

1 Defendant Google Inc. (“Google”) respectfully moves for administrative relief to enforce
2 the Court’s February 7, 2014 Order (Dkt. No. 108). Rather than comply with this Order—which
3 explicitly limits discovery to the issue of standing—Plaintiffs have ignored it: they have made
4 wide-ranging, overly burdensome demands for information on matters that go far beyond the
5 threshold standing issue. Judicial intervention is needed to prevent wasteful, protracted litigation
6 of an issue that has already been ruled upon.¹

7 BACKGROUND

8 Between 2008 and May 2010, Google Street View cars passively collected network-
9 identifying information broadcast by Wi-Fi networks as the cars traveled along public roadways.
10 Google sought this information because knowing the location of Wi-Fi networks helps Google
11 provide “location aware” services, such as directions. In May 2010, Google discovered that its
12 Street View cars had also acquired data sent over some unencrypted Wi-Fi networks (“payload
13 data”).² The cars only acquired payload data if it was being transmitted to the street at the partic-
14 ular moment a Street View car happened to drive by. Further, because the software in the Street
15 View cars cycled through Wi-Fi channels at a rate of five times per second, any single data col-
16 lection lasted only two-tenths of a second. *See* Joint Case Management Statement at 2-3 (Dkt.
17 No. 107).

18 Given all that, the chance that any part of a given individual’s communications was ac-
19 quired is remote. Plaintiffs—apparently realizing this—danced around the question of standing
20 in their Complaint, alleging only that “*On information and belief*, Defendant surreptitiously col-
21 lected, decoded, and stored data *from Plaintiff’s WiFi connection*, including payload data, on at
22 least one occasion.” Compl. ¶¶ 18-38 (emphasis added). But Plaintiffs do not plead any facts that
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24 ¹ A stipulation resolving this issue could not be obtained for the reasons explained below. *See*
25 *infra* p. 3 & Declaration of Michael H. Rubin (“Rubin Decl.”) ¶¶ 4-5.

26 ² Upon learning of the unwanted collection, Google promptly grounded its Street View cars,
27 removed their Wi-Fi software and hardware, segregated and rendered inaccessible the payload
28 data that had been acquired, hired a third party to review what had happened, publicly apolo-
gized for collecting payload data, and committed to never again collect any Wi-Fi data whatso-
ever with its Street View vehicles.

1 plausibly suggest that Google actually did collect any payload data from Plaintiffs’ Wi-Fi net-
2 works.

3 The parties presented their differing views on this issue to the Court in the Joint Case
4 Management Statement submitted on January 31, 2014, and it was addressed at the February 7,
5 2014 Case Management Conference. Plaintiffs insisted that notwithstanding the serious ques-
6 tions about their standing, merits-based discovery should begin unfettered. Rubin Decl. ¶ 2.
7 Google said that the question of standing needed to be resolved first, and that discovery should
8 be limited to that issue alone. *Id.* The Court agreed with Google and issued an order that permit-
9 ted only “limited discovery on the issue of standing,” and directed the parties to advise the Court
10 if a further conference needed to be scheduled. Dkt. No. 108.

11 Just days later, Plaintiffs made clear that they did not intend to abide by the Court’s ex-
12 plicit limitation. They demanded all sorts of information from Google—information that cannot
13 help resolve the question of their individual standing to pursue the case. *See* Pls.’ Notice Pursu-
14 ant to Fed. R. Civ. P. 30(B)(2) & 30(B)(6) & First Set of Reqs. for Produc. of Docs. Pursuant to
15 Rule 34 (“Production Requests,” “Deposition Topics,” or collectively “Requests”) (Rubin Decl.
16 ¶ 3 & Ex. A).

17 In particular, Plaintiffs request that Google deliver to their counsel’s office “[a]ll soft-
18 ware and hardware used to collect and record Street View Data” from January 1, 2007 through
19 November 8, 2010. *See* Production Request No. 2. Under any reading, that demand is irrelevant
20 to the standing question—and taken literally, would require delivering a fleet of Street View cars
21 to Plaintiffs’ counsel.

22 Plaintiffs also insist they receive *all* data collected by Google Street View cars—when
23 given Plaintiffs’ own allegations, the only data relevant to “limited discovery on the issue of
24 standing” would be data broadcast by the *named Plaintiffs* over their *own* unencrypted Wi-Fi
25 networks. *See* Production Request No. 1; Compl. ¶¶ 18-38. Plaintiffs could not possibly need *all*
26 Wi-Fi network information and *all* payload data from *other* networks to answer the simple ques-
27 tion of whether any data from *their* network was acquired by a passing car. And the notion that
28 all this information should be turned over to counsel for a handful of individuals who have not

1 yet established their standing is in serious tension with their allegations that at least some of this
2 information is private (Compl. ¶ 4).³

3 In short, Plaintiffs have proceeded as though the Court never issued its Order limiting
4 proceedings to the standing question.

