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E-Filed 10/10/08

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JENNA GODDARD, individually and on
behalf of similarly situated individuals,

Plaintiff,

v.

GOOGLE INC., a Delaware Corporation,

Defendant.

Case No. C 08-2738 JF

ORDER¹ DENYING PLAINTIFF'S MOTION
FOR REMAND

[Re: docket no. 11]

Plaintiff Jenna Goddard ("Goddard") brings the instant putative class action on behalf of herself and all those similarly situated who were charged for unauthorized mobile content services after Defendant Google Inc. ("Google") allowed third parties to advertise allegedly deceptive cellular telephone subscription services through its AdWords program. Goddard filed the action in the Santa Clara Superior Court on April 30, 2008. Defendants removed the action

¹ This disposition is not designated for publication in the official reports.

1 to this Court on May 30, 2008. Goddard moves to remand the action to the state court on the
2 basis that Google has failed to show that there is an amount in controversy sufficient to establish
3 federal jurisdiction. The Court has considered the briefing submitted by the parties as well as the
4 oral arguments presented by counsel at the hearing on October 3, 2008. For the reasons set forth
5 below, the motion will be denied.

6 I. BACKGROUND

7 Goddard alleges that Google “operates the most widely-used Internet search engine
8 in the world” and that it generates revenue primarily through online advertising. Compl. ¶ 2.
9 She also asserts that Google and its customers participate in Google’s AdWords program, which
10 allows advertisers to select keywords that correspond to their advertisements. In turn, the
11 advertisements are displayed when a person performs a keyword search. Compl. ¶ 15-16.
12 Goddard alleges that through AdWords, Google allows advertisements that link to fraudulent
13 websites that sell premium text message services such as customized ring tones, sports score
14 reports, stock updates, and horoscopes in violation of Google’s Content Policy.²

15 Goddard claims that a portion of Google’s top 250 Adwords customers who are mobile
16 content purveyors utilize landing pages that are not in compliance with Google’s Content Policy.
17 She provides the identities of seven such non-complying advertisers, Compl. ¶ 36, Ex. B, and
18 alleges that Google’s refusal to enforce its policy has allowed it to receive and retain substantial
19 fees from mobile subscription advertisers at the expense of customers. Goddard also alleges that
20 “many, if not all of the Fraudulent Mobile Subscription Services[’] monthly or periodic payments
21 to Google for the AdWords services exceed \$10,000.” Compl. ¶ 54.

22 Goddard claims that she was injured when she provided her cellular telephone number
23 to a fraudulent mobile subscription services website, which charged her for unauthorized mobile
24 content services in the form of premium text messages. Goddard asserts that “absent Google’s
25

26 ² Google has compiled a list of products and services that it does not allow to be
27 advertised under virtually any circumstances. Compl. ¶ 18, 22. Google provides an exception for
28 mobile subscription services, but it requires that the landing pages of such services’ websites
disclose clearly and accurately a host of relevant information about purchasing mobile content,
such as the service’s price, subscription period, and cancellation procedures. Compl. ¶ 18.

1 provision of AdWords services to the fraudulent mobile subscription services, she never would
2 have been damaged.” Compl. ¶ 58. Goddard brings this putative class action to prevent Google
3 from allowing fraudulent mobile subscription services to advertise further on Google’s website.
4 She purports to represent a nation-wide class of similarly situated plaintiffs who suffered
5 damages after clicking on ads for mobile subscription services on Google AdWords that linked to
6 fraudulent mobile subscription services websites. She asserts that the proposed class consists of
7 at least one thousand individuals and other entities. Goddard seeks imposition of a constructive
8 trust, an accounting, an injunction prohibiting the continued unlawful business practices,
9 damages, restitution, disgorgement of all ill-gotten gains, and attorneys’ fees and costs.

