

1 Michael W. Sobol (State Bar No. 194857)  
msobol@lchb.com  
2 **LIEFF CABRASER HEIMANN &**  
**BERNSTEIN, LLP**  
3 275 Battery Street, 29th Floor  
San Francisco, CA 94111  
4 Telephone: 415.956.1000  
Facsimile: 415.956.1008

5  
6 Hank Bates (State Bar No. 167688)  
hbates@cbplaw.com  
7 **CARNEY BATES & PULLIAM, PLLC**  
519 West 7<sup>th</sup> St.  
Little Rock, AR 72201  
8 Telephone: 501.312.8500  
Facsimile: 501.312.8505

9  
10 *Attorneys for Plaintiff, individually and*  
*on behalf of all others similarly situated*

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO/OAKLAND DIVISION

15  
16 NAPOLEON PATACSIL, individually,  
17 and on behalf of other persons similarly  
situated,

18 Plaintiff,

19 v.

20 GOOGLE, INC.,

21 Defendant.

Case No. 18-5062

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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1 **I. INTRODUCTION**

2 1. The present action involves the surreptitious location tracking of millions of  
3 mobile phone users by Defendant Google, Inc. (“Google”). Google is a mobile operating system  
4 and mobile applications (“apps”) developer. Google expressly represented to users of its  
5 operating system and apps that the activation of certain settings will prevent the tracking of users’  
6 geolocations. This representation was false. Despite users’ attempts to protect their location  
7 privacy, Google collects and stores users’ location data, thereby invading users’ reasonable  
8 expectations of privacy, counter to Google’s own representations about how users can configure  
9 Google’s products to prevent such egregious privacy violations.

10 2. The efforts of privacy-conscious individuals to avoid the improper collection and  
11 storage of personal information – particularly sensitive personal information – must be protected.  
12 As the Supreme Court recently recognized in *Carpenter v. United States*, 138 S. Ct. 2206 (2018),  
13 location data is highly sensitive, not just because of what the data point alone says about an  
14 individual (*i.e.*, where they were at a particular time), but also because of the massive amount of  
15 personal information that can be extracted from location data (such as medical treatment, personal  
16 relationships, and private interests). As Chief Justice John Roberts stated, “a cell phone—almost  
17 a ‘feature of human anatomy[]’—tracks nearly exactly the movements of its owner.... A cell  
18 phone faithfully follows its owner beyond public thoroughfares and into private residences,  
19 doctor’s offices, political headquarters, and other potentially revealing locales,” and when a third-  
20 party has access to the information stored on one’s cell phone, that entity “achieves near perfect  
21 surveillance, as if it had attached an ankle monitor to the phone’s user.” *Id.* at 2218 (internal  
22 citations omitted).

23 3. Despite the recognized sensitivity of location data, Google collects this data  
24 against the express wishes and expectations of its users. As reported recently by the Associated  
25 Press, “Google wants to know where you go so badly that it records your movements even when  
26 you explicitly tell it not to.”<sup>1</sup> The report—corroborated by respected cyber security researchers—

27 \_\_\_\_\_  
28 <sup>1</sup> Ryan Nakashima, “AP Exclusive: Google tracks your movements, like it or not,” The  
Associated Press, August 13, 2018 (available at

1 found that Google technology, embedded on millions upon millions of smartphones, stores  
2 individuals' location information even if users activate a privacy setting purporting to prevent  
3 Google from doing so.

4 4. Google itself assured individuals that they could prevent Google from tracking  
5 them by disabling a feature called "Location History" on their devices. Google represented that a  
6 user "can turn off Location History at any time. With Location History off, the places you go are  
7 no longer stored."<sup>2</sup> This simply was not true. As revealed in the recent AP investigation—and  
8 confirmed by a team of researchers at Princeton University—Google continues to access and  
9 store the precise geolocation information of those individuals who have affirmatively turned off  
10 the Location History setting. Google modified—and continues to modify as of the date of this  
11 complaint—this and other representations after the publication of the AP Report and the resulting  
12 public outcry, as discussed in Section C, *infra*.

13 5. This conduct violates the California Invasion of Privacy Act, Cal. Pen. Code §§  
14 630, *et seq.* ("CIPA") and California's Constitutional Right to Privacy, and constitutes an  
15 unlawful intrusion upon seclusion.

