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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiff

ADR

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JW

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don

12 HAL K. LEVITTE, Individually and On
13 Behalf of All Others Similarly Situated,

14 Plaintiff,

15 v.

16 GOOGLE, INC., a Delaware corporation,

17 Defendant.

008 03369

RS

**CLASS ACTION COMPLAINT FOR
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200 ET SEQ. AND 17500 ET
SEQ. AND UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

19
20 Plaintiff alleges, individually and on behalf of the class described below, and upon
21 information and belief, except as to allegations specifically pertaining to himself, which are based on
22 personal knowledge, as follows:

23 **SUMMARY OF CLAIMS**

24 I. This is a class action against defendant Google, Inc. ("Google") for violation of
25 Business & Professions Code Sections 17200 and 17500 and unjust enrichment in connection with
26 Google's AdWords program for Internet advertisers. Plaintiff alleges that Google has concealed
27 from and/or misrepresented material information to plaintiff and the class concerning the Google
28

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1 AdWords program. Google has damaged plaintiff and the class by improperly charging them for
2 advertising placed by Google on low-quality parked domain and error page websites.

3 **PARTIES**

4 2. Plaintiff Hal K. Levitte is a resident of Suffolk County, Massachusetts and citizen of
5 Massachusetts. Plaintiff is the principal of Levitte Law Group, a law firm located in Boston,
6 Massachusetts. During the class period, plaintiff ran an advertising campaign called "Levitte
7 International" for his law firm, using the Google AdWords advertising service.

8 3. Defendant Google is a Delaware corporation doing business and headquartered in
9 Mountain View, California.

10 **JURISDICTION AND VENUE**

11 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
12 1332(d) in that this is a civil action filed under Federal Rule of Civil Procedure 23 and plaintiff and
13 other members of the class are citizens of a state different from Google, the aggregate amount in
14 controversy exceeds \$5,000,000, exclusive of interest and costs, and there are more than 100 class
15 members. 28 U.S.C. § 1332(d)(2), (6).

16 5. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
17 § 1391(a) in that: (1) Google resides in this judicial district; (2) a substantial part of the events or
18 omissions giving rise to the claims asserted herein occurred in this judicial district; and (3) Google is
19 subject to jurisdiction in the Northern District of California.

20 **FACTS**

21 6. Google's free Internet search engine is the most widely used search engine in the
22 world. In 2007, Google's total revenue was approximately \$16.6 billion, 99% of which was derived
23 from advertising services.

24 7. Google offers two basic advertising and placement programs—Google AdWords and
25 Google AdSense. Google AdWords is for advertisers, such as plaintiff and the class, who wish to
26 place ads on Google and other sites within Google's network. Google AdSense is for website
27 publishers who wish to permit Google AdWords advertisers' ads to appear on their sites.

28 8. Google describes Google AdWords as follows:

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Google AdWords is a quick and simple way to advertise on Google, regardless of your budget. AdWords ads are displayed along with search results on Google, as well as on search and content sites in the growing Google Network, including AOL, EarthLink, HowStuffWorks, & Blogger. With searches on Google and page views on the Google Network each day, your Google AdWords ads reach a vast audience.

9. Under the Google AdWords program, advertisers select and bid on particular internet search terms. When an internet user employs Google to search for that term, Google displays the ads of its customers on the Google webpage that returns the search results. The more an advertiser bids for a particular search term, the better placement that advertiser generally receives. Advertisers pay Google based on the number of Internet users who click on their ads.

10. The Google AdWords program also allows advertisers to have their ads placed on third-party sites through Google's AdSense program. Google describes Google AdSense as follows:

Google AdSense is a fast and easy way for website publishers of all sizes to display relevant, unobtrusive Google ads on their website's content pages and earn money. Because the ads are related to what your users are looking for on your site, you'll finally have a way to both monetize and enhance your content pages. It's also a way for web site publishers to provide Google search to their site users, and to earn money by displaying Google ads on the search results pages.