5 Google, by contrast, has proposed a fair and structured means to efficiently address the
6 standing inquiry, and to do so without venturing into the merits before Plaintiffs' standing and
7 this Court's jurisdiction are established. *See* Google's February 21, 2014 Letter (Rubin Decl. ¶ 4
8 & Ex. B); *see also* Proposed Order Granting Motion for Administrative Relief to Enforce the
9 Court's February 7, 2014 Order ("Proposal" or "Proposed Order"). Under this Proposal, the par-
10 ties would agree on a neutral third party ("Neutral") (Proposal ¶ 1), who would develop and exe-
11 cute a protocol for determining whether any payload data was acquired from a named Plaintiff's
12 Wi-Fi network (*id.* ¶ 2), as Plaintiffs allege occurred on "information and belief." Compl. ¶¶ 18-
13 38. In particular, Google would deposit all payload and other Wi-Fi network data with the Neu-
14 tral, and Plaintiffs would deposit the wireless routers that Plaintiffs used to maintain unencrypted
15 Wi-Fi networks during the relevant time period. *Id.* ¶ 3. The Neutral would use this information
16 to determine whether any payload data broadcast over the networks of the named Plaintiffs was
17 actually acquired by a Street View car as it drove down the street. The Neutral would then issue
18 a report detailing its findings. *Id.* ¶ 4.

19 On March 3, the parties conferred about the Proposal. Rubin Decl. ¶ 5. Plaintiffs' counsel
20 flatly rejected it and stated that they would not offer an alternative. *Id.*

21 ARGUMENT

22 The court has allowed only limited jurisdictional discovery directed to resolving the ques-
23 tion of standing. Dkt. No. 108. "To establish Article III standing, an injury must be concrete, par-

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25 ³ Plaintiffs also demand "all documents explaining how the software and hardware *collects,*
26 *parses, and stores* Street View Data," and "[a]ll data and documents *correlating or associating*
27 *Street View Data with the name of a Person, with geographic coordinates or with physical ad-*
28 *resses or locations."* Production Requests Nos. 3-4 (emphasis added). But those wide-ranging
Production Requests are off base, as is Plaintiffs' Deposition Notice. *See, e.g.,* Deposition Topic
No. 3 ("The function and operation of the software and hardware used to collect and record
Street View Data.").

1 ticularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a
2 favorable ruling.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1147 (2013) (quotations omit-
3 ted). When plaintiffs’ claims are based on the alleged unlawful interception of their communica-
4 tions, to establish standing, plaintiffs must—at a minimum—show that the defendant acquired
5 the contents of *their* communications, or that such acquisition is imminent. *See id.* at 1147-50;
6 *ACLU v. NSA*, 493 F.3d 644, 655-56, 673-74 (6th Cir. 2007). In *Clapper*, the Court concluded
7 that plaintiffs lacked standing to challenge alleged surveillance by the Government where they
8 “fail[ed] to offer any evidence that their communications have been monitored.” 133 S. Ct. at
9 1148; *see also ACLU*, 493 F.3d at 655-56, 673-74 (holding that plaintiffs who lacked evidence
10 that their communications had been intercepted did not have standing to challenge alleged NSA
11 surveillance). Moreover, in *Clapper*, the plaintiffs were denied even the very limited discovery
12 on the standing question. 133 S. Ct. at 1149 n.4. They certainly were not given what Plaintiffs
13 are demanding here—free rein to peruse all of the information that was acquired (along with all
14 information regarding the methods and equipment used for doing so).

15 The *only* relevant question here is whether Google acquired payload data transmitted
16 from a Wi-Fi network belonging to one or more of the named Plaintiffs. That is the only basis
17 that Plaintiffs allege for standing—*albeit* in a conclusory fashion. *See* Compl. ¶¶ 18-38 (“On in-
18 formation and belief, Defendant surreptitiously collected, decoded, and stored data *from Plain-*
19 *tiff’s WiFi connection*, including payload data, on at least one occasion.” (emphasis added)). Ra-
20 ther than focusing their efforts on this specific question, Plaintiffs seek not to undertake a mere
21 fishing expedition, but to drain the entire lake in the hopes of finding a specific fish. Plaintiffs’
22 broad, unduly burdensome demands clearly contravene the Court’s Order. And Plaintiffs make
23 these demands without having made any showing that they have the right to pursue this action in
24 the first place.

