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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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

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Plaintiffs,

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v.

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GOOGLE, INC.,

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Defendant.

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CASE NO. C O5-03649 JW

**DEFENDANT GOOGLE, INC.'S
MOTION TO ENLARGE TIME AND
CLARIFY COURT ORDER**

Civil Local Rule 6-3

I. INTRODUCTION

1 On June 26, 2006, the initial Case Management Conference in this action was held. On
2 the following day, the Court issued its Order Following Case Management Conference
3 (“Order”), which provided in part that the scope of discovery, prior to the filing of the parties’
4 partial summary judgment motions, “shall be limited to discerning (i) the terms and conditions of
5 the agreement, if any, that existed between the parties. . . and (ii) the parties’ understanding of
6 those terms and conditions.” The Order provided that defendant Google, Inc. (“Google”) would
7 have an opportunity to depose “a representative from [plaintiffs] CLRB Hanson Industries and/or
8 Howard Stern” within 40 days of the date of the Order and scheduled an October 6, 2006 hearing
9 date for the partial summary judgment motions.
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11 Since this conference, Google has attempted in good faith to arrange the depositions of
12 plaintiffs but has been unsuccessful due to the parties’ conflicting schedules and plaintiffs’
13 refusal to produce both plaintiffs for deposition. Among other things, plaintiffs claim that the
14 representative for plaintiff CLRB Hanson Industries is unavailable from August 12 to 26 and
15 refuse to make him available after these dates. Google also attempted to reach a stipulation with
16 plaintiffs to continue the corresponding hearing date for the summary judgment motion, based on
17 plaintiff CLRB Hanson Industries’ unavailability in August, but was again met with plaintiffs’
18 refusal.

19 Accordingly, Google requests that the Court continue the deposition deadline set in the
20 Order to allow Google the opportunity to depose both plaintiffs prior to the filing of its motion
21 for partial summary judgment, and that the Court clarify Google’s entitlement to depose both
22 representative plaintiffs in this action. Google further requests a corresponding continuance of
23 the summary judgment hearing date so that the parties will have sufficient time following the
24 depositions of plaintiffs to prepare their moving papers.

II. ARGUMENT

A. Legal Standard For Motions Enlarging Time.

26 Civil Local Rule 6-1(b) provides, in part, that “[a] request for a Court order enlarging. . .
27 time may be made by. . . motion pursuant to Civil L.R. 6-3.” Civil Local Rule 6-3(a) provides,
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1 in part, that “[a] motion to enlarge. . . time may be no more than 5 pages in length and must be
2 accompanied by a proposed order and by a declaration” that addresses the reasons for the
3 requested enlargement, describes the efforts the party has made to obtain a stipulation to the time
4 change, identifies the substantial harm or prejudice that would occur if the Court did not change
5 the time, discloses all previous time modifications in the case, whether by stipulation of Court
6 order, and describes the effect the requested time modification would have on the schedule for
7 the case.

8 **B. A Continuance Of The Deposition Deadline Set In The Order Is Needed So That**
9 **Google May Depose Both Plaintiffs.**

10 The Order provides that “[w]ithin forty (40) days of this Order, at a time and place agreed
11 on by the parties, Defendant shall have the opportunity to depose a representative from CLRB
12 Hanson Industries and/or Howard Stern.” August 6, 2006 is the 40th day from the date of the
13 Order.

14 On July 11, Google requested that plaintiffs stipulate to an extension of the Court’s
15 deadline, due to lead counsel’s unavailability during the two weeks preceding the August 6
16 deadline. Declaration of M. Christopher Jhang (“Jhang Decl.”), ¶ 2, Exhibit A. Plaintiffs agreed
17 to make plaintiff Stern available for deposition between August 14 to 16, conditioned on the
18 deposition taking place in New York. Jhang Decl., ¶¶ 3, 4, 5, Exhibits B, C, D. Google readily
19 agreed to the deposition location requested by plaintiffs. Jhang Decl., ¶ 4, Exhibit C. Plaintiffs,
20 however, disputed Google’s right to depose both plaintiffs and claimed that the representative for
21 plaintiff CLRB Hanson would be unavailable from August 12 to 26. Jhang Decl., ¶ 5, Exhibit D.

22 In order to preserve its right to depose both plaintiffs and to obtain relevant documents in
23 their possession, Google served deposition notices for plaintiffs Stern and CLRB Hanson,
24 noticed for August 16 and 17, respectively, at plaintiffs’ counsel’s offices in New York. Jhang
25 Decl., ¶ 6, Exhibits E, F. Recognizing that plaintiff CLRB Hanson would be unavailable on
26 August 17, Google informed plaintiffs that it was “more than willing to work with [plaintiffs] on
27 acceptable dates.” Jhang Decl., ¶ 7, Exhibit G. Plaintiffs, however, continued in their refusal to
28 offer plaintiff CLRB Hanson on mutually agreeable dates even though Google had, in the past,

1 agreed with plaintiffs to move hearing and conference dates at plaintiffs' request. Jhang Decl., ¶
2 11. After claiming that plaintiff CLRB Hanson would be unavailable for a large portion of
3 August, plaintiffs offered plaintiff CLRB Hanson only on dates which they were fully aware that
4 Google's counsel would be unavailable. Jhang Decl., ¶¶ 2, 8, Exhibits A, H.

