



Court File No. **VLC-S-S-256412**

NO.

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

ALPHABET INC., GOOGLE LLC, and
GOOGLE CANADA CORPORATION

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Introduction

1. The within proposed consumer protection multi-jurisdictional class proceeding involves the Defendants', ALPHABET INC.'s, GOOGLE LLC's, and GOOGLE CANADA CORPORATION's (hereinafter collectively referred to as "**Google**," unless referred to individually or otherwise), practice of using their Android operating system built for mobile devices to wrongfully appropriate, interrupt and/or interfere with the use of the Plaintiff's and putative class members' cellular data allowances, purchased from third-party mobile cellular service providers, without their express and/or implied consent, in order to transmit or transfer information, including, *inter alia*, activity, device, and location data (the "**Information**"), to and from their mobile devices to the Defendant's, Google's, servers, and using the Information for their technological development and financial gain.

2. Mobile operating systems, such as the Defendant's, Google's, Android operating system and Apple Inc.'s ("**Apple**") iOS, are ubiquitous worldwide and form an integral part of individuals' daily lives. These operating systems provide the essential interface through which users interact with their mobile devices to perform a wide range of tasks.

3. In order to enhance the features of mobile device operating systems, provide necessary functionality of the mobile device or execute tasks, operating systems are designed or programmed to transfer or transmit Information to and from users' mobile devices. The transfer or transmission occurs in two different ways: (i) *actively*, when a user engages with an application or feature on the mobile device that requires the communication of Information to perform a specific task; or

(ii) *passively*, when a user is not using the mobile device, but the mobile device remains in standby mode with computing processes running in the background that require access to or transmit the Information.

4. These transfers or transmissions of Information occur over the Internet when a mobile device is connected, either through a Wi-Fi network or through the mobile device's cellular data network, and necessarily consume bandwidth by transmitting data packets to and from the servers of the entity managing the mobile devices' operating system. Such transfers occur both in the foreground, when applications are in use, and in the background, through automated synchronization and system processes.

5. Both active and passive transfers provide functionality to the mobile operating systems. However, whereas active transfers are triggered at the time the user interacts with the operating system, passive transfers may be delayed or, in some cases, disabled entirely at the user's discretion.

6. The within proposed class proceeding does not concern active transfers of Information, but rather passive transfers, particularly where the Plaintiff and putative class members are unable to limit or control such transfers despite taking active steps to do so, or where such transfers occur without their consent through the use of their cellular data allowances.

7. At all relevant times herein, while the Plaintiff's and putative class members' Android devices were not in use, the Defendant's, Google's, Android technology passively transferred enormous amounts of Information using the cellular data allowances, paid for by Plaintiff and putative class members, without their knowledge or consent, much of which it uses to further its own corporate interests, including targeted digital advertising.

8. While the Defendant's, Google's, direct competitor in the mobile device operating system sphere, Apple, also engages in passive transfers of Information from users' mobile devices, significantly less Information is transmitted through such transfers on Apple's iOS devices than on Android devices. Moreover, Apple's iOS provides users with greater control over the extent and nature of passive Information transfers.

9. In particular, the passive transfer of Information on mobile devices is not time sensitive

and could be delayed until users have access to Wi-Fi to avoid consuming users' cellular data allowances. However, the Defendant, Google, deliberately designed, programed and coded its Android operating system and first-party applications to indiscriminately take advantage of Plaintiff's and the putative class members' cellular data allowances to gain the necessary Internet access required to passively exchange Information at all hours of the day—even after Plaintiff and putative class members move the first-party mobile applications to the background, close the programs completely, or turn off the use of the cellular data entirely from within the settings in the Android operating system.

10. The Plaintiff and putative class members have no say in the Defendant's, Google's, continual misappropriation of their cellular data allowances, had no knowledge that the transfers were occurring, and remain powerless to stop them. The Defendant, Google, has designed its products to prevent users from changing the settings to disable these transfers completely or to restrict them to Wi-Fi networks. As a result of the Defendant's, Google's, deliberate design decisions, these passive Information transfers using cellular data allowances purchased by Plaintiff and putative class members are mandatory and unavoidable burdens shouldered by Android device users for the Defendant's, Google's, benefit and convenience.

11. The Plaintiff and putative class members at no time, explicitly or impliedly, consented to the passive transfers, when they took active steps to restrict, limit or cancel such transfers altogether. The Defendant, Google, has crafted its various terms of service and policies in ways that purport to create binding contracts with the users of its technologies. However, none of the Defendant's, Google's, terms or policies alert users that mobile devices running the Android operating system will needlessly consume their cellular data allowances in order to transfer Information that is not immediately required to provide the user with the full functionality of the mobile device. While the Defendant's, Google's, policies inform the users of certain transfers of personal information between the mobile devices and the Defendant, Google, these extensive "privacy" policies are conspicuously silent on the means by which mandatory, unavoidable, passive transfers of Information occur.

