

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and effective as of October 3, 2022 (the “Effective Date”) by and between: (1) the Plaintiff State of Arizona *ex rel.* Mark Brnovich, the Attorney General (“State” or the “Plaintiff”), on the one hand; and (2) Defendant Google, LLC (“Google” or the “Defendant”), on the other. The State and the Defendant (collectively, the “Parties”), by and through their counsel, enter into this Agreement to resolve the claims asserted in *State of Arizona, ex rel. Mark Brnovich, Attorney General v. Google, LLC*, No. CV2020-006219 (Superior Court, County of Maricopa, Arizona) as described in the Complaint filed on May 27, 2020 (the “Action”).

RECITALS

WHEREAS, the State brought the Action against Defendant in the Superior Court of the State of Arizona in and for the County of Maricopa;

WHEREAS, the Complaint alleges that the Defendant violated the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.* (“ACFA”), with respect to its acts, practices, and omissions related to the collection, storage, or use of user location data, (the “Covered Conduct”), and the Complaint further asserts claims for civil penalties and other monetary and injunctive relief, as described in further detail in the Complaint filed in the Action;

WHEREAS, the Parties have taken discovery, investigated the facts, and have analyzed the relevant legal issues regarding the claims and defenses asserted in the Action;

WHEREAS, the Parties have each considered the costs, delays and legal uncertainties associated with the continued prosecution and defense of this litigation, and have reached an agreement to settle and resolve the Action;

WHEREAS, the Parties agree that nothing in this Agreement shall constitute an admission of any wrongdoing or admission of any violations of law by Defendant.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the adequacy and receipt of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1 Settlement Payment and Assurance of Voluntary Compliance

1.1 In full and complete satisfaction of all claims asserted in the Action, the Defendant agrees to pay to the State eighty-five million dollars (\$85,000,000.00) (the “Settlement Payment”) to be used in the manner set forth in subsections 1.1(a)-(c) *et seq.*

(a) The Defendant shall deliver the Settlement Payment via ACH transfer to the state general fund to be used in accordance with applicable state laws and to the State’s counsel for the State’s counsels’ attorneys’ fees. To effectuate these transfers, the State and the State’s counsel hereby shall provide the Defendant with an IRS Form W-9 and ACH instructions upon execution of this agreement (“Transfer Documents”). The Defendant will transfer \$77,250,000 to the State and \$7,750,000 to the State’s counsel on October 24, 2022.

(b) The Attorney General will spend or direct \$5,000,000 of the Settlement Payment for educational institutes, specifically 1) an accredited law school that maintains programs for the education of attorney general staff and judges regarding consumer

protection issues, including but not limited to issues of consumer privacy and technology, and 2) a bipartisan association or forum of state attorneys general that provides programming to current attorneys general regarding consumer protection issues, to develop programs to rectify alleged violations of consumer protection laws and, specifically, for programs to educate and assist state attorneys general regarding consumer fraud act cases and digital privacy.

(c) The Arizona Legislature shall spend or direct the remainder of the \$77,250,000 after subsections 1.1(b) and (e) toward education, broadband, and Internet privacy efforts and purposes.

(d) The allocation of funds as set forth in subsections 1.1(b) and 1.1(c) shall be subject to the normal procurement process and approvals. The failure to comply shall not be a breach by the State or Google.

(e) All unreimbursed litigation costs incurred by the State's counsel in this Action shall be remitted to counsel by the State after the Settlement Amount is deposited per subsection 1.1(a) and per the terms and conditions in the contract between counsel and the State and in accordance with applicable state laws.

(f) Subject to the limitations imposed by state law, the provisions herein relating to attorneys' fees and costs were negotiated by the State and the State's counsel, not Defendant. Accordingly, any and all disputes regarding those fees and costs are solely for, and the responsibility of, the State and its counsel, not Defendant. The State's fee agreements with its counsel, Contract Nos. #AG18-0013-006 and #AG18-0013-008, are available for public review through the Attorney General's office.

1.2 The Agreement resolves all claims asserted in the Action or that could have been asserted based on the facts alleged in the Complaint and as further set forth herein.

