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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FREE RANGE CONTENT, INC., a California corporation, on behalf of itself and all others similarly situated,

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.

No.

CLASS ACTION COMPLAINT

COMPLAINT FOR BREACH OF CONTRACT, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, UNJUST ENRICHMENT, VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, AND FOR RELIEF PURSUANT TO THE CALIFORNIA DECLARATORY JUDGMENT ACT AND THE FEDERAL DECLARATORY JUDGMENT ACT

DEMAND FOR JURY TRIAL OF ANY ISSUES SO TRIABLE

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1 For its complaint against the defendant, plaintiff, on its own behalf and on behalf of all
2 others similarly situated, alleges as follows:

3 **I. INTRODUCTION**

4 1. Google Inc. (“Google”) owns and operates the AdSense advertising program. By
5 way of this program, Google induces website operators to host advertisements on their websites in
6 exchange for the promise that Google will pay these website operators a share of the fees that
7 advertisers pay it. Under the terms of Google’s contracts with the operators of these hosting
8 websites, program participants earn money when visitors to their websites view or interact with the
9 ads that Google has placed there.

10 2. The AdSense program is enormously popular. This popularity translates annually to
11 billions of dollars payable to AdSense publishers – Google’s parlance for website operators that
12 host its ads. But as the plaintiff and many other publishers have found, Google often shuts down
13 AdSense accounts shortly before a periodic payment is due and then denies the publisher the
14 entirety of the expected payment, notwithstanding all the ads the publisher already has served to
15 visitors to its website during the payment period.

16 3. This practice has sparked numerous bitter complaints detailed at various places on
17 the web. For example, one self-described AdSense publisher stated the following: “It’s common
18 knowledge among SEOs that AdSense tends to be disabled a few days before the supposed payout.
19 I haven't lost any big sum – only \$2000 but I know one person that lost \$40,000. It was all
20 legitimate traffic coming straight from Google themselves, no click fraud no bought traffic etc. PS:
21 I was using AdSense from 2008 to 2013 – over 5 years so it’s not like only new users got banned.”¹

22 4. It is Google’s wrongful refusal to pay terminated AdSense publishers the monies
23 they have earned and are owed that is the subject of this lawsuit. Google’s actions constitute
24 breach of contract, breach of the implied covenant of good faith and fair dealing, unjust
25 enrichment, and violation of the California Unfair Competition Law.

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¹ <https://news.ycombinator.com/item?id=7672910> (last accessed May 7, 2014).

1 Northern District of California. Furthermore, Google’s AdSense contract specifies that claims such
2 as these will be “litigated exclusively in the federal or state courts of Santa Clara County,
3 California, USA” (*See, e.g.*, <https://www.google.com/adsense/localized-terms?rc=US&ce=1>
4 (last accessed May 7, 2014).)

5 III. PARTIES

6 10. Plaintiff Free Range Content, Inc. (“Free Range Content”) is a California
7 corporation that owns and operates Repost.us, a website where it formerly hosted ads for Google
8 advertisers under Google’s AdSense program.

9 11. Defendant Google is a Delaware corporation with its headquarters and principal
10 place of business in Mountain View, California. Google is America’s leader in Internet
11 advertising. It was number 55 on last year’s U.S. Fortune 500, with 2013 revenues of \$55.2 billion
12 and profits of \$10.737 billion.

13 IV. RELEVANT FACTS

14 A. Google’s AdSense Program

15 12. Google’s AdSense program affords Google, *inter alia*, the ability to sell to
16 advertisers web ads that will appear on various non-Google websites. (*See, e.g.*,
17 https://www.google.com/adsense/www/en_US/tour/index.html (last accessed May 7, 2014).)

