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9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN JOSE DIVISION**

13  
14 MICHAEL DEVANEY, NICHOLAS  
15 ARRIETA, and SARA YBERRA,  
16 individually and on behalf of all others  
similarly situated,

17 Plaintiffs,

18 v.

19 GOOGLE LLC and ALPHABET INC.,

20 Defendants.  
21

Case No. 5:20-cv-04130

**CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Michael Devaney, Nicholas Arrieta, and Sara Yberra (collectively,  
2 “Plaintiffs”), acting individually and on behalf of all others similarly situated, bring this  
3 action for damages and equitable relief under the Sherman Act, 15 U.S.C. § 2, and the  
4 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* against Defendants  
5 Google LLC and Alphabet Inc. (collectively, “Google”).

6 **NATURE OF THE CASE**

7 1. Google has achieved an illegal monopoly by eliminating competition in  
8 digital display advertising. Specifically, Google gained dominance in the display  
9 advertising ad tech stack through acquisition of competitors, exclusivity provisions,  
10 interoperability/compatibility design choices, and development of its analytics services.  
11 With its ability to track millions of users across millions of sites and apps, other  
12 publishers cannot compete with Google’s informational advantage.

13 2. Google’s market power in search and display has allowed it to charge supra-  
14 competitive prices to advertisers. Although online ad auctions can be designed to drive  
15 prices to competitive levels, Google’s role in running the auctions on behalf of both  
16 buyers and sellers (including when Google itself is the seller, as it is for its Google search  
17 supply and for YouTube and its other properties) gives it the incentive and ability to bias  
18 auction prices.

19 3. In the digital advertising market, it is nearly impossible to advertise online  
20 except through Google’s advertising services. Resulting harms include higher advertising  
21 prices, higher consumer prices, decreased revenue for online newspapers and other web  
22 publishers, and overall reduced competition in the buying and selling of digital  
23 advertising. Consumers, of course, ultimately suffer the consequences of any abuse of  
24 market power by Google. When Google charges supra-competitive prices to advertisers,  
25 those excessive payments lead to an increase in the price consumers pay for goods and  
26 services throughout the economy.

27 4. Plaintiffs, like other class members placed advertisements online through  
28 Google as an intermediary. Like other class members, Plaintiffs overpaid and suffered

1 economic loss resulting from Google’s monopoly in relevant markets, and therefore seek  
2 damages and injunctive relief.

3 **PARTIES**

4 5. Plaintiff Michael Devaney is a Sarasota, Florida resident who purchased  
5 digital advertisements from Google during the class period for his supermarket website  
6 and photography business.

7 6. Plaintiff Nicholas Arrieta is a Miami, Florida resident who purchased digital  
8 advertisements from Google during the class period for his online website selling bicycle  
9 hardware and related retail.

10 7. Plaintiff Sara Ybarra is a Spokane, Washington resident who purchased  
11 digital advertisements from Google during the class period for her moving business.

12 8. Defendant Google LLC is a limited liability company organized under the  
13 laws of Delaware with its principal place of business in Mountain View, California.  
14 Google LLC is a technology company that provides internet-related services and  
15 products, including online advertising technologies and a search engine

16 9. Defendant Alphabet Inc. is a corporation organized under the laws of  
17 Delaware with its principal place of business in Mountain View, California. Google LLC  
18 is a wholly owned subsidiary of Alphabet.

19 **JURISDICTION AND VENUE**

20 10. This Court has original jurisdiction over Plaintiffs’ federal antitrust claim  
21 under Clayton Act, 15 U.S.C. § 15. The court also has jurisdiction over this action under  
22 the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d) because at least one class  
23 member is of diverse citizenship from Defendants, there are more than 100 class members  
24 nationally, and the aggregate amount in controversy exceeds \$5,000,000.

25 11. This Court may exercise jurisdiction over Google because Google’s  
26 principal place of business is located within this District. Google has established  
27 sufficient contacts in this District such that personal jurisdiction is appropriate.

1 12. Venue is proper in this District under 28 U.S.C. § 1391. Google’s principal  
2 place of business is in this district and it regularly conducts business here. A substantial  
3 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District.

4 13. Assignment is proper to the San Jose Division of this District under Local  
5 Rule 3-2(c)-(e), as a substantial part of the events or omissions giving rise to Plaintiffs’  
6 claims occurred in Santa Clara County.

7 **FACTUAL ALLEGATIONS**

8 **A. Digital Advertising Background**

9 14. Advertising campaigns used to be planned and managed by media buyers.  
10 If that media buyer needed to help a toy manufacturer reach parents of children, she might  
11 place an ad in *Parents Magazine*, or in the family section of the local newspaper.  
12 Advertising used to be something that could be placed, counted, then seen in the front  
13 cover spread of a magazine.

14 15. This is not how digital advertising works today. Digital advertising is  
15 automated and data-driven, involving data scientists, mathematicians, and computer  
16 programmers who, behind the scenes, use advanced statistical tools to optimize  
17 advertising campaigns, by micro-targeting users and constantly tweaking algorithms.

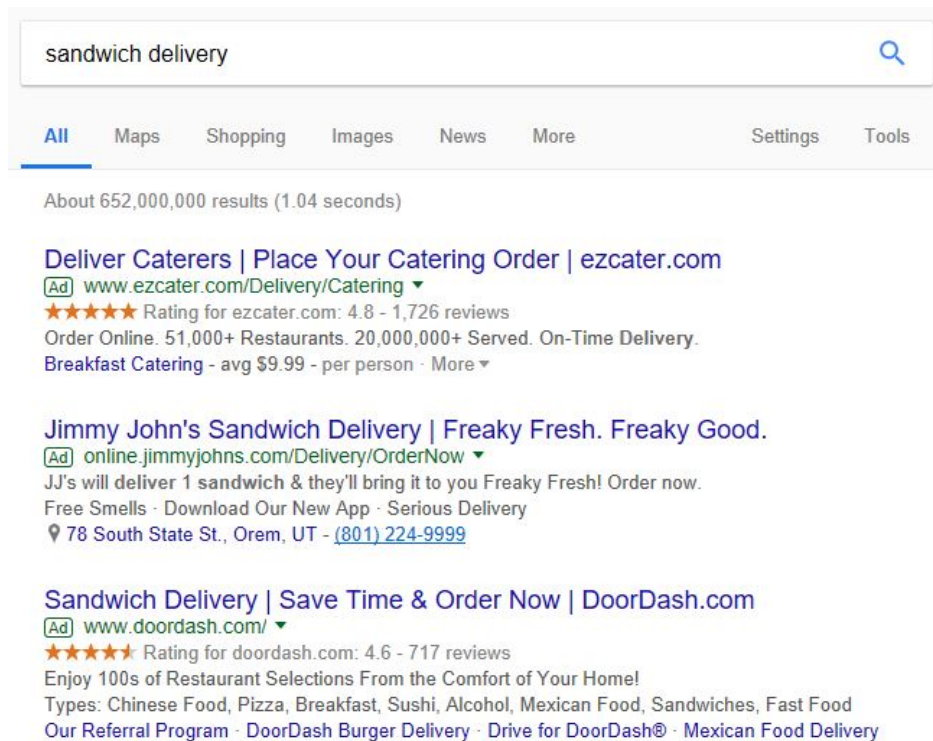
18 16. In the US, \$125 billion was spent on digital advertising in 2019, accounting  
19 for over half of total ad spending.<sup>1</sup>