## 16 **II. THE PARTIES**

17 6. Plaintiff Napoleon Patacsil resides in San Diego, California. Between 2016 and  
18 the present, Plaintiff owned and used an Apple iPhone that had various Google apps and  
19 functionalities downloaded onto the phone. While using these apps, Plaintiff Patacsil expressly  
20 attempted to limit Google's tracking of his location by managing his Location History settings –  
21 turning the apps' Location History storage option to "off." Nevertheless, Google continued to  
22 track his location information.

23 7. Prior to acquiring the iPhone in approximately 2016, Plaintiff owned and operated  
24 an Android mobile phone. Android is a mobile operating system developed by Google. In an  
25 express effort to protect his location history – and thus his privacy – from efforts by Google, and

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26 [https://www.apnews.com/828aefab64d4411bac257a07c1af0ecb/AP-Exclusive:-Google-tracks-](https://www.apnews.com/828aefab64d4411bac257a07c1af0ecb/AP-Exclusive:-Google-tracks-your-movements,-like-it-or-not)  
27 [your-movements,-like-it-or-not](https://www.apnews.com/828aefab64d4411bac257a07c1af0ecb/AP-Exclusive:-Google-tracks-your-movements,-like-it-or-not)) (hereafter, "AP Report") (accessed August 15, 2018).

28 <sup>2</sup> Google Account Help, "Manage of Delete Your Location History" (available at  
<https://support.google.com/accounts/answer/3118687?hl=en>) (accessed August 15, 2018).

1 any other third-parties, to track and record his location over time, Mr. Patacsil turned the Location  
2 History setting to “off” on this device. Nevertheless, Google continued to track his location  
3 information.

4 8. Defendant Google, Inc. (“Google,” “Defendant,” or “the Company”) is a United  
5 States corporation headquartered in Mountain View, California, and incorporated under the laws  
6 of Delaware.

### 7 **III. JURISDICTION AND VENUE**

8 9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
9 §§ 1332 and 1367 because this is a class action in which the matter or controversy exceeds the  
10 sum of \$5,000,000, exclusive of interest and costs, and in which some members of the proposed  
11 Class are citizens of a state different from defendant.

12 10. This Court has personal jurisdiction over Defendant because Defendant owns and  
13 operates a business that is headquartered in the Northern District of California and conducts  
14 substantial business throughout California.

15 11. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b)(1), as Google  
16 is headquartered in this district.

### 17 **IV. STATEMENT OF FACTS**

18 12. The overwhelming majority of mobile phones run on one of two operating  
19 systems:<sup>3</sup> Android or iOS, which are developed by Google and Apple, respectively. On each of  
20 these operating systems, users can customize their devices to their preferences by “managing”  
21 various functionalities of their phones. They can, for example, change their time zone, preferred  
22 language, or screen brightness. Included among these functionalities is the option to turn on or  
23 off the retention of “Location History”—that is, the individual’s precise location information<sup>4</sup> as

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24  
25 <sup>3</sup> An operating system (“OS”), in its most general sense, is software that allows a user to run other  
26 applications on a computing device, such as a mobile phone. *Techopedia*, definition of “operating  
27 system” (available at <https://www.techopedia.com/definition/3515/operating-system-os>)  
(accessed August 15, 2018).


28 <sup>4</sup> As used herein, “location information” or “location history” refers to any and all data obtained  
through an individual’s mobile device, which allows for the identification of that individual’s  
location either in the present or through historic record.

1 determined through the phone's GPS coordinates. Google represented that turning Location  
 2 History off would prevent the company from remembering where an individual had been, should  
 3 the individual so desire.

4 13. In addition to developing the Android operating system, Google also develops  
 5 apps that can be downloaded on Android and iOS devices. Users can make customized settings  
 6 and privacy decisions at the app level. A user can share location history with some apps—such as  
 7 the weather map or a ride-sharing app—but decide *not* to share that information with other apps.  
 8 A user can also share location information with a certain app at some times, but not at others.

