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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE GOOGLE BUZZ USER) C-10-00672 JW
PRIVACY LITIGATION,)
) SAN JOSE, CALIFORNIA
)
) FEBRUARY 7, 2011
)
) PAGES 1-48

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

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APPEARANCES CONTINUED ON NEXT PAGE

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1 SAN JOSE, CALIFORNIA

FEBRUARY 7, 2011

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENEED AND THE
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE CLERK: CALLING CASE NUMBER IN RE
6 GOOGLE BUZZ PRIVACY LITIGATION, ON FOR MOTION FOR
7 FINAL APPROVAL OF CLASS SETTLEMENT AND ATTORNEYS'
8 FEES.

9 FIVE MINUTES EACH SIDE AS TO BOTH
10 MOTIONS.

11 COUNSEL, PLEASE COME FORWARD AND STATE
12 YOUR APPEARANCES.

13 MR. MASON: GOOD MORNING, YOUR HONOR.
14 GARY MASON, CLASS COUNSEL FOR PLAINTIFFS.

15 MR. RAM: GOOD MORNING, YOUR HONOR.
16 MICHAEL RAM FOR THE PLAINTIFF CLASS.

17 MR. RUBENSTEIN: GOOD MORNING, YOUR
18 HONOR. WILLIAM RUBENSTEIN FOR THE PLAINTIFF CLASS.

19 MS. FAHRINGER: SUSAN FAHRINGER
20 REPRESENTING GOOGLE.

21 MR. FURMAN: GOOD MORNING, YOUR HONOR.
22 JOSHUA FURMAN FOR PLAINTIFF OBJECTOR
23 JOHN ZIMMERMAN.

24 MR. PALMER: GOOD MORNING, YOUR HONOR.
25 DARRELL PALMER ON BEHALF OF OBJECTOR STEVEN COPE,

1 AND SPECIALLY APPEARING FOR MEGAN MAREK.

2 MR. HARRIS: GOOD MORNING, YOUR HONOR.
3 JEFFREY P. HARRIS FOR OBJECTOR ALISON JACKSON, AND
4 ALSO MY PARTNER, ALAN STATMAN.

5 MR. OSBORN: GOOD MORNING, YOUR HONOR.
6 DANIEL OSBORN ON BEHALF OF OBJECTOR
7 TANYA RUDGAYZER.

8 MS. GACHOT: GOOD MORNING, YOUR HONOR.
9 NATALIE GACHOT, OBJECTOR APPEARING IN PRO PER.

10 THE COURT: IT'S UNUSUAL TO HAVE THE
11 OBJECTORS OUTNUMBER THE PARTIES IN THIS KIND OF
12 CASE. I ALMOST FEEL LIKE I SHOULD HEAR FROM THE
13 OBJECTORS FIRST, BUT LET'S HEAR FROM YOU,
14 MR. MASON, IS IT?

15 MR. MASON: IT'S MASON, THANK YOU, YOUR
16 HONOR. WE ARE GOING TO KEEP OUR COMMENTS BRIEF AND
17 TRY TO RESERVE TIME FOR REPLY TO THE OBJECTIONS.

18 I'M SPLITTING THE ARGUMENT THIS MORNING
19 WITH MY CO-COUNSEL, PROFESSOR RUBENSTEIN, AND I'M
20 GOING TO LET PROFESSOR RUBENSTEIN ARGUE FIRST ON
21 BEHALF OF THE SETTLEMENT ITSELF, AND I'M PREPARED
22 TO TALK ABOUT ATTORNEYS' FEES.

23 MR. RUBENSTEIN: GOOD MORNING, YOUR
24 HONOR. I'LL BE BRIEF AND WOULD ASK THAT WE RESERVE
25 TIME TO RESPOND TO THE OBJECTORS.

1 JUST TO MAKE SEVERAL POINTS TO PRESENT
2 THE SETTLEMENT TO YOU.

3 THE CASE WAS ORIGINALLY BROUGHT AGAINST
4 GOOGLE HAVING TO DO WITH THE LAUNCH OF THEIR SOCIAL
5 NETWORKING PROGRAM, THE BUZZ PROGRAM.

6 THE CONCERN WAS THAT BUZZ WAS ATTACHED TO
7 GOOGLE'S E-MAIL PROGRAM, GMAIL, AND IT USED THE
8 CONTACTS IN YOUR GMAIL CONTACT LIST AS THE BASIS OF
9 THE SOCIAL NETWORKING PROGRAM.

10 AND THIS RAISED PRIVACY CONCERNS BECAUSE
11 THERE'S A DIFFERENCE BETWEEN PEOPLE WHO YOU HAVE IN
12 YOUR E-MAIL CONTACT LIST AND PEOPLE WHO YOU MIGHT
13 WANT TO BE IN A SOCIAL NETWORKING PROGRAM WITH.

14 HAVING SAID THAT, THE BROADEST
15 ALLEGATIONS ABOUT THE PROGRAM THAT WERE MADE AT THE
16 OUTSET WERE ESSENTIALLY THAT JUST BY LAUNCHING
17 BUZZ, EVERYONE'S GMAIL CONTACT LIST SUDDENLY BECAME
18 PUBLIC TO THE WORLD, AND AFTER INVESTIGATION OF
19 THOSE ALLEGATIONS, THEY TURNED OUT NOT TO BE TRUE,
20 YOUR HONOR.

21 SEVERAL THINGS WE LEARNED WERE THAT --
22 TWO IMPORTANT FACTS.

23 FIRST, FOR ANY INFORMATION TO BECOME
24 PUBLIC, A USER HAD TO ACTIVATE BUZZ, WHICH REQUIRED
25 STEPPING THROUGH SEVERAL SCREENS AND GOING THROUGH

1 AN ACTIVATION PROCESS.

2 AND, SECOND, THE RELEASE OF INFORMATION
3 WASN'T TO THE WHOLE WORLD. IT WAS ONLY BROADCAST
4 ON THE WEB IF YOU HAD A GOOGLE PROFILE AND HAD DONE
5 THAT; OR, SECOND, IT WAS ONLY WITHIN THE NETWORK OF
6 PEOPLE WHO YOU WERE WITHIN.

7 SO WHERE WE STARTED WITH VERY BROAD
8 ALLEGATIONS IN THIS CASE, ONE OF THE THINGS WE
9 FOUND WAS THAT, IN FACT, THE BUZZ PROGRAM,
10 PARTICULARLY AFTER IT WAS MODIFIED THROUGHOUT THE
11 COURSE OF THIS LITIGATION, DIDN'T HAVE AS WIDE
12 DISSEMINATION OF THE PRIVATE INFORMATION AS WE
13 THOUGHT IT DID, AND THE ONLY INFORMATION WE'RE EVER
14 TALKING ABOUT WERE THE E-MAIL ADDRESSES OF YOUR
15 CONTACTS IN YOUR E-MAIL LIST.

16 SO THE PROGRAM -- THE CASE REALLY BECAME
17 ONE OF HAVING TO DEAL WITH GOOGLE'S PROGRAMS THAT
18 ENABLED USERS TO UNDERSTAND WHAT WAS BEING DONE
19 WITH THEIR INFORMATION AND WHETHER THAT WAS
20 SUFFICIENTLY DETAILED SO THAT USERS OF THE PROGRAM
21 KNEW HOW TO CONTROL THE PRIVACY OF THEIR
22 INFORMATION.

23 AFTER WE LEARNED MORE ABOUT THE PROGRAM
24 AND INVESTIGATED IT IN DEPTH, WE ENTERED INTO
25 SETTLEMENT NEGOTIATIONS.

1 WE HAD A FULL DAY MEDIATION IN FRONT OF
2 THE HONORABLE FERN SMITH, A RETIRED FEDERAL COURT
3 DISTRICT JUDGE, THAT YIELDED THE PRESENT SETTLEMENT
4 THAT WE PRESENTED TO THE COURT.

5 THE SETTLEMENT HAS THREE COMPONENTS OF
6 RELIEF FOR THE CLASS, YOUR HONOR: FIRST, IT
7 ACKNOWLEDGES THE CHANGES THAT HAVE BEEN MADE TO THE
8 PROGRAM TO BE MORE PRIVACY SENSITIVE TO USERS;
9 SECOND, GOOGLE'S AGREED TO DO A PUBLIC EDUCATION
10 CAMPAIGN ABOUT THE PRIVACY ASPECTS OF BUZZ SO
11 PEOPLE UNDERSTAND THAT MORE; AND, THIRD, WE'VE
12 CREATED AN \$8.5 MILLION SETTLEMENT FUND.

13 BECAUSE THERE ARE 37 MILLION CLASS
14 MEMBERS, YOUR HONOR, THE SETTLEMENT FUND WILL BE
15 DISTRIBUTED CY PRES TO GROUPS THAT ARE WORKING ON
16 INTERNET PRIVACY AND PUBLIC POLICY EDUCATION ABOUT
17 INTERNET PRIVACY.

18 WE THINK ALL OF THESE BENEFITS ARE VERY
19 STRONGLY SIGNIFICANT FOR THE CLASS.

20 IT IS TRUE CLASS MEMBERS WON'T BE GETTING
21 INDIVIDUAL DAMAGES. IN OUR INVESTIGATIONS, WE
22 DIDN'T FIND ANY INDIVIDUALS WITH ACTUAL
23 OUT-OF-POCKET DAMAGES.

24 HOWEVER, WE ASK THAT THIS CLASS BE
25 CERTIFIED AS A (B) (3) CLASS . YOU'LL REMEMBER WE

1 TALKED ABOUT THAT AT THE PRELIMINARY APPROVAL
2 HEARING, AND THAT GAVE INDIVIDUALS THE OPPORTUNITY
3 TO OPT OUT IF ANYONE HAD INDIVIDUAL DAMAGES THEY
4 WANTED TO PURSUE. THEY HAD THAT OPPORTUNITY IF
5 THEY WANTED TO OPT OUT.

6 570 PEOPLE OPTED OUT OF THE SETTLEMENT,
7 YOUR HONOR. WE DON'T KNOW IF ANY OF THEM HAVE
8 OUT-OF-POCKET DAMAGES. NONE OF THE OBJECTORS AND
9 NO ONE HAS COME FORWARD WITH ANY EVIDENCE OF THAT.

