

1 Barry Himmelstein (SBN 157736)
2 barry@himmellaw.com
3 HIMMELSTEIN LAW NETWORK
4 2000 Powell St.
5 Suite 1605
6 Emeryville, CA 94608-1861
7 Telephone: (510) 450-0782
8 Facsimile: (510) 380-6147

9 Jeffrey B. Cereghino (SBN 99480)
10 jbc@rocklawcal.com
11 Ram, Olson, Cereghino & Kopczynski
12 555 Montgomery St.
13 Suite 820
14 San Francisco, CA 94111
15 Telephone: (415) 433-4949
16 Facsimile: (415) 433-7311

17 Attorneys for Plaintiff
18 Rabbi Allan Greene

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF SANTA CLARA

21 RABBI ALLAN GREENE, on behalf of
22 himself and all others similarly situated,

23 Plaintiff,

24 v.

25 GOOGLE INC., a Delaware Corporation, and
26 DOES 1-10,

27 Defendants.

28 Case No.:

CLASS ACTION

**COMPLAINT FOR BREACH OF
CONTRACT**

DEMAND FOR JURY TRIAL

1 Plaintiff RABBI ALLAN GREENE alleges, on behalf of himself and all others similarly
2 situated:

3 **PARTIES**

4 1. Plaintiff RABBI ALLAN GREENE (“Greene”) is an individual residing in Los
5 Angeles County, California.

6 2. Defendant GOOGLE INC. (“Google”) is a Delaware Corporation having its
7 principal place of business in the County of Santa Clara, California. Google is one of the leading
8 technology companies in the world, with a market capitalization of approximately \$300 billion.

9 3. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
10 under the fictitious names Does 1 through 10. Each of the fictitiously named defendants is
11 responsible in some manner for the acts herein alleged, and proximately caused Plaintiff’s
12 damages. Plaintiff will seek leave of court to amend this complaint to allege said defendants’
13 true names and capacities as soon as Plaintiff ascertains them.

14 4. At all times mentioned herein, each defendant was the agent for each other
15 defendant, and was acting in the course and scope of such agency.

16 **FACTUAL ALLEGATIONS**

17 **The Google Voice Application**

18 5. Google is the developer of the Android operating system software for
19 smartphones and other mobile devices. Android is the most popular such operating system in the
20 world, capturing 52% of the market. As of May 2013, it has been installed on approximately 900
21 million smartphones and other mobile devices.

22 6. Google makes software applications for these devices available for download and
23 installation via its Google Play Store (f/k/a the “Android Market”).¹ On March 11, 2009, Google
24 released the Google Voice for Android application.

25 7. By October 2009, the Google Voice service had approximately 1.4 million users,
26 approximately 570,000 of whom used it on a daily basis. To date, the Google Voice for Android

27
28

¹ The Google Play Store is typically accessed via an application that comes pre-installed on all Android devices.

1 application has been downloaded and installed on between 10 million and 50 million mobile
2 devices.²

3 8. On November 16, 2010, Google released the Google Voice for iPhone
4 application, making it available in Apple Inc.'s ("Apple's") App Store for download and
5 installation on iPhones, manufactured by Apple.

6 9. Neither Google nor Apple have released information on the number of iPhones on
7 which Google Voice has been installed, but on information and belief, it numbers in the millions.

8 **Google Voice and International Calls**

9 10. The Google Voice application allows users to make inexpensive international
10 calls, by routing the call over the Google Voice system, instead of over the cell phone carrier's
11 system. When the user dials an international number, the application calls a US-based Google
12 Voice access number, and the call is carried from there to its destination over the Google Voice
13 system. As Google explains, "both domestic and international calls are placed through a US-
14 based Google Voice access number, and will use the standard minutes from your cell phone
15 plan." Accordingly, the user is supposed to be billed by his or her cell phone carrier for only the
16 regular, domestic per-minute charges. Per minute international charges, set by Google based on
17 the country being called, are deducted from the credit balance in the user's Google Voice
18 account.

