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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JOHN DOE, DAVID GUDEMAN, and PAOLA CORREA on behalf of the State of California and aggrieved employees,

Plaintiffs,

vs.

GOOGLE, INC., ALPHABET, INC., ADECCO USA INC., ADECCO GROUP NORTH AMERICA and ROES 1 through 10,

Defendants.

Case No. CGC-16-556034

REPLY DECLARATION OF CHRIS BAKER IN SUPPORT OF JOHN DOE'S MOTION TO COMPEL FURTHER RESPONSES TO DISCOVERY AND THE PRODUCTION OF DOCUMENTS

Department: 304 (COMPLEX)
Judge: Hon. Curtis E.A. Karnow
Hearing Date: May 19, 2017
Hearing Time: 9:00 a.m.

Complaint Filed: December 20, 2016
Trial Date: Not Set

My name is Chris Baker. I declare the following.

1. I am counsel of record for Plaintiffs in this case. With respect to the Google documents set forth in this declaration, I have no reason to doubt their authenticity.

2. **Exhibit 1** to this declaration is an email I sent to Cameron Fox (Google's counsel) on February 15, 2017 concerning PAGA exhaustion periods and potential serial amendments to the operative complaint. Following this email, I asked Ms. Fox is Google would agree to waive

the administrative exhaustion requirements under PAGA so that Plaintiff could file a final complaint and avoid serial amendments. Google refused this proposal.

3. Prior to filing Plaintiff's motion to compel to further discovery, I discussed the matter with the Court's clerk, who advised me that – in light of the situation – I could file the motion and schedule it for hearing on May 19, 2017.

4. **Exhibit 2** to this declaration is Plaintiffs' opposition to Google's demurrer to Plaintiffs First Amended Complaint. This demurrer was set to be heard on March 24, 2017. The hearing did not go forward because Judge Kahn recused himself.

5. **Exhibit 3** contains the offer letters and confidentiality agreements of John Doe and David Gudeman. The offer letters make clear that all Google employees much sign the confidentiality agreement. The confidentiality agreement requires all Googlers to abide by Google's illegal policies. (See Confidentiality Agreement, ¶¶ 9-10).

6. **Exhibit 4** is a copy of part of Google's Data Classification Guidelines which all Googlers must read.

7. **Exhibit 5** is a copy of part of Google's "You Said What?" training program in which the audience is described as "All Googlers, including temps, vendors and contractors."

8. **Exhibit 6** is a copy of an email that I understand Brian Katz sent to all Googlers on May 6, 2016. Katz leads Google's "investigations team."

9. **Exhibit 7** is a copy of the Google subsidiary Waymo's Notice of Motion and Motion for Preliminary Injunction against Uber which is currently being heard before Judge Alsup in the United States District Court. In this motion, Waymo confirms that all employees must sign Google's confidentiality agreements and abide by its policies.

I declare under penalty of perjury, under the laws of the state of California, that the foregoing is true and correct. Executed this 12th day of May, 2017, in San Francisco, California.

Chris Baker

Exhibit 1

Chris Baker

From:	Chris Baker
Sent:	Wednesday, February 15, 2017 3:27 PM
To:	'Fox, Cameron W.'; Hutton, Zachary
Cc:	'Deborah Schwartz (Work) (dschwartz@bakerlp.com)'
Subject:	Google/PAGA Demurrer Discussion

Hi Cameron:

This will confirm our discussion concerning Google's demurrer. I disagree with your assessment re preemption and the 1102.5 issue. I will seek to amend if the Court finds in your favor.

With respect to the exhaustion issue, we discussed my belief that Plaintiff has the right and obligation to amend the complaint seriatim under PAGA after administration exhaustion is completed, which may cause multiple additional amendments to the complaint as defendants and plaintiffs and claims are added. This may delay the ultimate hearing on your demurrer as amended complaints are filed. While this might just be how we have to do it given the manner in which PAGA is written, I am open to your suggestions as to alternative ways to address this.

Thanks.

Chris

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Exhibit 2

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Attorneys for Plaintiff
JOHN DOE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JOHN DOE, on behalf of the State of California and aggrieved employees,

Plaintiff,

vs.

GOOGLE, INC., ALPHABET, INC. and ROES 1 through 10,

Defendants.

Case No. CGC-16-556034

OPPOSITION TO DEFENDANTS' DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Hearing Date: March 24, 2017
Time: 9:30 a.m.
Dept. 302
RESERVATION #: 02170324-11

Complaint Filed: December 20, 2016
Trial Date: None Set

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I. INTRODUCTION

Defendants Google and Alphabet ("Google") – California-based companies nominally subject to California law – have divested this Court of jurisdiction over any direct employment disputes by requiring employees to sign arbitration agreements. Now, Google claims this Court also lacks jurisdiction over any and all PAGA claims. Thus, as far as Google is concerned, neither this nor any other court has any business in its business.

Google is wrong. This Court has jurisdiction.

First, Plaintiff John Doe's[1] PAGA causes of action concern conduct that is neither protected nor prohibited by the National Labor Relations Act ("NLRA"). The PAGA claims instead concern – among other things – illegal restraints of trade, whistleblowing, and the right to speak under the California Labor Code and the U.S. and California Constitutions. While this Court cannot address conduct prohibited NLRA, it can and must address conduct that is illegal under California law.

Second, even if certain of the PAGA causes of action do somehow implicate the NLRA, this Court has jurisdiction over the claims pursuant to the "local interest" exception to *Garmon* preemption.

Third, under settled law, the NLRB lacks jurisdiction with respect to claims concerning Google's managers, supervisors, and former employees (unless terminated in violation of the NLRA).[2] These categories of employees are "aggrieved employees" under PAGA and outside the jurisdiction of the NLRA regardless of how the Court decides the preemption issue.

For all these reasons and more, the Court should deny Google's demurrer.

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[1] Plaintiff is properly identified as a John Doe pursuant to *Doe v. Lincoln Unified School District* (2010) 188 Cal.App.4th 758.

[2] Google bears the burden of establishing that Plaintiff is an employee subject to the NLRA, as opposed to a supervisor or manager outside the NLRA's jurisdiction. *Dang v. Maruichi American Corp.* (2016) 3 Cal.App.5th 604, 608 n. 2. It cannot meet this burden at the pleadings stage because Google claims Plaintiff is a manager/supervisor. (FAC ¶ 5). Plaintiff's discovery requests seek Google's admission on this point. This is entirely appropriate, for it is this Court that decides the *Garmon* preemption issue, and it can consider discovery in making this decision. *Id.* (finding plaintiff was a supervisor exempt from the NLRA based on deposition testimony); *Kelecheva v. Multivision Cable TV Corp.* (1993) 18 Cal.App.4th 521, 528 (finding *Garmon* preemption based on a review of the record).

II. FACTS & BACKGROUND

Google miscasts Plaintiff's First Amended Complaint ("Complaint" or "FAC") to argue *Garmon* preemption. Google also claims that Plaintiff's allegations, which quote verbatim from Google's agreements, policies, training programs, and other written communications, are false. At this stage, though, the truth of Plaintiff's allegations are assumed and all reasonable inferences are drawn in Plaintiff's favor. It is also Google's burden to establish *Garmon* preemption, not Plaintiff's to refute it. *Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1478 n.2.

A. Plaintiff's Allegations

1. Google's Illegal Restraints of Trade

a. California Law

It is well-settled that overbroad confidentiality agreements between employers and employees are agreements in restraint of trade. *E.g., Bodemer v. Swanel Beverage, Inc.* (N.D. Ill. 2012) 884 F.Supp.2d 717, 729 (finding that confidentiality agreement prohibiting an employee from sharing all business information learned during employment was in effect a covenant not to compete); *R.R. Donnelly & Sons Co. v. Fagan* (S.D.N.Y. 1991) 767 F.Supp. 1259, 1269 (noting that a "confidentiality agreement is a restriction on trade, competition, and the free flow of information in the same manner as a non-compete agreement"). And since the passage of Business & Professions Code § 16600 in the year 1872, California has abhorred contracts in restraint of trade. *Edwards v. Arthur Anderson LLP* (2008) 44 Cal.4th 937, 945. Instead, California courts consistently affirm that section 16600 evinces a settled legislative policy in favor of open competition and employee mobility." *Id.* This policy is so important to California that it ignores choice of law provisions in employment contracts to give effect to California's strong interest in free competition. *Application Group, Inc. v. Hunters Group, Inc.* (1998) 61 Cal.App.4th 881, 900-905.

Labor Code §§ 232 and 1197.5(k)[3] – which outlaws policies or contracts that prohibit the

[3] This statute was amended effective 2017 so that § 1197.5(j) is now 1197.5(k). Consistent with California's policy in favor of fair competition, one purpose of 1197.5 is to "help ensure that both employers and workers are able to negotiate and set salaries based on the requirements, expectations, and qualifications of the person and the job in question." 2016 Cal. Legis. Serv. Ch. 856 (A.B. 1676).

disclosure of wages (including the wages of others), and Labor Code § 232.5 – which does the same with respect to working conditions – further California's public policy against restraints of trade. An employee seeking to change jobs must have the option of disclosing his or her working conditions and compensation to prospective employers to explain the decision to leave and to negotiate a comparable or higher salary. (FAC ¶ 79). Similarly, employees seeking to solicit their former colleagues must be able to disclose working conditions and wage rates at their former companies in order to determine whom best to solicit. *Application Group, supra*, 61 Cal.App.4th at 900 ("[a competitor] may solicit another's employees if they do not use unlawful means or engage in unfair competition.") These Labor Code rights are all the more important in the technology industry, where Google and its peers have entered into "non-poaching agreements" to suppress employee wages and limit employee mobility. *See, e.g., In re High-Tech Employee Antitrust Litigation* (N.D. Cal. 2012) 856 F. Supp.2d 1103.

Contracts or policies that violate the above law also violate Business & Professions Code § 17200. *See, Application Group*, 61 Cal.App.4th at 906.

b. Plaintiff's First & Second Causes of Action

In his Complaint, Plaintiff alleges that Google requires all employees to sign a Confidentiality Agreement that constitutes an illegal restraint of trade. (FAC ¶¶ 17, 30-31). This Agreement defines Confidential Information to mean "without limitation, any information in any form that relates to Google or Google's business that is not generally known, including "employee data."" (FAC ¶ 31). Google also requires employees to agree, in writing, to policies which prohibits employees "from disclosing 'confidential information' [which means everything at Google] without authorization." (FAC ¶ 38). Indeed, at Google, "even public information is confidential." (FAC ¶ 41). Once signed, Google's Agreement and policies last forever, and apply to former employees. (FAC ¶¶ 51-52).

Labor Code § 432.5 states that "no employer . . . shall require any employee or applicant . . . to agree, in writing, to any term or condition of employment which is known by such employer . . . to be prohibited by law." Google requires its employees to agree in writing to overbroad policies and a Confidentiality Agreement that it knows is prohibited by California law against

restraints of trade and the California Labor Code. (FAC ¶¶ 72-82). Among other things, Plaintiff alleges that the Agreement and policies: "purport to prevent employees from using or disclosing all the general skills, knowledge, acquaintances, and the overall experience that obtain at Google (FAC ¶ 74) and purport to prevent employees "from speaking with prospective employers about information that is not confidential as a matter [of law], about their work at Google, and about their wages and working conditions."

Plaintiff alleges this violates Labor Code § 432.5 and gives rise to a PAGA claim under Labor Code § 2699.5. These claims have nothing to do with the NLRA.

2. Google's Illegal Prohibition on Whistleblowing

a. California and Federal Law

Both federal and California law protect whistleblowers. The Federal Defend Trade Secrets Act § 7(b) requires employers to give employees written notice in confidentiality agreements that they cannot be held liable for disclosing trade secrets to the government or an attorney for the purpose of reporting or investigating a suspected violation of the law, or for use in an anti-retaliation case. (FAC ¶ 20). The Securities and Exchange Commission ("SEC") prohibits companies from "taking any action to impede an individual from communicating directly [with the SEC] about a possible securities law violation, including enforcing or threatening to enforce a confidentiality agreement . . . . with respect to such communications." SEC Rule 21F-17. (FAC ¶ 22). It is also well-established that confidentiality agreements that purport to prevent individuals from aiding outside attorneys or the government in shareholder or False Claims Act litigation violate public policy. *Cariveau v. Halferty* (2000) 83 Cal.App.4th 126, 137 (noting general rule against confidentiality agreements that permit violations of the securities laws to continue).

California Labor Code section 1102.5, first enacted in 1984 makes it unlawful for a company to adopt or enforce any rule or policy that prevents an employee from disclosing information – either internally or to the government – with respect to violations that the employee reasonably believes violates the law. Labor Code § 1102.5(a). Its deeply rooted purpose is to "encourage workplace whistleblowers to report unlawful acts without fearing retaliation," *Layton*

v. Terremark North America, LLC (N.D. Cal. 2014) 2014 WL 2538679, * 6, and a violation of Labor Code § 1102.5(a) is contrary to "fundamental principles of [California's] public policy." *Id.*

Labor Code §§ 232, 232.5, and 1197.5(k) have a similar sweep with respect, specifically, to wages and working conditions. California Labor Code §§ 232 and 1197.5(k) make it unlawful for employers to require that employees refrain from whistleblowing (or disclosing information about) the illegal payment of wages (whether arising from sex discrimination under Labor Code § 1197.5 or from other illegal pay practices). California Labor Code § 232.5 has the same effect with respect to illegal working conditions (whether arising from discrimination, safety violations, retaliation, or otherwise). Labor Code § 1197.5[4] has been in effect since 1949, Labor Code § 232 has been in effect since 1984, and Labor Code § 232.5 has been in effect since 2003. These statutes all reflect the deeply-rooted and fundamental public policies of the state of California. *E.g., Grant-Burton*, 99 Cal.App.4th at 1372 (finding Labor Code § 232 evinces a fundamental public policy); *Cuevas v. SkyWest Airlines* (N.D. Cal 2014) 17 F.Supp.3d 956, 967 (noting the public policy embodied in Labor Code § 232.5)

As with the illegal restraints of trade referenced above, a violation of the above law and statutes is also "prohibited by law" pursuant to Business & Professions Code § 17200.

b. Plaintiff's Third to Seventh, Ninth, and Eleventh Causes of Action

Plaintiff alleges that, contrary to California and federal law, Google's Agreements, rules, and policies conspicuously and proudly prohibit both internal and external whistleblowing. Among other things, Google does not notify employees in its Confidentiality Agreement of their right to whistle blow – even with respect to "trade secrets" - under the Defend Trade Secrets Act. (FAC ¶¶ 83, 87). Instead, employees are instructed that they must treat "all information at

[4] Note that § 1197.5 was amended in 2015 to emphasize that California outlaws employer attempts to prohibit the disclosure of wage information. Section 1(D) of the legislative findings as to the 2017 amendment to Labor Code § 1197.5 states that "pay secrecy also contributes to the gender wage gap, because women cannot challenge wage discrimination that they do not know exists. *Although California law prohibits employers from banning wage disclosures and retaliating against employees for engaging in this activity*, in practice many employees are unaware of these protections and others are afraid to exercise these rights due to potential retaliation. 2015 Cal. Legis. Serv. Ch. 546 (S.B. 358).

Google as confidential unless you know it has been approved for public disclosure." (FAC ¶ 55). This includes in its scope – by its plain terms – information and activity that an employee reasonably believes is illegal, whether it concerns defective products, corporate malfeasance, illegal pay practices, or illegal working conditions. (FAC ¶¶ 48, 83, 87, 91, 94, 97, 103, 109).

Indeed, Google's policy and/or rule against whistleblowing is so entrenched that it is included in training materials delivered to all employees. Google instructs employees that they must not "send an email that says 'I think we broke the law' or 'I think we violated this contract.'" (FAC ¶ 48). Rather, employees are instead instructed to "avoid communications [whether oral or written] that conclude, or appear to conclude that Google or Googlers are acting 'illegally' or 'negligently,'" or have "'violated the law,'" (FAC ¶ 49). Indeed, employees are instructed that "if you're sharing 'confidential information' to a reporter – or to anyone externally – for the love of all that's Googley, please reconsider! Not only could it cost you your job, but it betrays the values that makes us a community." (FAC ¶ 63). In short, Google's policy or rule is to prohibit employees "from communicating concerns about illegal conduct." (FAC ¶ 49).

Google's blanket policies, agreements, and/or rules against internal and external whistleblowing violate a number of provisions of the California Labor Code. They violate Labor Code § 432.5 because Google knows its agreement and policies against whistleblowing are prohibited by law, and yet Google requires employees to sign documents that prohibit whistleblowing as a condition of employment. (Third and Fourth Causes of Action concerning illegal prohibition on whistleblowing under Labor Code § 432.5). They violate Labor Code § 1102.5(a) because this statute unambiguously prohibits policies or rules against whistleblowing, and there is no question that Google's policy, rules, and agreements are drafted so broadly as to include instances where there is a reasonable cause to believe that a violation of the law has occurred. (Fourth and Fifth Causes of Action concerning illegal prohibition on whistleblowing under Labor Code § 1102.5(a).) They violate Labor Code §§ 232, 232.5, and 1197.5(k) because they prohibit employees from whistleblowing or disclosing information about illegal wage or employment practices. (Seventh, Ninth and Eleventh Causes of Action concerning the illegal prohibition on whistleblowing under Labor Code § 232, 232.5, and 1197.5(k))

All of these Labor Code violations are actionable under PAGA. These violations, too, have nothing at all to do with the NLRA.

3. Google's Illegal Prohibition on the Right to Speak

a. Background and California law

As discussed in news reports, in 1996, a former senior executive at Brown & Williamson spoke with 60 Minutes about the tobacco industry's efforts to increase the nicotine content of cigarettes in order to more easily addict consumers. Eventually, the tobacco industry settled with the states' attorneys general for $246 billion. By speaking out, the executive faced ruinous litigation arising from the alleged breach of his confidentiality agreement. http://www.nytimes.com/1999/10/15/us/a-tobacco-whistle-blower-s-life-is-transformed.html

In 2015, Secretary Schultz's grandson spoke with the Wall Street Journal about fraud at Theranos, then a high-flying technology company. As a result, the company shut down its blood-testing facilities and currently faces ongoing government investigations. The whistleblower was bullied by company lawyers, pressured to reveal that he had spoken to a reporter, and accused of breaching a confidentiality agreement. He has incurred more than $400,000 in legal fees. https://www.wsj.com/articles/theranos-whistleblower-shook-the-companyand-his-family-1479335963

Most recently, a female engineer posted a blog entry about her working conditions at Uber. The press picked up the story. Uber has since hired a former U.S. Attorney General to probe its workplace culture. http://www.reuters.com/article/us-uber-tech-sexual-harassment-idUSKBN160041.

