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5 Attorneys for Defendant
 GOOGLE INC.

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

12 HAL K. LEVITTE, Individually and On
 Behalf of All Others Similarly Situated,

13 Plaintiff,

14 v.

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

17 Defendants.

Case No. 08-CV-03369 JW RS

**DECLARATION OF LEO P.
 NORTON IN SUPPORT OF GOOGLE
 INC.'S CONSOLIDATED
 OPPOSITION TO HAL K. LEVITTE
 AND PULASKI & MIDDLEMAN,
 LLC'S ADMINISTRATIVE MOTIONS
 TO CONSIDER WHETHER CASES
 SHOULD BE RELATED (CIVIL L.R. 3-
 12)**

1 I, Leo P. Norton, declare:

2 1. I am an attorney licensed to practice law in the State of California, and I am
3 admitted to practice before this Court. I am an associate with the law firm of Cooley Godward
4 Kronish LLP, attorneys for Defendant Google Inc. in this action and in the three actions that
5 Plaintiffs Pulaski & Middleman, LLC (“Pulaski”)¹ and Hal K. Levitte (“Levitte”) seek to relate
6 through their respective administrative motions. As an attorney for Google, I have personal
7 knowledge of the facts set forth in this Declaration, and if called upon to testify, I could and
8 would testify competently thereto.

9 2. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint against
10 Google in the case entitled *David Almeida v. Google, Inc.*, Case No. C 08-02088-RMW
11 (“*Almeida* case”), which was filed on April 22, 2008.

12 3. On August 25, 2008, I sent plaintiffs’ counsel in the *Almeida, Levitte, RK West,*
13 and *Pulaski* cases a meet and confer letter via email and mail. I wrote to them to: (1) notify them
14 that the *Levitte, RK West,* and *Pulaski* cases are related to each other and to the earlier-filed
15 *Almeida* case; (2) attempt to reach a stipulation on Google’s intended administrative motion under
16 Civil Local Rules 3-12 and 7-11 to relate the cases; and (3) request that Google’s time to answer
17 or otherwise respond to the *Levitte, RK West,* and *Pulaski* cases complaints be coordinated and an
18 extension of time such that Google’s new response deadline in those three cases is on or before
19 September 30, 2008. I requested that plaintiffs counsel respond to my letter by end of day
20 Wednesday, August 27, 2008. Attached as Exhibit 2 is a true and correct copy of the letter I sent
21 to plaintiffs’ counsel on August 25, 2008.

22 4. On August 26, 2008, at 9:24 a.m., I received an email from plaintiff’s counsel in
23 the *Levitte* case, which was copied to all other plaintiffs’ counsel, purporting to write on behalf of
24 plaintiffs’ counsel in the *Almeida, Levitte, RK West,* and *Pulaski* cases and requesting an
25 additional week to and including September 3, 2008 to respond to my August 25, 2008 letter and
26 granting an interim extension to respond to the complaint in the *Levitte* case. Later that day, at

27 _____
28 ¹ Pulaski & Middleman, LLC is the plaintiff in the related action *Pulaski & Middleman, LLC v. Google Inc.*, Case No. C 08-03888-SI.

1 12:19 p.m., I responded via email, which was copied to all plaintiffs' counsel in the four cases,
2 granting their requested extension. Still later that day, at 1:00 p.m., I received another email from
3 plaintiff's counsel in the *Levitte* case, which was copied to all other plaintiffs' counsel, stating
4 that plaintiffs' counsel in the four cases would be discussing the issues raised in my August 25,
5 2008 letter and that they would respond by Thursday, August 28, 2008 at the latest. Attached as
6 Exhibit 3 is a true and correct copy of an email chain containing my email to all plaintiffs'
7 counsel on August 25, 2008 enclosing my August 25, 2008 letter, the *Levitte* case plaintiff's
8 counsel's response on August 26, 2008, at 9:24 a.m., my response that day at 12:19 p.m., and the
9 *Levitte* case plaintiff's counsel's response at 1:00 p.m.

10 5. I did not receive a response from any of the plaintiffs' counsel on Thursday,
11 August 28, 2008 as promised. Having still not received any response after the holiday weekend, I
12 emailed all plaintiffs' counsel on September 2, 2008, at 8:11 a.m., demanding that plaintiffs
13 respond to my August 25, 2008 letter. Attached as Exhibit 4 is a true and correct copy of my
14 September 2, 2008 at 8:11 a.m. email.

