

1 COOLEY GODWARD KRONISH LLP
 MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)
 2 LEO P. NORTON (216282) (lnorton@cooley.com)
 4401 Eastgate Mall
 3 San Diego, CA 92121
 Telephone: (858) 550-6000
 4 Facsimile: (858) 550-6420

5 COOLEY GODWARD KRONISH LLP
 PETER J. WILLSEY (*pro hac vice application pending*)
 6 (pwillsey@cooley.com)
 777 6th Street, N.W.
 7 Washington, D.C. 20001
 Telephone: (202) 842-7800
 8 Facsimile: (202) 842-7899

9 Attorneys for Defendant
 10 GOOGLE INC.

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

15 PULASKI & MIDDLEMAN, LLC.,
 16 individually and on behalf of all others
 similarly situated,
 17 Plaintiff,
 18 v.
 19 GOOGLE INC., a Delaware corporation,
 20 Defendant.

Case No. 08-CV-03888 SI
**DEFENDANT GOOGLE INC.'S
 ANSWER TO COMPLAINT**

22 Defendant Google Inc. ("Google") responds to the Complaint of Pulaski & Middleman,
 23 LLC. ("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. Google admits the allegations of paragraph 3 except for the last sentence. As to
9 the last sentence, Google admits that that its revenues in 2007 were approximately \$16.6 billion,
10 and that 99% of its revenue was from Google's advertising programs. Except as expressly
11 admitted herein, Google denies the allegations of paragraph 3.

12 **JURISDICTION AND VENUE**

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

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

21 6. Google admits that it resides and does business in this judicial district. Except as
22 expressly admitted herein, the allegations of paragraph 6 are legal conclusions to which a
23 response is not required, or Google lacks knowledge or information sufficient to form a belief as
24 to the truth of the allegations of paragraph 6, and on that basis, denies them.

25 **FACTUAL BACKGROUND**

26 **A. General Background**

27 7. Google admits that Plaintiff purports to quote a single sentence from the current
28 version of the web page cited in paragraph 7, but denies that Plaintiff has put the quote in the

1 proper context. Except as expressly admitted herein, Google denies the allegations of paragraph
2 7.

3 8. Google admits that an aspect of its advertising programs is called “AdWords” and
4 that 99% of its revenue was from advertising programs from 2004 to 2007. Except as expressly
5 admitted herein, Google denies the allegations of paragraph 8.

6 9. Google admits that its advertising network reaches a large segment of Internet
7 users worldwide and that Plaintiff quotes from and reproduces a table from the current version of
8 the web page cited on line 27 of page 2, but denies that Plaintiff has put the quote in the proper
9 context. Except as expressly admitted herein, Google denies the allegations of paragraph 9.

10 10. Google admits that Plaintiff contracted for and used Google’s AdWords
11 advertising program. Except as expressly admitted herein, Google lacks knowledge or
12 information sufficient to form a belief as to the truth of the allegations in paragraph 10, and on
13 that basis, denies them.

14 **B. Google Network**

15 11. Google lacks knowledge or information sufficient to form a belief as to the truth of
16 the allegations of paragraph 11, and on that basis, denies them.

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 admits that Plaintiff purports to quote from and reproduce a part of the
20 current version of the web page cited in paragraph 13, but denies that Plaintiff has put the quote
21 and reproduction in the proper context. Except as expressly admitted herein, Google lacks
22 knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph
23 13, and on that basis, denies them.

24 14. Google lacks knowledge or information sufficient to form a belief as to the truth of
25 the allegations of paragraph 14, and on that basis, denies them.

26 15. Google admits that Plaintiff purports to quote from part of a Google web page
27 cited in paragraph 15, but denies that Plaintiff has put the quote in the proper context. Except as
28 expressly admitted herein, Google lacks knowledge or information sufficient to form a belief as to

1 the truth of the allegations of paragraph 15, and on that basis, denies them.

2 16. Google admits that its Search Network currently includes Google Product Search
3 and Google Groups and the entities listed in paragraph 16. Except as expressly admitted herein,
4 Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations
5 of paragraph 16, and on that basis, denies them.

6 17. Google admits that Plaintiff purports to quote from part of a Google web page, but
7 denies that Plaintiff has put the quote in the proper context or that the quote is accurate or
8 complete. Except as expressly admitted herein, Google lacks knowledge or information sufficient
9 to form a belief as to the truth of the allegations of paragraph 17, and on that basis, denies them.