1.3 Upon (i) the Defendant making the Settlement Payment as described herein, and (ii) Arizona's full compliance with Section 3.1 below, the Defendant shall be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom shall inure entirely to the benefit of the State pursuant to the terms herein and its contract with the State's counsel.

Section 2 Mutual Releases

2.1 Upon and subject to the Defendant making the Settlement Payment in the manner specified herein, the State hereby shall and does fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit the Defendant, its affiliates and any of the Defendant's or its affiliates' former, present or future owners, shareholders, directors, officers, employees, attorneys, parent companies, subsidiaries, predecessors, successors, dealers, agents, assigns and representatives (collectively, "Released Defendant Parties") from any and all claims, demands, actions, or cause of action, including Unknown Claims (as defined below) that it may have, purport to have, or may hereafter have or purport to have against any Released Defendant Party arising out of or in any way related to the Covered Conduct (hereinafter, "Released Plaintiff Claims").

2.2 Upon the release in Paragraph 2.1 becoming effective, the Defendant shall and hereby does fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle and acquit the State and its departments and former and current officers, representatives, employees, and attorneys (the "Released Plaintiff Parties") from any and

all claims, demands, actions, or causes of action, including Unknown Claims (as defined below), that they may have, purport to have, or may hereafter have or purport to have against any Released Plaintiff Party arising out of or in any way related to the Covered Conduct (hereinafter, “Released Defendant Claims”).

2.3 “Unknown Claims” means any and all Released Plaintiff Claims or Released Defendant Claims (together, “Released Claims”) that any of the Released Plaintiff Parties or Released Defendant Parties (together, “Released Persons”) do not know or suspect to exist in their favor at the time of the release arising out of or in any way related to the Covered Conduct, which if known by them might have affected their decisions with respect to this Agreement. To ensure that the releases described in Section 2 are fully enforced in accordance with their terms, with respect to any and all Released Claims, the Parties stipulate and agree that upon the releases in Paragraphs 2.1 and 2.2 becoming effective, the Parties expressly waive, and each Released Person shall be deemed to have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Parties acknowledge, and the Released Persons by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of

Released Claims was separately bargained for and was an essential element of this Agreement.

2.4 Notwithstanding any term of this Agreement, the Released Claims do not include and shall not be construed to include a release of (a) any claims that may be part of the matters presently known as (i) *Utah et al. v. Google, LLC*, No. 3:21-cv-05227 (N.D. Cal) or; (ii) *Colorado et al. v. Google LLC*, No. 1:20-cv-03715 (D.D.C.); (b) any claims for new conduct occurring after the Effective Date; or (c) any actions to enforce this Settlement Agreement.

Section 3 Dismissal of the Litigation

3.1 Independent of the releases described in Section 2, within three (3) business days after the State receives the ACH transfer constituting the Settlement Payment, the State will file a Stipulation of Dismissal with Prejudice of the Action and an Order of Dismissal with Prejudice in the Superior Court of the State of Arizona, Maricopa County, in the form attached as Exhibit 1. The parties consent to the jurisdiction of this Court for any action seeking to enforce the terms of the Agreement.

Section 4 Miscellaneous

4.1 This is a fully integrated settlement agreement. This document contains the entire agreement of the Parties with respect to its subject matter, and all prior oral or written agreements, contracts, negotiations, representations and discussions, if any, pertaining to this matter are merged into this Agreement. No Party to this Agreement has made any oral or written representation other than those set forth in this Agreement, and no Party has relied upon, or is entering into, this Agreement in reliance upon any

representation other than those set forth in this Agreement. This Agreement may not be modified in any respect except by a written amendment signed by all Parties.

4.2 This Agreement shall bind and inure to the benefit of the Parties hereto, the Released Persons and their predecessors, successors, assigns, agents and attorneys. Each of the signatories of this Agreement represents and warrants that it, he, or she is authorized by its, his or her respective clients or principal to execute this Agreement and to bind the corresponding Party hereto. With respect to the Plaintiff, the relevant signatories affirm that they have authority to execute this Agreement on behalf of the State and that this Agreement is a binding obligation enforceable against the State. With respect to the Defendant, the relevant signatories affirm that they have authority to execute this Agreement on behalf of Google and that this Agreement is a binding obligation enforceable against Google.

