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

12 DAVID ALMEIDA, individually and on  
 behalf of all others similarly situated,  
 13  
 Plaintiff,  
 14  
 v.  
 15  
 16 GOOGLE INC., a Delaware corporation; and  
 DOES 1 through 10, inclusive,  
 17  
 Defendants.

Case No. C 08-02088 RMW

**DEFENDANT GOOGLE INC.'S  
 SUPPLEMENTAL MEMORANDUM IN  
 SUPPORT OF MOTION TO DISMISS  
 [Fed. R. Civ. P. 12(b)(1)]**

Date: April 2, 2010  
 Time: 9:00 a.m.  
 Dept: 6  
 Judge: Hon. Ronald M. Whyte

Date Comp. Filed: April 22, 2008

Trial Date: None set.

28

1 Google submits this supplemental memorandum to apprise the Court of the parties'  
2 efforts to stipulate to the dismissal of this action. The parties have met and conferred but have  
3 been unable to agree on the terms of a stipulation. Accordingly, Google requests that the Court  
4 dismiss the action pursuant to Google's motion. Further, for the reasons stated in its moving  
5 papers, Google requests that the dismissal be with prejudice, as Almeida now acknowledges that  
6 he never used the allegedly misleading interface that is the subject of the action, even though he  
7 falsely alleged in his Complaint that he did. *See* Complaint (Doc. 1) at ¶ 15; P.'s Mtn. for Leave  
8 to Amend (Doc. 27), at 1:9-11.

9 Yesterday, Almeida sent a letter to the Court requesting that Google's motion to dismiss  
10 be submitted without oral argument, or alternatively, that Almeida's counsel be permitted to  
11 appear telephonically. As Google has already stated, it would be pleased to submit this matter  
12 without oral argument. If the Court wishes to hear argument, Google's counsel will appear in  
13 person, but Google does not object to Almeida's counsel appearing by telephone.

14  
15 Respectfully submitted

16 Dated: April 1, 2010

KEKER & VAN NEST, LLP

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19 By: /s/ David J. Silbert

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Attorneys for Defendant  
GOOGLE INC.