

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DEKALB COUNTY PENSION FUND,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	C.A. No. _____
LARRY PAGE, SERGEY BRIN, ERIC E. SCHMIDT,	:	
L. JOHN DOERR, JOHN L. HENNESSY,	:	REDACTED VERSION - JULY 16, 2012
PAUL S. OTELLINI, K. RAM SHRIRAM,	:	
SHIRLEY M. TILGHMAN, DIANE B. GREENE,	:	
ANN MATHER, SHERYL SANDBERG,	:	
TIM ARMSTRONG, ALANA KAREN,	:	
OMID KORDESTANI, DAVID C. DRUMMOND,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
GOOGLE INC.,	:	
	:	
Nominal Defendant.	:	

SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff DeKalb County Pension Fund (“Plaintiff” or “the Fund”), by and through its undersigned counsel, for its Complaint against Defendants alleges upon personal knowledge as to itself and upon information and belief otherwise, as follows:

NATURE OF THE ACTION

1. This shareholder derivative action seeks to recover damages suffered by nominal party Google Inc. (“Google” or the “Company”) as a result of Defendants’ breaches of fiduciary duties in knowingly allowing Canadian online pharmacies to illegally advertise controlled, misbranded, and unapproved prescription drugs for sale in the United States through Google’s advertising program, AdWords.

2. It is unlawful for pharmacies outside the United States to ship prescription drugs

to customers in the United States or to cause pharmacies outside the United States to ship prescription drugs to customers in the United States. Such conduct violates the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §331(a) and (d) (Introduction into Interstate Commerce of Misbranded or Unapproved Drugs). Where these prescription drugs are controlled substances, such conduct also violates the Controlled Substances Act, 21 U.S.C. §952 (Importation of Controlled Substances). A person who aids or abets a violation of the Controlled Substances Act is punishable as a principal. 18 U.S.C. §2.

3. As early as March 13, 2003, high ranking employees of Google were on explicit notice in communications made directly to them that online Canadian pharmacies were advertising prescription drugs to the Company's users in the United States through the Company's AdWords advertising program and that such advertising could potentially lead to criminal liability.

4. However, certain Google directors and high-level employees knowingly continued to allow the illegal advertising of prescription drugs to the Company's users in the United States through the Company's AdWords advertising program until late 2009. Even after the Company was contacted in November 2003 by the parent of a teenager who became addicted to the powerful prescription narcotic Vicodin after using Google's search engine to locate and order the drug from an illegal online pharmacy, certain Google directors and high-level employees refused to consider anything other than cosmetic limitations on illegal online pharmacy advertising and did not make the requisite changes to bring their pharmacy advertising into compliance with federal and state law until after they became aware that Google had become the target of a criminal investigation.

5. As early as August 22, 2003, Google directors Eric Schmidt and Sergey Brin were

explicitly on notice in communications made directly to them by Company employees and outside sources that online Canadian pharmacies were advertising prescription drugs to the Company's users in the United States through the Company's AdWords advertising program and that such advertising could potentially lead to criminal liability.

6. As early as October 21, 2003, Google director Larry Page was explicitly on notice in communications made directly to him by Company employees and outside sources that online Canadian pharmacies were advertising prescription drugs to the Company's users in the United States through the Company's AdWords advertising program and that such advertising could potentially lead to criminal liability.

7. As early as October 30, 2003, Google director L. John Doerr was explicitly on notice in communications made directly to him by Company employees that online Canadian pharmacies were advertising prescription drugs to the Company's users in the United States through the Company's AdWords advertising program and that such advertising could potentially lead to criminal liability.

8. Google directors who did not receive explicit notice in communications made directly to them that online Canadian pharmacies were advertising prescription drugs to the Company's users in the United States through the Company's AdWords advertising program and that such advertising could potentially lead to criminal liability nevertheless still received such notice as a result of numerous articles in *The Washington Post*, *The Wall Street Journal* and *CNET* which ran between March 12, 2003 through December 1, 2003.

9. Google took no significant action to curb the advertisement and unlawful sale of prescription drugs in the United States by online Canadian pharmacies until it became aware of the Government's investigation of its pharmacy advertising practices in 2009. The Company

failed to act despite early explicit warnings that its AdWords advertising program could lead to criminal liability.

10. In August 2011, Google entered into a Non-Prosecution Agreement (the “Non-Prosecution Agreement”) with the United States Attorney’s Office for the District of Rhode Island and the United States Department of Justice (collectively, the “Government”). Google specifically admitted, agreed and accepted responsibility for violations of 21 U.S.C. §331(a) and (d) and 21 U.S.C. §952 by knowingly allowing Canadian online pharmacies to illegally advertise controlled, misbranded and unapproved prescription drugs for sale in the United States through AdWords.

11. In conjunction with entering into the Non-Prosecution Agreement, Google also made a payment of \$500,000,000 (five hundred million) to the Seized Assets Deposit Account of the United States Marshals Service as “a substitute *res* for the proceeds of controlled prescription drug sales by Canadian online pharmacies that advertised through the Company’s AdWords program.”

12. Plaintiff brings this action to remedy the Defendants’ failure to act in the interests of Google and its shareholders, to remedy their breaches of fiduciary duty in: (a) failing to monitor the Company’s operations; (b) knowingly allowing Google to permit online Canadian pharmacies to advertise prescription drugs to the Company’s users in the United States through the Company’s AdWords advertising program; (c) operating the Company’s AdWords advertising program in a criminal manner, subjecting the Company to criminal liability and severe reputational harm; and (d) causing the Company to be forced to enter into a Non-Prosecution Agreement and to pay a civil forfeiture of \$500 million.

THE PARTIES

13. Plaintiff is a pension plan which oversees the retirement portfolio of the employees of DeKalb County, Georgia. The Fund contains assets of more than \$1.2 billion and has been a significant holder of the common stock of Google since the initial public offering on April 18, 2004. As of August 31, 2011, the Fund was the beneficial owner of 11,667 shares of Google common stock with a current market value of over \$7 million. The Fund has continuously held Google stock at all times material hereto.

14. Nominal Defendant Google is a Delaware corporation whose primary business is advertiser-supported Internet search and services. The Company is headquartered at 1600 Amphitheatre Parkway, Mountain View, California 94043. The Company's stock trades on the NASDAQ National Market System under the symbol "GOOG."

15. Defendant Larry Page ("Page") is currently Google's chief executive officer, a director, and is a co-founder of the Company. From 2001 to 2011, Page was Google's president of product and shared responsibility for the Company's day-to-day operations with Sergey Brin and Eric Schmidt. Page has been a director of Google since its founding and serves on the board's Executive Committee and Acquisition Committee.

16. Defendant Sergey Brin ("Brin") is currently director of Google special projects and is a co-founder of the Company. From 2001 to 2011, Sergey served as president of technology and shared responsibility for the Company's day-to-day operations with Page and Eric Schmidt. Brin has been a director of Google since its founding and serves on the board's Executive Committee and Acquisition Committee.

17. Defendant Eric E. Schmidt (“Schmidt”) is currently Google’s Executive Chairman. From 2001 to 2011, Schmidt served as Google’s chief executive officer, and shared responsibility for the Company’s day-to-day operations with Page and Brin. Schmidt has served as chairman of the Company’s board of directors since 2001 and currently chairs the board’s Executive Committee and Acquisition Committee.

18. Defendant L. John Doerr (“Doerr”) has been a member of Google’s board of directors since May 1999 and currently serves on the board’s Leadership Development and Compensation Committee. Doerr has been a General Partner of Kleiner Perkins Caufield & Byers since August 1980.

19. Defendant John L. Hennessy (“Hennessy”) has been a member of Google’s board of directors since April 2004, and has been “Lead Independent Director” since April 2007 and currently serves on the board’s Nominating and Corporate Governance Committee. Hennessy has served as the President of Stanford University since September 2000.

20. Defendant Paul S. Otellini (“Otellini”) has been a member of Google’s board of directors since April 2004 and chaired the board’s Leadership Development and Compensation Committees during the relevant time period. Otellini has served as the Chief Executive Officer and President of Intel Corporation since May 2005 and has been a member of the board of directors of Intel since 2002.

21. Defendant K. Ram Shriram (“Shriram”) has been a member of Google’s board of directors since September 1998 and served on the board’s Audit Committee and Acquisition Committee during the relevant time period. Shriram has been a managing partner of Sherpalo Ventures, LLC since January 2000.

22. Defendant Shirley M. Tilghman (“Tilghman”) has been a member of Google’s board of directors since October 2005 and served on the board’s Nominating and Corporate Governance Committee during the relevant period. Tilghman has served as the President of Princeton University since June 2001.

23. Defendant Diane B. Greene (“Greene”) has been a member of Google’s board of directors since January 2012 and serves on the board’s Audit Committee.

24. Defendant Ann Mather (“Mather”) has been a member of Google’s board of directors since November 2005 and chairs the board’s Audit Committee.

25. Defendant Sheryl Sandberg (“Sandberg”) was formerly Google’s Vice President of Global Online Sales & Operations, from November 2001 to March 2008.

26. Defendant Tim Armstrong (“Armstrong”) was formerly Google’s President of Google’s Americas Operations and served on the Company’s operating committee from September 2000 to March 2009.

27. Defendant Alana Karen (“Karen”) was formerly Google’s policy specialist for Google AdWords.

28. Defendant Omid Kordestani (“Kordestani”) is Senior Advisor to the Office of the CEO and Founders at Google. Kordestani was the Senior Vice President for Worldwide Sales and Field Operations of Google until April 2009.

29. Defendant David C. Drummond (“Drummond”) is Google’s Senior Vice President, Corporate Development and Chief Legal Officer. He was formerly Google’s vice president of corporate development.

30. Defendants Page, Brin, Schmidt, Doerr, Hennessy, Otellini, Shriram, Tilghman, Greene, Mather, Sandberg, Armstrong, Karen, Kordestani, and Drummond are referred to herein

as the “Defendants.”

31. Defendants Page, Brin, Schmidt, Doerr, Hennessy, Otellini, Shriram, Tilghman, Greene, and Mather are referred to herein as the “Director Defendants.”

32. Defendants Doerr, Hennessy, Otellini, Shriram, Tilghman, Greene, and Mather are referred to herein as the “Non-Employee Director Defendants.”

