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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

PRADEEP SHAH, on behalf of himself and
all other stockholders of GOOGLE, INC.,
Plaintiff,

v.

**SERGEY BRIN,
LARRY PAGE,
ERIC E. SCHMIDT,
L. JOHN DOERR,
DIANE B. GREENE,
JOHN L. HENNESSY,
ANN MATHER,
PAUL S. OTELLINI,
KAVITARK RAM SHRIRAM,
SHIERY M. TILGHMAN,
SHONA L. BROWN,
ARNNON GESHURI,
JONATHAN J. ROSENBERG, and
DOES 1-30, Inclusive,**
Defendants,
and
GOOGLE, INC., a Delaware corporation,
Nominal Defendant.

Case No.

114CV264512
SHAREHOLDER DERIVATIVE

COMPLAINT FOR DAMAGES FOR:

1. **BREACH OF FIDUCIARY DUTY,**
2. **ABUSE OF CONTROL,**
3. **GROSS MISMANAGEMENT,**
4. **WASTE OF CORPORATE ASSETS**

DEMAND FOR JURY TRIAL

**ENDORSED
FILED**
APR 29 2014
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
By _____ Deputy

114CV264512

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1 Plaintiff PRADEEP SHAH, on behalf of himself and all other stockholders of Google, Inc.
2 (“Google” or the “Company”), by his attorneys, alleges the following based on his investigation and
3 the investigation of his counsel, including a review of legal and regulatory filings, press releases,
4 and media reports about Google.

5 I. NATURE OF THE ACTION

6 1. Silicon Valley has flourished due to innovation. A small group of high-level
7 executives at Google, however, have created and/or ratified policies and protocols that substantially
8 suppressed innovation for nearly 10 years—all for personal gain to the detriment of Google and its
9 shareholders. These Google executives entered into express, secret, and illegal non-solicitation
10 agreements with high-level executives at other companies, such as Apple, Intel, and Intuit, with
11 whom they had professional, personal, conspiratorial, and underhanded relationships. These
12 agreements provided that Google and the other companies would not recruit employees from each
13 other. These agreements not only hurt employees of these companies, but also the companies
14 themselves because Silicon Valley’s innovation is based in large part on the frequent turnover of
15 employees, which causes information diffusion and spurs innovation. This shareholder derivative
16 action seeks to recover damages on behalf of Google caused by the acts and omissions of Google’s
17 high-level executives and directors.

18 2. The conspiracy is heavily documented by e-mails, which were introduced in other
19 court proceedings, including the following documents:

20 3. In September 2007, Defendant Paul S. Otellini—then a Member of Google’s Board
21 of Directors and Intel’s Chief Executive Officer (“CEO”) and President—clarified Intel’s
22 relationship with Google in an e-mail to Intel personnel with the subject “**global gentleman**
23 **agreement with Google.**” When asked if he was aware of any agreement with Google prohibiting
24 Intel from recruiting Google’s senior talent, Otellini replied, “[Google and Intel] have nothing
25 signed. **We have a handshake ‘no recruit’ between eric [Schmidt] and myself. I would not like**
26 **this broadly known.**” Defendant Eric E. Schmidt was Google’s CEO at that time (Figure 1).

Figure 1

To: Thompson, Gabrielle[/O=INTEL/OU=AMERICAS01/CN=Workers/cn=Thompson, Gabrielle];
Murray, Patty[/O=INTEL/OU=AMERICAS01/CN=Workers/cn=Murray, Patty]
From: Otellini, Paul
Sent on behalf of: Otellini, Paul
Sent: Thur 9/6/2007 7:41:23 PM
Importance: Low
Sensitivity: None
Subject: RE: global gentleman agreement with Google -- Privileged & Confidential
Categories: 0x00000000

Let me clarify. We have nothing signed. We have a handshake "no recruit" between eric and myself. I would not like this broadly known. paul

4. In October 2005, Defendant Schmidt, then Google's CEO, expressed concern regarding "a paper trail over which we can be sued later" when Defendant Shona L. Brown, then-Google's Senior Vice President of Human Resources, e-mailed Schmidt a draft list of companies on the Google's "Do Not Call" and "Sensitive" lists and its policy protocols. In her e-mail, Brown asked Schmidt if Omid Kordestani, Google's then-Senior Vice President of Global Sales and Business Development, could share "with [eBay/PayPal] the rules as they pertain to them?" Schmidt replied, "I prefer that Omid do it verbally" (Figure 2).

Figure 2

On 10/5/05, Eric Schmidt <eschmidt@google.com> wrote:
I would prefer that Omid do it verbally since I don't want to create a paper trail over which we can be sued later? Not sure about this.. thanks Eric

From: Shona Brown [mailto:shona@google.com]
Sent: Wednesday, October 05, 2005 4:06 PM
To: Omid Kordestani
Cc: Eric Schmidt
Subject: Re: Fwd: Protocol for "Do Not Cold Call" and "Sensitive" Companies ---please comment to Arnon ASAP if you have any changes

I am fine with this.

Eric -- any concerns with Omid sharing with Ebay/PP the rules as they pertain to them?
slb

II. JURISDICTION AND VENUE

5. This Court has jurisdiction of this dispute. The amount in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of this Court. This case involves a corporation whose principal place of business is in Mountain View, a city in Santa Clara County.

1 Defendants' breach of fiduciary duties, abuse of control, gross mismanagement, and waste of
2 corporate assets occurred in this jurisdiction. As a Silicon Valley startup in 1998 that has become a
3 global leader in technology today, Google has and will continue to have a substantial impact on the
4 California economy. Each Defendant has sufficient contacts with California as a Director and/or
5 Officer of Google to make proper the exercise of personal jurisdiction over them.

6 6. Venue is proper in this Court. A substantial part of the events or omissions giving
7 rise to the claims alleged occurred in Silicon Valley, which is located within this jurisdiction in part.
8 Because a significant amount of the harm, as well as important evidence, is located within this
9 jurisdiction, this is the best venue for this action. Each Defendant has sufficient contacts with this
10 jurisdiction that venue in this jurisdiction is appropriate. Several Defendants reside within Santa
11 Clara County such that the exercise of jurisdiction by this Court is appropriate.

12 III. THE PARTIES

13 A. Plaintiff

14 7. Plaintiff Pradeep Shah is now and was, at the time of the transactions that form the
15 basis of this Complaint, a stockholder of Google. Plaintiff is a citizen of New Jersey.

16 B. Nominal Defendant

17 8. Nominal Defendant Google is a global leader in technology and a corporation whose
18 principal place of business is in Mountain View, California. Google has so dominated the Internet
19 search market that "to Google" something has become part of the American lexicon. In addition to
20 providing an Internet search engine, Google's products include search, cloud computing, software,
21 and online advertising technologies. One of its latest technological inventions is Google glass.

22 C. Executive Officer Defendants

23 9. Defendants **Sergey Brin** and **Larry Page** met each other at Stanford University in
24 1995. They crammed their dorm room with inexpensive computers and used Brin's data mining
25 system to build a superior search engine known as BackRub. The program became so popular that
26 they both suspended their PhD studies to start Google. Brin and Page share majority voting power
27 at Google. During all relevant times, Brin and Page worked closely together, even sharing the same

1 tiny office, talking about all issues impacting Google, and being the final decision-makers on all
2 major decisions.

3 10. **Brin** currently directs special projects, but has been President of Technology and
4 President and Chairman of the Board of Directors. He has been a Member of the Board of
5 Directors since September 1998. Brin instructed Google employees not to recruit employees from
6 Apple because of agreements he reached with Steve Jobs, head of Apple. He was part of the
7 Executive Management Group who received the formal "Do Not Cold Call" list of companies.

8 11. **Page** has been Google's CEO since 2011 and on the Board since September 1998.
9 Page is responsible for Google's day-to-day-operations, as well as leading the company's product
10 development and technology strategy. He was part of the Executive Management Group who
11 received the formal "Do Not Cold Call" list of companies.

12 12. Defendant **Eric E. Schmidt** joined Google in 2001 as CEO and has held a seat on
13 the Board of Directors since then. Since April 2011, he has been Google's Executive Chairman.
14 He has always been considered the "resident grown-up" at Google. He has a close relationship with
15 Defendants Brin and Page and with them has control over decisions at Google. He holds a
16 bachelor's degree in electrical engineering from Princeton University as well as a master's degree
17 and Ph.D. in computer science from the University of California, Berkeley. Prior to joining
18 Google, he worked at Bell Labs, Xerox, Sun Microsystems and Novell. Schmidt was a Member of
19 Apple's Board of Director from August 2006 to July 2009 and a member of Princeton University's
20 Board of Directors from 2004-2008. Schmidt's charitable giving includes donating \$25 million in
21 2010 to Princeton University to create an endowment, the Schmidt Transformative Technology
22 Fund, which donation was announced by Defendant Shirley M. Tilghman, who was then the
23 President of Princeton. Schmidt has taught at Stanford University. Schmidt approved the list of
24 "Do Not Cold Call" companies, instructed staff to keep the illegal agreements secret, communicated
25 with Steve Jobs and others about the agreements, instructed Google employees to implement the
26 agreements, and ratified the termination of those who failed to comply. Schmidt's mentor at Apple
27 is Bill Campbell, Chairman of Intuit.

1 13. Defendant **Shona L. Brown** was Google's Senior Vice President from April 2011 to
2 December 2012; Senior Vice President of Business Operations from January 2006 to April 2011;
3 and Vice President of Business Operations from September 2003 to January 2006. Brown was part
4 of the Executive Management Group that received the formal "Do Not Cold Call" list of
5 employees. Schmidt instructed Brown to keep the illegal agreements secret and only share
6 information "verbally, since I don't want to create a paper trail over which we can be sued later?"
7 She agreed.

8 14. Defendant **Arnon Geshuri** was at all relevant times Google's Director of
9 Recruiting. He was the conduit between Defendant Schmidt and Google's recruiters in
10 implementing the illegal scheme. He created the formal "Do Not Cold Call" list. He also enforced
11 the agreement by having a sourcer who contacted an Apple employee terminated. He also told
12 Schmidt that the Google recruiters "are strictly following the Do Not Call policy regarding Intel and
13 no one has called, networked, or emailed into the company or its subsidiaries looking for talent."

14 15. Defendant **Jonathan J. Rosenberg** was Google's Senior Vice President of Product
15 Management and Head of Product Development from January 2006 to at least April 2011; Vice
16 President of Product Management from February 2002 to January 2006; and Senior Vice President
17 of Marketing. Rosenberg enforced Google's illegal non-solicitation agreements. For example,
18 Google was about to extend a job offer to an Intel employee in August 2006 when Rosenberg
19 informed Laszlo Bock—Senior Vice President of Google's People Operations in charge of all
20 hiring—that "[Bill] Campbell and I already discussed this and agreed that either way I should give a
21 call to Paul Otellini. I'm meeting with [redacted (likely, the Intel employee)] tomorrow and I will
22 ask him how he wants to handle communication to Intel management *before we even get to the*
23 *stage of specifically discussing an offer*" (emphasis added). At the time, Campbell was Google's
24 Senior Advisor and "consigliere" to Defendant Schmidt until 2010¹, and Otellini was a Member of
25 Google's Board of Directors and CEO and President of Intel. Rosenberg would not consider
26 making an offer to Intel's employee without speaking to Defendant Otellini, then-CEO and

27
28 ¹ Jennifer Reingold. The secret coach. CNN Money, July 21, 2008,
http://money.cnn.com/2008/07/21/technology/reingold_coach.fortune/.

1 President of Intel and a Member of its Board of Directors. Rosenberg therefore got involved to
2 police a potential violation of Google's illegal non-solicitation agreement with Intel.

3 16. Campbell also e-mailed Rosenberg in November 2005, asking, "Jonathan . . . Are
4 you guys nuts? Bill" in reference to an e-mail Egon Zehnder, an executive search firm, had sent to
5 an Intuit employee on behalf of its client, Google. Egon Zehnder was conducting a search for
6 Google's newly created role of Chief Marketing Officer. Rosenberg did not reply but is copied on a
7 subsequent e-mail (along with Campbell) from Defendant Brown—Senior Vice President of
8 Google's Human Resources at the time—to Egon Zehnder in which she admonishes the firm for the
9 solicitation e-mail.

10 17. Rosenberg then received an e-mail from a Google employee, Andrea Ritzer, in
11 January 2007, revealing, "[I]t will be very challenging to add new initiatives [without] losing
12 something out the other end. I'm trying to be creative [with] recruiting from within the
13 [organization] . . . but we need to start poaching from other companies which is not that something
14 we currently do." Rosenberg was therefore aware of the hiring difficulties caused by Google's non-
15 solicitation agreements with other companies. Executive Officer Defendants Brin, Page, Schmidt,
16 Brown, Geshuri, and Rosenberg directly made, implemented, and/or ratified the illegal agreements
17 not to recruit employees from certain competitors.

18 **D. Board Defendants**

19 18. Executive Officer Defendants Brin, Page, and Schmidt are also on the Board of
20 Directors. Other Board Defendants are:

21 19. Defendant L. **John Doerr**, a General Partner at the venture capital firm of Kleiner
22 Perkins Caufield & Byers ("Kleiner Perkins") since August 1980, was an early investor in Google
23 and has been on its Board of Directors since May 1999; a Member of Google's Leadership
24 Development and Compensation Committee since October 2009 and was a Member of said
25 Committee from at least April 2005 to May 2007; and a Member of Google's Audit Committee
26 from 1999 to 2007.

1 20. In addition to Google, Doerr has backed some of the world's most successful
2 entrepreneurs, including Bill Campbell and Scott Cook and Intuit, Jeff Bezos of Amazon.com, and
3 Mark Pincus of Zynga. Doerr and Defendant Schmidt have a long history. Doerr's firm, Kleiner
4 Perkins, was an early investor in Sun Microsystems Inc. ("Sun"). Schmidt held various positions at
5 Sun from 1983 to March 1997. In 1996, when Schmidt was Sun's Chief Technology Officer,
6 Kleiner Perkins formed a \$100 million fund to invest in companies that would create software and
7 related products based on the Java programming language developed by Sun.

8 21. In 2001, Doerr suggested Schmidt might benefit from Campbell's mentoring, and
9 Campbell became Google's Senior Advisor and "consigliere" to Defendant Schmidt until 2010². "I
10 think John Doerr would say Bill Campbell saved Google," said Kleiner Perkins partner Will Hearst.
11 "He coached [Schmidt] on what it means to be a CEO, not the CEO of Novell but of a company like
12 Google. He taught [Schmidt] it's a lot like being a janitor: There's a lot of shit you have to do. And
13 he spent a lot of time with [Page] and [Brin], explaining the difference between being a cool
14 company or a smart company and being a successful company. It didn't happen overnight, but Bill
15 Campbell won."³ Campbell enforced Google's illegal non-solicitation agreements with other
16 companies, including Intuit. For example, as Chairman of Intuit's Board of Directors, Campbell e-
17 mailed Defendant Jonathan J. Rosenberg—then-Vice President of Google's Product Management—
18 in November 2005, asking, "Are you guys nuts?" in reference to a solicitation e-mail that Egon
19 Zehnder, an executive search firm, had sent to an Intuit employee on behalf of its client, Google,
20 regarding Google's newly created role of Chief Marketing Officer.

21 22. Doerr also directed early venture capital funding to Netscape Communications Corp.
22 ("Netscape") in 1994 when the web browser company was founded, and Defendant Kavitar Ram
23 Shriram was its Vice President. Netscape not had yet shipped products or posted revenue during
24 these now legendary early days of the Internet. Doerr's firm, Kleiner Perkins, paid \$4 million in
25 1994 for around 25 percent of Netscape and profited from Netscape's IPO and subsequent \$4

26 ² Jennifer Reingold. The secret coach. CNN Money, July 21, 2008,
27 http://money.cnn.com/2008/07/21/technology/reingold_coach.fortune/.

28 ³ Matt Marshall. The best story about Google yet. San Jose Mercury News, 26 Feb. 2005,
http://www.siliconbeat.com/entries/2005/02/26/the_best_story_about_google_yet.html.

1 billion acquisition by America Online in 1999. Doerr's and Shriram's close working relationship
2 began with Netscape and has continued on Google's Board of Directors. In 2006, Doerr and
3 Shriram visited India together. "[Kleiner Perkins] and Shriram are working together to make
4 investments in Indian companies serving the domestic market. The visit by [Kleiner Perkins]
5 partners and Shriram to the country later this month is to meet entrepreneurs as well as business and
6 political leaders," Sandeep Murthy, who represented both Sherpalo (Shriram's venture capital firm)
7 and Kleiner Perkins in India.⁴

8 23. Doerr has also served on a number of other boards in the Silicon Valley and has
9 personal relationship with industry leaders throughout the Silicon Valley. He has been Members of
10 Amyris, Inc.'s Board of Directors, a synthetic biology company, since May 2006; and Zynga Inc.'s
11 Board of Directors, a provider of social game services, since April 2013. Doerr was previously a
12 director of Amazon.com, Inc., an Internet retail company, from 1996 to 2010.

