EXHIBIT 23

EXHIBIT 23

REPLY DECLARATION OF GARY E. MASON

Devin Shoecraft
3286 A Mission Blvd.
San Diego, CA 92109

November 3, 2010

Hon. James Ware
c/o Clerk of the United States District Court
for the Northern District of California
San Jose Division
280 South 1st Street
San Jose, CA 95113

RE: Objection to proposed settlement, *In re Google Buzz User Privacy Litigation*, Case. No. 10-cv-00672-JW
Fairness Hearing: January 31, 2011, 9:00 a.m., Courtroom 8

To this Honorable Court:

Please take notice that pursuant to FRCP 23(e)(5), I hereby object to the proposed settlement in the above-referenced litigation.

I am a "class member." At all relevant times during the defined class period, I was and currently am a registered user of Google Gmail at the following address:

devinshoecraft@gmail.com

Specifically, I object to ¶¶ 3.4(a)-(d) and ¶ 10.1 of the settlement agreement, which collectively provide that the defendant is to deposit $8,500,000.00 into an interest bearing "Common Fund," out of which plaintiffs' counsel will seek an award of attorneys' fees totaling 30% of the fund by application to this Court,[1] with the bulk of the remaining funds to be dispersed to unidentified "existing organizations focused on Internet privacy policy or privacy education," to be named at a later date by mutual agreement of the parties.

First, this Court has no basis to find that the disbursement of millions of dollars from the Common Fund to unidentified "organizations" to be chosen by the parties represents a "fair, reasonable, and adequate" disposition of this matter from the perspective of the class members. FRCP 23(e)(2). There is no basis to find that class members will incur any appreciable benefit whatsoever by this disbursement. The settlement fails to define the extent to which an "organization" must be "focused" on "privacy policy" or "education" in order to be eligible to receive disbursements from the common fund. The settlement fails to ensure that the recipient "organizations" will apply the funds towards a purpose benefiting the class members (as opposed to overhead and salaries). The settlement places no limitation whatsoever on the discretion of the parties in determining the appropriate recipients of the funds, beyond the requirement that the recipient "exists" and that it "focuses" in some undefined degree on "privacy."

[1] The Court may note that the six-page "Notice of Settlement" posted at www.buzzclassaction.com/docs/notice.pdf represents (at page 5 thereto) that plaintiffs' counsel will only seek an award of 25% of the common fund. To be clear, the objection set forth herein is maintained regardless of whether counsel are seeking 30% of the fund ($2,550,000) or a mere 25% of the fund ($2,125,000.00).

Indeed, defendant Google Inc. *itself* meets the definition of an appropriate recipient of these settlement funds. Google is indisputably an "organization" that "focuses" on "Internet privacy policy or privacy education," as evidenced by the very allegations at issue in this lawsuit. The same point is applicable to class counsel, whose maintenance of the "buzzclassaction.com" website would also make counsel a potentially appropriate recipient of funds under the vague and ambiguous definition set forth in ¶ 3.4(a) of the settlement agreement. Nothing in the agreement prevents the parties from simply colluding and thereafter "dividing the spoils" amongst themselves once the administration of the fund is out of the hands of this Court.

Moreover, there is no apparent factual basis for class counsels' assurance, found at page 4, ¶ 7 of the settlement notice, that "few, if any, Class Members suffered compensable actual damages" as a result of defendant's acts and omissions alleged in the operative complaint. For example, paragraph 30 of the operative complaint sets forth multiple instances of persons who clearly have suffered actual, compensable harm as a result of defendant's conduct. Paragraph 39 of the operative complaint states:

> By automatically sharing user information without user authorization or knowledge, Google Buzz does precisely the opposite. Far from granting its customers a fine-grained set of controls by which users can control the use of their personal data, the Google Buzz program is an indiscriminate bludgeon, forcing all Gmail users to share their personal data in a public forum without their consent or knowledge.

If these allegations are true, I or other members of the class may very well have suffered a serious breach of our personal privacy, for which defendant would face substantially liability. How exactly does class counsel now reach the conclusion that, despite the serious allegations in the complaint, "few, if any" class members actually suffered damages? I see nothing indicating that the named plaintiffs have done anything at all to investigate the merits of their allegations beyond reviewing "documents and information regarding the operation of Google Buzz" that were voluntarily produced by defendant. [Settlement agreement at ¶ 3.1] What assurances do I have that from their review of these unspecified "documents," class counsel has properly determined that I, or other members of the class, suffered no compensable loss? The effect of this settlement will be to forever bar any claim against defendant arising out of the alleged privacy breach at issue in this action. It is unfair and unreasonable to allow the plaintiffs to bind the millions of users of defendant's products to this settlement agreement when it is so clear that counsel has done little to nothing to investigate the merits of the allegations in the complaint. It is implausible that in the seven months between the filing of this lawsuit and the filing of plaintiffs' notice of settlement, class counsel was able to determine that no members of the class suffered compensable harm. The expeditious manner in which the parties reached a settlement, without the plaintiffs conducting any discovery whatsoever, creates a strong inference that class counsel is more interested in personal financial gain than in "fairly and adequately protect[ing] the interests" of class members. FRCP 23(a)(4).