11. Under the Google AdSense program, website publishers can have subject matter related ads displayed on their websites. Google AdSense is comprised of three separate networks: AdSense for Search, AdSense for Content, and AdSense for Domains.

12. AdSense for Search refers to websites that include the Google search function, and that display ads alongside the results of Google searches conducted on the website. AdSense for Search is also known as Google's "Search Network."

13. AdSense for Content includes third-party websites that display ads alongside their content, as described above. AdSense for Content is also known as Google's "Content Network."

14. AdSense for Domains includes inactive, parked sites with little or no content, but that display ads related to their domain name.

15. AdSense for Domains is only available to domain name registrars and holders of large domain portfolios, and is defined by Google as follows:

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1 **Google AdSense for Domains** allows domain name registrars and large domain
2 name holders to provide valuable and relevant content on their parked pages. Parked
3 domain pages generally have no content; however, by adding targeted ads, we hope
4 to help users find what they are looking for. Using Google’s semantic technology to
5 analyze and understand the meaning of the domain names, AdSense for domains
6 delivers targeted, conceptually related advertisements to parked domain pages to
7 improve the user experience on these pages.

8 16. Finally, Google has a little-publicized advertising program called AdSense for Errors.
9 AdSense for Errors places ads on unregistered web pages or malformed search queries incorrectly
10 entered into a web browser’s address bar instead of a search engine. In place of generating an error
11 page, the resulting web page includes ads that are related to address of the page. Google lumps
12 these error page ads into its Content and Search Networks.

13 17. Most AdWords and AdSense transactions follow a pay-per-click model. Pursuant to
14 these programs, Google places ads on its own website and on third-party sites. Each time an ad is
15 clicked, the site owner is compensated, and the advertiser is charged. Third-party site owners
16 receive a fraction of the amount advertisers are charged, and Google takes the rest.

17 18. Google marketed AdWords by emphasizing the high quality of sites on which
18 AdWords ads will be placed, and did not disclose Google’s practice of placing ads on parked
19 domains and error pages.

20 19. Google’s AdWords website, which potential customers viewed before clicking the
21 “Start Now” button to sign up for the service, includes the following statement:

22 **Expand your reach through the content network**

23 With hundreds of thousands of high-quality websites, news pages, and blogs that
24 partner with Google to display AdWords ads, the Google content network can reach
25 users all over the web to help you drive conversions. Choose from text, image, and
26 video formats to communicate your message.

27 20. Google hosts an AdWords help page titled “Where will my ads appear?” that states:

28 **The search network**

 Your ads may appear alongside or above search results, as part of a results page as a
user navigates through a site’s directory, or on other relevant search pages. Our
global search network includes Google Product Search and Google Groups and the
following entities: AOL, Netscape Netcenter, Earthlink, CompuServe,
Shopping.com, AT&T Worldnet, Ask.com.

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The content network partners

Our extensive content network of websites and products includes these partners: About, Lycos, The New York Times, InfoSpace, Reed Business, howstuffworks.com, business.com, foodnetwork.com, HGTV.

Ads on the content network

AdWords ads on content sites are targeted to the content and URL of each page. In the screenshot below you can see how the ads are displayed on a content page and that the ads are directly relevant to the content of the page.

21. Without their knowledge or consent, advertisers who joined Google’s AdWords program have had their ads placed on pages contained in AdSense for Domains, or parked sites, and AdSense for Errors, or error pages. The quality of these sites as an advertising medium is substantially lower than sites on the rest of Google’s network.

22. Specifically, these websites result in a lower conversion rate than standard search traffic or web sites with actual content on them. The conversion rate is defined as the number of people who take action based on a click (be it placing an item in a shopping cart, signing a petition, or contacting a business), expressed as a percentage of total clicks.

23. Plaintiff used Google AdWords to conduct his “Levitte International” campaign for his law practice. From approximately June 1, 2007 to August 17, 2007 in the “Levitte International” campaign, plaintiff received 202,528 impressions (or times his ad appeared in a web browser in response to a search) from parked domain ads, 668 clicks, and zero conversions. Over the same period, plaintiff received 1,009 impressions from error page ads, 25 clicks, and zero conversions. Domain and error page ads accounted for approximately 16.2% of all clicks on plaintiff’s ad during his campaign, yet did not result in a single person completing the online form on the site, or contacting plaintiff by phone or email.