13 24. Defendant **Diane B. Greene** has been a Member of Google's Board of Directors
14 since January 2012. Greene has also been a Member of the Board of Directors of Intuit Inc. since
15 August 2006 and serves on its audit and risk committee and nominating and corporate governance
16 committee. Beginning no later than 2007, Intuit and Google entered into an illegal agreement not to
17 recruit each other's employees. Bill Campbell—Google's Senior Advisor and "consigliere" to
18 Defendant Schmidt until 2010⁵—was Chairman of Intuit's Board of Directors when Intuit named
19 Greene to the Board. At the time, Campbell stated that Green's "abilities and insights will be of
20 great value to our board" and her "intense focus on partnerships will help Intuit as it continues to
21 broaden its business strategy."⁶ Green and Campbell closely worked together on Intuit's Board
22 and "partnership" with Google when Campbell was enforcing Google's illegal non-solicitation
23

24 ⁴ Ishani Duttagupta. Moneybag VCs Shriram, Doerr set sail from US. The Times of India, 9
25 Jan. 2006,
26 http://economictimes.indiatimes.com/articleshow/1363995.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

27 ⁵ Jennifer Reingold. The secret coach. CNN Money, July 21, 2008,
28 http://money.cnn.com/2008/07/21/technology/reingold_coach.fortune/.

⁶ Intuit Names Diane Greene to Board of Directors. Intuit Press Release, 17 Aug. 2006,
http://web.intuit.com/about_intuit/press_releases/2006/08-17.html.

1 agreements with other companies, including Intuit. For example, Campbell e-mailed Defendant
2 Jonathan J. Rosenberg—then-Vice President of Google’s Product Management—in November
3 2005, asking, “Are you guys nuts?” in reference to a solicitation e-mail that Egon Zehnder
4 International (“Egon Zehnder”), an executive search firm, had sent to an Intuit employee on behalf
5 of its client, Google, regarding Google’s newly created role of Chief Marketing Officer.
6 Furthermore, Greene and Campbell were both early and major investors of RockMelt, maker of a
7 new social browser, which Yahoo acquired in 2013.

8 25. Greene also co-founded VMware, Inc., a provider of virtualization and
9 virtualization-based cloud infrastructure solutions, in 1998, took the company public in 2007, and
10 served as its CEO and President and on its Board of Directors. She also has worked at Silicon
11 Graphics Inc., Tandem Computers, Inc., and Sybase Inc.

12 26. Defendant **John L. Hennessy**, the President of Stanford University, has been a
13 Member of Google’s Board of Directors since April 2004. He has also been a Member of the Board
14 of Directors of Cisco Systems, Inc. and Atheros Communications, Inc.

15 27. Defendant **Kavitark Ram Shriram** was one of four angel investors in Google and a
16 founding member of its Board of Directors, on which he continues to sit today. Shriram counseled
17 Defendants Brin and Page every Monday morning during Google’s earliest days and helped them to
18 incorporate the Company. He also helped them work out a licensing agreement with Stanford so
19 the University would benefit if their two graduate students were successful. According to *Googled:
20 The End of the World as We Know It*, a Stanford computer science professor, David Cheriton, had
21 introduced Shriram to Brin and Page in 1998.⁷ Impressed by their idea, Shriram made an
22 investment of \$250,000.

23 28. Shriram has been a Member of Stanford University’s Board of Trustees since
24 December 2009. As a Google Director and Stanford Trustee, he closely works on two boards with
25 Defendant Hennessey, a Google Director since April 2004 and President of Stanford since October
26 2000. Shriram has a very close relationship with the University. He and his wife, Vijayalakshmi,

27 ⁷ Auletta, Ken. *Googled: The End of the World as We Know It*. The Penguin Press: New
28 York, 2009.

1 have served on Stanford's Parents Advisory Board since 2006 and endowed the Shriram Family
2 Professorship in Science Education. Both of his daughters are also students at Stanford. Shriram
3 also assisted Defendants Brin and Page in negotiating a licensing agreement with Stanford, so the
4 University would benefit Google was successful.

5 29. Shriram became a Vice President of Netscape in 1994 during the now legendary
6 early days of the Internet when the web browser company was founded and before it shipped
7 products or posted revenue. That same year, Defendant Doerr directed early venture capital funding
8 to Netscape. Doerr's firm, Kleiner Perkins, paid \$4 million in 1994 for around 25 percent of
9 Netscape and profited from Netscape's IPO and subsequent \$4 billion acquisition by America
10 Online in 1999. Shriram's and Doerr's close working relationship began with Netscape and has
11 continued on Google's Board of Directors. In 2006, Shriram and Doerr visited India together.
12 "[Kleiner Perkins] and Shriram are working together to make investments in Indian companies
13 serving the domestic market. The visit by [Kleiner Perkins] partners and Shriram to the country
14 later this month is to meet entrepreneurs as well as business and political leaders," Sandeep Murthy,
15 who represented both Sherpalo (Shriram's venture capital firm) and Kleiner Perkins in India.⁸

16 30. Shriram has also been a managing partner of Sherpalo Ventures, LLC, an angel
17 venture investment company, since January 2000. From August 1998 to September 1999, Ram
18 served as Vice President of Business Development at Amazon.com, Inc., an internet retail
19 company. Prior to that, Ram served as President at Jungle Corporation, a provider of database
20 technology, which was acquired by Amazon.com in 1998.

21 31. Defendant **Ann Mather** has been a Member of Google's Board of Directors and
22 Chairman of Google's Audit Committee since November 2005. She was Executive Vice President,
23 CFO, and Company Secretary of Pixar from October 1999 to May 2004. In September 1999,
24 Apple's Steve Jobs—majority shareholder of Pixar and Apple's Co-Founder, Chairman, and CEO
25 at the time—said, "Ann is a perfect match for Pixar -- she has strong financial skills and leadership

26 ⁸ Ishani Duttagupta. Moneybag VCs Shriram, Doerr set sail from US. The Times of India, 9
27 Jan. 2006,
28 http://economictimes.indiatimes.com/articleshow/1363995.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

1 talent, combined with a deep understanding of our industry.”⁹ At Pixar, Mather closely worked with
2 Jobs. Apple has been at the center of illegal non-solicitation agreements in Silicon Valley, having
3 entered into such agreements with Pixar, Google, and Adobe, according to the DOJ. Pixar also
4 entered into illegal non-solicitation agreements with LucasFilms.

5 32. Mather has also been a Member of the Board of Directors of Glu Mobile Inc.,
6 Netflix, Inc., Shutterfly, Inc., and Solazyme, Inc.

7 33. Defendant **Paul S. Otellini** has been a Member of Google’s Board of Directors since
8 April 2004. Otellini served as the CEO and President of Intel Corporation, a semiconductor
9 manufacturing company, from May 2005 to May 2013, and as a Member of its Board of Directors
10 from 2002 to May 2013. He also served as Intel’s Chief Operating Officer from 2002 to May 2005.
11 From 1974 to 2002, Otellini held various positions at Intel, including Executive Vice President and
12 General Manager, Intel Architecture Group, Sales and Marketing Group. Otellini and Schmidt
13 entered into an illegal agreement that Intel and Google would not recruit from each other. For
14 example, in an email dated April 16, 2007, Otellini wrote to an Intel recruiter: “I have an unofficial
15 no poaching policy with [Google]”. Schmidt confirmed this policy in a June 4, 2007, e-mail to
16 Otellini: “I checked as to our recruiting policy with Intel. ‘Intel has been listed on the Do Not Call
17 List since the policy was created. No one in staffing directly calls, networks, or emails into the
18 company or its subsidiaries looking for talent.’ Hopefully there are no exceptions to this policy and
19 if you become aware of this please let me know immediately!”

20 34. Defendant **Shirley M. Tilghman** has been a Member of Google’s Board of Directors
21 since October 2005 and is a citizen of New Jersey. Tilghman served as the President of Princeton
22 University from June 2001 to June 2013. From August 1986 to June 2001, she served as a
23 Professor at Princeton University, and from August 1988 to June 2001, as an Investigator at
24 Howard Hughes Medical Institute. In 1998, she took the role as founding director of Princeton’s
25 multi-disciplinary Lewis-Sigler Institute for Integrative Genomics. She accepted Schmidt’s \$25
26 million donation to Princeton.

27
28 ⁹ Pixar names Ann Mather CFO. PRNewswire, 20 Sep. 1999
(<http://www.thefreelibrary.com/Pixar+Names+Ann+Mather+CFO.-a055787960>).

1 35. Board Defendants Doerr, Greene, Hennessy, Shriram, Mather, Otellini, and
2 Tilghman approved or acquiesced to Executive Officer Defendants directly making, implementing,
3 and/or ratifying the illegal agreements not to recruit employees from certain competitors.

4 **E. Doe Defendants**

5 36. Except as described herein, Plaintiff is ignorant of the true names of Defendants sued
6 as Does 1 through 30, inclusive, and, therefore, Plaintiff sues these Defendants by such fictitious
7 names. Following further investigation and discovery, Plaintiff will seek leave of this Court to
8 amend this Complaint to allege their true names and capacities when ascertained. These fictitiously
9 named Defendants are Google's officers, other members of management, employees and/or
10 consultants or third parties who were involved in the wrongdoing detailed herein. These
11 Defendants aided and abetted, and participated with and/or conspired with the named Defendants in
12 the wrongful acts and course of conduct or otherwise caused the damages and injuries claimed
13 herein and are responsible in some manner for the acts, occurrences and events alleged in this
14 Complaint.

15 **F. Unnamed Participants**

16 37. Numerous individuals and entities participated actively during the course of and in
17 furtherance of the wrongdoing described herein. The individuals and entities acted in concert by
18 joint ventures and by acting as agents for principals, to advance the objectives of the scheme and to
19 provide the scheme to benefit Defendants and themselves to the detriment of Google.

20 **G. Aiding and Abetting**

21 38. At all relevant times, Defendants were agents of the remaining Defendants, and in
22 doing the acts alleged herein, were acting within the course of scope of such agency. Defendants
23 ratified and/or authorized the wrongful acts of each of the other Defendants. Defendants, and each
24 of them, are individually sued as participants and as aiders and abettors in the improper acts, plans,
25 schemes, and transactions that are the subject of this Complaint.

26 39. At all relevant times, Defendants pursued a conspiracy, common enterprise, and
27 common course of conduct to accomplish the wrongs complained of herein. The propose and effect
28

1 of the conspiracy, common enterprise, and common course of conduct complained of was, *inter*
2 *alia*, to benefit the defendants personally to the detriment of Google, by engaging in illegal,
3 fraudulent, and wrongful activities. Each Defendant was a direct, necessary and substantial
4 participant in the conspiracy, common enterprise, and common course of conduct complained of
5 therein, and was aware of his/her overall contribution to, and furtherance of, the conspiracy,
6 common enterprise and common course of conduct. Defendants' acts of conspiracy include, *inter*
7 *alia*, all of the acts that Defendants are alleged to have committed in furtherance of the wrongful
8 conduct complained of herein.

9 IV. DERIVATIVE NATURE OF ACTION

10 40. Plaintiff brings this action derivatively in the right, and for the benefit, of Google to
11 redress injuries suffered and to be suffered by the Company as a result of the Defendants' breach of
12 fiduciary duties, abuse of control, gross mismanagement, and waste of corporate assets.

13 41. Plaintiff is the owner of Google common stock, was the owner of Google common
14 stock at all times relevant hereto, and has standing to bring this derivative action.

15 42. Plaintiff and his counsel will adequately and fairly represent the interests of Google
16 in enforcing and prosecuting its rights.

17 43. At the time this derivative lawsuit was commenced in April 2014, Google's Board of
18 Directors consisted of 10 individuals: Defendants Brin, Page, Schmidt, Doerr, Greene, Hennessey,
19 Mather, Otellini, Shriram, and Tilghman.

20 A. Responsibilities of Corporate Directors

21 44. Corporate officers and directors owe the highest fiduciary duties of care and loyalty
22 to the corporation they serve. This action involves a massive breach of such duties relating to
23 Google's illegal non-solicitation agreements with other companies. Rather than evaluating this
24 important transaction with eyes wide open, Google's fiduciaries entered into these agreements
25 themselves or consciously decided to proceed with eyes closed shut, ignoring that these agreements
26 eliminated a significant form of competition to attract highly skilled employees. Google's Board of
27 Directors performed no due diligence on restrained competition without any procompetitive
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1 justification that ultimately suppressed Google's high tech talent and led to criminal penalties. This
2 lawsuit is being brought by Plaintiff on behalf of Google to seek redress for the financial and
3 reputational harm suffered by the Company as a result.

4 45. Google frequently states that the Board is held to the highest level of ethics. As
5 stated above these members have formed incestuous relationships with other technology
6 corporations and used these relationships to suppress innovation and employee pay. By allowing
7 this behavior to continue, the Board not only violated California and federal law, they also violated
8 their own company's ethical standards and guidelines. In fact, Google touts its ability to adhere to
9 the guidelines the company has come up through numerous statements on their website.

10 46. Defendant Schmidt said in his message from our Executive Chairman, "We believe
11 in the importance of building stockholder trust. *We adhere to the highest levels of ethical business*
12 *practices, as embodied by the Google Code of Conduct, which provides guidelines for ethical*
13 *conduct by our directors, officers and employees.* We think that we've created the optimal
14 corporate structure to realize Google's long-term potential and have established the appropriate
15 financial controls and management oversight of our internal process."

16 47. The Code of Conduct lists out the responsibility and duties of the Board.

17 Principal Duties of the Board of Directors

18 **To Oversee Management and Evaluate Strategy. The fundamental**
19 **responsibility of the directors is to exercise their business judgment to act in**
20 **what they reasonably believe to be the best interests of Google and its**
21 **stockholders. It is the duty of the Board to oversee management's performance**
22 **to ensure that Google operates in an effective, efficient and ethical manner in**
23 **order to produce value for Google's stockholders.**

24 48. The Board failed to live up to its duties when Brin, Page, Brown, Geshuri,
25 Rosenberg, Schmidt and others were allowed to conspire with competitors to restrict hiring. As
26 demonstrated through emails, Members of the Board were fully aware of these "gentlemen
27 agreements," or knowingly or recklessly approved or acquiesced to the implementation of these
28 illegal agreements. These directors failed to perform in an "effective and ethical manner."

1 49. Additionally, the Code of Conduct goes further to discuss the Board's responsibility
2 in regards to oversight:

3 The Board is responsible for oversight of strategic, financial and execution risks and
4 exposures associated with Google's business strategy, product innovation and sales road
5 map, policy matters, significant litigation and regulatory exposures, and other current
6 matters that may present material risk to Google's financial performance, operations,
7 infrastructure, plans, prospects or reputation, acquisitions and divestitures. Directors are
8 expected to invest the time and effort necessary to understand Google's business and
9 financial strategies and challenges.

10 50. The Board is responsible for oversight in regards to policy matters, litigation, and
11 other matters that could affect Google's prospects and reputation. It is clear from contemporaneous
12 emails that the Board facilitated Google's involvement in this illegal activity and condoned the
13 illegal agreements. The other members of the Board were tasked with overseeing issues related to
14 significant litigation and Google's reputation. It follows that the Board either knew of these illegal
15 activities and failed to stop them or failed to live up to their duties on the Board. Either way, the
16 Board is so heavily entrenched in these illegal transactions that any attempt on making a demand
17 would be futile.

18 51. The Google Code of Conduct addresses competing with other companies and
19 competition laws. "We respect our competitors and want to compete with them fairly." It further
20 states "Google is committed to competing fair and square, so please contact Ethics & Compliance if
21 you have any questions about the antitrust laws and how they apply to you." The Board is tasked
22 with following the Code of Conduct. By entering into illegal non-solicitation agreements with
23 competitors, the Board of directors violated Google's own Code of Conduct. Each member
24 violated these standards, either by active participation or failing to stop the illegal activity. These
25 illegal agreements continued for at least five (5) years and involved the highest level executives of
26 Google (Brin, Page and Schmidt), who also sit on the Board of Directors. One of the agreements
27 was with Otellini, then the head of Intel, who also sits on Google's Board. For these reasons,
28 demand on the board would be futile.

 52. Moreover, the 2013 10-K statement, which all members of the Board signed off on,
states "[w]e take great pride in our culture . . . We strive to hire the best employees, with

1 backgrounds and perspectives as diverse as our global users... Competition for qualified personnel
2 in our industry is intense, particularly for software engineers, computer scientists, and other
3 technical staff.” The Board obviously realizes the importance of hiring the best, no matter what
4 company they currently work for. The Board failed to follow this elementary business standard for
5 years.

