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 13 GOOGLE INC.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 IN RE GOOGLE INC. GMAIL
 18 LITIGATION

19 Case No. 5:13-md-02430 LHK (PSG)

20 **DECLARATION OF KYLE C. WONG IN
 21 SUPPORT OF GOOGLE INC.'S OPPOSITION
 22 TO PLAINTIFFS' MOTION FOR CLASS
 23 CERTIFICATION**

24 Date: January 16, 2013
 25 Time: 1:30 p.m.
 26 Dept.: Courtroom 8 - 4th Floor
 27 Judge: Hon. Lucy H. Koh

1 I, Kyle C. Wong, declare:

2 1. I am an attorney licensed to practice law in the State of California, where I am
3 special counsel with the law firm of Cooley LLP, counsel of record for Defendant Google Inc.
4 (“Google”). Except as otherwise noted, I have personal knowledge of the following facts and if
5 called to testify could and would testify competently thereto.

6 2. Google’s free, advertising-supported email service, Gmail, automatically scans the
7 content of email messages sent to and from Gmail users’ accounts. This automated scanning
8 serves several functions, such as spam filtering, virus detection, inbox organization, and serving
9 advertisements that are targeted to the content of the Gmail users’ emails. I understand that
10 Plaintiffs allege that Google’s automated scanning violates federal and state wiretapping laws
11 because Google has not obtained non-Gmail users’ consent to this scanning. (*See* Plaintiffs’
12 Consolidated Individual and Class Action Complaint, ¶¶ 216, 288, 328, 349, 370, filed May 16,
13 2013.)

14 3. Google discloses its email scanning practices through its Terms of Service,
15 Privacy Policy, Gmail Privacy Notice, and Gmail Legal Notice. These documents form the
16 agreement between Google and the Gmail user; the user must accept these terms before using the
17 service. These disclosures, and the numerous Google Help Pages that further explain Google’s
18 automated scanning features, are discussed in depth in the Declaration of Brad Chin (the “Chin
19 Declaration”), filed herewith.

20 4. I understand that in addition to these Google disclosures, there are thousands of
21 non-Google sources of information about Gmail’s email scanning practices. Online news articles,
22 radio programs, technology and privacy blogs, law review articles, discussion forums, and videos
23 address Gmail’s automated scanning of emails, and countless news reporters, industry
24 commentators, and readers have expressed their opinions about Gmail’s automated scanning
25 features. Gmail users and non-Gmail users have commented on or discussed automated scanning
26 in online forums and other media since Google first introduced Gmail in 2004. These comments,
27 far too voluminous to present before the Court, provide ample proof that a large segment of
28

1 Gmail and non-Gmail users alike knew about Google’s scanning of emails. I have excerpted
2 below a sample of those comments for the Court.

3 5. Below, I address:

- 4 • The parameters of our online search for non-Google information sources;
- 5 • News and public reaction to the 2004 Gmail launch;
- 6 • The California legislature’s 2004 proposal to ban email content scanning;
- 7 • Continued discussion of Gmail’s automated scanning from 2005 through 2010;
- 8 • News and commentary regarding the 2011 roll-out of the new ad-targeting system;
- 9 • News and public reaction to the 2012 privacy policy consolidation;
- 10 • News and commentary on the Microsoft “Scroogled” marketing campaign against
11 Google’s email scanning practices;
- 12 • Publicity surrounding the Gmail lawsuits;
- 13 • Comments from Gmail and non-Gmail users regarding their knowledge of
14 automated scanning (including for targeted advertising); and
- 15 • Disclosures from Google Apps for Education customers regarding automated
16 scanning and terms of use.

17 **ONLINE SEARCHES FOR NON-GOOGLE INFORMATION SOURCES**

18 6. With the assistance of three colleagues, I directed a broad search of publicly
19 accessible online material published between January 1, 2004 (three months before Gmail’s
20 launch) and October 31, 2013.

21 7. On February 24, 2013, Ray Sardo, an associate at Cooley, searched Westlaw News
22 to identify articles and other news sources published between January 1, 2004 and July 1, 2004
23 that describe Google’s automated scanning of Gmail messages. In particular, Mr. Sardo searched
24 for articles that referenced “Gmail” or “Google” and “email,” on the one hand, and in which the
25 term “scan” appeared in the same sentence as one of the following words, on the other: “email,”
26 “content,” “keyword,” “message,” or “attachment.”¹ Mr. Sardo chose the January 1, 2004 to July

27 _____
28 ¹ Mr. Sardo performed this search by inputting the following string into the Westlaw search engine: ((G-MAIL or GMAIL) & SCAN! /S (EMAIL! or E-MAIL! or CONTENT! or

1, 2004 timeframe because this six month period spans the three months before and the three months after the launch of Gmail. His search returned 268 results, including relevant articles from the New York Times, USA Today, the Los Angeles Times, the Washington Post, the Chicago Tribune, the San Francisco Chronicle, the Houston Chronicle, the Boston Globe, the Seattle Times, PC World, U.S. News & World Report, the San Jose Mercury News, the Dallas Morning News, the Philadelphia Inquirer, the Economist, and the Milwaukee Journal Sentinel, among *many* others.² The Internet versions of many of these articles remain available for viewing on the Internet, free of charge, almost nine years after they were first published. I discuss some of these articles in more depth below.

8. After Mr. Sardo's initial search, I used the same search string (see footnote 1) to identify articles and other news sources published after July 1, 2004—a period of time that extends from three months after Gmail's launch to today. This search returned 1738 results, including multiple articles from the New York Times, the Washington Post, the Los Angeles Times, the San Jose Mercury News, and the Chicago Tribune. The Internet-versions of these articles remain available for viewing on the Internet, free of charge, and I discuss some of these articles below.

9. Using Google's search engine (accessible at www.google.com), one can easily find many other sources of information that describe automated scanning of Gmail messages. For example, on February 25, 2013, Mr. Sardo typed the phrase "Gmail scans email content" into

KEYWORD! or MESSAGE! or ATTACHMENT!)) or (GOOGLE /S (EMAIL! or E-MAIL!) & SCAN! /S (EMAIL! or E-MAIL! or CONTENT! or KEYWORD! or MESSAGE! or ATTACHMENT!)). The Boolean operator "/s" means that the words to the left and the right of the operator must appear in the same sentence. By way of example, the search "Gmail /s scan" would only return results in which the word "Gmail" appeared in the same sentence as the word "scan." The Boolean operator "!" asks Westlaw to search for words that share a common root. Thus, the search "Gmail /s scan!" would return results in which the word "Gmail" appeared in the same sentence as any of the following words: "scan," "scans," "scanning," or "scanner."

² As of March 31, 2013, the following average circulation totals (digital and print) were available for these news sources: New York Times (1,865,318), USA Today (1,674,306), Los Angeles Times (653,868), Washington Post (474,767), Chicago Tribune (414,590), Dallas Morning News (405,349), Houston Chronicle (360,251), and Philadelphia Inquirer (306,831). *Alliance for Audited Media*, "Top 25 U.S. Newspapers for March 2013," <http://www.auditedmedia.com/news/blog/top-25-us-newspapers-for-march-2013.aspx> (last visited Nov. 5, 2013).

1 Google's search engine. This search returned approximately 13,000,000 results, including many
2 from non-traditional media sources, such as web blogs, online magazines, and privacy-focused
3 websites. Attached hereto as *Exhibit 1* is a true and correct copy of Mr. Sardo's Google search
4 and page 1 of the accompanying search results. I discuss some of these search results in more
5 detail in paragraphs 12-68 below.

6 10. With my knowledge and at my direction, Cooley staff conducted online searches
7 for material addressing Gmail scanning. From October 14-30, Cooley staff ran LexisNexis
8 searches, using the terms "Google," "Scan," "Gmail," and "Email" for news sources published
9 from 2004 to the present. From October 18-30, 2013, they typed the phrase, "Google scans email
10 for ads," among other similar terms and phrases, into Google's search engine to obtain online
11 materials discussing Gmail's email content scanning and targeted advertising. I have reviewed
12 the articles they gathered.

13 11. Due to the volume of relevant results, I discuss below only a sample of the articles
14 we culled from these online searches. For the most part, I have organized my discussion of these
15 articles chronologically, from just before Google's 2004 introduction of its new Gmail email
16 service, to Google's 2011 implementation of its improved targeted advertising system, to
17 Google's 2012 announcement of a consolidated privacy policy, and finally, to the present-day
18 lawsuits alleging that Google violates state and federal wiretap laws because Plaintiffs did not
19 consent to Gmail's automated scanning.

20 **NEWS AND PUBLIC REACTION TO THE 2004 GMAIL LAUNCH**

21 12. Google launched Gmail, its new free, web-based email service, on April 1, 2004,
22 after a period of invitation-only beta testing. Accompanying the public launch, there were
23 hundreds of articles published in the press, as noted in paragraph 7, above, and this public
24 commentary continued in earnest throughout 2004.

25 13. The SearchEngineWatch.com article entitled *Google Launches Gmail, Free Email*
26 *Service*, first published on March 30, 2004 before Gmail's launch, notes that:

27 Mixing ads with email isn't new. Free services have long earned
28 by inserting ads into the footers of emails that their users send. But

1 some users might be disturbed by the concept that Google, even if
2 only in an automated fashion, would be essentially reading their
3 mail in order to know what ads to place. . . . And while the
4 messages might stay private, the *contextual ads that Google serves
simply can't be targeted without the email's content being
analyzed.*

5 (emphasis added.) Attached hereto as *Exhibit 2* is a true and correct copy this article, which is
6 also available at [http://searchenginewatch.com/article/2065293/Google-Launches-Gmail-Free-
7 Email-Service](http://searchenginewatch.com/article/2065293/Google-Launches-Gmail-Free-Email-Service) (last visited Oct. 31, 2013).

8 14. The Forbes article entitled *A First Look At Google's Gmail*, first published on
9 April 12, 2004, discusses the automated scanning of Gmail messages to deliver targeted
10 advertisements, and concludes with the following observation: "Google insists quite clearly in its
11 privacy policy that 'No human reads your mail to target ads or other information without your
12 consent.' The process by which it pushes ads at its users is fully automated. Fears about privacy
13 problems inherent with the Gmail service are, in our opinion, overblown." Attached hereto as
14 *Exhibit 3* is a true and correct copy of this article, which is also available at
15 http://www.forbes.com/2004/04/12/cx_ah_0412tentech.html (last visited Oct. 30, 2013).

16 15. The USA Today article entitled, *Targeted ads tied to Gmail's super space*, first
17 published on April 14, 2004, notes that "Google's computers automatically scan the body of
18 messages for keywords used to tailor ads." The author then provides an example: he received an
19 email "mentioning NBA owner Mark Cuban," and next to it "were links related to his Dallas
20 Mavericks." The article also mentions the legislation California state Senator Liz Figueroa
21 introduced in 2004 that would have banned the automated scanning of Gmail messages. Attached
22 hereto as *Exhibit 4* is a true and correct copy of this article, which is also available at
23 http://usatoday30.usatoday.com/tech/columnist/edwardbaig/2004-04-14-baig_x.htm (last visited
24 Oct. 30, 2013).

25 16. The Salon.com article, *Don't be afraid of the big bad Gmail*, first published on
26 April 26, 2004, discusses "Google's plan to scan e-mail for advertising purposes" and, after
27 testing the Gmail service, concludes that "you shouldn't let it frighten you." Attached hereto as
28

1 **Exhibit 5** is a true and correct copy of this article, which is also available at
2 http://www.salon.com/2004/04/26/gmail_2/ (last visited Oct. 30, 2013.)

3 17. The News & World Report article entitled, *The World According To Google*, first
4 published on May 10, 2004, notes that Gmail users will be shown “ads targeted to their
5 interests—as determined by Google’s spiders, which will automatically scan every message.”
6 Attached hereto as **Exhibit 6** is a true and correct copy of this article, which is also available
7 online at http://www.usnews.com/usnews/biztech/articles/040510/10google_print.htm (last
8 visited Oct. 30, 2013.)

9 18. New York Times article entitled *State of the Art; Google Mail: Virtue Lies In the*
10 *In-Box*, first published on May 13, 2004, notes that Google uses “software” to “place ads in your
11 incoming messages, relevant to their contents,” and opines that privacy advocates’ initial
12 “reactions” to Gmail were “overblown” because:

13 no human ever looks at the Gmail e-mail. Computers do the
14 scanning . . . just the way your current e-mail provider scans your
15 messages for spam and viruses . . . Besides, if you’re that kind of
16 private, Gmail is the least of your worries. You’d better make sure
17 that the people at credit-card companies, mail-order outfits and
18 phone companies aren’t sitting in back rooms giggling at your
19 monthly statements . . . If Gmail creeps you out, just don’t sign up.
20 That would be a shame, though, because you’d be missing a
21 wonderful thing. Even in its current, early state, available only to a
22 few thousand testers, Gmail appears destined to become one of the
23 most useful Internet services since Google itself. Those people
24 [uncomfortable with computer-generated ads] are free to ignore or
25 even bad-mouth Gmail, but they shouldn’t try to stop Google from
26 offering Gmail to the rest of us. We know a good thing when we
27 see it.

22 This article also discusses the legislation California state Senator Liz Figueroa introduced in 2004
23 that would have banned the automated scanning of Gmail messages (this legislation is discussed
24 in more detail below). Attached hereto as **Exhibit 7** is a true and correct copy of this article,
25 which is also available at [http://www.nytimes.com/2004/05/13/technology/state-of-the-art-](http://www.nytimes.com/2004/05/13/technology/state-of-the-art-google-mail-virtue-lies-in-the-in-box.html?pagewanted=all&src=pm)
26 [google-mail-virtue-lies-in-the-in-box.html?pagewanted=all&src=pm](http://www.nytimes.com/2004/05/13/technology/state-of-the-art-google-mail-virtue-lies-in-the-in-box.html?pagewanted=all&src=pm) (last visited Oct. 30, 2013.)
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28

1 19. The Wired article entitled, *My Left Arm for a Gmail Account*, first published on
2 May 20, 2004, states that “one other aspect of Gmail *has received a great deal of attention*: The
3 service automatically searches members’ e-mails for keywords and then adds targeted
4 advertisements to accompany the messages.” (Emphasis added). The article further states that
5 “[m]any privacy activists have raised questions about such a program,” but notes that the Gmail
6 user it had interviewed for the story had “pooh-pooh[ed] such worries.” The articles quotes this
7 Gmail user as saying: “I think the privacy concerns are overblown, really, and I think most
8 people agree . . . As commercial e-mail services go, Gmail’s extremely benign, and unless you’re
9 scared about evil e-mail-scanning robots, there’s not much to worry about.” Attached hereto as
10 **Exhibit 8** is a true and correct copy of this article, which is also available at
11 <http://www.wired.com/culture/lifestyle/news/2004/05/63524> (last visited Oct. 30, 2013).

