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 10 *Proposed Class*

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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

CASE NO: 05-03649

**SECOND AMENDED CLASS ACTION
 COMPLAINT FOR:**

15)
 16 Plaintiffs,)

- 1. Breach of Contract
- 2. Breach of Implied Covenant of Good Faith and Fair Dealing
- 3. Violation of California Bus. & Prof. Code §§ 17200 *et seq.*
- 4. Violation of California Bus. & Prof. Code §§ 17500 *et seq.*
- 5. Unjust Enrichment

17 vs.)

18 GOOGLE, INC.,)

19 Defendant.)
 20)
 21)
 22)

JURY TRIAL DEMANDED

23 Plaintiffs, by their attorneys, allege the following upon information and belief, except for
 24 those allegations that pertain to Plaintiffs, which are based upon Plaintiffs' personal knowledge:
 25

NATURE OF THE ACTION

26 1. Plaintiffs bring this class action against Google, Inc. ("Google" or the
 27 "Company") on behalf of themselves and other persons and entities that advertise pursuant to
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1 Google's AdWords program ("AdWords") and have been charged more than their "daily
2 budget" for their advertising campaign (the "Class").

3 2. Plaintiffs bring this action to enjoin Google from engaging in such wrongful
4 overbilling in connection with its AdWords program and to recover damages incurred.

5 **JURISDICTION AND VENUE**

6 3. This Court has jurisdiction over this action pursuant to the Class Action Fairness
7 Act of 2005, 28 U.S.C. §1332(d)(2). The matter in controversy exceeds the jurisdictional
8 amount and there are members of the Class that are citizens of States different from the
9 Defendant's.

10 4. The claims asserted will be governed by the laws of California. California has a
11 distinct nexus with the alleged harm and the Defendant. It is possible that the number of citizens
12 of California is substantially larger than the number of citizens from any other State.

13 5. Defendant Google, a citizen of California, is the sole defendant from whom relief
14 is sought by members of the Class, and whose alleged conduct forms the basis for the claims
15 asserted by the Class.

16 6. Venue is proper in this Court because a substantial part of the events or omissions
17 giving rise to the claims herein occurred in this County, and Google has at all relevant times
18 been doing business in this County and throughout California and maintains its principal
19 executive offices in Santa Clara County.

20 7. The AdWords program terms state that the AdWords agreement is governed by
21 California law and any claims thereunder are to be adjudicated in Santa Clara County,
22 California.

23 **THE PARTIES**

24 8. Plaintiff CLRB Hanson Industries, LLC d/b/a Industrial Printing ("Industrial
25 Printing") is a limited liability corporation formed in the state of Minnesota. Industrial Printing
26 advertises on the Google network pursuant to AdWords.

27 9. Plaintiff Howard Stern ("Stern") is a citizen of the state of New Jersey. Stern
28 advertises his business, homeworksolvers.net, on the Google network.

1 10. Defendant Google is a Delaware corporation, with its principal place of business
2 located within Santa Clara County at 1600 Amphitheatre Parkway, Mountain View, California
3 94043.

4 11. Google owns and operates the Internet search engine named Google and offers
5 advertising programs. Internet users use the search engine to locate and access web sites. Users
6 key in words in the search box on the Google search screen and Google locates and lists websites
7 containing those words and provides links thereto. On the same page as the search results,
8 Google displays a box or boxes, above or to the right of, the search results which contain
9 “Sponsored Links” having 2-4 lines of text. These “Sponsored Links” are links to the websites
10 of businesses that provide the services or sell the products concerning the search terms that had
11 been inputted. These “Sponsored Links” are the ads of the advertisers who sign up for, and pay
12 for, Google’s advertising program. These ads could also appear in similar locations on the
13 search and content sites and products in the Google network.

14 12. The Google network is the largest online advertising network in the United States
15 and includes thousands of third-party web sites. The search sites include, for example, AOL,
16 Earthlink, AskJeeves, and Shopping.com; the content websites include, for example, The New
17 York Times, HGTV, and the Weather Channel.

