

1 RICHARD L. KELLNER, SBN 171416  
 2 FRANK E. MARCHETTI, SBN 203185  
 3 KABATECK BROWN KELLNER LLP  
 350 South Grand Avenue, 39<sup>th</sup> Floor  
 4 Los Angeles, California 90071-3801  
 Telephone: (213) 217-5000  
 Facsimile: (213) 217-5010

5 DARREN T. KAPLAN (Admitted *Pro Hac Vice*)  
 6 GREGORY E. KELLER (To be admitted *Pro Hac Vice*)  
 CHITWOOD HARLEY HARNES LLP  
 2300 Promenade II  
 7 1230 Peachtree Street, NE  
 Atlanta, Georgia 30309  
 8 Telephone: (404) 873-3900  
 Facsimile: (404) 876-4476

9 SHAWN KHORRAMI, SBN 180411  
 10 LAW OFFICES OF SHAWN KHORRAMI  
 14550 Haynes Street, Third Floor  
 11 Van Nuys, California 91411  
 Telephone: (818) 947-5111  
 12 Facsimile: (818) 947-5121

13 Attorneys for Plaintiff

14  
 15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN JOSE DIVISION

18	ADVANCED INTERNET TECHNOLOGIES,)	Case No.: 5:05-cv-02579-RMW
19	INC., a North Carolina corporation,	)
20	Individually and on behalf of all others	) <b>E-FILING</b>
21	similarly situated,	)
22	,	) <b>DECLARATION OF CLARENCE E.</b>
23	Plaintiff,	) <b>BRIGGS IN SUPPORT OF MOTION FOR</b>
24	vs.	) <b>CLASS CERTIFICATION</b>
25	GOOGLE, INC., et al,	) <b>Date: May 12, 2006</b>
26	Defendant	) <b>Time: 9:00 a.m.</b>
27		) <b>Judge: Hon. Ronald M. Whyte</b>

28 **DECLARATION OF CLARENCE E. BRIGGS**

**IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

I, Clarence E. Briggs, declare as follows

1. I am the founder and Chief Executive Officer of Advanced Internet Technologies, Inc. ("AIT"). AIT is a privately held North Carolina corporation whose primary business is Internet hosting for other businesses. AIT currently hosts over 210,000 web sites on behalf of thousands of entities including Time Warner, the U.S. federal government, the United Nations, the Oakridge Boys, the State of North Carolina, the Department of Defense, Pizza Hut, Goodyear, Discover Radio and many more.

2. AIT's 140 employees oversee and operate a vast network of servers from our 93,000 Square foot data center in Fayetteville, North Carolina. AIT has annual revenue of \$30 million and is a two time INC 500 Winner and a four time Deloitte & Touche Winner.

3. I submit this declaration in support of the motion to certify a class in this action and to appoint AIT as the representative plaintiff for the class.

4. AIT began its participation in Google's AdWords program in 2003. From that time until we ended our relationship with Google in 2005, AIT spent approximately \$475,000 on Google's AdWords program.

5. AIT is a party to the standard online form contract for Adwords known as the Google, Inc. AdWords Program Terms ("AdWords Program Terms") the most current version of which may be viewed at the AdWords website:

<https://adwords.google.com/select/TCUSbilling.html>. A copy of this document is annexed hereto as Exhibit "A."

1 6. The AdWords Program Terms provide that advertisers “shall be charged based on  
2 *actual clicks* . . .” (emphasis added). Further, the AdWords Program Terms specifically provide  
3 that:  
4

5 These Google Inc. AdWords Program Terms ("Terms") are entered  
6 into by you and Google Inc. ("Google") regarding the Google  
7 AdWords Program ("Program") as further described in the  
8 Program's frequently asked questions at  
9 <https://adwords.google.com/support/bin/index.py?fulldump=1> (the  
10 "FAQs") (collectively, the "Agreement").

11 7. The FAQs, which are linked to the AdWords Program Terms, provide as follows:

12 **Do I pay for every click on my ad?**

13 With Google AdWords cost-per-click (CPC) pricing, you pay  
14 whenever someone clicks on your ad . . . See our high click  
15 volume FAQ for more information about sources of legitimate  
16 clicks.

17 If you suspect that your ads have been affected by invalid clicks,  
18 *see the AdWords help center to learn more about AdWords click*  
19 *quality.* (Emphasis added)

20 A copy of this FAQ page is annexed hereto as Exhibits “B.”

21 8. The AdWords Help Center which is linked to the FAQs provides as follows:

22 **What does Google do when invalid clicks are detected?**

23 Google actively implements several click protection techniques in  
24 order to combat invalid click activity. Clicks that Google  
25 determines invalid are automatically filtered from your reports. In  
26 addition, we apply the following policies for the protection of  
27 AdWords advertisers:

- 28 • If we find that invalid clicks have escaped automatic detection,  
29 you'll receive a credit for those clicks. This credit will appear on  
30 the Billing Summary page of the My Account section in your  
31 AdWords account, labeled *Adjustment - Click Quality*.
- 32 • Any advertiser or publisher participating in invalid click activity or  
33 any related offense is subject to legal prosecution. We will also  
34 take the appropriate action on the related account.

35 **How will Google credit my account for invalid clicks?**

1 Google constantly monitors for, and strictly prohibits, invalid click  
2 activity. We work hard to maintain the integrity of our advertising  
3 program and to make sure you're being billed for legitimate clicks  
4 on your ads. If we discover that you've been charged for invalid  
5 clicks in the past two months, we'll apply credits to your account.

6 **What kinds of clicks does Google consider invalid?**

7 Some sources of invalid clicks include:

- 8 • Manual clicks intended to increase your advertising costs or to
- 9 increase profits for website owners hosting your ads.
- 10 • Clicks by automated tools, robots, or other deceptive software.

