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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JOSEPH TAYLOR, EDWARD MLAKAR,  
MICK CLEARY, and EUGENE ALVIS,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**



**INTRODUCTION**

1  
2 1. Defendant Google LLC (“Google”) has a dirty little secret. It designed the Android  
3 operating system to collect vast amounts of information about users, which Google uses to generate  
4 billions in profit annually by selling targeted digital advertisements. There are privacy implications  
5 for an operating system specifically designed to surveil mobile device users in order to refine  
6 Google’s targeted advertising business. But in the course of mobile surveillance, there is also an  
7 unlawful taking of Android users’ property—namely, their cellular data. Google effectively forces  
8 these users to subsidize its surveillance by secretly programming Android devices to constantly  
9 transmit user information to Google in real time, thus appropriating the valuable cellular data users  
10 have purchased. Google does this, in large measure, for its own financial benefit, and without  
11 informing users or seeking their consent.

12 2. This case involves the application of long-standing common law principles to seek  
13 redress for Google’s secret appropriation of Android users’ cellular data allowances. Pursuing  
14 claims for conversion and quantum meruit, Plaintiffs seek to represent a nationwide class of  
15 consumers (excluding California residents) who own Android mobile devices that secretly use  
16 their costly cellular data plans to enable Google’s surveillance activities.

17 3. Much of this information-gathering by Google takes place without any action at all  
18 by Android device owners. While Plaintiffs’ Android devices are in their purses and pockets, and  
19 even while sitting seemingly idle on Plaintiffs’ nightstands as they sleep, Google’s Android  
20 operating system secretly appropriates cellular data paid for by Plaintiffs to perform “passive”  
21 information transfers which are not initiated by any action of the user and are performed without  
22 their knowledge. The transmission of this data to and from Google is not time-sensitive and could  
23 be delayed until Plaintiffs are in Wi-Fi range to avoid consuming Plaintiffs’ cellular data  
24 allowances. However, Google deliberately designed and coded its Android operating system and  
25 Google applications to indiscriminately take advantage of Plaintiffs’ data allowances and passively  
26 transfer information at all hours of the day—even after Plaintiffs move Google apps to the  
27 background, close the programs completely, or disable location-sharing.

1           4.       Plaintiffs had no say in Google’s continual misappropriation of their cellular data  
2 allowances and remain largely powerless to stop it. Google designed its Android operating system  
3 and apps to prevent users from changing the settings to disable these transfers completely or to  
4 restrict them to Wi-Fi networks. Because of Google’s deliberate design decisions, these passive  
5 information transfers using cellular data allowances purchased by Plaintiffs are mandatory and  
6 unavoidable burdens shouldered by Android device users for Google’s financial benefit.

7           5.       Plaintiffs at no time consented to these transfers, and were given no warning or  
8 option to disable them. Google has crafted its various terms of service and policies in ways that  
9 purport to create binding contracts with the users of its technologies. But Plaintiffs and other  
10 consumers purchased their Android devices with little choice but to accept Google’s terms and  
11 policies, which are contracts of adhesion. Even if Google’s policies and terms of service are valid  
12 contracts, they do not alert users that Android devices will needlessly consume their cellular data  
13 allowances. While Google informs the users of certain transfers of personal information when they  
14 are actively engaged with their devices, its extensive “privacy” policies are silent on mandatory,  
15 passive information transfers and the means by which they occur.

16           6.       These information transfers are not mere annoyances—they interfere with  
17 Plaintiffs’ property interests, depriving them of data for which they, not Google, paid. Each month,  
18 mobile device users pay their mobile carriers for cellular data allowances that enable them to  
19 transmit and receive information on the carriers’ cellular data networks. Whether Plaintiffs pay for  
20 a specific number of gigabytes or unlimited access subject to speed restrictions above a certain  
21 data usage threshold, the contracts between Plaintiffs and their mobile carriers create for Plaintiffs  
22 concrete property interests in their purchased data allowances. When it initiates passive transfers  
23 of information utilizing Plaintiffs’ cellular allowances, Google wrongfully interferes with  
24 Plaintiffs’ property and commits the longstanding tort of conversion.

