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 11 (See Signature Page for Additional  
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 12

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

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

19 Plaintiffs,

20 vs.

21 GOOGLE, INC.,

22 Defendant.

Case No. C 05-03649 JW PVT

**PLAINTIFFS' NOTICE OF MOTION AND  
 MOTION TO COMPEL OBJECTOR  
 DEPOSITIONS**

Hearing: Tuesday, September 8, 2009  
 Time: 10:00 am  
 Dept.: Courtroom 5  
 Judge: Honorable Patricia V. Trumbull

23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN:**

24 **PLEASE TAKE NOTICE THAT** on September 8, 2009, at 10:00 am, or soon thereafter as  
 25 the matter may be heard, in Courtroom 5 of the United States District Court for the Northern District  
 26 of California, San Jose Division, CLRB Hanson Industries, LLC, and Howard Stern ("Plaintiffs") will,  
 27 and hereby do, move the Court for an order compelling Randy R. Lyons and Chase Thompson  
 28

1 individually and Etech Digital Playroom, Inc. and Universal Pro Audio, LLC, to attend depositions to  
2 be taken by Plaintiffs. This motion is based on this Notice of Motion, Motion and Memorandum in  
3 support thereof; the Declaration of Daniel Shih in support thereof, filed concurrently herewith; and all  
4 exhibits thereto. Plaintiffs expect to file a separate motion to shorten time to permit this motion to be  
5 heard on August 11, 2009, so as to allow the depositions to occur prior to the filing of a motion for  
6 final approval of the settlement of this action on August 24, 2009, and the settlement hearing on  
7 September 14, 2009.  
8

9 Plaintiffs respectfully move this Court for an order compelling Randy R. Lyons and Chase  
10 Thompson individually and Etech Digital Playroom, Inc. and Universal Pro Audio, LLC (collectively,  
11 “Objectors”), to attend depositions to be taken by Plaintiffs. Defendant Google, Inc., does not object  
12 to this motion.  
13

## 14 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 15 **I. BACKGROUND**

16 On May 12, 2009, the Court granted preliminary approval of the settlement in this matter  
17 between Plaintiffs, of behalf of themselves and the class, and defendant Google, Inc. (Docket No.  
18 319.) The Court’s order required any objections to be filed by July 14, 2009. (*Id.* at 13.) Such filing  
19 “must include the name and address of the person and the dates that the person was an AdWords  
20 Advertiser.” (*Id.*)  
21

22 Steve A. Miller, purporting to be an attorney representing “Randy R. Lyons and Chase  
23 Thompson individually and d/b/a Etech Digital Playroom, Inc. and Universal Pro Audio, LLC,” filed  
24 an “Objection to Proposed Settlement” dated July 14, 2009. (Docket No. 326.) The filing failed to  
25 include the address of a single one of the supposedly objecting persons (Randy R. Lyons, Chase  
26 Thompson, Etech Digital Playroom, Inc., and Universal Pro Audio, LLC) and failed to identify the  
27 dates that any of them was an AdWords Advertiser. (*Id.*) The filing also contains numerous  
28

1 conclusory allegations, devoid of substantiation, as supposed grounds for objecting. For example, the  
2 filing claims that “the Proposed Settlement is not fair, adequate or reasonable” without stating any  
3 basis for such alleged actual unfairness, inadequacy, or unreasonableness. (*Id.* ¶ 4.) The filing also  
4 objects to “the requested attorneys’ fees as being excessive” and “the requested representative fee as  
5 being excessive,” again without stating any basis for such conclusions. (*Id.* ¶¶ 8, 9.)  
6

7 In light of the deficiencies in Objectors’ filing, Plaintiffs sought to depose Objectors to  
8 ascertain their reasons for objecting and to understand the basis for their claim to have standing to  
9 object as members of the class. On July 17, 2009, Plaintiffs served notice of these depositions upon  
10 Objectors’ attorney. (Shih Decl. Ex. A.) The notice called for the depositions to take place in Denver,  
11 Colorado, where Objectors’ filing indicated Mr. Miller was located, because the filing failed to  
12 identify any address for Objectors (despite the Court’s order requiring this information). Plaintiffs’  
13 correspondence noted the deficiencies in Objector’s filing.<sup>1</sup> (*Id.*)  
14

