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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

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

Plaintiffs,

vs.

GOOGLE, INC.,

Defendant.

Case No. C 05-03649 JW PVT

**DECLARATION OF LESTER L. LEVY  
 IN SUPPORT OF PLAINTIFFS'  
 MOTION FOR FINAL APPROVAL OF  
 CLASS ACTION CERTIFICATION AND  
 SETTLEMENT; PLAINTIFFS' MOTION  
 FOR AWARD OF ATTORNEYS' FEES  
 AND EXPENSES AND CLASS  
 REPRESENTATIVE INCENTIVE  
 COMPENSATION AWARD; AND  
 PLAINTIFFS' RESPONSE TO CLASS  
 MEMBER OBJECTIONS**

Date: September 14, 2009  
 Time: 9:00 a.m.  
 Place: Courtroom 8

**I. INTRODUCTION**

I, LESTER L. LEVY, being duly admitted to the practice of law in the State of New York,  
 and *pro hac vice* in this action, do hereby declare:

1. I am a member of the law firm Wolf Popper LLP ("Wolf Popper"), which together  
 with Susman Godfrey L.L.P. ("Susman Godfrey"; collectively referred to as "Representative

1 plaintiffs' Counsel,<sup>1</sup>) are counsel for Representative Plaintiffs Howard Stern and CLRB Hanson  
2 Industries LLC ("CLRB Hanson"; collectively "Plaintiffs" or "Representative Plaintiffs") and the  
3 Class in this action. Our firms were responsible for the investigation and prosecution of this class  
4 action against Defendant Google Inc. ("Google"), challenging Google's representations as to the  
5 cost of its AdWords advertising program. Plaintiffs alleged that contrary to Google's promotion  
6 of its AdWords program as allowing AdWords advertisers to set and be billed no more than their  
7 daily budget, and to pause their advertisement without charge, Google billed them more than their  
8 daily budget on any given day and used paused days to absorb excess charges from other days, in  
9 breach of the AdWords agreement and in violation of Cal. Bus. & Prof. Code §§ 17200 *et. seq.*

11 2. I make and submit this Declaration in support of (a) approval of the Settlement set  
12 forth in the Settlement Agreement and Release, dated March 17, 2009, which includes Settlement  
13 Proceeds of \$20,000,000, plus accrued interest from March 27, 2009, as fair, reasonable and  
14 adequate to the Class; (b) payment of attorneys' fees in the amount of \$5 million plus accrued  
15 interest; (c) reimbursement of Wolf Popper's expenses in the amount of \$116,929.50; and (d)  
16 payment of \$20,000 to each Representative Plaintiff as a result of their representation of the  
17 Class and in recognition of their time, effort and willingness to assist in the prosecution of this  
18 action.

20 3. The Settlement was achieved after three and a half years of contentious and hard-  
21 fought litigation. Multiple motions to dismiss were filed, briefed, and argued, as well as multiple  
22 motions and cross-motions for summary judgment. As of this date, there are 338 docket entries.  
23 Notably, each motion posed the risk that Plaintiffs' claims could have been dismissed or that  
24 judgment could have been entered against them.

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27 <sup>1</sup> Defined terms shall have the meaning assigned thereto in the Settlement Agreement and Release  
28 executed on March 17, 2009.

1           4.       This Settlement was reached only after:

2               a.       Plaintiffs' counsel did an extensive investigation of the relevant facts and  
3 law to formulate the allegations contained in the Class Action Complaint, the Amended  
4 Class Action Complaint and the Second Amended Class Action Complaint, including  
5 accessing and reviewing customers' accounts and online AdWords terms and tutorials;

6               b.       Plaintiffs' counsel, through briefing and oral argument, successfully  
7 defeated Defendant Google's repeated motions to dismiss the action and claims;

8               c.       Representative Plaintiffs' Counsel participated in numerous meet and  
9 confer sessions and pre-motion conferences on discovery issues;

10              d.       Representative Plaintiffs' Counsel defended Plaintiffs' depositions and  
11 together with Plaintiffs, responded to and opposed approximately 150 combined document  
12 requests and 50 combined interrogatories;

13              e.       Representative Plaintiffs' Counsel prepared and served interrogatories,  
14 document requests and requests for admission upon Defendant;

15              f.       Representative Plaintiffs' Counsel obtained more than one hundred  
16 thousand pages of documents from Google, took numerous depositions, including those of  
17 Google engineers concerning technical aspects of the AdWords program;

18              g.       the parties engaged in protracted settlement negotiations, which included  
19 selecting and engaging in a mediation session before a professional mediator  
20 through JAMS;

21              h.       Representative Plaintiffs' Counsel carefully considered the prospects for  
22 recovery at trial and the risks of continued litigation;