4.3 This Agreement shall be construed and interpreted in accordance with the substantive law of the State of Arizona without regard to its conflict of laws provision.

4.4 The Parties agree that, in the event that any dispute relating to this Agreement arises between the Parties, the Parties will first meet and confer in good faith in an attempt to resolve the dispute prior to litigation.

4.5 Each Party acknowledges and agrees that this Agreement was negotiated at arms' length and shall not be construed against its drafter as each Party participated equally in its drafting.

4.6 If any portion of this Agreement is held to be invalid or unenforceable, the remaining terms of this Agreement will remain in full force and effect.

4.7 Any notice hereunder to or among the Parties shall be in writing and delivered (i) by email or personal delivery, and (ii) confirmed by United States Certified Mail, return receipt requested, or by Federal Express (or other overnight carrier) with recipient signature. Any such notice shall be delivered as follows:

For Arizona:

Consumer Protection & Advocacy
Section Office of the Arizona Attorney
General 2005 N. Central Avenue, Suite
100 Phoenix, Arizona 85004
consumer@azag.gov
consumer.litigation@azag.gov

Kevin D. Neal (Bar No. 011640)
Kenneth N. Ralston (Bar No. 034022)
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
Facsimile: (602) 530-8500
kevin.neal@gknet.com
ken.ralston@gknet.com

Guy Ruttenberg
RUTTENBERG IP LAW, A
PROFESSIONAL CORPORATION
1801 Century Park East, Suite 1920
Los Angeles, California 90067
Telephone: (310) 627-2270

For Defendant:

Jean-Jacques Cabou (#022835)
Alexis E. Danneman (#030478)
Matthew R. Koerner (#035018)
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788
JCabou@perkinscoie.com
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San Francisco, CA 94111
bhur@willkie.com
sagnolucci@willkie.com
jdanderson@willkie.com
aflorez@willkie.com

Any Party may change its address for such notices by notice given in accordance with this paragraph.

4.8 Except for the rights of the Released Persons with respect to the Released Claims: (i) this Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Agreement, and (ii) no third party shall be entitled to enforce any aspect of this Agreement or claim any legal or equitable injury for a violation of this Agreement.

4.9 Paragraph and section headings contained herein are inserted solely as reference aids for the ease and convenience of the reader. They shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions or any other aspect of this Agreement.

4.10 The Parties agree that this Agreement may be executed in identical counterparts by the Parties, and when each Party has signed and delivered at least one (1) such counterpart to the other Party, each counterpart shall be deemed an original and taken together shall constitute one and the same agreement that shall be binding and effective as to all Parties. A facsimile signature or signatures transmitted in PDF by electronic mail will be binding and enforceable to the same extent as an original signature.

4.11 The Parties agree that each Party shall bear its own costs and expenses, including without limitation all attorneys' fees, except to the extent otherwise discussed above with respect to portions of the Settlement Amount that shall be used toward compensation of the State's counsel and reimbursement of costs by the State.

APPROVED:

COUNSEL FOR PLAINTIFF STATE OF
ARIZONA, *ex rel.* MARK BRNOVICH,
ATTORNEY GENERAL

Dated: October ___, 2022

By: _____
Kevin D. Neal (Bar No. 011640)
Kenneth N. Ralston (Bar No. 034022)
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
Facsimile: (602) 530-8500
kevin.neal@gknet.com
ken.ralston@gknet.com

Dated: October ___, 2022

By: _____
MARK BRNOVICH
ATTORNEY GENERAL
Joseph A. Kanefield
Brunn W. Roysden III
Michael S. Catlett
Assistant Attorneys General

COUNSEL FOR DEFENDANT
GOOGLE, LLC

Dated: October __, 2022

By: _____
Lee-Anne Mulholland
Vice President, Alphabet, Regulatory Response,
Investigations & Strategy

By: _____
Benedict Y. Hur
Simona Agnolucci
Joshua D. Anderson
Argemira Flórez
WILLKIE FARR & GALLAGHER, LLP
One Front Street, 34th Floor
San Francisco, CA 94111
bhur@willkie.com
sagnolucci@willkie.com
jdanderson@willkie.com
aflorez@willkie.com

Exhibit 1

1 Kevin D. Neal (Bar No. 011640)
Kenneth N. Ralston (Bar No. 034022)
2 **GALLAGHER & KENNEDY, P.A.**
2575 East Camelback Road
3 Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
4 Facsimile: (602) 530-8500
kevin.neal@gknet.com
5 ken.ralston@gknet.com

6 [Additional Counsel on Signature Page]

7 *Attorneys for Plaintiff*
State of Arizona ex rel. Mark Brnovich,
8 *Attorney General*

9 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

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

11 STATE OF ARIZONA, *ex rel.* MARK
12 BRNOVICH, Attorney General,

13 Plaintiff,

14 v.