9 14. Google represented to users of both its apps and its devices that it would not access  
 10 – and would prevent other third-parties from accessing – an individual's location history if users  
 11 took certain steps in managing their privacy settings. Google's support page on the  
 12 subject stated: "You can turn off Location History at any time. **With Location History off, the**  
 13 **places you go are no longer stored.**"<sup>5</sup>

14 15. Google represented that Android mobile phone owners may do this on their  
 15 devices, by going to the phone's "Settings" tab, as follows:

- 16 1. On your Android phone or tablet, open your device's Settings app  > Google >  
 Google Account.
- 17 2. At the top, tap Data & personalization.
- 18 3. Under "Activity controls," tap Location History.
- 19 4. Turn Location History on or off for your account or devices:
  - 20 • For your whole account and all devices associated with it, turn Use Location History  
 on or off.
  - 21 • For a certain device only, turn that device's history on or off.

22 16. For iPhone users, Google explained that one must log into one's online account  
 23 with Google to turn off Location History (as it does not control the Apple device's operating  
 24 system):<sup>6</sup>

25  
 26 <sup>5</sup> Google Account Help, "Manage of Delete Your Location History" (available at  
<https://support.google.com/accounts/answer/3118687?hl=en>) (emphasis added) (accessed August  
 27 15, 2018).


28 <sup>6</sup> Google Account Help, "Location history for iPhone and iPad" (available at  
<https://support.google.com/accounts/answer/4388034>) (accessed August 15, 2018).

Turn Location History on or off 


Location History stores your location data from all devices that are signed in to your Google Account.

**Note:** When you pause Location History, it doesn't delete previous activity, it only stops saving new location information.

**Using your browser**

1. Go to the [Location history](#)  section of your Google Account.
2. Turn Location History on or off.
  - Off: Confirm by tapping Pause.
  - On: Confirm by tapping Turn on.

**Using the Google app**

1. Open the Google app .
2. At the top right, tap your account photo. You might need to sign in.
3. Tap My Account > Personal info and privacy > Activity controls > Google Location History.
4. Turn the setting on or off. If you turn it off, confirm by tapping Stop storing location.

17. Google affirmatively—and misleadingly—represented to both Android and Apple device users that turning off “Location History” would result in Google ceasing to track, record, and use an individual’s location information.

**A. Google Tracks Location Regardless of Privacy Settings.**

18. Google published a support page to instruct users on how to manage and delete the user’s Location History which stated, “[w]ith Location History off, the places you 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.”<sup>7</sup>

19. Google’s representation was false. As recently publicly revealed, turning off “Location History” only stopped Google from creating a location timeline that the *user* could view. Google, however, continues to track the phone owners and keep a record of their locations.

20. Even when “Location History” is turned off, a user’s location is stored every time she uses any of the myriad additional Google-controlled features on her mobile phone, including, *inter alia*, the Google Maps app, weather apps, and searches made with the phone’s mobile browser. Per the Associated Press:

For example, Google stores a snapshot of where you are when you merely open its Maps app. Automatic daily weather updates on Android phones pinpoint roughly where you are. And some

<sup>7</sup> Google Account Help, “Manage or delete your Location History” (available at <https://support.google.com/accounts/answer/3118687?hl=en>) (accessed August 15, 2018).

1 searches that have nothing to do with location, like “chocolate chip  
2 cookies,” or “kids science kits,” pinpoint your precise latitude and  
3 longitude — accurate to the square foot — and save it to your  
4 Google account.<sup>8</sup>

5 21. Google’s conduct is contrary to users’ reasonable expectations of privacy. As  
6 Princeton computer scientist and former chief technologist for the Federal Communications  
7 Commission’s enforcement bureau, Jonathan Mayer, stated: “If you’re going to allow users to  
8 turn off something called ‘Location History,’ then all the places where you maintain location  
9 history should be turned off. That seems like a pretty straightforward position to have.”<sup>9</sup>

10 **B. Preventing Google’s Collection and Storage of Location Information is Far  
11 More Complex than Google Represents.**

12 22. Contrary to the plain language and simple process set forth in the Google support  
13 pages referenced above, in order to actually prevent location tracking, an individual must navigate  
14 to a deeply buried and non-obvious setting titled “Web & App Activity.”

15 23. Specifically, an individual must first sign in to her Google account on a browser (if  
16 an iPhone user) or through the Android settings menu (on an Android phone). In the browser,  
17 one can access her account settings by finding “Google Account” in the dropdown menu in the  
18 upper right-hand corner, then select “Personal Info & Privacy,” choose “Manage your Google  
19 Activity,” then click “Go to Activity Controls.” Once there, a setting called “Web & App  
20 Activity” is revealed, which can then be toggled off. A series of screenshots demonstrating these  
21 steps is attached hereto as Exhibit 2.

