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 SPACE PENCIL, INC. D/B/A KISSMETRICS and
 8 GIGA OMNI MEDIA, INC.

9 [Counsel For Additional Parties
 Listed On Signature Page]

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

15 JOHN B. KIM and DAN C. SCHUTZMAN,
 Individuals, on Behalf of Themselves and Others
 16 Similarly Situated,

17 Plaintiffs,

18 v.

19 SPACE PENCIL, INC. D/B/A KISSMETRICS,
 20 BABYPIPS.COM, INVOLVER.COM, MOO,
 INC., SITENING, LLC., SHOEDAZZLE.COM
 21 INC., 8TRACKS INC., ABOUT.ME,
 FRIEND.LY, GIGA OMNI MEDIA, INC.,
 22 HASOFFERS.COM, KONGREGATE INC.,
 LIVEMOCHA INC., ROCKETTHEME, LLC,
 23 FITNESS KEEPER, INC., SEOMOZ, INC.,
 24 SHARECASH, LLC., SLIDESHARE.NET,
 SPOKEO, INC., SPOTIFY USA, INC.,
 25 VISUAL.LY, CONDUIT USA, FLITE, INC.,
 26 TANGIENT, LLC, ETSY INC, AND
 IVILLIAGE, INC.;

27 Defendants.

CASE NO. 11-CV-3796 LB

**STIPULATION AND ~~PROPOSED~~
 ORDER TO TEMPORARILY VACATE
 DEADLINES FOR DEFENDANTS TO
 RESPOND TO FIRST AMENDED CLASS
 ACTION COMPLAINT PENDING
 OUTCOME OF MEDIATION**

Date Action Filed: Aug. 1, 2011
 Trial Date: Not Set

1 WHEREAS, on August 1, 2011, Plaintiffs John B. Kim and Dan C. Schutzman (“Plaintiffs”)
2 filed a class action complaint against the twenty-six defendants listed on the caption page
3 (“Defendants”) in the above-referenced matter (Docket No. 1);

4 WHEREAS, on September 7, 2011, Plaintiffs filed a First Amended Class Action Complaint
5 (the “Complaint”) against Defendants (Docket No. 31);

6 WHEREAS, on September 30, 2011, this Court entered a Related Case Order relating this
7 case to Case No. 11-CV-03764 LB and transferring this case from Magistrate Judge Elizabeth D.
8 Laporte to this Court (Docket No. 38);

9 WHEREAS, on October 21, 2011, the parties received notice from the Clerk that the Court
10 has scheduled a Case Management Conference for January 26, 2012 at 10:30 a.m., and ordered the
11 parties to file a Joint Case Management Statement by January 19, 2012 (Docket No. 50);

12 WHEREAS, several Defendants have not yet been served, and the Defendants that have been
13 served have received various extensions of time to respond to the Complaint, including to October
14 27, 2011 (Docket Nos. 37, 41, 49), in order to coordinate response times;

15 WHEREAS, if the case moves forward, Plaintiffs may seek leave of Court, or may obtain the
16 agreement of Defendants, to file a Second Amended Complaint;

17 WHEREAS, if the case moves forward, Defendants plan to move to dismiss the Complaint
18 under at least Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and likely would also move to
19 dismiss any further amended complaint on similar grounds;

20 WHEREAS, prior to the filing of a potential further amended complaint and motions to
21 dismiss, and in the interests of judicial efficiency and the conservation of the parties’ resources,
22 Plaintiffs and certain (and potentially all) of the Defendants wish to explore a resolution of this matter
23 through the services of a private mediator sometime before December 22, 2011; and

24 WHEREAS, the parties intend to notify the Court of the results of the mediation (and any
25 follow-up discussions) by no later than January 19, 2012, the date the Joint Case Management
26 Statement is due;

27 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties to this
28 Stipulation, through their respective counsel, and subject to the approval of this Court, as follows:

1 1. Any existing deadlines for Defendants to respond to the Complaint, including the
2 October 27, 2011 deadline, are hereby vacated.

3 2. The parties shall notify the Court in their Joint Case Management Statement of the
4 results of any mediation.

5 3. If the parties have not reached a resolution of this matter by January 19, 2012, the parties
6 shall inform the Court in their Joint Case Management Statement and set a briefing schedule for a
7 Motion to Dismiss or address whether Plaintiffs may file an amended complaint.

8 The requested vacatur of the October 27, 2011 deadline of certain Defendants to respond to
9 the Complaint will not alter the date of any event or any deadline already fixed by Court order. The
10 parties previously stipulated to extend the time of various Defendants to respond to the Complaint
11 (and the initial complaint) to various dates in October 2011. *See* Docket Nos. 12, 25-27, 29, 33, 37,
12 41, 49.

13
14
15 DATED: October 25, 2011

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ S. Ashlie Beringer
S. Ashlie Beringer

Attorneys for Defendants
SPACE PENCIL, INC. D/B/A KISSMETRICS
and GIGA OMNI MEDIA, INC.

DURIE TANGRI LLP

By: /s/ Michael H. Page
Michael H. Page

Attorneys for Defendants
SITENING LLC, FLITE, INC., MODULAR
PATTERNS, LTD., and ETSY, INC.

LAW OFFICES OF STEVEN A. ELLENBERG

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By: /s/ David C. Parisi
David C. Parisi

Attorneys for Plaintiffs
JOHN B. KIM and DAN C. SCHUTZMAN

ATTORNEY ATTESTATION

Pursuant to General Order 45, I, S. Ashlie Beringer, hereby attest that concurrence in the filing of this document has been obtained from the above-listed counsel.

DATED: October 25, 2011

/s/ S. Ashlie Beringer
S. Ashlie Beringer

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 4, 2011



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