

1 ROBBINS ARROYO LLP
BRIAN J. ROBBINS (190264)
2 KEVIN A. SEELY (199982)
GINA STASSI (261263)
3 MICHAEL J. NICOUD (272705)
600 B Street, Suite 1900
4 San Diego, CA 92101
Telephone: (619) 525-3990
5 Facsimile: (619) 525-3991
brobbins@robbinsarroyo.com
6 kseely@robbinsarroyo.com
gstassi@robbinsarroyo.com
7 mnicoud@robbinsarroyo.com

8 Attorneys for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN MATEO CIV538782

11 ROBERT JESSUP, Derivatively on Behalf
of ALPHABET INC.,

12 Plaintiff,

13 v.

14 LARRY PAGE,
SERGEY BRIN,
15 ERIC E. SCHMIDT,
L. JOHN DOERR,
16 DIANE B. GREENE,
JOHN L. HENNESSY,
17 ANN MATHER,
ALAN R. MULALLY,
18 PAUL S. OTELLINI,
K. RAM SHRIRAM,
19 SHIRLEY M. TILGHMAN,
ARTHUR D. LEVINSON, and
20 DOES 1-25, Inclusive,

21 Defendants,

22 -and-

23 ALPHABET INC., a Delaware corporation,

24 Nominal Defendant.

) Case No.

) STOCKHOLDER DERIVATIVE
) COMPLAINT FOR BREACH OF
) FIDUCIARY DUTY, WASTE OF
) CORPORATE ASSETS, UNJUST
) ENRICHMENT, AND
) INDEMNIFICATION AND
) CONTRIBUTION

24 DEMAND FOR JURY TRIAL

FILED
SAN MATEO COUNTY

MAY 23 2016

Clerk of the Superior Court

By

DEPUTY CLERK

File By Fax

1 NATURE AND SUMMARY OF THE ACTION

2 1. This is a stockholder derivative action brought by plaintiff on behalf of nominal
3 defendant Alphabet Inc.¹ ("Alphabet" or the "Company") against certain of its officers and
4 current and former directors of its Board of Directors (the "Board"). This action seeks to remedy
5 defendants' violations of law, including breaches of fiduciary duties, waste of corporate assets,
6 unjust enrichment, and indemnification and contribution that have already caused and will
7 continue to cause substantial losses to the Company and other damages, such as to its reputation
8 and goodwill.

9 2. Beginning in 2007 and continuing until the present, Alphabet engaged in
10 improper business practices that violated European Union ("EU") antitrust laws. In particular,
11 with the consent of the Individual Defendants (as defined herein), the Company systematically
12 and illegally leveraged its proprietary Android operating system and applications to further
13 Alphabet's dominance in relevant EU markets. For years, the Board has allowed Alphabet to use
14 Android as a Trojan Horse for other services offered by the Company—imposing
15 anticompetitive restrictions on device manufacturers and developers through Alphabet's licensing
16 arrangements for proprietary Android technology and applications. The Company's abusive
17 Android practices, as detailed further herein, have unlawfully handicapped the ability of rival
18 businesses to fairly compete with Alphabet's dominance of the Android eco-system.

19 3. On April 20, 2016, the European Commission's Division of Competition (the
20 "Commission") announced that it filed formal antitrust charges against Alphabet after an
21 investigation revealed significant breaches of EU antitrust laws. In particular, the Commission
22 uncovered evidence that Alphabet's Android business practices violated applicable laws by: (i)
23 requiring device manufacturers to pre-install Google Chrome and Google Search as the default
24

25
26 ¹ In October 2015, the company traditionally known as Google Inc. ("Google") underwent a
27 reorganization in which Alphabet became a holding company for Google with no business
28 operations of its own, and all of the directors, officers, and stockholders remained the same (the
"Reorganization"). For simplicity, unless otherwise noted, Google is referred to as Alphabet
throughout.

1 browser and search platform in order to license Alphabet's proprietary applications;
2 (ii) preventing manufacturers from selling devices that rely on competing variants of the Android
3 operating system; and (iii) offering financial incentives to device manufacturers and network
4 operators who agree to pre-install Google Search on devices prior to distribution. The decision
5 was announced by Commissioner Margrethe Vestager, who summed up the Commission's
6 investigatory findings, stating:

7 A competitive mobile internet sector is increasingly important for consumers and
8 businesses in Europe. *Based on our investigation thus far, we believe that*
9 *[Alphabet's] behavior denies consumers a wider choice of mobile apps and*
10 *services and stands in the way of innovation by other players, in breach of EU*
11 *antitrust rules. These rules apply to all companies active in Europe.*

12 4. Since at least November 2010, Alphabet's Board was aware that EU regulators
13 were formally investigating the Company's European business practices. EU regulators initiated,
14 and subsequently expanded, the probe after more than a dozen of Alphabet's competitors lodged
15 formal complaints challenging the Company's European business practices, including its
16 imposition of anticompetitive and coercive Android licensing arrangements. For example, on
17 January 26, 2012, the Company disclosed in its Annual Report on Form 10-K for the fiscal year
18 ended December 31, 2011 with the U.S. Securities and Exchange Commission ("SEC") ("2011
19 Form 10-K"), that "[t]he European Commission's (EC) Directorate General for Competition has
20 ... opened an investigation into various antitrust-related complaints" that were filed against
21 Alphabet. In addition, the Company acknowledged in its 2011 Form 10-K that Alphabet was the
22 subject of a series of actions and investigations brought by various EU government agencies and
23 businesses.

24 5. Nevertheless, the Individual Defendants permitted Alphabet's unlawful and
25 anticompetitive Android practices to continue unabated for years. The Board either authorized
26 or condoned the Company's illicit Android practices despite knowledge that Alphabet: (i) held a
27 dominant position in relevant EU markets: (ii) EU regulators were probing the Company's
28 European business practices, including its Android licensing arrangements; and (iii) an adverse
29 EU antitrust judgment or enforcement action would have a material impact on the Company's

THE PARTIES

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

Plaintiff

10. Plaintiff Robert Jessup was a stockholder of Alphabet at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is a current Alphabet stockholder.

Nominal Defendant

11. Nominal defendant Alphabet is a Delaware corporation with principal executive offices at 1600 Amphitheatre Parkway, Mountain View, California. Alphabet, formerly Google, underwent corporate restructuring on October 2, 2015, by which Alphabet became the holding company for Google and its subsidiaries. Alphabet is an information technology company that markets a variety of online and cloud-based programs such as Search, Android, Maps, Chrome, YouTube, Google Play, and Gmail. Alphabet generates revenues primarily by offering online advertising through all of these outlets. As of December 31, 2015, Alphabet had 61,814 full-time employees.

Defendants

12. Defendant Larry Page ("Page") is Alphabet's co-founder and Chief Executive Officer ("CEO") and has been since April 2011 and a director and has been since September 1998. Defendant Page also served as Alphabet's President, Products from July 2001 to April 2011, CEO from September 1998 to July 2001, and Chief Financial Officer from September 1998 to July 2002. Defendant Page knowingly, recklessly, or with gross negligence: (i) made, caused, condoned, or allowed the Company to engage in anticompetitive Android licensing arrangements and other illicit business practices that violated EU antitrust laws; and (ii) failed to implement adequate internal controls to ensure that Alphabet's Android business complied with all applicable antitrust rules and regulations.

13. Defendant Sergey Brin ("Brin") is Alphabet's co-founder and President and has been since at least October 2015 and a director and has been since September 1998. Defendant Brin previously served as Alphabet's President and Chairman of the Board from September 1998 to July 2001 and President of Technology from July 2001 to October 2015. Defendant Brin

1 knowingly, recklessly, or with gross negligence: (i) made, caused, condoned, or allowed the
 2 Company to engage in anticompetitive Android licensing arrangements and other illicit business
 3 practices that violated EU antitrust laws; and (ii) failed to implement adequate internal controls
 4 to ensure that Alphabet's Android business complied with all applicable antitrust rules and
 5 regulations.

6 14. Defendant Eric E. Schmidt ("Schmidt") is Alphabet's Executive Chairman of the
 7 Board and has been since April 2007 and a director and has been since March 2001. Defendant
 8 Schmidt previously served as Alphabet's CEO from July 2001 to April 2011, and Chairman of
 9 the Board from March 2001 to April 2004. Defendant Schmidt knowingly, recklessly, or with
 10 gross negligence: (i) made, caused, condoned, or allowed the Company to engage in
 11 anticompetitive Android licensing arrangements and other illicit business practices that violated
 12 EU antitrust laws; and (ii) failed to implement adequate internal controls to ensure that
 13 Alphabet's Android business complied with all applicable antitrust rules and regulations.
 14 Alphabet paid defendant Schmidt the following compensation as an executive:

Year	Salary	Bonus	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	Non-Qualified Deferred Compensation Earnings	All Other Compensation	Total
2015	\$1,254,808	\$6,000,000	-	-	-	-	\$783,370	\$8,038,178
2014	\$1,250,000	\$6,000,000	\$100,443,838	-	-	-	\$996,934	\$108,690,772
2013	\$1,250,000	\$6,000,000	\$11,365,184	-	-	-	\$708,196	\$19,323,380
2012	\$1,250,000	\$6,000,000	-	-	-	\$35,320	\$343,304	\$7,626,624
2011	\$937,500	-	\$55,643,040	\$38,136,040	\$6,000,000	-	\$263,682	\$100,980,262
2010	\$1	\$1,785	-	-	-	-	\$311,433	\$313,219
2009	\$1	\$1,660	-	-	-	-	\$243,661	\$245,322
2008	\$1	-	-	-	-	-	\$508,763	\$508,764

21 15. Defendant L. John Doerr ("Doerr") is an Alphabet director and has been since
 22 May 1999. Defendant Doerr is a member of Alphabet's Audit Committee and has been since
 23 December 2015. Defendant Doerr also served on Alphabet's Audit Committee from May 2007
 24 to January 2012. Defendant Doerr knowingly or recklessly: (i) caused, condoned, or allowed the
 25 Company to engage in anticompetitive Android licensing arrangements and other illicit business
 26 practices that violated EU antitrust laws; and (ii) failed to implement adequate internal controls
 27 to ensure that Alphabet's Android business complied with all applicable antitrust rules and
 28 regulations. Alphabet paid defendant Doerr the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2014	\$75,000	\$350,216	-	\$425,216
2013	\$75,000	\$351,913	\$1,221,776	\$1,648,689
2012	\$75,000	\$343,856	-	\$418,856
2011	\$75,000	\$352,267	-	\$427,267
2010	\$75,000	\$358,187	-	\$433,187
2009	-	\$497,156	-	\$497,156

16. Defendant Diane B. Greene ("Greene") is an Alphabet director and has been since January 2012. Defendant Greene served on Alphabet's Audit Committee from January 2012 to December 2015. Defendant Greene knowingly or recklessly: (i) caused, condoned, or allowed the Company to engage in anticompetitive Android licensing arrangements and other illicit business practices that violated EU antitrust laws; and (ii) failed to implement adequate internal controls to ensure that Alphabet's Android business complied with all applicable antitrust rules and regulations. Alphabet paid defendant Greene the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2014	\$75,000	\$350,216	\$425,216
2013	\$75,000	\$351,913	\$426,913
2012	\$31,522	\$1,145,862	\$1,177,384

17. Defendant John L. Hennessy ("Hennessy") is Alphabet's Lead Independent Director and has been since April 2007, and a director and has been since April 2004. Defendant Hennessy knowingly or recklessly: (i) caused, condoned, or allowed the Company to engage in anticompetitive Android licensing arrangements and other illicit business practices that violated EU antitrust laws; and (ii) failed to implement adequate internal controls to ensure that Alphabet's Android business complied with all applicable antitrust rules and regulations. Alphabet paid defendant Hennessy the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Option Awards	Total
2014	\$75,000	\$350,216	-	\$425,216
2013	\$75,000	\$351,913	-	\$426,913
2012	\$75,000	\$343,856	-	\$418,856
2011	\$75,000	\$352,267	-	\$427,267
2010	\$75,000	\$358,187	-	\$433,187
2009	-	\$497,156	-	\$497,156

2008	-	-	\$196,285	\$196,285
------	---	---	-----------	-----------

18. Defendant Ann Mather ("Mather") is an Alphabet director and has been since November 2005. Defendant Mather is the Chairwoman of the Audit Committee and has been since November 2005. Defendant Mather knowingly or recklessly: (i) caused, condoned, or allowed the Company to engage in anticompetitive Android licensing arrangements and other illicit business practices that violated EU antitrust laws; and (ii) failed to implement adequate internal controls to ensure that Alphabet's Android business complied with all applicable antitrust rules and regulations. Alphabet paid defendant Mather the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Option Awards	Total
2014	\$75,000	\$350,216	-	\$425,216
2013	\$100,000	\$351,913	-	\$451,913
2012	\$100,000	\$343,856	-	\$443,856
2011	\$100,000	\$352,267	-	\$452,267
2010	-	\$507,915	-	\$507,915
2009	-	-	-	\$0
2008	-	\$257,415	\$157,104	\$414,519

19. Defendant Alan R. Mulally ("Mulally") is an Alphabet director and has been since July 2014. Defendant Mulally is a member of Alphabet's Audit Committee and has been since July 2014. Defendant Mulally knowingly or recklessly: (i) caused, condoned, or allowed the Company to engage in anticompetitive Android licensing arrangements and other illicit business practices that violated EU antitrust laws; and (ii) failed to implement adequate internal controls to ensure that Alphabet's Android business complied with all applicable antitrust rules and regulations. Alphabet paid defendant Mulally the following compensation as a director:

Fiscal Year	Stock Awards	Total
2014	\$1,002,475	\$1,002,475

20. Defendant Paul S. Otellini ("Otellini") is an Alphabet director and has been since April 2004. Defendant Otellini knowingly or recklessly: (i) caused, condoned, or allowed the Company to engage in anticompetitive Android licensing arrangements and other illicit business practices that violated EU antitrust laws; and (ii) failed to implement adequate internal controls

1 to ensure that Alphabet's Android business complied with all applicable antitrust rules and
 2 regulations. Alphabet paid defendant Otellini the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Option Awards	Total
2014	\$75,000	\$350,216	-	\$425,216
2013	\$75,000	\$351,913	-	\$426,913
2012	\$75,000	\$343,856	-	\$418,856
2011	\$75,000	\$352,267	-	\$427,267
2010	\$75,000	\$358,187	-	\$433,187
2009	-	\$497,156	-	\$497,156
2008	-	-	\$189,606	\$189,606

