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8 Attorneys for Defendant  
 9 GOOGLE, INC.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION  
 13

14 ROBERT A. BROWN, an individual,  
 15 Plaintiffs,

16 v.

17 GOOGLE, INC.; PAYROLLING.COM;  
 18 MARISSA MAYER; and DOES 1 through  
 19 20,  
 20 Defendants.

Case No. C05 01779 PVT

**CERTIFICATE OF SERVICE OF  
 NOTICE TO ADVERSE PARTIES OF  
 REMOVAL TO FEDERAL COURT**

(Santa Clara County Superior Court Case No.  
 105CV036200)

21 I, Debra Payton Moore, certify and declare as follows:

- 22 1. I am over the age of 18 years and not a party to this action.
- 23 2. My business address is: 580 California Street, Suite 1500, San Francisco, California,  
 24 94104.
- 25 3. I am familiar with my employer's mail collection and processing practices; know that  
 26 said mail is collected and deposited with the United States Postal Service on the same day that it is  
 27 deposited in the interoffice mail; and know that the postage thereon is fully prepaid.  
 28



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13 Attorneys for Defendant  
14 GOOGLE, INC.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF SANTA CLARA

17 ROBERT A. BROWN, an individual,  
18 Plaintiff,  
19 v.  
20 GOOGLE, INC.; PAYROLLING.COM;  
21 MARISSA MAYER; and DOES 1 through  
22 20,  
23 Defendants.

Case No. 105CV036200  
[Assigned to the Honorable William J. Elfving]  
**NOTICE TO ADVERSE PARTY OF  
REMOVAL OF CIVIL ACTION TO THE  
UNITED STATES DISTRICT COURT**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Defendant Google, Inc. has filed a Notice of Removal under 28  
3 U.S.C. § 1441(b) in the United States District Court for the Northern District of California.

4 A true and correct copy of the Notice of Removal is attached to this Notice as Exhibit "A" and  
5 is served and filed herewith.

6 Dated: April 29, 2005

AKIN GUMP STRAUSS HAUER & FELD LLP

7  
8 By

  
Heather Burr

9  
10 Attorneys for Defendant  
GOOGLE, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 580 California Street, Suite 1500, San Francisco, CA 94104. On April 29, 2005, I served the foregoing document(s) described as: NOTICE TO ADVERSE PARTY OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT on the interested party(ies) below, using the following means:

Gregory M. Sheffer  
The Sheffer Law Firm  
160 Sansome Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94104

Ronald H. Blumberg  
Aniko M. Felsen  
Blumberg Lorber Nelson LLP  
137 N. Acacia Avenue  
Solana Beach, CA 92075

BY PERSONAL SERVICE I delivered such envelope(s) by hand to the offices of the addressee(s).

BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at San Francisco, California.

BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed to the respective address(es) of the party(ies) stated above and providing them to a professional messenger service for service.

BY FAX Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the respective fax number(s) of the party(ies) as stated above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission(s), which I printed out, is attached.

BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 29, 2005 at San Francisco, California.

Debra Payton Moore  
[Print Name of Person Executing Proof]

  
[Signature]

**Exhibit A**

1 CATHERINE A. CONWAY (SBN 98366)  
2 AKIN GUMP STRAUSS HAUER & FELD LLP  
3 2029 Century Park East, Suite 2400  
4 Los Angeles, CA 90067-3012  
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9 580 California Street, Suite 1500  
10 San Francisco, CA 94104-1036  
11 Telephone: 415-765-9500  
12 Facsimile: 415-765-9501

13 Attorneys for Defendant  
14 GOOGLE, INC.

ORIGINAL  
FILED  
APR 29 2005

RICHARD W. WICKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

ADP

E-filing

18 ROBERT A. BROWN, an individual,  
19 Plaintiffs,

Case No. C-05 01779

PVT

20 v.

21 GOOGLE, INC.; PAYROLLING.COM;  
22 MARISSA MAYER; and DOES 1 through  
23 20,  
24 Defendants.

NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. § 1441(B)  
(FEDERAL QUESTION)

(Santa Clara County Superior Court Case No.  
105CV036200)

BY FAX

25 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

26 PLEASE TAKE NOTICE that Defendant Google, Inc. ("Defendant") hereby removes to this  
27 Court the state court action described below.

28 1. On February 24, 2005, Robert A. Brown ("Plaintiff") commenced an action against  
Defendant in the Superior Court of the State of California in and for the County of Santa Clara, entitled  
*Robert A. Brown v. Google, Inc.; Payrolling.com; Marissa Mayer; and Does 1 through 20*, Case No.

1 105CV036200 (the “State Court Action”). A true and correct copy of the Complaint from the State  
2 Court Action is attached hereto as Exhibit A.

3 2. On March 30, 2005, Defendant accepted service of the Complaint in the State Court  
4 Action. A true and correct copy of Defendant’s Notice and Acknowledgment of Receipt of Service of  
5 the Complaint as of March 30, 2005, is attached hereto as Exhibit B.

6 3. **Federal Question Jurisdiction.** This case is a civil action of which this Court has  
7 original jurisdiction under 28 U.S.C. § 1331, and thus may be removed to this Court pursuant to 28  
8 U.S.C. § 1441, because Plaintiff’s Eighth Cause of Action for “Breach of Implied Contract of  
9 Employment – Action for Recovery of Benefits and Other Promised Employee Compensation” arises  
10 under the federal Employee Retirement and Income Security Act of 1974 (“ERISA”), 29 U.S.C. §  
11 1001, *et seq.*

12 a. Under 28 U.S.C. § 1441(a), a defendant may remove to federal district court  
13 “any civil action brought in a State court of which the district courts of the United States have original  
14 jurisdiction . . . .” Federal district courts have original jurisdiction over “all civil actions arising under  
15 the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Accordingly, a claim that  
16 arises under a federal statute, such as ERISA, may be removed to federal court. *See, e.g., Aetna Health*  
17 *Inc. v. Davila*, 124 S. Ct. 2488 (2004). Even when a complaint purports to raise only a state law claim,  
18 the claim arises under federal law, and thus creates a basis for removal, if it is preempted by ERISA.  
19 *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-65 (1987).

20 b. In order to ensure that actions involving employee benefits are governed by a  
21 uniform body of federal law, ERISA preempts all causes of action that “relate to” employee benefit  
22 plans.<sup>1</sup> 29 U.S.C. § 1144(a) (mandating that ERISA “supersede any and all State laws insofar as they  
23

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24 <sup>1</sup> Under ERISA, “employee benefit plans” include welfare benefit plans and pension benefit  
25 plans. *See* 29 U.S.C. § 1002(3). The term “welfare benefit plan” is defined to include plans that  
26 provide medical care or benefits. *See* 29 U.S.C. § 1002(2)(A). A pension plan is any plan, fund, or  
27 program that “provides retirement income to employees” or “results in a deferral of income by  
28 employees for periods extending to the termination of covered employment or beyond.” 29 U.S.C. §  
1002(2)(A). 401(k) plans satisfy this standard. *See Board of Trustees, etc. v. J.R.D. Mech. Servs., Inc.*,  
99 F. Supp. 2d 1115, 1117 (C.D. Cal. 1999); *Ginsberg v. Valhalla Anesthesia Assocs., P.C.*, 971 F.  
Supp. 144 (S.D.N.Y. 1997).