11 We closely monitor these and other scenarios to better protect you  
12 from receiving invalid clicks.

13 Copies of these pages from the AdWords Help Center are annexed hereto as Exhibits "C," "D"  
14 and "E," respectively.

15 9. AIT's attorneys have provided me with a Declaration of Alana Karen, Online  
16 Operations Manager for Policy for Google, submitted by Google in a matter known as Lane's  
17 Gifts and Collectibles, L.L.C. et. al. v. Yahoo! Inc., et. al, in the Circuit Court of Miller County  
18 Arkansas which states that:

19 Every AdWords customer is required to agree to a contract with  
20 Google before they are able to place any advertisements with  
21 Google. The vast majority of these agreements are online  
22 agreements that the advertiser accepts by clicking a button. There  
23 is thus no signature page or other printed record of the specific  
24 agreement.

25 This declaration is consistent with AIT's own experience with AdWords. A copy of this  
26 declaration is annexed hereto as Exhibit "F."

27 10. Every machine that is on a network (a local network, or the network of the  
28 Internet) has a unique Internet Protocol address ("IP address") consisting of four sets of numbers  
29 divided by period with up to three numbers in each set. (I.e. 64.139.27.165) - If a machine does

1 not have an IP address it cannot be on a network. The IP address is the most common way to  
2 track back to an individual on the Internet.

3 11. Because AIT is an Internet hosting company, we own the servers that host our  
4 website www.AIT.com and we maintain our own records of traffic to those servers. These  
5 records are known as “log files.” Clicks on AIT’s ads in AdWords lead to the www.AIT.com  
6 website. The log files contain information showing not only the click on our AdWords ad but  
7 also the IP address of the “clicker.”  
8

9 12. In the summer of 2005, my employees and I began to notice that we were  
10 experiencing sharply increasing traffic to our website originating from AdWords but were not  
11 experiencing a corresponding increase in transactions.  
12

13 13. In an effort to discover the source of the discrepancy, in September 2005, I  
14 directed my employees to examine the log files for the servers hosting www.AIT.com. We  
15 analyzed the log files for the months of June, July and August 2005 and audited all traffic  
16 directed to www.AIT.com from our AdWords ads.  
17

18 14. We discovered that an alarming percentage of clicks for which we had already  
19 paid Google were “invalid clicks” as the term is defined in the AdWords Help Center.  
20 Specifically, we saw multiple clicks from the same IP addresses over a very short period of time.  
21 The “clickers” did not stay on the AIT site, but instead returned to the referring website hosting  
22 the AIT AdWords ad and clicked through again and again. These clicks were incontestably  
23 “clicks by automated tools, robots, or other deceptive software,” i.e., clicks that Google claims to  
24 consider invalid as described in the AdWords Help Center [Exhibit “E”]. It would be impossible  
25 for a human being to repeat this pattern of clicks in such rapid succession.  
26  
27  
28  
29

1           15.     On September 7, 2005, John N. Horton, our then VP of Marketing e-mailed  
2 Google advising them that we had been charged for invalid clicks and providing a detailed  
3 account of which clicks we had identified as invalid.  
4

5           16.     On September 8, 2005, we received an e-mail from Google acknowledging our  
6 correspondence, reciting Google's invalid click policies in identical form to the FAQs and  
7 promising that Google's "invalid click team will be in touch shortly."

8           17.     Despite Google's e-mail, we never heard back from them again with regard to this  
9 matter and, nor did AIT ever receive a credit from Google for the charges for invalid clicks.  
10

11           18.     I have learned that invalid clicks (popularly known as "click fraud") are an  
12 enormous problem for Google and that as many as 20% of all clicks on paid search ads may be  
13 invalid. One of the sources of my information is an article that appeared on CNNMoney.com  
14 (which includes the 20% estimate) wherein Google's CFO George Reyes is quoted as stating that  
15 click fraud the "biggest threat to the Internet economy" and a potential threat to Google's  
16 "business model." A copy of the article to which I am referring is annexed hereto as Exhibit  
17 "G."  
18

19           19.     The "Bible" of Internet business and culture, Wired Magazine, recently  
20 spotlighted the enormity of the problem that invalid clicks represent to the entire online economy  
21 in a cover story entitled "How Click Fraud Could Swallow the Internet." A copy of this article is  
22 annexed hereto as Exhibit "H."  
23

24           20.     AIT is not the only advertiser with whom Google has breached its contractual  
25 promised not to charge for invalid clicks. At a recent Search Engine Strategies Conference in  
26 New York, Google AdWords customers engaged in heated exchanges with Google about their  
27  
28  
29

1 continuing failure to refrain from charging advertisers for invalid clicks. Copies of articles  
2 describing the Conference are annexed hereto as Exhibits "I" and "J."

3  
4 21. AIT is prepared to discharge its responsibilities as representative plaintiff in this  
5 action and has the necessary resources and staff to see this case through to resolution. I am  
6 prepared to testify at deposition and at trial.

7 22. AIT has retained competent legal counsel to represent it and the proposed class in  
8 this litigation. Copies of the resumes of Chitwood Harley Harnes LLP and Kabateck Brown  
9 Kellner LLP are annexed hereto as Exhibits "K" and "L" respectively.

10  
11 23. AIT's interest in this litigation is solely in obtaining the maximum possible  
12 recovery and is in no way antagonistic to, the interests of the members of the Class.

13 I declare under penalty of perjury under the laws of the United States of America that the  
14 foregoing is true and correct.

15  
16 Date: March 6, 2006



17  
18 Clarence E. Briggs