

5. Upon obtaining personal information and/or wire or electronic communications of the Plaintiff, Google conspired to use said information for target marketing which pertained to the Plaintiff and the individual Class members, over the Internet.

6. Such conduct was committed in violation of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Electronic Communication Privacy Act of 1986, 18 U.S.C. § 2511, *et seq.* (referred to herein as the “Wiretap Act”).

PARTIES

Plaintiffs

7. Plaintiff Alex Movitz is an individual who resides at 602 Saddle Creek Loop, Oxford, MS 38655. Upon information and belief, Defendants intercepted, collected, and stored personal information from Plaintiff.

Defendants

8. Google is a company organized and existing under the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Google can be served at that address.

9. Defendants Doe 1 through 10 are other companies which may or may not bear any relationship to Google, and/or the remaining directors, employees, agents, or contractors of Google that are yet to be named and whose identity will become known through discovery and/or by requests made by Plaintiff or the members of the plaintiff class, after which such remaining defendants will be added as individual defendants.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action and all Defendants pursuant to 28 U.S.C. § 1331, in that this action arises under statutes of the United States, specifically violations

of the Wiretap Act.

11. Additionally, this Court has personal jurisdiction over Google pursuant to the Mississippi long-arm statute, §13-3-57, since Google transacted business in Mississippi, violated the law within the state of Mississippi, and otherwise has sufficient minimum contacts within the state of Mississippi as more particularly described herein.

12. Google has sufficient minimum contacts in Mississippi such that the maintenance of this suit in Mississippi does not offend traditional notions of fair play and substantial justice. Google has voluntarily submitted itself to the jurisdiction of this Court and jurisdiction is proper because, among other things:

- a. Google directly and purposefully obtained, misappropriated, and used information relating to wire or electronic communications of individuals living in Mississippi, including the Plaintiff and some of the individual Class members;
- b. Google committed tortious acts within Mississippi by misappropriating personal information and/or wire or electronic communications of citizens of Mississippi and otherwise violating the Wiretap Act;
- c. Plaintiff's and the Class members' causes of action directly arise from Google's commission of tortious and unlawful acts in Mississippi;
- d. Plaintiff's and the Class members' causes of action directly arise from Google's transaction of business in Mississippi;
- e. Google should reasonably anticipate being haled into court anywhere in the United States, including Mississippi, to answer for its unlawful acts. Mississippi has a strong interest in providing a forum for its residents aggrieved by violations of the law.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) because a substantial amount of the acts and omissions giving rise to this cause of action occurred in the Northern District of Mississippi.

FACTUAL ALLEGATIONS

14. Google operates a website, www.google.com, which includes a sub-domain that serves as a social networking site found at plus.google.com.

15. In conducting its business, Google aggregates data on individual members of the public and uses that information in furtherance of marketing and advertising.

16. Google tracks, collects, and stores wire and/or electronic communications of its Google+ users, including but not limited to their Internet browsing history.

17. Leading up to February 2012, Google tracked, collected and stored its users' wire and/or electronic communications, including but not limited to portions of their Internet browsing history, even when the users were using their Safari browsers with settings intended to block any tracking of their activity across the Internet.

18. Plaintiff did not give consent to Google or otherwise authorize Google to intercept, track, collect, and/or store his wire or electronic communications, while using his Safari browser with settings intended to block the tracking of his activity across the Internet.

19. The electronic information procured by Google, while Plaintiff was using his Safari browser with settings intended to block the tracking of his activity across the Internet, contained personal information and/or wire or electronic communications of the Plaintiff.

20. At all times material, Defendants knew, or reasonably should have known, that their actions violated clearly-established statutory rights of the Plaintiff and the Class members.

CLASS ACTION ALLEGATIONS

21. This action is properly brought as a plaintiff class action pursuant to FED. R. CIV. P. 23(b)(3). Plaintiff brings this action on his own behalf and all others similarly situated, as representative of the following class and subclass:

All individuals in the United States who subscribe to Google+ and signed into Google+ using the Safari web browser with settings intended to block the tracking of activity across the Internet and whose electronic internet information was intercepted by Google without their consent by Google's actions to bypass Safari privacy settings.

