

1 JOHN JASNOCH
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
2 707 Broadway, Suite 1000
San Diego, California 92101
3 Telephone: (619) 233-4565
Facsimile: (619) 233-0508
4 Email: jjasnoch@scott-scott.com

5 THOMAS L. LAUGHLIN, IV
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
6 The Chrysler Building
405 Lexington Avenue, 40th Floor
7 New York, New York 10174
Telephone: (212) 223-6444
8 Facsimile: (212) 223-6334

9 *Attorneys for Plaintiff*

10 [Additional counsel on signature page.]

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UNITED STATES DISTRICT COURT

13

NORTHERN DISTRICT OF CALIFORNIA

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15 WEST PALM BEACH FIRE PENSION FUND,
16 Plaintiff,

Case No.

17

v.

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

18 LAWRENCE "LARRY" PAGE, SERGEY M.
BRIN, ERIC E. SCHMIDT, L. JOHN DOERR,
19 DIANE B. GREENE, JOHN L. HENNESSY, ANN
MATHER, PAUL S. OTELLINI, K. RAM
20 SHRIRAM, SHIRLEY M. TILGHMAN,
MICHAEL J. MORITZ, ARTHUR D. LEVINSON,
21 ROBERT ALAN EUSTACE, OMID R.
KORDESTANI, JONATHAN J. ROSENBERG,
22 SHONA L. BROWN, and ARNON GESHURI,

23

Defendants,

24

and

25 GOOGLE, INC,

26

Nominal Defendant.

27

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1 **PROLOGUE**

2 “[T]here is ample evidence of an overarching conspiracy between” Google and the
3 other defendants, and of “evidence of Defendants’ rigid wage structures and
4 internal equity concerns, along with statements from Defendants’ own executives,
are likely to prove compelling in establishing the impact of the anti-solicitation
agreements”

5 *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-2509, 2014 WL 3917126, at *16 (N.D.
6 Cal. Aug. 8, 2014).

7 Plaintiff West Palm Beach Fire Pension Fund (“West Palm” or “Plaintiff”), on
8 behalf of Google, Inc. (“Google” or the “Company”), derivatively alleges upon personal
9 knowledge as to itself and its own acts, and upon information and belief as to all other
10 matters, based upon a review of publicly available information, including Securities and
11 Exchange Commission (“SEC”) filings by Google and media reports about Google and
12 Defendants, the following:

13 **I. INTRODUCTION AND SUMMARY OF CLAIMS**

14 1. This is a shareholder’s derivative action brought on behalf of and for the benefit
15 of Google, Inc. (“Google” or the “Company”) against Google’s Board of Directors (the “Director
16 Defendants”),¹ for breaches of fiduciary duties of loyalty, good faith, and candor, arising from
17 their reckless mismanagement in connection with Google’s systemic violations of federal laws
18 governing its business activities. Defendants caused or condoned Google’s conspiracy to
19 repeatedly and persistently violate federal antitrust laws, with several of its Silicon Valley
20 colleagues, by engaging in a multi-year scheme to illegally suppress competition and wages for
21 high-tech employees in Silicon Valley, thereby effectively undermining innovation in
22 technology. These violations occurred as far back as 2005 and continued over several years.

23 2. By 2009, Google had become the subject of an investigation led by the Antitrust
24 Division of the United States Department of Justice (“DOJ”). The DOJ eventually determined
25 that Google’s agreements were “facially anticompetitive because they eliminated a significant
26

27 ¹ All of Google’s present Board of Directors are named as Defendants in this action, with the exception of
28 Alan R. Mulally, who did not join the Google Board until July 2014, after the misconduct alleged herein had
transpired.

1 form of competition to attract high tech employees, and, overall, substantially diminished
2 competition to the detriment of the affected employees who were likely deprived of
3 competitively important information and access to better job opportunities.” The DOJ’s case
4 was settled in September 2010, which required Google and its anticompetitive colleagues to end
5 their illegal agreements.

6 3. Then in 2011, several technical, creative, and research and development
7 employees harmed by the illegal anticompetitive agreements filed class action lawsuits against
8 Google, Apple Inc. (“Apple”), Intel Corp. (“Intel”), Intuit Inc. (“Intuit”), and Adobe Systems
9 Inc. (“Adobe”), among others, for conspiring to suppress their wages, including by agreeing not
10 to actively recruit each other’s employees. These actions were later consolidated in *In re High-*
11 *Tech Employee Antitrust Litigation*, No. 11-cv-2509-LHK (N.D. Cal.) (the “Antitrust Class
12 Action”). In August 2014, the Court in the Antitrust Class Action rejected a settlement of \$324.5
13 million. In January 2015, the remaining parties, including Google, filed a new proposed
14 settlement with the Court, in which the remaining Defendants would pay \$415 million to the
15 impacted class members. On March 3, 2015, the Court granted preliminary approval of the
16 revised settlement and scheduled a final approval hearing for July 9, 2015.

17 4. When Google was still relatively new to the Silicon Valley scene, Google had a
18 strong reputation for recruiting the very best employees from other prominent Silicon Valley
19 companies by offering the best compensation and benefits to its employees. Initially, Defendant
20 Eric E. Schmidt (“Schmidt”), who was at that time Google’s Chief Executive Officer, expressly
21 rejected implementation of a policy against poaching the employees of Google’s competitors. In
22 a November 5, 2003 email, Schmidt wrote that Google’s “policy should be to have ‘no rule.’”

23 5. By 2005, however, Defendants Lawrence “Larry” Page (“Page”), Sergey M. Brin
24 (“Brin”), Schmidt, and other Google executives began developing and entering into illegal
25 anticompetitive agreements with their counterparts at other companies, including Apple, Intel,
26 and Intuit. These agreements were designed to illegally restrain the cartel members from hiring
27 each other’s high-tech employees and to artificially suppress compensation for such employees.

1 As *Bloomberg BusinessWeek* reported, “Silicon Valley’s vast wealth and a warped sense of
2 entitlement led to an audacious conspiracy to suppress salaries.”²

3 6. In 2005, Apple’s co-founder and former Chief Executive Officer Steve Jobs
4 (“Jobs”) began contacting Google executives, including Defendant Brin, irate that Google was
5 purportedly recruiting Apple employees. Jobs also contacted William V. Campbell
6 (“Campbell”), a close friend and member of Apple’s Board of Directors, to express his anger.
7 Campbell was also a Senior Advisor at Google and a mentor to Defendant Schmidt, and
8 regularly attended meetings of Google’s Board of Directors (the “Board”) and Google’s
9 Executive Management Group.

10 7. Defendants Page, Brin, and Schmidt responded by implementing an illegal policy
11 of not recruiting employees from Apple, Intel, and Genentech, Inc. (“Genentech”) under the
12 pretense of the relationships these Defendants had with these companies. Defendant Schmidt
13 explained: “Genentech and Intel had board members that were board members of Google
14 [Former Director Defendant Arthur D. Levinson and Defendant Paul S. Otellini], and . . . Art
15 Levinson was the CEO of Genentech[,] Paul Otellini was the CEO of Intel[,], . . . and Bill
16 Campbell was a board member of Apple [W]e did not want a situation where you had a
17 sitting board member and we were cold calling into their companies.”

18 8. Soon, Google expanded the list of companies on its “Do Not Call” list to include
19 companies that did not share board members with Google.

20 9. These agreements: (1) prevented companies within the cartel from actively
21 recruiting or “cold calling” each other’s employees; (2) required notification and collusion before
22 one cartel member made an employment offer to an employee of another cartel member; and/or
23 (3) prevented companies from making counteroffers with salaries above the initial employment
24 offer to ensure that salaries remained artificially deflated. These agreements were intended to,
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26

27 ² Paul M. Barrett and Brad Stone, *Apple, Google, and the Hubris of Silicon Valley’s Hiring Conspiracy*,
28 BLOOMBERG, May 1, 2014, <http://www.businessweek.com/articles/2014-05-01/tech-hubris-the-silicon-valley-antitrust-hiring-conspiracy>. Visited Mar. 18, 2015.

1 and did, suppress the compensation and mobility of highly skilled technical employees, which
2 improperly restricted competition for skilled labor in Silicon Valley.

3 10. Director Defendants Page, Brin, Schmidt, and Paul S. Otellini (“Otellini”) were
4 directly involved in forging these illegal, anticompetitive agreements and implementing and
5 maintaining practices consistent with these agreements. Additional executive Defendants named
6 herein also played significant roles in the development, ratification, and implementation of these
7 illegal policies and protocols.

8 11. In addition to suppressing employee compensation, these illegal, anticompetitive
9 agreements also stunted the success of Silicon Valley’s innovation by limiting the free flow of
10 employees between companies. Defendants benefited from these agreements to the detriment of
11 the Company and its shareholders.

12 12. All of this misconduct is heavily documented by emails, which were introduced in
13 other court proceedings. These emails are specifically detailed throughout this complaint.
14 Indeed, in the Antitrust Class Action, the Court noted that “there is ample evidence of an
15 overarching conspiracy between” Google and the other Defendants, and of “evidence of
16 Defendants’ rigid wage structures and internal equity concerns, along with statements from
17 Defendants’ own executives, are likely to prove compelling in establishing the impact of the
18 anti-solicitation agreements” *See High-Tech Employee*, 2014 WL 3917126, at *16.

19 13. This shareholder derivative action seeks to recover damages on behalf of Google,
20 caused by the unlawful acts and omissions of Defendants.

21 **II. JURISDICTION AND VENUE**

22 14. This derivative action is brought pursuant to Rule 23.1 of the Federal Rules of
23 Civil Procedure (“F.R.C.P.”).

24 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331, because
25 the claims asserted arise under §§14(a) and 29(b) of the Securities Exchange Act of 1934 (the
26 “Exchange Act”) (15 U.S.C. §§78n(a) and 78cc(b)).

1 16. This Court also has subject matter jurisdiction over this action pursuant to 28
2 U.S.C. §1332(a)(2). Plaintiff and Defendants are citizens of different states and the matter in
3 controversy exceeds \$75,000, exclusive of interests and costs.

4 17. This Court has supplemental jurisdiction over the state law claims pursuant to 28
5 U.S.C. §1367(a). This action is not a collusive one to confer jurisdiction on a court of the United
6 States that it would not otherwise have.

7 18. This Court has personal jurisdiction over each Defendant because each Defendant
8 has committed acts related to the claims at issue in this Complaint within this District.

9 19. Venue is proper in the Northern District of California because Nominal Defendant
10 Google is headquartered in this District, in Mountain View, California, and a number of the
11 Director Defendants are citizens of the State of California. Additionally, venue is proper in this
12 District because a substantial portion of the transactions and wrongs complained of herein,
13 including Defendants' primary participation in the wrongful acts detailed herein, occurred in this
14 District.

15 **III. PARTIES**

16 20. Plaintiff West Palm Beach Fire Pension Fund is a shareholder of Google and has
17 continuously held its shares at times relevant hereto. West Palm is a citizen of Florida.

18 21. Nominal Defendant Google is a Delaware corporation with its principal executive
19 offices located at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google is a
20 global technology leader focused on improving the ways people connect with information. The
21 Company aspires to build products and provide services that improve the lives of billions of
22 people worldwide. The Company's mission is to organize the world's information and make it
23 universally accessible and useful. Google's innovations in web search and advertising have
24 made its website a top internet property, and Google's brand one of the most recognized in the
25 world. Indeed, "to Google" something is now a recognized verb in popular lexicon. Google
26 generates most of its revenue by delivering relevant, cost-effective online advertising.

1 22. Defendant Lawrence “Larry” Page is a co-founder of Google, has been a member
2 of Google’s Board of Directors since 1998, and has served as Google’s Chief Executive Officer
3 since April 2011. Defendant Page has served in numerous executive capacities at Google,
4 including as the Company’s President, Products from July 2001 to April 2011; Chief Financial
5 Officer from September 1998 to July 2002; and CEO from September 1998 to July 2001.
6 Defendant Page is one of the primary wrongdoers involved in this misconduct alleged herein,
7 having overseen the creation of the illegal and anticompetitive agreements between Google and
8 other companies, caused the Company to enter into these agreements, and failed to implement
9 adequate internal controls to ensure Google’s compliance with federal law and regulations.
10 Defendant Page caused the Company to disseminate false and misleading Proxy Statements in
11 2012, 2013, and 2014. Upon information and belief, Defendant Page is a citizen of California.

12 23. Defendant Sergey M. Brin is a co-founder of Google, has been a member of
13 Google’s Board of Directors since 1998, and presently directs special projects for Google.
14 Defendant Brin has served in numerous executive capacities at Google, including as the
15 Company’s President, Technology from July 2001 to April 2011 and President and Chairman of
16 the Board from September 1998 to July 2001. Defendant Brin is one of the primary wrongdoers
17 involved in this misconduct alleged herein, having overseen the creation of the illegal and
18 anticompetitive agreements between Google and other companies, caused the Company to enter
19 into these agreements, and failed to implement adequate internal controls to ensure Google’s
20 compliance with federal law and regulations. Defendant Brin caused the Company to
21 disseminate false and misleading Proxy Statements in 2012, 2013, and 2014. Upon information
22 and belief, Defendant Brin is a citizen of California.

23 24. Defendant Eric E. Schmidt has been a member of Google’s Board of Directors
24 since March 2001 and has served as Google’s Executive Chairman of the Board since April
25 2011. Defendant Schmidt has served in numerous executive capacities at Google, including as
26 the Company’s Chief Executive Officer from July 2001 to April 2011, and Chairman of the
27 Board from March 2001 to April 2004 and April 2007 to April 2011. Defendant Schmidt also

1 served on the Apple Board of Directors from August 2006 to July 2009, during part of the period
2 of wrongdoing alleged herein. Defendant Schmidt is one of the primary wrongdoers involved in
3 this misconduct alleged herein, having overseen the creation of the illegal and anticompetitive
4 agreements between Google and other companies, caused the Company to enter into these
5 agreements, and failed to implement adequate internal controls to ensure Google's compliance
6 with federal law and regulations. Defendant Schmidt caused the Company to disseminate false
7 and misleading Proxy Statements in 2012, 2013, and 2014. Upon information and belief,
8 Defendant Schmidt is a citizen of California.

9 25. Defendant L. John Doerr ("Doerr") has been a member of Google's Board of
10 Directors since May 1999. Defendant Doerr has also served on Google's Audit Committee from
11 May 2007 to January 2012 and Google's Leadership Development and Compensation
12 Committee from April 2005 to May 2007 and again from October 2009 to present. Defendant
13 Doerr also served on the Intuit Board of Directors from 1999 to December 2007, during the
14 period of wrongdoing alleged herein. Defendant Doerr knowingly and consciously: (i) allowed
15 Defendants Page, Brin, and Schmidt to dominate and control the Board with little or no effective
16 oversight; (ii) upon information and belief, explicitly agreed to or facilitated the creation of
17 illegal anticompetitive agreements with certain of Google's competitors, including Intuit, where
18 Doerr served on the Board; (iii) caused or allowed Google to enter into such illegal
19 anticompetitive agreements; (iv) upon information and belief, actively ensured the illegal
20 anticompetitive agreements were followed within Google; and (v) failed to implement adequate
21 internal controls to ensure Google's compliance with federal law and regulations. Defendant
22 Doerr caused the Company to disseminate false and misleading Proxy Statements in 2012, 2013,
23 and 2014. Between 2009 and 2012, Google paid Defendant Doerr almost \$1.8 million in
24 compensation. Upon information and belief, Defendant Doerr is a citizen of California.

25 26. Defendant Diane B. Greene ("Greene") has been a member of Google's Board of
26 Directors since January 2012. Defendant Greene presently serves on the Audit Committee of the
27 Google Board of Directors. Defendant Greene caused the Company to disseminate false and
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1 misleading Proxy Statements in 2012, 2013, and 2014. Upon information and belief, Defendant
2 Greene is a citizen of California.

3 27. Defendant John L. Hennessy (“Hennessy”) has been a member of Google’s Board
4 of Directors since April 2004. Defendant Hennessy has also served as Google’s Lead
5 Independent Director Since April 2007. Defendant Hennessy knowingly and consciously:
6 (i) allowed Defendants Page, Brin, and Schmidt to dominate and control the Board with little or
7 no effective oversight; (ii) upon information and belief, explicitly agreed to or facilitated the
8 creation of illegal anticompetitive agreements with certain of Google’s competitors; (iii) caused
9 or allowed Google to enter into such illegal anticompetitive agreements; (iv) upon information
10 and belief, actively ensured the illegal anticompetitive agreements were followed within Google;
11 and (v) failed to implement adequate internal controls to ensure Google’s compliance with
12 federal law and regulations. Defendant Hennessy caused the Company to disseminate false and
13 misleading Proxy Statements in 2012, 2013, and 2014. Between 2006 and 2012, Google paid
14 Defendant Hennessy over \$3.2 million in compensation. Upon information and belief,
15 Defendant Hennessy is a citizen of California.

16 28. Defendant Ann Mather (“Mather”) has been a member of Google’s Board of
17 Directors since November 2005. Defendant Mather has also served as Chairman of the Audit
18 Committee of Google’s Board of Directors since November 2005. Defendant Mather knowingly
19 and consciously: (i) allowed Defendants Page, Brin, and Schmidt to dominate and control the
20 Board with little or no effective oversight; (ii) upon information and belief, explicitly agreed to
21 or facilitated the creation of illegal anticompetitive agreements with certain of Google’s
22 competitors; (iii) caused or allowed Google to enter into such illegal anticompetitive agreements;
23 (iv) upon information and belief, actively ensured the illegal anticompetitive agreements were
24 followed within Google; and (v) failed to implement adequate internal controls to ensure
25 Google’s compliance with federal law and regulations. Defendant Mather caused the Company
26 to disseminate false and misleading Proxy Statements in 2012, 2013, and 2014. Between 2006
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1 and 2012, Google paid Defendant Mather over \$4.2 million in compensation. Upon information
2 and belief, Defendant Mather is a citizen of California.

