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Clerk of Court
Superior Court of CA,
County of Santa Clara
20CV369448
Reviewed By: M Vu

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15 UNLIMITED JURISDICTION

16 GOOGLE LLC,
17 Plaintiff,
18 v.
19 ELIEZER POSNER a/k/a ELI POSNER, AMBER
20 LOGUE, and RFG TODAY LLC, each
21 individually and d/b/a PURPLE PRODUCE,
22 YARD CELL and MANGO WIRELESS CR
23 DIVISION, and DOES 1 through 50,
24 Defendants.

25 CASE NO.: 20CV369448
26 COMPLAINT FOR:
27 1. BREACH OF CONTRACT
28 2. FRAUD
3. CONVERSION
Amount demanded exceeds \$25,000
JURY TRIAL DEMANDED

1 **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

2 Plaintiff Google LLC (“Google” or “Plaintiff”) for its Complaint against Defendant Eliezer
3 Posner a/k/a Eli Posner (“Posner”), Defendant Amber Logue (“Logue”), and Defendant RFG
4 Today LLC (“RFG”), each individually and d/b/a Purple Produce, Yard Cell and Mango Wireless
5 CR Division, and Does 1 through 50 (“Doe Defendants”) (collectively referred to as
6 “Defendants”), alleges on personal knowledge as to its own actions and on information and belief
7 as to the actions of others as follows:

8 **NATURE OF THIS ACTION**

9 1. This case seeks redress for Defendants’ deliberate and repeated violations of their
10 agreement with Google--the Google Store Sales Terms (the “Agreement”). Defendants not only
11 breached the Agreement, but entered into it fraudulently, with no intention of honoring it, and then
12 engaged in further deception in an effort to evade detection of their breach and their fraud.

13 2. Defendants, using various aliases and other fraudulent means to mask their
14 identities, purchased *tens of thousands* of products through the Google Store at considerable
15 discount during limited promotions, for the purpose of subsequently reselling them at a higher
16 price. In doing so, Defendants systematically breached the Agreement, which prohibits purchases
17 other than for personal use, prohibits purchases of quantities beyond established limits and
18 prohibits purchases for resale.

19 3. After Google discovered Defendants’ misconduct, Google implemented measures
20 to block Defendants from making further Google Store purchases. However, Defendants
21 continued to utilize fraudulent means such as fictitious aliases in purchase orders, in an attempt to
22 prevent detection of their true identities.

23 4. Further, on multiple occasions, Defendants requested replacement products, falsely
24 representing that they had purchased defective Google products and falsely promising to return the
25 supposedly defective products. However, Defendants’ requests for replacement products were not
26 associated with any Google products they had purchased, much less any defective products. As a
27 result of their false representations, Defendants received replacement products without paying for
28 them. Defendants then sold those products for substantial profit.

1 5. Defendants’ schemes harm both consumers and Google itself. Defendants deprive
2 legitimate consumers of the benefit of Google’s limited promotional pricing by purchasing Google
3 products in quantities in excess of Google’s per customer limits. Defendants’ excessive purchases
4 of Google products also harm Google by, among other things, causing Google shortages of supply,
5 increasing Google’s costs of detecting abuse, and depriving Google of sales to legitimate
6 consumers that it otherwise would have made. Defendants’ replacement product scheme is simply
7 theft.

8 6. Since June of 2019, Google has repeatedly contacted Defendants, informed them of
9 these issues, demanded that they cease their unlawful and fraudulent conduct and taken measures
10 to combat their improper actions. Defendants’ misconduct has continued unabated.

11 **JURISDICTION AND VENUE**

12 7. Jurisdiction is proper in this Court because it has general subject matter jurisdiction
13 and no statutory exceptions to jurisdiction exist.

14 8. This Court has personal jurisdiction over Defendants pursuant to Section 23 of the
15 Agreement, which provides that “[c]laims arising out of or relating to [the Agreement] will be
16 subject to the exclusive jurisdiction and venue of the courts in Santa Clara County, California,
17 U.S.A.”