24. Plaintiff spent \$136.11 for advertising on parked domains and error pages, or approximately 15.3% of his total campaign costs of \$887.67, for which he received no benefit.

25. Google includes millions of parked domains and error pages that have little to no content, and that result in practically zero conversions, in both its Content Network and its Search Network.

1 26. Given the low quality of these parked domain and error page ads, advertisers would
2 not want to spend their advertising budgets on these distribution networks. However, Google
3 designed its network in such a way that it was virtually impossible to opt out of the AdSense for
4 Domains and/or AdSense for Errors programs.

5 27. Including parked domains and error pages within the Search and Content Networks is
6 the opposite of what AdWords advertisers like plaintiff expected. Google's practice of including
7 parked domain and error pages within the Search Network is misleading, since no actual searches
8 are performed on these pages. Likewise, Google's practice of including parked domains and error
9 pages within the Content Network is also misleading, since most of these sites include little or no
10 content.

11 28. Furthermore, even if an advertiser discovered that the parked domain and error pages
12 were included within these other networks, the advertiser would have to opt out of both the Search
13 Network and the Content Network to prevent its ads from being placed on low-quality parked
14 domains and error pages. However, doing so would also prevent the ads from being displayed on
15 the websites of any of Google's high-quality partners, such as AOL and The New York Times.

16 29. For each advertising campaign, Google provides a settings page that allows
17 advertisers to decide which networks on which to show their ads. Choices include Google Search,
18 Search Network, and Content Network. There is no setting on this screen to allow advertisers to
19 opt-out of the domains or error networks, and until March 2008, there was no method anywhere in
20 Google's user interface to opt out of the domains or errors networks.

21 30. When customers complained to Google that their ads were being shown on low-
22 quality parked domains and error pages, Google dismissed these complaints, claimed the clicks were
23 legitimate, and refused to refund customers for the charges.

24 31. For example, in response to plaintiff's demand for a refund for amounts charged in
25 connection with parked domain and error page clicks, Google declined to refund plaintiff for clicks
26 originating from parked domains or error pages, which accounted for 16.4% of the total clicks
27 during plaintiff's campaign. In an email from AdWords support to plaintiff, Google wrote, "My
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1 team verified that the clicks you have been charged for appear to fit a pattern of normal activity.”

2 The email went on to explain that clicks on the Content and Search Networks were all normal.

3 32. On March 6, 2008, Google posted a message on its AdWords blog announcing a
4 change to its policy. Prior to that announcement, Google offered a “Site Exclusion Tool” that
5 allowed advertisers to identify websites on which they did not wish Google to place their ads.
6 However, the “Site Exclusion Tool” did not allow advertisers to opt out of parked domains or error
7 pages. Their only options were to opt out of the entire Content Network or the entire Search
8 Network. The site exclusion tool was later updated and renamed the “Site and Category exclusion
9 tool.”

10 33. After this change in Google’s policy, by clicking on a well-hidden “page types” tab
11 within the tool, advertisers could now see summarized click data for “Error Pages” and “Parked
12 Domains,” and for the first time, exclude their ads from appearing on these sites. However, instead
13 of including this option on the main settings page for each campaign, Google instead placed this opt-
14 out button four clicks deep within its interface, where many advertisers would not notice it.

15 34. On its marketing pages, which are shown to prospective customers prior to signing
16 up for AdWords, Google states the following under “Reach More Customers”:

17 **Measure and optimize your results**

18 With the Placement Performance Report, you have visibility into where all your ads
19 appear. Review your ad’s performance on a site-by-site basis to see impression, click,
20 cost, and conversion data, and use this data to identify well-performing sites to target
21 more aggressively and low-value placements that require content optimization or
22 exclusion.

