

1 Bobbie J. Wilson, Bar No. 148317  
2 BWilson@perkinscoie.com  
3 Sunita Bali, Bar No. 274108  
4 SBali@perkinscoie.com  
5 **PERKINS COIE LLP**  
6 505 Howard Street, Suite 1000  
7 San Francisco, CA 94105-3204  
8 Telephone: 415.344.7000  
9 Facsimile: 415.344.7050  
10 Attorneys for Defendants Alphabet Inc.  
11 and Google LLC

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11  
12 SAN JOSE DIVISION

13 IN RE GOOGLE ASSISTANT PRIVACY  
14 LITIGATION

Case No. 5:19-cv-04286-BLF  
**DEFENDANTS ALPHABET INC. AND  
GOOGLE LLC'S NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT**

15 Date: October 20, 2022  
16 Time: 9:00 a.m.  
17 Dept.: Courtroom 3, 5th Floor  
18 Judge: Hon. Beth Labson Freeman  
19

20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

		<b>Page</b>
1		
2		
3		
4	I. INTRODUCTION .....	1
5	II. STATEMENT OF UNDISPUTED FACTS .....	2
6	A. Google Assistant .....	2
7	1. How Assistant’s voice activation technology works .....	2
8	2. Google’s ongoing efforts to improve its speech models and limit Assistant misactivations.....	3
9	3. Google offers a range of settings that allows users to control what information Google collects via Assistant and how that information is used .....	5
10	B. Summary of Plaintiffs’ Claims .....	6
11	C. Facts Relating to Individual Plaintiffs.....	7
12	1. Melissa Spurr (“Spurr”) and B.S.....	7
13	2. Lourdes Galvan (“L. Galvan”).....	8
14	3. Eleeanna Galvan (“E. Galvan”) .....	8
15	4. Asif Kumandan .....	8
16	III. ARGUMENT .....	8
17	A. The Undisputed Evidence Shows No Violation of the Wiretap Act.....	8
18	1. There Was No Unlawful Interception.....	9
19	2. Plaintiffs’ “Use” and “Disclosure” Claims Also Fail.....	13
20	B. Plaintiffs’ Stored Communications Act Claim Fails.....	14
21	1. Plaintiffs lack evidence to prove their SCA claim as pled.....	14
22	2. Plaintiffs lack standing to assert their SCA claim.....	15
23	3. Plaintiffs cannot show that Google provided an “electronic communication service” in this context.....	16
24	C. Plaintiffs’ CIPA Claim Fails Because There Is No Evidence of an Intentional Interception of a Confidential Communication.....	17
25	D. The Undisputed Evidence Shows That No Intrusion Upon Seclusion or Invasion of Privacy Has Occurred.....	17
26	E. Plaintiffs’ Breach of Contract Claim Fails as a Matter of Law.....	20
27	1. Plaintiffs cannot show that any contractual provision was breached.....	20
28	2. Plaintiffs Did Not Incur Any Damages as a Result of Any Breach of Google’s Privacy Policy.....	20
	F. Plaintiffs’ UCL Claims Fail on Multiple Grounds.....	23
	1. Lack of actual reliance dooms Plaintiffs’ claims.....	23
	2. Plaintiffs are not entitled to restitution under the UCL.....	24
	3. Plaintiffs’ UCL unlawful and unfair claims necessarily fail.....	25

**TABLE OF CONTENTS**  
**(continued)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

IV. CONCLUSION ..... 25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28**TABLE OF AUTHORITIES****Page(s)****CASES**