SUBSTANTIVE ALLEGATIONS

33. Google is a publicly-traded Internet search and technology corporation. Google is in the business of collecting and cataloging information. Since the earliest days of the Company’s existence, it has used its ability to collect information to gather information about itself. Google has always been particularly zealous about collecting news and analysis of Google by third-parties. Articles and news about Google are collected every day by the Company and then circulated throughout the company via e-mail distribution lists called listservs. One such listserv is called google-coverage@google.com. Virtually every high ranking employee of Google is a member of the google-coverage@google.com listserv. Google’s unparalleled ability to collect information about itself combined with the Google listservs ensures that almost everything written about Google that appears on the Internet will be read by Google employees.

34. Google offers various advertising services that permit advertisers to have their advertising message, and a hyperlink to their website, appear above and next to search results in response to search queries relevant to the advertiser, and on various websites that contract with Google.

35. Google’s largest advertising program, AdWords, displays sponsored advertisements in response to queries by Google’s search engine users. Advertisers pay fees to Google for each ad. Advertisers are able to “geo-target” their Google advertising campaigns,

selecting the countries where the advertisements will display.

36. The AdWords advertisements are displayed in response to “keywords.” A keyword is a specific word or phrase selected by the advertiser that the Company uses to trigger the display of advertisements in response to a user’s query. Advertisers bid, in an auction-like format, on keywords in order to have their advertisements appear when the user enters the selected keywords into the Company’s search engine.

37. The advertisers pay Google, not when their ads appear, but when users click on the ads that appear in order to be taken to the advertisers’ websites. Thus, the amount that advertisers bid is referred to as “cost-per-click” or “CPC.” The more advertisers bid for CPCs related to a keyword, the higher the advertisers’ ad will appear in the list of search results when the keyword is used in a search. Conversely, the lower an advertiser bids for CPC on a keyword, the lower the advertiser’s ad will appear in the list of search results. As a practical matter, an ad which does not appear within the top ten entries in the list of search results is essentially valueless since users are unlikely to read that far into the list to see the ad.

38. Google has always maintained certain standards for advertisers in the AdWords program. For instance, since the program’s inception, Google has refused to allow the advertising of tobacco products in the AdWords program.

39. Online pharmacies advertise through AdWords in an effort to generate Internet sales of prescription drugs and over-the-counter products. Google adopted initial policies regarding advertising by online pharmacies, and these policies evolved over time as the Company grew. In early 2003, it was Google’s policy to permit Canadian pharmacies to use AdWords to advertise the sale of prescription drugs and to geo-target those ads to the United States.

40. On March 12, 2003, The Wall Street Journal published an article entitled “The FDA Begins Cracking Down on Cheaper Drugs from Canada” which reported that in a recent legal opinion, a Food and Drug Administration (“FDA”) official had issued a warning to third parties that they may be violating civil and criminal law by making it possible for Americans to buy drugs from Canada. The article quoted a February 12, 2003 letter from William K. Hubbard (“Hubbard”), the FDA associate commissioner for policy and planning, which stated: “[a]ll parties ‘who cause a prohibited act’ can ‘be found civilly and criminally liable’ under the federal Food, Drug and Cosmetic Act. Those who aid and abet a criminal violation of the act, or conspire to violate the act, can also be found criminally liable.”

41. High-ranking employees at Google immediately recognized the potential danger that Google’s policy of permitting Canadian pharmacies to use AdWords to advertise the sale of prescription drugs and to geo-target those ads to the United States presented to the Company in light of the FDA’s legal opinion that parties who aid and abet a criminal violation of the Federal Food Drug and Cosmetic Act “can also be found criminally liable.”

42. On March 13, 2003, in response to an inquiry by Google, the National Association of Boards of Pharmacy (“NABP”) wrote to Mary Ann Belliveau (“Belliveau”), Google’s then-Vertical Market Manager for Healthcare, regarding the ability of online pharmacies to advertise their services through Internet searches and AdWords. That letter explicitly advised Google that, “the importation or reimportation of prescription drugs from foreign countries generally violates one or more . . . sections of the Federal Food Drug and Cosmetic Act . . .” as well as that, “those who aid and abet a criminal violation of the (Federal Food Drug and Cosmetic) Act or conspire to violate the Act, can also be found criminally liable.”

43. Significantly, the NABP's March 13, 2003 letter to Google also advised that the NABP had developed a program called "Verified Internet Pharmacy Practice Sites™" ("VIPPS®") whereby the NABP would certify that an Internet pharmacy held a valid license, had been inspected, and that its operations met the NABP's Internet pharmacy practice standards. The letter went on to advise Google that Internet pharmacies that were not VIPPS certified "have the potential to endanger patients because many operate illegally."

44. Finally, the NABP enclosed a fact sheet on the VIPPS program in the March 13, 2003 letter to Google, which closed with a prescient rhetorical question: "Could a search engine's acceptance of advertising income from these rogue [pharmacy] sites constitute aiding or assisting in the (sic) violation of law?" (**See further allegations in section of Complaint entitled "Facts Learned from Books and Records Produced in Response to Plaintiff's § 220 Demand"**).

45. On September 10, 2003, the New York Times reported that the Justice Department had moved to close a chain of Canadian drugstores called RX Depot, which was shipping prescription drugs from Canada into the U.S. in defiance of a United States law banning drug imports. (**See further allegations in section of Complaint entitled "Facts Learned from Books and Records Produced in Response to Plaintiff's § 220 Demand"**).

46. On October 31, 2003, The Wall Street Journal published another article entitled "Drugstore.com Battles Portals with Imported-Drug Ads," which spotlighted efforts by online pharmacy Drugstore.com to push the major Internet search engines and portals to only accept ads from online pharmacies that were certified by the NABP. Defendant Page is quoted in the article to the effect that it was supposedly "difficult for (Google) to determine whether an online pharmacy is based abroad" despite the fact that refusing ads from online pharmacies that were

not VIPPS certified would have ensured that only licensed U.S. online pharmacies were advertising with Google. **(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).**

47. On November 10, 2003, tech media website CNET News.com published an article entitled “Search Engines Face Drug Test” which again reported on Drugstore.com’s and the NABP’s efforts to pressure web search engines, including Google, to ban advertisements from unlicensed online pharmacies. The article reported that a Google search of the term “Vicodin” by CNET revealed ten sponsored ad results for distributors that apparently did not require buyers to provide prescriptions. The article also quoted Richard Cleland, the FTC’s assistant director of the advertising practices division, that “search engines that run ads for distributors that are deemed illegal could put themselves in legal jeopardy.” **(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).**

48. In a November 18, 2003 email, a Google employee discussed the advertising budgets of several Canadian online pharmacy advertisers and noted that “[a]ll ship from Canada into the US via Express Mail.”

49. On December 1, 2003, the Washington Post published an article entitled, “Google to Limit Some Drug Ads; Web Giants Asked to Help Discourage Illicit Online Pharmacies” that reported that Google would supposedly stop accepting advertising from unlicensed pharmacies by employing a third-party company to eliminate rogue pharmacies that advertised with Google. The article did not identify the third-party company in question but shortly after the article appeared, Google began using closely held SquareTrade Inc. (“SquareTrade”) to certify its pharmacy advertisers. The article went on to report that Google would also ban the names of

certain controlled drugs as keywords in its search-related advertising. Sandberg is quoted in the article:

“The effect is that those words won’t appear in our advertising,” said Sheryl Sandberg, vice president of global sales and operations for Google. “It won’t say ‘Buy Vicodin here,’” she said, citing the powerful painkiller.

50. The Washington Post article went on to report that Google had been contacted by the father of a teenage boy in suburban Chicago who said his son had used Google’s search engine to locate and later order the powerful prescription narcotic Vicodin from an Internet pharmacy that did not require a prescription to complete the sale. David Krane, a Google spokesman, said the company “takes this very seriously.” Sandberg was further quoted as saying, “[i]ndustry standards are evolving ... we want to make sure that the pharmaceutical advertisers ... adhere to those standards.” **(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).**

51. The Washington Post article also quoted Peter J. Pitts, the FDA’s Associate Commissioner for External Relations, on his unsuccessful efforts to meet with the search engines in an effort to force them to deal only with legitimate pharmacies: “We’re literally placing calls to the search engines trying to get a meeting going. You can’t blame them for accepting commerce. But they really haven’t understood the consequences.” **(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).**

52. On April 18, 2004, Google’s initial public offering took place. Plaintiff purchased 3,700 shares of Google stock in the initial public offering at the IPO price of \$85. Thus, DeKalb has been a stockholder in Google for as long as there have been public

shareholders of Google.

53. On April 23, 2004, a Google employee based in Canada reported in an email concerning the advertisements of a large Canadian pharmacy advertiser that “the Google team is proactively adjusting creative [sic] and optimizing with SquareTrade policy in mind.”

54. On June 4, 2004, the same employee emailed a member of the Company’s policy group and described how Google’s advertising sales teams were working with pharmacy advertisers on creative ways to circumvent Google’s newly announced pharmacy advertising policies, “[t]he Max team and [customer support] are sort of furiously working on creative [sic] to appease our new policy before approvals gets to them and disapproves.”

55. Also on June 4, 2004, the Wall Street Journal published yet another article entitled “Web Engine Ads for Pharmacies in Canada Rile Some in the U.S.” which reported that Google’s plan to continue carrying ads for Canadian pharmacies had drawn the ire of regulators. The article noted that, “it is illegal for U.S. residents to order drugs from Canadian pharmacies...” The article also again quoted Peter Pitts, the FDA’s Associate Commissioner for External Relations, as being “disappointed” in the search engines’ decision to continue to carry ads for Canadian pharmacies. “You can’t make value judgments based on what is or is not in your financial interests”

56. The Wall Street Journal article also noted that the state pharmacy boards disapproved of the rules that Google was using to check pharmacy advertisers and wanted Google to use the NABP’s VIPPS online pharmacy certification program. However, Google was instead using SquareTrade which, according to the article “requires a lower standard for approval.” The article also quoted Greg French, a spokesman for Drugstore.com as being displeased with Google’s use of SquareTrade over VIPPS: “[w]e were very disappointed that

Google and Yahoo have chosen a standard that we don't think is in the best interest of consumers" (See further allegations in section of Complaint entitled "Facts Learned from Books and Records Produced in Response to Plaintiff's § 220 Demand").

57. On June 16, 2004, Defendant Schmidt received a request for testimony at a hearing before the United States Senate Permanent Subcommittee on Investigations on the following topics:

(a) Descriptions of any current enforcement efforts to preclude the sale of illegal controlled substances and other pharmaceuticals purchased in part with Google's assistance over the Internet;

(b) Current efforts with the Drug Enforcement Administration and the Food and Drug Administration to address the issue of illegal purchases of controlled substances assisted through the placements of advertisements with the Google search engine;

(c) Commentary on pending applicable legislation as well as any suggested legislative changes to current laws that would assist Google in its efforts to combat and cease facilitating such illegal purchases.