15 On July 20, 2009, Rachel Black, counsel for Plaintiffs, spoke with Objectors’ attorney by  
16 phone and asked him to provide alternative dates if the noticed dates were not acceptable to Objectors.  
17 (Shih Decl. Ex. B.) He refused to provide any acceptable dates. (*Id.*) He did, however, eventually  
18 provide addresses for Lyons and Thompson; accordingly, on July 23, 2009, Plaintiffs served upon  
19 Objectors’ attorney an amended notice of deposition. (Shih Decl. Ex. C.) The notice called for Lyons  
20 and Thompson to appear for depositions on August 5, 2009, at 10:00 a.m. and at 1:30 p.m.,  
21 respectively, in Birmingham, Alabama, near where Lyons and Thompson are located. (Shih Decl. Ex.  
22 D.) Out of an abundance of caution, Plaintiffs also served upon Objectors’ attorney subpoenas with  
23 the appropriate witness fees. (Shih Decl. Ex. C.)  
24

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25  
26 <sup>1</sup> Plaintiffs consider Objectors’ failure to provide the information required by the Court’s order of May  
27 12, 2009, by the Court-imposed deadline to be fatal to the objection, regardless whether Objectors  
28 provide the information at a later date.

1 By letter on July 30, 2009, Objectors' attorney accused Plaintiffs of attempting to intimidate  
2 Objectors and refused to present Objectors for any depositions without a court order authorizing such  
3 discovery. (Shih Decl. Ex. E.<sup>2</sup>) He failed to identify any authority suggesting why a court order  
4 should be necessary to obligate Objectors to attend duly noticed depositions. (*Id.*) By email on  
5 August 3, 2009, Mr. Miller reiterated Objectors' refusal to attend the depositions. (Shih Decl. Ex. F.)  
6 Accordingly, Plaintiffs withdrew the notices and now seek the assistance of the Court. (*Id.*)  
7

## 8 **II. ARGUMENT**

9 "A party may, by oral questions, depose any person, including a party, without leave of court,"  
10 except in certain circumstances not at issue here. FED. R. CIV. P. 30(a)(1) (emphasis added). The  
11 parties to a class action settlement often seek discovery from objectors when useful to understand why  
12 the objectors are objecting. *See, e.g., Warren v. City of Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla.  
13 1988) (noting that depositions of objectors had occurred "to determine the basis of the objections").  
14

15 Objectors' attorney contends that a court order is necessary to seek discovery from objectors.  
16 But he has not identified any authority for this proposition on which Objectors base their refusal to  
17 attend duly noticed depositions, and Plaintiffs are not aware of any.

18 Nor is there any reason why depositions of Objectors should be disallowed in this case.  
19 Plaintiffs have made every effort to schedule depositions at a place and time convenient for Objectors.  
20 Although Plaintiffs initially noticed depositions in the city where Objectors' attorney is located (the  
21 attorney's address being the only one to be found in Objectors' filing), Plaintiffs re-noticed the  
22 depositions to take place where Lyons and Thompson are located once Objectors provided that  
23 information. Plaintiffs also have repeatedly asked Objectors to provide acceptable dates in an effort to  
24 accommodate their schedules.  
25

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26  
27 <sup>2</sup> Plaintiffs disagree with Mr. Miller's statements and description of events in the letter.  
28

1 Nor can requiring Objectors to provide deposition testimony be considered unduly  
2 burdensome. As the notices Plaintiffs served made clear, Plaintiffs intend the depositions to be  
3 relatively short. Indeed, the depositions of Lyons and Thompson were scheduled to begin mid-  
4 morning and mid-afternoon, respectively, on the same day. In addition, Plaintiffs have tendered the  
5 appropriate statutory witness fees to compensate Lyons and Thompson for their time.  
6

7 This matter warrants the immediate attention of the Court because the parties to the settlement  
8 are to file a motion for final approval of the settlement by August 24, 2009, and the settlement hearing  
9 is scheduled for September 14, 2009. (Docket No. 319.) If that motion is to properly address  
10 Objectors' concerns, Objectors' depositions must occur substantially in advance of those dates. In  
11 light of this urgency and Objectors' refusal to be deposed without a court order, the Court should  
12 require each of the four Objectors to attend depositions to be scheduled on short notice.  
13

### 14 **III. CONCLUSION**

15 For the foregoing reasons, the Court should order Objectors to attend depositions on dates to be  
16 determined in consultation with Plaintiffs and defendant Google, Inc., such depositions to take place  
17 within one week of the Court's order granting this motion.

18 Dated: August 4, 2009.

Respectfully submitted,

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8  
9 By /s/ Daniel J. Shih  
10 Daniel J. Shih

11 Attorneys for Plaintiffs

12  
13  
14  
15  
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that, on the date written above, I electronically filed the foregoing document  
18 with the Clerk of the Court using the CM/ECF system. The Court or the CM/ECF system will send  
19 notification of such filings to all CM/ECF participants.

20 I further certify that a true and correct copy of this document was sent via U.S. first-class mail,  
21 postage pre-paid, to all non-CM/ECF participants.

22  
23 /s/ Daniel J. Shih  
Daniel J. Shih