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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RACHEL FREZZA and MAURO
RODRIGUEZ, on their own behalf and all
others similarly situated,

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

Case No. C 12237 HRL

CLASS ACTION COMPLAINT FOR:

**Violation of Cal. Civ. Code § 1798.81
Violation of Cal. Civ. Code § 1770**

CLASS ACTION COMPLAINT

Plaintiffs Rachel Frezza and Mauro Rodriguez (collectively, “Plaintiffs”) bring this class
action complaint against Defendant Google Inc. (“Google” or “Defendant”) on behalf of

1 themselves and all others similarly situated, and complain and allege upon personal knowledge
2 as to themselves and their own acts and experiences, and, as to all other matters, upon
3 information and belief, including investigation conducted by their attorneys.

4 **I. NATURE OF THE ACTION**

5 1. Although perhaps best known for its search engine, Google took in more than \$28
6 billion in 2010 from its various advertising programs and products, accounting for 99% of the
7 corporation's total revenues.¹ One such advertising product was Google Tags. Google Tags was
8 an online feature that was designed to enhance the appeal of a business and more effectively
9 promote the services of that business on the Web.

10 2. Google knowingly and repeatedly deceived business owners and consumers
11 across the nation by luring them into signing up for a supposedly "free" trial of Google Tags. In
12 offering this promotion to businesses in simple and straightforward language, Google gave these
13 merchants every reason to believe that they could try Google Tags without financial risk or
14 obligation. This service, as consumers learned the hard way, turned out to be anything *but* free.

15 3. Under the terms of the trial offer as represented by Google, consumers could try
16 Google Tags for a 30-day period and then cancel without charge at any time prior to the end of
17 that period. In reality, however, Google charged merchants during the 30-day period and then
18 asserted that the trial offer consisted merely of a \$25 discount off the total price of the service.

19 4. Making matters worse, many consumers have discovered that they cannot remove
20 their credit card information from Google's billing system – even though Google Tags was
21 abolished in early 2011. In addition, Google has refused to delete the credit card information
22 associated with each of these merchants' accounts. This conduct violates California law, and
23 places consumers, including Plaintiffs and the putative Classes, at a heightened risk of identity
24 theft, fraud, and catastrophic financial loss.

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26 ¹ *Google Announces Fourth Quarter and Fiscal Year 2010 Results and Management Changes*, GOOGLE
27 INVESTOR RELATIONS, Jan. 20, 2011, http://investor.google.com/earnings/2010/Q4_google_earnings.html.

1 **IV. FACTUAL BACKGROUND**

2 ***The Purpose and Features of Google Tags***

3 11. From February 2010 through April 2011, Google offered a service called “Google
4 Tags” to merchants in cities across the United States. The basic idea behind this service was to
5 provide a way for a business that advertised its products or services on the web to showcase one
6 or more of the business’s distinguishing features and thereby increase the number of visitors to
7 its website.

8 12. A consumer who used Google Tags was able to set the name of his or her
9 business apart visually from the numerous other listings that would generally result from
10 entering the relevant terms in the Google search engine or “Google Maps” field. The name of
11 the business was made to stand out from the others through the use of a bright-yellow “tag” icon
12 that appeared immediately to the left of the listing. Accompanying this tag was additional
13 information about the business, such as promotions, photos, videos, menus, or a link to the
14 business’s website.

15 13. The fee for use of the tag was \$25 per month for each business listing, and this
16 “flat monthly fee” remained constant regardless of how often an internet user viewed the
17 enhanced listing or actually clicked on it for more information. At any time during the month-
18 long period, the user of the tag was permitted to add a tag to an additional listing, change the
19 content of the tag, or remove it altogether.

20 ***The “Free” Trial Period of Google Tags***

21 14. As a means of introducing Google Tags and enticing subscribers to this service,
22 Google launched a “trial” period in July of 2010. Under the terms of this initial offering,
23 consumers were led to believe that they could append a Google Tag to one or more of their
24 listings—absolutely free of charge—for a 30-day period. Nevertheless, Google required these
25 new users to enter their information from a valid U.S. credit card in order to activate the service.
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1 15. In reliance on the simple and straightforward language in this promotion,
2 numerous business owners, including Plaintiffs, signed up for the “Google Tags” service with
3 the understanding that they would not be charged for use of this service during the 30-day
4 period. The promotion did not contain any qualifying language or other “fine print” suggesting
5 that users would be charged for any part of the Google Tags service during this initial trial
6 period.

