

WYLY~ROMMEL, PLLC
 Sean F. Rommel (*Pro Hac Vice*)
 Email: srommel@wylyrommel.com
 4004 Texas Boulevard
 Texarkana, Texas 75503
 Telephone: (903) 334-8646
 Facsimile: (903) 334-8645

CORY WATSON CROWDER & DEGARIS, P.C.
 F. Jerome Tapley (*Pro Hac Vice*)
 Email: jtapley@cwcd.com
 2131 Magnolia Avenue
 Birmingham, AL 35205
 Telephone: (205) 328-2200
 Facsimile: (205) 324-7896

Plaintiffs' Co-Lead Counsel

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

IN RE GOOGLE INC. GMAIL LITIGATION

Master Docket No: 5:13-md-02430-LHK

THIS DOCUMENT RELATES TO:
 ALL ACTIONS

**PLAINTIFFS' CONSOLIDATED
 INDIVIDUAL AND CLASS
 ACTION COMPLAINT**

JURY DEMANDED

Judge: Hon. Lucy H. Koh
 Dept.: Courtroom 8, 4th Floor

///

///

///

///

///

///

///

///

///

**01274943-8 PLAINTIFFS' CONSOLIDATED INDIVIDUAL AND CLASS ACTION
 COMPLAINT**

5:13-md-02430-LHK

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>THE PARTIES</u>	3
III.	<u>JURISDICTION AND VENUE</u>	5
IV.	<u>GENERAL STATEMENT OF FACTS</u>	6
A.	<u>Gmail</u>	6
B.	<u>Gmail Processes</u>	6
1.	Pre-██████████ 20██████████ Gmail Email Delivery Flow	6
a.	<i>Incoming Messages</i>	6
b.	<i>Outgoing Messages</i>	7
2.	██████████ 20██████████ — ██████████ 20██████████ Gmail Email Delivery Flow	9
a.	<i>Incoming Messages</i>	9
b.	<i>Outgoing Messages</i>	12
c.	<i>Advertising Opt-Out and Method of Access To Gmail</i>	13
d.	<i>Surreptitious User Models</i>	14
3.	Post-██████████ 20██████████ Gmail Email Delivery Flow	14
4.	Additional Devices	16
5.	Google's Unlawful Conduct Occurs In Transit, In Transmission, and/or In Transfer of the Message	16
6.	Google's Use of Collected Data From Email Messages	16
C.	<u>Gmail User Types</u>	17
D.	<u>Google's Failure To Disclose That Its Gmail Processes Read, Acquire, and Use Email Message Content Violates Google's Express Agreements With Gmail Users, Cable One Google Apps Users, and Google Apps EDU Users.</u>	18
1.	No user consents to Google's unlawful conduct because Google's agreements are silent on the processes, contradict other agreements, or violate the terms of service and legal notices.	18
2.	No Cable One Google Apps user consents to Google's unlawful conduct because Google's agreements are silent on the processes, contradict other agreements, or violate the terms of service and legal notices.	22

1	3.	No Google Apps EDU user consents to Google's unlawful conduct because Google's agreements are silent on the processes, contradict other agreements, or violate the terms of service and legal notices.	26
2			
3	4.	No Gmail user, Cable One Google Apps user, or Google Apps EDU user consents to Google's unlawful conduct because Google's Privacy Policies are silent on the processes, contradict other agreements, or violate the terms of service and legal notices.	29
4			
5	5.	No person consents to Google's unlawful conduct based on other statements about Gmail processing because: (a) Google is the sole source of the information contained within the statement; and, (b) the information provided by Google is materially false, misleading, or omits material facts.	32
6			
7	6.	No person consents to Google's unlawful conduct because Google violates its user agreements and notices, because Google makes false and/or misleading statements, and because Google does not disclose the accused conduct.	34
8			
9			
10			
11	E.	<u>Google's Unlawful Devices</u>	35
12	V.	<u>CAUSES OF ACTION</u>	36
13		<u>COUNT ONE</u> (Violations of 18 U.S.C. §§ 2510 <i>et seq.</i>)	36
14		<u>A. Plaintiffs</u>	36
15		1. Plaintiff Keith Dunbar	36
16		2. Plaintiffs Fread and Carrillo	37
17		3. Plaintiff A.K., as Next Friend of Minor, J.K.	40
18		4. Scott, Harrington, and the Class of Non-Gmail Users	41
19		<u>B. ECPA Violations</u>	41
20		<u>COUNT TWO</u> (Violations of Cal. Penal Code §§ 630, <i>et seq.</i>)	47
21		<u>A. Violations of Cal. Penal Code § 631(a)</u>	48
22		<u>B. Violations of Cal. Penal Code § 632</u>	50
23		<u>C. Cal. Penal Code § 637.2 Relief</u>	51
24		<u>COUNT THREE</u> (Violations of Maryland Courts and Judicial Proceedings Code Ann. §§ 10-402, <i>et seq.</i>)	51
25		<u>COUNT FOUR</u> (Violations of Florida Statute §§ 934.03, <i>et seq.</i>)	55
26		<u>COUNT FIVE</u> (Violations of 18 Pa. Const. Stat. §§ 5701, <i>et seq.</i>)	59
27			
28	VI.	<u>CLASS ALLEGATIONS</u>	62

1	A. <u>Ascertainability</u>	64
2	1. <i>The Cable One Google Apps Class</i>	64
3	2. <i>The Google Apps EDU Class</i>	65
4	3. <i>The Minor Class</i>	65
5	4. <i>The Scott, Brinkman, Scott II, and Knowles Classes</i>	65
6	B. <u>Numerosity</u>	66
7	C. <u>Commonality</u>	67
8	D. <u>Typicality</u>	70
9	1. <i>Plaintiff Keith Dunbar</i>	70
10	2. <i>Robert Fread and Rafael Carrillo</i>	70
11	3. <i>Brad Scott and Todd Harrington</i>	71
12	4. <i>A.K., Next Friend of Minor Child, J.K.</i>	71
13	5. <i>Plaintiffs Matthew C. Knowles, Brent Matthew Scott, and Kristen</i> <i>Brinkman</i>	71
14	E. <u>Adequacy of Representation</u>	72
15	F. <u>Predominance – There Are No Individual Issues and a Class Action is</u> <u>Superior</u>	72
16		
17	VII. <u>JURY DEMANDED</u>	73
18	VIII. <u>PRAYER FOR RELIEF</u>	73
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 PLAINTIFFS, by and through LEAD PLAINTIFF, KEITH DUNBAR, file this
2 CONSOLIDATED CLASS ACTION COMPLAINT against Defendant Google, Inc.
3 (“Google”), and allege the following:

4 **I. INTRODUCTION**

5 1. Google’s Mindset:

6 *Google policy is to get right up to the creepy line and not cross it.* – October 2010.

7 *We know where you are. We know where you’ve been. We can more or less know what*
8 *you’re thinking about.* - October 2010.

9 *If you have something that you don’t want anyone to know maybe you shouldn’t be*
10 *doing it in the first place.* - December 2009.

11 *We do worry that as this [personal] information gets collected, it becomes a treasure*
12 *trove.* - August 2008.

13 *Your digital identity will live forever...because there’s no delete button.* – April 2013.

14 Eric Schmidt, Former CEO, Google Inc.

15 2. Unbeknownst to millions of people, on a daily basis and for years, Google has
16 systematically and intentionally crossed the “creepy line” to read private email messages
17 containing information “you don’t want anyone to know,” and to acquire, collect, or “mine”
18 valuable information from that mail. Google has one intended purpose for this systematic
19 practice of reading private messages and collecting the data therein: to know and profit from
20 what “you’re thinking about.”

21 3. In short, Google unlawfully opens up, reads, and acquires the content of people’s
22 private email messages. Google may say it automatically “scans” messages and that no humans
23 are involved, but Google actually reads each and every message in order to determine exactly
24 what the author of the message is saying and thinking. In reality, actual human beings couldn’t
25 do it any better, faster, or cheaper.

26 4. Because a private message is comprised of data, Google reads the data just as a
27 person would the words, and acquires or collects the data it knows is the most valuable. Google
28 creates new derivative data (or “metadata”) from the private information in the message to
maximize Google’s use of this valuable information. Google then [REDACTED] this

1 newly created derivative data [REDACTED]. This [REDACTED] metadata may [REDACTED] the
2 message itself, but only Google has access to the collected metadata. Google also takes the
3 collected metadata and places the most valuable pieces in separate storage or servers. Google
4 uses this separately collected derivative data to build surreptitious user models or profiles.
5 Google also uses the collected content and metadata in combination with other data (such as
6 web search history) to “know where you are...know where you’ve been...[and] know what
7 you’re thinking about.”

8 5. Google tells people that Gmail messages are automatically scanned or filtered for
9 unwanted spam and viruses. But for years Google’s filtering for spam and viruses actually
10 occurred in a process [REDACTED] Google’s reading and content acquisition of private email
11 messages for the author’s thoughts and meaning. Accordingly, Google reads and acquires the
12 content of the private email message [REDACTED]
13 Google [REDACTED]

14 [REDACTED] However, the email content that Google continues to read, acquire, collect, and annotate
15 is not actually used by Google for spam and virus filtering. Google’s reading and content
16 acquisition of private messages has nothing to do with spam and virus protection.

17 6. Google tells people that users’ emails are automatically processed to display
18 content based advertising to its users. Google told potential customers and users who did not
19 (or would not) receive advertising with their email service that their private email messages
20 would not be processed by Google’s “advertising systems.” But, Google does not disclose the
21 extent of its processing. After [REDACTED] of 20[REDACTED], Google’s processes for reading and content
22 acquisition of private email messages occurred [REDACTED] the systems Google might later use for
23 advertising. As a result, Google actually read and acquired the content of the private email
24 message for the author’s thoughts and meaning *regardless* of whether Google further processes
25 the email through its advertising servers.

26 7. Plaintiffs bring this Consolidated Individual and Class Action Complaint on
27 behalf of themselves and those classes of similarly situated persons: (1) to require Google to
28 fully and truthfully disclose its practices; and (2) for damages resulting from Google’s unlawful

1 conduct in violation of their statutory privacy rights.

2 **II. THE PARTIES**

3 8. Lead Plaintiff, Keith Dunbar (“Dunbar”), is a resident of the State of Texas and
 4 is over the age of nineteen (19) years. Dunbar asserts claims, individually, and on behalf of a
 5 class of similarly situated Cable One Google Apps subscribers, against Google for Google’s
 6 unlawful interception and use of Dunbar’s electronic communications in violation of the
 7 Electronic Communications Privacy Act of 1985 (“ECPA”), 18 U.S.C. §§ 2510 *et seq.* Dunbar
 8 and the Class he seeks to represent are Cable One Google Apps subscribers who do not receive
 9 advertising. Google nonetheless unlawfully intercepts and uses the content of their email
 10 messages in violation of 18 U.S.C. §§ 2511(1)(a) and (1)(d). No person consents to Google’s
 11 unlawful conduct.

12 9. Plaintiff, Brad Scott (“Scott”), is a resident of the State of Maryland and is over
 13 the age of nineteen (19) years. Plaintiff, Todd Harrington (“Harrington”), is a resident of the
 14 State of Alabama and is over the age of nineteen (19) years. Scott and Harrington assert claims,
 15 individually, and on behalf of a class of similarly situated non-California residents and non-
 16 Gmail subscribers, against Google for Google’s unlawful recording of and wiretapping of their
 17 communications in violation of California’s Invasion of Privacy Act (“CIPA”), Cal. Penal Code
 18 §§ 630 *et seq.* CIPA requires all parties to a communication to consent to the reading of a
 19 private message. Scott, Harrington, and their Class of non-Gmail users have not consented to
 20 Google’s unlawful conduct. In addition, Scott, Harrington, and a nationwide Class of non-
 21 Gmail users they seek to represent allege violations of ECPA, specifically §§ 2511(1)(a) and
 22 (1)(d).

23 10. Plaintiff, Matthew C. Knowles (“Knowles”), is a resident of the State of
 24 Maryland and is over the age of nineteen (19) years. Knowles asserts claims, individually, and
 25 on behalf of a class of similarly situated Maryland residents and non-Gmail subscribers, against
 26 Google for Google’s unlawful interception and use of Knowles’ electronic communications in
 27 violation of Maryland’s Wiretap Act, Md. Code Ann. § 10-402 *et seq.* Maryland requires all
 28 parties to a communication to consent to the reading of a private message. Knowles and his

1 Class of non-Gmail users have not consented to Google's unlawful conduct.

2 11. Plaintiff, A.K., next friend of Minor Child, J.K., is a resident of the State of
3 Illinois and is over the age of nineteen (19) years. Minor Child, J.K., is a resident of the State of
4 Illinois and is sixteen (16) years of age. A.K. asserts claims on behalf of Minor Child J.K.,
5 individually, and on behalf of a class of similarly situated minor Gmail subscribers, against
6 Google for Google's unlawful interception and use of J.K.'s electronic communications in
7 violation of ECPA, specifically §§ 2511(1)(a) and (1)(d). As minors, A.K. and the Minor Class
8 have not consented to Google's unlawful conduct in violation of ECPA.

9 12. Plaintiff, Brent Matthew Scott ("Scott II"), is a resident of the State of Florida
10 and is over the age of nineteen (19) years. Scott II asserts claims, individually, and on behalf of
11 a class of similarly situated Florida residents and non-Gmail subscribers, against Google for
12 Google's unlawful interception and use of Scott's electronic communications in violation of
13 Florida's Wiretap Act, Florida Statute §§ 10-402 *et seq.* Florida requires all parties to a
14 communication to consent to the reading of a private message. Scott II and his Class of non-
15 Gmail users have not consented to Google's unlawful conduct.

16 13. Plaintiff, Kristen Brinkman ("Brinkman"), is a resident of the State of
17 Pennsylvania and is over the age of nineteen (19) years. Brinkman asserts claims, individually,
18 and on behalf of a class of similarly situated Pennsylvania residents and non-Gmail subscribers,
19 against Google for Google's unlawful interception and use of Brinkman's electronic
20 communications in violation of Pennsylvania's Wiretapping and Electronic Surveillance
21 Control Act, 18 Pa. Cons. Stat. §§ 5701 *et seq.* Pennsylvania requires all parties to a
22 communication to consent to the reading of a private message. Brinkman and her Class of non-
23 Gmail users have not consented to Google's unlawful conduct.

24 14. Plaintiff, Robert Fread, is a resident of the State of Hawaii and is over the age of
25 nineteen (19) years. Plaintiff, Rafael Carrillo, is a resident of the State of California and is over
26 the age of nineteen (19) years. Fread and Carrillo assert claims, individually, and on behalf of a
27 class of similarly situated Google Apps for Education ("Google Apps EDU") subscribers
28 against Google for Google's unlawful interception and use of their electronic communications

1 in violation ECPA. Even though Google does not serve advertising to these accounts, Google
 2 still unlawfully intercepts and uses the content of Plaintiffs' email messages in violation of 18
 3 U.S.C. §§ 2511(1)(a) and (1)(d). No person consents to Google's unlawful conduct.

4 15. Google Inc. ("Google") is a Delaware corporation, whose principal place of
 5 business is at 1600 Amphitheatre Parkway, Mountain View, County of Santa Clara, State of
 6 California. Google conducts business in all fifty (50) States. Plaintiffs served Google and
 7 Google is a party.

8 **III. JURISDICTION AND VENUE**

9 16. Pursuant to the Transfer Order dated April 1, 2013, from the United States
 10 Judicial Panel on Multidistrict Litigation, and 28 U.S.C. § 1407, the following cases were
 11 transferred to this Court for coordinated or consolidated pre-trial proceedings: *Keith Dunbar v.*
 12 *Google, Inc.*, C.A. No. 5:12-03305, Northern District of California; *Brad Scott, et al. v. Google,*
 13 *Inc.*, C.A. No. 5:12-03413, Northern District of California; *Brent Matthew Scott v. Google, Inc.*,
 14 C.A. No. 4:12-00614, Northern District of Florida ("Scott II"); *A.K. v. Google, Inc.*, C.A. No.
 15 3:12-01179, Southern District of Illinois; *Matthew C. Knowles v. Google, Inc.*, C.A. No. 1:12-
 16 02022, District of Maryland; and *Kristen Brinkman v. Google, Inc.*, C.A. No. 2:12-06699,
 17 Eastern District of Pennsylvania. By stipulated administrative motion, this Court ordered
 18 *Fread, et al. v. Google, Inc.*, C.A. No. 13-01961, Northern District of California, to be related,
 19 coordinated, and consolidated as part of MDL 2430. Service is complete for all underlying
 20 actions. The Court has subject matter jurisdiction over the actions pursuant to: (1) 28 U.S.C. §
 21 1331 because Plaintiffs *Dunbar, A.K., Fread, Carrillo, Scott, and Harrington*, bring claims
 22 arising under the Electronic Communications Privacy Act of 1986 ("ECPA"), 18 U.S.C. §§
 23 2510 *et seq.*, a law of the United States; and, (2) the Class Action Fairness Act ("CAFA"), 28
 24 U.S.C. § 1332(d)(2), because Plaintiffs *Scott, Scott II, Knowles*, and *Brinkman* bring claims on
 25 behalf of citizens of states different than Google and the amounts in controversy exceed
 26 \$5,000,000.00 exclusive of interests and costs.

