

EXHIBIT A

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RICHARD W. WIEKING
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1 J. Paul Gignac, State Bar No. 125676
2 ARIAS OZZELLO & GIGNAC LLP
3 115 S. La Cumbre Lane, Suite 300
4 Santa Barbara, California 93105
5 Telephone (805) 683-7400
6 Facsimile (805) 683-7401
7 Email: j.paul@aogllp.com

8 Robert W. Killorin, Esq.
9 Craig G. Harley, Esq.
10 CHITWOOD HARLEY HARNES LLP
11 1230 Peachtree Street NE
12 2300 Promenade II
13 Atlanta, Georgia 30309
14 Email: rkillorin@chitwoodlaw.com
15 Email: charley@chitwoodlaw.com

16 Attorneys for Plaintiff

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 RICK BENITTI, on behalf of himself and
20 all others similarly situated

21 Plaintiff,

22 v.

23 GOOGLE, INC., a Delaware corporation,
24 and DOES 1 through 1000, inclusive;

25 Defendants.

Case No.: **CV 10-03297**

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF THE FEDERAL WIRETAP ACT, 18 U.S.C. §2511;
- (2) DECLARATORY RELIEF UNDER THE DECLARATORY JUDGMENT ACT, 28 U.S.C. §2201;
- (3) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200; AND
- (4) INVASION OF PRIVACY.

DEMAND FOR JURY TRIAL

COPY

1 All allegations in this Complaint, other than those allegations that are specific to
2 plaintiff Ric Benitti (“Plaintiff”), are based upon information and belief. Plaintiff’s
3 information and belief are based upon, *inter alia*, Plaintiff’s own investigation and the
4 investigation conducted by Plaintiff’s attorneys. Each allegation in this Complaint either
5 has evidentiary support or, alternatively, is likely to have evidentiary support after a
6 reasonable opportunity for further investigation and/or discovery.

7 NATURE OF THE ACTION

8 1. This is a nationwide class action, on behalf of Plaintiff and all other
9 similarly-situated persons, seeking, *inter alia*, declaratory and injunctive relief, statutory
10 penalties and/or damages, attorneys’ fees, and other relief based. This case arises out of
11 the actions of defendant Google, Inc. (“Google”) in unlawfully intercepting and
12 endeavoring to intercept encrypted and unencrypted wireless electronic communications
13 without authorization in connection with the gathering of information purportedly for use
14 in connection with its “Street View” program. As used herein, “unencrypted” means that
15 a “key” was not required to decode intercepted communications. Rather, the data was
16 sufficiently electronically transformed in order to obscure or hide its content so as to make
17 the data not readily accessible to the general public absent the use of software
18 intentionally developed and utilized to intercept wireless electronic communications.

19 2. As alleged herein, Google’s actions violated, *inter alia*, the Federal
20 Wiretapping Act, 18 U.S.C.A. § 2511, *et seq.* Google’s actions also constitute an invasion
21 of privacy and unfair competition under California law. Google’s co-founder, Sergey
22 Brin, conceded in a Wall Street Journal Article on May 20, 2010 that Google’s systematic
23 electronic communication interception program was a giant “screw up.”

24 3. The relief that Plaintiff seeks is primarily equitable relief in that Plaintiff
25 seeks declaratory and injunctive relief for the purpose of preventing Google from
26 continuing to intercept, endeavoring to intercept, and intercepting in the future any and all
27 wireless electronic communications, whether for use in Google’s Street View program or
28 otherwise.

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JURISDICTION AND VENUE

4. This Court has jurisdiction over the claims alleged herein pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the California state law claims alleged herein pursuant to 28 U.S.C. § 1367(a) because those claims are so related to federal law claims that they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue in this Court is appropriate because Google is headquartered in this district, because the conduct complained of emanated from within this district, and because the conduct complained of effected Plaintiff while he was a resident of this district.

THE PARTIES

6. Plaintiff Ric Benitti is currently a resident of Santa Barbara, California. At time relevant hereto, specifically between 2005 and April 2010, Plaintiff was a resident of San Francisco, California. During times relevant hereto, Plaintiff used and maintained a wireless internet connection at his home. Plaintiff used his wireless internet connection to transmit and receive personal and private data, including personal and business emails, documents, web browsing and a variety of other personal information. Absent the use of software intentionally developed and utilized by Google to intercept wireless electronic communications, Plaintiff's wireless electronic communications were not readily accessible to the general public, and Plaintiff reasonably expected that his wireless electronic communications were not subject to interception.

