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11 (Additional attorneys listed on signature page)

12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 In Re QUANTCAST ADVERTISING  
 15 COOKIE LITIGATION, and  
 16 In Re CLEARSPRING FLASH  
 17 COOKIE LITIGATION

No.2:10-cv-05484-GW-JCG  
 No.2:10-cv-05948-GW-JCG

[Assigned to the Hon. George H. Wu]

**DECLARATION OF DAVID A.  
 STAMPLEY IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 (1) FINAL APPROVAL OF CLASS  
 ACTION SETTLEMENT; AND  
 (2) APPROVAL OF ATTORNEYS  
 FEES AND COSTS AND  
 INCENTIVE AWARDS**

Date: June 13, 2011  
 Time: 9:30 a.m.  
 Location: Courtroom 10  
 312 N. Spring Street  
 Los Angeles, California 90012

1 I, David A. Stampley, declare as follows:

2 1. I am an attorney-at-law duly licensed to practice before all of the courts  
3 of the State of New York and am admitted *pro hac vice* before this court. I am a  
4 managing member of KamberLaw, LLC (“KamberLaw”). I am the attorney primar-  
5 ily responsible for the handling of this litigation on behalf of KamberLaw LLC. I  
6 make this declaration based upon my own personal knowledge. If called to testify, I  
7 could and would testify to the facts contained herein.

8 2. I represent that the disclosures contained herein relating to mediation  
9 and negotiation between the parties are with the consent of Michael Rhodes of Co-  
10 ley LLP, Michael Page of Durie Tangri LLP, Jeffrey Jacobson of Debevoise &  
11 Plimpton LLP and Ian Ballon of Greenberg Traurig LLP and are not violative of any  
12 settlement or mediation privilege.

13 3. For over nine months prior to the filing of the complaint in this matter, I  
14 and my co-counsel worked closely with co-counsel Joseph H. Malley and certain  
15 class representatives, investigating facts and developing legal theories contained in  
16 the complaint. This pre-complaint effort occupied hundreds of hours of attorney and  
17 client time as well as consultations with certain nonlegal experts. This case impacted  
18 millions of class members, and dealt with highly technical processes by which in-  
19 formation obtained by tracking class members on the web was shared among website  
20 owners and their online service providers. These processes required significant busi-  
21 ness and legal research and technical expert investigation to understand the mecha-  
22 nisms by which Defendants acquired, correlated, and shared class members’ infor-  
23 mation and the mechanisms and policies by which Defendants provided or could  
24 have provided, disclosures of their practices to affected members. I believe this un-  
25 derstanding allowed us to plead this case with the detail and accuracy that motivated  
26 rather early settlement negotiations between the parties. Based on my experience, I  
27 believe that the promptness of relief is an absolutely critical feature in addressing  
28 resolution of Internet usage issues that involve injunctive relief.

1           4.       Beginning on July 23, 2010, the plaintiffs in these matters began filing  
2 complaints on their own behalf and on behalf of a purported class of all persons who  
3 used any browsing program on any device to access one or more Internet sites con-  
4 trolled, operated or sponsored by Defendants employing Clearspring or Quantcast’s  
5 technologies involving the use of HTTP “cookies” or local shared objects stored in  
6 Adobe Flash Media local storage (“LSOs” or “Flash cookies”). Plaintiffs alleged that  
7 the Defendants failed to provide them proper and adequate notice regarding trans-  
8 missions of information about them, failed to obtain their consent for such transmis-  
9 sions, and engaged in actions that violated the Electronic Communications Privacy  
10 Act (“ECPA”), the Video Privacy Protection Act (“VPPA”), the Computer Fraud and  
11 Abuse Act (“CFAA”), the California Consumer Legal Remedies Act (“CLRA”), and  
12 the California Computer Crime Law (“CCCL”), California’s Invasion of Privacy  
13 Act, the California Unfair Competition Law, the California Uniform Trade Secrets  
14 Act, and Unjust Enrichment.

15           5.       At all times, all Defendants have denied and continue to deny that they  
16 have engaged in any wrongdoing or committed, threatened to commit, or attempted  
17 to commit any wrongdoing of any kind, including that alleged in the Complaint in  
18 this matter. Defendants contend that they have acted properly and therefore deny that  
19 the plaintiffs and putative class are entitled to any form of damages based on the  
20 conduct alleged in the Complaint. Defendants have maintained and continue to main-  
21 tain that they have meritorious defenses to all claims alleged in the Complaint and  
22 that Defendants were and are prepared to vigorously defend against all claims as-  
23 serted in this litigation.