58. In response to that request, Defendant Sandberg provided testimony to the United States Senate Permanent Subcommittee on Investigations on July 22, 2004. In a footnote to her written testimony, Sandberg explained how Google was purportedly preventing the sale of prescription drugs by Canadian pharmacies to US consumers:

While licensed Canadian pharmacies are permitted to obtain SquareTrade certification, they are also required to agree that they will not target US consumers, whether by providing shipping rates and information, by comparing the efficacy of Canadian drugs to FDA approved drugs, or by any other means that would lead a US consumer to believe that s/he can purchase pharmaceutical drugs from Company's (sic) website. Canadian pharmacies must also put a disclaimer on the home page of their website that states: "The FDA, due to the current state of their regulations, has taken the position that virtually all shipments of prescription drugs imported from a Canadian pharmacy by a U.S. consumer will violate the law."

(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).

59. At the same hearing before the United States Senate Permanent Subcommittee on Investigations on July 22, 2004, John M. Taylor, III (“Taylor”), the FDA Associate Commissioner for Regulatory Affairs (along with Hubbard), provided testimony on the growing danger of the illegal importation of prescription drugs into the United States by Internet pharmacies. During the course of that testimony, Taylor specifically mentioned Google and testified that the “FDA has strongly encouraged online search engines and other advertising outlets to assist in identifying and removing access to illegitimate pharmacies.” **(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).**

60. In an August 23, 2005 email, an employee in the Company’s policy group stated, “the majority of Canadian Pharmacies are in business to drive pharmacy traffic from the United States to Canada” and “target the US in their geo-targeting.”

61. On December 13, 2005 Andrew McLaughlin, Google’s Public Policy Executive, testified before the United States House of Representatives Subcommittee on Oversight and Investigations Committee on Energy and Commerce regarding Google’s supposed efforts to combat the illegal sale of pharmaceutical drugs to US consumers by Canadian Internet pharmacies. McLaughlin’s written testimony was, in large part, taken word-for-word from Sandberg’s earlier written testimony.

62. In June 2006, Google replaced SquareTrade’s licensed pharmacy program for online pharmacy advertisers with PharmacyChecker.com.

63. On December 19, 2007, U.S. Attorney Catherine L. Hanaway of the Eastern

District of Missouri announced that Microsoft, Google and Yahoo had agreed to pay a combined \$31.5 million to resolve government claims that they promoted illegal gambling by receiving advertising payments from online sports books, casinos and poker sites between 1997 and June 2007. Google paid \$3 million of the combined amount. **(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).**

64. In a February 13, 2008 email, a member of the Company's policy group reported that some online pharmacies that were not certified by either SquareTrade or PharmacyChecker were avoiding review by not using a pharmaceutical term in the text of the advertisement but were instead using the prescription drug terms as keywords in order to have their advertisements appear when the user enters the prescription drug terms as keywords into the Company's search engine, “[t]he only ads that are getting blocked are those with explicit pharma terms in the ad texts; the shady, fraudulent advertisers know not to do this.”

65. On July 7, 2008, the National Center on Addiction and Substance Abuse at Columbia University (“CASA”) wrote directly to Schmidt and enclosed a copy of their report entitled “‘You’ve Got Drugs!’ V; Prescription Drug Pushers on the Internet.” The letter advised Schmidt that despite Google's use of PharmacyChecker.com to prevent illegal online pharmacies from selling pharmaceutical drugs to US customers without prescription, CASA was:

[A]ble to find prominent displays of ads for rogue Internet pharmacies in a Google search for controlled drugs included in our analysis. ***This suggests that Google is profiting from advertisements for illegal sales of controlled prescription drugs online.*** (Emphasis added).

66. CASA's letter to Schmidt closed with a plea that Google, *inter alia*, “block all advertisements for controlled prescription drugs that do not come from licensed and certified

online pharmacies...” **(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).**

67. On January 1, 2009, the NABP wrote directly to Schmidt and informed him that:

We have noted that a search for prescription drugs returns some sponsored results for Internet drug outlets that do not require a valid prescription, including some online pharmacies that appear to be approved by your third-party verification service.

The letter went on to seek a formal discussion with Schmidt on the matter:

Because of these concerns, NABP recommends that Google replace its current third-party verification service with one that adheres to pharmacy laws and practice standards. Such an effort would better enable Google to curb the illegal trade of prescription drugs and protect the public health from illicit operators of Internet drug outlets. We would appreciate the opportunity to discuss this matter with you further, specifically regarding verification services that meet NABP-recognized standards.

(See further allegations in section of Complaint entitled “Facts Learned from Books and Records Produced in Response to Plaintiff’s § 220 Demand”).

68. In 2009, Boston University School of Law’s American Journal of Law & Medicine published a lengthy article by law Professor Bryan A. Liang entitled “Searching for Safety: Addressing Search Engine, Website and Provider Accountability for Illicit Online Drug Sales.” The heavily sourced article noted the prominent role that search engines were playing in the illegal sale of prescription drugs online:

B. Internet Drug Sales

With respect to Internet drug sales, the major search engines “require” that any of their advertisers who sell prescription drugs be approved through the PharmacyChecker.com verification program. The verification theoretically requires a valid pharmacy license in U.S. or Canada, as well as correct contact information of the seller on the website and security of purchaser information.

Unfortunately, the PharmacyChecker.com verification

program allows for foreign and suspect online sellers to advertise on these primary search engines with virtual impunity. Compared with the National Association of Boards of Pharmacy Verified Internet Pharmacy Practice Site (“VIPPS”) program, which is a rigorous evaluation system of pharmacies that use the Internet, is focused on drug safety and legitimacy, and has accredited only fifteen pharmacies, PharmacyChecker.com has much less stringent requirements and has certified hundreds of online drug sellers.

The ease with which online drug sellers can be PharmacyChecker.com verified is disturbing, and the implications are frightening. All of the major search engines require a website to be based in Canada or the U.S. before verification, yet, there is no way to ascertain the true locale of the drug seller. International online drug sellers can therefore access U.S. patients and markets by claiming a Canadian locale. Even assuming that these websites are telling the truth about where they are located, such a claim does nothing to ensure safety. In general, domestic safety laws do not apply if drugs are not for domestic consumption. For example, counterfeit or tainted drug products from China and India slated for U.S. citizens via Canadian-based online sales are unregulated by Health Canada because they are not intended for Canadian citizens: “Canadian law does not require the country to regulate or guarantee the safety of prescription medicines manufactured in foreign nations and transshipped through Canada to the United States.” Indeed, online Canadian pharmacies have been found to sell unapproved drugs from Mexico to U.S. citizens. The sourcing of pharmaceuticals in Canada from highly suspect countries has grown alarmingly. Drugs from these countries are primarily for export because they do not fulfill current Good Manufacturing Practices in Canada and therefore cannot be sold to Canadian citizens.

D. Unenforced “Requirements”

Beyond the fact that PharmacyChecker.com has “verified” suspect online drug sellers, allowing them to market drugs through search engine advertisements that purportedly fulfill its requirements, the search engines themselves allow sales by online sellers that in fact do not fulfill PharmacyChecker.com’s requirements. As discussed above, RxNorth.com, like many other “verified” online drug sellers, dispensed medications without valid prescriptions. Even worse, other “verified” sellers are also touting addictive, Schedule II controlled substances such as morphine derivatives without a prescription.

Unfortunately, over the Internet, such illicit drug sales are not the exception. As noted above, studies have revealed the large number of online drug sales that do not require a prescription. Analysis of these websites also indicated that greater than fifty percent of them did not secure customer data, in direct violation of PharmacyChecker.com requirements. This places buyers at risk for identity theft.

Other weaknesses attend the current PharmacyChecker.com/search engine accountability system. Online drug sellers verified by PharmacyChecker.com are not merely Canadian or domestic, as required by PharmacyChecker.com requirements. Indeed, they are listed to be in a wide array of countries, including Barbados, the U.K., New Zealand, Israel, India, Mexico, Vanuatu, Australia, as well as other countries not listed because PharmacyChecker.com does not provide a complete list of all online drug sellers it verifies. This result is consistent with an FDA-commissioned study that found that of 11,000 purportedly “Canadian” websites, only 214 were actually registered to a Canadian entity. Other websites selling pharmaceuticals that claim Canadian sourcing are located in Malaysia, Vanuatu, Eastern Europe, and elsewhere.

Further, PharmacyChecker.com verification permits the dangerous practice of online drug sellers simply using an “online consultation” as the basis for prescription sales. For example, KwikMed.com, a verified PharmacyChecker.com site has been sued by the Arkansas Attorney General over this practice, yet the online seller still remains “verified.”

E. No Verification

It should be noted that beyond poor accountability for fulfilling PharmacyChecker.com “requirements,” search engines also allow non-PharmacyChecker.com verified drug sellers to advertise as well. A whole host of drug seller websites advertise on Yahoo, Google, and MSN without any “verification” at all. Indeed, many of these websites are “affiliate” or “mirror” sites—in other words, they are duplicate websites used to garner a larger web presence. These mirror or affiliate sites generally divert traffic back to the original site and obtain a commission for doing so.

In summary, search engines exert very little effort to ensure that online drug sellers from which they obtain advertisement revenue are legitimate. Yet the unregulated nature of Internet drug

sales creates tremendous challenges for oversight. As a result, suspect drug products enjoy continuing sales without any oversight at all. Given the vast number of online drug sellers, in combination with the total lack of accountability for search engine-sponsored sales, the scope of illicit online drug sales is large, extensive, and entirely unregulated.

69. In 2009, Google learned that the Department of Justice, the Rhode Island U.S. Attorney's Office and the FDA's Office of Criminal Investigations were investigating the Company's advertising practices and policies with respect to Canadian pharmacies.

70. On February 9, 2010, Google finally changed its advertising policies in the United States and Canada to require U.S. online pharmacy advertisers to be certified by VIPPS and Canadian online pharmacy advertisers to be accredited by the Canadian International Pharmacy Association ("CIPA"). Google posted the updated pharmacy advertising policy on the AdWords website on February 23, 2010. The new advertising policy provided that:

Only VIPPS and CIPA certified pharmacies will be allowed to advertise

We've made the decision to further restrict the ads we accept for online pharmacy sites in the U.S. and Canada. Starting at the end of this month, Google AdWords will only accept ads from online pharmacies in the U.S. that are accredited by the National Association Boards of Pharmacy VIPPS program, and from online pharmacies in Canada that are accredited by the Canadian International Pharmacy Association (CIPA).

