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10 *Counsel for Plaintiff GEORGE JACK*

11  
12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**

15 GEORGE JACK, individually and on behalf of all  
16 others similarly situated,

17 Plaintiff,

18 v.

19 GOOGLE INC.,

20 Defendant.

Case No. 5:18-cv-06652

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

21 Plaintiff George Jack (“Plaintiff”), by and through his attorneys, make the following  
22 allegations pursuant to the investigation of his counsel and based upon information and belief, except  
23 as to allegations specifically pertaining to himself, which are based on personal knowledge, against  
24 defendant Google Inc. (“Google” or “Defendant”).

25 **NATURE OF THE ACTION**

26 1. This is a class action concerning Google’s unlawful and deceptive practice of tracking  
27 and storing time-stamped location data from millions of mobile phone users who affirmatively opt-out  
28 of the tracking.

1           2.       Google is a multinational technology company that specializes in Internet-related  
2 services and products, including search engines, cloud computing, software, and hardware.

3           3.       Google represented to the public and its users that it would not access users' location  
4 history if the users took certain steps in managing their privacy settings. Specifically, Google  
5 represented that if users disable the "Location History" feature on their accounts or devices, then  
6 Google would be prevented from tracking and storing location data from them. Google's support  
7 page, which is attached hereto as Exhibit A, stated: "You can turn off Location History at any time.  
8 With Location History off, the places you go are no longer stored."

9           4.       Google's representation was false, however. As revealed in a recent Associated Press  
10 investigation, and confirmed by computer-science researchers at Princeton University, Google  
11 accesses and stores the precise geolocation information even from individuals who have affirmatively  
12 disabled the Location History setting.<sup>1</sup>

13           5.       For example, even with the Location History feature disabled, Google apps will still  
14 automatically store time-stamped location data without obtaining consent from the user. The AP  
15 Report revealed that "Google stores a snapshot of where you are when you merely open its Maps app.  
16 Automatic daily weather updates on Android phones pinpoint roughly where you are. And some  
17 searches that have nothing to do with location, like 'chocolate chip cookies,' or 'kids science kits,'  
18 pinpoint your precise latitude and longitude—accurate to the square foot—and save it to your Google  
19 account."<sup>2</sup>

20           6.       Location data is highly sensitive, not only because the data point identifies where an  
21 individual is at any given time, but also because of the personal information that can be extracted from  
22 the location data. Therefore, the efforts of individuals who are conscious of their privacy and wish to  
23 avoid the collection and storage of sensitive location data should be respected and protected.  
24 However, Google collects the data against the express preferences and expectations of its users,  
25 thereby invading users' reasonable expectations of privacy.

26  
27 \_\_\_\_\_  
28 <sup>1</sup> Ryan Nakashima, *AP Exclusive: Google tracks your movements, like it or not*, AP News (Aug. 13, 2018), <https://www.apnews.com/828aefab64d4411bac257a07c1af0ecb> (hereafter, "AP Report").

<sup>2</sup> *Id.*



**JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1367 because this is a class action in which the matter or controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and in which some members of the proposed Class are citizens of a state different from defendant.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant is headquartered in this District.

**INTRADISTRICT ASSIGNMENT**

13. Pursuant to Civil L.R. 3-2(c), this civil action should be assigned to the San Jose Division, because a substantial part of the events or omissions giving rise to the claims occurred in the county of Santa Clara, where Google is headquartered.

14. Moreover, Google’s “Terms of Service,” available on Google’s website, contains the following forum selection provision:

All claims arising out of or relating to these terms or the Services will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.<sup>5</sup>

**FACTUAL ALLEGATIONS**

**A. Google Tracks Its Users’ Location Even When Users Affirmatively Disable the Location History Feature**

15. An operating system (“OS”) is software that allows a user to run other applications on a computing device, such as a mobile phone. A majority of mobile phones run on one of two operating systems: Android or iOS. Android was developed by Google and iOS was developed by Apple.

