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Case No. 2019-0355-SG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IRVING FIREMEN'S RELIEF AND RETIREMENT FUND, Derivatively on Behalf of ALPHABET, INC., Plaintiff, v. LAWRENCE E. PAGE, SERGEY BRIN, ERIC E. SCHMIDT, SUNDAR PICHAI, DIANE B. GREENE, L. JOHN DOERR, K. RAM SHRIRAM, ANN MATHER, ALAN R. MULALLY, ROGER W. FERGUSON, JR., JOHN L. HENNESSY, SHIRLEY M. TILGHMAN, DAVID C. DRUMMOND, RUTH M. PORAT, ANDREW E. RUBIN, AMIT SINGHAL, and LASZLO BOCK, Defendants, – and – ALPHABET INC., a Delaware corporation, Nominal Defendant.	C.A. No. 2019-0355-SG **PUBLIC VERSION** **FILED MAY 17, 2019**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Irving Firemen's Relief and Retirement System ("Irving Fire" or "Plaintiff"), by and through its undersigned counsel, brings this action derivatively on behalf of Nominal Defendant Alphabet, Inc. ("Alphabet" or the "Company"), against certain current and former members of Alphabet's board of directors (the "Board") and executive officers, seeking to remedy breaches of fiduciary duties from at least January 2012 through the present (the "Relevant Period"). Plaintiff makes these allegations upon personal knowledge, as to the facts of its ownership of Alphabet stock, and upon information and belief, as to all other matters, based upon an in-depth review of: (a) documents obtained pursuant to *8 Del. C.* §220 ("Section 220") (the "220 Documents" or "220 Production"); (b) public filings made by Alphabet and other related parties and non-parties with the U.S. Securities and Exchange Commission ("SEC"); (c) press releases and other publications disseminated by the Company and other related non-parties; (d) news articles, stockholder communications, and postings on Alphabet's website concerning the Company's public statements; (e) the proceedings in related civil lawsuits based on the same underlying misconduct; and (f) other publicly available information concerning Alphabet and the Individual Defendants (defined below).

I. INTRODUCTION AND SUMMARY OF CLAIMS

1. Alphabet and its predecessor and main subsidiary, Google LLC ("Google"), are known for their mantra, "Don't be evil." But behind an image of

doing good, the Company allowed rampant discrimination and misconduct to flourish, especially among its high-ranking executives.

2. The Company's executives encouraged the Board and its committees to place their trust in having the right "team," and in particular, encouraged excessive deference to co-founders Lawrence E. Page ("Larry Page" or "Page") and Sergey Brin ("Brin"), as well as their erstwhile "adult supervision," Eric E. Schmidt ("Schmidt"). Page especially was recognized as the Company's visionary, and he in turn allowed his chief lieutenants, such as Andrew E. Rubin ("Andy Rubin" or "Rubin") in the Android division and Sundar Pichai ("Pichai"), now the Chief Executive Officer ("CEO") of Google, autonomy to run their divisions as they saw fit with little oversight from him or the Board.

3. This culture that fostered autonomy, however, also led to systematic sex and age discrimination, sexual misconduct perpetrated by high-ranking executives, and a disregard for protecting user privacy.

4. The dark underside of Google's culture has only recently been exposed in explosive news coverage, including reports by the *New York Times* and *Wall Street Journal*, as well as numerous lawsuits. While the Company has managed to shunt some lawsuits into the secrecy of arbitration, it has not successfully shunted aside a class action lawsuit alleging systemic unequal pay and sex discrimination

against women, as well as a class action lawsuit alleging systematic age discrimination.

5. Meanwhile, in October 2018, a report by the *New York Times* revealed that Google and Alphabet paid an eight-figure cash severance to Andy Rubin and Amitabh Singhal ("Amit Singhal" or "Singhal") (the former head of Google search), who were forced to resign due to sexual misconduct, and yet covered up for these executives by refusing to disclose the real reasons for their departures, instead making them look like heroes by investing in Rubin's subsequent business and allowing Singhal to state his departure was to engage in philanthropy. Company employees were outraged at these revelations and engaged in mass protests where thousands of employees walked off their jobs in November 2018.

6. Meanwhile, also in October 2018, the *Wall Street Journal* revealed that Google had allowed a programming error that exposed the data of hundreds of thousands of Google+ users to unauthorized access by third-party developers. In December 2018, the Company revealed that another bug exposed the data of 52 million people. In addition, over the last two years, the Company has slowly revealed, sometimes only upon prompting by press investigations, that it had a longstanding practice of allowing its own employees or third-party developers to scan user emails. The Company engaged in these practices despite being under a federal Consent Order that required it to protect user privacy and seek affirmative

consent for disclosure of user data, and despite having already been fined more than $22 million for violating that Consent Order years earlier.

7. As Plaintiff's investigation revealed, this culture of misconduct was enabled by an uninformed and uninvolved Board and its committees, who were only too happy to defer to the Company's officers. The committee in charge of executive compensation, for example, the Leadership Development and Compensation Committee ("LDCC"), often approved via email compensation and severance packages that the Company's senior executives negotiated beforehand. The Audit Committee, charged with overseeing data privacy, similarly appears to have engaged in no oversight. The Board was kept uninformed until major bad publicity occurred, and, even then, has taken only limited or no remedial measures.

8. As a direct result of the Board and Company's officers' misconduct, the Company has been damaged. Plaintiff files this action to seek remedies for this damage.

9. To prepare this Complaint, Plaintiff engaged in an extensive pre-suit investigation, including multiple meet-and-confers to secure 220 Documents that other plaintiffs, who first-filed in California, did not incorporate into their complaints, including Rubin and Singhal's severance agreements, director and officer questionnaires ("D&O questionnaires") for the current Board, numerous versions of Google or Alphabet's Code of Conduct, co-worker relationship policies,

and anti-harassment policies, and additional Board minutes. As a result, Plaintiff has prepared a Complaint with significantly more detail based on confidential information than has been incorporated into the earlier filed complaints.

II. JURISDICTION

10. This Court has jurisdiction over this action under 10 *Del. C.* § 341.

11. As directors and officers of a Delaware corporation, the Individual Defendants have consented to the jurisdiction of this Court under 10 *Del. C.* § 3114.

12. This Court has jurisdiction over Alphabet under 8 *Del. C.* § 321 and 10 *Del. C.* § 3111.

III. PARTIES

A. Plaintiff

13. Plaintiff Irving Fire is a stockholder of Alphabet and has continuously held its shares at all times relevant hereto, will continue to hold Alphabet's shares throughout the pendency of this action, and will fairly and adequately represent the interests of other stockholders and the Company in enforcing its rights.

B. Nominal Defendant

14. Nominal Defendant Alphabet is a Delaware corporation with its principal executive offices located at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Its predecessor and main subsidiary, Google, is a multimedia technology company that primarily engages in internet search and in selling ads: it accounts for

almost all the revenues and profits of Alphabet.[1] Google makes approximately $90 to $100 billion in revenue every year.

C. Director Defendants

15. Defendant Page has been the CEO, co-founder, and a director of Alphabet, or its predecessor Google, since its founding in 1998.

16. Defendant Brin has been the President, co-founder, and a director of Alphabet, or its predecessor Google, since its founding in 1998.

17. Defendant Schmidt has been the former Executive Chairman of Alphabet (from 2011 to January 2018), former Chairman and CEO of Google (from 2001 to 2004, and again from 2007 to 2011), a current director (since 2001), and technical advisor of Alphabet.

18. Defendant Pichai has been the CEO of Google (since 2015), an executive at Google (since 2004), and a director of Alphabet (since 2017).

19. Defendant Diane B. Greene ("Greene") has been the former CEO of Google Cloud (from 2015 to January 2019) and a current director of Alphabet (since 2012). Greene was also a member of the Audit Committee from January through December 2015.

[1] Because most of the misconduct occurred either when the Company was Google or at the Google business units, throughout this Complaint, "Company" could refer to either Alphabet or Google, depending on the context.

20. Defendant L. John Doerr ("John Doerr" or "Doerr") has been a director of the Company and Chair of the LDCC since 1999.

21. Defendant K. Ram Shriram ("Ram Shriram" or "Shriram") has been a director of the Company and a member of the LDCC since 1998.

22. Defendant Ann Mather ("Mather") has been a director of the Company and Chair of the Audit Committee since 2005.

23. Defendant Alan R. Mulally ("Mulally") has been a director of the Company and a member of the Audit Committee since 2014.

24. Defendant Roger W. Ferguson, Jr. ("Ferguson") has been a director of the Company and a member of the Audit Committee since 2016.

25. Defendant John L. Hennessy ("Hennessy") has been a director of the Company since 2004 and Chairman since January 2018.

26. Defendant Shirley Tilghman ("Tilghman") was a director of the Company from October 2005 until February 2018.

D. Officer Defendants

27. Defendant Rubin was the Senior Vice President ("SVP") at Google and founder of Android until his resignation in October 2014.

28. Defendant Singhal was the former head of Google search until his resignation in February 2016.

29. Defendant David Drummond ("Drummond") is the Chief Legal Officer ("CLO") of the Company.

30. Defendant Laszlo Bock ("Bock") is the SVP, People Operations of the Company.

31. Defendant Ruth E. Porat ("Porat") is the Chief Financial Officer ("CFO") of the Company.

32. Defendants Page, Brin, Schmidt, Pichai, Greene, Rubin, Singhal, Drummond, Bock, and Porat are collectively referred to herein as the "Officer Defendants."

33. Defendants Page, Brin, Schmidt, Pichai, Greene, Doerr, Shriram, Mather, Mulalley, Ferguson, Hennessy, and Tilghman are collectively referred to herein as the "Director Defendants."

34. Defendants Page, Brin, Schmidt, Pichai, Greene, Doerr, Shriram, Mather, Mulalley, Ferguson, Hennessy, Tilghman, Rubin, Singhal, Drummond, Bock, and Porat are collectively referred to herein as the "Individual Defendants." Alphabet and the Individuals Defendants are collectively referred to herein as the "Defendants."