18 13. Google purports to be a global technology leader focused on improving the ways
19 people connect with information. According to the Company’s Form S-1 filed with the
20 Securities and Exchange Commission (“SEC”) on April 29, 2004 in conjunction with its initial
21 public offering, the Company’s:

22 [I]nnovations in web search and advertising have made our web
23 site a top Internet destination and our brand one of the most
24 recognized in the world. We maintain the world’s largest online
25 index of web sites and other content, and we make this information
26 freely available to anyone with an Internet connection. Our
27 automated search technology helps people obtain nearly instant
28 access to relevant information from our vast online index. We
generate revenue by delivering relevant, cost-effective online
advertising. Businesses use our AdWords program to promote their
products and services with targeted advertising.

SUBSTANTIVE ALLEGATIONS

The AdWords Program

14. AdWords is a global advertising program offered by Google.

15. Google states that AdWords gives advertisers hands-on control over all elements of their ad campaigns.

16. On the homepage for Google AdWords, under the heading “AdWords Advantages,” Google touts “we pledge to help you meet your customer acquisition needs by enabling you to: . . . Fully control your ad budget.”

17. Also on the homepage, under the heading “control,” Google states:

With all the great features listed below a Google AdWords account is fully customized for any advertiser.

- * * *
- Daily budget you set, starting from 5 cents USD.
- And with no monthly minimum spending limit . . .

18. AdWords gives advertisers the right to target their advertising campaign(s) and to limit the appearance of their ad(s) so that the ad(s) only appear in response to searches conducted from specific locales, at particular times or upon other specified search criteria.

19. In order to advertise with Google, advertisers sign up for the AdWords program over the Internet. The form agreement, found on-line, consists of a two-page document entitled Google Inc. AdWords Program Terms (“Terms”) and 142 pages of “Frequently Asked Questions” (“FAQs”) which further explains the program and can be accessed from Google’s AdWords site (collectively, the “Agreement.”). The Terms incorporate the FAQs into the Agreement. A copy of the Agreement (page-numbered for purposes of this Complaint), is annexed hereto as Exhibit A. (Citations thereto are to “Agreement, ___.”)

20. An advertiser can access the FAQs by clicking on a link entitled “Program Details and FAQ” which then brings him/her to a maze of more than 100 pages of information concerning the AdWords program.

21. Advertisers sign up for the AdWords program online through the “Advertising Programs” hyperlink on the Google.com Internet search engine site (Google’s homepage). Clicking on the “Advertising Programs” hyperlink brings up the Google page with the hyperlink

1 for “Google AdWords,” which, in turn, brings the prospective advertiser to the AdWords “sign
2 up” or login page.

3 22. By scrolling and clicking on the various linked pages, an advertiser, among other
4 things: (i) creates its ad and selects (i.e., “purchases”) keywords which will trigger the ad to run
5 when an Internet user inserts a search into the Google search engine which includes those
6 keywords; (ii) chooses the geographic locations it wants to target with its ad; (iii) sets a
7 maximum cost-per-click it wants to spend each time someone clicks on the ad; and (iv) sets a
8 daily budget, which Google describes in the sign up process as the “amount you’re willing to
9 spend on a specific campaign each day and can be changed as often as you like.”

10 23. After providing the afore-mentioned information, the advertiser creates an
11 AdWords account by providing an email address and choosing a password.

12 24. To activate the ad(s), the advertiser logs into the account he/she created and
13 submits his/her billing information.

14 25. The advertiser’s ad(s) begins to run once valid billing information is submitted.

15 26. Throughout the sign up process, advertisers can either click on form questions or
16 search for help by entering terms they have questions about. By clicking on the form questions
17 and by entering the help terms, Google brings to the screen responsive portions of the FAQs.

18 27. AdWords allows advertisers to “pause” an ad campaign at any time without limit.

19 28. The Company touts in its Form 10-K for the year ended December 31, 2004, filed
20 with the SEC on March 30, 2005 (the “2004 Form 10-K”) (as well as in its quarterly Form 10-Qs
21 filed with the SEC) AdWords as an effective way “to deliver relevant ads targeted to search
22 results or web content” and to “provide[] advertisers with a cost-effective way to deliver ads to
23 customers across Google sites and through the Google Network.”

