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15 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

16 **IN AND FOR THE COUNTY OF MARICOPA**

18 STATE OF ARIZONA, *ex rel.* MARK
19 BRNOVICH, Attorney General,

20 Plaintiff,

21 v.

22 GOOGLE LLC, a Delaware limited liability
23 company,

24 Defendant.

) Case No: CV2020-006219

) **STATE'S SEPARATE STATEMENT**
) **OF FACTS IN SUPPORT OF MOTION**
) **FOR PARTIAL SUMMARY**
) **JUDGMENT**

) Assigned to the Hon. Timothy Thomason

) **(COMPLEX CALENDAR)**

1 Plaintiff State of Arizona *ex rel.* Mark Brnovich, Attorney General (“State”) files this
2 Separate Statement of Facts in Support of its Partial Motion for Summary Judgment.

3 **I. AUTHENTICITY OF RELEVANT DOCUMENTS.**

4 1. The authenticity of relevant documents is discussed in the accompanying
5 Declaration of Michael Eshaghian.

6 2. [intentionally omitted]

7 **II. GOOGLE IS AN ADVERTISING COMPANY.**

8 3. In 2018, Google made \$136 billion in revenue, of which \$116 billion (85%) came
9 from advertising. (Ex. 292 (GOOG-GLAZ000001916) at 945).

10 4. [REDACTED]

11 [REDACTED]
12 (Ex. 278 (5/21/2020 [REDACTED] EUO Tr.) at 25:7–13).

13 5. [REDACTED]

14 [REDACTED]
15 [REDACTED]. (*Id.* at 29:13–23, 139:5–141:2).

16 6. [REDACTED]. (*Id.* at 141:3–
17 11).

18 7. Google allows advertisers to [REDACTED]
19 [REDACTED] and enables them to geo-target an area as granular as “a small radius around your
20 business” or as large as “cities, states, or entire countries.” (*Id.*; *id.* at 40:18–41:25; Ex. 122 at
21 1).

22 8. [REDACTED]. (Ex. 278
23 (5/21/2020 [REDACTED] EUO Tr.) at 90:4–9).

24 9. [REDACTED]
25 [REDACTED] (*Id.* at 44:17–45:2).

26 10. [REDACTED]. (*Id.*
27 at 178:3–7; Ex. 275 (2/28/2020 [REDACTED] EUO Tr.) at 309:10–15; 8/21/2020 Berlin Decl. ISO
28

1 Google's Mot. to Seal ¶ 6 ([REDACTED]
2 [REDACTED]); .

3 11. [REDACTED]
4 [REDACTED]. (Ex. 274 (2/27/2020 [REDACTED] EUO Tr.) at 143:7–20; Ex. 272
5 (7/12/2019 [REDACTED] EUO Tr.) at 112:4–16, 113:13–24; Ex. 202 (Google's 2/21/2020 Responses
6 to CIDs 1–3) at 13, 69); Ex. 288 (Google's 4/30/2020 Response to CID 4) at 15; 8/21/2020
7 Rothfuss Decl. ISO Google's Mot. to Seal ¶ 5 ([REDACTED]
8 [REDACTED]).

9 12. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] (Ex. 278 (5/21/2020 [REDACTED]
13 EUO Tr.) at 36:10–37:1, 38:18–39:8).

14 13. [REDACTED]
15 [REDACTED]
16 [REDACTED] (*Id.* at 37:3–14).

17 14. [REDACTED] (*Id.* at
18 39:10–21).

19 **III. ANDROID.**

20 15. [REDACTED]
21 [REDACTED]. (*See* Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 62:16–63:3;
22 Ex. 275 (2/28/2020 [REDACTED] EUO Tr.) at 342:13–344:6).

23 16. [REDACTED]. (Ex. 275
24 (2/28/2020 [REDACTED] EUO Tr.) at 342:13–343:9).

25 17. [REDACTED]
26 [REDACTED]. (*See* Ex. 51 (GOOG-GLAZ-
27 00026768) at 783–786).

1 18. Android is technically an open-source software, meaning that anyone can modify
2 the source code and install it on a compatible device. Such modifications are called Android
3 “forks.” (Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 139:9–140:9).

4 19. While third-party device manufacturers (“OEMs”) are theoretically free to pre-
5 install any Android fork on their phones, the vast majority of Android phones sold in the U.S.
6 have Google’s version. (Ex. 275 (2/28/2020 [REDACTED] EUO Tr.) at 448:9–17).

7 20. [REDACTED]
8 [REDACTED]
9 [REDACTED].¹ (Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 137:20–140:21; Ex. 276 (3/6/2020 [REDACTED]
10 EUO Tr.) at 74:17–75:4; Google’s MTD at 14).

11 21. Google’s own version of Android contains Google Mobile Services (“GMS”),
12 which makes it easier for Google to collect location information from users. (Ex. 273
13 (9/25/2019 [REDACTED] EUO Tr.) at 137:20–139:6).

14 22. [REDACTED]
15 [REDACTED]. (Ex. 275 (2/28/2020 [REDACTED] EUO Tr.) at
16 343:10–344:6, 444:8–445:9; Ex. 276 (3/6/2020 [REDACTED] EUO Tr.) at 69:4–76:13; Ex. 273
17 (9/25/2019 [REDACTED] EUO Tr.) at 64:6–13; *see also* Ex. 201 (GOOG-GLAZ-00149241) at 241
18 ([REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]); 8/21/2020 Chai Decl. ISO Google’s Mot. to Seal ¶ 19 ([REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]).