Under California law, employees have the right to speak to the press and others about their work and the companies for which they work. At times, speaking with the press is the only way to effectuate meaningful change or address illegal conduct. Under California law, employees cannot be chilled from speaking out through illegal contracts and policies and upon the threat of losing their jobs.

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Employer agreements or policies that categorically restrict the right to speak are illegal. Labor Code §§ 232, 232.5, and 1197.5(k) grant employees the right to disclose information about their working conditions and wages. There is no limitation with respect to whom they may disclose this information. Labor Code § 96(k) goes farther and recognizes that employees may engage in lawful conduct occurring during nonworking hours, and that "allowing any employer to deprive an employee of any constitutionally guaranteed civil liberties . . . is not in the public interest." 1999 Cal. Legis. Ch. 692 (A.B. 1989). One such constitutional liberty is that "every person may freely speak, write, and publish his or her sentiments on all subjects . . . . A law may not restrain or abridge liberty of speech or press." (West.Ann.Cal.Const. Art. 1 § 2). The right to speech under the California Constitution, like the right to privacy, "runs against the world, including private parties as well as governmental actors." *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 492.[5]

Accordingly, and except in limited situations not applicable here, California Labor Code § 98.6(b) prohibits an employer from threatening to discharge employees for the lawful conduct set forth in Labor Code § 96(k), including the constitutional right to speak.

b. Plaintiff's Eighth, Tenth, Twelfth, Thirteenth and Fourteenth Causes of Action

Plaintiff alleges that, contrary to California law, Google's agreements and policies prohibit employees from disclosing information about their working conditions and wages. Google's Confidentiality Agreement declares everything confidential, including "employee data" (which includes wages). (FAC ¶ 31). It prohibits employees from disclosing "confidential information" (meaning everything having to do with Google) to any third party without

[5] *Gerawan Farming* binds this Court and remains good law. In *Golden Gateway Center v. Golden Gateway Tenants Assn.* (2013) 26 Cal.4th 2013, three justices upheld *Gerawan* and found that the California Liberty of Speech clause applies to private parties. *Id.* at 817-828. Three justices found the opposite. *Id.* at 798-812. A concurring justice expressly declined to reach a decision, stating "if we were to hold . . . that all types of section 2 free speech claims require state action . . . we effectively would remove any state constitutional obstacle to any such action by a landlord, union, **or employer.** I see no reason to prejudge the resolution of such questions." *Id.* at 816-817. In making this statement, the concurring justice expressed his concern with employer attempts to utilize its power over an employee to suppress his or her free speech rights. *Id.* As Plaintiff will explain in a later pleading, a proper interpretation of Labor Code §§ 96(k) and 98.6 does not turn on the state/private actor dichotomy.

authorization. (FAC ¶ 32). Indeed, upon leaving Google, no employee may deliver to any other person any materials "pertaining to their work at Google." (FAC ¶ 34). Google further declares all its employment policies (which set forth working conditions) "confidential," and instructs employees that they must "never discuss the company with the press." (FAC ¶ 38).

Google backs up its prohibitions on speech with threats of discharge and legal action. Its Confidentiality Agreement states that the disclosure of Google "confidential information" may lead to disciplinary action, up to and including termination and/or legal action." (FAC ¶ 33). Its "confidential" Code of Conduct policy states that it is a bad idea for employees to post opinions or information about Google on the internet – even if not confidential – and that doing so "can result in disciplinary action, including termination of employment." (FAC ¶ 37). Indeed, Google even prohibits employees from writing a novel about Silicon Valley. (FAC ¶ 45). Instead, "only authorized Googlers are permitted to talk about the company with the press . . . on anyone else outside Google." (FAC ¶ 44). Google further instructs employees that speaking with the press – or to anyone externally - can "cost them their jobs." (FAC ¶ 63).

These agreements and policies violate Labor Code § 232 and 1197.5(k) which forbids any contract or policy prohibiting the disclosure of wages. (Ninth and Twelfth Causes of Action). They also violation Labor Code § 232.5, which similarly forbids such contracts or policies prohibiting the disclosure of working conditions. (Eighth Cause of Action). And they violate Labor Code §§ 96(k) and 98.6(b). Google cannot prohibit employees – as a condition of employment – from exercising their free speech rights. It similarly cannot threaten employees with discharge to prevent them from doing so. (Twelfth and Thirteenth Causes of Action).

All of the alleged Labor Code violations are actionable under PAGA. None of them concern the NLRA.

III. ARGUMENT

At bottom, Google claims that so long as its agreements and policies are in some unspecified way "arguably prohibited' by the NLRA, then neither this nor any other court can act to address illegal conduct that in any way implicates those agreements or policies. Think about this for a moment. If Google is correct, it means that no court has the power to decide whether

the agreements or policies constitute illegal restraints on trade, rendering Business & Professions Code § 16600 meaningless. It also means that no court has the power to consider whether those agreements or policies illegally prohibit whistleblowing, rendering Labor Code § 1102.5 and SEC Rule 21F-17 meaningless. It means that the federal court currently considering Google's trade secret claim against Uber cannot decide it because the trade secrets claim is based upon, in part, Google's confidentiality agreements and policies. (See RJN Exs. 1 and 2). And, according to Google (at least in the case – Plaintiff anticipates Google would take a different position with the federal court), no court can assert jurisdiction over disputes that in any way involve those agreements or policies because they may – in some way – also violate the NLRA.

In short, Google seeks to convert the NLRA – which was passed for the narrow purpose of protecting certain categories of employees who engage in protected concerted activity – into a broad grant of corporate immunity from the power of this or any other court with respect to any other violation of the law.

Stating Google's argument reveals its absurdity. State and federal courts routinely assert jurisdiction over disputes concerning employment agreements and policies, even when such agreements or policies contain language that is arguably prohibited by the NLRA. For example, in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 372, the California Supreme Court asserted jurisdiction and determined that an employment arbitration agreement which contained a class action waiver (that was arguably prohibited by the NLRA) violated California state law by including a PAGA waiver. *Id.* at 378 – 389. In *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, the Ninth Circuit did the same. The existence of a concurrent issue concerning the agreements' validity under the NLRA had no impact on the jurisdiction of these courts to determine the agreements' validity under PAGA. And the present case involves only PAGA.

Google cannot divest this and all other courts of jurisdiction concerning its illegal employment practices under PAGA by contending that it has also violated the NLRA. *See, Balog v. LRJV, Inc.* (1988) 203 Cal.App.3d 1295, 1308. Such a result would allow Google – or any other company – to render the courts powerless to address blatantly illegal agreements and

policies under state and federal law simply by adding a rider to such documents that assert the company is also trying to violate the NLRA.

This is incorrect.

A. Plaintiff Does Not Allege that Google's Illegal Agreements and Policies Are Prohibited By the NLRA

Section 7 of the NLRA gives employees the right to engage in "concerted activities" "for the purpose of" "mutual aid and protection." 29 U.S.C. § 157. Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to interfere with Section 7 rights. 29 U.S.C. § 158(a)(1).

In order for an employee's activity to be "concerted," it must stems from prior concerted activity, be made on behalf of a group of employees, or involve attempts to bring about or prepare for group action. *Haney v. Aramark Uniform Services, Inc.* (2004) 121 Cal.App.4th 623, 635. Thus, for example, an employee who engages in whistleblowing on his own – even if he personally believes it will help his coworkers – does not engage in concerted activity. *Id.* at 637. Similarly, an employee who discloses information about wages or working conditions for his or her own purposes – such as when seeking new employment or even just to vent – is not engaged in "concerted" activity. *See, e.g., Meyers v. Bryon Jackson, Inc.* (1984) 161 Cal.App.3d 402, 410-411; *Pelton Casteel, Inc. v. NLRB* (7th Cir. 1980) 627 F.2d 23, 29. When the activity is not also for the purpose of mutual aid or protection, the NLRA has no role.

Plaintiff does not allege that Google's Confidentiality Agreement and policies prohibit the exercise of section 7 rights. This case is thus different from *Luke v. Collotype Labels USA, Inc.* (2008) 159 Cal.App.4th 1463. There, the wrongful termination claim under Labor Code § 232.5 was based upon facts and evidence demonstrating that the employee was discharged for engaging in protected concerted activity such as providing support for employees who complained about working conditions and encouraging them to bring their complaints to management. *Id.* at 1471. There are no such facts pled here. Nowhere does Plaintiff allege that either he or any other aggrieved employees are prohibited from exercising section 7 rights as a result of Google's illegal Agreement or policies. Rather, Plaintiff, in his Complaint, explains (among other things) that

"the policies prohibit Googlers from using or disclosing all of the skills, knowledge, acquaintances, and overall experience at Google when working for a new employer. The policies prohibit Googlers from speaking to the government, attorneys, or the press about wrongdoing at Google. The policies even prohibit Googlers from speaking to their spouse or friends about whether they think their boss could do a better job." (FAC ¶ 2). None of these allegations reflect a section 7 right.

In response to Plaintiff's Complaint, Google goes outside the pleadings and points to certain unfair labor practice charges that have been pending before the NLRB's General Counsel for a year or more while the General Counsel allegedly "investigates." Plaintiff opposes Google's Request for Judicial Notice of these documents. Among other things, Plaintiff cannot determine from the March 1, 2016 charge (Google's RJN Ex. C) whether that employees' allegations have anything to do with Plaintiff's Complaint, and neither Plaintiff nor this Court should be required to speculate.

With respect to the charges filed by Plaintiff (Google's RJN Ex. A-B), these are irrelevant to Google's demurrer for the reasons set forth in Plaintiff's Opposition to the Request for Judicial Notice. Among other things, Plaintiff's unfair labor practice charges set forth bases unrelated to any issue this case, including allegations concerning electronic surveillance, Plaintiff's termination, and Google's class action waiver. To the extent Google argues that the mere filing of unfair practice charges somehow divests this Court of jurisdiction over any and all state law claims on different subjects, Google reads too much into the cases it cites (e.g., *Platt v. Jack Cooper Transport Co., Inc.* (8th Cir. 1992) 959 F.2d 91, 95. Google also fails to note that the California Court of Appeal rejects those cases. *Inter-Modal Rail Employees Ass'n v. Burlington Northern and Santa Fe Ry. Co.* (1999) 73 Cal.App.4th 918, 927-928 (rejecting *Platt*). As noted above, California courts can and do decide the validity of employment agreements and policies under PAGA even when those same agreements (and indeed the same sections of those same agreements) raise issues of federal labor law. *Iskanian v. CLS Transp. Los Angeles, LLC,* 59 Cal.4th 348, 378-79.

The unfair labor charges set forth in Google's Request for Judicial Notice have no bearing

on Plaintiff's Complaint. *Garmon* has no application here.

B. Even if this Case Implicates the *Garmon* Guidelines, this Court Must Still Assert Jurisdiction

If the Court concludes this case concerns conduct that is arguably prohibited by the NLRA, then it must look to the *Garmon* guidelines. *Kelecheva v. Multivision Cable T.V. Corp.*, supra, 18 Cal.App.4th at 527. The guidelines cannot be applied in a "literal, mechanical fashion." *Id.* 458. Rather, "the decision to pre-empt . . . state court jurisdiction over a given class of cases must depend upon the nature of the particular interests being asserted and the effect upon the administration of national labor policies of permitting the state court to proceed." *Id.* Matters that are only a "'peripheral concern' of the NLRA . . . or that are 'deeply rooted in local feeling and responsibility' are not subject to *Garmon* preemption." *Dang v. Maruichi American Corporation, supra*, 3 Cal.App.5th 604. Garmon preemption should not occur when there is a "significant state interest in protecting the citizen from the challenged conduct." *Retail Property Trust v. United Brother. of Carpenters and Joiners of America* (9th Cir. 2014) 768 F.3d 938, 953.

Thus, the critical inquiry is "whether the controversy presented to the state court is identical to . . . or different from . . . that which could have been . . . presented to the Labor Board." *Kelecheva*, 18 Cal.App.4th at 527-28. "Only if the controversy is identical to a claim that could have been presented to the Board would a state court's exercise of jurisdiction involve "a risk of interference with the unfair labor practice jurisdiction of the Board." *Retail Property Trust*, 768 F.3d at 953. This Court must determine its own jurisdiction under *Garmon* guidelines, *Dang v. Maruichi American*, supra, 3 Cal.App.5th at 608-609, and a defendant cannot escape liability under state laws of local importance and interest because it also had "the good fortune to also undertake the commission of NLRB-defined unfair labor practices." *Balog*, 204 Cal.App.3d at 1309.

In this case, PAGA and the California laws referenced above all represent significant state interests. As to PAGA specifically, the California Legislature found that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws . . . and *to ensure an effective disincentive for employers to engage in unlawful*

and anticompetitive business practices." 2003 Cal. Legis. Serv. Ch. 906 (S.B. 796). PAGA was passed in part because the State "was failing to effectively enforce labor law violations," and "resources dedicated to labor law enforcement have not kept pace with the growth of the economy in California." *Iskanian v. CLS Transp., supra,* 59 Cal.4th at 379. A PAGA action is in the nature of a *qui tam* action, and the use of *qui tam* actions is venerable, dating back to colonial times. *Id.* at 382. PAGA is one of the primary mechanisms by which the State enforces the Labor Code, *Id.* at 383, and PAGA claims are of such importance that they cannot be waived. *Id.* Accordingly, Plaintiff's PAGA claims are of significant importance to the State and are therefore not preempted by the *Garmon* guidelines.

Moreover, the Court's resolution of Plaintiff's PAGA claims will have no impact on national labor policy. To decide liability, this Court need not and will not decide if Google's Agreement and policies prohibit employees from engaging in protected concerted activities under the NLRA. Rather, this Court will instead decide if Google's Agreement and policies constitute an illegal restraint of trade, an illegal prohibition on whistleblowing, and an illegal prohibition on speech – all in violation of California law and PAGA. The PAGA complaint raises different controversies than any facing the NLRB, and the NLRB has no jurisdiction to address the claims made in Plaintiff's Complaint. This Court does, and it must assert jurisdiction to ensure that these laws are enforced. Otherwise, the State and Google's aggrieved employees will have no remedy and Google's unlawful acts will continue unabated.

C. Regardless of Its Determination as to *Garmon* Preemption for Rank-and-File Employees, There Is No Preemption for Managers, Supervisors, and Former Employees

Finally, regardless of any preemption issue as to rank-and-file employees, the NLRB does not apply to managers, supervisors or former employees. Instead, state law applies. *Knopf v. Producers Guild of America, Inc.* (1974) 40 Cal.App.3d 233, 245 ("By the exclusion of supervisory employees . . . from the federal act, the field as to them was left open to state control."); *Grant-Burton v. Covenant Care, supra,* 99 Cal.App.4th 1361; *NLRB v. Fansteel Metallurgical Corp.* (1939) 306 U.S. 240, 255 (holding that, in the normal course, the NLRB does not apply to former employees). Accordingly, the PAGA claims must proceed, at a

minimum, to the extent it relates to managers, supervisors, and former employees.

D. Plaintiff Has Adequately Pled a Violation of Labor Code § 1102.5(a)

As noted above, Google's Agreement and policies prohibit all whistleblowing, including whistleblowing with respect to conduct that an employee has a reasonable cause to believe violates the law. (FAC ¶¶ 91, 94). Google, however, argues that to state a claim under Labor Code § 1102.5(a) through PAGA, Plaintiff must identify specific instances where an employee declined to blow the whistle when he had reasonable cause to believe that a violation of the law occurred. Google misses the point. Labor Code § 1102.5(a) prohibits an employer from, among other things, adopting any rule or policy that prevents employees from blowing the whistle on reasonably believed violations of the law. Plaintiff alleges that Google has adopted such a rule or policy, and that this is policy and rule is reflected in the agreements, policies, corporate statements, and training manuals discussed above. Plaintiff does not need to "name" the policy or rule to allege its existence. And Plaintiff need not identify all the specific instances where the policy or rule was enforced. It is the very fact of the policy or rule that violates Labor Code § 1102.5(a) and PAGA.

IV. CONCLUSION

For all the reason stated above, Google's demurrer should be denied in its entirety. To the extent the Court grants all or part of Google's demurrer, Plaintiff requests leave to amend to address the Court's concerns. As noted in Plaintiff's declaration concerning the meet and confer over Google's demurrer, Plaintiff is also entitled to amend his Complaint as a matter of right, and Plaintiff intends to do so by adding additional parties and claims under PAGA upon the exhaustion of applicable administrative requirements.

DATED: March 13, 2017

BAKER CURTIS & SCHWARTZ, P.C.

By: _____
Chris Baker
Attorneys for Plaintiff
JOHN DOE

Exhibit 3

302992

[redacted]

July 14th, 2014

Re: **Offer of Employment – Contingencies and Conditions**

Dear [redacted]

On behalf of Google Inc. ("Google" or the "Company"), I am pleased to set forth below the terms and conditions of your "Offer of Employment" with Google, pending the closing of the Agreement and Plan of Merger by and among Google, Dropcam, Inc. ("Dropcam") and certain other parties thereto, which was executed in June 2014 (the "Merger Agreement"). Your Offer of Employment with Google will be effective from and after the day following the closing of the transactions contemplated by the Merger Agreement (the "Closing," the date upon which the Closing occurs being referred to herein as the "Closing Date"), subject to you signing the enclosed At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement. PLEASE NOTE THAT THIS OFFER OF EMPLOYMENT AND THE AT-WILL EMPLOYMENT, CONFIDENTIAL INFORMATION, INVENTION ASSIGNMENT AND ARBITRATION AGREEMENT WILL BE NULL AND VOID AND OF NO FORCE AND EFFECT IF THE CLOSING DOES NOT OCCUR AND THE MERGER AGREEMENT IS TERMINATED.

This Offer of Employment, together with the At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement, is the complete agreement regarding the terms and conditions discussed herein and will supersede and replace any prior agreements between you and Google and/or you and Dropcam with respect to or in connection with your employment with Google and/or Dropcam (written or verbal) ("Prior Agreements"). By accepting this Offer of Employment with Google, you acknowledge and agree that provided the Closing occurs, upon the Closing Date, any Prior Agreements will be null and void and you will no longer be eligible for any benefits or payments, to the extent provided therein.

