

EXHIBIT 8

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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

12 RK WEST, INC., a California corporation
d/b/a/ Malibu Wholesale, individually and on
13 Behalf of All Others Similarly Situated,

14 Plaintiff,

15 v.

16 GOOGLE, INC., a Delaware corporation; and
DOES 1 through 10, inclusive,

17 Defendants.
18

Case No. 08-CV-03452 RMW RS

**OPPOSITION TO
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED PURSUANT
TO CIVIL LOCAL RULE 3-12**

1 **I. INTRODUCTION**

2 Defendant Google Inc. (“Google”) opposes the administrative motion filed by Plaintiff
 3 RK West, Inc. (“RK West”), which represents nothing more than a preemptive strike against
 4 Google’s previously announced administrative motion to relate four cases pending in this district
 5 regarding Google’s AdWords advertising program, which Google concurrently filed with this
 6 opposition in the case *David Almeida v. Google, Inc.*, Case No. C 08-02088-RMW. RK West’s
 7 motion highlights the erosion of cooperation that has become all too common in putative class
 8 action cases. On August 25, 2008, four days before RK West filed its motion in this case, Google
 9 wrote all plaintiffs’ counsel and notified them that Google stood ready to file an administrative
 10 motion to relate four cases, provided copies of the four complaints, and requested that the
 11 plaintiffs stipulate, as Google was required to do under Civil Local Rule 7-11 before filing the
 12 motion, that the cases were related. Without the courtesy of responding to Google’s letter even
 13 after obtaining a one-week extension to do so, RK West filed its own administrative motion on
 14 August 29, 2008 seeking to relate three of the four cases that Google notified RK West that it
 15 intended to relate. Because RK West neglected to deliver the motion on the same day it was filed
 16 as required, and instead served it by mail, Google did not learn of RK West’s improper tactical
 17 maneuver until the late morning of September 2, 2008. Not surprisingly, considering RK West’s
 18 haste to preemptively file its administrative motion before Google, RK West’s motion suffers
 19 from numerous procedural and substantive defects. Consequently, it should be denied.

20 **II. BACKGROUND AND RK WEST’S QUESTIONABLE CONDUCT IN FILING ITS MOTION**

21 There are four cases presently pending against Google in this district relating to Google’s
 22 AdWords advertising program that are related and that should be reassigned for coordinated or
 23 consolidated proceedings before the same judge. Those cases are:

- 24 • *David Almeida v. Google, Inc.*, Case No. C 08-02088-RMW (“*Almeida case*”);
- 25 • *Hal K. Levitte v. Google, Inc.*, Case No. C 08-03369-JW (“*Levitte case*”);
- 26 • *RK West, Inc. v. Google, Inc.*, Case No. C 08-03452-RMW (“*RK West case*”); and
- 27 • *Pulaski & Middleman, LLC v. Google Inc.*, Case No. C 08-03888-SI (“*Pulaski case*”).¹

28 ¹ A copy of the *Almeida* case Complaint is attached as Exhibit 1 to the Declaration of Leo P.

1 On August 25, 2008, Google's counsel sent all plaintiffs' counsel a meet and confer letter
 2 that: (1) notified all plaintiffs that Google was prepared to file an administrative motion under
 3 Civil Local Rules 3-12 and 7-11 in the *Almeida* case; (2) provided all plaintiffs with copies of the
 4 complaints and the reasons why the cases were related; (3) attempted to reach a stipulation that
 5 the four cases are related as required under Civil Local Rule 7-11; and (4) requested that Google's
 6 deadline to respond to the *Levitte*, *RK West*, and *Pulaski* complaints be coordinated and extended
 7 until September 30, 2008. Norton Declaration, ¶ 3 & Exhibit 2. Plaintiff's counsel in the *Levitte*
 8 case, purportedly on behalf of all plaintiffs, requested a one-week extension to respond to
 9 September 3, 2008, and later stated they would respond by August 28, 2008. Norton Declaration,
 10 ¶ 4 & Exhibit 3. Having not yet received a response as of the morning of September 2, 2008,
 11 Google's counsel demanded a response by the end of the day. Norton Declaration, ¶ 5 & Exhibit
 12 4. Later that morning, Google's counsel received by mail RK West's administrative motion.
 13 Norton Declaration, ¶ 7. As of the filing of this opposition, RK West has not responded to any
 14 aspect of Google's letter dated August 25, 2008, including Google's request for a consolidated
 15 response date. Norton Declaration, ¶ 6. Google has received responses from the plaintiffs in the
 16 *Levitte* and *Pulaski* cases, each taking the position that the *Almeida* case is not related but still
 17 stipulating to Google's request for a consolidated response deadline of September 30, 2008.
 18 Norton Declaration, ¶ 6.

19 **III. RK WEST'S ADMINISTRATIVE MOTION SHOULD BE DENIED BECAUSE IT IS**
 20 **PROCEDURALLY IMPROPER**

21 RK West's motion should be denied on four independent procedural grounds: (1) RK
 22 West filed it in the wrong case; (2) RK West failed to deliver it to Google the same day it was
 23 filed; (3) RK West failed to meet and confer in an effort to obtain a stipulation; and (4) it is
 24 procedurally unnecessary in light of Google's administrative motion to relate all four Google
 25 AdWords advertising program putative class actions pending in this district.

