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11 Attorneys for Plaintiffs

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SANTA CLARA**

14 TRINA ALEMAN, LAWRENCE
15 ANDERSON, CARLOTTA BELL, SHULI
16 CHIU, JESSICA GONZALEZ, ANA
17 GRIFFITH, HOWARD GOSDORFER,
18 EMILY JOHNSON, AISJAH JONES,
19 ANYA JONES, JOYCE KHATIBI,
20 PANINA MANN, LISA MCGUIRE,
21 STEVE MITCHELL, KELLY MULKINS,
22 DAVID POLSTER, THOMAS PURCIEL,
23 BRUCE ROTHE, MICHELLE SENIOR,
24 BRYAN SLOTTEN, RUXY WALSH, and
25 MELANIE WARNER,

26 Plaintiffs,

27 v.

28 GOOGLE LLC, a Delaware Limited
Liability Company, and DOES 1-1,000,
inclusive,

Defendants.

Case No. 18CV334369

Dept.
Hon.

COMPLAINT FOR DAMAGES BASED ON:

- 1. Violations of the California Invasion of Privacy Act, Cal. Pen. Code § 630 *et seq.*
- 2. Violations of the Florida Wiretap Act, Fla. Stat. § 934.01 *et seq.*
- 3. Violations of the Pennsylvania Wiretap Act, 18 Pa. Cons. Stat. § 5703 *et seq.*
- 4. Violations of the Maryland Wiretap Act, Md. Code Ann., Cts. & Jud. Proc. § 10-401 *et seq.*

DEMAND FOR JURY TRIAL

1 **Introduction**

2 Plaintiffs are individuals who have never subscribed to Defendant Google’s “free”
3 email service known as Gmail and have never knowingly consented to Google intercepting the
4 contents of their emails. Google nevertheless intercepted, scanned, analyzed, and cataloged the
5 content of Plaintiffs’ emails to Gmail subscribers for advertising purposes in violation of state
6 laws prohibiting the interception of electronic communications without the consent of all parties
7 to the communication.

8 The allegations herein that relate to Plaintiffs’ personal actions are made based on
9 their personal knowledge. The balance are made on information and belief based on the
10 ^{2.} investigation of counsel.

11 **Parties**

12 Plaintiffs do not have and never had a Gmail account. Plaintiffs, and each of them,
13 ^{3.} sent one or more emails to an @gmail.com email address within the applicable statutory
14 limitations periods and before Google stopped pre-delivery processing of email sent to Gmail
15 accounts for advertising purposes. Google intercepted and scanned all such emails to acquire,
16 interpret, and catalog its contents, for advertising purposes, without any of the Plaintiffs’
17 ^{4.} knowledge or consent.

18 Defendant Google LLC (“Google”), formerly known as Google, Inc., is a
19 ^{5.} Delaware limited liability company headquartered in Mountain View, California.

20 Does 1 through 1,000 are the principals, agents, partners, affiliates, officers,
21 directors, shareholders, creditors, members, employees, managers, joint venturers, co-venturers,
22 and/or co-conspirators of their co-defendants and were acting within the course scope of their
23 ^{6.} agency, agreement, duties, employment, or shared purpose in planning, effectuating, advancing,
24 aiding, abetting, or committing the below-described wrongful acts. As used hereinafter, “Google”
25 means and includes Does 1-1,000.

26 Plaintiffs do not know the true names or capacities of the persons or entities sued
27 herein as Does 1-1,000 inclusive, and therefore sue these defendants by these fictitious names.
28 Each of the Doe defendants is in some manner legally responsible for the wrongs perpetrated

1 against and damages suffered by Plaintiffs as alleged herein. Plaintiffs will amend this complaint
2 to set forth the true names and capacities of these defendants when ascertained, along with
3 appropriate charging allegations.

4 **Jurisdiction and Venue**

5 This Court has personal jurisdiction over Google because Google is headquartered
6 in and conducts substantial business in California. The acts alleged herein took place in
7 California.

8 ^{7.} Venue lies here pursuant to California Code of Civil Procedure §395.5 because
9 Google is headquartered and maintains its principal place of business in Santa Clara County.