3 29. Defendant Paul S. Otellini has been a member of Google's Board of Directors
4 since April 2004. Defendant Otellini also served as a member of the Audit Committee of
5 Google's Board of Directors from April 2005 to January 2006 and as Chairman of the
6 Leadership Development and Compensation Committee of Google's Board of Directors from
7 October 2009 to present. Defendant Otellini also held numerous executive roles at Intel during
8 the period of wrongdoing alleged herein, including as CEO and President from May 2005 to May
9 2013, a director from 2002 to May 2013, Chief Operating Officer from 2002 to May 2005, and
10 various other positions including Executive Vice President and General Manager, Intel
11 Architecture Group, and Executive Vice President and General Manager, Sales and Market
12 Group, from 1974 to 2002. Defendant Otellini knowingly and consciously: (i) allowed
13 Defendants Page, Brin, and Schmidt to dominate and control the Board with little or no effective
14 oversight; (ii) upon information and belief, explicitly agreed to or facilitated the creation of
15 illegal anticompetitive agreements with certain of Google's competitors; (iii) caused or allowed
16 Google to enter into such illegal anticompetitive agreements; (iv) upon information and belief,
17 actively ensured the illegal anticompetitive agreements were followed within Google; and (v)
18 failed to implement adequate internal controls to ensure Google's compliance with federal law
19 and regulations. Defendant Otellini caused the Company to disseminate false and misleading
20 Proxy Statements in 2012, 2013, and 2014. Between 2006 and 2012, Google paid Defendant
21 Otellini over \$3.1 million in compensation. Upon information and belief, Defendant Otellini is a
22 citizen of California.

23 30. Defendant K. Ram Shriram ("Shriram") has been a member of Google's Board of
24 Directors since September 1998. Defendant Shriram also served as a member of the Audit
25 Committee of Google's Board of Directors since April 2005 and was Chairman of the Audit
26 Committee from April 2005 to November 2005. Defendant Shriram knowingly and consciously:
27 (i) allowed Defendants Page, Brin, and Schmidt to dominate and control the Board with little or
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1 no effective oversight; (ii) upon information and belief, explicitly agreed to or facilitated the
2 creation of illegal anticompetitive agreements with certain of Google's competitors; (iii) caused
3 or allowed Google to enter into such illegal anticompetitive agreements; (iv) upon information
4 and belief, actively ensured the illegal anticompetitive agreements were followed within Google;
5 and (v) failed to implement adequate internal controls to ensure Google's compliance with
6 federal law and regulations. Defendant Shriram caused the Company to disseminate false and
7 misleading Proxy Statements in 2012, 2013, and 2014. Between 2011 and 2012, Google paid
8 Defendant Shriram \$846,123 in compensation. Upon information and belief, Defendant Shriram
9 is a citizen of California.

10 31. Defendant Shirley M. Tilghman ("Tilghman") has been a member of Google's
11 Board of Directors since October 2005. Defendant Tilghman knowingly and consciously:
12 (i) allowed Defendants Page, Brin, and Schmidt to dominate and control the Board with little or
13 no effective oversight; (ii) upon information and belief, explicitly agreed to or facilitated the
14 creation of illegal anticompetitive agreements with certain of Google's competitors; (iii) caused
15 or allowed Google to enter into such illegal anticompetitive agreements; (iv) upon information
16 and belief, actively ensured the illegal anticompetitive agreements were followed within Google;
17 and (v) failed to implement adequate internal controls to ensure Google's compliance with
18 federal law and regulations. Defendant Tilghman caused the Company to disseminate false and
19 misleading Proxy Statements in 2012, 2013 and 2014. Between 2011 and 2012, Google paid
20 Defendant Tilghman \$846,123 in compensation. Upon information and belief, Defendant
21 Tilghman is a citizen of New Jersey.

22 32. Defendant Michael J. Moritz ("Moritz") was a member of Google's Board of
23 Directors from May 1999 to May 2007. Defendant Moritz also served as a member of the Audit
24 Committee of Google's Board of Directors from April 2005 to May 2007. Defendant Moritz
25 knowingly and consciously: (i) allowed Defendants Page, Brin, and Schmidt to dominate and
26 control the Board with little or no effective oversight; (ii) upon information and belief, explicitly
27 agreed to or facilitated the creation of illegal anticompetitive agreements with certain of
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1 Google's competitors; (iii) caused or allowed Google to enter into such illegal anticompetitive
2 agreements; (iv) upon information and belief, actively ensured the illegal anticompetitive
3 agreements were followed within Google; and (v) failed to implement adequate internal controls
4 to ensure Google's compliance with federal law and regulations. Upon information and belief,
5 Defendant Moritz is a citizen of California.

6 33. Defendant Arthur D. Levinson ("Levinson") was a member of Google's Board of
7 Directors from April 2004 to October 2009. Defendant Levinson also served as a member of the
8 Leadership Development and Compensation Committee from April 2005 to October 2009.
9 Defendant Levinson is also Chairman of the Board of Apple, where he has been a director since
10 2000 and the Chairman since November 2011. Defendant Levinson knowingly and consciously:
11 (i) allowed Defendants Page, Brin, and Schmidt to dominate and control the Board with little or
12 no effective oversight; (ii) upon information and belief, explicitly agreed to or facilitated the
13 creation of illegal anticompetitive agreements with certain of Google's competitors; (iii) caused
14 or allowed Google to enter into such illegal anticompetitive agreements; (iv) upon information
15 and belief, actively ensured the illegal anticompetitive agreements were followed within Google;
16 and (v) failed to implement adequate internal controls to ensure Google's compliance with
17 federal law and regulations. Between 2006 and 2009, Google paid Defendant Levinson over
18 \$1.8 million in compensation. Upon information and belief, Defendant Levinson is a citizen of
19 California.

20 34. Defendant Robert Alan Eustace ("Eustace") has served as Google's Senior Vice
21 President, Knowledge since April 2011. Defendant Eustace also served as Google's Senior Vice
22 President, Engineering & Research from January 2006 to April 2011 and Vice President of
23 Engineering from July 2002 to January 2006. Defendant Eustace was involved in developing
24 and perpetuating the illegal collusive scheme alleged herein. Defendant Eustace knowingly,
25 recklessly, or with gross negligence: (i) oversaw the creation of the protocols governing
26 anticompetitive hiring agreements between Google and other companies; (ii) caused or allowed
27 Google to enter into such illegal anticompetitive agreements; (iii) allowed Defendants Page,
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1 Brin, and Schmidt to dominate and control the Google Board of Directors with little or no
2 effective oversight; and (iv) failed to implement adequate internal controls to ensure that Google
3 complied with federal laws and regulations. Between 2006 and 2010, Google paid Eustace over
4 \$47.2 million in compensation. Upon information and belief, Defendant Eustace is a citizen of
5 California.

6 35. Defendant Omid R. Kordestani (“Kordestani”) served as Google’s Senior Vice
7 President of Global Sales and Business Development from May 1999 to April 2009. Upon
8 information and belief, Defendant Kordestani still works as an employee of Google, serving as a
9 Special Advisor, Office of the CEO and Founders. Defendant Kordestani was involved in
10 developing and perpetuating the illegal collusive scheme alleged herein. Defendant Kordestani
11 knowingly, recklessly, or with gross negligence: (i) oversaw the creation of the protocols
12 governing anticompetitive hiring agreements between Google and other companies; (ii) caused
13 or allowed Google to enter into such illegal anticompetitive agreements; (iii) allowed Defendants
14 Page, Brin, and Schmidt to dominate and control the Google Board of Directors with little or no
15 effective oversight; and (iv) failed to implement adequate internal controls to ensure that Google
16 complied with federal laws and regulations. In 2007 alone, Google paid Defendant Kordestani
17 almost \$5.6 million in compensation. Upon information and belief, Defendant Kordestani is a
18 citizen of California.

19 36. Defendant Jonathan J. Rosenberg (“Rosenberg”) served as Google’s Senior Vice
20 President of Product Management from January 2006 to April 2011 and Vice President of
21 Product Management from February 2002 to January 2006. Defendant Eustace was involved in
22 developing and perpetuating the illegal collusive scheme alleged herein. Defendant Rosenberg
23 knowingly, recklessly, or with gross negligence: (i) oversaw the creation of the protocols
24 governing anticompetitive hiring agreements between Google and other companies; (ii) caused
25 or allowed Google to enter into such illegal anticompetitive agreements; (iii) allowed Defendants
26 Page, Brin, and Schmidt to dominate and control the Google Board of Directors with little or no
27 effective oversight; and (iv) failed to implement adequate internal controls to ensure that Google

1 complied with federal laws and regulations. Between 2006 and 2009, Google paid Defendant
2 Rosenberg over \$36 million in compensation. Upon information and belief, Defendant
3 Rosenberg is a citizen of California.

4 37. Defendant Shona L. Brown (“Brown”) served as Google’s Senior Vice President,
5 Google.org from April 2011 to December 2012; Senior Vice President of Business Operations
6 from January 2006 to April 2011; and Vice President of Business Operations from September
7 2003 to January 2006. Defendant Eustace was involved in developing and perpetuating the
8 illegal collusive scheme alleged herein. Defendant Brown knowingly, recklessly, or with gross
9 negligence: (i) oversaw the creation of the protocols governing anticompetitive hiring
10 agreements between Google and other companies; (ii) caused or allowed Google to enter into
11 such illegal anticompetitive agreements; (iii) allowed Defendants Page, Brin, and Schmidt to
12 dominate and control the Google Board of Directors with little or no effective oversight; and (iv)
13 failed to implement adequate internal controls to ensure that Google complied with federal laws
14 and regulations. In 2006, Google paid Defendant Brown over \$2.8 million in compensation. In
15 2010, Google paid Defendant Brown almost \$16.3 million in compensation. Upon information
16 and belief, Defendant Brown is a citizen of California.

17 38. Defendant Arnon Geshuri (“Geshuri”) has served as Google’s Director of
18 Recruiting at all times relevant to this lawsuit. Defendant Geshuri was involved in developing
19 and perpetuating the illegal collusive scheme alleged herein. Defendant Geshuri knowingly,
20 recklessly, or with gross negligence: (i) oversaw the creation of the protocols governing
21 anticompetitive hiring agreements between Google and other companies; (ii) caused or allowed
22 Google to enter into such illegal anticompetitive agreements; (iii) allowed Defendants Page,
23 Brin, and Schmidt to dominate and control the Google Board of Directors with little or no
24 effective oversight; and (iv) failed to implement adequate internal controls to ensure that Google
25 complied with federal laws and regulations. Upon information and belief, Defendant Geshuri is
26 a citizen of California.

1 39. Hereinafter, Defendants Page, Brin, Schmidt, Doerr, Greene, Hennessy, Mather,
2 Otellini, Shriram, and Tilghman will be collectively referred to as the “Director Defendants.”
3 Defendants Moritz and Levinson will be collectively referred to as the “Former Director
4 Defendants.” Defendants Eustace, Kordestani, Rosenberg, Brown, and Geshuri will be
5 collectively referred to as the “Executive Defendants.” The Director Defendants, Former
6 Director Defendants, and Executive Defendants will be collectively referred to as “Defendants.”

7 **IV. DEFENDANTS’ FIDUCIARY DUTIES AND BREACHES THEREOF**

8 40. By reason of their positions as directors and fiduciaries of Google, and by virtue
9 of their ability to control the business and corporate affairs of the Company, each Defendant
10 owed and owes Google and its shareholders fiduciary obligations of trust, loyalty, good faith,
11 and candor and were and are required to use their utmost ability to control and manage the
12 Company in a lawful, fair, just, honest, and equitable manner. Defendants were and are required
13 to act in furtherance of the best interests of Google and its shareholders so as to benefit all
14 shareholders equally and not in furtherance of their personal interest or benefit.

15 41. Each Defendant owes to Google and its shareholders the fiduciary duty to
16 exercise good faith and diligence in the administration of the affairs of the Company, and in the
17 use and preservation of its property and assets, and the highest obligations of fair dealing.

18 42. At all times relevant hereto, each Defendant was the agent of each of the other
19 Defendants and of the Company, and was at all times acting within the course and scope of such
20 agency.

21 43. By virtue of their fiduciary duties of loyalty, good faith, trust, and candor, each
22 Defendant was required to, among other things:

- 23 a. exercise good faith to ensure that Google’s affairs were conducted in an
24 efficient, business-like manner;
- 25 b. exercise good faith to ensure that the Company was operated in a diligent,
26 honest, and prudent manner, and complied with all applicable federal and
27 state laws, rules, regulations, and requirements, and all contractual
28 obligations, including acting only within the scope of its legal authority;
- c. when put on notice of problems with the Company’s business practices
 and operations, exercise good faith in taking appropriate action to correct
 the misconduct and prevent its recurrence; and

1 d. remain informed as to how the Company conducted its operations, and,
2 upon receipt of notice or information of imprudent or unsound conditions
or practices, make reasonable inquiry in connection therewith.

3 44. The Defendants who were and are members of the committees of the Google
4 Board of Directors assumed the responsibility to carry out the functions of their committees.

5 45. Defendants knowingly or consciously breached their fiduciary duties of loyalty
6 and good faith. They did so by either causing themselves or allowing other Defendants to cause
7 Google to enter into anticompetitive hiring agreements with Google's competitors. These
8 constitute illegal practices, which led to the waste of Google's assets and caused Google to incur
9 significant reputational and monetary damages.

10 46. By virtue of their positions of control and authority as directors and/or officers of
11 Google, Defendants were able to and did, directly or indirectly, exercise control over the
12 wrongful acts complained of herein. Defendants also failed to prevent other Defendants from
13 their misconduct.

14 47. Furthermore, by signing Google's 2012, 2013, and 2014 Annual Reports on SEC
15 Form 10-K, and issuing Google's 2012, 2013, and 2014 Proxy Statements on Form 14-A without
16 disclosing the violations of federal law and regulations alleged herein and affirmatively
17 misrepresenting their practice of unlawfully suppressing their employees' compensation.
18 Defendants breached their fiduciary duties of loyalty, good faith, and candor and violated the
19 federal securities laws by making false and misleading statements to Google's shareholders and
20 regulatory authorities.

21 **V. GOOGLE'S CORPORATE GOVERNANCE STRUCTURE AND**
22 **REQUIREMENTS**

23 48. Google's bylaws, articles of incorporation, corporate governance guidelines, and
24 Code of Conduct, as well as Board committee charters, specifically set forth the duties and
obligations that Google Board members are required to fulfill on behalf of the Company.

25 49. Defendants, as corporate officers and directors of Google, owe the highest
26 fiduciary duties of loyalty, good faith, and care to the Company. This action involves serious
27 violations of federal antitrust laws, by virtue of Google's illegal, anticompetitive restrictive
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1 hiring agreements with other companies. Defendants either entered into these agreements
2 themselves or consciously disregarded these agreements, blindly ignoring Google’s participation
3 in an unlawful antitrust conspiracy. Defendants, especially the Director Defendants and Former
4 Director Defendants, performed no due diligence on Google’s practice of unlawfully restricting
5 competition that ultimately suppressed Google’s high-tech talent and led to criminal penalties
6 following an investigation by the DOJ.

7 50. In a recent “Message from our Executive Chairman,” Defendant Schmidt stated:

8 We believe in the importance of building stockholder trust. *We adhere to the*
9 *highest levels of ethical business practices, as embodied by the Google Code of*
10 *Conduct, which provides guidelines for ethical conduct by our directors,*
11 *officers and employees.* We think that we’ve created the optimal corporate
structure to realize Google’s long-term potential and have established the
appropriate financial controls and management oversight of our internal process.

(Emphasis added.)

12 51. Google’s Annual Report for 2013 filed on Form 10-K with the SEC on February
13 12, 2014, which was signed by all of the Director defendants, directs:

14 We take great pride in our culture We strive to hire the best employees, with
15 backgrounds and perspectives as diverse as our global users Competition for
16 qualified personnel in our industry is intense, particularly for software engineers,
computer scientists, and other technical staff.”

17 Defendants are and were therefore completely aware of the importance of hiring the best
18 employees, yet failed to follow this basic tenet of business for several years.

19 52. Google’s most recent Annual Report for 2014 filed on Form 10-K, which was
20 signed by all of the Director Defendants, reiterated the critical importance to the Company of
21 hiring the best employees. It states:

22 We take great pride in our culture. We embrace collaboration and creativity, and
23 encourage the iteration of ideas to address complex technical challenges. . . . We
24 strive to hire great employees, with backgrounds and perspectives as diverse as
25 those of our global users. . . . Our employees are among our best assets and are
26 critical for our continued success. We expect to continue investing in hiring
27 talented employees and to provide competitive compensation programs to our
28 employees.

1 **A. Google’s Code of Conduct**

2 53. Google maintains a Code of Conduct which must be known and followed by all
3 employees and Board members.³ Section VII of the Code of Conduct is entitled “Obey the
4 Law,” and requires that Defendants and the Company “comply with applicable legal
5 requirements and prohibitions,” and to “understand the major laws and regulations that apply.”