18 13. Google contracts with operators of these websites to publish these ads in exchange
19 for a percentage of the sums paid by advertisers to place and run the ads. Thus, Google promises
20 to pay publishers when visitors to the publishers’ web properties view, click on, or otherwise
21 interact with these ads. (*See, e.g., id.; see also* Exs. A (true and correct copy of the current
22 AdSense Online Terms and Conditions, retrieved on May 20, 2014 from
23 <https://www.google.com/adsense/localized-terms?rc=US&ce=1>), ¶ 5 (promise to pay)²; B (true and
24 correct copy of the AdSense Online Standard Terms and Conditions for the early July 2012
25 timeframe, when plaintiff became an AdSense program participant, retrieved on May 20, 2014

26 _____
27 ² “Subject to this Section 5 and Section 10 of these AdSense Terms, you will receive a payment
28 related to the number of valid clicks on Ads displayed on your Properties, the number of valid
impressions of Ads displayed on your Properties, or other valid events performed in connection
with the display of Ads on your Properties, in each case as determined by Google.” (*Id.*)

1 from the Internet Archive via the Wayback Machine
2 (<https://web.archive.org/web/20120706155053/https://www.google.com/adsense/localized-terms>)),
3 ¶ 11 (promise to pay)³; and C (true and correct copy of the AdSense Online Terms of Service then
4 current when plaintiff’s AdSense account was disabled on or about March 1, 2014, retrieved on
5 May 20, 2014 from the Internet Archive via the Wayback Machine
6 (<https://web.archive.org/web/20140220205332/https://www.google.com/adsense/localized-terms>)),
7 ¶ 5 (promise to pay)⁴.)

8 14. Google contracts with AdSense publishers consist of non-negotiable, adhesive terms
9 of participation. (*See generally* Exs. A, B, and C.) These contracts link to other non-negotiated
10 Google documents containing other adhesive terms.

11 15. Among these terms are provisions purportedly allowing Google to disable, *i.e.*,
12 terminate, publisher AdSense accounts for various reasons, at Google’s discretion. (*See, e.g.*,
13 Ex. A, ¶ 10; Ex. B, ¶¶ 6; Ex. C, ¶ 10.)

14 16. Also among these terms are provisions purportedly allowing Google not to pay
15 publishers for monies due them on their AdSense accounts upon Google’s disabling of those
16 accounts. (*See, e.g.*, Ex. A, ¶¶ 5 (“Payments will be calculated solely based on our accounting.
17 Payments to you may be withheld to reflect or adjusted to exclude any amounts refunded or
18 credited to advertisers and any amounts arising from invalid activity, as determined by Google in
19 its sole discretion. . . .”), 10; Ex. B, ¶ 11 (“Google reserves the right to withhold payment or charge
20 back Your account due to any of the foregoing or any breach of this Agreement by You, pending
21 Google’s reasonable investigation of any of the foregoing or any breach of this Agreement by
22 You”); Ex. C, ¶¶ 5 (“Payments will be calculated solely based on our accounting. Payments

23
24 ³ “You shall receive a payment related to the number of valid clicks on Ads, the number of
25 valid impressions of Ads, the number of valid completions of Referral Events initiated through
26 Referral Buttons displayed in connection with your Property(ies), and/or other events performed in
connection with the display of Ads on Your Property(ies), in each case as determined by Google
for participants in the Program.” (*Id.*)

27 ⁴ “Subject to this Section 5 and Section 10 of these AdSense Terms, you will receive a payment
28 related to the number of valid clicks on Ads displayed on your Properties, the number of valid
impressions of Ads displayed on your Properties, or other valid events performed in connection
with the display of Ads on your Properties, in each case as determined by Google.” (*Id.*)

1 to you may be withheld to reflect or adjusted to exclude any amounts refunded or credited to
2 advertisers and any amounts arising from invalid activity, as determined by Google in its sole
3 discretion . . .”), 10.)

4 17. Google, by its own tally, has disabled a massive number of publisher accounts. For
5 example, in a January 17, 2014 post entitled “Inside AdWords, Google’s official blog for news tips
6 and information on AdWords” – a publication directed to the advertiser side of Google’s
7 advertising ecosystem – Google states that “by the end of 2013” it had “[r]emoved more than
8 250,000 ad-funded publishers’ accounts for various policy reasons.”
9 (<http://adwords.blogspot.com/2014/01/busting-bad-advertising-practices-2013.html?m=1> (last
10 accessed May 7, 2014).) Given Google’s contractual terms purportedly permitting it to withhold
11 payment to publishers with disabled accounts, and in light of the experience of the plaintiff in
12 seeing this policy actually effected, the total of earned funds that Google has refused to pay its
13 AdSense publishers could be enormous.