5 Continuation of the deposition deadline is needed so that Google can depose both
6 plaintiffs. The Order specifies that the scope of discovery includes "the parties' understanding of
7 [the] terms and conditions [of the AdWords Agreement]." Google should be permitted to
8 explore the understanding of both plaintiffs since they may possess different understandings of
9 the Agreement and because both plaintiffs have cast themselves as class representatives in this
10 action. Further, the Order provides Google, as the defendant, with the option of deposing a
11 representative from either one or both plaintiffs.

12 Google met and conferred with plaintiffs, pursuant to Civil Local Rules 6-3 and 37-1, to
13 attempt to obtain a stipulation to continue the deposition deadlines.¹ Google's requests,
14 however, have been refused or ignored by plaintiffs. Jhang Decl., ¶¶ 7, 8, Exhibits G, H. In
15 addition, plaintiffs have yet to acknowledge Google's entitlement to depose both plaintiffs.
16 Jhang Decl., ¶¶ 5, 7, 8, Exhibits D, G, H.

17 Accordingly, Google respectfully requests that the Court continue the deposition deadline
18 imposed by the Order to the end of the first full week of September (September 8), which would
19 provide two weeks for the parties to reach mutually acceptable dates for the depositions of
20 plaintiffs. Google further requests that the Court clarify Google's entitlement to depose both
21 representative plaintiffs in this action.

25 ¹ Civil Local Rule 6-3 provides that "[a] motion to enlarge or shorten time. . . must be
26 accompanied by a proposed order and a declaration that. . . (2) Describes the efforts the party has
made to obtain a stipulation to the time change."

27 Civil Local Rule 37-1 provides that "[t]he Court will not entertain a request or a motion
28 to resolve a disclosure or discovery dispute unless, pursuant to FRCivP 37, counsel have
previously conferred for the purpose of attempting to resolve all disputed issues."

1 **C. A Continuance Of The Summary Judgment Hearing Date Set In The Order**
2 **Is Also Needed.**

3 In conjunction with its request for the continuance of the deposition deadline in the
4 Order, Google further requests that the Court continue the associated summary judgment hearing
5 date. The Court's Order provides that "[a] hearing on a motion for partial summary judgment is
6 set for October 6, 2006 at 9:00 a.m." Under this hearing date, the parties' moving summary
7 judgment papers would be due on September 1st. Given that the deposition of plaintiff CLRB
8 Hanson Industries would not occur until late August or early September, Google requests an
9 appropriate continuance of the current hearing date to allow the parties additional time to analyze
10 the deposition testimony and prepare their moving papers.

11 Accordingly, Google respectfully requests that this hearing date be continued to
12 November 20, thereby setting the briefing deadline for the moving papers on October 16
13 (approximately one month after the depositions of both plaintiffs have occurred).

14 **III. CONCLUSION**

15 For the above stated reasons, Google respectfully requests that the Court continue the
16 deposition deadline set in the Order, clarify Google's entitlement to depose both representative
17 plaintiffs, and continue the corresponding partial summary judgment hearing date set in the
18 Order.

19 Dated: July 26, 2006

PERKINS COIE LLP

20 By: /S/
21 M. Christopher Jhang
22 Attorneys for Defendant GOOGLE, INC.
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PROOF OF SERVICE

I, Susan E. Daniels, declare:

I am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of 18 years and am not a party to the within action. My business address is Perkins Coie LLP, Four Embarcadero Center, Suite 2400, San Francisco, California 94111. I am personally familiar with the business practice of Perkins Coie LLP. On July 26, 2006, I served the following document(s):

DEFENDANT GOOGLE, INC.'S MOTION TO ENLARGE TIME AND CLARIFY COURT ORDER

by placing a true copy thereof enclosed in a sealed envelope addressed to the following parties:

William M. Audet, Esq.
Ryan M. Hagan, Esq.
Jason Baker, Esq.
ALEXANDER, HAWES & AUDET, LLP
152 North Third Street, Suite 600
San Jose, CA 95112
Tel: (408) 289-1776; Fax: (408) 287-1776

XXX (By Hand) I caused each envelope to be delivered by hand to the offices listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed at San Francisco, California.

DATED: July 26, 2006

/s/
Susan E. Daniels