Pharmacies can only target ads within their country

These pharmacies may only target ads to users in the country in which they are accredited. This policy change does not affect our online pharmacy policy for countries outside the U.S. and Canada.

Accordingly, we'll no longer be using any 3rd party verifier of online pharmacies other than VIPPS and CIPA. AdWords advertisers who aren't accredited by VIPPS and CIPA will no longer see their online pharmacy ads displayed once this policy change comes into effect.

71. In addition, Google retained an independent company to detect pharmacy

advertisers exploiting flaws in the Company's screening systems. Finally, Google began suing pharmacy advertisers that violated the Company's terms of use and reporting suspected illegal pharmacies to the FDA.

72. Unfortunately for Google's shareholders, Google's belated actions were not sufficient for the Company to avoid criminal liability.

THE NON-PROSECUTION AGREEMENT

73. In August 2011 Google entered into the Non-Prosecution Agreement and specifically admitted as follows:

(f) As early as 2003, the Company was aware that in most circumstances it was illegal for pharmacies to ship controlled and non-controlled prescription drugs into the United States from Canada...

(g) The Company was aware that importation of prescription drugs to consumers in the United States is almost always unlawful because the United States Food and Drug Administration ("FDA") cannot ensure the safety and effectiveness of foreign prescription drugs that are not FDA-approved and because the drugs may not meet FDA's labeling requirements, may not have been manufactured, stored, and distributed under proper conditions, and may not have been dispensed pursuant to a valid prescription. While Canada has its own regulatory regime for prescription drugs, Canadian pharmacies that ship prescription drugs to U.S. residents are not subject to Canadian regulatory authority, and many sell drugs obtained from countries other than Canada, which lack adequate pharmacy regulations.

(h) As early as 2003, the Company was on notice that online Canadian pharmacies were advertising prescription drugs to the Company's users in the United States through the Company's AdWords advertising program. Although the Company took steps to block pharmacies in countries other than Canada from advertising in the United States through AdWords, the Company continued to allow Canadian pharmacy advertisers to geo-target the United States in their AdWords advertising campaigns. The Company knew that U.S. consumers were making online purchases of prescription drugs from these Canadian online pharmacies...

(i) The Company also knew that many of these Canadian online pharmacy advertisers distributed prescription drugs, including controlled prescription drugs, based on an online consultation, rather than a valid prescription from a treating medical practitioner. The Company was also on notice that many pharmacies accepting an online consultation rather than a prescription charged a premium for doing so, because individuals seeking to obtain prescription drugs without a valid prescription were willing to pay higher prices for the drugs.

(j) From 2004 to 2006, the Company retained a third-party verification service, Square Trade, Inc. (“Square Trade”), to verify whether online pharmacies seeking to advertise through AdWords were licensed in at least one state in the United States or in Canada. Square Trade required pharmacies seeking to advertise through AdWords to self-certify that they would act in accordance with applicable U.S. laws and regulations. During the period that Square Trade was providing services to the Company, the Company knowingly permitted Canadian online pharmacies that were certified by Square Trade to advertise the sale of prescription drugs through AdWords to U.S. consumers.

(k) From 2003 through 2009, the Company provided customer support to some of these Canadian online pharmacy advertisers to assist them in placing and optimizing their AdWords advertisements and in improving the effectiveness of their websites. For example, on or about April 23, 2004, a Google employee based in Canada reported in an email concerning the advertisements of a large Canadian pharmacy advertiser that “the Google team is proactively adjusting creative and optimizing with Square Trade policy in mind.” On or about June 4, 2004, the same employee emailed a member of the Company's policy group and stated, “The Max team and [customer support] are sort of furiously working on creative to appease our new policy before approvals gets to them and disapproves.”

(l) In 2006, the Company's relationship with Square Trade ended, and the Company began using the certification program of a second verification company, PharmacyChecker.com LLC (“PharmacyChecker”). While PharmacyChecker did not certify online pharmacies that shipped controlled prescription drugs, Canadian or otherwise, PharmacyChecker did certify advertisers of non-controlled prescription drugs, including distributors of non-controlled prescription drugs located in Canada. As a result, the Company knowingly permitted Canadian online pharmacies, certified by PharmacyChecker, to advertise the sale of

non-controlled prescription drugs through AdWords to U.S. consumers.

(m) Some pharmacy advertisers did not qualify for certification by either SquareTrade or, later, PharmacyChecker, but nonetheless advertised through the Company's AdWords program. The Company was on notice that certain online pharmacy advertisers set up their advertising programs so that their AdWords advertisements would not run in the United States. Thus, those advertisements could begin to run without the advertiser being required to obtain a Square Trade or PharmacyChecker certification. Once the advertisements began to run on the Company's search engine, however, some pharmacies changed the geo-targeting of the advertisements so as to cause the advertisements to appear in the United States in response to queries by U.S. users of the Company's search engine. Although the Company was on notice that some online pharmacies changed their geo-targeting in this manner, the Company did not prevent these changes in geo-targeting until after it became aware of the Government's investigation.

(n) In addition, as early as July 2004, the Company was on notice that online pharmacies were circumventing the SquareTrade and PharmacyChecker certification process by intentionally avoiding the use of certain pharmaceutical terms in the text of their AdWords advertisements, while using these same terms as advertising "keyword" terms. Once the Company began using SquareTrade, and continuing throughout the period during which the Company used PharmacyChecker, the Company conducted manual review of non-certified online pharmacy advertisements only if a pharmaceutical term appeared in the text of the advertisement. The Company was on notice, however, that some online pharmacy advertisers, including some from Canada, avoided this review by using the prescription drug terms as keywords only and not in advertising text. After it became aware of the Government's investigation, the Company made changes to its systems in order to flag for review all ads that had prescription drug terms as keywords.

(o) The Government and the Company estimate that the total proceeds to the Company and Canadian online pharmacy advertisers generated from the advertising and sale of controlled prescription drugs by Canadian online pharmacies that advertised through the Company's AdWords program was approximately \$500 million...

(q) In 2009, after the Company became aware of the Government's investigation of its advertising practices in the online pharmacy area, and as a result of that investigation, the Company took a number of significant steps to prevent the unlawful sale of prescription drugs by online pharmacies to U.S. consumers. Among other things, the Company became the first search engine to require online pharmacy advertisers to be certified by the NABP's [National Association of Boards of Pharmacy] VIPPS program, which does not certify Canadian online pharmacies. In addition, the Company retained an independent company to enhance its back-end sweeps, which were designed to detect pharmacy advertisers exploiting flaws in the Company's screening systems. The Company has also sued pharmacy advertisers who violated the Company's terms of use, and has reported suspected illegal pharmacies to the FDA.

Acceptance of Responsibility

3. The Company was on notice that most Canadian online pharmacy advertisers, advertising through the Company's AdWords program, geo-targeted their advertisements to consumers in the United States and imported into the United States both controlled prescription drugs, in violation of Title 21, United States Code, Section 952, and misbranded and unapproved prescription drugs, in violation of Title 21, United States Code, Section 331(a) and (d). The company acknowledges that it improperly assisted Canadian online pharmacy advertisers to run these advertisements that geo-targeted the United States through AdWords and the Company accepts responsibility for the Company's conduct as set forth above...

Forfeiture

4. As a result of the conduct described above, the Company agrees to forfeit \$500,000,000 (five hundred million) to the United States as a substitute res for the proceeds of controlled prescription drug sales by Canadian online pharmacies that advertised through the Company's AdWords program. Payment shall be wire-transferred to the Seized Assets Deposit Account of the United States Marshals Service within three days of the execution of this Agreement.

PLAINTIFF'S DEMAND TO INSPECT BOOKS AND RECORDS AND SUBSEQUENT ACTION TO ENFORCE ITS RIGHTS PURSUANT TO § 220 OF THE DELAWARE GENERAL CORPORATION LAW

74. On September 12, 2011, Plaintiff, as an owner of a significant number of shares of Google common stock, sought to learn more about the extent of the wrongdoing which preceded Google's entry into the Non Prosecution Agreement and to determine whether pre-suit demand on the Board would be futile, and accordingly made a demand to inspect books and records pursuant to 8 Del. C. § 220 (the "220 Demand"). In the demand letter, Plaintiff set forth the proper purposes of investigating the extent of the wrongdoing and determining whether Google's directors are sufficiently disinterested and independent such that pre-suit demand would be futile in any prospective derivative suit that Plaintiff might file on Google's behalf.

75. Plaintiff's demand letter met the requirements of § 220. It provided proof of Plaintiff's beneficial ownership, set forth the purpose of the demand, showed by a preponderance of the evidence that there existed a credible basis to find probable corporate wrongdoing, and tailored the documents requested to those that are directly relevant to the wrongdoing and the board's connection to it.

76. On September 21, 2011, Google responded to the 220 Demand denying that it stated a proper purpose and alleging that the requests in the demand were overbroad, sought confidential and private information and contained no limitation as to the relevant time period. Google also demanded proof that Plaintiff "was a beneficial owner of the Company's stock during the period for which it seeks documents" despite Plaintiff having already provided proof in the § 220 demand that it was a current beneficial owner of more than \$6,000,000 of Google common stock.

77. Nevertheless, in an effort to shift attention away from the information actually demanded, Google agreed, subject to a confidentiality agreement, to produce "relevant and non-privileged portions of the minutes of the meetings of and presentations to the Company's Board

of Directors at which pharmacy advertising policies were discussed for the period January 1, 2008 to the present.”

78. Plaintiff, by letter dated September 30, 2011, reasserted that it was entitled to the documents requested, but agreed, “without waiver of any of its rights as a beneficial holder, including the right to initiate an action under 8 Del. C. § 220,” to inspect the documents offered and to sign the confidentiality agreement required by Google. Plaintiff also provided documents evidencing its ownership of Google stock from January 1, 2008 through September 30, 2011.

79. On October 7, 2011, Google provided Plaintiff with a draft confidentiality agreement. On October 11, 2011, Plaintiff acquiesced without negotiation to all of Google’s terms with respect to the confidentiality agreement and returned Google’s draft of the confidentiality agreement executed by Plaintiff and its counsel.

