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14 Attorneys for Defendant HTC
 15 CORPORATION

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

21 MARY MCKINNEY, Individually and on
 22 behalf of All others Similarly Situated,

23 Plaintiff,

24 v.

25 GOOGLE INC., a Delaware Corporation;
 26 HTC CORP., a Taiwanese Corporation,

27 Defendants.
 28

Case No. 5:10-CV-01177 EJD

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

Dept: 1
 Judge: Hon. Edward J. Davila

1 Pursuant to the reassignment order dated April 25, 2011, the parties submit this Joint Case
2 Management Statement.

3 **A. Date case was filed.**

4 Plaintiff filed her original complaint on January 29, 2010 in the Superior Court of
5 California, Santa Clara. Defendants removed the action to this Court on March 22, 2010. *See*
6 *McKinney* Docket No. 2.

7 **B. List of all parties.**

8 Plaintiff is Mary McKinney (“Plaintiff”), a Pennsylvania resident, who purports to assert
9 claims on her own behalf and as representative of a putative nationwide class defined as “All
10 persons in the United States who purchased the Google Phone through www.google.com at any
11 time between January 5, 2010 and the present and who either (a) received a rebate for their phone
12 because they have a T-Mobile service plan for access to its 3G wireless network or (b) paid the
13 full price for an ‘unlocked’ Google phone for use on another 3G network.” Second Amended
14 Complaint (“SAC”), ¶¶ 2, 15.

15 There were initially three defendants in this action: T-Mobile USA, Inc. (“T-Mobile”),
16 Google Inc. (“Google”), and HTC Corporation (“HTC”). Judge Ware dismissed T-Mobile after
17 granting T-Mobile’s motion to compel arbitration of any and all claims asserted against it,
18 pursuant to Plaintiff’s subscription agreement for services with T-Mobile.

19 The two remaining defendants are Google, a Delaware corporation with its principal place
20 of business in Mountain View, California; and HTC Inc. (“HTC”), a Taiwanese corporation. As
21 used herein, “Defendants” refers to Google and HTC.

22 **C. Summary of all claims.**

23 Plaintiff asserts legal claims arising out of her purchase of a Nexus One smartphone –
24 which she refers to as the “Google Phone” – based on its alleged failure to provide “consistent”
25 connectivity to T-Mobile’s 3G wireless network. Plaintiff alleges that the Nexus One was
26 developed and marketed by Google, manufactured by HTC, and that T-Mobile is her 3G wireless
27 service provider. SAC ¶¶ 10, 11, 12. She alleges that the Nexus One is an “advanced mobile
28 cellular phone” – or “smartphone” – that provides various features, including voice service,

1 Internet access, email, texting, and other audio and video capabilities. *Id.* ¶ 41. Plaintiff further
2 alleges that the device is designed to provide these features on either a “3G” wireless network or a
3 “2G” wireless network (also known as “GSM/EDGE”), and to switch between networks as they
4 become available. *Id.* ¶¶ 52, 53. Plaintiff alleges that she has been dissatisfied because her
5 Nexus One does not maintain “consistent” connectivity to T-Mobile’s 3G wireless network and
6 has been unhappy with Defendants’ allegedly inadequate customer service. According to her
7 complaint, Google and HTC misrepresented and warranted that the Nexus One would maintain
8 “consistent” 3G connectivity and thereby would operate as what Plaintiff calls a “true 3G device.”

9 On November 16, 2010, Judge Ware granted Google and HTC’s Rule 12(b)(6) motion and
10 dismissed the three claims asserted in Plaintiff’s First Amended Complaint, including Plaintiff’s
11 state and federal breach of warranty claims, and her federal statutory claim under the Federal
12 Communications Act, 47 U.S.C. §§ 201, 207, with leave to amend. *See* Exh. A (Nov. 16, 2010
13 Order); Exh. B (Transcript of Nov. 1, 2010 Hrg.).

14 Plaintiff then filed her Second Amended Complaint, which asserts ten (10) causes of
15 action – including statutory claims under California’s Unfair Competition Law, Cal. Bus. & Prof.
16 Code §§ 17200 *et seq.*, False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, and
17 Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; claims for breach of express
18 warranty and breach of the implied warranty of merchantability under state law and the federal
19 Moss-Magnuson Warranty Act, 15 U.S.C. §§ 2301, *et seq.*; common law claims for negligence,
20 negligent misrepresentation, and fraud; “common counts and unjust enrichment”; and, finally, a
21 separate claim for “declaratory relief” with respect to the parties rights and obligations on the
22 other claims.

