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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JAMES SWEET; CHUCK MERE; ZOMBIE GO
BOOM, LLC, DBA ZOMBIEGOBOOM

Plaintiffs,

vs.

GOOGLE, INC. DBA YOUTUBE

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

OVERVIEW OF THE ACTION

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1. This Class Action case surrounds widespread anticompetitive and unfair conduct of a monopolistic enterprise, which, through intentional, reckless and/or negligent means, has economically stifled the pursuits of enterprising and creative content providers, causing significant loss of revenue and profit. Specifically, Plaintiffs James Sweet and Chuck Mere, who own and operate Zombie Go Boom, LLC, and who collectively do business as Zombiegoboom (“Plaintiffs”),¹ bring this action against Defendant Google, Inc., which does business as YouTube² (hereinafter “YouTube”).

2. Content providers, such as Plaintiffs, who use the YouTube forum to post their creative works are wholly reliant, from a revenue stream standpoint, on the ability to monetize their content through the advertisements that YouTube permits third party advertisers to post through the YouTube.com website. A portion of the revenue generated by YouTube is passed through to content providers when an advertisement is viewed and/or clicked on by a content consumer. The terms governing the payment of revenues through YouTube’s advertising monetization plan have been established and ongoing for years, and while not fully transparent, are largely predictable by businesses and content providers which create content and place it on YouTube. Without an advertisement being posted on a content provider’s video or channel in the first instance, no revenue can be generated by the content provider through YouTube’s content provider advertising program. YouTube acts as a unilateral gatekeeper in deciding which videos will be monetized. Until recently, this has never presented a problem, and has been applied by YouTube with an even hand.

3. Plaintiffs have monetized their creative entertainment content, which include hundreds, if not thousands of videos that they created, and filmed at their expense, through YouTube since 2011. Zombiegoboom has become one of the top YouTube channels since that time, with over 1.6 million subscribers to its channel, and millions of video views per month. Despite this overwhelming success and high demand for Zombiegoboom content by the content consumers using YouTube’s

¹ Zombiegoboom’s content can best be described as a cross between popular cable TV shows Mythbusters and The Walking Dead.
² Google, Inc. purchased YouTube, Inc. in 2006, and presently wholly owns the company. YouTube is a wholly owned subsidiary.

1 services, Zombiegoboom's revenues have plummeted by over 90%, to the point where they can no
2 longer afford to stay in business, due to affirmative acts taken by YouTube, with reckless disregard of
3 the content providers that have made it a success to the public.

4 4. Leading up to March 2017, YouTube began receiving negative press in a series of Wall
5 Street Journal articles³ which criticized YouTube for permitting racist and objectionable content (such
6 as Neo-Nazi and ISIS support videos) to be monetized through the placement of advertisements
7 played during these videos. These articles in turn led some of YouTube's advertising partners to put
8 pressure on YouTube to ensure that their advertisements were not on such videos.⁴

9 5. In or around March 2017, including specifically on March 20, 2017, in response to
10 growing concerns, YouTube released a new set of guidelines which purported to set forth a set of
11 restrictions upon the placement of advertisements through YouTube's content providers' videos,
12 which did not meet YouTube guidelines. Such guidelines included sexually explicit, racist, hateful,
13 incendiary or overtly violent videos.⁵ These guidelines were never provided to or explained to
14 content providers, such as Plaintiffs, nor were they ever agreed to by content providers. The
15 guidelines were applied retroactively across all content that had previously been created at the
16 expense of the content providers, including content which had been on YouTube without complaint
17 from advertisers or content viewers for years.

18 6. In order to quickly and efficiently implement these guidelines, YouTube created a
19 program with a proprietary algorithm, which it withheld from members of the public, and from
20 content providers, and which was supposed to demonetize any videos which failed to meet its new
21 vague content guidelines. However, these algorithms were never shared with content providers, and
22 were never disclosed to content providers, either at the time they signed up with YouTube as a
23 content provider, or at any point subsequent to such time, in any meaningful fashion.

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25 ³ [https://www.wsj.com/articles/googles-youtube-has-continued-showing-brands-ads-with-racist-and-
other-objectionable-videos-1490380551](https://www.wsj.com/articles/googles-youtube-has-continued-showing-brands-ads-with-racist-and-other-objectionable-videos-1490380551)

26 ⁴ Zombiegoboom does not in any way shape or form fit the mold of the types of videos that were subject
27 to these news reports, or which derivatively drew ire from advertisers. Indeed, many of the advertisers
28 that feature their advertisements on YouTube, also advertise on popular television shows such as The
Walking Deal, and Mythbusters, which are similar forms of entertainment, and offer an analogous target
market of viewership.

⁵ <https://youtube-creators.googleblog.com/2017/03/strengthening-youtube-for-advertisers.html>

1 13. Plaintiff Zombie Go Boom, LLC is an Arkansas corporation, with its principle place of
2 business in Fayetteville, Arkansas.

