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GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE GOOGLE INC. GMAIL
LITIGATION

Case No. 5:13-md-002430 LHK (PSG)

**GOOGLE INC.'S ANSWER TO PLAINTIFFS'
FIRST AMENDED CONSOLIDATED
INDIVIDUAL AND CLASS ACTION
COMPLAINT**

Judge: Hon. Lucy H. Koh
Courtroom: 8, 4th Floor
Trial Date: October 20, 2014

ANSWER

I. INTRODUCTION

Defendant Google Inc. ("Google" or "Defendant") answers Plaintiffs' First Amended Consolidated Individual and Class Action Complaint ("Complaint") as follows:

1. Paragraph 1 contains purported quotes of statements by Google's former Chief Executive Officer, Eric Schmidt, which speak for themselves, and do not require a response.
2. Google denies paragraph 2.
3. In response to paragraph 3, Google admits that it applies automated processing to certain emails for various purposes in providing Google's services. Google denies all remaining allegations in paragraph 3.

1 required, Google denies the allegations therein. The fourth and fifth sentences of paragraph 8 are
 2 legal conclusions and do not require a response; to the extent a response is required, Google
 3 denies the allegations in these sentences.

4 **9.** The first, second, and third sentences of paragraph 9 allege facts regarding
 5 Plaintiffs Brad Scott, Todd Harrington, and Ronald Kovler's citizenship, residence, and age,
 6 which are within Plaintiffs' knowledge. Google has no current basis to deny these allegations.
 7 The fourth and seventh sentences of paragraph 9 are Plaintiffs' characterization of their
 8 allegations and do not require a response; to the extent a response is required, Google denies the
 9 allegations in the fourth and seventh sentences of paragraph 9. The fifth and sixth sentences of
 10 paragraph 9 are legal conclusions and do not require a response; to the extent a response is
 11 required, Google denies the fifth and sixth sentences of paragraph 9.

12 **10.** The first sentence of paragraph 10 alleges facts regarding Plaintiff Matthew C.
 13 Knowles' citizenship, residence, and age, which are within Plaintiff's knowledge. Google has no
 14 current basis to deny these allegations. The second sentence of paragraph 10 is Plaintiffs'
 15 characterization of their allegations and does not require a response; to the extent a response is
 16 required, Google denies the allegations therein. The third and fourth sentences of paragraph 10
 17 are legal conclusions and do not require a response; to the extent a response is required, Google
 18 denies the allegations in the third and fourth sentences of paragraph 10.

19 **11.** The first and second sentences of paragraph 11 allege facts regarding Plaintiff
 20 A.K.'s and Minor Child J.K.'s citizenship, residence, and age, which are within Plaintiffs'
 21 knowledge. Google has no current basis to deny these allegations. The third sentence of
 22 paragraph 11 is Plaintiffs' characterization of their allegations and does not require a response; to
 23 the extent a response is required, Google denies the allegations therein. The fourth sentence of
 24 paragraph 11 is a legal conclusion and does not require a response; to the extent a response is
 25 required, Google denies the fourth sentence of paragraph 11.

26 **12.** The first sentence of paragraph 12 alleges facts regarding Plaintiff Brent
 27 Matthew Scott's citizenship, residence, and age, which are within Plaintiff's knowledge. Google
 28 has no current basis to deny these allegations. The second sentence of paragraph 12 is Plaintiffs'

1 characterization of their allegations and does not require a response; to the extent a response is
 2 required, Google denies the allegations therein. The third and fourth sentences of paragraph 12
 3 are legal conclusions and do not require a response; to the extent a response is required, Google
 4 denies the third and fourth sentences of paragraph 12.

5 **13.** The first and second sentences of paragraph 13 allege facts regarding Plaintiffs
 6 Robert Fread's and Rafael Carrillo's citizenship, residence, and age, which are within Plaintiffs'
 7 knowledge. Google has no current basis to deny these allegations. The third sentence of
 8 paragraph 13 is Plaintiffs' characterization of their allegations and does not require a response; to
 9 the extent a response is required, Google denies the allegations therein. The fourth and fifth
 10 sentences of paragraph 13 are legal conclusions and do not require a response; to the extent a
 11 response is required, Google denies the fourth and fifth sentences of paragraph 13.

12 **14.** Google admits paragraph 14.

13 **III. JURISDICTION AND VENUE**

14 **15.** Google admits the first, second, and third sentences of paragraph 15. In
 15 response to the fourth sentence of paragraph 15, Google admits that this Court has federal
 16 question jurisdiction over claims under the Electronic Communications Privacy Act, and that this
 17 Court has diversity jurisdiction under the Class Action Fairness Act, but Google denies that
 18 Plaintiffs have standing under Article III of the United States Constitution. To the extent that a
 19 response is required to the remaining allegations, Google denies the remaining allegations of
 20 paragraph 15.

21 **16.** In response to paragraph 16, Google admits that this Court has personal
 22 jurisdiction.

23 **17.** Google admits that venue is proper for pretrial purposes pursuant to the
 24 Transfer Order dated April 1, 2013.

25 **IV. GENERAL STATEMENT OF FACTS**

26 **18.** In response to paragraph 18, Google admits that it operates an electronic
 27 communication service, as that phrase is defined under the Electronic Communications Privacy
 28 Act of 1985 ("ECPA"), 18 U.S.C. §§ 2510 *et seq.*, named Gmail.

1 **19.** Google denies paragraph 19.

2 **20.** Google admits paragraph 20.

3 **21.** Google admits that the SMTP process described in the first and second
4 sentences of paragraph 21 occurs in some circumstances. In response to the third sentence of
5 paragraph 21, Google agrees there is no possible claim related to the SMTP process.

6 **22.** Google admits that the process described in paragraph 22 occurs in certain
7 circumstances, but otherwise denies the allegation.

8 **23.** In response to the first sentence of paragraph 23, Google admits that the
9 referenced server analyzes emails in order to determine whether the message should be classified
10 as spam. In response to the second sentence of paragraph 23, Google agrees there is no possible
11 claim related to the referenced server. Google denies all remaining allegations in paragraph 23.

12 **24.** Google admits that the process described in paragraph 24 occurs in certain
13 circumstances, but otherwise denies the allegation.

14 **25.** Google denies paragraph 25.

15 **26.** In response to the first sentence of paragraph 26, Google admits that, at certain
16 times, emails were stored in the referenced server. Google denies all remaining allegations in
17 paragraph 26.

18 **27.** In response to the paragraph 27, Google admits that, at certain times, the
19 referenced server has been used in connection with the display of advertising in some emails and
20 that the process involves an automated matching of advertisements to certain email contents.
21 Google denies all remaining allegations in paragraph 27.

22 **28.** Google denies paragraph 28.

23 **29.** In response to paragraph 29, Google admits that, at certain times, the
24 referenced server has been part of the automated processing for certain emails. Google denies all
25 remaining allegations in paragraph 29.

26 **30.** In response to paragraph 30, Google admits that, at certain times, the
27 referenced server was part of the automated processing for certain emails. Google denies all
28 remaining allegations in paragraph 30.

1 **31.** Google denies paragraph 31.

2 **32.** In response to the first sentence of paragraph 32, Google admits that, in certain
3 circumstances, the referenced server was involved in the automated processing of email. Google
4 denies all remaining allegations in paragraph 32.

