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12 **THE UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN JOSE DIVISION**

15 EVA HIBNICK and ANDRANIK
 16 SOUVALIAN, individually and on behalf
 17 of all others similarly situated,

18 Plaintiffs,

19 v.

20 GOOGLE, INC.,

21 Defendant.

Case No.: 10-CV-00672-JW

**NOTICE OF MOTION AND PLAINTIFFS’
 UNOPPOSED MOTION FOR ENTRY OF
 PROPOSED PRETRIAL ORDER NO. 1;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 PLAINTIFFS’ UNOPPOSED MOTION FOR
 ENTRY OF PRETRIAL ORDER NO. 1**

Date: July 12, 2010
 Time: 10:00am
 Place: Courtroom 8, 4th Floor
 [Hon. James Ware]

Original Complaint Filed: 02/17/10

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1 **PLEASE TAKE NOTICE THAT** on July 12, 2010 at 10:00am, or as soon thereafter as the
2 matter may be heard in the United States District Court for the Northern District of California, 280
3 South 1st Street, San Jose, CA 95113, Plaintiffs will and hereby do move this Court for entry of
4 Proposed Pretrial Order No. 1 consolidating the above-captioned case with the related *Feldman v.*
5 *Google, Inc.*, 10-cv-01433 (N.D. Cal. April 5, 2010) action, appointing Mr. Gary E. Mason of
6 Mason LLP as Lead Counsel, Michael Ram of Ram & Olson LLP as Liaison Counsel, and
7 establishing a Steering Committee.

8 This motion is made on the grounds that (1) consolidation pursuant to Fed. R. Civ. P. 42 will
9 greatly promote the efficient adjudication of the instant matter and the *Feldman* case, which involve
10 identical issues of fact and law; (2) Mr. Gary E. Mason and Mr. Michael Ram are well-qualified to
11 serve as Lead Counsel and Liaison Counsel respectively pursuant to Fed. R. Civ. P. 23(g)(3); and (3)
12 the proposed Steering Committee will assist in the representation of Plaintiffs and the Class. All
13 affected parties' counsel, including those representing Plaintiffs in the instant action and the
14 *Feldman* case and Defendant, have consented to this motion.

15 This motion is based on this Notice of Motion and Motion, the accompanying Memorandum
16 of Points and Authorities, and the Class Action Complaints on file in the instant case and *Feldman*.
17 Plaintiffs respectfully request that the Court grant their motion and enter Proposed Pretrial Order No.
18 1.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 Plaintiffs respectfully move for entry of proposed Pretrial Order No. 1 consolidating the
21 above-captioned case with the related *Feldman v. Google, Inc.*, 10-cv-01433 (N.D. Cal. April 5,
22 2010) action for pretrial purposes, appointing Mr. Gary E. Mason of Mason LLP as Lead Counsel,
23 Mr. Michael Ram of Ram & Olson LLP as Liaison Counsel, and establishing a Steering Committee.
24 As explained herein, consolidation, the appointment of Mr. Mason and Mr. Ram, and the creation of
25 a Steering Committee will fairly and efficiently advance this litigation in an organized manner that is
26 in the best interests of the Plaintiffs, the putative class members, Defendant Google Inc.
27 (“Defendant” or “Google”), and this Court. Notably, Defendant has provided its consent to this
28 motion and all of Plaintiffs' counsel have agreed to the organizational structure set forth in Proposed

1 Pretrial Order No. 1. Plaintiffs' motion should thus be granted.

2 **I. STATEMENT OF RELEVANT FACTS**

3 Plaintiffs in both the instant case and *Feldman v. Google Inc.*, 10-cv-01433 (N.D. Cal. April
4 5, 2010) have recently filed class action lawsuits in this Court against Google on behalf of a
5 nationwide class of individuals whose privacy rights were allegedly violated by the actions of
6 Google through its Buzz program.

7 In both actions, Plaintiffs allege that Google automatically added the Buzz service to the
8 accounts of all users of Google's "Gmail" service, thereby making private user information publicly
9 available without the users' knowledge or authorization. Both cases allege that in launching Google
10 Buzz, Google failed to provide its users with clear information detailing the nature of the new
11 service, including the automatic application of the Buzz program and its provisions for default
12 disclosure of personal information. Plaintiffs in each action allege that Google's public disclosure of
13 private user information violates users' rights under the Federal Wiretap Act, the Federal Computer
14 Fraud and Abuse Act, the Federal Stored Communications Act, and California common law. As a
15 result of these alleged breaches, Plaintiffs in both actions seek identical forms of relief.