23              i.       Representative Plaintiffs and Representative Plaintiffs' Counsel considered  
24 the significant risks of continued litigation, including appeals, delays and the specific  
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1 weaknesses of the case, including, *inter alia*, that concurrent with this case the California  
2 Supreme Court was considering the issue of whether individual reliance is an element of  
3 causes of actions under Cal. Bus. & Prof. Code, §17200 and §17500;

4 j. Representative Plaintiffs and Representative Plaintiffs' Counsel considered  
5 the risk as to Plaintiffs' ability to prove deception and false advertising based upon the  
6 representations by Google and their ability to recover damages for more than one billing  
7 period; and  
8

9 k. Representative Plaintiffs and Representative Plaintiffs' Counsel determined  
10 that given these risks, and the others described herein and in the memorandum in support  
11 of the Settlement, submitted herewith, the certainty and benefits of the proposed  
12 Settlement significantly outweighed the risks and any possible benefits from continuing to  
13 litigate this action.  
14

15 **The Pleadings and the Motions Addressed to the Pleadings**

16 5. Representative Plaintiffs filed their Class Action Complaint on August 3, 2005 in  
17 the Superior Court of the State of California, County of Santa Clara, alleging causes of action for  
18 violation of Cal. Bus. & Prof. Code §§17200 and 17500, *et seq.*, and breach of contract, negligent  
19 misrepresentation, unjust enrichment, imposition of a constructive trust, breach of the implied  
20 covenant of good faith and fair dealing, fraud, promise without intent to perform and injunctive  
21 and/or declaratory relief.  
22

23 6. Prior to filing this complaint, Plaintiffs' Counsel conducted extensive factual and  
24 legal investigations to formulate the allegations contained therein, including *inter alia*,  
25 discussions with clients and potential clients and retrieving and reviewing client's account  
26 information, the AdWords agreement, and AdWords tutorials.  
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1           7.       On or about September 12, 2005, Defendant filed a Notice of Removal seeking to  
2 remove the action to this Court.

3           8.       On October 12, 2005, Defendant moved to dismiss the complaint for failure to  
4 state a claim against Google.

5           On November 14, 2005, Plaintiffs filed their First Amended Class Action Complaint (“FAC”) in  
6 this Court, alleging Breach of Contract, Breach of Implied Covenant of Good Faith and Fair  
7 Dealing, Unfair Competition (violation of Cal. Bus. & Prof. Code §§17200 *et seq.*), Untrue and  
8 Misleading Advertising (violation of Cal. Bus. & Prof. Code §§17500 *et seq.*) and Unjust  
9 Enrichment. On January 3, 2006, Defendant filed a motion to dismiss Plaintiffs’ unjust  
10 enrichment claim.  
11

12           9.       On February 2, 2006, Plaintiffs filed their opposition to Defendant’s motion to  
13 dismiss Plaintiffs’ unjust enrichment claim.  
14

15           10.      On April 12, 2006, the Court granted Defendant’s motion to dismiss Plaintiffs’  
16 unjust enrichment claim with leave to replead.

17           11.      On May 4, 2006, Plaintiffs filed their Second Amended Class Action Complaint  
18 (the “SAC”) repleading the unjust enrichment claim and alleging claims for violation of Cal. Bus.  
19 & Prof. Code §§ 17200 *et seq.*, violation of California Bus. & Prof. Code §§ 17500 *et seq.*, breach  
20 of contract, and breach of the implied covenant of good faith and fair dealing.  
21

22           12.      On May 18, 2006, Defendant moved to dismiss Plaintiffs’ unjust enrichment claim  
23 in the SAC.

24           13.      On June 5, 2006, Plaintiffs filed their opposition to Defendant’s motion.

25           14.      On June 27, 2006, the Court entered an order denying Defendant’s motion to  
26 dismiss Plaintiffs’ unjust enrichment claim.  
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1           15.     The SAC having been upheld, on July 12, 2006, Defendant answered same (the  
2     “Answer”). Defendant’s Answer contained 33 affirmative defenses.

3     **Representative Plaintiffs Sought to Move for Summary Judgment as to Liability**

4           16.     On June 26, 2006, counsel for both parties attended a case management  
5     conference with the Court. At that conference, the Court accepted Plaintiffs’ counsel’s  
6     suggestion that Plaintiffs be permitted to make an early motion for partial summary judgment  
7     based upon limited discovery as to the terms of the AdWords advertising program.

8           17.     On June 27, 2006, the Court issued an Order Following Case Management  
9     Conference setting the schedule for the summary judgment motion.