Excluded from the Class are any individual who opts out of the class.

22. The particular members of the Class are capable of being described without difficult managerial or administrative problems. The members of the Class are readily identifiable from the information and records in the possession or control of the Defendants.

23. The Class members are so numerous that individual joinder of all members is impractical. This allegation is based upon information and belief that Defendants intercepted the personal information of millions of Google+ users, of which Google has claimed tens of millions of users.

24. There are questions of law and fact common to the Class, which questions predominate over any questions affecting only individual members of the Class, and, in fact, the wrongs suffered and remedies sought by Plaintiff and the other members of the Class are premised upon an unlawful scheme participated in by all Defendants. The principal common issues include, but are certainly not limited to the following:

- a. The nature and extent of the Defendants' participation in intercepting the wire and/or electronic communications of class members;
- b. Whether or not the interception of wire and/or electronic communications was

- intentional;
- c. Whether or not Defendants should be enjoined from intercepting any wire and/or electronic communications without the consent of its users;
 - d. Whether the actions taken by Defendants in intercepting the wire and/or electronic communications of class members violate the Wiretap Act and/or 42 U.S.C. § 1983;
 - e. The nature and extent to which the wire or electronic communications of Class members was unlawfully intercepted, tracked, stored or used;
 - f. The nature and extent of the Class members' damages;
 - g. The nature and extent of all statutory penalties or damages for which the Defendants are liable to the Class members; and
 - h. Whether punitive damages are appropriate.

24. Plaintiff's claims are typical of those of the Class and are based on the same factual and legal theories.

25. Plaintiff will fairly and adequately represent and protect the interests of the Class. He has suffered injury in his own capacity from the practices complained of and is ready, willing, and able to serve as a class representative. Moreover, Plaintiff's counsel is experienced in handling class actions and actions involving unlawful commercial practices. Neither Plaintiff nor his counsel has any interest that might cause them not to vigorously pursue this action.

26. Certification of a plaintiff class under FED. R. CIV. P. 23(b)(3) is appropriate in that Plaintiff and the Class members seek monetary damages, common questions predominate over any individual questions, and a plaintiff class action is superior for the fair and efficient adjudication of this controversy. A plaintiff class action will cause an orderly and expeditious administration of the Class members' claims and economies of time, effort, and expense will be

fostered and uniformity of decisions will be ensured. Moreover, the individual class members are unlikely to be aware of their rights and not in a position (either through experience or financially) to commence individual litigation against the likes of the defendants.

27. Alternatively, certification of a plaintiff class under FED. R. CIV. P. 23(b)(1) is appropriate in that inconsistent or varying adjudications with respect to individual members of the Class would establish incompatible standards of conduct for the Defendants, or adjudications with respect to individual members of the Class as a practical matter would be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

COUNT I
(Violation of the Wiretap Act)

28. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

29. As described herein, Google intentionally intercepted and collected wire and/or electronic communications from its users.

30. At times, Google intercepted and collected information from its Google+ users without their consent while the users were using their Safari browsers with settings intended to block the tracking of user activity across the Internet.

31. The transmission of data between Plaintiff's computer or other devices and the Internet constitute "electronic communication" within the meaning of 18 U.S.C. § 2510(12).

32. Google's data collection practices as described herein constitute "interceptions" within the meaning of § 2510(4).

33. As a direct and proximate result of such unlawful conduct, Defendants violated 18 U.S.C. § 2511 in that Defendants:

a. Intentionally intercepted, endeavored to intercept, or procured another person to

intercept wire and/or electronic communications of the Plaintiff;

- b. Upon belief predicated upon further discovery, intentionally disclosed or endeavored to disclose to another person the contents of Plaintiff's wire and/or electronic communications, knowing or having reason to know that the information was obtained through the interception of wire and/or electronic communications in violation of 18 U.S.C. §2511(1)(a).
- c. Upon belief predicated upon further discovery, intentionally used or endeavored to use the contents of Plaintiff's wire and/or electronic communications, knowing or having reason to know that the information through the interception of wire or electronic communications in violation of 18 U.S.C. §2511(1)(a).