12. The passive Information transfers are not mere annoyances—they actually injure the Plaintiff and putative class members. Each month, mobile device users pay their third-party mobile

device carriers for cellular data allowances that enable them to transmit and receive Information on the mobile carriers' cellular data networks. Regardless of whether the Plaintiff and the putative class members pay for a specific number of gigabytes or unlimited access subject to speed restrictions above a certain data usage threshold, the contracts between Plaintiff and the putative class members and their third-party mobile device carriers create for the Plaintiff and putative class members concrete *property interests* in their purchased data allowances.

13. When it initiates passive transfers of Information utilizing the Plaintiff's and putative class members cellular data allowances, the Defendant, Google, wrongfully appropriates, interrupts and/or interferes with the use of the Plaintiff's and putative class members' property, which alleged conduct amounts to the torts of conversion and/or trespass to personal property. Further, such alleged conduct is prohibited under Sections 342.1(1) and 430(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 ("*Criminal Code*") relating to unauthorized use of computer and mischief, respectively.

14. In addition to misappropriating the Plaintiff's and putative class members' property, the passive transfers also confer a valuable benefit to the Defendant, Google, that it acquires at Plaintiff's and putative class members' expense. The Defendant, Google, sends and receives Information without bearing the cost of transferring that Information between consumers and Google. Indeed, the Information transmitted through this practice supports the Defendant's, Google's, product development and lucrative targeted advertising business. In the absence of contractual provisions disclosing and permitting the Defendant's, Google's, appropriation of Plaintiff's and putative class members' property amounting to conversion and/or trespass to personal property, the Defendant, Google, has engaged in unfair business practices, contrary to applicable consumer protection legislation, and as such it must compensate the Plaintiff and putative class members for the reasonable market value of the data allowances the Defendant, Google, has misappropriated through passive transfers.

15. The Plaintiff seeks relief for all putative class members, including, *inter alia*, recovery of damages for conversion and/or trespass to personal property and under various provincial consumer protection legislation, and injunctive relief enjoining the Defendant, Google, from continuing its wrongful appropriation, interruption and/or interference with the use of the

Plaintiff's and putative class members' cellular data allowances.

B. The Parties

i. The Representative Plaintiff

16. The Plaintiff [REDACTED] has an address for service c/o 210-4603 Kingsway, Burnaby, British Columbia, Canada, V5H 4M4.

17. The Plaintiff has been a longtime user of mobile devices powered by the Defendant's, Google's, Android operating system. In particular, in the past ten years he has used at least five Android-powered mobile devices.

18. The Plaintiff is currently using a Samsung Galaxy S22.

19. The Plaintiff's mobile device service carrier is TELUS, and he contracts with TELUS to use its cellular data network to provide the necessary mobility devices services.

20. The Plaintiff is conservative in his use of cellular data and prefers to connect to Wi-Fi whenever available. He reserves his cellular data allowance for situations of necessity, including emergencies, and reasonably relies on the toggle within his mobile device settings, which is represented and expected to disable cellular data, but does not.

21. During his ownership of various Android-powered mobile devices, the Plaintiff has, on occasion, been compelled to upgrade his cellular plan in order to increase his available data allowance, notwithstanding his conservative usage habits.

22. In or around June 2024, the Plaintiff switched his mobile service carrier and upgraded his plan from 50 gigabytes to 200 gigabytes.

23. Given the Plaintiff's conservative use of the cellular data network and consistent preference for connecting via Wi-Fi, his monthly consumption is materially inconsistent with his anticipated usage.

24. As a result of the Defendant's, Google's, unlawful conduct, as averred herein, the Plaintiff is unable to reliably predict whether, and to what extent, cellular data will be available to

him when needed.

25. The Defendant, Google, has appropriated, interrupted or interfered with the use of the Plaintiff's cellular data allowance, and has used it to transfer Information regardless of whether the cellular data has been toggled on or not.

ii. The Defendants

26. The Defendant, Alphabet Inc., is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, 1505 Corporation CSC, 1600 Amphitheatre Parkway, Mountainview, California, United States of America, 94043.

27. The Defendant, Google LLC, is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, United States of America, 19808.

28. The Defendant, Google Canada Corporation, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia, under number A0126582, and has a registered and records office for service at Lawdell Corporate Services Limited, 1600 - 925 West Georgia Street, Vancouver, British Columbia, Canada, V6C 3L2.

29. At all material times to the cause of action herein, the Defendant, Google LLC, is an American multinational corporation and technology company engaged in online advertising, search engine technology, cloud computing, computer software, quantum computing, e-commerce, consumer electronics, and artificial intelligence.

30. At all material times to the cause of action herein, the Defendant, Alphabet Inc., was, and is, the parent corporation of the Defendant, Google LLC, and was, and is, inextricably involved in the ownership, direction, and oversight of the Defendant's, Google LLC's, business operations, including those relating to the Android operating system.