10 SO UNDER THE CIRCUMSTANCES, WE THINK THE
11 SETTLEMENT IS FAIR AND REASONABLE.

12 AGAIN, THE PROCESS BY WHICH IT WAS
13 NEGOTIATED WAS AT ARM'S LENGTH IN FRONT OF A
14 FEDERAL JUDGE, RETIRED FEDERAL JUDGE. THE TERMS
15 ARE VERY FAVORABLE.

16 WE FACED SIGNIFICANT RISKS OF LITIGATING
17 IT FURTHER. I'LL MENTION TWO VERY QUICKLY. OUR
18 MAIN CLAIM WAS UNDER THE STORED COMMUNICATIONS ACT.

19 THE STORED COMMUNICATIONS ACT ALLOWS THE
20 RELEASE OF RECORD INFORMATION, BUT NOT CONTENT
21 INFORMATION.

22 GOOGLE'S POSITION WAS THAT THE E-MAIL
23 ADDRESSES, EVEN IF THEY WERE RELEASED WITHOUT USER
24 CONSENT, WERE JUST RECORD INFORMATION AND NOT
25 CONTENT INFORMATION.

1 SECOND, GOOGLE'S POSITION IS THAT USERS
2 CONSENTED BY GOING THROUGH THE STEPS OF THE BUZZ
3 PROGRAM TO SET UP THEIR ACTIVATION, AND WE WOULD
4 HAVE FACED SIGNIFICANT RISK OF PROVING THERE WAS NO
5 USER CONSENT IN THESE CIRCUMSTANCES.

6 YOUR HONOR, WE BELIEVE THE SETTLEMENT
7 COMPARES FAVORABLY TO OTHER SETTLEMENTS OF THIS
8 TYPE. WE THINK THIS IS ONE OF, IF NOT THE LARGEST
9 PRIVACY FUND THAT WILL EVER BE SET UP TO FUND
10 INTERNET PRIVACY.

11 WE'VE PRESENTED IN OUR MOTION PAPERS A
12 LOT OF SETTLEMENTS THAT HAVE NO MONETARY RELIEF,
13 SOME SETTLEMENTS WITH LESS MONETARY RELIEF, AND WE
14 ONLY KNOW OF ONE SETTLEMENT WITH MORE, A LARGER
15 FUND, AND THAT'S THE FACEBOOK SETTLEMENT WHICH IS
16 NOW ON APPEAL IN THE NINTH CIRCUIT.

17 SECOND, YOUR HONOR NOTED THAT THERE ARE A
18 SIGNIFICANT NUMBER OF OBJECTORS IN THE COURTROOM
19 AND WE WILL ALLOW YOU TO HEAR THEM AND HEAR WHAT
20 THEY HAVE TO SAY.

21 I WANT TO NOTE SEVERAL THINGS FOR THE
22 RECORD. NO GOVERNMENT'S OBJECTED TO THIS
23 SETTLEMENT UNDER CAFA. WE SERVED ALL THE STATE
24 ATTORNEY GENERALS.

25 THE UNITED STATES -- THE FTC IS

1 OVERSEEING A COMPLAINT ABOUT THIS SAME PROGRAM AND
2 THEY DID NOT OBJECT TO THIS SETTLEMENT.

3 NO INDEPENDENT CONSUMER GROUPS OBJECTED
4 TO THE SETTLEMENT.

5 THE TOTAL NUMBER OF OBJECTORS IS ABOUT
6 ONE IN A MILLION AS THERE ARE 37 MILLION CLASS
7 MEMBERS.

8 I NOTED, YOUR HONOR, IN YOUR FIRST
9 FAIRNESS HEARING THIS MORNING, THERE WAS ONE
10 OBJECTOR AND THE CLASS SIZE WAS 300,000. THAT
11 TRANSLATES INTO ABOUT 100 OBJECTORS, TWICE AS MANY
12 AS WE HAVE HERE.

13 AND IN THE SECOND FAIRNESS HEARING YOU
14 HAD THIS MORNING, THERE WERE 25 OBJECTORS IN A
15 CLASS OF 200,000. THAT TRANSLATED INTO ABOUT 3700
16 OBJECTORS.

17 WE HAVE A TOTAL OF 47 OBJECTORS TO THIS
18 SETTLEMENT.

19 SO WE THINK THE SETTLEMENT HAS NOT
20 RECEIVED A SIGNIFICANT AMOUNT OR SIGNIFICANT
21 QUALITY OF OBJECTION.

22 WE'D RESERVE THE RIGHT TO RESPOND TO WHAT
23 THE OBJECTORS HAVE TO SAY AND WE THANK YOU FOR
24 CONSIDERING THIS.

25 THE COURT: JUST ONE QUESTION. I HAD

1 UNDERSTOOD THAT THERE HAD BEEN A SIGNIFICANT
2 CHANGE, NOT JUST IN THE PROCEDURE OF BUZZ, BUT THE
3 BUZZ PROGRAM ITSELF HAD BEEN MODIFIED IN SOME WAY.

4 AM I CORRECT OR INCORRECT?

5 MR. RUBENSTEIN: WHEN YOU SAY NOT JUST IN
6 THE PROCEDURES, BUT --

7 THE COURT: IN OTHER WORDS, THE -- AS I
8 UNDERSTAND THE WAY THE PROGRAM WAS SET UP, YOU HAD
9 TO STEP THROUGH A NUMBER OF SCREENS, AND AT THE END
10 OF THAT, YOU WERE IN A POSITION OF BEING A MEMBER
11 OF THIS SOCIAL NETWORK AND YOUR E-MAIL ADDRESSES OF
12 THOSE TO WHOM YOU USE GMAIL, I GUESS, WERE THEN
13 PART OF THE NON-PRIVATE INFORMATION.

14 IS THAT STILL THE CASE?

15 MR. RUBENSTEIN: IT IS STILL THE CASE
16 THAT IF YOU USE BUZZ, TO SET IT UP, YOU STEP
17 THROUGH A SERIES OF SCREENS.

18 THE THREE STEPS THAT YOU GO THROUGH HAVE
19 EACH CHANGED SINCE THE INCEPTION OF BUZZ, AND THE
20 CHANGES THAT HAVE BEEN MADE IN EACH OF THEM -- AND
21 I'M HAPPY TO WALK YOUR HONOR THROUGH WHAT THEY
22 ARE -- THE CHANGES THAT HAVE BEEN MADE IN EACH OF
23 THE THREE STEPS HAVE MADE EACH STEP MORE PRIVACY
24 SENSITIVE AND HAVE GIVEN USERS MORE CONTROL OVER
25 WHO IS IDENTIFIED AS BEING IN THEIR SOCIAL NETWORK

1 AND OVER WHETHER THE USER WANTS THAT INFORMATION TO
2 BE MADE PUBLIC OR TO BE KEPT PRIVATE.

3 IF, AT THE END OF THOSE THREE STEPS, THE
4 USER'S CHOICES ARE TO REVEAL WHO'S IN THEIR SOCIAL
5 NETWORK, THEN THAT INFORMATION WILL BE PUBLIC.

6 IF THE USER SELECTS THE OPTIONS THAT
7 GOOGLE -- I'M SORRY, I SHOULD BACK UP.

8 THAT INFORMATION WILL BE SHARED AMONG THE
9 PEOPLE IN THE SOCIAL NETWORK.

10 IF THAT PERSON HAS A GOOGLE PROFILE, IT
11 COULD BE ON THE WEB AS WELL.

12 IF THE PERSON, IN SETTING UP BUZZ,
13 SELECTS THE OPTIONS TO KEEP THE INFORMATION PRIVATE
14 AND NOT POST AMONG THE SOCIAL NETWORK OR ON THE
15 WEB, THEN THAT INFORMATION WILL NOT BE MADE PUBLIC,
16 YOUR HONOR. IT'S KEPT WITHIN THE SOCIAL NETWORK OR
17 KEPT PRIVATE TOTALLY. THE USER HAS CONTROL OVER IT
18 IN THAT SENSE.

19 I DON'T KNOW IF THAT ADDRESSED YOUR
20 QUESTION.

21 THE COURT: IT -- WELL, AT LEAST IT SAID
22 WORDS THAT CLARIFIED THAT THERE IS A PROCEDURE
23 STILL NOW WHERE IF YOU GO THROUGH THESE SCREENS AND
24 YOU AREN'T -- YOU DON'T SELECT THEM IN A CERTAIN
25 WAY, YOU COULD UNWITTINGLY END UP AT A CIRCUMSTANCE

1 WHERE YOUR MAIL RECIPIENTS BECOME PART OF THE
2 SOCIAL NETWORK THAT YOU'VE REVEALED TO THE PUBLIC.

3 MR. RUBENSTEIN: UNWITTINGLY IS THE HITCH
4 HERE. THE QUESTION IS HOW MUCH CONTROL A USER HAS
5 AND WHAT THEIR OPTIONS ARE.

6 LET ME GIVE YOU ONE EXAMPLE. WHEN THE
7 PROGRAM STARTED, THE SECOND STEP OF THE PROGRAM
8 SAID "THESE ARE THE PEOPLE YOU'RE ALREADY
9 FOLLOWING," AND IT HAD A LIST OF PEOPLE WHO WERE
10 YOUR E-MAIL CONTACTS WITH WHOM YOU COMMUNICATED
11 MOST FREQUENTLY.

12 NOW WHEN YOU GO THROUGH THAT STEP, NEXT
13 TO EACH OF THOSE PERSON'S NAME AND E-MAIL ADDRESS,
14 THERE'S A CHECKMARK AND IT'S CLEAR THAT YOU CAN
15 CHECK OR UNCHECK EACH OF THE PEOPLE WHOM YOU WANT
16 TO SELECT TO HAVE IN YOUR NETWORK.

17 SO THE PROGRAM MAKES IT EASIER TO TAKE
18 OUT PEOPLE WHOM YOU DON'T WANT TO COMMUNICATE --
19 YOU DON'T WANT TO BE IDENTIFIED --

20 THE COURT: BUT THE DEFAULT IS THAT
21 THEY'RE INCLUDED AND YOU HAVE TO ACTUALLY GO
22 THROUGH THE STEP OF DESELECTING THEM?

23 MR. RUBENSTEIN: CORRECT. THAT IS
24 CORRECT, YOUR HONOR, AND THAT'S ONE THING WE TALKED
25 ABOUT QUITE A BIT IN THE MEDIATION.

1 BUT HAVING SAID THAT, THAT CURRENT SET UP
2 WHERE YOU CAN EASILY UNCLICK IS BETTER THAN IT WAS
3 WHEN THE PROGRAM STARTED.

