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7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 CALIFORNIA CRANE SCHOOL, INC.,
12 on behalf of itself and all others similarly
13 situated,

14 Plaintiff,

15 v.

16 GOOGLE LLC, ALPHABET INC., XXVI
17 HOLDINGS INC., APPLE INC., TIM
COOK, SUNDAR PICHAI, and ERIC
SCHMIDT,

18 Defendants.
19
20

Case No. 4:21-cv-10001-HSG

**GOOGLE LLC, ALPHABET INC., XXVI
HOLDINGS, INC., SUNDAR PICHAI, AND
ERIC SCHMIDT'S NOTICE OF MOTION
AND MOTION TO COMPEL
ARBITRATION; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Hearing Date: August 11, 2022
Time: 2:00 p.m.
Place: Courtroom 2
Judge: Hon. Haywood S. Gilliam, Jr.

NOTICE OF MOTION AND MOTION

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

PLEASE TAKE NOTICE that on August 11, 2022, at 2:00 p.m., or as soon thereafter as this matter may be heard, either in Courtroom 2 of this Court, located on the 4th Floor of the United States Courthouse, 1301 Clay Street, Oakland, California, or by videoconference or teleconference, Google LLC, Alphabet Inc., XXVI Holdings Inc., Sundar Pichai, and Eric Schmidt (collectively, “Google Defendants”) will move the Court for an order compelling arbitration and dismissing or staying Plaintiff’s claims against Google Defendants.

Google Defendants respectfully request an order compelling arbitration and dismissing all causes of action brought against them in the above-captioned matter. This Motion is based upon this Notice; the accompanying Memorandum of Points and Authorities; any reply memorandum; the pleadings and files in this action; and such other matters Google Defendants may present at or before the hearing.

DATED: March 18, 2022

WILLIAMS & CONNOLLY LLP

By: /s/ John E. Schmidlein

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MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

Plaintiff entered into an agreement to individually arbitrate all disputes with Google—as well as any of Google’s parent companies and executives of those entities—relating to its participation in Google’s advertising programs and services. The enforceability of this arbitration provision has been repeatedly upheld by courts. Yet, Plaintiff nevertheless seeks to evade these contractual obligations by filing a purported class action against Google, its parent companies, and certain of its executives. Google respectfully moves for an order compelling Plaintiff to arbitrate its dispute, as it agreed.

I. BACKGROUND

The allegations in the Complaint are described in detail in the accompanying Defendants’ Joint Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As relevant to the instant motion, the Complaint alleges in conclusory fashion that Plaintiff, a crane operator certification company, purchased search advertisements on Google, and that the prices paid were inflated by an allegedly illegal agreement between Apple and Google. Compl. ¶¶ 45, 48, 139. The Complaint asserts claims against Google LLC, Alphabet Inc., XXVI Holdings Inc., Sundar Pichai, and Eric Schmidt (collectively, the “Google Defendants”), as well as Apple Inc. and Tim Cook. *Id.* ¶¶ 49, 50-53.

As is customary throughout the advertising industry, certain terms and conditions accompany an entity’s use of Google’s advertising services. These terms and conditions are contained in Google’s Advertising Program Terms of Service (“TOS”), which are presented to advertisers using Google’s services and available online for anyone, at any time, to review. Shadd Decl. ¶¶ 3, 5, 11. Plaintiff accepted the TOS in 2017 and 2018. *Id.* ¶¶ 13-16.

The TOS explains, in the very first paragraph, that it “require[s] the use of binding individual arbitration to resolve disputes rather than jury trials or class actions.” Shadd Decl., Exs. A & D.

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