27 17. This Court has general and specific personal jurisdiction over Google because
 28 Google is a resident of California.

1 26. When a Gmail user is [REDACTED] a regular Gmail account (which receives
2 content-based advertising) and receives an incoming email message, Google transmits the
3 message [REDACTED]. The
4 [REDACTED] reads and acquires the content of the message. Based upon the acquired content of
5 the message, Google selects a matching advertisement and attaches it to the message. Google
6 then delivers the incoming message and the advertisement to the receiving Gmail user.

7 27. When a Gmail user is [REDACTED] a regular Gmail account (which receives
8 content-based advertising) and receives an incoming email message, Google delivers the
9 incoming message to the [REDACTED] (a piece of Gmail infrastructure distinct from
10 the [REDACTED]). Once the user [REDACTED], the [REDACTED] sends the yet
11 undelivered message to the [REDACTED]. Google then transmits the message to the [REDACTED]
12 [REDACTED] reads and acquires the content of the message. Based upon the
13 acquired content of the message, Google selects a matching advertisement and attaches it to the
14 message. Google then delivers the incoming message and the advertisement to the receiving
15 Gmail user.

16 28. The CAT2 mixer (or [REDACTED]) is a distinct piece of
17 [REDACTED] infrastructure which Google uses for Gmail and Google's AdSense program to read
18 and acquire content and then [REDACTED] based upon the acquired content.

19 29. The CAT2 mixer reads the submitted content of an email for [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 30. The Medley Server is a distinct piece of Gmail infrastructure that reads and
23 acquires the content of the transmitted email message.

24 31. The ICEbox Server is a distinct piece of Gmail infrastructure that reads and
25 acquires the content of the transmitted email message for [REDACTED] and other characteristics.

26 32. Google uses additional devices to read and acquire email message content.

27 ***b. Outgoing Messages***

28 33. When a Gmail user sends an outgoing message from a regular Gmail account

(which receives content-based advertising), Google transmits the outgoing message to the [REDACTED]. Google then transmits the outgoing message from the [REDACTED] [REDACTED] reads and acquires the content of the message. Based upon the acquired content of the message, Google selects and returns a matching advertisement to the sending Gmail user.

34. Following the [REDACTED] reading and content acquisition of the message, Google transfers the outgoing message [REDACTED] [REDACTED] Google transmits the message to the [REDACTED].

35. The [REDACTED] performs its separate and distinct processes for [REDACTED]. Plaintiffs do not assert claims or violations of law for the separate and distinct processes of the Gmail [REDACTED].

36. Google then transmits the outgoing message to the SMTP-out server for external delivery.

37. When a Gmail user sends an outgoing message to another Gmail user who has a regular Gmail account (which receives content-based advertising) but who is [REDACTED], Google sends the outgoing message to the [REDACTED] and then transmits the message to the [REDACTED] of the Gmail user recipient. The [REDACTED] and the [REDACTED] [REDACTED] are distinct and different Gmail devices. Once the recipient [REDACTED] the [REDACTED] [REDACTED], Google then transmits the message to the [REDACTED] where the [REDACTED] reads and acquires the content of the message. Based upon the acquired content of the message, Google selects a matching advertisement and attaches it to the message. Google then delivers the message and the advertisement to the receiving Gmail user.

38. When a Gmail user sends an outgoing message to another Gmail user who has a regular Gmail account (which receives content-based advertising) and who is [REDACTED], Google transmits the message to the [REDACTED] where the [REDACTED] reads and acquires the content of the message. Based upon the acquired content of the message, Google selects a matching advertisement and attaches it to the message. Google then delivers the message and the

1 advertisement to the receiving Gmail user.

2 39. For Gmail users, the reading and content acquisition of the outgoing message by
3 the [REDACTED] from the reading and content acquisition of the
4 incoming message by the [REDACTED].

5 **2. [REDACTED] 20[REDACTED]—[REDACTED] 20[REDACTED] Gmail Email Delivery Flow**

6 **a. Incoming Messages**

7 40. Beginning in [REDACTED] 20[REDACTED], Google changed its Gmail email delivery flow but
8 did not change its public disclosures or disclosures to contracting third parties to disclose
9 Google's new and additional COB (Content Onebox) process. COB allows Google to read,
10 acquire, and use message content separate from the [REDACTED]
11 [REDACTED] and *regardless* of whether the Gmail user receives advertisements.

12 41. The initial SMTP process occurs as alleged *supra*. This case does not assert
13 claims or violations of law for the separate and distinct processes of the [REDACTED]
14 [REDACTED] during the SMTP process.

15 42. When an incoming external email message completes the "SMTP," Google
16 sends the message to the [REDACTED]. Following transfer to the [REDACTED], the
17 message undergoes what Google describes as "[REDACTED] processing."

18 43. [REDACTED] [REDACTED] [REDACTED], which is a separate and distinct piece of Gmail
19 infrastructure and performs its own separate processes, processes the email message. Plaintiffs
20 do not assert claims or violations of law for the separate and distinct processes of the Gmail
21 [REDACTED].

22 44. From the [REDACTED] [REDACTED], Google transmits the message to the [REDACTED]
23 [REDACTED].

24 45. [REDACTED] is a separate and distinct piece of Gmail
25 infrastructure and performs its own separate processes. Plaintiffs do not assert claims or
26 violations of law for the separate and distinct processes of the Gmail [REDACTED]
27 [REDACTED].

28 ///

1 46. [REDACTED] the [REDACTED] transfers
2 the message to [REDACTED] server. [REDACTED] server is a separate and distinct piece
3 of Gmail infrastructure.

4 47. [REDACTED] server reads and acquires the content of the transmitted message
5 to identify the following: [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 [REDACTED] and (9) other information from the content of the email message.

9 48. Probabilistic Hierarchical Inferential Learner (PHIL) clusters amount to the
10 inferred meaning of particular words or phrases derived by reading and acquiring the content of
11 the email message.

12 49. Through PHIL clusters, Google learns “concepts” by learning an explanatory
13 model of text. As such, PHIL’s concepts are supposed to model the *actual ideas* in a person’s
14 mind before that person accesses the text that is read and acquired by Google.

15 50. The [REDACTED] created by Google are the derived concepts of the content of the
16 message.

17 51. Google also transmits the message to the [REDACTED] server. The
18 DTS/REPHIL server is a separate and distinct piece of Gmail infrastructure. The DTS/REPHIL
19 server reads and acquires the content of the transmitted message.

20 52. Google also transmits the message to the [REDACTED] server. The [REDACTED] server
21 is a separate and distinct piece of Gmail infrastructure. The [REDACTED] server reads and acquires
22 the content of the transmitted message.

23 53. Google also transmits the message to the [REDACTED]. The [REDACTED] is a
24 separate and distinct piece of Gmail infrastructure. The [REDACTED] reads and acquires the
25 content of the transmitted message.

26 54. For every message that is [REDACTED], Google reads or attempts to
27 read, and acquires or attempts to acquire the message content through the [REDACTED]
28 [REDACTED], and the additional

1 delivery processes. Collectively, Google refers to these processes as the “COB process.”

2 55. Google also uses additional undisclosed devices which read and acquire message
3 content in the COB process.

4 56. At the time Google reads and acquires the message content in the COB process,
5 Google collects the content and creates metadata about that content. Google [REDACTED]

6 [REDACTED]
7 [REDACTED]. Google calls this [REDACTED]
8 [REDACTED]

9 57. “Nemo” is Gmail’s monetization component. For *every* message that Google
10 [REDACTED], and regardless of whether Google transfers the message to an advertising
11 processor to serve ads, Google reads or attempts to read and acquires or attempts to acquire the
12 message content through the COB process. Google collects or attempts to collect the content,
13 creates or attempts to create metadata, and collects and [REDACTED].

14 58. [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 59. Google [REDACTED] to the Caribou Server. The
18 Caribou Server is a separate and distinct piece of Gmail infrastructure. The Caribou Server
19 reads and acquires the content of the transmitted message and the [REDACTED]

20 60. Google [REDACTED] to the Medley server, which is a
21 separate and distinct piece of Gmail infrastructure. The Medley server reads and acquires the
22 content of the transmitted message and the [REDACTED].

23 61. Google [REDACTED] to Changeling, which is a separate
24 and distinct piece of Gmail infrastructure. Changeling reads and acquires the email message’s
25 [REDACTED], if any.

26 62. When a Gmail user is [REDACTED] a regular Gmail account (which receives
27 content-based advertising) and receives an incoming email message, Google [REDACTED]
28 [REDACTED] reads and acquires the

content of the message. Based upon the acquired content of the message and [REDACTED], Google selects a matching advertisement and [REDACTED] the message. Google then delivers the incoming message and the advertisement to the receiving Gmail user. Google transmits the message and the collected [REDACTED]

63. When a Gmail user is [REDACTED] a regular Gmail account (which receives content-based advertising) and receives an incoming email message, Google delivers the message and collected [REDACTED] Once the user

[REDACTED] the [REDACTED]

[REDACTED] reads and acquires the content of the message. Based upon the acquired content of the message and [REDACTED], Google selects a matching advertisement and [REDACTED] the message. Google then delivers the incoming message and the advertisement to the receiving Gmail user. Google [REDACTED]

64. Plaintiffs incorporate the allegations *supra* relating to the CAT2 mixer or [REDACTED] Medley Server, ICEbox Server and other devices which read and acquire email content.

b. Outgoing Messages

65. When a Gmail user sends an outgoing message from a regular Gmail account (which receives content-based advertising), Google transmits the outgoing message to the [REDACTED] reads and acquires the content of the message. Based upon the acquired content of the message, Google selects and returns a matching advertisement to the sending Gmail user.

66. [REDACTED] reads and acquires the content of the message, Google transfers the outgoing message [REDACTED], Google then transmits the message to the [REDACTED].

67. The [REDACTED] performs its separate and distinct processes for [REDACTED]. Plaintiffs do not assert claims or violations of law for the separate and distinct

processes of the Gmail [REDACTED].

68. Google then transmits the outgoing message to the SMTP-out server for external delivery.

69. For Gmail users, the reading and content acquisition of outgoing messages by the [REDACTED] from the reading and content acquisition of incoming messages by the [REDACTED].

c. Advertising Opt-Out and Method Of Access To Gmail

70. Google claims that Gmail users may opt-out of content-based advertising (“If you don’t want to see ads in Gmail, you can choose to use Gmail’s basic HTML view, or POP or IMAP[.]”) or access their email using a method that does not display advertising at all (e.g. messages that are “pushed” to mobile devices like iPhones, iPads, and Blackberries). This simply [REDACTED] Google from transmitting the message to the [REDACTED] or equivalent advertising server. However, Google still employs the “[REDACTED] process” to every email (including COB processing) which reads and acquires the content of [REDACTED] message regardless of whether Google additionally reads and acquires the content of the message through the separate and distinct [REDACTED] or equivalent advertising server.

71. Regardless of how a Gmail user accesses the email message, all of the same information or type of information is read, acquired, collected, and used, irrespective of whether Google does so by using the COB processing, the [REDACTED].

72. Google claims that it does not process certain Google Apps users’ email messages through its advertising servers; this means that Google does not route these messages [REDACTED]. However, regardless of whether Google routes a message to the [REDACTED], Google still employs the “[REDACTED] process” to every email, including COB processing (wherein Google reads, acquires, and uses the content of [REDACTED] message).

73. Regardless of whether a Gmail user receives advertising, all of the same information or type of information which is read, acquired, collected, and used by the [REDACTED] is read, acquired, collected, and used, during COB processing.

d. Surreptitious User Models

74. The [REDACTED] builds user models from the content of the email message, the collected [REDACTED].

This User Model includes, but is not limited to, the following information: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Google collects this information from the email messages and [REDACTED], the [REDACTED]

[REDACTED] builds the User Models, and Google stores the User Models.

75. Through the [REDACTED] and user modeling, Google collects and stores the derivative data from the user's email message [REDACTED] from the original email message.

76. The [REDACTED] also collects the user's web (search) history. The [REDACTED] applies this web (search) history with the user's email message history to build the user model.

77. Google's collection of information from email messages to build User Models is secret, and Google does not disclose its secret user profiling to anyone.

78. Google never informs anyone that Google uses information contained within incoming email messages to Gmail users to build secret user models. Although Google builds user models to discern the thoughts of Gmail users, Google collects the derivative data in large part from incoming messages which represent the contemporaneous thoughts of the senders.

79. Google's application of a user's collected web (search) history with a user's collected email message content and derivative data is secret, and Google does not disclose its secret user profiling to anyone.

3. Post-20 [REDACTED] Gmail Email Delivery Flow

80. In [REDACTED] of 20 [REDACTED], Google [REDACTED] its COB process to occur [REDACTED] the [REDACTED].

81. The initial SMTP process occurs as alleged *supra*. This case does not assert claims or violations of law for the separate and distinct processes of the [REDACTED]

1 [REDACTED] the SMTP process.

2 82. When an incoming external email message completes the “SMTP,” Google
3 sends the message to the [REDACTED].

4 83. The [REDACTED] the message to the COB process, where the COB
5 process performs the actions alleged *supra*.

6 84. Google added a separate and distinct piece of Gmail infrastructure known as
7 [REDACTED] to the COB process. The [REDACTED] server reads and acquires the content of the
8 transmitted message.

9 85. Google reads and acquires the message content through the COB process,
10 regardless of whether the user receives advertisements or how the user accesses Gmail.

11 86. At the time Google reads and acquires the message content in the COB process,
12 Google collects the content and creates metadata about that content. Google [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 87. Once read, analyzed, acquired, used, and processed by the COB process, Google
16 returns the message and the [REDACTED]

17 [REDACTED]

18 88. Google then transmits the message and the [REDACTED] to the [REDACTED]

19 [REDACTED] However, Google only uses part of the COB process in the [REDACTED]

20 [REDACTED] Plaintiffs do not assert claims or violations of law for the separate and
21 distinct processes of the Gmail [REDACTED] which may use some of the limited
22 output of the COB process.

23 89. If determined as [REDACTED], Google transmits the message and [REDACTED] to the
24 [REDACTED] and the message and [REDACTED] undergo the same processes alleged *supra*.

25 90. Regardless of how the user accesses their Gmail account, or whether the user
26 receives content-based advertising or not, Google still employs the “[REDACTED] process” to every
27 email, including COB processing, where Google reads and acquires the content of every
28 message.

1 91. The user modeling occurs as alleged *supra*.

2 **4. Additional Devices**

3 92. Google uses additional and separate devices to read and acquire the content of
4 incoming and outgoing email messages.

5 **5. Google's Unlawful Conduct Occurs In Transit, In Transmission,
6 and/or In Transfer of the Message**

7 93. With the exception of the [REDACTED], the devices
8 identified *supra* are not storage devices. Google's reading of the email message content, the
9 acquisition of such content, the collection of such content, the creation of new derivative data
10 from this content and collection of same, and the use of the content and annotations from the
11 email messages does not occur in storage. Google transfers, transmits, or routes each message
12 to each accused device for the purpose of a designated function which is to read and acquire
13 content from the message.

14 **6. Google's Use of Collected Data From Email Messages**

15 94. Google reads and acquires the content of email messages and uses the content to
16 create derivative data that is more useful to Google and easier to subsequently process and
17 store—whether [REDACTED] the email message or [REDACTED] the email message.

18 95. Google uses the content of email messages and the derivative data it creates to
19 build user profiles or models.

