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 10 GOOGLE INC.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

15 HAL K. LEVITTE, Individually and On  
 16 Behalf of All Others Similarly Situated,

17 Plaintiff,

18 v.

19 GOOGLE INC., a Delaware corporation,

20 Defendant.

Case No. 08-CV-03369 JW RS

**DEFENDANT GOOGLE INC.'S  
 ANSWER TO COMPLAINT**

21  
 22 Defendant Google Inc. ("Google") responds to the Complaint of Hal K. Levitte  
 23 ("Plaintiff") as follows:

24 **ANSWER**

25 **SUMMARY OF CLAIMS**

26 1. Google admits that Plaintiff purports to bring this action individually and on behalf  
 27 of a putative class of AdWords advertisers and that Plaintiff purports to assert various claims

1 against Google. Except as expressly admitted herein, Google denies the allegations of paragraph  
2 1 and that this action can be maintained as a class action.

### 3 PARTIES

4 2. Google admits that Plaintiff contracted for and used Google's AdWords  
5 advertising program. Except as expressly admitted herein, Google lacks knowledge or  
6 information sufficient to form a belief as to the truth of the allegations in paragraph 2, and on that  
7 basis, denies them.

8 3. Admitted.

### 9 JURISDICTION AND VENUE

10 4. The allegations of paragraph 4 are legal conclusions to which no response is  
11 required. To the extent a response is required, Google admits that this Court presently has subject  
12 matter jurisdiction over this purported class action. Except as expressly admitted herein, Google  
13 lacks knowledge or information sufficient to form a belief as to the truth of the allegations of  
14 paragraph 4, and on that basis, denies them.

15 5. Google admits that it resides and does business in this judicial district. Except as  
16 expressly admitted herein, Google lacks knowledge or information sufficient to form a belief as to  
17 the truth of the allegations of paragraph 5, and on that basis, denies them.

### 18 FACTS

19 6. Google admits that it offers a free search engine service that is widely recognized  
20 as the world's largest search engine, that its revenues in 2007 were approximately \$16.6 billion,  
21 and that its largest revenue source in 2007 in terms of dollars was advertising revenue. Except as  
22 expressly admitted herein, Google denies the allegations of paragraph 6.

23 7. Google admits that it offers an advertising program called "AdWords" and that it  
24 offers an advertising program called "AdSense." Google further admits that AdWords is for  
25 advertisers, while certain aspects of AdSense are for site owners. Except as expressly admitted  
26 herein, Google lacks knowledge or information sufficient to form a belief as to the truth of the  
27 allegations of paragraph 7, and on that basis, denies them.

28 8. Google admits that at one point in time, among other descriptions, it described the

1 AdWords program similarly to the block quote in paragraph 8, but denies that Plaintiff has put the  
2 block quote in the proper context and that the description is a complete description of the  
3 AdWords program or Plaintiff's contractual relationship with Google relating to the AdWords  
4 program. Except as expressly admitted herein, Google denies the allegations of paragraph 8.

5 9. Google admits that under the Google AdWords program, advertisers may select  
6 and bid on particular internet search terms, and that when an internet user employs Google to  
7 search for selected terms, Google displays ads of customers on the Google webpage that returns  
8 the search results. Google further admits that advertisers may opt to pay Google based on the  
9 number of Internet users who click on their ads. Except as expressly admitted herein, Google  
10 lacks information sufficient to form a belief as to the truth of the remaining allegations in  
11 Paragraph 9, and on that basis, denies them.

12 10. Google admits that at one point in time, among other descriptions, it described the  
13 AdSense program similarly to the block quote in paragraph 10, but denies that Plaintiff has put  
14 the block quote in the proper context. Except as expressly admitted herein, Google denies the  
15 allegations of paragraph 10.

16 11. Denied.

17 12. Google lacks knowledge or information sufficient to form a belief as to the truth of  
18 the allegations of paragraph 12, and on that basis, denies them.

19 13. Google lacks knowledge or information sufficient to form a belief as to the truth of  
20 the allegations of paragraph 13, and on that basis, denies them.

21 14. Google admits that "AdSense for Domains" is an advertising program in which  
22 owners of parked domain pages allow the placement of AdWords advertisements on such pages  
23 and in which Google uses its technology to target advertisements to such pages. Except as  
24 expressly admitted herein, Google lacks knowledge or information sufficient to form a belief as to  
25 the truth of the allegations of paragraph 14, and on that basis, denies them.