4 AND I SHOULD SAY, WHEN THE PROGRAM
5 STARTED -- PART OF THE CONFUSION ABOUT THIS IS
6 GOOGLE'S ADVERTISEMENTS OF THIS PROGRAM SAID
7 THERE'S NO SET UP NEEDED, YOU'RE AUTOMATICALLY
8 FOLLOWING ALL OF THESE PEOPLE.

9 WHAT BUZZ NOW SAYS IS "WE SUGGEST THAT
10 YOU FOLLOW THE FOLLOWING PEOPLE," AND IT HAS THE
11 CHECKMARKS AND YOU CAN TAKE THEM OUT.

12 THERE'S ALSO, IN THE THIRD STEP OF THE
13 PROGRAM, AN OPPORTUNITY TO DESELECT AGAIN THE LEVEL
14 OF PRIVACY THAT YOU WANT -- TO SELECT THE LEVEL OF
15 PRIVACY THAT YOU WANT WITH REGARD TO THE PEOPLE WHO
16 ARE IN YOUR SOCIAL NETWORK.

17 AND, YOUR HONOR, I'M SURE --

18 THE COURT: I'M SURE MS. FAHRINGER WOULD
19 WANT TO ADD TO THIS.

20 GO AHEAD, MA'AM.

21 MS. FAHRINGER: JUST ONE POINT OF
22 CLARIFICATION.

23 YOU HAD ASKED ABOUT E-MAIL ADDRESSES, AND
24 JUST TO BE CLEAR, AT NO POINT WERE ACTUAL E-MAIL
25 ADDRESSES PUBLICLY DISCLOSED.

1 WHAT WAS DISCLOSED, ONCE ALL OF THE
2 SCREENS HAD BEEN SHOWN, ONCE ALL OF THE TRIGGERS
3 HAD BEEN APPROVED BY THE USER, WAS THE PROFILE NAME
4 OF YOUR FOLLOWERS, AND FOR THOSE, IT WAS ONLY THOSE
5 PEOPLE WHO HAD ALSO CREATED A PUBLIC PROFILE.

6 SO THE DISCLOSURE WAS NOT ONLY TO A
7 SMALLER GROUP THAN ORIGINALLY ALLEGED IN THE
8 COMPLAINT, AND ALWAYS HAS BEEN, BUT IT WAS ONLY OF
9 THOSE PEOPLE WHO HAD THEMSELVES GONE THROUGH A
10 PROCESS TO CREATE AND APPROVE THEIR OWN PUBLIC
11 PROFILE.

12 SO IT ACTUALLY IS JUST A FAR NARROWER
13 GROUP AND DOES NOT INCLUDING E-MAIL ADDRESSES THAT
14 ULTIMATELY ARE PARTICIPATING IN THE BUZZ PROGRAM.

15 THE COURT: WELL, LET'S HEAR FROM THE
16 OBJECTORS AND THEN WE'LL COME BACK.

17 MR. RUBENSTEIN: THANK YOU VERY MUCH.

18 THE COURT: ANY OBJECTOR WISH TO SPEAK TO
19 THE COURT?

20 MR. HARRIS: JEFFREY HARRIS. GOOD
21 MORNING, YOUR HONOR. JEFFREY HARRIS FROM STATMAN,
22 HARRIS & EYRICH. WE REPRESENT OBJECTOR
23 ALISON JACKSON.

24 AFTER DISCUSSIONS WITH ALISON JACKSON,
25 AND AFTER REVIEWING THE NOTICE AND THE SETTLEMENT

1 AGREEMENT, WE BECAME CONCERNED THAT THERE REALLY IS
2 SOME SERIOUS TECHNICAL PROBLEMS IN THIS SETTLEMENT,
3 AND ALSO SOME SUBSTANTIVE ISSUES THAT NEED TO BE
4 ADDRESSED.

5 AS IN EVERY SETTLEMENT, THE REMEDY NEEDS
6 TO FIT THE PROBLEM, AND WE DON'T THINK THAT'S
7 HAPPENING HERE.

8 WE'RE NOT IN THE BUSINESS OF OBJECTING.
9 WE'VE NEVER OBJECTED BEFORE IN A CLASS ACTION CASE,
10 ALTHOUGH WE'VE BEEN INVOLVED IN CLASS ACTION CASES.

11 BUT IN THIS PARTICULAR CASE, WE THINK
12 THAT WE NEED TO ASSIST THIS CLASS TO -- AND TO --
13 AND OUR CLIENT TO GET A REMEDY THAT MORE FITS THE
14 PROBLEM.

15 AND WE'RE NOT HERE TO DERAIL THIS
16 SETTLEMENT, BUT WE BELIEVE THAT IT CAN BE
17 RESTRUCTURED TO ADDRESS THE CONCERNS OF THE CLASS,
18 AND POSSIBLY ALSO IT NEEDS TO BE RESTRUCTURED
19 BECAUSE IF IT GOES THROUGH THIS WAY, WE FEEL
20 THERE'S A VERY STRONG LIKELIHOOD THAT THIS CASE
21 WILL BE OVERTURNED ON APPEAL.

22 WE RAISED FIVE SPECIFIC OBJECTIONS.
23 THREE OF THOSE OBJECTIONS WERE NOT DEALT WITH IN
24 THE REPLY, AND TWO OF THEM WERE PARTIALLY
25 ADDRESSED, BUT REALLY THE WAY IT WAS ADDRESSED

1 ACTUALLY SUPPORTS THE OBJECTION.

2 THE FIRST, WHICH IS A VERY SPECIFIC
3 OBJECTION, IS THAT EVERYTHING THAT'S BEEN FILED IN
4 THIS CASE SHOWS THAT WHAT THEY DID TO REMEDY THE
5 PROBLEM ALL OCCURRED BEFORE FEBRUARY 17TH WHEN THE
6 FIRST CASE WAS FILED.

7 THERE WAS ONE THING THAT HAPPENED AFTER,
8 ON APRIL 5, WHEN THERE WAS A CONFIRMATION NOTICE
9 SENT OUT.

10 SO WE HAVE A SITUATION WHERE THE
11 PLAINTIFF -- AND AS FAR AS I CAN SEE, GOOGLE IS
12 SAYING THE PROBLEM'S REMEDIED ON APRIL 5.

13 WE HAVE A CLASS PERIOD, THOUGH, THAT RUNS
14 TO THE DATE OF THE NOTICE.

15 THIS MEANS THAT THIS CLASS IS OVERBROAD.
16 PEOPLE FROM APRIL 5 WHO JOINED GMAIL THROUGH THE
17 NOTICE DATE HAVE NO DAMAGE AND, AS IN EVERY CLASS
18 ACTION, YOU START WHEN THE PROBLEM HAPPENED, AND
19 YOU STOP THE CLASS PERIOD WHEN THE PROBLEM'S
20 RESOLVED.

21 WE TRIED TO DISCUSS THIS WITH PLAINTIFFS'
22 COUNSEL. WE TRIED TO DEAL WITH THIS ISSUE.

23 BUT THERE'S BEEN NO AVAIL.

24 BUT I THINK THAT JUST BECAUSE GOOGLE
25 WANTS THE BROADEST RELIEF POSSIBLE AS FAR AS A

1 RELEASE GOES BY INCLUDING ALL THESE PEOPLE, THEY
2 GET THE RELEASE FOR THEM, IT DOESN'T JUSTIFY
3 INCLUDING PEOPLE WHO ARE AFTER -- WHO JOINED AFTER
4 THE DATE THE PROBLEM'S REMEDIED.

5 SECONDLY, THE WAY THE SETTLEMENT IS
6 STRUCTURED, AND IF YOU READ THE SETTLEMENT
7 AGREEMENT CAREFULLY, THE RELEASE FOR THE ENTIRE
8 CLASS HAPPENS AT THE TIME THIS FINAL ORDER GETS
9 FILED.

10 HOWEVER, THE DISTRIBUTION OF THE CY PRES
11 FUND DOESN'T HAPPEN UNLESS THE FINAL ORDER GETS
12 ENTERED AND IT BECOMES NON-APPEALABLE.

13 SO YOU HAVE PEOPLE GIVING UP THEIR CLAIMS
14 BEFORE THE CY PRES FUND IS OBLIGATED TO BE
15 DISTRIBUTED.

16 WE BELIEVE THAT THESE THINGS SHOULD
17 COTERMINOUS. IF PEOPLE ARE GIVING UP THEIR CLAIMS,
18 IT SHOULD BE AT THE TIME THE FINAL ORDER IS
19 NON-APPEALABLE, JUST LIKE AT THE SAME TIME THE
20 BENEFIT IS TO BE GIVEN TO THE CLASS.

21 THE THIRD THING IS THEY'RE CLAIMING THAT
22 THERE'S A BENEFIT FROM SOME KIND OF EDUCATION
23 PROGRAM, AND ALSO A BENEFIT FROM THE CASE BEING
24 FILED.

25 THE FACT OF THE MATTER IS THIS CASE WAS

1 FILED ON FEBRUARY 17TH. ALL OF THE AFFIRMATIVE
2 ACTIONS OF CHANGING THE PROGRAM HAPPENED BEFORE THE
3 CASE WAS FILED.

4 AND THE EDUCATION EFFORTS ARE NOT
5 DESIGNATED AND THEY'RE TOTALLY IN GOOGLE'S
6 DISCRETION.

7 IF THERE'S EDUCATION EFFORTS, THIS
8 COURT -- AND IT'S PART OF ITS FIDUCIARY DUTY TO THE
9 CLASS -- SHOULD HAVE THE OPPORTUNITY TO KNOW WHAT
10 THOSE EDUCATIONAL EFFORTS ARE AND TO MAKE SURE THAT
11 THEY'RE SPECIFICALLY ADDRESSING THE PROBLEM.

12 THE FOURTH ISSUE, WHICH I THINK IS JUST A
13 FATAL FLAW, IS THEY HAVE A CY PRES FUND, BUT THEY
14 DON'T DESIGNATE THE CY PRES RECIPIENT.

15 NOW, THAT'S OKAY, AND IT ACTUALLY CAME UP
16 IN THE CASE THAT WAS BEFORE US, AND I APOLOGIZE, I
17 FORGET THE NAME.

18 IN THAT CASE, THEY SAID "WE'RE GOING TO
19 HAVE A CY PRES FUND THAT, YOU KNOW, BENEFITS THE
20 CLASS, AND WHEN WE DETERMINE IT, WE'RE GOING TO
21 COME BACK TO THIS COURT SO THE COURT CAN EXERCISE
22 ITS FIDUCIARY DUTY AND TELL THE COURT WHO THE FUND
23 IS AND LET THE COURT KNOW TO SEE IF IT'S AN
24 APPROPRIATE FUND."

