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Plaintiff David Carney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID CARNEY, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

GOOGLE, INC.,

Defendants.

Cas **CV 10** **3715**

COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION

PVT

COMPLAINT
CASE NO. _____

1 Plaintiff David Carney, individually and on behalf of a class of all others similarly situated,
2 brings this action for damages and injunctive relief against Defendant Google, Inc.

3 **PARTIES**

4 1. Plaintiff David Carney is a United States citizen and resident of San Francisco,
5 California. Plaintiff used and maintained an unencrypted wireless internet connection at his home,
6 which he used to send and receive various types of private data. Pictures of his home appear on
7 Google's Street View maps. On information and belief, a Google Street View vehicle has intercepted
8 and collected, and Google has stored, data from Plaintiff's WiFi connection.

9 2. Defendant Google, Inc., is a Delaware corporation with its principal place of business in
10 Mountain View, California.

11 **JURISDICTION AND VENUE**

12 3. This Court has jurisdiction under 28 U.S.C. § 1331 because Plaintiffs have alleged the
13 violation of a federal statute.

14 4. Venue in this Court is appropriate because Google is headquartered in this District and
15 directed the alleged wrongful conduct from this District.

16 **INTRADISTRICT ASSIGNMENT**

17 5. Assignment to the San Jose division of this District is proper under Local Rule 3-2(e).

18 **FACTUAL ALLEGATIONS**

19 6. Google was launched in 1998 as an internet search engine. The company expanded its
20 business over the years to include advertising and numerous web applications. Google posted a \$6.5
21 billion profit in 2009, making it the world's 19th most profitable company according to *Fortune*
22 magazine.

23 7. Street View is a web-based and web-accessed technology featured in Google Maps and
24 Google Earth that displays images taken from a fleet of specially adapted cars and provides panoramic
25 views of homes, offices and other buildings from various positions along the street. Google launched
26 Street View on May 25, 2007, in the United States, and has since expanded it to more than 30 nations.

27 8. Google Street View was controversial from the start. Many privacy concerns were raised
28 about Google's collection and display of images of people's homes, the license plates of cars parked on

1 the street, and the various activities of people who happened to be captured by Google's cameras. Some
2 of the images showed the inside of homes through front windows, while other images depicted people
3 sunbathing or entering adult bookstores. Google eventually developed technology that blurs identifiable
4 faces and license plates.

5 9. Google did not disclose that, while collecting the panoramic images for Street View,
6 Google's vehicles also intercepted information about the wireless internet (WiFi) networks along their
7 routes. The data Google collected included the names of wireless networks (known as SSIDs, or service
8 set identifiers), the MAC (media access control) addresses of devices connected to the networks, and
9 information sent over the internet (known as "payload data"). Payload data can include part or all of
10 emails, passwords, browser history, videos, audio and documents transmitted over WiFi networks.

11 10. Google captured this data using a "packet sniffing" program installed in the Street View
12 vehicles. Data is transmitted over the internet in "packets" that are created at the point of origin and
13 reassembled once they reach the destination device. There are two parts to a packet: the header
14 information (the envelope) and the payload/contents. The header contains the originating and
15 destination addresses (the "to" and "from"), as well as information about the length of the packet, the
16 protocol or type of packet (such as e-mail, web page, streaming video), and the packet number (which
17 identifies which packet it is in a sequence of packets). The payload is the "body" of the packet and
18 contains the actual data the packet is delivering to the destination.

19 11. After the packet-sniffing program collected the packets of data transmitted across WiFi
20 connections, a Google-developed program called "gslite" parsed the packets of data and stored
21 information about the WiFi networks to a hard drive.

22 12. Gslite captured and stored the header information from each packet to a hard drive.
23 Gslite also retrieved MAC addresses and SSIDs from the header information, which it then associated
24 with data from the vehicle's GPS units. Google has said that this data improves the accuracy of its
25 location-based services, like Google Maps and driving directions.

26 13. Gslite treated the payload data differently. While running in memory, gslite dropped
27 payload data that was transmitted over encrypted networks. Google saved all payload data from
28 unencrypted networks to a hard drive.

1 14. Google kept its WiFi data collection a secret from its launch of Street View in May 2007
2 until May 14, 2010, acknowledging its conduct only after German data protection authorities asked to
3 audit the data Google had collected. Since then, multiple foreign governments, numerous privacy
4 organizations, the Federal Trade Commission, more than thirty state attorneys general and several U.S.
5 Congressmen have launched investigations into Google's conduct.

6 15. While Google initially said that it had not collected any payload data, it has since
7 admitted that it collected and stored packet header information from both encrypted and unencrypted
8 WiFi networks and payload data from unencrypted WiFi networks.

9 **TOLLING AND FRAUDULENT CONCEALMENT**

10 16. Plaintiff and members of the class did not discover, and could not have discovered
11 through the exercise of reasonable diligence, the existence of Google's conduct until May 14, 2010,
12 when Google first announced that it had been collecting and storing class members' WiFi data.

13 17. Because Google's conduct was kept secret until May 14, 2010, Plaintiff and members of
14 the class were unaware before that time of Google's unlawful conduct.