16. In addition to developing the Android operating system, Google also develops apps that can be downloaded on Android and iOS devices.

17. On each operating system, users can manage the functionalities of their devices and apps by customizing their preferences.

18. Included among these preferences is the option to turn on or off Location History which

<sup>5</sup> Google.com, Terms of Service, <https://policies.google.com/terms?hl=en&gl=US> (last visited Oct. 15, 2018).

1 is an individual's precise location information as determined through the phone's GPS coordinates.

2 19. Google represented to users of its devices and apps that by turning the Location History  
3 feature off, Google would not track and store data relating to an individual's location. Android phone  
4 users can manage the Location History preference from their devices, while iPhone users are required  
5 to log into their online Google accounts to do so.

6 20. Specifically, Google's support webpage on the subject stated:

7 You can turn off Location History at any time. With Location History off, the places you  
8 go are no longer stored. When you turn off Location History for your Google Account,  
it's off for all devices associated with that Google Account.

9 *See Exhibit A.*

10 21. Accordingly, Google represented to both Android and Apple device users that turning  
11 the Location History feature off would result in Google ceasing to track and store an individual's  
12 location information.

13 22. However, Google's representations were false. As recently publicly revealed in the AP  
14 Report, turning off Location History only stopped Google from creating a location timeline that the  
15 user could view. Instead, Google continued to track phone owners and keep a record of their  
16 locations.

17 23. To demonstrate how powerful and invasive the tracking and storing of location data can  
18 be, the AP created a map of the movements of Princeton postdoctoral researcher Gunes Acar, who had  
19 the Location History feature on his cell phone turned off. The map identified where he travelled over  
20 three days, including, but not limited to, his train commute on two trips to New York, visits to The  
21 High Line park, Chelsea Market, Hell's Kitchen, Central Park, and Harlem.<sup>6</sup>

22 24. By tracking Plaintiff's and Class members' locations despite having affirmatively  
23 turned the Location History storage option off, Defendant intruded on and into Plaintiff's and Class  
24 members' solitude, seclusion, or private affairs. Google's conduct is contrary to users' reasonable  
25 expectations of privacy. As Princeton computer scientist and former chief technologist for the Federal  
26 Communications Commission's enforcement bureau, Jonathan Mayer, stated: "If you're going to

27 \_\_\_\_\_  
28 <sup>6</sup> Associate Press Interactive, '*Location history*' Off? Google's still tracking you, <https://interactives.ap.org/google-location-tracking/> (last accessed Oct. 15, 2018).

1 allow users to turn off something called ‘Location History,’ then all the places where you maintain  
2 location history should be turned off. . . . That seems like a pretty straightforward position to have.”<sup>7</sup>

3 **B. Contrary to Google’s Representations, Preventing the Collection and Storage of Location**  
4 **Information Is Actually a Complex, Counter-Intuitive Process**

5 25. To prevent Google from collecting and storing a user’s location data, users must turn  
6 off Location History, *in addition to* disabling a setting called Web & App Activity.

7 26. However, the Web & App Activity setting is deeply buried in Google’s settings, and in  
8 order to find it, users must first sign into their Google accounts either on a browser or through the  
9 Android settings menu. In the browser, users can access the Web & App Activity account settings by  
10 finding “Google Account” in the dropdown menu in the upper right-hand corner, then selecting  
11 “Personal Info & Privacy,” choosing “Manage your Google Activity,” then clicking “Go to Activity  
12 Controls.” Once there, the Web & App Activity setting is revealed, which can then be toggled off.

13 27. However, even if users navigate through their settings to find the Web & App Activity  
14 setting, Google obfuscates the fact that the Web & App Activity setting is even related to location  
15 collection data. The setting resides directly above, and separate from, the Location History option,  
16 causing reasonable users to conclude that Web & App Activity is not related to location tracking.

