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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

17 IN RE GOOGLE BUZZ USER PRIVACY  
18 LITIGATION

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

19 This Pleading Relates To:

20 ALL CASES

**NOTICE OF MOTION AND MOTION FOR  
ORDER (1) PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT; (2)  
PROVISIONALLY CERTIFYING  
SETTLEMENT CLASS AND APPOINTING  
CLASS COUNSEL; (3) AUTHORIZING  
DISTRIBUTION OF NOTICE OF  
SETTLEMENT; AND (4) SETTING A  
SCHEDULE FOR THE FINAL APPROVAL  
PROCESS; MEMORANDUM OF POINTS  
AND AUTHORITIES**

25 Date: December 20, 2010  
26 Time: 9:00 a.m.  
27 Place: Courtroom 8, 4<sup>th</sup> Floor  
[Hon. James Ware]

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1 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

2 Please take notice that on December 20, 2010 at 9:00 a.m., or on such other date as the  
3 Court directs, in Courtroom 8, 4<sup>th</sup> Floor of the United States District Court, Northern District of  
4 California, San Jose Division, before the Honorable James Ware, Plaintiffs Andrew Souvalian  
5 (“Souvalian”), Katherine C. Wagner (“Wagner”), Mark Neyer (“Neyer”), Barry Feldman  
6 (“Feldman”), John H. Case (“Case”), Lauren Maytin (“Maytin”), and Rochelle Williams  
7 (“Williams”) (collectively “Plaintiffs” or “Class Representatives”) on behalf of themselves and all  
8 those similarly situated and Google Inc. (“Google”) will respectfully move this Court for an order  
9 (1) preliminarily approving the proposed settlement; (2) provisionally certifying the Settlement  
10 Class and appointing Class Representatives and Class Counsel; (3) approving the proposed notice  
11 and authorizing its dissemination to the members of the class; and (4) setting a schedule for the  
12 final approval process.

13 Plaintiffs make this motion, with the support of counsel for defendant, pursuant to Federal  
14 Rule of Civil Procedure 23(e) as set forth in the accompanying brief.

15 This Motion will be based on this Notice; the accompanying Memorandum of Points and  
16 Authorities in Support of the Motion; the Declaration of Gary E. Mason, filed herewith, the  
17 Settlement Agreement and exhibits, attached to this Memorandum as Exhibit 1; the Court’s file in  
18 this action, and such other argument or evidence as may be presented at or prior to the hearing on  
19 the Motion.

#### 20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 The parties to this putative class action, Plaintiffs Andrew Souvalian (“Souvalian”),  
22 Katherine C. Wagner (“Wagner”), Mark Neyer (“Neyer”), Barry Feldman (“Feldman”), John H.  
23 Case (“Case”), Lauren Maytin (“Maytin”), and Rochelle Williams (“Williams”) (collectively  
24 “Plaintiffs” or “Class Representatives”) and Google Inc. (“Google”) have reached a settlement  
25 agreement resolving all claims asserted in the action. Accordingly, pursuant to Federal Rule of  
26 Civil Procedure 23(e), the Parties seek an order from this Court (i) preliminarily approving the  
27 proposed settlement; (ii) provisionally certifying the Settlement Class and appointing Class  
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1 Representatives and Class Counsel; (iii) approving the proposed notice and authorizing its  
2 dissemination to the members of the class; and (iv) setting dates and procedures for the fairness  
3 hearing, including deadlines for class members to file objections to the proposed settlement or  
4 request that they be excluded from the settlement. The Settlement Agreement is attached hereto  
5 as Exhibit 1.

## 6 **I. STATEMENT OF ISSUES TO BE DECIDED**

7 Plaintiffs identify the following issues to be decided: whether the Settlement Agreement  
8 reached by the parties can be preliminarily approved as fair, adequate and reasonable; whether the  
9 Settlement Class can be provisionally certified, and the Class Representatives and Class Counsel  
10 provisionally appointed; and whether the proposed notice can be approved and dissemination of  
11 that notice to the class can be authorized.

## 12 **II. BACKGROUND OF THE LITIGATION**

### 13 **A. Background**

14 Google launched a social networking product, "Google Buzz" (or "Buzz"), on February 9,  
15 2010. Google Buzz was built into "Gmail," Google's email program. In the terms used in Google  
16 Buzz, Buzz users are networked with those other individuals whom they are "following" and have  
17 individuals who are "followers" of them. Buzz suggests follower/following lists to prospective  
18 Buzz users based in part upon who they email and chat with the most in Gmail. A Buzz user's  
19 follower/following list may be publicly viewable through their Google profile. Plaintiffs alleged  
20 that this approach to a social networking program raised privacy concerns (1) because email users  
21 did not necessarily want to be in social networks with their email contacts; and (2) because public  
22 knowledge of how the "follower/following" lists were populated, coupled with the potential  
23 public availability of these lists, appeared to divulge a Gmail user's most frequent email contacts  
24 without sufficient consent.

25 On February 17, 2010, Plaintiff Eva Hibnick filed the initial class action Complaint in this  
26 action, on behalf of all United States users of Gmail to whose Gmail accounts Google added  
27 Google Buzz. Additional complaints were filed against the Defendant on March 3, 2010, April 5,  
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1 2010, May 27, 2010 and June 7, 2010. The plaintiffs in each of these actions alleged that aspects  
2 of the operations of Google Buzz violated: (i) the Electronic Communications Privacy Act, 18  
3 U.S.C. §2510 *et seq*; (ii) the Stored Communications Act, 18 U.S.C. §2701 *et seq*; (iii) the  
4 Computer Fraud and Abuse Act, 18 U.S.C. §1030 *et seq*; (iv) the common law tort of Public  
5 Disclosure of Private Facts as recognized by California common law; and (v) the California  
6 Unfair Competition Law, California Business & Professions Code §17200.

7 Google contends that plaintiffs have mischaracterized and misunderstood how Google  
8 Buzz operates, has denied and continues to deny plaintiffs' allegations, and denies that it has  
9 engaged in any wrongdoing whatsoever relating to Google Buzz. Google denies that the plaintiff  
10 and putative class are entitled to any form of damages or other relief, and has maintained  
11 throughout this litigation that it has meritorious defenses to all claims alleged in the Complaint  
12 and that it was and is prepared to vigorously defend against those claims.

13 On June 30, 2010, this Court granted Plaintiff Hibnick's motion to consolidate the cases  
14 and to appoint interim lead class counsel and liaison counsel.

### 15 **B. Google's Response To The Privacy Concerns**

16 While denying any legal liability, Google responded quickly to improve Google Buzz and  
17 to address concerns that had been raised about it. Google announced its first modifications within  
18 days after launch and implemented them within the following week. These changes included: (1)  
19 making a more visible option for users to avoid displaying their "followers;" (2) adding more  
20 links so users could more easily block individuals from following them; (3) changing Google's  
21 original concept that users automatically "followed" others to one in which users were given  
22 automatic "suggestions"; (4) changing its default connection to other Google content (such as a  
23 user's public photo albums previously uploaded on line) to give users more autonomy over this  
24 choice; and (5) adding a Buzz tab to Gmail settings, enabling users to have more autonomy over  
25 the connection between these two programs. Then, on April 5, 2010, several months after these  
26 suits were filed and after additional refinements to Buzz, Google enabled Buzz users a "second  
27 chance" by providing a "confirmation page" that displayed a Buzz users choices to the user and  
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1 sought confirmation from the user about his/her privacy settings.

2 **C. Mediation and Settlement**

3 Consistent with Google's attempt to address concerns about Buzz, the company reached  
4 out to Class Counsel to discuss concerns about Buzz and to see if resolution of the litigation could  
5 be advanced through in-persons meetings and discussions. The first such meeting was held at  
6 Google's counsel's office in San Francisco on April 21, 2010. See Declaration of Gary E. Mason  
7 in Support of Preliminary Approval ("Mason Dec.") (Sept. 2, 2010), ¶ 5. At that meeting,  
8 Google's Vice President for Product Management, whose responsibilities included the launch of  
9 Buzz, spent several hours discussing the program with Class Counsel. *Id.* He explained Buzz's  
10 operation and responded to questions posed by Class Counsel present at the meeting and available  
11 through teleconference, enabling Class Counsel to better understand the facts about how Buzz  
12 works, how it was launched, and what changes had already been made; simultaneously, Class  
13 Counsel's questioning enabled Google to better appreciate the concerns presented in the  
14 complaints. *Id.* At this meeting, Google's counsel also made an extended presentation of the  
15 company's legal defenses to the allegations of the complaints, characterizing the presentation as  
16 essentially showing Class Counsel what the content of Google's motion to dismiss would be. *Id.*  
17 Class counsel debated these legal issues with Google's counsel for several hours. *Id.* Following a  
18 break for lunch, the parties spent the remainder of their time together discussing the issues in the  
19 case and exploring the possibilities of settlement. *Id.* These discussions ultimately culminated  
20 with the parties agreeing to a formal mediation. *Id.*

21 Prior to the agreed upon mediation, Google provided further factual material to Class  
22 Counsel to enable Counsel to further investigate the factual aspects of the complaints,  
23 supplementing the information Google had conveyed to Class Counsel at the April meeting.  
24 Mason Dec., ¶ 6. Based on the information obtained from Google and through thorough  
25 independent investigation of the facts and law, Class Counsel produced for Google and the  
26 Mediator a 73-page Mediation Statement (with exhibits) that included a 31-page legal brief. *Id.*  
27 This brief outlined the plaintiffs' affirmative legal argument, while responding to the legal  
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1 presentation that Google's counsel had made at the April meeting; it represented Class Counsel's  
2 response to Google's orally-presented arguments for dismissal. *Id.* Google similarly produced a  
3 Mediation Statement for the Mediator, some of which was shared with Class Counsel. *Id.*

4 On June 2, 2010, the parties met for the formal mediation session at the JAMS office in  
5 San Francisco, California. Mason Dec., ¶ 7. Hon. Fern Smith, a retired federal district court  
6 judge with extensive class action experience, presided over the session. *Id.* It lasted for  
7 approximately 14 hours. *Id.* At the outset of the mediation session, the Mediator approved Class  
8 Counsel's request to make a formal presentation of their briefs and arguments, as Google had  
9 made to Class Counsel during the April meeting. *Id.* Class Counsel Rubenstein presented the  
10 plaintiffs' case to the Mediator and Google's counsel for the first portion of the mediation  
11 session. *Id.* The parties spent the remainder of the day discussing the factual and legal issues in  
12 the case and the bases for resolution of it. *Id.* Very late that evening, the mediation proved  
13 successful, resulting in a Term Sheet and ultimately in the formal Settlement Agreement  
14 described below. *Id.*

#### 15 **D. Confirmatory Discovery**

16 As part of the settlement, the parties negotiated factual materials that would be made  
17 available by Google to Class Counsel and the processes for that discovery. Pursuant to that  
18 agreement, Google made available to Class Counsel all consumer feedback that it had received  
19 about the Buzz program from Buzz users throughout the world. Google also produced a series of  
20 sworn statements by which its relevant employees delineated particular aspects of Buzz's launch  
21 and subsequent operations. Class counsel has reviewed these thousands of pages of documents.  
22 Class counsel also developed a coding system for the consumer comments and complaints and  
23 analyzed those. Of all consumer feedback sent to Google about Buzz, Class Counsel could  
24 identify no class members who allege that they suffered out-of-pocket damages.

