|  |  |
| --- | --- |
| David Boies (*pro hac vice*)  333 Main Street  Armonk, NY 10504  Tel: (914) 749-8200  dboies@bsfllp.com  Mark C. Mao, CA Bar No. 236165  Beko Reblitz-Richardson, CA Bar No. 238027  Joshua M. Stein, CA Bar No. 298856  44 Montgomery Street, 41st Floor  San Francisco, CA 94104  Tel: (415) 293-6800  mmao@bsfllp.com  brichardson@bsfllp.com  jstein@bsfllp.com  James Lee (*pro hac vice*)  100 SE 2nd Street, 28th Floor  Miami, FL 33131  Tel: (305) 539-8400  jlee@bsfllp.com | Alison L. Anderson, CA Bar No. 275334  2029 Century Park East, Suite 1520  Los Angeles, CA 90067  Tel: (213) 629-9040  alanderson@bsfllp.com  M. Logan Wright, CA Bar No. 349004  1401 New York Ave, NW  Washington, D.C. 20005  Tel: (202) 237-2727  Fax: (202) 237-6131  mwright@bsfllp.com  **MORGAN & MORGAN**  John A. Yanchunis (*pro hac vice*)  Ryan J. McGee (*pro hac vice*)  201 N. Franklin Street, 7th Floor  Tampa, FL 33602  Tel: (813) 223-5505  jyanchunis@forthepeople.com  rmcgee@forthepeople.com |

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SANTA CLARA**

|  |  |
| --- | --- |
| GILBERT LUNA, et al.,  Plaintiffs,  v.  GOOGLE LLC,  Defendant. | Case No. 24CV434093  Related Google LLC Cases Involving Incognito Mode  COMPLEX - ASSIGNED FOR ALL PURPOSES TO:  Honorable Charles F. Adams, Department 7  PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT GOOGLE LLC'S MOTION FOR SUMMARY JUDGMENT  Date: June 16, 2025  Time.: 1:30 p.m.  Dept.: 7  Action Filed: March 28, 2024  Trial Date: June 24, 2025 |

**TABLE OF CONTENTS**

I. INTRODUCTION 8

II. BACKGROUND 9

III. LEGAL STANDARD 10

IV. ARGUMENT 10

A. Plaintiffs' Factual Allegations Are Sufficiently Detailed. 10

i. Plaintiffs' allegations satisfy California's pleading standard. 10

ii. Google's access to key information also precludes dismissal. 12

B. Plaintiffs Sufficiently Plead Their Penal Code § 631 Claim. 14

C. Plaintiffs Sufficiently Plead Their Penal Code § 632 And Privacy Torts Claims. 18

i. Plaintiffs sufficiently plead their Penal Code § 632 claim. 18

ii. Plaintiffs sufficiently plead invasion of privacy and intrusion upon seclusion. 19

D. Plaintiffs Allege Facts Establishing UCL & CDAFA Standing. 20

i. Plaintiffs allege facts establishing UCL standing. 20

ii. Plaintiffs allege facts establishing CDAFA standing. 22

E. Plaintiffs Allege Facts Establishing Viable Contract Damages. 24

F. Plaintiffs Properly Plead Their Unjust Enrichment Claim. 26

V. CONCLUSION 27

TABLE OF AUTHORITIES

California Penal Code

§ 502 16

§ 631 14, 16, 17, 18

§ 632 17, 18, 19

18 U.S.C. § 1030 12

# INTRODUCTION

# BACKGROUND

# LEGAL STANDARD

“A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding.” (Code Civ. Proc. § 437c, subd. (a)(1) (“CCP”).) A motion for summary judgment can only be granted “if ***all*** of the papers submitted show that there is ***no triable issue as to any material fact*** and that the moving party is entitled to a judgment as a matter of law.” (CCP § 437c, subd. (c) (emphasis added).) “[S]ummary judgment is a drastic measure which deprives the losing party of trial on the merits.” (*Dee v. Vintage Petroleum, Inc.* (2003) 106 Cal.App.4th 30, 34 (quoting *Bahl v. Bank of Am.* (2001) 89 Cal.App.4th 389, 395).) It “should be used with caution so that it does not become a substitute for an open trial.” (*Pereira v. Dow Chemical Co.* (1982) 129 Cal.App.3d 865, 872.)

A defendant moving for summary judgment bears both the burden of persuasion and production. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) Thus, a defendant must: (1) prove that one or more elements of the cause of action in question “cannot be established,” or that “there is a complete defense” thereto, and (2) make a *prima facie* showing that there are no triable issues of material fact. (*Id.*) Only if the moving defendant meets its initial burden does the burden shift to the responding plaintiff to make a *prima facie* showing of the existence of a triable issue of material fact. (*See Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840; *see also* *Aguilar*, 25 Cal.4th at 850.) If “the plaintiff’s evidence or inferences raise a triable issue of material fact, [the court] must conclude its consideration and deny the defendants’ motion.” (*Aguilar*, 25 Cal.4th at 856.)

“In ruling on the motion, the court must ‘consider all of the evidence’ and ‘all’ of the ‘inferences’ reasonably drawn therefrom, and must view such evidence and such inferences in the light most favorable to the opposing party.” (*Aguilar,* 25 Cal.4th at 843 (internal citations omitted).) In other words, a “court must ‘liberally construe plaintiff’s evidentiary submissions and strictly scrutinize defendant’s own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff’s favor.’” (*Tielemans v. Aegion Energy Services, Inc.* (Super. Ct. Santa Clara County Nov. 1, 2024) 2024 WL 5098612, at \*2 (Adams, J.); *see also* *Johnson v. Am. Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

# ARGUMENT

## Plaintiffs’ Factual Allegations Are Sufficiently Detailed.

### Plaintiffs’ allegations satisfy California’s pleading standard.

# V.

For the reasons above, Plaintiffs respectfully request that the Court deny Google’s motion for summary judgment in full.

Dated: May 27, 2025 Respectfully submitted,

By: */s/ [DRAFT]*

Mark C. Mao (CA Bar No. 236165)

mmao@bsfllp.com

Beko Reblitz-Richardson (CA Bar No. 238027)

brichardson@bsfllp.com

Joshua M. Stein (CA Bar No. 298856)

jstein@bsfllp.com

44 Montgomery Street, 41st Floor

San Francisco, CA 94104

Telephone: (415) 293-6858

Facsimile (415) 999-9695

David Boies (admitted *pro hac vice*)

dboies@bsfllp.com

333 Main Street

Armonk, NY 10504

Telephone: (914) 749-8200

James Lee (*pro hac vice*)

jlee@bsfllp.com

100 SE 2nd Street, Suite 2800

Miami, FL 33131

Telephone: (305) 539-8400

Facsimile: (305) 539-1307

Alison L. Anderson, CA Bar No. 275334

alanderson@bsfllp.com

2029 Century Park East, Suite 1520

Los Angeles, CA 90067

Telephone: (813) 482-4814

M. Logan Wright (CA Bar No. 349004)

mwright@bsfllp.com

1401 New York Ave, NW

Washington, D.C. 20005

Telephone: (202) 237-2727

Facsimile: (202) 237-6131

John A. Yanchunis (*pro hac vice*)

jyanchunis@forthepeople.com

Ryan J. McGee (*pro hac vice*)

rmcgee@forthepeople.com

Michael F. Ram (CA Bar No. 238027)

mram@forthepeople.com

MORGAN & MORGAN, P.A.

201 N. Franklin Street, 7th Floor

Tampa, FL 33602

Telephone: (813) 223-5505

Facsimile: (813) 222-4736

*Attorneys for BSF/MM Plaintiffs*