5 **33.** In response to paragraph 33, Google admits that, in certain circumstances, the
6 referenced servers have implemented various aspects of the automated processing of emails, but
7 otherwise denies the allegation.

8 **34.** In response to the first sentence of paragraph 34, Google admits that the
9 referenced server is involved in the automated processing of emails. In response to the second
10 sentence of paragraph 34, Google agrees there is no possible claim related to the referenced
11 server. Google denies all remaining allegations in paragraph 34.

12 **35.** In response to paragraph 35, Google admits that, in certain circumstances, the
13 SMTP-out server was involved in the automated processing of emails. Google denies all
14 remaining allegations in paragraph 35.

15 **36.** In response to the first sentence of paragraph 36, Google admits that, in certain
16 circumstances, the referenced servers were involved in the automated processing of certain
17 emails. Google denies all remaining allegations in paragraph 36.

18 **37.** Google denies paragraph 37.

19 **38.** Google denies paragraph 38.

20 **39.** In response to the first sentence of paragraph 39, Google admits that beginning
21 in or around the referenced time frame, it added the referenced process to the automated
22 processing for email messages. To the extent the first sentence of paragraph 39 purports to
23 characterize specific Google disclosures, those statements speak for themselves. In response to
24 the second sentence of paragraph 39, Google admits that, in certain circumstances, the referenced
25 server applied automated processing to certain email messages to implement various Google
26 services. Google denies all remaining allegations in paragraph 39.

27 **40.** In response to the first sentence of paragraph 40, Google admits that the initial
28 SMTP process described in the Complaint is applied in certain circumstances. In response to the

1 second sentence of paragraph 40, Google agrees there is no possible claim related to the SMTP
2 process. Google denies all remaining allegations in paragraph 40.

3 **41.** Google admits that the process described in the first sentence of paragraph 41
4 occurs in certain circumstances, but otherwise denies the allegation. In response to the second
5 sentence of paragraph 41, Google admits that email messages undergo other automated
6 processing after transfer to the referenced server. Google denies all remaining allegations in
7 paragraph 41.

8 **42.** In response to the first sentence of paragraph 42, Google admits that the
9 referenced server is involved in the automated processing of certain email messages. In response
10 to the second sentence of paragraph 42, Google agrees there is no possible claim related to the
11 referenced server. Google denies all remaining allegations in paragraph 42.

12 **43.** Google admits that the process described in paragraph 43 occurs in certain
13 circumstances, but otherwise denies the allegation.

14 **44.** In response to the first sentence of paragraph 44, Google admits that the
15 referenced server is involved in the automated processing of certain emails. In response to the
16 second sentence of paragraph 44, Google agrees there is no possible claim related to the
17 referenced server. Google denies all remaining allegations in paragraph 44.

18 **45.** Google admits that the process described in the first sentence of paragraph 45
19 occurs in certain circumstances, but otherwise denies the allegation. Google denies all remaining
20 allegations in paragraph 45.

21 **46.** In response to paragraph 46, Google admits that the referenced process can
22 potentially identify the type of information listed in paragraph 46. Google denies all remaining
23 allegations in paragraph 46.

24 **47.** Google denies paragraph 47.

25 **48.** In response to paragraph 48, Google responds that the first sentence is vague
26 with respect to the terms used in the allegation. Google denies all remaining allegations in
27 paragraph 48.

28 **49.** In response to paragraph 49, Google responds that the terms used are vague

1 and ambiguous in the context of this allegation.

2 **50.** Google denies paragraph 50.

3 **51.** In response to paragraph 51, Google admits that, at certain times, the
4 referenced server was involved in the automated processing of certain email messages. Google
5 denies all remaining allegations in paragraph 51.

6 **52.** In response to paragraph 52, Google admits that, at certain times, the
7 referenced server was involved in the automated processing of certain email messages. Google
8 denies all remaining allegations in paragraph 52.

9 **53.** In response to paragraph 53, Google admits that it refers to some of the steps in
10 its automated processing of emails as described in the last sentence of paragraph 53, but
11 otherwise denies the allegations of paragraph 53.

12 **54.** Google denies paragraph 54.

13 **55.** In response to paragraph 55, Google admits that, at certain times and under
14 certain circumstances, information identified through the automated processing of email is stored
15 along with the email. Google denies all remaining allegations in paragraph 55.

16 **56.** In response to the first sentence of paragraph 56, Google admits that the
17 referenced term is used by Google to refer to the display of advertisements in Gmail. Google
18 denies all remaining allegations in paragraph 56.

19 **57.** In response to paragraph 57, Google admits that, at certain times, the
20 referenced router was involved in the automated processing of emails. Google denies all
21 remaining allegations in paragraph 57.

22 **58.** In response to paragraph 58, Google admits that, at certain times, the
23 referenced server was involved in the automated processing of emails. Google denies all
24 remaining allegations in paragraph 58.

25 **59.** In response to paragraph 59, Google admits that, at certain times, the
26 referenced server was involved in the automated processing of emails. Google denies all
27 remaining allegations in paragraph 59.

28 **60.** In response to paragraph 60, Google admits that, at certain times, the

1 referenced server was involved in the automated processing of emails. Google denies all
2 remaining allegations in paragraph 60.

3 **61.** Google denies paragraph 61.

4 **62.** Google admits that the process described in the first sentence of paragraph 62
5 occurs in certain circumstances and at certain times, but otherwise denies the allegation. Google
6 denies the second, third, fourth and fifth sentences of paragraph 62.

7 **63.** Paragraph 63 is vague and Google cannot respond.

8 **64.** Google denies paragraph 64.

9 **65.** Google admits that the process described in paragraph 65 occurs in certain
10 circumstances, but otherwise denies the allegation and specifically denies the characterization of
11 the process as involving “read[ing] or acquir[ing] the content of the message.”

12 **66.** In response to the first sentence of paragraph 66, Google admits that the
13 referenced server is involved in the automated processing of emails. In response to the second
14 sentence of paragraph 66, Google agrees there is no possible claim related to the referenced
15 server. Google denies all remaining allegations in paragraph 66.

16 **67.** In response to paragraph 67, Google admits that, in certain circumstances, the
17 SMTP-out server is involved in the automated processing of emails. Google denies all remaining
18 allegations in paragraph 67.

19 **68.** Google denies paragraph 68.

20 **69.** In response to the first sentence of paragraph 69, Google admits that Gmail
21 users can access their email using various methods that do not display advertising. Google
22 further admits that Gmail users can opt out of personalized ads, which results in certain aspects of
23 Google’s automated processing being bypassed. Google denies all other allegations in paragraph
24 69.

25 **70.** Google denies paragraph 70.

26 **71.** Google denies paragraph 71. To the extent the first sentence of paragraph 71
27 purports to refer to a specific disclosure, the statement speaks for itself.

28 **72.** Google denies paragraph 72.

1 **73.** In response to paragraph 73, Google admits that, at certain times and in certain
 2 circumstances, the referenced server could contain the referenced information. Google denies all
 3 remaining allegations in paragraph 73.

4 **74.** Google denies paragraph 74.

5 **75.** Google denies paragraph 75.

6 **76.** Google denies paragraph 76.

7 **77.** Google denies paragraph 77.

8 **78.** Google denies paragraph 78.