25 For these reasons, Google respectfully requests that the Court enter an order adopting
26 Google’s Proposal, as reflected in the attached Proposed Order. Google’s Proposal is narrowly
27 tailored to address the threshold jurisdictional issue before this Court without venturing improp-
28 erly into collateral matters. *See supra* p. 3. Moreover, Google’s Proposal would eliminate the

1 prospect of either party—or untold numbers of lawyers—combing through what Plaintiffs allege
2 is the private payload data of others. *Id.*

3 **CONCLUSION**

4 For the foregoing reasons, Google’s motion should be granted.

5
6 Dated: March 7, 2014

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

7
8
9 By: /s/ Michael H. Rubin
Michael H. Rubin
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11 *Attorney for Defendant Google Inc.*

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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

17 IN RE GOOGLE INC. STREET VIEW ELEC-) CASE NO.: 3:10-md-02184-CRB
18 TRONIC COMMUNICATIONS LITIGATION)
19) DECLARATION OF MICHAEL H.
20) RUBIN IN SUPPORT OF MOTION
21) FOR ADMINISTRATIVE RELIEF TO
22) ENFORCE THE COURT'S FEBRU-
23) ARY 7, 2014 ORDER
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1 I, Michael H. Rubin, declare:

2 1. I am a member of the law firm Wilson Sonsini Goodrich & Rosati P.C., counsel
3 of record for Defendant Google Inc. (“Google”). I submit this Declaration in support of Google’s
4 motion for administrative relief to enforce the Court’s February 7, 2014 Order (Dkt. No. 108). I
5 have personal knowledge of the facts set forth in this Declaration and can testify competently
6 thereto.

7 2. I represented Google during the February 7, 2014 Case Management Conference.
8 During this Conference, Plaintiffs’ counsel argued that the Court should open discovery on all
9 issues. I argued that discovery should be limited to that necessary to determine whether Plaintiffs
10 have standing. Plaintiffs and Google made these same arguments in their Joint Case Management
11 Statement (Dkt. No. 107). *See id.* at 7-9. The Court issued an order “allow[ing] limited discovery
12 on the issue of standing.” Dkt. No. 108.

13 3. Attached as Exhibit A to this Declaration is a true and correct copy of Plaintiffs’
14 Notice Pursuant to Fed. R. Civ. P. 30(B)(2) and 30(B)(6) and First Set of Requests for Produc-
15 tion of Documents Pursuant to Rule 34, which Plaintiffs served on February 11, 2014.

16 4. Attached as Exhibit B to this Declaration is a true and correct copy of Google’s
17 letter to Plaintiffs’ counsel, which proposed a stipulation (“Proposal”). Google explained in this
18 letter that the Proposal would provide an efficient and structured means of determining the only
19 relevant question at this stage of the proceedings: whether Google acquired payload data trans-
20 mitted from a Wi-Fi network belonging to one or more of the named Plaintiffs. This letter was
21 emailed to Plaintiffs’ counsel on February 21, 2014.

22 5. On March 3, 2014, the parties conferred regarding the Proposal. Plaintiffs’ coun-
23 sel rejected it outright and stated that they would not offer an alternative. For this reason, a stipu-
24 lation resolving this issue could not be obtained. I nevertheless provided notice to Plaintiffs’
25 counsel today, March 7, 2014, that Google would be seeking the relief sought in the Motion for
26 Administrative Relief.

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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct to the best of my knowledge.

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Dated: March 7, 2014

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Michael H. Rubin
Michael H. Rubin
Email: mrubin@wsgr.com

Attorney for Defendant Google Inc.

EXHIBIT A

TO THE DECLARATION OF MICHAEL H. RUBIN

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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 IN RE: GOOGLE INC. STREET VIEW
24 ELECTRONIC COMMUNICATIONS
25 LITIGATION

Case No. 3:10-md-02184-CRB

**PLAINTIFFS' NOTICE PURSUANT TO
FED. R. CIV. P. 30(B)(2) AND 30(B)(6) AND
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS
PURSUANT TO RULE 34**

1 Pursuant to Fed. R. Civ. P. 30(b)(2), 30(b)(6), and 34, Plaintiffs Benjamin Joffe, *et al.*,
2 (“Plaintiffs”) hereby notify Defendant Google, Inc. (“Google”) that:

3 1. Google must produce for inspection and copying the documents and electronically
4 stored information described herein, at the offices of Lief, Cabraser, Heimann & Bernstein, LLP,
5 275 Battery Street, 29th Floor, San Francisco, California, 94111, within 30 days of the service of
6 these requests. In accordance with Rule 34(b), Google shall provide written responses to the
7 following requests and shall produce the requested documents as they are kept in the ordinary and
8 usual course of business or shall organize and label the documents to correspond with the
9 categories in this request; and

10 2. Google must designate one or more of its officers, directors, managing agents or
11 other persons who consent to testify on its behalf, regarding information known or reasonably
12 available to Google concerning the topics designated herein. The deposition will be held at the
13 offices of LIEFF CABRASER HEIMANN & BERNSTEIN, LLP, 275 Battery Street, 29th Floor,
14 San Francisco, CA 94111-3339. The deposition will be taken before an officer legally authorized
15 to administer oaths and shall be recorded stenographically and by videotape for possible use at
16 trial. The deposition will begin on [Friday April 11, 2014 at 10:00 a.m.].