IV. SUBSTANTIVE ALLEGATIONS

A. The Company's Tone at the Top Created a Hostile Work Environment

35. Larry Page and Sergey Brin founded Google in 1998 with an office culture that was informal and combative. Page and Brin became lifelong friends and business partners through long and tough arguments. They imported this freewheeling style into the Company, and for many years, the freewheeling nature of the Company was both its strength and weakness. When Google went public in 2004, the *New York Times* described Brin and Page as "2 Wild and Crazy Guys . . . Hoping to Keep It That Way."[2]

36. In 1996, when Brin and Page were still graduate students at Stanford, they began collaborating on a new Internet search technology based on analyzing "back links" (links from one website to another). They called this program "BackRub." One of their earliest investors is the LDCC Chair, John Doerr, managing partner of Kleiner Perkins Caufield & Byers ("KPCB"). From these early beginnings with the risqué program name, they continued to be freewheeling and unconventional, maintaining a casual corporate culture with on-site massage therapists and games of roller hockey in the parking lot.

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[2] Laurie J. Flynn, *The Google I.P.O.: The Founders, 2 Wild and Crazy Guys (Soon to Be Billionaires), and Hoping to Keep It That Way*, N.Y. TIMES (Apr. 30, 2004), at C000006.

37. As described by Marissa Mayer ("Mayer") (one of Google's earliest employees who went on to run Yahoo!) in a *New York Times* interview from April 18, 2018, the management style of early Google was "Larry and Sergey just yelled at us until we became what they needed us to become, and get done what they needed to be done."[3]

38. On the one hand, the freewheeling culture and the willingness of the key executives to allow a high degree of autonomy for innovative employees has led the Company to become one of the most profitable companies on Earth. Page giving Rubin autonomy led to Android becoming the most widely used software platform for smartphones.

39. But at the same time, the freewheeling culture has also led to a toxic environment where rampant sexual misconduct and discrimination have persisted.

40. In Google's early days, sexual misconduct was a common occurrence, as reported by the media. Schmidt, in his tenure as the Google CEO, and while still married, used to bring his mistresses to Company functions. Schmidt even allegedly used Company funds to retain a mistress as a Company-paid employee or consultant.

41. Furthermore, Brin was known to be a "company playboy" and had multiple affairs with his subordinates. When an early human resources ("HR") chief

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[3] David Gelles, *Marissa Mayer Is Still Here*, N.Y. TIMES (Apr. 18, 2018), https://www.nytimes.com/2018/04/18/business/marissa-mayer-corner-office.html.

confronted Brin with his conduct, he responded, "Why not? They're my employees."

42. Page engaged in an affair with Mayer in her early days at Google. This freewheeling attitude toward office romances, in turn, made Page more tolerant of his subordinates' bad behavior, so long as they contributed to the bottom line.

43. In 2004, Drummond, currently Alphabet's CLO, and then Google's General Counsel, started an affair with a junior or mid-level employee, Jennifer Blakely ("Blakely"), who reported to him. He did not disclose his affair until 2007, despite Google's written requirement to do so, and only made this disclosure because he and Blakely had a child together. Blakely was then transferred to sales and a year later left the Company. Meanwhile, Drummond kept getting promoted, has made around $200 million during his time at Google and Alphabet, and today is not only Alphabet's CLO, but also runs CapitalG, one of the Company's venture funds. In 2018 alone, Drummond made $47.2 million, despite facing sexual misconduct allegations that were aired in the media and in investor lawsuits.

44. More recently, in 2013, Richard DeVaul ("DeVaul"), an executive who runs Google X, told a job applicant that he and his wife were "polyamorous," and then invited her to Burning Man. When she went in expectation of being interviewed for a job, he insisted on giving her a backrub. She later complained to HR when she did not get the job, and HR told her that her claims were "more likely than not to be

true." Yet, DeVaul stayed in the Company without incident, and only resigned after this incident became public in a report by the *New York Times* in October 2018.

45. In addition, the Company has, in recent years, been hit by numerous discrimination suits, some of which were forced into arbitration. Two recent class actions that the Company was not able to successfully kill or shove to a private forum allege pervasive gender and age discrimination. The gender discrimination case survived a motion to dismiss, and the age discrimination case is in the midst of settlement discussions.

46. In September 2017, a class of female employees filed a lawsuit based largely on Google's practices that have led to lower pay for women than for men.[4] The lawsuit alleges that Google: (1) systematically underpaid women because of centralized practices and policies, including asking for previous job salary information to determine starting pay, which is systematically biased against women because women are historically paid less than men and thus tend to join Google at lower pay; (2) a pay equity analysis by the U.S. Department of Labor (which was investigating discrimination allegations against Google, as well) showed six or seven standard deviations between the pay for men and women in almost every job classification at Google, which means there is only a one in one hundred million chance that these disparities occur by chance; and (3) Google performs annual

[4] *Ellis v. Google Inc.*, No. CGC-17-561299 (Cal. Super. Ct., S.F. Cty.).

internal pay equity analyses and thus knew about the pay equity disparity. The Company's publicly filed diversity report itself admits that only approximately 30% of its employees are women and only about 25% reach leadership positions.

47. Furthermore, the Company is subject to an age discrimination class and collective suit that is on the verge of settling. *Heath v. Google, LLC*, No. 5:15-cv-01824 (N.D. Cal.) ("*Heath*"). The *Heath* complaint alleges that Google is systematically biased against older applicants by focusing on cultural fit or "googlelyness," biasing questions toward theories taught in recent academic classes over lifetime experience, and requiring applicants to fill out college and graduate school graduation dates, which would give hiring managers the information to calculate age; the case survived various decertification and dismissal motions. And further, in July 2018, the Court remarked that even after three years of litigation, "[i]t would be grossly unfair to the plaintiffs to rule on summary judgment now." *Heath*, ECF No. 306 at 46:15-16 (N.D. Cal. July 12, 2018).

B. The Supine Board and Committees Repeatedly Abdicated Their Oversight Responsibilities and Acted as Rubber Stamps

48. Even when senior executives committed misconduct that was so serious that the Company was forced to let them go, the Company's officers negotiated generous severance packages for these executives, which the LDCC rubber-stamped, while the Board willfully ignored its obligation to oversee these arrangements.

49. The most egregious such example was Rubin. Page had acquired Android, founded and run by Rubin, in 2005 and gave Rubin a lot of autonomy – Rubin and Android's offices were housed in a different building from everyone else in Google. Android turned out to be a wild success, and in short order, became the operating system used in the majority of the world's smartphones; Google was able to leverage Android's success to introduce its core products into these sets, which has led to Google ads being seen and clicked by more people, resulting in greater revenues for Google. Thus, Rubin became one of the Company's most valued executives.

50. Rubin, however, was also known to be verbally abusive and sexually aggressive. In divorce records that have been unsealed, Rubin was accused of paying women to be "owned" by him and "loan[ed]" to other men. Rubin was also known to have numerous office affairs. Page turned a blind eye to all of this. Finally, Rubin crossed a line by coercing his subordinate into having forced oral sex with him, and as a result, Page asked for his resignation. Yet, while Rubin was being internally investigated for misconduct, Page negotiated a $150 million stock award for Rubin, so as to retain him and prevent him from running to a competitor. Then, when Rubin's continued employment became impossible because of his misconduct, Page negotiated for him to give up his stock award in exchange for $90 million in cash severance, thus allowing Rubin to trade a potentially higher stock award for more

liquidity and certainty. Rubin also was allowed more time to repay a low-interest personal loan of $14 million the Company had extended to him, Page gave him a "hero's farewell" by praising his value, and the Company even invested in Rubin's start-up that he established after leaving the Company. Meanwhile the Company made no comment about the actual reason Rubin left until it was revealed by a *New York Times* report in October 2018.

51. Rubin's generous severance payments came in spite of the fact that Rubin was employed at will, and his employment agreement did not provide for severance payments upon termination. Rubin's employment agreement sets out as the first numbered paragraph:

> 1. **At Will Employment**. I understand and acknowledge that my employment with the Company is for an unspecified duration and constitutes "at will" employment. I acknowledge that this employment relationship may be terminated at any time, with or without good cause or for any or no cause at the option either of the Company or myself, with or without notice.

GOOG-IVGFR-SHD-00000825. Rubin signed this agreement on July 5, 2005.

52. Rubin's primary leverage for obtaining a generous severance was his existing $150 million stock award and his commitment to not compete with Google in a few narrowly defined areas (or to forfeit his remaining severance payments if he did). But in approving that $150 million stock award, it is unclear whether the LDCC considered the sexual harassment allegations against Rubin or if they even knew about them. In an August 14, 2014, email from Prasad Setty ("Setty") to then-

LDCC members Doerr, Shriram, and Paul Otellini ("Otellini") (a former director who died in 2017), copying Page, Setty writes:

> John, Paul and Ram,
>
> We request the Committee's approval to grant Andy Rubin an SVP Equity award of $50M and a one-time stub grant of $100M.
>
> At the 4-Mar-14 meeting, the LDCC approved moving Andy to standard SVP cash compensation ($650k base salary and 250% bonus target). Andy deferred acceptance of the compensation changes due to a pending role discussion with Larry. This discussion has now taken place, and effective 1-Aug-14, Andy transitioned back to a SVP role leading the Automation product area.
>
> In order to retain Andy from pursuing external startup opportunities, Larry proposes an aggressive equity compensation package valued at $150M, consisting of two grants which will be awarded on 6-Aug-14:
>
> Grant 1 SVP biennial grant - $50M grant cliff vesting in Apr-18
>
> Grant 2 one-time stub grant - $100M grant vesting quarterly between Jul-15 and Oct-17 (to bridge equity vesting between his previous equity that fully vests by Apr-15 and Grant 1 that will cliff vest in Apr-18)
>
> The following table outlines the proposed equity grants, reflecting standard SVP cash compensation:

(amounts in USD 000s)

	2014	2015	2016	2017	2018	Total
Salary	650	650	650	650	650	3,250
Target Bonus	1,625	1,625	1,625	1,625	1,625	8,125
Historical Grants[1]	47,619	15,919	-	-	-	63,538
Proposed Grants[1]	-	20,000	40,000	40,000	50,000	150,000
Total	49,894	38,194	42,275	42,275	52,275	224,913

1) Assumes $575 GOOG stock price and 0% annual growth. While we typically assume 10% annual stock price growth for the LDCC, we show 0% growth to illustrate the proposed value at grant

> . . . If you are supportive of the equity grants for Andy Rubin, please reply to this email with "I approve."

