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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 IN RE GOOGLE ADWORDS LITIGATION

Case No. 08-3369 JW

13
14 **[REDACTED] THIRD AMENDED**
15 **CONSOLIDATED CLASS ACTION**
16 **COMPLAINT FOR VIOLATION OF**
17 **CALIFORNIA BUSINESS &**
18 **PROFESSIONS CODE SECTIONS 17200**
19 **ET SEQ. AND 17500 ET SEQ.**

20 This Document Relates to:
21 All Actions

22 **[UNREDACTED VERSION SUBMITTED**
23 **FOR FILING UNDER SEAL PURSUANT**
24 **TO SEALING ORDER DATED**
25 **NOVEMBER 23, 2010 (Docket Nos. 128,**
26 **138 and 165]**

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Plaintiffs allege, individually and on behalf of the Class described below, and upon information and belief, except as to allegations specifically pertaining to themselves, which are based on personal knowledge, as follows:

I. SUMMARY OF CLAIMS

1. This is a class action lawsuit against defendant Google, Inc. (“Google”) for violation of California Business & Professions Code Sections 17200 and 17500 in connection with Google’s AdWords program for Internet advertisers.

2. Google promotes itself as the world’s leading Internet search engine. However, Google’s principal source of revenue is the sale of online advertising. Plaintiffs and the Class are customers of Google’s AdWords program, pursuant to which Google places advertisements on Internet websites. Customers pay Google when Internet users click on their ads.

3. Advertisers wish to spend advertising dollars to display ads to consumers who are interested in their products and services. Google represents that it places ads on “high quality” search and content sites, that is, websites where advertisements will be placed alongside contextually relevant search results or content.

4. However, during the Class Period, Google concealed from advertisers that it actually was placing substantial numbers of their ads on low quality parked domain and error pages that contained little or no content, and which could not be accessed through what internet users considered to be “search.”

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1 5. “Parked domains” are and “error pages” are undeveloped webpages that generally
2 contain little or no content. While parked domains are registered websites, error pages are
3 unregistered. During the Class Period, Google described parked domains as follows:

4 A parked domain is a placeholder page for a domain that is not yet developed into a website.
5 Often this is entirely legitimate - for example, a webmaster may put up an "Under
6 construction" while the site itself is being built.

7 However, some webmasters register domains and park them in order to monetize those
8 pages. Typically this is done by filling the pages with ads in the hope of gaining pay-per-
9 click (PPC) revenue.

10 These parked pages don't provide value to searchers, so we don't typically return them in our
11 search results. If you have parked domains, activate the domains and fill them with useful
12 content to make them eligible for being indexed and returned in search results.

13 6. Internet users can reach parked domains and error pages when they mistype a URL in
14 the browser bar or through redirection from other websites.

15 7. During the Class Period, Google knew that advertisers did not consider parked
16 domains and error pages to be “high quality” websites. To the contrary, Google knew that AdWords
17 customers did not believe that advertising on such sites would result in a positive return on their
18 investment, and that AdWords customers did not want their businesses to be associated with parked
19 domains or error pages.

20 8.

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10. Finally, throughout the Class Period, Google knew that its published policies, which prohibited the placement of advertisements on “domain parking” websites, websites that lacked content, and websites that were created specifically for the purpose of showing ads, were misleading to its AdWords customers, because advertisers would reasonably infer from those policies that Google would not place their ads on parked domains and error pages. Despite this awareness, Google refrained from changing its published policies for fear of drawing attention to the prevalence of parked domains and error pages in its Network.

11. During the Class Period, Google made hundreds of millions of dollars by charging plaintiffs and the Class members for clicks on ads that Google had placed on parked domains and error pages, unbeknownst to them.

12. Google has damaged plaintiffs and the Class by improperly charging them for clicks from advertising placed on such websites.

II. PARTIES

13. Plaintiff Pulaski & Middleman, LLC (“Pulaski”) is a Texas limited liability company and a citizen of Texas. Pulaski is a law firm. During the Class Period, Pulaski contracted with Google to place advertising through Google’s AdWords program, paid for clicks from ads placed on parked domain and error pages, and was damaged thereby.

14. Plaintiff RK West, Inc. d/b/a Malibu Sales (“RK West”) is a California corporation and a citizen of California. RK West is a wholesaler. During the Class Period, RK West contracted with Google to place advertising through Google’s AdWords program, paid for clicks from ads placed on parked domain and error pages, and was damaged thereby.

15. Plaintiff JIT Packaging, Inc. (“JIT”) is an Illinois corporation and a citizen of Illinois. JIT provides packaging products and services. During the Class Period, JIT contracted with Google

1 to place advertising through Google's AdWords program, paid for clicks from ads placed on parked
2 domain and error pages, and was damaged thereby.

3 16. Plaintiff Richard Oesterling("Oesterling") is an individual and a citizen of the State
4 of California who, during the Class Period, was a sole proprietor doing business as KB Cameras, a
5 store that sold cameras and camera products. During the Class Period, Oesterling contracted with
6 Google to place advertising for various ventures through Google's AdWords program, paid for
7 clicks from ads placed on parked domain and error pages, and was damaged thereby.

8 17. Defendant Google is a publicly traded Delaware corporation headquartered in
9 Mountain View, California.

10
11 **III. JURISDICTION AND VENUE**

12 18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
13 § 1332(d) in that this is a civil action filed under Federal Rule of Civil Procedure 23 and plaintiffs
14 and other members of the Class are citizens of a state different from Google, the aggregate amount
15 in controversy exceeds \$5,000,000, exclusive of interest and costs, and there are more than 100 class
16 members. 28 U.S.C. § 1332(d)(2), (6).

17 19. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
18 § 1391(a) in that: (1) Google resides in this judicial district; (2) a substantial part of the events or
19 omissions giving rise to the claims asserted herein occurred in this judicial district; and (3) Google is
20 subject to jurisdiction in the Northern District of California.

21
22 **IV. FACTS**

23 **A. DESCRIPTION AND HISTORY OF GOOGLE**

24 20. Google dominates the US and the worldwide online advertising industry with a
25 network that reaches up to 86% of worldwide Internet users. As of the 4th quarter of 2009, Google
26 had an estimated 72% share of total online paid search advertising revenues in the U.S. In 2009
27
28

1 Google had total world-wide revenues of \$23.6 billion, up from \$6.1 billion in 2005 – a growth rate
2 of approximately 285% over 4 years.

3 21. Online advertising represents the vast majority of Google’s revenues – accounting for
4 about 99% of Google’s total revenues for the period 2005-2007, and accounting for about 97% of
5 Google’s total revenues for the period 2008-2009. In 2009, Google reported a net income of \$6.5
6 billion, or about 27% of its total worldwide revenues.

