

EXHIBIT A

1 BRIAN S. KABATECK, SBN 152054
(bsk@kbklawyers.com)
2 RICHARD L. KELLNER, SBN 171416
(rlk@kbklawyers.com)
3 ALFREDO TORRIJOS, SBN 222458
(at@kbklawyers.com)
4 KABATECK BROWN KELLNER LLP
644 South Figueroa Street
5 Los Angeles, California 90017
Telephone: (213) 217-5000
6 Facsimile: (213) 217-5010

7 Attorneys for Plaintiff
Largo Cargo Co.

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2010 JAN 19 P 3:11

RICHARD W. WEEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. LOS ANGELES

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File by Fax

10 *AKR* UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 LARGO CARGO CO., a Florida
13 corporation, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17
18 GOOGLE, INC., a Delaware
19 Corporation; and DOES 1 through 10,
20 inclusive,

21 Defendants.

~~CASE NO. CV 08-02088-DMW~~

~~HON. RONALD M. WILKINSON~~

C10-00241
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

HRL

22
23
24 Plaintiff Largo Cargo Co. ("Plaintiff"), individually and on behalf of the
25 class described below, by its attorneys, make the following allegations pursuant to
26 the investigation of its counsel and based upon information and belief except as to
27 allegations specifically pertaining to Plaintiff and its counsel, which are based on
28 personal knowledge. Plaintiff brings this action for damages and injunctive relief

1 against Defendant, demanding a trial by jury.

2 **NATURE OF THE ACTION**

3 1. Plaintiff brings this class action against defendant Google, Inc.
4 (“Google”) to recover damages and other relief available at law and in equity on
5 behalf of itself as well as on behalf of the members of the following class:

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

10 2. This action arises from Google’s deceptive, fraudulent, and unfair
11 practice of tricking advertisers who seek online advertising through Google’s
12 AdWords program into bidding for a service that they do not want.

13 3. Google is commonly thought simply as an Internet search engine; in
14 fact, Google’s business is online advertising. Google’s business model is primarily
15 dependent on linking individuals who are searching the internet with advertisers
16 who pay Google (and others) for each time the linkage occurs. The Google
17 Network is the largest online advertising network in the United States.

18 4. AdWords is Google’s primary advertising program and is the main
19 source of its revenue. Through AdWords, Google permits would-be advertisers to
20 bid on words or phrases that will trigger the advertisers’ ads. AdWords is
21 premised on a pay-per-click (“PPC”) model, meaning that the advertisers pay only
22 when their ads are clicked. As part of the AdWords bidding process, therefore,
23 advertisers must set a maximum cost per click (“CPC”) bid that the advertiser is
24 willing to pay each time someone clicks on its ad. When an advertiser is choosing
25 its CPC bid, it is also given the “option” of entering a separate bid for clicks
26 originating from Google’s “content network” which consists of sites that are not
27 search engines. These content network sites are those that use AdSense, the other
28 side of the Google advertising model.

1 allegations, as may be necessary.

2 **JURISDICTION AND VENUE**

3 9. This Court has original jurisdiction over this action pursuant to 28
4 U.S.C. § 1332(d)(2) in that it is a class action filed under rule 23 of the Federal
5 Rules of Civil Procedure, the matter in controversy, as aggregated pursuant to 28
6 U.S.C. § 1332(d)(6) exceeds the sum of \$5,000,000 exclusive of interest and costs,
7 and a substantial number of members of the class of plaintiffs are citizens of a state
8 different from that of defendant Google.

9 10. Venue is proper in the Northern District of California pursuant to 28
10 U.S.C. § 1391(a) in that: (1) Google resides in this judicial district; (2) a substantial
11 part of the events or omissions giving rise to the claims asserted herein occurred in
12 this judicial district; and (3) Google is subject to personal jurisdiction in the
13 Northern District of California.

14 **FACTUAL BACKGROUND**

15 11. Google offers advertisers two types of ads. The first is the search ad.
16 When an Internet user uses Google to search for a specific term or term, Google
17 will display the ads of advertisers who have bid for those particular keywords. The
18 second type of ad is the contextual based ad, or content ad. These ads are shown
19 on third party websites that have content that matches the keywords bid on by the
20 advertiser. For example, an ad for a hardware store may be shown on a website
21 that has content about home improvement projects.

22 12. In order to advertise with Google, advertisers must register with
23 AdWords, Google's advertising program. The process of registering with
24 AdWords involves an online process that begins by clicking on the "Advertising
25 Programs" link on Google's homepage. After selecting to register with AdWords
26 and the desired version, the advertiser moves to the initial step of the sign-up
27 process. First, the advertiser selects the target language and geographic location.
28 Then, the advertiser creates the ad that will be placed on Google's website or on

1 third party websites and selects the desired keywords. The advertiser then selects
2 the maximum daily budget and the maximum CPC bid. Here, the advertiser has
3 two choices, the "Default CPC bid" and the "CPC content bid". Next to the "CPC
4 content bid" input is the word "optional".