GOOG-IVGFR-SHD-00000004.

53. The LDCC members approved by email. Doerr stated, on August 28 2014, "I've discussed with Larry, and approve." But Doerr did not elaborate on what that discussion concerned. Then, Otellini and Shriram appear to merely rubber stamp the agreement by replying: "OK, I approve as well" (Otellini); and "I approve" (Shriram). GOOG-IVGFR-SHD-00000146.

54. But the LDCC failed to investigate whether this generous package was justified, especially because they most likely already knew about Rubin's problematic conduct at work. According to the *New York Times*, Rubin's bonus was docked one year when he was found to have sexual bondage videos on his work computer. The LDCC, as the committee that reviews and approves executive compensation, would have approved this bonus deduction. Thus, they had a red flag regarding Rubin's past behavior and should have continued to investigate rather than rubber-stamp a lucrative new deal.

55. Only two months later, at an October 22, 2014, meeting, the LDCC (consisting of Doerr, Otellini, and Shriram) met to consider Rubin's separation agreement. Bock presented on the Rubin agreement, and Page was in attendance: "Laszlo began the meeting with a summary of key guidance provided by the Committee to management during the last meeting, as well as the status of approvals made during the course of that meeting," including "an equity grant to Andy Rubin."

GOOG-IVGFR-SHD-00000110. Bock then "provided an update to the Committee on Andy Rubin's expected departure effective November 4, 2014. After discussing with Andy, Laszlo requested that the Committee approve the terms and conditions of Andy's separation agreement as set forth on Exhibit B (the 'Separation Terms)." GOOG-IVGFR-SHD-00000112. The LDCC then "discussed and asked questions" and "considered and approved the Separation Terms." *Id*. But the minutes do not reflect the substance of the discussion or questions; and there is no hint that there was any questioning as to why Rubin would be leaving the Company only two months after having been given an "aggressive" stock award for the purpose of retaining his services, with the speed of this departure itself being a red flag.

56. The separation terms outlined are: a cancellation of $173 million in unvested equity, replaced by $90 million cash severance paid monthly, over four years, with each payment "contingent on Andy's compliance with the non-compete agreement[,] and any breach would result in forfeiting all future payments" and extending the repayment of a $14 million loan. The total expected payout would be from 2014 through 2018. GOOG-IVGFR-SHD-00000115.

57. Rubin's severance agreement contained several unusual features that should have alerted the LDCC to investigate further the reason for his departure. In particular, [redacted]

GOOG-IVGFR-SHD-00001918-9 [emphasis added and in original].

58. Moreover, unlike a standard separation agreement, Rubin's agreement specified that the Company's "Communications Team will seek your input in drafting communications relating to your continued employment status and the termination of your employment." GOOG-IVGFR-SHD-00001915.

59. Moreover, the separation agreement took special care of the need for confidentiality, adding a provision that Rubin must keep the "existence and provisions of this Separation agreement . . . in strictest confidence and shall not be publicized or disclosed in any manner whatsoever without prior consent of the Chief Executive Officer or his designee[.]" GOOG-IVGFR-SHD-00001918.

[redacted]

60. Rubin's separation agreement was also favorable in other ways. For example, shortly after he signed the agreement – which initially provided for a payment schedule starting on December 5, 2014, and ending on November 5, 2018 (in monthly payments) – the Company amended the agreement to move up the last severance payment from November 5, 2018 to October 15, 2018, while moving up his first payment to December 1, 2014. The net effect was that Rubin was paid his entire $90 million severance in cash by mid-October 2018, shortly before the *New York Times* report of October 25, 2018, which exposed this generous package to the world. The Company did not seek any additional consideration for this favorable change, since there was no amendment that imposed any conditions on Rubin.

61. Moreover, the severance payments were graduated so that Rubin only gave up remaining severance payments if he sought to compete with Alphabet or Google in a manner not already permitted by the agreement. The agreement states, "You explicitly agree that nothing set forth in this Paragraph restricts you from engaging in a lawful profession, trade, or business of any kind, and that you may, at any time, forego the [severance payment] to pursue employment in any field." GOOG-IVGFR-SHR-00001914.

62. It is not clear if the LDCC was ever informed of the real reason why Rubin had to resign. A presentation for its January 28, 2015 meeting merely mentions, "On 4-Nov-14, Andy Rubin resigned to start a hardware startup incubator. The Robotics team now reports to Alan Eustace." GOOG-IVGFR-SHD-00000248.

63. Rubin's non-compete-type provision already contained a generous carve out – he was allowed to invest in venture capital or private debt or equity funds that could potentially hold investments in Alphabet's competitors, so long as he recused himself from investment decisions regarding competitors. Furthermore, on April 3, 2015, the Company amended the non-compete-type provision to give Rubin additional flexibility, by explicitly stating that he could "provid[e] services to or invest [] in Playground Ventures, L.P. . . . so long as [this company and its affiliates] are primarily focused on investing in and incubating consumer hardware products," while specifying that Rubin cannot engage these entities in competing with Google or accept payments from [redacted] GOOG-IVGFR-SH-00001901-2. Playground Ventures is the incubator that Rubin started, which was the given reason for why he resigned from Google; and not only did the Company allow Rubin to create this business and protect it from a non-compete provision, but it also invested millions of dollars in Rubin's incubator.

64. The LDCC was not even consulted about this change until after it was executed. While the modification was executed on April 3, 2015, it was only at its

April 22, 2015 meeting, as reflected in the minutes, that the LDCC got notice of "certain modifications made to Andy Rubin's separation agreement, originally approved by the Committee on October 22, 2014." GOOG-IVGFR-SHD-00000574. The LDCC made no attempt to exert any independent authority, only asking that "going forward, management provide pre-notification to the Committee of any proposed modifications to any severance and similar arrangements previously approved by the Committee to further transparency." GOOG-IVGFR-SHD-00000575.

65. In this context, Pichai carried on Page's tradition of turning a blind eye to bad behavior and negotiating lucrative severance packages for executives who faced misconduct allegations. When credible sexual misconduct allegations of how Singhal, the head of Google search, groped a woman at a holiday party, Singhal was allowed to exit with a package worth up to $45 million contingent to a non-compete, negotiated by Pichai and then pushed through the LDCC for approval. It is unclear how much of the severance was paid to Singhal; he went to work for Uber, arguably a competitor to Alphabet, but his severance agreement provides that he could seek approval to work for a competitor and thus still continue to receive his severance payments, and the record does not reflect whether Singhal sought this approval and whether it was granted. At the very least, he would have received his first year's severance (of $15 million), but he may have received all $45 million.

66. Yet Singhal's employment agreement, like Rubin's, specified that he was an at-will employee and did not specify that he as entitled to severance. Like Rubin, Singhal's agreement also states in the first numbered paragraph:

> 1. **At Will Employment**. I understand and acknowledge that my employment with the Company is for an unspecified duration and constitutes 'at-will' employment. I acknowledge that this employment relationship may be terminated at any time, with or without good cause or for any or no cause at the option either of the Company or myself, with or without notice.

GOOG-IVGFR-SHD-00000817. Singhal signed this agreement on November 28, 2000.

67. Yet, as was the case with Rubin, the LDCC again only appeared to rubber stamp a severance arrangement for Singhal. A presentation for the January 27, 2016, meeting states that, on January 11, 2016, "The LDCC approved the following separation agreement for Amit Singhal (SVP, Search)," including "Annual cash payments of $15M, to be paid 1 months and 24 months after exit, and $5M (negotiating range to $15M), to be paid 36 months after exit, contingent on not being employed by a competitor." GOOG-IVGFR-SHD-00000583. The presentation also notes that Singhal's last stock grant plus bonus were worth approximately $46 million. GOOG-IVGFR-SHD-0000623.

68. The LDCC rubber-stamped Pichai's proposal with short emails approving the agreement with one sentence: "I approve" (by Shriram); and "Approved" (by Otellini). GOOG-IVGFR-SHD-0000666-7. The email notes that

Singhal's unvested equity would be valued at approximately $87 million with cliff payments of $10 million in April 2016, $10 million in April 2017, and $50 million in April 2018. GOOG-IVGFR-SHD-00000667. But "[w]ere we to instead prorate his existing equity and make a cash payment at termination, as we have in select past cases, the amount be ~$33M." *Id.* On the approval emails, Page and Pichai were copied. These emails were sent on January 11, 2016, and attached to the January 27, 2016, presentation.

69. The January 27, 2016 LDCC meeting, attended by Otellini and Shriram (as members) and Page, Pichai, Bock (along with other executives), included this item in the minutes:

> Laszlo presented to the Committee a summary of key guidance provided by the Committee to management during and since the last regular and special meetings, as well as the status of approvals made during the course of those meetings. He also reviewed the business conducted and compensation matters approved by email since the last regular meeting, including the status of approval of (i) [redacted for responsiveness] and (vi) separation agreement for Amit Singhal.

GOOG-IVGFR-SHD-00000770. The minutes do not reflect any discussion by the LDCC members.

70. As was the case for Rubin, the record does not reflect if LDCC were informed of the real reasons for Singhal's departure. The presentation for the April 20, 2016 meeting of LDCC only notes, "On 26-Feb-1, Amit Singhal (SVP, Search) left Google to focus on philanthropic activities. After Amit's departure, the Search

and Research & Machine Intelligence teams were combined under John Giannandrea." GOOG-IVGFR-SHD-00000708 (The paragraph immediately below was redacted for nonresponsiveness.).

71. The record does not reflect any inquiry by the LDCC into Singhal's resignation or his stated reason for it. But Singhal's severance agreement also contained unusual provisions that should have led the LDCC into inquiring as to whether Singhal's stated reason for leaving – to focus on philanthropy – was instead pretextual and there was, instead, a more troubling reason for the departure.