10 18. Google admits that it offers an AdSense for Mobile program. Except as expressly
11 admitted herein, Google lacks knowledge or information sufficient to form a belief as to the truth
12 of the allegations of paragraph 18, and on that basis, denies them.

13 19. Google admits that it offers an AdSense for Video program. Except as expressly
14 admitted herein, Google lacks knowledge or information sufficient to form a belief as to the truth
15 of the allegations of paragraph 19, and on that basis, denies them.

16 20. Google admits that “AdSense for Domains” is an advertising program in which
17 owners of parked domain pages allow the placement of AdWords advertisements on such pages
18 and in which Google uses its technology to target advertisements to such pages. Except as
19 expressly admitted herein, Google lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations of paragraph 20, and on that basis, denies them.

21 21. Denied.

22 **C. Google AdWords Program**

23 22. Google admits that AdWords launched in 2000, that it is an aspect of Google’s
24 advertising programs, and that through AdWords, advertisers can place advertisements through
25 the Google Network, which reaches a large segment of Internet users worldwide. Except as
26 expressly admitted herein, Google denies the allegations of paragraph 22.

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

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

3 25. Google lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations of paragraph 25, and on that basis, denies them.

5 26. Google admits that AdWords advertisements can be displayed on the Search
6 Network or the Content Network. Except as expressly admitted herein, Google lacks knowledge
7 or information sufficient to form a belief as to the truth of the allegations of paragraph 26, and on
8 that basis, denies them.

9 27. Google lacks knowledge or information sufficient to form a belief as to the truth of
10 the allegations of paragraph 27, and on that basis, denies them.

11 28. Google admits that Plaintiff purports to quote from a part of the current version of
12 the web page cited in paragraph 28, but denies that Plaintiff has put the quote in the proper
13 context. Except as expressly admitted herein, Google lacks knowledge or information sufficient
14 to form a belief as to the truth of the allegations of paragraph 28, and on that basis, denies them.

15 29. Google admits that Plaintiff purports to quote from a part of the current version of
16 the web page cited in paragraph 29, but denies that Plaintiff has put the quote in the proper
17 context. Except as expressly admitted herein, Google lacks knowledge or information sufficient
18 to form a belief as to the truth of the allegations of paragraph 29, and on that basis, denies them.

19 30. Google admits that Plaintiff purports to quote from and refer to a part of the
20 current version of the web page cited in paragraph 30, but denies that Plaintiff has put the quote in
21 the proper context, that the quote and references are complete, and that the web page is a
22 complete description of the AdSense program. Except as expressly admitted herein, Google lacks
23 knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph
24 30, and on that basis, denies them.

25 31. Google admits that Plaintiff purports to quote from a part of the current version of
26 the web page cited in paragraph 31, but denies that Plaintiff has put the quote in the proper
27 context. Except as expressly admitted herein, Google lacks knowledge or information sufficient
28 to form a belief as to the truth of the allegations of paragraph 31, and on that basis, denies them.

1 32. Google admits that Plaintiff purports to quote from a part of the current version of
2 the web page cited in paragraph 32, but denies that Plaintiff has put the quote in the proper
3 context and that the description is a complete description of the AdWords program or Plaintiff's
4 contractual relationship with Google relating to the AdWords program. Except as expressly
5 admitted herein, Google lacks knowledge or information sufficient to form a belief as to the truth
6 of the allegations of paragraph 32, and on that basis, denies them.

7 33. Denied.

8 34. Google lacks knowledge or information sufficient to form a belief as to the truth of
9 the allegations of paragraph 34, and on that basis, denies them.

10 35. Denied.

11 **D. Inclusion of Low-Quality Parked Domains and Error Pages in Google Networks.**

12 36. Denied.

13 37. Denied.

14 38. Denied.

15 39. Google lacks knowledge or information sufficient to form a belief as to the truth of
16 the allegations in paragraph 39, and on that basis, denies them.

17 40. Google lacks knowledge or information sufficient to form a belief as to the truth of
18 the allegations in paragraph 40, and on that basis, denies them.

19 41. Denied.

20 42. Denied.

21 43. Denied.

22 44. Google lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations in paragraph 44, and on that basis, denies them.

24 45. Denied.

25 46. Denied.

26 47. Denied.

27 48. Denied.

28

1 **E. Monetization of AdWords Advertisements**

2 49. Google lacks knowledge or information sufficient to form a belief as to the truth of
3 the allegations of paragraph 49, and on that basis, denies them.

