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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CV 10 6727

JW

18 EVA HIBNICK, individually and
19 on behalf of all others similarly situated,

20 Plaintiff,

21 vs.

22 GOOGLE INC.,

23 Defendant

) Case No.:
) CLASS ACTION COMPLAINT
) DEMAND FOR JURY TRIAL
)
)
)

25 Plaintiff, EVA HIBNICK ("Plaintiff"), by and through her attorneys, allege on personal
26 knowledge as to all facts related to herself and on information and belief as to all other matters,
27 which are based upon, among other things, the investigation made by Plaintiff through her
28 counsel and personal knowledge, as follows:

1 **PRELIMINARY STATEMENT**

2 1. This is a class action lawsuit, brought by, and on behalf of, a nationwide class of
3 individuals whose privacy rights were violated by the actions of Google Inc. ("Google") through
4 its Google Buzz program.

5 2. Google automatically added the Google Buzz service to the accounts of all users
6 of Google's "Gmail" service.

7 3. Google Buzz made private data belonging to Gmail users publicly available
8 without the users' knowledge or authorization. This information included some or all of the
9 following: personal contact information, place of residence, occupation, and a list of the users'
10 frequent email contacts.

11 4. When launching its Buzz service, Google failed to provide users with clear
12 information detailing the nature of the new service, including the automatic application of the
13 Buzz program and its provisions for default disclosure of personal information.

14 5. Google failed to provide users with a meaningful opportunity to opt out of the
15 Buzz service before sharing their data publicly.

16 6. Google has publicly admitted that its Buzz program presents privacy concerns,
17 and Google has made several waves of modifications to the program. However, Google's
18 modifications do not go far enough to address the problem. Furthermore, Google's actions have
19 already caused damage because the Buzz program disclosed private user information the moment
20 Google launched the service. The bell of breached privacy cannot be un-rung.

21 7. Google's public disclosure of private user data violates users' rights under the
22 Federal Electronic Communications Privacy Act, the Federal Computer Fraud and Abuse Act,
23 the Federal Stored Communications Act, and California common and statutory law.

24 **JURISDICTION AND VENUE**

25 8. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 for
26 deprivation of rights guaranteed under the Electronic Communications Privacy Act, 18 U.S.C. §
27 2510 *et seq.*, the Stored Communications Act, 18 U.S.C. § 2701 *et seq.*, and the Computer Fraud
28 and Abuse Act, 18 U.S.C. § 1030 *et seq.* This Court also has jurisdiction pursuant to 28 U.S.C. §

1 1367(a) over Plaintiff's state statutory and common law claims. Jurisdiction is also founded
2 upon 28 U.S.C. §1332(d) in that this is a putative class action with more than 100 class members,
3 more than \$5 million in controversy, and minimal diversity of citizenship.

4 9. Venue is appropriate pursuant to 28 U.S.C. § 1391(b) and (c). A substantial
5 portion of the events and conduct giving rise to the violations alleged in this complaint occurred
6 in this District. Defendant Google resides here as it maintains its principle office and
7 headquarters in this District.

8 **PARTIES**

9 10. Plaintiff Eva Hibnick is a user of Google's "Gmail" email service. She is a
10 citizen of Sarasota County, State of Florida. Google automatically activated the Buzz program
11 on Plaintiff's account, as a result of which Buzz broadcast Plaintiff's personal information to
12 other Gmail users and/or made this information publicly viewable on the Internet.

13 11. Defendant Google Inc. is a Delaware corporation headquartered at 1600
14 Amphitheatre Parkway, Mountain View, CA 94043. Google provides a variety of internet-
15 related services, including email service through its "Gmail" program. Google does business
16 throughout the United States, and in particular, does business in the State of California and in
17 this district.

18 **STATEMENT OF COMMON FACTS**

19 12. Google launched the Google Buzz program on or about Tuesday, February 9,
20 2010. Google Buzz enables users of Google's "Gmail" service to share written posts, photos,
21 hyperlinks, and other information with other Gmail users. Buzz is Google's attempt to compete
22 with social networking programs such as Facebook and Twitter.

23 13. To jump-start that competition, Google, without any authorization by Gmail
24 users, automatically added Google Buzz to the accounts of all Gmail users.

25 14. When Buzz was first rolled out on February 9, Gmail users who accessed their
26 mail accounts were initially given two options: (1) set up Google Buzz; or (2) continue to Gmail
27 inbox. Regardless of which option the user chose, Google automatically activated the Buzz
28 program on that user's Gmail account. Option (2) therefore deceptively implied that by selecting

1 it, and not the "set up Google Buzz" option, the user was not activating Buzz -- but in fact
2 Google activated Buzz even if the user did not elect to "set up" the program.