12 20. The Washington Post article entitled, *Search Is On for Gmail Names*, was first
13 published on May 21, 2004 notes that the Gmail service “generated some controversy among
14 privacy activists for the way its technology serves up text ads to users based on the content of
15 their messages,” but states that “[n]one of the Gmail account holders or would-be account holders
16 contacted for this article expressed concerns along these lines.” The article quotes one
17 prospective Gmail user as stating: “[t]he privacy thing doesn’t bother me, because it’s a
18 computer scanning your e-mail, not a person.” Attached hereto as **Exhibit 9** is a true and correct
19 copy of this article, which is also available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/articles/A43620-2004May20.html)
20 [dyn/articles/A43620-2004May20.html](http://www.washingtonpost.com/wp-dyn/articles/A43620-2004May20.html) (last visited Oct. 30, 2013).

21 21. PCWorld.com article entitled, *Gmail Hits the Auction Block*, first published May
22 26, 2004, quotes a Gmail user as saying, “Nothing’s for nothing. I think it’s kind of ridiculous
23 that people are concerned. If you want the gigabyte of storage for free, it’s not giving up that
24 much to see ads that are based on your email.” Attached hereto as **Exhibit 10** is a true and correct
25 copy of this article, which is also available online at [http://www.pcworld.com/article](http://www.pcworld.com/article/116293/article.html)
26 [/116293/article.html](http://www.pcworld.com/article/116293/article.html) (last visited Nov. 7, 2013).

27 22. The Chicago Tribune article entitled, *Google generous with mailbox size, vows no*
28 *eyes will pry*, first published on April 25, 2004, explains that Gmail “uses [Google’s] AdSense

1 software,” and that “AdSense is an algorithm that scans keywords and sites, then automatically
2 displays ads and links from outfits that pay a fee for placement and priority listings.” Attached
3 hereto as *Exhibit 11* is a true and correct copy of this article, which is also available at
4 [http://articles.chicagotribune.com/2004-04-25/business/0404240315_1_gmail-google-simplest-e-](http://articles.chicagotribune.com/2004-04-25/business/0404240315_1_gmail-google-simplest-e-mail)
5 [mail](http://articles.chicagotribune.com/2004-04-25/business/0404240315_1_gmail-google-simplest-e-mail) (last visited Oct. 30, 2013).

6 23. The Boston Globe article entitled, *Google’s Gmail is still a Rough Draft*, first
7 published on May 31, 2004, states that: “[m]uch has been made of Google’s plan to make money
8 off the service by featuring ads inspired by the contents of the e-mail messages. Intrusive? Not
9 really. Indeed, it’s sort of cool. A note about the Bank of America merger with FleetBoston
10 Financial Corp. spawns an ad from the Internet service MapQuest, offering to draw a map of all
11 Fleet offices.” The article also discusses Senator Figueroa’s proposed Gmail legislation, and
12 notes that “[i]n all, the system offers much to admire and nothing to fear.” Attached hereto as
13 *Exhibit 12* is a true and correct copy of this article, which is also available at
14 [http://www.boston.com/business/globe/articles/2004/05/31/googles_gmail_is_still_a_](http://www.boston.com/business/globe/articles/2004/05/31/googles_gmail_is_still_a_rough_draft?pg=full)
15 [rough_draft?pg=full](http://www.boston.com/business/globe/articles/2004/05/31/googles_gmail_is_still_a_rough_draft?pg=full) (last visited Oct. 30, 2013.)

16 24. The Houston Chronicle article entitled, *Getting Gmail put them on the A list*, first
17 published on June 20, 2004, notes that “some industry watchers have complained that Google
18 scans account holders’ messages for keywords and then delivers text-based ads relevant to the
19 keywords detected. However, most Gmail users said they’re not bothered by it.” Attached hereto
20 as *Exhibit 13* is a true and correct copy of this article, which is also available at
21 [http://www.chron.com/business/technology/article/Getting-Gmail-put-them-on-the-A-list-](http://www.chron.com/business/technology/article/Getting-Gmail-put-them-on-the-A-list-1493632.php)
22 [1493632.php](http://www.chron.com/business/technology/article/Getting-Gmail-put-them-on-the-A-list-1493632.php) (last visited Oct. 30, 2013).

23 25. The Seattle Times article entitled, *Microsoft counters the Gmail buzz with more*
24 *Hotmail space*, first published on June 24, 2004, notes that: “Google sparked a controversy when
25 it said it would include text-based advertisements in Gmail messages that are tailored to the
26 content of the message. Privacy advocates complained that reading e-mail messages to match
27 them with advertising was invasive, even if a computer did it and not a person.” Attached hereto
28 as *Exhibit 14* is a true and correct copy of this article, which is also available at

1 http://seattletimes.com/html/business/technology/2001963770_msn24.html (last visited Oct. 30,
2 2013).

3 26. The remainder of the above-referenced articles spanning the January 1, 2004 and
4 July 1, 2004 time frame, from the San Jose Mercury News, the Dallas Morning News, the
5 Philadelphia Inquirer, the Economist, and the Milwaukee Journal Sentinel, are available from
6 various database services. Attached hereto as *Exhibits 15-19* are true and correct copies of these
7 articles as they appeared in Mr. Sardo's Westlaw search results.

8 **OTHER RESPONSES TO GMAIL SCANNING**

9 27. In addition to the voluminous press accounts accompanying Gmail's launch, a
10 number of privacy groups and government officials publicly responded to the introduction of
11 Gmail.

12 28. On February 20, 2004, California state Senator Liz Figueroa introduced Senate
13 Bill No. 1822 ("SB 1822"). As drafted, the bill would have prohibited the automated scanning of
14 Gmail messages. Attached hereto as *Exhibit 20* is a true and correct copy of Senate Bill
15 No. 1822 (2003-04 Reg. Sess.), as amended May 3, 2004.

16 29. SB 1822 was amended on May 3 and May 25 and was passed as amended by the
17 Senate on May 27, but was never passed by the Assembly. Specifically, the bill died in the
18 Assembly Judiciary Committee. On February 26, 2013, Mr. Sardo accessed and printed the bill's
19 "Complete Bill History Report" by visiting www.leginfo.ca.gov, a website maintained by the
20 California state Legislature. Attached hereto as *Exhibit 21* is a true and correct copy of the
21 report. Public reaction to the May 3 and May 27 amendments and the bill's passing in the Senate
22 is discussed further in the paragraphs below.

23 30. On May 3, 2004, the Electronic Privacy Information Center ("EPIC"), a well-
24 known privacy watchdog, and two other privacy watchdogs (the Privacy Rights Clearinghouse
25 and the World Privacy Forum) sent a letter to then-Attorney General Bill Lockyer. This letter is
26 available on EPIC's website, <http://epic.org/>. EPIC has a webpage entitled "Gmail Privacy
27 FAQ" (accessible at <http://epic.org/privacy/gmail/faq.html>), which contains links to various
28

1 sources of information pertaining to Gmail. The May 3, 2004 EPIC letter is available through
 2 one of these links, at <http://epic.org/privacy/gmail/agltr5.3.04.html> (last visited Nov. 1, 2013), and
 3 attached hereto as *Exhibit 22* is a true and correct copy of EPIC’s letter. The “Gmail Privacy
 4 FAQ” web page also links to a June 4, 2004 letter then-Attorney General Bill Lockyer wrote in
 5 response to EPIC’s earlier letter. I clicked on this link as well (which directed me to
 6 <http://epic.org/privacy/gmail/caagack.pdf>), and printed out a copy of this second letter. Attached
 7 hereto as *Exhibit 23* is a true and correct copy of the second letter.

8 31. The CNet.com article entitled, *Lawmaker tones down anti-Gmail bill*, first
 9 published on May 25, 2004, explained that Google’s new Gmail service “proposed placing ads in
 10 messages based on the mail’s content, requiring customers to agree to let the company scan their
 11 correspondence for keywords.” In addressing the amended bill, the article noted that the revised
 12 SB 1822:

13 omits a provision that would have required Google to win the full
 14 and informed consent of non-Gmail users sending e-mail to the
 15 service—a hurdle that Gmail advocates assumed would be
 16 impossible to meet. In addition, the bill would explicitly allow e-
 17 mail and instant-messaging providers to scan the content of
 18 messages in order to deliver advertisements, as long as the
 19 providers meet certain restrictions on how the data is used. . . .

17 The draft states in part: ‘A provider of electronic mail or instant-
 18 messaging service may review, examine or otherwise evaluate the
 19 content of a customer’s incoming, outgoing, or stored e-mail or
 20 instant messages only if the review is for the automated and
 21 contemporaneous display of an advertisement to the user while the
 22 user is viewing the e-mail or instant message.’

21 Several readers weighed in on the amended bill. For example:

22 *Frankly, I’d personally like for Google to take into account mail*
 23 *I send and receive in order to show me more targeted ads over*
 24 *time AND improve my searches.* – Adam (bold and italics added.)

25 *Despite the claim of critics, I don’t see that the kind of automated*
 26 *text scanning that Google would need to do to insert context-*
 27 *sensitive ads is all that different from the kind of automated text*
 28 *scanning that is used to detect spam. . . . [P]rogrammed scanning*
of email for targeted ad insertion doesn’t seem like too big a deal
to me, especially when it’s disclosed up front to participants in the
service. . . . No one is going to be forced to use gmail. If you don’t
like ads in your mail, don’t use the service. – bnathan1240

1 (emphasis added.)

2 Attached hereto as **Exhibit 24** is a true and correct copy of this article, which is also available at
3 http://news.cnet.com/2100-1025_3-5220492.html (last visited Oct. 31, 2013).

4 32. The Los Angeles Times article entitled, *California State Senate Expected to OK E-*
5 *Mail Bill*, first published on May 27, 2004, discusses amendments to Senator Figueroa's proposed
6 Gmail legislation and notes that, prior to amendment, the bill "could have hamstrung Google
7 Inc.'s upcoming e-mail service, called Gmail, which is designed to [scan messages] to select
8 appealing advertising and display it with the e-mails." The article also contains the following
9 quote from "Lenny Goldberg, a lobbyist for the Privacy Rights Clearing House": "'We liked the
10 original version [of the bill], but apparently that wasn't going to fly' on the Senate floor." The
11 thrust of the article is that Senator Figueroa amended her legislation to boost its chances of
12 passing the Senate. According to the article, Google had "agreed to the changes," and "[p]rivacy
13 advocates said they supported the revised version of the bill" which, as revised, no longer banned
14 the automated scanning of Gmail messages. Attached hereto as **Exhibit 25** is a true and correct
15 copy of this article, which is also available at [http://articles.latimes.com/2004/may/27/business/fi-
googlelaw27](http://articles.latimes.com/2004/may/27/business/fi-
16 googlelaw27) (last visited Oct. 30, 2013).

17 33. The CNet.com article entitled, *California Senate approves anti-Gmail bill*, first
18 published May 27, 2004, announced that the California state Senate approved Senator Figueroa's
19 bill, "after revisions that removed a key provision that would have required e-mail providers to
20 win the consent of anyone sending messages to their service before scanning messages." The
21 article noted that "some critics raised concerns that Gmail could subject consumers to
22 unwarranted privacy risks," including the fact that "Google proposed placing ads in messages
23 based on the mail's content, requiring customers to let the company scan their correspondence for
24 keywords." Attached hereto as **Exhibit 26** is a true and correct copy of this article, which is also
25 available at [http://news.cnet.com/California-Senate-approves-anti-Gmail-bill/2100-1028_3-
5222062.html](http://news.cnet.com/California-Senate-approves-anti-Gmail-bill/2100-1028_3-
26 5222062.html) (last visited Nov. 1, 2013).

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1 34. As documented in the Complete Bill History Report, as referenced in paragraph 29
2 above, SB 1822 ultimately died in the Assembly Judiciary Committee and was never passed into
3 law.

4 **CONTINUED DISCUSSION OF GMAIL'S SCANNING FEATURES POST-LAUNCH**

5 35. Even after Gmail's initial launch, news sources continued to discuss the Gmail's
6 scanning technology and any privacy implications that could arise from the automated scanning
7 of email contents for purposes of targeted advertising. In the section below, I discuss a sample of
8 sources from 2004 to 2012 addressing Gmail's automated scanning.

9 36. From July 1, 2004 to today, the New York Times published 14 different articles
10 that describe the automated scanning of Gmail messages to deliver targeted advertisements.
11 I discuss six of these articles below, and the remaining five New York Times articles—from
12 2005, 2006, 2007, 2012, and 2013—are also available on the internet, free of charge.

13 37. The New York Times article entitled, *You've Got Mail (and Court Says Others*
14 *Can Read It)*, first published on July 6, 2004, notes that "Gmail, Google's new e-mail service . . .
15 shows advertising based on the content of a subscriber's email messages." Attached hereto as
16 **Exhibit 27** is a true and correct copy of this article, which is also available at
17 [http://www.nytimes.com/2004/07/06/business/you-ve-got-mail-and-court-says-others-can-read-](http://www.nytimes.com/2004/07/06/business/you-ve-got-mail-and-court-says-others-can-read-it.html)
18 [it.html](http://www.nytimes.com/2004/07/06/business/you-ve-got-mail-and-court-says-others-can-read-it.html) (last visited Oct. 30, 2013).