24 29. The Company emphasizes in its 2004 Form 10-K, that “AdWords gives
25 advertisers hands-on control over most elements of their ad campaigns. Advertisers can specify
26 the relevant search or content topics for each of their ads. Advertisers can also manage
27 expenditures by setting a maximum daily budget and determining how much they are willing to
28 pay whenever a user clicks on an ad.”

1 **Advertisers Set a “Daily” Budget and Are**
2 **Supposed to Have the Right to Control What they Pay**

3 30. A key feature of AdWords is that it allows the advertiser to set a “daily budget.”

4 31. As part of the sign up process, the advertiser sets a daily budget which limits the
5 amount of money that Google may charge per day. As stated by Google: “Your daily budget is
6 the amount you’re willing to spend on a specific campaign each day and can be changed as often
7 as you like.”

8 32. The AdWords Agreement gives advertisers the right to set their own daily budget
9 as a method of cost control.

10 33. Advertisers have the right to change their daily budget as often as they like. The
11 FAQs section provides that an advertiser may change a daily budget for an ad campaign up to ten
12 times per day.

13 34. In the AdWords Agreement, Google represents, offers and agrees to the following
14 concerning the daily budget:

15 a. How do I create an AdWords account?

16 * * *

17 Step 4: Specify your **daily budget**.
18 Your maximum **daily budget** helps determine your ad
19 exposure (the number of times Google shows your ad in a
20 day). There is no minimum daily budget.

(Agreement, 019-20) (Emphasis added.)

21 b. What are all the steps to creating an AdWords Account?

22 * * *

23 Choose **Daily Budget**
24 13. A recommended **daily budget** will appear highlighted in the **daily**
25 **budget** box on the next page. This is the amount necessary for
26 your ad to appear every time on your keyword. However, you can
27 increase or lower this amount by typing in your desired **daily**
28 **budget**.”
Note: This amount controls how often your ad appears on Google;
we will spread the delivery of your ad throughout the day to stay
within your alternative budget setting. Matching the recommended
daily budget helps ensure maximum exposure.

(Agreement, 020-21.) (Emphasis added.)

c. How does Google come up with a recommended budget?

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We recommend **daily budgets** based on historical data for the same or similar keywords as you. We also consider additional factors-such as variations in language and location and Google Network activity. The **daily budget** we recommend will ensure your ads appear for all relevant searches, increasing your visibility and reach to potential customers.

Remember, setting your **daily budget** to the amount we recommend is optional-you're always in full control of your AdWords account. You can edit your campaign's daily budget as often as you'd like, and to whatever amount results in the most appropriate return on investment for you.

(Agreement, 061.) (Emphasis added.)

d. Why can't I see my ad?

* * *

2. 2. Check your **daily budget**. When you create your ads, we recommend a **daily budget** for maximum ad delivery. If your **daily budget** is set lower than the recommended amount, we spread the delivery of your ad throughout the day in order to stay within your budget. In that case your ad may not be showing when you look for it. To maximize your visibility, meet the recommended **daily budget** amount.

(Agreement, 036.) (Emphasis added.)

e. What happens if my **daily budget** is lower than what the AdWords system recommends?

* * *

You may have received an email or a notification in your account stating that your ads have periodically stopped showing because one or more of your campaigns has reached its **daily budget**. This notification links to a tool you can use to edit your daily budget.

* * *

. . . Is this just a way to get me to pay more?
If you increase your **daily budget**, you won't necessarily spend it all. Remember, you only pay when people click your ads. And, of course, you're always in control of your account-you never have to pay more than you want.

(Agreement, 048-049.) (Emphasis added.)

f. Is image ads pricing different than text ads pricing?

No. . . . Your **daily budget** can go as high as you like.

(Agreement, 062.) (Emphasis added.)

g. Does it cost extra to show my ads on all of the Google Network sites?

There is no fee to run your ads on sites and products in the Google Network. . . . As with all Google advertising, you only pay for clicks on your ads. You control how much you spend by selecting a maximum cost-per-click (CPC) and **daily budget** that fit your advertising goals.

