

# EXHIBIT 5



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VIA EMAIL & MAIL

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**RE: Google AdWords Putative Class Actions Pending in N.D. Cal.**

*David Almeida v. Google, Inc.*, Case No. C 08-02088-RMW (filed April 22, 2008)  
*Hal K. Levitte v. Google, Inc.*, Case No. C 08-03369-JW (filed July 11, 2008)  
*RK West, Inc. v. Google, Inc.*, Case No. C 08-03452-RMW (filed July 17, 2008)  
*Pulaski & Middleman, LLC v. Google Inc.*, Case No. C 08-03888-SI (filed August 14, 2008)

Dear Counsel:

We are counsel for Google Inc. in the *Levitte*, *RK West*, and *Pulaski & Middleman* cases.<sup>1</sup> We write to: (1) notify you that the *Levitte*, *RK West*, and *Pulaski & Middleman* cases are related to each other and to the earlier-filed *Almeida* case; (2) attempt to reach a stipulation on Google's intended administrative motion under Civil Local Rules 3-12 and 7-11 to relate the cases; and (3) request that Google's time to answer or otherwise respond to the *Levitte*, *RK West*, and

<sup>1</sup> Keker & Van Nest, LLP is counsel of record for Google in the *Almeida* case.



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*Pulaski & Middleman* complaints be coordinated and an extension of time such that Google's new response deadline in those three cases is on or before September 30, 2008. For your reference, I am enclosing a copy of the four related complaints.

#### **Related Google AdWords Putative Class Actions**

Civil Local Rule 3-12 states that actions are related when "[t]he actions concern substantially the same parties, property, transaction or event" and "[i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges." Civil L.R. 3-12(a). The four putative class actions easily satisfy the Court's requirements for related cases.

Google is the sole named defendant in all four putative class actions, and therefore, the cases concern the same defendant. Further, the cases concern substantially the same putative plaintiffs because each case asserts a putative class of Google AdWords customers.

Also, all four putative class actions arise from and relate to the named plaintiffs' and putative class members' contractual relationship with Google for Google's AdWords advertising program. Although the *Almeida* case challenges alleged charges for clicks occurring on the content network when the "CPC input" is left blank, while the *Levitte*, *RK West*, and *Pulaski* cases challenge alleged charges for clicks for advertisements placed on parked domain or error page websites, each of the cases arise from and involve the same subject matter—Google's AdWords advertising program. All the actions involve and require an understanding of Google's advertising program, Google's contractual relationship with the named plaintiffs and putative class members, AdWords, the AdWords bidding process, the way advertisements are displayed and where they are displayed, and the fees that Google charges and how those fees are charged.

Additionally, all the actions assert claims for alleged unjust enrichment and alleged violation of California Business and Professions code section 17200 arising from the Google AdWords advertising program.

Last, given that the cases concern substantially the same subject matter and involve overlapping putative classes, there is the potential for unduly burdensome duplication of party and judicial labor and expense. Moreover, there is the potential for conflicting results, at a minimum as to class certification, if the cases are not related and if they proceed as presently assigned before three different judges.

#### **Stipulation on Google's Administrative Motion**

As required under Civil Local Rule 3-12(b), Google stands ready to file an administrative motion under Civil Local Rules 3-12 and 7-11 to relate the cases. If the cases are related, all four cases will be reassigned to the same judge, which is the judge in the low-numbered case. Here, the low-numbered case is the *Almeida* case, and the judge assigned to that case is Ronald M. Whyte. Also, the *RK West* case is already assigned to him. The *Levitte* and *Pulaski & Middleman* cases would be reassigned to him if the cases are related.

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Under Civil Local Rule 7-11(a), the administrative motion "must be accompanied by a proposed order and by either a stipulation under Civil L.R. 7-12 or by a declaration that explains why a stipulation could not be obtained." Civil L.R. 7-11(a). We ask that you stipulate that the cases are related, which will result in all the cases being assigned to Judge Whyte. The administrative motion does not address the level of coordination or consolidation. That will be addressed later after the cases are reassigned to the same judge.

**Request for Extension of Time to Respond**

The *Levitte*, *RK West*, and *Pulaski & Middleman* cases have all recently been served and presently have deadlines to answer or otherwise respond to the complaints staggered throughout the first half of September. We would appreciate the professional courtesy of coordinating the deadline to respond in those three actions, and request an extension of time to respond in those three actions to on or before September 30, 2008. By then, Google's administrative motion to relate the cases will be decided (and the cases reassigned if granted). Under Civil Local Rule 6-1, we can simply stipulate to the extension without Court approval, but we will have to file the stipulation in the three respective actions.

Please contact me by end of day **Wednesday, August 27, 2008** to advise whether your respective plaintiffs will stipulate that the cases are related and whether they will agree to coordinate and extend Google's response deadline to on or before September 30, 2008.

Sincerely,



Leo P. Norton

Enclosures – as stated

cc: Daralyn J. Durie  
Keker & Van Nest, LLP (w/ enclosures)

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