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11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**

14 JASON WEBER, Individually and On
 15 Behalf of a Class of Similarly Situated
 Individuals,

16 Plaintiff,

17 v.

18 GOOGLE INC., a Delaware Corporation,

19 Defendant.

CASE NO: 10-CV-05035 LHK

JURY DEMAND

FIRST AMENDED CLASS ACTION
 COMPLAINT FOR VIOLATIONS OF:

1. ELECTRONIC COMM. PRIVACY ACT,
18 U.S.C. § 2510
2. COMPUTER FRAUD & ABUSE ACT,
18 U.S.C. § 1030
3. CAL. BUS. & PROF. CODE § 17200
4. ~~CAL. CIV. CODE § 1750~~
5. CONVERSION

24
 25 Plaintiff Jason Weber (“Plaintiff”), through his attorneys, KamberLaw, LLC, brings this
 26 complaint on behalf of himself and all other similarly situated individuals (each a “Class Mem-
 27 ber” of the putative “Class”). The allegations in this complaint about his actions and
 28 observations are based on his own personal knowledge. The other allegations he makes in this

1 complaint are based on information he has learned through his attorneys and that he believes is
2 true. He believes these other allegations will be supported by substantial evidence that will
3 result from discovery and further investigation in this matter.

4 **I. NATURE OF THE CASE**

5 1. This action arises out of Plaintiff's downloading and use of software provided by
6 Google, known as the Google Toolbar ("Toolbar"), designed to aid users in searching and
7 browsing the web. For some of Toolbar's features to work, such as features to display additional
8 information about the web page the user is viewing, Toolbar transmits to Google certain infor-
9 mation about the user's web activity, including the specific pages the user views.

10 2. Despite Google's claim that a user can maintain web-browsing privacy by dis-
11 abling these features, including temporarily, Google's statements have been incorrect. In reality,
12 the functions that supposedly turned off Toolbar or its transmission features only turned off the
13 *display* of Toolbar in the user's browser window. Toolbar itself continued to function in the
14 background, transmitting to Google the address of every web page viewed by the user, along
15 with information that identified the individual user.

16 3. For many months, Google knew about serious discrepancies between what it said
17 about Toolbar and how Toolbar actually functioned. However, Google failed to take any correc-
18 tive action until late January of this year, after publicity revealed the details of Toolbar's im-
19 proper data collection. Google still has not taken steps to purge the improperly collected and
20 highly personal data that Toolbar improperly collected.

21 **II. JURISDICTION AND VENUE**

22 4. The Court has subject-matter jurisdiction over this case pursuant to 28 United
23 States Code, Section 1332, subsections (a) and (d)(2). Plaintiff and Defendant are citizens of
24 different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of
25 interest and costs. In addition, this Complaint alleges claims on behalf of a national class of
26 individuals who are minimally diverse from Defendant. The amount in controversy exceeds
27 \$5,000,000.00 exclusive of interest and costs. The class consists of more than one hundred
28

1 members.

2 5. This Court has federal subject-matter jurisdiction over this action pursuant to 28
3 United States Code, Section 1331 as this action arises in part under federal statutes.

4 6. This Court has supplemental subject-matter jurisdiction over the pendent state
5 law claims under 28 United States Code, Section 1367.

6 7. Venue is proper in this jurisdiction pursuant to 28 United States Code, Section
7 1391 because Defendant Google is a corporation headquartered in Santa Clara County, Califor-
8 nia and, therefore, resides in this judicial district.

9 8. In addition, venue is proper in this jurisdiction because a substantial part of the
10 events or omissions giving rise to the claims asserted in this complaint occurred in, were di-
11 rected from, and emanated from within this judicial district.

12 **III. PARTIES**

13 9. Plaintiff Jason Weber is a resident of Kings County in the State of New York and
14 has at all times relevant to the complained-of conduct has been a Google Toolbar user.

15 10. Defendant Google Inc. (“Google”) is a Delaware corporation with its principal
16 place of business in Santa Clara County at 1600 Amphitheatre Parkway, Mountain View,
17 California 94043. Google’s presence spans the globe. It operates hundreds of thousands of
18 servers in data centers worldwide. In addition, Google maintains at least 23 office locations in
19 the United States with offices in 39 other countries.

20 **IV. STATEMENT OF FACTS**

21 11. Google makes money by showing advertisements to Internet users. In 2009, 97
22 percent of its nearly \$24 billion in revenue came from advertising, the same proportion as 2008.

23 12. Consumers who choose to interact with Google do so main by using its popular
24 search engine. However, Google interacts with consumers on a far greater scale, by displaying
25 ads on millions of websites, some of which are its syndicated search partners and millions more
26 of which are third-party web sites that make up the “Google Network.”

27 13. In addition, Google displays online advertisements in the course of providing
28

1 over 40 Google-branded services and software offerings, such as its search engine and web-
2 based applications such as GMail, YouTube, and Google Docs; mobile device versions of
3 Google services; and downloadable software such as Toolbar.

4 14. Toolbar is software that users can download from the Internet and install on their
5 personal computers to help them browse websites.

6 15. Google reportedly told *PC World* that Toolbar runs on “hundreds of millions” of
7 computers. “Google Toolbar Tracks Some Browsing Even When It’s Not Supposed To,” *PC*
8 *World*, Jan. 25, 2010, http://www.pcworld.com/article/187670/google_toolbar_tracks_some_browsing_even_when_its_not_supposed_to.html (last visited Feb. 15, 2010).

10 **A. Google’s Collection and Retention of User Information**

11 16. With products such as Toolbar, Google acquires a great deal of information about
12 users’ Internet activities, adding to the already substantial information it acquires by providing a
13 search engine, network advertising, and more. However, as detailed in the Statement of Facts,
14 below, Google does not adequately or accurately disclose the extent of its collection of Toolbar
15 users’ data; Google does not fulfill its own promises to provide timely disclosure and opt-out
16 mechanisms; and the opt-out mechanisms Google has offered have not always functioned as
17 advertised. As further detailed in this complaint, the net effect is that many users transmit
18 information about themselves and their online activities to Google that they intended to keep
19 private.

20 17. Once installed on a user’s personal computer, Toolbar appears near the top of the
21 user’s web browser display as a row that includes a fill-in box for performing Google searches,
22 as well as several buttons that activate Toolbar’s basic features such as spell-checking and web
23 page language translation. *See* Figure 1, below.

24 *Figure 1. Toolbar appearance*



1 18. Toolbar routinely transmits to Google certain information about a Toolbar user
2 including: (a) the identifying and tracking information that is stored in Google’s cookies on the
3 user’s computer; (b) the IP address that uniquely and persistently identifies the user’s specific
4 personal computer; (c) the unique application number(s)—essentially serial numbers—unique to
5 the particular Toolbar software installed on a given computer.

6 19. If a user activates certain “advanced features” of Toolbar, Toolbar transmits to
7 Google the full Uniform Resource Locator (“URL”) of every web page requested by the user,
8 including full path information. The path information that follows the domain name in a URL
9 identifies the specific web page or Internet resource requested by a user. By analogy to a library
10 book, URL information is equivalent to identifying which book and which page in that book
11 was viewed by a reader. *See, e.g.*, Figure 2, below. URLs may reveal a user’s inquiries about
12 medical, political, religious, cultural, or financial matters.

13 *Figure 2. Sample URLs containing path information*

14 Underscore = path information

15 *Page title* = text typically displayed in browser window upper left corner

16 (a) <http://clinicaltrials.gov/ct2/show/NCT00809445>

17 *Page title*: “Rapid HIV Testing and Counseling – Full Text View –
Clinical Trials.gov”

18 (b) <http://da.co.la.ca.us/domv.htm>

19 *Page title*: “LADA Domestic Violence Hotline”

20 (c) <http://www.msnbc.msn.com/id/21478416>

21 *Page title*: “Which is worse: foreclosure or bankruptcy? – Answer desk –
msnbc.com?”

