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GOOGLE INC. and SLIDE, INC.

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14
15 NICOLE PIMENTAL and JESSICA
FRANKLIN, individually and on behalf of
16 all others similarly situated,

17 Plaintiffs,

18 v.

19 GOOGLE INC., a Delaware corporation,
and SLIDE, INC., a Delaware corporation,

20 Defendants.
21

Case No. 11-cv-02585-SBA

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' CONSOLIDATED CLASS
ACTION COMPLAINT**

22 This Document Relates to All Actions.
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1 On October 14, 2011, Defendants filed a Motion to Dismiss Plaintiffs’ Consolidated Class
2 Action Complaint (the “Motion”). Upon consideration of the Motion, Defendants’ request for
3 judicial notice, Plaintiffs’ response to the Motion, and the arguments of counsel on these matters,
4 IT IS HEREBY ORDERED that the Motion is GRANTED, for the following reasons:

5 (1) The Consolidated Class Action Complaint (the “Complaint”) fails to state a claim
6 upon which relief can be granted under Federal Rules of Civil Procedure 8 and 12(b)(6) because
7 it does not sufficiently allege an essential element of a claim for violation of the Telephone
8 Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Specifically, the Complaint does not state
9 well-pleaded factual allegations to support Defendants’ use of an “automatic telephone dialing
10 system,” as that term is defined by the TCPA. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
11 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. --, 129 S. Ct. 1937, 1949-50 (2009).

12 (2) In addition, and as an independent ground for dismissal, under a narrow construction
13 of the applicable provisions of the TCPA, the communications at issue here—informational,
14 noncommercial text messages sent by Defendants—do not violate the TCPA and, therefore, the
15 Complaint fails to state a claim upon which relief can be granted.

16 Accordingly, the Complaint is hereby DISMISSED WITH PREJUDICE.

17 IT IS SO ORDERED.

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20 DATED: _____

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HON. SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT COURT JUDGE