9 21. Defendant K. Ram Shriram ("Shriram") is an Alphabet director and has been
 10 since September 1998. Defendant Shriram was a member of Alphabet's Audit Committee from
 11 at least December 2004 to July 2014. Defendant Shriram knowingly or recklessly: (i) caused,
 12 condoned, or allowed the Company to engage in anticompetitive Android licensing arrangements
 13 and other illicit business practices that violated EU antitrust laws; and (ii) failed to implement
 14 adequate internal controls to ensure that Alphabet's Android business complied with all
 15 applicable antitrust rules and regulations. Alphabet paid defendant Shriram the following
 16 compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2014	\$75,000	\$350,216	-	\$425,216
2013	\$75,000	\$351,913	\$283,670	\$710,583
2012	\$75,000	\$343,856	-	\$418,856
2011	\$75,000	\$352,267	-	\$427,267
2010	-	-	-	\$0
2009	-	-	-	\$0
2008	-	-	-	\$0

23 22. Defendant Shirley M. Tilghman ("Tilghman") is an Alphabet director and has
 24 been since October 2005. Defendant Tilghman knowingly or recklessly: (i) caused, condoned, or
 25 allowed the Company to engage in anticompetitive Android licensing arrangements and other
 26 illicit business practices that violated EU antitrust laws; and (ii) failed to implement adequate
 27 internal controls to ensure that Alphabet's Android business complied with all applicable
 28 antitrust rules and regulations. Alphabet paid defendant Tilghman the following compensation

1 as a director:

2

3

4

5

6

7

Fiscal Year	Fees Paid in Cash	Stock Awards	Option Awards	Total
2014	\$75,000	\$350,216	-	\$425,216
2013	\$75,000	\$351,913	-	\$426,913
2012	\$75,000	\$343,856	-	\$418,856
2011	\$75,000	\$352,267	-	\$427,267
2010	-	\$504,206	-	\$504,206
2009	-	-	-	\$0
2008	-	\$238,173	\$114,092	\$352,265

8 23. Defendant Arthur D. Levinson ("Levinson") was an Alphabet director from April
9 2004 to October 2009. Defendant Levinson knowingly or recklessly: (i) caused, condoned, or
10 allowed the Company to engage in anticompetitive Android licensing arrangements and other
11 illicit business practices that violated EU antitrust laws; and (ii) failed to implement adequate
12 internal controls to ensure that Alphabet's Android business complied with all applicable
13 antitrust rules and regulations. Alphabet paid defendant Levinson the following compensation as
14 a director:

15

16

17

Fiscal Year	Stock Awards	Option Awards	Total
2009	\$497,156	-	\$497,156
2008	-	\$189,606	\$189,606

18 24. The defendants identified in ¶¶12-14 are referred to herein as the "Officer
19 Defendants." The defendants identified in ¶¶12-23 are referred to herein as the "Director
20 Defendants." The defendants identified in ¶¶15-16, 18-19, 21 are referred to herein as the "Audit
21 Committee Defendants." Collectively, the defendants identified in ¶¶12-23 are referred to herein
22 as the "Individual Defendants."

23 25. Except as described herein, plaintiff is ignorant of the true names of defendants
24 sued as Does 1-25, inclusive, under California Code of Civil Procedure section 474 and,
25 therefore, plaintiff sues these defendants by such fictitious names. Following further
26 investigation and discovery, plaintiff will seek leave of this Court to amend this Complaint to
27 allege their true names and capacities when ascertained. These fictitiously named defendants are
28 Alphabet's officers, other members of management, employees, and/or consultants or third

1 parties who were involved in the wrongdoing detailed herein. These defendants aided and
2 abetted, and participated with and/or conspired with the named defendants in the wrongful acts
3 and course of conduct or otherwise caused the damages and injuries claimed herein and are
4 responsible in some manner for the acts, occurrences, and events alleged in this Complaint.

5 **RESPONSIBILITIES AND DUTIES OF THE INDIVIDUAL DEFENDANTS**

6 **Responsibilities of the Individual Defendants**

7 26. Corporate officers and directors owe the highest fiduciary duties of care and
8 loyalty to the corporation they serve. This action involves a massive breach of such duties
9 relating to Alphabet's anticompetitive European business practices. Alphabet's fiduciaries caused
10 or failed to prevent the Company from engaging in illegal and anticompetitive Android licensing
11 arrangements and other illicit practices in order to prevent competitors from gaining traction in
12 relevant EU markets. The Company's actions have harmed European competitors and consumers
13 and are likely to result in massive fines from EU regulators that could easily exceed several
14 billion dollars.

15 27. Google frequently touted the Board's purported commitment to the highest level
16 of ethics prior to its corporate Reorganization. For example, in a message posted on Google's
17 website prior to the Reorganization entitled "Message from our Executive Chairman," defendant
18 Schmidt opined:

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

23 However, as stated above and discussed further herein, the Board caused or failed to prevent
24 Google from systematically violating EU antitrust laws in order to further solidify its dominance
25 of the Android market. By allowing this illegal behavior to continue for years, the members of
26 the Board not only violated applicable EU antitrust laws, they failed to honor Google's oft stated
27

28

1 "Don't be evil" approach to business.²

2 28. Prior to the Reorganization, Google's official Code listed the "principal" duties
3 and responsibilities of the Board. The Code stated:

4 The fundamental responsibility of the directors is to exercise their business
5 judgment to act in what they reasonably believe to be the best interests of Google
6 and its stockholders. *It is the duty of the Board to oversee management's*
7 *performance to ensure that Google operates in an effective, efficient and ethical*
8 *manner in order to produce value for Google's stockholders.... The Board is*
9 *responsible for oversight of strategic, financial and execution risks and*
10 *exposures associated with Google's business strategy, product innovation and*
11 *sales road map, policy matters, significant litigation and regulatory exposures,*
12 *and other current matters that may present material risk to Google's financial*
13 *performance, operations, infrastructure, plans, prospects or reputation,*
14 *acquisitions and divestitures.*

15 Directors are expected to invest the time and effort necessary to understand
16 Google's business and financial strategies and challenges.

17 29. Further, the Code expressly required the Board and all employees to take "very
18 seriously" and "comply" with all "applicable legal requirements and prohibitions." Since at least
19 2009, the Code specifically addressed compliance with "Competition Laws" around the world.
20 Specifically, the Code made clear that "[m]ost countries have laws designed to encourage and
21 protect free and fair competition," and further elaborated that applicable antitrust laws "*prohibit*
22 *1) arrangements with competitors that restrain trade in some way, 2) abuse of intellectual*
23 *property rights, and 3) use of market power to engage in unfair price discrimination and other*
24 *forms of unfair practices."* The Code directed personnel to "[p]lease contact Legal whenever
25 you have any antitrust/competition law concerns" in order to "ensure that Google complies fully
26 with these laws." Additionally, the Code required the Board to "ensure that Google operate[d] in
27 an effective, efficient and ethical manner." And, outlined the Board's obligation to oversee
28 "significant litigation" and "regulatory exposures"—like the Commission's nearly six-year probe

29 ² Interestingly, Alphabet chose not to incorporate Google's "Don't be evil" proscription into its
30 official Code of Conduct (the "Code") following the Reorganization, and instead Alphabet's
31 Code directs employees to "Do the right thing."

1 into the Company's European business practices—that "present[ed] material risk" to the
2 Company's business and operations.

3 30. Alphabet's official Code is substantially in accord. Alphabet's Code similarly
4 directs employees to "comply" with "all applicable legal requirements and understand the major
5 laws and regulations that apply to [their] work." Additionally, Alphabet's Code also makes clear
6 that "Competition Laws" generally "*prohibit 1) arrangements with competitors that restrain*
7 *trade, 2) abuse of market power to unfairly disadvantage competitors, and 3) misleading or*
8 *harming consumers,*" and further notes that these laws may "*carry civil and criminal penalties*
9 *for individuals and companies.*"

10 31. Together, Alphabet's and Google's Codes demonstrate that the Individual
11 Defendants were required, at all relevant times, to "comply" with applicable antitrust laws and
12 avoid anticompetitive practices that relied on the Company's "market power" to unfairly and
13 illegally disadvantage competitors. By causing or permitting Android licensing arrangements
14 and other practices that systematically violated EU antitrust laws, each member of the Board
15 violated both the letter and spirit of the proscriptions outlined in both Alphabet's and Google's
16 Codes.

17 **Fiduciary Duties of the Individual Defendants**

18 32. By reason of their positions as officers and directors of the Company, each of the
19 Individual Defendants owed and continue to owe Alphabet and its stockholders fiduciary
20 obligations of trust, loyalty, good faith, and due care, and were and are required to use their
21 utmost ability to control and manage Alphabet in a fair, just, honest, and equitable manner. The
22 Individual Defendants were and are required to act in furtherance of the best interests of
23 Alphabet and not in furtherance of their personal interest or benefit.

24 33. To discharge their duties, the officers and directors of Alphabet were required to
25 exercise reasonable and prudent supervision over the management, policies, practices, and
26 controls of the financial affairs of the Company. By virtue of such duties, the officers and
27 directors of Alphabet were required to, among other things:

28 (a) to ensure that the Company did not engage in illegal and anticompetitive

1 Android licensing arrangements and other business practices designed to abuse Alphabet's
2 dominant position to the detriment of European competitors and consumers;

3 (b) conduct the affairs of the Company in an efficient, business-like manner in
4 compliance with all applicable laws, rules, and regulations so as to make it possible to provide
5 the highest quality performance of its business, to avoid wasting the Company's assets, and to
6 maximize the value of the Company's stock; and

7 (c) remain informed as to how Alphabet conducted its operations, and, upon
8 receipt of notice or information of imprudent or unsound conditions or practices, make
9 reasonable inquiry in connection therewith, and take steps to correct such conditions or practices
10 and make such disclosures as necessary to comply with applicable laws.

11 **Additional Duties of the Audit Committee Defendants**

12 34. In addition to these duties, under the Company's Audit Committee Charter, the
13 Audit Committee Defendants, defendants Doerr, Greene, Mather, Mulally, and Shriram owed
14 specific duties to Alphabet to set up corporate functions to comply with applicable laws, rules,
15 and regulations. During the relevant period, the Charter has given Alphabet's Audit Committee
16 direct "responsibility for oversight of risks and exposures associated with financial matters,
17 particularly ... *programs and policies related to legal compliance and strategy.*" The Audit
18 Committee Defendants either disregarded or failed to comprehend the enormous financial risk
19 associated with Alphabet's illegal European business practices, including the imposition of fines
20 and other remedial measures that could cost the Company several billions of dollars.

21 **Breaches of Duties**

22 35. The conduct of the Individual Defendants complained of herein involves a
23 knowing and culpable violation of their obligations as officers and directors of Alphabet, the
24 absence of good faith on their part, and a reckless disregard for their duties to the Company.

25 36. The Individual Defendants, because of their positions of control and authority as
26 officers and/or directors of Alphabet, were able to and did, directly or indirectly, exercise control
27 over the wrongful acts complained of herein. The Individual Defendants also failed to prevent
28 the other Individual Defendants from taking such illegal actions. As a result, and in addition to

1 the damage the Company has already incurred, Alphabet has expended, and will continue to
2 expend, significant sums of money.

3 **Conspiracy, Aiding and Abetting, and Concerted Action**

4 37. At all relevant times, the Individual Defendants were agents of the remaining
5 Individual Defendants, and in doing the acts alleged herein, were acting within the course of
6 scope of such agency. The Individual Defendants ratified and/or authorized the wrongful acts of
7 each of the other Individual Defendants. The Individual Defendants, and each of them, are
8 individually sued as participants and as aiders and abettors in the improper acts, plans, schemes,
9 and transactions that are the subject of this Complaint.

10 38. In committing the wrongful acts alleged herein, the Individual Defendants have
11 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with
12 and conspired with one another in furtherance of the improper acts, plans, schemes, and
13 transactions that are the subject of this Complaint. In addition to the wrongful conduct herein
14 alleged as giving rise to primary liability, the Individual Defendants further aided and abetted
15 and/or assisted each other in breaching their respective duties.

16 39. The Individual Defendants engaged in a conspiracy, common enterprise, and/or
17 common course of conduct. During this time, the Individual Defendants caused the Company to
18 engage in licensing arrangements and other business practices that were illegal under EU
19 antitrust laws.

20 40. During all times relevant hereto, the Individual Defendants, collectively and
21 individually, initiated a course of conduct that was designed to and did: (i) force manufacturers
22 and developers to license Alphabet's proprietary Applications on anticompetitive terms;
23 (ii) illegally incentivize manufacturers and network operators to carry the Company's products
24 and services; and (iii) strengthen the Company's position in the Android market to the detriment
25 of European competitors and consumers. In furtherance of this plan, conspiracy, and course of
26 conduct, the Individual Defendants, collectively and individually, took the actions set forth
27 herein.

28 41. The purpose and effect of the Individual Defendants' conspiracy, common

1 enterprise, and/or common course of conduct, among other things, was to leverage the
2 Company's market share to the detriment of its competitors, disguise the Individual Defendants'
3 violations of law, breaches of fiduciary duty, waste of corporate assets, and unjust enrichment;
4 and to conceal adverse information concerning the Company's operations.

5 42. The Individual Defendants accomplished their conspiracy, common enterprise,
6 and/or common course of conduct by causing the Company to purposefully or recklessly engage
7 in business practices that violated EU antitrust laws. Because the actions described herein
8 occurred under the authority of the Board, each of the Individual Defendants was a direct,
9 necessary, and substantial participant in the conspiracy, common enterprise, and/or common
10 course of conduct complained of herein.

11 43. Each of the Individual Defendants aided and abetted and rendered substantial
12 assistance in the wrongs complained of herein. In taking such actions to substantially assist the
13 commission of the wrongdoing complained of herein, each Individual Defendant acted with
14 knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that
15 wrongdoing, and was aware of his or her overall contribution to and furtherance of the
16 wrongdoing.

17 **ALPHABET'S BUSINESS PRACTICES CONCERNING ANDROID**

18 44. Android is a mobile operating system that is currently developed by Alphabet and
19 designed primarily for touchscreen devices such as smartphones and tablets. Android was
20 designed to help replicate the user experience and functionality of a desktop computer on a host
21 of handheld devices. Android is a "software stack" consisting of an operating system,
22 middleware, user interface, and applications. Android's "software stack" is developed privately
23 by Alphabet through its Google business segment. Although Alphabet heralds Android as an
24 "open-source" operating system, only Android's most basic code is made available to the public
25 without a license from Alphabet. Much of Android's core operating system remains close-
26 sourced, including a substantial amount of Android's functionality and key software applications.
27 In particular, Alphabet's coveted suite of proprietary Android applications—such as Set-up
28 Wizard, Search, Gmail, Google Calendar, Google Talk, YouTube, Google Maps for Mobile,

1 Google Street View, Contact Sync, Android Market Client, Google Voice Search, Network
2 Location Provider, and Google Play Store (collectively "Applications")—are available only
3 through direct licensing arrangements from Alphabet. Device manufacturers must first obtain
4 the requisite licenses from Alphabet before any of the Applications can be installed and/or pre-
5 loaded onto Android devices sold to consumers.