3 14. Zombie Go Boom, LLC is produced by 3 time Emmy Award winning television
4 creative director James Sweet and Emmy Award winning independent filmmaker Chuck Mere.
5 Zombie Go Boom, LLC is owned by James Sweet and Chuck Mere, and operates the YouTube
6 channel Zombiegoboom.

7 15. Plaintiffs James Sweet and Chuck Mere are citizens of Arkansas.

8 **COMMON FACTUAL ALLEGATIONS**

9 16. YouTube is an American video-sharing website, which permits content providers to
10 upload videos, to be viewed by members of the public worldwide. Users can view, share, rate or
11 favorite videos, as well as add comments, and subscribe to channels of content providers whose
12 content they may enjoy and wish to view regularly.

13 17. YouTube permits many forms of original content, including videos, television shows,
14 music videos, films, educational videos, short original videos, and other similar forms of content.
15 Content can include such areas as political speech, comedy, education, entertainment, or other forms
16 of artistic expression. All other things equal, there are no limits on the types of content that one is
17 physically able to post on YouTube.

18 18. A large percentage of YouTube’s traffic relates to original content providers who create
19 original videos for the express purpose of gathering subscribers to their YouTube Channel. Views
20 and subscribers typically translate into revenue for the content providers, due to YouTube’s
21 monetization schedule.

22 19. YouTube monetizes its content by permitting third party advertisers, such as Wal-Mart,
23 Verizon, General Motors and many others, to place advertisements at the beginning of videos.
24 Typically when a user clicks on a video of a content provider that they wish to view, an advertisement
25 will play before the video begins. Users can click on the advertisement to be directed to the
26 advertiser’s website. YouTube’s advertisement placement algorithm is controlled by Google
27 AdSense, a program which targets ads according to site content and audience.
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1 20. Depending on the circumstances of whether a) the advertisement is viewed, b) the
2 advertisement is viewed in full, or c) the advertisement is clicked on by a user, YouTube will charge
3 the advertiser a different pre-negotiated fee. A portion of this fee is passed on to content providers
4 (such as Plaintiffs), which incentivizes content providers to focus on creating content as a full time
5 job.

6 21. Many successful content providers have been able to earn a living wage, or even in
7 excess of \$100,000 annually by working exclusively as a YouTube Content provider. Plaintiffs fell
8 into this category, with over 1.6 million subscribers to the Zombiegoboom channel, and millions of
9 views to their videos each month. Zombiegoboom is presently one of the top 2000 YouTube
10 Channels in the world, which puts it in the top 1% of YouTube revenue earners.

11 22. Content providers, including Plaintiffs, have come to rely on this steady stream of
12 revenue/income, as they continue to put out new content to be viewed by the world. For instance,
13 Plaintiffs have come to expect that in a slow month, they can earn approximately \$10,000, and in a
14 good month, they can earn approximately \$15,000. Typically, based on several years of experience
15 as a YouTube content provider, Plaintiffs' viewership to revenue rate is such that one million views
16 translates to approximately \$1000-\$2000 in advertising revenue passed through to Zombiegoboom.

17 23. Plaintiffs have come to rely on these proportions of viewership-revenue, as they have
18 translated like clockwork since approximately 2011 when they founded the Zombiegoboom channel.
19 Plaintiffs have, in reliance on these figures, continued to put out new and interesting content on
20 YouTube which is demanded by the public at large (as evidenced by the number of views and
21 subscribers to the Zombiegoboom channel). In so relying, Plaintiffs have spent resources, including
22 time, labor, artistic vision and money, into creating new content exclusively for YouTube, with the
23 expectation that, as long as people want to watch the content, Plaintiffs will continue to get paid at the
24 same rate that they have historically been paid.

25 24. Plaintiffs have carved out a decent living while also engaging in a career that they love
26 (creative and entertaining filmmaking), through the Zombiegoboom YouTube channel.

27 25. In early 2017, YouTube was hit with a wave of bad press, because the Google AdSense
28 program was allegedly placing advertisements on videos that contained hate speech and sexually

1 explicit material. For instance, several articles, including a string of articles in the Wall Street
2 Journal, reported that YouTube's AdSense program had placed advertisements for companies such as
3 Pepsi, on videos of ISIS supporters and Neo-Nazis spouting hate speech.

4 26. Advertisers were disturbed by these reports, and there was a backlash where
5 approximately five percent of YouTube's advertisers backed out of agreements to place their
6 advertisements on YouTube's content providers' videos. Big name advertisers such as Pepsico,
7 AT&T, Dish and Starbucks were reported to have pulled the plug on continuing to advertise through
8 YouTube.com, as fear grew that their advertisements might be associated with undesirable videos of
9 fringe lunatics. YouTube was thus highly financially incentivized to quickly address these concerns
10 in order to stop the bleeding and prevent further advertisers from withdrawing their support of
11 YouTube's content, which almost universally contained content that was no less appropriate than
12 what could be viewed on cable television, where these same advertisers were already placing their
13 advertisements and willingly associating their products and services.

