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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

PULASKI & MIDDLEMAN, LLC, individually and on behalf of all others similarly situated, Plaintiff, v. GOOGLE INC., a Delaware corporation, Defendant.	Case No. 08-3888-SI **PLAINTIFF'S STATEMENT IN RESPONSE TO NOTICE OF PENDENCY OF OTHER ACTION [CIVIL LOCAL RULE 3-13(c)]**

In its Notice of Pendency of Other Action (Dock. No. 14), defendant Google Inc. contends that this action should be stayed until a case filed in the Northern District of Illinois, *JIT Packaging, Inc. v. Google Inc.*, Case No. 08-CV-4543 (N.D. Ill.) (filed Aug. 11, 2008), "is re-filed or transferred here." While plaintiff agrees the *JIT Packaging* action involves similar and overlapping allegations and is therefore related to this case within the meaning of Civil Local Rule 3-12, there is no reason for a stay. All four of the following actions are now pending in this district:

1) *Levitte v. Google, Inc.,* Case No. C 08 033692 JW (filed June 11, 2008) ("*Levitte*");
2) *RK West, Inc. v. Google, Inc.,* Case No. C 08 03452 RS (filed July 17, 2008) ("*RK West*");
3) *Pulaski & Middleman, LLC v. Google, Inc.,* Case No. C 08 03888 SI (filed August 14, 2008) ("*Pulaski & Middleman"*); and
4) *JIT Packaging, Inc. v. Google, Inc.*, Case No. C 08 4701 PVT (re-filed Octonber 10, 2008) ("*JIT Packaging*").

On October 8, 2008, the *JIT Packaging* case was voluntarily dismissed without prejudice. (A true and correct copy of the dismissal order in *JIT Packaging* is attached hereto as Exhibit A.) On October 10, 2008, the action was re-filed in this District, San Jose Division, as *JIT Packaging, Inc. v. Google Inc.*, Case No. C 08 4701 PVT (N.D. Cal.) (filed Oct. 10, 2008).

On September 19, 2008, the Court in the *Levitte* and *R.K. West* matters provisionally denied plaintiff's previously-filed administrative motion to relate these cases (Dock. No. 16, attached hereto as Exhibit B), pending resolution of another motion to relate, filed by defendant Google, Inc. in a different, earlier-filed case. On September 29, 2008, the Honorable Ronald M. Whyte denied Google's motion to relate the *Levitte v. Google, Inc.* case (and the *Pulaski & Middleman* and *RK West* cases) with the *Almeida* action, finding that "*Almeida* is not related to *RK West*, *Pulaski & Middleman*, and *Levitte*." *See Almeida v. Google, Inc.,* Order Denying Defendant's Motion to Relate Cases, September 29, 2008 (Dock. No. 20, attached hereto as Exhibit C). Judge Whyte expressly declined to "determine whether those cases are related to

each other. That issue is before Judge Ware, whose *Levitte* case has the lowest docket number of the three." *Id.*

As Judge Whyte noted, "all parties agree" that *Levitte, RK West*, and *Pulaski & Middleman* "are themselves related." *Id.* The parties also agree that *JIT Packaging* is related. Plaintiffs counsel in these related actions are requesting that the Honorable James Ware respectfully reconsider the previously filed administrative motion to relate all of the subsequently-filed cases, including *Levitte, Pulaski & Middleman, RK West* and *JIT Packaging*. Consequently, there no longer remains a need to stay this action pending the transfer of the *JIT Packaging* action.

Dated: October 10, 2008

Saveri & Saveri, Inc.

/s/ Cadio Zirpoli

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google.009

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JIT Packaging, Inc., Individually and on behalf of all others similarly situated, Plaintiff, v. GOOGLE INC., a Delaware corporation, Defendant.	Case No. 08-cv-4543 Hon. Robert M. Dow Jr. Magistrate Judge Schenkier

STIPULATION OF VOLUNTARY DISMISSAL PURSUANT TO RULE 41(a)(1)(A)(ii)

Pursuant to Federal Rule of Procedure 41(a)(1)(A)(ii), Plaintiff, JIT Packaging, Inc. ("JIT"), and Defendant Google Inc. ("Google") hereby stipulate to the voluntary dismissal, without prejudice, of this action.

1. Plaintiff, JIT, filed a complaint on August 11, 2008, against Google for breach of contract, breach of duty of good faith and fair dealing, violations of Illinois Consumer Fraud Act, Illinois Deceptive Trade Practices Act, and the similar statutes of various states, Common Law Fraud and unjust enrichment.

2. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), Plaintiff and Defendant hereby consent and stipulate to the voluntary dismissal, without prejudice, of Plaintiff's entire complaint.

Dated: October 8, 2008

Respectfully submitted,

By:/s/Henry M. Baskerville
Johnathan M. Cyrluk, Esq. (#6210250)
Henry M. Baskerville, Esq. (#6285712)
(Electronically signed with the express Authorization of Henry M. Baskerville)

By:/s/Robert M. Foote
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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2008, I electronically filed the foregoing document with the clerk of court for the U. S. District Court, Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means, and other attorneys of record have been served by other means:

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/s/Robert M. Foote

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Hal K. Levitte, et al.,

Plaintiffs,

v.

Google, Inc.,

Defendant.

/

NO. C 08-03369 JW
NO. C 08-03452 RS
NO. C 08-03888 SI

ORDER DENYING PLAINTIFFS' MOTION TO RELATE CASES

Presently before the Court are two Motions to Relate Cases pursuant to Civil Local Rule 3-12, filed by Plaintiffs in this action and Plaintiffs in one of the allegedly related actions.[1] The Plaintiff groups move to relate this action with RK West, Inc. v. Google, Inc., Case No. C 08-3452-RS, and with Pulaski & Middleman, LLC v. Google, Inc., Case No. C 08-3888-SI.

Having reviewed the parties' briefing papers, the Court finds that another motion to relate cases, filed by Defendant Google, is currently pending before Judge Ronald Whyte. (Declaration of Leo P. Norton in Support of Google, Inc.'s Consolidated Opposition to Administrative Motions to Consider Whether Cases Should Be Related, Docket Item No. 14.) The motion before Judge Whyte requests relation of the three cases at issue here, along with a fourth case, Almeida v. Google, Inc., Case No. C 08-2088-RMW. The Almeida case is the earliest filed case of the four.

[1] (Plaintiff Pulaski & Middleman, LLC's Administrative Motion to Consider Whether Cases Should Be Related, Docket Item No. 5; Administrative Motion to Consider Whether Cases Should Be Related Pursuant to Civil Local Rule 3-12, Docket Item No. 9.)

Rule 3-12(f) provides that "the Judge in this District who is assigned the earliest filed case will decide if the cases are or are not related." If the Judge in the earliest filed case does not relate the cases, Rule 3-12(f)(2) permits Judges in the remaining cases to consider whether the later-filed cases are related. Accordingly, the Court declines to relate this case with the RK West and Pulaski cases, pending Judge Whyte's resolution of Defendant's motion.

Accordingly, the Court DENIES Plaintiffs' Motions to Relate Cases.

Dated: September 19, 2008

JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: September 19, 2008

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

EXHIBIT C

E-FILED on 09/29/08

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

DAVID ALMEIDA, individually and on behalf of all others similarly situated,

Plaintiff,

v.

Google, INC., a Delaware Corporation; and Does 1 through 10, inclusive,

Defendants.

No. C-08-02088 RMW

ORDER DENYING DEFENDANT'S ADMINISTRATIVE REQUEST TO RELATE CASES

[Re Docket No. 16]

Defendant Google moves to relate this action with *RK West v. Google, Inc.*, Case No. C-08-03452 RMW, *Pulaski & Middleman, LLC v. Google, Inc.*, Case No. C-08-0388 SI, and *Levitte v. Google, Inc.*, Case No. C-08-3369 JW. All parties agree that the three cases sought here to be related are themselves related. Therefore, the only question for the court is whether those cases relate to the instant one, which bears the lowest docket number.

It appears that, though in all four cases the defendant is Google and the case concerns the Adwords program, the similarity ends there. *RK West, Pulaski & Middleman*, and *Levitte* all deal with Google ads posted on "parked domains" and "error pages," whereas this case concerns Google charging customers for content ads who, during the Adwords bidding process, left the "CPC content bid" input blank. Furthermore, the proposed class in this case does not appear to overlap with the

proposed classes in *RK West, Pulaski & Middleman*, and *Levitte*. *See* Joint Opp'n to Mot. to Consider Whether Cases Should Be Related, 2-3.

This order only determines that *Almeida* is not related to *RK West, Pulaski & Middleman*, and *Levitte*. It does not determine whether those cases are related to each other. That issue is before Judge Ware, whose *Levitte* case has the lowest docket number of the three.

Accordingly, the court denies defendant's motion to relate.

DATED: 09/29/08

Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

Dated: 09/29/08

JAS
Chambers of Judge Whyte