6 45. In order to develop or distribute devices equipped with any of the Company's
7 Applications, a manufacturer must first obtain a license directly from Alphabet. In turn,
8 Alphabet uses its licenses to impose anticompetitive restrictions on manufacturers in exchange
9 for the right to pre-install the Company's suite of proprietary Applications. Alphabet's licenses
10 are known as Mobile Application Distribution Agreements ("MADA" or "MADAs"). The
11 Company's MADAs govern its relationship with third-party device manufacturers and
12 developers that wish to pre-install the Applications on their devices prior to distribution.
13 Alphabet refuses to make its MADAs publicly available and has gone to great lengths to keep the
14 MADAs confidential. In fact, the MADAs prohibit manufacturers from sharing "Confidential
15 Information" and designate the MADAs as "Confidential," making them subject to the
16 confidentiality restriction. Further, the MADAs prevent manufacturers from making "any public
17 statement regarding the relationship contemplated by [the MADAs] without ... prior written
18 approval" from Alphabet.

19 46. Although generally kept confidential, two of Alphabet's MADAs were recently
20 made public in connection with a lawsuit filed by Oracle America, Inc. against Alphabet in the
21 United States District Court for the Northern District of California. In particular, the Company's
22 MADAs with HTC Corporation ("HTC") and Samsung Electronics Co., Ltd. ("Samsung") were
23 made available to the public after they were entered as trial exhibits. The publicly disclosed
24 MADAs provide a rare window into the Company's illicit practice of using its licensing
25 arrangements to impose a host of conditions on manufacturers to further its dominance in the
26 Android market. Although the effective dates of the HTC and Samsung MADAs were January
27 1, 2011 to December 31, 2012, Alphabet has continued to employ the same or substantially
28 similar Android licensing practices outlined in the HTC and Samsung MADAs.

1 47. The MADAs demonstrate Alphabet's practice of forcing device manufacturers to
2 license and pre-install its proprietary Applications as a bundle. The Company relies on the
3 MADAs to prevent manufacturers from licensing only select Applications (like Search or Play
4 Store) and require manufacturers to pre-install all of the Applications on their devices. As a
5 result, a manufacturer must license *all* of the Applications in order to develop and sell devices
6 that onboard *any* of Alphabet's proprietary Applications.

7 48. For example, section 2.1 of Alphabet's HTC MADA requires the manufacturer to
8 "pre-install" on their devices "all Google Applications." Section 2.1 provides:

9 **2. Google Applications.**

10 **2.1. License Grant.** Subject to the terms and conditions of this Agreement
11 (including Section 2.7), Google hereby grants to Company a nontransferable,
12 nonsublicensable (except Company may sublicense to Telecom Operators
13 with whom Company has a written agreement), nonexclusive license during
14 the Term to: (a) reproduce the Google Applications to the extent necessary to
15 exercise the right granted in {b); and (b) distribute the Google Applications
16 for no cost directly to End Users only in the Territories specifically authorized
17 by Google via the distribution methods specified by Google. For the sake of
18 clarity, Company may sublicense the Google Applications to resellers and
19 distributors solely for distribution purposes and only when the Google
20 Applications are pre-Installed on the Devices. Devices *may* only be distributed
21 if all Google Applications (excluding any Optional Google Applications)
22 authorized for distribution in the applicable Territory are pre-installed on the
23 Device, unless otherwise approved by Google in writing. Initial distribution in
24 each Individual Territory, and the appearance and implementation of Google
25 Applications, shall be subject to Google's prior written approval, and shall
26 adhere to the terms and conditions of this Agreement, including but not
27 limited to the Google Mobile Branding Guidelines. Additionally, where
28 Google specifies a specific version of a Google Application to be distributed
in a certain Territory, Company shall distribute only such version within such
Territory. Company may also sublicense the Google Applications to its
contractors for testing, evaluation and development purposes only (not
distribution) and only with contractors with which Company has a written
agreement that is no less protective of the Google Applications as set forth in
this Agreement.

25 49. The pressure these Android licensing arrangements impose on device
26 manufacturers is further compounded by: (i) the Company's refusal to allow end-users to
27 download its Applications after purchase; and (ii) the absence of clear substitutes for certain of
28 the Applications developed and offered by Alphabet. For example, the Company's Play Store

1 serves as the official app store for the Android operating system, and Play Store is necessary for
2 device users to browse and download over a million Android applications. An Android device
3 without Play Store pre-installed would leave its end-users unable to access popular third-party
4 applications—such as Facebook, Uber, Pandora, Twitter, and others—that are available only
5 through the Play Store. Further, it would be impossible for a device manufacturer to pre-install
6 an alternative app store to rival Alphabet's Play Store, because it would essentially require the
7 device manufacturer to create an alternative marketplace for Android applications. As a result,
8 manufacturers have little choice but to license and accept Alphabet's entire bundle of
9 Applications (along with other draconian terms and conditions) in order to install Play Store on
10 their devices.

11 50. Under the MADAs, manufacturers retain the right to install third-party
12 applications *in addition* to Alphabet's Applications. For example, a device manufacturer could
13 install other search, location, map, and e-mail applications in addition to those offered by
14 Alphabet. However, other licensing conditions and restrictions imposed by Alphabet through its
15 MADAs are designed to deter Android manufacturers and developers from pre-installing
16 additional, third-party applications on their devices. For example, sections 3.4, 3.5, 3.8(c) of the
17 HTC MADA collectively require it to: (i) "preload" all of Alphabet's proprietary Android
18 Applications prior to distribution; (ii) set Search and other Applications as the device defaults;
19 and (iii) comply with detailed icon placement requirements. These provisions are detailed
20 below:

21 (a) Section 3.4:

22 **3.4. Placement Requirements.** Unless otherwise approved by Google in
23 writing: (1) Company will preload all Google Applications approved in the
24 applicable Territory or Territories on each Device; (2) Google Phone-top
25 Search and the Android Market Client icon must be placed at least on the
26 panel immediately adjacent to the Default Home Screen; (3) all other Google
27 Applications will be placed no more than one level below the Phone Top; and
28 (4) Google Phone-top Search must be set as the default search provider for all
Web search access points on the Device. Notwithstanding the foregoing, there
are no placement requirements for Optional Google Applications. For clarity,
"Web search" shall not include data on the Device.

1 (b) Section 3.6:

2 **3.6. Distribution.** Company shall preload the Google Applications on the
3 Devices so that, after preload, an Icon representing each Google Application
4 shall appear on the Device as specified In the above Placement Requirements.
In addition:

5 (a) Preload by Company of a Google Application shall be limited to
6 Installation by Company of the Google Application, and shall not involve
launch of the Google Application

7 (b) End User selection of an Icon representing an already preloaded Google
8 Application shall launch such Google Application.

9 (c) Section 3.8(c):

10 **3.8. Network Location Provider.** The following requirements apply to
Network Location Provider:

11 (c) Company shall configure Network location Provider to be the default
12 network-based location provider on all Android Compatible Devices.
13 Notwithstanding the foregoing, Company may be permitted to use an
14 alternative network-based location provider for a specific Territory or
15 Telecom Operator If the parties mutually agree and determine that
Network Location Provider cannot be used due to inadequate data quality
and coverage.

16 51. The above conditions imposed by Alphabet are designed to further limit the
17 chance that end-users will utilize the services of other pre-loaded applications that are not set as
18 the default on Android devices. As a result, these restrictions further reduce the willingness of
19 competing application developers to pay for pre-installation on new devices, because they know
20 that their applications cannot rival Alphabet's Applications which are contractually set as the
21 default on nearly 100% of Android devices. Further, device developers and manufacturers are
22 hesitant to pre-install and offer duplicative applications for fear of confusing end-users and to
23 avoid draining a device's limited operating resources. Together, the Company's Android
24 licensing practices are designed and do prevent manufacturers from selecting and pre-installing
25 third-party applications that are less costly or otherwise more preferable to one or more of
26 Alphabet's Applications.

27 52. After the Company's MADAs were first made public, several technology industry
28 commentators immediately recognized the anticompetitive effect of Android licensing conditions

1 imposed by Alphabet on device manufacturers and developers. Commenting on the Company's
2 licensing arrangements, Benjamin G. Edelman, associate professor at the Harvard Business
3 School, noted:

4 *[T]here are no plausible pro-consumer benefits to the Google MADA*
5 *restrictions.... These MADA restrictions suppress competition.* Thanks to the
6 MADA, alternative vendors of search, maps, location, email, and other apps
7 cannot outcompete Google on the merits; even if a competitor offers an app that's
8 better than Google's offering, the carrier is obliged to install Google's app also,
9 and Google can readily amend the MADA to require making its app the default in
10 the corresponding category (for those apps that don't already have this additional
11 protection). Furthermore, competitors are impeded in using the obvious strategy
12 of paying manufacturers for distribution; to the extent that manufacturers can
13 install competitors' apps, they can offer only inferior placement adjacent to
14 Google, with Google left as the default in key sectors—preventing competitors
15 from achieving scale or outbidding Google for prominent or default placement on
16 a given device.

12 * * *

13 [T]he MADAs correspondingly reduce pressure on Google to provide market-
14 leading functionality and quality. Some competing apps might be a little bit better
15 than Google's offerings, and a phone manufacturer might correctly assess that
16 consumers would prefer those alternatives. But phone manufacturers can't switch
17 to those offerings because the MADA disallows those changes. This barrier to
18 switching in turn discourages competing app makers from even trying to compete.

17 * * *

18 *The ... key effect of the MADAs, then, is that they prevent new entrants and*
19 *other competitors from paying to get exclusive placement. This impedes*
20 *competition and entry, and streamlines Google's dominance.*

20 * * *

21 Competition lawyers offer the term "naked exclusion" for conduct unabashedly
22 intended to exclude rivals, for which a dominant firm offers no efficiency
23 justification. That diagnosis matches my understanding of these tactics, as the
24 MADAs give no suggestion that Google is trying to help consumers or anyone
25 else. Rather, *the MADAs appear to be intended to push Google's own*
businesses and prevent competitors from getting traction.

26 Alphabet's "Anti-Fragmentation" Efforts

27 53. Alphabet also employs its MADAs to stymie the development and commercial
28 adoption of competing variants of the Android operating system. The MADAs require

1 manufacturers to agree to various "anti-fragmentation" restrictions that prohibit the development
2 of devices and applications that rely on or otherwise incorporate alternative versions of the
3 Android operating system.

4 54. Because certain elements of Android's operating system are open source, it is
5 possible for developers and device manufacturers to take Android's basic coding and create
6 software and devices based on independent variants of the Android operating system. In the
7 technology industry, these independently developed variants of the Android operating system are
8 known as "Android forks." Since Android's release in the fall of 2007, the Company has actively
9 worked to prevent the development and adoption of competing variants of its Android operating
10 system.

11 55. In fact, on November 5, 2007, the Company announced the formation of the Open
12 Handset Alliance ("OHA") on the very same day Android was released. Lead by Alphabet, the
13 OHA is a consortium of approximately eighty-four of the world's leading technology and
14 wireless communications companies. OHA members are contractually prohibited from building
15 non-Alphabet approved applications and devices. Together, Alphabet and the OHA jointly
16 develop and promote a unified Android platform for use by developers and manufacturers. The
17 specific requirements of the unified Android platform are outlined in the Android Compatibility
18 Definition Document ("CDD") which Alphabet and OHA publicly disseminate through the
19 "Android Open Source Project." In order to license Alphabet's proprietary Applications,
20 manufacturers must agree to develop devices that comply with the requirements of the CDD and
21 pass the Android Compatibility Test Suite ("CTS"). Similarly, mobile and smart device
22 applications created by third-party software developers also must comply with the CDD and pass
23 the CTS before they can be sold to and downloaded by end-users through the Play Store.

24 56. The Company's MADAs include restrictions that reinforce the CDD and
25 discourage the development of devices and applications based on competing variants of Android.
26 The Company's MADAs expressly require manufacturers to comply with the CDD and CTS and
27 agree to other "anti-fragmentation" restrictions as a condition to licensing Alphabet's
28 Applications. More specifically, HTC's MADA reveals that the agreements require

1 manufacturers to develop "Android Compatible Device(s)," which the MADA defines as
2 "[d]evices that: (i) comply with the Android Compatibility Definition document (which may be
3 updated from time to time), which can be found at the Android compatibility website
4 (<http://source.android.com/compatibility>); and (ii) successfully pass the Android Compatibility
5 Test Suite (CTS)."

6 57. The various anti-fragmentation restrictions forced onto device manufacturers and
7 developers by Alphabet are reflected in sections 1.8, 2.2, 2.7, and 4.4 of HTC's MADA.
8 Collectively, the anti-fragmentation restrictions: (i) define "Device" as a device that is
9 compatible with CDD and CTS; (ii) expressly prohibit "any actions that may cause or result in
10 the fragmentation of Android"; (iii) require CCD and CTS compliance prior to launch; and (iv)
11 mandate on-going cooperation with Alphabet to ensure Android compatibility. These provision
12 are detailed below:

13 (a) Section 1.8:

14 1.8. "Device" means the device(s) approved by Google pursuant to Section 4.3
15 (Google Approval and Launch) and using only the Android operating system
16 which is enabled by Company and used by an End User to access the Service.

17 (b) Section 2.2:

18 2.2. **License Grant Restrictions.** Company shall not, and shall not allow any
19 third party to: (a) disassemble, decompile or otherwise reverse engineer the
20 Google Applications or otherwise attempt to learn the source code or algorithms
21 underlying the Google Applications; (b) create derivative works from or based on
22 the Google Applications; (c) except as expressly set forth in this Agreement,
23 provide, sell, license, distribute, lease, lend, or disclose the Google Applications
24 to any third party; (d) exceed the scope of any license granted to Company
25 hereunder; (e) ship, divert, transship, transfer, export or re-export the Google
26 Applications, or any component thereof, into any country or use it in any manner
27 prohibited by any export control laws, restrictions, or regulations administered by
28 the U.S. Commerce Department's Bureau of Export Administration, the U.S.
Department of Treasury's Office of Foreign Assets Control or any other
applicable government agency; or (f) take any actions that may cause or result in
the fragmentation of Android, including but not limited to the distribution by
Company of a software development kit (SDK) derived from Android or derived
from Android Compatible Devices and Company shall not assist or encourage
any third party to distribute a software development kit (SDK) derived from
Android, or derived from Android Compatible Devices.

1 (c) Section 2.7:

2 **2.7. Authorization to Distribute Google Applications on the Devices &**
3 **Compatibility.**

4 The license to distribute Google Applications in Section 2.1 is contingent upon
5 the Device becoming an Android Compatible Device. Each Device must become
6 an Android Compatible Device at least 30 days prior to the Final Embed Date of
7 the Device. The final software build on Devices must pass the Compatibility Test
8 Suite prior to Launch. Company agrees as follows:

- 9 (a) each of its employees that are designated by Company in an email to
10 CTS@android.com is authorized to submit and upload CTS Reports on
11 behalf of Company.
- 12 (b) the CTS has not been modified or altered by Company or Its employees or
13 agents.
- 14 (c) Company will execute the CTS completely.
- 15 (d) no CTS Reports have been altered.
- 16 (e) the contents of each CTS Report Is true to the best of Company's
17 knowledge.
- 18 (f) Google and its affiliates may include Android Compatible Devices and
19 Company's name in presentations, marketing materials, press releases, and
20 customer lists (which includes, without limitation, customer lists posted on
21 Google web sites) for marketing purposes. Google may publish the results
22 of each CTS Report after the applicable Device is Launched.

