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 8 Attorneys for Plaintiff  
 and the Proposed Class

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 10 **UNITED STATES DISTRICT COURT**  
 11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN JOSE DIVISION**

13  
 14 DAVID ALMEIDA, individually  
 and on behalf of all others similarly  
 15 situated,

16 Plaintiff,

17 vs.

18  
 19 GOOGLE, INC., a Delaware  
 Corporation; and DOES 1 through  
 20 10, inclusive,

21 Defendants.  
 22

CASE NO. CV 08-02088 RMW

**JOINT RULE 26(F) REPORT**

Initial Status Conference

Date: August 15, 2008

Time: 10:30 a.m.

Before: Honorable Ronald M. Whyte

23  
 24 **JOINT RULE 26(F) REPORT**

25 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Plaintiff  
 26 David Almeida (“Plaintiff”) and Defendant Google Inc. (“Defendant” or “Google”)  
 27 hereby jointly submit this Rule 26(f) Report. The parties met and conferred on July  
 28 25, 2008, pursuant to Rule 26 of the Federal Rules of Civil Procedure. During this

1 meeting, they discussed Rule 26 initial disclosures and discovery. This Joint Report  
2 was prepared based on those discussions.

3  
4 **A. PLAINTIFF’S STATEMENT OF THE CASE**

5 Plaintiff brings this class action against Google Inc. (“Google”) to recover  
6 damages and other relief available at law and in equity on behalf of himself as well  
7 as on behalf of the members of the following class:

8 *All persons or entities located within the United States*  
9 *who bid on a keyword through AdWords, left the “CPC*  
10 *content bid” input blank, and were charged for content*  
11 *ads.*

12 The Complaint alleges misrepresentations related to Google’s AdWords  
13 online advertising program when it fails to notify potential advertisers that leaving  
14 the supposedly optional “CPC content bid” input blank on the signup webpage will  
15 result in charges for ads on the “content network.” Unlike the ads placed on  
16 Google’s web search results, ads on the “content network” are placed on less  
17 desirable third party websites. Many online advertisers do not want their ads on  
18 third party websites and therefore chose to leave the optional “CPC content bid”  
19 box empty, not realizing that this would automatically generate bids for ads on third  
20 party websites.

21 By tricking advertisers who seek on-line advertising through Google’s  
22 AdWords program into bidding for a service that they do not want, Google is  
23 causing damage to the class in an amount equal to the charges generated from the  
24 unwanted ads displayed on the “content network”. Plaintiff brings the following  
25 three causes of action: (1) unjust enrichment; (2) fraudulent concealment; (3) and  
26 violation of California Business & Professions Code Section 17200, et seq.

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1 **B. GOOGLE’S STATEMENT OF THE CASE**

2 Google denies Plaintiff’s allegations. In particular, and without limitation,  
3 Google denies that its AdWords program was confusing as alleged by Plaintiff.  
4 Google further contends that it complied with all applicable regulations and  
5 statutes. Its conduct was neither unfair nor unlawful. Additionally, Google  
6 contends that this case is inappropriate for class-action treatment. Google will raise  
7 additional defenses after it has had the opportunity to learn the basis for Plaintiff’s  
8 claims.

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10 **C. RULE 26 INITIAL DISCLOSURES**

11 Plaintiff made the initial disclosures required by Rule 26 on August 8, 2008.  
12 The parties have agreed that Defendant Google will serve its Rule 26 initial  
13 disclosures no later than September 15, 2008.

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15 **D. DISCOVERY SUBJECTS, COMPLETION AND PHASING**

16 The parties anticipate discovery may be needed concerning: (1) issues of  
17 class certification (including, numerosity, adequacy, typicality and commonality);  
18 (2) the identity of all AdWords customers who left the “CPC content bid” input  
19 blank; (3) the design and/or testing of the AdWords bidding process; (4) the  
20 marketing of the AdWords program; (5) disclosures made concerning the bidding  
21 process for AdWords; and (6) damages. By identifying these categories, the parties  
22 do not concede that all such information is discoverable or necessary.

