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NORTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 JENNIFER LOCSIN and JAMES
15 BLACKWELL, individually and on behalf of
16 all others similarly situated,
17
18 Plaintiffs,
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20 v.
21
22 GOOGLE, INC.,
23
24 Defendant.

CASE NO.: **C10-03272 PVT**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

24 Plaintiffs JENNIFER LOCSIN and JAMES BLACKWELL ("Plaintiffs"), by and through
25 their attorneys, allege on personal knowledge as to all facts related to themselves and on
26 information and belief as to all other matters, which are based upon, among other things, the
27 investigation made by Plaintiffs through their counsel and personal knowledge, as follows:
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PRELIMINARY STATEMENT

1. This is a class action lawsuit, brought by, and on behalf of, a nationwide class of individuals whose privacy rights were violated by the actions of Google Inc. (“Google”) through its Street View service.

2. Google operates a service called Street View, which is incorporated into its maps and earth view services. Street View allows users of its Maps and Google Earth Service to view actual photographs of addresses throughout the United States and the world. To provide this service, Google has equipped vehicles with specially designed cameras which take millions of photographs as these camera-equipped vehicles drive our nation’s streets and streets internationally.

3. Unbeknownst to the world until May 2010, Google also equipped these vehicles with proprietary technology that records all data being transmitted on open Wi-Fi networks within range as they were being driven around photographing most of the U.S and much of the world.

5. When launching its Street View service, Google recorded every website visited, every video watched and every email sent and or received over open Wi-Fi networks while in range of Google’s Street View vehicles. However, Google conveniently failed to tell and or provide anyone with clear information detailing the nature of the new service.

6. Google has publicly admitted that its Street View program presents privacy concerns, and has made several waves of modifications to the program. However, the modifications Google has made fall short and do not go far enough to address the problem. Furthermore, Google’s actions have already caused damage because the Street View service disclosed private user information the moment it was launched.

7. Google’s public disclosure of private user data violates users’ rights under the Federal Wiretap Act, the Federal Computer Fraud and Abuse Act, the Federal Stored Communications Act, and California common law.

JURISDICTION AND VENUE

8. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 for

1 deprivation of rights guaranteed under the Wiretap Act, 18 U.S.C. § 2510 *et seq.*, the Stored
2 Communications Act, 18 U.S.C. § 2701 *et seq.*, and the Computer Fraud and Abuse Act, 18
3 U.S.C. § 1030 *et seq.* This Court also has jurisdiction pursuant to 28 U.S.C. § 1367(a) over
4 Plaintiffs' state common law claims. Jurisdiction is also founded upon 28 U.S.C. § 1332(d) in
5 that this is a putative class action with more than 100 class members, more than \$5 million in
6 controversy, and minimal diversity of citizenship.

7 9. Venue is appropriate pursuant to 28 U.S.C. § 1391(b) and (c). A substantial
8 portion of the events and conduct giving rise to the violations alleged in this complaint occurred
9 in this District. Defendant Google resides here as it maintains its principle office and
10 headquarters in this District.

11 PARTIES

12 10. Plaintiff Jennifer Locsin is a resident of Contra Costa County, California. During all
13 relevant times, she used an open Wi-Fi network at her residence, and her residence is viewable
14 on Google Street View. The images available on Street View confirm that Plaintiff Locsin lived
15 at this residence while the Google Street View vehicles photographed her home.

16 11. Plaintiff James Blackwell is a resident of Alameda County, California. During all
17 relevant times, he used an open Wi-Fi network at his residence, and his residence is viewable on
18 Google Street View. The images available on Street View confirm that Plaintiff Blackwell lived
19 at this residence while the Google Street View vehicles photographed his home.

20 12. Defendant Google Inc. develops and operates a variety of Internet-based products
21 and services, including the world's most visited website, www.google.com. It is a Delaware
22 Corporation headquartered in Santa Clara County, California, at 1600 Amphitheatre Parkway,
23 Mountain View, California 94043. Google Inc. does business throughout the State of California
24 and the nation.

25 COMMON FACTS

26 13. On or about May 25, 2007, Google launched an enhancement to its Maps and Earth
27 programs named Google Street View.
28

1 14. Google Street View initially covered only five U.S. cities, but now covers most of
2 the United States of America and much of Australia, Canada, Europe, Japan, Mexico and New
3 Zealand to name just a few of the foreign nations.

4 15. Google Street View features panoramic photographs of the streets and surrounding
5 environs of the areas it covers. Thus upon entering a specific location and or address into Street
6 View, users can interact with the panoramas by panning and zooming so as to view exactly how
7 that particular location and or address appears.