22 (d) [http://www.cs.uiowa.edu/ejjung/courses/f08196/lectures/_
deanonimization.pdf](http://www.cs.uiowa.edu/ejjung/courses/f08196/lectures/_deanonimization.pdf)

23 *Page title*: “Robust De-Anonymization of Large Sparse Datasets”

24 (e) <http://www.saintmichaelschurch.org/connect/aa.html>

25 *Page title*: “St. Michael’s Church – New York” (Alcoholics Anonymous
and AL-ANON meeting information)

26 (f) http://www.medscape.com/viewarticle/702506_4

27 *Page title*: “Evaluation and Treatment of Torture and Refugee Trauma:
Mental Health Treatment for Torture Survivors”
28

1 (g) <http://www.wfmz.com/news/22406766/detail.html>

2 *Page title:* “Some Fear Not Enough Being Done To Protect Illegal
3 Immigrants In Census Collection – News Story – WFMZ Allentown”

4 20. Path information is not the only revealing content that may be included in a URL.
5 Often, a URL includes additional information called a “query string.” A query string is a set of
6 instructions telling a website what information to display on the selected web page.

7 21. For example, search engines often display results as a web page, the URL of
8 which contains the user’s search criteria embedded as a query string. A URL’s query string may
9 include personal, sensitive, or confidential information. *See, e.g.*, Figure 3, below.

10 22. For example, users often perform searches on their names or their credit card,
11 social security, or unlisted phone numbers to see if their personal information is available on the
12 Internet or to investigate identity theft. *See Gonzales v. Google*, Declaration of Matt Cutts
13 [Google Senior Staff Software Engineer] at 9, Case No. 5:06-mc-80006-JW (N.D. Cal., Feb. 17,
14 2006). In addition, users often mistakenly enter passwords or other account credentials in a
15 search box.

16 *Figure 3. Sample URLs containing website name + query string*

17 Underscore = query string

18 **Bold** = search term and/or personal information

19 (a) [http://208.114.97.178:1111/-
usg/process?username=**01894484DB-SMITH8016**&password=-
12345&RLF=http://portal.ICServices.mtnsat.com/err.aspx
&OS=CAFE.SEAMOBILE.COM](http://208.114.97.178:1111/-usg/process?username=01894484DB-SMITH8016&password=-12345&RLF=http://portal.ICServices.mtnsat.com/err.aspx&OS=CAFE.SEAMOBILE.COM)

21 *Page title:* “process” (unencrypted shipboard wireless account login that
22 includes username and password in clear text)

23 (b) [http://www.altavista.com/web/results?itag=ody&q=%2B**government**
%2B**domestic**%2B**surveillance**%2B**political**%2B**action**&kgs=1&kls=0](http://www.altavista.com/web/results?itag=ody&q=%2Bgovernment
%2Bdomestic%2Bsurveillance%2Bpolitical%2Baction&kgs=1&kls=0)

24 *Page title:* “Alta Vista Search: government domestic surveillance political
25 action”

26 (c) <http://answers.yahoo.com/question/index?qid=20100202164829AAhRrJF>

27 *Page title:* “Can I get birth control at 16 without parental consent?”
28

1 (d) <http://assignments.uspto.gov/assignments/q?db=pat&asnr=JONES, JAY, - MS.>

2 *Page title:* “USPTO Assignments on the Web” (search of government
3 database for patent assignments by Jay Jones)

4 (e) <http://newyork.craigslist.org/search/m4m/mnh?query=nonsmoker&catAbbreviation=m4m&minAsk=35&neighborhood=124&hasPic=1>

5 *Page title:* “new york men seeking men classifieds – craigslist”
6 (search of Manhattan personals ads containing the word “nonsmoker” posted
7 by persons over 35 or older in the Soho area and whose ads include images)

8 (f) http://web2.westlaw.com/search/default.wl?tc=1001&rltdb=-CLID_DB999999999&db=NY-CS-ALL&sv=Split&eq=search&tf=-2004&method=TNC&action=Search&query=breach+/3+privacy&mt=297&fn=top&vr=2.0&rp=/search/default.wl&ifm=NotSet&rs=WLW9.11

9 *Page title:* “Search - NY-CS-ALL - BREACH /3 PRIVA” (search of legal
10 database for court cases in a particular jurisdiction and containing certain
11 words)

12 (g) http://www.linkedin.com/ppl/webprofile?action=vmi&id=99999999&pvs=-pp&authToken=QQCI&authType=name&trk=ndir_viewmore&lnk=-vw_pprofile

13 *Page title:* “Profile | LinkedIn” (request to view a particular member profile
14 on a social network website)
15

16 23. Google admits that it receives personally identifying information contained in
17 search queries and URLs transmitted by Toolbar. Google Inc., *Google Toolbar Privacy Notice*,
18 <http://toolbar.google.com/privacy.html> (last visited Feb. 15, 2010) (“[I]t is possible for ...
19 queries [and] page addresses ... to contain such [personally identifying] information”).

20 24. Google also acknowledges that the query string portion of a URL can typically
21 be identified by the question mark character preceding it (underscored in Figure 3, above).

22 25. Despite the fact that Toolbar could easily discard the query string portion of a
23 URL before transmitting the URL to Google servers, Google offers no explanation for its failure
24 to do so.

25 26. Google’s Terms of Service require each user to grant Google a broad, perpetual,
26 and irrevocable license to use user-provided content in its business and to transfer such content
27 to third parties of Google’s choosing. *See* Google Inc., Terms of Service, “Content Licence from
28

1 You,” §§ 11.1-11.2, <http://www.google.com/accounts/TOS> (last visited Mar. 16, 2010). In
2 addition to Google’s use and sharing of data permitted by its Terms of Service, user data re-
3 tained by Google may pose user consequences that lie outside Google’s control.

4 27. For example Toolbar data is subject to disclosure in civil proceedings and under
5 government subpoena. *See, e.g., Gonzales v. Google, Inc.*, 234 F.R.D. 674, 688 (N.D. Cal.
6 2006) (order denying Justice Department’s motion to compel Google to comply with subpoena
7 of 5,000 search queries but granting motion to compel disclosure of 50,000 URL requests).

8 28. Google’s practices regarding user data and privacy are of public interest and are
9 highly material to consumers in their decisions to use Google services and software in light of:
10 (a) the massive amounts of user data Google acquires as the leading search service provider;
11 (b) the personal and often sensitive content of some of that data; (c) Google’s apparently unfet-
12 tered retention and use of the user data it receives; and (d) the potential for Google’s disclosure
13 of user data to third parties.

14 29. In the case of Toolbar, this materiality is further borne out by the fact that Goo-
15 gle, itself, purports to disclose its data practices and mechanisms for users to exercise choice and
16 control over what data is transmitted to Google.

17 30. In fact, Google specifically promises users that they can control the operation of
18 certain Toolbar features with special privacy consequences. In particular, Google promises that
19 these features “only operate and transmit data if you choose to enable them.” Google Inc.,
20 *Google Toolbar—Toolbar Help—Review Privacy Details: Enhanced Features*,
21 <http://www.google.com/support/toolbar/bin/answer.py?hl=en&answer=162423> (last visited Feb.
22 16, 2010). Furthermore, Google’s Privacy FAQ promises:

23 Some Google services (such as Google Toolbar) enable you to opt-in or
24 opt-out of sending URLs to Google *When you sign up for any such*
25 *service, you will be informed clearly that the service sends URLs to Goo-*
gle, and whether and how you can opt-in or opt-out.

