Laurie M. Burgess
BURGESS LAW OFFICES
498 Utah Street
San Francisco, CA 94110
(32) 320-1718
lburgess@burgess-laborlaw.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

Rebecca Rivers, Sophie Waldman and Paul Duke, Plaintiffs, v. Google, Inc., Defendant	Case No.: 1. Breach of Contract 2. Promissory Estoppel 3. Breach of Implied Covenant of Good Faith and Fair Dealing 4. Slander/False Light 5. Termination in Violation of Public Policy

COMPLAINT

Now comes Rebecca Rivers, Sophie Waldman and Paul Duke ("Plaintiffs") by and through their counsel, Laurie M. Burgess, BURGESS LAW OFFICES, and complains and alleges against Defendant Google, Inc. as follows:

The Parties: Venue & Jurisdiction

1. Google, Inc. is a corporation with its principal pace of business at 1600 Amphitheatre Parkway, Montainview, California.

2. In or about February 2019, Plaintiff Rebecca Rivers, a natural person and U.S. citizen, accepted an employment offer tendered by Google, Inc. to work as a Software Engineer.

3. On or about August 1, 2011, Plaintiff Paul Duke, a natural person and U.S. citizen, accepted an employment offer tendered by Google, Inc. to work as a Software Engineer.

4. On or about January 29, 2018, Plaintiff Sophie Waldman, a natural person and U.S. citizen, accepted an employment offer tendered by Google, Inc. to work as a Software Engineer.

5. Venue and jurisdiction in this Court is proper because Google's primary place of business is in Santa Clara County, the conduct complained of herein occurred in Santa Clara County, and each Plaintiff entered into a written contract with Google agreeing to be subjected to jurisdiction in California, and agreeing that California law would apply to all terms and conditions of employment.

Google's "Don't Be Evil" Contractual Mandate

6. Google requires all employees to enter into a written employment contract that incorporates by reference several policies including its corporate "Code of Conduct."

7. The "Code of Conduct" that each full-time Google employee is required to sign as a condition of employment states in pertinent part:

> "Don't be evil." Googlers generally apply those words to how we serve our users. But "Don't be evil" is much more than that. Yes, it's about providing our users unbiased access to information, focusing on their needs and giving them the best products and services we can. But it's also about doing the right thing more generally – following the law, acting honorably and treating each other with respect.
>
> The Google Code of Conduct is one of the ways we put "Don't be evil" into practice. It's built around the recognition that everything we do in connection with our work at Google will be, and should be, measured against the highest possible standards of ethical business conduct. . .
>
> So please do read the Code, and follow it, always bearing in mind that each of us has a personal responsibility to incorporate, and to encourage other Googlers to incorporate, the principles of the Code into our work. And if you have a question or ever think that one of your fellow Googlers or the company as a whole may be falling short of our commitment, don't be silent. We want – and need – to hear from you.

The "Code of Conduct" also warned that "all of our employees and Board members" are expected to know and follow the Code, and that "[f]ailure to do so can result in disciplinary action, including termination of employment."

8. Rivers, Waldman and Duke were each individually induced to give up other employment opportunities in order to work for a corporation that maintained a motto and contractually mandated term "Don't be evil" which they knew was binding on all Google employees, its Board members and the Company itself.

9. Rivers, Waldman and Duke each executed a contract agreeing to the terms set forth in the "Code of Conduct."

10. Google affirmed its commitment to its motto and contractually mandated term of employment, "Don't be evil," by its conduct including, but not limited to (a) agreeing to withdraw from contracting with the Chinese government to launch a censored search engine ("Project Dragonfly"); (b) agreeing to refrain from using the company's artificial intelligence technology to analyze drone surveillance footage ("Project Maven"); (c) joining employees' request to protest the Trump administration travel ban; and (d) repeatedly affirming its commitment to this motto orally at employee-wide meetings and in written communications to its employees.

Plaintiffs' Compliance with Google's "Don't Be Evil" Mandate

11. Rivers, Waldman and Duke each engaged in activities consistent with Google's "Don't be evil" contractual obligation. Specifically, they questioned Google management regarding its intent to enter into a contract with the Trump administration's Customs and Border Protection ("CBP") Immigration and Customs Enforcement ("ICE") and/or Office of Refugee Resettlement ("ORR") agencies which they understood were responsible for e.g. separating children from their parents, "caging" immigrants, unlawfully detaining refugees and engaging in other human rights abuses.