20 17. The two big contenders in digital advertising are search and display  
21 advertising.

22 18. Search advertising is a service that businesses pay for to show up in search  
23 results on search engine result pages, predominately Google Search. Because the  
24 audience is targeted to those who are actually searching for a product or service, an  
25

26  
27 <sup>1</sup>See [https://www.iab.com/wp-content/uploads/2020/05/FY19-IAB-Internet-Ad-Revenue-  
28 Report\\_Final.pdf](https://www.iab.com/wp-content/uploads/2020/05/FY19-IAB-Internet-Ad-Revenue-Report_Final.pdf).

1 advertiser only pays when the user clicks on the ad. For example, if a user searches for  
2 sandwich delivery, the search advertising results looks something like this<sup>2</sup>:



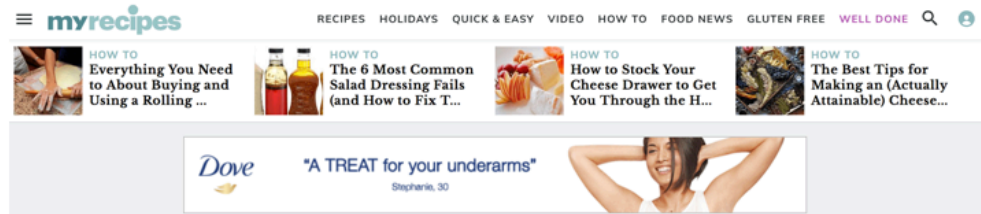
16 19. Search advertising is designed to reach customers who have already shown  
17 an interest in purchasing a product or service and may be close to making a purchasing  
18 decision. Search advertising is attractive to local or small businesses not seeking to reach  
19 a broad audience. For example, if a citizen finds himself in need of a plumber, and  
20 searches for plumbers on Google, search advertising will place ads for local plumbers  
21 above the organic search results.

22 20. The downside to search advertising for advertisers themselves is that they  
23 have to wait for someone to search for their product or service in order to direct  
24 prospective customers to their business.

25  
26  
27  
28 <sup>2</sup>See <https://www.disruptivestatic.com/wp-content/uploads/2018/02/sandwich-delivery-google-search.jpg>.

21. Suppliers of display advertising are known as publishers (e.g. online newspapers and other content creators). Publishers employ third party tools to find advertisers and sell advertising space available on their websites.

22. Display advertising is the advertising that appears alongside content on publishers’ websites. For example, an ad for *Dove* might appear on a cooking website, “myrecipes” as a banner or a side bar<sup>3</sup>:



Or as side bar ads, like this:

### The 5 Essential Baking Tools You Should Have in Your Kitchen



23. In display advertising, an active search for the particular product by the internet user is not required; but the key to effective display ads is that they are placed on websites likely to be viewed by the advertiser’s target audience and/or those most likely to purchase the advertised products or services.

24. \$38.1 billion was spent on display advertising in 2019 in the US, representing a 13.8% increase from 2018.<sup>4</sup> In 2020, spending on display media is

<sup>3</sup> See <https://www.disruptiveadvertising.com/adwords/google-display-network>.

<sup>4</sup> See [https://www.iab.com/wp-content/uploads/2020/05/FY19-IAB-Internet-Ad-Revenue-Report\\_Final.pdf](https://www.iab.com/wp-content/uploads/2020/05/FY19-IAB-Internet-Ad-Revenue-Report_Final.pdf).

1 expected to hit \$41.9 billion, with a 15.1% year-over-year increase, again outpacing  
2 search advertising.<sup>5</sup>

3 25. Outside of Google, Facebook, and a few others, the rest of the market, which  
4 includes thousands and thousands of independent news publishers (that depend on digital  
5 advertising as their primary source of revenue), will shrink by 11 percent.<sup>6</sup>

6 26. Search advertising and display advertising serve different purposes.  
7 Advertisers do not regard them as substitutes for each other. The Interactive Advertising  
8 Bureau separates display and search categorically for annual revenue analysis purposes.

### 9 **B. Google Dominates Both Search and Display Online Advertising Services**

10 27. Alphabet's total ad revenue in 2019 was \$133 billion, making up 82% of  
11 total revenue.<sup>7</sup> Google is estimated to have captured 37.2% of all U.S. digital ad spend in  
12 2019.<sup>8</sup>

13 28. Google's revenue from display ads comes from ads placed on Google's own  
14 properties (Google Maps, Gmail, etc.) and ads placed with third party publishers (digital  
15 versions of newspapers, online content creators, etc.). Google sells ad space on third party  
16 websites to advertisers as an intermediary.

17 29. When an ad is viewed through a third-party publisher, for example, *The*  
18 *Washington Post*, Google pays the publisher a portion of the price that the advertiser paid  
19 to Google for its ad placement services. The portion Google keeps is the "take rate", or  
20 difference between what advertiser pays and publisher receives. Google's take rate is  
21 estimated to be about 40%.<sup>9</sup>

22 30. Google has an incentive to increase ads placed on its own property sites  
23 because Google does not have to share the collected price of the ad with a third-party  
24 publisher.