23 35. Google’s Placement Performance Reports provided limited information only on sites
24 included in Google’s Content Network. No such reports have ever been available for Google’s
25 Search Network. What’s more, Google did not automatically provide these reports to its AdWords
26 customers. Rather, the reports would be generated only for AdWords customers who made a special
27 effort to locate the appropriate page on Google’s site and have the report generated. Moreover,
28 while the reports did provide an incomplete list of some of the sites where an ad appeared, it
concealed the domain names, IP addresses, and associated performance data of parked domains and

1 error pages on which an ad was placed by aggregating this data into two lump-sum line items,
2 among hundreds of line items on a typical report, called "Domain ads" and "Error page ads." The
3 meaning of those line-items was not explained in the report, nor did Google disclose the low quality
4 of those pages or the low conversion rates of advertising placed on those pages. Before June 12,
5 2007, when Google first made the Placement Performance Report tool available for its Content
6 Network, not even this limited, aggregated data on "Domain ads" and "Error page ads" was
7 available to AdWords customers. At no time did Google ever disclose to customers contemplating
8 an AdWords purchase that low-quality parked domain and error pages were included in both its
9 Content Network and its Search Network.

10 36. In addition to failing to disclose that ads would be placed on parked domains and
11 error pages, and preventing advertisers from opting out of placement on these pages prior to March
12 2008, Google also concealed the individual addresses of the parked sites and error pages on which it
13 placed AdWords ads. This policy was at odds with Google's marketing claims about what data it
14 makes available to its users.

15 37. When Google originally launched the Placement Performance Report tool on June
16 12, 2007, it posted a message to its official AdWords blog stating: "Currently, AdSense for domains
17 statistics are collectively reported, but we are working to give you site-by-site level statistics soon."

18 38. Without a site-by-site listing of which parked domains and error pages their ad was
19 placed on, advertisers could not adjust their advertising budgets on these sites or exclude some or all
20 parked domains and error pages from receiving ad placement. By aggregating this information,
21 Google effectively prohibited advertisers from utilizing another means of opting out of domain or
22 error page ads using the AdWords interface.

23 39. On May 2, 2008, Google posted a message titled "Where did I park?" on its
24 AdWords Agency Blog announcing that it had finally changed the policy and was providing site-by-
25 site data for parked domains.

26 40. Katharine Allan of Google's Agency Team wrote: "We recently added a new level of
27 detail to Placement Performance reports to answer this question. Placement Performance reports
28 give site-by-site performance metrics for the sites where your ads appeared within Google's content

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1 network. Now, rather than seeing one consolidated entry for all parked domains in your reports,
2 you'll see separate rows displaying performance statistics for individual parked domains."

3 41. Prior to May 2, 2008, Google failed to disclose domain names, IP addresses, and
4 associated performance data of parked domain and error pages included in its Content Network.
5 Google has never disclosed this data for parked domain and error pages included in its Search
6 Network.

7 **CLASS ALLEGATIONS**

8 42. Plaintiff brings this nationwide class action on behalf of himself and the class defined
9 as follows:

10 All persons or entities located within the United States who, within four years of the filing of
11 this complaint, had an AdWords account with Google and who were charged for
advertisements appearing on parked domain and/or error page websites.

12 43. Excluded from the class are governmental entities, defendant, any entity in which
13 defendant has a controlling interest, and defendant's officers, directors, affiliates, legal
14 representatives, employees, co-conspirators, successors, subsidiaries, and assigns.

15 44. Also excluded from the class are any judges, justices, or judicial officers presiding
16 over this matter and the members of their immediate families and judicial staff.

17 45. Upon information and belief, plaintiff alleges that the total number of class members
18 is at least in the hundreds of thousands and that the members of the class are geographically
19 dispersed across the United States. Consequently, joinder of the individual class members would be
20 impracticable.