26 Norton in Support of Opposition. A copy of the *Levitte* case Complaint is attached as Exhibit C
 27 to RK West's administrative motion. A copy of the *RK West* case Complaint is attached as
 28 Exhibit A to RK West's administrative motion. A copy of the *Pulaski* case complaint is attached
 as Exhibit B to RK West's administrative motion.

1 **A. RK West Filed Its Administrative Motion in the Wrong Case.**

2 Under Civil Local Rule 3-12(b), an administrative motion to relate cases must be filed in
3 the low-numbered case. Civil L.R. 3-12(b). The *RK West* case plaintiff’s administrative motion
4 attempts to relate the following three cases:

- 5 • *Hal K. Levitte v. Google, Inc.*, Case No. C 08-03369-JW;
- 6 • *RK West, Inc. v. Google, Inc.*, Case No. C 08-03452-RMW; and
- 7 • *Pulaski & Middleman, LLC v. Google Inc.*, Case No. C 08-03888-SI.

8 The low-numbered case in this instance is the *Levitte* case, not the *RK West* case, and therefore
9 RK West’s administrative motion in this case was not properly filed and should be denied.

10 **B. RK West Failed To Deliver Its Administrative Motion to Google on the Same
11 Day It Filed It As Required.**

12 Civil Local Rule 3-12(b) requires compliance with Civil Local Rule 7-11’s requirements
13 for Administrative Motions, and requires service on all known parties in the cases sought to be
14 related. Civil L.R. 3-12(b). Civil Local Rule 7-11 requires that the “moving party must deliver
15 the motion and all attachments to all other parties on the same day as the motion is filed.” Civil
16 L.R. 7-11(a). RK West failed to satisfy this requirement.

17 RK West filed its administrative motion on Friday, August 29, 2008. Document No. 10.
18 Google did not receive the motion until Tuesday, September 2, 2008 because RK West served the
19 motion and supporting documents by priority U.S. Mail, rather than delivering them on the same
20 day as filed as required. Norton Declaration, ¶ 7. RK West’s administrative motion should be
21 denied for failure to adhere to Civil Local Rule 7-11.

22 **C. RK West Failed To Engage in Any Attempt to Obtain a Stipulation from
23 Google as Required.**

24 Civil Local Rule 7-11(a) mandates that the moving party attempt to obtain a stipulation
25 under Civil Local Rule 7-12 or submit a declaration that explains why a stipulation could not be
26 obtained. Civil L.R. 7-11(a). RK West never communicated with Google regarding its
27 administrative motion, nor did RK West ever respond to Google’s attempt to obtain a stipulation
28 on Google’s administrative motion. Instead, RK West filed its administrative motion without

1 warning and knowing full well that Google stood ready to file its administrative motion but was
2 waiting for a response from all plaintiffs' counsel before doing so. RK West should not be
3 permitted to ignore the Local Rules. Having failed to adhere to Civil Local Rule 7-11(a), RK
4 West's administrative motion should be denied.

5 **D. RK West's Administrative Motion Is Procedurally Unnecessary Because of**
6 **Google's Administrative Motion Filed in the *Almeida* Case.**

7 Google filed its own administrative motion to relate the *Almeida*, *Levitte*, *RK West*, and
8 *Pulaski* cases. Because the *Almeida* case is the low-numbered case, Google filed its
9 administrative motion in that action. Norton Declaration, ¶ 8. Google's motion renders RK
10 West's motion unnecessary because Civil Local Rules 3-12 provides an opportunity for a party in
11 RK West's position to contend that some, but less than all, of the cases subject to an
12 administrative motion are related.

13 Civil Local Rule 3-12(e) allows a non-moving party to file a response to an administrative
14 motion, and specifically provides that if "a party contends that not all of the cases are related, the
15 party must address whether any of the cases are related to one another." Civil L.R. 3-12(e).
16 Moreover, Civil Local Rule 3-12(f) provides that if the judge assigned to the low-numbered case
17 (here, the *Almeida* case) decides that the cases are not related, the Clerk shall submit the order to
18 the judges assigned to the other cases, in the order those cases were filed, to decide whether any
19 of those cases are related. Civil L.R. 3-12(f)(2)-(3).

20 Rather than rushing to file its own preemptive administrative motion, the proper way for
21 RK West to attempt to relate only the *Levitte*, *RK West*, and *Pulaski* cases would have been to
22 oppose Google's administrative motion filed in the *Almeida* case, and request that the Court relate
23 the *Levitte*, *RK West*, and *Pulaski* cases, but not the *Almeida* case. If the *Almeida* case judge
24 denied the administrative motion, the judge in the *Levitte* case (Judge James Ware) could have
25 related the *Levitte*, *RK West*, and *Pulaski* cases, which all parties in all cases agree at a minimum
26 are related. RK West's failure to do so has resulted in needless duplicative administrative
27 motions and the attendant expense of multiple filings in different cases. Moreover, in its rush to
28 beat Google to the punch, RK West stumbled over numerous procedural requirements, including

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2008, I electronically filed the foregoing **OPPOSITION TO ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL LOCAL RULE 3-12** 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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