

1 COOLEY LLP
2 MICHAEL G. RHODES (116127)
3 (rhodesmg@cooley.com)
4 WHITTY SOMVICHIAN (194463)
5 (wsomvichian@cooley.com)
6 KYLE C. WONG (224021)
7 (kwong@cooley.com)
8 101 California Street, 5th Floor
9 San Francisco, CA 94111-5800
10 Telephone: (415) 693-2000
11 Facsimile: (415) 693-2222

12 Attorneys for Defendant
13 GOOGLE INC.

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
17
18 SAN JOSE DIVISION
19

20 IN RE GOOGLE INC. GMAIL
21 LITIGATION

Case No. 5:13-md-02430 LHK (PSG)

**STATEMENT OF RECENT DECISION RE
DEFENDANT GOOGLE INC.'S OPPOSITION
TO PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Civ. L.R. 7-3(d)(2)

Hearing on Plaintiffs' Motion for Class
Certification to be held on:

Date: February 27, 2014
Time: 1:30 p.m.
Judge: Hon. Lucy H. Koh
Dept.: Courtroom 8 - 4th Floor

Trial Date: October 20, 2014

STATEMENT OF RECENT DECISION

Defendant Google Inc. ("Google") respectfully submits for the Court's consideration the recent decision of:

- *Berger v. Home Depot USA, Inc.*, No. 11-55592, 2014 U.S. App. LEXIS 2059, at *17 (9th Cir. Feb. 3, 2014) (Gould, J.) (holding that class certification was properly denied where individual evidence would be required to determine whether the representations at issue were actually made to each member of the class). A true and correct copy of the decision is attached hereto as **Exhibit A**.

This case is relevant to Google's Opposition to Plaintiffs' Motion for Class Certification.

Dated: February 6, 2014

COOLEY LLP
MICHAEL G. RHODES (116127)
WHITTY SOMVICHIAN (194463)
KYLE C. WONG (224021)

/s/ Whitty Somvichian

Whitty Somvichian (194463)
Attorneys for Defendant GOOGLE INC.

1352541 /SF