6 53. Additionally, each Member of the Board has additional ethical and responsibilities
7 because of their respective Committees on the Board. Google has five board committees: (1)
8 Audit, (2) Leadership Development and Compensation, (3) Nominating and Corporate Governance,
9 and (5) Acquisition and Executive.

10 54. The Audit Committee’s key function is to oversee the accounting and financial
11 reporting process. The Committee also provides oversight regarding significant financial matters,
12 including Google’s tax planning, treasury policies, currency exposures, dividends and share
13 issuance and repurchases. The Audit Committee consists of Chairperson Ann Mather, Diane
14 Greene, and Kavitar Ram Shriram. This committee is charged with supervising Google’s
15 relationship with its independent auditors, internal controls, financial risk oversight, and among
16 others, the ability to investigate any matter brought to its attention, with full access to all Google
17 books, records, facilities and employees. These directors either ignored or failed to realize the
18 financial risk from allowing the restrictive illegal activities to happen at Google. By allowing this
19 restrictive hiring to continue, innovation was constricted. Additionally, it has opened Google up to
20 a significant amount of potential liability on top of the already realized attorney’s fees and loss of
21 goodwill.

22 55. The Leadership Development and Compensation Committee’s purpose is to oversee
23 the compensation programs. This committee is crucial. From the Leadership Development and
24 Compensation Committee website, this committee is charged with “broadly oversee[ing] matters
25 relating to *the attraction, motivation, development and retention of all Googlers*. In undertaking
26 these responsibilities, the Committee shall take into account factors it deems appropriate from time
27 to time, including Google’s business strategy, the risks to Google and its business implied by its
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1 executive compensation and incentive programs and awards, and the results of any shareholder
2 advisory votes with respect thereto.” (Emphasis added). This committee is comprised of Paul
3 Otellini (Chairperson) and L. John Doerr. This committee was designated with the broad power
4 over the retention of all Googlers. Based upon Otellini’s direct involvement and Doerr’s
5 relationship with Otellini, Brin, Page, Doerr, Steve Jobs and others who made these agreements,
6 and his knowledge of the Valley’s workings, this committee had full knowledge of the illegal acts
7 and allowed them to continue.

8 56. The Nominating and Corporate Governance Committee’s purpose is to assist the
9 Board of Directors in identifying individuals qualified to become members of the Board consistent
10 with criteria set forth by the Board of Directors, to oversee the evaluation of the board of directors
11 and management, and to develop and update corporate governance principles. This committee is
12 comprised of John Hennessy (Chairperson) and Shirley Tilghman. These members are also tasked
13 with the ability to recommend the termination of service of individual members of the Board as
14 appropriate, for cause or for other “proper reasons.” These individuals all have ties to other
15 members of the Board. If any member encouraged or voted to bring suit, these committee members
16 would be able to recommend their termination. Since the termination is not reliant on “just cause”,
17 this committee could terminate anyone that attempted to go against the Board’s illegal activities or
18 try to hold the Board accountable for such activities.

19 57. The Acquisition Committee’s purpose is to serve as an administrative committee of
20 the Board of Directors to review and approve certain investment, acquisition, and divestiture
21 transactions proposed by management. This committee is comprised of Eric Schmidt, Larry Page,
22 Sergey Brin, and Kavitar Ram Shriram. Page, Brin and Shriram have been involved with Google
23 since the beginning and forged close personal ties. Page, Brin and Schmidt, the three who control
24 Google, entered into these illegal agreements with other companies.

25 58. The Executive Committee’s purpose is to serve as an administrative committee of
26 the Board of Directors to act upon and facilitate the consideration by senior management and the
27 Board of Directors of certain high-level business and strategic matters. Eric Schmidt

(Chairperson), Larry Page, and Sergey Brin are on the Executive Committee. These three entered into illegal agreements with other companies.

B. Demand Is Futile Because Board of Director Defendants Are Not Disinterested

59. Plaintiff has not made a demand on Google's Board of Directors to investigate and prosecute the wrongdoing alleged herein. Such a demand is futile and therefore excused because: (i) the Board's wrongful conduct is not subject to protection under the Business Judgment Rule, and (ii) a majority of the Board is unable to conduct an independent and objective investigation of the alleged wrongdoing. Under such circumstances, the demand requirement is excused since making such a demand on the Board of Directors would be futile. *Aronson v. Lewis*, 473 A. 2d 805 (Del. 1984); *Rales v. Blasband*, 634 A. 2d 927 (Del. 1993); *Shields v. Singleton*, 15 Cal. App. 4th 1611 (1993); *Bader v. Anderson*, 179 Cal. App. 4th 775, 789-793 (2009).

60. Google's Board of Directors was aware of, and is responsible for, Google's employment policies and practices as well as its express illegal agreements with other companies on the same. The Board breached their fiduciary duties of good faith, loyalty, and due care by entering into, ratifying, and/or failing to prevent Google from entering into illegal non-solicitation agreements for employees with other companies, such as Apple, Intel, Intuit, Dell and eBay. These illegal non-solicitation agreements allowed the companies to enter into, maintain, and enforce illegal non-solicitation agreements that prevented each other from soliciting, cold calling, recruiting, and otherwise competing for employees without any procompetitive justification. None of the agreements were limited by geography, job function, product group, or time period. They were therefore broader than reasonably necessary for any collaboration between the companies, and have been found illegal by the Department of Justice. The Boards' actions and omissions amounted to abuse of control, gross mismanagement, and waste of corporate assets because Google's illegal non-solicitation agreements eliminated a significant form of competition to attract highly skilled employees, reducing its ability to compete for high tech workers, and subjecting Google to criminal prosecution for violations of antitrust law and civil lawsuits.

1 61. All Board Defendants had a financial incentive to support and/or fail to stop Google
2 from entering into illegal non-solicitation agreements for employees with other companies. These
3 Directors are well-compensated and powerful players in Silicon Valley, making millions, if not
4 billions of dollars from Google. They did not conduct due diligence as to Google's employment
5 policies and practices, as well as its express illegal agreements with other companies on the same,
6 to preserve their positions on the Board, their professional relationships and their compensation and
7 power. They abused their control, grossly mismanaged, and wasted corporate assets of Google by
8 entering into these agreements or consciously turning a blind eye to the Company entering into
9 these agreements, which eliminated a significant form of competition to attract highly skilled
10 employees. Board Defendants therefore face potential personal liability for their wrongful conduct
11 as members of the Board.

12 62. In the high technology sector, there is a strong demand for employees with advanced
13 or specialized skills. Due to the Board Defendants' improprieties, Google was unable to attract as
14 many employees, and as talented employees, as it would have in the absence of illegal non-
15 solicitation agreements. This exposed the Company to financial, reputational, and litigation risks.
16 As a direct and proximate result of Board Defendants' actions and omissions, Google has expended,
17 and will continue to expend, significant sums of money. Such expenditures include but are not
18 limited to:

19 (a) Costs incurred from not being able to attract highly skilled employees of companies
20 with which it has an illegal non-solicitation agreement and loss of innovation;

21 (b) Costs incurred from attracting highly skilled employees through non-principal
22 means, such as cold-calling, and loss of innovation during that time;

23 (c) Costs incurred from lost customers and business opportunities due to less talented
24 employees and less innovation overall;

25 (d) Destruction of value and reputational harm to the Google brand due to criminal
26 investigations resulting in agreements in lieu of criminal prosecution;

1 (e) Costs incurred from external investigations, including the Department of Justice
2 (“DOJ”)’s investigation, and litigation against Google’s Executive Officers, Board of Directors, and
3 Senior Management;

4 (f) Costs incurred from internal investigations into the Board’s acts and omissions; and

5 (g) Costs incurred from compensating Executive Officer Defendants, Board Defendants,
6 and Senior Management Defendants who have breached their fiduciary duties to Google and
7 engaged in illegal acts.

8 **C. Demand by Plaintiff Is Futile and Therefore Excused Because the Business Judgment**
9 **Rule Does Not Protect Board Defendants’ Conduct**

10 63. Defendants Brin, Page, Schmidt, and Otellini directly adopted and implemented a
11 business strategy based their entering into illegal non-solicitation agreements. They were Executive
12 Officers and/or Directors when Google listed Apple among the companies that had special
13 agreements with Google, and were part of the “Do Not Cold Call” list in or around 2006; when
14 Google listed Intel, eBay, Dell and Intuit among the companies that have special agreements with
15 Google and are part of the “Do Not Cold Call” list in or around September 2007; and when Google
16 listed Intuit among the companies that have special agreements with Google and are part of the “Do
17 Not Cold Call” list in or around June 2007.

18 64. Defendants Brin, Page Schmidt, and Otellini were involved with creating,
19 implementing, and enforcing Google’s and other companies’ uncompetitive hiring policies. They
20 created and/or ratified Google’s “Protocol for ‘Do Not Cold Call’ and ‘Sensitive’ Companies,”
21 which defines the anticompetitive protocols for hiring from companies with whom Google had
22 illegal agreements to refrain from hiring highly skilled employees from other companies. On
23 October 4, 2005, Defendants Brin, Page and Schmidt received an e-mail attaching a draft version of
24 said Protocol that requested comments or changes before the Protocol went “live.” Schmidt
25 expressly approved the Protocol, and Brin and Page acquiesced to the Protocol through their lack of
26 comments and changes. There is written evidence that Brin, Page and Schmidt colluded with the
27 executive officers of other companies, including Otellini at Intel, concerning the scope of illegal
28 non-solicitation agreements and personally enforced the Protocol at Google.

1 65. Defendants Brin, Page, and Schmidt explicitly agreed with executive officers at
2 other companies, including Otellini, regarding hiring. For example, on February 17, 2005, Bill
3 Campbell (then-Google's Senior Advisor and a mentor to Schmidt, Member of Apple's Board of
4 Directors, and Chairman of Intuit's Board of Directors) e-mailed Brin and Page regarding Steve
5 Jobs, Apple's Co-Founder and Former Chairman and CEO. Before officially joining Google,
6 Campbell came to the Company at least once a week as the only non-Googler attending Google's
7 Monday meeting of the Executive Management Group, and often, the Tuesday product-pitch
8 meetings.¹⁰ Campbell wrote, "Sergey[,] Steve just called me again and is pissed that we are still
9 recruiting his browser guy. You should give him a call." Page immediately replied, "Sergey is
10 going to call him now," copying Defendants Brin and Schmidt and others. A few years later, when
11 the issue arose again, Schmidt e-mailed Jobs stating that Google's recruiters informed him that one
12 of its recruiter should not have contacted an Apple employee and that the recruiter would be
13 terminated within the hour. In a subsequent e-mail to Jobs on March 9, 2007, Schmidt stated that
14 "as a followup we investigated the recruiter's actions and she violated our policies Should this
15 ever happen again please let me know immediately and we will handle." Jobs forwarded the
16 message to then-Apple's Vice President of Human Resources, adding only " :)".

17 66. In another e-mail from Jobs to Schmidt, Jobs did not hesitate to expand the illegal
18 non-solicitation agreement between Google and Apple. On June 6, 2007, Defendant Geshuri,
19 Google's Director of Recruiting, e-mailed Schmidt, copying Defendant Brown and Laszlo Bock,
20 stating, "During a brief conversation with Shona [Brown] and Bill Campbell, Bill requested that
21 Intuit be added fully to the Do Not Call list." Bill Campbell has been Chairman of Intuit's Board of
22 Directors since August 1998. Geshuri's e-mail indicated that the current "policy cover[ed] only 18
23 Intuit employees who were involved in the partnership discussions last year and therefore leaves the
24 rest of the company's employee population open to our recruiting efforts." Geshuri stated that the
25 change "to our Do Not Call policy will make our hands-off approach to Intuit explicit and ensure
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27
28 ¹⁰ Jennifer Reingold. *The Secret Coach*. CNN Money, 21 Jul. 2008,
http://money.cnn.com/2008/07/21/technology/reingold_coach.fortune/.

1 clarity." Geshuri then requested Schmidt to "confirm you are okay with the modification to the
2 policy." Schmidt simply replied, "Yes, absolutely."

3 67. Other Director Defendants also engaged in wrongful conduct. Defendant Otellini
4 has been a Member of Google's Board of Directors since 2004. He has also been Intel's CEO since
5 2005; was Director from 2002 to 2013; and an Intel employee since 1974. According to Google's
6 "Special Agreement Hiring Policy Protocol for 'Do Not Cold Call' and 'Sensitive' Companies,"
7 Intel was added to Google's "Do Not Cold Call" list on or about March 6, 2005. Otellini engaged
8 in creating, implementing, and/or enforcing illegal non-solicitation agreements between Google and
9 Intel. Furthermore, he admitted in a September 6, 2007 e-mail that he and Schmidt had "a
10 handshake 'no recruit'" agreement.

11 68. Defendant Doerr has been a venture capitalist at Kleiner Perkins since 1980 and has
12 been involved in funding and working with some of the biggest companies in the Silicon Valley.
13 He attended early meetings of the Homebrew Computer Club, an early informal group of engineers
14 where he met Steve Jobs, whom he grew to know well. He is a close friend and business colleague
15 of Bill Campbell. Doerr has been a Member of Google's Board of Directors since 1999 and was a
16 Member of Intuit's Board of Directors from 1999 to 2007 where Kleiner Perkins had originally
17 invested \$4.7 million for a 12% ownership of Intuit. According to Google's "Special Agreement
18 Hiring Policy Protocol for 'Do Not Cold Call' and 'Sensitive' Companies," Intuit was added to
19 Google's "Do Not Cold Call" list in April 2006. Given his multiple roles in several of the
20 companies involved in the illegal agreements and his business and personal ties, Doerr approved or
21 ratified the illegal conduct.

22 69. Defendant Greene has been a Member of Google's Board of Directors since January
23 2012. Greene has also been a Member of the Board of Directors of Intuit Inc. since August 2006.
24 She was Intuit's Director when Intuit agreed to enter into illegal non-solicitation agreements with
25 Google. As part of her fiduciary duties of both companies, she was responsible for overseeing
26 management and the companies.

1 70. Defendant Mather has been a Member of Google's Board of Directors and Chairman
2 of Google's Audit Committee since November 2005. She served as CFO and was part of top
3 management of Pixar from October 1999 to May 2004 during which time Pixar entered into illegal
4 non-solicitation agreements with LucasFilms.

5 71. The Board's approval of, or acquiescence to, Google's employment policies and
6 practices as well as its express illegal agreements with other companies on the same are not
7 protected business decisions. Moreover, such acts or omissions are not valid exercises of business
8 judgment. The Board had an independent duty to consider all reasonably available information
9 before approving or acquiescing to Google's hiring policies and protocol manual. Demand is futile
10 because Director Defendants have personally engaged in misconduct not protected by the business
11 judgment rule.

12 **D. Demand by Plaintiff Is Futile and Therefore Excused Because a Majority of the Board**
13 **Is Unable To Conduct An Independent and Objective Investigation of Wrongful**
14 **Conduct**

15 72. Demand is futile if at least a majority of Google's Board of Directors cannot fairly
16 and independently adjudicate potential claims against themselves. Of the current Board of
17 Directors, all Directors except Greene were on the Board when Google entered into its first express
18 illegal agreement subjecting Google to criminal charges and financial and reputational risk. A
19 majority of the Board therefore engaged, and continues to engage, in the wrongdoing and has
20 interests that are adverse to performing a fair, unbiased investigation.

21 73. Furthermore, Google's Board was adversely dominated by Defendants Brin, Page,
22 and Schmidt. Pursuant to Google's most recent Form 10-K filed with the U.S. Securities and
23 Exchange Commission ("SEC") on February 12, 2014, Brin, Page, and Schmidt "have significant
24 influence over management and affairs and over all matters requiring stockholder approval,
25 including the election of directors and significant corporate transactions ... for the foreseeable
26 future." The filing also states that Brin, Page and Schmidt beneficially owned approximately 92.2%
27 of Class B common stock, representing approximately 61.7% of the voting power of outstanding
28 capital stock. They have held this strength of voting power at all relevant times. As wrongdoers

1 themselves, their control rendered an independent and objective investigation of Google's
2 anticompetitive employment policies and illegal non-solicitation impossible. Other Defendant
3 Directors are and have been wholly under the domination of Brin, Page, and Schmidt, preventing
4 them from taking remedial action against Brin, Page, and Schmidt. Brin, Page and Schmidt, as
5 majority shareholders, have the power not to re-elect any Director who votes to discipline them for
6 their illegal acts. Other Director Defendants have been "wholly under the domination" of Brin,
7 Page, and Schmidt that they are "deemed to be in the same position as an incompetent person or a
8 minor without legal capacity either to know or to act in relation to" the wrongful conduct. *Beal v.*
9 *Smith* (1920) 46 Cal.App. 271, 279.