26 Google Inc., *Privacy FAQ*, http://www.google.com/privacy_faq.htm (last visited Feb. 15, 2010)
27 (emphasis added).

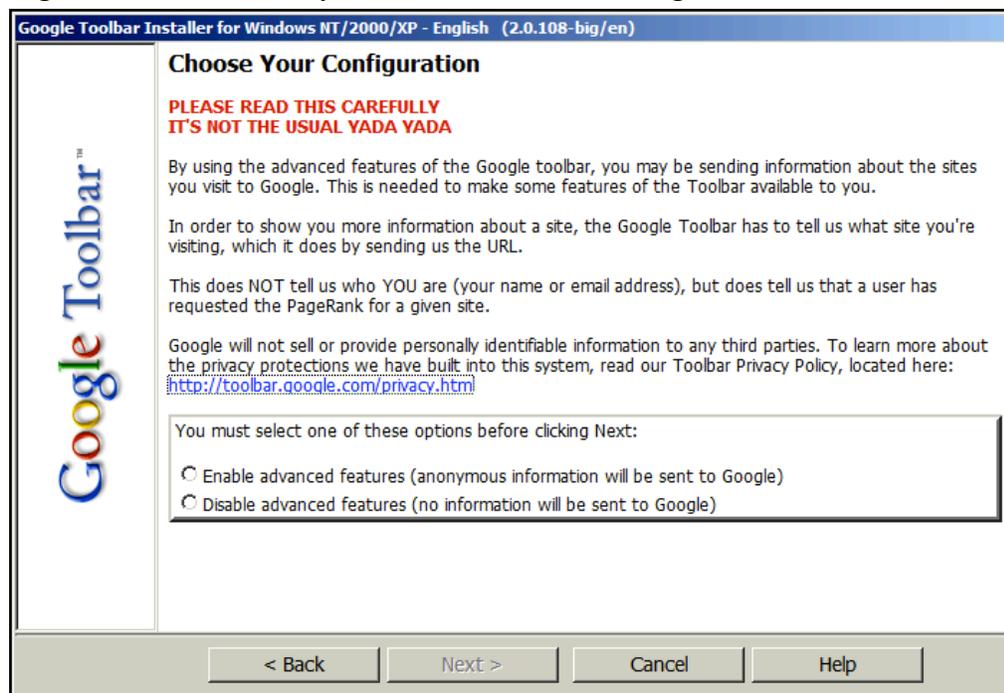
1 31. As a result, it is also material to Toolbar users that—as detailed below—Google
2 has provided users inadequate and misleading disclosures regarding Toolbar and the control
3 mechanisms that purport to implement user’s Toolbar preferences. Unbeknownst to users, these
4 controls do not work as described.

5 **B. Google’s Inadequate and Misleading Statements about Toolbar**

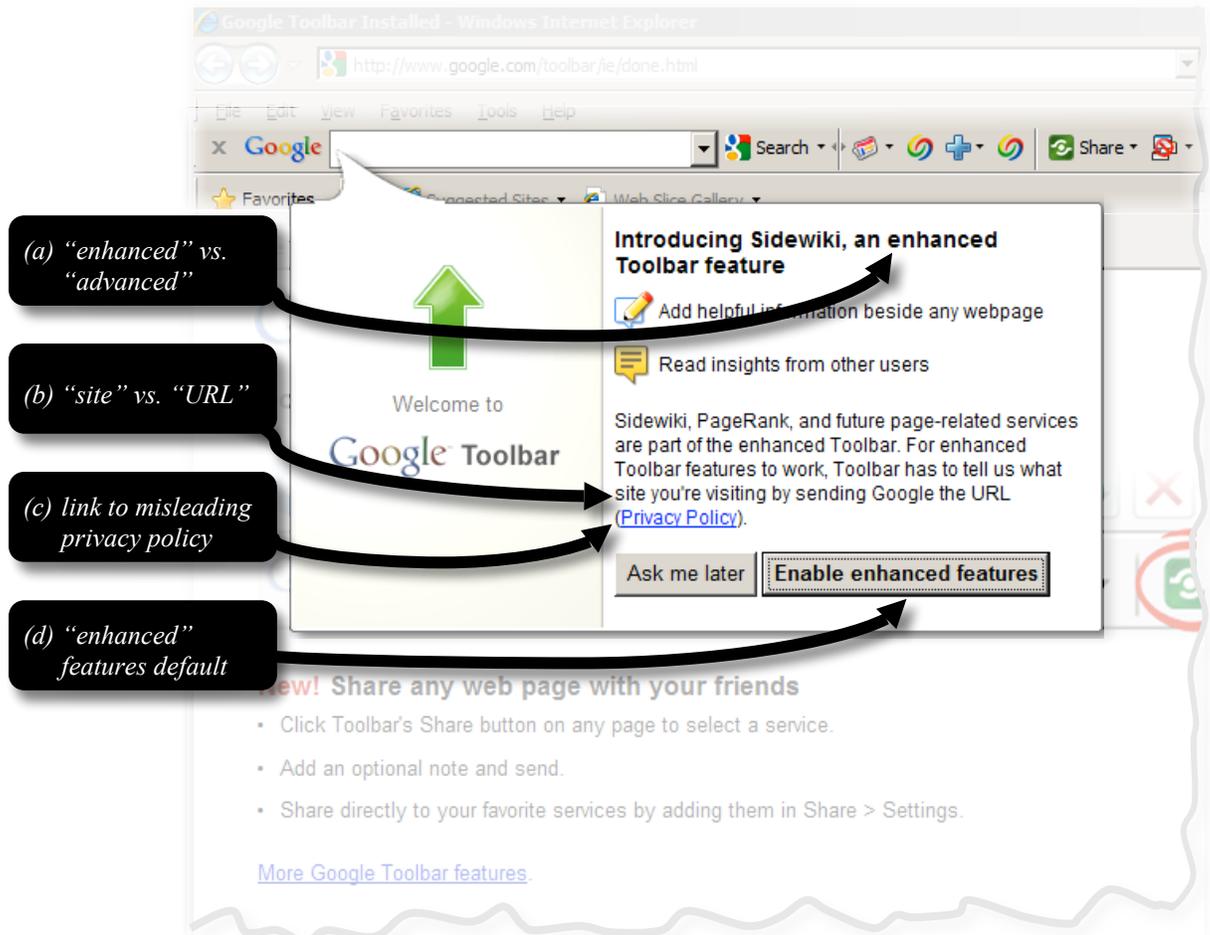
6 *(i) Retrogression in Installation Notice and Choice*

7 32. At one time, users installing Toolbar received clear and conspicuous notice that
8 their installation choices could have privacy consequences. Recognizing the material privacy
9 implications, Google specifically drew users’ attention to this important decision with forceful
10 red text at the top of the screen. Users could activate Toolbar’s “advanced,” URL-transmitting
11 features only through an opt-in process, and the selection buttons to opt in or not opt in were
12 presented with equal prominence. *See* 2004 version of Toolbar installation dialog, Figure 4 on
13 page 9. Neither option operated as a default selection that would be activated merely by pressing
14 the space bar or Enter key. By labeling Toolbar’s URL-transmitting features as “advanced”
15 features and by activating them only upon a users unambiguous, affirmative request, Google
16 properly presented these features as suitable for knowledgeable users.

17 *Figure 4. 2004 version of Toolbar installation dialog box*



1 *Figure 5. Toolbar installation*



18 33. Some Google pages still retain this more appropriate, “advanced features” label
19 for Toolbar’s URL-transmitting features. Indeed, Toolbar’s Help pages continue to use this
20 label. See, e.g., “Learn More—Master Advanced Features.” Google Inc., Google Toolbar Help,
21 <http://toolbar.google.com/privacy.html> (last visited Feb. 15, 2010).