18 9. In addition, this Court has personal jurisdiction over Defendants pursuant to Cal.
19 Civ. Proc. Code § 410.10. As Defendants are aware, and at all relevant times were aware, Google
20 resides with its principal place of business in this County and Defendants targeted their unlawful
21 conduct at Google in this County. Defendants also resold Google products to consumers in
22 California.

23 10. Venue is proper in this Court pursuant to Section 23 of the Agreement, through
24 which the parties agree that the “venue” for any “[c]laims arising out of or relating to [the
25 Agreement]” would be in the “courts in Santa Clara County, California, U.S.A.”

26 **PARTIES**

27 11. Plaintiff Google LLC (“Google”) is a Delaware limited liability company and a
28 wholly-owned subsidiary of Alphabet, Inc., with its principal place of business located at 1600

1 Amphitheatre Parkway, Mountain View, California 94043. Google sells a variety of consumer
2 hardware products, such as those sold under the Nest, Google Nest, Pixel, Google Nest WiFi,
3 Chromecast, Pixelbook, and related brands, including cutting-edge smartphones and smart home
4 devices and services (“Google Products”).

5 12. Defendant Eliezer Posner a/k/a Eli Posner (“Posner”), individually and d/b/a Purple
6 Produce, Yard Cell and Mango Wireless CR Division, is an individual and a resident of Atlanta,
7 Georgia. Posner has been employed by Defendant RFG Today LLC since July 2018. Posner is
8 personally engaged in, and helped facilitate, the unlawful conduct described herein.

9 13. Defendant Amber Logue (“Logue”), individually and d/b/a Purple Produce, Yard
10 Cell and Mango Wireless CR Division, is an individual and a resident of Nashua, New Hampshire.
11 Logue is personally engaged in, and helped facilitate, the unlawful conduct described herein.

12 14. Defendant RFG Today LLC (“RFG”) d/b/a Purple Produce, Yard Cell and Mango
13 Wireless CR Division, is a New Hampshire limited liability company with its principal place of
14 business located at 20 Trafalgar Square, Suite 486, Nashua, New Hampshire 03063. RFG’s sole
15 member is Defendant Posner. RFG is engaged in, and helped facilitate, the unlawful conduct
16 described herein.

17 15. Plaintiff does not know the true names and capacities of defendants sued as Does 1
18 through 50 (“Doe Defendants”), and therefore sues such defendants by fictitious names under
19 California Code of Civil Procedure § 474. Plaintiff will amend the complaint to show the true
20 names of each such defendant once their true names have been ascertained. Each of the Doe
21 Defendants encouraged, participated in, and/or ratified and approved the wrongful and unlawful
22 conduct described below. Each of the Doe Defendants was at all relevant times, the agent,
23 employee, or representative of the named Defendants and/or the other Doe Defendants, and was
24 acting within the course and scope of such relationship. Defendants and DOE Defendants are
25 hereinafter collectively referred to as the “Defendants.”

26 16. Defendants are jointly doing business as “Purple Produce,” “Yard Cell” and
27 “Mango Wireless CR Division.” Each Defendant was and is an agent of the other Defendant and
28 was and is acting in the course of their agency at all relevant times.

1 23. The Agreement also states that “[y]ou must comply with [Google’s] Return Policy
2 here if you want to return a [Google Product] for a refund.” That Policy in turn requires that the
3 original Product be returned to Google within 15 or 30 calendar days (depending on the Product)
4 after the day the Product was received.

5 24. Google implements measures designed by Google to detect violations of the
6 Agreement. For example, if Google detects that a purchaser exceeded the purchase limit by
7 evading Google’s measures, or is otherwise engaged in activity that repeatedly violates the
8 Agreement, that purchaser is “blocked” and prohibited from making additional purchases through
9 the Google Store.

