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16 individually and on behalf of
all others similarly situated

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 DANIEL MATERA, as an individual, and
21 on behalf of other persons similarly
situated,

22 Plaintiff,

23 v.

24 GOOGLE, INC.,

25 Defendant.
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Case No. 5:15-cv-04062

CLASS ACTION COMPLAINT FOR:

- 27 1. Violations of the California Invasion of Privacy Act, Cal. Pen. Code §630 *et seq.*
- 28 2. Violations of the Electronic Communications Privacy Act, 18 U.S.C. §2510 *et seq.*

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. Defendant Google, Inc. (“Google,” “Defendant,” or “the Company”) has
3 created a business model that relies upon intercepting, reading, and analyzing the content of
4 private email messages. Specifically, in offering its web-based email service (“Gmail”)¹ to
5 users, Google elected to forego charging money for the service, instead employing a system
6 architecture that scans each email sent to or from a Gmail accountholder, then deriving and
7 cataloging the content of that email in order to create data profiles of the communicants for
8 purposes of selling to paying customers, and sending to the profiled communicants, targeted
9 advertising based upon analysis of these profiles.

10 2. In so doing, Google secretly and systematically diverts the transmission of
11 email messages to devices—separate from the devices that are instrumental to sending and
12 receiving email—that are designed to and do extract the messages’ content. Google analyzes
13 the content of users’ email messages to predict their behavior, and to influence and manipulate
14 them in order to gain an economic advantage over them. As Google’s former CEO Eric
15 Schmidt described it: “We know where you are. We know where you’ve been. We can more
16 or less know what you’re thinking about.”²

17 3. Google has not obtained any consent from non-Gmail users to having their
18 emails scanned, analyzed, and cataloged indefinitely. These individuals have never agreed to
19 Google’s terms of service and have not at any point or in any fashion agreed to allow Google
20 to acquire and indefinitely store the contents of their emails. Yet, whenever these individuals
21 send or receive email messages from a Gmail accountholder, this is precisely what Google
22 does.

23 4. Google’s practice of intercepting, extracting, reading, and using the private
24 email content of individuals who do not have email accounts with Google violates the

25 ¹ Google offers several variations of its Gmail product including Gmail for individual users, a
26 version for businesses called Google Apps for Work, and a version for educational institutions
27 called Google Apps for Education. Collectively, all Google-based email services will be referred
to as “Gmail” in this Complaint.

28 ² Interview with Eric Schmidt by Maria Bartiromo, CNBC (Dec. 9, 2009), reposted on the
Huffington Post (Mar. 8, 2010) (available at http://www.huffingtonpost.com/2009/12/07/google-ceo-on-privacy-if_n_383105.html).

1 California Invasion of Privacy Act, Cal. Pen. Code §§ 630, *et seq.* (“CIPA”), and the
2 Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.* (“ECPA”).

3 5. Plaintiff seeks to represent a class of persons in the State of California, who
4 have not established an email account with Google, and who have sent emails to or received
5 emails from individuals who have, and for this purpose used, Google email accounts; as well
6 as a class of all persons in the United States, who have not established an email account with
7 Google, and who sent emails to or received emails from individuals with Google email
8 accounts before December 19, 2014 (collectively, “the Classes”).

9 6. Plaintiff seeks, on behalf of the proposed Classes, (1) a declaration that
10 Google’s conduct violates CIPA; (2) a declaration that Google’s conduct before December 19,
11 2014 violated ECPA; (3) injunctive relief in the form of, *inter alia*, an order enjoining Google
12 from intercepting and cataloging the content of Class members’ emails in violation of CIPA;
13 (4) injunctive relief in the form of, *inter alia*, an order requiring Google to purge all
14 information gathered from the interception of the content of Plaintiff’s and Class members’
15 messages in violation of ECPA and/or CIPA; and (5) attorney’s fees and costs of litigation.