22 34. However, aside from these remnants, Google has renamed Toolbar’s URL-
23 transmitting Toolbar features as “enhanced features” (emphasis added), falsely suggesting that
24 these features are desirable and beneficial for all users.

25 35. In addition, Google’s new Toolbar installation process makes it excessively easy
26 for users to enable Toolbar’s advanced features, such as PageRank. For example, Google bills
27 Toolbar as a quick installation (Google promises the Toolbar “installs in seconds”), a process in
28

1 which users in which users cannot reasonably be expected to be aware of the significant and
2 long-lasting privacy-sensitive consequences.

3 36. Further, the very design of Google’s enhanced-features prompt increases the like-
4 lihood that users will make an uninformed decision. Google presents a bold-faced heading and
5 three sentences of supposed benefits before finally discussing the crucial privacy detriments of
6 advanced features. *See* Figure 5, page 10, above.

7 37. Even where Google finally does discuss privacy, Google’s text is both internally
8 inconsistent and misleading: Google’s installation prompt states, “For enhanced Toolbar fea-
9 tures to work, Toolbar has to tell us *what site you’re visiting* by sending Google *the URL*”
10 (emphasis added). *See* Figure 5, note (b) on page 10, above. This sentence conflates the concept
11 of “site” (the general address of a web server or domain, as a whole) and “URL” (a specific,
12 individual document or request) – trivializing the privacy consequences of activating Toolbar’s
13 enhanced features.

14 38. Other aspects of the design of Google’s enhanced features prompt further impair
15 users’ decision-making on this screen.

16 a. The prompt includes a link labeled “privacy policy.” *See* Figure 5, note
17 (c), page 10, above. However, the Privacy Policy link takes the user to a pop-up display which
18 does not provide the user with the options to search, copy, save or print the lengthy policy. Yet
19 the document discusses advanced Toolbar features only in the 19th paragraph, a location few
20 users are likely to find. Even then, the document misleadingly states:

21 **Enhanced Toolbar features**

- 22 • Toolbar’s enhanced features, such as PageRank and Sidewiki, operate
23 by sending Google the *addresses* and other information about *sites* at
24 the time you visit them.
- 25 • *When you use Sidewiki* to write, edit, or rate an entry, *the URL of the*
26 *relevant page*, the type of action you performed and the text related to
27 that action are sent to Google and stored with your Google Account.
28 Your Sidewiki entries are publicly viewable and associated with your
Google profile.

Google Inc., *Google Toolbar Privacy Notice*, <http://toolbar.google.com/privacy.html> (referring

1 to “enhanced features”) (last visited Feb. 15, 2010) (italics added).

2 b. The first bullet, above, describes transmission of “the addresses” of
3 “sites” users visit—again falsely implying that Toolbar transmits mere domain names, not full
4 URLs that include path and query string information.

5 c. The second bullet mentions transmission of URLs to Google, but only in
6 reference to Sidewiki, not PageRank—indicating, inaccurately, that only if a user uses Sidewiki
7 to write, edit, or rate an entry will a web page URL be transmitted. Like the installation dialog
8 box, this buried discussion of PageRank masks and misrepresents the fact that Toolbar transmits
9 to Google the full URL of each web page visited by a user who has enabled advanced features.

10 d. The installation prompt presents a button to “enable enhanced features”
11 with bold type, more than twice the size of the button labeled “no thanks.” *See* Figure 5, note
12 (d), page 10, above. A user who responds to the installation prompt by merely pressing the enter
13 key or tapping the space bar is taken to have accepted PageRank, purportedly authorizing
14 Google to capture the URL of every single web page the user visits, without further notice or
15 confirmation of any kind.

16 e. Furthermore, users are particularly unlikely to make informed decisions
17 *at the conclusion* of Toolbar installation: the Toolbar has appeared on-screen, by all indications
18 allowing the users to get back to work without further questions from Google. A privacy-
19 sensitive question asked at this time invites users to make a hasty and ill-considered decision.

20 39. By choosing the misleading “enhanced” name for the privacy-invasive Toolbar
21 features, by explaining these features with the deficient, inaccurate, and deceptive disclosures
22 described above, and by positioning these features for activation with a single accidental tap of
23 the space bar, Google induces users to disclose URL communications they would not have
24 disclosed had they been adequately informed of the consequences and had they been granted a
25 proper means to grant or withhold consent.

26 40. Compared to 2004, installation disclosures regarding the privacy implications are
27 now dramatically less clear, less conspicuous, and the advanced features choice less robust.

1 Google’s current installation process minimizes the apparent significance of privacy-affecting
2 Toolbar functions and decreases the likelihood that users will fully comprehend the privacy
3 consequences of Toolbar installation.

4 **C. Defective Documentation Impairs Users’ Ability to Disable Enhanced Features**

5 41. Despite promising to provide timely disclosure of Toolbar’s URL-transmitting
6 features and an effective mechanism to enable or disable such features, Google fails to provide
7 the promised information and mechanisms. Its Help Center links that purport to explain how to
8 disable PageRank and Toolbar or uninstall Toolbar do not provide such information.

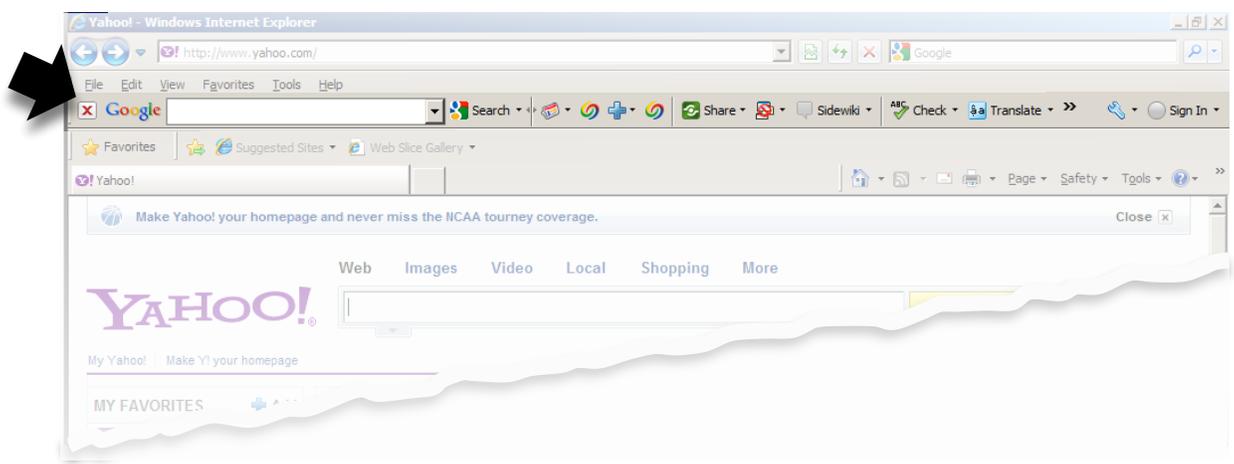
9 42. Thus, once a user has enabled Toolbar’s advanced features, Google makes it hard
10 to turn back.

11 **(i) Defective Toolbar Disabling Functions through January 26, 2010**

12 43. With no meaningful instructions from Google, users who want to manage Tool-
13 bar’s URL-transmitting features, such as PageRank, are on their own—a particular burden on
14 novice users more likely to have been induced by Google to activate enhanced features.