22 24. This process is counter-intuitive: Google obfuscates the fact that the “Web & App  
23 Activity” setting is related to location. Indeed, the setting resides directly *above*—but separate

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24 <sup>8</sup> AP Report. *See also*, Exhibit 1 (attached hereto): To demonstrate how powerful these other  
25 markers can be, the Associated Press (“AP”) created a visual map of the movements of Princeton  
26 postdoctoral researcher Gunes Acar, who carried an Android phone with Location History turned  
27 off, and shared a record of his Google account. The map includes Acar’s train commute on two  
28 trips to New York and visits to the High Line park, Chelsea Market, Hell’s Kitchen, Central Park,  
and Harlem. To protect his privacy, the AP didn’t plot the most telling and frequent marker—his  
home address.

<sup>9</sup> *Id.*

1 and apart from—the Location History option, causing a reasonable user to conclude that the two  
2 items are distinct. Further, Google’s vague description of “Web & App Activity”—that it  
3 “[s]aves your activity on Google sites and apps to give you faster searches, better  
4 recommendations, and more personalized experiences in Maps, Search, and other Google  
5 services”<sup>10</sup>—provides no reasonable notice that it relates to GPS tracking accurate to less than a  
6 meter. To obtain any more detail beyond this meaningless description, an individual must click to  
7 “[l]earn more,” then scroll to what’s saved as “Web & App Activity,” and tap again on “[i]nfo  
8 about your searches & more” before Google even *mentions* location tracking.<sup>11</sup> This is plainly  
9 insufficient notice of the collection and storage of location information.

10 25. Google is aware that it hides the nature of its location tracking and intentionally  
11 complicates the opt-out process. Google itself offers at least *three* support pages on location  
12 titled: “Manage or delete your Location History,”<sup>12</sup> “Turn location on or off for your Android  
13 device,”<sup>13</sup> and “Manage location settings for Android apps.”<sup>14</sup> Strikingly, none of these makes  
14 any mention of “Web & App Activity”—allegedly the only true way to prevent location tracking.

15 **C. Google’s Ineffective Response to the AP Report Confirms and Continues Its**  
16 **Deceptive Behavior.**

17 26. In its initial response to the Associated Press exposé on April 13, 2018, Google  
18 failed to refute engaging in the identified conduct, but rather appeared to attempt a defense by  
19 stating: “We provide clear descriptions of these tools.”<sup>15</sup>

20  
21  
22 <sup>10</sup> Google Account Help, “Activity Controls” (available at  
<https://myaccount.google.com/intro/activitycontrols>) (accessed August 15, 2018).

23 <sup>11</sup> Google Search Help, “See & control your search activity” (available at  
<https://support.google.com/websearch/answer/54068?co=GENIE.Platform%3DAndroid&oco=1>)  
24 (accessed August 15, 2018).

25 <sup>12</sup> Google Account Help, “Manage or delete your Location History” (available at  
<https://support.google.com/accounts/answer/3118687>) (accessed August 15, 2018).

26 <sup>13</sup> Google Account Help, “Turn location on or off for your Android device” (available at  
<https://support.google.com/accounts/answer/3467281?hl=en>) (accessed August 15, 2018).

27 <sup>14</sup> Android Help, “Manage location settings for Android apps” (available at  
<https://support.google.com/android/answer/6179507>) (accessed August 15, 2018).

28 <sup>15</sup> AP Report.



1           27. Google’s representation that such “clear descriptions” exist is false. First, Google  
2 publicly represented that preventing the storage of location data is as easy as turning “off” a  
3 settings switch, though in actuality that action is ineffective. Google silently endorsed well-  
4 known technology periodicals that propagated Google’s falsehood that toggling off Location  
5 History is an effective tool to prevent tracking.<sup>16</sup> Second, while perpetuating the myth of an  
6 effective “Location History” switch, Google fails to make reasonably clear to users that they must  
7 take another complicated and poorly-labeled route altogether in order to turn off location  
8 tracking, *i.e.*, locating, identifying, and understanding a deeply-buried and non-obvious setting  
9 titled “Web & App Activity.”<sup>17</sup>

