



No. S-1711066
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KIPLING WARNER

PLAINTIFF

AND:

GOOGLE LLC

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: Google LLC (“Google”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - Defendant’s Response to Facts

1. The facts alleged in NONE of the paragraphs of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 1-21 of Part 1 of the Notice of Civil Claim are denied.

Division 2 - Defendant’s Version of Facts

3. Google is a Delaware limited liability company.
4. Google denies each and every allegation of fact set out in the Notice of Civil Claim (the “Claim”) and puts the Plaintiff to the strict proof thereof.

Division 3 - Additional Facts

5. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

6. Google opposes the granting of the relief sought in paragraphs 22-27 of Part 2 of the Claim.

7. Google seeks orders that:
 - (a) The Claim be struck, or dismissed, or stayed on the ground that the Claim does not allege facts that, if true, would establish that the court has jurisdiction over Google; or
 - (b) The Claim be dismissed or stayed on the ground that the Court does not have jurisdiction over Google in respect of the claims made;
 - (c) The Plaintiff's action be dismissed; or
 - (d) The Class Members, as defined in the Claim are not a class capable of certification under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 ("*CPA*"); or
 - (e) The Plaintiff Kipling Warner is not a member of any such class that might be identified pursuant to the *CPA*; and
 - (f) Costs be awarded to Google; and
 - (g) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

8. In response to the entirety of the Claim against Google, the Claim should be dismissed as disclosing no cause of action.
9. In response to paragraphs 2-4 of the Claim, the Class Members, are not a class capable of certification under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and Mr. Warner is not a member of any such class that might be identified.
10. Google denies it breached the *Privacy Act*, R.S.B.C. 1996, c. 373 ("*Privacy Act*"), as alleged or at all.
11. In the alternative, if Google breached the *Privacy Act*, which is specifically denied, Google denies the Plaintiff and the Class Members suffered any damage, loss or expense as a result thereof, as alleged or at all.
12. Google denies that it has been unjustly enriched by the Plaintiff or the Class Members, as alleged or at all.
13. In the alternative, if Google was enriched by the Plaintiff or the Class Members, which is specifically denied, such enrichment was pursuant to a valid and enforceable agreement between Google and the Plaintiff and the Class Members, which contract provided the reason for Google's enrichment and any deprivation of the Plaintiff and the Class Members.
14. Google denies that Location Data, as defined in the Claim, falls within the definition of "radio-based telephone communication" under s. 183 of the *Criminal Code*, R.S.C. 1985, c C-46 ("*Code*") or that s. 193.1 of the *Code* has any application, as alleged or at all.

15. In further response to the entire Claim, the claims are barred by the provisions of the applicable limitations acts; or alternatively, the proposed claims have no temporal limitation and would include persons whose claims are statute barred under the applicable limitations acts.
16. Google denies that its conduct warrants condemnation such that an award of punitive damages should be made, as alleged or at all.
17. Google denies that its conduct merits a compensatory award of aggravated damages for intangible injuries suffered, as alleged or at all.
18. Google says that the Court does not have jurisdiction over it in respect of the claims made against it in the within proceeding. Google pleads and relies on the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 ("*CJPTA*").
19. Google denies that the Plaintiff and the Class Members have the right to serve this Claim on Google pursuant to s. 10 of the *CJPTA*, as alleged or at all.
20. Google denies that the British Columbia Courts have territorial competence in respect of the within proceeding against Google. The facts on which the proceeding is based have no real and substantial connection to British Columbia, either on the basis of the *CJPTA* or otherwise, nor has Google attorned to British Columbia as the applicable jurisdiction.
21. In the alternative, the British Columbia Court should decline to exercise its territorial competence in respect of the proceeding on the ground that it is not the most appropriate forum in which to hear the claims.

Google LLC's address for service:

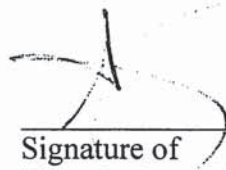
Fasken Martineau DuMoulin LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3

Attention : Tracey M. Cohen, Q.C.

Fax number address for service (if any): n/a

E-mail address for service (if any): n/a

Dated: January 30, 2018



Signature of
 Defendant Lawyer for Defendant

Tracey M. Cohen, Q.C.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any part at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

The Solicitors for the Defendant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131. (Reference: Tracey M. Cohen, Q.C./Andrew Borrell/Caroline Senini/)