17 28. Further, Google’s description of Web & App Activity is that it “[s]aves your activity on  
18 Google sites and apps to give you faster searches, better recommendations, and more personalized  
19 experiences in Maps, Search, and other Google services.”<sup>8</sup> This description does not provide  
20 reasonable notice that it relates to location tracking.

21 29. To obtain additional information about the function of the Web & App Activity feature,  
22 a user must click “[l]earn more,” then scroll to “[w]hat’s saved as Web & App Activity,” and click on  
23 “[i]nfo about your searches & more” before Google even mentions location tracking.<sup>9</sup> This is  
24

25 \_\_\_\_\_  
26 <sup>7</sup> See AP Report.

27 <sup>8</sup> Google.com, Activity Controls, <https://myaccount.google.com/intro/activitycontrols> (last visited  
28 Oct. 15, 2018).

<sup>9</sup> Google.com, Search Help, [https://support.google.com/websearch/answer/54068?p=web\\_app\\_activity  
&hl=en&visit\\_id=636749651614250929-987972148&rd=1](https://support.google.com/websearch/answer/54068?p=web_app_activity&hl=en&visit_id=636749651614250929-987972148&rd=1) (last visited Oct. 15, 2018).

1 insufficient notice of the collection and storage of location information.

2 30. Leaving Web & App Activity on and turning Location History off does not stop  
3 Google's collection of certain location markers.

4 31. Google fails to make clear to users that in order to stop Google from saving their  
5 location markers, in addition to turning Location History off, they must also turn off the Web & App  
6 Activity setting.

7 **C. Google's Response to the AP Report Confirms Its Unlawful and Deceptive Acts and**  
8 **Practices**

9 32. In its response to the AP Report, Google first defended its actions, stating: "We provide  
10 clear descriptions of these tools."<sup>10</sup>

11 33. Then, three days after the AP revealed that several Google apps and websites store user  
12 location even if users have turned off Location History, Google announced that it was "updating the  
13 explanatory language about Location History to make it more consistent and clear across our platforms  
14 and help centers."<sup>11</sup> This statement contradicts a prior statement Google sent to the AP in which it  
15 claimed that the descriptions for opting out of Location History were clear.

16 34. The revised description on its website acknowledges that Location History continues to  
17 track users even if they have disabled the setting. Specifically, Google revised the description, which  
18 originally stated, "[w]ith Location History off, the places you go are no longer stored," to read "This  
19 setting does not affect other location services on your device."<sup>12</sup> Google also acknowledged that  
20 "some location data may be saved as part of your activity on other services, like Search and Maps."<sup>13</sup>

21 35. Accordingly, Google acknowledged, for the first time, that it continues to track users  
22 even if they disable the Location History setting.<sup>14</sup>

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24 <sup>10</sup> AP Report.

25 <sup>11</sup> Ryan Nakashim, *APNewsBreak: Google clarifies location-tracking policy*, AP News (Aug. 16,  
26 2018), <https://apnews.com/ef95c6a91eeb4d8e9dda9cad887bf211>.

27 <sup>12</sup> *Id.*

28 <sup>13</sup> *Id.*

<sup>14</sup> Nakashim, *supra*.

1 36. Rather than ending the practice, however, Google simply revised its website so that it  
2 could continue to track those users who had previously affirmatively opted out of the tracking.

3 **CLASS ALLEGATIONS**

4 37. Plaintiff brings this action on behalf of himself and the members of the proposed Class  
5 under Rule 23(a), (b)(2), (b)(3), and/or (c)(4) of the Federal Rules of Civil Procedure. The proposed  
6 Class consists of the following:

7 All natural persons residing in the United States who own one or more  
8 Android or Apple mobile phones, who turned off Location History, and  
9 whose location information was nonetheless recorded and used by Google  
10 (the “Class”).

