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THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* MARK BRNOVICH, Attorney General, Plaintiff, v. GOOGLE LLC, a Delaware limited liability company, Defendant.	Case No: CV2020-006219 **STATE'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT** Assigned to the Hon. Timothy Thomason (**COMPLEX CALENDAR**) **ORAL ARGUMENT SET FOR JAN. 19, 2021 AT 9:00 AM**

TABLE OF CONTENTS

I. INTRODUCTION

The Court should grant the State's Motion for Partial Summary Judgment ("MSJ"). With respect to deceptiveness, Google's Response ("Resp.") interprets the Arizona Consumer Fraud Act ("CFA") unduly narrowly by applying the incorrect "reasonable consumer" standard, and undisputed evidence shows three different violations of the CFA's standard. Undisputed facts also show Google's conduct was "in connection with" the sale or advertisement of merchandise. If summary judgment is denied, undisputed material facts should be identified under Rule 56(g).

II. GOOGLE'S ACTS AND PRACTICES WERE DECEPTIVE UNDER THE CFA

A. Google Misstates the CFA's Deception Standard

Deceptiveness can be appropriately resolved at summary judgment. Crucially, there is no "intent to deceive" requirement under the CFA's Act Clause. *See State ex rel. Babbitt v. Goodyear Tire & Rubber Co.*, 128 Ariz. 483, 486 (App. 1981) (only intent under Act Clause is intent to do the act); A.R.S. § 44-1522(A) ("intent" only contained in the Omission Clause). And the test for deceptiveness "is whether the least sophisticated reader would be misled." *Madsen v. W. Am. Mortgage Co.*, 143 Ariz. 614, 618 (App. 1985). Courts have applied that standard consistently since *Madsen*.[1] Indeed, numerous Arizona and federal cases have found deceptiveness ***on summary judgment***.[2]

Here, undisputed evidence confirms that (i) Google's LH statement was ***literally false***, (ii) Google created a deceptive net impression that WAA is unrelated to location, and (iii) it used a deceptive UI to obtain user location data. *See infra* Part II.B–D. There is also undisputed evidence of mass actual deception of not just users but also Google's own engineers. [SOF

[1] *Larkey v. Health Net Life Ins. Co.*, No. 1 CA-CV 11-0523, 2012 WL 2154185, at *3, ¶ 12 (Ariz. App. June 14, 2012) ("The test to determine whether a representation is misleading is whether the least sophisticated reader would be misled" (citing *Madsen*, 143 Ariz. at 618)); *State ex rel. Horne v. AutoZone, Inc.*, 227 Ariz. 471, 480, ¶ 25 (App. 2011) (same), *vacated in part*, 229 Ariz. 358 (2012); *James Erickson Family P'ship LLLP v. Transamerica Life Ins. Co.*, No. CV-18-04566-PHX-DWL, 2019 WL 4673337, at *5 (D. Ariz. Sept. 25, 2019) (same).

[2] *State ex rel. Woods v. Sgrillo*, 176 Ariz. 148, 149 (App. 1993) (affirming summary judgment for State); *see also State ex rel. Woods v. Hameroff*, 180 Ariz. 380, 382 (App. 1994) (noting Superior Court granted State's motion for summary judgment); *State ex rel. Corbin v. Hovatter*, 144 Ariz. 430, 431 (App. 1985) (same). Federal cases are in accord. *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 631–32 (6th Cir. 2014) (collecting cases); *FTC v. Peoples Credit First, LLC*, 244 F. App'x. 942, 944 (11th Cir. 2007); *see also* State's MSJ at 7 n.6 (collecting more cases).

¶¶134–138, 130–131, 141–143]. Summary judgment is appropriate. *F.T.C. v. Cyberspace.com LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (proof that consumers were actually misled is "highly probative to show that a practice is likely to mislead"; affirming summary judgment).

In response, Google does not contend that the Arizona Supreme Court has overruled the *Madsen* standard or that any Arizona court has disagreed with it, and Google does not mention the many cases that apply it. (Resp. at 9–10). Instead Google argues that, without Arizona courts noticing, the relevant inquiry has changed from "the least sophisticated reader" to "a reasonable person." (Resp. at 9). For support, Google cites interpretations of the FTC Act that other courts have applied to other states' consumer-fraud laws. (Resp. at 10). Although Arizona courts may use interpretations of the FTC Act as a guide in construing the CFA, A.R.S. § 44-1522(C), Arizona courts have *already* resolved this particular interpretative issue, and neither the FTC nor the federal courts can overrule the established meaning of the Arizona CFA.

