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

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

16 Plaintiffs,

17 v.

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

Defendants.

CASE NO. 11-CV-3796 LB

**REPORT FOLLOWING SECOND
 MEDIATION SESSION, AND
 STIPULATION REGARDING:
 and ORDER**

- (i) **FILING OF SECOND AMENDED COMPLAINT;**
- (ii) **DEADLINES FOR SUBMITTING BRIEFING SCHEDULE FOR MOTIONS TO DISMISS AND DATES FOR RULE 26(F) CONFERENCE;**
- (iii) **CONTINUANCE OF CASE MANAGEMENT CONFERENCE AND RELATED DATES;**

AND (PROPOSED) ORDER

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

REPORT FOLLOWING MEDIATION

1 Plaintiffs and defendant Space Pencil Inc. D/B/A KISSmetrics engaged in a second mediation
2 session in this matter on February 15, 2012 before Hon. Justice Edward A. Panelli (Ret.). No
3 agreement to settle was reached, so the parties are proceeding with the litigation.

4 During mediation, Plaintiffs indicated their intent to file an amended complaint.

5 Defendants agree with Plaintiffs that judicial efficiency and the interests of all parties will be
6 best served by (i) allowing Plaintiffs to file their amended complaint within the next 30 days, (ii)
7 having all parties then confer to set a briefing schedule for any motions to dismiss, and to set Rule
8 26(f) conference dates, within two weeks of receiving the amended complaint, and (iii) the parties'
9 submission of a further stipulation to such dates. Given this agreement on how best to proceed in the
10 near term, and given the possibility of some change in the line-up of parties when the amended
11 complaint is filed, the parties believe that it would be efficient to continue the Case Management
12 Conference currently set for March 8, 2012 until the parties submit those proposed briefing dates, and
13 suggest the second week of May for that CMC.

14 **STIPULATION**

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

18 WHEREAS, on September 7, 2011, Plaintiffs filed an amended Class Action Complaint (the
19 "Complaint") against Defendants (Docket No. 31);

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

23 WHEREAS, on October 21, 2011, the parties received notice from the Clerk that the Court
24 had scheduled a Case Management Conference for January 26, 2012, and ordered the parties to file a
25 Joint Case Management Statement by January 19, 2012 (Docket No. 50);

26 WHEREAS, on November 4, 2011, this Court granted the parties' stipulation to temporarily
27 vacate deadlines for Defendants to respond to the Complaint pending the outcome of mediation
28 (Docket No. 56);

1 WHEREAS, on December 19, 2011, certain of the parties participated in a mediation before
2 the Honorable Edward A. Panelli (Ret.) of JAMS, and continued negotiations after the mediation;

3 WHEREAS, the Court thereafter ordered the Case Management Conference to be continued
4 to February 23, 2012, and then to March 8, 2012, and also ordered the pre-conference deadlines to be
5 continued (Docket Nos. 71 & 76);

6 WHEREAS, a second mediation session was conducted before Justice Panelli on February 15,
7 2012;

8 WHEREAS, the parties believe that judicial efficiency will be maximized and that the
9 interests of all parties will be best served by (i) allowing Plaintiffs to proceed file their amended
10 complaint within the next 30 days, (ii) having all parties then confer to set a briefing schedule for any
11 motions to dismiss, and to set Rule 26(f) conference dates, within two weeks thereafter, followed by
12 (iii) the parties' submission of a further stipulation to such dates, and (iv) continuing the Case
13 Management Conference;

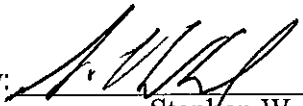
14 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties to this
15 Stipulation, through their respective counsel, and subject to the approval of this Court, as follows:

- 16 1. Any deadlines for Defendants to respond to the Complaint that were vacated by the
17 Court's November 4, 2011 Order remain vacated.
- 18 2. Plaintiffs will file any amended complaint by April 2, 2012 (30 days out)
- 19 3. The Case Management Conference scheduled for March 8, 2012 at 10:30 a.m. is continued
20 to May 10, 2012, and the parties will file a Joint Case Management Statement by May 3, 2012.
- 21 4. By April 16, 2012 (or two weeks after Defendants' receipt of the amended complaint),
22 the parties will confer upon and file with the Court (i) a proposed briefing schedule for any motions
23 to dismiss, and (ii) proposed Rule 26(f) conference dates.

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DATED: March 2, 2012

Respectfully submitted,
NIELSEN HALEY & ABBOTT LLP

By: 
Stephen W. Cusick

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TANGIENT LLC and 8TRACKS, INC.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: March 5, 2012



The Honorable Laurel Beeler
United States Magistrate Judge