15 18. Google's acts were wrongfully concealed and carried out in a manner that precluded
16 detection.

17 19. By its very nature, Google's conduct was inherently self-concealing.

18 20. A reasonable person under the circumstances would not have been alerted to investigate
19 Google's conduct until at least May 14, 2010.

20 21. Plaintiff and members of the class could not have discovered Google's conduct at an
21 earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of
22 secrecy Google used to avoid detection.

23 22. None of the facts or information available to Plaintiff and members of the class prior to
24 May 14, 2010, if investigated with reasonable diligence, could or would have led to the discovery of
25 Google's conduct prior to that date.

26 23. As a result of Google's fraudulent concealment, the running of any statute of limitations
27 has been tolled with respect to the claims that Plaintiff and members of the class have alleged in this
28 Complaint.

1 will fairly and adequately protect the interests of the class. Plaintiff and all members of the class are
2 similarly affected by Google's wrongful conduct in violation of the federal wiretap statute in that their
3 electronic communications transmitted over WiFi connections were intentionally intercepted by
4 Google's Street View vehicles. Plaintiff's claims arise out of the same common course of conduct giving
5 rise to the claims of the other class members.

6 29. **Adequacy.** Plaintiff is an adequate representative of the class because his interests do
7 not conflict with the interests of the members of the class he seeks to represent. Plaintiff has retained
8 counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute
9 this action vigorously. The interests of members of the class will be fairly and adequately protected by
10 Plaintiff and his counsel.

11 30. **Superiority.** A class action is superior to other available methods for the fair and
12 efficient adjudication of this controversy. The class is readily definable. Prosecution as a class action
13 will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large number
14 of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently,
15 and without the duplication of effort and expense that numerous individual actions would engender. This
16 action presents no difficulties in management that would preclude maintenance as a class action.

17 31. In the alternative, the class may be certified because:

18 (a) the prosecution of separate actions by the individual members of the class would
19 create a risk of inconsistent or varying adjudication with respect to individual class members, which
20 would establish incompatible standards of conduct for Google;

21 (b) the prosecution of separate actions by individual class members would create a
22 risk of adjudications with respect to them which would, as a practical matter, be dispositive of the
23 interests of other class members not parties to the adjudications, or substantially impair or impede their
24 ability to protect their interests;

25 (c) Google has acted or refused to act on grounds generally applicable to the class,
26 thereby making appropriate final injunctive relief with respect to the members of the class as a whole;
27 and

28 (d) The claims of class members are comprised of common issues that are appropriate

1 for certification under Rule 23(c)(4).

2 **FIRST CAUSE OF ACTION**

3 **(Violation of the Wiretap Act, 18 U.S.C. § 2511 *et seq.*)**

4 32. Plaintiff incorporates and realleges each allegation set forth in the previous paragraphs.

5 33. Beginning at least as early as May 25, 2007, Google intentionally intercepted or
6 endeavored to intercept class members' electronic communications sent or received on their WiFi
7 connections, and thus violated 18 U.S.C. § 2511, *et seq.*

8 34. The electronic communications Google intercepted are not readily accessible to the
9 general public.

10 35. Pursuant to 18 U.S.C. § 2520, Plaintiff and class members are entitled to statutory
11 damages of \$100 a day for each day of violation or \$10,000 (whichever is greater), punitive damages,
12 equitable or declaratory relief, and reasonable attorney's fees and other litigation costs reasonably
13 incurred.

14 **SECOND CAUSE OF ACTION**

15 **(For Violation of California's Unfair Competition Law)**

16 36. Plaintiff incorporates and realleges each allegation set forth in the previous paragraphs.

17 37. Google's acts and practices, as alleged in this complaint, constitute unfair business
18 practices in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*

19 38. Google has engaged in and continues to engage in an unlawful business practice by
20 intercepting Plaintiff's and class members' electronic communications in violation of the Wiretap Act,
21 18 U.S.C. § 2511, *et seq.*

22 39. Google's conduct also constitutes an unfair business practice because its business
23 practice is unscrupulous, unethical, oppressive and injurious to consumers. There is no legitimate
24 business reason for Google's business practice such that the utility of its business practice outweighs the
25 harm to consumers. Furthermore, Google's business practice undermines this State's fundamental
26 policy against invasion of privacy as well as the policy against unfair and sharp business practices that
27 are likely to deceive or mislead consumers, and which undercut trust and fair competition in the
28 consumer marketplace.

1 40. Plaintiff and the class have suffered injuries as a result of Google's unlawful and unfair
2 conduct and are entitled to injunctive relief.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for the following relief:

- 5 A. An order certifying the proposed class under Rules 23(a) and (b)(3) and appointing
6 Plaintiff and his counsel to represent the class;
- 7 B. Actual, statutory and punitive damages;
- 8 C. Declaratory relief;
- 9 D. Injunctive relief;
- 10 E. Attorneys' fees, costs and expenses of suit, as well as pre- and post-judgment interest at
11 the maximum legal rate; and
- 12 F. Such other and further relief as this Court may deem appropriate.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a trial by jury on all claims so triable.

15
16 DATED: August 20, 2010

Respectfully submitted,

17 **GIRARD GIBBS LLP**

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