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 NORTHERN DISTRICT OF CALIFORNIA

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14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

SC

CV 08

3888

19 Pulaski & Middleman, LLC., individually and)
 20 on behalf of all others similarly situated,)
 21 Plaintiff,)
 22 v.)
 23 GOOGLE INC., a Delaware corporation,)
 24 Defendant)

Case No.:
CLASS ACTION
COMPLAINT
JURY TRIAL DEMANDED

1 Plaintiff, Pulaski & Middleman, LLC, ("Pulaski") alleges, individually and on behalf of
2 the Class described below, and upon information and belief, except as to allegations specifically
3 pertaining to itself, which are based on personal knowledge, as follows:

4 **SUMMARY OF CLAIMS**

5 1. This case is about Defendant Google's fraudulent, unfair and deceptive
6 business practices in connection with its AdWords advertising program ("AdWords"). Pulaski
7 brings this case both individually, and on behalf of a similarly situated Class, against Defendant
8 Google, Inc. ("Google") for breach of contract, breach of duty of good faith and fair dealing,
9 violations of Business Professions Code Sections 17200 and 17500 and unjust enrichment.

10 **PARTIES**

11 2. Plaintiff, Pulaski & Middleman, LLC, is Texas limited liability company
12 engaged in the practice of law. Pulaski's offices are located at 6800 West Loop South, Suite
13 200, Bellaire, Texas 77401. During the relevant time set forth herein, Plaintiff contracted with
14 Google to place advertisements through AdWords. Pulaski has contracted with Google and
15 participated in the AdWords program since on or about May 6, 2006.

16 3. Defendant Google Inc. ("Google") is a publicly held corporation that was
17 incorporated in California in September 1998 and reincorporated in Delaware in August 2003.
18 Google's headquarters are located at 1600 Amphitheatre Parkway, Mountain View, California
19 94043. Defendant Google's website is located at www.Google.com. In 2007, Google's total
20 revenue was approximately 16.6 billion, 99% of which was derived from Internet based
21 advertising services offered through AdWords.

22 **JURISDICTION AND VENUE**

23 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
24 §1332(d) in that this is a civil action filed under Federal Rule of Civil Procedure 23 and Plaintiff
25 and other members of the Class are citizens of a state different from Google, the aggregate
26 amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and there are more
27 than 100 Class members 28 U.S.C. §1332(d)(2), (6).

1 10. Pulaski and the Class are "Adwords advertisers" that have contracted with
2 Google to participate in the AdWords advertising program and display their advertisements on
3 the Google Network.

4 **B. Google Network**

5 11. The Google Network, also referred to as the Google AdSense Network, is the
6 association of individuals/entities that collectively provide the internet locations where AdWords
7 advertisements are displayed and monetized. The Google Network consists of: (1) Google; (2)
8 Google Search Network participants (America Online, CompuServe, Netscape, AT&T Worldnet,
9 EarthLink, Sympatico, and others); (3) Google Content Network participants (New York Post
10 Online Edition, Mac Publishing (includes Macworld.com, JavaWorld, LinuxWorld),
11 HowStuffWorks, and others); (4) Google Domain Network participants (Sedo.com, Oversee.net
12 and others); and (5) Google AdSense Network participants.

13 12. The Google AdSense program pays participants for AdWords ads monetized on
14 their sites. Google AdSense consists of the following different programs: AdSense for Content,
15 AdSense for Search, AdSense for Mobile, AdSense for Video, AdSense for Domains, and
16 AdSense for Errors.

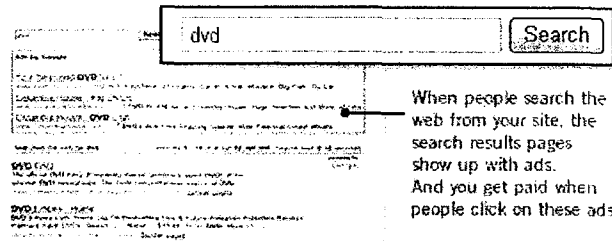
17 13. *AdSense For Content:* AdSense Network partners that contract with Google to
18 allow AdWords Advertisements to be placed/displayed on content based webpages under their
19 ownership, license, registration, and or other control. As explained by Google on its website:
20 "The Google content network comprises hundreds of thousands of high-quality websites, news
21 pages, and blogs that partner with Google to display targeted AdWords ads. When you choose to
22 advertise on the content network, you can expand your marketing reach to targeted audiences--
23 and potential customers--visiting these sites every day. There's no larger network for contextual
24 advertising in the world." It includes, but is not limited to the following individuals/entities:



28 <https://adwords.google.com/select/arc.ntml>

1 14. **AdSense for Search:** AdSense Network partners that contract with Google to
2 place a Google search box on their websites to allow a website's users to perform search queries
3 using keywords from a website they have visited. Based on the search query typed into the
4 search box, Google will display Google search results along with related Adwords
5 advertisements and Google shares the revenue with the site owner.

6 15. As Google states: "**AdSense for search** allows website publishers to provide
7 Google web and site search to their visitors, and to earn money by displaying Google ads on the
8 search results pages."



14 [https://www.google.com/adsense/login/en_US/?hl=en_US&sourceid=aso&subid=ww-en_US-et-](https://www.google.com/adsense/login/en_US/?hl=en_US&sourceid=aso&subid=ww-en_US-et-ads-r3_b_top&medium=link&gsessionid=jjUuHkGH_dk)
15 [ads-r3_b_top&medium=link&gsessionid=jjUuHkGH_dk](https://www.google.com/adsense/login/en_US/?hl=en_US&sourceid=aso&subid=ww-en_US-et-ads-r3_b_top&medium=link&gsessionid=jjUuHkGH_dk)

16 16. Defendant Google explains on its website, the: "(g)lobal search network which
17 includes, but is not limited to, Google Product Search and Google Groups and the following
18 entities:



22

23 <http://adwords.google.com/support/bin/answer.py?answer=6119>

24 17. This is how Google defines a "search":

25 **The Essentials of Google Search**

26 Doing a search on Google [or a site in the Search Network] is easy. Simply
27 type one or more search terms (the words or phrase that best describe the
28

1 information you want to find) into the search box and hit the 'Enter' key or click
2 on the Google Search button.

3 Hawaii

Google Search

4
5 In response, Google produces a results page: a list of web pages related to your
6 search terms, with the most relevant page appearing first, then the next, and so
7 on. <http://www.google.com/support/bin/static.py?page=searchguides.html&ctx=basis>

8 18. **AdSense for Mobile:** AdSense Network partners that contract with Google to
9 allow AdWords Advertisements to be placed/displayed on mobile webpages under their
10 ownership, license, registration, and or other control.

