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11 Attorneys for Plaintiff
12 RK West, Inc.

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16
17 RK West, Inc., a California corporation
d/b/a Malibu Wholesale,
18 individually and on Behalf of All Others
19 Similarly Situated,

20 Plaintiff,

21 v.

22 GOOGLE, INC., a Delaware
23 Corporation; and DOES 1 through 10,
24 inclusive,

25 Defendants.

CASE NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

26
27 Plaintiff RK West, Inc. d/b/a Malibu Sales ("Plaintiff"), individually and on behalf
28 of the class described below, by its attorneys, makes the following allegations pursuant to

1 the investigation of its counsel and based upon information and belief except as to
2 allegations specifically pertaining to Plaintiff and its counsel, which are based on
3 personal knowledge. Plaintiff brings this action for damages and injunctive relief against
4 defendant, demanding a trial by jury.

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this class action against Google, Inc. ("Google") to recover
7 damages and other relief available at law and in equity on behalf of itself as well as on
8 behalf of the members of the following class:

9 *All persons or entities located within the United States who*
10 *created an AdWords campaign and were subsequently*
11 *charged for clicks from ads placed on parked domains.*

12 2. This action arises from Google's deceptive, fraudulent and unfair practice
13 of hiding the sources of invalid clicks from advertisers who seek on-line advertising
14 through Google's AdWords.

15 3. Google is commonly thought simply as an Internet search engine; in fact
16 Google's business is online advertising. Google's business model is primarily dependent
17 on connecting individuals who are searching the internet with advertisers who pay
18 Google (and others) for each time the linkage occurs. The Google Network is the largest
19 online advertising network in the United States.

20 4. AdWords is Google's primary advertising program and is the main source
21 of its revenue. Through AdWords, Google permits would-be advertisers to bid on words
22 or phrases that will trigger the advertisers' ads. AdWords is premised on a pay-per-click
23 ("PPC") model, meaning that advertisers pay only when their ads are clicked. In addition
24 to being displayed on Google.com, the ads from Google's customers can also be placed
25 on Google's "content network" which consists of sites that are not search engines. These
26 content network sites include "parked domains" which are websites with no other content
27 besides ads. This is done through the AdSense for Domains program, the other side of
28 the Google advertising model.

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1 complaint to set forth the true names and capacities of these defendants when they have
2 been ascertained, along with appropriate charging allegations, as may be necessary.

3
4
5 **JURISDICTION AND VENUE**

6 9. This Court has diversity subject matter jurisdiction over this class action
7 pursuant to 28 U.S.C. § 1332(d) in that this is a civil action filed under Rule 23 of the
8 Federal Rules of Civil Procedure and members of the class of plaintiffs are citizens of a
9 State different from defendant Google, and the aggregated amount in controversy exceeds
10 \$5,000,000, exclusive of interest and costs. See 28 U.S.C. § 1332(d)(2), (6).

11 10. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
12 § 1391(a) in that: (1) Google resides in this judicial district; (2) a substantial part of the
13 events or omissions giving rise to the claims asserted herein occurred in this judicial
14 district; and (3) Google is subject to personal jurisdiction in the Northern District of
15 California.

16
17 **FACTUAL BACKGROUND**

18 11. Google offers advertisers two types of ads. The first is a search ad. When
19 an Internet user uses Google to search for a specific term or term, Google will display the
20 ads of advertisers who have bid for those particular keywords. The second type of ad is
21 contextual based ads, or content ads. These ads are shown on third party websites that
22 have content that matches the keywords bid on by the advertiser. For example, an ad for
23 a hardware store may be shown on a website that has content about home improvement
24 projects.

25 12. An internet domain refers to the web address associated with a particular
26 website. For example, the domain associated with the United States District Court in the
27 Northern District of California is "cand.uscourts.gov." Domains are acquired by
28 registering the name with an appropriate internet domain name registrar.

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1 13. A parked domain refers to a web address pointing to a website which
2 contains no content besides ads. The domain name is registered for the sole purpose of
3 selling the domain name at a later date, or to generate ad revenue. Since the domain
4 name is no longer available for registration, it is commonly referred to as being “parked.”

5 14. By default Google includes parked domains in its third party network.
6 Domains owners are compensated for clicks that occur in these content-less websites
7 through the AdSense for Domains program.

8 15. In order to advertise with Google, advertisers must register with AdWords,
9 Google’s advertising program. After registration advertisers are able to change the
10 default option and exclude their ads from being placed on parked domains only after
11 engaging a complicated account settings page.

12 12. Plaintiff enrolled in AdWords in or around August 2006. Plaintiff created
13 several advertising campaigns for its online store business.

14 13. Plaintiff was charged for several clicks originating from parked domains,
15 with no additional information given by Google as to the nature or specific source of
16 these clicks beyond the designation “parked domain.”