16 **II. ARGUMENT**

17 **A. Consolidation for Pretrial Purposes Promotes the Efficient Litigation of**
18 **Common Issues.**

19 Fed. R. Civ. P. 42(a)(2) provides that the Court may consolidate actions that involve a
20 common question of law or fact. Consolidation is also appropriate under Fed. R. Civ. P. 42(a)(3) to
21 avoid unnecessary cost or delay. Here, as shown above, both the instant action and the related
22 *Feldman* case involve identical core questions of law and fact concerning Google's public disclosure
23 of personal user information through its Buzz application and its consequent effect on the privacy
24 rights of its users. Given the plain factual and legal similarity of these two putative class actions,
25 separate adjudication will certainly involve duplication in motion practice and pre-trial procedures
26 and will thus result in unnecessary costs and inconvenience affecting Plaintiffs, Defendant and the
27 Court. In order to avoid such inefficiency, Plaintiffs' counsel in both actions and Defendant agree
28 that this case and *Feldman* should be consolidated for pretrial purposes.

1 **B. The Proposed Lead Class Counsel, Liaison Counsel, and Steering Committee**
2 **will Effectively, Fairly, and Adequately Represent the Interests of all Class**
3 **Members in this Litigation.**

4 As set forth in Fed. R. Civ. P. 23(g)(3), “[t]he court may designate interim counsel to act on
5 behalf of a putative class before determining whether to certify the action as a class action.” In
6 appointing class counsel, the court must consider the following factors: (1) the work counsel has
7 done in identifying or investigating potential claims in the action; (2) counsel’s experience in
8 handling class actions, other complex litigation, and claims of the type asserted in the action; (3)
9 counsel’s knowledge of the applicable law; and (4) the resources counsel will commit to
10 representing the class. Fed. R. Civ. P. 23(g)(1)(A). Each of these factors supports the appointment
11 of Gary E. Mason as Lead Counsel and Michael Ram as Liaison Counsel in these action.

12 **1. Mr. Mason is Well-Qualified to Serve as Lead Counsel in the**
13 **Consolidated Action.**

14 Mr. Mason is a highly-skilled and experienced class action attorney who is more than
15 capable of litigating this action on behalf of a nationwide class. At even this preliminary stage of
16 litigation, Mr. Mason has already expended significant time and effort researching, investigating,
17 and identifying the claims belonging to Plaintiffs and putative class members. Mr. Mason has
18 invested the time to understand precisely how the Google Buzz service was introduced by
19 Defendant, how it works, and how it has affected Gmail users. Mr. Mason has also coordinated
20 counsel in the three related federal complaints filed to date.

21 Moreover, as detailed in his firm resume, Mr. Mason has extensive experience-- gained over
22 the course of twenty years-- representing plaintiffs in class actions. *See* Exhibit 1 to Declaration of
23 Gary E. Mason in Support of Plaintiffs’ Unopposed Motion for Entry of Pretrial Order No. 1. He
24 has successfully litigated a variety of complex class actions, including cases involving privacy and
25 civil rights issues similar to those present in the instant litigation, in federal courts throughout the
26 country. *Id.* Just last year, Mr. Mason, as court-appointed co-lead counsel, settled a nationwide
27 class action in the U.S. District Court of the District Columbia on behalf of veterans whose privacy
28 rights had been compromised by the theft of an external hard drive containing the names, dates of

1 birth, and social security numbers of some 26.5 million veterans and their spouses. *In re: Dept. of*
2 *Veterans Affairs (VA) Data Theft Litig.*, MDL 1796 (D. D.C.). There, Plaintiffs alleged violations of
3 the Privacy Act, the Administrative Procedure Act, and the Fourth and Fifth Amendments. The
4 settlement resulted in the creation of a \$20 million fund for the affected veterans and a *cy pres* award
5 for two non-profit organizations. Mr. Mason is also involved with the proposed \$1.25 billion
6 nationwide settlement of a class action brought on behalf of tens of thousands of black farmers who
7 were denied equal access to U.S. Agriculture Department loan programs. *In re Black Farmers*
8 *Discrimination Litig.*, 1:08- MC- 0051 (D. D.C.).