17 **INSTRUCTIONS**

18 1. Pursuant to Rule 26(b)(5) of the Federal Rules of Civil Procedure, if You
19 withhold the production of any document which is responsive to the following requests on the
20 grounds that the document is privileged or otherwise protected, You shall state in a privilege log
21 the nature of the claim of privilege or protection; and describe generally the type and nature of
22 the document; the date of the document; the identity of the author(s), the addressee(s), and any
23 recipient(s) of the document; the document's present location; and any other information that will
24 enable Plaintiffs and the Court to assess the applicability of the privilege or protection.

25 2. You are required to produce all the requested documents which are in Your
26 possession, custody or control, including (by way of illustration only and not limited to)
27 documents in the possession, custody or control of Your affiliates, Your merged and acquired
28 predecessors, Your present and former directors, officers, partners, employees, accountants,

1 attorneys or other agents, Your present and former independent contractors over which You have
2 control, and any other Person acting on Your behalf.

3 3. If a Document responsive to these requests was at any time in Your possession,
4 custody or control but is no longer available for production, as to each such Document state the
5 following information:

- 6 a. Whether the Document is missing or lost;
7 b. Whether the Document has been destroyed;
8 c. Whether the Document has been transferred or delivered to another person
9 and, if so, at whose request;
10 d. Whether the Document has been otherwise disposed of; and
11 e. The circumstances surrounding the disposition of the Document and the
12 date of its disposition.

13 4. These Requests shall be deemed continuing so as to require supplemental
14 responses as You or Your attorneys obtain further information or materials from the time Your
15 answers are served until the time of trial.

16 **DEFINITIONS**

17 1. "Google," "You," and "Your" means Defendant, Google Inc., and its parents,
18 subsidiaries, divisions, affiliates, officers, directors, employees, dealers, and agents.

19 2. "Person" means any natural person, public or private corporation (whether or not
20 organized for profit), governmental entity, partnership, association, cooperative, joint venture,
21 sole proprietorship, or other legal entity. With respect to a business entity, the term "person"
22 includes without limitation any natural person or entity acting formally or informally as an
23 employee, officer, agent, attorney or other representative of the business entity.

24 3. Unless otherwise specified, the "Time Period" refers to the period beginning on
25 January 1, 2007 through the present time.

26 4. The terms "Document" or "Documents" are defined as broadly as permitted under
27 Federal Rule of Civil Procedure 34. They include, without limitation, any Electronically Stored
28 Information ("ESI") and/or typewritten, handwritten, graphic, photographic, printed or otherwise

1 recorded matter or recording of symbols in tangible form, however produced or reproduced, of
2 every kind and regardless of where located, which is in Your possession, custody, or control; or
3 in the possession, custody or control of any servant or agent or of Your attorneys. The terms
4 include the following: electronically recorded information such as electronic mail (“email”),
5 html files, databases, data collected or recorded by Your Street View Vehicles, data processing
6 cards or tapes, computerized data, computer diskettes, or information otherwise contained on a
7 computer’s hard drive, disks or backup tapes; video tapes, audio tapes, or any information
8 maintained on digital, electronic, magnetic or other media; and any other summary, schedule,
9 memorandum, note, statement, letter, telegram, interoffice communication, report, diary,
10 worksheet, list, graph, chart, or index, tape record, partial or complete report of telephone or oral
11 conversation, transcript or minutes, compilation, tabulation, study, analysis, or other such writing
12 or recording. The terms “document” and “documents” include all originals and copies, no
13 matter how prepared, and all drafts prepared in connection with such documents, whether or not
14 used, as well as the file in which the documents are maintained. A draft or non-identical copy of
15 a document, including a copy or duplicate of a document that has any nonconforming notes,
16 marginal annotations or other markings, and any preliminary version, draft or revision of the
17 foregoing, is a separate document within the meaning of these terms.

18 5. “Electronically Stored Information” (“ESI”) is defined as broadly as permitted
19 under Federal Rules of Civil Procedure 26 and 34 and includes, without limitation, the
20 following:

- 21 a. Activity listings of electronic mail receipts and/or transmittals;
- 22 b. Output resulting from the use of any software program, including without
23 limitation word processing documents, spreadsheets, database files, charts, graphs and outlines,
24 electronic mail, instant messaging or chat programs (such as, but not limited to, Skype, Microsoft
25 Instant Messenger, Google Chat, Yahoo Messenger, and AOL Instant Messenger), mobile
26 messaging (such as, but not limited to, text messages, Apple iMessage, or Blackberry Instant
27 Messenger), bulletin board programs, online or intranet forums, operating systems, source code,
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1 PRF files, PRC files, batch files, ASCII files, and all miscellaneous media on which they reside
2 and regardless of whether such electronic data exist in an active file, deleted file, or file fragment;

3 c. Any and all items stored on computer memories, hard disks, floppy disks,
4 CD-ROM, magnetic tape, or on any other vehicle for digital data storage and/or transmittal,
5 including without limitation USB flash memory drives, memory cards (e.g. non-volatile Secure
6 Digital cards), a smartphone or personal digital assistant (e.g., iPhone, Blackberry, Windows
7 Phone, Android, or other device), or a tablet computer such as an iPad, Android or Windows
8 tablet; and

9 d. ESI must be processed and produced in a manner that preserves all
10 metadata.

