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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 *IN RE GOOGLE RTB CONSUMER*
16 *PRIVACY LITIGATION*

Case No. 4:21-cv-02155 YGR (VKD)

17 _____
18 *This document applies to all actions.*

**PLAINTIFFS' NOTICE OF RENEWED
MOTION AND RENEWED MOTION FOR
CLASS CERTIFICATION AND
APPOINTMENT OF CLASS
REPRESENTATIVES AND CLASS
COUNSEL; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Judge: Hon. Yvonne Gonzalez Rogers
Date: TBD
Time: TBD
Courtroom: 1, 4th Floor

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26 **REDACTED VERSION**

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III. Should the Court appoint Elizabeth Pritzker, Lesley Weaver, Jay Barnes, David Straite, Nanci Nishimura, and Francis Bottini Jr. as Class Counsel and Ms. Pritzker as Lead Class Counsel? 1

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1 **NOTICE OF MOTION AND MOTION**

2 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that, on a date and time to be determined, in Courtroom 1, 4th
4 Floor, of this Court, located at 1301 Clay Street, Oakland, California 94612, plaintiffs Christopher
5 Valencia, John Kevranian, Terry Diggs, Kimberley Woodruff, Rethena Green, Salvatore Toronto,
6 and Tara Williams will and hereby do move the Court for an Order (i) certifying this action as a class
7 action, (ii) appointing plaintiffs as representatives of the Class, and (iii) appointing Elizabeth Pritzker
8 of Pritzker Levine LLP, Lesley Weaver of Bleichmar Fonti & Auld LLP, Jay Barnes of Simmons
9 Hanly Conroy LLP, David Straite of DiCello Levitt LLP, Nanci Nishimura of Cotchett Pitre &
10 McCarthy, LLP, and Francis Bottini, Jr. of Bottini & Bottini, Inc. as Class Counsel, with Ms. Pritzker
11 to serve as Lead Class Counsel.

12 Plaintiffs seek to certify a class consisting of all individual Google account holders subject to
13 a Google U.S. Terms of Service (“ToS”) who have an active Google account (the proposed “Class”).
14 Plaintiffs seek certification of the following claims, all arising under California law: (i) breach of
15 contract, (ii) breach of confidence, (iii) invasion of privacy, (iv) intrusion upon seclusion,
16 (v) publication of private facts, (vi) for violations of the California Information Privacy Act
17 (“CIPA”), Cal. Penal Code § 631.2; and (vi) for violations of the California Unfair Competition Law
18 (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq* (collectively, the “Class claims”). Consistent with
19 this Court’s April 4, 2024 Order (ECF 690) (the “Order”) holding that “plaintiffs meet many of the
20 requirements of class certification under” Fed. R. Civ. P. 23(b)(2) (*see* Order at 2), this Motion is
21 made pursuant to that Rule on the grounds that plaintiffs seek with respect to all claims uniform
22 injunctive or declaratory relief from policies or practices that are generally applicable to the Class as
23 a whole.

24 Plaintiffs’ Motion is based upon the Order (ECF 690); this Notice; the accompanying
25 Memorandum of Points and Authorities; the Further Declarations of Elizabeth C. Pritzker (“Further
26 Pritzker Decl.”) and Bethany Caracuzzo (“Further Caracuzzo Decl.”); and all exhibits thereto; any
27 reply plaintiffs may file; the orders, pleadings, and files in this action; and such other matters as may
28 be presented at or before the hearing.

1 **STATEMENT OF ISSUES TO BE DECIDED**

- 2 I. Should the Court certify the Class and Class claims under Rule 23 (a) and (b)(2) of the
3 Federal Rules of Civil Procedure?
- 4 II. Should the Court appoint plaintiffs as representatives of the Class?
- 5 III. Should the Court appoint Elizabeth Pritzker, Lesley Weaver, Jay Barnes, David Straite,
6 Nanci Nishimura, and Francis Bottini Jr. as Class Counsel and Ms. Pritzker as Lead Class
7 Counsel?

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 The Court found that plaintiffs “meet many of the requirements of class certification under
11 Rule 23(b)(2)” of the Federal Rules of Civil Procedure (“Rule 23(b)(2)”). Order at 2. The Court
12 directed plaintiffs to address in “the next round of briefing,” “two unresolved issues: (1) whether the
13 class, as defined, is fail safe and, if so, whether striking ‘personal information’ from the definition
14 would result in an overbroad class; and (2) whether the RTB data produced thus far [for the plaintiffs]
15 is representative of the class as a whole.” *Id.* This renewed Motion addresses these issues.¹

16 In summary, with respect to the class definition questions, plaintiffs seek certification of a
17 Rule 23(b)(2) class defined as: **All individual Google account holders subject to a Google U.S.**
18 **ToS who have an active Google account** (hereinafter “all active Google U.S. account holders”).
19 This definition removes any concern that the class definition is “fail safe” because class membership
20 does not depend upon whether a member has a valid claim. The Class here is subject to an objective
21 inquiry that all Class members can readily discern for themselves. Invoking Google’s definition, an
22 “active” Google account is an account that has been used at any time in the past two years.² Google

23 _____

24 ¹ The Court instructed the parties that “[w]here the Court has ruled on an argument, the parties shall
25 not reassert it at the next round of briefing.” Order at 2. In this renewed Motion, Plaintiffs thus only
26 address numerosity (*id.* at 10), commonality (*id.* at 10-18), typicality (*id.* at 18-19), and adequacy (*id.*
at 20) to the limited extent necessary in light of the modified Class definition and the new Class data.

27 ² A Google account “that is in use is considered active.” See https://support.google.com/accounts/answer/12418290?hl=en&ref_topic=7189311&sjid=12474238374228731571-NC. An inactive
28 Google account is “an account that has not been used within a 2-year period.” *Id.*

1 can discern from its own records those accounts that are “active” versus those that are not.

2 Defining the Class in this way also does not present overbreadth concerns. As plaintiffs’
3 technical experts have already shown, and as further demonstrated by Prof. Zubair Shafiq’s
4 Supplemental Class Cert. Expert Report (“Shafiq Supp.”) [Ex. 3 to the Further Pritzker Decl.], Google
5 RTB is pervasive; it is uniformly implemented across the Class; and it impacts plaintiffs and Class
6 members in the same way. There are no unimpacted Class members. “Google’s RTB protocol is
7 identical for every one of its billions of daily [RTB] bids;” Class member and “plaintiffs’ RTB data
8 is uniformly personally identifying”; and “as Google confirmed at the [prior class certification]
9 hearing, there currently is no way for users to stop Google from selling information about their unique
10 IDs, location, and browsing history through the billions of RTB bids exchanged every single day with
11 hundreds of RTB participants from all around the world.” Order at 12, 16, 25-26.

12 As to the Court’s second concern about the representative nature of the RTB data produced
13 for the plaintiffs (the “Plaintiff data”), following the Court’s Order, Google produced six ten-minute
14 intervals of class-wide RTB bid data spread over a three-year period (2021-2023) (the “Class data”).
15 Further Pritzker Decl., ¶ 17. Prof. Shafiq analyzed this production, encompassing over 120 terabytes
16 of data and almost ■ billion RTB bid requests. His analysis directly answers the Court’s inquiry,
17 affirming that the RTB data are uniformly personal information for the plaintiffs and the Class, and
18 that the Plaintiff data is in fact representative of the Class as a whole. *See* Shafiq Supp., ¶¶ 14-44.

19 Plaintiffs have met their burden. As previously illustrated and as the additional evidence
20 shows, there is an ample evidentiary record for the Court to grant certification under Rule 23(a) and
21 (b)(2). The injunctive relief sought – for transparency in Google’s disclosures and a meaningful
22 choice to opt-out of RTB – will apply generally to the Class, precisely as Rule 23(b)(2) requires.