### 25 **III. THE TERMS OF THE SETTLEMENT AGREEMENT**

26 As the result of the extensive arm's-length negotiations described above, the parties have  
27 agreed to settle the litigation on the terms set forth in the Settlement Agreement. The Settlement  
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1 Agreement includes key terms recognizing changes to the Buzz program, providing for public  
2 education about the privacy aspects of Buzz, providing extensive monetary relief for the creation  
3 of a fund payable to cy pres recipients to be agreed upon and attorneys' fees and expenses, and  
4 providing notice to the class and an opportunity to object to the Settlement.

5 **A. The Settlement Class**

6 The Settlement Class is defined as all Persons in the United States who were Gmail users  
7 presented with the opportunity to utilize Buzz through the date of notice provided for in the  
8 Settlement Agreement.

9 **B. Settlement Benefits**

10 The Settlement confers three significant sets of benefits on the class and public.

11 *First*, the Settlement recognizes that, since the inception of these lawsuits, Google has  
12 made changes to the Buzz program to address privacy and other concerns raised by users. These  
13 changes are generally described in Part II(B), above.

14 *Second*, the Settlement requires that Google undertake wider public education about the  
15 privacy aspects of Buzz. The plaintiffs have made and may make further recommendations to  
16 Google about the content of that public education. Google will consider the recommendations of  
17 Plaintiffs about the content of that public education, will select and design the final content of the  
18 public education efforts in its discretion, and will report back to Class Counsel identifying the  
19 particular aspects of the educational efforts it undertakes within 90 days of a final judgment in  
20 this matter.

21 *Third*, the Settlement provides for the creation of an \$8.5 million Settlement Fund. After  
22 deduction of attorneys' fees and expenses, incentive awards and administrative cost, the balance  
23 of the Settlement Fund, in its entirety, will be paid out to cy pres recipients, who will be existing  
24 organizations focused on Internet privacy policy or privacy education.

25 **C. Attorneys' Fees and Expenses**

26 Google has agreed that Class Counsel is entitled to seek an award of reasonable attorneys'  
27 fees and expenses for prosecuting this action and would not object to Class Counsel's petition for  
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1 fees provided the request is for no more than 30 percent of the Settlement Fund. Class Counsel  
2 intend to petition for a fee constituting 25% of the Common Fund. See Mason Decl. at ¶10.

3 **D. Release of Claims**

4 Under the Settlement Agreement, each member of the class will be deemed to have  
5 released any and all claims, demands, rights, liabilities and causes of action of every nature and  
6 description whatsoever, known or unknown, suspected or unsuspected, asserted or that might  
7 have been asserted, by the Plaintiffs or any Settlement Class Member, against Google arising out  
8 of or related to the facts giving rise to the subject matter of the Consolidated and Amended  
9 Complaint and the predecessor complaints.

10 **E. Notice**

11 The parties have agreed, subject to Court approval, to a notice plan that includes (1) a  
12 third-party website (the "Settlement Website") created to provide neutral information about the  
13 settlement and containing a proposed settlement notice (the "Class Notice") (attached to the  
14 Settlement Agreement as Exhibit B); (2) a joint press release mutually agreed by the Parties,  
15 announcing the settlement and listing the address of the Settlement Website, that Defendant shall  
16 cause to be wired to major news outlets; and (3) individual email notification, sent by Google to  
17 all Gmail users whom Google can identify through reasonable efforts as residing in the United  
18 States, which notification shall include a hypertext link to the Settlement Website.

19 The Class Notice informs Class Members of the nature of the action, the litigation  
20 background and the terms of the agreement, including the definition of the Settlement Class, the  
21 relief provided by the Settlement Agreement, the entitlement of Class Counsel to fees and  
22 expenses, and the scope of the release and binding nature of the settlement on Class Members. It  
23 also describes the procedure for objecting to the settlement, advises class members that they have  
24 the right to opt out of the settlement and describes the consequences of opting out, and states the  
25 date and time of the final approval hearing. *Id.*

26 The Agreement proposes that notice program set forth above be established, and the  
27 emails and joint press release sent, within thirty (30) days after the Court enters an order granting  
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1 preliminary approval of the Settlement Agreement. Pursuant to the requirements of the Class  
2 Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, the Defendant also shall serve notice of the  
3 Settlement Agreement on the appropriate federal and state officials not later than ten (10) days  
4 after the Settlement Agreement is filed with the Court.

#### 5 **F. Objections and Opt-Out Procedures**

6 To be excluded from the Settlement Class, a class member must send a written request for  
7 exclusion to the Administrator. The request for exclusion must contain the name, current postal  
8 address, current telephone number, and Gmail user name of the Settlement Class member and a  
9 specific statement that he, she or it requests to be excluded from the Settlement Class and be  
10 postmarked no later than sixty (60) days after the Court enters an order granting preliminary  
11 approval of the Settlement Agreement. Plaintiffs shall provide the Court with a list of all  
12 conditional Settlement Class members submitting an Exclusion Request in accordance with  
13 Section I(3)(a)(1) above (the “Exclusion List”) at or before the Fairness Hearing.

14 Any Settlement Class Member who does not submit a valid and timely Exclusion Request  
15 may object to the Settlement by mailing a written statement of his, her or its objection to the  
16 Court. The Objection must be received no later than the twenty-one (21) days prior to the  
17 Fairness Hearing and include the Settlement Class Member's name, current postal address, current  
18 telephone number, the basis for the objection, and whether the Settlement Class Member or his,  
19 her or its lawyer intends to appear at the Fairness Hearing.

#### 20 **IV. ARGUMENT**

##### 21 **A. The Court Should Grant Preliminary Approval of the Proposed Settlement.**

##### 22 **1. The Standard for Preliminary Approval.**

23 Federal Rule of Civil Procedure 23(e) provides that a class action cannot be settled or  
24 compromised without approval by the court. Fed. R. Civ. P. 23(e). Judicial approval is required  
25 regardless of whether the action is certified for trial and later settled or is certified for purposes of  
26 settlement. *Manual for Complex Litigation*, Fourth, § 21.61 (2004). The approval process  
27 typically involves two steps: first, the settlement is approved preliminarily following the  
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1 submission of the parties of relevant information concerning the terms of the settlement and the  
2 history of the litigation; second, after notice of the proposed settlement is given to the class, the  
3 Court conducts a final approval hearing, also known as a fairness hearing. *Nat'l Rural*  
4 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523 (C.D. Cal. 2004). Ultimately, to approve  
5 the proposed settlement the Court must determine that it is fair, reasonable and adequate. *Officers*  
6 *for Justice v. Civil Serv. Comm'n of City & County of San Francisco.*, 688 F.2d. 615, 625 (9th  
7 Cir. 1982).

8 At this first preliminary approval stage, the Court's estimation of whether a settlement is  
9 fair, reasonable, and adequate is limited. "Where the proposed settlement appears to be the  
10 product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not  
11 improperly grant preferential treatment to class representatives or segments of the class and falls  
12 within the range of possible approval, preliminary approval is granted." *In re NASDAQ Market-*  
13 *Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997); *see also In re Syncor ERISA Litig.*,  
14 516 F.3d 1095, 1110 (9th Cir. 2008); *Young v. Polo Retail, LLC*, No. C-02-4546 VRW, 2006 WL  
15 3050861, at \* 5 (N.D. Cal., Oct. 25, 2006); *In re Vitamins Antitrust Litig.*, Nos. Misc. 99-197  
16 (TFH), MDL 1285, 2001 WL 856292, at \* 4-5 (D.D.C., Jul. 25, 2001); WILLIAM B. RUBENSTEIN,  
17 ET AL., *NEWBERG ON CLASS ACTIONS*, §11.25 (4th ed. 2002 & 2010 Updates). Additionally, the  
18 Court's analysis should begin with the presumption that the settlement is fair.

19 A presumption of fairness exists where the settlement is reached through arm's-length  
20 negotiations, sufficient investigation has taken place to allow counsel and the Court to act  
21 intelligently, and counsel is experienced in similar types of litigation. *Duhaime v. John Hancock*  
22 *Mut. Life. Ins. Co.*, 177 F.R.D. 54, 68 (D. Mass. 1997) (settlement is presumed fair where it is the  
23 product of arm's-length negotiations); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 176  
24 F.R.D. 158, 184 (E.D. Pa. 1997) ("Significant weight should be attributed 'to the belief of  
25 experienced counsel that the settlement is in the best interest of the class'" (quoting *Austin v. Pa.*  
26 *Dep't of Corrections.*, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995)). Thus, at this stage, so long as  
27 the settlement falls into the range of possible approval — giving deference to the result of the  
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1 parties' arm's-length negotiations and the judgment of experienced counsel following sufficient  
2 investigation — the settlement should be preliminarily approved and a final fairness hearing  
3 scheduled.

4 **2. The Proposed Settlement Is Fair and Within The Range of Possible**  
5 **Approval.**

6 The proposed Settlement Agreement in this case is fair, reasonable, and adequate, and  
7 clearly falls within the range of possible approval.

8 **a. The Settlement Is the Result of Serious, Arm's-Length,**  
9 **Informed Negotiations.**

10 One indication of whether a settlement is fair and reasonable is whether it is the product of  
11 serious, arm's-length negotiations following serious investigation of the merits of the case. Such  
12 negotiation and investigation minimize any concerns that the Settlement Agreement might be the  
13 result of collusion among opposing parties or their counsel to undermine the interests of the class  
14 for their own benefit.

15 The Settlement in this case easily meets that standard. Class counsel separately undertook  
16 significant factual and legal investigation of the issues prior to filing the cases and prior to  
17 meeting with Google. The parties then engaged in extensive discussion about both the facts and  
18 law at issue. Google presented what amounted to a factual and legal motion to dismiss to Class  
19 Counsel at their initial meeting in April 2010. Google there made available an executive who  
20 oversees product management for Google product applications, including Google Buzz. Class  
21 Counsel had the opportunity to review with him how Buzz worked and to clarify various facts  
22 material to plaintiffs' claims. Google and Class Counsel had extensive discussions about the facts  
23 of the case and the merits of the applicable legal claims, culminating in the parties' scheduling a  
24 formal mediation.

25 In preparation for the mediation, Class Counsel conducted further extensive research and  
26 analysis of plaintiffs' claims. At Class Counsels' request, Google provided critical information  
27 about Buzz and its launch, including screenshots of the various web pages shown to Gmail users  
28 who "checked out" Buzz when it was initially launched, and screenshots of these same pages as



1 subsequently modified. Synthesizing these materials in preparation for the mediation, Class  
2 Counsel produced a 73-page written response to Google's factual and legal claims, essentially a  
3 vigorous written opposition to Google's oral motion to dismiss presentation. At the outset of the  
4 mediation presided over by the retired federal district court judge Fern Smith, Class Counsel  
5 orally presented its position on the facts and law in the case. The parties then engaged in  
6 mediation for roughly 14 hours under Judge Smith's direction, culminating in a term sheet late in  
7 the evening. At all times, the mediation was hard fought and arm's-length. Attorney's fees were  
8 never discussed.

9       Following the successful resolution of the formal mediation and pursuant to the terms  
10 adopted there, Class Counsel has conducted confirmatory discovery. Google has made thousands  
11 of pages of documents available to Class Counsel, including about 2,000 emails that Gmail users  
12 sent to Google providing feedback about Buzz, as well as sworn statements from Google  
13 employees about various aspects of the Buzz program. Class Counsel have reviewed these  
14 documents, including carefully scrutinizing the complaints about Buzz by coding and entering  
15 them in a database so that they could be formally analyzed.

16       The Settlement Agreement clearly emerges from a formal, arms-length negotiation  
17 process between the parties and Class Counsel are confident, based on their extensive experience  
18 as class action litigators, that they have a full understanding of the facts at issue and the strengths  
19 and weaknesses of the legal allegations in the complaint.

