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9 Attorneys for Defendants
 GOOGLE INC. and SLIDE, INC.

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

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 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-YGR

**ANSWER OF DEFENDANTS
 GOOGLE INC. AND SLIDE, INC. TO
 PLAINTIFFS' CONSOLIDATED CLASS
 ACTION COMPLAINT**

22 This Document Relates to All Actions.

1 Defendants Google Inc. and Slide, Inc., for their Answer to Plaintiffs' Consolidated Class
2 Action Complaint (the "Complaint"), state as follows:

3 1. Defendants admit that Plaintiffs Nicole Pimental and Jessica Franklin have filed a
4 Consolidated Class Action Complaint, which (a) names Google Inc. and Slide, Inc. as defendants;
5 and (b) seeks certification of a class, an award of statutory damages, and injunctive relief. Except
6 as expressly admitted, Defendants deny any and all remaining allegations of Paragraph 1 of the
7 Complaint.

8 2. Defendants presently lack information or belief sufficient to answer the allegations
9 in Paragraph 2 of the Complaint and on that basis deny them.

10 3. Defendants presently lack information or belief sufficient to answer the allegations
11 in Paragraph 3 of the Complaint and on that basis deny them.

12 4. Defendants admit the allegations in Paragraph 4 of the Complaint.

13 5. Defendants admit the allegations in Paragraph 5 of the Complaint, except deny that
14 Slide, Inc.'s principal place of business is 301 Brannan St, 6th Floor, San Francisco, California
15 94107.

16 JURISDICTION & VENUE

17 6. The allegations in Paragraph 6 of the Complaint are legal conclusions as to which
18 no response is required.

19 7. The allegations in Paragraph 7 of the Complaint are legal conclusions as to which
20 no response is required.

21 COMMON ALLEGATIONS OF FACT

22 A. Bulk SMS Marketing

23 8. Defendants presently lack information or belief sufficient to answer the allegations
24 in Paragraph 8 of the Complaint and on that basis deny them.

25 9. Defendants presently lack information or belief sufficient to answer the allegations
26 in the first sentence of Paragraph 9 of the Complaint and on that basis deny them. Defendants
27 admit the allegations in the second and third sentences of Paragraph 9 of the Complaint.
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1 10. Defendants presently lack information or belief sufficient to answer the allegations
2 in Paragraph 10 of the Complaint and on that basis deny them.

3 **B. Defendants Transmit Text Messages to Consumers Who Do Not Want Them**

4 11. Defendants admit that Disco was a group text messaging application whereby
5 Disco users were able to cause text messages to be sent to all members of a Disco group at once.
6 Defendants deny that Disco was a form of “text message marketing.” Except as expressly
7 admitted, Defendants deny any and all remaining allegations in Paragraph 11 of the Complaint.

8 12. Defendants deny the allegations in Paragraph 12 of the Complaint.

9 13. Defendants admit that Disco was a group text messaging application that enabled
10 users to create groups within which group members could communicate via text message using a
11 common telephone number. Except as expressly admitted, Defendants deny any and all
12 remaining allegations of Paragraph 13 of the Complaint.

13 14. Defendants admit that users (a) could create a Disco group through the Disco
14 website or mobile application; (b) could, at one point during the life of the Disco service, add up
15 to ninety-nine individuals to that group; and (c) in order to add an individual to a group, were
16 required to enter a name and cellular telephone number for the individual. Except as expressly
17 admitted, Defendants deny any and all remaining allegations of Paragraph 14 of the Complaint.

18 15. Defendants deny the allegations in Paragraph 15 of the Complaint.

19 16. Defendants deny the allegations in Paragraph 16 of the Complaint.

20 17. Defendants deny the allegations in Paragraph 17 of the Complaint.

21 18. Defendants deny the allegations in Paragraph 18 of the Complaint.

22 **C. Defendants Harvest the Phone Numbers Submitted by Group Creators to**
23 **Promote the Disco Service Through Text Spam**

24 19. Defendants deny the allegations in Paragraph 19 of the Complaint.

25 20. Defendants deny the allegations in Paragraph 20 of the Complaint.

26 21. Defendants deny the allegations in Paragraph 21 of the Complaint.

27 22. Defendants admit that certain text messages sent through Disco contained a link to
28 a URL from which the Disco mobile application could be downloaded for free. Except as

1 expressly admitted, Defendants deny any and all remaining allegations of Paragraph 22 of the
2 Complaint.