16 7. Google has committed a breach of trust from which every facilitator of
17 communications is prohibited: it acquired the substance of individuals’ communications
18 without their consent. These acts are the twenty-first-century equivalent of AT&T
19 eavesdropping on each of its customers’ phone conversations, or of the postal service taking
20 information from private correspondence—acts that uniformly would be condemned as
21 egregious and illegal invasions of privacy under any circumstance. As the California Supreme
22 Court has said:

23 [A] measure of personal isolation and personal control over the conditions of its
24 abandonment is of the very essence of personal freedom and dignity.... A

25 [person]...whose conversations may be overheard at the will of another...is less of a
26 [person], has less human dignity, on that account. He who may intrude upon another at
27 will is the master of the other and, in fact, intrusion is a primary weapon of the tyrant.
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1 *Shulman v. Group W Productions, Inc.*, 18 Cal. 4th 200, 231 (Cal. 1998) (citation omitted).

2 **II. THE PARTIES**

3 8. Plaintiff Daniel Matera resides in San Francisco, California. Plaintiff does not
4 have and never has had an email account with Google. Plaintiff has sent emails to and received
5 emails from Gmail users. In so doing, Plaintiff's emails were, without Plaintiff's knowledge
6 or consent, intercepted and scanned by Google for purposes of acquiring, interpreting, and
7 cataloging the content of those electronic communications. Although Plaintiff has never
8 consented to having his emails intercepted and scanned by Google for the purpose of acquiring
9 and cataloging their message content, and has never had any mechanism by which to opt out of
10 such practices, he has continued to—and as a practical matter must continue to—communicate
11 with Gmail users via email: By virtue of the ubiquity of Gmail, and the fact that tens if not
12 hundreds of millions of Gmail accounts are presently in existence, it is impossible for Plaintiff
13 to avoid sending or receiving emails from Gmail users.

14 9. Defendant Google, Inc. ("Google," "Defendant," or "the Company") is a United
15 States corporation headquartered in Mountain View, California, and incorporated under the
16 laws of Delaware.

17 **III. JURISDICTION AND VENUE**

18 10. Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over the
19 claims of Plaintiff that arise under the Electronic Communications Privacy Act of 1986
20 ("ECPA"), 18 U.S.C. §§ 2510 *et seq.*

21 11. This Court has personal jurisdiction over Defendant because Defendant owns
22 and operates a business that is headquartered in the Northern District of California and
23 conducts substantial business throughout California.

24 12. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b)(1), as
25 Google, Inc. is headquartered in this district.

1 **IV. STATEMENT OF FACTS**

2 13. Google is a California-based multinational corporation that offers web-based
3 services, including, among others, the electronic communications service known as Gmail.

4 14. In addition to providing Gmail, Google sells advertising services.

5 15. Google products, including but not limited to Gmail, are embedded with data
6 mining devices that track individual users' behavior and report the information back to the
7 Company. Indeed, while Google initially declared that its collection of user data was
8 maintained solely to make its services work better,³ the Company subsequently—and
9 surreptitiously—began amalgamating user data from across its various platforms for ad
10 targeting.⁴

11 16. This strategy has enabled Google to become the dominant force in online
12 advertising. Google's user data enable it to deliver ads that are highly targeted to susceptible
13 buyers. It can thus sell more advertising and command higher prices. Google's revenues are
14 almost entirely derived from ad sales, which accounted for 96% of its total revenue of \$29.3
15 billion in 2010; 96% of its total revenue of \$37.9 billion 2011; 95% of its total revenue of \$46
16 billion in 2012, 91% of \$56 billion in 2013, and 89% of \$66 billion in 2014.⁵

17 17. Google has developed products premised on interpersonal communication—
18 including Gmail—that have the attendant, undisclosed property of scanning and cataloging
19 users' communications to acquire and retain user data and deliver targeted advertisements
20 based on these profiles.

21 18. Google never obtained consent from Plaintiff or any Class member to scan and
22 catalog the contents of his or her email communications with Gmail users.

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25 ³ Singel, Ryan. "Analysis: Google's Ad Targeting Turns Algorithms on You," *Wired* (Mar. 11, 2009) (available at <http://www.wired.com/business/2009/03/google-ad-annou/>).