7 22. Thus, while Google is perhaps most well known for its own search-based website
8 (www.google.com), Google’s online advertising program, referred to as “AdWords,” is at the heart
9 of the Company’s financial success. In this context, the advertisers who are the putative Class
10 Members in this case are the AdWords customers who are paying Google and its site-owner partners
11 (AdSense publishers) for the service of delivering and hosting advertising messages.

12 **B. THE ADWORDS AND ADSENSE PROGRAMS**

13 **1. AdWords**

14 23. Google AdWords operates an auction-based advertising program. Google has stated
15 that the purpose of its AdWords program is to provide advertisers with the means to deliver
16 “relevant, targeted advertising” to internet users by placing their advertisements on websites that
17 Google owns, as well as on websites owned by third parties, which are referred to as AdSense
18 publishers or the Google Network.

19 24. Google describes Google AdWords as follows:

20 **Google AdWords** is a quick and simple way to advertise on Google, regardless of your
21 budget. AdWords ads are displayed along with search results on Google, as well as on search
22 and content sites in the growing Google Network, including AOL, EarthLink,
23 HowStuffWorks, & Blogger. With searches on Google and page views on the Google
24 Network each day, your Google AdWords ads reach a vast audience.

25 25. Throughout the Class Period, using the AdWords program, plaintiffs and the Class
26 members created text-based or display ads and participated in auctions that allowed them to
27 implement advertising campaigns. In setting up ad campaigns, the Class members entered certain
28 Google-defined variables, such as the keywords Google would use to match their advertisements
with relevant search results or web content, the maximum price per click, and their daily budget.

1 The Class members also chose whether they wanted to bid for clicks on ads on search or content
2 sites, or both.

3 26. Google explained that it employed what it described as “AdSense Contextual
4 Advertising Technology” to match advertisers’ keywords with particular sites:

5 Our AdSense technology employs techniques that consider factors such as keyword analysis,
6 word frequency, font size and the overall link structure of the web to analyze the content of
7 individual web pages and to match ads to them almost instantaneously. With this ad targeting
8 technology, we can automatically serve contextually relevant ads. To do this, Google
9 Network members embed a small amount of customer HTML code on web pages that
10 generates a request to Google’s AdSense service whenever a user views the web page. Upon
11 receiving a request, our software examines the content of web pages and performs a
12 matching process that identifies advertisements that we believe are relevant to the content of
13 the specific web page. The relevant ads are then returned to the web pages in response to the
14 request. We employ similar techniques for matching advertisements to other forms of textual
15 content, such as email messages and Google Groups postings. For example, our technology
16 can serve ads offering tickets to fans of a specific sports team on a news story about that
17 team.

18 27. Thus, while the Class members had a degree of influence over the effectiveness of
19 their ad campaigns through Google (e.g., by the design of their ads, their choice of certain keywords,
20 and their maximum bid), they ultimately relied upon Google’s technology to appropriately place
21 their ads alongside relevant search results or web content and to price their ads accordingly.

22 2. AdSense

23 28. Google’s AdSense program is a program that enables online publishers of websites to
24 partner with Google and earn revenue from ads placed by Google on their websites. Throughout the
25 Class Period, Google charged Plaintiffs and the Class members each time an internet user clicked on
26 their ads on AdSense publishers’ websites and then paid a portion of that revenue to the AdSense
27 publishers, while retaining the remaining portion for itself.

28 29. According to Google’s SEC filings, revenue from advertisements on the third-party
publishers which made up the “Google Network” was responsible for between 35% and 44% of
Google’s revenue from advertising during the period 2005-2007. These third party “partners” of
Google include both “online” and “direct” partners. Google’s “direct” partners often included
owners of thousands of websites who negotiated special contracts with Google.

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1 30. During the Class Period, Google’s two primary categories of publishers were its
2 AdSense for Content (“AFC”) and AdSense for Search (“AFS”) partners.

3 31. During the Class Period, Google described AdSense for Content as follows:
4 AdSense for content, launched in the first quarter of 2003, is our service for distributing ads
5 from our advertisers that are relevant to content on our Google Network members’ sites.
6 Under this program, we use automated technology to analyze the meaning of the content on
7 the web site and serve relevant ads based on the meaning of such content. For example, a
8 web page on an automotive blog that contains an entry about vintage cars might display ads
9 for vintage car parts or vintage car shows. These ads are displayed in spaces that our
10 AdSense for content partners have set aside on their web sites for our AdWords content.
11 AdSense for content allows a variety of ad types to be shown, including text ads, image ads,
12 video ads, link units (which are sets of clickable links to topic pages related to page content)
13 and themed units (which are regular text ad units with graphic treatments that change
14 seasonally and by geography).

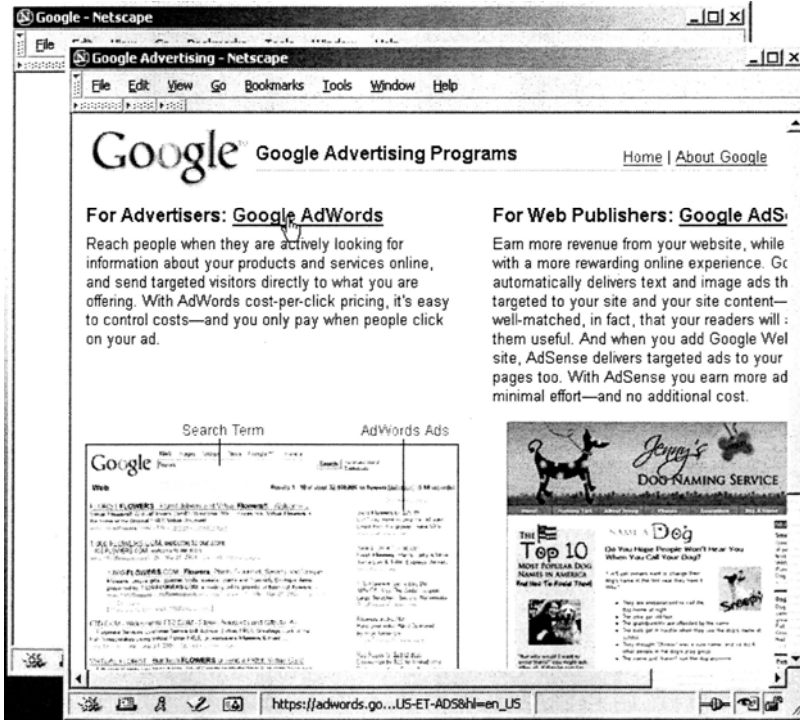
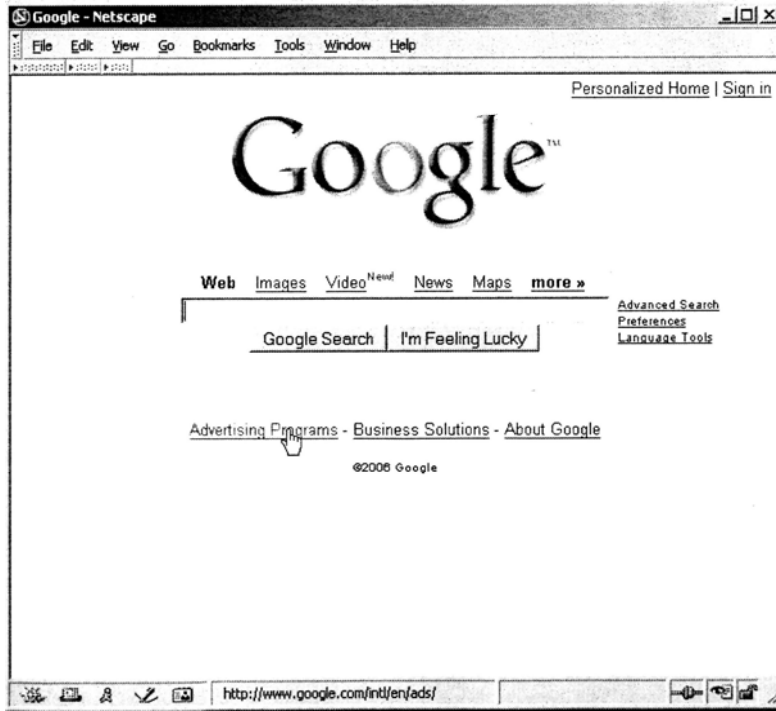
15 32. During the Class Period, Google described AdSense for Search as follows:
16 AdSense for search, launched in the first quarter of 2002, is our service for distributing
17 relevant ads from our advertisers for display with search results on our Google Network
18 members’ sites. To use AdSense for search, most of our AdSense for search partners add
19 Google search functionality to their web pages in the form of customizable Google search
20 boxes. When visitors of these web sites search either the web site or the Internet using these
21 customizable search boxes, we display relevant ads on the search results pages, targeted to
22 match user search queries.

