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FAX TRANSMISSION

TO: ERIC SCHROEDER FROM: MICHAEL DAILEY

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(including cover)

FAX: 404 572 6999

DATE: 9-18-08 CLIENT/MATTER: COBB v GOOGLE

RE: \_\_\_\_\_  
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ANDERSON



DAILEY LLP

September 18, 2008

**VIA TELECOPIER AND  
UNITED STATES MAIL**

Eric P. Schroeder, Esq.  
POWELL GOLDSTEIN LLP  
One Atlantic Center  
Fourteenth Floor  
Atlanta, Georgia 30309

Re: *Jonathan Cobb v. Google, Inc. et al.*;  
Civil Action File No. 1:08-CV-0483-MHS;  
United States District Court/Northern District of Georgia

Dear Eric:

This letter will confirm my receipt of your telephone message of this morning. I have attempted to call you back, but inasmuch as you reported that you may be out of the office later, I have taken the liberty of sending you this letter.

As you know, Plaintiff filed this morning his Motion To Compel Discovery from Defendant Google, Inc. Your message of this morning states that you believe I "jumped the gun" in filing the Motion, based on your report when we spoke by telephone on September 2, 2008. I must respectfully disagree.

In my conversation with your predecessor, Michael Zwibelman of Brune & Richard, LLP, conducted on August 19, 2008, Mr. Zwibelman informed me of the fact that he was resigning his position with his law firm. Mr. Zwibelman's report was most inconvenient, as he and I had been discussing by telephone and through correspondence a festering discovery dispute having to do with Google's various responses. Even so, Mr. Zwibelman stated that I would hear from someone within "a matter of days" (he estimated two to three) about who it was that would be primarily responsible for handling the case going forward, and, most importantly to me, what Google's position on our pending discovery dispute would be.



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In point of fact, I heard nothing at all that week. I heard nothing more the following week through Friday August 29, 2008 mid-day, when I boarded a flight to Colorado. Later that afternoon, you left a voicemail message for me stating that you and your firm would be handling the case going forward. I retrieved your message when I returned, and on Tuesday, September 2, 2008, I telephoned you to discuss the case.

In our conversation of that same date, you informed me again that you would be handling the case. You also said that you were aware of the discovery dispute that had been pending, but you also stated that you could not give me a report on what Google's position would be until at least September 15, 2008, when Google's in-house counsel returned from her vacation. That was frustrating news for sure. We then talked through the details of the pending dispute. I alerted you to the fact that our discovery period was being consumed by this delay, and I requested your help in gaining any extension we might need. You responded that you could make no commitments, but you seemed to understand my growing frustration.

September 15, 2008 came and went. I figured Google's in-house counsel deserved at least one day to clear her desk upon returning from vacation. I figured she was also deserving of at least one day more to confer in detail with you about this long simmering dispute. And I believed you were deserving of at least one further day to get back with me. Unfortunately, by the end of the day September 17, 2008 I had heard nothing further from anyone, and I determined to file our Motion today.

Your voice-message states that you are in the process of gathering documents and information for production to me, and therefore I should either (1) withdraw Plaintiff's Motion and await your production, or (2) advise you that we are committed to resolving these issues via motion practice, and proceed accordingly.

I would offer another approach. Eric, I fully understand you are new to the case in terms of holding its lead counsel position. I want to give you every consideration you are due. But I also understand that Google's in-house counsel is controlling what Google elects to produce and disclose in this case. I also know that I have been stiff-armed for a very long time, going on three (3) full months, for what are very basic discovery obligations on Google's part. A request from Google that the Plaintiff seriously consider a phased discovery approach was met with a detailed written proposal from me on July 11, and yet Google has not even seen fit to respond to my proposal in any substantive detail. Rather, it continues to tell me that it will produce what it desires when it desires to do so.

So I propose that my client's Motion remain pending while you complete the production you report is coming. Adequate time exists for me to receive that production



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and determine if it is adequate. If it is, I have no problem withdrawing the Motion. If it is not, and I can't get you to supplement your production further, then those aspects of the Motion still requiring Court assistance can be heard. I think that is a constructive way to proceed.

I look forward to talking with you.

Sincerely,

Michael Alan Dailey

MAD/msm