26 ⁴ *Id.*

27 ⁵ Google Form 10-K for fiscal year ending December 31, 2013, "Management's Discussion and
28 Analysis of Financial Condition and Results of Operations." (available at <http://www.sec.gov/Archives/edgar/data/1288776/000128877614000020/goog2013123110-k.htm#sCF5BD61C9BB5908EEE622E71A9CC8F22>); <https://investor.google.com/financial/tables.html>).

Google's Specific Content Extraction and Data Mining Procedures and Devices

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19. When Plaintiff and Class members sent emails to or received emails from Gmail users, Google intercepted these communications to scan, compile, analyze, and archive the contents of the communications. Upon information and belief, Google employed a variety of devices—in the course of transmitting Plaintiff's and Class members' messages—to acquire and manipulate the content of said messages. During the Relevant Time Period, such devices included, but were not limited to:

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• **The Content Onebox process (“COB process”)**—a distinct piece of Google's infrastructure, the purpose of which is to acquire and interpret the content of users' Gmail, including Plaintiff's and Class members' emails. Through the COB process, during the Relevant Time Period, Google not only collected the content of said messages, but also created metadata about that content.
- **Changeling**—a distinct piece of Google's infrastructure that the Company used to acquire and interpret the contents of users' Gmail, including Plaintiff's and Class members' emails.

20. Upon information and belief, after extracting the content of Plaintiff's and Class members' messages and creating new, derivative data (“metadata”) therefrom, Google utilized a process called “Nemo,” whereby it determined how best to monetize the data gathered.

21. In addition to using the intercepted content of Gmail to sell advertisements, Google also cataloged the intercepted content, including the emails of Plaintiff and Class members, to create user profiles to be stored indefinitely. The future purposes of this indefinitely stored information are unclear and have not been disclosed.

22. Among other devices, Google utilized “PHIL,” or the Probabilistic Hierarchical Inferential Learner, a distinct piece of Google's infrastructure the purpose of which is to learn the “meaning behind text” of the content of Gmail and the Plaintiff's and Class members' emails, by learning the relationships between words and concepts present in the acquired data.

23. Upon information and belief, PHIL's purpose is to process the data gathered from the intercepted messages' content to create “PHIL clusters,” which amount to the inferred meaning of particular words or phrases derived by reading and acquiring the content of the

1 user's emails. Through PHIL clusters, Google learns "concepts" by learning an explanatory
2 model of text. As such, PHIL's concepts are intended to and (on information and belief) do
3 model the actual ideas passing through a person's mind before the person composes the text
4 that is read and acquired by Google.

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6 **Google Did Not Obtain the Consent of Plaintiff or Class members to Scan and Catalog the Contents of Their Emails**

7 24. At all relevant times, Google indiscriminately intercepted, scanned, and
8 cataloged all emails sent or received by its Gmail accountholders. Google had no policy of
9 limiting this practice only to email between Gmail users. So, whenever Plaintiff and Class
10 members exchanged emails with Gmail users, the contents of those private communications
11 were scanned and cataloged by Google.

12 25. At all relevant times, Google had no policy in place to obtain the consent of
13 non-Gmail users to having their emails scanned and cataloged, in the course of exchanging
14 emails with Gmail users. Neither did Google have a policy in place during the relevant
15 timeframe to put Plaintiff or Class members on notice that their private correspondence with
16 Gmail users was being and would be scanned, cataloged, analyzed, and used, *inter alia*, to sell
17 and deliver targeted. Google did not notify or even attempt to notify Plaintiff or the Class
18 members of any of those facts, or in any way seek to obtain their consent to any of these acts.
19 Nor did Google have a process in place to exclude non-Gmail users' emails from its scanning
20 and cataloging practices.