6 54. Section VII(2) is entitled “Competition Laws,” and provides the following:

7 Most countries have laws – known as “antitrust,” “competition,” or “unfair
8 competition” laws – designed to promote free and fair competition. Generally
9 speaking, these laws prohibit 1) arrangements with competitors that restrain trade
10 in some way, 2) abuse of intellectual property rights, and 3) use of market power
11 to unfairly disadvantage competitors.

12 Certain conduct is absolutely prohibited under these laws, and could result in your
13 imprisonment, not to mention severe penalties for Google. Examples of
14 prohibited conduct include:

- 15 • agreeing with competitors about prices
- 16 • agreeing with competitors to rig bids or to allocate customers or
17 markets
- 18 • agreeing with competitors to boycott a supplier or customer

19 Other activities can also be illegal, unfair, or create the appearance of impropriety.
20 Such activities include:

- 21 • sharing competitively sensitive information (e.g., prices, costs, market
22 distribution, etc.) with competitors
- 23 • entering into a business arrangement or pursuing a strategy with the
24 sole purpose of harming a competitor
- 25 • using Google’s size or strength to gain an unfair competitive
26 advantage

27 Although the spirit of these laws is straightforward, their application to particular
28 situations can be quite complex. Google is committed to competing fair and
square, so please contact Ethics & Compliance if you have any questions about
the antitrust laws and how they apply to you. Any personnel found to have
violated Google’s antitrust policies will, subject to local laws, be disciplined, up
to and including termination of employment. If you suspect that anyone at the
company is violating the competition laws, notify Ethics & Compliance
immediately.

29 55. The Corporate Governance Guidelines⁴ also specify the responsibilities and duties
30 of the Board:

31 ³ See <https://investor.google.com/corporate/code-of-conduct.html>. Visited Mar. 18, 2015.

32 ⁴ See <https://investor.google.com/corporate/guidelines.html>. Visited Mar. 18, 2015.

1
2 Principal Duties of the Board of Directors

3 To Oversee Management and Evaluate Strategy. The fundamental responsibility
4 of the directors is to exercise their business judgment to act in what they
5 reasonably believe to be the best interests of Google and its stockholders. It is the
6 duty of the Board to oversee management's performance to ensure that Google
operates in an effective, efficient and ethical manner in order to produce value for
Google's stockholders.

7 56. Furthermore, the Corporate Governance Guidelines address the Board's
responsibilities with respect to oversight:

8 The Board is responsible for oversight of strategic, financial and execution risks
9 and exposures associated with Google's business strategy, product innovation and
10 sales road map, policy matters, significant litigation and regulatory exposures, and
11 other current matters that may present material risk to Google's financial
performance, operations, infrastructure, plans, prospects or reputation,
acquisitions and divestitures. Directors are expected to invest the time and effort
necessary to understand Google's business and financial strategies and challenges.

12 **B. Additional Responsibilities Based on Board Committee Membership**

13 57. Google has five standing committees of the Board of Directors: (1) Audit
14 Committee; (2) Leadership Development and Compensation Committee; (3) Nominating and
15 Corporate Governance Committee; (4) Executive Committee; and (5) Acquisition Committee.
16 Each of these committees is required to report regularly to the full Google Board of Directors.

17 58. Google's Leadership Development and Compensation Committee (the "LDCC")
18 of the Board of Directors is charged with:

19 [B]roadly oversee[ing] matters relating to the attraction, motivation, development
20 and retention of all Googlers. In undertaking these responsibilities, the
21 Committee shall take into account factors it deems appropriate from time to time,
including Google's business strategy, the risks to Google and its business implied
by its executive compensation and incentive programs and awards, and the results
of any shareholder advisory votes with respect thereto.

22 59. The LDCC is presently composed of Defendants Otellini (Chair), Doerr, and
23 Shriram. The LDCC has broad power over the retention of all Google employees. As alleged
24 herein, Defendant Otellini was directly involved in the development, ratification, and
25 implementation of the illegal anti-solicitation covenants. Furthermore, Defendants Doerr's and
26 Shriram's relationships with Defendants Page, Brin, Schmidt, and Otellini, as well as non-
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1 defendants like Jobs, demonstrate that these Defendants knew about the anticompetitive conduct
2 and allowed it to continue.

3 60. The key function of the Audit Committee of Google's Board of Directors is to
4 oversee the accounting and financial reporting process. This Committee also provides oversight
5 regarding significant financial matters, including Google's tax planning, treasury policies,
6 currency exposures, dividends, and share issuance and repurchases. The Audit Committee must
7 supervise: Google's relationship with its independent auditors; internal controls; financial risk
8 oversight; and, *inter alia*, ability to investigate any matter brought to its attention. The Audit
9 Committee has full access to all Google books, records, facilities, and employees.

10 61. The Audit Committee is presently composed of Defendants Mather (Chair),
11 Greene, and non-defendant Mulally. Defendant Mather specifically ignored or consciously and
12 blindly failed to account for the financial risk caused by allowing the anticompetitive hiring
13 practices to occur at Google. Furthermore, Defendant Mather failed to require Google to
14 implement adequate internal controls. By allowing the illegal anticompetitive practices to occur
15 and continue unchecked, Defendant Mather has caused Google to face a significant amount of
16 liability, in addition to other costs already incurred and lost goodwill.

17 62. Google's Nominating and Corporate Governance Committee (the "NCGC") was
18 created to assist the Board in identifying individuals qualified to serve as members of the Board,
19 oversee Board evaluation and management, and develop and update corporate governance
20 principles.

21 63. The NCGC is presently composed of Defendants Hennessy (Chair) and Tilghman.
22 As alleged herein, these Defendants have close ties and relationships to the other Director
23 Defendants. If any Board member encouraged or voted to bring suit, these NCGC members
24 would therefore be unable to recommend their termination. The NCGC could terminate any
25 Board member that attempted to go against the Board's anticompetitive practices or try to hold
26 the Board accountable for such misconduct.

1 64. Google also has an Executive Committee, which is designed to serve as an
2 administrative committee of the Board to act upon and facilitate the consideration by senior
3 management and the Board of certain high-level business and strategic matters.

4 65. The Executive Committee is presently composed of Defendants Schmidt (Chair),
5 Page, and Brin. These Defendants control Google and are among the principal wrongdoers.

6 66. Google's Acquisition Committee is tasked with serving as an administrative
7 committee of the Board to review and approve certain investment, acquisition, and divestiture
8 transactions proposed by management.

9 67. The Acquisition Committee is presently composed of Defendants Schmidt
10 (Chair), Page, Brin, and Shriram. Defendants Page, Brin, and Schmidt control Google and are
11 among the principal wrongdoers. Defendant Shriram has also been involved with Google since
12 its inception and has close personal ties to many of the other Defendants.

13 **VI. SUBSTANTIVE ALLEGATIONS**

14 68. Defendants, with their colleagues at rival companies including Apple, Adobe, and
15 Intel, illegally conspired to drive down wages for over 100,000 workers in Silicon Valley. This
16 misconduct caused significant damage to Google and its shareholders. Defendants caused and/or
17 blindly looked away when Google entered into illegal anticompetitive hiring agreements with its
18 rival companies. These unlawful restraint of trade agreements were intended to and did, in fact,
19 reduce employee compensation and mobility for high-tech employees. Defendants had
20 knowledge of the misconduct and were actively involved therein.

21 **A. Background**

22 69. In a legal, competitive labor market, companies compete for the best employees.
23 One of the most effective methods for identifying and luring the best employees is by soliciting
24 employees presently working for other companies, a tactic referred to as "cold calling."⁵ Not
25 only are such employees typically unresponsive to other recruiting strategies, but they are also,
26

27 ⁵ Cold calling includes communicating directly with another company's employee who has not otherwise
28 applied for a job opening, in any manner (including orally, in writing, telephonically, or electronically).

1 on average, significantly more valuable because employees who are not seeking other
2 employment tend to be more qualified, hardworking, and stable than those who are actively
3 seeking employment. In addition, cold calling the employees of a rival company provides
4 tremendous cost savings because the hiring company can take advantage of the efforts its rival
5 has already expended in performing background checks, interviewing, training, and evaluating
6 skilled labor, among other things. Accordingly, cold calling is a key competitive tool companies
7 use to recruit employees, particularly highly skilled technical employees.

8 70. Employees also derive tremendous benefits from cold calling. For example, cold
9 calling provides current employees with information about new job opportunities and potential
10 pay packages. Even if they do not leave their present employment, learning about new
11 opportunities affords current employees knowledge about the market and the potential ability to
12 negotiate their present salaries and benefits. Furthermore, when a contacted employee shares
13 cold call information with his or her coworkers, other employees can also learn of competitive
14 pay rates and new job opportunities, which they may also use for their benefit. Thus, the effects
15 of cold calling commonly impact all salaried employees. Furthermore, when an employer learns
16 that its rivals are cold calling its employees, the employer will often preemptively increase
17 compensation or other benefits to reduce the risk that its rivals will be able to poach
18 undercompensated employees.

19 71. For years, Silicon Valley companies like Google have had handshake agreements
20 with each other to not cold call each other's employees.

21 72. Adobe founder John E. Warnock explained:

22 We were entering in a live-or-die kind of environment where we were exposed to
23 all of the details of the [Apple] Macintosh, I mean, and worked hand in hand with
24 their engineers. They were exposed to a lot of details in [Adobe] PostScript and I
25 think in order to establish trust, [Adobe co-founder Charles M. Geschke] and I
26 had a handshake agreement with Steve [Jobs] not to cold call their employees.

27 73. Veteran Silicon Valley executive Bill Campbell ("Campbell") explained that
28 similar "gentleman's agreements" had long been common among Valley companies with shared

1 board members, explaining, “it seemed like that was a practice that was being honored just out of
2 respect for the board member’s time.”

3 **B. Google**

4 74. Per an undated internal Google document titled “Special Agreement Hiring Policy
5 Protocol for ‘Do Not Cold Call’ and ‘Sensitive’ Companies,” by at least 2005, and until at least
6 2010, Google began entering into agreements with its rivals to eliminate competition for
7 employees. Google improperly agreed to not directly cold call or otherwise solicit employment
8 from any individuals employed at several specific companies, and each company in the cartel
9 agreed to the same conditions with Google. These agreements were designed to, and did,
10 improperly restrict hiring, decrease employee mobility, and artificially deflate salaries
11 throughout Silicon Valley and also harmed Google and its shareholders.

12 75. Furthermore, Google entered into illegal hiring agreements with companies it
13 deemed “Sensitive.” For such “Sensitive” companies, hiring restrictions applied to director-level
14 or higher candidates who Google engaged and had begun to interview. For each company on the
15 “Sensitive” list, Google staffing was required to inform the Company’s Executive Management
16 Group, who in turn designated a senior executive to either place a “courtesy call” into the
17 “Sensitive” company when an offer was made, or for certain undisclosed exceptions, call into the
18 “Sensitive” company to indicate that Google would be making an offer. Defendants Brin, Page,
19 Schmidt, and Brown comprised the Executive Management Group, among others. The latter
20 scenario allowed Google and its co-conspirators to restrict offers to certain employees that the
21 colluding companies’ executives had orally agreed not to poach, and further, to ensure that the
22 salaries offered for such individuals did not exceed certain artificially low thresholds that had
23 been agreed upon between the companies.

24 76. Defendants were directly involved in creating and/or overseeing Google’s illegal,
25 anticompetitive hiring agreements and protocols, and were regularly updated regarding the same.
26 Publicly available information demonstrates Defendants’ clear knowledge and involvement.

1 **i. Google and Apple**

2 77. Steve Jobs was one of the architects of the conspiracy because of his strong desire
3 not to have his employees go to other firms. In early 2005, Google and Apple agreed not to
4 recruit certain of each other's employees. The earliest publicly available documentation of this
5 agreement are emails written by Defendant Brin about Jobs' threats against Google. Jobs
6 thought that Google was trying to recruit the team working on Apple's Safari browser. On
7 February 13, 2005, Defendant Brin memorialized in an email that Jobs "made various veiled
8 threats."

9 78. On February 17, 2005, Jobs telephoned Defendant Brin again with threats and, as
10 a result, Defendant Brin agreed to stop recruiting from Apple. Jobs' message, as noted in an
11 email from Defendant Brin, could not have been more clear. Defendant Brin understood after
12 his call with an "irate" Jobs, that his position was "if you hire a single one of these people that
13 means war." Defendant Brin took this threat seriously and advised the Executive Management
14 Group not to "make any new offers or contact new people at Apple until we have had a chance to
15 discuss."

16 79. To ensure its employees complied with the agreement, Google placed Apple on
17 its internal "Do Not Call" list, which instructed Google employees not to cold call Apple
18 employees. Apple also informed its relevant personnel about its agreement with Google and
19 instructed them not to cold call Google employees. Senior executives of both companies
20 monitored compliance with the agreement and policed violations.

21 80. On February 27, 2005, non-party Campbell, a member of Apple's Board of
22 Directors, a Senior Advisor at Google, and mentor to Defendant Schmidt, emailed Jobs to assure
23 him that Defendant Schmidt "got directly involved and firmly stopped all efforts to recruit
24 anyone from Apple." The next day, an Apple internal memorandum to all of its recruiters in the
25 United States reflects that Apple and Google agreed not to recruit each other's employees.

26 81. Defendants put the agreement with Apple into an official company policy at least
27 by early March 2005. A Google internal memorandum lists Apple as a company having a
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1 special agreement with Google and that is part of the “Do Not Call” list, effective March 6, 2005.
2 Google’s protocol was “[n]ot to directly cold call into” companies on this list. Google’s first
3 anticompetitive agreements came on the heels of Jobs’ threat to Defendant Brin to stop all
4 recruiting at Apple. Google expanded the scope of its anti-competitive conspiracy by adding
5 Intel, Intuit, and eBay to Google’s “Do Not Cold Call” list, though their effective dates were not
6 until the following year.

7 82. In a February 13, 2006 email from Apple’s Jobs to Defendant Schmidt, Jobs
8 complained, “I am told that Googles [sic] new cell phone software group is relentlessly
9 recruiting in our iPod group. If this is indeed true, can you put a stop to it?” On the same day,
10 Defendant Schmidt deferentially replied, “I’m sorry to hear this; we have a policy of no
11 recruiting of Apple employees. I will investigate immediately!”

12 83. Then, in a March 7, 2007 email from Jobs to Defendant Schmidt, Jobs again
13 protested about Google’s suspected violations of its anticompetitive non-solicitation agreement
14 with Apple: “Eric [Schmidt], I would be very pleased if your recruiting department would stop
15 doing this,” referring to an email from a recruiter for the Google.com Engineering team.

16 84. In response, Defendant Schmidt emailed Defendant Geshuri the next day, telling
17 him to “get this stopped and let me know why this is happening? I will need to send a response
18 back to Apple quickly so please let me know as soon as you can.” Defendant Geshuri replied to
19 defendant Schmidt, reporting:

20 On this specific case, the sourcer who contacted this Apple employee should not
21 have and will be terminated within the hour . . . In general, we have a very clear
22 “do not call” policy that is given to every staffing professional and I reiterate this
23 message in ongoing communications and staff meetings . . . for this type of
24 violation we terminate [the employee’s] relationship with Google. Please extend
25 my apologies as appropriate to Steve Jobs. This was an isolated incident and we
26 will be very careful to make sure this does not happen again.

27 85. Defendant Schmidt responded to Defendant Geshuri stating, “[a]ppropriate
28 response. Please make a public example of this termination with the group. Please also make it
a very strong part of the new hire training for the group.” Defendants Schmidt’s and Geshuri’s
immediate handling of Jobs’ request demonstrates that they were far more concerned with

1 enforcing these anticompetitive agreements and maintaining good relations with Apple than with
2 preserving competition in Silicon Valley.

3 86. An internal Apple email from 2009 reveals that the anticompetitive non-
4 solicitation agreements were mutual and ongoing. Google appeared on Apple's "Hands Off (Do
5 Not Call List)," which was circulated between Apple employees.

6 **ii. Google and Intel**

7 87. By no later than September 2007, Google had entered into an agreement with
8 Intel that was similar or identical to Google's agreement with Apple to stop recruiting employees
9 from each other. Senior executives at Google and Intel expressly agreed, through direct
10 communications, not to cold call each other's employees. Google's internal memorandum from
11 March 2006 lists Intel as a company having a special agreement with Google that was part of the
12 "Do Not Call" list since March 6, 2005. Thus, Google's protocol was "[n]ot to directly cold call
13 into" Intel. Similarly, Intel instructed its human resources staff about the existence of the
14 agreement.

15 88. Senior executives of Google and Intel monitored compliance with the
16 anticompetitive non-solicitation agreements and policed violations. For example, Google had
17 extended an offer to an Intel employee. Upon learning of this, Defendant Rosenberg informed
18 Laszlo Bock ("Bock"), Senior Vice President of Google's People Operations in charge of all
19 hiring, in August 2006 that "[Bill] Campbell and I already discussed this and agreed that either
20 way I should give a call to [Defendant] Paul Otellini [Intel's then-CEO and President]. I'm
21 meeting with [the Intel employee] tomorrow and I will ask him how he wants to handle
22 communication to Intel management before we even get to the stage of specifically discussing an
23 offer." Defendant Rosenberg's email demonstrates how important the unlawful non-solicitation
24 agreements were to Google's executive team.

25 89. In an April 2007 email, Defendant Otellini noted the existence of the
26 anticompetitive agreement between Google and Intel. Defendant Otellini wrote that he was
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1 “worried that [Google] would try to raid [Intel]” to fill two senior management positions.
2 However, he also stated, “I have an unofficial no poaching policy with [Google].”

