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5 Attorneys for Defendant
 6 GOOGLE, INC.

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11 CLICK DEFENSE INC., a Colorado
 12 corporation, Individually and on behalf of all
 13 others similarly situated,

Plaintiffs,

v.

15 GOOGLE, INC., a Delaware corporation, and
 16 DOES 1 through 100, Inclusive,

17 Defendants.

Case No. C 05 02579 RMW

**DEFENDANT GOOGLE, INC.'S
 ANSWER TO CLASS ACTION
 COMPLAINT**

Date Comp. Filed: June 24, 2005

Trial Date:

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1 Defendant Google, Inc. (“Google”) answers plaintiff Click Defense, Inc. (“Click
2 Defense”) Class Action Complaint (the “Complaint”) as follows:

3 **SUMMARY OF CLAIMS**

4 1. Google admits that Click Defense originally brought this action styled as a purported
5 class action and asserted breach of contract, negligence, unjust enrichment, and unfair business
6 practices claims. Since the Complaint was filed, the Court has dismissed Click Defense’s
7 negligence and unjust enrichment claims. Google has no information or knowledge to admit or
8 deny the remaining allegations in this paragraph, and on that basis denies those allegations.

9 **THE PARTIES**

10 2. Google has no information or knowledge to admit or deny the allegations in this
11 paragraph, and on that basis denies those allegations.

12 3. Admitted.

13 4. Google has no information or knowledge to admit or deny the allegations in this
14 paragraph, and on that basis denies those allegations.

15 5. Google has no information or knowledge to admit or deny the allegations in this
16 paragraph, and on that basis denies those allegations.

17 6. Google has no information or knowledge to admit or deny the allegations in this
18 paragraph, and on that basis denies those allegations.

19 7. Google has no information or knowledge to admit or deny the allegations in this
20 paragraph, and on that basis denies those allegations.

21 **JURISDICTION AND VENUE**

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

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

24 **CLASS ACTION ALLEGATIONS**

25 10. Google has no information or knowledge to admit or deny the allegations in this
26 paragraph and on that basis denies those allegations.

27 11. This paragraph states a legal conclusion to which no response is required. To the
28 extent that a response is required, Google denies the allegations in this paragraph.

1 intention of doing business with the advertiser” are undefined and ambiguous, and on that basis
2 denies the allegations contained therein. Further, Google has no information or knowledge to
3 admit or deny the allegations regarding “click fraud” because “fraud as such is understood at
4 common law” or “under the pleading requirements of the federal rules” is ambiguous, and on
5 that basis denies the allegations contained therein. Google has no information or knowledge to
6 admit or deny the allegations regarding the intention of the alleged “perpetrators of click fraud”
7 and on that basis denies the allegations contained therein.

8 22. Denied.

9 23. Denied.

10 24. Google has given and continues to provide credits to advertisers whose ads appear to
11 have received invalid clicks. Except as so admitted, Google denies the allegations contained in
12 this paragraph.

13 25. Google has no information or knowledge to admit or deny the allegations in this
14 paragraph, because the phrase “closed-end Google universe of internet links” is undefined and
15 ambiguous, and on that basis denies those allegations.

16 **3. The Pervasiveness of Click Fraud**

17 26. Google has no information or knowledge to admit or deny the allegations in this
18 paragraph, because the term “rampant problem” is undefined and because “some analysts” is
19 vague and ambiguous, and on that basis denies those allegations.

20 27. Google admits that Mr. Reyes made the statement in quotes, and except as so
21 admitted, denies the allegations in this paragraph.

22 28. Google has no information or knowledge to admit or deny the allegations in this
23 paragraph, because the term “downplayed” and the phrase “a meeting with analysts in February”
24 is vague and ambiguous, and on that basis denies those allegations.

25 **4. Google’s Failure to Disclose the Pervasiveness of Click Fraud**

26 29. Denied.

27 30. Denied.

28 31. Denied.

1 32. Denied.

2 33. Denied.

3 34. Denied.

4 **5. Google's Agreement with the Class**

5 35. Denied.

6 36. Google admits that the "AdWords Program Terms" provides that advertisers "shall
7 be charged based on actual clicks . . . ", and, except as so admitted, denies the allegations
8 contained in this paragraph.

9 37. Denied.

10 38. Google admits that the "AdWords Program Terms" provides that the agreement is to
11 be "governed by California law," and, except as so admitted, denies the allegations contained in
12 this paragraph.

13 **FACTUAL BACKGROUND**

14 39. Google admits that on or around January 21, 2005, Click Defense entered into a
15 written contract with Google for the placement of a pay-per-click advertisement to be displayed
16 as a sponsored link and that Click Defense successfully bid \$3 for the display of that ad, and
17 except as so admitted, denies the allegations contained in this paragraph.

18 40. Google has no information or knowledge to admit or deny the allegations in this
19 paragraph, because the term "click fraud" is vague and ambiguous, and on that basis denies those
20 allegations.

21 **FIRST CAUSE OF ACTION**

22 **(BREACH OF CONTRACT)**

23 41. This paragraph does not require a response.

24 42. Google admits that the "AdWords Program Terms" provides that advertisers "shall
25 be charged based on actual clicks . . . ", and, except as so admitted, denies the allegations
26 contained in this paragraph.

27 43. This paragraph states a legal conclusion to which no response is required.

28 44. Denied.

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45. Denied.

FOURTH CAUSE OF ACTION
(UNFAIR BUSINESS PRACTICES)
(BUSINESS & PROFESSIONS CODE 17200, ET SEQ.)

53. This paragraph does not require a response.

54. Google admits that the “AdWords Program Terms” provides that the agreement is to be “governed by California law.” Google admits that, among other things, the California Business & Professions Code § 17200 provides that “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice.”

55. Denied.
56. Denied.
57. Denied.
58. Denied.

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

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

SECOND AFFIRMATIVE DEFENSE
WAIVER

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

THIRD AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

Assuming without conceding that the Complaint states a claim, plaintiff and the putative plaintiff class’s claims are barred, in whole or in part, by the four-year statute of limitations applicable to breach of a written contract and unfair competition claims.

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FOURTH AFFIRMATIVE DEFENSE

FAILURE TO MITIGATE

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

FIFTH AFFIRMATIVE DEFENSE

LACHES

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

SIXTH AFFIRMATIVE DEFENSE

UNCLEAN HANDS

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

PRAYER FOR RELIEF

WHEREFORE, Google prays for judgment as follows:

- (a) That Plaintiff takes nothing by its Complaint and the Court dismiss the Complaint with prejudice;
- (b) That the Court award Google reasonable attorneys' fees under 35 U.S.C. § 285;
- (c) That the Court award Google all costs and expenses it incurs in this action;
- (d) That the Court award Google such other and further relief that it deems just and proper.

Dated: October 18, 2005

KEKER & VAN NEST, LLP

By: /s/ Ryan M. Kent
RYAN M. KENT
Attorneys for Defendant
GOOGLE, INC.