14 **B. Plaintiff’s and Proposed Class Members’ Bitter Experiences with Google’s AdSense**
15 **Program**

16 **Plaintiff Free Range Content**

17 18. Google has withheld monies due plaintiff Free Range Content under its AdSense
18 program.

19 19. Plaintiff owns the Repost content syndication service and the website Repost.us. In
20 or about July 2012, plaintiff became an AdSense publisher for pages served on various websites
21 under its Repost.us brand.

22 20. All went well until February 2014, when estimated earnings for ads by the plaintiff,
23 as reported by Google, began to increase at a previously unseen rate. Plaintiff was took note of this
24 earnings spike and self-reported it to Google, asking for help to ascertain why it was happening and
25 also seeking aid to correct it as needed. Additionally, plaintiff attempted to identify the reason for
26 the spike on its own.

1 21. Shortly after the plaintiff reached out to Google, it received a note asking it to set up
2 an appointment to speak with a representative from the AdSense team. Plaintiff did as requested,
3 scheduling a call for March 6, 2014.

4 22. At the end of February 2014, Google issued a report stating that plaintiff’s estimated
5 earnings for the covered period were over \$40,000. To the plaintiff, it seemed unlikely, based on
6 its history with the program, that the number was correct; it seemed far too high. But certainly the
7 plaintiff was due some substantial portion of those estimated earnings, amounting to several
8 thousands of dollars — perhaps in the \$8,000 to \$11,000 range — for AdSense ads it had dutifully
9 served during that final period before Google disabled its account. Indeed, Google’s own estimate
10 of plaintiff’s payable earnings, issued at or around the beginning of March 2014, put the number
11 for the covered period at over \$11,000.

12 23. Then on March 4, 2014 — two days before the March 6, 2014 call with the AdSense
13 representative was to occur — plaintiff received word from the AdSense program that Google had
14 disabled its account. Google offered no explanation, other than a reference to its supposed
15 detection of “invalid activity in [plaintiff’s] AdSense account.” As Google put it: “We’re limited
16 in the amount of information we can provide about your specific violation. We understand this can
17 be frustrating for you, but we’ve taken precautionary measures because intentional violators can
18 use this information to circumvent our detection systems.”

19 24. Plaintiff was shocked to hear of its account termination, given that it had itself
20 alerted Google to a potential problem with its account and sought in good faith to identify and
21 correct whatever problem there actually might be. It promptly filed in writing the appeal
22 referenced in the termination notice. By way of this appeal, plaintiff sought not only reinstatement
23 of its account but the earnings owed it and withheld by Google.

24 25. Also, plaintiff’s telephone conference with the Google AdSense representative took
25 place as planned on March 6, 2014. During this call, the AdSense representative sounded
26 sympathetic but made it plain that he had no control over the matter. The representative also
27 indicated that plaintiff would be paid its earnings for the last payment period only if Google
28

1 granted its appeal. Shortly thereafter, plaintiff received a terse letter from Google, dated March 7,
2 2014, rejecting its appeal.

3 26. Now, having disabled plaintiff's AdSense account, Google refused to pay plaintiff
4 *any* of the sums it owed plaintiff for having served many thousands of AdSense ads on
5 Repost.com-branded webpages during the last pay period. Google made no attempt to limit what it
6 withheld, whether based on an assessment of the time-scope of the apparent problem with
7 plaintiff's AdSense account, the number of pages and ads that may have been affected, or
8 otherwise — Google simply withheld *all* of plaintiff's earnings for the last payment period.