25 THEY DON'T DO THAT IN THIS SETTLEMENT,

1 AND THEIR OWN CASES -- WELL, FIRST OF ALL, WE CITED
2 PROBABLY THE CASE MOST ON POINT, SIX MEXICAN
3 WORKERS. IT CLEARLY SAYS THE BURDEN OF PROVING THE
4 CY PRES RECIPIENT IS ACCEPTABLE AND BENEFITS THE
5 CLASS IS ON THE DEFENDANT AND THAT THERE NEEDS TO
6 BE A RECORD.

7 HOW CAN THERE BE A RECORD IF YOU DON'T
8 EVEN KNOW WHO THE CY PRES RECIPIENT IS?

9 AND SECONDLY, IT CLEARLY SAYS THAT THE
10 COURT, AS PART OF ITS FIDUCIARY DUTY, NEEDS TO
11 REVIEW THAT.

12 THE CASES THAT THEY CITE -- EVERY CASE
13 THAT THEY CITE IN THEIR REPLY, EXCEPT FOR ONE WHICH
14 DIDN'T ADDRESS THE ISSUE, ALL WERE CASES IN WHICH
15 THE CY PRES RECIPIENT WASN'T DESIGNATED AT THE TIME
16 OF THE HEARING, BUT THERE WAS LANGUAGE IN THE
17 SETTLEMENT AGREEMENT THAT REQUIRED THEM TO COME
18 BACK TO COURT AND HAVE THE COURT LOOK AT IT AND
19 APPROVE IT.

20 THE LAST POINT, WHICH I'M NOW GETTING
21 LONG AND I APOLOGIZE, BUT IT'S AN IMPORTANT POINT,
22 IS THAT EVERYONE KEEPS TALKING ABOUT NO DAMAGE, NO
23 HARM.

24 THERE IS ONE PERSON WHO FILED AN
25 OBJECTION THAT CLAIMED HARM OF IDENTITY THEFT.

1 I DID GO THROUGH THIS WITH A COLLEAGUE OF
2 MINE --

3 THE COURT: WAS THAT MS. JACKSON?

4 MR. HARRIS: NO. THAT WAS -- EXCUSE ME.
5 THAT WAS CLAIM NUMBER 86, KAREN SUE --

6 THE COURT: I JUST WANTED TO KNOW IF IT
7 WAS YOUR CLIENT.

8 MR. HARRIS: KAREN SUE LLANO.

9 BUT IN PREPARING FOR THIS HEARING, I WENT
10 WITH A COLLEAGUE IN MY OFFICE, AN ATTORNEY, AND
11 WENT BACK TO HER GOOGLE BUZZ ACCOUNT AND WE LOOKED
12 AT HER GOOGLE BUZZ ACCOUNT.

13 SHE HAD NEVER SEEN IT BEFORE. SHE DIDN'T
14 KNOW IT EXISTED.

15 SHE WAS NOT FOLLOWING ANY PEOPLE. THERE
16 WAS ONE PERSON THAT WAS FOLLOWING HER.

17 AND I KNEW SHE HAD BEEN MARRIED, SO I
18 JOKINGLY SAID, "HEY," I'M NOT GOING TO SAY HER
19 NAME, "BUT HEY, IT'S PROBABLY YOUR EX-HUSBAND."

20 GUESS WHAT? IT WAS HER EX-HUSBAND.

21 AND GUESS WHAT ELSE? SHE HAD A
22 RESTRAINING ORDER AGAINST HIM THAT HAD JUST COME UP
23 30 DAYS AGO.

24 NOW, THE POINT TO THAT STORY IS, WHAT
25 HAPPENS IF THIS GUY, BECAUSE OF INFORMATION HE GOT

1 FROM THE RELEASE ON FEBRUARY 9TH, THREE WEEKS FROM
2 NOW DOES SOMETHING, MAIMS HER, HARMS HER, DISABLES
3 HER?

4 THE WAY THIS IS STRUCTURED RIGHT NOW, HER
5 CLAIM WOULD BE RELEASED BECAUSE WHAT THEY NEED TO
6 DO IS THEY NEED TO CARVE OUT THAT THIS DOES NOT
7 APPLY TO ANYBODY THAT HAS A PERSONAL INJURY AS A
8 RESULT OF THE RELEASE OF INFORMATION.

9 THE COURT: THANK YOU, MR. HARRIS.

10 OTHERS WHO HAVE OBJECTIONS WANT TO SPEAK?

11 MR. FURMAN: YOUR HONOR, JOSHUA FURMAN
12 FOR JOHN ZIMMERMAN, OBJECTOR.

13 YOUR HONOR, FIRST OF ALL, I APOLOGIZE TO
14 THE COURT. THERE WAS A MISSTATEMENT IN OUR BRIEF.
15 WE STATED TO THE COURT THAT THERE WERE SO-CALLED
16 CONFIRMATORY DISCOVERY OR NEGOTIATIONS THAT TOOK
17 PLACE AT THE DEFENDANT'S OFFICE.

18 IT WAS PLAINTIFFS' COUNSEL'S OFFICE, SO I
19 APOLOGIZE TO THE COURT FOR THAT.

20 THERE'S BEEN A LOT MADE IN THE REPLY
21 BRIEF ABOUT THIS CONTEXT VERSUS RECORD DICHOTOMY
22 AND THAT THERE MIGHT BE A DIFFICULTY TRYING TO GET
23 THESE LAWS TO APPLY TO A PRIVACY DISCLOSURE IN THE
24 SOCIAL MEDIA CONTEXT.

25 THERE REALLY IS VERY LITTLE ABOUT WHAT

1 THE CASES SAY ABOUT THAT DICHOTOMY, YOUR HONOR, IN
2 TERMS OF THE CONTENT VERSUS RECORD.

3 THERE ARE TWO DISCRETE CATEGORIES THAT
4 ARE CONSIDERED RECORD AND EXEMPTED, AND ONE THEM IS
5 NOT PHOTOS OF THE INDIVIDUALS.

6 I BELIEVE THAT UNDER THIS, UNDER THE
7 GOOGLE BUZZ PROGRAM, NOT ONLY DO YOU GET THE ACTUAL
8 NAMES, BUT IF IT'S PART OF THEIR PROFILE, YOU GET
9 PHOTOS ALSO OF THESE INDIVIDUALS.

10 SO THAT'S PART OF THE ISSUE THERE.

11 AND THERE'S CERTAINLY NO CASE HOLDING
12 THAT IN A CIVIL CONTEXT THAT THIS INFORMATION IS
13 EXEMPTED FROM THE PROTECTIONS OF THE STORED
14 COMMUNICATIONS ACT.

15 THERE'S ALSO A REALLY FUNDAMENTAL PROBLEM
16 WITH THE CHARACTER OF THE DAMAGES AND THE WAY THAT
17 THE STATUTORY SCHEME ADDRESSES THEM.

18 WE HAVE THE CY PRES ONLY DISTRIBUTION,
19 AND WHEN I SAY "CY PRES ONLY," IT'S NOT JUST THE
20 MONETARY RELIEF THAT'S GOING TO THE CY PRES FUND,
21 IT'S THE ONLY RELIEF.

22 THERE'S -- IN EVERY SINGLE CASE THAT WAS
23 DISCUSSED IN THE BRIEFS THAT CLASS COUNSEL PUT
24 FORWARD, THERE IS SOME DIRECT RELIEF THAT'S GOING
25 TO THE CLASS MEMBERS.

1 IN THE PERRY CASE, THEY HAD AN IN KIND
2 DIRECT BENEFIT IN TERMS OF THEY GOT CREDIT
3 REPORTING DIRECT TO THE CLASS MEMBERS.

4 IN THE INTUIT CASE, THERE WAS SIGNIFICANT
5 INJUNCTIVE RELIEF.

6 AND THE OTHER CASES HAVE ALREADY BEEN
7 ADDRESSED, LANE VERSUS FACEBOOK, DOUBLECLICK, THERE
8 WAS SIGNIFICANT INJUNCTIVE RELIEF, AS WELL AS IN
9 THE DELISE CASE.

10 AND IN THE KEDS CASE, THERE WAS A VERY
11 STRONG CONSENT DECREE.

12 ALL THESE THINGS LIMITED WHAT THE
13 DEFENDANT COULD DO FOLLOWING THE ENTRY OF THE
14 SETTLEMENT OR THE CONSENT DECREE.

15 WE DON'T HAVE THAT HERE. WE'VE GOT THESE
16 CHANGES THAT WERE ALLEGEDLY MADE AND,
17 HYPOTHETICALLY SPEAKING, ONLY HYPOTHETICALLY
18 SPEAKING, THEY COULD LITERALLY SIGN OFF ON
19 RELEASING ALL THESE CLAIMS AND TOMORROW CHANGE THE
20 PROCEDURES BACK TO SOME OTHER WAY.

21 THERE'S NOTHING THAT'S PREVENTING THEM
22 FROM DOING THAT UNDER THIS, UNDER THIS AGREEMENT,
23 SO THAT INJUNCTIVE RELIEF IS COMPLETELY ILLUSORY.

24 THE ONLY OTHER THINGS THAT WERE
25 CONSIDERED INJUNCTIVE RELIEF UNDER THE SETTLEMENT

1 AGREEMENT WERE THESE QUASI DISCOVERY ACTS THAT WERE
2 DONE, AND WHICH THEY ARE REQUIRED TO DO ANYWAY IF
3 YOU ACTUALLY SERVE DISCOVERY, AND THIS P.R. PROGRAM
4 THAT I THINK MR. HARRIS -- I BELIEVE THAT WAS HIS
5 NAME -- ADDRESSED THAT THE EDUCATION PROGRAM HAS NO
6 SUPERVISION FROM THE COURT, THERE'S NO WAY FOR THIS
7 COURT TO DETERMINE THAT THAT RELIEF IS ADEQUATE OR
8 THAT IT EVEN TARGETS THE CLASS IN ANY WAY AND IN
9 THAT CY PRES ONLY RELIEF UNDER THESE STATUTES,
10 THESE PRIVACY STATUTES, IS CONTRARY TO THE
11 STATUTORY SCHEME.

