

**EXHIBIT 5**

ADRMOP,E-Filing

**U.S. District Court**  
**California Northern District (San Jose)**  
**CIVIL DOCKET FOR CASE #: 5:12-cv-01565-PSG**

Anderson v. Google, Inc.  
Assigned to: Magistrate Judge Paul Singh Grewal  
Cause: 28:1331 Fed. Question

Date Filed: 03/29/2012  
Jury Demand: Plaintiff  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff**

**Nicholas Anderson**  
*individually and on behalf of all others  
similarly situated*

represented by **Lawrence Timothy Fisher**  
Bursor & Fisher, P.A.  
1990 North California Blvd.,  
Suite 940  
Walnut Creek, CA 94596  
925-300-4455  
Fax: 925-407-2700  
Email: ltfisher@bursor.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Sarah N Westcot**  
Bursor & Fisher PA  
1990 North California Blvd.  
Suite 940  
Walnut Creek, CA 94596  
925-300-4455  
Fax: 925-407-2700  
Email: swestcot@bursor.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Scott A. Bursor**  
Bursor & Fisher P.A.  
369 Lexington Avenue  
10th Floor  
New York, NY 10017-6531  
212-989-9113  
Fax: 212-989-9163  
Email: scott@bursor.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Sarah Nicole Westcot**  
 Bursor and Fisher, P.A.  
 1990 North California Blvd., Suite 940  
 Walnut Creek, CA 94596  
 925-300-4455  
 Fax: 925-407-2700  
 Email: swestcot@bursor.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**  
**Google, Inc.**

Date Filed	#	Docket Text
03/29/2012	<a href="#">1</a>	<b>Alleged Class Action Complaint</b> (Summons Issued): jury demand; COMPLAINT against Google, Inc. ( Filing fee \$ 350, receipt number 44611008572 ). Filed by Nicholas Anderson. (bw, COURT STAFF) (Filed on 3/29/2012) (Additional attachment(s) added on 4/2/2012: # <a href="#">1</a> Civil Cover Sheet) (bw, COURT STAFF). (Entered: 03/29/2012)
03/29/2012	<a href="#">2</a>	Summons Issued as to Google, Inc.. (bw, COURT STAFF) (Filed on 3/29/2012) (bw, COURT STAFF). (Entered: 03/29/2012)
03/29/2012	<a href="#">3</a>	ADR SCHEDULING ORDER: Case Management Statement due by 6/19/2012. Case Management Conference set for 6/26/2012 02:00 PM in Courtroom 5, 4th Floor, San Jose. (bw, COURT STAFF) (Filed on 3/29/2012) (bw, COURT STAFF). (Entered: 03/29/2012)
03/29/2012		CASE DESIGNATED for Electronic Filing. (bw, COURT STAFF) (Filed on 3/29/2012) (Entered: 03/29/2012)
04/02/2012	<a href="#">4</a>	Declination to Proceed Before a U.S. Magistrate Judge by Nicholas Anderson . (Westcot, Sarah) (Filed on 4/2/2012) (Entered: 04/02/2012)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
04/02/2012 12:29:12			
<b>PACER Login:</b>	sb0938	<b>Client Code:</b>	089 Google
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	5:12-cv-01565-PSG
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20

1 **BURSOR & FISHER, P.A.**

2 L. Timothy Fisher (State Bar No. 191626)  
3 Sarah N. Westcot (State Bar No. 264916)  
4 1990 North California Boulevard, Suite 940  
5 Walnut Creek, CA 94596  
6 Telephone: (925) 300-4455  
7 Facsimile: (925) 407-2700  
8 E-Mail: ltfisher@bursor.com  
9 swestcot@bursor.com

6 **BURSOR & FISHER, P.A.**

7 Scott A. Bursor (State Bar No. 276006)  
8 369 Lexington Avenue, 10th Floor  
9 New York, NY 10017  
10 Telephone: (212) 989-9113  
11 Facsimile: (212) 989-9163  
12 E-Mail: scott@bursor.com

10 *Attorneys for Plaintiff*

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

15 NICHOLAS ANDERSON, individually and on  
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 GOOGLE INC.

20 Defendant.

21 **C12-01565** **PSG**  
22 **CLASS ACTION COMPLAINT**

23 **JURY TRIAL DEMANDED** **ADR**

ORIGINAL  
FILED  
MAR 29 2012  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BERKELEY

1 Plaintiff Nicholas Anderson brings this action on behalf of himself and all others similarly  
2 situated against defendant Google Inc. (“Google”). Plaintiff makes the following allegations upon  
3 information and belief, except as to allegations specifically pertaining to him, which is based on  
4 personal knowledge.

### 5 **NATURE OF THE ACTION**

6 1. Google is an advertising company. Its business model is to deliver targeted  
7 advertisements through free web-based services. These services include Google Search, Gmail,  
8 YouTube, and Google+. In 2011, Google’s revenues were \$37.91 billion, of which \$36.53 billion  
9 came from advertising.

10 2. Google’s success is attributed to its ability to deliver highly-relevant, targeted  
11 advertisements. In order to accomplish this, Google logs personalized information, browsing  
12 habits, purchasing information, and other demographic information (“user data”). For example,  
13 Google records users’ search histories on Google Search, their real name on Google+, and the  
14 types of websites they visit. Google then place specific advertisements on user’s webpages based  
15 on the user’s individual interests and online habits. Advertisers are willing to pay a premium to  
16 advertise with Google because of their ability to place individually targeted ads.

17 3. Prior to March 1, 2012, Google placed targeted ads based on a user’s online habits  
18 within a specific Google service. For example, when displaying ads in YouTube, Google targeted  
19 specific ads based only on a user’s prior YouTube use. Google did not target a YouTube user’s ads  
20 based on that user’s history within other Google services, for instance their Google search history  
21 or the content of their Gmail messages. In short, Google did not consolidate user data across the  
22 various Google services. Google users expected this level of privacy when they signed up for  
23 Google services.

24 4. However, Facebook has recently emerged as a threat to Google’s dominance.  
25 Facebook has superior user data. When users register for Facebook, they must submit their names,  
26 genders, and birthdays. Users then create profiles and participate in online events. In doing so,  
27 users voluntarily submit lists of friends, their interests, their favorite shows, their favorite music,  
28

1 what products they use, what webpages they read, what games they play, and what movies they  
2 watch. This information is also used by Facebook to target advertisements.

3 5. Threatened, Google decided to consolidate user data across its various services in  
4 order to enhance their advertising capabilities and draw a premium from potential advertisers for  
5 the placement of targeted ads.

6 6. Google announced a new Privacy Policy, which went into effect March 1, 2012.  
7 The new policy eliminated every previous privacy policy, across all Google services and allowed  
8 Google to consolidate user data. For example, user data in Google+ is now available to YouTube.

9 7. On January 30, 2012, Google circulated a letter to Congress explaining the change.  
10 Google explained the new Privacy Policy was for the sake of simplicity, and it would improve  
11 users' experiences on Google services. Google did not address advertising in detail.

12 8. Google misrepresented the reason behind the decision to consolidate user data. The  
13 decision to consolidate user data resulted from competition from Facebook and the desire to  
14 increase advertising revenue.