10          18.     In accordance with the Court’s June 27, 2006 Order and throughout the summer of  
11     2006, Plaintiffs’ counsel drafted and served discovery requests concerning the terms of the  
12     AdWords program. In response, Defendants produced approximately 7 boxes of documents in  
13     hard copy consisting of various terms and conditions of the AdWords program.

14          19.     Also during the summer of 2006 and prior to the first summary judgment motion,  
15     Defendant noticed each Plaintiff’s deposition and requested documents be produced by each.

16          20.     In mid-August 2006, Defendant deposed Plaintiff Howard Stern and Plaintiff  
17     CLRB Hanson by Brett Hanson.

18     **The September 2006 Cross-Motions for Partial Summary Judgment and/or**  
19     **Summary Adjudication; Subsequent Court Ordered Discovery; and Supplemental Briefing**

20          21.     On or about September 29, 2006, Plaintiffs filed their Motion for Partial Summary  
21     Judgment on Liability as to their claims for violation of Cal. Bus. & Prof. Code § 17200,  
22     *et seq.*, violation of Cal. Bus. & Prof. Code § 17500, *et seq.*, and unjust enrichment.

23          22.     On or about October 2, 2006, Defendant filed its Motion for Summary Judgment,  
24     or in the Alternative, Summary Adjudication. Defendant submitted supporting affidavits from,  
25     *inter alia*, Google engineer, Michael Schulman.

1           23.     On October 16, 2006, Plaintiffs filed their Opposition to Defendant's Motion for  
2 Summary Judgment or in the alternative for Summary Adjudication. Also on October 16, 2006,  
3 Defendant filed its Opposition to Plaintiff's Motion for Partial Summary Judgment on Liability.

4           24.     On October 23, 2006, the parties submitted their respective reply papers. In  
5 support of its reply papers, Google submitted a declaration from its employee, Heather Wilburn.

6           25.     After the completion of the summary judgment briefing, yet prior to any hearing  
7 thereon, on or about October 30, 2006, the Court entered an order to show cause directing the  
8 parties to demonstrate why the case should not be remanded for lack of subject matter  
9 jurisdiction, *i.e.*, whether potential damages were in excess of \$5 million.

10           26.     In order to respond to the Court's order to show cause, Plaintiffs' counsel  
11 investigated Google's public financial information to best determine the breakdown of its  
12 revenues and searched information regarding the number of AdWords users. On November 8,  
13 2006, Plaintiffs filed their Memorandum of Points and Authorities in Response to Order to Show  
14 Cause and in support of Retention of Federal Jurisdiction. On November 14, 2006, the Court  
15 vacated its order to show cause.

16           27.     On January 22, 2007, the Court held a hearing on the parties' cross motions for  
17 summary judgment/summary adjudication.

18           28.     On February 8, 2007, the Court issued an order following the hearing which noted,  
19 *inter alia*, that there was insufficient evidence supporting Google's statement that it only  
20 overdelivers ads to offset prior shortfalls and directed the depositions of Google employees with  
21 knowledge as to how the AdWords program accounts for fluctuations in internet traffic, including  
22 that of declarant engineer Michael Schulman.

23           29.     Prior to the Court ordered depositions, the parties engaged in extensive  
24 negotiations over a confidentially stipulation and eventually entered into same.

1           30.     On March 6 and 7, 2007, Defendant produced declarants Michael Schulman,  
2 Heather Wilburn and Google engineer Shivakumar Venkatarman, for depositions in San  
3 Francisco. Shortly before these depositions, Defendant produced additional documents  
4 purportedly relevant thereto.

5           31.     The depositions revealed, *inter alia*, that Google had recently changed its method  
6 of accounting for fully paused days. In September, 2006 (approximately 14 months after this case  
7 was filed complaining as to how Google treated paused days), Google changed its practice and  
8 began to exclude fully paused days from the number of days in a month - thereby lowering an  
9 advertiser's monthly maximum charge which Google calculated as the daily budget multiplied by  
10 the number of days in the month.

11           32.     Following the depositions, and based upon facts presented therein, the parties  
12 submitted supplemental briefs on their respective motions for summary judgment and/or  
13 summary adjudication. The parties submitted supplemental cross-opening opposition and reply  
14 papers. The opening supplemental papers were filed on May 3, 2007, the oppositions were filed  
15 on or about May 21, 2007, and reply papers were filed on or about May 29, 2007.

16           33.     Each supplemental opening, opposition, and reply brief was accompanied by an  
17 additional motion to file under seal and/or an opposition thereto. Whereas Plaintiffs did not agree  
18 that the papers necessitated filing under seal, given Defendant's position otherwise, a motion  
19 needed to be made and/or opposed for each filing by both parties and a redacted and a highlighted  
20 version reflecting the redacted material, needed to be submitted for each filing.

