

1 DAVID T. BIDERMAN, Bar No. 101577
 2 JUDITH B. GITTERMAN, Bar No. 115661
 3 M. CHRISTOPHER JHANG, Bar No. 211463
PERKINS COIE LLP
 4 Four Embarcadero Center, Suite 2400
 San Francisco, CA 94111-4131
 Telephone: (415) 344-7000
 Facsimile: (415) 344-7050
 5 Email: DBiderman@perkinscoie.com
 Email: JGitterman@perkinscoie.com
 6 Email: CJhang@perkinscoie.com

7 Attorneys for Defendant Google Inc.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CLRB HANSON INDUSTRIES, LLC d/b/a
 INDUSTRIAL PRINTING, and HOWARD
 STERN, on behalf of themselves and all others
 similarly situated,

 Plaintiffs,

 v.
 GOOGLE, INC.,

 Defendant.

CASE NO. C O5-03649 JW

**GOOGLE INC.'S NOTICE OF
 MOTION AND MOTION FOR
 SUMMARY JUDGMENT, OR IN THE
 ALTERNATIVE, FOR SUMMARY
 ADJUDICATION**

 Fed. R. Civ. P. 56

 Date: November 6, 2006
 Time: 9:00 a.m.
 Place: Courtroom 8
 Judge: Honorable James Ware

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on November 6, 2006, at 9:00 a.m., or as soon thereafter
3 as the matter may be heard, in Courtroom 8 of the United States District Court for the Northern
4 District of California, San Jose Division, defendant Google Inc. (“Google”) will, and hereby
5 does, move the Court for summary judgment, for Google and against plaintiffs CLRB Hanson
6 Industries, LLC, d/b/a Industrial Printing, and Howard Stern (“Plaintiffs”), on Plaintiffs’ claims
7 for breach of contract, breach of implied covenant of good faith and fair dealing, unfair
8 competition, untrue and misleading advertising, and unjust enrichment, pursuant to Federal Rules
9 of Civil Procedure 56(c). In the alternative, Google will, and hereby does, move for summary
10 adjudication of the following issues of fact and law: (1) that Google is entitled, under Google’s
11 advertising Agreement, to exceed an advertiser’s daily budget by up to 20% on any given day
12 and (2) that Google may base an advertiser’s charges in a given billing period on the number of
13 days in that month multiplied by the advertiser’s daily budget. In addition, Google will, and
14 hereby does, move for summary adjudication that Plaintiffs’ claims, and the claims of the
15 putative class members, be barred for alleged breaches occurring more than 60 days prior to the
16 date the original complaint was filed, August 3, 2005.

17 This motion is made on grounds that the undisputed facts show that Plaintiffs’ claims are
18 unsupported by the express terms of the parties’ Agreement, that the Agreement fully discloses
19 the calculation of advertisers’ advertising charges, that Google billed Plaintiffs consistently with
20 the terms of their Agreement, and that a valid enforceable agreement exists between the parties.
21 This motion is also made on the undisputed fact that advertisers do not accrue charges when their
22 ad campaigns are “paused,” and that pausing does not affect the calculation of an advertiser’s
23 monthly budget, which is based in a billing period on the number of days in that month times the
24 advertiser’s daily budget, as long as the campaign is active (i.e., not deleted and the term of the
25 campaign has not ended). Finally, this motion is made on the ground that Plaintiffs’ claims are
26 barred in part by the limitations period in the Agreement, which limits advertisers’ claims to
27 those asserted within 60 days of the contested charge.

1 Google's motion is based on this Notice of Motion, the Memorandum of Points and
2 Authorities, the supporting Declarations of M. Christopher Jhang, Michael Schulman, and Leslie
3 Altherr, the [Proposed] Order Granting Google Inc.'s Motion for Summary Judgment, or in the
4 Alternative, for Summary Adjudication, the pleadings on file in this action, and such other
5 matters and arguments as may be presented to the Court prior to or at the hearing on the motion.

6 Dated: October 2, 2006

PERKINS COIE LLP

7 By: _____/S/
8 David T. Biderman
9 Attorneys for Defendant Google Inc.

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