10 ***Google’s Authorized Reseller Network***

11 25. In addition to the Google Store, Google sells Google Products through a nationwide
12 network of authorized resellers (“Authorized Resellers”). Google’s Authorized Resellers receive
13 specialized training regarding Google Products and the manner in which they are to be sold and
14 promoted. Google’s Authorized Resellers are required, among other things, to follow defined
15 quality control procedures, provide technical and other support to end-user customers, and to
16 comply with Google’s branding guidelines.

17 26. The obligations Google imposes on Google’s Authorized Resellers enable Google
18 to control the quality and safety of its products and services. For example, if Google Products are
19 in the hands of an unauthorized reseller, Google has no ability to ensure proper handling and
20 storage, discontinuation of outdated models, rapid recalls, and other measures intended to ensure
21 quality standards and consumer safety.

22 ***Defendants’ Breach of the Agreement***

23 27. Google has discovered that, since at least 2018, Defendants Posner, Logue and RFG
24 have operated an unlawful scheme by which they purchase large quantities of Google Products
25 through the Google Store for purposes of resale on online commerce sites.

26 28. Each time Defendants purchased Google Products through the Google Store, they
27 agreed to the Agreement.
28

1 29. Defendants' bulk purchases of Google Products through the Google Store violate
2 the Agreement's provision restricting the quantity of Google Products that may be purchased
3 through the Google Store. Further, their purchases of Google Products through the Google Store
4 for purposes of resale violate the Agreement's provision restricting purchases to those made for
5 personal use only, and prohibiting purchases for purposes of resale.

6 30. Together, Defendants have unlawfully purchased thousands of Google Products
7 through the Google Store and resold them on online commerce websites using the reseller names
8 Purple Produce, Yard Cell, Mango Wireless CR Division, and possibly others.

9 31. When Google detected that Defendants had made purchases of Google Products
10 that exceeded the quantity limit of purchases for the Google Store, it took a variety of preventive
11 measures.

12 32. For example, each time Google was able to detect that an impermissible order was
13 placed by Defendants for Google Products from the Google Store, it cancelled Defendants' order
14 and sent Defendants a notification that the order was cancelled because it violated their Agreement
15 with Google.

16 33. In response, Defendants deliberately attempted to circumvent Google's efforts to
17 block Defendants' unlawful purchases by providing false purchasing information in connection
18 with their Google Store purchases.

19 34. Defendants regularly made multiple, separate purchases in a single day in violation
20 of the Agreement. For example, any individual purchaser of Google's Nest Cam Indoor camera
21 through the Google Store is technologically unable to place more than ten Nest Cam Indoor
22 cameras in his or her shopping cart as a result of the quantity restriction Google places on those
23 products. On June 21, 2019, Defendants made twenty separate purchases of ten Nest Cam Indoor
24 cameras and one purchase of five Nest Cam Indoor cameras for a total of 205 Nest Cam Indoor
25 cameras purchased in one day through the Google Store. To evade Google's restrictions,
26 Defendants provided fictitious purchasing information in connection with these orders.

27 35. Defendants regularly purchased Google Products through the Google Store when
28 they were sold at a discount from their regular price during limited promotions. For example, the

1 205 Nest Cam Indoor cameras purchased by Defendants on June 21, 2019, were discounted by
2 \$70.00 each for a total savings of \$14,350. Google only discounts a limited set of inventory and
3 those promotional discounts are meant to be enjoyed by legitimate end user customers.

4 36. Together, Defendants have purchased tens of thousands of Google Products through
5 the Google Store for well over \$7 million. These products were purchased at discounted prices;
6 the actual value of the products based on non-discount prices is well over \$10 million dollars.

7 ***Defendants' Resale of the Google Products on Online Commerce Sites***

8 37. Defendants are not and have never sought to become Google Authorized Resellers.

9 38. Since at least November 2019, Defendants have regularly sold Google Products on
10 various online commerce sites using the reseller name "Purple Produce." Prior to that, they sold
11 Google Products on online commerce sites using the reseller names "Yard Cell" and "Mango
12 Wireless CR Division."

