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Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE GOOGLE BUZZ USER
PRIVACY LITIGATION

This Pleading Relates To:

ALL CASES

Case No. 5:10-CV-00672-JW

**DECLARATION OF GARY E. MASON
IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: December 20, 2010
Time: 9:00 a.m.
Place: Courtroom 8, 4th Floor
[Hon. James Ware]

1 I, Gary E. Mason, declare as follows:

2 1. I am a partner at the law firm of Mason LLP and a member in good standing of
3 the bars of the State of New York, the State of Maryland, and the District of Columbia, and I am
4 admitted *pro hac vice* in this matter. I make this declaration based upon personal knowledge and
5 with respect to documents, upon due inquiry.

6 2. Plaintiff Eva Hibnick filed the initial class action complaint on February 17, 2010
7 against Google, Inc. (“Google”). Additional class action complaints were filed against Google
8 on March 3, 2010, April 5, 2010, May 27, 2010, and June 7, 2010. Plaintiffs in each of these
9 actions asserted claims against Google alleging violations of the (i) the Electronic
10 Communications Privacy Act, 18 U.S.C. §2510 *et seq*; (ii) the Stored Communications Act, 18
11 U.S.C. §2701 *et seq*; (iii) the Computer Fraud and Abuse Act, 18 U.S.C. §1030 *et seq*; (iv) the
12 common law tort of Public Disclosure of Private Facts as recognized by California common law;
13 and (v) the California Unfair Competition Law, California Business & Professions Code §17200.

14 3. On June 30, 2010, this Court granted Plaintiff Eva Hibnick’s motion to
15 consolidate the cases and to appoint interim lead counsel and liaison counsel.

16 4. Plaintiffs filed an amended consolidated complaint on July 29, 2010.

17 5. Plaintiffs’ counsel conducted extensive settlement negotiations with counsel for
18 Google, including multiple in-person meetings. The first such meeting was held at Google’s
19 counsel’s office in San Francisco on April 21, 2010. At that meeting, Google’s Vice President
20 for Product Management, whose responsibilities included the launch of Buzz, spent several hours
21 discussing the program with Class Counsel. He explained Buzz’s operation and responded to
22 questions posed by Class Counsel present at the meeting and available through teleconference,
23 enabling Class Counsel to better understand the facts about how Buzz works, how it was

1 launched, and what changes had already been made; simultaneously, Class Counsel's
2 questioning enabled Google to better appreciate the concerns presented in the complaints. At
3 this meeting, Google's counsel also made an extended presentation of the company's legal
4 defenses to the allegations of the complaints, characterizing the presentation as essentially
5 showing Class Counsel what the content of Google's motion to dismiss would be. Class Counsel
6 debated these legal issues with Google's counsel for several hours. Following a break for lunch,
7 the parties spent the remainder of their time together discussing the issues in the case and
8 exploring the possibilities of settlement. These discussions ultimately culminated with the
9 parties agreeing to a formal mediation.

10 6. Prior to the agreed upon mediation, Google provided further factual material to
11 Class Counsel to enable Counsel to further investigate the factual aspects of the complaints,
12 supplementing the information Google had conveyed to Class Counsel at the April meeting.
13 Based on the information obtained from Google and through thorough independent investigation
14 of the facts and law, Class Counsel produced for Google and the Mediator a 73-page Mediation
15 Statement (with exhibits) that included a 31-page legal brief. This brief outlined the plaintiffs'
16 affirmative legal argument, while responding to the legal presentation that Google's counsel had
17 made at the April meeting; it represented Class Counsel's response to Google's orally-presented
18 arguments for dismissal. Google similarly produced a Mediation Statement for the Mediator,
19 some of which was shared with Class Counsel.

20 7. On June 2, 2010, the parties met for the formal mediation session at the JAMS
21 office in San Francisco, CA. Hon. Fern Smith, a retired federal district court judge with
22 extensive class action experience, presided over the session. It lasted for approximately 14
23 hours. At the outset of the mediation session, the Mediator approved Class Counsel's request to