9 **79.** In response to paragraph 79, Google admits that, beginning in approximately
 10 the referenced date, Google switched the order of certain aspects of the automated scanning
 11 process for emails. Google denies all remaining allegations in paragraph 79.

12 **80.** In response to the first sentence of paragraph 80, Google admits that the initial
 13 SMTP process as described in the Complaint applies to certain emails. In response to the second
 14 sentence of paragraph 80, Google agrees there is no possible claim related to the SMTP process.
 15 Google denies all remaining allegations in paragraph 80.

16 **81.** Google admits that the process described in paragraph 81 occurs in certain
 17 circumstances, but otherwise denies the allegation.

18 **82.** Paragraph 82 is vague as to “the actions alleged *supra*” and Google generally
 19 incorporates its other responses herein.

20 **83.** In response to paragraph 83, Google admits that at certain times, the referenced
 21 server has been part of the automated processing of email. Google denies all remaining
 22 allegations in paragraph 83.

23 **84.** Google denies paragraph 84.

24 **85.** In response to paragraph 85, Google admits that it applies automated
 25 processing to certain emails to identify information that is then stored with the email and used to
 26 provide various Google services. Google denies all remaining allegations in paragraph 85.

27 **86.** In response to paragraph 86, Google admits that, at certain times, the
 28 referenced server and router have been used in the automated processing of certain emails.

1 Google denies all remaining allegations in paragraph 86.

2 **87.** Google admits that the process described in the first and second sentences of
3 paragraph 87 occur in certain circumstances. In response to the third sentence of paragraph 87,
4 Google agrees there is no possible claim related to the referenced server. Google denies all
5 remaining allegations in paragraph 87.

6 **88.** In response to paragraph 88, Google admits that at certain times, emails not
7 marked as spam would be routed to the referenced server. Paragraph 88 is vague as to “the same
8 process alleged *supra*” and Google generally incorporates its other responses herein.

9 **89.** Google denies paragraph 89.

10 **90.** Paragraph 90 is vague as to the phrase “as alleged *supra*” and Google generally
11 incorporates its other responses herein.

12 **91.** Google denies paragraph 91.

13 **92.** Google denies paragraph 92.

14 **93.** Google denies paragraph 93.

15 **94.** In response to paragraph 94, Google admits that it applies automated
16 processing to certain emails and some information identified in this process may be stored for
17 certain Gmail users. Google denies all remaining allegations in paragraph 94.

18 **95.** In response to the first sentence of paragraph 95, Google admits that its 10K
19 filed with the United States Securities and Exchange Commission for the year ended December
20 31, 2010 refers to “traffic acquisition costs.” Google denies all remaining allegations in
21 paragraph 95.

22 **96.** Google denies paragraph 96.

23 **97.** Paragraph 97 is vague as to “other purposes and for Google’s profit.” To the
24 extent Plaintiff is referring to advertisements in Gmail, Google admits that its automated
25 processing of emails is used to display targeted advertising, which generates revenue that enables
26 Google to provide Gmail as a free service. Google otherwise denies paragraph 97.

27 **98.** Google admits paragraph 98.

28 **99.** In response to the first and second sentences of paragraph 99, Google admits

1 that it offers “Google Apps Partner Edition.” Google admits that Partner Edition offers various
 2 Google applications, including Gmail, to ISPs. Google admits that Cable One is an ISP that
 3 subscribes to Google’s Partner Edition. Google admits that ISPs like Cable One may customize
 4 Google Apps. Google admits that Cable One offers the various Google applications contained
 5 within Partner Edition to its own customers. Google denies the remaining allegations in the first
 6 and second sentences of paragraph 99. The third sentence of paragraph 99 is a characterization
 7 by Plaintiffs to which no response is required. The fourth sentence of paragraph 99 is a
 8 characterization of the terms of a contract, which speaks for itself. Google denies the fifth
 9 sentence of paragraph 99.

10 **100.** In response to the first and second sentences of paragraph 100, Google admits
 11 that it offers “Google Apps for Education.” Google admits that Apps for Education offers various
 12 Google applications, including Gmail, to educational organizations. Google admits that
 13 educational organizations may offer the various Google applications contained within Apps for
 14 Education to their various constituents, including students and that educational institutions may
 15 customize Apps for Education. Google denies the remaining allegations in the first and second
 16 sentences of paragraph 100. The third sentence of paragraph 100 is a characterization by
 17 Plaintiffs to which no response is required. Google denies the fourth sentence of paragraph 100.

18 **101.** In response to paragraph 101, Google admits that it maintained a “Google
 19 Terms of Service” webpage from April 16, 2007 to March 1, 2012. Google admits that on March
 20 1, 2012, Google updated its Privacy Policy and Terms of Service, eliminating the more than 60
 21 different privacy policies across Google and instituting terms that are shorter and easier to read
 22 for Google’s users.

23 **102.** Google denies paragraph 102.

24 **103.** In response to paragraph 103, Google admits that the quoted text appeared on
 25 its “Google Terms of Service” webpage from April 16, 2007 to March 1, 2012. Google admits
 26 that on March 1, 2012, Google updated its Privacy Policy and Terms of Service, eliminating the
 27 more than 60 different privacy policies across Google and instituting terms that are shorter and
 28 easier to read for Google’s users.

1 **104.** Paragraph 104 reflects Plaintiffs' characterization of terms that speak for
2 themselves; to the extent a response is required, Google denies the characterizations and
3 interpretations in paragraph 104.

4 **105.** Paragraph 105 reflects Plaintiffs' characterization of terms that speak for
5 themselves; to the extent a response is required, Google denies the characterizations and
6 interpretations in paragraph 105.

7 **106.** Paragraph 106 reflects Plaintiffs' characterization of terms that speak for
8 themselves; to the extent a response is required, Google denies the characterizations and
9 interpretations in paragraph 106.

10 **107.** The first sentence of paragraph 107 reflects Plaintiffs' characterization of
11 terms that speak for themselves; to the extent a response is required, Google denies the
12 characterizations and interpretations in the first sentence of paragraph 107. The second sentence
13 of paragraph 107 is a legal conclusion and does not require a response; to the extent a response is
14 required, Google denies the second sentence of paragraph 107.

15 **108.** Google denies paragraph 108.

16 **109.** Google denies paragraph 109.

17 **110.** Paragraph 110 reflects Plaintiffs' characterization of terms that speak for
18 themselves; to the extent a response is required, Google denies the characterizations and
19 interpretations in paragraph 110.

20 **111.** The first sentence of paragraph 111 is vague as to the phrase "stored on
21 Google's Gmail" and Google cannot respond. Google denies the second sentence of paragraph
22 111.

23 **112.** Paragraph 112 is so vague that Google cannot respond.

24 **113.** Paragraph 113 reflects Plaintiffs' characterization of terms that speak for
25 themselves; to the extent a response is required, Google denies the characterizations and
26 interpretations in paragraph 113.

27 **114.** Paragraph 114 reflects Plaintiffs' characterization of terms that speak for
28 themselves; to the extent a response is required, Google denies the characterizations and

1 interpretations in paragraph 114.

2 **115.** Paragraph 115 reflects Plaintiffs' characterization of terms that speak for
3 themselves; to the extent a response is required, Google denies the characterizations and
4 interpretations in paragraph 115.

5 **116.** Google denies paragraph 116.