10 74. Director Defendants were either involved in creating, implementing, overseeing, or
11 enforcing Google's employment policies and/or illegal non-solicitation agreements, or not
12 independent of those who engaged in such acts. Defendants Brin, Page, Schmidt, Otellini were
13 directly involved in Google's illegal non-solicitation agreements. Defendants Doerr, Greene,
14 Hennessy, Mather, Shriram, and Tilghman are not independent of Defendants Brin, Page, and
15 Schmidt due to their interrelated professional and personal relationships. These relationships have
16 caused conflicts of interest precluding Doerr, Greene, Hennessy, Shriram, Mather, and Tilghman
17 from taking any necessary and proper steps against Brin, Page, and Schmidt on behalf of the
18 Company as requested herein. None of these six Directors are disinterested as explained herein.

19 75. **L. JOHN DOERR:** Defendant Doerr is a General Partner at Kleiner Perkins, a
20 venture capital firm. It was in this capacity that Doerr met Brin and Page according to a book
21 written with full cooperation from Google's top management. The meeting was just ending when
22 Doerr asked a final question: "How big do you think this can be?" "Ten billion," said Page. Doerr
23 just about fell off his chair. Surely, he replied to Page, you cannot be expecting a market cap of \$10
24 billion. Doerr had already made a silent calculation that Google's optimal market cap—the
25 eventual value of the company—could go maybe as high as one billion dollars. "Oh, I'm very
26 serious," said Page. "And I don't mean market cap, I mean revenues." Doer would go on to invest
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1 in Google. The company surpassed even Page's wild projection.¹¹ Doerr also regularly visits
2 Stanford to scout for ideas. He describes Stanford as the "germplasm for innovation. I can't
3 imagine Silicon Valley without Stanford University." He hosts political and charitable events
4 attended by many of the other Google directors.

5 76. Furthermore, Defendant Doerr has sought and obtained significant investments from
6 Google for private companies in which Kleiner Perkins is a major investor. For example, Google
7 bought Peakstream, Inc. for \$20.3 million in 2007. As part owner of Peakstream, Inc., Kleiner
8 Perkins received 24.5 percent of that figure (approximately \$5 million). Kleiner Perkins invested in
9 Intuit. Since then, Google has continued to invest in companies in which Kleiner Perkins has major
10 investments. Since 2008, Google has invested \$47.5 million in the same companies in which
11 Kleiner Perkins invested. In 2010, at the direction of Defendants Brin, Page, and Schmidt, Google
12 invested over \$21 million in companies in which Kleiner Perkins has a substantial interest. If Doerr
13 voted in favor of initiating litigation against Brin, Page, or Schmidt, he would risk Google's
14 continued financial support in companies in which Kleiner Perkins has major investments. Doerr
15 will not take such a risk.

16 77. Doerr has a close relationship with Brin and Page having been one of the early
17 investors in Google. When Schmidt joined the Board, he told Schmidt to use Bill Campbell as a
18 coach and Campbell, who was involved in the agreements not to recruit, is a close advisor to
19 Schmidt. Campbell and Doerr have had a close business relationship for decades.

20 78. Accordingly, Defendant Doerr is not independent from "interested" Defendants Brin,
21 Pagen, and Schmidt. As such, a pre-suit demand on Defendant Doerr is futile.

22 79. **DIANE B. GREENE:** Defendant Greene was a director at Intuit during the time that
23 Intuit entered into illegal agreements not to compete. She and the Doerrs and the Schmidts donate
24 to the same charitable organizations, including the Kahn Academy, the Tech Museum of
25 Innovation, and the California Academy of Sciences. She attended a political dinner with Eric
26 Schmidt, John Hennessy, Arthur D. Levinson and Steve Jobs at the home of host John Doerr.

27
28 ¹¹ Levy, Steven. *In The Plex: How Google Thinks, Works, and Shapes Our Lives*. New York: Simon
& Schuster, 2011. Print.

1 Levinson is currently the CEO of Calico (a Google venture) and the Chairman of both Genentech's
2 and Apple's Board of Directors. Accordingly, Greene lacks independence from Schmidt, rendering
3 a pre-suit demand on her futile.

4 80. **JOHN L. HENNESSY:** Defendant Hennessy is the President of Stanford. At the
5 direction of Defendants and Stanford alumni, Brin and Page, Google donates millions of dollars
6 every year to Stanford. Since 2006, Google has donated over \$14.4 million to the University.
7 Hennessy's role at Google has created the closest intersection with his Stanford duties per the *Wall*
8 *Street Journal*. In 2004, several months before Google's initial public offering (IPO), the Company
9 appointed Hennessy to its Board of Directors. Defendant Doerr, one of Google's original investors
10 and directors, made the first overture to Hennessy. Hennessy has invested money with Defendant
11 Doerr's firm, Kleiner Perkins. Google granted Hennessy 65,000 options to buy Google stock at \$20
12 apiece. After Google's IPO, SEC filings reveal that Hennessy received 10,556 Google shares as
13 part of an earlier investment in a Kleiner Perkins fund.

14 81. With his positions at Stanford and Google, Hennessy effectively sits on two sides of
15 a business relationship. Google licenses its Internet search technology from Stanford, where Brin
16 and Page started the company and were Ph.D. students. As payment, Stanford received shares in
17 the offering that the school has since sold for \$336 million. Stanford continues to receive what it
18 describes as "modest" annual licensing fees from Google. Paul Aiken, Executive Director of the
19 Authors Guild, calls Hennessy's personal holdings in Google "a great concern" and says "there
20 seems to be both a personal and institutional profit motive here." In November 2006, Google
21 pledged \$2 million to Stanford Law School's Center for Internet and Society, founded by Stanford
22 professor Lawrence Lessig, known for his views that copyright laws are often too restrictive. Aine
23 Donovan, Executive Director of the Ethics Institute at Dartmouth College, says Stanford should not
24 have accepted the Google gift because it is too narrowly tailored to benefit Google's corporate
25 interests. "It might as well be the Google Center," she says.¹²

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28 ¹² John Hechinger and Rebecca Buckman. *The Golden Touch of Stanford's President*. Wall
Street J., 24 Feb. 2007 <<http://online.wsj.com/news/articles/SB117226912853917727>.

1 82. Hennessey attended a political dinner with Schmidt, Greene, Levinson, and Jobs at
2 Doerr's home in February 2011; Hennessey was the only non-business leader invited to no one's
3 surprise.¹³ Additionally, Schmidt joins a third of Professor Peter Wendell's Entrepreneurship and
4 Venture Capital classes at the Stanford Graduate School of Business. Schmidt said when Google is
5 looking for engineers, they start at Stanford. Five percent of Google employees are Stanford
6 graduates.¹⁴

7 83. Hennessey has much to lose by voting to initiate litigation against Brin or Page. If
8 Hennessey voted to initiate litigation against Defendants Brin, Page or Schmidt, Stanford would risk
9 losing multi-million dollar donations every year. As one of Hennessey's principle duties is to ensure
10 continued alumni support as Stanford's President, he would not jeopardize the loss of such a
11 substantial donation. Furthermore, Hennessey would not risk his prestigious positions at Stanford or
12 Google's continued support of the University by voting to initiate litigation against Brin, Page or
13 Schmitt. Accordingly, Hennessey lacks independence from Brin, Page and Schmidt, rendering a pre-
14 suit demand on him futile.

15 84. **KAVITARK RAM SHRIRAM:** Defendant Shriram was one of the first investors
16 in Google and has been on its Board since its inception. He gave weekly advice to Brin and Page
17 since they first started the company and his involvement with Google has made him a billionaire.
18 Accordingly, based upon his many ties and involvement, he lacks independence, rendering a pre-
19 suit demand futile.

20 85. **ANN MATHER:** Defendant Mather was the Chief Financial Officer at Pixar during
21 the time that Pixar had an illegal agreement with LucasFilms not to compete. She had a close
22 relationship with Steve Jobs, one of the architects of the illegal agreements. Accordingly, based
23 upon her many ties and involvement in these agreements, she lacks independence, rendering a pre-
24 suit demand on her futile.

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26
27 ¹³ Ken Auletta. *Get Rich U.* The New Yorker, 30 Apr. 2012,
http://www.newyorker.com/reporting/2012/04/30/120430fa_fact_auletta?currentPage=all.

28 ¹⁴ Ken Auletta. *Get Rich U.* The New Yorker, 30 Apr. 2012,
http://www.newyorker.com/reporting/2012/04/30/120430fa_fact_auletta?currentPage=all.

1 86. **SHIERY M. TILGHMAN:** Defendant Tilghman is currently a Molecular Biologist
2 and Professor at Princeton University ("Princeton"). She was Princeton's President from June 2001
3 to June 2013. Defendant Schmidt is a Princeton graduate and was a Member of its Board of
4 Trustees from 2004 to 2008 when Tilghman was Princeton's President. As a Trustee, Schmidt
5 exercised substantial control over Tilghman's compensation and continued employment. Schmidt
6 has donated tens of millions of dollars to Princeton. For example, Princeton announced that
7 Schmidt and his wife, Wendy, created a \$25 million endowment fund at the University on October
8 13, 2009. Tilghman praised Schmidt for his generous gift, stating, "This fund will allow
9 Princeton's scientists and engineers to explore truly innovative ideas that need the creation or
10 application of new technologies, including the kinds of technological breakthroughs that most
11 funding sources are too risk-averse to support." Tilghman continued, "We are deeply grateful to
12 Eric [Schmidt] ... not only for providing this support, but for providing the capacity and flexibility
13 to make investments that are likely to have the broadest and most transformative impact."
14 Tilghman would therefore not vote to initiate litigation against Schmidt, a friend whose generous
15 donations have helped to support Princeton. Accordingly, Defendant Tilghman lacks independence
16 from "interested" Defendant Schmidt, rendering a pre-suit demand on her futile.

17 **E. Demand by Plaintiff Is Excused Because Defendants Page, Brin, Schmidt, Doerr,**
18 **Hennessy, Mather, Shriram, and Tilghman Face a Substantial Likelihood of Liability**
19 **For Their Wrongful Conduct**

20 87. As alleged above, Defendants Brin, Page, Schmidt, and Otellini breached their
21 fiduciary duties of good faith, loyalty, and due care by directly entering into illegal non-solicitation
22 agreements with competitors.

23 88. Defendants Doerr, Greene, Hennessy, Mather, Shriram, and Tilghman breached the
24 same fiduciary duties by approving or failing to prevent Defendants Brin, Page, and Schmidt from
25 controlling Google with no effective oversight. Additionally, they knowingly or recklessly
26 approved or acquiesced to violations of the law by Defendants Brin, Page, Schmidt, and Otellini in
27 failing to implement adequate internal controls to prevent such violations.

1 89. A majority of Google's Board is not disinterested and therefore, demand upon the
2 Company's Board of Directors is futile. All Directors were aware or reckless in not knowing of
3 Google's employment policies and practices as well as its express illegal agreements with other
4 companies on the same. Each Director serves the Executive Officers, and their compensation and
5 power are tied to their positions. The majority of Directors are therefore unable to independently
6 and fairly evaluate their own misconduct as well as the misconduct of Executive Officers and
7 Senior Management. Therefore, demand on Google's Board of Directors is futile.

8 **F. Misconduct by Google's Board Has Harmed Google**

9 90. Despite the Director Defendants having been aware of similar claims against Google
10 since at least the Department of Justice's settlement with Google to preserve competition for high
11 tech employees, the Board has failed to seek recovery for Google—let alone, investigate the claims
12 within Google—for any of the wrongdoing alleged herein.

13 91. Google has been and will continue to be exposed to significant losses because
14 Director Defendants have not filed any lawsuits against themselves or others who were responsible
15 for the wrongful conduct to attempt to recover for Google any part of the damages Google suffered
16 and will suffer thereby. Defendant Directors have failed, and continue to fail, in appropriately
17 investigating, correcting, and commencing legal action against those who are responsible for the
18 misconduct alleged. There has been a sustained and/or systemic failure by the Board of Directors
19 to exercise reasonable oversight. These failures, in the face of heavy media scrutiny on the matter,
20 demonstrate that Google's Board is hopelessly incapable of independently addressing any
21 legitimate demand.

22 **G. Demand on the Shareholders Is Excused**

23 92. Plaintiff has not made any demand on the other shareholders of Google to institute
24 this action since such demand would be futile for at least the following reasons:

- 25 (a) Google is a publicly held company with 674.46 million shares outstanding as
26 of March 31, 2014¹⁵ and likely thousands of shareholders;

27
28 ¹⁵ Google Finance, <https://www.google.com/finance?fstype=bi&cid=694653>.

1 (b) making demand on such a number of shareholders would be impossible for
2 Plaintiff who has no way of finding out the names, addresses, or phone
3 numbers of shareholders; and

4 (c) making demand on all shareholders would force Plaintiff to incur excessive
5 expenses, assuming all shareholders could be individually identified.

6 (d) Brin, Page and Schmidt own over 50% of the stock, making demand futile.

7 93. Google's Directors cannot be relied upon to reach a truly independent decision
8 whether to commence the demanded action against themselves and the officers responsible for the
9 misconduct alleged in this derivative complaint. The Board is currently dominated by Defendants,
10 who were directly involved in the breach of fiduciary duties, abuse of control, gross
11 mismanagement, and waste of corporate assets alleged, and who approved or acquiesced to the
12 actions complained of.

13 94. None of them are in a position to fairly evaluate their own misconduct in this case.

14 95. The adverse domination of Google's Board of Director by Defendants Brin, Page,
15 and Schmidt prevents it from validly exercising its business judgment in a fair and neutral manner,
16 and renders it incapable of reaching an independent decision whether to accept any demand by
17 Plaintiff to address the wrongs detailed herein. A majority of Directors received personal and
18 financial benefits while they caused or permitted Google to engage in the extensive misconduct
19 detailed in this derivative complaint. A demand on the Board is therefore excused.

20 **H. The Statute of Limitations Does Not Bar Plaintiff's Claims or, Alternatively, Was**
21 **Tolled During Adverse Domination**

22 96. The statute of limitations does not bar Plaintiff's shareholder derivative action. The
23 essence of Plaintiff's causes of action is that Defendants breached their fiduciary duties as
24 Executive Officers, Directors, and/or Senior Management of Google. Plaintiffs' other causes of
25 action naturally flow from a single cause of action: breach of fiduciary duties. Plaintiff has brought
26 this complaint within the applicable statute of limitations.

97. Alternatively, the statute of limitations was tolled during Executive Officer Defendants' adverse domination of Google and the concealment by Defendants of their wrongful acts. Here, Defendant Directors and Google were wholly under the adverse domination of Brin, Page, and Schmidt, who collectively control almost two-thirds of shareholder votes. Consequently, Director Defendants were "deemed to be in the same position as an incompetent person or a minor without legal capacity either to know or to act in relation to" the wrongful conduct. *Beal v. Smith*, 46 Cal.App. at 279. Moreover, Defendants concealed, and continue to conceal, their wrongful acts. The statute of limitations has therefore been tolled since Brin, Page, and Schmidt adversely dominated Google. The statute of limitations should not bar Plaintiff, an innocent stockholder, from bringing this shareholder derivative suit.

VI. FACTUAL ALLEGATIONS

A. Movement of Employees between Companies in Silicon Valley Increases Innovation

98. The success of the technology companies in the South Bay of San Francisco, California, now known as the Silicon Valley, over the last 35 years has been incredible. People with vision and innovation have created a host of new products and created a community of successful people who are interconnected through personal and business relationships. Many of the leaders attended the great universities in the area, Stanford, the University of California, Berkeley, and Santa Clara University, and/or worked together at various companies. Top executives serve as Directors of other Silicon Valley companies and venture capitalists have funded companies when they were start-ups and remained involved through the companies' success. There has always been movement of employees at all levels between companies in Silicon Valley. This movement has been one of the reasons for its success because of the cross-pollination of ideas, which has created the staggering innovation which has come out of Silicon Valley.

99. Alan Hyde, a professor at Rutgers Law School, wrote a book in 2003 called “Working in Silicon Valley: Economic and Legal Analysis of a High-Velocity Labor Market,” using the Silicon Valley as a case study to show that the high and rapid turn-over of employees supports rapid technological growth because of the fluid market of employees who typically move

1 from one company. This employee movement creates information diffusion where technical know-
2 how and advancements travel between companies. This movement of employees creates innovation
3 of new ideas and products and brings profitability to a company.