23 **II. BACKGROUND**

24 Plaintiffs bring this renewed Motion on a well-developed evidentiary record, supplemented
25 by the Class data Google produced in July 2024 and Prof. Shafiq’s Supplemental Expert Report.³ As
26

27 ³ Evidence relied on in this Motion is attached to the Further Pritzker Decl. and Further Caracuzzo
28 Decl. Because the prior reports of plaintiffs’ technical experts Profs. Shafiq and Wilson are cited
extensively, they are submitted again as exhibits to the Further Pritzker Decl.: Prof. Shafiq’s opening

1 reflected in the record, this action is brought on behalf of active Google U.S. account holders –
 2 hundreds of millions of them – to whom Google consistently, and unequivocally, makes the same
 3 core promise in its ToS and Privacy Policies:

4 **We don't sell users' personal information.**⁴

5 Google restates this core promise – and the related promise that it does not sell or share
 6 personal information with anyone outside of Google – in its Google account holder agreements going
 7 back at least to June 28, 2016 and continuing to today:

8 **What is still the same?**

- 9 • Google does not sell your personal information to anyone.⁵

10 ***

11 We will share personal information with companies, organizations or individuals outside
 12 of Google **when we have your consent to do so. We require opt-in consent for the sharing
 of any sensitive personal information.**⁶

13 ***

14 **Never sell our users' personal information to anyone...** [i]t's important to clarify that **our
 users' personal information is simply not for sale.**⁷

15 ***

16 We do not share personal information with companies, organizations and individuals
 outside of Google unless one of the following circumstances applies: With your consent
 . . . With domain administrators . . . For external processing . . . For legal reasons . . .⁸

17 report (“Shafiq Rep.”) and rebuttal report (“Shafiq Reb.”) are Exs. 1 and 2, and his new supplemental
 18 report is Ex. 3 thereto. Prof. Wilson’s opening report (“Wilson Rep.”) and rebuttal report (“Wilson
 19 Reb.”) are Exs. 4 and 5. The Further Caracuzzo Decl. largely duplicates counsel’s prior declaration
 (ECF 546-36), but adds testimony and evidence concerning Google privacy policies and ToS dated
 after the filing of plaintiffs’ prior class certification motion.

20 ⁴ Google’s *Privacy Principles*, published on Google’s website and incorporated into the Google
 21 Privacy Policy since September 10, 2015. Further Caracuzzo Decl., ¶¶ 3-12, Ex. 13 (see also Order
 at 11); Google’s *How Our Business Works*, published on Google’s website and incorporated into
 22 Google’s ToS from at least February 2020 to the present. *Id.*, ¶¶ 13-16, Exs. 16-19.

23 ⁵ Google’s “Consent Bump” issued to U.S. account holders on June 28, 2016, and which Google
 testified continues to apply to all Google account holders thereafter. *Id.*, ¶¶ 21-23, Exs. 22, 23.

24 ⁶ Google’s *Privacy Policy* (June 28, 2016). Further Caracuzzo Decl., ¶¶ 17-20, 24, 27-29, Exs. 14,
 25 20, 21, 24 (bold italics added). The Privacy Policy now states Google requires “explicit consent.” *Id.*

26 ⁷ Google’s *Safety Center – Our Privacy & Security Principles*, published on Google’s website and
 27 incorporated into Google’s Privacy Policy and ToS since September 10, 2018. *Id.*, ¶¶ 8-12, Ex. 15
 (emphasis added). It now adds, “We never sell your personal information.” *Id.*, ¶ 12.

28 ⁸ Google’s *Privacy Policy* (at least June 28, 2016 to the present). *Id.*, ¶¶ 19, 24, Exs. 14, 20, 21, 24.

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We don't show you personalized ads based on sensitive categories like race, religion, sexual orientation, or health. We don't share information that personally identifies you with advertisers unless you ask us to.⁹

Google does not sell your personal information.¹⁰

We don't sell your personal information to anyone.¹¹

[W]e never sell your personal information to anyone.¹²

Advertisers do not pay us for personal information.¹³

Google does not keep this uniform promise. Instead, the record evidence shows that billions of times each day, Google sells and shares U.S. account holders' personal information to hundreds of third-party advertisers, independent ad exchanges, social media websites (such as Meta and X), and other participants around the world in Google's "real time bidding" auctions. Order at 12 (citing Shafiq Rep., ¶ 18). As the Court has already held:

There is evidence before the Court which already shows that Google shares enough information that RTB participants can discern what an account holder is reading online, even when it is on a religious or medical topic; exactly where they are reading it, including the coordinates of an account holder's home or work; and their background, which allows for a detailed, demographic profile of the account holder. Google cannot run away from the common question of whether it promises its account holders that it would not sell their personal information and, if so, it violates that promise billions of times a day.

Order at 25; *see also* Shafiq Supp., ¶¶ 14-44 (supplementing record with analysis of Class data).

Google RTB is a fully automated process, through which Google uses its own source code that it has embedded on websites or apps visited by a Google account holder (or "user") to instantaneously transmit back to Google an impression containing information about the user and her

⁹*Id.*

¹⁰ Google's *Privacy Policy* (from March 21, 2020 to the present). *Id.*, ¶ 17, Exs. 20, 21.

¹¹ Google's "How Our Business Works" page, incorporated into Google's ToS, from March 31, 2020, to the present. *Id.*, ¶¶ 13-16, Exs. 16-19. *See also* Order at 21, fn. 15.

¹² *How Our Business Works*, Further Caracuzzo Decl., Ex. 16.

¹³ *Id.*

1 computer – including unique identifiers associated with the user, the device’s IP address, the URL of
2 the website or app name being viewed, and the make/model of the user’s browser or mobile device –
3 to Google for subsequent sale and sharing through the Google RTB system. Shafiq Rep., ¶ 21.
4 Through no action of the user, Google RTB then packages that impression into a “bid request,” which
5 is the standardized way that Google solicits bids from hundreds of potential buyers around the world
6 seeking the opportunity to place an ad (“RTB participants”). *See* Order at 12 (citing Shafiq Rep., ¶¶
7 18, 19; Wilson Rep., ¶ 24). Each bid request consistently includes: (1) information that Google
8 associates with a user’s Google account; (2) information that is reasonably capable of identifying the
9 user to RTB participants, including a Google User ID and other information that uniquely identifies
10 the user or their device; and (3) content and contextual information that places the user and their
11 communication into specific ad targeting categories, oftentimes including categories that Google
12 publicly admits are “sensitive.” *See, generally*, Order at 12-14 (citing Shafiq Rep., ¶¶ 28-29, 41, 42,
13 46, 78, 88; Wilson Rep., ¶¶ 31, 36, 37, 43, 45-48, 49, 68, 70, 72). This is true for plaintiffs (*see id.*)
14 and for the Class as a whole. Shafiq Supp., ¶¶ 24-27, 35-44.

15 As plaintiffs’ experts have further shown – *and as Google itself concedes* – the sharing of this
16 information in Google RTB is a uniform process for all active Google U.S. account holders. Shafiq
17 Rep., ¶ 18; Wilson Rep., ¶ 34; *and see* 2/21/24 Hrg. Tr. (ECF 680) at 10-18 (Google conceding RTB
18 process is identical for every one of its billions of daily bid requests). RTB participants can then bid
19 for the opportunity to have a targeted ad delivered to the Class member based on personal information
20 shared in the bid request. Wilson Rep., ¶ 24. RTB participants also use the RTB data to:

- 21 • “build ‘profiles’ of individuals by inferring their demographics, interests, hobbies,
22 place of residence, etc.” (*id.*, ¶ 31);
- 23 • link to a user’s Google account using Google’s unique identifier for that user, or a
24 cookie, truncated IP address, the user’s current latitude and longitude with
25 accuracy; the model and make of their operating system; and the webpage the user
26 is currently viewing (*id.*, ¶ 37);
- 27 • synchronize RTB data with individual users through cookie matching (*id.*, ¶¶ 43,
28 45-48); or

- match RTB data to individual Google account holders through “user lists”¹⁴ (*id.*, ¶¶ 68, 70, 72).¹⁵

The information commonly shared and sold by Google through Google RTB is “reasonably capable of being linked to an individual or household.” Wilson Rep., ¶ 36. This is not surprising. The “very purpose” of Google RTB’s is “to encourage RTB participants to bid on impressions in Google RTB. And, because RTB participants seek to *target* ads to *individuals* based on context . . . the nature of the information being shared and sold needs to facilitate that *individual targeting*.” Order at 14 (italics and ellipse in original) (citing Wilson Rep., ¶ 41).

