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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

19 DREAMSTIME.COM, LLC, a
20 Florida LLC,
21 Plaintiff,
22
23 v.
24 GOOGLE, LLC, a Delaware LLC;
25 and DOES 1-10,
26 Defendants.

Case No.

CIVIL COMPLAINT FOR:

- (1) VIOLATION OF SECTION TWO OF THE SHERMAN ACT;**
- (2) BREACH OF CONTRACT;**
- (3) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND**
- (4) VIOLATION OF SECTION 17200 et seq. OF THE**

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**CALIFORNIA BUSINESS &
PROFESSIONS CODE -
UNFAIR BUSINESS
PRACTICES**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Dreamstime.com, LLC (“Dreamstime”), through its undersigned
2 counsel, hereby brings this Complaint against Google, LLC (“Google”), and DOES
3 1-10 (collectively “Defendants”) for violation of Section 2 of the Sherman Act (15
4 U.S.C. § 2), breach of contract, breach of the implied covenant of good faith and fair
5 dealing, and unfair business practices, to secure damages and injunctive relief, and
6 demanding trial by jury, and claims and alleges as follows:

7 **I. INTRODUCTION**

8 1. This lawsuit arises out of Google’s anticompetitive, discriminatory, and
9 unfair conduct, as well as its related, on-going breaches of its contracts with
10 Dreamstime. Google has engaged in a strategy to use its monopoly power in the
11 relevant market for online search advertising to squeeze its customer, Dreamstime,
12 and other similarly-situated competitors, out of the online stock photography
13 business. This strategy is intended to and does further entrench Google’s monopoly
14 of the relevant online search advertising market by eliminating sites such as
15 Dreamstime that threaten to be the first place people go to search for high-quality
16 images for purchase on the Internet (instead of searching on Google).

17 2. Google’s presence in online search is so ubiquitous and dominant that a
18 new verb “google,” meaning to use an Internet search engine to locate information
19 on the web, has entered the common vernacular. Google has literally defined online
20 search and, accordingly, dominates it.

21 3. Google’s maintenance and abuse of its online search advertising
22 monopoly is intentional and widely known. For example, Google’s illegal,
23 anticompetitive “search bias” tactics have been widely reported and investigated by
24 governments around the world. The United States Department of Justice (“DOJ”)
25 and Federal Trade Commission (“FTC”) have both recognized that Google is a
26 monopolist in the relevant antitrust market of online search advertising. In this case,
27 Google has brought to bear several complementary and insidious anticompetitive
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1 tactics to strong-arm Dreamstime and others out of the online stock photography
2 business, so as to strengthen its monopoly in online search advertising.

3 4. In or about the second half of 2015, sensing an opportunity to exploit
4 its monopoly power in the online search advertising market by restraining trade in
5 other lucrative related lines of commerce like online stock photography repositories,
6 Google began to abuse its monopoly power in the online search advertising market
7 to exclude Dreamstime from the most common online searches for stock
8 photography. As part of its anticompetitive scheme, it entered into a licensing
9 agreement with Dreamstime’s biggest competitor, Shutterstock.¹ Google set about
10 using its immense market power in online search advertising to bolster
11 Shutterstock’s market position in the online stock photography business, while at the
12 same time unfairly hamstringing Dreamstime’s ability to compete and increasing
13 Dreamstime’s spending on Google’s online advertising services. Google
14 intentionally altered its search algorithm – or, at least, how that algorithm was
15 applied to Dreamstime – to unfairly prejudice Dreamstime and favor Google’s own
16 services and those of its partner, Shutterstock, providing them an unearned and
17 crucial competitive advantage over Dreamstime.

18 5. More recently, in February of 2018, Google announced yet another
19 licensing agreement with Getty Images, another extremely large competitor of
20 Dreamstime. Almost immediately, Getty Images’ websites began to receive even
21 more prominence in Google’s search results, at times surpassing Shutterstock
22 (which also continues to rank very highly).² The implementation of this agreement

23
24 ¹ “Shutterstock” is defined for purposes of this lawsuit to include Shutterstock
25 and the online stock photography websites owned by Shutterstock such as Bigstock
(www.bigstockphoto.com).

26 ² Since the middle of February 2018, Getty Images has ranked more highly than
27 Shutterstock at times, though Shutterstock also remains highly ranked in Google
28 search results. “Getty Images” is defined for purposes of this lawsuit to include
(footnote continued)

1 is too early to assess completely, but it is sure to increase Google's ability to
2 manipulate and discriminate in the online stock photography industry and to
3 increase the effects of Google's anticompetitive conduct against Dreamstime and
4 others. Meanwhile, Dreamstime – for years in the top three to five most
5 prominently displayed stock photography Google search results – has vanished from
6 the first several pages of search results, making it invisible to all who google for
7 stock photography.

8 6. Because of this change to Google's search algorithm in or around
9 August 2015 (and with material changes continuing to the present), Dreamstime's
10 ranking on Google's search engine plummeted from at or near the top of search
11 results for online stock photographs to 91st (as much as 20 pages deep) – well below
12 Shutterstock and Getty Images, well below other smaller competitors, and even well
13 below unambiguously less relevant search results. Essentially, Dreamstime is
14 invisible to people googling for online stock photographs. As a result, Google
15 devastated Dreamstime's business, cost it millions of dollars in sales and threatens
16 its survival. Google's alteration of its algorithm did not serve to benefit the
17 consumer but was intended to increase its partners' and its own businesses and to
18 discriminate against and harm Dreamstime. Google has since replicated this
19 monopoly conduct to exclude other similarly-situated competitors, including 123RF,
20 DepositPhotos, and CanStockPhoto, who have all suffered inexplicable drops in
21 online search rankings. The only significant stock photography competitor that has
22 not announced a partnership with Google and that has not yet been excluded from
23 top search results is Adobe.

24
25
26 _____
27 Getty Images and the online stock photography websites owned by Getty Images
28 such as iStock (www.istockphoto.com) and Thinkstock
(www.thinkstockphotos.com).

1 7. There is no legitimate, procompetitive purpose for Google’s intentional
2 tanking of Dreamstime’s and others’ search rankings, and it hurts consumers in
3 addition to Dreamstime. Dreamstime’s prior higher search ranking has now been
4 usurped in part by much smaller, old or irrelevant websites – including websites that
5 traffic only in public domain images.³ Google’s manipulation of its algorithm to
6 lower Dreamstime’s search ranking makes it harder for users to find what they are
7 looking for – high-quality websites (like Dreamstime) that offer commercially
8 acceptable stock photographs *not* in the public domain. Dreamstime’s prior high
9 ranking reflected and arose directly from the fact that it was a result that consumers
10 found very responsive to their searches. More alarmingly, the effective exclusion of
11 Dreamstime and other similarly-situated competitors from Google’s search results is
12 a banishment from the marketplace and is likely to result in depriving users of an
13 informed search that would allow them to choose the best price/quality options.

14 8. The aim and the result of this conduct is to maintain and abuse
15 Google’s monopoly over online search advertising to exclude and restrict
16 competition in the online stock photography business through its partners and
17 proxies Shutterstock and Getty Images (as well as its own service, Google Images,
18 as described below). In addition to harming Dreamstime, this conduct harms
19 competition in the online stock photography business and further entrenches
20 Google’s monopoly in online search advertising. Google’s favoritism of
21

22 ³ Public domain images are, for the most part, unusable as a reasonable substitute
23 for properly licensed stock images because public domain images lack the kind of
24 intellectual property vetting, rights releases, and documentation that would permit
25 use in a commercial context. Using a public domain image for a commercial
26 website, where a licensed stock image should have appeared, can draw potential
27 claims from the image’s author, any models that appear in the image, and/or the
28 owner of any copyrighted material that the image author may have inadvertently
captured.

1 Shutterstock is most tellingly depicted in “knowledge graphs,” which are entries that
2 appear at the very top of organic search results for generic terms like “stock photos.”
3 An example is attached hereto as Exhibit “A.” In Exhibit “A,” Shutterstock and
4 Bigstock (which Shutterstock owns) are placed prominently alongside search results
5 for generic market terms, giving them an additional unfair advantage over other
6 competitors like Dreamstime.

7 9. In addition to its promotion of Shutterstock and Getty Images to the
8 exclusion of Dreamstime and others, Google also benefits by promoting its own
9 image search service, Google Images, to the exclusion of Dreamstime and others.
10 (Notably, as detailed below, Google was fined €2.4 billion when it did the same
11 thing for its own service, Google Shopping, in the European Union.) Google
12 Images is the biggest repository of images in the world. Now, anything a user
13 googles that includes words like “photos,” “images,” “pictures” or “pics,”
14 will trigger a set of Google Images results for that thing. Some of the images that
15 result are “free,” yet others of the images are copyrighted stock photos that Google
16 Images enables a searcher to steal without paying for them.⁴ More importantly,
17 Google Images has misused licensed stock photos of Dreamstime and other websites
18 by making high-quality versions of them available in Google Images search results.
19 By simply right-clicking on high-resolution images of these proprietary stock photos
20 in a Google Images result, searchers can essentially steal on a whim. The Centre of
21 the Picture Industry (“CEPIC”) estimates that 85% of pictures found online by
22 visual search systems are unlawful copies and 80% of those illegal images have
23 been spread through search engines such as Google Images. This practice
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25
26 ⁴ Of course, even Google Images’ “free” images are not free – a user exchanges
27 his or her all-important behavioral data and other private information when
28 acquiring these images.

1 exemplifies the harm Google can cause through the exercise and abuse of its
2 monopoly power.

3 10. Google's anticompetitive strategy against Dreamstime, however, is not
4 limited to search bias, or the provision via Google Images of direct access to the
5 proprietary stock photos of Dreamstime and similarly-situated participants.
6 Dreamstime has long been an active participant/consumer in Google's AdWords and
7 DisplayAds online advertising programs, having paid Google over \$50 million for
8 these services over the last 12 years. Dreamstime used AdWords to place targeted
9 ads within Google search engine results relevant to online stock photographs. Over
10 time and through extensive research and experimentation, Dreamstime developed
11 efficient AdWords and DisplayAds campaigns that resulted in many sales. Though
12 this efficiency in campaigns lowered Google's AdWords profits, it benefitted
13 consumers by lowering the marginal cost of acquired purchases and allowed
14 Dreamstime to offer a more competitive price for its online stock photographs.
15 After Google used its search bias scheme to artificially tank Dreamstime's search
16 ranking, Dreamstime began to invest even more money in its AdWords and
17 DisplayAds campaigns – millions of dollars – to counter Google's removal of
18 Dreamstime from organic search results. These inefficiencies increased the
19 marginal cost of Dreamstime's acquired purchases, placing a serious strain on its
20 finances and business model. Google perversely profited from its anticompetitive
21 search bias scheme by obtaining an unfair and anticompetitive premium for its
22 AdWords service. After Google's demotion of Dreamstime's organic search
23 ranking, most months Dreamstime barely breaks even or loses money. The risks
24 and negative impact to Dreamstime's future prospects are obvious and directly
25 attributable to Google's discriminatory conduct, all of which increases Google's
26 monopoly of the online search advertising market.

1 11. Google has intentionally and aggressively interfered with Dreamstime’s
2 AdWords and DisplayAds campaigns in several material ways. Among other
3 things, Google has:

- 4 • manipulated Dreamstime’s organic search ranking unfairly and
5 illegally to force Dreamstime to spend an unreasonable amount of
6 money on additional AdWords campaigns that would not otherwise
7 have been necessary;
- 8 • cancelled Dreamstime’s most successful ad campaigns without
9 adequate notice or explanation;
- 10 • improperly suspended Dreamstime’s account based on unfounded
11 accusations of “policy violations;”
- 12 • prevented Dreamstime from running successful DisplayAds campaigns
13 while allowing the *exact same* advertisements to be placed by other
14 competitors;
- 15 • placed Dreamstime’s advertisements on irrelevant websites and error
16 pages in direct violation of the AdWords contract; and
- 17 • overdelivered AdWords campaigns, causing daily spending limits for
18 certain campaigns to be exceeded on a regular and systematic basis.

19 12. Google’s use of the AdWords, DisplayAds, and AdSense programs to
20 harm Dreamstime and others are part of an overall, anticompetitive and exclusionary
21 business strategy that goes hand-in-hand with Google’s online search bias scheme.
22 With respect to a similar scheme, the European Union recently issued a record €2.42
23 billion fine against Google for its abuse of its market dominance as a search engine
24 to promote its own Google Shopping services in its search results and demote those
25 of competitors. Here, as it was found to have done with Google Shopping in the
26 EU, Google is illegally promoting its proxies’ stock photography sites and its own
27 Google Images services by demoting other stock photography sites like
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1 Dreamstime. Google is misusing its monopoly power in the relevant online search
2 advertising market to control and restrict competition among online stock
3 photography websites, which are repositories for an important thing that consumers
4 search for (high-quality, online images to purchase). In the process, Google's
5 tactics have directly and proximately caused serious, material injuries to
6 Dreamstime in the form of lost revenue, lost customers, potential search engine
7 optimization ("SEO") penalties, and loss of goodwill. More importantly, Google's
8 unfair tactics have harmed competition in the online stock photography business,
9 reducing consumer choice, and giving Shutterstock and Getty Images, Google's
10 partners and proxies in the online stock photography business, an unwarranted
11 competitive advantage over Dreamstime and other smaller rivals.

12 13. Among other things, this conduct resulted in fewer choices of online
13 stock photographs for consumers, stifling of innovation and technology, and harm to
14 competition as a whole. It also resulted in substantially enhanced market share for
15 Google's partner, Shutterstock, and is likely to do so for Getty Images as well. Most
16 importantly, it allows Google to maintain and enhance its monopoly in online search
17 advertising by ensuring that stock photography repository websites will increase
18 their reliance on Google and AdWords for new customer acquisitions. Similarly,
19 Google's monopolistic actions with respect to AdWords and DisplayAds gives rise
20 to civil liability, including but not limited to a violation of Section 2 of the Sherman
21 Act, breach of contract, breach of the covenant of good faith and fair dealing, and
22 violation of California's strict and sweeping unfair competition laws.

23 **II. THE PARTIES**

24 14. Plaintiff Dreamstime.com, LLC is a limited liability company
25 incorporated under the laws of Florida with its principal place of business located at
26 1616 Westgate Circle, Brentwood, Tennessee 37027.

27 15. Defendant Google LLC is a Delaware limited liability company that is
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1 a wholly-owned subsidiary of Alphabet, Inc., with its principal place of business
2 located at 1600 Amphitheatre Parkway, Mountain View, California 94043.

3 16. Plaintiff Dreamstime is ignorant of the true names and capacities of
4 defendants sued herein as DOES 1 through 10, and therefore sues these defendants
5 by such fictitious names. Plaintiff will amend this Complaint to allege their true
6 names and capacities as they are ascertained. Plaintiff is informed and believes that
7 each of the fictitiously named defendants is responsible in some manner for the
8 injuries to plaintiff as alleged herein. Plaintiff further alleges that its injuries were
9 proximately caused by each and all such defendants.

10 **III. JURISDICTION AND VENUE**

11 17. This Complaint is filed and this civil action is instituted under Sections
12 4 and 16 of the Clayton Act (15 U.S.C. §§ 15, 26) to recover the damages caused by,
13 and to secure injunctive relief against the named defendant's past, continuing, and
14 on-going violation of Section 2 of the Sherman Act (15 U.S.C. § 2). This Court has
15 original, diversity, and exclusive jurisdiction over the subject matter of this civil
16 action under 28 U.S.C. §§ 1331, 1332, and 1337 because it involves claims arising
17 under the Sherman Act (15 U.S.C. § 2), and diversity between the parties exists.

18 18. Venue is proper in this District as all parties consented to venue and
19 jurisdiction in the state of California, County of Santa Clara as the mandatory forum
20 to enforce or interpret the operative agreements that form part of the basis of this
21 action. In particular, Google's Advertising Program Terms (the "AdWords
22 Agreement") contain a forum selection clause calling for venue in Santa Clara
23 County, California. The AdWords Agreement also provides that California law
24 governs the Agreement. All parties that desire to use Google AdWords must first
25 agree to the AdWords Agreement before they can create an AdWords account at
26 <https://adwords.google.com>.

1 19. Defendant maintains an office and transacts business on a systematic
2 and continuous basis within this District, and may be found here, within the
3 meaning of 15 U.S.C. §§ 15, 22 and 28 U.S.C. § 1391. Further, the unlawful acts
4 alleged herein were performed and occurred in material part within this District.

5 **IV. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

6 **A. Google Maintains a Monopoly in the Market for Online Search**
7 **Advertising**

8 **1. Google Has a Monopoly in the Online Search Market**

9 20. Google operates in multiple markets. One of its most important
10 markets is the online search market which is defined for purposes of this action as
11 the domestic market for search engine queries. As described below, Google
12 monetizes its dominant position in search – which is ostensibly free to users – with a
13 commensurately dominant position in the online search advertising market, in which
14 Dreamstime is a consumer. This Complaint first describes Google’s dominance in
15 free or “organic” search and then how that dominance translates into commensurate
16 dominance in the relevant product/service market of online search advertising.

17 21. Google owns and operates the world's largest search engine and has
18 established Google as one of the most influential companies in the world. A “web
19 search engine” is a software system that is designed to search for information on the
20 World Wide Web. The search results are generally presented in a line of results
21 often referred to as search engine results pages (“SERPs”). Consumers use search
22 engines to find information on the Internet quickly. Consumers enter a query into a
23 search engine, typically a few keywords (*e.g.*, “stock photos”), and the search
24 engine then returns a list of results. The usefulness of the search engine depends in
25 large part on the relevance of the result set it gives back. While there may be
26 millions of web pages that include a particular word or phrase, some pages are more
27 relevant, popular or authoritative than others. Most search engines, including
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1 Google, employ methods to rank the results to provide the “best” results first (its
2 “search results”). Most search engines, including Google, are commercial ventures
3 supported by advertising revenue of various types.

4 22. Google’s search engine uses a number of proprietary algorithms to rank
5 websites in its search engine results. Google claims that the algorithms allow its
6 search engines to “return good answers” and help consumers find “pages with
7 relevant information.” Google claims its algorithms “sort through the hundreds of
8 billions of webpages in our Search index to give you useful and relevant results in a
9 fraction of a second.” A website’s Google search ranking has a direct, measurable
10 impact on the amount of web traffic to that website. The Google ranking is so
11 important to businesses (and especially online businesses) that entire industries exist
12 relating to “optimizing” a website’s Google search ranking. Google has stated that
13 the primary purpose of its search algorithms is “giving relevant information.” The
14 other major online search engine companies deploy similar algorithms that rank
15 relevant results based on a user’s search.