10 II. DISCUSSION

11 The Class Action Fairness Act (“CAFA”) vests district courts with “original jurisdiction
12 of any civil action in which . . . the amount in controversy exceeds the sum or value of
13 \$5,000,000.” 28 U.S.C. § 1332(d). Under CAFA, the burden of establishing removal jurisdiction
14 rests with the removing party. *Lowedermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 997 (9th Cir.
15 2007). If the jurisdictional amount in controversy is not facially apparent in the Complaint, the
16 removing defendant must prove by a “preponderance of the evidence” that the amount in
17 controversy requirement has been met. *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir.
18 2006); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398 (9th Cir. 1996) (“[T]he defendant
19 must provide evidence establishing that it is ‘more likely than not’ that the amount in controversy
20 exceeds that amount.”). In determining whether the jurisdictional requirement has been met, the
21 court may consider evidence submitted subsequent to the notice of removal, including evidence
22 submitted in conjunction with an opposition to a motion to remand. *Cohen v. Petsmart, Inc.*, 281
23 F.3d 837, 840 n.1 (9th Cir. 2002); see *Willingham v. Morgan*, 395 U.S. 402, 407 n. 3, (1969) (“it
24 is proper to treat the removal petition as if it had been amended to include the relevant
25 information contained in the later-filed affidavits”).

26 Because Goddard’s complaint does not allege a specific amount in controversy, Google
27 must demonstrate that it is “more likely than not” that the amount in controversy exceeds \$ 5
28 million. The Court concludes that Google has met its burden. First, Google points out that if the

1 Court accepts Goddard's allegations as true, Google could be required to disgorge revenues
2 received from the purported 250 mobile subscription service advertisers at the rate of \$10,000 per
3 month per advertiser throughout the four-year period covered by Goddard's complaint. Google's
4 Mem. In Opp. To Pl.'s Mot. to Remand ("Google Opp. Mem.") at 7. Google thus would have
5 collected \$480,000 from each fraudulent advertiser.³ Even if only eleven of the purported 250
6 Google advertisers engaged in the alleged fraud, the CAFA threshold would be met;⁴ currently,
7 Goddard's complaint identifies seven. It is a reasonable inference that four additional advertisers
8 from the alleged 250 also will be identified. This number represents disgorgement benefits alone.

9 Second, Google's primary source of revenue is its online advertising programs, including
10 AdWords. Google Opp. Mem. At 10. Google's revenue from its advertising programs was more
11 than \$5 billion in the first quarter of 2008. Google Opp. Mem. at 10. As set forth in the
12 declaration of Google financial analyst Matthew Hudson, Google's revenue data for mobile
13 subscription services and mobile content providers well exceeds the amount in controversy
14 required by CAFA. *See* Declaration of Matthew Hudson in Support of Google Inc.'s Opposition
15 to Motion to Remand ("Hudson Decl.") ¶ 8. Moreover, ring tone subscription providers represent
16 only a small portion of the total revenue that may be subject to disgorgement and restitution
17 under Goddard's complaint. *See* Compl. ¶ 7.

18 Finally, in addition to disgorgement, Goddard seeks money damages for breach of
19 contract, as well as restitution and attorney's fees and costs. With a purported class that includes
20 every person in the United States who was charged without authorization for mobile content
21 services by any cellular telephone company that used Google AdWords for advertising, it is more
22 likely than not that in the event Goddard proves her claim, such damages will exceed \$5,000,000.
23 Viewing claims for damages together with the other forms of relief Goddard requests, there
24 appears to be no real question that the jurisdictional requirements of CAFA are satisfied.

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27 ³ \$10,000 x 12 (months per year) x 4 (years) = \$480,000.

28 ⁴ \$5,000,000 ÷ \$480,000 = 10.417. Eleven advertisers would put Goddard's disgorgement
claim over \$5 million. Google's Opp. Mem. at 7.

1 **IV. ORDER**

2 The motion for remand is DENIED.

3
4 Dated: October 10, 2008

5 A handwritten signature in blue ink, appearing to read 'J. Fogel', is written over a horizontal line.

6
7 JEREMY FOGEL
8 United States District Judge
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1 This Order has been served upon the following persons:

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