23 (d) Section 4.4:

24 **4.4. Implementation Requirements. The parties shall provide the materials**
25 **and Information listed below:**

- 26 (a) Company shall deliver to Google no less than four (4) Device samples for
27 each Device model for Google's approval as set out in Section 4.3 (Google
28 Approval and Launch). Company shall use commercially reasonable efforts
to provide such Devices at least 30 days prior to the Final Embed Date for
each Initial Launch of each Device model. Google may use such Devices to
test the operation and presentation of relevant Google products, services and
sites on the Device. Devices will be sent to a Google address to be provided
by Google to Company.
- (b) If at any time the Devices provided under this Section 4.4 are no longer
capable of displaying the current implementation of relevant Google
products, services or sites, Company will provide Google with replacement
Devices as required.

- 1 (c) If at any time the software on the Devices as distributed to End Users
2 changes the representation of Google products, services and sites, Company
3 shall make available to Google the new software and / or Devices for
4 approval.
- 5 (d) Company agrees to assist Google with ongoing testing of Devices and
6 Android applications. Google may from time to time provide Company with
7 Android-based applications and tests that should be run on Devices (which
8 may represent families of Devices) on which such applications will be loaded
9 to assure the operation and presentation of such application. Company will
10 load such applications on Devices and run such test in a timely manner to
11 help assess the operation and presentation of such applications and provide
12 the test results to Google.
- 13 (e) Company shall configure the appropriate Client ID for each Device as
14 provided by Google.
- 15 (f) Company shall provide all other information, equipment and/or assistance
16 reasonably necessary to allow Google to deliver the Google Applications and
17 make the Google Applications (including over-the-air updates thereto)
18 available on the Service and the Devices.

19 58. Ron Amadeo, writing for *Ars Technica*, a leading technology news and
20 information website owned by Conde Nast Digital, analyzed the market environment created by
21 the anti-fragmentation restrictions built into Alphabet's MADAs. In his article "Google's Iron
22 Grip on Android: Controlling Open Source by Any Means Necessary," Mr. Amadeo observed:

23 *If a company even wanted to consider forking Android and creating a viable*
24 *commercial competitor, they would have to replicate everything.... Even then,*
25 *you've only broken even.* You would still have to give your users a reason to
26 switch from Google's Android to your fork of Android.... If a company does
27 manage to fork Android and make something compelling outside of Google's
28 ecosystem, there's the little matter of nearly every manufacturer being
contractually barred from manufacturing a device that runs the new OS. Even if
this new Android derivative is better, for an [Original Equipment Manufacturer]
jumping out of the Google ecosystem, it's probably more trouble—and risk—than
it's worth.

While Android is open, it's more of a "look but don't touch" kind of open. You're
allowed to contribute to Android and allowed to use it for little hobbies, but in
nearly every area, the deck is stacked against anyone trying to use Android
without Google's blessing. *The second you try to take Android and do*
something that Google doesn't approve of, it will bring the world crashing down
upon you.

1 APPLICABLE EU ANTITRUST LAWS

2 59. Approximately 80% of all smart and mobile devices in the EU market³ run on the
3 Android operating system developed by Alphabet. As a result, the Company's Android licensing
4 arrangements and other business practices are subject to strict EU antitrust laws outlined in
5 Article 102 of the Treaty on the Functioning of the EU ("Article 102"). Article 102 prohibits
6 companies from abusing a dominant position in the EU market to affect trade and prevent or
7 restrict competition among member states. Specifically, Article 102 states, in relevant part:

8 Any abuse by one or more undertakings of a dominant position within the internal
9 market or in a substantial part of it shall be prohibited as incompatible with the
10 internal market in so far as it may affect trade between Member States.

11 Such abuse may, in particular, consist in:

12 (a) directly or indirectly imposing unfair purchase or selling prices or
13 other unfair trading conditions;

14 (b) limiting production, markets or technical development to the
15 prejudice of consumers;

16 (c) applying dissimilar conditions to equivalent transactions with other
17 trading parties, thereby placing them at a competitive disadvantage;

18 (d) making the conclusion of contracts subject to acceptance by the
19 other parties of supplementary obligations which, by their nature or according to
20 commercial usage, have no connection with the subject of such contracts.

21 60. The Commission is the executive body responsible for enforcing EU antitrust
22 laws. In particular, the Commission is authorized to implement the antitrust mandate outlined in
23 Article 102 through the powers conferred in Council Regulation (EC) No 1/2003 ("Reg.
24 1/2003"). Reg. 1/2003 grants the Commission regulatory authority to "establish a system which
25 ensures that competition in the [EU] market is not distorted" and punish companies that abuse
26 their dominant market positions.

27 61. It is uncontroverted that Alphabet maintains a dominant position in relevant EU
28

³ The EU market is officially known as European Economic Area, and includes the EU's 28 member states, along with Iceland, Liechtenstein, and Norway.

1 markets. Industry data compiled by Kantar Worldpanel demonstrates that, as of December 31,
2 2015, *more than 71%* of all smart and mobile devices in the five largest EU member states—
3 Great Britain, Germany, France, Italy, and Spain—run on Alphabet's Android operating system.
4 Indeed, the number of European consumers purchasing Android devices has grown exponentially
5 every year since Android's commercial release in 2007. According to the Commission, "*Google*
6 *is dominant in the markets for general internet search services, licensable smart mobile*
7 *operating systems and app stores for the Android mobile operating system.*" In each of these
8 EU markets, the Commission has determined that Alphabet enjoys a market share that exceeds
9 90%.

10 62. The Company's Android operating system is used on virtually all smartphones
11 and tablets not developed or sold by Apple Inc. ("Apple"). According to the Commission,
12 developers of competing mobile and smart device operating systems face "a number of barriers
13 to entry that protect [Alphabet's] position" in the market, including "so-called network effects
14 (that is, the more consumers adopt an operating system, the more developers write apps for that
15 system)." Further, Alphabet's dominance of the operating system market ensures that Android
16 users would face significant costs—such as losing their applications, data, and contacts—if they
17 were to switch to an operating system developed by a competitor. These specific findings, along
18 with Alphabet's greater than 90% market share, support the Commission's determination that the
19 Company holds a dominant position in the EU market for licensable mobile operating systems.

20 63. Alphabet also maintains a dominant position in the EU market for Android
21 applications. The Company's Play Store provides a crucial link between consumers and
22 application developers. European consumers downloaded well over 90% of all applications onto
23 their Android devices through the Company's Play Store. In the Commission's view,
24 "[m]anufacturers find it commercially important to pre-install the Play Store on their devices"
25 because "it is not available for download by end users." As a result, the Play Store (and the
26 bundle of proprietary Applications that come with it) is licensed and pre-installed on nearly
27 every Android device developed and sold to consumers in the EU market.

28

1 EU ANTITRUST VIOLATIONS

2 64. Alphabet's dominant position in relevant EU markets conferred on the Company
3 and its corporate fiduciaries "a special responsibility to ensure that [Alphabet's] conduct does not
4 distort competition." Similarly, Article 102 required the Board to ensure that Alphabet's
5 European business practices, including its Android licensing arrangements, did not abuse the
6 Company's dominant position in those markets. Rather than abide by these clear mandates,
7 however, the Board caused or failed to prevent Alphabet from systematically engaging in
8 coercive and anticompetitive practices to protect its market share at the expense of European
9 competitors and consumers.

10 65. On April 20, 2016, the Commission announced formal charges against Alphabet
11 after its investigation revealed significant breaches of EU antitrust laws. In a formal Statement
12 of Objections sent to Alphabet, the Commission accused the Company of abusing its dominant
13 position in relevant EU markets through anticompetitive Android licensing arrangements that
14 impose unlawful restrictions on device manufacturers and mobile network operators. In
15 particular, the Commission alleged that Alphabet's Android licensing arrangements violated
16 Article 102 of the TFEU by: (i) requiring device manufacturers to pre-install Google Chrome and
17 Google Search as the default browser and search platform in order to license its Applications; (ii)
18 preventing manufacturers from selling devices that rely on competing variants of the Android
19 operating system; and (iii) offering financial incentives to manufactures and network operators
20 who agree to pre-install Google Search on their devices. The Commission's findings confirmed
21 what leading tech-industry commentators, consumer watchdog organizations, and rival
22 businesses had been saying for years about Alphabet's anticompetitive European business
23 practices, including its prevalent use of MADAs to control device manufacturers and
24 developers.⁴

25 _____
26 ⁴ See, e.g., Amir Efrati, *Google's Confidential Android Contracts Show Rising Requirements*,
27 *The Information* (Sept. 26, 2014), <https://www.theinformation.com/Google-s-Confidential-Android-Contracts-Show-Rising-Requirements>; *Summary of the FairSearch Complaint to the*
28 *EU Against Google*, FairSearch (Apr. 8, 2016), <http://fairsearch.org/summary-of-the-fairsearch->

1 66. The Commission's investigation focused on Alphabet's long standing practice of
2 forcing manufacturers to license its proprietary Android Applications as a bundle. In particular,
3 the Commission found that Alphabet's MADAs make the licensing of certain of its Applications
4 to manufacturers—such as the Play Store—conditional on Google Search and Google Chrome
5 being pre-installed and set as the default search service and browser on new devices. The
6 Company's licensing conditions prevent rival search engines and Internet browsers from
7 becoming pre-installed or set as defaults on the significant majority of Android devices in the EU
8 market. The conditions also reduced consumer incentives to download rival search engines and
9 browsers onto their devices after purchase. Analyses performed by the Commission confirmed
10 that European consumers rarely download applications that provide the same or substantially
11 similar functionality to applications that come pre-installed on an end-user's device. According
12 to the Commission, the "bundle of apps" imposed Google through its MADAs "*limit[]*
13 *manufacturers' freedom to choose the most appropriate apps to pre-install.*" The Commission
14 concluded that "*competition in both mobile browsers and general search has been adversely*
15 *affected*" by Alphabet's Android licensing practices, which "*protect and strengthen [Alphabet's]*
16 *dominant position.*"⁵

17 67. The Commission's investigation also determined that Alphabet's systematic
18 efforts to suppress the development of devices and applications relying on competing variants of

19
20 complaint-to-the-eu-against-google/; *FairSearch to EU: Google's Android A "Trojan Horse" to*
21 *Dominate Mobile Markets*, FairSearch (Apr. 9, 2013), [http://fairsearch.org/fairsearch-eu-](http://fairsearch.org/fairsearch-eu-googles-android-trojan-horse-dominate-mobile-markets/)
22 [http://www.theverge.com/2013/4/8/4203684/microsoft-others-file-eu-antitrust-complaint-over-android-bund-](http://www.theverge.com/2013/4/8/4203684/microsoft-others-file-eu-antitrust-complaint-over-android-bundling)
23 [http://www.theverge.com/2014/7/31/5954985/google-may-face-](http://www.theverge.com/2014/7/31/5954985/google-may-face-android-antitrust-investigation-in-europe-says-reuters)
24 [android-antitrust-investigation-in-europe-says-reuters.](http://www.theverge.com/2014/7/31/5954985/google-may-face-android-antitrust-investigation-in-europe-says-reuters)

25 ⁵ Since 2004, the Commission has fined Microsoft Corporation ("Microsoft") over \$2.2 billion
26 after its probe revealed that the company abused its dominant position in the EU market by
27 bundling together its Windows operating system and Internet Explorer web browser.
28 Alarminglly, Alphabet's strategy of bundling its Applications and requiring Google Search to be
set as the default on Android devices bears a striking resemblance to Microsoft's strategy that
violated EU antitrust laws and resulted in massive fines.

1 the Android operating system violate EU antitrust laws. The Commission found that Alphabet
2 requires manufacturers to enter into "Anti-Fragmentation" agreements in order to pre-install and
3 license its proprietary Applications, including Play Store and Search. The anti-fragmentation
4 restrictions in Alphabet's MADAs require manufacturers to agree not to sell devices in the EU
5 market that run on alternate versions of the Android operating system. Although EU antitrust
6 laws do permit dominant companies to place certain objectively reasonable restrictions on their
7 business and licenses, the Commission concluded that "*to date, [Alphabet] has not been able to*
8 *show this in relation to the restrictions in the 'Anti-Fragmentation Agreements.'*"
9 Additionally, the Commission's investigation uncovered:

10 *[E]vidence that [Alphabet's] conduct prevented manufacturers from selling*
11 *smart mobile devices based on a competing Android fork which had the*
12 *potential of becoming a credible alternative to the Google Android operating*
13 *system ... [Alphabet] ... closed off an important way for its competitors to*
introduce apps and services, in particular general search services, which could
be pre-installed on Android forks.

14 In the Commission's view, the Company's anti-fragmentation practices have "*had a direct*
15 *impact on consumers*" by denying them access to innovative, and potentially superior, versions
16 of the Android operating system.

17 68. Finally, the Commission determined that Alphabet violated Article 102 by
18 improperly incentivizing some of the largest smartphone and tablet manufacturers. In particular,
19 the Commission determined that Alphabet grants significant financial incentives to
20 manufacturers and network providers on the condition that they exclusively pre-install Google
21 Search on their devices. These financial incentives discouraged manufacturers and network
22 operators from pre-installing rival search services on devices they sell to end-users. And, the
23 Commission found direct "evidence" that Alphabet's incentive-based "exclusivity condition
24 affected whether certain device manufacturers and mobile network operators pre-installed
25 competing search services."

26 69. The Commission has sweeping authority to order remedial measures to restore
27 competition and/or impose monetary sanctions for Alphabet's offending Android practices.
28 Under Reg. 1/2003, the Commission has the power to impose direct monetary penalties for

1 anticompetitive business practices equal to 10% of a company's global revenue in the year
2 preceding a determination that the company violated Article 102. In recent years, the
3 Commission has assessed multi-billion dollar fines against several leading American technology
4 firms for conduct less egregious than Alphabet's Android licensing practices. Therefore, under
5 Reg. 1/2003, the Commission may impose direct monetary penalties on Alphabet equal to 10%
6 of its global revenues, or *nearly \$7.4 billion* based on the Company's 2015 revenues, for its
7 Android antitrust violations. Further, Article 24 of Reg. 1/2003 grants the Commission the
8 power to order companies to "comply" with "interim measures" formulated by the Commission.
9 Additionally, the Commission can also direct companies operating in the EU market "to put an
10 end" to business practices that violate Article 102. Thus, the Commission may also decide to
11 order Alphabet to rescind, publicly disclose, or alter the terms of its MADAs, and/or direct
12 Alphabet to undertake other costly remedial measures that together will have a substantial impact
13 on the Company's business and operations.