34. Google's actions described herein occurred without the consent of Plaintiff and violated Google's own instructions to users regarding Advertising Opt-Out Plug-Ins for Safari browsers, which stated the following, in pertinent part:

Instructions for Safari

While we don't yet have a Safari version of the Google advertising cookie opt-out plugin, Safari is set by default to block all third-party cookies. If you have not changed these settings, this option effectively accomplishes the same thing as setting the opt-out cookie.

35. Upon information and belief, Google's actions described herein occurred without the consent of the websites from which Google surreptitiously, intentionally, and without consent placed tracking cookies on Plaintiffs' computer and other web-surfing devices.

36. Google's actions described herein were for the purpose of committing tortious acts in violation of the laws of the United States and Mississippi. In taking its actions, Google committed the following tortious acts alleged in this petition:

- a. Unjust enrichment; and

b. Invasion of privacy.

37. As a result of the above violations and pursuant to 18 U.S.C. § 2520, Defendants are liable to Plaintiff and the Class in the sum of statutory damages consisting of the greater of \$100 for each day each of the class members' data was wrongfully obtained or \$10,000 per violation; injunctive and declaratory relief; punitive damages in an amount to be determined by a jury, but sufficient to prevent the same or similar conduct by Google in the future, and reasonable attorneys' fees and other reasonable litigation costs.

COUNT II
(Unjust enrichment)

38. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

39. Plaintiff conferred a benefit on Defendants without Plaintiff's consent, namely access to his wire and/or electronic communications over the Internet.

40. Upon information and belief, Defendants realized such benefits through either sales to third parties, or greater knowledge of its own users' behavior without their consent.

41. Acceptance and retention of such benefit without Plaintiff's consent is unjust and inequitable.

COUNT III
(Intrusion upon seclusion)

42. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

43. In surreptitiously and without consent intercepting Plaintiff's wire and/or electronic communications on the Internet by bypassing his Safari privacy settings, Defendants intentionally intruded upon his solitude or seclusion.

44. Plaintiff did not consent to Defendants' intrusion.

45. Defendants' intentional intrusion on Plaintiff's solitude or seclusion without his

consent would be highly offensive to a reasonable person.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiff, on behalf of himself and all members of the Class, respectfully prays for judgment against the Defendants as follows:

- a) For an order certifying that this action may be maintained as a class action under FED. R. CIV. P. 23(b)(3) or, in the alternative, FED. R. CIV. P. 23(b)(1) and appointing Plaintiff and his counsel, to represent the Class and directing that reasonable notice of this action be given to all other members of the Class as necessary and appropriate;
- b) For a declaration that the Defendants' actions violated the 18 U.S.C. § 2511, *et seq.*;
- c) For a declaration that the Defendants, through their actions and misconduct as alleged herein, have been unjustly enriched, and an order that Defendants disgorge such unlawful gains and proceeds;
- d) For all actual damages, statutory damages, penalties, and remedies available for the Defendants' violations of 18 U.S.C. § 2511, *et seq.*;
- e) That judgment be entered against Defendants for statutory damages pursuant to 18 U.S.C. § 2520(c)(2)(B);
- f) That judgment be entered against Defendants for statutory damages pursuant to 18 U.S.C. § 2520(b)(2);
- g) That Plaintiff and the Class recover pre-judgment and post-judgment interest as permitted by law;
- h) For an award to Plaintiff and the Class of their reasonable attorneys' fees and other litigation costs reasonably incurred pursuant to 18 U.S.C. § 2520(b)(3);
- i) That the court enter an order granting Plaintiff and the Class a preliminary and permanent

injunction restraining and enjoining Defendants from any act to intercept electronic information from its users when they are not logged in and from disclosing any of the information already acquired on its servers; and

j) That the Court grant such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff demands that all issues so triable in this Complaint be tried to a jury.

Dated this 27th day of February, 2012.

Respectfully submitted,

BY: 

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