80. Under cover letter dated October 19, 2011, Google produced 10 pages which it represented were the “relevant and non-privileged portions of the minutes of the meetings of and presentations to the Company’s Board of Directors at which pharmacy advertising policies were discussed for the period January 1, 2008 to the present.” Eight of the pages contained no more than two sentences each, and most of them were virtually blank. The two pages containing text were dated July 2010 and January 2011, a year or more after the wrongdoing purportedly ended, and contained merely a list of present directors and other descriptions of the opening of the Board meeting. Google redacted the pages based on relevancy and claims of attorney-client communications and work product privileges.

81. Recognizing that Google had no intention of providing a substantive response to the § 220 demand, Plaintiff filed an action in the Court of Chancery of the State of Delaware on October 28, 2011 under Civil Action No. 6993-VCP to compel Google to turn over the books

and records demanded.

82. On November 21, 2011, Google filed its answer in the 220 action, denying the allegations in the complaint and asserting eleven affirmative defenses.

83. On January 17, 2012, Google moved for summary judgment in the 220 action. On February 10, 2012, Plaintiff filed its opposition to Google's motion for summary judgment and on February 22, 2012, Google filed its reply to Plaintiff's opposition.

84. On February 29, 2012, the parties appeared for oral argument of Google's motion for summary judgment and for trial of all remaining issues before the Hon. Donald F. Parsons, Vice Chancellor. At the conclusion of the hearing and trial, the Court described Google's response to Plaintiff's 220 demand as "an insult to 220, the 10 pages that were produced here. And it's a cynical response, as far as I'm concerned."

85. Following the hearing, the Court entered an order requiring Google to produce, commencing March 19, 2012 and completed by April 9, 2012:

All documents provided or presented to any member or members of the Google Board of Directors (the "Board") or the Board or any committee of the Board between January 1, 2003 and September 12, 2011 discussing online Canadian pharmacies advertising prescription drugs in the United States through the AdWords advertising program. . .

86. The Order also directed the parties to place any further disputes concerning: (1) the adequacy of production; or (2) the appropriateness of any (a) assertion of privilege or (b) other claim relating to confidentiality *sub judice* by submission of a letter to the Court.

87. On March 19, 2012, Google produced 722 pages of documents in response to the Court's Order. On April 9, 2012, Google produced an additional 210 pages of documents in response to the Court's Order.

88. On April 23, 2012, after completing the review of Google's production, Plaintiff's

counsel wrote to counsel for Google taking issue with the limited scope of the production, the continuing issue of wholesale redactions of documents based on purported relevancy grounds and a host of other redactions based on purported “attorney-client privilege” or “work product,” which Plaintiff’s counsel maintained qualified for an exception to the attorney-client privilege under *Garner v. Wolfinbarger*, 430 F.2d 1093, 1103-04 (5th Cir.1970).

89. After meeting and conferring and being unable to reach an agreement resolving Plaintiff’s concerns with regard to the production, Plaintiff wrote to the Court on May 8, 2012, seeking an order: (1) compelling Google to turn over a sample of twenty documents from their production to be selected by DeKalb with all material previously redacted for relevancy included so that a review of the propriety of those redactions can be made by DeKalb’s counsel; (2) precluding application of the attorney-client communication or attorney work product privilege to the documents which Google has produced in response to this Court’s March 6, 2012 order; and (3) a description from Google of how the searches for responsive documents were conducted and who conducted them.

90. In response, the Court issued a letter ruling on May 11, 2012, directing Plaintiff to pick ten (10) documents by May 14, 2012 to be reviewed by the Court *in camera* for relevance; directing Google to produce to the Court the documents chosen by Plaintiff, submit a response “addressing the *Wolfinbarger* privilege issue, as well as the adequacy of Defendant’s production to date to which Plaintiff was to submit a reply, and directing the parties to appear for oral argument.

91. On May 14, 2012, Plaintiff wrote to the Court designating the ten documents it chose for *in camera* review. On May 21, 2012, Google submitted its response to the Court’s letter ruling of May 11, 2012 and submitted the ten documents chosen by Plaintiff in unredacted

form. Plaintiff filed its reply to the response on May 24, 2012.

92. On May 25, 2012, the parties again appeared for oral argument before Vice Chancellor Parsons, who held that one of the documents selected by Plaintiff for *in camera* review, Bates number GB000725-728, was relevant and should be produced to Plaintiff in unredacted form. Chancellor Parsons directed Google to re-examine its documents to determine whether other documents should be unredacted. The Court also ordered Google to produce a privilege log by June 7, 2012 and directed Plaintiff to make any additional submissions by that date.

93. Google produced an unredacted version of GB000725-728 to Plaintiff's counsel that evening. The document proved to be an extraordinary window into Google's highest level executives' thinking in October 2003 as it related to allowing non-VIPPS certified Internet pharmacy to advertise with Google.

94. After examining GB000725-728, Plaintiff wrote again to Vice Chancellor Parsons on June 7, 2012, describing the significance of the document and urging the Court to either review the remaining documents produced by Google that were redacted for relevancy or to direct Defendant to produce the documents to Plaintiff's counsel in unredacted form.

95. Also on June 7, 2012, Google provided its privilege log to the Court and to Plaintiff and also produced an *additional* 63 pages of documents under Bates number GB000933-996 that Google's counsel determined should have been produced without redaction in light of the Court's ruling on the prior document Bates number GB000725-728.

96. Again, the additional 63 pages of documents proved to be exceptionally important documents from October 2003, reflecting continued discussions of Google's advertising policies related to non-VIPPs certified Internet pharmacies that made their way up to the highest levels of

Google's management and to board members not previously identified in media accounts of the scandal.

97. Following review of the new documents, produced well past the proverbial eleventh hour, Plaintiff again wrote to Vice Chancellor Parsons on June 12, 2012, imploring the Court to:

a. Direct Google to provide a new affidavit fully explaining the circumstances which led to the discovery of the new documents identified by Bates Numbers GB000933-996;

b. Direct Google to collect documents in the custodial files of **Redacted** (see ¶52) and to conduct the same searches for potentially responsive documents as were conducted of the other "Employee Custodial Documents";

c. Direct Google to take custody of its "Outside Directors" documents ("including both electronic files and hard-copy documents") relating to Google from 2003 through 2009 and to conduct the same searches for potentially responsive documents as were conducted of the "Employee Custodial Documents."

98. Google responded to Plaintiff's counsel's letter on June 14, 2012.

99. On June 29, 2012, the Court denied Plaintiff's request for additional documents and information from Google, effectively ending the § 220 Action.

FACTS LEARNED FROM BOOKS AND RECORDS PRODUCED IN RESPONSE TO PLAINTIFF'S § 220 DEMAND

100. As a result of its relentless eight-month campaign to force Google to turn over relevant books and records, Plaintiff is in possession of significant non-public information demonstrating both that Google's top officers and directors knowingly and deliberately breached their fiduciary duties and that demand upon Google's Board of Directors to take remedial action on behalf of Google against those officers and directors would be futile.

101. On August 20, 2003, Kal Raman ("Raman"), then CEO of Drugstore.com e-

mailed directly to

Redacted

in

a follow-up to an earlier telephone call. The e-mail indicates that Drugstore.com had been in contact with the NABP and that the NABP was willing to work with Google in “implementing an automatic validation scheme” to ensure that only legitimate licensed pharmacies are allowed to advertise with Google. Raman is undoubtedly referring to VIPPS in the e-mail.

102. Raman’s e-mail went on to summarize the problems associated with Google’s current practice of allowing advertising by foreign Internet pharmacies that are geo-targeting U.S. consumers in what is clearly a summary of his prior conversation with **Redacted**

Goal: Educate Google executives on the risks associated with the continued paid sponsorship of rogue pharmacies

Multiple national agencies have declared the Importation process illegal and a risk to US consumers. The key takeaways are:

* ***Importation of medication is illegal***

* Risk of counterfeit product

* Risk of contaminated product

* Risk of expired or duplicative therapy

*Unregulated by both US and Canadian/Mexican Authorities (FDA and FDA equivalent) as no consistent safety and quality controls exist for purchasing and receipt of prescription medications

Agencies include:

* FDA· Federal Drug Administration

* ***Violation of Food, Drug, and Cosmetic Act to import prescription product.***

* Foreign product may not meet all the requirement [sic] for US approval, and thus qualifies as an unapproved product

* Medications are frequently labeled incorrectly

*Extremely unlikely that a pharmacy could ensure all applicable legal requirements are met

****Individuals and business that cause those shipments also violate the act and are therefore civilly and criminally liable. (RX Depot store front issue cease and desist)***

(Emphasis added)

103. Kalman’s e-mail went on to list specific examples of foreign Internet pharmacy

ads which will appear when Google searches are run on the words “Lipitor” (common cholesterol medication) and “Xenical” (common weight loss medication). Importantly, the e-mail made clear that Google, in “causing” the illegal importation of prescription drugs to U.S. customers, was risking civil and criminal liability (see ¶46) and even referenced the FDA “Cease and Desist” letter against RX Depot (see ¶47).

104. On August 22, 2003, Redacted forwarded Kalman’s e-mail to Schmidt and Redacted Redacted carbon copied

Redacted on the e-mail.

105. Schmidt then forwarded the Kalman e-mail on August 22, 2003 to Redacted Redacted Brin and Sandberg with a terse instruction:

Redacted

106. Google continued to have discussions and meetings with Drugstore.com as Drugstore.com continued to pressure Google to only accept advertising from Internet pharmacies that were, like Drugstore.com, VIPPS certified. Google refused to consider limiting its pharmacy advertisers to only VIPPS-certified online pharmacies for reasons it would not explain to Drugstore.com. Eventually, Drugstore.com indicated that it would be issuing a press release pointing out the dangers that non-VIPPS certified Internet pharmacies posed to U.S. consumers

1

Redacted

and specifically taking Google to task for allowing non-VIPPS certified Internet pharmacies to advertise with Google.

107. On October 21, 2003, some six months before Google's IPO, Sandberg wrote to Defendant Karen, Redacted
Redacted and Defendant Schmidt, with a carbon copy to Armstrong:

Redacted

108. On October 21, 2003, Defendant Karen responded to Defendant Sandberg's e-mail Redacted

Redacted

Redacted

109. On October 21, 2003, Sandberg forwarded Karen's e-mail to **Redacted**

Redacted

Page, Armstrong,

Schmidt, and Kordestani with a carbon copy to Karen.

Redacted

Redacted

110. Also on October 21, 2003, Armstrong e-mailed Page and described a conversation with Kalman that he and **Redacted** had earlier in the day:

Redacted

Redacted

Redacted

111. Instead of taking the opportunity to reflect upon Google's misguided and illegal advertising policies, Page and Sandberg became defensive,

Redacted

112. **Redacted** responded to Sandberg's earlier e-mail to the same sender and recipients including Schmidt on October 22, 2003.