25 \_\_\_\_\_  
26 <sup>5</sup> See <https://www.marketingcharts.com/advertising-trends/spending-and-spenders-111801>.

27 <sup>6</sup> See <https://app.hubspot.com/documents/4934439/view/35422028?accessId=bc7916>.

28 <sup>7</sup> See [https://abc.xyz/investor/static/pdf/2019Q4\\_alphabet\\_earnings\\_release.pdf](https://abc.xyz/investor/static/pdf/2019Q4_alphabet_earnings_release.pdf).

<sup>8</sup> See <https://www.emarketer.com/content/google-maintains-wide-lead-in-net-us-search-ad-revenues>.

<sup>9</sup> See <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study#interim-report>.

1           **1. Google’s Search Advertising Practices and Market Share**

2           31. Google by far holds the highest share of search advertising revenue in the  
3 U.S. In 2019, its share was 73%.<sup>10</sup>

4           32. Google makes space on its search result pages available to advertisers  
5 through an auction process that occurs each time a user runs a search. Google starts the  
6 auction by first finding all the ads with keywords matching the search. Google then only  
7 displays ads with sufficiently high “rank” based on factors like the advertiser’s bid,  
8 quality of the ad, user location, and type of device user is using. The auction process is  
9 repeated for every search performed on Google Search, so different searches may lead to  
10 different auctions, which may lead to different advertisements being displayed.

11           33. Although Google claims its prices are set via auction, Google controls and  
12 frequently raises the price of its search advertising by setting a high reserve price. (An ad  
13 will not sell if it does not meet the reserve price.) A majority of winning bids are just at  
14 the reserve price.

15           **2. Google’s Dominance in the Ad Tech Stack and Display Advertising**

16           34. Google is a major supplier of display advertising and owns multiple products  
17 that supply it such as YouTube, Google Maps, and Google Play.

18           35. When an internet user visits a website, in the milliseconds that it takes for  
19 that page to load, there are real-time auctions running in the background that determine  
20 which ads to display on *that particular user’s* page. These auctions are run by SSPs and  
21 DSPs in the ad tech stack as described below.

22           36. Suppliers (online publishers) of display advertising employ publisher ad  
23 servers (PAS) to accept, store, and manage ads, choose where and when ads appear, and  
24 track the effectiveness of ad campaigns. The placement of ads is determined based on  
25 bids from advertisers and/or arrangements publishers have with the advertisers.

26  
27  
28 \_\_\_\_\_  
<sup>10</sup> See *Id.*



1 37. Suppliers of ad space/publishers rely on supply side platforms (SSP) to run  
2 auctions, interface directly with advertisers, and optimize available supply ad-space  
3 inventory.

4 38. The advertisers (or market demand side) rely on advertiser ad servers (AAS)  
5 to store ads, deliver them to publishers, and records transactions. Advertisers also employ  
6 demand side platforms (DSP) to purchase digital advertising by bidding in auctions.

7 39. Together, the PAS, SSP, AAS, and DSP comprise the ad tech stack. By  
8 connecting publishers and advertisers, an ad tech provider functions as an intermediary,  
9 similar to a broker.

10 40. Until fairly recently, different firms provided various services in the ad tech  
11 stack, and intermediaries did not own the publisher or advertise. This is no longer the  
12 case – After a series of acquisitions, Google now dominates and controls the ad tech  
13 stack. Since 2007, Google has made at least nine key acquisitions in the interest of  
14 gaining control of the entire ad tech stack.

15 41. Google purchased a publisher ad server in 2007 called DoubleClick, for  
16 example; the technology from that company served as the basis for Google’s current  
17 publisher ad server. It acquired AdMob in 2009; AdMob owned technology for serving  
18 ads on apps. It purchased Invite Media in 2010, which Google developed into its main  
19 demand side platform. In 2011, it purchased AdMeld, a supply side platform that it  
20 integrated into AdX, the Google exchange. And in 2014, Google bought Adometry, an  
21 analytics and attribution provider it then integrated into Google Analytics. Together,  
22 these acquisitions reveal a sustained effort to occupy the entire ad tech stack as well as  
23 the related analytics market through mergers.

24 42. In the supply of advertising space, Google now holds at least 90% of the  
25 PAS market through multiple products such as Google Ad Manager and Google Double  
26 Click for Publishers. Google’s AdX product alone holds about 50% of the SSP market.

1 43. Likewise, on the advertiser-demand side, Google controls a substantial  
2 majority of the DSP market (reportedly over 62%) and holds a substantial share of AAS  
3 market.

4 44. By consolidating key portions of the ad tech stack for display advertising,  
5 Google can now readily broker transactions on both sides and steer advertisers to its own  
6 digital display platforms. Google's acquisitions and access to every level of display  
7 advertising service industry have enabled Google to eliminate competition through a  
8 variety of anticompetitive policies and activities.

9 45. Publishers and advertisers have little choice but to go through Google's  
10 services.

11 46. For example, Nexstar Media Group Inc., the largest local news company in  
12 the U.S., tested what would happen if it stopped using Google's technology to place ads  
13 on its websites. Over several days, the company's video ad sales plummeted. "That's a  
14 huge revenue hit," said Tony Katsur, senior vice president at Nexstar. After its brief test,  
15 Nexstar switched back to Google.<sup>11</sup>

16 **C. Google Has Used its Dominance as a Search Engine and Other Products to**  
17 **Create and Maintain a Monopoly for Display Advertising Services**

18 **1. Google's Dominance as a Browser and the Significance of User Data**

19 47. Google has an enormous advantage over advertisers and publishers due to  
20 sheer volume of information it obtains about consumers. As former CEO Eric Schmidt  
21 boasted, "We know where you are. We know where you've been. We can more or less  
22 know what you've been thinking about."<sup>12</sup>

23 48. Online advertising is more effective when it is targeted, displaying products  
24 or services a user is likely to want. Accordingly, user data including gender, age, location,  
25 and browsing history influences not just the type of ads a user will see, but also price  
26 advertisers are willing to pay. "The exact same ad, on the same website, at the same time,

27 <sup>11</sup> See <https://www.wsj.com/articles/how-google-edged-out-rivals-and-built-the-worlds-dominant-ad-machine-a-visual-guide-11573142071>.

