

1 Maureen M. Phillips
 2 461 Windward Way
 3 Avon Lake, Ohio 44012
 4 Voice (440) 933-5120
 5 Pro Se Objecter
 6

7 **THE UNITED STATES DISTRICT COURT**
 8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 9 **SAN JOSE DIVISION**

10
 11 IN RE: GOOGLE BUZZ USER PRIVACY) Case No. 10-CV-00672-JW
 12 LITIGATION)
 13) Judge: James Ware
 14)
 15) **OBJECTION TO PROPOSED**
 16) **CLASS ACTION SETTLEMENT**
 17)

18 NOW COMES, Maureen M. Phillips (“Phillips”), proceeding in pro se as a member of
 19 the class in the above referenced suit against Google Inc. (“Google” or “Defendant”), and files
 20 his Objections to Proposed Class Action Settlement. In support of his objections, Phillips would
 21 respectfully submit to the Court the following:

22 1. Phillips is a member of the class through her Gmail account having registered
 23 prior to February 9, 2010 and was presented with the opportunity to use Google Buzz before
 24 November 2, 2010, as evidenced by the attached email, Exhibit A.

25 2. Phillips hereby gives notice that he does not intend to attend the Fairness Hearing
 26 presently scheduled for January 31, 2011 at 9:00 a.m. in the United States District Court of
 27 Northern California, located at 280 South First Street, Courtroom 8, 4th Floor, San Jose, CA
 28 95113. Phillips will rely on his written Objections.

29 3. Phillips objects to the proposed class action settlement and respectfully requests
 30 the Court to reject it because it is unfair, unreasonable, and inadequate. Specifically, Phillips
 31 objects to the proposed class action settlement for the following reasons:

1 **A. Lack of any benefits from the Common Fund.** Class members receive
2 absolutely nothing from the “Common Fund”, including those injured like myself by the
3 invasion of my privacy rights. The Consolidated and Amended Complaint contains claims
4 pertaining to the invasion of these privacy rights, Count I- Violations Stored Communications
5 Act, Count II-Violations Wiretap Act, Count III- Violations Computer Fraud and Abuse Act, and
6 Count IV- Public Disclosure Tort, for which class members like myself received absolutely
7 nothing from the Common Fund in exchange for a complete release of all claims. Whereas, Class
8 Counsel can receive up to 30% of the Common Fund of 8.5 million, 2.55 million for attorney
9 fees and costs, and 100% of the remaining balance goes to *cy pres* recipients, non-profit and
10 charitable organizations, not named, non-identified, unknown, in unknown amounts, to be
11 determined in the future. Class members, including those injured like myself, deserve better than
12 a blank check with respect to any *cy pres* distributions. Furthermore, the Class Representatives
13 have requested incentive awards of 2,500 each from the Common Fund, whereas class members
14 receive absolutely nothing from the Common Fund.

15 **B. Attorney Fees are Excessive.** Class members receive absolutely nothing from the
16 Common Fund. Whereas, Class Counsel can receive up to 30% of the Common Fund of 8.5
17 million, 2.55 million for attorney fees and costs. Class Counsel has indicated it will request
18 attorney fees of 25% of the Common Fund. There is **no** “lodestar” computation to judge the
19 reasonableness of this percentage of Common Fund request. There is **no** documentation for the
20 amount of time spent on the litigation. There is **no** computation of hours worked. There is **no**
21 documentation for what a reasonable hourly rate would be in the “lodestar” computation. There
22 is **no** documentation for the standard factors which are considered in determining the
23 reasonableness of an hourly rate. This case has been settled on a preliminary basis very early on

1 in the litigation process further bringing into question the reasonableness of the percentage of
2 Common Fund request and the percentage requested. This Court should defer any ruling on the
3 Settlement until such time as it makes a determination on the recently filed Class Counsel
4 request for attorney fees. They both should be determined contemporaneously since the amount
5 of attorney fees is critical to a determination of the reasonableness of the Settlement. This Court
6 should defer any ruling on the Class Counsel request for attorney fees recently filed to provide
7 opportunity for Objectors to review and supplement their Objections with respect to the
8 excessive attorney fees stated in the proposed Settlement, and to specifically make their
9 Objections to the recently filed request for attorney fees filed by Class Counsel.

10 **C. Cy pres Distributions are Improper.** Class members receive absolutely nothing
11 from the Common Fund. Whereas, the remaining balance of the Common Fund after attorney
12 fees and costs will go to the *cy pres* recipients, non-profit and charitable organizations, not
13 named, non-identified, unknown, in unknown amounts, to be determined in the future. *Cy pres*
14 recipients who suffered no injuries received 100% of the remaining balance of the Common
15 Fund. Whereas, class members injured by the invasion of their privacy rights receive **no** benefit.
16 Any balance of the Common Fund to be spent on public awareness and education should be
17 specifically directed to the class members who have been injured, informing, instructing and
18 educating them how to deal with the invasion of privacy rights, how to minimize its effects, and
19 curative and restoration means available to them, rather than being directed to the general public
20 at large who have **not** been injured by the Defendants' Google actions and conduct. A specific
21 detail plan for public awareness and education directed to the class members must be part of any
22 adopted Settlement. There is none.