3 90. In a June 3, 2007 email to Defendant Brown and Bock, Defendant Schmidt
4 inquired about Google’s policy regarding hiring Intel employees. Schmidt informed them,
5 “Since [Defendant] Paul [Otellini] is on [Google’s] board we should have a crisp rule.”
6 Defendant Otellini was also the CEO and President of Intel, and a member of its Board of
7 Directors at that time. Defendant Geshuri replied, “Since the beginning of the Do Not Call List,
8 Intel has been listed. No one calls, networks, or emails into the company or its subsidiaries
9 looking for people.” Defendant Schmidt then relayed Defendant Geshuri’s response to
10 Defendant Otellini. It seems that Defendant Otellini asked Defendant Schmidt about Google’s
11 policy regarding hiring Intel employees after a suspected violation. Defendant Schmidt added,
12 “Hopefully there are no exceptions to this policy and if you become aware of this please let me
13 know immediately!” Defendant Otellini forwarded Defendant Schmidt’s email to Intel
14 personnel, stating, “Fyi . . . Do not fwd.”

15 91. In a September 6, 2007 email, Defendant Otellini clarified Intel’s relationship
16 with Google to Intel personnel with the subject “global gentleman agreement with Google”:
17 “[Google and Intel] have nothing signed. We have a handshake ‘no recruit’ between eric
18 [Schmidt] and myself. I would not like this broadly known.”

19 92. Despite this illegal, anticompetitive agreement between Google and Intel at this
20 time, Renee James of Intel emailed Defendant Otellini on September 26, 2007, demonstrating
21 Google was losing the opportunity to hire the best employees in stating, “I am losing so many
22 people to Google.” Defendant Otellini then emailed Defendant Schmidt, asking, “Eric
23 [Schmidt], can you pls [sic] help here??? Renee runs all my s/w efforts.” Defendant Schmidt
24 replied, assuring Defendant Otellini that Google does not actively recruit from Intel. He added,
25 Defendant “Arnon [Geshuri] will run the diligence and report back to you on the facts. If we
26 find that a recruiter called into Intel, we will terminate the recruiter. We take these relationships
27 exceptionally seriously.” Moreover, he wrote, Google will “develop and implement a process to
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1 actively flag candidates from sensitive companies as soon as they receive a response to
2 their Google application.”

3 **iii. Google and Intuit**

4 93. By June 2007, Google had entered into an agreement with Intuit that was nearly
5 identical to Google’s agreements with Apple and Intel. Google and Intuit agreed to eliminate
6 competition between them for skilled labor, designed to suppress the compensation and mobility
7 of each company’s employees. Senior executives from these two companies expressly agreed,
8 through direct communications, not to cold call each other’s employees. Like the agreements
9 with Apple and Intel, the Google internal memorandum from March 2006 lists Intuit as a
10 company having a special agreement with Google that is part of the “Do Not Call” list, effective
11 April 10, 2006; Google’s protocol was “[n]ot to directly cold call into” companies on this list.
12 However, instead of the entire company, the memorandum lists eighteen specific individuals at
13 Intuit to avoid contacting. This agreement was later amended to include Intuit on the general
14 “Do Not Call” list.

15 94. On June 5, 2007, Defendant Geshuri sent an email to Google employees
16 requesting that the Do Not Call list “now include Intuit 100% do not call” instead of only the
17 original eighteen named employees. The next day, Defendant Geshuri emailed Defendant
18 Schmidt, copying Defendant Brown, informing them that Campbell, Chairman of Intuit’s board
19 and a member of Apple’s board, “requested that Intuit be added fully to the Do Not Call list . . .
20 Please confirm that you are okay with the modification to the policy.”

21 95. To ensure compliance with the non-solicitation agreement, Google added Intuit
22 on its “Do Not Call” and “Sensitive” company list, and instructed Google employees not to cold
23 call Intuit employees. This was included on an email titled “Arnon’s Top 10.”

24 96. Senior Google and Intuit executives monitored compliance with the agreement
25 and policed violations. For example, Egon Zehnder International (“Egon Zehnder”), a leading
26 executive search firm, emailed an Intuit employee on November 18, 2005, regarding a search it
27 was conducting on behalf of Google for the newly created role of Chief Marketing Officer. The

1 very next day, Campbell asked Defendant Rosenberg, “[a]re you guys nuts?” after coming across
2 Egon Zehnder’s email to the Intuit employee. Campbell was then Google’s Senior Advisor and
3 Chairman of Intuit’s Board of Directors. Defendant Brown then emailed Martha Josephson of
4 Egon Zehnder regarding the email, stating, “This is pretty bad. Can you educate your colleagues
5 please.”

6 97. On February 13, 2007, Campbell again emailed Bock copying Defendant Brown,
7 requesting, “Can we please not target Intuit . . .” with respect to an Intuit employee who had
8 reached out to Google. Bock emphasized that Intuit was on “Google’s do not solicit” list. Bock
9 added, “[T]here are a lot of fish in the sea and I’m happy to not move forward with conversations
10 with this particular individual if you prefer.”

11 98. The companies in the unlawful cartel also assisted each other in forming and
12 policing their agreement. Campbell’s February 18, 2006 email to Jobs mentioned a conversation
13 he had with Defendant Schmidt. “I am heading out of town . . . and wanted to give you the latest
14 of what I heard from Google after talking to Eric Schmidt. [] Eric told me he got directly
15 involved and firmly stopped all efforts to recruit anyone from Apple.”

16 **iv. Google and Dell**

17 99. By April 2007, Google entered into a non-solicitation agreement with Dell after
18 Michael Dell (“M. Dell”), Dell’s CEO and founder, emailed Defendant Schmidt to express his
19 displeasure about “Google extend[ing] an offer to one of [Dell]’s sales guys . . . given our
20 partnership.” M. Dell suggested that the companies “have a general understanding that we are
21 not actively recruiting from each other.”

22 100. Shortly thereafter, Defendant Schmidt forwarded M. Dell’s email to two of
23 Google’s human resources executives. Bock stated that Google would “put Dell on ‘do not call’
24 for the next 2 months.”

25 **v. Google and eBay**

26 101. In September 2005, Google entered into a non-solicitation agreement with eBay
27 after eBay CEO Margaret C. Whitman (“Whitman”) telephoned Defendant Schmidt complaining
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1 that Google’s recruiters were hurting profits and business at eBay. Defendant Schmidt
2 subsequently emailed Google’s Executive Management Group summarizing Whitman’s and
3 “The valley’s” view that competing for workers by offering higher pay packages was “unfair.”
4 Defendant Schmidt told a Google executive to “fire the recruiter [who offended Whitman]
5 immediately” because she was a “good friend.” Soon after Whitman’s call to Defendant
6 Schmidt, Google listed eBay under “Sensitive” companies.

7 102. In early October 2005, Defendant Brown, then-Google’s Senior Vice President of
8 Human Resources, emailed Defendant Schmidt a draft list of companies on the Company’s “Do
9 Not Call” and “Sensitive” lists, and the policy protocols. Defendant Schmidt replied, “This
10 looks very good.” Defendant Brown then asked Defendant Schmidt if Defendant Kordestani,
11 then Google’s Senior Vice President of Global Sales and Business Development, could share
12 “with Ebay/[PayPal] the rules as they pertain to them?” Defendant Schmidt replied, “I would
13 prefer that Omid [Kordestani] do it verbally.” He even voiced concern regarding “a paper trail
14 over which we can be sued later.”

15 **C. Specific Documentation of Defendants’ Misconduct at Google**

16 103. On October 4, 2005, an email explaining the illegal, anticompetitive hiring policy
17 was sent to many senior Google employees and directors, including Defendants Page, Brin,
18 Schmidt, and Brown. The email contained a list of companies that Google had reached an
19 agreement with, including both “Do Not Cold Call” companies and “Sensitive” companies. The
20 email further requested feedback from Google’s top executives and directors concerning the
21 stated policies and protocols for each type of company.

22 104. Defendant Schmidt expressly agreed to the illegal policy referenced in the
23 October 4, 2005 email, responding that it “looks very good.” Defendants Page and Brin tacitly
24 approved of the policy by not responding thereto.

25 105. In an October 5, 2005 follow up email to the above email, Defendant Brown
26 asked Defendant Schmidt if he was at all concerned with sharing the anticompetitive protocol
27 between Google and eBay, and Google and PayPal. Defendant Schmidt replied that he “would
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1 prefer that [the information was shared] verbally since I don't want to create a paper trail over
2 which we can be sued later?" Defendant Brown agreed that it "makes sense to do orally."

3 106. Non-party Campbell emailed Defendant Rosenberg in November 2005, asking,
4 "Jonathan . . . Are you guys nuts? Bill," referring to an email Egon Zehnder International
5 ("Egon Zehnder"), an executive search firm, sent to an Intuit employee on behalf Google. Egon
6 Zehnder was conducting a search for Google's newly created role of Chief Marketing Officer.
7 Defendant Rosenberg did not reply, but is copied on a subsequent email (along with Campbell)
8 from Defendant Brown – Senior VP of Google's Human Resources at the time, to Egon Zehnder,
9 in which she admonishes the firm for the solicitation email.

10 107. In an email string from April and May 2006, Defendants Page, Brin, and Eustace
11 were all aware that Google had decided not to hire certain individuals because doing so would
12 risk Google's relationship with Apple. In April 2006, Defendant Eustace emailed Jobs to ask if
13 he would have an issue with Google hiring a former Apple employee. Jobs responded that he
14 "would have a problem if [what the employee is working on] is related to cell phone handsets,
15 etc." After Defendant Eustace replied that it would not be "anything having to do with cell
16 phone handsets," Jobs responded "[t]hat would be fine with me." Defendant Eustace then asked
17 Jobs for approval because that employee wanted "to hire 4 people that used to work for him at
18 Apple in Paris. Three left in [sic] Apple in December, and one gave notice in December...."
19 Defendant Eustace went so far as to write to Jobs, "Are you OK with this? *If not, I'm willing to*
20 *cancel the entire thing.*" (Emphasis added.) Jobs responded, "[w]e'd strongly prefer that you
21 not hire these guys." Thus, based entirely on Jobs' "strong preference that [Google] not hire the
22 ex-Apple engineers," Defendant Eustace informed Jobs that "Jean-Marie [the employee
23 requesting to hire the additional four ex-Apple employees] and I decided not to open a Google
24 Paris engineering center." On May 23, 2006, Defendant Eustace forwarded this email string
25 along to Defendants Page and Brin, and non-party Campbell.

26 108. Defendant Rosenberg also enforced Google's illegal agreements. For example, in
27 August 2006, Google was about to extend a job offer to an Intel employee when Defendant
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1 Rosenberg informed Bock that “[Bill] Campbell and I already discussed this and agreed that
2 either way I should give a call to Paul Otellini. I’m meeting with [redacted (likely, the Intel
3 employee)] tomorrow and I will ask him how he wants to handle communication to Intel
4 management before we even get to the stage of specifically discussing an offer.”

5 109. Another Google internal memorandum, dated November 2006, and entitled
6 “Special Agreement Hiring Policy Protocol for ‘Restricted Hiring,’ ‘Do Not Cold Call,’ and
7 ‘Sensitive’ Companies” provided detailed instructions for dealing with employees from each of
8 these lists. The policy noted that Microsoft Corp., Novell Inc. (“Novell”), Oracle Corp., and Sun
9 Microsystems, Inc. (“Sun Microsystems”) were on the “Restricted Hiring” list, which meant that
10 Google had agreed “not to pursue manager level and above candidates for Product, Sales, or
11 G&A roles – even if they have applied to Google.”

12 110. Defendant Rosenberg received an email from a Google employee, Andrea Ritzer,
13 in January 2007, stating, “[i]t will be very challenging to add new initiatives [without] losing
14 something out the other end. I’m trying to be creative [with] recruiting from within the
15 [organization] . . . but we need to start poaching from other companies which is not that
16 something we currently do.” Defendant Rosenberg was therefore aware of the hiring difficulties
17 caused by Google’s non-solicitation agreements with other companies.

18 111. Defendant Schmidt and non-party Campbell also worked closely with Jobs to
19 enforce the terms of the agreement. On March 7, 2007, Jobs emailed Defendant Schmidt to
20 inform him about an attempt by a Google employee to recruit an Apple engineer, stating, “I
21 would be very pleased if your recruiting department would stop doing this.” Defendant Schmidt
22 forwarded Jobs’ email to undisclosed recipients and asked, “[c]an you get this stopped and let me
23 know why this is happening?” Google’s staffing director responded that the employee who
24 contacted the Apple engineer “will be terminated within the hour.” Defendant Brown added:

25 Appropriate response. Please make a public example of this termination with the
26 group. ***Please also make it a very strong part of new hire training for the group.***
27 ***I want it clear that we have a zero-tolerance policy for violating our policies.***
28 This should (hopefully) prevent future occurrences.

(Emphasis added.)

1 112. Defendant Otellini sought to ensure that the “no recruit” policies were followed at
2 Google. On September 26, 2007, he received an email from an Intel executive stating that
3 Google was selectively hiring certain people at Intel. Defendant Otellini forwarded the email to
4 Defendant Schmidt and asked, “Eric [Schmidt], can you [please] help here???” Defendant
5 Schmidt forwarded the email to other executives at Google, noting that he was under the
6 impression that Google was not hiring from Intel, and requesting an investigation. In response,
7 Defendant Schmidt was assured that Google’s policy was to not actively recruit from Intel, but if
8 the investigation “find[s] that a recruiter called into Intel, we will terminate the recruiter.” The
9 email also assured Defendant Schmidt that Google “take[s] these relationships exceptionally
10 seriously.” Defendant Geshuri told Defendant Schmidt that the Google recruiters “are strictly
11 following the Do Not Call policy regarding Intel and no one has called, networked, or emailed
12 into the company or its subsidiaries looking for talent.”

13 113. For most of Google’s co-conspirators, no publicly available documents detailing
14 the negotiations leading up to the illegal agreements exist. The lack of records is not surprising,
15 since Defendants knew of the impropriety of such agreements. Nevertheless, documents have
16 recently surfaced that demonstrate how simple it was for Defendants to create the
17 anticompetitive agreements with Google’s competitors. For example, Dell was added to
18 Google’s “Do Not Cold Call” list pursuant to a short email request from M. Dell, the Founder,
19 Chief Executive Officer, and Chairman of Dell, to Defendant Schmidt. M. Dell emailed
20 Defendant Schmidt to develop a “general understanding that we are not actively recruiting from
21 each other.” Defendant Schmidt forwarded the email to other members of the Executive
22 Management Group, and instructed them to “put [Dell] on the ‘don’t call into Dell’ list for a
23 while.” Presumably, the details of the agreement were reached orally between Defendant
24 Schmidt and M. Dell.

25 114. Defendant Geshuri created Google’s formal “Do Not Call” list, and was the link
26 between Defendant Schmidt and Google’s recruiters in implementing the illegal scheme.
27 Defendant Geshuri enforced the agreement by having anyone who contacted an Apple employee
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1 terminated. Defendant Geshuri explained Google’s policy with respect to Apple to Defendant
2 Eustace in an email dated February 11, 2008. Defendant Eustace asked, “What is the policy
3 toward recruiting from Apple?” Defendant Geshuri responded, “Apple is on our Do Not Call list
4 which basically means we cannot proactively go after anyone from the company. We are not
5 allowed to call, email, or network directly into Apple to find passive candidates.”

6 115. Google’s scheme to restrict competitive hiring stretched across many of Silicon
7 Valley’s most powerful and influential companies. Recently revealed documents demonstrate
8 the extent of these agreements with companies including Apple, Intel, Intuit, eBay, and Dell.

9 116. In testimony from a March 18, 2013 deposition, Defendant Brin indicated that the
10 entire Google Board of Directors knew of these agreements, stating:

11 We felt that we should think, you know, are there other companies [besides
12 Apple] where we also don’t wish to, you know, needlessly aggravate the
13 executives, and I believe that Genentech was an example, and [Former Director
14 Defendant] Art Levinson was on our board, and so was Intel, and [Director
15 Defendant] Paul Otellini was on our board. ***So I’m sure that we would have
mentioned it to at least those board members, probably might as well the whole
board.***

15 (Emphasis added.)

16 117. Even though Defendants had clear knowledge these anticompetitive hiring
17 agreements and protocols were illegal, Defendants caused and/or blindly permitted Google to
18 enter into “Do Not Cold Call” agreements with at least ten companies, and “Sensitive”
19 agreements with at least eight companies. In particular, per Google’s internal documents, in or
20 about March 2005, Google entered into “Do Not Cold Call” agreements with Genentech, Intel,
21 Apple, PayPal, and Comcast Corporation (“Comcast”). By January 2006, Google added
22 OpenTV Corp. (“OpenTV”) and NVIDIA (“NVIDIA”) Corporation to the “Do Not Cold Call”
23 list, and Intuit was added in April 2006, followed by eBay in November 2006, and Dell Inc.
24 (“Dell”) in April 2007. eBay was also on the “Sensitive” companies list at some point, along
25 with AOL Inc., Ask Jeeves, Inc., EarthLink, Inc., NTL, Clear Channel Communications, Inc.,
26 International Business Machines Corporation, and Lycos Inc.

1 118. The illegal collusion between Google and its competitors was easy to accomplish
2 because many of the Defendants had roles at both Google and other companies that engaged in
3 the anticompetitive misconduct.

4 119. For example, Defendant Otellini, in addition to his role at Google, also served on
5 the Intel Board of Directors, as well as Intel's Chief Executive Officer between May 2005 and
6 May 2013 – during the entirety of the misconduct alleged herein.