Finally, the settlement's provision for an award of more than two-and-half million dollars in attorneys' fees for plaintiffs' class counsel is so patently unreasonable that it shocks the conscience. This action was filed on February 17, 2010; the motion for an order approving settlement was filed September 3, 2010 – less than seven months elapsed from filing to settlement. Over the course of this litigation, counsel can expect to receive roughly $200,000 for

each month in which this case was "prosecuted," and yet there is no indication from the records of this Court or any other source that counsel actually rendered legal services warranting such an exorbitant fee. There was no case management conference in this matter, no initial disclosures, no discovery, and a grand total of 50 filings appear on the Court's docket to date. While it is true that the seven named plaintiffs were represented by no less than fourteen (14) separate law firms, it is inconceivable that counsel have collectively rendered legal services reasonably valued at more than $2.5 million dollars.

As explained in *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003):

> Attorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is "fundamentally fair, adequate, and reasonable." Fed. R. Civ. P. 23(e). There is no exception in Rule 23(e) for fee provisions contained in proposed class action settlement agreements. Thus, to avoid abdicating its responsibility to review the agreement for the protection of the class, a district court must carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement. *See, e.g., Piambino v. Bailey*, 610 F.2d 1306, 1328 (5th Cir. 1980) ("the District Court abdicated its responsibility to assess the reasonableness of attorneys' fees proposed under a settlement of a class action, and its approval of the settlement must be reversed on this ground alone"); *Strong*, 137 F.3d at 848-50; *In re GMC*, 55 F.3d at 819-20; *Jones v. Amalgamated Warbasse Houses, Inc.*, 721 F.2d 881, 884 (2d Cir. 1983) (holding with regard to attorneys' fees that "[t]he presence of an arms' length negotiated agreement among the parties weighs strongly in favor of approval, but such an agreement is not binding on the court."

A blanket award of $2.5 million to class counsel for litigation that lasted well under a year, involved no discovery or any other work-intensive motions or pleadings is not reasonable. Respectfully, this fee provision at least creates the appearance that this litigation is designed only to benefit a few "professional plaintiffs" and their attorneys without actually providing any benefit to class members such as myself, whose existence and standing as a class-member has been effectively exploited for counsels' personal enrichment. The request is particularly troubling given that counsel may actually be harming members of the class by entering into a settlement before thoroughly investigating the merits of the plaintiffs' allegations, thus causing the class members to forever lose potentially meritorious legal claims against the defendant.

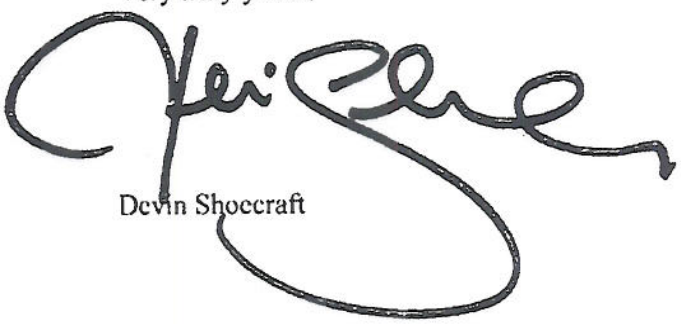
I would respectfully request the Court instead order that any award of attorneys' fees will be calculated pursuant to the "lodestar" method, whereby each attorney is required to submit evidence establishing both his or her reasonable hourly rate and an accounting of the time reasonable spent prosecuting this action on behalf of the class. See, *Stanton, supra*, 327 F.3d at 968; *City of Burlingame v. Dague*, 505 U.S. 557, 562-563 (1992). Requiring counsel to make a record establishing what precisely was done to justify such a massive payment will provide transparency and ensure confidence in class members that their best interests have been served in this matter.

In considering the request for fees, this Court acts in a fiduciary capacity on behalf of the class. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002). I would respectfully submit that the Court will best fulfill this role by requiring class counsel to produce substantial

evidence showing that the fee requested – an amount of money greater than what many of the class members will likely earn over the course of their entire lives – is a "fair" and "reasonable" fee for the legal services at issue.

I thank the Court for its consideration of the foregoing. Please note that neither I nor any person acting on my behalf will appear at the fairness hearing or any other proceeding in this matter, and I will respectfully submit on the judgment of the Court as to the points raised herein. No personal response to this written objection is requested or required.

Very truly yours,



Devin Shoecraft

cc: Gary Mason, Esq.
Mason LLP
1625 Massachusetts Ave., NW
Suite 605
Washington, DC 20036
Attorneys for Plaintiffs

David J. Burman, Esq.
Perkins Coie LLP
1201 Third Avenue
Suite 4800
Seattle, WA 98101-3099
Attorneys for Defendant