21 26. Before December 19, 2014, Google's Gmail Terms of Service and Privacy
22 Policy made no mention of the practices complained of herein, and thus Google failed to
23 legally obtain the consent of Gmail users to the practices complained of herein. *See In re*
24 *Google Inc. Gmail Litig.*, 2013 U.S. Dist. LEXIS 172784 at *50 (N.D. Cal. Sept. 26, 2013)
25 ("The Court finds that Gmail users' acceptance of [Google's Terms of Service and Privacy
26 Policy] does not establish explicit consent.")

27 27. On or about December 19, 2014, Google amended its Privacy Policy to read, in
28 relevant part: "Our automated systems analyze your content (including emails) to provide you

1 personally relevant product features, such as customized search results, tailored advertising,
2 and spam and malware detection.” Plaintiff and the Class Members were never subject to or
3 on notice of Google’s Privacy Policy, either before or after its amendment. Plaintiff and the
4 Class Members never clicked on or otherwise accepted Google’s Privacy Policy—which is
5 buried in a supplement to a click-through agreement on a website. Google does not legally or
6 conscionably obtain user’s consent to its Privacy Policy, either before or after its amendment.
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8 **Google’s Conduct Falls Outside the Only Possible Exception to the Statutes Prohibiting Its**
9 **Conduct—None of the Actions Complained of Herein Fall Within the Ordinary Course of**
10 **Google’s Email Provider Business**

11 28. Google’s interception of Gmail, including the emails of Plaintiff and the Class
12 members, as alleged herein, were not conducted in the ordinary course of its business, within
13 the meaning of CIPA or ECPA. Google cannot demonstrate the interception facilitated the
14 communication service or was incidental to the functioning of the provided communication
15 service. There is no nexus between Google’s interception of Gmail and its *subscriber’s*
16 ultimate business, that is, the ability of Google to provide the underlying service or good.
17 Instead Google intercepts Gmail for the distinct purpose of acquiring and retaining user data
18 and creating targeted advertising, and therefore the interception is outside the ordinary course
19 of Google’s business. *Google Inc. Gmail Litig.*, 2013 U.S. Dist. LEXIS 172784, *30 (N.D.
20 Cal. Sept. 26, 2013); *Campbell v. Facebook Inc.*, 2014 U.S. Dist. LEXIS 177331, *21 (N.D.
21 Cal. Dec. 23, 2014).

22 **Plaintiff and Class Members Are at Continued Risk of the Injuries Alleged Herein**

23 29. Plaintiff is constrained to communicate with Gmail users through those users’
24 Gmail accounts, given the ubiquity of Gmail. Plaintiff cannot reasonably avoid sending emails
25 to or receiving emails from Gmail users.

26 30. Google has changed the language in its privacy policy 3 times in 2015, alone,
27 and 8 times since January 1, 2013. Google has come under criticism for aggregating its
28 privacy policy across platforms and products (*i.e.*, making a one-size-fits-all policy to govern
YouTube, Gmail, Google+, etc.). Google is free to amend its Privacy Policy in the future,

1 eliminating all reference to its scanning practices—which Plaintiff contends are, at present,
2 still too oblique to establish express consent on the part of Gmail users to the scanning
3 practices described herein.

4 31. Google has, in the past, made affirmative representations that it would not
5 acquire or catalog message content on certain of its email platforms, only to be caught
6 subsequently engaging in the precise activities it had publicly disclaimed.⁶ Accordingly,
7 absent an order from this Court enjoining Google from such practices, Plaintiff and Class
8 members are and will remain at risk of Google unilaterally dispensing with the privacy rights
9 guaranteed by the laws of California and the United States.

10 **V. CLASS ALLEGATIONS**

11 32. Plaintiff brings this class action, pursuant to Rule 23 of the Federal Rules of
12 Civil Procedures, individually and on behalf of all members of the following classes, which are
13 jointly referred to throughout this Complaint as the Class:

14 **CIPA Class (Count One):** All persons in the State of California
15 who have never established an email account with Google, and who
16 have sent emails to or received emails from individuals with
17 Google email accounts.

18 **ECPA Class (Count Two):** All persons in the United States who
19 have never established an email account with Google, and who sent
20 emails to or received emails from individuals with Google email
21 accounts before December 19, 2014.

