

1 DAVID H. KRAMER, State Bar No. 168452
 2 BART E. VOLKMER, State Bar No. 223732
 3 JACOB T. VELTMAN, State Bar No. 247597
 4 WILSON SONSINI GOODRICH & ROSATI
 5 Professional Corporation
 6 650 Page Mill Road
 7 Palo Alto, CA 94304-1050
 8 Telephone: (650) 493-9300
 9 Facsimile: (650) 565-5100
 10 dkramer@wsgr.com

11 *Attorneys for Defendant Google Inc.*

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 OAKLAND DIVISION

15 GARY BLACK, et al.,
 16 Plaintiffs,
 17 v.

18 GOOGLE INC.,
 19 Defendant.

No. C 10-02381 CW

**DEFENDANT GOOGLE INC.'S
 OBJECTION TO PLAINTIFFS'
 DECLARATION FOR DAMAGES**

Hearing Date: August 12, 2010
 Hearing Time: 2:00 p.m.
 Courtroom: 2
 (Hon. Claudia Wilken)

**[MATTER SUBMITTED
 ON THE PAPERS]**

1 On August 5, 2010, Plaintiffs filed a “Declaration for Damages,” presumably
2 in support of their motion for judgment on the pleadings. This declaration is the
3 latest in a series of procedurally improper pleadings Plaintiffs have submitted in
4 this matter, and Google hereby objects to it in its entirety.

5 **First**, Plaintiffs’ motion for judgment on the pleadings is itself procedurally
6 improper because Google has not filed an answer in this case. (Doc. No. 17 at 1
7 (citing *Doe v. United States*, 419 F.3d 1058, 1061 (9th Cir. 2005)). A declaration
8 supporting a premature motion is necessarily objectionable.

9 **Second**, when deciding a motion for judgment on the pleadings, the Court
10 may only consider the allegations contained in the pleadings and “facts that ‘are
11 contained in materials of which the court may take judicial notice.’” *Heliotrope*
12 *Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 n.18 (9th Cir. 1999). Plaintiffs’
13 declaration consists of rambling, conclusory, and legally insufficient damages
14 allegations and is unsuitable for judicial notice. *See* FED. R. EVID. 201(b).

15 **Third**, Plaintiffs’ declaration violates the Federal Rules of Evidence,
16 including Rules 401-402 (relevance), Rule 602 (personal knowledge), Rule 701
17 (proper lay witness testimony), Rule 802 (hearsay) and Rule 1002 (best evidence
18 rule).

19 For these reasons, Google respectfully requests that the Court strike or
20 disregard Plaintiffs’ “Declaration for Damages.”

21
22 Respectfully submitted,

23 Dated: August 10, 2010

24 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

25
26 By: s/ David H. Kramer
David H. Kramer

27 Attorneys for Defendant
28 Google Inc.

1 I, Deborah Grubbs, declare:

2 I am employed in Santa Clara County, State of California. I am over the age of 18 years
3 and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati,
4 650 Page Mill Road, Palo Alto, California 94304-1050.

5 On this date I served:

6 **DEFENDANT GOOGLE INC.'S OBJECTION TO PLAINTIFFS'**
7 **DECLARATION FOR DAMAGES**

8 **VIA U.S. MAIL:** By placing the document(s) in a sealed envelope for collection
9 and mailing with the United States Postal Service on this date addressed to the person(s) listed
10 below. I am familiar with our business practices for collecting and processing of mail for the
11 United States Postal Service. Mail placed by me within the office for collection for the United
12 States Postal Service would normally be deposited with the United States Postal Services that
13 same day in the ordinary course of business.

14 NON-ECF FILERS

15 Gary Black
16 Holli Beam-Black
17 101 Auld Court
18 Green Valley Falls, CA 94534

19 **BY E-MAIL:** by causing to be transmitted via e-mail the document(s) listed
20 above to the addressee(s) at the e-mail address(es) listed below.

21 NON-ECF FILERS

22 Gary Black
23 Holli Beam-Black
24 Email: gerald@raymondavich.com

25 I declare under penalty of perjury under the laws of the United States of America that the
26 foregoing is true and correct. Executed at Palo Alto, California on August 10, 2010.

27 /s Deborah Grubbs
28 Deborah Grubbs