Still, Google's insistence on changing the standard shows it cannot prevail under the correct one.[3] So does its attempt to smuggle in a materiality requirement that the Act Clause does not contain. (*See* Resp. at 9).[4] That clause encompasses "any" deception, A.R.S. § 44-1522(A), and Arizona law is clear that deceptions include statements "that have a tendency and capacity to convey misleading impressions to . . . the least sophisticated reader." *Madsen*, 143 Ariz. at 618 (internal quotation marks omitted).

B. Google's LH Disclosure was Literally False

Google has ***admitted*** under oath that its LH disclosure—"With Location History off, the places you go are no longer stored"—was false. Google stores user location data through both the LH and WAA settings (among others) to power Google's advertising business. Google removed this disclosure once its continued location tracking through WAA was uncovered in an

[3] Google notes that the "least sophisticated" standard "preserves a quotient of reasonableness." (Resp. at 10). But all that means is that "bizarre, idiosyncratic, or peculiar misinterpretations" do not suffice. *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1062 (9th Cir. 2011).

[4] The federal district court case that Google cites concerns the FDCPA, not the CFA or even the FTC Act. *Isham v. Gurstel, Staloch & Chargo, P.A.*, 738 F. Supp. 2d 986, 995 (D. Ariz. 2010).

Associated Press report, because the statement was literally false. [SOF ¶¶54–55, 132].[5] Testifying through its corporate designee, Google itself unequivocally agreed:

[redacted]

[SOF ¶55]. Not only does Google fail to address this cited testimony, but it admits that this disclosure [redacted] [RSOF ¶55 (emphasis added); *see also* SOF ¶50 (undisputed)]. Google attempts to wriggle out of this hole by claiming its disclosure was true because "no new places are added ***to the user's Timeline***." (Resp. at 11 (emphasis added); *see also id.* ("WAA *does not* save the places the user goes ***on the user's Timeline*** or otherwise store ***continuous*** data about where users go") (first emphasis in original)). But Google did not qualify its disclosure to users in the same way that it does now via attorney argument. Google's actual disclosure did not say, for example, "the places you go are no longer stored ***in your Timeline***" or "the places you go are no longer ***continuously*** stored." Even if the disclosure were technically correct (and it was not), it still had the "'tendency and capacity' to convey misleading impressions." *Madsen*, 143 Ariz. at 618; *see also Chrysler Corp. v. FTC*, 561 F.2d 357, 359–60, 363 (D.D.C. 1977) (ads re: comparative gas mileage of Chrysler's "small cars" were deceptive as they lacked "any stated references to the cars' engines," affecting comparison) (cleaned up).

Google's next tries to wave away its deception by describing hypothetical situations where WAA ***might*** not collect location data. (*See, e.g.*, Resp. at 11 (where user is not signed into Google Account; disables WAA; or is signed into Account with WAA on, but does not interact with a Google product or service); RSOF ¶55)). Its first and third hypos implicate a minuscule number of devices, [*see* SSOF ¶¶6–7; *see also* SOF ¶¶19–21, 144; RGSOF ¶45], and the second overlooks the fact that WAA is on ***by default***. [SOF ¶37]. None of these addresses the deception

[5] Google's contention that [redacted] is both unsupported and irrelevant. [RSOF ¶132]. In the testimony Google cites, [redacted]. [SSOF ¶1]. If anything, this testimony only reaffirms that Google was aware of the false statement and failed to remove it before the AP report. Google's contention is further belied by more recent changes, including the video referenced in footnote 1 of its Response. [SSOF ¶¶2–5].

that occurs when WAA ***does*** collect location data. And in any event, Google concedes it collects location data for advertising purposes when both LH and WAA are off. [SOF ¶62].