(Agreement, 062.) (Emphasis added.)

1 35. The Agreement assures advertisers that Google will not go over their daily
2 budget:

3 How does Google keep my campaign below my **daily budget**?

4 Google shows your ads evenly over time so that you reach your
5 **daily budget** by the end of each day. This keeps your ad from
6 accumulating charges early on and then disappearing for the
7 remainder of the day.

8 Once you've selected your keywords, you'll see a recommended
9 **daily budget**. If you set your **daily budget** to this value, you will
10 maximize your ad's visibility and activity. If your **daily budget** is
11 lower than the recommended amount, Google will deliver your ads
12 evenly throughout the day to keep your costs at or below your
13 **daily budget**.

14 (Agreement, 062.) (Emphasis added.)

15 36. The Agreement repeatedly refers to advertisers' ability to control the costs of their
16 advertising and assures advertisers that they will not be billed more than they are "willing to
17 pay":

18 a. How much does AdWords cost?

19 In the Google AdWords program, the cost of your
20 campaigns really depends on you -- **how much you are**
21 **willing to pay** and how well you know your audience. It
22 all boils down to knowing your own goals and letting us
23 know what they are.

24 There is a nominal, one-time activation fee for Google
25 AdWords. After that, you pay only for clicks on your
26 AdWords ads, and you can control that by telling us **how**
27 **much you are willing to pay** per click and per day.

28 (Agreement, 010.) (Emphasis added.)

29 b. Top 5 Things I need to know to get started:

30 How much does AdWords cost?
31 There is a nominal, one-time activation fee for Google AdWords. After
32 that, **you pay only for clicks on your AdWords ads, and you can**
33 **control that by telling us how much you are willing to pay per click**
34 **per day**. For example, a new advertiser paying in USD can activate
35 his/her AdWords account with just US\$5.00, and can then choose a
36 maximum cost-per-click (CPC) from US\$0.05- US\$100. Daily budgets
37 start as low as 5 cents up to whatever limit he or she is comfortable
38 spending.

(Agreement, 010.) (Emphasis added.)

c. Are there spending requirements, a minimum contract length, or other
qualifying term?

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There is **never a minimum spending commitment** when you sign up for AdWords. No minimum contract requirements or other “lock-in” rules apply. **You have complete control** over how long you participate in AdWords, and you control the maximum you want to spend per day.

(Agreement, 012.) (Emphasis added.)

d. How much do image ads cost?

As with text ads, each advertiser determines the cost of their own image ad campaign. Your price depends on the keywords on which you choose to advertise, how much you bid, and how successfully you design your ads. You set your own **daily budget**, which will control your overall spending. There is a nominal one-time activation fee for Google AdWords, but there is never a minimum spending commitment.

(Agreement, 016.)

e. AdWords billing & payments: AdWords account costs

How do I control the cost of my ads?
With cost-per-click advertising on AdWords, **the cost of your campaigns really depends on you - how much you are willing to pay** and how well you know your audience. It all boils down to knowing your own goals and letting us know what they are.

- Set your own limits: There is a nominal activation fee for Google AdWords. After that, you tell us how much you are willing to pay per click and per day.

(Agreement, 059.) (Emphasis added.)

Pausing an Ad

37. During the sign up process, Google explicitly tells prospective advertisers that they will only be billed for the days their ad runs:

Google AdWords

Daily Budget:

- . Daily budget is based on the keyword Traffic Estimator
- . Daily charges can fluctuate depending on clicks you receive
- . **Ad system ensures you never pay more than your daily budget multiplied by the number of days in a month your campaign was active**

A hard copy of this screen is annexed hereto as Exhibit B.

38. The Agreement likewise gives advertisers the right to “pause” an ad campaign at any time, without limit, and states that advertisers will not accrue charges for the period that their ad is paused:

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a. Can I have my ads run at particular times of day?

* * *

You can pause your ad campaign at any time. You won't accrue charges while your ads are paused, and they'll remain paused until you resume them.

(Agreement, 026.) (Emphasis added.)

b. If I pause or delete my campaign, when do I get billed?