6 **117.** In response to paragraph 117, Google admits that the quoted text appeared on
7 its "Gmail Legal Notices" webpage at certain times.

8 **118.** Google denies paragraph 118.

9 **119.** Google denies paragraph 119.

10 **120.** Paragraph 120 purports to compare text which appeared on Google's "Gmail
11 Legal Notices" webpage at certain times with Google's March 1, 2012 Terms of Service, which
12 are separate documents and which speak for themselves.

13 **121.** Paragraph 121 reflects Plaintiffs' characterization of terms that speak for
14 themselves; to the extent a response is required, Google denies the characterizations and
15 interpretations in paragraph 121.

16 **122.** Paragraph 122 reflects Plaintiffs' characterization of terms that speak for
17 themselves; to the extent a response is required, Google denies the characterizations and
18 interpretations in paragraph 122.

19 **123.** Paragraph 123 reflects Plaintiffs' characterization of terms that speak for
20 themselves; to the extent a response is required, Google denies the characterizations and
21 interpretations in paragraph 123.

22 **124.** Paragraph 124 reflects Plaintiffs' characterization of terms that speak for
23 themselves; to the extent a response is required, Google denies the characterizations and
24 interpretations in paragraph 124.

25 **125.** Paragraph 125 reflects Plaintiffs' characterization of terms that speak for
26 themselves; to the extent a response is required, Google denies the characterizations and
27 interpretations in paragraph 125.

28 **126.** Paragraph 126 reflects Plaintiffs' characterization of terms that speak for

1 themselves; to the extent a response is required, Google denies the characterizations and
2 interpretations in paragraph 126.

3 **127.** Paragraph 127 reflects Plaintiffs' characterization of terms that speak for
4 themselves; to the extent a response is required, Google denies the characterizations and
5 interpretations in paragraph 127.

6 **128.** Paragraph 128 reflects Plaintiffs' characterization of terms that speak for
7 themselves; to the extent a response is required, Google denies the characterizations and
8 interpretations in paragraph 128.

9 **129.** Paragraph 129 reflects Plaintiffs' characterization of terms that speak for
10 themselves; to the extent a response is required, Google denies the characterizations and
11 interpretations in paragraph 129.

12 **130.** Google denies paragraph 130.

13 **131.** Google denies paragraph 131.

14 **132.** Google denies paragraph 132.

15 **133.** Google denies paragraph 133.

16 **134.** Google denies paragraph 134.

17 **135.** Google denies paragraph 135.

18 **136.** Paragraph 136 purports to characterize certain terms in the Google Apps
19 Partner Edition Agreement with Cable One executed on July 9, 2009, which speak for
20 themselves.

21 **137.** Paragraph 137 purports to characterize certain terms in the Google Apps
22 Partner Edition Agreement with Cable One executed on July 9, 2009, which speak for
23 themselves.

24 **138.** Google denies paragraph 138.

25 **139.** Paragraph 139 purports to quote terms in the Google Apps Partner Edition
26 Agreement with Cable One executed on July 9, 2009, which speak for themselves.

27 **140.** The first sentence of paragraph 140 purports to characterize certain terms in
28 the Google Apps Partner Edition Agreement with Cable One executed on July 9, 2009, which

1 speak for themselves. Google denies the second sentence of paragraph 140.

2 **141.** Google denies paragraph 141.

3 **142.** Google denies paragraph 142.

4 **143.** Paragraph 143 reflects Plaintiffs' characterization of terms that speak for
5 themselves; to the extent a response is required, Google denies the characterizations and
6 interpretations in paragraph 143.

7 **144.** Google denies paragraph 144.

8 **145.** Google admits paragraph 145.

9 **146.** Google denies paragraph 146.

10 **147.** In response to paragraph 147, Google admits that the quoted text appeared on
11 its "Gmail Legal Notices" webpage at certain times.

12 **148.** Google denies paragraph 148.

13 **149.** Google denies paragraph 149.

14 **150.** Paragraph 150 purports to compare certain versions of the "Gmail Legal
15 Notices" webpage, which speak for themselves.

16 **151.** Paragraph 151 characterizes certain terms in the Gmail Legal Notice, which
17 speaks for itself.

18 **152.** Google denies paragraph 152.

19 **153.** Google denies paragraph 153.

20 **154.** Google denies paragraph 154.

21 **155.** Google denies paragraph 155.

22 **156.** Google denies paragraph 156.

23 **157.** Google denies paragraph 157.

24 **158.** Google denies paragraph 158.

25 **159.** Paragraph 159 is vague as to which Google Apps Education Agreement applies
26 and Google cannot respond.

27 **160.** In response to the first sentence of paragraph 160, Google denies that there is a
28 uniform Google Apps Education Edition Agreement. As a result, paragraph 160 is vague as to

1 which Google Apps Education Agreement applies and Google cannot respond.

2 **161.** Google denies paragraph 161.

3 **162.** In response to the first sentence of paragraph 162, Google denies that there is a
4 uniform Google Apps Education Edition Agreement. As a result, paragraph 162 is vague as to
5 which Google Apps Education Agreement applies and Google cannot respond.

6 **163.** Paragraph 163 is vague as to which Google Apps Education Agreement applies
7 and Google cannot respond.

8 **164.** Google denies paragraph 164.

9 **165.** Paragraph 165 characterizes the Google Terms of Service, which speak for
10 themselves.

11 **166.** Google denies paragraph 166.

12 **167.** Google denies paragraph 167.

13 **168.** Google denies paragraph 168.

14 **169.** Google denies paragraph 169.

15 **170.** In response to paragraph 170, Google admits that the quoted text appeared on
16 its “Gmail Legal Notices” webpage at certain times.

17 **171.** Google denies paragraph 171.

18 **172.** Google denies paragraph 172.

19 **173.** Paragraph 173 purports to compare versions of Google’s “Gmail Legal
20 Notices” webpage, which speak for themselves.

21 **174.** Paragraph 174 purports to characterize the “Gmail Legal Notices” document
22 which speaks for itself.

23 **175.** Google denies paragraph 175.

24 **176.** Google denies paragraph 176.

25 **177.** Google denies paragraph 177.

26 **178.** Google denies paragraph 178.

27 **179.** Google denies paragraph 179.

28 **180.** Google denies paragraph 180.

1 **181.** Google denies paragraph 181.

2 **182.** Google denies paragraph 182.

3 **183.** Google denies paragraph 183.

4 **184.** Google denies paragraph 184.

5 **185.** Paragraph 185 reflects Plaintiffs' characterization of terms that speak for
6 themselves; to the extent a response is required, Google denies the characterizations and
7 interpretations in paragraph 185.

8 **186.** Google denies paragraph 186.

9 **187.** Paragraph 187 reflects Plaintiffs' characterization of terms that speak for
10 themselves; to the extent a response is required, Google denies the characterizations and
11 interpretations in paragraph 187.

12 **188.** Google denies paragraph 188.

13 **189.** Google denies paragraph 189.

14 **190.** Google denies paragraph 190.

15 **191.** Google denies paragraph 191.

16 **192.** Google denies paragraph 192.

17 **193.** Google denies paragraph 193.

18 **194.** Google denies paragraph 194.

19 **195.** Google denies paragraph 195.

20 **196.** Paragraph 196 is so vague that Google cannot respond.