1 may now or hereafter relate to any employee benefit plan . . .”); *Ingersoll-Rand Co. v. McClendon*,  
2 498 U.S. 133, 133 (1990) (explaining that ERISA “broadly declares that that statute supersedes all state  
3 laws (including decisions having the effect of state law) that ‘relate to’ any covered employee benefit  
4 plan”); *McBride v. PLM Int’l, Inc.*, 179 F.3d 737, 745 (9th Cir. 1999); *Scott v. Gulf Oil Corp.*, 754 F.2d  
5 1499, 1504 (9th Cir. 1985). For purposes of ERISA preemption, “[a] law ‘relates to’ an employee  
6 benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan.”  
7 *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1404 (9th Cir. 1988) (quoting *Mackey v. Lanier*  
8 *Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988)).

9 c. The fact that a complaint “relies on state common law causes of action and does  
10 not refer to an employee benefit plan” does not preclude ERISA preemption. *Id.* at 1404. Rather,  
11 regardless of how a claim is cast, as long as it is based on an allegedly wrongful denial of employee  
12 benefits, ERISA provides the exclusive remedy, and the claim is preempted. *See Aetna Health Inc.*,  
13 124 S. Ct. at 2498-2499, 2502; *see also Metropolitan Life Ins. Co.*, 481 U.S. at 62-63 (holding that “a  
14 suit by a beneficiary to recover benefits from a covered plan . . . falls directly under § 502(a)(1)(B) of  
15 ERISA [29 U.S.C. § 1132(a)(1)(B)], which provides an exclusive federal cause of action for resolution  
16 of such disputes”). Indeed, “[t]he Ninth Circuit has held that ERISA preempts common law theories of  
17 breach of contract implied in fact, promissory estoppel, estoppel by conduct, fraud and deceit, and  
18 breach of contract.” *Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1095 (9th Cir. 1985) (disapproved on  
19 other grounds in *Watkins v. Westinghouse Hanford Co.*, 12 F.3d 1517 (9th Cir. 1993)). In short, any  
20 claim based on an allegedly wrongful denial of benefits is preempted and, therefore, is removable to  
21 federal court. *See Metropolitan Life Ins. Co.*, 481 U.S. at 66 (“[C]auses of action within the scope of  
22 the civil enforcement provisions of [ERISA are] removable to federal court”).

23 d. Plaintiff’s Eighth Cause of Action is preempted by ERISA because it “relates to”  
24 Defendant’s employee benefit plans. With respect to that cause of action – entitled, in part, “Action for  
25 Recovery of Benefits” – Plaintiff alleges that Defendant denied him the benefits offered to its  
26 employees. (Complaint at ¶¶ 102-103). Specifically, he alleges that Defendant “misclassified [him] as  
27 a contractor or temporary employee” and thus wrongfully excluded him from the “full premium  
28 coverage medical and dental insurance plans . . . , matched contribution employee 401(k) plan, [and]

1 eligibility for stock options and bonuses” available to “regular employees.” (*Id.* at ¶¶ 102, 105).  
 2 Among other relief, Defendant seeks to recover damages “in the amount of the value of the . . .  
 3 medical premiums, dental premiums, profit sharing [and] stock options.” (*Id.* ¶ 106). Because  
 4 Plaintiff claims that Defendant wrongfully denied him benefits available under Defendant’s employee  
 5 benefit plans, his Eighth Cause of Action plainly “relates to” those plans and therefore is preempted by  
 6 ERISA. *See Metropolitan Life Ins. Co.*, 481 U.S. at 66. For this reason, the State Court Action is  
 7 removable to this Court. *See* 29 U.S.C. § 1441(a); *Metropolitan Life Ins. Co.*, 481 U.S. at 66;  
 8 *Ethridge*, 861 F.2d at 1404.<sup>2</sup>

9       4.       **Pendent Jurisdiction.** This Court has pendent jurisdiction over Plaintiff’s state law  
 10 claims. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 721-27 (1966); *City of Gainesville v.*  
 11 *Brown-Crummer Investment Co.*, 277 U.S. 54, 60 (1928); 28 U.S.C. §§ 1441(b) and (c).

12       5.       **Joinder.** All other defendants who have been served with a summons and complaint in  
 13 the State Court Action, or who have agreed to accept service of the complaint, have joined this Notice  
 14 of Removal, as evidenced by the Joinders of defendant Payrolling.com and defendant Marissa Mayer.

15       6.       **Venue.** Venue is proper because the Northern District of California is the judicial  
 16 district embracing Santa Clara County wherein the State Court Action is pending. *See* 28 U.S.C. §  
 17 84(a). Pursuant to 28 U.S.C. § 1446(a), Defendant files this Notice of Removal in the District Court of  
 18 the United States for the district and division within which the State Court Action is pending.

19       7.       **Intradistrict Assignment.** Assignment to the San Jose Division of this Court is proper  
 20 under Local Civil Rule 3-2(e) because the State Court Action arose, was filed by Plaintiff, and is now  
 21 pending in Santa Clara County.

22       8.       **State Court Pleadings.** Attached as Exhibit C are copies of all other pleadings and  
 23 orders which, to Defendant’s knowledge, have been filed in the State Court Action.

24  
 25  
 26  
 27       <sup>2</sup> Plaintiff’s Eleventh Cause of Action for unfair business practices re-alleges these same  
 28 allegations and additionally seeks declaratory and injunctive relief prohibiting Defendant from denying  
 benefits to other individuals in the future. (Complaint at ¶¶ 124, 126). Because the Eleventh Cause of  
 Action likewise relates to Defendant’s employee benefit plans, it too is preempted by ERISA.

1           9.     **Notice of Removal.** Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal  
2 with its attachments will promptly be provided to Plaintiff's counsel.

3 Dated: April 29, 2005

AKIN GUMP STRAUSS HAUER & FELD LLP

4  
5 By  \_\_\_\_\_  
6 Heather Burrot

7 Attorneys for Defendant  
8 GOOGLE, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 580 California Street, Suite 1500, San Francisco, CA 94104. On April 29, 2005, I served the foregoing document(s) described as: NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. § 1441(B) on the interested party(ies) below, using the following means:

Gregory M. Sheffer  
The Sheffer Law Firm  
160 Sansome Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94104

Ronald H. Blumberg  
Aniko M. Felsen  
Blumberg Lorber Nelson LLP  
137 N. Acacia Avenue  
Solana Beach, CA 92075

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BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 29, 2005 at San Francisco, California.

Debra Payton Moore  
[Print Name of Person Executing Proof]

  
[Signature]

**Exhibit A**

1 X Gregory M. Sheffer, Esq., State Bar No. 173124  
2 THE SHEFFER LAW FIRM  
3 160 Sansome Street, 2nd Floor  
4 San Francisco, CA 94104-3706  
5 Tel: (415) 434-9111  
6 Fax: (415) 434-9115

7 Attorneys for Plaintiff  
8 ROBERT A. BROWN

FILED UCS  
2005 FEB 24 PM 1:05  
CLERK OF COURT  
SANTA CLARA COUNTY  
COURT HOUSE  
JULIA CLARA  
G A PINACATE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SANTA CLARA  
11 UNLIMITED CIVIL JURISDICTION

BY FAX:

12 ROBERT A. BROWN, an individual

13 Plaintiff,

14 v.

15 GOOGLE, INC.; PAYROLLING.COM;  
16 MARISSA MAYER; and DOES 1 through  
17 20,

18 Defendants.

No. 105CV036200

COMPLAINT FOR DAMAGES  
[BY FAX]

19 1. Plaintiff Robert Brown brings this Complaint against the defendants hereinafter  
20 identified, Mr. Brown's employers, to recover damages proximately caused by the defendants'  
21 independent as well as joint acts in violation of California's Labor Code and certain other laws of  
22 this State.