14 THE BOARD'S KNOWLEDGE OF ANTITRUST VIOLATIONS

15 70. The Individual Defendants are ultimately responsible for the Company's EU
16 antitrust violations and the resulting damage to Alphabet. The Board caused or failed to prevent
17 Alphabet from engaging in illegal, anticompetitive Android practices, including: (i) the coercive
18 bundling of its proprietary Android Applications; (ii) the stifling of Android software
19 development through anti-fragmentation restrictions; and (iii) the payment of improper financial
20 incentives to device manufacturers and network operators to disadvantage rival search providers.
21 Had the Board not allowed these illicit Android practices or overseen the Company in good faith,
22 Alphabet would have substantially mitigated its unlawful European business practices and
23 avoided formal antitrust enforcement proceedings by the Commission.

24 71. For years, the Individual Defendants were aware that Alphabet was engaged in
25 anticompetitive Android practices and that EU regulators were increasingly scrutinizing the
26 Company's European business and operations. Nevertheless, the Individual Defendants caused
27 or failed to prevent Alphabet from engaging in the illicit Android practices (outlined above) that
28 were designed to improperly strengthen the Company's market position and force manufacturers

1 into licensing arrangements that favored the Company's Applications and Android operating
2 system.

3 72. Since at least November 2010, Alphabet and the Board were aware that EU
4 regulators were amassing evidence that the Company's Android business practices were designed
5 to and did abuse Alphabet's dominant position in relevant EU markets. In fact, on November 30,
6 2010, the Commission publicly announced its decision "*to open an antitrust investigation into*
7 *allegations that Google Inc. abused [its] dominant position.*" The Commission's 2010
8 investigation was launched after it received formal complaints alleging that Alphabet routinely
9 abused its dominant position to disadvantage its competitors. Between 2010 and the present,
10 more than a dozen businesses—including Microsoft and Apple—have filed formal complaints
11 with the Commission challenging Alphabet's anticompetitive European business practices. For
12 example, FairSearch, a group representing major technology companies such as Microsoft,
13 Expedia Inc., and Nokia Corporation, filed a formal antitrust complaint with the Commission
14 directly challenging Alphabet's Android practices. At the time the complaint was filed, Thomas
15 Vinje, lead counsel representing FairSearch, warned Commission regulators that "*[Alphabet] is*
16 *using its Android mobile operating system as a 'Trojan Horse' to deceive partners, monopolize*
17 *the mobile marketplace, and control consumer data,*" and that a failure to act would "cement
18 [Alphabet's] control over consumer Internet data for online advertising as usage shifts to
19 mobile." During the same time period, the Commission repeatedly expanded the scope of its
20 antitrust investigation, and rejected attempts by Alphabet to settle its probe.

21 73. For example, in June 2014, *Reuters* published an article titled, "*European*
22 *Regulators Training Sights on Google's Mobile Software,*" written by industry commentators
23 Foo Yun Chee and Alexei Oreskovic. The article indicated that EU regulators were actively
24 "laying the groundwork for a case centered on whether Google abuses the 80 percent market
25 share of its Android mobile operating system to promote services from maps to search." Citing
26 sources with direct knowledge of the Commission's Android probe, and a former Alphabet
27 executive, the article reported, in pertinent part:

1 The Commission has stepped up inquiries just in recent weeks, sending
2 companies questionnaires that seek far more details than previous queries on the
3 matter in 2011 and 2013.

4 In one questionnaire seen by Reuters, *respondents were asked whether there was*
5 *a requirement set by Google, written or unwritten, that they not pre-install apps,*
6 *products or services on mobile devices that compete with Google software like*
7 *its search engine, app store and maps.*

8 *Companies must provide emails, faxes, letters, notes from phone calls and*
9 *meetings, and presentations stretching as far back as 2007 related to such deals*
10 *with Google, suggesting the European Commission wants to know if Google's*
11 *behavior has been long-term. Respondents have been given until early September*
12 *to reply to more than 40 questions.*

13 *While any company is free to use the open-source Android as they choose,*
14 *mobile handset makers that want to use the newest version must sign a contract*
15 *that stipulates a minimum number of Google services be pre-installed on*
16 *devices, according to a third source, a former Google executive with knowledge*
17 *of the matter.*

18 The impending Android inquiry adds to a growing list of regulatory challenges
19 that complicate the Internet company's ambitions in a vital market. Europe
20 accounted for more than \$30 billion in digital advertising spending in 2013.

21 74. Alphabet's public filings and statements made by officials at the Company also
22 demonstrate that the Board was aware of the anticompetitive nature of the Company's European
23 business practices. In particular, the Board knew at all relevant times that: (i) the Company's
24 business was under direct scrutiny from EU regulators; (ii) mounting evidence of EU antitrust
25 violations were chronicled in a formal Statements of Objections filed by the Commission and in
26 over a dozen formal complaints lodged by rival search providers and device manufacturers; and
27 (iii) EU antitrust violations could have a material adverse effect on the Company's business and
28 operations. For example, on July 27, 2011, Alphabet filed with the SEC its Quarterly Report on
Form 10-Q for the period ended June 30, 2011. The Form 10-Q, which was certified pursuant to
the Sarbanes-Oxley Act of 2002 by defendant Page, disclosed that:

**We are subject to increased regulatory scrutiny that may negatively impact
our business.**

The growth of our company and our expansion into a variety of new fields
implicate a variety of new regulatory issues, and *we have experienced increased
regulatory scrutiny as we have grown. In particular, we are cooperating with*

1 *the U.S. Federal Trade Commission (FTC) and the European Commission in*
2 *investigations they are conducting with respect to our business and its impact*
3 *on competition.* Legislators and regulators, including those conducting
4 investigations in the U.S. and Europe, may make legal and regulatory changes, or
5 interpret and apply existing laws, in ways that make our products and services less
6 useful to our users, require us to incur substantial costs, expose us to
7 unanticipated civil or criminal liability, or cause us to change our business
8 practices. These changes or increased costs could negatively impact our business
9 and results of operations in material ways.

6 * * *

7 *We are regularly involved in claims, suits, government investigations, and*
8 *proceedings* arising from the ordinary course of our business, including actions
9 with respect to intellectual property claims, *competition and antitrust matters*
10 *(such as the pending investigations by the FTC and the European*
11 *Commission),* privacy matters, tax matters, labor and employment claims,
12 commercial claims, as well as actions involving content generated by our users,
13 and other matters. Such claims, suits, government investigations, and proceedings
14 are inherently uncertain and their results cannot be predicted with certainty.
15 *Regardless of the outcome, such legal proceedings can have an adverse impact*
16 *on us because of legal costs, diversion of management resources, and other*
17 *factors.* Determining reserves for our pending litigation is a complex, fact-
18 intensive process that requires significant judgment. It is possible that a resolution
19 of one or more such proceedings could result in substantial fines and penalties
20 that could adversely affect our business, consolidated financial position, results of
21 operations, or cash flows in a particular period. *These proceedings could also*
22 *result in criminal sanctions, consent decrees, or orders preventing us from*
23 *offering certain features, functionalities, products, or services, requiring a*
24 *change in our business practices, or requiring development of non-infringing*
25 *products or technologies, which could also adversely affect our business and*
26 *results of operations."*

19 75. On September 21, 2011, defendant Schmidt was asked to appear before the Senate
20 Judiciary's subcommittee on Antitrust, Competition Policy, and Consumer Rights (the
21 "Subcommittee") to address concerns that Alphabet engaged in anticompetitive business
22 practices. In prepared remarks to the Subcommittee, defendant Schmidt admitted that "*[w]e*
23 *know that several companies have complaints with [Alphabet], which they may have raised*
24 *with government regulators here and abroad.*" However, defendant Schmidt downplayed the
25 significance of these complaints and the scrutiny from regulators, noting: "I am not a lawyer, but
26 I take comfort from the fact that every decided antitrust suit that has been brought against Google
27 regarding our search results has been dismissed.... I believe that this demonstrates that our
28 business principles and, in particular, [Alphabet's] focus on putting consumers first, are also the

1 same values that are behind the antitrust laws." Further, defendant Schmidt attempted to eschew
2 criticism of Alphabet's Android practices by touting the purported openness of the Android
3 operating system. According to defendant Schmidt, regulatory criticism of Android was
4 unwarranted because its "openness allows anyone to take it and develop it independently" and
5 *"Android's openness has helped make mobile computing competitive* by allowing the
6 introduction of lower-priced smartphones and pushing other companies to innovate and improve
7 their products – all resulting in better phones for less."

8 76. However, Senators Herb Kohl and Mike Lee, the Chairman and Ranking Member
9 of the Subcommittee, respectively, were unconvinced by defendant Schmidt's testimony. Two
10 months after the Subcommittee hearing, the Senators sent a joint letter to the Federal Trade
11 Commission on December 19, 2011 (the "FTC Letter") highlighting "concerns" about Alphabet's
12 business practices and calling on the agency to investigate. In particular, the FTC Letter noted
13 that the Subcommittee was troubled by concerns raised by several industry observers *"that*
14 *[Alphabet] may, as a condition of access to the Android operating system, require phone*
15 *manufacturers to install Google as the default search engine."* The FTC Letter also noted that
16 "[i]n response to written questions after [the Subcommittee's] hearing, *[Alphabet] denied that it*
17 *presently makes this demand*, suggesting that manufacturers are free to install any search engine
18 they wish. Yet [Alphabet] has been unwilling to provide any assurance that it will not adopt
19 such a policy in the future." Finally, the FTC Letter disclosed that *"[o]verseas, the European*
20 *Commission"* was *"in its second year of its investigation"* into Alphabet's anticompetitive
21 practices.

22 77. On January 26, 2012, Alphabet filed with the SEC its 2011 Form 10-K. The
23 Company's 2011 Form 10-K revealed, in pertinent part, that:

24 *The European Commission's (EC) Directorate General for Competition has*
25 *also opened an investigation into various antitrust-related complaints against*
26 *us. On February 10, 2010, we received notification from the EC about three*
27 *antitrust complaints* filed by Ciao, Ejustice, and Foundem, respectively. *On*
28 *November 30, 2010, the EC formally opened proceedings against us.* Since
November 2010, 1plusV, parent company of Ejustice, and VFT, an association of
business listings providers in Germany, have filed similar complaints against us.
On March 31, 2011, Microsoft Corporation submitted a similar complaint to the

1 EC against us. On the same day, the EC notified us of additional complaints filed
2 by Elfvoetbal, Hotmaps, Interactive Labs, and nnpt.it, and on August 30, 2011 of
3 a complaint by dealdujour.pro. On September 16, 2011, we responded to all of
4 the allegations made against us. In addition, in December 2011, the Spanish
5 Association of Daily Newspaper Publishers also submitted a complaint to the EC
6 against us. We are cooperating with the EC and responding to its information
7 requests.

8 * * *

9 We are subject to increased regulatory scrutiny that may negatively impact our
10 business.

11 The growth of our company and our expansion into a variety of new fields
12 implicate a variety of new regulatory issues, and *we have experienced increased*
13 *regulatory scrutiny as we have grown. In particular, we are cooperating with*
14 *the U.S. Federal Trade Commission (FTC), the European Commission (EC)*
15 *and several state attorneys general in investigations they are conducting with*
16 *respect to our business and its impact on competition.* Legislators and regulators,
17 including those conducting investigations in the U.S. and Europe, may make legal
18 and regulatory changes, or interpret and apply existing laws, in ways that make
19 our products and services less useful to our users, require us to incur substantial
20 costs, expose us to unanticipated civil or criminal liability, or cause us to change
21 our business practices. *These changes or increased costs could negatively impact*
22 *our business and results of operations in material ways.*

23 78. The 2011 Form 10-K was signed by defendants Page, Brin, Doerr, Greene,
24 Hennessy, Mather, Otellini, Shriram, and Tilghman.

25 79. On January 29, 2013, Alphabet filed with the SEC its Annual Report on Form 10-
26 K for the fiscal year ended December 31, 2012 ("2012 Form 10-K"). The 2012 Form 10-K
27 disclosed that the Commission had expanded its investigation into Alphabet's European business
28 practices following additional complaints made by several of Alphabet's competitors in online
search and device manufacturing. Notably, the 2012 Form 10-K also disclosed that the
Company was actively attempting to resolve the Commission's probe in order to "avoid" a fine,
but does not state that the Alphabet discontinued the infringing practices that drew the
Commission's ire in the first place. The 2012 Form 10-K notes, in relevant part:

The European Commission's (EC) Directorate General for Competition has also
opened an investigation into various antitrust-related complaints against us. Since
February 2010, we have received a number of notifications from the EC about
antitrust complaints filed against us. On November 30, 2010, the EC formally
opened proceedings against us. We believe we have adequately responded to all

1 of the allegations made against us. *We continue to cooperate with the EC and*
2 *are pursuing a potential resolution that would avoid a finding of infringement*
3 *and a fine. The EC has also opened an investigation into Motorola's licensing*
4 *practices* for standards-essential patents and use of standards-essential patents in
litigation on the basis of complaints brought by Microsoft and Apple. We are
cooperating with the EC and responding to the information requests on an
ongoing basis.

5 * * *

6 We are also regularly subject to claims, suits, government investigations, and
7 other proceedings involving competition and antitrust (such as the pending
8 investigations by the FTC and the EC described above), intellectual property,
9 privacy, tax, labor and employment, commercial disputes, content generated by
our users, goods and services offered by advertisers or publishers using our
10 platforms, personal injury, consumer protection, and other matters. Such claims,
suits, government investigations, and other proceedings could result in fines, civil
or criminal penalties, or other adverse consequences.

11 Certain of our outstanding legal matters include speculative claims for substantial
12 or indeterminate amounts of damages.

13 80. The 2012 Form 10-K was signed by defendants Page, Schmidt, Brin, Doerr,
14 Greene, Hennessy, Mather, Otellini, Shriram, and Tilghman.

15 81. On February 12, 2014, Alphabet filed with the SEC its Annual Report on Form
16 10-K for the fiscal year ended December 31, 2013 ("2013 Form 10-K"). The 2013 Form 10-K
17 revealed that the Commission's investigation uncovered evidence that Alphabet had abused its
18 dominant position in relevant EU markets. In response to these violations, the Commission sent
19 Alphabet a formal Statement of Objections outlining certain of the Company's infringing
20 practices. The 2013 Form 10-K discloses, in pertinent part:

21 *On November 30, 2010, the European Commission's (EC) Directorate General*
22 *for Competition opened an investigation into various antitrust-related*
23 *complaints against us. We believe we have adequately responded to all of the*
24 *allegations made against us. We continue to cooperate with the EC and are*
25 *pursuing a potential resolution that would avoid a finding of infringement and a*
26 *fine. The EC has also opened an investigation into Motorola's licensing practices*
27 *for standards essential patents and use of standards-essential patents in litigation*
on the basis of complaints brought by Microsoft and Apple. The EC has issued a
Statement of Objections against Motorola alleging abuse of a dominant position
with respect to these standards-essential patents. We have responded to the
Statement of Objections and are defending the case.