11 38. The Class contains the following Subclass:

12 All natural persons residing in the state of New York who own Android or  
13 Apple mobile phones, who turned off Location History, and whose location  
14 information was nonetheless recorded and used by Google (the “New York  
15 Subclass”).

16 39. Plaintiff reserves the right to redefine the Class before certification and after having the  
17 opportunity to conduct discovery.

18 40. Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and  
19 directors, any entity in which Defendant has a controlling interest, and all judges assigned to hear any  
20 aspect of this litigation, as well as their immediate family members.

21 41. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are so numerous that  
22 joinder is impractical. The Class consists of millions of members, the precise number which is within  
23 the knowledge of and can be ascertained only by resort to Defendant’s records.

24 42. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are numerous questions of  
25 law and fact common to the Class, which predominate over any questions affecting only individual  
26 members of the Class. Among the questions of law and fact common to the Class are:

- 27 a. Whether Defendant’s acts and practices complained of herein violated the CIPA, Cal.  
28 Pen. Code §§ 630, *et seq.*;
- b. Whether Defendant’s acts and practices complained of herein violated the New York

1 General Business Law, N.Y. Gen. Bus. Law §§ 349, *et seq.*;

2 c. Whether Defendant misrepresented or omitted one or more material facts to Plaintiff  
3 and the Class; and

4 d. Whether Defendant's conducted violated the other provisions of statutory and common  
5 law outlined in this complaint;

6 43. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the  
7 Class in that Plaintiff, like all Class members, took efforts to prevent his phone's location history from  
8 being recorded and used by Google, yet despite these efforts and contrary to Google's representations,  
9 nonetheless had said location history recorded and used by Google.

10 44. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiff is a representative who will fairly and  
11 adequately assert and protect the interests of the Class and retained counsel experienced in prosecuting  
12 class actions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately  
13 protect the interests of the Class.

14 45. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to all  
15 other available methods for the fair and efficient adjudication of this lawsuit, because individual  
16 litigation of the claims of all members of the Class is economically unfeasible and procedurally  
17 impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the  
18 individual damages incurred by each member of the Class resulting from Defendant's wrongful  
19 conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class  
20 members prosecuting their own separate claims is remote, and even if every member of the Class  
21 could afford individual litigation, the court system would be unduly burdened by individual litigation  
22 of such cases.

23 46. The prosecution of separate actions by members of the Class would create a risk of  
24 establishing inconsistent rulings and/or incompatible standards of conduct for Defendant.  
25 Additionally, individual actions may be dispositive of the interests of the Class, although certain Class  
26 members are not parties to such actions.

27 47. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). The conduct of Defendant  
28 is generally applicable to the Class as a whole and Plaintiff seeks equitable remedies with respect to  
the Class as a whole. Like all Class members, Plaintiff suffers a substantial risk of repeated injury in

1 the future. Like all Class members, although Plaintiff wishes to control the circumstances under which  
2 his location information can be collected and used by Google, Google has shown deliberate  
3 indifference to those wishes and has indeed taken pains to deceive Plaintiff (and all Class members)  
4 and to thwart those wishes. As such, the systematic policies and practices of Defendant make  
5 declaratory or equitable relief with respect to the Class as a whole appropriate. Plaintiff and all Class  
6 members face substantial risk of the same injury in the future. Google’s conduct is common to all  
7 Class members and represents a common thread of conduct resulting in injury to all members of the  
8 Class.

## 9 CAUSES OF ACTIONS

### 10 COUNT I

#### 11 **Violations of CIPA, Cal. Pen. Code §§ 630, *et seq.***

12 48. Plaintiff incorporates and realleges by reference each and every allegation above as if  
13 set forth herein in full.

14 49. Cal. Pen. Code § 630, known as the California Invasion of Privacy Act (“CIPA”) provides that “[t]he Legislature hereby declares that advances in science and technology have led to  
15 the development of new devices and techniques for the purpose of eavesdropping upon private  
16 communication and that the invasion of privacy resulting from the continual and increasing use of  
17 such devices and techniques has created a serious threat to the free exercise of personal liberties and  
18 cannot be tolerated in a free and civilized society.”