20 96. Google uses the content of email messages and the derivative data it creates to
21 avoid paying for “traffic acquisition costs” as defined by Google on page 32 of its 10K filed
22 with the Securities Exchange Commission for the year ended December 31, 2010. Google has
23 no rights or license in the email message content data at issue. But, through Google's reading,
24 acquisition, and use of private message content, Google obtains for free the exact type of
25 information and data for which it pays third parties. Google uses the content of email messages
26 and the derivative data it creates to allow its human engineers to read and work with the
27 message content.

28 ///

1 97. Google uses the content of the email messages and the derivative data it creates
2 for its own benefit in other Google services unrelated to the service of email or the particular
3 user.

4 98. Google uses the content of the email message and the derivative data it creates
5 for other purposes and for Google's profit.

6 **C. Gmail User Types**

7 99. Google offers free email accounts through Gmail.

8 100. Through its Google Apps Partner program, Google also operates its Gmail
9 service on behalf of Internet Service Providers (ISP's), such as Cable One. Cable One then re-
10 sells the Gmail service labelled e.g. "Cable One, Powered by Google" or "Mycableone.com,"
11 under its domain name and service to their customers, including Plaintiff Dunbar. This type of
12 account is referred to as the Cable One Google Apps account. As a matter of contract between
13 Cable One and Google, no Google service offered through the Cable One Google Apps
14 accounts can display advertisements. Google considers Cable One Google Apps users who use
15 Gmail to be Gmail users with Gmail accounts and processes incoming email messages the same,
16 except for serving content-based advertising.

17 101. Through Google Apps for Education (EDU), Google operates its Gmail email
18 service on behalf of educational organizations for students, faculty, staff, alumni, and members
19 of these organizations. Like the Google Apps Partner program, the educational organizations
20 require students who pay tuition for this service (and the other users) to use the Gmail service
21 labelled as, e.g., "name.institution.edu," but "Powered by Google." This type of account is
22 referred to as the Google Apps EDU account. Google considers Google Apps EDU users who
23 use Gmail to be Gmail users with Gmail accounts, and Google processes these incoming email
24 messages the same, even though Google Apps EDU users do not receive content-based
25 advertising.

26 ///

27 ///

28 ///

D. Google's Failure To Disclose That Its Gmail Processes Read, Acquire, and Use Email Message Content Violates Google's Express Agreements With Gmail Users, Cable One Google Apps Users, and Google Apps EDU Users.

1. No user consents to Google's unlawful conduct because Google's agreements are silent on the processes, contradict other agreements, or violate the terms of service and legal notices.

102. For Gmail users there are two applicable Google Terms of Service within the class periods beginning in November of 2008: the Google Terms of Service dated April 16, 2007, and the Google Terms of Service dated March 1, 2012.

103. Google's Terms of Service, the Gmail Legal Notices, and the Gmail Program Policy do not disclose Google's unlawful conduct and do not obtain consent for the unlawful activities.

104. At ¶ 8.3 of the 2007 version of the "Terms of Service," Google states:

Google reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content from any Service. For some Services, Google may provide tools to filter out explicit sexual content. These tools include the SafeSearch preference settings (see <http://www.google.com/help/cutomoze.html#safe>). In addition, there are commercially available services and software to limit access to material that you may find objectionable.

Google removed this language from Google's March 2012 Terms of Service.

105. The first sentence of ¶ 8.3 of the "Terms of Service," when viewed in the context of the entirety of Section 8 and the remaining sentences within ¶ 8.3, is limited to Google's reservation of rights to protect its services and users. No wording in ¶ 8.3 addresses or obtains consent to allow Google to read email message content, acquire such content, collect such content, create derivative data from such content and collection of the same, or use and store the content and annotations from the email messages.

106. The words "pre-screen," "review," "flag," "filter," "modify," "refuse," and "remove" used in the context of ¶ 8.3 of the Terms of Service, Section 8 of the Terms of Service, the "Terms of Service," the "The Terms of Service Highlights," the "Gmail Legal Notices," the "Program Policies," and the "Privacy Policy" do not address or obtain consent to allow Google to read email message content, acquire such content, collect such content, create derivative data from such content and collection of the same, or use and store the content and

1 annotations from the email messages.

2 107. Paragraph 17.1 of the “Terms of Service” advises users that “*Some* of the
3 Services are supported by advertising revenue and may display advertisements and
4 promotions.” (Emphasis added). Google does not refer to Gmail as a Service to which this
5 provision is applicable. Google removed this language from Google’s March 2012 Terms of
6 Service.

7 108. Paragraph 17.1 of the “Terms of Service” further provides, “These
8 advertisements may be content-based to the *content* information *stored* on the Services, queries
9 made through the Service or other information.” (Emphasis added). Google does not refer to
10 Gmail as a service to which this provision is applicable or define the applicable “content.”

11 109. At ¶ 17.1 in the “Terms of Service,” Google does not advise the user how the
12 “content” is “content-based.”

13 110. At ¶ 17.1 in the “Terms of Service,” Google does not advise the user that
14 “content” may be derived from incoming or outgoing messages in transit.

15 111. At ¶ 17.1 in the “Terms of Service,” Google does not use the capitalized word
16 “Content” as defined in ¶ 8.1 and used throughout the “Terms of Service,” thereby specifically
17 excluding the incoming data or content from others.

18 112. At the time Gmail users send or receive messages, those messages are not stored
19 on Google’s Gmail. Google’s unlawful conduct does not occur during storage.

20 113. At the time Gmail users send or receive messages, those messages are not
21 queries through Gmail or other information.

22 114. The language of ¶ 17.1 in the “Terms of Service,” when compared to the context
23 of the “Terms of Service,” the “Gmail Legal Notices,” “The Program Policies,” and the
24 “Privacy Policy,” do not address or obtain consent to allow Google to read email message
25 content, acquire such content, collect such content, create derivative data from such content and
26 collection of the same, or use and store the content and annotations from the email messages.

27 115. Paragraph 17.3 of the “Terms of Service” provides, “In consideration for Google
28 granting you access to and use of the Services, you agree that Google may *place such*

1 *advertising on the Services.*” Google removed this language from Google’s March 2012 Terms
2 of Service. Paragraph 17.3 only allows Google to place advertisements on the unidentified
3 services; it does not address or obtain consent to allow Google to read email message content,
4 acquire such content, collect such content, create derivative data from such content and
5 collection of the same, or use and store the content and annotations from the email messages.

6 116. Pursuant to ¶ 1.5 of the “Terms of Service,” the Additional Terms or Legal
7 Notices for a particular Service, like Gmail, take precedence over any term within the “Terms of
8 Service.”

9 117. The Gmail Legal Notices do not address or obtain consent to allow Google to
10 read email message content, acquire such content, collect such content, create derivative data
11 from such content and collection of the same, or use and store the content and annotations from
12 the email messages.

13 118. The “Gmail Legal Notices” specifically states, “Google does not claim any
14 ownership in any of the content, including any text, data, information, images, photographs,
15 music, sound, video, or other material, that you upload, transmit or store in your Gmail
16 account.”

17 119. Google’s reading of email message content, the act of acquiring and collecting
18 email message content for separate storage apart from the user’s email message, and Google’s
19 exclusive access and use of that message content violates the “Gmail Legal Notices.”

20 120. Google’s creation, acquisition, and collection of data derived from email
21 message content, the separate use and storage of this metadata, and Google’s exclusive access
22 and use of that metadata violates the Gmail Legal Notices.

23 121. The “Gmail Legal Notices” specifically state, “We will not use any of your
24 content for any purpose except to provide you with the Service.” Google removed this language
25 from Google’s March 2012 Terms of Service.

26 122. The electronic communication service known as Gmail is the only applicable
27 Google “Service” within the “Gmail Legal Notices.”

28 ///

1 123. Advertising is not the applicable Google “Service” within the “Gmail Legal
2 Notices.”

3 124. Advertising is not a Google “Service” to Gmail users.

4 125. Advertising is not a “Service” within Gmail.

5 126. Paragraph 17.1 of the “Terms of Service” distinguishes “Services” from
6 advertising revenues which pay for the “Services.”

7 127. Paragraph 17.3’s specific request for the user to agree to the placement of
8 advertisements on Services evidences that advertisements are not “Services.”

9 128. Paragraphs 7.1, 7.2, 8.3, 17.1, and 17.3 of the “Terms of Service” contradict the
10 Gmail Legal Notices and are invalid to the extent that they attempt to allow Google to read
11 email message content, acquire such content, collect such content, create derivative data from
12 such content and collection of the same, or use and store the content and annotations from the
13 email messages.

14 129. Paragraphs 7.1, 7.2, 8.3, 17.1, and 17.3 of the “Terms of Service” and “Gmail
15 Legal Notices” are silent with regard to allowing Google to read email message content, acquire
16 such content, collect such content, create derivative data from such content and collection of the
17 same, or use and store the content and annotations from the email messages.

18 130. Paragraphs 7.1, 7.2, 8.3, 17.1 and 17.3 of the “Terms of Service” and “Gmail
19 Legal Notices” do not address or obtain consent to allow Google to read email message content,
20 acquire such content, collect such content, create derivative data from such content and
21 collection of the same, or use and store the content and annotations from the email messages.

22 131. Due to Google’s violations of its own Terms of Service and Legal Notices with
23 Gmail users, no Gmail user ever gives Google consent to read email message content, acquire
24 such content, collect such content, create derivative data from such content and collection of the
25 same, or use and store the content and annotations from the email messages.

26 132. Due to Google’s violations of its own Terms of Service and Legal Notices with
27 Gmail users, Google is not operating within the ordinary course of business when it reads email
28 message content, acquires such content, collects such content, creates derivative data from such

1 content and collection of the same, or uses and stores the content and annotations from the
2 email messages.

3 133. Due to Google's violations of its own Terms of Service and Legal Notices with
4 the Gmail user, the Gmail user does not and cannot consent to Google's unlawful conduct in the
5 transmission of any email message to or from any Plaintiff or Class Member.

6 134. Due to Google's violations of its own Terms of Service and Legal Notices with
7 the Gmail user, Google's actions are not within the ordinary course of business in the
8 transmission of any email message to or from any Plaintiff or Class Member.

9 135. Due to the silence of Google's Agreements with the Gmail user, the Gmail user
10 does not consent to Google's unlawful conduct in the transmission of any email message to or
11 from any Plaintiff or Class Member.

12 136. Due to the silence of Google's Agreements with the Gmail user, Google's
13 actions are not within the ordinary course of business in the transmission of any email message
14 to or from any Plaintiff or Class Member.

15 **2. No Cable One Google Apps user consents to Google's unlawful**
16 **conduct because Google's agreements are silent on the processes,**
17 **contradict other agreements, or violate the terms of service and legal**
notices.

18 137. Paragraph 1.2 of the Google Apps Partner Edition Agreement with Cable One
19 provides that Google will "protect against unauthorized access to or *use of Customer data.*"
20 (Emphasis Added).

21 138. The Google Apps Partner Edition Agreement defines "Customer data" as "data,
22 *including email*, provided, generated, transmitted or displayed via the Services by Customer or
23 End Users." (Emphasis Added). Cable One Google Apps users are the "End Users."

24 139. Google's reading of email message content, acquiring such content, collecting
25 such content, creating derivative data from such content and collection of the same, or using and
26 storing the content and annotations from the email messages is the "unauthorized access to or
27 use of Customer data." Google's unlawful conduct violates Paragraph 1.2 of the Google Apps
28 Partner Edition Agreement with Cable One.

1 140. Paragraph 1.7 of the Google Apps Partner Edition Agreement with Cable One
2 states, “Ads. Google will not serve Ads in connection with the Service.”

3 141. The Google Apps Partner Edition Agreement defines “Service” as “the Google
4 Apps Partner Edition services provided by Google and used by Customer under this
5 Agreement.” Service is not limited to Gmail.

6 142. Google’s application of the same processes for the service of Ads by reading of
7 email message content, acquiring such content, collecting such content, creating derivative data
8 from such content and collection of the same, or using and storing the content and annotations
9 from the email messages, violates ¶ 1.7 of the Google Apps Partner Edition Agreement.

10 143. The Google Apps Terms of Service, the Gmail Legal Notices, and the Gmail
11 Program Policy do not disclose Google’s unlawful conduct and do not obtain consent for the
12 unlawful conduct.

13 144. Paragraph Three (3) of the Google Apps Terms of Service applicable to Google
14 Apps Cable One users expressly limits Google’s “access” to a Google Apps user’s “Content” to
15 only those instances where Google is: (1) “required to do so by law;” or, (2) “in a good faith
16 belief that such access” is “reasonably necessary” to: (a) satisfy any applicable law, regulation,
17 legal process, or enforceable government request; (b) enforce the Terms of Service, including
18 investigation of potential violations hereof; (c) detect, prevent, or otherwise address fraud,
19 security, or technical issues (including, without limitation, the filtering of spam); or, (d) protect
20 against imminent harm to the rights, property, or safety of Google, its users or the public as
21 required or permitted by law.

22 145. Google’s reading of email message content, acquiring such content, collecting
23 such content, creating derivative data from such content and collection of the same, or using and
24 storing the content and annotations from the email messages, violates ¶ 3 of the Google Apps
25 Terms of Service.

26 146. Paragraph 1 of the Google Apps Terms of Service specifically references and
27 includes the Gmail Legal Notices.

28 ///

1 147. The Gmail Legal Notices do not address or obtain consent to allow Google to
2 read email message content, acquire such content, collect such content, create derivative data
3 from such content and collection of the same, or use and store the content and annotations from
4 the email messages.

5 148. The “Gmail Legal Notices” state, “Google does not claim any ownership in any
6 of the content, including any text, data, information, images, photographs, music, sound, video,
7 or other material, that you upload, transmit or store in your Gmail account.”

8 149. Google’s reading of email message content, the act of acquiring and collecting
9 email message content, and Google’s exclusive access and use of that message content violates
10 the Gmail Legal Notices.

11 150. Google’s creation, acquisition and collection of data derived from email message
12 content, the separate use and/or storage of this metadata, and Google’s exclusive access and use
13 of that metadata violates the Gmail Legal Notices.

14 151. The “Gmail Legal Notices” state, “We will not use any of your content for any
15 purpose except to provide you with the Service.” Google removed this language from the
16 March 2012 Legal Notice.

17 152. The electronic communication service known as Gmail is the only applicable
18 Google “Service” within the “Gmail Legal Notices.”

19 153. Because Google cannot by contract serve advertisements to Cable One Google
20 Apps users, Google’s reading of email message content, acquiring such content, collecting such
21 content, creating derivative data from such content and collection of the same, or using and
22 storing the content and annotations from the email messages in any way associated with
23 Google’s service of advertising to other Gmail users or processes related to the service of
24 advertising violates the Gmail Legal Notices.

25 154. Google cannot obtain consent for acts contrary to or in violation of the Google
26 Apps Partner Edition Agreement, the Google Apps Terms of Service, and the Gmail Legal
27 Notices.

28 ///

1 155. Due to Google's violations of the Google Apps Partner Edition Agreement, the
2 Google Apps Terms of Service, and the Gmail Legal Notices, no Cable One Google Apps user
3 ever gives Google consent to read email message content, acquire such content, collect such
4 content, create derivative data from such content and collection of the same, or use and store the
5 content and annotations from the email messages.

6 156. Google cannot operate in the ordinary course of business for acts contrary to or
7 in violation of the Google Apps Partner Edition Agreement, the Google Apps Terms of Service,
8 and the Gmail Legal Notices.

9 157. Due to Google's violations of the Google Apps Partner Edition Agreement, the
10 Google Apps Terms of Service, and the Gmail Legal Notices, Google cannot operate within the
11 ordinary course of business when it reads email message content, acquires such content, collects
12 such content, creates derivative data from such content and collection of the same, or uses and
13 stores the content and annotations from the email messages.

14 158. Because Cable One Google Apps users do not receive advertising, any purported
15 statement related to content-based advertising in any Agreements with Google has no
16 application Cable One Google Apps users. Any purported statement related to content-based
17 advertising in any Agreements with Google expressly contradicts the other terms, disclosures or
18 contracts, and these statements do not address or obtain consent to allow Google to read email
19 message content, acquire such content, collect such content, create derivative data from such
20 content and collection of the same, or use and store the content and annotations from the email
21 messages.

22 159. Due to the silence of Google's Agreements with the Cable One Google Apps
23 users, the user does not consent to Google's reading of email message content, acquiring such
24 content, collecting such content, creating derivative data from such content and collection of the
25 same, or using and storing the content and annotations from the email messages.