72. For example, while Singhal, Rubin, and DeVaul – the three executives for whom Alphabet produced employment agreements – all agreed to not solicit any employees for a period of 12 months in the event of their termination – in their standard employment agreements, Rubin [redacted] Singhal's severance agreement provided for [redacted] GOOG-IVGFR-SHD-00001909. [redacted] appears to be an odd concern if the Company truly believed Singhal was retiring to pursue philanthropy, and an even odder concern that the Company would impose [redacted]

[redacted] The LDCC thus turned a blind eye to the implication that Singhal would very likely go work for a competitor, [redacted] and thus the LDCC should have inquired into the real reason for Singhal's departure instead of the philanthropy pretext that it was thrown.

73. Moreover, the LDCC was on further alert as to the sensitive nature of Singhal's departure because his severance agreement contained an especially severe confidentiality clause. As with Rubin's separation agreement, the Company sought for Singhal to maintain the "existence of and provisions of the Agreement . . . in strictest confidence . . . and shall not be publicized or disclosed in any manner whatsoever[.]" GOOG-IVGFR-SHD-00001909. But in addition, the Company placed, in bolded text, the condition:

> **You specifically agree that your obligation to maintain the confidentiality of this Agreement is a material term of this Agreement without which the Company would not have entered into this Agreement.** [redacted]

Id.

74. But despite these two unusual provisions, the record reflects absolutely no discussion by the LDCC into why the Company wanted to impose such restrictions on Singhal if he was leaving only to engage in philanthropy. Nor did the

LDCC inquire into the generous provisions of the agreement, including the fact that Singhal could seek employment from a competitor and still receive his full severance, so long as he received prior approval from Google:

> As a condition of receiving the Severance Benefit and until the final payment is made, you are required to confirm in writing (email) prior to each one of the above Payment Dates that you have not been employed, worked or provided services for a competitor. . . . Such written confirmation shall be provided to Laszlo Bock or his designee. In the event you have been employed, worked or provided services as described above to a competitor during all or part of the course of the prior quarter as described in the prior sentence ***without an Approval***, you agree to forego payment of any amount of that quarter's payment, as well as any and all future payments. In the event you desire to be employed by, work at, or provide services as described above to a competitor during the three year period of this Agreement, you are required to seek prior written (email) approval of the Company via a request submitted to Laszlo Bock or his designee[.]"

GOOG-IVGFR-SHR-00001904 [emphasis added].

75. Although the LDCC charter provides that it is to keep the Board apprised of its activities, nothing in the record reflects that the Board was actually informed of anything related to Rubin or Singhal's employment or termination.

76. Despite the fact that Plaintiff's Section 220 demand asked for Board-level materials regarding sexual harassment, the Company did not produce any Board minutes that state the Defendants considered the sexual harassment allegations against Rubin, Singhal, and other executives prior to their severance.

77. Thus, it is reasonable to infer that prior to the *New York Times* report of October 2018, there was ***no Board-level deliberation whatsoever*** regarding

oversight of the executives, investigations into their sexual harassment, or their severance payouts.

78. The Board's remedial actions, in fact, tend to support the theory that they performed no oversight beforehand. On November 28, 2018, a Special Meeting of the Board was held, which was attended by Brin, Doerr, Ferguson, Greene, Hennessy, Mather, Mulally, Page, Pichai, Schmidt, Shriram, and several officers, including Drummond. There, while the substantive discussion was redacted on the ground of privilege, [redacted] GOOG-IVGFR-SHD-00000803. [redacted]

79. The only other references to discrimination and harassment issues that were given Board-level consideration occurred at a January 31, 2018 meeting (attended by Page, Brin, Schmidt, Doerr, Ferguson, Greene, Hennessy, Mather, Mulally, Pichai, Shriram, and Shirley M. Tilghman ("Tilghman") (since retired) and officers, such as Porat (CFO) and Drummond). The only substantive discussion of

the meeting shown in the minutes (with the rest of the material redacted) advised that:

> Eileen Naughton, Vice President, People Operations, joined the meeting. Ms. Naughton provided an overview of the People Operations team, and discussed the Company's cultural environment, Google values, the processes regarding diversity, the review of pay equity, the review of investigations, processes and results, and the severance agreement process. The Board asked questions of Ms. Naughton, to which she responded, and discussion ensued.

GOOG-IVGFR-SHD-00001153. The agenda for January 31, 2018 meeting (with no accompanying presentation produced) shows that there was a "Gender Pay Equity and Sexual Harassment Policy Discussion." GOOG-IVCGFR-SHD-00000784.

80. This suggests that even though the Board may have, at some point, discussed sexual harassment and gender pay equity issues, it took them another 10 months to take any action and likely only because they were spurred by the October 25, 2018, *New York Times* report and its backlash, including tens of thousands of Google employees walking out in protest.

81. Moreover, despite the Board's overtures toward reform, it failed to prevent widespread retaliation against its employees for protesting against Google's culture of discrimination and sexual misconduct. Last month, on April 22, 2019, *Wired* published an open letter from two Google employs who reported retaliation for engaging in the walk-out and collected 350 more instances of retaliation for

complaining about misconduct in contrast to the Company's Code of Conduct's official policy prohibiting retaliation.[5]

C. Management Also Recklessly Kept Privacy Unprotected

82. Alphabet and Google have also had a long history of privacy problems, which the Audit Committee and the Board were responsible for monitoring and remedying.

83. In 2010, Google launched a social media network, Google Buzz, through its web-based email. Google, at the time, represented to users that they had the option of joining or declining to join the network. Moreover, Google's privacy policy stated, "When you sign up for a particular service that requires registration, we ask you to provide personal information. If we use this information in a manner different than the purpose for which it was collected, then we will ask for your consent prior to such use." But the Federal Trade Commission ("FTC") alleged that Google misled its users because it: (1) used the personal information of Gmail users for another purpose – social networking; (2) enrolled Gmail users automatically into some Buzz features, even when users declined to enroll in Buzz or elected to "Turn

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[5] Nitasha Niku, *Google Walkout Organizers Say They're Facing Retaliation*, WIRED (Apr. 22, 2019), https://www.wired.com/story/google-walkout-organizers-say-theyre-facing-retaliation/; *see also* Kate Conger and Daisuke Wakabayashi, *Google Employees Say They Faced Retaliation After Organizing Walkout*, N.Y. TIMES (Apr. 22, 2019), https://www.nytimes.com/2019/04/22/technology/google-walkout-employees-retaliation.html.

Off Buzz"; (3) defaulted enrollees' email contacts as public and failed to disclose that fact; and (4) violated the U.S.-EU Safe Harbor privacy framework by failing to give users notice and a choice before using their information for a purpose users did not approve in advance. All these practices, the FTC alleged, violated the Federal Trade Commission Action of 1914 ("FTC Act") because they were unfair and deceptive trade practices.

84. While the FTC did not have the statutory authority to impose a monetary penalty for a first-time violation, in settling its complaint with Google through a consent decree, it did impose several "firsts" with Google: it required, for the first time in a settlement order with any company, Google to implement a comprehensive privacy program; it also required Google to undergo biennial privacy audits by an FTC-approved third party for the next 20 years; and required the Company to refrain from future misrepresentations regarding privacy, confidentiality of individuals' information, or compliance with privacy, security, or compliance programs and, in addition, required Google to obtain users' affirmative consent before sharing information with third parties if Google changes its products or services in a way that results in information sharing, contrary to privacy promises made when the user's information was collected.

85. The Consent Order was implemented on October 13, 2011, and, *inter alia*, provides for:

> **IT IS FURTHER ORDERED** that respondent, prior to any new or additional sharing by respondent of the Google user's identified information with any third party that: 1) is a change from stated sharing practices in effect at the time respondent collected such information, and 2) results from any change, addition, or enhancement to a product or service by respondent, in or affecting commerce, shall:
>
> A. Separate and apart from any final "end user license agreement," "privacy policy," "terms of use" page, or similar document, clearly and prominently disclose: (1) that the Google user's information will be disclosed to one or more third parties, (2) the identity of specific categories of such third parties, and (3) the purpose(s) for respondent's sharing; and
>
> B. Obtain express affirmative consent from the Google user to such sharing.
>
> * * *
>
> **IT IS FURTHER ORDERED** that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

In the Matter of Google Inc., No. 102 3136, Docket No. C-4336, Decision and Order (F.T.C. Oct. 13, 2011).

86. Less than a year later, despite the Consent Order's specific call for the Board to be informed, and thus implying that the Board must conduct oversight into Google's privacy practices, the FTC alleged that the Company had violated the Consent Order. Google is, to date, one of only ***two*** companies to settle with the FTC

over violations of a consent order. Moreover, the speed with which Google violated the Consent Order was alarming and should have placed Google and the Board on heightened alert to be particularly sensitive to privacy concerns going forward.

87. On August 8, 2012, the FTC filed a complaint alleging that Google violated the Consent Order by misrepresenting to users that it would not place third-party tracking cookies or serve targeted advertisements based on those cookies on their computers, but it, in fact, did so. *United States v. Google Inc.*, No. 3:12-cv-04177, Complaint for Civil Penalties and Other Relief (N.D. Cal. Aug. 8, 2012) (the "FTC Compl.").

88. In its complaint, the FTC alleged that Google assured Apple Safari browser users that, even though Google did not have an explicit feature to allow Safari users to opt out of third-party cookies, as Google did for other browsers, "Safari is set by default to block all third-party cookies. If you have not changed those settings, this option effectively accomplishes the same thing as setting the opt-out cookie." FTC Compl. at 8 (excerpting Google Advertising Cookie Opt-Out Plugin instructions).

89. But the FTC further alleged that these instructions were misleading because unbeknownst to the user, Google used a code that would generate a "form submission" that overrode Safari's usual default and made Safari accept the third-party cookie. As a result, Google's instructions were misleading because by not

changing settings, users ***did not*** achieve the same results as setting Google's "opt-out cookie" because, in fact, users did get the cookies – and resulting targeted ads – that they had not wanted.

90. To settle this complaint, Google agreed to pay a $22.5 million civil penalty – which, to date, is the largest privacy fine levied on a tech company by the FTC. The Court approved the settlement on November 16, 2012. *United States v. Google Inc.*, No. 3:12-cv-04177, Order Approving Stipulated Order for Permanent Injunction and Civil Penalty Judgment (N.D. Cal. Nov. 16, 2012).