31. At all material times to the cause of action herein, the Defendant, Google Canada Corporation, was, and is, a wholly owned Canadian subsidiary, affiliate and/or operating unit of

the Defendant, Alphabet Inc., and was inextricably involved in the promotion, distribution, marketing, and/or support of the Android operating system and related mobile device services within Canada, including the Province of British Columbia.

32. At all material times to the cause of action herein, the Defendants, Alphabet Inc., Google LLC, and Google Canada Corporation, shared the common purpose of, *inter alia*, designing, developing, programming, marketing, distributing, supplying, and/or supporting the Android operating system and related mobile device services in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants are inextricably interwoven with one another as to the Android operating system and related mobile device services, such that each is the agent of the other.

33. Hereinafter, the Defendants, Alphabet Inc., Google LLC, and Google Canada Corporation, are collectively referred to as the “**Defendant, Google**”, and/or the “**Defendants**”, unless referred to individually or otherwise.

C. The Class

34. This action is brought on behalf of a class consisting of all residents of Canada who purchased mobile devices running Google’s Android operating system to access the Internet through cellular data plans provided by third-party mobile device network carriers (“**Class**” or “**Class Members**”), excluding employees, officers, directors, agents of the Defendants and their family members, class counsel, presiding judges and any person who has commenced an individual proceeding against or delivered a release to the Defendants concerning the subject of this proceeding, or such other class definition or class period as the Court may ultimately decide on the application for certification.

D. Factual Allegations

i. The Defendant’s, Google’s, Android operating system is ubiquitous

35. The Defendant, Google, owns and programs one of the most popular mobile device platforms in the world, the Android operating system. Android works on a variety of mobile devices, including smartphones and tablets.

36. The Android operating system includes an interface that provides the principal means by which users interact with their mobile devices. The interface allows users to access and to use applications and widgets on the devices to perform various tasks such as, *inter alia*, making phone calls, sending text messages, browsing the Internet, navigating routes, and tracking workouts.

37. In addition to the Android operating system, Plaintiff and Class Members' mobile devices come with various first-party applications and widgets pre-installed, including, *inter alia*, the Google application, Chrome browser, Gmail email application, Google Maps, and YouTube (the "**Google Products**").

38. Android has been available on mobile devices since 2008. It currently has about a 39.65 percent share of the Canadian smartphone market.

39. All, or virtually all, mobile device network carriers offer cellular data plans that enable Android devices to connect to their cellular data networks to send and receive Internet communications. These carriers sell either (i) mobile devices powered by the Android operating system bundled with cellular data plans, or (ii) standalone cellular data plans directly to consumers. Among the carriers providing cellular data networks compatible with Android-powered devices are Rogers, TELUS, and Freedom.

40. Many of the most popular mobile device manufacturers sell devices with Android preinstalled as the operating system, often accompanied by a suite of Defendant's, Google's, mobile device applications. These manufacturers include, *inter alia*, Samsung, Motorola, LG, Kyocera, Sonim, Huawei, ZTE, and HTC.

ii. The Plaintiff and Class Members have a property interest in their cellular data plans

41. The Plaintiff and Class Members purchased mobile devices preinstalled with the Defendant's, Google's, Android operating system and Google Products.

42. To use their mobile devices, the Plaintiff and Class Members contracted with mobile network carriers. As part of these contracts, the Plaintiff and Class Members purchased cellular data plans that provided them with data allowances. These plans allow the Plaintiff and Class Members to access the mobile device carriers' cellular data networks, thereby providing them with

the ability to send and receive information over the Internet without a Wi-Fi connection. In this way, cellular data plans provide the essential capability that allows a mobile device to be truly mobile.

43. Cellular data plans vary by the mobile device network carrier, but they function in substantially the same way. In particular, users pay the mobile device network carrier a set monthly price for the desired cellular data allowances, which provide them with the right to send and receive information on their devices through the mobile carrier's cellular data network. Each plan allocates a finite amount of bandwidth, typically measured in gigabytes, representing the total volume of data that can be transmitted and received during the billing cycle. Some plans provide users with a fixed allowance (e.g., 10 gigabytes), after which they are typically charged an overage fee. Others are marketed as "unlimited," but in practice impose quotas on bandwidth usage, after which the users' connection speeds are throttled. Throttling reduces the available bandwidth to such an extent that certain functionalities—such as video streaming or large file transfers—may be lost entirely, and the overall performance of the device can be significantly impaired. In this way, cellular data allowances, and the bandwidth they represent, function as a scarce and valuable resource purchased by users.