26 160. Due to the silence of Google's Agreements with the Cable One Google Apps
27 users, Google's reading of email message content, acquiring such content, collecting such
28 content, creating derivative data from such content and collection of the same, or using and

1 storing the content and annotations from the email messages are not within the ordinary course
2 of business.

3 **3. No Google Apps EDU user consents to Google's unlawful conduct**
4 **because Google's agreements are silent on the processes, contradict**
5 **other agreements, or violate the terms of service and legal notices.**

6 161. Paragraph 1.2 of the Google Apps Education Edition Agreement with
7 educational institutions states that Google will "protect against unauthorized access to or *use of*
8 *Customer data.*" (Emphasis Added).

9 162. The uniform Google Apps Education Edition Agreement defines "Customer
10 data" as "data, *including email*, provided, generated, transmitted or displayed via the Services
11 by Customer or End Users." (Emphasis Added). Further, the definition specifically includes,
12 "any Personally Identifiable Information, as defined in the Family Education Rights and Privacy
13 Act 20 U.S.C. § 1232g ("FERPA"), of Customer or End users provided, generated, transmitted
14 or displayed via the Services by Customer or End Users." Google Apps EDU users are "End
15 Users."

16 163. Google's reading of email message content, acquiring such content, collecting
17 such content, creating derivative data from such content and collection of the same, or using and
18 storing the content and annotations from the email messages is the "unauthorized access to or
19 use of Customer data," which violates Paragraph 1.2 of the Google Apps Education Edition
20 Agreement.

21 164. Paragraph 1.6 of the uniform Google Apps Education Edition Agreement states,
22 "Ads. a. Default Setting. The default setting for the Services is one that does not allow Google
23 to serve Ads."

24 165. The Google Apps Education Edition Agreement defines "Service" as "the
25 Google Apps Education Edition services provided by Google and used by Customer under this
26 Agreement." Service is not limited to Gmail.

27 166. Google's application of the same processes as the processes for the service of
28 Ads by reading of email message content, acquiring such content, collecting such content,
creating derivative data from such content and collection of the same, or using and storing the

1 content and annotations from the email messages, violates ¶ 1.6 of the Google Apps Education
2 Edition Agreement.

3 167. The Google Terms of Service discussed *supra* apply to Google Apps EDU users
4 and are incorporated herein.

5 168. Google's Terms of Service, the Gmail Legal Notices, and the Gmail Program
6 Policy do not disclose Google's unlawful conduct and do not obtain consent for the unlawful
7 conduct.

8 169. Because Google cannot by contract serve advertisements to Google Apps EDU
9 users, ¶ 17.3 of the Terms of Service is contrary to or in violation of the Google Apps Education
10 Edition Agreement. Google's reading of email message content, acquiring such content,
11 collecting such content, creating derivative data from such content and collection of the same,
12 or using and storing the content and annotations from the email messages violates ¶ 17.3 of the
13 Google Apps Education Edition Agreement.

14 170. Because Google cannot by contract serve advertisements to Google Apps EDU
15 users, ¶ 17.3 of the Terms of Service or any purported statement relating to advertising are
16 inapplicable and do not obtain consent for Google's reading of email message content,
17 acquiring such content, collecting such content, creating derivative data from such content and
18 collection of the same, or using and storing the content and annotations from the email
19 messages.

20 171. The Gmail Legal Notices do not address or obtain consent from Google Apps
21 EDU users to allow Google to read email message content, acquire such content, collect such
22 content, create derivative data from such content and collection of the same, or use and store the
23 content and annotations from the email messages.

24 172. The "Gmail Legal Notices" state, "Google does not claim any ownership in any
25 of the content, including any text, data, information, images, photographs, music, sound, video,
26 or other material, that you upload, transmit or store in your Gmail account."

27 173. Google's reading of email message content, the act of acquiring and collecting
28 email message content, and Google's exclusive access and use of that message content violates

1 the Gmail Legal Notices.

2 174. Google's creation, acquisition and collection of data derived from email message
3 content, the separate use and/or storage of this metadata, and Google's exclusive access and use
4 of that metadata violates the Gmail Legal Notices.

5 175. The "Gmail Legal Notices" state, "We will not use any of your content for any
6 purpose except to provide you with the Service." Google removed this language from the
7 March 2012 Legal Notice.

8 176. The electronic communication service known as Gmail is the only applicable
9 Google "Service" within the "Gmail Legal Notices."

10 177. Because Google cannot by contract serve advertisements to Google Apps EDU
11 users, Google's reading of email message content, acquiring such content, collecting such
12 content, creating derivative data from such content and collection of the same, or using and
13 storing the content and annotations from the email messages in any way associated with
14 Google's service of advertising to other Gmail users or processes related to the service of
15 advertising violates the Gmail Legal Notices.

16 178. Google cannot obtain consent for acts contrary to or in violation of the Google
17 Apps Education Agreement, the Google Apps Terms of Service, and the Gmail Legal Notices.

18 179. Due to Google's violations of the Google Apps Education Agreement, the
19 Google Apps Terms of Service, and the Gmail Legal Notices, no Google Apps EDU user ever
20 gives Google consent to read email message content, acquire such content, collect such content,
21 create derivative data from such content and collection of the same, or use and store the content
22 and annotations from the email messages.

23 180. Google cannot operate in the ordinary course of business for acts contrary to or
24 in violation of the Google Apps Education Agreement, the Google Apps Terms of Service, and
25 the Gmail Legal Notices.

26 181. Due to Google's violations of the Google Apps Education Agreement, the
27 Google Apps Terms of Service, and the Gmail Legal Notices, Google cannot operate within the
28 ordinary course of business when it reads email message content, acquires such content, collects

1 such content, creates derivative data from such content and collection of the same, or uses and
2 stores the content and annotations from the email messages.

3 182. Because Google Apps EDU users do not receive advertising, any purported
4 statement related to content-based advertising in any Agreements with Google has no
5 application Google Apps EDU users. Any purported statement related to content-based
6 advertising in any Agreements with Google expressly contradicts the other terms, disclosures or
7 contracts, and these statements do not address or obtain consent to allow Google to read email
8 message content, acquire such content, collect such content, create derivative data from such
9 content and collection of the same, or use and store the content and annotations from the email
10 messages.

11 183. Due to the silence of Google's Agreements with the Google Apps EDU users,
12 the user does not consent to Google's reading of email message content, acquiring such content,
13 collecting such content, creating derivative data from such content and collection of the same,
14 or using and storing the content and annotations from the email messages.

15 184. Due to the silence of Google's Agreements with the Google Apps EDU users,
16 Google's reading of email message content, acquiring such content, collecting such content,
17 creating derivative data from such content and collection of the same, or using and storing the
18 content and annotations from the email messages are not within the ordinary course of business.

19 **4. No Gmail user, Cable One Google Apps user, or Google Apps EDU**
20 **user consents to Google's unlawful conduct because Google's Privacy**
21 **Policies are silent on the processes, contradict other agreements, or**
violate the terms of service and legal notices.

22 185. Every Privacy Policy since August 7, 2008, is silent as to Google's reading of
23 email message content, acquiring such content, collecting such content, creating derivative data
24 from such content and collection of the same, or using and storing the content and annotations
25 from the email messages. No user can ever give consent pursuant to the Privacy Policies.

26 186. To the extent any purported language within any Privacy Policy since August 7,
27 2008 addresses or seeks to obtain consent to allow Google to read email message content,
28 acquire such content, collect such content, create derivative data from such content and

1 collection of the same, or use and store the content and annotations from the email messages,
2 such language is contrary to user agreements. No user can ever give consent pursuant to the
3 Privacy Policies.

4 187. Within each version of the Privacy Policy, Google *expressly limits* the
5 information it *collects* from Gmail users, Cable One Google Apps users, and Google Apps EDU
6 users to only the following information: (1) personal information (specifically defined) provided
7 by the user when the user signs up for a Google Account; (2) information derived from the
8 placement of cookies on the user's computer or device; (3) log information; (4) user
9 communications *directed at* Google (as a party); (5) personal information (specifically defined)
10 provided from affiliated Google Services or other sites; (6) information from third party
11 applications; (7) location data from location-enabled services; and, (8) unique application
12 numbers from Google Toolbar.

13 188. Google intentionally omits and excludes from any of these categories Google's
14 reading of email message content, acquiring such content, collecting such content, creating
15 derivative data from such content and collection of the same, or using and storing the content
16 and annotations from the email messages.

17 189. Google amended its Privacy Policy on March 1, 2012, and again on July 27,
18 2012. In each version, Google *expressly limits* the information it *collects* from all users of
19 Gmail to the following: (1) information the user gives to Google—the user's personal
20 information; and, (2) information Google obtains from the user's use of Google services,
21 wherein Google lists: (a) the user's device information; (b) the user's log information; (c) the
22 user's location information; (d) the user's unique application number; (e) information stored
23 locally on the user's device; and, (e) information derived from cookies placed on a user's
24 device.

25 190. Google intentionally omits and excludes from any of these categories Google's
26 reading of email message content, acquiring such content, collecting such content, creating
27 derivative data from such content and collection of the same, or using and storing the content
28 and annotations from the email messages. In addition, because incoming email to all Gmail

1 users is read while in transit, and regardless of whether the user is [REDACTED], it does not amount
2 to “Information we get from your use of our services.”

3 191. Google violates the express limitations of its Privacy Policies with its reading of
4 email message content, acquiring such content, collecting such content, creating derivative data
5 from such content and collection of the same, or using and storing the content and annotations
6 from the email messages.

7 192. Google cannot obtain consent for acts contrary to or in violation of Google’s
8 Privacy Policies.

9 193. Google cannot act in the ordinary course of business in violation of Google’s
10 Privacy Policies.

11 194. Due to Google’s violations of its own Privacy Policies, no person ever gives
12 Google consent to read email message content, acquire such content, collect such content, create
13 derivative data from such content and collection of the same, or use and store the content and
14 annotations from the email messages.

15 195. Due to Google’s violations of its Privacy Policies, Google does not operate
16 within the ordinary course of business when it reads email message content, acquires such
17 content, collects such content, creates derivative data from such content and collection of the
18 same, or uses and stores the content and annotations from the email messages.

19 196. Google’s Privacy Policies are silent on, and do not address or obtain consent for
20 Google to read email message content, acquire such content, collect such content, create
21 derivative data from such content and collection of the same, or use and store the content and
22 annotations from the email messages.

23 197. Google’s Privacy Policies are silent on Google’s reading of email message
24 content, acquiring such content, collecting such content, creating derivative data from such
25 content and collection of the same, or using and storing the content and annotations from the
26 email messages and these actions are not within the ordinary course of business.

27 ///

28 ///

1 **5. No person consents to Google’s unlawful conduct based on other**
 2 **statements about Gmail processing because: (a) Google is the sole**
 3 **source of the information contained within the statement; and, (b)**
 4 **the information provided by Google is materially false, misleading, or**
 5 **omits material facts.**

6 198. While Google claims that all email service providers filter for spam and viruses,
 7 users and persons can only consent to Google’s filtering for spam and virus protection.

8 199. Before [REDACTED] 20[REDACTED], the Gmail [REDACTED] and [REDACTED]
 9 [REDACTED] processed messages [REDACTED] Google processes the message unlawfully by reading,
 10 acquiring, and using email message content. After [REDACTED] 20[REDACTED], only part of the message
 11 content collected by the Content Onebox process is actually used by Google for purposes of the
 12 [REDACTED] separate processing. No user or person consents to the unlawful
 13 reading, acquisition, and use of the message content acquired by these separate devices which is
 14 [REDACTED]

15 200. While Google claims that it processes messages for spell-check, language
 16 detection, and sorting, it fails to disclose the separate occurrences of Google’s reading of email
 17 message content, acquiring such content, collecting such content, creating derivative data from
 18 such content and collection of the same, or using and storing the content and annotations from
 19 the email messages.

20 201. Google falsely claims that it simply filters or reviews email messages for
 21 “keywords,” when in fact Google acquires, collects, and stores this type of content and uses it to
 22 create derivative data.

23 202. Google falsely asserts that only static “keywords” are reviewed, omitting that it
 24 actually reads, acquires, collects, extracts, and [REDACTED] information to determine meaning and
 25 concepts through PHIL, [REDACTED].

26 203. Google falsely implies or overtly creates the false impression that users can: (1)
 27 opt-out of advertising; (2) use various ways to access Gmail accounts which will not generate
 28 advertising; or, (3) use Apps accounts which will not generate advertising, to prevent Google
 from Google’s reading of email message content, acquiring such content, collecting such
 content, creating derivative data from such content and collection of the same, or using and

1 storing the content and annotations from the email messages. Yet, all of these activities occur
2 regardless of: (1) whether a user opts out of advertising; (2) how a user accesses Gmail; or, (3)
3 whether Google serves advertising to the account.

4 204. Google falsely claims that no humans read the email message content when in
5 fact Google employees routinely read, examine, and analyze the collected email message
6 content and/or generated metadata.

7 205. Google omits the material fact that for years Google has acquired, collected, and
8 created information from email message content and web (search) history to create secret user
9 profiles.

10 206. When a user deletes their email messages, Google omits the material fact that it
11 maintains and stores the collected and created email message data in separate storage.

12 207. Google never informs the Gmail user that Google acquires the content of the
13 incoming electronic communication during an “interception.” In fact, Google falsely indicates
14 that it acquires information from the users’ inbox—not while the email message is in transit to
15 the recipient. Accordingly, Google never discloses to the user at what point in time the
16 unlawful conduct occurs, i.e. during the transmission process, after receipt in the user’s inbox,
17 or when the user displays the message on her screen. Accordingly, Google never discloses an
18 actual interception for which it can obtain consent.

19 208. Google makes other false or misleading statements and omits other material
20 information about its practices.

21 209. For users of Gmail who are required to accept the applicable Terms of Service,
22 Legal Notices, Program Policy, and Privacy Policies, and wherein Google’s has expressly
23 contracted that (1) the Terms constitute the whole legal agreements, (2) the Terms replace all
24 other agreements, and/or (3) Terms control the relationship between Google and the users. The
25 uniform, form contract(s) are the only applicable statements as to the issue of consent.

26 ///

27 ///

28 ///

1 **6. No person consents to Google's unlawful conduct because Google**
2 **violates its user agreements and notices, because Google makes false**
3 **and/or misleading statements, and because Google does not disclose**
4 **the accused conduct.**

5 210. Due to the silence, the conflicts, and the expressed limitations in Google's
6 agreements with its users, Gmail users and other persons cannot and do not consent to Google's
7 reading of email message content, acquiring such content, collecting such content, creating
8 derivative data from such content and collection of the same, or using and storing the content
9 and annotations from the email messages.

10 211. Due to Google's false statements and material omissions about its reading of
11 email message content, acquiring such content, collecting such content, creating derivative data
12 from such content and collection of the same, or using and storing the content and annotations
13 from the email messages, no person can and does consent to Google's unlawful conduct.

14 212. Google is the sole source of information about its Gmail processes, and is the
15 originator of the express terms of its form contracts with Gmail users. Third party statements
16 relating to Google's unlawful conduct or its user agreements are not probative of whether
17 Google obtains consent for its unlawful practices. Third party statements relating to Google's
18 conduct are speculative and lack foundation. To the extent such third party statements are based
19 upon Google's representations, Google's representations are false, omit material information, or
20 violate or contradict a contractual agreement. The truth of Google's conduct is a tightly
21 guarded secret.

22 213. No party to any email message transmitted to or from any Plaintiff and Class
23 Member consents to Google's reading of email message content, acquiring such content,
24 collecting such content, creating derivative data from such content and collection of the same,
25 or using and storing the content and annotations from the email messages. Plaintiff and the
26 Class Members are not given any reasonable opportunity to consent, cannot consent, and do not
27 consent to Google's unlawful conduct.

28 ///

///

E. Google's Unlawful Devices

214. Google utilizes the following “accused devices,” including: machines; instruments; apparatuses; and/or contrivances, to intentionally intercept, endeavor to intercept, use, endeavor to use, read, attempt to read, acquire, take, exert unauthorized control over, record and collect the contents of, determine and learn the meaning and content of, eavesdrop upon, and/or store, private email messages, the content of private email messages, and private electronic communications without consent:

- a. Content Onebox and supporting processes;
- b. CAT2 mixer and/or [REDACTED];
- c. Goldmine;
- e. Medley Server;
- f. ICEbox;
- g. Caribou Server;
- i. Criteria Server; and,
- j. Other undisclosed devices and processes.

