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11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14	CLRB HANSON INDUSTRIES, LLC d/b/a)	CASE NO: C05-03649 JW
15	INDUSTRIAL PRINTING, and HOWARD)	
16	STERN, on behalf of themselves and all)	DECLARATION OF MICHELE F.
16	others similarly situated,)	RAPHAEL IN OPPOSITION TO
17	Plaintiffs,)	DEFENDANT GOOGLE INC.'S
18	vs.)	ADMINISTRATIVE MOTION FOR
19	GOOGLE, INC.,)	LEAVE TO FILE DOCUMENTS
20	Defendant.)	UNDER SEAL IN CONNECTION WITH
21)	GOOGLE INC.'S OPPOSITION TO
22)	PLAINTIFFS' SUPPLEMENTAL
23)	MEMORANDUM IN SUPPORT OF
24)	PARTIAL SUMMARY JUDGMENT
25)	Civ. L.R. 7-11
26)	Civ. L.R. 79-5
27)	Courtroom: 8
28)	Judge: Hon. James W. Ware

28 **RAPHAEL DECLARATION IN OPPOSITION TO DEFENDANT 'S MOTION TO FILE DOCUMENTS UNDER SEAL IN CONNECTION WITH GOOGLE INC.'S OPPOSITION TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM**

1 I, **MICHELE F. RAPHAEL**, declare as follow:

2 1. I am a member of Wolf Popper LLP, counsel for Plaintiffs CLRB Hanson
3 Industries, LLC d/b/a Industrial Printing and Howard Stern (collectively, "Plaintiffs") in this
4 action against Google, Inc ("Google"). I have personal knowledge of the facts stated herein. I
5 submit this declaration in opposition to Defendant Google Inc.'s Administrative Motion for
6 Leave to File Documents Under Seal in Connection with Google Inc.'s Opposition to Plaintiff.

7 2. Defendant seeks to file its Opposition to Plaintiffs' Supplemental Memorandum
8 in Support of Partial Summary Judgment ("Def. Supp. Opp. Mem.") entirely under seal and
9 Exhibits A, B, C, F and G to the Supplemental Declaration of M. Christopher Jhang in Support
10 of Google Inc.'s Opposition to Plaintiffs' Supplemental Memorandum in Support of Partial
11 Summary Judgment ("Supp. Opp. Jhang Decl.") (collectively, "Supp. Opp. Filings") under seal,
12 largely because those documents and exhibits contain, or refer to the deposition transcripts of
13 Messrs. Schulman and Venkataraman which Defendant has improperly designated as
14 confidential in their entirety.

15 3. Plaintiffs have objected to Defendant's blanket designation of the transcripts of
16 Messrs. Schulman and Venkataraman as improper and contrary to the Protective Order entered
17 on May 15, 2007. Paragraph 4 thereof explicitly prohibits blanket, en masse designations
18 without regard to the specific contents of each document or piece of information. Illustrative of
19 the impropriety of Defendant's blanket confidential designation is that testimony of the
20 witnesses concerning their preparation for their deposition, whether they were asked to provide
21 documents with respect to this case, their educational background, their employment history,
22 their titles and physical location of their offices at Google, and questions concerning Ms.
23 Schulman's Declaration which was publicly filed, have all been marked confidential. This is
24 just illustrative, and not an exhaustive reiteration of the testimony that has been improperly
25 designated confidential. Plaintiffs have requested that Defendant provide good faith
26 designations, which it has not done.

27 4. Defendant has failed to demonstrate good cause to justify the filing of the

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1 aforementioned documents under seal. Little, if any, information qualifies as confidential
2 material as per the Protective Order. Defs. Supp. Opp. Mem. discusses/argues what the sign-up
3 process was when Plaintiffs' enrolled, whether the terms of the purported Adwords Agreement
4 excludes paused days from the calculation of daily budget times the number of days in a month
5 and whether Plaintiffs are legally entitled to recover on an unjust enrichment theory. Indeed,
6 much of the brief concerns the publicly available Frequently Asked Questions ("FAQs"). There
7 is little (if anything), in Defs. Supp. Opp. Mem. which may be properly withheld from the public
8 record.

9 5. The same holds true for the exhibits to the Supp. Opp. Jhang Decl. which
10 Defendant wants to keep from the public. Exhibit A are excerpts from the transcript of Mr.
11 Schulman. The first pages thereof discuss Mr. Schulman's educational and employment history
12 and little, if anything, on the remaining pages may be properly sealed. Defendant likewise
13 requests that Exhibit B, excerpts from the transcript of Mr. Venkataraman, be filed under seal,
14 again, because it improperly designated the entire transcript as confidential - not because it
15 contains confidential material as per the Protective Order nor Fed. R Civ. Pro. 26. Defendant's
16 request to file under seal the excerpts from the deposition transcript of Ms. Wilburn, Exhibit C,
17 is extremely troubling. Of the 7(seven) pages of testimony attached, only 2(two) even contain
18 any lines designated by Defendant as confidential. The few lines on those 2 pages (whether
19 properly designated or not) need only be redacted. Also annexed in Exhibit C is the page which
20 Defendant claims evidences the click to accept screen on its site when Plaintiffs enrolled. That
21 is clearly not confidential. As for the two remaining exhibits, F and G, those contain documents
22 produced by Google prior to Ms. Wilburn's deposition and have been represented to be internal
23 training documents. While not admitting that they deserve a confidential designation, Plaintiffs
24 do not object to those documents being filed under seal.

25 6. Defendant should make a good faith effort to designate as confidential only those
26 portions of Defs. Supp. Opp. Mem. and only those exhibits, or portions of exhibits, annexed to
27 the Supp. Opp. Jhang Decl. which properly qualify as confidential pursuant to the Protective

1 Order and Fed. R. Civ. Pro. 26 (c). Then, if, and to the extent, Defendant continues to maintain
2 that it is necessary to file under seal any portion of Defs. Supp. Opp. Filings, such request should
3 be narrowly tailored to keep from the public record only those portions which constitute trade
4 secrets, proprietary information, and/or confidential information, which, if not sealed and
5 permitted in the public record, would prejudice Google or cause Google to suffer irreparable
6 harm.

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8 Dated: May 24, 2007

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/s/
Michele F. Raphael

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