4 50. Google lacks knowledge or information sufficient to form a belief as to the truth of
5 the allegations of paragraph 50, and on that basis, denies them.

6 51. Google lacks knowledge or information sufficient to form a belief as to the truth of
7 the allegations of paragraph 51, and on that basis, denies them.

8 52. Google lacks knowledge or information sufficient to form a belief as to the truth of
9 the allegations of paragraph 52, and on that basis, denies them.

10 53. Google lacks knowledge or information sufficient to form a belief as to the truth of
11 the allegations of paragraph 53, and on that basis, denies them.

12 54. Admitted.

13 55. Google lacks knowledge or information sufficient to form a belief as to the truth of
14 the allegations of paragraph 55, and on that basis, denies them.

15 56. Google lacks knowledge or information sufficient to form a belief as to the truth of
16 the allegations of paragraph 56, and on that basis, denies them.

17 57. Google admits that Plaintiff purports to quote from a part of the current version of
18 the web page cited in paragraph 57, but denies that Plaintiff has put the quote in the proper
19 context. Except as expressly admitted herein, Google lacks knowledge or information sufficient
20 to form a belief as to the truth of the allegations of paragraph 57, and on that basis, denies them.

21 58. Google lacks knowledge or information sufficient to form a belief as to the truth of
22 the allegations of paragraph 58, and on that basis, denies them.

23 59. Google lacks knowledge or information sufficient to form a belief as to the truth of
24 the allegations of paragraph 59, and on that basis, denies them.

25 60. Admitted.

26 **F. AdWords Contracts, Guidelines, and Policies**

27 61. Google admits that AdWords advertisers agree to the Google Inc. Advertising
28 Program Terms and to the Google Terms of Service and that AdWords advertisers agree to be

1 subject to all applicable Google and Partner policies. Except as expressly admitted herein,
2 Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations
3 of paragraph 61, and on that basis, denies them.

4 62. Denied.

5 63. Denied.

6 64. Denied.

7 65. Denied.

8 66. Google admits that AdWords advertisers agree to the Google Inc. Advertising
9 Program Terms and to the Google Terms of Service and that AdWords advertisers agree to be
10 subject to all applicable Google and Partner policies. Except as expressly admitted herein,
11 Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations
12 of paragraph 66, and on that basis, denies them.

13 67. Google admits that AdWords advertisers agree to the Google Inc. Advertising
14 Program Terms and to the Google Terms of Service and that AdWords advertisers agree to be
15 subject to all applicable Google and Partner policies. Except as expressly admitted herein,
16 Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations
17 of paragraph 67, and on that basis, denies them.

18 68. Google lacks knowledge or information sufficient to form a belief as to the truth of
19 the allegations in paragraph 68, and on that basis, denies them.

20 69. Denied.

21 70. Google lacks knowledge or information sufficient to form a belief as to the truth of
22 the allegations in paragraph 70, and on that basis, denies them.

23 71. Google admits that Plaintiff purports to quote for a part of paragraph 2 of the
24 Google Inc. Advertising Program Terms. Except as expressly admitted herein, Google denies the
25 allegations of paragraph 71.

26 72. Denied.

27 73. Denied.

28 74. Denied.

- 1 75. Denied.
- 2 76. Denied.
- 3 77. Denied.
- 4 78. Denied.
- 5 79. Denied.

6 **G. Google Representations, Promises, and Communications**

7 80. Google lacks knowledge or information sufficient to form a belief as to the truth of
8 the allegations in paragraph 80, and on that basis, denies them.

- 9 81. Denied.
- 10 82. Denied.
- 11 83. Denied.
- 12 84. Denied.
- 13 85. Denied.
- 14 86. Denied.
- 15 87. Denied.
- 16 88. Denied.
- 17 89. Denied.
- 18 90. Denied.
- 19 91. Denied.
- 20 92. Denied.

21 **H. Contextual Targeting Technology**

22 93. Google admits that Plaintiff purports to quote from part the web page cited in
23 paragraph 93, but denies that Plaintiff has put the quote in the proper context. Except as
24 expressly admitted herein, Google denies the allegations of paragraph 93.

25 94. Google admits that Plaintiff purports to quote from and reproduce certain
26 examples from a Google web page, but denies that Plaintiff has put the quote and reproduction in
27 the proper context. Except as expressly admitted herein, Google denies the allegations of
28 paragraph 94.