12 THE ONLY CASES THAT ARE OUT THERE THAT
13 ADDRESS THIS ISSUE SAY THAT WHEN YOU'VE GOT THESE
14 KIND OF STATUTORY DAMAGES, A CY PRES ONLY SOLUTION
15 IS NOT ACCEPTABLE.

16 THERE'S SOME CRITICISM IN THE RELY BRIEF
17 OF THE SIMER CASE SAYING THAT IT WASN'T WELL CITED.

18 THE SIMER CASE LAYS OUT THESE ISSUES VERY
19 CLEARLY. IT'S BEEN CITED OVER 200 TIMES, AND FIVE
20 TIMES BY THE NINTH CIRCUIT, SO I THINK THAT
21 CRITICISM RINGS HOLLOW.

22 AND IF CLASS COUNSEL IS CONCERNED THAT
23 THESE -- THAT THERE'S GOING TO BE A HARD TIME
24 APPLYING THESE PRIVACY CASES, THESE PRIVACY LAWS TO
25 THIS KIND OF SITUATION, THEY SHOULD BE EQUALLY

1 CONCERNED ABOUT HAVING CY PRES ONLY DISTRIBUTION
2 BECAUSE IT'S NOT BEEN DONE BEFORE.

3 THERE'S SIMPLY NOTHING THAT I WAS ABLE TO
4 FIND, AND NOTHING THAT CLASS COUNSEL CITED, THAT
5 SAYS WE HAVE EVER HAD A CY PRES ONLY DISTRIBUTION
6 WHEN NO RELIEF WHATSOEVER GOES TO THE ACTUAL CLASS
7 MEMBERS.

8 THE COURT: THANK YOU MR. FURMAN.

9 MR. FURMAN: AND AGAIN, YOUR HONOR, I
10 WOULD JUST ALSO ECHO THE ISSUE THAT THESE ARE
11 MYSTERY CY PRES RECIPIENTS. WE DON'T KNOW WHO THEY
12 ARE AND WE CAN'T DO THE SIX MEXICAN WORKERS
13 ANALYSIS WITHOUT THAT INFORMATION.

14 THANK YOU, YOUR HONOR.

15 THE COURT: OTHER OBJECTORS?

16 MR. OSBORN: DANIEL OSBORN ON BEHALF OF
17 OBJECTOR RUDGAYZER.

18 GOOD MORNING, YOUR HONOR.

19 THE COURT OBVIOUSLY HAS A LOT OF
20 EXPERIENCE IN CLASS ACTIONS AND IS FULLY --

21 THE COURT: THIS MORNING ALONE.

22 MR. OSBORN: I WAS SURPRISED TO SEE THAT
23 ON THE CALENDAR, FRANKLY.

24 OBVIOUSLY YOU'RE FAMILIAR WITH THE PHRASE
25 FAIR, REASONABLE AND ADEQUATE AS THE HALLMARK AND

1 BENCHMARK FOR APPROVING CLASS ACTION SETTLEMENTS.

2 I THINK WHAT WE HAVE HERE UNFORTUNATELY,
3 AND MAYBE WHAT THIS HAS EVOLVED TO, IS A BEST WE
4 COULD DO SETTLEMENT.

5 I MEAN NO DISRESPECT TO CLASS COUNSEL. I
6 DO CLASS ACTIONS FOR A LIVING FOR THE MOST PART.
7 I'VE ONLY OBJECTED ON THREE OR FOUR OTHER OCCASIONS
8 IN MY 22 YEARS, SO I DON'T MAKE A PRACTICE OF THIS.

9 BUT THIS PARTICULAR SETTLEMENT, AS I WENT
10 THROUGH IT WITH MY CLIENT AND MY CO-COUNSEL IN
11 NEW YORK, I SAID THERE'S NOT ENOUGH IN HERE TO GET
12 YOUR ARMS AROUND IN TERMS OF WHAT THEY'RE GETTING.

13 AND I ECHO IN THE COMMENTS OF MR. STATMAN
14 AND MR. FURMAN.

15 YOU LOOK AT THE RELIEF THAT WAS AFFORDED
16 OR GIVEN TO THESE CLASS MEMBERS. CLASS COUNSEL
17 HAVE TOLD YOU IT'S THREE PARTICULAR ELEMENTS. ONE
18 IS THE CHANGES TO THE PROGRAM, AS MR. STATMAN, I
19 THINK SAID, HE SAID THERE WERE CHANGES THAT WERE
20 MADE, BUT MOST OF THOSE WERE MADE BEFORE THE FIRST
21 LAWSUIT WAS FILED.

22 GOOGLE BUZZ LAUNCHED ON FEBRUARY 9TH. ON
23 FEBRUARY 17TH WAS THE FIRST LAWSUIT.

24 WE'VE ARTICULATED IN OUR PAPERS THAT FOUR
25 OF THE FIVE SUPPOSED CHANGES MADE TO GOOGLE BUZZ

1 WERE MADE DURING THAT WEEK OF FEBRUARY 9TH TO
2 FEBRUARY 17TH, TWO CHANGES ON THE 11TH, TWO MORE ON
3 THE 13TH, AND WE'VE SET THOSE FORWARD IN OUR BRIEF.

4 THERE IS THIS APRIL 5TH CHANGE THAT IS
5 SORT OF THE PENULTIMATE, YOU KNOW, YOU CAN
6 PARTICIPATE OR NOT PARTICIPATE, BUT EVEN THAT WAS
7 ONLY THE ONE CHANGE.

8 AND WHAT'S ODD IS TWO MORE LAWSUITS WERE
9 FILED EVEN AFTER THAT.

10 BUT NO CHANGES WERE MADE TO GOOGLE BUZZ
11 AFTER APRIL 5TH THAT I'M AWARE OF.

12 THE SETTLEMENT AGREEMENT TALKS ABOUT
13 FURTHER REVISIONS AND SO FORTH, BUT NONE OF THOSE
14 HAVE BEEN IDENTIFIED.

15 THE SECOND ASPECT OF THE RELIEF IS THIS
16 PUBLIC EDUCATION. WHEN YOU LOOK AT THE SETTLEMENT
17 AGREEMENT, IT SAYS, FOR THE MOST PART, ALL OF THAT
18 WILL BE DECIDED, AGREED UPON, AND IMPLEMENTED AFTER
19 THE SETTLEMENT IS FINALLY APPROVED.

20 AGAIN, CLASS MEMBERS ARE LEFT WITHOUT
21 ANYTHING TO REALLY GET THEIR ARMS AROUND.

22 THE THIRD ASPECT IS THE CY PRES. YOU'VE
23 ALREADY HEARD ABOUT THE FACT THAT THE IDENTIFY OF
24 THE CY PRES RECIPIENTS IS NOT KNOWN AT THIS POINT
25 IN TIME, TO BE DECIDED UPON LATER, AMOUNTS AND

1 ALLOCATIONS TO ANY PARTICULAR CY PRES RECIPIENT TO
2 BE DECIDED UPON LATER.

3 YOU'RE ASKING CLASS MEMBERS TO DECIDE
4 NOW, OPT IN OR EXCLUDE YOURSELF, WHAT HAVE YOU, TO
5 A SETTLEMENT THAT IS REALLY SORT OF VAGUE IN TERMS
6 OF THE DETAILS.

7 THERE ARE OTHER ASPECTS OF THIS CASE I
8 THINK THAT SHOULD CAUSE THE COURT TO PAUSE AND
9 MAYBE SCRATCH YOUR HEAD.

10 MR. STATMAN MENTIONED THE CLASS AND THE
11 CLASS PERIOD.

12 THE LAWSUIT WAS FILED ON FEBRUARY 17TH;
13 LAST CHANGE IMPLEMENTED APRIL 5; SETTLEMENT
14 AGREEMENT, THE MEDIATION, WAS CONDUCTED AND
15 CONCLUDED ON JUNE 2ND; AND YET WE HAVE A SETTLEMENT
16 CLASS THAT RUNS ANOTHER FIVE MONTHS TO NOVEMBER.

17 THERE'S NO REASON TO INCLUDE ALL OF THOSE
18 FOLKS, AND I'M NOT SURE WHY -- I UNDERSTAND THE
19 DEFENDANTS, FROM HAVING DONE THIS WORK, DEFENDANTS
20 WANT THE BROADEST RELEASE POSSIBLE, AND THAT'S
21 FINE.

22 IT DOESN'T NECESSARILY MEAN, FROM THE
23 PLAINTIFF'S SIDE, THAT YOU AGREE TO IT.

24 ANOTHER THING I THINK THAT SHOULD CAUSE
25 THE COURT A LITTLE PAUSE IS THERE'S SOME QUESTION

1 AS TO THE SIZE OF THE CLASS, AND I FOUND IT
2 INTERESTING THAT WHEN YOU READ THE COMPLAINT, THE
3 BASIS FOR THE SIZE OF THE CLASS IS AN ARTICLE FROM
4 A JOURNAL THAT TALKS ABOUT POTENTIAL NUMBER OF
5 USERS OF GMAIL.

6 IT DOESN'T EVEN TALK ABOUT GMAIL ACCOUNT
7 HOLDERS. IT TALKS ABOUT PERSONS USING GMAIL, AND
8 THERE'S SOME 37 OR 32 MILLION FIGURE THAT'S
9 DISCLOSED IN THERE.

10 THERE'S NEVER ANY DISPOSITIVE PIECE OF
11 INFORMATION THAT'S GIVEN TO CLASS MEMBERS TO
12 UNDERSTAND THE PRECISE SIZE OF THE CLASS. IT'S
13 JUST THIS ESTIMATE BASED ON A JOURNAL ARTICLE.

14 TODAY WE'RE HEARING FOR THE FIRST TIME,
15 AND AS I SAT IN THE SECOND ROW I WAS KIND OF
16 CONCERNED, WE'RE HEARING THAT THE CLASS SIZE
17 PROBABLY ISN'T 37 MILLION. IT'S SOME SUBSET OF
18 PEOPLE BECAUSE NOT EVERY ACCOUNT HOLDER WAS
19 IMPACTED; AND WITHIN THAT SUBSET, IT'S PROBABLY
20 ANOTHER SUBSET OF PEOPLE.

