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15 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

16 **IN AND FOR THE COUNTY OF MARICOPA**

18 STATE OF ARIZONA, *ex rel.* MARK  
19 BRNOVICH, Attorney General,

20 Plaintiff,

21 v.

22 GOOGLE LLC, a Delaware limited liability  
23 company,

24 Defendant.

) Case No: CV2020-006219

) **STATE'S STATUS REPORT**

) **\*\*Status Conference Scheduled for  
Tuesday, August 4 at 10:00 a.m.\*\***

) Assigned to the Hon. Timothy Thomason

) **(COMPLEX CALENDAR)**

1 The State of Arizona, ex rel. Mark Brnovich, Attorney General (the “State”), hereby  
2 submits the following status report and list of potential topics for the telephonic status  
3 conference scheduled for August 4, 2020 at 10:00 a.m.<sup>1</sup>

4 **I. CURRENT STATUS**

5 This case is the result of a two-year investigation by the State into the acts and practices  
6 of Google, LLC (“Google”) relating to Google’s collection, use, storage, and deletion of its  
7 users’ location data. On May 27, 2020, the State filed a lengthy and detailed complaint alleging  
8 that Google violated the Arizona Consumer Fraud Act (“ACFA”).

9 To permit the parties to follow the Rule 5.4(g) process, the State in filing the Complaint  
10 redacted any material Google had designated “confidential” during the investigation, and also  
11 allegations relying upon such information. After the Complaint was filed, the parties met and  
12 conferred extensively about those portions of the Complaint and exhibits that should be made  
13 public but were unable to reach an agreement. On July 17, 2020, the State filed a Notice of  
14 Lodging pursuant to Rule 5.4, notifying the Court of the sealing issue and stating the State’s  
15 position regarding those portions of the Complaint and exhibits that should be made public.

16 Meanwhile, on July 15, 2020, Google filed a Motion to Dismiss the Complaint. The  
17 State’s response to that motion is due on August 24, 2020. On July 18, 2020, Google filed a  
18 Motion for Continuance, requesting that the Court delay addressing the sealing issue until after  
19 ruling on Google’s Motion to Dismiss or, in the alternative, to allow Google until August 21,  
20 2020 to file its motion to seal. Pursuant to the Court’s request, the State filed its response to the  
21 Motion for Continuance on July 24, 2020.

22 Thus, there are three motions currently pending before the Court: (1) the State’s Notice  
23 of Lodging, requesting public access to the Complaint and exhibits, (2) Google’s Motion to  
24 Dismiss, and (3) Google’s Motion for a Continuance. Of these three, only Google’s Motion for  
25 a Continuance is ripe for decision.

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28 <sup>1</sup> The State reached out to Google on July 16 and 29 to see whether it wanted to participate in a  
joint status report. Google declined to do so.

1 **II. ISSUES FOR RESOLUTION OR DISCUSSION AT THE STATUS**  
2 **CONFERENCE**

3 The State respectfully requests that the Court take up the following issues at the status  
4 conference:

5 **A. Scheduling for Google’s Motion to Dismiss and the State’s Expected Motion**  
6 **for Partial Summary Judgment**

7 The Court should provide guidance on scheduling related to Google’s Motion to Dismiss  
8 and the State’s expected Motion for Partial Summary Judgment. The State expects to file a  
9 motion for partial summary judgment, seeking a ruling that, as a matter of law and undisputed  
10 fact, Google has engaged in certain acts and practices giving rise to liability under ACFA. An  
11 early motion for partial summary judgment, to be briefed and heard in conjunction with  
12 Google’s Motion to Dismiss, will give the Court an opportunity to provide early guidance to  
13 the parties on important legal issues, will focus and potentially narrow the scope of subsequent  
14 discovery, and will result in efficiencies for the Court and the parties. It would assist the parties  
15 to discuss with the Court scheduling for the two motions, which will overlap on many issues.

16 **B. Addressing Google’s Motion for Continuance Seeking Sequencing**

17 The Court should also address and hear any argument from counsel on Google’s pending  
18 Motion to for Continuance. Much of the Complaint and associated exhibits are presently  
19 nonpublic without any Motion to Seal being filed. Google has moved to delay its obligation to  
20 file a Motion to Seal, and any ruling on such a motion, pending resolution of its Motion to  
21 Dismiss. The State’s position, as explained in its Notice of Lodging and its Response to Motion  
22 for a Continuance, is that the public has a constitutional right to access the Complaint and  
23 exhibits and that a ruling on Google’s pending Motion to Dismiss will not change the  
24 constitutional right of public access to these filings—even in the unlikely event that the  
25 Complaint is dismissed.

