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 GOOGLE INC.¹

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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION
 11

12 DAVID ALMEIDA, individually and on
 behalf of all others similarly situated,
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 Plaintiff,
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 v.
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 16 GOOGLE, INC. a Delaware Corporation; and
 DOES 1 through 10, inclusive,
 17
 Defendants.

Case No. 08-cv-02088 RMW (PVT)

**ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER PUTATIVE
 CLASS ACTION CASES AGAINST
 GOOGLE INC. REGARDING
 ADWORDS ADVERTISING
 PROGRAM SHOULD BE RELATED
 (Civil L.R. 3-12 & 7-11)**

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 25 ¹ KEKER & VAN NEST LLP attorneys Daralyn J. Durie, David J. Silbert, Ryan M. Kent, and
 26 Alyse Bertenthal are counsel of record for Google Inc. in this case, and have already appeared in
 27 this action. COOLEY GODWARD KRONISH LLP (“Cooley”) and its attorneys listed above are
 28 counsel for Google Inc. in the three actions sought to be related with this action. Civil Local Rule
 3-12 requires that this motion be made in the first filed action, which is this action, and therefore
 the Cooley attorneys make this motion in this case on Google’s behalf.

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 3-12 and 7-11, Defendant Google Inc. (“Google”)
3 respectfully requests that this action be related to three later-filed, substantially similar putative
4 class actions against Google recently filed in this district that, like this action, concern Google’s
5 AdWords advertising program. The four related putative class actions are:

- 6 • *David Almeida v. Google, Inc.*, Case No. C 08-02088-RMW (“*Almeida* case”);
- 7 • *Hal K. Levitte v. Google, Inc.*, Case No. C 08-03369-JW (“*Levitte* case”);
- 8 • *RK West, Inc. v. Google, Inc.*, Case No. C 08-03452-RMW (“*RK West* case”); and
- 9 • *Pulaski & Middleman, LLC v. Google Inc.*, Case No. C 08-03888-SI (“*Pulaski* case”).²

10 These four putative class actions are related because they concern substantially the same parties
11 as well as substantially the same transactions or events and there is the potential for undue
12 burdensome duplication and conflicting results if not related. Judicial and party economy and the
13 Civil Local Rules dictate that the cases should be related and that the cases not already assigned
14 to the Honorable Ronald M. Whyte—the *Levitte* and *Pulaski* cases—should be reassigned to him.

15 **II. THE FOUR GOOGLE ADWORDS PUTATIVE CLASS ACTIONS ARE RELATED**

16 Civil Local Rule 3-12 states that actions are related when “[t]he actions concern
17 substantially the same parties, property, transaction or event” and “[i]t appears likely that there
18 will be an undue burdensome duplication of labor and expense or conflicting results if the cases
19 are conducted before different Judges.” Civil L.R. 3-12(a). Here, the four Google AdWords
20 putative class actions easily satisfy the definition for related cases.

21 **A. Substantially the Same Parties.**

22 Google is the sole named defendant in all four putative class actions, and therefore the
23 cases concern the same defendant. Norton Declaration, Exhibits 1-4.

24 _____
25 ² A copy of the *Almeida* case Complaint is attached as Exhibit 1 to the Declaration of Leo P.
26 Norton in Support of Administrative Motion to Consider Whether Putative Class Action Cases
27 Against Google Inc. Regarding AdWords Advertising Program Should Be Related (“Norton
28 Declaration”). A copy of the *Levitte* case Complaint is attached as Exhibit 2 to the Norton
Declaration. A copy of the *RK West* case Complaint is attached as Exhibit 3 to the Norton
Declaration. A copy of the *Pulaski* case complaint is attached as Exhibit 4 to the Norton
Declaration.

1 Also, the four putative class actions assert similar or overlapping classes of plaintiffs:

- 2 • *Almeida* case: “All persons or entities located within the United States who bid on a
3 keyword though [sic] AdWords, left the ‘CPC content bid’ input blank, and were
4 charged for content ads.” *Almeida* case Complaint, ¶ 13 (italics omitted);
- 5 • *Levitte* case: “All persons or entities located within the United States who, within four
6 years of the filing of this complaint, had an AdWords account with Google and who
7 were charged for advertisements appearing on parked domain and/or error page
8 websites.” *Levitte* case Complaint, ¶ 42;
- 9 • *RK West* case: “All persons or entities located within the United States who created an
10 AdWords campaign and were subsequently charged for clicks from ads placed on
11 parked domains.” *RK West* case Complaint, ¶ 1 (italics omitted); and
- 12 • *Pulaski* case: “All persons or entities located within the United States who, within
13 four years preceding the filing of this Complaint, contracted for and participated in
14 Google’s AdWords program.” *Pulaski* case Complaint, ¶ 115.

15 Because each case asserts a putative class of Google AdWords customers, the putative classes
16 overlap or are completely encompassed by one another.³ Accordingly, the cases also concern
17 substantially the same putative plaintiffs.

18 **B. Substantially the Same Transactions or Events.**

19 All four putative class actions arise from and relate to the named plaintiffs’ and putative
20 class members’ contractual relationship with Google for Google’s AdWords advertising program:

- 21 • *Almeida* case: “This action arises from Google’s deceptive, fraudulent and unfair
22 practice of tricking advertisers who seek on-line advertising through Google’s
23 AdWords program into bidding for a service that they do not want.” *Almeida* case
24 Complaint, ¶ 2;
- 25 • *Levitte* case: “This is a class action against defendant Google, Inc. (‘Google’) for

26 ³ For example, a putative class member in the *Almeida* case would also be in the *Pulaski* case
27 putative class, which is broadly defined to include *all* AdWords customers, and might also be in
28 both the *Levitte* case and *RK West* case putative classes if charged for an advertisement appearing
on a parked domain webpage.