11 19. **AdSense for Video:** AdSense Network partners that contract with Google to
12 allow AdWords Advertisements to be placed/displayed within video streams under their
13 ownership, license, registration, and or other control.

14 20. **AdSense for Domains:** AdSense Network partners that contract with Google to
15 allow AdWords Advertisements to be placed/displayed on parked domains entered into the
16 address bar under their ownership, license, registration, and or other control, based on the
17 meaning of the "domain names". Google explains on its website: AdSense for domains allows
18 domain name registrars and large domain name holders to unlock the value in their parked page
19 inventory. AdSense for domains delivers targeted, conceptually related advertisements to parked
20 domain pages by using Google's semantic technology to analyze and understand the meaning of
21 the domain names. Our program uses ads from the Google AdWords network, which is
22 comprised of thousands of advertisers worldwide and is growing larger everyday. Google
23 AdSense for domains targets web sites in over 25 languages, and has fully localized
24 segmentation technology in over 10 languages. <http://www.google.com/domainpark/index.html>

25 21. **AdSense for Errors:** AdSense for Errors program serves AdWords
26 Advertisements when an internet user enters an unregistered URL or search query in their
27 browser's address bar.

1 **C. Google AdWords Program**

2 22. The Google AdWords program, launched in 2000, is Google's primary
3 advertising program. It offers participants an opportunity to place advertisements through
4 Google's expansive network that reaches up to 86% of worldwide Internet users.

5 23. AdWords advertisements appear throughout the Google Network alongside or
6 above search results, on web pages, in e-mail, blogs, in video, and/or otherwise on Google or the
7 Google Network (collectively referred to herein as "Advertising Properties").

8 24. AdWords advertisements are offered in a variety of formats including, but not
9 limited to, text ads, image ads (banner ads), flash ads, and video ads.

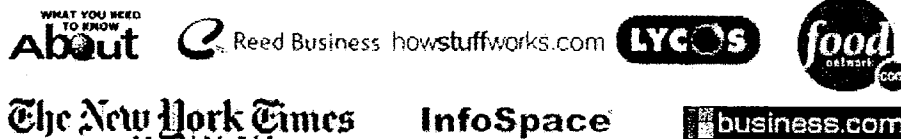
10 25. Google states that advertisements are displayed throughout the Google Network
11 based on factors such as: how much an advertiser bids, the quality of the advertiser's ad, and
12 how many other people want to bid on a particular keyword.

13 26. AdWords ads can be displayed on the: (1) Search Network and/or (2) Content
14 Network.

15 27. Search Network Ads are targeted and displayed based on a user's exact search
16 query terms and keywords. Content Network Ads are targeted and displayed based on content
17 themes.

18 28. Google defines its "Content Network" as follows:

19 The Google content network comprises hundreds of thousands of high-quality
20 websites, news pages, and blogs that partner with Google to display targeted
21 AdWords ads. When you choose to advertise on the content network, you can
22 expand your marketing reach to targeted audiences--and potential customers--
23 visiting these sites every day. There's no larger network for contextual
24 advertising in the world.



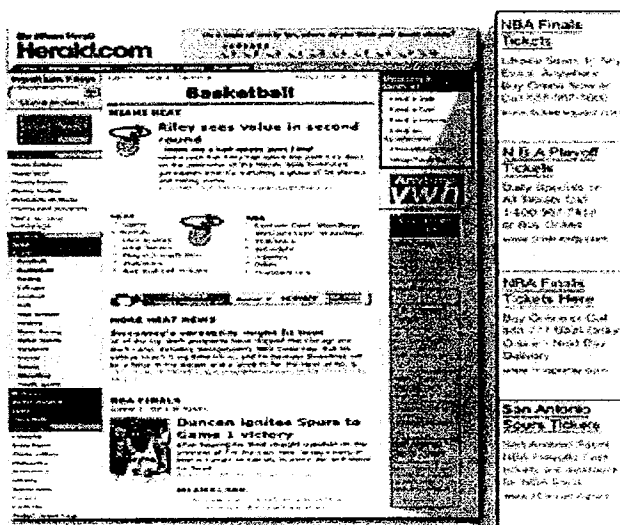
27 As an AdWords advertiser, you can hand-pick sites from the content network
28 or simply let Google's proven ad targeting display your ads on the website
pages most relevant to your products and services.

<https://adwords.google.com/select/afc.html>

1 29. Google, at
2 <https://adwords.google.com/support/bin/answer.py?answer=6119&topic=82>, provides the
3 following representations about, and example of, ad placement on the content network:

4 **Ads on the content network**

5 AdWords ads on content sites are targeted to the content and URL of each page.
6 In the screenshot below you can see how the ads are displayed on a content page
7 and that the ads are directly relevant to the content of the page.



19 30. Google partners participating in the AdSense program are required to adhere to
20 the following policies. "No Google ad may be placed on any non-content-based pages." In
21 addition, no Google ad is allowed to be placed on web pages generated "specifically for the
22 purpose of showing ads, whether or not the page content is relevant."

23 [https://www.google.com/adsense/support/bin/answer.py?answer=48182&sourceid=aso&subid=](https://www.google.com/adsense/support/bin/answer.py?answer=48182&sourceid=aso&subid=ww-ww-et-asui&medium=link)
24 [ww-ww-et-asui&medium=link](https://www.google.com/adsense/support/bin/answer.py?answer=48182&sourceid=aso&subid=ww-ww-et-asui&medium=link)

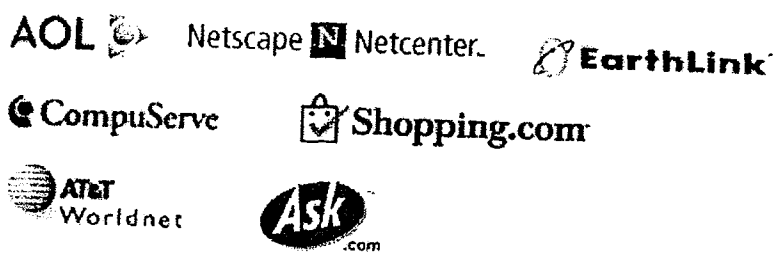
25 31. Google states the following about the "Search Network":

26 **The search network**

27 Your ads may appear alongside or above search results, as part of a results
28 page as a user navigates through a site's directory, or on other relevant search

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pages. Our global search network includes Google Product Search and Google Groups and the following entities:



<https://adwords.google.com/support/bin/answer.py?answer=6119>

32. Regarding the Search Network, Google tells advertisers: “Ads are targeted based on a user’s search terms. For example, if you search for ‘Italian coffee’ on Google, you’ll see related coffee ads next to the search results.”

