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DAVID T. BIDERMAN, Bar No. 101577 1 JUDITH B. GITTERMAN, Bar No. 115661 M. CHRISTOPHER JHANG, Bar No. 211463 2 PERKINS COIE LLP 180 Townsend Street, 3rd Floor 3 San Francisco, CA 94107-1909 Telephone: (415) 344-7000 4 Facsimile: (415) 344-7050 Email: <u>DBiderman@perkinscoie.com</u> 5 Email: JGitterman@perkinscoie.com Email: CJhang@perkinscoie.com 6 Attorneys for Defendant Google Inc. 7 8 9 UNITED STATES DISTRICT COURT 10 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION 11 CLRB HANSON INDUSTRIES, LLC d/b/a CASE NO. C O5-03649 JW 12 INDUSTRIAL PRINTING, and HOWARD 13 STERN, on behalf of themselves and all others **DEFENDANT GOOGLE INC.'S RESPONSE TO PLAINTIFFS'** similarly situated, 14 MOTION TO ENLARGE TIME Plaintiffs, Civil Local Rule 6-3 15 V. 16 GOOGLE, INC., 17 Defendant. 18 19 20 21 22 23 24 25 26 27 28

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## RESPONSE TO PLAINTIFFS' MOTION TO ENLARGE TIME

Plaintiffs CLRB Hanson Industries, LLC d/b/a Industrial Printing and Howard Stern ("plaintiffs") request in their motion to enlarge time a continuance of the partial summary judgment hearing date, from October 6, 2006 to November 6, 2006. Defendant Google Inc. ("Google") does <u>not</u> oppose plaintiffs' continuance request. However, plaintiffs' failure to seek a stipulation with Google prior to the filing of their motion, and their insistence on including unrelated and previously decided matters in any stipulation between the parties, have necessitated this response.

Under the current October 6, 2006 hearing date, the parties' moving summary judgment papers must be filed by September 1, 2006. Plaintiffs' depositions are scheduled to occur on August 16 and 18, 2006. Declaration of M. Christopher Jhang ("Jhang Decl."), ¶ 2. Although Google does not oppose plaintiffs' continuance request, it disputes plaintiffs' purported basis for seeking the continuance. Google has complied with the Court's June 27, 2006 Order Following Case Management Conference ("Order") through the filing of its declaration, its amended declaration, and its production of documents to plaintiffs, and plaintiffs have been informed of this. Id., at ¶ 3, Exhibit A. Immediately following the issuance of the Order, in order to provide a thorough and responsive production to plaintiffs, Google searched its archives and retrieved all versions of the AdWords Frequently Asked Questions ("FAQs"), from July 2002 to the present, which appeared on the AdWords website. Id., at ¶ 4. In addition, plaintiffs' contention that Google has violated the deposition deadline imposed by the Order is untrue – Google sought and obtained from this Court a continuance of the deposition deadline. See Court's August 1, 2006 Order Re Defendant Google, Inc.'s Motion To Enlarge Time and Clarify Court Order.

Plaintiffs have unnecessarily brought a motion to enlarge time where a stipulation between the parties could have been obtained. When counsel for Google was informed that plaintiffs sought to continue the partial summary judgment hearing date, they notified plaintiffs (on a Friday) that the lead attorney was out of the country on a plane and that plaintiffs would receive a response "early next week." Jhang Decl., ¶ 5, Exhibit B. On the following Tuesday, plaintiffs filed their motion before receiving any response from Google and without making any

attempt to obtain a stipulation to their requested time change. Id., at  $\P$  6. Google immediately 1 2 informed plaintiffs that it would have stipulated to the continuance and requested plaintiffs to withdraw their motion. Id., at ¶ 6, Exhibit C. Plaintiffs, however, refused to do so, conditioning 3 a stipulation on the inclusion, in the stipulation, of their discovery complaints and matters that 4 5 were either previously decided by this Court or unrelated to their continuance request. Id., at ¶ 7, Exhibit D. 6 Despite the parties' disagreement on the reasons for continuing the hearing date and the 7 impropriety of plaintiffs' motion, the parties do agree that a continuance is needed and that good 8 9 cause exists for the continuance. The parties further agree on the continued hearing date sought by plaintiffs. For these reasons, Google respectfully requests that the Court grant plaintiffs' 10

Dated: August 11, 2006 PERKINS COIE LLP

request to continue the partial summary judgment hearing date to November 6, 2006.

By: /S/
M. Christopher Jhang
Attorneys for Defendant GOOGLE INC.

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