7 16. At the conclusion of the supposedly “free” trial period, however, Plaintiffs and
8 other members of the Class discovered that Google had charged them for their use of multiple
9 tags during all or most of this period. When Plaintiffs and the other members of the Class sought
10 an explanation from Google’s customer service department, they were told that the trial offer
11 consisted merely of a one-time, \$25 discount — as opposed to genuinely “free” use of the tags
12 during the 30-day period. This was not disclosed in the terms of Google’s promotional offer.

13 ***Google’s Unlawful Retention of Consumers’ Credit Card Information***

14 17. Unfortunately, this is not the full extent of the problems associated with Google
15 Tags. In addition to the practices described above, Google retained the credit card information
16 of those consumers who signed up for the “free” trial of the Google Tags service, even though
17 Google discontinued the service itself on April 29, 2011.

18 18. Google refused to provide these consumers with a way to delete their credit card
19 information from Google’s electronic billing records, other than advising them to cancel the card
20 itself or replace the existing information with new credit card information. As a result, the
21 Plaintiffs’ sensitive, proprietary information remains needlessly stored among Google’s
22 electronic billing records, exposing these Plaintiffs to an elevated and very real risk of fraud,
23 identity theft, and catastrophic financial loss.

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1 ***Facts Pertaining to Plaintiff Rodriguez***

2 19. On November 18, 2010, Rodriguez signed up for what Google represented to be a
3 “free” 30-day trial of Google Tags in order to promote the services of his employer, an auto
4 dealership. At the time that he decided to use this service, he was told that he would not be
5 charged during the initial 30-day period, and that he could cancel anytime. As a condition of
6 using this service, Rodriguez provided his credit card number to Google.

7 20. On December 10, 2010 — less than 30 days after he signed up for the service —
8 Rodriguez cancelled his trial subscription to Google Tags.

9 21. Soon thereafter, he discovered that Google had charged \$52.00 to his credit card
10 in violation of the terms of the “free” trial offer. In addition, Google retained his credit card
11 number in its electronic billing records after he discontinued the service and refused to delete it.

12 ***Facts Pertaining to Plaintiff Frezza***

13 22. In the fall of 2010, Frezza signed up for Google Tags after reading the
14 promotional offer for a “free” trial of the service. Frezza had hoped to use the Google Tags
15 service to better advertise her small holistic healing business, and she assumed – based on the
16 language in the offer – that she had nothing to lose by signing up for the supposedly “free” trial.

17 23. Despite the guarantee of a free 30-day trial, Frezza found that Google charged her
18 credit card, which she had previously provided to Google for other transactions, during this
19 initial period.

20 24. When she contacted Google to dispute the charge and request that her credit card
21 number be deleted, a Google representative informed her that her credit card information could
22 not be deleted from its electronic billing records unless she cancelled the credit card altogether.

23 25. On information and belief, Google continued to retain her credit card number in
24 its electronic records and refused to delete it until the card expired.

1 **V. CLASS ACTION ALLEGATIONS**

2 26. Plaintiffs bring Counts I, III, and V, as set forth below, on behalf of themselves
3 and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal
4 Rules of Civil Procedure on behalf of a class defined as:

5 All consumers nationwide who signed up for a free 30-day trial of
6 Google Tags and who were nevertheless charged for their use of
7 the tags during this period (the “Contract Class”).

8 Excluded from the Contract Class are Google and its subsidiaries and affiliates; all persons who
9 make a timely election to be excluded from the Class; governmental entities; and the judge to
10 whom this case is assigned and any immediate family members thereof.

11 27. Plaintiffs bring Counts II, III, and IV, as set forth below, on behalf of themselves
12 and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal
13 Rules of Civil Procedure on behalf of a second class defined as:

14 All consumers nationwide who signed up for a “free” 30-day trial
15 of Google Tags and whose credit card information was retained by
16 Google after their accounts were closed (the “Credit Card Class”).

17 Excluded from the Credit Card Class are Google and its subsidiaries and affiliates; all persons
18 who make a timely election to be excluded from the Class; governmental entities; and the judge
19 to whom this case is assigned and any immediate family members thereof.

20 28. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because
21 Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as
22 would be used to prove those elements in individual actions alleging the same claims.