44. Although cellular data networks provide a critical resource for mobile devices, they are not necessary for the mobile device to send and receive information through the Internet. When users do not wish to use their cellular data networks or when they are unable to use them, mobile devices can also transfer and receive Information over the Internet through Wi-Fi connections. Indeed, many cost-conscious users maximize their time on Wi-Fi whenever possible and use their cellular data networks only when Wi-Fi connections are unavailable in order to "save" the cellular data allowances available under their monthly mobile device network carrier plans.

45. The purchase of data plans from mobile device network carriers creates a property interest for the Plaintiff and Class Members in their cellular data allowances. Each unit of data allowance has a fair market value determined by prevailing market forces of supply and demand, and other external factors, and as such is capable of class-wide damages assessment.

46. Further, by contracting for the purchase of their data allowances, the Plaintiff and Class Members acquire not only access to send and receive information on the mobile device carriers'

cellular networks in accordance with the terms of their contracts, but also the corresponding right to exclude other persons and entities from using their data allowances. The Plaintiff and Class Members further possess the right to determine how their data allowances are consumed and to decide whether, and under what circumstances, others may access those allowances through their mobile device activity.

47. For example, Android users may explicitly grant others access to their cellular data allowances by creating a mobile “hotspot,” in which the mobile device shares its cellular network connection with other nearby devices so that those devices can access the internet once they are given the hotspot’s password. Similarly, “tethering” (either through a USB cable or a Bluetooth connection) allows users to connect their mobile device with a computer to share the device’s cellular network connection and grant the computer access to their cellular data allowances. Users can also sell unused data allowances.

iii. Mobile device users consent to the Defendant’s, Google’s, use of their cellular data allowances when they actively use the Google Products

48. Under certain circumstances, mobile device users implicitly consent to the use of their cellular data allowances. For instance, when users actively engage with applications that require Internet access while connected only through their cellular data network, they understand that such applications will draw from their cellular data allowance. Thus, when users in an area without Wi-Fi open a browser and enter a web address, they consent to the use of their cellular data to transmit and receive information with the operating system developer’s server. Likewise, when users open a video application, they consent to the transmission of video content to their mobile device over their mobile carrier’s cellular network, with such usage counting against their cellular data allowances.

49. These active transfers of Information that are initiated by the user engaging an application are not at issue in this proposed class proceeding. The Plaintiff and Class Members do not contest the Defendant’s, Google’s, right to use Plaintiffs’ cellular data allowances pursuant to their consent when Plaintiff and Class Members are actively interacting with the Android operating system and the Google Products.

50. The Plaintiff and Class Members instead challenge the Defendant’s, Google’s,

appropriation of their cellular data allowances without their consent. Specifically, the Plaintiff and Class Members challenge the Defendant's, Google's, wrongful appropriation, interruption and/or interference with the use of their cellular data allowances based on "passive transfers," meaning Information transfers that occur in the background and which do not result from Plaintiff's and Class Members' direct engagement with Google Products on their mobile devices. These passive transfers, described in more detail below, occur in a variety of ways—including when Google Products are open (though not in active use) and operating in the background, and even when a user has closed out all Google Product on his or her mobile device and the mobile device is stationary and seemingly dormant. In none of the Defendant's, Google's, policies discussed below does it notify users that it's Android operating system and the Google Products cause users' mobile devices to indiscriminately consume Plaintiffs' cellular data allowances, even when users are not using an application or widget on their mobile devices.

iv. Through the Defendant's, Google's, standard agreements, mobile device users consent to the Defendant's, Google's, use of their cellular data allowances only when they actively use its products

51. Users of Android devices do not pay the Defendant, Google, directly to use its Android operating system and Google Products. Instead, they provide consideration in the form of consent to the company's various policies. The policies form a contract between the parties ("**Google Agreements**"). Users manifest consent to the Google Agreements through performance by using the company's products. But none of those policies disclose that the Defendant, Google, appropriates the Plaintiff's and Class Members' cellular data allowances to transmit information when they are not actively using the Android software and Google Products.

52. The Google Agreements include four general policies relevant to the within class proceeding: (i) the Terms of Service; (ii) Privacy Policy; (iii) Managed Google Play Agreement; and (iv) Google Play Terms of Service. The Defendant's, Google's, master policy is its Terms of Service. The Terms of Service themselves incorporate by reference the company's Privacy Policy. In addition, according to the Managed Google Play Agreement, use of the Android operating system is governed by the Google Play Terms of Service. Nothing in these policies suggests that the Defendant, Google, uses the Plaintiff's and Class Members' data allowances to transmit Information when they are not actively engaged with the Android operating system and Google

Products.

53. Specifically, the Defendant's, Google's, Privacy Policy states, "We collect information about the apps, browsers, and devices you use to access Google services... We collect this information when a Google service on your device contacts our servers—for example, when you install an app from the Play Store or when a service checks for automatic updates. If you're using an Android device with Google apps, your device periodically contacts Google servers to provide information about your device and connection to our services. This information includes things like your device type and carrier name, crash reports, which apps you've installed, and, depending on your device settings, other information about how you're using your Android device."