10           28. Three days after the AP Report was published, on August 16, 2018, Google  
11 reversed course and revised the description on its help page for the Location History setting—  
12 which previously stated simply “With Location History off, the places you go are no longer  
13 stored”—to read:

14                   This setting does not affect other location services on your device, like  
15 Google Location Services and Find My Device. Some location data  
16 may be saved as part of your activity on other services, like Search and  
17 Maps. When you turn off Location History for your Google Account,  
18 it’s off for all devices associated with that Google Account.<sup>18</sup>

19           29. With this revision, Google disclosed for the first time that Google tracks users  
20 even after they have disabled the Location History setting. However, the new language remains  
21 vague, ambiguous, and deceptive, particularly the use and meaning of “some” and “may.” It does  
22 not specify what, if anything, is accomplished by turning off Location History; and it does not  
23 specify when Google continues to store location history despite the setting being turned off.

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24 <sup>16</sup> See, e.g., Matt Burgess, “How to stop Google from tracking you and delete your personal data,”  
25 *Wired* (Mar. 16, 2018) (available at <https://www.wired.co.uk/article/google-history-search-tracking-data-how-to-delete>) (accessed August 15, 2018); Greg Kumparak, “Google’s Location  
26 History Browser is a Minute-by-Minute Map of Your Life,” *TechCrunch* (Dec. 18, 2013)  
27 (available at <https://techcrunch.com/2013/12/18/google-location-history/>) (accessed August 15,  
28 2018).

<sup>17</sup> This function is set by default to share your information, including location.

<sup>18</sup> Ryan Nakashima, “APNewsBreak: Google clarifies location-tracking policy,” *The Associated Press* (August 17, 2018) (available at <https://apnews.com/ef95c6a91eeb4d8e9dda9cad887bf211>) (accessed August 17, 2018).

1 Moreover, Google still makes no mention of the distinct setting deeply buried in “Web & App  
2 Activity” where a user can actually stop Google from recording location history.

3 **D. The FTC has Found that Tracking Individuals’ Geolocations Without**  
4 **Permission (and In Contravention of Their Wishes) Is a Deceptive Trade**  
5 **Practice.**

6 30. The FTC has expressly weighed in on the behavior complained of herein and  
7 found it to be a deceptive trade practice, in violation of Section 5 of the FTC Act.

8 31. In June 2016, the FTC announced that it had entered into a settlement agreement  
9 with a mobile advertising company, InMobi PTE, after the agency charged InMobi with  
10 deceptively tracking the locations of hundreds of millions of individuals without their knowledge  
11 or consent in order to serve them geo-targeted advertising (i.e. advertisements tailored to an  
12 individual based on where they live or places they frequent).

13 32. In a highly analogous case, the FTC alleged that InMobi misrepresented that its  
14 advertising software would only track consumers’ locations when they opted in to being tracked,  
15 and in a manner consistent with their device’s privacy settings. According to the FTC  
16 complaint,<sup>19</sup> InMobi was actually tracking consumers’ locations whether or not the apps using  
17 InMobi’s software asked for consumers’ permission to do so, and even when consumers had  
18 denied permission to access their location information.

19 33. As a result of the FTC enforcement action, InMobi agreed to pay \$950,000 in civil  
20 penalties and implement a comprehensive privacy program, including a prohibition from  
21 collecting individuals’ location information without their affirmative express consent and a  
22 requirement that InMobi honor consumers’ location privacy settings. The company was required  
23 to delete all of the location information of consumers it had collected without their consent and  
24 was prohibited from further misrepresenting its privacy practices. The settlement also required  
25

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26 <sup>19</sup> “Mobile Advertising Network InMobi Settles FTC Charges It Tracked Hundreds of Millions of  
27 Consumers’ Locations Without Permission,” Federal Trade Commission (June 22, 2016)  
28 (available at <https://www.ftc.gov/news-events/press-releases/2016/06/mobile-advertising-network-inmobi-settles-ftc-charges-it-tracked>) (accessed August 15, 2018).

1 InMobi to institute a comprehensive privacy program that will be independently audited every  
2 two years for 20 years from the date of settlement.<sup>20</sup>

3 34. The activities engaged in by Google, detailed in this complaint, mirror location  
4 tracking activities condemned and sanctioned by the FTC.

