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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

BURKE MINAHAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Google, LLC,

Defendant.

Case No. 3:22-cv-05652

**AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR
JURY TRIAL**

1 Plaintiff Burke Minahan, individually, and on behalf of all others similarly situated, by
2 and through his attorneys, make the following allegations based on personal knowledge, pursuant
3 to the investigation of his counsel and based upon information and belief.

4 **NATURE OF THE ACTION**

5 1. Plaintiff is a consumer of Google’s video rental service, Google Play, which
6 unlawfully retains Plaintiff’s video rental history and personally identifiable information, such
7 as his name, addresses, and credit card information, in violation of Minnesota’s M.S.A. §325I.01-
8 03 (the “Minnesota Statute”).

9 2. Google LLC is a massive technology company with lines of business that span a
10 broad spectrum of industries. One line of Google’s business is streaming video rental services,
11 whereby Google, through its streaming products, such as Google Play, Google TV, and YouTube
12 (the “Services”), makes prerecorded audiovisual materials (i.e., videos) available for consumers
13 to rent for a limited time, such as movies and television shows.

14 3. A consumer must have a Google account in order to rent a video, which can be
15 created through the consumer’s use of Google’s email client, Gmail, by creating a non-email-
16 based Google account, or by creating a YouTube account.

17 4. Any time a user interacts with the Services, his or her activities are logged with
18 the associated Google account.

19 5. Google maintains records for consumers using the Services, including records of
20 their account information, such as their names, email addresses, phone numbers, and billing
21 addresses.

22 6. In addition to personal information of the account holder, Google keeps a record
23 of the consumers’ video rental histories, which identifies every video rented by the consumers
24 using the Services.

25 7. Thus, Google, keeps a digital record on thousands of consumers throughout
26 Minnesota, which includes personal information and a detailed record of its consumers’ video
27 rental histories.

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1 8. Google maintains these digital records in violation of Minnesota law, which
2 requires video rental companies, like Google, to “destroy personally identifiable information as
3 soon as practicable, but no later than one year from the date the information is no longer necessary
4 for the purpose for which it was collected. . . .” GBL §673(5); M.S.A. §325I.02(6).

5 9. Google stores its consumers’ personal information in violation of the protections
6 established by the Minnesota legislature. Google does not destroy its consumer’s personal
7 information as soon as practicable. Google does not even destroy its consumer’s personal
8 information within one year from the date the information is no longer necessary for the purpose
9 for which it was collected. Indeed, on information and belief, Google stores its consumer’s
10 personal information, including video rental history, indefinitely. Thus, Google has knowingly
11 retained the personally identifiable information, including sensitive video rental histories, of
12 thousands of Minnesota consumers, in violation of Minnesota law.

13 10. Plaintiff brings this action on behalf of himself and a class of all people in
14 Minnesota whose personally identifiable information and sensitive video rental histories were
15 retained by Google in violation of M.S.A. § 325I.02.

16 **THE PARTIES**

17 11. Plaintiff Burke Minahan lives and is domiciled in Minneapolis, Minnesota.

18 12. Plaintiff Minahan has a Google account and has rented and viewed videos through
19 that account, including on Google Play and YouTube.

20 13. Plaintiff Minahan rented more than ten videos using the Services, beginning in
21 2018.

22 14. In connection with those rentals, Google collected Plaintiff Minahan’s name,
23 address, and credit card information.

24 15. As of September 30, 2022, Plaintiff’s account history still displayed the titles of
25 the videos he rented, as well as the date he rented it and the price he paid for it, including videos
26 rented over four years ago in 2018.

1 than one year from the date the information is no longer necessary for the purpose for which it
2 was collected....” 18 U.S.C. §2710(d). The VPPA does not provide a private right of action for
3 failing to destroy records in the manner required by law.

4 *Minnesota M.S.A. §325I.01-03*

5 24. After passage of the VPPA, many states enacted their own state analogs protecting
6 the video rental histories for citizens of their states, including Minnesota (M.S.A. §325I.02).

7 25. Minnesota defines “personally identifiable information” as “information that
8 identifies a person as having requested or obtained specific video materials or services from a
9 videotape service provider....” M.S.A. § 325I.01(3).

10 26. Like the VPPA, Minnesota included a requirement that a videotape service
11 provider destroy personally identifiable information as soon as practicable.

12 27. Specifically, Minnesota requires videotape service providers to “destroy
13 personally identifiable information as soon as practicable, but no later than one year from the
14 date the information is no longer necessary for the purpose for which it was collected....” M.S.A
15 §325I.02(6).

16 28. Minnesota also provides for a private right of action to enforce the destruction of
17 video rental history records and provides that “a consumer who prevails or substantially prevails
18 in an action brought under this section is entitled to a minimum of \$500 in damages, regardless
19 of the amount of actual damages proved....” M.S.A. § 325I.03.

20 *Google’s Retention of Video Rental History*

21 29. Google hosts videos on its platform which it allows accountholders to rent for a
22 limited period of time through the Services. Account holders can stream the rented video on a
23 number of devices such as their mobile devices, smart televisions, computers, or Google video-
24 streaming devices.

