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

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13 HAL K. LEVITTE, Individually and On
 14 Behalf of All Others Similarly Situated,
 15
 16 Plaintiff,
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 18 v.
 19 GOOGLE, INC., a Delaware corporation,
 20
 21 Defendant.

Case No. C08-03369 JW

**PLAINTIFF’S STATEMENT IN
 RESPONSE TO NOTICE OF PENDENCY
 OF OTHER ACTION
 [CIVIL LOCAL RULE 3-13(c)]**

Judge: Hon. James Ware

21 In its Notice of Pendency of Other Action (Dock. No. 21), defendant Google, Inc. contends
 22 that this action should be stayed until a case filed in the Northern District of Illinois, *JIT Packaging,*
 23 *Inc. v. Google, Inc.*, Case No. 08-CV-4543 (N.D. Ill.) (filed Aug. 11, 2008), “is re-filed or
 24 transferred here.” While plaintiff agrees the *JIT Packaging* action involves similar and overlapping
 25 allegations and is therefore related to this case within the meaning of Civil Local Rule 3-12, there is
 26 no reason for a stay.

27 On October 8, 2008, the *JIT Packaging* case was voluntarily dismissed without prejudice.
 28 (A true and correct copy of the dismissal order in *JIT Packaging* is attached hereto as Exhibit A.)

1 On October 10, 2008, the action was re-filed in this District. *JIT Packaging, Inc. v. Google, Inc.*,
2 Case No. C08-4701 PVT (N.D. Cal.) (filed Oct. 10, 2008).

3 Plaintiff respectfully requests that the Court reconsider his administrative motion to relate
4 all of the subsequently-filed cases, including *RK West*¹ and *Pulaski & Middleman*,² before this
5 Court. *JIT Packaging* should also be related, as a fourth subsequently-filed case.

6 On September 19, 2008 this Court provisionally denied plaintiff's previously-filed
7 administrative motion to relate these cases (Dock. No. 9), pending resolution of another motion to
8 relate, filed by defendant Google, Inc. in a different, earlier-filed case, *Almeida v. Google, Inc.*,
9 Case No. C 08-2088-RMW (N.D. Cal.). See Order Denying Plaintiffs' Motion to Relate Cases,
10 September 19, 2008 (Dock. No. 17). On September 29, 2008, Judge Ronald M. Whyte denied
11 Google's motion to relate this case (and the *RK West* and *Pulaski & Middleman* cases) with the
12 *Almeida* action, finding that "*Almeida* is not related to *RK West*, *Pulaski & Middleman*, and
13 *Levitte*." See *Almeida v. Google, Inc.*, Order Denying Defendant's Motion to Relate Cases,
14 September 29, 2008 (Dock. No. 20). Judge Whyte expressly declined to "determine whether those
15 cases are related to each other. That issue is before Judge Ware, whose *Levitte* case has the lowest
16 docket number of the three." *Id.* A true and correct copy of Judge Whyte's Order is attached hereto
17 as Exhibit B.

18 As Judge Whyte noted, "all parties agree" that *Levitte*, *RK West*, and *Pulaski & Middleman*
19 "are themselves related." *Id.* The parties also agree that *JIT Packaging* is related. Plaintiff
20 respectfully requests that all four cases be deemed related and reassigned to this Court pursuant to
21 Local Rule 3-12(f)(3). Counsel for plaintiffs in each of those cases join in this request.

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27 ¹ *RK West, Inc. v. Google, Inc.*, Case No. C08-03452 (filed July 17, 2008).

28 ² *Pulaski & Middleman, LLC v. Google Inc.*, Case No. C08-03888 (filed August 14, 2008).

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Dated: October 10, 2008

Respectfully submitted,

SCHUBERT JONCKHEER KOLBE &
KRALLOWEC LLP

/s/ Kimberly A. Kralowec

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – **CM/ECF LIVE, Ver 3.2.2**
Eastern Division

JIT Packaging Inc

Plaintiff,

v.

Case No.: 1:08-cv-04543
Honorable Robert M. Dow Jr.

Google, Inc.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, October 8, 2008:

MINUTE entry before the Honorable Robert M. Dow, Jr: Pursuant to Stipulation [27] the parties consent and stipulate to the voluntary dismissal, without prejudice, of Plaintiff's entire complaint. Defendant's Motion to Dismiss[22] is stricken as moot. Status hearing date of 10/9/08 is stricken. Notice of Motion date of 10/9/08 is stricken and no appearances are necessary on that date. Civil case terminated. Mailed notice(tbk,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

EXHIBIT B

United States District Court
For the Northern District of California

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E-FILED on 09/29/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

Plaintiff,

v.

Google, INC., a Delaware Corporation; and
Does 1 through 10, inclusive,

Defendants.

No. C-08-02088 RMW

ORDER DENYING DEFENDANT'S
ADMINISTRATIVE REQUEST TO RELATE
CASES

[Re Docket No. 16]

Defendant Google moves to relate this action with *RK West v. Google, Inc.*, Case No. C-08-03452 RMW, *Pulaski & Middleman, LLC v. Google, Inc.*, Case No. C-08-0388 SI, and *Levitte v. Google, Inc.*, Case No. C-08-3369 JW. All parties agree that the three cases sought here to be related are themselves related. Therefore, the only question for the court is whether those cases relate to the instant one, which bears the lowest docket number.

It appears that, though in all four cases the defendant is Google and the case concerns the Adwords program, the similarity ends there. *RK West*, *Pulaski & Middleman*, and *Levitte* all deal with Google ads posted on "parked domains" and "error pages," whereas this case concerns Google charging customers for content ads who, during the Adwords bidding process, left the "CPC content bid" input blank. Furthermore, the proposed class in this case does not appear to overlap with the

1 proposed classes in *RK West, Pulaski & Middleman*, and *Levitte*. See Joint Opp'n to Mot. to
2 Consider Whether Cases Should Be Related, 2-3.


3 This order only determines that *Almeida* is not related to *RK West, Pulaski & Middleman*,
4 and *Levitte*. It does not determine whether those cases are related to each other. That issue is before
5 Judge Ware, whose *Levitte* case has the lowest docket number of the three.

6 Accordingly, the court denies defendant's motion to relate.

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9 DATED: 09/29/08



10 RONALD M. WHYTE
11 United States District Judge

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United States District Court
For the Northern District of California

United States District Court
For the Northern District of California

1 **Notice of this document has been electronically sent to:**

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Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

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14 **Dated:** 09/29/08

JAS
Chambers of Judge Whyte

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