14 27. YouTube responded to these concerns by altering the algorithms in the AdSense
15 program, in an attempt to automatically weed out inappropriate content, without the use of human
16 oversight.⁶ In doing so, YouTube's new algorithms were poorly executed, such that the very types of
17 content that were subject to the ire of news reports and advertisers were still not being properly
18 screened out of monetization (resulting in advertisements still appearing on such videos), while
19 content that was not any more inappropriate than what someone would see by turning on AMC or
20 Discovery Channel might see in their living rooms on cable television was nonetheless screened and
21 demonetized.

22 28. Zombiegoboom, along with thousands of other appropriate and successful YouTube
23 channels, was victimized by YouTube's over-inclusive alterations to the AdSense algorithms.

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27 ⁶ YouTube could have implemented a new protocol whereby it employed individuals to watch videos
28 and ensure that their content fit the criteria of advertisers before approving said videos for monetization,
but instead used automated algorithms to attempt to replicate that process, presumably at a much less
expensive cost.

1 29. YouTube implemented the revised algorithms around March, 2017. YouTube content
2 providers and online bloggers have dubbed this date “Adpocolypse.”⁷ As an example of Plaintiffs’
3 loss of revenue due to the AdSense changes, Plaintiffs earned approximately \$10,000 through
4 advertisement revenue generated through the Zombiegoboom YouTube channel in February 2017. In
5 March, 2017, that figure dropped to \$8,000. After March 27, 2017, Zombiegoboom’s advertisement
6 revenue plummeted from an average of \$300-\$500 per day to \$20-\$40 per day, a 90-95% drop in
7 revenue overnight. This was despite the fact that viewership of creative content posted by
8 Zombiegoboom remained steady. The proportion of revenue received dropped significantly because
9 advertisements were no longer being placed on Zombiegoboom videos, due to the content having
10 been screened and labeled as demonetized by AdSense. Case in point, pre-March 27, 2017, one
11 million views on the Zombiegoboom channel would translate to approximately \$1,000-\$2,000 in
12 revenue. Post-March 27, 2013, one million views on the Zombiegoboom channel would translate to
13 approximately \$150 in revenue.

14 30. YouTube implemented a secret rating system that is only available to be viewed by
15 YouTube and advertisers which automatically rates videos using the AdSense algorithms, in a similar
16 way to movie ratings (G to R) or video game ratings such as E (for everybody) to M (for mature).
17 After the videos are automatically put into a category, advertisers can then chose to filter their
18 advertisements to only be placed on certain categories of videos. None of this was ever explained to
19 Plaintiffs or to other content providers, despite the fact that it was essential to their businesses to
20 know how they would ultimately be paid through advertising placed on their YouTube videos. By
21 not telling content providers that this rating system existed, or how the algorithm worked, YouTube
22 was causing damage to content providers, because the lack of transparency led content providers to
23 make different types of content than they otherwise would have been making, to maximize their
24 profits.

25 31. Replicating the pre-March 27, 2017 revenue became impossible for Plaintiffs, as it
26 would have required hundreds of millions of views per month, just to make ends meet. At the time,
27 Plaintiffs’ YouTube channel was receiving 6-10 million views per month, which is roughly

28 ⁷ A video of a YouTube Producer describing the issue can be viewed here:
<https://www.youtube.com/watch?v=XqDWE-wreJM&feature=youtu.be>

1 equivalent to the number of views that a popular television show on cable would receive. And yet,
2 Plaintiffs were not even being paid enough to cover the costs of making their content, due to their
3 videos being demonetized.

4 32. Zombiegoboom content was denied the opportunity for an appeal of the demonetization
5 decision, and Plaintiffs were given no explanation by YouTube, despite numerous requests for
6 answers.

7 33. YouTube never provided any advanced notice to Plaintiffs that it would be altering its
8 revenue model, in any meaningful fashion that provided sufficient specifics for Plaintiffs to be put on
9 notice that any changes might affect their Channel.

10 34. YouTube never provided Plaintiffs any advanced notice that it would be implementing
11 and new terms by which Plaintiffs' videos must adhere, which indicated to Plaintiffs that their content
12 might be subjected to demonetization.

13 35. The only such communication received by Plaintiffs focused on YouTube's desire to
14 demonetize hate speech. Plaintiffs' videos contain no hate speech.

15 36. YouTube's Terms of Service, identified above, do not contain any advanced notice or
16 indication whatsoever that YouTube retains the rights to unilaterally alter the terms by which content
17 providers will be entitled to receive revenue or have their content monetized or demonetized.