Position, Salary and Bonus Target

I am pleased to offer you the position listed below. You will receive an annual salary listed below, which will be paid biweekly. You are eligible to participate in the Company bonus program; your annual bonus target will be the below percentage of your annual salary. If at any point in your employment, your position/level changes, your annual bonus target may change. Bonuses under the Company bonus program are discretionary. The actual bonus amount could be larger or smaller than this amount, based on your performance and the performance of the Company. Whether a bonus will be awarded in a particular bonus period, and in what amount, is within Google's sole discretion. Please note that both your salary and bonus eligibility are subject to periodic review and may be modified in Google's discretion.

Title: Product Manager
Salary: $[redacted]
Annual Bonus Target: [redacted]%

Stay Bonus

Contingent on the Closing, you will be eligible to receive a special retention bonus (the "Stay Bonus") in an aggregate amount of the amount listed below (the "Stay Bonus Target Amount"). Your Stay Bonus will vest according to the following schedule (each indicated anniversary of the Closing Date, a "vesting date"), subject to your continued employment with Google through each of the applicable vesting dates.

Stay Bonus Amount: [redacted]

Vesting Date	Stay Bonus Payment
6 Month Anniversary Of Closing Date	[redacted]
12 Month Anniversary Of Closing Date	[redacted]
18 Month Anniversary Of Closing Date	[redacted]
24 Month Anniversary Of Closing Date	[redacted]
30 Month Anniversary Of Closing Date	[redacted]
36 Month Anniversary Of Closing Date	[redacted]

For the avoidance of doubt, upon your termination of employment with Google, as of the date of such termination of employment you shall cease to have any rights with respect to any unpaid portion of the Stay Bonus and all of Google's obligations in respect of any such unpaid Stay Bonus shall be extinguished. In addition, payment of each installment will be subject to (a) through each applicable vesting date, you remaining in Good Standing, defined as performing at a level determined by Google to consistently meet expectations or better and (b) through each applicable vesting date, you have not breached your At-Will Employment, Confidential Information and Invention Assignment Agreement. In addition, each installment will be subject to proration in the event that you work a reduced schedule prior to the applicable vesting date. Further, if you take a leave of absence for a period exceeding ninety (90)-days in which you are not actively performing services for Google (which does not otherwise qualify as a "separation from service" under Section 409A of the Code) at any point during the 4 year period immediately following the Closing Date, any Stay Bonus payment(s) payable to you in accordance with the terms and conditions set forth above following any such leave of absence shall be paid as set forth above, but depending on the nature of such leave, either (i) reduced on a pro-rata basis for non-statutory leaves or (ii) tolled with respect to vesting for statutory leaves, in either case, to reflect such period of inactive service in excess of ninety (90) days due to the leave, except as otherwise required by applicable law with respect to a leave of absence for mandatory military service.

New Hire Equity Grant

Upon approval by the Board of Directors of Google (or its designee) (the "Board"), you will be granted the following Google Stock Units ("GSUs") as a new hire grant (hereafter referred to as "New Hire GSUs").

Google Stock Units: 450

Vesting Schedule: Your New Hire GSUs first will vest 25% on the 25th day of the month following the one (1) year anniversary of the Closing Date.

Thereafter your New Hire GSUs will vest 1/48th monthly on the 25th of the month until fully vested.

At the time of vest, the vested number of New Hire GSUs will convert to Google common shares. If the US financial markets are closed on a vesting date, the shares will vest on the next trading day.

This award and all future equity awards are contingent and issued only upon approval by the Board, and are subject to the terms and conditions of applicable plan documents and award agreements. Vesting in GSUs is contingent on continued employment on the applicable vesting dates. Your grant will be made as soon as it is approved by the Board, which we expect to be within thirty (30) days of Closing Date. Further details on the GSUs will be available to you shortly after the Closing occurs. Please be aware that this program and subsequent processes could be changed at any time, at the discretion of the Board.

Benefits

As a regular full-time employee you will be eligible for various benefits offered to similarly-situated Google employees in accordance with the terms of Google's policies and benefit plans. Among other things, these benefits currently include medical and dental insurance, life insurance, and a 401(k) retirement plan. You will be automatically enrolled in the pre-tax 401(k) plan at 10% into the Vanguard Target Retirement Trust I ®, which is a portfolio of stocks and bonds that gradually becomes more conservative as your year of retirement approaches. You will be able to change your deferral amount and fund allocation upon your hire. The eligibility requirements and other information regarding these benefits are set forth in more detailed documents that are available from Google. For purposes of determining your eligibility to participate in, and your level of benefits under, Google's welfare benefit programs and policies, you will receive credit for your prior service with Dropcam. For the avoidance of doubt, you will receive no such prior service credit for any purpose under Google's equity or annual incentive plans or programs, or any of Google's defined benefit pension plans. In addition, no credit shall be given where such credit would result in duplication of benefits for the same period of service. With the exception of the "employment at-will" policy discussed herein, Google may, from time to time in its sole discretion, modify or eliminate its policies and the benefits offered to employees.

Confidential and Proprietary Information

You are being offered employment at Google based on your personal skills and experience, and not due to your knowledge of any confidential, proprietary or trade secret information of a prior or current employer, except for the confidential, proprietary or trade secret information of Dropcam. Should you accept this offer, we do not want you to make use of or disclose any such information or to retain or disclose any materials from a prior or current employer. However, the foregoing is not intended to preclude your use of Dropcam's proprietary information during your employment with Google for Company-related work. Likewise, as an employee of Google, it is likely that you will become knowledgeable about confidential, trade secret and/or proprietary information related to the operations, products and services of Google and its clients. To protect the interests of both Google and its clients, all employees are required to read and sign the enclosed At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement as a condition of employment with Google. Please sign and deliver it to us along with this Offer of Employment.

Insider Trading

Google has a strict policy against insider trading, which prohibits, among other things, employees, contractors and temporary workers from trading Google stock during certain time periods and engaging in any derivative transactions in Google stock. It will be your responsibility to educate yourself regarding Google's insider trading policies and to ensure you are in full compliance. If you have any questions about Google's policy against insider trading, please contact Human Resources.

Arbitration

All disputes in connection with any matter based upon or arising out of this Offer of Employment or the matters contemplated herein shall be governed by the arbitration provisions of your At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement.

Miscellaneous

If an export control license is required in connection with your employment, this offer is further contingent upon Google's receipt of the export control license and any similar approvals. Your employment with Google will commence following receipt of such export control license and governmental approvals; and is conditioned upon your (a) maintaining your employment with Google, and (b) continued compliance with all conditions and limitations contained in such a license. If for any reason such export control license and governmental approvals cannot be obtained within six (6) months from your date of signature, this offer will automatically terminate and have no force and effect.

Please understand that this letter does not constitute a contract of employment for any specific period of time, but will create an "employment at-will" relationship. This means that the employment relationship may be terminated with or without cause and with or without notice at any time by you or Google. No individual other than the Chief Executive Officer of Google has the authority to enter into any agreement for employment for a specified period of time or to make any agreement or representation contrary to Google's policy of employment at-will. Any such agreement or representation must be in writing and must be signed by you and the Chief Executive Officer. Your signature at the end of this letter confirms that no promises or agreements that are contrary to our at-will relationship have been committed to you during any of your pre-employment discussions with Google, and that this letter, along with the At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement, contain our complete agreement regarding the terms and conditions of your employment.

We look forward to an early acceptance of this offer. This offer will remain open until 5:00 p.m. Pacific Time on Thursday, July 17, 2014. Orientation details will be provided after the Closing Date. Additionally, this offer and your employment are contingent upon satisfactory results from your background check and reference checks. To indicate your acceptance of Google's offer, please electronically sign and date the offer letter and the At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement copy at the URL link provided in the email.
Orientation will be held at a location which will be communicated to you after the Closing Date.

In order for Google to comply with the Immigration Reform and Control Act, your employment with Google is contingent on your eligibility to work in the United States. Accordingly, please bring appropriate verification or authorization to work in the United States (e.g., US Passport or Driver's License and Social Security Card) on your first day.

We look forward to working with you.

Sincerely,

Chris M. Pennington
Director, People Operations
Google Inc.

[redacted]

Jul 16, 2014
Date

GOOGLE INC.

AT-WILL EMPLOYMENT, CONFIDENTIAL INFORMATION, INVENTION ASSIGNMENT AND ARBITRATION AGREEMENT

As a condition of my employment with Google Inc., its subsidiaries, affiliates, successors or assigns, including, without limitation, Dropcam, Inc. ("Dropcam"), its affiliates and subsidiaries (together "Google"), and in consideration of my receipt of confidential information, my employment with Google, and my receipt of any compensation Google is paying to me, I agree to the following terms of this At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (this "Agreement"):

1. **At-Will Employment**. MY EMPLOYMENT WITH GOOGLE IS FOR AN UNDEFINED DURATION AND IS AT-WILL EMPLOYMENT, WHICH MEANS IT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT CAUSE OR NOTICE. NO REPRESENTATION TO THE CONTRARY IS AUTHORIZED OR VALID UNLESS MADE IN WRITING AND SIGNED BY THE CHIEF EXECUTIVE OFFICER OF GOOGLE INC.

2. **Confidential Information**.

(a) *Definition of Google Confidential Information*. "Google Confidential Information" means, without limitation, any information in any form that relates to Google or Google's business and that is not generally known. Examples include Google's non-public information that relates to its actual or anticipated business, products or services, research, development, technical data, customers, customer lists, markets, software, hardware, finances, employee data and evaluation, trade secrets or know-how, intellectual property rights, including but not limited to, Assigned Inventions (as defined below), unpublished or pending patent applications and all related patent rights, and user data (i.e., any information directly or indirectly collected by Google from users of its services). Google Confidential Information also includes any information of third parties (e.g., Google's advertisers, collaborators, subscribers, customers, suppliers, partners, vendors, partners, licensees or licensors) that was provided to Google on a confidential basis. Google Confidential Information does not include any items that have become publicly known through no wrongful act of mine or others under a relevant confidentiality obligation. Nothing in this Agreement is intended to limit employees' rights to discuss the terms, wages, and working conditions of their employment, as protected by applicable law.

(b) *Nonuse and Nondisclosure*. During and after my employment with Google, I will hold in the strictest confidence and take all reasonable precautions to prevent any unauthorized use or disclosure of Google Confidential Information (whether disclosed to me in anticipation of or during my employment by Google), and I will not (i) use Google Confidential Information for any purpose other than for the benefit of Google in the scope of my employment, or (ii) disclose Google Confidential Information to any third party without the prior written authorization. I agree that all Google Confidential Information that I use or generate in connection with my employment belongs to Google (or third parties identified by Google). I understand that my unauthorized use or disclosure of Google Confidential Information during my employment or after my employment may lead to disciplinary action, up to and including termination and/or legal action.

(c) *Former Employer Information / Definition of Google Property*. I will not use or disclose in connection with my employment with Google or bring onto Google's electronic or physical property, facilities, or systems (collectively, "Google Property") any proprietary information, trade secrets, or any non-public material belonging to any previous employer or other person or entity unless consented to in writing by such employer, person, or entity. The foregoing is not intended to preclude my use of Dropcam's proprietary information or trade secrets during my employment with the Company for Company-related work.

3. **Inventions**.

(a) *Definition of Inventions*. "Inventions" includes inventions, designs, developments, ideas, concepts, techniques, devices, discoveries, formulae, processes, improvements, writings, records, original works of authorship, trademarks, trade secrets, all related know-how, and any other intellectual property, whether or not patentable or registrable under patent, copyright, or similar laws.

(b) *Assignment of Inventions*. Except as provided in Section 3(f) below, Google Inc. will own all Inventions that I invented, developed, reduced to practice, or otherwise contributed to, solely or jointly with others, during my employment with Google (including during my off-duty hours) or with the use of Google's equipment, supplies, facilities, or Google Confidential Information, and any intellectual property rights in the Inventions (the "Assigned Inventions"). I will promptly disclose in writing to Google any Assigned Inventions and assign to Google my rights in any Assigned Inventions. I hereby irrevocably assign to Google Inc. my rights in all Assigned Inventions, and convey to Google Inc. ownership of any Assigned Inventions not yet in existence. All works of authorship made by me (solely or jointly with others) within the scope of and during my employment with Google are "works made for hire" as defined in the United States Copyright Act. The decision whether or not to commercialize or market any Assigned Inventions is within Google's sole discretion and for Google's sole benefit, and that I will not claim any consideration as a result of Google's commercialization of any such Inventions.

(c) *Prior Inventions*. I list in Exhibit A all Inventions that I solely or jointly made before my employment with Google (inclusive of my tenure with Dropcam) (collectively, "Prior Inventions") and that I am not assigning to Google. I will not incorporate any Prior Inventions into any Assigned Inventions, product, or service of Google or otherwise use any Prior Inventions in the course of my employment with Google without its prior written permission. If I incorporate (or have incorporated) a Prior Invention into any Assigned Inventions, product, or service of Google, I hereby grant to Google a royalty-free, irrevocable, perpetual, transferable worldwide license (with the right to sublicense) to make, have made, use, import, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Prior Invention.

(d) *Maintenance of Records*. I agree to keep and maintain for Google detailed and accurate written records in any format that it may specify of all Assigned Inventions that I make (solely or jointly with others) for Google. The records are and remain the sole property of Google.

(e) *Securing Intellectual Property Rights*. I agree to assist Google (or its designee) at Google's expense to assign, secure, and enforce all intellectual property rights in any Assigned Inventions in any and all countries, disclose to Google of all pertinent information and data, and sign any document that Google reasonably deems necessary. If Google is unable for any reason to secure my signature to any document required to assign, secure, and enforce any intellectual property rights in any Assigned Inventions, then I hereby irrevocably designate and appoint Google and its officers and agents as my agents and attorneys in fact to execute any documents on my behalf for this purpose. This power of attorney will be considered coupled with an interest and will be irrevocable. My obligations under this Section 3(e) will continue after the termination of my employment with Google.

(f) *Exception to Assignments*. The provisions of this Agreement requiring disclosure and assignment of Inventions to Google do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as Exhibit B). While employed, I will advise Google promptly in writing of any inventions that I believe meet the criteria in California Labor Code Section 2870 and that I have not disclosed on Exhibit A for a confidential ownership determination.

4. Conflicting Employment.

(a) *Other Employment or Activities*. During my employment with Google, I will not engage in any other employment or other activities or services directly related to the business in which Google is now involved, becomes involved, or has plans to become involved or that conflict with my obligations to Google without seeking and receiving permission in advance from Google's Ethics and Compliance team.

(b) *Prior Agreements with Other Parties*. My performance of all the terms of this Agreement and my duties as an employee of Google will not breach any invention assignment, proprietary information, confidentiality, or similar agreement with any former employer or other party.

5. Return of Google Property and Information.

(a) *Return of Google Property*. Immediately upon termination of my employment with Google, I agree to deliver to Google and will not keep, recreate, or deliver to any other person or entity any documents and materials pertaining to my work with Google or containing any Google Confidential Information. I agree to deliver promptly all Google Property, as applicable, in my possession or control. I agree, upon Google's request, to sign a document that I have fulfilled my responsibilities under this Agreement.

(b) *Return of Google Information*. Upon termination of my employment, I will make a prompt and reasonable search for any Google Confidential Information in my possession or control. If I locate such information I will notify Google and provide a computer-useable copy of it. I will cooperate reasonably with Google to verify that the necessary copying is completed, and, when Google confirms compliance, I will delete fully all Google Confidential Information.

(c) *Compliance*. I have no reasonable expectation of privacy in any Google Property or in any other documents, equipment, or systems used to conduct the business of Google. Google may audit and search any Google Property or such documents, equipment, or systems without further notice to me for any business-related purpose at Google's reasonable discretion. I will provide Google with access to any documents, equipment, or systems used to conduct the business of Google immediately upon request. I consent to Google taking reasonable steps to prevent unauthorized access to Google Property and Google information. I understand that I am not permitted to add any unauthorized applications or any applications that I do not have a license or authorization for use to any Google Property, and that I will refrain from copying any software that I do not have a license or authorization to use or using such software or websites that I do not have a license or authorization to use on Google Property. It is my responsibility to comply with Google's policies governing use of Google Property.

6. Notification. If my employment with Google ends, I consent to Google notifying my new employer or any third party about my obligations under this Agreement.

7. Solicitation of Employees. To the fullest extent permitted under applicable law, during my employment with Google and for twelve months immediately following its termination for any reason, whether voluntary or involuntary, with or without cause, I will not directly or indirectly solicit any of Google's employees to leave their employment.

8. Export Statement of Assurance. In the course of my employment, Google may release to me items (including software, technology, systems, equipment, and components) subject to the Export Administration Regulations ("EAR") or the International Traffic in Arms Regulations ("ITAR"). I certify that I will not export, re-export, or release these items in violation of the EAR or ITAR and I will not disclose/export/re-export these items to any person other than as required in the scope of my employment with Google. If I have any question regarding this Section 8, I immediately will contact the Legal Services Department before taking any actions.

9. Code of Conduct. I have read Google's Code of Conduct, which is available on the "Investor Relations" page of Google's public website. I agree to comply with the terms of the Code of Conduct and report any violations of the Code of Conduct.

10. Employee Handbook. Google's Employee Handbook consists of "Core" policies listed in a table of contents on Google's "Employee Handbook" internal website, and that those policies incorporate by reference supplemental policies. Within ten days of

my start date at Google, I will read the "Core" policies within Google's Employee Handbook, and comply with its policies, including supplemental policies, as they may be revised from time to time.

11. Use of Images. During my employment, Google or its agents may obtain images of me for subsequent use in materials. My name may or may not be included along with such images. I grant Google permission for such use of my images, both during and after my employment, and I understand that I will not receive any royalties or other compensation for this use.