16 23. According to netmarketshare.com, Google maintains 80.52% of the
17 global market for online search engines. By comparison, its largest competitors
18 Baidu (5.94%), Yahoo (5.35%) and Bing (6.92%) collectively muster approximately
19 17% of the market share. Thus, Google has a global monopoly in the online search
20 market. Google also has a monopoly in the United States online search market. For
21 example, in 2017, Google’s share of the online search market performed from
22 laptops or desktops fluctuated between 78.7% and 69.21 % according to
23 netmarketshare.com. In the mobile search market in the United States, Google has
24 over 93% market share. As a “business to business” platform that offers high-
25 resolution stock photographs, most of Dreamstime’s business comes from desktop
26 or laptop purchases. Mobile phones with limited bandwidth and storage are not as
27 suited to downloading high resolution stock photographs. At the same time, many
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1 of Dreamstime’s contributors submit content via mobile phones and many potential
2 customers sometimes search for stock photograph offerings on mobile devices and
3 then later make purchases and downloads via desktops or laptops.

4 24. There are a small number of participants in the online search market,
5 and the market has high barriers to entry. Engineering talent is limited and data
6 centers that can simultaneously support millions of searches are expensive.
7 Moreover, search engines have evolved such that most modern search engines are
8 based on machine-learning algorithms combining thousands of factors. Some of the
9 most prominent factors are historical search query logs and their corresponding
10 search result clicks. One study cited in a 2015 Harvard Business Review article
11 noted that historical search data improves search results up to 31%, meaning that in
12 effect “today’s search engines cannot reach high-quality results without this
13 historical user behavior.”⁵ The result is that new market participants, even those
14 with better algorithms, “cannot enter the market and compete with the established
15 players, with their deep records of previous user behavior.” Data on user behavior
16 in turn creates enormous network effects and critical mass that cannot be replicated
17 by new entrants into the market.

18 25. For example, several years ago Microsoft, currently in the 28th position
19 in the Fortune 500 list, decided to launch a new search engine to compete with
20 Google. After years of struggling with unsuccessful search products and faced with
21 the problem of building a competitive search engine without access to historical
22 data, Microsoft formed an alliance with the internet company Yahoo!. Pursuant to
23 this alliance, Microsoft’s Bing search engine would power Yahoo!’s search. The
24 “Yahoo!-Microsoft Search Alliance” deal was formally signed in December 2009

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27 ⁵ See Radinsky, Kira, “Data Monopolists Like Google Are Threatening the
28 Economy,” Harvard Business Review March 2, 2015.

1 and received legal clearances in 2010. The alliance, however, never performed to
2 Yahoo!’s expectations, lagging behind revenue projections, and the alliance was
3 restructured in 2015. Today, despite Microsoft’s vast resources and alliance with
4 Yahoo!, Bing still lags well behind Google in the online search market.

5 26. Microsoft’s experience in the online search market is particularly
6 telling. Microsoft entered the market with high brand recognition and visibility and
7 as a highly sophisticated and experienced competitor in Internet technology.
8 Notwithstanding its brand recognition and significant financial investment,
9 Microsoft has not been able to significantly penetrate Google’s market dominance.

10 27. This real-world example demonstrates the significant barriers to entry
11 that exist in the online search market.

12 28. Google’s dominance in the online search market is so well-recognized
13 that it has added a new verb to the English language. On the website
14 dictionary.com, there are three definitions for Google. The first is a noun, referring
15 to the company, Google. The other two definitions are *verbs*:

16 2. verb (used with object), Googled, Googling. (often lowercase) to search
17 the Internet for information about (a person, topic, etc.): *We googled the new*
18 *applicant to check her background.*

19 3. verb (used without object), Googled, Googling (often lowercase) to use a
20 search engine such as Google to find information, a website address, etc., on
21 the Internet.

22 29. Some commentators have suggested that the zero-cost nature of free
23 online search disqualifies this grouping from being considered a relevant market for
24 antitrust purposes, and for this and other reasons the relevant market for purposes of
25 this case is online search advertising. To begin with, however, it must be noted that
26 “free” search is not really free – consumers waive many privacy rights and provide
27 very valuable behavioral data to Google when performing free searches. This
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1 behavioral data in turn creates vast network effects, which are large barriers to entry.
2 In any event, the zero-cost aspect of online search does not immunize it from
3 consumer harm. As John M. Newman recently noted in a law review article for the
4 University of Pennsylvania Law Review entitled *Antitrust in Zero-Price Markets:
5 Foundations:*

6 Modern antitrust law is firmly grounded in neoclassical economics,
7 which is in turn centered on price theory. Steeped in price theory,
8 preeminent antitrust theorists have urged that without prices there can
9 be no markets, and consequently no market power. This heavy
10 methodological dependence on positive prices has led antitrust courts
11 and enforcement agencies to overlook potentially massive welfare
12 harms. Unfortunately, recent empirical research confirms that such
13 harms have already occurred . . . The absence of positive prices thus
14 does not foreclose antitrust scrutiny; “trade,” for purposes of the
15 Sherman and Clayton Acts, encompasses zero-price transactions. To
16 continue ignoring welfare harms in these markets would be both unjust
17 and inefficient.

18 **2. Google Has a Monopoly in the Online Search Advertising** 19 **Market**

20 30. The online search advertising market is an appropriate relevant
21 product/service market in which to assess Google’s market power, and its selection
22 in lieu of online search as a whole has no legal or practical effect on the Sherman
23 Act Section 2 analysis in this case. Google’s dominance in the online search market
24 translates to a commensurate dominance in the online search advertising market.
25 Google’s share of the U.S. online search advertising market has steadily increased,
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1 from 75.8% in 2016 to an estimated 80.2% by 2019.⁶ Other than Google, only
2 Amazon, which held a mere 1.9% market share in 2016, is expected to increase its
3 market share over the next two years (to a mere estimated 2.2% by 2019).⁷
4 Dreamstime is a consumer in the online search advertising market, and the
5 allegations herein regarding Google's manipulation of Dreamstime's and its
6 competitors' AdWords campaigns is both a breach of contract and a basis for
7 Google's antitrust liability with respect to this relevant market.

8 31. Though the online search market and online search advertising markets
9 are described separately for the sake of precision, and though the online search
10 advertising market is the relevant antitrust market for purposes of this case, they are
11 essentially one and the same, and Google's monopoly power exists in both. In
12 essence, Google is monetizing a monopoly position in online search by selling
13 advertising on top of search results. The search function is "free" to the searcher,
14 but the searcher provides extremely valuable private information about the
15 searcher's behavior when he or she conducts a search and is also subjected to
16 advertising paid for by consumers of the ads such as Dreamstime. No one would go
17 to Google just to see ads, and no ads would be placed on Google without the free
18 search services. In many ways, this relationship is akin to free over-the-air sports
19 programming that is monetized by commercial advertisements. The market may be
20 described as that for sports programming or for advertising within sports
21 programming, but it is essentially one market. Viewers may tune in for free to NBC
22 to watch the Olympics, but NBC (largely) monetizes that experience through ads.
23 The fact that the Olympics are free to watch with a digital antenna in no way

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25
26 ⁶ See, <https://searchengineland.com/google-search-ad-revenues-271188> (last
27 accessed on March 19, 2018).

28 ⁷ *Id.*

1 changes the fact that NBC is in the market for sports programming. The same
2 analogy applies to over-the-air free radio and print newspapers.

3 32. The DOJ recognized a relevant market of online search advertising in
4 fighting a proposed advertising agreement between Yahoo! and Google in 2008,
5 which was abandoned on the eve of the DOJ filing an action against it. In a press
6 release dated November 5, 2008, entitled *Yahoo! Inc. and Google Inc. Abandon*
7 *Their Advertising Agreement*, the DOJ stated (emphasis added):

8 'The companies' decision to abandon their agreement eliminates the
9 competitive concerns identified during our investigation and
10 eliminates the need to file an enforcement action,' said Thomas O.
11 Barnett, Assistant Attorney General in charge of the Department's
12 Antitrust Division. 'The arrangement likely would have denied
13 consumers the benefits of competition –lower prices, better service
14 and greater innovation.'

15 . . .

16 The Department's investigation revealed that Internet search
17 advertising and Internet search syndication ***are each relevant antitrust***
18 ***markets and that Google is by far the largest provider of such***
19 ***services***, with shares of more than 70 percent in both markets. Yahoo!
20 is by far Google's most significant competitor in both markets, with
21 combined market shares of 90 percent and 95 percent in the search
22 advertising and search syndication markets, respectively . . . Had the
23 companies implemented their arrangement, Yahoo!'s competition
24 likely would have been blunted immediately with respect to the search
25 pages that Yahoo! chose to fill with ads sold by Google rather than its
26 own ads, and Yahoo! would have had significantly reduced incentives

1 to invest in areas of its search advertising business where outsourcing
2 ads to Google made financial sense for Yahoo!

3 33. The FTC has also recently recognized online search advertising as an
4 appropriate antitrust relevant market, in the context of the merger of Google and
5 traditional online display-ad marketing company, DoubleClick. Even though the
6 Google-DoubleClick merger would by some industry estimates give Google a 69%
7 share of all online advertising revenues, the FTC did not challenge the merger
8 because Google and DoubleClick were, in its view, in separate relevant markets. Its
9 official statement, released in December 2007, directly dismissed the argument that
10 other forms of online advertising are appropriate substitutes for online search
11 advertising (emphasis added):

12 The evidence in this case shows that advertisers buy online
13 advertising space from both search engine providers, like Google, and
14 content providers (referred to as publishers in the online advertising
15 business). *However, the evidence in this case shows that the*
16 *advertising space sold by search engines is not a substitute for space*
17 *sold directly or indirectly by publishers or vice versa.* Or, to put it in
18 terms of merger analysis, the evidence shows that the sale of search
19 advertising does not operate as a significant constraint on the prices or
20 quality of other online advertising sold directly or indirectly by
21 publishers or vice versa.

22 . . .

23 Advertisers view online content providers differently. A user's
24 visit to a particular content page may reveal some insight into that
25 user's interests. However, users visiting a content page do not declare
26 their interests in the same way they do when they type in a keyword
27 on a search engine. As they do in other media, advertisers wishing to
28

1 direct their advertising to customers based on their interests must
2 decide where to place advertising after determining which websites
3 are popular with the advertisers' target customers. For example, a
4 manufacturer of hybrid vehicles may purchase advertising space on an
5 online magazine's feature on climate change.

6 Google, through its AdWords business, is the dominant provider
7 of sponsored search advertising, and most of its online advertising
8 revenue is generated by the sale of advertising space on its search
9 engine results pages. DoubleClick does not sell sponsored search
10 advertising.

11 . . .

12 ***Unquestionably, Google is the most popular search engine on***
13 ***the Internet today by almost any metric. As a result, it has a high***
14 ***market share in sponsored search advertising.***

15 34. Recently, on June 27, 2017, the European Commission fined Google
16 €2.42 billion for "breaching EU antitrust rules" and abusing its dominance in search
17 by giving an illegal advantage to its own comparison-shopping service, Google
18 Shopping, and requiring it to end all anticompetitive conduct going forward. In a
19 press release shortly after the ruling, Commissioner Margrethe Vestager stated:
20 "Google's strategy for its comparison shopping service wasn't just about attracting
21 customers by making its product better than those of its rivals. Instead, Google
22 abused its market dominance as a search engine by promoting its own comparison
23 shopping service in its search results, and demoting those of competitors." The
24 press release further explained (emphasis in original):

25 From 2008, Google began to implement in European markets a
26 fundamental change in strategy to push its comparison shopping
27 service. This strategy relied on Google's dominance in general internet
28

1 search, instead of competition on the merits in comparison shopping
2 markets:

- 3 • **Google has systematically given prominent placement to its**
4 **own comparison shopping service:** when a consumer enters a
5 query into the Google search engine in relation to which
6 Google's comparison shopping service wants to show results,
7 these are displayed at or near the top of the search results.
- 8 • **Google has demoted rival comparison shopping services in its**
9 **search results:** rival comparison shopping services appear in
10 Google's search results on the basis of Google's generic search
11 algorithms. Google has included a number of criteria in these
12 algorithms, as a result of which rival comparison shopping
13 services are demoted. Evidence shows that even the most highly
14 ranked rival service appears on average only on page four of
15 Google's search results, and others appear even further down.
16 Google's own comparison shopping service is not subject to
17 Google's generic search algorithms, including such demotions.

18 As a result, Google's comparison shopping service is much more
19 visible to consumers in Google's search results, whilst rival comparison
20 shopping services are much less visible.

21 The Commission found that “Google is dominant in general internet search
22 markets throughout the European Economic Area,” and that “[t]here are also
23 high barriers to entry in these markets, in part because of network effects: the
24 more consumers use a search engine, the more attractive it becomes to
25 advertisers . . . Similarly, the data a search engine gathers about consumers
26 can in turn be used to improve results.” Finally, the Commission concluded
27 that “Google has abused this market dominance by giving its own comparison
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1 shopping service an illegal advantage.” Google Images is remarkably similar
2 to the Google Shopping service at issue in the European Union. The two
3 screenshots attached as Exhibit “B” hereto compare the Google Shopping
4 service that was prohibited in the European Union with the Google Images
5 service at issue in this case.

6 35. States Attorneys General have also begun investigations of
7 Google in recent months. On November 13, 2017, Missouri Attorney General
8 Josh Hawley issued an investigative demand to Google seeking “to determine
9 if Google has violated the Missouri Merchandising Practices Act. . .and
10 Missouri’s antitrust laws.”⁸ According to its press release, the attorney
11 general’s office was investigating, among other things, “Google’s alleged
12 manipulation of search results to preference websites owned by Google and to
13 demote websites that compete with Google.”⁹ In a Fortune article covering
14 the investigation, Missouri AG Hawley is quoted as saying that “substantial
15 evidence exists” that Google is manipulating its core search service to list its
16 own Google-websites higher in search results.¹⁰ An online Wired magazine
17 article dated November 14, 2017, suggests that more state investigations are
18 likely to follow Missouri’s lead.¹¹

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23 ⁸ See, Press Release dated November 13, 2017,
24 [https://www.ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-](https://www.ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-google-inc-)
25 [demands-to-google-inc-](https://www.ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-google-inc-). (last accessed March 19, 2018).

26 ⁹ (*Id.*)

27 ¹⁰ See, [http://fortune.com/2017/11/13/google-missouri-attorney-general-](http://fortune.com/2017/11/13/google-missouri-attorney-general-investigation/)
28 [investigation/](http://fortune.com/2017/11/13/google-missouri-attorney-general-investigation/) (last accessed March 19, 2018).

¹¹ See, [https://www.wired.com/story/state-attorneys-general-are-googles-next-](https://www.wired.com/story/state-attorneys-general-are-googles-next-headache/)
[headache/](https://www.wired.com/story/state-attorneys-general-are-googles-next-headache/) (last accessed on March 19, 2018).

1 36. In its 2016 Annual Report, Google discloses:
2 The Comision Nacional de Defensa de la Competencia in Argentina,
3 the Competition Commission of India (CCI), Brazil’s Council for
4 Economic Defense (CADE), the Federal Antimonopoly Service (FAS)
5 of the Russian Federation, and the Korean Fair Trade Commission have
6 also opened investigations into certain of our business practices. In
7 November 2016, we responded to the CCI Director General’s report
8 with interim findings of competition law infringements regarding
9 search and ads. In September 2015, FAS found that there has been a
10 competition law infringement in Android mobile distribution. The
11 appeal against that decision has so far been rejected, so Google has
12 implemented the ruling to the degree possible and is working on
13 product changes to finalize implementation. The appeals process
14 continues. In April 2016, the Canadian Competition Bureau informed
15 us that it was closing its antitrust investigations of our business
16 practices.

17 **3. Google Maintains and Abuses its Monopoly in the Online**
18 **Search Advertising Market to Cause Harm to Competition in**
19 **Related Dependent Businesses**

20 37. While Google’s original, famous search engine was essential to its
21 initial success, it has exponentially expanded on that success by acquiring
22 competing search engines, online advertising entities, mobile technologies, video
23 sharing technologies and platforms, social media and gaming communities and
24 artificial intelligence companies at an extraordinarily high rate. As of December
25 2016, Google or its parent, Alphabet, Inc., had acquired over 200 companies, while
26 only divesting itself of four of these companies. Google has exploited ownership of
27 the proprietary technologies acquired along with those companies, as well as their
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1 user bases and networks, by integrating them into its increasingly vast and
2 increasingly more dominant position in online search, advertising, e-commerce and
3 mobile devices.

4 38. By so doing, Google has progressively and synergistically increased its
5 market power in innumerable related or downstream businesses in those fields,
6 giving it the power to dictate not only economic and compensation rules on those
7 businesses but also to manipulate the very content made available to Internet users,
8 both directly and indirectly. At an October 31, 2017 hearing of the Senate Judiciary
9 Committee where members of the Committee grilled executives from Google and
10 other large tech companies concerning the ways their platforms were manipulated
11 during the 2016 U.S. presidential election, Republican Senator John Kennedy
12 expressed concern about these companies' "breathtaking" influence: "[y]our power
13 sometimes scares me."¹²

14 **4. Dreamstime Is a Consumer in the Online Search Advertising**
15 **Market and a Competitor in the Online Stock Photography**
16 **Business**

17 39. In addition to its standing as a consumer and participant in the online
18 search advertising market, Dreamstime has been injured in and competes in the
19 online stock photography business which is defined for purposes of this action as the
20 online business of selling and distributing licensed digital images and includes
21 market participants such as Dreamstime, Shutterstock, Getty Images, Adobe and
22 other smaller competitors. Shutterstock, Getty Images and Adobe together control
23 the bulk of the online stock photography business. Along with Dreamstime, these
24 participants comprise a highly concentrated industry. As described on

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27 ¹² See, [https://www.fastcompany.com/40489793/senators-grill-facebook-twitter-
28 google-on-fake-news-your-power-scares-me](https://www.fastcompany.com/40489793/senators-grill-facebook-twitter-google-on-fake-news-your-power-scares-me) (last accessed March 19, 2018).