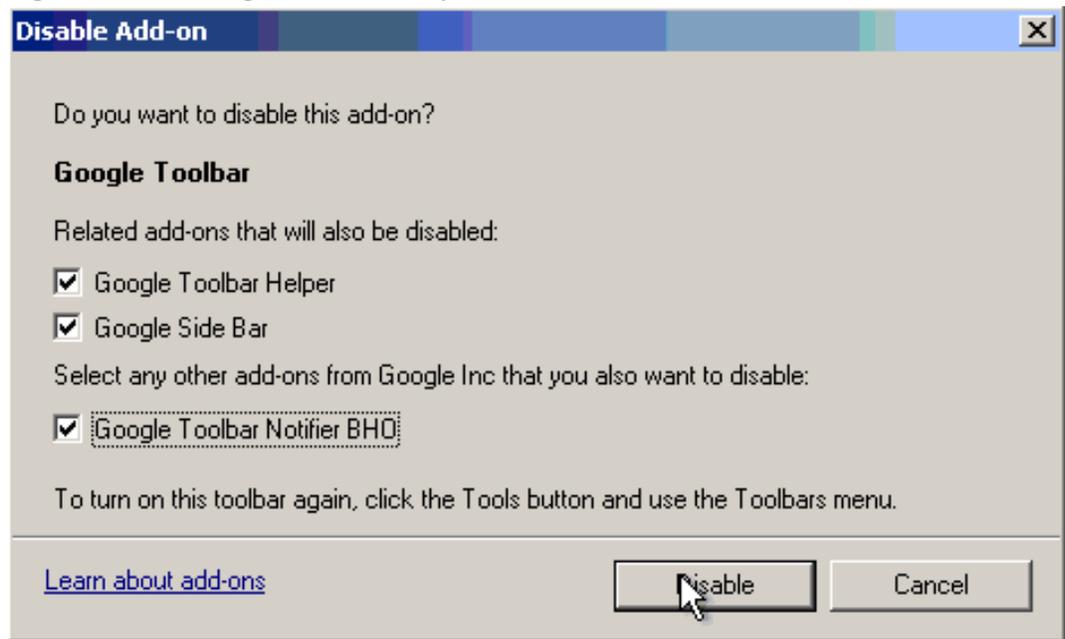
15 44. Seeking a method to control the Toolbar, a user might reasonably look to the
16 Toolbar itself, as it appears in the user’s browser window. Consistent with standards for browser
17 “plug-in” software, the Toolbar display includes an “X” button in one corner. *See*, Figure 6,
18 below. This “X” is widely understood to mean “exit” or “disable.”

19 *Figure 6. Toolbar display (arrow indicates exit / disable button)*



1 right-clicked on an empty area of a toolbar, the user received the message shown in Figure 8,
2 below, indicating that the toolbar “will be disabled.” Yet Toolbar’s transmissions continued
3 unabated, in the background. Disabling of the Toolbar add-on did eventually take effect, but
4 only after a browser restart. *Id.*

5 *Figure 8: Disabling Toolbar – confirmation screen*



16 49. Google did not advise users that they must restart their browser in order to actu-
17 ally disable Toolbar, nor did Google prompt users to restart their browsers. This behavior did
18 not comport with accepted browser and software configuration practices, which ordinarily
19 notify a user when an additional step, such as a browser re-start or computer re-boot, is required
20 for changes to take effect. Nor did this behavior comport with users’ reasonable expectations.

21 50. Google staff knew about these defects as of November 2009 or earlier. However,
22 rather than promptly fix the problem or at least notify users, Google failed to take corrective
23 action until publicity revealed these defects on or about January 26, 2010.

24 **D. Interception of Content**

25 51. Google Toolbar enables users to transmit and receive text, audio, and video con-
26 tent consisting of data transmitted in whole or in part by wire, radio, electromagnetic, photoelec-
27 tronic, or photooptical systems that affect interstate and/or foreign commerce. Users’ communi-
28

1 cations using Google Toolbar are therefore electronic communications and Google is a provider
2 of an electronic communications service as those terms are defined in the Electronic Communi-
3 cations Privacy Act, Title 18, United States Code, Sections 2510(12, 15). *See also Gonzales v.*
4 *Google*, Google's Opposition to the Government's Motion to Compel at 19, Case No. 5:06-mc-
5 80006-JW (N.D. Cal., Feb. 17, 2006) (in which Google acknowledges that its search services
6 bring it within the Section 2510(15) definition of “electronic communications service pro-
7 vider”).

8 52. Accordingly, Google Toolbar is a device used to acquire the “contents” of com-
9 munications, as that term is defined in the Wiretap Act, Title 18, United States Code, Section
10 2510(8), in that Google uses Toolbar and its networks to divert and transfer the substance,
11 purport, and meaning of the communications to Google’s networks. Therefore, Toolbar is used
12 to “intercept” the contents of electronic communications, as that term is defined in the Wiretap
13 Act, Title 18, United States Code, Section 2510(4).

14 53. Google Toolbar, which is designed to send transmissions to and receive trans-
15 missions from Google’s system, in combination with Google’s system, which is designed to
16 send transmissions to and receive transmissions from users’ Google Toolbars, are devices and
17 apparatuses used to intercept, retain, and transcribe in-transit electronic communications and are
18 therefore “electronic, mechanical, or other device[s]” as defined in the Wiretap Act, Title 18,
19 United States Code, Section 2510(5).

20 54. Upon information and belief, which Plaintiff expects discovery to confirm, Goo-
21 gle was aware as early as autumn of 2009, if not before, that Toolbar had not been operating as
22 described. Upon information and belief, Google chose not to remediate Toolbar until January
23 26, 2010, after an independent publication presented video evidence of Toolbar’s undocumented
24 operational characteristics’ causing nonconsensual transmission of user data to Google.

25 55. Under some circumstances, Google is authorized to intercept users’ communica-
26 tions with other websites. However, whenever Toolbar continued to intercept and transmit
27 users’ activities to Google after those users’ had correctly activated a command purporting to
28

1 disable Toolbar and cause such transmissions to cease, Google knowingly and intentionally
2 eavesdropped on and intercepted users' electronic communications captured by Toolbar and its
3 networks. Google was not authorized to eavesdrop on and intercept the communications at
4 issue.

5 56. Google's interception and eavesdropping was not in its normal course of business
6 or a necessary incident to its rendition of services or protection of its rights or property. To the
7 contrary, Google's interception and eavesdropping affected user data Google had explicitly
8 committed not to intercept.

9 57. Each communication intercepted by Google was between a user and a particular
10 website. Unless that website was Google-owned, Google was neither an originator nor recipient
11 of the user communications intercepted by Google Toolbar and was not a party to such elec-
12 tronic communications as that term is used in the Wiretap Act, Title 18, United States Code,
13 Section 2511(2)(d).

14 ***(i) Computer Tampering and Contamination***

15 58. Users' personal computers are computers used in and affecting interstate com-
16 merce and communication and are therefore protected computers as defined in the Computer
17 Fraud and Abuse Act, Title 18, United States Code, Section 1030(e)(2).

18 59. Google, through the operation of its systems and Google Toolbar, induced users
19 to download Toolbar knowing that it could not be disabled as advertised but would, instead,
20 continue to transmit user data even when users had taken proper action to disable it and when, to
21 all appearances, it was disabled. Google did so knowingly and with the intent of acquiring such
22 data, and so Google's offering of Toolbar, its deceptive help screens and dialogs, and its opera-
23 tion in tandem with Google's system constituted intentional conduct to defraud users by Goo-
24 gle's access of their personal computers, through Toolbar, without authorization and in excess
25 of any authorization. By means of such conduct, Google furthered its intended fraud of obtain-
26 ing users' confidential Internet communications and, in fact, obtained such communications.