12. Arbitration and Equitable Relief

(a) Arbitration. IN CONSIDERATION OF MY EMPLOYMENT WITH GOOGLE, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES, AND MY RECEIPT OF THE COMPENSATION, PAY RAISES AND OTHER BENEFITS PAID TO ME BY GOOGLE, I AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH ANYONE (INCLUDING GOOGLE AND ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER OR BENEFIT PLAN OF GOOGLE IN THEIR CAPACITY AS SUCH OR OTHERWISE), ARISING OUT OF, RELATING TO, OR RESULTING FROM MY EMPLOYMENT WITH GOOGLE OR THE TERMINATION OF MY EMPLOYMENT WITH GOOGLE, INCLUDING ANY BREACH OF THIS AGREEMENT, WILL BE SUBJECT TO BINDING ARBITRATION UNDER THE ARBITRATION RULES SET FORTH IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1280 THROUGH 1294.2, INCLUDING SECTION 1283.05 (THE "RULES"), WHICH ARE AVAILABLE ON THE "CALIFORNIA LAW" PAGE OF THE "CALIFORNIA LEGISLATIVE INFORMATION" PUBLIC WEBSITE. I AGREE THAT I MAY ONLY COMMENCE AN ACTION IN ARBITRATION, OR ASSERT COUNTERCLAIMS IN AN ARBITRATION, ON AN INDIVIDUAL BASIS AND, THUS, I HEREBY WAIVE MY RIGHT TO COMMENCE OR PARTICIPATE IN ANY CLASS OR COLLECTIVE ACTION(S) AGAINST GOOGLE, TO THE FULLEST EXTENT PERMITTED BY LAW. DISPUTES THAT I AGREE TO ARBITRATE, AND THEREBY AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY, INCLUDE ANY STATUTORY CLAIMS UNDER LOCAL, STATE, OR FEDERAL LAW, INCLUDING CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE SARBANES-OXLEY ACT, THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT, THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, THE FAMILY AND MEDICAL LEAVE ACT, THE FAIR LABOR STANDARDS ACT, THE CALIFORNIA FAMILY RIGHTS ACT, THE CALIFORNIA LABOR CODE, CLAIMS OF HARASSMENT, DISCRIMINATION, WRONGFUL TERMINATION AND ANY OTHER CONTRACTUAL, TORT OR STATUTORY CLAIMS UNDER FEDERAL, CALIFORNIA AND LOCAL LAWS, TO THE EXTENT ALLOWED BY LAW. I UNDERSTAND THAT THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY DISPUTES THAT GOOGLE MAY HAVE WITH ME.

(b) Procedure. I AGREE THAT ANY ARBITRATION WILL BE ADMINISTERED BY JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS"), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (THE "JAMS RULES"), WHICH ARE AVAILABLE ON THE "RULES/CLAUSES" PAGE OF JAMS' PUBLIC WEBSITE, AND NO OTHER RULES FROM JAMS. I AGREE THAT THE ARBITRATOR WILL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, INCLUDING MOTIONS FOR SUMMARY JUDGMENT AND/OR ADJUDICATION, MOTIONS TO DISMISS OR TO STRIKE, DEMURRERS, AND MOTIONS FOR CLASS CERTIFICATION, PRIOR TO ANY ARBITRATION HEARING. I ALSO AGREE THAT THE ARBITRATOR WILL HAVE THE POWER TO AWARD ANY REMEDIES AVAILABLE UNDER APPLICABLE LAW, INCLUDING INJUNCTIVE RELIEF, AND THAT THE ARBITRATOR WILL AWARD ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY, EXCEPT AS PROHIBITED BY LAW. I AGREE THAT THE DECREE OR AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED AS A FINAL AND BINDING JUDGMENT IN ANY COURT HAVING JURISDICTION THEREOF. I UNDERSTAND THAT GOOGLE WILL PAY FOR ANY ADMINISTRATIVE OR HEARING FEES CHARGED BY THE ARBITRATOR OR JAMS EXCEPT THAT I WILL PAY ANY FILING FEES ASSOCIATED WITH ANY ARBITRATION THAT I INITIATE, BUT ONLY SO MUCH OF THE FILING FEES AS I WOULD HAVE INSTEAD PAID HAD I FILED A COMPLAINT IN A COURT OF LAW. I AGREE THAT THE ARBITRATOR WILL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH CALIFORNIA LAW, INCLUDING THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND THAT THE ARBITRATOR WILL APPLY SUBSTANTIVE AND PROCEDURAL CALIFORNIA LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO RULES OF CONFLICT OF LAW. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH CALIFORNIA LAW, CALIFORNIA LAW WILL TAKE PRECEDENCE. I AGREE THAT THE DECISION OF THE ARBITRATOR WILL BE IN WRITING. I AGREE THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL BE HELD IN SANTA CLARA COUNTY, CALIFORNIA.

(c) Remedy. EXCEPT AS PROVIDED BY THE RULES AND THIS AGREEMENT, ARBITRATION WILL BE THE SOLE, EXCLUSIVE, AND FINAL REMEDY FOR ANY DISPUTE BETWEEN ME AND GOOGLE. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THE RULES AND THIS AGREEMENT, NEITHER I NOR GOOGLE WILL BE PERMITTED TO PURSUE COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION. NOTWITHSTANDING, THE ARBITRATOR WILL NOT HAVE THE AUTHORITY TO DISREGARD OR REFUSE TO ENFORCE ANY LAWFUL GOOGLE POLICY, AND THE ARBITRATOR WILL NOT ORDER OR REQUIRE GOOGLE TO ADOPT A POLICY NOT OTHERWISE REQUIRED BY LAW. NOTHING IN THIS AGREEMENT OR IN THIS PROVISION IS INTENDED TO WAIVE THE PROVISIONAL RELIEF REMEDIES AVAILABLE UNDER THE RULES.

(d) Administrative Relief. I UNDERSTAND THAT THIS AGREEMENT DOES NOT PROHIBIT ME FROM PURSUING AN ADMINISTRATIVE CLAIM WITH A LOCAL, STATE OR FEDERAL ADMINISTRATIVE BODY SUCH AS THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE NATIONAL LABOR RELATIONS BOARD, OR THE WORKERS' COMPENSATION BOARD. THIS AGREEMENT DOES, HOWEVER, PRECLUDE ME FROM PURSUING COURT ACTION REGARDING ANY SUCH CLAIM.

(e) Voluntary Nature of Agreement. I ACKNOWLEDGE AND AGREE THAT I AM EXECUTING THIS AGREEMENT VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE BY GOOGLE OR ANYONE ELSE. I ACKNOWLEDGE

AND AGREE THAT I HAVE CAREFULLY READ THIS AGREEMENT AND THAT I HAVE ASKED ANY QUESTIONS NEEDED FOR ME TO UNDERSTAND ITS TERMS, CONSEQUENCES, AND BINDING EFFECT. I RECOGNIZE THAT ***I AM WAIVING MY RIGHT TO A JURY TRIAL***. I AGREE THAT I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF MY CHOICE BEFORE SIGNING THIS AGREEMENT.

(f) *Arbitration Clause, Governing Law*. THIS ARBITRATION CLAUSE IS ENTERED PURSUANT TO AND GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. SECTION 1, ET SEQ.), BUT IN ALL OTHER RESPECTS THIS AGREEMENT IS GOVERNED BY THE LAWS OF CALIFORNIA.

13. General Provisions

(a) *Governing Law; Consent to Personal Jurisdiction*. Except as provided in Section 12(f), this Agreement will be governed by the laws of the State of California except for its choice of law rules. If any lawsuit is permitted under or related to this Agreement or my employment, I consent to the exclusive personal jurisdiction and venue of the state and federal courts located in California.

(b) *Entire Agreement*. This Agreement, together with its Exhibits, and any executed written offer letter between Google and me, are the entire agreement between Google and me relating to my employment and any related matters and supersede all prior written and oral agreements, discussions, or representations. If there are conflicts between this Agreement and the offer letter, this Agreement will control. No change to this Agreement, other than amendments to Sections 3 and 4 relating to personal open-source projects in a format prepared by Google, will be effective unless in writing signed by Google Inc.'s Chief Executive Officer. Any change or changes in my duties, salary, or compensation will not affect the validity or scope of this Agreement.

(c) *Severability*. If one or more of the provisions in this Agreement are deemed void, the remaining provisions will continue in full force and effect.

(d) *Successors and Assigns*. This Agreement will be binding upon my heirs, executors, assigns, administrators, and other legal representatives and will be for the benefit of Google, its successors, and its assigns. Google may assign this Agreement to anyone at any time without my consent. There are no intended third-party beneficiaries to this Agreement.

(e) *Waiver*. Waiver by Google of a breach of any provision of this Agreement will not waive its right to take action based on any other breach.

(f) *Survivorship*. The rights and obligations of the parties to this Agreement will survive termination of my employment with Google.

Date: Jul 16, 2014

Signature

Name of Employee (typed or printed)

Google™

David Gudeman
dave.gudeman@gmail.com

October 8, 2013

THIS OFFER SUPERSEDES AND REPLACES ANY PRIOR VERSIONS

Dear David,

On behalf of Google Inc., I am pleased to offer you the exempt position of Software Engineer. You will receive an annual salary of [redacted], which will be paid biweekly. You are eligible to participate in the company discretionary bonus plan; your annual bonus target will be 15% of the median annualized salary for your peer group (as determined by Google). The actual bonus amount could be larger or smaller than this amount, based on your performance, and the performance of the company. The exact bonus amount is at the sole discretion of Google. Both your base salary and the components of your bonus are subject to periodic review.

Additionally, Google will pay you a one-time Sign-On Bonus of [redacted], less applicable deductions and tax withholding, within thirty (30) days following your start date at Google. Should your employment with Google end within your first twelve months of employment, you will be required to repay the Sign-On Bonus on a prorated basis. In addition, within thirty days following the completion of your first year of full time employment with us, Google will pay you an additional Sign-On Bonus o[redacted], less applicable deductions and tax withholding. Should your employment with Google end within your second twelve months of employment, you will be required to repay the additional Sign-On Bonus on a prorated basis. We encourage you to consult a tax professional for information on all current IRS reporting requirements.

Upon Approval by our Board of Directors, you will be granted [redacted] Google Stock Units (GSUs). Your GSUs will first vest 25% on the 25th day of the month following your 1 year anniversary of hire. Thereafter your GSUs will vest 1/48th monthly on the 25th of the month until fully vested. At the time of vest, the vested number of GSUs will convert to Google common shares. If the US financial markets are closed on a vesting date, shares will vest on the next trading day.

This award and all future equity awards are contingent and issued only upon approval by the Board, and are subject to the terms and conditions of applicable plan documents and award agreements. Vesting in GSUs is contingent on continued employment on the applicable vesting dates. Further details on the GSUs will be available to you shortly after your start date. Please be aware that this program and subsequent processes could be changed at any time, at the discretion of the Board.

In addition, as a regular full-time employee you will be eligible for various benefits offered to similarly-situated Google employees in accordance with the terms of Google's policies and benefit plans. Among other things, these benefits currently include medical and dental insurance, life insurance, and a 401(k) retirement plan. You will be automatically enrolled in the pre-tax 401(k) plan at 10% into the VanguardTarget Retirement Trust I ®which is a portfolio of stocks and bonds that gradually becomes more conservative as your year of retirement approaches. You will be able to change your deferral amount and fund allocation upon your hire. The eligibility requirements and other information regarding these benefits are set forth in more detailed documents that are available from Google. With the exception of the "employment at-will" policy discussed herein, Google may, from time to time in its sole discretion, modify or eliminate its policies and the benefits offered to employees.

You are being offered employment at Google based on your personal skills and experience, and not due to your knowledge of any confidential, proprietary or trade secret information of a prior or current employer or an entity, such as a university or college. Should you accept this offer, we do not want you to make use of or disclose any such information or to retain or disclose any materials from a prior or current employer. Likewise, as an employee of Google, it is likely that you will become knowledgeable about confidential, trade secret and/or proprietary information related to the operations, products and services of Google and its clients. To protect the interests of both Google and its clients, all employees are required to read and sign the enclosed At Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement as a condition of employment with Google. This Agreement, which provides for arbitration of all disputes arising out of your employment, is enclosed for your review; you will be required to sign it on your first day of employment.

Google has a strict policy against insider trading, which prohibits, among other things, employees, contractors and temporary workers from trading Google stock during certain time periods and engaging in any derivative transactions in Google stock. It will be your responsibility to educate yourself regarding Google's insider trading policies and to ensure you are in full compliance. If you have any questions about Google's policy against insider trading, please contact Human Resources.

If an export control license is required in connection with your employment, this offer is further contingent upon Google's receipt of the export control license and any similar approvals. Your employment with Google will commence following receipt of such export control license and governmental approvals; and is conditioned upon your (a) maintaining your employment with Google, and (b) continued compliance with all conditions and limitations contained in such a license. If for any reason such export control license and governmental approvals cannot be obtained within six (6) months from your date of signature, this offer will automatically terminate and have no force and effect.

Please understand that this letter does not constitute a contract of employment for any specific period of time, but will create an

"employment at-will" relationship. This means that the employment relationship may be terminated with or without cause and with or without notice at any time by you or Google. No individual other than the Chief Executive Officer of Google has the authority to enter into any agreement for employment for a specified period of time or to make any agreement or representation contrary to Google's policy of employment at-will. Any such agreement or representation must be in writing and must be signed by the Chief Executive Officer. Your signature at the end of this letter confirms that no promises or agreements that are contrary to our at-will relationship have been committed to you during any of your pre-employment discussions with Google, and that this letter, along with the At Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement, contain our complete agreement regarding the terms and conditions of your employment.

We look forward to an early acceptance of this offer. This offer will remain open for 1 (one) business days following your receipt of this letter and is contingent upon your start date no later than October, 2013. New Hire orientation is held every Monday (or Tuesday if Monday is a holiday). The number of spaces in each session is limited; please work with your recruiter to select an available start date that works for you.

Additionally, this offer and your employment are contingent upon satisfactory results from your background check and reference checks. To indicate your acceptance of Google's offer, please electronically sign and date the offer letter copy at the URL link provided in the email. A duplicate original is enclosed for your record. You will receive an email regarding your new hire orientation 5 days prior to your start date. If you do not receive this email by the Thursday prior to your start, please send an email to newhire-orientation@google.com for information. In order for Google to comply with the Immigration Reform and Control Act, your employment with Google is contingent on your eligibility to work in the United States. Accordingly, please bring appropriate verification or authorization to work in the United States (e.g. US Passport or Driver's License and Social Security Card) on your first day.

David, we look forward to working with you.

Sincerely,

Sridhar Ramaswamy
Senior Vice President of Ads & Commerce
Google Inc.

I accept this offer of employment with Google and agree to the terms and conditions outlined in this letter.

David Gudeman
David Gudeman (Oct 8, 2013)

David Gudeman	Oct 8, 2013	11/4/2013
	Date	Planned Start Date (Monday)

Google Inc.

AT-WILL EMPLOYMENT, CONFIDENTIAL INFORMATION, INVENTION ASSIGNMENT AND ARBITRATION AGREEMENT

As a condition of my employment with Google Inc., its subsidiaries, affiliates, successors or assigns (together "Google"), and in consideration of my receipt of confidential information, my employment with Google, and my receipt of any compensation Google is paying to me, I agree to the following terms of this At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (this "Agreement"):

1. At-Will Employment. MY EMPLOYMENT WITH GOOGLE IS FOR AN UNDEFINED DURATION AND IS AT-WILL EMPLOYMENT, WHICH MEANS IT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT CAUSE OR NOTICE. NO REPRESENTATION TO THE CONTRARY IS AUTHORIZED OR VALID UNLESS MADE IN WRITING AND SIGNED BY THE CHIEF EXECUTIVE OFFICER OF GOOGLE INC.

2. Confidential Information.

(a) *Definition of Google Confidential Information*. "Google Confidential Information" means, without limitation, any information in any form that relates to Google or Google's business and that is not generally known. Examples include Google's non-public information that relates to its actual or anticipated business, products or services, research, development, technical data, customers, customer lists, markets, software, hardware, finances, employee data and evaluation, trade secrets or know-how, intellectual property rights, including but not limited to, Assigned Inventions (as defined below), unpublished or pending patent applications and all related patent rights, and user data (i.e., any information directly or indirectly collected by Google from users of its services). Google Confidential Information also includes any information of third parties (e.g., Google's advertisers, collaborators, subscribers, customers, suppliers, partners, vendors, partners, licensees or licensors) that was provided to Google on a confidential basis. Google Confidential Information does not include any items that have become publicly known through no wrongful act of mine or others under a relevant confidentiality obligation. Nothing in this Agreement is intended to limit employees' rights to discuss the terms, wages, and working conditions of their employment, as protected by applicable law.

(b) *Nonuse and Nondisclosure*. During and after my employment with Google, I will hold in the strictest confidence and take all reasonable precautions to prevent any unauthorized use or disclosure of Google Confidential Information (whether disclosed to me in anticipation of or during my employment by Google), and I will not (i) use Google Confidential Information for any purpose other than for the benefit of Google in the scope of my employment, or (ii) disclose Google Confidential Information to any third party without the prior written authorization. I agree that all Google Confidential Information that I use or generate in connection with my employment belongs to Google (or third parties identified by Google). I understand that my unauthorized use or disclosure of Google Confidential Information during my employment or after my employment may lead to disciplinary action, up to and including termination and/or legal action.

(c) *Former Employer Information / Definition of Google Property*. I will not use or disclose in connection with my employment with Google or bring onto Google's electronic or physical property, facilities, or systems (collectively, "Google Property") any proprietary information, trade secrets, or any non-public material belonging to any previous employer or other person or entity unless consented to in writing by such employer, person, or entity.

3. Inventions

(a) *Definition of Inventions*. "Inventions" includes inventions, designs, developments, ideas, concepts, techniques, devices, discoveries, formulae, processes, improvements, writings, records, original works of

authorship, trademarks, trade secrets, all related know-how, and any other intellectual property, whether or not patentable or registrable under patent, copyright, or similar laws.

(b) *Assignment of Inventions*. Except as provided in Section 3(f) below, Google Inc. will own all Inventions that I invented, developed, reduced to practice, or otherwise contributed to, solely or jointly with others, during my employment with Google (including during my off-duty hours) or with the use of Google's equipment, supplies, facilities, or Google Confidential Information, and any intellectual property rights in the Inventions (the "Assigned Inventions"). I will promptly disclose in writing to Google any Assigned Inventions and assign to Google my rights in any Assigned Inventions. I hereby irrevocably assign to Google Inc. my rights in all Assigned Inventions, and convey to Google Inc. ownership of any Assigned Inventions not yet in existence. All works of authorship made by me (solely or jointly with others) within the scope of and during my employment with Google are "works made for hire" as defined in the United States Copyright Act. The decision whether or not to commercialize or market any Assigned Inventions is within Google's sole discretion and for Google's sole benefit, and that I will not claim any consideration as a result of Google's commercialization of any such Inventions.