17 14. Plaintiff examined charges to its AdSense account from unknown domains
18 labeled only as “parked domains.” Upon further inspection Plaintiff realized that this
19 traffic was being directed from parked domains which had little relation to its business,
20 yet generated traffic to its site.

21 15. Despite indication that some of the clicks from parked domains were
22 invalid, Google failed to disclose to the Plaintiff specific domains names in which these
23 ads were clicked on, making detection of invalid clicks difficult and even worse
24 concealing any evidence of invalid clicks.

25 16. Since Google profits from all generated clicks, regardless of validity they
26 benefit by actively hiding sources of invalid clicks being charged to its advertisers.
27 Hiding the source of parked domain clicks launders invalid clicks and makes any claims
28 of invalid clicks from these sites nearly impossible to show.

CLASS ALLEGATIONS

1
2 16. Description of the Class: Plaintiff brings this nationwide class action on
3 behalf of himself and the Class defined as follows:

4 *All persons or entities located within the United States who*
5 *created an AdWords campaign and were subsequently*
6 *charged for clicks from ads placed on parked domains.*

7 17. Excluded from the Class are governmental entities, Defendant, any entity in
8 which Defendant has a controlling interest, and Defendant's officers, directors, affiliates,
9 legal representatives, co-conspirators, successors, subsidiaries, and assigns. Also
10 excluded from the Class is any judge, justice, or judicial officer presiding over this matter
11 and the members of their immediate families and judicial staff.

12 18. Plaintiff reserves the right to modify the class description and the class
13 period based on the results of discovery.

14 19. Numerosity: The proposed Class is so numerous that individual joinder of
15 all its members is impracticable. Due to the nature of the trade and commerce involved,
16 however, Plaintiff believes that the total number of class members is at least in the
17 hundreds of thousands and that the members of the Class are numerous and
18 geographically dispersed across the United States. While the exact number and identities
19 of class members are unknown at this time, such information can be ascertained through
20 appropriate investigation and discovery. The disposition of the claims of the Class
21 members in a single class action will provide substantial benefits to all parties and to the
22 court.

23 20. Common Questions of Law and Fact Predominate: There are many
24 questions of law and fact common to the representative Plaintiff and the proposed Class,
25 and those questions substantially predominate over any individualized questions that may
26 affect individual class members. Common questions of fact and law include, but are not
27 limited to, the following:

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- 1 a. Whether Google committed fraud it failed to disclose sources of
2 clicks from parked domains;
- 3 b. Whether or not Plaintiff and the members of the Class have been
4 damaged by the wrongs complained of herein, and if so, the measure
5 of those damages and the nature and extent of other relief that should
6 be afforded;
- 7 c. Whether Google engaged in unfair, unlawful and/or fraudulent
8 business practices; and
- 9 d. Whether Google failed to disclose material facts about the subject
10 Google Adwords program.

11 21. Typicality: Plaintiff's claims are typical of the claims of the members of
12 the Class. Plaintiff and all members of the Class have been similarly affected by
13 Defendant's common course of conduct since material information pertaining to the
14 source of clicks coming from parked domains was equally withheld from all.

15 22. Adequacy of Representation: Plaintiff will fairly and adequately represent
16 and protect the interests of the Class. Plaintiff has retained counsel with substantial
17 experience in prosecuting complex and class action litigation. Plaintiff and its counsel
18 are committed to vigorously prosecuting this action on behalf of the Class, and have the
19 financial resources to do so. Neither Plaintiff nor its counsel has any interests adverse to
20 those of the proposed Class.

21 23. Superiority of a Class Action: Plaintiff and the members of the Class have
22 suffered, and will continue to suffer, harm as a result of Defendant's unlawful and
23 wrongful conduct. A class action is superior to other available methods for the fair and
24 efficient adjudication of the present controversy as individual joinder of all members of
25 the Class is impractical. Even if individual Class members had the resources to pursue
26 individual litigation, it would be unduly burdensome to the courts in which the individual
27 litigation would proceed. Individual litigation magnifies the delay and expense to all
28 parties in the court system of resolving the controversies engendered by Defendant's

1 common course of conduct. The class action device allows a single court to provide the
2 benefits of unitary adjudication, judicial economy, and the fair and equitable handling of
3 all class members' claims in a single forum. The conduct of this action as a class action
4 conserves the resources of the parties and of the judicial system, and protects the rights of
5 the class member. Furthermore, for many, if not most, Class members, a class action is
6 the only feasible mechanism that allows an opportunity for legal redress and justice.

7 24. Adjudication of individual Class members' claims with respect to the
8 Defendant would, as a practical matter, be dispositive of the interests of other members
9 not parties to the adjudication and could substantially impair or impede the ability of
10 other Class members to protect their interests.