23 THE PARTIES

24 2. Plaintiff Robert A. Brown ("Plaintiff" or "Brown") is a natural person and, was at  
25 all relevant times, a resident of the State of California. At all relevant times, Mr. Brown resided at  
26 835A Stannage Avenue in the City of Albany in the County of Alameda, California.

3. Plaintiff Brown is also a "person" within the meaning of California Business and  
Professions Code §17200 et seq. As such, Plaintiff brings each cause of action on his own behalf as  
well as on behalf of those similarly situated in the general public, if there may be any, and for the

1 public interest of the State of California.

2 4. Plaintiff Brown and other similarly situated persons employed by Defendants  
3 during the relevant time period are "aggrieved employees" within the meaning of California Labor  
4 Code §2698 et seq. (hereinafter the "Labor Code Private Attorneys General Act of 2004").

5 5. Upon information and belief, Defendant Google, Inc. ("Google") is a corporation  
6 that is qualified to do business in California and maintains its principal executive offices at 1600  
7 Amphitheatre Parkway, in the City of Mountain View, County of Santa Clara, California. At all  
8 times relevant to the claims presented in this Complaint, defendant Google was the employer of  
9 Plaintiff Brown as that term is defined in Title 8 CCR §11040 2(H).

10 6. Upon information and belief, Defendant Payrolling.com ("Payrolling.com") is a  
11 corporation that is qualified to do business in California and maintains its principal executive  
12 offices at 8333 Clairemont Mesa Blvd., No. 203 in the City and County of San Diego, California.  
13 Defendants Payrolling.com and Google identified Payrolling.com as Plaintiff's employer at all  
14 times relevant to the claims presented in this Complaint.

15 7. Defendant Marissa Mayer ("Mayer") is a natural person and, upon information and  
16 belief, a resident of Palo Alto in the State of California. Defendant Google employs Defendant  
17 Mayer as a Product Manager. At all relevant times, and for all of her conduct identified herein,  
18 defendant Mayer was acting within the scope of her position with Google. Defendant Mayer hired  
19 Plaintiff Brown, was at all relevant times Plaintiff's employment supervisor, directed and  
20 controlled Plaintiff Brown's work, and fired Plaintiff Brown.

21 8. Defendants, and each of them, are "persons" within the meaning of California  
22 Labor Code §18, as incorporated into Labor Code §2698 et seq. (hereinafter the "Labor Code Private  
23 Attorneys General Act of 2004").

24 9. At this time, the true names of DOES 1 through 20, inclusive, are unknown to  
25 Plaintiff, who therefore sues said defendants by their fictitious name pursuant to California Code of  
26 Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of the

1 fictitiously named defendants is responsible for some or all of the acts and occurrences herein  
2 alleged. Plaintiff will amend this Complaint to allege their true names and capacities when  
3 ascertained.

4 10. Plaintiff is informed and believes and thereon alleges that at all times mentioned  
5 herein, defendants, and each of them, were agents, employees and/or authorized representatives of  
6 each of the named defendants, and each was acting within the purpose and scope of said agencies  
7 and employment.

8 11. Plaintiff is informed and believes and thereon alleges that at all times mentioned  
9 herein, the defendants, and each of them, were members of, and engaged in, a joint venture,  
10 partnership and common enterprise, and acting within the course and scope of, and in pursuance  
11 of, said joint venture, partnership and common enterprise. Further, based upon personal  
12 knowledge, as well as upon information and belief, defendants, and each of them, were aware of  
13 the conduct of the other herein described, which conduct inured to the benefit of the others, and  
14 approved of or acquiesced to such other defendants' conduct.

15 12. Plaintiff is informed and believes and thereon alleges that at all times mentioned  
16 herein, the acts and omissions of defendants, and each of them, concurred and contributed to the  
17 various acts and omissions of each and all of the other defendants in proximately causing the  
18 injuries and damages alleged herein.

19 13. Plaintiff is informed and believes and thereon alleges that at all times mentioned  
20 herein, the defendants, and each of them, ratified and/or aided and abetted in the commission of  
21 the acts and omissions of each other in proximately causing the damages as alleged herein.

22 **BACKGROUND**

23 14. In or about August of 2002, Plaintiff Brown was advised of an employment opening  
24 with Google. Plaintiff Brown transmitted his resume to Defendant Mayer at Google. Defendant  
25 Mayer conducted a telephone interview with Plaintiff during which she described an opening in  
26 the fledgling Google News division. Defendant Mayer later telephoned Plaintiff Brown and

1 invited him to meet with her, in-person, at her office in the City of Mountain View, California.

2 15. On September 3, 2002, Plaintiff Brown met with Defendant Mayer at the Google  
3 offices in Mountain View. Defendant Mayer told Plaintiff that Google needed someone right away  
4 and that the job was his if he wanted it. Defendant Mayer advised Plaintiff by that he would be on  
5 a probationary status for a short time. Plaintiff immediately accepted the job offer from Mayer.  
6 From the interview process with defendant Mayer, plaintiff understood he would be entitled to full  
7 benefits and increased pay from Google once the probationary period was over.

8 16. Defendant Mayer directed and required Plaintiff Brown to fill out certain forms and  
9 paperwork to complete the hiring process.

10 17. Certain of this new hire paperwork purported to characterize Payrolling.com as Mr.  
11 Brown's "employer". Mr. Brown never met with nor spoke to anyone at Payrolling.com.

12 18. Plaintiff asked Mayer and the Google Human Resources person, who provided him  
13 with the employment paperwork, why the paperwork referred to "Payrolling.com". The Google  
14 representative specifically told Plaintiff that Payrolling.com was simply the company that handled  
15 the processing of Google's payroll and that such paperwork was only to facilitate the processing of  
16 payroll.

17 19. Plaintiff Brown was characterized as an "at-will" employee for purposes of his  
18 work for Google and Google declared their power to terminate Mr. Brown's services at any time  
19 and for any reason. Plaintiff Brown was to be paid an hourly wage for an indefinite period of time.

20 20. Mayer advised Plaintiff that he was to start working for Google as of September 3,  
21 2002, and was to be paid on an hourly basis at a rate of \$17.00 per hour. Though this rate was quite  
22 low compared to other employment opportunities available to Plaintiff, he accepted this position  
23 because he understood the rate was for the probationary period only and he believed Google was a  
24 great company to work for, took great care of their employees, and offered great benefits and  
25 compensation packages, including stock options.

26 21. Throughout the initial course of his work, Plaintiff never thought to question how,

1 or even whether, Google classified his employment. From the interview process, Plaintiff  
2 understood Google hired all of its employees in the same exact manner in which he, himself, was  
3 hired. Plaintiff understood all Google hires were given probationary periods, like him, and were  
4 later recognized as official employees if their performance was satisfactory.

5 22. As of April 21, 2003, Google increased the wage of Plaintiff to \$21.00 per hour.  
6 Google informed Plaintiff that the raise was consequent to his loyalty, performance and  
7 assumption of increasing responsibilities within the new sourcing division of Google.

8 23. Defendant Mayer terminated Plaintiff on May 10, 2004, effective May 14, 2004.

