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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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CLRB HANSON INDUSTRIES, LLC d/b/a
 INDUSTRIAL PRINTING, and HOWARD
 13 STERN, on behalf of themselves and all others
 similarly situated,

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Plaintiffs,

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v.

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GOOGLE, INC.,

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Defendant.

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CASE NO. C 05-03649 JW

**GOOGLE INC.'S REPLY BRIEF IN
 RESPONSE TO COURT'S ORDER TO
 SHOW CAUSE WHY THE CASE
 SHOULD NOT BE REMANDED FOR
 LACK OF JURISDICTION**

Date: November 20, 2006
 Time: 9:00 a.m.
 Dept.: Courtroom 8
 Judge: Honorable James Ware

GOOGLE INC.'S REPLY BRIEF IN RESPONSE TO COURT'S ORDER TO
 SHOW CAUSE WHY THE CASE SHOULD NOT BE REMANDED FOR
 LACK OF JURISDICTION

REPLY BRIEF IN RESPONSE TO COURT'S ORDER

Both parties in this action agree that this Court should retain jurisdiction over this case. The jurisdictional amount required by the Class Action Fairness Act is in controversy and maintaining jurisdiction would be the most efficient use of judicial resources. On the issue of removal, the jurisdictional amount in controversy is determined from the allegations or prayer of the complaint, and “[t]he inability of plaintiff to recover an amount adequate to give the court jurisdiction does not . . . oust jurisdiction.” *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289-90 (1938); *see also Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 375 (9th Cir. 1997). As set forth in Google Inc.’s Opening Brief in Response to Court’s Order to Show Cause Why the Case Should Not Be Remanded for Lack of Jurisdiction (“Google’s Opening Brief”), the allegations in Plaintiffs’ Second Amended Complaint demonstrate that the jurisdictional amount is met. Therefore, this Court possesses jurisdiction over this matter.

Plaintiffs’ claims need not have merit for this Court to possess jurisdiction over this matter. In this regard, Plaintiffs’ contention that “Google would not have removed this case had it believed its exposure would be less than [\$5 million]” is incorrect. *See* Plaintiffs’ Response to Order to Show Cause, at 1. Plaintiffs’ claims are meritless because the parties’ agreement expressly discloses that Plaintiffs’ daily budgets may be exceeded by up to 20% on any given day and that their total charges for the month will not exceed their average daily budget times the number of days in that month. Nonetheless, Google was entitled to remove this case to this Court because it is “facially apparent” from Plaintiffs’ complaint that the jurisdictional amount is in controversy. *See, e.g., Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 984 (S.D. Cal. 2005) (a district court must first consider whether it is “facially apparent” from the complaint that the jurisdictional amount is in controversy). There is no requirement that a removing defendant “believe its exposure” meets the amount that a plaintiff has alleged is in controversy in the complaint. *See id.* Here, Google removed this case based on the allegations in Plaintiffs’ complaint, as it was entitled to do under California authority.

