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18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA  
 20 SAN JOSE DIVISION

21 CLICK DEFENSE INC., a Colorado  
 corporation, individually and on behalf of all  
 22 others similarly situated,

23 Plaintiffs,

24 v.

25 GOOGLE, INC., a Delaware corporation, and  
 26 DOES 1 through 100, Inclusive,

27 Defendants.

Case No. C 05 02579 RMW

**JOINT CASE MANAGEMENT  
 STATEMENT AND [PROPOSED]  
 ORDER**

Date: October 28, 2005  
 Time: 10:30 a.m.  
 Judge: Hon. Ronald M. Whyte

Date Comp. Filed: June 24, 2005  
 Trial Date: None Set

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1 Plaintiff Click Defense, Inc. (“Click Defense”) and defendant Google, Inc. (“Google”)  
2 submit this Case Management Statement and Proposed Order and request that the Court to adopt  
3 it as its Case Management Order in this case. The parties have met and conferred over this  
4 statement and have agreed to jointly file this statement

5 **I. DESCRIPTION OF THE CASE**

6 Click Defense brings this action alleging that Google overcharged for pay-per-click  
7 advertising by charging Click Defense for “fraudulent clicks.” Click Defense defines “click  
8 fraud” in its Complaint as “when someone clicks on an internet search advertisement with an ill  
9 intent and with no intention of doing business with the advertiser.” Click Defense asserts causes  
10 of action for (1) breach of contract, (2) unjust enrichment, (3) negligence, and (4) unfair business  
11 practices and seeks class certification.

12 Google filed a motion to dismiss the unjust enrichment and negligence causes of action.  
13 Click Defense conceded that its negligence cause of action should be dismissed, but opposed the  
14 dismissal of its unjust enrichment claim. Google’s motion came before the Court on September  
15 2, 2005. Having considered the pleadings, and the arguments presented by counsel, the Court  
16 granted Google’s motion and dismissed the unjust enrichment and negligence claims on  
17 September 14, 2005.

18 The parties are not yet in a position to identify all of the principal factual and legal issues  
19 in dispute. But it is clear that the parties will dispute at least the following factual and legal  
20 issues: (1) whether a class should be certified in this action; (2) whether Google charged Click  
21 Defense and the class for “fraudulent clicks”; (3) whether Google’s alleged charging of Click  
22 Defense and the class for “fraudulent clicks” constitutes a breach of contract; and (4) whether  
23 Google’s alleged charging of Click Defense and the class for “fraudulent clicks” constitutes an  
24 unlawful, unfair, and/or fraudulent business act and practice.

25 **II. CLASS ACTION STATEMENT**

26 Plaintiff believes that this action is maintainable as a class action pursuant to Federal  
27 Rule of Civil Procedure 23(a) and (b).

28 This action is brought on behalf of all persons and/or entities that paid money to Google

1 for advertising through Google’s “AdWords” program. Excluded from the Class are Defendants,  
2 officers and directors of the Company, members of the immediate families and each of their legal  
3 representatives, heirs, successors or assigns and any entity in which Google has or has had a  
4 controlling interest.

5 Click Defense is entitled to maintain this action pursuant to Federal Rule of Civil  
6 Procedure 23(a) and (b) in that:

7 1. Class Action Prerequisites

8 (a) the members of the Class for whose benefit this action is brought are  
9 dispersed throughout the United States and are so numerous that joinder of all Class members  
10 is impracticable. Plaintiff believes that Class members number in the thousands. Members  
11 of the Class may be identified from records maintained by Google and may be notified of the  
12 pendency of this action by mail, using a form of notice similar to that customarily used in  
13 class actions;

14 (b) Plaintiff’s claims are typical of those of the Class as all members of the Class  
15 are similarly affected by Google’s actionable conduct as alleged herein;

16 (c) Plaintiff will fairly and adequately protect the interests of the Class and has  
17 retained counsel competent and experienced in class action litigation including class actions  
18 within the Northern District of California. Plaintiff has no interests antagonistic to, or in  
19 conflict with, the Class that Plaintiff seeks to represent;

20 (d) a class action is superior to other available methods for the fair and efficient  
21 adjudication of the claims asserted herein, because joinder of all members is impracticable.  
22 Furthermore, because the damages suffered by individual members of the Class may be  
23 relatively small, the expense and burden of individual litigation make it virtually impossible  
24 for Class members to redress the wrongs done to them. The likelihood of individual Class  
25 members prosecuting separate claims is remote;

26 (e) Plaintiff anticipates no difficulties in the management of this action as a class  
27 action; and  
28

1 (f) the questions of law and fact common to the members of the Class  
2 predominate over any questions affecting individual members of the Class. Among the  
3 questions of law and fact common to the Class are:  
4 i. the pervasiveness of advertising “click fraud”;  
5 ii. the construction of the agreement between Google and the Class;  
6 iii. Google’s acts and/or omissions as alleged herein;  
7 **iv.** whether Google’s promotional and advertising materials for its  
8 “AdWords” program misrepresented and/or omitted material facts with  
9 respect to the pervasiveness of “click fraud”;  
10 v. whether Google has breached its agreement with the class;  
11 vi. whether Google has taken adequate measures to prevent “click fraud;”  
12 vii. whether Google has properly accounted and for and refunded fees it has  
13 wrongfully collected from identified victims of “click fraud”;  
14 viii. to what extent the members of the Class have sustained damages  
15 and the proper measure of damages; and  
16 ix. the agreement between Google and the class provides that it is to be  
17 “governed by California law.” Therefore, a single body of substantive state  
18 law applies to this action such that a nationwide class may be certified.