1 Shutterstock’s website, “stock photos are images that anyone can license for creative
2 use. Rather than hire a photographer, designers can search a large database of
3 photos and quickly find one that works for their project.”¹³ Shutterstock’s website
4 also describes the crucial role that Internet search engines play in the online stock
5 photograph market: “[t]oday, Internet search engines allow anyone to find the
6 perfect stock photo in seconds.”¹⁴ Getty Images’ CEO, in announcing its
7 partnership with Google, cited its own “market leading” position and the fact that
8 the partnership is likely to increase its dominant position: “We will license our
9 market leading content to Google, working closely with them to improve attribution
10 of our contributors’ work and thereby growing the ecosystem.”

11 40. So-called “vertical search” websites (websites with a search function
12 that are “downstream” from search engines like Google), including stock photo
13 websites, pose an existential threat to Google’s monopoly in the online search
14 advertising market. Like other “vertical search” websites, stock photo websites are
15 repository sites, places where a consumer can go directly to search for millions of
16 images, instead of starting with Google or Google Images. If they gained sufficient
17 brand recognition and awareness, most consumers would know the primary stock
18 photo URLs by heart (like they know amazon.com or yelp.com by heart) and could
19 start there to search for stock photos, skipping Google as a middle step. This
20 “cutting out the middleman” takes away searches from Google, which of course
21 then takes away search advertising revenue from Google, because every search pulls
22 up AdWords results that increase Google’s online search advertising
23 monopoly. Google Images would be devastated if more consumers knew they could
24 go to Dreamstime, Getty Images, Adobe or Shutterstock directly instead of going to

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26 ¹³ See, www.shutterstock.com/support/articles/en_US/kbat01/What-are-stock-photos. (last accessed on March 19, 2018).

27 ¹⁴ *Id.*

1 Google first. Then, these dominant stock photo sites could start expanding their
2 offerings to include other things people search for to buy. This is exactly what
3 Amazon and Yelp have done to some degree. As noted below, one important way
4 that Google keeps this from happening is partnering with some competitors and
5 excluding others like Dreamstime (a lower cost competitor) that threaten its
6 monopoly of online search advertising. This gives Google more control over (and
7 information about) what the dominant stock photo websites are doing, which allows
8 it to prevent them from supplanting Google as the place to search for images on the
9 Internet.

10 41. Google has long recognized the importance of “vertical search” threats
11 like stock photography repositories to its search dominance, and the FTC also
12 recognized this threat in its prior investigations of Google. As an article in
13 *International Business Times* entitled “Google Faces Threats From Amazon, Yelp,
14 Retailers As Search Goes Mobile”¹⁵ reported:

15 The search wars are back on, but this time it's different . . .

16 Google also faces the challenge of competing against Amazon, Yelp
17 and many other services that threaten to eat into its market with
18 specialized or vertical search engines.

19 This threat to Google’s business has been around for years, but
20 it was thrust back into the spotlight this week after documents from
21 the Federal Trade Commission were revealed showing just how much
22 the Mountain View, California, tech titan fears vertical search
23 engines.

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27 ¹⁵ See, [http://www.ibtimes.com/google-faces-threats-amazon-yelp-retailers-
28 search-goes-mobile-1861968](http://www.ibtimes.com/google-faces-threats-amazon-yelp-retailers-search-goes-mobile-1861968). (last accessed March 19, 2018).

1 Specialized search engines ‘might cause users to shift their
2 searches in those categories away from Google's general Web search
3 platform. As users moved to vertical search websites, those websites
4 could, in turn, become more attractive vehicles for advertisers, thus
5 resulting in potentially significant revenue losses to Google,’ the FTC
6 documents, which were obtained by the Wall Street Journal, said.

7 This fear for Google is more pressing than ever. . .

8 42. Dreamstime is one of the leaders among online stock photography
9 repositories and has been a reliable supplier of high quality digital images since
10 2000. Dreamstime is a repository of millions of high quality stock images. It serves
11 a variety of clients in the creative market, from independent private sector customers
12 to Fortune 100 companies. As of March 2018, Dreamstime had 20,000,000
13 registered members, more than 400,000 contributing photographers and over
14 75,000,000 photos, illustrations, clip arts, and vectors.

15 43. Dreamstime conducts its business through its website and mobile
16 applications, through which customers can choose from millions of high quality
17 digital photographs, videos and illustrations sold by hundreds of thousands of
18 contributing photographers.

19 44. Dreamstime has worked diligently for almost two decades to establish
20 itself as a leader in online stock photography. Like all its competitors in the online
21 stock photography business, Dreamstime relies heavily upon online search engines
22 and search engine advertising to build its name recognition and generate new
23 customers and sales. Like most modern stock photography companies,
24 Dreamstime’s business is conducted exclusively through the Internet and web-based
25 applications. As much as 99% of Dreamstime’s business comes from the Internet.
26 As such, search engines are a *critical* component of Dreamstime’s sales and
27 customer acquisition strategy. Roughly two-thirds of Dreamstime’s customers find
28

1 their way to the website from a search-engine search. Even customers with active
2 Dreamstime accounts will often conduct a Google search for “Dreamstime”
3 (sometimes along with other search terms) instead of typing “Dreamstime.com” in
4 their browser address bar.

5 45. High barriers to entry exist in the online stock photography business.
6 Among other things, the major players in this industry all possess vast repositories
7 of digital images for consumers to search for and license. Shutterstock’s website
8 boasts over 183 million images; Getty Images has an archive of over 80 million still
9 images and illustrations and more than 50,000 hours of stock film footage; and
10 Adobe claims “millions” of available images. Hosting these images and making
11 them available on websites requires significant computing power and engineering.
12 Moreover, existing online stock photography companies employ vast networks of
13 contributors to build their library of digital images. Like many Internet-based
14 companies, these companies take advantage of network effects whereby a product or
15 service gains additional value as more people use it. Network effects create the
16 most significant barrier to entry, because photographers only want to license their
17 photos to websites that already attract a large number of potential purchasers.
18 Adobe was the most recent major player to enter the online stock photograph
19 business in 2015, and it was only able to enter the business because of extraordinary,
20 “one of a kind” advantages peculiar to it: Adobe is the publisher of popular image-
21 editing software available through their “Creative Cloud Interface.” Adobe found
22 that 85% of creative professionals who purchase stock photography used their
23 software products and that 90% of all stock photography was edited using their
24 software. Adobe integrated its online stock photograph business directly into its
25 Creative Cloud interface, which links directly with any Adobe program currently
26 accessing a user’s image library. Even with these advantages, Adobe had recently
27 captured only 2.62% of the market for online stock photography. Like the
28

1 Microsoft example in online search, the Adobe example illustrates the significant
2 barriers to entry in the online stock photography business. It is worth noting that
3 this was Adobe's *third* attempt at entering this business segment. Adobe had
4 previously paid \$800 million to purchase Fotolia, one of Dreamstime's competitors.

5 **5. Google Restricts and Distorts Competition in Online Stock**
6 **Photography Through Its Deals with Shutterstock and Getty**
7 **Images**

8 46. On July 12, 2016, Shutterstock publicly announced a licensing
9 agreement between it and Google.¹⁶ Among other things, the deal provides
10 advertisers with access to Shutterstock's library of online images to use with their
11 advertisements running through Google's AdSense, AdWords and AdMob
12 platforms. The day after the deal was announced, Shutterstock's stock price rose
13 14.2%. On information and belief, the licensing agreement allows Google to
14 receive revenue from the licensing of Shutterstock's online stock photographs,
15 thereby making Google a participant in the online stock photograph business. On
16 information and belief, the licensing agreement calls for Shutterstock to share user
17 data with Google, which allows Google to maintain its monopoly in the online
18 search advertising market.

19 47. Google also plans to enter the online stock photography business
20 segment directly and is currently using its Google Images service to disrupt the
21 market for stock photos and eliminate (or at least significantly impair) competition
22 in that line of commerce. One way that Google caused anticompetitive effects in the
23 online stock photography business until very recently was by way of its "view
24 _____

25 ¹⁶ See, e.g., Sullivan, Laurie. "Google, Shutterstock, Licensing Deal
26 Automatically Chooses Images For Ads" available at
27 <https://www.mediapost.com/publications/article/280120/google-shutterstock-licensing-deal-automatically.html> (last accessed on March 19, 2018).
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1 image” button that appeared when a user clicked on an image returned by a Google
2 search. Clicking on this button allowed a user to open and save the image directly.
3 The view image button encouraged and enabled users to steal copyrighted
4 photographs from photographers, publishers and online stock photography
5 companies, including Dreamstime. The button allowed users to bypass the websites
6 from which Google obtained the image and provided the image directly to the user.
7 To make matters worse, Google provided users with high resolution copies of these
8 images, which made it even easier and more desirable for users to download and
9 save images without visiting their website of origin. Of course, by bypassing the
10 original website, Google users were not exposed to relevant copyright and
11 ownership information available on the websites from which the images originated.
12 The “view image” button took business away from Dreamstime and other stock
13 photography companies: users often took and used images from Dreamstime
14 without ever visiting its site. This often resulted in an infringement of the image’s
15 copyright and prevented the user from purchasing the image from Dreamstime or
16 being exposed to Dreamstime’s website and its many other stock photograph
17 offerings. On February 15, 2018, it was reported that Google was removing its
18 “view image” button to encourage users to visit the website that hosts the image.¹⁷
19 The article notes that “the intention seems to be either stopping people from taking
20 an image altogether or driving them through to the website where the image is
21 found, so that the website can serve ads and get revenue and so that people are more
22 likely to get copyright information.”¹⁸ Just one week after Google removed this
23 button, Dreamstime experienced a 25% increase in traffic to its website and 10%
24 increase in conversion – proving that Google’s past conduct with the “view image”

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26 ¹⁷ See, <https://www.theverge.com/2018/2/15/17017864/google-removes-view-image-button-from-search-results>. (last accessed on March 19, 2018).

27 ¹⁸ *Id.*

1 button stole traffic and customers from Dreamstime. The button no doubt was
2 popular with some Google users who wanted to easily obtain copyrighted images for
3 free, increasing the popularity of Google’s search engine. To this day, however,
4 searchers are still able to access high-resolution images that show up in Google
5 Images searches by right-clicking and saving the image. These images are still of a
6 high enough resolution for desktop and mobile screens as to allow abuses to occur.
7 Google has taken its empowerment of would-be infringers even further, by creating
8 and distributing a script that removes watermarks from images (watermarks are one
9 means by which a copyright owner prevents unauthorized use of an image).

10 48. In or around the first week of February 2018, Google and Getty
11 Images announced a “multi-year global licensing partnership, enabling Google to
12 use Getty Images’ content within its various products and services.”¹⁹ That deal
13 “effectively” ended a copyright and antitrust dispute filed by Getty Images in the
14 European Union in 2016 involving Google Image’s use of high-resolution images
15 “scraped” from Getty Images’ and/or its customers’ websites. Ironically, Google
16 may have partnered with Getty Images to avoid antitrust liability in the European
17 Union at the same time as the “partnership” furthers its ability to control and restrict
18 trade in the online stock photography business. Because this partnership is in its
19 nascent stages, little measure of the effects it will likely have on the online stock
20 photography business is available (though Getty Images has at times received an
21 even higher rank than Shutterstock since the deal). On information and belief, the
22 licensing agreement allows Google to receive revenue from the licensing of Getty
23 Image’s online stock photographs, thereby making Google a participant in the online
24 stock photograph business. On information and belief, the licensing agreement calls

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27 ¹⁹ See, www.searchengineland.com/google-getty-images-enter-multi-year-global-licensing-partnership-291831. (last accessed on March 19, 2018).
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1 for Getty Images to share user data with Google, which allows Google to maintain
2 its monopoly in the online search advertising market.

3 **6. Google Abuses Its Monopoly Power in Online Search**
4 **Advertising to Harm and Competitively Disadvantage Its**
5 **Consumer, Dreamstime, in the Online Stock Photography**
6 **Business**

7 49. Google wields its market power in online search advertising
8 discriminatorily by giving some participants in downstream dependent businesses
9 higher search rankings while lowering the search rankings of others to the point that
10 they become invisible. Google's apparent purpose is to exclude competition,
11 increase Shutterstock's (its partner/proxy's) and Getty Images' (its partner/proxy's)
12 market power and reduce consumer choice, while at the same time maximizing the
13 AdWords revenue Google derives from other large competitors that have significant
14 AdWords campaigns. When Dreamstime is gone, Shutterstock's and Getty Images'
15 dominant positions will be solidified, and Google will be able to eliminate still other
16 large competitors, starting with those who spend the least on its profitable AdWords
17 services.

18 50. Here is how this works in practice: Google discriminates in the online
19 search market by rigging its search engine algorithm to unfairly privilege its
20 partners, Shutterstock and Getty Images, and to essentially exclude Dreamstime
21 from organic search results for stock photography. The only other significant stock
22 photo website that is not a partner of Google's and that may have benefited
23 marginally from Google's exclusion of Dreamstime and other competitors is Adobe.
24 Google derives large profits from online advertising purchased by Adobe, creating
25 significant costs in the short term for it to eliminate Adobe. In addition, Google is
26 aware that eliminating all competitors besides Shutterstock and Getty Images at
27 once would draw more obvious antitrust scrutiny. Indeed, Google's search engine
28

1 might lose all credibility if it were to return no relevant searches for stock
2 photography other than Google Images, Shutterstock, Getty Images and their
3 wholly-owned websites. For the most part, Adobe stays on the first page of organic
4 search results, but it does not generally rank ahead of Shutterstock and Getty Images
5 or receive the other benefits unique to Shutterstock described herein (*e.g.*,
6 “knowledge graphs,” at Exhibit “A”).

7 51. Google has also elevated the search ranking of various websites
8 containing only public domain images and other “Junk Websites,” defined for
9 purposes of this lawsuit as results responsive to search terms related to online stock
10 photographs that are of low relevance to customers searching for sources of
11 licensable digital images. Google’s promotion of Junk Websites can only have an
12 anticompetitive purpose and effect, because these sites knock Dreamstime out of
13 view for the consumer googling for stock photography but do not promote viable
14 alternatives in the process.

15 52. While Google has focused many of its efforts on Dreamstime (so far),
16 Dreamstime is not the only competitor that has been excluded from organic search
17 results in this fashion. Google has also intentionally altered its algorithm to harm
18 other similarly-situated competitors, including 123RF, DepositPhotos, and
19 CanStockPhoto, who all suffered inexplicable drops in organic search rankings.

20 53. In sum, Google has altered its search algorithm – or, at least, how that
21 algorithm was applied to Dreamstime and others – to unfairly exclude Dreamstime
22 and others in the online stock photography business and to favor Google’s own
23 services and those of Shutterstock and/or Getty Images,²⁰ providing an unearned and
24 _____

25 ²⁰ Adobe may also benefit marginally in the intermediate term as an indirect
26 consequence of Dreamstime’s exclusion. However, it too risks harm in the long
27 term when Google takes further advantage of its own Google Images, Shutterstock’s
28 and Getty Images’ increased market power to exclude it.

1 crucial advantage to Shutterstock and Getty Images over Dreamstime and others. In
2 the process, many Junk Websites populate Google’s search results, diminishing the
3 consumer experience, and increasing the likelihood that consumers are directed to
4 Shutterstock and Getty Images (or to Google Images, Google’s own service).

5 54. Google’s maintenance and abuse of its online search advertising
6 monopoly to restrict and distort competition for online stock photography has
7 benefited Google directly, and has also benefited its partners Shutterstock and Getty
8 Images. For example, Google’s market power in the online search advertising
9 market has allowed it to extract supracompetitive advertising premiums from its
10 customers because it is not required to compete on price. That is, most of the
11 commercial websites ranked by Google are also customers of Google’s online
12 advertising services. Those websites that are pushed to the bottom of the search
13 rankings, as Dreamstime has been, are forced to increase their reliance (and
14 spending) on Google online advertising services to drive customers to their website
15 and generate business. In the past, when Dreamstime’s search ranking more
16 accurately reflected its relevance to online stock photography, Dreamstime did not
17 need to spend as extravagantly on its paid advertising on search results pages. The
18 elimination of Dreamstime from organic search results in turn allows Google to
19 maintain its monopoly power over online search advertising by eliminating an
20 important “vertical search” threat to its search dominance.

21 55. Google has long been accused of exactly this kind of discriminatory,
22 anticompetitive manipulation of its search engine. In a Senate hearing on Google in
23 September 2011, Jeff Katz, CEO of Nextag, Inc., complained that Google “cook[s]”
24 its algorithm ... rigging its results, biasing [search results] in favor of [itself.]” The
25 downstream business for online stock photography is one of several dependent
26 businesses that have been injured through Google’s maintenance and improper use
27 of its online search advertising market power, injuring its customer Dreamstime and
28

1 giving it standing to bring these antitrust claims. This conduct, in turn, harms
2 consumers of online stock photographs, by eliminating millions of images from their
3 available choices in that online industry. This industry is at the very foundation of
4 online advertising because it provides high quality images to integrate into
5 advertisements.

6 56. By favoring its own additional services in downstream businesses (that
7 are dependent on Google’s online search services) through its monopoly of the
8 online search advertising market, Google both pressures current competitors in the
9 downstream businesses to exit their businesses as well as increases the cost (or
10 makes it impossible) for additional competitors to enter those marketplaces. For
11 example, in Senate testimony of September 2011, Yelp CEO Jeremy Stoppelman
12 indicated that “there’s no way” he would have started Yelp, or a business using a
13 similar strategy, if Google had been engaging in the favored placement of its own
14 services in the way that has become Google’s routine.

15 **B. Google Engages in Predatory, Discriminatory, and Anticompetitive**
16 **Conduct to Maintain and Exploit its Monopoly**

17 57. Google has injured competition in the online business in which
18 Dreamstime competes, online stock photography, through the discriminatory use of
19 its monopoly power in the online search advertising market, excluding Dreamstime
20 (a consumer of Google’s search advertising services) and other online stock
21 photography competitors from all common searches for stock photography. As
22 described below, Google has engaged, and continues to engage, in predatory or
23 anticompetitive conduct directed at accomplishing its unlawful goal of preserving its
24 monopoly and harming competition downstream for its economic benefit.
25 Ultimately, consumers are harmed because Dreamstime, as a large supplier of
26 unique, high-quality stock photo images – one that otherwise would exert downward
27 pricing pressure on a dominant market player like Shutterstock or Getty Images –
28

1 has essentially become invisible to consumers. In fact, one of Dreamstime’s most
2 important unique selling points that differentiates its stock photography offerings
3 from other competitors like Shutterstock and Getty Images is its competitive pricing.
4 Most of Dreamstime’s customers view its pricing as Dreamstime’s most important
5 distinguishing feature over other online stock photography competitors.²¹

6 **1. Google’s Monopoly Abuse and Exploitation Has Restricted**
7 **Competition for Stock Photography Directly and Through**
8 **Its Partners/Proxies Shutterstock and Getty Images**

9 58. Google, through its partner/proxies, Shutterstock and Getty Images, and
10 buttressed by its unlawful Google Images practices, has restricted competition
11 among stock photography repository websites (which, in turn, eliminates a “vertical
12 search” threat to Google’s search advertising dominance). Shutterstock and Getty
13 Images currently control a dominant share of the online stock photography industry,
14 together representing close to 70% of the market. Google’s strategy in the online
15 stock photography business is transparent: using Google’s search algorithm to
16 unfairly sandbag Dreamstime’s search ranking, further assisted by other
17 discriminatory conduct against Dreamstime with respect to Google’s AdWords and
18 Google Images. The elimination of competition in “vertical search” websites like
19 those allowing for direct stock photography searches enhances Google’s online
20 search advertising monopoly.