(c) *Prior Inventions*. I list in Exhibit A all Inventions that I solely or jointly made before my employment with Google (collectively, "Prior Inventions") and that I am not assigning to Google. I will not incorporate any Prior Inventions into any Assigned Inventions, product, or service of Google or otherwise use any Prior Inventions in the course of my employment with Google without its prior written permission. If I incorporate (or have incorporated) a Prior Invention into any Assigned Inventions, product, or service of Google, I hereby grant to Google a royalty-free, irrevocable, perpetual, transferable worldwide license (with the right to sublicense) to make, have made, use, import, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Prior Invention.

(d) *Maintenance of Records*. I agree to keep and maintain for Google detailed and accurate written records in any format that it may specify of all Assigned Inventions that I make (solely or jointly with others) for Google. The records are and remain the sole property of Google.

(e) Securing Intellectual Property Rights. I agree to assist Google (or its designee) at Google's expense to assign, secure, and enforce all intellectual property rights in any Assigned Inventions in any and all countries, disclose to Google of all pertinent information and data, and sign any document that Google reasonably deems necessary. If Google is unable for any reason to secure my signature to any document required to assign, secure, and enforce any intellectual property rights in any Assigned Inventions, then I hereby irrevocably designate and appoint Google and its officers and agents as my agents and attorneys in fact to execute any documents on my behalf for this purpose. This power of attorney will be considered coupled with an interest and will be irrevocable. My obligations under this Section 3(e) will continue after the termination of my employment with Google.

(f) Exception to Assignments. The provisions of this Agreement requiring disclosure and assignment of Inventions to Google do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as Exhibit B). While employed, I will advise Google promptly in writing of any inventions that I believe meet the criteria in California Labor Code Section 2870 and that I have not disclosed on Exhibit A for a confidential ownership determination.

4. Conflicting Employment.

(a) *Other Employment or Activities*. During my employment with Google, I will not engage in any other employment or other activities or services directly related to the business in which Google is now involved, becomes involved, or has plans to become involved or that conflict with my obligations to Google without seeking and receiving permission in advance from Google's Ethics and Compliance team.

(b) *Prior Agreements with Other Parties*. My performance of all the terms of this Agreement and my duties as an employee of Google will not breach any invention assignment, proprietary information, confidentiality, or similar agreement with any former employer or other party.

5. Return of Google Property and Information.

(a) *Return of Google Property*. Immediately upon termination of my employment with Google, I agree to deliver to Google and will not keep, recreate, or deliver to any other person or entity any documents and materials pertaining to my work with Google or containing any Google Confidential Information. I agree to deliver promptly all Google Property, as applicable, in my possession or control. I agree, upon Google's request, to sign a document that I have fulfilled my responsibilities under this Agreement.

(b) *Return of Google Information*. Upon termination of my employment, I will make a prompt and reasonable search for any Google Confidential Information in my possession or control. If I locate such information I will notify Google and provide a computer-useable copy of it. I will cooperate reasonably with Google to verify that the necessary copying is completed, and, when Google confirms compliance, I will delete fully all Google Confidential Information.

(c) *Compliance*. I have no reasonable expectation of privacy in any Google Property or in any other documents, equipment, or systems used to conduct the business of Google. Google may audit and search any Google Property or such documents, equipment, or systems without further notice to me for any business-related purpose at Google's reasonable discretion. I will provide Google with access to any documents, equipment, or systems used to conduct the business of Google immediately upon request. I consent to Google taking reasonable steps to prevent unauthorized access to Google Property and Google information. I understand that I am not permitted to add any unauthorized applications or any applications that I do not have a license or authorization for use to any Google Property, and that I will refrain from copying any software that I do not have a license or authorization to use or using such software or websites that I do not have a license or authorization to use on Google Property. It is my responsibility to comply with Google's policies governing use of Google Property.

6. Notification. If my employment with Google ends, I consent to Google notifying my new employer or any third party about my obligations under this Agreement.

7. Solicitation of Employees. To the fullest extent permitted under applicable law, during my employment with Google and for twelve months immediately following its termination for any reason, whether voluntary or involuntary, with or without cause, I will not directly or indirectly solicit any of Google's employees to leave their employment.

8. Export Statement of Assurance. In the course of my employment, Google may release to me items (including software, technology, systems, equipment, and components) subject to the Export Administration Regulations ("EAR") or the International Traffic in Arms Regulations ("ITAR"). I certify that I will not export, re-export, or release these items in violation of the EAR or ITAR and I will not disclose/export/re-export these items to any person other than as required in the scope of my employment with Google. If I have any question regarding this Section 8, I immediately will contact the Legal Services Department before taking any actions.

9. Code of Conduct.. I have read Google's Code of Conduct, which is available on the "Investor Relations" page of Google's public website. I agree to comply with the terms of the Code of Conduct and report any violations of the Code of Conduct.

10. Employee Handbook. Google's Employee Handbook consists of "Core" policies listed in a table of contents on Google's " Employee Handbook" internal website, and that those policies incorporate by reference supplemental policies. Within ten days of signing this Agreement, I will read the "Core" policies within Google's Employee Handbook, and comply with its policies, including supplemental policies, as they may be revised from time to time.

11. Use of Images. During my employment, Google or its agents may obtain images of me for subsequent use in materials. My name may or may not be included along with such images. I grant Google permission for such use of my images, both during and after my employment, and I understand that I will not receive any royalties or other compensation for this use.

12. Arbitration and Equitable Relief

(a) *Arbitration*. IN CONSIDERATION OF MY EMPLOYMENT WITH GOOGLE, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES, AND MY RECEIPT OF THE COMPENSATION, PAY RAISES AND OTHER BENEFITS PAID TO ME BY GOOGLE, I AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH ANYONE (INCLUDING GOOGLE AND ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER OR BENEFIT PLAN OF GOOGLE IN THEIR CAPACITY AS SUCH OR OTHERWISE), ARISING OUT OF, RELATING TO, OR RESULTING FROM MY EMPLOYMENT WITH GOOGLE OR THE TERMINATION OF MY EMPLOYMENT WITH GOOGLE, INCLUDING ANY BREACH OF THIS AGREEMENT, WILL BE SUBJECT TO BINDING ARBITRATION UNDER THE ARBITRATION RULES SET FORTH IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1280 THROUGH 1294.2, INCLUDING SECTION 1283.05 (THE "RULES"), WHICH ARE AVAILABLE ON THE "CALIFORNIA LAW" PAGE OF "CALIFORNIA LEGISLATIVE INFORMATION" PUBLIC WEBSITE. I AGREE THAT I MAY ONLY COMMENCE AN ACTION IN ARBITRATION, OR ASSERT COUNTERCLAIMS IN AN ARBITRATION, ON AN INDIVIDUAL BASIS AND, THUS, I HEREBY WAIVE MY RIGHT TO COMMENCE OR PARTICIPATE IN ANY CLASS OR COLLECTIVE ACTION(S) AGAINST GOOGLE, TO THE FULLEST EXTENT PERMITTED BY LAW. DISPUTES THAT I AGREE TO ARBITRATE, AND THEREBY AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY, INCLUDE ANY STATUTORY CLAIMS UNDER LOCAL, STATE, OR FEDERAL LAW, INCLUDING CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE SARBANES-OXLEY ACT, THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT, THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, THE FAMILY AND MEDICAL LEAVE ACT, THE FAIR LABOR STANDARDS ACT, THE CALIFORNIA FAMILY RIGHTS ACT, THE CALIFORNIA LABOR CODE, CLAIMS OF HARASSMENT, DESCRIMINATION, WRONGFUL TERMINATION AND ANY OTHER CONTRACTUAL, TORT OR STATUTORY CLAIMS UNDER FEDERAL, CALIFORNIA AND LOCAL LAWS, TO THE EXTENT ALLOWED BY LAW. I UNDERSTAND THAT THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY DISPUTES THAT GOOGLE MAY HAVE WITH ME.

(b) *Procedure*. I AGREE THAT ANY ARBITRATION WILL BE ADMINISTERED BY JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS"), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (THE "JAMS RULES"), WHICH ARE AVAILABLE ON THE "RULES/CLAUSES" PAGE OF JAMS' PUBLIC WEBSITE, AND NO OTHER RULES FROM JAMS. I AGREE THAT THE ARBITRATOR WILL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, INCLUDING MOTIONS FOR SUMMARY JUDGMENT AND/OR ADJUDICATION, MOTIONS TO DISMISS OR TO STRIKE, DEMURRERS, AND MOTIONS FOR CLASS CERTIFICATION, PRIOR TO ANY ARBITRATION HEARING. I ALSO AGREE THAT THE ARBITRATOR WILL HAVE THE POWER TO AWARD ANY REMEDIES AVAILABLE UNDER APPLICABLE LAW, INCLUDING INJUNCTIVE RELIEF, AND THAT THE ARBITRATOR WILL AWARD ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY, EXCEPT AS PROHIBITED BY LAW. I AGREE THAT THE DECREE OR AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED AS A FINAL AND BINDING JUDGMENT IN ANY COURT HAVING JURISDICTION THEREOF. I UNDERSTAND THAT GOOGLE WILL PAY FOR ANY ADMINISTRATIVE OR HEARING FEES CHARGED BY THE ARBITRATOR OR JAMS EXCEPT THAT I WILL PAY ANY FILING FEES ASSOCIATED WITH ANY ARBITRATION THAT I INITIATE, BUT ONLY SO MUCH OF THE FILING FEES AS I WOULD HAVE INSTEAD PAID HAD I FILED A COMPLAINT IN A COURT OF LAW. I AGREE THAT THE ARBITRATOR WILL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH CALIFORNIA LAW, INCLUDING THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND THAT THE ARBITRATOR WILL APPLY SUBSTANTIVE AND PROCEDURAL CALIFORNIA LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO RULES OF CONFLICT OF LAW. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH CALIFORNIA LAW, CALIFORNIA LAW WILL TAKE PRECEDENCE. I AGREE THAT THE DECISION OF THE ARBITRATOR

WILL BE IN WRITING. I AGREE THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL BE HELD IN SANTA CLARA COUNTY, CALIFORNIA.

(c) *Remedy*. EXCEPT AS PROVIDED BY THE RULES AND THIS AGREEMENT, ARBITRATION WILL BE THE SOLE, EXCLUSIVE, AND FINAL REMEDY FOR ANY DISPUTE BETWEEN ME AND GOOGLE. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THE RULES AND THIS AGREEMENT, NEITHER I NOR GOOGLE WILL BE PERMITTED TO PURSUE COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION. NOTWITHSTANDING, THE ARBITRATOR WILL NOT HAVE THE AUTHORITY TO DISREGARD OR REFUSE TO ENFORCE ANY LAWFUL GOOGLE POLICY, AND THE ARBITRATOR WILL NOT ORDER OR REQUIRE GOOGLE TO ADOPT A POLICY NOT OTHERWISE REQUIRED BY LAW. NOTHING IN THIS AGREEMENT OR IN THIS PROVISION IS INTENDED TO WAIVE THE PROVISIONAL RELIEF REMEDIES AVAILABLE UNDER THE RULES.

(d) *Administrative Relief*. I UNDERSTAND THAT THIS AGREEMENT DOES NOT PROHIBIT ME FROM PURSUING AN ADMINISTRATIVE CLAIM WITH A LOCAL, STATE OR FEDERAL ADMINISTRATIVE BODY SUCH AS THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE NATIONAL LABOR RELATIONS BOARD, OR THE WORKERS' COMPENSATION BOARD. THIS AGREEMENT DOES, HOWEVER, PRECLUDE ME FROM PURSUING COURT ACTION REGARDING ANY SUCH CLAIM.

(e) *Voluntary Nature of Agreement*. I ACKNOWLEDGE AND AGREE THAT I AM EXECUTING THIS AGREEMENT VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE BY GOOGLE OR ANYONE ELSE. I ACKNOWLEDGE AND AGREE THAT I HAVE CAREFULLY READ THIS AGREEMENT AND THAT I HAVE ASKED ANY QUESTIONS NEEDED FOR ME TO UNDERSTAND ITS TERMS, CONSEQUENCES, AND BINDING EFFECT . I RECOGNIZE THAT ***I AM WAIVING MY RIGHT TO A JURY TRIAL***. I AGREE THAT I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF MY CHOICE BEFORE SIGNING THIS AGREEMENT.

(f) *Arbitration Clause, Governing Law*. THIS ARBITRATION CLAUSE IS ENTERED PURSUANT TO AND GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. SECTION 1, ET SEQ.), BUT IN ALL OTHER RESPECTS THIS AGREEMENT IS GOVERNED BY THE LAWS OF CALIFORNIA.

13. General Provisions

(a) *Governing Law; Consent to Personal Jurisdiction*. Except as provided in Section 12(f), this Agreement will be governed by the laws of the State of California except for its choice of law rules. If any lawsuit is permitted under or related to this Agreement or my employment, I consent to the exclusive personal jurisdiction and venue of the state and federal courts located in California.

(b) *Entire Agreement*. This Agreement, together with its Exhibits, and any executed written offer letter between Google and me, are the entire agreement between Google and me relating to my employment and any related matters and supersede all prior written and oral agreements, discussions, or representations. If there are conflicts between this Agreement and the offer letter, this Agreement will control. No change to this Agreement, other than amendments to Sections 3 and 4 relating to personal open-source projects in a format prepared by Google, will be effective unless in writing signed by Google Inc.'s Chief Executive Officer. Any change or changes in my duties, salary, or compensation will not affect the validity or scope of this Agreement.

(c) *Severability*. If one or more of the provisions in this Agreement are deemed void, the remaining provisions will continue in full force and effect.

(d) *Successors and Assigns*. This Agreement will be binding upon my heirs, executors, assigns, administrators, and other legal representatives and will be for the benefit of Google, its successors, and its assigns. Google may assign this Agreement to anyone at any time without my consent. There are no intended third-party beneficiaries to this Agreement.

(e) *Waiver*. Waiver by Google of a breach of any provision of this Agreement will not waive its right to take action based on any other breach.

(f) *Survivorship*. The rights and obligations of the parties to this Agreement will survive termination of my employment with Google.

Eff. Date Nov 2013
CA Version

11/22/2013	David Gudeman
Date:	**Signature**

David Gudeman
Name of Employee (typed or printed)

e-sign agreement

Exhibit A

GOOGLE INC.

LIST OF PRIOR INVENTIONS

AND ORIGINAL WORKS OF AUTHORSHIP

I understand that listing a project or an invention here does not mean that Google is granting me permission to continue working on the project or invention. This is only a listing of inventions or original works of authorship done prior to employment.

Number of inventions / improvements :

Add Invention

☑ No inventions or improvements

☐ Additional sheets attached

Signature of Employee: David Gudeman

Print Name of Employee: David Gudeman

Date: 11/22/2013

Exhibit 4

Status: **Official**
Last modified: December 10, 2013
Last reviewed: December 10, 2013

Google
security policies

Data Classification Guidelines

Associated Policy

These guidelines were developed in accordance with the Data Security Policy.

Who Needs to Read These Guidelines

All Googlers

Details

Purpose

These Guidelines describe how data and information are classified at Google (the terms "data" and "information" are used interchangeably in these Guidelines). Each classification is illustrated with examples based on three categories of data: business data, user data, and employee data, which are defined in more detail below.

At Google we classify and protect information according to its sensitivity. In other words, the classification of information, and the steps Googlers take to protect it, should reflect the harm that would occur if the data is lost, mishandled, or disclosed improperly.

General Guidelines

There are three basic classifications that reflect the sensitivity of information at Google: Need-To-Know, Confidential, and Public. Additional sub-classifications may be developed as needed.

Exhibit 5

Ethics and Compliance

E&C

You Said What?!

Darn good advice on how to use your words - safely and smartly - so that you're not at risk of having to eat them later on.

Audience: All Googlers, including temps, vendors and contractors.

Accessibility: An accessible version of the course can be found here. If you experience an issue with this course related to accessibility, please submit feedback.

Duration: 15 mins

Course Terms: Due in 22 day(s) from registration date; Recurs every 1 Year(s) based on Completion Date

GET STARTED HERE

Ethics and Compliance

Anti-Bribery & Corruption

Code of Conduct

Competition Law

Sexual Harassment & Discrimination

Trade Compliance (Singapore Only)

You Said What?!

- FAQs -

 SEND FEEDBACK ABOUT THE HELP CENTER

Exhibit 6

The recent leaks

1 message

Brian Katz <katzbm@google.com>
To: Googlers <googlers@google.com>

Fri, May 6, 2016 at 8:57 AM

INTERNAL ONLY. REALLY.

Hi there,

I'm Brian. I lead the Investigations team, which includes stopleaks@.

At TGIF a few weeks back we promised an update on our investigation into some recent leaks, and here it is: We identified the people who leaked the TGIF transcript and memes. Because of their intentional disregard of confidentiality, they've been fired.

We've all worked hard to create an environment where we can share information openly. Our culture relies on our ability to trust each other—we share a lot of confidential information, but we also commit to keeping it inside the company. We don't want that to change.

That said, we'll be making some changes to TGIF to help keep the information shared internal-only, starting by no longer posting the written transcript to go/tgif. Instead, you'll be able to watch a live stream, and for those who can't tune in live, we'll be offering the full video with Q&A.

We'll continue to share information internally because the vast majority of Googlers and Characters respect our culture and don't leak—thank you for that. That commitment toward a common vision and goal makes this a special place to work.

Please remember: whether malicious or unintentional, leaks damage our culture. Be aware of the company information you share and with whom you share it. If you're considering sharing confidential information to a reporter—or to anyone externally—for the love of all that's Googley, please reconsider! Not only could it cost you your job, but it also betrays the values that makes us a community. If you have concerns or disagreements, share them constructively through your manager, HRBP or go/saysomething.

Which brings me to my final point: some of the recent discourse on Memegen and elsewhere within the company has been, shall we say, less than civil. Memegen, Misc, internal G+ and our many discussion groups are a big part of our culture—they keep us honest—but like any conversation amongst colleagues, we should keep it respectful.