<http://adwords.google.com/support/bin/answer.py?hl=en&answer=6104>

33. All new keyword campaigns are automatically included into both the Search and Content networks.

34. An AdWords advertiser can exclude an ad campaign from the Search and/or Content Networks, however until May 2008, there was no way to categorically exclude “parked sites” or AdSense for Errors pages from a campaign.

35. In fact, until May 2008, Google actively concealed the identity of parked pages and error pages that displayed AdWords advertisements.

D. Inclusion of Low –Quality Parked Domains and Error Pages in the Google Networks

36. Google includes millions of low-quality parked/undeveloped websites (“sham sites”) in the Google Search and Content Networks, despite the fact that said sites do not contain any content and are not search sites.

37. Until May 2008, Google actively concealed the monetization, with AdWords advertisements, of low-quality, parked and error pages.

38. Google includes web pages displayed through the AdWords for Errors program in the “Content Network,” despite the fact that the pages contain no content. Google displays

1 AdWords ads on its AdSense for Errors web pages when an Internet user enters an unregistered
2 URL in their browser's address bar.

3 39. AdWords advertisers in the Google "Content Network" may have their ads
4 displayed not only on "content sites," but also on parked/non-content sites, AdSense for
5 Domains, and AdSense for Error pages.

6 40. AdWords advertisers in the Google "Search Network" may have their ads
7 displayed not only on "search sites," but also on parked/non-content sites and AdSense for
8 Domains pages, where someone only typed in a domain name into the address bar and/or no
9 search query from a search box occurred.

10 41. Google intentionally includes the low-quality parked/undeveloped sites, Google
11 AdSense for domains and error pages in the Google Search and Content Networks in order to
12 inflate its reported search statistics, as well as to maximize revenue from internet traffic by
13 providing substantially more advertising venues (Internet locations) and more billed "clicks" or
14 "impressions" for AdWords advertisements.

15 42. Google actively misleads AdWords advertisers and otherwise conceals the fact
16 that many of its AdWords advertisements appear on low-quality parked/non-content sites and
17 Error pages, by among other things:

18 a. Repeatedly affirmatively representing on its website, and in other
19 communications, that AdWords advertisements appear on "High-quality" sites;

20 b. Failing to reference the AdSense for Domains and AdSense for Errors pages in its
21 definition of the Google Network or on the main AdSense Pages;

22 c. Until May 2008, failing to provide any specific identification of low-quality,
23 parked/non-content, AdSense for Domains and Error pages in its Content Network performance
24 reports;

25 d. Even through the present, failing to identify the specific parked/undeveloped and
26 other AdSense for Domains sites monetized through its "Search Network" on its AdWords
27 advertisers' performance reports;

1 e. After it commenced reporting in May 2008, Google recharacterized many of the
2 parked/undeveloped sites and AdSense for Domains pages as "Search Network" sites to avoid
3 specifically reporting monetization of those sites and further conceal their conduct from
4 AdWords advertisers;

5 f. Misrepresenting to AdWords advertisers the real reason that parked/undeveloped
6 sites and AdSense for Domains have equal or better click through rates than traditional content
7 and search sites. Google fails to disclose such pages and only shows ads on the
8 parked/undeveloped sites. In doing this, Google violates its own terms and conditions of how
9 ads can be displayed on the Search and Content Networks, further misleading advertisers;

10 g. Knowingly provided AdWords advertisers false definitions of the AdSense for
11 Domains Network, and misrepresented to advertisers what the AdSense for Domains Network
12 consists of and how an internet user gets to a parked page in the AdSense for Domains Network.

13 h. Otherwise making affirmative misrepresentations, fraudulent statements, and
14 omissions of material fact to AdWords advertisers and the general public regarding the AdWords
15 and AdSense programs.

16 43. Google induces advertiser participation in AdWords by emphasizing the "high-
17 quality" of sites on which AdWords ads will be placed, and intentionally concealed and omitted
18 Google's practice of placing ads on low-quality parked AdSense for Domains sites or on
19 AdSense for Errors sites, as well as on sites that it knows violates cybersquatting, trademark,
20 copyright, and other intellectual property laws.

21 44. Google's AdWords website, which potential customers view before clicking the
22 "Start Now" button to sign up for the program, includes the following statement:

23
24 Expand your reach through the content network with hundreds of thousands of
25 high-quality websites, news pages, and blogs that partner with Google to display
26 AdWords ads, the Google content network can reach users all over the web to
27 help you drive conversions. Choose from text, image, and video formats to
28 communicate your message.

1 45. Google intends to and has affirmatively mislead AdWords advertisers, and
2 otherwise omitted material facts, regarding the composition of the Content and Search networks.

3 46. Google makes numerous affirmative representations and promises, to AdWords
4 advertisers about participation in the AdWords program, including but not limited to the
5 following:

6 a. By advertising on sites in the Google "Content Network": "Your ads appear on
7 sites that are highly relevant to your products and services. As a result, you're already aligned
8 with the interests of people visiting those sites."

9 <https://adwords.google.com/select/afc/cycle.html>

10 b. All web sites and products are reviewed and monitored according to Google's
11 rigorous standards, so as the network grows, your AdWords ads will continue to appear only on
12 high quality sites and products.

13 <https://adwords.google.com/support/bin/answer.py?answer=6104&query=Google+Network&top>
14 [ic=&type=f&%20onclick=](https://adwords.google.com/support/bin/answer.py?answer=6104&query=Google+Network&top) Similarly, Google states: "To ensure overall quality, all sites are
15 carefully reviewed before being allowed in the Google Network."

16 <http://adwords.google.com/support/bin/answer.py?hl=en&answer=6104>

17 c. Google represents that a number of "tools" offer automated optimization of an
18 Adwords ad campaign and will save the AdWords advertiser money, including but not limited
19 to: AdWords Budget Optimizer, Site exclusion tool, performance reporting tools
20 contextual targeting tools, and AdWords Discounter.

21 47. Google, despite its representations to AdWords advertisers, uses its automated
22 tools to maximize its own revenue and for its own financial gain. Google misleads AdWords
23 advertisers to utilize the tools with false promises that the tools will benefit the Adwords
24 Advertiser.