12. On or about July 17, 2019, Waldman in writing openly questioned Google's commitment to refraining from working with CBP. After her question garnered many comments and follow-up questions by hundreds of fellow employees, Carter Gibson, Google's Internal Community Management Team Lead, took the highly unusual step of advising Waldman that the comments on this topic were going to be closed.

13. On or about July 26, 2019, Thomas Kurian, the CEO of Google Cloud, stated during a workplace meeting that Google in general and Google Cloud in particular would not participate in any projects "associated with the Southern Border," and affirmed that Google products and services would only be used for "good stuff" such as crop protection.

14. On or about August 14, 2019 Waldman and Duke prepared and circulated a petition among their co-workers requesting that Google affirm that it would not collaborate with CBP or ICE with respect to enforcement of the Trump border control policies.

15. In or about August, 2019, Rivers discovered that Google had already offered a "free trial" of its new cloud platform, "Anthos," to CBP. Rivers discovered this information by conducting ordinary on-line searches and reviewing internal Google documents that were readily available to her and all other full-time Google employees. The information that Rivers found was used to update the petition that Duke and Waldman had prepared. In circulating this revised petition to their co-workers the authors expressly directed their co-workers to refrain from sharing this information outside of Google.

16. On August 21, 2021, Duke held a "townhall" meeting among fellow employees to discuss Google's involvement with CBP. That same day the authors of the petition requested a meeting with Thomas Kurian to answer questions regarding Google's involvement with CBP – an invitation that he declined two days later.

An Unidentified Person Shares Google Data Externally

17. On August 22, 2019 a BusinessInsider article disclosed that Google offered CBP a free Anthos trial.

18. Neither Duke, Waldman or Rivers ever shared any information pertaining to the free Anthos trial (or any other "confidential" or "need to know" information) to BusinessInsider or any other publication or person outside of Google.

Google Questions Plaintiffs and Returns them to Work Without Discipline or Any Directive to Change Their Behavior

19. On September 5, 2019, Google's "Global Investigations" team interviewed Duke, Waldman and Rivers regarding what information they accessed in preparing the "No GCP for CBP" petition and with whom they shared the data. Each responded that all of the data they used was found through external on-line searches or found in internal Google searches and that all data they reviewed was openly available for all Google employees to find and review independently. None of these employees were told that they had engaged in any misconduct or that they needed to alter their behavior in any way. Each was returned to work without any reprimand or disciplinary action.

20. On September 24, 2019, Waldman and Duke updated the "No GCP for CBP" petition by disclosing that Google was working with Palantir, a company that

assists ICE with database software services. Once again, in researching and updating the petition, Waldman and Duke relied exclusively upon information readily available to all full-time Google employees. Once again, in publishing to their co-workers what they discovered, they reminded their co-workers in writing to refrain from sharing any of this data to non-Google employees.

21. After conducting a thorough investigation, Google never identified any evidence that Duke, Waldman or Rivers ever shared any information pertaining to the free Anthos trial (or any other "confidential" or "need to know" information) with any person other than Google co-workers who had direct access to the same data that Duke, Waldman and Rivers shared with them.

22. During the course of its investigation into the above actions, while finding no incriminating evidence regarding Plaintiffs' conduct, Google was able to identify documentation demonstrating that Duke, Waldman and Rivers consistently guarded "sensitive" and "confidential" information by reminding their colleagues in writing to keep the discussion and copies of these documents "internal" to Google employees.

Google Hires IRI Consultants to Assist it in Surrepitiously Rolling-back its "Don't Be Evil" Mandate

23. Unknown to Google employees but well known to Google's upper management, on January 14, 2019, Google retained IRI Consultants for the explicit purpose of "formulating legal advice in connection with anticipated and existing litigation including in defense of a likely petition for representation before the NLRB *and other brand attacks* resulting from the Labor Campaign." IRI-Google Consultant Services Engagement Agreement Paragraph 8.

24. In or about the time that it retained IRI consultants, Google adopted a plan internally titled "Project Vivian" to implement IRI's recommendations for defending itself against employee organizing and other activity that Google considered an "attack" on its "brand."