21 SO NOW WE'RE ASKED TO AGREE TO A
22 SETTLEMENT, OR AT LEAST A SETTLEMENT IS PUT BEFORE
23 THE COURT FOR APPROVAL WHERE I DON'T THINK WE
24 REALLY HAVE ANY IDEA WHAT THE SIZE OF THE CLASS IS.
25 I REALLY DON'T THINK THAT THAT INFORMATION HAS BEEN

1 CAPTURED.

2 AND JUST ONE OTHER POINT BECAUSE I THINK
3 EVERYTHING ELSE HAS BEEN ARTICULATED BY THE OTHER
4 GENTLEMEN.

5 THERE HAS BEEN A LOT MADE BY THE
6 PLAINTIFFS' COUNSEL OF THE FACT THAT THERE ARE
7 NO -- BASED UPON THEIR REVIEW OF THE MATERIALS THAT
8 HAVE BEEN PROVIDED TO THEM AND THEIR INVESTIGATION,
9 THERE'S NO CLAIM OF ACTUAL DAMAGES SUFFERED BY
10 ANYBODY.

11 MR. STATMAN OR MR. FURMAN POINTED OUT
12 THAT, IN FACT, THERE IS THAT ONE OBJECTOR WHO
13 ARTICULATED THE IDENTITY THEFT OBJECTION.

14 WHEN YOU LOOK AT THE COMPLAINT ITSELF AT
15 PARAGRAPH 30, THERE ARE THREE OR FOUR EXAMPLES OF
16 PERSONS WHO PURPORTEDLY SUFFERED SOME SORT OF
17 DAMAGE, AND THEN WE HEAR THAT STORY THIS MORNING.

18 SO I THINK THERE IS A PROBLEM WITH THE
19 SCOPE OF THE RELEASE, IT'S OVERLY BROAD, AND IT
20 DOES NEED TO BE CARVED OUT, I BELIEVE, FOR ANYBODY
21 WHO MAY HAVE SUFFERED A PERSONAL INJURY LIKE THAT
22 ARTICULATED BY MR. STATMAN.

23 THE COURT: THANK YOU.

24 MR. OSBORN: SORRY, IF I CAN MAKE ONE
25 LAST POINT, YOUR HONOR.

1 ON THE FEES -- I HATE TO PICK ON FEES
2 BECAUSE I DO THIS FOR A LIVING AND I WOULD HATE FOR
3 SOMEBODY TO BE STANDING HERE PICKING ON MY FEES --
4 BUT IT'S UNUSUAL FOR ME TO SEE AN APPLICATION, FEE
5 APPLICATION, WITH ONLY SUMMARY TIME RECORDS,
6 DECLARATIONS RATHER, THAT SAY "I WORK FOR THIS
7 FIRM, I WORKED 20 HOURS AT \$400 AN HOUR, \$8,000."

8 IN THE CASES I WORK ON, WE'RE REQUIRED TO
9 SUBMIT DETAILED TIME RECORDS TO SEE WHAT WORK WAS
10 DONE.

11 I THINK THAT IS PARTICULARLY IMPORTANT
12 HERE GIVEN THE FACT THAT BY JUNE 2ND, THREE AND A
13 HALF MONTHS AFTER THE FIRST LAWSUIT WAS FILED, THIS
14 CASE WAS SETTLED.

15 NOW, I KNOW THERE'S WORK THAT'S DONE
16 AFTERWARD TO IMPLEMENT THE SETTLEMENT AGREEMENT,
17 BUT CLASS COUNSEL IS NOT SUPPOSED TO BE COMPENSATED
18 FOR THAT WORK. THAT'S JUST PART OF TAKING ON THE
19 CASE.

20 SO I THINK IT'S IMPORTANT THAT THE COURT
21 ACTUALLY SEE THE TIME AND THE WORK THAT WAS
22 PERFORMED BY THE ATTORNEYS.

23 THANK YOU, YOUR HONOR.

24 THE COURT: THANK YOU. I HAVE OTHER
25 MATTERS I HAVE TO ATTEND TO, BUT I DIDN'T WANT TO

1 DEPRIVE ANY OTHER OBJECTORS WHO HAVE ANY NEW OR
2 DIFFERENT OBJECTIONS.

3 I HAD MS. GACHOT WHO MADE AN APPEARANCE.
4 I UNDERSTAND THAT THERE'S A MR., OR ATTORNEY
5 DARRELL PALMER WHO'S HERE ON BEHALF OF AN OBJECTOR.

6 ANYONE ELSE?

7 YES, MA'AM.

8 MS. GACHOT: NATALIE GACHOT APPEARING IN
9 PRO PER.

10 AND MOST OF --

11 THE COURT: YOU'RE REPRESENTING YOURSELF?

12 MS. GACHOT: YES.

13 THE COURT: THANK YOU, MA'AM. YOU'RE A
14 LAWYER, THOUGH?

15 MS. GACHOT: YES. MOST OF MY OBJECTIONS
16 HAVE ALREADY BEEN COVERED BY OTHER OBJECTORS.

17 HOWEVER, I'D LIKE TO MAKE A POINT THAT I
18 THINK THERE WAS INSUFFICIENT INVESTIGATION INTO
19 WHETHER OR NOT THE MEMBERS OF THE CLASS SUFFERED
20 OUT-OF-POCKET DAMAGES OR DAMAGES IN GENERAL.

21 THEY WERE BASED ON 2,000 E-MAILS WHICH
22 WERE VOLUNTARILY GIVEN TO GOOGLE, KIND OF COMMENTS
23 OR, I GUESS, OPINIONS ABOUT GOOGLE BUZZ GIVEN
24 VOLUNTARILY TO GOOGLE, AND THAT REPRESENTS JUST A
25 VERY, VERY SMALL AMOUNT OF THE ACTUAL CLASS SIZE.

1 THE COURT: THANK YOU VERY MUCH.

2 YES?

3 MR. MURPHY: I'M ALSO AN OBJECTOR.

4 THE COURT: SPEED.

5 MR. MURPHY: MY NOTES ARE BRIEF. MY NAME
6 IS RYAN MURPHY, AND I HAVE -- I DO HAVE SOMETHING
7 SLIGHTLY DIFFERENT TO SAY, AND IT'S IN THE --

8 THE COURT: TELL ME WHAT IT IS. DON'T
9 TELL ME --

10 MR. MURPHY: IT'S IN THE FRAMEWORK OF THE
11 IDEA OF THE PRIVATE ATTORNEY GENERAL WHICH YOU
12 NOTED.

13 SO I THINK THAT THERE ARE -- THE DYNAMIC
14 OF THIS CASE HAS TWO MAIN -- THERE ARE TWO FEATURES
15 THAT ARE SALIENT TO ME. ONE IS THAT FOR THE CLASS
16 COUNSEL, THIS IS LOW RISK LITIGATION.

17 THE SECOND IS THAT THIS SETTLEMENT
18 DOESN'T FORCE OR EVEN ENCOURAGE GOOGLE TO
19 INTERNALIZE THE COST OF ITS BEHAVIOR, TO FACTOR IN
20 GMAIL USERS' PRIVACY CONCERNS INTO THE CALCULUS OF
21 THEIR BUSINESS DECISIONS.

22 AND SO IF YOU LOOK AT THE RELATIVE
23 BENEFITS AND LOSSES, THE AVERAGE PAY OUT TO THE 11
24 FIRMS IS ABOUT \$200,000 PER FIRM, ALTHOUGH FOR THE
25 TOP FOUR FIRMS, THAT'S -- THE AVERAGE IS \$430,000

1 PER FIRM.

2 THE AVERAGE HOURLY RATE, IF WE'RE
3 INCLUDING THE MULTIPLIER FOR ALL THE FIRMS, IS
4 ABOUT \$870 PER HOUR.

5 THE LOSS TO GOOGLE IS ABOUT -- IS 8 -- IS
6 \$8.5 MILLION, WHICH IS ALMOST EXACTLY ONE
7 ONE-THOUSANDTH OF THEIR 2010 NET INCOME, WHICH IS
8 NOT THEIR REVENUE, IT'S THEIR NET INCOME, AND I GOT
9 THAT FROM THEIR WEBSITE, WHICH IS 8 AND A HALF
10 BILLION DOLLARS.

11 SO IT'S A RATHER SAFE BET THAT FACED WITH
12 THE POSSIBILITY OF OWING STATUTORY DAMAGES TO A
13 POOL OF 32 OR 37 MILLION PEOPLE, A MASSIVE COMPANY
14 LIKE GOOGLE WILL HAND OVER A THOUSANDTH OF ITS
15 ANNUAL INCOME, AND THAT GOOGLE WILL PAY THAT
16 AMOUNT, WHICH IS ONLY A SMALL AMOUNT, AND THAT
17 GOOGLE WILL HAVE NO OBLIGATION TO CHANGE GOOGLE
18 BUZZ, AND THAT THEY'LL BE IMMUNIZED FROM FUTURE
19 LITIGATION MEANS THAT IF WE WENT BACK IN TIME ONE
20 YEAR AND TOLD GOOGLE THAT THE COST OF CHANGING BUZZ
21 WOULD BE THIS SETTLEMENT, THEY WOULD HAVE NO
22 INCENTIVE TO DO ANYTHING DIFFERENT.

23 AND ACTUALLY WE KIND OF KNOW THAT BECAUSE
24 THEY HAVE NONE -- THEY HAVE REALLY DONE NOTHING
25 DIFFERENT SINCE THE START OF THIS LITIGATION.

1 SO THAT'S VERY QUICKLY THE REASONS WE,
2 MYSELF AND TWO OF MY COLLEAGUES, ARE HERE, BECAUSE
3 WE BELIEVE THAT THIS IS NOT AN ADEQUATE SETTLEMENT.

4 THANK YOU.

5 THE COURT: VERY WELL. SO LET ME HAVE
6 THE PARTIES BACK AND ADDRESS NOT ALL OF THIS, BUT
7 THERE ARE A COUPLE THINGS THAT I DID WANT TO HEAR
8 YOU ADDRESS IN PARTICULAR, BUT BRIEFLY.

9 I MIGHT ACTUALLY ASK FOR SUPPLEMENTAL
10 BRIEFING ON THIS IF I CAN'T GET A BRIEF
11 EXPLANATION.

12 THE ONE CONCERN THAT I'VE HEARD IS THAT
13 THE SETTLEMENT DOES NOT PROVIDE ANY DETAIL OF
14 GOOGLE'S PUBLIC EDUCATION EFFORT, THAT THERE'S NO
15 MECHANISM FOR ENSURING THAT IT IS GOING IN A
16 FASHION THAT BENEFITS THE CLASS.