25 48. For example, Google offers the "AdWords Budget Optimizer" tool that
26 promises to get AdWords advertisers the most clicks for their advertising dollars. In fact,
27 Google uses that tool to maximize its own revenue by displaying AdWords ads on many low-
28 quality sites that generate costly low-quality clicks, such as AdSense for Domains pages.

1 **E. Monetization of AdWords Advertisements**

2 49. Google generates money when it “monetizes” AdWords advertisements by
3 displaying them throughout the Google Network and then charging AdWords advertisers through
4 one of its two primary pricing regimes: Cost Per Click (“CPC”) and Cost per Thousand
5 Impressions (“CPM”).

6 50. Google generates revenue under the CPC regime when:

- 7 a. Google displays the AdWords advertisement on the Google Network;
- 8 b. An Internet user “clicks” on the advertisement; and
- 9 c. Google charges the corresponding AdWords advertiser a “click fee.”

10 51. Google generates revenue under the CPM regime by charging advertisers a flat
11 rate based on display of impressions, regardless of whether an Internet user “clicks” on any
12 impression.

13 52. Under the CPC pricing regime, Google places ads through the Google Network
14 and the AdWords advertiser is charged “per click,” each time an ad is clicked.

15 53. Under the CPM pricing regime, an Advertiser pays Google a set fee per 1000
16 impressions displayed.

17 54. CPC or CPM pricing is available on placement targeted ads. Only CPC pricing
18 is offered for contextually targeted ads.

19 55. CPC advertisements are displayed when an Internet user enters search terms
20 into the Google Search engine. The order in which the AdWords advertisements appear depends
21 on the amount of the bid and the “quality score” of all ads shown for a given search.

22 56. AdWords advertisers can choose to pay a different price when ads appears on
23 the content network versus when it appears on Google or a Google search network site (“content
24 bidding”).

25 57. Google represents to AdWords advertisers that the “AdWords smart pricing
26 feature” will optimize their advertising dollars, because it: “(w)ill adjust the cost of your content
27 network click based on the content network site's relevance to your own site. For example, if our
28 data shows that a particular click from a content network page is less likely to turn into a sale,

1 registration, or other desired behavior, we'll automatically reduce the price you pay for that
2 click." <https://adwords.google.com/select/afc/pricing.html>

3 58. AdWords advertisers can set a maximum price that they are willing to pay per
4 click, a maximum daily budget, and/or use the "AdWords Budget Optimizer" that Google
5 promises will "(t)ry and find you the most clicks possible within your budget."

6 59. Google represents that it is always actively working for AdWords advertisers to
7 get them the lowest advertising rates, with tools such as the "AdWords Discounter" which
8 Google affirmatively represents "(a)utomatically reduces the actual cost-per-click (or CPC) you
9 pay to the lowest cost needed to maintain your ad's position. The AdWords Discounter keeps
10 working no matter which method of display or bidding you choose."

11 <https://adwords.google.com/support/bin/answer.py?answer=6084&topic=115>

12 60. Aggregate paid clicks on Google Network sites increased by 65% from year-
13 end 2005 through year end 2006 (*See* 2006 Google 10K at 43).

14 **F. AdWords Contracts, Guidelines, and Policies**

15 61. In order to participate in AdWords, advertisers must electronically accept the
16 following contracts: <https://adwords.google.com/select/tsandcsfinder>. ("AdWords Contract")
17 and <http://www.google.com/accounts/TOS> ("Google Universal Contract"), as well as all
18 general and Google policies, procedures and regulations such as: Editorial Guidelines
19 (<adwords.google.com/select/guidelines.html>), Google Privacy Policy
20 (<www.google.com/privacy.html>) and Trademark Guidelines
21 (<www.google.com/permissions/guidelines.html>), and Google and Partner ad specification
22 requirements (collectively, "**Policies**"). Pulaski and each member of the Class has entered into
23 said contracts with Google. *See AdWords Contracts, attached hereto as Exhibit "A."*

24 62. Google is contractually obligated to act in good faith and deal fairly with
25 AdWords advertisers.

26 63. Google is further obligated to act in good faith and deal fairly with AdWords
27 advertisers in implementing and enforcing its self proscribed policies and guidelines.

1 64. Google is obligated to discharge its contractual obligations without violating
2 California, United States, and International cybersquatting, typosquatting, cyberpiracy,
3 trademark, copyright, and other intellectual property laws.

4 65. Google controls the Internet advertising market through restrictive agreements
5 with many of its Google Network participants that forbid those participants from displaying any
6 advertisements on their sites other than Google advertisements. Therefore, in order to gain
7 access to millions of Internet advertising properties, Pulaski and the Class were left with no
8 choice but to contract with Google for participation in the Google AdWords advertising program.

9 66. Google requires, as a condition for participation in the AdWords advertising
10 program, and to gain access to the Google Network properties that purportedly reaches 86% + of
11 world-wide internet users, that AdWords advertisers consent to and enter into electronic
12 contracts with Google that are displayed on Google's website.

13 67. AdWords advertisers are required to agree to comply with Google's rules,
14 regulations, guidelines, and other policies. In fact, several of the policies are explicitly
15 incorporated into the contracts.

16 68. Pulaski and the Class have all entered into the same standard contracts with
17 Defendant Google, as a condition of participation in Google's AdWords advertising program.
18 Pulaski and the Class are subject to the same, standard written policies, procedures, and
19 guidelines published by Google on its website.

20 69. Google unilaterally drafts all contracts, policies, procedures, and guidelines
21 governing the relationship between Google and AdWords advertisers, as well as any and all
22 amendments and modifications.

23 70. Google places all AdWords advertisements on the Google Network.

24 71. Pursuant to ¶2 of the Google Inc. Advertising Program Terms:

25 "Google Customer understands and agrees that ads may be placed on (y) any
26 content or property provided by Google ("**Google Property**"), and, unless
27 Customer opts out of such placement in the manner specified by Google, (z) any
28 other content or property provided by a third party ("**Partner**") upon which
Google places ads ("**Partner Property**"). Customer authorizes and consents to
all such placements."

1 72. Google is obligated pursuant to the terms of ¶2, to act in good faith and deal
2 fairly with Google AdWords advertisers in discharging the placement of AdWords
3 Advertisements.

4 73. Specifically, Google has an obligation to display advertisements on legitimate
5 sites that Google and/or its “partners” are legally entitled to utilize and monetize.

6 74. Google breaches its contractual obligations to Pulaski and the Class when it
7 displays and/or charges them for their AdWords advertisements displayed on sites that Google is
8 not legally entitled to use, sites that violate trademark law, sites that violate cybersquatting law,
9 sites that violate cyberpiracy laws, sites that violate copyright laws, and sites that violate other
10 California, United States and/or International laws.