9 24. After Plaintiff Brown's termination by Google, he applied for Unemployment  
10 Compensation benefits. On his application, Mr. Brown identified Google as his employer. Mr.  
11 Brown had difficulty in receiving benefits because Google denied his status as an employee and  
12 Plaintiff had no understanding that Google was not his employer. Ultimately, Plaintiff looked at  
13 one of his old payroll receipts and provided the Unemployment Department with the employer  
14 number contained thereon. Plaintiff thus learned this number was the employer number for  
15 Payrolling.com. This was the first time Plaintiff realized that he was characterized as an employee  
16 of Payrolling.com.

17 **FIRST CAUSE OF ACTION**

18 **Failure to Pay Overtime Compensation**

19 **[Labor Code §§1194, 1196; Industrial Welfare Commission Wage**  
20 **Order Nos. 5-1996, 5-2000, and 5-2001]**

21 25. Plaintiff repeats and alleges as though fully set forth herein, each and every  
22 allegation contained in paragraphs numbered 1 through 24.

23 26. Plaintiff Brown alleges that he was required to, and did, submit either handwritten  
24 or electronic timesheets identifying the hours he had worked for each day. These timesheets were  
25 submitted to Defendants Mayer and Google and also forwarded to Defendant Payrolling.com.  
26 These timesheets and/or other express communications specifically identified the fact that Brown  
had performed or was about to perform work for Google in amounts in excess of eight (8) hours per

1 day and/or forty (40) hours per week. Defendant Mayer often required that plaintiff work the  
2 overtime hours he reported. Plaintiff Brown was also required to, and did, work overtime to make  
3 up any hours missed if he was absent from work due to sickness or other reasons. Defendants  
4 Google and Mayer required Brown to make up any time he purportedly "missed", by working  
5 additional hours on several other days that he was present. Defendants Google and Mayer often  
6 required Plaintiff to complete his time records as if he had never missed any regular work time and  
7 never worked the overtime hours (i.e., had him record 8 hours worked on the days he missed and  
8 no more than 8 hours worked on the days he worked more than 8 hours to make up for the days he  
9 missed.).

10 27. Plaintiff Brown was not paid overtime for the hours he worked in excess of eight (8)  
11 in any day or forty (40) in any week. Plaintiff was not compensated for the extra overtime hours  
12 that Google and Mayer required to make up the absent time. Defendants failed and refused, and  
13 continue to fail and refuse, to pay Plaintiff these overtime wages mandated by law.

14 28. Based on defendants' failure to pay the amounts owed, Plaintiff requests  
15 compensatory back pay damages in an amount according to proof, prejudgment interest thereon  
16 from the date such amounts became due, injunctive relief to prevent further unlawful activity by  
17 defendants (which activity is continuing), reasonable attorney's fees and costs of suit.

18 29. WHEREFORE, Plaintiff prays for judgment against defendants for these identified  
19 damages and such other relief permitted by law and/or as more fully set forth below.

20 **SECOND CAUSE OF ACTION**

21 **Failure to Provide Meal Periods**

22 [Industrial Welfare Commission Wage Order 4; Labor Code §§ 226.7 and 512]

23 30. Plaintiff repeats and alleges as though fully set forth herein, each and every  
24 allegation contained in paragraphs numbered 1 through 24.

25 31. Plaintiff worked over five (5) hours per day on almost every day, if not every day,  
26 that he worked for defendants between September 3, 2002, and May 21, 2004. Defendants

1 encouraged, if not required, Plaintiff to not take any uninterrupted meal breaks, but to eat, while  
2 working, at his desk. Defendants Mayer, Google and Payrolling.com failed to provide him with an  
3 uninterrupted meal period of at least thirty minutes on each of these days that Plaintiff Brown  
4 worked more than five (5), but less than ten (10) hours during the relevant statutory period of  
5 Plaintiff's employment, from September 3, 2002, through May 21, 2004.

6 32. Plaintiff also worked over ten (10) hours per day on several days that he worked for  
7 defendants between September 3, 2002, and May 21, 2004. Defendants Mayer, Google and  
8 Payrolling.com failed to provide him with two uninterrupted meal periods of at least thirty  
9 minutes on each of these days that Plaintiff Brown worked more than ten (10) hours during the  
10 relevant statutory period of Plaintiff's employment, from September 3, 2002, through May 21, 2004.

11 33. This failure by Defendants has caused damages and penalties to accrue to Plaintiff  
12 at a rate of one hour of premium pay times \$17.00 per hour for each day he was refused a meal  
13 period between September 3, 2002, and April 20, 2003, plus one hour premium pay at \$21.00 per  
14 hour for each day he was refused a meal period between April 21, 2003, and May 21, 2004.

15 34. Based on Defendants' failure to pay the amounts owed, Plaintiff requests  
16 compensatory premium pay damages, in an amount according to proof, interest thereon from the  
17 date such amounts became due, injunctive relief to prevent further unlawful activity by defendants  
18 (which activity is continuing), waiting time penalties and reasonable attorney's fees as provided by  
19 law.

20 35. WHEREFORE, Plaintiff prays for judgment against defendants for these identified  
21 damages and such other relief permitted by law and/or as more fully set forth below.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Timely Pay Wages Due and Owing**

24 **[Labor Code §204b]**

25 36. Plaintiff repeats and alleges as though fully set forth herein, each and every  
26 allegation contained in paragraphs numbered 1 through 24.

1 37. Plaintiff Brown was designated, by Defendants and each of them, to be paid on a  
2 weekly basis pursuant to Labor Code §204b.

3 38. Plaintiff Brown was required by Mayer and Google to submit handwritten, and  
4 later, electronic time records to Mayer by 2:00 p.m. on the Monday following the week in which the  
5 recorded hours had been worked. These time records were then also transmitted to Defendant  
6 Payrolling.com.

7 39. Defendants Mayer and Google advised Plaintiff that he would be paid, for the  
8 hours he worked in any week, on the Thursday following the week in which the hours were  
9 worked. Defendants did not maintain any posted information regarding when and how Plaintiff  
10 Brown was to be paid.

11 40. Plaintiff maintained a custom and practice of completing his time record and  
12 transmitting it to Mayer at the end of the last day of the week in which the hours were worked -  
13 usually Friday - but in no instance later than the following Monday by 2:00 p.m.

14 41. On numerous occasions, including, but not necessarily limited to, December 22-26,  
15 2003, December 29, 2003 to January 2, 2004, February 9-13, 2004, and May 10-14, 2004, Defendants  
16 Payrolling.com, Google and Mayer did not timely issue payment to Plaintiff for submitted work  
17 hours until after the Thursday in the following calendar week and even after seven (7) days had  
18 passed from the end of the prior work period for which pay was due.

19 42. Based on Defendants' failure to pay the amounts owed, Plaintiff requests  
20 compensatory and other damages in an amount according to proof, waiting time penalties,  
21 injunctive relief to prevent further unlawful activity by defendants (which activity is continuing)  
22 and any reasonable attorney's fees authorized by law.

23 43. WHEREFORE, Plaintiff prays for judgment against defendants for these identified  
24 damages and such other relief permitted by law and/or as more fully set forth below.

25 //

26

**FOURTH CAUSE OF ACTION**

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COMPLAINT FOR DAMAGES

1 **Failure to Immediately Pay Wages Due and Owing upon Termination**

2 [Labor Code §§ 201, 206]

3 44. Plaintiff repeats and alleges as though fully set forth herein, each and every  
4 allegation contained in paragraphs numbered 1 through 24.