19 **Google Voice for Android**

20 11. In the Google Play Store, the Description of the Google Voice application states
21 "Make cheap international calls with your Google number."

22 12. After downloading and installing the Google Voice application, users are
23 presented with a screen that says: "To complete the set up: You need to decide if you want to
24 make international calls with Google Voice."

25 13. After pressing the "Next" button, users are presented with a screen that says:
26 "Google Voice can help you save money on international calls. [Learn more.](#)" Clicking on
27 "Learn more," users are presented with a screen that says:

28 ² Google has not made more precise figures publicly available.

1 You can make international calls at very low rates with Google
2 Voice. You can use the Google Voice website or the phone system,
3 as long as you have one of your forwarding phones or your mobile
4 device available to complete the call.

5 Get started by purchasing credit through Google Wallet. Rates vary
6 by country and will be counted on a per minute basis. To view
7 international calling rates, click the **See Rates** link in the **Billing** tab
8 of your Google Voice Settings page.

9 14. Clicking on “very low rates,” users are presented with a screen that says: “**See**
10 **how our super low rates compare to the competition,**” showing a “**Google Voice rate per**
11 **minute**” of \$0.10 for calls to mobile phones in France and Germany, compared to “**Leading**
12 **internet telephony provider**” rates of \$0.20 and \$0.25, respectively; a Google Voice rate of
13 \$0.02 per minute for calls to mobile phones in India, compared to \$0.09; and a Google Voice rate
14 of \$0.15 per minute for calls to mobile phones in Mexico, compared to \$0.33.

15 15. Clicking on “purchasing credit,” users are presented with a screen that says:

16 You can make international calls through Google Voice at an
17 affordable price. To get started, you’ll need to purchase credit
18 through Google Wallet.

19 Just click **Add Credit** on the left side of your inbox or on the
20 **Billing** tab of your Google Voice Settings. You’ll get to a Google
21 Wallet page where you can enter your credit card and billing
22 information.

23 You can have a maximum of \$70.00 credit at any one time.

24 16. To complete the set up, users are required to select one of the following options:

- 25 • Only use Google Voice for international calls
- 26 • Do not use Google Voice to make any calls
- 27 • Ask every time I make an international call

28 17. The configuration guide explains that:

You can choose to make all international calls via Google Voice, to
take advantage of Google Voice’s low international calling rates; to
be prompted each time you make a call; or to never use Google
Voice for calls.

18. Whichever option is selected by the user is retained in Google Voice’s “Settings.”

1 19. Google’s instructions for placing an international phone call through Google
2 Voice state that:

3 After you’ve chosen your option, just place an international call as
4 you normally would, and your Google Voice number will display
5 on the recipient’s phone.

6 If you’ve configured Google Voice to ask whether you want to use
7 it each time you place a call, touch Call with Google Voice in the
8 dialog. If you’ve configured Google Voice to use it for all calls,
9 this dialog doesn’t appear.

10 International calls use standard cell phone plan minutes and are
11 charged against your Google Voice credit, at Google Voice’s
12 international rates.

13 Google Voice for iPhone

14 20. In Apple’s App Store, the Description of the Google Voice application states
15 “make international calls at very low rates,” and that:

16 When using Google Voice for iPhone, both domestic and
17 international calls are placed through a US-based Google Voice
18 access number, and will use the standard minutes from your cell
19 phone plan.

20 21. After downloading and installing the Google Voice application, iPhone users are
21 presented with a screen that says: “Insanely cheap international calls”. iPhone users also receive
22 a message in their Google Voice Inbox stating that they can use Google Voice to “make cheap
23 international calls.”

24 22. The instructions for “Placing a call” with Google Voice for iPhone are as follows:

- 25 1. Launch Google Voice for iPhone.
- 26 2. Tap the Dialer tab.
- 27 3. Enter any phone number (1-xxx-xxx-xxxx for US numbers and +cc
28 xxxxxx for international numbers) and tap Call.