10 **Statement of Facts**

11 Google is a California-based multinational company that offers web-based services
12 including, among others, the electronic communications service known as Gmail. Google offers
13 several variations of its Gmail product including Gmail for individual users, a version for
14 businesses called Google Apps for Work, and a version for educational institutions called Google
15 Apps for Education. For the purposes of this complaint, the term “Gmail” refers to Gmail for
16 individual users, i.e., “free” email accounts with addresses that end with the suffix
17 `ft@gmail.com`”.

18 Google products, including but not limited to Gmail, incorporate data mining
19 systems that track individual users’ behavior, characteristics, and interests, and report that
20 information to Google. Google initially declared that it collected and maintained user data solely
21 ^{11.} to make its services work better,¹ but subsequently began collecting and combining user data
22 from across its various platforms for ad targeting and other commercial purposes.

23 This strategy has enabled Google to dominate online advertising. Google’s user
24 data enables it to deliver ads targeted to susceptible buyers. It can thus sell more advertising and
25 command higher prices for ads. Google generated advertising revenue of \$95.4 billion in 2017,
26

27 ¹ Singel, Ryan. “Analysis: Google’s Ad Targeting Turns Algorithms on You,” *Wired* (Mar. 11,
28 2009) (available at <http://www.wired.com/business/2009/03/google-ad-annou/>).

1 accounting for 87% of Google's total revenue that year.²

2 **Google's Interception of Plaintiffs' Emails to Gmail Users**

3 Google systematically intercepted, scanned, and analyzed the contents of all
4 emails sent to Gmail users for advertising purposes before those emails reached the Gmail users'
5 inboxes. Google began this practice at least three years before the filing of this action and, on
6 information and belief, stopped it in or before February 2018 in compliance with the injunction
7 issued in *Matera v. Google, Inc.*, N.D. Cal. Case No. 5:15-cv-04062-LHK (the "Relevant
8 Period").

9 Google intercepted, scanned, and analyzed the content of at least one unencrypted
10 email that each Plaintiff sent from his or her non-Gmail e-mail account to a Gmail user, for
11 advertising purposes.

12 Google carried out this pre-delivery interception, scanning, and analysis by
13 diverting Plaintiffs' emails to various devices, including a device called Content One Box.
14 Content One Box is a distinct piece of Google's infrastructure that extracts and analyzes the
15 content of emails sent to Gmail users before delivery to their inboxes for advertising purposes,
16 including the purpose of serving targeted advertisements and creating user profiles.

17 Google executed its interception, scanning, and analysis of email sent to Gmail
18 users for advertising purposes in an automated, programmatic, and uniform manner, such that
19 Google applied the same processes to all emails that Plaintiffs sent to any and all Gmail users
20 during the Relevant Period.

21 Google scanned, analyzed, and intercepted the contents of Plaintiffs' emails for
22 advertising purposes in California using devices located in California. Further, Google personnel
23 developed, implemented, and authorized the challenged practices in California.

24 Each and every individual Plaintiff owns and uses an email account not affiliated
25 in any way with Google or Gmail, and used it to send one or more emails to Gmail users during
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27 ² Alphabet Inc. Form 10-K for fiscal year ending December 31, 2017, Management's Discussion
28 and Analysis of Financial Condition and Results of Operations, Revenues (available at:
https://abc.xyz/investor/pdf/20171231_alphabet_10K.pdf).

1 the Relevant Period.

2 **FIRST CAUSE OF ACTION**

3 **Violations of CIPA, Cal. Pen. Code § 630 et seq.**

4 **(On behalf of all Plaintiffs)**

5 Plaintiffs incorporate the preceding paragraphs of this complaint as if repeated
6 here.

7 Cal. Pen. Code § 631(a) creates liability for “[a]ny person who, by means of any
8 machine, instrument, or contrivance, or in any other manner, ... willfully and without the consent
9 of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or
10 to learn the contents or meaning of any message, report, or communication while the same is in
11 transit or passing over any wire, line, or cable, or is being sent from, or received at any place
12 within this state”

13 Pursuant to Cal. Pen. Code § 7, Google, a limited liability company and formerly a
14 corporation, is a “person.”

15 Google committed the acts and practices complained of herein knowingly and
16 willfully, spending significant sums and using cutting-edge technology to do so in the most
17 comprehensive and effective manner possible. Google’s actions were at all relevant times
18 intentional as evidenced by, *inter alia*, Google’s utilization of message-scanning and analyzing
19 devices to divine the meaning of the contents of private messages and Google’s use of that
20 information for, among other things, data profiling and ad targeting.