5 13. Nowhere on this page, or anywhere in the registration process is there
6 the option to opt-out of content ads.

7 14. Advertisers who do not want to pay for ads placed on third party
8 websites therefore leave the "CPC content bid" input blank, believing that the word
9 "optional" means that having content ads placed on third party websites is optional.

10 15. Google, however, fails to inform that an advertiser who leaves this
11 "optional" input blank will nonetheless be charged for third party content ads. By
12 redefining the universally understood meaning of an input form left blank, and then
13 intentionally concealing this redefinition, Google has fraudulently taken millions
14 of dollars from Plaintiff and the members of the class.

15 16. Plaintiff enrolled in AdWords in January of 2008. Plaintiff set the
16 desired bids for its ads, and, not wanting to pay for ads placed on third party
17 content sites, left the CPC content bid input blank. Plaintiff, like any reasonable
18 consumer, expected that leaving an input blank would indicate that it did not want
19 to bid on content ads. This expectation was supported by the fact that Plaintiff was
20 not given the option of opting out of content bids during the advertising campaign
21 creation process.

22 17. Despite leaving the CPC content bid input blank, Google charged
23 Plaintiff over \$10,000 for unwanted third party content ads.

24 **CLASS ALLEGATIONS**

25 18. Description of the Class: Plaintiff brings this nationwide class action
26 on behalf of himself and the Class defined as follows:

27 *All persons or entities located within the United States*
28 *who bid on a keyword through AdWords, left the "CPC*

1 *content bid” input blank, and were charged for content*
2 *ads.*

3 19. Excluded from the Class are governmental entities, Defendant, any
4 entity in which Defendant has a controlling interest, and Defendant’s officers,
5 directors, affiliates, legal representatives, employees, co-conspirators, successors,
6 subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or
7 judicial officer presiding over this matter and the members of their immediate
8 families and judicial staff.

9 20. Plaintiff reserves the right to modify the class description and the
10 class period based on the results of discovery.

11 21. Numerosity: The proposed Class is so numerous that individual
12 joinder of all its members is impracticable. Due to the nature of the trade and
13 commerce involved, however, Plaintiff believes that the total number of class
14 members is at least in the hundreds of thousands and that the members of the Class
15 are numerous and geographically dispersed across the United States. While the
16 exact number and identities of class members are unknown at this time, such
17 information can be ascertained through appropriate investigation and discovery.
18 The disposition of the claims of the class members in a single class action will
19 provide substantial benefits to all parties and to the court.

20 22. Common Questions of Law and Fact Predominate: There are many
21 questions of law and fact common to the representative Plaintiff and the proposed
22 Class, and those questions substantially predominate over any individualized
23 questions that may affect individual class members. Common questions of fact
24 and law include, but are not limited to, the following:

- 25 a. Whether Google charges for advertisements placed on third
26 party websites when the “optional” CPC content bid input is
27 left blank, and whether Google discloses this material fact to
28 consumers;

- 1 b. Whether Google failed to disclose that when the “optional”
2 CPC content bid input is left blank, Google will still charge for
3 ads placed on third party websites;
- 4 c. Whether or not Plaintiffs and the members of the class have
5 been damaged by the wrongs complained of herein, and if so,
6 the measure of those damages and the nature and extent of other
7 relief that should be afforded;
- 8 d. Whether Google engaged in unfair, unlawful and/or fraudulent
9 business practices; and
- 10 e. Whether Google failed to disclose material facts about the
11 subject Google Adwords program.

12 23. Typicality: Plaintiff’s claims are typical of the claims of the
13 members of the Class. Plaintiff and all members of the class have been similarly
14 affected by Defendant’s common course of conduct since their charged for content
15 ads after leaving the “optional” CPC content bid input blank.

16 24. Adequacy of Representation: Plaintiff will fairly and adequately
17 represent and protect the interests of the Class. Plaintiff has retained counsel with
18 substantial experience in prosecuting complex and class action litigation. Plaintiff
19 and its counsel are committed to vigorously prosecuting this action on behalf of the
20 Class, and have the financial resources to do so. Neither Plaintiff nor its counsel
21 have any interests adverse to those of the proposed Class.