All calls will be routed through a Google Voice access number . . .

Note: Using Google Voice for iPhone to place your domestic
and/or international calls will still use normal minutes from your
cell phone plan.

Make international phone calls

1 You can use Google Voice for iPhone to take advantage of cheap
2 rates for international calls. Launch Google Voice for iPhone,
3 place an international call as you normally would (+cc xxxxxx),
4 and your Google Voice number will display on the recipient's
5 phone.

6 International calls use standard domestic cell phone plan minutes
7 and are charged against your Google Voice credit, at Google Voice
8 international rates.

9 **Google Voice Bugs**

10 23. Beginning in least September 2009, and continuing until at least March 2012, the
11 Google Voice application suffered from a series of software defects, or "bugs," which caused
12 international calls that should have been routed through the Google Voice system to be routed
13 instead through the cell phone carrier's international calling system. As a direct and proximate
14 result of these software defects, Google Voice users, including Plaintiff, were billed for these
15 international calls by their cell phone carriers at the carrier's tariff rates, instead of having the
16 per-minute charges deducted from their Google Voice accounts, at Google Voice's much lower
17 international per-minute rates. Detailed information concerning these software defects is set
18 forth below.

19 24. Beginning in at least September 2009, and continuing until at least November
20 2009, Google Voice for Android users who had selected "Only use Google Voice for
21 international calls" reported that their international calls were being routed instead through their
22 respective cell phone carriers. In each case, the international call did not show up on the user's
23 Google Voice call history, and showed up instead on the monthly bill received from the user's
24 cell phone carrier, causing users to incur and pay hefty charges for calls that Google had
25 promised would cost much less.

26 25. For example, one user reported incurring approximately \$350 in excess charges
27 on his international calls placed between October 27, 2009 and November 7, 2009, explaining
28 that:

The problem is simple. I use Google Voice all the time to make
international calls.

I used over 900 airtime minutes in the past few months and I
bought over \$100 worth of [Google Voice] calling plan.

1 I use G1 Android and I have direct dial through Google Voice set
2 up for all international calls.

3 Google Voice failed on my Android from 10/27/2009 to
4 11/07/2009, the calls were placed directly through T-Mobile
5 instead.

6 I had no changes in settings, location, or numbers that I call. I had
7 sufficient credit.

8 Here is a brief overview of calls I made before, during and after
9 that period.

10 After 11/7, the calls have been placed to my Google Voice (few
11 examples):

Date	Time	Destination	Number	Duration	Cost
11/8/2009	4:59 PM	Ukraine	380...	2 min	\$0.32
11/8/2009	4:56 PM	Ukraine	380...	1 min	\$0.16
11/8/2009	4:45 PM	Ukraine	380...	1 min	\$0.16
11/8/2009	4:39 PM	Ukraine	380...	2 min	\$0.32

12 During the 10/29-11/7 period the calls have been placed to my T-
13 Mobile account:

Date	Time	Destination	Number	Duration	T-Mobile Charges
11/7/2009	11:34 AM	Saudi Arabia	966...	19 min	\$37.81
11/2/2009	4:17 PM	Saudi Arabia	966...	2 min	\$3.98
10/31/2009	3:21 PM	Ukraine	380...	1 min	\$1.99
10/31/2009	3:22 PM	Ukraine	380...	55 min	\$109.45
10/30/2009	5:23 PM	Saudi Arabia	966...	3 min	\$5.97
10/30/2009	5:26 PM	Saudi Arabia	966...	51 min	\$101.49
10/29/2009	4:09 PM	Saudi Arabia	966...	13 min	\$25.87

14 Before 10/29, the calls have been placed to my Google Voice (a
15 few examples):

Date	Time	Destination	Number	Duration	Cost
10/27/2009	5:39 PM	Saudi Arabia	966...	2 min	\$0.22
10/27/2009	5:24 PM	Saudi Arabia	966...	15 min	\$1.65
10/16/2009	12:30 AM	Ukraine	380...	2 min	\$0.20
10/11/2009	1:48 PM	Ukraine	380...	50 min	\$5.00

1 As you see, a brief failure for just a few days cost me 3-4 times
2 more than all my spending on Google Voice altogether in the past
3 4 months.