20                   **b.       The Terms of the Settlement Are Fair and Reasonable.**

21       There can be little doubt that the proposed settlement is "within the range of possible  
22 approval." The Settlement (1) acknowledges changes that Google has made to Buzz since the  
23 filing of these cases; (2) requires Google to undertake further public education on the privacy  
24 aspects of Buzz; and (3) creates a \$8.5 million Settlement Fund payable to cy pres recipients.  
25 This package of benefits is significant on its own terms and compares well to settlements in  
26 comparable cases.

27       On its own terms, the Settlement is a fair and reasonable resolution to this litigation  
28



1 because it recognizes three important concerns raised by plaintiffs. *First*, Google has made a  
2 series of changes to Buzz to address the concerns raised about privacy and other issues. *See*  
3 *supra*, Section II.B. Plaintiffs believe that Google’s changes to Buzz are significant achievements  
4 of this Settlement. *Second*, and more specifically, via the Settlement Agreement, Google has  
5 agreed to provide further public education concerning the privacy aspects of Buzz. The particular  
6 content of this “injunctive” relief is being developed, with the plaintiffs providing suggestions to  
7 Google, who will provide Lead Class Counsel with a report on these educational efforts within  
8 ninety days of the date of final approval of the settlement. *Last*, but certainly not least, the  
9 Settlement provides for the creation of a \$8.5 million cy pres fund; payments will be made to  
10 qualified organizations focused on enhancing internet privacy and/or furthering public education  
11 about internet privacy. The work of these organizations enabled by the cy pres money will  
12 benefit class members by helping to protect their internet privacy in the future.

13 This package of settlement benefits compares favorably to settlements in other cases  
14 concerning alleged privacy violations that did not involve significant actual damages. *See, e.g.*,  
15 *Lane v. Facebook, Inc.*, No. 08-cv-3845 RS (N.D. Cal. 2009) (unconsented sharing of personal  
16 information with third-parties; settlement created privacy foundation with funding of \$9.5  
17 million); *In re DoubleClick, Inc. Privacy Litig.*, No. 00 Civ 0641 (NRB) (S.D.N.Y. 2001)  
18 (Defendant, an Internet ad-serving company, revised its notice, choice and data collection  
19 practices and conducted a privacy-oriented public information campaign); *DSeLise v Farenheit*  
20 *Entertainment*, Civ. Act. No. CV-014297 (Cal. Sup. Ct., Marin Cty. Sept. 2001) (sellers of  
21 interactive music CD updated privacy policies, added warning labels to CDs, and purged  
22 previously collected data).

23 Of particular relevance to the reasonableness of the relief obtained under the proposed  
24 settlement is the fact that Google has and would continue to contest vigorously the merits of Class  
25 Members’ claims as well as named Plaintiffs’ ability to pursue this action on a class-wide basis.  
26 Google denies that it engaged in any unlawful conduct and, in addition, has interposed several  
27 defenses to the claims asserted. Moreover, Google argues that Class Counsel will be unable to  
28

1 demonstrate that any plaintiffs have suffered actual compensatory damages.

2 The claims raised in this litigation are based primarily upon federal privacy statutes that  
3 have not been specifically applied by courts to internet-based social networks. Numerous issues  
4 would necessarily be subject to novel and extensive litigation, and possible appeal, including  
5 whether the information at issue here is protected by the Stored Communication Act, whether the  
6 information was “intercepted” within the meaning of the federal Wiretap Act, and whether  
7 Google’s use of its own computer servers can create liability under the Computer Fraud and  
8 Abuse Act. Other defenses are fact-based and would be determined by the trier of fact if the case  
9 proceeded to trial. There is, in short, certainly no guarantee that Plaintiffs would ultimately  
10 prevail on these legal and factual issues. Thus, as in any case, the risk of losing must be  
11 considered in evaluating the adequacy of a proposed settlement.

12 Indeed, throughout the course of settlement negotiations, the parties considered factors  
13 such as the past and ongoing cost of the contentious litigation, the scope of relief that was being  
14 sought and that might be provided, the cost and benefit of such relief, the potential damages at  
15 issue, the risks to each party of class certification and trying the matter, and the possibility of  
16 appeals of any judgment in the trial court - adding to the expense, delay and uncertainty of  
17 litigation. The parties believe that the settlement is fair, reasonable, and adequate and – given the  
18 uncertainties of continued litigation coupled with the fact that Plaintiffs have concluded that few,  
19 if any, Gmail users suffered out-of-pocket damages as a result of the launch of Buzz – there can  
20 really be no doubt that this proposed Settlement falls well within the range of possible approval.

21 **B. The Court Should Provisionally Certify a Settlement Class Pursuant to**  
22 **Federal Rule of Civil Procedure 23(b)(3).**

23 Plaintiffs propose that the Court provisionally certify this action as a class action pursuant  
24 to Federal Rule of Civil Procedure 23 for the purpose of settlement. Such provisional  
25 certification is considered an appropriate device in the settlement of class actions where the  
26 agreement to settle the case occurs before certification. *See, e.g., Jaffe v. Morgan Stanley & Co.,*  
27 *Inc.*, No. C-06-3903 TEH, 2008 WL 346417, at \* 2-3 (N.D. Cal. Feb. 7, 2008); *In re Portal*  
28 *Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 1991529, at \* 2-3 (N.D. Cal. Jun. 30,

1 2007). Although Google disagrees that a class could be certified if the litigation proceeded, the  
2 parties agree that the settlement class may be certified under Rule 23(b)(3) and have provided in  
3 the Settlement Agreement and the proposed notice that class members will have the opportunity  
4 to exclude themselves from the settlement, as required by Rule 23(c)(2)(B)(v) and 23(e)(4).

5 However, plaintiffs speak only for themselves in addressing class certification.

6 **1. The Class is So Numerous that the Individual Joinder of All Class**  
7 **Members Would Be Impracticable.**

8 The Class that Plaintiffs seek to represent consists of millions of Gmail users. This class  
9 is ascertainable, and indeed so numerous that joinder of all members would be impracticable.  
10 Fed. R. Civ. P. 23 (a)(1). While Plaintiffs need not allege a precise number of class members,  
11 this Court has noted that a class consisting of as few as 41 members is sufficient to satisfy the  
12 numerosity requirement, particularly where the size of each individual claim is relatively small or  
13 the members are geographically diverse. *See e.g., Natl. Federation of Blind v. Target Corp.*, No.  
14 C-06-1802, 2007 WL 2846462, at \*13 (N.D. Cal. October 2, 2007) (citing 5 James Wm. Moore et  
15 al., *Moore's Federal Practice* §23.22[1][b] (3d ed. 2004)); *Kresnick v. Cendant Corp.*, No. 4:07-  
16 00013, 2007 WL 1795793, at \*7 (N.D. Cal. June 20, 2007); *see also Xiufang Situ*, 240 F.R.D. at  
17 560. Here, the class consists of several million individuals. There is, therefore, no question that  
18 the numerosity requirement is satisfied.

19 **2. There Are Questions of Law and Fact Common to Plaintiffs and**  
20 **Members of the Class.**

21 Next, Rule 23(a)(2), which is construed permissively by the courts, requires that common  
22 questions of law or fact exist among class members. *Xiufang Situ*, 240 F.R.D. at 56. The  
23 requirements for finding commonality are minimal. *Id.*; *Hanlon v. Chrysler Corp.*, 150 F.3d  
24 1011, 1020 (9th Cir. 1998). Accordingly, it is sufficient that Plaintiffs show the “existence of  
25 shared legal issues with divergent factual predicates” or “a common core of salient facts coupled  
26 with disparate legal remedies within the class.” *Hanlon*, 150 F.3d at 1019. In fact, in order to  
27 satisfy this requirement, Plaintiffs need only evince a single significant common question  
28 between the Class Representative and the prospective Class. *Dukes v. Wal-Mart, Inc.*, 474 F.3d

1 1214, 1225 (9th Cir. 2007); *see also* WILLIAM B. RUBENSTEIN, ET AL., NEWBERG ON CLASS  
2 ACTIONS § 3.10 (4th ed. 2002 & 2010 Updates) (stating that the Rule 23(a)(2) requirement “is  
3 easily met in most cases. When the party opposing the class has engaged in some conduct that  
4 affects a group of persons and gives rise to a cause of action, one or more elements of that cause  
5 of action will be common to all persons affected.”).

6 The claims of Plaintiffs and the Class Members all arise from the same legal theory—that  
7 Google disclosed private information without consent. The common issues include: whether the  
8 Google Buzz program publicly shared user information and if so, what user information Google  
9 shared and how; whether Google failed to provide adequate information and opt out procedures  
10 for its Gmail users; whether by allegedly committing these acts and omissions Google violated  
11 federal and state laws; and whether class members are entitled to injunctive, declarative and  
12 monetary relief as a result of Google’s alleged conduct.

13 These questions form the basis of Plaintiffs’ and Class Members’ consumer protection  
14 claims, and are indisputably sufficient to establish commonality.

15 **3. The Claims of the Representative Plaintiffs are Typical of the Claims**  
16 **of the Class.**

17 Rule 23(a)(3), which requires that the named plaintiffs be members of the class and  
18 possess claims that are “reasonably co-extensive with those of the absent class members,” is also  
19 interpreted permissively. *Hanlon*, 150 F.3d at 1020. “The test of typicality is whether other  
20 members have the same or similar injury, whether the action is based on conduct which is not  
21 unique to the named plaintiffs and whether other class members have been injured by the same  
22 conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal citations  
23 omitted).

24 Here, Google’s alleged practice of disclosing private contact information without adequate  
25 notice or consent is alleged to have resulted in an intrusion into class members’ privacy in  
26 violation of state and federal law. Plaintiffs allege that Google violated each proposed class  
27 members’ rights in an identical manner. While Google denies these allegations, Plaintiffs’ claims  
28 are typical of the proposed class and the typicality requirement is satisfied.

1                   **4. The Class Representatives and Their Counsel Have Fairly and**  
2                   **Adequately Protected the Interests of the Class, and Will Continue to**  
3                   **Do So.**

4                   Finally, Rule 23(a)(4) and Rule 23(g) together ensure the satisfaction of what courts have  
5                   recognized as a two-part test: (1) that the named plaintiffs and their counsel do not have conflicts  
6                   of interest with the proposed class; and (2) that the named plaintiffs and their counsel can  
7                   prosecute the action vigorously through qualified counsel. *Hanlon*, 150 F.3d at 1020 (citing  
8                   *Lerwill v. Inflight Motion Pics., Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)); *Tierno*, 2006 WL  
9                   2535056, at \*3. In considering the adequacy of counsel, the court must consider (1) the work  
10                  counsel has done in investigating the potential claims in the action; (2) counsel's experience in  
11                  handling class actions and the types of claims asserted in the action; (3) counsel's knowledge of  
12                  the applicable law; and (4) the resources that counsel will commit to representing the class.  
13                  *Xiufang Situ*, 240 F.R.D. at 562 (citing Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv)). Both aspects of the  
14                  adequacy test are satisfied here.

15                  First, as shown above, Plaintiffs' interests are squarely aligned with the interests of absent  
16                  class members as all are Gmail users who were presented with the opportunity to utilize Buzz  
17                  during the class period. Plaintiffs' claims are typical of, and in fact identical to, those of the  
18                  proposed Class. There is no conflict of interest among Plaintiffs and the Class Members since all  
19                  share the same goal of establishing Google's liability for launching Buzz in a manner that  
20                  allegedly disclosed Plaintiffs' private information without their consent.

21                  The firms representing the Plaintiffs and the Class are well-respected members of their  
22                  legal communities and have extensive experience prosecuting class action lawsuits. Further  
23                  detailed credentials of counsel are enumerated on their firm resumes. Mason Decl., Ex.  
24                  Accordingly, both Plaintiffs and Class Counsel have and will adequately represent the class.

