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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

GURMINDER SINGH,  
Plaintiff,  
v.  
GOOGLE LLC,  
Defendant.

Case No. 16-cv-03734-BLF

**ORDER DENYING MOTION FOR  
CLASS CERTIFICATION**

[Re: ECF No. 134]

United States District Court  
Northern District of California

This case concerns the AdWords program<sup>1</sup> run by Defendant Google LLC. Through AdWords, Google sells to individuals and businesses of all sizes pay-per-click advertisements that are displayed on the Google Display Network, which consists of Google.com, other Google properties (such as YouTube and Gmail), and third-party sites who enroll in Google’s separate AdSense program. Plaintiff Gurminder Singh, a small business owner, signed up for AdWords in January 2008 and now controls multiple AdWords accounts. Singh alleges that Google deceives advertisers who use AdWords by making false and misleading statements concerning (1) how effectively Google identifies and filters out invalid and fraudulent clicks on advertisements; and (2) the proportion of total AdWords clicks that constitute invalid and fraudulent clicks. These misrepresentations allegedly induced him to sign up for AdWords and then pay for more invalid and fraudulent clicks than Google represented he would pay for.

Over five years after filing this lawsuit, Singh seeks to represent an expansive class of all

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<sup>1</sup> As of July 24, 2018, AdWords is known as “Google Ads.” The Court uses “AdWords,” as the Parties do, recognizing that this was the name of the program for much of the putative class

1 persons and entities who advertised and paid for clicks through AdWords since June 1, 2012,  
2 where the clicks originated from the Google Display Network. *See* ECF No. 134 (“Motion”); *see*  
3 *also* ECF No. 150 (“Reply”). Google opposes the Motion, arguing that Singh cannot satisfy the  
4 requirements of Federal Rule of Civil Procedure 23. ECF No. 142 (“Opp.”). The Court held a  
5 hearing on the Motion on December 2, 2021. ECF No. 160. For the reasons discussed on the  
6 record and explained below, Singh’s motion for class certification is DENIED.

### 7 **I. BACKGROUND**

8 This case has an extensive history that is familiar to the parties and chronicled thoroughly  
9 in the Court’s previous orders. *See* ECF Nos. 64 (dismissing SAC); 85 (dismissing TAC); 104  
10 (dismissing Fourth Amended Complaint, ECF No. 86 (“4AC”). The Court here only recounts the  
11 alleged misrepresentations on which Singh’s case is based.

12 Singh’s general theory is that Google misled advertisers participating in its AdWords  
13 program by making false and misleading statements concerning (1) how effectively Google  
14 identifies and filters out invalid and fraudulent clicks on advertisements; and (2) the proportion of  
15 total AdWords clicks that constitute invalid and fraudulent clicks. Singh focuses on statements  
16 made on two different pages of Google’s website.

17 The first set of alleged misrepresentations is in the “Ad Traffic Quality Resource Center”  
18 (“ATQRC”), which specifies Google’s process for identifying invalid traffic. ECF No. 134-2  
19 (“ATQRC”). The ATQRC states:

20 The relationship between Google, advertisers, and publishers is built  
21 on trust. Advertisers rely on the relevance of our ad placement, our  
22 reporting statistics, and the quality of clicks their ads receive.  
23 Publishers in turn count on advertiser participation, relevant ads  
24 which create a good experience for users, and an accurate and reliable  
source of income which contributes to the success of their websites  
and business. We take this trust seriously and we know that the  
Google advertising networks couldn’t exist without it.

25 *Id.* The ATQRC explains the difference between what Google terms “click fraud”—“clicks  
26 generated with malicious or fraudulent intent”—and “invalid traffic”—“both clicks and  
27  
28

1 impressions on AdWords ads that Google suspects to not be the result of genuine user interest.”<sup>2</sup>

2 *Id.* Google does not charge advertisers for invalid traffic. *Id.* Google then claims:

3           The vast majority of all invalid clicks on AdWords are caught by our  
4           online filters. These filters are constantly being updated and react to  
5           a wide variety of traffic patterns and indications of click fraud attacks.  
6           On average, invalid clicks account for less than 10% of all clicks on  
7           AdWords ads.”

8 *Id.*

9           The second set of challenged statements are in a February 28, 2007 post on the AdWords  
10          Blog. ECF No. 142-19 (“Blog Post”). The Blog Post contains similar statements as the ATQRC.  
11          The Blog Post describes Google’s recent efforts and performance in detecting click fraud,  
12          including the same methods explained in the ATQRC. The Blog Post describes how Google’s  
13          filters “[a]ccount for the vast majority of invalid click detection” and that “invalid clicks fluctuate  
14          constantly but average less than 10% of all clicks.” *Id.* The Blog Post also states that “the overall  
15          invalid clicks rate, as well as its day-to-day fluctuations, has almost no relation to the invalid  
16          clicks rate for an individual advertiser.” *Id.* Individual advertisers should “refer to [their] invalid  
17          clicks report for that data,” the Blog Post says. *Id.*

18           According to Singh, the two pages make claims that are “intended to convince advertisers  
19          to sign up for AdWords, impress[] upon the reader that AdWords’ [pay-per-click] system was  
20          adequately tackling the scourge of [c]lick [f]raud.” Motion at 4. In fact, Singh says, his expert has  
21          found click fraud accounts for 14% of all clicks on the online advertising platforms, including on  
22          Google’s platform, which “significantly exceeds” Google’s 10% claim. ECF No. 134-3 ¶ 37.  
23          Singh claims that Google knows of this disparity and “conceal[s] the prevalence of [c]lick [f]raud  
24          on [its] platform, [which is] material information affecting all consumers.” *Id.* at 6.