7. Defendant Google is a publicly traded Delaware corporation with its headquarters located in Mountain View, California.

8. Plaintiff does not know the true names and capacities of DOES 1 thru 1000, inclusive, whether individual, corporate, association or otherwise and, therefore, sues said defendants, and each of them, by such fictitious names. Plaintiff will amend this Complaint to include their true names and capacities when they have been ascertained.

1 DOES 1 thru 1000 are contractors, vendors and other third parties that were hired to work
2 as Google's agents and that are in some manner legally responsible for the events,
3 happenings and wrongdoing alleged in this Complaint.

4 9. In this Complaint, when reference is made to any act, deed or conduct of
5 Google and/or DOES 1 thru 1000, the allegation means that Google and/or DOES 1 thru
6 1000 engaged in the act, deed or conduct by or through one or more of its and/or their
7 officers, directors, agents, employees or representatives who was actively engaged in the
8 management, direction, control or transaction of the ordinary business and affairs of
9 Google and/or DOES 1 thru 1000.

10 **FACTUAL BACKGROUND**

11 10. One of Google's internet services is Google Street View ("Street View").
12 Street View is a technology featured in Google Maps and Google Earth -- Internet
13 available products that provide panoramic views from various positions along many
14 streets in the United States and throughout the world. Street View displays images taken
15 from a fleet of specially adapted vehicles ("GSV vehicles"). Google launched the Street
16 View service in May 2007, with 360-degree street level imagery of five American cities.
17 Today, Google's Street View encompasses most of the United States.

18 11. Google, in conjunction with DOES 1 thru 1000, purposefully equipped the
19 GSV Vehicles with, among other items, devices designed to intercept, capture and store
20 electronic communications, whether such communications were encrypted or not, such as
21 wireless signals and data of the sort transmitted by wireless networks such as that of
22 Plaintiff. Plaintiff witnessed the GSV vehicles in the neighborhood in which he lived, but
23 Plaintiff was unaware that the GSV Vehicles were attempting to intercept, capture and
24 store his wireless electronic communications.

25 12. When Google and DOES 1 thru 1000 created, implemented and operated the
26 data collection systems on the GSV vehicles, they included devices known as wireless
27 packet sniffers that collect the fact of the communication, whether encrypted or not, and,
28 in many cases, data in the form of electronic communications consisting of all or part of

1 documents, emails, video, audio and VOIP information that was being sent over wireless
2 networks such as that used by Plaintiff.

3 13. Google and DOES 1 thru 1000 have engaged in an ongoing course of
4 conduct to intercept and endeavor to intercept and then use or endeavor to use the
5 electronic communications, both encrypted and unencrypted, of Plaintiff and others
6 without authorization. As a result, hundreds if not thousands of Google employees
7 throughout the United States have access to data maintained on Google's servers, which
8 includes intercepted electronic communications of Plaintiff and others.

9 14. During the time that Google and DOES 1 thru 1000 were intercepting or
10 endeavoring to intercept wireless electronic communications with the GSV vehicles: (a)
11 Plaintiff maintained an open wireless network and internet connection at his residence; (b)
12 Plaintiff's residence was located on a street for which GSV vehicles collected electronic
13 communications on one or more occasions since 2007; and (c) Plaintiff regularly
14 conducted business and personal activity over the wireless internet connection at his
15 residence. Thus, a substantial amount of personal information was transmitted as
16 electronic communications across Plaintiff's wireless internet connections and was subject
17 to interception by the GSV vehicles.

18 15. Based thereon, Plaintiff has reasonable cause to believe that, on one or more
19 occasions since 2007, a GSV vehicle has intercepted and stored Plaintiff's wireless
20 electronic communications. Absent the use of the extraordinary sniffers and related
21 software intentionally developed and utilized by Google and DOES 1 thru 1000 to
22 intercept Plaintiff's wireless electronic communications, these electronic communications
23 were not readily accessible to the general public.

24 16. Google and DOES 1 thru 1000 intentionally intercepted or endeavored to
25 intercept both encrypted and unencrypted communications to be used for Google's
26 commercial benefit. Google gained access to the content of intercepted electronic
27 communications despite its statements that the primary purpose of its collection of and
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1 interception of electronic communications was to record the fact of communication for
2 later use and analysis.