19 38. The ZDNet.com article entitled, *Google Gmail personal data mining: Where is the*
20 *outrage?*, first published on August 11, 2006, notes that "[m]illions of tech savvy individuals use,
21 and are clamoring to use, Google's Gmail, a system which openly states it data mines personal
22 email communications, and sells ads against the personal data." Attached hereto as **Exhibit 28** is
23 a true and correct copy of this article, which is also available at
24 [http://www.zdnet.com/blog/micro-markets/google-gmail-personal-data-mining-where-is-the-](http://www.zdnet.com/blog/micro-markets/google-gmail-personal-data-mining-where-is-the-outrage/325)
25 [outrage/325](http://www.zdnet.com/blog/micro-markets/google-gmail-personal-data-mining-where-is-the-outrage/325) (last visited Oct. 30, 2013).

26 39. The New York Times article entitled, *Companies Fret as Office E-Mail Is*
27 *Detoured Past Security Walls*, first published on January 11, 2007, notes that Google uses
28 "automated software [to] scan messages in Gmail, looking for keywords that might generate

1 related text advertisements on the page.” Attached hereto as **Exhibit 29** is a true and correct copy
2 of this article, which is also available at [http://query.nytimes.com/gst/fullpage.html?res=
3 9505E5D71230F932A25752C0A9619C8B63](http://query.nytimes.com/gst/fullpage.html?res=9505E5D71230F932A25752C0A9619C8B63) (last visited Oct. 31, 2013).

4 40. The New York Times article entitled, *A company will monitor phone calls and*
5 *devise ads to suit*, first published on September 24, 2007, notes in the first sentence that
6 “Companies like Google scan their e-mail users’ in-boxes to deliver ads related to those
7 messages.” Attached hereto as **Exhibit 30** is a true and correct copy of this article, which is also
8 available at [http://www.nytimes.com/2007/09/24/business/worldbusiness/24iht24adcol.
9 7614035.html](http://www.nytimes.com/2007/09/24/business/worldbusiness/24iht24adcol.7614035.html) (last visited Oct. 30, 2013).

10 41. The Crosscut.com article entitled, *Google’s scan of user-email: fair or creepy?*,
11 first published on November 18, 2007, the author opined that “[t]he fact that Google scans the
12 content of my e-mails, not just to block viruses but to see what’s been discussed, is creepy.”
13 Attached hereto as **Exhibit 31** is a true and correct copy of my print out of this article, which is
14 also available at [http://crosscut.com/2007/11/18/seattle/9222/Googles-scan-user-email-fair-or-
15 creepy/](http://crosscut.com/2007/11/18/seattle/9222/Googles-scan-user-email-fair-or-creepy/) (last visited Oct. 31, 2013).

16 42. In the midst of this continued press coverage of Gmail scanning, the New York
17 State Bar Association issued Ethics Opinion No. 820 (“Opinion”) on February 8, 2008 to address
18 the question of whether a lawyer may “use an e-mail service provider that scans e-mails by
19 computer for keywords and then sends or displays instantaneously (to the side of the e-mails in
20 question) computer-generated advertisements to users of the service based on the e-mail
21 communication[.]” The Opinion noted that “[t]he e-mail provider identifies the presumed
22 interests of the service’s user by scanning for keywords in e-mails opened by the user. The
23 provider’s computers then send advertising that reflects the keywords in the e-mail.” The
24 Opinion concluded that a lawyer may use an email provider that automatically scans emails to
25 generate computer advertising “where the e-mails are not reviewed by or provided to other
26 individuals,” because the risks posed to client confidentiality “are not meaningfully different from
27 the risks in using other e-mail service providers that do not employ this practice.” Attached
28 hereto as **Exhibit 32** is a true and correct copy of this article, which is available at

1 <http://www.nysba.org/CustomTemplates/Content.aspx?id=5222> (last visited Nov. 1, 2013). This
2 Ethics Opinion was the subject of a 2010 Washington Journal of Law, Technology & Arts article
3 entitled *Trusting the Machines: New York State Bar Ethics Opinion Allows Attorneys to Use*
4 *Gmail*. The law review article notes that this Opinion “directly implicates Gmail,” which “scans
5 the content of an open e-mail for relevant text and then displays advertisements related to that
6 text.” Attached hereto as **Exhibit 33** is a true and correct copy of this article, which is also
7 available at <http://digital.law.washington.edu/bitstream/handle/1773.1/452/Raudebaugh>
8 [.%206%20Wash.%20J.L.%20Tech.%20%26%20Arts%2083.pdf?sequence=3](http://digital.law.washington.edu/bitstream/handle/1773.1/452/Raudebaugh.%206%20Wash.%20J.L.%20Tech.%20%26%20Arts%2083.pdf?sequence=3) (last visited Nov. 1,
9 2013).

10 43. In a June 12, 2008 radio segment entitled “Privacy vs. Profit on the Internet,” the
11 *All Things Considered* program on National Public Radio, reporters discussed the “many ways
12 companies are trying to use your personal information to hone their marketing message.” The
13 reporter noted that “when Google launched its ad-based Gmail, a lot of people were concerned
14 that Google would be scanning private email to sell targeted ads. Today, most people don’t seem
15 to mind so much and continue to use it.” Attached hereto as **Exhibit 34** is a true and correct copy
16 of this radio segment, a transcript of which is also available at
17 <http://www.npr.org/templates/story/story.php?storyId=91436209> (last visited Oct. 31, 2013).

18 44. The WashingtonPost.com article entitled, *Internet Providers’ New Tool Raises*
19 *Deep Privacy Concerns*, first published on August 21, 2008, notes that “[m]illions of people
20 subject themselves to more intensive scrutiny when they use Google’s Gmail service, which scans
21 the text of each message to place more relevant ads.” Attached hereto as **Exhibit 35** is a true and
22 correct copy of this article, which is also available at [http://articles.washingtonpost.com/2008-08-](http://articles.washingtonpost.com/2008-08-21/opinions/36793288_1_internet-providers-inspection-nebuad)
23 [21/opinions/36793288_1_internet-providers-inspection-nebuad](http://articles.washingtonpost.com/2008-08-21/opinions/36793288_1_internet-providers-inspection-nebuad) (last visited Oct. 31, 2013).

24 45. In the CNet.com article entitled *5 Little Gmail annoyances Google needs to fix*,
25 first published on December 22, 2008 as a follow-up to the previous week’s article about “why
26 Gmail is the best e-mail service on the Web,” the author lists “E-mail scans for advertising” as his
27 first “little Gmail annoyance” to be fixed. A Gmail user himself, the author states: “I don’t like
28 that Google scans my e-mail to deliver more relevant ads. It’s not that I’m against relevant ads—

1 I think that's what makes Google's success online so compelling and the main reason why the
 2 company is in the place it is today—but I simply don't like knowing that my content is being
 3 watched by a public company so it can make money. . . . At least no one at the company actually
 4 reads my e-mails, I guess." The author does not state that these "little annoyances" made him
 5 stop using Gmail, or change his opinion that "Gmail is the best e-mail service on the Web."
 6 Attached hereto as *Exhibit 36* is a true and correct copy of my print out of this article, which is
 7 also available at http://news.cnet.com/8301-17939_109-10127183-2.html (last visited Nov. 1,
 8 2013).

9 46. TechDirt.com blog post entitled, *Privacy Group Wants FTC to Shut Down*
 10 *Gmail...Again*, first published on March 18, 2009, reports that five years after Gmail's launch,
 11 EPIC asked the Federal Trade Commission (FTC) to shut down all Google online applications,
 12 claiming Google is unable to safeguard users' confidential information. The author commented:
 13 "I think privacy is a very important issue that often is given short-shrift. . . but I've never been
 14 able to understand some of the positions staked out by [EPIC], who seems to have decided long
 15 ago that, even if people are making a conscious choice, anything that puts their privacy at risk is
 16 downright evil and must be stopped." (emphasis added.) Readers commenting on the blog post
 17 tended to agree with the author's position that EPIC should not interfere with users' ability to use
 18 Google's services. One reader noted:

19 Nothing you do online is ever private, every where you go every
 20 instant message every email, is logged on multiple servers. ***I***
 21 ***signed up for Gmail BECAUSE they scan my emails, and***
 22 ***because they show me advertisements that relate to my interests.***
 – Guy One, March 18, 2009 (bold and italics added).

23 Attached hereto as *Exhibit 37* is a true and correct copy of this article, which is also available at
 24 <http://www.techdirt.com/articles/20090318/0010124159.shtml> (last visited Oct. 31, 2013).

25 47. The Geek.com article entitled, *Google attempts to make Gmail ads more relevant*,
 26 first published on January 21, 2010, begins by stating "We all know that using a Gmail account
 27 means that Google automatically scans your mail and serves up adverts it thinks are relevant to
 28 you in the hope you will click them." The article goes on to describe Gmail's update of its

1 advertising system to serve more relevant advertising: “Now, if it can’t find a relevant advert
2 related to your active e-mail it looks at other e-mails on your account and finds and advert related
3 to them. So you should see any adverts for pay day loans anymore, unless of course you have
4 some e-mails relating to loans in your account. But that PS3 you were discussing with a friend
5 last week might pop up in a special offer this week. Google also makes it very clear that no
6 human is ever involved in this ad serving process. It’s just an algorithm looking at the text and
7 finding keyword matches so this change has no impact on what data Google collects or the way it
8 is used.” The author opines, “I’m really surprised Google weren’t doing this before and instead
9 relying on the best guess system.” The article embeds the “Serving better ads in Gmail”
10 information video Google posted on The Official Gmail Blog, available at
11 <http://gmailblog.blogspot.com/2010/01/serving-better-ads-in-gmail.html> (last visited Oct. 31,
12 2013). Attached hereto as **Exhibit 38** is a true and correct copy of this article, which is also
13 available at [http://www.geek.com/news/google-attempts-to-make-gmail-ads-more-relevant-
14 1062531/](http://www.geek.com/news/google-attempts-to-make-gmail-ads-more-relevant-1062531/) (last visited Oct. 31, 2013).

15 48. The CBSNews.com article entitled, *Google Will “Scan” Your Email, Not “Read”*
16 *It. What Hypocrisy*, first published on October 27, 2010, notes that “the Gmail privacy policy
17 made it clear that Google goes through all emails to target advertising.” The author notes that
18 Google “goes through each and every one of the emails—sent and received—that the Gmail
19 system processes. It uses all the information it gains to better deliver ads, and so all that data
20 becomes part of the extensive personal information the company keeps on individuals.” Attached
21 hereto as **Exhibit 39** is a true and correct copy of this article, which is also available at
22 [http://www.cbsnews.com/8301-505124_162-43446393/google-will-scan-your-email-not-read-it-
23 what-hypocrisy/](http://www.cbsnews.com/8301-505124_162-43446393/google-will-scan-your-email-not-read-it-what-hypocrisy/) (last visited Oct. 31, 2013).

24 49. Additional online articles published between 2004 and 2012 discussing Gmail’s
25 automated scanning of email contents and the creation of user profiles for targeted advertising
26 appeared in the Daily Mail and Vancouver Sun, widely read British and Canadian news sources.
27 Attached hereto as **Exhibits 40-43** are true and correct copies of these articles.

28 //

1 **NEWS AND REACTION TO 2011 ROLL-OUT OF NEW AD TARGETING SYSTEM**

2 50. In 2011, Google launched a new advertising system designed to increase the
3 relevance of advertising results by matching ads based on the contents of a users' inbox, rather
4 than just the individual email the user has open. The information compiled from the automated
5 scan of the users' emails helps create a more accurate user profile, based on the users' interests
6 and online habits. These user profiles are then used to match more relevant ads. As discussed in
7 the Chin Declaration, Google made clear that this improved ad-targeting algorithm did not change
8 the fact this scanning is completely automated, and no humans read users' emails. The articles
9 discussed below address the details of this new advertising system.

10 51. The New York Times article entitled, *Google Shows Ads with Images in Gmail*,
11 first published on January 27, 2011, discussed Google's introduction of "display ads," or ads with
12 images, on January 21. The article noted that "Ads in Gmail have always been related to e-mail
13 messages," and "Gmail ads struck some users as eerie when they were first introduced in 2004,
14 but most Gmail users have grown accustomed to them. Google says that all ad placement is
15 automatic and no human reads private e-mail messages." As of October 30, 2013, thirty-one
16 readers left comments on the article. For example:

17 I agree that it's disturbing to have my personal data saved and
18 analyzed by Google, ***but not to the point that I will forsake its free***
19 ***useful software.*** If I had secrets, I wouldn't use it[.] – JLS,
 February 1, 2011 (emphasis added.)

20 Attached hereto as ***Exhibit 44*** is a true and correct copy of this article, which is also available at
21 <http://searchenginewatch.com/article/2065293/Google-Launches-Gmail-Free-Email-Service> (last
22 visited Oct. 31, 2013).

23 52. The TechCrunch.com article entitled, *Gmail to Roll Out Ads that Learn from Your*
24 *Inbox*, first published on March 29, 2011, discussed Gmail's March 2011 roll out of its new ad
25 system, which author Jason Kincaid noted "could prove to be quite powerful: ads that learn what
26 you're interested in based on your email habits." A Gmail user himself, Kincaid noted that "[t]he
27 feature first showed up in my Gmail account earlier this afternoon (there's a prompt informing
28 users about the new ads)," and included a screenshot of the yellow butter bar at the top of his

1 inbox announcing “Coming Soon: Better ad in Gmail” with a “Learn more” link to more
2 information about Gmail’s new ads. As Kincaid explained:

3 Google says that the system uses signals similar to those utilized
4 by Priority Inbox, the automated system launched last August . . .
5 that attempts to highlight which of your incoming email is most
6 important. These signals include things like who sent the message,
7 whether or not you read it, and keywords that appear in the
8 message.

9 For example, if you frequently email with your friends about
10 cooking (and you actually *read* those messages), Gmail might start
11 showing more ads related to cooking classes or a local merchant
12 that specializes in cookware. Google says that by improving its
13 existing ads it’s reduced the number it shows to users by a third,
14 and hopes to continue that trend with the new system.