25. On September 30, 2019, Duke emailed Amy Lambert, V.P. of Google's Legal Department, and asked her to explain to the Google community what changes that Google had made to its policies/practices in compliance with the terms of a recent NLRB posting that Google had been required to post. Lambert declined to provide an explanation.

26. On November 7, 2019 Google's "Global Investigation" team interviewed Rivers regarding her activities accessing documents pertaining to Google's evolving engagement with CBP. At the close of that meeting she was placed on administrative leave.

27. On November 12, 2019, Kent Walker, Google's Chief Legal Counsel and Vice President, publicly commented to all Googlers world-wide about Google's decision to place Rivers on administrative leave. Without specifically naming Rivers, Walker falsely accused her of "deliberately search[ing] for, access[ing] and shar[ing] a number of confidential or need-to-know documents outside the scope of their job after receiving prior feedback not to do so," and that "[m]any of these documents subsequently appeared in the press," thereby insinuating that Rivers was responsible for the leak.

28. On November 14, 2019, Rivers responded to Walker's statement and on November 22, 2019 she participated in an "open culture townhall" meeting to speak about what happened.

29. On November 25, 2019, Google terminated the employment of Waldman, Duke and Rivers within minutes of one another.

30. On November 25, 2019, Chris Rackow, Google's Vice President of Global Security, issued a false and grossly misleading statement regarding the termination of these employees by asserting that despite "being reminded of data security policies," they engaged in "systematic searches" for information "outside the scope of their job" which included "inaccurate descriptions about Googlers' work and [which] was subsequently shared externally." In fact, neither Duke, Rivers nor Waldman were ever told prior to their termination that they had in any way violated any "data security policy" despite the fact that these employees *asked* the investigators if they had done anything wrong. None of these employees engaged in "systematic" searches, and each only searched for and reviewed documents in Google's data base that any and all other full-time employees could have found and reviewed on their own.

COUNT I: BREACH OF CONTRACT

31. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained above in paragraphs 1 – 30.

32. Each Plaintiff entered into a valid contract with Defendant that incorporated, as terms of their employment agreement, Google's "Code of Conduct."

33. At all times, each Plaintiff fully complied with the terms and conditions of their employment including, but not limited to, complying with the directive to tell Google if they believed that Google, other employees, or its Board members were violating the obligation "Don't be evil."

34. Each Plaintiff fulfilled their contractual duty to Google by advising it, as described above, ways in which Google was "Doing evil." Specifically, each Plaintiff protested Google's engagement in supporting BCP policies that resulted in separation of families and "caging" of immigrants who were seeking asylum in the United States.

35. None of the Plaintiffs violated any terms or conditions in their employment contract with Google.

36. On November 25, 2019, Google terminated the employment of each Plaintiff based upon their performance of obligations that were contractually imposed upon them to perform in violation of the agreement. Google wrongfully breached its contract with Plaintiffs and frustrated Plaintiffs' ability to perform by unlawfully terminating their employment contracts.

WHEREFORE Plaintiffs pray for the relief as set forth below.

COUNT II: PROMISSORY ESTOPPEL

37. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained above in paragraphs 1 – 36.

38. Prior to accepting employment with Google, each Plaintiff was advised of Google's motto and contractual mandate "Don't be evil." Each Plaintiff, in reliance upon that representation, believed that by accepting employment with Google, their labor would not be used to produce products or services that would facilitate unethical, inhumane or "evil" conduct.

39. Each Plaintiff relinquished other employment opportunities in order to work for Google, a company that represented it would not permit itself, its Board

members or its employees engage in conduct that violated its motto and contractual obligation "Don't be evil."

40. Google terminated each Plaintiffs' employment with it for adhering to the directive "Don't be evil" and calling out activity by Google that they each believed betrayed that directive.

41. Plaintiffs were harmed by their reliance upon Google's representation that Google employees were entitled, and required to "call out" Google for engaging in action that they believed violated its "Don't be evil" code of conduct by accepting employment with Google, foregoing other employment, and having their employment with Google wrongfully terminated.

WHEREFORE Plaintiffs pray for the relief as set forth below.

COUNT III:
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

42. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained above in paragraphs 1 – 41.