Brian Katz
Director, Protective Services, Investigations & Intelligence

Exhibit 7

QUINN EMANUEL URQUHART & SULLIVAN, LLP
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Attorneys for WAYMO LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.; OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

CASE NO. 3:17-cv-00939-WHA

PLAINTIFF WAYMO LLC'S NOTICE OF MOTION AND MOTION FOR A PRELIMINARY INJUNCTION

REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

Hearing:
Date: April 27, 2017
Time: 8:00 a.m.
Place: 8, 19th Floor
Judge: The Honorable William H. Alsup

TO DEFENDANTS UBER TECHNOLOGIES, INC., OTTOMOTTO LLC, AND OTTO TRUCKING LLC, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 27, 2017 at 8:00 a.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable William H. Alsup at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, Plaintiff Waymo LLC ("Waymo") shall and hereby does move the Court for a preliminary injunction prohibiting Defendants Uber Technologies, Inc. ("Uber"), Ottomotto LLC, and Otto Trucking LLC (together, "Otto") (collectively, "Defendants"), from accessing, using, imitating, copying, disclosing, or making available to any person or entity Waymo's Asserted Trade Secrets, including but not limited to the Asserted Trade Secrets as embodied in LiDAR systems that contain or are designed to operate with the printed circuit board depicted in the schematic attached as Exhibit 1 to the Declaration of William Grossman or any colorable variation thereof. Waymo further requests that Defendants be enjoined from making, using, selling, or offering to sell devices that infringe claims 1 or 13 of United States Patent No. 8,836,922 and claims 1 or 14 of U.S. Patent 9,285,464. Further, Waymo requests that Defendants be compelled to return any and all Waymo confidential information in their possession or control, including the 14,000+ documents unlawfully taken from Waymo by Mr. Anthony Levandowski and his colleagues. Alternatively, Waymo requests an expedited trial on all of the claims set out in its First Amended Complaint.

This motion is based on this notice of motion and supporting memorandum of points and authorities, the supporting declarations of Pierre-Yves Droz, Michael Janosko, Gary Brown, Tim Willis, Gregory Kintz, Jordan Jaffe, and accompanying exhibits, reply briefing in further support of this motion and supporting declarations and accompanying exhibits, as well as other written or oral argument that Waymo may present to the Court.

Should expedited discovery provide good cause, Waymo respectfully reserves the right to expand the scope of its preliminary injunction request.

DATED: March 10, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By */s/ Charles K. Verhoeven*
Charles K. Verhoeven
Attorneys for Plaintiff Waymo LLC

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PRELIMINARY STATEMENT

This case is about Uber, Ottomoto, and Otto Trucking trying to gain a crucial edge in the self-driving car market by using trade secrets stolen from Waymo and by infringing Waymo's patents. Today, dozens of established companies and startups are in a frenzied race, vying to commercialize self-driving technology. This technology will revolutionize the way people and goods move around, generating untold revenues for those companies that successfully master it early. In order to prevent Defendants from misappropriating Waymo's own technology to cheat and distort competition in this nascent market, Waymo respectfully seeks a preliminary injunction.

Waymo is the industry leader in self-driving hardware and software and has been since launching its self-driving car project in 2009. While Waymo's self-driving cars are a common (and very public) phenomenon on the Bay Area's roads, the underpinning technology is powered in large part by ***non***-public, trade secret technologies developed over thousands of research and development hours by leading engineers, designers and researchers. As part of those efforts, Waymo has developed its own unique, proprietary LiDAR systems tailored to fully autonomous vehicles. LiDAR is a laser-based technology that uses the reflection of laser beams off objects to create a real-time 3D image of the world. Waymo designed its own LiDAR systems to enable a self-driving vehicle to "see" its surroundings and thus detect traffic, pedestrians, and other obstacles that a vehicle must be able to see in order to drive safely. This technology was pivotal in Waymo achieving the world's first — and only — truly driverless trip on public roads in 2015.

Uber, on the other hand, is a late entrant to the self-driving car space. Desperate to catch up with Waymo — by any means necessary — Uber jump-started its self-driving car efforts by using Waymo trade secrets stolen by Anthony Levandowski, a former Waymo employee. In December 2015, just weeks before he resigned without notice, Mr. Levandowski systematically downloaded more than 14,000 confidential Waymo files and then attempted to wipe the forensic evidence. In January 2016, Mr. Levandowski met with senior Uber executives. Shortly thereafter, his new venture Ottomotto LLC was founded. Mr. Levandowski resigned on January 27, 2016,

and his related venture Otto Trucking was officially formed four days later. Otto[1] launched publicly in May 2016, and less than three months later Uber purchased the start-up — which had few assets and no marketable product — for over half a billion dollars.

In December 2016, Waymo was inadvertently copied on an email from one of its LiDAR component vendors, which attached machine drawings of what purports to be an Uber LiDAR circuit board. However, the circuit board bears a striking resemblance to Waymo's own highly confidential design and reflects Waymo trade secrets — including those contained in the more than 14,000 files downloaded by Mr. Levandowski. The Uber LiDAR circuit board also indicates that Otto and Uber's LiDAR systems infringe Waymo's LiDAR patents.

On February 9, 2017 — through a public records request — Waymo learned that Otto told Nevada state regulators that it is no longer using a third-party LiDAR solution, but rather has "developed in house and/or currently deployed" an "[i]n-house custom built 64-laser" LiDAR system. As is clear from the evidence, the LiDAR technology that Uber and Otto have "developed in house and/or currently deployed" is in fact Waymo's LiDAR technology. Defendants' statement about "deploying" this technology create an imminent threat that Defendants will use Waymo's technology to gain a potentially irreversible edge in the new self-driving car market. To prevent Defendants from gaining a crucial market edge through the misuse of Waymo's technology, Waymo respectfully requests a preliminary injunction.

STATEMENT OF FACTS

I. WAYMO IS A LEADER IN THE SELF-DRIVING CAR INDUSTRY

Google was the first major U.S. technology firm to dedicate significant resources to the development of self-driving car technology, which promises to make transportation safer, cleaner, more efficient, and more widely available. *See* Declaration of Jordan Jaffe ("Jaffe Decl.") Exs. 22-25. Google initiated its self-driving car project in 2009. *Id.* Before long, Google's self-driving cars had navigated from the Bay Area to Los Angeles, drove the Pacific Coast Highway, and circled Lake Tahoe, logging over 140,000 miles — a first in robotics research. *Id.* Ex. 22. In

[1] Collectively, OttoMotto LLC and Otto Trucking LLC are referred to herein as "Otto."

2014, Google unveiled its own reference vehicle, a two-door fully autonomous car without pedals or a steering wheel. *Id.* Exs. 26-28. A year later, this prototype made the first ever fully self-driving trip in normal traffic on public roads. *Id.* Exs. 29-30.

In 2016, Google's self-driving car program became Waymo.[2] *Id.* Exs. 24-25, 31-32. To date, Waymo's fleet of self-driving vehicles has logged over 2.5 million miles in autonomous mode on public roads (equating to over 300 years of human driving experience), and its systems have logged over a billion miles of simulated driving using Waymo's in-house simulator and Google's massive data centers. *Id.* Exs. 31-33.

Waymo's early, sustained investment in self-driving car technology has made it a leader not only in performance and safety but also in cost-reduction, a critical element for commercialization. As a result, Waymo is at the forefront of the effort to bring fully self-driving cars to market.

II. WAYMO DEVELOPS ITS OWN LiDAR TECHNOLOGY FOR IMPROVED PERFORMANCE AND REDUCED COST

Laser systems known as LiDAR ("Light Detection and Ranging") provide the "vision" for autonomous vehicles. Declaration of Gregory Kintz ("Kintz Decl.") ¶ 21. LiDAR uses high-frequency, high-power pulsing lasers to measure distances between a car and external objects. *Id.* After a laser beam is fired, it reflects off the surface of surrounding objects, and data regarding the light that bounces back to designated receivers is recorded. *Id.* Software analyzes the data in order to create a three-dimensional view of the environment, which is used to identify objects, assess their motion and orientation, predict their behavior, and make driving decisions. *Id.* Waymo has invested millions of dollars and thousands of engineering hours to develop its own proprietary LiDAR systems that are high-performing and low-cost — *i.e.*, tailored to advance the commercialization of autonomous vehicles. Declaration of Pierre-Yves Droz ("Droz Decl.") ¶ 38.

[2] Further references to "Waymo" refer to the self-driving car project from its inception in 2009 to the present.

Waymo's early efforts to develop its mid-range LiDAR systems[3] were directed at selecting a fundamental architecture that could provide the right balance among a variety of priorities: high resolution, compact and durable design, simple software, easy manufacture, and overall robustness. *Id.* ¶¶ 10-12. The Waymo team spent years working on a variety of possibilities — [redacted], among others. *Id.* ¶¶ 10-11. Waymo's experience with these "dead-end" designs helped lead Waymo to the architecture now at the heart of its current LiDAR systems. *Id.* ¶ 12.

In contrast to other publicly available systems, Waymo's custom and revolutionary new technology permits the use of a single lens to both transmit the laser beams used to scan the environment and receive the light reflected when those beams bounce off surrounding objects. *Id.* ¶¶ 13-16. This single-lens design was (and remains today) vastly different from commercially available LiDAR systems, including those produced by leading suppliers like Velodyne and Quanergy Systems, as well as Waymo's own previous generations of LiDAR (as described above). Prior systems had used separate lens assemblies — often with multiple lens elements — for the "transmit path" and the "receive path." *Id.* ¶¶ 14-15. Waymo's common single lens design was a game-changer over these prior designs. *Id.* ¶ 15. It reduced the size of Waymo's LiDAR by reducing the number of optical system components; it reduced the complexity of Waymo's technology by eliminating the need to painstakingly align pairs of transmit and receive lenses (with even a slight mis-calibration of a lens pair affecting the accuracy of the system); and it helped reduce the cost of the system to less than one-tenth of the cost of benchmark LiDAR systems that were on the market just a few years prior — all this, while maintaining high resolution and performance. *Id.* Waymo's custom LiDAR solutions are thus a significant

[3] Autonomous vehicles must be able to "see" objects at different distances (*e.g.*, an oncoming emergency vehicle 100 meters away, a pedestrian at an intersection 10 meters away, and a curb immediately next to the car). Droz Decl. ¶ 9. Because a LiDAR system optimal for use in closer ranges will usually not be optimal for use in longer ranges, Waymo has developed mid-range and long-range LiDAR technology. *Id.* ¶¶ 9-11.

differentiating factor over later entrants into the self-driving space, who typically rely on the prior-art separate lens designs, with their attendant cost and manufacturing deficiencies.

Waymo replaced the third-party LiDAR systems it had been using for its autonomous vehicle program with its in-house single-lens system [redacted] *Id.* ¶ 19. Waymo now has over a dozen patents on various innovations implemented in [redacted] including the fundamental single-lens architecture described in U.S. Patent Nos. 8,836,922 and 9,285,464. Kintz Decl. ¶¶ 94-96, 135-137.

Waymo's current-generation LiDAR technology, known internally as [redacted] reflects additional improvements on the single-lens design that was at the heart of [redacted]. Droz Decl. ¶¶ 20-22. These innovations further optimize the balance among resolution, durability, size, simplicity, ease of manufacture, and cost. *Id.* ¶ 20. As just one example, [redacted] *Id.* ¶¶ 20-21. Innovations like these are not patented, are not visible to passers-by as Waymo tests its vehicles,[4] and derive their economic value from being kept secret from competitors. *See, e.g.*, Kintz Decl. ¶¶ 28-31, 36-39, 44-45, 49-50, 54. Thus, these innovations qualify as trade secrets. Concurrently with this Motion, Waymo is submitting a List of Asserted Trade Secrets Pursuant to Cal. Civ. Proc. Code § 2019.210, detailing with particularity 121 of its trade secrets related to its LiDAR technology. Jaffe Decl., Ex. 1.

III. THE UNPATENTED INNOVATIONS UNDERLYING WAYMO'S LiDAR TECHNOLOGY ARE HEAVILY GUARDED SECRETS

Unless and until it is patented, Waymo's LiDAR technology is subject to robust measures to protect its secrecy.

As a condition of employment, Waymo requires all employees to enter into written agreements to maintain the confidentiality of proprietary and trade secret information. Droz Decl. ¶ 30. As a related ongoing measure, Waymo enforces an employee code of conduct that explains employees' strict obligations to maintain the secrecy of confidential information. *Id.*

---

[4] Waymo's LiDAR systems are generally contained within a housing unit that precludes an observer from viewing its internal architecture. *See* '922 Patent at 6:29-36; Jaffe Decl., Ex[redacted]

Waymo employs network security measures and access policies that restrict the access and dissemination of confidential and proprietary trade secret information to only teams that are working on projects related to that information. Droz Decl. ¶ 32. For example, Google employees working on projects with no relation to Waymo or self-driving cars have never had access to Waymo's confidential and proprietary technical information stored on the secure SVN repository. *Id.*; Declaration of Michasel Janosko ("Janosko Decl.") ¶¶ 23-25.

Waymo also employs reasonable measures to monitor and secure the networks and devices that employees use to access confidential and proprietary information. Droz Decl. ¶ 33; Janosko Decl. ¶¶ 4-25. Networks hosting such information are encrypted and require passwords for access. *Id.* ¶¶ 13-16, 25. Devices (e.g. computers, tablets, and cell phones) provided to employees are also encrypted, password protected, and subject to other security measures. *Id.* ¶¶ 5-10. Certain Waymo databases storing confidential and proprietary information, such as the SVN database (Waymo's confidential design server), are available on a need to know basis only and require special software to access. *Id.* ¶ 25; Droz Decl. ¶ 32.

Waymo takes reasonable measures to mark confidential and proprietary information, such as documents and other materials, with visible legends designating them as such. *Id.* ¶ 34; Declaration of Tim Willis ("Willis Decl.") ¶ 4. Waymo employs reasonable efforts to secure physical facilities by restricting access and employing locks, cameras, guards, and other security measures. Droz Decl. ¶ 35; Janosko Decl. ¶ 22.

Waymo also strictly requires all consultants, vendors, and manufacturers to sign confidentiality agreements that require that they undertake reasonable efforts to maintain, and not to disclose, any confidential or trade secret information. Willis Decl. ¶¶ 4-5. Each outside vendor or manufacturer that has received Waymo's LiDAR-related confidential and proprietary trade secret information has executed at least one written non-disclosure agreement. *Id.*

IV. UBER IS LATE TO ENTER THE SELF-DRIVING CAR MARKET

Uber came to view its entry into the self-driving car space as an "existential" imperative when it saw Waymo's successful self-driving car efforts. Jaffe Decl. Ex. 35. But whereas Waymo began developing its self-driving cars in 2009, Uber's first serious foray into automation was not

until six years later when — in February 2015 — Uber announced a partnership with Carnegie Mellon University. *Id.* Exs. 36-37. According to public reports of the partnership, Uber hired at least 40 CMU faculty members, researchers, and technicians, including the former head of CMU's National Robotics Engineering Center, to help jump-start an Uber vehicle automation program. *Id.*

By early 2016, Uber had invested significant sums in the team from Carnegie Mellon, but the research and development process was slow. *Id.* Ex. 37. And with respect to LiDAR technology, Uber's program appeared to rely solely on a third-party, off-the-shelf LiDAR system manufactured by Velodyne Inc. (the HDL-64E). *Compare id.* Ex. 38 (product page for Velodyne's HDL-64E with photo) *with* Ex. 39 (August 2016 article with photo of Uber LiDAR).

Uber's stalled program did not make any significant advances toward designing or manufacturing its own LiDAR technology for improved performance or lower cost. *Id.* Ex. 37. As of mid-2016, Uber remained years behind in the race to develop vehicle automation technology suitable for the mass market.

V. WHILE AT WAYMO, ANTHONY LEVANDOWSKI AND OTHER WAYMO EMPLOYEES SECRETLY DOWNLOAD THOUSANDS OF CONFIDENTIAL FILES BEFORE LEAVING FOR OTTO

Unbeknownst to Waymo at the time, by late 2015, Waymo manager Anthony Levandowski was secretly preparing to launch a competing vehicle automation venture — a company named "280 Systems," which later would become Otto. In November 2015, an Internet domain name was registered for 280 Systems. Jaffe Decl. Ex. 40. On December 3, 2015, Mr. Levandowski searched for instructions on how to access the SVN database, Waymo's highly confidential design server. Declaration of Gary Brown ("Brown Decl.") ¶ 15. This server holds detailed technical information related to Waymo's LiDAR systems, including the blueprints for its key hardware components, and is accessible only on a need-to-know basis. Janosko Decl. ¶¶ 23-25; Droz Decl. ¶ 32.

On December 11, 2015, Mr. Levandowski – who had a total of three Waymo-issued computers – installed special software on a Waymo laptop to access the design server. Brown Decl. ¶ 16. Until shortly before installing the software, Mr. Levandowski had used this particular

laptop only a handful of times in the previous eight months. *Id.* ¶ 13. On that same day, December 11, 2015, Mr. Levandowski then downloaded over 14,000 proprietary files from that server. *Id.* ¶ 17. Mr. Levandowski's download included 9.7 GBs of sensitive, secret, and valuable internal Waymo information. *Id.*; Janosko Decl. ¶¶ 23-25. 2 GBs of the download related to Waymo's LiDAR technology. *Id.* ¶ 24. Among the downloaded documents were confidential specifications for each version of every generation of Waymo's LiDAR circuit boards. Droz Decl. ¶ 24; Kintz Decl. ¶ 25. On December 14, Mr. Levandowski attached a removable media device (an SD Card) to the laptop containing the downloaded files for approximately eight hours. Brown Decl. ¶ 18.

On December 18, seven days after Mr. Levandowski completed his download of confidential Waymo information and four days after he removed the SD Card, he reformatted the laptop, attempting to erase any evidence of what happened to the downloaded files. *Id.* ¶ 19. After wiping the laptop clean, Mr. Levandowski used the reformatted laptop for a few minutes and then never used it again. *Id.* ¶¶ 19-20.

On January 4, 2016, Mr. Levandowski used his Waymo credentials and security clearances to download additional confidential Waymo documents to a personal device (as opposed to viewing documents online, as is typical for Waymo employees). *Id.* ¶ 22. These downloaded materials included at least five highly sensitive internal presentations containing proprietary technical details regarding the manufacture, assembly, calibration, and testing of Waymo's LiDAR sensors. *Id.*; Droz Decl. ¶¶ 25-26 & Exs. A-B, D-F. At around the same time, Mr. Levandowski confided in some Waymo colleagues that he planned to "replicate" Waymo's technology at a Waymo competitor. *Id.* ¶ 27.

