

# EXHIBIT 17

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REPLY DECLARATION OF GARY E. MASON

Andrew MacKie-Mason  
1044 Ferdon Road  
Ann Arbor, MI 48104  
(734) 709-2304  
January 5, 2011

RE: *In re Google Buzz User Privacy Litigation*, No. 5: 10-cv-00672-JW

Clerk of the United States District Court  
for the Northern District of California  
San Jose Division  
280 South 1st Street  
San Jose, CA 95113

To Whom It May Concern:

#### OBJECTIONS TO PROPOSED SETTLEMENT

As a member of the plaintiff class in the above referenced case (proof of class membership included as Attachment C), I ask the Court to reject the proposed settlement. As it stands, this settlement would enrich plaintiffs' attorneys at the expense of plaintiffs' interests, and should not be permitted under F.R.C.P. 23(e)(2) as unfair, unreasonable, and inadequate. Further, in pursuit of this settlement, class counsel has abrogated his duty under F.R.C.P. 23(g)(4) to fairly and adequately represent the interests of the class. Instead, the settlement acts in the interests of class counsel and a few individual plaintiffs.

First, class counsel has secured no benefits in this settlement for individual members of the class. Class counsel is asking his clients to give up their right to legal recourse for harms done, but has agreed, on their behalf, to a settlement that offers no compensation in exchange for that sacrifice. As it stands, plaintiffs who opt out of the settlement will receive exactly the same benefits as those who remain in the class.

Second, the indirect benefits that the settlement will provide to class members are of questionable value. Under the settlement, with class counsel's current request for bonuses, less than \$6.4 million will be paid to unspecified internet privacy organizations (See Attachment A). The organizations that will benefit are not specified in the settlement, so neither plaintiffs nor the court have any way of determining whether those organizations will use the funds in plaintiffs' best interests prior to final approval. Further, class members will have no mechanism to influence the way in which the Common Fund is distributed, and so plaintiffs' interests may not be properly protected in that process. Instead, it seems, class counsel will make all decisions regarding *cy pres* recipients while accepting only minimal input, which class counsel feels entitled to ignore, from the actual plaintiffs (See Attachment B).

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Third, the proposed settlement will indirectly harm plaintiffs. Many if not all members of the class are current consumers of products produced by Google. Thus, expenditures by Google in settling this lawsuit will affect the quality or cost of products available to plaintiffs in the future. This settlement means that more than \$2.1 million will be lost by organizations that benefit plaintiffs and go instead to class counsel and a few select individual plaintiffs. Given the efforts by Google to advance privacy interests acknowledged in the settlement, it seems likely that \$8.5 million in Google's hands will do more to serve plaintiffs than less than \$6.4 in the hands of unspecified organizations.

Fourth, class counsel has failed to adequately represent the class by not informing plaintiffs as to the actual amount that will be available to privacy organizations. The information provided by class counsel to plaintiffs states that \$8.5 million will be paid into the Common Fund, and that \$2,142,500 of that will be requested as bonuses for class counsel and representative plaintiffs. The information also states that plaintiffs attorneys will request reimbursement of additional costs and expenses, but does not state how much will be requested for that purpose (See Attachment A). In response to queries for additional information, class counsel confirmed that the amount being requested for fees would not be available prior to the deadline for withdrawing from the class (See Attachment B). Class counsel did assure me that the fee requests would be available by December 20<sup>th</sup> (Attachment B), but as of January 5<sup>th</sup> has not made that fee petition available with the other court documents on the class action website (See Attachment D). Because of this, I and other plaintiffs have been unable to determine how much money class counsel will receive and how much will actually go towards promoting privacy interests, and thus have been impaired by the actions of class counsel in our ability to protect our own interests and evaluate this settlement.

Fifth, the schedule imposed by the Court on this settlement process means that I and other plaintiffs were unable to fully evaluate the merits of the settlement before deciding whether or not to opt out of the class. The Court's October 7, 2010 Order Granting Preliminary Approval of Class Action Settlement mandates that individuals opt-out of the settlement by December 6, 2010. However, requests for attorneys' fees, expense reimbursements, and incentive awards were permitted to be filed as late as December 20, 2010 and the Fairness Hearing is scheduled for January 31, 2011. The requests made by class counsel for awards, fees, and expenses and decisions made by the Court in response to objections at the Fairness Hearing all weigh on my, and other plaintiffs', decision of whether to opt-out of the class. The current schedule does not provide for a real opportunity for class members to preserve their rights. In communication, class counsel has confirmed this interpretation of the schedule (See Attachment C).

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The proposed settlement provides no direct benefits to class members; the indirect benefits it promises are speculative; the indirect harms plaintiffs will suffer are clear; class counsel has not kept plaintiffs adequately informed; and the settlement schedule does not provide plaintiffs with any opportunity to make a fully informed choice about opting-out of the settlement. Therefore, I ask the Court to reject this settlement as unfair, unreasonable, and inadequate. In the alternate, I ask the Court to allow class members an additional opportunity to opt out after a final settlement, including all relevant fees and distribution of awards, is decided upon.