26
27 _____
28 ¹ As used in this Statement of Fact, “Android” refers to Google’s version of Android that
Google causes to be pre-installed.

1 **IV. GOOGLE’S RELEVANT SETTINGS FOR THE INSTANT MOTION.**

2 23. Of the three types of Google settings, account-level settings are those that apply to
 3 a user’s entire Google Account and cover all activity associated with that Account, regardless of
 4 device. (Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at 134:11–135:4).

5 24. Of the three types of Google settings, device-level settings are those that are
 6 specific to a given hardware device, like a smartphone or tablet. (See Ex. 279 (GOOG-GLAZ-
 7 00000054) at 055).

8 25. Of the three types of Google settings, app-level settings are settings specific to a
 9 particular app. (See Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 273:19–24).

10 26. Both Location History (“LH”) and Web & App Activity (“WAA”) are account-
 11 level settings. (Ex. 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 18).

12 27. Google describes LH as a setting that “saves a private map . . . of where the user
 13 goes with his or her signed-in devices, even when the user is not using a Google service.” (Ex.
 14 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 18).

15 28. “Opting in to Location History allows Google to build a user’s Timeline . . . of the
 16 places the user’s devices have been and to provide more personalized features across Google
 17 products and services” (*Id.*).

18 29. Timeline is a user-facing product that allows users to view and manage the
 19 location data collected by LH. (Ex. 271 (7/11/2019 [REDACTED] EUO Tr.) at 218:13–219:5).

20 30. [REDACTED]. (*Id.* at
 21 66:11–22).

22 31. [REDACTED]
 23 [REDACTED]
 24 [REDACTED] (Ex.
 25 204 (GOOG-GLAZ-00085882) at 882).

1 32. [REDACTED]

2 [REDACTED].² (*Id.*; *see also*
3 8/21/2020 McGriff Decl. ISO Google’s Mot. to Seal ¶ 13 ([REDACTED]
4 [REDACTED])).

5 33. [REDACTED]

6 [REDACTED]
7 [REDACTED] (Ex. 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 66; *see also id.* at 66–68
8 ([REDACTED])).

9 34. WAA is another account-level setting “that stores a user’s Google activity data to
10 My Activity . . . in their Google Account.” (Ex. 202 (Google’s 2/21/2020 Responses to CIDs 1–
11 3) at 18–19).

12 35. My Activity is a user-facing product that allows users to view and manage the data
13 (including location data) saved by WAA. (Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at 188:22–
14 189:2).

15 36. “The user location information that is saved as a result of Web & App Activity . . .
16 is collected and stored in a user’s Google Account when the user is engaging with a Google
17 product and has Web & App Activity enabled. For example, when a user uses Google Search or
18 Google Maps to search for ‘restaurant,’ Google collects the search term as well as information
19 about that activity, including IP address and location information, so that the search results
20 returned to the user will show nearby restaurant options.” (Ex. 202 (Google’s 2/21/2020
21 Responses to CIDs 1–3) at 18–19).

22 37. [REDACTED]. (Ex. 272 (7/12/2019 Monsees EUO Tr.) at 175:7–176:18).

23 38. WAA saves a user’s location data. (Ex. 202 (Google’s 2/21/2020 Responses to
24 CIDs 1–3) at 18–19; Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at 83:12–84:25, 85:23–86:8, 89:20–
25 91:22)).

26
27
28 ² The metadata produced by Google for Exhibit 204 indicates a “DATECREATED” of February 8, 2019. (Declaration of Michael Eshaghian at ¶ 37).

1 39. [REDACTED]. (Ex. 272
2 (7/12/2019 [REDACTED] EUO Tr.) at 87:17–92:10, 184:11–185:18).

3 40. “Implicit user location information does not tell Google where a user’s device is
4 located, but through user inputs, Google may infer that a user is either interested in a place or
5 that the user might be at a place. . . . For example, if a user conducts a Google Search for ‘Eiffel
6 Tower’ Google may infer that the user may like to see information for places near Paris, and
7 Google can then use that inference to provide localized recommendations about those places.”
8 (Ex. 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 4–5).

9 41. [REDACTED] (Ex. 272 (7/12/2019
10 [REDACTED] EUO Tr.) at 434:3–22).

11 42. “Explicit user location information contains information about where a device is
12 located” and derives location from a variety of sensors such as [REDACTED]
13 [REDACTED]. (Ex. 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 4–6; *id.* at
14 17, 69–70; *see also* Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at 93:11–23).

15 43. [REDACTED]
16 [REDACTED]. (Ex. 272 (7/12/2019
17 [REDACTED] EUO Tr.) at 184:11–185:18).

18 44. [REDACTED]
19 [REDACTED] (*Id.* at 89:20–
20 90:8).

21 45. [REDACTED]
22 [REDACTED]. (Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at
23 69:3–18, 93:24–94:17; Ex. 202 (Google’s Responses to CIDs 1–3) at 63); Ex. 274 (2/27/2020
24 [REDACTED] EUO Tr.) at 49:18–20, 185:17–186:24).

25 46. [REDACTED]
26 [REDACTED]
27 [REDACTED] (Ex.
28

1 272 (7/12/2019 [REDACTED] EUO Tr.) at 98:19–100:9; *see also* Ex. 202 (Google’s Responses to
2 CIDs 1–3) at 72–73 (listing various uses of WAA location data)).

3 47. Before 2015, the location data stored by WAA was coarsened to “approximately a
4 neighborhood-sized area with a sufficient number of unique users.” (Ex. 202 (Google’s
5 2/21/2020 Responses to CIDs 1–3) at 92).

