1 2 3 4	BRIAN S. KABATECK, SBN 152054 (bsk@kbklawyers.com) RICHARD L. KELLNER, SBN 171416 (rlk@kbklawyers.com) ALFREDO TORRIJOS, SBN 222458 (at@kbklawyers.com) KABATECK BROWN KELLNER LLP 644 South Figueroa Street			
5 6	Los Angeles, California 90017 Telephone: (213) 217-5000 Facsimile: (213) 217-5010			
7 8	Attorneys for Plaintiff David Almeida			
-	UNITED STATES DISTRICT COURT			
9 10	NORTHERN DISTRICT OF CALIFORNIA			
11				
12	DAVID ALMEIDA, individually and on behalf of all others similarly situated,	CASE NO. CV 08-02088 RMW		
13	Plaintiff,	HON. RONALD M. WHYTE		
14	VS.	DECLARATION OF MICHAEL V.		
15 16	GOOGLE, INC., a Delaware Corporation; and DOES 1 through 10, inclusive,	STORTI IN SUPPORT OF PLAINTIFF'S NOTICE OF NON-OPPOSITION TO DEFENDANT GOOGLE, INC.'S MOTION		
10	Defendants.	TO DISMISS		
17		<u>Hearing</u>		
18		Date: April 2, 2010 Time: 9:00 a.m. Dept: 6		
20				
21	DECLARATION O	F MICHAEL V. STORTI		
22	I, Michael V. Storti, declare as follows	3:		
23	1. I am over the age of 18 and a resident of California. I make this declaration of my			
24	personal and first-hand knowledge, and, if called and sworn as a witness, I would and could			
25	testify competently hereto.			
26				
27				
28				
	DECLARATION OF MICHAEL V. STORTI IN SUPPORT OF PLAINTIFF'S NOTICE OF NON- OPPOSITION TO DEFENDANT GOOGLE, INC.'S MOTION TO DISMISS (CV 08-02088 RMW)			

2. I am an attorney admitted to practice in the state California. I am an associate at		
the law firm of Kabateck Brown Kellner LLP and I am one of the attorneys representing plaintiff		
David Almeida ("Plaintiff") in this action.		
3. On June 18, 2009, Plaintiff agreed to dismiss the action if Google would stipulate		
to a dismissal. Google initially agreed to stipulate, but the parties were ultimately unable to		
agree on a stipulation because Google insisted that conclusions of law, not yet made by the		
Court, be included in the stipulation.		
4. On March 3, 2010, I spoke with David Silbert, counsel for Google, about		
attempting to stipulate to dismiss the case. I stated that I believed we could agree to a stipulation		
if Google did not insist on unnecessary recitals. I also sent Mr. Silbert a draft stipulation that		
day.		
5. On March 11, 2010 I received Google's revisions to the draft stipulation. Google		
sought to include numerous recitals that are irrelevant for the purposes of stipulating to a		
voluntary dismissal pursuant to FRCP 41(a)(1).		
6. Attached hereto as Exhibit "A" is a true and correct copy of the Google's		
proposed revisions to the draft stipulation of dismissal.		
I declare under penalty of perjury that the foregoing is true and correct, executed on		
March 12, 2010 in Los Angeles, California.		
/s/		
Michael V. Storti		
— 2 —		

## EXHIBIT A

1 2	BRIAN S. KABATECK, SBN 152054 (bsk@kbklawyers.com) RICHARD L. KELLNER, SBN 171416			
3	(rlk@kbklawyers.com) ALFREDO TORRIJOS, SBN 222458			
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5	644 South Figueroa Street			
6	Los Angeles, California 90017 Telephone: (213) 217-5000 Facsimile: (213) 217-5010			
7	Attorneys for Plaintiff and the proposed class			
8	and the proposed class			
9	UNITED STATES DISTRICT COURT			
10	FOR THE NORTHERN DISTRICT OF CALIFORNIA			
11	SAN JOSE DIVISION			
12				
13	DAVID ALMEIDA, individually and	CASE NO. CV 08-02088 RMW		
14	on behalf of all others similarly situated,	HON. RONALD M. WHYTE		
15	Plaintiff,			
16	VS.	STIDULATION OF VOLUNTADV		
17 18	GOOGLE, INC., a Delaware Corporation; and DOES 1 through 10, inclusive,	STIPULATION OF VOLUNTARY DISMISSAL PURSUANT TO FED. R. CIV. P. 41(a)(1)		
19	Defendants.			
20				
21	Through this Stipulation, and for the reasons set forth below, plaintiff David			
22	Almeida ("Plaintiff") and defendant Google, Inc. ("Defendant") stipulate to the			
23	dismissal, with prejudice, of Plaintiff's claims against Defendant, pursuant to			
24	Federal Rule of Civil Procedure 41(a)(1):			
25	WHEREAS, on or about April 22, 2008, Plaintiff commenced the above			
26	captioned action;			
27	-	2008 Defendant filed its answer:		
28	WHEREAS, on or about July 14, 2008, Defendant filed its answer;			
	STIPULATION OF VOLUNTARY DISMISSAL PURSUANT TO FED. R. CIV. P. 41(A)(1) (CV 08-02088 RMW)			

1	WHEREAS Plaintiff alleged in his Complaint that he "enrolled in AdWords		
2	in November 2006" and "left the CPC content bid input blank";		
3	WHEREAS it was brought to Plaintiff's attention by Google in the course of		
4	discovery that Plaintiff enrolled in AdWords prior to deployment of the "CPC		
5	content bid input" described in the Complaint;		
6	WHEREAS on November 11, 2009 Plaintiff filed a motion for leave to		
7	amend the Complaint to substitute a new class representative into this action;		
8	WHEREAS on November 30, 2009 the Court denied Plaintiff's motion for		
9	leave to amend;		
10	WHEREAS the Court ordered Plaintiff to submit evidence sufficient to		
11	create an inference that he used the "CPC content bid input";		
12	WHEREAS Plaintiff has not, to date, submitted evidence sufficient to show		
13	that he used the interface in question;		
14	WHEREAS counsel for Plaintiff never responded to Defendant's request		
15	that Plaintiff dismiss this action voluntarily in light of the foregoing circumstances,		
16	and consequently, Defendant filed a motion to dismiss on February 22, 2010;		
17	WHEREAS, Fed. R. Civ. P. 41(a)(1)(A)(ii) allows for voluntary dismissal		
18	without court order by a stipulation signed by all parties who have appeared;		
19	WHEREAS, the putative class has not been certified.		
20	IT IS HEREBY STIPULATED AND AGREED that Plaintiff dismisses his		
21	claims against Defendant, with prejudice., and that Google is the prevailing party		
22	in this action for all purposes.		
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	STIPULATION OF VOLUNTARY DISMISSAL PURSUANT TO FED. R. CIV. P. 41(A)(1) (CV 08-02088 RMW)		