21 59. The Shutterstock and Getty Images contracts are opportunities for
22 Google to collect more user data and play into the self-reinforcing strength of

23 _____
24 ²¹ Because Dreamstime has lost so much traffic after Google downgraded its
25 search ranking and because of its increased costs due to the necessity of countering
26 Google’s tactics by increasing its Google AdWords spending, Dreamstime may
27 soon have to raise its prices and risk losing one of its key advantages over larger
28 online stock photography companies.

1 Google's search advertising platform as it gathers more data compared to rivals. Or
2 as Jonathan Rosenberg, Google's *own* VP of Product Management and Marketing,
3 explained in an unguarded statement in 2008:

4 We get more users because we have more advertisers because we can
5 buy distribution on sites that understand that our search engine
6 monetizes better. So more users more information, more information
7 more users, more advertisers more users, it's a beautiful thing, lather,
8 rinse, repeat, that's what I do for a living. So that's . . . the engine that
9 can't be stopped.²²

10 Its control over user data creates enormous barriers to entry and unique
11 competitive advantages for Google that increase its monopoly power with
12 every partnership it enters. In fact, multiple countries have accused Google
13 of (and sanctioned it for) unlawful mining of user data through various
14 platforms and arrangements, including but not limited to Google Maps,
15 Android phones, and alliances with other partners. In a recent Yale Journal
16 on Regulation article entitled "Search, Antitrust, And the Economics Of The
17 Control Of User Data" (31 Yale J. on Reg. 401, 435-440), Nathan Newman
18 stated: "Beyond entrenching its monopoly on search advertising by
19 expanding into new online markets to control new user data, Google has
20 even more directly used its market power to coerce allies in ways that fortify
21 its position and engaged in flatly illegal activities to reinforce its control of
22 user data." As spelled out in the Newman article (at pages 435-440), Google

24 ²² Press Release, Senator Richard Blumenthal, Blumenthal Continues to Press
25 Google on Market Power and Competition Policy. *See*,
26 [https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-continues-](https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-continues-to-press-google-on-market-power-and-competition-policy)
27 [to-press-google-on-market-power-and-competition-policy-](https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-continues-to-press-google-on-market-power-and-competition-policy) (last accessed on March
28 19, 2018).

1 has engaged in unlawful conduct that violates privacy or consumer fraud
2 laws, all in the interest of maintaining and enhancing its dominance in
3 gathering, organizing, and reselling private information. The use of that
4 private information in turn enhances Google’s revenues and its monopoly in
5 the online search advertising market.

6 60. In connection with the DoubleClick merger investigation, the FTC
7 stated: “The popularity of Google’s search engine and its technical prowess already
8 give Google abundant customer information even pre-transaction.”

9 61. Google wields monopoly power in the online search advertising market
10 through its ability to control prices or destroy competition. It abuses that power by
11 discriminating and restraining trade in the online stock photography business, a
12 “vertical search” business that threatens Google’s monopoly. Google manipulates
13 this competition for its own benefit. As described above, it chooses winners in the
14 online stock photography industry. This has a two-fold benefit for Google: (a) it
15 increases its revenue both through its partnership with Shutterstock and Getty
16 Images and through the increase in advertising revenue it derives from excluded
17 websites; and (b) it allows Google to maintain its monopoly power in the online
18 search advertising market. Google profits from having arrangements with
19 dependent dominant downstream parties because it ensures it will receive the
20 revenue from the party it has helped gain dominant downstream market share.
21 Google maintains and even enhances its monopoly by creating downstream
22 arrangements, like the ones it has with Shutterstock and Getty Images. In exchange,
23 Google need only alter its search algorithm (essentially a low-cost undertaking) to
24 promote Shutterstock’s and Getty Images’ rankings and downgrade Dreamtime’s
25 and others’ rankings. A non-discriminatory application of Google’s search
26 algorithm would result in Google losing a significant amount of revenue from
27
28

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1 Shutterstock and Getty Images (as well as its own Google Images) and would foster
2 healthy and fair competition among these websites.

3 62. Shutterstock, one source of Google’s revenue derived from online
4 stock photography, was recently the second result when a user searched for the
5 terms “stock photography” in Google’s search engine. The website Wikipedia –
6 which is commonly known to be a non-commercial, encyclopedic reference website
7 – ranked first in this search. In other words, Shutterstock was the first commercial
8 entity ranked on a search for “stock photography.” A knowledge graph also
9 appeared below the first search result very high on the page and the first question in
10 that knowledge graph is “are there free images on Shutterstock” – none of the other
11 three questions in the knowledge graph mentioned any stock photography company
12 by name. Getty Images also ranked highly in Google’s search results (typically in
13 the first two or three) and, through various special arrangements with Google, is
14 likely to enjoy even greater organic search visibility for its images after its licensing
15 agreement with Google. Adobe ranked fourth. Other Junk Websites or public
16 domain images websites (which are not stock photography websites) round out the
17 top 10.

18 63. In a recent Google search for “stock photos,” iStock (owned by Getty
19 Images) and Shutterstock ranked prominently and consistently in the top five.
20 Shutterstock’s website, Bigstock, was also in the top 10. Of the top 10 results, only
21 iStock (owned by Getty Images), Shutterstock, Bigstock (owned by Shutterstock)
22 and Adobe are online stock photograph competitors – that is, in the crucial first page
23 of Google search results, the only stock photography competitors are Shutterstock,
24 Getty Images and Adobe.

25 64. Dreamstime, for so long a standard denizen of the valuable top three
26 search results for this particular search, is generally not even found on the first 20
27 *pages* of results. Other competitors have suffered a similar fate.

28

1 **2. Google Has Engaged in Additional Anticompetitive Conduct**
2 **in Furtherance of Its Maintenance and Abuse of its Online**
3 **Search Advertising Monopoly**

4 65. Google also has a policy against duplicative content. Pursuant to that
5 policy, Google prevents substantive blocks of content within or across domains that
6 either completely match other content or are appreciably similar. In furtherance of
7 its maintenance and abuse of its monopoly in the online search advertising market to
8 restrain and control online stock photography competition, however, Google now
9 selectively enforces this rule to Dreamstime's detriment. As mentioned above,
10 Dreamstime's competitors Shutterstock and Bigstock are stock photo retailers
11 owned by the same provider. They offer the same images for license under two
12 different domains without any appreciable difference, yet they both recently
13 appeared as the first and second individual results when searching for the phrase
14 "stock photo." As a result, Shutterstock would generally receive at least 50% of the
15 Google traffic for the search term "stock photos." As shown in Exhibit "C" attached
16 hereto, Google inexplicably includes as many as three to five links to the same site
17 on its first page of search results, further pushing Dreamstime (and others) down in
18 results that become less and less useful to potential customers. In fact, there are
19 some searches where only a single site is displayed on a whole page of results (*i.e.*,
20 10 out of 10 spots), which further demotes Dreamstime. *See* Exhibit "D". These
21 results violate Google's own policy of allowing only two links from the same
22 website owner (a policy that was intended to ensure diverse results).

23 66. Google's "support" services offered to companies further its anti-
24 competitive scheme. After Dreamstime sought answers from Google regarding its
25 dramatic plunge in organic search ranking, Google refused to substantively discuss
26 Dreamstime's search ranking or provide any rational justification for Dreamstime's
27 unfavorable ranking. When asked via Google's support forum (the place where
28

1 Google insists that companies must go to ask for assistance) about Dreamstime’s
2 ranking, Google’s representatives have responded with sarcastic and dismissive non-
3 advice to questions about how such low-quality results can wind up so high in
4 organic search results.

5 67. As an example of this behavior of dismissing Dreamstime’s concerns
6 about Google’s search ranking policies, Exhibit “E” depicts a screen capture of a
7 forum discussion wherein a user is asking Google why a site ranks so highly for the
8 general search term “stock photos” when the site’s main domain is permanently set
9 to redirect users to another page deep within the indexed site’s hierarchy (*i.e.*, a
10 specific page listing images that match the more specific search string “christmas
11 images”). In other words, the site in question employed a “hacking” technique to
12 artificially increase its search ranking – a practice that is purportedly against
13 Google’s policies. This example presented in the forum post involved a site called
14 StockPhoto.com that ranked ahead of Dreamstime in Google search results.
15 Clicking on the StockPhoto.com link in Google’s search results, rather than taking
16 users to the homepage of StockPhoto.com, redirected users to the page
17 <https://stockphoto.com/search/listen+to+music> – which displays only a very narrow
18 subset of images that are not very useful to a potential customer searching for “stock
19 photos.” This would be akin to searching for the broad category “electronics,”
20 selecting a top result to click on, and being sent to a page that only provided
21 information about 8-track tape players. Rather than acknowledging a problem with
22 the search results or volunteering substantive fixes for such a situation, John Muller,
23 an executive on Google’s organic search team, responded to the forum question by
24 suggesting that site owners who rank below the offending site should “ask them”
25 why they would use a redirect on their homepage. This infuriating level of non-
26 support is indicative of Google’s attitude toward any company whom Google has
27 not selected as a partner.

1 68. Since early 2016, Dreamstime has followed every guideline and
2 suggestion provided by Google’s documentation, as well as many other suggestions
3 by external SEO agencies, in an effort to resolve the damage to its organic search
4 ranking. Nothing has changed. In fact, Dreamstime’s ranking continued to decline
5 through the end of 2017. At Google’s recommendation, Dreamstime has
6 implemented a bevy of changes, including: switching to https and http2; disavowing
7 links; improving its website quality, diversity, and quantity of content; investing in
8 dedicated hardware for a caching system; and dramatically increasing its crawl rate
9 (10 times) and number of pages. At Google’s suggestion, Dreamstime invested
10 numerous development hours in rebuilding its entire site to be “mobile friendly,”
11 because it was claimed that Dreamstime’s search rank might be hurt by failing to
12 have a site that worked on cell phones. Dreamstime diverted precious
13 development resources from other projects in its business plan and doubled its
14 hosting costs, all to no avail. These “suggestions” were nothing more than cover for
15 Google’s anticompetitive search bias scheme. These suggestions could not possibly
16 alter Dreamstime’s ranking, were intended to waste Dreamstime’s resources and
17 time, and disguised Google’s intentional manipulation of Dreamstime’s ranking
18 algorithm. Dreamstime expended significant resources and time to implement these
19 suggestions and in fact undertook an entire re-design of its website in an ultimately
20 futile attempt to regain the ground it lost in Google’s organic search.

21 69. Dreamstime paid several expensive search engine “guru” firms for their
22 analysis and opinion of why Dreamstime’s Google search ranking might be
23 declining, and not a single one was able to identify any issue with Dreamstime’s site
24 that would explain its drop in Google’s search ranking. Based on Google’s public
25 guidelines about how its search worked, Dreamstime spent millions of dollars on
26 website hosting to increase the content on its website by adding more images.
27 These efforts failed to regain its lost ranking. In addition, Dreamstime hired its own
28

1 in-house SEO expert to help its efforts to regain its prior search ranking. Like the
2 outside search engine gurus, this experienced professional was unable to identify
3 any issues with Dreamstime's site that would explain how Dreamstime came to be
4 excluded from Google's search ranking. Dreamstime also launched a second
5 website, Megapixl.com, to get more exposure for a subset of its content (just as
6 Shutterstock launched a sister website Offset.com, which contained a subset of its
7 content). Dreamstime also spent substantial sums on AdWords campaigns for
8 Megapixl.com. Despite Dreamstime's significant investment in infrastructure and
9 advertising for Megapixl.com, that website was unable to gain traction in organic
10 search and Dreamstime was only able to recover a fraction of its investment. All
11 told, Dreamstime spent several million dollars hiring search professionals, building
12 out and launching AdWords campaigns for a second website, expanding the content
13 on its primary site and increasing its AdWords budget.

14 70. To combat the losses resulting from its effective exclusion from
15 Google's organic search results, Dreamstime was at first forced to spend
16 considerably more on search engine advertising to maintain its position as a leader
17 in online stock photography.²³ This meant increased spending on advertising
18 services including Google's AdWords. The increased reliance on paid search results
19 in turn diminished Dreamstime's competitive standing. Of course, it also benefitted
20 Google directly.

21 71. Dreamstime is unaware of any innocuous explanation for its dramatic
22 decline in search ranking – nothing about its website or how customers use its

23

24

25 ²³ After dramatically increasing its ad spend and implementing extensive changes
26 recommended by Google to help with search ranking, Dreamstime recently resolved
27 to significantly lower its advertising spending, as its advertising spending did not
28 come close to compensating for the loss of traffic caused by Google's search bias
campaign.

28

1 website explain its decline in stock photography searches (and Google has never
2 cited any such innocent reason in the course of Dreamstime’s efforts to address the
3 issue with Google). If anything, Dreamstime has improved in all of the metrics that
4 Google claims are important to search ranking. During the relevant period (2014-
5 2017), Dreamstime’s user engagement has improved over time. Its “bounce rate” (a
6 metric that indicates that percentage of people who land on a web page and then
7 leave without clicking anywhere else on the website) has declined over time while
8 the average amount of time users have spent on Dreamstime’s website has stayed
9 basically constant. Dreamstime’s page load times have also decreased dramatically
10 since Fall of 2015 when the issues with its search ranking became noticeable.

11 **3. Google’s Discrimination Against Dreamstime Has Had** 12 **Anticompetitive Effects**

13 72. Google has used various tactics and manipulated its search engine
14 algorithm to illegitimately change the ranking of Dreamstime’s website (and the
15 websites of other competitors) in the results page for searches related to online stock
16 photography, causing the ranking of Dreamstime’s website to plummet several
17 *pages* of search results for the most common searches.

18 73. From approximately 2005 to 2015, Dreamstime consistently ranked in
19 the top three in Google's organic search ranking for searches related to stock
20 photography, and always appeared on the first page of the search results. Due to
21 Dreamstime’s longstanding place among the top online repositories of stock
22 photographs and its status as a top five vendor of online stock photography, its
23 ranking made sense. Along with three other pioneer microstock agencies, iStock,
24 Fotolia and Shutterstock, Dreamstime challenged the traditional stock photography
25 agencies and were major players in the online stock photograph industry. However,
26 iStock was acquired by Getty Images, Fotolia was acquired by Adobe, and
27 Shutterstock and Getty Images have partnered directly with Google – leaving
28

1 Dreamstime on its own as the only significant independent microstock agency left
2 from these pioneering sites, despite Dreamstime’s historically large community and
3 customer retention.

4 74. Given its market position and the breadth and quality of its images,
5 Dreamstime is undoubtedly relevant and popular to computer users that google
6 online stock photographs. Dreamstime’s historical web traffic prior to Google’s
7 conduct reinforced this conclusion – its high traffic reflected that many people that
8 google online stock photography ended up using and purchasing stock photographs
9 from Dreamstime.

10 75. Yet, since approximately August 2015, Dreamstime's organic search
11 ranking on Google has inexplicably plummeted on several standard searches related
12 to stock photography. For example, from approximately 2005 to 2015,
13 Dreamstime’s Google ranking for the search term “stock photos” ranked either
14 second or third. By comparison, in or around June 2017, Dreamstime plummeted to
15 the fourth page for the same search term despite being in the stock
16 photography business for over a decade and offering a stock photography library of
17 over 70 million images. Now, its ranking has fallen to the 20th page within the
18 Google ranking. Bing and Yahoo! both rank Dreamstime as the fourth result for this
19 same search term, while Baidu similarly ranks Dreamstime eighth. Both rankings
20 would generally place Dreamstime prominently on the critical first page of search
21 results. These other search engine examples illustrate that Google’s exclusion of
22 Dreamstime is not due to any industry-wide change in Dreamstime’s content, users’
23 search behavior or any other rational change in circumstances. They also
24 demonstrate how Google’s dominance over search engines harms consumers, by
25 eliminating choices that would otherwise widely be available.

26 76. Dreamstime’s plummet in Google’s organic search ranking
27 significantly reduced the number of new Dreamstime buyers, *i.e.*, new customers
28

1 who sign up for Dreamstime and make a purchase within one month. For example,
2 in April 2015, before Dreamstime’s ranking drop, it gained a substantial number of
3 new buyers. In April of 2016, however, it gained 30% fewer buyers. This steady
4 decline in new buyers because of its drop in Google’s rankings has caused
5 Dreamstime to lose tens of millions of dollars in potential revenue and as much as
6 hundreds of millions in market value. It is safe to assume that other downgraded
7 sites (*e.g.*, 123RF, Canstockphoto, Depositphotos) experienced a similar decline.
8 Again, this result not only harms Dreamstime and other competitors, it harms
9 consumers, who now may choose only from Google’s partners, Adobe or Google’s
10 own Google Images section (where images are not safe to use for commercial and
11 legal reasons).