21           34.     On June 12, 2007, the parties submitted a Joint Statement of Undisputed Facts, as  
22 required by the Court. This, too, entailed extensive negotiation and proved to be a lengthy  
23 process.



1           35.     After the extensive supplemental briefing, a second hearing on the cross-motions  
2 for summary judgment and/or summary adjudication was held on June 21, 2007.

3           36.     On August 21, 2007, the Court entered a decision with respect to the cross  
4 motions. The Court found that there was a valid contract between Plaintiffs and Google. The  
5 Court dismissed Plaintiffs' claims for breach of the covenant of good faith and fair dealing, as  
6 duplicative of Plaintiffs' contract claim. The Court also dismissed Plaintiffs' claim for unjust  
7 enrichment, having found a valid governing contract. The Court further determined that there  
8 were triable issues of fact with respect to Plaintiffs' claims that Google violated Cal. Bus & Prof.  
9 Code. §§ 17200 and 17500. The Court set a Case Management Conference for September 17,  
10 2007.

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12           **The Mediation**

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14           37.     After the Court's decision in August, 2007, the parties agreed to private mediation.  
15 That process first required selection of a mutually acceptable mediator with time available in the  
16 coming months. The parties ultimately selected Judge Sabraw at JAMS.

17           38.     The parties agreed to adjourn the scheduled September 17, 2007 case management  
18 conference pending the mediation.

19           39.     Prior to the mediation, Plaintiffs sought information from Defendant as to potential  
20 damages.

21  
22           40.     On October 30, 2007, the parties exchanged mediation statements. On November  
23 1, 2007, Plaintiffs filed a responsive mediation statement.

24           41.     The mediation took place in San Francisco on November 6, 2007. Although a  
25 second day had been scheduled, the parties had reached an impasse and did not participate for a  
26 second day. The parties disagreed as to the interpretation of the Court's August 21, 2007 Order,  
27  
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1 namely, as to whether delivery above the daily budget on any given day remained an issue in the  
2 case. Defendant claimed the case had been limited to pausing.

3 **The Parties' Disagreement as to the Court's**  
4 **August 21, 2007 Order and Further Summary Judgment Motions**

5 42. After the unsuccessful mediation, the parties returned to the court schedule and  
6 worked to prepare a joint case management statement.

7 43. On November 26, 2007, the parties filed their Joint Case Management Statement  
8 and Proposed Order pursuant to N.D. L.R. 16-9.

9 44. On December 3, 2007, the parties appeared and participated in a case management  
10 conference. At the conference, the parties set forth their dispute and respective positions as to  
11 what claims remained. The Court directed additional briefing and set an additional hearing for  
12 February 25, 2008.

13 45. On January 29, 2008, Plaintiffs filed their Supplemental Submission Re: The  
14 Court's Order of August 21, 2007, and Defendant filed its Opening Brief Regarding the 120%  
15 Rule. The parties contested whether overdelivery (in addition to pausing) was still an issue in the  
16 case and if so, addressed the merits thereof.

17 46. On February 11, 2008, the parties filed their respective opposition papers.

18 47. On February 26, 2008, the Court heard argument on the then-current motions  
19 addressed to the August 21, 2007 Order. The Court treated the additional submissions as an  
20 additional summary judgment motion filed by Defendant directed to Plaintiffs' claims arising  
21 from overdelivery.

22 48. On May 14, 2008, the Court granted in part and denied in part Defendant's  
23 (second) motion for summary judgment. The Court granted Defendant's motion with respect to  
24 whether the practice of charging customers up to 120% of their "Daily Budget," in and of itself,  
25 constitutes a breach of the AdWords Agreement. The Court denied Defendant's motion with  
26

1 respect to whether Defendant's use of the term "Daily Budget," while charging up to 120% of a  
2 customer's "Daily Budget," constitutes false advertising in violation of California Unfair  
3 Competition Law, finding that such practice may be actionable under §17200 *et seq.*

4 **Pretrial Discovery Including Extensive Discovery of**  
5 **Plaintiffs and Google's Third Motion for Summary Judgment**

6 49. On June 2, 2008, the parties submitted a joint case management statement and  
7 proposed order.

8 50. On June 16, 2008, the parties participated in a case management conference.

9 51. In early July, 2008, the parties submitted their respective plans for discovery.

10 52. On July 7, 2008, the court issued an order regarding discovery addressing: Initial  
11 Disclosures, Discovery Topics, Timing and Sequencing of Discovery, Electronic Documents and  
12 Discovery Limits.

