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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 5:20-CV-07956-VKD

**FIRST AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. Defendant Google LLC (“Google”) designed the Android operating system to
3 collect vast amounts of information about its users, which Google uses to generate billions of
4 dollars in profit annually by selling targeted digital advertisements and improving products like
5 Google Maps. There are privacy implications for an operating system specifically designed to
6 surveil mobile device users in order to refine Google’s targeted advertising business. But there is
7 also an unlawful free-riding problem because Google collects this information by consuming the
8 cellular data that its Android users purchase from their cellular providers every month. Google
9 effectively forces these users to subsidize its surveillance by secretly programming Android
10 devices to constantly transmit user information to Google in real time, thus appropriating the
11 valuable cellular data users have purchased. Google does this, in large measure, for its own
12 financial benefit, and without informing users or seeking their consent.

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

18 3. Consumers pay mobile carriers for cellular data, and they consume that data
19 through their mobile devices. Cellular data is property subject to conversion. But even if cellular
20 data were a service rather than property, Google’s misappropriation of that service gives rise to a
21 quantum meruit claim—a claim that does not depend on cellular data being property.

22 4. Cellular data is property subject to conversion because, just like electricity or water,
23 cellular data is capable of exclusive possession. Just like electricity or water passing through a
24 meter attached to a home, every singly byte of cellular data transmitted by a wireless device is
25 metered by the carrier. Just like the use of electricity or water, the amount of data transmitted by a
26 wireless device has ramifications for the consumer, who can be charged for the additional use or
27 suffer restrictions on further use. And just as electricity and water are provided by utilities, it

1 makes no difference that cellular data is transmitted by a wireless carrier. Just like electricity
2 delivered through a wire into a home is property, and just as the water passing through a pipe into
3 a home is property, so too is the cellular data transported over a wireless carrier's network to and
4 from a user's cellular device.

5 5. Even if cellular data is not property subject to conversion, and is instead a
6 contractual right of access to a service, it is still a valuable right that Google has misappropriated,
7 and the misappropriation of a service is precisely the sort of wrong that quantum meruit is meant
8 to redress. ***The quantum meruit claim pleaded in this Amended Complaint is not a common***
9 ***count derivative of the conversion claim.*** It is a separate cause of action, with a separate theory
10 of recovery that the consumer class has a right to pursue regardless of whether cellular data is or
11 is not property. The quantum meruit claim does not rise and fall with the conversion claim—quite
12 the opposite. Either cellular data is property subject to conversion, or it is a contractual right of
13 access to a service subject to quantum meruit. It may even be both—but it must at least be one or
14 the other.

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

26 7. Plaintiffs had no say in Google's continual misappropriation of their cellular data
27 and remain largely powerless to stop it. Google designed its Android operating system and apps

1 to prevent users from changing the settings to disable these transfers completely or to restrict them
2 to Wi-Fi networks. Because of Google's deliberate design decisions, these passive information
3 transfers using cellular data purchased by Plaintiffs are mandatory and unavoidable burdens
4 shouldered by Android device users for Google's financial benefit.

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

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

24 10. If cellular data is viewed as a contractual right of access to a service instead of
25 property, then Google has unjustly enriched itself by misappropriating Plaintiffs' right to transmit
26 cellular data over their carriers' networks for its own purposes, without the knowledge or consent
27 of the users whose right of access Google is coopting. If that misappropriation does not state a

1 claim for conversion, it must state a claim for quantum meruit. That is because the passive
2 transfers of cellular data confer a valuable benefit to Google at Plaintiffs' expense. Google sends
3 and receives information without bearing the cost of transferring that information between
4 consumers and Google. Indeed, the information transmitted through this practice supports the
5 company's product development and lucrative targeted advertising business. In the absence of
6 contractual provisions disclosing and permitting Google to utilize Plaintiffs' cellular data, Google
7 must compensate Plaintiffs for that use.

8 11. This case is not about privacy. In this Amended Complaint, Plaintiffs do not
9 challenge Google's underlying practice of harvesting personal information about users from their
10 interactions with mobile devices or apps. Rather, Plaintiffs challenge Google's practice of
11 effectively making mobile device users *pay* for the *transfer* of that information from their mobile
12 devices to Google. As used by the carriers, and as used in this Amended Complaint, the term
13 "cellular data" does not describe the underlying personal information that Google secretly causes
14 Android mobile devices to transmit to it; rather, "cellular data" describes the transmission of such
15 information over cellular networks charged against consumers' cellular data plans. To avoid
16 confusion, this Amended Complaint typically refers to cellular data as "data" and the underlying
17 information transferred via the cellular network as "information."

18 PARTIES

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

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

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