

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Brent Matthew Scott, individually, and on behalf of all similarly situated persons, Plaintiff, vs. Google, Inc., Defendant.	CIVIL ACTION NO. <u>4:12-614</u> (JURY TRIAL DEMANDED)
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CLASS ACTION COMPLAINT

Plaintiff, Brent Matthew Scott, individually, and on behalf of the class described below, brings this state-wide class action suit against Defendant, Google, Inc. (hereinafter “Google”), and would respectfully show unto the Court the following:

PARTIES

1. Plaintiff is a citizen of the State of Florida, and resides in Leon County, Florida, which is within the Tallahassee Division of the Northern District of Florida.
2. Google is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California.
3. At all time relevant herein Google was acting individually and by and through its officers, agents, servants and/or employees in the course and scope of their agency and employment.

JURISDICTION AND VENUE

4. The Court has original jurisdiction of this matter, *inter alia*, under the Class Action Fairness Act (“CAFA”), 29 U.S.C. § 1332(d)(2). Plaintiff and Defendant are citizens of different states, the amount in controversy in this action exceeds \$5,000,000.00, there are more than one hundred (100) members of the putative class and all class members are citizens of the State of Florida.

5. The Court has general and specific personal jurisdiction over the Defendant Google due to its sufficient minimum contacts within the State of Florida and because the material acts upon which Plaintiffs’ claims are based occurred within the Northern District of Florida.

6. Venue is proper in the United States Northern District Court, District of Florida, Tallahassee Division, pursuant to 28 U.S.C. § 1391(b) in that Defendant Google resides in the Northern District of Florida under 28 U.S.C. § 1391(c)(2) and a substantial part of the events giving rise to the claims occurred within the State of Florida.

NATURE OF SUIT

7. Plaintiff brings this state-wide class action lawsuit against Google pursuant to F.R.C.P. 23 for violation of the Florida Wiretap Act, codified at Florida Statute §934.03. *et seq.* Specifically, Plaintiff alleges the Defendant has violated the Florida Wiretap Act through its intentional interception and use of electronic communications sent by Plaintiffs and members of the Putative Class in Florida to Google’s “Gmail” account holders within Florida.

8. Google operates an e-mail service known as “Gmail”. Gmail account holders are assigned a Gmail e-mail address by Google through which they can send and/or receive electronic communications.

9. Upon information and belief Google, utilizing multiple devices and methodologies, intercepts and scans all electronic communications sent to Gmail account holders prior to their receipt and review by the Gmail account holder/recipient.

10. The actions complained of herein involve the interception and use of content from Plaintiff's and Class Member's Florida electronic communications (e-mail) whose e-mails are sent to a Florida Gmail account holder, whether through the initialization of an electronic communication to the Gmail user, a response or reply to an electronic communication from the Gmail user, or any subsequent new electronic communication transmitted by Plaintiff and/or Class Members to a Gmail user.

11. Google's systematic interception and use of electronic communications sent from Plaintiff and other non-Gmail account holders/users violates Florida Statute §934.03 *et seq.*

STATEMENT OF FACTS

12. Google owns and operates one of the world's largest internet search engines. Google offers many services, including e-mail address and internet usage, for free to attract large numbers of customers or users. Google generates revenue by selling on-line advertising which is aimed at its customers/users utilizing its free services. Google is able to attract more advertisers or charge higher advertising prices by virtue of attracting more customers/users or usage of Google services than other internet search engines or service providers.

13. "Gmail" is an electronic communication service operated by Google.

14. Google assigns Gmail account holders a Gmail e-mail address (username@gmail.com) for the purposes of sending and receiving electronic communications through the electronic communication service operated by Google (i.e. Gmail). Gmail account

holders can receive electronic communications from other Gmail account holders and from non-@gmail.com account holders.

15. Plaintiff has sent and continues to send electronic communications in Florida to @gmail.com account holders in Florida.

16. Upon information and belief, prior to Gmail users ever receiving Plaintiff's e-mail, Google intercepts Plaintiff's e-mail. Google's interception of Plaintiff's confidential e-mail communications without Plaintiff's knowledge, consent or permission is in violation of Florida Statute §934.03-934.09, *et seq.*

17. Google is not an intended recipient of or a party to Plaintiff's e-mails sent to Gmail users in Florida.

18. The devices used by Google are not a telephone or telegraph instrument, they are not telephone or telegraph equipment, they are not a telephone or telegraph facility, and they are not any component thereof. Therefore, any exception set out in Florida Statute §934.03-934.09, *et seq.* do not apply.

19. Google's interception and use of content of electronic communications from Plaintiff and the Class Members is not within the ordinary course of business of an electronic communication service such as an email provider, is not a necessary incident to providing email services and does not functionally enhance providing email service to Gmail account holders.