54. The Google Play Terms of Service and Managed Google Play Agreement are the only policies that have a disclaimer targeted specifically at Google Play's and the Android operating system's usage of cellular data allowances. The disclaimer, which is substantially similar in both policies, however, applies only to active usage in connection with the use of Google Play and applications available through Google Play, and the Android operating system. In particular, the disclaimer in the Google Play Terms of Service provides: "You are responsible for any access or data fees incurred from third parties (such as your Internet provider or mobile carrier) in connection with *your use and viewing* of Content and Google Play" (emphasis added). Although the disclaimer clarifies that users' data allowances are appropriated as a result of the user's active "use and viewing," it is noticeably silent on the Defendant's, Google's, misappropriation of cellular data allowances when users are not "using and viewing" the Defendant's, Google's, products. Further, the disclaimer in the Managed Google Play Agreement is substantially similar and provides: "You may incur access or data fees from third parties (such as Your Internet provider or mobile carrier) in connection with Your *use* of Applications and Service. You are responsible for all such fees" (emphasis added).

55. The Google Agreements also include the Defendant, Google, policies that apply specifically to individual mobile applications. None of those policies disclose the Defendant's, Google's, passive data usage. For example, the Google Maps terms provide that "[c]ontent you upload, submit, store, send, or receive through Google Maps/Google Earth is subject to Google's Universal Terms." The policy is silent about how that information is sent and does not provide the

Defendant, Google, with the authority to use Plaintiff's and Class Members' cellular data allowances for passive Information transfers.

56. The same is true of the Google Chrome browser policy. Despite the policy's specificity, it still does not obtain users' consent to the Defendant, Google, accessing users' cellular data allowances for passive Information transfers. Instead, the Google Chrome policy merely discloses that Chrome transmits various types of information to the Defendant, Google, without user involvement. For example, the policy states that Chrome "periodically sends information to Google to check for updates, get connectivity status, validate the current time, and estimate the number of active users." It further states that "information that Chrome stores [locally on your device] won't be sent to Google unless you choose to store that data in your Google Account." The policy also provides that "sites and Android apps can also ask the browser to preload the pages you might visit next" when using Chrome and that "[p]reloading requests from Android apps are controlled by the same setting as Chrome-initiated predictions." Moreover, "on mobile devices, Chrome automatically shares your location with your default search engine if the Chrome app has permission to access your location and you haven't blocked geolocation for the associated website." Finally, the policy states that "usage statistics and crash reports are sent to Google to help us improve our products." But again, no language in the policy discloses that the Defendant, Google, accesses users' cellular data allowances to initiate passive Information transfers.

v. The Defendant's, Google's, misappropriation of the Plaintiff's and Class Members' cellular data allowances has caused harm and damage to the Plaintiff and Class Members

57. The Defendant, Google, and Apple are the only mobile device operating system developers currently in the market, and as such, they set the industry standard for the tracking, sharing, storing, and use of Information collected from users of their mobile devices. Users interact with Android-enabled or iOS-enabled devices in a similar manner, and each have their suite of comparable applications, for example, website browsers, mail and text applications and calendars. In addition, iOS-enabled devices incorporate Google Products at the user's discretion.

58. Discovery evidence will show that, during comparable use, iOS-enabled devices, even the ones that incorporate Google Products, transfer significantly less Information between the users' devices and Apple's servers than the mobile devices running the Android operating system.

59. The Plaintiff and Class Members expect the Defendant, Google, to follow the industry standard in the tracking, sharing, storing, and use of Information collected from users of their mobile devices, and not passively transfer the Information and misappropriate it.

60. The Defendant, Google, designed and implemented its Android operating system and Google Products to extract and transmit large volumes of Information between the Plaintiff's and Class Members' mobile devices and the Defendant, Google, using the Plaintiff's and Class Members' own cellular data allowances. As averred to herein, the Defendant's, Google's, usage of the Plaintiff's and Class Members' cellular data allowances includes "active" Information transfers, which occur when users are actively engaged with the Android operating system or the Google Products. Those active transfers are not at issue in the within proposed class proceeding. Here, the Plaintiff and Class Members challenge the Defendant's, Google's, practice of misappropriating the Plaintiff's and Class Members' cellular data allowances through passive transfers of Information between the Defendant, Google, and the Plaintiff's and Class Members' mobile devices. These passive transfers, which occur in the background or do not result from Plaintiff's and Class Members' direct engagement with the Android operating system or Google Products, happen without Plaintiff's and Class Members consent, and is not *de minimis*.

