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9 Attorneys for Plaintiffs

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SANTA CLARA**

12 LISA BROWN, RICHARD
13 ESTABROOK, IRAIDA MARTUCCI,
14 JANET MRVOS, XAVIER RODRIGUEZ,
15 MAUREEN ROWLAND, JACQUIE
16 SMITH, BRENDA SUMMERS,
17 REGINALD TANEGA, and ANNEIL
18 TEDDER,

19 Plaintiffs,

20 v.

21 GOOGLE LLC, a Delaware Limited
22 Liability Company, and DOES 1-1,000,
23 inclusive,

24 Defendants.

Case No. 18CV324895

COMPLAINT FOR DAMAGES BASED ON:

1. Violations of the California Invasion of Privacy Act, Cal. Pen. Code § 630 *et seq.*
2. Violations of the New Hampshire Wiretapping and Eavesdropping Statute, N.H. Rev. Stat. 570-A:2

DEMAND FOR JURY TRIAL

Gallo LLP
1299 Fourth St., Suite 505
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1 **Introduction**

2 1. Plaintiffs are individuals who never subscribed to Defendant Google’s email
3 service—Gmail—and never consented to Google intercepting the contents of their emails. Google
4 nevertheless intercepted, scanned, analyzed, and cataloged the content of Plaintiffs’ emails with
5 Gmail subscribers for advertising purposes in violation of state laws prohibiting the interception
6 of electronic communications without the consent of all parties to the communication. Numerous
7 claims like Plaintiffs’ are expected to follow in an amended version of this complaint and/or in
8 related cases.

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

12 **Parties**

13 3. Plaintiffs are individuals who never subscribed to Gmail and never consented to
14 Google intercepting the contents of their email. Plaintiffs Lisa Brown, Richard Estabrook, Janet
15 Mrvos, Xavier Rodriguez, Maureen Rowland, Jacquie Smith, Brenda Summers, Reginald Tanega,
16 and Anneil Tedder (the “California Plaintiffs”) reside in California. Plaintiff Iraidia Martucci (the
17 “New Hampshire Plaintiff”) resides in New Hampshire. California and New Hampshire both
18 prohibit the interception of electronic communications without the consent of all parties to the
19 communication. Each Plaintiff sent unencrypted emails from his or her non-Gmail e-mail account
20 to a Gmail user, which Google intercepted and analyzed for advertising purposes as alleged in
21 detail below.

22 4. Defendant Google LLC (“Google”), formerly known as Google, Inc., is a
23 Delaware limited liability company headquartered in Mountain View, California.

24 5. Plaintiffs do not know the true names or capacities of the persons or entities sued
25 herein as Does 1-1,000 inclusive, and therefore sue these defendants by these fictitious names.
26 Each of the Doe defendants is in some manner legally responsible for the damages suffered by
27 Plaintiffs as alleged herein. Plaintiffs will amend this Complaint to set forth the true names and
28 capacities of these defendants when ascertained, along with appropriate charging allegations.

1 command higher prices for ads. Google generated advertising revenue of \$95.4 billion in 2017,
2 accounting for 87% of Google's total revenue that year.²

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

4 12. Plaintiffs are individuals who never subscribed to Gmail and never consented to
5 Google intercepting the contents of their email. Each Plaintiff sent at least one unencrypted email
6 from his or her non-Gmail e-mail account to a Gmail subscriber within one year preceding the
7 filing of this action.

8 13. From at least one year preceding the filing of this action, and until recently,
9 Google systematically intercepted, scanned, and analyzed the content of all emails sent to Gmail
10 users for advertising purposes before they reached the Gmail users inboxes. Google intercepted,
11 scanned, and analyzed the content of at least one unencrypted email that each Plaintiff sent from
12 his or her non-Gmail e-mail account to a Gmail subscriber for advertising purposes within one
13 year preceding the filing of this action.

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

19 15. Google executed its interception, scanning, and analysis of email sent to Gmail
20 users for advertising purposes in an automated, programmatic, and uniform manner, such that
21 Google applied the same processes to all the email Plaintiffs sent to Gmail users during the
22 relevant period.

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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).

FIRST CAUSE OF ACTION

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

(On behalf of the California Plaintiffs)

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

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

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

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

20 20. Google was not a party to the emails Plaintiffs sent to Gmail users.

21 21. Google engaged in the acts complained of herein without the consent of Plaintiffs.

22 22. Each email Plaintiffs sent to Gmail users was a “message, report, or
23 communication” within the meaning of Cal. Pen. Code § 631.

