1 2 3 4 5 6 7 8 9 10		TER & HEDGES, LLP 2009 AUG 28 AM II: 48 CLERK U.S. DISTERCY CENTRAL DIST. OF CALIE. SANTA ARA CT OF CALIFORNIA
112 113 114 115 116 117 118 119 220 221	PERFORMANCE PRICING, INC., Plaintiff, vs. GOOGLE INC. and AOL LLC, Defendants.	CASE NO.: CV09-6283 GAF (CTx) DISCOVERY MATTER DECLARATION OF EMILY C. O'BRIEN IN SUPPORT OF DEFENDANT GOOGLE INC. AND AOL LLC'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY THIRD PARTIES NEAL COHEN AND VISTA IP LAW GROUP LLC Crtrm.: Judge: Hrg. Date: Hrg. Time:
22 23 24 25 26 27 28		

01002.51305/3032764.1

DECLARATION OF EMILY C. O'BRIEN

I, Emily C. O'Brien, declare and state as follows:

- 1. I am an associate of the law firm Quinn Emanuel Urquhart
 Oliver & Hedges, LLP and represent Defendants AOL LLC and Google Inc. in this
 action. This declaration is made in support of Defendant Google Inc. and AOL
 LLC's Motion to Compel Production of Documents. The matters referred to in this
 declaration are based upon my personal knowledge, and if called as a witness I
 could testify competently to those matters.
- 2. Attached hereto as Exhibit A is a true and accurate copy of the document subpoena served on Neal Cohen on October 22, 2008.
- 3. Attached hereto as Exhibit B is a true and accurate copy of the document subpoena served on Vista IP Law Group, LLP on October 22, 2008.
- 4. Attached hereto as Exhibit C is a true and accurate copy of the Neal Cohen and Vista IP Law Group, LLP privilege log served on November 7, 2008. This is referred to in the Joint Stipulation as the first privilege log.
- 5. Attached hereto as Exhibit D is a true and accurate copy of the November 25, 2008 letter from Emily O'Brien to Neal Cohen.
- 6. Attached hereto as Exhibit E is a true and accurate copy of the revised Exhibit A to the Neal Cohen and Vista IP Law Group, LLP privilege log served on January 9, 2009. This is referred to in the Joint Stipulation as the second privilege log.

5

10 11

12

13

14 15

17

18

19

20

21 22

23

24

25

26 27

28

- Attached hereto as Exhibit F is a true and accurate copy of 7. selected pages from the deposition of Neal Cohen, taken February 11, 2009.
- 8. Attached hereto as Exhibit G is a true and accurate copy of the March 16, 2009 letter from Emily O'Brien to Christin Cho. Ms. Cho is an associate at Dovel & Luner LLP, the law firm representing Plaintiff Performance Pricing, Inc. in this matter. Dovel & Luner also represents third party Neal Cohen in connection with the subpoenas served in this matter. This letter memorializes a telephone conversation between myself and Ms. Cho, in which Ms. Cho affirmed that Mr. Cohen would revise entries in his privilege log for which he improperly asserted work product protection.
- 9. Attached hereto as Exhibit H is a true and accurate copy of the revised Neal Cohen and Vista IP Law Group, LLP privilege log served on March 31, 2009. This is referred to in the Joint Stipulation as the third privilege log.
- 10. Attached hereto as Exhibit I is a true and accurate copy of an electronic mail sent by Rachel Kim of Dovel & Luner to counsel for Defendants on April 16, 2009. Attached to this electronic mail, Ms. Kim produced documents previously withheld by Neal Cohen. These documents are not included as part of Exhibit I.
- Attached hereto as Exhibit J is a true and accurate copy of the 11. revised Neal Cohen and Vista IP Law Group, LLP privilege log served on April 21, 2009. This is referred to in the Joint Stipulation as the fourth privilege log. Also

included in Exhibit J is the electronic mail sent by Rachel Kim to counsel for Defendants, to which the revised privilege log was attached. Attached to this electronic mail, Ms. Kim also produced documents previously withheld by Neal Cohen. These documents are not included as part of Exhibit J.

- 12. Attached hereto as Exhibit K is a true and accurate copy of the revised privilege log of Neal Cohen and Vista IP Law Group, LLP served on May 18, 2009. This is referred to in the Joint Stipulation as the fifth privilege log.
- 13. Attached hereto as Exhibit L is a true and accurate copy of the May 22, 2009 letter from Emily O'Brien to Christin Cho regarding the Cohen privilege log.
- 14. Attached hereto as Exhibit M is a true and accurate copy of the revised privilege log of Neal Cohen and Vista IP Law Group, LLP served on May 29, 2009. This is referred to in the Joint Stipulation as the sixth privilege log. Please note that there was initially a problem with the service of the privilege log, such that Defendants did not receive it on May 29, 2009. The privilege log was reserved on June 2, 2009.
- June 8, 2009 letter from Emily O'Brien to Greg Dovel and Christin Cho. This letter summarizes the parties' meet and confer regarding the Neal Cohen and Vista IP Law Group, LLP privilege log. This letter identified each privilege log entry in dispute, outlined Defendants' position regarding this discovery issue, and cited case law in

support of Defendants' position. During the meet and confer on June 4, 2009,

Plaintiff's counsel indicated that they did not believe attorney-client privilege to
have been waived, because the documents had not yet been produced.

- 16. Attached hereto as Exhibit O is a true and accurate copy of the revised privilege log of Neal Cohen and Vista IP Law Group, LLP served on June 12, 2009. This is referred to in the Joint Stipulation as the seventh privilege log.
- 17. Attached hereto as Exhibit P is a true and accurate copy of the discovery order and docket control order entered in this case, and orders modifying the deadlines set in these initial orders.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 24, 2009 at San Francisco, California.

Emily C. O'Brien