22 33. Excluded from each of the Classes are the following individuals and/or entities:
23 Google and its parents, subsidiaries, affiliates, officers and directors, and any entity in which
24 Google has a controlling interest; any and all federal, state or local governments, including but
25 not limited to their department, agencies, divisions, bureaus, boards, sections, groups, counsels
26 and/or subdivisions; and all judges assigned to hear any aspect of this litigation, as well as their
27 immediate family members.

28 ⁶ <http://blogs.wsj.com/digits/2014/04/30/google-stops-scanning-student-gmail-accounts-for-ads/>

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34. Plaintiff reserves the right to modify or amend the definition of each of the proposed Classes before the Court determines whether certification is appropriate.

35. This action readily satisfies the requirements set forth under Federal Rule of Civil Procedure 23:

Class Action Allegations

36. Each Class is so numerous that joinder of all members is impracticable. Upon information and belief, Class members number in the millions.

37. There are questions of law or fact common to the Classes. These questions include, but are not limited to, the following:

a. Whether Google’s acts and practices complained of herein amount to an intentional and unauthorized connection to an electronic communication, in violation of Cal. Pen. Code § 631(a) (on behalf of the CIPA Class);

b. Whether Google’s acts and practices complained of herein amount to the willful and unauthorized reading, attempting to read, or learning the contents or meaning of Plaintiff’s and Class members’ in transit communications, in violation of Cal. Pen. Code § 631(a) (on behalf of the CIPA Class);

c. Whether Google used or attempted to use any information acquired in violation of Cal. Pen. Code § 631(a) (on behalf of the CIPA Class);

d. Whether Google intentionally intercepted, endeavored to intercept, or procured any other person to intercept or endeavor to intercept Plaintiff’s and Class members’ electronic communications in violation of 18 U.S.C. § 2511(1)(a) (on behalf of the ECPA Class);

e. Whether Google acquired any “contents” of Plaintiff’s and Class members’ electronic communications, within the meaning of 18 U.S.C. § 2510(8) (on behalf of the ECPA Class);

f. Whether Plaintiff’s and Class members’ emails were “electronic communications” within the meaning of 18 U.S.C. § 2510(12) (on behalf of the ECPA Class);

1 g. Whether Google used an “electronic, mechanical, or other device,”
2 within the meaning of 18 U.S.C. § 2510(5) (on behalf of the ECPA Class);

3 h. Whether Google intentionally used, or endeavored to use, the contents
4 of Plaintiff’s and Class members’ electronic communications, knowing or having reason to
5 know that the information was obtained in violation of 18 U.S.C. § 2511(1)(a) (on behalf of
6 the ECPA Class);

7 i. Whether Google acted intentionally in violating privacy rights;

8 j. Whether an injunction should issue; and

9 k. Whether declaratory relief should be granted.

10 38. Plaintiff’s claims are typical of the claims of the Class of non-Gmail users in
11 that Plaintiff and the Classes sent emails to and received emails from Gmail users. In the
12 process, Google intercepted, scanned, and acquired the content of those electronic
13 communications. Google further used or endeavored to use the contents of Plaintiff’s and
14 Class members’ electronic communications. Plaintiff and the Class members did not consent
15 to the interception and use of their electronic communications, which acts form the basis for
16 this suit. Moreover, like all Class members, Plaintiff suffers a substantial risk of repeated
17 injury in the future. Like all Class members, although Plaintiff has never consented to having
18 his emails intercepted and scanned by Google for the purpose of acquiring and cataloging their
19 message content, and has never had any mechanism by which to opt-out of such practices, he
20 has continued to—and *must* continue to—communicate with Gmail users via email. Indeed,
21 by virtue of the ubiquity of Gmail in its various incarnations⁷, and the fact that tens if not
22 hundreds of millions of Gmail accounts presently exist, Plaintiff and Class members cannot
23 avoid sending emails to or receiving emails from Gmail users now and in the future. Plaintiff
24 and the Class members are entitled to injunctive and declaratory relief as a result of the
25 conduct complained of herein. Because the conduct complained of herein is systemic, Plaintiff
26 and all Class Members face substantial risk of the same injury in the future. Google’s conduct
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⁷ See footnote 1, *infra*.