25                   **5. The Rule 23(b)(3) Elements are Satisfied as Common Questions**  
26                   **Predominate and Certification Presents the Superior Method for**  
27                   **Adjudication.**

28                  The settlement of this action is maintainable under Rule 23(b)(3), which permits class  
certification if the court finds (1) that the "questions of law or fact common to the members of the  
class predominate over any questions affecting only individual members," and (2) that "a class

1 action is superior to other available methods for fair and efficient adjudication of the  
2 controversy.” Fed. R. Civ. P. 23(b)(3). Rule 23(b)(3) certification is proper because the  
3 predominance and superiority requirements of that prong of Rule 23 are satisfied. *See* Fed. R.  
4 Civ. P. 23(b)(3); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (“The Rule  
5 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant  
6 adjudication by representation”). Since certification of the class under Rule 23(b)(3) is in the  
7 settlement context, the Court need not consider the manageability requirement. *See Amchem*  
8 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

9 The predominance inquiry looks to whether a proposed class is sufficiently cohesive to  
10 warrant adjudication by representation. *Amchem*, 521 U.S. at 623. Because there is no defined  
11 test to determine whether common issues predominate in a class action, the Court must  
12 “pragmatically assess” the issues involved in each case. *Tierno*, 2006 WL 2535056, at \*5. As the  
13 United States Supreme Court emphasized, “predominance is a test readily met in certain cases  
14 alleging consumer . . . fraud.” *Amchem*, 521 U.S. at 625. Common issues “predominate” where a  
15 common nucleus of facts and potential legal remedies dominate the litigation. *See Chamberlan v.*  
16 *Ford Motor Co.*, 402 F.3d 952, 962 (9th Cir. 2005). Furthermore, the existence of individual  
17 issues will not, by itself, defeat certification. *See Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d  
18 Cir. 1985); *Dal Ponte*, 2006 WL 2403982, at \*7. Rather, they must be less significant than the  
19 common issues and must not be so unmanageable as to defeat class treatment. *Dal Ponte*, 2006  
20 WL 2403982, at \*7. Inasmuch as Plaintiffs’ claims arise out of the same set of operative facts  
21 and are premised on identical legal theories, the predominance requirement is easily satisfied  
22 here. This is particularly true in that few, if any, Class Members appear to have suffered  
23 individualized out-of-pocket damages. Common questions clearly predominate in this case,  
24 where each class member would seek to remedy the same grievance.

25 With respect to superiority, Rule 23(b)(3) requires Plaintiffs to demonstrate that the  
26 proposed class action is superior to other available forms of adjudication. In determining  
27 superiority, four considerations are relevant: (1) the interests members of the class have in  
28

1 individually controlling the prosecution or defense of the separate actions; (2) the extent and  
2 nature of any litigation concerning the controversy already commenced by or against members of  
3 the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the  
4 particular forum; and (4) the difficulties likely encountered in the management of a class action.  
5 Fed. R. Civ. P. 23(b)(3); *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190-93 (9th Cir.  
6 2001).

7 As to the first factor, Class Members have little interest in controlling this action on their  
8 own as the alleged damages affecting each individual are slight compared to the cost of litigating  
9 a case of this complexity. Class actions, as a general proposition, are favored for the very  
10 purpose of providing individuals with relatively small damages, and therefore little incentive to  
11 litigate, an opportunity to prosecute their rights. The United States Supreme Court crystallized  
12 this notion in *Amchem* explaining that “[t]he policy at the very core of the class action mechanism  
13 is to overcome the problem that small recoveries do not provide the incentive for any individual  
14 to bring a solo action prosecuting his or her rights.” *Amchem*, 521 U.S. at 617. *See also Zinser*,  
15 253 F.3d at 1190 (“Where damages suffered by each putative class member are not large, this  
16 factor weighs in favor of certifying a class action.”); *see also* Wright, Miller & Kane, Federal  
17 Practice and Procedure §1779 at 557 (2d ed. 1986) (“For example, a group composed of  
18 consumers or small investors typically will be unable to pursue their claims on an individual basis  
19 because the cost of doing so exceeds any recovery they might secure. When this is the case it  
20 seems appropriate to conclude that the class action is superior to other available methods for the  
21 fair and efficient adjudication of the controversy.”). Here, few if any Class Members suffered  
22 out-of-pockets damages and Class Members are therefore are unlikely to pursue litigation against  
23 Google on their own.

24 Next, while other class actions have been brought against Google concerning its launch of  
25 Buzz, all of these cases have now been consolidated in the Northern District of California and  
26 will be resolved by the proposed Settlement. Thus, as a result of the Settlement, the litigation,  
27 already concentrated in this forum, will now be fully and finally resolved.  
28



1 For all of the above reasons, plaintiffs contend that common questions predominate and a  
2 class action is the superior method of settling this controversy.

3 **C. The Court Should Approve The Proposed Settlement Notices and Authorize**  
4 **Their Dissemination.**

5 In any proceeding which is to be accorded finality, due process requires that interested  
6 parties be provided with notice reasonably calculated, under the circumstances, to apprise them of  
7 the pendency of the action and afford them an opportunity to present their objections. *Mullane v.*  
8 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). That means the settlement notices  
9 must fairly apprise the class members of the terms of the proposed compromise and give class  
10 members sufficient information to decide whether they should accept the benefits offered, opt out  
11 and pursue their own remedies, or object to the settlement. *Id.* Additionally, the notice must be  
12 designed so as to have a reasonable chance of reaching a substantial percentage of the class  
13 members; *Id.* at 318 (notice must be reasonably calculated to reach interested parties).

14 Here, the proposed notice and the method of dissemination meet each of these  
15 requirements. Google will send all identifiable Class Members notification via an email to their  
16 Gmail account, which email will notify them of the settlement and provide a hyperlink to the  
17 Settlement website. On the Settlement website class members can review the detailed Notice  
18 which provides clear and concise information with respect to all the relevant aspects of the  
19 litigation, including (a) the class definition and statement of claims; (b) the litigation history; (c)  
20 the terms of the Settlement Agreement; (d) the binding effect of any judgment approving the  
21 Settlement on those who do not opt out; (e) the right to (and procedure for) opting out or back  
22 into the Settlement Class; (f) the right to (and procedure for) objecting to the Settlement; (g)  
23 whom to contact to obtain additional information regarding the Settlement or the litigation; (h)  
24 the manner in which compensation will be provided to the Class Representatives to compensate  
25 them for their service to the class; and (g) the manner in which Class Counsel will be  
26 compensated. (Settlement Agreement, Exhibit B). Thus, the Notice provides all the information  
27 necessary for Class Members to make informed decisions with respect to whether they remain in  
28 or opt out of the Settlement Class or object to the proposed Settlement.



1 Accordingly, the content and method of dissemination of the proposed Notice fully  
2 comports with the requirements of due process and applicable case law. As such, the Court should  
3 approve the proposed Notice and direct that it be distributed as agreed by the parties.

4 **D. The Court Should Schedule a Fairness Hearing and Approve the Proposed**  
5 **Preliminary Approval Order.**

6 Once the Court has ruled on the motion for preliminary approval, the times for providing  
7 notice, opting out of the Settlement Class, and submitting claims will begin to run. The parties  
8 propose the following sequence of events and deadlines, assuming the Court grants this motion  
9 for preliminary approval.

	<b>Event</b>	<b>Timing</b>
10		
11		
12	1. Deadline for Dissemination of Class Notice	<b>Within Thirty (30) days after Preliminary Approval Order Signed</b>
13		
14	2. Deadline for Class Counsel to file petition for award of attorneys' fees and reimbursement of expenses and request for incentive awards to the Class Representatives.	<b>No Later than Twenty-One (21) Days before the Fairness Hearing</b>
15		
16	3. Deadline for filing Requests for Exclusion	<b>Postmarked No Later than Sixty (60) days after Preliminary Approval Order Signed</b>
17		
18		
19	4. Deadline for filing Objections	<b>Received No Later than Twenty-One (21) days prior to the Fairness Hearing</b>
20		
21	5. Deadline for Responses to Class Counsel's petition for an award of attorneys' fees and reimbursement of expenses and request for incentive awards to the Class Representatives.	<b>Postmarked No Later than Ten (10) days prior to the Fairness Hearing</b>
22		
23	6. Deadline to File Affidavit of Notice of Mailing.	<b>At or Before the Fairness Hearing</b>
24		
25	7. Deadline for Class Counsel to file any Reply in Support of an award of attorneys' fees and reimbursement of expenses and request for incentive awards to the Class Representatives.	<b>No Later than Five (5) Days Prior to the Fairness Hearing</b>
26		
27		
28		

	<b>Event</b>	<b>Timing</b>
8.	Deadline for Filing Submissions in Support of the Settlement.	<b>No Later than Twenty-One (21) Days Prior to the Fairness Hearing</b>
9.	Deadline for Class Counsel to Reply to any opposition to memorandum filed by any objector.	<b>No Later than Five (5) Days Prior to the Fairness Hearing</b>
10.	Fairness Hearing.	<b>At Least Ninety (90) Days Following Preliminary Approval</b>

**V. CONCLUSION.**

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court grant this motion for preliminary approval of the Settlement, provisionally certify the class, approve the content and authorize the dissemination of the proposed settlement notice, and schedule a fairness hearing and adopt the proposed schedule of events and deadlines.

Respectfully submitted,

Dated: September 3, 2010

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# **EXHIBIT 1**

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**

**Before: Hon. James Ware**

**SETTLEMENT AGREEMENT**

WHEREAS, Plaintiffs have brought a series of complaints as described below (“Action”) against Google Inc. (“Google”) asserting claims relating to Google’s social networking program, Google Buzz; and

WHEREAS, the plaintiffs in the Action asserted claims against Google alleging violations of (i) the Electronic Communications Privacy Act, 18 U.S.C. §2510 *et seq*; (ii) the Stored Communications Act, 18 U.S.C. §2701 *et seq*; (iii) the Computer Fraud and Abuse Act, 18 U.S.C. §1030 *et seq*; (iv) the common law tort of Public Disclosure of Private Facts as recognized by California common law; and (v) the California Unfair Competition Law, California Business & Professions Code §17200, and might have amended their Complaints to add other claims if this settlement had not been reached; and

WHEREAS, Lead Class Counsel, as appointed by the Court on June 30, 2010, and Class Counsel have conducted significant investigations and analyzed and evaluated the merits of the claims made to date against the Defendant in the Action, and the impact of this Agreement on Plaintiffs and the Class, and based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Action, if not settled now, might not result in any recovery whatsoever for the Class, or might result in a recovery that is less favorable to the Class, and that any such recovery would not occur for several years, Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Class; and

WHEREAS, Google has denied and continues to deny each and every allegation and all charges of wrongdoing or liability of any kind whatsoever asserted or which could have been asserted relative to the Action; and

WHEREAS, while Plaintiffs believe these claims possess substantial merit and while Google vigorously disputes such claims, without in any way acknowledging any fault or liability, the Parties have agreed to enter into this Settlement Agreement as an appropriate compromise of Plaintiffs’ and Class Members’ claims in order to put to rest all controversy and to avoid the uncertainty, risk, expense, and burdensome, protracted, and costly litigation that would be involved in prosecuting and defending the Action;

NOW, THEREFORE, THIS AGREEMENT is entered into as of this 2nd day of September, 2010, by and among (1) the Plaintiffs in the Action for themselves and on behalf of the Class as defined below; and (2) Google (collectively, the “Parties”).