7 120. Defendant Otellini played a key role in generating the anticompetitive hiring
8 agreement between Google and Intel. For example, in a September 6, 2007 email exchange
9 between Defendant Otellini and other Intel employees, bearing the subject line “global
10 gentleman agreement with Google,” Defendant Otellini was asked if he knew of any “agreement
11 with Google that prohibits [Intel] from recruiting Google's senior talent.” Defendant Otellini
12 responded, “[l]et me clarify. We have nothing signed. We have a handshake ‘no recruit’
13 between eric [Defendant Schmidt] and myself. I would not like this broadly known.”

14 121. When Google and Apple reached their anticompetitive agreement, Defendant
15 Schmidt was also a director on Apple's Board, as was non-party Campbell, who was a senior
16 advisor at Google and a director on Apple's Board.

17 122. Google's anticompetitive agreements with other companies were so pervasive that
18 they were not limited by geography (extending beyond Silicon Valley), job function, product
19 group, or time period. For example, Sunni Paik, Google's Asia Pacific Leadership Recruiter,
20 emailed Defendant Geshuri, Google's Director of Recruiting, to confirm whether they could
21 “cold call companies in Korea (excluding the ‘do not cold call’ companies, of course),” seeking
22 to “check” and “get your approval” from Defendant Geshuri.

23 123. Similarly, an email between Apple employees discussing applicants for a “sous
24 chef” position shed light on the extent of the agreement between Google and Apple. The email
25 notes that Apple had received several resumes from Google employees, but that “[w]e are not
26 recruiting these folks, they are actively seeking us out.” The Apple employees discussed the
27 “sensitivity” issue, and one noted that “she gets it loud & clear.” The email further noted that the

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1 Apple employee had “heard some rumblings the last couple of months that Google may not
2 necessarily be honoring their part of the hands-off policy, although I don’t have any hard
3 evidence.”

4 124. Remarkably, Defendants even put their anticompetitive agreements with other
5 companies into official company memoranda. In one memorandum entitled “Special Agreement
6 Hiring Policy Protocol for ‘Do Not Cold Call’ and ‘Sensitive’ Companies,” Google listed the
7 companies that were part of its arrangement. This memorandum noted that more and more
8 companies were being added to the agreement over time. It provided specific instructions for the
9 companies included on the “Do Not Cold Call” list, which included Genentech, Intel, Apple,
10 PayPal, Comcast, OpenTV, NVIDIA, Intuit, and eBay. For each of these companies, Google
11 employees were warned that they were “[n]ot to directly cold call into those companies.”

12 125. Google’s policy also set forth specific restrictions for companies on their
13 “Sensitive” list. Google’s protocol was to provide notice to the Executive Management Group of
14 companies on this list when it was recruiting or extending an offer to their employees at the
15 director level or higher. Ironically, the policy solidifying the anticompetitive agreement
16 informed employees to “[p]lease be cautious when recruiting teams from any company to keep
17 our candidates and potential employees safe from legal action.” Furthermore, the policy also
18 noted the pervasive nature of these anticompetitive agreements, stating that “[m]ost companies
19 have non-solicit agreements which would limit or prohibit a candidate from asking a coworker to
20 interview with us as well.”

21 126. The anticompetitive policies fostered at Google were so strong that Google
22 actually refrained from establishing a new division because it was Steve Jobs’ “strong
23 preference” that they not hire certain individuals. Google entered into anticompetitive
24 agreements with companies they deemed “Sensitive.” For “Sensitive” companies, hiring
25 restrictions applied to director level or higher candidates whom Google engaged and had begun
26 to interview. For each company on the “Sensitive” list, Google staffing was required to inform
27 Google’s Executive Management Group. The Executive Management Group would then
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1 designate a senior executive to either place a “courtesy call” to the “Sensitive” company when an
2 offer was extended, or for certain undisclosed exceptions, call into the “Sensitive” company to
3 indicate that Google was making an offer. The latter scenario allowed Google and its co-
4 conspirators to restrict offers to certain employees that the colluding companies’ executives had
5 orally agreed not to poach and ensure that the offered salaries for such individuals did not exceed
6 certain artificially deflated thresholds that were agreed upon between the companies. This
7 allowed the companies to give the appearance that they had not entered into the illegal
8 covenants, when they in fact had.

9 **D. The DOJ Investigation**

10 127. In 2009, the DOJ began investigation of Silicon Valley’s anticompetitive hiring
11 practices. On September 24, 2010, the DOJ filed a complaint against Google, Adobe, Apple,
12 Intel, Intuit, and Pixar, alleging that these companies’ secretive agreements amounted to
13 restraints of trade that were *per se* unlawful under the antitrust laws. The DOJ alleged that the
14 agreements “are facially anticompetitive because they eliminated a significant form of
15 competition to attract high tech employees, and, overall, substantially diminished competition to
16 the detriment of the affected employees who were likely deprived of competitively important
17 information and access to better job opportunities.” The DOJ further alleged that the agreements
18 “disrupted the normal price-setting mechanisms that apply in the labor setting.” The DOJ
19 announced a settlement of the action on its website on September 24, 2010, though a final
20 judgment in the action was not entered until March 17, 2011.

21 **E. Class Action Litigation Against Google and Its Competitors**

22 128. On May 4, 2011, the first of several class actions was filed by employees of
23 Google, Adobe, Apple, Intel, Intuit, Pixar, and other Silicon Valley companies that were
24 investigated by the DOJ. These actions were consolidated in September 2011 in the United
25 States District Court for the Northern District of California, and sought injunctive relief and
26 damages for violations of: Section 1 of the Sherman Act, 15 U.S.C. §1; the Cartwright Act;

1 California Business and Professions Code §§16720, *et seq.*; California Business and Professions
2 Code §16600; and California Business and Professions Code §§17200, *et seq.*

3 129. On January 27, 2012, the parties filed an unredacted Joint Case Management
4 Conference Statement (“CMC Statement”). The CMC Statement selectively quoted the contents
5 of certain internal documents from Intel and other companies that were uncovered in discovery
6 in the Antitrust Class Action. This was the first time the public learned about the extent of the
7 anticompetitive practices detailed herein, and that they were the result of “gentleman’s
8 agreements” between the officers and directors of the companies involved in the collusive
9 scheme, including Google.

10 130. On April 18, 2012, the Court granted in part and denied in part the defendants’
11 joint motion to dismiss the Antitrust Class Action. The Court held that the federal enclave
12 doctrine did not extinguish the claim for violation of California’s Cartwright Act, and that the
13 class action plaintiffs sufficiently alleged: the colluding companies’ overarching conspiracy, as
14 required to state a claim for Sherman Act violation; the colluding companies’ knowledge of and
15 intent to engage in conspiracy; and a *per se* violation of the Sherman Act. *See generally In re*
16 *High-Tech Emp. Antitrust Litig.*, 856 F. Supp. 2d 1103, 1108 (N.D. Cal. 2012). The Court
17 further held that the class action plaintiffs had Article III standing to bring a restraint of trade
18 claim and sufficiently alleged an antitrust injury, as required to bring a claim under the Sherman
19 Act, but had no vested interest protected by California’s Unfair Competition Law. *See id.*

20 131. On January 22, 2013, true copies of the documents quoted in the CMC Statement,
21 along with certain other internal documents from Intel and others, were finally made public when
22 they were attached as exhibits to the Declaration of Anne B. Shaver in Support of Plaintiffs’
23 Notice of Motion and Motion for Class Certification, and Memorandum of Law in Support.

24 132. On April 24, 2014, the remaining parties to the Antitrust Class Action (Google,
25 Adobe, Apple, and Intel) informed the Court that they had reached an agreement to settle the
26 Antitrust Class Action. The settlement amount was \$324.5 million.

1 133. However, on August 8, 2014, the Court denied the antitrust plaintiffs’ motion for
2 preliminary approval of settlements with Google, Adobe, Apple, and Intel. *See High-Tech*
3 *Employee*, 2014 WL 3917126. At length, the Court highlighted the overwhelming evidence
4 against Google demonstrating that it had engaged in anticompetitive behavior. *Id.*, at *9-*11.
5 This includes, *inter alia*:

- 6 a. Defendant Schmidt terminated at least two recruiters for violations of anti-
7 solicitation agreements, and threatened to terminate more;
- 8 b. Defendant Schmidt informed Defendant Otellini that Defendant Schmidt
9 would terminate any Google recruiter who recruited Intel employees;
- 10 c. Google maintained a formal “Do Not Call” list, which was approved by
11 top Google executives;
- 12 d. A draft of the “Do Not Call” list was presented to Google’s Executive
13 Management Group, which consisted of Defendants Schmidt, Page, Brin,
14 and Brown, among other senior Google executives;
- 15 e. Defendant Schmidt approved Google’s “Do Not Call” list;
- 16 f. Google executives knew that the anti-solicitation agreements could lead to
17 legal troubles;
- 18 g. Defendant Schmidt told Defendant Brown that he preferred the “Do Not
19 Call” list to only be shared “verbally . . . since I don’t want to create a
20 paper trail over which we can be sued later?”; (*id.*, at *9) and
- 21 h. Defendant Geshuri, upon learning that Facebook was cold calling
22 Google’s employees, responded by suggesting that Google contact
23 Facebook’s Chief Operating Officer to consider establishing a mutual “Do
24 Not Call” agreement.

25 134. The Court ultimately rejected the settlement in the Antitrust Class Action because
26 “there is ample evidence of an overarching conspiracy between” Google and the other
27 defendants, and of “evidence of Defendants’ rigid wage structures and internal equity concerns,
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1 along with statements from Defendants’ own executives, are likely to prove compelling in
2 establishing the impact of the anti-solicitation agreements” *Id.*, at *16. The Court
3 concluded that the settlement amount of \$324.5 million was too low. *Id.*, at *17.

4 135. In response, on January 15, 2015, Google, Adobe, Apple, and Intel, as well as the
5 Antitrust Class Action plaintiffs, filed a new motion for preliminary approval of the settlement.
6 This time, the purported settlement would pay the Antitrust Class Action plaintiffs \$415 million.

7 136. On March 3, 2015, Judge Koh granted preliminary approval to the new \$415
8 million settlement in the Antitrust Class Action. After the parties to the Antitrust Class Action
9 submit additional briefing and Class members are given an opportunity to object, the Court will
10 hold a final approval hearing regarding the new \$415 million settlement on July 9, 2015.

11 **F. Defendants’ Misconduct Has Caused Google Significant Harm**

12 137. As a result of Defendants’ breach of their fiduciary duties, Google entered into
13 anticompetitive hiring agreements with several of the Company’s peers. These agreements
14 restricted employee mobility and artificially decreased the wages of over 100,000 employees in
15 Silicon Valley.

16 138. In September 2010, Google was forced to enter into a five-year settlement
17 agreement with the DOJ to remedy the Company’s illegal anticompetitive agreements with its
18 co-conspirators. The DOJ alleged that Google’s non-solicitation agreements amounted to
19 restraints of trade that were *per se* unlawful under the federal antitrust laws. The DOJ
20 determined that the agreements are “facially anticompetitive because they eliminated a
21 significant form of competition to attract high tech employees, and, overall, substantially
22 diminished competition to the detriment of the affected employees who were likely deprived of
23 competitively important information and access to better job opportunities.” A final judgment in
24 the DOJ action against Google was entered on March 17, 2011. Under this settlement, Google
25 was required to cease entering into these anticompetitive agreements, annually file a statement
26 describing any violations, and allow the DOJ to access Google’s offices and to interview
27 Google’s executives employees to ensure compliance with the settlement. Notably, within sixty
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1 days of entry of the final judgment, and for each of the succeeding five years, each director of
2 Google must certify that (s)he had read the Final Judgment, understood it, was not aware of any
3 violation of the Final Judgment, and understood that any “person’s failure to comply with this
4 Final Judgment may result in an enforcement action for civil or criminal contempt of court
5 against [Google] and/or any person who violates this Final Judgment.” *United States v. Adobe*
6 *Systems, Inc.*, No. 10-cv-1629, ECF No. 17, §VI.A.4 (D.D.C. Mar. 18, 2011) Google sustained
7 significant harm from the DOJ investigation and settlement, both in terms of reputation and the
8 expenditure of substantial time and money to defend itself, and it will continue to have to expend
9 money to comply with its settlement with the DOJ.

10 139. Furthermore, as alleged herein, Google has also been sued in a class action
11 brought by Silicon Valley employees for antitrust and other violations alleging that their wages
12 have been suppressed, which has been settled, but the Court has yet to approve the settlement.
13 The Antitrust Class Action, which was initially filed against six companies, seeks billions of
14 dollars in damages against all the defendants. A class was certified and trial was scheduled for
15 May of 2014. Presently, Google’s agreement to pay part of a \$415 million settlement awaits
16 Court approval. Google has had to expend substantial time and money to defend itself and will
17 have to spend more time and money to satisfy the settlement.

18 140. Google’s reputation has been harmed as a result of these anticompetitive
19 agreements.

20 141. Further harm has come from the loss of innovation which occurred because of the
21 anticompetitive agreements. Alan Hyde, a Professor and a Sidney Reitman Scholar at Rutgers
22 University School of Law and author of *Working in Silicon Valley: Economic and Legal Analysis*
23 *of a High-Velocity Labor Market*, concluded that technological and economic growth depends
24 upon a company’s ability to hire and fire employees quickly in his theory of damages. Professor
25 Hyde addresses the evolving labor market by utilizing the high-technology employers in Silicon
26 Valley as a case study. Professor Hyde declares that the rapid and frequent turnover of
27 employees is a key component resulting in short job tenures. He also identifies the heavy use of
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1 temporary labor and a lack of loyalty to individual firms as contributing factors. Professor Hyde
2 labels these unique components of employment in the mobile market of Silicon Valley as “high-
3 velocity.” In an attempt to explain why high-velocity labor supports rapid technological growth,
4 Professor Hyde effectively identifies and explains two general concepts, “flexibility” and
5 “information diffusion.” “Flexibility” accounts for the fluid market of available employees
6 consisting of contractors and consultants who typically move from one company to the next.
7 “Information diffusion” accounts for the technical know-how and advancements that travel
8 between companies as those employees move from job to job.⁶

9 142. Thus, Defendants impeded technological and economic growth at Google by
10 entering into non-solicitation agreements with the Company’s competitors to artificially freeze
11 employee salaries at Google and at other companies, which suppressed high-velocity labor by
12 squelching flexibility and information diffusion. The anticompetitive agreements run contrary to
13 what has made Silicon Valley so successful: job-hopping. As Professor Hyde explains, “[t]here
14 is a fair amount of research that tech companies, particularly in California, have distinctive
15 personnel practices.” He stated, “[t]hey hire for short tenures and keep ties with former
16 employees so there can be an exchange of information across company lines. The companies in
17 [a class-action lawsuit that accuses industry executives of agreeing between 2005 and 2009 not
18 to poach one another’s employee] might have been killing the golden goose.”⁷

19 143. This loss has been confirmed by Google internal documents. Prior to Google’s
20 agreement with Apple, Google determined it needed to “dramatically increase the drain to
21 competitors to accomplish this rate of hiring [employees for positions in the technical class].”
22 There was a large “hiring gap” for engineering positions. Google found that cold calling offered
23 the highest yield of employees. In response to concerns about slow hiring, Google’s Chief
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25 ⁶ ALAN HYDE, *WORKING IN SILICON VALLEY: ECONOMIC AND LEGAL ANALYSIS OF A HIGH-VELOCITY*
26 *LABOR MARKET* (M.E. Sharpe, Inc. 2003).

27 ⁷ David Streitfeld, *Engineers Allege Hiring Collusion in Silicon Valley*, *New York Times*, Feb. 28, 2014,
28 http://www.nytimes.com/2014/03/01/technology/engineers-allege-hiring-collusion-in-silicon-valley.html?_r=0.
Visited May 2, 2014.

1 Culture Officer stated that: “Cold calling into companies to recruit is to be expected unless
2 they’re on our ‘don’t call’ list.” Google tracked the decline of its top technical candidates as well
3 as the loss of its technical employees.

4 144. A January 8, 2007 email from Google personnel to Defendant Rosenberg reveals
5 how “it will be very challenging to add new initiatives [without] losing something out the other
6 end” due to the anticompetitive non-solicitation agreements in place between Google and other
7 competitors. Further, he stated, “I’m trying to be creative [with] recruiting from within the
8 [organization] . . . but we need to start poaching from other companies which is not something
9 that we currently do.”

10 145. When Google removed eBay and PayPal from its “Do Not Call” list, this opened
11 the door for a flood of talent and therefore, innovation. Defendant Geshuri’s May 14, 2007
12 email to Defendant Schmidt stated, “[i]n response to the recent lifting of eBay and PayPal from
13 the ‘do not call list,’ staffing is ready to pursue several hundred leads and candidates from these
14 two companies for various roles within Google.”

15 146. Furthermore, as a direct and proximate result of Defendants’ actions, Google has
16 expended, and will continue to expend, significant sums of money. Such expenditures include,
17 but are not limited to: (a) costs incurred from years of lost opportunities to hire more qualified
18 employees who were employed at other companies; (b) costs incurred from defending and
19 eventually paying a settlement in the Antitrust Class Action for violations of antitrust laws;
20 (c) costs incurred from defending and settling the DOJ action against Google; (d) loss of
21 reputation; and (e) costs incurred from compensation and benefits paid to the Defendants who
22 have breached their duties to Google.