Redacted

Redacted

1)

Redacted

2)

Redacted

3) VIPPS approved list

<http://www.nabp.net/vipps/consumerlistall.asp>

Detail	Web	Business	Name	Website	Address
accuratepharmacy.com	www.	accuratepharmacy.com			
AdvanceRx.com	www.	AdvanceRx.com			
Anthem Prescription	www.	anthemprescription.com			
Caremark Inc.	www.	rxrequest.com	.		
elckpharmacy.com	www.	clickpharmacy.com			
CVS Washington, Inc., dba CVS.com	www.	cvs.com			
drugstore.com	WWW.	drugstore.com			
Express Pharmacy Services/Eckerd.com	www.	Eckerd.com			
Familymeds.com	www.	Familymeds.com			
Medco Health Solutions, Inc.	www.	medcohealth.com			
NCS Healthcare dba Care For Life	www.	careforlife.com			
RxWEST Pharmacy	www.	rxwest.com			
Tel-Drug, Inc./CIGNA	www.	teldrug.com			
walgreens.com, Inc.	www.	walgreens.com			

4)

Redacted

Redacted

5)

Redacted

113. Thus, in a single e-mail, to Defendants Schmidt, Sandberg, Armstrong, and Karen, Redacted

Redacted

³ A later e-mail from

Redacted

Redacted

Redacted

114. This exchange was extraordinary not simply because

Redacted

Redacted

One would think that the fact that Google's advertisers are dealing prescription drugs without prescription would be worthy of mention to Google's Directors, but this astonishing revelation was evidently never formally communicated to any of Google's Non-Employee Director Defendants.

115. Drugstore.com e-mailed their proposed press release to Redacted On October 21, 2003, Redacted forwarded the press release to Defendants Sandberg, Armstrong, Page, and Brin and carbon copied Redacted Defendants Schmidt, Kordestani, Karen, Redacted Redacted and Defendant Drummond.

116. The Drugstore.com press release described the dangers of Canadian pharmacies, the VIPPS certification program of the NABP and that only 14 pharmacies had earned VIPPS certification. The press release also specifically pointed the finger at Google and other search engines for their role in driving traffic to rogue pharmacies by permitting them to advertise on

their sites:

While the problem of enforcing our existing laws against illegal pharmacies is complicated, an immediate solution to the problem is very simple. Illegal pharmacies rely on the incredible amount of traffic generated by their advertisements on major Internet search engines, such as Google, MSN, and Yahoo. The first step in protecting public health and safety, drugstore.com management states, is for the search engines to voluntarily stop accepting rogue pharmacy ads. Until then, or until Congress forces search engines to stop accepting such advertising, consumers are warned to be very cautious about ads for prescription medications that sound too good to be true.

“It’s unfortunate that major search engines, which are trusted by the public, are enabling rogue pharmacies to trick the public,” continued Neupert. “While technology has effectively helped streamline the delivery of prescription drugs and substantially lowered the cost of drugs, our public policy to safeguard the transactions has not kept pace. We sincerely hope that Yahoo, MSN, Google, and other search engines do the right thing and refuse to carry these ads. If not, then Congress needs to protect the public by making it unlawful to sell advertising space to companies that provide illegal pharmacy services, such as re-importation, shipping without a legitimate prescription, and misrepresentation.”

117. All of the Employee Defendants received a copy of this press release by having it forwarded to them by Redacted

118. On October 23, 2003, Drugstore.com tried a different tack and suggested that it would be willing to jointly issue a press release with both Google and Yahoo! if the search engines agreed to accept paid pharmacy advertisements only from pharmacies that were VIPPS-certified.

Redacted

119. On October 27, 2003, Sandberg wrote to the “emg@google.com” e-mail listserv.

This listserv was comprised of the members of the executive management group at Google and included Defendants Page, Brin and Schmidt as well as other top executives.

Redacted

1) :

Redacted

2)

Redacted

3)

Redacted

4)

Redacted

5)

Redacted

Redacted

120.

Redacted

121. On October 29, 2003, Sandberg wrote to Armstrong, emg@google.com and Karen, among others and described a conversation she personally had with Kalman:

Redacted

Redacted

5

Redacted

Plaintiff knows this because no such documents evidencing such advise were produced in the § 220 Action, even in redacted form.

Redacted

122. In response to Sandberg's e-mail, Page instructed Sandberg on October 29, 2003 to forward the meeting summary to Defendant Doerr who was also on the board of Drugstore.com.

123. On October 30, 2003, Sandberg forwarded her summary along with Drugstore.com's proposed press release to Doerr.

124. Doerr did nothing in response to Sandberg's e-mail

Redacted

125. Drugstore.com did ultimately issue its press release and Google's competitors began to move to a more restrictive policy with their online pharmacy advertisers other than merely taking them at their word that they would not sell drugs without a prescription.

126. On October 31, 2003, the Wall Street Journal article “Drugstore.com Battles Portals with Imported-Drug Ads” appeared and the text of the article was forwarded to Sandberg and Page, among others (*see* paragraph 49, *supra*).

127. On November 10, 2003, the text of the CNET article “Search Engines Face Drug Test” was forwarded to Sandberg and the emg@google.com listserv. *See* paragraph 50, *supra*.

128. On November 14, 2003 Overture contacted Google to advise that it was making significant changes in its advertising policies with respect to Internet pharmacies. An e-mail describing Overture’s changes was sent out that same day to emg@google.com, Armstrong, Karen, **Redacted** Sandberg and **Redacted** with “high” importance. Still, Google refused to change its own advertising policies.

129. On November 17, 2003, **Redacted**

Redacted

Redacted

Sandberg’s e-mail to the emg@google.com listserv

Redacted

Redacted

130.

Redacted

131. Sandberg's e-mail likely would have been ignored by Defendants Page, Brin and Schmidt had it not been for the fact that the Washington Post was preparing to publish an article on Google's criminally lax pharmacy advertising policies (*see* paragraphs 52-54, *supra*). The timing of this article could not have been worse for Google inasmuch as their IPO was five months away.

132. On November 18, 2003, [Redacted] joined in Sandberg's PR-based plea in an e-mail to emg@google.com, as well as to Karen, [Redacted] and Sandberg:

Redacted

Redacted

133. In a rare display of courage by a Google executive,

Redacted

Redacted

134. Defendants Page, Brin and Schmidt evidently relented and Google changed its pharmacy advertising policies in time for the Washington Post article to report that Google “will start using a third-party company to weed out rogue pharmacies that advertise on its site. Google also will ban the names of certain controlled drugs as keywords.” That third-party company turned out to be SquareTrade, **Redacted**

135. On June 4, 2004, the text of the Wall Street Journal article “Search Sites’ Decision to Allow Canadian Drug Ads Causes Stir” was e-mailed to the google-coverage@google.com listserv (*see* paragraphs 58-59).

136. Strikingly, despite all the e-mail traffic among top-level Google executives, there are no communications with any Non-Employee Director Defendants apart from the single e-mail to Doerr.

137. Despite numerous articles appearing in the Washington Post, the Wall Street Journal and CNET that, at the very least, should have raised suspicions of illegal conduct by Google in the minds of the Non-Employee Director Defendants, not a single Non-Employee Director Defendant ever inquired of Google employees as to what the current advertising policies were or whether Google was even complying with the law with respect to Internet pharmacy advertising. Google executives changed advertising policies **Redacted**

Redacted trooped up to Capitol Hill to testify, and were continually quoted in the press describing how their advertising policies were allowing pharmacies to advertise the sale of prescription drugs over the Internet and yet not a single Non-Employee Director Defendant did so much as send an e-mail seeking further information.

138. Plaintiff knows this because no such documents were produced by Google in

response to the Court's orders in the § 220 Action.

139. Moreover, even though in December 2007 Google agreed to pay \$3 million to resolve government claims that it promoted illegal gambling by receiving advertising payments from online sports books, casinos and poker sites between 1997 and June 2007, not a single Non-Employee Director Defendant ever inquired of Google employees as to what the current advertising policies were or whether Google was even complying with the law with respect to other types of advertising it was accepting despite the fact that the payment to the government should have, at the very least, raised suspicions of illegal conduct by Google in the minds of the Non-Employee Director Defendants. Again, not a single Non-Employee Director Defendant did so much as send an e-mail seeking further information.

140. Plaintiff knows this because no such documents were produced by Google in response to the Court's orders in the § 220 Action.

141. Furthermore, not a single Non-Employee Director Defendant ever sought a formal opinion from Google's legal department as to whether or not the importation of prescription medication into the United States was actually illegal or whether Google could be held criminally liable for aiding and abetting the importation of prescription medication into the United States.

142. Plaintiff knows this because no such documents were produced in the § 220 Action, even in redacted form.

143. Certainly, Google's directors never created a system or procedure whereby they could assure themselves that Google employees were not exposing the Company to potential criminal liability by virtue of the advertising Google was accepting.

144. Plaintiff knows this because no such documents were produced by Google in

response to the Court's orders in the § 220 Action.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

145. Plaintiff brings this action derivatively, in the right and for the benefit of Google, to redress the breaches of fiduciary duty and other violations of law by Defendants. Plaintiff will adequately and fairly represent the interests of Google and its shareholders in enforcing and prosecuting its rights.

146. Plaintiff has not made a demand upon the Board of Google to take remedial action on behalf of Google against the Defendants, because the Board participated in, approved, and/or permitted the wrongs alleged herein and is not disinterested and lacks sufficient independence to exercise business judgment.

147. The Board currently consists of the following ten individuals: Defendants Page, Brin, Schmidt, Doerr, Hennessy, Otellini, Shriram, Tilghman, Greene, and Mather.

148. As described below, all Non-Employee Director Defendants of Google are beholden to Defendants Page, Brin and Schmidt and lack sufficient independence to exercise business judgment as to whether to commence an action against themselves as well as the officers responsible for the breaches of fiduciary duty alleged herein.

Defendants Page, Brin and Schmidt Are Not Independent: They Dominate and Control the Board

149. Google's 2012 Proxy Statement provides that "each of the director nominees standing for election, except Larry (Page), Sergey (Brin), and Eric (Schmidt), has no relationship that, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and is an independent director as defined in the Listing Rules of NASDAQ." Thus, Google concedes that Page, Brin and Schmidt are not independent.