15 GOOGLE LLC, a Delaware limited liability
16 company,

17 Defendant.
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) Case No: CV2020-006219

)

) **STIPULATION FOR DISMISSAL**
) **WITH PREJUDICE**

)

) Assigned to the Hon. Timothy Thomason

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) **(COMPLEX CALENDAR)**

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1 Pursuant to Arizona Rule of Civil Procedure 41(a), the parties stipulate to dismiss this
2 action, and all of the claims and counterclaims herein, with prejudice.

3 Each party shall bear its own costs and attorneys' fees, except as separately agreed
4 between the parties.

5 A proposed Order of Dismissal is submitted simultaneously herewith for the Court's
6 convenience.

7 RESPECTFULLY SUBMITTED this ___th Day of October, 2022.

8
9 **GALLAGHER & KENNEDY, P.A.**

10 By: /s/ _____
11 Kevin D. Neal
12 Kenneth N. Ralston
2575 East Camelback Road
Phoenix, Arizona 85016-9225

13 **WILLKIE FARR & GALLAGHER LLP**

14 By: /s/ _____
15 Benedict Y. Hur*
16 Simona Agnolucci*
17 Joshua Anderson*
One Front Street, 34th Floor
San Francisco, CA 94111

18 Jean-Jacques Cabou
19 Alexis A. Danneman
20 Matthew Koerner
PERKINS COIE LLP
2901 N. Central Avenue, Suite 2000
Phoenix, Arizona 85012

21 *Attorneys for Defendant Google LLC*
22 **Admitted Pro Hac Vice*
23

1 **COPY** of the foregoing **FILED**
2 with the Court this _th day of October, 2022.

3 **COPY** of the foregoing **EMAILED**
4 this _th day of October, 2022 to:

4 **MARK BRNOVICH**
5 **ATTORNEY GENERAL**
6 Firm State Bar No. 14000
7 Joseph A. Kanefield (State Bar No. 15838)
8 Brunn W. Roysden III (State Bar No. 28698)
9 Michael S. Catlett (State Bar No. 025238)
10 Christopher Sloot (State Bar No. 034196)
11 *Assistant Attorneys General*

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13 Phoenix, Arizona 85004
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15 Michael.Catlett@azag.gov
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18 Guy Ruttenberg (CA Bar No. 207937)
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20 **PROFESSIONAL CORPORATION**
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23 guy@ruttenbergiplaw.com
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25 Alexis E. Danneman (#030478)
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Attorneys for Defendant

By: /s/

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6 [Additional Counsel on Signature Page]

7 *Attorneys for Plaintiff*
8 *State of Arizona ex rel. Mark Brnovich,*
Attorney General

9 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

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

11 STATE OF ARIZONA, *ex rel.* MARK)
12 BRNOVICH, Attorney General,)

13 Plaintiff,)

14 v.)

15 GOOGLE LLC, a Delaware limited liability)
16 company,)

17 Defendant.)
18)
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23)

Case No: CV2020-006219

**[PROPOSED] ORDER OF
DISMISSAL WITH PREJUDICE**

Assigned to the Hon. Timothy Thomason

(COMPLEX CALENDAR)

1 Pursuant to the parties' Stipulation of Dismissal with Prejudice, and good cause appearing,
2 IT IS HEREBY ORDERED dismissing this action and all of the claims and counterclaims,
3 with prejudice.

4 Each party shall bear its own attorneys' fees and costs, except as may be allocated from
5 any settlement amount separately agreed between the parties.

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7 DATED this _____ day of _____, 2022.

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10 _____
11 The Honorable Timothy Thomason
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