U.S. Google account holders cannot avoid Google’s RTB process, even if they attempt to activate Google’s user “privacy” settings. Order at 14 (citing Wilson Rep., ¶¶ 101-103, 123). This basic reality is uncontroverted, as the Court recognized in the Order:

As Google confirmed at the hearing, ***there is currently no way for users to stop Google from selling information about their unique IDs, location, and browsing history*** through the billions of RTB bids exchanged every single day with hundreds of RTB participants from around the world.

Id. at 25-26 (emphasis supplied) (citing 2/21/24 Hrg. Tr. at 36:7-22). And the Class data Google has produced confirms that Google RTB is essentially unavoidable for any U.S. Google account holder using the internet, given Google RTB’s use on millions of websites and apps, including many of the most popular websites visited in the United States. *See* Shafiq Supp., ¶¶ 45-51.

These background facts, all fully supported by the record, demonstrate why class certification under Rule 23(a) and (b)(2) is warranted. All individual U.S. Google account holders must agree to Google’s standardized U.S. ToS when creating their accounts. That ToS, together with Google’s standardized Privacy Policies and related disclosures, apply generally to all U.S. account holders to form a common contract and common commitment that Google does not and will not share or sell their personal information to anyone outside of Google. *See, supra*, fn. 3-13. The essential element

¹⁴ Cookie matching enables an RTB participant to match their cookies with Google’s to determine whether an RTB bid request is associated with a user the participant seeks to target, facilitating the creation and maintenance between the participant’s cookie and the Google User ID, and allowing for the population of user lists. *See* <https://developers.google.com/authorized-buyers/rtb/cookie-guide>.

¹⁵ The cited record evidence is set forth in the Order at 14.

1 of Rule 23(b)(2) certification is therefore satisfied. Additionally, Google RTB is a common practice
2 through which U.S. Google account holder information is shared and sold by Google to hundreds of
3 companies trillions of times each day. The information Google shares and sells through RTB, as the
4 evidence also shows, is “reasonably capable of being linked to an individual or household” across the
5 Class, and there is no way for Class members to opt out of the auctions.

6 Rule 23(b)(2)’s requirements are “unquestionably satisfied when,” as here, Class members
7 “seek uniform injunctive relief from policies or practices that are generally applicable to the class as
8 a whole.” *Parsons v. Ryan*, 754 F. 3d 657, 688 (9th Cir. 2014). As this Court has held, the “question
9 of whether [Google] promises its account holders that it would not sell their personal information”
10 will be “resolved on the basis of Google’s standardized disclosures – and therefore plaintiffs’ express
11 consent – alone.” Order at 25. If granted, plaintiffs’ proposed injunctive relief uniformly provides
12 Class members transparency in Google’s disclosures as to the nature and extent of account holder
13 personal information shared and sold by Google in RTB auctions, and will give each member of the
14 Class an effective choice to opt out of these auctions. Such an injunction is appropriate as to the Class
15 as a whole, and “would be an important step toward choice, accountability, and transparency” for
16 Class members. *Id.* at 26. Plaintiffs’ renewed motion for Rule 23(b)(2) certification should be granted.

17 **III. LEGAL FRAMEWORK**

18 Rule 23(b)(2) provides that “[a] class action may be maintained if...the party opposing the
19 class has acted or refused to act on grounds that apply generally to the class, so that final injunctive
20 relief or corresponding declaratory relief is appropriate to the class as a whole.” *B.K. by next friend*
21 *Tinsley v. Snyder*, 922 F.3d 957, 970-971 (9th Cir. 2019) (“*B.K.*”); *accord Rodriguez v. Google, LLC*,
22 2024 WL 38302 at *10 (N.D. Cal. Jan. 3, 2024). Certification under Rule 23(b)(2) is appropriate
23 “when a single injunction or declaratory judgment would provide relief to each member of the class.”
24 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). “These requirements are ‘unquestionably
25 satisfied when members of a putative class seek uniform injunctive relief from policies or practices
26 that are generally applicable to the class as a whole.’” *B.K.*, 922 F.3d at 971 (citing *Parsons v. Ryan*,
27 754 F.3d 657, 688 (9th Cir. 2014)).

28 “When a class seeks an indivisible injunction benefitting all its members at once, there is no

1 reason to undertake a case-specific inquiry into whether class issues predominate or whether class
2 action is a superior method of adjudicating the dispute.” *Dukes*, 564 U.S. at 362-63. The Rule 23(b)(2)
3 inquiry “does not require an examination of the viability or bases of the class members’ claims for
4 relief, does not require that issues common to the class satisfy a Rule 23(b)(3)-like predominance test,
5 and does not require a finding that all members have suffered identical injuries.” *Parsons*, 754 F.3d
6 at 688. “Rather, as the text of the rule makes clear, this inquiry asks only whether ‘the party opposing
7 the class has acted or refused to act on grounds that apply generally to the class.’” *Id.* (quoting Rule
8 23(b)(2)).¹⁶ To obtain certification under Rule 23(b)(2), plaintiffs must describe “the general contours
9 of an injunction that would provide relief to the whole class, that is more specific than a bare
10 injunction to follow the law, and that can be given greater substance and specificity at an appropriate
11 stage in the litigation through fact-finding, negotiations, and expert testimony.” *B.K.*, 922 F.3d at 972
12 (quoting *Parsons*, 754 F.3d at 689 n.35).

13 Plaintiffs’ renewed class certification motion fully satisfies Rule 23(b)(2)’s legal framework.

14 **IV. ARGUMENT**

15 Plaintiffs first address the two unresolved issues identified in the Court’s Order.

16 **A. The Proposed Class is Objectively Defined and Appropriate in Scope**

17 Plaintiffs first respond to the Court’s concern that the class to be certified will strike the right
18 balance by being neither “fail safe” (*i.e.*, defined in such a way that qualification for membership
19 does not depend on whether the person has a valid claim), nor overinclusive (that is, potentially
20 inclusive of more than a *de minimis* number of uninjured class members).¹⁷ *See* Order at 8-9.

21 Plaintiffs’ revised class definition accomplishes that balance. Plaintiffs now seek to certify a
22 Class consisting of all individual Google account holders subject to a Google U.S. ToS who have an
23 active Google account.¹⁸ The revised class definition provides objective criteria – the activation and

24

25 ¹⁶ *Accord In re College Athlete NIL Litig.*, 2023 WL 7106483 at *6 (N.D. Cal. Sept. 22, 2023).

26 ¹⁷ *See Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir.),
27 *cert. denied sub nom. StarKist Co. v. Olean Wholesale Grocery Coop., Inc.*, 143 S. Ct. 424 (2022)
(citing *Messner v. Northshore Univ. Health System*, 669 F.3d 802, 825 (7th Cir. 2012)).

28 ¹⁸ The prior definition included all individual account holders subject to a Google U.S. ToS whose
personal information was sold or shared by Google in RTB after June 28, 2016. *See* Order at 8.

1 use of a Google account – that allows Class members to easily determine whether they are included
2 in the Class. *See Krommenhock v. Post Foods, LLC*, 334 F.R.D. 552, 567 (N.D. Cal. 2020)
3 (“‘[P]laintiffs provide objective criteria that allow class members to determine whether they are
4 included in the proposed class,’ and that is sufficient.”) (internal citation omitted)); *Day v. GEICO*
5 *Cas. Co.*, 2022 WL 16556802, at *8 (N.D. Cal. Oct. 31, 2022) (class definition that relies on objective
6 criteria satisfies ascertainability and administrative feasibility concerns). Class members know
7 whether their Google accounts are active but, if there is any doubt, Google’s website tells account
8 holders how they can confirm their status *See, supra*, fn. 2. Google, likewise, can discern which
9 accounts are active, *i.e.*, those that were created and have been active within the last two years. *See,*
10 *supra*, pp.1-2; Shafiq Rep., ¶¶ 90-91; Wilson Rep., ¶¶ 15, 80-100, 124. Thus, there is no concern that
11 the proposed class definition is “fail safe” or defined in such a way that membership depends on
12 whether the person has a valid claim.