24           6.       Beginning in October 2010, representatives of Plaintiffs and Defendants  
25 initiated a series of settlement discussions, agreeing to private and confidential me-  
26 diation of the matter and engaged in substantive, arms-length negotiations.

27           7.       The settlement of this litigation was negotiated with the assistance and  
28 oversight of Rodney A. Max of Upchurch Watson White & Max Mediation Group,

1 who presided over a full day mediation session, after which the parties continued  
2 settlement discussions. The parties did not discuss the amounts of any incentive fee  
3 or payment to Plaintiffs' counsel until after the terms of the settlement agreement  
4 were agreed upon. After the full day of mediation, the parties to the mediation agreed  
5 on all substantive relief, and memorialized their mutual understanding in a document  
6 outlining the principal terms of settlement.

7       8. In the following weeks, Mr. Kamber and I personally negotiated with  
8 Mr. Rhodes of Cooley and Mr. Page of Durie Tangri to flesh out the settlement  
9 framework and implementation. The parties continued to negotiate, exchange infor-  
10 mation regarding settlement details, and examine creative approaches to potential  
11 injunctive relief compatible with Defendants' business models.

12       9. The settlement is product of hard-fought litigation and takes into con-  
13 sideration the significant risks specific to the case. It was negotiated by experienced  
14 counsel for plaintiffs and defendants with a solid understanding of both the strengths  
15 and weaknesses of their respective positions.

16       10. I have participated directly in the mediation and negotiation efforts, the  
17 petition for preliminary approval of the proposed settlement, and the petition for final  
18 approval now before this Court. Throughout our mediation and negotiation efforts  
19 and in advising our clients of the proposed settlement, plaintiffs' counsel has at all  
20 times considered the fairness, reasonableness, and adequacy of the settlement for the  
21 class, taking into account: the strength of plaintiffs' case; the risk, expense, complex-  
22 ity and likely duration of any further litigation; the risk of certifying a class and then  
23 maintaining class action status through trial; the amount offered in settlement; the  
24 extent of discovery completed, and the stage of the proceedings and views of plain-  
25 tiffs' counsel. Against the backdrop of counsel's collective experience in prosecuting  
26 complex class actions, co-counsel and I have considered the claims set forth in the  
27 complaint and our continued confidence in the merit of those claims, the scope of  
28 relief offered in the settlement compared to potential relief at the conclusion of litiga-

1 tion, and the risks and costs of continued litigation. Taking these factors into ac-  
2 count, it is my opinion that the proposed settlement is fair, reasonable, and adequate,  
3 well within the range of possible approval, and therefore deserving of the Court's  
4 final approval.

5 11. These issues and others were considered by plaintiffs and their counsel  
6 in deciding to settle the litigation on terms which would provide the class with a  
7 benefit of \$2.4 million and injunctive relief that directly redresses the harm alleged  
8 in the complaint. In reaching the determination to settle, plaintiffs and lead counsel  
9 have weighed the documentary evidence and legal authority supporting their allega-  
10 tions against the documents and legal authority that defendants assert undercut plain-  
11 tiffs' claims, as well as defendants' characterizations and interpretations of the evi-  
12 dence in this case. Plaintiffs also considered the novelty of the harm and liability  
13 issues in this case.

14 12. On balance, considering all the circumstances and risks both sides  
15 faced, plaintiffs came to the conclusion that settlement on the terms agreed upon was  
16 in the best interests of the class. The settlement confers substantial benefit on the  
17 class and eliminates the significant costs of continued discovery, the risk that certifi-  
18 cation would be denied, and the risk that summary judgment and/or trial would not  
19 be in plaintiffs' favor. It is respectfully submitted that the settlement should be ap-  
20 proved as fair, reasonable and adequate, that Plaintiffs' counsel should be awarded  
21 fees of \$600,000, or 25 percent of the settlement's value, which includes counsels'  
22 expenses of \$10,318.82.

23 13. Plaintiffs' counsel prosecuted this action on a wholly contingent basis  
24 and advanced and incurred litigation expenses. By doing so, Plaintiffs' counsel have  
25 borne the risk of an unfavorable result. They have not received any compensation for  
26 their substantial effort nor have they been paid for their expenses. The vigorous na-  
27 ture of the litigation has resulted in expenses of \$10,318.82 as well as the investment  
28 of 1,171 hours of attorney and other professional time (these numbers reflect Interim

1 Plaintiffs' counsel's fees and expenses as well as those reported to them by the other  
2 attorneys in this litigation, who submitted declarations in support of their fees and  
3 expenses).