3 15. Google Buzz automatically created a list of "followers" for each Gmail user.

4 16. Google Buzz also automatically created a list of persons whom the user was
5 automatically "following."

6 17. Google Buzz "posted" to Buzz any information that was previously posted to
7 certain other Google websites, including but not limited to Picasa, Google Reader, and Twitter.

8 18. Google created the "follower" and "following" lists by using an algorithm that
9 selected those email contacts with whom a Gmail user communicated most frequently. This
10 meant that Google shared information about a Gmail user with the users' frequent email contacts.
11 By contrast, a social networking program such as Facebook shares information with "Friends"
12 only after both parties have agreed to become Friends. An individual's email contacts may be a
13 different group of people (for example, professional contacts) than the group with whom a user
14 would want to be in a social network. By implementing the Buzz program, Google forced upon
15 its Gmail users Google's own definition of a proper social network, all in an effort to jump-start
16 Google's entry into a new consumer market.

17 19. When Google automatically activated Google Buzz in a user's Gmail account,
18 Google's unilateral actions had significant privacy consequences, including but not limited to:

- 19 * the "following" and "follower" lists of each user were made
20 publicly available on the web;
- 21 * the "following" and "follower" lists of each user were made
22 available to persons following that user;
- 23 * followers could view any information posted on Buzz by
24 someone they were following;
- 25 * for Gmail users who have created a "Google profile," the
26 contents of the profile became visible to all persons who are
27 "following" the user. A user's Google profile may contain
28 information such as the user's occupation, place of residence,
and contact information; and
- * for Gmail users who have created a "Google profile," the
"following" and "follower" lists of the user became visible to
all persons who are "following" the user, and were made
publicly available to be searched and viewed by any person on
the Internet.

1
2 20. Google's own privacy policy confirms these points:

3 When you first enter Google Buzz, to make the startup experience
4 easier, we may automatically select people for you to follow based
5 on the people you email and chat with most. Similarly, we may
6 also suggest to others that they automatically follow you . . . Your
7 name, photo, and the list of people you follow and people
8 following you will be displayed on your Google profile, which is
9 publicly searchable on the Web.

10 Google Buzz Privacy Policy, February 11, 2010, available at
11 <http://www.google.com/buzz/help/intl/en/privacy.html>.

12 21. The procedures by which Gmail users could opt-out of Buzz were either
13 unavailable or difficult to understand and execute.

14 22. Google's automatic sharing of user contact information, profile information, and
15 postings had the effect of revealing to the public confidential and sometimes highly sensitive
16 information. This means that, for example, the names of a doctor's patients or a lawyer's clients
17 were made public in contravention of the privileges that attach to those relationships. Private
18 contacts - for instance, the contacts of a gay person who was struggling to come out of the closet
19 and had contacted a gay support group - could be revealed to the world. Sensitive personal
20 information might be viewed exposed to an employer, or an ex-spouse.

21 23. This parade of horrors was more than hypothetical. The media reported the
22 following exemplary accounts:

23 * A woman whose contact information was made available to her
24 abusive ex boyfriend because Google Buzz automatically
25 selected him as one of her "followers" in Google Buzz. See
26 Miguel Helft, *Critics Say Google Invades Privacy With a New
27 Service*, N.Y. Times, February 13, 2010.

28 * Lawyers and journalists concerned that Google Buzz might
reveal confidential client and contact lists. Don Cruse, *Lawyers
(or journalists) with Gmail Accounts: Careful with the Google
Buzz*, February 11, 2010, available at
[http://www.scotxblog.com/legal-tech/lawyer-privacy-on-
google-buzz](http://www.scotxblog.com/legal-tech/lawyer-privacy-on-google-buzz).

* A political commentator concerned that authoritarian
governments might "check on Google Buzz accounts for
political activists and see if they have any connections that
were previously unknown to the government." Evgeny
Morozov, *Wrong Kind of Buzz Around Google Buzz*, February

1 11, 2010, available at
2 [http://neteffect.foreignpolicy.com/posts/2010/02/11/
wrong_kind_of_buzz_around_google_buzz](http://neteffect.foreignpolicy.com/posts/2010/02/11/wrong_kind_of_buzz_around_google_buzz).

3 24. A Google spokesperson confirmed to one blogger that Buzz automatically makes
4 public user contact lists:

5 [B]efore you change any settings in Google Buzz, someone could
6 go into your profile and see the people you email and chat with
most.

7 A Google spokesperson asked us to phrase this claim differently.
8 Like this: "In other words, after you create your profile in Buzz, if
9 you don't edit any of the default settings, someone could visit your
profile and see the people you email and chat with most (provided
you didn't edit this list during profile creation)."