25           7.       In addition to misappropriating Plaintiffs’ property, the passive transfers confer a  
26 valuable benefit to Google at Plaintiffs’ expense. Google sends and receives information without  
27 bearing the cost of transferring that information between consumers and Google. Indeed, the

1 information transmitted through this practice supports the company's product development and  
2 lucrative targeted advertising business. In the absence of contractual provisions disclosing and  
3 permitting Google's appropriation of Plaintiffs' property, Google must compensate Plaintiffs for  
4 the fair market value of the data allowances Google has misappropriated, as well as the value of  
5 the personal information which Google has thereby acquired.

6 **PARTIES**

7 8. Plaintiff Joseph Taylor, who is a resident and domiciliary of Illinois, bought an  
8 Android mobile device that he uses with a monthly unlimited cellular data plan purchased from  
9 carrier Metro by T-Mobile. Plaintiff Taylor was injured in fact and has been deprived of his  
10 property as a result of Google's unlawful conversion of his cellular data.

11 9. Plaintiff Edward Mlakar, who is a resident and domiciliary of Illinois, bought an  
12 Android mobile device that he uses with a monthly unlimited cellular data plan purchased from  
13 carrier Sprint Solutions, Inc. Plaintiff Mlakar was injured in fact and has been deprived of his  
14 property as a result of Google's unlawful conversion of his cellular data.

15 10. Plaintiff Mick Cleary, who is a resident and domiciliary of Wisconsin, bought an  
16 Android mobile device that he uses with a monthly unlimited cellular data plan purchased from  
17 carrier Verizon. Plaintiff Cleary was injured in fact and has been deprived of his property as a  
18 result of Google's unlawful conversion of his cellular data.

19 11. Plaintiff Eugene Alvis, who is a resident and domiciliary of Iowa, bought Android  
20 mobile devices that he has used with a monthly limited cellular data plan purchased from carrier  
21 Verizon and a monthly unlimited cellular data plan from U.S. Cellular. Plaintiff Alvis was injured  
22 in fact and has been deprived of his property as a result of Google's unlawful conversion of his  
23 cellular data.

24 12. Defendant Google LLC is a Delaware limited liability company with its principal  
25 place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google  
26 created the Android operating system and continues to control all aspects of Android's  
27 programming and operation.

**JURISDICTION**

1  
2 13. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d), because (1)  
3 this action is a “class action,” which contains class allegations and expressly seeks certification of  
4 a proposed class of individuals; (2) the Class defined below consists of more than one hundred  
5 proposed class members; (3) the citizenship of at least one class member is different from Google’s  
6 citizenship;<sup>1</sup> and (4) the aggregate amount in controversy of the claims of Plaintiffs and the  
7 putative Class exceeds \$5,000,000, exclusive of interest and costs.

8 14. This Court has personal jurisdiction over Google because it maintains its  
9 headquarters in California and in this District, and the illegal conduct alleged herein was conceived  
10 and implemented in whole or in part within California and this District.

11 15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c).

12 16. Google’s terms of service provide that all claims arising out of or relating to  
13 Google’s products and services will be litigated in federal or state courts in Santa Clara County,  
14 California, USA, and that Google consents to personal jurisdiction in those courts.

15  
16 **I. GOOGLE’S ANDROID SYSTEM IS UBIQUITOUS**

17 17. Google owns and programs the most popular mobile platform in the world, the  
18 Android operating system. Android works on a variety of mobile devices, including smartphones  
19 and tablets.

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23 <sup>1</sup> Because jurisdiction is based on the Class Action Fairness Act, 28 U.S.C. § 1332(d), even  
24 though Google LLC is a limited liability company, it is a citizen of the states “where it has its  
25 principal place of business and...under whose laws it is organized.” 28 U.S.C. § 1332(d)(10). In  
26 other words, while in traditional non-class diversity cases the citizenship of a limited liability  
27 company would be determined by the citizenship of its members, that principle does not apply to  
this case. *See, e.g., Erie Ins. Exch. V. Erie Indemn. Co.*, 722 F.3d 154, 161 n.7 (3d Cir. 2013)  
(explaining that the Class Action Fairness Act “evinces an intent that suits by unincorporated  
associations be treated like suits by corporations in that the citizenship of the association for  
diversity purposes is determined by the entity’s principal place of business and not by the  
citizenship of its members”).

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