9 **Other Publishers, Similar Experiences**

10 27. Google's wrongful refusal to pay publishers terminated from the AdSense program
11 *any* of the sums owed to them for serving ads since the last program payment has spawned a
12 plethora of bitter complaints detailed at various places on the web. For example, one self-
13 described AdSense publisher stated the following: "It's common knowledge among SEOs that
14 AdSense tends to be disabled a few days before the supposed payout. I haven't lost any big sum –
15 only \$2000 but I know one person that lost \$40,000. It was all legitimate traffic coming straight
16 from Google themselves, no click fraud no bought traffic etc. PS: I was using AdSense from 2008
17 to 2013 – over 5 years so it's not like only new users got banned."
18 (<https://news.ycombinator.com/item?id=7672910> (last accessed May 7, 2014.) Another reported in
19 part as follows:

20 Oh joy, I just got this dreaded email this morning. I've spent since December
21 creating 85 niche sites and generated around \$400 so far, none of which I'm going to
22 receive now because my account is disabled.

23 I'm just starting to go through my sites and try to figure out WHY and here are a
24 couple of things I have noticed so far.

25 On my latest batch of 11 sites I forgot to disable adsense on the privacy policy and
26 contact page (i only activated adsense on these sites 24 hours ago so they are my
27 prime suspects)

28 On some of my earliest sites I only made the contact page available via the privacy
policy page, so I'll need to improve the navigation on those sites.

1 Apart from that, I honestly can't see why my entire account was killed. I was
2 receiving normal amounts of clicks based on the traffic I was getting so I don't think
3 I had invalid click activity. . . .

4 (<http://empireflippers.com/adsense-account-disabled/> (last accessed May 8, 2014).) Numerous
5 similar reports abound.

6 **C. Reports from an Anonymous, Self-Described Former Employee of Google Regarding**
7 **Google's Alleged Practice of Wrongfully Withholding Payment from AdSense**
8 **Publishers**

9 28. On April 29, 2014, an anonymous, self-described "former Google employee" took
10 to the web to "leak information to the public of what [he or she] witnessed and took part in while
11 being an employee." (<http://pastebin.com/qh6Tta3h> (last accessed May 7, 2014).) The individual
12 wrote that "[his or her] position was to deal with AdSense accounts, more specifically the accounts
13 of publishers (not advertisers)." (*Id.*) The individual indicates that he or she is keeping his or her
14 identity a secret for now, and he or she did not reveal the subject information sooner, because of
15 "[h]aving signed many documents such as NDA's and non-competes," and out of fear of "many
16 repercussions . . . , especially in the form of legal retribution from Google." (*Id.*)

17 29. The individual goes on to describe an alleged first-quarter 2009 Google AdSense
18 division meeting in which "division higher ups" participated. (*Id.*) In this "very long meeting,"
19 according to this individual, there was discussion to the effect that "Google had suffered some very
20 serious losses in the financial department several months earlier." (*Id.*) The upshot was that
21 Google was going to "carry out extreme quality control on AdSense publishers." (*Id.*) This was
22 said to mean that "AdSense itself hands out too many checks each month to publishers, and that the
23 checks were too large and that needed to end right away." (*Id.*) Other "smaller meetings"
24 reportedly followed, and "the word was," according to this individual, that "they [Google] were
25 planning to cut off a large portion of publisher's payments." (*Id.*)

26 30. Purportedly, "the first big batch of bans happened in March of 2009. The main
27 reason, the publishers made too much money. But something quite devious happened." (*Id.*)
28 According to this individual, "[w]e were told to begin banning accounts that were close to their
payout period (which is why account bans never occur immediately after a payout). The purpose

1 was to get that money owed to publishers back to Google AdSense, while already having served up
2 the ads to the public.” (*Id.*)

3 31. According to this individual, “[f]rom 2009 to 2012 there were many more big
4 batches of bans. The biggest of all banning sessions occurred in April 2012. The AdSense
5 division had enormous pressure from the company to make up for financial losses, and for
6 Google’s lack of reaching certain internal financial goals for the quarter prior.” (*Id.*) Purportedly,
7 Google AdSense employees “were threatened with job losses if we didn’t enforce the company’s
8 wishes.” (*Id.*)