13 53. On July 21, 2008, Plaintiffs served Plaintiffs' First Set of Interrogatories to  
14 Defendant Google, Notice of Rule 30(b)(6) Videotaped Deposition of Google, and Plaintiffs'  
15 First Set of Requests for Production of Documents to Defendant Google.

16 54. On July 22, 2008, Defendant Google served Requests for Production of  
17 Documents to Plaintiff Howard Stern (Set Two) and Requests for Production of Documents to  
18 Plaintiff CLRB Hanson Industries, LLC (Set Two).

19 55. On August 11, 2008, Defendant produced its Supplemental Disclosures pursuant  
20 to Fed. R. Civ. Pro. 26.

21 56. On August 19, 2008, Google served Objections and Responses to Plaintiffs' Rule  
22 30(b)(6) Videotaped Deposition of Google.

23 57. On August 25, 2008, Plaintiff CLRB Hanson served its Response to Defendant  
24 Google's Request for Production of Documents (Set Two) and Plaintiff Howard Stern served its  
25 Response to Defendant Google's Request for Production of Documents (Set Two).

26 **Decl. of Lester L. Levy in Support of Pls.' Mot. for Final Approval of Class Cert. & Settlement; Pls.' Mot. for**  
27 **Award of Attorneys' Fees & Expenses & Class Rep. Incentive Awards; and Pls.' Resp to Class Member Objs.**

28 Case No. C 05-03649 JW

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1           58.    On August 25, 2008, Defendant Google served its Request for Admissions to  
2 Plaintiff CLRB Hanson (Set One); Interrogatories to Plaintiff CLRB Hanson (Set One); and  
3 Requests for Admissions to Plaintiff Howard Stern (Set One).

4           59.    On August 25, 2008, Google served its Response to Plaintiff's First Set of  
5 Interrogatories.  
6

7           60.    On August 27, 2008, Google served a Notice of Deposition of Plaintiff Howard  
8 Stern, Notice of FRCP Rule 30(b)(6) Deposition of CLRB Hanson, and a Notice of Deposition of  
9 Cindy Hanson.

10          61.    On September 12, 2008, Google served Interrogatories to Plaintiff CLRB Hanson  
11 (Set Two) and Interrogatories to Plaintiff Howard Stern (Set Two).

12          62.    On September 25, 2008, Plaintiff CLRB Hanson served its Responses and  
13 Objections to Defendant Google's Interrogatories (Set One).  
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15          63.    On September 26, 2008, Plaintiff CLRB Hanson served its Objection to Notice of  
16 FRCP Rule 30(b)(6) Deposition of CLRB Hanson.

17          64.    On September 26, 2008, Plaintiff Howard Stern served his Objections to  
18 Defendant Google's Notice of Deposition addressed to him.

19          65.    Also on September 26, 2008, Plaintiffs served their Objections to Notice of  
20 Deposition of Cindy L. Hanson and Howard Stern's Responses and Objections to Defendant  
21 Google's Interrogatories (Set One).  
22

23          66.    On September 26, 2008, the parties filed their joint case management statement.

24          67.    On September 29, 2008, Plaintiffs CLRB Hanson and Howard Stern Responded to  
25 Defendant Google's respective Requests for Admissions (Set One).  
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1           68.     On October 7, 2008, Plaintiffs served their Notice of Videotaped Oral Deposition  
2 of Adam Samet (*see infra*, Mr. Adam Samet submitted a declaration in support of Google's third  
3 motion for summary judgment).

4           69.     On October 15, 2008, Defendant served their Second Supplemental Disclosures  
5 pursuant to Fed. R. Civ. P. 26.

6           70.     On November 21, 2008, Plaintiffs served their Third Set of Interrogatories to  
7 Defendant Google.

8           71.     On November 12, 2008, Google served its Amended Response to Plaintiff's First  
9 Set of Interrogatories, Nos. 1-3.

10          72.     On November 25, 2008 Google served Interrogatories to Plaintiff CLRB Hanson  
11 (Set Three) and Requests for Production of Documents to Plaintiff CLRB Hanson (Set Three).

12          73.     On November 26, 2008, Plaintiffs served their Fourth Set of Interrogatories to  
13 Defendant Google.

14          74.     On December 1, 2008, Plaintiff Howard Stern served his Response to Defendant  
15 Google's Request for Admissions (Set One).

16          75.     On December 9, 2008, the Court issued an amended order following case  
17 management conference, setting a new deadline of February 2, 2009 for the close of all discovery  
18 and March 20, 2009 for dispositive motions.

19          76.     In December, 2008, Defendant served subpoenas upon Cindy L. Hanson, Hanson  
20 Industries LLC, and upon CLRB Hanson's bankers and vendors.