61. These passive transfers occur in a variety of ways. First, such transfers occur when mobile devices are in a completely idle state, meaning they are stationary, untouched, and with all applications closed. Second, a higher volume of passive transfers occurs when mobile devices are stationary, untouched, but with one or more applications open and unused. Third, even more passive transfers occur once users begin moving around with their Android-enabled devices, or interacting with them by visiting web pages, or using applications, despite also eschewing the use of any preloaded Google Products. This increased activity was driven by the Defendant's, Google's, publishing and advertising products including Google Analytics, DoubleClick (now Google Ad Manager), and AdWords (now Google Ads). In all of these instances, the Defendant, Google, can misappropriate the data even if the cellular data is turned off.

62. Further, the Defendant's, Google's, publishing and advertising products also drive passive data transfers from the Defendant, Google, to Android devices. For example, the Defendant, Google, tracks and predicts user behavior to preload targeted ads containing text, audio,

games or other interactives, and even video onto Android devices. Users often never view these pre-loaded ads, even though their cellular data was already consumed to download the ads from the Defendant, Google, and because these pre-loads can count as ad impressions, the Defendant, Google, is paid for transmitting the ads.

63. The Defendant's, Google's, publishing and advertising products drive passive data transfers from Android devices to the Defendant, Google, in a variety of ways. For example, Android devices transmit "tokens" that identify devices and users (and provide other information) with each connection to the Defendant's, Google's, servers. The Defendant, Google, uses this information to determine which users it communicates with on which specific devices and to serve targeted ads. These tokens are frequently sent alongside requests to send ads to the device.

64. Many of passive transfers comprise LOG files, which are automatically-produced files that contain a record of certain background information such as the networks that are available, applications that are open, and metrics about the operating system. LOG files are typically not time-sensitive, and transmission of them could easily be delayed until Wi-Fi is available. The Defendant, Google, could also program Android to allow users to enable passive transfers only when they are on Wi-Fi connections, but it has chosen not to do so. Instead, the Defendant, Google, misappropriates the Plaintiff's and Class Members cellular data allowances, thereby causing them harm and damage.

65. In particular, the Defendant, Google, has willfully designed, programmed, and/or coded its Android operating system to transfer significantly more Information passively than is understood to be the industry standard. It does so without the consent of the Plaintiff and Class Members by misappropriating, interrupting, and/or interfering with their cellular data allowances, thereby infringing upon their property interests. But for the Defendant's, Google's, wrongful and intentional conduct, the Plaintiff and Class Members would not have been deprived of their data allowances, which deprivation has manifested in the form of overage charges, the purchase of more expensive data network plans, and the throttling of cellular data speeds—all of which are quantifiable damages, as each unit of bandwidth is capable of valuation at fair market rates. Further, the Defendant's, Google's, misappropriation can be quantified by evidence comparing the volume of Information transmitted through Android devices against recognized industry standards

for transmission and collection, as averred to herein.

Part 2: RELIEF SOUGHT

1. The Plaintiff, on his own behalf, and on behalf of the Class Members, claims against the Defendants, jointly and severally, as follows:

- (a) an Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c.50 (“**CPA**”) and appointing the Plaintiff as the named representative of the Class;
- (b) a declaration that the Defendants:
 - (i) misappropriated, interrupted and/or interfered with the property of the Plaintiff and Class Members without their consent and committed the tort of conversion, and are consequently liable to the Plaintiff and Class Members for damages;
 - (ii) in the alternative, wrongfully interfered with the Plaintiff’s and Class Members property without their consent and committed the tort of trespass to personal property, and are consequently liable to the Plaintiff and Class Members for damages;
 - (iii) engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 (“**BPCPA**”); sections 5 and 6 of the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; sections 6 and 7 of *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; sections 2 and 3 of *The Business Practices Act*, C.C.S.M. c B120; sections 14(1) and (2) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; section 10 of the *Consumer Protection Act*, S.N.B. 2024, c 1; section 2 of *Business Practices Act*, R.S.P.E.I. 1988, c B-7; section 7 of *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1; articles 215, 219, and 228 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, (collectively, the “**Parallel Consumer Protection**”

Legislation,” unless otherwise referred to individually), and are consequently liable to the Plaintiff and Class Members for damages; and

- (iv) unjustly enriched themselves to the deprivation of the Plaintiff and Class Members, and are consequently liable to the Plaintiff and Class Members for damages;
- (c) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *BPCPA*, and the *Parallel Consumer Protection Legislation*, and waiving any such applicable notice provisions;
- (d) an Order for the statutory remedies available under the *BPCPA*, and the *Parallel Consumer Protection Legislation*, including damages;
- (e) an Order directing the Defendants to advertise any adverse findings against them pursuant to section 172(3)(c) of the *BPCPA*; section 19 of the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; section 93(1)(f) of *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; section 23(2)(f) of *The Business Practices Act*, C.C.S.M. c B120; section 18(11) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; section 15 of the *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; *Business Practices Act*, R.S.P.E.I. 1988, c B-7; section 7 of *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1;
- (f) an Order enjoining the Defendants from continuing its unlawful and unfair business practices as alleged herein;
- (g) an order pursuant to section 29 of the *CPA* directing an aggregate assessment of damages;
- (h) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;

- (i) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (j) special damages;
- (k) punitive damages;
- (l) costs of investigation pursuant to section 36 of the *Competition Act*;
- (m) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (n) such further and other relief as to this Honorable Court may seem just.