23 The parties propose the following discovery schedule:

24 November 2, 2009	Non-expert discovery cut-off
25 November 9, 2009	Expert opening reports
26 November 23, 2009	Expert opposition reports
27 December 7, 2009	Expert reply reports

1 December 14, 2009 Expert discovery cut-off

2 The parties do not believe that an order phasing or limiting discovery upon  
3 particular issues is necessary.

4  
5 **E. DISCOVERY OF ELECTRONICALLY STORED INFORMATION**

6 The parties have agreed to serve all filings in this action by electronic mail  
7 (by .pdf, .tif, or Word format) if the service, including attachments, consists of 200  
8 or fewer pages. For service of larger filings, the parties may effect service by  
9 overnight mail, as long as courtesy copies of the operative pleading, motion, or  
10 discovery response are served electronically on the same date. The parties agree  
11 that Google may effect electronic service of documents in this action by serving the  
12 following attorneys of record for Plaintiffs: Richard L. Kellner  
13 (rlk@kbklawyers.com), and Alfredo Torrijos (at@kbklawyers.com). The parties  
14 further agree that Plaintiff may effect electronic service of documents in this action  
15 by serving the following attorneys of record for Google: David J. Silbert  
16 (dsilbert@kvn.com) and Alyse Bertenthal (abertenthal@kvn.com).

17 Additionally, the parties anticipate that discovery in this case will involve the  
18 production of documents and electronically stored information (“ESI”). The parties  
19 agree to meet and confer in good faith in an effort to avoid the need for any formal  
20 motions related to discovery of documents or ESI.

21  
22 **F. ISSUES RELATING TO CLAIMS OF PRIVILEGE**

23 Discovery in this action may involve trade secrets. During the meet and  
24 confer on July 25, 2008, the parties agreed to negotiate a stipulated Protective Order  
25 that will govern the production of confidential materials (including documents and  
26 other information) in this action. The parties agree to meet and confer in good faith  
27 in an effort to reach agreement concerning the contents of an appropriate protective  
28

1 order.

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3 **G. CHANGES TO LIMITATIONS ON DISCOVERY**

4 The parties have agreed to change the limit on depositions made by  
5 F.R.Civ.P. 30(a)(2)(A)(i) from a maximum of ten depositions to an equivalent  
6 maximum hourly quota of 70 hours to be used at the discretion of each party.

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8 **H. PROPOSED CLASS CERTIFICATION BRIEFING SCHEDULE**

9 The parties stipulate and agree, and request that the Court approve, the  
10 following briefing schedule for Plaintiff's anticipated motion for class certification:

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12 April 3, 2009 Last day for Plaintiff to file and serve: (1) expert report(s)  
13 on class certification; and (2) motion for class certification.

14 May 8, 2009 Last day for Defendant to file and serve: (1) expert  
15 report(s) on class certification; and (2) opposition to  
16 motion for class certification.

16 May 22, 2009 Last day for Plaintiff to file and serve reply in support of  
17 motion for class certification.

17 June 19, 2009 Hearing on motion for class certification.

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1 **I. ALTERNATIVE DISPUTE RESOLUTION**

2 The Court has ordered mediation as the ADR process. The parties request  
3 that the Court extend the presumptive deadline for mediation until they have  
4 conducted substantial discovery. The parties agree to hold mediation by June 9,  
5 2009.

6  
7 DATED: August 8, 2008 By: \_\_\_\_\_ /s/

8 **KABATECK BROWN KELLNER LLP**  
9 Brian S. Kabateck  
10 Richard L. Kellner  
11 Alfredo Torrijos  
12 *Counsel for Plaintiff and the proposed class*

13  
14 DATED: August 8, 2008 By: \_\_\_\_\_ /s/

15 **KEKER AND VAN NEST LLP**  
16 Daralyn J. Durie  
17 David J. Silbert  
18 Ryan M. Kent  
19 Alyse D. Bertenthal  
20 *Counsel for Defendant Google Inc.*

