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 GOOGLE INC.

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

15 HAL K. LEVITTE, Individually and On  
 Behalf of All Others Similarly Situated,  
 16  
 Plaintiff,  
 17  
 v.  
 18 GOOGLE INC., a Delaware corporation,  
 19  
 Defendant.  
 20

Case No. 08-CV-03369 JW RS

**AGREED ADMINISTRATIVE  
 MOTION TO CONSIDER WHETHER  
 PUTATIVE CLASS ACTION CASES  
 AGAINST GOOGLE INC. SHOULD  
 BE RELATED (Civil L.R. 3-12 & 7-11)**

1 **I. INTRODUCTION**

2 Defendant Google Inc. (“Google”) earlier filed an administrative motion in the case  
3 entitled *Almeida v. Google, Inc.*, Case No. C 08-02088-RMW, before Judge Ronald Whyte to  
4 relate that case with three later-filed cases against Google. The three later filed cases at issue in  
5 that earlier administrative motion were: (1) *Levitte v. Google, Inc.*, Case No. C 08-03369-JW; (2)  
6 *RK West, Inc. v. Google, Inc.*, Case No. C 08-03452-RMW; and (3) *Pulaski & Middleman, LLC*  
7 *v. Google Inc.*, Case No. C 08-03888-SI. All parties to the motion agreed that the three later-filed  
8 cases were related to each other, but plaintiffs disputed that the earlier-filed *Almeida* case was  
9 related. Certain plaintiffs also filed administrative motions in this case to relate only the three  
10 later-filed cases, which this Court denied on September 19, 2008 in light of the then pending  
11 administrative motion before Judge Whyte in the *Almeida* case (Docket Item Nos. 5, 9, & 17).  
12 On September 29, 2008, Judge Whyte denied the administrative motion in the *Almeida* case,  
13 noting that (1) all the parties agree that the three later-filed cases are related and (2) the issue of  
14 whether the three later-filed cases were related moves to Judge James Ware in the *Levitte* case  
15 because this case has the lowest case number of the three-later filed cases. Docket Item No. 26, at  
16 p. 7.

17 Under Civil Local Rule 3-12(f)(2), the determination of whether the three later-filed cases  
18 were related was to be made in this case within 10 court days after Judge Whyte’s denial, which  
19 made the deadline October 14, 2008. That date passed without a determination. Moreover, in the  
20 interim, on October 10, 2008, a new case not subject to the earlier administrative motion was filed  
21 in this district entitled *JIT Packaging, Inc. v. Google Inc.*, Case No. C 08 -04701-PVT. All  
22 parties agree that this newly filed case is also related to the *Levitte*, *RK West*, and *Pulaski* cases.  
23 Importantly, Case Management and ADR deadlines are upcoming at the end of October through  
24 November in both the *RK West* and *Pulaski* cases, of which the Case Management orders will be  
25 re-set under Civil Local Rule 3-12(g) once the cases are related, further necessitating resolution of  
26 the related case issue.

27 Accordingly, pursuant to Civil Local Rules 3-12 and 7-11, Google brings this motion, to  
28 which all parties agree, to request that the Court determine as soon as possible whether the

1 following four putative class actions should be related and transferred to Judge Ware: (1) *Levitte*  
2 *v. Google, Inc.*, Case No. C 08-03369-JW; (2) *RK West, Inc. v. Google, Inc.*, Case No. C 08-  
3 03452-RMW; (3) *Pulaski & Middleman, LLC v. Google Inc.*, Case No. C 08-03888-SI; and (4)  
4 *JIT Packaging, Inc. v. Google Inc.*, Case No. C 08 -04701-PVT.<sup>1</sup>

5 **II. THE FOUR GOOGLE ADWORDS PUTATIVE CLASS ACTIONS ARE RELATED**

6 Civil Local Rule 3-12 states that actions are related when “[t]he actions concern  
7 substantially the same parties, property, transaction or event” and “[i]t appears likely that there  
8 will be an unduly burdensome duplication of labor and expense or conflicting results if the cases  
9 are conducted before different Judges.” Civil L.R. 3-12(a). Here, all parties agree that the four  
10 Google AdWords putative class actions easily satisfy the definition for related cases.

11 **A. Substantially the Same Parties.**

12 Google is the sole named defendant in all four putative class actions, and therefore the  
13 cases concern the same defendant. Also, the four putative class actions assert duplicative putative  
14 classes of Google AdWords customers. *Levitte* case Complaint, ¶ 42; *RK West* case Complaint, ¶  
15 1; *Pulaski* case Complaint, ¶ 115; *JIT* case Complaint, ¶ 115.