3 CLASS ACTION ALLEGATIONS

4 17. This action is brought and properly may be maintained as a class action
5 pursuant to the provisions of Fed.R.Civ.P. 23(a)(1)-(4) and 23(b)(1), (b)(2) or (b)(3) and
6 satisfies the requirements thereof.

7 18. Plaintiff seeks to represent a nationwide class ("the Class") defined as
8 follows: "All residents of the United States whose wireless electronic communications
9 were intercepted and/or used by Google for Google's Street View program."

10 19. Plaintiff also seeks to represent a California resident subclass ("the
11 California Subclass") defined as follows: "All residents of the State of California whose
12 wireless electronic communications were intercepted and/or used by Google for Google's
13 Street View program."

14 20. As used herein, the term "class members" shall mean and refer to the
15 members of the Class and/or the California Subclass.

16 21. The class members are so numerous that joinder of all class members in one
17 action is impractical.

18 22. There are questions of fact that are common to Plaintiff and the class
19 members, including:

20 (a) Whether Google and/or DOES 1 thru 1000 intentionally intercepted
21 the class members' electronic communications; and

22 (b) Whether Google and/or DOES 1 thru 1000 used the class members'
23 electronic communications without their authorization.

24 23. There are questions of law that are common to Plaintiff and the class
25 members, including:

26 (a) Whether the conduct of Google and/or DOES 1 thru 1000 violated
27 one or more of the provisions of 18 U.S.C. § 2511 *et seq.*;

1 (b) Whether the conduct of Google and/or DOES 1 thru 1000 has
2 resulted in an actual controversy such that declaratory relief is appropriate under
3 the Declaratory Judgment Act, 28 U.S.C. §2201;

4 (c) Whether the conduct of Google and/or DOES 1 thru 1000 constitutes
5 and unfair business practice in violation of California Business and Professions
6 Code §17200;

7 (d) Whether the conduct of Google and/or DOES 1 thru 1000 constitutes
8 and unlawful business practice in violation of California Business and Professions
9 Code §17200; and

10 (e) Whether the conduct of Google and/or DOES 1 thru 1000 constitutes
11 an invasion of the class members' privacy under California law.

12 24. The questions of law and fact that are common to the class members
13 predominate over the questions of law or fact, if any, which are individual to particular
14 class members.

15 25. Plaintiff's claims are typical of the claims of the class members.

16 26. Plaintiff will fairly and adequately protect the interests of the class members,
17 and Plaintiff has no interests that are adverse to or that directly and irrevocably conflict
18 with those of the other class members.

19 27. Plaintiff has retained counsel who are experienced in litigation, including
20 complex class litigation, and who will zealously pursue the claims of the class members.

21 28. A class action is superior to all other available methods for the fair and
22 efficient adjudication of this controversy because the damages suffered by individual class
23 members, while not inconsequential, may be relatively small such that the expense and
24 burden of individual litigation make it economically unfeasible for the class members to
25 initiate and pursue individual litigation in order to redress the wrongs done to them.
26 Moreover, there will be no difficulty in the management of this case as a class action.
27
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1 29. This action is certifiable under the provisions of Fed.R.Civ.P. 23(b)(1)
2 and/or 23(b)(2) because:

3 (a) the prosecution of separate actions by individual class members would create a
4 risk of inconsistent or varying adjudications with respect to individual class members that
5 would establish incompatible standards of conduct for Google and DOES thru 1000;

6 (b) the prosecution of separate actions by individual class members would create a
7 risk of adjudications as to them that would, as a practical matter, be dispositive of the
8 interests of the other class members not parties to the adjudications, or substantially impair
9 or impede their ability to protect their interests; and

10 (c) Google and DOES 1 thru 1000 have acted or refused to act on grounds
11 generally applicable to the class members, thereby making appropriate final injunctive
12 relief or corresponding declaratory relief with respect to the class members as a whole and
13 necessitating that any such relief be applied on a class wide basis.

14 30. The class members are readily identifiable through records maintained by
15 Google, and notice can be provided to the class members using methods and techniques
16 (e.g. direct mail, publication, email, etc.) that have been accepted and approved by the
17 courts for purposes of providing notice to class members in other nationwide class actions.

