

Exhibit A

ORIGINAL

1 X Gregory N. Karasik (SBN 115834)
greg@karasiklawfirm.com
2 Karasik Law Firm
11835 W. Olympic Blvd. Ste. 1275
3 Los Angeles, CA 90064
Tel (310) 312-6800
4 Fax (310) 943-2582

5 Attorneys for Plaintiff
DAVID F. CALKINS

SON

FILED Santa Clara Co
02/17/12 11:02am
David H. Yamasaki
Chief Executive Officer
By: Cecilia DTSC/Di
R#201200016966
CK \$945.00
TL \$945.00
Case: 1-12-CV-218874

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA

11 DAVID F. CALKINS, individually and on
behalf of other persons similarly situated,

12 Plaintiff,

13 vs.

14 GOOGLE INC., a Delaware corporation; and
DOES 1 through 10.

16 Defendants.

Case No. 112CV218874

CLASS ACTION

COMPLAINT FOR STATUTORY
DAMAGES FOR UNLAWFUL RECORDING
OF CONFIDENTIAL COMMUNICATIONS

FAXED

19 Plaintiff David F. Calkins ("Plaintiff"), on behalf of himself and all others similarly situated,
20 complains and alleges as follows:

21 INTRODUCTION

22 1. This class action lawsuit arises out of the unlawful recording of confidential telephone
23 conversations by defendant Google Inc. ("Defendant"). Defendant records the telephone conversations
24 of all persons who speak on the telephone with a customer service representative of Defendant. When
25 the customer service representative initiates the call, however, the telephone conversation is recorded
26 without the person's knowledge or consent because Defendant does not disclose that the call will or
27 might be recorded. Recording of telephone calls without obtaining the consent of the person spoken
28 to, who in the absence of a disclosure about recording has an objectively reasonable expectation that

1 his or her telephone conversation will not be recorded and is thus confidential, constitutes a violation
2 of Penal Code Section 632. Pursuant to Penal Code Section 637.2, every person who had one or more
3 of their confidential telephone conversations with Defendant recorded without their consent is entitled
4 to statutory damages in the amount of \$5,000.

5 JURISDICTION AND VENUE

6 4. Venue is proper in this Judicial district and the County of Santa Clara because telephone
7 calls that are the subject of this action occurred in the County of Santa Clara, Defendant's legal
8 obligations to class members under California law arose and were breached in the County of Santa
9 Clara, and/or Defendant's principal place of business is in the County of Santa Clara.

10 5. The California Superior Court has jurisdiction in this matter because Plaintiff is a
11 resident of California, Defendant is qualified to do business in California, and Defendant regularly
12 conducts business in California. Further, there is no federal question at issue as the claims herein are
13 based solely on California law.

14 THE PARTIES

15 Plaintiff

16 6. Plaintiff is a resident of California. On February 4, 2012, Plaintiff registered online for
17 Defendant's AdWords advertising services. On February 7, 2012, Plaintiff received a phone call from
18 a customer service representative of Defendant named David to discuss Plaintiff's interest in
19 Defendant's AdWords services. About an hour after this telephone conversation ended, David called
20 Plaintiff again. During this second telephone call on February 7, 2012, Plaintiff first spoke with David
21 for several minutes, and then David transferred Plaintiff to another of Defendant's customer service
22 representatives, named Patrick. At no time during the first phone call from David on February 7, 2012
23 did David disclose to Plaintiff that Plaintiff's conversation was being or might be recorded and, during
24 the second phone call from David on February 7, 2012, neither David nor Patrick disclosed to Plaintiff
25 before starting to discuss Plaintiff's interest in Defendant's AdWords services that Plaintiff's
26 conversation was being or might be recorded. Because no such disclosures were made, Plaintiff had an
27 objectively reasonable expectation that all of his conversations with David and Patrick on February 7,
28 2012 were not being recorded. At the end of his conversation with Patrick during the second phone

1 call on February 7, 2012, Plaintiff was told by Patrick that Defendant records all telephone
2 conversations between its customer service representatives and customers. Not having been given this
3 disclosure earlier, Plaintiff was not given the opportunity to consent to the recording of any his
4 telephone conversations with either David or Patrick on February 7, 2012 and Plaintiff did not consent
5 to the recording of any of those telephone conversations.

6 7. The members of the Class are identifiable, similarly situated persons who spoke on the
7 telephone with a customer service representative of Defendant during a telephone call made by a
8 customer service representative of Defendant who, because they were not told beforehand that the
9 telephone call might or would be recorded, expected that the conversation with the customer service
10 representative of Defendant would be confidential and had their confidential conversation with the
11 customer service representative of Defendant recorded without their knowledge or consent.

12 Defendants

13 8. Defendant is a corporation organized under the laws of the state of Delaware with its
14 principal place of business in Mountain View, California.

15 9. Plaintiff is ignorant of the true name, capacity, relationship and extent of participation
16 in the conduct herein alleged of the Defendants sued herein as DOES 1 through 10, but is informed and
17 believes and thereon alleges that said defendants are legally responsible for the wrongful conduct
18 alleged herein and therefore sue these defendants by such fictitious names. Plaintiff will amend this
19 complaint to allege their true names and capacities when ascertained.

20 10. Plaintiff is informed and believes and thereon alleges that each defendant acted in all
21 respects pertinent to this action as the agent of the other defendants and/or carried out a joint scheme,
22 business plan or policy in all respects pertinent hereto, and/or the acts of each defendant are legally
23 attributable to the other defendants.