13 This class definition also does not sweep uninjured Class members within its scope: all Class
14 members must agree to the same, standardized ToS when they activate their Google accounts, and all
15 Class members are subject to the same common set of standardized Privacy Policies and disclosures.
16 *See Further Caracuzzo Decl.*, ¶¶ 31-38. Google’s RTB practices similarly apply generally to the Class
17 as a whole; Google RTB is pervasive and impacts plaintiffs and Class members in the same way. This
18 means that Google engages in a uniform common course of conduct and there are no unimpacted
19 Class members. The evidence shows this: (1) “Google’s RTB protocol is identical for every one of
20 its billions of daily [RTB] bids”; (2) Class member and “plaintiffs’ RTB data is uniformly personally
21 identifying” and may be associated with an individual Class member or household; and (3) “as Google
22 confirmed at the hearing, there currently is no way for users to stop Google from selling information
23 about their unique IDs, location, and browsing history through the billions of RTB bids exchanged
24 every single day with hundreds of RTB participants from all around the world.” Order at 12 (citing
25 Shafiq Rep., ¶ 18; Wilson Rep, ¶ 34; 2/21/24 Hrg. Tr. at 11-18); Order at 16 (citing, prior to quoted
26 text, Shafiq Rep., ¶¶ 42e, 46-a-g, and Shafiq Reb., ¶ 37); and Order at 25-26 (citing 2/21/24 Hrg. Tr.
27 at 36:7-22); *see also* Shafiq Rep., ¶¶ 90-95; Shafiq Supp., ¶¶ 16-44; Wilson Rep., ¶¶ 101-123.

28

1 **B. The Plaintiff RTB Data is Representative of the RTB Data for the Class**

2 1. Plaintiffs Satisfy the Standards for Rule 23(b)(2) Certification

3 In the Order, the Court found that “[p]laintiffs have demonstrated sufficiently for class
4 certification that [the previously-produced plaintiff RTB data], along with user lists and cookie
5 matching, allows RTB participants to create detailed profiles of individual account holders” and that
6 “[f]or that reason, ... [the] named plaintiffs’ RTB data is uniformly personally identifying.” Order at
7 16.¹⁹ The Court’s ruling was based on the state of discovery then in effect: Google had “produced
8 just eight weeks-worth of data about the named plaintiffs,” totaling “almost five million records of
9 RTB bid request data shared with hundreds of RTB participants around the world,” amounting to “**10**
10 **thousand RTB bid requests per-user-per-day.**” *Id.* at 15-16 (citing Shafiq Reb., ¶ 37 (emphasis in
11 original)). There was, however, no class-wide RTB data production from Google with which to
12 compare these plaintiff-specific findings. This is because Google refused to produce such data on a
13 class-wide basis. *See* Decl. of Elizabeth C. Pritzker (ECF 546-2), ¶ 6. Acknowledging that “Google
14 cannot refuse to produce RTB data about other putative class members and then argue that, without
15 this data, plaintiffs cannot meet their commonality burden,” the Court found the state of the record at
16 that time to be “insufficiently developed” and directed plaintiffs “to affirmatively demonstrate
17 through expert testimony or otherwise that the RTB data thus far is representative of all putative class
18 members” in this renewed motion. Order at 17.

19 Google has since produced Class data consisting of ten-minute slices of RTB data involving
20 U.S. Google account holders, drawn from six periods of time between 2021-2023. *See* Further
21 Pritzker Decl., ¶¶ 12, 15, 17; Shafiq Supp., ¶¶ 14-15. With this data, as explained below, plaintiffs
22 satisfy the Court’s concerns. Before turning to that analysis, however, it should be noted that
23 plaintiffs’ evidentiary showing need not “satisfy a Rule 23(b)(3)-like predominance test” to achieve
24

25 _____
26 ¹⁹ “As an example, with the limited discovery produced thus far, Professor Shafiq was able to pinpoint
27 the exact coordinates of each named plaintiffs’ home and work locations based on the RTB bid within,
28 at most, a three-kilometer error rate. In addition to those locations, RTB participants could tell that
the named plaintiffs were looking up religious verses, medical symptoms, gambling applications, and
what a Supreme Court justice thought about a recent abortion decision.” Order at 15 (citing Shafiq
Rep., ¶¶ 42e, 46a-g).

1 certification under Rule 23(b)(2). *California Coal. for Women Prisoners v. United States*, 2024 WL
2 1290766, at *10 (N.D. Cal. Mar. 15, 2024) (citing *Parsons*, 754 F. 3d at 688); see also *In Re Yahoo*
3 *Mail Litig.*, 308 F.R.D. 577, 598-99 (N.D. Cal. 2015) (“a plaintiff does not need to show
4 predominance of common issues or superiority of class adjudication to certify a Rule 23(b)(2)
5 class.”). Rather, as this Court previously held, “[r]ule 23(b)(2) permits certification of a class when
6 ‘the party opposing the class has acted or refused to act on grounds that apply generally to the class,
7 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as
8 a whole.’” Order at 24 (citing *B.K.*, 944 F.3d at 972).

9 Plaintiffs have substantial evidence to support certification of an injunctive and declaratory
10 relief class under this standard. “Google’s RTB is universal[,] . . . its disclosures are generalized”
11 (Order at 24), and there is common, class-wide evidence that Google is selling personal, sensitive,
12 information about its account holders to hundreds of RTB participants worldwide – literally trillions
13 of times each day. This is in direct violation of Google’s universal promise to its U.S. account holders
14 that Google “never” has, “does not” and will not sell their personal information. Google’s violations
15 are continuing, and these violations adversely affect Class members to this very day. See Shafiq
16 Supp., ¶¶ 45-51. Absent the injunctive relief plaintiffs request, Google will continue to share and sell
17 its account holders’ personal information to companies around the world through RTB, and account
18 holders will have no mechanism to opt out of Google’s RTB practices. Rule 23(b)(2) certification is
19 appropriate and warranted to afford Class members appropriate injunctive relief.

20 2. Google’s RTB Shares and Sells Class Members’ Personal Information

21 Based on Prof. Shafiq’s analysis of the Plaintiff data set forth in his two prior expert reports,
22 the Court has already found that the “plaintiffs’ RTB data is uniformly personally identifying” and
23 that this personal information about the plaintiffs is routinely shared and sold by Google in RTB
24 auctions. Order at 15-16. Prof. Shafiq’s analysis of the Class data set forth in his new supplemental
25 report similarly provides a basis for the Court now to find that (i) the Class data also is uniformly
26 personal identifying; (ii) this personal information about the Class also is routinely shared and sold
27 by Google in RTB auctions; and (iii) because the Class data is essentially the same as the Plaintiff
28 data, the Plaintiff data is, in fact, representative of the Class as a whole.

1 For the plaintiffs only, Google produced limited RTB auction data for eight one-week periods
2 that included almost five million individual RTB bid requests. *See* Shafiq Rep., ¶ 35. Prof. Shafiq
3 first analyzed this data to determine whether there was a common set of data fields present in all of
4 the Plaintiff data, and ultimately found that there were at least 62 data fields commonly included in
5 all of the Plaintiff data. *See id.*, ¶ 41.²⁰ Prof. Shafiq then analyzed these 62 common data fields to
6 determine what information the fields conveyed to RTB participants and whether this information
7 collectively was personally identifying.²¹ *See id.*, ¶¶ 42-88. Having analyzed the information in the
8 fields, along with numerous internal Google documents discussing the fields and other peer-reviewed
9 research, Prof. Shafiq concluded that the information Google conveys to RTB bid participants in RTB
10 auctions is sufficiently specific to allow those participants to identify, associate with, or reasonably
11 link that data to a particular user or household, a conclusion accepted by the Court in the Order. *See*
12 Shafiq Rep., ¶¶ 43-89; Order at 16 (“the Court finds that named plaintiffs’ RTB data is uniformly
13 personally identifying.”).