5 **V. CLASS ALLEGATIONS**

6 35. Plaintiff brings this class action, pursuant to Rule 23 of the Federal Rules of Civil  
7 Procedure, individually and on behalf of all members of the following classes, which are jointly  
8 referred to throughout this Complaint as the “Class:”

9 **Android Class:** All natural persons residing in the United States  
10 who own Android mobile phones, who turned off Location History,  
11 and whose location information was nonetheless recorded and used  
12 by Google.

12 **iPhone Class:** All natural persons residing in the United States who  
13 own Apple mobile phones, who turned off Location History, and  
14 whose location information was nonetheless recorded and used by  
15 Google.

14 36. Excluded from each Class are the following individuals: officers and directors of  
15 Google and its parents, subsidiaries, affiliates, and any entity in which Google has a controlling  
16 interest; and all judges assigned to hear any aspect of this litigation, as well as their immediate  
17 family members.

18 37. Plaintiff reserves the right to modify or amend the definition of each of the  
19 proposed Classes before the Court determines whether certification is appropriate.

20 38. This action readily satisfies the requirements set forth under Federal Rule of Civil  
21 Procedure 23:

22 a. Each Class is so numerous that joinder of all members is impracticable.  
23 Upon information and belief, Class members number in the millions.

24 b. There are questions of law or fact common to the Classes. These questions  
25 include, but are not limited to, the following:

26 \_\_\_\_\_  
27 <sup>20</sup> “Stipulated Order for Permanent Injunction and Civil Penalty Judgment,” *United States of*  
28 *America v. InMobi Pte, Ltd.*, Case No. 3:16-cv-3474 (NDCA) (Dkt. No. 2-1) (available at  
<https://www.ftc.gov/system/files/documents/cases/160622inmobistip.pdf>) (accessed August 15,  
2018).

1                   i.       Whether Google’s acts and practices complained of herein amount  
2 to the use of an electronic tracking device to determine the location or movement of a person, in  
3 violation of Cal. Pen. Code § 637.7;

4                   ii.       Whether the technology utilized by Google—and embedded on the  
5 mobile devices of Plaintiff and Class members—are “electronic tracking devices” under Cal. Pen.  
6 Code § 637.7(d);

7                   iii.       Whether Google’s acts and practices complained of herein amount  
8 to egregious breaches of social norms;

9                   iv.       Whether Google acted intentionally in violating Plaintiff’s and  
10 Class members’ privacy rights;

11                   v.       Whether an injunction should issue; and

12                   vi.       Whether declaratory relief should be granted.

13                   c.       Plaintiff’s claims are typical of the claims of the Class in that Plaintiff, like  
14 all Class members, took efforts to prevent his phone’s location history from being recorded and  
15 used by Google, yet despite these efforts and contrary to Google’s representations, nonetheless  
16 had said location history recorded and used by Google. Plaintiff and the Class members did not  
17 consent to Google’s collection and use of their location history, which acts form the basis for this  
18 suit.

19                   d.       Moreover, like all Class members, Plaintiff suffers a substantial risk of  
20 repeated injury in the future. Like all Class members, although Plaintiff wishes to control the  
21 circumstances under which his location information can be collected and used by Google, Google  
22 has shown deliberate indifference to those wishes and has indeed taken pains to deceive Plaintiff  
23 (and all Class members) and to thwart those wishes. Nonetheless, like all Class members,  
24 Plaintiff must own and use a mobile phone—itsself an effective prerequisite for modern life—but  
25 Google’s deceptive and deliberate actions have thwarted and continue to threaten Plaintiff’s (and  
26 Class members’) ability to own such a phone without having his whereabouts constantly tracked,  
27 recorded, and used. Plaintiff and the Class members are entitled to injunctive and declaratory  
28 relief as a result of the conduct complained of herein. Because the conduct complained of herein

1 is systemic, Plaintiff and all Class Members face substantial risk of the same injury in the future.  
2 Google's conduct is common to all Class members and represents a common thread of conduct  
3 resulting in injury to all members of the Class. Plaintiff has suffered the harm alleged and has no  
4 interests antagonistic to any other Class member.