43. Plaintiffs claim that Google violated its duty to act fairly and in good faith in entering into and honoring the terms of its employment agreement with them in that they each (1) entered into a contract with Google in good faith; (2) each fully performed all tasks required of them as employees; (3) without their knowledge, during the course of their employment Google unilaterally altered a material term of their contract, namely, their joint contractual commitment to Google's "Don't be evil" code of conduct – specifically, Google decided to start punishing employees for fulfilling their contractual commitment to "call out" conduct that they believed to be inhumane or "evil"; (4) Google did not act fairly and in good faith when it materially breached its Code of Conduct and unilaterally changed this

working condition without prior notice to or agreement from Plaintiffs; (5) terminated Plaintiffs' employment without cause, thereby depriving them of the benefits they were entitled to from Google.

WHEREFORE Plaintiffs pray for the relief as set forth below.

COUNT IV SLANDER/FALSE LIGHT

44. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained above in paragraphs 1 – 43.

45. Defendant, by and through its agents including its Chief Counsel, Kent Walker, and by Chris Rackow, its Vice President of Global Security, made statements internally to all Google employees internationally, and caused to be repeated externally through the media, false and misleading statements regarding Plaintiff Rivers.

46. The statements made about Rivers – statements made by one of Google's highest ranking officials – were intended to put Rivers in a false light by suggesting that she shared "confidential" and "need-to-know" Google data with the media.

47. Walker knew, at the time that he made these statements that Rivers did not share any sensitive, confidential or need-to-know information with the media.

48. Unknown to Rivers, Defendant repeated the false statements about her to others, and intentionally obscured information regarding its misconduct from Rivers.

49. Defendant's conduct has caused significant damage to Rivers' reputation and ability to become gainfully reemployed.

50. Google engaged in this conduct with malice, oppression or fraud.

WHEREFORE Rivers prays for the relief as set forth below.

COUNT V: TERMINATION IN VIOLATION OF PUBLIC POLICY

51. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained above in paragraphs 1 – 50.

52. Plaintiffs were each discharged from employment with Google for reasons that violate public policy:

(a) At the time that Plaintiffs were urging Google to refrain from contracting with CBP or ICE to provide Google products and services that would facilitate the separation of children from their parents and to "cage" immigrants, it was the strong and well-known public policy of the State of California to protest this same activity. Specifically, the State of California sued the Trump administration on that basis, commenting, "No child deserves to be left in conditions inappropriate and harmful for their age. The actions by this administration are not just morally reprehensible, they're illegal. Children don't become subhuman because they are migrants." ((Eric Gay / Associated Press) By PATRICK MCGREEVY , TARYN LUNA AUG. 26, 2019 11:50 AM; Quote attributed to then California State Attorney General Xavier Becerra).

(b) Google's conduct of interrogating and subsequently terminating the employment of Plaintiffs for speaking out about and objecting to Google's involvement in contracting with the Trump administration's CBP and ICE agencies to provide goods and services was done to restrict their political activities in violation of Cal. Lab. Code § 1102.

(c) Google's conduct of interrogating Plaintiffs regarding their activities in preparing the "No GCP for CBP" petition and subsequently terminating their employment for engaging in this action constitutes a violation of Cal. Lab. Code § 232.5.

(d) Three of the five employees whom Google selected for termination based upon the above activities are trans people, one is gay and one is a heterosexual male. Google's conduct of targeting gay and trans employees for termination based upon their involvement in the above activities constitutes

unlawful discrimination based upon sex, gender, gender expression, gender identity and/or sexual orientation in violation of Cal. Govt. Code § 12940.

JURY DEMAND

Plaintiffs demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For general damages according to proof on each cause of action for which such damages are available;

2. For special damages, according to proof on each cause of action for which such damages are available;

3. For compensatory damages, according to proof on each cause of action for which such damages are available;

4. For punitive damages, damages, according to proof on each cause of action for which such damages are available;

5. For prejudgment and post-judgment interest according to law;

6. For reasonable attorneys' fees incurred in this action on those causes of action for which such fees are recoverable under the law;

7. For costs of suit incurred in this action; and

8. For other relief as this Court deems just and equitable.

DATED: November 29, 2021

Laurie M. Burgess