6 48. But in 2015, Google began storing precise WAA location data, namely precise
7 latitude/longitude—the same precision with which LH location data is saved. (*Id.*; *see also* Ex.
8 274 (7/12/2020 [REDACTED] EUO Tr.) at 183:3–10 ([REDACTED]
9 [REDACTED])).

10 49. This saving of precise location lasted until April 2019 when Google reverted to
11 storing coarser location. (Ex. 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 92, 68–69
12 ([REDACTED]
13 [REDACTED])).

14 50. [REDACTED]
15 [REDACTED]. (Ex. 272 (7/12/2019
16 [REDACTED] EUO Tr.) at 244:10–245:18).

17 51. [REDACTED]
18 [REDACTED].
19 (Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 59:16–60:6).

20 52. [REDACTED]
21 [REDACTED]
22 [REDACTED]. (*Id.* at 60:7–17, 66:12–23, 73:2–15, 92:23–93:23).

23 53. [REDACTED]
24 [REDACTED]. (Ex. 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 15, 17–19;
25 Ex. 271 (7/11/2019 [REDACTED] EUO Tr.) at 74:22–76:8).

26 **V. GOOGLE’S DECEPTIVE ACTS AND PRACTICES.**

27 54. At least until around the end of 2018, in a webpage titled “Manage or delete your
28 Location History,” Google stated that “[w]ith Location History off, the places you go are no

1 longer stored.” (Ex. 8 at 1; *see also* Ex. 271 (7/11/2019 [REDACTED] EUO Tr.) at 29:10–31:2

2 ([REDACTED]
3 [REDACTED]); 112:23–113:8 ([REDACTED]

4 [REDACTED]
5 [REDACTED]); (Ex. 11 (GOOG-GLAZ-00000927); Ex. 271 (7/11/2019
6 [REDACTED] EUO Tr.) at 147:5–149:19 ([REDACTED]

7 [REDACTED]).

8 55. [REDACTED]

9 [REDACTED]
10 [REDACTED]. (Ex. 275 (2/28/2020 [REDACTED] EUO
11 Tr.) at 464:10–16; *see also* Ex. 271 (7/11/2019 [REDACTED] EUO Tr.) at 139:13–17 ([REDACTED]

12 [REDACTED]
13 [REDACTED]); Ex. 220 (GOOG-GLAZ-00057237) at
14 238 ([REDACTED]

15 [REDACTED]);³ Ex. 221 (GOOG-GLAZ-00146003) at 007 ([REDACTED]
16 [REDACTED]);⁴ Ex. 213 (GOOG-

17 GLAZ-00028891) at 894–95 ([REDACTED]

18 [REDACTED]
19 [REDACTED])).

20 56. In a webpage titled “Manage your Android device’s location settings,” Google
21 states that it “has a number of location-based services,” and lists only LH as being the setting
22 relevant to “the places your device has been.” (Ex. 280 (GOOG-GLAZ-00001105) at 105). The

23
24 ³ *See also* 8/21/2020 McGriff Decl. ISO Google’s Mot. to Seal ¶ 19 ([REDACTED]
25 [REDACTED]).

26 ⁴ *See also* 8/21/2020 Berlin Decl. ISO Google’s Mot. to Seal ¶ 18 ([REDACTED]
27 [REDACTED]).
28

1 exclusion of WAA from this webpage dates was true during the relevant period for the Motion.⁵
2 (*See also* Ex. 281 (GOOG-GLAZ-00000876) (webpage titled “Change your Google app location
3 settings” discussing LH but not WAA)⁶).

4 57. Today, Google states that if users wants to “stop sharing your location with
5 Google,” they can do so by “changing your settings, but Google may still suggest a location
6 based on your IP address, recent locations, or Location History”—with no mention of the
7 location information saved by WAA. (Ex. 282 (GOOG-GLAZ-00000942) at 942).

8 58. An earlier version of the page referenced paragraph 57 within the relevant time
9 period (July 31, 2017) does not even have that disclosure; instead, Google merely explain how
10 to “Turn your location on or off,” “Check and update your location,” and “Troubleshoot location
11 problems.” (Ex. 297 at Ex. A pp. 1–2).

12 59. [REDACTED] (Ex. 274 (2/27/2020 [REDACTED]
13 EUO Tr.) at 143:11–20).

14 60. [REDACTED]
15 [REDACTED]. (Ex. 274 (2/27/2020 [REDACTED] EUO Tr.) at 98:19–
16 100:10; 8/21/2020 Berlin Decl. ISO Google’s Mot. to Seal ¶ 6).

17 61. Users of online services must provide the IP address of their device when using
18 online services like Google’s. (Ex. 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 6).

19 62. [REDACTED]
20 [REDACTED]. (Ex. 277
21 (5/8/2020 [REDACTED] EUO Tr.) at 271:23–272:1; Ex. 275 (2/28/2020 [REDACTED] EUO Tr. at 517:15–
22 23); Ex. 278 (5/21/2020 [REDACTED] EUO Tr.) at 103:5–7).

25 ⁵ Google produced this document without any metadata indicating when it was created.
26 (Declaration of Michael Eshaghian at ¶ 52). An older version of this page from mid-2016
27 similarly did not discuss WAA. (Ex. 297 at Ex. A pp. 3–4).

28 ⁶ Google produced this document without any metadata indicating when it was created.
(Declaration of Michael Eshaghian at ¶ 53). Nevertheless, archived versions of this page from
mid-2016 and mid-2018 also do not discuss WAA. (Ex. 297 at Ex. A pp. 5–8).

