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

12 DAVID ALMEIDA, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 GOOGLE, INC., a Delaware corporation; and
17 DOES 1 through 10, inclusive,

18 Defendants.

Case No. C 08-02088 RMW

**GOOGLE INC.'S ANSWER TO
COMPLAINT**

19
20
21 Defendant Google Inc. ("Google") responds to Plaintiff David Almeida's Class Action
22 Complaint as follows:

23 **INTRODUCTION**

24 Google admits that Plaintiff brought this action styled as a purported class action.
25 Google lacks information or knowledge sufficient to admit or deny the remaining allegations in
26 this paragraph, and on that basis denies those allegations.
27
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1 **NATURE OF THE ACTION**

2 1. Google admits that Plaintiff brought this action styled as a purported class action
3 to recover damages and other relief available at law and in equity. However, Google denies that
4 this action is appropriately brought as a class action, and denies the remaining allegations in this
5 paragraph.

6 2. Google denies the allegations in this paragraph.
7

8 3. Google admits that it offers an internet search engine. Google also admits that it
9 offers an advertising program entitled “AdWords.” Google lacks information or knowledge
10 sufficient to admit or deny the remaining allegations in this paragraph because the terms
11 “commonly thought” “business model,” “primarily dependent,” “linking,” and “Google
12 Network” are undefined and ambiguous, and on that basis denies the allegations contained
13 therein.

14 4. Google admits that it offers an advertising program called “AdWords” and that,
15 under one aspect of this program, advertisers choose keywords that will trigger display of their
16 advertisements, and advertisers pay only when their ads are clicked. Google admits that
17 advertisers generally set the maximum amount they will pay if an individual clicks their ad.
18 Google also admits that it offers an advertising program called “AdSense.” Google further
19 admits that, under aspects of the AdWords program, advertisers’ ads may be displayed on
20 Google.com, the Google search network, and/or the content network, which includes websites,
21 news pages, and blogs that partner with Google to display targeted AdWords ads. Google denies
22 the remaining allegations in this paragraph.
23

24 5. Google denies the allegations in this paragraph.

25 **THE PARTIES**

26 6. Google lacks information or knowledge sufficient to admit or deny the allegations
27 in this paragraph, and on that basis denies those allegations.

28 7. Google admits that it is a Delaware Corporation that does business in the State of

1 California. Google denies that Network Solutions’ headquarters are located at 1600
2 Amphitheatre Parkway, Mountain View, California. The remaining allegations in this paragraph
3 are legal conclusions to which no response is required.

4 8. Google lacks information or knowledge sufficient to admit or deny the allegations
5 in this paragraph, and on that basis denies those allegations. However, Google denies that Doe
6 pleading is appropriate in federal court.

7 **JURISDICTION AND VENUE**

8 9. This paragraph states a legal conclusion to which no response is required.

9 10. This paragraph states a legal conclusion to which no response is required.

10 **FACTUAL BACKGROUND**

11 11. Google admits that it offers the advertising program “AdWords,” and that under
12 one aspect of this program, relevant ads are selected in part based on the advertisers’ cost-per-
13 click bid for specific keywords. Google also admits that, under aspects of the AdWords
14 program, ads may appear on Google’s search-engine “Google” or on other websites. Except as
15 specifically admitted herein, Google denies the remaining allegations in this paragraph.

16 12. Google admits that advertisers must register with AdWords. Except as
17 specifically admitted herein, Google denies the remaining allegations in this paragraph.

18 13. Google denies the allegations in this paragraph (identified in Plaintiff’s Complaint
19 as the second of two paragraph 12s).

20 14. Google denies the allegations in paragraph 13.

21 15. Google denies the allegations in paragraph 14.

22 16. Google lacks information or knowledge sufficient to admit or deny the allegations
23 in paragraph 15 about Plaintiff’s activities, and on that basis denies those allegations. Google
24 denies the remaining allegations in paragraph 15

25 17. Google lacks information or knowledge sufficient to admit or deny the allegations
26 in paragraph 16, and on that basis denies those allegations.

27 **CLASS ALLEGATIONS**

28 18. With respect to Plaintiff’s paragraph 13 (“Description of the Class”), Google

1 admits that Plaintiff styled this action as a purported class action, and otherwise denies the
2 allegations.

3 19. With respect to Plaintiff's paragraph 14, Google admits that Plaintiff styled this
4 action as a purported class action, and otherwise denies the allegations.

5 20. Plaintiff's paragraph 15 states a legal conclusion to which no response is required.
6 To the extent that a response is required, Google denies the allegations in this paragraph.

7 21. Google denies the allegations in paragraph 16, and denies that this action is
8 appropriately brought as a class action.