150. Further, Google's 2012 Proxy Statement discloses that Page beneficially owns 39.6% of the Class B Common Stock shares which equates with 28.4% of the total voting power. Google's 2012 Proxy Statement also discloses that Brin beneficially owns 39.0% of the Class B Common Stock shares which equates with 28.0% of the total voting power. Google's 2012 Proxy Statement also discloses that Schmidt beneficially owns 13.20% of the Class B Common Stock shares which equates with 9.0% of the total voting power. Thus, collectively, Defendants Page, Brin and Schmidt hold 65.9% of Google's total shareholder voting power.

151. In addition, Defendants Page, Brin and Schmidt form the majority of Google's Acquisition Committee of the Board. According to Google's 2012 Proxy Statement, the Acquisition Committee serves as an administrative committee of the board of directors to review and approve certain investment, acquisition, and divestiture transactions proposed by management. Thus, Defendants Page, Brin and Schmidt also control Google's significant investment activities.

152. Most importantly, Defendants Page, Brin and Schmidt were all personally and directly involved in the acts of mismanagement alleged herein and face a substantial likelihood of liability for these breaches of fiduciary duty, and each approved the actions which are complained of herein. Defendants Page, Brin and Schmidt therefore lack disinterestedness and cannot exercise business judgment with respect to any demand.

Defendant Doerr is Not Independent

153. Defendant Doerr has been a General Partner of Kleiner Perkins Caufield & Byers since August 1980. As disclosed in Google's 2012 Proxy Statement, in August 2011, Google committed to invest up to \$75 million in a fund with a portfolio company of Kleiner Perkins Caufield & Byers to purchase residential solar rooftop installations in the U.S. In addition,

Google Ventures (in which Google is the sole limited partner) made the following investments in certain private companies in 2011 alongside Kleiner Perkins Caufield & Byers as a co-investor:

- In May 2011, Google Ventures invested approximately \$21 million in the Series B preferred stock financing of a consumer technology company.
- In May 2011, Google Ventures invested \$100,000 in the convertible note financing of a provider of support infrastructure for mobile applications.
- In June 2011, Google Ventures invested approximately \$1.25 million in the Series D preferred stock financing of a semiconductor company.
- In August 2011, Google Ventures invested \$5 million in the Series A preferred stock financing of a biotechnology company.
- In October 2011, Google Ventures invested approximately \$1 million in the Series C preferred stock financing of an information technology software company.

KPCB Holdings, Inc., as nominee for certain funds of Kleiner Perkins Caufield & Byers and several of the managers of the fund, held more than 5% of the outstanding shares of each of the above entities. Defendant Doerr is a managing director of the managing members of those funds and the general partner of the general partners of certain Kleiner Perkins Caufield & Byers funds. Additionally, in June 2011, Google Inc. agreed to contribute up to \$9.8 million in KPCB sFund, LLC in exchange for a limited liability company interest therein.

154. As disclosed in Google's 2011 Proxy Statement, Google Ventures invested in certain private companies in 2010 alongside Kleiner Perkins Caufield & Byers as a co-investor:

- In December 2010, Google Ventures invested approximately \$2 million in the Series A preferred stock financing of a provider of technology solutions to the solar industry.
- In July 2010, Google Ventures invested approximately \$10

million in the Series B preferred stock financing of a biopharmaceutical company.

- In April 2010, Google Ventures invested approximately \$9.2 million in the Series C preferred stock financing of a provider of high-performance and high-efficiency transistors.

KPCB Holdings, Inc., as nominee for certain funds of Kleiner Perkins Caufield & Byers and several of the managers of the fund, held more than 5% of the outstanding shares of each of the above entities. Defendant Doerr was and is a managing director of these funds and the general partner of certain Kleiner Perkins Caufield & Byers funds at the time of the Google Ventures investments.

155. As disclosed in Google's 2010 Proxy Statement, in January 2009, Google Ventures invested approximately \$15 million in the Series D preferred stock financing of Silver Spring Networks, Inc. KPCB Holdings, Inc., as nominee for certain funds of Kleiner Perkins Caufield & Byers and several of the managers of the fund, held more than five percent of the outstanding shares of Silver Spring at the time of Google Ventures's investment. Defendant Doerr was a managing director of these funds and the general partner of certain Kleiner Perkins Caufield & Byers funds at the time of Google Venture's investment. Further, in July 2009, Google Ventures invested approximately \$4 million in the Series B preferred stock financing of V-Vehicle Company. Prior to Google's investment in this financing, Google also invested approximately \$1 million in a convertible debt financing, which was converted into Series A preferred stock as part of this financing transaction. KPCB Holdings, Inc., as nominee for certain funds of Kleiner Perkins Caufield & Byers and several of the managers of the fund, held more than 10% of the outstanding shares of V-Vehicle. Defendant Doerr was a managing director of these funds and the general partner of certain Kleiner Perkins Caufield & Byers funds

at the time of Google Ventures's investment. Defendant Doerr was and is also a director of V-Vehicle. Lastly, in September 2009, Google purchased certain assets from MetaRAM, Inc. MetaRAM's stockholders included certain funds of Kleiner Perkins Caufield & Byers.

156. As disclosed in Google's 2009 Proxy Statement, in August 2008, Google invested approximately \$6.25 million in the Series B preferred stock financing of AltaRock Energy, Inc. KPCB Holdings, Inc., as nominee for certain funds of Kleiner Perkins Caufield & Byers and several of the managers of these funds, held more than 10% of the outstanding shares of AltaRock Energy at the time of Google's investment. Defendant Doerr was a managing director of these funds and the general partner of certain Kleiner Perkins Caufield & Byers funds at the time of Google's investment.

157. As disclosed in Google's 2008 Proxy Statement, in May 2007, Google acquired PeakStream, Inc. for approximately \$20.3 million. KPCB Holdings, Inc. held the shares of PeakStream as nominee for Kleiner Perkins Caufield & Byers XI-A, LP, Kleiner Perkins Caufield & Byers XI-B, LP, and several of the managers of the fund. These entities were entitled to receive approximately 24.5% of the consideration received in the acquisition. At the time of the PeakStream acquisition, Defendant Doerr was a managing director of KPCB XI Associates, LLC, the general partner of both Kleiner Perkins Caufield & Byers XI-A, LP and Kleiner Perkins Caufield & Byers XI-B, LP and a limited partner of both Kleiner Perkins Caufield & Byers XI-A, LP and Kleiner Perkins Caufield & Byers XI-B, LP.

158. Google's previous investment in Kleiner Perkins Caufield & Byers's own investments and acquisitions are so material to Defendant Doerr as to raise a reasonable doubt as to Doerr's lack of interest and independence. Defendant Doerr would be unlikely to vote in favor of commencing suit against Defendants Page, Brin and Schmidt (who also constitute the

majority of the Acquisition Committee) and risk losing Google's continued investment in Kleiner Perkins Caufield & Byers's own investments and acquisitions.

159. Furthermore, Defendant Doerr faces a substantial likelihood of liability for his own breach of fiduciary duty because he was fully aware of that the Company was engaging in illegal activity in allowing Canadian pharmacies to advertise the sale of prescription drugs to U.S. customers after receiving Sandberg's e-mail on October 30, 2003 and failed to take any action to force Google to cease its illegal activity or even to assure himself that such illegal activity was not taking place until Google learned it was under investigation in 2009. Defendant Doerr therefore lacks disinterestedness and cannot exercise business judgment with respect to any demand.

Defendant Hennessy is Not Independent

160. Defendant Hennessy has been a member of Google's board of directors since April 2004 and has served as the President of Stanford University since September 2000. Defendants Page and Brin are graduates of Stanford University. Since 2006, Google has donated approximately \$14.7 million to Stanford University "for scholarships and other philanthropic endeavors."

161. In addition, since 2006, Google has paid an additional \$2.8 million to Stanford University for licenses by Stanford of patents to Google. As disclosed in Google's 2012 Proxy Statement, "[p]ursuant to Stanford's standard royalty arrangements with its students who develop patents in the course of their studies at Stanford, Stanford shares a portion of the royalty revenues associated with some of these patent licenses with Larry [Page] and Sergey [Brin]." Thus, not only is Stanford University a recipient of a huge amount of corporate largesse from Google, but Google also pays Stanford for patent licenses, with a portion of those royalties being

remitted back from Stanford to Defendants Page and Brin.

162. Google's previous donations to Stanford University and Google's payment of license fees for the use of Stanford's patents are so material to Hennessey as to raise a reasonable doubt as to Defendant Hennessey's lack of interest and independence. Defendant Henessy would be unlikely to vote in favor of commencing suit against Defendants Page, Brin and Schmidt and risk losing Google's continued donations to Stanford University or the replacement of Stanford University's lucrative patents with competing patents by Google.

163. Furthermore, Defendant Henessy faces a substantial likelihood of liability for his own breach of fiduciary duty because he should have been aware that the Company was engaging in illegal activity in allowing Canadian pharmacies to advertise the sale of prescription drugs to U.S. customers and failed to take any actions to ensure that Google was not involved in illegal activity or even to assure himself that such illegal activity was not taking place until Google learned it was under investigation in 2009. Defendant Henessy therefore lacks disinterestedness and cannot exercise business judgment with respect to any demand.

Defendant Otellini is Not Independent

164. Defendant Otellini has been a member of Google's board of directors since April 2004. Otellini has served as the Chief Executive Officer and President of Intel Corporation since May 2005 and has been a member of the board of directors of Intel since 2002.

165. Intel and Google have enjoyed a longstanding partnership relationship. As Defendant Otellini declared at the 2011 Intel Developer Conference in San Francisco on September 12, 2011, "Google and Intel have been working together as partners in computing solutions for many years in the data centers and on Google TV"

166. Intel, which dominates the PC market but has struggled to gain traction in mobile

computing, is dependent upon Google to help it gain a foothold in mobile computing. The two companies collaborate extensively on Google's laptop operating system known as "Chromebook."

167. On September 12, 2011, Intel and Google jointly announced that Google would begin designing its Android mobile operating system to be compatible with Intel mobile processors. As part of the announcement, Defendant Otellini said, "[w]e want to make Intel architecture the platform of choice for smartphones. Every time we have collaborated with Google, good things have come out of it." As industry analysts noted, "the partnership (with Google) will aid Intel in delivering on its promise to finally release smartphones with its technologies by the middle of 2012."

168. Google's longstanding partnership with Intel and Intel's dependence on Google to design its mobile operating systems such as Chromebook and Android to be compatible with Intel technology in order for Intel to establish itself and remain competitive in the smartphone and laptop markets are so material to Defendant Otellini as to raise a reasonable doubt as to Otellini's lack of interest and independence. Defendant Otellini would be unlikely to vote in favor of commencing suit against Defendants Page, Brin and Schmidt and risk losing Intel's longstanding partnership with Google and Google's continued willingness to design mobile operating systems that support Intel's mobile processors. .