///

///

///

///

///

///

///

///

///

///

///

///

///

V. CAUSES OF ACTION

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

215. Plaintiffs adopt and incorporate each and every allegation of this complaint as if stated fully herein.

216. Plaintiffs Dunbar; Fread and Carrillo; A.K., as Next Friend of Minor, J.K.; Scott and Harrington; assert violations of 18 U.S.C. §§ 2511(1)(a) and (1)(d) for Google's unlawful interception and use of Plaintiffs' electronic communications.

A. Plaintiffs

1. Plaintiff Keith Dunbar

217. Cable One is an ISP. Prior to November 16, 2010, Dunbar paid Cable One for his internet service, including email service for his business and family.

218. Prior to November 16, 2010, Dunbar sent and received email messages to and from Gmail users wherein Google unlawfully intercepted and used the content of those electronic communications in violation of 18 U.S.C. §§ 2511(1)(a) and (1)(d).

219. On November 16, 2010, Dunbar learned that Cable One required him and all other Cable One account holders to convert their email accounts to be "Powered by Google." Dunbar converted his account to be "Powered by Google" but continued as a Cable One subscriber and his email address remained the same.

220. Similar to Dunbar's conversion, Cable One required the conversion of all other Cable One email accounts to be "Powered by Google."

221. In addition, once Cable One set up its "Mycableone.com" platform using Google Apps for email, new Cable One subscribers opened their new "Powered by Google" Cable One email accounts through Google Apps, and thus, Gmail.

222. Google services Cable One Google Apps email accounts through Gmail.

223. After the conversion of his Cable One email account, Dunbar received email messages through his Cable One Google Apps email account, and sent email messages to Gmail and other Cable One Google Apps email accounts.

224. Accordingly, Dunbar has been (1) a non-Gmail user who sent and received emails to and from a Gmail user; and is: (2) a Cable One Google Apps user (Gmail user) who received messages; and, (3) a Cable One Google Apps user (Gmail user) who sent messages to Gmail users.

2. *Plaintiffs Fread and Carrillo*

225. Plaintiff Robert Fread has been a student at the University of Hawaii since January 2011.

226. The University of Hawaii's migration of its email services to Google Apps EDU began in 2009, when the University investigated the possibility of contracting out its email services for its students, faculty, and staff.

227. On June 21, 2010, Google contracted with the University of Hawaii ("the University," or "UH") to provide exclusive email services for all of the UH's students, faculty, and staff. Google's contract with the University is titled "Google Apps Education Edition Agreement" ("Agreement"), stamped "Google Apps Edu Agreement 031809" ("UH Google Apps EDU Contract"). The UH Google Apps EDU Contract is essentially a form contract containing the same relevant and material terms, conditions and disclosures as other Google Apps EDU contracts. Google has entered into these contracts throughout the United States including, *e.g.* with the University of the Pacific, and the California State University and University of California systems. These analogous Google Apps EDU contracts include a provision regarding Google's claim to comply with FERPA by virtue of Google's false and fraudulent designation as a "school official" as a defined term in the contracts.

228. Through the UH Google Apps EDU Contract, Google services the @hawaii.edu email accounts provided to all students, faculty, and staff of UH, including Plaintiff Fread.

229. The @hawaii.edu email system is the official—and often exclusive—form of communication by UH for UH's students, faculty, and staff.

230. In May of 2011, the University sent emails to @hawaii.edu account holders informing them of the forced migration of their email service to Google Apps EDU.

231. On September 12, 2011, Fread received notice that his student email account

1 would migrate to Google Apps EDU on September 24, 2011, without his consent.

2 232. On January 4, 2012, UH's IT department informed Fread that his email account
3 would migrate to Google Apps EDU against his will on January 24, 2012.

4 233. On July 23, 2012, Fread's @hawaii.edu email account migrated to a Google
5 Apps EDU account without his consent. For months, Fread refused to use his Google Apps
6 EDU email account, but later Fread was forced to use the account in order to send and receive
7 official UH communications.

8 234. Google failed to disclose to Fread and UH Google's reading of email message
9 content, acquiring such content, collecting such content, creating derivative data from such
10 content and collection of the same, or using and storing the content and annotations from the
11 email messages. Google processes all incoming email messages to UH students, faculty,
12 administrative staff, and alumni @hawaii.edu accounts this way.

13 235. Fread did not consent to Google's reading of email message content, acquiring
14 such content, collecting such content, creating derivative data from such content and collection
15 of the same, or using and storing the content and annotations from the email messages.

16 236. Google's reading of Fread's email message content, acquiring such content,
17 collecting such content, creating derivative data from such content and collection of the same,
18 or using and storing the content and annotations from the email messages is an interception and
19 use of Fread's electronic communications.

20 237. In 2010, the University of the Pacific ("UOP") located in Stockton, California
21 entered into a contract with Google for email services through its Google Apps for Education
22 program ("UOP Google Apps EDU Contract"). McGeorge School of Law is part of UOP.
23 The UOP Google Apps EDU Contract applies to all UOP students, faculty, administrative staff,
24 and alumni, including those affiliated with McGeorge.

25 238. The UOP Google Apps EDU Contract is essentially a form contract containing
26 the same relevant and material terms, conditions and disclosures as other Google Apps EDU
27 contracts. Google has entered into these contracts throughout the United States including, *e.g.*
28 with the University of the Pacific, and the California State University and University of

1 California systems. These analogous Google Apps EDU contracts include a provision
2 regarding Google's claim to comply with FERPA by virtue of Google's false and fraudulent
3 designation as a "school official" as a defined term in the contracts.

4 239. At no time before or after entering into the UOP Google Apps EDU Contract has
5 Google disclosed Google's reading of email message content, acquiring such content, collecting
6 such content, creating derivative data from such content and collection of the same, or using and
7 storing the content and annotations from the email messages. Google processes all incoming
8 email messages to UOP students, faculty, administrative staff, and alumni @u.pacific.edu
9 accounts this way.

10 240. Before Google began the Google Apps EDU service, all existing UOP students,
11 faculty, administrative staff and alumni sent and received all communications with UOP
12 through @u.pacific.edu accounts. UOP operated the email system itself using a Novell Group
13 Wise platform or server. UOP then changed to Google Apps EDU email service and forced all
14 UOP students, faculty, administrative staff and alumni to migrate their accounts to Google Apps
15 EDU accounts.

16 241. The forced migration process involved a series of prompts including a
17 "Welcome to Your New Account" page which included terms and conditions and a privacy
18 policy. The instructions called for the individual to enter a word in a box and click on
19 something which said words like "I accept" and "continue with my account." UOP requires
20 new students, faculty, and staff to open Google serviced @u.pacific.edu accounts through this
21 same process.

22 242. Plaintiff Rafael Carrillo attended McGeorge School of Law from August 2009
23 until his graduation in May 2012. McGeorge required Carrillo to maintain an @u.pacific.edu
24 email account for official UOP communications, including communications involving his
25 enrollment.

26 243. UOP forced Carrillo to migrate his @u.pacific.edu account in the manner
27 described above, but Google did not inform Carrillo that Google treated his migrated account as
28 a Gmail account.

1 244. Carrillo did not consent to Google's reading of email message content, acquiring
2 such content, collecting such content, creating derivative data from such content and collection
3 of the same, or using and storing the content and annotations from the email messages.

4 245. After the forced migration, Carrillo sent and received communications to and
5 from UOP and others, including communications relating to private and confidential
6 educational and financial information which are protected from disclosure under federal law,
7 including FERPA. Google's reading of Carrillo's email message content, acquiring such
8 content, collecting such content, creating derivative data from such content and collection of
9 the same, or using and storing the content and annotations from the email messages is an
10 interception and use of Carrillo's electronic communications.

11 246. Neither Fread nor Carrillo received Google advertising in their Google Apps
12 EDU accounts.

13 **3. *Plaintiff A.K., as Next Friend of Minor, J.K.***

14 247. Minor Child, J.K., is a sixteen (16) year old child who has a personal Gmail
15 account.

16 248. Minor Child, J.K., has used his personal Gmail account to communicate
17 electronically with non-Gmail users and with other Gmail subscribers who are under the age of
18 majority ("Minor Subscribers").

19 249. Accordingly, Minor Child, J.K., has received email messages from non-Gmail
20 users and Minor Subscribers. In addition, Minor Child, J.K., has sent email messages to non-
21 Gmail users and Minor Subscribers.

22 250. Minor Child, a child under the legal age of majority, did not consent, and, as a
23 matter of law, could not have consented to the interception of his electronic communications.
24 As a result of their minority, Minor Class Members were and are incapable of consenting to
25 Google's conduct. Absent consent, Google's conduct violated and continues to violate ECPA.

26 251. Google did not attempt to obtain the permission of the parents or guardians of
27 Minor Child or other members of the Minor Class whose electronic communications were
28 intercepted.

252. Non-Gmail subscribers or other Minor Subscribers who sent or received electronic communications to or from Gmail accounts of Minor Child or members of the Minor Class did not consent to Google's interception of the electronic communication.

4. *Scott, Harrington, and the Class of Non-Gmail Users*

253. Scott and Harrington are non-Gmail users who have sent email messages to Gmail users. Scott and Harrington are non-Gmail users who have received email messages from Gmail users.

254. Google unlawfully intercepted and used the content of the electronic communications (emails) which Scott, Harrington, and the Class they seek to represent sent to Gmail users.

255. Google unlawfully intercepted and used the content of the electronic communications (emails) which Scott, Harrington, and the Class they seek to represent received from Gmail users.

B. ECPA Violations

256. Google, as a corporation, is a "person" pursuant to 18 U.S.C. § 2510(6).

257. Google's actions were/are intentional as evidenced by the design of its Gmail data flow processes and the intentional changes made during the course of this litigation. Google has the capacity and in the past actually engineered its Gmail processes: (1) to serve advertisements without the secret creation and collection of separate metadata; and, (2) without unlawfully intercepting and using information from those users who do not receive advertisements with Gmail. Google's actions are not the industry standard, are not performed by other companies, and are intentional.

258. Google's actions affect interstate commerce in that: (1) Plaintiffs are residents of various states; (2) Cable One does not offer services in State of California, Cable One and Google entered into a contractual agreement regarding the Google Apps Partner Program, Class Members from several states transferred their Cable One email accounts to Google Apps and Gmail, and *Dunbar's* Class Members' use of their Cable One Google Apps accounts occurred outside of the State of California; (3) as exemplified by Fread and Carrillo, educational

1 institutions from various states have contracted with Google, those Class Members have
2 transferred their email accounts to Google Apps EDU, and those Class Members' use of their
3 Google Apps EDU accounts occurred within and outside the State of California; and (4) Minor,
4 J.K., resides in Illinois, the Gmail service is offered throughout the United States, and those
5 Class Members have used their Gmail accounts throughout the United States. Finally, Google's
6 actions as an electronic communication service provider offering Gmail throughout the United
7 States demonstrates its actions affect interstate commerce.

8 259. Pursuant to 18 U.S.C. § 2511(1)(a), Google intentionally intercepted, intercepts,
9 or endeavored or endeavors to intercept the electronic communications: (1) Plaintiffs and Class
10 Members sent to @gmail.com account users; and, (2) received by Plaintiffs and the Class
11 Members based on the following:

12 a. Through Google's reading of the email messages, Google acquired(s) the
13 substance, purport, and meaning of email messages transmitted to and from Plaintiffs
14 and Class Members. The acquisition of content is further exemplified by Google's
15 collection of such content and the creation of metadata which is collected and annotated
16 to the email message.

17 b. The email messages transmitted to and from Plaintiffs and Class
18 Members are (were) electronic communications. The conduct alleged herein does not
19 occur in storage. Google transfers, transmits, or routes each message to each accused
20 device for the purpose of a designated function to acquire content from the message.

21 c. Google utilized(s) one or more devices comprised of an electronic,
22 mechanical or other device or apparatus to intercept the electronic communications
23 transmitted to and from Plaintiffs and Class Members. Such devices include, but are not
24 limited to, the distinct pieces of Gmail infrastructure comprising the Content Onebox
25 process, CAT2 mixer or [REDACTED], Medley Server, ICEbox, etc.

26 d. Google does not furnish the devices to Gmail or Google Apps users, and
27 users do not use the devices for connection to the facilities.

28 e. The intercepting devices are not used for the ability to send or receive

1 electronic communications.

2 f. The devices are not used by Google, if operating as an electronic
3 communication service, in the ordinary course of business as a provider of an electronic
4 communication server.

5 g. Google's interception of electronic communications sent by and to
6 Plaintiffs and Class Members for; (a) undisclosed purposes; (b) for the purpose of
7 delivering content-based advertising; (c) for purposes beyond the Service of Gmail; (d)
8 in violation of its user agreements; (e) in violation of its contracts with third parties; (f)
9 in violation of its statements to users; (g) in violation of States' and California law; and,
10 (h) in violation of the property rights of Plaintiffs, Class Members, and third parties; is
11 not within the ordinary course of business of a provider of an electronic communication
12 service.

13 260. Pursuant to 18 U.S.C. § 2511(1)(d), Google intentionally used, uses, or
14 endeavored or endeavors to use the contents of Plaintiffs' and Class Members' electronic
15 communications while knowing or having reason to know that it obtained the information
16 through the interception of the electronic communication in violation of 18 U.S.C. § 2511(1)(a).

17 261. Google's interception of and use of the contents of Plaintiffs' and Class
18 Members' electronic communications were not performed by an employee engaged in any
19 activity necessary for the rendition of an electronic communication service or for the protection
20 of the rights or property of Google.

21 262. The industry standard for webmail electronic communication services does not
22 include the interception and use of the content of email messages.

23 263. The ordinary course of business within the industry for webmail electronic
24 communication services for the ability to send and receive electronic communications does not
25 include the interception and use of content of an electronic communication as Google performs
26 on the subject electronic communications.

27 264. Google's services that are not related to the ability to send and receive electronic
28 communications are not electronic communication services.

1 265. Google's content-based advertising and other uses of Plaintiffs' and Class
2 Members' emails, including those sent to Plaintiffs and Class Members, are not a service of an
3 electronic communication service as defined by 18 U.S.C. § 2510(15).

4 266. No party to the electronic communications alleged herein consented to Google's
5 interception or use of the contents of the electronic communications.

6 267. As to consent, and pursuant to 18 U.S.C. § 2520(b)(1), Minor Child, J.K., and the
7 Minor Class seek specific declaratory relief as follows.

8 268. At all times relevant hereto, Minor Child, J.K., and the Minor Class were minor
9 children.

10 269. Emails, and the contents thereof, are personal property.

11 270. Emails, and the contents thereof, sent or received by Gmail users are not in the
12 immediate possession of Gmail users because an individual acquires possession of them only
13 through Google.

14 271. The metadata and associated [REDACTED] created by Google from the Minor
15 Child, J.K.'s, and Minor Class Members' email messages are never in possession of or
16 accessible to the Minor Child, J.K., and Minor Class Members.

17 272. Google's creation of metadata and associated [REDACTED] relates to personal
18 property not in the immediate possession or control of a minor Gmail user.

19 273. Google's reading, acquisition, and other uses of minor Gmail users' email
20 content and data therein by its advertising servers relates to personal property not in the
21 immediate possession or control of a minor Gmail user.

22 274. Defendant's uniform (form) contracts with Minor Child, J.K., and the Minor
23 Class are governed by California law, and violate Cal. Fam. Code § 6701(a) and/or (c), to the
24 extent they purport to give both a delegation of power, and relate to personal property not in the
25 immediate possession or control of a minor.

26 275. Contracts that are contrary to Section 6701 are void without disaffirming the
27 contract to avoid its apparent effect.

28 276. The 2007 version of the Google Terms of Service provides, "If any court of law,

1 having the jurisdiction to decide on this matter, rules that any provision of these Terms is
2 invalid, then that provision will be removed from the Terms without affecting the rest of the
3 Terms. The remaining provisions of the Terms will continue to be valid and enforceable.” The
4 2012 version of the Google Terms of Service provides, “If it turns out that a particular terms is
5 not enforceable, this will not affect any other terms.” Accordingly, Google recognizes that
6 aspects of its Terms found to be invalid may be separated from the Terms.

