

1 Gary E. Mason (pro hac vice)
 2 gmason@masonlawdc.com
 3 Donna F. Solen (pro hac vice)
 4 dsolen@masonlawdc.com
 5 MASON LLP
 6 1625 Massachusetts Ave., NW
 7 Washington, DC 20036
 8 Telephone: (202) 429-2290
 9 Facsimile: (202) 429-2294

6 Michael F. Ram (SBN 104805)
 7 mram@ramolson.com
 8 RAM & OLSON LLP
 9 555 Montgomery Street, Suite 820
 10 San Francisco, California 94111
 11 Telephone: (415) 433-4949
 12 Facsimile: (415) 433-7311

10 [Additional Counsel listed on signature page]

11 *Attorneys for Plaintiffs and the Proposed Class*

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

15 IN RE GOOGLE BUZZ USER PRIVACY
 16 LITIGATION
 17 This Pleading Relates To:
 18 ALL CASES
 19
 20

Case No.: 10-CV-00672-JW

**AMENDED [PROPOSED] ORDER
 PRELIMINARILY APPROVING CLASS
 ACTION SETTLEMENT**

Date: October 4, 2010
 Time: 9:00am
 Place: Courtroom 8, 4th Floor
 [Hon. James Ware]

1 **ORDER GRANTING PRELIMINARY APPROVAL**
2 **OF CLASS ACTION SETTLEMENT**

3 WHEREAS, the Plaintiffs Andranik Souvalian, Katherine C. Wagner, Mark Neyer, Barry
4 Feldman, Rochelle Williams, John Case, and Lauren Maytin (collectively, “Plaintiffs”) and
5 Defendant Google Inc. (the “Defendant”) have entered into a Settlement Agreement intended to
6 resolve the litigation pending in this Court; and

7 WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the
8 terms and conditions for a proposed settlement and dismissal with prejudice of these actions against
9 the Defendant; and

10 WHEREAS, the Court has before it the Plaintiffs' Motion for Preliminary Approval of
11 Settlement, together with the Settlement Agreement and supporting materials; and

12 WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement
13 Agreement were the result of good faith, arm’s length settlement negotiations between competent
14 and experienced counsel for both Plaintiffs and Defendant, assisted by a retired federal district judge
15 with extensive class action experience.

16 IT IS HEREBY ORDERED this ___ day of _____, 2010, as follows:
17

18 1. The terms of the parties’ Settlement Agreement are hereby conditionally approved,
19 subject to further consideration thereof at the Final Approval Hearing provided for below.

20 2. The Settlement Agreement between Defendant and Plaintiffs is adopted by the Court
21 and made part of this Order as if set out in full herein. This Order incorporates by reference the
22 definitions in the Settlement Agreement, and all terms used in this Order shall have the meanings set
23 forth in the Settlement Agreement.
24

25 3. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), the proposed Class
26 is hereby preliminarily certified for Settlement purposes only. The Settlement Class is defined as
27 follows:
28

1 All Gmail users in the United States presented with the opportunity to use
2 Google Buzz through the Notice Date. Excluded from the Class are: (1)
3 Google, or any entity in which Google has a controlling interest, and its
4 respective legal representatives, officers, directors, employees, assigns and
5 successors; (2) the judge to whom this case is assigned and any member of the
6 judge's staff and immediate family; and (3) any person who, in accordance
7 with the terms of this Agreement, properly executes and submits a timely
8 request for exclusion from the Class.

9
10 4. Pursuant to Federal Rule of Civil Procedure 23, and for purposes of settlement only, the
11 Court makes the following preliminary findings of fact and conclusions of law:

- 12 a. The Settlement Class is sufficiently definite;
- 13 b. The Settlement Class is so numerous that joinder of all members of the Settlement
14 Class is impracticable;
- 15 c. There are questions of law and/or fact common within the Settlement Class;
- 16 d. Plaintiffs' claims are typical of the claims of the members of the Settlement Class;
- 17 e. Plaintiffs and their counsel have and will fairly and adequately represent and protect
18 the interests of the Settlement Class;
- 19 f. Plaintiffs' interests do not conflict with the interests of the Settlement Class in the
20 maintenance of this action;
- 21 g. The questions of law and/or fact common to the Settlement Class predominate over
22 the questions affecting only individual members of the Settlement Class; and
- 23 h. Certification of the Settlement Class is superior to other available methods for the fair
24 and efficient adjudication of this controversy.

25 5. The Settlement Agreement and the terms contained therein are hereby preliminarily
26 approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class as a
27 whole.

