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Plaintiffs' Liaison Counsel

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

IN RE GOOGLE INC. GMAIL LITIGATION

Master Docket No.: 13-MD-02430-LHK

THIS DOCUMENT RELATES TO:
 ALL ACTIONS

**STIPULATION AND [PROPOSED]
 ORDER RE AMENDMENT TO
 CONSOLIDATED INDIVIDUAL AND
 CLASS ACTION COMPLAINT**

Judge: Hon. Lucy H. Koh
 Place: Courtroom 8—4th Floor

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**STIPULATION AND [PROPOSED] ORDER RE AMENDMENT TO
 CONSOLIDATED INDIVIDUAL AND CLASS ACTION COMPLAINT**
 5:13-MD-002430-LHK

TO THE COURT, AND ALL PARTIES AND THEIR ATTORNEYS:

WHEREAS, *Brinkman v. Google, Inc.*, 2:12-cv-06699-AB (“*Brinkman Action*”) was filed on or about November 30, 2012 in the Eastern District of Pennsylvania with Kristen Brinkman as the designated proposed Class Representative for the putative Pennsylvania Class;

WHEREAS, the *Brinkman Action* was transferred to Judge Lucy H. Koh, in the San Jose Division of the Northern District of California, by Order of the Judicial Panel on Multidistrict litigation by Order dated April 1, 2013 (MDL Doc. 32);

WHEREAS, this Court ordered that the claims stated in the *Brinkman Action* be included in a consolidated complaint (Doc. 9);

WHEREAS, Plaintiffs’ Consolidated Individual and Class Action Complaint including the claims stated by proposed Class Representative *Brinkman* was filed on May 16, 2013 (Doc. 38-2);

WHEREAS, pleading motions regarding Plaintiffs’ Consolidated Individual and Class Action Complaint have been briefed, argued and submitted; and

WHEREAS, counsel in the *Brinkman* action, Golomb & Honik, P.C., have lost contact with proposed class representative *Brinkman* and, despite repeated efforts, have been unable to locate or reestablish any contact with her, and are reasonably concerned that she may no longer have the ability to participate as an individual and/or proposed Class Representative for the putative Pennsylvania Class.

The PARTIES do hereby Stipulate and agree as follows:

1. The Consolidated Individual and Class Action Complaint (Doc. 38-2), is amended to add Ronald A. Kovler as a proposed Class Representative for the putative Pennsylvania Class pursuant to Fed. R. Civ. Proc. 15(a)(2) and/or Fed. R. Civ. Proc. 21;

2. The addition of Mr. Kovler as proposed Class Representative shall not expand the Class definition, including its operative time, nor shall it otherwise alter the nature or extent of the claims stated by or for the putative Pennsylvania Class;

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3. Plaintiff Kovler shall respond to discovery previously propounded by defendant Google, Inc. on Kristen Brinkman on or before October 2, 2013, and shall appear for deposition in Baltimore, Maryland on October 9, 2013;

4. Paragraph 366 of the operative Consolidated Individual and Class Action Complaint is modified and amended to read as follows: "At the time Plaintiff sent the emails to @gmail.com account holders, Plaintiff did so from his rkoves@aol.com account.";

5. Wherever the name "Brinkman" or "Kristen Brinkman" appears in the operative Consolidated Individual and Class Action Complaint, the complaint is modified and amended to replace these name references with "Kovler" or "Ronald Kovler", and all references to Kovler shall be in the masculine.

6. In light of the Court's dismissal of the Pennsylvania "received" claims by Order dated September 26, 2013, and because Plaintiffs shall not attempt to amend to restate the Pennsylvania "received" claims, the claims of Ronald Kovler individually and on behalf of the Pennsylvania Class he proposes to represent shall exclude "received" claims and relate solely to "sent" claims as described in the Court's September 26, 2013 Order. Plaintiff Kovler reserves and retains any and all appeal rights he may have individually or in a representative capacity with respect to said Order, but acknowledges he has no more rights regarding appeal than Kristen Brinkman would have if she remained a named Plaintiff; and

7. The claims of Kristen Brinkman, without prejudice to the rights of Google, Inc., are Dismissed Without Prejudice pursuant to Fed. R. Civ. Proc. 41(a)(2).

IT IS SO STIPULATED BY THE PARTIES

Respectfully submitted,

Dated: October 1, 2013

CARTER WOLDEN CURTIS, LLP

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COOLEY, LLP

By: /s/ Whitty Somvichian

Whitty Somvichian, Esq.

Michael Rhodes, Esq.

101 California, 5th Floor

San Francisco, CA 94111-5800

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: _____

Hon. Lucy H. Koh