15 **C. SIGNING UP FOR ADWORDS**

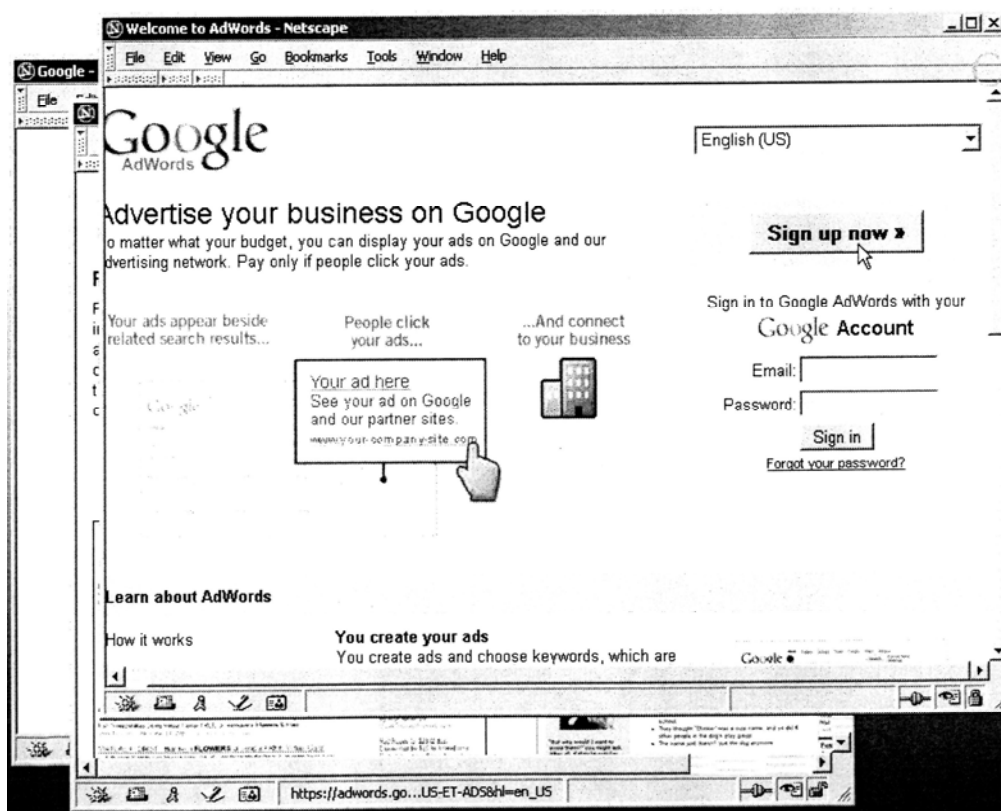
16 33. During the Class Period, a potential AdWords customer could sign up online through
17 Google’s AdWords website. As shown below, from the Google.com homepage, a potential
18 AdWords advertiser would click on a link entitled “Advertising Programs,” which would take the
19 advertiser to a page describing Google’s AdWords and AdSense programs.
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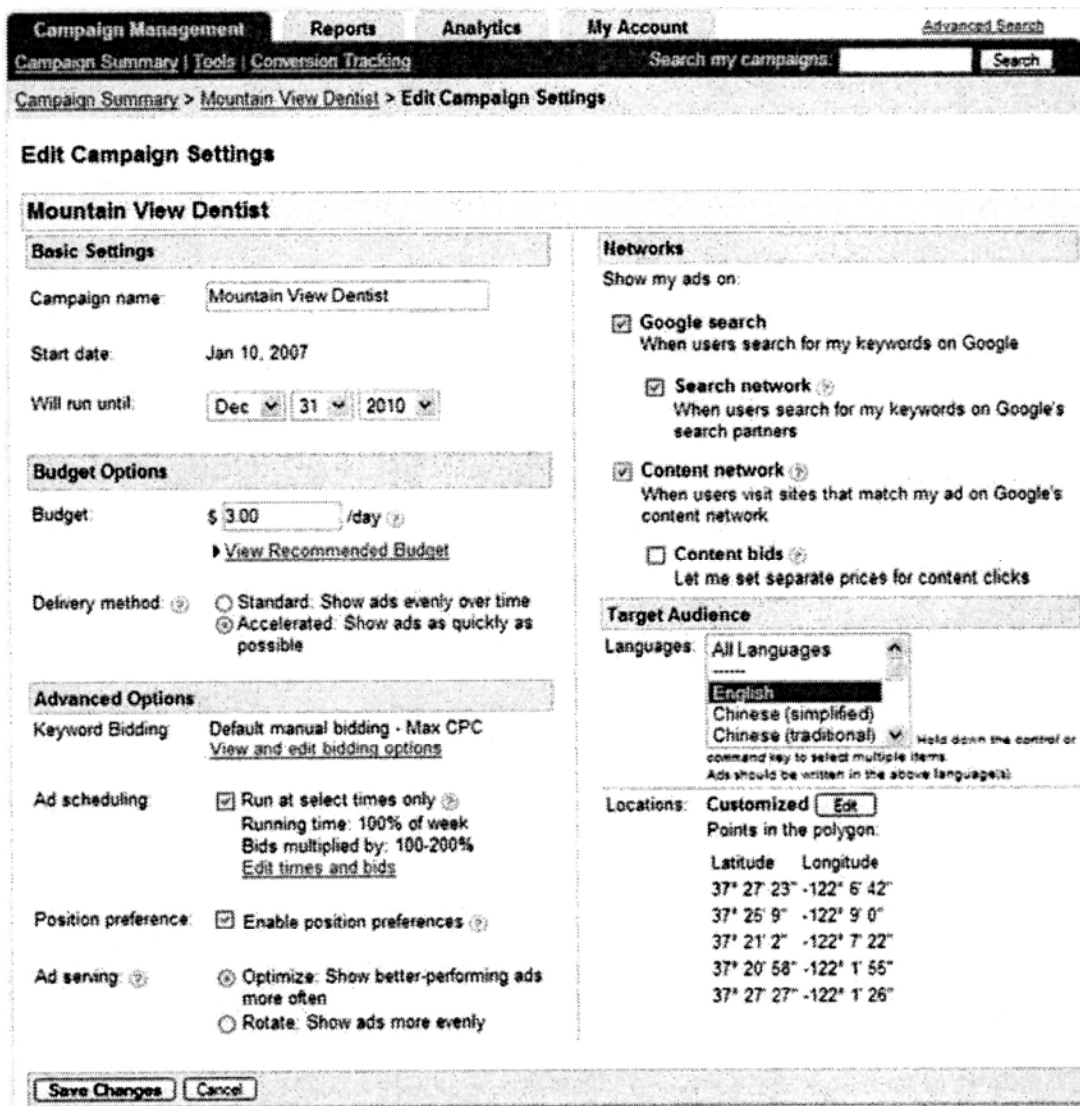
34. If the advertiser chose the “AdWords” link, he or she would then be taken to another webpage where he or she could click on a “Sign Up Now” button to initiate an AdWords account.