21          77.     During this time frame, Google produced over one hundred thousand pages of  
22 documents in electronic format. Google also showed Plaintiffs' Representative Counsel  
23 screenshots it claimed were just discovered in its archives. These screenshots evidenced that the  
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1 disclosure of the “120% Rule” were more clearly made in the period before June 2005 and after  
2 October 2006 than in the interim period.

3 78. On January 28, 2009, Google responded to Plaintiffs’ Third Set of Interrogatories  
4 and on January 29, 2009, responded to Plaintiffs’ Fourth Set of Interrogatories.

5 79. On January 29, 2009, CLRB Hanson Responded to Defendant’s Request for  
6 Production of Documents (Set Three) and served its Responses and Objections to Google’s  
7 Interrogatories (Sets One and Three).

8 80. Also on January 29, 2009, Howard Stern served his Revised Responses and  
9 Objections to Defendant’s Interrogatories (Set One).

10 81. On January 30, 2009, Plaintiffs objected to the Subpoena to Cindy L. Hanson and  
11 Hanson Industries.

12 82. While this extensive pretrial discovery was taking place, Google filed its third  
13 motion for summary judgment.

14 83. On September 5, 2008, Defendant filed its Motion for Partial Summary Judgment  
15 on Plaintiffs’ “120% Rule” and “Partial Month” Claims. Google submitted the Declaration of  
16 Adam Samet, Senior Software Engineer in support of this motion.

17 84. On November 7, 2008, after having taken the deposition of Mr. Samet, Plaintiffs  
18 filed their Opposition to Defendant’s Motion for Partial Summary Judgment on Plaintiffs’ “120%  
19 Rule” and “Partial Month” Claims.

20 85. On November 17, 2008, Defendant filed its Reply in Support of its Motion for  
21 Partial Summary Judgment on Plaintiffs’ “120 Rule” and “Partial Months” Claims.

22 86. On December 16, 2008, the Court issued its Order Denying Defendant’s Motion  
23 for Summary Judgment on Plaintiffs’ “120% Rule” and “Partial Month” Claims.

1     **The Settlement**

2             87.     In the period December 2008 to March 2009, the parties engaged in arm's length  
3 settlement negotiations. The negotiations culminated in the March 17, 2009 Settlement and  
4 Release Agreement.

5             88.     As per the Settlement, Defendant deposited \$20 million into an interest bearing  
6 account established for the benefit of the Settlement Class. The Settlement Proceeds, together  
7 with the interest thereon, shall be distributed in AdWords Credits or cash in accordance with the  
8 terms of the Settlement.

9             89.     In addition to the Settlement Proceeds, Google will pay all costs of notice and  
10 settlement administration. The Settlement is structured so that Class Members do not have to file  
11 proofs of claim to participate in the Settlement Proceeds.

12             90.     The Settlement Proceeds, \$20,000,000 plus interest from March, 2009, is a  
13 substantial benefit to Class Members. Representative Plaintiffs' Counsel had estimated that the  
14 overdelivery claim had a maximum damage potential of approximately \$197 million. (As  
15 detailed in the memorandum filed herewith, the actual damages from daily overcharges are likely  
16 much lower.) Thus, the Settlement Proceeds of \$20,000,000 (plus interest thereon), represents  
17 more than 10% of the maximum potential recovery. In addition, and as noted *supra*, while not a  
18 part of this Settlement, after this suit was brought, Google changed its practice so as to no longer  
19 use fully paused days to "absorb" overdelivery within a billing period.

20             91.     Given the inherent risks in continued litigation, and the uncertainty of  
21 Representative Plaintiffs' ability to prove their claims at trial, including Defendant's proffer of  
22 screen sheets it claims disclosed the challenged overdelivery practice during the AdWords sign-  
23 up process, the Settlement is in the best interest of the Class.

1           92.     After the settlement was reached, the parties negotiated and prepared all of the  
2 necessary settlement documents, including the Settlement Agreement and Release, Notice to the  
3 Class, Plan of Allocation, and an Order of Preliminary Approval.

4           93.     On May 12, 2009, this Court entered the Order Certifying Class and Granting  
5 Preliminary Approval of Class Action Settlement (the “Preliminary Approval Order”). In the  
6 Preliminary Approval Order, the Court approved the form and content of the Notice and  
7 Summary Notice.

8  
9     **The Objection Filed by Matthew Weiss and the Objections filed by Attorney Miller**

10          94.     On July 14, 2009, an objection to the settlement was filed on behalf of objector  
11 Matthew Weiss, an attorney and seasoned objector to class action settlements. The objection  
12 provides an AdWords account and customer identification number for Matthew Weiss, states that  
13 he was charged more than his per day budget and claims that the proposed \$20 million settlement  
14 is unfair and inadequate and unreasonable in light of Google’s 2006 fiscal year revenue of over  
15 \$10 billion.