1 63. [REDACTED]
2 [REDACTED]. (Ex. 274 (2/27/2020
3 [REDACTED] EUO Tr.) at 116:9–117:23 ([REDACTED]
4 [REDACTED]
5 [REDACTED]), 266:15–277:2 ([REDACTED]); Ex. 288
6 (Google’s 4/30/2020 Responses to CID 4) at 15 ([REDACTED]
7 [REDACTED])).

8 64. [REDACTED]
9 [REDACTED]. (Ex. 274 (2/27/2020 [REDACTED] EUO Tr.) at 144:20–
10 145:1).

11 65. [REDACTED]
12 [REDACTED] (Ex. 71 (GOOG-GLAZ-00027187) at 189; *see also*
13 8/21/2020 Berlin Decl. ISO Google’s Mot. to Seal ¶ 11 ([REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED])).

17 66. [REDACTED].
18 (Ex. 222 (GOOG-GLAZ-00069965) at 965 ([REDACTED]
19 [REDACTED]); *see also* 8/21/2020 Berlin Decl. ISO Google’s Mot. to Seal ¶ 21 ([REDACTED]
20 [REDACTED]
21 [REDACTED])).

22 67. [REDACTED]
23 [REDACTED]. (Ex. 275 (2/28/2020
24 [REDACTED] EUO Tr.) at 473:9–16; *see also* at Ex. 274 (2/27/2020 [REDACTED] EUO Tr.) at 153:11–154:2).

25 68. [REDACTED]
26 [REDACTED]. (Ex. 275 (2/28/2020 [REDACTED]
27 EUO Tr.) at 473:1–8).

1 69. [REDACTED]
2 [REDACTED]. (Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at
3 373:18–374:13).

4 70. [REDACTED]
5 [REDACTED]. (*Id.* at 381:16–
6 23).

7 71. [REDACTED]
8 [REDACTED]. (*Id.* at 373:18–375:4).

9 72. Until Android version Q, Android users could not directly access the WAA or LH
10 settings on their phones. (*Id.* at 164:16–166:19, 169:19–171:1).

11 73. Android Q, also known as Android 10, was publicly released in about September
12 2019. (Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 163:13–18).

13 74. Until Android Q, a user would have to navigate to the device’s settings, then to a
14 Google link which took the user to his Google Account, then navigate down to WAA. (Ex. 272
15 (7/12/2019 [REDACTED] EUO Tr.) at 164:16–166:19).

16 75. Even with respect to Google’s affirmative disclosures outside the device itself,
17 Google created a net deceptive impression that WAA is not tied to location. (*E.g.*, Ex. 284
18 (GOOG-GLAZ-00000885) at 885).

19 76. For example, in a page titled “Control how your activity across the web is saved &
20 used,” Google explains that WAA “Make[s] it easier for you to see and control activity that’s
21 saved to your account and how it’s used” and “Let[s] Google use this activity to show you more
22 relevant ads on our services and on websites and apps that partner with us.” (Ex. 284 (GOOG-
23 GLAZ-00000885) at 885).

24 77. In the page referenced in paragraph 76, however, Google does not disclose
25 WAA’s connection to location storage. (*Id.*).

26 78. In another section on the same page referenced in paragraph 76 titled “Details
27 about activity & ads,” Google gives an example of how WAA works (without actually stating
28 that it is describing WAA): “Information about your activity helps us make our services faster,

1 smarter, and more useful. For example, if you search for ‘mountain bikes,’ you may see an ad
2 for sports equipment when you’re browsing a site that shows ads served by Google.” (*Id.* at
3 887). There is no disclosure of WAA’s connection to saving a user’s location. (*Id.*).

4 79. Another version produced by Google of the same page referenced in paragraph 76
5 (neither of which were produced with metadata indicating their dates (Declaration of Michael
6 Eshaghian ¶¶ 56–57)) replaces the “mountain bike” example with the following: “For example,
7 when you let Google know your location, you won’t get ads for stores in other regions.” (Ex.
8 285 (GOOG-GLAZ-00000424) at 425).

9 80. During its investigation, the AG asked Google to identify any disclosure during
10 the set-up process for accounts created before 2018 that WAA collects user location data. (Ex.
11 202 (Google’s 2/21/2020 Responses to CIDs 1–3) at 98).

12 81. In its sworn response, Google pointed to a screenshot that makes no mention of
13 the WAA setting, much less the fact that its stores *precise* location information. (*Id.* at 98
14 (citing Ex. 295 (GOOG-GLAZ-00203120) at 125–26).

15 82. Even today, Google buries a reference to WAA’s relationship with location in a
16 page titled “See & control your Web & App Activity.” (Ex. 286 (GOOG-GLAZ-00001111) at
17 111).

18 83. To find the disclosure referenced in paragraph 82, a user must find the relevant
19 page, scroll down to a link called “Info about your searches & more,” expand that link, then see
20 that Google states that WAA “saves information like: . . . Your location.” (*Id.*)⁷

21 84. ██████████, when pausing LH, users were shown text that stated,
22 “[W]hen you pause Location History, places you go with your devices will stop being added to
23 your Location History map”—with no mention of WAA at all. (Ex. 16 (GOOG-GLAZ-
24 00000150) at 151; Ex. 272 (7/12/2019 ██████████ EUO Tr.) at 291:14–293:14; Ex. 29 (GOOG-
25 GLAZ-00001366) at 366 (██████████)).

