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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JONATHAN DIAZ and LEWIS
BORNMANN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 5:21-cv-3080

COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

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1 **I. INTRODUCTION**

2 Defendant Google LLC (“Google”) co-created the Google-Apple Exposure Notification
3 System (“GAEN”) to assist state and local authorities deploying apps for mobile devices that
4 conduct COVID-19 “contact-tracing,” and implements GAEN in Android smartphones via
5 Google Mobile Services, a collection of Google apps and APIs (“GMS”). Google unequivocally
6 assures that it completely safeguards the sensitive information necessarily involved with COVID-
7 19 contact tracing. However, because Google’s implementation of GAEN allows this sensitive
8 contact tracing data to be placed on a device’s system logs and provides dozens or even hundreds
9 of third parties access to these system logs, Google has exposed GAEN participants’ private
10 personal and medical information associated with contact tracing, including notifications to
11 Android device users of their potential exposure to COVID-19.

12 The GAEN contact tracing system uses signals called “rolling proximity identifiers”
13 broadcast through the Bluetooth radio on mobile devices that other mobile devices can detect and
14 record, thereby providing information about proximate encounters with nearby participants.
15 Google’s GMS records both this outgoing and incoming data on each device’s system log, such
16 that Android device users running Google’s software unwittingly expose not only their
17 information to numerous third parties, but also information from unsuspecting GAEN users on
18 other devices (including non-Android devices, such as iPhones) who come within range of them.

19 The exposed information is personally identifiable. The contact tracing apps themselves
20 generate ostensibly-secure personal device identifiers, which change periodically as they are
21 broadcast to other devices, and should be traceable to the device user only with a “key” held by
22 the public health authorities. But in storage, these identifiers are maintained alongside other
23 device identifiers known as MAC addresses. When this stored data is written to mobile device
24 system logs, it becomes available to third parties with access to the logs. They, alone or in
25 concert, can use the MAC addresses to trace the identifiers back to individual identities, locations,
26 and other identifying attributes, effectively creating an alternative “key” of their own. For those
27 who have reported testing positive, it enables third parties to link that diagnosis back to the
28 particular patient, defeating the purported anonymity Google claims for its service.

1 In February 2021, Google was informed of the security flaw in its implementation of
2 GAEN that caused the data breach alleged herein. To date, Google has failed to inform the public
3 that participants in GAEN have had their private personal and medical information exposed to
4 third parties, who in the ordinary course of business may access the system logs from time to
5 time, or that Google itself may access these logs.

6 Accordingly, Plaintiffs Jonathan Diaz and Lewis Bornmann, on behalf of themselves and
7 all others similarly situated, bring this action pursuant to the California Confidentiality of Medical
8 Information Act and their common law and constitutional privacy rights to obtain a mandatory
9 public injunction requiring Google to remediate the security flaw in its implementation of the
10 GAEN system, and for, *inter alia*, damages and restitution.

11 **II. PARTIES**

- 12 1. Plaintiff Jonathan Diaz is a citizen and resident of Alameda County, California.
13 2. Plaintiff Lewis Bornmann is a citizen and resident of Solano County, California.
14 3. Defendant Google LLC (“Google”) is a Delaware Limited Liability Company

15 based at 1600 Amphitheatre Way, Mountain View, California, whose sole member is XXVI
16 Holdings Inc. XXVI Holdings Inc. is a corporation incorporated in Delaware with its principal
17 office in California.

18 **III. JURISDICTION**

19 4. Under 28 U.S.C. § 1332(d), the Court has subject matter jurisdiction of Plaintiffs’
20 state law claims because the amount in controversy exceeds \$5,000,000, exclusive of interest and
21 costs, and at least one class member is a citizen of a state that is neither Delaware nor California.

22 **IV. INTRADISTRICT ASSIGNMENT**

23 5. Pursuant to Civil L.R. 3-2(c), assignment to the San Jose Division of this District
24 is proper because a substantial part of the conduct which gives rise to Plaintiffs’ claims occurred
25 in Santa Clara County. Google developed, markets, and deploys its products throughout the
26 United States, including in Santa Clara County. Additionally, Google is headquartered in
27 Mountain View, California, which is located within Santa Clara County.

28

1 **V. GOOGLE’S CONDUCT**

2 **A. Background: The COVID-19 Pandemic**

3 6. In December 2019, a new strain of coronavirus known as SARS-CoV-2 appeared
4 in China.

5 7. SARS-CoV-2 causes a highly infectious disease known as COVID-19.

6 8. COVID-19 spread swiftly across the globe. The World Health Organization
7 declared it a global health emergency on January 20, 2020.

8 9. One potentially effective tool used by public health authorities to control the
9 spread of infectious diseases like COVID-19 is called contact tracing.

10 10. In general, contact tracing means identifying everyone who has come into contact
11 with an infected person to notify them they may have been infected, observe them for signs of
12 infection, and isolate and treat them if they are infected.

13 11. The contact tracing protocol issued for COVID-19 by the U.S. Centers for Disease
14 Control and Prevention provides that such notifications should be issued to anyone who has been
15 within 6 feet of an infected person for at least 15 minutes within the past 14 days.¹

16 **B. Google’s Exposure Notification System**

17 12. In 2020, Google and Apple Inc. developed a system for digital contact tracing
18 using smartphones called the Google-Apple Exposure Notification System (“GAEN”).

19 13. In May 2020, Google implemented GAEN and made it available to public health
20 authorities worldwide.²

21 14. GAEN acts a framework or platform on which a public health authority can build a
22 mobile contact tracing application (“Contact Tracing App” or “App”) for use in its jurisdiction.³

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24 _____
25 ¹ Ctrs. for Disease Control & Prevention, *Contact Tracing for COVID-19*
<https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/contact-tracing.html> (Feb. 25, 2021).

26 ² David Burke, *An Update on Exposure Notifications*, Google (July 31, 2020),
27 <https://blog.google/inside-google/company-announcements/update-exposure-notifications>.

28 ³ Google, *Exposure Notifications*, <https://www.google.com/covid19/exposurenotifications> (last visited Apr. 27, 2021).

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