1 is common to all Class members and represents a common thread of conduct resulting in injury
2 to all members of the Class. Plaintiff has suffered the harm alleged and has no interests
3 antagonistic to any other Class member.

4 39. Plaintiff will fairly and adequately protect the interests of the Classes.
5 Plaintiff's interests do not conflict with the interests of the Class members. Furthermore,
6 Plaintiff has retained competent counsel experienced in class action litigation, consumer
7 protection litigation, and electronic privacy litigation. Plaintiff's counsel will fairly and
8 adequately protect and represent the interests of the Classes. FRCP 23(a)(4) and 23(g) are
9 satisfied.

10 40. In acting as above-alleged, and in failing and refusing to cease and desist
11 despite public outcry and the initiation of lawsuits, Google has acted on grounds generally
12 applicable to the entire Classes, thereby making final injunctive relief and corresponding
13 declaratory relief each appropriate with respect to the Classes as a whole. The prosecution of
14 separate actions by individual Class members would create the risk of inconsistent or varying
15 adjudications with respect to individual Class members that would establish incompatible
16 standards of conduct for Google and other email providers.

17 41. Injunctive relief is necessary to prevent further unlawful and unfair conduct by
18 Google. Money damages, alone, could not afford adequate and complete relief, and injunctive
19 relief is necessary to restrain Google from continuing to commit its illegal and unfair violations
20 of privacy. As discussed in paragraphs 29-31, *infra*, Defendant routinely has altered the terms
21 of its Privacy Policy, conflated the application of its contract with its customers across
22 platforms, and acted contrary to its public-facing representations.

1 **VI. CAUSES OF ACTION**

2 **COUNT ONE**

3 **(Violations of CIPA, Cal. Pen. Code §§ 630, et seq.)**

4 **(Brought on behalf of the Plaintiff and the CIPA Class)**

5 42. Plaintiff incorporates the preceding paragraphs of this complaint as if repeated
6 here.

7 43. Cal. Pen. Code § 630 provides that “[t]he Legislature hereby declares that
8 advances in science and technology have led to the development of new devices and
9 techniques for the purpose of eavesdropping upon private communication and that the invasion
10 of privacy resulting from the continual and increasing use of such devices and techniques has
11 created a serious threat to the free exercise of personal liberties and cannot be tolerated in a
12 free and civilized society.”

13 44. Cal. Pen. Code § 631(a) prohibits the use of “any machine, instrument, or
14 contrivance, or...any other manner” to “intentionally tap[], or make[] any unauthorized
15 connection, whether physically, electrically, acoustically, inductively, or otherwise, with any
16 telegraph or telephone wire, line, cable, or instrument” *or* to “willfully and without the consent
17 of all parties to the communication, or in any unauthorized manner, read[], or attempt[] to read,
18 or to learn the contents or meaning of any message, report, or communication while the same
19 is in transit or passing over any wire, line, or cable, or is being sent from, or received at any
20 place within this state.”

21 45. Cal. Pen. Code § 631(a) further prohibits the “use[], or attempt[] to use, in any
22 manner, or for any purpose, or to communicate in any way, any information so obtained.”

23 46. Google’s acts and practices complained of herein, engaged in for purposes of
24 acquiring and using the content of emails sent to and from Plaintiff and Class members to
25 generate significant advertising profits, violated and violate Cal. Pen. Code § 631.

26 47. Google committed the acts and practices complained of herein knowingly and
27 willfully, spending significant sums and using cutting-edge technology to do so in the most
28 comprehensive and effective manner possible. Google’s actions were at all relevant times

1 intentional as evidenced by, *inter alia*, the design of its data flow processes, its utilization of
2 message-scanning devices, its utilization of devices to divine the meaning of the content of
3 private messages and to discern the communicants' likely thoughts before writing them, and
4 Google's use of that information for, *inter alia*, data profiling and ad targeting.