After you pause or delete all of your campaigns, you don't accrue any additional charges to your Google AdWords account. However, because the AdWords program bills on a 30-day billing cycle, you may receive a charge up to 30 days after you have paused or deleted your campaigns. **You will be charged for any activity that occurred [sic] before you pause or delete a campaign.**

(Agreement, 070.) (Emphasis added.)

39. Unlike advertising in traditional media such as billboards and print publications, cost-per-click Internet ads displayed with specific keyword searches have been promoted as a definitive way for companies to gauge their exposure to potential customers. As a result, U.S. sales from advertiser-paid search results are expected to grow 25 percent this year to \$3.2 billion, up from \$2.5 billion in 2003, according to research firm eMarketer. From 2002 to 2003, the market rose by 175 percent.

40. Google's revenue is largely dependent upon its AdWords program. The revenue that Google receives from its AdWords program is critical to the viability of Google.

41. According to a December 2, 2004 article on the CNNMoney website:

Paid-search advertising generates about 98 percent of Google's revenues. Red-hot demand for cost-per-click advertising doubled Google revenues in the first three quarters of [2004] and paved the way for the company's blockbuster IPO in August.

42. Google's latest 2004 Form 10-K stated:

Growth in our revenues from 2003 to 2004 and from 2002 to 2003, resulted primarily from growth in revenues from ads on our Google Network members' web sites and growth in revenues from ads on our web sites. The advertising revenue growth resulted primarily from increases in the total number of paid clicks and ads displayed through our programs, rather than from changes in the average fees realized. The increase in the number of paid clicks was due to an increase in the number of Google Network members, an increase in aggregate traffic both on our web sites and those of

1 our Google Network members and improvements in our ability to
2 monetize increased traffic on our web sites.

3 43. In its 2004 Form 10-K and quarterly Form 10-Qs filed with the SEC, Google
4 boasts that AdWords is an effective way “to deliver relevant ads targeted to search results or web
5 content” and to “provide[] advertisers with a cost-effective way to deliver ads to customers
6 across Google sites and through the Google Network.”

7 44. Google also reiterated in its 2004 Form 10-K that advertisers can manage
8 expenditures by setting a maximum daily budget and determining how much they are willing to
9 pay whenever a user clicks on an ad.

10 **Google Wrongfully and Misleadingly Charges Advertisers More Than Their Daily Budget**

11 45. Despite the fact that throughout the sign up process and the Agreement,
12 Defendant Google plainly and repeatedly states that advertisers set their own “daily” budget to
13 control costs and set limits, Google wrongfully and misleadingly commits advertisers to a
14 monthly budget, in an amount up to their daily budget times 30 or 31, with no exception made
15 for days their ad is paused.

16 46. Defendant does not deny that it converts the daily budgets set by advertisers into
17 monthly budgets. For example (and as detailed below), when Plaintiff Stern complained about
18 having been billed more than his daily budget, Defendant responded by telling him that Google
19 is allowed to bill advertisers up to the the number of days in the billing period (30 or 31 days)
20 times said advertiser’s daily budget.

21 47. Even though the Agreement plainly and repeatedly states that advertisers will not
22 be charged during periods that their ad is paused or deleted, Google does not exclude those days
23 when it calculates an advertiser’s monthly charge (daily budget times 30/31).

24 48. In stark contrast to the daily budget advertised, offered and agreed to, by Google,
25 and set by advertisers, the Agreement refers to monthly budgets in the context of Google’s
26 Jumpstart and Budget Optimizer Features, and expressly distinguishes such “monthly” budgets
27 from an advertiser’s “daily” budget:

28 a. Will my Google Budget Optimizer (TM) target budget replace my current
daily budget and CPC?

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The target budget you set when you enable the Google Budget Optimizer tool will replace your campaign’s previous keyword CPCs and daily budget. However, the AdWords system will store your keyword CPCs and daily budget in case you’d like to restore these values after you disable the Budget Optimizer.

(Agreement, 034.)

b. If you used Jumpstart to create your AdWords campaign, you were asked to specify a monthly budget.