1 82. The 2013 Form 10-K was signed by defendants Page, Schmidt, Brin, Doerr,
2 Greene, Hennessy, Mather, Shriram, and Tilghman.

3 83. On February 9, 2015, Alphabet filed with the SEC its Annual Report on Form 10-
4 K for the fiscal year ended December 31, 2014 ("2014 Form 10-K"). The 2014 Form 10-K again
5 discussed continued scrutiny by EU regulators. In particular, 2014 Form 10-K notes, in pertinent
6 part:

7 [W]e have experienced increased regulatory scrutiny as we have grown.... *We*
8 *continue to cooperate with the European Commission (EC)* and other
9 international regulatory authorities around the world in investigations they are
10 conducting with respect to our business and its impact on competition.
11 *Legislators and regulators may make legal and regulatory changes, or interpret*
12 *and apply existing laws, in ways that make our products and services less useful*
to our users, require us to incur substantial costs, expose us to unanticipated
civil or criminal liability, or cause us to change our business practices. These
changes or increased costs could negatively impact our business and results of
operations in material ways.

13 The 2014 Form 10-K was signed by defendants Page, Schmidt, Brin, Doerr, Greene, Hennessy,
14 Mather, Mulally, Otellini, Shriram, and Tilghman.

15 84. Finally, on February 11, 2016, the Company filed with the SEC its Annual Report
16 on Form 10-K for the fiscal year ended December 31, 2015 ("2015 Form 10-K"). The 2015
17 Form 10-K disclosed that EU regulators were once again expanding their probe into Alphabet's
18 anticompetitive European business practices. In particular, the Company revealed that the
19 Commission issued Alphabet another formal Statement of Objections outlining practices that
20 violated applicable antitrust laws. Alphabet also disclosed that the Commission "opened a
21 formal investigation" into Alphabet's long-scrutinized Android practices. The 2015 Form 10-K
22 states, in relevant part:

23 On November 30, 2010, the European Commission's (EC) Directorate General for
24 Competition opened an investigation into various antitrust-related complaints
25 against us. *On April 15, 2015, the EC issued a Statement of Objections (SO)*
regarding the display and ranking of shopping search results. The EC also
26 *opened a formal investigation into Android.* We responded to the SO on August
27 27, 2015 and will continue to cooperate with the EC.

28 The Comision Nacional de Defensa de la Competencia in Argentina, the
Competition Commission of India (CCI), Brazil's Council for Economic Defense
(CADE), the Canadian Competition Bureau (CCB), and the Federal

1 Antimonopoly Service (FAS) of the Russian Federation have also opened
2 investigations into certain of our business practices. In August 2015, we received
3 the CCI Director General's report with interim findings of competition law
4 infringements regarding search and ads. In September 2015, FAS found that there
5 has been a competition law infringement in Android mobile distribution. We will
6 respond to the CCI's report and have filed an appeal of the FAS decision.

7 85. The 2015 Form 10-K was signed by defendants Schmidt, Page, Brin, Doerr,
8 Greene, Hennessy, Mather, Mulally, Otellini, Shriram, and Tilghman.

9 86. The Individual Defendants caused or recklessly failed to take any action to
10 address Alphabet's illegal Android practices during the relevant period. Despite knowledge that
11 the Commission was probing the Company's European business practices, the Individual
12 Defendants caused or recklessly permitted Alphabet to abuse its dominant position in relevant
13 EU markets by: (i) requiring device manufacturers to pre-install Google Chrome and Google
14 Search as the default browser and search platform in order to license the Applications; (ii)
15 preventing manufacturers from selling devices that rely on competing variants of the Android
16 operating system; and (iii) offering financial incentives to manufacturers and network operators
17 who agree to pre-install Google Search on their devices. Throughout the relevant period, the
18 Individual Defendants continued to allow or failed to prevent Alphabet from violating EU
19 antitrust laws even though they knew that an adverse judgment from EU regulators could have a
20 material impact on the Company's business and operations.

21 DAMAGES TO ALPHABET

22 87. As a result of the Individual Defendants' improprieties, Alphabet entered into
23 illegal, anticompetitive Android licensing agreements and improperly incentivized device
24 manufacturers and network operators. These agreements violated applicable EU antitrust laws
25 and operated to the detriment of the Company's European competitors and consumers. The
26 Commission has authority to impose direct monetary sanctions on the Company that may exceed
27 several billion dollars.

28 88. Further, as a direct and proximate result of the Individual Defendants' actions,
Alphabet has expended, and will continue to expend, significant sums of money. Such
expenditures include, but are not limited to:

1 (a) costs incurred from defending, settling, or paying an adverse judgment
2 from the Commission for violations of EU antitrust laws;

3 (b) costs incurred from implementing any corrective and/or remedial
4 measures ordered by the Commission;

5 (c) costs incurred from defending, settling, or paying any adverse judgment
6 from any other legal actions pertaining to the Company's Android licensing restrictions and/or
7 other of its anticompetitive business practices; and

8 (d) costs incurred from compensation and benefits paid to the Individual
9 Defendants who have breached their duties to Alphabet.

10 89. Finally, Alphabet's business, goodwill, and reputation have been, and will
11 continue to be, severely damaged by the Individual Defendants' decision to allow and/or failure
12 to prevent the Company's systemic violation of EU antitrust laws.

13 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

14 90. Plaintiff brings this action derivatively in the right and for the benefit of Alphabet
15 to redress injuries suffered, and to be suffered, by Alphabet as a direct result of breaches of
16 fiduciary duty, waste of corporate assets, unjust enrichment, and indemnification and
17 contribution, as well as the aiding and abetting thereof, by the Individual Defendants. Alphabet
18 is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to
19 confer jurisdiction on this Court that it would not otherwise have.

20 91. Plaintiff will adequately and fairly represent the interests of Alphabet in enforcing
21 and prosecuting its rights.

22 92. Plaintiff was a stockholder of Alphabet at the time of the wrongdoing complained
23 of, has continuously been a stockholder since that time, and is a current Alphabet stockholder.

24 93. The current Board of Alphabet consists of the following eleven individuals:
25 defendants Page, Brin, Schmidt, Doerr, Greene, Hennessy, Mather, Mulally, Otellini, Shriram,
26 and Tilghman.

27 94. Plaintiff has not made a demand on Alphabet's Board to investigate and prosecute
28 the wrongdoing alleged herein. Such a demand is futile and therefore excused because: (i) a

1 majority of the Board is unable to conduct an independent and disinterested investigation of the
2 alleged wrongdoing; and (ii) the Board's wrongful conduct is not subject to protection under the
3 Business Judgment Rule. Under such circumstances, the demand requirement is excused since
4 making such a demand on the Board would be futile. *Aronson v. Lewis*, 473 A.2d 805 (Del.
5 1984) *overruled by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000); *Rales v. Blasband*, 634 A.2d 927
6 (Del. 1993); *Shields v. Singleton*, 15 Cal. App. 4th 1611 (1993); *Bader v. Anderson*, 179 Cal.
7 App. 4th 775 (2009).

8 **Demand Is Excused Because the Board Is Not Disinterested**

9 95. The Board is not disinterested because each of its members face a substantial
10 likelihood of liability and have direct personal incentives to turn a blind eye to the misconduct
11 alleged. Alphabet's Board was aware of, and is ultimately responsible for, the damages suffered
12 by Alphabet as a direct result of the Company's illegal Android practices and EU antitrust
13 violations. The members of the Board, therefore, face potential personal liability for their
14 wrongful conduct.

15 **Officer Defendants**

16 96. As officers of the Company, defendants Schmidt, Page, and Brin orchestrated and
17 directed the Company's licensing and other Android business practices in the United States and
18 abroad. The Officer Defendants were required to ensure that Alphabet's business complied with
19 all "applicable legal requirements and prohibitions," including EU antitrust laws. Defendants
20 Schmidt, Page, and Brin each had an obligation to conduct Alphabet's business, including its
21 Android segment, in an "effective, efficient, and ethical manner."

22 97. In dereliction of these duties, the Officer Defendants each acted knowingly,
23 recklessly, or with gross negligence⁶ when they directed Alphabet to engage in anticompetitive
24 Android licensing arrangements and other unlawful practices despite knowledge that: (i)
25

26
27 ⁶ As officers of Alphabet, defendants Schmidt, Page, and Brin are liable to the Company for their
28 grossly negligent conduct relating to Alphabet's EU antitrust violations and the resultant harm to
its business, notwithstanding Del. Code §102(b)(7).

1 Alphabet maintained a dominant position in several EU markets; (ii) the Company's European
2 business practices, including its Android business segment, were under direct scrutiny from EU
3 regulators since at least November 2010; (iii) mounting evidence of EU antitrust violations were
4 chronicled in formal Statements of Objections filed by the Commission and in over a dozen
5 complaints lodged by rival search providers and device manufacturers; (iv) several of the
6 complaints filed against the Company targeted Alphabet's use of anticompetitive Android
7 licensing arrangements; and (v) EU antitrust violations could have a material adverse effect on
8 the Company's business and operations.

9 98. Throughout the relevant period, defendants Schmidt, Page, and Brin, each signed
10 Quarterly Reports and Annual Reports on Forms 10-Q and 10-K, respectively, disclosing that the
11 Company's European business practices, including its Android segment, were being investigated
12 by EU regulators and that an adverse antitrust finding would have a material impact on
13 Alphabet's business and operations. Further, the Officer Defendants received formal Statements
14 of Objections sent by the Commission, and they were aware of the Commission's decisions to
15 repeatedly expand the scope of its antitrust probe. And, as defendant Schmidt candidly told the
16 Subcommittee in September 2011, Alphabet "kn[e]w" that formal antitrust complaints were filed
17 against the Company and that regulators were investigating its anticompetitive business practices
18 "here and abroad." Nevertheless, the Officer Defendants caused or failed to prevent Alphabet
19 from continuing its Android licensing arrangements and other illicit business practices that
20 violated EU antitrust laws.

21 99. As a result, defendants Schmidt, Page, and Brin face a substantial likelihood of
22 liability for their involvement in Alphabet's EU antitrust violations and are not disinterested.

23 **Director Defendants**

24 100. The Director Defendants are also each responsible for the damages suffered by
25 Alphabet as a result of the Company's EU antitrust violations. During the relevant period, the
26 Director Defendants had a duty "to ensure that [Alphabet] operates in an effective, efficient, and
27 ethical manner" and were directly "*responsible for oversight of ... significant litigation and*
28 *regulatory exposures ... that may present a material risk*" to the Company's business and

1 operations. Further, as members of Alphabet's Audit Committee, defendants Doerr, Greene,
2 Mather, Mulally, and Shriram, were specifically charged with "oversight of risks and exposures"
3 including "legal compliance."

4 101. In dereliction of these duties, the Director Defendants each knowingly or
5 recklessly permitted Alphabet to engage in anticompetitive Android licensing arrangements and
6 other unlawful practices despite their knowledge that: (i) the Company's European business
7 practices, including its Android business segment, was under direct scrutiny from EU regulators;
8 (ii) mounting evidence of EU antitrust violations were chronicled in formal Statements of
9 Objections filed by the Commission and in over a dozen formal complaints lodged by rival
10 search providers and device manufacturers; (iii) several of the complaints filed against the
11 Company targeted Alphabet's use of anticompetitive Android licensing arrangements; and
12 (iv) EU antitrust violations could have a material adverse effect on the Company's business and
13 operations. The Director Defendants each signed Annual Reports on Forms 10-K filed with the
14 SEC disclosing that European regulators were investigating the Company's business for antitrust
15 violations, but each of the Director Defendants allowed Alphabet's Android licensing
16 arrangements and other illegal practices to continue unabated.

17 102. These actions by the Director Defendants have subjected Alphabet to substantial
18 fines and have harmed the Company's business, reputation, and goodwill. As a result,
19 defendants Doerr, Greene, Hennessy, Mather, Mulally, Otellini, Shriram, and Tilghman each
20 face a substantial likelihood of liability for their involvement in Alphabet's EU antitrust
21 violations and are not disinterested. Accordingly, pre-suit demand on the Director Defendants is
22 futile.

23 **Demand Is Futile Because Defendants Brin, Page, and Schmidt Dominate and Control the**
24 **Board**

25 103. Defendants Brin, Page, and Schmidt dominated the Board by controlling
26 stockholder voting power. As of April 29, 2016, defendant Page controlled 26.6% of the
27 stockholder voting power; defendant Brin controlled 25.9% of the stockholder voting power; and
28 defendant Schmidt controlled 5.6% of the stockholder voting power. These three defendants

1 collectively control a majority of the Board, controlling 58.4% of the stockholder voting power.
2 Further, these defendants have controlled a majority of the stockholder voting power since before
3 the Company began its illegal Android licensing practices. As disclosed in the Company's most
4 recent 2015 Form 10-K, defendants Schmidt, Page, and Brin "have significant influence over
5 management and affairs and over all matters requiring stockholder approval, including the
6 election of directors and significant corporate transactions ... for the foreseeable future." The
7 remaining Director Defendants are and have been wholly under the domination of defendants
8 Brin, Page, and Schmidt, preventing them from taking remedial action against defendants Brin,
9 Page, and Schmidt. Defendants Brin, Page, and Schmidt, as majority stockholders, have the
10 power not to re-elect any director who votes to discipline them for their improper acts. A
11 demand is therefore futile and excused.

12 **Demand Is Futile Because a Majority of the Board Cannot Conduct an Independent and**
13 **Objective Investigation of the Wrongful Conduct**

14 104. Demand is futile if at least a majority of Alphabet's Board cannot fairly and
15 independently adjudicate potential claims against themselves. Of the current Board, all
16 defendants were on the Board when Alphabet engaged in the anticompetitive European business
17 practices and Android licensing arrangements that violated EU antitrust laws, subjecting the
18 Company to significant financial charges and reputational risk. Further, the Board's tangled web
19 of close professional and personal relationships amount to conflicts of interest that have, and will
20 continue to, preclude it from taking necessary and proper steps to investigate and remedy
21 Alphabet's illegal conduct.

22 105. **Larry Page and Sergey Brin:** Defendants Brin and Page met at Stanford
23 University in 1995 when defendant Page was twenty-two and defendant Brin was twenty-one.
24 They crammed a dorm room with inexpensive computers and used defendant Brin's data mining
25 system on a research project together at Stanford in 1996, during which time they became
26 friends. The research project, known as "BackRub," explored backlinks, or links on other
27 websites that refer back to a given webpage, as a way to measure the relative importance of a
28 particular site. Defendants Page and Brin then developed an algorithm together called

1 "PageRank" which returned rankings based on the number of times a search term appeared. The
2 program became so popular that they both suspended their PhD studies to start Alphabet, which
3 they initially ran out of their dorm rooms. During all relevant times, defendants Page and Brin
4 worked closely together, even sharing the same tiny office, talking about all the issues impacting
5 Alphabet, and being the final decision-makers on all major decisions.