23 **VII. DIRECTOR DEFENDANTS’ CAMPAIGN FOR RETENTION WHILE**
24 **WITHHOLDING MATERIAL INFORMATION FROM**
SHAREHOLDERS

25 147. On May 9, 2012, several of the Director Defendants caused Google to issue a
26 false and misleading proxy statement in connection with the 2012 Annual Shareholders’ meeting
27 that was held on June 21, 2012 (the “2012 Proxy”), at which Google’s shareholders were to vote
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1 on the election of the ten nominees for the Board listed in the proxy, including all of the Director
2 Defendants.

3 148. In violation of Section 14(a) of the Exchange Act, the 2012 Proxy contained
4 materially false and misleading statements and omissions.

5 149. The 2012 Proxy misleadingly represented that Google's Board of Directors
6 selected nominees for the Board who "are committed to maintaining the highest standards of
7 business conduct and corporate governance, which we believe are essential to running our
8 business efficiently, serving our stockholders well, and maintaining our integrity in the
9 marketplace. We have adopted a code of business conduct and ethics for directors, officers
10 (including our principal executive officer and principal financial and accounting officer), and
11 employees, known as the Google Code of Conduct."

12 150. As noted above, the Google Code of Conduct required Defendants, *inter alia*, to
13 preserve "[o]ur reputation as a company that our users can trust is our most valuable asset, and it
14 is up to all of us to make sure that we continually earn that trust. All of our communications and
15 other interactions with our users should increase their trust in us."

16 151. Furthermore, the Google Code of Conduct assured investors that Google and the
17 Defendants would "Obey the Law," including not violating antitrust, competition, or unfair
18 competition laws.

19 152. These statements were false and misleading at the time they were made in the
20 absence of the disclosure that these Director Defendants (Page, Brin, Schmidt, Doerr, Greene,
21 Hennessy, Mather, Otellini, Shriram, and Tilghman) had exhibited a distinct lack of personal and
22 professional integrity by causing and/or allowing the Company to knowingly violate federal
23 antitrust laws. These statements were material because there is a substantial likelihood that a
24 reasonable shareholder would consider them important in deciding how to vote.

25 153. In addition, the 2012 Proxy misleadingly provides: "Our employees . . . are
26 everything. Google is organized around the ability to attract and leverage the talent of
27 exceptional technologists and business people. . . . In line with this philosophy, we have
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1 designed our compensation programs to support three main goals: [a]ttract and retain the world's
2 best talent[; s]upport Google's culture of innovation and performance[; and a]align employee and
3 stockholder interests." This statement was false and/or misleading at the time it was made in the
4 absence of a disclosure that Google did not design such a compensation program but was
5 required by a settlement agreement with the DOJ to stop its compensation program that
6 suppressed wages or inhibited innovation.

7 154. These false and misleading statements and omissions were an essential link in the
8 election of the Director Defendants to the Board of Directors of Google. The 2012 Proxy
9 harmed Google by interfering with the proper governance on its behalf that follows the free and
10 informed exercise of the stockholders' right to vote for directors. For example, as a result of the
11 false proxy statement's interference with fair corporate suffrage, the Director Defendants were
12 elected to the Board and continued to harm Google by causing and/or allowing the Company and
13 its employees to break the law.

14 155. On April 24, 2013, several of the Director Defendants caused Google to issue a
15 false and misleading proxy statement in connection with the 2013 Annual Shareholders' meeting
16 that was held on June 6, 2013 (the "2013 Proxy"), at which Google's shareholders were to vote
17 on the election of the ten nominees for the Board listed in the proxy, including all of the Director
18 Defendants.

19 156. In violation of Section 14(a) of the Exchange Act, the 2013 Proxy contained
20 materially false and misleading statements and omissions.

21 157. The 2013 Proxy misleadingly represented that Google's Board of Directors
22 selected nominees for the Board must comply with the Google Code of Conduct. Specifically,
23 the 2013 Proxy stated:

24 We have adopted a code of business conduct and ethics for directors, officers
25 (including our principal executive officer and principal financial and accounting
26 officer), and employees, known as the Google Code of Conduct. We have also
27 adopted Corporate Governance Guidelines, which, in conjunction with our
28 certificate of incorporation, bylaws, and charters of the standing committees of
our board of directors, form the framework for our corporate governance.

1 158. As noted above, the Google Code of Conduct required Defendants, *inter alia*, to
2 preserve “[o]ur reputation as a company that our users can trust is our most valuable asset, and it
3 is up to all of us to make sure that we continually earn that trust. All of our communications and
4 other interactions with our users should increase their trust in us.”

5 159. Furthermore, the Google Code of Conduct assured investors that Google and the
6 Defendants would “Obey the Law,” including not violating antitrust, competition, or unfair
7 competition laws.

8 160. This statement was false and misleading at the time it was made in the absence of
9 the disclosure that these Director Defendants (Page, Brin, Schmidt, Doerr, Greene, Hennessy,
10 Mather, Otellini, Shriram, and Tilghman) had exhibited a distinct lack of personal and
11 professional integrity by causing and/or allowing the Company to knowingly violate federal
12 antitrust laws. This statement was material because there is a substantial likelihood that a
13 reasonable shareholder would consider it important in deciding how to vote.

14 161. In addition, the 2013 Proxy misleadingly provides: “Our employees . . . are
15 everything. Google is organized around the ability to attract and leverage the talent of
16 exceptional technologists and business people. . . . In line with this philosophy, we have
17 designed our compensation programs to support three main goals: [a]ttract and retain the world’s
18 best talent[; s]upport Google’s culture of innovation and performance[; and a]lign employee and
19 stockholder interests.” This statement was false and/or misleading at the time it was made in the
20 absence of a disclosure that Google did not design such a compensation program but was
21 required by a settlement agreement with the DOJ to stop its compensation program that
22 suppressed wages or inhibited innovation.

23 162. Thus, an investor could not take comfort from the existence of the reporting
24 structure described in the 2013 Proxy because Google’s management and directors did not care if
25 their employees broke the law.

26 163. These false and misleading statements and omissions were an essential link in the
27 election of the Director Defendants to the Board of Directors of Google. The 2013 Proxy

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1 harmed Google by interfering with the proper governance on its behalf that follows the free and
2 informed exercise of the stockholders' right to vote for directors. For example, as a result of the
3 false proxy statement's interference with fair corporate suffrage, the Director Defendants were
4 elected to the Board and continued to harm Google by causing and/or allowing the Company and
5 its employees to break the law.

6 164. On March 28, 2014, several of the Director Defendants caused Google to issue a
7 false and misleading proxy statement in connection with the 2014 Annual Shareholders' meeting
8 that was held on May 14, 2014 (the "2014 Proxy"), at which Google's shareholders were to vote
9 on the election of the ten nominees for the Board listed in the proxy, including all of the Director
10 Defendants.

11 165. In violation of Section 14(a) of the Exchange Act, the 2014 Proxy contained
12 materially false and misleading statements and omissions.

13 166. The 2014 Proxy misleadingly represented that Google's Board of Directors
14 selected nominees for the Board must comply with the Google Code of Conduct. Specifically,
15 the 2014 Proxy stated:

16 We have adopted a code of business conduct and ethics for directors, officers
17 (including our principal executive officer and principal financial and accounting
18 officer), and employees, known as the Google Code of Conduct. We have also
19 adopted Corporate Governance Guidelines, which, in conjunction with our
20 certificate of incorporation, bylaws, and charters of the standing committees of
21 our board of directors, form the framework for our corporate governance.

22 167. As noted above, the Google Code of Conduct required Defendants, *inter alia*, to
23 preserve "[o]ur reputation as a company that our users can trust is our most valuable asset, and it
24 is up to all of us to make sure that we continually earn that trust. All of our communications and
25 other interactions with our users should increase their trust in us."

26 168. Furthermore, the Google Code of Conduct assured investors that Google and the
27 Defendants would "Obey the Law," including not violating antitrust, competition, or unfair
28 competition laws.

169. This statement was false and misleading at the time it was made in the absence of
the disclosure that these Director Defendants (Page, Brin, Schmidt, Doerr, Greene, Hennessy,

1 Mather, Otellini, Shriram, and Tilghman) had exhibited a distinct lack of personal and
2 professional integrity by causing and/or allowing the Company to knowingly violate federal
3 antitrust laws. This statement was material because there is a substantial likelihood that a
4 reasonable shareholder would consider it important in deciding how to vote.

5 170. In addition, the 2014 Proxy misleadingly provides: “Our employees . . . are
6 everything. Google is organized around the ability to attract and leverage the talent of
7 exceptional technologists and business people. . . . In line with this philosophy, we designed our
8 compensation programs for all Googlers, including named executive officers, to support three
9 main goals: [a]ttract and retain the world’s best talent[; s]upport Google’s culture of innovation
10 and performance[; and a]lign employee and stockholder interests.” This statement was false
11 and/or misleading at the time it was made in the absence of a disclosure that Google did not
12 design such a compensation program but was required by a settlement agreement with the DOJ
13 to stop its compensation program that suppressed wages or inhibited innovation.

14 171. Thus, an investor could not take comfort from the existence of the reporting
15 structure described in the 2014 Proxy because Google’s management and directors did not care if
16 their employees broke the law.

17 172. These false and misleading statements and omissions were an essential link in the
18 election of the Director Defendants to the Board of Directors of Google. The 2014 Proxy
19 harmed Google by interfering with the proper governance on its behalf that follows the free and
20 informed exercise of the stockholders’ right to vote for directors. For example, as a result of
21 their election to the Board, the Director Defendants continued to harm Google by causing and/or
22 allowing the Company and its employees to break the law.

23 **VIII. THE STATUTE OF LIMITATIONS DOES NOT BAR PLAINTIFF’S**
24 **CLAIMS, OR ALTERNATIVELY, THE STATUTE OF LIMITATIONS**
25 **WAS TOLLED**

26 173. The statute of limitations does not bar Plaintiff’s shareholder derivative action,
27 because Plaintiff has brought its action within the requisite time frame.
28

1 174. In the alternative, the statute of limitations was tolled during the period of
2 wrongdoing under the doctrines of fraudulent concealment and equitable tolling.

3 175. “[T]he statute of limitations may be disregarded when a defendant has
4 fraudulently concealed from a plaintiff the facts necessary to put him on notice of the truth.
5 Under this doctrine, a plaintiff must allege an affirmative act of ‘actual artifice’ by the defendant
6 that either prevented the plaintiff from gaining knowledge of material facts or led the plaintiff
7 away from the truth.” *In re Tyson Foods, Inc.*, 919 A.2d 563, 585 (Del. Ch. 2007).

8 176. Defendants issued false and misleading proxy statements, including the 2014
9 Proxy issued on March 28, 2014. In their public filings, the Director Defendants specifically
10 stated that they and the Company were in compliance with all antitrust laws. As alleged herein,
11 however, this was false and misleading. These misstatements are an act of “actual artifice” that
12 satisfy the requirements of the doctrine of fraudulent concealment. *See, e.g., Tyson Foods*, 919
13 A.2d at 590.

14 177. Furthermore, “[t]he equitable tolling doctrine . . . applies if the Stockholder
15 Plaintiffs were actually lulled into repose by AIG’s public filings.” *In re Am. Int’l Grp., Inc.*,
16 965 A.2d 763, 813 (Del. Ch. 2009). The doctrine of equitable tolling “stops the statute [of
17 limitations] from running while a plaintiff has reasonably relied upon the competence and good
18 faith of a fiduciary. No evidence of actual concealment is necessary in such a case. . . .” *Tyson*
19 *Foods*, 919 A.2d at 585.

20 178. Again, Defendants issued false and misleading proxy statements, including the
21 2014 Proxy issued on March 28, 2014. In their public filings, the Director Defendants
22 specifically stated that they and the Company were in compliance with all antitrust laws. These
23 misstatements misled investors, who relied in good faith on these misstatements. “To allow
24 fiduciaries who engaged in illegal conduct to wield a limitations defense against stockholders
25 who relied in good faith on those fiduciaries when their disclosures provided no fair inquiry
26 notice of claims would be inequitable.” *In re Am. Int’l Grp.*, 965 A.2d at 813.

1 179. Accordingly, the statute of limitations was tolled by virtue of the Director
2 Defendants' false and misleading public statements. Plaintiff did not discover, and could not
3 have discovered, the liability of Defendants until the truth was fully revealed after the filing of
4 the 2014 Proxy. Thus, the doctrines of fraudulent concealment and equitable tolling prevent the
5 statute of limitations from having run.

6 **IX. DAMAGES ALLEGATIONS**

7 180. As a direct and proximate result of the Defendants' wrongdoing, Google has
8 suffered, and will continue to suffer, a myriad of damages.

9 181. Defendants' actions here, for example, caused Google to suffer reputational
10 damages.

11 182. Furthermore, Defendants' actions have caused the Company to be the subject of a
12 high profile antitrust class action lawsuit, *In re High-Tech Employee Antitrust Litigation*, No. 11-
13 cv-2509-LHK (N.D. Cal.). Reportedly, the Company will attempt to settle this litigation for tens
14 of millions – if not hundreds of million – dollars.

15 183. In addition, Defendants, while causing and/or allowing the Company to violate
16 the law, received lavish compensation.

17 184. Furthermore, Defendants have caused the Company to expend tens of millions of
18 dollars on attorneys' fees and costs in defending against the DOJ action and the Antitrust Class
19 Action.

20 185. By the terms of the Company's final judgment with the DOJ entered on March
21 17, 2011, each Google director, for each of the succeeding five years, must certify that (s)he has
22 read the final judgment entered in that case, understands it, was not aware of any violation of the
23 final judgment, and that any "person's failure to comply with the Final Judgment may result in
24 an enforcement action for civil or criminal contempt of court against [Google] and/or any person
25 who violates the" final judgment. The DOJ settlement further requires Google to annually file a
26 statement describing violations of the agreement, and to allow the DOJ to access Google's
27 offices and to interview Google's executives and employees to ensure compliance with the
28

1 settlement. As a result, Google has sustained and will continue to sustain ongoing costs in
2 compliance with the DOJ settlement.

3 186. Finally, by virtue of the misconduct alleged herein, Google has lost out on many
4 of the best and brightest high-tech employees, thereby resulting in lost opportunities for
5 innovation in a company that is wholly dependent on such innovation.

6 **X. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

7 187. Plaintiff was a shareholder at the time of the conduct complained of herein and
8 has continuously held shares of Google through the present. Plaintiff will continue to remain a
9 shareholder of Google throughout the pendency of this action. Plaintiff will adequately and
10 fairly represent the interests of Google and its shareholders in enforcing its rights.

11 188. Plaintiff repeats, realleges, and incorporates by reference each and every
12 allegation set forth as though fully set forth herein. In addition to those allegations, demand on
13 the current Board of Directors (comprised of Defendants Larry Page, Sergey Brin, Eric E.
14 Schmidt, L. John Doerr, Diane B. Greene, John L. Hennessy, Ann Mather, Paul S. Otellini, K.
15 Ram Shriram, Shirley M. Tilghman, and non-defendant Alan R. Mulally) would have been a
16 futile act for at least the following reasons as set forth herein.

17 189. Such a demand would be a futile and useless act because there is a reasonable
18 doubt that: (1) the Board's actions that damaged the Company were the product of a valid
19 exercise of business judgment; and/or (2) a majority of the current eleven-member Board is
20 capable of making an independent and disinterested decision about whether to institute and
21 vigorously prosecute this action.

22 **A. The Board's Actions Were Not Valid Exercises of Business Judgment**

23 190. The Board's decision to violate the federal antitrust laws by engaging in the
24 illegal, anticompetitive hiring practices detailed herein was not a valid exercise of business
25 judgment.

1 191. The Board’s decision to cause and/or allow the Company to enter into illegal,
2 anticompetitive agreements with several of the Company’s competitors was not a valid exercise
3 of business judgment.

4 192. The Board’s decisions to reward wrongdoers through compensation were not
5 valid exercises of business judgment.

6 **B. Demand Is Futile Because the Complaint Alleges Facts Creating a**
7 **Reasonable Doubt that a Majority of the Board Is Independent and**
8 **Disinterested for Purposes of Considering a Demand**

9 193. A majority of the Board has a strong interest in refusing to bring the claims
10 asserted by Plaintiff to protect themselves against a substantial likelihood of liability for
11 violating the federal antitrust laws that disqualifies them from considering demand. Ten
12 directors on Google’s 11-member Board, including Director Defendants Page, Brin, Schmidt,
13 Doerr, Greene, Hennessy, Mather, Otellini, Shriram, and Tilghman, sat on the Google Board
14 during the relevant period and knew about the wrongful conduct described herein at the time it
15 was occurring. Each of these ten directors knew of the wrongdoing and either actively
16 orchestrated it or acquiesced in it. Accordingly, each of these current directors faces a
17 substantial likelihood of liability for causing and/or allowing Google to violate the federal
18 antitrust laws by engaging in the illegal, anticompetitive behavior alleged herein.

19 **C. Demand Is Futile Because a Majority of the Board Faces a Substantial**
20 **Likelihood of Liability for Breaching Their Fiduciary Duty to Google**

21 194. The same ten directors also face a substantial likelihood of liability for breaching
22 their fiduciary duty to Google. These ten individuals had an obligation to ensure that Google
23 complied with the law that they actively shirked. Faced with knowledge that Google was
24 engaging in illegal, anticompetitive hiring practices, these ten Defendants caused or allowed the
25 Company to continue its misconduct. These anticompetitive non-solicitation agreements
26 allowed the companies involved, including Google, to enter into, maintain, and enforce
27 anticompetitive non-solicitation agreements that prevented each other from soliciting, cold
28 calling, recruiting, and otherwise competing for employees without any procompetitive
justification. These agreements were broader than reasonably necessary for any collaboration

1 between the companies involved, including Google, and were deemed *per se* unlawful by the
2 DOJ. “Delaware law does not charter law breakers.” *In re Massey Energy Co.*, C.A. No. 5430-
3 VCS, 2011 WL 2176479, at *20 (Del. Ch. May 31, 2011). Based on these facts, there is a
4 substantial likelihood that Plaintiff will be able to prove that these ten individuals breached their
5 fiduciary duties of loyalty and good faith. The Director Defendants’ acts and omissions
6 amounted to a breach of fiduciary duty, abuse of control, gross mismanagement, and waste of
7 corporate assets because Google’s non-solicitation agreements eliminated a significant form of
8 competition to attract highly skilled employees, reducing the Company’s ability to compete for
9 high-tech workers and subjecting Google to criminal and civil prosecution for violations of
10 federal antitrust law. Accordingly, these ten individuals are disqualified from evaluating a
11 demand and demand is therefore futile.