<i>Baghdasarian v. Amazon.com, Inc.</i> , No. CV 05-8060 2009 WL 4823368 (C.D. Cal. Dec. 9, 2009) .....	24
<i>Banga v. Experian Info. Sols.</i> , No. 08-cv-04147, 2010 WL 11531066 (N.D. Cal. Mar. 8, 2010) .....	25
<i>Blackman v. Omak Sch. Dist.</i> , 466 F. Supp. 3d 1172 (E.D. Wa. 2020).....	23
<i>Courtesy Oldsmobile, Inc. v. Gen. Motors Corp.</i> , 329 F. Appx. 73 (9th Cir. 2009).....	20
<i>Delaney v. Aurora Loan Servicing, Inc.</i> , No. C 09-3131, 2010 WL 11583448 (N.D. Cal. Mar. 1, 2010).....	25
<i>Deteresa v. Am. Broad. Cos.</i> , 121 F.3d 460 (9th Cir. 1997).....	18, 20
<i>Federal Agric. Mortg. Corp. v. It's A Jungle Out There, Inc.</i> , No. C 03-3721, 2005 WL 3325051 (N.D. Cal. Dec. 7, 2005) .....	22
<i>Genesis Ins. Co. v. Magma Design Automation, Inc.</i> , No. 06-cv-05526, 2017 WL 4642443 (N.D. Cal. Oct. 16, 2017) .....	23
<i>Harmoush v. Allstate Ins. Co.</i> , No. CV 10-4664, 2012 WL 13005929 (C.D. Cal. Mar. 12, 2012) .....	21
<i>Hayes v. SpectorSoft Corp.</i> , No. 08-cv-187, 2009 WL 3713284 (E.D. Tenn. Nov. 3, 2009).....	10
<i>Heldt v. Guardian Life Ins. Co. of Am.</i> , No. 16-cv-885, 2019 WL 651503 (S.D. Cal. Feb. 15, 2019).....	20
<i>Hernandez v. Hillsides, Inc.</i> , 47 Cal. 4th 272 (2009) .....	18, 19, 20
<i>Hill v. Nat'l Collegiate Athletic Ass'n</i> , 7 Cal. 4th 1 (1994) (en banc) .....	19

**TABLE OF AUTHORITIES**  
(continued)

		<b>Page(s)</b>
1		
2		
3	<i>Huff v. Spaw</i> ,	
4	794 F.3d 543 (6th Cir. 2015).....	12
5	<i>In re Google Assistant Priv. Litig.</i> ,	
6	457 F. Supp. 3d 797 (N.D. Cal. 2020) .....	9, 13, 19
7	<i>In re Google Assistant Priv. Litig.</i> ,	
8	457 F. Supp. 3d at 818–19 .....	13
9	<i>In re Google Inc. Gmail Litig.</i> ,	
10	No. 13-MD-02430, 2013 WL 5423918 (N.D. Cal. Sept. 26, 2013) .....	13
11	<i>In re iPhone Application Litig.</i> ,	
12	6 F. Supp. 3d 1004 (N.D. Cal. 2013) .....	24
13	<i>In re iPhone Application Litig.</i> ,	
14	844 F. Supp. 2d 1040 (N.D. Cal. 2012) .....	19
15	<i>In re Pharmatrak, Inc.</i> ,	
16	329 F.3d 9 (1st Cir. 2003).....	9, 10
17	<i>Jayne v. Bosenko</i> ,	
18	No. 08-cv-02767, 2014 WL 2801198 (E.D. Cal. June 19, 2014) .....	10
19	<i>Joffe v. Google, Inc.</i> ,	
20	746 F.3d 920 (9th Cir. 2013).....	9
21	<i>Katz v. United States</i> ,	
22	389 U.S. 347 (1967).....	12
23	<i>Kearney v. Salomon Smith Barney, Inc.</i> ,	
24	39 Cal. 4th 95 (2006) .....	17
25	<i>Khasin v. Hershey Co.</i> ,	
26	No. 12-cv-01862, 2014 WL 1779805 (N.D. Cal. May 5, 2014).....	24
27	<i>Kirch v. Embarq Mgmt. Co.</i> ,	
28	702 F.3d 1245 (10th Cir. 2012).....	13
	<i>Korea Supply Co. v. Lockheed Martin Corp.</i> ,	
	29 Cal. 4th 1134 (2003) .....	25
	<i>Lopez v. Apple, Inc.</i> ,	
	519 F. Supp. 3d 672 (N.D. Cal. 2021) .....	17, 18

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.