

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GALAXY INTERNET SERVICES, INC., ) on behalf of themselves, their customers, ) and all others similarly situated within the ) Commonwealth of Massachusetts, )  <div style="text-align: right;">Plaintiffs, )</div>	)	CIVIL ACTION NO. 1:10 10871WGY
v. )	)	
GOOGLE INC., )	)	
Defendant. )	)	

MEMORANDUM IN SUPPORT OF ASSENTED TO  
MOTION TO EXTEND DEADLINE TO RESPOND TO COMPLAINT

As Defendant Google Inc. ("Google") explained in its previous Motion to Stay, which was granted by this Court on July 14, 2010, the instant lawsuit is one of thirteen separately filed, but factually related, actions pending in multiple judicial districts throughout the country. Google is the sole defendant in these actions, which all pertain to the collection by Google's "Street View" vehicles of data transmitted over open, unencrypted wireless internet ("Wi-Fi") connections. These actions have all been placed before the United States Judicial Panel on Multidistrict Litigation ("JPML" or "Panel") on a motion for consolidation brought by the plaintiffs in one of the related Wi-Fi cases. The JPML convened less than three weeks ago on July 29, 2010 in Boise, Idaho for a hearing on the motion to consolidate all pending actions. All parties agreed that the cases should be consolidated. Consolidation and a new consolidated complaint are therefore even more likely than they were when the Court entered its July 14, 2010 Order, and the Panel's decision is expected imminently.

Accordingly, Google now seeks a ten-day extension of time, to August 23, 2010,

to respond to the Plaintiffs' Complaint in this action. Google has conferred with counsel for Plaintiffs and Plaintiffs do not object to the requested ten day extension. This brief extension will allow additional time for the Panel to issue its anticipated consolidation ruling, which may moot entirely the need for a responsive pleading specific to this action. The additional stay will conserve this Court's resources, and will avoid what may otherwise be needless litigation, requiring Google to respond to a Complaint that may be rendered inoperative by the Panel shortly after Google's response is submitted. For these reasons, Google asks that the Court extend Google's deadline to respond to the Complaint from August 13, 2010, to August 23, 2010.

#### **I. FACTUAL BACKGROUND**

1. Google's response to Plaintiff's May 25, 2010, Complaint is presently due on August 13, 2010. Google has conferred with Plaintiffs' counsel and Plaintiffs do not object to a ten-day extension of time to answer, resulting in a new due date of August 23, 2010, if the Court so rules.

2. Plaintiffs' Complaint is based on allegations concerning "open" wireless Wi-Fi connections used by Plaintiffs to transmit and receive personal information. Plaintiffs contend Google received such data in violation of the federal Wiretap Act and other laws.

3. Thirteen other cases have been filed in seven different federal judicial districts which also allege that Google violated the federal Wiretap Act, among other laws, by allegedly using its Street View vehicles to receive data being transmitted over open Wi-Fi connections.

4. Google is the sole defendant in these thirteen Wi-Fi cases.

5. On July 29, 2010, the JPML held a hearing on a motion filed by the plaintiff in one of the actions, *Keyes v. Google, Inc.*, No. 1:10-cv-0896-JDB (D.D.C.), asking the

JPML to consolidate the *Keyes* action with all related Wi-Fi cases, including this matter. The consolidation issues have been fully briefed to the JPML, and its decision is expected imminently.

6. No party opposed consolidation. All pending cases in which deadlines to answer would otherwise have lapsed as of this date have been stayed pending the JPML's ruling.<sup>1</sup>

7. On June 29, 2010, Google filed a Motion to Stay Pretrial Deadlines in this Court. (Dkt. Nos. 9 and 10) (filed June 29, 2010). Google's Motion for Stay was not opposed, and the Court granted it in its July 14, 2010 Order.

8. Counsel for Google conferred with counsel for Plaintiffs on August 10, 2010, regarding an additional extension of time to respond to the May 25 Complaint. Plaintiffs' counsel does not object to a ten-day extension of the current deadline to respond, resulting in a new deadline of August 23, 2010, if the Court so rules.