6 106. **Eric E. Schmidt:** Defendant Schmidt joined Alphabet in 2001 as CEO and has
7 held a seat on the Board since then. Since April 2011, he has been Alphabet's Executive
8 Chairman. He has always been considered the "resident grown-up" at Alphabet. He has a close
9 relationship with defendants Brin and Page and with them has control over decisions at
10 Alphabet. He holds a bachelor's degree in electrical engineering from Princeton University as
11 well as a master's degree and Ph.D. in computer science from the University of California,
12 Berkeley. Prior to joining Alphabet, he worked at Bell Labs, Xerox Corp., Sun Microsystems
13 and Novell. Defendant Schmidt was a member of Apple's board from August 2006 to July 2009
14 and a member of Princeton University's board from 2004-2008. Defendant Schmidt's charitable
15 giving includes donating \$25 million in 2010 to Princeton University to create an endowment,
16 the Schmidt Transformative Technology Fund, which donation was announced by defendant
17 Tilghman, who was then the President of Princeton. Defendant Schmidt has taught at Stanford
18 University.

19 107. **John L. Hennessy:** Defendant Hennessy is the President of Stanford. Defendant
20 Hennessy has been a member of the boards of Cisco Systems, Inc. and Atheros Communications,
21 Inc.

22 108. At the direction of defendants and Stanford alumni, Brin and Page, Alphabet
23 donates millions of dollars every year to Stanford. Since 2006, Alphabet has donated over \$14.4
24 million to the University. Defendant Hennessy's role at Alphabet has created the closest
25 intersection with his Stanford duties per the *Wall Street Journal*. In 2004, several months before
26 Alphabet's initial public offering ("IPO"), the Company appointed defendant Hennessy to its
27 Board. Defendant Doerr, one of Alphabet's original investors and directors, made the first
28 overture to defendant Hennessy. Defendant Hennessy has invested money with defendant

1 Doerr's firm, Kleiner Perkins Caufield & Byers ("Kleiner Perkins"). Alphabet granted defendant
2 Hennessy 65,000 options to buy Alphabet stock at \$20 apiece. After Alphabet's IPO, SEC
3 filings reveal that defendant Hennessy received 10,556 Alphabet shares as part of an earlier
4 investment in a Kleiner Perkins fund.

5 109. With his positions at Stanford and Alphabet, defendant Hennessy effectively sits
6 on two sides of a business relationship. Alphabet licenses its Internet search technology from
7 Stanford, where defendant Brin and Page started the Company and were Ph.D. students. As
8 payment, Stanford received shares in the offering that the school has since sold for \$336 million.
9 Stanford continues to receive what it describes as "modest" annual licensing fees from Alphabet.
10 Paul Aiken, Executive Director of the Authors Guild, calls defendant Hennessy's personal
11 holdings in Alphabet "a great concern" and says "there seems to be both a personal and
12 institutional profit motive here." In November 2006, Alphabet pledged \$2 million to Stanford
13 Law School's Center for Internet and Society, founded by Stanford Professor Lawrence Lessig,
14 known for his views that copyright laws are often too restrictive. Aine Donovan, Executive
15 Director of the Ethics Institute at Dartmouth College, says Stanford should not have accepted the
16 Alphabet gift because it is too narrowly tailored to benefit Alphabet's corporate interests. "It
17 might as well be the Alphabet Center," she says.⁷

18 110. Defendant Hennessy attended a political dinner with defendants Schmidt, Greene,
19 and Levinson, at defendant Doerr's home in February 2011; defendant Hennessy was the only
20 non-business leader invited to no one's surprise.⁸ Additionally, defendant Schmidt joins a third
21 of Professor Peter Wendell's Entrepreneurship and Venture Capital classes at the Stanford
22 Graduate School of Business. Defendant Schmidt stated when Alphabet is looking for engineers,

25 ⁷ John Hechinger and Rebecca Buckman, *The Golden Touch of Stanford's President*, Wall Street
26 Journal, (Feb. 24, 2007), <http://online.wsj.com/news/articles/SB117226912853917727>.

27 ⁸ Ken Auletta, *Get Rich U*, The New Yorker, (April 30, 2012), http://www.newyorker.com/reporting/2012/04/30/120430fa_fact_auletta?currentPage=all.

28

1 they start at Stanford. Five percent of Alphabet's employees are Stanford graduates.⁹

2 111. Further, defendant Hennessy along with defendants Doerr and Schmidt serve as
3 fellows at the American Academy of Arts and Sciences. Defendant Hennessy became a fellow
4 in 1995, while defendants Doerr and Schmidt joined as fellows in 2009 and 2007, respectively.
5 Defendant Hennessy, along with defendants Mulally, Page, and Schmidt are also all members of
6 the National Academy of Engineering and have been since at least 2006.

7 112. As a result, defendant Hennessy has much to lose by voting to initiate litigation
8 against fellow members of the Board. For example, if defendant Hennessy voted to initiate
9 litigation against defendants Brin, Page, or Schmidt, Stanford would risk losing multi-million
10 dollar donations every year. As one of defendant Hennessy's principle duties is to ensure
11 continued alumni support as Stanford's President, he would not jeopardize the loss of such a
12 substantial donation. Furthermore, defendant Hennessy would not risk his prestigious positions
13 at Stanford or Alphabet's continued support of the University by voting to initiate litigation
14 against defendants Brin, Page, or Schmidt.

15 113. Accordingly, based upon defendant Hennessy's many ties and involvement in the
16 illegal Android licensing practices, he lacks independence, rendering a pre-suit demand on him
17 futile.

18 114. **Shirley M. Tilghman:** Defendant Tilghman is currently a Professor of Molecular
19 Biology at Princeton University and was the President of Princeton University from June 2001 to
20 June 2013. Prior to becoming President, defendant Tilghman was a Professor of Life Sciences at
21 Princeton. Defendant Schmidt has donated tens of millions of dollars to Princeton University.
22 For instance, while defendant Tilghman was President, on October 13, 2009, Princeton
23 University announced that defendant Schmidt created a \$25 million endowment fund at
24 Princeton University, which defendant Tilghman accepted. Defendant Tilghman heaped praise
25 on defendant Schmidt for providing Princeton University with this generous gift, stating "This
26 fund will allow Princeton's scientists and engineers to explore truly innovative ideas that need

27
28 ⁹ *Id.*

1 the creation or application of new technologies, including the kinds of technological
2 breakthroughs that most funding sources are too risk-averse to support." Defendant Tilghman
3 continued, "We are deeply grateful to Eric [Schmidt] ... not only for providing this support, but
4 for providing the capacity and flexibility to make investments that are likely to have the broadest
5 and most transformative impact." Defendant Schmidt is a graduate of Princeton University and
6 served as a trustee of the University from 2004 to 2008, at the same time as defendant Tilghman
7 served as a trustee of the University. During that time, defendant Schmidt, as a trustee, exercised
8 substantial control over defendant Tilghman's compensation and continued employment.
9 Defendant Tilghman will not vote to initiate litigation against defendant Schmidt out of loyalty
10 and owingness for his past acts to her and Princeton University and because it would risk that
11 defendant Schmidt would not provide any future donations to Princeton University.

12 115. Defendants Tilghman and Schmidt both presently serve as fellows at the Institute
13 for Advanced Study. Defendant Schmidt was appointed as a fellow in 2008, while defendant
14 Tilghman was appointed in June 2014. Additionally, defendants Tilghman and Schmidt both
15 currently serve as directors of the Broad Institute. Defendant Schmidt was appointed a director
16 in 2012, while defendant Tilghman has served since August 2015.

17 116. Accordingly, based upon defendant Tilghman's many ties and involvement in the
18 illegal Android licensing practices, she lacks independence, rendering a pre-suit demand on her
19 futile.

20 117. **L. John Doerr:** Defendant Doerr a General Partner at the venture capital firm of
21 Kleiner Perkins since August 1980, was an early investor in Alphabet and has been on its Board
22 since May 1999.

23 118. It was in his capacity as General Partner of Kleiner Perkins that he met defendants
24 Brin and Page according to a book written with full cooperation from Alphabet's top
25 management. The meeting was just ending when defendant Doerr asked a final question: "How
26 big do you think this can be?" "Ten billion," said defendant Page. "Doerr just about fell off his
27 chair. Surely, he replied to Page, you can't be expecting a market cap of \$10 billion. Doerr had
28 already made a silent calculation that Alphabet's optimal market cap—the eventual value of the

1 company—could go maybe as high as one billion dollars." "Oh, I'm very serious," said defendant
2 Page. "And I don't mean market cap, I mean revenues." Defendant Doerr would go on to invest
3 in Alphabet. The Company surpassed even defendant Page's wild projection.¹⁰ Defendant Doerr
4 also regularly visits Stanford to scout for ideas. He describes Stanford as the "germplasm for
5 innovation. I can't imagine Silicon Valley without Stanford University." He hosts political and
6 charitable events attended by many of the other Alphabet directors.

7 119. Furthermore, defendant Doerr has sought and obtained significant investments
8 from Alphabet for private companies in which Kleiner Perkins is a major investor. For example,
9 Alphabet bought Peakstream, Inc. for \$20.3 million in 2007. As part owner of Peakstream, Inc.,
10 Kleiner Perkins received 24.5% of that figure (approximately \$5 million). Kleiner Perkins
11 invested in Intuit Inc. ("Intuit"). Since then, Alphabet has continued to invest in companies in
12 which Kleiner Perkins has major investments. Since 2008, Alphabet has invested \$47.5 million
13 in the same companies in which Kleiner Perkins invested. In 2010, at the direction of defendants
14 Brin, Page, and Schmidt, Alphabet invested over \$21 million in companies in which Kleiner
15 Perkins has a substantial interest. If defendant Doerr voted in favor of initiating litigation against
16 defendants Brin, Page, or Schmidt, he would risk Alphabet's continued financial support in
17 companies in which Kleiner Perkins has major investments. Defendant Doerr will not take such
18 a risk.

19 120. Defendant Doerr has a close relationship with defendants Brin, Page, and
20 Schmidt, having been one of the early investors in Alphabet. When defendant Doerr joined the
21 Board, he told defendant Schmidt to use William V. Campbell ("Campbell") as a coach and
22 Campbell was a close advisor to defendant Schmidt. Campbell and defendant Doerr had a close
23 business relationship for decades. Defendant Doerr has also backed successful entrepreneurs
24 including Campbell and Scott D. Cook of Intuit, Jeffrey P. Bezos of Amazon.com, Inc.,
25 ("Amazon") and Mark Pincus of Zynga Inc. Defendant Doerr's firm, Kleiner Perkins, was an

26 _____
27 ¹⁰ Levy, Steven, *In The Plex: How Google Thinks, Works, and Shapes Our Lives*, New York:
28 Simon & Schuster, 2011. Print.

1 early investor in Sun Microsystems. Defendant Schmidt held various positions at Sun
2 Microsystems from 1983 to March 1997. In 1996, when defendant Schmidt was Sun
3 Microsystems' Chief Technology Officer, Kleiner Perkins formed a \$100 million fund to invest
4 in companies that would create software and related products based on the Java programming
5 language developed by Sun Microsystems. In 2001, defendant Doerr suggested defendant
6 Schmidt might benefit from Campbell's mentoring, and Campbell became Alphabet's Senior
7 Advisor and "consigliere" to defendant Schmidt until 2010/ "I think John Doerr would say Bill
8 Campbell saved Google," said Kleiner Perkins partner Will Hearst. "He coached [Schmidt] on
9 what it means to be a CEO, not the CEO of Novell but of a company like Google. He taught
10 [Schmidt] it's a lot like being a janitor: There's a lot of shit you have to do. And he spent a lot of
11 time with [Page] and [Brin], explaining the difference between being a cool company or a smart
12 company and being a successful company."

13 121. Defendant Doerr also directed early venture capital funding to Netscape
14 Communications Corp. ("Netscape") in 1994 when the web browser company was founded, and
15 defendant Shriram was its Vice President. Netscape not had yet shipped products or posted
16 revenue during these now legendary early days of the Internet. Defendant Doerr's firm, Kleiner
17 Perkins, paid \$4 million in 1994 for around 25% of Netscape and profited from Netscape's IPO
18 and subsequent \$4 billion acquisition by America Online, Inc. ("America Online") in 1999.
19 Defendants Doerr and Shriram's close working relationship began with Netscape and has
20 continued on to Alphabet's Board. In 2006, defendants Doerr and Shriram visited India together.
21 "[Kleiner Perkins] and Shriram are working together to make investments in Indian companies
22 serving the domestic market. The visit by [Kleiner Perkins] partners and Shriram to the country
23 later this month is to meet entrepreneurs as well as business and political leaders," stated
24 Sandeep Murthy, who represented both Sherpalo Ventures, LLC ("Sherpalo") (defendant
25 Shriram's venture capital firm) and Kleiner Perkins in India.¹¹

26
27 ¹¹ Ishani Duttgupta, *Moneybag VCs Shriram, Doerr set sail from US.*, The Economic Times
28 (Jan. 9, 2009), http://economictimes.indiatimes.com/articleshow/1363995.cms?utm_source=

1 122. Defendant Doerr also co-founded TechNet in 1997 and currently sits on the
2 company's executive council. Defendant Otellini joined TechNet's executive council in
3 November 2009 and served with defendant Doerr on the council until at least January 2013.
4 Defendant Schmidt joined TechNet's executive council in November 2009 and continues to serve
5 as a member alongside defendant Doerr.

6 123. Defendants Doerr and Shriram worked together at Amazon. Defendant Doerr
7 served as director of Amazon from June 1996 to May 2010, while defendant Shriram was
8 employed by Amazon as Vice President of Business Development from August 1998 to
9 September 1999. Further, defendants Doerr and Shriram both joined the board of Zazzle Inc.
10 ("Zazzle") which customizes apparel, posters, cards and postage stamps, in July 2005. Defendants
11 Doerr and Shriram helped Zazzle secure \$16 million in venture capital funding.

12 124. Defendant Doerr along with defendants Hennessy and Schmidt serve as fellows at
13 the American Academy of Arts and Sciences. Defendant Hennessy became a fellow in 1995,
14 while defendants Doerr and Schmidt joined as fellows in 2009 and 2007, respectively.

15 125. Accordingly, based upon defendant Doerr's many ties and involvement in the
16 illegal Android licensing practices, he lacks independence, rendering a pre-suit demand on him
17 futile.