14 Prof. Shafiq also analyzed other aspects of the Plaintiff data, including the number and
15 identities of RTB participants that were receiving the bid data from Google, the countries that the bid
16 data was being sent to, the number of times sensitive URLs were involved, and how many times, on
17 average, each plaintiff’s personal information was being sold or shared by Google in RTB auctions.
18 For the eight weeks of data Google produced for the plaintiffs, Prof. Shafiq found that there were at
19 least [REDACTED] different companies receiving the bid data located in at least [REDACTED] countries, that the companies
20 included some of the largest technology companies in the world (many with first-party relationships
21 with the plaintiffs), that sensitive categories of information were conveyed in more than [REDACTED] of
22 the bid requests, and that the plaintiffs were each subject to, on average, more than [REDACTED] bid requests

24 ²⁰ Prof. Shafiq discussed many of the 62 common data fields in his report, and a complete list of all
25 62 data fields was attached as Exhibit B to his rebuttal report. Shafiq Rep., ¶ 42; Shafiq Reb., ¶ 22
26 and Ex. B. Prof. Shafiq considered a field to be commonly included if it was present 98% of the time
or higher. Shafiq Rep., fn. 17.

27 ²¹ The information in the 62 common data fields included, among other things, a unique Google User
28 ID, the specific URL of the website or app being visited or used, IP address, [REDACTED] extensive
location data, extensive device information, and the language of the site or app being visited or used.
See Shafiq Rep., ¶ 42.

1 a day. Shafiq Rep., ¶¶ 36-40; Shafiq Reb. ¶ 37.

2 For the Class as a whole, Google produced limited RTB auction data for six ten-minute
 3 periods that include almost [REDACTED] billion individual RTB bid requests.²² See Shafiq Supp., ¶ 18. While
 4 Google only produced RTB bid data for the plaintiffs while they were signed into their Google
 5 accounts, for the Class as whole, Google produced RTB bid data for both signed-in and signed-out
 6 U.S. Google account holders. As Prof Shafiq attests, this ultimately is a distinction without a
 7 difference, since the Class data still contains the same data fields that were previously produced for
 8 the plaintiffs, and the data is still uniformly personally identifying as to both plaintiffs and Class
 9 members based on the totality of the information commonly disclosed in the bid requests. See *id.*, ¶¶
 10 28-34. Prof. Shafiq conducted the same analysis of the Class data that he previously did for the
 11 Plaintiff data. This allowed for a direct comparison between them to test whether the Plaintiff data is
 12 representative for the Class.

13 Prof. Shafiq first analyzed the Class data to determine whether the same 62 data fields
 14 common in the Plaintiff data were also common in the Class data. He concludes that with four
 15 exceptions (none of which impact his ultimate opinion that the data is uniformly personally
 16 identifying), the same data fields that are commonly included in the Plaintiff data are also commonly
 17 included in the Class data. See *id.*, ¶¶ 24-26.²³ That is, 58 of the 62 fields are commonly included in
 18 both the Class data and the Plaintiff data. *Id.* He then analyzed these common data fields to determine
 19 what information the fields conveyed to RTB participants and whether this information collectively
 20 was sufficiently specific to allow those participants to identify, associate with, or reasonably link that
 21 data to a particular user or household.²⁴ See *id.*, ¶¶ 27, 35-44. Conducting the same analysis that he
 22 did for the Plaintiff data (and relying on the same internal Google documents and peer-reviewed

23
 24 ²² When Google produced the Class data in July 2024, it produced the same data fields that it had
 produced for the plaintiffs. See Further Pritzker Decl., ¶ 12, 15, 17.

25 ²³ The four exceptions are for two of the nine location fields ([REDACTED]), which are present [REDACTED]
 26 [REDACTED] of the time, respectively, and for two of the twelve device fields (model and brand), which
 are present [REDACTED] of the time, respectively. *Id.*, ¶ 25.

27 ²⁴ The information in the common data fields again included, *inter alia*, a unique Google User ID,
 28 the specific URL of the website or app visited or used, IP address, [REDACTED], extensive location
 data, extensive device information, and the language of the site or app. See Shafiq Supp, ¶ 27.

1 research), Prof. Shafiq again concludes that the information Google conveyed to RTB bid participants
2 in the Class data is uniformly sufficiently specific to allow those participants to identify, associate
3 with, or reasonably link that data to a particular user or household. *Id.*

4 Just as he did with the Plaintiff data, Prof. Shafiq analyzed other aspects of the Class data,
5 including the number and identities of RTB participants receiving bid data from Google, the countries
6 that the bid data was being sent to, the number of times sensitive URLs were involved, and how many
7 times, on average, each Class member's personal information was sold or shared by Google. For the
8 six ten-minute periods of Class data Google produced, Prof. Shafiq finds that there were at least [REDACTED]
9 different companies receiving the bid data located in at least [REDACTED] countries, and that the companies
10 included some of the largest technology companies in the world. Shafiq Supp., ¶¶ 18, 21-22. These
11 statistics are remarkably consistent with the statistics for the Plaintiff data. Shafiq Rep., ¶¶ 36-40.
12 With respect to sensitive categories of information, in just the one hour of time sampled, categories
13 of sensitive information were conveyed in more than one billion of the Class bid requests. Shafiq
14 Supp., ¶ 23. Finally, while the manner in which Google produced the Class data makes it impossible
15 to determine the number of individual Google account holders in that data, Prof. Shafiq was able to
16 determine that there were at least [REDACTED] million signed-in Google account holders represented in the
17 Class data and that, on average, they were each subject to at least [REDACTED] bid requests a day; lower than
18 the average for the plaintiffs, but still quite substantial. Shafiq Reb. ¶ 37; Shafiq Supp., ¶ 20.

19 Prof. Shafiq also looked to determine whether there were any material differences in the Class
20 data as between signed-in and signed-out Google U.S. account holders. Prof. Shafiq concludes that
21 there are no material differences between signed-in and signed-out accounts, because all of the same
22 data fields are populated in both sets of Class data at the same percentages. Shafiq Supp., ¶¶ 28-34.
23 This is reflected in the spreadsheet attached as Exhibit C to Prof. Shafiq's Supplemental Report,
24 which lists the common data fields present in the Plaintiff data and the Class data, both for signed-in
25 and signed-out account holders. Additionally, Prof. Shafiq concludes that from Google's perspective,
26 as opposed to the RTB participants receiving the bid requests, there is no difference between the
27 signed-in and signed-out Class data, because Google has the ability to link, and in fact did link,
28 signed-out data with account holders when it produced the Class data here. *Id.*, ¶¶ 32-33.

1 In light of all of the similarities between the Plaintiff data and the Class data summarized
2 above and detailed in Prof. Shafiq’s Supplemental Report, Prof. Shafiq opines that the Plaintiff data
3 is in fact representative of the Class as whole, and that the Class data, like the Plaintiff data, is
4 uniformly sufficiently specific to allow RTB bid participants to identify, associate with, or reasonably
5 link that data to a particular user or household. Shafiq Supp., ¶ 34.

6 **C. Rule 23(a) and (b)(2) Certification is Warranted**

7 Plaintiffs have met their burden for certification of an injunctive and declaratory relief class.
8 The requirements of Rule 23(a) (b)(2) are amply satisfied, and the form of injunctive relief plaintiffs
9 propose – all of which focus on choice, accountability, and transparency – will provide meaningful
10 and appropriate relief to the Class as a whole.

11 1. Rule 23(a)’s Requirements are Satisfied

12 The Court previously held that plaintiffs satisfied Rule 23(a)’s requirements of numerosity,
13 typicality and adequacy, and the modest change in the class definition from the prior motion does not
14 disturb any of the Court’s prior holdings with respect to these three elements of Rule 23(a). The case
15 still involves at least tens, if not hundreds of millions of active U.S. account holders, satisfying
16 numerosity under Rule 23(a)(1). *See* Order at 10 (“Plaintiffs contend...there are potentially 1.4 billion
17 U.S. accounts holders at issue. Google does not dispute this estimate”); Shafiq Supp. ¶ 20. If one
18 extrapolates out the Class data (50 billion bid requests an hour), Google is sharing its U.S. account
19 holders’ personal information ■■■ million times a minute and ■■■ trillion times a day. The “proposed
20 class representatives are, like all putative class members, subject to Google’s ToS, its Privacy Policy,
21 and other standardized disclosures” and remain in “active” account status, so typicality is still met
22 under Rule 23(a)(3). Order at 19; Further Caracuzzo Decl., ¶¶ 31-38; Further Pritzker Decl., Exs. 6-
23 12. Adequacy also is satisfied under Rule 23(a)(4). “Named plaintiffs and their counsel have already
24 spent years vigorously litigating discovery. Moreover, plaintiffs’ counsel has experience in complex
25 and class action litigation, including privacy class actions.” Order at 19; Further Pritzker Decl., ¶ 25.