10 Nicholas Carson, *WARNING: Google Buzz has Huge Privacy Flaw*, February 10, 2010, available
11 at <http://www.businessinsider.com/warning-google-buzz-has-a-huge-privacy-flaw-2010-2>.

12 **Google Admits to Privacy Problems with Buzz**

13 25. On Thursday, February 11, 2010, Google reacted to the stream of negative press
14 and blog postings by changing some of the default settings in Google Buzz.

15 26. Also on February 11, Google issued an official blog posting in which the
16 company admitted that many users had concerns that Buzz violated their privacy. Todd Jackson,
17 *Millions of Buzz Users, and Improvements Based on Your Feedback*, February 11, 2010,
18 available at <http://gmailblog.blogspot.com/>.

19 27. Despite ongoing modifications, Google has not sufficiently altered the Buzz
20 program to remedy the ongoing privacy violations caused by Buzz. For example, the
21 information sharing features of the Buzz program continue to operate unless the user
22 affirmatively opts out of these features.

23 28. Google's official Privacy Policy assures customers that, because "[p]eople have
24 different privacy concerns and needs. . . Google strives to offer [its users] meaningful and fine
25 grained choices over the use of their personal information." Google Privacy Policy,
26 <http://www.google.com/privacy.html>.

27 29. By automatically sharing user information without user authorization or
28 knowledge, Google Buzz does precisely the opposite. Far from granting its customers a fine-

1 grained set of controls by which users can control the use of their personal data, the Google Buzz
2 program is an indiscriminate bludgeon, forcing all Gmail users to share their personal data in a
3 public forum without their consent or knowledge.

4 **CLASS ALLEGATIONS**

5 30. Plaintiff brings this complaint on behalf of herself and the class of all Gmail users
6 in the United States to whose accounts Google added the Buzz program.

7 31. The members of the putative class are so numerous that joinder of individual
8 claims is impracticable. In January of 2009, Gmail had 31.2 million users in the United States.
9 Anthony Ha, Zimbra Tops 40M Paid Users: More Popular Than Gmail?, March 5, 2009,
10 available at [http://venturebeat.com/2009/03/05/zimbra-tops-40m-paid-users-more-popular-than-](http://venturebeat.com/2009/03/05/zimbra-tops-40m-paid-users-more-popular-than-gmail/)
11 [gmail/](http://venturebeat.com/2009/03/05/zimbra-tops-40m-paid-users-more-popular-than-gmail/). Google automatically added the Buzz program to most or all of these accounts.

12 32. There are significant questions of fact and law common to the members of the
13 class. These issues include: whether the Google Buzz program publicly shared user information
14 and if so, what user information Google shared and how; whether Google failed to provide
15 adequate information and opt out procedures for its Gmail users; whether by committing these
16 acts and omissions Google violated federal and state laws; and whether class members are
17 entitled to injunctive, declarative and monetary relief as a result of Google's conduct.

18 33. Plaintiff's claims are typical of the claims of the putative class. Plaintiff and all
19 members of the putative class have been adversely affected and damaged in that Google publicly
20 shared their private information without the class members' knowledge or consent.

21 34. The proposed class representative will fairly and adequately represent the putative
22 class because she has the class members' interest in mind, her individual claims are co-extensive
23 with those of the class, and because she is represented by qualified counsel experienced in class
24 action litigation of this nature.

25 35. A class action in this instance is superior to other available methods for the fair
26 and efficient adjudication of these claims because individual joinder of the claims of all members
27 of the putative class is impracticable. Many members of the class are without the financial
28 resources necessary to pursue this matter. Even if some members of the class could afford to

1 litigate their claims separately, such a result would be unduly burdensome to the courts in which
2 the individualized cases would proceed. Individual litigation increases the time and expense of
3 resolving a common dispute concerning Google's actions toward an entire group of individuals.
4 Class action procedures allow for far fewer management difficulties in matters of this type and
5 provide the unique benefits of unitary adjudication, economy of scale and comprehensive
6 supervision over the entire controversy by a single court.

7 36. The putative class may be certified pursuant to Rule 23(b)(2) of the Federal Rules
8 of Civil Procedure because Google has acted on grounds generally applicable to the putative
9 class, thereby making final injunctive relief and corresponding declaratory relief appropriate with
10 respect to the claims raised by the class.

11 37. The putative class may be certified pursuant to Rule 23(b)(3) of the Federal Rules
12 of Civil Procedure because questions of law and fact common to class members will predominate
13 over questions affecting individual members, and a class action is superior to other methods for
14 fairly and efficiently adjudicating the controversy and causes of action described in this
15 Complaint.

16 **COUNT ONE**

17 **(Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.*)**

18 38. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1
19 through 37 above.

