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 18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20 SAN JOSE DIVISION

21 MARY MCKINNEY,

Case No. 5:10-CV-01177 EJD

22 NATHAN NABORS

Case No. 5:10-CV-03897 EJD

23 Plaintiffs,

**JOINT CASE STATUS STATEMENT
 REGARDING WHETHER THE
 MCKINNEY AND NABORS CASES
 SHOULD BE CONSOLIDATED**

24 v.

25 GOOGLE INC., et al.,

Dept: 1
 Judge: Hon. Edward J. Davila

26 Defendants.

1 Pursuant to this Court’s order dated August 30, 2011, the parties in *McKinney v. Google,*
2 *Inc., et al.*, Case No. 10-cv-01177 (“*McKinney*”), and *Nabors v. Google, Inc.*, Case No. 10-cv-
3 03897 (“*Nabors*”), submit this Joint Case Status Statement addressing whether the cases should
4 be consolidated pursuant to this Court’s authority under Federal Rules of Civil Procedure 42(a),
5 and, if so, what schedule should be set for nomination of Lead Plaintiff and Lead Counsel.

6 Plaintiffs and Defendants agree that the actions should be consolidated, as described
7 below.

8 **A. The Parties**

9 Plaintiff Mary McKinney is a Pennsylvania resident who allegedly purchased the Nexus
10 One smartphone and claims that she has not received consistent connectivity to T-Mobile USA,
11 Inc.’s (“T-Mobile”) 3G wireless network. McKinney has purported to assert various claims on
12 her own behalf and as representative of a putative nationwide class.¹ McKinney had originally
13 asserted claims against T-Mobile, but Judge Ware dismissed those claims while granting T-
14 Mobile’s motion to compel arbitration. The two remaining defendants in *McKinney* are Google
15 Inc. (“Google”), a Delaware corporation with its principal place of business in Mountain View,
16 California; and HTC Corporation (“HTC”), a Taiwanese corporation. As used herein,
17 “Defendants” refers to Google and HTC.

18 Plaintiff Nathan Nabors is a Florida resident who, like McKinney, allegedly purchased the
19 Nexus One smartphone and claims that he has not received consistent connectivity to T-Mobile’s
20 3G wireless network. Nabors has asserted the same claims as those in *McKinney*, on behalf of
21 himself and as representative of a proposed Florida Class and California Class.² Google is the

22 ¹ McKinney has defined her proposed class as “All persons in the United States who purchased
23 the Google Phone through www.google.com at any time between January 5, 2010 and the present
24 and who either (a) received a rebate for their phone because they have a T-Mobile service plan for
25 access to its 3G wireless network or (b) paid the full price for an ‘unlocked’ Google phone for use
26 on another 3G network.” *McKinney* Second Amended Complaint (“SAC”) ¶¶ 2, 15 (filed on Dec.
27 3, 2010).

26 ² Nabors has defined his proposed Florida Class as consisting of “All persons within the State of
27 Florida who purchased the Google Phone through www.google.com at any time between January
28 5, 2010 and the present,” and his proposed California Class as consisting of “All persons within
the State of California who purchased the Google Phone through www.google.com at any time
between January 5, 2010 and the present.” *Nabors* First Amended Complaint (FAC) ¶¶ 14-15

1 only named defendant in *Nabors*.

2 **B. Procedural History Of The Cases**

3 McKinney filed her original complaint on January 29, 2010 in the Superior Court of
4 California, Santa Clara. Defendants removed the action to this Court on March 22, 2010.
5 McKinney voluntarily amended her complaint on June 11, 2010. On July 12, 2010, Defendants
6 then filed motions to dismiss the First Amended Complaint, including (i) T-Mobile’s motion to
7 compel arbitration, and (ii) Google and HTC’s joint Rule 12(b)(6) motion to dismiss. On August
8 31, 2010, plaintiff in *Nabors* – who is represented by the same counsel as the plaintiff in
9 *McKinney* – filed his complaint in this Court asserting the same causes of action as in *McKinney*
10 but naming only Google as a defendant.

11 By order dated October 8, 2010, Judge Ware related *McKinney* to *Nabors* and set a Case
12 Management Conference for October 25, 2010. The Court also directed the parties to submit a
13 Joint Case Management Statement addressing “whether the cases should be consolidated and if
14 so, a schedule for nomination of Lead Plaintiff and Lead Counsel.” On October 15, 2010, the
15 parties submitted a Joint Case Management Conference Statement asserting that it was premature
16 to consolidate *McKinney* and *Nabors* given the pendency of Defendants’ potentially dispositive
17 motions in *McKinney*. The parties also requested that the October 25, 2010 Case Management
18 Conference be continued to a date after the Court ruled on the motions to dismiss. On October
19 22, 2010, Judge Ware found good cause to continue the Case Management Conference to
20 coincide with the hearing on the motions.

