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**SUPERIOR COuRT OF THE STATE OF CALIFORNIA**

**COUNTY OF SANTA CLARA**

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| 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 |

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# 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. CONCLUSION

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,

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