5 45. Labor Code §201(a) requires an employer who discharges an employee to  
6 immediately pay all wages earned and unpaid at the time of discharge.

7 46. Defendants Google and Mayer discharged Plaintiff on May 14, 2004. His last day of  
8 work was determined to be May 21, 2004, so that he could assist Google during the transition in  
9 which a Google employee would take his place. Upon his discharge, Plaintiff was not immediately  
10 paid, at his place of discharge or elsewhere, his regular and other wages. Moreover, upon his  
11 discharge, Plaintiff Brown was not immediately paid his due and owing overtime pay, meal period  
12 premium pay, and vacation pay he had accrued as a statutory employee of Defendant Google.

13 47. Based on each defendants' failure to immediately pay the amounts owed upon  
14 termination, Plaintiff requests compensatory, penalty and any other damages authorized by law, in  
15 an amount according to proof, and any reasonable attorney's fees authorized by law.

16 48. WHEREFORE, Plaintiff prays for judgment against defendants for these identified  
17 damages and such other relief permitted by law and/or as more fully set forth below.

18 **FIFTH CAUSE OF ACTION**

19 (Fraudulent Inducement to Enter Contract)

20 49. Plaintiff repeats and alleges as though fully set forth herein, each and every  
21 allegation contained in paragraphs numbered 1 through 24.

22 50. Plaintiff alleges that the fact that he was technically classified as a Payrolling.com  
23 employee by his new hire paperwork is a fact of material significance to him.

24 51. Plaintiff is informed and believes, and on such belief alleges, that Defendant Google  
25 and Defendant Mayer's representation that Plaintiff's new hire paperwork from Payrolling.com  
26 was simply to facilitate payroll processing (and not also to classify his employer) was untrue and

1 Google and Mayer knew the representation to be untrue at the time they made the representation.

2 52. Plaintiff is informed and believes, and upon such information and belief alleges,  
3 that Mayer and Google made such false representation for the specific purpose and with the  
4 specific intent to induce him to sign the new-hire paperwork, to unknowingly consent to becoming  
5 an "employee" of Payrolling.com, and to release any claim to the benefits of employment by  
6 Google.

7 53. Based upon his reliance upon Google's representations, Plaintiff signed the new-  
8 hire paperwork. Based upon Mayer's and Google's representations, Plaintiff believed the new-hire  
9 paperwork was solely to facilitate the processing of Google's payroll. Plaintiff had no idea that his  
10 completion of the Payrolling.com paperwork was designed to characterize him as an employee of  
11 Payrolling.com. Plaintiff had no idea what or who or where Payrolling.com was and had no  
12 intention to enter any kind of contract of employment with them.

13 54. Had Plaintiff known that the paperwork purported to make him an employee of  
14 Payrolling.com and not Google, he would not have signed the paperwork. Had Google not assured  
15 Brown that the paperwork was just to allow Payrolling.com to perform payroll services for Brown's  
16 employment with Google, he would not have signed the paperwork.

17 55. As a consequence of this fraud, Plaintiff accepted employment at a reduced wage  
18 that he would not otherwise have accepted. As a consequence of this fraud, Plaintiff continued in  
19 this employment, until his termination by Google, at a wage less than that he could command if  
20 he accepted available employment elsewhere. As a result of this fraud, Plaintiff's unemployment  
21 compensation was interrupted and impaired. As a result of this fraud, defendants denied  
22 Plaintiff full benefits provided to every employee of Google. As a result of this fraud, and the  
23 extreme sense of betrayal that resulted from it, Plaintiff Brown suffered severe emotional distress.

24 56. Based on defendants' intentional and successful defrauding of Plaintiff, Plaintiff  
25 Brown requests compensatory and any other damages authorized by law, in an amount according  
26 to proof, as well as such damages to punish and make an example of defendants.



1 him as a full employee within a short time.

2 63. On March 25, 2004, Plaintiff Brown had a meeting with Defendant Mayer during  
3 which Defendant Mayer specifically advised Plaintiff Brown that Google was terminating all  
4 "contractors" who had been working for Google for a long period of time in order to comply with  
5 Google's new "contractor policy". Plaintiff Brown was even directed by Google to terminate the  
6 position of one of the individuals performing work as a contractor under him in news services.

7 64. At the time Mayer gave Brown the direction to fire the "contractor", she again  
8 reassured Plaintiff that Google would be properly characterizing him as a full Google employee  
9 very soon.

10 65. Plaintiff is informed and believes and upon such information and belief alleges that  
11 Defendants Mayer and Google made each of these continuing promises of full employment  
12 recognition at a time when Defendants Google and Mayer had no intention of fulfilling such  
13 promise.

14 66. Plaintiff is informed and believes and upon such information and belief alleges that,  
15 at the time of defendant Mayer's promise to Plaintiff of full employment with Google, Mayer knew  
16 this statement was false and knew that Google was already preparing to terminate Plaintiff and fill  
17 his position with an "official" employee of Google.

18 67. Plaintiff is informed and believes and upon such information and belief alleges that  
19 Defendant Mayer made these promises with the intention of causing Plaintiff Brown to cease being  
20 concerned about Google's "contractor policy" and to continue performing his valuable work for  
21 Google without proper employment benefits until Google was ready to replace him.

22 68. Plaintiff is informed and believes and upon such information and belief alleges that  
23 Mayer and Google understood and appreciated that these additional representations were false at  
24 the time they were made, or made the representation recklessly without having sufficient  
25 information or investigation to know whether it was true or false.

26 69. Plaintiff trusted Defendant Mayer and Google. Because of Defendant Mayer's and

1 Google's representations about his imminent full employment status, because Plaintiff placed such  
2 importance on working for a company with the benefits of Google, and because he believed his  
3 patience would soon pay off, Brown was willing to, and did, continue diligently performing work  
4 for Google and Mayer.

5 70. Approximately two weeks later, Mr. Brown followed up with Ms. Mayer to see if  
6 she needed any additional information from him to complete the promised process of making him  
7 an "official" Google employee. Neither Defendant Google nor Defendant Mayer ever responded.

8 71. During the week of April 26, 2004, or thereabout, Plaintiff Brown wrote to  
9 Defendant Mayer and again requested to learn the status of Google's "job offer". Defendants  
10 Google and Mayer never responded to this request either.

11 72. Plaintiff Brown trusted the representations of his supervisor, Defendant Mayer, and  
12 in specific reliance thereupon, ceased making inquiries about the "contractor policy" and continued  
13 to diligently perform his work that was integral to the operations of Defendants Google and Mayer.  
14 Plaintiff Brown chose not to further investigate his misclassification as a non-employee and chose  
15 not to investigate other employment opportunities based upon this promise of continued  
16 employment with Google. Plaintiff Brown felt excited to finally be properly classified as an official  
17 employee of Google.

18 73. In the beginning of May 2004, Defendant Mayer finally communicated her  
19 readiness to have a meeting with Plaintiff Brown about his status as an "official" Google employee.  
20 By defendant Mayer's comments in setting up this meeting, Plaintiff Brown was led to believe that  
21 this meeting would confirm his position as a full-time and regular employee of Google. Defendant  
22 Mayer then postponed said meeting several times.

23 74. After Defendant Mayer's postponements, Plaintiff Brown met with Ms. Mayer at  
24 her request on May 10, 2004, at three thirty in the afternoon. During this meeting, Defendant  
25 Mayer advised Mr. Brown that Google was terminating his employment, effective immediately.