15 9. Google wrote, "We are not selling our users' data." This is misleading. Advertisers  
16 pay a premium to place their ads with Google due to Google's ability to employ user data for  
17 targeted ads. User data is a material factor when advertisers partner with Google — advertisers  
18 know Google has an unparalleled ability to place highly-relevant, targeted ads by analyzing user  
19 data.

20 10. Google's previous privacy policies prohibited the consolidation of user data. They  
21 stated, "When you sign up for a particular service that requires registration, we ask you to provide  
22 personal information. If we use this information in a manner different than the purpose for which it  
23 was collected, then we will ask for your consent prior to such use." However, "the purpose for  
24 which [user data] was collected" was to set up and run users' accounts. It was not for tracking and  
25 advertising. Google users did not agree to have Google consolidate their user data for advertising  
26 purposes. Users did not agree to share their private online habits across Google's dozens of  
27 different services.  
28







1           23.    Members of the Class, California Subclass, Android Subclass, and California  
2 Android Subclass (collectively, the “Subclasses”) are so numerous that their individual joinder  
3 herein is impracticable. On information and belief, members of the Class number in excess of 300  
4 million. The precise number of Class members and their identities are unknown to plaintiff at this  
5 time but will be determined through discovery of Google’s records. Class members may be  
6 notified of the pendency of this action by mail, email, and/or publication.

7           24.    Common questions of law and fact exist as to all Class members and predominate  
8 over questions affecting only individual Class members. These common legal and factual  
9 questions include, but are not limited to:

- 10           a. Whether Google violated its previous privacy policy by merging data across  
11           products and services without consumers’ consent;
- 12           b. Whether Google deceptively claimed that it would seek the consent of consumers  
13           before using their personal information for a purpose other than that for which it  
14           was collected;
- 15           c. Whether Google misrepresented the ability of consumers to exercise control over  
16           their personal information;
- 17           d. Whether Google misrepresented the extent of its compliance with the U.S.-EU Safe  
18           Harbor Framework by claiming that the company complied with the framework  
19           while violating the principles of Notice and Choice;
- 20           e. Whether Google’s new privacy policy deceptively claims that it does not sell  
21           personal information to advertisers when advertisers can, and in fact do, purchase  
22           targeting from Google that uses the consumer’s personal information and Google  
23           profits as a result;
- 24           f. Whether Google’s new privacy policy allows Google to profit from the deceptive  
25           use of consumers’ personal information through acquisition of a large share of  
26           advertising revenue;
- 27           g. Whether Google’s opt-out practices for its new privacy policy are deceptive and  
28           misleading;

- 1 h. Whether consumers can effectively opt-out of Google's new privacy policy;
- 2 i. Whether Google should, alternatively, provide an opt-in measure for its new privacy
- 3 policy;
- 4 j. Whether Android users can effectively opt-out of Google's new privacy policy;
- 5 k. Whether Android users are entitled to the cost of purchasing a new device or
- 6 reimbursement for the purchase of their current Android device;
- 7 l. Whether Google concealed or failed to disclose material information concerning its
- 8 advertising practices and future plans for revenue growth;
- 9 m. Whether Plaintiff and the Class and Android Subclass are entitled to injunctive
- 10 relief; and
- 11 n. Whether Plaintiff and the Class and Android Subclass are entitled to damages and
- 12 attorneys' fees.

13 25. Plaintiff's claims are typical of the claims of the proposed class. Each class member

14 was subjected to the same conduct, was harmed in the same way, and has claims for relief under

15 the same legal theories.

16 26. Plaintiff is an adequate representative of the Class because his interests do not

17 conflict with the interests of the Class members he seeks to represent, he has retained counsel

18 competent and experienced in prosecuting class actions, and he intends to prosecute this action

19 vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and

20 his counsel.

21 27. The class mechanism is superior to other available means for the fair and efficient

22 adjudication of the claims of Class members. Each individual Class member may lack the

23 resources to undergo the burden and expense of individual prosecution of the complex and

24 extensive litigation necessary to establish defendant's liability. Individualized litigation increases

25 the delay and expense to all parties and multiplies the burden on the judicial system presented by

26 the complex legal and factual issues of this case. Individualized litigation also presents a potential

27 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer

28 management difficulties and provides the benefits of single adjudication, economy of scale, and

1 comprehensive supervision by a single court on the issue of defendant's liability. Class treatment  
2 of the liability issues will ensure that all claims and claimants are before this Court for consistent  
3 adjudication of the liability issues.

4 28. Unless a class is certified, Google will retain monies received as a result of its  
5 conduct that were taken from Plaintiff and proposed Class members. Unless a classwide injunction  
6 is issued, Google will continue to commit the violations of law alleged, and the members of the  
7 Class and the general public will continue to be misled.

### 8 **SUBSTANTIVE ALLEGATIONS**

#### 9 **Google's Business And Services**

10 29. Google is an advertising company. Its business model is to deliver targeted  
11 advertisements through free web-based services. These services include Google Search, Gmail,  
12 YouTube, and Google+.

13 30. Google's market capitalization exceeded \$200 billion as of March 2012. According  
14 to Alexa, a web statistics company, Google.com is the most heavily-trafficked website on the  
15 Internet.

16 31. Google Search is Google's flagship product. It is currently the Internet's most  
17 popular search engine, handling over one billion search requests per day. In 2008, Google logged  
18 over 1 trillion unique URLs, and it indexes an estimated 40 billion websites. On most searches,  
19 users will see targeted ads at the top and side of their search results.

20 32. Gmail is a free email service offered by Google. Gmail has 350 million users as of  
21 January 2012. When viewing a message in Gmail, targeted advertisements appear at the top of  
22 each message. To deliver these advertisements, Gmail's software scans the contents of each email  
23 to display relevant ads.

24 33. YouTube is a video sharing site that Google purchased in 2006. According to  
25 Alexa, YouTube is the third most heavily-trafficked website on the Internet. YouTube serves over  
26 4 billion videos per day. Like other Google products, targeted advertisements appear across  
27 YouTube.

1           34.     Google+ is Google’s social networking service. Google+ has 90 million users as of  
2 January 19, 2012. Users must provide their real name and gender when signing up. Google  
3 suspends accounts that use pseudonyms.

4           35.     Google offers dozens of other products and services. These include Google Docs,  
5 Google Maps, Google Calendar, Google Books, Google News, Google Wave, Google Analytics,  
6 Google Trends, Blogger, Orkut, and Picasa.

7     **Google’s Advertising Programs And Targeted Ads**

8           36.     Google earns over 95% of its revenue from advertising. In 2011, Google’s revenues  
9 were \$37.91 billion, of which \$36.53 billion came from advertising.

10          37.     Google has two major advertising programs, AdWords and AdSense. With  
11 AdWords, advertisers bid to have their ads displayed on Google search results. For example,  
12 competing websites may bid on the search term “Honda Civic.” Then, when a user searches for  
13 “Honda Civic,” the highest bids will be at the top of the search results. AdWords ads will also run  
14 on sites within Google’s content network and Google affiliates.

15          38.     AdSense is another Google advertising program. With AdSense, Google will pay  
16 third-party websites to run Google’s advertisements. In return, the webmaster will allocate space,  
17 and Google will choose which ads to run. In the first quarter of 2011, Google earned \$2.43 billion  
18 (\$9.71 billion annualized), or 28% of its revenue, from AdSense. AdSense ads appear on  
19 YouTube, as well as third-party sites across the Internet.