4 26. Other users also reported incurring hundreds of dollars in excess cell phone
5 charges from their respective carriers as a result of the problem. Google Voice users who
6 complained to their cell phone carrier about being charged for international calls that were
7 supposed to go through Google Voice were generally told that the problem was with the Google
8 Voice application, and were required to pay their bills in full or have their cell phone service shut
9 off.

10 27. On November 10, 2009, a Google employee identifying himself as Zeke posted
11 that "We recently released version 0.2.6 of the app to the Android Market, which should address
12 this."

13 28. In December 2009, users began reporting the same problem with version 0.2.7 of
14 Google Voice.

15 29. In July 2010, users reported the same problem with version 0.3.4, and later with
16 version 0.4.0.12 of Google Voice.

17 30. In September 2010, users reported the same problem with Google Voice.

18 31. In October and November 2010, users reported the same problem with version
19 0.4.2.8 of Google Voice.

20 32. In February 2011, June 2011, July 2011, September 2011, October 2011, and
21 April 2012, users reported the same problem with later versions of Google Voice, incurring as
22 much as \$700 in additional cell phone charges as a result.

23 33. The problem was reported by customers of all of the major cell phone carriers,
24 including Verizon, AT&T, T-Mobile, and Sprint.

25 34. The problem was reported to occur on a variety of cell phones made by different
26 manufacturers, including the Nexus, designed and sold by Google, and the Droid, manufactured
27 by Motorola Mobility LLC, a wholly-owned subsidiary of Google.

28 35. Beginning in December 2011, and continuing until February 2012, Google Voice
for iPhone users who had dialed international calls using version 1.4.0.2372 of the application

1 (*i.e.*, using the Google Voice application dialer) reported that their international calls were being
2 routed instead through their respective cell phone carriers. In each case, the international call did
3 not show up on the user's Google Voice call history, and showed up instead on the monthly bill
4 received from the user's cell phone carrier, causing users to incur and pay hefty charges for calls
5 that Google had promised would cost much less.

6 36. As one Google Voice user who incurred approximately \$600 in excess cell phone
7 charges on his international calls made during this time period reported:

8 I've been a **long time user** of GV, and have made **literally**
9 **hundreds** of international calls with it. Never had a problem. Had
10 been a satisfied customer, but have stopped using it because of
11 weird, unexplained behavior by GV. All of a sudden, I was billed
12 over \$600 by my carrier, for calls I made through GV. For every
13 single one of these calls, I was first informed by GV's auto-prompt
14 that the call would be billed at 2 cents/min., thereby indicating that
15 the call was going through GV. So how and why did my calls, all
16 of a sudden, get billed by my carrier instead, even though:

- 17 - GV informed me that each call was being billed at 2 cents/min,
18 **thereby confirming** that the call was going through GV.

19 Here's another weird thing. I checked my Call History within
20 GV. There's no trace of these particular calls within GV! All other
21 calls before and after these calls are listed in the Call History,
22 except this group of calls during a certain time period of about 10
23 days.

24 Mine doesn't seem to be an isolated incident. This has happened to
25 others too, as the following posts show

26 37. On January 9, 2012, Google released version 1.4.1.2575 of the Google Voice for
27 iPhone application. The release notes, "What's New in Version 1.4.1.2575," states only
28 "Improved reliability of outbound calls via Google Voice."

29 38. On February 28, 2012, The Google Voice Team posted an acknowledgment that
30 the problem described above was due to "a bug with a previous version of our iPhone app," and
31 recommended "that you immediately update to the most recent version of the Google Voice for
32 iPhone Application," which "will prevent this issue from affecting you on an ongoing basis."