18 37. YouTube intentionally withholds information from content providers regarding the
19 existence of this hidden AdSense algorithm, so as to maintain secrecy and control over its revenue
20 stream, which not only unfairly leaves content providers in the dark as to the status of their
21 livelihoods, but also stifles growth and opportunity by discouraging content from being created and
22 posted in the first place.

23 38. Plaintiffs relied on the fact that they were historically receiving \$1,000-\$2,000 per
24 million views in revenue from their content in creating new content and continuing to participate as a
25 top YouTube Channel.

26 39. Plaintiffs suffered tens of thousands of dollars in tangible and calculable harm as a
27 result of YouTube's decision to, without advanced notice, alter the terms of Plaintiff's revenue
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1 sharing agreement with YouTube. In fact, if this demonetization of Plaintiffs' content continues,
2 Plaintiffs will have to shut down the Zombiegoboom Channel and find other work.

3 40. Prior to Adpocalypse, Plaintiffs were offered \$60,000 by an interested buyer who
4 wanted to purchase all of Plaintiffs' existing online content. After adpocalypse, the buyer has
5 recinded the offer, and now has represented that they would not be able to come close to paying
6 anything near that amount.

7 41. As an additional example of harm suffered, Plaintiffs were receiving advertising deals
8 outside of the context of YouTube for \$25,000 to promote other products through a video advertising
9 the goods/services, including video games such as Dead Rising, prior to Adpocalypse. After
10 Adpocalypse, Plaintiffs reached out to an advertising partner and explained the situation regarding
11 their drop in revenue, and agreed to a lower contracted price of creating a video of \$3,500. Due to
12 YouTube's restrictions on Plaintiffs' videos, the response rate to the video created by Plaintiffs did
13 not garner the business that was anticipated, and the advertiser was ultimately forced to reduce the
14 compensation to Plaintiffs to \$1,150.

15 42. YouTube's Adpocalypse-related conduct, in particular its lack of transparency with
16 Plaintiffs regarding its AdSense algorithms, and failure to provide advanced notice of these changes,
17 interfered with Plaintiffs' contractual relationships with other business partners, rendering them
18 considerably less valuable, as a direct attributable result of YouTube's conduct.

19 43. YouTube continued to benefit from Plaintiffs' placement of new content on YouTube's
20 website following March 27, 2017, through users being drawn to the YouTube website as a result of
21 Plaintiffs' creative work and labors, including through YouTube receiving additional revenues
22 through advertisements or otherwise that were viewed by these users. YouTube also benefited from
23 existing content created and uploaded by Plaintiffs that is already present and existent on YouTube,
24 which continues to attract new users to come to YouTube.com and view Zombiegoboom videos and
25 other videos.

26 44. YouTube sent vague communications to Plaintiffs throughout the process of
27 implementing its AdSense changes, which indicated that content providers would only be subject to
28 demonetization if their videos contained hate speech, or were personally de-selected by advertisers.

1 45. YouTube also represented to Plaintiffs that it was concerned about the livelihoods of its
2 creators, and thus, it would be providing an appeal process if a content provider felt their video was
3 being unfairly demonetized. However, Plaintiffs requested appeals of YouTube's decision to
4 demonetize their content and never received any feedback as to why their videos were demonetized
5 or whether any appeal could be initiated. YouTube ignored Plaintiffs' repeated requests for review.

6 46. Plaintiffs allege on information and belief that content providers were not the sole cause
7 of the precipitous drop in revenue suffered by Plaintiffs, and that YouTube's demonetization
8 algorithms were primarily to blame. This allegation is based in large part on the fact that the content
9 of Plaintiffs' videos is similar in nature to content that is present on popular TV shows such as
10 Mythbusters and The Walking Dead (though significantly less violent or graphic than The Walking
11 Dead), and yet many of the advertisers whose ads previously appeared on Plaintiffs' content also
12 place their advertisements on Discovery Channel and AMC.

13 47. YouTube was aware that this issue was causing widespread discord with its content
14 providers, as evidenced by a posting it made on its own website: [https://youtube-
15 creators.googleblog.com/2017/06/your-content-and-making-money-from.html](https://youtube-creators.googleblog.com/2017/06/your-content-and-making-money-from.html). YouTube states: [w]e
16 know that revenue fluctuations have been unsettling and want to reassure you that we're working
17 closely with our advertising partners to make sure that YouTube continues to be a great place for
18 creators to earn money. We recognize there is still more work to do. We know we have to improve
19 our communications to you, our creators. We also need to meet our commitment to our advertisers by
20 ensuring their ads only appear against the content they think is suitable for their brands." YouTube
21 goes on to admit that it is receiving a large volume of complaints from content providers about a lack
22 of transparency with regard to the terms which are governing the revenue streams that act as the
23 lifeblood of these creative content providers.