26
27 ⁷ Google produced this document without any metadata indicating when it was created.
28 (Declaration of Michael Eshaghian at ¶ 58). An archived version of the page from May 5, 2018
is substantially the same. (Ex. 298 at Ex. B pp. 1–2).

1 85. [REDACTED]

2 [REDACTED] (Ex. 272
3 (7/12/2019 [REDACTED] EUO Tr.) at 320:22–321:15).

4 86. After the end of 2018, when a user turned off LH, Google presented six
5 paragraphs of text. (Ex. 16 (GOOG-GLAZ-00000150) at 154–55; Ex. 29 (GOOG-GLAZ-
6 00001366) at 366 ([REDACTED])).

7 87. In the middle of the text referenced in paragraph 86—and visible only after the
8 user scrolls down—Google stated that “location data may be saved as part of activity on Search
9 and Maps when your Web & App Activity setting is on.” (Ex. 16 (GOOG-GLAZ-00000150) at
10 155).

11 88. In neither of the instances referenced in paragraphs 84 or 86 does Google disclose
12 that WAA saves [REDACTED] location data or location data [REDACTED].
13 (See Ex. 286 (GOOG-GLAZ-00001111) at 111–12; Ex. 16 (GOOG-GLAZ-00000150) at 154–
14 55).

15 89. [intentionally omitted]

16 90. As late as November 30, 2018, Google’s Privacy & Terms page was completely
17 devoid of any mention of WAA. (Ex. 297 at Ex. A pp. 11–12).

18 91. As late as November 30, 2018, in the page referenced in paragraph 90, Google
19 explained that “if you type in ‘Eiffel Tower’, we infer that you may like to see information for
20 places near Paris, and we can then use that to provide recommendations about those local places
21 to you.” (*Id.*).

22 92. As late as November 30, 2018, the vast majority of the information on the page
23 referenced in paragraph 90 references collection of location data by LH. (*Id.*)

24 93. Google’s change to having WAA collect precise (instead of coarsened) location
25 data in 2015 [REDACTED]

26 [REDACTED]
27 [REDACTED] (Ex. 228 (GOOG-GLAZ-00106193) at 194; see also 8/21/2020 Monsees Decl. ISO
28 Google’s Mot. to Seal ¶ 9 ([REDACTED])

1 [REDACTED]
2 [REDACTED])).

3 94. When Google made the changed referenced in paragraph 93, it did not make “any
4 changes to the privacy policy, terms and conditions, help desk or help center website . . . that
5 reflected the change.” (Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at 195:11–205:22; Ex. 202
6 (Google’s 2/21/2020 Responses to CIDs 1–3) at 92–95 (“The relevant parts of Google’s Privacy
7 Policy have not been updated in the timeframe inquired about.”)).

8 95. The only way users would have been able to see the change referenced in
9 paragraph 93 is if they happened to open the My Activity tool and notice that the data was
10 suddenly more precise. (See Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at 205:4–23 (Google’s
11 designated witness on its public statements regarding WAA stating that he was not aware of
12 other methods)).

13 **VI. GOOGLE DECEIVED ITS USERS VIA ITS USER INTERFACE**

14 96. [REDACTED]
15 [REDACTED] (Ex. 273 (9/25/2019 [REDACTED]
16 EUO Tr.) at 199:4–6).

17 97. [REDACTED]
18 [REDACTED].
19 (Ex. 51 (GOOG-GLAZ-00026768) at 770; Ex. 50 (GOOG-GLAZ-00026480) at 481; *see also*
20 Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 197:8–200:25 (discussing Ex. 50)).

21 98. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] (Ex. 50 (GOOG-GLAZ-00026481) at 481–82 ([REDACTED]
25 [REDACTED])

1 [REDACTED]; Ex. 51 (GOOG-GLAZ-00026768) at 769–72
2 ([REDACTED])⁸.

3 99. In the second quarter of 2014, Google made a UI change to the Quick Settings
4 (“QS”) panel on Android KitKat (*i.e.*, the Android version released around 2013). (Ex. 51
5 (GOOG-GLAZ-00026768) at 769; Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 201:16–202:9).

6 100. Generally, in the Android UI, the QS panel becomes visible when a user pulls
7 down from the top of the screen on an Android device. (Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at
8 202:15–22).