21 Google was not a party to the emails that Plaintiffs sent to Gmail users during the
22 Relevant Period.

23 Google engaged in the acts complained of herein without the consent of Plaintiffs,
24 or any of them.

25 Each email Plaintiffs sent to Gmail users during the Relevant Period was a
26 “message, report, or communication” within the meaning of Cal. Pen. Code § 631.

27 Each email Plaintiffs sent to Gmail users during the Relevant Period was “in
28 transit” within the meaning of Cal. Pen. Code § 631 when Google intercepted, scanned, and

1 analyzed its contents for advertising purposes.

2 By intercepting, scanning, and analyzing the contents of Plaintiffs' emails to
3 Gmail users for advertising purposes Google read, attempted to read, and learned the contents and
4 meaning of Plaintiffs' emails within the meaning of Cal. Pen. Code § 631.

5 Google intercepted, scanned, and analyzed the contents of Plaintiffs' emails to
6 Gmail users for advertising purposes "by means of any machine, instrument, or contrivance, or in
7 any other manner" within the meaning of Cal. Pen. Code § 631, including without limitation by
8 means of the Content One Box device. Plaintiffs reserve the right to assert CIPA violations as to
9 any further devices subsequently disclosed or discovered.

10 Cal. Pen. Code § 631(a) also creates liability for any person "who uses, or attempts
11 to use, in any manner, or for any purpose, or to communicate in any way, any information so
12 obtained." Google violated this prohibition by using the information it obtained from intercepting,
13 scanning, and analyzing the contents of Plaintiffs' emails to Gmail users for advertising purposes,
14 including consumer profiling and ad targeting.

15 Each of the actions taken by Google and complained of herein extends beyond the
16 normal occurrences, requirements, and expectations regarding the facilitation and transmission of
17 private messages and were not for the purpose of the construction, maintenance, conduct or
18 operation of Google's email service. Rather, the actions taken by Google and complained of
19 herein were for advertising purposes, including data profiling and ad targeting.

20 As a direct and proximate result of Google's violations of Cal. Pen. Code §§ 630,
21 *et. seq.*, and pursuant to Cal. Pen. Code § 637.2, each Plaintiff has suffered damage, including the
22 loss of the value of his or her own information, and the value of his or her privacy. Further,
23 Google has been unjustly enriched by the value of each Plaintiff's wrongfully obtained
24 information.

25 Pursuant to Cal. Pen. Code § 637.2, each Plaintiff is entitled to statutory damages
26 of \$5,000 for each violation of Cal. Pen. Code § 631 that Google committed against him or her.

1 **SECOND CAUSE OF ACTION**

2 **Violations of the Florida Wiretap Act, Fla. Stat. § 934.01 et seq.**

3 **(On behalf of the Florida Plaintiffs³)**

4 Plaintiffs incorporate the preceding paragraphs of this complaint as if repeated
5 here.

6 Fla. Stat. § 934.03 creates liability for a person who, “intentionally intercepts,
7 ³²endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire,
8 ³³oral, or electronic communication.”

9 The email communications transmitted by Plaintiffs to Gmail users were each a
10 “wire communication” and “electronic communication” pursuant to Fla. Stat. § 934.02 (1) and
11 ³⁴(12).

12 Google “intercepted” Plaintiffs’ emails to Gmail users within the meaning of Fla.
13 ³⁵Stat. § 934.02 (3).

14 ³⁶Google intercepted the contents of Plaintiffs’ emails to Gmail users for advertising
15 purposes using an “electronic, mechanical, or other device” within the meaning of Fla. Stat. §
16 ³⁷934.02(4), including without limitation by means of the Content One Box device.

17 Google, a limited liability company and formerly a corporation, is a “person”
18 pursuant to Fla. Stat. § 934.02(5). Google engaged in the acts complained of herein without the
19 ³⁸consent of Plaintiffs.