24 48. YouTube has a duty to disclose, with detailed specificity and complete transparency,
25 the terms by which content is selected or deselected for monetization, as well as the structure of
26 payments that will be provided to content providers as a result of advertising revenue generated, to its
27 content providers, because content providers rely on an expected revenue stream as a source of
28 income, and require these assurances in order to invest in the expense and time necessary to create

1 new content. Failing to disclose this essential information to content providers, along with
2 maintaining unilateral control to change the terms and conditions which govern the payment received
3 by content providers for their creative work is anti-competitive, harmful to the creative content
4 market, and also a breach of good faith and fair dealing. Content providers gain nothing by such a
5 lack of transparency, and YouTube gains everything by withholding this information, and keeping its
6 content providers chained and in the dark.

7 49. Plaintiffs seek a Court Order mandating that YouTube make its revenue sharing rules,
8 including both the demonetization/monetization qualifications and programming, and the structure by
9 which content providers are paid a share of advertising revenue generated from their content,
10 available in complete form to content providers at the time that they first contract with YouTube to
11 provide such services to YouTube. Plaintiffs allege that this is necessary to prevent another
12 incurrence of Adpocalypse. Plaintiffs also seek monetary damages against YouTube on behalf of
13 content providers whose revenue streams were negatively impacted by Adpocalypse.

14 **CLASS ACTION ALLEGATIONS**

15 50. Plaintiffs bring this action under Federal Rule of Civil Procedure 23 on behalf of the
16 following Class and Subclasses:

17 **The Class**

18 All content providers in the United States who uploaded content on
19 YouTube.com at any point since 2006, and whose videos were
20 available for public viewing on YouTube.com during the time frame
of March 1, 2017 to present.

21 Excluded from the proposed Class are YouTube's officers, directors, legal representatives,
22 successors, and assigns; any entity in which YouTube has a controlling interest; and judicial officers
23 to whom this case is assigned and their immediate family members.

24 51. Plaintiffs reserve the ability to modify the definition of the proposed Class before the
25 Court determines whether class certification is warranted.

26 52. The requirements of Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3) are
27 met in this case.
28

1 53. Numerosity. The Class consists of thousands of content providers, making joinder of
2 each Class member impracticable. The Class is presently ascertainable by reference to objective
3 criteria and based on records within YouTube’s possession.

4 54. Commonality and Predominance. Common questions of law and fact exist for each of
5 the causes of action and predominate over questions affecting only individual Class members.
6 Questions common to the Class include:

- 7 a. Whether YouTube’s acts and practices constitute unfair methods of
8 competition;
- 9 b. Whether YouTube engaged in unfair acts or practices in the conduct of trade;
- 10 c. Whether YouTube engaged in deceptive business practices with respect to its
11 handling of Adpocalypse;
- 12 d. Whether YouTube made material misrepresentations and omissions with respect
13 to the terms by which Plaintiffs and Class members were agreeing to become
14 content providers;
- 15 e. YouTube’s motives for devising and executing its modification of Class
16 members’ content provider monetization structures;
- 17 f. Whether and to what extent YouTube profited from its modification of Class
18 members’ content provider monetization structures;
- 19 g. Whether YouTube violated Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- 20 h. Whether YouTube’s conduct constitutes tortious interference with contractual
21 relations and/or prospective economic advantage;
- 22 i. Whether YouTube’s conduct constitutes a breach of quasi contract;
- 23 j. Whether YouTube’s conduct constitutes a breach of contract;
- 24 k. Whether Plaintiffs and Class members are entitled to equitable relief;
- 25 l. Whether YouTube’s unlawful, unfair, and deceptive practices harmed Plaintiffs
26 and Class members;
- 27 m. Whether YouTube’s conduct is substantially injurious to content providers;
- 28

- n. The method of calculation and extent of damages for Plaintiffs and Class members;
- o. Whether Plaintiffs and the Class are entitled to restitution and, if so, in what amount; and
- p. Whether Plaintiffs and the Class are entitled to other appropriate equitable relief.

55. Typicality. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs, like all Class members, provided content on YouTube.com, and were negatively economically impacted by YouTube's unilateral and secretive changes to the monetization structure and AdSense algorithms, resulting in a reduction in marketing revenue. Each Class member's claims arise from the same tortious conduct of YouTube.

56. Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' interests do not conflict with the interests of Class members, and they have retained counsel experienced in prosecuting class action and consumer protection litigation.

57. In addition to satisfying the prerequisites of Rule 23(a), Plaintiffs satisfy the requirements for maintaining a class action under Rule 23(b)(3).

58. Superiority. A class action is superior to individual adjudications of this controversy. Litigation is not economically feasible for individual Class members because the amount of monetary relief available to individual plaintiffs is insufficient in the absence of the class action procedure. Separate litigation could yield inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system. A class action presents fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

59. Class certification also is appropriate under Rule 23(b)(1) or (b)(2) because:

- a. the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for YouTube;

1 c. YouTube conditioned the operation of content providers on their adherence to
2 YouTube's non-transparent advertising practices and policies, including the AdSense algorithm and
3 content ratings system.