20          39.     Google’s financial success is due to its advertising. And the success of its  
21 advertising is due to Google’s ability to run highly-specific, targeted ads. Google represents,

22                   By making ads more relevant, and improving the connection between advertisers and our  
23                   users, we can create more value for everyone. Users get more useful ads, and these more  
24                   relevant ads generate higher returns for advertisers and publishers. Advertising is the  
25                   lifeblood of the digital economy. . . Our advertisers and publisher partners have been  
26                   asking us for a long time to offer interest-based advertising. Advertisers need an efficient  
27                   way to reach those who are most interested in their products and services. And publishers  
28                   can generate more revenue when they connect advertisers to interested audiences.<sup>2</sup>

---

<sup>2</sup> Google Official Blog, Making ads more interesting,  
<http://googleblog.blogspot.com/2009/03/making-ads-more-interesting.html> (March 11, 2009, 05:01 EST).

1           40. Advertisers are willing to pay a premium to advertise with Google. Google has an  
2 unparalleled ability to run highly-specific ads within target demographics. According to Alex  
3 Daley, chief investment strategist at Casey Research, “If they can make the ads more relevant, the  
4 logic goes, they can increase the number of advertisers and the price they can charge per click (on  
5 each ad). . . Because the click will be from more qualified leads — customers who are more  
6 interested in the product — they can grow the revenue.”

7           41. Targeted advertising is the cornerstone of Google’s business. Google offers free or  
8 low-cost services to attract users and deploy ads.

### 9 **Google’s Collection Of User Data**

10           42. Google collects and processes user data to maintain its competitive edge. Google  
11 uses this data to sell premium, targeted advertisements. Better user data means better targeting,  
12 which means a price premium for Google.

13           43. Every day, Google’s network processes an estimated twenty-four petabytes of user  
14 data. The network contains an estimated one million servers.

15           44. First, Google collects any information submitted when creating a Google Account  
16 or a Google+ account, including a user’s real name, email address, telephone number, and/or credit  
17 card. If a user only provides a credit card number, Google will obtain the user’s real name from his  
18 or her credit card company. Google represents that “many of our services require you to sign up  
19 for a Google Account. When you do, we’ll ask for personal information, like your name, email  
20 address, telephone number or credit card information. If you want to take full advantage of the  
21 sharing features we offer, we might also ask you to create a publicly visible Google Profile, which  
22 may include your name and photo.”

23           45. Second, Google tracks browsing history. When loading a website with AdSense,  
24 Google places tracking cookies on users’ computers to trace them as they browse the Internet.  
25 Google represents, “we also show some ads that you might find useful based on the types of  
26 websites you like to visit . . . Mary's favorite hobby is gardening. With Google's interest-based  
27 advertising technology, Mary will see more relevant gardening ads because she visits many  
28

1 gardening websites.” It also represents, “Other ways we can personalize ads include using your  
2 Web History to show ads that are relevant to you. . .”

3 46. Third, Google tracks users’ Internet searches. Google represents, “When you search  
4 for something on Google, for example ‘hotels in New York,’ the page that you get contains search  
5 results and ads that match your search terms. We might personalize ads that appear on search  
6 results by using additional information beyond what you just entered in the search box. For  
7 example, if you search for ‘hotels’ and then make a second search for ‘travel,’ and then a third for  
8 ‘New York,’ the results page for the last search might contain ads for hotels in New York, based on  
9 the combination of the three searches.”

10 47. Fifth, Google tracks hardware details on a users’ computer or web-enabled phone.  
11 Google represents, “We may collect device-specific information (such as your hardware model,  
12 operating system version, unique device identifiers, and mobile network information including  
13 phone number). Google may associate your device identifiers or phone number with your Google  
14 Account.”

15 48. Sixth, on web-enabled phones, Google tracks users’ location data. Google  
16 represents, “When you use a location-enabled Google service, we may collect and process  
17 information about your actual location, like GPS signals sent by a mobile device. We may also use  
18 various technologies to determine location, such as sensor data from your device that may, for  
19 example, provide information on nearby Wi-Fi access points and cell towers.”

20 49. Seventh, Google scans email content read within Gmail. Google represents, “Gmail  
21 scans and processes all messages using fully automated systems in order to do useful and  
22 innovative stuff like filter spam, detect viruses and malware, [and] show relevant ads. . . .”

23 50. Eighth, Google collects miscellaneous data, such as IP addresses, telephony logs,  
24 cookies that uniquely identify users’ Google Accounts, browser type, browser language, the date  
25 and time of URL requests, and hardware settings.

26 51. During a December 3, 2009 interview with CNBC, former Google CEO Eric  
27 Schmidt said, “If you have something that you don't want anyone to know, maybe you shouldn't be  
28

1 doing it in the first place, but if you really need that kind of privacy, the reality is that search  
2 engines including Google do retain this information for some time. . . .”

3 52. On August 4, 2010, Eric Schmidt said, “Show us 14 photos of yourself and we can  
4 identify who you are. You think you don't have 14 photos of yourself on the internet? You've got  
5 Facebook photos! People will find it's very useful to have devices that remember what you want to  
6 do, because you forgot. . . But society isn't ready for questions that will be raised as result of user-  
7 generated content.”

### 8 **Google's User Data Was Not Consolidated**

9 53. Google's user data had a serious weakness: Google kept separate records for each  
10 service, instead of consolidating its user data among all services. For example, a user's search  
11 history on Google Search is not available for YouTube advertisements.

12 54. In fact, Google's old Privacy Policies *prohibited* Google from cross-referencing  
13 user data across many of its services. Prior to March 2012, Google kept a separate Privacy Policy  
14 for each service, resulting in about 60 separate policies. Each of these policies stated, “When you  
15 sign up for a particular service that requires registration, we ask you to provide personal  
16 information. If we use this information in a manner different than the purpose for which it was  
17 collected, then we will ask for your consent prior to such use.”

18 55. Users were led to believe that “the purpose for which [their data] was collected” was  
19 to set up their account and administer the service. Users did not believe the purpose for collecting  
20 their data was tracking and advertising across dozens of Google services.

### 21 **Facebook Threatens Google's Dominance Over User Data And Targeted Ads**

22 56. Facebook now threatens Google's domination over user data and targeted  
23 advertising. According to Alexa, Facebook is the Internet's second most heavily-trafficked  
24 website. Facebook earns about 85% of its revenue from advertising. In 2011, Facebook earned  
25 \$3.71 billion revenue, of which \$3.15 billion came from advertisements.

26 57. Facebook has superior user data, which it uses to deliver targeted advertisements.  
27 When users register for Facebook, they must submit their name, gender, and birthday. Users then  
28 create profiles and participate in online events. In doing so, users voluntarily submit lists of

1 friends, their interests, their favorite shows, their favorite music, what products they use, what  
2 webpages they read, what games they play, and what movies they watch.

3 58. And unlike Google, Facebook is not bound by restrictive Privacy Policies.  
4 Facebook is free to cross-reference user data across its services for advertising purposes. Unlike  
5 Google, Facebook's user data is consolidated.