9 32. After “[s]everal publishers [reportedly] launched legal actions which were settled,”
10 Google, according to this individual, “came up with a new policy.” (*Id.*) This policy purportedly
11 was “officially called AdSense Quality Control Color codes (commonly called AQ3C by
12 employees).” (*Id.*) According to this individual, “[t]hose publisher’s [sic] that could do the most
13 damage by having their account banned were placed in a VIP group that was to be left alone. The
14 rest of the publishers would be placed into other groupings accordingly.” (*Id.*) He or she also
15 states that “[t]he new AQ3C also implemented ‘quality control’ quotas for the account auditors, so
16 if you didn’t meet the ‘quality control’ target (aka account bans) you would be called in for a
17 performance review.” (*Id.*)

18 33. The author of the post goes on to describe four groups, segregated by color,
19 requiring various levels of attention from AdSense employees. These purportedly ranged from
20 urgent (red) to VIP (green), the latter of which he or she describes as the “‘untouchables.’” (*Id.*)
21 AdSense publishers in these four groups purportedly were subject to differing degrees of scrutiny,
22 with publishers placed in the three non-green groups being subject to “ban[is]” for various
23 “reason[s],” (*id.*) All bans were to “occur as close to a payout period as possible with the most
24 amount of money accrued,” according to the anonymous poster. (*Id.*)

25 34. The individual goes on to write of a purported scheme whereby Google also used
26 skewed “Google Analytics” data to bilk publishers out of some or all of the money owed them.
27 (*See id.*)

1 district judge or magistrate judge to whom this case is assigned, as well as those judges' immediate
2 family members. Plaintiff will seek to amend this proposed class as necessary, or to add a class or
3 classes as necessary, in order to obtain all the relief sought by way of this complaint.

4 41. **Numerosity:** The exact number of the members of the proposed class is unknown
5 and is not available to the plaintiff at this time, but, upon information and belief, the class will
6 consist of many tens or even hundreds of thousands of members, such that individual joinder in this
7 case is impracticable.

8 42. **Commonality:** Numerous questions of law and fact are common to the claims of
9 the plaintiff and members of the proposed class. These include, but are not limited to:

10 a. Whether Google withholds earned funds from publishers whose accounts it
11 disables or terminates, purportedly under terms of its AdSense contracts with those publishers;

12 b. Whether terms of Google's AdSense contracts purportedly giving Google
13 the right to withhold earned funds from website publishers participating in its AdSense program are
14 unconscionable and unenforceable;

15 c. Whether the terms of Google's AdSense contracts purportedly giving
16 Google the right to withhold earned funds from website publishers participating in its AdSense
17 program are actually liquidated damages terms that set forth penalties in violation of California law
18 on liquidated damages, such that they are unenforceable;

19 d. Whether Google has breached its AdSense contracts with publishers by
20 refusing to pay them monies earned for serving ads on their websites;

21 e. Whether Google has breached the implied covenant of good faith and fair
22 dealing in administering its AdSense contracts in and following termination actions with its
23 AdSense publishers;

24 f. Whether plaintiff and members of the proposed class are entitled to
25 declaratory relief with respect to the illegality of the terms of Google's AdSense contracts insofar
26 as they purport to allow Google to withhold monies earned from AdSense program publishers, and
27 injunctive relief in order to halt that unlawful practice, and whether plaintiff and the proposed class
28 are entitled to their attorneys' fees, costs, and expenses for securing such relief;

1 g. Whether plaintiff and members of the proposed class are entitled to any
2 damages or restitution, including payments of AdSense program payments wrongfully withheld
3 from them by Google, and to their attorneys' fees, costs, and expenses related to any recovery of
4 such monetary relief; and

5 h. Whether plaintiff and members of the proposed class are entitled to any
6 damages or restitution incidental to the declaratory or injunctive relief they seek, and to their
7 attorneys' fees, costs, and expenses related to any recovery of such monetary relief.

8 43. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
9 proposed class. The factual and legal bases of Google's liability are the same and resulted in injury
10 to plaintiff and all of the other members of the proposed class.

11 44. **Adequate representation:** Plaintiff will represent and protect the interests of the
12 proposed class both fairly and adequately. Plaintiff has retained counsel competent and
13 experienced in complex class-action litigation. Plaintiff has no interests that are antagonistic to
14 those of the proposed class, and its interests do not conflict with the interests of the proposed class
15 members it seeks to represent.