26 The Court similarly held that, “at least for commonality purposes, Google’s standardized
27 disclosures are common proof capable of resolving the question” of whether Google promised its
28 U.S. account holders that it would not share or sell their personal information.” Order at 14. That

1 ruling addressed Rule 23(a)(2)'s commonality requirement, in part. On this renewed Motion,
2 plaintiffs were ordered to address whether there also is evidence common to the Class that the account
3 holder information Google shares and sells in RTB auctions is personally identifying. *See id.* at 2, 15-
4 18. Plaintiffs have shown here that such common evidence exists. As detailed above, Google's RTB
5 protocol, by design and in everyday practice, is identical for every one of its trillions of daily RTB
6 bids, and it impacts all U.S. account holders in common ways. *See Order* at 12; Shafiq Supp., ¶¶ 45-
7 51. Having now analyzed over 120 terabytes of Class data and almost ■ billion Class RTB bid
8 requests, Prof. Shafiq attests that all of the trillions of Google's daily RTB bids uniformly contain
9 information that is in fact personally identifying for the Class as a whole. *Id.*, ¶¶ 14-34. Prof. Shafiq
10 confirms there is common class-wide evidence that the information Google commonly shares and
11 sells in RTB auctions is personally identifying for all Google U.S. account holders and that Google
12 and its hundreds of RTB participants around the world can readily identify, associate with, or
13 reasonably link that data to a particular user or household. *Id.*, ¶¶ 35-44. This is how RTB works.
14 This is true irrespective of whether account holders are signed-in or signed-out of their Google
15 accounts when they are searching the internet or using an app. *Id.*, ¶¶ 28-33. The requirement of
16 commonality under Rule 23(a)(2) is thus satisfied.

17 2. Rule 23(b)(2)'s Requirements are Satisfied

18 Plaintiffs also have shown that the proposed Class satisfies the requirements of Rule 23(b)(2).
19 Rule 23(b)(2) allows for class treatment and certification of an injunctive relief class where "the party
20 opposing the class has acted or refused to act on grounds that apply generally to the class, so that final
21 injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."
22 Rule 23(b)(2); *see also B.K.*, 922 F.3d at 970-971.

23 Here, as the Court previously held, "Google's disclosures are generalized." *Order* at 24. These
24 standardized disclosures – Google's ToS, Privacy Policies, and related disclosures – apply generally
25 across the Class to all active U.S. Google account holders to form a common contract and common
26 commitment. *See* fn. 3-13, *supra*. Together, they provide common proof as to the question of whether
27 Google promised its U.S. account holders that it would not share or sell their personal information,
28 as this Court has already held. *See Order* at 11.

1 Additionally, as this Court has already observed, and as plaintiffs’ experts have shown,
2 “Google’s RTB is universal.” Order at 24. Its “RTB protocol is identical for every one of its billions
3 of daily bids.” *Id* at 12 (citing Wilson Rep., ¶34; Shafiq Rep., ¶ 18; 2/21/24 Hrg. Tr. at 10-18 (Google
4 so conceding)). This is by design. RTB is an entirely mechanical, computerized process that operates
5 a billion times a minute, transmitting information about a user’s web browsing activity back to
6 Google, that Google then packages into bid requests that it sends to hundreds of RTB participants
7 from around the world, who then send bid responses back to Google as part of an auction process by
8 which the winning RTB participant earns the opportunity to display an advertisement to the user. *See*
9 Wilson Rep., ¶ 24. Although the entire process occurs “faster than the blink of an eye” (Shafiq Rep.,
10 ¶ 19), all Class members are subject to Google RTB in the very same way. *See* Shafiq Supp., ¶¶ 34,
11 45-51. There is no way for users to stop Google from sharing or selling their information through the
12 billions of RTB bids exchanged every day in the RTB auction – Google conceded this fact when the
13 Court considered Plaintiffs’ first class certification motion. *See* 2/21/24 Hrg. Tr. at 36:7-22.
14 Moreover, as Prof. Shafiq attests, plaintiffs now have common proof that the Class member data
15 Google uniformly sells and shares in the RTB auction process may constitute “personal information”
16 under California law.²⁵ Shafiq Supp., ¶¶ 35-44.

17 Plaintiffs have satisfied Rule 23(b)(2)’s requirements. Plaintiffs challenge “a pattern or
18 practice that is generally applicable to the class as a whole.” *Walters v. Reno*, 145 F.3d 1032, 1047
19 (9th Cir. 1998). And, Google RTB is ongoing – presenting continuing and present adverse effects
20 across the Class. These are precisely the circumstances under which Rule 23(b)(2) certification and
21 class-wide injunctive relief are appropriate. *See, e.g., Brown v. Google, LLC*, 2022 WL 17961497, at
22 *14, *20 (N.D. Cal. Dec. 12, 2022) (certifying (b)(2) class where “plaintiffs’ theory of the case was
23 Google collects users’ private browsing data after promising not to do so.”); *Rodriguez v. Google*,

24
25 _____
26 ²⁵ The Court has previously held: “Under California law, personal information is ‘information that
27 identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably
28 be linked, directly or indirectly, with a particular consumer or household’ including ‘[i]nternet or
other electronic network activity information,’ such as ‘browsing history, search history, and
information regarding a consumer’s interaction with an internet website, application, or
advertisement.’” Order at 15 (citing Cal. Civ. Code § 1798.140(v)).

1 *LLC*, 2024 WL 38302, at *10 (N.D. Cal. Jan. 3, 2024) (certifying (b)(2) class seeking deletion of all
 2 “SWAA-off data” collected by Google despite promise it would not collect such data from Class
 3 members who switched off their WAA and sWAA buttons); *DZ Rsrv. v. Meta Platforms, Inc.*, 2022
 4 WL 912890, at *10 (N.D. Cal. Mar. 29, 2022), *aff’d in part, vacated in part, remanded*, 96 F.4th 1223
 5 (9th Cir. 2024) (certifying (b)(2) class requiring Meta to correct or cease certain alleged misleading
 6 advertising practices).

7 3. Plaintiffs’ Proposed Injunctive Relief Provides Class-Wide Relief

8 Plaintiffs also satisfy Rule 23(b)(2)’s requirement that they “‘describe[] the general contours’
 9 of the class-wide injunctive relief that they seek, ‘that is more specific than a bare injunction to follow
 10 the law, and that can be given greater substance or specificity at an appropriate stage in the litigation
 11 through fact-finding, negotiations, and expert testimony.’” Order at 24 (citing *B.K.*, 922 F.3d at 972
 12 (quoting *Parsons*, 754 F.3d at 689-90, n.35)); *see also Rodriguez*, 2024 WL 38302 at *10 (granting
 13 Rule 23(b)(2) certification, also citing *Parsons*, and holding that “Plaintiffs have convincingly
 14 identified ‘the general contours’ of the class-wide injunctive relief they seek”).

15 Consistent with this authority, plaintiffs describe the general contours of the injunctive relief
 16 they seek for the Class. Plaintiffs seek an order that Google:

- 17 • Cease its false representations that it “will not,” does not” and will “never” share with
 18 or sell to companies the personal information of its U.S. account holders;
- 19 • Truthfully disclose precisely what information it in fact shares and sells with RTB
 20 participants and for what purposes;
- 21 • Tell U.S. account holders how long Google retains their Google RTB data and how
 22 they can request transparency into the personal information that Google shared or sold;
- 23 • Provide U.S. account holders with a mechanism they can use to decide whether they
 24 do or do not consent to Google’s sharing and sale of their personal information to
 25 companies in Google RTB;
- 26 • Make available to any Class member who requests it a list of what personal information
 27 was shared or sold to third parties in Google RTB, and to whom; and
- 28 • Offer an effective means for account holders to opt out of Google RTB altogether.