28 <sup>12</sup> See <https://techcrunch.com/2010/09/07/eric-schmidt-ifa>.

1 could be worth vastly different amounts to two different buyers depending on how much  
2 they know about the consumer being targeted,” explains Ari Paparo, now founder and  
3 CEO of advertising company Beeswax and a former Google executive “User data is  
4 everything.”

5 49. The prices that any company is able to fetch for its ads depend on two crucial  
6 factors: the ability to identify *who* is loading the page, and the ability to then connect the  
7 user’s identity with more information about the user.

8 50. The targeting of display ads begins the moment a reader visits any website.  
9 Typically, the reader’s IP address, location, and the URL of the page the reader visits are  
10 swiped from the reader’s browser without their explicit knowledge. This information is  
11 used to run these ad auctions. The goal is to build as specific a portrait about the reader  
12 as possible—by linking their device with their identity—and cookies are a common tool  
13 for doing so.

14 51. Google has acted to make it harder for its competitors to obtain similar  
15 information. In early 2020, for instance, Google announced that it would “phase out”  
16 third-party cookies that helped advertisers target consumers based on demographics, past  
17 browsing history, and other information. Without third-party cookies, it is much harder  
18 for advertisers and competitors to efficiently bid on ads. That is not true for Google,  
19 which continues to have other sources for gleaning robust data on consumers.

20 52. If a company that sells online ads can know what their readers are reading  
21 on *other* sites, then they can target the users based on that information when the user  
22 returns to their own site. To illustrate the supreme advantage of Google over any other  
23 publishers, let’s consider two hypothetical online publishers, CNBC and *The New York*  
24 *Times*. For example, say Michael visits CNBC’s website in the mornings and reads about  
25 the markets, but visits *The New York Times* in the evenings and only reads the book  
26 review section. CNBC knows Michael is someone who follows the markets and might  
27 monetize his view at a \$30 CPM (cost per thousand). The *Times* knows that Michael is  
28 someone who likes to read books so might only monetize Michael at a \$10 CPM. If

1 the *Times* can somehow find out that Michael is reading CNBC in the mornings, then  
2 when Michael visits the *Times* book section in the evening, the *Times* can target him as  
3 someone who follows the markets and monetize him at \$30, too.

4 53. Would CNBC want to share with the *Times* what Michael reads on  
5 cnbc.com? Of course not. The two are competitors on the advertising side of the market.  
6 If CNBC is selling its audience of financial readers at a cost of \$30, and the *Times* can  
7 copy CNBC's readers and their reading patterns, then the *Times* could theoretically  
8 undercut CNBC and sell ads targeted to CNBC financial readers for, say, \$20 instead of  
9 \$30.

10 54. But publishers like the *Times* and CNBC have no choice but to share this  
11 information with Facebook and Google.

12 55. Google, which now tracks users on over 70 percent of the top one million  
13 sites, also uses its ability to track users across the internet to extract an advantage in  
14 advertising markets.<sup>13</sup> Google tracks users via its analytics and ad-serving products,  
15 which Google consolidated and rebranded as the Google Marketing Platform.

16 56. Google runs auctions through which publishers now sell their own  
17 advertising. Unlike in finance, there are several auction markets where digital ads trade.  
18 Anyone can create one. But Google ensures its own advertising inventory (e.g. YouTube)  
19 can only be bought through their *own, proprietary* auctions. Google made almost \$20  
20 billion last year from selling other companies' ads.<sup>14</sup> This is why Google today is the  
21 largest seller of advertising, globally, period.

## 22 **2. Google's Unfair Practices in Search Products**

23 57. Google operates the default internet search platform in the United States; at  
24 least 90% of all internet searches are conducted through Google Search. Consequently,  
25 Google is the dominant source for search advertising. Companies seeking to promote  
26 their products or services online are de facto required to purchase search advertising space

27 <sup>13</sup>[https://www.cs.princeton.edu/~arvindn/publications/OpenWPM\\_1\\_million\\_site\\_tracking\\_measurem  
28 ent.pdf](https://www.cs.princeton.edu/~arvindn/publications/OpenWPM_1_million_site_tracking_measurement.pdf).

<sup>14</sup> See [https://abc.xyz/investor/static/pdf/20180204\\_alphabet\\_10K.pdf?cache=11336e3](https://abc.xyz/investor/static/pdf/20180204_alphabet_10K.pdf?cache=11336e3).

1 from Google. Google has taken advantage of this dominance in the search advertising  
2 market to drive out competition in the separate market for display advertising services.

3 58. When a Google Ads account is established for use in placing search  
4 advertisements, Google Ads is set as the default account for placing both search and  
5 display advertisements. And to disadvantage rivals, Google restricts access to data  
6 concerning web searches performed on Google Search.

7 59. When consumers run Google searches, Google collects and retains data  
8 related to the searches. DSPs and advertisers use this information to craft more effective  
9 advertising campaigns. Google, however, withholds this information from rival DSPs and  
10 advertisers using rival service providers. The result of this policy is that, in order to gain  
11 access to the search data over which Google has monopoly control, an advertiser must  
12 agree to use Google's products in the separate display advertising services market.

13 60. For example, GoogleAds, (a DSP) relies on algorithms that match keywords  
14 selected by advertisers to user search terms in order to determine which searches would  
15 be good matches for which search ads.

16 61. Google similarly uses its dominance in the video-ad publishing market  
17 segment to coerce advertisers to use Google's display advertising services. Google-  
18 owned YouTube runs up to 50% of all video display ads not appearing on Facebook and  
19 Amazon. After Google purchased YouTube, it initially made YouTube's inventory of  
20 display advertisements available to any advertising service provider. But in 2015, Google  
21 prevented non-Google advertising service providers from purchasing advertising space  
22 on YouTube. As a result, if an advertiser wants to purchase any of the valuable  
23 advertising space on YouTube, it must use Google's advertising services and cannot use  
24 any of Google's rivals' advertising services.

25 62. In addition to its ad tech stack services, Google offers Ads Data Hub (ADH)  
26 which allows advertisers to view data from ad campaigns, which users were reached by  
27 search ad campaigns, and combine the data with third party data to adjust display ad  
28

1 strategy. However, ability to use the data has a built-in restriction in that the data can only  
2 be sent to another Google service and cannot otherwise be exported.