91. The Board and Audit Committee are responsible for overseeing cybersecurity and privacy issues. The Audit Committee's charter provides that the Committee is responsible for risk oversight regarding "programs and policies relating to legal compliance and strategy" and "operational infrastructure, particularly . . . security, and data privacy, including cyber security. The Audit Committee shall provide regular reports to the full Board of Directors." GOOG-IVGFR-SHD-00001166. Yet none of the materials, except for one presentation, show any consideration of data security concerns at all, and in that presentation, it is unclear to whom or what the presentation was made.

92. Google's Code of Conduct (which, according to their D&O questionnaires, every current director has certified compliance of) also emphasizes:

> Always remember that we are asking users to trust us with their personal information. Preserving that trust requires that each of us

> respect and protect the privacy and security of that information. Our security procedures strictly limit access to and use of users' personal information, and require that each of us take measures to protect user data from unauthorized access.
>
> * * *
>
> Google is committed to advancing privacy and freedom of expression for our users around the world. Where user privacy and freedom of expression face government challenges, we seek to implement internationally recognized standards that respect those rights as we develop products, do business in diverse markets, and respond to government requests to access user information or remove user content.

GOOG-IVGFR-SHD-00000835.

93. Yet the Board and Audit Committee appear to have violated the Consent Order and Code of Conduct over the last few years because they allowed: the Company to engage in surreptitious practices reading users' emails or tracking their locations; third parties to do the same; and a glitch that provided unauthorized access to user data. For years, these allowances continued to go unaddressed and remained undisclosed until the Company was forced to come clean due to the pending news reports.

94. Prior to announcing the end of this practice in June 2017, Google would read emails of its Gmail users to create personalized ads. Between 2010 and 2016, Google faced at least three lawsuits over this practice, and it stopped this practice for students, business, and government users in 2014, announcing in June 2017 that it would stop this practice with regard to individual users. However, these measures

were still considered to have not gone far enough, as evidenced by a judge's rejection in March 2017 of the first proposed settlement in one of these lawsuits.

95. A year later, the *Wall Street Journal* reported that Google continued to allow hundreds of third-party software developers to read Gmail users' emails.[6] Almost anyone can build an app that connects to Gmail accounts through an application programming interface ("API"). Once a user opens one of these apps, he or she is asked for permission to access their inbox. If the user consents, Google gives the developer a key to access the user's entire inbox, including the ability to read the messages and even send and delete messages on their behalf. Gmail, with 1.4 billion users, contains a treasure trove of data.

96. Google appears to have taken a hands off approach toward these APIs, who often allowed their computers, or even their employees, to read users' emails. For example, Return Path, Inc., a marketing data analyst, scanned the inboxes of more than two million people who signed up for a free app in its partner network; its computers analyzed up to 100 million emails a day; and its employees read about 8,000 unredacted emails over approximately two years to help train the company's software. Return Path, Inc. claimed that this practice was covered by other agreements, but they do not explicitly request permission from users to read their

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[6] Douglas MacMillan, *Tech's 'Dirty Secret': The App Developers Sifting Through Your Gmail*, WALL ST. J. (July 2, 2018), https://www.wsj.com/articles/techs-dirty-secret-the-app-developers-sifting-through-your-gmail-153054442.

email. But despite Google writing in its user agreements that private data can only be accessed by "explicit opt-in consent" from a user, this policy is reportedly not strictly enforced. Non-enforcement of this policy would appear to be a clear violation of the Consent Order, which requires affirmative consent by users to have their data accessed.

97. Even after this news report in July 2018, Google did not cease or reform this practice. In September 2018, Google responded to a Congressional inquiry by disclosing that it continued to allow third-party developers to scan and even share data from Gmail accounts.

98. Meanwhile, in October 2018, the *Wall Street Journal* revealed that Google had known for months of a glitch that resulted in giving access to outside developers the user data of Google+ users. But instead of disclosing this failure in March 2018, when the Company discovered this problem, Google debated this internally, with a memo that was circulated to Pichai and other executives. Pichai was briefed on the plan to hide this from users after an internal committee reached this conclusion. Apparently, Pichai never sought to report this to the Board because none of the produced Board or committee minutes clearly reflect this disclosure. The Company only disclosed this issue on October 8, 2018, the same date the *Wall Street Journal* report was issued.

99. When it revealed this data breach, Google was forced to announce that Google+ would be closed permanently, and it was forced to move up the closure. The fact that this breach occurred is an even bigger problem for Google, since it had to develop its comprehensive privacy program because of privacy issues relating to the previous iteration of its social media platform, Google Buzz, which led to the signing of the Consent Order with the FTC and the replacement of Buzz with Google+. Even though Google was penalized for allegedly violating the Consent Order barely a year after it occurred, instead of preventing further violations from happening, it appears a similar issue has happened with Google+.

100. The problem was discovered only by an internal audit code-named "Project Strobe" that began at the start of 2018. While Google discovered the problem internally in March 2018, it was actually an open issue for three years – starting in 2015. Yet Google did not discover this issue for three years despite having a privacy policy in place and engaging a third party to audit its platform, suggesting that either process was deficient.

101. The problem was that a bug in an API allowed developers to collect profile data of users' friends, even if the data was marked nonpublic in Google's privacy setting. Google ran a test in March 2018 to find out who was impacted and found 496,951 users who had shared private profile data with a friend could have had that data accessed by an outside developer. But the Company did not know

exactly who was affected and what data may have been improperly collected because it kept limited activity logs. Google believes 438 applications may have had access to unauthorized Google+ data, but it could not know what was done with the data because it did not secure "audit rights" over its developers.

102. Top product executives in the Company's Privacy and Data Protection Office determined that it would not reveal this information to the public because it would result in Google "coming into the spotlight alongside or even instead of Facebook despite having stayed under the radar throughout the Cambridge Analytica scandal" and "almost guarantees [Pichai] will testify before Congress" and trigger "immediate regulatory interest."

103. The Board was only told about this problem after the fact, as reflected in the only privacy-related 220 Document that was produced, which indicates that the Board, or a committee, were, at most, told about this ***after*** the fact, through an undated presentation that does not include information on whether it was sent to the Board or a committee, but shows a "2018-2019 Legal and Regulatory Outlook" for "Project Strobe G+, WSJ Coverage and related inquiries." GOOG-IVGFR-SHD-00000786. The rest of the presentation is redacted for substance, except for a few headers.

104. In December 2018, Google disclosed – only a day before Pichai was slated to testify before Congress for the first time – that in November 2018 it had

found (and fixed) a bug that exposed the data of 52 million users' Google+ data. Although Google did not find evidence that data was misused, as the earlier October 2018 report by the *Wall Street Journal* mentioned, it could not have known because it did not have the right to audit its developers.

105. Google's failure to disclose the exposure of user data appears to violate its Privacy Policy and the Consent Order. As Pichai testified before Congress in December 2018, "once [Google has] found a bug . . . and . . . ascertained the users who are eligible for notification, my understanding is [Google has] 72 hours, and we both notify users as well as regulators in that timeframe."

106. These violations have consequences for the Company and this data breach has led to multiple lawsuits, which were consolidated into *In re Google Plus Profile Litig.*, No. 5:18-cv-06164 (N.D. Cal.) (motion to dismiss filed April 10, 2019).

107. Moreover, Google is also currently facing consolidated litigation based on its failure to disclose that it maintains location tracking, even when a user has turned off settings, in a fact pattern similar to what caused it to pay the $22.5 million fine to the FTC regarding its failure to disclose that it could place cookies in Safari. *See In re: Google Location History Litig.*, No. 5:18-cv-05062, Consolidated Class Action Complaint (N.D. Cal. Apr. 29, 2019) ("*Google Location*").

108. As alleged in *Google Location*, Google assures users "You can turn off Location History at any time. With Location History off, the places you go are no longer stored." But as further alleged in *Google Location*, Google continues to track location through apps, such as those for weather updates and Google Maps; and moreover, some searches will lead to pinpointing the location of users, which information is then saved to Google accounts. The data saved by Google is so granular that it includes, but is not limited to, a time stamp, latitude, longitude, velocity, altitude, and activity (which can include how a person is moving, *e.g.*, whether by vehicle, and what kind of vehicle, or walking).

109. Google misled users when it led them to believe that turning off "Location History" would turn off location tracking, when in reality, to truly stop location tracking entirely, a user would have to turn off "Web & App Activity" (which is buried behind several steps: a user would have to first go to "Google Account," then select "Personal Info & Privacy," then choose "Manage your Google Activity," then click "Go to Activity Controls," and only then would they be able to reach "Web & App Activity."). However, Google has not confirmed that these steps will actually stop all location tracking.

110. Recently, in January 2019, Google was hit with a $57 million fine by European regulators for violating the General Data Privacy Regulation, which, at the time, was the largest levied under that law.

111. Most recently, at its annual developers' conference on May 7, 2019, the Company announced a slew of new privacy features, including plans to allow users to navigate several of its applications in "incognito mode," allow users to delete web and app activity history automatically after three or 18 months, make settings clearer so that users can more easily find, and delete information they have shared with the Company, such as location data in maps. In a press conference afterwards, the Company announced that it would take steps to limit the use of tracking cookies on Google Chrome (the Company's signature internet browser). But the last issue echoes Google's settlement with the FTC in 2018, when it was fined for misleading users regarding their ability to opt out of third party cookies. And its steps regarding location data are being taken in the middle of a class action lawsuit against the Company's location tracking ability. Thus, the Company's ramp-up of efforts to allow users to block third party cookies in the wake of rivals' scandals and limit or delete location data users provide to the Company may be in response to the litigation it faces or could face (since its cookies policy might violate the Consent Order), and serves as a tacit admission that its existing privacy infrastructure is inadequate.

112. Google's numerous privacy and sexual misconduct and discrimination problems, as well as others, has led Google's two founders to avoid facing questioning by other Googlers. In contrast to their past practices, where at least

either Page or Brin – and usually both – would attend Alphabet's internal weekly town halls – in 2019, neither one has attended any of Alphabet's internal weekly town halls.