13 39. Defendants have obtained a significant portion of the inventory of Google Products
14 they offer for sale to consumers from unlawful bulk purchases they make through the Google
15 Store. Google has traced Google Products offered for sale and sold by Defendants on online
16 commerce sites back to inventory Defendants purchased through the Google Store.

17 40. For example, Google traced a Nest Cam Indoor camera offered for sale by Purple
18 Produce on Amazon.com that was initially purchased (along with nine other cameras) by
19 Defendants, on November 1, 2019, through the Google Store under the name "RFG Today," and
20 shipped to an address associated with Posner and Logue.

21 41. Since at least November 2019, Defendants, using the reseller name, Purple Produce,
22 have offered for sale a variety of Google Products on online commerce sites, including Nest
23 cameras, Nest thermostats, Google WiFi router systems, and Pixel smartphones. While the offered
24 price of each product varies, in general, Defendants offer for sale Google Products at a price that
25 ranges from hundreds of dollars to just under one-thousand dollars per product.

26 42. Defendants generally resell the same Google Products at higher prices than what
27 they paid Google, thereby creating substantial profits for Defendants, at the expense of legitimate
28 Google Store customers and Google itself.

1 ***Defendants’ Fraudulent Product “Return” Scheme and Conversion of Google***
2 ***Products***

3 43. On multiple occasions, Defendants requested and received “replacement” Google
4 Products under false pretenses. Using false purchase details, Defendants falsely represented to
5 Google that they had purchased products from the Google Store that were defective and that they
6 would return the supposedly defective products after receiving replacement products from Google.
7 In fact, Defendants had not purchased any Google Products in connection with their false
8 “replacement” product requests, much less any defective products, and had no intention of
9 returning any products after receiving “replacement” products from Google.

10 44. Google shipped products to Defendants based on Defendants’ false purchase
11 information and representations that they had purchased products from Google, those products
12 were defective, and that they would return the supposedly defective products upon receipt of the
13 “replacement” products.

14 45. Defendants received “replacement” products from Google, but failed to return any
15 purportedly “defective” products as promised. As a result, Defendants received Google Products
16 without paying for them and then sold them.

17 46. Google reasonably relied on Defendants’ misrepresentations in connection with
18 Defendants’ product “return” scheme and was harmed by Defendants’ conduct.

19 47. Other times, after purchasing more Google Products than they could resell,
20 Defendants returned some of the Google Products utilizing the same fictitious purchasing
21 information they employed to purchase the Google Products. By the time Defendants returned the
22 Google Products, Google had already missed the opportunity to sell those Products to legitimate
23 end users at the discounted price, especially since a number of the products had been discontinued
24 by Google prior to their return by Defendants. Additionally, Google was forced to expend
25 resources processing the returns.

26 ***Google’s Efforts to Stop Defendants’ Unlawful Activities***

27 48. Google has conducted a time-consuming investigation into Defendants’ unlawful
28 purchases from the Google Store. After determining Defendants’ purchases violated the

1 Agreement, Google employed various measures aimed at preventing Defendants' misconduct.
2 However, Defendants deliberately attempted to circumvent such measures, for example, by
3 providing false purchasing information, and continues to do so. As a result, Google is forced to
4 continuously investigate Defendants' deceptive and unlawful purchases in an effort to stop them.

5 49. Before filing this lawsuit, Google made multiple attempts to get Defendants to
6 cease their unlawful activities without the need for litigation. But Defendants have persisted in
7 their behavior.

8 50. On June 21, 2019, Google sent a letter to Posner and Logue via Certified Mail,
9 explicitly notifying them that their conduct violated the Agreement and demanding that they cease
10 their unlawful purchases, resales, and returns. Posner and Logue received the June 2019 letter.
11 But Posner and Logue did not cease their unlawful activities.

12 51. In February of 2020, Google sent another letter to an email address associated with
13 Defendant Logue: logue.amber@gmail.com. The February 2020 letter demanded that Posner and
14 Logue cease their resales of Google Products. Defendants responded to the February 2020 letter
15 but did not cease their conduct.

