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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **OAKLAND DIVISION**

17 NICOLE PIMENTAL and JESSICA
 18 FRANKLIN, individually and on behalf of
 all others similarly situated,

19 Plaintiffs,

20 v.

21 GOOGLE INC., a Delaware corporation,
 22 and SLIDE, INC., a Delaware corporation,

23 Defendants.

Case No. 11-cv-02585-YGR

JOINT CASE MANAGEMENT STATEMENT

1 Pursuant to the Court's Reassignment Order dated January 18, 2012, Plaintiffs Nicole
2 Pimental and Jessica Franklin, and Defendants Google Inc. and Slide, Inc. (collectively, the
3 "Parties"), hereby jointly submit the following Joint Case Management Statement.

4 1. **Date case was filed:** This is a consolidated action. Initially, *Pimental v*
5 *Google, Inc., Slide, Inc.* (11-cv-02585-SBA) was filed on May 27, 2011.
6 *Franklin v Google, Inc., Slide, Inc.* (11-cv-03333-SBA) was then filed on July
7 7, 2011. Thereafter, Plaintiffs filed the Consolidated Complaint now before
8 this Court on September 14, 2011. (*Pimental v Google Inc., Slide, Inc.* (11-
9 cv-02585-YGR)).

10 2. **List of parties:**

- 11 a. Plaintiffs: Nicole Pimental, Jessica Franklin
12 b. Defendants: Google Inc., Slide, Inc.

13 3. **List of current deadlines:** As set forth by the Court in its January 20, 2012
14 Order (Dkt. 51), and pursuant to Defendants' renote of motion (Dkt. 52), the
15 current deadlines and relevant dates are as follows:

16 **CASE MANAGEMENT CONFERENCE:** February 9, 2012 at
17 9:00 a.m.

18 **MOTION TO DISMISS HEARING:** March 6, 2012 at 2:00 p.m.

19 **SETTLEMENT CONFERENCE** with a U.S. Magistrate Judge to be
20 completed no later than November 30, 2012.

21 **NON-EXPERT DISCOVERY CUTOFF:** June 22, 2012

22 **DISCLOSURE OF EXPERTS** (retained/non-retained): opening:
23 June 15, 2012 rebuttal: June 29, 2012

24 **EXPERT DISCOVERY CUTOFF:** August 17, 2012

25 **DISPOSITIVE MOTIONS TO BE HEARD BY:** October 30, 2012

26 **PRETRIAL STATEMENTS:** January 18, 2013

27 **PRETRIAL CONFERENCE:** February 1, 2013

28 **TRIAL DATE:** February 19, 2013 (Jury Trial)

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TRIAL LENGTH: 3 to 5 days

Additionally, the minutes of the October 12, 2011 case management conference (Dkt. 32) reflect the following deadlines:

LAST DATE TO AMEND PLEADINGS OR ADD PARTIES:

February 12, 2012

PLAINTIFFS’ CLASS CERTIFICATION MOTION PAPERS

DUE: May 8, 2012

DEFENDANTS’ CLASS CERTIFICATION OPPOSITION

PAPERS DUE: June 5, 2012

PLAINTIFFS’ CLASS CERTIFICATION REPLY PAPERS

DUE: June 19, 2012¹

4. **List of all pending motions:**

a. Defendants’ Motion to Dismiss (Dkt. 29) – briefing is complete; the original hearing was vacated per the Court’s Reassignment Order; the hearing has been renoticed for March 6, 2012.

b. Defendants’ Administrative Motion to Stay Discovery (Dkt. 34).

5. **Description of events underlying claim:** Plaintiffs allege that Defendants formerly operated a service known as “Disco,” which allowed consumers to engage in “group text messaging” (*i.e.*, allowing one text message to be sent to numerous people simultaneously, and allowing other group members to interact with the entire group through a single message). Plaintiffs allege that Defendants send their own text messages, promoting their service and mobile application, to Disco group members without receiving consent to do so, in

¹ The Parties identify these additional deadlines since they were not expressly vacated in the Reassignment Order or reset in the January 20, 2012 Clerk’s Notice regarding trial-related dates.

1 direct violation of the Telephone Consumer Protection Act (47 U.S.C. § 227
2 *et seq*). Plaintiffs specifically allege that they were added to Disco groups
3 without permission and thereafter received numerous unwanted text messages,
4 including promotional text messages from Defendants. Additionally,
5 Plaintiffs allege that after they attempted to be removed from the Disco group,
6 they continued to receive unwanted text messages.

7 Defendants dispute Plaintiffs' allegations and deny liability on Plaintiffs'
8 claim.

9 6. **Summary of all claims:** Plaintiffs' Consolidated Complaint alleges a single
10 cause of action for violation of the Telephone Consumer Protection Act (47
11 U.S.C. § 227 *et seq*).

12 7. **List and description of relief sought:** Plaintiffs seeks the following relief:

- 13 (a) An order certifying the action as a Class Action and designating
14 Plaintiffs and their counsel as representatives of the Class;
- 15 (b) Injunctive relief for the Class on Count I;
- 16 (c) Actual damages, or statutory damages in the amount of \$500 per
17 violation under 47 U.S.C. § 227(b)(3)(B), whichever is greater, with a
18 possible trebling under § 227(b)(3)(C);
- 19 (d) An award of reasonable attorneys' fees and costs for Plaintiffs and
20 their counsel;
- 21 (e) Such other and further relief as the Court may deem just and proper.