6 59. James Whittaker, a former Google Engineering Director, described Facebook's  
7 advantage over user data. On March 13, 2012, he wrote a public explanation of his resignation:

8 It turns out that there was one place where the Google innovation machine  
9 faltered and that one place mattered a lot: competing with Facebook. . . Like the  
10 proverbial hare confident enough in its lead to risk a brief nap, Google awoke  
11 from its social dreaming to find its front runner status in ads threatened. . . Google  
12 could still put ads in front of more people than Facebook, but Facebook knows so  
13 much more about those people.

14 Advertisers and publishers cherish this kind of personal information, so much so  
15 that they are willing to put the Facebook brand before their own. Exhibit A:  
16 [www.facebook.com/nike](http://www.facebook.com/nike), a company with the power and clout of Nike putting  
17 their own brand after Facebook's? No company has ever done that for Google  
18 and Google took it personally.

19 60. In part, Google responded by developing Google+, a social networking site intended  
20 to compete with Facebook. James Whittaker wrote, "Social became state-owned, a corporate  
21 mandate called Google+. . . Search had to be social. Android had to be social. You Tube, once  
22 joyous in their independence, had to be. . . well, you get the point. Even worse was that  
23 innovation had to be social. Ideas that failed to put Google+ at the center of the universe were a  
24 distraction." Google+ publicly launched on September 20, 2011. It now has over 90 million users.

### 25 **Google Consolidated User Data Across Dozens Of Services To Compete With Facebook**

26 61. As part of its effort to compete with Facebook, Google began tracking user data  
27 across its services in order to create targeted advertising based on an individual's search history,  
28 email content, location data, etc. For example, a user's Google Search history can influence  
advertisements that appear on their YouTube page. Location data from a user's Google Maps  
searches and the content of a user's Google+ social networking account can influence the results of  
their Google web searches.



1           62.     The consolidation of user data across all Google services would have violated  
2 Google’s own privacy policies. To get around this, Google first eliminated the existing privacy  
3 policies (a unique policy for each service, about 60 in total) and created a single, unified Privacy  
4 Policy applicable for all Google services.

5           63.     The change to Google’s Privacy Policy took effect on March 1, 2012.

6           64.     The new policy explains:

7           We use the information we collect from all of our services to provide, maintain,  
8 protect and improve them, to develop new ones, and to protect Google and our  
9 users. We also use this information to offer you tailored content – like giving you  
more relevant search results and ads. . .

10          We may combine personal information from one service with information,  
11 including personal information, from other Google services. . . .<sup>3</sup>

12           65.     From October 14, 2005 to the present, Google’s Privacy Policy states, “We will not  
13 reduce your rights under this Policy without your explicit consent.” However, users were not given  
14 a choice. There was no opt-in. There was no simple opt-out; users must manage their privacy  
15 settings for each Google product. Android users are left with no remedy but to abandon their  
16 phone if they disagree with the new Privacy Policy.

17           66.     On February 22, 2012, thirty-six Attorneys General discussed their concerns in an  
18 open letter to Larry Page, “Unfortunately, Google has not only failed to provide an ‘opt-in’ option, but  
19 has failed to provide meaningful ‘opt-out’ options as well.”

20           67.     Between July 1, 2004 and March 11, 2009, Google’s Privacy Policy states that  
21 while there may be changes, “we expect most such changes to be minor.” Eliminating the Privacy  
22 Policy of every Google service is not minor. Consolidating user data across every Google service  
23 is not minor.

24           68.     James Whittaker, a former Engineering Director who actively worked on Google+,  
25 wrote, “Truth is I’ve never been much on advertising. I don’t click on ads. When Gmail displays  
26 ads based on things I type into my email message it creeps me out. . . Perhaps Google is right.  
27 Perhaps the future lies in learning as much about people’s personal lives as possible.”

28 <sup>3</sup> Google Privacy Policy, <http://www.google.com/policies/privacy/> (Mar. 1, 2012).

1 **Harm To Computer Users**

2 69. If a computer user disagrees with Google’s new Privacy Policy, the remedy is to  
3 stop using his or her Google Account. But terminating a Google Account is time-consuming,  
4 inconvenient, and costly. Users may have Google Accounts for email, advertising, webpage  
5 analytics, or other purposes. A loss of a Google Account means a loss of business, advertising, and  
6 opportunity.

7 70. Small businesses are severely affected if they disagree with the new Privacy Policy.  
8 Many small businesses use Google Accounts for company email. Local versions of Google Search  
9 may be used to search the company intranet. Removing and replacing Google services is costly  
10 and disruptive.

11 71. On February 22, 2012, thirty-six Attorneys General wrote in an open letter, “This  
12 invasion of privacy will be costly for many users to escape. For users who rely on Google products  
13 for their business – a use that Google has actively promoted – avoiding this information sharing  
14 may mean moving their entire business over to different platforms, reprinting any business cards or  
15 letterhead that contained Gmail addresses, re-training employees on web-based sharing and  
16 calendar services, and more.”

17 **Harm To Android Phone Users**

18 72. Android is a Linux-based operating system designed for smartphones. It is  
19 developed by the Open Handset Alliance, which is led by Google. There are over 300 million  
20 Android phones on the market. Over 850,000 new Android phones are activated every day. About  
21 half of all smartphones are Android devices.

22 73. Android phones are heavily integrated into Google. Email is handled by Gmail.  
23 Chat functions are also handled by Google. Apps, music, movies, and books may be purchased on  
24 Google Play (previously called the Android Marketplace).

25 74. If an Android phone user disagrees with Google’s new Privacy Policy, there is no  
26 remedy. The user must purchase a new phone or have all smartphone functionality stripped away.  
27 This means hundreds of dollars of damages, per Android user.

1           75.     On February 22, 2012, thirty-six Attorneys General wrote, “Even more troubling,  
2 this invasion of privacy is virtually impossible to escape for the nation’s Android-powered  
3 smartphone users, who comprise nearly 50% of the national smartphone market. For these  
4 consumers, avoiding Google’s privacy policy change may mean buying an entirely new phone at  
5 great personal expense. No doubt many of these consumers bought an Android-powered phone in  
6 reliance on Google’s existing privacy policy, which touted to these consumers that ‘We will not  
7 reduce your rights under this Privacy Policy without your explicit consent.’ That promise appears  
8 not to be honored by the new privacy policy. Given the way the new privacy policy is being  
9 implemented, i.e., without genuine opt-out options and without pre-purchase notice to users of  
10 Android-powered smartphones, it seems these users can only register non-consent by abandoning  
11 their phone altogether.”

#### 12 **Google Misrepresented The Purpose Of Its New Privacy Policy**

13           76.     Google has consistently misrepresented the purpose of its new Privacy Policy. On  
14 January 30, 2012, Google sent a letter to eight members of Congress, including Cliff Stearns, Joe  
15 Barton, Marsha Blackburn, G.K. Butterfield, Henry Waxman, Edward Markey, Diana DeGette,  
16 Jackie Speier. Google’s letter offers two explanations for the privacy policy. First, it was adopted  
17 for simplicity, because it merges over 60 policies into one comprehensive document. Second, it  
18 improves user experiences across Google services. For example, the letter explains the benefits of  
19 using recent Google Search terms to identify relevant videos in YouTube.

20           77.     Between January and March 2012, Google unveiled an ambitious advertising  
21 campaign to relieve concerns over its new Privacy Policy. The campaign, entitled Good to Know,  
22 showcases the benefits of consolidating user data and the security features Google offers.