5 48. Google was not a party to the emails sent or received by Plaintiff and Class
6 members at any point during the relevant time period.

7 49. Google engaged in the acts complained of herein without the consent of
8 Plaintiff and Class members.

9 50. Each email sent to and from Plaintiff and Class members, and scanned and
10 cataloged by Google, was a "message, report, or communication" within the meaning of Cal.
11 Pen. Code § 631.

12 51. Each email sent to or from Plaintiff or to or from any Class member, and
13 scanned and cataloged by Google, was "in transit" within the meaning of Cal. Pen. Code §
14 631.

15 52. Each of the actions taken by Google and complained of herein extends beyond
16 the normal occurrences, requirements, and expectations regarding the facilitation and
17 transmission of private messages.

18 53. Pursuant to Cal. Penal Code § 7, Google, a corporation, is a "person."

19 54. As a result of Google's violations of Cal. Pen. Code § 631, and pursuant to Cal.
20 Pen. Code § 637.2, Plaintiff and Class members are entitled to the following relief:

21 a. A declaration that Google's conduct violates CIPA;

22 b. Injunctive relief in the form of, *inter alia*, an order enjoining Google
23 from continuing its practice of intercepting the content of Plaintiff's and Class members'
24 emails in violation of CIPA;

25 c. Injunctive relief in the form of, *inter alia*, an order requiring Google to
26 destroy all data created or otherwise obtained from its illegal interception of emails sent or
27 received by Plaintiff or any Class member; and
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1 d. An award of attorney's fees and costs of litigation as provided by CIPA,
2 the private attorney general doctrine existing at common law and also codified at California
3 Civil Code Section 1021.5, and all other applicable laws;

4 55. In addition, pursuant to Cal. Pen. Code § 637.2, Plaintiff individually seeks
5 monetary damages in the amount of \$5,000, as well as trebled actual damages, in an amount to
6 be proved at trial.

7 56. While certain devices and methods have been identified in this Complaint,
8 Plaintiff reserves the right to assert CIPA violations as to any further devices subsequently
9 disclosed or discovered.

10 **COUNT TWO**

11 **(Violations of ECPA, 18 U.S.C. §§ 2510, et seq.)**

12 **(Brought on behalf of Plaintiff and the ECPA Class)**

13 57. Plaintiff incorporates the preceding paragraphs of this complaint as if repeated
14 here.

15 58. Google's actions alleged herein, and each of them, have at all times affected
16 interstate commerce. Upon information and belief, Google mail has more than 425 million
17 users worldwide.

18 59. Google, a corporation, is a "person" within the meaning of 18 U.S.C. § 2510(6).

19 60. The email communications transmitted by Plaintiff and the Class members, and
20 each of them, were and have been at all relevant times "electronic communications," pursuant
21 to 18 U.S.C. § 2510(11).

22 61. Google engaged in the acts complained of herein without the consent of
23 Plaintiff or the Class members.

24 62. Google engaged in the acts complained of herein without the consent of Gmail
25 users.

26 63. Google's actions were at all relevant times intentional as evidenced by, *inter*
27 *alia*, the design of its data flow processes, its utilization of message-scanning devices, its
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1 utilization of devices to divine the meaning of the content of private messages and to discern
2 the communicants' likely thoughts before writing them, and Google's use of that information
3 for, *inter alia*, data profiling and ad targeting.

4 64. Google used one or more "devices," as defined pursuant to 18 U.S.C. § 2510(5),
5 to intercept the electronic communications transmitted to Google mail users by Plaintiff and
6 the Class members, and each of them. Such devices include, but are not limited to, the distinct
7 pieces of Google infrastructure comprising the COB process, Changeling, the "Nemo" process,
8 and PHIL.

