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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN JOSE DIVISION

19	CLRB HANSON INDUSTRIES, LLC d/b/a)	CASE NO: C05-03649 JW
20	INDUSTRIAL PRINTING, and HOWARD)	
21	STERN, on behalf of themselves and all)	DECLARATION OF LESTER L. LEVY
22	others similarly situated,)	IN OPPOSITION TO DEFENDANT
23	Plaintiffs,)	GOOGLE INC.'S MOTION FOR
24	vs.)	SUMMARY JUDGMENT, OR IN THE
25	GOOGLE, INC.,)	ALTERNATIVE, FOR SUMMARY
26	Defendant.)	ADJUDICATION
27)	
28)	

**DECLARATION OF LESTER L. LEVY IN OPPOSITION TO DEFENDANT GOOGLE INC.'S MOTION
 FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION**
 Case No: C05-03649 JW

1 I, LESTER L. LEVY, declare as follow:

2 1. I am an attorney at Wolf Popper LLP ("Wolf Popper"), counsel for Plaintiffs
3 CLRB Hanson Industries, LLC d/b/a Industrial Printing ("CLRB Hanson") and Howard Stern
4 (collectively, "Plaintiffs") in this action against Google, Inc ("Google"). I have personal
5 knowledge of the facts stated herein. I submit this declaration in opposition to Defendant Google
6 Inc.'s motion for summary judgment, or in the alternative, for summary adjudication.
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9 **Google Refused to Produce Michael Schulman for his Deposition but Submits his**
10 **Declaration in Support of its Motion for Summary Judgment, or in the Alternative,**
for Summary Adjudication

11 2. In Defendant's Initial Disclosures Google named only Michael Schulman as
12 having knowledge about this case. No other person at Google was identified.
13

14 3. On June 27, 2006, this court issued the Order Following Case Management
15 Conference limiting the scope of discovery prior to the filing of the anticipated summary
16 judgment motion(s) to (i) the terms and conditions of the agreement, if any, that existed between
17 the parties relating to the AdWords advertising program and (ii) the parties' understanding of
18 those terms and conditions. A copy of the Order Following Case Management Conference is
19 annexed hereto as Exhibit A.
20

21 4. On or about July 31, 2006, Google produced seven (7) boxes of documents
22 (production was in hard copy form only) containing disjointed portions of its Frequently Asked
23 Questions ("FAQs") in effect since 2002. Google did not produce any documents evidencing the
24 sign-up process for that period of time.
25

26 5. On August 24, 2006, Plaintiffs noticed the deposition of Google by Michael
27 Schulman, to be examined about (i) terms and conditions of the agreement, if any, that existed
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1 between the parties relating to the AdWords advertising program and (ii) the parties'
2 understanding of those terms and conditions, including, how Google bills Plaintiffs under those
3 terms and conditions. The deposition was noticed for September 13, 2006. A copy of Plaintiffs'
4 Notice of Deposition of Google, Inc. ("Notice of Deposition") is annexed hereto as Exhibit B.

5
6 6. On September 5, 2006, I requested confirmation of the noticed date and David
7 Biderman responded that the deposition should not go forward. Annexed hereto as Exhibit C is a
8 true and correct copy of this e-mail correspondence.

9
10 7. Google refused to produce Mr. Schulman for his examination under oath by
11 Plaintiffs' counsel. On or about September 7, 2006 Google served objections to the Notice of
12 Deposition, arguing that this Court's Case Management Order did not allow for Google's
13 deposition. Google's objections also stated that the Notice of Deposition failed to describe with
14 reasonable particularity the matters on which examination is requested (even though the
15 deposition notice mirrored the scope of discovery expressly allowed by the Court). A true and
16 correct copy of Defendant Google Inc.'s Objections to Plaintiffs' Notice of Deposition is
17 annexed hereto as Exhibit D.

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20 8. Google submits a Declaration by Mr. Schulman in support of its motion for
21 summary judgment. If the Court finds any of Mr. Schulman's assertions necessary for its
22 determination of the competing motions for summary judgment, it is respectfully requested that
23 the Court direct Mr. Schulman to appear in Court at the hearing on November 6, 2006, to be
24 questioned by the Court (with Plaintiffs' counsel having an opportunity to question Mr.
25 Schulman) with respect to the statements in his Declaration.

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**DECLARATION OF LESTER L. LEVY IN OPPOSITION TO DEFENDANT GOOGLE INC.'S MOTION
FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION
Case No: C05-03649 JW**

1 **Google Argues for a 60 Day Prior to August 3, 2005 Cut Off**
 2 **for Claims Against Google**

3 9. Google, in its motion for summary judgment, argues that Plaintiffs (and the other
 4 class members) are barred from asserting claims occurring more than 60 days prior to the date the
 5 original complaint was filed (on August 3, 2005). As evidenced by documents produced by
 6 Google in this litigation, Plaintiffs often complained to Google about being overcharged. For
 7 example, Howard Stern emailed to Google on October 9, 2003, complaining that, though he had
 8 a \$10 a day budget, his cost on October 8, 2003, was over that budget and that he thought the
 9 listing would go off once the budget was reached. CLRB Hanson Industries, LLC also
 10 complained often to Google about the overcharges. For example, on January 13, 2005, it
 11 requested Google to examine their charges in excess of the daily budget. The next day, not
 12 having received a satisfactory reply, CLRB Hanson stated if it were not credited for charges over
 13 the daily budget then Google would be forcing CLRB Hanson to get attorneys involved. True
 14 and correct copies of this email correspondence is annexed hereto as Exhibit E.

15 10. Annexed hereto as Exhibit F are true and correct copies of pages from the
 16 transcript of the deposition of Howard Stern taken under oath on August 16, 2006.

17 11. Annexed hereto as Exhibit G are true and correct copies of pages from the
 18 transcript of CLRB Hanson Industries, LLC by Brett Hanson, taken under oath on August 18,
 19 2006.

20 Dated: October 16, 2006

21 /s/

22 Lester L. Levy

23 **DECLARATION OF LESTER L. LEVY IN OPPOSITION TO DEFENDANT GOOGLE INC.'S MOTION**
 24 **FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION**
 25 **Case No: C05-03649 JW**