11 6. The term “communication” means the transmittal of information in any form,
12 including, but not limited to, facts, thoughts, ideas, intentions, desires, inquiries, shapes, sounds,
13 letters, words and numbers, by any means or media whatsoever, including, but not limited to,
14 statements, codes, actions or signals, whether verbal or non-verbal and whether written or oral.

15 7. The terms “concerning,” “pertaining to,” “relating to,” “regarding” or “referring
16 to” (including other tense forms of those terms) mean describing, evidencing, constituting,
17 reflecting, showing, comprising, considering, discussing, regarding, setting forth, studying,
18 analyzing, commenting upon, recommending, alluding to, or mentioning, in whole or in part.

19 8. The singular includes the plural and the plural includes the singular.

20 9. The conjunctions “and” and “or” shall be interpreted conjunctively and shall not
21 be interpreted disjunctively to exclude any information otherwise within the scope of a request.

22 10. The words “any” or “all” mean all documents or items so described.

23 11. Use of the present tense in any request includes the period of time or any portion
24 thereof from January 1, 2007 through the present.

25 12. The term “Complaint” refers to the Consolidated Class Action Complaint filed by
26 Plaintiffs on November 8, 2010.

27 13. “Street View Data” means all data collected or recorded by Google’s Street View
28 vehicles operating in the United States from January 1, 2007 through November 8, 2010,

1 including but not limited to all data collected or recorded by the software and hardware
2 described in the June 3, 2010 report prepared by Stroz Friedberg for Google and Perkins Coie.

3 **FORMAT OF PRODUCTION**

4 Plaintiffs request that You meet and confer regarding the production format(s) for all data
5 or documents maintained in electronic form. Unless otherwise requested, all such data or
6 documents are to be produced in an agreed-upon, computer searchable format.

7 **DOCUMENTS TO BE PRODUCED**

8 **REQUEST FOR PRODUCTION NO. 1:**

9 All Street View Data.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

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12 **REQUEST FOR PRODUCTION NO. 2:**

13 All software and hardware used to collect and record Street View Data.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

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16 **REQUEST FOR PRODUCTION NO. 3:**

17 All data and documents correlating or associating Street View Data with the name of a
18 Person, with geographic coordinates or with physical addresses or locations.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

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21 **REQUEST FOR PRODUCTION NO. 4:**

22 All documents relating to the operation of the software and hardware used by Google's
23 Street View Vehicles to collect and record Street View Data, including all documents explaining
24 how the software and hardware collects, parses, and stores Street View Data.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

1 **REQUEST FOR PRODUCTION NO. 5:**

2 All documents relating to the structure, configuration and format of the Street View Data,
3 including field types and data definitions.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

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6 **REQUEST FOR PRODUCTION NO. 6:**

7 Any and all documents relating to the named Plaintiffs in this action.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

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10 **REQUEST FOR PRODUCTION NO. 7:**

11 Any and all documents relating to any changes or differences between the Street View
12 Data that was collected and recorded by Street View Vehicles and the data produced to Plaintiffs
13 (e.g., in response to Request No. 1).

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

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16 **TOPICS FOR DEPOSITION**

- 17 1. The structure, configuration, and format of the Street View Data, including field
18 types and data definitions;
- 19 2. The function and operation of the software and hardware used to collect and record
20 Street View Data;
- 21 3. All document retention or destruction policies that would relate to any of the
22 Requested Documents;
- 23 4. The method of search made by Google for the Requested Documents;
- 24 5. Any changes or differences between the Street View Data that was collected and
25 recorded by Street View Vehicles and the data produced to Plaintiffs (e.g., in response to Request
26 No. 1).
- 27 6. The completeness of Google's production of the Requested Documents as of the
28 date of the deposition;

- 1 7. The identity of the custodian(s) of the Requested Documents; and
2 8. The authenticity of the Requested Documents.

3
4 Dated: February 11, 2014

Respectfully submitted,

5 By: /s/ Jeffrey L. Kodroff

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CERTIFICATION OF SERVICE

I hereby certify that on **February 11, 2014**, I served Plaintiffs' Notice Pursuant to Fed. R. Civ. P. 30(B)(2) and 30(B)(6) and First Set of Requests for Production of Documents Pursuant to Rule 34 to Michael Rubin, Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, CA 94304-1050, attorney for the Defendant Google Inc., via email and regular mail.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing is willfully false, I may be subject to punishment.