20. Within the Class Period, Plaintiff has sent and continues to send e-mails to Gmail account holders in Florida from various locations within Florida.

21. Plaintiff's e-mails are electronic communications.

22. At the time Plaintiff sent the e-mails to @gmail.com account holders, Plaintiff did so from his Hotmail® account.

23. Upon information and belief, Google intentionally intercepted and used the content of Plaintiff's e-mails to @gmail.com account holders.

24. Google did not compensate Plaintiff for the interception and use of the content of Plaintiff's e-mail or the use of the content of Plaintiff's e-mail, did not have his permission or, indeed, even advise Plaintiff that his emails to @gmail.com account holders within Florida were being intercepted and used by Google for its own purposes.

CLASS ALLEGATIONS

25. Plaintiff hereby repleads and incorporates by reference each and every allegation set for above, and further states as follows:

26. Plaintiff brings this class action, pursuant to Rule 23 of the *Federal Rules of Civil Procedure*, individually and on behalf of all members of the following Class. The Class consists of:

All natural persons located within the State of Florida who sent e-mails from a non-@gmail.com account e-mail address to an @gmail.com account e-mail address the owner of which was also located within Florida from within the longest period of time allowed by statute before the filing of this action up through and including the date of the judgment in this case;

Excluded from the class are the following individuals and/or entities:

- a. Any and all federal, state, or local governments, including but not limited to their department, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions;
- b. Individuals, if any, who timely opt out of this proceeding using the correct protocol for opting out;
- c. Current or former employees of Google;
- f. Individuals, if any, who have previously settled or compromised claims(s) as identified herein for the class; and

- g. Any currently sitting federal judge and/or person within the third degree of consanguinity to any federal judge.

A. Numerosity

27. The Class is so numerous that joinder of all members is impracticable.

28. The number of separate individuals who sent e-mails from a non@gmail.com account e-mail addresses to a @gmail.com account e-mail address from within the longest period of time allowed by statute before the filing of this action is excess of 100 persons.

29. Upon information and belief, the number of Gmail account holders in Florida is more than two hundred and fifty thousand users. Correspondingly, Plaintiff alleges the numbers for the Class are some multiple of that number.

B. Commonality

30. There are questions of law or fact common to the class. These questions include, but are not limited to, the following:

- a. Whether Google intentionally intercepted, endeavored to intercept, or procured any other person to intercept or endeavor to intercept Plaintiff's and Class Members' electronic communications to @gmail.com account recipients. Inclusive in this common question are the common questions regarding the elements of Florida statutes based upon the statutory definitions:
- Whether or not Google acted intentionally;
 - Whether or not Google acquired any content of Plaintiff's and Class members e-mail;
 - Whether or not Plaintiff's and Class Members' e-mails to the @gmail.com account recipients were electronic communications;
 - Whether or not statutory damages against Google should be assessed; and
 - Whether or not injunctive and declaratory relief against Google should be issued.

C. Typicality

31. Plaintiff's claims are typical of the claims of the Class in that Plaintiff and the Class sent e-mails to @gmail.com account holders, Google intercepted and acquired the e-mails' contents, Google used or endeavored to use the contents of the Plaintiff's and the Class Members' e-mails, the users of Gmail did not consent to the interception and uses made the basis of this suit, neither Plaintiff nor the Class consented to Google's interception and uses of content made the basis of this suit, Plaintiff and the Class Members are entitled to declaratory relief, statutory damages, and injunctive relief due to Google's conduct.

D. Adequacy of Representation

32. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests do not conflict with the interests of the Class members. Furthermore, Plaintiff has retained competent counsel experienced in class action litigation. Plaintiff's counsel will fairly and adequately protect and represent the interests of the Class.

33. Plaintiff asserts that pursuant to Fed. R. Civ. P. 23(b)(3), questions of law or fact common to the Class Members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

CAUSE OF ACTION **VIOLATIONS OF FLORIDA STATUTE §934.03 ET SEQ.**

34. Plaintiff hereby repleads and incorporates by reference each and every allegation set forth above, and further states as follows:

35. Google, as a corporation, is a "person" pursuant to Florida Statute §934.02 (5).

36. Throughout the entirety of the conduct upon which this suit is brought, Google's actions were/are willful.

37. Upon information and belief, Google willfully intercepted, intercepts, or endeavored or endeavors to intercept the electronic communications of Plaintiff's e-mail and Class members' e-mails as follows:

- Google acquired(s) the content of Plaintiff's and Class Members' e-mail;
- Plaintiff's and Class Members' e-mails are electronic communications;
- Google utilized(s) one or more devices composing of an electronic, mechanical or other device or apparatus to intercept Plaintiff's and Class Members' electronic communications;
- Google's intercepting devices are not a telephone or telegraph instrument, are not telephone or telegraph equipment, are not a telephone or telegraph facility, or are not any component thereof;
- Google does not furnish the devices used to intercept the emails to Gmail users and users do not use the devices for connection to the facilities;
- The devices are not used by Google, operating as an electronic communication service, in the ordinary course of its business as a provider of an electronic communication service, are not a necessary incident of the rendition of email services and do not functionally enhance providing email service to Gmail account holders;
- Google's interception of Plaintiff's and Class Members' electronic communications for undisclosed and improper purposes delivering targeted advertisements, for purposes beyond the Service of Gmail, in violation of its user agreements, in violation of its contracts with third parties, and in violation of its statements to users are not within the ordinary course of business of a provider of an electronic communication service.

38. Google intentionally used, uses, or endeavored or endeavors to use the contents of Plaintiff's and Class Members' electronic communications knowing or having reason to know that the information was obtained through the interception of the electronic communication in violation of Florida Statute §934.03, *et seq.*

39. Google's interception of and use of the contents of Plaintiff's and Class Members' electronic communications were not subject to any of the exceptions set out in Florida Statute §§ 934.03 – 934.09.

40. Plaintiff did not consent to the interception or use of his electronic communications and, upon information and belief, either did any of the Class Members.

41. As a result of Google's violations of Florida Statute §934.03 *et seq.* pursuant to §934.10, Plaintiff and the Class are entitled to:

- a. Preliminary and permanent injunctive relief to halt Google's violations;
- b. Appropriate declaratory relief;
- c. For Plaintiff and each Class members, the greater of \$100 a day for each day of violation or \$1,000 whichever is higher;
- d. Punitive damages; and
- e. Reasonable attorneys' fees and other litigation costs reasonably incurred.

JURY DEMANDED

Pursuant to the Seventh Amendment to the U.S. Constitution and Federal Rule of Civil Procedure 38, Plaintiff demands a jury on any issue triable of right by a jury.

PRAYER FOR RELIEF

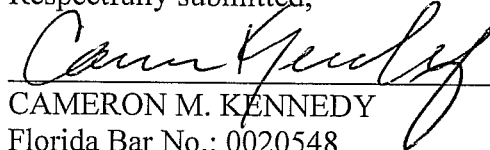
WHEREFORE, Plaintiff, on behalf of himself and all Class members, requests judgment be entered against Defendant and that the Court grant the following:

1. An order certifying the Class and appointing Plaintiff and his counsel to represent the Class;
2. Judgment against the Defendant for Plaintiff's and the Class' asserted cause of action;
3. Appropriate declaratory relief against Defendant;
4. Preliminary and permanent injunctive relief against Defendant;

5. An award of statutory damages to the Plaintiff and the Class, for each, the greater of \$100 a day for each day of violation or \$1,000, whichever is higher;
6. Punitive damages;
7. An award of reasonable attorneys' fees and other litigation costs reasonably incurred; and
8. Any and all other relief to which the Plaintiff and the Class may be entitled.

This 28th day of November, 2012.

Respectfully submitted,



CAMERON M. KENNEDY

Florida Bar No.: 0020548

**Searcy Denney Scarola Barnhart
& Shipley, P.A.**

Towle House, 517 N. Calhoun St.

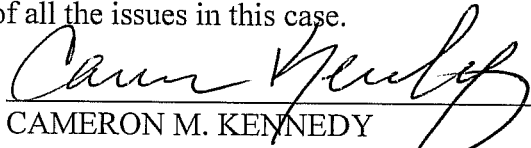
Tallahassee, FL 32301-1231

Tel. No. (850) 224-7600

E-mail: CMK@searcylaw.com

DEMAND FOR TRIAL BY JURY

The Plaintiff demands a trial by struck jury of all the issues in this case.



CAMERON M. KENNEDY

ATTORNEY FOR THE PLAINTIFF

REQUEST FOR SERVICE OF PROCESS

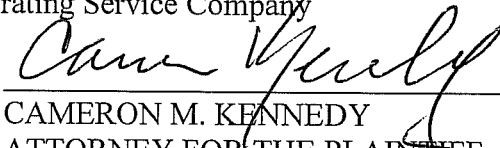
The Plaintiff requests that the Summons and Complaint in this case be served upon Defendant by Process Server, as follows:

Google, Inc.

c/o Registered Agent: CSC Lawyers Incorporating Service Company

11 East Chase Street

Baltimore, Maryland 21202



CAMERON M. KENNEDY

ATTORNEY FOR THE PLAINTIFF