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 and the Proposed Class

8
 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN JOSE DIVISION**

12 David Almeida, on behalf of himself and all
 13 others similarly situated,

14 Plaintiff,

15 vs.

16 Google Inc., a Delaware Corporation, and
 Does 1 through 10, inclusive,

17 Defendant.

CASE NO. C 08-02088 RMW

**PLAINTIFF'S NOTICE OF NON-
 OPPOSITION TO DEFENDANT
 GOOGLE, INC.'S MOTION TO DISMISS**

Date: April 2, 2010
 Time: 9:00 a.m.
 Dept: 6
 Judge: Hon. Ronald M. Whyte

1 NOTICE IS HEREBY GIVEN by and through Plaintiff David Almeida's ("Plaintiff")
2 counsel of record, that Plaintiff does not oppose Defendant Google Inc.'s ("Google") Motion to
3 Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1).

4 Google moves to dismiss the action, with prejudice, for lack of subject matter jurisdiction
5 based on Plaintiff's lack of standing to represent the putative class. Plaintiff does not oppose the
6 dismissal of the action pursuant to FRCP 12(b)(1). However, the Ninth Circuit has held that if a
7 district court dismisses an action for lack of subject matter jurisdiction, the dismissal must be
8 made without prejudice. *See Kelly v. Fleetwood Enterprises, Inc.*, 377 F.3d 1034, 1036 (9th Cir.
9 2004) (stating that the district court should have dismissed the action without prejudice because
10 it lacked subject matter jurisdiction); *see also Kendall v. Dept. of Veterans Affairs*, 2009 WL
11 5184127, *1 (9th Cir. 2009).

12 Moreover, Plaintiff has been attempting to stipulate to a dismissal of this action since
13 June 2009. [Storti Decl., ¶¶ 3-6.]

14 Accordingly, Plaintiff does not oppose the dismissal of this action but requests that the
15 dismissal be made without prejudice.

16 DATED: March 12, 2010

17 By: _____ /s/
18 **KABATECK BROWN KELLNER LLP**
19 Brian S. Kabateck
20 Richard L. Kellner
21 Alfredo Torrijos
22 *Counsel for Plaintiff and proposed class*