8 16. Google has captured millions of photographs necessary for these connected
9 panoramas by traveling the globe in especially equipped vehicles. These vehicles are equipped
10 with nine directional cameras that record continual and connected 360 –degree horizontal/290-
11 degree vertical photographs of the streets traveled.

12 17. However, it has been disclosed that Google’s Street View vehicles are equipped with
13 more than just cameras and are being used to capture more than just images.

14 18. The vehicles are also equipped with antennas for gathering cellular and or Wi-Fi
15 network data.

16 19. On April 27, 2010 Google posted an entry on its European Public Policy Blog in
17 response to inquiries a from the German Data Protection Authority(“DPA”) concerning the
18 specific data Google’s Street View vehicles collect. In this post, Google explains that it collects
19 the SSID (essentially Wi-Fi network name) and MAC address (basically the ID number of the
20 Wi-Fi network’s hardware).

21 20. Google goes on to explain in its post:

22 **What do you mean when you talk about Wi-Fi network**
23 **information?**

24 Wi-Fi networks broadcast information that identifies the network and how that
25 network operates. That includes SSID data (i.e. the network name) and MAC address
26 (a unique number given to a device like a Wi-Fi router).

27 Networks also send information to other computers that are using the network, called
28 payload data, but Google does not collect or store payload data.

1 <http://googlepolicyeurope.blogspot.com/2010/04/data-collected-by-google-cats.html>.

2 21. "Payload data" refers to the actual data being carries by a network, such as the
3 content of the websites, passwords entered, and the bodies of the emails. In short, it is the content
4 an individual views and uses online.
5

6 23. Google represented April 27, 2010 that it does not collect payload data.

7 24. However, on or about Friday, May 14, 2010, Google announced via another blog
8 post that it had been using its Street View to collect payload data of open Wi-Fi networks for
9 several years.
10

11 25. Google contends the method for collecting the data was developed in 2006 before the
12 launch of Street View. Ant that it launched the payload data collection data in 2007, the same
13 year it launched Street View.

14 26. On or about May 19, 2010, while speaking at the Google I/O conference, Google
15 cofounder Sergey Brinstated said the following about this issue:
16

17 "In short, let me just say that we screwed up. I'm not going to make any excuses about
18 it. The answer is yes. We so have a lot of internal controls but obviously they didn't prevent
19 this error form occurring." [www.zdnet.com/blog/btl/sergey-brin-we-screwed-up-on-wifi-](http://www.zdnet.com/blog/btl/sergey-brin-we-screwed-up-on-wifi-data-collection/34579)
20 [data-collection/34579](http://www.zdnet.com/blog/btl/sergey-brin-we-screwed-up-on-wifi-data-collection/34579)
21

22 27. While Google has characterized this privacy invasion as an "error," it has not
23 identified the quantity and or nature if the data collected. Additionally, it has not disclosed
24 where the data resides, whether it has been copied, transmitted to other persons and or entities
25 and or who has accessed the data in the three years Google has gathered it.
26
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1 **Google Wants to Destroy the Evidence**

2 28. In a blog post on or about May 14, 2010, Google stated it was working with
3 regulators to destroy the collected data.

4
5 29. On or about May 17, 2010, in an update to the May 14 bog post, Google stated it
6 worked with a third-party vendor to destroy the data collected in Ireland. The third-party vendor
7 confirmed the destruction of the data collected in Ireland in a letter dated on or about May 16,
8 2010 letter.

9
10 30. On or about May 21, 2010, the London Financial Times reported Google had agreed
11 to halt the destruction of the collected data.

12 **Facts Relating to Plaintiffs**

13 31. At all relevant times, Plaintiffs have used an open Wi-Fi network at their place of
14 residence which are the type of networks susceptible to unauthorized access by Google Street
15 View vehicles.

16
17 32. At all times relevant, Plaintiffs place of residence was captured by Google Street
18 View, meaning on information and belief, that Google used its Street View vehicle(s) to capture
19 any and all payload data being transmitted over their open Wi-Fi network.

20 **Google Admits to Privacy Problems with Street View**

21 25. On Thursday, February 11, 2010, Google reacted to the stream of negative press and
22 blog postings by changing some of the default settings in Street View.

23 26. Also on February 11, Google issued an official blog posting in which the company
24 admitted that many users had concerns that Street View violated their privacy. Todd Jackson,
25 *Millions of Street View Users, and Improvements Based on Your Feedback*, February 11, 2010,
26 available at <http://gmailblog.blogspot.com/>.