3 23. Defendants deny the allegations in Paragraph 23 of the Complaint.

4 24. Defendants deny the allegations in Paragraph 24 of the Complaint.

5 **D. Plaintiffs' Experience with Defendants**

6 25. Defendants presently lack information or belief sufficient to answer the allegations
7 in Paragraph 25 of the Complaint and on that basis deny them.

8 26. Defendants deny the allegations in Paragraph 26 of the Complaint.

9 27. Defendants presently lack information or belief sufficient to answer the allegations
10 in Paragraph 27 of the Complaint and on that basis deny them.

11 28. Defendants presently lack information or belief sufficient to answer the allegations
12 in Paragraph 28 of the Complaint and on that basis deny them.

13 29. Defendants presently lack information or belief sufficient to answer the allegations
14 in Paragraph 29 of the Complaint and on that basis deny them.

15 30. Defendants presently lack information or belief sufficient to answer the allegations
16 in Paragraph 30 of the Complaint and on that basis deny them.

17 31. Defendants deny the allegations in Paragraph 31 of the Complaint.

18 32. Defendants presently lack information or belief sufficient to answer the allegations
19 in Paragraph 32 of the Complaint and on that basis deny them.

20 33. Defendants presently lack information or belief sufficient to answer the allegations
21 in Paragraph 33 of the Complaint and on that basis deny them.

22 34. Defendants presently lack information or belief sufficient to answer the allegations
23 in Paragraph 34 of the Complaint and on that basis deny them.

24 35. Defendants deny the allegations in Paragraph 35 of the Complaint.

25 36. Defendants admit that Plaintiffs have brought this putative class action and assert a
26 single claim for violation of 47 U.S.C. § 227. Defendants deny that they are liable in any way on
27 Plaintiffs' claim.

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1 37. Defendants admit that Plaintiffs purport to seek injunctive relief, statutory
2 damages, costs and attorneys' fees in this action. Defendants deny that Plaintiffs are entitled to
3 any or all such relief.

4 **CLASS ACTION ALLEGATIONS**

5 38. Defendants admit that Plaintiffs purport to bring this action pursuant to Rules
6 23(b)(2) and 23(b)(3) of the Federal Rules of Civil procedure on behalf of themselves and the
7 classes identified in Paragraph 38 of the Complaint.

8 39. Defendants admit that Plaintiffs purport to exclude the individuals identified in
9 Paragraph 39 from the classes identified in Paragraph 38 of the Complaint.

10 40. The allegations in the first two sentences of Paragraph 40 of the Complaint state
11 legal conclusions to which no response is required. To the extent a response is required,
12 Defendants presently lack information or belief sufficient to answer the allegations in the first two
13 sentences of Paragraph 40 and on that basis deny them. Defendants presently lack information or
14 belief sufficient to answer the allegations in the third, fourth, and fifth sentences of Paragraph 40
15 of the Complaint and on that basis deny them.

16 41. The allegations in Paragraph 41 of the Complaint state legal conclusions to which
17 no response is required. To the extent a response is required, Defendants deny the allegations of
18 Paragraph 41.

19 42. The allegations in Paragraph 42 of the Complaint state legal conclusions to which
20 no response is required. To the extent a response is required, Defendants deny the allegations of
21 Paragraph 42.

22 43. The allegations in Paragraph 43 of the Complaint state legal conclusions to which
23 no response is required. To the extent a response is required, Defendants deny the allegations of
24 Paragraph 43.

25 44. The allegations in Paragraph 44 of the Complaint state legal conclusions to which
26 no response is required. To the extent a response is required, Defendants deny the allegations of
27 Paragraph 44.

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1 45. The allegations in Paragraph 45 of the Complaint state legal conclusions to which
2 no response is required. To the extent a response is required, Defendants deny the allegations of
3 Paragraph 45.

4 46. The allegations in the first and third sentences of Paragraph 46 of the Complaint
5 state legal conclusions to which no response is required. To the extent a response is required,
6 Defendants deny the allegations in the first and third sentences of Paragraph 46. Defendants deny
7 the allegations in the second sentence of Paragraph 46.

8 47. The allegations in Paragraph 47 of the Complaint state legal conclusions to which
9 no response is required. To the extent a response is required, Defendants deny the allegations of
10 Paragraph 47.

11 48. The allegations in Paragraph 48 of the Complaint state legal conclusions to which
12 no response is required. To the extent a response is required, Defendants deny the allegations of
13 Paragraph 48.