27 60. Google knowingly caused the transmission of a program, information, code, or
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1 command in its distribution and operation of Google Toolbar operating in tandem with Google's
2 systems. Through this conduct, Google intentionally caused damage to users' protected comput-
3 ers as follows:

4 a. Google knowingly caused the installation of software that Google knew
5 did not work as advertised, and that Google knew would enable it to acquire users' URLs, and to
6 do so without authorization. Google lacked authorization in that users had not consented to the
7 downloading, installation, and operation of software containing undisclosed functions to cause
8 the transmission to Google of information that Google said its software would not transmit.

9 b. Google knowingly subverted the operation of other software on users'
10 computers, such as users' browser toolbar controls, Manage Add-Ons tools, and other mecha-
11 nisms with which users would reasonably have expected to be able to disable Toolbar. Google
12 did so without authorization, in that users had not consented to the downloading, installation,
13 and operation of software containing undisclosed functions that were designed to prevent users
14 from disabling toolbar and designed to interfere with the operation of users' browser manage-
15 ment tools.

16 ***(ii) Harm***

17 61. Plaintiff has used Toolbar for a number of years, with PageRank enabled.

18 62. During the Class Period, Plaintiff has thought he was disabling Toolbar's data
19 transmission functions by clicking the "X" symbol on the Toolbar display and selecting the
20 option to disable Toolbar operation in the current browser window.

21 63. Plaintiff did not give Google consent to continue collecting his data after he dis-
22 abled Toolbar. He was unaware of its collection properties, and had he known of Google's
23 continued collection of data after he disabled Toolbar, he would have taken further steps to
24 attempt to prevent transmission of his information to Google had he known of Toolbar's data
25 transmission properties.

1 64. Toolbar users engage in online economic exchanges with the provider, Google,
2 exchanging their personal information for the provider’s product and thereby reducing the cost
3 they would otherwise have to pay.

4 65. Even when such transactions that do not involve the transmission of personally
5 identifiable information, but merely *personal* information with which users are tracked in
6 supposed anonymity, users engage in value-for-value exchanges by providing their information
7 in exchange for ad-supported content and services.

8 66. A value-for-value exchange takes place, even when the provider’s offerings are
9 supported by advertising revenue, as are Google’s. In those cases, the user becomes a participant
10 in what is known as a two-sided business platform. On one side is one customer (the user), and
11 on the other side is the advertiser. The web provider stands in middle, functioning as an inter-
12 mediary between these two sets of customers. The users provide personal information and
13 advertisers pay the provider/intermediary for access to the users’ information. The provider’s
14 so-called “free” offerings are inducements to increase user participation, which, in turn, the
15 provider parlays into increased advertising revenue.

16 67. Google itself acknowledges that it engages in a value-for-value exchange with
17 users by stating, in its Terms of Use, section 17.3: “In consideration for Google granting you
18 access to and use of the Services, you agree that Google may place such advertising on the
19 Services.”¹

20
21 ¹ Two industry organizations that represent online advertising interests acknowledge the
22 value exchange between users and providers of online offerings. The Interactive Advertising
23 Bureau (IAB) recently observed that, without users’ data, “users would encounter a severely
24 diminished experience since they would lose out on the remarkable benefits provided by data
25 sharing.¹ Similarly, the Network Advertising Initiative (NAI) stated, “Instead of requiring
26 visitors to register and pay a subscription fee, the operators of Web offerings subsidize their
27 offerings with various types of advertising.” The NAI noted behaviorally targeted ads rely on
28 personal information furnished by users such as “registration information reflecting [users’]
gender, age, or zip code; or alternatively, other potential interests of [users] inferred from prior
Web activity, either on the publisher’s site or elsewhere on the web.”¹ Thus, advertising industry
spokespersons have acknowledged that users obtain value online because they exchange some-
thing of value—their personal information.

1 68. Because Google engages in undisclosed and inadequately disclosed data collec-
2 tion from Toolbar users, users do not receive the full value of their exchange. In essence,
3 Google raises the ticket price for Toolbar, but instead of telling users, Google simply reaches
4 into their pockets and extracts the undisclosed premium in the form of users' information.
5 Because this is an undisclosed cost to users in the taking of their information that they use in
6 value-for-value exchanges, Google practices impose an economic cost—and loss—on Toolbar
7 users.

8 69. In addition, the undisclosed privacy and information transfer consequences of
9 Google's practices impose costs on users in the form of the loss of the opportunity to have
10 entered into value-for-value exchanges with *other* web publishers and third-party advertisers
11 whose business practices better conform to users' expectations. This is because users use their
12 personal information not only to acquire online offerings; they use it to acquire a better-value
13 exchange by choosing among competing providers. Given that they have choices in where they
14 will engage in these value-for-value exchanges, Google's failure adequately to disclose its
15 information practices and using its lack of disclosure to take users' information, Google impose
16 a real opportunity cost on users.

17 70. Likewise, Google's lack of disclosure coupled with its taking of information im-
18 poses costs on users who would otherwise have exercised their rights to utilize the economic
19 value of their information by declining to exchange it with Google or any competitor—
20 foregoing online offerings entirely. Users routinely exercise such choices by electing whether to
21 visit websites or download product, or whether set browser filters that limit how online provid-
22 ers can collect information. These, too, are decisions predicated on users' recognition and
23 exercise of the value of their information.

24 71. Users' information, which they use as an asset of economic value in the ways de-
25 scribed above, has value as an asset in the information marketplace. Online providers have
26 proven the value of users' information through those providers' own business models, such as
27 the fact that an online provider acquires revenue by providing user data to ad-delivery entities,
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1 or by allowing such entities to access users and acquire their information online. These practices
2 have created an active market in which user information has a discernable price.

3 72. In addition, the information marketplace includes opportunities for users them-
4 selves to market their information directly to online providers and advertisers and control the
5 transfer of their information, with services such as allow.com (UK) (“[p]ersonal information
6 like your name and address is being traded for profit everyday. Now you can help stop this trade
7 and turn your data into cash for yourself with ALLOW’s new, free service”); personal.com
8 (“[o]wn, manage, and share your personal information”); and selectout.org.

9 73. Thus, Google’s conduct alleged in this complaint constituted an ongoing course
10 of conduct that harmed Plaintiff and Toolbar users in general, and caused them to incur financial
11 losses, in that Google, without authorization, acquired the personal information of Plaintiff and
12 Class Members, which information has economic value to Plaintiff and Class Members, causing
13 them to incur costs in the form of information taken and opportunity costs in the form of uses of
14 the economic value of their information of which Google deprived them.

15 74. Google realized significant economic benefits from the conduct described above.
16 Google’s purpose in acquiring users’ data is to advance its commercial interests. Google’s
17 business is the selection and display of advertisements, and its notable success is due, in part, to
18 the data it has amassed about individual users. Google uses such data to profile and track users
19 for ad-serving purposes.

20 75. Google admits it faces “formidable competition in every aspect of our business,
21 particularly from companies that seek to connect people with information on the web and
22 provide them with relevant advertising.” Google Inc., SEC Form 10-K for period ending Dec.
23 31, 2009 at 15. By misrepresenting the nature of its conduct and the personal information costs
24 associated with using Toolbar, Google deprived users of their right to make adequately in-
25 formed decisions about whether they would do business with Google or one of its competitors.

26 76. By that same conduct, Google imposed on users the undisclosed opportunity
27 costs of their choosing to do business with Google and use Toolbar. Google’s actions caused
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1 users to expend money, time, and resources, and with a cost to their productivity, because of
2 their efforts investigating and attempting to mitigate the operation of Toolbar on their personal
3 computers and attempting to control or remove the persistent data-harvesting software installed
4 without adequate notice by Google or consent from users.

5 77. Further, Google’s installation of Toolbar software with its undisclosed features
6 interfered with, diminished, and devalued users’ possessory interests in their personal computers
7 and Internet communications, infringed on users’ right to exclude others from unauthorized
8 access to their personal computers, and compromised the integrity, ownership, and operability
9 of users’ personal computers.