20 39. By engaging in the forgoing acts and omissions, Defendant Google intentionally
21 and without authorization divulged electronic communications in violation of the Electronic
22 Communications Privacy Act, 18 U.S.C. § 2510 *et seq.*

23 40. Plaintiff seeks declaratory, injunctive and monetary relief as provided for by the
24 Electronic Communications Privacy Act for herself and on behalf of the class.

25 **COUNT TWO**

26 **(Stored Communications Act, 18 U.S.C. § 2701 *et seq.*)**

27 41. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1
28 through 40 above.

1 42. By engaging in the forgoing acts and omissions, Defendant Google exceeded its
2 authorization to access and control the private information of Plaintiff and all class members,
3 and/or knowingly divulged the electronic communications of Plaintiff and all class members, in
4 violation of Stored Communications Act, 18 U.S.C. § 2701 *et seq.*

5 43. Plaintiff seeks declaratory, injunctive and monetary relief as provided for by the
6 Stored Communications Act for herself and on behalf of the class.

7 **COUNT THREE**

8 **(Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*)**

9 44. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1
10 through 43 above.

11 45. By engaging in the forgoing acts and omissions, Defendant Google intentionally
12 accessed a protected computer without authorization and/or knowingly caused the transmission
13 of information resulting in a loss to one or more persons in violation of the Computer Fraud and
14 Abuse Act, 18 U.S.C. § 1030 *et seq.*

15 46. Plaintiff seeks declaratory, injunctive and monetary relief as provided for by the
16 Computer Fraud and Abuse Act for herself and on behalf of the class.

17 **COUNT FOUR**

18 **(Public Disclosure Tort)**

19 47. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1
20 through 46 above.

21 48. By engaging in the forgoing acts and omissions, Defendant Google committed the
22 common law tort of Public Disclosure of Private Facts as recognized by California common law.
23 The Google Buzz program resulted in the public disclosure of private facts which would be
24 offensive and objectionable to a reasonable person, and which facts are not of legitimate public
25 concern. See *Shulman v. Group W Prods., Inc.*, 955 P.2d 469, 478 (Cal. 1998).

COUNT FIVE

(Violation of California

Business & Professions Code §17200)

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2
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4 49. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1
5 through 48 above.

6 50. Commencing on or about Tuesday, February 9, 2010, and continuing to the
7 present, Google has engaged in, is engaged in, and proposes to engage in unfair competition, as
8 that term is defined in the California Unfair Competition Law, California Business & Professions
9 Code (“UCL”) § 17200.

10 51. As used in this Complaint and in § 17200, “unfair competition” means (1) an
11 unlawful, unfair or fraudulent business act or practice; (2) unfair, deceptive, untrue or misleading
12 advertising; and/or (3) an act prohibited by Chapter 1 (commencing with Section 17500) of Part
13 3 of Division 7 of the Business and Professions Code. This conduct is actionable pursuant to
14 UCL §§ 17200, 17203.

15 52. An Unfair Competition Law civil action may be predicated on unfair, deceptive,
16 untrue or misleading advertising and/or any act prohibited by Cal. Bus. & Prof. Code § 17500-
17 17581.

18 53. Defendant has engaged in unfair, unlawful and fraudulent business practices, as
19 alleged herein, and thereby deprived the Plaintiff and the class of rights and privileges and
20 privacies and statutory rights and protections. If not enjoined by this Court, Plaintiff and the
21 class will continue to suffer irreparable harm as consequence of Defendant’s actions.

22 54. As a direct and indirect result of Defendant’s violations, Plaintiff and the class
23 have been injured and suffered damages.

24 55. Among other relief, Plaintiff seeks to enjoin Google from continuing to use the
25 unfair and deceptive practices set forth herein. Plaintiff further seeks damages, plus interest and
26 attorney’s fees pursuant to the California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, on behalf of herself and all others similarly situated, hereby demands judgment against Defendant Google as follows:

- a. For an order certifying the Class proposed herein and appointing Plaintiff and her counsel to represent the Class;
- b. For a declaration that Google’s acts and omissions constitute a knowing and unauthorized invasion of its users’ privacy rights in violation of the laws of the United States and the State of California;
- c. For preliminary and permanent injunctive relief enjoining and preventing Google from continuing to operate its Buzz program without appropriate safeguards, default provisions and opt-in mechanisms to ensure that the private data of its users is not improperly disclosed or transmitted in the future;
- d. For an award of damages, including without limitation damages for actual harm, profits made by Google in the operation of its Buzz program, and statutory damages where applicable;
- e. For an award of reasonable attorneys’ fees and costs incurred by Plaintiff and the members of the putative class in prosecuting this matter; and
- f. For an award of such other relief in law and equity to which Plaintiff and the members of the putative class may be entitled.

DATED: February 17, 2010

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