35. The process of creating an AdWords account required filling in certain requisite information on various webpages, such as the language or languages that the advertiser’s customers speak, the text of the advertiser’s ad or ads, the keyword or keywords that an internet user could type into a Google search box to trigger the advertiser’s ad to display alongside Google’s search results, the maximum that the advertiser would pay each time an internet user clicked on an ad, the maximum budget set by the advertiser per day, and certain account billing information.

36. AdWords ads were monetized through placement by Google on websites falling into one of the three following categories: (1) “Google.com” websites, which are websites owned by Google; (2) “Search Network” sites, which include AdSense for Search Network websites; and (3) Content Network websites, which are also websites owned by third parties.

37. By default, AdWords customers' ads were placed within all three categories of websites: Google.com, the Search Network, and the Content Network. As shown below, it was only by "unchecking" boxes in the "Edit Campaign Settings" tab on the AdWords website that advertisers could opt out of having their ads appear on sites in the Content Network or in the Search Network.



38. From the beginning of the Class Period until the end of the first quarter of 2005, all AdWords customers paid Google on a cost-per-click basis, meaning that advertisers paid Google only when an internet user clicked on their ads. After the end of the first quarter of 2005, some

1 AdWords customers also paid Google based upon the number of times their ads appeared on sites in
2 the Google Network, which Google referred to as the “cost-per-impression” basis. This case
3 concerns only those advertisers who paid Google on a cost-per-click basis.

4 39. From the beginning of the Class Period until November 22, 2005, all AdWords
5 customers bid one amount for placement of their ads based upon each chosen keyword, regardless of
6 whether the ads would be placed on Google-owned sites, Search Network sites, or Content Network
7 sites.

8 40. On November 22, 2005, Google announced that advertisers could bid separately for
9 content and search sites:

10 Today, Google launched separate content bidding for Google AdWords. This enhancement
11 to Google AdWords enables advertisers to place one bid for ads that run on content sites and
12 a separate bid for ads that run on search sites within the Google Network. Previously, the
13 single keyword bid placed by advertisers was applied to their ads on both search and content
14 pages.

15 41. As an example, starting on November 22, 2005 and continuing through to the end of
16 the Class Period, Advertiser A could bid \$1 per click for his ad to appear on Content Network sites
17 that were deemed relevant to his keyword “apple,” and \$2 per click for his ad to appear on what
18 Google termed “search” sites, which included those sites owned by Google and owned by Google’s
19 AdSense for Search partners. Advertisers could bid as little as \$.01 for a click on an ad on either
20 search or content pages.

21 42. By default, Google opted all AdWords customers into bidding the same amount for
22 placement of ads on all three categories of sites, but after November 22, 2005, by checking a box on
23 the Edit Campaigns Setting tab, advertisers could choose to bid separately for Content Network
24 clicks. *See* Paragraph 35, above. Thus, after November 22, 2005, advertisers could bid for clicks on
25 “search” sites (including Google.com and the Search Network) or “content” sites, which were sites
26 in the Content Network, or both.

27 43. Nowhere in the sign up process did Google explain to AdWords customers that,
28 regardless of whether they chose for their ads to run in the Search Network, the Content Network, or
both, that Google would place their ads on undeveloped parked domains and error pages.

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D. GOOGLE KNEW THAT ADWORDS CUSTOMERS DID NOT EXPECT THEIR ADS TO BE PLACED ON PARKED DOMAINS AND ERROR PAGES AND DID NOT CONSIDER PARKED DOMAINS AND ERROR PAGES TO BE HIGH-QUALITY SITES

44. Throughout the Class Period, Google was well-aware that it failed to disclose to its AdWords customers that it placed substantial numbers of their ads on parked domains and error pages, and that as a result, its AdWords customers were misled.

45.

46. Furthermore, during the Class Period, Google was well-aware that parked domains and error pages were not considered high-quality websites. Plaintiffs viewed these websites as “garbage sites,” which contained only advertisements, or advertisements plus links to additional pages of advertisements, otherwise referred to as “link farms.” Plaintiffs believed that clicks on ads on such pages were unlikely to lead to desirable business outcomes, and that placement on such pages could damage their brands.

47. Google managers were well-aware that, like the Plaintiffs, AdWords customers did not consider parked domains and error pages desirable places to advertise. Google managers knew that AdWords customers generally viewed web pages lacking content as low quality sites, and that they would not expect that clicks on those sites would result in a positive return on their investments.

48. Furthermore, Google managers were well aware that AdWords customers would have considered placement of their ads on parked domains and error pages to be potentially damaging to their brands, and that parked domains and error pages were associated with trademark violations, spamming, and other unsavory activities.

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49.