(Agreement, 063.)

49. In contrast to Google’s representations concerning setting a daily budget to allow an advertiser to control its advertising costs, Google routinely overdelivers ads to allow advertisers’ accounts to go over their daily budget.

50. Google will not provide credits for charging advertisers more than their daily budget on any given day as long as those overages do not cumulatively exceed the calculated “monthly” budget (daily budget times 30/31) in any given month.

51. In a simple example, if an advertiser has a \$100 daily budget, Google may run the advertiser’s ad so that the daily cost goes up to 20% (or more) over the \$100 daily budget on any given day. If this advertiser only wants to advertise on Mondays – 4 out of 30 days, at \$100 per day, and the ad goes 20% over budget on all four days, or \$120 per day, Google will charge \$480. Even though Google has exceeded the advertiser’s “daily budget” by \$80, Google deems the full charge to be within budget because the total of \$480 is less than \$3000 (or \$100 per day times 30 days).

52. Google has a substantial financial interest in increasing the charges for AdWords advertising.

53. The information necessary to demonstrate the extent of injury to each named plaintiff and every other advertiser is in Google’s sole possession.

54. As set forth in Paragraph 5 of the Terms portion of the Agreement, “ Payment. . . Charges are solely based on Google’s click measurements. Refunds (if any) are at the discretion of Google and only in the form of advertising credit for Google Properties.” (Agreement, 002.)

55. Within the FAQ portion, the Agreement further provides: “We make extraordinary efforts to provide accurate reports. For that reason, no measurements other than

1 those maintained by Google shall be accepted for reporting or payment purposes.” (Agreement,
2 0109.)

3 **Defendant’s Wrongful Conduct With Respect to Plaintiffs**

4 56. In July, 2002, plaintiff Industrial Printing entered into a contract with Google to
5 advertise using the AdWords program and specified a daily budget.

6 57. Despite this set daily budget, Google routinely exceeded the daily budget set by
7 Plaintiff Industrial Printing, Google did not credit Industrial Printing for all such charges over its
8 daily budget, and Google continues to charge it for advertising in excess of its daily budget.

9 58. Plaintiff Industrial Printing ran an advertising campaign, Contract Decorating,
10 during the month of February 2005 for 27 days with a \$50 daily budget and was charged a total
11 of \$1495.33, or \$55.38. The same campaign was run in March 2005, for 17 days with a daily
12 budget of \$50. On each day the campaign ran in that billing cycle, Google overdelivered the ad,
13 charging Industrial Printing from 121% to 162% above its \$50 daily budget, for an average of
14 141% over the applicable daily budget. Plaintiff was billed \$1,197.79 in March 2005 (\$70.45
15 per day) instead of the \$850 it contracted for, and was “willing to pay.”

16 59. Similarly, in connection with another campaign, Mousepads, also with a \$50 daily
17 budget, in February 2005 Plaintiff Industrial Printing ran the add 9 days and was charged
18 \$462.23, or \$51.35 per day. In March 2005, the campaign, still with a daily budget of only \$50,
19 ran only 2 days and Industrial Printing was charged \$118.10, or \$59.05 per day.

20 60. With respect to yet another campaign, Team, also with a \$50 daily budget, in
21 February, 2005, Google charged Industrial Printing \$1443.11 for said campaign which ran only
22 27 days, or \$53.44 per day. In March, 2005, Industrial Printing was charged \$1126.08 even
23 though the ad ran only 17 days, or \$66.24 per day.

24 61. Google charged Industrial Printing’s credit card for said amounts and did not
25 provide credits therefore.

26 **Defendant’s Wrongful Conduct With Respect to Plaintiff Stern**

27 62. In October, 2003, Plaintiff Stern entered into a contract with Google to advertise
28 using the AdWords program. He set his daily budget at \$10.