In mid-January, Mr. Levandowski was spotted at Uber's headquarters in San Francisco, attending meetings with high-level Uber executives. *Id.* ¶ 29. On January 15, Mr. Levandowski's venture 280 Systems — which became OttoMotto LLC — was officially formed (though it remained in stealth mode for several months). Jaffe Decl. Ex. 41. On January 27, Mr. Levandowski resigned from Waymo without notice. And on February 1, Mr. Levandowski's

venture Otto Trucking was officially formed (also remaining in stealth mode for several months). *Id.* Ex. 42.

Other Waymo employees would later download additional confidential documents immediately prior to resigning from Waymo and joining Otto. Brown Decl. ¶¶ 24-29; Willis Decl. ¶¶ 6-11.

VI. UBER ACQUIRES OTTO, AFTER ONLY SIX MONTHS OF OFFICIAL EXISTENCE, FOR OVER HALF A BILLION DOLLARS

In July 2016, after just six months of existence, Uber inked a deal to acquire Otto. Jaffe Decl. Exs. 43-45. As *Forbes* reported at the time, "one of the keys to this acquisition[] could be the LIDAR system that was developed in-house at Otto." *Id.* Ex. 44.

Otto's purchase price was reported as $680 million, the payment of which is reportedly contingent on Otto meeting various technical milestones and — ultimately — getting self-driving Uber cars deployed. *Id.* Ex. 46. In recognition of the central role of Otto's technology within Uber, Uber named Otto co-founder Mr. Levandowski as its vice president in charge of Uber's self-driving car project. *Id.* Ex. 47. Uber rechristened Otto's existing San Francisco office as Uber's new self-driving research and development center. *Id.* Ex. 43.

The sudden resignations from Waymo, Otto's quick path from formation to public launch with Mr. Levandowski at the helm, and Uber's near-immediate acquisition of Otto for more than half a billion dollars all raised suspicions at Waymo regarding possible misuse of its intellectual property. Accordingly, in the summer of 2016, Waymo began to investigate the events surrounding the departure of Waymo employees for Otto and ultimately discovered Mr. Levandowski's 14,000-document download, his efforts to hide the disposition of those documents, and the downloading of other Waymo confidential materials by Mr. Levandowski and other former Waymo employees. Brown Decl. ¶¶ 12-29.

Though Waymo found evidence that Mr. Levandowski and others had downloaded Waymo's confidential materials in a suspicious manner, Waymo did not yet have evidence that its secret intellectual property was actually being acquired for use by another party, much less used

for any imminent product launch in the self-driving car market. Such evidence, however, would soon be forthcoming.

VII. WAYMO OBTAINS PROOF THAT DEFENDANTS ARE ACTUALLY USING ITS INTELLECTUAL PROPERTY

One of Waymo's LiDAR component vendors is [redacted] On December 13, 2016, a Waymo employee received an email from a [redacted] employee, entitled "RE: OTTO FILES." Declaration of William Grossman ("Grossman Decl."), Ex. 1. The email's recipients included the email alias Uber@[redacted]com — seemingly indicating that the thread was a discussion among members of [redacted] 'Uber" team. *Id.* Attached to the email was a machine drawing of what purported to be an Otto printed circuit board (the "Replicated Board") that bore a striking resemblance to — and shared several unique characteristics with — Waymo's highly confidential current-generation [redacted] circuit boards, the design of which had been among the more than 14,000 files downloaded by Mr. Levandowski before his resignation. *Id.*, Kintz Decl. ¶¶ 25, 47.

Indeed, in all key respects, the Replicated Board is indistinguishable from Board [redacted]' in Waymo's current-generation [redacted] LiDAR systems:

[redacted]

Id. ¶¶ 26, 32-34, 40-42, 46-48, 51-52, 55.

[redacted]

[redacted]

VIII. WAYMO OBTAINS EVIDENCE THAT DEFENDANTS ARE USING WAYMO'S INTELLECTUAL PROPERTY FOR AN IMMINENT PRODUCT LAUNCH

On February 3, 2017, aware that Defendants were pre-testing or testing self-driving cars in Nevada, Waymo filed a public records request with the Nevada Governor's Office of Economic Development and Department of Motor Vehicles. Jaffe Decl. Ex. 51. Among the documents that Waymo received on February 9 in response to that request was a submission in which Otto

represented that it had "developed in house and/or currently deployed" an "[i]n-house custom built 64-laser" LiDAR system. *Id.* Ex. 52 at 59-60. In other words, Defendants were using Waymo's intellectual property for an imminent product launch — an actual "deploy[ment]" of its stolen LiDAR technology in the self-driving market.

Since Waymo filed its Complaint in this action, Forbes published the following statement by Mr. Levandowski: "How did we get to where we are? We understand what not to do and where not to waste time because we have experience from having tried it before and it didn't work. ***And we have experience in trying things that do work, so we are just doing the things that do work and focus on that.***" Jaffe Decl. Ex. 53. Defendants are now deploying technology that replicates "the things that do work" — *i.e.*, Waymo's intellectual property.

ARGUMENT

To obtain a preliminary injunction, Waymo "must establish that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest." *AstraZeneca LP v. Apotex Corp.*, 633 F.3d 1042, 1049 (Fed. Cir. 2010) (alterations omitted) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). As explained below and in the accompanying declarations, Defendants' theft of Waymo's trade secrets and infringement of Waymo's patents easily meets this standard. Accordingly, Waymo is entitled to a preliminary injunction.

I. WAYMO IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS

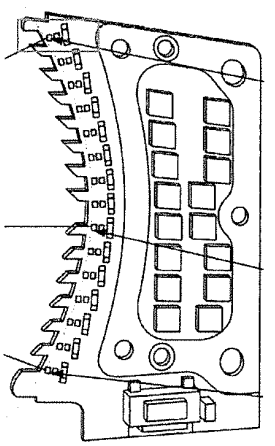
A. Waymo Is Likely To Succeed On Its Trade Secret Claims

In order to prevail on its claims under the California Uniform Trade Secrets Act and the Defend Trade Secrets Act, Waymo need only show that Defendants acquired Waymo's trade secrets with reason to know that the trade secrets were acquired by improper means. Cal. Civ. Code § 3426; 18 U.S.C. § 1836. There can be no viable dispute on this point: Mr. Levandowski improperly downloaded thousands of Waymo's confidential and proprietary LiDAR documents while he was setting up his competing venture and meeting with Uber executives. Statement of Facts § V, *supra*.

But it is not just Defendants' ***acquisition*** of Waymo's trade secrets that makes a preliminary injunction particularly warranted here; it is also Defendants' ***use*** of those trade secrets in a system that is apparently now fully developed and being deployed (or about to be deployed) in self-driving vehicles.

[redacted]

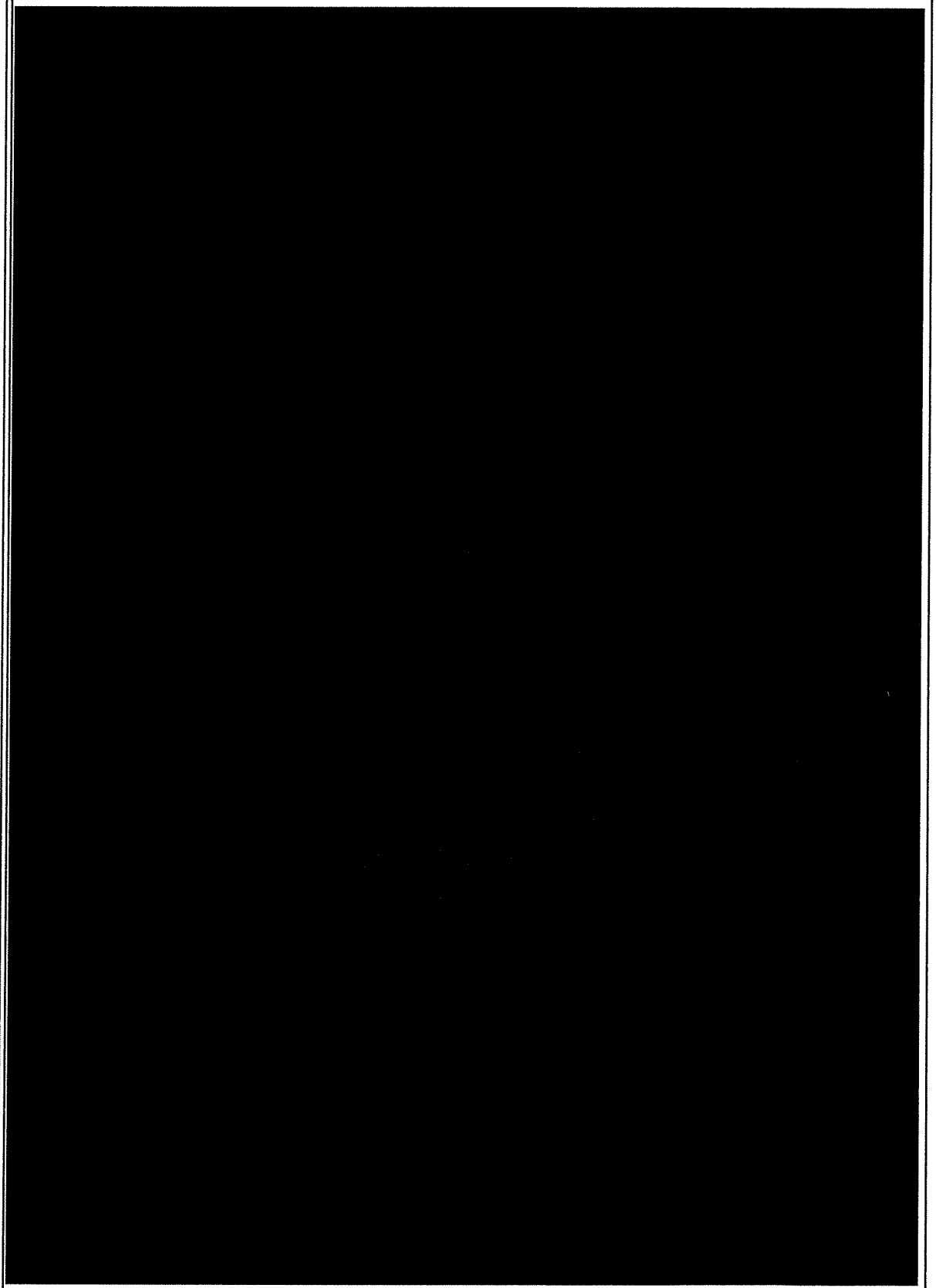
[redacted]

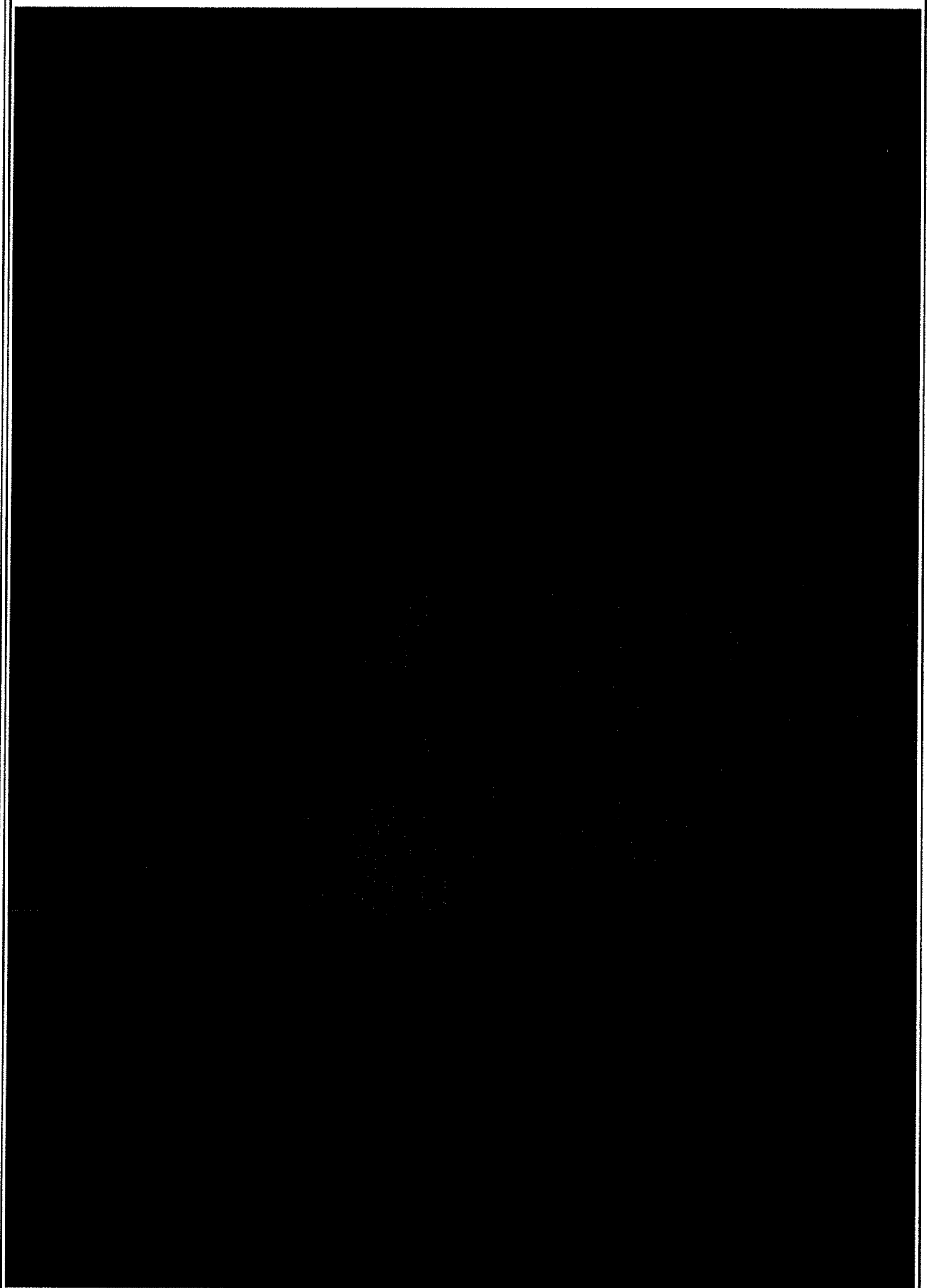


'922 Fig. 4

[redacted]

[5] All of the trade secrets discussed in this Section are examples from Waymo's List of Asserted Trade Secrets Pursuant to Cal. Civ. Proc. Code § 2019.210, filed herewith as Exhibit 1 to the Declaration of Jordan Jaffe. This List details, with particularity, 121 Waymo trade secrets.





[redacted]

B. Waymo Is Likely To Succeed On Its Patent Infringement Claims

While Defendants' misappropriation of these trade secrets is apparent from the Replicated Board itself, the board is one part of a larger LiDAR device and thus interacts with a host of other components — including other boards, lenses, and transmit and receive components — in order to function properly. In this context, the Replicated Board as part of the entire LiDAR device "deployed" by Defendants reads on the fundamental common lens design patents granted to Waymo.

Waymo developed the [redacted] specifically to interface with components in the design covered by U.S. Patent Nos. 8,836,922 ("the '922 Patent") and 9,285,464 ("the '464 Patent"), and Mr. Levandowski downloaded confidential documentation related to all aspects of that design. Mr. Levandowski and his team are well aware of these specific patents. He and some of his colleagues were named inventors on them when they developed the pioneering common lens design at Waymo.

The '922 Patent teaches an optical configuration that uses a common lens to both transmit and receive light beams, rather than using separate lenses for transmission and receipt. '922 Patent at 4:5-11; Kintz Decl. ¶ 56. One of [redacted] innovations was this common-lens design to both transmit and receive the collection of laser beams used to scan the surrounding environment. Droz Decl. ¶ 13.

Traditionally, a LiDAR system used lens assemblies with multiple elements, such as 3 lens elements (a triplet lens) for transmit side and another triplet lens for the receive side. *Id.* ¶ 14. But this approach was not practical in a LiDAR system meant for self-driving cars because the size and cost of the system would be very large due to the complexity of manufacturing numerous complex lens elements. *Id.* Thus, one of Waymo's key insights was that using one lens for both transmitting and receiving is simpler and allows for a smaller and less expensive LiDAR unit. *Id.* ¶ 15. Using one lens better ensures that focal lengths are equal for both sending laser beams out

(transmit side) and for receiving reflected light back (receive side) so that the transmit and receive arrays can match perfectly. *Id.*

While offering important savings in cost, performance, and complexity, a common-lens design poses problems that must be solved. *Id.* For example, using a single lens makes the focal plane curved like a bowl rather than flat like a pancake, but Waymo developed a curved transmit board to echo the curved focal plane. *Id.* Waymo's ingenuity enabled it to get the small-size and low-cost benefits of a single-lens system.