15 Gmail’s ads have used an automated system similar to AdSense for
16 years—it looks for keywords in your message content and then
17 attempts to place a relevant ad in the sidebar. But now, as Gmail
18 learns your habits, you’ll start seeing ads that aren’t directly related
19 to the email you’re reading (but are hopefully related to your
20 interests).

21 Of course, this is probably going to spark some privacy concerns.
22 Google is explicitly stating that, just as with the original ad
23 product, this is an automated system, and if you’re really
24 concerned about privacy you can just turn it off. And the interest
25 profile established by Gmail will not be used by any other Google
26 advertising products. *It seems like a long time ago now, but
27 Gmail raised waves of privacy issues years ago when it first
28 rolled out its ads in 2004—and people obviously got over it.*

(emphasis added.) Attached hereto as **Exhibit 45** is a true and correct copy of this article, which
is also available at [http://techcrunch.com/2011/03/29/gmail-to-roll-out-ads-that-learn-from-your-
inbox/](http://techcrunch.com/2011/03/29/gmail-to-roll-out-ads-that-learn-from-your-inbox/) (last visited Oct. 30, 2013)

53. The NBCNews.com article entitled, *Gmail will soon personalize ads based on
your emails*, first published March 30, 2011, began by asking, “What if your email service
gradually learned from the emails you send and read so that it could show you ads which you
might actually be interested in? That’s exactly what Gmail will be doing soon.” After describing
how the new ads system by using quotes from the March 29 TechCrunch.com article discussed in
paragraph 51 above, the article continued: “Now before you panic and worry that someone is

1 snooping through your email and handpicking ads for you, know this: The system is fully
2 automated—as in, no human is actually reading your messages and no personally identifiable
3 information is handed to advertisers. All that’s happening is that Google’s improving the chances
4 that you’ll want to click an ad.” The reporter concludes the article by describing herself, stating
5 “Rosa Golijan writes about tech here and there. She’s a bit obsessed with Twitter, loves to be
6 liked on Facebook, and *barely even notices ads in Gmail anymore.*” (emphasis added.)
7 Attached hereto as *Exhibit 46* is a true and correct copy of this article, which is also available at
8 <http://www.nbcnews.com/technology/gmail-will-soon-personalize-ads-based-your-emails-124201>
9 (last visited Oct. 31, 2013).

10 54. The PCWorld.com article entitled, *Gmail to Get Better at Mining E-Mails,*
11 *Displaying Relevant Ads*, first published on March 30, 2011, begins by stating “For years, Gmail
12 has been reading users’ e-mails to display relevant ads, but soon it’ll go a step further by learning
13 users’ habits. Under the existing system, Gmail ads are based solely on keywords in the message
14 you’re currently reading. In the coming months, Gmail will get smarter, borrowing methods from
15 Priority Inbox to learn which ad topics are most important to each user.” The article continued,
16 “Like the original Gmail advertising that rolled out in 2004, the new system could be kind of
17 creepy at first. Gmail won’t just be spitting back ads in the moment. It’ll be *building a profile of*
18 *things that are most important to you based on your personal correspondences.*” (emphasis
19 added.) In response to one of the reader’s comment that Google is violating their constitutional
20 right to privacy, the author replied: “Last I checked, no one’s forcing you to use Gmail. Your
21 constitutional right to privacy is intact if you take your business elsewhere.” Attached hereto as
22 *Exhibit 47* is a true and correct copy of this article, which is also available at
23 [http://www.pcworld.com/article/223711/Gmail_to_Get_Better_at_Mining_E_Mails](http://www.pcworld.com/article/223711/Gmail_to_Get_Better_at_Mining_E_Mails_Displaying_Relevant_Ads.html)
24 [Displaying_Relevant_Ads.html](http://www.pcworld.com/article/223711/Gmail_to_Get_Better_at_Mining_E_Mails_Displaying_Relevant_Ads.html) (last visited Nov. 7, 2013).

25 55. The TechCrunch.com article entitled, *Google Moves to Profile-Based Gmail Ads,*
26 first published on March 30, 2011, noted that Google “has announced that it will change the way
27 it uses the information that it gathers from your scanned Gmail messages. (Or did you forget that
28 Gmail scans every single one of your messages in order to show relevant advertising?) The big

1 change is this: rather than scanning your email on a per-message basis, Google will now begin
 2 **building a profile about you based on all of your emails. It's this profile that will then be used**
 3 **to deliver advertising to you.**" (emphasis added.) The article continues, "It's not hard to
 4 understand. Say you email your buddy a lot during the NFL season about how great the Giants
 5 are. 'The Giants are so great,' you might say to your friend. 'Totally,' he might reply. You have
 6 several weeks' worth of these emails, so Google will have built up a profile that says, 'This user
 7 loves the Giants, and football more generally. Let's serve him ads about Giants tickets packages,
 8 or Giants memorabilia.' You won't see ads about the Jets because, well, you clearly have
 9 established, in the eyes of the Google bot, you're only a Giants fan; no point trying to sell you Joe
 10 Namath analog clocks. . . . It's different from the existing system in that **ads aren't served based**
 11 **on a one-off scan, but instead are based on your long-term profile that's been built.**" (emphasis
 12 added.) Attached hereto as **Exhibit 48** is a true and correct copy of this article, which is also
 13 available at <http://techcrunch.com/2011/03/30/google-moves-to-profile-based-gmail-ads/> (last
 14 visited Oct. 31, 2013).

15 56. On April 3, 2011, participants in the Warrior Forum discussed the topic, "Google
 16 will now scan your emails to show relevant ads. Invasion of privacy?" Below I excerpt some of
 17 the comments raised during the discussion:

18 **Google has been scanning your email in order to display context**
 19 **sensitive advertising for years now.** Their system is more
 20 accurate, that[']s all. **Invasion of privacy? No way.** No one is
 21 forcing you to use it. Use hushmail or something like it if you're
 22 that paranoid. – Headfirst, April 3, 2011 (emphasis added.)

23 The Google software is simply responding or reacting to pre
 24 established keywords or phrases in your email. **I like gmail very**
 25 **much and I don't take too much notice of the ads.** If I did and
 26 they got on my nerves, I'd simply not use the service. – Jeff
 27 Henshaw, April 3, 2011 (emphasis added.)

28 Attached hereto as **Exhibit 49** is a true and correct copy of this article, which is available on the
 Warrior Forum at [http://www.warriorforum.com/main-internet-marketing-discussion-
 forum/358855-google-will-now-scan-your-emails-show-relevant-ads-invasion-privacy.html](http://www.warriorforum.com/main-internet-marketing-discussion-forum/358855-google-will-now-scan-your-emails-show-relevant-ads-invasion-privacy.html) (last
 visited Oct. 31, 2013).

1 57. The New York Times article entitled, *Q&A: Personalized Ads in Gmail*, first
2 published on April 25, 2011, notes that “Gmail uses targeted ads that are often related to the
3 places or topics mentioned within your messages. . . . The ads only appear when you use Gmail
4 on the Web, so downloading your messages with a regular e-mail program like Microsoft Outlook
5 or Apple Mail is one way to avoid them.” The article also links to several Google web pages and
6 a Google video which provide additional information about Google’s practices. Attached hereto
7 as *Exhibit 50* is a true and correct copy of this article, which is also available at
8 <http://gadgetwise.blogs.nytimes.com/2011/04/25/qa-personalized-ads-in-gmail/> (last visited Oct.
9 30, 2013).

10 58. The ReadWrite.com article entitled, *What Do Google Ads Know About You?*, first
11 published on November 10, 2011, discussed Google’s new “why these ads?” campaign to
12 “increase transparency and show users why a particular ad was targeted to them.” The article
13 described how Gmail ads display “why these ads?” links that, when clicked, explain that the ad is
14 based on search terms or the contents of a users’ inbox. The article also discusses “Google
15 Profiling” through the Ads Preferences Manager, which “infers” the user’s age bracket and other
16 interests. The author concluded, “the preferences are pretty accurate, and none of these data
17 points are creepy. It knows I like music, computers, and news. Wow. Good guess.” Attached
18 hereto as *Exhibit 51* is a true and correct copy of this article, which is also available at
19 http://readwrite.com/2011/11/10/what_do_google_ads_know_about_you#awesm=~oIZk6IlqbXp
20 [wrP](#) (last visited Nov. 1, 2013).

21 59. The Engadget.com article entitled, *Google rolls out improved Gmail search, scans*
22 *your emails for better results*, first published on May 21, 2012, addressed Google’s new Gmail
23 search feature with tailored auto complete suggestions that include “email info based on the
24 conversations stored in a user’s account, like flight or hotel reservations,” to supplement results
25 for labels and contacts. In the comments section, readers further discussed the new Gmail search
26 feature:

27 ***I must admit that it was Google’s search features in Gmail that***
28 ***was a key in my decision to quit Outlook.*** – Kyle Jones (emphasis
 added.)

1 ***This is awesome! Take the best email search available and make***
 2 ***it better!*** Way to go goog! – gmaninvan (emphasis added.)

3 I think if they start leaking our info, we would not want to use
 4 them. It is definitely a scary thought knowing they not only have
 5 all of our info, but they remember our searches and pretty much
 6 anything we do on the web. ***Nonetheless, Google is still great I***
 7 ***will definitely continue using all of their services.*** – Aaron
 8 Goldblatt (emphasis added.)

9 ***Just when I was considering switching to Hotmail, just in time***
 10 ***Google, just in time.*** – gbafa (emphasis added.)

11 ***You choose to use Gmail knowing that their software will read***
 12 ***your email. By my standards, if that improves my user***
 13 ***experience, I don't care.*** Google products are awesome. If you
 14 want privacy, pull the plug on your computer and stay inside. –
 15 er_tomas (emphasis added.)

16 Attached hereto as ***Exhibit 52*** is a true and correct copy of this article, which is also available at
 17 [http://www.engadget.com/2012/05/21/google-rolls-out-improved-gmail-search-reads-your-](http://www.engadget.com/2012/05/21/google-rolls-out-improved-gmail-search-reads-your-emails-for-be/)
 18 [emails-for-be/](http://www.engadget.com/2012/05/21/google-rolls-out-improved-gmail-search-reads-your-emails-for-be/) (last visited on Oct. 31, 2013).

19 **NEWS AND REACTION TO GOOGLE'S 2012 PRIVACY POLICY CONSOLIDATION**

20 60. In March 2012, Google consolidated its numerous product-specific privacy
 21 policies into one Google policy designed to be shorter and easier to read. This policy informed
 22 users that their information would also be consolidated and used to improve users' experience
 23 across all Google products. As discussed further in the Chin Declaration, Google publicized the
 24 new privacy policy through pop-up windows and butter bars on Google products where users
 25 would be sure to see these notifications. The new policy sparked debate amongst news reporters
 26 and users, as demonstrated in the articles discussed below.

27 61. The Wall Street Journal article entitled, *What Do Google's Privacy Changes Mean*
 28 *For You?*, first published January 25, 2012, reported on the upcoming consolidation of Google's
 privacy policies and the implications for users. The privacy policy put all of the policy terms in
 one place, but it also consolidated users' information across Google products. As the article
 notes, "[i]n practice this could mean that you'll search for something on Google and see ads for a
 subject you've just been discussing with a friend over email." The author opines, "In some ways,

1 this change isn't shocking; Google has always consolidated this sort of information. For
 2 example, *you may have noticed ads in your Gmail based on emails you had typed. Those*
 3 *appear because Google scans the content of emails for things like keywords that may be*
 4 *relevant for advertising.*" Attached hereto as **Exhibit 53** is a true and correct copy of this article,
 5 which is also available at [http://blogs.wsj.com/digits/2012/01/25/what-do-googles-privacy-](http://blogs.wsj.com/digits/2012/01/25/what-do-googles-privacy-changes-mean-for-you/)
 6 [changes-mean-for-you/](http://blogs.wsj.com/digits/2012/01/25/what-do-googles-privacy-changes-mean-for-you/) (last visited Nov. 1, 2013).

7 62. In the ZDNet.com article entitled, *Google's privacy policy doomsday goes ahead*
 8 *despite warnings*, first published on March 1, 2012, strongly criticized Google's new consolidated
 9 privacy policy "allowing signed in users to have their data shared from one Google product to
 10 another, even if they don't want to. Google Maps records are now kept with search results, and
 11 combine Google+ and Gmail searches, records, and uploaded information, and so on." The
 12 author dismissed Google's efforts at informing users of the policy change, opining that Google
 13 should not have allowed users to click the "dismiss" link in the pop-up notification warning users
 14 about the new privacy policy, but still notes that Google advertised in U.S. newspapers and New
 15 York and Washington D.C. subways to educate users about its data security and privacy
 16 protection. Below are some of the readers' comments in response to the article:

17 *I'm glad I've kept my other mail addresses active, time to say*
 18 *goodbye to Gmail. . . .* – GarlynSav, March 1, 2012 (bold and
 italics added.)

19 Oh, really, did the author of this article even read the privacy
 20 policy and TOS for themselves? . . . I don't really care if the new
 21 policy gives Google more rights or not (although I don't think it
 22 does), it makes it easy for me to understand exactly what they can
 23 and cannot do with my information. *I am ok with what they can*
 24 *do with my information, I don't run national secrets and they are*
 25 *not taking my content for their own (although they can use it to*
 26 *make the service better, etc. and will share it, if I choose to allow*
 27 *them to do so), so I think it is a fair balancing act.* –
 28 cmwade1877, March 1, 2012 (bold and italics added.)

Attached hereto as **Exhibit 54** is a true and correct copy of this article, which is also available at
[http://www.zdnet.com/blog/btl/googles-privacy-policy-doomsday-goes-ahead-despite-](http://www.zdnet.com/blog/btl/googles-privacy-policy-doomsday-goes-ahead-despite-warnings/70578)
[warnings/70578](http://www.zdnet.com/blog/btl/googles-privacy-policy-doomsday-goes-ahead-despite-warnings/70578) (last visited Nov. 1, 2013).