11 75. Google breaches its contractual obligations to Pulaski and the Class when it
12 displays and/or charges them for their AdWords advertisements displayed on sites that violate
13 Google’s own written and published guidelines, policies, and rules.

14 76. Google breaches its contractual obligations to Pulaski and the Class when it
15 overcharges them for AdWords advertisements.

16 77. Google breaches its contractual obligations to Pulaski and the Class when it
17 includes millions of low-quality sites and Error pages in its “Content” and “Search” Networks.

18 78. Google breaches its contractual obligations to Pulaski and the Class when it
19 utilizes its tools and technologies for their own pecuniary gain and to the detriment of Pulaski
20 and the Class, while inducing Pulaski and the Class to utilize those tools with false
21 representations that the tools will optimize/maximize the value of their participation in
22 AdWords.

23 79. Google knowingly and intentionally displays, and charges Pulaski and the
24 Class, for AdWords advertisements on:

- 25 a. Low-quality parked/non-content sites and Error pages;
- 26 b. Sites that it “knows” violates cybersquatting, typosquatting, cyberpiracy,
27 trademark, copyright and other intellectual property laws;
- 28

1 c. Sites that it knows violates Google's own written and published policies,
2 guidelines, and rules, such as gambling sites and pornography related sites;

3 d. Sites that it knows it is not legally entitled to use; and

4 e. Sites that neither itself nor its partners are legally entitled to use or
5 monetize, and in fact whose use is in violation of United States and International
6 cybersquatting, trademark, copyright and other laws ("illegal sites").

7 **G. Google Representations, Promises, and Communications**

8 80. Google makes specific affirmative written representations and promises to
9 Plaintiff, the putative Class, and the general public which are located on its website,
10 www.google.com, as well as, specifically contained in the following documents:

11	Google's Universal	http://www.google.com/accounts/TOS
12	Terms of Service	
13	Google's	http://www.google.com/tm_complaint.html .
14	Copyright and	http://www.google.com/dmca.html .
15	Trademark policies	
16	Google	https://www.google.com/adsense/localized-terms
17	AdSense™ Online	
18	Standard Terms	
19	and Conditions	
20	Google AdSense	https://www.google.com/adsense/support/bin/answer.py?answer=4818
21	Program Policies	2
22	Google Webmaster	http://www.google.com/webmasters/guidelines.html .
23	Guidelines	
24	Google Landing	https://adwords.google.com/support/bin/answer.py?answer=46675&hl
25	Page and Site	=en
26	Quality Guidelines	
27	AdSense For Video	https://www.google.com/AdSense/support/bin/answer.py?answer=739
28	Program Policies	87
	AdSense for	https://www.google.com/AdSense/support/bin/answer.py?answer=716
	Mobile Content	00
	Program Policies	

25 81. Google knowingly and intentionally uses the written representations to induce
26 AdWords advertisers to contract with Google for participation in the AdWords advertising
27 program. Google intends Plaintiff, the Class, and the public to rely upon and act in reliance upon
28 its representations on www.google.com and other publicly available documents and

1 communications. Plaintiff and the Class reasonably expect Google to act in accordance with
2 these representations.

3 82. Google knows that its website, and other public communications are false,
4 misleading, and/or omit material facts and information.

5 83. Google intentionally and knowingly continuously violates its written policies,
6 guidelines, policies and rules in operating the AdWords and AdSense programs. It does so for its
7 own ill-gotten commercial gain, in ways such as but not limited to:

8 a. Intentionally displays and charges Plaintiff and the Class for “clicks” on
9 advertisements placed on websites that violate Google’s written contracts, guidelines, policies,
10 and public representations, such as sites generated solely for the purpose of displaying AdWords
11 Advertisements and sites violating trademark and copyright law.

12 b. Intentionally displaying and charging Plaintiff and the Class for “clicks” on
13 advertisements placed on low-quality and undisclosed websites participating in the AdSense for
14 Domains and AdSense for Errors programs;

15 c. Overcharging Plaintiff and the Class for advertising through the AdWords
16 program;

17 d. Intentionally hijacking and diverting Plaintiff and the Class Member’s legitimate
18 internet traffic to sham infringement websites, and then requiring Plaintiff and the Class to pay
19 “click” ransoms to get their own internet traffic back. For example, a user intending to visit the
20 retailer Target’s legitimate website might mistype it as “www.wwwtarget.com.” At the “www”
21 infringing site, the internet user sees a list of ads provided by Google, including an ad for the
22 legitimate Target site. If the user clicks the legitimate Target ad, the user is taken to the true
23 Target website, but Target has to pay a “ransom”, in the form of a “PPC” click fee in order to get
24 their intended internet traffic back from Google;

25 e. Displaying, and charging for, AdWords advertisements in spyware programs; and

26 f. Failing to utilize targeting technology to ensure that AdWords ads are “highly
27 targeted,” but rather placing and displaying AdWords ads in a random fashion.

1 84. Without their knowledge or consent, advertisers who joined Google's AdWords
2 program have had their ads placed on pages contained in AdSense for Domains, or parked sites,
3 and AdSense for Errors, or error pages. The quality of these sites as an advertising medium is
4 substantially lower than sites on the rest of Google's network, and many of the sites directly
5 violate United States and International trademark, copyright, and other intellectual property laws.

6 85. For example, Google routinely and intentionally charges Plaintiff and Class
7 members for clicks on advertisements improperly displayed on parked domains that infringe
8 distinctive and valuable marks, for example "www", "http" and "com.com" domains, such as:
9 bedbathandbeyondcom.com; chevycom.com; chryslercom.com; cocacolacom.com;
10 discovercreditcardcom.com; disneylandcom.com; disneyworldcom.com;
11 ebaumsworldcom.com; espncom.com; fordmotorscom.com; geicocom.com;
12 homedepotcom.com; ibmcom.com; ikea.com; jetbluecom.com; jcpennycom.com;
13 kohlscom.com; kmartcom.com; mcdonaldscom.com; musiciansfriendcom.com;
14 nascarcom.com; oldnavycom.com; pizzahutcom.com; randcom.com; saabcom.com;
15 scottrade.com; travelocitycom.com; usairwayscom.com; volkswagencom.com;
16 xangacom.com. httpaarp.com, httpabc.com; httpabcgames.com; httpabckids.com;
17 httpabcnews.com; httpamericanexpress.com; httpamsouthbank.com; httpautotrader.com;
18 httpbankofamerica.com; httpbellsouth.com; httpbestbuy.com; httpblackplanet.com;
19 httpbordersbooks.com; httpbratz.com; httpcareerbuilder.com; httpcapitalone.com;
20 httpcapitolone.com; httpcarmax.com; httpcartonnetwork.com; httpcartoonnetwork.com;
21 httpcartoonnetwork.com; httpchevrolet.com; httpchevy.com; httpcircuitcity.com;
22 httpcisco.com; httpciti.com; httpcitibank.com; httpciticard.com and httpciticards.com.
23 "WWWAMERICANAERLINES.COM";
24 "WWWAMERICANAIRLINESARENA.COM";
25 "WWWAMERICANANIAGARA.COM"; "WWWAMERICANARLINES.COM";
26 WWWAMERICANCRAFTSMANWIN.COM"; "WWWAMERICANCURVES.COM";
27 "WWWAMERICANFUND.COM"; "WWWAMERICANFUNDS.COM";
28 "WWWAMERICANGREETING.COM"; "WWWAMERICANHEARTASSO