E. GOOGLE FAILED TO MONITOR ITS NETWORK TO ENSURE THAT IT DID NOT INCLUDE LOW QUALITY PARKED DOMAINS AND ERROR PAGES, AND ACTIVELY SOLICITED PUBLISHERS OF THOSE SITES

50. During the Class Period, despite its representations to the contrary, Google failed to monitor its Network to ensure that it did not include low quality parked domains and error pages.

51. Furthermore, Google actively solicited publishers of low-quality parked domains and error pages through two programs –AdSense for Domains (“AFD”) and AdSense for Errors (“AFE”) – and generated substantial revenue as a result.

52. Google describes AFD as follows:

Google AdSense for domains allows owners of undeveloped domains which receive traffic from users typing generic terms into browsers or search to generate revenue from relevant advertising... Like AdSense for search or content, Google shares the majority of the advertising revenue from AdSense for domains ... with the domain owner...

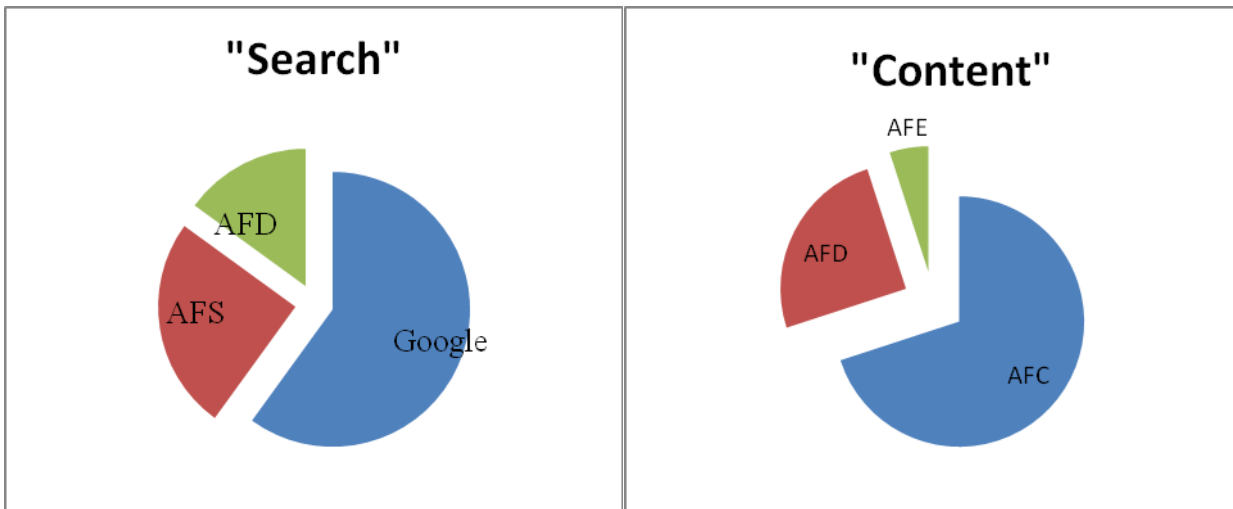
53. Google describes AFE as follows:

Our AdSense for errors program serves users with targeted AdWords ads when they enter an unregistered URL or a search query in their browser's address bar rather than in a search engine such as Google. Previously, these searches would result in error pages (i.e. a '404 error' page), which would leave the user with no other option but to renew the search query.

Now, these pages offer ads (some pages also include actual search results) that can be relevant information for the user. AdSense for errors uses Google's semantic technology to thoroughly interpret search queries before delivering contextually targeted ads.

54. Unbeknownst to Plaintiffs and the members of the Class, during the Class Period, AdWords customers who bid on clicks on sites in the “Search” network were charged for clicks on ads placed on sites in the AdSense for Domains program, and AdWords customers who bid on clicks on sites in the “Content” network were charged for clicks on pages in both the AdSense for Domains and AdSense for Errors programs.

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F. GOOGLE NOT ONLY FAILED TO DISCLOSE, BUT PURPOSEFULLY CONCEALED ITS PLACEMENT OF ADWORDS' CUSTOMERS' ADVERTISEMENTS ON PARKED DOMAINS AND ERROR PAGES

1. Google Represented That AdWords Customers' Ads Would Be Placed on Search and Content Sites

55. Throughout the Class Period, Google consistently represented that the Google Network, which comprised the third party sites owned or controlled by AdSense publishers, was exclusively comprised of "search" and "content" sites.

56. For example, as discussed previously, the AdWords web page where advertisers could choose where their ads would run mentioned only three categories of sites: Google, Google's search partners, and Google's content network. See paragraph 35, *supra*.

57. As another example, the AdWords Help Center answered the frequently asked question ("FAQ"), "What is Google AdWords?" as follows:

Google AdWords is a quick and simple way to purchase highly targeted cost-per-click (CPC) advertising, regardless of your budget. AdWords ads are displayed along with search results on Google, as well as on search and content sites in the growing **Google Network**. ...

58. If the user clicked on the highlighted text, "Google Network," he or she would then be taken to a second webpage that stated:

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1 The Google Network is made up of sites and products who partner with Google to publish
2 targeted AdWords ads via their site or product. Google can target your ads to search results
3 and relevant web content on a wide variety of sites and products to help you reach a vast and
4 highly-targeted audience.

5 AdWords ads are always displayed on Google search results pages, but you can choose
6 whether your Google AdWords campaigns also appear on either of our search or content
7 networks, or both. Your ads are automatically opted in to distribution on the Google
8 Network, so if you want your ads to appear on Google, and search and content sites and
9 products, then you don't need to do a thing.

10 59. The AdWords' Help Center's description of the Google Network remained largely
11 unchanged throughout the Class Period, continuing to explain that ads would be placed on either
12 "search" or "content" sites:

13 AdWords ads are placed based either on searches or content, so the Google Network has two
14 components: the search network and the content network.

15 60. In response to the FAQ, "Who's part of the Google Network?", Google's AdWords
16 Help Center explained:

17 **The search network**

18 Ads are targeted based on a user's search terms. For example, on if you search for 'italian
19 coffee' on Google, you'll see related coffee ads next to the search results.

20 **Content network**

21 Ads are targeted based on content themes rather than specific keywords. You can also
22 specify specific sites. [Learn more about the content network.](#)

23 61. During the Class Period, another Help Center description of the Google Network
24 stated:

25 The Google Network is made up of websites and other products who partner with Google to
26 publish targeted AdWords ads. The Google Network is divided into a [search network](#) and a
27 [content network](#):

28 Search network: Google's search network lets your ads be shown on the search results pages
of our high-quality partners including search sites and shopping comparison engines. Ads are
targeted to users' search queries, so that your ad will appear when a user is searching for
information related to your ad group's keywords. Your ads may also show as part of a results
page as a user navigates through a site's directory or on other relevant search pages. Our
global search network includes Froogle, Google Groups, Netscape, AT&T Worldnet,
EarthLink, and others.