24 23. Each email Plaintiffs sent to Gmail users was “in transit” within the meaning of
25 Cal. Pen. Code § 631 when Google intercepted, scanned, and analyzed its contents for advertising
26 purposes.

27 24. By intercepting, scanning, and analyzing the contents of Plaintiffs’ emails to
28 Gmail users for advertising purposes, Google read, attempted to read, and learned the contents

1 and meaning of Plaintiffs' emails within the meaning of Cal. Pen. Code § 631.

2 25. Google intercepted, scanned, and analyzed the contents of Plaintiffs' emails to
3 Gmail users for advertising purposes "by means of any machine, instrument, or contrivance, or in
4 any other manner" within the meaning of Cal. Pen. Code § 631, including by means of the
5 Content One Box device. Plaintiffs reserve the right to assert CIPA violations as to any further
6 devices subsequently disclosed or discovered.

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

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

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

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

25 **SECOND CAUSE OF ACTION**

26 **Violations of the N.H. Wiretapping and Eavesdropping Statute, N.H. Rev. Stat. 570-A:2**

27 **(On behalf of the New Hampshire Plaintiff)**

28 30. Plaintiffs incorporate the preceding paragraphs of this complaint as if repeated

1 here.

2 31. N.H. Rev. Stat. 570-A:2 I(a) creates liability for a person who, “without the
3 consent of all parties to the communication,” “[w]illfully intercepts ... any telecommunication or
4 oral communication.”

5 32. The email communications transmitted by Plaintiffs to Gmail users were each a
6 “telecommunication” pursuant to N.H. Rev. Stat. § 570-A:1 I.

7 33. Google “intercepted” Plaintiffs’ emails to Gmail users within the meaning of N.H.
8 Rev. Stat. § 570-A:1 III.

9 34. Google intercepted the contents of Plaintiffs’ emails to Gmail users for advertising
10 purposes using an “electronic, mechanical, or other device” within the meaning of N.H. Rev. Stat.
11 § 570-A:1 IV, including without limitation by means of the Content One Box device.

12 35. Google, a limited liability company and formerly a corporation, is a “person”
13 pursuant to N.H. Rev. Stat. § 570-A:1 V.

14 36. Google engaged in the acts complained of herein without the consent of Plaintiffs.

15 37. 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*, its utilization of message-scanning and analyzing devices
19 to divine the meaning of the contents of private messages, and Google’s use of that information
20 for, *inter alia*, data profiling and ad targeting.

21 38. Google’s conduct complained of herein also violated N.H. Rev. Stat. 570-A:2 I(d),
22 which creates liability for a person who “[w]illfully uses, or endeavors to use, the contents of any
23 telecommunication ..., knowing or having reason to know that the information was obtained
24 through the interception of a telecommunication ... in violation of [N.H. Rev. Stat. 570-A:2 I].”
25 Google violated this prohibition by using the information it obtained from intercepting, scanning,
26 and analyzing the contents of Plaintiffs’ emails to Gmail users for advertising purposes, including
27 data profiling and ad targeting.

28 39. Pursuant to N.H. Rev. Stat. 570-A:11, each New Hampshire Plaintiff is entitled to

1 (a) liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000,
2 whichever is higher; (b) punitive damages; and (c) a reasonable attorney's fee and other litigation
3 costs reasonably incurred.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs pray for relief and judgment as follows:

- 6 1. For statutory damages for each California Plaintiff of \$5,000 for each violation
7 of Cal. Pen. Code § 631 that Google committed against him or her pursuant to
8 Cal. Pen. Code § 637.2;
- 9 2. For statutory damages for the New Hampshire Plaintiff computed at the rate of
10 \$100 a day for each day of violation or \$1,000, whichever is higher, pursuant
11 to N.H. Rev. Stat. 570-A:11;
- 12 3. For punitive damages for the New Hampshire Plaintiff pursuant to N.H. Rev.
13 Stat. 570-A:11;
- 14 4. For attorneys' fees pursuant to N.H. Rev. Stat. 570-A:11;
- 15 5. For costs of suit; and
- 16 6. For all such other and further relief as the Court deems just and proper.³

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18 DATED: March 13, 2018

Respectfully submitted,

19 **GALLO LLP**

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21 By: 

Ray E. Gallo
Attorneys for Plaintiffs

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28 ³ Plaintiffs expect to amend their complaint to seek attorneys' fees pursuant to Cal. Code of Civ.
Proc. § 1021.5 if and when that remedy becomes available.

DEMAND FOR JURY TRIAL

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

DATED: March 13, 2018

Respectfully submitted,

GALLO LLP

By: 

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