12 195. As detailed herein, Defendants Page, Brin, Schmidt, and Otellini breached their
13 fiduciary duties of good faith and loyalty by directly creating, ratifying, or implementing the
14 illegal, anticompetitive anti-solicitation agreements.

15 196. Furthermore, Defendants Doerr, Hennessy, Mather, Shriram, and Tilghman also
16 breached their fiduciary duties by blindly ignoring the unlawful scheme and failing to prevent
17 Defendants Page, Brin, and Schmidt from controlling Google with no effective oversight. In
18 addition, these Defendants knowingly or recklessly approved or acquiesced to violations of law
19 by Defendants Page, Brin, Schmidt, and Otellini in failing to implement adequate internal
20 controls to prevent such violations.

21 197. The Director Defendants, with the exception of Defendant Greene, were either
22 aware of or consciously and blindly disregarded the illegal anticompetitive agreements. As
23 detailed herein, and as noted by Judge Koh in the Antitrust Class Action, ample evidence,
24 including internal Google emails and documents, exists to implicate the highest levels of
25 executives and directors at Google in the wrongdoing. Moreover, sworn testimony has identified
26 that the entire Board knew about the misconduct. Google actively worked to conceal these
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1 illegal agreements from the public eye, even though it was well known within the Company and
2 within the industry that these agreements were widespread and enforced.

3 198. To date, the Director Defendants have still failed to seek to recover for the
4 Company for any of the wrongdoing identified by Plaintiff herein. For all these reasons, a
5 majority of the current Google Board of Directors is incapable of independently and fairly
6 evaluating a demand to bring an action against themselves and other Google executives.

7 **D. Demand Is Futile Because Defendants Page, Brin, and Schmidt**
8 **Dominate and Control the Google Board of Directors**

9 199. Defendants Page, Brin, and Schmidt dominated the Google Board of Directors by
10 controlling shareholder voting power. As of March 17, 2014, Defendant Page alone controlled
11 28.1% of the shareholder voting power; Defendant Brin alone controlled 27.6% of the
12 shareholder voting power; and Defendant Schmidt alone controlled 5.5% of the shareholder
13 voting power. Accordingly, these three Defendants combined control a majority of the Google
14 Board of Directors, controlling over 61% of the shareholder voting power. Indeed, these three
15 Defendants have controlled a majority of the shareholder voting power since before Google even
16 began entering into anticompetitive hiring agreements. As disclosed in Google's most recent
17 Annual Report on Form 10-K filed with the SEC on February 12, 2014, Defendants Page, Brin,
18 and Schmidt "have significant influence over management and affairs and over all matters
19 requiring stockholder approval, including the election of directors and significant corporate
20 transactions . . . for the foreseeable future." The other Director Defendants are and have been
21 completely under the domination of Defendants Page, Brin, and Schmidt, preventing them from
22 taking remedial action against Defendants Page, Brin, and Schmidt. As majority shareholders,
23 Defendants Page, Brin, and Schmidt have the power to not re-elect any director who votes to
24 discipline them for their improper acts. Accordingly, demand is futile.

25 **E. Demand Is Futile Because a Majority of Google's Board Faces a**
26 **Substantial Likelihood of Liability for Violating Section 14(a) of the**
27 **Exchange Act**

28 200. As described above, ten culpable Director Defendants caused Google to
disseminate false and misleading proxies between 2012 and 2014, in violation of Section 14(a)

1 of the Exchange Act. These Proxies harmed Google by interfering with the proper governance
2 of the Company that would have followed a fully informed shareholder vote. Based on these
3 facts, there is a substantial likelihood that these ten individuals are liable under Section 14(a) of
4 the Exchange Act. In addition, there is a substantial likelihood that these same ten directors are
5 liable for breach of their fiduciary duties owed to the Company. Accordingly, these ten
6 individuals are disqualified from hearing demand and demand is therefore futile.

7 **F. Additional Demand Futility Allegations**

8 201. The Director Defendants, with the exception of Defendant Greene, were either
9 involved in creating, implementing, overseeing, or enforcing Google's employment policies
10 and/or anticompetitive agreements, or not independent of those who engaged in such acts.

11 202. *Defendants Page, Brin, Schmidt, and Otellini* orchestrated and were directly
12 involved in Google's anticompetitive agreements. Defendants Doerr, Hennessy, Mather,
13 Shriram, Tilghman, and Greene are not independent of Page, Brin, and Schmidt due to their
14 close professional and personal relationships. These relationships have caused conflicts of
15 interest precluding Defendants Doerr, Hennessy, Shriram, Mather, Tilghman, and Greene from
16 taking any necessary and proper steps against Page, Brin, and Schmidt on behalf of Google as
17 requested herein. None of the present members of the Google Board of Directors, with the
18 exception of non-party Mulally, are disinterested.

19 **Page and Brin**

20 203. *Defendants Page and Brin* co-founded Google in 1998, after having met at
21 Stanford University in 1995. Defendants Page and Brin, as alleged herein, were intimately
22 involved in the implementation, development, ratification, and enforcement of the illegal,
23 anticompetitive non-solicitation agreements that Google entered into with other Silicon Valley
24 companies. Furthermore, Defendants Page and Brin are the final decision makers at Google for
25 all major decisions. Defendants Page and Brin both issued the false and misleading Proxy
26 Statements sent to Google's shareholders between 2012 and 2014. Defendants Page and Brin
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1 were intimately involved in the creation, ratification, and implementation of the illegal
2 covenants. For example, in the Antitrust Class Action, Judge Koh has noted:

- 3 • “On the same day, Mr. Campbell sent an email to Mr. Brin and to Larry Page (Google
4 CoFounder) stating, ‘Steve just called me again and is pissed that we are still recruiting
5 his browser guy.’ . . . Mr. Page responded ‘[h]e called a few minutes ago and demanded
6 to talk to me.’”
- 7 • “Google promptly scrapped the plan, and the Google executive responded deferentially to
8 Mr. Jobs, stating, ‘Steve, Based on your strong preference that we not hire the ex-Apple
9 engineers, JeanMarie and I decided not to open a Google Paris engineering center.’ . . .
10 The Google executive also forwarded the email thread to Mr. Brin, Larry Page (Google
11 Co-Founder), and Mr. Campbell.”
- 12 • “A draft of the ‘Do Not Call’ list was presented to Google’s Executive Management
13 Group, a committee consisting of Google’s senior executives, including Mr. Schmidt,
14 Larry Page (Google Co-Founder), Sergey Brin (Google Co-Founder), and Shona Brown
15 (former Google Senior Vice President of Business Operations). . . . Mr. Schmidt
16 approved the list. . . . (email from Mr. Schmidt stating: ‘This looks very good.’).”
- 17 • “Google’s response to competition from Facebook also demonstrates the impact of the
18 alleged conspiracy. Google had long been concerned about Facebook hiring’s effect on
19 retention. For example, in an email to top Google executives, Mr. Brin in 2007 stated
20 that ‘the facebook phenomenon creates a real retention problem.’ . . . A month later, Mr.
21 Brin announced a policy of making counteroffers within one hour to any Google
22 employee who received an offer from Facebook.”

23 See *High-Tech Employee*, 2014 WL 3917126, at *7-*10.

24 204. Based on the foregoing, Defendants Page and Brin were intimately involved in
25 the illegal misconduct detailed herein. As two of the primary wrongdoers, they are incapable of
26 impartially considering a demand to initiate litigation. Thus, demand is futile with respect to
27 Defendants Page and Brin.

28 **Schmidt**

205. *Defendant Schmidt* began working at Google in 2001 as Chief Executive Officer
and has served on Google’s Board of Directors ever since. Since April 2011, Defendant Schmidt
has served as Google’s Executive Chairman. Defendant Schmidt has a close relationship with
Defendants Page and Brin, and with them, has control over decisions at Google. Defendant
Schmidt also served on Apple’s Board of Directors between August 2006 and July 2009, during

1 a substantial portion of the period of wrongdoing alleged herein. Defendant Schmidt approved
2 of the “Do Not Cold Call” list of companies, instructed Google employees to keep the
3 anticompetitive non-solicitation agreements secret, communicated with Jobs and other
4 executives at other companies about the illegal agreements, instructed Google employees to
5 implement the agreements, and ratified the termination of employment for those Google
6 employees who did not comply. Defendant Schmidt’s mentor at Apple is Bill Campbell,
7 Chairman of Intuit. Defendant Schmidt issued the false and misleading Proxy Statements sent to
8 Google’s shareholders between 2012 and 2014. Defendant Schmidt was intimately involved in
9 the creation, ratification, implementation, and enforcement of the illegal covenants. For
10 example, in the Antitrust Class Action, Judge Koh has noted:

- 11 • “The evidence against Google is equally compelling. Email evidence reveals that Eric
12 Schmidt (Google Executive Chairman, Member of the Board of Directors, and former
13 CEO) terminated at least two recruiters for violations of anti-solicitation agreements, and
14 threatened to terminate more. As discussed above, there is direct evidence that Mr.
15 Schmidt terminated a recruiter at Steve Jobs’ behest after the recruiter attempted to solicit
16 an Apple employee. Moreover, in an email to Bill Campbell (Chairman of Intuit Board
17 of Directors, Co-Lead Director of Apple, and advisor to Google), Mr. Schmidt indicated
18 that he directed a for-cause termination of another Google recruiter, who had attempted to
19 recruit an executive of eBay, which was on Google’s donot-cold-call list Finally, as
20 discussed in more detail below, Mr. Schmidt informed Paul Otellini (CEO of Intel and
21 Member of the Google Board of Directors) that Mr. Schmidt would terminate any
22 recruiter who recruited Intel employees.”
- 23 • “Moreover, there is evidence that Google executives knew that the anti-solicitation
24 agreements could lead to legal troubles, but nevertheless proceeded with the agreements.
25 When Ms. Brown asked Mr. Schmidt whether he had any concerns with sharing
26 information regarding the ‘Do Not Call’ list with Google’s competitors, Mr. Schmidt
27 responded that he preferred that it be shared ‘verbally[,] since I don’t want to create a
28 paper trail over which we can be sued later?’ Ms. Brown responded: ‘makes sense
to do orally. i agree.’”
- “Google’s impact on the labor market before the anti-solicitation agreements was best
summarized by Meg Whitman (former CEO of eBay) who called Mr. Schmidt ‘to talk
about [Google’s] hiring practices.’ . . . As Eric Schmidt told Google’s senior executives,
Ms. Whitman said ‘Google is the talk of the valley because [you] are driving up salaries
across the board.’ . . . A year after this conversation, Google added eBay to its do-not-
cold-call list.”

See *High-Tech Employee*, 2014 WL 3917126, at *9-*11.

206. Based on the foregoing, Defendant Schmidt was intimately involved in the illegal
misconduct detailed herein. As one of the primary wrongdoers, he is incapable of impartially

1 considering a demand to initiate litigation. Thus, demand is futile with respect to Defendant
2 Schmidt.

3 **Doerr**

4 207. ***Defendant Doerr*** was one of the earliest investors in Google, and has served on
5 the Company’s Board of Directors continuously since May 1999. Defendant Doerr has also
6 served on the boards of several other Silicon Valley tech companies, including Amyris, Inc.
7 since May 2006, Zynga, Inc. since April 2013, and Amazon from 1996 to 2010. Defendant
8 Doerr issued the false and misleading Proxy Statements sent to Google’s shareholders between
9 2012 and 2014. Defendant Doerr works as a General Partner at Kleiner Perkins Caufield &
10 Byers (“Kleiner Perkins”), and has since August 1980. Years ago, through Kleiner Perkins,
11 Defendant Doerr met Defendants Page and Brin. At their initial meeting, Defendant Doerr asked
12 Defendants Page and Brin: “[h]ow big do you think this can be?” Defendant Page replied: “Ten
13 billion.” As a Google-approved novel recounting this meeting directs:

14 [Defendant] Doerr just about fell off his chair. Surely, he replied to Page, you
15 can’t be expecting a market cap of \$10 billion. Doerr had already made a silent
16 calculation that Google’s optimal market cap – the eventual value of the company
– could go maybe as high as one billion dollars. “Oh, I’m very serious,” [replied
17 Defendant Page], “[a]nd I don’t mean market cap. I mean revenues.”⁸

18 Defendant Doerr also regularly scouts at Stanford for ideas, and describes the University, where
19 Defendant Hennessy serves as President and Defendants Page and Brin were once students and
20 conceived of Google, as the “germplasm for innovation. I can’t imagine Silicon Valley without
21 Stanford University.”

22 208. Over the course of his many years of close association with Google, Defendant
23 Doerr has sought and obtained significant investments from Google for private companies in
24 which Kleiner Perkins is a major investor. In 2007, Google bought Peakstream, Inc. for \$20.3
25 million. Kleiner Perkins was a part owner of Peakstream and received approximately 24.5% of
26 that sum. Kleiner Perkins also invested in Intuit (one of the other primary wrongdoers involved
27 in the illegal anticompetitive scheme). Since 2008, Google has invested \$47.5 million in

28 ⁸ STEVEN LEVY, IN THE PLEX: HOW GOOGLE THINKS, WORKS, AND SHAPES OUR LIVES (Simon & Schuster
2011).

1 companies that Kleiner Perkins has also invested in. In 2010, at the direction of Defendants
2 Page, Brin, and Schmidt, Google invested over \$21 million in companies in which Kleiner
3 Perkins has a substantial interest.

4 209. Again, Defendant Doerr was one of the earliest investors in and Board members
5 of Google. When Defendant Doerr joined the Google Board, he recommended that Defendant
6 Schmidt use Bill Campbell as a coach and mentor. Campbell, who is involved in the anti-
7 solicitation agreements, remains a close advisor to Defendant Schmidt. “I think John Doerr
8 would say Bill Campbell saved Google,” said Kleiner Perkins partner Will Hearst. “He coached
9 [Defendant Schmidt] on what it means to be a CEO, not the CEO of Novell but of a company
10 like Google. He taught [Defendant Schmidt] it’s a lot like being a janitor. There’s a lot of shit
11 you have to do. And he spent a lot of time with [Defendant Page] and [Defendant Brin],
12 explaining the difference between being a cool company or a smart company and being a
13 successful company.” Intuit, as alleged herein, was on Google’s “Do Not Cold Call” list by
14 April 2006, in significant part because Defendant Doerr was also a director at Intuit at that time.

15 210. Defendant Doerr and Campbell have had a close business relationship for
16 decades, and Defendant Doerr has backed entrepreneurs like Campbell, Scott D. Cook of Intuit,
17 Jeffrey P. Bezos of Amazon.com, and Mark Pincus of Zynga, Inc. Kleiner Perkins was an early
18 investor in Sun Microsystems, where Defendant Schmidt held various positions from 1983 to
19 1997. In fact, in 1996, Kleiner Perkins formed a \$100 million fund to invest in companies that
20 would create software and related products based on the Java programming language developed
21 by Sun Microsystems.

22 211. Defendants Doerr and Shriram have had a close relationship dating back to 1994.
23 Defendant Doerr also directed early venture capital funding to Netscape Communications Corp.
24 in 1994, when Netscape was founded and Defendant Shriram was its Vice President. Kleiner
25 Perkins paid \$4 million in 1994 for around 25% of Netscape and profited from Netscape’s initial
26 public offering and subsequent \$4 billion acquisition by America Online, Inc. in 1999.
27 Defendants Doerr and Shriram traveled together to India in 2006. Kleiner Perkins “and Shriram
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1 are working together to make investments in Indian companies serving the domestic market.
2 The visit by [Kleiner Perkins] partners and Shriram to the country later this month is to meet
3 entrepreneurs as well as business and political leaders,” said Sandeep Murthy, who represented
4 both Shriram’s venture capital firm Sherpalo Ventures, LLC, and Kleiner Perkins, in India.⁹

5 212. Based on the foregoing, Defendant Doerr is incapable of impartially considering a
6 demand to initiate litigation against Defendants Page, Brin, or Schmidt. Furthermore, he is not
7 independent of Defendants Page, Brin, Schmidt, or Shriram. Thus, demand is futile with respect
8 to Defendant Doerr.

9 **Greene**

10 213. ***Defendant Greene*** has served on Google’s Board of Directors since January 2012
11 and has also been a member of the Intuit Board of Directors since August 2006. Defendant
12 Greene issued the false and misleading Proxy Statements sent to Google’s shareholders between
13 2012 and 2014. Defendant Greene served on Intuit’s Board when Intuit and Google entered into
14 their illegal non-solicitation agreement, which began no later than 2007. Non-party Campbell,
15 Defendant Schmidt’s mentor and Defendant Doerr’s longtime friend, was Chairman of Intuit’s
16 Board when Greene was named thereto. Defendant Greene and Defendant Campbell worked
17 closely together and were also both early and major investors of Rockmelt, maker of a new
18 social browser, which was acquired by Yahoo! Inc. in 2013. Based on the foregoing, Defendant
19 Greene is incapable of impartially considering a demand to initiate litigation against her
20 colleagues on the Google Board of Directors. Thus, demand is futile with respect to Defendant
21 Greene.