Further, Google's argument that "it would be unreasonable for users to believe that disabling LH would prevent Google from storing any kind of location data" (Resp. at 14) is belied by the undisputed fact that, the day after the AP report, [redacted]. [SSOF ¶¶8–9; SOF ¶131]. [redacted] [SSOF¶¶10–11].[6] [redacted] [SOF ¶¶134–38] [redacted] [SOF ¶¶141–43], [redacted] [SOF ¶¶139–40]. *See Cyberspace.com*, 453 F.3d 1196 at 1201 (proof of actual deception is "highly probative").[7]

Neither do disclosures made on other pages cure this deception. *Id.* (solicitation deceptive even though back of an included check stated depositing check would constitute agreement to pay a monthly fee). Google says the "general disclosures" in its privacy policy, as well as the disclosures a user sees when turning LH ***on***, explain that Google collects location data. (Resp. at 11, 13). But Google did not simply collect its users' location data via LH. It did so by continuing to store users' location data when LH was ***off*** despite a specific representation to the contrary. [*See also* SOF ¶84]. In any case, the cited portion of the privacy policy states that "[w]hen you use Google services, we ***may*** collect and process information about your actual location." It says nothing about how LH or WAA works, what happens when those settings are enabled/disabled, or what type of location information is gathered by each. [Anderson Decl., Ex. J at 3]. And in any event, it remains undisputed that the page dedicated to explaining to users how to "[m]anage or delete your Location History" made a false statement. [Ex. 8].

Google also cannot avoid liability by claiming that LH is "optional" or off by default. (Resp. at 12). Google's LH disclosure deceived users about what happens ***when LH is off***. And Google cites no evidence for its contention that users would have seen further disclosures "in the

[6] Google revised its help page ***after*** the AP reported Google's false statement. [SSOF ¶¶12–13].
[7] Google's hearsay objections fail. The statements in RSOF ¶¶134–38 are not for the truth of the matter asserted, and those in SOF ¶¶140–43 are party admissions. Ariz. R. Evid. 801(d)(2)(D).

course of both enabling and disabling LH." Nor does Google cite any law suggesting that such "additional disclosures" would nullify the literally false statement about LH. Reading Google's statement that, "With Location History off, the places you go are no longer stored," the least sophisticated user would believe that turning off LH (or never enabling it in the first place) prevents "the places you go" from being stored. The statement was false.

C. Google Created a Deceptive Net Impression that WAA is Unrelated to Location

As shown by extensive and undisputed evidence, Google's statements to its users created the deceptive net impression that only LH, not WAA, stores location data. (*See* MSJ at 8–11). Specifically, it is undisputed that (i) WAA stored explicit, precise location information from 2015 until April 2019, and (ii) Google's disclosures failed to provide ***any indication*** that this was happening.[8] [SOF ¶¶47–49]. Missing the point, Google argues that users could not "have formed an impression—either true or false—about the precision of" location data saved by WAA ***because*** "Google made *no* disclosures about location data with respect to WAA." (Resp. at 15). But unlike LH, WAA is on ***by default***. [SOF ¶37]. Thus, while Google represented to users that they could enable "optional" settings (like LH) that track their location, Google failed to disclose that a pre-enabled setting ***was already collecting and storing*** this information. The CFA "is a broadly drafted remedial provision designed to eliminate unlawful practices." *Madsen*, 143 Ariz. at 618. Google need not have made a literally false disclosure such as "WAA has no relationship with storing location data" to be found liable. *See Fanning*, 821 F.3d at 170.

Instead of addressing the slew of evidence that it created a deceptive net impression about WAA, Google relies on four discrete disclosures. None creates a genuine issue of material fact. Google first points to page 160 of Ex. 16, where Google discloses that WAA "stores your searches and other things you do on Search, Maps and other Google services, including your location and other associated data." (Resp. at 14 [citing GSOF ¶52]). Google fails to mention, however, that [redacted].

[8] The difference between collection of precise and non-precise location data is critical, [redacted]. [SSOF ¶¶14–19].

[SSOF ¶20]. [redacted] a series of actions that the least sophisticated user is unlikely to take. [*Id.* ¶21]. Separately, [redacted]. [*Id.* ¶22]. Google claims [redacted] but cites no supporting evidence.[9] [RSOF ¶71].