17 AND THEN THERE'S A QUESTION THAT I WOULD
18 WISH YOU TO ADDRESS HAVING TO DO WITH -- IT WAS THE
19 ONE I INITIALLY ASKED, WHICH IS, WHAT CHANGE IS
20 BEING MADE?

21 AND THEN AS I UNDERSTAND IT, ONE OF THE
22 OBJECTIONS IS THERE'S NO REQUIREMENT THAT IT BE
23 PERMANENT, EVEN IF IT IS -- IF THERE IS A CHANGE
24 THAT'S BEING MADE.

25 AND THERE ARE SOME OTHER QUESTIONS THAT

1 CAME UP HAVING TO DO WITH WHETHER, IN A RELATIVELY
2 SHORT LITIGATION, THE FULL AMOUNT OF FEES UP TO THE
3 NINTH CIRCUIT BENCHMARK IS WARRANTED.

4 MR. RUBENSTEIN: YES, SIR.

5 FIRST OF ALL, ON THE PUBLIC EDUCATION
6 CAMPAIGN, WE BELIEVE, AND WE'VE BRIEFED THIS, WE
7 BELIEVE THERE IS AN ACCOUNTABILITY MECHANISM BUILT
8 INTO THAT.

9 WE -- GOOGLE WILL TAKE RECOMMENDATIONS
10 FOR THE PUBLIC EDUCATION CAMPAIGN FROM US. WE'VE
11 ALREADY MADE SOME.

12 THEY'VE SUGGESTED THEY'RE OPEN TO HEARING
13 FROM ANYONE ABOUT THE IDEA OF IT.

14 THEY THEN HAVE TO REPORT BACK TO US, IT'S
15 WRITTEN INTO THE AGREEMENT, THEY HAVE TO REPORT
16 BACK TO CLASS COUNSEL WHAT THEY DID IN THE PUBLIC
17 EDUCATION CAMPAIGN.

18 IF WE BELIEVE THAT IT'S A BREACH OF THE
19 CONTRACT OF THE SETTLEMENT AGREEMENT, THAT IT
20 WASN'T DONE IN GOOD FAITH, THE PUBLIC EDUCATION
21 CAMPAIGN, WE WILL TELL GOOGLE THAT.

22 IF THEY DISAGREE, THERE'S A DISPUTE
23 RESOLUTION MECHANISM IN THE SETTLEMENT. WE GO
24 BEFORE JUDGE SMITH AND WE TRY TO WORK OUT WITH HER
25 WHETHER OR NOT THEY'VE LIVED UP TO THEIR

1 CONTRACTUAL OBLIGATION TO DO THE PUBLIC EDUCATION.

2 AND, OF COURSE, FAILING ANY AGREEMENT
3 THERE, WE COME BACK TO THE COURT AND WE BRING IT TO
4 YOU AND SAY "WE DON'T THINK THEY LIVED UP TO THEIR
5 CONTRACTUAL OBLIGATION TO DO THE PUBLIC EDUCATION
6 CAMPAIGN."

7 WE DON'T THINK THIS IS A MEANINGLESS,
8 HOLLOW THING. WE THINK THERE'S A BUILT-IN
9 ACCOUNTABILITY MECHANISM. WE SPECIFICALLY WROTE
10 INTO THIS THAT THEY HAVE TO REPORT BACK TO US ON
11 EXACTLY WHAT THEY DID, AND WE HAVE THE DISPUTE
12 RESOLUTION MECHANISM IN PLACE WITH REGARD TO THAT.

13 SECOND, AS TO THE CHANGES IN THE PROGRAM,
14 YOUR HONOR, I'M HAPPY TO GO THROUGH THEM WITH YOU
15 AGAIN. I THINK THE MAIN --

16 THE COURT: DON'T GO THROUGH THEM, JUST
17 WHETHER THERE'S ANY REQUIREMENT THAT THEY BE
18 PERMANENT.

19 MR. RUBENSTEIN: THERE'S NOTHING IN THE
20 SETTLEMENT AGREEMENT THAT REQUIRES THEM TO BE
21 PERMANENT.

22 I WILL SAY, YOUR HONOR, IF, IN FACT, THE
23 DAY AFTER FINAL APPROVAL IS GRANTED, SHOULD IT BE
24 THAT GOOGLE THEN CHANGED THE BUZZ PROGRAM BACK AND
25 MADE IT THAT THEY'RE AUTOMATICALLY RELEASING, WHICH

1 IT NEVER WAS THAT, BUT IF THEY AUTOMATICALLY
2 RELEASED USER INFORMATION, I THINK WE'D COME BACK
3 BEFORE THE COURT AND SAY IT'S OUT OF LINE WITH THE
4 SETTLEMENT.

5 THE COURT: BUT I WOULDN'T HAVE ANY
6 ENFORCEMENT AUTHORITY UNLESS THERE IS SOME
7 REQUIREMENT.

8 BUT I GUESS THE ULTIMATE QUESTION THAT'S
9 BEING RAISED, AND IT'S THE ONE I RAISED AT THE
10 PRELIMINARY APPROVAL, IS THE NATURE OF THIS IS A
11 (B) (3) CLASS.

12 IT DOES SEEM TO THE COURT THAT ONE VIEW
13 THAT THE COURT COULD TAKE OF THIS IS THAT THE
14 EDUCATIONAL PROCESS, THE CY PRES PROCESS, WHATEVER
15 THAT IS, IS ALL DESIGNED FOR INJUNCTIVE TYPE
16 RELIEF.

17 THIS IS NOT MONEY THAT IS BEING GIVEN TO
18 THE CY PRES ORGANIZATIONS AS DAMAGES FOR THE
19 BENEFIT OF THE CLASS MEMBERS.

20 THE MONIES THAT ARE BEING GIVEN ARE VERY
21 MUCH TO BE AN EDUCATIONAL BENEFIT FOR INTERNET
22 PRIVACY, AND I CAN UNDERSTAND THAT.

23 AS I HEAR IT, THE REASON THIS IS BEING
24 JUSTIFIED AS A (B) (3) CLASS IS, NUMBER ONE, THERE
25 ARE POTENTIAL DAMAGE CLAIMS THAT COULD BE BROUGHT,

1 AND ALTHOUGH THE DAMAGES WOULD BE SMALL, THERE ARE
2 DAMAGES, AND SO THIS IS A SETTLEMENT WHICH IS
3 DESIGNED TO TAKE THOSE SMALL AMOUNTS OF DAMAGES,
4 AGGREGATE THEM INTO AN AMOUNT AND PUT IT IN SORT OF
5 A FUND THAT CAN BE USED FOR INTERNET PRIVACY POLICY
6 AND EDUCATION, AND I'M CONSIDERING IT IN THAT
7 LIGHT.

8 AT THE SAME TIME, AS I NOTED AT THE
9 PRELIMINARY HEARING, IT'S UNUSUAL. IT'S UNUSUAL
10 FOR THE COURT TO ASK INDIVIDUALS TO GIVE UP THEIR
11 PERSONAL INJURY OR OTHER DAMAGE CLAIMS IN A
12 CIRCUMSTANCE WHERE THEY ARE NOT RECEIVING THOSE
13 DAMAGES, AND I'M NOT SURE I UNDERSTAND WHY THEY
14 WOULD NOT BE ENTITLED TO RECEIVE THEM, HOWEVER
15 SMALL.

16 I JUST APPROVED ONE WHERE THE AMOUNTS ARE
17 RELATIVELY SMALL COMPARED TO THE KINDS OF CLAIMS
18 THAT PEOPLE MIGHT FEEL THEY HAVE HAVING TO DO WITH
19 THEIR MORTGAGES OR OTHER MATTERS.

20 SO YOU WANT TO ADDRESS THE (B) (3) ASPECT
21 OF THIS?

22 MR. RUBENSTEIN: YES, YOUR HONOR.

23 I DISAGREE WITH ONE THING THAT YOU SAID
24 IN CHARACTERIZING IT. I THINK THAT WE HAVE
25 RECEIVED MONEY DAMAGES FOR THE CLASS. WE'VE

1 RECEIVED \$8.5 MILLION FOR THIS CLASS.

2 GOOGLE HAS GIVEN UP THAT AMOUNT. THAT
3 SERVES AS A DETERRENT EFFECT.

4 THE ONLY REASON, THE ONLY REASON THE
5 CLASS MEMBERS ARE NOT GETTING THE MONEY HERE IS
6 THAT THERE ARE 37 MILLION OF THEM.

7 THIS IS NOT UNUSUAL. THIS HAPPENS ALL
8 THE TIME. THIS IS VERY TYPICAL IN ANTITRUST
9 SETTLEMENTS, FOR INSTANCE, YOUR HONOR. WHERE THERE
10 ARE LARGE CLASSES AND THE DAMAGES CANNOT BE
11 DISTRIBUTED TO THE CLASS, 100 PERCENT OF THE MONEY
12 IS SENT CY PRES.

13 THERE'S NOTHING ABOUT IT THAT'S
14 NEFARIOUS. IT'S SIMPLY A MATTER OF DIVISION AND
15 THE FACT THAT WE'RE REPRESENTING 37 MILLION PEOPLE.

16 SO WE HAVE RECEIVED MONEY DAMAGES AND
17 IT'S A STANDARD (B) (3) CLASS ACTION.

18 THE REASON WE CAN'T DISTRIBUTE THE MONEY
19 IS SOLELY THE AMOUNT OF MONEY DIVIDED BY THE AMOUNT
20 OF PEOPLE IN THE CLASS.

21 LIKE ANY ANTITRUST SETTLEMENT OF THIS
22 TYPE, WE CITE A NUMBER OF CASES IN OUR FINAL
23 APPROVAL BRIEF AND RELY BRIEF WHERE MONIES GO 100
24 PERCENT CY PRES AND THEY'RE CERTIFIED AS (B) (3)
25 CASES JUST LIKE THIS ONE.