1 63. The New York Times article entitled, *Microsoft Tightens Personal Data Rules*,
2 first published on October 22, 2012, notes that Google “scans the content of e-mails sent through
3 its Gmail system, focusing on keywords to generate advertising that it thinks will interest the
4 user.” Attached hereto as *Exhibit 55* is a true and correct copy of this article, which is also
5 available at [http://www.nytimes.com/2012/10/23/technology/microsoft-tightens-personal-data-
6 rules.html](http://www.nytimes.com/2012/10/23/technology/microsoft-tightens-personal-data-rules.html) (last visited Oct. 30, 2013).

7 MICROSOFT’S ANTI-GMAIL MARKETING CAMPAIGN

8 64. Since 2011, Microsoft has criticized Google’s email scanning and targeted
9 advertising practices in ongoing anti-Gmail ad campaigns, as documented by news sources and
10 industry blogs, including the sources discussed below.

11 65. The ZDNet.com article entitled, *Microsoft’s Latest Google-compete weapon: The*
12 *Gmail man*, first published on July 28, 2011, states that “Google has acknowledged that Gmail
13 scans content and context of email as part of its ad system” and describes a video Microsoft
14 presented at an internal marketing conference, which featured Microsoft’s spoof character,
15 “Gmail man,” “riff[ing] through mail to find keywords for serving up ads.” Attached hereto as
16 *Exhibit 56* is a true and correct copy of this article. which is also available at
17 [http://www.zdnet.com/blog/microsoft/microsofts-latest-google-compete-weapon-the-gmail-
18 man/10217](http://www.zdnet.com/blog/microsoft/microsofts-latest-google-compete-weapon-the-gmail-man/10217) (last visited on Oct. 30, 2013).

19 66. The Newser.com article entitled, *Microsoft Video Slams Snooping “Gmail Man,”*
20 first published July 29, 2011, addressed the same Microsoft “Gmail Man” video discussed in the
21 paragraph immediately above. In the comments section, readers noted:

22 Hmmm...let’s see here; I have used the ads in gmail cause I’ve
23 typed to someone about a specific topic and it said here’s the site;
24 well guess what, that site had relevant information on what I was
25 looking for. WOW! Can you believe that? ***An algorithm that***
26 ***scans words in an email you receive or send and suggests articles***
27 ***based on words in it? WOW! It’s giving me a more personal***
28 ***experience of my inbox*** cause it may find me information that I
should have searched for and instead emailed someone to ask for. .
. . –darkness_falls, July 30, 2011 (bold and italics added)

Great, mudslinging is no longer a thing of politics. Thanks

1 Microsoft. . . . Now I will NEVER go with [Microsoft Office] 365.
 2 ***GMail, I am with ya.*** . . . –roseie80 (bold and italics added)

3 Attached hereto as ***Exhibit 57*** is a true and correct copy of this article, which is also available at
 4 <http://www.newser.com/story/124586/microsoft-video-slams-snooping-gmail-man.html> (last
 5 visited Nov. 1, 2013).

6 67. The New York Times article entitled, *A Political Brawler, Now Battling for*
 7 *Microsoft*, first published on December 14, 2012, discusses Microsoft’s anti-Google ad campaign,
 8 which “criticiz[es] Google for scanning Gmail users’ messages so it could deliver related
 9 advertising.” Attached hereto as ***Exhibit 58*** is a true and correct copy of this article, which is also
 10 available at [http://www.nytimes.com/2012/12/15/technology/microsoft-battles-google-by-hiring-](http://www.nytimes.com/2012/12/15/technology/microsoft-battles-google-by-hiring-political-brawler-mark-penn.html)
 11 [political-brawler-mark-penn.html](http://www.nytimes.com/2012/12/15/technology/microsoft-battles-google-by-hiring-political-brawler-mark-penn.html) (last visited Oct. 30, 2013).

12 68. The Techland.Time.com article entitled, *How Microsoft Scroogled Itself*, first
 13 published on February 16, 2013, criticized Microsoft’s Scroogled campaign. Attached hereto as
 14 ***Exhibit 59*** is a true and correct copy of this webpage, which is also available at
 15 <http://techland.time.com/2013/02/16/how-microsoft-scroogled-itself/> (last visited Nov. 5, 2013).

16 69. The KQED News article entitled, *Update: Microsoft Renews its ‘Scroogled’ Ads,*
 17 *Claims They’re Working*, first published April 9, 2013, reports that Microsoft released new
 18 “Scroogled” ads on television and in the updated “Scroogled” website,
 19 <http://www.scroogled.com/> (last visited Nov. 5, 2013). The article stated that “Microsoft was
 20 convinced the ads were working because ‘nearly 4 million people visited the Scroogled site in
 21 February during the Gmail campaign, and more than 115,000 people signed a petition asking
 22 Google to stop reading their emails.’” Attached hereto as ***Exhibit 60*** is a true and correct copy of
 23 this article, which is also available at [http://blogs.kqed.org/newsfix/2013/04/09/microsoft-](http://blogs.kqed.org/newsfix/2013/04/09/microsoft-refocuses-scroogled-attack-ads-on-android/)
 24 [refocuses-scroogled-attack-ads-on-android/](http://blogs.kqed.org/newsfix/2013/04/09/microsoft-refocuses-scroogled-attack-ads-on-android/) (last visited Nov. 5, 2013).

25 PUBLICITY SURROUNDING GMAIL LAWSUITS

26 70. Years after Google launched Gmail, sparking a multimedia discourse regarding
 27 Google’s email scanning emails for purposes of targeted advertising, plaintiffs around the country
 28 filed lawsuits, including this on, which allege that Google violates state and federal wiretap laws

1 by scanning email without obtaining users' consent. The articles and newscasts discussed below
2 are just a few of the many reports on these lawsuits.

3 71. The Register.com article entitled, *Google sued for scanning emails of non-Gmail*
4 *users*, first published on November 23, 2010, reports that Keith Dunbar initiated a lawsuit
5 claiming Google's Gmail service violates federal wiretapping laws. Attached hereto as **Exhibit**
6 **61** is a true and correct copy of this article, which is also available at
7 http://www.theregister.co.uk/2010/11/23/gmail_privacy_lawsuit/ (last visited Oct. 31, 2013).

8 72. The InformationWeek.com article entitled, *Google Again Sued Over Gmail*
9 *Content Scanning*, first published March 10, 2011, described Kelly Michaels' suit against Google,
10 which similarly alleged that Gmail "violates users' privacy by scanning e-mail messages to serve
11 relevant ads." The article noted, "the latest complaint argues Google's disclosures are inadequate
12 because nobody reads lengthy legal documents." Attached hereto as **Exhibit 62** is a true and
13 correct copy of this article, which is also available at
14 [http://www.informationweek.com/security/privacy/google-again-sued-over-gmail-content-](http://www.informationweek.com/security/privacy/google-again-sued-over-gmail-content-sca/229300677)
15 [sca/229300677](http://www.informationweek.com/security/privacy/google-again-sued-over-gmail-content-sca/229300677) (last visited Oct. 31, 2013).

16 73. The CNet.com article entitled, *Massachusetts woman sues over Gmail snooping*, first
17 published on August 10, 2011, reports that Debra Marquis ("Plaintiff Marquis") filed a class
18 action lawsuit against Google, alleging Google violates a Massachusetts wiretapping law by
19 scanning the email communications "without the prior consent of the non-Gmail users." The
20 article noted that prior to Plaintiff Marquis' lawsuit, "Gmail's scanning has occasionally been a
21 lightning rod for privacy advocates. Google has faced similar suits in the past." Attached hereto
22 as **Exhibit 63** is a true and correct copy of this article, which is also available at
23 [http://news.cnet.com/8301-1023_3-20090939-93/massachusetts-woman-sues-over-gmail-](http://news.cnet.com/8301-1023_3-20090939-93/massachusetts-woman-sues-over-gmail-snooping/)
24 [snooping/](http://news.cnet.com/8301-1023_3-20090939-93/massachusetts-woman-sues-over-gmail-snooping/) (last visited Nov. 1, 2013).

25 74. The Yahoo! News article entitled, *Pa. woman sues Google over Gmail privacy,*
26 *ads*, first published on December 10, 2012, reports that a Pennsylvania plaintiff brought a class
27 action lawsuit alleging Google's email scanning practices violate Pennsylvania wiretapping laws.
28 The article quotes the plaintiff's attorney, who had also sued Google for similar alleged violations

1 in Maryland and Florida. Attached hereto as **Exhibit 64** is a true and correct copy this article,
2 which is also available at <http://news.yahoo.com/pa-woman-sues-google-over-182256512.html>
3 (last visited Nov. 1, 2013).

4 75. On November 5, 2013, I visited, <http://www.justice4you.com/>, the website for the
5 Arnold Law Firm, counsel of record for Plaintiff in this matter. The Arnold Law Firm's website
6 includes a web page entitled "Lawsuit filed against Google and Yahoo for ad targeting"
7 (accessible at [http://www.justice4you.com/lawsuit-filed-against-google-and-yahoo-for-ad-](http://www.justice4you.com/lawsuit-filed-against-google-and-yahoo-for-ad-targeting.html)
8 [targeting.html](http://www.justice4you.com/lawsuit-filed-against-google-and-yahoo-for-ad-targeting.html)), which contains links to: (1) a 3 minute 25 second video from the Fox News
9 Channel in which a Fox News "legal panel" debates the merits of the automated scanning of
10 Gmail messages, in general, and the underlying lawsuits, in particular; and (2) an ABC News
11 report that also discusses Gmail's automated email scanning, and even quotes one of the attorneys
12 representing Plaintiff here. (The first sentence of the ABC News article reads: "By now most of
13 us have accepted a fact of the digital age: If, say, we write the word 'eyeglasses' in the body of an
14 email, advertisements for LensCrafters and Armani specs will most likely pop up on our
15 computer screens soon. We may not like it, but we understand that we trade privacy for the
16 convenience of modern technology.") Attached hereto as **Exhibit 65** is a true and correct of the
17 Fox News webpage were the video, entitled "Google, Yahoo accused of scanning e-mails from
18 non-users," is available ([http://video.foxnews.com/v/1717019780001/google-yahoo-accused-of-](http://video.foxnews.com/v/1717019780001/google-yahoo-accused-of-scanning-e-mails-from-non-users)
19 [scanning-e-mails-from-non-users](http://video.foxnews.com/v/1717019780001/google-yahoo-accused-of-scanning-e-mails-from-non-users), last visited Nov. 7, 2013). Attached hereto as **Exhibit 66** is a
20 true and correct copy of the ABC News report, entitled "Lawsuit: Gmail, Yahoo Email Invade
21 Privacy, Even Non-Users'," which is also available at [http://abcnews.go.com/Business/lawsuit-](http://abcnews.go.com/Business/lawsuit-gmail-yahoo-invade-privacy-email-account/story?id=16680463#.T_NAkCdJlag.email)
22 [gmail-yahoo-invade-privacy-email-account/story?id=16680463#.T_NAkCdJlag.email](http://abcnews.go.com/Business/lawsuit-gmail-yahoo-invade-privacy-email-account/story?id=16680463#.T_NAkCdJlag.email) (last
23 visited Nov. 7, 2013).

24 76. The June 11, 2013 CBS News video, *Google surveillance far surpasses the NSA, author says*, published the transcript at CBSNews.com, introduces Brent Scott and his lawsuit
25 against Google alleging Gmail scanning violates wiretapping laws. The video states, "***For years, Google's computers have scanned the content of millions of Gmails—Google's popular email***
26 ***service—in order to figure out what ads the users might respond to. Many users don't realize***
27
28

1 *they've given Google permission to eavesdrop in the agreement that opens their account."*

2 Attached hereto as *Exhibit 67* is a true and correct copy of the CBS News video and transcript as
3 it is available online at http://www.cbsnews.com/8301-18563_162-57588833/ (last visited Nov.
4 5, 2013).

5 77. Additional press accounts of these lawsuits – and others filed throughout the
6 United States and elsewhere – have appeared in reports by the Associated Press, TechCrunch,
7 Information Week, the Vancouver Sun, Wikipedia, and The Register, among others, and can be
8 found by performing a simple Google search (*e.g.*, entering the phrase “Gmail lawsuit” into
9 Google’s search engine).

10 78. The CNet.com article entitled, *Google filing says Gmail users have no expectation*
11 *of privacy*, first published on August 13, 2013, reports on Google’s Motion to Dismiss Plaintiffs’
12 Consolidated Individual and Class Action Complaint (ECF No. 44). As of October 30, 2013, 192
13 people left comments after the article. For example:

14 *I hope Google doesn't have any expectation of me being one of*
15 *their future customers! Ever!* – alankdkd, August 17, 2013
(emphasis added.)

16 @alankdkd: *then read the TOS, delete your account, and go*
17 *elsewhere.* – theoctagon, August 17, 2013

18 They just need to remember that it isn't private. *It seems a lot of*
19 *people knew that it wasn't private and then forgot as they used*
20 *the service more and more.* – ShadowITninja, August 15, 2013
(emphasis added.)

21 I think people are getting way too upset about this. First of all,
22 when we say Google is ‘reading’ our e-mails, it’s not like someone
23 is sitting there actually going through each individual e-mail, *E-*
24 *mails are being scanned for a specific purpose of removing Spam*
25 *e-mails and targeting ads toward my personal interests. Since I*
dislike Spam and advertisements that have no relevance to me, I
am glad that Google scans my e-mails for me, so that I don’t have
to do that. . . . –ch4meleon (emphasis added.)

26 *I am actually comfortable with Google using my information for*
27 *its targeting and selling ads* – ExpandThePie, August 14,
28 2013 (emphasis added.)

1 @ExpandThePie: *If auto-scanning to prevent spam is okay, why*
 2 *would auto-scanning to display auto-ads be any worse?* –
 3 transpar3nt, August 14, 2013 (emphasis added.)

4 @transpar3net @ExpandThePie: I agree, fact is *I rather they use*
 5 *that information to show me relevant things (ads) that matter to*
 6 *me.* . . . – Ricky_y, August 14, 2013 (emphasis added.)