113. Moreover, the fact that many of the Company's problems have been caused by a lack of Board and committee oversight is no accident. Schmidt admitted as much when, in an excerpt of a book about Bill Campbell ("Campbell"), Google/Alphabet's executive coach, Schmidt cited to an example of the approval process where Shriram had asked for more details regarding mounting losses at Google. However, Shriram was instead met with assurances that he need not concern himself with those details because Google had the "right team in place" that was "working on the problem[,]" therefore discouraging the Board's involvement.[7] Shriram was seemingly placated because he recounted how the discussion then did not focus on "the problem analytically[,]" but rather on "the people on the team and if they could get it done." *Id*. Shriram, as a member of the LDCC, apparently has internalized this deferential approach because none of the materials produced show that he ever pushed back against management's suggestions, but rather merely "approved" their decisions with rubber-stamping emails.

[7] Eric Schmidt, Jonathan Rosenberg & Alan Eagle, *Google's formula to build an All Star team*, LIVEMINT.COM (Apr. 19, 2019), https://www.livemint.com/companies/news/google-s-formula-to-build-an-all-star-team-1555635877747.html.

V. DERIVATIVE ALLEGATIONS

114. Plaintiff brings this action derivatively in the right and for the benefit of Alphabet to redress the breaches of fiduciary duty and other violations of law committed by the Individual Defendants, as alleged herein.

115. Plaintiff will adequately and fairly represent the interests of Alphabet and its stockholders in enforcing and prosecuting the Company's rights, and Plaintiff has retained counsel experienced in prosecuting this type of derivative action. Plaintiff has continuously held Alphabet stock throughout the Relevant Period and will continue to hold Alphabet stock through the resolution of this action.

116. Plaintiff has not made a pre-suit demand on the Board to assert the claims set forth herein against the Individual Defendants because such a demand would have been futile, and thereby excused, since the allegations herein permit the inference that there is a reasonable doubt as to whether: (1) the directors have the requisite disinterest and independence to fairly determine whether these claims should be pursued, owing to the risk of personal liability and conflicts of interest; or (2) the Board's actions are valid exercises of business judgment.

VI. DEMAND FUTILITY ALLEGATIONS

117. A demand on the Board to bring the claims asserted herein would be a futile and useless act because there is a reasonable doubt as to: (1) whether at least six of the current 12-member Board can make an independent and disinterested

decision about whether to institute and vigorously prosecute this action; or (2) whether the Director Defendants exercised valid business judgment.

118. A majority of the Board cannot disinterestedly or independently consider a demand because it is dominated and controlled by its controlling stockholders Page, Brin, and Schmidt.

119. A majority of the Board also cannot disinterestedly or independently consider a demand because all the Director Defendants have a strong interest in refusing to bring claims asserted by Plaintiff to protect themselves against a substantial likelihood of liability for breach of fiduciary duty.

120. Furthermore, a majority of the Board cannot disinterestedly or independently consider a demand because a majority of the directors are disabled by conflicts of interest.

121. Finally, the Director Defendants did not exercise valid business judgment when they approved severance agreements without examining why such generous payments with unusual agreement provisions – such as [redacted] – would be necessary.

A. Demand Is Futile Because the Board Is Dominated and Controlled by Page, Brin, and Schmidt

122. The Board is dominated and controlled by Page, Brin, and Schmidt because Page and Brin alone hold 51% of the voting power of Alphabet and Page, Brin, and Schmidt together hold 56% of the voting power of Alphabet. Alphabet

does not have a classified Board, so the Board knows that if they displease Page and Brin, or Page, Brin, and Schmidt, they could be removed at any time via written consent or at the next annual election and be replaced with more compliant directors owing to the voting power these three directors exert.

123. Furthermore, the Board has effectively been controlled by Page because he has always been recognized as Google/Alphabet's visionary and historically has gotten his way. In fact, Page's effective control has only increased over the years.

124. Google is controlled by Page, Brin, and Schmidt, who together control 56% of the voting power of the Company; Page and Brin alone control 51% of the vote; and they each control approximately 25-26% of the voting power. Within this bloc, and in the Company in general, Page exercises ultimate control as the driving force behind the Company. As *Business Insider* reported in an in-depth more-than-40-page profile of Page in 2014, "Page has a co-founder, Sergey Brin, but Page has always been his company's true visionary and driving force."[8]

125. And Page's effective control has only grown since Google's founding. In 2001, investors forced Page to hire Schmidt to provide "adult supervision." But Page continued to exercise ultimate operational control, approving every hire and signing Google's initial public offering ("IPO") papers. He also continued to review

[8] Nicholas Carlson, *The Untold Story of Larry Page's Incredible Comeback*, BUSINESS INSIDER (Apr. 24, 2014), https://www.businessinsider.com/larry-page-the-untold-story-2014-4.

and approve Google's products. Page also made a deal to purchase Android from Andy Rubin, and only informed Schmidt after the deal was done. Page allowed Rubin almost total autonomy by setting Android up as a separate entity, in its own building, that other Google employees could not access with their employee badges. And in 2010, as Page began to grow dissatisfied with aspects of Schmidt's performance, he sidelined him. Schmidt announced during a January 20, 2011, earnings call that he would become Executive Chairman, while Page would reassume the CEO role, and later tweeted, "Adult-supervision no longer needed."

126. Later that year, Page further asserted his control over the Company by pressuring the Board to accept a proposal to approve a new class of non-voting stock that would allow the Company to raise revenue without diluting Page and Brin's voting control. Many of the directors during that period remain on Google's Board. Others were directors or even had a direct role in approving severance for Rubin or Singhal. For example, Otellini, a director and then-member of the LDCC (who passed away in 2017), shared an email from Page to him with the Board, where Page asked, "Why should I sacrifice and work so hard if I might not be in control?" Otellini added that he thought of the statement as a "veiled threat." The Board initially pushed back against the Class C stock, forming a Special Committee to examine the issue for over a year, instead of merely approving the stock creation. And several current directors, who were also on the Board, then recognized that

Page, in particular, wanted a mechanism to continue to maintain control – even if Brin and Schmidt sold their stakes. Hennesy told the Board that "Larry is hoping to hold voting control even if Sergey and Eric sell" and Shriram and Mather were both on the Special Committee and initially pushed back against Page. The Board ultimately got Page and Brin to agree to accept share transfer limits, which Tilghman (who recently retired as a director in early 2018) said prevented Page, Brin, and Schmidt from benefiting from a "windfall sale" of their Class C stock. But despite winning a few concessions, the Board proved Page, Brin, and Schmidt – in particular Schmidt – remained in the drivers' seat because it still approved the Class C stock creation and issuance, which later became the subject of a lawsuit that settled in 2013.

127. The facts of this case further illustrate Page's dominating influence in particular. The LDCC had originally approved a compensation package for Rubin that he was not satisfied with and his immediate recourse was to talk to Page. The LDCC seemed to accept, as a matter of routine, that they should await Rubin's conversation with Page before making any decisions. The LDCC then heard of a significantly more generous offer Page made to Rubin, which they accepted without question on Page's recommendation, despite the new package costing at least tens of millions of dollars in equity. Doerr even noted that he had "discussed [this] with

[Page]" and, as a result, would "approve" the package; two LDCC members merely replied with "approve."

128. Moreover, Page feels a special loyalty for Rubin because Rubin was the ticket to Page's own comeback. Before the acquisition and development of Android, many Google employees felt that Page was increasingly taking a back seat to Schmidt. But Page engineered the Android merger, gave Rubin the autonomy to develop a platform that became the world's most popular operating system for smartphones, and Rubin and Android's success gave Page the confidence to take back the reigns of the Company from Schmidt. In turn, Page felt that Rubin was not adequately compensated for his contribution to the Company, and as a result, he drove compensation discussions for Rubin that directly resulted in Rubin's $150 million equity deal, even as Rubin was being internally investigated for allegations of sexual misconduct. This decision to give Rubin $150 million worth of stock backfired when it became clear that Rubin would have to leave, and at that point, Page engineered a generous exit for Rubin that allowed him to have more time to repay a $14 million loan, receive $90 million in cash (thus ensuring certain liquidity even if Alphabet's stock were to decrease in value), and gave Rubin important protections in his severance agreement that would allow Rubin to succeed in his next endeavor, by giving him significant leeway to start another venture and [redacted]. Page even went out of the way

to give Rubin a hero's farewell, and the Company invested millions of dollars in Rubin's next venture.

129. For these reasons, because Page is personally invested in Rubin and controls the Company, the Board will be unable to impartially and disinterestedly evaluate a demand that is made to initiate litigation against them.

B. Demand Is Futile Because the Individual Defendants Face a Substantial Likelihood of Personal Liability

130. Page negotiated Rubin's compensation and severance packages personally. He faces a substantial likelihood of personal liability for being willfully blind or grossly negligent negotiating a generous stock package for Rubin worth $150 million, even as he knew Rubin was under investigation for allegations of sexual misconduct, which then gave Rubin the leverage to secure an overly generous cash compensation package that provided him immediate liquidity. Page also committed willful misconduct or gross negligence by not providing key information about Rubin's misconduct to the LDCC, which led the LDCC to approve these overly generous packages and waste corporate assets. As the CEO of Alphabet, Page also faces a substantial likelihood of personal liability for being willfully blind or grossly negligent in monitoring data privacy or security issues, which has led to the unauthorized exposure of more than 52 million users' data to third parties, without first securing their affirmative consent, thus violating the Consent Order and exposing the Company to potentially massive fines.

131. Pichai faces a substantial likelihood of personal liability for conscious misconduct or willful blindness for negotiating generous compensation and severance packages with Singhal, despite knowing of allegations of sexual misconduct against him, and then withholding that information from the LDCC when it approved Singhal's compensation and severance packages. Pichai also faces a substantial likelihood of personal liability for consciously disregarding the Company's admitted obligation to disclose to users and regulators data breaches within 72 hours of discovery: he was informed of the unauthorized access to Google+ users' data, but did not disclose that information to the Board, customers, or regulators.

132. Brin, as the President of Alphabet, faces a substantial likelihood of personal liability for being willfully disengaged from considering issues of sexual misconduct and data privacy. The record does not reflect any consideration of these issues, despite Plaintiff's Section 220 demand for that information, which leads to the inference that such information does not exist.