Subject to Court approval and the other conditions set forth herein, it is hereby agreed by the Parties that, in consideration of the undertakings, promises, and payments set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment approving the settlement and directing the implementation of the terms and conditions of this Agreement, the Action shall be settled and compromised upon the terms and conditions set forth below.

## 1. DEFINITIONS

As used in this Agreement and the attached exhibits, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall be defined as set forth below:

**1.1** “Action” means: *In re Google Buzz Privacy Litigation*, No. 5:10-cv-00672-JW (N.D. Cal.), which consolidates the separately filed cases *Eva Hibnick and Andranik Souvalian v. Google, Inc.*, No. 5:10-cv-00672-JW (N.D. Cal.) (complaint filed Feb. 17, 2010; first amended complaint filed Mar. 15, 2010); *Barry Feldman v. Google, Inc.*, No. 5:10-cv-01433-HRL (N.D. Cal.) (complaint filed Apr. 5, 2010); *Rochelle Williams v. Google, Inc.*, No. 5:109-cv-02509-PVT (N.D. Cal.) (complaint filed June 7, 2010); *Andranik Souvalian v. Google Inc.*, No. 1:10-cv-00102-MD-LDA (D.R.I.) (complaint filed Mar. 3, 2010); and *John H. Case and Lauren Maytin v. Google, Inc.*, No. 1:10-cv-01241-WYD-BNB (D. Col.) (complaint filed May 27, 2010).

**1.2** “Agreement” or “Settlement Agreement” means this Settlement Agreement, including all exhibits.

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

**1.4** “Class Action Administrator” means a mutually agreeable party, to be appointed by the Court, who will facilitate administrative matters and distribution of payments from the Common Fund under the direction of Lead Class Counsel, and who will be paid from the Common Fund.

**1.5** “Class Counsel” means Plaintiffs’ counsel set forth on the signature pages of this Agreement.

**1.6** “Class Member” means a member of the Class who has not timely and validly requested exclusion.

**1.7** “Class Representatives” means Andranik Souvalian, Barry Feldman, John H. Case, Lauren Maytin, Mark Neyer, Katherine C. Wagner, and Rochelle Williams.

**1.8** “Common Fund” means the total payment described in subsection 3.4.

**1.9** “Court” means the United States District Court for the Northern District of California.

**1.10** “Day” or “Days” means calendar days.

**1.11** “Fairness Hearing” means the settlement approval hearing(s) to be conducted by the Court in connection with the final determination that the Agreement is fair, reasonable, and adequate and in the best interests of the Class as a whole.

**1.12** “Final Order and Judgment” means the order entered by the Court, in a form that is mutually agreeable to the Parties and substantially in the form attached hereto as Exhibit A, approving this Agreement as fair, reasonable, and adequate and in the best interests of the Class as a whole, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement, without modifying any of the terms of this Agreement.

**1.13** “Google” means Google Inc. and its successors, assigns, predecessors, parents, subsidiaries, divisions, departments, or affiliates and any of its or their past or present officers, directors, stockholders, partners, agents, servants, subrogees, insurers, employees, or representatives.

**1.14** “Google Buzz” means the social networking application released by Google beginning on February 9, 2010.

**1.15** “Lead Class Counsel” means Gary E. Mason, Mason LLP.

**1.16** “Notice Date” means the first day on which the email referred to in Section 5.1(3) is sent.

**1.17** “Notice of Proposed Class Action Settlement” means the Notice of Pendency of Class Action, Proposed Settlement and Hearing, in a form agreed to by the Parties and substantially in the form attached hereto as Exhibit B.

**1.18** “Opt-Out Deadline” means the deadline for a Class Member to opt out of the settlement as set forth in Section 6 of this Agreement and in the Preliminary Approval Order and which shall be no more than sixty (60) Days from the date of entry of the Preliminary Approval Order.

**1.19** “Party” or “Parties” means Plaintiffs, Class Members, and Google, or each of them.

**1.20** “Person” means an individual or legal entity, including an association, or his, her, or its respective successors or assigns.

**1.21** “Plaintiffs” means the named Plaintiffs in the Action.

**1.22** “Preliminary Approval Order” means the Court’s Order granting preliminary approval of this Agreement, approving the Notice of Proposed Class Action Settlement and the manner of providing notice to the Class, and setting forth a schedule for briefing regarding the fairness of the settlement and dates for submitting exclusion requests and the Fairness Hearing, in a form as agreed to by the Parties and substantially as set forth in Exhibit C.

**1.23** “Releasing Parties” means Class Members and their respective heirs, administrators, devisees, predecessors, successors, attorneys, representatives, shareholders, partners, directors, officers, owners, affiliates, subrogees, assignees, or insurers.

**1.24** “Settled Claims” means any claim, liability, right, demand, suit, matter, obligation, damage, including consequential damages, losses or costs, punitive damages, attorneys’ fees and costs, actions or causes of action, of every kind and description, that the Releasing Parties, had, or may have, against Google that arise out of or relate to facts giving rise to the subject matter of the Action, whether known or unknown, suspected or unsuspected, asserted or unasserted, accrued or which may thereafter accrue, regardless of legal theory and the type of equitable relief or damages claimed.

**1.25** “Settlement Date” means the later of the date on which (1) the Final Order and Judgment, after entry by the Court, becomes final by expiration of the time for appeal; (2) the date the mandate issues if the Final Order and Judgment is appealed and is affirmed in full; or (3) the date the Parties elect to proceed with the Agreement under subsection 11.2 if the Final Order and Judgment is appealed and is not affirmed in full.

## **2. SETTLEMENT PURPOSES ONLY**

**2.1** This Agreement is for settlement purposes only, and to the fullest extent permitted by law neither the fact of, nor any provision contained in, this Agreement or its attachments, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs in the Action or in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Google or admission by any of the Parties of the validity or lack thereof of any claim, allegation, or defense asserted in the Action or in any other action.

**2.2** Google conditionally agrees and consents to certification of the Class for settlement purposes only, and within the context of this Agreement only. If this Agreement, for any reason, is not finally approved or is otherwise terminated, Google reserves the right to assert any and all objections and defenses to certification of a class, and neither this Agreement nor any Order or other action relating to this Agreement shall be offered by any Person as evidence in support of a motion to certify a class for a purpose other than settlement.



### **3. RELIEF**

**3.1** Google agreed to and has produced to Lead Class Counsel documents and information regarding the operation of Google Buzz, changes made to Google Buzz after it launched, and consumer feedback regarding Google Buzz.

**3.2** Google has made changes to the Google Buzz user interface that clarify Google Buzz's operation and users' options regarding Google Buzz, including, in particular, changes regarding user information and control over Buzz's privacy settings.

**3.3** Google agrees to disseminate wider public education about the privacy aspects of Google Buzz. Google agrees that it will consider the suggestions that it has received from Class Counsel and any other suggestions it may receive from Class Counsel on this issue within thirty (30) days after this Settlement Agreement is executed by all Parties. The parties agree that Google will select and design the final content of the public education efforts in its discretion. Google agrees that it will provide a report to Lead Class Counsel within three months after the Final Order and Judgment describing the public education efforts concerning the privacy aspects of Google Buzz that it undertook pursuant to this Settlement Agreement.

**3.4** Google agrees to and shall deposit in an interest-bearing bank account established by Google the total sum of Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) as a Common Fund for Class Administrator fees and expenses, cy pres relief, class representative incentive payments, attorneys' fees, and costs. The First installment, of Five Hundred Thousand Dollars (\$500,000.00) shall be deposited within ten (10) business days of entry of the Preliminary Approval Order. The remainder shall be deposited within thirty (30) Days after entry of the Final Order and Judgment. The interest earned on such deposits shall accrue to the benefit of the Common Fund, and the interest shall be transferred to the cy pres recipients per subsection 3.4(d), below. The Class Action Administrator will maintain control over the Common Fund and shall be responsible for all disbursements. Google shall have no other financial obligation under this Settlement Agreement. In addition, under no circumstances will Google have any liability for taxes or tax expenses under this Settlement Agreement.

(a) The cy pres recipients will be existing organizations focused on Internet privacy policy or privacy education.

(b) The Parties shall mutually agree on the cy pres recipients and the amounts for each.

(c) Payments to the cy pres recipients shall be made out of the Common Fund by the Class Action Administrator within thirty (30) Days after the latest of (1) agreement by the Parties on the cy pres recipients and amounts for each, and (2) the Settlement Date.

(d) All monies in the Common Fund shall be paid out in full, and no monies shall revert to Google, unless the Court rejects the Final Order and Judgment, in which case all monies paid into the Common Fund shall immediately be returned to Google.

#### **4. SUBMISSION FOR PRELIMINARY APPROVAL**

**4.1** Upon execution of this Agreement by both Parties, Class Counsel shall submit this Agreement to the Court and request that the Court enter the Preliminary Approval Order.

**4.2** Plaintiffs shall use best efforts to obtain agreement to the terms of this Agreement from all parties who, prior to the Court's entry of the Preliminary Approval Order, have filed lawsuits or asserted claims against Google arising out of the subject matter of the Action. To the extent Plaintiffs are unable to obtain such agreement, Plaintiffs will cooperate with Google in assuring that duplicative litigation does not interfere with the benefit to Google of this settlement.

#### **5. NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**5.1** The notice program and content shall be submitted for Court approval in the Preliminary Approval Order and shall consist of the following: (1) a third-party website created to provide neutral information about the settlement and containing the Notice of Proposed Class Action Settlement (the "Settlement Website"); (2) a joint press release mutually agreed by Lead Class Counsel and Google, announcing the settlement and listing the address of the Settlement Website, that Defendant shall cause to be wired to major news outlets; and (3) a notification, emailed by Google to all Gmail users whom Google can identify through reasonable efforts as residing in the United States, which email notification shall include a hypertext link to the Settlement Website.

**5.2** The notice program set forth in paragraph 5.1, above, shall be established, and the emails and joint press release sent, within thirty (30) days of entry of the Preliminary Approval Order. Notice under 5.1(2) and (3), above, shall be implemented and paid for by Google. The costs associated with the Settlement Website and the fees and costs of the Class Action Administrator, including payment for Notice-related work, shall be paid out of the Common Fund. Any amounts expended on the notice described in paragraph 5.1 are non-refundable even if the Court does not enter the Final Order and Judgment.

**5.3** The Settlement Website shall (1) notify Class Members of their rights to object or opt out; (2) notify Class Members that no further notice will be provided to them that the settlement has been approved; and (3) inform Class Members that they should monitor the settlement information website for developments.

**5.4** Within ten Days after the filing of this Agreement with the Court, Google shall notify the appropriate state and federal officials of this Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

#### **6. CLASS MEMBERS' RIGHT OF EXCLUSION/INCLUSION**

**6.1** Except for those Persons who properly request exclusion as described below, all members of the Class will be deemed Class Members for all purposes under this Agreement. Any Person who properly requests exclusion shall not be entitled to relief under, and shall not be affected by, this Agreement or any relief provided by this Agreement.

**6.2** A Class Member may request exclusion from the Class up until the Opt-Out Deadline. To request exclusion, the Class Member must complete, sign, and mail to the Class Action Administrator a request for exclusion. The request must be signed by the Class Member under penalty of perjury. The request must be postmarked on or before the Opt-Out Deadline.

**6.3** The Parties shall have the right to challenge the timeliness and validity of any exclusion request. The Court shall determine whether any contested exclusion request is valid.

**6.4** Within ten Days after the Opt-Out Deadline, the Class Action Administrator will provide to Google a list of all Persons who opted out by validly requesting exclusion. In the event that the number of Persons who opted out exceeds a level separately agreed to by Lead Class Counsel and Google, Google may elect to terminate this Agreement on the ground that exclusion at that level threatens to frustrate the essential purpose of this Agreement. Google may exercise its right to terminate under this subsection by notifying Lead Class Counsel of its election no later than seven Days after receipt of the list of Persons who opted out.