7 Attached hereto as **Exhibit 68** is a true and correct copy of this article, which is also available at
 8 [http://news.cnet.com/8301-1023_3-57598420-93/google-filing-says-gmail-users-have-no-
 9 expectation-of-privacy/](http://news.cnet.com/8301-1023_3-57598420-93/google-filing-says-gmail-users-have-no-expectation-of-privacy/) (last visited Oct. 30, 2013).

10 79. The Huffington Post video entitled, *Google: Email Users Can't Legitimately*
 11 *Expect Privacy When Emailing Someone on Gmail*³, first published August 13, 2013, also
 12 reported on Google's Motion to Dismiss. In the video, the technology correspondent, stated: "As
 13 everybody knows, or as *I thought* everybody knew, Gmail, one of the reasons Gmail is free, is
 14 because Google scans your email and serves you ads based on what you've written about in
 15 emails, what you've searched for. . . ." (emphasis added.) As of November 4, 2013, the webpage
 16 noted that "1,486 people are discussing this article with 3,870 comments." Attached hereto as
 17 **Exhibit 69** is a true and correct copy of this video and the accompanying article, which is also
 18 available at http://www.huffingtonpost.com/2013/08/13/gmail-privacy_n_3751971.html (last
 19 visited Nov. 4, 2013).

20 80. Local television news station ABC7 ran a story on September 4, 2013 about the
 21 lawsuit now before this Court. Business and Technology reporter David Louie introduced the
 22 story by stating, "Google does not hide the fact that it scans emails in order to target advertising
 23 based on what people write about." Attached hereto as **Exhibit 70** is a true and correct copy of
 24 this video as it appears on the Consumer Watchdog website at
 25 [http://www.consumerwatchdog.org/video/kabc-tv-7-los-angeles-ca-google-argues-right-continue-
 26 scanning-gmail](http://www.consumerwatchdog.org/video/kabc-tv-7-los-angeles-ca-google-argues-right-continue-scanning-gmail) (last visited Nov. 13, 2013).

27 ³ In its Motion to Dismiss, Google argued that "the automated processing of email is so widely
 28 understood and accepted that the act of sending an email constitutes implied consent to automated
 processing as a matter of law." (ECF No. 44 at 19:17-20.) It did not take the position, and has
 never taken the position, that there is no expectation of privacy in email.

1 81. CBC News, a Canadian media outlet, reported on this lawsuit in a video posted to
2 Youtube.com on September 14, 2013. The broadcaster stated, “[I]f you’re one of the more than
3 400 million people using Google’s free version of Gmail, you signed a user agreement allowing
4 Google to use your information with advertisers. You probably noticed it. Do a Google search or
5 send an email about say, a yoga class, and next thing you know, there are ads for yoga classes in
6 your area.” Molly Wood of CNet was interviewed for the story and stated: “This is a fact of life
7 about Gmail and any other free webmail service that you’re going to use. These are all
8 businesses and their business is not to give you free email.” Attached hereto as **Exhibit 71** is a
9 true and correct copy of the CBC News video as it appears on Youtube.com at
10 <http://www.youtube.com/watch?v=5FZx0YbgmHE> (last visited Nov. 13, 2013).

11 82. The Washington Post article entitled, *No, Gmail’s ad-targeting isn’t wiretapping*,
12 first published September 28, 2013, argues that “Google *did* seek consent for advertising” through
13 its terms of service and “Google’s ad-targeting policies have never been a secret. They were
14 widely debated at the time the service was launched.” Attached hereto as **Exhibit 72** is a true and
15 correct copy of the article, which is also available at [http://www.washingtonpost.com/blogs/the-
16 switch/wp/2013/09/28/heres-whats-wrong-with-this-weeks-ruling-that-google-may-be-
17 wiretapping-its-customers/](http://www.washingtonpost.com/blogs/the-switch/wp/2013/09/28/heres-whats-wrong-with-this-weeks-ruling-that-google-may-be-wiretapping-its-customers/) (last visited Nov. 6, 2013).

18 83. In an Al Jazeera America news story posted October 3, 2013, John Simpson,
19 consumer advocate at Consumer Watchdog, was asked about his Gmail privacy concerns in the
20 wake of this Court’s Order on Google’s Motion to Dismiss. The newscaster described his own
21 experience with Gmail scanning, stating: “They’re scanning in an automated way, they’re going
22 through these emails that people send, and they’re just picking up keywords. For example, my
23 son plays tennis, and all of a sudden I remember a couple of years ago I started getting all sorts of
24 information about tennis, all sorts of tennis-related ads.” Below the video, one person
25 commented, “[D]o you think we didn’t know what we are signing up for[?] That is part of the
26 agreement when we signed up for gmail. Please leave our gmail alone!!!!” Attached hereto as
27 **Exhibit 73** is a true and correct copy of the Al Jazeera video, which is available at the Consumer
28

1 Watchdog website, [http://www.consumerwatchdog.org/video/al-jazeera-america-john-simpson-](http://www.consumerwatchdog.org/video/al-jazeera-america-john-simpson-discusses-gmail-privacy-concerns)
 2 [discusses-gmail-privacy-concerns](http://www.consumerwatchdog.org/video/al-jazeera-america-john-simpson-discusses-gmail-privacy-concerns) (last visited Nov. 12, 2013).

3 //

4 **GMAIL AND NON-GMAIL USERS' COMMENTARY ON GMAIL SCANNING**

5 84. Many of the online sources discussed above allow and encourage readers to leave
 6 comments reflecting on the articles. The volume of these reader comments is too great to provide
 7 an exhaustive list, but the chart below provides a sample of the comments left by Gmail users and
 8 non-Gmail users alike in reaction to news regarding Google's automated scanning of user emails.

COMMENTS	ARTICLE
<p>10 <i>Frankly, I'd personally like for Google to take into</i> 11 <i>account mail I send and receive in order to show me more</i> 12 <i>targeted ads over time AND improve my Web searches.</i></p> <p>13 – Adam (emphasis added)</p> <p>14 <i>There is nothing about Gmail I have read that gives me any</i> 15 <i>pause whatsoever. . . . There are already hundreds of</i> 16 <i>millions of users of hosted mail services at AOL, Hotmail,</i> 17 <i>MSN, and Yahoo! These services routinely scan all mail for</i> 18 <i>viruses and spam. . . . Despite the claims of critics, I don't</i> 19 <i>see that the kind of automated text scanning that Google</i> 20 <i>would need to do to insert context-sensitive ads is all that</i> 21 <i>different from the kind of automated text scanning that is</i> 22 <i>used to detect spam. . . .Google doesn't have humans</i> 23 <i>reading this mail; it has programs reading them. . . . For that</i> 24 <i>matter, the very act of sending an email message consists of</i> 25 <i>having a number of programs on different machines read and</i> 26 <i>store your mail. Every time you send an email message, it is</i> 27 <i>typically routed through a number of computers to get to its</i> 28 <i>destination. [P]rogrammed scanning of email for</i> <i>targeted ad insertion doesn't seem like too big a deal to me,</i> <i>especially when it's disclosed up front to participants in the</i> <i>service. . . . No one is going to be forced to use gmail. If you</i> <i>don't like ads in your mail, don't use the service.</i></p> <p>– bnathan1240 (emphasis added)</p>	<p><i>Lawmaker tones down anti-</i> <i>Gmail bill</i></p> <p>CNet.com, May 25, 2004</p> <p>Exhibit 24, http://news.cnet.com/2100-1025_3-5220492.html (last visited Oct. 31, 2013)</p>
<p>My understanding was that the senator finally got a clue as to what was going on, and took out the language banning Gmail, and basically saying that no human could read the mail. It's a stupid law anyways, since it's totally voluntary,</p>	<p><i>California Senate approves</i> <i>anti-Gmail bill,</i></p> <p>CNet.com, May 27, 2004</p>

COMMENTS	ARTICLE
<p>1 and not sneaky in any way. . . . I was one of the ones that 2 wrote her to express these opinions; hopefully, she read it (I 3 did get a canned reply).</p> <p>4 – winfidel, May 27, 2004 (emphasis added)</p> <p>5 Are you kidding me?? If you don't like whatever intrusion 6 you think there will be using gMail, DON'T USE IT! It's 7 your choice. . . .</p> <p>8 – anonymous, May 28, 2004</p>	<p>Exhibit 26, http://news.cnet.com/California-Senate-approves-anti-Gmail-bill/2100-1028_3-5222062.html (last visited Nov. 1, 2013).</p>
<p>9 Gmail scans your email in the same way as Hotmail or 10 Yahoo! or any other service would scan your emails in order 11 to mark junk mail, insert hyperlinks for web addresses, etc. 12 Your mail is "read" by computers by all of these services, 13 and I'm quite happy for there to be relevant discrete text 14 adds [sic] rather than the huge annoying Flash banners you 15 get on Hotmail and the like. If you find it creepy, just don't 16 sign up.</p> <p>17 – iandavies, August 12, 2006</p> <p>18 It's not like there's a team of Google marketers personally 19 reading our emails. Who cares? All it's doing is making ads 20 more relevant and therefore less annoying. I can't blame 21 them for doing it. If you don't like the idea, then you 22 shouldn't sign up for Gmail. My guess will be that Google 23 is trendsetting this type of data mining/ad serving and you'll 24 see it on Yahoo, MSN and others in the future.</p> <p>25 – suedelock, August 11, 2006</p>	<p><i>Google Gmail personal data mining: Where is the outrage?</i> ZDNet.com, August 11, 2006</p> <p>Exhibit 28, http://www.zdnet.com/blog/micro-markets/google-gmail-personal-data-mining-where-is-the-outrage/325 (last visited Oct. 30, 2013).</p>
<p>26 Gmail: When you set up your gmail account you can opt out 27 of this kind of adds [sic] that are related to your emails. 28 Google does not do this unless you have authorized it. When I set up my account I opted in and find it useful but I was very aware of allowing them to do it and the prompt was not hidden at all.</p> <p>–dawsea</p> <p>No news. . . .This is news to you? Where were you 3+ years ago when Google introduced gmail? <i>Didn't you read their privacy/disclosure info when you signed up for your account? They made it clear that they would be scanning content for ad placement.</i> There was some uproar when</p>	<p><i>Google's scan of user-email: fair or creepy?</i> Crosscut.com, November 18, 2007</p> <p>Exhibit 31, http://crosscut.com/2007/11/18/seattle/9222/Googles-scan-user-email-fair-or-creepy/ (last visited Oct. 31, 2013)</p>

COMMENTS	ARTICLE
<p>1 they first started, but folks signed up anyway.</p> <p>2</p> <p>3 –slugbiker (emphasis added)</p>	
<p>4 So you sent emails to Google users, via Google’s email</p> <p>5 service, and you’re surprised they had a look at the email</p> <p>6 contents? Serves you right! How many of these “Google</p> <p>7 violates privacy” stories are we going to read before people</p> <p>8 wake up to Google?</p> <p>9 – The Fuzzy Wotnot, November 23, 2010</p> <p>10 Putting the court case aside for a moment, the problem is the</p> <p>11 fact that you have to know all about gmail before you send</p> <p>12 an e-mail to it. To avoid this kind of thing, you’d probably</p> <p>13 have to check the T&Cs of every domain you send an e-mail</p> <p>14 to before you send it. Now, you and I know all about google</p> <p>15 and their antics, but someone fresh to the world of web and</p> <p>16 e-mail wouldn’t know this.</p> <p>17 – Z1, November 23, 2010</p>	<p>18 <i>Google sued for scanning</i></p> <p>19 <i>emails of non-Gmail users</i></p> <p>20 Register.com, November 23,</p> <p>21 2010</p> <p>22 Exhibit 61,</p> <p>23 http://www.theregister.co.uk/20</p> <p>24 10/11/23/gmail_privacy_lawsui</p> <p>25 t/ (last visited Oct. 31, 2013).</p>
<p>16 I agree that it’s disturbing to have my personal data saved</p> <p>17 and analyzed by Google, <i>but not to the point that I will</i></p> <p>18 <i>forsake its free useful software.</i> If I had secrets, I wouldn’t</p> <p>19 use it[.]</p> <p>20 – JLS, February 1, 2011 (emphasis added)</p>	<p>21 <i>Google Shows Ads with Images</i></p> <p>22 <i>in Gmail</i></p> <p>23 New York Times, January 27,</p> <p>24 2011</p> <p>25 Exhibit 44,</p> <p>26 http://searchenginewatch.com/a</p> <p>27 rticle/2065293/Google-</p> <p>28 Launches-Gmail-Free-Email-</p> <p>Service (last visited Oct. 31,</p> <p>2013).</p>
<p>22 <i>Google has been scanning your email in order to display</i></p> <p>23 <i>context sensitive advertising for years now.</i> Their new</p> <p>24 system is more accurate, that[’]s all. <i>Invasion of privacy?</i></p> <p>25 <i>No way.</i> No one is forcing you to use it. Use hushmail or</p> <p>26 something like it if you’re that paranoid.</p> <p>27 – Headfirst, April 3, 2011 (emphasis added)</p> <p>28 The Google software is simply responding or reacting to</p> <p>pre established keywords or phrases in your emails. <i>I like</i></p> <p><i>gmail very much and I don’t take too much notice of the</i></p> <p><i>ads.</i> If I did and they got on my nerves, I’d simply not use</p>	<p>“Google will now scan your</p> <p>emails to show relevant ads?</p> <p>Invasion of privacy?”</p> <p>Warrior Forum, April 3, 2011.</p> <p>Exhibit 49,</p> <p>http://www.warriorforum.com/</p> <p>main-internet-marketing-</p> <p>discussion-forum/358855-</p> <p>google-will-now-scan-your-</p> <p>emails-show-relevant-ads-</p>