19 50. Google’s acts and practices complained of herein, engaged in for purposes of acquiring  
20 and using the geolocation of mobile phone users, without their consent, and in direct contravention of  
21 the representations made about turning off the location history function, violate Cal. Pen. Code  
22 § 637.7.

23 51. Cal. Pen. Code § 637.7 prohibits the use of an electronic tracking device to determine  
24 the location or movement of a person.

25 52. In direct violation of this prohibition and without the consent of Plaintiff or Class  
26 members, and in direct contravention of those individuals’ clearly-expressed wishes—Google intended  
27 to and continued to record, store, and use the location information of Plaintiff and Class members after  
28

1 they disabled the Location History feature on their phones.

2 53. As described herein, Google utilized multiple devices that are “electronic tracking  
3 devices” under Cal. Pen. Code § 637.7(d), in that Google employs and embeds a host of technology—  
4 including but not limited to apps, firmware, device components, operating system software, and other  
5 code—on each Class member’s phone (a “movable thing” under the statute), and this technology  
6 “reveals its location or movement by the transmission of electronic signals.”

7 54. Defendant’s acts in violation of the CIPA occurred in the State of California because  
8 those acts resulted from business decisions, practices, and operating policies that Google developed,  
9 implemented, and utilized in the State of California and which are unlawful and constitute criminal  
10 conduct in the state of Google’s principal business operations.

11 55. As a result of Google’s violations of Cal. Pen. Code § 637.7, and pursuant to Cal. Pen.  
12 Code § 637.2, Plaintiff and Class members are entitled to the following relief:

- 13 a. A declaration that Google’s conduct violates the CIPA;
- 14 b. Statutory damages and/or trebled actual damages;
- 15 c. Injunctive relief in the form of, *inter alia*, an order enjoining Google from  
16 geolocating Class members in violation of CIPA;
- 17 d. Injunctive relief in the form of, *inter alia*, an order requiring Google to destroy  
18 all data created or otherwise obtained from its illegal geolocation of Class members; and
- 19 e. An award of attorney’s fees and costs of litigation as provided by the CIPA, the  
20 private attorney general doctrine existing at common law and also codified at California Civil Code  
21 § 1021.5, and all other applicable laws.

22 **COUNT II**

23 **Violations of the New York General Business Law, N.Y. Gen. Bus. Law §§ 349, *et seq.***

24 56. Plaintiff, individually and on behalf of the New York Subclass, incorporates and  
25 realleges by reference each and every allegation above as if set forth herein in full.

26 57. Google engaged in deceptive acts or practices in the conduct of its business, trade, and  
27 commerce or furnishing of goods or services, in violation of N.Y. Gen. Bus. Law § 349, as described  
28 herein.

1 58. Google’s representations and omissions were material because they were likely to  
2 deceive reasonable consumers into believing their location information would not be tracked and  
3 stored if they disabled the Location History feature.

4 59. Google acted intentionally, knowingly, and maliciously to violate New York’s General  
5 Business Law, and recklessly disregarded Plaintiff and the New York Subclass members’ rights.

6 60. As a direct and proximate result of Google’s unfair, deceptive, and unconscionable  
7 trade practices, Plaintiff and the New York Subclass members have suffered and will continue to  
8 suffer injury, ascertainable losses of money or property, and monetary and nonmonetary damages,  
9 including from not receiving the benefit of their bargain in using Google’s services and keeping their  
10 data private.

11 61. Google’s deceptive and unlawful acts and practices complained of herein affected the  
12 public interest and consumers at large, including the millions of New Yorkers who use Google’s  
13 services and devices.

14 62. Plaintiff’s and the New York Subclass members’ location data has tangible value.  
15 Their location data is in the possession of Google, which has used and will continue to use such data  
16 for its own advantage, including financial advantage.