23           78.     Google made similar representations on company blogs and explanatory webpages.  
24 The message is consistent: Google made the new Privacy Policy for the sake of simplicity, and it  
25 improves users’ experiences.

26           79.     But Google’s letter and advertising campaign are misleading. They fail to highlight  
27 Google’s true goal: consolidating user data for advertising purposes. Writers, technology experts,  
28

1 and even former Google employees recognize the new Privacy Policy is actually intended to  
2 improve Google's access to user data.

3 80. On January 25, 2012, USA Today published an article called "Consumers in the  
4 middle of Google-Facebook battle." The article explains, "Google signaled its intent to begin  
5 correlating data about its users' activities across all of its most popular services and across multiple  
6 devices. The goal: to deliver those richer behavior profiles to advertisers. . . The global online  
7 advertising market is expected to swell to \$132 billion by 2015, up from \$80 billion this year,  
8 according to eMarketer. Google and Facebook are putting their abilities to index individuals'  
9 online activity and behaviors into high gear to tap into this market, analysts say."

10 81. On January 25, 2012, BBC News published an article called "Backlash over Google  
11 move to change privacy settings." The article identified advertising as an objective of the move. It  
12 explains, "Google said the update would offer more relevant searches. But critics say it has more  
13 to do with the data battle the search giant is waging with rival Facebook."

14 82. On January 28, 2012, the Altimeter Group, an Internet consulting company, posted a  
15 blog article called "Google's New Privacy Policy Critical to Competition with Facebook."  
16 Rebecca Lieb, an analyst, wrote that "Google needs a 360 degree view of the customer now more  
17 than ever. Why? Because Facebook's already got it. Or is at least a lot closer to having it than  
18 Google is if all Google's information is separately warehoused. Facebook is currently better  
19 positioned than Google" to know what users are doing as they surf the Internet.

20 83. On February 22, 2012, a consumer advocacy group called the Center for Digital  
21 Democracy ("CDD ") petitioned the U.S. Federal Trade Commission ("FTC") to enforce a October  
22 13, 2011 Consent Order with Google, which prevents Google from misrepresenting the extent to  
23 which it "maintains and protects the privacy and confidentiality" of user data. The filing alleges  
24 that the consolidation of user data "has nothing to do with making it 'easier' or 'more convenient'  
25 [to use Google services]. . . In particular, Google fails to inform its users that the new privacy  
26 regime is based on its own business imperatives: to address competition from Facebook; to finely  
27 profile and target through audience buying. . . ."  
28

1           84.     On February 22, 2012, thirty-six Attorneys General sent an open letter to Larry  
2 Page, Google’s CEO. The letter expressed concerns over the new Privacy Policy and casts doubt  
3 on Google’s explanation to Congress. It says, “Your company claims that users of Google  
4 products will want their personal information shared in this way because doing so will enable your  
5 company to provide them with a ‘simple product experience that does what you need, when you  
6 want it to,’ among many other asserted benefits. If that were truly the case, consumers would not  
7 only decline to opt out of the new privacy policy, but would freely opt *in* if given the opportunity.  
8 Unfortunately, Google has not only failed to provide an ‘opt-in’ option, but has failed to provide  
9 meaningful ‘opt-out’ options as well.”

10           85.     The Attorneys General letter further elaborates, “We have reviewed your recently  
11 published letter to several members of Congress regarding your privacy policy change, as well as  
12 the letters recently sent to several attorneys general, and while we appreciate your efforts to inform  
13 elected officials and other members of the public, the letters have not allayed our concerns  
14 regarding the multiple issues discussed above. Indeed, they have raised as many questions as they  
15 have answered.”

16           86.     James Whittaker, a former Engineer Director who worked on the Google+ project,  
17 writes, “The Google I was passionate about was a technology company that empowered its  
18 employees to innovate. The Google I left was an advertising company with a single corporate-  
19 mandated focus.”

#### 20 **Google Misrepresented How It Discloses User Data**

21           87.     In its January 30, 2012 letter to Congress, Google wrote, “**We are not selling our**  
22 **users’ data.** We do not sell users’ personally identifiable information, and that will not change  
23 under the updated privacy policy. . . Google does not sell, trade, or rent personally identifiable user  
24 information, and shares it with third parties only with users’ consent and in the limited  
25 circumstances described in our privacy policy, such as to satisfy valid legal requests.” (emphasis in  
26 original).

27           88.     This is misleading. Advertisers pay a premium to place their ads with Google  
28 because it has user data. User data is pivotal to the success of Google’s advertising programs.

1 User data is a material factor when advertisers partner with Google — advertisers know Google  
2 has an unparalleled ability to place highly-relevant, targeted ads by analyzing user data.

3 89. When bidding on AdWords, Google reveals information from Google Search. By  
4 examining the bid price, researchers could gauge the popularity of certain keywords. For example,  
5 researchers found they can discover flu outbreaks and changes in unemployment by analyzing the  
6 popularity of search terms. Google even launched Google Flu Trends, which uses search terms to  
7 predict flu outbreaks.

### 8 **Google Violated Its 2011 Consent Decree With The FTC Over Google Buzz**

9 90. On February 9, 2010, Google launched Google Buzz, a social networking program  
10 within Gmail. By default, Google Buzz automatically made certain information public, such as a  
11 list of names of common Gmail contacts. In one dramatic case, this privacy breach caused a  
12 woman’s abusive ex-husband to discover her workplace.

13 91. After an FTC suit, Google entered into a Consent Decree on March 30, 2011 that  
14 “bars the company from future privacy misrepresentations, requires it to implement a  
15 comprehensive privacy program, and calls for regular, independent privacy audits for the next 20  
16 years.”

17 92. Specifically, Section I.A prohibits Google from misrepresenting “the extent to  
18 which respondent maintains and protects the privacy and confidentiality of any covered  
19 information, including, but not limited to, misrepresentations related to: (1) the purposes for which  
20 it collects and uses covered information, and (2) the extent to which consumers may exercise  
21 control over the collection, use, or disclosure of covered information.” Google violated this section  
22 because it misrepresented the purpose of consolidating user data. Google represented it  
23 consolidated user data to make its Privacy Policy simpler, and to improve user experience. To the  
24 contrary, the new Privacy Policy is intended to facilitate targeted advertising.

25 93. Section II.B requires Google to “[o]btain express affirmative consent from the  
26 Google user” to new or additional sharing of user data. Google violated this section. Users were  
27 not given a choice. There was no opt-in. There was no simple opt-out; users must manage their  
28

1 privacy settings for each Google product. Android users are left with no remedy but to abandon  
2 their phone if they disagree with the new Privacy Policy.

3 **COUNT I**  
4 **Breach Of Contract**

5 94. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
6 paragraphs of this complaint.

7 95. This count is brought against Defendant by Plaintiff individually, and on behalf of  
8 the Class and all Subclasses.

9 96. Before March 1, 2012, Google's Privacy Policies stated, "When you sign up for a  
10 particular service that requires registration, we ask you to provide personal information. If we use  
11 this information in a manner different than the purpose for which it was collected, then we will ask  
12 for your consent prior to such use." However, "the purpose for which [user data] was collected"  
13 was to create and manage users' accounts. It was not for tracking and advertising. Users did not  
14 agree to have Google consolidate their user data for advertising. Users did not agree for Google to  
15 share this information across its dozens of services. Users did not consent to the change in the  
16 Privacy Policy because there is no simple and effective way to opt out. Class members with  
17 Android phones are forced to discard their phones or abandon smartphone functionality if they  
18 disagree.