27 27. Despite ongoing modifications, Google has not sufficiently altered the Street View
28

1 Program to remedy the ongoing privacy violations caused by Street View. For example, the
2 information sharing features of the Street View program continue to operate unless the user
3 affirmatively opts out of these features.

4 28. Google's official Privacy Policy assures customers that, because "[p]eople have
5 different privacy concerns and needs. . . . Google strives to offer [its users] *meaningful and*
6 *fine grained choices* over the use of their personal information." Google Privacy Policy,
7 <http://www.google.com/privacy.html>.

8 29. By automatically sharing user information without user authorization or
9 knowledge, Street View does precisely the opposite. Far from granting its customers well tuned
10 controls by which users can control the use of their personal data, the Street View program is an
11 indiscriminate bludgeon, forcing all Gmail users to share their personal data in a public forum
12 without their consent or knowledge.

13 CLASS ALLEGATIONS

14 30. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on behalf of
15 themselves and the following class:

16 All persons in the United States whose Wi-Fi payload data was collected by Google.
17 Street View from May 25, 2007 to and including and May 14, 2010.

18 Excluded from the class are Defendant, its legal representatives, assigns and successors, and any
19 entity in which Defendant has a controlling interest. Also excluded is the judge to who this case
20 is assigned and the judge's immediate family.

21 31. The putative class members are so numerous that joinder of individual
22 claims are impracticable.

23 32. Plaintiffs' claims are typical of the claims of all of the other putative class members.

24 33. Plaintiff will fairly and adequately represent and protect the interests of the other
25 putative class members. Plaintiff has retained counsel with substantial experience in prosecuting
26 complex litigation and class actions. Plaintiffs and their counsel are committed to vigorously
27 prosecuting this action on behalf of the putative class members, and have the financial resources
28

1 to do so, neither Plaintiffs nor their counsel have any interest adverse to those of the other
2 putative class members.

3 34. Absent a class action, most putative class members would find the cost of litigating
4 their claims to be prohibitive and will have no effective remedy. The class treatment of common
5 questions of law and fact is also superior to multiple individual actions or piecemeal litigation in
6 that it conserves the resources of the courts and the litigants and promotes consistency and
7 efficiency of adjudication.

8 35. Google has acted and failed to act on grounds generally applicable to Plaintiffs and
9 the other putative class members, requiring the Court's imposition of uniform relief to ensure
10 compatible standards of conduct toward the putative class members.

11 36. The factual and legal bases of Google's liability to Plaintiffs and to the other putative
12 class members are the same, resulting in injury to Plaintiffs and to the putative class members.
13 Plaintiffs and the other putative class members have all suffered harm and damages because of
14 Google's wrongful conduct.

15
16 37. Plaintiff reserves the right to change, modify and or amend the class definition stated.

17 38. There are many questions of law and fact common to the claims of Plaintiffs and to
18 the putative class, and those questions predominate over any questions that may affect individual
19 putative class members. Common questions for the class include but are not limited to the
20 following:
21

22 (a) Whether Google's conduct described herein violates the Wiretap Act;

23 (b) Whether Google's conduct described herein violates California's Computer Crime
24 Law; and,

25 (c) Whether Google's practices described herein constitute unfair and deceptive acts or
26 practices;
27

28 (d) Whether Google's practices described herein constitute breach of contract.

1 39. The questions of law and fact common to the putative class members predominate
2 over any questions affecting only individual members and a class action is superior to all other
3 available methods for the fair and efficient adjudication of this controversy.

4
5 **FIRST CAUSE OF ACTION**
6 **Violation of 18 U.S.C Section 1030, the computer Fraud and abuse Act (“CFAA”)**
7 **(On behalf of Plaintiffs and the putative class)**

8 40. 18 U.S.C Section 2520(a) authorizes private rights of action under the Wiretap Act.

9 41. Google violated 18 U.S.C Section 2520(1)(a) by intentionally intercepting and or
10 endeavoring to intercept electronic communications carries to Plaintiffs and putative class
11 members Wi-Fi networks without authorization, knowledge, or consent while the
12 communications were en route, via its Street View Wi-Fi Data Collection practices.

13 42. The transmission of data by Plaintiffs and putative class members over their Wi-Fi
14 networks between their computers and the Internet constitute “electronic communications”
15 within the meaning of 18 U.S.C Section 2510 (12).

16 43. Google’s Wi-Fi Data Collection practices as described herein constitute
17 “interceptions” within the meaning of Section 2510(4).