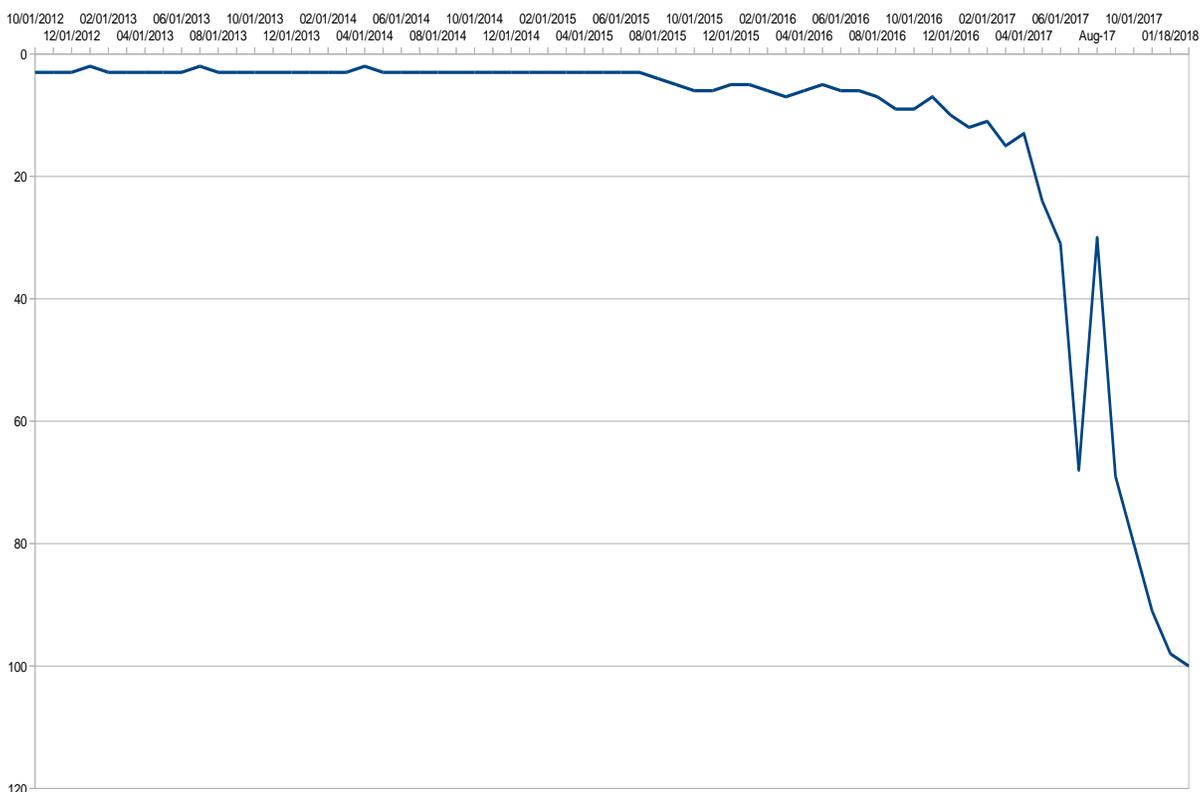
12 77. The same holds true for other searches related to stock photography.
13 For example, Dreamstime’s organic search ranking for “stock images” was recently
14 91st on Google, compared to fifth on Bing, fourth on Yahoo!, and third on Baidu.

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1 78. This graph shows Dreamstime’s position in Google search results for
 2 “stock photos” over the last five years, as it recently dropped from third to 91st.



19 79. Of crucial importance is Dreamstime’s drop from page one of Google’s
 20 rankings to page two (and recently as far as page 20 and below). According to
 21 research by respected online ad network Chitika, 92% of all Google search traffic is
 22 limited to the first page of the results, with the top three results receiving 61% of the
 23 clicks. When moving from page one to two, the traffic drops by 95%. For almost
 24 ten years, Dreamstime ranked in the top two to three in the key search for the terms
 25 “stock photos” (far and away the most important search for online stock
 26 photography due to the number of users searching for these terms). By relegating

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1 Dreamstime to the 20th or lower *page* in Google’s search, Google has effectively
2 banished Dreamstime from the marketplace.

3 80. This decline in Dreamstime’s organic search ranking does not bear any
4 relationship to Dreamstime’s overall organic visibility, which improved over the
5 same period of time. Google intentionally altered its search ranking algorithm’s
6 functionality with respect to online stock photography searches to bolster
7 Shutterstock’s and Getty Images’ search rankings and severely diminish
8 Dreamstime’s ranking. The timing of Dreamstime’s dramatic fall in Google search
9 rankings, Dreamstime’s historical Google search ranking and Dreamstime’s
10 continued excellent performance in non-Google search rankings confirms that
11 Google altered its search rankings to exclude Dreamstime and benefit itself and its
12 partners.²⁴

13 81. To push Dreamstime entirely out of view for any consumer searching
14 for online stock photographs, Google inserts ahead of Dreamstime completely
15 useless Junk Websites. The low caliber of online stock photography companies that
16 now rank ahead of Dreamstime in Google search results for “stock photos”
17 evidences Google’s unfair and discriminatory treatment. Dreamstime has recently
18 ranked behind clearly inferior competitors including sites with only 30,000 free
19 images (compared with Dreamstime’s more than 2 million free images), sites with
20 only 140 images total, and multiple URLs that refer to the same photo site. Prior to
21 Google’s licensing deal with Shutterstock, these sites were never ranked ahead of
22 Dreamstime in online stock photography searches, and rightfully so. Dreamstime is
23 clearly more “relevant” to “stock photos” than a blog article entitled “Stock photos
24
25

26 ²⁴ Again, the effects of Getty Images’ licensing agreement are yet to be clearly
27 measured given that this agreement was only recently put into effect.
28

1 that don't suck" that has not been updated since 2014. Other less relevant websites
2 that are ranked higher than Dreamstime in a search for "stock photos" include:

- 3 • "Death to Stock" – a website that emails free photographs to users and
4 has a library of just 1500 photographs;
- 5 • Vince Vaughn and Co-stars Pose for Idiotic Stock Photos You Can
6 Have Free – an article about a PR campaign for a movie released in
7 2015;
- 8 • the reddit webpage "WTF Stock Photos" that collects "unnecessary
9 stock photos taken without a realistic intention of selling" for the
10 amusement of the reddit online community;
- 11 • the twitter account page for "darkstockphotos," a twitter user that posts
12 "extremely f***** up stock photography" (whose recent twitter posts
13 include a photograph of a woman writing the word "help" in blood on a
14 mirror and a toddler in obvious distress holding a chrome-plated nine-
15 millimeter semi-automatic pistol); and
- 16 • an October 20, 2014, article by Casey Ark on the website
17 entrepreneur.com titled "14 Amazingly free stock photo websites."

18 Were Google's algorithm performing the function of ranking and distinguishing
19 relevant and useful results ahead of less relevant and useful results, these sites *would*
20 *never* be ranked ahead of Dreamstime. The obvious anticompetitive purpose and
21 effect of this conduct is to entirely eliminate millions of high-quality, unique stock
22 photographs from a consumer's view, and thereby eliminate a potential "vertical
23 search" threat to Google's online search advertising monopoly.

24 82. Google's treatment of Dreamstime is markedly different from Google's
25 treatment of many of Dreamstime's largest competitors. Through its partnership
26 with Shutterstock and recently announced partnership with Getty Images, as well as
27 its independent offering of images within its search results, Google has become a
28

1 major force in the online stock photography business, with the distinct advantage of
2 controlling organic and paid searches for customers in that online industry.
3 Shutterstock ranks at or very near number one in organic search ranking for “stock
4 photos” on Google. Bigstock, a website owned by Shutterstock, which carries
5 almost exactly the same images as Shutterstock, also ranks in the top five on
6 Google. Additionally, as depicted in Exhibit “A,” both Shutterstock and Bigstock
7 enjoy the significant benefits of “knowledge graph” entries that appear at the very
8 top of organic search results for generic terms like “stock photos.” These
9 “knowledge graphs” – which according to Google are intended to show general
10 information about the topic a user is searching for²⁵ – ultimately function as free
11 advertising for Google’s partners when placed alongside search results for generic
12 market terms, giving unfair advantage to those partners over competitors like
13 Dreamstime. The inclusion of images (*i.e.*, company logos) makes knowledge
14 graph entries in search results and paid advertisements (all of which are plain,
15 vanilla text) very noticeable and attractive to users and draws even more clicks away
16 from companies who do not happen to be Google’s partner.

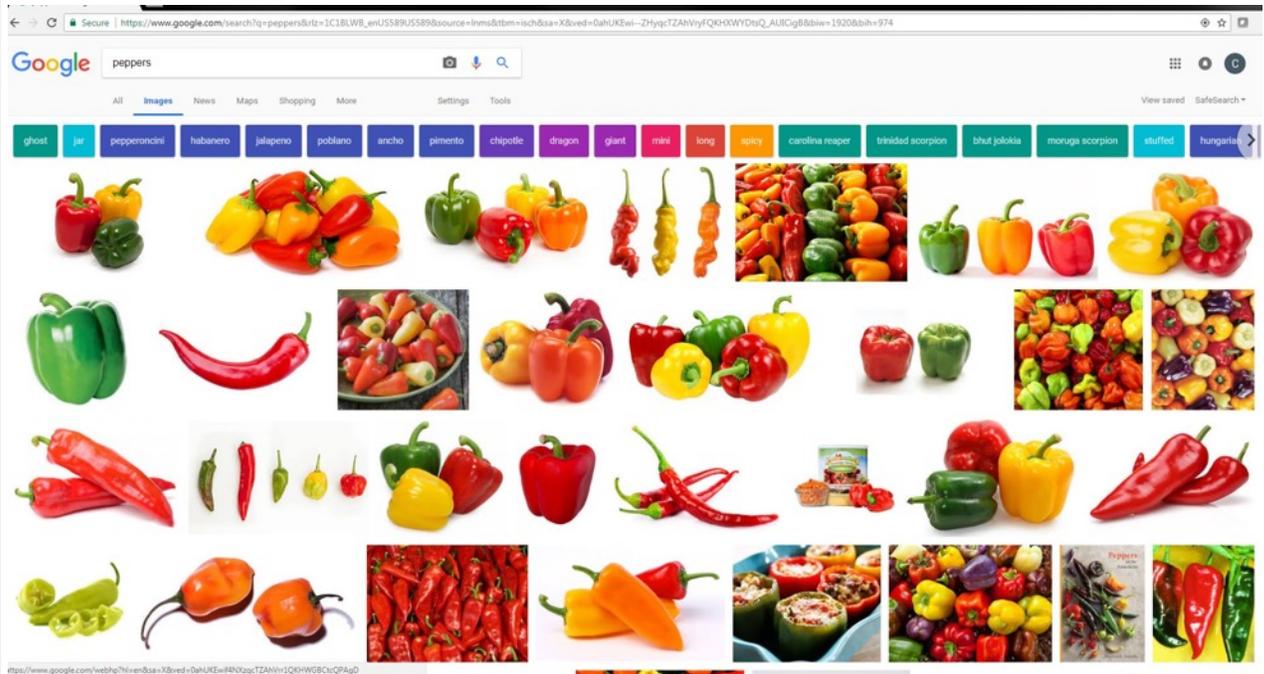
17 83. Similarly, Google often alerts users to the existence of competitors
18 when users search for a specific brand under a “users also searched for” tag. For
19 example, when users search for the term “Dreamstime” in the search results, Google
20 will inform the user that other users have searched for the term “Shutterstock.”
21 However, when a user searches for “Shutterstock,” Google does *not* include a tag
22 informing users that others had also searched for Dreamstime. Similarly,
23 Shutterstock is displayed prominently in organic search results for “dreamstime,”
24 which is a result that is very difficult to achieve from traditional SEO efforts.

25

26 ²⁵ See, Knowledge Graph feature description, available at
27 <https://www.google.com/intl/es419/insideseach/features/search/knowledge.html>.
28 (last accessed on March 19, 2018).

1 Again, this is a strategy to draw clicks away from Dreamstime and to divert and
 2 funnel those clicks to Shutterstock.

3 84. Literally any Google user can easily *see* how Google’s discrimination
 4 against Dreamstime impacts consumers. Take, for example, the term “peppers”
 5 (plural). When one performs a Google Image search of the term “peppers,” the first
 6 100 image results are pictures of bell or jalapeno peppers. This result provides some
 7 insight into Google’s algorithm – for example, the algorithm finds pictures of bell
 8 peppers highly relevant to the Image Search for the word “peppers.” Below is a
 9 screen capture showing the first images returned for a search for the term “peppers”
 10 on Google Images.

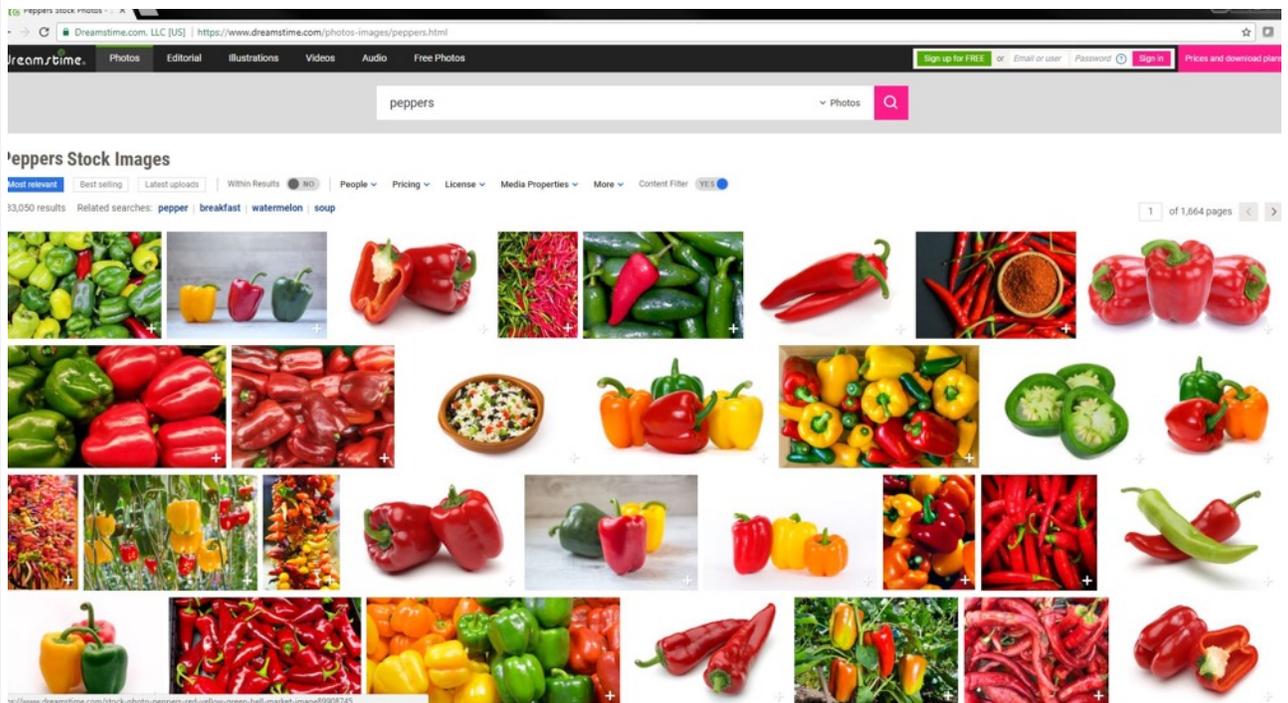


23 Dreamstime’s website also allows users to search its stock photographs by entering
 24 a search term. Searching for the term “peppers” on Dreamstime’s site also returns
 25 images of jalapeno and bell peppers. Almost every image on the first page of results
 26 are images of bell or jalapeno peppers (like the results from a Google Image search).
 27 Based on the images returned, it seems as if Dreamstime’s website and Google’s
 28

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1 search algorithm both consider images of bell or jalapeno peppers highly relevant to
 2 a search for the term “peppers.” Similarly, neither Google Images nor Dreamstime
 3 searches for “peppers” include images of *peppercorns* in the first page of image
 4 results on a search for “peppers.” That is, Dreamstime’s search function returns
 5 stock photos of the very thing that Google’s own algorithm finds highly relevant to
 6 the search. A consumer looking for stock photographs of bell or jalapeno peppers
 7 would find exactly what they were looking for on Dreamstime’s website – and this
 8 is *precisely* why Dreamstime used to enjoy a very high organic search ranking on
 9 Google prior to August 2015. Below is a screen capture showing the first results
 10 returned when a user searches for the term “peppers” on Dreamstime’s website.

11

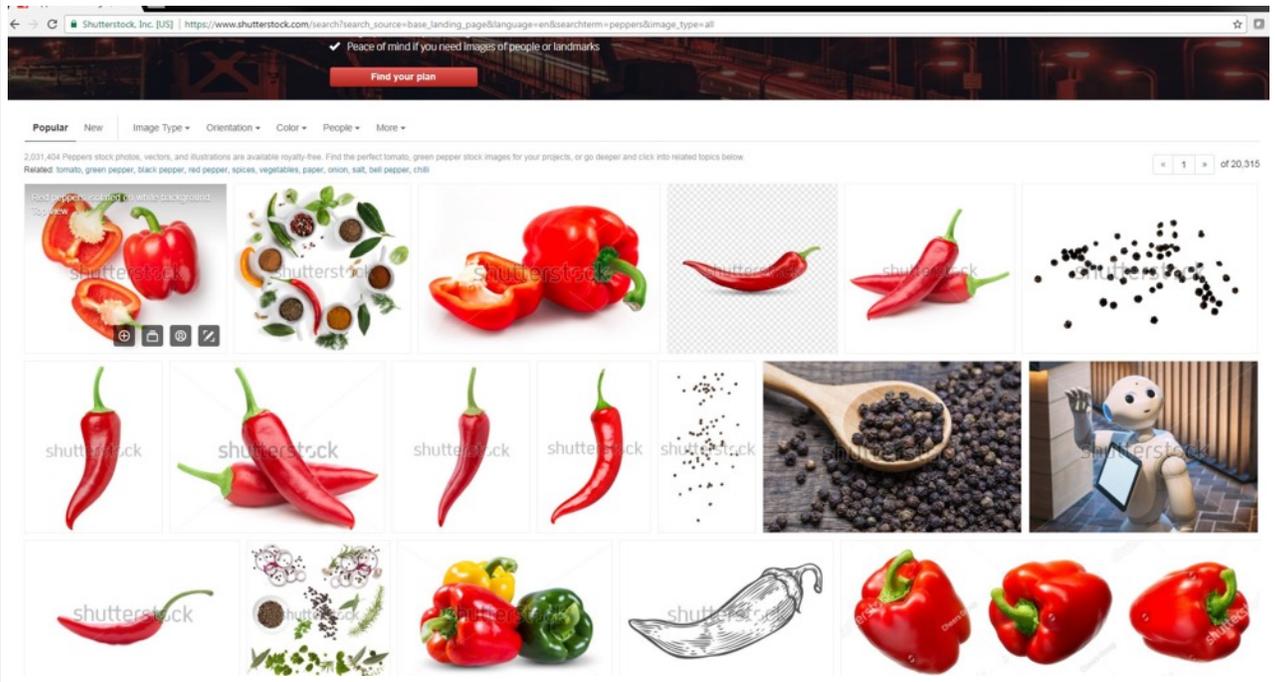


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 24 Like Dreamstime, Shutterstock also allows users to search its stock photographs by
 25 keyword. Searching for the term “peppers” on Shutterstock returns some pictures of
 26 bell and jalapeno peppers in the first page of stock photographs, but also returns
 27 some seemingly anomalous images including several photographs of peppercorns,
 28

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1 what appears to be a white robot named “Pepper,” as well as many photographs of
 2 salt and pepper shakers. Shutterstock’s image search algorithm returns *less relevant*
 3 results than either Google Images or Dreamstime on a search for the term “peppers.”
 4 Shutterstock’s results are less useful to a consumer interested in purchasing stock
 5 photos of bell or jalapeno peppers.