1 **I. Google Site Exclusion Tool**

2 95. Denied.

3 96. Google admits that it posted a blog on or about March 6, 2008 regarding Google's
4 site and category exclusion tool. Except as expressly admitted herein, Google denies the
5 allegations of paragraph 96.

6 97. Denied.

7 98. Denied.

8 99. Denied.

9 **J. Performance Reporting**

10 100. Google lacks knowledge or information sufficient to form a belief as to the truth of
11 the allegations in paragraph 100, and on that basis, denies them.

12 101. Denied.

13 102. Denied.

14 103. Denied.

15 104. Denied.

16 105. Denied.

17 106. Google admits that it posted a blog entry on May 2, 2008 with the title "Where did
18 I park?" on the AdWords Agency Blog. Except as expressly admitted herein, Google denies the
19 allegations of paragraph 106.

20 107. Google admits that Plaintiff quotes a portion of the blog entry referred to in
21 paragraph 107, but denies that Plaintiff has put the quote in the proper context or that Plaintiff's
22 quote is the complete blog posting. Except as expressly admitted herein, Google denies the
23 allegations of paragraph 107.

24 108. Denied.

25 109. Denied.

26 110. Denied.

27 111. Denied.

28 112. Denied.

1 113. Denied.

2 114. Denied.

3 **CLASS ALLEGATIONS**

4 115. Google admits that Plaintiff purports to bring this action individually and on behalf
5 of a putative class of AdWords advertisers. Except as expressly admitted herein, Google denies
6 the allegations of paragraph 115.

7 116. Google admits that Plaintiff purports to bring this action individually and on behalf
8 of a putative class of AdWords advertisers. Except as expressly admitted herein, Google denies
9 the allegations of paragraph 116.

10 117. Google admits that Plaintiff purports to bring this action individually and on behalf
11 of a putative class of AdWords advertisers. Except as expressly admitted herein, Google denies
12 the allegations of paragraph 117.

13 118. Denied.

14 119. Denied.

15 120. Denied.

16 121. Denied.

17 122. Denied.

18 123. Denied.

19 124. Denied.

20 125. Denied.

21 126. The allegations of paragraph 126 are legal conclusions to which no response is
22 required. To the extent a response is required, Google denies the allegations of paragraph 126.

23 **FIRST CLAIM FOR RELIEF**

24 **(Breach of Contract)**

25 127. Google hereby incorporates as through fully set forth herein its answers to
26 paragraphs 1 through 126.

27 128. Denied.

28 129. Google admits that Plaintiff contracted for and used Google's AdWords

1 advertising program and that Plaintiff entered into at least the two contracts referenced in
2 paragraph 129. Except as expressly admitted herein, Google lacks knowledge or information
3 sufficient to form a belief as to the truth of the allegations in paragraph 129, and on that basis,
4 denies them.

5 130. Denied.

6 131. Denied.

7 132. Denied.

8 133. Denied.

9 **SECOND CLAIM FOR RELIEF**

10 **(Breach of Covenant of Good Faith and Fair Dealing)**

11 134. Google hereby incorporates as through fully set forth herein its answers to
12 paragraphs 1 through 133.

13 135. Denied.

14 136. Denied.

15 137. Denied.

16 138. Denied.

17 139. Denied.

18 **THIRD CLAIM FOR RELIEF**

19 **(Violation of California Business & Professions Code**

20 **Section 17200 Et Seq. – Unfair Conduct)**

21 140. Google hereby incorporates as through fully set forth herein its answers to
22 paragraphs 1 through 139.

23 141. Denied.

24 142. Denied.

25 143. Denied.

26 144. Denied.

27 145. Denied.

28 146. Denied.

1 147. Denied.

2 148. Google admits that Plaintiff purportedly seeks the relief requested in paragraph
3 148 individually and on behalf of a putative class of AdWords advertisers, but denies that
4 Plaintiff is entitled to the relief requested and that this action can be maintained as a class action.
5 Except as expressly admitted herein, Google denies the allegations of paragraph 148.

6 149. Google admits that Plaintiff purportedly seeks the relief requested in paragraph
7 149 individually and on behalf of a putative class of AdWords advertisers, but denies that
8 Plaintiff is entitled to the relief requested and that this action can be maintained as a class action.
9 Except as expressly admitted herein, Google denies the allegations of paragraph 149.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Violation of California Business & Professions Code**

12 **Section 17200 Et Seq. – Fraudulent Conduct)**

13 150. Google hereby incorporates as through fully set forth herein its answers to
14 paragraphs 1 through 149.