Content network: Our ad serving system analyzes the content and URL of a web page, and
then matches this information to your ad group's keywords and ads. Your ads will be served
to pages whose subject-matter is relevant to your keywords and ads, so that you're provided

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with a targeted audience with an established interest in your message. Along with relevant web pages, the content network also includes relevant newsletters, email programs, and similar products.

The Google Network includes America Online, HowStuffWorks, Ask.com, New York PostOnline Edition, HowStuffWorks, and thousands of others worldwide.

62. In its response to the FAQ, “Where will my ads appear?”, the AdWords Help Center again described “search” sites as follows:

On search sites in the Google Network, your ads could appear along side or above search results or as a part of a results page a user navigates to through a site’s directory.

In response to this same FAQ, Google described content sites as follows:

AdWords ads on the Miami Herald and other sites are targeted to the actual content of the page that day. In the screenshot below, you can see the ads are directly relevant to NBA playoffs articles.

63. On none of the featured pages describing where AdWords’ customers ads will be placed did Google even mention parked domains or error pages.

2. Google’s Represented That AdWords Customers’ Ads Would Be Targeted to Contextually Relevant Sites

64. Throughout the Class Period, Google’s advised AdWords customers that their advertisements would be targeted to contextually relevant sites within the Google Network. For example, the AdWords Help Center provided the following definition of “contextual advertising”:

Google leverages our award-winning search technology to deliver relevant AdWords ads to content pages of sites and products in the Google Network. Our technology draws upon our understanding of the billions of pages in our search index and our ability to crawl web pages to figure out which keywords would lead a user to the page. Then, we match ads to the page based on those keywords.

65. Google’s response to the FAQ, “How does contextual advertising work?,” similarly stated:

If you are a new or existing AdWords advertiser your ads automatically begin appearing on relevant content sites and products. Utilizing our advanced search technology, Google scans the content of a Web page and automatically selects ads to display that have keywords closely matching the subject of the page. For example, if users look at a Web page about building hummingbird feeders, they may see Google AdWords ads for hummingbird feeders or hummingbird food. Or, if a users view a page containing brownie recipes, they may see ads about chocolate brownies or delicious dessert recipes. You don’t have to waste time trying to find the right content venue to display your ads. Our advanced algorithm makes it easy by displaying your ads automatically for the most relevant content.

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1 66. As yet another example, throughout the Class Period, Google’s response to the FAQ,
2 “How does Google target AdWords ads to content-based web pages?,” promised:

3 The technology that drives AdWords's contextual advertising comes from Google's award-
4 winning search and page ranking technology. Based on a sophisticated algorithm, we can
5 comprehend a page's meaning and then figure out which keywords relate best to the content
6 page. Then, we match ads that are precisely targeted to the content page based on the
7 associated keywords. This means that in addition to reaching customers who specifically
8 search on your keywords, you can now reach customers who view Web content directly
9 related to your AdWords ads. For example, if someone visits a web page on astronomy
10 he/she would be served Google AdWords ads for telescopes.

11 67. Google’s representations that it would place ads next to contextually relevant content
12 in the Content Network were false or misleading insofar as parked domains and error pages lacked
13 content.

14 **3. Google Represented That It Would Rigorously Monitor All Sites and**
15 **Ensure That They Complied with AdSense Program Policies**

16 68. Google marketed its AdWords program by promising that all of the websites upon
17 which it would place its Adwords customers’ advertisements would be rigorously reviewed and
18 monitored by Google itself to ensure that they met with Google’s high standards for quality:

19All web sites and products are reviewed and monitored according to Google's rigorous
20 standards, so as the network grows, your AdWords ads will continue to appear only on high-
21 quality sites and products.

22 To ensure overall quality, all sites are carefully reviewed before being allowed in the Google
23 Network.

24 We are constantly expanding the number of sites and products in our network through our
25 premium services and our new online Google AdSense program. All web sites and products
26 are reviewed and monitored according to the same rigorous standards, so as the network
27 grows, your AdWords ads will continue to appear only on high-quality sites and products.

28 69. Furthermore, Google advertised that all AdSense publishers were required to comply
with Google’s AdSense Program Policies, which were published on its website and accessible by
link from pages directed to AdWords advertisers. Those policies prohibited the placement of ads on
any “domain parking” websites, “any non-content-based pages,” and any pages that were created
specifically for the purpose of showing ads.

1 70. Throughout the Class Period, Google represented that if “[a publisher] fail[ed] to
2 comply with these policies, [Google had] the right to disable ad serving to [that publisher’s] site
3 and/or disable [that publisher’s] AdSense account at any time.”

4 71. However, Google failed to rigorously monitor the parked domains and error pages in
5 its Network to ensure that they complied with Google’s AdSense policies. To the contrary, as
6 discussed in greater detail below, substantial percentages of the parked domains in Google’s
7 network contained content that was at a minimum, unsavory, and often was truly offensive.

8 **4. Google Knew That Its Published Policies Were Misleading to Advertisers**

9 **a. Google’s Published Policies Regarding AdSense Sites Prohibited
10 Publishers from Placing Ads on “Domain Parking” Websites,
11 Pages Lacking Content, and Pages Created Specifically for the
12 Purpose of Showing Ads Were Misleading to Advertisers**

13 72. As stated previously, during the Class Period, Google’s AdSense Program Policies,
14 which were published on its website and accessible by link from pages directed to AdWords
15 advertisers, prohibited placement of ads on any “domain parking” websites, “any non-content-based
16 pages,” and any pages that were created specifically for the purpose of showing ads, and stated that
17 if a publisher failed to comply with those policies, Google could disable that publisher’s AdSense
18 account at any time.

19 73. Google employees were well-aware that these published AdSense policies were
20 misleading its AdWords customers, but opposed changing the policies for fear of drawing attention
21 to Google’s substantial business monetizing parked domains and error pages.

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10 77. Nevertheless, the “year of transparency” came and went without Google making any
11 changes to these AdSense Program policies.

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[Redacted] Third Amended Consolidated Class Action Complaint
No. 08-3369 JW

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82. The AdSense Program policies prohibiting the placement of ads on any non-content pages and on any pages that were published specifically for the purpose of showing ads remained in force throughout the Class Period.

b. Google’s Published Policies Prohibiting the Placement of Ads on Websites with With Adult Content and Other Unsavory Characteristics Were Misleading to Advertisers

83. During the Class Period, Google’s published AdSense Program policies also prohibited the placement of ads on websites that contained a variety of other unsavory characteristics, including pornography, adult or mature content, violent content, content related to racial intolerance, excessive profanity, gambling or casino-related content, sales of weapons or ammunition, or any other content that is illegal, promotes illegal activity or infringes on the legal rights of others.