3 63. By conditioning advertiser access to Google search data and YouTube's  
4 advertising platform on the purchase of Google's advertising services, Google effectively  
5 forces advertisers to use Google for all aspects of their campaigns.

#### 6 **D. Other Forms of Anticompetitive Conduct**

7 64. Google conceals key information from publishers and advertisers in acting  
8 as an intermediary. Parties on both sides of the transaction are not aware of the price  
9 actually paid to Google for an ad placement. Studies have shown that about 15% of  
10 advertising transaction costs are unaccounted for.<sup>15</sup>

11 65. Google generally maintains a culture of secrecy around its services, an  
12 indication of market power. Service providers in competitive markets generally must  
13 provide to their customers detailed accounts of services they provide to justify the prices  
14 they charge.<sup>16</sup>

15 66. In 2016 Google launched AMP for the stated purpose of loading webpages  
16 faster on mobile devices. AMP pages are listed first in a search, encouraging publishers  
17 to use them. AMP sends users to content on pages hosted by Google, thereby denying  
18 content providers as much access to, and data about, their own users as they would  
19 normally get. This weakens the content providers in the long run, allowing Google's own  
20 properties to slowly gain a greater share of consumer attention. Although one might begin  
21 by characterizing content providers as complements, this creeping strategy by Google to  
22

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23 <sup>15</sup> PricewaterhouseCoopers recently concluded a study in which it attempted to track various  
24 advertisers' payments through the ad tech stack. It concluded that a remarkable 15% of ad spend  
25 simply went missing somewhere between the advertisers and publishers: "15% of advertiser spend –  
26 an "unknown delta", representing around one-third of supply chain costs – could not be attributed."  
27 See Abi Gibbons, Time for change and transparency in programmatic advertising, ISBA MEMBER  
28 PORTAL (May 6, 2020), <https://www.isba.org.uk/news/time-for-change-and-transparency-in-programmatic-advertising/>. This study did not focus exclusively on Google's intermediation services but it nonetheless reflects the difficulty advertisers face when trying to understand where their money goes, which itself indicates the market is not working efficiently.

<sup>16</sup> <https://www.omidyar.com/sites/default/files/Roadmap%20for%20a%20Case%20Against%20Google.pdf>.

1 host content on its own pages—by a variety of methods—demonstrates that Google views  
2 content providers as competitors in the long run for the capture of ad dollars. Google  
3 doesn't want to develop content so that it wins more Pulitzer Prizes than the New York  
4 Times or the Washington Post; that is an expensive undertaking. Rather, Google wants  
5 to host that attractive content so it can capture the ad dollars that otherwise would go to  
6 those publishers. That is the reason it steers consumers to Google properties and away  
7 from content providers. That conduct constitutes foreclosure of horizontal competitors.

#### 8 **E. Government Investigations into Google's Monopolistic Conduct**

9 67. In July 2019, the U.S. Department of Justice announced that it had opened  
10 an investigation into whether Google is committing illegal monopolistic acts. The DOJ  
11 stated that its probe would focus on whether and how Google and other leading online  
12 platforms “have achieved market power and are engaging in practices that have reduced  
13 competition, stifled innovation, or otherwise harmed consumers.”

14 68. In September 2019, 48 state attorneys general, led by Texas Attorney  
15 General Ken Paxton, disclosed their own probe into whether Google is violating the  
16 antitrust laws. In announcing the investigation, Paxton referred to “evidence that  
17 Google's business practices may have undermined consumer choice, stifled innovation,  
18 violated users' privacy, and put Google in control of the flow and dissemination of online  
19 information.”

20 69. On May 15, 2020, the Wall Street Journal reported—based on information  
21 from “people familiar with the matter”—that both the DOJ and the state attorneys general  
22 likely will file antitrust lawsuits against Google as soon as the summer and are well into  
23 planning for such litigation. The Journal reported that “all signs point toward [the DOJ]  
24 bringing a case” and that “[m]uch of the states' investigation has focused on Google's  
25 online advertising business. The company owns the dominant tool at every link in the  
26 complex chain between online publishers and advertisers.”<sup>17</sup>

27 \_\_\_\_\_  
28 <sup>17</sup> See <https://www.wsj.com/articles/justice-department-state-attorneys-general-likely-to-bring-antitrust-lawsuits-against-google-11589573622?mod=searchresults&page=1&pos=17>.

1 70. Google has also faced regulatory action in Europe. The European  
2 Commission fined Google \$2.7 billion in 2017 for rigging search results to favor its own  
3 online shopping portal and \$1.7 billion in 2019 for dictating to other websites how they  
4 can display search results from Google’s competitors.

5 71. The U.K. is also considering limiting Google’s ability to set self-serving  
6 defaults and enforcing data sharing and/or feature interoperability to help rivals compete  
7 in relevant markets. Of particular interest is forcing Google to separate its ad server arm  
8 from the rest of the business. The U.K.’s Competition and Markets Authority (CMA)  
9 launched the market study in July of 2019— a couple of weeks after the U.K.’s data  
10 watchdog published its own damning report setting out major privacy and other concerns  
11 around programmatic advertising. Based on initial findings from the study, it says there  
12 are “reasonable grounds” for suspecting serious impediments to competition in the online  
13 platforms and digital advertising market.

14 The report specifically flags three areas where it suspects harm — namely:

- 15 • **the open display advertising market** — with a focus on “the conflicts of  
16 interest Google faces at several parts of its vertically integrated chain of  
17 intermediaries”;
- 18 • **general search and search advertising** — with a focus on “Google’s  
19 market power and the barriers to expansion faced by rival search engines”;

20 Other concerns raised in the report include problems flowing from a lack of  
21 transparency in the digital advertising market; and the difficulty or lack of choice for  
22 consumers to opt out of behavioral advertising.<sup>18</sup>

23 72. In December 2019, France’s competition authority fined Google \$166  
24 million following a lengthy investigation into Google’s online advertising practices.  
25 France sanctioned Google for adopting “opaque and difficult to understand” rules for its  
26 ad platform and for applying them in an “unfair and random manner.” According to

27 \_\_\_\_\_  
28 <sup>18</sup> See <https://techcrunch.com/2019/12/18/uks-competition-regulator-asks-for-views-on-breaking-up-google>.