4 100. In this model, companies are continually looking for new employees and employees
5 in Silicon Valley frequently move from company to company. The larger Silicon Valley companies
6 use internal and external recruiters to find new employees. Along with the traditional way of
7 obtaining employees through the placement of advertisements, these recruiters also make "cold
8 calls," meaning that they locate employees who they believe might be best suited for a job and call
9 the prospective employee asking if that person might be interested in the job. Thousands of
10 employees have changed jobs because of cold calling and other informal recruiting.

11 **B. In Order to Benefit Themselves, the Defendants Agreed with Colleagues from Other**
12 **Companies to Not Recruit from Each Other**

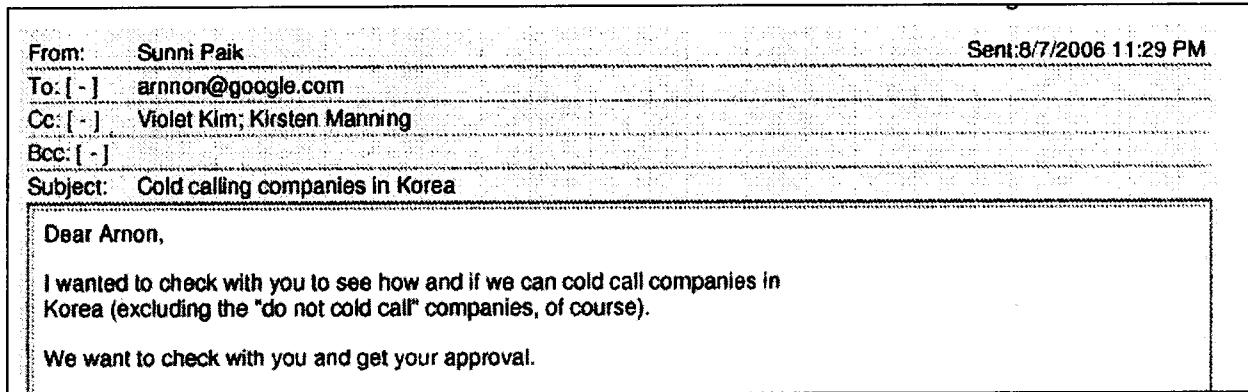
13 101. Some executives at Silicon Valley companies did not like the active movement of
14 employees because they did not want to lose good employees and have to pay new employees more
15 money. As a result, some of the biggest names in Silicon Valley, including Defendants sued herein,
16 entered into agreements where they agreed not to compete in the market for highly skilled
17 employees by halting the practice of recruiting each other's employees. These agreements were *per*
18 *se* illegal under the antitrust laws.

19 102. By at least early 2005 until at least 2010, Google, through its highest ranking
20 executives, entered into agreements with its competitors not to directly solicit each other's
21 employees. These agreements were concealed from the public, including the companies'
22 shareholders, and the public pronouncements from Defendants were that they aggressively pursued
23 talent. The agreements not to recruit from other firms were enforced by the highest level employees
24 at Google.

25 103. Google's illegal non-solicitation agreements with other companies were not limited
26 by geography, job function, product group, or time period. For example, Sunni Paik, Google's Asia
27 Pacific Leadership Recruiter, e-mailed Defendant Geshuri, Google's Director of Recruiting to
28

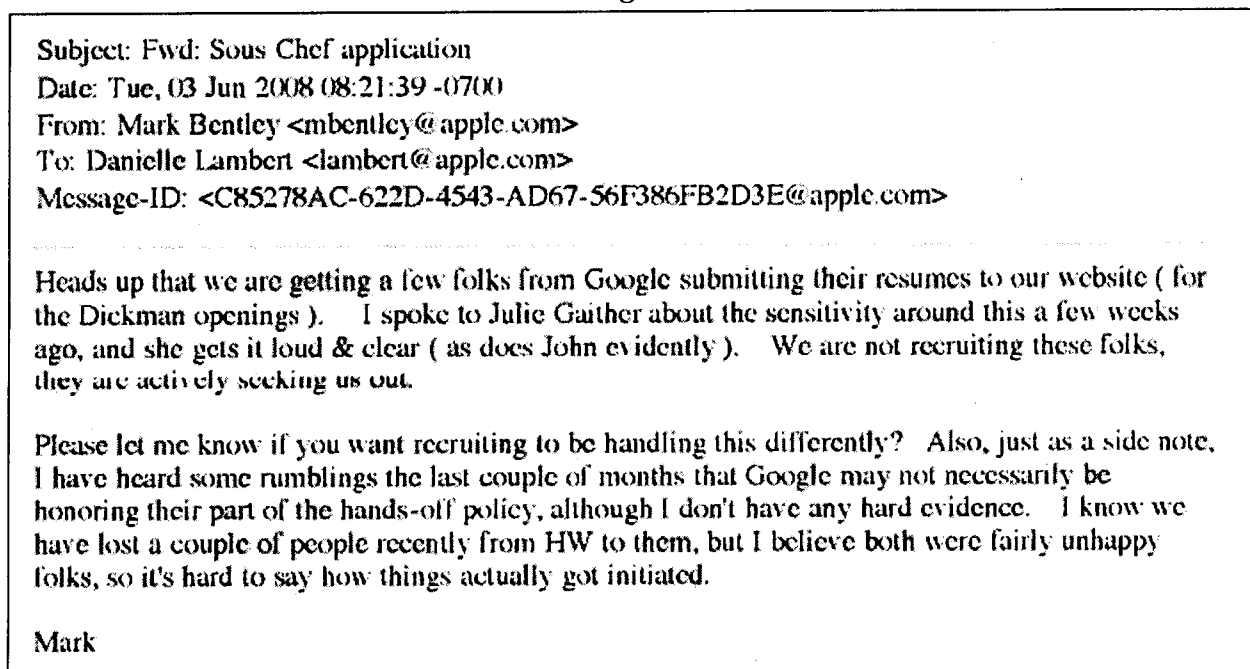
1 confirm whether "... we can cold call companies in Korean (excluding the 'do not cold call'
2 companies, of course)" (Figure 3).

3 **Figure 3**



13 104. An e-mail from one Apple employee to another suggests that illegal non-solicitation
14 agreements covered all positions, including Sous Chef, which is not considered a high-skilled
15 technology job traditionally. The e-mail states Apple personnel discussed the "sensitivity" of this
16 issue and decided, "We are not recruiting these folks, they are actively seeking us out."
17 Additionally, the e-mail confirms the existence of an illegal non-solicitation agreement between
18 Google and Apple by revealing, "I have heard some rumblings in the last couple of months that
19 Google may not necessarily be honoring their part of the hands-off policy ..." (Figure 4).

20 **Figure 4**



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106. On February 17, 2005, Jobs called Brin again with threats and, as a result, Brin agreed to stop recruiting from Apple (Figure 6). As memorialized by Brin, Jobs had threatened Brin to stop all recruiting at Apple: “if you hire a single one of these people that means war.”

Figure 6

From: Sergey Brin <sergey@google.com> on behalf of Sergey Brin
Sent: Thursday, February 17, 2005 8:20 PM
To: emg@google.com; joan@google.com; Bill Campbell
Cc: arninnon@google.com
Subject: Re: FW: [Fwd: RE: irate call from steve jobs]

So I got another irate call from jobs today. I don't think we should let that determine our hiring strategy but thought I would let you know. Basically, he said "if you hire a single one of these people that means war". I said I could not promise any outcome but I would discuss it with the executive team again. I asked if he expected us to withdraw offers and he said yes.

In reviewing the data below again, I do think this could be treated as not just an employee referral since he referred essentially a whole team. So a compromise would be to continue with the offer we have made (to [redacted]) but not to make offers to any of the others unless they get permission from Apple

In any case, lets not make any new offers or contact new people at Apple until we have had a chance to discuss.

--Sergey

107. To ensure compliance with the agreement, Google placed Apple on its internal “Do Not Call” list, which instructed Google employees not to cold call Apple employees. Apple also informed its relevant personnel about its agreement with Google and instructed them not to cold call Google employees. Senior executives of Google and Apple monitored compliance with the agreement and policed violations.

108. On February 27, 2005, Bill Campbell, a Member of Apple's Board of Directors, Google's Senior Advisor, and mentor to Schmidt, e-mailed Jobs to confirm that Schmidt "got directly involved and firmly stopped all efforts to recruit anyone from Apple." The next day, an Apple internal memorandum to all of its recruiters in the U.S. reflects that Apple and Google agreed not to recruit each other's employees (Figure 7).

Figure 7

Subject: Google
From: "Danielle Lambert" <lambert@apple.com>
Received(Date): Sat, 26 Feb 2005 05:28:46 +0000
To: <usrecruitingall@group.apple.com>

All,

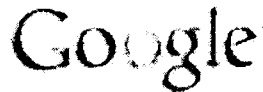
Please add Google to your "hands-off" list. We recently agreed not to recruit from one another so if you hear of any recruiting they are doing against us, please be sure to let me know.

Please also be sure to honor our side of the deal.

Thanks,
Danielle

109. Defendants put this agreement into official company policy. In early March 2005, Google's illegal non-solicitation agreement with Apple became "effective." A Google internal memorandum lists Apple as a company having a special agreement with Google and is part of the "Do Not Call" list, effective March 6, 2005; Google's protocol was "[n]ot to directly cold call into" companies on this list (Figure 8). Google's first illegal non-solicitation agreements came on the heels of Jobs' threat to Brin to stop all recruiting at Apple. Note that Intel, Intuit, and eBay were also part of Google's "Do Not Cold Call" list, though their effective dates were not until the following year.

Figure 8



**Special Agreement Hiring Policy
Protocol for "Do Not Cold Call" and "Sensitive" Companies**

The following companies have special agreements with Google and are part of the "Do Not Cold Call" list.

Effective March 6, 2005:

- Genentech, Inc.
- Intel Corporation
- Apple Computer
- Paypal, Inc.
- Comcast Corporation

Effective January 20, 2006:

- OpenTV Corporation
- Nvidia Technologies Corporation

Effective April 10, 2006:

- Intuit Inc.

Effective November 06, 2006:

- eBay, Inc.

Do not contact the following individuals from Intuit:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
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- 9.
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- 17.
- 18.



For each of these "Do Not Cold Call" companies, Google has agreed to the following protocol:

1. Not to directly cold call into those companies;

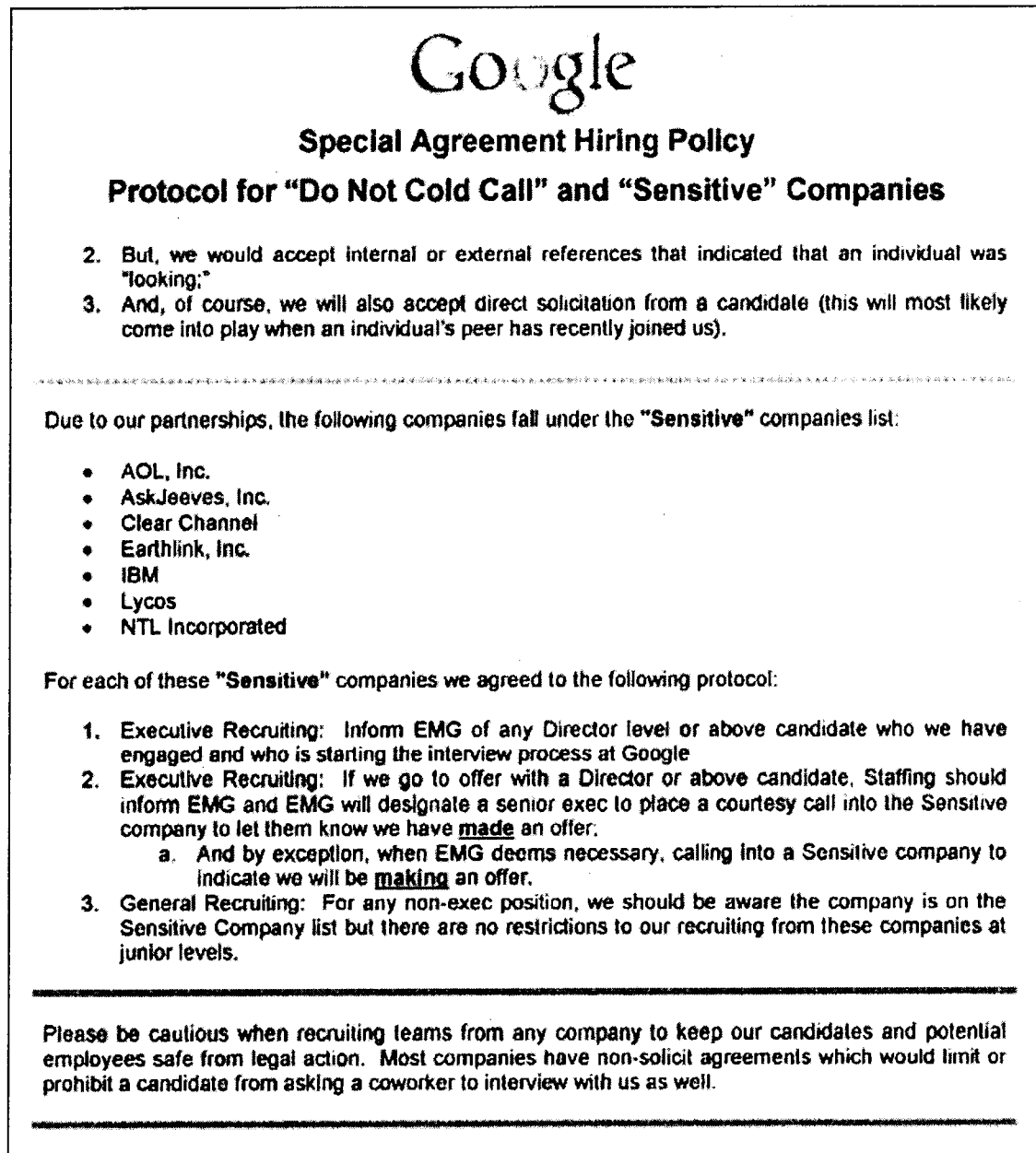
Revision 1106 2006

Google Inc.

1 110. The second page of the Google memorandum from March 2005 lists companies that
2 fall under the "Sensitive" list. Google's protocol was to provide notice to the Executive
3 Management Group of companies on this list when it was recruiting, or making an offer to, their
4 employees at the director level or above. Importantly, the memorandum includes language
5 demonstrating that Google was aware of the illegality of its hiring policies: "Please be cautious
6 when recruiting teams from any company to keep our candidates and potential employees safe from
7 legal action" (Figure 9). The memorandum also includes language revealing the prevalent nature of
8 these unlawful agreements: "Most companies have non-solicit agreements which would limit or
9 prohibit a candidate from asking a coworker to interview with us as well" (Figure 9).

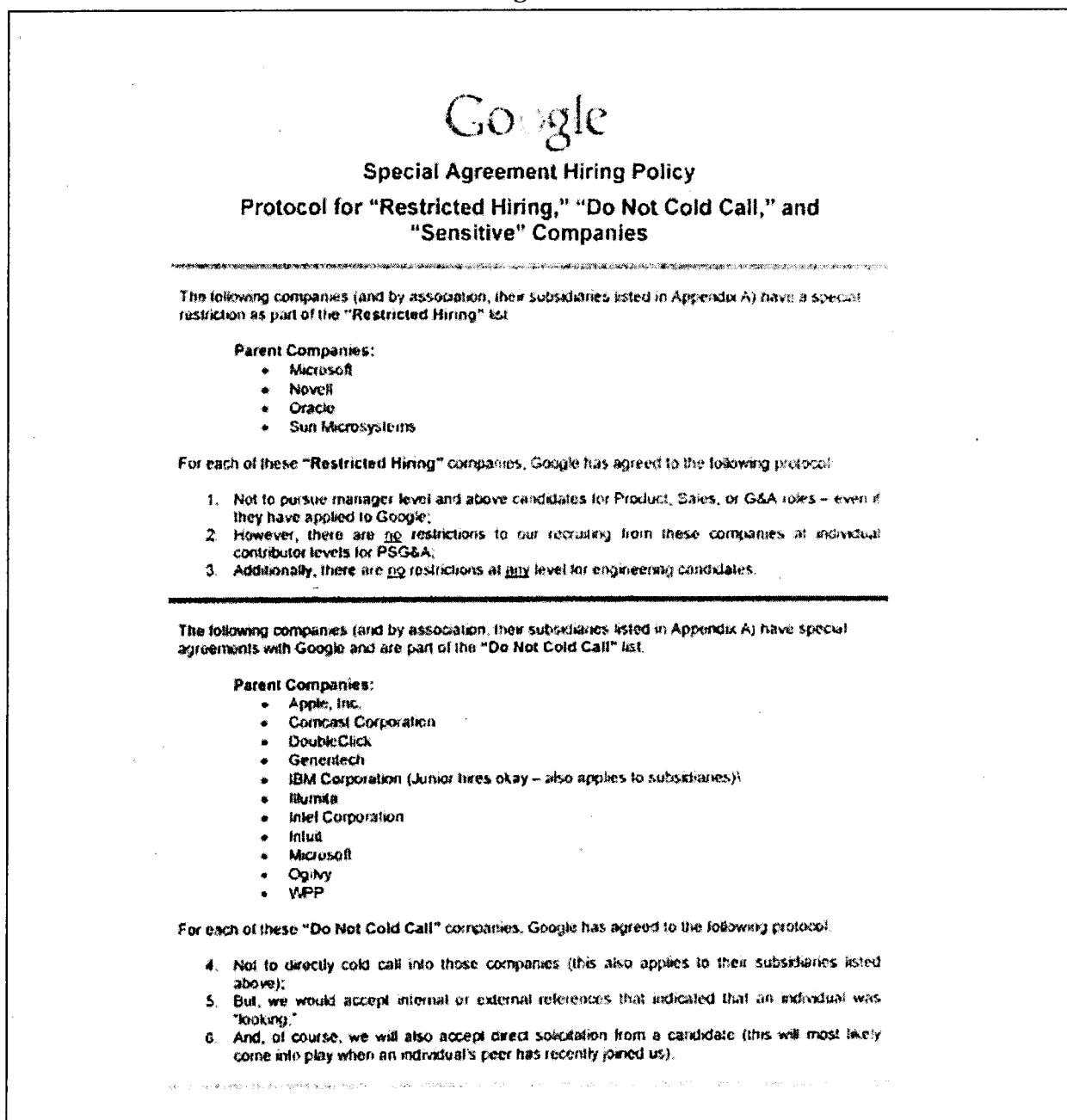
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Figure 9



111. Google, Apple, and other companies instructed their recruiters and human resources staff to avoid hiring individuals from companies on their no-solicit lists. Another Google internal memorandum from November 2006 details Google's "Special Agreement Hiring Policy" and the "Protocol for 'Restrictive Hiring,' 'Do Not Cold Call' and 'Sensitive' Companies," including even more companies on its various lists this time (Figure 10). Below is the first page of said memorandum in which Google lists numerous companies in its restricted hiring policies.