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5. Google Purposefully Concealed Parked Domains and Error Pages In Its PPR Reports

90. In the summer of 2007, Google initiated Performance Placement Reports (“PPRs”) to show advertisers who opted into the Content Network exactly what sites their ads had been placed on.

1. Report Type

Search/Content Reports **TV Ads Reports**

Choose a report from the following options: [Learn more about report types](#)

- Placement / Keyword Performance View performance data for keywords or placements you've specifically targeted.
- Ad Performance View performance data for each of your ads.
- URL Performance View performance data for each of your Destination URLs.
- Ad Group Performance View ad group performance data for one or more of your campaigns.
- Campaign Performance View performance data for your campaigns.
- Account Performance View performance data for your entire account.
- Demographic Performance View performance data for sites by demographic.
- Geographic Performance View performance data by geographic origin.
- Search Query Performance View performance data for search queries which triggered your ad and received clicks.
- Placement Performance**  View performance data for content network sites where your ad has been shown.
- Reach and Frequency Performance  View reach and frequency performance data for your campaigns.

[Emphasis added.]

1 91. By providing increased transparency to advertisers regarding the sites upon which
2 their ads were placed, Google hoped to address negative perceptions regarding the quality of sites in
3 the Content Network and prevent advertisers from opting out of the Content Network as a whole.

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6. Google’s Purposefully Concealed Its Association with Parked Domains By Forbidding AFD Publishers from Including Any Google Branding on Their Sites

97. Finally, Google ensured that parked domains contained no reference to Google whatsoever, as yet another way to conceal its involvement with these low-quality sites.

98. Google brands the vast majority of websites on Google.com and in the Google Network to “distinguish[] Google ads from other ads so that when users click on Google ads, they know they can trust Google to provide high quality ads targeted to their interests. This trust provides value to both publishers and advertisers.” Ads in Google’s Content Network are labeled, “Ads by Google,” and Google’s Search Network sites include Google branding on the web search box.

99.

V. SUMMARY OF GOOGLE’S WRONGFUL CONDUCT

100. Google misled Plaintiffs and the Class members by failing to disclose that it placed substantial numbers of their ads on low-quality parked domains and error pages during the Class Period, and by, among other things:

- a. Repeatedly representing on its website, and in other communications, that AdWords advertisements would be placed on contextually relevant, “high quality” “search” and “content” sites;

1 b. Failing to reference the AdSense for Domains and AdSense for Errors pages
2 in its definition of the Google Network, or on other prominently featured webpages explaining
3 where AdWords ads would be placed;

4 c. Publishing policies prohibiting the placement of ads on any “domain parking”
5 pages, sites lacking content, and sites that were created for the purpose of showing ads, while being
6 aware that such policies were misleading to AdWords customers;

7 d. Publishing policies prohibiting the placement of ads on sites with “adult”
8 content or with other unsavory characteristics, while knowing that substantial percentages of its
9 parked domains had those characteristics and actively soliciting publishers of “adult” AFD sites;

10 e. Until April 2008, purposefully concealing any specific identification of low-
11 quality, AdSense for Domains and AdSense for Error pages in its Placement Performance Reports,
12 because Google knew that identifying those sites would cause AdWords customers to cease
13 advertising through Google;

14 f. Forbidding AFD publishers from including any mention of Google on their
15 sites so as to conceal Google’s association with those parked domains.

16 **VI. CLASS ALLEGATIONS**

17 101. Plaintiffs bring this nationwide class action on behalf of themselves and the Class
18 defined as follows:

19 All persons or entities located within the United States who, from July 11, 2004 through
20 March 31, 2008 (the “Class Period”), had an AdWords account with Google and were
21 charged for clicks on advertisements appearing on parked domain and/or error page
22 websites.

23 102. Excluded from the Class are governmental entities, defendant, any entity in which
24 defendant has a controlling interest, and defendant’s officers, directors, affiliates, legal
25 representatives, employees, co-conspirators, successors, subsidiaries, and assigns.

26 103. Also excluded from the Class are any judges, justices, or judicial officers presiding
27 over this matter and the members of their immediate families and judicial staff.

28 104. Upon information and belief, plaintiffs allege that the total number of Class members
is at least in the hundreds of thousands and that the members of the Class are geographically

1 dispersed across the United States. Consequently, joinder of the individual Class members would be
2 impracticable.

3 105. There are many questions of law and fact common to the representative plaintiffs and
4 the proposed Class, and those questions substantially predominate over any individualized questions
5 that may affect individual Class members. Common questions of fact and law include, but are not
6 limited to, the following:

- 7 • Whether Google's representations regarding AdWords were false or misleading.
- 8 • Whether Google, in violation of applicable law and its own stated policy, charged
9 plaintiffs and the members of the Class for ads that were placed on parked domain
10 and error page websites;
- 11 • Whether Google engaged in unfair, unlawful and/or deceptive business practices;
- 12 • Whether Google failed to disclose material facts about its Adwords program; and
- 13 • Whether plaintiffs and the members of the Class have been damaged by the wrongs
14 complained of herein, and if so, the measure of those damages and the nature and
15 extent of other relief that should be provided.

16 106. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and
17 all Class members have been similarly affected by defendant's common course of conduct.

18 107. Plaintiffs will fairly and adequately represent and protect the interests of the Class.
19 Plaintiffs have retained counsel with substantial experience in prosecuting complex and class action
20 litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf
21 of the Class, and have the financial resources to do so. Neither plaintiffs nor their counsel have any
22 interests adverse to those of the proposed Class.

23 108. Plaintiffs and the members of the Class have suffered, and will continue to suffer,
24 harm as a result of defendant's unlawful and wrongful conduct. A class action is superior to other
25 available methods for the fair and efficient adjudication of the present controversy, because joinder
26 of all members of the Class would be impractical.

1 109. Even if individual Class members had the resources to pursue individual litigation, it
 2 would be unduly burdensome to the courts in which the individual litigation would proceed.
 3 Individual litigation would cause delay and undue expense to all parties affected by defendant's
 4 common course of conduct.

5 110. The class action device will allow a single court to provide the benefits of unitary
 6 adjudication, judicial economy, and the fair and equitable handling of all Class members' claims in a
 7 single forum. The conduct of this action as a class action will conserve the resources of the parties
 8 and of the judicial system, and will protect the rights of the Class members.

9 111. Furthermore, for many, if not most, Class members, a class action is the only feasible
 10 mechanism for legal redress for the harm alleged.

11 112. Adjudication of individual Class members' claims against the defendant would, as a
 12 practical matter, be dispositive of the interests of other Class members not parties to the adjudication
 13 and could substantially impair or impede the ability of other Class members to protect their interests.