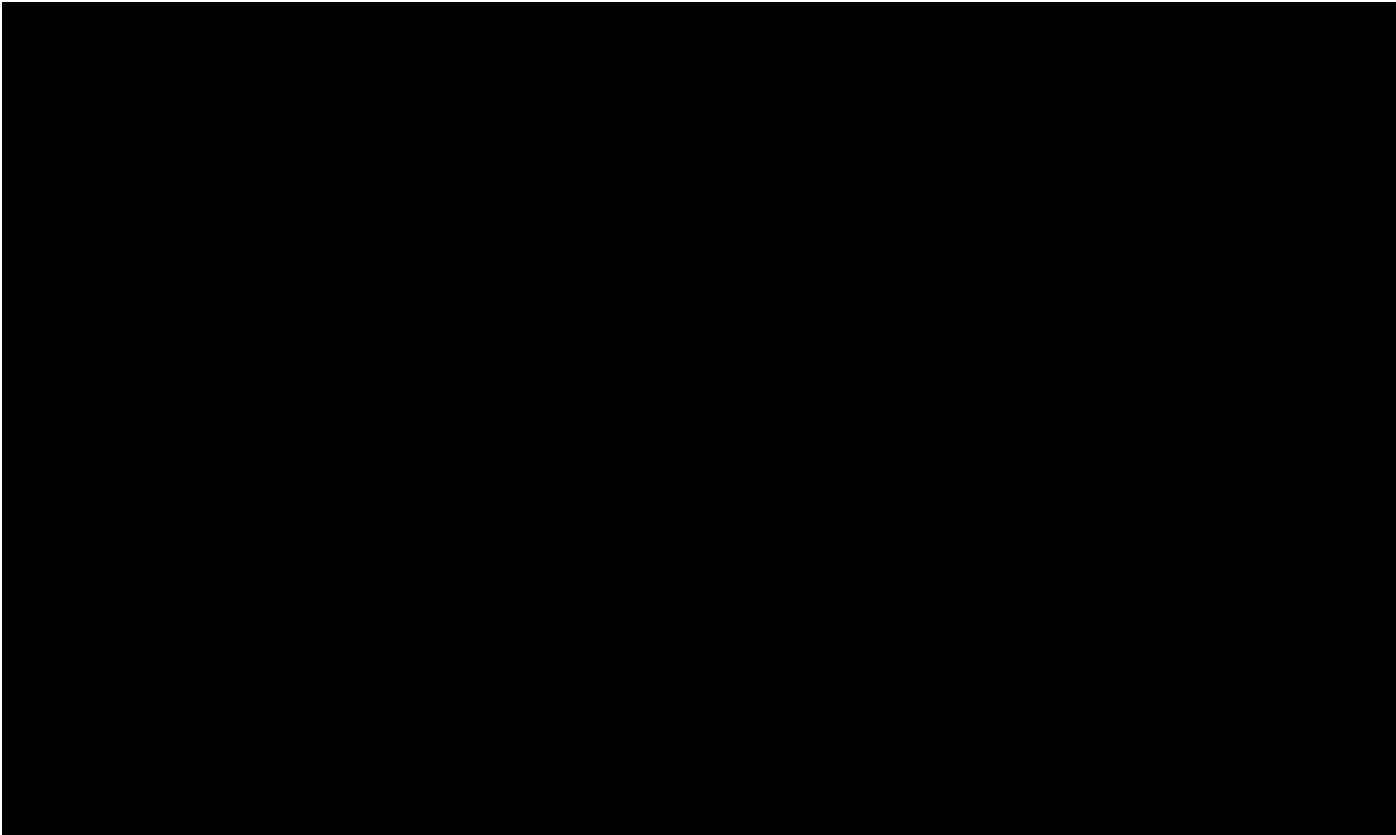
9 101. In the Android UI, the QS panel includes toggles for various popularly used
10 settings. (*Id.*).

11 102. [REDACTED]
12 [REDACTED]. (Ex. 51 (GOOG-GLAZ-00026768) at 772; Ex. 71 (GOOG-GLAZ-
13 00027187) at 196 ([REDACTED]
14 [REDACTED]); *see also* 8/21/2020 Berlin Decl. ISO Google’s Mot. to Seal ¶ 11
15 ([REDACTED])).

16 103. [REDACTED]
17 [REDACTED]
18 [REDACTED]. (Ex. 51
19 (GOOG-GLAZ-00026768) at 769–72; *see also* Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 211:12–
20 21).

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26 ⁸ *See also* 8/21/2020 Chai Decl. ISO Google’s Mot. to Seal ¶ 11 ([REDACTED]
27 [REDACTED]
28 [REDACTED]).

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104. [REDACTED]. (Ex. 51 (GOOG-GLAZ-00026768) at 769–77).

105. [REDACTED]. (Ex. 61 (GOOG-GLAZ-00026360) at 360).

106. [REDACTED]).

107. [REDACTED]. (See Ex. 52 (GOOG-GLAZ-00005425) at 428; see also Ex. 252 (GOOG-GLAZ-00028327) at 327 ([REDACTED]).

1 [REDACTED]; *see also*

2 8/21/2020 Chai Decl. ISO Google’s Mot. to Seal ¶ 23 ([REDACTED])

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]).

7 108. [REDACTED]

8 [REDACTED]. (Ex. 294 (GOOG-GLAZ-

9 00029585) at 614; Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 201:25–202:9; Ex. 274 (2/28/2020

10 [REDACTED] EUO Tr.) at 402:8-11 ([REDACTED])).

11 109. [REDACTED]

12 [REDACTED]. (Ex. 202 (Google’s 2/21/2020

13 Responses to CIDs 1–3) at 20; Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 163:13–18 ([REDACTED]

14 [REDACTED]); Ex. 274 (2/28/2020 [REDACTED] EUO Tr.) at 402:8-11 ([REDACTED]

15 [REDACTED])).

16 110. [REDACTED]

17 [REDACTED]. (Ex. 202 (Google’s 2/21/2020

18 Responses to CIDs 1–3) at 20).

19 111. [REDACTED]

20 [REDACTED] (Ex. 290

21 (GOOG-GLAZ-00032447) at 449; *see also* Declaration of Michael Eshaghian ¶ 62 (explaining

22 that metadata produced by Google in connection with Exhibit 290 indicates that Exhibit 290 was

23 created on May 23, 2017).

24 112. [REDACTED]

25 [REDACTED]

26 [REDACTED]. (Ex. 51 (GOOG-GLAZ-00026768) at 785; *see*

27 *also* 8/21/2020 Chai Decl. ISO Google’s Mot. to Seal ¶ 11 ([REDACTED])

28 [REDACTED]

1 [REDACTED]
2 [REDACTED].Ex. 273 (9/25/2019 [REDACTED] EUO Tr.) at 238:10–239:3; Ex. 253 (GOOG-GLAZ-
3 00028014) at 014–25 ([REDACTED]
4 [REDACTED])).

