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15 GOOGLE LLC

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 JONATHAN DIAZ and LEWIS
15 BORNMANN, on behalf of themselves
16 and all others similarly situated,

17 Plaintiff,

18 v.

19 GOOGLE LLC,

20 Defendant.

Case No. 5:21-cv-03080 NC

**DEFENDANT GOOGLE LLC'S
NOTICE OF MOTION AND MOTION
TO DISMISS THE FIRST AMENDED
COMPLAINT PURSUANT TO FED.
R. CIV. P. 12(B)(1) AND 12(B)(6)**

Judge: Hon. Nathanael Cousins
Court: Courtroom 5 – 4th Floor
Date: October 27, 2021
Time: 1:00 p.m.

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT**, on October 27, 2021 at 1:00 p.m., the undersigned will
3 appear before the Honorable Nathanael Cousins of the United States District Court for the
4 Northern District of California at the San Jose Courthouse, Courtroom 5, 4th Floor, 280 South 1st
5 Street, San Jose, CA 95113, and shall then and there present Defendant Google LLC (“Google”)’s
6 Motion to Dismiss the First Amended Complaint (“Motion”).

7 Google brings this Motion under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil
8 Procedure. Google will, and hereby does, move for an order dismissing the First Amended
9 Complaint (“FAC”) with prejudice because any additional amendment of the FAC would be futile.
10 The Motion is based on this Notice of Motion and Motion, the following Memorandum of Points
11 and Authorities, Google’s Request for Judicial Notice, the Declaration of Tiffany Lin, and exhibits
12 attached thereto, the pleadings and other papers on file in this action, any oral argument, and any
13 other evidence that the Court may consider in hearing this Motion.

14 **ISSUES PRESENTED**

15 Whether Plaintiffs’ FAC should be dismissed for lack of subject-matter jurisdiction under
16 Federal Rule of Civil Procedure 12(b)(1) where Plaintiffs lack Article III standing; whether
17 Plaintiffs’ FAC should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for
18 failure to state a claim upon which relief can be granted; and whether the FAC should be
19 dismissed with prejudice where any additional amendment would be futile.

20
21 WILLKIE FARR & GALLAGHER LLP

22 Date: August 25, 2021

23 By: /s/ *Benedict Y. Hur*
24 Benedict Y. Hur
25 Simona Agnolucci
26 Eduardo E. Santacana
27 Tiffany Lin

28 Attorneys for Defendant
Google LLC

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