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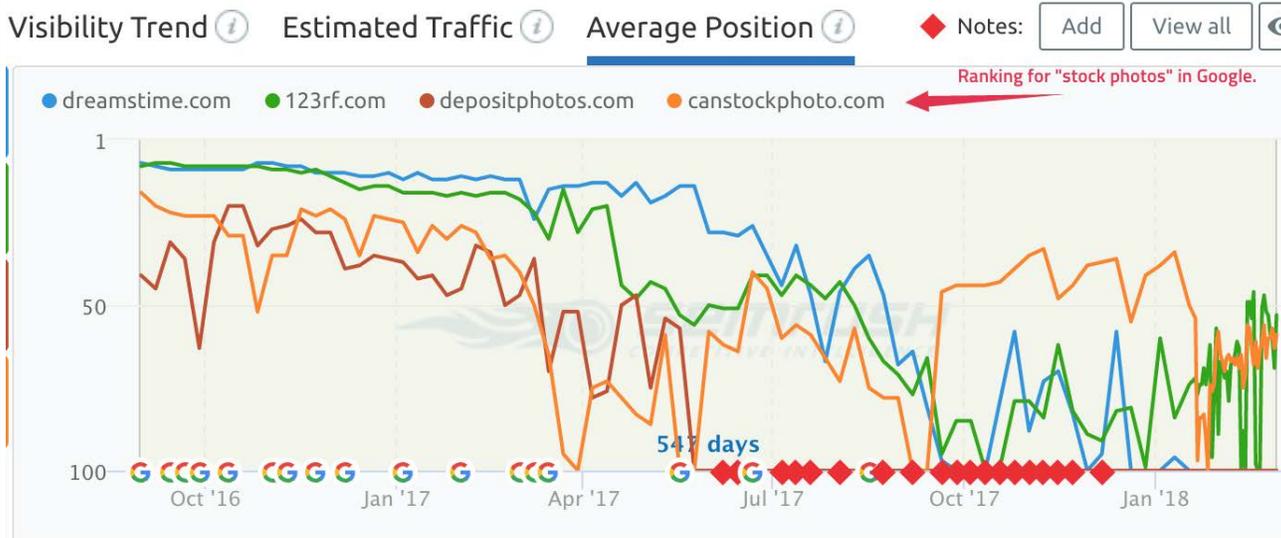
19 85. Based on how Google Image’s algorithm processes a search for the
 20 term “peppers” and selects relevant images, one would expect that Dreamstime’s
 21 website would be *more relevant* than Shutterstock’s website when a user searched
 22 for stock photos of peppers. This, however, is no longer the case. When a user
 23 performs a (non-image) Google search for the terms “peppers stock photos,” among
 24 the first ten web pages returned from this search, positions *two through five* are for
 25 Shutterstock websites. The second result returned is a link to
 26 www.shutterstock.com/search/pepper, the third result returned is
 27 www.shutterstock.com/search/serrano+peppers and the fourth result is

1 www.shutterstock.com/search/bell-pepper. Dreamstime’s website, however, is not
2 listed in the first *five* pages of search results for this search (and on information and
3 belief is not returned *at all* in Google’s search results pages for this search). Again,
4 many clearly less relevant websites are featured in the first five pages of results for
5 this search, including a Google books result entitled “Trees in Paradise: a California
6 History,” an article on the website Thrillist entitled “Bad Stock Photos – People
7 Smoking Weed,” and an article entitled “Hilarious Twitter Thread Points Out
8 Bizarre Cookbook Cover Trend” on the website www.scarymommy.com. The harm
9 to consumers is obvious. A consumer seeking to purchase stock photographs of bell
10 or jalapeno peppers and using a commonsense search like “peppers stock photos”
11 would never find Dreamstime – a site highly relevant to this search. That consumer
12 *would* be not so subtly steered by Google to its partner Shutterstock’s page as
13 Shutterstock occupied slots two through five in the top 10 – even though
14 Shutterstock’s website is not as helpful to the consumer based on its ability to return
15 relevant results.

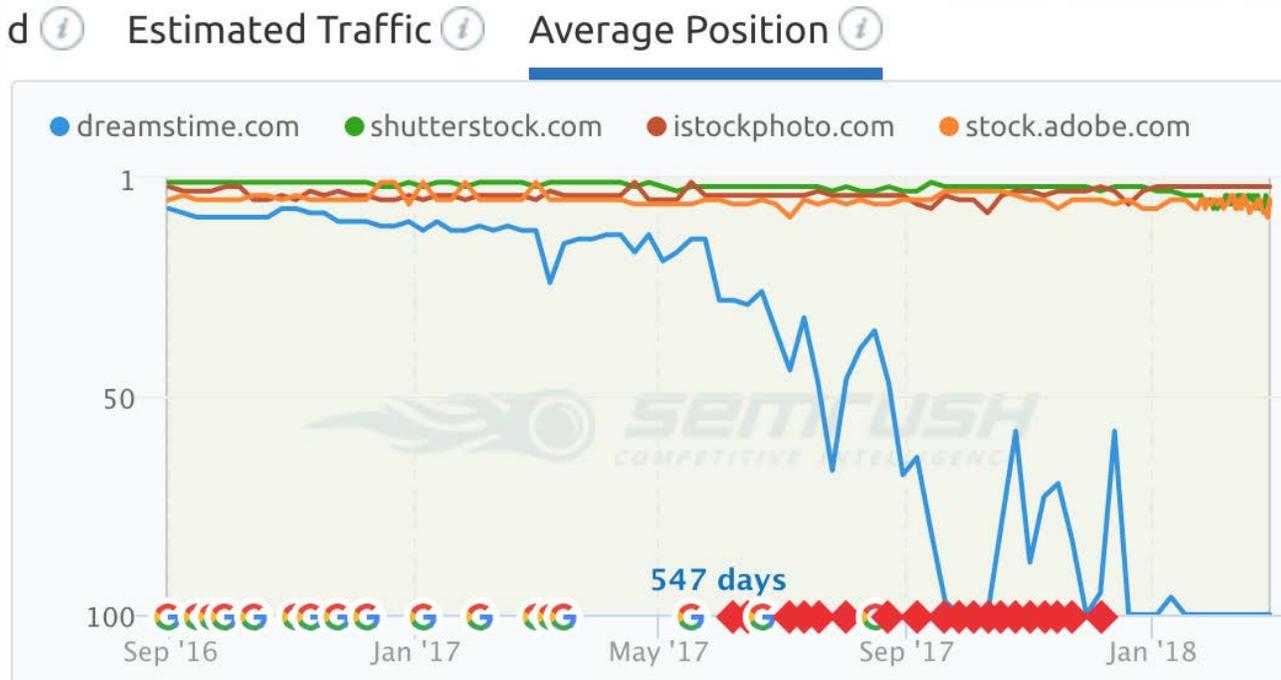
16 86. Dreamstime is not the only player Google has unfairly discriminated
17 against in this fashion. Others, such as 123RF, DepositPhotos, and CanStockPhoto,
18 have similarly experienced significant drops in their organic search rankings.

19 87. The graph below shows how the ranking for the websites Dreamstime,
20 123rf.com, depositphotos.com and canstockphoto.com have changed over the time
21 period September 2016 to February 2018. The vertical axis plots the search ranking
22 of each website when searching on Google for the term “stock photos.” The graph
23 clearly shows the drastic downward trend toward functional irrelevance for the most
24 important Google search for the online stock photograph industry. These smaller
25 competitors in the online stock photography industry have seen their ranking in the
26 “stock photos” search experience tremendous declines from September 2016 to
27 February 2018.

28



The graph below shows the ranking for Dreamstime, Shutterstock, stock.adobe.com, and iStock (owned by Getty Images) over the same time. This graph shows that, while Dreamstime was experiencing a precipitous decline in its ranking for the search "stock photos," Shutterstock, Getty Images (through the website istockphotos.com) and Adobe enjoyed lasting stability near the top of the rankings (in a range that Dreamstime used to enjoy).



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1 **4. Google’s Discrimination Against Dreamstime Has Unfairly**
2 **Helped Shutterstock Gain Market Share**

3 88. As described in detail above, Shutterstock is a significant player in the
4 online stock photography industry and competes directly with Dreamstime. It
5 provides the same or similar services as Dreamstime – *i.e.*, the licensing of online
6 digital images. Like Dreamstime, Shutterstock allows users to license an image for
7 a period of time by paying a fee (instead of paying a royalty every time the customer
8 used the image).

9 89. A company’s rank in organic search directly impacts its ability to
10 attract customers and generate revenue. Many empirical studies have tracked the
11 behavior of search engine use and come to the same conclusion: users tend to focus
12 on the top results for a given search and rarely investigate results beyond the first
13 page of ranked results.

14 90. Shutterstock’s unfair advantage in organic search has increased its
15 market share significantly.

16 **5. Google Has No Procompetitive Explanation for Its**
17 **Exclusionary and Disparate Treatment of Dreamstime**

18 91. In response to these allegations, Google might attempt to point to some
19 material change in Dreamstime’s metrics to justify its changed ranking in organic
20 search (or, alternatively, may point to some metrics of Shutterstock, Getty Images
21 and Adobe that justify their current organic search rankings), or claim that it fine-
22 tuned its search engine algorithm for some legitimate purpose in a way that
23 impacted Dreamstime’s ranking. This cannot be the explanation for what has
24 happened to Dreamstime. First, any such explanation would need to account for the
25 fact that Shutterstock, Getty Images and Adobe have not suffered any similar
26 downgrade in rankings. Second, any potential explanation would need to account
27 for why clearly irrelevant and poor-quality results such as the examples provided
28

1 above appear before Dreamstime in Google's search ranking. Dreamstime as a
2 website is obviously more relevant to organic searches for terms related to stock
3 photography – as evidenced by its long-time excellent performance in organic
4 search prior to Google's anticompetitive scheme. Moreover, if some legitimate
5 reason for Dreamstime's dramatic plummet in Google's organic search rankings
6 existed (it does not), Google could have provided that explanation to Dreamstime
7 during Dreamstime's extensive efforts to meet with Google to address the issue. As
8 detailed above, that did not occur.

9 **6. Dreamstime and Other Online Stock Photography**
10 **Competitors Have Suffered Antitrust Injury as Purchasers of**
11 **Online Search Advertising**

12 92. Dreamstime and others – such as 123RF, DepositPhotos, and
13 CanStockPhoto – have been denied a Google search ranking that truly reflects their
14 relevance and credibility in the online stock photography industry. This has resulted
15 in a diminution of Dreamstime's competitive position. Dreamstime simply cannot
16 compete with Shutterstock and Getty Images without being accurately and
17 legitimately ranked by Google's search engine.

18 93. Google's manipulation of Dreamstime's organic search ranking has
19 also negatively impacted Dreamstime's ranking on other search engines.
20 Dreamstime has recently started to experience a slow downward decline in its search
21 ranking on other search engines such as Bing (albeit a small decline thus far). This
22 was an inevitable and foreseeable consequence of Dreamstime's effective exclusion
23 from Google's search rankings: all search engines track consumer behavior and to
24 the extent that Dreamstime's traffic has diminished because of its fall in Google's
25 search ranking, its search ranking on other engines will naturally fall as well. In
26 addition, some changes that Dreamstime made to its website to reverse its decline in
27 Google's search rankings had consequences for its ranking on other search engines.
28

1 For example, when Dreamstime implemented the http/2 upgrade at Google's
2 suggestion, it was removed from Bing's search listing for six months because Bing
3 was not able to track the new technology. Unlike Dreamstime's experience with
4 Google, however, Dreamstime was able to address its issue with Bing quickly and
5 received input and advice that resolved that issue.

6 94. Google's unjustified and disparate treatment of Dreamstime has
7 provided Shutterstock and Getty Images (and, in the short term, Adobe) with an
8 unfair commercial advantage vis-à-vis Dreamstime. Their placement near the top of
9 the rankings for the most impactful online stock photography online searches
10 provides Shutterstock and Getty Images with an unfair competitive advantage over
11 Dreamstime and has by itself caused customers to license images from Shutterstock
12 and Getty Images instead of Dreamstime.

13 95. The result of Google's abuse and exploitation of its online search
14 advertising monopoly by means of anticompetitive and discriminatory conduct is
15 that competition for online stock photography has been harmed. Google's acts have
16 threatened to drive many competitors out of the business and created technological
17 barriers to entry into the market which keep out potential new entrants. Moreover,
18 they have generated confusion in the marketplace and created an online stock
19 photography industry with fewer choices for consumers, diminished pricing
20 competition and reduced innovation. All of these effects are a direct result of
21 Google's injury to competition.

22 96. Competition in the online stock photography industry is reduced as
23 Google effectively chooses market winners and puts those market winners in
24 elevated and dominant positions. In the online stock photography industry,
25 Google's discriminatory actions have enhanced power for favored competitors like
26 Shutterstock and Getty Images while taking market share away from many other
27 disfavored competitors. In turn, they have allowed Google to gain more control
28

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1 over a very significant set of websites that threaten Google’s online search
2 advertising market, by ensuring that people still go to Google first when searching
3 for images on the Internet. Essentially, these discriminatory actions allow Google to
4 eliminate some enemies to its online search monopoly, while keeping its remaining
5 enemies closer.

6 97. By exercising its entrenched online search advertising monopoly power
7 to discriminate in favor of companies in which it has a direct financial and strategic
8 interest, Google has unlawfully restricted competition and caused antitrust injury to
9 online stock photography competitors and consumers.

10 98. Google’s strategic manipulation of Dreamstime’s and others’ search
11 rankings has caused a material reduction in Dreamstime’s web traffic and consumer
12 purchases. Because of the reduction in traffic and customers, Dreamstime has been
13 damaged and will, unless the acts complained of here are remedied, continue to be
14 damaged because its prospective revenues are closely tied to its web traffic from
15 Google searches.

16 99. Google’s conduct is intended to, and does, unlawfully protect the
17 financial and strategic benefits it enjoys by virtue of its partnerships and
18 arrangements with Shutterstock and Getty images, Dreamstime’s chief rivals.

19 100. Google’s conduct deprives smaller rivals in the online stock
20 photography industry of a distribution channel sufficient to achieve efficient scale,
21 thereby raising costs of doing business and slowing or preventing effective market
22 entry and/or expansion.

23 101. Most importantly, Google’s conduct reinforces its monopoly in online
24 search advertising by diminishing an important “vertical search” threat to Google’s
25 search dominance.

26 102. Google’s conduct restricts competition and harms consumer welfare
27 because it: (a) increases the incentive for Google itself, as a monopolist, to continue
28

1 to foreclose competitors such as Dreamstime from competition on the merits; (b)
2 effectively deprives competitors, on a discriminatory basis, of access to Google's
3 search engine ranking which is a necessary selling/marketing facility or resource;
4 and (c) has aided Shutterstock and Getty Images in enjoying unfair competitive
5 advantages as online stock photography players, which in turn has left that industry
6 with fewer choices, reduced or stifled innovation and technological advances and
7 diminished pricing competition (in addition to generating consumer confusion).

8 103. Prior to Google's discrimination against Dreamstime and other
9 competitors, consumers had more choice. That is, when Dreamstime was ranked in
10 the top three of search results for online stock photography, users searching for
11 online stock photography had easy, direct access to the 72 million stock photographs
12 on Dreamstime's website. Due to Google's anticompetitive scheme, a former
13 competitor previously ranked in the top three for online stock photography searches
14 that received a substantial portion of the views from such searches is now gone from
15 Google's search result – along with its 72 million digital images that consumers
16 could choose from. Consumers searching for online stock photography now have
17 access to only Shutterstock's, Getty Images' and Adobe's digital catalogs, along
18 with various public domain image websites and Junk Websites completely unhelpful
19 for consumers interested in purchasing licensed stock photography.

20 **C. Google Also Breaches Its AdWords Agreement with Dreamstime**
21 **and Unfairly Manipulates Its Advertising Service to Enhance Its**
22 **Monopoly Power in Online Search Advertising**

23 **1. Dreamstime Has Entered into a Contract with Google as a**
24 **Purchaser of Google's AdWords Service**

25 104. Google generates a significant amount of its revenue from AdWords,
26 its advertising service through which companies pay Google to have advertisements
27 for their websites prominently displayed in Google's search results.
28

1 105. To use AdWords, advertisers must agree to the Google LLC
2 Advertising Program Terms along with several related terms and conditions (the
3 “AdWords Agreement”). *See* Exhibit “F.” The AdWords Agreement provides that
4 in consideration for an advertiser’s payment, Google will display its advertisements,
5 subject to certain limitations. In part, the AdWords Agreement states that use is
6 subject to applicable Google advertising polices.

7 106. Google drafted both the AdWords Agreement and advertising polices.
8 The agreements are adhesion contracts, as Google offers its services on a “take it or
9 leave it” basis without giving consumers opportunities to negotiate terms to benefit
10 their needs or interests.

11 107. One recent update to the AdWords Agreement in late 2017 included an
12 arbitration clause with an option to opt out, and Dreamstime elected to opt out of
13 this clause.

14 108. In return for the obligations and other consideration to which
15 purchasers agreed in the AdWords Agreement, Google agreed to provide the
16 AdWords program to each and every purchaser executing the standard AdWords
17 Agreement. This program was and is described in various answers to Frequently
18 Asked Questions (FAQs) in Google’s AdWords support pages, which were
19 incorporated by reference into the AdWords Agreement. Attached as Exhibit “G” is
20 the AdWords agreement in effect around the time Dreamstime became an AdWords
21 purchaser that specifically referenced and incorporated the FAQs. The AdWords
22 program uses an auction system to determine which advertisements are shown and
23 how much an advertisement costs. Advertisers bid for relevant search term
24 keywords such as "stock photo" or "digital image." AdWords then assigns each
25 advertisement a "quality score" based on multiple factors including click-through
26 rate ("CTR") (the percentage of users who view the ad that actually click it),
27 relevance to the keywords, and the quality of the advertiser's website. Each time a
28

1 Google user enters search terms that include relevant keywords, AdWords
2 determines which of the competing advertisements are displayed by factoring both
3 an advertiser's bid amount and quality score. Thus, the lower the advertisement's
4 quality score, the higher the bid must be for the ad to compete.