16 52. Each time Google detected impermissible conduct by Defendants, it took a variety
17 of preventive measures, including canceling Defendants' order and notifying them that the
18 cancellation was due to their violation of their Agreement with Google. Nonetheless, Defendants
19 have continued to purchase Google Products through the Google Store through their deceptive
20 means, in violation of the contractual quantity limits, and with the intent of reselling them rather
21 than for their personal use. Defendants have not removed their Google Product listings from
22 online commerce sites.

23 ***Defendants' Conduct Is Harming Google***

24 53. Defendants' continued violations of the Agreement and fraudulent and tortious
25 practices as described above have harmed, and if not enjoined will continue to harm, Google.

26 54. Google offers promotional discounts on a limited inventory of Google Products sold
27 on the Google Store. Moreover, after a customer purchases a Google Product, they are given
28 subsequent offers for other discount purchases. As a result, the more purchases Defendants make,

1 the fewer opportunities that Google has to sell the purchased items and additional Google products
2 to other end user customers. When Defendants purchase high volumes of discounted products,
3 they benefit from discounts that were meant for legitimate customers and prevent legitimate
4 customers from enjoying those discounts. Defendants' bulk purchases prevent Google from
5 establishing direct and valuable relationships with the end users, and from promoting additional
6 sales to end users during purchase transactions.

7 55. Given that Defendants purchase high volumes of Google Products, Defendants'
8 actions cause inventory shortages in certain regions of the country, requiring Google to expend
9 additional resources to move inventory to meet the needs of its legitimate end user customers and,
10 in some instances, Google has lost out on sales opportunities altogether because of a lack of
11 available Products.

12 56. Google further is harmed by Defendants' resales of Google Products they
13 improperly purchased on the Google Store. Because Defendants purchased the products at steeply
14 discounted prices intended only for legitimate end user customers, Defendants resell the same
15 products at higher prices that are still lower than the price of the products at that time if purchased
16 through the Google Store. Google therefore loses sales and their associated profits as a direct
17 result of Defendants' conduct.

18 57. In addition, Google's relationship with its network of Authorized Resellers is
19 damaged by Defendants' sale of Google Products. In exchange for the right to sell Google
20 Products, Authorized Resellers must satisfy a number of obligations, including specialized
21 training, providing quality customer support, and complying with branding guidelines. By selling
22 Google Products without meeting the obligations imposed on Authorized Resellers, Defendants
23 render the Authorized Reseller Agreements less valuable and hurt Google's relationships with its
24 Authorized Resellers who are frustrated by Defendants' unauthorized sales. Defendants'
25 misconduct thereby adds costs and burden to Google's contractual relationships with its
26 Authorized Resellers.

27 58. Defendants' fraudulent product "return" scheme harms Google because Defendants
28 cause Google to ship Defendants "replacement" products but fail to return products or to pay for

1 those products; as such, Google loses the full value of the products. And even when Defendants
2 have actually purchased and later do return the products, they do so many months after the time
3 permitted by Google. Google loses the opportunity to sell many of those products and is forced to
4 expend its own resources processing returns of purchases that should never have been made.

5 59. Further, Google's efforts to investigate and take measures against Defendants'
6 misconduct and unlawful actions have required, and continue to require, a significant expenditure
7 of resources and costs.

8 **COUNT I**

9 **Breach of Contract**

10 **(Against All Defendants)**

11 60. Google hereby realleges the allegations set forth in paragraphs 1 to 59 as if fully set
12 forth herein.

13 61. Defendants each repeatedly agreed to be bound by the Agreement.

14 62. The Agreement constitutes a valid, binding contract between Defendants and
15 Google.

16 63. Google has performed its obligations under the Agreement, including by causing to
17 be delivered to Defendants the Google Products they purchased through the Google Store.

18 64. Defendants each breached the Agreement by, among other misconduct, (a)
19 purchasing more than the maximum number of Google Products permitted on a product page or in
20 a product description; (b) purchasing Google Products for purposes of resale; and (c) returning
21 Google Products, purchased in violation of the Agreement, under false pretenses and outside the
22 permitted return time period.