Figure 10



112. Three years later, in 2009, an Apple internal e-mail reveals that the illegal non-solicitation agreements were mutual and ongoing. Google appeared on Apple's "Hands Off (Do Not Call List)" (Figure 11b), which was attached to an e-mail from one Apple personnel to another (Figure 11a).

Figure 11a

From: David Alvarez <david.alvarez@apple.com>
To: Jonathan Geyer <jgeyer@apple.com>
Subject: List
Received(Date): Thu, 9 Jul 2009 17:25:08 -0700
Handsofflist.doc

Figure 11b

Hands Off (Do Not Call List) :

Microsoft - Mountain View (exchange group and Mac group)
Garmin
Palm
Adobe (Software partner)
Aspyr
AMD/ATI
Best Buy
CDW
Cingular
Comp USA (product re-seller)
Foxconn
Genentech (CEO sits on our board)
Google
Ingram Micro
Intel
Intuit (Common board members)
JCrew (Common board members)
Mac Zone
Nike (Common board members)
Nvidia
PC Connection
PC Mall
Pixar
Lucas
Quanta
Tech Data
Zones

113. In a February 13, 2006 e-mail from Apple's Jobs to Defendant Schmidt, Jobs complained, "I am told that Googles [sic] new cell phone software group is relentlessly recruiting in our iPod group. If this is indeed true, can you put a stop to it?" On the same day, Schmidt deferentially replied, "I'm sorry to hear this; we have a policy of no recruiting of Apple employees. I will investigate immediately!" (Figure 12).

Figure 12

Subject: RE: Recruiting
Date: Mon, 13 Feb 2006 15:17:11 -0800
From: "Eric Schmidt" <eschmidt@google.com>
To: "Steve Jobs" <sjobs@apple.com>
Message-ID: <200602132317.k1DNHCF1029022@stewie.corp.google.com>

I'm sorry to hear this; we have a policy of no recruiting of Apple employees. I will investigate immediately ! Eric

-----Original Message-----

From: Steve Jobs [mailto:sjobs@apple.com]
Sent: Monday, February 13, 2006 3:15 PM
To: Eric Schmidt
Subject: Recruiting

Eric,

I am told that Googles new cell phone software group is relentlessly recruiting in our iPod group. If this is indeed true, can you put a stop to it?

Thanks,
Steve

114. The next year, in a March 7, 2007 e-mail from Jobs to Schmidt, Jobs again protested Google's suspected violations of its illegal non-solicitation agreement with Apple: "Eric [Schmidt], I would be very pleased if your recruiting department would stop doing this" (Figure 14) in reference to an e-mail from a recruiter for the Google.com Engineering team (Figure 13).

Figure 13

Begin forwarded message:
From: [REDACTED]
Date: March 7, 2007 9:46:13 AM PST
To: [REDACTED]
Subject: Google.com Engineering Recruitment Team

Hello [REDACTED]

My name is [REDACTED] and I am a Recruiter for the "Google.com Engineering" team formerly known as the "Site Reliability Engineering" team. I found your contact information on the Internet. I am interested to know more about your past work experience and openness to new opportunities. We currently have positions available at Google that may be a good match for you. If you are open to exploring these opportunities further please send an updated version of your resume in word, html, or pdf form to me as soon as possible. Let me know when would be a good time to talk, please include your phone number.

1 115. In response, Schmidt e-mailed Defendant Geshuri, Google's Director of Recruiting,
2 the next day to "get this stopped and let me know why this is happening? I will need to send a
3 response back to Apple quickly so please let me know as soon as you can." Geshuri replied to
4 Schmidt, reporting, "On this specific case, the sourcer who contacted this Apple employee should
5 not have and will be terminated within the hour . . . In general, we have a very clear 'do not call'
6 policy that is given to every staffing professional and I reiterate this message in ongoing
7 communications and staff meetings . . . for this type of violation we terminate [the employee's]
8 relationship with Google. Please extend my apologies as appropriate to Steve Jobs. This was an
9 isolated incident and we will be very careful to make sure this does not happen again."

10 116. Schmidt's responded to Geshuri, "Appropriate response. Please make a public
11 example of this termination with the group. Please also make it a very strong part of the new hire
12 training for the group." (Figure 14). Schmidt's and Geshuri's immediate handling of Jobs' request
13 shows that they were more concerned with enforcing illegal non-solicitation agreements and
14 maintaining good relations with Apple than with preserving competition in Silicon Valley.

Figure 14

From: Shona Brown Sent: 3/11/2007 12:57 PM
To: [-] Amnon Geshuri
Cc: [-] Eric Schmidt; Laszlo Bock; Judy Gilbert
Bcc: [-]
Subject: Re: FW: Google Recruiting from Apple

Amnon-
Appropriate response. Please make a public example of this termination with the group. Please also make it a very strong part of new hire training for the group. I want it clear that we have a zero-tolerance policy for violating our policies. This should (hopefully) prevent future occurrences.

On 3/8/07, Amnon Geshuri <amnon@google.com> wrote:

Eric,

On this specific case, the sourcer who contacted this Apple employee should not have and will be terminated within the hour. We are scrubbing the sourcer's records to ensure she did not contact anyone else.

In general, we have a very clear 'do not call' policy (attached) that is given to every staffing professional and I reiterate this message in ongoing communications and staffing meetings. Unfortunately, every six months or so someone makes an error in judgment, and for this type of violation we terminate their relationship with Google.

Please extend my apologies as appropriate to Steve Jobs. This was an isolated incident and we will be very careful to make sure this does not happen again.

Thanks,
Amnon

On 3/8/07, Eric Schmidt <eschmidt@google.com> wrote:

I believe we have a policy of no recruiting from Apple and this is a direct inbound request. Can you get this stopped and let me know why this is happening? I will need to send a response back to Apple quickly so please let me know as soon as you can.

Thanks Eric

From: Steve Jobs [mailto:sjobs@apple.com]
Sent: Wednesday, March 07, 2007 10:44 PM
To: Eric Schmidt
Subject: Google Recruiting from Apple

Eric,

I would be very pleased if your recruiting department would stop doing this.

Thanks,
Steve

117. In addition to Apple, Google entered into illegal non-solicitation agreements with other companies, including Intel, Intuit, eBay, and Dell and many others who were on the "Do Not Call List".

1 **2. Google Enters Into an Express Illegal Agreement with Intel**

2 118. Beginning no later than September 2007, Google entered into an agreement with
3 Intel that was identical to Google's earlier agreement with Apple to stop recruiting each other's
4 employees. Senior executives of Google and Intel expressly agreed, through direct
5 communications, not to cold call each other's employees. Like Apple, the Google internal
6 memorandum from March 2006 lists Intel as a company having a special agreement with Google
7 and is part of the "Do Not Call" list, effective March 6, 2005; Google's protocol was "[n]ot to
8 directly cold call into" companies on this list (Figure 8). Similarly, Intel instructed its human
9 resources staff about the existence of the agreement.

10 119. Senior executives of Google and Intel monitored compliance with the illegal non-
11 solicitation and policed violations. Regarding Google extending an offer to an Intuit employee,
12 Defendant Rosenberg informed Laszlo Bock in August 2006 that "[Bill] Campbell and I already
13 discussed this and agreed that either way I should give a call to Paul Otellini. I'm meeting with [the
14 Intuit employee] tomorrow and I will ask him how he wants to handle communication to Intel
15 management before we even get to the stage of specifically discussing an offer" (Figure.15).
16 Rosenberg's e-mail highlights Google's perceived importance of the illegal non-solicitation
17 agreements. Rosenberg would not consider making an offer to Intuit's employee without speaking
18 to Defendant Otellini, then-CEO and President of Intel and a Member of its Board of Directors.

Figure 15

From: Jonathan Rosenberg <jonathan@google.com> on behalf of Jonathan Rosenberg
Sent: Wednesday, August 23, 2006 3:42 AM
To: Laszlo Bock; Jonathan Rosenberg
Cc: janicew@google.com; Martha Josephson; Shona Brown
Subject: RE: [REDACTED]

Thanks. Campbell and I already discussed this and agreed that either way I should give a courtesy call to Paul Otellini. I'm meeting with [REDACTED] tomorrow and I will ask him how he wants to handle communication to Intel management before we even get to the stage of specifically discussing an offer.

Jonathan

From: Laszlo Bock [mailto:laszlo@google.com]
Sent: Tuesday, August 22, 2006 7:25 PM
To: Jonathan Rosenberg
Cc: janicew@google.com; Martha Josephson; Shona Brown
Subject: RE: [REDACTED]

Jonathan - Just looked more closely at this list....Intel is "do not cold call", which we haven't (nor has EZI). No action needed prior to extending an offer on our part. -- Sorry for my earlier note.

From: Laszlo Bock
Sent: Tuesday, August 22, 2006 7:23 PM
To: Jonathan Rosenberg
Cc: 'janicew@google.com'; 'Martha Josephson'; Shona Brown
Subject: [REDACTED]

Jonathan,

Just a reminder that Intel is on our "sensitive companies" list. Not sure if Eric or someone else is the right person to call before we extend the offer. Let me know if/when you plan to extend and we can coordinate that discussion with Intel.

Thanks,
Laszlo

120. An e-mail from Defendant Otellini to Intel personnel reveals that Otellini was "more worried that [Google] would try to raid [Intel]" to fill two senior management positions. Additionally, Otellini confirmed the illegal non-solicitation agreement between Google and Intel: "I have an unofficial no poaching policy with them, but there have been escapes..." (Figure 16).

Figure 16

From: Otellini, Paul
To: Bryant, Andy
Sent: 4/16/2007 1:50:29 PM
Subject: RE: fyl

I agree on both. I was actually more worried that they would try to raid you for one or both. I have an unofficial no poaching policy with them, but there have been escapes...

From: Bryant, Andy
Sent: Monday, April 16, 2007 1:49 PM
To: Otellini, Paul
Subject: RE: fyl

It will be interesting to see what they find on IR. If someone good, I should have hired spencer stuart instead of letting our search people look.

For IA, I would probably try to stay inside, and draw a cpa from accounting.

From: Otellini, Paul
Sent: Monday, April 16, 2007 1:34 PM
To: Bryant, Andy
Subject: fyl

Google has two external searches... VP-IR and VP- IA.... Fyl..

121. In a June 3, 2007 e-mail from Schmidt to Defendant Brown and Laszlo Block, he inquired about Google's policy regarding hiring Intel employees. He informed them, "Since Paul [Otellini] is on [Google's] board we should have a crisp rule." Otellini was still the CEO and President of Intel and a Member of its Board of Directors at that time. Geshuri replied, "Since the beginning of the Do Not Call List, Intel has been listed. No one calls, networks, or emails into the company or its subsidiaries looking for people" (Figure 17).

Figure 17

From: Arnon Geshuri <arnnon@google.com> on behalf of Arnon Geshuri
Sent: Monday, June 04, 2007 3:41 AM
To: Laszlo Bock
Subject: Re: Fw: Rules about hiring Intel employees

Yes. Since the beginning of the Do Not Call List, Intel has been listed. No one calls, networks, or emails into the company or its subsidiaries looking for people.

Below is the protocol we require for companies on the Do Not Call List:

Standard Protocol for the DNC Companies:

- Not to directly cold call into those companies (this also applies to their subsidiaries);
- But, we would accept internal or external references that indicated that an individual was "looking;"
- And, of course, we will also accept direct solicitation from a candidate (this will most likely come into play when an individual's peer has recently joined us).

Let me know if we want to make the company completely hands-off and not even accept Intel employees that proactively seek Google out for employment opportunities.

On 6/3/07, **Laszlo Bock** <laszlo@google.com> wrote:
Is Intel also do not call?

----- Original Message -----

From: Eric Schmidt <eschmidt@google.com>
To: Shona Brown; Laszlo Bock
Sent: Sun Jun 03 19:25:05 2007
Subject: Rules about hiring Intel employees

What are the rules about us hiring Intel employees? Since Paul is on the board we should have a crisp rule. Thanks
Eric

122. Schmidt then relayed Geshuri's response to Otellini. It appears Otellini had asked Schmidt about Google's policy regarding hiring Intel employees after a suspected violation. Schmidt added, "Hopefully there are no exceptions to this policy and if you become aware of this, let me know immediately!" Otellini forwarded Schmidt's e-mail to Intel personnel, stating, "Fyi.... Do not fwd [sic]." (Figure 18). Google, Intel, and other companies were not concerned with overall diminished competition to the detriment of Google, which could not attract highly skilled employees as easily as it could have in the absence of illegal non-solicitation agreements, or affected employees, who were likely deprived of competitively important information and access to better job opportunities.

Figure 18

From: Otellini, Paul
To: Murray, Patty
Sent: 6/4/2007 4:08:06 PM
Subject: FW: hiring

Fyi.... Do not fwd..

From: Eric Schmidt [mailto:eschmidt@google.com]
Sent: Monday, June 04, 2007 6:18 AM
To: Otellini, Paul
Subject: hiring

Paul,

I checked as to our recruiting policy with Intel: "Intel has been listed on the Do Not Call List since the policy was created. No one in Staffing directly calls, networks, or emails into the company or its subsidiaries looking for talent." Hopefully there are no exceptions to this policy and if you become aware of this please let me know immediately ! I assume the person you sent information about contacted us directly and asked for a job...

Thanks and see you soon .. ! Eric

123. Later that year, Otellini clarified Intel's relationship with Google in a September 6, 2007 e-mail to Intel personnel with the subject "global gentleman agreement with Google": "[Google and Intel] have nothing signed. We have a handshake 'no recruit' between eric [Schmidt] and myself. I would not like this broadly known" (Figure 19).

Figure 19

To: Thompson, Gabrielle[/O=INTEL/OU=AMERICAS01/CN=Workers/cn=Thompson, Gabrielle];
Murray, Patty[/O=INTEL/OU=AMERICAS01/CN=Workers/cn=Murray, Patty]
From: Otellini, Paul
Sent on behalf of: Otellini, Paul
Sent: Thur 9/6/2007 7:41:23 PM
Importance: Low
Sensitivity: None
Subject: RE: global gentleman agreement with Google -- Privileged & Confidential
Categories: 0x00000000

Let me clarify. We have nothing signed. We have a handshake "no recruit"
between eric and myself. I would not like this broadly known. paul

From: Thompson, Gabrielle
Sent: Thursday, September 06, 2007 11:47 AM
To: Murray, Patty; Otellini, Paul
Subject: FW: global gentleman agreement with Google -- Privileged & Confidential

Hi Patty and Paul,

Are either of you aware of any agreement with Google that prohibits us from recruiting
Google's senior talent?

Thanks.