18 44. Plaintiff brings this cause of action within two (2) years of the date he first had a
19 reasonable opportunity to discover the violation.

20 45. Plaintiff seeks such a preliminary and equitable or declaratory relief as may be
21 appropriate, damages consistent with Section 2520(c), and a reasonable attorneys’ fee and costs.

22 46. Plaintiff seeks the maximum actual damages, profit disgorgement, or statutory
23 damages allowed under Section 2520(c)(2)(A) or (B).

24
25 **SECOND CAUSE OF ACTION**
26 **Violation of 18 U.S.C Section 1030, the computer Fraud and abuse Act (“CFAA”)**
27 **(On behalf of Plaintiffs and the class)**
28

1 47. Plaintiff incorporates by reference the foregoing allegations.

2 48. 18 U.S.C Section 1030 (g) authorizes private rights of action under the CFAA
3 provided the “conduct involves 1 of the factors set forth in sub-clauses (I), (II), (III), (IV), or (V)
4 of subsection (c) (4) (A) (i).”
5

6 49. Google 18 U.S.C Section 1030(a) (2) (C) by intentionally accessing the computers,
7 as defined by Section 1030(e) (1), of Plaintiffs and putative class members without authorization
8 via its street View Wi-Fi collection equipment and activities and thereby obtaining payload data
9 from their protected computers, as defined by Section 1030(e) (2) (B) because they are used in
10 interstate commerce, of Plaintiffs and putative class members.
11

12 50. Google violated 18 U.S.C Section 1030(a) (5) (a) by knowingly causing the
13 transmission of a program, information, code, or command within Google’s Street View Wi-Fi
14 data collection equipment to gather the payload data of Plaintiffs and putative class members’
15 protected computers as defined in 18 U.S.C Section 1030(e) (2) (B) because they are used in
16 interstate commerce and/or communication. By gathering Plaintiffs and putative class members,
17 payload data, Google intentionally caused damage without authorization to Plaintiffs and
18 putative class members’ protected computers by impairing the integrity of information and/or
19 data.
20
21

22 51. Google violated U.S.C Section 1030(a)(5)(C) by intentionally accessing Plaintiffs
23 and putative class members’ protected computers without authorization, and as a result, caused
24 damage to the Plaintiffs and putative class members’ protected computers by impairing the
25 integrity of information and/or data.
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1 52. Because of these takings, Google's conduct has caused a loss to one or more persons
2 during any one-year period aggregating at least \$5,000 in value in real economic damages, as
3 articulated in Section 1030 (c)(4)(a)(i)(I) and required by Section 1030(g).
4

5 53. Plaintiffs and putative class members have additionally suffered loss by reason of
6 these violations, including, without limitation, violation of the right of privacy and economic
7 damages.

8 Plaintiff brings this cause of action within two (2) years if the date of the discovery of the
9 damage.
10

11 54. Google's action, as described herein, is not based on negligent design or manufacture
12 of its Street View Wi-Fi data collection equipment, but rather intentional conduct design, and
13 manufacture.

14 55. Google's unlawful access to Plaintiffs' computer network has also caused Plaintiff
15 irreparable injury. Unless restrained and enjoined, Google will continue to commit such acts.
16 Plaintiffs remedy at law is not adequate to compensate him for these inflicted and threatened
17 injuries, entitling Plaintiff to remedies, including injunctive relief, as provided by Section
18 1030(g).
19

20 THIRD CAUSE OF ACTION

21 Violation of Cal. Penal Code Section 501, California's Computer Crime Law ("CCCL")
22 (On behalf of Plaintiffs and the putative class)

23 56. Plaintiff incorporates by reference the foregoing allegations.

24 57. Google knowingly used data, computers, computer systems, or computer networks-
25 its Street View Wi-Fi data Collection equipment by collecting Plaintiffs and putative class
26 members payload data to wrongfully control and or obtain data, the payload data, in violation of
27 Section 512(c)(1).
28

1 58. Google knowingly accessed and without permission took, copied and or made use of
2 Plaintiffs and putative class members' payload data in violation of Section 502(c)(2).

3 59. Google knowingly and without permission used and or caused to be used computer
4 services by impermissibly accessing , collecting and transmitting Plaintiffs and class' members
5 payload data in violation of Section 502(c)(3).

