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11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**
 14

15 PALOMA GAOS and ANTHONY ITALIANO,
 16 individually and on behalf of all others similarly
 17 situated,

18 Plaintiffs,

19 v.

20 GOOGLE INC., a Delaware Corporation,

21 Defendant.

Case No. 5:10-cv-04809-EJD

CLASS ACTION

22 **ADMINISTRATIVE MOTION TO**
CONSIDER WHETHER CASES
SHOULD BE RELATED

Date: no hearing required

Time:

Place: Courtroom 1, 5th Floor

Judge: Hon. Edward J. Davila

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1 Pursuant to L.R. 3-12, Paloma Gaos and Anthony Italiano, the plaintiffs in *Gaos v. Google*
2 *Inc.*, 5-10-cv-4809-EJD, bring this administrative motion to consider whether the *Gaos* matter
3 should be related to *Priyev v. Google, Inc.*, 5:13-cv-00093-LHK.

4 The *Priyev* matter concerns substantially the same parties, events, issues of law and fact as
5 the instant case. If the cases are not related, it is likely that there will be unduly burdensome
6 duplication of labor and expense or conflicting results as the cases proceed before different judges.

7 This Administrative Motion is supported by Stipulation of all parties to both cases.

8 **I. FACTUAL BACKGROUND**

9 Plaintiff Paloma Gaos filed this putative class action complaint on October 25, 2010 in this
10 Court. Plaintiffs Gaos and Italiano filed their Second Amended Complaint on May 1, 2012. (*Gaos*,
11 Dkt. 39.) On February 29, 2012, Plaintiff Priyev filed his putative class action complaint in the
12 Northern District of Illinois. Plaintiff Priyev filed his Second Amended Complaint on August 3,
13 2012. (*Priyev*, Dkt. 40.) On August 28, 2012, Judge St. Eve of the Northern District of Illinois
14 ordered that the *Priyev* case be transferred to the San Jose Division of the Northern District of
15 California pursuant to 28 U.S.C. § 1404(a). (*Priyev*, Dkt. 47.) On January 8, 2013, the *Priyev* case
16 was transferred to this District. (*Priyev*, Dkt. 49.) *Priyev* was reassigned to Judge Koh on January
17 25, 2013. Both complaints seek relief on behalf of nationwide classes of individuals whose search
18 queries Google transmitted to third parties via referrer headers.

19 Both complaints present substantially the same factual allegations. According to each
20 complaint, users of Google enter search queries on Google's website. Google then displays lists of
21 websites that purport to pertain to the users' searches. When users click on any of the website
22 links, Google transmits to the destination website the exact search queries entered by users.
23 Plaintiffs in both cases allege Google lacks authority to transmit search queries to third parties
24 without explicit consent and that Google misrepresented whether it would transmit search queries
25 to third parties.

26 **II. DISCUSSION**

27 Under L.R. 3-12(a), cases may be related if:
28

1 (1) The actions concern substantially the same parties, property,
2 transaction or event; and

3 (2) It appears likely that there will be an unduly burdensome
4 duplication of labor and expense or conflicting results if the cases
5 are conducted before different judges.

6 **A. Both matters seek relief from Google on behalf of substantially the same group**
7 **of individuals.**

8 The *Gaos* and *Priyev* matters involve substantially the same parties. Each case alleges
9 claims against a single defendant—Google. Likewise each case was filed on behalf of a
10 nationwide class of individuals injured as a result of Google’s alleged wrongful conduct.

11 Plaintiffs *Gaos* and *Italiano* seek relief on behalf of the following classes:

12 All persons in the United States with a Google Account who, at any time
13 between October 25, 2006 and October 17, 2011 during which Google
14 was transmitting search queries to search results links via referrer headers,
15 submitted a search query at <http://www.google.com> and clicked on any
link displayed by Google in its search results (the “ECPA Class”).

16 All persons in the United States with a Google Account who, at any time
17 between October 25, 2006 and October 17, 2011 during which Google
18 was transmitting search queries to search results links via referrer headers,
submitted a search query at <http://www.google.com> and clicked on any
link displayed by Google in its search results (the “State Law Class”).