24 CLASS ACTION ALLEGATIONS

25 11. Plaintiff brings this action on behalf of himself and on behalf of all other similarly
26 situated persons as a class action pursuant to Code of Civil Procedure Section 382. The members of
27 the Class are defined as follows:
28

1 All persons in California other than employees of Defendant who, at any time since the date
2 three years preceding the filing of this complaint, spoke on the telephone with a customer
3 service representative of Defendant during a telephone call made by the customer service
4 representative of Defendant and were not advised by the customer service representative of
5 Defendant prior to the conversation that it was being or might be recorded.

6 12. This action has been brought and may be maintained as a class action pursuant to Code
7 of Civil Procedure Section 382 because there is a well defined community of interests among many
8 persons who comprise a readily ascertainable class:

- 9 a. The Class members are so numerous that the individual joinder of all of them as
10 named plaintiffs is impracticable. While the exact number of Class members is
11 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon
12 alleges that there are not less than 500 members in the Class.
- 13 b. Common questions of law and fact exist as to members of the Class and
14 predominate over any questions that affect only individual members of the Class.
15 These common questions include, but are not limited to:
- 16 (1) Does Defendant have a policy or practice of recording telephone
17 conversations between Defendant's customer service representatives and
18 persons called by Defendant's customer service representatives?
- 19 (2) Does Defendant have a policy or practice of not informing persons who
20 speak on the telephone during calls made by Defendant's customer
21 service representatives that their conversation will or may be recorded?
- 22 (3) Did Defendant violate Penal Code Section 632 by intentionally recording
23 the telephone conversations of Class members without their consent?
- 24 (4) Are Class members entitled under Penal Code Section 637.2 to statutory
25 damages of \$5,000 for every violation of Penal Code Section 632?
- 26 c. Plaintiff is a member of the Class and the claims of Plaintiff are typical of the
27 claims of the other class members who Plaintiff seeks to represent. Plaintiff and
28 other members of the Class suffered the same injuries and seek the same relief.
- d. Plaintiff will adequately and fairly protect the interests of the members of the
Class. Plaintiff has no interest adverse to the interests of absent class members

1 and Plaintiff is represented by legal counsel who has substantial class action
2 experience in civil litigation.

- 3 e. A class action is superior to other available means (if any) for fair and efficient
4 adjudication of the claims of the Class and would be beneficial for the parties
5 and the court. Class action treatment will allow a large number of similarly
6 situated persons to prosecute their common claims in a single forum
7 simultaneously, efficiently, and without the unnecessary duplication of effort and
8 expense that numerous individual actions would require. The monetary amounts
9 due to many individual Class members are likely to be relatively small, and the
10 burden and expense of litigation would make it difficult or impossible for Class
11 members to seek and obtain relief through individual lawsuits. A class action
12 will serve an important public interest by providing Class members an effective
13 mechanism for redress of violation of their statutory rights.

14 13. Plaintiff is presently unaware of any difficulties that are likely to be encountered in the
15 management of this action that would preclude its maintenance as a class action, but reserves the right
16 to modify his allegations and/or the class definitions based on further investigation, discovery or legal
17 developments.

18 FIRST CAUSE OF ACTION

19 **UNLAWFUL RECORDING OF CONFIDENTIAL COMMUNICATIONS**

20 **(By Plaintiff and the Class against all Defendants)**

21 14. Plaintiff incorporates paragraphs 1 through 13 of this complaint as if fully alleged
22 herein.

23 15. At all relevant times, Plaintiff and the other members of the Class were persons entitled
24 to legal protection against invasion of privacy pursuant to Penal Code Section 632.

25 16. Pursuant to Penal Code Section 632, it is unlawful to intentionally record a confidential
26 telephone conversation without the consent of all parties to that conversation.

27 17. Defendant intentionally recorded the confidential telephone conversations of Plaintiff
28 and other members of the Class in violation of Penal Code Section 632. Plaintiff is informed and

1 believes and thereon alleges that within the limitations period applicable to this cause of action,
2 Defendant had a policy or practice of recording telephone conversations between Defendant's
3 customer service representatives and persons called by Defendant's customer service representatives,
4 without notifying the persons called by Defendant's customer service representatives at the outset of
5 the call, that their telephone conversation was being or might be recorded. In the absence of a
6 disclosure that their telephone conversation was being or might be recorded, Plaintiff and other
7 members of the Class who spoke on the telephone with a customer service representative of Defendant
8 during a call made by a customer service representative of Defendant did not consent to the recording
9 of their telephone conversations but had an objectively reasonable expectation that their telephone
10 conversations were not being recorded and were thus confidential.

11 18. As a result of its conduct, Defendant caused legal harm or injury to Plaintiff and other
12 members of the Class by invading their privacy in violation of Penal Code Section 632.

13 19. Pursuant to Penal Code Section 637.2, Plaintiff and other members of the Class are
14 entitled to recover \$5,000 in statutory damages for each invasion of their privacy in violation of Penal
15 Code Section 632 without having to prove that they suffered or were threatened with any actual
16 monetary damages.

17 20. Plaintiff and members of the Class are entitled to recover reasonable attorney's fees
18 pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for
22 judgment against Defendants as follows:

- 23 A. An order certifying this case as a class action;
24 B. An order appointing Plaintiff as class representative;
25 C. An order appointing Plaintiff's counsel as class counsel;
26 D. Statutory damages pursuant to Penal Code Section 637.2;
27 E. Costs of suit;

28 ///

1 F. Reasonable attorney's fees; and

2 G. Such other relief as the Court may deem just and proper.

3
4 Dated: February 17, 2012

KARASIK LAW FIRM

5
6 By



Gregory R. Karasik
Attorneys for Plaintiff
DAVID F. CALKINS