27 *See Further Pritzker Decl.* ¶¶ 26-27. This injunctive relief, the Court has held, “would be an important
 28

1 step toward choice, accountability and transparency.” Order at 26. Plaintiffs’ requested declaratory
2 relief – including a judicial declaration that Google’s representations in its Privacy Policies, ToS and
3 related disclosures amount to a common contract, that Class members have a right under that contract
4 not to have their personal information shared and sold to third parties, and that Google’s RTB
5 practices are unfair, unlawful and deceptive – is entirely complementary to such injunctive relief, and
6 would similarly provide significant Class-wide relief. *See* Further Pritzker Decl. ¶¶ 28-29.

7 4. The Claims to Be Certified Provide Effective Injunctive Remedies

8 Rule 23(b)(2) “does not require an examination of the viability or bases of the class members’
9 claims for relief,” and “does not require a finding that all members have suffered identical injuries.”
10 *Parsons*, 754 F.3d at 688. Injunctive relief is appropriate under Rule 23(b)(2) when its issuance is
11 “respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *see also B.K.*, 922 F.3d at 970-971. Here,
12 plaintiffs’ requested injunctive relief is logically tied to the claims to be certified, is appropriate to
13 address the continuing violations and class-wide harms plaintiffs allege, and provides important,
14 prospective relief for Class member in ways that satisfy Rule 23(b)(2)’s requirements.

15 **The Breach of Contract Claim.** Google does not challenge that there is common proof in its
16 ToS, Privacy Policies and related disclosures of its contractual promise that it will not sell or share
17 Class members’ personal information outside of Google. This is the precise type and form of evidence
18 that courts look to in assessing whether there is common contract to which Google and all Class
19 members are bound. *See In Re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 610 (9th Cir.
20 2020) (“*Facebook Tracking*”). Indeed, at the prior class certification hearing, “Google conceded that
21 whether it made a contractual promise not to sell its account holders’ personal information is capable
22 of classwide resolution.” Order at 11 (citing 2/21/24 Hrg. Tr. at 0:13-24).

23 Claims that arise from common form contracts, as here, “are particularly appropriate for class
24 treatment.” *Newberg on Class Actions*, § 3.24 (5th ed.). Injunctive relief in the form plaintiffs request
25 is an appropriate prospective way to afford class-wide relief on this common contractual claim. That
26 claim, like plaintiffs’ other claims, is governed entirely by California law. *See* ECF 92, CCAC, Count
27 I, ¶¶ 339-350, Prayer, ¶¶ E, F; Further Caracuzzo Decl. ¶¶ 32-37. Pecuniary compensation would not
28 afford adequate relief for Google’s continuing RTB practices and its ongoing breaches of its

1 contractual promises to its U.S. account holders. Conversely, an order that would require Google to
2 (1) amend and clarify its standardized contractual disclosures; (2) stop Google from misrepresenting
3 that it never shares or sells account holder personal information in RTB despite its promise to the
4 contrary; (3) stop Google’s sharing or selling account holders’ personal information in violation of
5 this core contractual promise, and (4) require Google to provide Class members a meaningful
6 opportunity to opt out of RTB would provide effective class-wide relief to remedy these continuing
7 breaches and ongoing class-wide impacts. *See Broomfield v. Craft Brew All., Inc.*, 2018 WL 4952519,
8 at *8 (N.D. Cal. Sept. 25, 2018) (certifying Rule 23(b)(2) class where proposed injunctive relief
9 would enjoin defendant’s “uniform policy and practice of misrepresenting on its packaging the
10 brewing location of the Kona Beers”); *Brown*, 2022 WL 17961497 at *1, 20 (granting Rule 23(b)(2)
11 certification of breach of contract and related claims).

12 **The Privacy Tort Claims.** Plaintiffs also seek Rule 23(b)(2) certification of four privacy tort
13 claims under California law. *See* ECF 92 (Count IV-Invasion of Privacy, ¶¶ 383-397; Count V-
14 Intrusion Upon Seclusion, ¶¶ 399-408; Count IV-Publication of Private Information, ¶¶ 410-425;
15 Count VIII-Breach of Confidence, ¶¶ 417-426, Prayer, ¶¶ E, F). Each claim involves common
16 questions, including whether Class members possess a legally protected privacy interest, whether
17 they maintain a reasonable expectation of privacy, and whether the intrusion is highly offensive to a
18 reasonable person. *See Hernandez v. Hillsides, Inc.*, 47 Cal. 4th 272, 287 (2009) (claim for invasion
19 of privacy under the California Constitution); *Facebook Tracking*, 956 F. 3d at 605 (intrusion upon
20 seclusion); *Shulman v. Grp. W. Prods., Inc.*, 18 Cal. 4th 200, 214 (1998) (publication of private
21 information). Plaintiffs’ breach of confidence claim requires proof that Class members’ private
22 information is “widely published and not confined to a few persons or limited circumstances.” *Hill v.*
23 *NCAA*, 7 Cal. 4th 1, 37 (1994).

24 Each claim also is subject to common proof. As shown above (at § C.1), there is common
25 proof that Google collects and shares with RTB participants Class members’ legally protected
26 “personal information,” as that term is defined in California law. This includes the contents of Class
27 members’ internet communications, such as the URLs they are visiting, information about their
28 activities and interests, and information that can identify or be associated with the Class member or

1 her household. Shafiq Supp. ¶¶ 35-44. Such information is obviously “confidential.” MTD Order
2 (ECF 233) at 15:2-6.²⁶ Whether Class members have a reasonable expectation of privacy in their
3 personal information, and whether Google’s common practice of sharing and selling that information
4 billions of times each day to hundreds of RTB participants from around the world is highly offensive
5 to a reasonable person, are objective inquiries that also can be answered through common proof. *See*
6 Order at 7-8 (“It is black letter law that whether someone has a reasonable expectation of privacy is
7 an objective, and therefore common, inquiry.”) (citing *Shulman*, 18 Cal.4th at 214)); *Opperman v.*
8 *Path, Inc.*, 2016 WL 3844326, at *11 (N.D. Cal. July 15, 2016) (certifying class for intrusion upon
9 seclusion claim where common proof of class members’ “reasonable expectations” of privacy shown
10 through broadly based and widely accepted community norms).

11 Here, in light of Google’s uniform promises that it would not share and sell Class members’
12 personal information, Class members uniformly had a reasonable expectation that Google would keep
13 their information private in accordance with its promises. *See, e.g., Calhoun v. Google*, 113 F.4th
14 1141, 1150 (9th Cir. 2024) (Google’s Chrome Privacy Notice includes an “affirmative statement[]
15 that it would not receive [user] information”...“unless you choose to ... turn[] on sync,” setting an
16 expectation that data would not be collected and stored if sync is not turned on); *Facebook Tracking*,
17 956 F.3d at 602 (“Facebook set an expectation that logged-out user data would not be collected, but
18 then collected it anyway”); *In re Nickelodeon Cons. Priv. Litig.*, 827 F.3d 262, 294 (3d Cir. 2016) (a
19 reasonable expectation of privacy existed when Nickelodeon promised users that it would not collect
20 information from users, but then did). Proof of these issues is common to the Class (*see* Order at 7-
21 8), using common evidence – Google’s standardized ToS, Privacy Policies and related disclosures.

22 Additionally, insofar as the reasonable expectation of privacy inquiry at this juncture rises or
23 falls on consent, Google’s express promises, and its breaches of those promises, are uniform for all
24 Class members and go directly to the issues of consent and reasonable expectations of privacy for
25

26 ²⁶ *Cf. Riley v. California*, 573 U.S. 373, 395-96 (2014) (“Internet search and browsing history” and
27 “location information”); *Flores-Mendez v. Zoosk, Inc.*, 2021 WL 308543, at *4 (N.D. Cal. Jan. 30,
28 2021) (“sexual preference[]”); *Stasi v. Inmediata Health Grp.*, 501 F. Supp. 3d 898, 915 (S.D. Cal.
2020) (medical information).