7 277. The provisions, if any, of the Terms of Service and agreements with Google
8 relating to the interception and use of Gmail messages of Minor Child, J.K., and the Minor
9 Class are void. In the alternative, said Terms of Service and agreements are void in their
10 entirety.

11 278. Accordingly, in addition to the other allegations against consent as to Gmail
12 users, Minor Child, J.K., and the Minor Class seek a declaration that the provisions, if any, of
13 the Terms of Service and agreements with Google relating to the interception and use of Gmail
14 of Minor Child, J.K., and the Minor Class are in fact void, will be “removed from the Terms,”
15 and that Minor Child, J.K., and the Minor Class have not provided consent.

16 279. Alternatively, in addition to the other allegations against consent as to Gmail
17 users, Minor Child, J.K., and the Minor Class seek a declaration that the entire alleged contract
18 between Google and Minor Child, J.K., and the Minor Class is void, and that Minor Child and
19 the Minor Class have not provided consent.

20 280. Alternatively, in addition to the other allegations against consent as to Gmail
21 users, Minor Child and the Minor Class seek a declaration that Minor Child and the Minor Class
22 cannot give the consent required under ECPA.

23 281. Google intercepts Plaintiffs’ and Class Members’ electronic communications for
24 the purpose of committing a criminal or tortious act in violation of the laws of any state, and as
25 such, it cannot obtain consent pursuant to § 2511(2)(d).

26 282. Google’s interception and use of electronic communications violates the
27 proprietary interests of the property owners of the email who have not consented to the
28 interception. Due to the expressed limitations in the Privacy Policies and content licenses

1 granted to Google by users, Google has no contractual rights to the data within email messages
 2 that Gmail users have yet received and yet submitted for public viewing. At the moment
 3 Google reads the incoming email, it exercises unauthorized control over the data within that
 4 email to acquire content, make copies of content, create data from the content to be used in
 5 association with content, or create data from the content to be used apart from content. This
 6 data is valuable to Google. Google openly claims to investors the monetary value in obtaining
 7 data as alleged herein, and Google pays specific and particularized sums of money for the same
 8 type of data to third parties. Google defines the payment of monies to others for the same type
 9 of data as “traffic acquisition costs.” To avoid paying these “traffic acquisition costs,” Google
 10 unlawfully exercises control over data within incoming electronic communications, copies or
 11 derives other data from those emails, and benefits from the value of that data—all without
 12 compensation to the owner/party of the message and beyond the scope of its content license
 13 with its users.

14 283. Google has no property rights or license in the email sent to users of Gmail and
 15 that have not been submitted, posted, uploaded, or displayed by the users of Gmail.

16 284. Google has no property rights or license in the copies of emails sent to users of
 17 Gmail or metadata it generates or creates from email sent to Gmail users.

18 285. As a result of Google’s violations of § 2511, pursuant to § 2520, Plaintiffs and
 19 the Class Members are entitled to:

- 20 a. Preliminary and permanent injunctive relief to require Google to fully
 21 disclose its activities, obtain proper parental consent of Minors, and halt Google’s
 22 violations;
- 23 b. Appropriate declaratory relief;
- 24 c. For Plaintiffs and each Class Member, the greater of \$100 a day for each
 25 day of violation or \$10,000; and
- 26 d. Reasonable attorneys’ fees and other litigation costs reasonably incurred.

27 286. While certain devices have been identified in this Complaint, Plaintiffs reserve
 28 the right to assert ECPA violations as to any further devices disclosed or those devices upon

1 which Google provides additional information.

2
3 **COUNT TWO**
4 **(Violations of Cal. Penal Code §§ 630, *et seq.*)**

5 287. Plaintiffs adopt and incorporate each and every allegation of this complaint as if
6 stated fully herein.

7 288. Plaintiffs Scott and Harrington individually, and on behalf of a Class of non-
8 Gmail users residing outside of California, assert violations of California's Invasion of Privacy
9 Act ("CIPA"), Cal. Penal Code §§ 630, *et seq.*, specifically Cal. Penal Code §§ 631(a) and 632,
10 for Google's unlawful reading and recording of email message content Plaintiffs sent to or
11 received from Gmail users. Google uses this information to learn information about the sender
12 and recipient, and uses it for commercial advantage and profit.

13 289. "The Legislature hereby declares that advances in science and technology have
14 led to the development of new devices and techniques for the purpose of eavesdropping upon
15 private communications and that the invasion of privacy resulting from the continual and
16 increasing use of such devices and techniques has created a serious threat to the free exercise of
17 personal liberties and cannot be tolerated in a free and civilized society." Cal. Pen. Code § 630.

18 290. Google's acts in violation of CIPA occurred in the State of California because
19 those acts resulted from business decisions, practices, and operating policies that Google
20 developed, implemented, and utilized in the State of California and which are unlawful and
21 constitute criminal conduct in the state of Google's residence and principal business operations.
22 Google's implementation of its business decisions, practices, and standard ongoing policies
23 which violate CIPA took place in the State of California. Google profited in the State of
24 California as a result of its repeated and pervasive violations of CIPA. Google's unlawful
25 conduct which occurred in the State of California harmed Plaintiffs and all Class Members.
26 Google developed, designed, built, and physically placed in California one or more of the
27 accused devices used by Google to violate CIPA.

28 291. Plaintiffs and the Class Members sent email messages to Gmail users and
received original email messages from Gmail users.

1 292. Google is not a party to Plaintiffs' and Class Members' emails exchanged with
2 Gmail users.

3 293. The email messages exchanged by Plaintiffs and Class Members with Gmail
4 users are messages.

5 294. These messages are communications between Plaintiffs and the Class Members,
6 and the Gmail users.

7 295. Google transmits the messages in defined Internet Message Formats with
8 destination address fields specifying the recipients of the message.

9 296. Pursuant to the destination address fields, messages exchanged with Gmail users
10 are confined to those persons specified as recipients in the destination address fields.

11 297. Pursuant to the destination address fields, Plaintiffs' and Class Members'
12 messages sent to and received from Gmail users are confined to those persons specified as
13 recipients in the destination address fields.

14 **A. Violations of Cal. Penal Code § 631(a)**

15 298. Pursuant to Cal. Penal Code § 7, Google, as a corporation, is a "person."

16 299. Google uses a "machine," "instrument," "contrivance," or "in any other manner"
17 to read, attempt to read, or to learn the content or meaning of Plaintiffs' and the Class Members'
18 emails.

19 300. Google acts wilfully when it reads, attempts to read, or learns the content or
20 meaning of Plaintiffs' and Class Members' emails.

21 301. Google does not have the consent of all parties to the communication, or it acts
22 in an unauthorized manner, when it reads, attempts to read, or learns the content or meaning of
23 Plaintiffs' and Class Members' emails.

24 302. Plaintiffs' and Class Members' emails are "any message, report, or
25 communication."

26 303. At the time Google reads, attempts to read, or learns the contents or meaning of
27 Plaintiffs' and Class Members' emails, the emails are in transit to or from the Gmail user.

28 304. At the time Google reads, attempts to read, or learns the contents or meaning of

1 Plaintiffs' and Class Members' emails, the emails are passing over any wire, line, or cable.

2 305. Email, coded written messages sent electronically to remote locations, is
3 telegraph within the meaning of this Act and section. As such, the wires, lines, cables and/or
4 instruments which carry and facilitate the transmission of Plaintiffs' and Class members' email
5 are telegraph wires, lines cables and/or instruments within the meaning of this Act and section.

6 306. Google Talk is part of Gmail. Google Talk allows those using Gmail who
7 download the Google Chat application to make long distance calls anywhere in the world, audio
8 conference, and chat with Gmail friends. Gmail is a telephone system which uses wires, lines,
9 cables or instruments which are capable of and in fact transmit telephone calls. This telephone
10 system includes an internal system of wires, lines, cables or instruments connected to the
11 servers involved in the COB and CAT2 processing which are capable of and do in fact transmit
12 telephone calls. As such, the wires, lines, cables and/or instruments which transmit Plaintiffs'
13 and Class Members' email are telephone wires, lines, cables and/or instruments within the
14 meaning to this Act and section.

15 307. Plaintiffs and Class Members do not consent, expressly or impliedly, to Google's
16 eavesdropping upon and recording of their personal emails. Google does not disclose material
17 information to anyone relating to its attempts at reading, reading, acquiring and collecting of
18 email content, and the creation of derivative data based on that content.

19 308. There is no knowledge or expectation among Plaintiffs and Class Members
20 regarding the extent of Google's reading of message content, learning about the content or
21 meaning of the messages, the acquisition of such content, the collection of such content, the
22 creation of derivative data from this content and collection of same, and the use and storage of
23 the content and annotations from the email messages—all beyond the normal occurrences,
24 industry standard, and expectations regarding the transmittal of email messages.

25 309. Specifically, Google's actions are entirely separate from and are not the
26 recording of the email message to the user's "inbox."

27 ///

28 ///

B. Violations of Cal. Penal Code § 632

310. Pursuant to Cal. Penal Code §§ 7 and 632(b), Google, as a corporation, is a “person.”

311. Cal. Penal Code section 632 prohibits eavesdropping upon or the recording of any confidential communication, including those occurring by telephone, telegraph or other device, through the use of an amplification or electronic recording device without the consent of all parties to the communication.

312. Google intentionally and without the consent of all parties to the communication eavesdrops upon and/or records Plaintiffs’ and Class Members’ email messages sent to and from Gmail users.

313. Google uses any electronic amplifying or recording device, including the devices engaged in COB and CAT2 processing, to eavesdrop upon and to record Plaintiffs’ and Class Members’ email messages sent to and from Gmail users, for purposes independent of and unrelated to storage.

314. Plaintiffs’ and Class Members’ email messages sent to and from Gmail users are confidential communications with specifically identified and designated recipients.

315. At the time the Plaintiffs and Class Members transmitted emails to and from Gmail users, their communications are confidential because the communications are confined to those persons specified as recipients in the destination address fields and there would be no expectation that a third party, such as Google, would act in any manner other than within the industry standards for delivery of the communications.

316. There is no knowledge or expectation among Plaintiffs and Class Members regarding the extent of Google’s reading of message content, learning about the content or meaning of the messages, the acquisition of such content, the collection of such content, the creation of derivative data from this content and collection of same, and the use and storage of the content and annotations from the email messages—all beyond the normal occurrences, industry standard, and expectations regarding the transmittal of email messages.

317. Specifically, Google’s actions are entirely separate from and are not the

1 recording of the email message to a user's "inbox."

2 318. Plaintiffs' and Class Members' email messages sent to and from Gmail users are
3 carried on among those parties by means of an electronic device which is not a radio.

4 319. Plaintiffs and Class Members do not consent, expressly or impliedly, to Google's
5 eavesdropping upon and recording of their personal emails. Google does not disclose material
6 information to anyone relating to its attempts at reading, reading, acquiring and collecting of
7 email content, and the creation of derivative data based on that content.

8 320. While Plaintiffs identified certain accused devices in this Complaint, Plaintiffs
9 reserve the right to assert §§ 631 and 632 violations as to any further devices disclosed or those
10 devices upon which Google provides additional information.

11 **C. Cal. Penal Code § 637.2 Relief**

12 321. As a result of Google's violations of §§ 631 and 632, Plaintiffs and the Class are
13 entitled to:

- 14 a. Preliminary and permanent injunctive relief to require Google to fully disclose its
15 practices and halt its violations;
- 16 b. Appropriate declaratory relief;
- 17 c. Monetary relief in the amount set forth in § 637.2 (a)(1) for each Class member;
18 and,
- 19 d. Reasonable attorneys' fees and other litigation costs reasonably incurred.

20 **COUNT THREE**

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

22 322. Plaintiffs adopt and incorporate each and every allegation of this complaint as if
23 stated fully herein.

24 323. Within the Class Period, Plaintiff Matthew C. Knowles has sent emails to
25 @gmail.com account holders.

26 324. Within the Class Period, Plaintiff Knowles has received emails from
27 @gmail.com account holders.

28 325. At the time Plaintiff sent and the received the emails to and from @gmail.com

1 account holders, Plaintiff did so from his Yahoo® account.

2 326. Plaintiff and the Class Members have transmitted email messages to and from
3 Gmail users.

4 327. Google is not a party to Plaintiff's and Class Members' emails exchanged with
5 Gmail users.

6 328. Pursuant to Maryland Court and Judicial Proceedings Code Annotated § 10-402,
7 Google intentionally intercepted, intercepts, or endeavored or endeavors to intercept the
8 electronic communications Plaintiff and Class Members sent to and received from @gmail.com
9 account users:

10 a. Through its reading of the email message, Google acquired(s)
11 information concerning the identity of the parties or the existence, substance, purport,
12 and meaning of email messages transmitted to and from Plaintiff and Class Members.
13 The acquisition of content is further exemplified by Google's collection of such content
14 and the creation of metadata which is collected and annotated to the email message.

15 b. The email messages transmitted to and from Plaintiff and Class Members
16 are (were) electronic communications. The conduct alleged herein does not occur in
17 storage. Google transfers, transmits, or routes each message to each accused device for
18 the purpose of a designated function to acquire content from the message.

19 c. Google utilized(s) one or more electronic, mechanical, or other devices or
20 electronic communication to intercept the electronic communications sent by and to
21 Plaintiff and Class Members. Such devices include, but are not limited to, the distinct
22 pieces of Gmail infrastructure comprising the Content Onebox process, CAT2 mixer or
23 [REDACTED], Medley Server, ICEbox, etc.

24 d. Google does not furnish the devices to the users of Gmail, and users do
25 not use the devices for connection to the facilities.

26 e. The intercepting devices are not used for the ability to send, receive, or
27 transmit electronic communications.

28 f. The devices are not used by Google, if operating as a communications

1 common carrier, in the ordinary course of business as a provider of a communications
2 common carrier.

3 g. Google's interception of electronic communications sent by and to
4 Plaintiff and Class Members for: (a) undisclosed purposes; (b) for the purpose of
5 delivering content-based advertising; (c) for purposes beyond the Service of Gmail; (d)
6 in violation of its user agreements; (e) in violation of its contracts with third parties; (f)
7 in violation of its statements to users; (g) in violation of States' laws; and, (h) in
8 violation of the property rights of Plaintiff, Class Members, and third parties; is not
9 within the ordinary course of business of a provider of an electronic communication
10 service.

11 329. Google intentionally used, uses, or endeavored or endeavors to use the contents
12 of Plaintiff's and Class Members' electronic communications knowing or having reason to
13 know that Google obtained the information through the interception of the electronic
14 communication in violation of § 10-402(a)(3).

15 330. Google's interception of and use of the contents of Plaintiff's and Class
16 Members' electronic communications were not performed by an employee while engaged in
17 any activity which is necessary incident to the rendition of Gmail or for the protection of the
18 rights or property of Google.

19 331. The industry standard for webmail electronic communication services does not
20 include the interception and use of the content of the email alleged herein as Google performs
21 on these electronic communications.

22 332. The ordinary course of business within the industry for webmail electronic
23 communication services for the ability to send and receive electronic communications does not
24 include the interception and use of content of an electronic communication that Google
25 performs on the subject electronic communications.

26 333. Google's services that are not related to the ability to send and receive electronic
27 communications are not electronic communication services or communications common carrier
28 services.

1 334. Google’s content-based advertising and other uses of Plaintiff’s and Class
2 Members’ emails, and those sent to Plaintiff and Class Members, are not a service of a
3 communication service as defined by §§ 10-401(3), (6), or (7).

4 335. Google is not a party to the communications, and § 10-402(c)(3) and the defense
5 of consent are not applicable to Google or Google’s actions.

6 336. If § 10-402(c)(3) is found applicable, all parties to the communication have not
7 consented to Google’s interception of the communications.

8 337. Google intercepts Plaintiff’s and Class Members’ communications for the
9 purpose of committing a criminal or tortious act in violation of the laws of any state, and as
10 such, it cannot obtain consent pursuant to § 10-402(c)(3).