According to the '922 patent on Waymo's single-lens design, the common lens is mounted to a housing. '922 Patent at 1:50-51; Kintz Decl. ¶[redacted] Within the housing, a transmit block emits light to the lens via an exit aperture in a wall that includes a reflective surface. '922 Patent at 3:61-67, 4:37-39; Kintz Decl. ¶[redacted] The wall shields the light from the transmit block from blinding the detectors, but a narrow exit aperture is necessary to allow the light to exit the lens into the surrounding environment, as required for the LiDAR device to function. When that light returns after reflecting off an object in the surrounding environment, it returns into the housing in the same direction that it exited, *i.e.*, it travels towards the wall containing the exit aperture. Because the surface of the wall that faces the lens is reflective, the wall is able to direct the returning object-reflected light towards the receive block, which measures the time-of-flight of the laser beam to calculate object distance. '922 Patent at 4:26-39; Kintz Decl. ¶[redacted]

The architecture of the Replicated Board (including its curved edge and other design elements) shows that the Accused LiDAR Device is designed to interface with a common-lens design that would meet every element of at least claim 1 of the '922 Patent. *Id.* ¶¶[redacted] In brief, Waymo is likely to show infringement of at least '922 claim 1, which claims a LiDAR device comprising:

a lens mounted to a housing, wherein the housing is configured to rotate about an axis and has an interior space that includes a transmit block, a receive block, a transmit path, and a receive path, wherein the transmit block has an exit aperture in a wall that comprises a reflective surface, wherein the receive block has an entrance aperture, wherein the transmit path	This claim limitation describes the optical configuration claimed by the patent — a configuration by which a common lens handles transmitting and receiving, and by which the light travels through an exit aperture in a wall, which wall doubles as a reflector for returning object-reflected light. Given the layout of the Replicated Board[redacted]

extends from the exit aperture to the lens, and wherein the receive path extends from the lens to the entrance aperture via the reflective surface;	[redacted] Further, other characteristics of the Replicated Board indicate that it is designed to project its laser beams towards the claimed exit aperture within a wall with a reflective surface. Kintz Decl. ¶¶ [redacted]
a plurality of light sources in the transmit block, wherein the plurality of light sources are configured to emit a plurality of light beams through the exit aperture in a plurality of different directions, the light beams comprising light having wavelengths in a wavelength range;	The Accused LiDAR Device's Replicated Board contains [redacted] *Id.* ¶¶ [redacted]
a plurality of detectors in the receive block, wherein the plurality of detectors are configured to detect light having wavelengths in the wavelength range; and	The Replicated Board necessarily corresponds to a plurality of detectors in the receive block of the Accused LiDAR Device, because if there were only one detector, the Accused LiDAR Device would be unable to emit 6.4 million beams per second, as claimed by Defendants. The detectors will be configured to detect the light emitted by [redacted] because otherwise the LiDAR device could not function. *Id.* ¶¶ [redacted]
wherein the lens is configured to receive the light beams via the transmit path, collimate the light beams for transmission into an environment of the LIDAR device, collect light comprising light from one or more of the collimated light beams reflected by one or more objects in the environment of the LIDAR device, and focus the collected light onto the detectors via the receive path.	As described above, the Replicated Board is part of the Accused LiDAR Device, which uses a common lens to receive the outgoing light on the transmit path and to collect returning light that has reflected off external objects. Furthermore, all LiDAR transmit lenses collimate light for transmission, and all LiDAR receive lenses focus collected light onto detectors; the common lens necessarily follows these basic properties. *Id.* ¶ [redacted]

A more detailed infringement analysis for claim 1 and 13 is set forth in the attached Declaration of Gregory Kintz, an expert in optical designs who has designed LiDAR and other laser systems for the U.S. Navy and Lockheed Martin. *See id.* at ¶¶ [redacted].

Mr. Kintz further explains how the '922 claims are valid, since their configuration of elements — including the single lens, housing with transmit/receive blocks, and transmit path — "was a departure from the LiDAR devices in existence at the time. The invention made advances

in size, cost, and complexity, and would not have been obvious to a person of ordinary skill in the art. There are LiDAR systems in prior art, but none achieve the benefits enabled by the elegant configuration disclosed by the '922 Patent." *Id.* at ¶¶[redacted]

The '464 Patent is a continuation of the '922 Patent and shares its specification and figures. Claim 1 of the '464 Patent is identical to claim 1 of the '922 Patent except that the first element is slightly worded differently:

'922 Patent	**'464 Patent**
a lens mounted to a housing, wherein the housing is configured to rotate about an axis and has an interior space that includes a transmit block, a receive block, a transmit path, and a receive path, wherein the transmit block has an exit aperture **in a wall that comprises a reflective surface**, wherein the receive block has an entrance aperture, wherein the transmit path extends from the exit aperture to the lens, and wherein the receive path extends from the lens to the entrance aperture **via the reflective surface**;	a lens mounted to a housing, wherein the housing is configured to rotate about an axis and has an interior space that includes a transmit block, a receive block, a transmit path, and a receive path, wherein the transmit block has an exit aperture, wherein the receive block has an entrance aperture, wherein the transmit path extends from the exit aperture to the lens, wherein the receive path extends from the lens to the entrance aperture, **and wherein the transmit path at least partially overlaps the receive path in the interior space between the transmit block and the receive block**;

While both patents claim a common-lens system, the '464 Patent does not specifically require that the exit aperture exist within a wall that doubles as a mirror on the receive path. Rather, it requires that the transmit path overlap the receive path within the shared interior space. Thus, while the '464 Patent is slightly different than the '922 Patent, the Accused LIDAR Device infringes claims 1 and 14 of the '464 Patent for the same reasons it infringes claims 1 and 13 of the '922 Patent. Kintz Decl. at ¶¶ 101-30. Mr. Kintz has also explained that the '464 patent is valid. *Id.* at ¶ 131-34.

* * *

While Defendants' misappropriation of certain trade secretes and infringement of certain patents is apparent from Waymo's inadvertent receipt of the Replicated Board and the limited public information that Waymo has been able to obtain, Waymo strongly suspects that this is only the tip of the proverbial iceberg. Expedited discovery is likely to show that Defendants have misappropriated additional trade secrets and infringed additional Waymo patents. Thus, as

detailed in Waymo's Motion for Expedited Discovery (filed herewith), Waymo respectfully requests that expedited discovery be granted, and Waymo reserves the right to amend this Motion should expedited discovery provide further details about additional trade secret misappropriation and patent infringement.

II. WAYMO WILL SUFFER IRREPARABLE HARM WITHOUT AN INJUNCTION

Numerous courts in this District have held that threatened or continued use of another party's trade secrets generally creates irreparable harm. *See, e.g., Gallagher Benefits Servs., Inc. v. De La Torre*, No. C 07-5495 VRW, 2007 WL 4106821, at *5 (N.D. Cal. Nov. 16, 2007) ("In general, the imminent use of a trade secret constitutes irreparable harm."); *aff'd in relevant part*, 283 F. App'x 543 (9th Cir. 2008); *see also Western Directories, Inc. v. Golden Guide Directories, Inc.*, No. C 09-1625 CW, 2009 WL 1625945, *6 (N.D. Cal. June 8, 2009) ("The Court presumes that Plaintiff will suffer irreparable harm if its proprietary information is misappropriated."); *Vinyl Interactive, LLC v. Guarino*, No. C 09-0987 CW, 2009 WL 1228695, at *8 (N.D. Cal. May 1, 2009) (same); *Teleflora, LLC v. Florists' Transworld Delivery, Inc.*, No. C 03-05858 JW, 2004 WL 1844847, at *6 (N.D. Cal. Aug. 18, 2004) ("Use or disclosure of trade secrets is an irreparable harm which will support the granting of a preliminary injunction.") Courts in other districts have reached similar conclusions. *See, e.g., Advanced Instructional Sys., Inc. v. Competentum USA, Ltd.*, No. 1:15CV858, 2015 WL 7575925, at *4 (M.D. N.C. Nov. 25, 2015) ("In most instances, courts presume irreparable harm when a trade secret has been misappropriated."); *Pixon Imaging, Inc. v. Empower Techs. Corp.*, No. 11-CV-1093-JM MDD, 2011 WL 3739529, at *6 (S.D. Cal. Aug. 24, 2011) ("[A]n intention to make imminent or continued use of a trade secret or to disclose it to a competitor will almost always show irreparable harm.")

The usual rule applies forcefully in this case. Specifically, Defendants' continued use of Waymo's trade secrets to unfairly compete with Waymo in the nascent self-driving car industry would cause irreparable harm to Waymo. After all, this nascent industry includes several fierce competitors who are racing to become the first to offer a full suite of commercial self-driving services and thus gain a critical first-mover advantage. *See, e.g.,* Adrienne LaFrance, "The High-Stakes Race to Rid the World of Human Drivers," *The Atlantic* (Dec. 1, 2015) (noting that ("[t]he

race to bring driverless cars to the masses is only just beginning, but already it is a fight for the ages . . . . Aspects of this race evoke several pivotal moments in technological history: the construction of railroads, the dawn of electric light, the birth of the automobile, the beginning of aviation.") It naturally follows that Waymo would be irreparably harmed if Defendants were allowed to use Waymo's own trade secrets to gain a critical edge in this race. *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991) ("An injunction in a trade secret case seeks to protect the secrecy of misappropriated information and to eliminate any unfair head start the defendant may have gained."); *Netlist Inc v. Diablo Techs. Inc.*, No. 13-CV-05962-YGR, 2015 WL 153724, at *8 (N.D. Cal. Jan. 12, 2015) ("The Court finds that the showing of a head-start advantage to Diablo, based upon an improper use of Netlist's technology, is sufficient to establish that any harm to Netlist would not be remedied by money damages alone."). Uber's own CEO Travis Kalanick recently explained the irreparable effects that will result from whichever company wins the race to first commercialize self-driving cars, stating: "If we are not tied for first, then the person who is in first, or the entity that's in first, then rolls out a ride-sharing network that is far cheaper or far higher-quality than Uber's, then Uber is no longer a thing." Biz Carson, "Uber CEO Travis Kalanick on Uber's Bet on Self-Driving Cars: 'I Can't Be Wrong'", *Business Insider* (Aug. 18, 2016). Jaffe Decl. Ex. 35.

Waymo would also be irreparably harmed because Defendants' continued use of Waymo's trade secrets is likely to result in further ***disclosure*** of those trade secrets. As explained in Statement of Facts Section VIII, *supra*, Defendants have already begun making regulatory filings that reference Waymo's trade secrets. If Defendants continue using Waymo's trade secrets in their self-driving car endeavors, there would likely be additional filings disclosing other aspects of Waymo's trade secrets. Furthermore, Defendants' disrespectful treatment of Waymo's trade secrets — as shown by Defendants' willingness to capitalize on their outright theft — leaves little doubt that Defendants would not hesitate to throw Waymo's trade secrets open to the general public if Defendants decided that it suited their purposes. Improper disclosure of trade secrets is, of course, a classic irreparable injury because such disclosure destroys the trade secret altogether.

Saini v. Int'l Game Tech., 434 F. Supp. 2d 913, 919 (D. Nev. 2006) ("Public disclosure of a trade secret destroys the information's status as a trade secret.")

A similar analysis applies to Defendants' patent infringement, which — if left unchecked — will inflict many of the same irreparable harms as Defendants' trade secret misappropriation. For example, like Defendants' continued trade secret misappropriation, Defendants' continued patent infringement would give Defendants an unfair advantage in the high-stakes race to offer commercial self-driving services. Were Waymo to lose the race to successfully commercialize this nascent field, the harm would be irreparable. This Court reached a similar conclusion last Fall in the *Illumina, Inc. v. Qiagen N.V.* case, finding irreparable harm where "[t]he market for DNA sequencing in clinical laboratories is expected to grow substantially in the near future . . . . Now, as the doors to the market have swung open, Qiagen seeks to usurp Illumina's position in that market with pirated technology." *Illumina, Inc. v. Qiagen, N.V.*, -- F.Supp. 3d --, 2016 WL 4719269, at *10 (N.D. Cal. Sept. 9, 2016) (Alsup, J.) Other courts have likewise found irreparable harm when a defendant's patent infringement allows the defendant to gain a competitive edge in a nascent or fast-growing market. *See Visto Corp. v. Sproqit Techs., Inc.*, 413 F. Supp. 2d 1073, 1092 (N.D. Cal. 2006) (finding irreparable harm when patentee and infringer were direct competitors fighting for market share in a rapidly changing market); *Transocean Offshore Deepwater Drilling, Inc. v. GlobalSantaFe Corp.*, No. H-03-2910, 2006 WL 3813778, at *4 (S.D. Tex. Dec. 27, 2006) (finding irreparable harm because the infringer would steal sales and market share in a "developing market"); *Power-One, Inc. v. Artesyn Tech., Inc.*, No. 2:05-CV-463, 2008 WL 1746636, at *1 n.1 (E.D. Tex. Apr. 11, 2008) (finding irreparable harm where the patentee and infringer were direct competitors, and the relevant market had been "recently created").

To be sure, when a patentee claims irreparable harm from lost sales or market share in an existing market, it must show "'some connection' between the patented features and the demand for [the infringing] products." *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 642 (Fed. Cir. 2015) ("*Apple IV*"). This is often called the "causal nexus" requirement. Here, there is a clear causal nexus between Defendants' patent infringement and the harm resulting from Defendants' unfair head-start in the race to commercialize self-driving cars. This is because the Waymo

patents at issue in this motion — the '922 Patent and the '464 Patent — cover core technical features that enable a LiDAR system to meet the challenges of the self-driving environment. More specifically, these patents cover a single-lens configuration that offers great advantages in size, cost, and complexity compared with prior LiDAR configurations. It would be much more difficult to successfully launch a self-driving car without this patented technology. *See, e.g.*, Kintz Decl. ¶¶ 39, 44. Indeed, as explained above, the single-lens architecture reduces costs by an order of magnitude over prior art multi-lens architectures. Statement of Facts § II, *supra*. Thus, adopting this infringing architecture gives Defendants a huge unearned cost advantage in their efforts to win the race to launch a commercially-viable self-driving car.

III. THE BALANCE OF HARDSHIPS STRONGLY FAVORS AN INJUNCTION

The balance of hardships strongly favors a preliminary injunction, on both the trade secret claim and the patent claims. On the trade secret claim, it should be noted that Waymo is not seeking to enjoin Defendants from pursuing self-driving car projects *in toto*. Waymo merely asks that Defendants not be allowed to use Wayno's trade secrets in doing so. Given that Defendants have no right to use Waymo's trade secrets at all, they would suffer no legally-cognizable hardship from being forced to abandon Waymo's trade secrets in their self-driving endeavors. Conversely, Waymo would be greatly harmed if its own trade secrets were used against it in the race to commercialize self-driving technology. Thus, the balance of hardships strongly favors Waymo. *See, e.g., TMX Funding, Inc. v. Impero Techs., Inc.*, No. C 10-00202 JF (PVT), 2010 WL 1028254, at *8 (N.D. Cal. Mar. 18, 2010) ("The injunctive relief sought by TMX is specific to the use of proprietary information belonging to TMX . . . . Accordingly, the balance of hardships weighs in favor of TMX.") *Farmers Ins. Exch. v. Steele Ins. Agency, Inc.*, No. 2:13-CV-00784-MCE, 2013 WL 2151553, at *14 (E.D. Cal. May 16, 2013) ("Courts have found that the balance of hardships tips in favor of a plaintiff seeking an injunction which would 'merely prohibit the defendants from misappropriating the trade secrets of the plaintiff.'") (brackets deleted).

The balance of hardships also favors Waymo on the patent infringement claims. While Defendants may face some hardship in being enjoined from using the accused instrumentalities, "[o]ne who elects to build a business on a product found to infringe cannot be heard to complain if

an injunction against continuing infringement destroys the business so elected." *Robert Bosch, LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1156 (Fed. Cir. 2011) (quoting *Windsurfing Int'l, Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n.12 (Fed. Cir. 1986)). This Court reached a similar conclusion in *Illumina*. -- F.Supp. 3d --, 2016 WL 4719269 at *11 ("Qiagen contends . . . . that it would be unable to recoup its investment in the development and marketing of the GeneReader. But that is the price of its election 'to build a business on a product found to infringe....' The balance of hardships weighs in favor of an injunction.") (quoting *Windsurfing*, 782 F.2d at 1003 n.12).

Moreover, Defendants would be free to use non-infringing alternative components in their business, such as the same third-party LiDAR systems that they had previously used before switching to Waymo's patented technology. Merely reverting back to a non-infringing alternative is not a significant hardship under the law. *Douglas Dynamics, LLC v. Buyers Prod. Co.*, 717 F.3d 1336, 1345 (Fed. Cir. 2013) ("If indeed Buyers had a non-infringing alternative which it could easily deliver to the market, then the balance of hardships would suggest that Buyers should halt infringement and pursue a lawful course of market conduct.")

On the other side of the ledger, Waymo would suffer severe hardship from being forced "to compete against its own patented invention." *Robert Bosch*, 659 F.3d at 1156. This is particularly true given the new market that Waymo is racing to commercialize. Thus, the balance of hardships strongly favors Waymo.

IV. THE PUBLIC INTEREST SUPPORTS AN INJUNCTION

The public interest also weighs in favor of enjoining Defendants, on both the trade secret claim and the patent claims. First, there is a strong public interest in vindicating both trade secret and patent rights — a public interest that far outweighs any public interest in ***allowing*** products that infringe on trade secret or patent rights. *See Vinyl Interactive,* 2009 WL 1228695 at *8 ("the third prong of the requested injunction, which simply enjoins Eddy from using Vinyl's proprietary information, would further the public's interest in prohibiting unfair competition."); *Douglas Dynamics*, 717 F.3d at 1346 (holding that the public has a "general interest in the judicial protection of property rights in inventive technology" that "outweighs any interest the public has in . . . . infringing products."); *Illumina*, -- F.Supp. 3d. --, 2016 WL 4719269 at *11 ("[A]bsent

any other relevant concerns...the public is best served by enforcing patents that are likely valid and infringed.") (quoting *Abbott Labs. v. Andrx Pharm., Inc.*, 452 F.3d 1331, 1348 (Fed. Cir. 2006)).

The public does have an interest in competition and consumer choice. But a preliminary injunction against Defendants would hardly stifle competition or create a monopoly in the nascent self-driving car market. Besides Waymo and Defendants, such corporate heavyweights as Apple, Tesla, Ford, General Motors, and Nvidia are all pursuing self-driving car technology. *See* Jaffe Decl. Exs. 54-56. And, of course, Defendants themselves would be free to continue pursuing this technology as well, as long as they do not use Waymo's trade secrets or patents to do so. Thus, an injunction would be squarely in the public interest and would not disserve the goals of healthy and vigorous competition.

CONCLUSION

For the foregoing reasons, Waymo respectfully requests that the Court enjoin Defendants, together with their officers, agents, attorneys, and those persons who are in active concert or participation with Defendants, from accessing, using, imitating, copying, disclosing, or making available to any person or entity Waymo's Asserted Trade Secrets, including but not limited to the Asserted Trade Secrets as embodied in LiDAR systems that contain or are designed to operate with the printed circuit board depicted in the schematic attached as Exhibit 1 to the Declaration of William Grossman or any colorable variation thereof. Waymo further requests that Defendants be enjoined from making, using, selling, or offering to sell devices that infringe claims 1 or 13 of United States Patent No. 8,836,922 and claims 1 or 14 of U.S. Patent 9,285,464. Waymo also requests that Defendants be compelled to return any and all Waymo confidential information in their possession or control, including the 14,000+ documents unlawfully taken from Waymo by Mr. Anthony Levandowski and his colleagues. Alternatively, Waymo requests an expedited trial on all of the claims set out in its Amended Complaint. Should expedited discovery provide good cause, Waymo respectfully reserves the right to expand the scope of its preliminary injunction request.

DATED: March 10, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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