1 **Google Refused Demands for Reimbursement**

2 39. Many users reporting the above-described software defects to Google demanded
3 that Google reimburse them for the excess cell phone charges they incurred as a result. Google
4 ignored and/or refused these demands for reimbursement.

5 **Plaintiff Greene's Mis-routed International Calls**

6 40. In approximately August 2010, Greene downloaded and installed the Google
7 Voice application on his Android smartphone (his "Cell Phone"). During the installation
8 process, Greene selected the option to "Only use Google Voice for international calls." Greene
9 has left this setting unchanged since the application was installed.

10 41. Greene purchased Google Voice credit, and made a number of international phone
11 calls from his Cell Phone that were properly routed through the Google Voice system, and
12 charged against the credit balance in his Google Voice account.

13 42. On January 19, 2012, at 7:43 p.m. Pacific Time, Greene placed a call on his Cell
14 Phone from Encino, California to a landline in the United Kingdom. The call did not show up in
15 Greene's Google Voice call history. The call lasted one minute, for which Greene was billed
16 \$1.69 by his cell phone carrier, Verizon. The Google Voice rate for calls to landlines in the
17 United Kingdom is \$0.02 per minute. Accordingly, Greene incurred excess charges of \$1.67.

18 43. On January 19, 2012, at 7:48 p.m. Pacific Time, Greene placed a call on his Cell
19 Phone from Tarzana, California to a landline in the United Kingdom. The call did not show up
20 in Greene's Google Voice call history. The call lasted 15 minutes, for which Greene was billed
21 \$25.35 by Verizon, instead of the Google Voice contract rate of \$0.30, an excess charge of
22 \$25.05.

23 44. On March 8, 2012, at 12:15 p.m. Pacific Time, Greene placed a call on his Cell
24 Phone from Tarzana, California to a mobile phone in the United Kingdom. The call did not
25 show up in Greene's Google Voice call history. The call lasted two minutes, for which Greene
26 was billed \$3.38 by Verizon, instead of the Google Voice contract rate of \$0.10 per minute for
27 calls to mobile phones in the United Kingdom, an excess charge of \$3.18.

1 45. On March 8, 2012, at 9:42 p.m. Pacific Time, Greene placed a call on his Cell
2 Phone from Tarzana, California to a landline in Israel. The call did not show up in Greene's
3 Google Voice call history. The call lasted four minutes, for which Greene was billed \$5.96 by
4 Verizon. The Google Voice rate for calls to landlines in Israel is \$0.02 per minute. Accordingly,
5 Greene incurred excess charges of \$5.88.

6 46. Greene paid each of the foregoing amounts he was billed by Verizon.

7 **CLASS ACTION ALLEGATIONS**

8 47. Plaintiff brings this action on behalf of himself and a Class, defined as:

9 All persons who installed the Google Voice application on a cell
10 phone, and who were billed by the cell phone carrier for
11 subsequently-placed international calls, where the application was
12 set to "Only use Google Voice for international calls" (on Android
13 phones), or the call was dialed using the Google Voice Dialer (on
14 iPhones).

15 48. Excluded from the Class are the officers, directors, and employees of Google, any
16 judicial officer presiding over this action, and the members of his or her immediate family and
17 judicial staff.

18 49. This action is brought and may properly be maintained as a class action pursuant
19 to Code of Civil Procedure section 382.

20 50. The Class is so numerous that joinder of all members is impracticable. Google
21 Voice has millions of users, many of whom have suffered damages as a result of the software
22 defects complained of. While the precise number of Class members is unknown to Plaintiff at
23 this time, it likely numbers in the thousands.

24 51. There is well-defined community of interest among the members of the Class.
25 Plaintiff and the members of the Class, were promised that if they selected "Only use Google
26 Voice for international calls" using the Android application, or used the Google Voice Dialer to
27 dial international calls using the iPhone application, that the calls would be completed at Google
28 Voice's lower international rates, and not at their cell phone carrier's higher international rates.
Each Class member suffered damages as a result of Google's breach of contract.