21 After hearing oral argument on November 1, 2010, Judge Ware granted Defendants’
22 pending motions in *McKinney* on November 16, 2010. Specifically, the Court (i) granted T-
23 Mobile’s motion to compel arbitration; and (ii) granted Google and HTC’s Rule 12(b)(6) motion
24 to dismiss all claims asserted in McKinney’s First Amended Complaint but with the leave to
25 amend in accordance with the Court’s order.

26 On December 3, 2010, McKinney filed her Second Amended Complaint, in which she

27
28 (filed on Jan. 10, 2011).

1 purported to assert ten (10) claims against Google and HTC. Plaintiff Nabors amended his
2 complaint as of right on January 10, 2011 asserting the same ten causes of action against Google.

3 On February 22, 2011, Defendants moved to dismiss the Second Amended Complaint in
4 *McKinney* and the First Amended Complaint in *Nabors*. Both *McKinney* and *Nabors* were then
5 reassigned to the Honorable Edward J. Davila on April 25, 2011. On August 30, 2011, this Court
6 granted Defendants' motion to dismiss in *McKinney* and Google's motion to dismiss in *Nabors*,
7 but granted Plaintiffs leave to amend in accordance with the terms of this Court's Order by
8 September 30, 2011.

9 Also on August 30, 2011, this Court issued an order requiring the parties in *Nabors* and
10 *McKinney* to file a joint statement addressing whether the cases should be consolidated and, if so,
11 proposing a schedule for nomination of Lead Plaintiff and Lead Counsel.

12 **C. Nabors and McKinney Involve Common Questions Of Law And Fact And Should Be**
13 **Consolidated**

14 Plaintiffs and Defendants agree that the two actions should be consolidated. Under
15 Federal Rule of Civil Procedure 42(a), this Court has the authority to consolidate actions
16 involving common questions of law or fact. *See* Fed. R. Civ. Proc. 42(a) (when actions involve
17 common questions of law or fact, "the court may: (1) join for hearing or trial any or all matters at
18 issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary
19 cost or delay"). Consolidation is "within the broad discretion of the district court." *In re Adams*
20 *Apple, Inc.*, 829 F.2d 1484, 1487 (9th Cir. 1987). "In exercising its broad discretion to order
21 consolidation, a district court 'weighs the saving of time and effort consolidation would produce
22 against any inconvenience, delay, or expense that it would cause.'" *Levitte v. Google, Inc.*, 2009
23 U.S. Dist. LEXIS 18198, at **3-4 (N.D. Cal. Feb. 25, 2009) (citing *Huene v. U.S.*, 743 F.2d 703,
24 704 (9th Cir. 1984)); *Brown v. Kelly*, 2006 U.S. Dist. LEXIS 89162, at *4 (N.D. Cal. Nov. 27,
25 2006).

26 Here, *Nabors* and *McKinney* assert the same claims based on substantially the same core
27 allegations of fact. The parties jointly agree that consolidation of the two actions pursuant to
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1 Rule 42(a) is in the interests of justice. Consolidation would conserve judicial and party
2 resources, and avoid unnecessary duplication and wasted time and effort, while not causing any
3 overriding inconvenience, delay or expense. In fact, consolidation would be more convenient,
4 more efficient, and less costly than proceeding with the two cases as separate actions.

5 Accordingly, consolidation of *McKinney* and *Nabors* is warranted under Rule 42(a). The parties
6 have agreed that Plaintiffs will file a single, consolidated amended complaint by September 30.

7 **D. Proposed Schedule For Nomination Of Lead Plaintiff And Lead Counsel**

8 This Court has ordered that any amended complaints be filed no later than September 30,
9 2011. The parties believe that the interests of efficiency will be best served through consolidation
10 before that date.

11 Since *McKinney* and *Nabors* are both represented by the same counsel, Plaintiffs propose
12 that the law firms of Plaintiffs' attorneys serve as co-lead counsel. Defendants have no objection
13 to that proposal. Moreover, Plaintiffs propose that *McKinney* and *Nabors* serve as co-Lead
14 Plaintiffs. Since the parties have not participated in a Rule 26(f) conference and discovery has
15 not commenced in neither *McKinney* nor *Nabors*, Plaintiffs do not find there will be any prejudice
16 to Defendants. Defendants propose that a single Lead Plaintiff be appointed and propose that
17 *McKinney*, as the first to file and the only plaintiff who asserted claims against both Defendants,
18 be the one selected by the Court.

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Dated: September 9, 2011

Respectfully submitted,

DECHERT LLP

By: /s/ Matthew L. Larrabee
Matthew L. Larrabee

Counsel for Defendant GOOGLE INC

Dated: September 9, 2011

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