I do not seek an opportunity to appear at the Fairness Hearing, but I do humbly request that these objections be considered and made a part of the record.

Respectfully yours,

Andrew MacKie-Mason  
Class Member, *pro se*

Enclosures: (5)  
cc: Gary Mason, Esq.  
David J. Burman, Esq.

**Attachment A: Excerpt From Class Action Website**

Available at: <http://www.buzzclassaction.com/faq>  
Accessed: November 10, 2010

***12. How will the lawyers be paid?***

Class Counsel will ask the Court for attorneys' fees of 25% of the Common Fund, plus reimbursement of costs and expenses. Class Counsel will also request that the seven Class Representatives who helped the lawyers on behalf of the whole Class each receive a \$2500 incentive award. The Court may award less than these amounts. The payment of attorneys' fees, incentive awards and reimbursement of costs and expenses will be deducted from the Common Fund prior to the distribution of the Common Fund to the selected Internet privacy organizations.

**Attachment B: First Email Received From Class Counsel**

From: Gary E. Mason <GMason@masonlawdc.com>  
To: Andrew MacKie-Mason <adrewmm@uchicago.edu>  
Date: Thu, Nov 11, 2010 at 3:11 PM  
Subject: RE: Google Buzz Settlement

Dear Mr. MacKie-Mason,

Thank you for contacting Mason LLP concerning the Google Buzz settlement.

With respect to your questions concerning attorneys' fees, expenses and incentive awards, Class Counsel will be filing with the Court a petition for an award of attorneys' fees and reimbursement of expenses and requests for incentive awards to Class Representatives on or before December 20, 2010. That document will be public and available for your review. I am able to say at this point that our costs and expenses are not likely to be significant. The numerous firms involved in this matter charge rates which vary. The rates will all be disclosed in the fee petition and accompanying affidavits.

With respect to cy pres, we are currently in the process of developing the mechanism for selecting cy pres recipients. We will submit the final list of cy pres recipients to Judge Ware for his review. If you have organizations you would like to propose as potential recipients of a payment from the Common Fund, please let me know.

Gary Mason

Gary E. Mason Mason LLP

Gary E. Mason Mason LLP

**Attachment C: Second Email Received From Class Counsel**

From: Gary E. Mason <GMason@masonlawdc.com>  
To: Andrew MacKie-Mason <adrewmm@uchicago.edu>  
Date: Sat, Dec 4, 2010 at 3:46 PM  
Subject: Re: Google Buzz Settlement

Pursuant to the Court's order, plaintiffs' fee petition is due December 20. There is no schedule in place at this time for selection of the cy pres recipients and I do not expect any final decisions will be made on any cy pres recipients until after final approval. Consequently, you are correct - neither the specific data you requested concerning attorneys fee nor the identify [sic] of the cy pres recipients will available prior to the exclusion date.

Gary E. Mason  
Mason LLP



# Attachment D: Proof of Class Membership

The screenshot shows a Gmail inbox on a desktop browser. The address bar shows the URL <https://mail.google.com/mail/?ui=2&ik=190buz>. The email list contains three messages:

- Message 1:** From Dylan LaRios, subject "Insultful: Denard Robinson is down... Uh-oh".
- Message 2:** From Andrew Mackie-McGee, subject "Michigan Proposal 10-2: More information". The body text reads: "This link has been getting a lot of visits from people looking for information about the ballot proposals in Michigan this year and I sent them my analysis of proposal 10-2 is quite up to par. So, here's an update. As a reminder, proposal 10-2 would bar people within a broad class of felons from holding public office whether elected or appointed, where they have adversely used public money. This proposal is a bad idea and should be defeated or, possibly, revised in some manner."
  - First, as it applies to election officials, the proposal would take away voters' discretion to elect people who they think are up to the job. If there is a person who has violated the public's trust, people won't elect them, unless there's some other reason for the voters to trust the person. Voters in a particular election will be better at judging the cases of felons than voters in the election are at weighing the hypothetical. For the reason alone, the broad language of the proposal should be voted down.
  - When it comes to high-level appointed officials, the proposal would take away the discretion of the elected officials who make those appointments. Like voters who pick elected officials, the officials who make the appointments will be better able to weigh the various factors on a case-by-case basis.
  - The proposal takes away judicial discretion. It might be appropriate to make a prohibition on future office holding a possible punishment for certain crimes, because in that circumstance judges could weigh the factors. But for that to work, they would need discretion.
  - This proposal would create an unconstitutional ex post facto punishment when applied to people who have already committed the crimes referenced in the proposal. If they've already been sentenced, we shouldn't restrict their liberty more since the fact.
- Message 3:** From Alan Stella, subject "HAPPY BIRTHDAY @NakedNights!!".