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

12 ADVANCED INTERNET TECHNOLOGIES,
 INC., a North Carolina corporation,
 13 Individually and on behalf of all others
 similarly situated,

14 Plaintiffs,

15 v.

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

18 Defendants.

19
 20 STEVE MIZERA, an Individual, individually
 and on behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 GOOGLE, INC., a Delaware corporation; and
 24 DOES 1 through 100, inclusive,

25 Defendants.

Case No. C 05 02579 RMW

Consolidated with
Case No. C 05 02885 RMW

**DECLARATION OF DAVID J. SILBERT
 IN SUPPORT OF DEFENDANT GOOGLE
 INC'S MOTION TO STAY PENDING
 SETTLEMENT**

Judge: Hon. Ronald M. Whyte

Date Comp. Filed: June 24, 2005

Trial Date: None set

1 I, David J. Silbert, declare that the following is true:

2 1. I am an attorney licensed to practice in the State of California and before this
3 Court. I am a partner in the law firm of Kecker & Van Nest, LLP, counsel for defendant Google,
4 Inc. (“Google”) in these coordinated actions. I make this declaration of my own personal
5 knowledge, and if called to do so, I would testify to these facts under oath.

6 2. On February 5, 2004, a group of plaintiffs sued Google and other major “pay-per-
7 click” advertising companies in the Circuit Court in Miller County Arkansas (the “Arkansas
8 action”). A true and correct copy of the Second Amended Complaint in the Arkansas action is
9 attached hereto as Exhibit A.

10 3. Attached hereto as Exhibit B is a true and correct copy of the complaint that Click
11 Defense filed against Google on June 24, 2005.

12 4. Attached hereto as Exhibit C is a true and correct copy of the complaint that Steve
13 Mizera filed against Google on July 15, 2005.

14 5. The parties in the Arkansas action have litigated a variety of issues at the trial-
15 and appellate-court levels in both state and federal court. In or around January 2006, after nearly
16 a year of litigation, Google and the plaintiffs agreed to engage in discussions to attempt to settle
17 the case.

18 6. In February 2006, the parties held a two-day mediation before the Hon. Layn R.
19 Phillips. Judge Phillips is a retired United States District Judge and a former United States
20 Attorney, and is a highly regarded mediator.

21 7. Through the settlement process that Judge Phillips oversaw, the parties ultimately
22 signed a confidential settlement agreement. While the details of that agreement are still
23 confidential, its principal terms include the creation of a nationwide settlement class, the
24 establishment of a settlement fund with a total value of up to \$90 million, and the resolution of
25 all class members’ claims against Google relating to “click-fraud” or other invalid clicks on pay-
26 per-click advertisements.

27 8. A hearing on AIT’s motion to intervene is currently scheduled for March 14,
28 2006, and a hearing on the preliminary approval of the settlement is currently set for April 3,

1 2006. Attached hereto as Exhibit D is a true and correct copy of the Arkansas Court's
2 scheduling orders setting those hearings.

3 9. Numerous discovery activities are underway in this action, including AIT's,
4 Mizera's and Click Defense's responses to document requests, which are due in several weeks.
5 Unless the parties resolve their disputes, they may also need to move in the next few weeks for
6 the entry of a protective order, and possibly for other relief as well.

7 10. On March 9, 2006, I telephoned Darren Kaplan, counsel for plaintiffs in this
8 action. I asked Mr. Kaplan if plaintiffs would stipulate to stay the current proceedings pending
9 the approval of the Arkansas settlement. Mr. Kaplan declined to so stipulate.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct, and that this declaration was executed on March 9, 2005 in San
12 Francisco, California.

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14 /s/ David Silbert
15 DAVID J. SILBERT
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