23 65. Defendants' breaches have proximately caused damages to Google.

24 66. Defendants' actions have irreparably harmed Google and, unless enjoined, will
25 continue to do so in a manner affording Google no adequate remedy at law.

1 **COUNT II**

2 **Fraud**

3 **(Against All Defendants)**

4 67. Google hereby realleges each and every allegation contained in paragraphs 1 to 59
5 as if fully set forth herein.

6 68. Defendants knowingly, intentionally and repeatedly made numerous false
7 statements of material fact to Google with the intent to induce Google's reliance upon such
8 representations. For example, as described above, Defendants repeatedly submitted false
9 purchasing information to Google in connection with orders from the Google Store, and false order
10 information to Google with requested Google Product replacements. Defendants further
11 repeatedly agreed to abide by the Agreement, with no intention of doing so.

12 69. Google reasonably relied on Defendants' representations by fulfilling Defendants'
13 orders and replacement requests and shipping a significant number of products to Defendants that
14 Google would not have shipped to Defendants but for their false representations.

15 70. As a proximate result of Defendants' fraudulent conduct, Google has been damaged
16 in an amount to be proven at trial.

17 71. Defendants' conduct was undertaken with the intent to injure Google, or with a
18 willful and conscious disregard of Google's rights, and constitutes fraud and malice under
19 California Civil Code Section 3294. As a result, Google is entitled to an award of punitive
20 damages against Defendants in an amount sufficient to deter them from future misconduct.

21 72. Defendants' actions have irreparably harmed Google and, unless enjoined, will
22 continue to do so in a manner affording Google no adequate remedy at law.

23 **COUNT III**

24 **Conversion**

25 **(Against All Defendants)**

26 73. Google hereby realleges each and every allegation contained in paragraphs 1 to 59
27 as if fully set forth herein.

1 74. Google has the right to possession of the Google Products provided to Defendants
2 as “replacement” Google Products.

3 75. Defendants fraudulently induced Google to provide Defendants with “replacement”
4 Google Products by supplying Google with fictitious purchase information, and misrepresenting
5 that Defendants had purchased defective Google Products, and would return the supposedly
6 defective Google Products after receiving replacement Google Products.

7 76. After receiving the “replacement” Google Products, Defendants did not pay for the
8 “replacement” Google Products and did not return any Google Products. Defendants’ possession
9 or dispossession of “replacement” Google Products is wrongful and constitutes conversion of those
10 products.

11 77. As a proximate result of Defendants’ conduct, Google has been damaged in an
12 amount to be proven at trial.

13 78. Defendants’ conduct was undertaken with the intent to injure Google, or with a
14 willful and conscious disregard of Google’s rights, and constitutes fraud and malice under
15 California Civil Code Section 3294. As a result, Google is entitled to an award of punitive
16 damages against each Defendant in an amount sufficient to deter them from future misconduct.

17 **RELIEF REQUESTED**

18 WHEREFORE, Google respectfully requests that the Court:

19 A. Preliminarily and permanently enjoin Defendants and all those acting in concert
20 with Defendants from:

- 21 i. acquiring, or taking any steps to acquire, directly or indirectly, any Google
22 Products through the Google Store;
- 23 ii. listing for sale, selling, or taking any steps to sell, any Google Products acquired
24 through the Google Store;
- 25 iii. inducing, assisting, or abetting any other person or business entity in engaging
26 in or performing any of the activities described in the paragraphs above.

27 B. Order that each and every Defendant be required to:


- i. account for, hold in constructive trust, pay over to Google, and otherwise disgorge all profits derived by Defendants from their tortious conduct; and
- ii. pay to Google the costs incurred in bringing this action;
- C. Award to Google compensatory and punitive damages; and
- D. Award any other relief as this Court deems just and proper.

JURY TRIAL CLAIM

Google hereby requests trial by jury on all claims so triable.

Dated: August 12, 2020

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
David H. Kramer

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GOOGLE LLC