22 8. **Status of discovery:**

23 Joint Statement: The Parties conducted a Rule 26(f) meet and confer in
24 August 2011, and again on October 5, 2011. Defendants filed an
25 Administrative Motion to Stay Discovery on October 26, 2011 (Dkt. 34), on
26 the grounds that discovery in this case should be temporarily stayed pending
27 resolution of Defendants' motion to dismiss because that motion may dispose
28 of this action in its entirety. Plaintiffs served discovery on Defendant Google

1 on October 27, 2011 in the form of interrogatories and request to produce
2 documents. Google served its responses to that discovery on December 23,
3 2011. Plaintiffs requested, and the Parties held, a meet and confer regarding
4 Defendant's discovery responses on December 29, 2011. The Parties have not
5 yet reached a resolution on several of Defendant's objections to Plaintiffs'
6 requests and Defendant has offered to continue the meet and confer process.
7

8 Plaintiffs' Position Regarding Google's Discovery Responses: After
9 providing Defendant with several extensions of time to respond, Defendants
10 served Plaintiffs with discovery responses consisting of only objections and
11 no responsive documents. Plaintiffs are of the position that they are not
12 obligated to meet and confer any further given that they have already done so
13 and Defendant's main objection for not responding to the discovery is that
14 they have a motion to stay discovery on file. However, Plaintiffs note that no
15 discovery stay is currently in place, there has been no ruling regarding
16 Defendant's Administrative Motion to Stay Discovery, and unless and until a
17 stay is entered, Rule 26 requires that Defendant respond to Plaintiffs'
18 outstanding discovery requests. Plaintiffs have even agreed to narrow certain
19 requests, but to date, Defendant has not supplemented their responses to
20 discovery. Plaintiffs are willing to engage in one final meet and confer to
21 attempt to get beyond this discovery impasse prior to moving to compel. But,
22 Defendant's continued "offers" to meet and confer are nothing more than a
23 delay tactic. For example, following their meet and confer conference on
24 December 29, 2011, during which, as explained above, Plaintiffs agreed to
25 narrow several discovery requests, Defendant, though memorializing the
26 narrowing of the discovery, has still failed to supplement its responses,
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1 claiming that further follow up from Plaintiffs is needed. There should be no
2 need for additional meet and confers since Plaintiffs already agreed to narrow
3 several discovery requests, and did not object to Defendant's follow up letter
4 regarding same. Also, though Defendant has indicated the need for a
5 protective order, which Plaintiffs have no objection to, and despite the fact
6 that Plaintiffs provided Defendant with a nearly four-week extension to
7 respond to written discovery, Defendant failed to provide a draft protective
8 order until *after* its discovery responses were due. Defendant's attempt to rely
9 on the lack of a protective order as a basis for not responding to discovery is
10 nothing but a red herring as Defendant has always taken the position that it
11 refuses to respond to discovery during the pendency of its motion to dismiss.
12

13 Google's Position Regarding Its Discovery Responses: Based on the Court's
14 standing order and this District's Local Rules, Google disagrees with
15 Plaintiffs' position that they are not obligated to meet and confer any further.
16 Indeed, Google has been consistently trying to engage Plaintiffs in the meet
17 and confer process, but Plaintiffs have been unresponsive. Following the first
18 (and only) meet and confer on December 29, Google's counsel sent Plaintiffs'
19 counsel a letter on January 5 that memorialized the discussion and invited a
20 further meet and confer. To date, Plaintiffs have not responded to that letter.
21 In addition, Google's counsel sent Plaintiffs' counsel an email on January 13
22 that attached a draft stipulated protective order for Plaintiffs' counsel
23 consideration. Again, Plaintiffs' counsel has to date not responded to that
24 email. As explained in another email from Google's counsel to Plaintiffs'
25 counsel on January 24, Google has been and remains willing to continue the
26 meet and confer process regarding Plaintiffs' discovery. As is probably
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1 evident, Google disagrees with Plaintiffs' distorted characterization of the
2 meet and confer process, and notes that the Court ordered the parties to
3 describe the "status of discovery" in this Joint Case Management Statement,
4 not engage in discovery argument. Accordingly, Google will not here refute
5 each of Plaintiffs' several misstatements, but rather seeks to summarize the
6 discovery proceedings to date.

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8 9. **Procedural history of case:** An initial case management conference was
9 held on September 8, 2011, with a second case management hearing held on
10 October 12, 2011. Defendants filed a Motion to Dismiss on October 14, 2011,
11 for which the Parties have completed briefing. The hearing on the Motion
12 was set for February 28, 2012, but has been vacated and re-noticed for March
13 6, 2012.

14 10. The Court has scheduled a case management conference for February 9, 2012
15 at 9:00 a.m.

16
17 Respectfully Submitted,

18 Dated: January 27, 2012

EDELSON MCGUIRE, LLC

19
20 By: /s/ Rafey S. Balabanian

21 Attorneys for Plaintiffs

22 Dated: January 27, 2012

PERKINS COIE LLP

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24 By: /s/ Bobbie J. Wilson

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CERTIFICATE OF SERVICE

I, Rafey S. Balabanian, an attorney, hereby certify that on January 27, 2012, I served the above and foregoing ***Joint Case Management Statement***, by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Rafey S. Balabanian