Dated: February 11, 2014

/s/ Jeffrey L. Kodroff
Jeffrey L. Kodroff, Esquire

EXHIBIT B

TO THE DECLARATION OF MICHAEL H. RUBIN



Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

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February 21, 2014

Via Electronic Mail

Jeffrey L. Kodroff, Esq.
Spector Roseman Kodroff & Wills, PC
1818 Market St., Ste. 2500
Philadelphia, PA 19103
jkodroff@srkw-law.com

**Re: *In re Google Inc. Street View Electronic Communications Litigation,*
Case No. 3:10-md-02184-CRB (N.D. Cal.)**

Dear Mr. Kodroff:

We received the discovery you served on February 11, 2014. It is not limited to the threshold jurisdictional question confronting the parties and the Court. The only relevant question during this period of "limited jurisdictional discovery" is whether Google acquired payload data transmitted from a Wi-Fi network belonging to one or more of the named Plaintiffs. Attached is a stipulation that provides an efficient and structured means of answering that question without venturing improperly into collateral matters.

We suggest that the parties discuss this process in the coming days once you have had an opportunity to review the stipulation. Please let me know when you are available.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

A handwritten signature in blue ink, appearing to read 'Michael H. Rubin', written over a horizontal line.

Michael H. Rubin

Attorneys for Defendant Google Inc.

cc: Counsel for Plaintiffs

DEFINITIONS

For the purposes of this Jurisdictional Discovery Process, the following definitions shall apply:

1. “Basic Network Information” shall mean unique information identifying a particular router, such as the router’s Basic Service Set Identification (BSSID) or media access control (MAC) address.
2. “Complaint” shall refer to the Consolidated Class Action Complaint filed November 8, 2010, Docket No. 54.
3. “Confidential Material” shall refer to information, documents, communications, and things relating to jurisdictional discovery in this action.
4. “Neutral” shall refer to a neutral third-party network security firm to be agreed upon by the Parties pursuant to the process set forth below.
5. “Payload Data” shall mean the information contained within a data frame acquired from an unencrypted wireless network by Google’s Street View vehicles operating in the United States from January 1, 2007 through May 15, 2010, and shall exclude management, control, and data frames themselves.
6. “Plaintiff” shall refer to the following named plaintiffs, identified as appellees in the Ninth Circuit appeal in this action: Dean M. Bastilla, Rick Benitti, Matthew Berlage, Russell Carter, Stephanie Carter, Jeffrey Colman, Bertha Davis, James Fairbanks, Benjamin Joffe, Patrick Keyes, Aaron Linsky, Jennifer Locsin, Lilla Marigza, Eric Myhre, John E. Redstone, Karl H. Schulz, Jason Taylor, Vicki Van Valin.
7. “Plaintiffs’ Counsel” shall refer to Plaintiffs’ Co-Lead Counsel and Plaintiffs’ Liaison Counsel as appointed by the Court in this action.

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PROCESS FOR JURISDICTIONAL DISCOVERY

1. Selection of the Neutral

- a. Within 14 days of the Parties’ agreement to this Jurisdictional Discovery Process, Google shall identify to Plaintiffs’ Counsel no fewer than five potential Neutrals.
- b. Within seven days thereafter, Plaintiffs’ Counsel shall select a Neutral from among Google’s proposed choices and inform counsel for Google of their selection.
- c. Following the selection of the Neutral, either Party may request the removal or replacement of the Neutral for good cause shown.
- d. The Parties shall split all fees and costs associated with the Neutral on a 50/50 basis.

2. Role of the Neutral

- a. The Neutral’s sole charge shall be to develop and execute a protocol for determining whether any Plaintiff’s Payload Data was acquired by Google (the “Protocol”), and to produce a report as specified in Section 4.
- b. The Neutral shall develop the Protocol following receipt of the materials specified in Section 3.
- c. Each Party shall cooperate with the Neutral in its efforts to develop the Protocol and to carry out its charge.
- d. The Neutral shall begin to execute the Protocol once both Parties have agreed to the Protocol, such agreement not to be unreasonably withheld.

3. Depositing of Information with the Neutral

- a. No later than fourteen days following selection of the Neutral, Google shall deposit with the Neutral the following items in its possession, custody or control:
 - i. a copy of the hard drive produced to the Oregon federal district court in MDL member case *Van Valin v. Google Inc.* following that court’s order of May 24, 2010, which contains Payload Data removed from Google's servers in May 2010 (the “Payload Drive”);

- 1 ii. a copy of the hard drive containing the Basic Network Information previously
- 2 resident on Google’s servers (the “BNI Drive”); and
- 3 iii. any Street View car disk that was in circulation in the United States prior to
- 4 May 15, 2010 but never processed and therefore may contain Basic Network
- 5 Information along with Payload Data (the “Car Drives”).