6 60. Google knowingly and without permission, provided and or assisted in providing a
7 means of accessing a computer, computer system and or computer network by creating a
8 command that allowed it to impermissibly access, collect and or transmit Plaintiffs and putative
9 class members' payload data in violation of Section 502(c)(6)
10

11 61. Google knowingly and without permission accessed or caused to be accessed
12 Plaintiffs and putative class members' computers and/or computer networks by impermissibly
13 collecting Plaintiffs and putative class members' payload data in violation Section 510(c)(7)
14

15 62. Google knowingly introduced a computer contaminant, as defined in Section
16 502(b)(10), by introducing computer instructions designed to record and or transmit information-
17 Plaintiffs and putative class members' payload data on Plaintiffs and putative class members'
18 computers and/or networks without the intent and or permission of the owners of that violation
19 of Section 502(c)(8).
20

21 63. As a direct and proximate result of Google's' unlawful conduct within the meaning
22 of Section 502, Google has caused loss to Plaintiffs and putative class members' in an amount to
23 be proven at trial. Plaintiffs are further entitled to recover their attorneys' fees pursuant to
24 Section 502(e).
25

26 64. Plaintiffs and putative class members' have also suffered irreparable injury from
27 these acts, including the collection of their personal information contained in the collected
28

1 payload data. Accordingly, Plaintiffs and putative class members have no adequate remedy at
2 law, entitling them to injunctive relief.

3
4 **FOURTH CAUSE OF ACTION**
5 **Violation of Cal. Bus. & Prof. Code Section 17200**
6 **(On behalf of Plaintiffs and the putative class)**

7 65. Plaintiff incorporates by reference the foregoing allegations.

8 66. Section 17200 proscribes unfair business competition and defines it to include any
9 unfair, unlawful, or fraudulent business practice or act.

10 67. Google violated Section 17200 through its conduct alleged above, including its
11 unlawful violations of Wiretap Act, the CFAA, and the CCCL.

12 68. As a result of Google's unlawful conduct of herein, Plaintiffs and the putative class
13 suffered injuries and have no adequate remedy at law. Therefore, Plaintiff individually and on
14 behalf of the class, seeks an order enjoining Google from continuing its Wi-Fi Payload Data
15 Collection practices.

16
17 **FIFTH CAUSE OF ACTION**
18 **Accounting**
19 **(On behalf of Plaintiffs and the putative class)**

20 69. Plaintiff incorporates by reference the foregoing allegations.

21 70. By collecting and storing personal and private data of the class, Google undertook
22 fiduciary relationship with and owed a fiduciary duty to the class to make sure that any data
23 collected would be kept safe, secure, protected from theft and available to Plaintiffs and the
24 putative class.

25 71. Plaintiffs and the putative class are unable to ascertain the exact quantity and nature
26 of the data that Google collected in the quantity and nature of data, if any, that remain in
27 Google's possession, custody, or control. An unknown balance of data is due to Plaintiffs and the
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1 putative class that cannot be ascertained without an accounting, the means by which are within
2 the knowledge of Defendant

3 72. Accordingly, Plaintiff seeks an Order by the Court directing an equitable accounting
4 of all data collected by Google and the quantity and nature of all data, if any, remaining in
5 Google's possession, custody, or control.
6

7 **PRAYER FOR RELIEF**

8 94. **WHEREFORE** Plaintiff, on behalf of herself and all others similarly
9 situated, hereby demand judgment against defendant Google as follows:
10

11 a. For an order certifying the class proposed herein and appointing Plaintiff identified
12 herein and their counsel to represent the class;

13 b. For a declaration that Google's acts and or omissions constitute a knowing and
14 unauthorized invasion of Plaintiffs rights in violation of the laws of the United States and the
15 State of California;

16 c. For preliminary and permanent injunctive relief enjoining and preventing Google from
17 continuing to operate its Street View program without appropriate safeguards, default provisions
18 and or opt-in mechanisms to ensure the private data of its users is not improperly disclosed,
19 compromised and or transmitted in the future;
20

21 d. For an award of damages, including without limitation damages for actual harm,
22 profits made by Google in the operation of its Street View program, and statutory damages
23 where applicable;
24

25 e. For an award of reasonable attorneys' fees and costs incurred by Plaintiffs and the
26 putative class members in prosecuting this matter; and
27
28

1 f. For an award of such other relief in law and equity which Plaintiffs and the
2 putative members' class may be entitled.

3 DATED: July 24, 2010
4

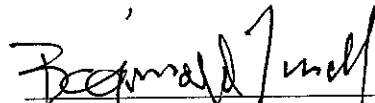
5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs hereby demand a trial by jury on all claims so triable.

7 Respectfully submitted,

8 Dated: July 24, 2010
9

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