COMMENTS	ARTICLE
<p>1 the service.</p> <p>2 – Jeff Henshaw, April 3, 2011 (emphasis added)</p> <p>3</p> <p>4 It didn't even bother me if google will try to upgrade their</p> <p>5 ads in gmail.</p> <p>6 – greggycooper, April 3, 2011 (emphasis added)</p>	<p>invasion-privacy.html (last visited Oct. 31, 2013).</p>
<p>7 Truth is they both [Microsoft and Google] probably rifle</p> <p>8 through all of your docs.</p> <p>9 – Rick_K</p> <p>10 [T]o use almost any online service in existence you have to</p> <p>11 agree to ToS that state that you grant them that right, [paid]</p> <p>12 or not, you give them the right to look at your stuff.</p> <p>13 – blakjak.au</p>	<p><i>Microsoft's Latest Google- compete weapon: The Gmail man</i></p> <p>ZDNet.com, July 28, 2011</p> <p>Exhibit 56, http://www.zdnet.com/blog/microsoft/microsofts-latest-google-compete-weapon-the-gmail-man/10217 (last visited on Oct. 30, 2013).</p>
<p>14 Hmm...let's see here; I have used the ads in gmail cause</p> <p>15 I've typed to someone about a specific topic and it said</p> <p>16 here's the site; well guess what, that site had relevant</p> <p>17 information on what I was looking for. WOW! Can you</p> <p>18 believe that? <i>An algorithm that scans words in an email</i></p> <p>19 <i>you receive or send and suggests articles based on words</i></p> <p>20 <i>in it? WOW! It's giving me a more personal experience</i></p> <p>21 <i>of my inbox</i> cause it may find me information that I</p> <p>22 should have searched for and instead emailed someone to</p> <p>23 ask for. . . .</p> <p>24 –darkness_falls, July 30, 2011 (emphasis added)</p> <p>25</p> <p>26 Great, mudslinging is no longer a thing of politics.</p> <p>27 Thanks Microsoft. . . . Now I will NEVER go with</p> <p>28 [Microsoft Office] 365. <i>GMail, I am with ya. . . .</i></p> <p>–roseie80 (emphasis added)</p>	<p><i>Microsoft Video Slams Snooping "Gmail Man"</i></p> <p>Newser.com, July 29, 2011</p> <p>Exhibit 57, http://www.newser.com/story/124586/microsoft-video-slams-snooping-gmail-man.html (last visited Nov. 1, 2013).</p>
<p>26 <i>I'm glad I've kept my other mail addresses active, time to</i></p> <p>27 <i>say goodbye to Gmail. . . .</i></p> <p>28 – GarlynSav, March 1, 2012 (emphasis added)</p>	<p><i>Google's Privacy Policy Doomsday Goes Ahead Despite Warnings</i></p>

COMMENTS	ARTICLE
<p>1 Oh, really, did the author of this article even read the 2 privacy policy and TOS for themselves? . . . I don't really 3 care if the new policy gives Google more rights or not 4 (although I don't think it does), it makes it easy for me to 5 understand exactly what they can and cannot do with my 6 information. <i>I am ok with what they can do with my 7 information, I don't run national secrets and they are not 8 taking my content for their own (although they can use it 9 to make the service better, etc. and will share it, if I 10 choose to allow them to do so), so I think it is a fair 11 balancing act.</i></p> <p>12 – cmwade1877, March 1, 2012 (emphasis added)</p> <p>13 Personal RESPONSIBILITY!!! The people who dismissed 14 the notice. . . WHO CARES!!! I'm tired of this nanny 15 treatment everyone gets. Take some responsibility people. 16 This change in policy amounts to nothing.</p> <p>17 – codecrackx15, March 1, 2012 (emphasis in 18 original)</p>	<p>ZDNet.com, March 1, 2012</p> <p>Exhibit 54, http://www.zdnet.com/blog/btl/ googles-privacy-policy- doomsday-goes-ahead-despite- warnings/70578 (last visited Nov. 1, 2013).</p>
<p>19 I've just deleted my Google account along with Google Docs 20 and Youtube!!</p> <p>21 – brian</p> <p>22 If you don't want to be tracked and spied on then delete your 23 Google accounts such as gmail and youtube, install adblock 24 plus on your browser and then use one of the search engines 25 of the search engines such as dogpile or metacrawler.</p> <p>26 –Sean</p> <p>27 . . . Google scans all of your emails to provide consumer 28 information, so they can sell you stuff. Use a more secure email provider. . . .</p> <p>– Crazy Bert</p>	<p><i>Google will know more about you than your partner: Uproar as search giant reveals privacy policy that will allow them to track you on all their products</i></p> <p>MailOnline.com, March 2, 2012</p> <p>Exhibit 43, http://www.dailymail.co.uk/scie ncetech/article- 2091508/Google-privacy- policy-Search-giant-know- partner.html (last visited Nov. 1, 2013)</p>
<p>29 <i>I must admit that it was Google's search features in 30 Gmail that was a key in my decision to quit Outlook.</i></p> <p>31 – Kyle Jones (emphasis added)</p> <p>32 <i>This is awesome! Take the best email search available 33 and make it better!</i> Way to go goog!</p>	<p><i>Google rolls out improved Gmail search, scans your emails for better results</i></p> <p>Engadget.com, May 21, 2012</p>

COMMENTS	ARTICLE
<p>1</p> <p>2</p> <p>3 – gmaninvan (emphasis added)</p> <p>4 I think if they start leaking our info, we would not want to</p> <p>5 use them. It is definitely a scary thought knowing they not</p> <p>6 only have all of our info, but they remember our searches</p> <p>7 and pretty much anything we do on the web. <i>Nonetheless,</i></p> <p>8 <i>Google is still great I will definitely continue using all of</i></p> <p>9 <i>their services.</i></p> <p>10</p> <p>11 – Aaron Goldblatt (emphasis added)</p> <p>12 <i>Just when I was considering switching to Hotmail, just in</i></p> <p>13 <i>time Google, just in time.</i></p> <p>14</p> <p>15 – gbafa (emphasis added)</p> <p>16 <i>You choose to use Gmail knowing that their software will</i></p> <p>17 <i>read your email. By my standards, if that improves my</i></p> <p>18 <i>user experience, I don't care.</i> Google products are</p> <p>19 awesome. If you want privacy, pull the plug on your</p> <p>20 computer and stay inside.</p> <p>21</p> <p>22 – er_tomas (emphasis added)</p> <p>23 Google is one of the best search engines and also very</p> <p>24 popular because of its services. It always try [sic] to</p> <p>25 improve their services and thinking of new ways for</p> <p>26 profiting to its users. I think it is new improvement in</p> <p>27 Google's Gmail service. . . .</p> <p>28</p> <p>– Website Design</p> <p>GMail's ever expanding indexing capabilities (they read text</p> <p>printed in images you send, too) inspired me to create this</p> <p>"side channel" where you can communicate without the all</p> <p>seeing eye regurgitating your past into advertising. . . .if you</p> <p>care about that.</p> <p>– MangoCat (emphasis in original)</p> <p>[G]lad to know Google's servers are reading through all of</p> <p>my emails . . . [N]ot that it's all too surprising.</p> <p>– GadgetGeezer (emphasis in original)</p> <p>[Y]ou're using a free service with tons of storage [sic] for a</p>	<p>Exhibit 52,</p> <p>http://www.engadget.com/2012/05/21/google-rolls-out-improved-gmail-search-reads-your-emails-for-be/ (last visited on Oct. 31, 2013).</p>

COMMENTS	ARTICLE
<p>1 free email account and given the ability to conveniently 2 search through all of your archived emails for the one your 3 [sic] looking for quickly and easily . . . and you're 4 complaining? [H]onestly. . . if you don't like it, don't use it.</p> <p>5 – WizardKnight (emphasis in original)</p> <p>6 You're using a free service for a free email made by a 7 SEARCH COMPANY. [H]onestly, if you don't like it, 8 don't use it. Those ads are what keep it free. I'm not trying 9 to be a jerk. . . but there's so many other options out there, if 10 you don't like what one is doing, use a different one. 11 Gmail[']s spam filtering, integrated Gtalk (which we use at 12 work constantly), integrated calendar alerts, and huge 13 amount of free storage make[s] it an easy choice for me. 14 Being able to easily search through hundreds of emails for 15 the one I'm looking for just makes it that much better. <i>If</i> 16 <i>you have privacy concerns about it...go to yahoo or</i> 17 <i>hotmail.</i></p> <p>18 – WizardKnight (emphasis added)</p>	
<p>14 <i>I hope Google doesn't have any expectation of me being</i> 15 <i>one of their future customers! Ever!</i></p> <p>16 – alankdkd, August 17, 2013 (bold and italics 17 added)</p> <p>18 <i>then read the TOS, delete your account, and go</i> 19 <i>elsewhere.</i></p> <p>20 – theoctagon, August 17, 2013 (emphasis added)</p> <p>21 They just need to remember that it isn't private. <i>It seems</i> 22 <i>a lot of people knew that it wasn't private and then forgot</i> 23 <i>as they used the service more and more.</i></p> <p>24 – ShadowITninja, August 15, 2013 (emphasis 25 added)</p> <p>26 I think people are getting way too upset about this. First 27 of all, when we say Google is 'reading' our e-mails, it's 28 not like someone is sitting there actually going through each individual e-mail, <i>E-mails are being scanned for a</i> <i>specific purpose of removing Spam e-mails and targeting</i> <i>ads toward my personal interests. Since I dislike Spam</i> <i>and advertisements that have no relevance to me, I am</i></p>	<p>Google filing says Gmail users have no expectation of privacy</p> <p>CNet.com, August 13, 2013</p> <p>Exhibit 68, http://news.cnet.com/8301-1023_3-57598420-93/google-filing-says-gmail-users-have-no-expectation-of-privacy/ (last visited Oct. 30, 2013)</p>

COMMENTS	ARTICLE
<p>1</p> <p>2 <i>glad that Google scans my e-mails for me</i>, so that I don't</p> <p>3 have to do that. . . .</p> <p>4 – ch4meleon, August 14, 2013 (emphasis added)</p> <p>5 <i>I am actually comfortable with Google using my</i></p> <p>6 <i>information for its targeting and selling ads</i></p> <p>7 – ExpandThePie, August 14, 2013 (emphasis</p> <p>8 added)</p> <p>9 @ExpandThePie: <i>If auto-scanning to prevent spam is</i></p> <p>10 <i>okay, why would auto-scanning to display auto-ads be</i></p> <p>11 <i>any worse?</i></p> <p>12 – transpar3nt, August 14, 2013 (emphasis added)</p> <p>13 @transpar3net @ExpandThePie: I agree, fact is <i>I rather</i></p> <p>14 <i>they use that information to show me revant [sic] things</i></p> <p>15 <i>(ads) that matter to me. . . .</i></p> <p>16 – Ricky_y, August 14, 2013 (emphasis added)</p> <p>17 “Microsoft asserts its e-mail service automatically scans the</p> <p>18 contents of users’ e-mails only to prevent spam, malware,</p> <p>19 and other unwanted activity.” What hypocrite would worry</p> <p>20 about Google scanning their email for these same reasons,</p> <p>21 with the only addition being to target advertising, and run to</p> <p>22 Microsoft based on this statement, and then say that it was</p> <p>23 because of privacy concerns??! It shouldn't matter why it's</p> <p>24 being done, if you're worried about your email being</p> <p>25 scanned, then you should be just as worried about</p> <p>26 Outlook.com, and Microsoft shouldn't be using it to</p> <p>27 advertise a strength. If, on the other hand, you're worried</p> <p>28 about the targeted advertising itself, well that's separate and</p> <p>different from a privacy concern and you shouldn't be calling</p> <p>foul on a privacy basis.</p> <p>– martinp9999, August 28, 2013</p> <p>People want better spam filtering so they provided it. Gmail</p> <p>has the best spam filtering across the three providers I use[:]</p> <p>outlook, yahoo and gmail. I already knew they did this, this</p> <p>was pretty much old news. I think I even read somewhere</p> <p>that they scan emails in order to provided [sic] target ads.</p> <p>– kratm, August 16, 2013</p>	

COMMENTS	ARTICLE
<p>1 [T]he mail servers are still through gmail.com even if the</p> <p>2 email address is @companyname.com.</p> <p>3</p> <p>4 – Citizen X, August 15, 2013</p> <p>5 We need to boycott Google. NOW.</p> <p>6 – Harold_Gideon, August 14, 2013 (emphasis in</p> <p>7 original)</p> <p>8 @Harold_Gideon: if by ‘we’ you mean all the people being</p> <p>9 duped by the scroogled campaigns, then yeah! you naive</p> <p>10 fools go right ahead . . . <i>the rest of the informed populace</i></p> <p>11 <i>will continue to use the best services available.</i></p> <p>12 – ukjb, August 14, 2013 (emphasis added)</p> <p>13 @Harold_Gideon: ‘we’? <i>You go right ahead.</i></p> <p>14 – mavfan2, August 14, 2013 (emphasis added)</p> <p>15 Ummm...except they open and scan to sort. Then sell the</p> <p>16 contents to advertisers. There are email services that don’t</p> <p>17 do this. Everyone who values privacy should boycott Google</p> <p>18 services.</p> <p>19 – jfoulk1981, August 14, 2013 (emphasis in original)</p> <p>20 @jfoulk1981: Correct me if I’m mistaken but they don’t sell</p> <p>21 the actual content of your emails to advertisers. They use an</p> <p>22 algorithm to determine what ad topics would be most</p> <p>23 appealing to you and sell ads based on that result. . . .</p> <p>24 – transpar3nt, August 14, 2013</p>	
<p>22 [D]o you think we didn’t know what we are signing up</p> <p>23 for[?] That is part of the agreement when we signed up for</p> <p>24 gmail. Please leave our gmail alone!!!!</p> <p>25 – retodddd (signed up for Gmail in 2006).</p>	<p>Al Jazeera America, Oct. 3, 2010</p> <p>Exhibit 73,</p> <p>http://www.consumerwatchdog.org/video/al-jazeera-america-john-simpson-discusses-gmail-privacy-concern, (last visited Nov. 12, 2013)</p>

UNIVERSITIES' DISCLOSURES REGARDING GOOGLE APPS FOR EDUCATION

85. Many colleges and universities contract with Google to provide Google Apps, a suite of integrated Google products that includes Gmail, to their students or other end users. As discussed in the Chin Declaration, these universities have a contractual obligation to obtain their students' and end users' consent to Google's automated scanning. Google does not, as the Chin Declaration notes, mandate how these Google Apps for Education customers obtain the necessary consent from their end users. (*See* Chin Decl. ¶ 3.) An exhaustive examination of the thousands of the organizations that use Google Apps is too voluminous for our purposes here, but I provide examples below demonstrating that a number of organizations informed their end users of (1) their adoption of Gmail to provide email services, and (2) Google's automated scanning of emails. Schools have approached this differently and it appears that information available to Google Apps end users may be unique.

