

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAWRENCE E. FELDMAN & ASSOCIATES
LAWRENCE E. FELDMAN
432 Tulpehocken Avenue
Elkins Park, PA 19027
(215) 885-3302

Attorneys for Plaintiff
LAWRENCE E. FELDMAN & ASSOCIATES

KEKER & VAN NEST, LLP
DARALYN J. DURIE - #169825
DAVID J. SILBERT - #173128
KEVIN T. REED - #240799
710 Sansome Street
San Francisco, CA 94111-1704
Telephone: (415) 391-5400
Facsimile: (415) 397-7188

Attorneys for Defendant
GOOGLE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LAWRENCE E. FELDMAN d/b/a
LAWRENCE E. FELDMAN AND
ASSOCIATES,

Plaintiff,

v.

GOOGLE, INC.,

Defendant.

Case No. C 07 02411 RMW

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED] ORDER**

Date: August 17, 2007
Time: 10:30 a.m.
Judge: Hon. Ronald M. Whyte

1 Plaintiff Lawrence E. Feldman d/b/a Lawrence E. Feldman & Associates (“Feldman”)
2 and defendant Google, Inc. (“Google”) submit this Case Management Statement and Proposed
3 Order and request that the Court to adopt it as its Case Management Order in this case. The
4 parties have met and conferred over this statement and have agreed to jointly file this statement

5
6 **I. DESCRIPTION OF THE CASE**

7 Feldman brings this action alleging that Google overcharged him for pay-per-click
8 advertising in its AdWords advertising program by charging him for “fraudulent clicks.”
9 Feldman purports to have opted out of the Arkansas class-action click settlement, with which this
10 Court is familiar. Google is investigating Feldman’s claim that he opted out of the settlement.
11 Pending completion of its investigation, Google disputes that claim.

12 Feldman originally filed this action in state court in Philadelphia, Pennsylvania. Google
13 removed to federal court based on diversity of citizenship, then moved to dismiss or transfer the
14 case to this Court based on the forum-selection clause in the AdWords agreement. On March 29
15 2007, the district court in Philadelphia granted Google’s motion to transfer, ruling that the
16 forum-selection clause in the contract is valid and enforceable.

17 Feldman asserts causes of action for (1) breach of implied contract, (2) breach of implied
18 covenant of good faith and fair dealing, (3) fraudulent inducement, (4) negligence, (5) unjust
19 enrichment, and (6) unfair business practices.

20 The parties are not yet in a position to identify all of the principal factual and legal issues
21 in dispute. But it is clear that the parties will dispute at least the following factual and legal
22 issues: (1) whether Feldman’s claims are barred by the Arkansas class-action settlement;
23 (2) whether Google charged Feldman for “fraudulent clicks”; and (3) whether Google’s alleged
24 charging of Feldman for “fraudulent clicks” constitutes a breach of contract or was otherwise
25 unlawful.

26 **II. ALTERNATIVE DISPUTE RESOLUTION**

27 The parties have filed a Stipulation and Proposed Order selecting mediation as their
28

1 preferred ADR process.

2 **III. DISCLOSURES**

3 The parties have not made the disclosures required by Rule 26, Federal Rule of Civil
4 Procedure. The parties have met and conferred on the appropriate schedule for these disclosures,
5 and agreed to make their disclosures within thirty days of the case management conference.
6

7 **IV. DISCOVERY**

8 The parties likely intend to pursue all discovery methods available under the Federal
9 Rules of Civil Procedure, including depositions, interrogatories, requests for admission, and
10 requests for production. The parties request the following discovery schedule:
11

- 12 10/8/07 Deadline for plaintiff to amend complaint;
- 13 5/9/08 Non-expert discovery cut-off;
- 14 5/16/08 Opening expert reports
- 15 5/30/08 Opposition expert reports
- 16 6/6/08 Reply expert reports
- 17 6/20/08 Expert discovery cut-off;
- 18 6/27/08 Last day to file dispositive motions;
- 19 8/15/08 File (or lodge) and serve trial brief; motions in limine; deposition
20 and discovery responses offered as evidence; proposed voir dire
questions; proposed jury instructions; proposed form of verdict;
joint pretrial statement
- 21 8/22/08 File (or lodge) and serve oppositions to motions in limine;
22 objections to use of discovery responses; counter-designations;
objections to voir dire, verdict forms, or authenticity or
23 admissibility of trial exhibits;
- 24 8/29/08 Pretrial conference

V. TRIAL SCHEDULE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The parties request that the Court set a trial on September 8, 2008, or thereafter at the Court's convenience. The parties estimate that the trial will take one week.

Dated: August 10, 2007

KEKER & VAN NEST, LLP

By: /s/David J. Silbert
DAVID J. SILBERT
Attorneys for Defendant
GOOGLE, INC.

Dated: August 10, 2007

LAWRENCE E. FELDMAN &
ASSOCIATES

By: /s/Lawrence E. Feldman
LAWRENCE E. FELDMAN &
ASSOCIATES
Attorneys for Plaintiff
LAWRENCE E. FELDMAN

CASE MANAGEMENT ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

Dated:

By: _____
THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT COURT JUDGE