5 e. Plaintiff will fairly and adequately protect the interests of the Class.  
6 Plaintiff's interests do not conflict with the interests of the Class members. Furthermore, Plaintiff  
7 has retained competent counsel experienced in class action litigation, consumer protection  
8 litigation, and electronic privacy litigation. Plaintiff's counsel will fairly and adequately protect  
9 and represent the interests of the Class. FRCP 23(a)(4) and 23(g) are satisfied.

10 f. In acting as above-alleged, and in failing and refusing to cease and desist  
11 despite public outcry, Google has acted on grounds generally applicable to the entire Class,  
12 thereby making final injunctive relief and corresponding declaratory relief each appropriate with  
13 respect to the Class as a whole. The prosecution of separate actions by individual Class members  
14 would create the risk of inconsistent or varying adjudications with respect to individual Class  
15 members that would establish incompatible standards of conduct for Google.

16 g. Injunctive relief is necessary to prevent further unlawful and unfair conduct  
17 by Google. Money damages, alone, could not afford adequate and complete relief, and injunctive  
18 relief is necessary to restrain Google from continuing to commit its illegal and unfair violations of  
19 privacy.

## 20 **VI. CAUSES OF ACTION**

### 21 **COUNT ONE** 22 **(Violations of CIPA, Cal. Pen. Code §§ 630, et seq.)**

23 39. Plaintiff incorporates the preceding paragraphs of this complaint as if repeated here.

24 40. Cal. Pen. Code § 630 provides that “[t]he Legislature hereby declares that  
25 advances in science and technology have led to the development of new devices and techniques  
26 for the purpose of eavesdropping upon private communication and that the invasion of privacy  
27 resulting from the continual and increasing use of such devices and techniques has created a  
28

1 serious threat to the free exercise of personal liberties and cannot be tolerated in a free and  
2 civilized society.”

3 41. Google’s acts and practices complained of herein, engaged in for purposes of  
4 acquiring and using the geolocation of mobile phone users, without their consent—and indeed in  
5 direct contravention of instructions clearly expressed through turning off the location history  
6 function —violated and continues to violate Cal. Pen. Code § 637.7.

7 42. Cal. Pen. Code § 637.7 prohibits the use of an electronic tracking device to  
8 determine the location or movement of a person.

9 43. In direct violation of this prohibition and without the consent of Plaintiff or Class  
10 members—and indeed in direct contravention of those individuals’ clearly-expressed wishes—  
11 Google continued to record, store, and use the location information of Plaintiff and Class  
12 members after they disabled the Location History feature on their phones.

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

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

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

**COUNT TWO**  
**(Intrusion Upon Seclusion)**

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46. Plaintiff repeats and realleges all preceding paragraphs contained herein.

47. Plaintiff and Class members have reasonable expectations of privacy in their mobile devices and their online behavior, generally. Plaintiff’s and Class members’ private affairs include their locations.

48. The reasonableness of such expectations of privacy is supported by Google’s unique position to monitor Plaintiff’s and Class members’ behavior through its access to Plaintiff’s and Class members’ private mobile devices. It is further supported by the surreptitious and non-intuitive nature of Defendant’s tracking.

49. Defendant intentionally intruded on and into Plaintiff’s and Class members’ solitude, seclusion, or private affairs by intentionally geolocating them.

50. These intrusions are highly offensive to a reasonable person. This is evidenced by, *inter alia*, Supreme Court precedent (most recently and forcefully articulated in the *Carpenter* opinion), legislation enacted by Congress, rules promulgated and enforcement actions undertaken by the FTC, and countless studies, op-eds, and articles decrying location tracking. Moreover, Google engaged in true tracking of location history deceptively and in direct contradiction of the express instructions of Plaintiff and the members of the Class. Also supporting the highly offensive nature of Defendant’s conduct is the fact that Defendant’s principal goal was to surreptitiously monitor Plaintiff and Class members and to allow third-parties to do the same.

51. Plaintiff and Class members were harmed by the intrusion into their private affairs as detailed throughout this Complaint.

52. Google’s actions and conduct complained of herein were a substantial factor in causing the harm suffered by Plaintiff and Class members.

53. As a result of Google’s actions, Plaintiff and Class members seek damages and punitive damages in an amount to be determined at trial. Plaintiff and Class members seek punitive damages because Google’s actions—which were malicious, oppressive, and willful—were calculated to injure Plaintiff and Class members and made in conscious disregard of

1 Plaintiff's and Class members' rights. Punitive damages are warranted to deter Google from  
2 engaging in future misconduct.