23 **D. Brief description of the event underlying the action.**

24 Plaintiff alleges that she purchased a Nexus One over the internet through
25 www.google.com and has been unhappy with her alleged inability to receive “consistent”
26 connectivity to T-Mobile’s 3G wireless network and Defendants’ allegedly inadequate customer
27 service. She alleges that she bought a Nexus One with the expectation that it would provide
28 “consistent” 3G connectivity and thereby operate as what she refers to as a “true 3G device.”

1 Plaintiff alleges that her expectations have been frustrated because the Nexus One has not
2 provided “consistent” 3G connectivity to T-Mobile’s 3G wireless network.

3 **E. Description of relief sought and damages claimed.**

4 Plaintiff’s Second Amended Complaint seeks injunctive and declaratory relief, restitution
5 and damages, attorney’s fees, costs and interest.

6 **F. Status of discovery.**

7 To date, no discovery has commenced because the pleadings are not settled and, under
8 Judge Ware’s management of the case, no discovery was proper unless and until the pleadings are
9 settled and it is determined by the Court whether Plaintiff has any viable legal claim. On October
10 20, 2010, Judge Ware continued the parties’ initial case management conference in light of the
11 then-pending Rule 12(b)(6) motions to dismiss Plaintiff’s First Amended Complaint. No case
12 management conference was held because, as noted above, Judge Ware granted the motion to
13 dismiss with leave to amend, and Plaintiff thereafter filed her Second Amended Complaint.
14 Defendants’ Rule 12(b)(6) motion to dismiss all of the claims asserted in that complaint is fully
15 briefed. Under Judge Ware’s management of this action to date, the parties agree that discovery
16 continues to be premature. McKinney, however, remains ready to proceed with discovery at the
17 earliest possible time.

18 **G. Procedural history of the case.**

19 Defendants removed the action to this Court on March 22, 2010. Plaintiff voluntarily
20 amended her complaint on June 11, 2010. Defendants then filed motions to dismiss the First
21 Amended Complaint, including T-Mobile’s motion to compel arbitration as well as Google and
22 HTC’s joint Rule 12(b)(6) motion to dismiss. On October 8, 2010, Judge Ware related this case
23 to *Nathan Nabors v. Google Inc.*, Case No. C 10-3897, another putative class action filed by the
24 same counsel and asserting the same claims but only against Google. Oral argument on motions
25 to dismiss was heard by the Court on November 1, 2010 (a transcript of which is attached as
26 Exhibit B). On November 16, 2010, Judge Ware issued the Court’s Order granting T-Mobile’s
27 motion to compel arbitration, and also granting Google and HTC’s motion to dismiss the First
28 Amended Complaint with leave to amend. On December 3, 2010, Plaintiff filed her Second

1 Amended Complaint, which asserted claims against Google and HTC. Defendants moved to
2 dismiss the Second Amended Complaint; that motion was fully briefed when the case was
3 reassigned to this Court on April 25, 2011. On April 29, 2011, the Court reset the hearing on
4 Defendants' motion to dismiss to July 1, 2011 at 9:00 a.m.

5 **H. Other deadlines in place.**

6 Not applicable.

7 **I. Any requested modification of these dates.**

8 Not applicable.

9 **J. Whether the parties will consent to a magistrate judge for trial.**

10 The parties will not consent to a magistrate judge for trial.

11 **K. If there exists an immediate need for a case management conference to be scheduled.**

12 No case management conference is appropriate or necessary at this time.

13 Dated: May 5, 2011

Respectfully submitted,

14 DECHERT LLP

15
16 By: /s/ Steven B. Weisburd.
Steven B. Weisburd

17
18 *Counsel for Defendant GOOGLE INC*

19 Dated: May 5, 2011

MUNGER, TOLLES & OLSON LLP

20
21 By: /s/ Rosemarie T. Ring.
Rosemarie T. Ring

22 *Counsel for Defendant HTC CORP.*

23
24 Dated: May 5, 2011

MILSTEIN ADELMAN, LLP
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25
26 By: /s/ Sara Avila.
Sara Avila