15 6. RK West's counsel never responded to Google's letter, and instead filed its own
16 administrative motion on August 29, 2008 in the *RK West* case (as opposed to this case). RK
17 West served its motion by mail, and therefore, Google did not receive it until the late morning on
18 September 2, 2008. RK West's motion seeks to relate all but the *Almeida* case before the
19 Honorable James Ware.

20 7. On September 2, 2008, Pulaski's counsel notified Google's counsel that it would
21 not stipulate that the *Almeida* case was related and that Pulaski would file its own administrative
22 motion. Pulaski filed its motion in this case later that day, and served it by mail. Google received
23 it in the late morning on September 5, 2008.

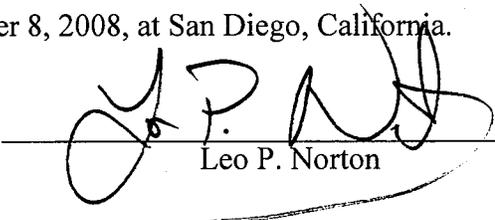
24 8. On September 3, 2008, Levitte's counsel notified Google's counsel that it would
25 not stipulate that the *Almeida* case was related and that Levitte would file its own administrative
26 motion. Levitte filed his motion in this case later that day, and served it by mail. Google
27 received it in the late morning on September 5, 2008.

28 9. After learning that the Pulaski plaintiff intend to file its own dueling administrative

1 motion to relate all but the *Almeida* case in this action, in the interest of judicial and party
2 economy, I emailed all plaintiffs' counsel on September 2, 2008, at 2:31 p.m. advising them that
3 it was unnecessary for plaintiffs to file their own administrative motions under Civil Rule 3-12
4 because if Judge Ronald Whyte denied the motion in the *Almeida* case, the Honorable James
5 Ware would then have an opportunity to relate the *Levitte*, *RK West*, and *Pulaski* cases in the
6 normal course of Google's motion. Moreover, Google stated that it agreed that the cases should
7 be related if Judge Whyte finds that the cases are not related to the *Almeida* case, but Google
8 contended that the *Almeida* case is related. Attached as Exhibit 5 is a true and correct copy of my
9 September 2, 2008 at 2:31 p.m. email.

10 10. On September 4, 2008, concurrently with the filing of its opposition to RK West's
11 administrative motion filed in the *RK West* case, Google filed its administrative motion in the
12 *Almeida* case, which seeks to relate the *Almeida*, *Levitte*, *RK West*, and *Pulaski* cases. The
13 *Almeida* case is the low-numbered case.

14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct. Executed on September 8, 2008, at San Diego, California.

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17 
18 _____
19 Leo P. Norton

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2008, I electronically filed the foregoing **DECLARATION OF LEO P. NORTON IN SUPPORT OF GOOGLE INC.'S CONSOLIDATED OPPOSITION TO HAL K. LEVITTE AND PULASKI & MIDDLEMAN, LLC'S ADMINISTRATIVE MOTIONS TO CONSIDER WHETHER CASES SHOULD BE RELATED (CIVIL L.R. 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.

- **Willem F. Jonckheer**
wjonckheer@schubert-reed.com
- **Kimberly Ann Kralowec**
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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 8th day of September, 2008 to the following listed addresses.

1 Guido Saveri
2 R. Alexander Saveri
3 Cadio Zirpoli
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5 111 Pine Street
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7 San Francisco , CA 94111
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18 **Attorneys for Plaintiff Hal K. Levitte**

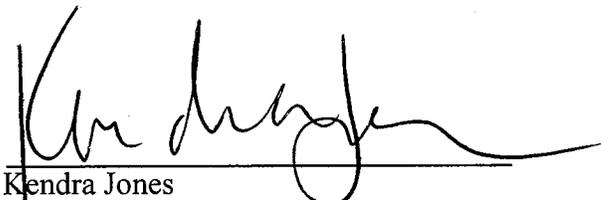
17 Hon. Ronald M. Whyte
18 United States District Court
19 Northern District of California
20 280 South 1st Street
21 Courtroom 6, 4th Floor
22 San Jose, CA 95113
23 **COURTESY COPY (by noon following day)**
24 **RK West, Inc., Case No. 08-cv-03452**

26 602538 v1/SD

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Northern District of California
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Courtroom 10, 19th Floor
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**Pulaski & Middleman, LLC v. Google Inc.,
Case No. 08-cv-03888**



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