3 **COUNT THREE**  
4 **California Constitutional Right to Privacy**

5 54. Plaintiff repeats and realleges all preceding paragraphs contained herein.

6 55. Plaintiff and Class members have reasonable expectations of privacy in their  
7 mobile devices and their online behavior, generally. Plaintiff's and Class members' private  
8 affairs include their behavior on their mobile devices as well as any other behavior that may be  
9 monitored by the surreptitious tracking employed or otherwise enabled by location tracking.

10 56. Google intentionally intruded on and into Plaintiff's and Class members' solitude,  
11 seclusion, right of privacy, or private affairs by intentionally tracking their location.

12 57. These intrusions are highly offensive to a reasonable person, because they  
13 disclosed sensitive and confidential location information, constituting an egregious breach of  
14 social norms. This is evidenced by, *inter alia*, Supreme Court precedent (most recently and  
15 forcefully articulated in the *Carpenter* opinion), legislation enacted by Congress, rules  
16 promulgated and enforcement actions undertaken by the FTC, and countless studies, op-eds, and  
17 articles decrying location tracking. Further, the extent of the intrusion cannot be fully known, as  
18 the nature of privacy invasion involves sharing Plaintiff's and Class members' location  
19 information with potentially countless third-parties, known and unknown, for undisclosed and  
20 potentially unknowable purposes, in perpetuity.

21 58. Plaintiff and Class members were harmed by the intrusion into their private affairs  
22 as detailed throughout this Complaint.

23 59. Google's actions and conduct complained of herein were a substantial factor in  
24 causing the harm suffered by Plaintiff and Class members.

25 60. As a result of Google's actions, Plaintiff and Class members seek damages and  
26 punitive damages in an amount to be determined at trial. Plaintiff and Class members seek  
27 punitive damages because Google's actions—which were malicious, oppressive, and willful—  
28 were calculated to injure Plaintiff and Class members and made in conscious disregard of



1 Plaintiff's and Class members' rights. Punitive damages are warranted to deter Google from  
2 engaging in future misconduct.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff requests that judgment be entered against Google and that the  
5 Court grant the following:

6 A. An order determining that this action may be maintained as a class action under  
7 Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff is a proper class representative, that  
8 Plaintiff's attorneys shall be appointed as Class counsel pursuant to Rule 23(g) of the Federal  
9 Rules of Civil Procedure, and that Class notice be promptly issued;

10 B. Judgment against Google for Plaintiff's and Class Members' asserted causes of  
11 action;

12 C. Appropriate declaratory relief against Google;

13 D. Injunctive relief in the form of, *inter alia*, an order enjoining Google from  
14 continuing its practice of recording and using Plaintiff's and Class members' location information  
15 against their wishes and in violation of CIPA;

16 E. Injunctive relief related to CIPA in the form of, *inter alia*, an order requiring  
17 Google to destroy all data acquired, created, or otherwise obtained from the unlawful recording  
18 and use of the location information of Plaintiff and Class members;

19 F. An award of damages pursuant to Cal. Pen. Code § 637.2;

20 G. Reasonable attorney's fees and costs reasonably incurred; and

21 H. Any and all other and further relief to which Plaintiff and the Class may be  
22 entitled.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands a trial by jury of all issues so triable.

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26 Dated: August 17, 2018

Respectfully Submitted,

27 /s/ Michael W. Sobol

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Michael W. Sobol (State Bar No. 194857)  
msobol@lchb.com  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
Facsimile: 415.956.1008

Nicholas Diamand  
ndiamand@lchb.com  
Abbye R. Klamann (State Bar No. 311112)  
aklamann@lchb.com  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
250 Hudson Street, 8<sup>th</sup> Floor  
New York, NY 10013  
Telephone: 212.355.9500  
Facsimile: 212.355.9592

Hank Bates (State Bar No. 167688)  
CARNEY BATES & PULLIAM, PLLC  
519 W. 7<sup>th</sup> St.  
Little Rock, AR 72201  
Telephone: 501.312.8500  
Facsimile: 501.312.8505

*Attorneys for Plaintiff, individually and  
on behalf of all others similarly situated*