9 22. Google denies the allegations in paragraph 17, and denies that this action is
10 appropriately brought as a class action.

11 23. Google denies the allegations in paragraph 18, and denies that this action is
12 appropriately brought as a class action.

13 24. Google denies the allegations in paragraph 19, and denies that this action is
14 appropriately brought as a class action.

15 25. Google denies the allegations in paragraph 20, and denies that this action is
16 appropriately brought as a class action.

17 26. Plaintiff's paragraph 21 states a legal conclusion to which no response is required.
18 To the extent that a response is required, Google denies the allegations in this paragraph.

19 **FIRST CAUSE OF ACTION**

20 **(UNJUST ENRICHMENT)**

21 27. Paragraph 22 does not require a response. To the extent that it does, Google
22 incorporates by reference its responses above.

23 28. Google denies the allegations in paragraph 23.

24 29. Google denies the allegations in paragraph 24.

25 30. Google denies the allegations in paragraph 25.

26 31. Google denies the allegations in paragraph 26.

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SECOND CAUSE OF ACTION
(FRAUDULENT CONCEALMENT)

32. Paragraph 27 does not require a response. To the extent that it does, Google incorporates by reference its responses above.
33. Google denies the allegations in paragraph 28.
34. Google denies the allegations in paragraph 29.
35. Google denies the allegations in paragraph 30.
36. Google denies the allegations in paragraph 31.
37. Google denies the allegations in paragraph 32.
38. Google denies the allegations in paragraph 33.

THIRD CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE
SECTIONS 17200 ET SEQ.

39. Paragraph 34 does not require a response. To the extent that it does, Google incorporates by reference its responses above.
40. Google denies the allegations in paragraph 35.
41. Google denies the allegations in paragraph 36.
42. Google denies the allegations in paragraph 37.
43. Google denies the allegations in paragraph 38.
44. Google denies the allegations in paragraph 39.
45. Google denies the allegations in paragraph 40.
46. Google denies the allegations in paragraph 41.
47. Google denies the allegations in paragraph 42.
48. Paragraph 43 states a legal conclusion to which no response is required. To the extent that a response is required, Google denies the allegations in this paragraph.
- Google denies that plaintiff is entitled to a judgment or to any other relief as requested in the “PRAYER FOR RELIEF.”

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3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 **FAILURE TO STATE A CLAIM**

6 The Complaint and each claim set forth therein fail to state a claim upon which relief can
7 be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **WAIVER**

10 Assuming without conceding that the Complaint states a claim, the claims of wrongdoing
11 in the Complaint have been waived by the plaintiff and the putative plaintiff class in whole or in
12 part and are, to that extent, barred.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **STATUTE OF LIMITATIONS**

15 Assuming without conceding that the Complaint states a claim, plaintiff's and the
16 putative plaintiff class's claims are barred, in whole or in part, by the three-year statute of
17 limitations applicable to the unjust enrichment, fraudulent concealment and common law unfair
18 competition claims and by the four-year statute of limitations applicable to statutory unfair
19 competition claims.

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21 **FOURTH AFFIRMATIVE DEFENSE**

22 **FAILURE TO MITIGATE**

23 Assuming without conceding that the Complaint states a claim, plaintiff and the putative
24 plaintiff class have failed to mitigate its damages, if any.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 **LACHES**

27 Assuming without conceding that the Complaint states a claim, plaintiff's and the
28 putative plaintiff class's claims are barred by the doctrine of laches.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **UNCLEAN HANDS**

3 Assuming without conceding that the Complaint states a claim, plaintiff's and the
4 putative plaintiff class's claims are barred, in whole or in part, by the doctrine of unclean hands.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 **ESTOPPEL**

7 Assuming without conceding that the Complaint states a claim, plaintiff's and the
8 putative plaintiff class's claims are barred, in whole or in part, by the doctrine of estoppel.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 **CONSENT**

11 Assuming without conceding that the Complaint states a claim, plaintiff's and the
12 putative plaintiff class's claims are barred, in whole or in part, by their consent to the allegedly
13 unlawful conduct.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Google prays for judgment as follows:

17 (a) That Plaintiff takes nothing by his Complaint and the Court dismiss the Complaint
18 with prejudice and enter judgment in Google's favor;

19 (b) That the Court award Google all costs and expenses it incurs in this action;

20 (c) That the Court award Google its attorneys' fees as permitted by law;

21 (c) That the Court award Google such other and further relief that it deems just and
22 proper.

23 Dated: July 14, 2008

KEKER & VAN NEST, LLP

24
25 By: /s/ David J. Silbert

26 DAVID J. SILBERT
27 Attorneys for Defendant
28 GOOGLE, INC.