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 GOOGLE INC.

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 IN RE GOOGLE INC. GMAIL
 LITIGATION

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

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 18 THIS DOCUMENT RELATES TO:
 ALL ACTIONS

**DEFENDANT GOOGLE INC.'S
 ADMINISTRATIVE MOTION FOR LEAVE
 TO SUBMIT SUPPLEMENTAL MATERIAL**

Judge: Hon. Lucy H. Koh

Trial Date: Not yet set

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1 Pursuant to Civil Local Rule 7-11, defendant Google Inc. (“Google”) brings this
2 Administrative Motion to seek leave from the Court to submit supplemental material in support of
3 its Motion for § 1292(b) Certification for Interlocutory Review (ECF No. 80).¹

4 On December 30, 2013, plaintiffs Matthew Campbell and Michael Hurley filed a Class
5 Action Complaint that is relevant to Google’s pending Motion for Certification before this Court.
6 *See Campbell v. Facebook, Inc.*, No. 5:13-cv-05996-PJH, ECF No. 1 (N.D. Cal. Dec. 30, 2013)
7 (“*Campbell*”). A true and correct copy of the *Campbell* Class Action Complaint is filed herewith
8 as Appendix A.

9 The *Campbell* Complaint demonstrates that plaintiffs in other matters are pursuing claims
10 that appear to be predicated in part on this Court’s interpretation of the “ordinary course of
11 business” defense under 18 U.S.C. § 2510(5)(a)(ii) as set forth in its September 25, 2013 Order on
12 Google’s Motion To Dismiss. In *Campbell*, the plaintiffs allege that Facebook “systematically
13 intercept[s]” users’ Facebook messages and “scans the content of the Facebook message” “without
14 users’ consent,” in violation of the Wiretap Act as modified by the Electronic Communications
15 Privacy Act (“ECPA”). *See id.* at 2-3, 25. The Complaint further alleges that Facebook’s actions
16 are not “necessary for or incidental to the ability to send or receive private messages” because
17 “Facebook has the technical capacity to offer its private message service without intercepting,
18 scanning, and using the content” of users’ messages. *See id.* at 19. The Complaint alleges that, as
19 a result, such activities are “outside the ordinary course of business of electronic communications
20 providers,” referring to the “ordinary course of business” defense under 18 U.S.C. § 2510(5)(a)(ii).
21 *See id.* at 19.

22 This Court should grant the motion to submit the *Campbell* Class Action Complaint as
23 supplemental material in support of Google’s Motion for Certification. *First*, this request is
24 timely, as the *Campbell* Complaint was recently filed on December 30, 2013. *Second*, the filing of

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26 ¹ Because the hearing on Google’s Motion for Certification has already occurred, Google is
27 seeking prior court approval before submitting supplemental material. An administrative motion
28 under Civil Local Rule 7-11 is the proper procedural mechanism for seeking this approval. *See Michael Taylor Designs v. Travelers Property Casualty Company of Am.*, 761 F. Supp. 2d 904,
908-10 (N.D. Cal. 2011).

1 this Complaint is directly relevant to Google’s motion for certification because it demonstrates
2 that plaintiffs in other matters are filing claims based on the unsettled interpretation of the
3 “ordinary course of its business” exception within the Ninth Circuit. *Third*, there is no prejudice
4 to Plaintiffs from the Court’s consideration of this Complaint, which is a matter of public record.

5 **CONCLUSION**

6 The Court should grant Google’s motion for leave to submit the *Campbell* Complaint for
7 inclusion as part of the record on Google’s Motion for Certification.²

8 DATED: January 8, 2014

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24 ² Pursuant to Civil Local Rule 7-11, counsel for Google asked lead counsel for Plaintiffs whether
25 they would stipulate to this request; Plaintiffs declined to stipulate, and asked Google to include
26 the following statement in its motion: “Plaintiffs were asked but declined to stipulate to this
27 request. Plaintiffs stated their opposition to Google’s request on the grounds that the subject
28 Complaint is not a ‘relevant judicial opinion’ within the meaning of [Civil Local Rule] 7-3(d)(1),
and is not, therefore, the proper subject of a Statement of Recent Decision. Plaintiffs also oppose
on the grounds that it is not a proper request for administrative relief as contemplated by [Civil
Local Rule] 7-11.”