9 Mr. Mason has served as co-counsel in a number of other complex class actions that have
10 been resolved in federal courts. *See, e.g., Ersler, et. al v. Toshiba America et. al*, 07-civ- 2304
11 (D.N.J. 2009) (settlement of claims arising from allegedly defective television lamps); *In re General*
12 *Motors Corp. Speedometer Prods. Liability Litig.*, MDL 1896 (W.D. Wash. 2008) (national settlement
13 of claims arising from allegedly defective vehicles); *Turner v. General Electric Company*, No. 2:05-
14 CV-186 (M.D. Fl. 2007) (settlement of claims arising from allegedly defective refrigerators);
15 *Galanti v. Goodyear Tire & Rubber Co.*, No. 03-209 (D.N.J. 2003) (creation of \$330 million
16 settlement fund for payment of claims arising from allegedly defective radiant heating systems);
17 *Nnadili, et al. v. Chevron U.S.A.*, No. 02-cv-1620 (D.D.C. 2008) (\$6.2 million settlement for owners
18 and residents of 200 properties contaminated with petroleum products); *In re Synthetic Stucco*
19 *(EIFS) Products Liability Litigation*, MDL No. 1132 (E.D.N.C.) (national class action involving
20 defective synthetic siding); *In re Swanson Creek Oil Spill Litigation*, No. 00-1429 (D. Md. 2002)
21 (\$2.25 million settlement fund to resolve litigation arising from largest oil spill in history of State of
22 Maryland).

23 Finally, Mr. Mason's law firm, Mason LLP, which consists of four attorneys, each of whom
24 has experience litigating class actions on behalf of plaintiffs, and a full staff, has more than sufficient
25 resources to litigate this case.

26 **2. Mr. Ram is Well-Qualified to Serve as Liaison Counsel in the**
27 **Consolidated Action**

28 As recognized by Plaintiffs' counsel, Mr. Ram is similarly well-qualified and adequate to

1 serve as Liaison Counsel in this litigation. As a partner at the law firm of Ram & Olson LLP, Mr.
2 Ram has substantial experience litigating a variety of complex class action cases throughout the
3 nation, and notably, in this forum. *See, e.g., Keilholtz et al v. Superior Fireplace Co.*, 4:08-cv-
4 00836-CW (N.D. Cal.) (currently serving as co-counsel for the national certified class of half a
5 million owners of allegedly dangerous glass-pane gas fireplaces); *Chamberlan v. Ford Motor Co.*,
6 No. 03-2628 (N.D. Cal.) (settlement of nationwide class claims alleging defective plastic manifolds);
7 *Falk v. G.M.C.*, No. 1C07-1731 (N.D. Cal.) (settlement of class action involving allegations of
8 defective speedometers). Mr. Ram's experience is further and more fully enumerated in the Ram &
9 Olson LLP firm resume. *See* Exhibit 1 to Declaration of Michael F. Ram in Support of Plaintiffs'
10 Unopposed Motion for Entry of Pretrial Order No. 1.

11 Importantly, Mr. Ram and his firm are based in California and are thus able to quickly and
12 conveniently communicate with this Court as necessary. Like Mr. Mason, Mr. Ram has spent a
13 significant amount of time investigating and identifying the allegations and legal claims asserted in
14 this litigation. He is able and willing to commit the resources necessary to represent the Class.

15
16 **3. The Steering Committee Will Further Advance the Efficiency and**
Fairness of this Litigation.

17 Finally, Plaintiffs request that the Court approve the creation of the proposed Steering
18 Committee, which will provide support to Lead and Liaison Counsel and assist in the fair and
19 efficient litigation of this case. The Steering Committee is comprised of the attorneys who represent
20 each of the named Plaintiffs in the cases to be consolidated under proposed Pretrial Order No. 1.
21 Each of the members of the proposed Steering Committee has assisted with the investigation of the
22 claims belonging to Plaintiffs and Class Members, and is closely familiar with Google's alleged
23 misconduct. Counsel on the Steering Committee also have substantial experience with federal class
24 action litigation. The firm resume of each Steering Committee member is attached hereto as
25 Exhibits A through D.
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1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that this Court grant entry of Pretrial
3 Order No. 1.

4 DATED: May 6, 2010

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