1 **D. No Injunctive Relief Granted.** The class requested injunctive relief enjoining
2 and preventing Google from continuing to operate its Buzz program without appropriate
3 safeguards, default provisions, and opt-in mechanism to ensure that the private data of its users is
4 not improperly disclosed or transmitted in the future [Prayer for Relief, Par. 104 (C)]. The
5 Settlement provides for **no** injunctive relief, **no** default provisions, **no** safeguards, and **no** opt-in
6 mechanisms, to protect and assure class members against future violations and invasion of their
7 privacy rights. This class action is solely based upon the invasion of the members' privacy
8 rights, but the Settlement totally and completely ignores these safeguards and protections. An
9 intangible benefit to class members, no more future invasion of their privacy rights and the
10 minimization of this exposure, has been ignored, not addressed, and abandoned. Why settle a
11 class action case based solely on the invasion of privacy rights, without these safeguards,
12 protections and injunctive relief. Without these, the Settlement is unconscionable.

13 **E. Conflicts of Interests and Self Dealing.** There is an inherent apparent conflict of
14 interest and self dealing evidenced in the Settlement, the lack of any benefits in the common
15 fund for the class members, excessive attorney fees by Class Counsel, the improper distribution
16 of 100% of the balance of the Common Fund to *cy pres* recipients, and the lack of any injunctive
17 relief being granted. The class representatives are **not** fairly and adequately protecting the
18 interests of the class, but are more concerned about the protecting their incentive awards. Class
19 counsel is more concerned about their attorney fees, rather than protecting the privacy rights of
20 the class members. Class Counsel is requesting \$2.55 million in fees and expenses for a
21 settlement that is providing **no** benefit to the class. This is exactly backwards. The reality is this
22 is a fee-driven settlement. It is unclear whether the lack of recovery for class members is
23 because class counsel tacitly colluded with the Defendant or because class counsel simply

1 recklessly disregarded their obligation to negotiate a settlement that was likely to provide
2 meaningful recovery to their clients. But in either situation, the attorneys have failed to meet the
3 standard of Rule 23 (a) (4) and Rule 23 (g) (4).

4 **F. Individualization of Claims and Damages.** The class is quite large, 31.2 million
5 Gmail accounts as of January 2009. The class is highly individualized and diverse, being
6 composed of businesses, individuals, consumers, injured, non-injured, professionals, non-
7 professionals, and photo users, and having differences in the volume of use and type of use. The
8 injuries and damages are different, distinct, and unique based upon these different categories of
9 Google Buzz users. The extremely broad non-descriptive nature and designation of the class
10 makes it non-manageable as a class action in its present format. The individualization of claims
11 and damages predominate over the commonality of issues over liability for actions and conduct
12 constituting the violations of the class members' privacy rights. [Rule 23 (b) (3)]

13 4. Phillips respectfully adopts and incorporates into these Objections any and all
14 other well-taken, timely filed Objections that are not inconsistent with these Objections.

15 5. The class members have a legally protectable interest in this litigation. That
16 interest will be impacted by the proposed settlement agreement, particularly the legal fees that
17 are proposed to be paid.

18 6. These Objections, presented to the Court as a matter of right, are properly and
19 timely filed by Phillips. All of the legally required prerequisites material to these Objections
20 have been met.

21 7. Any and all future correspondence, communications or questions regarding my
22 Objections should be directed to: Gerald W. Phillips, Cannata Phillips LPA LLC, 9555 Vista
23 Way Suite 200, Garfield Hts., Ohio 44125, Fax No. (440) 930-0747, Phone No. (440) 933-9142.

1 WHEREFORE, class member Andrew J. Phillips respectfully requests that this Court:

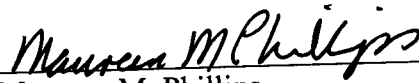
2 A. Upon proper hearing, sustain these Objections;

3 B. Continue the issue of attorneys' fees and expense reimbursement for a subsequent
4 hearing;

5 C. Upon proper hearing, enter such Orders as are necessary and just to adjudicate
6 these Objections and to alleviate the inherent unfairness, inadequacies, and unreasonableness of
7 the proposed settlement.

8
9
10
11
12
13
14
15
16
17
18
19
20
21

Respectfully submitted,


Maureen M. Phillips
461 Windward Way
Avon Lake, Ohio 44012
Voice (440) 933-5120
Pro Se Objector


CERTIFICATE OF SERVICE

1
2 A copy of the foregoing Objections to Proposed Class Action Settlement was mailed by
3 overnight express mail to the Clerk of Court, and by ordinary first class U.S. Mail, postage
4 prepaid to the following on January 8, 2011:
5

6 Clerk of Court
7 U.S. District Court
8 Northern District of California
9 San Jose Division
10 280 South First Street
11 San Jose, CA 95113
12
13

Gary Mason, Esq.
Mason LLP
1625 Massachusetts Ave., NW
Suite 605
Washington, DC 20036
Class Counsel

14 David J. Burman, Esq.
15 Perkins Coie LLP
16 1201 Third Avenue
17 Suite 4800
18 Seattle, WA 98101-3099
19 Defense Counsel
20
21
22
23


Maureen M. Phillips
Pro Se Objector
24
25
26
27
28
29

Gmail - 8 pictures for you



Maureen Phillips <mmphill49@gmail.com>

8 pictures for you

1 message

Maureen Phillips <mmphill49@gmail.com>

To: T-L_Smith@juno.com

Thu, May 13, 2010 at 12:24 PM

does this look like anything to you. I think it is a really mini columbine about 3 inches high.
You have been sent 8 pictures.

IMG_2161.JPG
IMG_2162.JPG
IMG_2163.JPG
IMG_2164.JPG
IMG_2165.JPG
IMG_2166.JPG
IMG_2167.JPG
IMG_2168.JPG

These pictures were sent with Picasa, from Google.
Try it out here: <http://picasa.google.com/>

EXHIBIT A