## **7. OBJECTIONS**

**7.1** Any Class Member who does not file a timely written request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement. Class Members may not seek to exclude themselves from the Class and file an objection to the Settlement.

**7.2** Any Class Member who wishes to object to any aspect of the Settlement must deliver to Lead Class Counsel and Defendants' Counsel as set forth in 13.11, below, no later than 21 days before the Fairness Hearing, and file with the Court, no later than 21 days before the Fairness Hearing, a written statement of the objection(s). The written statement of the objection(s) must include (a) a detailed statement of the Class Member's objection(s), as well as the specific reasons, if any, for each objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his/her objection(s); (b) the Class Member's name, address and telephone number; and (c) information demonstrating that the Class Member is entitled to be included as a member of the Class.

**7.3** Class Members may raise an objection either on their own or through an attorney hired at their own expense. If a Class Member hires an attorney other than Class Counsel to represent him or her, the attorney must (a) file a notice of appearance with the Clerk of Court no later than 21 days before the Fairness Hearing or as the Court otherwise may direct, and (b) deliver a copy of the notice to Class Counsel and Defendants' Counsel, as set forth in 13.11 below, no later than 21 days before the Fairness Hearing. Class Members, or their attorneys, intending to make an appearance at the Fairness Hearing, must deliver to Lead Class Counsel and Defendants' Counsel, and file with the Court, no later than 21 days before the Fairness Hearing or as the Court otherwise may direct, a notice of their intention to appear at the Fairness Hearing.

7.4 Any Class Member who fails to comply with the provisions of the preceding subsections shall waive and forfeit any and all rights he or she may have to appear separately and/or object, and shall be bound by all the terms of this Settlement and by all proceedings, orders, and judgments in the Action.

## 8. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT

8.1 This Agreement shall be the sole and exclusive remedy for any and all Settled Claims of Class Members. Upon entry of the Final Order and Judgment, each Class Member shall be barred from initiating, asserting, or prosecuting against Google any Settled Claims that are released by operation of this Agreement and the Final Order and Judgment. In the event any Class Member attempts to prosecute an action in contravention of the Final Order and Judgment and this Agreement, counsel for any of the Parties may forward this Agreement and the Final Order and Judgment to such Class Member and advise him, her, or it of the releases provided pursuant to this Agreement. If so requested by Google or counsel for Google, Lead Class Counsel shall provide this notice.

8.2 Upon entry of Final Order and Judgment, the Action shall be dismissed with prejudice.

8.3 The Court retains exclusive and continuing jurisdiction over the Action and all Parties to interpret and enforce the terms, conditions, and obligations of this Agreement.

## 9. RELEASES

9.1 Upon entry of the Final Order and Judgment, and regardless of whether any Class Member executes and delivers a written release, each Releasing Party shall be deemed to release and forever discharge Google from any and all Settled Claims.

9.2 The Releasing Parties shall, by operation of the Final Order and Judgment, expressly waive the provisions of California Civil Code § 1542 (and all other similar provisions of law) to the full extent that these provisions may be applicable to this release. California Civil Code § 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Releasing Parties shall, by operation of the Final Order and Judgment, be deemed to assume the risk that facts additional, different, or contrary to the facts which each believes or understands to exist, may now exist or may be discovered after the release set forth in this Agreement becomes effective, and the Releasing Parties shall, by operation of the Final Order and Judgment, be deemed to have agreed that any such additional, different, or contrary facts

shall in no way limit, waive, or reduce the foregoing releases, which shall remain in full force and effect.

**9.3** Nothing in this Agreement shall be construed in any way to prejudice or interfere with any Releasing Party's ability to pursue his, her, or its rights under any applicable insurance policies.

## **10. CLASS COUNSEL FEES AND COSTS AND INCENTIVE AWARDS**

**10.1** Class Counsel may apply to the Court for a determination of their reasonable attorneys' fees and costs. Class Counsel agrees that it will seek up to, but not more than, thirty (30) percent of the Common Fund as an award of attorney's fees, and Google will not object to an award limited to such amount. Attorneys' fees and costs as awarded by the Court shall be paid out of the Common Fund by the Class Action Administrator within ten Days after the latest of (1) the Court issuing an order awarding such attorneys' fees and costs, and (2) the Settlement Date. The Class Action Administrator shall wire the amount awarded to Lead Class Counsel, who shall be responsible for allocating the fee award among Class Counsel.

**10.2** In recognition of their efforts on behalf of the Class, and subject to Court approval, Lead Class Counsel shall apply to the Court for an award to each Class Representative of up to Two Thousand Five Hundred Dollars (\$2,500.00) as appropriate compensation for his or her time and effort serving as Class Representative. Such incentive awards shall be paid out of the Common Fund by the Class Action Administrator within 30 Days after the latest of (1) the Court issuing an order approving such incentive awards and (2) the Settlement Date.

**10.3** Except as otherwise provided in this section, each Party will bear its own costs, including attorneys' fees, incurred in connection with the Action.

## **11. TERMINATION OF THE AGREEMENT**

**11.1** The performance of this Agreement is expressly contingent upon entry of the Final Order and Judgment. If the Court fails to issue the Final Order and Judgment following conclusion of the Fairness Hearing, or if Google terminates the Agreement as provided in subsection 6.4, the Agreement will be terminated.

**11.2** If the Final Order and Judgment is vacated, modified, or reversed, in whole or in part, the Agreement will be deemed terminated, unless all Parties who are adversely affected thereby, in their sole discretion within thirty (30) Days of receipt of such ruling, provide written notice through counsel to Lead Class Counsel and Defendant of their intent to proceed with the Agreement as modified by the Court or on appeal.

**11.3** If this Agreement is terminated pursuant to this section or subsection 6.4, it will have no force or effect whatsoever, shall be null and void, and will not be admissible as evidence for any purpose in any pending or future litigation in any jurisdiction.

## **12. CONFIDENTIALITY**

Other than responses to inquiries from governmental entities or as necessary to comply with federal and state tax and securities laws, no Party shall initiate any publicity relating to or make any public comment regarding this Settlement Agreement until a Motion seeking the Preliminary Approval Order is filed with the Court.

## **13. MISCELLANEOUS PROVISIONS**

**13.1** This Agreement, including all attached exhibits, shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements and understandings between the Parties.

**13.2** This Agreement may not be changed, modified or amended except in writing signed by Lead Class Counsel and Google's counsel, subject to Court approval if required.

**13.3** Each Party represents and warrants that it enters into this Agreement of his, her, or its own free will. Each Party is relying solely on its own judgment and knowledge and is not relying on any statement or representation made by any other Party or any other Party's agents or attorneys concerning the subject matter, basis, or effect of this Agreement.

**13.4** This Agreement has been negotiated at arms' length by Class Counsel and Google's counsel. In the event of any dispute arising out of this Agreement, or in any proceeding to enforce any of the terms of this Agreement, no Party shall be deemed to be the drafter of this Agreement or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis of that Party's identity as the drafter of any part of this Agreement.

**13.5** The Parties agree to cooperate fully and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

**13.6** This Agreement shall be binding upon and inure to the benefit of all the Parties and their respective representatives, heirs, successors, and assigns.

**13.7** The headings of the sections of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

**13.8** This Agreement will be construed in accordance with the laws of the State of California.

**13.9** If any provision, paragraph, section, subsection, or other portion of this Agreement is found to be void (except for Section 9), all of the remaining provisions of this Agreement shall remain in full force and effect.

**13.10** Prior to pursuing relief or submitting any dispute relating to this Settlement Agreement to the Court, the Parties agree to mediate the dispute before the Honorable Fern M. Smith (Ret.) of JAMS, Two Embarcadero Center, Suite 1500, San Francisco, California 94111.

**13.11** Any notice, instruction, court filing, or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, or overnight delivery service to the respective representatives identified below or to other recipients as the Court may specify. As of the date of this Agreement, these respective representatives are as follows:

For the Class:

MASON LLP  
c/o Gary E. Mason  
1625 Massachusetts Avenue, Suite 605  
Washington, DC 20036

For Google:

PERKINS COIE LLP  
c/o David J. Burman  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101

**13.12** The Parties each represent and warrant that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand covered by this Agreement.

**13.13** The signatories to this Agreement represent that they have been duly authorized to execute this Agreement on behalf of the Parties they purport to represent.

**13.14** This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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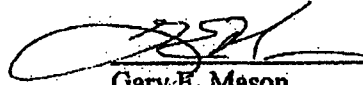
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Dated: September 2, 2010.

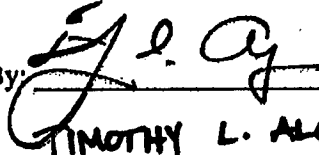
MASON LLP



\_\_\_\_\_  
Gary E. Mason,  
on behalf of all Class Members

Dated: September 2, 2010

GOOGLE INC.

By:  \_\_\_\_\_

TIMOTHY L. ALGER  
DEPUTY GENERAL COUNSEL



**Additional Counsel for the Class:**

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Phone: (215) 232-1000

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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In Re: GOOGLE BUZZ  
PRIVACY LITIGATION

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This Document Relates To:  
ALL CASES

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

**ORDER AND FINAL JUDGMENT GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

WHEREAS, the Plaintiffs Andranik Souvalian, Katherine C. Wagner, Mark Neyer, Barry Feldman, Rochelle Williams, John Case, and Lauren Maytin (collectively, “Plaintiffs”) and Defendant Google Inc. (the “Defendant”) have moved for an order granting final approval to this Class Action Settlement (“Settlement”) which received preliminary approval on \_\_\_\_, 2010;

WHEREAS, the Parties appeared by their attorneys of record at a fairness hearing on \_\_\_\_, 2010, after an opportunity having been given to all Class Members to be heard in accordance with the Court’s Preliminary Approval Order, and having given due consideration to the Parties’ Settlement Agreement, including all attached exhibits and related materials, the Motion, all other papers filed in support, all objections to the Settlement, the complete record of the case, the arguments at the \_\_\_\_, 2010, hearing, and all other material relevant to this matter including the Affidavit of the Settlement Administrator;

WHEREAS, the Court has before it the parties’ Motion for Approval of Settlement, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm’s length settlement negotiations between

competent and experienced counsel for both Plaintiffs and Defendant, assisted by a retired federal district judge with extensive class action experience.

IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms as used in this Order shall have the meanings as set forth in the Settlement Agreement.

2. For purposes of this litigation, the Court has subject matter and personal jurisdiction over the Parties, including all Class Members.

3. The Settlement Agreement previously provided to the Court is adopted by the Court and made part of this Order as if set out in full herein.

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

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

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

- a. The Settlement Class is sufficiently definite;
- b. The Settlement Class is so numerous that joinder of all members of the Settlement Class is impracticable;
- c. There are questions of law and/or fact common within the Settlement Class;

- d. Plaintiffs' claims are typical of the claims of the members of the Settlement Class;
- e. Plaintiffs and their counsel have and will fairly and adequately represent and protect the interests of the Settlement Class;
- f. Plaintiffs' interests do not conflict with the interests of the Settlement Class in the maintenance of this action;
- g. The questions of law and/or fact common to the Settlement Class predominate over the questions affecting only individual members of the Settlement Class; and
- h. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of this controversy.

6. The Settlement Agreement and the terms contained therein are hereby approved as fair, reasonable, and adequate, and in the best interests of the class as a whole.