1 CIATION.COM"; "WWWAMERICANHOMEPARTNERS.COM";
2 "WWWAMERICANMEADOWS.COM"; "WWWAMERICANTRANSAIR.COM";
3 "WWWAMERICASFIRSTHOME.NET"; "WWWAMERIJET.COM";
4 "WWWAMIGOSADVENTISTAS.ORG"; "WWWAMIN.ORG"; "WWWAMITI.COM";
5 "WWWAMORPOSTALES.COM"; "WWWAMOUR.COM";
6 "WWWAMROKHALED.COM"; "WWWAMTRACT.COM";
7 "WWWAMWAYINDIA.COM", "WWWANALOG.COM"; "WWWAND.COM";
8 "WWWANGELPIN.NET"; "WWWANGONOTICIAS.COM".

9 86. Google includes millions of parked domains and error pages that have little to
10 no content, and that result in practically zero conversions, in both its Content Network and its
11 Search Network.

12 87. Given the illegality and/or low quality of these parked domain and error page
13 sites, Plaintiff and the Class would not agree to spend their advertising budgets on these
14 distribution networks. However, Google designed its network in such a way that it was
15 impossible to opt out of the AdSense for Domains and/or AdSense for Errors programs.

16 88. Even after providing limited ability to opt-out of the AdSense for Domains and
17 AdSense for Errors programs, Google still continues to conceal from the Plaintiff and the Class
18 that those networks contain millions of illegal sites that *infringe* trademark, copyrights and
19 intellectual property laws.

20 89. Google's practice of including parked domains within the Search Network is
21 misleading, since no actual searches are performed on these pages. Likewise, Google's practice
22 of including parked domains and error pages within the Content Network is also misleading,
23 since most of these sites include little or no content.

24 90. Google violates its promise and duty to not place ads in pernicious spyware
25 programs. Google has done just that, and has charged AdWords advertisers for every click made
26 on spyware pop-up ads.

1 91. Google also represented that its advertisement would be "highly targeted."
2 When, in fact, Google enters into syndication agreements with companies that show random ads
3 that are the opposite of "highly targeted."

4 92. Google has otherwise acted unfairly, in bad faith, and in a manner that is
5 directly contrary to the interests of AdWords advertisers, and in its own pecuniary interest, in
6 discharging its duties and obligations to AdWords advertisers.

7 **H. Contextual Targeting Technology**

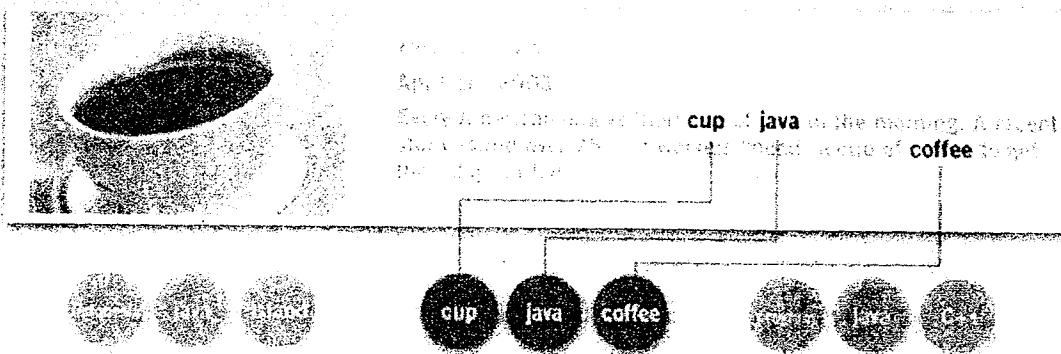
8 93. Google promises AdWords advertisers that it has sophisticated "Contextual
9 Targeting Tehchnology" that: "(c)an automatically match your ads to webpages in our content
10 network that are most relevant to your business. For example, an ad for a digital camera may
11 show up next to an article reviewing the latest digital cameras."

12 <https://adwords.google.com/select/Login>.

13 94. Google provides the following explanation and example of how "contextual
14 targeting" technology is used to maximize an AdWords ad placement:

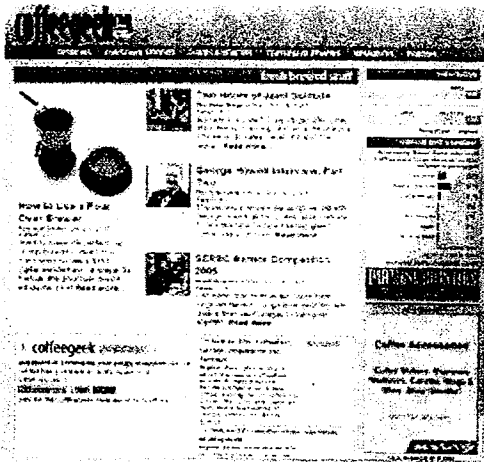
15 Google continually scans the millions of pages from the content network to look for relevant
16 matches with your keywords and other campaign data. When we find a match, your ad becomes
17 eligible to run on that page. Google's extensive web search and linguistic processing technology
18 can decipher the meaning of virtually any content network page to ensure we're showing the
19 most relevant ads.

20 Consider the following example:



28 If you have a page about Java the coffee, our technology knows that it's not about Java the programming language. And you get ads about coffee.

1 Here's another example of an AdWords ad on a content network page:



You get relevant text and image ads that are precisely targeted to your site and your site content.

