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4 Attorney for Plaintiff

5  
 6 UNITED STATES DISTRICT COURT  
 7 CENTRAL DISTRICT OF CALIFORNIA

8 PERFECT 10, INC., a California  
 9 corporation,

10 Plaintiff,

11 v.

12 MICROSOFT CORPORATION, a  
 13 corporation; and DOES 1 through 10,  
 inclusive,

14 Defendants.

CASE NO. CV 07-5156 AHM (SHx)

OPPOSITION TO MICROSOFT  
 CORPORATION'S MOTION TO  
 DISMISS PERFECT 10'S THIRD AND  
 FOURTH CLAIMS FOR RELIEF  
 PURSUANT TO RULE 12(b)(6)

Date: December 10, 2007

Time: 10 A.M.

Place: Courtroom of Judge Matz

16 On or about October 4, 2007, Microsoft Corporation filed a Motion to  
 17 Dismiss Perfect 10's Third and Fourth Claims for Relief Pursuant to Rule 12(b)(6).  
 18 On October 24, Perfect 10 filed an Amended Complaint which does not include the  
 19 Third and Fourth Claims for Relief.<sup>1</sup> Therefore, Microsoft's motion is moot.

20 Dated: November 13, 2007

Respectfully submitted,

21 By: Jeffrey N. Mausner  
 22 Jeffrey N. Mausner  
 23 Attorney for Plaintiff Perfect 10, Inc.

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 25 \_\_\_\_\_  
 26 <sup>1</sup> Federal Rule of Civil Procedure 15(a) provides that a party has the right to amend  
 27 its complaint once as a matter of course at any time before a responsive pleading is  
 28 served. A Rule 12(b)(6) motion is not a responsive pleading. *See St. Michael's  
 Convalescent Hospital v. California*, 643 F.2d 1369, 1374 (9<sup>th</sup> Cir. 1981); *Nolen v.  
 Fitzharris*, 450 F.2d 958, 958-59 (9<sup>th</sup> Cir. 1971); Judge Matz's Initial Order  
 Following Filing of Complaint Assigned to Judge Matz, page 5.