7. Gary E. Mason, Mason LLP, is hereby confirmed as Lead Class Counsel.

8. Michael F. Ram, Ram & Olson LLP, is hereby confirmed as liaison Counsel.

9. William Rubenstein, Peter N. Wasylyk, Andrew S. Kierstead, Michael D. Braun, Braun Law Group, P.C., Peter W. Thomas, Thomas Genshaft, P.C., Donald Amangbo, Amangbo & Associates, Reginald Terrell, The Terrell Law Group, Jonathan Shub, Shub Law LLC, Christopher A. Seeger, Seeger Weiss LLP, Lawrence Feldman, Lawrence E. Feldman & Associates, Eric Freed, Freed & Weiss LLC, and Howard G. Silverman, Kane & Silverman P.C., are hereby confirmed as Class Counsel.

10. The Parties have provided notice in a manner consistent with the Order Granting Motion for Preliminary Approval of Class Action Settlement and as set forth in the Settlement Agreement. The notice, as implemented, met the requirements of due process and was the best notice practicable under the circumstances. The notice was reasonably calculated, under the

circumstances, to apprise members of the Settlement Class of the pendency of the action, the terms of the Settlement, and their right to appear, object to, or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to receive notice. The Defendant notified the appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715.

11. Class Counsel retained \_\_\_\_ to assist in disseminating Notice in accordance with the terms of the Settlement Agreement and the Court’s Order Granting Motion for Preliminary Approval of Class Action Settlement. It is apparent from the Affidavit of \_\_\_\_\_ that the Notice was properly implemented and effective.

12. The Court has determined that full opportunity has been given to the members of the Settlement Class to opt out of the Settlement, object to the terms of the Settlement or to Class Counsel’s request for attorneys’ fees and expenses, and otherwise participate in the Final Approval Hearing on \_\_\_, 2010. The Court has considered all submissions and arguments provided by Class Members objecting to the Settlement as well as Class Counsel’s response to those objections and has determined that none of the objections warrants disapproval of the Settlement Agreement and/or Plaintiffs’ request for attorneys’ fees and expenses.

13. The Court has carefully considered all the materials and arguments before it and has made its independent judgment that (1) Plaintiffs and Class Members face significant risks if this litigation were to proceed; (2) the possibility of a greater ultimate recovery is speculative and any such recovery would only occur after considerable delay; (3) the terms of the Settlement provide substantial and meaningful benefits to the Settlement Class; (4) the Settlement is the product of meaningful investigation in the facts and circumstance of the launch of Google Buzz;

(5) the settlement negotiations were extensive, arms-length, under the direction of the Hon. Fern Smith, and without any collusion; (6) the reaction by the Settlement Class has been in favor of the Settlement; and (7) experienced Class Counsel support the Settlement. Accordingly, having considered the foregoing as well as the small number of opt outs and objections, the costs and risks and delays of continued litigation versus the benefits provided by the Settlement, and based on this Court's knowledge of this action, the Court finds and concludes that the Settlement is in the best interests of the Class and is fair, reasonable, and adequate to all Class Members. The Court therefore enters judgment in accordance with the Settlement Agreement.

14. The Settlement and the terms of the Settlement Agreement are accordingly granted final approval and are confirmed as fair, reasonable and adequate and are binding upon all Class Members who have not timely opted out.

15. The Parties are hereby directed to proceed with and complete implementation of the Settlement, including payment to the cy pres recipients pursuant to Section 3.4 of the Settlement Agreement.

16. The Court dismisses on the merits with prejudice all claims presently before it and orders the release of all Class Members' claims pursuant to Section 9 of the Settlement Agreement.

17. Those Class Members who requested exclusion and who are listed on Exhibit 1 to the Affidavit of the Class Action Administrator are hereby excluded from this Settlement.

18. The Court, having considered the request of Class Counsel for an award of attorneys' fees and reimbursement of expenses, hereby grants the request and awards Class Counsel attorneys' fees in the amount of \$\_\_\_\_\_. The Court also grants Class Counsel's request for expense reimbursement equal to the amount of their reasonable expenses incurred in

prosecuting this action and in implementing this Settlement. The Court approves reimbursement totaling \$\_\_\_\_. The Court also approves the requested incentive award of \$\_\_\_\_ for each Class Representative. All court-awarded fees, expenses, and reimbursements shall be paid out of the Common Fund.

19. All Parties are bound by this Final Order and Judgment and by the Settlement Agreement.

20. Without affecting the finality of this Final Order and Judgment, the Court reserves continuing and exclusive jurisdiction over the Parties and their counsel, including all Class Members and their counsel with respect to the execution, consummation, administration, implementation, effectuation and enforcement of the Settlement Agreement and this Order, including the entry of any additional orders as may be necessary and appropriate relating to any and all issues including any appeals.

**IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable James Ware  
United States District Judge



# **EXHIBIT B**

## If you are a Gmail user who was presented with the opportunity to use Google Buzz, you could be part of a class action settlement.

*A federal court authorized this notice. This is **not** a solicitation from a lawyer.*

- A class action Settlement has been reached with Google Inc. that resolves Litigation about privacy concerns arising out of Google's social networking program, Google Buzz. This settlement was reached to avoid the costs and uncertainties of further litigation; it does not mean Google violated any law.
- Under the Settlement, Google ("the Defendant") will establish an \$8.5 million Common Fund to fund organizations focused on Internet privacy policy or privacy education, as well as to cover lawyers' fees and costs and other expenses. The Defendant will also do more to educate users about the privacy aspects of Google Buzz. Since the inception of this litigation, the Defendant has also made changes to Google Buzz that clarify its operation and users' options, including, in particular, changes regarding user information and control over Buzz's privacy settings.
- Your legal rights are affected whether you act, or do not act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>EXCLUDE YOURSELF</b>	This is the only option that allows you to bring your own, or be part of any other, lawsuit against Google about the legal claims resolved in this Settlement.
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Give up your rights to sue Google about the legal claims in this case and thereby accept the terms of this Settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the Settlement.

**WHAT THIS NOTICE CONTAINS**

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2. What is this Litigation about?
3. Why is this a class action?
4. Why is there a Settlement?

**WHO IS IN THE SETTLEMENT ..... PAGE 4**

5. How do I know if I am part of the Settlement?
6. What if I am not sure whether I am included in the Settlement?

**THE SETTLEMENT BENEFITS..... PAGE 5**

7. What does the Settlement provide?
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**EXCLUDING YOURSELF FROM THE SETTLEMENT ..... PAGE 5**

9. If I exclude myself, can I get anything from this Settlement?
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**THE LAWYERS REPRESENTING YOU ..... PAGE 6**

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19. What happens if I do nothing at all?

**GETTING MORE INFORMATION ..... PAGE 8**

20. How do I get more information about the Settlement?

## BASIC INFORMATION

### 1. Why is this Notice being provided?

A Court authorized this Notice because you have a right to know about a proposed Settlement of this class action Litigation and about all your rights and options before the Court decides whether to give “final approval” to the Settlement. This notice explains the Litigation, the Settlement, your legal rights, what benefits are available, and how to get them.

Judge James Ware of the United States District Court for the Northern District of California, San Jose Division, is overseeing this class action. The case is known as *In re Google Buzz Privacy Litigation*, No. 5:10-cv-00672-JW. The people who sued are called the “Plaintiffs,” and the organization that they sued, Google Inc., is called the “Defendant.”

### 2. What is this Litigation about?

On February 9, 2010, Google launched Buzz, a social networking program. The Plaintiffs allege that Google automatically enrolled Gmail users in Buzz, and that Buzz publicly exposed data, including users’ most frequent Gmail contacts, without enough user consent. The Litigation alleges that the Defendant violated (i) the Electronic Communications Privacy Act, 18 U.S.C. §2510 *et seq*; (ii) the Stored Communications Act, 18 U.S.C. §2701 *et seq*; (iii) the Computer Fraud and Abuse Act, 18 U.S.C. §1030 *et seq*; (iv) the common law tort of Public Disclosure of Private Facts as recognized by California common law; and (v) the California Unfair Competition Law, California Business & Professions Code §17200. Google denies the accuracy of Plaintiffs’ allegations and denies that it violated any law or caused any harm by the launch of Google Buzz.

### 3. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, Mark Neyer, Barry Feldman, Katherine C. Wagner, Andrew Souvalian, John H. Case, Lauren Maytin, and Rochelle Williams) sue on behalf of people who have similar claims. All of these people are a “Class” or “Class Members.” The Settlement resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### 4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Google. Instead, both sides agreed to settle this case to avoid the cost and risk of trial. The Settlement does not mean that any law was broken or that the Google did anything wrong. Google denies all legal claims in this case. The Class Representatives and their lawyers think the Settlement is in the best interest of the Class Members.

## WHO IS IN THE SETTLEMENT

To see if you will be affected by this Settlement, you first have to determine if you are a Class Member.

### 5. How do I know if I am part of the Settlement?

The Court decided that the Class includes all Gmail users in the United States who were presented with the opportunity to use Google Buzz before \_\_\_\_, 2010. The Class also includes all representatives, heirs, administrators, executors, beneficiaries, agents, and assigns of these affected individuals.

### 6. What if I am not sure whether I am included in the Settlement?

**00019987; 1. QUESTIONS? CALL 1-888-XXX-XXX TOLL FREE, OR VISIT [WWW.BUZZCLASS.COM](http://WWW.BUZZCLASS.COM)**  
41063-0140/LEGAL19034135.1  
41063-0140/LEGAL19074020.1

If you are not sure whether you are in the Class, or have any other questions about the Settlement, call the toll-free number, 1-888-XXX-XXXX or visit [www.buzzclass.com](http://www.buzzclass.com). You may also write with questions to Buzz Settlement, PO BoxXXXX, City, State, XXXXX-XXXX.

## THE SETTLEMENT BENEFITS

### 7. What does the Settlement provide?

- *First*, the Defendant agreed to make, and did make, changes to Buzz that clarify its operation and users' options regarding Google Buzz, including, in particular, changes regarding user information and control over Buzz's privacy settings. The Settlement Agreement recognizes that since the inception of this Litigation the Defendant has made these changes to Google Buzz.
- *Second*, the Defendant will do more to educate users about the privacy aspects of Google Buzz. The Defendant will consider the recommendations of Plaintiffs about the content of that public education. Google will select and design the final content of the public education efforts in its discretion, and will provide a report to Plaintiffs' lead lawyer of the education undertaken.
- *Third*, the Defendant will pay a total of \$8,500,000 into an interest-bearing account. This \$8,500,000, plus interest, will constitute the "Common Fund." Because few, if any, class members suffered compensable actual damages and because a pro rata distribution of the fund to the Class would not be feasible due to the size of the Class, the Common Fund amounts in excess of fees, costs, expenses, and incentive awards will be distributed to organizations that advance the privacy interests of internet users such as the Class Members. The Settlement Agreement, available at [www.buzzclass.com](http://www.buzzclass.com), describes all of the details about the proposed Settlement Agreement.

### 8. What am I giving up as part of the Settlement?

If the Settlement becomes final, Class Members will be releasing the Defendants from all of the settled claims. The settled claims are all claims arising from or related to the facts giving rise to the subject matter of the Litigation, as described in Sections 1.23 and 9 of the Settlement Agreement. This means you will no longer be able to sue the Defendant regarding any of the settled claims described in the Settlement Agreement if you are a Class Member and if you do not exclude yourself from the Class. The full text of the Settlement Agreement is available at [www.buzzclass.com](http://www.buzzclass.com).

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue the Defendant about the issues in this case, then you must exclude yourself from ("opt out" of) the Class.

### 9. What happens if I exclude myself?

If you exclude yourself, you cannot object to the proposed Settlement. However, if you ask to be excluded, you may sue or continue to sue the Defendant about the same claims resolved by this Settlement in the future. You will not be bound by anything that happens in this Litigation.