Part 3: LEGAL BASIS

A. Jurisdiction

1. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c.28 (“*CJPTA*”) in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (e)(i), (e)(iii)(A)(B), (f), (g), (h) and (i) of the *CJPTA* because this proceeding:

- (e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;
- (e)(iii)(A)(B) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser’s trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;

- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

B. Causes of Action

i. Conversion

1. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of the Notice of Civil Claim.

2. The Defendant's, Google's, conduct in wrongfully appropriating, interrupting and/or interfering with the Plaintiff's and Class Members' cellular data allowances to facilitate passive transfers of Information constitutes the tort of conversion.

3. The Plaintiff and Class Members have property interests in the cellular data allowances, which are established when they contracted with the third-party mobile cellular network service providers to obtain exclusive control and use of the desired amount of cellular data allowances to the exclusion of others.

4. The Plaintiff's and Class Members' property interests in their cellular data allowances hold economic value determined by prevailing market forces. The Defendant's, Google's, appropriation, interruption and/or interference deprived them of property of quantifiable value.

5. The Defendant, Google, intentionally and/or willfully interfered with the right of ownership of the Plaintiff and Class Members in their cellular data allowances by using their purchased bandwidth to transfer Information at all times during the day, without the knowledge of or consent, and for its financial and technological gain.

6. As a result, the Plaintiff and Class Members suffered harm and/or damage in the form of deprivation of their cellular data allowances and loss of control over their use, amounting to an exercise of dominion by the Defendant, Google, over their property.

7. The Defendant, Google, knew, or ought to have known, that its unlawful or wrongful conduct infringed upon the property rights of the Plaintiff and Class Members.

8. By engaging in this conduct, the Defendant, Google, knew that it was infringing on the property rights of the Plaintiff and Class Members in their cellular data allowances.

9. Further, such alleged conduct is prohibited under Sections 342.1(1) and 430(1) of the *Criminal Code* relating to unauthorized use of computer and mischief, respectively.

ii. Trespass to Personal Property

10. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of the Notice of Civil Claim.

11. The Plaintiff and Class Members were in possession of their cellular data allowances when the Defendant, Google, wrongfully interfered with that possession. It did so by interfering with the Plaintiff's and Class Members' right to possess their cellular data allowance so as to facilitate the passive transfers of Information, without disclosing that it would be doing so, and without the Plaintiff and Class Members' express or implied consent. The Defendant's, Google's, wrongful interference dispossessed the Plaintiff and Class Members right of possession of their cellular data allowance causing harm and damage to the Plaintiff and Class Members.

12. The Defendant's, Google's, wrongful interference with the cellular data allowances of the Plaintiff and Class Members was an intended act that caused harm to the Plaintiff and Class Members, even if it did not have the intention to interfere with that possession or ownership, which it did.

iii. Violation of the *BPCPA* and Parallel Provincial Consumer Protection Legislation

13. The Plaintiff and Class Members hereby incorporate by reference the allegation contained in the preceding paragraphs of the Notice of Civil Claim.

14. The Defendant, Google, is in British Columbia for the purpose of the *BPCPA*, and in provinces with the *Parallel Consumer Protection Legislation*.

15. The Plaintiff and Class Members who purchased Android-enabled mobile devices primarily for personal, family or household purposes, and not for resale or for the purpose of carrying on business, were "consumers" as defined in the *BPCPA*, and in provinces with the *Parallel Consumer Protection Legislation*.

16. The Defendant, Google, is a “supplier” as defined in the *BPCPA*, and in provinces with the *Parallel Consumer Protection Legislation*.

17. The Google Agreements constituted a “consumer agreement” or “consumer transaction” between the Defendant, Google, and each Class Member for purposes of the *BPCPA*, and in provinces with the *Parallel Consumer Protection Legislation*.

18. Cellular data allowances are “goods” as defined in the *BPCPA*, and in provinces with the *Parallel Consumer Protection Legislation*.

19. The Defendant, Google, violated sections 4 and/or 5 of the *BPCPA*, and the applicable provisions in the *Parallel Consumer Protection Legislation*, by misappropriating, interrupting and/or interfering with the use of the Plaintiff’s and Class Members’ cellular data allowances, and further by failing to disclose and/or actively concealing this willful and/or intentional conduct.

20. The Plaintiff’s and Class Members’ injuries were directly or proximately caused by the Defendant’s, Google’s, unlawful and deceptive business practices.