25 30. To rent a video through the Services, a consumer must create an account with
26 Google, which requires the consumer to submit personally identifying information about
27 themselves, such as name, email address, billing address, and payment information.

1 31. So long as the consumer is logged into a Google account, renting a video to stream
2 is simple – the consumer searches Google’s Play, TV, or YouTube video library for a selection
3 and Google presents the option to rent the video from within the library interface. When the
4 consumer selects the option to rent the video, the credit card on file will be charged and the video
5 will be available for streaming.

6 32. Typically, the video is available to be viewed for thirty days, but once the
7 consumer begins playing the video, it must be completed with forty-eight hours. After passage
8 of thirty days from the initial rental, or forty-eight hours after beginning to stream the video it
9 will no longer be available for viewing using the consumer’s account unless the consumer pays
10 to rent the video again.

11 33. Google offers refunds for some video purchases, but the refund availability
12 depends on the type of purchase and the reason for the refund request. Most refunds are available
13 for a 48-hour period after the purchase, but for some technical difficulties refunds may be
14 available for up to 65 days after a purchase – the longest possible refund period.

15 34. After the option to view the video has expired (either after the thirty-day or forty-
16 eight-hour periods), Google does not destroy the video rental information, nor does Google
17 destroy personal information pertaining to the consumer.

18 35. Google retains the video rental information for every video the consumer rented
19 using her Google account.

20 36. The transaction is completed once the video is no longer viewable by the
21 accountholder – at that point payment has been made, Google’s duty to offer the video terminates,
22 and no refund is available to the consumer, yet Google retains the video rental history for its
23 accountholders beyond the completion of this transaction.

24 37. For rentals, once the transaction is complete and the video is no longer available
25 to be viewed, Google has no purpose for retaining the video rental information, yet it does so
26 indefinitely.

1 **PLAINTIFF’S EXPERIENCE**

2 38. Plaintiff Burke Minahan uses his Google account to rent videos through Google
3 Play.

4 39. Plaintiff Minahan first rented videos from Google Play in 2018.

5 40. As of September 28, 2022, Plaintiff Minahan’s video rental history is still
6 available to be viewed from his Google account, including personal information related to videos
7 he rented over four years ago in 2018. Specifically, when Plaintiff Minahan reviews his Account
8 Profile, he can navigate to the “Budget & order history” which displays a list of every video he
9 has rented since 2018.

10 41. Plaintiff Minahan does not have the option to select a video and view it from this
11 page, or anywhere within his Google account, because the transaction is complete.

12 42. Google has stored and continues to store Plaintiff Minahan’s personal information
13 in violation of the protections established by the Minnesota legislature. Google did not destroy
14 Plaintiff Minahan’s personal information as soon as practicable. Google did not even destroy
15 Plaintiff Minahan’s personal information within one year from the date the information was no
16 longer necessary for the purpose for which it was collected. Indeed, on information and belief,
17 Google’s policy and intention is to store Plaintiff Minahan’s personal information, including
18 video rental history, indefinitely.

19 **CLASS ALLEGATIONS**

20 43. Plaintiff Minahan seeks to represent the following class of individuals:

21 All Minnesota residents with Google accounts who rented a video using one of
22 Google’s video-streaming services.

23 44. **Numerosity**: The Class is so numerous that joinder of individual members herein
24 is impracticable. The exact number of Class members, as herein identified and described, is not
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1 known, but Google confirms it has over 110 million monthly active Google TV and Android TV
2 devices, and Plaintiff estimates there at least thousands of consumers in the Class.¹

3 45. **Commonality**. Common questions of fact and law exist for the causes of action
4 and predominate over questions affecting only individual Class members, including the
5 following:

- 6 a. Whether Defendant made videos available to be rented and streamed as
7 alleged in paragraphs 32-36;
- 8 b. Whether Defendant created, maintained, and retained records of personally
9 identifiable information for the Class members for longer than necessary for
10 the purpose for which it was collected;
- 11 c. Whether Defendant created, maintained, and retained records of video rental
12 history of the Class members for longer than necessary for the purpose for
13 which it was collected; and
- 14 d. Whether Class members are entitled to statutory damages for the
15 aforementioned violations.

16 46. **Typicality**. Plaintiff's claims are typical of the claims of members of the
17 proposed Classes because, among other things, Plaintiff and members of the Classes sustained
18 similar injuries as a result of Defendant's uniform wrongful conduct and their legal claims arise
19 from the same events and wrongful conduct by Defendants.

20 47. **Adequacy**. Plaintiff will fairly and adequately protect the interests of the
21 proposed Class. Plaintiff's interests do not conflict with the interests of the Class members and
22 Plaintiff has retained counsel experienced in complex class action and data privacy litigation to
23 prosecute this case on behalf of the Class.