23 29. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the
24 Classes are so numerous that individual joinder of all members of the Classes is impracticable.
25 On information and belief, there are thousands of business owners who have been damaged by
26 the misleading language in the terms of Google’s trial offer as well as Google’s wrongful
27 retention of their credit card information. The precise number of members of the Classes and
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1 their addresses are presently unknown to Plaintiffs, but may be ascertained from a review of
2 Google’s electronic billing records associated with subscribers to its “free” 30-day trial of its
3 Google Tags service. Members of the Classes may be notified of the pendency of this action by
4 recognized, Court-approved notice dissemination methods, which may include U.S. mail,
5 electronic mail, internet postings, and/or published notice.

6 **30. Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**
7 **and 23(b)(3).** This action involves common questions of law and fact, which predominate over
8 any questions affecting individual members of the Classes, including, without limitation:

9 (a) whether Google engaged in the conduct as alleged herein;

10 (b) whether Plaintiffs and the Classes are entitled to compensatory or other forms of
11 damages, and other monetary relief and, if so, in what amount(s); and

12 (c) whether Plaintiffs and the Classes are entitled to equitable relief, including but not
13 limited to restitution and injunctive relief.

14 **31. Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’ claims are
15 typical of the claims of the other members of the Classes because, among other things, all
16 members of the Classes were comparably injured through the uniform misconduct described
17 above.

18 **32. Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**
19 Plaintiffs are adequate representatives of the Classes because their interests do not conflict with
20 the interests of the members of the Classes that they seek to represent; they have retained counsel
21 competent and experienced in complex commercial and class action litigation; and Plaintiffs
22 intend to prosecute this action vigorously. The interests of the Classes will be fairly and
23 adequately protected by Plaintiffs and their counsel.

24 **33. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**
25 Google has acted or refused to act on grounds generally applicable to Plaintiffs and the members
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1 39. Plaintiffs have satisfied all conditions precedent pursuant to the Contract.

2 40. Plaintiffs are not in breach of the Contract.

3 41. Google has breached the Contract by charging these merchants for use of Google
4 Tags during the 30-day trial period, despite an explicit promise in the original offer that it would
5 not do so.

6 42. As a result of the foregoing, Plaintiffs and the Contract Class have suffered
7 damages and will in the future suffer damages caused by Google's breach of the Contract.
8 Plaintiffs and the Contract Class are entitled to damages in an amount to be determined at trial.

9 **COUNT II**
10 **Unjust Enrichment**
11 **(In the Alternative to Count I)**
12 **(On Behalf of the Contract Class)**

13 43. Plaintiffs adopt and incorporate by reference paragraphs 1-33 of this Complaint as
14 if fully set forth herein.

15 44. Google has received a benefit from Plaintiffs and each of the other members of
16 the Contract Class by improperly charging these consumers fees for their use of the Google Tags
17 service during what Google represented to be a "free" trial period.

18 45. Google has knowingly appreciated and accepted this benefit of improperly
19 collected usage fees, which has resulted in and continues to result in an inequity to Plaintiffs and
20 each of the members of the Contract Class.

21 46. Google's appreciation and acceptance of this benefit is inequitable.

22 47. As a result of Google's unjust enrichment, Plaintiffs and each of the members of
23 the Contract Class have suffered damages and will in the future suffer damages caused by the
24 misconduct of the Defendant. Plaintiffs and each of the members of the Contract Class seek full
25 disgorgement and restitution of Google's enrichment, benefits, and ill-gotten gains acquired as a
26 result of the unlawful and/or wrongful conduct alleged herein.
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COUNT III
Violation of the California Consumers Legal Remedies Act,
Cal.Civ.Code § 1750, *et seq.*
(On Behalf of the Contract Class)

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3 48. Plaintiffs adopt and incorporate by reference paragraphs 1-33 of this Complaint as
4 if fully set forth herein.

5 49. The California Consumers Legal Remedies Act (“CCLRA”) provides, in pertinent
6 part, that

The following unfair methods of competition and unfair or
deceptive acts or practices undertaken by any person in a
transaction intended to result or which results in the sale or lease of
goods or services to any consumer are unlawful:

....

Making false or misleading statements of fact concerning reasons
for, existence of, or amounts of price reductions.

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11 Cal.Civ.Code § 1770(a)(13).

12 50. The members of the Contract Class signed up for a trial period of the Google Tags
13 Service on the strength of language in the promotion stating that use of Google Tags would be
14 free for the initial 30-day period.

15 51. Despite the clear and explicit promise contained in the language of the Google
16 Tags promotion, Google charged the Plaintiffs for use of Google Tags during this allegedly
17 “free” trial period.