19 97. Between July 1, 2004 and March 11, 2009, Google's Privacy Policy stated that  
20 while there may be changes, "we expect most such changes to be minor." Eliminating the Privacy  
21 Policy of every Google service is not minor. Consolidating user data across every Google service  
22 is not minor.

23 98. Google breached its contract with Plaintiff and members of the Class by  
24 consolidating and sharing user data across its dozens of services for advertising purposes.

25 99. Google breached its contract with Plaintiff and members of the Class by failing to  
26 provide a simple and effective way to opt out.

1 100. Google breached its contract with Plaintiff and members of the Class by enacting a  
2 major change in its Privacy Policies: eliminating them entirely and creating a single, unified policy  
3 with substantially altered terms.

4 101. Plaintiff and Class members suffered and will continue to suffer damages including  
5 by not limited to loss of their personal information, deprivation of money earned by the use of such  
6 information, and the cost of purchasing a new phone for members of the Android Subclass, all of  
7 which have ascertainable value to be proven at trial.

8 **COUNT II**  
9 **Violation Of California’s Consumer Legal Remedies Act,**  
10 **California Civil Code §1750, et seq.**  
11 **(Injunctive Relief Only)**

12 102. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
13 paragraphs of this complaint.

14 103. This count is brought against Defendant by Plaintiff individually, and on behalf of  
15 the California Subclass and the California Android Subclass.

16 Google violated Civil Code § 1770(a)(9), (14) and (16) by intentionally and knowingly  
17 misrepresenting that Plaintiff and the Class have full control to prevent their user data being  
18 used for advertising. Google did so with the intent of getting members to register for, and  
19 to use, its products and services, even while Google knew there was no simple and effective  
20 way to prevent one’s user data from being used for targeted advertising.

21 104. Moreover, Google intentionally misrepresented the ability of Plaintiff and Class  
22 members to prevent use of their user data in advertisements so Google could enjoy substantial  
23 profits by selling targeted advertisements at a premium.

24 105. Google also knowingly and intentionally failed to seek and acquire informed  
25 consent regarding the changes to its Privacy Policy.

26 106. Google also knowingly and intentionally misrepresented the reasons for  
27 consolidating user data.

28 107. Google led Plaintiff and the Class to believe that they had control of their user data,  
encouraging Plaintiff and the Class to make Google products indispensable to their lives, and then



1 using Plaintiff's and the Class' user data in a manner in which Plaintiff and the Class cannot  
2 effectively opt out.

3 108. Plaintiff and members of the Class have suffered harm as a result of these violations  
4 of the CLRA because they have been deprived of money earned by the misrepresentations, in an  
5 amount to be proven at trial.

6 109. On March 29, 2012, prior to the filing of this Complaint, a CLRA notice letter was  
7 served on Defendant which complies in all respects with California Civil Code §1782(a). Plaintiff  
8 Nicholas Anderson sent Defendant a letter via certified mail, return receipt requested, advising  
9 Defendant that they are in violation of the CLRA and demanding that they cease and desist from  
10 such violations and make full restitution by refunding the monies received therefrom. Defendant  
11 was further advised that in the event that the relief requested has not been provided within (30)  
12 days, Plaintiff will amend this Complaint to include a request for monetary damages pursuant to  
13 the CLRA. A true and correct copy of Plaintiff's CLRA letter is attached hereto as Exhibit A.

14 110. Wherefore, Plaintiff presently seeks only injunctive relief for these violations of the  
15 CLRA.

### 16 **COUNT III**

#### 17 **Violation Of California's Unfair Competition Law ("UCL"),** 18 **California Business & Professions Code §§ 17200 et seq.**

19 111. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
20 paragraphs of this complaint.

21 112. This count is brought against Defendant by Plaintiff individually, and on behalf of  
22 the California Subclass and the California Android Subclass.

23 113. Google violated the "unlawful" prong of the UCL by their nonconsensual use of  
24 Plaintiff's and Class members' personal information in violation of the Federal Wiretap Act, the  
25 Stored Electronic Communications Act, and Penal Code § 502, as described below.

26 114. Google also violated the "fraudulent and deceptive" prong of the UCL by  
27 intentionally and knowingly misrepresenting that Plaintiff and the Class have full control to  
28 prevent their user data being used for advertising. Google did so with the intent of getting

1 members to register for, and to use, its products and services, even while Google knew there was  
2 no simple and effective way to prevent one's user data from being used to target advertising.

3 115. Moreover, Google intentionally misrepresented the ability of Plaintiff and the Class  
4 members to prevent use of their user data in advertisements so Google could enjoy substantial  
5 profits by selling targeted advertisements at a premium.

6 116. Plaintiff and the Class justifiably relied upon those misrepresentations when  
7 deciding to sign up for and use Google's products and services, and when using those services to  
8 run searches for their interest, exchange emails with friends, edit and share their pictures, stream  
9 videos, and search for directions. Plaintiff and the Class were harmed in that they suffered  
10 damages of deprivation of money earned by the misrepresentations, in an amount to be proven at  
11 trial.

12 117. Google also violated the "fraudulent" prong of the UCL by knowingly and  
13 intentionally failing to seek and acquire informed consent regarding the changes to its privacy  
14 policy.

15 118. Google violated the "unfair" prong of the UCL by leading Plaintiff and the Class to  
16 believe that they had control of their user data, encouraging Plaintiff and the Class to make Google  
17 products indispensable to their lives, and then using Plaintiff's and the Class' user data in a manner  
18 in which Plaintiff and the Class cannot effectively opt out.

19 119. Google's unfair, deceptive, and fraudulent practices originated in California.  
20 Decisions concerning Google's privacy policies and advertising decisions were made in California.

21 120. Plaintiff and the Class have a vested, monetary interest in the use of their user data  
22 to target advertisements, and Google has deprived them of that interest.

23 121. Plaintiff and the Class each lost money to which they were entitled in the form of  
24 compensation for the use of their user data, and in which they had a vested interest, by virtue of  
25 Google's conduct. They are entitled to restitution of such sums.

26 122. Pursuant to Bus. & Prof. Code §17203, Plaintiff seeks an order permanently  
27 enjoining Google from continuing to engage in the unlawful, unfair, and deceptive conduct alleged  
28 herein. Plaintiff and the Class also seek and order requiring Google to:

- 1 (a) immediately cease the conduct described herein;  
2 (b) make full restitution of all monies wrongfully obtained;  
3 (c) disgorge all ill-gotten revenues and/or profits; and  
4 (d) award Plaintiff and the Class reasonable costs and attorneys' fees pursuant to Cal.  
5 Code of Civ. Proc. §1021.5.

6 **COUNT IV**  
7 **Violations Of The Federal Wiretap Act**  
8 **18 U.S.C. § 2511**

9 123. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
10 paragraphs of this complaint.

11 124. This count is brought against Defendant by Plaintiff individually, and on behalf of  
12 the Class and all Subclasses.

13 125. The Federal Wiretap Act ("FWA"), as amended by the Electronic Communications  
14 Privacy Act of 1986, prohibits the willful interception of any wire, oral or electronic  
15 communication.

16 126. Section 2520(a) of the FWA provides a private right of action to any person whose  
17 wire, oral, or electronic communication is intercepted or disclosed. 18 U.S.C. § 2520(a).