16  
17          95.     On August 2, 2009, Mr. Weiss appeared for his deposition concerning his  
18 objection. At the deposition, Mr. Weiss’s counsel stated that Mr. Weiss, in preparing for his  
19 deposition, noticed that the objection should have been filed for Weiss & Associates PC and not  
20 for him personally. The deposition revealed that Matthew Weiss was not a Google AdWords  
21 customer and thus, not a Class member and lacks standing to object to the Settlement. (Transcript  
22 of the Deposition of Mr. Mathew Weiss, relevant pages annexed hereto as Ex. A, at pp 1-4.) The  
23 deposition also revealed that Mr. Weiss works with two Florida attorneys, Mr. Paul Rothstein and  
24 Mr. Albert Bacharach, in objecting to class action settlements. Although not disclosed to the  
25 Court, Mr. Rothstein and Mr. Bacharach are participants in Mr. Weiss’ current objection. (*Id.* at  
26  
27  
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1 pp. 22-3, 25-7. 32-3.) As per Mr. Weiss, there is an unwritten agreement pursuant to which Mr.  
2 Weiss, personally, will receive 25% of any fees generated by this objection. (*Id.* at p. 34.)

3 96. Mr. Weiss testified that he has not read any of the filings in this action, other than  
4 the Class Notice, that he is unaware of Google's defenses, and that he never read the AdWords  
5 Agreement nor FAQs when he signed up his law firm to use Google AdWords. (*Id.* at pp.7-8.)  
6 He is also unaware of whether the "attorneys who are handling this on my behalf or on Weiss &  
7 Associates' behalf I should say" obtained and/or reviewed any of the Court filings herein. (*Id.* at  
8 20:17-20.) On the other hand, Mr. Weiss recognized from the Notice that Representative  
9 Plaintiffs' Counsel did "a lot of work" and did a "very good job" withstanding Google's summary  
10 judgment motions. (*Id.* at 19:15-19.)

11 97. In sum, the objection filed by Matthew Weiss, is meritless and invalid. His belated  
12 attempt to substitute his law firm as the objector—well after the period to file an objection had  
13 passed—is untimely.

14 98. Worth noting, attorneys Rothstein and Bacharach have also filed objections to  
15 class action settlements with attorney Steve Miller, a Colorado lawyer, who has also filed an  
16 objection to this Settlement on behalf of two persons located in Alabama. I have been informed  
17 that in *TransUnion Privacy Litigation*, MDL No. 1350, Civil Action No. 00cv-4729 (N.D. Ill.),  
18 Messers Rothstein, Bacharach, and Miller were among a group of attorneys who filed objections  
19 to the class action settlement, (*see* Ex. B hereto, service list for *TransUnion*), that when the  
20 objections were denied by the Court as meritless, the objectors filed Notices of Appeal, and that  
21 they were paid fees to dismiss the appeal. The attorneys dismissed the appeal without any  
22 modification to the settlement. (*See* Ex. C hereto, *TransUnion*, Order of Dismissal of Appeal.)

23 104. I have also been informed that in *Reformulated Gasoline Antitrust and Patent*  
24 *Litigation*, D.C. No. 2:05-ml-01671-CAS-VBK (C.D. Cal.), attorney Steve Miller filed an  
25

1 objection to the settlement therein on behalf of a Ms. Leslie Yagar. I have ascertained that Leslie  
2 Yagar was formerly Leslie Miller. I am further informed that when that objection was denied as  
3 meritless, attorney Miller filed a Notice of Appeal and was again paid a fee when he dismissed  
4 the appeal. There, too, I am informed that Mr. Miller dismissed his appeal even though there was  
5 no modification to the settlement.  
6

7 105. Consistent with this course of conduct, Attorney Miller has filed an objection to  
8 the Google settlement on behalf of purported class members “Randy R. Lyons and Chase  
9 Thompson individually and d/b/a Etech Digital Playroom, Inc. and Universal Pro Audio, LLC.”  
10 (Docket No. 326.) These objections fail to provide the addresses and account information for the  
11 objectors, as required by Court order. Mr. Miller has further objected to any deposition of his  
12 clients with regard to their objections, and has otherwise thwarted efforts by Representative  
13 Plaintiffs’ Counsel to ascertain whether the objections were authorized and whether there is an  
14 agreement pursuant to which the objectors will receive any portion of monies paid to Mr. Miller,  
15 similar to the agreement Mr. Weiss testified about, and pursuant to which Mr. Weiss is to receive  
16 a portion of any monies paid to his attorney with respect to the objection.  
17