21 **197.** In response to the second sentence of paragraph 197, Google admits that
22 certain information from the referenced process is used in connection with spam detection.
23 Google denies all other allegations in paragraph 197.

24 **198.** Google denies paragraph 198.

25 **199.** Google denies paragraph 199.

26 **200.** Google denies paragraph 200.

27 **201.** Google denies paragraph 201.

28 **202.** Google denies paragraph 202.

1 **203.** Google denies paragraph 203.

2 **204.** Google denies paragraph 204.

3 **205.** Google denies paragraph 205.

4 **206.** Google denies paragraph 206.

5 **207.** The first sentence of paragraph 207 purports to characterize certain documents,
6 which speak for themselves. Google denies all other allegations in paragraph 207.

7 **208.** Google denies paragraph 208.

8 **209.** Google denies paragraph 209.

9 **210.** In response to the first sentence of paragraph 210, Google admits that it is the
10 originator of certain contracts between Google and Gmail users. Google denies all remaining
11 allegations in paragraph 210.

12 **211.** Google denies paragraph 211.

13 **212.** Google denies paragraph 212.

14 **V. CAUSES OF ACTION**

15 **COUNT ONE**

16 **(Violations of 18 U.S.C. §§ 2510 *et seq*)**

17 **213.** Google incorporates by reference its responses to paragraphs 1-212 in response
18 to paragraph 213, as if fully set forth herein.

19 **214.** Paragraph 214 is Plaintiffs' characterization of their allegations and does not
20 require a response; to the extent a response is required, Google denies the allegations therein.

21 **215.** In response to the first sentence of paragraph 215, Google admits that Cable
22 One is an ISP. Google is without knowledge sufficient to admit or deny the remaining allegations
23 in paragraph 215.

24 **216.** Google denies paragraph 216.

25 **217.** In response to paragraph 217, Google is without knowledge sufficient to admit
26 or deny the allegations in paragraph 217 as they relate to Plaintiff's knowledge and conversations.
27 In response to the first sentence of paragraph 217, Google admits that Plaintiff's email account
28 was converted to the Google Apps service. To the extent Plaintiff claims in paragraph 217 that he

1 did not become bound to the Google Apps Terms of Service, Google denies any such allegation.

2 **218.** In response to paragraph 218, Google admits that certain Cable One users were
3 converted to the Google Apps service.

4 **219.** In response to paragraph 219, Google admits that Cable One was a Google
5 Apps customer and offered certain Google Apps services to its users.

6 **220.** In response to paragraph 220, Google admits that it provides services to Cable
7 One Google Apps end users.

8 **221.** Google is without direct knowledge sufficient to admit or deny the allegations
9 in paragraph 221 but admits that Plaintiff Dunbar has testified that he has sent and received email
10 through his Cable One email account.

11 **222.** Paragraph 222 essentially reiterates Plaintiff Dunbar's proposed class
12 definition and does not require a response.

13 **223.** Google is without direct knowledge sufficient to admit or deny the allegations
14 in paragraph 223 but admits that Plaintiff Fread has testified that he has been a student at the
15 University of Hawai'i ("UH") since January 2011.

16 **224.** Google is without direct knowledge sufficient to admit or deny the allegations
17 in paragraph 224 because it concerns facts involving a non-party to this litigation.

18 **225.** In response to the first and second sentences of paragraph 225, Google admits
19 that it entered into a Google Apps Education Edition Agreement with UH on June 21, 2010 which
20 includes a footer stating "Google Apps Edu Agreement 031809". Google denies the third
21 sentence of paragraph 225. In response to the fourth sentence of paragraph 225, Google admits
22 that it has entered into agreements with certain educational institutions throughout the United
23 States for the provision of its Google Apps for Education service. In response to the fifth
24 sentence of paragraph 225, Google admits that certain of its agreements with educational
25 institutions include a provision regarding FERPA but otherwise denies that its agreements with
26 other educational institutions are necessarily analogous to its agreement with UH for the
27 provision of its Google Apps for Education service. As a result, the fifth sentence of paragraph
28 225 is vague as to which Google Apps Education Agreement Plaintiffs refer and Google cannot

1 respond.

2 **226.** Paragraph 226 purports to characterize Google's agreement with UH, which
3 speaks for itself.

4 **227.** Google is without direct knowledge sufficient to admit or deny the allegations
5 in paragraph 227 because it concerns facts involving a non-party to this litigation.

6 **228.** Google is without direct knowledge sufficient to admit or deny the allegations
7 in paragraph 228 because it concerns facts involving a non-party to this litigation.

8 **229.** Google is without knowledge sufficient to admit or deny the allegations in
9 paragraph 229.

10 **230.** Google is without knowledge sufficient to admit or deny the allegations in
11 paragraph 230.

12 **231.** Google denies paragraph 231.

13 **232.** Google denies paragraph 232.

14 **233.** Google denies paragraph 233.

15 **234.** Google denies paragraph 234.

16 **235.** In response to the first sentence of paragraph 235, Google admits that it
17 entered into a Google Apps Education Edition Agreement with the University of the Pacific
18 ("UOP") on December 9, 2009. Google further responds that UOP states in public materials that
19 it has campuses in Stockton, California, San Francisco, California, and Sacramento, California.
20 Google has no factual basis to deny the second sentence of paragraph 235. The third sentence of
21 paragraph 235 purports to characterize Google's agreement with UOP, which speaks for itself.

22 **236.** Google denies the first sentence of paragraph 236. In response to the second
23 sentence of paragraph 236, Google admits that it has entered into agreements with certain
24 educational institutions throughout the United States for the provision of its Google Apps for
25 Education service. In response to the third sentence of paragraph 236, Google admits that certain
26 of its agreements with educational institutions include a provision regarding FERPA but
27 otherwise denies that its agreements with other educational institutions are necessarily analogous
28 to its agreement with UOP for the provision of its Google Apps for Education service. As a

1 result, the third sentence of paragraph 236 is vague as to which Google Apps Education
2 Agreement Plaintiffs refer and Google cannot respond.

3 **237.** Google denies paragraph 237.

4 **238.** Google is without knowledge sufficient to admit or deny the allegations in the
5 first and second sentences of paragraph 238 because they concern facts involving a non-party to
6 this litigation. In response to the third sentence of paragraph 238, Google admits that it entered
7 into a Google Apps Education Edition Agreement with UOP on December 9, 2009. Google is
8 without direct knowledge sufficient to admit or deny the allegations in the third sentence of
9 paragraph 238 because it concerns facts involving a non-party to this litigation.

10 **239.** Google is without direct knowledge sufficient to admit or deny the allegations
11 in paragraph 239 because it concerns facts involving a non-party to this litigation.

12 **240.** Google is without direct knowledge sufficient to admit or deny the allegations
13 in paragraph 240 but admits that Plaintiff Carillo has testified that he attended McGeorge School
14 of Law from August 2009 until May 2012.

15 **241.** Google denies paragraph 241.

16 **242.** Google denies paragraph 242.

17 **243.** Google is without knowledge sufficient to admit or deny the allegations in the
18 first sentence of paragraph 243. Google denies the second sentence of paragraph 243.

19 **244.** Google is without knowledge sufficient to admit or deny the allegations in
20 paragraph 244.