20 Google committed the acts and practices complained of herein knowingly and
21 willfully, spending significant sums and using cutting-edge technology to do so in the most
22 comprehensive and effective manner possible. Google’s actions were at all relevant times
23 ³⁹intentional as evidenced by, among other things, its utilization of message-scanning and
24 analyzing devices to divine the meaning of the contents of private messages, and Google’s use of
25 that information for, *inter alia*, data profiling and ad targeting.

26 Google’s conduct complained of herein also violated Fla. Stat. § 934.03(d), which

27 _____
28 ³ “Florida Plaintiffs” means the Plaintiffs who reside in Florida and includes Howard Gosdorfer,
Lisa Mcguire, Joyce Khatibi, Michelle Senior, and Steve Mitchell.

1 creates liability for a person who “Intentionally uses, endeavors to use, the contents of any wire,
2 oral, or electronic communication, knowing or having reason to know that the information was
3 obtained through the interception of a wire, oral, or electronic communication in violation of [Fla.
4 Stat. § 934.03].” Google violated this prohibition by using the information it obtained from
5 intercepting, scanning, and analyzing the contents of the Florida Plaintiffs’ emails to Gmail users
6 for advertising purposes, including data profiling and ad targeting.

7 Pursuant to Fla. Stat. § 934.10, the Florida Plaintiffs are entitled to: (a) actual
8 damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of
9 violation or \$1,000, whichever is higher; (b) punitive damages; and (c) a reasonable attorney's fee
10 and other litigation costs reasonably incurred.

11 **THIRD CAUSE OF ACTION**

12 **Violations of the Pennsylvania Wiretap Act, 18 Pa. Cons. Stat. § 5703 et seq.**

13 **(On behalf of the Pennsylvania Plaintiff⁴)**

14 41. Plaintiffs incorporate the preceding paragraphs of this complaint as if repeated
15 here.

16 42. 18 Pa. Cons. Stat. § 5703 (1) creates liability for a person who, “intentionally
17 intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to
18 43. intercept any wire, electronic or oral communication.”

19 44. The email communications transmitted by Plaintiffs to Gmail users were each an
20 “electronic communication” pursuant to 18 Pa. Cons. Stat. § 5702.

21 Google “intercepted” Plaintiffs’ emails to Gmail users within the meaning of 18
22 Pa. Cons. Stat. § 5702 because it acquired the contents of electronic communications through the
23 use of an electronic, mechanical or other device, including without limitation by means of the
24 Content One Box device.

25 Google, a limited liability company and formerly a corporation, is a “person”
26 pursuant to 18 Pa. Cons. Stat. § 5702.

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28 ⁴ “Pennsylvania Plaintiff” means the Plaintiff who resides in Pennsylvania, Bryan Slotten.

1 Google committed the acts and practices complained of herein knowingly and
2 willfully, spending significant sums and using cutting-edge technology to do so in the most
3 comprehensive and effective manner possible. Google’s actions were at all relevant times
4 intentional as evidenced by, among other things, its utilization of message-scanning and
5 ^{46.} analyzing devices to divine the meaning of the contents of private messages, and Google’s use of
6 that information for, *inter alia*, data profiling and ad targeting.

7 Google’s conduct complained of herein also violated 18 Pa. Cons. Stat. § 5703 (3),
8 which creates liability for a person who “intentionally uses or endeavors to use the contents of
9 any wire, electronic, or oral communication, or evidence derived therefrom, knowing or having
10 reason to know, that the information was obtained through the interception of a wire, electronic,
11 or communication,” obtained in violation of 18 Pa. Cons. Stat. § 5703(1). Google violated this
12 prohibition by using the information it obtained from intercepting, scanning, and analyzing the
13 contents of the Pennsylvania Plaintiff’s emails to Gmail users for advertising purposes, including
14 data profiling and ad targeting.

15 ^{48.} Pursuant to 18 Pa. Cons. Stat. § 5725, the Pennsylvania Plaintiff is entitled to: (a)
16 actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each
17 day of violation or \$1,000, whichever is higher; (b) punitive damages; and (c) a reasonable
18 attorney's fee and other litigation costs reasonably incurred.

19 **FOURTH CAUSE OF ACTION**

20 **Violations of the Maryland Wiretap Act, Md. Code Ann., Cts. & Jud. Proc. § 10-401 et seq.**

21 **(On behalf of the Maryland Plaintiff⁵)**

22 ^{50.} Plaintiffs incorporate the preceding paragraphs of this complaint as if repeated
23 here.