19 All persons in the United States with a Google Account who, at any time
20 after October 25, 2006 and during which time Google was transmitting
21 search queries to search results links via referrer headers, submitted a
search query at <http://www.google.com> and clicked on any link displayed
22 by Google in its search results (the “Injunctive Relief Class”).

23 *Priyev*, for his part, seeks relief on behalf of the following class and subclass:

24 GOOGLE ACCOUNT CLASS. All persons in the United States who, at
25 any time between October 25, 2008 and the present when Google was
26 transmitting search query or result links to third-parties via Referer
headers, used [Google.com](http://www.google.com) to perform a search and clicked on a search
27 result.
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1 WEB HISTORY SUBCLASS. All persons in the United States for whom
2 Google has maintained Web History from four years preceding the filing
of this Complaint.

3 The proposed class definitions encompass substantially the same group of affected
4 individuals—all persons who use Google search—and assert claims on their behalf against the
5 same defendant. The similarity of parties in each case favors a decision to relate these matters.

6 **B. Both matters involve Google’s allegedly unauthorized transmission of its**
7 **users’ search queries to third parties.**

8 The basis of each case at issue is Google’s allegedly unauthorized transmission of users’
9 search queries to third parties via referrer headers. Each complaint asserts substantially similar
10 causes of action, including the ECPA, breach of contract, and unjust enrichment/implied contract.
11 (*Gaos*, Dkt. 39 ¶¶ 110-126, 136-140.) (*Priyev*, Dkt. 40 ¶¶ 81-104, 118-141.) Plaintiff Priyev also
12 asserts claims of breach of covenant of good faith and fair dealing, violation of California Unfair
13 Competition Law, Cal. Bus. & Prof. Code § 17200, and Declaratory Judgment, 28 U.S.C. § 2201.
14 (*Priyev*, Dkt. 40 ¶¶ 105-117, 142-165.)¹

15 Regardless of the minor variation amongst the specific claims asserted, both cases seek
16 substantially the same relief for injuries suffered as a result of Google’s allegedly unlawful
17 transmission of its users’ search queries via referrer headers. The similarity between the claims
18 asserted in each case, and their legal and factual bases, supports a decision to relate these matters.

19 **C. If the cases are not related, it is likely that there will be an unduly burdensome**
20 **duplication of labor and expense or conflicting results.**

21 If these cases do not get deemed related, the likelihood of duplicative labor, expense, and
22 producing conflicting results would increase substantially. Given the complex and highly technical
23 nature of the claims asserted in each, litigating these matters before a single judge would reduce
24 the parties’ expenditure of time and other resources, while also preserving the resources of the
25 judiciary. Furthermore, proceeding before a single judge virtually eliminates the risk that the
26 parties will be subject to inconsistent obligations, and ultimately ensures that consistent and

27 _____
28 ¹ Plaintiff Italiano also alleged a UCL violation, but withdrew the claim in his opposition to
Google’s motion to dismiss. (Dkt. 45.)

1 appropriate relief can be provided.

2 Relating these matters is in the best interest of the parties and the Court, would avoid an
3 unduly burdensome duplication of labor and expense, and decrease the likelihood of producing
4 conflicting results. Therefore, the matters should be related.

5 **III. CONCLUSION**

6 For the foregoing reasons, Plaintiffs Paloma Gaos and Anthony Italiano, individually and
7 on behalf of classes of similarly situated individuals, respectfully request that this Court issue an
8 Order relating the *Gaos/Italiano* and *Priyev* matters pursuant to L.R. 3-12.

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10 Dated: March 20, 2013

Respectfully submitted,
NASSIRI & JUNG LLP

11

s/ Kassra P. Nassiri
Kassra P. Nassiri
Attorneys for Plaintiff and the Putative Class

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13 Dated: March 20, 2013

Respectfully submitted,
ASCHENBRENER LAW, P.C.

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s/ Michael J. Aschenbrener
Michael J. Aschenbrener
Attorneys for Plaintiff and the Putative Class

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CERTIFICATE OF SERVICE

The undersigned certifies that, on March 20, 2013, he caused this document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of filing to counsel of record for each party.

Dated: March 20, 2013

ASCHENBRENER LAW, P.C.

By: s/ Michael Aschenbrener
Michael Aschenbrener