- 1 e. Whether the Agreement is to be construed against its drafter, the Defendant;
- 2 f. Whether Google's nondisclosures are material;
- 3 g. Whether advertisers were damaged and the appropriate measure of damages;
- 4 h. Whether the Class is entitled to an injunction requiring Google to cease and desist from exceeding set daily budgets for advertising clicks;
- 5 i. Whether Google was unjustly enriched by charging advertisers more than their daily budget;
- 6 j. Whether Google's conduct of charging advertisers more than their daily budget violated California's unfair competition law;
- 7 k. Whether Google's representations in its AdWords Agreement and/or during the sign up process were, and are, misleading;
- 8 l. Whether Google's nondisclosures in the AdWords Agreement and/or the sign up process made the AdWords Agreement and/or the sign up process misleading and/or deceptive; and
- 9 m. Whether Google's representations in its AdWords Agreement and/or during the sign up process were, and are, deceptive.

10 72. Typicality (FRCP 23(a)(3)): Plaintiffs' claims are typical of the claims of each
11 member of the Class, in that Plaintiffs, as every member of the Class, were charged by Google
12 for advertising under Google's AdWords program in excess of their daily budgets. Plaintiffs are
13 entitled to relief under the same causes of action as the other members of the Class.

14 73. Adequacy (FRCP 23(a)(4)): Plaintiffs are adequate representatives of the Class
15 because their interests do not conflict with the interests of the members of the Class they seek to
16 represent; they have retained counsel competent and experienced in complex class action
17 litigation; and they intend to prosecute this action vigorously. Plaintiffs have no interests which
18 conflict with those of the Class. The interests of members of the Class will be fairly and
19 adequately protected by Plaintiffs and their counsel.

20 74. Google has acted on grounds generally applicable to the Class, making
21 appropriate equitable injunctive relief with respect to Plaintiffs and the members of the Class.
22 The prosecution of separate actions by individual Class members would create a risk of
23 inconsistent and varying adjudications.
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75. Superiority (FRCP 23(b)(3)): A class action is superior to other available methods for the fair and efficient adjudication of this controversy because:

- a. The joinder of thousands of geographically diverse individual members of the Class is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- b. The individual claims of the members of the Class now may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, expensive, if not totally impossible, to justify individual actions;
- c. When defendant’s liability has been adjudicated, claims of all members of the Class can be determined by the court and administered efficiently in a manner which is far less erroneous, burdensome, and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of class claims to promote economies of time, resources, and limited pool of recovery;
- e. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action; and
- f. This class action will assure uniformity of decisions among members of the Class.

FIRST CAUSE OF ACTION

[Breach of Contract]

76. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

77. Plaintiffs and Google entered into the Agreement that included Google’s Standard Terms and Conditions for participation in Google’s AdWords program.

78. The Agreement gives Plaintiffs and the Class the ability to control their own advertising cost by setting their own daily budget.

79. Google repeatedly represented and promised that it would not exceed the daily budget set by Plaintiffs and Class members.

80. The Agreement prohibits Google from exceeding Plaintiffs’ and the Class members’ daily budgets, and explicitly states that Google will deliver Plaintiffs’ and the Class members’ ads at, or below, their daily budgets.

1 81. In the Agreement, Google promises that Plaintiffs and Class members will not
2 be charged for periods when their ads are paused.

3 82. Plaintiffs and the Class performed all conditions, covenants and promises
4 required to be performed by Plaintiffs and the Class in accordance with the terms of the
5 Agreement.

6 83. Google breached the Agreement by charging Plaintiffs and the Class advertising
7 fees in excess of their respective daily budgets.

8 84. Google's breach of the Agreement and continued breach of the Agreement has
9 benefitted, and continues to benefit, Google, and has damaged, and continues to damage
10 Plaintiffs and the Class.

11 85. There is no adequate remedy at law.

12 **SECOND CAUSE OF ACTION**

13 **[Breach of Implied Covenant of Good Faith and Fair Dealing]**

14 86. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
15 herein.

16 87. The Adwords Agreement includes the implied covenant of good faith and fair
17 dealing.

18 88. Defendant has a duty not to commit acts which would improperly deprive
19 Plaintiffs and Class Members of the benefit of the Agreement.

20 89. A principal benefit for which Plaintiffs and the Class contracted was the ability
21 to control their advertising cost by setting a daily budget and to be charged no more than their
22 daily budget for each day their ad runs.