22 25. Superiority of a Class Action: Plaintiff and the members of the Class
23 have suffered, and will continue to suffer, harm as a result of defendant’s unlawful
24 and wrongful conduct. A class action is superior to other available methods for the
25 fair and efficient adjudication of the present controversy as individual joinder of all
26 members of the class is impractical. Even if individual class members had the
27 resources to pursue individual litigation, it would be unduly burdensome to the
28 courts in which the individual litigation would proceed. Individual litigation

1 magnifies the delay and expense to all parties in the court system of resolving the
2 controversies engendered by Defendant's common course of conduct. The class
3 action device allows a single court to provide the benefits of unitary adjudication,
4 judicial economy, and the fair and equitable handling of all class members' claims
5 in a single forum. The conduct of this action as a class action conserves the
6 resources of the parties and of the judicial system, and protects the rights of the
7 class member. Furthermore, for many, if not most, Class members, a class action
8 is the only feasible mechanism that allows therein an opportunity for legal redress
9 and justice.

10 26. Adjudication of individual Class members' claims with respect to the
11 Defendant would, as a practical matter, be dispositive of the interests of other
12 members not parties to the adjudication and could substantially impair or impede
13 the ability of other class members to protect their interests.

14 **FIRST CAUSE OF ACTION**

15 **UNJUST ENRICHMENT**

16 27. Plaintiff realleges the preceding paragraphs as if fully set forth herein
17 and, to the extent necessary, plead this cause of action in the alternative.

18 28. Through the actions described above, Google has received money
19 belonging to Plaintiff and the Class through the fees collected from ads placed on
20 third party content sites when a reasonable advertiser would have believed that
21 leaving the CPC content bid input blank meant that they would not be charged for
22 content ads.

23 29. Additionally, Google has reaped substantial profit by concealing the
24 fact when left blank, the "optional" CPC content bid would be set at an amount
25 that could reach the amount bid for the search bid. Ultimately, this resulted in
26 Google's wrongful receipt of profits and injury to Plaintiff and the Class. Google
27 has benefited from the receipt of such money that it would not have received but
28 for its concealment.

1 30. As a direct and proximate result of Google's misconduct as set forth
2 above, Google has been unjustly enriched.

3 31. Under principles of equity and good conscience, Google should not be
4 permitted to keep the full amount of money belonging to Plaintiff and the Class
5 which Google has unjustly received as a result of its actions.

6 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

7 **SECOND CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**

9 **SECTIONS 17200 ET SEQ.**

10 32. Plaintiff realleges the preceding paragraphs as if fully set forth herein
11 and, to the extent necessary, plead this cause of action in the alternative.

12 33. Plaintiff has standing to pursue this claim as Plaintiff has suffered
13 injury in fact and has lost money or property as a result of Google's actions as
14 delineated herein.

15 34. Class members have suffered injury in fact and have lost money or
16 property as a result of Google's actions as delineated herein.

17 35. Google's actions as alleged in this complaint constitute an unfair or
18 deceptive practice within the meaning of California Business and Professions Code
19 sections 17200 *et seq.* in that Google's actions are unfair, unlawful and fraudulent,
20 and because Google has made unfair, deceptive, untrue or misleading statements in
21 advertising media, including the Internet, within the meaning of California
22 Business and Professions Code sections 17500 *et seq.*

23 36. Google's business practices, as alleged herein, are unfair because they
24 offend established public policy and/or are immoral, unethical, oppressive,
25 unscrupulous and/or substantially injurious to consumers in that consumers are not
26 informed that they will be charged for ad placed on third party websites even
27 though the "optional" CPC content bid input was left blank.

28

- 1 4. For an injunction ordering Defendant to cease and desist from
- 2 engaging in the unfair, unlawful, and/or fraudulent practices alleged in
- 3 the Complaint;
- 4 5. For compensatory and general damages according to proof on certain
- 5 causes of action;
- 6 6. For special damages according to proof on certain causes of action;
- 7 7. For both pre and post-judgment interest at the maximum allowable
- 8 rate on any amounts awarded;
- 9 8. Costs of the proceedings herein;
- 10 9. Reasonable attorneys fees as allowed by statute; and
- 11 10. Any and all such other and further relief that this Court may deem just
- 12 and proper.

13
14 Dated: January ___ 2010

KABATECK BROWN KELLNER LLP

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17 By: 

18 BRIAN S. KABATECK
19 RICHARD L. KELLNER
20 ALFREDO TORRIJOS
Attorneys for Plaintiff and proposed Class

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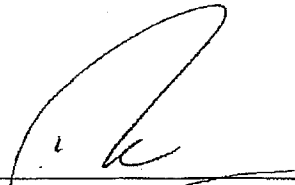
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury in the instant action.

Dated: January ___ 2010

KABATECK BROWN KELLNER LLP

By: _____



BRIAN S. KABATECK
RICHARD L. KELLNER
ALFREDO TORRIJOS
Attorneys for Plaintiff and proposed Class