11 338. Pursuant to § 10-402(c)(3), Google’s interception and use of communications
12 violates the proprietary interests of the property owners of the email who have not consented to
13 the interception. Due to the expressed limitations in the Privacy Policies and content licenses
14 granted to Google by users, Google has no contractual rights to the data within email that Gmail
15 users have yet received and yet submitted for public viewing. At the moment Google reads the
16 incoming email, it exercises unauthorized control over the data within that email to acquire
17 content, make copies of content, create data from the content to be used in association with
18 content, or create data from the content to be used apart from content. This data is valuable to
19 Google. Google openly claims to investors the monetary value in obtaining data as alleged
20 herein, and Google pays specific and particularized sums of money for the same type of data to
21 third parties. Google defines the payment of monies to others for the same type of data as
22 “traffic acquisition costs.” To avoid paying these “traffic acquisition costs,” Google unlawfully
23 exercises control over data within incoming electronic communications, copies or derives other
24 data from those emails, and benefits from the value of that data—all without compensation to
25 the owner/party of the message and beyond the scope of its content license with its users.

26 339. Google has no property rights or license in the email sent to Gmail users and that
27 have not been submitted, posted, uploaded, or displayed by the Gmail user.

28 340. Google has no property rights or license in the copies of emails sent to Gmail

1 users or metadata it generates or creates from email sent to Gmail users.

2 341. As a result of Google's violations of § 10-402, pursuant to § 10-410, Plaintiff
3 and the Class are entitled to:

4 a. For Plaintiff and each Class Member, the greater of \$100 a day for each
5 day of violation or \$1,000 in liquidated damages;

6 b. Punitive damages; and

7 c. Reasonable attorneys' fees and other litigation costs reasonably incurred.

8 342. While certain devices have been identified in this Complaint, Plaintiff reserves
9 the right to assert violations as to any further devices disclosed or those devices upon which
10 Google provides additional information.

11
12 **COUNT FOUR**
(Violations of Florida Statute §§ 934.03, *et seq.*)

13 343. Plaintiffs adopt and incorporate each and every allegation of this complaint as if
14 stated fully herein.

15 344. Within the Class Period, Plaintiff Brent Scott ("*Scott II*") has sent emails to
16 @gmail.com account holders.

17 345. Within the Class Period, Plaintiff Scott II has received emails from @gmail.com
18 account holders.

19 346. At the time Plaintiff sent and the received the emails to and from @gmail.com
20 account holders, Plaintiff did so from his Hotmail® account.

21 347. Plaintiff and the Class Members have transmitted email messages to and from
22 Gmail users.

23 348. Google is not a party to Plaintiff's and Class Members' emails exchanged with
24 Gmail users.

25 349. Pursuant to Florida Statutes § 934.03(1)(a), Google intentionally intercepted,
26 intercepts, or endeavored or endeavors to intercept the electronic communications Plaintiff and
27 Class Members sent to and received from @gmail.com account users:

28 a. Through its reading of the email message, Google acquired(s)

1 information concerning the identity of the parties or the existence, substance, purport,
2 and meaning of email messages transmitted to and from Plaintiff and Class Members.
3 The acquisition of content is further exemplified by Google's collection of such content
4 and the creation of metadata which is collected and [REDACTED] the email message.

5 b. The email messages transmitted to and from Plaintiff and Class Members
6 are (were) electronic communications. The conduct alleged herein does not occur in
7 storage. Google transfers, transmits, or routes each message to each accused device for
8 the purpose of a designated function to acquire content from the message.

9 c. Google utilized(s) one or more electronic, mechanical, or other devices or
10 apparatuses to intercept the electronic communications sent by and to Plaintiff and Class
11 Members. Such devices include, but are not limited to, the distinct pieces of Gmail
12 infrastructure comprising the Content Onebox process, CAT2 mixer or [REDACTED]
13 [REDACTED], Medley Server, ICEbox, etc.

14 d. Google does not furnish the devices to the users of Gmail, and users do
15 not use the devices for connection to the facilities.

16 e. The intercepting devices are not used for the ability to send, receive, or
17 transmit electronic communications.

18 f. The devices are not used by Google, if operating as an electronic
19 communications service, in the ordinary course of business as a provider of an electronic
20 communications service.

21 g. Google's interception of electronic communications sent by and to
22 Plaintiff and Class Members for: (a) undisclosed purposes; (b) for the purpose of
23 delivering content-based advertising; (c) for purposes beyond the service of Gmail; (d)
24 in violation of its user agreements; (e) in violation of its contracts with third parties; (f)
25 in violation of its statements to users; (g) in violation of States' laws; and, (h) in
26 violation of the property rights of Plaintiff, Class Members, and third parties; is not
27 within the ordinary course of business of a provider of an electronic communication
28 service.

1 350. Google intentionally used, uses, or endeavored or endeavors to use the contents
2 of Plaintiff's and Class Members' electronic communications knowing or having reason to
3 know that Google obtained the information through the interception of the electronic
4 communication in violation of § 934.03(1)(d).

5 351. Google's interception of and use of the contents of Plaintiff's and Class
6 Members' electronic communications were not performed by an employee while engaged in
7 any activity which is necessary incident to the rendition of Gmail or for the protection of the
8 rights or property of Google.

9 352. The industry standard for webmail electronic communication services does not
10 include the interception and use of the content of the email alleged herein as Google performs
11 on these electronic communications.

12 353. The ordinary course of business within the industry for webmail electronic
13 communication services for sending and receiving electronic communications does not include
14 the interception and use of content of an electronic communication as Google performs on the
15 subject electronic communication.

16 354. Google's services that are not related to the ability to send and receive electronic
17 communications are not electronic communication services or communications common carrier
18 services.

19 355. Google's content-based advertising and other uses of Plaintiff's and Class
20 Members' emails and those sent to Plaintiff and Class Members are not a service of an
21 electronic communication service as defined by §§ 934.02(12), (14), and (15).

22 356. Pursuant to § 934.03(2)(d), all parties to the communication have not consented
23 to Google's interception of the communications.

24 357. Google intercepts Plaintiff's and Class Members' communications for the
25 purpose of committing a criminal violation, and as such, it cannot obtain consent pursuant to §
26 934.03(2)(e).

27 358. Pursuant to § 934.03(2)(e), Google's interception and use of communications
28 amounts to the taking of the proprietary interests of the property owners of the email who have

not consented to the interception. Due to the expressed limitations in the Privacy Policies and content licenses granted to Google by users, Google has no contractual rights to the data within email that Gmail users have yet received and yet submitted for public viewing. At the moment Google reads incoming email, it exercises unauthorized control over the data within that email to acquire content, make copies of content, create data from the content to be used in association with content, or create data from the content to be used apart from content. This data is valuable to Google. Google openly claims to investors the monetary value in obtaining data as alleged herein, and Google pays specific and particularized sums of money for the same type of data to third parties. Google defines the payment of monies to others for the same type of data as “traffic acquisition costs.” To avoid paying these “traffic acquisition costs,” Google unlawfully exercises control over data within incoming electronic communications, copies or derives other data from those emails, and benefits from the value of that data—all without compensation to the owner/party of the message and beyond the scope of its content license with its users.

359. Google has no property rights or license in the email sent to Gmail users and that have not been submitted, posted, uploaded, or displayed by the Gmail user.

360. Google has no property rights or license in the copies of emails sent to Gmail users or metadata it generates or creates from email sent to Gmail users.

361. As a result of Google’s violations of § 934.03, pursuant to § 934.10, Plaintiff and the Class are entitled to:

- a. Preliminary or equitable or declaratory relief as may be appropriate;
- b. For Plaintiff and each Class Member, the greater of \$100 a day for each day of violation or \$1,000 in liquidated damages;
- c. Punitive damages; and
- d. Reasonable attorneys’ fees and other litigation costs reasonably incurred.

362. While certain devices have been identified in this Complaint, Plaintiff reserves the right to assert violations as to any further devices disclosed or those devices upon which Google provides additional information.

COUNT FIVE
(Violations of 18 Pa. Cons. Stat. §§ 5701, *et seq.*)

363. Plaintiffs adopt and incorporate each and every allegation of this complaint as if stated fully herein.

364. Within the Class Period, Plaintiff Brinkman has sent emails to @gmail.com account holders.

365. Within the Class Period, Plaintiff Brinkman has received emails from @gmail.com account holders.

366. At the time Plaintiff sent and received the emails to and from @gmail.com account holders, Plaintiff did so from her Hotmail® account.

367. Plaintiff and the Class Members have transmitted email messages to and from @gmail.com users.

368. Plaintiff and the Class Members do not have or maintain personal Gmail accounts.

369. Google is not a party to Plaintiff's and Class Members' emails exchanged with Gmail users.

370. Pursuant to Title 18, Pennsylvania Consolidated Statutes § 5703(1), Google intentionally intercepted, intercepts, or endeavored or endeavors to intercept the electronic communications Plaintiff and Class Members sent to and received from @gmail.com account users:

a. Through its reading of the email message, Google acquired(s) information concerning the identity of the parties or the existence, substance, purport, and meaning of email messages transmitted to and from Plaintiff and Class Members. The acquisition of content is further exemplified by Google's collection of such content and the creation of metadata which is collected and [REDACTED] the email message.

b. The email messages transmitted to and from Plaintiff and Class Members are (were) electronic communications. The conduct alleged herein does not occur in storage. Google transfers, transmits, or routes each message to each accused device for the purpose of a designated function to acquire content from the message.

1 c. Google utilized(s) one or more electronic, mechanical, or other devices or
2 apparatus to intercept the electronic communications sent by and to Plaintiff and Class
3 Members. Such devices include, but are not limited to, the distinct pieces of Gmail
4 infrastructure comprising the Content Onebox process, CAT2 mixer or [REDACTED]
5 [REDACTED], Medley Server, ICEbox, etc.

6 d. Google does not furnish the devices to the users of Gmail, and users do
7 not use the devices for connection to the facilities.

8 e. The intercepting devices are not used for the ability to send, receive, or
9 transmit electronic communications.

10 f. The devices are not used by Google, if operating as a communication
11 common carrier, in the ordinary course of business as a provider of electronic
12 communications.

13 g. Google's interception of electronic communications sent by and to
14 Plaintiff and Class Members for: (a) undisclosed purposes; (b) for the purpose of
15 delivering content-based advertising; (c) for purposes beyond the Service of Gmail; (d)
16 in violation of its user agreements; (e) in violation of its contracts with third parties; (f)
17 in violation of its statements to users; (g) in violation of States' laws; and, (h) in
18 violation of the property rights of Plaintiffs, Class Members, and third parties; is not
19 within the ordinary course of business of a communication common carrier.

20 371. Google intentionally used, uses, or endeavored or endeavors to use the contents
21 of Plaintiff's and Class Members' electronic communications knowing or having reason to
22 know that Google obtained the information through the interception of the electronic
23 communication in violation of Title 18, § 5703(3).

24 372. Google's interception and use of the contents of Plaintiff's and Class Members'
25 electronic communications were not performed by an employee while engaged in any activity
26 which is necessary incident to the rendition of Gmail or for the protection of the rights or
27 property of Google.

28 373. Google's actions are not mechanical or service quality control checks.

1 374. The industry standard for webmail electronic communication services does not
2 include the interception and use of the content of the email alleged herein as Google performs
3 on these electronic communications.

4 375. The ordinary course of business within the industry for webmail electronic
5 communication services for the ability to send and receive electronic communications does not
6 include the interception and use of content of an electronic communication as Google performs
7 on the subject electronic communication.

8 376. Google's services that are not related to the ability to send and receive electronic
9 communications are not electronic communication services or communications common carrier
10 services.

11 377. Google's content-based advertising and other uses of Plaintiff's and Class
12 Members' emails and those sent to Plaintiff and Class Members are not a service of an
13 electronic communication service as defined by §§ 5702.

14 378. Pursuant to § 5704(4), all parties to the communication have not consented to
15 Google's interception of the communications.

16 379. Google intercepts Plaintiff's and Class Members' communications for the
17 purpose of committing a criminal violation of the laws of the any state, and as such, it cannot
18 obtain consent pursuant to § 5704(1).

19 380. Google's interception and use of communications are a taking of the proprietary
20 interests of the property owners of the email who have not consented to the interception. Due to
21 the expressed limitations in the Privacy Policies and content licenses granted to Google by
22 users, Google has no contractual rights to the data within email that the Gmail user has yet
23 received and yet submitted for public viewing. At the moment Google reads incoming email, it
24 exercises unauthorized control over the data within that email to acquire content, make copies of
25 content, create data from the content to be used in association with content, or create data from
26 the content to be used apart from content. This data is valuable to Google. Google openly
27 claims to investors the monetary value in obtaining data as alleged herein, and Google pays
28 specific and particularized sums of money for the same type of data to third parties. Google

defines the payment of monies to others for the same type of data as “traffic acquisition costs.” To avoid paying these “traffic acquisition costs,” Google unlawfully exercises control over data within incoming electronic communications, copies or derives other data from those emails, and benefits from the value of that data—all without compensation to the owner/party of the message and beyond the scope of its content license with its users.

381. Google has no property rights or license in the email sent to Gmail users and that have not been submitted, posted, uploaded, or displayed by the Gmail user.

382. Google has no property rights or license in the copies of emails sent to Gmail users or metadata it generates or creates from email sent to Gmail users.

383. As a result of Google’s violations of § 5703, pursuant to § 5725, Plaintiff and the Class are entitled to:

- a. For Plaintiff and each Class Member, the greater of \$100 a day for each day of violation or \$1,000 in liquidated damages;
- b. Punitive damages; and
- c. Reasonable attorneys’ fees and other litigation costs reasonably incurred.

384. While certain devices have been identified in this Complaint, Plaintiffs reserve the right to assert violations as to any further devices disclosed or those devices upon which Google provides additional information.

VI. CLASS ALLEGATIONS

385. Plaintiffs adopt and incorporate each and every allegation of this complaint as if stated fully herein.

386. Plaintiffs bring this class action, pursuant to Rule 23(a) and (b)(3) of the *Federal Rules of Civil Procedure*, individually and on behalf of all members of the following Classes.

387. As to each of the Class Definitions, the following exclusions apply and are incorporated into the definitions:

- i. Any and all federal, state, or local governments, including but not limited to their department, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions;

1 ii. Individuals, if any, who timely opt out of this proceeding using the
2 correct protocol for opting out;

3 iii. Current or former employees of Google;

4 iv. Individuals, if any, who have previously settled or compromised
5 claims(s) as identified herein for the Class; and,

6 v. Any currently sitting federal judge and/or person within the third degree
7 of consanguinity to any federal judge.

8 388. Plaintiff Dunbar seeks to represent the following Class consisting of:

9 **All Cable One users who have, through their Cable One Google Apps email**
10 **accounts, (1) sent an email message to a Gmail account user with an**
11 **@gmail.com address and received a reply, or (2) received an email message,**
within two years before the filing of this action up through and including the
date of class certification.

12 389. Plaintiffs Fread and Carrillo seek to represent the following Class consisting of:

13 **All Google Apps for Education users who have, through their Google Apps**
14 **for Education email accounts, (1) sent an email message to a Gmail account**
15 **user with an @gmail.com address and received a reply, or (2) received an**
email message, within two years before the filing of this action up through
and including the date of class certification.

16 390. Plaintiffs Scott and Harrington seek to represent the following Classes consisting
17 of:

18 **All United States citizens, excluding California residents, who have, through**
19 **their non-Gmail accounts, (1) received an original email message from a**
20 **Gmail account user with an @gmail.com address, or (2) sent an email**
message to a Gmail account user with an @gmail.com address and received a
reply, from within two years before the filing of this action up through and
including the date of class certification;

21 and,

22 **All United States citizens, who have, through their non-Gmail accounts, (1)**
23 **received an original email message from a Gmail account user with an**
24 **@gmail.com address, or (2) sent an email message to a Gmail account user**
with an @gmail.com email address and received a reply, within two years
before the filing of this action up through and including the date of class
certification.

26 ///

27 ///

28 ///

391. Plaintiffs Brinkman, Scott II, and Knowles seek to represent the following
Classes consisting of:

All natural persons within the Commonwealth of Pennsylvania who have, through their non-Gmail accounts, (1) received an original email message from a Gmail account user with an @gmail.com address, or (2) sent an email message to a Gmail account user with an @gmail.com address and received a reply, from within the longest period of time allowed by statute before the filing of this action up through and including the date of certification.

All natural persons within the State of Florida who have, through their non-Gmail accounts, (1) received an original email message from a Gmail account user with an @gmail.com address, or (2) sent an email message to a Gmail account user with an @gmail.com address and received a reply, from within the longest period of time allowed by statute before the filing of this action up through and including the date of certification.

All natural person within the State of Maryland who have, through their non-Gmail accounts, (1) received an original email message from a Gmail account user with an @gmail.com address, or (2) sent an email message to a Gmail account user with an @gmail.com address and received a reply, from within the longest period of time allowed by statute before the filing of this action up through and including the date of certification.