18 126. **K. Ram Shriram:** Defendant Shriram was one of four angel investors in
19 Alphabet and a founding member of its Board, on which he continues to sit today. Defendant
20 Shriram counseled defendants Brin and Page every Monday morning during Alphabet's earliest
21 days and helped them to incorporate the Company. He also helped them work out a licensing
22 agreement with Stanford so the University would benefit if their two graduate students were
23 successful. According to *Googled: The End of the World as We Know It*, a Stanford computer
24 science professor, David Cheriton, had introduced defendant Shriram to defendants Brin and
25

26
27 contentofinterest&utm_medium=text&utm_campaign=cppst.
28

1 Page in 1998.¹² Impressed by their idea, defendant Shriram made an investment of \$250,000.

2 127. Defendant Shriram has been a member of Stanford University's board since
3 December 2009. As an Alphabet director and Stanford trustee, defendant Shriram closely works
4 on two boards with defendant Hennessy, an Alphabet director since April 2004 and President of
5 Stanford since October 2000. Defendant Shriram has a very close relationship with the
6 University. He and his wife have served on Stanford's Parents Advisory Board since 2006 and
7 endowed the Shriram Family Professorship in Science Education. Both of his daughters attended
8 Stanford. Defendant Shriram also assisted defendants Brin and Page in negotiating a licensing
9 agreement with Stanford, so the University would benefit if Alphabet was successful.

10 128. Defendant Shriram became a Vice President of Netscape in 1994 during the now
11 legendary early days of the Internet when the web browser company was founded and before it
12 shipped products or posted revenue. That same year, defendant Doerr directed early venture
13 capital funding to Netscape. Defendant Doerr's firm, Kleiner Perkins, paid \$4 million in 1994
14 for around 25% of Netscape and profited from Netscape's IPO and subsequent \$4 billion
15 acquisition by America Online in 1999. Defendants Shriram and Doerr's close working
16 relationship began with Netscape and has continued on to Alphabet's Board. In 2006, defendants
17 Shriram and Doerr visited India together. "[Kleiner Perkins] and Shriram are working together
18 to make investments in Indian companies serving the domestic market. The visit by [Kleiner
19 Perkins] partners and Shriram to the country later this month is to meet entrepreneurs as well as
20 business and political leaders," stated Sandeep Murthy, who represented both Sherpalo
21 (defendant Shriram's venture capital firm) and Kleiner Perkins in India.

22 129. Defendant Shriram has also been a managing partner of Sherpalo, an angel
23 venture investment company, since January 2000. From August 1998 to September 1999,
24 defendant Shriram served as Vice President of Business Development at Amazon, an Internet
25 retail company. Prior to that, defendant Shriram served as President at Junglee Corporation, a

26 _____
27 ¹² Auletta, Ken, *Googled: The End of the World as We Know It*, The Penguin Press: New York,
28 2009.

1 provider of database technology, which was acquired by Amazon in 1998.

2 130. Defendants Shriram and Doerr worked together at Amazon. Defendant Doerr
3 served as director of Amazon from June 1996 to May 2010, while defendant Shriram was
4 employed by Amazon as Vice President of Business Development from August 1998 to
5 September 1999. Further, defendant Shriram and Doerr both joined board of Zazzle, which
6 customizes apparel, posters, cards and postage stamps, in July 2005. Defendants Shriram and
7 Doerr helped Zazzle secure \$16 million in venture capital funding.

8 131. Defendants Shriram and Doerr were both initial investors in Frontline Wireless,
9 and both served on the board until the company went bankrupt in January 2008. Defendants
10 Doerr and Shriram were also both initial investors and served on the board of Podshow Inc.,
11 which later changed its name to Mevio Inc. Mevio Inc. went bankrupt in 2014.

12 132. Accordingly, based upon defendant Shriram's many ties and involvement in the
13 illegal Android licensing practices, he lacks independence, rendering a pre-suit demand on him
14 futile.

15 133. **Diane B. Greene:** Defendant Greene has been a member of Alphabet's Board
16 since January 2012. Defendant Greene has also been a member of the board of Intuit since
17 August 2006 and serves on its Audit and Risk Committee and Nominating and Corporate
18 Governance Committee. Defendant Greene has been a member of Alphabet's Board since
19 January 2012.

20 134. Defendant Greene co-founded the software firm bebop which was purchased by
21 Alphabet in early 2016 for more than \$380 million. Defendant Greene received a staggering
22 **\$148.62 million** from Alphabet for her stake in the company.¹³

23 135. Defendant Greene served with defendant Doerr on Intuit's board. Defendant
24 Doerr was an Intuit director from August 1990 to December 2007, while defendant Greene was
25

26
27 ¹³ Dan Primak, *Google Paid \$380 Million for Diane Greene's Startup*, Fortune (Jan. 4, 2016),
28 <http://fortune.com/2016/01/04/google-paid-380-million-for-diane-greenes-startup/>.

1 elected to Intuit's board in August 2006, where she continues to serve as a director.

2 136. Defendant Greene is also director of the MIT Corporation, the governing body of
3 the Massachusetts Institute of Technology ("MIT"), and defendant Mulally has served on MIT's
4 advisory board.

5 137. Accordingly, based upon defendant Greene's ties and involvement in the illegal
6 Android licensing practices, she lacks independence, rendering a pre-suit demand on her futile.

7 138. **Alan R. Mulally:** Defendant Mulally is an Alphabet director and has been since
8 July 2014. Defendant Mulally is also a member of Alphabet's Audit Committee and has been
9 since July 2014.

10 139. Defendant Mulally, along with defendants Hennessy, Page, and Schmidt are all
11 members of the National of Academy of Engineering and have been since at least 2006.

12 140. Defendant Mulally served on MIT's advisory board, and defendant Greene is a
13 director of the MIT Corporation, the governing body of MIT.

14 141. Accordingly, based upon defendant Mulally's ties and involvement in the illegal
15 Android licensing practices, he lacks independence, rendering a pre-suit demand on him futile.

16 142. **Paul S. Otellini:** Defendant Otellini is an Alphabet director and has been since
17 April 2004.

18 143. Defendants Otellini and Doerr were both employed at Intel together from 1974 to
19 1980. Defendant Doerr joined Intel in 1974 and served in a variety of positions, holding roles in
20 engineering, marketing, management, and sales, before leaving for Kleiner Perkins in 1980.
21 Defendant Otellini also joined Intel in 1974 and later served as Intel's CEO until his resignation
22 in May 2013.

23 144. In May 2009, while defendant Otellini served as Intel's CEO, the Commission
24 imposed a \$1.45 billion fine on the company for antitrust violations. At the time, Intel's \$1.45
25 billion fine was the largest ever imposed by the Commission.¹⁴ As a result, defendant Otellini

26 _____
27 ¹⁴ Liam Tung, *Intel Loses Fight Against €1bn EU Antitrust Fine*, ZDNet.com (June 12, 2014),
28 <http://www.zdnet.com/article/intel-loses-fight-against-eur1bn-eu-antitrust-fine/>.

1 had direct knowledge of the Commission's scrutiny of anticompetitive practices and the grave
2 consequences that result from non-compliance with applicable EU antitrust laws.

3 145. Defendant Otellini joined the executive council of TechNet, which was co-
4 founded by defendant Doerr. Defendant Otellini served with defendant Doerr on the executive
5 council from November 2009 until at least January 2013. Defendant Schmidt joined TechNet's
6 executive council in November 2009 and continues to serve as a member alongside defendant
7 Doerr.

8 146. Accordingly, based upon defendant Otellini's ties and involvement in the illegal
9 Android licensing practices, he lacks independence, rendering a pre-suit demand on him futile.

10 **Demand Is Futile Because the Board's Conduct Is Not Protected by the Business Judgment**
11 **Rule**

12 147. The Board caused or condoned Alphabet's illegal practice of using the Company's
13 MADAs to force Android device manufacturers and developers to abide by facially
14 anticompetitive restrictions. The licensing restrictions in the MADAs serve no commercial
15 purpose and were imposed on device developers and manufacturers for the singular purpose of
16 illegally stunting the development and commercial success of Alphabet's competitors in the
17 Android market. Permitting the Company to engage in anticompetitive licensing practices is not
18 a protected business decision and, as such, this conduct can in no way be considered a valid
19 exercise of business judgment. Accordingly, demand on the Board is excused.

20 148. A true and correct copy of this Complaint was delivered to Alphabet prior to
21 being filed with this Court.

22 **FIRST CAUSE OF ACTION**

23 **(Against the Individual Defendants and Does 1-25 for Breach of Fiduciary Duty)**

24 149. Plaintiff incorporates by reference and realleges each and every allegation
25 contained above, as though fully set forth herein.

26 150. The Individual Defendants and Does 1-25 owed and owe Alphabet fiduciary
27 obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe
28 Alphabet the highest obligation of good faith, fair dealing, loyalty, and due care.

1 151. The Individual Defendants and Does 1-25, and each of them, violated and
2 breached their fiduciary duties of candor, good faith, and loyalty. More specifically, the
3 Individual Defendants violated their duty of good faith by creating a culture of lawlessness
4 within Alphabet, and/or consciously failing to prevent to Company from engaging in the
5 unlawful acts complained of herein.

6 152. The Officer Defendants knew, were reckless, or were grossly negligent in not
7 knowing that Alphabet was engaged in illegal Android licensing arrangements and other
8 anticompetitive business practices that violated applicable EU antitrust laws. Accordingly, the
9 Officer Defendants breached their duty of care and loyalty to the Company.

10 153. The Director Defendants owed Alphabet the highest duty of loyalty. These
11 defendants breached their duty of loyalty by causing or recklessly permitting Alphabet's illegal
12 Android licensing arrangements and other anticompetitive business practices that violated
13 applicable EU antitrust laws. Accordingly, the Director Defendants breached their duty of loyalty
14 to the Company.

15 154. As a direct and proximate result of the Individual Defendants' and Does 1-25's
16 breaches of their fiduciary obligations, Alphabet has sustained significant damages, as alleged
17 herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

18 155. Plaintiff, on behalf of Alphabet, has no adequate remedy at law.

19 **SECOND CAUSE OF ACTION**

20 **(Against the Individual Defendants and Does 1-25 for Waste of Corporate Assets)**

21 156. Plaintiff incorporates by reference and realleges each and every allegation
22 contained above, as though fully set forth herein.

23 157. As a result of the wrongdoing detailed herein and by failing to conduct proper
24 supervision, the Individual Defendants and Does 1-25 have caused Alphabet to waste its assets
25 by paying improper compensation and bonuses to certain of its executive officers and directors
26 that breached their fiduciary duty.

27 158. As a result of the waste of corporate assets, the Individual Defendants and Does
28 1-25 are liable to the Company.

1 159. Plaintiff, on behalf of Alphabet, has no adequate remedy at law.

2 **THIRD CAUSE OF ACTION**

3 **(Against the Individual Defendants and Does 1-25 for Unjust Enrichment)**

4 160. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 161. By their wrongful acts and omissions, the Individual Defendants were unjustly
7 enriched at the expense of and to the detriment of Alphabet. The Individual Defendants were
8 unjustly enriched as a result of the compensation and director remuneration they received while
9 breaching fiduciary duties owed to Alphabet.

10 162. Plaintiff, as a stockholder and representative of Alphabet, seeks restitution from
11 these Defendants, and seeks an order of this Court disgorging all profits, benefits, and other
12 compensation obtained by these defendants from their wrongful conduct and fiduciary breaches.

13 163. Plaintiff, on behalf of Alphabet, has no adequate remedy at law.

14 **FOURTH CAUSE OF ACTION**

15 **(Against the Individual Defendants and Does 1-25 for Indemnification and Contribution)**

16 164. Plaintiff incorporates by reference and realleges each and every allegation
17 contained above, as though fully set forth herein.

18 165. The conduct of the Individual Defendants and Does 1-25 described above has
19 exposed Alphabet to significant liability under various antitrust laws and regulations by their
20 disloyal acts.

21 166. Alphabet is alleged liable to private persons, entities, and/or classes by virtue of
22 many of the same facts alleged herein.

23 167. The Individual Defendants and Does 1-25 have caused Alphabet to suffer
24 substantial harm through their disloyal acts.

25 168. Alphabet is entitled to contribution and indemnification from the Individual
26 Defendants and Does 1-25 in connection with all such claims that have been, are, or may be
27 asserted against Alphabet by virtue of the Individual Defendants' wrongdoing.

28

1 PRAYER FOR RELIEF

2 WHEREFORE, plaintiff, on behalf of Alphabet, demands judgment as follows:

3 A. Against all of the defendants, jointly and severally, and in favor of the Company
4 for the amount of damages sustained by the Company along with pre- and post-judgment interest
5 as allowed by law resulting from defendants' breaches of fiduciary duties, waste of corporate
6 assets, unjust enrichment, and indemnification and contribution;

7 B. Directing Alphabet to take all necessary actions to reform and improve its
8 corporate governance and internal procedures to comply with applicable laws and to protect
9 Alphabet and its stockholders from a repeat of the damaging events described herein, including,
10 but not limited to, putting forward for stockholder vote, resolutions for amendments to the
11 Company's By-Laws or Articles of Incorporation and taking such other action as may be
12 necessary to place before stockholders for a vote of the following Corporate Governance
13 Policies:

14 1. a proposal to strengthen the Board's supervision of operations and
15 develop and implement procedures for greater stockholder input into the policies and guidelines
16 of the Board;

17 2. a proposal to reform Alphabet's Android licensing and anti-fragmentation
18 practices;

19 3. a proposal to strengthen internal controls concerning antitrust laws;

20 4. a proposal to strengthen the roles of independent members of the Board
21 in directing and overseeing the Company's operations; and

22 5. a provision to permit the stockholders of Alphabet to nominate at least
23 three candidates for election to the Board;

24 C. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and
25 state statutory provisions sued hereunder, including attaching, impounding, imposing a
26 constructive trust on, or otherwise restricting the proceeds of defendants' trading activities or
27 their other assets so as to assure that plaintiff on behalf of Alphabet has an effective remedy;

28 D. Awarding to Alphabet restitution from defendants, and each of them, and ordering

1 disgorgement of all profits, benefits, and other compensation obtained by the defendants;

2 E. Awarding to plaintiff the costs and disbursements of the action, including
3 reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

4 F. Granting such other and further relief as the Court deems just and proper.

5 **JURY DEMAND**

6 Plaintiff demands a trial by jury.

7 Dated: May 23, 2016

8 ROBBINS ARROYO LLP
9 BRIAN J. ROBBINS
10 KEVIN A. SEELY
11 GINA STASSI
12 MICHAEL J. NICLOUD


BRIAN J. ROBBINS

13 600 B Street, Suite 1900
14 San Diego, CA 92101
15 Telephone: (619) 525-3990
16 Facsimile: (619) 525-3991
17 E-mail: brobbins@robbinsarroyo.com
18 kseely@robbinsarroyo.com
19 gstassi@robbinsarroyo.com
20 mnicoud@robbinsarroyo.com

21 Attorneys for Plaintiff

22
23
24
25
26 1097192