21 **245.** Google is without direct knowledge sufficient to admit or deny the allegations
22 in paragraph 245 but admits that Plaintiff J.K. has testified that he opened Gmail accounts as a
23 minor.

24 **246.** Google is without direct knowledge sufficient to admit or deny the allegations
25 in paragraph 246 but admits that Plaintiff J.K. has testified that he used Gmail accounts as a
26 minor to communicate with non-Gmail users and with minor Gmail users.

27 **247.** Google is without direct knowledge sufficient to admit or deny the allegations
28 in paragraph 247 but admits that Plaintiff J.K. has testified that he has received emails as

1 referenced in paragraph 247.

2 **248.** Google denies paragraph 248.

3 **249.** Google denies paragraph 249.

4 **250.** Google denies paragraph 250.

5 **251.** Google is without direct knowledge sufficient to admit or deny the allegations
6 in paragraph 251 but admits that Plaintiffs Scott, Harrington, Kovler, Scott II, and Knowles have
7 each testified that he has sent and received emails as referenced in paragraph 251.

8 **252.** Google denies paragraph 252.

9 **253.** Google denies paragraph 253.

10 **254.** In response to paragraph 254, Google does not dispute that it is a “person”
11 within the meaning of 18 U.S.C. § 2510(6).

12 **255.** Google denies the first and third sentences of paragraph 255. The second
13 sentence of paragraph 255 is so vague that Google cannot respond.

14 **256.** Paragraph 256 consists of legal argument and does not require a response.

15 **257.** Google denies paragraph 257.

16 **258.** Google denies paragraph 258.

17 **259.** Google denies paragraph 259.

18 **260.** Google denies paragraph 260.

19 **261.** Google denies paragraph 261.

20 **262.** Google denies paragraph 262.

21 **263.** Google denies paragraph 263.

22 **264.** Google denies paragraph 264.

23 **265.** Paragraph 265 is Plaintiffs’ characterization of their allegations and does not
24 require a response.

25 **266.** Google is without knowledge sufficient to admit or deny the allegations in
26 paragraph 266 as to the alleged Minor Class.

27 **267.** Paragraph 267 is a legal conclusion and does not require a response; to the
28 extent a response is required, Google denies paragraph 267.

1 **268.** Google denies paragraph 268.

2 **269.** Google denies paragraph 269.

3 **270.** Google denies paragraph 270.

4 **271.** Google denies paragraph 271.

5 **272.** Google admits that California law applies to its Terms of Service but otherwise
6 denies paragraph 272.

7 **273.** Paragraph 273 is a legal conclusion and does not require a response; to the
8 extent a response is required, Google denies paragraph 273.

9 **274.** The first and second sentences of paragraph 274 purport to compare and
10 characterize various versions of Google's Terms of Service, which speak for themselves. The
11 third sentence of paragraph 274 is a legal conclusion and does not require a response; to the
12 extent a response is required, Google denies the third sentence of paragraph 274.

13 **275.** Google denies paragraph 275.

14 **276.** Paragraph 276 is Plaintiffs' characterization of their allegations and does not
15 require a response; to the extent a response is required, Google denies that Plaintiffs are entitled
16 to any relief.

17 **277.** Paragraph 277 is Plaintiffs' characterization of their allegations and does not
18 require a response; to the extent a response is required, Google denies that Plaintiffs are entitled
19 to any relief

20 **278.** Paragraph 278 is Plaintiffs' characterization of their allegations and does not
21 require a response; to the extent a response is required, Google denies that Plaintiffs are entitled
22 to any relief.

23 **279.** Google denies paragraph 279.

24 **280.** Google denies paragraph 280.

25 **281.** Paragraph 281 is a legal conclusion and does not require a response; to the
26 extent a response is required, Google denies paragraph 281.

27 **282.** Paragraph 282 is a legal conclusion and does not require a response; to the
28 extent a response is required, Google denies paragraph 282.

1 **283.** Google denies paragraph 283.

2 **284.** Paragraph 284 is Plaintiffs' characterization of their allegations and does not
3 require a response; to the extent a response is required, Google denies the allegations therein.

4 **COUNT TWO**

5 **(Violations of Cal. Penal Code §§ 630, *et seq*)**

6 **285.** Google incorporates by reference its responses to paragraphs 1-284 in response
7 to paragraph 285, as if fully set forth herein.

8 **286.** The first sentence of paragraph 286 is Plaintiffs' characterization of their
9 allegations and does not require a response; to the extent a response is required, Google denies the
10 allegations therein. Google denies the second sentence of paragraph 286.

11 **287.** Paragraph 287 is a quotation to Cal. Pen. Code § 630 and does not require a
12 response.

13 **288.** Google denies paragraph 288.

14 **289.** In response to paragraph 289, Google admits that Plaintiffs and Class Members
15 may have engaged in email communications with Gmail users.

16 **290.** Paragraph 290 does not identify the emails it refers to and Google cannot
17 respond.

18 **291.** In response to paragraph 291, Google admits that email messages can be
19 characterized as "messages."

20 **292.** In response to paragraph 292, Google admits that Plaintiffs and Class Members
21 may have engaged in email communications with Gmail users.

22 **293.** In response to paragraph 293, Google admits that emails are generally
23 transmitted with "designation address fields specifying the recipients of the message." Google
24 further states that paragraph 293 is vague as to "Internet Message Formats."

25 **294.** In response to paragraph 294, Google admits that email messages are generally
26 delivered to the persons identified as recipients in the email header.

27 **295.** In response to paragraph 295, Google admits that email messages are generally
28 delivered to the persons identified as recipients in the email header.

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297. Google denies paragraph 297.

298. Google denies paragraph 298.

299. Google denies paragraph 299.

300. Google denies paragraph 300 to the extent it purports to state that emails are covered by CIPA.

301. Google denies paragraph 301.

302. Google denies paragraph 302.

303. Google denies paragraph 303.

304. In response to the first sentence of paragraph 304, Google admits that certain features of Google Talk may be accessed from the Gmail interface. In response to the second sentence of paragraph 304, Google admits that Google Talk had these capabilities at certain times and in certain circumstances. Google denies the remaining allegations in the first and second sentences of paragraph 304. The third, fourth, and fifth sentences of paragraph 304 are legal conclusions and do not require a response; to the extent a response is required, Google denies the third, fourth and fifth sentences of paragraph 304.

305. Google denies paragraph 305.

306. Google denies paragraph 306.

307. Google denies paragraph 307.

308. Google denies paragraph 308.

COUNT THREE

(Violations of Maryland Courts And Judicial Proceedings Code Ann. §§ 10-402, et seq)

309. Google incorporates by reference its responses to paragraphs 1-308 in response to paragraph 309, as if fully set forth herein.

310. Google is without knowledge sufficient to admit or deny the allegations in paragraph 310.

311. Google is without knowledge sufficient to admit or deny the allegations in

1 paragraph 311.

2 **312.** Google is without knowledge sufficient to admit or deny the allegations in
3 paragraph 312.

4 **313.** In response to paragraph 313, Google admits that Plaintiffs and Class Members
5 may have engaged in email communications with Gmail users.

6 **314.** Paragraph 314 does not identify the emails it refers to and Google cannot
7 respond.

8 **315.** Google denies paragraph 315.

9 **316.** Google denies paragraph 316.

10 **317.** Google denies paragraph 317.