26 75. By Defendant Mayer's own statements and the investigation of Plaintiff, Plaintiff

1 is informed and believes, and thereon alleges, that the totality of Defendant Mayer's conduct in  
2 making and perpetuating these promises and statements was done in coordination with, and  
3 with the knowledge, acquiescence, or approval of both her superiors at Google and the directors  
4 and managers at Payrolling.com.

5 76. As a consequence of said promises and statements, Plaintiff Brown failed to  
6 further investigate Google's misclassification of himself and other similarly situated individuals  
7 working for Google. Plaintiff thus failed to identify and preserve writings, data and other  
8 information critical to his claims of misclassification for himself and others so situated.

9 77. As a consequence of said promises and statements, Plaintiff Brown also failed to  
10 demand a higher and more appropriate rate of pay that would be appropriate for someone who,  
11 as a misclassified employee, was denied all health benefits, paid vacation, sick days, holidays,  
12 profit sharing and stock options. Brown failed to make such a request because he understood  
13 that such concern would be immaterial once he was properly classified and compensated as a  
14 Google employee.

15 78. As a consequence of said promises and statements, Plaintiff Brown failed to  
16 accept several other employment opportunities he had either been offered or sought outside of  
17 Google and failed to continue to investigate other such employment from the advantageous and  
18 more marketable position of being currently employed. By the time Plaintiff learned of his  
19 termination, said opportunities were no longer available to him.

20 79. As a consequence of said promises and statements, and the ultimate classification  
21 of Plaintiff as being a poorly performing or unsatisfactory worker, Plaintiff Brown lost his  
22 previously existing positive Google references for all of the hard work he performed for Google.

23 80. As a consequence of this promises and statements, and the extreme sense of  
24 betrayal that resulted from it, Plaintiff Brown suffered severe emotional distress.

25 81. Plaintiff further alleges that this conduct by Defendants Google and Mayer of  
26 which Payrolling.com was aware and compliant was not only willful and intentional, but done

1 with a complete understanding of the nature and severity of the damages that would result to  
2 Plaintiff. Moreover, by the very purpose of their fraud and intent to deceive Plaintiff Brown,  
3 Defendants Google and Mayer were aware of the probable detrimental consequences to Plaintiff  
4 Brown of their conduct and deliberately failed to avoid those consequences.

5 82. As such, Plaintiff alleges that defendants are guilty of malice, oppression and/or  
6 fraud, as defined by Civil Code §3294, and Plaintiff is entitled and should recover, in addition to  
7 actual damages, such damages to punish and make an example of defendants.

8 83. Based on defendants' intentional and successful defrauding of Plaintiff, Plaintiff  
9 Brown also requests compensatory and any other damages authorized by law, in an amount  
10 according to proof.

11 84. WHEREFORE, Plaintiff prays for judgment against defendants for these identified  
12 damages, emotional distress and punitive damages, and such other relief permitted by law and/or  
13 as more fully set forth below.

14 **SEVENTH CAUSE OF ACTION**

15 **(Negligent Misrepresentation)**

16 85. Plaintiff repeats and alleges as though fully set forth herein, each and every  
17 allegation contained in paragraphs numbered 1 through 24, 59 through 64, and 69 through 74.

18 86. At the time of Defendant Mayer's promises to Plaintiff of receiving a job offer, the  
19 representations were not true and she had no reasonable grounds for believing that her promise  
20 was true.

21 87. Defendants Mayer and Google's misrepresentations to Plaintiff about his  
22 classification were material to Plaintiff's choice to work for Google.

23 88. As a consequence of this misrepresentation, Plaintiff Brown failed to further  
24 investigate Google's misclassification of himself and other similarly situated individuals working  
25 for Google. Plaintiff thus failed to identify and preserve writings, data and other information  
26 critical to his claims of misclassification for himself and others so situated. Plaintiff failed to

1 demand a higher and more appropriate rate of pay. Plaintiff failed to accept several other  
2 employment opportunities he had investigated outside of Google and failed to continue to  
3 investigate other such employment. By the time Mr. Brown learned of his termination, these  
4 opportunities were no longer available to him. Plaintiff Brown lost his previously existing  
5 positive Google references for all of the hard work he performed for Google. Plaintiff Brown also  
6 suffered severe emotional distress.

7 89. Based on defendants' intentional and successful defrauding of Plaintiff, Plaintiff  
8 Brown also requests compensatory and any other damages authorized by law, in an amount  
9 according to proof.

10 90. WHEREFORE, Plaintiff prays for judgment against defendants for these identified  
11 damages and such other relief permitted by law and/or as more fully set forth below

12 **EIGHTH CAUSE OF ACTION**

13 (Breach of Implied Contract of Employment -  
14 Action for Recovery of Benefits and Other Promised Employee Compensation)

15 91. Plaintiff repeats and alleges as though fully set forth herein, each and every  
16 allegation contained in paragraphs numbered 1 through 24.

17 92. Plaintiff Brown alleges that, at all times that he worked for Defendant Google,  
18 between September 3, 2002, and May 14, 2004, Google was his "employer", as that term is defined  
19 in California Wage Order 9 and 8 CCR §511010, et seq., including §11090, subdiv. 2(F), and he was  
20 Google's "employee" as such term is defined by the DLSE Enforcement Policies & Interpretation  
21 Manual §28.3.2.1 and also as that term is defined under the criteria enunciated and adopted in *S.G.  
Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341.

22 93. Plaintiff was not hired to perform any discreet, short-term project for Google and  
23 his work was, instead, a regular part of the continuing business of Google.

24 94. Plaintiff did not bring any unique skills or abilities to his work for Google that were  
25 distinct from the skills and abilities of those Google employees for and with whom he worked.

26 95. Plaintiff was required to, and did, perform all of his work for Google at Google's

1 employee offices in Mountain View, California. Plaintiff received an admission security card for  
2 entry to Google's office space.

3 96. Plaintiff received all instrumentalities and tools of his work, including his physical  
4 office space, desk, chair, computer, office supplies, and access to Google's internal data  
5 management system from Google.

6 97. Plaintiff was required to, and did, perform his work for Google during the normal  
7 business hours of the other Google employees with and for whom he worked.

8 98. Google determined the procedure for when and how Plaintiff would report his  
9 hours worked and when he would receive his wages therefor.

10 99. Defendant Google provided all instruction as to the method and manner in which  
11 Plaintiff was required to perform his work for Google. Defendant Mayer and other managers,  
12 officers or directors of Google controlled and directed all of the work that Plaintiff performed for  
13 Google. Defendants Mayer and Google required Plaintiff to perform his work within a framework  
14 or structure that had been created by Google. Plaintiff exercised very little discretion in performing  
15 his work for Google and only exercised discretion within such framework identified by Google.  
16 Google controlled all other manner and means by which Plaintiff could accomplish his work for  
17 Google.

18 100. Google maintained and exercised the right to assign additional work and projects to  
19 Plaintiff during the indefinite course of his performing work for Google.

20 101. Plaintiff performed the same exact work as other true employees of Google.

21 102. Through its custom and practice, through its employee manual and through  
22 various other writings, including its website, Google made express promises to provide all of its  
23 employees with certain compensation, such as ten (10) paid holidays per year, fifteen (15) paid  
24 vacation days for the first year of employment, twenty (20) vacation days for the second year of  
25 employment, paid sick days as necessary, full premium coverage medical and dental insurance  
26 plans from the date of hire, matched contribution employee 401(k) plan, eligibility for stock options

1 and bonuses.