1 TechCrunch, the French governing body also found that “another element of Google ad  
2 rules could lead sites to favor a content policy aligned with its own ad-funded services—  
3 thereby pushing online publishers to adopt an economic model that deeds and benefits its  
4 own.” The French governing body summarized its bases for fining Google as follows:

5 [T]he French Competition Authority considers that the Google Ads operating rules  
6 imposed by Google on advertisers are established and applied under non-objective,  
7 non-transparent and discriminatory conditions. The opacity and lack of objectivity  
8 of these rules make it very difficult for advertisers to apply them, while Google has  
9 all the discretion to modify its interpretation of the rules in a way that is difficult  
10 to predict and decide accordingly whether the sites comply with them or not. This  
11 allows Google to apply them in a discriminatory or inconsistent manner. This leads  
12 to damage both for advertisers and for search engine users.

### 13 **IMPACT ON INTERSTATE TRADE AND COMMERCE**

14 73. Google’s conduct as alleged herein has had a substantial effect on interstate  
15 and intrastate commerce.

16 74. At all material times, Google participated in the marketing, promotion,  
17 distribution, and sale of publication and advertising services for display advertisements  
18 in a continuous and uninterrupted flow of commerce across state and national lines and  
19 throughout the United States.

20 75. Google’s conduct also had substantial intrastate effects in that, among other  
21 things, Google’s publication and advertising services for display advertisements were  
22 sold in each state, including California. At least thousands of individuals in each state,  
23 including California, were impacted by Google’s anticompetitive conduct. As alleged  
24 below, absent Google’s unlawful conduct, Plaintiffs and class members within each state,  
25 including California, would have paid less for digital advertising services.

### 26 **RELEVANT MARKETS**

27 76. Google’s anticompetitive conduct has restrained competition in the market  
28 for digital advertising services (encompassing the overall process that connects

1 advertisers and publishers, including Google) as well as in several distinct markets within  
2 this larger market.

3 77. Google used its dominant position in search and search advertising in the  
4 United States to restrict competition in the market for search advertising services. Google  
5 also has established itself as the dominant provider in the broad market for display  
6 advertising services (encompassing all of the various steps that are necessary to facilitate  
7 placement of digital advertisements into the available supply of display advertising space  
8 made available by publishers).

9 78. Google has also monopolized each of the relevant submarkets of the overall  
10 market for digital advertising services, including the broader markets for search  
11 advertising services and display advertising services, and the subsidiary markets for  
12 publisher ad servers, supply side platforms, demand side platforms, and advertiser ad  
13 servers. Its conduct had the intent and effect of suppressing competition in the search and  
14 display advertising services markets as well as in each of their component submarkets.

15 79. Google has branded its market power to integrate each component of digital  
16 display advertising services (PAS, DSP, AAS, SSP) into a single set of bundled services  
17 to prevent or discourage competitors (i.e., other display advertising service providers),  
18 publishers, and advertisers from selecting advertising service providers on a component-  
19 by-component basis. In short, Google's anticompetitive activity has frustrated the ability  
20 of each segment of the display advertising services process to function as a free and  
21 independent market.

22 80. There is no substitute for search advertising services or display advertising  
23 services. While advertisers and publishers can theoretically connect directly to buy and  
24 sell ad space and ads respectively, the vast majority do not for reasons of high inefficiency  
25 costs and are thus extremely dependent on third party services such as those Google  
26 provides. Furthermore, advertisers and publishers have become beholden to the vast,  
27 unmatched user data resources that only Google can provide.

28

1           81.     There are high barriers to entry for the search advertising services market,  
2 the display advertising market, and the component display advertising submarkets.  
3 Entering any of these markets requires a substantial investment to develop and implement  
4 the technology necessary to compete. Google’s conduct, such as leveraging its internet  
5 search platform dominance and denying interoperability in several respects, as described  
6 above, has made it exponentially more difficult for would-be market participants to  
7 effectively enter these markets and compete with Google. Google has accordingly used  
8 its market dominance to ensure that market entry by would-be competitors is infeasible.  
9 And Google’s conduct has made it impractical for existing market participants to  
10 compete, which has resulted in large numbers of companies exiting the relevant markets.

11           82.     The digital advertising services markets (services that facilitate ad sale  
12 transactions) are distinct from the advertisement inventory markets (spaces on websites  
13 that publishers make available for advertisers to purchase). At least thousands of  
14 companies act as publishers with display advertisement inventory, but in general, these  
15 companies do not offer the services that facilitate placement of advertisements into the  
16 supply of display advertising space. Only a few companies—Google chief among them—  
17 provide display advertising services.

18           83.     Similarly, although Facebook and Amazon also display a large amount of  
19 advertising content, they are not competitors in the brokering of ad sale transactions on  
20 the open web. They do not operate in the same display advertising services market as  
21 Google connecting independent entities—advertisers and publishers. Advertisers use  
22 display advertising services to gain access to a range of publication options. Publishers,  
23 in turn, use display advertising services to access a range of potential advertisers. Google  
24 operates in an open-ended market in which it facilitates the transactions between  
25 advertisers and publishers. Companies like Facebook and Amazon, by contrast, have their  
26 own in-house display advertising systems that they use to publish advertisements on their  
27 websites. An advertiser wishing to advertise on websites other than Facebook and  
28 Amazon would need to use display advertising service like Google’s. The advertising

1 services offered by Facebook and Amazon are not, therefore, reasonable substitutes for  
2 the system that Google offers.

3 **ANTITRUST IMPACT**

4 84. The purpose and effect of Google’s conduct was to prevent competition in  
5 the relevant markets. Absent Google’s conduct, each component of the digital advertising  
6 market would have been more competitive and class members would have financially  
7 benefited from the increased competition.

8 85. More vigorous competition would have benefited both the advertisers and  
9 the publishers that use digital advertising services.