1 REMEMBER, IN OUR FINAL APPROVAL BRIEF, WE
2 GIVE FIVE REASONS THIS SHOULD BE A (B) (3) CLASS.
3 THE FIRST IS IT FITS THE LANGUAGE OF (B) (3) IN THAT
4 COMMON ISSUES PREDOMINATE AND THE CLASS MECHANISM
5 IS SUPERIOR; SECOND, WE DO HAVE MONEY DAMAGES, WE
6 JUST CAN'T DISTRIBUTE THEM BECAUSE OF THE NUMBER OF
7 PEOPLE IN THE CLASS; THIRD, THERE IS NO INJUNCTIVE
8 RELIEF TO DO THIS UNDER (B) (2); FOURTH, WE WANTED
9 TO DO IT (B) (3), REMEMBER, SO PEOPLE COULD OPT OUT,
10 AND 500 AND SOME PEOPLE OPTED OUT OF THE CLASS; AND
11 FIFTH, IN SITUATIONS LIKE THIS WHEN THE AMOUNT OF
12 MONEY IS TOO SMALL TO DISTRIBUTE TO ALL OF THE
13 MEMBERS OF CLASS, IT'S TYPICAL TO CERTIFY AS (B) (3)
14 BECAUSE IT IS A MONEY CASE. THE DISTRIBUTION
15 PROBLEM IS SOLELY A PROBLEM OF THE NUMBER OF PEOPLE
16 IN THE CLASS.

17 YOUR HONOR, I DO THINK THAT THE PRIVATE
18 ATTORNEY GENERAL MECHANISM THAT YOU WERE DISCUSSING
19 IN THE LAST CASE IS APPROPRIATE TO THINK ABOUT IN
20 THIS CONTEXT. THAT IS WHAT WE'RE DOING IN THIS
21 CASE. WE'RE SERVING AS PRIVATE ATTORNEY GENERALS
22 FOR AN ENORMOUS CLASS. A CLASS OF THIS SIZE IS ALL
23 OF THE CITIZENS OF THE STATE OF CALIFORNIA.

24 WHAT WE'VE DONE HERE IS CREATE A
25 DETERRENT EFFECT IN SITUATIONS LIKE THIS WHERE

1 DEFENDANTS THAT LAUNCH INTERNET PROGRAMS THAT HAVE
2 PRIVACY CONCERNS, WE HOPE, WILL BE MORE SENSITIVE
3 TO THOSE CONCERNS IN THE FUTURE BECAUSE OF THE,
4 ESSENTIALLY THE FINE THEY HAVE TO PAY HERE.

5 LIKE A PRIVATE ATTORNEY GENERAL, WE'VE
6 SECURED JUST THE TYPES OF RELIEF THAT ARE
7 APPROPRIATE IN SMALL CLAIMS CASES SUCH AS THIS, AND
8 WE THINK THIS SETTLEMENT FITS THE DYNAMICS OF A
9 SMALL CLAIMS CLASS ACTION QUITE APPROPRIATELY IN
10 THAT SENSE.

11 MS. FAHRINGER: ONLY ONE OBSERVATION IN
12 ANSWER TO YOUR THREE QUESTIONS ABOUT EDUCATION AND
13 CHANGES.

14 CHANGES IN PARTICULAR -- AS TO THE
15 QUESTION WHETHER INJUNCTIVE RELIEF SHOULD BE
16 REQUIRED TO PRESERVE GOOGLE BUZZ AS IS RATHER THAN
17 HAVING IT REVERT BACK TO THE WAY THE COMPLAINT
18 ALLEGES IT WORKED, GOOGLE BUZZ NEVER WORKED THE WAY
19 THE COMPLAINT ALLEGED IT WORKED. IT NEVER
20 DISCLOSED E-MAIL ADDRESSES PUBLICLY. IT NEVER DID
21 THE THINGS ALLEGED IN THE COMPLAINT.

22 AND SO IT IS VERY UNLIKELY THAT GOOGLE
23 WOULD EVER CAUSE THE PROGRAM TO BE CHANGED TO ALIGN
24 TO THE PROGRAM AS ALLEGED IN THE COMPLAINT.

25 MR. RUBENSTEIN: YOUR HONOR, YOU HAD ONE

1 LAST QUESTION ABOUT THE FEE REQUEST BEING A
2 BENCHMARK, AND LEAD COUNSEL WILL ADDRESS THAT.

3 MR. MASON: VERY BRIEFLY, YOUR HONOR,
4 WE'VE ASKED FOR 25 PERCENT. WE NEGOTIATED 30
5 PERCENT, BUT WE THOUGHT 25 PERCENT, THE BENCHMARK,
6 WAS APPROPRIATE IN THIS CASE GIVEN ALL THE
7 CIRCUMSTANCES.

8 OF IMPORTANCE AND WHAT MAKES THIS CASE A
9 LITTLE BIT DIFFERENT THAN MAYBE EVEN SOME OF THE
10 CASES THAT YOU SAW THIS MORNING IS THERE ARE FIVE
11 COMPLAINTS THAT ARE ON FILE, THREE OF WHICH WERE
12 FILED PRIOR TO THIS COURT CONSOLIDATING THE CASES
13 AND MAKING MYSELF LEAD COUNSEL, TWO OF WHICH CAME
14 AFTERWARDS.

15 THERE'S MORE THAN TEN LAW FIRMS INVOLVED,
16 AND AS LEAD COUNSEL, I'VE BEEN VERY DILIGENT ABOUT
17 WATCHING EVERYBODY'S TIME, MAKING SURE THAT IT'S
18 NOT DUPLICATIVE.

19 WE'VE BASICALLY, YOU KNOW, KEPT VERY
20 SMALL THE NUMBER OF LAWYERS WHO HAVE BEEN DOING THE
21 WORK SINCE THE CONSOLIDATION.

22 BUT NONETHELESS, GIVEN THE NUMBER OF LAW
23 FIRMS INVOLVED, GIVEN THE SUBSTANTIAL BRIEFING WE
24 DID IN CONNECTION WITH THE MEDIATION, AS WELL AS
25 THE PRELIMINARY APPROVAL, FINAL APPROVE BRIEF, AND

1 NOW THE REPLY BRIEF, THE TIME DOES ADD UP. IT'S
2 JUST -- THAT'S SOMETHING THAT NOBODY CAN CONTROL
3 THAT EFFECTIVELY AT SOME LEVEL.

4 THE LODESTAR, AS REPORTED INITIALLY, WAS
5 ABOUT 1.3 MILLION, WHICH LED TO A MULTIPLIER OF
6 1.67, WHICH IS WELL WITHIN THE RANGE OF
7 MULTIPLIERS.

8 MY BACK-OF-THE-ENVELOPE CALCULATION OF
9 WHERE WE ARE NOW AFTER DOING ADDITIONAL BRIEFING
10 IS CLOSER TO 1.5, WHICH HAS LOWERED THE MULTIPLIER
11 TO ALSO ABOUT 1.5.

12 AND OF COURSE THERE'S GOING TO BE
13 ADDITIONAL WORK GOING FORWARD, PARTICULARLY WITH
14 THE CY PRES AND POTENTIALLY WITH APPEALS.

15 SO BASICALLY, YOUR HONOR, WE'RE JUST
16 ASKING FOR A VERY MODEST MULTIPLIER, IF ANY, OVER
17 THE LODESTAR THAT HAS ACCRUED IN THIS CASE.

18 THE COURT: VERY WELL. I'M PREPARED TO
19 TAKE THIS UNDER SUBMISSION.

20 AS I SAID, I MIGHT ASK FOR SUPPLEMENTAL
21 BRIEFING BEFORE I GIVE FINAL APPROVAL, AND THE
22 ORDER THAT I GIVE FOR FINAL APPROVAL MIGHT BE A
23 LITTLE DIFFERENT THAN WHAT I HAVE GIVEN THE
24 IMPORTANCE OF THE CY PRES RECIPIENTS.

25 MY STAFF MIGHT HAVE ALERTED YOU TO THIS

1 ALREADY. THE COURT WOULD TAKE IT UPON ITSELF TO
2 MAKE THE FINAL DECISION AS TO WHO THOSE RECIPIENTS
3 ARE AND RECEIVE NOMINATIONS FROM THE PARTIES, AND
4 PERHAPS THERE COULD BE A WAY OF INCLUDING THE CLASS
5 IN SOME WAY IN THAT, AT LEAST AS TO NOTICE OF ALL
6 OF THAT. WITH TODAY'S TECHNOLOGY, IT'S EASY TO
7 ALERT PEOPLE TO WHAT THE COURT IS CONSIDERING DOING
8 AND ACTUALLY GET SOME FEEDBACK TO THAT PROCESS.

9 I HAVEN'T THOUGHT ABOUT THAT YET, BUT I
10 WILL.

11 AND SO I'LL SEND YOU A DRAFT OF MY
12 PROPOSED ORDER, GET YOUR COMMENTS ON IT, AND THEN
13 PUT IT IN PLACE AFTER I RECEIVE THAT.

14 MR. RUBENSTEIN: THANK YOU, YOUR HONOR.

15 ONE THING TO NOTE. IN OUR FINAL APPROVAL
16 BRIEF, WE MENTIONED, AS TO THE CY PRES PROCESS,
17 THAT WE'D BE WORKING WITH AN INDEPENDENT
18 ORGANIZATION TO HELP US IDENTIFY CY PRES
19 RECIPIENTS, AND WE HOPE TO RECEIVE A BROAD CROSS
20 SECTION OF CY PRES RECIPIENTS AND DISTRIBUTE THE
21 MONEY WIDELY ACROSS THE COUNTRY.

22 THERE'S A LARGE AMOUNT OF MONEY HERE, AND
23 WE HAVE A CLASS THAT ENCOMPASSES THE WHOLE COUNTRY,
24 SO WE HOPE TO HAVE A GOOD SLATE OF -- A BROAD RANGE
25 OF CY PRES RECIPIENTS.

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THE COURT: AND I DIDN'T SPEAK TO THE
GOOGLE PART OF THIS. I DO INTEND TO SEEK SOME MORE
SPECIFICITY WITH RESPECT TO THAT PART OF IT.

IT DOES SEEM TO ME THAT IF I HAVE TO PLAY
ANY ROLE IN ASSESSING WHETHER OR NOT THEY HAVE
COMPLIED WITH THE TERMS, I NEED TO HAVE THOSE TERMS
MORE EXPLICITLY STATED, AND SO I MIGHT ASK FOR MORE
SPECIFICITY FROM THE PARTIES BEFORE I GIVE YOU MY
FINAL JUDGMENT ON THAT PART AS WELL.

MR. RUBENSTEIN: THANK YOU, YOUR HONOR.

THE COURT: MATTER SUBMITTED.

MS. FAHRINGER: THANK YOU, YOUR HONOR.

(WHEREUPON, THE PROCEEDINGS IN THIS
MATTER WERE CONCLUDED.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595