16 45. **Prevention of inconsistent or varying adjudications:** If prosecution of a myriad
17 of individual actions for the conduct complained of were undertaken, there likely would be
18 inconsistent or varying results. This would have the effect of establishing incompatible standards
19 of conduct for the defendant. Certification of plaintiff's proposed class would prevent these
20 undesirable outcomes.

21 46. **Injunctive and declaratory relief:** By way of its conduct described in this
22 complaint, the defendant has acted on grounds that apply generally to the proposed class.
23 Furthermore, the defendant purports to apply common contractual terms in effecting the actions
24 complained of with respect to members of the proposed class. Accordingly, the injunctive and
25 declaratory relief requested are appropriate respecting the class as a whole.

26 47. **Predominance and superiority:** This proposed class action is appropriate for
27 certification. Class proceedings on these facts and this law are superior to all other available
28 methods for the fair and efficient adjudication of this controversy, given that joinder of all

1 members is impracticable. Even if members of the proposed class could sustain individual
2 litigation, that course would not be preferable to a class action because individual litigation would
3 increase the delay and expense to the parties due to the complex factual and legal controversies
4 present in this matter. Here, the class action device will present far fewer management difficulties,
5 and it will provide the benefit of a single adjudication, economies of scale, and comprehensive
6 supervision by this Court. Further, uniformity of decisions will be ensured.

7 **VI. CLAIMS FOR RELIEF**

8 **APPLICATION OF CALIFORNIA LAW**

9 48. Plaintiff's state-law claims in this matter, and those of the proposed class, are
10 governed by California law per the terms of Google's AdSense contracts. (Ex. A, ¶ 14; Ex. B,
11 ¶ 17; Ex. C, ¶ 14.)

12 **FIRST CAUSE OF ACTION**

13 **BREACH OF CONTRACT**

14 49. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully
15 set forth herein.

16 50. Plaintiff and members of the proposed class entered into contracts with Google
17 regarding their participation in Google's AdSense program. (See Exs. A, B, and C.)

18 51. These AdSense contracts contain terms promising that Google will pay publishers
19 for, *inter alia*, serving ads on their websites sold by Google to various advertisers. (Ex. A, ¶ 5;
20 Ex. B, ¶ 11; Ex. C, ¶ 5.)

21 52. Plaintiff and publisher-members of the proposed class have performed under the
22 AdSense contract by, *inter alia*, serving the subject ads on their websites. But in turn, Google,
23 purportedly relying on other terms of the contracts, refuses to pay these publishers funds already
24 owed them upon its disabling of their accounts.

25 53. The contractual terms purporting to permit Google to withhold payment of funds
26 owed to publishers whose accounts it disables, *see* Ex. A, ¶¶ 5, 10, Ex. B, ¶ 11, and Ex. C, ¶¶ 5, 10,
27 which Google reads and applies as permitting it to withhold such funds in their entirety, are
28 unconscionable. Accordingly, they are unenforceable. *See* CAL. CIV. CODE § 1670.5(a). These

1 oppressive terms appear in contracts of adhesion that were foisted upon small businesses and
2 individuals with no bargaining power by a giant and powerful corporation, Google, that drafted
3 them and presented them as a take-it-or-leave-it proposition. There was no negotiation, and there
4 was an absence of meaningful choice. Furthermore, these terms are so one-sided as to shock the
5 conscience; they are harsh and oppressive in that they purport, according to Google itself, to give it
6 the right to withhold upon disabling of a publisher's AdSense account *all* unpaid sums already
7 earned by the publisher for having served AdSense advertisements on its website(s) in the period
8 prior to account termination, however limited in scope or time the supposed offense or policy
9 violation might have been. As such, these terms are unconscionable and, therefore, unenforceable.
10 *See id.*