9 65. The devices were not used by Google, operating as an electronic
10 communication service, in the ordinary course of providing electronic communication services.
11 Specifically, Google's interception of electronic communications sent by and to Plaintiff and
12 the Class members, and each of them was, among other things, (a) for undisclosed purposes;
13 (b) for purposes of acquiring, cataloging and retaining user data; (c) for purposes beyond
14 facilitating the transmission of emails sent or received by either Gmail users or Plaintiff and
15 the Class members; (f) contrary to Google's public statements; (g) in violation of federal law;
16 and (h) in violation of the property rights of Plaintiff and Class members in their private
17 information. These activities are not within the ordinary course of business of a provider of an
18 electronic communication service.

19 66. The conduct alleged herein did not occur after the electronic communications
20 had been transmitted and were in storage. Rather, Google transferred, transmitted, or routed
21 each communication to each of its self-serving devices to acquire and learn private information
22 about Plaintiff and the Class members from their emails in the course of those emails'
23 transmission.

24 67. Google's conduct complained of herein also violated 18 U.S.C. § 2511(1)(d),
25 which prohibits the intentional use or endeavoring to make use of "contents of any wire, oral,
26 or electronic communication," when such contents were acquired in violation of 18 U.S.C. §
27 2511(1)(a).
28

1 68. As a result of Google's violations of § 2511, and pursuant to § 2520, Plaintiff
2 seeks the following relief for himself and the Class:

3 a. A declaration that Google's conduct prior to December 19, 2014
4 violated ECPA.

5 b. Injunctive relief in the form of, *inter alia*, an order enjoining Google
6 from intercepting the content of Plaintiff's and the Class members' emails in violation of
7 ECPA in the future;

8 c. Injunctive relief in the form of, *inter alia*, an order requiring Google to
9 destroy all data created or otherwise obtained from the interception of emails sent or received
10 by Plaintiff and Class members, or any of them, before December 19, 2014; and

11 d. Attorney's fees and costs of litigation as provided by ECPA.

12 69. In addition, pursuant to § 2520, Plaintiff individually seeks the greater of (1) the
13 sum of actual damages sustained by Plaintiff and any profits made by Google as a result if its
14 ECPA violations complained of herein or (2) statutory damages of the greater of (a) \$100 a day
15 for each day of violation or (b) \$10,000.

16 70. While certain devices have been identified in this Complaint, Plaintiff reserves
17 the right to assert ECPA violations as to any further devices subsequently disclosed or
18 discovered.

19 **VII. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff requests that judgment be entered against Defendant and that the
21 Court grant the following:

22 A. An order determining that this action may be maintained as a class action under
23 Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff is a proper class
24 representative, appointing Plaintiff's attorneys as Class counsel pursuant to
25 Rule 23(g) of the Federal Rules of Civil Procedure, and providing that Class
26 notice be promptly issued;

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- B. Judgment against Google for Plaintiff’s and Class Members’ asserted causes of action;
- C. Appropriate declaratory relief against Google;
- D. Injunctive relief in the form of, *inter alia*, an order enjoining Google from continuing its practice of intercepting the content of Plaintiff’s and Class members’ emails in violation of CIPA and ECPA;
- E. Injunctive relief related to CIPA in the form of, *inter alia*, an order requiring Google to destroy all data acquired, created or otherwise obtained from the interception of emails sent or received by Plaintiff and Class members;
- F. Injunctive relief related to ECPA class in the form of, *inter alia*, an order requiring Google to destroy all data created or otherwise obtained from the interception of emails sent or received by Plaintiff and Class members prior to December 19, 2014;
- G. An award of damages to Plaintiff pursuant to Cal. Pen. Code § 637.2;
- H. An award of damages to Plaintiff pursuant to 18 U.S.C. § 2520;
- I. Reasonable attorney’s fees and costs reasonably incurred; and
- J. Any and all other and further relief to which Plaintiff and the Class may be entitled.

Dated: September 4, 2015

Respectfully Submitted,

/s/ Michael W. Sobol

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DEMAND FOR JURY TRIAL

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

Dated: September 4, 2015

Respectfully Submitted,

/s/ Michael W. Sobol

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