26 15. Google admits that at one point in time, among other descriptions, it described  
27 "AdSense for Domains" similar to the blocked-quote in paragraph 15, but denies that Plaintiff has  
28 put the block quote in the proper context. Except as expressly admitted herein, Google denies the

1 allegations of paragraph 15.

2 16. Denied.

3 17. Google admits that one aspect of its AdWords advertising program involves a cost  
4 per click basis. Except as expressly admitted herein, Google lacks knowledge or information  
5 sufficient to form a belief as to the truth of the allegations of paragraph 17, and on that basis,  
6 denies them.

7 18. Denied.

8 19. Google admits that at one point in time, among other descriptions, it described the  
9 Content Network similarly to the blocked-quote in paragraph 19, but denies that Plaintiff has put  
10 the block quote in the proper context and that the description is a complete description of the  
11 AdWords program or Plaintiff's contractual relationship with Google relating to the AdWords  
12 program. Except as express admitted herein, Google denies the allegations of paragraph 19.

13 20. Google admits that at one point in time, among other descriptions, it described the  
14 Search Network in a web page similarly to the blocked-quote in paragraph 20, but denies that  
15 Plaintiff has put the block quote in the proper context and that the description is a complete  
16 description of the AdWords program or Plaintiff's contractual relationship with Google relating  
17 to the AdWords program. Except as express admitted herein, Google denies the allegations of  
18 paragraph 20.

19 21. Denied.

20 22. Denied.

21 23. Google lacks knowledge or information sufficient to form a belief as to the truth of  
22 the allegations of paragraph 23, and on that basis, denies them.

23 24. Google lacks knowledge or information sufficient to form a belief as to the truth of  
24 the allegations of paragraph 24, and on that basis, denies them.

25 25. Denied.

26 26. Denied.

27 27. Denied.

28 28. Google lacks knowledge or information sufficient to form a belief as to the truth of

1 the allegations of paragraph 28, and on that basis, denies them.

2 29. Google admits that AdWords advertisers can set various settings relating to the  
3 placement of advertisements, including Google Search, Search Network, and Content Network.  
4 Except as expressly admitted herein, Google denies the allegations of paragraph 29.

5 30. Denied.

6 31. Google admits that it did not refund Plaintiff for charges he incurred on a cost per  
7 click basis, that it examined Plaintiff's complaints, and that it had communications with Plaintiff.  
8 Except as expressly admitted herein, Google lacks knowledge or information sufficient to form a  
9 belief as to the truth of the allegations of paragraph 31, and on that basis, denies them.

10 32. Denied.

11 33. Denied.

12 34. Google admits that the out-of-context, block-quoted language appeared at some  
13 point in time, among other things, on a Google web page for learning about AdWords. Except as  
14 expressly admitted herein, Google lacks knowledge or information sufficient to form a belief as to  
15 the truth of the allegations of paragraph 34, and on that basis, denies them.

16 35. Google admits that the Placement Performance Report is an AdWords report that  
17 presently provides site-by-site performance metrics for ads across the Google Content Network.  
18 Except as expressly admitted herein, Google denies the allegations of paragraph 35.

19 36. Denied.

20 37. Google admits that Plaintiff accurately quotes from one out-of-context sentence of  
21 a multi-sentence blog posting on June 12, 2007, but denies that Plaintiff has put the quote in the  
22 proper context or that Plaintiff's quote is the complete blog posting. Except as expressly admitted  
23 herein, Google denies the allegations of paragraph 37.

24 38. Denied.

25 39. Google admits that it posted a blog entry on May 2, 2008 with the title "Where did  
26 I park?" on the AdWords Agency Blog. Except as expressly admitted herein, Google denies the  
27 allegations of paragraph 39.

28 40. Google admits that Plaintiff quotes a portion of the blog entry referred to in

1 paragraph 40, but denies that Plaintiff has put the quote in the proper context or that Plaintiff's  
2 quote is the complete blog posting. Except as expressly admitted herein, Google denies the  
3 allegations of paragraph 40.

4 41. Denied.

5 **CLASS ALLEGATIONS**

6 42. Google admits that Plaintiff purports to bring this action individually and on behalf  
7 of a putative class of AdWords advertisers. Except as expressly admitted herein, Google denies  
8 the allegations of paragraph 42.

9 43. Google admits that Plaintiff purports to bring this action individually and on behalf  
10 of a putative class of AdWords advertisers. Except as expressly admitted herein, Google denies  
11 the allegations of paragraph 43.