## II. ANALYSIS

As consistently remarked upon by federal courts throughout the country, it is an appropriate exercise of discretion to stay proceedings pending a consolidation decision by the JPML. *Brandt v. BP, PLC*, 2010 WL 2802495, at \*2 (D.S.C., Jul. 14, 2010) ("Courts frequently grant stays in cases when an MDL decision is pending. District courts have granted motions to stay after finding that the plaintiff would not be prejudiced by a slight delay.") (staying proceedings in lawsuit concerning Gulf Coast oil spill); *Benege v. Eli Lilly & Co.*, 553 F.Supp.2d 1049, 1051 (N.D. Ind. 2008) ("The Court finds that the

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<sup>1</sup> Since the time of Google's June 29 Motion to Stay, four new cases have been filed against Google based on similar allegations concerning Wi-Fi data. Pre-trial deadlines are not yet stayed in these additional actions, although Google likewise intends to seek a stipulation from plaintiffs in these actions staying proceedings pending the Panel's consolidation ruling.

considerations of judicial economy and potential prejudice to the Defendant weigh in favor of granting the requested stay.") (stay issued pending MDL consolidation ruling); *Anderson v. Merck*, 417 F.Supp.2d 842, 849 (D. Kan. 2006) ("Defendants have moved the Court to stay this case pending a transfer to the Judicial Panel on Multidistrict Litigation. The reason an MDL is established is to provide for 'the convenience of parties and witnesses and ... promote the just and efficient conduct' of complex matters . . . . [A] stay would serve these purposes."); *Good v. Prudential*, 5 F.Supp.2d 804, 809 (N.D. Cal. 1998) ("Courts frequently grant stays pending a decision by the MDL Panel regarding whether to transfer a case.").

Courts in the First Circuit are no different in recognizing that a stay pending a Panel's consolidation decision promotes judicial economy and should generally be granted absent some showing of prejudice caused by the delay. *Good v. Altria Group, Inc.*, 624 F. Supp. 2d 132, 134 (D. Me. 2009) (decision on staying action pending JPML ruling based on: "(1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party without a stay; and (3) judicial economy").

All of the reasons supporting Google's previously granted Motion for Stay remain true, and have only grown more compelling. Since Plaintiffs have assented to Google's requested ten-day extension, any potential prejudice to Plaintiffs is not a factor here supporting denial of the requested extension. The Panel heard argument on the pending motion to consolidate as expected on July 29, and a ruling is anticipated soon. If the Panel rules prior to August 23, the issue of an answer or response to Plaintiffs' Complaint in this matter may be rendered moot. If, by contrast, the ten-day extension is not granted and the Panel does not rule by August 13, Google will be forced to respond to the

Complaint in this action, which may be a wholly unnecessarily and duplicative pleading if, as anticipated, the Panel orders consolidation and plaintiffs elect to file a new consolidated complaint or the transferee court orders that they do so.

Google acknowledges the Court's July 14 Order regarding further continuances. Google nonetheless respectfully submits that the foregoing subsequent developments and the other relevant factors supporting its requested ten-day extension weigh so heavily in favor of extending the stay—with virtually no countervailing factors that support denial of the extension of time—that the relief sought is warranted. The JPML gave no indication on July 29 that its ruling would be unusually delayed. Given the agreement among the parties before the Panel, including the parties to this case, that the Wi-Fi cases should be consolidated, consolidation and a new consolidated complaint is the likely outcome, and both are expected in the very near future. Requiring Google to answer or otherwise respond during this interim period, particularly in light of Plaintiff's assent to the intervening ten day extension, would needlessly expend the resources of the parties.

### III. CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court issue a brief ten day extension of Google's deadline to respond to Plaintiffs' Complaint from August 13, 2010, to August 23, 2010.

GOOGLE INC.,  
By its attorneys,

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Dated: August 11, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing. The ECF system presently indicates that there are no non-registered participants.

/s/ James B. Conroy  
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