133. Schmidt, as the Executive Chairman of Alphabet during the time of the misconduct at issue, also faces a substantial likelihood of personally liability for being willfully disengaged from considering issues of sexual misconduct and data privacy. The record does not reflect any consideration of these issues, despite Plaintiff's Section 220 demand for that information, which leads to the inference that

such information does not exist. In addition, information in the public record indicates that Schmidt, at one point, retained a mistress using Company funds by having Google hire her as a consultant, and thus he faces personal liability for the misappropriation of Company funds. As such, he cannot independently and disinterestedly evaluate a demand.

134. Doerr and Shriram face a substantial likelihood of personal liability because they willfully failed to investigate why the Company would offer Singhal and Rubin generous compensation and severance packages, despite unusual features in the latter agreements. Instead, the record reflects minimal or non-existent deliberation and mere deference to either Page or Pichai's recommendations. This willful blindness and total abdication of oversight creates a substantial likelihood of personal liability for breaches of fiduciary duties for both of them, thus leading them to be unable to independently and disinterestedly evaluate a demand.

135. Mather, Ferguson, and Mulalley, as members of the Audit Committee, and Greene as a former Audit Committee member for most of 2015, face a substantial likelihood of personal liability because they willfully failed to supervise data privacy and security measures, as members of the Audit Committee charged with doing so. Moreover, as members of the Audit Committee, they also willfully failed to supervise the Company's financial controls by not investigating the generous severances offered to both Rubin and Singhal. This willful blindness and

total abdication of oversight creates a substantial likelihood of personal liability for breaches of fiduciary duties for all of them, thus leading them to be unable to independently and disinterestedly evaluate a demand.

136. All of the Director Defendants face a substantial likelihood of personal liability for failure to monitor the Company with respect to systemic issues of sexual harassment, sexual misconduct, gender and age discrimination, and data privacy. The minutes or presentations produced indicate that they only addressed these problems after the fact by considering privacy issues after the *Wall Street Journal* forced their hand by exposing the data breach and [redacted] after massive publicity regarding Rubin and Singhal's misconduct and vast employee walkouts in protest. To date, there is no evidence that they made any systemic effort to address gender or age discrimination. With respect to the currently pending age and sex discrimination class action suits, the record does not reflect that the Board was even informed about these, and even if they were, the record reflects no Board action in response. As a result, the Director Defendants all face a substantial likelihood of personal liability for consciously disregarding their oversight obligations, and thus cannot disinterestedly or independently evaluate a demand.

C. Demand Is Futile Because a Majority of the Board Suffers from Disabling Conflicts of Interest

137. Alphabet's Board is dominated by directors with long tenures and interlocking ties. Among the 12 directors, the Company acknowledges five of them are not independent: co-founders Page and Brin, current Google CEO Pichai; recent employee Greene; and recently retired executive chairman and currently retained technical advisor, Schmidt. The most recent proxy statement, filed on April 30, 2019 (the "Proxy"), asserts that "[e]ach of the directors. . . except Larry [Page], Sergey [Brin], Eric [Schmidt], Sundar [Pichai], and Diane [Greene], is independent." Thus, the Board has conceded that these five directors are not independent.

138. Beyond the Board's concessions, the five directors above are bound closely by employment ties. The Board's D&O questionnaires establish, as one criterion of independence, the fact that a director is not an employee of the Company for the last three years: all of these five directors are either current employees of the Company or have only left the employee less than a year before. Page is the current CEO of Alphabet; Brin is the current President of Alphabet; Schmidt was Executive Chairman until January 2018, and received over $1.6 million in compensation in 2018 alone; Pichai is the current CEO of Google; and Greene was the CEO of Google Cloud until the end of January 2019. The 2017 Proxy refers to these five as Alphabet's "employee directors" who were thus ineligible to receive compensation as Board directors.

139. Moreover, all five have numerous interlocking investments that they would not want to jeopardize by alienating themselves should one bring suit against any of the others. According to their 2019 D&O questionnaires, for example, affiliates of each of the five are investors, along with Alphabet's venture capital arm, Google Ventures ("GV"), in [redacted]

140. Page, Brin, and Schmidt, in particular, are closely associated with each other, together holding 56.5% of the voting power, and have been identified with each other as a bloc in numerous public reports, with Page and Brin as the co-founders and Schmidt referred to as the "adult supervision" brought in to help guide Page and Brin. Page, Brin, and Schmidt also own several aviation interests together, which are disclosed on the Proxy. Moreover, all three have the vast majority of their multi-billion-dollar net worth tied in Alphabet equity.

141. Pichai is also closely associated with Page, Brin, and Schmidt. In particular, his identification with the Company is even greater since he worked up the ranks to become the CEO of Google. Because Pichai's career has been so closely associated with Google, he has also been vastly enriched by the Company: he currently holds about $500 million worth of Alphabet stock that has yet to vest, which constitutes more than one third of his total net worth. [redacted]

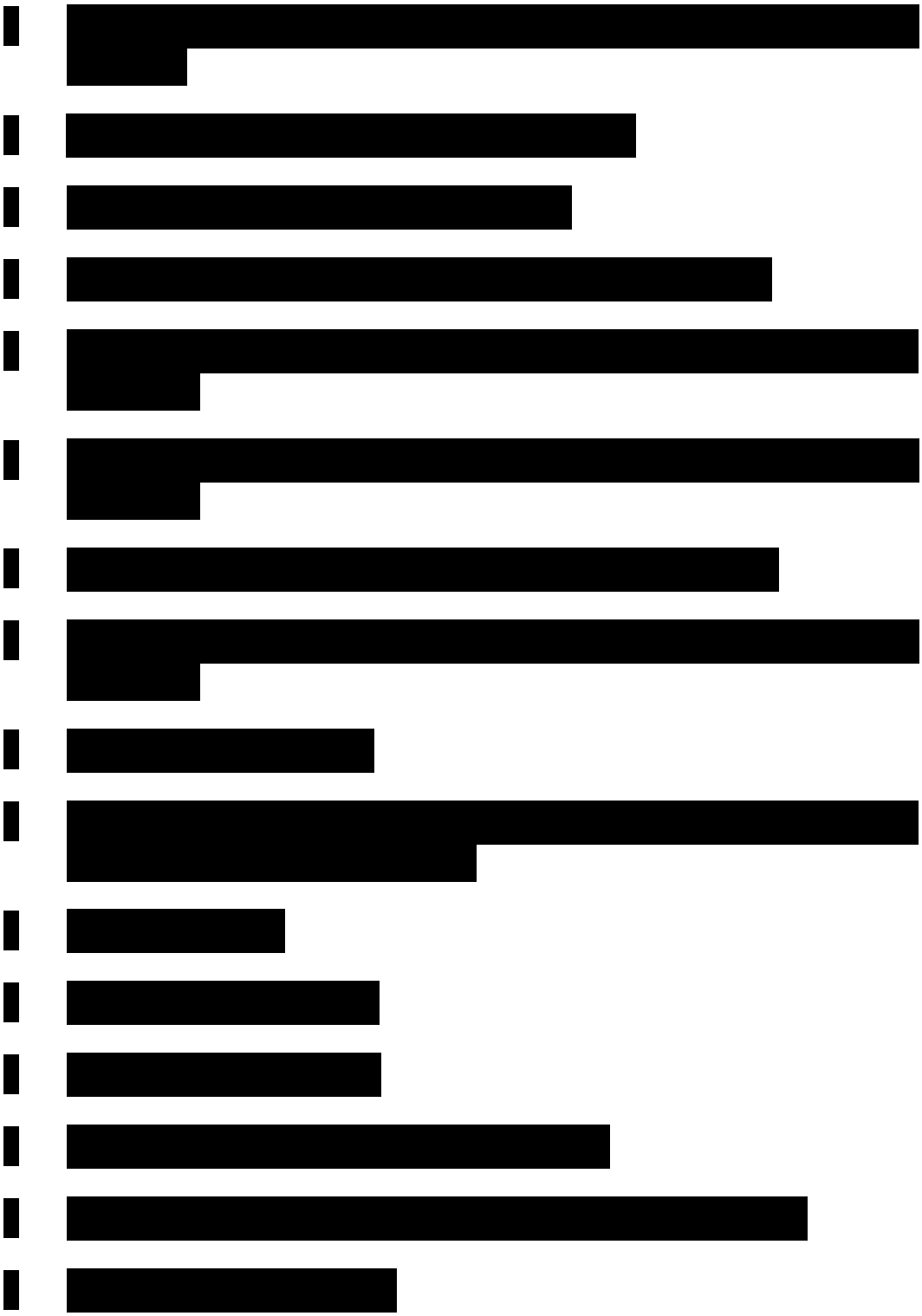
[redacted] he would not be able to independently or disinterestedly consider a lawsuit that would target the two of them.

142. Greene is also indebted to Page, Brin, Schmidt, and Pichai because, until just three months ago, she was their employee. Moreover, she or her affiliates continues to hold numerous investments alongside GV, the investment arm of Alphabet, including co-investments in:

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

143. Among the remaining ostensibly independent seven directors, three also have disabling ties: Hennessy, as Chairman; and Doerr and Shriram, as two members of the LDCC.

144. Doerr, as KPCB's managing partner, was a crucial early investor in Google and instrumental in convincing Page and Brin to hire Schmidt. He or his affiliates continues to co-invest in many companies with Page, Brin, Schmidt, and Alphabet's venture capital arms, GV and CapitalG. Over the last two years, KPCB has either invested in or committed to invest approximately $200 million with GV and CapitalG, according to the 2018 and 2019 Proxies. The 2018 Proxy mentions that GV and CapitalG's investment, or commitment to invest, in an aggregate of $128.6 million in which KPCB is either a co-investor or an existing investor between 2017 through March 31, 2018; the 2019 Proxy pegs that amount at $80.2 million between 2018 to March 31, 2019. Moreover, Doerr's D&O questionnaire discloses additional investments from Doerr or his affiliates with Alphabet or its affiliates and its directors and their affiliates, including:



145. Doerr is so closely associated with Google and Alphabet that both Institutional Shareholder Services ("ISS") and Glass, Lewis & Co. ("Glass Lewis"),

the largest institutional proxy advisory firms, have raised concerns regarding his independence as far back as 2004 and have, in several years (*e.g.*, 2015 for Glass Lewis and ISS; 2018 for ISS), recommended that stockholders withhold their votes for his election. However, because Page, Brin, and Schmidt control the majority of the voting power, Doerr's re-election is assured, so long as he is in their good graces. As a result of his numerous ties with the Company and the controlling stockholders, as well as other directors, he would not be able to independently and impartially consider a litigation demand against these directors.