12 44. Google admits that Plaintiff purports to bring this action individually and on behalf  
13 of a putative class of AdWords advertisers. Except as expressly admitted herein, Google denies  
14 the allegations of paragraph 44.

15 45. Denied.

16 46. Denied.

17 47. Denied.

18 48. Denied.

19 49. Denied.

20 50. Denied.

21 51. Denied.

22 52. Denied.

23 53. The allegations of paragraph 53 are legal conclusions to which no response is  
24 required. To the extent a response is required, Google denies the allegations of paragraph 53.

25 **FIRST CLAIM FOR RELIEF**

26 **(VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**

27 **SECTION 17200 ET SEQ. – UNFAIR CONDUCT)**

28 54. Google hereby incorporates as through fully set forth herein its answers to

1 paragraphs 1 through 53.

2 55. Denied.

3 56. Denied.

4 57. Denied.

5 58. Denied.

6 59. Denied.

7 60. Denied.

8 61. Google admits that Plaintiff purportedly seeks the relief requested in paragraph 61,  
9 but denies that Plaintiff is entitled to the relief requested. Except as expressly admitted herein,  
10 Google denies the allegations of paragraph 61.

11 62. Google admits that Plaintiff purportedly seeks the relief requested in paragraph 62,  
12 but denies that Plaintiff is entitled to the relief requested. Except as expressly admitted herein,  
13 Google denies the allegations of paragraph 62.

14 **SECOND CLAIM FOR RELIEF**

15 **(VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**

16 **SECTION 17200 ET SEQ. – FRAUDULENT CONDUCT)**

17 63. Google hereby incorporates as through fully set forth herein its answers to  
18 paragraphs 1 through 62.

19 64. Denied.

20 65. Denied.

21 66. Denied.

22 67. Denied.

23 68. Denied.

24 69. Denied.

25 70. Google admits that Plaintiff purportedly seeks the relief requested in paragraph 70,  
26 but denies that Plaintiff is entitled to the relief requested. Except as expressly admitted herein,  
27 Google denies the allegations of paragraph 70.

28 71. Google admits that Plaintiff purportedly seeks the relief requested in paragraph 71,

1 but denies that Plaintiff is entitled to the relief requested. Except as expressly admitted herein,  
2 Google denies the allegations of paragraph 71.

3 **THIRD CLAIM FOR RELIEF**

4 **(VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS**

5 **CODE § 17200 ET SEQ. – UNLAWFUL CONDUCT)**

6 72. Google hereby incorporates as through fully set forth herein its answers to  
7 paragraphs 1 through 71.

8 73. Denied.

9 74. Denied.

10 75. Denied.

11 76. Denied.

12 77. Google admits that Plaintiff purportedly seeks the relief requested in paragraph 77,  
13 but denies that Plaintiff is entitled to the relief requested. Except as expressly admitted herein,  
14 Google denies the allegations of paragraph 77.

15 78. Google admits that Plaintiff purportedly seeks the relief requested in paragraph 78,  
16 but denies that Plaintiff is entitled to the relief requested. Except as expressly admitted herein,  
17 Google denies the allegations of paragraph 78.

18 **FOURTH CLAIM FOR RELIEF**

19 **(VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 ET SEQ.)**

20 79. Google hereby incorporates as through fully set forth herein its answers to  
21 paragraphs 1 through 78.

22 80. Google admits that Plaintiff purports to bring this action individually and on behalf  
23 of a putative class of AdWords advertisers. Except as expressly admitted herein, Google denies  
24 the allegations of paragraph 80.

25 81. Admitted.

26 82. Denied.

27 83. Denied.

28 84. Denied.



1 85. Google admits that Plaintiff purportedly seeks the relief requested in paragraph 85,  
2 but denies that Plaintiff is entitled to the relief requested. Except as expressly admitted herein,  
3 Google denies the allegations of paragraph 85.

4 **FIFTH CLAIM FOR RELIEF**

5 **(UNJUST ENRICHMENT)**

6 86. Google hereby incorporates as through fully set forth herein its answers to  
7 paragraphs 1 through 85.

8 87. Denied.

9 88. Denied.

10 89. Denied.

11 90. Denied.

12 91. Denied.

13 **SEPARATE AND ADDITIONAL DEFENSES**

14 As and for separate and additional defenses, Google alleges as follows:

15 **FIRST SEPARATE AND ADDITIONAL DEFENSE**  
16 **(Failure to State a Cause of Action)**

17 1. The Complaint and each and every claim alleged therein fail to state facts  
18 sufficient to constitute a cause of action upon which relief may be granted.

