

1 KING, HOLMES, PATERNO & BERLINER LLP  
 HOWARD E. KING, ESQ., STATE BAR NO. 077012  
 2 STEPHEN D. ROTHSCHILD, ESQ., STATE BAR NO. 132514  
 1900 AVENUE OF THE STARS, 25<sup>TH</sup> FLOOR  
 3 LOS ANGELES, CALIFORNIA 90067-4506  
 E-MAIL: ROTHSCHILD@KHPBLAW.COM  
 4 TELEPHONE: (310) 282-8989  
 FACSIMILE: (310) 282-8903

5 JEFFREY N. MAINER (State Bar No. 122385)  
 6 JOHN R. YATES (State Bar No. 120344)  
 BERMAN, MAUSNER & RESSER  
 7 11601 Wilshire Boulevard, Suite 600  
 Los Angeles, California 90025-1742  
 8 E-MAIL: JEFFMAUSNER@BMRLAW.COM  
 TELEPHONE: (310) 473-3333  
 9 FACSIMILE: (310) 473-8303

10 DANIEL J. COOPER (State Bar No. 198460)  
 General Counsel, Perfect 10, Inc.  
 11 RANDY LEWIS (State Bar No. 210444)  
 Associate General Counsel, Perfect 10, Inc.

12 Attorneys for Plaintiff PERFECT 10, INC.

13  
14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

16  
17 PERFECT 10, INC., a California  
18 corporation,,

19 Plaintiff,

20 vs.

21 VISA INTERNATIONAL SERVICE  
 ASSOCIATION; FIRST DATA CORP, a  
 22 corporation; CARDSERVICE  
 INTERNATIONAL, INC., a corporation;  
 23 MASTERCARD INTERNATIONAL  
 INCORPORATED, a corporation;  
 24 HUMBOLDT BANK, a national banking  
 association; and DOES 1 through 100,  
 25 inclusive,

26 Defendants.

CASE NO. C 04-00371 (JCS)  
 [Assigned for all purposes to  
 Judge James Ware]

Action Commenced: January 28, 2004

PLAINTIFF'S NOTICE OF ERRATA  
 TO OPPOSITION TO MOTION TO  
 DISMISS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TO THE ABOVE-ENTITLED COURT AND TO ALL PARTIES AND  
THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that Plaintiff Perfect 10, Inc. respectfully submits the following errata to its opposition to defendants' motion to dismiss:

Plaintiff inadvertently gave an incorrect cite for the statement at page 10, lines 11-12, of the opposition, that "[a] suit should not be dismissed if it is possible to hypothesize facts, consistent with the complaint, that would make out a claim."

The correct cite is *Graehling v. Village of Lombard*, 58 F.3d 295, 297 (7th Cir.1995), citing *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232-33, 81 L.Ed.2d 59 (1984); *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957); *Sanjuan v. American Board of Psychiatry & Neurology, Inc.*, 40 F.3d 247, 250-51 (7th Cir.1994); and, *American Nurses' Ass'n v. Illinois*, 783 F.2d 716, 727 (7th Cir.1986).<sup>1</sup>

DATED: June 3, 2004 KING, HOLMES, PATERNO & BERLINER, LLP

By: \_\_\_\_\_  
STEPHEN D. ROTHSCHILD  
Attorneys for Plaintiff PERFECT 10, INC.

<sup>1</sup> *Graehling* was cited with approval for the above-cited proposition in *Hawkins v. Comparet-Cassani*, 33 F.Supp.2d 1244, 1253 (C.D.Cal. 1999) (rev'd on other grounds, 251 F.3d 1230 (9th Cir. 2001)).