16 **B. Substantially the Same Transactions or Events.**

17 The four Google AdWords putative class actions are also related because they concern  
18 substantially the same transactions or events. All four putative class actions arise from and relate  
19 to the named plaintiffs’ and putative class members’ contractual relationship with Google for  
20 Google’s AdWords advertising program. *Levitte* case Complaint, ¶ 1; *RK West* case Complaint, ¶  
21 2; *Pulaski* case Complaint, ¶ 1; *JIT* case Complaint, ¶ 1. All the actions assert claims based on  
22 the same legal theories of unjust enrichment and alleged violation of California Business and  
23 Professions code section 17200, arising from the Google AdWords advertising program and  
24 alleged charges for clicks for advertisements placed on parked domain or error page websites.

25 \_\_\_\_\_  
26 <sup>1</sup> The Complaint in this action is Docket Item No. 1. A copy of the *RK West* case Complaint is  
27 attached as Exhibit A to the Declaration of Willem F. Jonckheer i/s/o Levitte’s Administrative  
28 Motion (Docket Item No. 10). A copy of the *Pulaski* case complaint is attached as Exhibit B to  
the Jonckheer Declaration (Docket Item No. 10). A copy of the *JIT* case Complaint is attached as  
Exhibit 1 to this motion.

1 *Levitte* case Complaint, ¶¶ 54-78, 86-91; *RK West* case Complaint, ¶¶ 25-29, 37-46; *Pulaski* case  
2 Complaint, ¶¶ 140-165, 172-177; *JIT* case Complaint, ¶¶ 140-165, 172-177. The *Pulaski* and *JIT*  
3 cases also assert nearly identical contract based theories. *Pulaski* case Complaint, ¶¶ 127-139;  
4 *JIT* case Complaint, ¶¶ 127-139.

5 **C. Potential for Unduly Burdensome Duplication of Labor and Expense and**  
6 **Potential for Conflicting Rulings.**

7 If the four class actions are not related, the actions will potentially result in unduly  
8 burdensome duplication of labor and cause Google great expense. Four different judges would be  
9 tasked with resolving the same or similar issues relating to the pleadings, discovery, class  
10 certification, dispositive motions, and trial. Moreover, Google would be subjected to significant  
11 defense costs four times over, including, but not limited to, in potentially filing motions for  
12 summary judgment, opposing class certification, propounding and responding to duplicative  
13 discovery, and at trial. Also, as the cases are all putative class actions involving substantially the  
14 same subject matter, the potential exists for conflicting rulings. Transferring cases that concern  
15 substantially the same subject matter or that involve overlapping putative classes to a single judge  
16 is well recognized to result in judicial and party economy and to ensure consistent rulings. *See, In*  
17 *re Prempro Prods. Liab. Litig.*, 254 F. Supp. 2d 1366, 1367 (J.P.M.L. 2003); *In re Res.*  
18 *Exploration, Inc. Sec. Litig.*, 483 F. Supp. 817, 821 (J.P.M.L. 1980); *In re Plumbing Fixtures,*  
19 308 F. Supp. 242, 244 (J.P.M.L. 1970). The four Google AdWords putative class actions should  
20 be related to avoid unduly burdensome duplication and conflicting rulings.

21 **D. All Parties Agree the Cases Should Be Related and Consolidated.**

22 All plaintiffs in the four actions agree with Google that the four cases should be related.  
23 Moreover, all parties agree that the cases should be consolidated once related.

24 **III. CONCLUSION**

25 All parties agree that the four putative class actions against Google relating to its  
26 AdWords advertising program are related. Consequently, Google respectfully requests that the  
27 four actions be related before the Honorable James Ware.

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Dated: October 16, 2008

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LEO P. NORTON (216282)

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**IT IS SO AGREED:**  
Dated: October 16, 2008

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JIT PACKAGING, INC.



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 16, 2008, I electronically filed the foregoing **AGREED**  
3 **ADMINISTRATIVE MOTION TO CONSIDER WHETHER PUTATIVE CLASS**  
4 **ACTION CASES AGAINST GOOGLE INC. SHOULD BE RELATED (CIVIL L.R. 3-12 &**  
5 **7-11)** with the Clerk of Court using the CM/ECF system, which will send notification of such  
6 filing to the following attorneys of record at the following listed email addresses.

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13 I also hereby certify that I am personally and readily familiar with the business practice of Cooley  
14 Godward Kronish LLP for collection and processing of correspondence for mailing with the  
15 United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to  
16 be placed in the United States Postal Service at San Diego, California on this 16th day of October,  
17 2008 to the following listed addresses.

18 I also hereby certify that I caused the foregoing document to be personally delivered by  
19 consigning the document(s) to an authorized courier and/or process server for hand delivery on  
20 this 16th day of October, 2008 to the following indicated addressees.

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28 Hon. Susan Illston  
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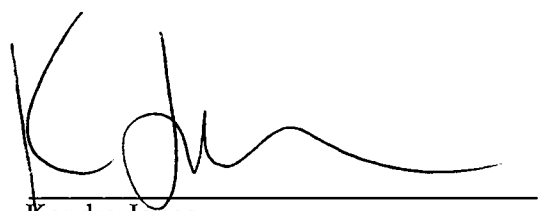
Hon. Ronald M. Whyte  
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*RK West, Inc., Case No. 08-cv-03452*



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