19 **SECOND SEPARATE AND ADDITIONAL DEFENSE**  
20 **(Lack of Standing)**

21 2. Plaintiff lacks standing to assert the claims alleged in the Complaint.

22 **THIRD SEPARATE AND ADDITIONAL DEFENSE**  
23 **(No Harm)**

24 3. Google is informed and believes, and therefore alleges, that neither Plaintiff nor  
25 any putative class member sustained any loss, damage, harm, or detriment in any amount as a  
26 result of any alleged acts, omissions, fault, fraud, carelessness, recklessness, negligence, or other  
27 breach of duty by Google.

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**FOURTH SEPARATE AND ADDITIONAL DEFENSE  
(Res Judicata/Collateral Estoppel)**

4. Plaintiff and some or all of the putative class members are barred from pursuing the Complaint and the claims asserted therein against Google pursuant to the Final Order and Judgment Approving Settlement, Certifying Class for Settlement Purposes, Awarding Class Counsel Attorneys' Fees and Dismissing Action With Prejudice, entered by the Honorable Joe. E. Griffin, Circuit Court Judge in the Circuit Court of Miller County, Arkansas on June 26, 2006 in Lane's Gifts & Collectibles LLC, et. al. v. Yahoo! Inc., et. al., Case No. CV-2005-52-1.

**FIFTH SEPARATE AND ADDITIONAL DEFENSE  
(LACHES)**

5. The Complaint and the claims asserted therein are barred by the doctrine of laches.

**SIXTH SEPARATE AND ADDITIONAL DEFENSE  
(UNCLEAN HANDS)**

6. The Complaint and the claims asserted therein are barred by the doctrine of unclean hands.

**SEVENTH SEPARATE AND ADDITIONAL DEFENSE  
(ESTOPPEL)**

7. The Complaint and the claims asserted therein are barred by the doctrine of estoppel.

**EIGHTH SEPARATE AND ADDITIONAL DEFENSE  
(WAIVER)**

8. The Complaint and the claims asserted therein are barred by the doctrine of waiver.

**NINTH SEPARATE AND ADDITIONAL DEFENSE  
(JUSTIFICATION)**

9. The Complaint and the claims asserted therein are barred because to the extent Google engaged in any of the alleged acts, omissions, or conduct, it did so with justification.

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**TENTH SEPARATE AND ADDITIONAL DEFENSE  
(NO QUASI-CONTRACTUAL REMEDY)**

10. Plaintiff’s claim for unjust enrichment is barred because unjust enrichment is a quasi-contractual remedy that cannot be stated here because there is an express contract between Plaintiff and Google.

**ELEVENTH SEPARATE AND ADDITIONAL DEFENSE  
(CONTRACT)**

11. The Complaint and claims asserted therein are barred because the parties entered into a contract that contemplated, provided for, and authorized the acts or conduct complained of and on which recovery is sought.

**TWELFTH SEPARATE AND ADDITIONAL DEFENSE  
(CONSENT OR AUTHORIZATION)**

12. The Complaint and claims asserted therein are barred because Plaintiff expressly or impliedly approved, authorized, ratified, or consented to the complained acts or conduct, and is therefore precluded from recovery.

**THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE  
(STATUTE OF LIMITATIONS)**

13. The Complaint and claims asserted therein are barred, in whole or in part, by the applicable statute of limitations, including, but not limited to, California Code of Civil Procedure sections 338 and 340 and California Business and Professions code section 17208.

**FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE  
(FAILURE TO MITIGATE)**

14. The Complaint and claims asserted therein are barred, in whole or in part, by Plaintiff and the putative class’ failure to mitigate their damages, if any.

**FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE  
(ADDITIONAL DEFENSES)**

15. Google hereby reserves its right to seek leave to amend this Answer to set forth additional defenses based on its ongoing investigation and discovery into the matters alleged in

1 the Complaint.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Google prays for relief and judgment as follows:

4 1. That the Court deny Plaintiff's prayer for relief in its entirety and that the Court  
5 dismiss the Complaint with prejudice and enter judgment in Google's favor and against Plaintiff;

6 2. That the Court award Google its costs and expenses that it incurs in this action and  
7 attorneys' fees as permitted by law; and

8 3. That the Court award Google such other and further relief that it deems  
9 appropriate.

10 Dated: September 30, 2008

COOLEY GODWARD KRONISH LLP  
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