169. Furthermore, Defendant Otellini faces a substantial likelihood of liability for his own breach of fiduciary duty because he should have been aware that the Company was engaging in illegal activity in allowing Canadian pharmacies to advertise the sale of prescription drugs to U.S. customers and failed to take any actions to ensure that Google was not involved in illegal activity or even to assure himself that such illegal activity was not taking place until

Google learned it was under investigation in 2009. Defendant Otellini therefore lacks disinterestedness and cannot exercise business judgment with respect to any demand.

Defendant Shriram is Not Independent

170. Defendant Shriram has been a member of Google's board of directors since September 1998. As disclosed in Google's 2012 Proxy Statement, Shriram also serves on the Stanford University board of trustees. Stanford University describes the powers and duties of its Board of Trustees as "custodian of the endowment and all properties of the University. The Board administers the invested funds, sets the annual budget, and determines policies for the operation and control of the University."

171. Google's previous donations to Stanford University and Google's payment of license fees for the use of Stanford's patents are so material to Defendant Shriram as to raise a reasonable doubt as to Defendant Shriram's lack of interest and independence. Defendant Shriram would be unlikely to vote in favor of commencing suit against Defendants Page, Brin and Schmidt and risk losing Google's continued donations to Stanford University or the replacement of Stanford University's lucrative patents with competing patents by Google.

172. Furthermore, Defendant Shriram faces a substantial likelihood of liability for his own breach of fiduciary duty because he should have been aware that the Company was engaging in illegal activity in allowing Canadian pharmacies to advertise the sale of prescription drugs to U.S. customers and failed to take any actions to ensure that Google was not involved in illegal activity or even to assure himself that such illegal activity was not taking place until Google learned it was under investigation in 2009. Defendant Shriram therefore lacks disinterestedness and cannot exercise business judgment with respect to any demand.

Defendant Tilghman is Not Independent

173. Defendant Tilghman has been a member of Google's board of directors since October 2005. Tilghman has served as the President of Princeton University since June 2001. Defendant Schmidt graduated from Princeton in 1976 and served as a trustee of the university from 2004 to 2008.

174. In 2009, Defendant Schmidt and his wife, Wendy, established a \$25 million endowment fund at Princeton University modestly called the Eric and Wendy Schmidt Transformative Technology Fund. In announcing the endowment for Princeton University, Defendant Tilghman was effusive, "[w]e are deeply grateful to Eric and Wendy not only for providing this support, but for providing the capacity and flexibility to make investments that are likely to have the broadest and most transformative impact."

175. Defendant Schmidt's previous donations to Princeton University and prior position as Trustee of Princeton are so material to Defendant Tilghman as to raise a reasonable doubt as to Defendant Tilghman's lack of interest and independence. Defendant Tilghman would be unlikely to vote in favor of commencing suit against Defendants Page, Brin and Schmidt and risk losing Defendant Schmidt's continued donations to Princeton University or that Tilghman would repay Defendant Schmidt's past generosity to Princeton University by commencing suit against him. Furthermore, Defendant Tilghman faces a substantial likelihood of liability for his own breach of fiduciary duty because he should have been aware that the Company was engaging in illegal activity in allowing Canadian pharmacies to advertise the sale of prescription drugs to U.S. customers and failed to take any actions to ensure that Google was not involved in illegal activity or even to assure himself that such illegal activity was not taking place until Google learned it was under investigation in 2009. Defendant Tilghman therefore lacks disinterestedness and cannot exercise business judgment with respect to any demand.

Defendant Greene is Not Independent

176. Defendant Greene has been a member of Google's board of directors since January 2012. As disclosed in Google's 2012 Proxy Statement, Defendant Greene is also a member of The MIT Corporation, the governing body of the Massachusetts Institute of Technology. The Massachusetts Institute of Technology describes the duties of the MIT Corporation as "to see that the Institute adheres to the purposes for which it was chartered and that its integrity and financial resources are preserved for future generations as well as for current purposes."

177. In addition, the Massachusetts Institute of Technology makes clear that, "[i]t is also understood that trustees are expected to represent the interests of MIT to outside constituencies as appropriate and help provide financial support for the Institute."

178. In partnership with MIT, Google has contributed significant sums of money to various philanthropic projects. For example, in 2005, Google contributed \$2 million to the One Laptop Per Child program for which MIT designed the prototype \$100 notebook computer.

179. Most significantly, on August 17, 2011, MIT announced the formation of the new MIT Center for Mobile Learning, seeded by the gift from Google of App Inventor for Android, the browser-based tool for the visual creation of Android apps. Initial funding for the Center was made available from Google Education. App Inventor was started as a project between Google and MIT to create a modular, easy to use integrated development environment to build Android applications.

180. Google's previous donations of money and technology to MIT and willingness to collaborate on projects with MIT are so material to Defendant Greene as to raise a reasonable doubt as to Defendant Greene's lack of interest and independence. Defendant Greene, charged

with preserving the financial resources of MIT as well as to represent the interests of MIT to outside constituencies, would be unlikely to vote in favor of commencing suit against Defendants Page, Brin and Schmidt and risk losing Google's continued donations of money and technology to MIT or the ability for MIT to collaborate on projects with Google. Defendant Greene therefore lacks disinterestedness and cannot exercise business judgment with respect to any demand.

Defendant Mather is Not Independent

181. Defendant Mather has been a member of Google's board of directors since November 2005 and chairs the board's Audit Committee. As described by Google, "[t]he Audit Committee has responsibility for oversight of . . . *Google's programs and policies relating to legal compliance and strategy . . .*"

182. Defendant Mather faces a substantial likelihood of liability for her own breach of fiduciary duty because she should have been aware that the Company was engaging in illegal activity in allowing Canadian pharmacies to advertise the sale of prescription drugs to U.S. customers and failed to take any actions to ensure that Google was not involved in illegal activity or even to assure herself that such illegal activity was not taking place until Google learned it was under investigation in 2009. As chair of the Audit Committee, Defendant Mather had a particular and specific fiduciary duty and responsibility to ensure that Google was not involved in illegal activity and to assure herself that such illegal activity was not taking place. Defendant Mather therefore lacks disinterestedness and cannot exercise business judgment with respect to any demand.

All of the Director Defendants As a Group are Not Independent

183. With the exception of Greene, who was appointed to the Board after Google

entered into the Non-Prosecution Agreement but is, nevertheless disabled from acting on demand for other reasons described *supra*, each Director Defendant is disabled from acting on a demand because each Director Defendant was fully aware of, or should have been aware, in breach of their fiduciary duties, that the Company was engaging in illegal activity in allowing Canadian pharmacies to advertise the sale of prescription drugs to U.S. customers from 2003 through 2009.

184. As a result of the Director Defendants' (other than Greene's) utter failure to monitor and oversee the Company's operations in the face of reports that clearly should have raised the suspicions of the Director Defendants, and in allowing Google to manage and conduct the Company's advertising programs in violation of state and federal law and regulation, subjecting Google to criminal liability and severe reputational harm, the Director Defendants breached their fiduciary duties to Google by, *inter alia*, failing to act in any manner whatsoever to detect, prevent and/or halt these practices.

185. Every member of the Board, therefore, is not independent and cannot act independently with respect to the claims made in this action. Demand on the Board, therefore, would be futile.

COUNT I

DERIVATIVELY AGAINST DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES

186. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

187. By reason of their fiduciary relationships, the Defendants owed Google the highest obligation of loyalty to act in good faith, including a fiduciary duty to assess continually Google's advertising policies and practices to ensure that the Company's advertising programs were not in violation of state and federal law and regulation.

188. As a result of Defendants' breach of their fiduciary duties as described herein,

Google and its stockholders have suffered injury. Accordingly, Google is entitled to damages.

COUNT II

DERIVATIVELY AGAINST THE NON-EMPLOYEE DIRECTOR DEFENDANTS FOR BREACH OF FIDUCIARY DUTY

189. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

190. By reason of their positions as directors, the Non-Employee Director Defendants owed and owe Google the highest fiduciary obligation of loyalty to act in good faith.

191. The Non-Employee Director Defendants violated and breached their fiduciary duties of loyalty, reasonable inquiry, oversight, good faith and supervision.

192. By consciously failing to monitor or oversee Google's internal controls designed to prevent the operation of the Company in a manner that violated criminal law or even to assure themselves that such internal controls existed in spite of numerous articles and reports that should have made the Non-Employee Director Defendants suspicious of wrongdoing, the Non-Employee Director Defendants disabled themselves from being informed of risks or problems requiring their attention.

193. The Non-Employee Director Defendants are liable to the Company for abandoning and abdicating their responsibilities and fiduciary duties causing injury to the Company. Accordingly, Google is entitled to damages.

COUNT III

DERIVATIVELY AGAINST DEFENDANTS PAGE, BRIN AND SCHMIDT FOR CORPORATE WASTE

194. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

195. As a result of Defendants Page, Brin and Schmidt's misconduct as alleged herein, Defendants Page, Brin and Schmidt have caused Google to waste valuable corporate assets.

196. As a direct and proximate result of Defendants' corporate waste, Google has sustained and continues to sustain significant reputational and monetary damages, including the \$500,000,000 paid by the Company in connection with the Non-Prosecution Agreement. As a result of the wrongful conduct alleged herein, Defendants Page, Brin and Schmidt are liable to the Company.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Determining that its suit is a proper derivative action and certifying Plaintiff as an appropriate representative of Google for said action;

B. Declaring that each of the Defendants has breached his or her fiduciary duties to Google;

C. Determining and awarding to Google the damages sustained as a result of the violations set forth above from each of the Defendants, jointly and severally, together with interest thereon;

D. Awarding Google restitution from Defendants, and each of them;

E. Directing the Individual Defendants to cause the Company to implement policies and procedures to ensure that Google never again deliberately engages in illegal conduct and that Google's Non-Employee Director Defendants are immediately advised of any conduct by Google which might lead to criminal liability or which might expose the Company to serious reputational harm;

F. Awarding to Plaintiff the costs and disbursements of the action, including

reasonable attorneys' fees, costs, and expenses; and

G. Granting such other and further relief as the Court deems just and proper.

Dated: July 11, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2012, a copy of the foregoing document was served electronically via *LexisNexis File & Serve* upon the following counsel of record:

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