5 113. [REDACTED]
6 [REDACTED]
7 [REDACTED]. (Ex. 254 (GOOG-GLAZ-00115868) at 868
8 (sheet1, cell G14)).

9 114. [REDACTED]
10 [REDACTED]
11 [REDACTED] (Ex. 53 (GOOG-GLAZ-00026843) at 850; *see also* Ex. 273 (9/25/2019 [REDACTED]
12 EUO Tr.) at 253:1–254:22).

13 115. [REDACTED]
14 [REDACTED]
15 [REDACTED]. (*Id.* at
16 847–50).

17 116. [REDACTED]
18 [REDACTED]. (*See id.* at 846–47; *see also id.* at 844 ([REDACTED]
19 [REDACTED]
20 [REDACTED]); *see also* 8/21/2020 Chai Decl. ISO Google’s Mot. to Seal ¶ 27 ([REDACTED]
21 [REDACTED]
22 [REDACTED])).

23 117. [REDACTED]
24 [REDACTED] (Ex.
25 52 (GOOG-GLAZ-00005425) at 428).

26 118. [REDACTED]
27 [REDACTED]
28 [REDACTED] (*Id.* at 425).

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119. [REDACTED]
[REDACTED]
[REDACTED] (*Id.*).

120. [REDACTED]
[REDACTED]. (Ex. 255 (GOOG-GLAZ-00027518) at 518).

121. [REDACTED]
[REDACTED]. (Ex. 257 (GOOG-GLAZ-00032539) at 539–40; *see also* 8/21/2020 Chai Decl. ISO Google’s Mot. to Seal ¶ 17 ([REDACTED]
[REDACTED]
[REDACTED])).

122. [REDACTED]
[REDACTED]:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

(Ex. 290 (GOOG-GLAZ-00032447) at 450).

123. [REDACTED]
[REDACTED]. (Ex. 254 (GOOG-GLAZ-00115868) at 868 (sheet1, rows 12–14); *see also* 8/21/2020 Chai Decl. ISO Google’s Mot. to Seal ¶ 32 ([REDACTED])).

124. [REDACTED]
[REDACTED]
[REDACTED]. (*See* Ex. 61 (GOOG-GLAZ-00026360) at 361 ([REDACTED]
[REDACTED]
[REDACTED])).

1 [REDACTED]; *see also* 8/21/2020 Chai Decl. ISO
2 Google’s Mot. to Seal ¶ 14 ([REDACTED]
3 [REDACTED]).

4 125. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED] (Ex. 206 (GOOG-GLAZ-00055452) at 452; *see also*
8 8/21/2020 Chai Decl. ISO Google’s Mot. to Seal ¶ 21 ([REDACTED]
9 [REDACTED]
10 [REDACTED]).

11 126. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] (Ex.
16 213 (GOOG-GLAZ-00028891) at 896; *see also* 8/21/2020 Chai Decl. ISO Google’s Mot. to
17 Seal ¶ 8 ([REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]).

21 127. On around August 13, 2018, a Google employee named [REDACTED] said the
22 following in an internal email thread: “The current UI **feels** like it is designed to make things
23 possible, yet difficult enough that people won’t figure it out.” (Ex. 18 (GOOG-GLAZ-
24 00001266) at 270).

25 128. At least one Google software engineer ([REDACTED]) acknowledged that
26 a user would look to the QS panel to determine whether the location functionality on an Android
27 phone is on. (Ex. 215 (GOOG-GLAZ-00163209) at 213 (“Speaking as a user, WTF? More
28 specifically I ***thought*** I had location tracking turned off on my phone. However the

1 location toggle in the quick settings was on. So our messaging around this is enough to confuse
2 a privacy focused Google-SWE. That’s not good.”)).

3 **VII. USERS WERE ACTUALLY DECEIVED BY GOOGLE.**

4 129. On August 13, 2018, the Associated Press reported that Google continued saving
5 location data via WAA even when LH was off. (Ex. 3 (AP article); Ex. 18 (GOOG-GLAZ-
6 00001266) at 266–70 (text of AP article circulated internally at Google)).

7 130. [REDACTED]
8 [REDACTED]. (Ex. 24 (GOOG-GLAZ-
9 00001458) at 464–65; Ex. 271 (7/11/2019 [REDACTED] EUO Tr.) at 295:13–17).

10 131. [REDACTED]
11 [REDACTED]. (*Id.* at 466; *see*
12 *also* 8/21/2020 Monsees Decl. ISO Google’s Mot. to Seal ¶ 15 ([REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED])).

17 132. Amidst the fallout, Google updated its LH help page to remove the disclosure
18 “With Location History off, the places you go are no longer stored.” (*See* Ex. 11 (GOOG-
19 GLAZ-00000927); *see also* Ex. 271 (7/11/2019 [REDACTED] EUO Tr.) at 147:5–149:19 ([REDACTED]
20 [REDACTED]
21 [REDACTED])).

22 133. [REDACTED]
23 [REDACTED]
24 [REDACTED]. (Ex. 27
25 (GOOG-GLAZ-00001446) at 448).