11 **318.** Google denies paragraph 318.

12 **319.** Google denies paragraph 319.

13 **320.** Google denies paragraph 320.

14 **321.** Google denies paragraph 321.

15 **322.** Google denies paragraph 322.

16 **323.** Google denies paragraph 323.

17 **324.** Google denies paragraph 324.

18 **325.** Google denies paragraph 325.

19 **326.** Paragraph 326 is a legal conclusion and does not require a response; to the
20 extent a response is required, Google denies paragraph 326.

21 **327.** Paragraph 327 is a legal conclusion and does not require a response; to the
22 extent a response is required, Google denies paragraph 327.

23 **328.** Google denies paragraph 328.

24 **329.** Paragraph 329 is Plaintiffs' characterization of their allegations and does not
25 require a response; to the extent a response is required, Google denies the allegations therein.

26 **COUNT FOUR**

27 **(Violations of Florida Statute §§ 934.03, et seq)**

28 **330.** Google incorporates by reference its responses to paragraphs 1-329 in response

1 to paragraph 330, as if fully set forth herein.

2 **331.** Google is without knowledge sufficient to admit or deny the allegations in
3 paragraph 331.

4 **332.** Google is without knowledge sufficient to admit or deny the allegations in
5 paragraph 332.

6 **333.** Google is without knowledge sufficient to admit or deny the allegations in
7 paragraph 333.

8 **334.** In response to paragraph 334, Google admits that Plaintiffs and Class Members
9 may have engaged in email communications with Gmail users.

10 **335.** Paragraph 335 does not identify the emails it refers to and Google cannot
11 respond.

12 **336.** Google denies paragraph 336.

13 **337.** Google denies paragraph 337.

14 **338.** Google denies paragraph 338.

15 **339.** Google denies paragraph 339.

16 **340.** Google denies paragraph 340.

17 **341.** Google denies paragraph 341.

18 **342.** Google denies paragraph 342.

19 **343.** Google denies paragraph 343.

20 **344.** Google denies paragraph 344.

21 **345.** Google denies paragraph 345.

22 **346.** Paragraph 346 is a legal conclusion and does not require a response; to the
23 extent a response is required, Google denies paragraph 346.

24 **347.** Paragraph 347 is a legal conclusion and does not require a response; to the
25 extent a response is required, Google denies paragraph 347.

26 **348.** Google denies paragraph 348.

27 **349.** Paragraph 349 is Plaintiffs' characterization of their allegations and does not
28 require a response; to the extent a response is required, Google denies the allegations therein.

VI. CLASS ALLEGATIONS

350. Google incorporates by reference its responses to paragraphs 1-349 in response to paragraph 350, as if fully set forth herein.

351. Paragraph 351 is Plaintiffs' characterization of their allegations and does not require a response.

352. Paragraph 352 contains purported exclusions to Plaintiffs' proposed class definition and does not require a response.

353. Paragraph 353 is Plaintiff Dunbar's proposed class definition and does not require a response.

354. Paragraph 354 is Plaintiffs Fread and Carrillo's proposed class definition and does not require a response.

355. Paragraph 355 is Plaintiffs Scott, Harrington, and Kovler's proposed class definition and does not require a response.

356. Paragraph 356 is Plaintiffs Scott, Harrington, Kovler, Scott II, and Knowles' proposed sub-class definitions and does not require a response.

357. Paragraph 357 is Plaintiff A.K., as Next Friend of Minor, J.K.'s, proposed class definition and does not require a response.

358. Paragraph 358 is a legal conclusion as to class certification and does not require a response; to the extent a response is required, Google denies paragraph 358. Google denies that the proposed classes can be certified under the requirements of Federal Rule of Civil Procedure 23.

359. Paragraph 359 is a legal conclusion as to class certification and does not require a response; to the extent a response is required, Google denies paragraph 359. Google denies that the proposed classes can be certified under the requirements of Federal Rule of Civil Procedure 23.

360. In response to paragraph 360, Google denies that Cable One email accounts operated through Google Apps are operated in the same manner as other Gmail accounts in all respects.

1 **361.** Paragraph 361 is vague as to “readily identifiable information” and Google
2 cannot respond.

3 **362.** Paragraph 362 is a legal conclusion as to class certification and does not
4 require a response; to the extent a response is required, Google denies paragraph 362. Google
5 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
6 Procedure 23.

7 **363.** Paragraph 363 is a legal conclusion as to class certification and does not
8 require a response; to the extent a response is required, Google denies paragraph 363. Google
9 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
10 Procedure 23.

11 **364.** Paragraph 364 is a legal conclusion as to class certification and does not
12 require a response; to the extent a response is required, Google denies paragraph 364. Google
13 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
14 Procedure 23.

15 **365.** Paragraph 365 is a legal conclusion as to class certification and does not
16 require a response; to the extent a response is required, Google denies paragraph 365. Google
17 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
18 Procedure 23.

19 **366.** Paragraph 366 is a legal conclusion as to class certification and does not
20 require a response; to the extent a response is required, Google denies paragraph 366. Google
21 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
22 Procedure 23.

23 **367.** In response to paragraph 367, Google denies that Google Apps EDU email
24 accounts are operated in the same manner as other Gmail accounts in all respects.

25 **368.** Paragraph 368 is vague as to “readily identifiable information” and Google
26 cannot respond.

27 **369.** Paragraph 369 is a legal conclusion as to class certification and does not
28 require a response; to the extent a response is required, Google denies paragraph 369. Google

1 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
2 Procedure 23.

3 **370.** Paragraph 370 is a legal conclusion as to class certification and does not
4 require a response; to the extent a response is required, Google denies paragraph 370. Google
5 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
6 Procedure 23.

7 **371.** Paragraph 371 is vague as to “readily identifiable information” and Google
8 cannot respond.

9 **372.** Paragraph 372 is a legal conclusion as to class certification and does not
10 require a response; to the extent a response is required, Google denies paragraph 372. Google
11 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
12 Procedure 23.

13 **373.** Paragraph 373 is a legal conclusion as to class certification and does not
14 require a response; to the extent a response is required, Google denies paragraph 373. Google
15 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
16 Procedure 23.

17 **374.** The first sentence of paragraph 374 is Plaintiffs Scott, Harrington, Kovler,
18 Scott II, and Knowles’ proposed class definition and does not require a response; to the extent a
19 response is required, Google denies the allegations therein. The second and third sentences of
20 paragraph 374 are legal conclusions and do not require a response; to the extent a response is
21 required, Google denies the second and third sentences of paragraph 374.

22 **375.** Paragraph 375 is a legal conclusion as to class certification and does not
23 require a response; to the extent a response is required, Google denies paragraph 375. Google
24 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
25 Procedure 23.

26 **376.** Paragraph 376 is a legal conclusion as to class certification and does not
27 require a response; to the extent a response is required, Google denies paragraph 376. Google
28 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil

1 Procedure 23.

2 **377.** Paragraph 377 is a legal conclusion as to class certification and does not
3 require a response; to the extent a response is required, Google denies paragraph 377. Google
4 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
5 Procedure 23.

6 **378.** Google admits paragraph 378.

7 **379.** Google admits paragraph 379.

8 **380.** Google admits paragraph 380.

9 **381.** Google admits paragraph 381.

10 **382.** Google admits paragraph 382.