5 109. Advertisers place bids on the "cost per click" of each advertisement.
6 Advertisers can choose to either manually bid or pay an extra fee to select from
7 automatic bidding options that use algorithms to adjust and optimize bid amounts
8 based on specific advertising goals. Automatic bidding options are referred to by
9 Google as "marketing campaigns." Common marketing campaigns include
10 targeting spending on advertisements with the lowest cost per acquisition or on
11 advertisements that maximize the number of clicks generated. For a specific
12 advertiser, acquisitions might include customer visits resulting in sales, signups, or
13 mobile app downloads.

14 110. When using marketing campaigns, advertisers specify the amount, on
15 average, they would like to spend each day on a particular campaign. Google then
16 aims to show advertisements as much as possible until the daily budget is met.
17 Google explains that "in a given billing period, you're never charged more than the
18 average number of days in a month (roughly 30.4) times your daily budget."

19 111. In or around 2005, Dreamstime entered the AdWords Agreement with
20 Google when it began paying Google to display its advertisements on Google's
21 search results. Implicit in this Agreement was Google's duty to provide its
22 advertising services to Dreamstime in good faith and not take actions that unfairly
23 favored Dreamstime's competitors. Dreamstime's decision to enter into the
24 AdWords Agreement and its good faith understanding of the terms of Google's
25 AdWords Agreement and advertising policies were always based on the text of
26 those agreements, Google's stated policies and Google's treatment of competing
27 online stock photography sites.

28

1 112. Dreamstime has engaged in several different marketing campaigns with
2 the goal of promoting its advertisements with the lowest cost per acquisition. That
3 is, to promote its advertisements with the best combination of quality score, bid
4 amount, and resulting customer acquisitions. In doing so, Dreamstime as a
5 customer pays Google daily to determine which of its advertisements are the most
6 effective and to increase their circulation accordingly.

7 113. Despite Google's agreement to provide Dreamstime with effective
8 marketing campaigns pursuant to policies that were uniformly agreed to and
9 intended to apply uniformly to all purchasers who executed the standard AdWords
10 Agreement, several of Dreamstime's campaigns have suddenly stopped acquiring
11 customers for no apparent reason. In other words, Dreamstime was seeing a
12 steady, predictable number of acquisitions from these campaigns each week, and
13 then suddenly these acquisitions dropped to zero and remained at zero without any
14 decline in the number of viewer impressions. Dreamstime has been unable to get
15 any support from Google on this issue, despite multiple requests for an explanation.
16 Google's only response has been that the campaigns are working as they should. As
17 noted below, Google has not uniformly applied its own policies to all of its
18 customers who have executed the standard AdWords Agreement and who are
19 competitors in online stock photography. Instead, it has disparately applied its
20 policies to Dreamstime as compared to other of Dreamstime's competitors. In
21 addition, Google has cancelled certain Dreamstime ad campaigns on the basis that
22 they violated stated policies that the ad campaigns did not violate.

23 **2. Google Has Engaged in Bad Faith Through Improper**
24 **Disapproval and Removal of Dreamstime Advertisements**
25 **from Its Online Network**

26 114. Google's advertising policies understandably prohibit the use of
27 misleading content in advertisements, and the standard AdWords Agreement is
28

1 intended to ensure that these policies apply equally to all purchasers of AdWords.
2 The policies specifically provide the following examples of misleading
3 advertisements that would be subject to rejection or removal: “making false
4 statements about your identity or qualifications; using false claims or claims that
5 entice the user with an improbable result; falsely implying affiliation with, or
6 endorsement by, an individual, organization, product, or service; ads that mislead or
7 trick the user into interacting with them (‘trick to click’); or providing a business
8 name that is anything other than the domain.”

9 115. Google has consistently removed Dreamstime’s lowest cost per
10 acquisition advertisements as being “trick to click” despite Dreamstime’s
11 competitors running the exact same type of advertisements, without any apparent
12 issue or objection from Google.²⁶ Google’s purported complaint with these ads
13 concerned the “search box” that invited users to search Dreamstime’s website.
14 When a user clicked on this search box, the user was taken to Dreamstime’s website
15 (as opposed to search results appearing in the actual box). Ironically, Google later
16 encouraged Dreamstime to submit HTML5 banners with a non-functional search
17 box that transferred the user to Dreamstime’s website. Google accepted and ran
18 these HTML5 banner ads on Dreamstime’s behalf. Google’s technical staff has also
19 given inconsistent or puzzling explanations to Dreamstime about why certain ads
20 were “trick to click.” In a Google hangouts conversation, a Google staff member
21 told Dreamstime that Dreamstime’s swirl logo with a white background was “trick
22 to click.” Dreamstime’s AdWords contact at Google apologized when passing
23 along this statement to Dreamstime.

24 _____
25 ²⁶ See Exhibit “H” attached hereto, which provides a snapshot of advertisements
26 currently running on Google’s DisplayAds platform for one of Dreamstime’s
27 competitors that have the same purported “trick to click” characteristics that Google
28 rejected in Dreamstime’s ads, *i.e.* “fake” search boxes.

1 116. Even more telling is the fact that Google continued to remove
2 Dreamstime’s low cost per acquisition advertisements as “trick to click” while
3 allowing Dreamstime’s high costs per acquisition display advertisements of the
4 same type to remain active.

5 117. Each time an advertisement’s cost per acquisition began to drop, it was
6 removed as being allegedly “trick to click” despite the fact that other Dreamstime
7 advertisements having the exact same format, but having higher cost per acquisition,
8 were left running.

9 118. Dreamstime engaged in extensive efforts to resolve these issues with
10 Google and spent countless hours emailing and calling Google to find out: why its
11 low cost per acquisition advertisements were being removed, how it could modify
12 them so that they would follow Google’s advertising polices, and why competitor
13 sites could display advertisements with the same format but without repercussion.
14 Dreamstime also asked Google to reconsider its decision to remove its
15 advertisements.

16 119. At Google’s suggestion, Dreamstime implemented HTML5 versions of
17 its search bar ads, which added an actual dynamic search input field to the
18 advertisement and thereby removed any likelihood that the consumer might be
19 “tricked” into clicking a search field that was not active. This dynamic search box
20 could be used by users as if they were searching directly on Dreamstime’s website.
21 For example, typing “trees” in the field and pressing the banner’s Search button
22 would open a page of “trees” search results on Dreamstime’s website. For several
23 months, Google allowed these ads to run even though the search function was not
24 working properly because of a technical problem with Google’s system. Google
25 then began removing the ads again in the same fashion as the non-dynamic versions.
26 Later, Google updated its ad validation tool to disallow ads with dynamic search
27 boxes from being accepted into Google’s ad system. Thereafter, Dreamstime was
28

1 only allowed to upload ad banners without a dynamic search box feature. Per
2 Google's new specifications, Dreamstime resubmitted the banners with a search box
3 that did not work. As of March 2018, Dreamstime's banners include a search box
4 that does not work, which behave exactly as the non-dynamic banners initially
5 removed, despite Google's initial assurance that Dreamstime's HTML5 efforts
6 would result in workable, dynamic search ads.

7 120. Similarly, Google removed Dreamstime's mobile application ("app")
8 because it featured lingerie photographs while Shutterstock's remained active
9 despite featuring explicit nude photographs. While the images from Shutterstock's
10 app are particularly "not safe for work" and therefore not attached as exhibits,
11 Dreamstime can provide at the appropriate time a comparison of the images Google
12 found objectionable on Dreamstime's app and images from Shutterstock's app that
13 demonstrate Google's double standard. When Dreamstime inquired about this
14 discrepancy in treatment, Google stated that its review was limited to Dreamstime's
15 mobile app and that if Dreamstime wanted to address the issue, it should lodge a
16 formal complaint concerning Shutterstock's app. Following Google's instruction,
17 Dreamstime lodged a complaint only to have it summarily ignored.

18 121. Google wields its immense power in the online search engine
19 advertising market discriminatorily by allowing only some customers in
20 downstream businesses to use effective, low cost advertisements. Google uses
21 selective enforcement of its removal policies as one of its bases for discriminating
22 and to attempt to conceal its competitively unfair behavior. By doing so, Google
23 ensures that disfavored downstream competitors like Dreamstime pay more to
24 Google for displaying less effective advertisements. This provides a huge windfall
25 for Google all at Dreamstime's expense, while simultaneously benefitting Google
26 and its partners such as Shutterstock and Getty Images.

1 122. In addition to being a breach of contract, Google's unfair enforcement
2 of its advertising polices has resulted in diminution of Dreamstime's competitive
3 position among online stock photography repositories. Dreamstime cannot
4 compete at the level that rival sites compete while Google continues to unfairly
5 discriminate against its low cost per acquisition advertisements.

6 123. Google's unjustified and disparate treatment of Dreamstime has
7 provided it and its partners with an unfair commercial advantage vis-à-vis
8 Dreamstime. The ability to display cost effective advertisements on Google's
9 search results provides Google's favored partners with an unfair competitive
10 advantage that has caused customers to purchase digital images from them instead
11 of Dreamstime.

12 **3. Google has Caused Significant Contractual Damages and**
13 **Anticompetitive Injury to Dreamstime Though Its Coordinated**
14 **Manipulation of Online Search and AdWords Campaigns**

15 124. Since its inception, Dreamstime has spent approximately \$50 million
16 on its AdWords campaigns, and spends hundreds of thousands of dollars on
17 AdWords per month. When Dreamstime began to experience a drop in its organic
18 search traffic caused by Google's manipulation of its search ranking, it increased its
19 monthly AdWords budget by approximately 50% in an attempt to mitigate the
20 damage caused by the changes to Google's algorithm. Despite the increase in its
21 advertising budget, as a direct result of Google's manipulation of Dreamstime's
22 search ranking and its unfair enforcement of its AdWords policies, Dreamstime has
23 lost millions of dollars, its cost of acquiring new customers has doubled, and its
24 growth has slowed by approximately 50%.

25 125. Google's evisceration of Dreamstime's organic search ranking and
26 Google's unfair and uneven enforcement of its AdWords policies worked both
27 independently and in concert to harm Dreamstime and benefit Google. Of course,
28

1 even if Google had not unfairly enforced its AdWords’ policies, it would have been
 2 basically impossible for Dreamstime to increase its monthly advertising spend
 3 enough to “undo” the damage wrought by Google’s changes to its search algorithm.
 4 This is because Dreamstime’s prior, pre-2015 organic search ranking drove five or
 5 six times more traffic to its website than its AdWords campaigns. Importantly,
 6 Dreamstime’s pre-2015 search ranking was “free” in the sense that it was a natural
 7 result of Dreamstime maintaining a quality stock image website highly relevant to
 8 stock photography searches and did not require Dreamstime to pay Google anything.
 9 Despite Dreamstime’s efforts to compensate for the loss in traffic from organic
 10 search by spending more on AdWords (a reaction Google no doubt expected and
 11 intended when it began to manipulate Dreamstime’s search ranking), Dreamstime
 12 was unable to sustain the increased AdWords spending on a long-term basis due to
 13 the losses in organic search and Google’s unfair enforcement of its AdWords
 14 policies. As a result of Google’s tinkering with its algorithm to eliminate
 15 Dreamstime from organic stock photography searches, Google also experienced an
 16 uptick in AdWords revenue as Dreamstime struggled to reach customers it
 17 previously reached through organic search. This, in turn, works to eliminate an
 18 important “vertical search” threat to Google’s online search advertising monopoly.

19 **V. CLAIMS FOR RELIEF**

20 **FIRST CAUSE OF ACTION**

21 **(Monopoly Maintenance and Abuse in Violation of**
 22 **Section Two of the Sherman Act)**

23 126. Dreamstime realleges the preceding paragraphs of this Complaint as if
 24 fully set forth herein.

25 127. The actions complained of herein will continue to restrain trade, allow
 26 Google to maintain, exploit, and abuse its online search advertising monopoly
 27 power, and adversely affect interstate commerce in that Google provides and sells
 28

1 its services across State lines and on the Internet. The defendant and plaintiff also
2 each purchase goods and supplies in interstate commerce that are used in the
3 services and offerings that comprise their businesses.

4 128. The antitrust laws are concerned with protecting the economic freedom
5 of participants and consumers in the relevant market. The aims and objectives of
6 the antitrust laws are directed at encouraging innovation, industry, and competition.
7 The central purpose of the antitrust laws is to preserve competition and it is that
8 interaction of competitive forces that benefits consumers. The antitrust laws protect
9 customers from harm directly related to the unlawful removal of a competitive
10 service or product from the marketplace.

11 129. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*,
12 monopolization of any part of the trade or commerce among the States.

13 130. Because of the discriminatory practices and conduct, contracts and
14 agreements with Dreamstime's rivals, and the other exclusionary and
15 anticompetitive actions carried out by the monopolist in the online search
16 advertising market, plaintiff Dreamstime has lost actual and prospective business
17 and Internet traffic – all necessary and essential components to survive and prosper
18 as an online stock photography competitor.

19 131. **Relevant Product/Service Markets.** The relevant product or service
20 market for antitrust purposes in which to assess Google's power and conduct is
21 defined as the online search advertising market. There are no reasonable substitutes
22 for online search services and there are no other means by which consumers and
23 Internet users can reasonably and efficiently perform automated searches for online
24 data and websites. Likewise, there are no reasonable substitutes for the provision of
25 online search advertising, a marketplace in which Dreamstime is a purchaser. The
26 cross-elasticity of demand between online search advertising services and other
27 forms of finding such information is extremely low. The DOJ and FTC have both
28

1 recognized a relevant market defined as online search advertising on multiple
2 occasions, specifically as it relates to Google. Dreamstime is dependent upon and a
3 consumer/purchaser of various Google online services. Dreamstime is a distributor
4 and seller of online stock photography. Dreamstime and competition for online
5 stock photography has been excluded, destroyed, and or restrained because of
6 Google's maintenance, exploitation, and abuse of its monopoly power in the
7 relevant market for online search advertising.

8 132. Relevant market definition is a fact-intensive determination.

9 133. **Relevant Geographic Market**. The relevant geographic market for
10 antitrust purposes in this case is the United States. The relevant geographic market
11 is the area of effective competition in which the parties operate and to which
12 customers can practicably turn for the desired services. The online services
13 provided by Google in the United States differ from those it offers or provides in
14 foreign countries and different rules and regulations often apply. Further, the
15 federal antitrust laws only reach conduct within the United States that affects
16 domestic consumers.

17 134. **Monopoly Power**. Throughout the relevant period, Google has been
18 the dominant and entrenched player in the domestic online search market and online
19 search advertising market (to the extent those markets are considered distinct),
20 possessing a market share of at least 70%. Generally, a market share of 65% or
21 more is a *prima facie* showing of monopoly power. Accordingly, Google is a
22 monopolist in this market(s). Google has the power to control prices, exclude
23 competition, reduce output and selection, and/or stifle technology and innovation in
24 the relevant market(s).

25 135. Market or monopoly power determination is a fact-intensive issue
26 reserved for the fact-finder.

1 136. Google has maintained, exploited, and abused its monopoly power in
2 the online search advertising market in violation of the monopolization proscription
3 of Section 2 of the Sherman Act. Plaintiff Dreamstime and other of its rivals in the
4 online stock photography industry are customers of various of Google's online
5 advertising services and have suffered antitrust injury and damages as a direct
6 consequence of Google's monopoly exploitation and abuses.

7 137. **Significant Barriers to Market Entry and Expansion.** Significant
8 and high barriers to market entry and expansion exist that preclude or discourage
9 new firms from entering the domestic online search advertising market and
10 challenging the behemoth Google's entrenched monopoly position. Significant
11 barriers to expansion also exist, which is evidenced by the fact that only a small
12 number of competitors have managed to marginally penetrate this market dominated
13 and controlled by Google. Indeed, many potential big players have exited the online
14 search advertising market, and none have been able to capture any significant
15 market shares. Some of these significant barriers to entry and expansion include: (a)
16 requirement of intellectual property and licenses; (b) regulatory controls and
17 restrictions; (c) high capital costs; (d) economies of scale; (e) control and
18 maintenance of technological resources; (f) brand loyalty; (g) entrenched user
19 preferences; and (h) all-important network effects.

20 138. **General Intent to Monopolize.** Google has undertaken its clearly
21 anticompetitive and exclusionary conduct with the purpose of maintaining and
22 abusing its monopoly in the online search advertising market in the United States
23 and to vanquish and injure Dreamstime and other smaller rivals in the online stock
24 photography industry. Google has acted to eliminate, destroy, or foreclose
25 meaningful competition in the relevant market through the discriminatory tactics
26 described above. Google's conduct discourages, prevents, and/or precludes
27 consumers from finding, accessing and/or buying services from Dreamstime and
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1 other stock photo repositories directly, which in the long run would erode Google's
2 standing as the first place to go to search for stock photos on the Internet. During
3 the relevant period, Google has provided services to Dreamstime, is keenly aware of
4 its capabilities and has deemed Dreamstime to be a target to be minimized or
5 eliminated.

6 139. **Antitrust Standing**. Plaintiff Dreamstime has the requisite standing to
7 assert and maintain antitrust claims against Google because it has suffered antitrust
8 injury because of Google's maintenance, exploitation, and abuse of its monopoly
9 power through its discriminatory and exclusionary conduct. Dreamstime is a
10 purchaser/consumer of Google's AdWords services, consumers use Google's online
11 search services to locate, access, and buy online stock photography products from
12 Dreamstime and other market participants, and Google has licensing and other
13 written agreements with various online stock photography competitors such as
14 Shutterstock and Getty Images that are designed to exclude competition. Indeed,
15 online stock photography providers are critically dependent upon Google's services
16 for website traffic and customers. Consequently, in addition to injury Dreamstime
17 as a consumer of Internet search advertising, Google's services and monopoly
18 conduct are inextricably intertwined with and materially affect competition in the
19 online stock photography line of commerce. In addition, by reason of Dreamstime's
20 business relationship and service contracts with Google it is a participant and
21 consumer in the online search advertising market. Finally, as a "vertical search"
22 website that consumers may access directly to search for something many people
23 commonly google – high-quality images for purchase – Dreamstime poses a direct
24 threat to Google's online search advertising monopoly, and its elimination enhances
25 Google's monopoly in the relevant market.