12 I. Google Site Exclusion Tool

13
14 95. Until March 2008, Google's "Site Exclusion Tool" only allowed an advertiser
15 to exclude an advertising campaign from: (1) specific websites, (2) the entire "Search Network,"
16 and/or (3) the entire "Content Network." It could not categorically exclude "parked" AdSense
17 for Domains and/or AdSense for Errors pages. Rather, in order to avoid placement on illegal
18 and/or low quality sites, an advertiser would have to entirely opt-out of both the Search Network
19 and the Content Network. But, doing so would also prevent its ads from being displayed on the
20 websites of any of Google's high-quality partners, such as AOL and The New York Times.

21 96. On March 6, 2008, Google posted a message on its AdWords blog announcing
22 a change to its exclusion policy.

23 97. After this change in Google's policy, by clicking on a well-hidden "page types"
24 tab within the tool, AdWords advertisers can now see summarized click data for "Error Pages"
25 and "Parked Domains," and for the first time, exclude their ads from appearing on these sites.
26 However, instead of including this option on the main settings page for each campaign, Google
27 placed this opt-out button four (4) clicks deep within its interface, where many advertisers would
28 not notice it.

1 98. The site exclusion tool still does not provide a mechanism by which AdWords
2 advertisers can “exclude” illegal sites from a campaign, such as those that infringe trademarks,
3 copyrights, and other intellectual property laws.

4 99. The site exclusion tool still does not provide a mechanism by which AdWords
5 advertisers can “exclude” sites and pages that fail to meet Google’s published guidelines,
6 policies, and procedures (i.e., gambling sites, pornography sites, etc.).

7 **J. Performance Reporting**

8 100. On Google’s AdWords promotional/marketing pages, which are shown to
9 prospective customers prior to signing up for AdWords, Google states the following under
10 "Reach More Customers":

11 Measure and optimize your results With the Placement Performance Report, you have
12 visibility into where all your ads appear. Review your ad's performance on a site-by-site
13 basis to see impression, click, cost, and conversion data, and use this data to identify
14 well-performing sites to target more aggressively and low-value placements that require
15 content optimization or exclusion.

16 <https://adwords.google.com/select/Login>

17 101. Google's Placement Performance Reports provide limited information only on
18 sites included in Google's Content Network. No such reports have ever been available for
19 Google's Search Network.

20 102. Google does not automatically provide these reports to its AdWords customers.
21 Rather, the reports are generated only for AdWords advertisers that locate the appropriate page
22 on Google's website and have the report generated.

23 103. In June 2007, Google first began offering limited data on the placement of
24 AdWords ads on parked and error pages. However, until May 2008, the reports did not provide a
25 specific (site-by-site) list of the parked and error pages where an ad appeared, rather the report
26 simply aggregated the data into two lump-sum line items, called "Domain ads" and "Error page
27 ads."
28

1 104. At no time prior to June 12, 2007, did Google ever disclose to AdWords
2 advertisers that low-quality parked domain and error pages were included in both its Content and
3 Search Networks.

4 105. Without a site-by-site listing of which parked domains and error pages their ad
5 was placed on, advertisers could not adjust their advertising budgets on these sites. Nor could
6 they exclude some or all parked domains and error pages from receiving ad placement. By
7 aggregating this information, Google effectively prohibited advertisers from utilizing means of
8 opting out of domain or error page ads using the AdWords interface.

9 106. In response to complaints by advertisers, on May 2, 2008, Google posted a
10 message titled "Where did I park?" on its AdWords Agency Blog announcing that it had finally
11 changed the policy and was providing site-by site data for parked domains.

12 107. Katharine Allan of Google's Agency Team wrote: "We recently added a new
13 level of detail to Placement Performance reports to answer this question. Placement Performance
14 reports give site-by-site performance metrics for the sites where your ads appeared within
15 Google's content network. Now, rather than seeing one consolidated entry for all parked domains
16 in your reports, you'll see separate rows displaying performance statistics for individual parked
17 domains."

18 108. Prior to May 2, 2008, Google completely failed to disclose domain names, IP
19 addresses, and associated performance data of parked domain and error pages included in its
20 Content Network. Google has never, and still does not disclose this data for parked domain and
21 error pages included in its Search Network.

22 109. Google's conduct, as alleged herein, has injured the general public and
23 contravene well-established public policy.

24 110. Google's conduct, as alleged herein, has distorted the Internet search system for
25 public Internet users and has made it more difficult and time-consuming for Internet users to
26 locate legitimate websites on the Internet, as they are repeatedly diverted through parked
27 advertising pages that simply provide Google with "click" revenue.
28

1 individualized questions that may affect individual Class members. Common questions of fact
2 and law include, but are not limited to, the following:

- 3 • Whether Google's representations regarding AdWords were false or misleading;
- 4 • Whether Google's breached its Contracts with Plaintiff and the Class;
- 5 • Whether Google, in violation of applicable law and its own stated policy, charged
6 Plaintiff and the members of the Class for ads that were placed on parked domain and
7 error page websites;
- 8 • Whether Google engaged in unfair, unlawful and/or deceptive business practices;
- 9 • Whether Google failed to disclose material facts about its AdWords program; and
- 10 • Whether or not Plaintiff and the members of the Class have been damaged by the
11 wrongs complained of herein, and if so, the measure of those damages and the nature
12 and extent of other relief that should be provided.

13
14 120. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff
15 and all Class members have been similarly affected by Defendant's common course of conduct.

16 121. Plaintiff will fairly and adequately represent and protect the interests of the
17 Class. Plaintiff has retained counsel with substantial experience in prosecuting complex and
18 Class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this
19 action on behalf of the Class. Neither Plaintiff nor his counsel has any interests adverse to those
20 of the proposed Class.

21 122. Plaintiff and the members of the Class have suffered, and will continue to
22 suffer, as a result of Defendant's unlawful and wrongful conduct. A Class action is superior to
23 other available methods for the fair and efficient adjudication of the present controversy, because
24 joinder of all members of the Class would be impractical.

25 123. Even if individual Class members had the resources to pursue individual
26 litigation, it would be unduly burdensome to the courts in which the individual litigation would
27 proceed. Individual litigation would cause delay and undue expense to all parties affected by
28 Defendant's common course of conduct.

1 Google's publicly disseminated written policies, procedures and guidelines (i.e, gambling sites,
2 pornography sites, etc.)

3 131. Google knowingly and intentionally violates United States and international
4 trademark, copyright, and intellectual property laws, for its own commercial gain, in the course
5 of administering its AdWords program.

6 132. Google actively conceals its illegal conduct from Plaintiff and the putative
7 Class.

8 133. As a direct and proximate result of Google's breach of contract as set forth
9 above Plaintiff and Class members have been damaged.