86. The FAQ webpages operated by these schools inform students that their email and other online services are provided by Google. For example, the University of the Pacific ("UoP") student email sign-in page informs users that their UoP email is "powered by Google." The UoP sign-in page provides links to Google's Privacy Policy and the Google Apps Terms of Service (which are available at <http://www.google.com/intl/en/policies/privacy/> and http://www.google.com/apps/intl/en/terms/user_terms.html, respectively (last visited Nov. 13, 2013). A true and correct copy of the UoP sign-in page is attached hereto as *Exhibit 74*, and is available at <https://www.google.com/a/u.pacific.edu/ServiceLogin?service=mail&passive=true&rm=false&continue=https://mail.google.com/a/u.pacific.edu/&ss=1<mpl=default<mplcache=2&emr=1> (last visited Nov. 13, 2013).

87. From the "Google@UH" page, University of Hawaii end users click the "Gmail" link to access their email, or the Google "Help Center" link to receive more information on Google Apps for Education tools. After clicking this "Help Center" link, users are directed to the "Google Apps Documentation & Support—Using Google Apps at work or school" page, which contains a "Learn by app" section that includes a Gmail icon. Clicking the Gmail icon, users are directed to the "Using Gmail at work or school" page, which provides links to the Gmail Help

1 Center. The Gmail Help Center contains links to the Google Apps TOS and Privacy Policy.
2 True and correct copies of the “Google@UH” page, the “Using Google Apps at work or school”
3 page, the “Using Gmail at work or school page,” and the Gmail Help Center page are attached as
4 **Exhibits 75-78** to this declaration.

5 88. The University of Alaska (“UA”) has a “Google Mail FAQs,” which asks, “I hear
6 that Google reads my email. Is this true?” The answer states, “They do not ‘read’ your email per
7 se. For use in targeted advertising on their other sites, and if your email is not encrypted,
8 software (not a person) does scan your mail and compile keywords for advertising. For example,
9 if the software looks at 100 emails and identifies the word ‘Doritos’ or ‘camping’ 50 times, they
10 will use that data for advertising on their other sites.” Attached as **Exhibit 79** is a true and correct
11 print out of UA’s Google Mail FAQ page, which is also available at
12 www.alaska.edu/google/faqs/general/#mail (last visited Nov. 13, 2013).

13 89. The FAQs page on the Rochester Institute of Technology (“RIT”) websites asks,
14 “What is Google doing with my email?” RIT responds by “encourag[ing] you to review the
15 Gmail Privacy Notice, as it should answer many of your privacy-related questions.” According to
16 my searches on the “Way Back Machine” (<https://archive.org>), a website that archives internet
17 pages as they change overtime, the link in this RIT FAQ directed users to the September 12, 2008
18 and February 9, 2010 versions of the Gmail Privacy Notice until the Gmail Privacy Notice was
19 superseded by the Google Privacy Policy, as discussed in the Chin Declaration (and attached as
20 Exs. M-N). Today, the RIT FAQ directs users to the most current Google Privacy Policy.
21 Attached hereto as **Exhibits 80** is a true and correct copy of the RIT FAQs page, which is also
22 available at <http://google.rit.edu/faq.php#privacy> (last visited Nov. 13, 2013).

23 90. Like RIT, Carnegie Mellon University’s FAQ page asks “What is Google doing
24 with my email?” Carnegie Mellon also “encourages you to review the Gmail Privacy Notice,”
25 which links to Google’s most recent Privacy Policy. Attached hereto as **Exhibit 81** is a true and
26 correct copy of the Carnegie Mellon FAQ page, which is also available at
27 <http://www.cmu.edu/computing/email/google/faq.html#privacy1> (last visited Nov. 18, 2013).

28

1 91. The University of California, Santa Cruz (“UC Santa Cruz”) has a “Security
2 Information for Google Apps” webpage which provides links to Google’s Privacy Policy and
3 Terms of Service and further states: “The University of California has a contract with Google
4 that provides assurances regarding the security and privacy of customer information stored on
5 Google’s systems. UC’s contract with Google takes precedence if there is a conflict with
6 Google’s posted terms or policies. For more information about how to protect your own privacy
7 using Google Apps, please visit Privacy Tools.” The “Privacy Tools” link takes the user to
8 Google’s “Know your Google security and privacy tools” webpage, which provides links to the
9 Google Dashboard, Ads Preferences Manager, and other privacy tools discussed in the Chin
10 Declaration. Attached hereto as *Exhibit 82* is a true and correct copy of the UC Santa Cruz
11 information page, which is available at <http://its.ucsc.edu/google/security.html#privacy> (last
12 visited Nov. 18, 2013).

13 92. The Rutgers University FAQs page responds to the question of “Why Gmail?” by
14 stating: “This project was initiated as a result of university wide student input. Other free, hosted
15 email solutions that were available to support the Rutgers student constituency were considered
16 such as Microsoft Live@edu, Yahoo, etc. Gmail was selected because of its extensive suite of
17 applications and its success at many other universities.” Although recommended, Google Apps
18 are not required to be used by all students. The FAQs provide links to the Google Apps Terms of
19 Service, Google’s Privacy Policy, Google’s Privacy Center and Google’s Good to Know pages
20 (which are discussed further in the Chin Declaration). Attached hereto as *Exhibit 83* is a true and
21 correct copy of the Rutgers FAQ page, which is also available at
22 <http://scarletmail.rutgers.edu/index.php?page=faq> (last visited Nov. 18, 2013).

23 93. The University of California, Davis (“UC Davis”) FAQs page addressing Google
24 Apps asks, “Do I need to agree to a Terms of Service?” The answer states: “Yes. You must
25 agree to two Terms of Service (TOS) agreements: Google’s and UC Davis’. If you reject the
26 Google TOS, you must redirect your email to an external provider of your choice.” The FAQs
27 page provides links to the Google Apps Terms of Service and Google’s Privacy Policy. UC
28 Davis students are not required to use a “DavisMail” Google Apps account, and may decide to

1 “direct [their] mail to an outside account at [their] own risk.” Attached hereto as *Exhibit 84* is a
2 true and correct copy of the UC Davis FAQ page, which is also available at
3 <http://davismail.ucdavis.edu/faq.cfm> (last visited Nov. 18, 2013).

4 94. In the Western Piedmont Community College FAQ page, the question asks: “I’ve
5 heard that Google scans the text in emails of Gmail accounts. Is that true?” The answer explains:
6 “Well, yes, but probably not in the way you might be thinking. Google does use software or a
7 ‘bot’ to scan Gmail emails for key words for the purposes of targeted advertising. Google then
8 places small, unobtrusive, and relevant text ads alongside your Gmail messages, similar to those
9 on the side of Google search results pages. The matching of ads to content is a completely
10 automated process performed by computers. No humans read your email to target the ads, and no
11 email content or other personally identifiable information is ever provided to advertisers.”
12 Attached hereto as *Exhibit 85* is a true and correct copy of the FAQ, available at
13 http://www.wpcc.edu/distance_learning.php?cat=428 (last visited Nov. 5, 2013).

14 95. Student publications reporting on the schools’ switch to Google Apps reveal that
15 many students were already forwarding their school emails to their pre-existing, personal Gmail
16 accounts, and such students were already familiar with Gmail and welcomed the transition to
17 school-sponsored Google Apps.

18 96. The University of California, Los Angeles (“UCLA”) Google Apps sign-in page
19 provides links to the Google Apps Learning Center, Gmail Help Center, and articles from the
20 student newspaper, the Daily Bruin, announcing UCLA’s decision to migrate to Google Apps. In
21 an October 31, 2011 article entitled, “UCLA to outsource email accounts to Gmail,” the Daily
22 Bruin reports that members of the UCLA technology planning board voted to outsource student
23 email accounts to Gmail—“a move greeted enthusiastically by students”—because “student use
24 of Gmail substantially surpassed the use of Bruin OnLine accounts[.]” One student interviewed
25 for the article noted that he “already forwards his Bruin OnLine emails to his Gmail account,” and
26 that the full switch to Gmail would just reflect what many students already do. Attached hereto
27 as *Exhibits 86-87* are true and correct copies of the UCLA sign-in page and the Daily Bruin
28

1 article, which are also available at <http://g.ucla.edu/> and <http://dailybruin.com/2011/10/31/4eae6847bdca1/>, respectively (last visited Nov. 18, 2013).

3 97. In a February 10, 2012 article entitled, *Zimbra to be axed, replaced by Gmail*, The
4 Stanford Daily, the Stanford University student newspaper, announces that Stanford had
5 contracted with Google to provide Google Apps and Gmail to Stanford students. After an 18-
6 month evaluation period, administrators decided the transition was “necessary due to consistent
7 feedback from the student body preferring Gmail to Zimbra. . . . 95 percent of students who
8 currently send their email outside Stanford forward their messages to Gmail.” One Stanford
9 student—“one of many students who currently forwards his Zimbra emails to a Gmail account”—
10 stated that he had “always had Gmail, so [he] knew it better.” Attached hereto ask **Exhibit 88** is a
11 true and correct copy of The Stanford Daily article, which is also available at
12 <http://www.stanforddaily.com/2012/02/10/zimbra-to-be-axed-replaced-by-gmail/> (last visited
13 Nov. 18, 2013).

14 98. Stanford also provides Google Apps accounts for its alumni, and it informs those
15 users on a FAQ webpage that “Google runs completely automated scanning and indexing
16 processes to offer spam filtering, anti-virus protection and malware detection. Their systems also
17 scan content to make sure Apps work better for users, enabling functionality like search in Gmail
18 or Google Docs. This is completely automated and involves no humans.” Attached hereto as
19 **Exhibit 89** is a true and correct copy of the FAQ, which is also available at
20 <http://alumni.stanford.edu/get/page/perks/alumniemail/faq?CSRT=10704275189001307355> (last
21 visited Nov. 18, 2013).

22 99. In a February 23, 2012 article entitled, *SAS email service switches to Gmail*, the
23 Daily Pennsylvanian, the University of Pennsylvania student newspaper, reports that students in
24 the School of Arts and Sciences (“SAS”) would be able to switch their university email accounts
25 from Microsoft’s Windows Live Hotmail to Google@SAS. The school made after observing that
26 “more than 50 percent of students forward emails from their Hotmail to Gmail accounts.” The
27 article reports that as of October 2011, 62 of the nation’s top 100 universities use Google Apps
28 for Education, including Yale, Brown, and Harvard. Attached hereto as **Exhibit 90** is a true and

1 correct copy of the Daily Pennsylvanian article, which is also available at
2 http://www.thedp.com/article/2012/02/college_email_service_switches_to_gmail (last visited
3 Nov. 18, 2013).

4 100. In a March 26, 2012 article entitled, *USG signals support for Gmail as*
5 *replacement*, the Princeton University student newspaper, the Daily Princetonian, reports that in a
6 poll of 150 students participating in the pilot testing of Gmail and Microsoft Office 365—the two
7 options for the universities’ switch away from Webmail—only two students chose Office 365
8 over Gmail. Attached hereto as **Exhibit 91** is a true and correct copy of the Daily Princetonian
9 article, which is also available at [http://dailyprincetonian.com/news/2012/03/usg-signals-support-](http://dailyprincetonian.com/news/2012/03/usg-signals-support-for-gmail-as-replacement/)
10 [for-gmail-as-replacement/](http://dailyprincetonian.com/news/2012/03/usg-signals-support-for-gmail-as-replacement/) (last visited Nov. 18, 2013). The Princeton Google Apps “Terms of
11 Service” page states that “By using Google Apps at Princeton University, you acknowledge,
12 understand, and consent to the above Terms of Service,” which include the Princeton University
13 policy and the Google Apps Terms of Service. The Princeton Google Apps sign-in page also
14 provides links to Google’s Privacy Policy and the Google Apps Terms of Service. Attached
15 hereto as **Exhibits 92-93** are true and correct copies of the Princeton Terms of Service and sign-in
16 pages, which are also available at [http://www.princeton.edu/studentapps/google-apps/terms-of-](http://www.princeton.edu/studentapps/google-apps/terms-of-service/)
17 [service/](http://www.princeton.edu/studentapps/google-apps/terms-of-service/) and [https://www.google.com/a/princeton.edu/ServiceLogin?service=mail&passive](https://www.google.com/a/princeton.edu/ServiceLogin?service=mail&passive=true&rm=false&continue=https://mail.google.com/a/princeton.edu/&ss=1<mpl=default<mplcache=2&emr=1)
18 [=true&rm=false&continue=https://mail.google.com/a/princeton.edu/&ss=1<mpl=default<mpl](https://www.google.com/a/princeton.edu/ServiceLogin?service=mail&passive=true&rm=false&continue=https://mail.google.com/a/princeton.edu/&ss=1<mpl=default<mplcache=2&emr=1)
19 [cache=2&emr=1](https://www.google.com/a/princeton.edu/ServiceLogin?service=mail&passive=true&rm=false&continue=https://mail.google.com/a/princeton.edu/&ss=1<mpl=default<mplcache=2&emr=1), respectively (last visited Nov. 18, 2013).

20
21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct. Executed on November 21, 2013, in San Francisco, California.

23
24 /s/ Kyle C. Wong

25 Kyle C. Wong

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FILER’S ATTESTATION

Pursuant to Local Civil Rule 5-1(i), the undersigned attests that the party whose signature appears above has concurred in the filing of this declaration. The undersigned shall maintain records to support this concurrence in accordance with Rule 5-1(i)(3).

Dated: November 21, 2013

COOLEY LLP

/s/ Whitty Somvichian

Whitty Somvichian (194463)

Attorneys for Defendant
GOOGLE INC.