18 106. Mr. Miller has also objected to the deposition subpoena served on Leslie Yagar,  
19 formerly Leslie Miller. This subpoena was served to assist Representative Plaintiff’s Counsel in  
20 establishing Mr. Miller’s apparent pattern of filing objections, filing appeals when they are  
21 invariably dismissed and denied as meritless, and then being paid a fee upon his dismissal of the  
22 appeal. Ms. Yagar would also have been questioned on whether she had an arrangement similar  
23 to Mr. Weiss’ to participate in any monies paid to objector’s counsel.  
24

25 107. Representative Plaintiffs’ Counsel sought to compel the depositions of Mr.  
26 Miller’s clients who purport to object to this Settlement. Magistrate Judge Trumball denied the  
27 motion because the discovery period had ended, but did so without prejudice to Plaintiffs to seek  
28

1 relief from the Court to reopen discovery. (Docket No. 338.) Accordingly, those depositions and  
2 that of Leslie Yagar have not been conducted.

3 108. Were this Court to allow the depositions to proceed, they may well shed light on  
4 the *bona fides* of the objection filed by attorney Miller to the Settlement.

5  
6 **The Requested Incentive Awards**

7 109. The Representative Plaintiffs spent substantial amounts of time participating in the  
8 prosecution of this litigation. They responded to Google's voluminous interrogatories, requests  
9 for admission, and requests for document production. They each testified at depositions  
10 conducted by Google. Moreover, they consulted with their counsel at all key points in this  
11 litigation. They also reviewed the pleadings, motions, court decisions, discussed strategy and the  
12 proposed Settlement.

13  
14 110. Plaintiff CLRB Hanson responded to 26 interrogatories and 83 separate document  
15 requests, produced thousands of pages of documents, had its depositions taken, had its vendors  
16 and banks subpoenaed by Google for records dealing with CLRB Hanson activities, participated  
17 in numerous telephone conversations and emails with counsel. It estimates it spent 175 hours in  
18 the prosecution of this suit.

19 111. Plaintiff Howard Stern responded to 22 interrogatories and 76 document requests,  
20 exchanged over 300 emails with counsel and participated in dozens of telephone conversations  
21 and meetings with counsel. He searched for and produced relevant documents, generated usage  
22 reports, reviewed credit card statements, created spreadsheets with respect to damages, reviewed  
23 Court filings and had his deposition taken. He estimates having spent more than 140 hours in the  
24 prosecution of this suit.  
25  
26  
27  
28

1           112. This is a David and Goliath situation. The Representative Plaintiffs who believed  
2 they and others similarly situated had been wronged, took on the well financed Google. Without  
3 any assurance of success, they pursued this litigation to a successful conclusion.

4           **Request for Attorneys' Fees and Reimbursement of Expenses**

5           113. My firm litigated this action on a fully contingent basis. At each litigation  
6 obstacle, including each motion to dismiss and each summary judgment motion, we risked non-  
7 payment for all of the time and expenses that we had thus far spent on this extremely hard fought  
8 case.

9           114. The attorneys who litigated this suit are experienced class action attorneys that  
10 have successfully litigated complex class actions throughout the country. For example, I headed  
11 the legal team that recently obtained a settlement of more than \$190,000,000 for the class in the  
12 *Motorola Securities Litigation*, 03C287 (N.D. Ill.). The Courts before whom we practice have  
13 commented favorably upon our work. Annexed as Ex. D hereto is a biography of Wolf Popper  
14 and the attorneys who principally litigated this action, which sets forth our experience.

15           115. As reflected in Ex. E, hereto, the total number of hours expended by Wolf Popper  
16 in connection with the prosecution of this litigation exceeds 5,700 hours. The total lodestar of my  
17 firm is \$3,213,639.50. This calculation is reflected in Ex. E and is based upon Wolf Popper's  
18 billing rates and does not include charges for expense items.

19           116. As detailed in Ex. F hereto, my firm has incurred a total of \$116,929.50 in  
20 unreimbursed expenses in connection with the prosecution of this litigation. The expenses  
21 incurred in this action are reflected on the books and records of the firm.

1 CONCLUSION

2 The Settlement and the request for attorneys' fees and expenses and the Representative  
3 Plaintiffs' Incentive Awards are fair, reasonable and adequate. I respectfully request the Court to  
4 approve the proposed Settlement, fee request, expense request, and incentive awards.  
5

6 I declare under penalty of perjury under the laws of the United States that the foregoing is  
7 true and correct.

8 EXECUTED this 24th day of August, 2009 at Quogue, New York.

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12 Lester L. Levy  
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CERTIFICATE OF SERVICE

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

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

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s/ Rachel S. Black