21 46. There are many questions of law and fact common to the representative plaintiff and
22 the proposed class, and those questions substantially predominate over any individualized questions
23 that may affect individual class members. Common questions of fact and law include, but are not
24 limited to, the following:

- 25 • Whether Google's representations regarding AdWords were false or misleading.
- 26 • Whether Google, in violation of applicable law and its own stated policy, charged
27 plaintiff and the members of the class for ads that were placed on parked domain and
28 error page websites;

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- 1 • Whether Google engaged in unfair, unlawful and/or deceptive business practices;
- 2 • Whether Google failed to disclose material facts about its Adwords program; and
- 3 • Whether or not plaintiff and the members of the class have been damaged by the
- 4 wrongs complained of herein, and if so, the measure of those damages and the nature
- 5 and extent of other relief that should be provided.

6 47. Plaintiff's claims are typical of the claims of the members of the class. Plaintiff and
7 all class members have been similarly affected by defendant's common course of conduct.

8 48. Plaintiff will fairly and adequately represent and protect the interests of the class.
9 Plaintiff has retained counsel with substantial experience in prosecuting complex and class action
10 litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of
11 the class, and have the financial resources to do so. Neither Plaintiff nor his counsel has any
12 interests adverse to those of the proposed class.

13 49. Plaintiff and the members of the class have suffered, and will continue to suffer, harm
14 as a result of defendant's unlawful and wrongful conduct. A class action is superior to other
15 available methods for the fair and efficient adjudication of the present controversy, because joinder
16 of all members of the class would be impractical.

17 50. Even if individual class members had the resources to pursue individual litigation, it
18 would be unduly burdensome to the courts in which the individual litigation would proceed.
19 Individual litigation would cause delay and undue expense to all parties affected by defendant's
20 common course of conduct.

21 51. The class action device will allow a single court to provide the benefits of unitary
22 adjudication, judicial economy, and the fair and equitable handling of all class members' claims in a
23 single forum. The conduct of this action as a class action will conserve the resources of the parties
24 and of the judicial system, and will protect the rights of the class members.

25 52. Furthermore, for many, if not most, class members, a class action is the only feasible
26 mechanism for legal redress for the harm alleged.

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1 53. Adjudication of individual class members' claims against the defendant would, as a
2 practical matter, be dispositive of the interests of other class members not parties to the adjudication
3 and could substantially impair or impede the ability of other class members to protect their interests.

4 **FIRST CLAIM FOR RELIEF**
5 **(VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
6 **SECTION 17200 ET SEQ. — UNFAIR CONDUCT)**

7 54. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
8 extent necessary, pleads this cause of action in the alternative.

9 55. Plaintiff has standing to pursue this claim as plaintiff has suffered injury in fact and
10 has lost money or property as a result of Google's actions as set forth above.

11 56. Class members have suffered injury in fact and have lost money or property as a
12 result of Google's actions as set forth above.

13 57. Google's actions as alleged in this complaint constitute "unfair" conduct within the
14 meaning of California Business and Professions Code sections 17200 *et seq.*

15 58. Google's business practices, as alleged herein, are "unfair" because they offend
16 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or
17 substantially injurious to its customers. Google's conduct is "unfair" because Google fails to
18 disclose that customers' ads are placed on parked domain and error page sites, and Google does not
19 provide an effective means for customers to exclude their ads from appearing on these sites. In fact,
20 until March 2008, Google provided no means at all for customers to exclude their ads from
21 appearing on these sites.

22 59. As a result of Google's "unfair" conduct, plaintiff and members of the class expended
23 money on advertising that they would not otherwise have spent, and received less value for their
24 advertising dollars than they should have received.

25 60. Google's wrongful business practices alleged herein constituted, and continue to
26 constitute, a continuing course of unfair competition since Google continues to market and sell its
27 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
28 oppressive, unscrupulous and/or substantially injurious to its customers

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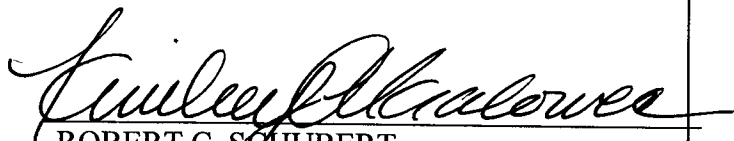
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JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: July 11, 2008

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