19 2. In addition the prosecution of separate actions by or against individual members  
20 of the class would create a risk of:

21 (a) inconsistent or varying adjudications with respect to individual members of  
22 the class which would establish incompatible standards of conduct for the party opposing the  
23 class, and

24 (b) adjudications with respect to individual members of the class which would as  
25 a practical matter be dispositive of the interests of the other members not parties to the  
26 adjudications or substantially impair or impede their ability to protect their interests;  
27  
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1           3.       Further, in allegedly charging the class for fraudulent clicks Google has acted or  
2 refused to act on grounds generally applicable to the class, thereby making appropriate final  
3 injunctive relief or corresponding declaratory relief with respect to the class as a whole; and

4           4.       Questions of law or fact common to the members of the class predominate over  
5 any questions affecting only individual members, and that a class action is superior to other  
6 available methods for the fair and efficient adjudication of the controversy as demonstrated by  
7 the following pertinent matters:

8               (a)       The interest of members of the class in individually controlling the  
9 prosecution or defense of separate actions is minimal;

10              (b)       The only other litigation concerning the controversy already commenced by or  
11 against members of the class was commenced in Arkansas state court notwithstanding that  
12 the agreement between Google and all members of the class provides that, “[t]his Agreement  
13 must be . . . adjudicated in Santa Clara County, California,” which is within the Northern  
14 District of California;

15              (c)       It is desirable to concentrate the litigation of the claims in the Northern  
16 District of California insofar in that (1) Google resides in this judicial district, (2) a  
17 substantial part of the events or omissions giving rise to the claims asserted herein occurred  
18 in this judicial district, (3) Google is subject to personal jurisdiction in the Northern District  
19 of California and (4) the agreement between Google and all members of the class provides  
20 that the agreement is to be “governed by California law”;

21              (d)       The difficulties likely to be encountered in the management of a class action  
22 are minimal and the Northern District of California has significant experience in managing  
23 class actions of this type.

24           Google disputes all of the above statements to the extent that the same could be  
25 construed as an admission that certification of a class is appropriate or legally permissible in this  
26 litigation.

27           The parties jointly propose that the court consider whether the case can be maintained as  
28 a class action on April 8, 2006.

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**III. ALTERNATIVE DISPUTE RESOLUTION**

The parties have not filed a Stipulation and Proposed Order Selecting an ADR process as yet, however the parties jointly request mediation as their preferred ADR process.

**IV. DISCLOSURES**

The parties have not made the disclosures required by Rule 26, Federal Rule of Civil Procedure. The parties will attempt to meet and confer on the appropriate schedule for these disclosures. If the parties cannot reach an agreement, Google intends to follow the schedule set forth in the Federal Rules of Civil Procedure and make its disclosure within fourteen days of the case management conference.

**V. DISCOVERY**

The parties likely intend to pursue all discovery methods available under the Federal Rules of Civil Procedure, including depositions, interrogatories, requests for admission, and requests for production. Google requests that the Court phased discovery in order to expedite the class certification process. Google would request the following discovery schedule:

- 11/14/05 Deadline for plaintiff to amend complaint;
- 1/9/06 Deadline for plaintiff to file motion for class certification;
- 3/13/06 Deadline for defendant to file response to plaintiff’s motion for class certification;
- 4/10/06 Deadline to complete discovery on class certification issues;
- 4/17/06 Deadline for plaintiff to file reply in support of its motion for class certification;
- 5/2/05 Parties to exchange exhibit lists and pre-marked exhibits for class certification hearing;
- 5/8/06 Hearing on Motion for Class Certification; and
- 7/3/06 Status conference with all parties

**VI. TRIAL SCHEDULE**

The parties jointly request that the Court set a trial date at the status conference following the hearing on plaintiff’s motion for class certification.

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Dated: October 17, 2005

KEKER & VAN NEST, LLP

By: /s/ DARALYN DURIE  
DARALYN J. DURIE  
Attorneys for Defendant  
GOOGLE, INC.

Dated: October 17, 2005

CHITWOOD HARLEY HARNES LLP

By: /s/ DARREN T. KAPLAN  
DARREN T. KAPLAN  
Attorneys for Plaintiff  
CLICK DEFENSE, INC.

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**CASE MANAGEMENT ORDER**

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

Dated:

By: \_\_\_\_\_  
THE HONORABLE RONALD M. WHYTE  
UNITED STATES DISTRICT COURT JUDGE