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 6 GOOGLE, INC.

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA
 9 SAN JOSE DIVISION

11 LAWRENCE E. FELDMAN, d/b/a
 LAWRENCE E. FELDMAN and
 12 ASSOCIATES,
 13 Plaintiff,
 14 v.
 15 GOOGLE, INC.,
 16 Defendant

Case No. C 07-02411 PVT
**DEFENDANT GOOGLE, INC.'S
 ANSWER TO COMPLAINT**
 Date Comp. Filed: August 9, 2006
 Trial Date: Not set

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1 Defendant Google, Inc. (“Google”) answers Plaintiff Lawrence Feldman’s (“Feldman”)
2 Complaint (the “Complaint”) as follows:

3 **ANSWER TO COMPLAINT**

4 1. Google has no information or knowledge to admit or deny the allegations in this
5 paragraph, and on that basis denies those allegations.

6 2. Admitted.

7 3. Denied.

8 4. Admitted.

9 **FACTS**

10 5. Google has no information or knowledge to admit or deny the allegations in this
11 paragraph, and on that basis denies those allegations.

12 6. Google admits that AdWords advertising customers can bid an amount that they
13 select so that online advertisements that they design will appear, in an order based on Google’s
14 proprietary analysis of a variety of factors, on the margin of certain search results. Advertisers
15 generally pay Google based on the number of times these advertisements are clicked. Except as
16 so admitted, Google denies the allegations contained in this paragraph.

17 7. Google admits that its advertisers select keywords that will trigger their
18 advertisements, and, except as so admitted, denies the allegations contained in this paragraph.

19 8. Google admits that advertisers generally pay Google based on the number of
20 times these advertisements are clicked. Except as so admitted, Google denies the allegations
21 contained in this paragraph.

22 9. Google admits that advertisers make bids for the keywords that will trigger their
23 advertisements and, except as so admitted, denies the allegations contained in this paragraph.

24 10. Denied.

25 11. Denied.

26 12. Denied.

27 13. Denied.

28 14. Google admits that Mr. Reyes made the statement in quotes, and except as so

1 admitted, Google denies the allegations contained in this paragraph.

2 15. Google uses a number of measures to detect and prevent invalid clicks, and has
3 given and continues to give credits to advertisers when Google determines that their ads have
4 received invalid clicks. Except as so admitted, Google denies the allegations contained in this
5 paragraph.

6 16. Denied.

7 17. Denied.

8 18. Google has no information or knowledge to admit or deny the allegations in this
9 paragraph, and on that basis denies those allegations.

10 19. Google has no information or knowledge to admit or deny the allegations in this
11 paragraph, and on that basis denies those allegations.

12 20. Google has no information or knowledge to admit or deny the allegations in this
13 paragraph, and on that basis denies those allegations.

14 21. Google has no information or knowledge to admit or deny the allegations in this
15 paragraph, and on that basis denies those allegations.

16 22. Denied.

17 23. Google admits that the “AdWords Program Terms” provides that advertisers
18 “waive all claims relating to charges unless claimed within 60 days after the charge . . . ,” and,
19 except as so admitted, denies the allegations contained in this paragraph.

20 **COUNT I**

21 **(Breach of Implied Contract)**

22 24. This paragraph does not require a response.

23 25. Google has no information or knowledge to admit or deny the allegations in this
24 paragraph, and on that basis denies those allegations.

25 26. This paragraph states a legal conclusion to which no response is required.

26 27. Denied.

27 28. Denied.

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COUNT II

(Breach of Implied Covenant of Good Faith and Fair Dealing)

- 29. This paragraph does not require a response.
- 30. This paragraph states a legal conclusion to which no response is required.
- 27. Denied.
- 28. Denied.
- 29. Denied.
- 30. Denied.

COUNT III

(Fraudulent Inducement)

- 31. This paragraph does not require a response.
- 32. Denied.
- 33. Denied.
- 34. Denied

COUNT IV

(Negligence)

- 35. This paragraph does not require a response.
- 36. This paragraph states a legal conclusion to which no response is required.
- 37. Denied.
- 38. Denied.
- 39. Denied.

COUNT V

(Unjust Enrichment)

- 40. This paragraph does not require a response.
- 41. This paragraph states a legal conclusion to which no response is required.
- 42. Google admits that the “AdWords Program Terms” provides that advertisers “shall be charged based on actual clicks . . .”, and, except as so admitted, denies the allegations contained in this paragraph.

- 1 43. Denied.
2 44. Denied.
3 45. This paragraph states a legal conclusion to which no response is required.

4 **COUNT VI**

5 **(Violations of Business Professions Code 17200, et. seq.)**

- 6 46. This paragraph does not require a response.
7 47. Admitted.
8 48. This paragraph states a legal conclusion to which no response is required.
9 49. This paragraph states a legal conclusion to which no response is required.
10 50. Denied.
11 51. Denied.
12 53. This paragraph states a legal conclusion to which no response is required.

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 **FAILURE TO STATE A CLAIM**

16 The Complaint and each claim set forth therein fail to state a claim upon which relief can
17 be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **WAIVER**

20 Assuming without conceding that the Complaint states a claim, the claims of wrongdoing
21 in the Complaint have been waived by the plaintiff and are, to that extent, barred.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **STATUTE OF LIMITATIONS**

24 Assuming without conceding that the Complaint states a claim, plaintiff's claims are
25 barred, in whole or in part, by the applicable statutes of limitations.

27 **FOURTH AFFIRMATIVE DEFENSE**

28 **FAILURE TO MITIGATE**

1 Assuming without conceding that the Complaint states a claim, plaintiff has failed to
2 mitigate his damages, if any.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **LACHES**

5 Assuming without conceding that the Complaint states a claim, plaintiff's claims are
6 barred by the doctrine of laches.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **UNCLEAN HANDS**

9 Assuming without conceding that the Complaint states a claim, plaintiff's claims are
10 barred, in whole or in part, by the doctrine of unclean hands.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Google prays for judgment as follows:

- 13 (a) That Plaintiff takes nothing by its Complaint and the Court dismiss the Complaint
14 with prejudice;
- 15 (b) That the Court award Google reasonable attorneys' fees;
- 16 (c) That the Court award Google all costs and expenses it incurs in this action;
- 17 (d) That the Court award Google such other and further relief that it deems just and
18 proper.

19
20 Dated: June 12, 2007

KEKER & VAN NEST, LLP

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