10 78. Google’s deployment of Toolbar in the marketplace and the ongoing, continuous,
11 automatic operation of Google systems programmed to interact with Toolbar constituted a
12 single act that caused an aggregated loss of at least \$5,000 within a one-year period to users
13 affected by Toolbar.

14 79. The costs and harms described above are aggravated by Google’s continued re-
15 tention and commercial use of the improperly acquired user data.

16 80. The privacy risks for more novice or less sophisticated users are heightened by
17 the fact that, in contrast to the impediments Google imposes on users who seek to exercise
18 controls over Toolbar features, Google makes it exceedingly easy for users to enable Toolbar’s
19 advanced features in the first place. Thus, despite Google’s assurance that “[o]ther features . . .
20 only operate and transmit data if you choose to enable them,” the net effect of the Toolbar
21 design—Toolbar’s configuration choices, its reframing of “advanced features” as “enhanced
22 features,” and the quality of its Help and documentation—serve to draw large numbers of users
23 into unknowingly transmitting to Google their every Internet transaction, including their interac-
24 tions with Google competitors.

25 81. Even among privacy-aware users, most users do not have the skill or ability nec-
26 essary to confirm Google’s representations and to analyze their Internet communications to
27 detect Google’s misconduct, particularly when Toolbar disappears from view and appears to be
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1 disabled, but is not. In this regard, Google’s behavior is particularly egregious because the users
2 whose information, privacy rights, and economic choices are most affected are those who
3 attempt to utilize available mechanisms to disable Toolbar’s advanced features, but who are
4 defeated in their efforts by the deceptive statements of Google and the undisclosed operation of
5 Toolbar.

6 V. CLASS ALLEGATIONS

7 82. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on
8 behalf of themselves and the following class:

9 All individuals or entities in the United States who, from June 30,
10 2009 to the present (the “Class Period”), downloaded, installed, and
11 used Google Toolbar with the result that their information, including
12 URLs visited, was transmitted to Google without their informed con-
13 sent.

14 83. Plaintiff reserves the right to revise this definition of the Class based on facts
15 learned in the course of litigation of this matter.

16 84. Excluded from the Class are: (i) any judge or magistrate presiding over this ac-
17 tion, and the court personnel supporting the judge or magistrate presiding over this action, and
18 members of their respective families; (ii) Defendant, Defendant’s subsidiaries, parents, succes-
19 sors, predecessors, and any entity in which a Defendant or its parent has a controlling interest;
20 and its current or former employees, officers, and directors; (iii) persons who properly execute
21 and file a timely request for exclusion from the Class; and (iv) the legal representatives, succes-
22 sors, or assigns of any such excluded persons.

23 85. The Class consists of thousands, if not millions, of individuals and other entities,
24 making joinder impractical. Members of the class may be readily identified through Defen-
25 dant’s business records.

26 86. The claims of Plaintiff are typical of the claims of all other Class Members.

27 87. Plaintiff will fairly and adequately represent the interests of the other Class
28 Members. Plaintiff has retained counsel with substantial experience in prosecuting complex
litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting

1 this action on behalf of the Class Members and have the financial resources to do so. Neither
2 Plaintiff nor his counsel has any interests adverse to those of the other Class Members.

3 88. Absent a class action, most Class Members would find the cost of litigating their
4 claims to be prohibitive and would have no effective remedy.

5 89. The class treatment of common questions of law and fact is superior to multiple
6 individual actions or piecemeal litigation in that it conserves the resources of the courts and the
7 litigants and promotes consistency and efficiency of adjudication.

8 90. Google has acted and failed to act on grounds generally applicable to Plaintiff
9 and the other Class Members, requiring the Court's imposition of uniform relief to ensure
10 compatible standards of conduct toward Class Members.

11 91. The factual and legal bases of Google's liability to Plaintiff and other Class
12 Members are the same, resulting in injury to Plaintiff and all of the other Class Members.
13 Plaintiff and the other Class Members have all suffered harm and damages as a result of Goo-
14 gle's wrongful conduct.

15 92. There are many questions of law and fact common to Plaintiff and the Class
16 Members. Common questions for the Class include but are not limited to:

- 17 a. whether consumer software provided by Google functioned as
18 advertised;
- 19 b. whether Google intended that its consumer software not function
20 as advertised;
- 21 c. whether Google's representations regarding the operation and
22 control of its consumer software were deceptive and misleading;
- 23 d. whether Google, with Toolbar and against consumers' explicit
24 instructions, caused consumers' electronic communications to be
25 intercepted and transmitted to Google's servers;
- 26 e. whether Google's conduct described herein violates the Electronic
27 Communications Act, Title 18 United States Code, Section 2510,
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- et seq. (Wiretap Act);
- f. whether and with what *mens rea* Google caused software to be installed on user’s computers to transmit data invisibly and defeat the normal operation of users’ browser controls;
- g. whether Google’s conduct described herein violates the Computer Fraud and Abuse Act, Title 18 United States Code, Section 1030, et seq.;
- h. whether Google’s conduct described herein violates California Unfair Competition Law, California Business and Professions Code, Section 17200, *et seq.*;
- i. whether Google’s conduct alleged herein, or any part of it, was intentional;
- j. whether Google’s conduct alleged herein, or any part of it, was knowing;
- k. whether and to what extent Google has been unjustly enriched by its conduct;
- l. whether and in what manner Google retains and uses user data improperly acquired through Toolbar; and
- m. whether and to what extent Plaintiff and the Class have suffered harm in the nature of economic loss, other loss, and damage to their computers.

The questions of law and fact common to Class Members predominate over any questions affecting only individual members, and a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

CLAIMS FOR RELIEF

Based on all the allegations of this complaint, Plaintiff’s claims for relief include the following:

1 **FIRST CLAIM FOR RELIEF**

2 **Violations of the Electronic Communications Privacy Act**

3 **18 U.S.C. § 2510, et. seq. (Wiretap Act)**

4 93. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

5 94. Plaintiffs incorporate the above allegations as if fully set forth herein.

6 95. Defendants' conduct was in violation of Title 18, United States Code, Section
7 2511(1)(a) because Defendants intentionally intercepted and endeavored to intercept Plaintiff's
8 and Class Members' electronic communications.

9 96. Defendants' conduct was in violation of Title 18, United States Code, Section
10 2511(1)(d) in that Defendants used and endeavored to use the contents of Plaintiff's and Class
11 Members' electronic communications, knowing and having reason to know the information was
12 obtained through interception in violation of Title 18, United States Code, Section 2511(1).

13 97. Through Defendants' interception, endeavoring to intercept, use, and endeavor-
14 ing to use Class Members' electronic communications, their electronic communications were in
15 fact intercepted and intentionally used, in violation of Title 18, United States Code, Chapter
16 119. Accordingly, Class Members are entitled to:

17 a. such preliminary and other equitable or declaratory relief as may be just
18 and proper;

19 b. damages computed as the greater of (i) the sum of the actual damages suf-
20 fered by Plaintiffs and Class Members plus Defendants' profits made through the violative
21 conduct alleged in this complaint; (ii) statutory damages for each Class Member of \$100 a day
22 for each day of violation; or (iii) statutory damages of \$10,000 per user;

23 c. punitive damages; and

24 d. reasonable attorneys' fees and other litigation costs reasonably incurred.

25 **SECOND CLAIM FOR RELIEF**

26 **Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et. seq.**

27 98. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

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1 99. Defendant violated the Computer Fraud and Abuse Act, 18 United States Code,
2 Section 1030, *et. seq.*, in that Defendant knowingly accessed and, without permission, used,
3 copied, and made use of data, computers, computer systems, and computer networks in order to
4 devise and execute schemes and artifices to defraud, deceive, or extort, and to wrongfully
5 control or obtain money, property, or data, in Defendant’s deceptive deployment and operation
6 of Toolbar, which Defendant deployed to gain access to and use of Class Members’ Internet
7 activity data emanating from their computers, on which the client-side portion of Toolbar was
8 installed.