1 52. There are numerous questions of law and fact common to the members of the
2 Class which predominate over any questions affecting only individual members, including: (a)
3 whether Google offered Class members who downloaded and installed the Google Voice
4 application, and who purchased Google Voice credit, international calling at low, scheduled
5 rates; (b) whether Google's failure to complete Google Voice users' international calls at the
6 scheduled rates constitutes a breach of contract; and (c) the measure of damages therefore.

7 53. Plaintiff's claims are typical of the claims of the Class, as Defendant's liability to
8 each Class member is predicated on the same type of breach of contract. Plaintiff does not seek
9 any relief greater than or different from the relief sought for the class of which he is a
10 member. This action, if successful, will enforce an important right affecting the public interest,
11 and will confer a significant benefit on the general public or a large class of persons. Private
12 enforcement of the claims brought herein is necessary and places a disproportionate financial
13 burden on the plaintiff in relation to his stake in this matter.

14 54. Plaintiff will fairly and adequately protect the interests of the Class, as he has no
15 conflict of interest with the other members of the Class, and he has retained counsel experienced
16 in complex consumer class actions to represent their interests.

17 55. A class action is superior to other available methods for fairly and efficiently
18 adjudicating the controversy, in that the costs of litigation would likely exceed the potential
19 recovery by individual Class members, and there are no unusual difficulties in managing the
20 litigation as a class action.

21 **CAUSE OF ACTION FOR BREACH OF CONTRACT**

22 56. The allegations of the preceding paragraphs are incorporated by reference as if
23 fully set forth herein.

24 57. Google offered Plaintiff and the members of the Class who installed and used the
25 Google Voice application international calling services at the low per-minute rates set forth in
26 the Google Voice international calling rates schedule in exchange for performing certain actions,
27 including purchasing Google Voice credits.

1 58. Plaintiff and the members of the class accepted Google’s offer in the manner
2 provided by Google, and provided good and sufficient consideration, by: (a) downloading and
3 installing the Google Voice application; (b) purchasing Google Voice credits; (c) selecting “Only
4 use Google Voice for international calls” (on Android phones), or using the Google Voice Dialer
5 (on iPhones); and (d) dialing an international call.

6 59. Google failed to perform its obligations under the resulting contracts, by failing to
7 complete the international calls of Plaintiff and the Class at the rates set forth in the Google
8 Voice international calling rates schedule.

9 60. As a direct, proximate, and foreseeable result of Google’s breaches of contract,
10 Plaintiffs and the Class have sustained damages equal to the difference between what they paid
11 their respective cell phone carriers for international calls that should have been completed
12 through Google Voice, and the charge for the call as set forth in the Google Voice international
13 calling rates schedule.

14 **PRAYER FOR RELIEF**

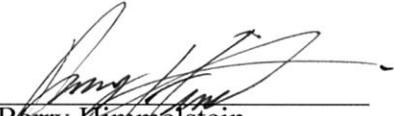
15 WHEREFORE, Plaintiff prays for relief as follows:

- 16 1. For compensatory damages, according to proof;
17 2. For prejudgment interest;
18 3. For attorney’s fees and costs, pursuant to Cal. Govt. Code § 1021.5; and
19 4. For such other and further relief as the Court deems just and proper.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury on all claims so triable.

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4 Dated: July 3, 2013

5 
6 Barry Himmelstein
7 barry@himmellaw.com
8 HIMMELSTEIN LAW NETWORK
9 2000 Powell St.
10 Suite 1605
11 Emeryville, CA 94608-1861
12 Telephone: (510) 450-0782
13 Facsimile: (510) 380-6147

14 Jeffrey B. Cereghino
15 jbc@rocklawcal.com
16 Ram, Olson, Cereghino & Kopczynski
17 555 Montgomery St.
18 Suite 820
19 San Francisco, CA 94111
20 Telephone: (415) 433-4949
21 Facsimile: (415) 433-7311

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27
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Attorneys for Plaintiff
Rabbi Allan Greene