14 **VII. FIRST CLAIM FOR RELIEF**
 15 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
 16 **SECTION 17200 ET SEQ. — "UNFAIR" CONDUCT**

17 113. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the
 18 extent necessary, plead this cause of action in the alternative.

19 114. Plaintiffs have standing to pursue this claim as plaintiffs have suffered injury in fact
 20 and have lost money or property as a result of Google's actions as set forth above.

21 115. Class members have suffered injury in fact and have lost money or property as a
 22 result of Google's actions as set forth above.

23 116. Google's actions as alleged in this complaint constitute "unfair" conduct within the
 24 meaning of California Business and Professions Code Sections 17200 *et seq.*

25 117. Google's business practices, as alleged herein, are "unfair" because they offend
 26 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or
 27 substantially injurious to its customers. Google's conduct is also "unfair" because Google failed to
 28 disclose that customers' ads were placed on parked domain and error page sites, and during the

1 Class Period, did not provide an effective means for customers to exclude their ads from appearing
2 on these sites.

3 118. In fact, until March 2008, Google provided no means at all for customers to exclude
4 their ads from appearing on these sites.

5 119. As a result of Google’s “unfair” conduct, plaintiffs and members of the Class
6 expended money on advertising that they would not otherwise have spent, and received low quality
7 ad placements and clicks that were worth less than Google represented and less than plaintiffs and
8 members of the Class paid for them.

9 120. Google’s wrongful business practices alleged herein constituted a continuing course
10 of unfair competition since, throughout the Class Period, Google marketed and sold its products in a
11 manner that offends public policy and/or in a fashion that is immoral, unethical, oppressive,
12 unscrupulous and/or substantially injurious to its customers

13 121. Plaintiffs and the Class seek an order requiring Google to make full restitution of all
14 moneys it has wrongfully obtained from plaintiffs and the Class, along with all other relief allowable
15 under Business and Professions Code Section 17200 *et seq.*

16 **VIII. SECOND CLAIM FOR RELIEF**
17 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
18 **SECTION 17200 ET SEQ. — “FRAUDULENT” CONDUCT**

19 122. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the
20 extent necessary, plead this cause of action in the alternative.

21 123. Plaintiffs have standing to pursue this claim as plaintiffs have suffered injury in fact
22 and have lost money or property as a result of Google’s actions as set forth above.

23 124. Class members have suffered injury in fact and have lost money or property as a
24 result of Google’s actions as set forth above.

25 125. Google’s actions as alleged in this complaint constitute “fraudulent” conduct within
26 the meaning of California Business and Professions Code sections 17200 *et seq.*

27 126. Google’s business practices, as alleged herein, are “fraudulent” because they are
28 likely to deceive consumers, including plaintiffs and members of the Class.

1 127. Google failed to disclose all material information to AdWords advertisers concerning
 2 the types of sites on which their ads would be displayed, and affirmatively concealed that low-
 3 quality parked domains and error pages were included in both its Content Network and its Search
 4 Network. Google failed to disclose to advertisers, including plaintiffs and the Class, that, until
 5 March 2008, they would have no way to exclude their ads from appearing on these sites.

6 128. As a result of Google's "fraudulent" conduct, plaintiffs and members of the Class
 7 expended money on advertising that they would not otherwise have spent, and received low quality
 8 ad placements and clicks that were worth less than Google represented and less than plaintiffs and
 9 members of the Class paid for them.

10 129. Google's wrongful business practices alleged herein constituted a continuing course
 11 of unfair competition since Google marketed and sold its products in a manner that was likely to
 12 deceive customers throughout the Class Period.

13 130. Plaintiffs and the Class seek an order requiring Google to make full restitution of all
 14 moneys it has wrongfully obtained from plaintiffs and the Class, along with all other relief allowable
 15 under Business and Professions Code Section 17200 *et seq.*

16 **IX. THIRD CLAIM FOR RELIEF**
 17 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
 18 **SECTION 17200 ET SEQ. — "UNLAWFUL" CONDUCT**

19 131. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the
 20 extent necessary, plead this cause of action in the alternative.

21 132. Plaintiffs have standing to pursue this claim as plaintiffs have suffered injury in fact
 22 and have lost money or property as a result of Google's actions as set forth above.

23 133. Class members have suffered injury in fact and have lost money or property as a
 24 result of Google's actions as set forth above.

25 134. Google's actions as alleged in this complaint constitute an "unlawful" practice within
 26 the meaning of Business and Professions Code Section 17200 *et seq.* because Google's actions were
 27 "unfair" and "fraudulent," as alleged above, and because they violated Business and Professions
 28 Code sections 17500 *et seq.*, which proscribe false advertising, as alleged below.

1 135. As a result of Google’s “unlawful” conduct, plaintiffs and members of the Class
2 expended money on advertising that they would not otherwise have spent, and received low quality
3 ad placements and clicks that were worth less than Google represented and less than plaintiffs and
4 members of the Class paid for them.

5 136. Plaintiffs and the Class seek an order requiring Google to make full restitution of all
6 moneys it has wrongfully obtained from plaintiffs and the Class, along with all other relief allowable
7 under Business and Professions Code Section 17200 *et seq.*

8 **X. FOURTH CLAIM FOR RELIEF**
9 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
10 **SECTION 17500 ET SEQ.**

11 137. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the
12 extent necessary, plead this cause of action in the alternative.

13 138. Plaintiffs bring this claim for relief on behalf of themselves and the Class.

14 139. Google engaged in advertising and marketing to the public and offered for sale
15 advertising services on a nationwide basis, including in California.

16 140. Google engaged in the advertising and marketing alleged herein with the intent to
17 directly or indirectly induce the sale of advertising services to customers like plaintiffs.

18 141. Google’s advertisements and marketing representations regarding the characteristics
19 of AdWords and the placement of its customers’ ads were false, misleading and deceptive as set
20 forth more fully above.

21 142. At the time it made and disseminated the statements alleged herein, Google knew or
22 should have known that the statements were untrue or misleading, and acted in violation of Business
23 and Professions Code Section 17500 *et seq.*

24 143. Plaintiffs seek restitution and all other relief allowable under Business and
25 Professions Code Section 17500 *et seq.*

26 WHEREFORE, plaintiffs and the Class pray for relief as set forth below.
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XI. PRAYER FOR RELIEF

Plaintiffs request that the Court enter an order or judgment against defendant as follows:

1. Certification of the proposed Class pursuant to Fed. R. Civ. P. 23;
2. A declaration that defendant has engaged in the conduct alleged herein;
3. Restitution and disgorgement on certain causes of action;
4. Both pre- and post-judgment interest at the maximum allowable rate on any amounts awarded;
5. Costs of the proceedings herein;
6. Reasonable attorneys' fees; and
7. Any and all such other and further relief that this Court may deem just and proper.

Dated: November 29, 2010

SCHUBERT JONCKHEER & KOLBE LLP

By _____/s/_____

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