18 **CLAIMS FOR RELIEF**

19 **First Claim For Relief**

20 **(Violation of the Federal Wiretap Act, 18 U.S.C. § 2511)**

21 31. Plaintiff repeats and incorporates by reference paragraphs 1 through 30
22 above as if fully set forth herein.

23 32. Google and DOES 1 thru 1000: (a) without authorization, intentionally
24 intercepted or endeavored to intercept both encrypted and unencrypted electronic
25 communications of Plaintiff and the class members; and/or (b) intentionally used or
26 endeavored to use the electronic communications of Plaintiff and the class members
27 knowing or having reason to know that the information was obtained through the
28 interception of electronic communications.

1 33. As a direct and proximate result of their deliberate and intentional conduct,
2 Google and DOES 1 thru 1000 violated the Federal Wiretap Act, 18 U.S.C. § 2511(1)(a)
3 and/or (d).

4 34. Pursuant to 18 U.S.C. § 2520, Plaintiff and each of the class members are
5 entitled to statutory damages and other relief as follows:

6 (a) statutory damages in the amount of the greater of \$100 each day that
7 each person's data was intercepted or \$10,000 per class member;

8 (b) alternatively, to the extent they are greater than the maximum
9 allowable statutory damages, all profits made by Google and DOES 1 thru 1000 as
10 a result of the violations alleged herein;

11 (c) punitive damages in an amount to be determined at trial, but in an
12 amount sufficient to prevent the same or similar conduct by Google and DOES 1
13 thru 1000 in the future; and

14 (d) reasonable attorneys' fees and other litigation costs incurred by
15 Plaintiff and the class members.

Second Claim For Relief

(Declaratory Relief under the Declaratory Judgment Act, 28 U.S.C. § 2201)

17 35. Plaintiff repeats and incorporates by reference paragraphs 1 through 30
18 above as if fully set forth herein.

19 36. An actual controversy has arisen and now exists between Plaintiff and the
20 class members, on one hand, and Google and DOES 1 thru 1000, on the other hand,
21 concerning their respective rights and duties.

22 37. Plaintiff and the Class Members contend that the practices engaged in by
23 Google and DOES 1 thru 1000 of intentionally intercepting or endeavoring to intercept
24 both encrypted and unencrypted electronic communications of Plaintiff and the class
25 members and/or intentionally using or endeavoring to use the electronic communications
26 of Plaintiff and the class members knowing or having reason to know that the information
27 was obtained through the interception of electronic communications is improper and
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1 unlawful, while Google and DOES 1 thru 1000 maintain that their actions and conduct are
2 lawful and proper. 38. A judicial declaration is necessary and appropriate at this time,
3 under the circumstances presented, in order that Plaintiff and the class members may
4 ascertain their rights and duties with respect to the practices of Google and DOES 1 thru
5 1000 as alleged herein.

6 **Third Claim For Relief**

7 **(Violation of California Business and Professions Code §17200, et seq.)**

8 39. Plaintiff repeats and incorporates by reference paragraphs 1 through 30
9 above as if fully set forth herein.

10 40. Google and DOES 1 thru 1000 have engaged in and continue to engage in
11 the unfair and /or unlawful business practices of: (a) without authorization, intentionally
12 intercepted or endeavored to intercept both encrypted and unencrypted electronic
13 communications of Plaintiff and the class members; and/or (b) intentionally used or
14 endeavored to use the electronic communications of Plaintiff and the class members
15 knowing or having reason to know that the information was obtained through the
16 interception of electronic communications.

17 41. By engaging in these practices, Google and DOES 1 thru 1000 have
18 committed one or more acts of unfair competition within the meaning of California
19 Business and Professions Code § 17200, *et seq.*

20 42. The practices engaged in by Google and DOES 1 thru 1000 are unfair
21 because they are immoral, unethical, oppressive, unscrupulous and/or substantially
22 injurious to Plaintiff and the class members.

23 43. The practices engaged in by Google and DOES 1 thru 1000 are unlawful
24 because they violate the Federal Wiretap Act, 18 U.S.C. § 2511(1)(a) and/or (d) and
25 because they constitute an invasion of privacy.

26 44. Unless Google and DOES 1 thru 1000 are enjoined from continuing to
27 engage in these unfair and unlawful business practices and ordered to dispose of the
28 wrongfully intercepted wireless electronic communications, Plaintiff and the other class

1 members will continue to be injured by the wrongful actions and conduct of Google and
2 DOES 1 thru 1000.