1 violation of Business & Professions Code Section 17200 and 17500 and unjust
2 enrichment in connection with Google’s AdWords program for Internet advertisers.
3 Plaintiff alleges that Google has concealed from and/or misrepresented material
4 information to plaintiff and the class concerning the Google AdWords program.”
5 *Levitte* case Complaint, ¶ 1;

- 6 • *RK West* case: “This action arises from Google’s deceptive, fraudulent and unfair
7 practice of hiding the sources of invalid clicks from advertisers who seek on-line
8 advertising through Google’s AdWords.” *RK West* case Complaint, ¶ 2; and
- 9 • *Pulaski* case: “This case is about Defendant Google’s fraudulent, unfair and deceptive
10 business practices in connection with its AdWords advertising program (‘AdWords’).”
11 *Pulaski* case Complaint, ¶ 1.

12 Although the *Almeida* case challenges alleged charges for clicks occurring on the content network
13 when the “CPC input” is left blank, while the *Levitte*, *RK West*, and *Pulaski* cases challenge
14 alleged charges for clicks for advertisements placed on parked domain or error page websites,
15 each of the cases arise from and involve the same subject matter—Google’s AdWords advertising
16 program. All the actions involve and require an understanding of Google’s advertising program,
17 Google’s contractual relationship with the named plaintiffs and putative class members,
18 AdWords, the AdWords bidding process, the way advertisements are displayed and where they
19 are displayed, and the fees that Google charges and how those fees are charged. *Compare* Norton
20 Declaration, Exhibits 1-4, generally. Additionally, all the actions assert claims based on the same
21 legal theories of unjust enrichment and alleged violation of California Business and Professions
22 code section 17200 arising from the Google AdWords advertising program. *Almeida* case
23 Complaint, ¶¶ 22-26, 34-43; *Levitte* case Complaint, ¶¶ 54-78, 86-91; *RK West* case Complaint,
24 ¶¶ 25-29, 37-46; *Pulaski* case Complaint, ¶¶ 140-165, 172-177.

25 The four Google AdWords putative class actions are also related because they concern
26 substantially the same transactions or events.

1 **C. Potential for Unduly Burdensome Duplication of Labor and Expense and**
2 **Potential for Conflicting Rulings.**

3 If the four Google AdWords class actions are not related, and are instead conducted before
4 three different judges, the actions will potentially result in unduly burdensome duplication of
5 labor and cause Google great expense. Three different judges would be tasked with resolving the
6 same or similar issues relating to the pleadings, discovery, class certification, dispositive motions,
7 and trial. Moreover, Google would be subjected to significant defense costs four times over,
8 including, but not limited to, in potentially filing motions attacking the pleadings or for summary
9 judgment, opposing class certification, propounding and responding to duplicative discovery, and
10 at trial. Because all the cases arise from Google's AdWords advertising program, discovery in
11 the four cases will likely involve overlapping witnesses and documents. Also, as the cases are all
12 putative class actions involving substantially the same subject matter, the potential exists for
13 conflicting rulings on, at a minimum, class certification. Transferring cases that concern
14 substantially the same subject matter or that involve overlapping putative classes to a single judge
15 is well recognized to result in judicial and party economy and to ensure consistent rulings. *See, In*
16 *re Prempro Prods. Liab. Litig.*, 254 F. Supp. 2d 1366, 1367 (J.P.M.L. 2003); *In re Res.*
17 *Exploration, Inc. Sec. Litig.*, 483 F. Supp. 817, 821 (J.P.M.L. 1980); *In re Plumbing Fixtures*,
18 308 F. Supp. 242, 244 (J.P.M.L. 1970). The four Google AdWords putative class actions should
19 be related to avoid unduly burdensome duplication and conflicting rulings.

20 **D. The Plaintiffs' Anticipated Opposition To This Motion Should Be Rejected.**

21 Based on the *RK West* case plaintiff's counsel's preemptive conduct in filing its own
22 improper administrative motion to relate all but the *Almeida* case before Judge Ware⁴ and on

23 _____
24 ⁴ On August 25, 2008, Google's counsel sent all plaintiffs' counsel a meet and confer letter
25 attempting to reach a stipulation that the cases at issue in this motion are related as required under
26 Civil Local Rule 7-11. Norton Declaration, Exhibit 5. The *Levitte* case plaintiff's counsel,
27 purportedly on behalf of all plaintiffs, requested a one-week extension to respond to September 3,
28 2008, and then later that day stated they would respond by Thursday, August 28. Norton
Declaration, Exhibit 6. Having not yet received a response the morning of Tuesday, September 2,
Google's counsel again demanded a response. Norton Declaration, Exhibit 7. Later that day,
Google's counsel received by mail the *RK West* case plaintiff's improper administrative motion to
relate the cases except for the *Almeida* case, and learned by examining the docket that the motion

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2008, I electronically filed the foregoing **ADMINISTRATIVE MOTION TO CONSIDER WHETHER PUTATIVE CLASS ACTION CASES AGAINST GOOGLE INC. REGARDING ADWORDS ADVERTISING PROGRAM SHOULD BE RELATED** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record at the following listed email addresses.

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I also hereby certify that I caused the foregoing document to be personally delivered by consigning the document(s) to an authorized courier and/or process server for hand delivery on this 4th day of September, 2008 to the following listed addresses.

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25 ***RK West, Inc., Case No. 08-cv-03452***

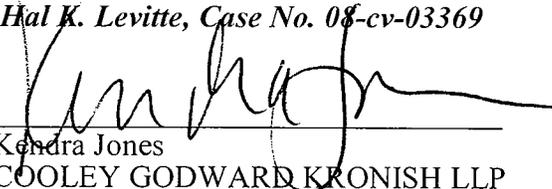
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