11 54. Furthermore, these terms constitute invalid provisions for liquidated damages. CAL.
12 CIV. CODE § 1671(b). Under California law governing liquidated damages provisions, the terms in
13 question constitute penalties in that the sums Google can purportedly withhold from publishers,
14 *i.e., all* sums earned by them for serving AdSense ads in the period prior to termination of their
15 accounts, bear no reasonable relationship to any actual damages or injury that Google might have
16 suffered from the supposed breach of the AdSense contracts by publishers. No matter how limited
17 the supposed offense, Google can (and does) refuse to pay all the funds owed, notwithstanding all
18 the performance on the part of the publisher in the payment period prior to Google's disabling of
19 its account. Thus, these terms were unreasonable under the circumstances existing at the time the
20 contract was made, rendering them invalid and unenforceable. *See id.*

21 55. With these payment-withholding terms stricken from the contracts as unenforceable,
22 Google's liability to plaintiff and the proposed class for breach of contract is stark.

23 56. Plaintiff and members of the proposed class have been damaged by Google's breach
24 of contract in the amount of sums owed to them but not paid when their AdSense accounts were
25 disabled, together with pre-judgment interest.

1 **SECOND CAUSE OF ACTION**

2 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

3 57. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully
4 set forth herein.

5 58. There exists in every contract, including Google's AdSense agreements with the
6 plaintiff and members of the proposed class, an implied covenant of good faith and fair dealing.

7 59. Google violated this covenant by terminating the plaintiff's AdSense agreement for
8 purported violations of its policies, even though the plaintiff endeavored at all times to comply with
9 Google's policies and itself brought potential issues to Google's attention so that it could resolve
10 them to Google's satisfaction. Next, Google compounded its violation of the covenant by
11 withholding *all* sums payable to the plaintiff for ads already served on its website during the period
12 prior to its account being disabled. Google made no effort whatsoever to limit the funds it refused
13 to pay to the plaintiff in any way. For example, Google did not limit the funds it withheld to ads
14 appearing on specific webpages, nor did it limit its action to a specific time period when activity
15 that purportedly violated its policies had occurred. Instead, Google refused to pay anything to
16 plaintiff for the final pay period. Upon information and belief, other members of the proposed
17 class, have suffered similar fates and violations of the covenant.

18 60. As alleged in the preceding cause of action, Google's contractual terms purportedly
19 allowing it to refuse to pay publishers funds already earned at the time of disablement of their
20 accounts are unenforceable because they are unconscionable and invalid liquidated damages
21 provisions. Accordingly, it is with respect to the remainder of the AdSense contract terms,
22 including those requiring payment for ads served, *see* Ex. A, ¶ 5, Ex. B, ¶ 11, and Ex. C, ¶ 5, that
23 Google has breached the implied covenant of good faith and fair dealing.

24 61. Plaintiff and members of the proposed class have been damaged by Google's breach
25 of the implied covenant of good faith and fair dealing in the amount of sums owed to them but not
26 paid when their AdSense accounts were disabled, together with pre-judgment interest.

1 **THIRD CAUSE OF ACTION**

2 **UNJUST ENRICHMENT**

3 62. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully
4 set forth herein.

5 63. To the detriment of plaintiff and the proposed class, Google has been and continues
6 to be unjustly enriched as a result of the unlawful and/or wrongful conduct alleged herein. More
7 specifically, Google has been unjustly benefited by retaining, purportedly on the basis of
8 unconscionable, invalid, and unenforceable AdSense contract terms, monies due and payable to
9 publishers, including the plaintiff and members of the proposed class, for serving on their websites
10 advertisements sold by Google to various advertisers.

11 64. As between the plaintiff and the proposed class on one hand, and Google on the
12 other, it would be unjust for Google to retain the benefits attained by its wrongful actions.
13 Moreover, even if Google remitted some or all of the withheld funds to its advertisers, it did so by
14 its wrongful choice, to the publishers' detriment, after first wrongfully choosing to withhold all of
15 the sums payable to publishers when it terminated their accounts. Thus, Google remains liable to
16 plaintiff and members of the proposed class for these funds. Accordingly, plaintiff and members of
17 the proposed class seek full restitution of the referenced sums which Google withheld from them
18 and by which Google was unjustly enriched, together with pre-judgment interest, or the value of
19 the benefit by which Google was unjustly enriched, based on the wrongful conduct alleged herein.