4 14. The fee and costs application in the amount of \$600,000, or 25 percent  
5 of the settlement value, is fair both to the settlement class and Plaintiffs' counsel and  
6 warrants this Court's approval. This fee request is within the range of fees frequently  
7 awarded in these types of actions and is entirely justified in light of the substantial  
8 benefits conferred on the class, the risks undertaken, the quality of representation,  
9 and the nature and extent of legal services performed..

10 15. The following is a summary of the nature of the settlement class's  
11 claims, the principal events that occurred during the course of this litigation, and the  
12 legal services provided by Co-Lead Counsel.

### 13 **LEAD COUNSELS' FEE APPLICATION IS REASONABLE**

#### 14 **A. Lead Counsels' Fee Application is Fair and Reasonable**

15 16. The requested fee based upon a lodestar of \$544,887 and a multiplier of  
16 just above one, which lies well within, and on the low side of, the range of attorney  
17 fee awards, is fair and reasonable and is amply justified by numerous specific facts  
18 and circumstances in this case.

##### 19 *1. Nature and Extent of Litigation*

20 17. The prosecution of this action required Plaintiffs' counsel to perform  
21 1,171 hours of work yielding a lodestar of \$544,887 and incur \$10,319 in expenses.

22 18. These cases settled only after extensive negotiations and a full day me-  
23 diation session with mediator Rodney A. Max.

##### 24 *2. The Requested Fee and Cost Award are Reasonable*

25 19. Plaintiffs' counsel requests a fee and cost award that is equal to 25 per-  
26 cent of the settlement fund. As set forth in the accompanying memorandum in sup-  
27 port of plaintiffs' application for an award of attorneys' fees and costs, numerous  
28 courts have awarded fees consistent with plaintiffs' lodestar and multiplier of only

1 1.01. By any method of computation, whether it be a lodestar analysis or percentage-  
2 based analysis, the requested fees are reasonable and merited in this case in light of  
3 the effort required and the results obtained.

4 20. The parties have agreed that a fee not exceeding 25 percent, including  
5 costs and expenses, is reasonable and warranted in this case. Plaintiffs' counsel seeks  
6 a total fee and cost award of \$600,000. This represents a multiplier on counsels' time  
7 of just over one. Applying a multiplier of just over 1 is a modest multiplier that is  
8 reasonable and warranted here.

9 **3. Time Expended**

10 21. Together, Plaintiffs' counsel expended a total of 1,171 hours in attorney  
11 time in litigating and obtaining the settlement. The resulting lodestar is \$544,877. To  
12 calculate Plaintiffs' counsel's lodestar the attorneys performing work on this litiga-  
13 tion are billed at rates that correlate to their respective experience and that are rea-  
14 sonable in the New York, California, and Texas legal markets. The rates employed  
15 by Plaintiffs' counsel are their normal billing rates that would be presently charged  
16 to hourly clients.

17 22. Additionally, although several lawyers were involved in the litigation of  
18 this matter, each made conscious effort to minimize the duplication of work. Further,  
19 the hours submitted were reviewed and any unnecessary hours or duplicative hours  
20 have been adjusted.

21 23. Plaintiffs' counsel anticipates an additional outlay in time and expenses  
22 to be incurred through finalizing the administration of the settlement, which is not  
23 included in the base lodestar.

24 **4. Support of the Class Representatives**

25 24. Plaintiffs actively monitored the litigation and consulted with counsel  
26 during the course of settlement negotiations. The named class representatives spent  
27 considerable time and effort fulfilling their duties and responsibilities in this case,  
28 including reviewing briefs, and consulting with counsel concerning the merits of the

1 litigation, and support Plaintiffs' counsel's requested fee.

2 **5. *Excellent Settlement Achieved***

3 25. The \$2.4 million settlement benefit was achieved as a result of extensive  
4 and creative prosecutorial and investigative efforts, and contentious and complicated  
5 motion practice and settlement negotiations, as detailed herein. Moreover, the injunc-  
6 tive relief terminates the offending conduct complained of.

7 **6. *Risk of Contingent Class Action Litigation***

8 26. This declaration and the motion in support of the proposed settlement  
9 and the fee application describe the substantial risks of this litigation. Those same  
10 difficulties also constituted risks that counsel might never be paid for their efforts.