6 b. No later than fourteen days following selection of the Neutral, each Plaintiff shall de-

7 posit with the Neutral the following items in his or her possession, custody, or con-

8 trol:

- 9 i. any wireless router that Plaintiff used to maintain an unencrypted Wi-Fi net-
- 10 work between January 1, 2007 and May 15, 2010, as alleged in paragraphs 18-
- 11 38 of the Complaint.

12 c. In conjunction with making these deposits, each Party shall provide declarations at-

13 testing to the authenticity of the items deposited with the Neutral. Such declarations

14 shall be provided both to the Neutral and to the opposing Party.

15 **4. The Neutral’s Report**

16 a. Following completion of the Neutral’s Protocol described in Section 2, the Neutral

17 shall provide to Plaintiffs’ Counsel and to counsel for Google a Report setting forth:

- 18 i. the agreed-upon Protocol the Neutral used;
- 19 ii. the data security and integrity practices the Neutral employed to safeguard,
- 20 process, and review the information deposited with it; and
- 21 iii. on a per-Plaintiff basis, whether Basic Network Information was collected
- 22 from each Plaintiff’s router and, if so, whether any Payload Data was also col-
- 23 lected from that network. The Report shall not contain any additional infor-
- 24 mation.

25 b. In the event that Basic Network Information or Payload Data were acquired from a

26 Plaintiff’s network, the Neutral shall also provide a copy of that information to each

27 Party in native form in conjunction with the Report.

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1 **5. Joint Case Status Report Following Neutral’s Report**

2 a. No later than 20 days after issuance of the Neutral’s Report, the Parties shall jointly
3 submit to the Court a Joint Case Status Report and jointly request that the Court
4 schedule a Case Management Conference.

5 **6. Confidentiality**

6 a. Neither the Parties nor the Neutral shall disclose any Confidential Material to any
7 third party except pursuant to a Court order or by written agreement of the Parties.

8 b. The Neutral may use and disclose Confidential Material received from the Parties on-
9 ly to the extent such use and disclosure is permitted pursuant to Sections 2 and 4 of
10 this Jurisdictional Discovery Process. The Neutral shall make no other disclosure of
11 any Party’s Confidential Material to the opposing Party except pursuant to a Court
12 order or by written agreement of the Parties.

13 **7. Scope of Jurisdictional Discovery**

14 a. Unless agreed to by the Parties or specifically ordered by the Court, this Jurisdictional
15 Discovery Process shall be the full extent of jurisdictional discovery conducted by the
16 Parties.

17 DATED: _____, 2014 WILSON SONSINI GOODRICH & ROSATI, P.C.
18 David H. Kramer
19 Michael H. Rubin
20 Dylan J. Liddiard

By: _____

*Attorneys for Defendant
Google Inc.*

23 DATED: _____, 2014 SPECTOR ROSEMAN KODROFF & WILLIS, P.C.
24 Jeffrey L. Kodroff
25 John A. Macoretta
26 Mary Ann Geppert

By: _____

Plaintiffs’ Co-Lead Counsel

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DATED: _____, 2014

COHEN MILSTEIN SELLERS & TOLL PLLC
Daniel A. Small
David A. Young

By: _____

Plaintiffs' Co-Lead Counsel

1 Now before the Court is Defendant Google Inc.'s ("Google's") Motion for Administrative
2 Relief to Enforce the Court's February 7, 2014 Order, filed March 7, 2014. On review of Google's
3 Motion, the declaration and exhibits filed in support thereof, [Plaintiffs' opposition,] the plead-
4 ings, records, and papers on file in this action, and good cause appearing, Google's Motion is
5 hereby GRANTED; and the Court ORDERS as follows:

6 **DEFINITIONS**

7 For the purposes of this Order, the following definitions shall apply:

8 1. "Basic Network Information" shall mean unique information identifying a partic-
9 ular router, such as the router's Basic Service Set Identification (BSSID) or media access control
10 (MAC) address.

11 2. "Complaint" shall refer to the Consolidated Class Action Complaint filed No-
12 vember 8, 2010, Docket No. 54.

13 3. "Confidential Material" shall refer to information, documents, communications,
14 and things relating to jurisdictional discovery in this action.

15 4. "Neutral" shall refer to a neutral third-party network security firm to be agreed
16 upon by the Parties pursuant to the process set forth below.

17 5. "Payload Data" shall mean the information contained within a data frame ac-
18 quired from an unencrypted wireless network by Google's Street View vehicles operating in the
19 United States from January 1, 2007 through May 15, 2010, and shall exclude management, con-
20 trol, and data frames themselves.