146. Shriram is also one of the earliest investors in Google, as well as one of its founding Board directors (even before the IPO). Like Doerr, Shriram or his affiliates have numerous interlocking investments with Alphabet or its affiliates or its directors and their affiliates. These investments, according to his D&O questionnaire, include:

[redacted]

147. Moreover, Shriram helped Page and Brin negotiate a licensing agreement with Stanford when they first were beginning their business. Finally, Shriram's ties are so close to Google that ISS has, on two occasions, recommended against his re-election, but because Brin, Page, and Schmidt have a majority of the voting power of the Company, Shriram's re-election is reassured, as long as he stays in their good graces. As a result of his numerous ties with the Company and the controlling stockholders, as well as other directors, he would not be able to independently and impartially consider a litigation demand against these directors.

148. Hennessy is a long-time director of Google and spent most of his career at Stanford. He served in several leadership positions in the Stanford administration from 1994 through 2016, including as President of Stanford from 2000 to 2016. His association with Google and Alphabet has been hugely beneficial to his career because they have been extraordinarily generous toward Stanford, which, in turn, reflects well on his leadership. Stanford received Google stock as part of the IPO in 2004, which it has since sold for $336 million. Furthermore, it continues to receive annual licensing fees from Google, probably in the millions of dollars. Moreover, Google or Alphabet contribute millions of dollars to the university annually. Finally, Hennesy himself has been scrutinized in the media for the large stock grants he has

received from Google (including 65,000 options to buy the stock at $20 and 10,556 shares after the IPO) and his interlocking investments with the Company or its directors, especially Doerr (who recruited Hennessy to the Board). He invests in various KPCB funds. [redacted]

D. Demand Is Futile Because the Board and the Audit Committee Did Not Exercise Valid Business Judgment When They Approved the Rubin and Singhal Compensation and Severances

149. The record reflects no deliberation by the Board of Rubin or Singhal's compensation or severance, or whether it was ever informed of their employment arrangements. Thus, the record reflects that the Board as a whole did not exercise any independent business judgment with respect to Rubin or Singhal's compensation or severance packages, but instead delegated the function to the LDCC.

150. Similarly, the record reflects no deliberation by the Audit Committee of Rubin or Singhal's compensation or severance packages – not a single set of Audit Committee minutes was produced.

151. The LDCC is charged with reviewing and approving executive compensation and severance arrangements. But the LDCC members did not exercise valid business judgment because they merely deferred to Page and Pichai,

respectively, when it came to the compensation and severance arrangements for Rubin and Singhal.

152. This excessive deference is especially evident in the short "I approve" emails that the LDCC members sent in response to being told of Rubin and Singhal's severance arrangements. They failed to inform themselves of the rationale for the terms of the settlement, and the record reflects no discussion of the unusual features of these severance packages, including, with respect to Rubin, [redacted] and the two amendments that gave Rubin a sped up payment schedule and explicit carve out to start his venture without apparent consideration in return, and with respect to Singhal, the strict confidentiality provision [redacted], despite the stated reason of Singhal's departure being to engage in philanthropy.

VII. CAUSES OF ACTION

COUNT I
Breach of Fiduciary Duty
(Against the Director Defendants in Their Capacities as Directors)

153. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if fully set forth herein.

154. By virtue of their positions as directors of Alphabet, the Director Defendants owed fiduciary duties of care, loyalty, and good faith to Alphabet and its stockholders. They breached those duties by willfully abdicating their oversight responsibilities with respect to sex and age discrimination, sexual misconduct, and user privacy safeguards, and instead deferring either entirely to the officers or willfully failing to keep themselves informed or involved at all.

155. Furthermore, Director Defendants Doerr and Shriram breached their fiduciary duties by making no attempt to examine the unusual provisions of Rubin and Singhal's severance agreements or the rationales for their departures, which the unusual severance agreements should have keyed them into, and instead allowed overly generous severance to be paid to Rubin and Singhal, despite their at-will employment agreements and the serious misconduct that was the cause for their departures.

156. Furthermore, director Defendants Mather, Ferguson, Mulalley, and Greene breached their fiduciary duties as members of the Audit Committee by failing to provide any oversight into the overly generous payments made to Rubin and Singhal and by not conducting any oversight over the firm's privacy or data security, which would have led to the discovery of the Google+ data breach instead of allowing the breach to fester for three years before it was forced to be disclosed by a pending news report from the Wall Street Journal.

157. As a result of the Director Defendants' actions or inactions, the Company has been damaged.

158. The Director Defendants' breaches of fiduciary duty directly and proximately caused substantial losses to the Company in an amount to be proven at trial.

159. The Director Defendants are liable to the Company as a result of the acts alleged herein.

COUNT II
Breach of Fiduciary Duty
(Against the Officer Defendants in Their Capacities as Officers)

160. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if fully set forth herein.

161. By virtue of their positions as officers of Alphabet, the Officer Defendants owed fiduciary duties of care, loyalty, and good faith to Alphabet and its stockholders. The Officer Defendants breached those duties when they failed to conduct oversight over sex and age discrimination, sexual misconduct, and user data privacy.

162. Furthermore, Page acted disloyally when he negotiated a $150 million settlement for Rubin and later a $90 million cash payment with a [redacted], when he knew that Rubin was under investigation for sexual misconduct.

163. Furthermore, Pichai acted disloyally when he negotiated a $45 million severance for Singhal when he knew that Singhal was under investigation for sexual misconduct.

164. Furthermore, Bock acted disloyally in signing off on Rubin and Singhal's severance agreements when he knew that they were under investigation for sexual misconduct.

165. Furthermore, Porat acted negligently or disloyally when, as CFO of Alphabet, she neglected to examine why Singhal was getting a $45 million severance agreement with unusual features, and when she neglected to extract additional value from Rubin's severance agreement when his agreement was amended in April 2015 (after she joined Alphabet in March 2015) to carve out his incubator from the non-compete provision.

166. Furthermore, Drummond acted negligently and disloyally when he failed to adequately safeguard user privacy, prevent discrimination, and prevent sexual misconduct or prevent the rewarding of sexual misconduct through generous severance, thus exposing the Company to legal liability, when his job is to minimize the Company's legal exposure.

167. Furthermore, Rubin and Drummond also acted disloyally when they willfully violated Company policy by engaging in relationships with subordinates

without reporting the relationships to their supervisors, as required by Google's relationship policy and Code of Conduct.

168. Furthermore, Rubin and Singhal acted disloyally when they violated the Code of Conduct through engaging in sexual misconduct.

169. As a result of the Officer Defendants' actions or inactions, the Company has been damaged.

170. The Officer Defendants' breaches of fiduciary duty directly and proximately caused substantial losses to the Company in an amount to be proven at trial.

171. The Officer Defendants are liable to the Company as a result of the acts alleged herein.

COUNT III
Breach of Fiduciary Duty
(Against Defendants Page, Brin, and Schmidt as Controlling Stockholders)

172. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if fully set forth herein.

173. By virtue of their holding the majority of the voting power of the Company and their domination and control of the Board, Page, Brin, and Schmidt are controlling stockholders of Alphabet and therefore fiduciaries of the Company and its stockholders. As such, they owe the Company and its stockholders the highest duties of care, loyalty, and good faith.

174. Page, Brin, and Schmidt breached their fiduciary duties by using their control over Alphabet and the Board and its committees to abdicate oversight over sexual misconduct and discrimination allegations and approving excessively generous severance to Rubin and Singhal when they could have been terminated without severance because they were at-will employees.

175. As a result of Page, Brin, and Schmidt's actions or inactions, the Company has been damaged.

176. Page, Brin, and Schmidt's breaches of fiduciary duty directly and proximately caused substantial losses to the Company in an amount to be proven at trial.

177. Page, Brin, and Schmidt are liable to the Company as a result of the acts alleged herein.

COUNT IV
Corporate Waste
(Against Individual Defendants in Their Capacities as Directors and Officers)

178. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if fully set forth herein.

179. The Officer and Director Defendants have a fiduciary duty to protect Alphabet's assets from waste or loss.

180. By approving excessive severance payments to executives who were credibly accused of sexual harassment or misconduct, Individual Defendants breached their fiduciary duties and caused Alphabet to waste corporate assets.

181. As a result of this waste, the Company has been, and continues to be, damaged.

COUNT V
Unjust Enrichment
(Against Individual Defendants in Their Capacities as Directors and Officers)

182. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if fully set forth herein.

183. Defendants Rubin and Singhal were unjustly enriched by extracting excessive compensation and severance from Alphabet while committing sexual misconduct that harms the Company.

184. Defendants Rubin and Singhal should therefore be ordered to disgorge the severance and other compensation they were paid as a result of their wrongful conduct and breaches of fiduciary duties to the Company.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Declaring that Plaintiff may maintain this derivative action on behalf of Alphabet and that Plaintiff is a proper and adequate representative of the Company;

B. Declaring that the Individual Defendants have breached their fiduciary duties of care, loyalty, and good faith to Alphabet or Google;

C. Determining and awarding to Alphabet the damages sustained by it, as a result of the breaches of fiduciary duty and other claims set forth above, from each of the Individual Defendants, jointly and severally;

D. Awarding to Alphabet restitution from the Individual Defendants and ordering disgorgement of all profits, benefits, and other compensation obtained by them, including all profits, special benefits, and unjust enrichment they have obtained as a result of their unlawful conduct, payment of incentive compensation (whether in the form of cash bonuses, stock awards, or stock option grants), and common stock sale proceeds;

E. Directing Alphabet to take all necessary actions to reform and improve its corporate governance and internal procedures, enable the Company to comply with the Company's existing governance obligations and all applicable laws, and protect the Company and its stockholders from a recurrence of the damaging events described herein, including, but not limited to, requiring the Company to implement additional audit, compliance, and internal control procedures;

F. Awarding to Plaintiff costs and disbursements of this action, including reasonable attorneys', accountants, and experts' fees;

G. Awarding pre- and post-judgment interest; and

H. Granting such other and further relief as the Court deems just and equitable.

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May 17, 2019

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