28 6. The Court approves the proposed method of dissemination of notice set forth in the
Settlement Agreement. The notice meets the requirements of due process and is the best notice

1 practicable under the circumstances. Subject to amendment if the need arises, the notice program set
2 forth in the Settlement Agreement shall be established, and the emails and joint press release sent,
3 within thirty (30) days of this Preliminary Approval Order and executed as set forth in the Settlement
4 Agreement. The Defendant shall notify the appropriate federal and state officials pursuant to the
5 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715.
6

7 7. The Class Action Administrator shall administer the settlement so as to facilitate
8 administrative matters and the distribution of payments to the cy pres recipients in accordance with
9 the terms and conditions of the Settlement Agreement.

10 8. Members of the Settlement Class may opt-out of the Class by submitting a written
11 request for exclusion to the Class Action Administrator. The request for exclusion must be received
12 within sixty (60) days of the date of this Order and must include the individual’s full name, address,
13 a statement of the individual’s intention to opt-out of the Settlement, and the reason or reasons for
14 opting out of the Settlement.
15

16 9. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy
17 of the Settlement Agreement must file with the Clerk of the Court and serve Lead Class Counsel and
18 Defendant's Counsel as set forth in Section 13.11 of the Settlement Agreement, no later than twenty-
19 one (21) days before the Fairness Hearing, a statement of the objections setting forth the specific
20 reason(s), if any, for the objection, including any legal support that the Class Member wishes to
21 bring to the hearing, any evidence that the Class Member wishes to introduce in support of the
22 objection, and whether the Class Member intends to appear at the Fairness Hearing. Class Members
23 may so act either on their own or through any attorney hired at their own expense. The Class
24 Member, or attorney, acting on his or her behalf, also must:
25

- 26 a. File a notice of appearance with the Clerk of the Court no later than twenty-
27 one (21) days prior to the Fairness Hearing or as the Court may otherwise
28

1 direct;

- 2 b. Serve a copy of such notice of appearance on Lead Class Counsel and
3 Defendant's Counsel as set forth in Section 13.11 of the Settlement
4 Agreement, no later than twenty-one (21) days prior to the Fairness Hearing
5 or as the Court may otherwise direct; and
6
7 c. Prove his or her status as a Class Member.

8 10. Any Class Member who files and serves a written objection in accordance with the
9 procedure set forth above and in Section 7 of the Settlement Agreement may appear at the Fairness
10 Hearing to object to any aspect of the fairness, reasonableness or adequacy of the Settlement
11 Agreement. A Class Member who does not timely file and serve such a written objection shall not be
12 heard at the Fairness Hearing.

13
14 11. Any member of the Settlement Class who does not properly and timely request
15 exclusion from the Settlement Class shall waive and forfeit any and all rights the Class Member may
16 have to opt out and shall be bound by all the terms of the Settlement Agreement and by all
17 proceedings, orders and judgments in the Actions.

18 12. The deadline for Class Counsel to file a petition for award of attorneys' fees and
19 reimbursement of expenses and requests for incentive awards to Class Representatives shall be
20 thirty-five (35) days before the Fairness Hearing and the deadline for filing a reply shall be five (5)
21 days before the Fairness Hearing.

22
23 13. The Fairness Hearing shall be conducted on _____, _____, 20____, at _____
24 a.m. The Fairness Hearing shall take place in Courtroom 8, 4th Floor, at the United States District
25 Court for the Northern District of California, San Jose Division, 280 South 1st Street, San Jose, CA
26 95133. At the Fairness Hearing, the Parties will request that the Court, among other things, (a) grant
27 final certification of the Class, (b) enter Judgment in accordance with the Settlement Agreement, (c)
28

1 approve the settlement as final, fair, reasonable, adequate and binding on all Class Members who
2 have not timely opted-out pursuant to Section 6 of the Settlement Agreement and this Order, (d)
3 approve the payment of reasonable attorneys' fees and costs for Class Counsel pursuant to Section
4 10.1 of the Settlement Agreement, (e) approve the incentive awards proposed for the Plaintiffs
5 pursuant to Section 10.2 of the Settlement Agreement, and (f) order the release of all Class
6 Members' claims pursuant to Section 9 of the Settlement Agreement and dismiss this Action with
7 prejudice.
8

9 14. Pending further orders by this Court, all proceedings in this case — other than
10 proceedings pursuant to this Order — shall be stayed and all members of the Settlement Class who
11 do not request exclusion from the Settlement Class in accordance with Paragraph 11 of this Order
12 shall be enjoined under the All Writs Act, 28 U.S.C. § 1651, the Anti- Injunction Act, 28 U.S.C.
13 §2283, and Federal Rule of Civil Procedure 65 from commencing or prosecuting any action, suit,
14 proceeding, claim, or cause of action in any jurisdiction or court against the Defendant relating to or
15 arising out of the subject matter of the Actions.
16

17
18
19 **IT IS SO ORDERED**

20 Dated: _____
21

22
23 _____
24 The Honorable James Ware
25 United States District Judge
26
27
28