26 140. **Google's Predatory and Exclusionary Conduct**. Google has
27 willfully acquired and/or maintained its monopoly power in the online search
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1 market (and/or online search advertising market) and has abused that power using
2 anticompetitive and exclusionary means, including by excluding and distorting
3 competition in online stock photography. Google's overall monopolistic and
4 discriminatory scheme is described specifically in Paragraphs 1–13 and 46–125
5 above. Such unlawful conduct undertaken by the monopolist, Google, includes: (a)
6 downgrading Dreamstime's online search ranking (making it essentially invisible in
7 Google's search results), without justification, forcing Dreamstime to spend
8 additional funds on Google's AdWords program, thereby raising Dreamstime's
9 costs of competing and threatening to drive it out of business; (b) contracting with
10 Shutterstock to give it a favored status that has not been available to Dreamstime
11 and other rivals; (c) contracting with Getty Images to give it favored status that has
12 not been available to Dreamstime and other rivals; (d) providing favored treatment
13 to Shutterstock and other competitors in online search results or other online search
14 displays, unfairly allowing these favored rivals to poach longstanding customers
15 from Dreamstime, or thwarting efforts of Dreamstime to attract and obtain new
16 customers; (e) selectively enforcing its rules governing its online AdWords
17 program, thereby further undermining Dreamstime's ability to compete; (f) moving,
18 in the online search rankings, inconsequential or underperforming (junk) rivals
19 ahead of Dreamstime and other established, high quality or low-priced online stock
20 photography repositories; and (g) engaging in unlawful activity to capture privacy
21 protected data of consumers, thereby maintaining and enhancing Google's
22 monopoly power. The purpose of Google's predatory and discriminatory scheme is
23 to limit or foreclose competition for online stock photography and maintain its
24 monopoly in online search advertising.

25 141. Google has acted to maintain its monopoly power, and its existing
26 enormous power and anticompetitive conduct has enabled it to do so, in flagrant
27 violation of Section 2 of the Sherman Act.

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1 142. The “conduct” element of this offense is the use of monopoly power to
2 foreclose competition or to destroy a competitor. Conduct is anticompetitive when
3 it unnecessarily excludes or handicaps competitors to gain or maintain a monopoly.
4 Anticompetitive or exclusionary practices are acts designed to deter potential rivals
5 from entering the market, intervening or preventing access to customers, or
6 preventing existing rivals in the market from increasing their output.
7 Anticompetitive acts are not fair competition on the merits of price, selection,
8 quality or other factors, but instead acts that have the deleterious effect of preventing
9 or excluding competition or frustrating the efforts of other firms to compete for
10 customers within the relevant market. Conduct by a monopolist that constitutes a
11 deliberate effort to discourage or thwart customers from doing business with its
12 rivals is anticompetitive.

13 143. Conduct or practices that otherwise might comply with antitrust law
14 may be impermissibly exclusionary and unlawful when engaged in by a monopolist.
15 Indeed, a monopolist is not free to take certain actions that a firm in a competitive
16 (or even oligopolistic) market may take, because there is not a market constraint on
17 a monopolist’s behavior. Consequently, a monopolist is precluded from employing
18 otherwise lawful practices that unnecessarily diminish or exclude competition.

19 144. Google’s anticompetitive acts affect a substantial amount of interstate
20 commerce in the relevant market and constitute unlawful monopolization. Google’s
21 conduct is not motivated by technological or efficiency concerns and has no valid or
22 legitimate business justifications. Any purported business justifications that may be
23 proffered by Google are merely pretextual. In sum, the purpose and effect of
24 Google’s anticompetitive conduct is to preserve, exploit, and promote its monopoly
25 stranglehold position in the online search advertising marketplace and to misuse that
26 mighty power to exclude, control, and restrict competition for online stock
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1 photography to the detriment of consumer welfare, competition, innovation, and
2 plaintiff Dreamstime.

3 145. **Antitrust Injury to Plaintiff, Competition, and Consumers.**

4 Google's monopolistic conduct has caused antitrust injury to plaintiff Dreamstime,
5 competition, and consumers.

6 146. As a direct result of Google's abuse of its online search advertising
7 monopoly through anticompetitive conduct and restrictions on competition,
8 Dreamstime and other smaller online stock photography competitors have been
9 restricted from functioning in a competitive open market, output has been reduced
10 or limited, and the quality and freedom of choice of online stock photographs and
11 providers has been reduced and diminished in this concentrated industry. Google's
12 monopolistic and discriminatory conduct has severely hindered plaintiff's ability to
13 attract new customers and traffic to its website, and the number of photographs it
14 may license/sell has diminished significantly.

15 147. Google's monopolistic and discriminatory conduct has erected a barrier
16 that precludes effective entry by other would-be competitors into the industry and
17 the quality and variety of online stock photography offerings in that industry have
18 been reduced and constrained to the detriment of consumers.

19 148. Google's maintenance and exploitation of its online search advertising
20 monopoly and exercise of predatory and anticompetitive conduct has caused
21 antitrust injury, and unless enjoined by this Court, will continue to produce at least
22 the following actual and demonstrative anticompetitive, exclusionary, and injurious
23 effects upon competition, consumers, and interstate commerce: (a) AdWords spends
24 for lower cost stock repositories like Dreamstime will continue to increase, thereby
25 increasing costs to consumer or eliminating consumer choices; (b) competition in
26 the online distribution and sale of stock photographs has been substantially and
27 unreasonably restricted, lessened, foreclosed, and eliminated; (c) barriers to entry
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1 into this highly concentrated industry have been raised which has prevented or
 2 delayed entry of new online stock photography competitors; (d) consumer choice
 3 has been, and will continue to be, significantly reduced, limited, and constrained as
 4 to selection price, and quality of online stock photographs; (e) access to
 5 Dreamstime's competitive services has been artificially restricted and reduced, and
 6 its service offerings will continue to be excluded; and (f) Google has maintained its
 7 entrenched monopoly position in the online search advertising market.

8 149. Antitrust injury is a fact question for the jury.

9 150. **Damage to Plaintiff Dreamstime.** Because of, and as a direct and
 10 proximate result of Google's past and continuing anticompetitive practices and
 11 conduct, plaintiff has suffered, and will continue to suffer, substantial financial
 12 injury to its business and property. Defendant's coordinated and focused
 13 anticompetitive and discriminatory conduct has cumulatively, incrementally, and
 14 unreasonably restricted competition and devastated Dreamstime's once thriving and
 15 growing business. As a result, plaintiff has been deprived of revenues and profits it
 16 would have otherwise made, incurred higher advertising costs, suffered diminished
 17 market growth, and sustained a loss of goodwill and going concern value. Plaintiff
 18 has not yet calculated the precise extent of its past damages and cannot now estimate
 19 with precision the future damages that continue to accrue, but when it does so, it
 20 will seek leave of the Court to insert the amount of the damages sustained herein.
 21 Plaintiff also seeks injunctive relief to prevent further irreparable and continuing
 22 injury to its business and property caused by Google's unlawful conduct.

23 **SECOND CAUSE OF ACTION**

24 **(Breach of Contract)**

25 151. Dreamstime realleges the preceding paragraphs of this Complaint as if
 26 fully set forth herein.

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1 152. This Court has jurisdiction over this Second Cause of Action based on
2 diversity jurisdiction.

3 153. Dreamstime entered into enforceable contracts with Google whereby
4 Google agreed to provide advertising services for Dreamstime’s website in
5 exchange for various fees. In particular, the AdWords Agreement was an adhesion
6 contract intended to be executed by every single purchaser of AdWords. It
7 incorporated by reference the AdWords program policies and various FAQ answers
8 and support pages describing Google’s policies. The nature of this standard
9 agreement was that it was intended to be signed in the same form by all purchasers
10 of AdWords, and the policies and descriptions of the services Google was to provide
11 were intended to apply equally to all who executed it.

12 154. Despite the AdWords Agreement, Google provided Dreamstime
13 advertising marketing campaigns that did not work and did not meet Dreamstime’s
14 expectations, applied its policies and procedures unevenly toward Dreamstime,
15 cancelled some of Dreamstime’s ad campaigns for violating stated policies that the
16 ad campaigns did not violate and overcharged and overdelivered AdWords to
17 Dreamstime, all in breach of the AdWords Agreement. No reasonable explanation
18 for these failures was provided by Google. Google failed to provide the services,
19 apply the standard policies and perform the obligations that the AdWords
20 Agreement required it to do.

21 155. Among other things, Google breached its contract with Dreamstime
22 when it:

- 23 • manipulated Dreamstime’s organic search ranking unfairly and illegally to
24 force Dreamstime to spend an unreasonable amount of money on
25 additional AdWords campaigns that would not otherwise have been
26 necessary;

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- 1 • cancelled Dreamstime’s most successful ad campaigns without adequate
2 notice or explanation;
- 3 • improperly suspended Dreamstime’s account based on unfounded
4 accusations of “policy violations;”
- 5 • prevented Dreamstime from running successful DisplayAds campaigns
6 while allowing the *exact same* advertisements to be placed by other
7 competitors and other parties to the same standard contracts;
- 8 • placed Dreamstime’s advertisements on irrelevant websites and error
9 pages in direct violation of the AdWords contract; and
- 10 • overdelivered AdWords campaigns, causing daily spending limits for
11 certain campaigns to be exceeded on a regular and systematic basis.

12 156. Dreamstime has at all times performed all its significant duties and
13 obligations under the AdWords Agreement except to the extent that Dreamstime
14 was excused or prevented from doing so by the acts and omissions of Google.

15 157. Google’s breaching conduct was the result of fraud or willful injury to
16 Dreamstime, was in violation of law, and/or was at least negligent, such that any
17 limitation of liability clause in the AdWords Agreement is void pursuant to
18 California Civil Code § 1668. At most, it has acted intentionally and with reckless
19 disregard for Dreamstime’s rights.

20 158. As a direct and proximate result of Google’s breach of the written
21 contracts, Dreamstime has suffered actual, compensatory, and consequential
22 damages in an amount to be determined at trial, plus prejudgment interest at the
23 maximum legal rate. These damages include but are not limited to lost profits and
24 other consequential damages that are not waivable by contract as a matter of law due
25 to Google’s heightened culpability.

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THIRD CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

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3 159. Dreamstime realleges the preceding paragraphs of this Complaint as if
4 fully set forth herein.

5 160. This Court has jurisdiction over this Third Cause of Action based on
6 diversity jurisdiction.

7 161. The covenant of good faith and fair dealing is implied in every contract,
8 including the AdWords Agreement, and is intended to prevent one party from
9 unfairly frustrating the other party's right to receive the benefits of the contract. The
10 covenant of good faith finds particular application, whereas here, Google is invested
11 with discretionary power to affect the rights of Dreamstime. Google was charged
12 with the duty to exercise that discretion in good faith and in accordance with fair
13 dealing. Google failed to do either. Google's unjustified breach deprived
14 Dreamstime of its legitimate expectations under the AdWords Agreement.

15 162. Google breached the implied covenant of good faith and fair dealing by
16 improperly disapproving and removing Dreamstime's low cost per acquisition
17 advertisements despite them not being in violation of Google's advertising policies.

18 163. Google also breach the implied covenant of good faith and fair dealing
19 by improperly disapproving and removing Dreamstime's low cost per acquisition
20 advertisements as being "trick to click" or for other unreasonable reasons to provide
21 an economic advantage to Dreamstime's competitors and to overcharge Dreamstime
22 for AdWords services.

23 164. Google's breaching conduct was the result of fraud or willful injury to
24 Dreamstime, was in violation of law, and/or was at least negligent, such that any
25 limitation of liability clause in the AdWords Agreement is void pursuant to
26 California Civil Code § 1668. At most, it has acted intentionally and with reckless
27 disregard for Dreamstime's rights.
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1 165. As a direct and proximate result of Google’s breach of the covenant of
2 good faith and fair dealing, Dreamstime has suffered actual, compensatory, and
3 consequential damages in an amount to be determined at trial, plus prejudgment
4 interest at the maximum legal rate. These damages include but are not limited to
5 lost profits and other consequential damages that are not waivable by contract as a
6 matter of law due to Google’s heightened culpability.

7 **FOURTH CAUSE OF ACTION**

8 **(Unfair Competition in Violation of California Business**
9 **and Professions Code § 17200 *et seq.*)**

10 166. Dreamstime realleges the preceding paragraphs of this Complaint as if
11 fully set forth herein.

12 167. This Court has jurisdiction over this Fourth Cause of Action based on
13 diversity jurisdiction.

14 168. Section 17200 *et seq.* of the California Business & Professions Code
15 (“UCL”) is written in the disjunctive and broadly covers three varieties of unfair
16 competition – acts that are unlawful or unfair or fraudulent. The UCL statute’s
17 intent and purpose is to protect both consumers and competitors by promoting fair
18 competition in commercial markets for goods and services. The coverage of section
19 17200 *et seq.* is broad and intended to enjoin on-going wrongful business conduct in
20 whatever context such activity might occur.

21 169. Plaintiff Dreamstime is a “person” within the meaning of California
22 Business & Professions Code § 17201. Google’s principal place of business is
23 located within California.

24 170. As alleged herein, defendant’s predatory, discriminatory, deceptive,
25 monopolistic and/or concerted wrongful conduct constitutes “unfair” business
26 practices. A practice may be deemed unfair even if not specifically proscribed by
27 some other law. Conduct that significantly threatens or harms competition, violates
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1 the policy or spirit of an antitrust law, or threatens an incipient violation of an
2 antitrust law, may be deemed “unfair” under the UCL.

3 171. As alleged herein, defendant’s anticompetitive conduct is also
4 “unlawful” under the UCL. Within the meaning of section 17200, virtually any
5 violation of any civil or criminal federal, state or municipal, statutory, regulatory,
6 court-made or local law can serve as a predicate offense for an “unlawful” claim.
7 The violations of the federal antitrust laws and other concerted and deceptive
8 conduct as alleged herein, satisfies the “unlawful” prong of section 17200.

9 172. Dreamstime has standing to pursue this claim as Dreamstime has
10 suffered an injury in fact and has lost money or property resulting from Google’s
11 unfair and/or unlawful actions. Dreamstime has paid tens of millions of dollars for
12 Google’s advertising and other services. Google only provided its services
13 selectively to benefit itself at Dreamstime’s expense. Google also selectively
14 applied its disapproval and removal policies to injure Dreamstime and benefit others
15 such as Shutterstock and Getty Images, Google’s partners. Google’s anticompetitive
16 and discriminatory actions constitute unfair and/or unlawful business practices and a
17 scheme of unfair competition with respect to Google’s advertising services and
18 contracts. Google has engaged, and continues to engage, in business acts that are
19 unfair, unlawful, discriminatory, deceptive, untrue or misleading with respect to the
20 advertising services it provided to Dreamstime. The harm to consumers and
21 competition caused by Google’s conduct is substantial. There is no legitimate or
22 procompetitive justification for defendant’s anticompetitive and discriminatory
23 conduct.

24 173. Because of, and as a direct and proximate result of, defendant’s unfair
25 and/or unlawful business practices and conduct, Dreamstime has suffered, and will
26 continue to suffer, financial injury to its business and property. Pursuant to the
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1 provisions of the UCL (sections 17203 and 17535), Dreamstime is entitled to
2 restitution from Google for its injury.

3 174. Defendant's unfair and/or unlawful conduct has caused economic harm
4 to plaintiff, competition and consumers. Nonetheless, the UCL is a strict liability
5 statute and it is not necessary to show that defendants *intended* to injure or harm
6 Dreamstime.

7 175. Whether a business practice is unfair or unlawful is a question of fact
8 for the fact-finder to determine.

9 176. An act may violate the UCL even if the unfair or unlawful practice
10 affects only one victim.

11 177. Pursuant to Business & Professions Code section 17203, the entry of
12 permanent and mandatory injunctive relief against Google is necessary to enjoin its
13 on-going unfair and/or unlawful business conduct. An injunction is needed to
14 enable and restore competition in the market.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Dreamstime respectfully requests that this Court adjudge and
17 decree and enter judgment in its favor and against Google, as follows:

18 1. The conduct alleged in the First Cause of Action herein be adjudged to
19 constitute unlawful monopolization in violation of Section 2 of the Sherman Act (15
20 U.S.C. § 2);

21 2. The conduct alleged in the Second Cause of Action be adjudged to
22 constitute an unjustified breach of contract;

23 3. The conduct alleged in the Third Cause of Action be adjudged to
24 constitute a breach of the covenant of good faith and fair dealing;

25 4. The conduct alleged in the Fourth Cause of Action herein be adjudged
26 to constitute a violation of section 17200 *et seq.* of the California Business &
27 Professions Code as an unfair and/or unlawful business practice;

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1 5. Pursuant to Section 4 of the Clayton Act (15 U.S.C. §15), plaintiff
2 recover treble the actual amount of its damages sustained by reason of defendant’s
3 antitrust violations;

4 6. Pursuant to Section 4 of the Clayton Act (15 U.S.C. §15), plaintiff be
5 awarded its reasonable attorneys’ fees and costs of litigation;

6 7. Pursuant to Section 16 of the Clayton Act (15 U.S.C. §26), the
7 anticompetitive, discriminatory, and/or exclusionary conduct be permanently
8 enjoined to abate to actual and threatened irreparable injury to Dreamstime’s
9 business and property;

10 8. Plaintiff be awarded actual, compensatory, and/or consequential
11 damages on its breach of contract and breach of the implied covenant of good faith
12 and fair dealing claims;

13 9. Pursuant to section 17203 of the California Business & Professions
14 Code, the unfair and/or unlawful business practices of defendant be permanently
15 enjoined;

16 10. Pursuant to sections 17203 and 17535 of the California Business &
17 Professions Code, plaintiff be awarded restitution;

18 11. Pursuant to section 1021.5 of the California Code of Civil Procedure
19 be awarded reasonable attorneys’ fees;

20 12. Award plaintiff prejudgment interest at the maximum legal rate; and

21 13. For such other and further relief that this Court deems just and proper.

22 DATED: March 28, 2018

BAKER MARQUART LLP

23
24 By: 
25 _____
26 Jaime Marquart
27 Attorneys for Plaintiff
28 Dreamstime.com, LLC

DEMAND FOR JURY TRIAL

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2 Plaintiff hereby demands, pursuant to Fed. R. Civ. P. 38(b) and Local Civil
3 Rule 3-6, a trial by jury of all issues which are subject to adjudication by a trier of
4 fact.

5
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7 DATED: March 28, 2018

BAKER MARQUART LLP

8
9 By: _____


Jaime Marquart
Attorneys for Plaintiff
Dreamstime.com, LLC

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