22 **Hennessy**

23 214. ***Defendant Hennessy*** is the President of Stanford University. Google, at the
24 direction of Defendants Page and Brin (both alumni of Stanford), donates millions of dollars to
25 Stanford every year. Since 2006, Google has donated no less than \$14.4 million each year to
26

27 ⁹ Ishani Duttagupta, *Moneybag VCs Shriram, Doerr set sail from US*. THE TIMES OF INDIA, Jan. 9, 2009,
28 http://economictimes.indiatimes.com/articleshow/1363995.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. Visited Mar. 18, 2015.

1 Stanford. Defendant Hennessy's roles at Google and Stanford create tremendous conflict,
2 putting Defendant Hennessy on both sides of a business relationship. Google licenses its internet
3 search technology from Stanford, where as noted above, Defendants Page and Brin created the
4 Company and were students. For its services, Stanford received shares in Google's initial public
5 offering that the University later sold for \$336 million, and Stanford continues to receive
6 "modest" annual licensing fees from Google. Paul Aiken, Executive Director of the Authors
7 Guild, has called Defendant Hennessy's personal holdings in Google "a great concern," and says
8 "there seems to be both a personal and institutional profit motive here." In November 2006,
9 Google also pledged \$2 million to Stanford Law School's Center for Internet and Society. This
10 Center was founded by Stanford Professor Lawrence Lessing, who is known for his views that
11 copyright laws are often too restrictive, a view espoused by Google. Aine Donovan, Executive
12 Director of the Ethics Institute at Dartmouth College, says Stanford should not have accepted
13 this donation from Google because it is too narrowly tailored to benefit Google's corporate
14 interests. As she put it, "[i]t might as well be the Google Center."¹⁰

15 215. Furthermore, in 2004, just a few months before Google's initial public offering,
16 Google appointed Defendant Hennessy to its Board of Directors. Defendant Doerr, one of
17 Google's original investors and directors, first approached Defendant Hennessy. Defendant
18 Hennessy has invested money with Defendant Doerr's firm, Kleiner Perkins. Google granted
19 Defendant Hennessy 65,000 options to buy Google stock at \$20 per share. After Google's initial
20 public offering, SEC filings show that Defendant Hennessy received 10,556 shares of Google
21 stock as part of an earlier investment in a Kleiner Perkins fund.

22 216. Defendant Hennessy has also attended a political dinner with Defendants
23 Schmidt, Greene, and Levinson, and Steve Jobs at Defendant Doerr's house in February 2011.
24 Defendant Hennessy was the only non-business leader invited.¹¹ Defendant Schmidt has stated
25

26 ¹⁰ John Hechinger and Rebecca Buckman, *The Golden Touch of Stanford's President*, WALL STREET
27 JOURNAL, Feb. 24, 2007, <http://online.wsj.com/news/articles/SB117226912853917727>. Visited Mar. 18, 2015.

28 ¹¹ Ken Auletta, *Get Rich U*, THE NEW YORKER, Apr. 30, 2012, http://www.newyorker.com/reporting/2012/04/30/120430fa_fact_auletta?currentPage=all. Visited Mar. 18, 2015.

1 that when Google looks for engineers, it starts at Stanford. Five percent of Google's employees
2 are Stanford graduates.¹²

3 217. Defendant Hennessy also issued the false and misleading Proxy Statements sent
4 to Google's shareholders between 2012 and 2014. Based on the foregoing, Defendant Hennessy
5 is incapable of impartially considering a demand to initiate litigation against Defendants Page,
6 Brin, or Schmidt. If he did so, he would risk losing millions of dollars in donations to the
7 university at which he serves as President. In that capacity, one of Defendant Hennessy's
8 primary responsibilities is to maximize donations from Stanford alumni, and he would not risk
9 cutting or hindering ties with one of Stanford's most important donors. Thus, demand is futile
10 with respect to Defendant Hennessy.

11 **Mather**

12 218. ***Defendant Mather*** has served on Google's Board of Directors and as Chairman
13 of the Audit Committee continuously since November 2005. Defendant Mather issued the false
14 and misleading Proxy Statements sent to Google's shareholders between 2012 and 2014.
15 Defendant Mather worked as the Executive Vice President, Chief Financial Officer, and
16 Company Secretary of Pixar from October 1999 to May 2004, one of the other companies
17 accused of the anticompetitive wrongdoing alleged herein. While at Pixar, Defendant Mather
18 worked closely Apple's co-founder, Chairman, and Chief Executive Officer Steve Jobs, who was
19 also a majority shareholder in Pixar. Based on the foregoing, Defendant Mather is incapable of
20 impartially considering a demand to initiate litigation against her colleagues on the Google
21 Board of Directors. Thus, demand is futile with respect to Defendant Mather.

22 **Otellini**

23 219. ***Defendant Otellini*** has served on the Google Board of Directors since 2004, and
24 is also the former President and Chief Executive Officer of Intel, another of the primary
25 wrongdoers involved in the anticompetitive scheme detailed herein. Defendant Otellini issued
26

27 _____
28 ¹² *Id.*

1 the false and misleading Proxy Statements sent to Google’s shareholders between 2012 and
2 2014. In his joint capacities at Google and Intel, Defendant Otellini was intimately involved in
3 the creation, ratification, and implementation of the illegal covenants. For example, in the
4 Antitrust Class Action, Judge Koh has noted:

- 5 • “Finally, as discussed in more detail below, Mr. Schmidt informed Paul Otellini (CEO of
6 Intel and Member of the Google Board of Directors) that Mr. Schmidt would terminate
7 any recruiter who recruited Intel employees.”
- 8 • “There is also compelling evidence against Intel. Google reacted to requests regarding
9 enforcement of the anti-solicitation agreement made by Intel executives similarly to
10 Google’s reaction to Steve Jobs’ request to enforce the agreements discussed above. For
11 example, after Paul Otellini (CEO of Intel and Member of the Google Board of Directors)
12 received an internal complaint regarding Google’s successful recruiting efforts of Intel’s
13 technical employees on September 26, 2007 . . . (‘Paul, I am losing so many people to
14 Google We are countering but thought you should know.’), Mr. Otellini forwarded
15 the email to Eric Schmidt (Google Executive Chairman, Member of the Board of
16 Directors, and former CEO) and stated ‘Eric, can you pls help here???’ Mr. Schmidt
17 obliged and forwarded the email to his recruiting team, who prepared a report for Mr.
18 Schmidt on Google’s activities. . . . The next day, Mr. Schmidt replied to Mr. Otellini, ‘If
19 we find that a recruiter called into Intel, we will terminate the recruiter,’ the same remedy
20 afforded to violations of the Apple-Google agreement. . . . In another email to Mr.
21 Schmidt, Mr. Otellini stated, ‘Sorry to bother you again on this topic, but my guys are
22 very troubled by Google continuing to recruit our key players.’ Moreover, Mr.
23 Otellini was aware that the anti-solicitation agreement could be legally troublesome.
24 Specifically, Mr. Otellini stated in an email to another Intel executive regarding the
25 Google-Intel agreement: ‘Let me clarify. We have nothing signed. We have a handshake
26 ‘no recruit’ between eric and myself. I would not like this broadly known.’
27 Furthermore, there is evidence that Mr. Otellini knew of the anti-solicitation agreements
28 to which Intel was not a party. Specifically, both Sergey Brin (Google Co-Founder) and
Mr. Schmidt of Google testified that they would have told Mr. Otellini that Google had
an anti-solicitation agreement with Apple. . . . (‘I’m sure that we would have mentioned
it[.]’) . . . (‘I’m sure I spoke with Paul about this at some point.’). Intel’s own expert
testified that Mr. Otellini was likely aware of Google’s other bilateral agreements by
virtue of Mr. Otellini’s membership on Google’s board. . . . The fact that Intel was added
to Google’s do-not-cold-call list on the same day that Apple was added further suggests
Intel’s participation in an overarching conspiracy. . . . Additionally, notwithstanding the
fact that Intel and Google were competitors for talent, Mr. Otellini ‘lifted from Google’ a
Google document discussing the bonus plans of peer companies including Apple and
Intel. . . . True competitors for talent would not likely share such sensitive bonus
information absent agreements not to compete.”
- “The Apple-Google agreement was discussed at Google Board meetings, at which both
Mr. Campbell and Paul Otellini (Chief Executive Officer of Intel and Member of the
Google Board of Directors) were present. . . . After discussions between Mr. Brin and
Mr. Otellini and between Mr. Schmidt and Mr. Otellini, Intel was added to Google’s do-
not-cold-call list. Mr. Campbell then used his influence at Google to successfully lobby
Google to add Intuit, of which Mr. Campbell was Chairman of the Board of Directors, to
Google’s do-not-cold-call list.”
- “In light of the overlapping nature of this small group of executives who negotiated and
enforced the anti-solicitation agreements, it is not surprising that these executives knew

1 of the other bilateral agreements to which their own firms were not a party. For example,
2 both Mr. Brin and Mr. Schmidt of Google testified that they would have told Mr. Otellini
3 of Intel that Google had an anti-solicitation agreement with Apple. . . . ('I'm sure we
4 would have mentioned it[.]') . . . ('I'm sure I spoke with Paul about this at some point.').
5 Intel's own expert testified that Mr. Otellini was likely aware of Google's other bilateral
6 agreements by virtue of Mr. Otellini's membership on Google's board."

7 *See High-Tech Employee*, 2014 WL 3917126, at *9-*12, *15-*16.

8 220. Based on the foregoing, Defendant Otellini was intimately involved in the illegal
9 misconduct detailed herein. As one of the primary wrongdoers, he is incapable of impartially
10 considering a demand to initiate litigation. Thus, demand is futile with respect to Defendant
11 Otellini.

12 Shriram

13 221. *Defendant Shriram* was a founding member of the Google Board of Directors,
14 and during Google's earliest days, he counseled Defendants Page and Brin every Monday
15 morning and helped them to incorporate Google. Defendant Shriram helped Defendants Page
16 and Brin work out a licensing agreement with Stanford so that Stanford would benefit if
17 Defendants Page and Brin were successful. Per one publication, David Cheriton, a Stanford
18 computer science professor, introduced Defendant Shriram to Defendants Page and Brin in
19 1998,¹³ and Shriram made an investment of \$250,000. This makes Defendant Shriram one of
20 Google's four angel investors. Defendant Shriram also served as Vice President of Business
21 Development at Amazon from August 1998 to September 1999, and Amazon is one of the
22 companies with which Google entered into the illegal agreements alleged herein.

23 222. As alleged herein, Google and several of the Director Defendants have extremely
24 close ties with Stanford University. Defendant Shriram is no exception, having served on
25 Stanford's Board since December 2009. Accordingly, Defendant Shriram works very closely
26 with Defendant Hennessy (Stanford's President). Defendant Shriram and his wife have served
27 on Stanford's Parents' Advisory Board since 2006 and endowed the Shriram Family
28 Professorship in Science Education.

¹³ KEN AULETTA, *GOOGLED: THE END OF THE WORLD AS WE KNOW IT* (The Penguin Press 2009).
VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

1 maximize donations from Princeton alumni, and she would not risk cutting or hindering ties with
2 one of Princeton’s significant donors. Defendant Tilghman issued the false and misleading
3 Proxy Statements sent to Google’s shareholders between 2012 and 2014. Based on the
4 foregoing, Defendant Tilghman is incapable of impartially considering a demand to initiate
5 litigation. Thus, demand is futile with respect to Defendant Tilghman.

6 226. In the motion to dismiss order in *In re Google, Inc. S’holder Deriv. Litig.*, this
7 Court analyzed whether Google’s directors exercised independence when making decisions
8 unrelated to the present lawsuit. *See* No. 11-cv-4248, 2012 WL 1611064, at *7-*8 (N.D. Cal.
9 May 8, 2012). While the Court granted the motion to dismiss there, the Court determined that
10 the plaintiffs did an “adequate job of setting forth actual financial ties and motivations that go
11 beyond the mere existence of a naked business relationship” with respect to Defendants Doerr,
12 Hennessy, Shriram, and Tilghman. *Id.*, at *10. Significantly, the Court also held that:

13 Given the factual nature of the independence inquiry, and in view of the concrete
14 financial motivations that plaintiffs have alleged, such allegations are sufficient in
15 the court’s view—when combined with the majority stockholder control that Brin,
16 Page, and Schmidt have over the Board—to allege that neither Hennessy,
17 Shriram, Doerr, nor Tilghman were truly “independent directors capable of
18 considering a demand.”[“]

19 *Id.*

20 227. Even more so than in the previous, unrelated derivative litigation before this
21 Court (cited to in the preceding paragraph), Plaintiff has alleged the existence of interlocking
22 business, professional, and social relationships, in addition to financial alliances between
23 Defendants Page, Brin, and Schmidt, and the remaining Director Defendants. These
24 relationships have resulted in conflicts of interest that disable the other Director Defendants from
25 considering a demand to institute an investigation into the misconduct alleged herein on behalf of
26 the Company.

27 **XI. CAUSES OF ACTION**

28 **FIRST COUNT**
Breach of Fiduciary Duty
Against All Defendants

228. Plaintiff incorporates by reference and realleges each and every allegation set
forth above as if fully set forth herein.

1 Directors were selected, the effectiveness of the Board's oversight of compliance issues at
2 Google, and the Board's compliance with Google's Code of Conduct.

3 235. As stated herein, these Proxies contained untrue statements of material facts and
4 omitted to state material facts necessary to make the statements that were made not misleading,
5 in violation of §14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder. These
6 false statements and omissions were essential links in the election of the Director Defendants to
7 Google's Board of Directors and the continued mismanagement of Google.

8 236. The written communications made by the Director Defendants described herein
9 constitute violations of Rule 14a-9 and §14(a) because such communications were materially
10 false and/or misleading and were provided in a negligent manner.

11 237. At all relevant times to the dissemination of the materially false and/or misleading
12 Proxies, the Director Defendants were aware of and/or had access to the facts concerning
13 Google's operation.

14 238. Google has been severely injured by this conduct and is entitled to damages and
15 equitable relief.

16 **THIRD COUNT**
17 **Violation of §29(b) of the Exchange Act**
Against the Director Defendants

18 239. Plaintiff incorporates by reference and realleges each and every allegation set
19 forth above as if fully set forth herein.

20 240. The Director Defendants each received incentive compensation and fees,
21 including stock awards, while engaging in conduct that violates §14(a) of the Exchange Act.
22 The Director Defendants' incentive compensation and fees should be rescinded under §29 of the
23 Exchange Act because these Defendants violated §14(a) by issuing false and misleading reports
24 to Google shareholders regarding the nature of, and responsibility for, violations of federal law
25 and regulations. All of the payments the Director Defendants received are therefore voidable by
26 Google under §29(b) of the Exchange Act.

1 B. Finding that Defendants have breached their fiduciary duties to the Company and
2 violated the federal securities laws;

3 C. Against each of Defendants in favor of Google for the amount of damages
4 sustained by Google as a result of the breaches of fiduciary duties by each Defendant as alleged
5 herein, jointly and severally, in an amount to be determined at trial, together with pre- and post-
6 judgment interest at the maximum legal rate allowable by law

7 D. Requiring Defendants to return to Google all compensation and remuneration of
8 whatever kind paid by Google during the time that they were in breach of the fiduciary duties
9 they owed to Google;

10 E. Directing Defendants to establish, maintain, and fully fund effective corporate
11 governance and compliance programs to ensure that Google's directors, officers, and employees
12 do not engage in wrongful and illegal practices;

13 F. Granting appropriate equitable and/or injunctive relief to remedy Defendants'
14 misconduct, as permitted by law;

15 G. Awarding to Plaintiff the costs and disbursements of this action, including
16 reasonable attorneys' and experts' fees and expenses; and

17 H. Granting any such other further relief as the Court may deem just and proper.

18 **XIII. JURY TRIAL DEMANDED**

19 Plaintiff hereby demands a trial by jury.

20 Dated: March 23, 2015

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

21 By: /s/ John Jasnoch
22 John Jasnoch
23 707 Broadway, Suite 1000
24 San Diego, CA 92101
25 Telephone: (619) 233-4565
26 Facsimile: (619) 233-0508
27 Email: jjasnoch@scott-scott.com

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Thomas L. Laughlin, IV
Judith Scolnick
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
The Chrysler Building
405 Lexington Avenue, 40th Floor
New York, NY 10174
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
Email: tlaughlin@scott-scott.com
jscolnick@scott-scott.com

David R. Scott
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
156 South Main Street, P.O. Box 192
Colchester, CT 06415
Telephone: (860) 537-5537
Facsimile: (860) 537-4432
Email: david.scott@scott-scott.com

Attorneys for Plaintiff

VERIFICATION

I, David Merrell, on behalf of West Palm Beach Fire Pension Fund (the "Fund"), hereby declare and verify that the Fund is currently an owner of Google, Inc. ("Google" or the "Company") stock and has continuously been an owner of the Company's stock since at least as early as May 4, 2007. I have read the allegations of the complaint and confirm that this action is not collusive and that the Fund is capable and willing to fairly and adequately represent the interest of shareholders who are similarly situated in enforcing the rights of the Company.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of March, 2015, at Palm Beach, Florida.

West Palm Beach Fire Pension Fund

A handwritten signature in black ink, appearing to read "David S. Merrell", written over a horizontal line.