18 52. By advertising Google Tags as free for a 30-day period and then unexpectedly
19 charging subscribers for use of the service, Google made a false and misleading statement of fact
20 about the existence of a price reduction.

21 53. The false and misleading statements in Google’s promotional offer were
22 essentially intended to result in the sale of the Google Tags service to Plaintiffs for a 30-day
23 period or longer.

24 54. As a result of Google’s unfair and deceptive conduct described herein and its
25 violation of Cal.Civ.Code § 1770, Plaintiffs have suffered damages.
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- A quarterly automatic or manual process for identifying and securely deleting stored cardholder data that exceeds defined retention requirements

PCI Security Standards Council LLC, *Navigating PCI DDS: Understanding the Intent of the Requirements*, v2.0 (October 2010), p. 20.

60. Google breached its implied contract with the merchants by taking none of the above measures dictated by the industry standard. Instead, Google retained the credit-card information of the merchants long after they cancelled their subscription to Google Tags. In addition, Google has continued to retain this credit-card information despite the fact that Google has discontinued the Google Tags advertising product itself. Google's billing department has refused to delete this information from its records.

61. Adding insult to injury, Google has not only retained the credit card information, but also has steadfastly refused to delete this information from its electronic billing records, despite numerous pleas from Plaintiffs to do so. When confronted with a request to delete this information, Google has informed these merchants that it cannot do so unless they provide new credit card information as a substitute for the information to be deleted.

62. Google has also breached its implied contract with the merchants by failing to notify them that it would be retaining their credit card information within its billing records.

63. As a result of the foregoing, Plaintiffs and the Credit Card Class have suffered damages and will in the future suffer damages caused by the misconduct of the Defendant. Plaintiffs and the Credit Card Class are entitled to damages in an amount to be determined at trial, in addition to the cost for three years of credit monitoring and identity theft protection services.

COUNT V

Violation of the California Customer Records Act, Cal.Civ.Code § 1798.80, *et seq.* (On Behalf of the Credit Card Class)

64. Plaintiffs adopt and incorporate by reference paragraphs 1-33 of this Complaint as if fully set forth herein.

1 65. The California Customer Records Act (“CCRA”) provides, in pertinent part, that

2 A business shall take all reasonable steps to dispose, or arrange for
3 the disposal, of customer records within its custody or control
4 containing personal information when the records are no longer to
5 be retained by the business by (a) shredding, (b) erasing, or (c)
 otherwise modifying the personal information in those records to
 make it unreadable or undecipherable through any means.

6 Cal.Civ.Code § 1798.81.

7 66. Under the CCRA, “personal information” is defined as

8 any information that identifies, relates to, describes, or is capable
9 of being associated with, a particular individual, including, but not
10 limited to, his or her name, signature, social security number,
11 physical characteristics or description, address, telephone number,
12 passport number, driver’s license or state identification card
13 number, insurance policy number, education, employment,
 employment history, bank account number, *credit card number*,
 debit card number, or any other financial information, medical
 information, or health insurance information[.]

14 Cal.Civ.Code § 1798.80 (emphasis added).

15 67. The members of the Credit Card Class canceled their “free” trial of Google Tags
16 prior to, or upon, the expiration of the 30-day promotional period, and Google subsequently
17 retired its Google Tags feature altogether. Thus, Google no longer needs to retain the credit-card
18 number of the Class members. Nonetheless, Google has continued to retain this personal
19 information in its electronic billing records.

20 68. Worse yet, Google has stated to Plaintiffs and the Credit Card Class that Google
21 will not delete their credit-card information without first requiring that the members either cancel
22 their credit card altogether or replace the existing credit-card number with the number of a new
23 credit card.

24 69. On information and belief, Google has not taken a single step toward shredding,
25 erasing, encrypting, or otherwise modifying the Plaintiffs’ personal information so as to make it
26 unreadable or undecipherable by others.

1 Dated: January 5, 2012

Respectfully submitted,

2 RACHEL FREZZA and MAURO RODRIGUEZ,
3 on their own behalf and on behalf of all others
4 similarly situated

5 s/ Todd Atkins

6 By: _____
7 One of the Attorneys for Plaintiffs and the
8 Proposed Putative Classes

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26 **Pro hac vice* admittance to be sought

27 *Counsel for Plaintiff and the Putative Class*

28 4849-3766-4782, v. 1