Next, Google relies on Ex. 295 at 126 and Ex. 297 at 12 (Resp. at 14, 15 [citing GSOF ¶¶53, 55]) to support its claim that it did disclose that WAA collected location data. [*See also* SOF ¶¶80–81 (describing Ex. 295), 90–92 (Ex. 297)]. But there is no mention of WAA in these disclosures whatsoever, let alone that the WAA setting is responsible for collecting or storing location data. In Ex. 297 at 12, which purports to describe the "Types of location data used by Google," all but three paragraphs are devoted to ***LH***. [SSOF ¶24]. Google fails to explain how the least sophisticated user would connect anything in these disclosures to WAA. Further, Google's failure to identify WAA ***by name*** is critical, not just a "red herring" as Google contends. (Resp. at 15). Since WAA is on ***by default***, a user must identify and locate that setting to disable it. As noted above, when the AP article identified this setting ***by name***, [redacted]

Google also relies on the disclosure given when LH is turned off. (Resp. at 16). [redacted]. [SOF ¶¶86–87; RSOF ¶59]. Even then, a statement about WAA was buried in a wall of small text towards the bottom of a long disclosure [SOF ¶87], *see AMG*, 910 F.3d at 422–23, which a user would only see if she turned LH off. [SOF ¶86]. Because LH is off by default, a user who stuck with default settings would have never seen this disclosure.

Grasping at straws, Google also argues that the State "will be hard pressed to prove that users do not understand that Google uses their location when running search queries." (Resp. at 14). But Google ***stores***, not just uses, the location data obtained from WAA. [SOF ¶¶34–45].

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[9] [redacted] [SSOF ¶23].

Even if a user assumed that Google was using her location when running search queries, she had no reason to know that Google was storing and profiting off of her location in its ad business. And the user certainly had no reason to know Google was storing precise and explicit location.

D. Google Also Acted Deceptively With Respect to Its Location Master Setting

Google's deceptive UI additionally subjects it to liability under the CFA. The FTC has confirmed that a deceptive UI constitutes a "deceptive practice" under the FTC Act, 15 U.S.C. § 45(a).[10] The FTC has also warned against "dark patterns" in UIs, where design features are used to deceive users into behavior that is profitable for an online service but contrary to the users' intent.[11] And Arizona's CFA expressly directs courts to look to the FTC's interpretation of 15 U.S.C. § 45 (among other things) in construing the CFA. *See* A.R.S. § 44-1522(C).

As explained (MSJ at 11–14), Google manipulated its UI—and misled [redacted] to do the same—so that users keep their Location Master ("LM," a device-level location setting) turned on. Per undisputed evidence, Google did this in two ways. First, Google does not dispute that it [redacted]. [SOF ¶105]. It did so despite [redacted] [SOF ¶106]. Indeed, undisputed evidence shows Google did this knowing full well that [redacted] [SOF ¶126; SSOF ¶25; RGSOF ¶61]. And Google does not dispute its own analytics showing [redacted] [SOF ¶122].

Second, undisputed evidence shows that Google [redacted] [SOF ¶¶112–21; *see also* SSOF ¶¶26–32]. [redacted]

[10] *See* https://www.ftc.gov/news-events/press-releases/2013/02/path-social-networking-app-settles-ftc-charges-it-deceived ("the user interface in Path's iOS app was misleading and provided consumers no meaningful choice"); https://www.ftc.gov/sites/default/files/documents/cases/2013/07/ 130702htccmpt.pdf at 8.

[11] *See* https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_-_rchopra_statement.pdf.

[redacted] [SSOF ¶27]. [redacted] [SOF ¶¶112–13; *see also* 8/21/2020 Chai Decl. ¶25 (authenticating Ex. 253)] t[redacted]. [SOF ¶¶115–16; *see also* SSOF ¶¶28–32] [redacted] [SOF ¶¶117–18].

In short, Google told [redacted] information it knew was false to [redacted] that it knew users were using to stop location tracking. And Google fails to contend with the State's arguments that its UI manipulation was actionably deceptive.[12]

III. GOOGLE'S ACTS AND PRACTICES WERE "IN CONNECTION WITH" THE SALE AND ADVERTISEMENT OF MERCHANDISE

Finally, Google contends that its deceptions do not violate the CFA because (i) the State identifies no pre-sale deceptions, the identified post-sale deceptions are not cognizable, and consumers are not misled post-sale, and (ii) the CFA only prohibits the "act" of deception in connection the sale or advertisement of merchandise. (Resp. at 6–8). Each contention fails.