20 **FOURTH CAUSE OF ACTION**

21 **VIOLATION OF THE UNFAIR COMPETITION LAW**
22 **(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

23 65. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully
24 set forth herein.

25 66. Plaintiff brings this claim on its own behalf and on behalf of each member of the
26 proposed nationwide class described above.
27
28

1 67. California’s Unfair Competition Law (“UCL”) defines unfair competition to include
2 any “unlawful, unfair, or fraudulent” business act or practice. CAL. BUS. & PROF. CODE §§ 17200,
3 *et seq.*

4 68. Google has engaged in, and, upon information and belief, continues to engage in,
5 acts of unlawful and unfair business acts and practices prohibited by California’s UCL. These acts
6 include the inducing of AdSense publishers to serve ads on their websites for Google advertisers on
7 the promise of payment to the publishers of a share of the money paid to Google by the advertisers
8 for that service; causing publishers to serve those ads on their websites; disabling publisher
9 accounts before monies earned for serving those ads are due to be paid; and then withholding not
10 some, but *all*, of the funds due to the publishers for serving ads during the final payment period,
11 without any attempt to limit, let alone rationally limit, the sum withheld.

12 69. Google’s conduct has harmed plaintiff and members of the proposed class. Despite
13 publishers’ actions, including those of the plaintiff, to comply with Google’s policies and to act in
14 good faith in response to any notices from Google of policy infringements, Google refuses to pay
15 publishers, including the plaintiff, what is owed them for serving ads during the period prior to
16 disabling the publishers’ accounts. It simply withholds all the monies due, however limited in
17 scope or time a purported policy violation, or a publisher’s supposed offense, may be.

18 70. Google so acts on the basis of contractual terms purportedly permitting such
19 conduct, but which actually violate California law (a) making unlawful and unenforceable
20 contractual terms that are unconscionable; and (b) rendering unlawful and unenforceable invalid
21 provisions for liquidated damages. *See* CAL. CIV. CODE § 1670.5(a); CAL. CIV. CODE § 1671(b).
22 Furthermore, Google’s actions are patently unfair; as described above, Google withholds all
23 monies due to publishers for performance already rendered when Google terminates the publishers’
24 accounts, no matter how limited in scope or time the supposed offense identified by Google that
25 led to termination. Google’s unlawful and unfair business acts and practices as described herein
26 demonstrate unfair competition in violation of California’s UCL. *See* CAL. CIV. CODE § 17200
27 (“[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or
28 practice . . .”).

1 these terms in withholding funds from AdSense publishers; accordingly, there is an actual
2 controversy between the plaintiff and class members on the one hand, and Google on the other.

3 77. Pursuant to 28 U.S.C. § 2201(A) and otherwise, plaintiff and members of the
4 proposed class are entitled to an order declaring these terms unconscionable, invalid, and
5 unenforceable as against them and all AdSense publishers.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, plaintiff respectfully requests the following relief:

8 A. That the Court certify this case as a class action on the nationwide basis requested,
9 and that it appoint plaintiff as class representative and its counsel to be class counsel;

10 B. That the Court award it and the proposed class all appropriate relief, including
11 monetary relief, whether by way of restitution or damages, together with pre-judgment interest at
12 the highest rate permitted by law, as well as injunctive relief requiring that Google cease the
13 practices with respect to its AdSense program complained of herein, and declaratory relief,
14 adjudging such practices and the contractual terms upon which Google purports to rely unlawful
15 and unenforceable, in addition to recovery of its attorneys' fees, costs, and expenses;

16 C. That the Court grant it and the proposed class such additional orders or judgments as
17 may be necessary to redress or prevent the unlawful practices complained of herein; and

18 D. That the Court award it and the proposed class such other, favorable relief as may be
19 available and appropriate under federal or state law, or at equity.

20 **JURY TRIAL DEMANDED**

21 Plaintiff demands a trial by jury on all issues so triable.

22 DATED: May 20, 2014

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