15 151. Denied.

16 152. Denied.

17 153. Denied.

18 154. Denied.

19 155. Denied.

20 156. Denied.

21 157. Google admits that Plaintiff purportedly seeks the relief requested in paragraph
22 157 individually and on behalf of a putative class of AdWords advertisers, but denies that
23 Plaintiff is entitled to the relief requested and that this action can be maintained as a class action.
24 Except as expressly admitted herein, Google denies the allegations of paragraph 157.

25 158. Google admits that Plaintiff purportedly seeks the relief requested in paragraph
26 158 individually and on behalf of a putative class of AdWords advertisers, but denies that
27 Plaintiff is entitled to the relief requested and that this action can be maintained as a class action.
28 Except as expressly admitted herein, Google denies the allegations of paragraph 158.

1 **FIFTH CLAIM FOR RELIEF**

2 **(Violation of California Business & Professions**

3 **Code § 7200 Et Seq. – Unlawful Conduct)**

4 159. Google hereby incorporates as through fully set forth herein its answers to
5 paragraphs 1 through 158.

6 160. Denied.

7 161. Denied.

8 162. Denied.

9 163. Denied.

10 164. Google admits that Plaintiff purportedly seeks the relief requested in paragraph
11 164 individually and on behalf of a putative class of AdWords advertisers, but denies that
12 Plaintiff is entitled to the relief requested and that this action can be maintained as a class action.
13 Except as expressly admitted herein, Google denies the allegations of paragraph 164.

14 165. Google admits that Plaintiff purportedly seeks the relief requested in paragraph
15 165 individually and on behalf of a putative class of AdWords advertisers, but denies that
16 Plaintiff is entitled to the relief requested and that this action can be maintained as a class action.
17 Except as expressly admitted herein, Google denies the allegations of paragraph 165.

18 **SIXTH CLAIM FOR RELIEF**

19 **(Violation of California Business & Professions Code § 17500 Et Seq.)**

20 166. Google hereby incorporates as through fully set forth herein its answers to
21 paragraphs 1 through 165.

22 167. Admitted.

23 168. Denied.

24 169. Denied.

25 170. Denied.

26 171. Google admits that Plaintiff purportedly seeks the relief requested in paragraph
27 171, but denies that Plaintiff is entitled to the relief requested. Except as expressly admitted
28 herein, Google denies the allegations of paragraph 171.

1 **SEVENTH CLAIM FOR RELIEF**

2 **(Unjust Enrichment)**

3 172. Google hereby incorporates as through fully set forth herein its answers to
4 paragraphs 1 through 171.

5 173. Denied.

6 174. Denied.

7 175. Denied.

8 176. Denied.

9 177. Denied.

10 **SEPARATE AND ADDITIONAL DEFENSES**

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

12 **FIRST SEPARATE AND ADDITIONAL DEFENSE**
13 **(Failure to State a Cause of Action)**

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

16 **SECOND SEPARATE AND ADDITIONAL DEFENSE**
17 **(Lack of Standing)**

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

19 **THIRD SEPARATE AND ADDITIONAL DEFENSE**
20 **(No Harm)**

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

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

27 4. Plaintiff and some or all of the putative class members are barred from pursuing
28 the Complaint and the claims asserted therein against Google pursuant to the Final Order and

1 Judgment Approving Settlement, Certifying Class for Settlement Purposes, Awarding Class
2 Counsel Attorneys' Fees and Dismissing Action With Prejudice, entered by the Honorable Joe. E.
3 Griffin, Circuit Court Judge in the Circuit Court of Miller County, Arkansas on June 26, 2006 in
4 Lane's Gifts & Collectibles LLC, et. al. v. Yahoo! Inc., et. al., Case No. CV-2005-52-1.

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

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

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

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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 337 and 338 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 the Complaint.

PRAYER FOR RELIEF

WHEREFORE, Google prays for relief and judgment as follows:

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

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

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

5 Dated: September 30, 3008

COOLEY GODWARD KRONISH LLP
MICHAEL G. RHODES (116127)
PETER J. WILLSEY (*pro hac vice appl. pending*)
LEO P. NORTON (216282)

6
7
8
9 /s/Leo P. Norton

Leo P. Norton
Attorneys for Defendant
GOOGLE INC.
Email: lnorton@cooley.com

10
11
12 604683 /SD

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28