First, undisputed evidence confirms that Google's false and deceptive disclosures and practices concerning LH and WAA are "in connection with" the sale of Google's and other Android devices running Google's software. For example, at and before the point of sale for Google's own Pixel phones, the purchaser is directed to Google's privacy policy, which then directs the user to the false LH help center page. [SSOF ¶¶33–45]. Google's false and deceptive pre-sale statements are unlawful under the CFA. *Fanning*, 821 F.3d at 171 (statements on "About Us" page of website were sufficient to trigger liability under FTC Act).

Similarly, the initial setup of the smartphone is necessarily "in connection with" its sale. To use much of the software that comes with a smartphone, a user as part of setup clicks through a series of screens and agrees to terms with Google. As part of the setup for both an Android phone and a Google Account, the user is directed to Google's privacy policy, which refers to the

[12] Google contends there is no evidence of actual deception. (Resp. at 16). Though unnecessary (*see* MSJ at 14), such evidence not only exists but remains undisputed. [SOF ¶¶125–27].

false LH and deceptive WAA disclosures. [SSOF ¶¶38–40, 46–48].[13] Android users are required set up a Google Account to use even the basic features of that device. [SOF ¶144]. Even if, as Google claims, "some Android devices include no Google services and therefore have no need for a Google account" (Resp. at 7), the "vast majority" of Android phones sold in the U.S. still ***do*** have Google's services installed and require a Google Account for use. [SOF ¶19].

Limiting the phrase "in connection with" solely to actions "prior to" sale, as Google proposes, would be inconsistent with Arizona case law. "The phrase 'in connection with,' as used in the CFA, "is a broad phrase that goes beyond the moment of sale." *Sands v. Bill Kay's Tempe Dodge, Inc.*, 1 CA-CV 13-0051, 2014 WL 1118149, at *4 ¶17 (Ariz. Ct. App. Mar. 20, 2014) (mem. decision). The Arizona Supreme Court recently emphasized—when interpreting a statute imposing criminal liability—the breadth of the word "connection," construing it as meaning a "relationship." *Molera v. Hobbs*, 474 P.3d 667, 679 ¶40 (Ariz. 2020); *accord State v. Bews*, 177 Ariz. 334, 336 (App. 1993) ("'[C]onnection is defined as 'a relationship or association in thought.'"). And as explained above, the FTC's interpretation of 15 U.S.C. § 45(a) leaves no doubt that a deceptive user interface is within the CFA's ambit. Even though a user interacts with the UI of an Android device post-sale, the UI is necessarily connected to the "sale" of that device, which cannot be used without its UI. Google itself recognized that its new (and deceptive) QS would be implemented in newly purchased devices. [SSOF ¶¶51–52].

Google's preferred case, *Sullivan v. Pulte Home Corp.*, 231 Ariz. 53 (App. 2012), *vacated in part*, 232 Ariz. 344 (2013), is not to the contrary. *Sullivan* involved a ***private*** CFA claim, which unlike a State claim requires "proximate injury," *id.* ¶35, and its holding expressly relies on the private nature of the claim. *See id*. ¶37 ("we conclude, on the basis of the statutory language, ***the purpose of the implied private cause of action under the CFA***, and the alleged facts of this case that a false or deceptive 'advertisement' must have been related to a sale

[13] Attacking SOF ¶¶69–70, Google wrongly contends that [redacted] (Resp. at 14 n.4). [redacted] [SSOF ¶¶49–50].

between the parties.") (emphases added).[14] Google is similarly wrong that the CFA requires "a direct misstatement . . . from the defendant or of the defendant's products." (Resp. at 8). Both cases Google cites[15] are also private CFA suits, where the misstatements were not made ***to the plaintiffs***. In any event, there is no dispute that Google itself sells devices like the Pixel. And even as to other Android devices, it is undisputed that the user must sign up for a Google Account to use the software that comes pre-installed on the phone, Google itself made the literally false LH statement, provided the deceptive WAA disclosures, and implemented the deceptive QS panel in the UI.