### 10. If I do not exclude myself, can I sue later?

No, if you are a Class Member, unless you exclude yourself, you give up the right to sue the Defendant for all of the claims that this Settlement resolves.

#### 11. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter or other written document by mail saying that you want to be excluded from *In re Google Buzz Privacy Litigation*, No. 5:10-cv-00672-JW. Be sure to include your full name, address, reason why you want out of the Settlement, as well as proof that you used Gmail at some point after February 9, 2010, your signature, and the date. You must mail your request for exclusion so that it is received no later than **Month XX, 2010** to:

NOTICE ADMINISTRATOR
Buzz Settlement Exclusions PO Box 0000 City, State Zip Code

You cannot ask to be excluded on the phone, by email, or at the website. An exclusion request is not a claim for payment.

### THE LAWYERS REPRESENTING YOU

#### 12. Do I have a lawyer in the case?

The Court appointed Gary E. Mason of Mason LLP; Michael Ram of Ram & Olson LLP; William Rubenstein; Jonathan Shub of Shublawn LLC; Peter N. Wasylyk, Andrew S. Kierstead, Donald Amamgbo of Amamgbo & Associates; Reginald Terrell of The Terrell Law Group; and Peter W. Thomas as "Class Counsel" to represent Class Members. You will not be individually charged for these lawyers, who, instead, will apply to the Court to be paid from the Common Fund. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

#### 13. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees of 25 % of the Common Fund, plus reimbursement of costs and expenses. Class Counsel will also request that the five Class Representatives who helped the lawyers on behalf of the whole Class each receive a \$2500 incentive award. The Court may award less than these amounts. The payment of attorneys' fees, incentive awards and reimbursement of costs and expenses will be deducted from the Common Fund prior to the distribution of the Common Fund to the selected Internet privacy organizations.

### OBJECTING TO THE SETTLEMENT

#### 14. How do I tell the Court that I do not like the Settlement?

You can object to the Settlement if you do not like any part of it. You must give reasons why you think the Court should not approve the Settlement. To object, send a letter saying that you object to the proposed Settlement in *In re Google Buzz Privacy Litigation*, No. 5:10-cv-00672-JW. Be sure to include: your name, address, telephone number, and your signature; the reasons why you object to the Settlement; copies of any legal support or evidence you would like the Court to consider; proof that you are a Class Member;

**{00019987; 1} QUESTIONS? CALL 1-888-XXX-XXX TOLL FREE, OR VISIT [WWW.BUZZCLASS.COM](http://WWW.BUZZCLASS.COM)**  
41063-0140/LEGAL19034135.1  
41063-0140/LEGAL19074020.1

and whether you or your attorney will appear at the fairness hearing (see Question 16 below). Mail the objection to the three different places listed below so that it is received no later than **Month XX, XXXX**. Note: Your objection must be received by the deadline. The Court will appoint a Notice Administrator to process all responses to the Settlement, and to coordinate with Class Counsel to answer Class Members' questions.

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the United States District Court for the Northern District of California San Jose Division 280 South 1 <sup>st</sup> Street San Jose, CA 95113	Gary Mason, Esq. Mason LLP 1625 Massachusetts Ave., NW Suite 605 Washington, DC 20036	David J. Burman, Esq. Perkins Coie LLP 1201 Third Avenue Suite 4800 Seattle, WA 98101-3099

#### 15. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you cannot object to the Settlement because the case no longer affects you.

## THE COURT'S FAIRNESS HEARING

#### 16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at **\_: \_m. on Month XX, XXXX**, at the United States District Court for the Northern District of California, San Jose Division, 280 South 1<sup>st</sup> Street, San Jose, CA. At the Fairness Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's request for attorneys' fees, costs and expenses, and the incentive awards. If there are objections, the Court will consider them.

The Fairness Hearing may be moved to a different date without additional notice, so it is recommended that you periodically check [www.buzzclass.com](http://www.buzzclass.com) for updated information.

#### 17. Do I have to come to the hearing?

No, you are not required to attend the final fairness hearing. However, you are welcome to attend the hearing at your own expense. If you send in a written objection, you do not have to come to the Fairness Hearing to talk about it. As long as you mailed your written objection and it was received on time, the Court will consider it. You also may pay your own lawyer to attend the Fairness Hearing, but that is not necessary.

#### 18. May I speak at the hearing?

To speak at the Fairness Hearing, you must send a letter or other written document saying that the letter or document is your "Notice of Intent to Appear" in *In re Google Buzz Privacy Litigation*, No. 5:10-cv-00672-JW. Be sure to include your name, address, telephone number, signature, and copies of any documents you have proving that you are a Class Member. Send your Notice of Intent to Appear so that it is received no later than **Month XX, XXXX**, to the addresses listed in Question 14. You cannot speak at the hearing if you exclude yourself from the Settlement.

## IF YOU DO NOTHING

**00019987; 1** QUESTIONS? CALL **1-888-XXX-XXX** TOLL FREE, OR VISIT **WWW.BUZZCLASS.COM**  
41063-0140/LEGAL19034135.1  
41063-0140/LEGAL19074020.1

19. What happens if I do nothing at all?

If you are a Class Member and do nothing, and you do not exclude yourself, you will not be able to start a lawsuit, or be part of any other lawsuit against the Defendants about the claims in this case, ever again.

## GETTING MORE INFORMATION

20. How do I get more information about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.buzzclass.com](http://www.buzzclass.com). You also may write with questions to Buzz Settlement, PO Box 0000, City, State, Zipcode or call 1-888-XXX-XXXX.



# **EXHIBIT C**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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In Re: GOOGLE BUZZ  
PRIVACY LITIGATION

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This Document Relates To:  
ALL CASES

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

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

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

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

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

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

IT IS HEREBY ORDERED this \_\_\_ day of \_\_\_\_\_, 2010, as follows:

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

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

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

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

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

- a. The Settlement Class is sufficiently definite;
- b. The Settlement Class is so numerous that joinder of all members of the Settlement Class is impracticable;
- c. There are questions of law and/or fact common within the Settlement Class;
- d. Plaintiffs' claims are typical of the claims of the members of the Settlement Class;

- e. Plaintiffs and their counsel have and will fairly and adequately represent and protect the interests of the Settlement Class;
- f. Plaintiffs' interests do not conflict with the interests of the Settlement Class in the maintenance of this action;
- g. The questions of law and/or fact common to the Settlement Class predominate over the questions affecting only individual members of the Settlement Class; and
- h. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of this controversy.

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

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

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

8. Members of the Settlement Class may opt-out of the Class by submitting a written request for exclusion to the Class Action Administrator. The request for exclusion must be

received within sixty (60) days of the date of this Order and must include the individual's full name, address, a statement of the individual's intention to opt-out of the Settlement, and the reason or reasons for opting out of the Settlement.

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

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

10. Any Class Member who files and serves a written objection in accordance with the procedure set forth above and in Section 7 of the Settlement Agreement may appear at the Fairness Hearing to object to any aspect of the fairness, reasonableness or adequacy of the

Settlement Agreement. A Class Member who does not timely file and serve such a written objection shall not be heard at the Fairness Hearing.

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

12. The Fairness Hearing shall be conducted on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m. The Fairness Hearing shall take place in Courtroom 8, 4th Floor, at the United States District Court for the Northern District of California, San Jose Division, 280 South 1st Street, San Jose, CA 95133. At the Fairness Hearing, the Parties will request that the Court, among other things, (a) grant final certification of the Class, (b) enter Judgment in accordance with the Settlement Agreement, (c) approve the settlement as final, fair, reasonable, adequate and binding on all Class Members who have not timely opted-out pursuant to Section 6 of the Settlement Agreement and this Order, (d) approve the payment of reasonable attorneys' fees and costs for Class Counsel pursuant to Section 10.1 of the Settlement Agreement, (e) approve the incentive awards proposed for the Plaintiffs pursuant to Section 10.2 of the Settlement Agreement, and (f) order the release of all Class Members' claims pursuant to Section 9 of the Settlement Agreement and dismiss this Action with prejudice.

13. Pending further orders by this Court, all proceedings in this case — other than proceedings pursuant to this Order — shall be stayed and all members of the Settlement Class who do not request exclusion from the Settlement Class in accordance with Paragraph 11 of this Order shall be enjoined under the All Writs Act, 28 U.S.C. § 1651, the Anti- Injunction Act, 28 U.S.C. §2283, and Federal Rule of Civil Procedure 65 from commencing or prosecuting any

action, suit, proceeding, claim, or cause of action in any jurisdiction or court against the Defendant relating to or arising out of the subject matter of the Actions.

**IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable James Ware  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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In Re: GOOGLE BUZZ  
PRIVACY LITIGATION

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This Document Relates To:  
ALL CASES

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

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

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

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

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

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



IT IS HEREBY ORDERED this \_\_\_ day of \_\_\_\_\_, 2010, as follows:

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

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

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

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

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

- a. The Settlement Class is sufficiently definite;
- b. The Settlement Class is so numerous that joinder of all members of the Settlement Class is impracticable;
- c. There are questions of law and/or fact common within the Settlement Class;
- d. Plaintiffs' claims are typical of the claims of the members of the Settlement Class;

- e. Plaintiffs and their counsel have and will fairly and adequately represent and protect the interests of the Settlement Class;
- f. Plaintiffs' interests do not conflict with the interests of the Settlement Class in the maintenance of this action;
- g. The questions of law and/or fact common to the Settlement Class predominate over the questions affecting only individual members of the Settlement Class; and
- h. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of this controversy.

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

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

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

8. Members of the Settlement Class may opt-out of the Class by submitting a written request for exclusion to the Class Action Administrator. The request for exclusion must be

received within sixty (60) days of the date of this Order and must include the individual's full name, address, a statement of the individual's intention to opt-out of the Settlement, and the reason or reasons for opting out of the Settlement.

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

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

10. Any Class Member who files and serves a written objection in accordance with the procedure set forth above and in Section 7 of the Settlement Agreement may appear at the Fairness Hearing to object to any aspect of the fairness, reasonableness or adequacy of the

Settlement Agreement. A Class Member who does not timely file and serve such a written objection shall not be heard at the Fairness Hearing.

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

12. The Fairness Hearing shall be conducted on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m. The Fairness Hearing shall take place in Courtroom 8, 4th Floor, at the United States District Court for the Northern District of California, San Jose Division, 280 South 1st Street, San Jose, CA 95133. At the Fairness Hearing, the Parties will request that the Court, among other things, (a) grant final certification of the Class, (b) enter Judgment in accordance with the Settlement Agreement, (c) approve the settlement as final, fair, reasonable, adequate and binding on all Class Members who have not timely opted-out pursuant to Section 6 of the Settlement Agreement and this Order, (d) approve the payment of reasonable attorneys' fees and costs for Class Counsel pursuant to Section 10.1 of the Settlement Agreement, (e) approve the incentive awards proposed for the Plaintiffs pursuant to Section 10.2 of the Settlement Agreement, and (f) order the release of all Class Members' claims pursuant to Section 9 of the Settlement Agreement and dismiss this Action with prejudice.

13. Pending further orders by this Court, all proceedings in this case — other than proceedings pursuant to this Order — shall be stayed and all members of the Settlement Class who do not request exclusion from the Settlement Class in accordance with Paragraph 11 of this Order shall be enjoined under the All Writs Act, 28 U.S.C. § 1651, the Anti- Injunction Act, 28 U.S.C. §2283, and Federal Rule of Civil Procedure 65 from commencing or prosecuting any

action, suit, proceeding, claim, or cause of action in any jurisdiction or court against the Defendant relating to or arising out of the subject matter of the Actions.

**IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable James Ware  
United States District Judge