2 103. As his employer, Defendant Google failed to pay Plaintiff Brown the additional  
3 benefit wages they promised to provide to all other employees such that the current value of all  
4 such benefit wages is currently owing to Plaintiff Brown.

5 104. Based on defendants' failure to pay the amounts owed, either during the normal  
6 course of Plaintiff's employment, or upon his termination, Plaintiff Brown requests compensatory  
7 damages in an amount according to proof, interest thereon from the date such amounts became due  
8 and reasonable attorney's fees pursuant to Labor Code §1194(a).

9 105. Plaintiff further alleges that each defendant individually, and all defendants in  
10 concert with the other, were aware of the fact that Plaintiff was misclassified as a contractor or  
11 temporary employee and that his proper characterization was as an employee. Plaintiff alleges  
12 that each defendant individually, and all defendants in concert with the other, affirmatively  
13 determined to misclassify Plaintiff as something other than a regular employee of Google and set  
14 up an elaborate framework to perpetuate this misclassification. Defendants were not only aware  
15 of the probable dangerous consequences of their conduct and deliberately failed to avoid those  
16 consequences, defendants actually intended those consequences of misclassifying Plaintiff  
17 Brown. All such actions taken by defendants in support of perpetuating Plaintiff's  
18 misclassification were done in conscious disregard of his rights as an employee. As such, Plaintiff  
19 alleges that defendants were guilty of malice, oppression and/or fraud, as defined in Civil Code  
20 §3294, and Plaintiff is entitled to and should recover, in addition to actual damages, such  
21 damages to punish and make an example of defendant.

22 106. WHEREFORE, Plaintiff prays for judgment against defendants in the amount of the  
23 value of the vacation days, holidays, sick days, medical premiums, dental premiums, profit  
24 sharing, stock options and such other identified damages and such other relief permitted by law,  
25 including any interest and attorney's fees, as more fully set forth below.

26

**NINTH CAUSE OF ACTION**

(Wrongful Termination in Violation of Public Policy)

1  
2 107. Plaintiff repeats and alleges as though fully set forth herein, each and every  
3 allegation contained in paragraphs numbered 1 through 24 and 61 through 81.

4 108. During the course of Plaintiff's work for Google, he observed Google terminating  
5 individuals classified by Google as contractors and then rehiring new contractors with the same  
6 qualifications to take their place. Plaintiff was even required by Google to execute some of these  
7 terminations himself. Plaintiff understood Google was performing these terminations to avoid  
8 properly classifying these individuals as Google employees. Plaintiff was even advised of this  
9 motivation by Defendant Mayer in her discussion of the "contractor policy".

10 109. In or around February 2004, Plaintiff still had not received confirmation of the date  
11 when he would finally be recognized as a full Google employee. Brown again expressed his  
12 significant concerns about the propriety of his classification to Mayer. Defendant Mayer again  
13 confirmed that Google was soon going to recognize him as a full employee.

14 110. Plaintiff Brown advised Defendant Mayer, that he understood that there was a legal  
15 issue with respect to employers, like Google, classifying people as contractors when the nature and  
16 extent of their work made them employees as a matter of law. Plaintiff Brown became increasingly  
17 concerned about his status as an employee of Google and, again, requested that he be officially and  
18 properly characterized as an employee instead of as a contractor. Defendant Mayer advised  
19 Plaintiff that she had not heard of anything like a "contractor policy" and told Plaintiff that she  
20 would look into it.

21 111. On March 4, 2004, Plaintiff Brown again urged Mayer to confirm that he would be  
22 properly classified and recognized as an official Google employee. Defendant Mayer advised  
23 Plaintiff that she needed to speak with her manager about classifying Plaintiff as an employee.

24 112. Plaintiff advised defendant Mayer that he was aware of an issue regarding  
25 individuals working for Google and being improperly classified as contractors or temporary  
26 employees, instead of as official employees. Plaintiff also expressed concern over Google's

1 improper classification of himself as a contractor instead of an employee. Plaintiff carefully  
2 urged Google to correct this wrong and properly classify him as a Google employee.

3 113. In response to Plaintiff raising the issue of Google's unlawful misclassification of  
4 its "contractor" employees, Plaintiff Brown was terminated. Plaintiff, who had a tremendous  
5 record of excellent performance, who was assigned ever increasing responsibility by Google and  
6 who was given a significant wage rate increase by Google, was told his termination was the result  
7 of his poor performance. Plaintiff Brown alleges that the indication of poor performance  
8 evaluations by defendant Mayer were a sham and a pretext for his firing that was motivated  
9 instead by Google's retaliation for Plaintiff having raised the unlawful employee misclassification  
10 as well as for the general intention of terminating all "employees" who had been improperly  
11 characterized by Google as contractors and who had been employed at Google for over one year.

12 114. Defendants' act of terminating Plaintiff for complaining about not being correctly  
13 characterized and treated as an employee of Google constitutes a violation of California public  
14 policy, including but not limited to Labor Code §§98.6, 201 and 1198. California has evidence an  
15 extremely strong public policy and interest in the proper classification of employees versus  
16 independent contractors or other non-employees. This policy and its significance to the State of  
17 California are identified throughout California's statutory and interpretive law, including 8 CCR  
18 §11010, ¶2. A relatively thorough review of the history and significance of proper employee  
19 classification is found in *S.G. Borello & Sons, Inc. vs. Department of Industrial Relations*, (1989) 48  
20 Cal3d 341.

21 115. As a direct and proximate result of defendants' wrongful conduct as alleged  
22 herein, Plaintiff suffered substantial compensatory damages, including lost wages, lost future  
23 business opportunities and emotional distress.

24 116. Through their actions herein alleged, defendants acted fraudulently, maliciously,  
25 oppressively, and despicably. The totality of these aforementioned facts and circumstances,  
26 including defendants gross underpayment of Plaintiff by systematic violations of the wage and

1 hour laws, Defendants Mayer and Google's fabrication of a scheme of false promises of "official"  
 2 employment to induce Plaintiff to continue working under these unlawful conditions as an  
 3 improperly classified employee of Google, defendants' persistent refusal to properly classify him  
 4 as a Google employee and to terminate him for raising his lawful right to be properly paid and  
 5 properly characterized and defendants' concerted efforts to perpetuate this treatment to  
 6 Plaintiff's considerable disadvantage, evidences a sufficiently strong, conscious disregard for the  
 7 rights of Plaintiff to entitle him to exemplary and punitive damages.

8 117. WHEREFORE, Plaintiff prays for judgment against defendants for these identified  
 9 damages and such other damages or relief permitted by law, including interest and attorneys fees,  
 10 as more fully set forth below.

11 **TENTH CAUSE OF ACTION**

12 (Waiting Time Penalties under Labor Code §203)

13 118. Plaintiff repeats and alleges as though fully set forth herein, each and every  
 14 allegation contained in the foregoing paragraphs.

15 119. Defendants' failure to timely pay regular wages, failure to provide mandatory  
 16 meal periods and failure to timely issue final pay, as hereinabove alleged, was knowing,  
 17 intentional and willful. Plaintiff is thus entitled to penalties under Labor Code §203, which  
 18 provides that an employee's wages shall continue as a penalty until paid for a period of up to  
 19 thirty (30) days from the time they were due.

20 120. WHEREFORE, Plaintiff prays for judgment against defendants for these  
 21 identified damages and such other relief permitted by law and/or as more fully set forth below.