1 injunctive relief purposes – **as this Court has already held.** See Order at 25 (“[W]hether Google
2 promised not to share account holders’ personal information is a ... question ... [t]hat will be resolved
3 on the basis of Google’s standardized disclosures – and therefore plaintiffs’ express consent – alone.”)
4 (citing *In re Google Inc. Gmail Litig.*, 2014 WL 1102660, at *19 (N.D. Cal. Mar. 18, 2014)); accord
5 *Calhoun*, 113 F.4th at 1150. Prof. Shafiq’s analysis of the Class data also provides common proof
6 that Class members’ personal information is both “widely published and not confined to a few persons
7 or limited circumstances” (*Hill*, 7 Cal. 4th at 27),²⁷ and of such an immense scope and scale as to be
8 highly offensive to a reasonable person. Prof. Shafiq’s analysis reveals that for just six, ten-minute
9 periods, Google disclosed its U.S. account holders’ personal information to at least [REDACTED] different
10 companies located in [REDACTED] countries almost [REDACTED] billion times, equating to roughly [REDACTED] million disclosures
11 each minute of each day. Shafiq Supp. ¶¶ 18-22. His analysis also reveals the scope and breadth of
12 Google RTB and how unlikely it would be for any Class member using the internet to avoid having
13 their personal information shared or sold by Google in RTB. See *id.*, ¶ 45-51.

14 Injunctive and corresponding declaratory relief are entirely appropriate remedies to address a
15 common, ongoing practice that violates Class members’ personal privacy where, as here, there is no
16 adequate remedy at law for damages. See, e.g., *Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300,
17 307 (2002) (Cal. Const. Art. 1, § 1 is self-executing and, like many other constitutional provisions, it
18 “supports an action...for declaratory relief or for an injunction.”); *In re Meta Pixel Healthcare Litig.*,
19 647 F. Supp. 3d 778, 802 (N.D. Cal. 2022) (injunctive relief appropriate to remedy invasion of privacy
20 triggered by Meta’s ongoing disclosure of plaintiffs’ medical information – “precisely the kind of
21 intangible injury that cannot be remedied by damages”); *Brooks v. Thomson Reuters Corp.*, 2021 WL
22 3621837, at *11 (N.D. Cal. Aug. 16, 2021) (injunctive relief available where there is an invasion of
23 privacy that “can never be fully remedied through damages” and loss of privacy is “irreparable”).

24 An order requiring Google to (1) amend and clarify its standardized contractual disclosures,
25 (2) stop it from misrepresenting what types of user information it shares and sells to outside
26

27 ²⁷ See also *In re Facebook, Inc. Consumer Priv. User Profile Litig.*, 402 F. Supp. 3d 767, 796 (N.D.
28 Cal. 2019) (“[D]issemination of your private information to tens of thousands of individuals and
companies is generally going to be equivalent to making that information ‘public.’”).

1 companies in the RTB auctions, and (3) requiring Google to provide Class members a mechanism to
2 opt out of RTB, would provide effective class-wide relief to remedy these ongoing intrusions of Class
3 members' privacy, and the continuing dissemination by Google of their personal information to
4 hundreds of companies billions of times every day. *See, e.g., Rodriguez*, 2024 WL 38302 at *10
5 (granting Rule 23(b)(2) certification for injunctive relief of invasion of privacy, intrusion upon
6 seclusion, and related claims); *Brown*, 2022 WL 17961497 at *14, *20 (same).

7 **The CIPA Claim.** The Court has already held that “an injunctive relief class would be
8 appropriate for purposes of plaintiffs' claims under...[the California Invasion of Privacy Act,] CIPA.
9 Order at 26. And, with good reason. Plaintiffs' CIPA claim is supported by common proof that Google
10 allows RTB participants to “read” or “attempt to read” or “learn the contents or meaning of “class
11 member communications as part of the Google RTB process. Shafiq Rep. ¶ 42; Shafiq Reb. ¶¶ 44-
12 47. And, the undisputed proof that Google's actions occurred while the communications were “in
13 transit” is common to all class members. *See* Order at 18.

14 The CIPA statute, Penal Code § 637.2(b), specifically provides that “any person...may bring
15 an action to enjoin and restrain any violation of this chapter....” *Id.* An order for injunctive relief is
16 an appropriate class-wide remedy, here. Google's conduct has not stopped. Absent an injunction in
17 the form requested, Google will continue to violate Class member's rights under CIPA in the very
18 manner it does so today. These are precisely the circumstances under which this courts grant Rule
19 23(b)(2) certification for injunctive relief under CIPA. *See Brown*, 2022 WL 17961497 at *1, 20
20 (granting Rule 23(b)(2) certification for injunctive relief under CIPA); *In re Yahoo Mail Litig.*, 308
21 F.R.D. at 599 (certifying Rule 23(b)(2) class, under CIPA, for a requested injunction to stop Yahoo
22 from scanning class members' emails and using contents without consent); *see also Doe v. Meta*
23 *Platforms, Inc.*, 690 F. Supp. 3d 1064, 1079 (N.D. Cal. 2023) (noting, without ruling, that Meta's
24 ToS, specifying that California laws applies to disputes between Meta and its users, supports allowing
25 out-of-state plaintiffs to seek all available relief under CIPA).

26 **The UCL Claim.** Plaintiffs' complaint also asserts a claim for relief under the California
27 Unfair Competition Law (UCL). *See* ECF 92, ¶¶ 372-382. This claim has been held in abeyance,
28 consistent with Judge Koh's directive, at the outset of the litigation, to specify only eight of plaintiffs'

1 claims to be litigated through trial. *See* ECF 83 at 1; ECF 91 at 2. The Order specifically found
2 “plaintiffs’ motion for an injunctive relief class under Rule 23(b)(2) would be appropriate for
3 purposes of plaintiffs’ claims under the UCL.” Order at 26. The Court was well within its discretion
4 to bring this claim out of abeyance, and the Court can, and should, afford Class members appropriate
5 injunctive relief under the UCL now. The UCL covers a wide range of conduct. It “borrows”
6 violations from other laws making them independently actionable as unfair competitive practices,
7 embracing “anything that can properly be called a business practice and that at the same time is
8 forbidden by law” (*Cel-Tech Comms., Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 180
9 (1999)), and it lists injunctive relief as one of the UCL’s core equitable remedies. *See* Cal. Bus. &
10 Prof. § 17203; *Colgan v. Leatherman Tool Grp., Inc.*, 135 Cal. App. 4th 663, 702 (2006), as modified
11 on denial of reh’g (“A trial court has broad authority to enjoin conduct that violates section 17200.”)

12 Here, an order providing for plaintiffs’ requested injunctive relief (*see* § C.3 above) would go
13 a long way toward remedying Google’s misleading and unfair RTB practices, providing effective
14 relief to the Class as a whole. *See Brooks v. Thomson Reuters Corp.*, 2023 WL 9316647, at *16 (N.D.
15 Cal. Aug. 10, 2023) (certifying Rule 23(b)(2) class under the UCL, finding: “In whatever form
16 injunctive relief takes – whether creating a public campaign to inform Californians that CLEAR
17 exists, enhancing its...Privacy Policy for individuals to easily request opt-out and remove their
18 information from CLEAR, reaching out to individuals for consent, or shutting down the CLEAR
19 platform altogether – ‘a proposed injunction addressing those policies and practices
20 would...prescribe a standard of conduct applicable to all class members.’”); *Brown*, 2022 WL
21 17961497 at *1, *20 (certifying Rule 23(b)(2) class for UCL and related claims, finding that
22 injunctive relief that would “...preclude Google from collecting further private browsing information;
23 ...require Google to delete the private browsing information that it previously collected...; [and]...
24 require Google to remove any services that were developed or improved with the private browsing
25 information...” would provide “important changes to reflect transparency in the system.”).

26 V. CONCLUSION

27 For all the foregoing reasons, the Court should certify the Class and Class claims under Rule
28 23(a) and (b)(2), appoint plaintiffs as representatives of the Class, and appoint Class Counsel.

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DATED: November 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2024, I caused to be electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

/s/ Bethany Caracuzzo
Bethany Caracuzzo