392. Plaintiff A.K., as Next Friend of Minor, J.K., seeks to represent the following
Class consisting of:

All children in the United States who, within two years before the filing of this action up through and including the date of class certification, were under the legal age of majority, had a Gmail account, and used his or her Gmail account to send an email to or receive an email from either: (1) a non-Gmail subscriber; or (2) another Gmail subscriber under the legal age of majority.

A. Ascertainability

393. The Classes are objectively defined.

394. The Classes are ascertainable.

1. The Cable One Google Apps Class

395. Google treats Cable One Google Apps email accounts operated through Google Apps as Gmail accounts.

396. Gmail accounts contain readily identifiable information as to the account user.

397. Through the Google Apps account, direct notice can be given to the Class Member *via* email.

398. A Cable One Google Apps user can be identified through the corresponding

1 Cable One account.

2 399. The Cable One account contains readily identifiable information as to the
3 account user.

4 400. Through the Cable One accounts, direct notice can be given in a number of
5 ways; one such method is by mail to the Cable One billing address for the accounts.

6 401. Upon Court-approved notice, any Class Member who desires to seek actual
7 damages pursuant to 28 U.S.C. § 2520(C)(2)(a) may opt-out OR remain in the Class and be
8 bound by the remedies and results sought herein.

9 **2. The Google Apps EDU Class**

10 402. Google treats Google Apps EDU email accounts as Gmail accounts.

11 403. Google Apps EDU accounts contain readily identifiable information as to the
12 account user.

13 404. Through the Google Apps EDU accounts, direct notice can be given to the Class
14 Member *via* email.

15 405. Upon Court-approved notice, any Class Member who desires to seek actual
16 damages pursuant to 28 U.S.C. § 2520(C)(2)(a) may opt-out OR remain in the Class and be
17 bound by the remedies and results sought herein.

18 **3. The Minor Class**

19 406. Minor Plaintiff, J.K., and the Minor Class have (had) Gmail accounts which
20 contain readily identifiable information as to the account user.

21 407. Through the Gmail accounts, direct notice can be given to the Class Member *via*
22 email.

23 408. Upon Court-approved notice, any Class Member who desires to seek actual
24 damages pursuant to 28 U.S.C. § 2520(C)(2)(a) may opt-out OR remain in the Class and be
25 bound by the remedies and results sought herein.

26 **4. The Scott, Brinkman, Scott II, and Knowles Classes**

27 409. The definition of the proposed classes involves email messages *received* by the
28 Class Members demonstrating: (1) the receipt of an original email message sent directly from

@gmail.com account, and (2) initial receipt of the Class Members' sent email messages to the @gmail.com account (as demonstrated by the reply). The term "original email message" is necessary because Google [REDACTED]. Likewise, the reply message received by the non-Gmail user demonstrates that the non-Gmail user's sent message was received by the Gmail user. Accordingly, the proposed Classes are ascertainable by email messages contained in their own inboxes, rather than any requirement or necessity of viewing the @gmail.com user's account.

410. Notice can be achieved through publication or by email.

411. Upon Court-approved notice, any Class Member who desires to seek actual damages pursuant to respective States' laws may opt-out OR remain in the Class and be bound by the remedies and results sought herein.

B. Numerosity

412. The Classes are so numerous that joinder of all members is impracticable, in large part because Cable One does not offer services in California and the Class Members are from multiple states.

413. The number of Cable One Google Apps users exceeds 100 persons.

414. The number of Google Apps EDU users exceeds 100 persons.

415. The number of minor Gmail users exceeds 100 persons.

416. The number of non-Gmail, non-California United States residents who have exchanged email messages with Gmail subscribers exceeds 100 persons.

417. The number of non-Gmail United States residents who have exchanged email messages with Gmail subscribers exceeds 100 persons.

418. The number of non-Gmail Pennsylvania residents who have exchanged email messages with Gmail subscribers exceeds 100 persons.

419. The number of non-Gmail Maryland residents who have exchanged email messages with Gmail subscribers exceeds 100 persons.

420. The number of non-Gmail Florida residents who have exchanged email messages

with Gmail subscribers exceeds 100 persons.

C. Commonality

421. There are questions of law or fact common to the class. These questions include, but are not limited to, the following:

422. For all classes with the except the *Scott* CIPA Class:

a. Whether Google intentionally intercepted, endeavored to intercept, or procured any other person to intercept or endeavor to intercept Plaintiffs' and Class Members' electronic communications as made the basis of this suit. Inclusive in this common question(s) are the common questions regarding the elements of ECPA, Maryland law, Florida law, and Pennsylvania law as alleged *supra* and based upon the respective statutory definitions:

i. Whether the emails sent by and to Plaintiff and Class Members were electronic communications;

ii. Whether Google used an electronic, mechanical, or other device;

iii. Whether Google acquired any content of email sent by and to Plaintiffs and Class Members;

iv. Whether that content amounted to any information concerning the substance, purport, or meaning of the electronic communications by and to Plaintiffs and Class Members;

v. Whether Google acted intentionally;

vi. Whether statutory or liquidated damages against Google should be assessed; and,

vii. Whether injunctive and declaratory relief against Google should be issued.

b. Whether Google intentionally used, or endeavored to use, the contents of Plaintiffs' and Class Members' electronic communications knowing or having reason to know that the information was obtained through the interception of the electronic communication in violation of ECPA, Maryland law, Florida law, and Pennsylvania law

as alleged *supra*. Inclusive in this common question(s) are the common questions regarding the elements of ECPA, Maryland law, Florida law, and Pennsylvania law as alleged *supra* and based upon the respective statutory definitions:

i. Whether the emails sent by and to Plaintiffs and Class Members were electronic communications;

ii. Whether Google used an electronic, mechanical, or other device;

iii. Whether Google acquired any content of email sent by and to Plaintiffs and Class Members;

iv. Whether that content amounted to any information concerning the substance, purport, or meaning of the emails sent by and to Plaintiffs and Class Members;

v. Whether Google used the content of Plaintiffs' and Class Members' electronic communications;

vi. Whether Google acted intentionally;

vii. Whether statutory or liquidated damages against Google should be assessed; and.

viii. Whether injunctive and declaratory relief against Google should be issued.

423. For the Scott CIPA Class:

§ 631 claims:

a. Whether Google, as a corporation, is a "person."

b. Whether Google, as a corporation, acts through "persons" for whose actions Google is liable.

c. Whether Google uses a "machine," "instrument," "contrivance," or "in any other manner" to read, attempt to read, or to learn the content or meaning of Plaintiffs' and the Class Members' emails.

d. Whether Google acts willfully when it reads, attempts to read, or learns the content or meaning of Plaintiffs' and Class Members' emails.

1 e. Whether Google has the consent of all parties to the communication or
2 does it act in an unauthorized manner when it reads, attempts to read, or learns the
3 content or meaning of Plaintiffs' and Class Members' emails.

4 f. Does Google's review, processing, acquisition or copying of Plaintiffs'
5 and Class Members' email amount to Google reading, attempting to read, or learning the
6 content or meaning of Plaintiffs' and Class Members' emails.

7 g. Do Plaintiffs' and Class Members' emails amount to "any message,
8 report, or communication."

9 h. At the time Google reads, attempts to read, or learns the contents or
10 meaning of Plaintiffs' and Class Members' emails, are the emails in transit to the Gmail
11 recipients.

12 i. At the time Google reads, attempts to read, or learns the contents or
13 meaning of Plaintiffs' and Class Members' emails, are the emails passing over any wire,
14 line, or cable.

15 j. Whether Google utilizes any telegraph or telephone line, wire, cable or
16 instrument.

17 ***§ 632 claims***

18 a. Whether Google, as a corporation, is a "person."

19 b. Whether Google, as a corporation, acts through "persons" for whose
20 actions Google is liable.

21 c. Whether Google intentionally and without the consent of all parties to the
22 communication eavesdrops upon or records Plaintiffs' and Class Members' emails sent
23 to Gmail recipients.

24 d. Whether Google uses any electronic amplifying or recording device to
25 eavesdrop upon Plaintiffs' and Class Members' emails sent to Gmail recipients.

26 e. Whether the emails sent by Plaintiffs and Class Members to Gmail
27 recipients are confidential communications in transit.

28 f. Whether the emails sent by Plaintiffs and Class Members to Gmail

recipients are carried on among those parties by means of a device which is not a radio.

§ 637.2 relief

a. Whether Plaintiffs and the Class are entitled to preliminary and permanent injunctive relief to halt Google's violations.

b. Whether Plaintiffs and the Class are entitled to appropriate declaratory relief.

c. Whether each Plaintiff and each Class Member is entitled to \$5,000 in statutory damages.

d. Whether Plaintiffs and the Class are entitled to reasonable attorneys' fees and other litigation costs reasonably incurred.

424. Accordingly, all questions of law or fact are common to the respective Classes.

D. Typicality

425. Plaintiffs' claims are typical of the claims of the Classes they seek to represent.

1. *Plaintiff Keith Dunbar*

426. Dunbar and the Class he seeks to represent are Cable One Google Apps users. Plaintiff and the Class received emails pursuant to their Cable One Google Apps account. Google intercepted and acquired the emails' contents, Google used or endeavored to use the emails' contents, neither Plaintiff nor the Class consented to Google's interception and uses of content, neither Gmail users nor the senders of the email consented to the interception and use of the emails, the user agreements between the parties are uniform, and Plaintiff and the Class Members are entitled to declaratory relief, statutory damages, and injunctive relief due to Google's conduct.

2. *Robert Fread and Rafael Carrillo*

427. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs and the Class are Google Apps EDU users, and: (1) Plaintiffs and Class Members' sent and/or received emails through their Google Apps EDU accounts;(2) Google intercepted and/or endeavored to intercept and acquired the emails' content;(3) Google used or endeavored to use the emails' content;(4) neither Plaintiffs nor the Class consented to Google's interception and uses of the

1 emails' content; (5) the Google Apps EDU contracts are uniform, and contain the same relevant
 2 and material terms, conditions and disclosures; and, (6) Plaintiffs and the Class Members are
 3 entitled to declaratory relief, statutory damages, and injunctive relief as a result of Google's
 4 unlawful conduct.

5 **3. Brad Scott and Todd Harrington**

6 428. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs and Class
 7 Members sent email messages to Gmail users and Gmail users sent email messages to Plaintiffs
 8 and Class Members; Plaintiffs and Class Members are non-Gmail subscribers; Google (1) read,
 9 eavesdropped, or recorded, and, (2) intercepted and used Plaintiffs' and Class Members'
 10 message contents; neither Plaintiffs nor the Class Members consented to Google's reading,
 11 eavesdropping, or recording of their messages; neither Plaintiffs nor the Class Members
 12 consented to Google's interception and use of their messages; and, Plaintiffs and the Class
 13 Members are entitled to declaratory relief, statutory damages, and injunctive relief due to
 14 Google's conduct.

15 **4. A.K., Next Friend of Minor Child, J.K.**

16 429. Plaintiff's claims are typical of the Minor Class because J.K. is a minor Gmail
 17 subscriber, the consent issues applicable to J.K. are applicable to all minor Gmail subscribers,
 18 Google intercepted and acquired the Plaintiff's and Class Members' emails' contents, Google
 19 used or endeavored to use the emails' contents, neither Plaintiff nor the Class consented to
 20 Google's interception and uses of content of email, neither minor Gmail users nor the senders of
 21 the email to Plaintiff and the Class Members consented to the interception and use of the emails,
 22 and Plaintiff and the Class Members are entitled to declaratory relief, statutory damages, and
 23 injunctive relief due to Google's conduct.

24 **5. Plaintiffs Matthew C. Knowles, Brent Matthew Scott, and Kristen**
 25 **Brinkman**

26 430. Plaintiffs' claims are typical of the Classes they seek to represent in that
 27 Plaintiffs and the Class are non-Gmail subscribers; Plaintiffs and the Class Members exchanged
 28 email messages to and from @gmail.com users; none of the Plaintiffs or Class Members
 consented to the interception or use of their email messages; Google intercepted and acquired

the email messages' contents; Google used the contents of Plaintiffs' and the Class Members' email messages; and Plaintiffs and the Class Members are entitled to declaratory relief, statutory damages, and injunctive relief due to Google's conduct.

E. Adequacy of Representation

431. Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs' interests do not conflict with the interests of the Class Members they seek to represent. Furthermore, Plaintiffs have retained competent counsel experienced in class action litigation. Plaintiffs' counsel will fairly and adequately protect and represent the interests of the Class.

F. Predominance - There Are No Individual Issues and a Class Action is Superior

432. Pursuant to Fed. R. Civ. P. 23(b)(3), questions of law or fact common to the Class Members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

433. Google's reading of email message content, acquiring such content, collecting such content, creating derivative data from such content and collection of the same, or using and storing the content and annotations from the email messages are uniform.

434. All disclosures made by Google to the Gmail users, Plaintiffs, Class Members, or any person upon which Google could assert a defense of consent are uniform.

435. All disclosures made by third parties are based upon information from Google and may be uniformly adjudicated as if Google was the author of the information.

436. A class action is superior to any individual actions available to affected Class Members because: (1) the individual members of the respective Classes are from several states; (2) for many Class Members, Google would likely require each affected individual Class Member using Gmail to litigate in California; and, (3) Google's non-disclosure and concealment of its unlawful conduct in communications with: (a) Gmail users; (b) the public; (c) Google Apps users, including Cable One Google Apps and Google Apps EDU users; and,

(d) Plaintiffs, make it unlikely that individuals will be able to effectively or economically adjudicate their important individual privacy rights without this litigation; and, (4) one Class within the State of California on behalf of the affected Class Members is more efficient.

VII. JURY DEMANDED

Plaintiffs, individually and for the Classes they seek to represent, demand trial by jury on each and every triable issue.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all Class members they respectively seek to represent, request:

(1) that this matter be certified as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(2) that Plaintiffs be appointed as Class Representatives of their respective Classes they seek to represent;

(3) that Class counsel be appointed pursuant to Rule 23(g); and,

(4) that Class notice be promptly issued.

Further, Plaintiffs request the Court enter judgment against the Defendant as follows:

(1) a Verdict against the Defendant for the causes of action alleged against it and for Class Damages;

(2) an award to Plaintiffs for their personal damages pursuant to their respective causes of action;

(3) an award to Plaintiffs for litigation costs reasonably incurred;

(4) an award to Plaintiffs and Class Counsel for attorney fees;

(5) an Order for the entry of the Court approved Verdict claims process and Class Claim Form;

(6) an Order for the appointment of the Class Claims Administrator;

(7) an Order for the issuance of Verdict Notice to the Class Members;

(8) an Order for the approval of Class Claims Administrator's findings as to Class Members' Claims;

- 1 (9) an Order for award of post-Verdict litigation costs reasonably incurred;
2 (10) an Order for award of post-Verdict attorney fees;
3 (11) Judgment for Plaintiffs and the Class Members for the amount of the approved
4 claims;
5 (12) Judgment for Plaintiffs and the Class Members for litigation costs reasonably
6 incurred;
7 (13) Judgment for Plaintiffs and the Class Members for attorney fees; and,
8 (14) Judgment for all other relief to which Plaintiffs may prove and are entitled.
9 Respectfully submitted,

10
11 Dated: May 16, 2013

CORY WATSON CROWDER & DEGARIS, P.C.

12
13 By: /s/ F. Jerome Tapley

14 F. Jerome Tapley (*Pro Hac Vice*)
15 Email: jtapley@cwcd.com
16 2131 Magnolia Avenue
Birmingham, AL 35205
Telephone: (205) 328-2200
Facsimile: (205) 324-7896

17 WYLY~ROMMEL, PLLC
18 Sean F. Rommel (*Pro Hac Vice*)
19 Email: srommel@wylyrommel.com
20 4004 Texas Boulevard
Texarkana, Texas 75503
Telephone: (903) 334-8646
Facsimile: (903) 334-8645

21 Plaintiffs' Co-Lead Counsel

22 CARTER WOLDEN CURTIS, LLP
23 Kirk J. Wolden (SBN 138902)
24 Email: kirk@cwclawfirm.com
25 1111 Exposition Boulevard, Suite 602
Sacramento, California 95815
Telephone: (916) 567-1111
Facsimile: (916) 567-1112

26 Plaintiffs' Liaison Counsel
27
28