4 d. By forcing Plaintiffs and Class members to adhere to these undisclosed
5 practices, and forcing YouTube's policies on content providers, YouTube has obtained an unfair
6 advantage in the marketplace and has hindered competition for content providers.

7 e. YouTube has caused considerable harm to Plaintiffs and thousands of other
8 content providers' businesses by imposing its policies on content providers.

9 64. YouTube acted to inhibit competition in a manner that is unfair and substantially
10 injurious to the consuming public. YouTube's unfair methods of competition and unfair acts and
11 practices are contrary to California law and policy and constitute unscrupulous, unethical, outrageous,
12 and oppressive business practices.

13 65. YouTube has indicated that it considers itself free to commit similar injurious acts of
14 unfair competition in the future. It should be enjoined from doing so pursuant to Business and
15 Professions Code section 17203.

16 66. The gravity of the harm resulting from YouTube's conduct detailed above outweighs
17 any possible utility of this conduct. There are reasonably available alternatives that would further
18 YouTube's legitimate business interests, such as disclosing the AdSense target areas and related
19 policies and practices to content providers rather than maintaining them in secrecy.

20 67. Plaintiffs and Class members could not have reasonably avoided injury from
21 YouTube's unfair business conduct. Plaintiffs and Class members did not know, and had no
22 reasonable means of learning, that YouTube would unilaterally alter the terms of its marketing
23 program, compensation structure, or AdSense algorithms in advance of having done so.

24 68. As a direct and proximate result of YouTube's conduct, Plaintiffs and Class members
25 have suffered injuries in fact, including because:

26 a. Plaintiffs and Class members depend on their ability to receive compensation
27 from YouTube through its marketing program, and depend on the anticipated revenues to be
28 generated therefrom based on historic rate stemming from the organic response of the population to

1 the content they post on YouTube; however YouTube's unfair methods of competition and unfair acts
2 and practices have thwarted and deprived them of the anticipated regular revenues stemming from the
3 creation and posting of content on YouTube.com.

4 b. YouTube's unfair methods of competition and unfair acts and practices have
5 prevented Plaintiffs and Class members from making content creation and other business decisions on
6 the basis of competitive factors in the marketplace.

7 c. YouTube's unfair methods of competition and unfair acts and practices have
8 caused Plaintiffs and Class members to incur lost time and out-of-pocket costs for, among other
9 things, attempting to create new content that would be viewed as more favorable by AdSense;
10 however doing so presented considerable challenges since Plaintiffs and other content providers had
11 no realistic expectation of what AdSense was screening for.

12 d. YouTube's unfair methods of competition and unfair acts and practices have
13 prevented Plaintiffs and Class members, who had already created and posted content, and who would
14 otherwise have continued to create and post content going forward, from learning about the basis for
15 YouTube's monetization structure in its content provider marketing terms, and in contravention of the
16 Plaintiffs' and Class members' reasonable expectations and practices.

17 e. As a result of YouTube's unfair methods of competition and unfair acts and
18 practices, Plaintiffs and Class members lost value to their businesses, as well as advertising revenues.

19 f. YouTube's unfair methods of competition and unfair acts and practices have
20 caused Plaintiffs' and Class members' content and YouTube Channels, as well as related business
21 dealings to suffer a loss in value.

22 69. All of YouTube's unlawful and unfair conduct occurred during YouTube's business
23 and was part of a generalized course of conduct. YouTube's decisions relating to the conduct alleged
24 herein originated in YouTube's operations within the State of California.

25 70. Plaintiffs and the Class accordingly are entitled to relief as provided for under the UCL,
26 including restitution, declaratory relief, and a permanent injunction prohibiting YouTube from
27 committing these violations and requiring YouTube to reverse its unfair and unlawful policies,
28 including by being transparent with its content providers about the terms of their compensation

1 structures. Plaintiffs also respectfully seek reasonable attorneys' fees and costs under applicable law,
2 including California Code of Civil Procedure section 1021.5.

3 **SECOND CLAIM FOR RELIEF**

4 **Fraudulent Business Practices in Violation of the Unfair Competition Law,**
5 **Cal. Bus. & Prof. Code § 17200, *et seq.***
6 **(On Behalf of the Class)**

7 71. Plaintiffs incorporate the above allegations by reference.

8 72. YouTube's conduct resulted from policies that YouTube contrived, ratified, and
9 implemented in California.

10 73. YouTube's conduct violates the UCL's prohibition of fraudulent business practices.