10 86. Firms that provide digital advertising services make money in a variety of  
11 ways, including by retaining the difference between (1) what an advertiser pays the  
12 provider to place ads, and (2) the portion of that payment that the provider remits to a  
13 publisher for placing the ads on its website. With increased competition, advertisers  
14 would have paid less to have their ads placed, and publishers would have received more  
15 for placing the ads on their websites. But with Google stifling

16 87. competition and extracting monopoly rents as the dominant intermediary,  
17 both advertisers and publishers lost money. The decrease in competition caused by  
18 Google’s conduct has thus harmed Plaintiffs and class members in their business and  
19 property because advertisers have paid more than they otherwise would have and  
20 publishers have been paid less than they otherwise would have.

21 **TOLLING OF STATUTE OF LIMITATIONS**

22 **A. The Statutes of Limitations Never Began to Run Because Plaintiffs Did Not**  
23 **and Could Not Discover Their Claims.**

24 88. Plaintiffs and class members had no knowledge of Google’s anticompetitive  
25 conduct, or of facts sufficient to place them on inquiry notice of the claims asserted  
26 herein, during the class period and continuing thereafter.

27 89. Plaintiffs and class members paid for digital advertising at artificially  
28 inflated prices or otherwise suffered economic loss as a result of Google’s wrongful

1 exercise of monopoly power in the relevant market. Other than dealing directly with  
2 Google when using its digital advertising services, Plaintiffs had no means from which  
3 they could have discovered its wrongful conduct.

4 90. Throughout the class period, and continuing thereafter, there was no  
5 information in the public domain sufficient to put Plaintiffs and class members on notice  
6 that Google had wrongfully acquired a digital advertising monopoly or was using its  
7 monopoly power to charge supra-competitive digital advertising prices.

8 91. Because digital advertising is subject to antitrust regulation, it was  
9 reasonable for Plaintiffs and class members to presume that digital advertising was sold  
10 in a competitive market. A reasonable person under the circumstances would not have  
11 had occasion to suspect digital advertising was being sold at supra-competitive prices at  
12 any time during the class period.

13 92. Given the imbalance of power and knowledge, it was reasonable for  
14 Plaintiffs and class members not to suspect that Google was engaging in any unlawful  
15 anticompetitive behavior.

16 93. Plaintiffs allege a continuing course of unlawful conduct by Google,  
17 including conduct within the applicable limitation periods. That conduct has inflicted  
18 continuing and accumulating harm within the applicable statutes of limitations.

19 94. For these reasons, the statutes of limitations applicable to Plaintiffs' and  
20 class members' claims have been tolled with respect to the claims asserted herein.

21 **B. Google's Fraudulent Concealment Tolled Statute of Limitations.**

22 95. Additionally, the doctrine of fraudulent concealment tolled the statutes of  
23 limitations on Plaintiffs' claims. Google concealed its illicit conduct, both by failing to  
24 disclose its wrongful acquisition and maintenance of a digital advertising monopoly  
25 through exclusionary acts in the relevant market, and by affirmatively denying that it was  
26 engaged in such conduct.

27 96. Google has repeatedly publicly denied allegations by U.S. and foreign  
28 regulators that it was abusing its market power in the digital advertising market. When

1 the French Competition Authority fined Google \$166 million in late 2019, Google  
2 publicly defended its policies as purportedly needed to “protect [people] from  
3 exploitative and abusive ads.” Similarly, in response to recent news reports of impending  
4 antitrust actions against it by federal and state officials for monopolization, Google stated  
5 publicly that “[c]ompetition is flourishing, and publishers and marketers have enormous  
6 choice” which was plainly false.

7 97. Google’s anticompetitive monopoly conduct was inherently self-concealing  
8 because Google knew, its disclosure likely would have led to governmental enforcement  
9 activity or civil liability. Because Google’s antitrust violations were self-concealing and  
10 affirmatively concealed by Google, Plaintiffs and class members had no knowledge of  
11 Google’s antitrust violations or of any facts or information that would have caused a  
12 reasonably diligent person to suspect Google of having wrongfully acquired and  
13 maintained monopoly power during the class period. Therefore, the statutes of limitations  
14 applicable to Plaintiffs’ and class members’ claims were tolled throughout the class  
15 period by operation of Google’s fraudulent concealment.

### 16 CLASS ACTION ALLEGATIONS

17 98. Plaintiffs bring this lawsuit individually and as a class action on behalf all  
18 others similarly situated pursuant to Federal Rules of Civil Procedure (“Rule”) 23(a),  
19 (b)(2), and/or (b)(3). This action satisfies the numerosity, commonality, typicality,  
20 adequacy, predominance, and superiority requirements of Rule 23. The Nationwide Class  
21 is defined as:

22 All persons and entities in the United States that, from January 1, 2016 to the  
23 present, used Google’s digital advertising services to (1) place an ad on a  
24 website operated by another entity (advertisers) or (2) place an ad from a third  
25 party on their own website (publishers).

26 99. Excluded from the Class are the following persons and entities: Google, any  
27 entity or division in which Google has a controlling interest, and its legal representatives,  
28 officers, directors, assigns, and successors and the Judge to whom this case is assigned

1 and the Judge's staff. Plaintiffs reserve the right to amend the Class definitions if  
2 discovery and further investigation reveal that the Class should be expanded or otherwise  
3 modified.

4 100. Numerosity: Although the exact number of Class members is uncertain and  
5 can only be ascertained through appropriate discovery, the number is great enough such  
6 that joinder is impracticable. The disposition of the claims of these Class members in a  
7 single action will provide substantial benefits to all parties and to the Court. The Class  
8 members are readily identifiable from information and records in Google's possession,  
9 custody, or control.

10 101. Typicality: The claims of the representative Plaintiffs are typical in that  
11 Plaintiffs, like all Class members, advertise or advertised on another entity's website or  
12 publish or published ads from a third party on their own website. Plaintiffs, like all Class  
13 members, have been damaged and will continue to be damaged by Google's unfair  
14 business practices and monopolization of digital advertising service markets.

15 102. Commonality: There are numerous questions of law and fact common to  
16 Plaintiffs and Class members that predominate over any individual questions. These  
17 common legal and factual issues include the following:

- 18 a. Whether Google holds monopoly power in digital advertising service  
19 markets;
- 20 b. Whether, Google unlawfully acquired and maintained monopoly power in  
21 digital advertising service markets;
- 22 c. Whether Google engaged in unfair business practices that reduced  
23 competition in digital advertising service markets;
- 24 d. The amount of damages owed the class as a result of Google's illegal  
25 activity;
- 26 e. The form and content of injunctive relief;

27 103. Questions of law and fact common to members of the class will predominate  
28 over any questions that may affect only individual class members because Google acted

1 on grounds generally applicable to the class as a whole. For the same reason, class  
2 certification for purposes of adjudicating Plaintiffs' claims for injunctive relief is  
3 appropriate.