25           On July 13, 2021, Singh moved for class certification. *See* Motion. Singh seeks to certify  
26          and represent the following class:

27           \_\_\_\_\_

28           <sup>2</sup> The term “invalid traffic” used to be called “invalid clicks” before AdWords impressions were  
29          added to the definition of the term. *See* Opp. at 6. The parties do not dispute that this addition is

1 All persons and entities throughout the United States who advertised  
2 through Google's AdWords program and paid for clicks on their  
3 Google AdWords advertisement(s) at any time since June 1, 2012 (the  
"Class Period"), where such clicks originated from Google's Display  
Network.

4 *Id.* at Notice of Motion. His request for class certification is based on two claims asserted in the  
5 Fourth Amended Complaint for violations of the UCL and FAL. *Id.* Singh also seeks  
6 appointment of Miller Shah LLP and Edgar Law Firm LLC as class counsel. *Id.* The Court held a  
7 hearing on this Motion on December 2, 2021. ECF No. 160.

## 8 II. LEGAL STANDARD

9 A class action is maintainable only if it meets the four threshold requirements of  
10 Rule 23(a): (1) the class is so numerous that joinder of all members is impracticable; (2) there are  
11 questions of law or fact common to the class; (3) the claims or defenses of the representative  
12 parties are typical of the claims or defenses of the class; and (4) the representative parties will  
13 fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Amchem Prods., Inc.*  
14 *v. Windsor*, 521 U.S. 591, 613 (1997).

15 "In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must  
16 show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Amchem*, 521 U.S. at 614.  
17 Certification under Rule 23(b)(1) is proper "where prosecuting separate actions by or against  
18 individual class members would create a risk of: (A) inconsistent or varying adjudications with  
19 respect to individual class members that would establish incompatible standards of conduct for the  
20 party opposing the class; or (B) adjudications with respect to individual class members that, as a  
21 practical matter, would be dispositive of the interests of the other members not parties to the  
22 individual adjudications or would substantially impair or impede their ability to protect their  
23 interests." Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on  
24 grounds that apply generally to the class, so that final injunctive relief or corresponding  
25 declaratory relief is appropriate respecting the class as a whole." Rule 23(b)(3) requires that  
26 "questions of law or fact common to class members predominate over any questions affecting only  
27 individual members," and that "a class action is superior to other available methods for fairly and  
28 efficient adjudication of the controversy."

1 “A party seeking class certification must affirmatively demonstrate his compliance with  
2 the Rule – that is, he must be prepared to prove that there are in fact sufficiently numerous parties,  
3 common questions of law or fact, etc.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

### 4 **III. DISCUSSION**

#### 5 **A. Standing**

6 Google’s first argument in opposition to class certification is that both Singh and other  
7 members of his putative class lack standing. Google says that Singh has not met his burden to  
8 demonstrate statutory standing as a potential class representative by showing that he actually paid  
9 for any invalid traffic or undetected click fraud. Opp. at 11. Google also says that Singh cannot  
10 show that he relied on the alleged misrepresentations and that Singh’s continued use of AdWords  
11 forecloses standing. *Id.* at 12. These problems will also plague members of the putative class,  
12 Google says. *Id.* at 12–13.

13 Singh responds that the Court can defer consideration of standing until after ruling on his  
14 motion for class certification. Reply at 1–2. If the Court reaches the issue of standing, Singh  
15 argues that he has both statutory and Article III standing. He says Google’s argument to the  
16 contrary mischaracterizes his claims, which seek restitution for overpayment for the clicks he  
17 bought based on Google’s alleged misrepresentations about the level of average click fraud for  
18 AdWords ads. *Id.* at 3. This overpayment theory also forecloses Google’s argument about  
19 continued use of AdWords after seeing the representations and learning that they were misleading.  
20 *Id.*

21 Courts generally must determine whether parties have standing prior to reaching the merits  
22 of a case. *FW/PBS Inc. v. City of Dallas*, 493 U.S. 215, 230–31 (1990). In multiple cases,  
23 however, the Supreme Court has considered class certification before standing. *See Amchem*, 521  
24 U.S. at 612–13; *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 831 (1999). There is a “growing  
25 consensus” among lower courts that class certification can be decided first “in situations in which  
26 the certification decision will itself shed light on the standing question.” 1 Newberg on Class  
27 Actions § 2:2 (5th ed. 2021) (“Newberg”) (citing cases); *In re Carrier IQ, Inc. Customer Privacy*

28 *Litig.*, 78 F. Supp. 2d 1051, 1074 (N.D. Cal. 2015) (citing cases and concluding that the court

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