11 74. To induce the posting of content on YouTube.com, which in turn led to advertising
12 partners to contract with YouTube, YouTube provided a monetization structure to members of the
13 public interested in becoming content providers. YouTube provided very little information to content
14 providers about the structure of how they would be compensated under the monetization schedule,
15 but did historically provide fair compensation to content providers in exchange for the revenue
16 generated as a result of the artistic and creative work they created and posted on YouTube.com.
17 Historically, content providers came to expect a certain return on investment in dealing with
18 YouTube under this structure, which remained steady and predictable. Plaintiffs relied on the fact
19 that historically they could expect a certain return on investment to the content they created, as
20 described above.

21 75. In March of 2017, YouTube implemented new terms and conditions to the
22 arrangement, including by implementing new AdSense algorithms that targeted and demonetized
23 certain types of content. YouTube never explained to content providers that it would be doing this, or
24 that it did do this. YouTube did this for personal gain, i.e. to prevent advertising partners from
25 leaving YouTube; however the result was severely detrimental to content providers, including
26 Plaintiffs.

27 76. YouTube also implemented a secret ratings system, which was secretly formulated
28 through automated means using AdSense, or similar related technology, and which placed a rating on
each video posted by a content provider. Advertisers could then use this rating system to screen

1 certain ratings of videos from the types of videos on which they desired their advertisements to be
2 placed, or not placed. YouTube never disclosed that it was implementing this practice to content
3 providers.

4 77. Content providers relied detrimentally on the status quo being preserved, in creating
5 new content at their expense, and posting it to YouTube.com

6 78. YouTube benefitted from the creation of this content and the placement of it on
7 YouTube's website, because the content continued to drive consumers to YouTube for viewing
8 purposes; however, YouTube stopped compensating its content providers at the same historic rates, as
9 a result of the new practices that it never disclosed to content providers.

10 79. Plaintiffs' allege these acts be constitute both fraud by omission and fraud by
11 misstatement.

12 80. A reasonable content provider would have been misled by YouTube's conduct

13 81. YouTube's conduct had a strong tendency and likelihood to deceive reasonable content
14 providers. YouTube's conduct misled, deceived, and tricked Plaintiffs and Class members into
15 placing content on YouTube, expecting one rate of compensation, while YouTube engaged in activity
16 that was undisclosed which led them to receive a much lower rate of compensation.

17 82. YouTube's conduct constitutes a bait and switch scheme.

18 83. YouTube had a duty to clearly and conspicuously disclose to Plaintiffs and Class
19 members all of the material terms of its monetization structure, and the algorithms by which AdSense
20 was selecting content to be monetized or demonetized, so that content providers could make informed
21 business decisions about the types of creative content they created for YouTube.

22 84. YouTube breached its duty to disclose by concealing its AdSense algorithms and its
23 decision to alter its monetization structure from content providers

24 85. YouTube caused Plaintiffs and Class members to forgo creating other forms of content,
25 in reliance on their belief that they would continue to receive similar revenues for similar public
26 response to their content; yet YouTube concealed material facts that were pertinent to their decisions.

27 86. Plaintiffs and the Class accordingly are entitled to relief as provided for under the UCL,
28 including restitution, declaratory relief, and a permanent injunction. Plaintiffs also respectfully seek

1 reasonable attorneys' fees and costs under applicable law, including California Code of Civil
2 Procedure section 1021.5.

3 **THIRD CLAIM FOR RELIEF**

4 **Tortious Interference with Contractual Relations and/or Prospective Economic Advantage**
5 **(On Behalf of the Class)**

6 87. Plaintiffs incorporate the above allegations by reference.

7 88. At the time YouTube unilaterally altered the terms of its monetization structure for
8 content providers, Plaintiffs and Class members had entered into business transactions with third-
9 party advertisers, purchasers, and other businesses, which were premised in large part off of
10 Plaintiffs' and Class Members' ability to monetize their content and receive both advertising revenue
11 and views on YouTube. These sales transactions involved various contractual conditions of sale.

12 89. For instance, Plaintiffs were negotiating a contract with a third party who wanted to
13 purchase the rights to own and monetize their YouTube videos. After Adpocalypse, the value of
14 Plaintiffs' channel plummeted, because predicting future advertising revenue through YouTube's
15 monetization schedule became highly challenging since YouTube took it upon itself to change the
16 rules of monetization without notice, and to the detriment of its content providers.

17 90. YouTube was aware that Plaintiffs and Class members routinely enter into such related
18 contracts with third parties, and that changes to its monetization structure, including demonetizing
19 videos without notice or recourse, and altering the terms by which videos would receive
20 compensation would have a direct impact on these contractual arrangements.

21 91. Plaintiffs had multiple contractual deals fall through or devalued as a direct attributable
22 result of YouTube's aforementioned conduct.

23 92. YouTube's interference with the contractual conditions of sale between Plaintiffs and
24 Class members, on one hand, and third-party marketers and investors, on the other hand, was
25 intentional and wrongful.