23 90. The implied covenant prevents Google from charging Plaintiffs and the Class
24 more than their respective daily budgets. By charging Plaintiffs and the Class more than their
25 respective daily budgets, Google breached the implied covenant of good faith and fair dealing.

26 91. The implied covenant prevents Google from converting each advertiser's daily
27 budget into a monthly budget and holding each advertiser liable up to that amount per month,
28 irrespective of whether he/she/it pause their ad.

1 their daily budget on any given day. Google also overdelivers ad(s) in order to best ensure that
2 it will charge advertisers up to the monthly budget which it wrongfully creates from
3 advertisers' daily budgets.

4 99. Defendant's act and practices described herein are unlawful in violation of §
5 17200 and constitute, *inter alia*, breach of contract and unjust enrichment.

6 100. Defendant's acts and practices alleged herein are unfair in violation of § 17200.
7 Defendant's acts and practices alleged herein constitute a violation of § 17200 in that members
8 of the public are likely to be deceived concerning the cost of its AdWords program.

9 101. Plaintiffs and members of the Class have been injured by Defendant's conduct.
10 They have been charged in excess of their daily budget.

11 102. Defendant's acts and practices alleged herein constitute unfair, deceptive,
12 untrue or misleading advertising in violation of § 17200 in that members of the public are
13 likely to be deceived by Defendant concerning the cost of its AdWords program and their
14 ability to control their costs.

15 103. Plaintiffs and members of the Class have been injured by Defendant's conduct.

16 104. As set forth in the following cause of action, Defendant's acts and practices also
17 constitute a violation of § 17500.

18 105. Plaintiffs have suffered injury in fact and have lost money or property as a result
19 of this unfair competition and bring this cause of action on behalf of themselves and on behalf
20 of all other similarly injured Class members, pursuant to Business & Professions Code
21 §§ 17200 *et seq.*

22 106. Google maintains its headquarters and principal places of operations in
23 California. The unfair, unlawful or fraudulent business acts and practices of defendant set
24 forth above emanate from Google's California headquarters. Google's wrongful conduct
25 originated from and thus occurred inside California.

26 107. Pursuant to Business and Professions Code §17200, *et seq.*, Plaintiffs
27 on behalf of themselves and all others similarly situated, seek relief as prayed for below.
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FIFTH CAUSE OF ACTION

[Unjust Enrichment]

116. Plaintiffs incorporate by reference paragraphs 1-55, 57-61, 63-70, 71a., b., f. - m., 72-75, 94-98, 100-108, 110-115, as if fully set forth herein.

117. As set forth in paragraph 37, *supra*, Google represented that its “Ad System ensures you [advertisers] never pay more than your daily budget multiplied by the number of days in a month your campaign was active.”

118. To the detriment of Plaintiffs and each member of the Class, Google has been, and continues to be, unjustly enriched through unlawful overcharging and collecting advertising fees in excess of advertiser’s daily budget times the number of days their ad runs.

119. Google has unjustly benefitted through its unlawful overcharging and continues to benefit, at the expense of, and to the detriment of, Plaintiffs and each member of the Class.

120. Google has voluntarily accepted and retained these profits and benefits which it derived from Plaintiffs and Class members with the full knowledge and awareness that they result from its own wrongful, routine, and systematic overcharging for advertising.

121. By virtue of the conduct alleged in this Complaint, Google has been unjustly enriched at the expense of the Plaintiffs and Class Members, who are equitably entitled to, and hereby seek, the disgorgement and restitution of Google’s profits, revenue, and benefits to the extent, and in the amount, deemed appropriate by the Court. Specifically, the additional sums of money charged to Plaintiffs and all other similarly situated individuals for advertising which was improper must be refunded. These amounts of money constitute money which, in equity and good conscience, should be returned by Google to Plaintiffs and members of the Class pursuant to the equitable doctrine of restitution/unjust enrichment.

122. Accordingly, Plaintiffs and each member of the Class seek restitution of the full value of all benefits and enrichment Google has obtained, and continues to obtain, at the expense of Plaintiffs and each member of the Class.

