

Court File No.

CV-18-590521-000P

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

GLENN EMOND AND GRAEME MACQUEEN

Plaintiffs

-and-

GOOGLE LLC

Defendant



Proceeding under the *Class Proceedings Act*, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT WILL BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date of Issue: January 22, 2018

Issued by: 
Local Registrar

Address of court office:
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: GOOGLE LLC

1600 Amphitheatre Parkway, Mountain
View, California 94043, USA

CLAIM

The Plaintiffs claim:-

- (a) an order certifying this action as a class proceeding;
- (b) damages of \$10,000,000 or such other amount as may be proved at trial for the tort of intrusion upon seclusion; in the alternative, waiver of tort;
- (c) disgorgement of all benefits received by Google attributable to the unauthorised collection, retention, and use of the Location Data;
- (d) aggravated and punitive damages;
- (e) pre-judgment and post-judgment interest;
- (f) costs;
- (g) such further and other relief this Honourable Court deems just.

FACTS

Overview

1. In 2017, Google LLC (“**Google**”) began collecting location data from users of the Android mobile operating system (“**Android OS**”). Google collected the data from all users of all smartphones running the Android OS. Google collected the information even when users had not enabled or had disabled location services, and even when users’ smartphones did not contain a SIM card, and despite the fact that Google does not have a contractual relationship with users for the use of the Android OS. Google collects, uses, retains and commercialises the location data it takes from users, and profits from it. Google’s wrongful acts constituted the tort of intrusion upon seclusion and unjustly enriched Google at the expense of users. Through this suit, Canadian users seek to hold Google accountable for this unlawful conduct.

The Parties

2. The defendant Google is a Delaware limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043, USA. Google carries on business worldwide, including in Ontario and Canada. Google is a subsidiary of Alphabet Inc.

3. The Plaintiff, Glenn Emond, is a resident of Toronto, Ontario. He owns a Doogee Y100 Pro 4G LTE Phablet and a Doogee DG310 MTK 6582 Quad Core Android 4.4 Smartphone. Both of these devices run the Android OS. Mr. Emond is protective of his privacy.

4. The Plaintiff, Graeme MacQueen, is a resident of Hamilton, Ontario. He owns an HTC Desire smartphone that runs the Android OS. Mr. MacQueen is protective of his privacy and takes active steps to protect it.

5. The Plaintiffs bring this claim on behalf of themselves and all users of the Android OS at issue in this claim ("**Class Members**", to be defined in the Plaintiffs' application for class certification) who during the Class Period owned or used a smartphone running the Android OS, in Canada.

Android OS

6. Smartphones require software to operate. Google's Android OS is the mobile platform software employed by a majority of handset original equipment manufacturers ("**OEMs**") to provide an operating system and user interface. Smartphones made by OEMs including but not limited to Samsung, LG, Sony, HTC, Blackberry, and Google itself, all run the Android OS. A majority of smartphones in Canada run the Android OS.

7. Google develops and maintains the Android OS. Google retains control over and responsibility for the development and maintenance of the Android OS. However, the Android OS is distributed under a free (*libre*) and open-source license. Users acquire copies of the Android OS from their cellular carrier or handset OEM, and not from Google. OEMs or other intermediaries are free to make some modifications to the Android OS installed on a particular handset, although certain parts of the Android OS can be modified only by Google or with its permission.

8. Google does not have a direct contractual relationship with users of the Android OS covering the terms of use for that software. If users choose to run Google services on their smartphones, such as Gmail, the Google Play store, Google Maps, or other applications, the use of those services may be governed by Google's Terms of Service. The use of the Android OS itself by an end-user on a smartphone manufactured by a company other than Google is not covered by Google's Terms of Service or its Privacy Policy.

Unauthorised Collection of Location Data by Google

9. In early 2017, Google began a program of mass user surveillance by collecting the addresses of nearby cellular towers from smartphone users using the Android OS and sending that data back to Google using a sophisticated communication protocol.

10. The data collected by Google enabled it to identify an individual user's locations and movements ("**Location Data**"). While information about a single cellular tower can only offer an approximation of where a mobile handset actually is, data from multiple towers can be used to triangulate a smartphone's location. Google collected Location Data about persons in Ontario and elsewhere in Canada, including from the Plaintiffs and Class Members.

11. The Location Data was collected when users were not using applications and even when location services were disabled on users' smartphones. Handsets with a cellular data or WIFI connection sent the Location Data to Google each time they came within range of a new cellular tower. When handsets were connected to a WIFI network, they would send the Location Data to Google even if they did not have SIM cards installed.

12. Google's decision to collect the Location Data was planned and deliberate, and was made knowing that users had not consented to, and were not aware of, its collection.

13. Consumers cannot disable the transmission of this information by their smartphones.

14. Google collected, retained, and used the data for its own benefit.

15. Consumers, including the Plaintiffs and Class Members, had no notice that Google was collecting, retaining, or using the Location Data.

