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13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

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

19 Plaintiffs,

20 v.

21 GOOGLE, INC.,

22 Defendant.

CASE NO. C O5-03649 JW

**GOOGLE INC.'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION**

Fed. R. Civ. P. 56

Date: November 6, 2006
Time: 9:00 a.m.
Place: Courtroom 8
Judge: Honorable James Ware

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GOOGLE INC.'S NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR
SUMMARY ADJUDICATION

CASE NO. 05-03649

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 6, 2006, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 8 of the United States District Court for the Northern District of California, San Jose Division, defendant Google Inc. ("Google") will, and hereby does, move the Court for summary judgment, for Google and against plaintiffs CLRB Hanson Industries, LLC, d/b/a Industrial Printing, and Howard Stern ("Plaintiffs"), on Plaintiffs' claims for breach of contract, breach of implied covenant of good faith and fair dealing, unfair competition, untrue and misleading advertising, and unjust enrichment, pursuant to Federal Rules of Civil Procedure 56(c). In the alternative, Google will, and hereby does, move for summary adjudication of the following issues of fact and law: (1) that Google is entitled, under Google's advertising Agreement, to exceed an advertiser's daily budget by up to 20% on any given day and (2) that Google may base an advertiser's charges in a given billing period on the number of days in that month multiplied by the advertiser's daily budget. In addition, Google will, and hereby does, move for summary adjudication that Plaintiffs' claims, and the claims of the putative class members, be barred for alleged breaches occurring more than 60 days prior to the date the original complaint was filed, August 3, 2005.

This motion is made on grounds that the undisputed facts show that Plaintiffs' claims are unsupported by the express terms of the parties' Agreement, that the Agreement fully discloses the calculation of advertisers' advertising charges, that Google billed Plaintiffs consistently with the terms of their Agreement, and that a valid enforceable agreement exists between the parties. This motion is also made on the undisputed fact that advertisers do not accrue charges when their ad campaigns are "paused," and that pausing does not affect the calculation of an advertiser's monthly budget, which is based in a billing period on the number of days in that month times the advertiser's daily budget, as long as the campaign is active (i.e., not deleted and the term of the campaign has not ended). Finally, this motion is made on the ground that Plaintiffs' claims are barred in part by the limitations period in the Agreement, which limits advertisers' claims to those asserted within 60 days of the contested charge.

1 Google's motion is based on this Notice of Motion, the Memorandum of Points and
2 Authorities, the supporting Declarations of M. Christopher Jhang, Michael Schulman, and Leslie
3 Altherr, the [Proposed] Order Granting Google Inc.'s Motion for Summary Judgment, or in the
4 Alternative, for Summary Adjudication, the pleadings on file in this action, and such other
5 matters and arguments as may be presented to the Court prior to or at the hearing on the motion.

6 Dated: October 2, 2006

PERKINS COIE LLP

7 By: /S/
8 David T. Biderman
9 Attorneys for Defendant Google Inc.