26 134. On around August 14, 2018, a Google employee named [REDACTED] said
27 the following in an internal email thread about the AP article: “Although I know it works and
28 what the difference between ‘Location’ and ‘Location History’ is, I did not know that Web and

1 App activity had anything to do with location. Also seems like we are not very good at
2 explaining this to users.” (Ex. 19 (GOOG-GLAZ-00001288) at 289)

3 135. On around August 14, 2018, a Google software engineer named [REDACTED]
4 [REDACTED] (also discussed above in paragraph 128) said the following in the same internal email
5 thread about the AP article: “Indeed we aren’t very good at explaining this to users. Add me to
6 the list of Googlers who didn’t understand how this worked an [sic] was surprised when I read
7 the article. Of course, we shouldn’t have to explain this to users. The real failure is that we
8 shipped a [user interface] that confuses users and requires explanation.” (*Id.* at 290).

9 136. On around August 14, 2018, a Google employee named [REDACTED] said
10 the following in the same internal email thread about the AP article: “The complaint in this
11 article is that if you have Web and App Activity enabled and the location toggle enabled, then
12 your search history entries contain your approximate location at the time you made a query. It’s
13 also not possible to remove them by clearing your location history, which is counter-intuitive –
14 you have to clear your search history instead.” (*Id.* at 288).

15 137. On around August 14, 2018, a Google employee named [REDACTED] said the
16 following in the same internal email thread about the AP article: “Definitely confusing from a
17 user point of view if we need googlers [to] explain it to us.” (*Id.* at 289).

18 138. On around August 13, 2018, a Google employee named [REDACTED] said the
19 following in another internal email thread about the AP article: “I agree with the article.
20 Location off should mean location off, not except for this case or that case.” (Ex. 18 (GOOG-
21 GLAZ-00001266) at 270).

22 139. On around August 13, 2018, [REDACTED]
23 [REDACTED], sent [REDACTED]⁹ an email with the subject “AP Story on Location.”
24 (Ex. 20 (GOOG-GLAZ-00001521) at 523).

25 _____
26 ⁹ [REDACTED]. (Ex.
27 274 (2/27/2020 [REDACTED] EUO Tr.) at 70:16–73:10). [REDACTED]
28 [REDACTED] (Ex. 275 (2/28/2020 [REDACTED] EUO Tr.)
at 352:9–353:6).

1 140. On the Monday after the AP article was published, Google held an “Oh Shit”
2 meeting about the AP article. (*Id.*). In the email referenced in paragraph 139, [REDACTED] said:

3 Your name came up today during our Monday morning “Oh Shit” meeting in
4 relation to this story. Both comms and policy are looking for an update on where
5 we are in terms of fixing “location history” fixes [sic] and having one single place
6 to turn off instead of 3:

7 “There are a number of different ways that Google may use location to improve
8 people’s experience, including: Location History, Web and App Activity, and
9 through device-level Location Services,” a Google spokesperson said in a statement
10 to the AP. “We provide clear descriptions of these tools, and robust controls so
11 people can turn them on or off, and delete their histories at any time.”

12 Who should I reach out to for an update?

13 (*Id.*). Additionally, [REDACTED], was directly involved in the aftermath
14 of the AP article. On around August 14, 2018, Mr. [REDACTED] called a [REDACTED] meeting
15 to get “constant” updates on the issues covered by the article from his direct reports,
16 including from [REDACTED], the [REDACTED]. (Ex. 23
17 (GOOG-GLAZ-00001371) at 373; Ex. 276 (3/6/2020 [REDACTED] EUO Tr.) at 176:10–
18 178:11).

19 141. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] (Ex. 223 (GOOG-
23 GLAZ-00057861) at 861; *see also* 8/21/2020 Monsees Decl. ISO Google’s Mot. to Seal ¶ 11
24 ([REDACTED]
25 [REDACTED]).

26 _____
27 ¹⁰ [REDACTED]
28 [REDACTED] (Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at 72:13–73:7). [REDACTED]
[REDACTED]. (*Id.*)

1 142. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] (Ex. 30 (GOOG-GLAZ-00001374) at 374; *see also* (Ex. 272

5 (7/12/2019 [REDACTED] EUO Tr.) at 340:2–341:9 ([REDACTED]

6 [REDACTED]

7 [REDACTED])).

8 143. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] (Ex. 299 (GOOG-GLAZ-00078009) at 037.

13 **VIII. GOOGLE’S DECEPTIVE ACTS AND PRACTICES WERE IN CONNECTION**
14 **WITH SALES AND ADVERTISEMENT OF MERCHANDISE.**

15 144. After users purchase an Android device, they must set up a Google Account to be
16 able to use their device in any meaningful way. (Ex. 15 (GOOG-GLAZ-00000058) at 93
17 (“Without a Google Account, you won’t be able to: Download apps, music, games, and other
18 content from Google Play; Back up your apps to Google, and sync Google services like
19 Calendar and Contacts with your device; Activate device protection features.”)).

20 145. [REDACTED]

21 [REDACTED]. (Ex. 291 (GOOG-GLAZ-
22 00016196) at 196; Ex. 272 (7/12/2019 [REDACTED] EUO Tr.) at 174:8–20; Ex. 289 (GOOG-GLAZ-
23 00122386) at 386).

24 146. “Google also uses user location information collected when Location History and
25 Web & App Activity are enabled to provide advertising services to signed-in users.” (Ex. 202
26 (Google’s Responses to CIDs 1–3) at 13).

27 147. [REDACTED]

28 [REDACTED]

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[REDACTED]

[REDACTED] (Ex. 293

(GOOG-GLAZ-00135059) at 059.

1 Dated: August 25, 2020

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17 *Pro hac vice granted

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