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UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

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12 ADVANCED INTERNET TECHNOLOGIES,
 INC., a North Carolina corporation,
 13 Individually and on behalf of all others
 similarly situated,

Case No. C 05 02579 RMW

Consolidated with
 Case No. C 05 02885 RMW

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Plaintiffs,

**DEFENDANT GOOGLE INC'S EX
 PARTE MOTION TO VACATE
 BRIEFING SCHEDULE PENDING
 RULING ON MOTION TO STAY**

15

v.

Judge: Hon. Ronald M. Whyte

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GOOGLE, INC., a Delaware corporation, and
 DOES 1 through 100, Inclusive,

Date Comp. Filed: June 24, 2005

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Defendants.

Trial Date: None set

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STEVE MIZERA, an Individual, individually
 and on behalf of all others similarly situated,

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Plaintiff,

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v.

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GOOGLE, INC., a Delaware corporation; and
 DOES 1 through 100, inclusive,

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Defendants.

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1 Under Civil L.R. 7-10, Google moves *ex parte* for an order vacating the class-
2 certification briefing schedule to allow the Court to rule on Google's pending motion to stay.

3 Google's class-certification brief is currently due on Monday, April 3. On March 9,
4 Google filed an administrative motion under Civil L.R. 7-11 notifying the Court that Google had
5 reached a nationwide class settlement in the parallel state-court case which, once finalized, will
6 fully resolve the class claims in this case, and asking the Court to stay this action pending final
7 approval of the settlement. *See* Declaration of David J. Silbert ("Silbert Decl.") Ex. A. Google
8 requested a stay under Local Rule 7-11 because it believed that doing so was procedurally
9 proper, and because a principal basis for the motion was to avoid undermining the state court's
10 jurisdiction and wasting this Court's and the parties' resources by litigating class certification
11 here while a settlement is being finalized in state court—requiring relief more quickly than a
12 standard noticed motion would allow. *See* Silbert Decl. Exs. A and C.

13 Plaintiff AIT, however, objected to the form of the motion to stay and argued that a
14 noticed motion was required. *See* Silbert Decl. Ex. B. Further, the Court has not yet ruled on the
15 motion, suggesting that the Court, too, may prefer the parties to address the matter more fully,
16 including a hearing or additional briefing. To allow that to occur, the Court should vacate the
17 existing class-certification schedule. Vacating that schedule is necessary to ensure that much of
18 the harm that Google's motion seeks to forestall does not occur while that motion is being
19 decided—namely, endangering "the delicate and transitory process of approving a [class-action]
20 settlement agreement," *see Sandpiper Vill. Condo. Ass'n v. Louisiana-Pacific Corp.*, 428 F.3d
21 831, 845 (9th Cir. 2005), and wasting the Court's and the parties' resources. Further, vacating
22 the schedule will not prejudice AIT. If the Court denies the motion to stay, it may set new dates
23 in the very near future.

24 Vacating the existing class-certification schedule is also appropriate for two additional
25 reasons. First, plaintiffs AIT and Mizera have provided written responses to Google's document
26 requests, but they have interposed numerous objections, and have not yet produced any
27 documents. *See* Silbert Decl. ¶ 3. By itself, this would be a reason to adjust the schedule to
28 allow the parties to meet-and-confer over plaintiffs' discovery responses, and if necessary,