21 6. "Plaintiff" shall refer to the following named plaintiffs, identified as appellees in
22 the Ninth Circuit appeal in this action: Dean M. Bastilla, Rick Benitti, Matthew Berlage, Russell
23 Carter, Stephanie Carter, Jeffrey Colman, Bertha Davis, James Fairbanks, Benjamin Joffe, Pat-
24 rick Keyes, Aaron Linsky, Jennifer Locsin, Lilla Marigza, Eric Myhre, John E. Redstone, Karl
25 H. Schulz, Jason Taylor, Vicki Van Valin.

26 7. "Plaintiffs' Counsel" shall refer to Plaintiffs' Co-Lead Counsel and Plaintiffs' Li-
27 aison Counsel as appointed by the Court in this action.
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PROCESS FOR JURISDICTIONAL DISCOVERY

1. Selection of the Neutral

- a. Within fourteen days of entry of this Order, Google shall identify to Plaintiffs' Counsel no fewer than five potential Neutrals.
- b. Within seven days thereafter, Plaintiffs' Counsel shall select a Neutral from among Google's proposed choices and inform counsel for Google of their selection.
- c. Following the selection of the Neutral, either Party may request the removal or replacement of the Neutral for good cause shown.
- d. The Parties shall split all fees and costs associated with the Neutral on a 50/50 basis.

2. Role of the Neutral

- a. The Neutral's sole charge shall be to develop and execute a protocol for determining whether any Plaintiff's Payload Data was acquired by Google (the "Protocol"), and to produce a report as specified in Section 4.
- b. The Neutral shall develop the Protocol following receipt of the materials specified in Section 3.
- c. Each Party shall cooperate with the Neutral in its efforts to develop the Protocol and to carry out its charge.
- d. The Neutral shall begin to execute the Protocol once both Parties have agreed to the Protocol, such agreement not to be unreasonably withheld.

3. Depositing of Information with the Neutral

- a. No later than fourteen days following selection of the Neutral, Google shall deposit with the Neutral the following items in its possession, custody or control:
 - i. a copy of the hard drive produced to the Oregon federal district court in MDL member case *Van Valin v. Google Inc.* following that court's order of May 24, 2010, which contains Payload Data

- 1 removed from Google’s servers in May 2010 (the “Payload
- 2 Drive”);
- 3 ii. a copy of the hard drive containing the Basic Network Information
- 4 previously resident on Google’s servers (the “BNI Drive”); and
- 5 iii. any Street View car disk that was in circulation in the United
- 6 States prior to May 15, 2010 but never processed and therefore
- 7 may contain Basic Network Information along with Payload Data
- 8 (the “Car Drives”).
- 9 b. No later than fourteen days following selection of the Neutral, each
- 10 Plaintiff shall deposit with the Neutral the following items in his or her
- 11 possession, custody, or control:
- 12 i. any wireless router that Plaintiff used to maintain an unencrypted
- 13 Wi-Fi network between January 1, 2007 and May 15, 2010, as al-
- 14 leged in paragraphs 18-38 of the Complaint.
- 15 c. In conjunction with making these deposits, each Party shall provide decla-
- 16 rations attesting to the authenticity of the items deposited with the Neutral.
- 17 Such declarations shall be provided both to the Neutral and to the oppos-
- 18 ing Party.

19 **4. The Neutral’s Report**

- 20 a. Following completion of the Neutral’s Protocol described in Section 2, the
- 21 Neutral shall provide to Plaintiffs’ Counsel and to counsel for Google a
- 22 Report setting forth:
- 23 i. the agreed-upon Protocol the Neutral used;
- 24 ii. the data security and integrity practices the Neutral employed to
- 25 safeguard, process, and review the information deposited with it;
- 26 and
- 27 iii. on a per-Plaintiff basis, whether Basic Network Information was
- 28 collected from each Plaintiff’s router and, if so, whether any Pay-

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load Data was also collected from that network. The Report shall not contain any additional information.

b. In the event that Basic Network Information or Payload Data were acquired from a Plaintiff’s network, the Neutral shall also provide a copy of that information to each Party in native form in conjunction with the Report.

5. Joint Case Status Report Following Neutral’s Report

a. No later than twenty days after issuance of the Neutral’s Report, the Parties shall jointly submit to the Court a Joint Case Status Report and jointly request that the Court schedule a Case Management Conference.

6. Confidentiality

a. Neither the Parties nor the Neutral shall disclose any Confidential Material to any third party except pursuant to a Court order or by written agreement of the Parties.

b. The Neutral may use and disclose Confidential Material received from the Parties only to the extent such use and disclosure is permitted pursuant to Sections 2 and 4 of this Order. The Neutral shall make no other disclosure of any Party’s Confidential Material to the opposing Party except pursuant to a Court order or by written agreement of the Parties.

7. Scope of Jurisdictional Discovery

a. Unless agreed to by the Parties or further ordered by the Court, the process for jurisdictional discovery set forth in this Order shall be the full extent of jurisdictional discovery conducted by the Parties.

SO ORDERED.

DATED: _____

The Honorable Charles R. Breyer
United States District Judge