21. As a result of the Defendant’s, Google’s, conduct as alleged herein, the Plaintiff and Class Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by the Defendant, Google, in respect to the misappropriation, interruption and/or interference with the use of the Plaintiff and Class Members’ cellular data allowances contravenes the *BPCPA*, an injunction under section 172(1)(b) of the *BPCPA* to restrain such conduct and/or damages under section 171 of the *BPCPA*, and to similar remedies available under the *Parallel Consumer Protection Legislation*.

22. The Plaintiff and Class Members in British Columbia are entitled, to the extent necessary, a waiver of any notice requirements under section 173(1) the *BPCPA*, and under the *Parallel Consumer Protection Legislation*, as a result of the Defendant’s, Google’s, failure to disclose and/or active concealment of its misappropriation, interruption and/or interference of the Plaintiff and Class Members cellular data allowances.

23. As a result of the Defendant’s, Google’s, breaches of the *BPCPA*, and the *Parallel Consumer Protection Legislation*, the Plaintiff and Class Members suffered damages.

iv. Unjust Enrichment

24. The Plaintiff and Class Members hereby incorporate by reference the allegation contained in the preceding paragraphs of the Notice of Civil Claim.

25. Through its willful misappropriation, interruption and/or interference with the property and/or the interests in the property of the Plaintiff and Class Members, and the unfair and deceptive business practices, as alleged herein, the Defendant, Google, was unjustly enriched at the expense of the Plaintiff and Class Members in the form of increased revenues from supplying itself with significant amounts of Information that it used to further its technological improvements and advancements.

26. Further, the Plaintiff and Class Members have suffered a corresponding deprivation by the Defendant, Google, misappropriating, interrupting and/or interfering with the property and/or the interests in the property of the Plaintiff and Class Members without any compensation or economic benefit.

27. There is no juristic reason for the Defendant's, Google's, enrichment and the Plaintiff and Class Members' corresponding deprivation in light of its unfair and deceptive business practices, its breaches of the *BPCPA* and the *Parallel Consumer Protection Legislation*, and the breaches of the common law tort of conversion and/or trespass to personal property.

28. Accordingly, the Plaintiff seeks restitution on behalf of himself and Class Members of all profits derived by the Defendant's, Google's, misappropriation, interruption and/or interference of the Plaintiff's and Class Members cellular data allowances without their knowledge and/or consent.

v. Damages

29. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

30. It was reasonably foreseeable that the Plaintiff and Class Members would suffer damages as a result of the Defendant's, Google's, unfair and deceptive business practices, its breaches of the *BPCPA* and the *Parallel Consumer Protection Legislation*, and breaches of the common law torts of conversion and/or trespass to personal property.

The Defendant's, Google's, misappropriation, interruption and/or interference of the Plaintiff's and Class Members cellular data allowances can be quantified by evidence comparing the volume of Information transmitted through Android devices against recognized industry standards for transmission and collection, as averred to herein. As such, damages are capable of being assessed on a class-wide basis.

vi. Punitive Damages

31. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

32. The Plaintiff and Class Members rely on the facts and allegations herein and state that, in every meaningful sense, the Defendant, Google, has acted in a deliberate, unlawful, arrogant, outrageous, secretive, high-handed, callous, wanton and reckless manner for financial gain so as to warrant a claim for punitive damages.

Plaintiff's address for service:

Dusevic & Garcha
Barristers & Solicitors
210 - 4603 Kingsway
Burnaby, BC V5H 4M4
Canada

Fax number address for service (if any):

(604) 436-3315

E-mail address for service (if any):

ksgarcha@dusevicgarchalaw.ca

Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: August 26, 2025



Signature of K.S. Garcha
lawyer for plaintiff(s)

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the “*CJPTA*”) in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10(e)(i), (iii)(a) & (b), (f), (g), (h) and (I) of the *CJPTA* because this proceeding:

- (e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia:
- (e) (iii)(a) & (b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser’s trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia;
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proposed consumer protection multi-jurisdictional class proceeding involves the Defendants', Alphabet Inc.'s, Google LLC's, and Google Canada Corporations's, practice of using their Android operating system built for mobile devices to unlawfully and/or wrongfully appropriate, interrupt and/or interfere with the use of the Plaintiff's and Class Members' cellular data allowances, purchased from third-party mobile cellular service providers, without their express and/or implied consent, in order to transmit or transfer information, including, *inter alia*, activity, device, and location data, to and from their mobile devices to the Defendant's, Google's, servers, and using the information for their technological development and financial gain.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
2. *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003 c. 28
3. *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S., 2014, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Protection Act*, S.N.B. 2024 c 1; *Business Practices Act*, R.S.P.E.I. 1988, c B-7, *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31; *Consumer Protection Act*, C.Q.L.R. c. P-40.1
4. *Court Order Interest Act*, R.S.B.C., c. 79
5. *Criminal Code of Canada*, R.S.C. 1985, c. C-46