Second, there is no dispute that Google ***uses*** these deceptive practices "in connection with" (i) selling its advertising services, and (ii) advertising its customers' products and services. The CFA forbids not just the "act" of deception, but also the "use or employment" of deception, "in connection with" the sale or advertisement of merchandise. A.R.S. § 44-1522(A). Thus, the deceptive "act" itself need not be connected to a "sale" if the seller otherwise "uses" the deception in the sale. Google "uses" location data that it obtains through deception (as described above) in connection with the sale of its advertising services, which constitute "merchandise" under the CFA. A.R.S. § 44-1521(5). Google's [redacted] testified under oath that [redacted]. [SSOF ¶53]. And undisputed evidence confirms that Google obtained the user location data that is a "[redacted]" for its ads [SOF ¶8] through a literally false statement as to LH, a net deceptive practice as to WAA, and a deceptive UI. Google even admits that its ability to collect precise location data "could generally impact" its advertising revenue. (Resp. at 8).

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[14] Moreover, the court held that a subsequent purchaser cannot maintain a CFA claim against the original manufacturer, who made neither a representation nor a sale ***to the plaintiff***. But there is little doubt that the State, or even the original purchaser, could have successfully asserted the claim in *Sullivan*. *See People ex rel. Babbitt v. Green Acres Tr.*, 127 Ariz. 160, 168 (App. 1980), *superseded on other grounds*, 1981 Ariz. Sess. Laws, ch. 295, § 5; *see also Murray v. Farmer's Ins. Co. of Ariz.*, No. 2 CA-CV 2014-0123, 2016 WL 7367754, at ¶40 (Ct. App. Jan. 19, 2016) ("Although Jones would have us limit a private CFA cause of action to the parties to the transaction involving the misrepresentation, the broad language of the act would appear only to require that a consumer have a relationship to the transaction," and distinguishing *Sullivan*).

[15] *State Farm Fire & Cas. Co. v. Amazon.com Inc.*, No. CV-17-01994-PHX, 2018 WL 1536390, at *5 (D. Ariz. Mar. 29, 2018); *In re Insulin Pricing Litig.*, No. 17-cv-699, 2020 WL 831552, at *5 (D.N.J. Feb. 20, 2020)

Google also facilitates the "sale," § 44-1522(A), of third-party merchandise through these ads, which again rely on location data obtained through the use of deception. (MSJ at 17). The State acknowledges the Court's skepticism that this connection is close enough for the CFA. But *State ex rel. Woods v. Sgrillo*, 176 Ariz. 148 (App. 1993)—binding case law cited in the MSJ that Google declines to acknowledge—compels that summary judgment is appropriate here. In *Sgrillo*, the court concluded that because "the packet of information sent ***by those for whom defendants acted***" counted as a sale of merchandise, defendants were liable under the CFA for their own deceptive conduct. *Id.* at 149 (emphasis added). The Court then rejected the purported defense that defendants' "acts were in aid of a sale by ***another entity***," because "§ 44-1522 forbids deceptive acts 'in connection with the sale' of any merchandise' ***regardless of whether the deceiver is the seller***." *Id.* (emphasis added).[16]

In *Arizona v. Valley Delivery LLC*, CV 2020-002880, defendants left fake missed-delivery tags, which induced Arizonans to provide personal information to reschedule. Minute Entry, CV 2020-002880 *2–3 (Sup. Ct. May 22, 2020). The court held that the slips are "in connection with the sale or advertisement of merchandise" because they "are left for the purposes of gathering information which, in turn, is given to telemarketers for purposes of contacting individuals to buy services or products." *Id.* "While the tags themselves do not advertise a product or service, they are only one step removed." *Id.* Similarly, Google deceptively induced users to hand over location data, which, in turn, Google uses to sell and serve ads based on the customers' location. Google's deceptive practices are "in connection with" both the sale *and* the advertisement of merchandise.

IV. CONCLUSION

The Court should grant the State's MSJ. If denied, the Court should "enter an order identifying any material fact . . . that is not genuinely in dispute" under Rule 56(g).

[16] In *Sgrillo*, defendants directed postcards to consumers recently rejected for credit. (Hartwick Decl. Ex. 315 at PDF pages 15–16). Consumers who called were provided a "900 number" tied to "another company" that sent information for a charge. *Id.* Though the merchandise was provided by a third party, the Court held that the defendants' conduct was "in connection with" a sale under the CFA. 176 Ariz. at 149. So, too, here with Google, which collects and stores location data through deceptive practices to power its lucrative ads and sales by third parties.

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**Pro hac vice* granted

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