17 63. Plaintiff’s and the New York Subclass members’ personal location data was exploited  
18 without consent. Accordingly, Plaintiff and the New York Subclass members are entitled to part of  
19 Google’s profits that were generated by their personal location data without informed consent.

20 64. Plaintiff and New York Subclass members seek all monetary and non-monetary relief  
21 allowed by law, including actual damages or statutory damages of \$50 (whichever is greater), treble  
22 damages, injunctive relief, and attorneys’ fees and costs

23 **COUNT III**

24 **Intentional Misrepresentation**

25 65. Plaintiff incorporates and realleges by reference each and every allegation above as if  
26 set forth herein in full.

27 66. Defendant and its agents, employees, and/or subsidiaries made materially false  
28 representations to Plaintiff and the Class that their operating system and apps did not secretly collect

1 information against users' explicit wishes.

2 67. These material misrepresentations were contained in public statements by Defendant,  
3 including in its Terms of Service.

4 68. Defendant knew or recklessly disregarded the false and misleading nature of their  
5 material misrepresentations.

6 69. Defendant made the materially false and misleading statements for the purpose of  
7 inducing Plaintiff and the other members of the Class to install and use its operating system and apps.

8 70. In purchasing and using Google's operating system and apps, Plaintiff and the Class  
9 reasonably relied on Defendant's materially misleading statements that Plaintiff's and the Class'  
10 location would not be monitored contrary to users' explicit wishes.

11 71. As a result of Defendant's materially false and misleading misrepresentations and  
12 omissions, Plaintiff and the Class sustained damages as set forth herein.

13 **COUNT IV**

14 **Negligent Misrepresentation**

15 72. Plaintiff incorporates and realleges by reference each and every allegation above as if  
16 set forth herein in full.

17 73. Defendant and its agents, employees, and/or subsidiaries negligently and/or recklessly  
18 made materially false representations to Plaintiff and the Class as alleged above.

19 74. These material misrepresentations were contained in public statements by Defendant,  
20 including in its Terms of Service.

21 75. Defendant knew or should have known that the materially false and misleading  
22 statements would induce Plaintiff and the other members of the Class to accept the operating system  
23 and apps for their phones.

24 76. In purchasing and/or using Google's operating system and apps, Plaintiff and the Class  
25 reasonably relied on Google's materially misleading statements that their location would not be  
26 monitored contrary to their explicit wishes.

27 77. As a result of Google's materially false and misleading misrepresentations and  
28 omissions, Plaintiff and the Class sustained damage as set forth herein.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. An order certifying that this Action may be maintained as a class action, that Plaintiff be appointed as Class Representative, and his counsel be appointed Class Counsel;

B. A judgment awarding Plaintiff and all members of the Class damages as alleged above incurred by Plaintiff and Class members as a result of Defendant’s unlawful, deceptive, and unfair business and trade practices described herein;

C. Appropriate declaratory relief against Defendant;

D. An order enjoining Defendant from continuing to violate the laws as described herein;

E. Injunctive relief in the form of, inter alia, an order enjoining Defendant from continuing its practice of recording and using Plaintiff’s and Class members’ location information against their express preferences;

F. An order requiring Google to destroy all data acquired, created, or otherwise obtained from the unlawful recording and use of the location information of Plaintiff and Class members;

G. An order requiring Google to modify its operating system and all applications, and representations made with respect thereto, in a manner that truthfully advises users of location tracking;

H. For equitable relief requiring restitution and disgorgement of the revenues wrongfully retained as a result of Defendant’s wrongful conduct;

I. A judgment awarding Plaintiff the costs of suit, including reasonable attorneys’ fees, and pre and post-judgment interest; and

J. Such other and further relief as may be deemed necessary or appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: November 1, 2018

**LEVI & KORSINSKY, LLP**

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