18 127. The FWA defines "electronic communication" as "any transfer of signs, signals,  
19 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a  
20 wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or  
21 foreign commerce..." *Id.* at § 2510(12).

22 128. The FWA defined "wire communications" as "any aural transfer made in whole or  
23 in part through the use of facilities for the transmission of communications by the aid of wire,  
24 cable, or other like connection between the point of origin and the point of reception." *Id.* at §  
25 2510(1).

26 129. The data Google is intercepting and consolidating are "communications" within the  
27 meaning of the Wiretap Act.

28 130. Plaintiff and member of the class are persons whose electronic communication were  
intercepted within the meaning of 18 U.S.C. § 2520.



1           139. “Electronic communication service” is defined as “any service which provides to  
2 users thereof the ability to send or receive wire or electronic communications.” *Id.* at § 2510(15).

3           140. Google provides an “electronic communication service to the public” within the  
4 meaning of the SCA because it provides consumers at large with the ability to send or receive wire  
5 or electronic communications, and provides services to run internet searches, exchange emails, edit  
6 and share pictures, stream videos, and search for directions.

7           141. Section 2702(a)(2)(A) of the SCA provides “a person or entity providing remote  
8 computing service to the public shall not knowingly divulge to any person or entity the contents of  
9 any communication which is carried or maintained on that service on behalf of, and received by  
10 means of electronic transmission from (or created by means of computer processing of  
11 communications received by means of electronic transmission from), a subscriber or customer of  
12 such service.” 18 U.S.C. § 2702(a)(2)(A)

13           142. The SCA defines “remote computing service” as “the provision to the public of  
14 computer storage or processing services by means of an electronic communications system.” 18  
15 U.S.C. § 2711(2).

16           143. An “electronic communications system” is defined by the SCA as “any  
17 wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire  
18 or electronic communications, and any computer facilities or related electronic equipment for the  
19 electronic storage of such communications.” 18 U.S.C. § 2510(14).

20           144. Google provides remote computing services to the public because it provides  
21 consumers at large with the ability to send or receive wire or electronic communications, and  
22 provides services to run internet searches, exchange emails, edit and share pictures, stream videos,  
23 and search for directions.

24           145. By intentionally exceeding its authorized access to consumers’ electronic  
25 communications stored on Google’s system, and by divulging such information for their own  
26 pecuniary gain in the form of advertising sales, Google has violated Sections 2702(a)(1) and (2) of  
27 the SCA.









1           175. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
2 in violation of ARK. CODE ANN. § 4-88-107, *et seq.*

3           176. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
4 or have made false representations in violation of COLO. REV. STAT. § 6-1-101, *et seq.*

5           177. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
6 in violation of CONN. GEN. STAT. § 42-110b, *et seq.*

7           178. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
8 in violation of DEL. CODE ANN. tit. 6, § 2511, *et seq.*

9           179. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
10 or made false representations in violation of D.C. CODE ANN. § 28-3901, *et seq.*

11           180. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
12 in violation of FLA. STAT. ANN. § 501.201, *et seq.*

13           181. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
14 in violation of GA. CODE ANN. §10-1-392, *et seq.*

15           182. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
16 in violation of HAW. REV. STAT. § 480, *et seq.*

17           183. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
18 in violation of IDAHO CODE § 48-601, *et seq.*

19           184. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
20 in violation of 815 ILL. COMP. STAT. 505/1, *et seq.*

21           185. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
22 in violation of IND. CODE ANN. § 24-5-0.5-1, *et seq.*

23           186. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
24 in violation of IOWA CODE §714.16, *et seq.*

1           187. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
2 in violation of KAN. STAT. § 50-623, *et seq.*

3           188. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
4 in violation of KY. REV. STAT. ANN. § 367.110, *et seq.*

5           189. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
6 in violation of LA. REV. STAT. § 51:1404, *et seq.*

7           190. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
8 in violation of ME. REV. STAT. tit. 5, § 205-A, *et seq.*

9           191. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
10 in violation of MD. CODE. ANN., COM. LAW § 13-101, *et seq.*

11           192. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
12 in violation MASS. GEN LAWS ch. 93A, §1, *et seq.*

13           193. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
14 in violation of MICH. COMP. LAWS § 445.901, *et seq.*

15           194. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
16 in violation of MINN. STAT. § 8.31, *et seq.*

17           195. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
18 in violation of MISS. CODE ANN. § 75-24-3, *et seq.*

19           196. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
20 in violation of MO. REV. STAT. § 407.010, *et seq.*

21           197. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
22 in violation of MONT. CODE ANN. § 30-14-101, *et seq.*

23           198. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
24 in violation of NEB. REV. STAT. § 59-1601, *et seq.*

1           219. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
2 in violation of NEV. REV. STAT. 598.0903, *et seq.*

3           200. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
4 in violation of N.H. REV. STAT. ANN. § 358-A:1, *et seq.*

5           201. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
6 in violation of N.M. STAT. ANN. § 57-12-1, *et seq.*

7           202. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
8 in violation of N.Y. GEN. BUS. LAW § 349, *et seq.*

9           203. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
10 in violation of N.J.S.A. 56:8-1, *et seq.*

11           204. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
12 in violation of N.C. GEN. STAT. § 75-1.1, *et seq.*

13           205. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
14 in violation of N.D. CENT. CODE § 51-15-01, *et seq.*

15           206. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
16 or made false representations in violation of OKLA. STAT. tit. 15, § 751, *et seq.*

17           207. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
18 in violation of OR. REV. STAT. § 646.605, *et seq.*

19           208. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
20 in violation of 73 PA. CONS. STAT. § 201-1, *et seq.*

21           209. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
22 in violation of R.I. GEN. LAWS § 6-13.1-1, *et seq.*

23           210. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
24 in violation of S.C. CODE § 39-5-10, *et seq.*

1           211. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
2 in violation of S.D. CODIFIED LAWS § 37-24-1, *et seq.*

3           212. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
4 in violation of TENN. CODE ANN. § 47-18-101, *et seq.*

5           213. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
6 in violation of TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.*

7           214. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
8 in violation of UTAH CODE. ANN. § 13-11-1, *et seq.*

9           215. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
10 in violation of VT. STAT. ANN. tit. 9, § 2451, *et seq.*

11           216. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
12 in violation of VA. CODE ANN. § 59.1-196, *et seq.*

13           217. Defendant has engaged in unfair competition or unfair, deceptive or fraudulent acts  
14 or practices in violation of WASH. REV. CODE § 19.86.010, *et seq.*

15           218. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
16 in violation of W. VA. CODE § 46A-6-101, *et seq.*

17           219. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
18 in violation of WIS. STAT. § 100.18, *et seq.*

19           220. Defendant has engaged in unfair competition or unfair or deceptive acts or practices  
20 in violation of WYO. STAT. ANN. § 40-12-101, *et seq.*

21           221. The acts, practices, misrepresentations and omissions by Defendant described  
22 above, and Defendant's dissemination of deceptive and misleading advertising and marketing  
23 materials in connection therewith, occurring in the course of conduct involving trade or commerce,  
24 constitute unfair methods of competition and unfair or deceptive acts or practices within the  
25  
26  
27  
28

1 meaning of each of the above-enumerated statutes, because each of these statutes generally  
2 prohibits deceptive conduct in consumer transactions, and Defendant violated each of these statutes  
3 by repeatedly representing that consolidating user data was for purposes other than advertising and  
4 by providing no simple and effective means to opt out.  
5

6 222. Plaintiff and Class Members were injured as a direct and proximate result of  
7 Defendant's unfair, deceptive and/or unconscionable acts and practices, because: (a) they would  
8 not have created a Google Account or continued to use a Google Account if the true facts  
9 concerning their user data had been known; (b) members of the Android Subclass and California  
10 Android Subclass would not have purchased an Android phone if the true facts concerning  
11 Google's use of their user data had been known; and (c) their Google services did not perform as  
12 promised.