Gaby

124. Despite the express illegal agreement between Google and Intel at this time, Renee James of Intel e-mailed Otellini on September 26, 2007, stating, "I am losing so many people to Google." Otellini then e-mailed Schmidt, asking, "Eric [Schmidt], can you pls [sic] help here???" Renee runs all my s/w efforts[.]" Schmidt replied, assuring Otellini that Google does not actively recruit from Intel. He added, "Arnon [Geshuri] will run the diligence and report back to you on the facts. If we find that a recruiter called into Intel, we will terminate the recruiter. We take these relationships exceptionally seriously." Further, Google will "develop and implement a process to

1 actively flag candidates from sensitive companies as soon as they receive a response to their Google
2 application" (Figure 20).

3 **Figure 20**

4 **From:** Eric Schmidt
5 **To:** Otellini, Paul
6 **CC:** eschmidt@google.com
7 **Sent:** 9/27/2007 6:52:55 AM
8 **Subject:** recruiting

9 **Paul, I checked and was told:**

10 "We do not actively recruit from Intel, though we do accept inbound applications. Arnon will
11 run the diligence and report back to you on the facts. If we find that a recruiter called into
12 Intel, we will terminate the recruiter. We take these relationships exceptionally seriously"

13 I'm very sorry if indeed a recruiter (who are sometimes contractors) did this; if so we will
14 address asap. Thank you very much for letting me know and please let me know if this
15 continues to happen/happens again.

16 Eric

17 **3. Google Enters Into an Express Illegal Agreement with Intuit**

18 125. In June 2007, Google entered into an agreement with Intuit that was identical to
19 Google's earlier agreement with Apple and Intel. Google and Intuit agreed to eliminate competition
20 between them for skilled labor, with the intent and effect of suppressing the compensation and
21 mobility of their employees. Senior executives of Google and Intuit expressly agreed, through
22 direct communications, not to cold call each other's employees. Like Apple and Intel, the Google
23 internal memorandum from March 2006 lists Intuit as a company having a special agreement with
24 Google and is part of the "Do Not Call" list, effective April 10, 2006; Google's protocol was "[n]ot
25 to directly cold call into" companies on this list (Figure 21). Instead of the entire company,
26 however, the memorandum lists 18 specific individuals at Intuit to not contact. Defendant Greene
27 was on Intuit's Board of Directors when the companies entered into the non-solicitation agreement.

28 126. Geshuri's June 5, 2007 e-mail to Google personnel requested that the Do Not Call
list "to now include Intuit 100% do not call" instead of only the 10 named employees.

Figure 21

From: Arnon Geshuri Sent: 6/5/2007 9:57 AM
To: [-] Carson Page; Karne Karpali (קרני)
Cc: [-] Jenny Byrne
Bcc: [-]
Subject: Intuit is now officially a Do Not Call company

Carson,

Can you please update the DNC list to now include Intuit 100% do not call.

You can remove the names in appendix C and add in any subsidiaries.

Thanks,
Arnon

127. The next day, Geshuri e-mailed Schmidt, copying Brown, informing them that Campbell, Chairman of the Intuit's Board of Directors and Member of Apple's Board of Directors, "requested that Intuit be added fully to the Do Not Call list . . . Please confirm that you are okay with the modification to the policy" (Figure 22).

Figure 22

From: Arnon Geshuri Sent: 6/6/2007 10:06 AM
To: [-] Eric Schmidt
Cc: [-] Shona Brown; Laszlo Bock
Bcc: [-]
Subject: Changing Intuit's Status on the Do Not Call List

Eric,

During a brief conversation with Shona and Bill Campbell, Bill requested that Intuit be added fully to the Do Not Call list.

Currently, our non-solicit policy covers only 18 Intuit employees who were involved in the partnership discussions last year and therefore leaves the rest of the company's employee population open to our recruiting efforts. However, our staffing team has treated Intuit with great sensitivity because of our relationship and has not been proactively recruiting out of this organization.

The change to our Do Not Call policy will make our hands-off approach to Intuit explicit and ensure clarity.

Please confirm you are okay with the modification to the policy.

Thanks,
Arnon

1 128. To ensure compliance with the non-solicitation agreement, Google added Intuit on
2 its "Do Not Call" and "Sensitive Company" list and instructed Google employees not to cold call
3 Intuit employees (Figure 23).

4 **Figure 23**

5	From: Arnon Geshuri	Sent: 6/12/2007 10:44 AM
6	To: [-] recruiter@google.com; recruiting-coordinators@google.com; sourcers@google.com	
7	Cc: [-]	
8	Bcc: [-]	
9	Subject: Arnon's Weekly Top Ten - Week of June 11, 2007	
10	<div><p>Arnon's Top 10</p><p>Week of June 11, 2007</p><p>10. Candidate Clearinghouse – Have you ever had a lead or candidate that you thought would be great for Google but was not a fit for the specific role for which you were recruiting? Perhaps you weren't sure where exactly they might fit within Google and didn't have time to research where there would be a fit. Well, the Collaborative Sourcing Team is just what you were looking for. In addition to sourcing passive candidates for various roles within Google, the team also acts as a clearinghouse for candidates and leads who aren't a fit for the roles for which they were interviewed or sourced, but who meet Google's hiring bar. The team is happy to take on the task of finding what other opportunities could be available for that candidate/lead, confirming the interest of the candidate in pursuing alternative opportunities and ensure they are inserted into the recruiting process as appropriate. To take advantage of the clearinghouse function, simply close the candidate out of the req they are currently in without sending a rejection e-mail and route to one of the team members: Nicole Kozlosky (nkozlosky), Rachel Kinney (rkinney), David Rudman (drudman), Paul Hudson (pahudson), Mabel Lam (mabellam), Greg Schwan (gpschwan), and Morgan Missentzis (morganjane) for possible consideration by other teams. If, as a sourcer or recruiter, you already know where the candidate might fit, then you may simply bypass the clearinghouse and route directly to the appropriate sourcer or recruiter. The purpose of the clearinghouse is to ensure qualified candidates are considered for all possible opportunities and are not lost in the system</p><p>9. Updated Do Not Call/Sensitive Company List – There have been some changes to the Do Not Call and Sensitive Company list. Intuit has been added to the list.</p><p>Please refer to the Hiring Policies and Protocols located here for the new document (Link: http://gweb.corp.google.com/staffing/library.cgi?action=file&docID=35707) and take a few moments to read through the list and keep it accessible for future reference.</p></div>	

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21 129. Senior executives of Google and Intuit monitored compliance with the agreement
22 and policed violations. For example, Egon Zehnder International ("Egon") e-mailed an Intuit
23 employee on November 18, 2005 regarding a search it was conducting on behalf of Google for the
24 newly created role of Chief Marketing Officer (Figure 24).

Figure 24

-----Original Message-----

From: Kim Van Der Zon <kvdz@ezi.net>

To: [REDACTED]

Sent: Fri Nov 18 12:41:25 2005

Subject: Google CMO search

[REDACTED]

I am a Partner at Egon Zehnder International, and one of my colleagues suggested that I contact you in regards to a search we are conducting on behalf of our client Google for the newly created role of CMO. I have attached the spec for your perusal and look forward to any thoughts you may have.

Many thanks in advance for your time and consideration.

best,
Kim

<<Spec Google Head of Mkting.ZIP>>

Kim Van Der Zon
Egon Zehnder International
350 Park Avenue
NY, NY 10021
Phone: 212.519.6160
FAX: 212.519.6064
kvdz@ezi.net

130. The next day, Campbell asked Defendant Rosenberg, "Are you guys nuts?" after coming across Egon's e-mail to the Intuit employee. Campbell was then-Google's Senior Advisor and Chairman of Intuit's Board of Directors. Defendant Brown then e-mailed Martha Josephon of Egon regarding the e-mail, stating, "This is pretty bad. Can you educate your colleagues please" (Figure 25).

Figure 25

From: Shona Brown <shona@google.com> on behalf of Shona Brown
Sent: Saturday, November 19, 2005 1:11 AM
To: Martha Josephson
Cc: Campbell, Bill; Jonathan Rosenberg
Subject: Re: FW: Google CMO search

MJ-

We have a set of companies that we are particularly sensitive to (I asked Arnon to forward to you in separate email) and that we want emg to know if any of their senior folks are being approached. It is a very short list. With these, I suggest ezi make sure we are aware before contact is made and also that the language is clearer that you are looking for leads and not the individual's own interest. thx.
slb

On 11/18/05, Martha Josephson <Martha.Josephson@ezi.net> wrote:

He has been helpful with referrals in the past and we ask people like him all the time for ideas. We know full well that we can't touch Intuit people as targets. (We also know we can't call this "CMO" after the first discussion, but the initials help orient outsiders to the type of seniority we need.) Please forgive? mj

Martha Josephson
Egon Zehnder International
1290 Page Mill Road
Palo Alto, California 94304-1122
650-847-3055
650-283-3109 (mobile)
650-847-3050 (fax)
www.zehnder.com

-----Original Message-----

From: Shona Brown [mailto:shona@google.com]
Sent: Friday, November 18, 2005 3:01 PM
To: Campbell, Bill; Martha Josephson
Cc: Jonathan Rosenberg
Subject: Re: FW: Google CMO search

Martha-

This is pretty bad. Can you educate your colleagues please.
slb

On 11/18/05, Campbell, Bill <Bill_Campbell@intuit.com> wrote:
Jonathan

Are you guys nuts?

Bill

131. Campbell again e-mailed Bock copying Defendant Brown on February 13, 2007, requesting, "Can we please not target Intuit..." with respect to an Intuit employee who had reached out to Google. Bock emphasized that Intuit was on "Google's do not solicit" list. Bock added, "[T]here are a lot of fish in the sea and I'm happy to not move forward with conversations with this particular individual if you prefer" (Figure 26). Bock's reply highlights Google's interest in maintaining relations with other companies by entering into these illegal agreements.

Figure 26

From: Campbell, Bill <bill_campbell@intuit.com> on behalf of Campbell, Bill
Sent: Tuesday, February 13, 2007 9:41 PM
To: Laszlo Bock
Cc: Shona Brown
Subject: RE: Russell Reynolds Contact

Thanks so much.....

bill

From: Laszlo Bock [mailto:laszlo@google.com]
Sent: Tuesday, February 13, 2007 1:39 PM
To: Campbell, Bill
Cc: Shona Brown
Subject: RE: Russell Reynolds Contact

Hi Bill,

This candidate actually reached out to a Googler about exploring opportunities here, which is how we found out about him. Intuit is on our "do not solicit" list. When I saw this candidate's name in my weekly update with Russell Reynolds, I re-emphasized our policy with them and had Arnon double-check that this was someone who contacted us initially, and was then routed to Russell as part of our search.

That being said, there are a lot of fish in the sea and I'm happy to not move forward with conversations with this particular individual if you prefer.

Thanks,
Laszlo

From: Campbell, Bill [mailto:Bill_Campbell@intuit.com]
Sent: Tuesday, February 13, 2007 1:22 PM
To: Laszlo Bock
Cc: Shona Brown
Subject: FW: Russell Reynolds Contact
Importance: High

Laszlo

Can we please not target Intuit.....

Bill

132. Companies also assisted each other in forming and policing the agreement. Campbell's February 18, 2006 e-mail to Jobs mentioned a conversation he had with Schmidt. "I am heading out of town . . . and wanted to give you the latest of what I heard from Google after talking to Eric Schmidt. [] Eric told me he got directly involved and firmly stopped all efforts to recruit anyone from Apple" (Figure 27).

Figure 27

Subject: google
Date: Fri, 18 Feb 2005 18:24:09 -0800
From: "Campbell, Bill" <bill_campbell@intuit.com>
To: "Steve Jobs (sjobs@apple.com)" <sjobs@apple.com>
Message-ID: <BEE0888C52AFA4A8EE285BFD2FE4C390AE762B1@mtvex02.mv.intuit.com>

Steve

I am heading out of town in the AM (off to Montana) and wanted to give you the latest of what I heard from Google after talking to Eric Schmidt.. Eric told me that he got directly involved and firmly stopped all efforts to recruit anyone from Apple. Unfortunately (and you will be rightfully pissed), they had already extended an offer to Dave. When I talked to Eric, he simply felt that he could not rescind the offer, but felt that it was doubtful that Dave would take the offer since Google stopped recruiting the other two members of his team.

I am not leaving until 11:00AM if you want to talk.

Bill

4. Google Enters Into an Express Illegal Agreement with eBay

133. In September 2005, Google entered into a non-solicitation agreement with eBay after eBay CEO Meg Whitman called Schmidt complaining that Google's recruiters were hurting profits and business at eBay. Schmidt then e-mailed Google's Executive Management Committee summarizing Whitman's and "The valley's" view that competing for workers by offering higher pay packages was "unfair" (Figure 28). Schmidt told a Google executive to "fire the recruiter [who offended Whitman] immediately because she was a "good friend." Within weeks of Whitman's call to Schmidt, Google listed eBay under "Sensitive" companies.

Figure 28

From: Eric Schmidt <eschmidt@google.com> on behalf of Eric Schmidt
Sent: Wednesday, September 07, 2005 10:52 PM
To: emg@google.com; Campbell, Bill; amon@google.com
Subject: Phone call from Meg Whitman

DO NOT FORWARD

Meg called to talk about our hiring practices. Here is what she said:

1. Google is the talk of the valley because we are driving salaries up across the board. People are just waiting for us to fall and get back at us for our "unfair" practices now.
2. Our recruiting practices are "zero sum" and it appears that somewhere in Google we are targeting eBay to "hurt them" and its the reputation that we are doing this against Yahoo, eBay and MSFT (I denied this.)
3. Apparently a Google recruiter called Maynard Webb (their COO) and had a meeting with him. Here is what the recruiter said:
 - a) Google is looking for a COO
 - b) the position will pay \$10 m over 4 years.
 - c) the COO will be part of the "CEO succession plan" (i.e. in line to be CEO).
 - d) Maynard has declined to pursue this.

Based on this (falsehoods) I have directed Amon to fire the recruiter immediately for cause.

4. This was a rough call from a good friend. We need to get this fixed

Eric

134. In early October 2005, Defendant Brown, then-Google's Senior Vice President of Human Resources, e-mailed Schmidt a draft list of companies on the Company's "Do Not Call" and "Sensitive" lists, and the policy protocols. Schmidt replied, "This looks very good." Brown then asked Schmidt if Defendant Kordestani, then-Google's Senior Vice President of Global Sales and Business Development, could share "with Ebay/PP the rules as they pertain to them?" Schmidt replied, "I prefer that Omid [Kordestani] do it verbally." He even voiced concern regarding "a paper trial over which we can be sued later" (Figure 29).

Figure 29

From: Shona Brown <shona@google.com> on behalf of Shona Brown
Sent: Thursday, October 06, 2005 1:44 AM
To: Eric Schmidt
Cc: Omid Kordestani
Subject: Re: Fwd: Protocol for "Do Not Cold Call" and "Sensitive" Companies ---please comment to Amnon ASAP if you have any changes

makes sense to do orally. i agree.

On 10/5/05, **Eric Schmidt** <eschmidt@google.com> wrote:

I would prefer that Omid do it verbally since I don't want to create a paper trail over which we can be sued later? Not sure about this.. thanks Eric

From: Shona Brown [mailto:shona@google.com]

Sent: Wednesday, October 05, 2005 4:06 PM

To: Omid Kordestani

Cc: Eric Schmidt

Subject: Re: Fwd: Protocol for "Do Not Cold Call" and "Sensitive" Companies ---please comment to Amnon ASAP if you have any changes

I am fine with this.

Eric -- any concerns with Omid sharing with Ebay/PP the rules as they pertain to them?
slb

On 10/5/05, **Omid Kordestani** <omid@google.com> wrote:

Great. Can I edit and forward the core policy to ebay/PP (only their respective org's listed of course)?

Omid

5. Google Enters Into an Express Illegal Agreement with Dell

135. By April 2007, Google entered into a non-solicitation agreement with Dell after Michael Dell, Dell's CEO and Founder, e-mailed Schmidt to express his displeasure about "Google extend[ing] an offer to one of [Dell]'s sales guys given our partnership." Dell suggested that the companies "have a general understanding that we are not actively recruiting from each other." (Figure 30).

Figure 30

----- Forwarded message -----
From: Michael@dell.com <Michael@dell.com >
Date: Apr 19, 2007 8:12 AM
Subject: Hiring our guys
To: ericschmidt@google.com

Eric,

I learned recently that Google extend an offer to one of our sales guys.

Not real happy about this and not the kind of think we would expect given our partnership.

We should discuss next time we are together but I think we should have a general understanding that we are not actively recruiting from each other.