24 48. **Predominance and Superiority**. Plaintiff satisfies the requirements of Rule
25 23(a) as well as the requirements for maintaining a class under Rule 23(b)(3). Common questions
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27 ¹ Google TV has over 110 million monthly active devices, [https://9to5google.com/2022/01/06/android-tv-
28 os-devices-2022-google-tv/](https://9to5google.com/2022/01/06/android-tv-os-devices-2022-google-tv/) (last accessed September 29, 2022)

1 of law and fact predominate over any questions affecting only individual Class members, and a
2 class action is superior to individual litigation and all other available methods for the fair and
3 efficient adjudication of this controversy. The amount of damages available to individual
4 plaintiffs is insufficient to make litigation addressing Defendants' conduct economically feasible
5 in the absence of the class action procedure. Individualized litigation also presents a potential
6 for inconsistent or contradictory judgments, and increases the delay and expense presented by
7 the complex legal and factual issues of the case to all parties and the court system. By contrast,
8 the class action presents far fewer management difficulties and provides the benefits of a single
9 adjudication, economy of scale, and comprehensive supervision by a single court.

10 49. **Injunctive Relief**. Plaintiff also satisfies the requirements for maintaining a class
11 under Rule 23(b)(2). Defendant acted on grounds that apply generally to the proposed Classes,
12 making final declaratory or injunctive relief appropriate with respect to the proposed Classes as
13 a whole.

14 50. Particular Issues. Plaintiff also satisfies the requirements for maintaining a class
15 action under Rule 23(c)(4). His claim consists of particular issues that are common to all Class
16 members and are capable of class-wide resolution that will significantly advance the litigation.

17 **CLAIMS FOR RELIEF**

18 **COUNT I**

19 **Violation of Minnesota M.S.A § 325I.01-03**

20 51. Plaintiff incorporates all allegations contained the foregoing paragraphs as if fully
21 set forth herein.

22 52. Plaintiff Minahan brings this claim individually and on behalf of the members of
23 the proposed Class against Defendant.

24 53. Plaintiff Minahan is a "consumer" because he is a "renter...of goods or services
25 from a videotape service provider." M.S.A. § 325I.01(2).

1 54. Defendant is a “videotape service provider” because it is “engaged in the business
2 of rental of prerecorded videocassette tapes or similar audiovisual materials.” M.S.A. §
3 325I.01(5).

4 55. A videotape service provider must “destroy personally identifiable information as
5 soon as practicable, but no later than one year from the date the information is no longer necessary
6 for the purpose for which it was collected” M.S.A. § 325I.02(6).

7 56. “Personally identifiable information” is “information that identifies a person as
8 having requested or obtained specific video materials or services from a videotape service
9 provider.” M.S.A § 325I.01(3).

10 57. Google collects personally identifiable information from consumers in order to
11 obtain payment from them and to provide them with the video selected by them for viewing.

12 58. Google offers a video for viewing to consumers for a thirty-day period and does
13 not provide refunds for videos which are viewed or after a certain time period, typically 48-hours
14 – thus, Google has no purpose for retaining personally identifiable information for longer than
15 thirty days.

16 59. Google has not and does not destroy the personally identifiable information as
17 soon as practicable after the information is no longer necessary for the purpose for which it was
18 collected in violation of M.S.A. § 325I.02(6).

19 60. Google retained Plaintiff Minahan’s personally identifiable information for much
20 longer than thirty days after he rented a video from Google.

21 61. Google has stored and continues to store the personal information of Plaintiff
22 Minahan and members of the proposed Class in violation of the protections established by the
23 Minnesota legislature. Google did not destroy the personal information of Plaintiff Minahan and
24 members of the proposed Class as soon as practicable. Google did not even destroy the personal
25 information of Plaintiff Minahan and members of the proposed Class within one year from the
26 date the information was no longer necessary for the purpose for which it was collected. Indeed,
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1 on information and belief, Google's policy and intention is to store the personal information of
2 Plaintiff Minahan and members of the proposed Class indefinitely.

3 62. In accordance with M.S.A. § 325I.03, Plaintiff Minahan and members of the
4 proposed Class have been injured for violations of M.S.A. § 325I.02 and seek damages of not
5 less than \$500 each, regardless of the actual amount of damages proved, plus costs,
6 disbursements, and reasonable attorneys' fees.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
9 respectfully requests that this Court:

- 10 a. Certify this case as a class action, appoint Plaintiff as Class representative, and
11 appoint Plaintiff's counsel to represent the Class;
- 12 b. Find that Defendant's actions, as described herein, constitute violations of M.S.A. §
13 325I.02;
- 14 c. Enter a declaratory judgment that Defendant violated M.S.A. § 325I.02 by failing to
15 destroy Plaintiff's and the proposed class members' personally identifiable
16 information as soon as practicable after the information is no longer necessary for
17 the purpose for which it was collected;
- 18 d. Enter an order permanently enjoining Defendant from retaining personally
19 identifiable information of its consumers in violation of Minnesota law;
- 20 e. Award Plaintiff and Class members appropriate relief, including statutory damages
21 of not less than \$500 each;
- 22 f. Award equitable, injunctive, and declaratory relief as may be appropriate;
- 23 g. Award all costs, including experts' fees, attorneys' fees, and the costs of prosecuting
24 this action; and
- 25 h. Grant such other legal and equitable relief as the Court may deem appropriate.
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1 Dated: October 3, 2022

Respectfully submitted,

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