3 **Fourth Claim For Relief**

4 **(Invasion of Privacy)**

5 45. Plaintiff repeats and incorporates by reference paragraphs 1 through 30
6 above as if fully set forth herein.

7 46. Without consent, Google and DOES 1 thru 1000 intruded into the private
8 places, conversations, and matters of Plaintiff and the class members in a manner that
9 would be highly offensive to a reasonable person such as to constitute an invasion of
10 privacy under California law.

11 47. As a direct and proximate result of the actions and conduct of Google and
12 DOES 1 thru 1000, the privacy rights of Plaintiff and the class members have been
13 invaded and violated.

14 48. Unless Google and DOES 1 thru 1000 are enjoined from continuing to
15 invade the privacy of Plaintiff and the class members and ordered to dispose of the
16 wrongfully intercepted wireless electronic communications, Plaintiff and the other class
17 members will continue to be injured by the wrongful actions and conduct of Google and
18 DOES 1 thru 1000.

19 **PRAYER FOR RELIEF**

20 Plaintiff, on behalf of himself and the class members, prays for relief against
21 Google and DOES 1 thru 1000 as follows:

22 **On The First Claim For Relief**

23 For statutory damages in the amount of the greater of \$100 each day that each
24 person's data was intercepted or \$10,000 per class member;

25 Alternatively, to the extent they are greater than the maximum allowable statutory
26 damages, for all profits made by Google and DOES 1 thru 1000 as a result of the
27 violations alleged herein;
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1 For punitive damages in an amount to be determined at trial; and
2 For reasonable attorneys' fees and other litigation costs incurred by Plaintiff and
3 the class members.

4 On The Second Claim For Relief

5 That this Court declare that that the practices engaged in by Google and DOES 1
6 thru 1000 of intentionally intercepting or endeavoring to intercept both encrypted and
7 unencrypted electronic communications of Plaintiff and the class members and/or
8 intentionally using or endeavoring to use the electronic communications of Plaintiff and
9 the class members knowing or having reason to know that the information was obtained
10 through the interception of electronic communications is improper and unlawful.
11

12 On The Third Claim For Relief

13 For an order enjoining Google and DOES 1 thru 1000 from intentionally
14 intercepting or endeavoring to intercept both encrypted and unencrypted electronic
15 communications of Plaintiff and the class members and/or intentionally using or
16 endeavoring to use the electronic communications of Plaintiff and the class members; and

17 For an order mandating the time and manner of the disposition of the wireless
18 electronic communications captured by Google and DOES 1 thru 1000 that belong to
19 Plaintiff and the class members.

20 On The Fourth Claim For Relief

21 For an order enjoining Google and DOES 1 thru 1000 from intentionally
22 intercepting or endeavoring to intercept both encrypted and unencrypted electronic
23 communications of Plaintiff and the class members and/or intentionally using or
24 endeavoring to use the electronic communications of Plaintiff and the class members; and

25 For an order mandating the time and manner of the disposition of the wireless
26 electronic communications captured by Google and DOES 1 thru 1000 that belong to
27 Plaintiff and the class members.
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On All Claims For Relief

For all attorneys' fees, expenses and recoverable costs reasonably incurred in connection with the commencement and prosecution of this action, provided that this action results in the establishment and/or protection of the rights of the class members and/or confers a substantial benefit on the class members; and

For such other and further relief as the Court deems just and proper.

Dated: July 26, 2010

ARIAS OZZELLO & GIGNAC LLP

By 
J. Paul Gignac

and

Robert W. Killorin, Esq.
Craig G. Harley, Esq.
CHITWOOD HARLEY HARNES LLP
1230 Peachtree Street NE
2300 Promenade II
Atlanta, Georgia 30309
Email: rkillorin@chitwoodlaw.com
Email: charley@chitwoodlaw.com

Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable in this action.

Dated: July 26, 2010

ARIAS OZZELLO & GIGNAC LLP

By



J. Paul Gignac

and

Robert W. Killorin, Esq.

Craig G. Harley, Esq.

CHITWOOD HARLEY HARNES LLP

1230 Peachtree Street NE

2300 Promenade II

Atlanta, Georgia 30309

Email: rkillorin@chitwoodlaw.com

Email: charley@chitwoodlaw.com

Attorneys for Plaintiff