22 **ELEVENTH CAUSE OF ACTION**

23 (Unlawful, Unfair or Fraudulent Business Practices in  
 24 Violation of California Business and Professions Code §17200 et seq.)

25 121. Plaintiff repeats and alleges as though fully set forth herein, each and every  
 26 allegation contained in the foregoing paragraphs.

122. California Business and Professions Code §17200 prohibits acts of unfair

1 competition, which include "any unlawful, unfair or fraudulent business practice."

2 123. Plaintiff alleges that defendants have engaged in unlawful, unfair, fraudulent and  
3 deceptive trade practices by misleading and deceiving him during the hiring process, by failing to  
4 classify Plaintiff as an employee, by failing to comply with requirements concerning the amount  
5 and timing of payment for his regular and overtime compensation as well as for failure to allow or  
6 enforce appropriate meal/rest periods. In addition to causing direct injury to Plaintiff, these unfair  
7 business practices provide defendants with an unfair advantage over their competitors as well as  
8 damages and injuries to Plaintiff and the general public. Plaintiff is further informed, believes and  
9 thereon alleges, that defendants' violations of these and other wage and hour laws have continued  
10 throughout the relevant period up to the present time.

11 124. Plaintiff seeks, on his own behalf, full restitution and disgorgement of the (1)  
12 overtime wages withheld from him, (2) meal period premiums owing to him and (3) the value of  
13 regular employee benefits, such as paid vacation, sick leave, health insurance, profit sharing and  
14 stock options, that he was denied consequent to his improper classification as a non-employee, as  
15 necessary and according to proof and to restore any and all monies wrongfully withheld by  
16 defendants by means of the unfair and/or deceptive trade practices complained of herein.

17 125. The acts complained of herein, at least in part, occurred within the last four (4)  
18 years preceding the filing of the complaint in this action.

19 126. Plaintiff is further entitled to and seeks both a declaration, that the above-described  
20 trade practices are unfair, unlawful and/or fraudulent, and injunctive relief, restraining defendants  
21 from engaging in any of such trade practices in the future. Such misconduct by defendants, unless  
22 and until enjoined and restrained by order of this Court, will cause injury to the general public in  
23 that defendants will continue to violate these California laws unless specifically ordered to comply  
24 with the same. This expectation of future violations will require current and future employees of  
25 defendants to repeatedly and continuously seek legal redress in order to be paid lawful  
26 compensation and be provided with working conditions as required under law. Plaintiff has no

1 other adequate remedy at law to ensure future compliance with the laws allegedly violated herein.

2 127. As a direct and proximate result of such actions, the general public of California has  
3 suffered, and continues to suffer, injury and other damages in an amount to be, and which will be,  
4 proven at trial.

5 128. WHEREFORE, Plaintiff prays for judgment against defendants for these identified  
6 damages and such other relief permitted by law and/or as more fully set forth below.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment against defendants and relief as more fully set  
9 forth below.

10 1. For general damages, special damages and consequential damages according to  
11 proof;

12 2. For waiting time penalties under Labor Code § 256 and 203

13 3. For attorneys' fees;

14 4. For costs of suit incurred herein;

15 5. For prejudgment interest as provided by Civil Code §3287 or other appropriate law;

16 6. For punitive and exemplary damages;

17 7. For restitution and statutory damages pursuant to California Business and  
18 Professions Code §§17202, 17203, 17205, and 17206;

19 8. For injunctive and further relief pursuant to California Business and Professions  
20 Code §17203; and

21 9. For any such other and further relief as the court may deem just and proper.

22 Dated: February 23, 2005

23 THE SHEFFER LAW FIRM

24   
25 Gregory M. Sheffer  
26 Attorneys for Plaintiff  
ROBERT A. BROWN

**Exhibit B**

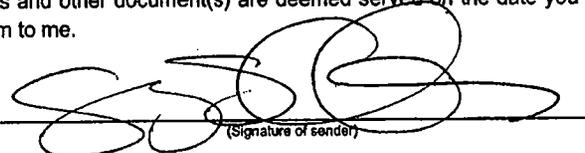
<b>NAME AND ADDRESS OF SENDER:</b> Gregory M. Sheffer, State Bar No. 173124 The Sheffer Law Firm 160 Sansome Street, 2nd Floor San Francisco, CA 94104		<b>TELEPHONE NO.:</b> Tel. (415) 434-9111 Fax (415) 434-9115	For Court Use Only:
Insert name of court, judicial district or branch court, if any, and Post Office and Street Address: Superior Court for the County of Santa Clara Downtown Superior Court 191 North Street San Jose, CA 95113			
<b>PLAINTIFF:</b> Robert A. Brown			
<b>DEFENDANT:</b> Google, Inc., et al.			
<b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT</b>			Case Number: 105CV036200

TO: Catherine A. Conway, Esq. Akin Gump.Strauss Hauer & Feld LLP, Attorneys for Google, Inc. . . . .  
 (Insert name of individual being served)

This summons and other document(s) indicated below are being served pursuant to Section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it to me within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 415.30 provides that this summons and other document(s) are deemed served on the date you sign the Acknowledgment of Receipt below, if you return this form to me.

Dated: March 15, 2005 . . . . .



(Signature of sender)

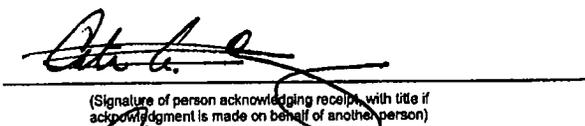
**ACKNOWLEDGMENT OF RECEIPT**

This acknowledges receipt of: (To be completed by sender before mailing)

1.  A copy of the summons and of the complaint.
2.  A copy of the summons and of the Petition (Marriage) and:
  - Blank Confidential Counseling Statement (Marriage)
  - Order to Show Cause (Marriage)
  - Blank Responsive Declaration
  - Blank Financial Declaration
  - Other: (Specify) Civil Lawsuit Notice; and Santa Clara County Superior Court Alternative Dispute Resolution Information Sheet

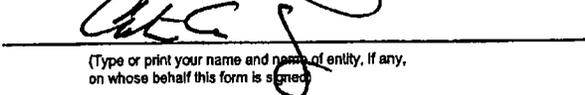
(To be completed by recipient)

Date of receipt: ~~3-30-05~~ . . . . .



(Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person)

Date this form is signed: 3-30-05 . . . . .



(Type or print your name and name of entity, if any, on whose behalf this form is signed)

**Exhibit C**

ATTACHMENT A

# CIVIL LAWSUIT NOTICE

CASE NUMBER 1 05 CV 0362 08

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

**READ THIS ENTIRE FORM**

**PLAINTIFFS** (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANTS** (the person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the Complaint, in the clerk's office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

**Warning: If you do not do these three things, you may automatically lose this case.**

**RULES AND FORMS:** You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: [www.sccsuperiorcourt.org/civil/rule1toc.htm](http://www.sccsuperiorcourt.org/civil/rule1toc.htm)
- Rose Printing, 39 N. First St., San Jose (408-293-8177)

For other local information, visit the Court's Self-Service website [www.sccselfservice.org](http://www.sccselfservice.org) and select "Civil."

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC. You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: WILLIAM MARTIN DEPT: 15

The first CMC is scheduled as follows: (Completed by Clerk of Court)  
Date: JUN 21 2005 Time: 4:00pm Dept.: 15

The next CMC is scheduled as follows: (Completed by party if the first CMC was continued or has passed)  
Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services; and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.