Michael

136. Two days later, Schmidt forwarded Dell's e-mail to two of Google's human resources executives. Lazlo Bock stated that Google would "put Dell on 'do not call' for the next two months" (Figure 31). Dell is just one example of how simple express illegal non-solicitation agreements were between Google and other companies. Over time, the companies involved in the illegal non-solicitation agreements increased in number.

Figure 31

From: Arnon Geshuri. Sent: 4/19/2007 2:04 PM.
To: [-] Brad Strader.
Cc: [-]
Dcc: [-]
Subject: Fwd: Hiring our guys.

Can you help me with this Eric firedrill. Same kind of spreadsheet we created in the past.

Let's check on [REDACTED] first to see if he actively came to us or we sourced him.

Thanks.

----- Forwarded message -----
From: Laszlo Bock <laszlo@google.com>
Date: Apr 19, 2007 1:50 PM
Subject: Re: Hiring our guys
To: Eric Schmidt <eschmidt@google.com>, Shona Brown <shona@google.com>, Arnon Geshuri <arnon@google.com>

(+Arnon)
Eric,

We'll put Dell on "do not call" for the next 2 months.

Arnon's team will investigate if this particular one was inbound or if we found him, and do a report of Dell folks in process today. We'll send a summary back to you so you have the facts for your next conversation with Michael.

Best,
-Laszlo

----- Original Message -----
From: Eric Schmidt <eschmidt@google.com>
To: Laszlo Bock; Shona Brown
Sent: Thu Apr 19 15:43:05 2007
Subject: FW: Hiring our guys

Lets put them on the "dont call into Dell" list for a while. Thanks eric

C. Google Has Been Harmed by these Illegal Agreements

137. Google has been harmed by these illegal agreements because it was forced to enter into an agreement with the DOJ in September 2010, which caused it to expend substantial time and money to defend itself.

138. In addition, Google has been sued in a class action brought by its employees for antitrust and other violations alleging that their wages have been suppressed. The action, which was initially filed against six companies, seeks billions of dollars in damages against all the defendants. A class has been certified and trial has been set for May of 2014. On April 24, 2014, the parties announced resolution of the lawsuit, although the settlement amount was not disclosed. Google has had to expend substantial time and money to defend itself and to satisfy the settlement.

1 139. As a result of its illegal agreements, Google's reputation has been harmed.

2 140. Further harm has come from the loss of innovation which occurred because of the
3 illegal agreements. Alan Hyde, a Professor and the Sidney Reitman Scholar at Rutgers University
4 School of Law and author of *Working in Silicon Valley: Economic and Legal Analysis of a High-*
5 *Velocity Labor Market* (New York: M.E. Sharpe, Inc., 2003), concluded that technological and
6 economic growth depends upon a company's ability to hire and fire employees quickly in his theory
7 of damages. Professor Hyde addresses the evolving labor market by utilizing the high-technology
8 employers in Silicon Valley as a case study. Professor Hyde declares that the rapid and frequent
9 turnover of employees is a key component resulting in short job tenures. He also identifies the
10 heavy use of temporary labor and a lack of loyalty to individual firms as contributing factors.
11 Professor Hyde labels these unique components of employment in the mobile market of Silicon
12 Valley as "high-velocity." In an attempt to explain why high-velocity labor supports rapid
13 technological growth, Professor Hyde effectively identifies and explains two general concepts,
14 "flexibility" and "information diffusion." "Flexibility" accounts for the fluid market of available
15 employees consisting of contractors and consultants who typically move from one company to the
16 next. "Information diffusion" accounts for the technical know-how and advancements that travel
17 between companies as those employees move from job to job.¹⁶

18 141. Accordingly, Defendants impeded technological and economic growth at Google by
19 entering into illegal non-solicitation agreements with the Company's competitors to artificially
20 decrease employee salaries at Google and at other companies, which suppressed high-velocity labor
21 by squelching flexibility and information diffusion. The illegal agreements run contrary to what has
22 made Silicon Valley so successful: job-hopping. As Professor Hyde explains, "There is a fair
23 amount of research that tech companies, particularly in California, have distinctive personnel
24 practices." He stated, "They hire for short tenures and keep ties with former employees, so there
25 can be an exchange of information across company lines. The companies in [a class-action lawsuit
26

27
28 ¹⁶ Alan Hyde. *Working in Silicon Valley: Economic and Legal Analysis of a High-Velocity Labor Market*. New York: M.E. Sharpe, Inc., 2003. Print.

1 that accuses industry executives of agreeing between 2005 and 2009 not to poach one another's
2 employee] might have been killing the golden goose."¹⁷

3 142. This loss has been confirmed by Google internal documents. Prior to Google's
4 agreement with Apple, Google determined it needed to "dramatically increase the drain to
5 competitors to accomplish this rate of hiring [employees for positions in the technical class]."
6 There was a large "hiring gap" for engineering positions. Google found that cold calling offered the
7 highest yield of employees. In response to concerns about slow hiring, Google's Chief Culture
8 Officer stated that: "Cold calling into companies to recruit is to be expected unless they're on our
9 'don't call' list." Google tracked the decline of its top technical candidates as well as the loss of its
10 technical employees.

11 143. A January 8, 2007 e-mail from Google personnel to Defendant Rosenberg reveals
12 how "it will be very challenging to add new initiatives [without] losing something out the other
13 end" due to the illegal non-solicitation agreements in place between Google and other competitors.
14 Further, "I'm trying to be creative [with] recruiting from within the [organization] . . . but we need
15 to start poaching from other companies which is not something we currently do" (Figure 32).

16 **Figure 32**

17 **From:** Andrea Ritzer [mailto:aritzer@google.com]
18 **Sent:** Monday, January 08, 2007 6:01 PM
19 **To:** Jonathan Rosenberg
20 **Subject:** Re: FW: [Eng-announce] [Fwd: Q4 interviewing stats]

21 Until we do get PM HR staffed, it will be very challenging to add new initiatives w/o losing something out the
22 other end.

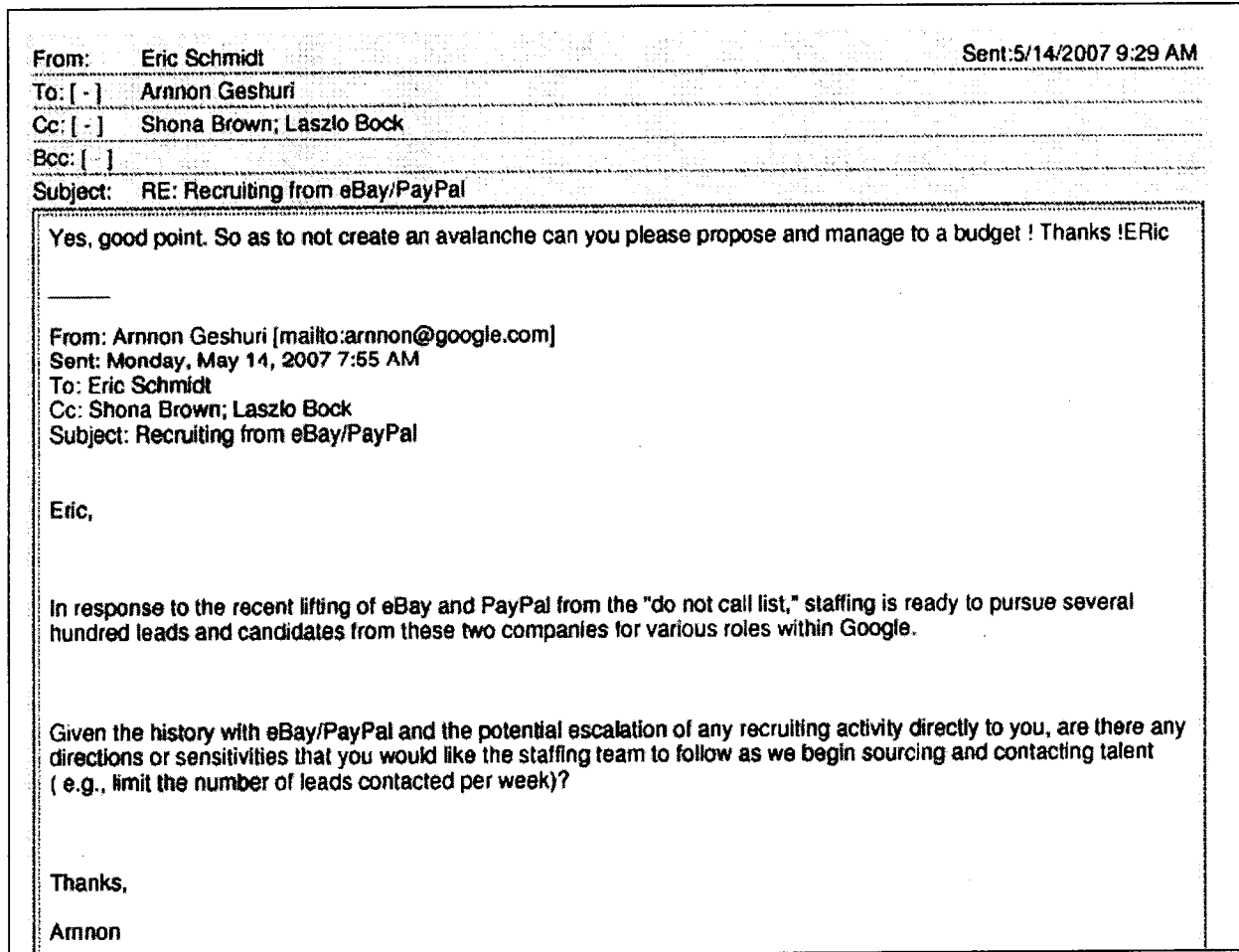
23 I'm trying to be creative w/ recruiting from within the org as well as looking for seasoned people but we need to
24 start poaching from other companies which is not something that we currently do. Stay on Laszlo on this- I will
25 as well. We have to grow my team quickly or we will ultimately fail the Product folks and fall short of our

26 144. When Google removed eBay and PayPal from its "Do Not Call" list, this opened the
27 door for a flood of talent and therefore, innovation. Defendant Geshuri's May 14, 2007 e-mail to
28 Defendant Schmidt stated, "In response to the recent lifting of eBay and PayPal from the 'do not

29 ¹⁷ David Streitfeld, *Engineers Allege Hiring Collusion in Silicon Valley*. New York Times, 28
30 Feb. 2014, http://www.nytimes.com/2014/03/01/technology/engineers-allege-hiring-collusion-in-silicon-valley.html?_r=0.

1 call list,' staffing is ready to pursue several hundred leads and candidates from these two companies
2 for various roles within Google" (Figure 33).

3 **Figure 33**



19 145. As a direct and proximate result of Defendants' actions, Google has expended, and
20 will continue to expend, significant sums of money. Such expenditures include but are not limited
21 to:

- 22 (a) costs incurred from years of lost opportunities to hire more qualified employees that
23 were employed at other companies;
- 24 (b) costs incurred from defending and paying a settlement in the class actions for
25 violations of antitrust laws;
- 26 (c) costs incurred from defending and settling the DOJ action against Google;
- 27 (d) loss of reputation; and
- 28

1 (e) costs incurred from compensation and benefits paid to the Defendants who have
2 breached their duties to Google.

3 **VI. CLAIMS FOR RELIEF**

4 **FIRST CAUSE OF ACTION**

5 **Against Defendants for Breach of Fiduciary Duty and Aiding and Abetting Breaches of**
6 **Fiduciary Duty**

7 134. Plaintiff incorporates by reference the allegations set forth above as though fully
8 restated herein.

9 135. Defendants, as Google's Executive Officers, Directors, and Senior Leadership, were
10 and are required to use their abilities to control and manage Google in a fair, just, and equitable
11 manner to ensure that the Company complied with applicable laws and contractual obligations, to
12 refrain from abusing their positions of control, and not to favor their own interests at the expense of
13 Google.

14 136. By their actions alleged above, Defendants violated their fiduciary duties to Google,
15 including, without limitation, their duties of good faith, loyalty, and due care.

16 137. The wrongful conduct particularized herein was not due to an honest error in
17 judgment but rather to Defendants' abuse of control, gross mismanagement, and waste of corporate
18 assets as well as bad faith and/or reckless disregard of Google's rights and interests and its
19 employees, without reasonable and ordinary care which they owed to the Company. There was
20 sustained and/or systemic lack of oversight by the Board of Directors, done either knowingly or
21 recklessly.

22 138. Defendants have participated in harming Google and have breached fiduciary duties
23 owed to the Company. Defendants knowingly aided, encouraged, cooperated and/or participated in,
24 and substantially assisted other Defendants in the breach of their fiduciary duties.

25 139. As a result of Defendants' breach of fiduciary duties, Google has sustained and will
26 continue to sustain damages and injuries for which it has no adequate remedy at law.

140. The acts of Defendants named herein, and each of them, were done maliciously, oppressively, and with intent to defraud, and Plaintiff on behalf of Google is entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

SECOND CAUSE OF ACTION

Against Defendants Brin, Page, and Schmidt for Abuse of Control

141. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

142. By virtue of their positions and financial holdings in Google, Defendants exercised control over the Company and its operations, and owed duties as controlling persons to Google not to use their positions of control within the Company for their own personal interests and contrary to Google's interests.

143. Defendants' conduct by entering into illegal agreements amounts to an abuse of their control of Google in violation of their obligations to the Company. By their actions alleged above, Defendants knowingly aided, encouraged, cooperated and/or participated in, and substantially assisted other Defendants in their abuse of control.

144. As a result of Defendants' abuse of control, Google has sustained and will continue to sustain damages and injuries for which it has no adequate remedy at law.

145. The acts of Defendants named herein, and each of them, were done maliciously, oppressively, and with intent to defraud, and Plaintiff on behalf of Google is entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

THIRD CAUSE OF ACTION

Against Defendants Brin, Page, and Schmidt for Gross Mismanagement

146. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

147. By their actions alleged above, Defendants Brin, Page, and Schmidt abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing Google's assets and business in a manner consistent with the operations of a publicly held corporation.

148. As a result of the gross mismanagement based upon the acts and omissions set out in this Complaint, Google has sustained and will continue to sustain damages and injuries for which it has no adequate remedy at law.

149. The acts of Defendants Brin, Page, and Schmidt were done maliciously, oppressively, and with intent to defraud, and Plaintiff on behalf of Google is entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

FOURTH CAUSE OF ACTION

Against Defendants for Waste of Corporate Assets

150. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

151. By their actions alleged above, and by failing to properly consider the interests of Google and its public shareholders by failing to conduct proper supervision, Defendants have caused the Company to waste valuable corporate assets by paying improper compensation and bonuses to certain Executive Officers, Directors, and Senior Management who breached their fiduciary duties and to incur potentially millions of dollars of legal liability or legal costs to defend Defendants' unlawful actions.

152. As a result of the waste of corporate assets, Google has sustained and will continue to sustain damages and injuries for which it has no adequate remedy at law.

153. The acts of Defendants named herein, and each of them, were done maliciously, oppressively, and with intent to defraud, and Plaintiff on behalf of Google is entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

REQUEST FOR RELIEF

Plaintiff on behalf of Google requests judgment and relief as follows:

1. Damages described in this Complaint against all Defendants, jointly and severally, together with pre- and post-judgment interest as allowed by law, for the benefit of Google;

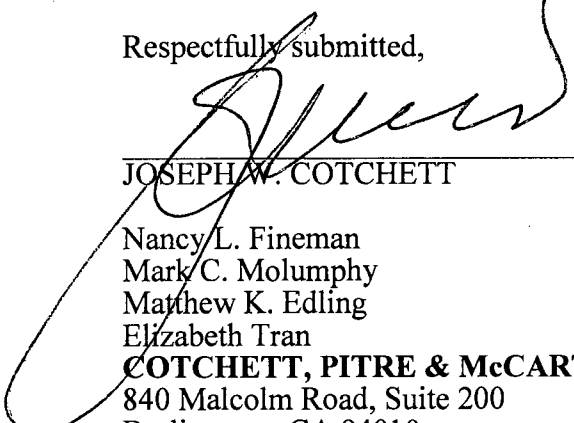
2. Appropriate equitable relief;

1 3. Reasonable attorney's fees and costs incurred in the prosecution of this action for the
2 benefit of Google;

3 4. Any other and further relief that may be just and proper.

4 Dated: April 29, 2014

Respectfully submitted,

5
6 
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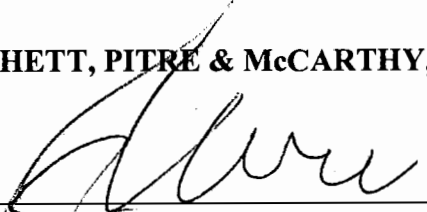
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JURY TRIAL DEMAND

Plaintiff Pradeep Shah on behalf of Google hereby demands a trial by jury of all issues which are subject to adjudication by a trier of fact.

Dated: April 29, 2014

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