9 100. Google, through the operation of its systems and Google Toolbar, as set forth
10 above, knowingly and with intent to defraud, accessed users’ protected computers without
11 authorization and in excess of any authorization, and by means of such conduct furthered its
12 intended fraud of obtaining users’ confidential Internet communications and obtained such
13 communications.

14 101. As set forth above, including in the discussion of “Computer Tampering and
15 Contamination,” page 17, above, Google knowingly transmitted programs, codes, and com-
16 mands to users’ personal computers and intentionally caused damage to protected computers,
17 doing so without authorization and exceeding any level of authorization Google had.

18 102. Through the same conduct, Google intentionally caused damage to users’ pro-
19 tected computers, doing so without authorization.

20 103. Plaintiff and the Class Members suffered damage and loss during the Class Pe-
21 riod, as specifically alleged in paragraphs 64 through 81, above, in an amount exceeding \$5,000
22 in the aggregate.

23 104. Plaintiff and the Class Members are therefore entitled to compensatory damages
24 and injunctive relief under 18 United States Code, Section 1030, *et seq.*

1 **THIRD CLAIM FOR RELIEF**

2 **Violations of the Unfair Competition Law (UCL)**

3 **California Business and Professions Code § 17200, et seq.**

4 105. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

5 106. In violation of California Business and Professions Code, Section 17200 *et seq.*,
6 Defendant's conduct in this regard is ongoing and includes, but is not limited to, statements
7 made by Defendant and Defendant's omissions, including as set forth above.

8 107. By engaging in the above-described acts and practices, Defendant has committed
9 one or more acts of unfair competition within the meaning of the Unfair Competition Law and,
10 as a result, Plaintiff and the Class have suffered injury-in-fact and have lost money and as
11 specifically alleged in paragraphs 64 through 81, above.

12 ***(i) Unlawful Business Act and Practices***

13 108. Defendant's business acts and practices are unlawful, in part, because they vio-
14 late California Business and Professions Code, Section 17500, *et seq.*, which prohibits false
15 advertising, in that they were untrue and misleading statements relating to Defendant's perform-
16 ance of services and with the intent to induce consumers to enter into obligations relating to
17 such services, and regarding which statements Defendant knew or which, and by the exercise of
18 reasonable care Defendant should have known, were untrue and misleading.

19 109. Defendant's business acts and practices are also unlawful in that they violate the
20 California Consumer Legal Remedies Act, California Civil Code, Section 1750, *et seq.*; Title
21 18, United States Code, Section 1030, *et. seq.*; and Title 18, United States Code, Section 2510,
22 *et. seq.* Defendant is therefore in violation of the unlawful prong of the Unfair Competition
23 Law.

24 110. Defendant's business acts and practices are also unlawful in that they violate the
25 California Constitution, Article I, Section 1, which articulates the inalienable right to pursue and
26 obtain privacy, in that, through Toolbar, Defendant willfully interfered with and obstructed
27 users' rights and actual attempts to pursue and obtain the privacy promised by Defendant as an
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1 inducement for users to install Toolbar.

2 ***(ii) Unfair Business Act and Practices***

3 111. Defendant's business acts and practices are unfair because they have caused
4 harm and injury-in-fact to Plaintiff and Class Members and for which Defendant has no justifi-
5 cation other than to increase, beyond what Defendant would have otherwise realized, its infor-
6 mation assets supportive of its advertising revenue.

7 112. The utility of Defendant's conduct is not outweighed by the gravity of the harm
8 to Plaintiff and Class Members as specifically alleged in paragraphs 64 through 81, above.

9 113. Plaintiff's and Class Members' injury is substantial, and is not outweighed by
10 any countervailing benefit to consumers or competition and is one that consumers could not
11 reasonably have avoided because of the manner in which Defendant engaged in disclosures and
12 omissions as set forth herein.

13 114. Defendant's conduct lacks reasonable and legitimate justification in that Defen-
14 dant has benefited from such conduct and practices while Plaintiff and the Class members have
15 been misled as to the nature and integrity of Defendant's products and services and have, in fact,
16 suffered material disadvantage regarding their interests in the privacy and confidentiality of
17 their personal information. Defendant's conduct offends public policy in California tethered to
18 the Consumer Legal Remedies Act, the state constitutional right of privacy, and California
19 statutes' recognition of the need for consumers to be information and equipped to protect their
20 own privacy interests, such as California Civil Code, Section 1798.8, such that consumers may
21 make informed decisions in their choices of merchants and other means of safeguarding their
22 privacy.

23 115. Plaintiffs and Class Members enjoy a legally protected privacy and economic in-
24 terest in their Internet browsing activity as alleged in paragraphs 64 through 81, above.

25 116. Plaintiff's expectation of privacy was reasonable under the circumstances and
26 Defendant's conduct caused a serious violation of that privacy interest in that his personal
27 information was collected and used by Defendant without his consent and authorization.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff and the Class respectfully pray that the Court enter judgment
3 in their favor as follows:

4 1. with respect to all counts, declaring the action to be a proper class action and des-
5 ignating Plaintiff and their counsel as representatives of the Class;

6 2. as applicable to the Class *mutatis mutandis*, awarding injunctive and equitable re-
7 lief including, *inter alia*:

8 a. prohibiting Defendant from engaging in the acts alleged above;

9 b. ordering an accounting and constructive trust imposed on the data, funds,
10 and other assets obtained by unlawful means as alleged above, to avoid dissipation, fraudulent
11 transfers, and concealment of such assets by Defendant;

12 c. requiring Defendant to delete all data wrongfully collected and retained
13 through the acts alleged above;

14 d. requiring Defendant to provide clear, conspicuous, accessible, and accu-
15 rate notice of its practices, instructions, and privacy choices for configuring and using Toolbar;

16 e. requiring Defendant to provide Plaintiff and the other Class Members a
17 clear, conspicuous, effective, and permanent means to decline to participate or suspend partici-
18 pation in any Toolbar data collection activities, in any present or future iteration of Toolbar;

19 f. requiring Defendant to disgorge all ill-gotten gains to Plaintiff and the
20 other Class Members, or to whomever the Court deems appropriate;

21 g. awarding Plaintiff and Class Members full restitution of all benefits
22 wrongfully acquired by Defendant by means of the wrongful conduct alleged in this complaint;

23 h. awarding Plaintiff and Class Members full compensation for all costs
24 arising from Defendant's wrongful conduct;

25 3. for a preliminary and permanent injunction restraining Defendant and Defen-
26 dant's officers, agents, servants, employees, and attorneys, and those in active concert or par-
27 ticipation with any of them from:

1 a. acquiring any information about Plaintiff's or Class Members' activities
2 on the Internet without fair, clear and conspicuous notice of the intent to transmit information,
3 including a full description of all information potentially and/or actually available for transmis-
4 sion;

5 4. awarding damages, including statutory and punitive damages where applicable,
6 to the Class in an amount to be determined at trial;

7 5. awarding Plaintiff reasonable attorney's fees and costs;

8 6. awarding pre- and post-judgment interest; and

9 7. granting such other and further relief as the Court may deem just and proper.

10 Respectfully submitted,

11 DATED: March 16, 2011

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

DATED: November 5, 2010

KAMBERLAW, LLC
KAMBERLAW, LLP

By: 
AVI KREITENBERG
One of the Attorneys for Plaintiff,
individually and on behalf of a class of
similarly situated individuals

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