24 Md. Code Ann., Cts. & Jud. Proc. § 10-402(1) creates liability for a person who
25 “Wilfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor
26 to intercept, any wire, oral, or electronic communication.”

27
28 ⁵ “Maryland Plaintiff” means the Plaintiff who resides in Maryland, Kelly Mulkins.

1 The email communications transmitted by Plaintiffs to Gmail users were each an
2 “electronic communication” pursuant to Md. Code Ann., Cts. & Jud. Proc. § 10-401(5)(i).

3 Google “intercepted” Plaintiffs’ emails to Gmail users within the meaning of Md.
4 Code Ann., Cts. & Jud. Proc. § 10-401(10) because it acquired the contents of electronic
5 ^{51.}communications through the use of an electronic, mechanical or other device, including without
6 ^{52.}limitation by means of the Content One Box device.

7 Google, a limited liability company and formerly a corporation, is a “person”
8 pursuant to Md. Code Ann., Cts. & Jud. Proc. § 10-401(14).

9 ^{53.} Google committed the acts and practices complained of herein knowingly and
10 willfully, spending significant sums and using cutting-edge technology to do so in the most
11 ^{54.}comprehensive and effective manner possible. Google’s actions were at all relevant times
12 intentional as evidenced by, among other things, its utilization of message-scanning and
13 analyzing devices to divine the meaning of the contents of private messages, and Google’s use of
14 that information for, *inter alia*, data profiling and ad targeting.

15 ^{55.} Google’s conduct complained of herein also violated Md. Code Ann., Cts. & Jud.
16 Proc. § 10-402(3), which creates liability for a person who “willfully use[s], or endeavors to use,
17 the contents of any wire, oral, or electronic communication, knowing or having reason to know
18 that the information was obtained through the interception of a wire, oral, or electronic
19 communication” obtained in violation of Md. Code Ann., Cts. & Jud. Proc. § 10-402(1). Google
20 violated this prohibition by using the information it obtained from intercepting, scanning, and
21 ^{56.}analyzing the contents of the Pennsylvania Plaintiff’s emails to Gmail users for advertising
22 purposes, including data profiling and ad targeting.

23 Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 10-410, the Maryland Plaintiff is
24 entitled to: (a) actual damages, but not less than liquidated damages computed at the rate of \$100
25 a day for each day of violation or \$1,000, whichever is higher; (b) punitive damages; and (c) a
26 reasonable attorney’s fee and other litigation costs reasonably incurred.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

1. For statutory damages for each Plaintiff of \$5,000 for each violation of Cal. Pen. Code § 631 that Google committed against him or her pursuant to Cal. Pen. Code § 637.2;
2. For liquidated damages for the Florida Plaintiffs computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher, pursuant to Pursuant to Fla. Stat. § 934.10(b);
3. For punitive damages for the Florida Plaintiffs pursuant to Fla. Stat. § 934.10(c);
4. For liquidated damages for the Pennsylvania Plaintiff computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher, pursuant to Pursuant to 18 Pa. Cons. Stat. § 5725(a)(1);
5. For punitive damages for the Pennsylvania Plaintiff pursuant to 18 Pa. Cons. Stat. § 5725(2);
6. For liquidated damages for the Maryland Plaintiff computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher, pursuant to Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 10-410(a)(1);
7. For punitive damages for the Maryland Plaintiff pursuant to Md. Code Ann., Cts. & Jud. Proc. § 10-410(a)(2);
8. For attorneys' fees pursuant to statute, including but not limited to Fla. Stat. § 934.10(d), 18 Pa. Cons. Stat. § 5725(a)(3), Md. Code Ann., Cts. & Jud. Proc. § 10-410(a)(3), and Cal. Code of Civ. Proc. § 1021.5;
9. For costs of suit; and


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10. For all such other and further relief as the Court deems just and proper.

DATED: September 4, 2018

Respectfully submitted,

GALLO LLP

By: 

Ray E. Gallo
Dominic Valerian
Nathaniel Simons
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable.

DATED: September 4, 2018

Respectfully submitted,

GALLO LLP

By: 

Ray E. Gallo
Dominic Valerian
Nathaniel Simons
Attorneys for Plaintiffs

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