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 9 GOOGLE, INC., a Delaware corporation

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

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

15 Plaintiff,

16 v.

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

19 Defendants.

Case No. C 08-02088 HRL

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

20 Pursuant to Civil L.R. 3-12, Google, Inc. (“Google”), defendant in Case No. C08-02088
 21 (HRL) (“*Almeida v. Google*”),¹ files this administrative motion asking the Court to consider
 22 whether *Almeida v. Google* should be related to the earlier-filed and decided Case No. C 05-
 23 02579 (“*Advanced Internet Technologies, Inc. v. Google, Inc.*”), which was consolidated with
 24

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 26 ¹ A copy of the April 22, 2008 Complaint filed in *Almeida v. Google* is attached hereto as Exhibit
 27 A (“*Almeida Complaint*”) to the Declaration of Alyse D. Bertenthal in Support of Defendant’s
 28 Administrative Motion to Consider Whether Cases Should Be Related (“*Bertenthal Decl.*”). Pursuant to Local Rule 73-1, Google has concurrently filed a Declination to Proceed Before a Magistrate Judge.

1 Case No. C 05-02885 (“*Steve Mizera v. Google, Inc.*”) (collectively “the Consolidated Cases”),²
2 which were pending before the Honorable Ronald M. Whyte.

3 This case appears to be related to the Consolidated Cases under Civil L.R. 3-12. First,
4 the cases concern “substantially the same parties.” See Civil L.R. 3-12(a)(1). Google is the
5 defendant in all the cases, and the putative class in *Almeida v. Google* likely overlaps with the
6 putative class in the Consolidated Cases (*compare Almeida Complaint ¶ 13 with AIT Complaint*
7 *¶ 39 and with Mizera SAC ¶ 39*). Plaintiffs’ counsel and defense counsel in all the cases is the
8 same as well.
9

10 Second, “it appears likely that there will be an unduly burdensome duplication of labor
11 and expense . . . if the cases are conducted before different Judges.” See Civil L.R. 3-12(a)(2).
12 All of the cases involve, and require an understanding of, similar subject matter: the AdWords
13 bidding process; the way that ads are displayed on Google and its advertising network; and the
14 manner in which Google charges advertisers for their ads. (*Compare Almeida Complaint ¶¶ 11-*
15 *13 with AIT Complaint ¶¶ 13-18, 35-38 and with Mizera SAC ¶¶ 13-18, 35-38.*) In addition, the
16 settlement and release that formed the basis of the judgment in the Consolidated Cases may also
17 bar some or all of the claims in *Almeida v. Google*.
18

19 For the foregoing reasons, and pursuant to Civil L.R. 3-12, Google respectfully requests
20 that the Court consider whether the pending *Almeida v. Google* action should be related to the
21 previously filed *Advanced Internet Technologies, Inc. v. Google, Inc.* and *Mizera v. Google, Inc.*
22 actions.
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26 ² The *Advanced Internet Technologies* case was initially filed by Clicks Defense, Inc., but
27 Advanced Internet Technologies, Inc. was later substituted as the named plaintiff in that case.
28 See Order (Jan. 13, 2006), Dkt. No. 40. A copy of the June 24, 2005 Complaint filed in *Clicks*
Defense, Inc. v. Google, Inc. is attached hereto as Bertenthal Decl., Exhibit B (“*AIT Complaint*”).
A copy of the November 22, 2005 Second Amended Complaint filed in *Steven Mizera v. Google,*
Inc. is attached hereto as Bertenthal Decl., Exhibit C (“*Mizera SAC*”).

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Dated: June 27, 2008

KEKER & VAN NEST, LLP

By: /s/ David Silbert
DAVID J. SILBERT
Attorneys for Defendant
GOOGLE, INC.

1 PROOF OF SERVICE

2 I am employed in the City and County of San Francisco, State of California in the office of a
3 member of the bar of this court at whose direction the following service was made. I am over the
4 age of eighteen years and not a party to the within action. My business address is Keker & Van
Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

5 On June 27, 2008, I served the following documents:

6 **(1) ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES
7 SHOULD BE RELATED PURSUANT TO CIVIL LOCAL RULE 3-12;**

8 **(2) DECLARATION OF ALYSE D. BERTENTHAL IN SUPPORT OF
9 DEFENDANT GOOGLE'S ADMINISTRATIVE MOTION TO
10 CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT
11 TO CIVIL LOCAL RULE 3-12**

12 (1) By **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy
13 scanned into an electronic file in Adobe "pdf" format. The transmission was reported as
14 complete and without error; and

15 (2) By regular **UNITED STATES MAIL** by placing a true and correct copy in a sealed
16 envelope addressed as shown below. I am readily familiar with the practice of Keker & Van
17 Nest, LLP for collection and processing of correspondence for mailing. According to that
18 practice, items are deposited with the United States Postal Service at San Francisco, California
19 on that same day with postage thereon fully prepaid. I am aware that, on motion of the party
20 served, service is presumed invalid if the postal cancellation date or the postage meter date is
more than one day after the date of deposit for mailing stated in this affidavit.

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Executed on June 27, 2008, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true
and correct.



Kay Shida