16. The collection, retention, and use of Location Data by Google was unauthorised. Because Google does not have a direct contractual relationship with users of the Android OS for their use of the software itself, users have not given permission to Google to collect any data about them from the use of their smartphones acquired from third-party carriers and OEMs. Users, including the Plaintiffs and Class Members, have not consented to the collection, retention, or use of the Location Data by Google.

17. As a result of the unauthorised collection, retention, and use of the Location Data, the Plaintiffs and Class Members have been deprived by:

- a. suffering a loss and violation of privacy;

- b. facilitation of surveillance by hackers or undesirable state actors; and
- c. in the case of persons for whom their location needs to be kept secret, such as victims of abuse, journalists meeting with confidential sources, or undercover police operatives, an increased risk of personal harm from disclosure.

18. As a result of the unauthorised collection, retention, and use of the Location Data, Google has been enriched by, but not limited to, the following:

- a. selling advertising to third parties on the basis of the Location Data for display to users of the Android OS;
- b. selling the Location Data to third parties;
- c. selling customer profiles containing the Location Data to third parties;
- d. advancing its own research and development agenda, turning users into unwitting test subjects, to profit its own commercial interests; and
- e. permitting Google to track users who do not otherwise use Google services, or to track users who have disabled location services on other Google services that they use.

19. Collecting, retaining, and using the Location Data was in Google's economic interest, and provided it with a competitive advantage in the marketplace.

20. Google routinely shares information collected about users with government bodies, including U.S. government intelligence agencies.

21. Google has admitted collecting the Location Data.
22. Once its wrongdoing was uncovered, Google claimed that it would stop collecting the Location Data at the end of November 2017.

CAUSES OF ACTION

Intrusion Upon Seclusion

23. It is a tort, actionable without proof of harm, for a defendant to:
 - (a) intentionally or recklessly;
 - (b) invade a plaintiff's private affairs or concerns;
 - (c) without lawful justification;
 - (d) where a reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish.
24. As set out above, through its unauthorised collection, retention, and use of the Location Data, Google has committed the tort of intrusion upon seclusion against the Plaintiffs and Class Members. Google intentionally, or at a minimum recklessly, invaded the private affairs or concerns of the Plaintiffs and Class Members. Google's actions were without and without lawful justification. A reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish.
25. The Plaintiffs and Class Members are entitled to damages as a result of Google's tortious acts.

26. In the alternative, the Plaintiffs and Class Members waive the tort and elect to pursue restitutionary remedies against Google. Google must disgorge to the Plaintiffs and Class Members an amount attributable to the value it received for or attributable to the collection, retention, and use of the Location Data.

Unjust Enrichment

27. As set out above, Google has been enriched by the collection, retention, and use of the Location Data from the Plaintiffs and Class Members. Google has profited from the commercialisation and use of the Location Data taken from the Plaintiffs and Class Members. In particular, Google has been enriched by advertising sold on the basis of the Location Data, as well as the sale of Location Data to third parties. Google has also benefitted from the Location Data to advance its own research and development agenda.

28. As set out at paras. 10-18, the Plaintiffs and Class Members have been deprived through the loss of their reasonable expectation of privacy, and the taking of data about them.

29. There is no juristic reason why Google should have received or should retain this benefit. The unauthorised collection, retention, and use by Google of the Location Data was in violation of the *Criminal Code of Canada*, RSC 1985, c 46, s. 193.1 and the *Privacy Act*.

30. In particular, Location Data falls within the definition of “radio-based telephone communication” under the *Criminal Code*, s. 183. The unauthorised collection, retention, and use by Google of the Location Data constitute use and disclosure within the meaning of the *Criminal Code*, s. 193.1.

31. To the extent that Google's Terms & Conditions and Privacy Policy are applicable, which is denied, these violations make those Terms & Conditions and Google's Privacy Policy void or unenforceable, and thereby negate any juristic reason why Google should have received or should retain the benefit of its wrongdoing.

32. As a result, Google has been unjustly enriched by the benefits it received from the Plaintiffs and the Class Members. Justice and good conscience require that Google disgorge to the Plaintiffs and Class Members an amount attributable to the value it received for or attributable to the collection, retention, and use of the Location Data.

Aggravated and Punitive Damages

33. Google's misconduct, as described above, was malicious, oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. It violated the trust and security of users. Google's actions are part of a pattern of willful disregard for users' privacy and autonomy by Google and other technology companies. Google's actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made. Google's harm to users also merits a compensatory award of aggravated damages for the intangible injuries suffered.

SERVICE OUTSIDE OF ONTARIO

34. The originating process may be served without court order outside Ontario because the claim is:

- (a) in respect of a tort committed in Ontario (Rule 17.02(g)); and

(b) against a person carrying on business in Ontario (Rule 17.02(p)).

PLACE OF TRIAL

35. The Plaintiffs propose that this action be tried in the City of Toronto.

January 22, 2018

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- and -

Google LLC

Plaintiff

Defendant

Court File No. *CV-18-590521-00CP*

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

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