11 **383.** Google admits paragraph 383.

12 **384.** Google admits paragraph 384.

13 **385.** Paragraph 385 is a legal conclusion as to class certification and does not
14 require a response; to the extent a response is required, Google denies paragraph 385. Google
15 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
16 Procedure 23.

17 **386.** Paragraph 386 is a legal conclusion as to class certification and does not
18 require a response; to the extent a response is required, Google denies paragraph 386. Google
19 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
20 Procedure 23.

21 **387.** Paragraph 387 is a legal conclusion as to class certification and does not
22 require a response; to the extent a response is required, Google denies paragraph 387. Google
23 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
24 Procedure 23.

25 **388.** Paragraph 388 is a legal conclusion as to class certification and does not
26 require a response; to the extent a response is required, Google denies paragraph 388. Google
27 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
28 Procedure 23.

1 **389.** Paragraph 389 is a legal conclusion as to class certification and does not
2 require a response; to the extent a response is required, Google denies paragraph 389. Google
3 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
4 Procedure 23.

5 **390.** Paragraph 390 is a legal conclusion as to class certification and does not
6 require a response; to the extent a response is required, Google denies paragraph 390. Google
7 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
8 Procedure 23.

9 **391.** Paragraph 391 is a legal conclusion as to class certification and does not
10 require a response; to the extent a response is required, Google denies paragraph 391. Google
11 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
12 Procedure 23.

13 **392.** Paragraph 392 is a legal conclusion as to class certification and does not
14 require a response; to the extent a response is required, Google denies paragraph 392. Google
15 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
16 Procedure 23.

17 **393.** Paragraph 393 is a legal conclusion as to class certification and does not
18 require a response; to the extent a response is required, Google denies paragraph 393. Google
19 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
20 Procedure 23.

21 **394.** Paragraph 394 is a legal conclusion as to class certification and does not
22 require a response; to the extent a response is required, Google denies paragraph 394. Google
23 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
24 Procedure 23.

25 **395.** Paragraph 395 is a legal conclusion as to class certification and does not
26 require a response; to the extent a response is required, Google denies paragraph 395. Google
27 denies that the proposed classes can be certified under the requirements of Federal Rule of Civil
28 Procedure 23.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The named Plaintiffs, and each and every member of the purported Classes, are barred from recovery, in whole or in part, by the doctrines of waiver, estoppel, laches, and other applicable equitable defenses.

THIRD DEFENSE

The named Plaintiffs, and each and every member of the purported Classes, are barred from recovery, in whole or in part, by their failure to mitigate injury and their failure to mitigate damages.

FOURTH DEFENSE

This action is not suitable for class action treatment under Federal Rule of Civil Procedure 23.

FIFTH DEFENSE

Plaintiffs have no standing to bring this action under Article III of the United States Constitution.

SIXTH DEFENSE

Plaintiffs have no standing to bring this action under the Electronic Communications Protection Act, 18 U.S.C. 2510, *et seq.*

SEVENTH DEFENSE

Plaintiffs have no standing to bring this action under California Penal Code §§ 630, *et seq.*

EIGHTH DEFENSE

Plaintiffs have no standing to bring this action under Maryland Courts and Judicial Proceedings Code Ann. §§ 10-402, *et seq.*

NINTH DEFENSE

Plaintiffs have no standing to bring this action under Florida Statute §§ 934.03, *et seq.*

TENTH DEFENSE

Plaintiffs have no standing to bring this action under 18 Pa. Cons. Stat. §§ 5701, *et seq.*

ELEVENTH DEFENSE

This action is barred because Plaintiffs, and each and every member of the purported Classes, expressly or impliedly approved, authorized, ratified, or consented to the complained acts or conduct, and are therefore precluded from recovery.

TWELFTH DEFENSE

This action is barred as a result of the doctrine of unclean hands.

THIRTEENTH DEFENSE

This action is barred by the First Amendment to the United States Constitution and/or by Article 1, Section 2 of the California Constitution.

FOURTEENTH DEFENSE

Punitive or exemplary damages should not be awarded or should otherwise be limited because: (i) any recovery of punitive or exemplary damages would violate the substantive and procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, by Article 1, Section 7 of the California Constitution, by section 3294 of the California Civil Code, and by the common law; and (ii) imposition of any punitive or exemplary damages would constitute an excessive fine or penalty under the Eighth Amendment to the United States Constitution and Article 1, Section 17 of the California Constitution.

FIFTEENTH DEFENSE

Statutory damages under 18 U.S.C. 2510 should not be awarded or should otherwise be limited because: (i) such an award would violate the substantive and procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, by Article 1, Section 7 of the California Constitution, and by the common law; and (ii) the imposition of such an award would constitute an excessive fine or penalty under the Eighth Amendment to the United States Constitution and Article 1, Section 17 of the California Constitution.

SIXTEENTH DEFENSE

Plaintiffs' damages – including actual, punitive, compensatory, exemplary, or statutory

1 damages – are limited by the terms of the contracts between Google and Plaintiffs.

2 **SEVENTEENTH DEFENSE**

3 Google's liability for the alleged conduct at issue is precluded by the terms of the
4 contracts between Google and Plaintiffs.

5 **EIGHTEENTH DEFENSE**

6 The claims made in the Complaint are barred, in whole or in part, because at all relevant
7 times, Google's actions were a necessary incident to the rendition of services.

8 **NINETEENTH DEFENSE**

9 The claims in the Complaint are barred, in whole or in part, because Google's alleged
10 conduct was authorized.

11 **TWENTIETH DEFENSE**

12 The claims in the Complaint are barred, in whole or in part, because at all relevant times,
13 Google's actions were within the ordinary course of business.

14 **TWENTY-FIRST DEFENSE**

15 The claims in the Complaint are barred, in whole or in part, by applicable statutes of
16 limitations.

17 **TWENTY-SECOND DEFENSE**

18 The relief prayed for in the Complaint cannot be granted because neither Plaintiff nor any
19 putative class member has sustained any loss, damage, harm, or detriment as a result of any
20 alleged acts, omissions, or other breach of duty by Google.

21 **TWENTY-THIRD DEFENSE**

22 The claims in the Complaint are barred, in whole or in part, because the damages alleged
23 to have been suffered are not compensable under the law.

24 **TWENTY-FOURTH DEFENSE**

25 The claims in the Complaint are barred, in whole or in part, because to the extent Google
26 engaged in any of the alleged acts, omissions, or conduct, it did so with justification.

27 **TWENTY-FIFTH DEFENSE**

28 The claims in the Complaint are barred, in whole or in part, because any recovery by

1 Plaintiffs would constitute unjust enrichment of Plaintiffs. In particular, the claims in the
 2 Complaint are barred, in whole or in part, to the extent that Plaintiffs have used any of Google's
 3 services that are enabled by the practices that Plaintiffs seek to challenge.

4 **TWENTY-SIXTH DEFENSE**

5 The claims in the Complaint are barred, in whole or in part, by the terms of 47 U.S.C.
 6 section 230(c).

7 **RESERVATION OF DEFENSES**

8 Future discovery may reveal additional facts that support additional defenses presently
 9 available to, but unknown to, Google. Google reserves the right to assert additional defenses in
 10 the event that discovery or investigation indicates that additional defenses would be appropriate.

11 Dated: November 21, 2013

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14
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