10 **SECOND CLAIM FOR RELIEF**

11 **(Breach of Covenant of Good Faith and Fair Dealing)**

12 134. Plaintiff realleges the preceding paragraphs as if fully set forth herein, and to
13 the extent necessary is plead in the alternative.

14 135. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact
15 and has lost money or property as a result of Google's actions as set forth above.

16 136. Class members have suffered injury in fact and have lost money or property as
17 a result of Google's actions as set forth above.

18 137. Google had a duty to act in good faith and deal fairly with Plaintiff and the
19 Class in connection with said contracts and its obligations in administering the AdWords
20 program.

21 138. Google breached its duty of good faith and fair dealing to Plaintiff and the Class
22 through its actions as alleged herein.

23 139. As a direct and proximate result of Googles' breach of the covenant of good
24 faith and fair dealing as set forth above Plaintiff and Class members have been damaged.
25
26
27
28

1 **THIRD CLAIM FOR RELIEF**

2 **(Violation of California Business & Professions Code**
3 **Section 17200 Et Seq. -Unfair Conduct)**

4 140. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to
5 the extent necessary, pleads this cause of action in the alternative.

6 141. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact
7 and has lost money or property as a result of Google's actions as set forth above.

8 142. Class members have suffered injury in fact and have lost money or property as
9 a result of Google's actions as set forth above

10 143. Google's actions as alleged in this complaint constitute "unfair" conduct within
11 the meaning of California Business and Professions Code sections 17200 *et seq.*

12 144. Google's business practices, as alleged herein, are "unfair" because they offend
13 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or
14 substantially injurious to its customers. Google's conduct is "unfair" because Google fails to
15 disclose that customers' ads are placed on parked domain and error page sites, and Google does
16 not provide an effective means for customers to exclude their ads from appearing on these sites.
17 In fact, until March 2008, Google provided no means at all for customers to exclude their ads
18 from appearing on these sites.

19 145. As a result of Google's "unfair" conduct, Plaintiff and members of the Class
20 expended money on advertising that they would not otherwise have spent, and received less
21 value for their advertising dollars than they should have received.

22 146. As a result of Google's "unfair" conduct, Plaintiff and members of the Class
23 have unknowingly been charged and paid for advertising on sites that actually infringe upon the
24 Class members' own trademarks.

25 147. Google's wrongful business practices alleged herein constituted, and continue to
26 constitute, a continuing course of unfair competition since Google continues to market and sell
27 its products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
28 oppressive, unscrupulous and/or substantially injurious to its customers.

1 and adequate method of excluding ads from these sites, or to adequately disclose that any method
2 of excluding ads from these sites exists at all.

3 155. As a result of Google's "fraudulent" conduct, Plaintiff and members of the Class
4 expended money on advertising that they would not otherwise have spent, and received less
5 value for their advertising dollars than they should have received.

6 156. Google's wrongful business practices alleged herein constituted, and continue to
7 constitute, a continuing course of unfair competition since Google continues to market and sell
8 its products in a manner that is likely to deceive customers.

9 157. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and the Class seek an
10 order of this court enjoining Google from continuing to engage in "fraudulent" business practices
11 and any other act prohibited by law, including those acts set forth in this complaint.

12 158. Plaintiff and the Class also seek an order requiring Google to make full
13 restitution of all moneys it has wrongfully obtained from Plaintiff and the Class, along with all
14 other relief allowable under Cal. Bus. & Prof. Code §17200 *et seq.*

15 **FIFTH CLAIM FOR RELIEF**

16 **(Violation of California Business & Professions**
17 **Code § 17200 Et Seq.-Unlawful Conduct)**

18 159. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to
19 the extent necessary, pleads this cause of action in the alternative.

20 160. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact
21 and has lost money or property as a result of Google's actions as set forth above.

22 161. Class members have suffered injury in fact and have lost money or property as
23 a result of Google's actions as set forth above.

24 162. Google's actions as alleged in this complaint constitute an "unlawful" practice
25 within the meaning of California Business and Professions Code §17200 *et seq.* because
26 Google's actions are "unfair" and "fraudulent," as alleged above, and because they violate
27 California Business and Professions Code §17500 *et seq.*, which proscribe false advertising, as
28 alleged below.

1 **SEVENTH CLAIM FOR RELIEF**

2 **(Unjust Enrichment)**

3 172. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to
4 the extent necessary, pleads this cause of action in the alternative.

5 173. Through the actions described above, Google has received money belonging to
6 Plaintiff and the Class through fees collected from ads placed on parked domains and error
7 websites, even though reasonable customers would have believed that they were not paying for
8 and would not be charged for ads placed on such websites.

9 174. Google has also reaped substantial profit by collecting and retaining revenue
10 from Plaintiff and the Class generated through clicks generated through ads that were displayed
11 on such websites.

12 175. Google has received money belonging to Plaintiff and the Class resulting from
13 clicks on these ads.

14 176. As a direct and proximate result of Google's misconduct as set forth above,
15 Google has been unjustly enriched.

16 177. Google should not be permitted to keep sums that Google has unjustly received
17 as a result of its actions.

18 **PRAAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, Adam Pulaski and the Class pray for relief as follows:

20 a. That the Court determine that the claims alleged herein may be maintained as a
21 class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure;

22 b. That the Court adjudge and decree that the Defendant has engaged in the conduct
23 alleged herein;

24 c. That the defendant be permanently enjoined and restrained from, in any manner,
25 directly or indirectly, continuing, maintaining, or engaging in the unfair, unlawful, and/or
26 deceptive practices alleged herein;

27 d. That plaintiff and the class members be awarded restitution, including
28 disgorgement of profits obtained by defendant as a result of their acts of unfair, unlawful or

1 deceptive practices and acts of unjust enrichment and breach of the covenant of good faith and
2 fair dealing;

3 e. That the plaintiff and class members be awarded compensatory damages and/or
4 all other available monetary and equitable remedies for the breach of contract claims identified
5 above;

6 f. That plaintiff and the class members be awarded both pre-and post-judgment
7 interest at the maximum allowable rate on any amounts awarded;

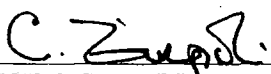
8 g. That plaintiff and the class members recover their costs of suit, including
9 reasonable attorneys' fees as provided by law;

10 h. That plaintiff and the class members be awarded such other and further relief as
11 may be necessary and appropriate.

12 **JURY DEMAND**

13 Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Constitution of the
14 United States, Plaintiff and the Class members demand a trial by jury for all issues so triable.

15
16
17 Dated: August 14, 2008


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