4 104. Adequate Representation: Plaintiffs will fairly and adequately protect the  
5 interests of Class members. Plaintiffs have retained attorneys experienced in the  
6 prosecution of class actions, including antitrust class actions, and Plaintiffs intend to  
7 prosecute this action vigorously.

8 105. Predominance and Superiority: Plaintiffs and Class members have all  
9 suffered and will continue to suffer harm and damages as a result of Google's unlawful  
10 and wrongful conduct. A class action is superior to other available methods for the fair  
11 and efficient adjudication of the controversy. Absent a class action, Class members  
12 would likely find the cost of litigating their claims prohibitively high and would therefore  
13 have no effective remedy at law. Absent a class action, Class members will continue to  
14 incur damages, and Google's misconduct will continue without remedy. Class treatment  
15 of common questions of law and fact would also be a superior method to multiple  
16 individual actions or piecemeal litigation in that class treatment will conserve the  
17 resources of the courts and the litigants and will promote consistency and efficiency of  
18 adjudication.

19  
20 **FIRST CAUSE OF ACTION**  
21 **Violations of Section 2 of The Sherman Act**  
22 **15 U.S.C. § 2**

23 106. Plaintiffs incorporate the allegations set forth above as if fully set forth  
24 herein.

25 107. Google wrongfully acquired and unlawfully maintained monopoly power in  
26 the relevant markets through the conduct alleged herein, including by leveraging its  
27 monopoly power in the online search and other markets to coerce the purchase and use  
28 of its display advertising services (an unlawful tying arrangement), acquiring rivals,



1 denying interoperability on several technological fronts, restricting competing firms’  
2 access to information, and rigging auctions that it controlled to its own advantage.

3 108. As a direct and proximate cause of Google’s conduct, Plaintiffs and  
4 members of the class have suffered antitrust injury. Plaintiffs and the class members paid  
5 significantly higher prices than they would have but for Google’s unlawful conduct. That  
6 conduct also deprived Plaintiffs and class members of improved quality and innovation  
7 in the relevant markets.

8 109. Plaintiffs and members of the class are entitled to damages, including treble  
9 damages, sustained as a result of Google’s monopolistic acts and practices.

10 110. Plaintiffs and members of the class are entitled to equitable relief as  
11 appropriate to cure Google’s monopoly conduct and restore competition in the relevant  
12 markets. Members of the class are regular users of digital advertising services and will  
13 continue to purchase such services and suffer further injury if Google’s monopoly in  
14 digital advertising is not ended.

15  
16 **SECOND CAUSE OF ACTION**

17 **Violations of the California Unfair Competition Law**  
18 **Cal. Bus. & Prof. Code § 17200, *et seq.***

19 111. Plaintiffs hereby incorporate by reference the allegations contained in the  
20 preceding paragraphs of this Complaint.

21 112. Plaintiffs bring this cause of action individually and on behalf of the  
22 Nationwide Class against Google.

23 113. California Business & Professions Code § 17200, *et seq.* (“UCL”) prohibits  
24 acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act  
25 or practice” and “unfair, deceptive, untrue or misleading advertising.”

26 114. Google’s conduct is unlawful in violation of the UCL because it violates  
27 Section 2 of the Sherman Act, 15 U.S.C. § 2.

28 115. Google has engaged in unfair business practices through the conduct alleged  
herein, which has restrained competition. Google’s conduct is unfair, in violation of the

1 UCL, because it violates California’s clearly established public policy forbidding  
2 monopolistic acts. Google wrongfully acquired and unlawfully maintained monopoly  
3 power in the relevant markets through the conduct alleged herein, including by leveraging  
4 its monopoly power in the online search and other markets to coerce the purchase and  
5 use of its display advertising services (an unlawful tying arrangement), acquiring rivals,  
6 denying interoperability on several technological fronts, restricting competing firms’  
7 access to information, and rigging auctions that it controlled to its own advantage.

8 116. Google’s practices, acts, and omissions also are unlawful in violation of the  
9 UCL because they offend public policy; are immoral, unethical, oppressive, outrageous,  
10 unscrupulous, and substantially injurious; and caused substantial harm, including in the  
11 form of artificially inflated prices, that greatly outweighs any possible utility from the  
12 practices.

13 117. Google’s conduct actually and proximately caused Plaintiffs and class  
14 members to lose money or property. On behalf of the class, Plaintiffs seek restitution,  
15 injunctive relief, and reasonable attorneys’ fees, as well as any other relief the Court may  
16 deem just or proper.

17 118. As a direct and proximate result of Google’s unfair and deceptive practices,  
18 Plaintiffs and Class members have suffered and will continue to suffer actual damages.

19 **REQUEST FOR RELIEF**

20 Plaintiffs, individually and on behalf of all others similarly situated, request the  
21 Court enter judgment against Google, and accordingly requests the following:

- 22 A. An order certifying the proposed Class and designating Plaintiffs as the named  
23 representatives of the Class and designating the undersigned as Class Counsel,  
24 pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3);  
25 B. An order for injunctive relief to restore competition in the relevant markets;  
26 C. An award to Plaintiffs and Class members of compensatory, actual, exemplary,  
27 and statutory damages, including treble damages, as provided by law, and  
28

1 restitution to the class in amount to be proven at trial, plus interest in accordance  
2 with law;

3 D. An award of attorneys' fees and costs pursuant to all applicable laws;

4 E. An award of pre-judgment and post-judgment interest, as provided by law;

5 F. Leave to amend the Complaint to conform to the evidence produced at trial;  
6 and

7 G. Such other relief as may be appropriate under the circumstances to redress the  
8 harm caused by Google's unlawful conduct.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs, individually and on behalf of all others similarly situated, hereby  
11 demand a trial by jury as to all matters so triable pursuant to Federal Rule of Civil  
12 Procedure 38.

13  
14 Respectfully submitted,

15 Dated: June 22, 2020

/s/ Tina Wolfson

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