11
12 **FIRST CAUSE OF ACTION**

13 **UNJUST ENRICHMENT**

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

16 26. Through the actions described above, Google has received money
17 belonging to Plaintiff and the Class through the fees collected ads placed on third party
18 parked domain sites.

19 27. Additionally, Google has reaped substantial profit by concealing invalid
20 clicks from parked domains. Ultimately, this resulted in Google's wrongful receipt of
21 profits and injury to Plaintiff and the Class. Google has benefited from the receipt of
22 such money that it would not have received but for its concealment.

23 28. As a direct and proximate result of Google's misconduct as set forth above,
24 Google has been unjustly enriched.

25 29. Under principles of equity and good conscience, Google should not be
26 permitted to keep the full amount of money belonging to Plaintiff and the Class which
27 Google has unjustly received as a result of its actions.

28 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

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SECOND CAUSE OF ACTION

FRAUDULENT CONCEALMENT

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

31. Google knew at all material times the source of invalid clicks from parked domains, and that its customers would not be able to distinguish between valid and invalid clicks from parked domains with the limited information that was provided to them. These facts were not known to Plaintiff and the Class.

32. Google had a duty to disclose the above known material facts because it knew that these material facts were unknown to Plaintiff and the Class, that Google was in a superior position of knowledge with regard to its own technology, and Google chose to make certain representations that presented only a part of the true story and thus misled its customers.

33. Google’s knowledge that advertisers would be charged for invalid clicks hidden in the bulk AdWords charges from parked domains, combined with Google’s knowledge that Plaintiff and the Class relied or relies upon Google to communicate the true state of facts relating to its AdWords program creates a legal obligation on Google’s part to disclose the source of clicks originating from parked domains.

34. Google intentionally concealed and/or suppressed the above facts with the intent to defraud Plaintiff and the Class.

35. Plaintiff and the Class were unaware of the above facts and would not have acted as they did if they had known of the concealed material facts.

36. Google’s concealment of the above facts has caused damage to Plaintiff and the Class in an amount to be shown at trial.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

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THIRD CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE
SECTIONS 17200 ET SEQ.

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

38. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Google’s actions as delineated herein.

39. Class members have suffered injury in fact and have lost money or property as a result of Google’s actions as delineated herein.

40. Google’s actions as alleged in this complaint constitute an unfair or deceptive practice within the meaning of California Business and Professions Code sections 17200 *et seq.* in that Google’s actions are unfair, unlawful and fraudulent, and because Google has made unfair, deceptive, untrue or misleading statements in advertising media, including the Internet, within the meaning of California Business and Professions Code sections 17500 *et seq.*

41. Google’s business practices, as alleged herein, are unfair because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers in that consumers are not informed of the sources of invalid clicks for which they are charged for.

42. Google’s business practices, as alleged herein, are unlawful because the conduct constitutes fraudulent concealment, as well as the other causes of action herein alleged.

43. Google’s practices, as alleged herein, are fraudulent because they are likely to deceive consumers.

44. Google’s wrongful business acts alleged herein constituted, and constitute, a continuing course of conduct of unfair competition since Google is marketing and selling its products in a manner that is likely to deceive the public.

45. Google’s business acts and practices, as alleged herein, have caused injury

1 to Plaintiff, the Class and the public.

2 46. Pursuant to section 17203 of the California Business and Professions Code,
3 Plaintiffs and the class seek an order of this court enjoining Google from continuing to
4 engage in unlawful, unfair, or deceptive business practices and any other act prohibited
5 by law, including those acts set forth in the complaint. Plaintiff and the Class also seek
6 an order requiring Google to make full restitution of all moneys it wrongfully obtained
7 from Plaintiff and the Class.

8 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

9

10

PRAYER FOR RELIEF

11

WHEREFORE, Plaintiff and members of the proposed Class request that the
12 court enter an order or judgment against Defendant as follows:

13

1. Certification of the proposed Class and notice thereto to be paid by
14 Defendant;

14

15

2. Adjudge and decree that Defendant has engaged in the conduct alleged
16 herein;

16

17

3. For restitution and disgorgement on certain causes of action;

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4. For an injunction ordering Defendant to cease and desist from engaging in
19 the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;

19

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5. For compensatory and general damages according to proof on certain
21 causes of action;

21

22

6. For special damages according to proof on certain causes of action;

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7. For both pre and post-judgment interest at the maximum allowable rate on
24 any amounts awarded;

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8. Costs of the proceedings herein;

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- 9. Reasonable attorneys fees as allowed by statute; and
- 10. Any and all such other and further relief that this Court may deem just and proper.

Dated: July 17, 2008

By: _____

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury in the instant action.

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4 Dated: July 17, 2008

5
6 By: _____

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