11 27. There are numerous cases where Plaintiffs' counsel in contingent fee  
12 cases such as this, after expenditures of significant hours and out-of-pocket expendi-  
13 tures, have received no compensation whatsoever. Plaintiffs' counsel who litigate  
14 cases in good faith and receive no fees whatsoever are often the most diligent mem-  
15 bers of the plaintiffs' bar. The fact that defendants and their counsel know that the  
16 members of the plaintiffs' bar are actually able to, and will, go to great lengths even  
17 in high-risk cases gives rise to meaningful settlements in actions such as this. The  
18 losses suffered by Plaintiffs' counsel in other actions were insubstantial settlement  
19 offers are rejected, and Plaintiffs' counsel ultimately receives little or no fee, should  
20 not be ignored. Plaintiffs' counsel knows from personal experience that despite the  
21 most vigorous and competent efforts, attorneys' success in contingent litigation, such  
22 as this, is never assured.

23 28. Because the fee to be awarded in this matter is entirely contingent, the  
24 only certainty from the outset was that there would be no fee without a successful  
25 result, and that such a result would be realized only after a lengthy and difficult ef-  
26 fort.

27 29. Plaintiffs' success in this action was by no means assured. Defendants  
28 disputed nearly everything and challenged plaintiffs at every step. Were this settle-



1 ment not achieved, and even if plaintiffs prevailed at trial, plaintiffs faced potentially  
2 years of costly and risky appellate litigation against defendants, which ultimate suc-  
3 cess far from certain. Plaintiffs' counsel is entitled to a fee and cost award of  
4 \$600,000 or 25 percent of the settlement value because of the risk factors involved in  
5 this case.

6 **7. *Diligent Prosecution of this Case***

7 30. The requested fee is also warranted in light of the extensive efforts on  
8 the part of Plaintiffs' counsel, as outlined above, that were required to produce this  
9 settlement. Plaintiffs' counsel spent 1,171 hours of their time on the case, *inter alia*,  
10 conducting an extensive investigation, reviewing and analyzing documents, consult-  
11 ing with experts, drafting complaints and additional legal memoranda, making court  
12 appearances and engaging in extensive settlement discussions.

13 **8. *Complexity of this Action's Factual and Legal Questions***

14 31. Courts have recognized that the novelty and difficulty of the issues in a  
15 case are significant factors to be considered in making a fee award. As discussed in  
16 the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of the  
17 Settlement, this case involved difficult and novel issues of fact and law.

18 **9. *Contingent Nature of the Case and Financial Burden Carried by Lead***  
19 ***Counsel***

20 32. A determination of a fair fee must include consideration of the contin-  
21 gent nature of the fee, the financial burden carried by plaintiffs' counsel and the  
22 difficulties that were overcome in obtaining the settlement. Plaintiffs' counsel typi-  
23 cally charge at least 33.33 percent for individual contingency fee cases and, having  
24 consulted with co-counsel, co-counsel concur that their contingency fee charges in  
25 individual cases are typically, at a minimum, 33.33 percent, as well.

26 33. This action was prosecuted by Plaintiffs' counsel on a "at-risk" contin-  
27 gent fee basis. Plaintiffs' counsel committed 1,171 hours of attorney time and in-  
28 curred \$10,318 in expenses in the prosecution of the litigation, and fully assumed the

1 risk of an unsuccessful result. Thus, counsel should be fairly compensated for their  
2 efforts. Plaintiffs' counsel have received no compensation for their services during  
3 the course of this litigation and have incurred very significant expenses in litigating  
4 for the benefit of the class. Any fee award or expense reimbursement to Plaintiffs'  
5 counsel has always been at risk and completely contingent on the result achieved.

6 34. Plaintiffs' counsel's efforts were performed on a wholly contingent ba-  
7 sis, despite significant risk and in the face of a determined opposition. Under these  
8 circumstances, it necessarily follows that we are justly entitled to the award of a  
9 reasonable fee and cost award of \$600,000.00.

10 **II. CONCLUSION**

11 35. For all of the foregoing reasons, Plaintiffs' counsel respectfully request  
12 that this Court approve the settlement and approve the fee and expense application  
13 and award Plaintiffs' counsel \$600,000, which incorporates costs to our firms.

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

16 Executed on April 19, 2011 at New York, New York.

17  
18 Dated: April 19, 2011

KAMBERLAW, LLC

19  
20 By: s/David A. Stampley

21 David A. Stampley

22 One of the Attorneys for Plaintiffs, individually  
23 and on behalf of a Class of similarly situated  
24 individuals  
25  
26  
27  
28