26 The Complaint and exhibits have now been out of public view for more than two  
27 months, and, as explained in our papers, the public’s right to access is violated every day that  
28 they remain nonpublic without Google moving to seal. The State diligently began the meet and

1 confer process on May 27, the same day it filed its Complaint. After seven weeks of meeting-  
2 and-conferring, Google provided its final position on July 15—confirming that it seeks to seal  
3 everything that was redacted in the complaint and seal most of the Exhibits, as well. As a  
4 constitutional matter, these materials cannot continue to remain nonpublic without Google  
5 making the required showing under 5.4(c)(2)(A)-(D) that the material should be sealed.

6 Moreover, if Google is permitted to keep vast amounts of court filings secret without  
7 any sealing ruling, it will result in heavy administrative burdens for the parties, the clerk’s  
8 office, and the Court. At a minimum, both the State’s response to Google’s Motion to Dismiss  
9 and presumably the Court’s ruling would be to be provisionally under seal absent some  
10 resolution of Google’s far-ranging designations.

11 **C. Scheduling Exchange of Initial Disclosure Statements and Privilege Log**

12 The Court should order limited discovery to commence—namely 1) the exchange of  
13 initial disclosure statements under Rule 26.1 and a previously promised privilege log by  
14 Google, and 2) meeting and conferring regarding those disclosures and log in advance of the  
15 next status conference, which should be the case management conference under Local Rule  
16 3.12(b).<sup>2</sup>

17 During the underlying investigation, the State served Google multiple Civil Investigative  
18 Demands (“CIDs”) containing Demands for Information (“DFIs”) and Requests for Production  
19 (“RFPs”). The State also subpoenaed Google and specific witnesses for examinations under  
20 oath (“EUOs”), both on specific topics identified by the State and pursuant to the witnesses’  
21 personal capacities. *See State ex rel. Brnovich v. 6635 N. 19th Ave., Inc.*, No. 1 CA-CV 15-  
22 0550, 2016 WL 7368620, at \*1 ¶3 (Ariz. Ct. App. Dec. 20, 2016) (The AG “is authorized by  
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25 <sup>2</sup> In a complex case, the parties cannot initiate discovery until the Court enters a case  
26 management order following a case management conference “at the earliest practical date.”  
27 Maricopa Cty. Super. Ct. Civil Rule 3.12(b)(1), (5). The Court, however, can lift that  
28 requirement. *Id.* Given that the parties have already been engaging in pre-suit exchanges for  
well over eighteen months, the State requests that the Court do so here in a limited way, so that  
this case can proceed.

1 statute to enforce the CFA, including to ‘engage in extensive pre-complaint discovery’ if it has  
2 reasonable cause to believe a person has violated the CFA.”).

3 To increase efficiency and streamline this case, consistent with the purposes of the  
4 Complex Court, this Court should order the parties to serve initial disclosure statements under  
5 Rule 26.1 by August 31, 2020, and order the parties to meet and confer within 7 days after  
6 service of the disclosure statements about what each contends is missing from the other’s  
7 disclosures in light of the pre-suit investigative demands. The Court should further order that  
8 Google’s initial disclosures include a privilege log of documents Google has withheld from the  
9 State during the pre-suit investigation, which Google promised but did not complete during that  
10 investigation.

11 Ordering the exchange of initial disclosure statements and a privilege log of documents  
12 withheld will allow the parties to frame the discovery issues for this Court and be more  
13 informed when presenting their joint report in advance of the Case Management Conference.

14 In sum, the combination of scheduling the Motion to Dismiss and expected Motion for  
15 Summary Judgment along with the exchange of initial disclosure statements will create  
16 substantial efficiencies on both legal and factual issues over the next few months and allow this  
17 case to proceed consistent with the purposes of the Complex Court.

18 **D. Case Management Conference and Additional Conferences**

19 The State believes it would further the expeditious processing and resolution of this case  
20 if the Court, schedule permitting, will hold status conferences with the parties every 30 to 45  
21 days. The State requests that the next conference be set for approximately 45 days out (i.e. the  
22 week of September 17), and be designated the initial case management conference. *See* Local  
23 Rule 3.12(b) (providing the complex court must conduct case management conference “at the  
24 earliest practical date”).

25 **E. Protective Orders**

26 The State expects that Google would like a protective order to govern the production of  
27 its documents and other information during the litigation. The parties will meet and confer and  
28 aim to submit a proposed protective order by August 15, 2020.

1 Dated: July 30, 2020

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1 COPY of the foregoing E-FILED  
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