14 **FIRST CAUSE OF ACTION**
15 **Telephone Consumer Protection Act**
16 **(Violation of 47 U.S.C. § 227)**

17 49. Defendants incorporate by reference the foregoing responses as if fully set forth
18 herein.

19 50. Defendants deny the allegations in Paragraph 50 of the Complaint.

20 51. Defendants deny the allegations in Paragraph 51 of the Complaint.

21 52. The allegations in Paragraph 52 of the Complaint state legal conclusions to which
22 no response is required. To the extent a response is required, Defendants deny the allegations of
23 Paragraph 52.

24 53. The allegations in Paragraph 53 of the Complaint state legal conclusions to which
25 no response is required. To the extent a response is required, Defendants deny the allegations of
26 Paragraph 53.

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AFFIRMATIVE DEFENSES

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Defendants further plead the following separate and additional defenses. By pleading these defenses, Defendants do not in any way agree or concede that they have the burden of proof or persuasion on any of these issues. Defendants reserve the right to assert additional affirmative defenses in the event that discovery or further investigation demonstrates that any such defense is appropriate or applicable.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)

The Complaint fails to allege facts sufficient to state a cause of action against Defendants.

SECOND AFFIRMATIVE DEFENSE
(First Amendment)

Plaintiffs’ claim is barred because construing the Telephone Consumer Protection Act to prohibit the text messages complained of violates the First Amendment of the United States Constitution.

THIRD AFFIRMATIVE DEFENSE
(Due Process)

Plaintiffs’ claim is barred in whole or in part because the imposition on Defendants of statutory damages under the Telephone Consumer Protection Act would violate the Due Process provisions of the United States Constitution.

FOURTH AFFIRMATIVE DEFENSE
(No Use of an “Automatic Telephone Dialing System”)

Plaintiffs’ claim is barred because neither Defendants nor any alleged agent of Defendants used an “automatic telephone dialing system” under the terms of the Telephone Consumer Protection Act.

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FIFTH AFFIRMATIVE DEFENSE
(Consent)

Plaintiffs' claim is barred in whole or in part because they gave prior express consent, either directly, through group creators or otherwise, to receive the text messages that Defendants allegedly caused to be sent to them.

SIXTH AFFIRMATIVE DEFENSE
(Lack of Standing)

Plaintiffs' claim is barred because Plaintiffs lack standing to bring the claim.

SEVENTH AFFIRMATIVE DEFENSE
(No Injury)

Plaintiffs' claim is barred in whole or in part because Plaintiffs did not suffer any cognizable injury as a result of the actions alleged in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE
(No Proximate Cause)

Plaintiffs' claim is barred in whole or in part because Defendants did not proximately cause any damages, injury or violation alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE
(Acts of Others)

Plaintiffs' claim is barred in whole or in part because any damages, injury, violation of law or wrongdoing alleged in the Complaint was caused by the actions of third parties for which Defendants cannot be held vicariously liable.

TENTH AFFIRMATIVE DEFENSE
(No Knowing or Willful Misconduct)

Any claim by Plaintiffs for treble damages is barred because Defendants did not engage in knowing or willful misconduct.

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ELEVENTH AFFIRMATIVE DEFENSE
(No Injunctive Relief)

Any claim by Plaintiffs for injunctive relief is barred because there is neither continuing harm nor any real and immediate danger of injury in the future.

TWELFTH AFFIRMATIVE DEFENSE
(Improper Class Action)

Plaintiffs cannot satisfy the prerequisites set forth in Rule 23 of the Federal Rules of Civil Procedure to maintain this action as a class action.

THIRTEENTH AFFIRMATIVE DEFENSE
(Estoppel and Waiver)

Plaintiffs' claim is barred in whole or in part by the doctrines of estoppel and waiver.

FOURTEENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Plaintiffs' claim is barred in whole or in part as a result of their failure to mitigate their alleged damages, if any.

FIFTEENTH AFFIRMATIVE DEFENSE
(Communications Decency Act)

Plaintiffs' claim is barred in whole or in part by the Communications Decency Act, 47 U.S.C. § 230(c).

WHEREFORE, Defendants pray that the Court determine and adjudge as follows:

1. That this action cannot be maintained as a class action;
2. That the Complaint be dismissed, with prejudice and in its entirety;
3. That Plaintiffs take nothing by the Complaint, and that judgment be entered against Plaintiffs and in favor of Defendants.
4. That Defendants be awarded their costs of suit and reasonable attorneys' fees; and