26 93. YouTube's interference with Plaintiffs and Class members' reasonable expectation that
27 they could negotiate contracts with third-party marketers and investors, was intentional and wrongful.
28

1 94. Plaintiffs and Class members sustained harm as a direct and proximate result of
2 YouTube’s tortious interference with contractual relations and/or prospective economic advantage.
3 Plaintiffs and Class members accordingly seek damages in an amount to be proven at trial.

4 **FOURTH CLAIM FOR RELIEF**
5 **Breach of Contract**
6 **(On Behalf of the Class)**

7 95. Plaintiffs include by reference all previous paragraphs as if set forth herein.

8 96. A contract existed between Plaintiffs and Class members and Defendant , which
9 governed the terms and conditions by which Plaintiffs were permitted to engage with YouTube as a
10 content provider. Similarly a contract existed between Plaintiffs and Class members and Defendant
11 which governed Plaintiffs’ monetization structure for the posting of their content on YouTube

12 97. By altering the terms and conditions governing how Plaintiffs’ and Class members’
13 videos would be monetized, Defendant breached said contract.

14 98. Plaintiffs and Class members performed all obligations arising from the contract.

15 99. As a result, Plaintiffs and Class members suffered harm.

16 100. Therefore, Defendant is liable to Plaintiffs and Class members accordingly seek
17 damages for their breach of the contract as described herein, thus entitling Plaintiffs to recompense.

18 **FIFTH CLAIM FOR RELIEF**
19 **Breach of Duty of Good Faith And Fair Dealing**
20 **(On Behalf of the Class)**

21 101. Plaintiffs include by reference all previous paragraphs as if set forth herein.

22 102. All parties to a contract are obliged to refrain preventing one another from receiving the
23 reasonably expected benefits of the contract. To make out a claim for a violation of this duty,
24 Plaintiffs must show the following: 1) there was a contract between Plaintiffs and Defendant; 2)
25 Plaintiffs performed their obligation or was relieved therefrom; 3) Defendant unfairly prevented
26 Plaintiffs from receiving the benefits of the contract; and 4) as a result, Plaintiffs were harmed.

27 103. Plaintiffs were engaged in a contractual relationship with Defendant, namely for the
28 exchange of valuable consideration for the provision of content on YouTube.com.

1 104. Plaintiffs performed all obligations arising out of the contract and in no way interfered
2 with Defendant’s ability to perform their own.

3 105. By engaging in the conduct herein described, Defendant unfairly prevented Plaintiffs
4 from receiving the benefits of the contract.

5 106. The same is true for Class Members

6 107. As a result, Plaintiffs and Class Members have suffered economic harm, stress and
7 anxiety, and inconvenience.

8 108. Defendant is therefore liable to Plaintiffs and Class Members for their violation of their
9 duty of good faith and fair dealing, and Plaintiffs and Class Members are therefore entitled to
10 recovery of all damages, both economic and non-economic, and all other remedies the court deems
11 appropriate.

12 **SIXTH CLAIM FOR RELIEF**
13 **Breach of Quasi Contract**
14 **(On Behalf of the Class)**

15 109. Plaintiffs incorporate by reference each allegation set forth above.

16 110. As a direct and proximate result of its acts, as set forth above, Defendant has been
17 unjustly enriched.

18 111. Through unlawful and deceptive conduct in connection with the terms governing
19 monetization of content providers, and the algorithms used by its applications such as AdSense to
20 select content for demonetization, YouTube has reaped the benefits of Plaintiff’s and Class Members’
21 creation and posting of content on YouTube.com, and related participation in the YouTube
22 community.

23 112. YouTube’s conduct created a contract or quasi-contract through which YouTube
24 received and continues to receive a benefit of monetary compensation without providing the
25 consideration promised to Plaintiff and Class Members. Accordingly, YouTube will be unjustly
26 enriched unless ordered to disgorge those profits for the benefit of Plaintiff and Class Members.

27 113. Plaintiff and Class Members are entitled to and seek through this action restitution of,
28 disgorgement of, and the imposition of a constructive trust upon all profits, benefits, and
compensation obtained by YouTube from its improper conduct as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class defined above, respectfully request that this Court:

- A. Certify this case as a class action under Federal Rule of Civil Procedure 23, appoint Plaintiffs as Class representatives, and appoint the undersigned counsel as Class counsel;
- B. Enter injunctive and declaratory relief as appropriate under applicable law;
- C. Order restitution or actual damages to Plaintiffs and Class members;
- D. Award Plaintiffs and Class members trebled damages along with pre- and post-judgment interest, as prescribed by law;
- E. Award punitive damages, as permitted by law, in an amount to be determined by the jury or the Court;
- F. Order YouTube to provide notice to the Class of this action and the remedies entered by this Court;
- G. Award reasonable attorneys’ fees and costs as permitted by law; and
- H. Enter such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: July 13, 2017

Respectfully submitted,

By: /s/ Todd M. Friedman
 Todd M. Friedman (State Bar No. 216752)
 Adrian R. Bacon (State Bar No. 280332)
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