13 **PRAYER FOR RELIEF**

14 223. WHEREFORE, Plaintiff, on behalf of himself and on behalf of the members of the  
15 proposed Class, Android Subclass, California Subclass, and California Android Subclass prays:  
16 (a) for all forms of relief set forth above, (b) for an order certifying the proposed Class, Android  
17 Subclass, California Subclass, and California Android Subclass, and appointing Plaintiff and his  
18 undersigned counsel of record to represent the proposed classes, (c) for punitive damages, (d) for  
19 costs of suit herein; (e) for both pre- and post-judgment interest on any amounts awarded, (f) for  
20 payment of reasonable attorneys' fees, and (g) for such other and further relief as the Court may  
21 deem proper.

22 **DEMAND FOR JURY TRIAL**

23 224. Plaintiff demands a trial by jury.

24 /  
25 /  
26 /  
27 /  
28 /

1 Dated: March 29, 2012

Respectfully submitted,

2  
3 By:   
Sarah N. Westcot

4  
5 **BURSOR & FISHER, P.A.**

L. Timothy Fisher (State Bar No. 191626)  
Sarah N. Westcot (State Bar No. 264916)  
1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-Mail: ltfisher@bursor.com  
swestcot@bursor.com

6  
7  
8  
9  
10 **BURSOR & FISHER, P.A.**

Scott A. Bursor (State Bar No. 276006)  
369 Lexington Avenue, 10th Floor  
New York, NY 10017  
Telephone: (212) 989-9113  
Facsimile: (212) 989-9163  
E-Mail: scott@bursor.com

11  
12  
13  
14 *Attorneys for Plaintiff*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I, Nicholas Anderson, declare as follows:

1. I am a plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that defendant Google, Inc. does business in Santa Clara County and a substantial portion of the transaction complained of occurred in Santa Clara County, within the Northern District of California.

3. I purchased an Android phone prior to March 1, 2012. At the time of my purchase, I was familiar with Google's privacy policy, and relied on such in deciding to purchase the Android phone. I would not have purchased an Android phone had I known Google would breach its existing privacy policies by consolidating my user data.

I declare under the penalty of perjury, under the laws of the State of California that the foregoing is true and correct, executed on March 28, 2012 at San Francisco, California.



Nicholas Anderson

# EXHIBIT A





1990 N. CALIFORNIA BLVD  
WALNUT CREEK, CA 94596  
[www.bursor.com](http://www.bursor.com)

SARAH N. WESTCOT  
TEL: 925.300.4455  
FAX: 925.407.2700  
[swestcot@bursor.com](mailto:swestcot@bursor.com)

March 29, 2012

**Via Certified Mail – Return Receipt Requested**

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

*Re: Demand Letter Pursuant to California Civil Code § 1782*

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by Google Inc. (“Google”) pursuant to the provisions of California Civil Code § 1782, on behalf of our client, Nicholas Anderson, and all other persons similarly situated.

On March 1, 2012, Google implemented a new Privacy Policy that allows it to consolidate user data across dozens of Google services, including Google Search, Gmail, YouTube, Google+, and AdSense. For example, from within Youtube, Google can now access users’ search histories from Google Search, browsing habits from AdSense, and social networking data from Google+. Previously, Google did not consolidate its user data across its services. Each service kept its own records of users’ activities. Users expected this level of privacy when they signed up for Google services prior to March 1, 2012.

Google has engaged in a uniform marketing and advertising program representing that its new Privacy Policy — and the decision to consolidate user data — was implemented for the sake of simplicity and to improve users’ experiences on Google services. These representations were prominently displayed on Google’s Official Blog, Google’s Good to Know advertising campaign, and in an open letter to eight Congressional representatives.

However, Google misled consumers because it failed to highlight its true goal: consolidating user data for advertising purposes. Writers, technology experts, and even a former Google Engineering Director recognize that the new Privacy Policy is intended to help Google place targeted advertisements. Advertisers are willing to pay a premium to advertise with Google because it has this user data.

Google’s previous privacy policies prohibit the consolidation of user data. Users did not agree to have Google consolidate their user data for advertising. Users did not agree to share this information across Google’s dozens of different services. There is no simple and effective way to opt out; users must manage their privacy settings in each Google service.

If a computer user disagrees with Google's new Privacy Policy, the remedy is to stop using his or her Google Account. But terminating a Google Account is time-consuming, inconvenient, and costly. Users may have Google Accounts for email, advertising, webpage analytics, or other purposes. A loss of a Google Account means a loss of business, advertising, and opportunity.

Users with Android phones are in the worst position. Google connectivity is heavily integrated into these devices. Google connectivity is used for email, chat, and purchasing content. If an Android user disagrees with the change, the only remedy is to discard the phone or cease using smartphone functionality.

Nicholas Anderson is a citizen of the State of California and is a consumer as defined in California Civil Code §1761(d) in that he purchased an Android phone and has a Google account "for personal, family or household purposes." At the time of purchase, Mr. Anderson was familiar with Google's existing privacy policies, and he relied on such misrepresentations in deciding to purchase his Android phone.

Mr. Anderson would not have purchased an Android phone if he had known that Google would breach its existing privacy policies by consolidating his user data. Mr. Anderson suffered a loss of money as a result of Google's misrepresentation in the amount of the purchase price of his Android phone.

By misrepresenting its existing privacy policies and misrepresenting the reasons for consolidating user data, Google has violated numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(9), (14), and (16).

We hereby demand that Google immediately (1) abide by the terms of its privacy policies prior to March 1, 2012; (2) remove consolidated user data from its possession; (3) adequately disclose that advertising considerations were a material factor in Google's decision to consolidate user data; (4) cease using consolidated user data to deliver targeted advertisements; and (5) agree that it will only consolidate user data on a purely opt-in basis.

It is further demanded that Google preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the development and implementation of consolidating user data;
2. All communications with advertisers and marketing affiliates concerning the potential uses of consolidated user data;
3. All documents comparing Google's user data to the data held by its competitors, including Facebook; and
4. All communications with customers concerning complaints or comments relating to consolidated user data.

Please comply with this demand within 30 days from receipt of this letter. If the relief requested has not been provided within 30 days from receipt of this letter, Plaintiff will amend the Complaint to include a request for monetary damages pursuant to the CLRA.

We are willing to negotiate with Google to attempt to resolve the demands asserted in this letter. If Google wishes to enter into such discussions, please contact me immediately.

If Google contends that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter, but in no event later than 30 days from the date of receipt.

Very truly yours,

A handwritten signature in black ink that reads "Sarah N. Westcot". The signature is written in a cursive, flowing style.

Sarah N. Westcot