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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **OAKLAND DIVISION**

20 CALIFORNIA CRANE SCHOOL, INC., on
21 behalf of itself and all others similarly
22 situated,

23 Plaintiff,

24 v.

25 GOOGLE LLC, ALPHABET INC., XXVI
26 HOLDINGS INC., APPLE INC., TIM
27 COOK, SUNDAR PICHAI, and ERIC
28 SCHMIDT,

Defendants.

CASE NO. 4:21-cv-10001-HSG

**DEFENDANTS' ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
CASES SHOULD BE RELATED**

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This document also relates to:

MARY KATHERINE ARCELL, KEITH DEAN BRADT, JOSE BRITO, JAN-MARIE BROWN, ROSEMARY D'AUGUSTA, BRENDA DAVIS, PAMELA FAUST, CAROLYN FJORD, DONALD C. FREELAND, DONALD FRYE, GABRIEL GARAVANIAN, HARRY GARAVANIAN, YVONNE JOCELYN GARDNER, VALARIE JOLLY, MICHAEL MALANEY, LENARD MARAZZO, LISA MCCARTHY, TIMOTHY NIEBOER, DEBORAH PULFER, BILL RUBINSOHN, SONDRARUSSELL, JUNE STANSBURY, CLYDE DUANE STENSRUD, GARY TALEWSKY, DIANA LYNN ULTICAN, PAMELA WARD, and CHRISTINE M. WHALEN,

Plaintiffs,

v.

GOOGLE LLC, ALPHABET INC., XXVI HOLDINGS INC., APPLE INC., TIM COOK, SUNDAR PICHAI, and ERIC SCHMIDT,

Defendants.

CASE NO. 5:22-cv-02499-EJD

1 Pursuant to Civil Local Rules 3-12 and 7-11, Defendants Google LLC, Alphabet Inc., XXVI
2 Holdings Inc., Apple Inc., Tim Cook, Sundar Pichai, and Eric Schmidt (collectively, “Defendants”)
3 jointly submit this administrative motion for this Court to consider whether the *California Crane*
4 *School, Inc. v. Google LLC*, No. 4:21-cv-10001-HSG (“*Crane*”) action is related to the later-filed
5 *Arcell v. Google LLC*, No. 5:22-cv-02499-EJD (“*Arcell*”) action. Under Civil Local Rule 3-12, two
6 or more actions are related to one another when: (1) “the actions concern substantially the same
7 parties, property, transaction, or event”; and (2) “[i]t appears likely that there will be an unduly
8 burdensome duplication of labor or conflicting results if the cases are conducted before different
9 Judges.” The *Crane* and *Arcell* actions, which feature substantially *identical* allegations, claims, and
10 parties, decidedly meet this standard and, accordingly, should be related.

11 ***First***, the cases concern substantially the same parties, alleged transactions, alleged events,
12 and claims. As regards the parties, Defendants in the *Crane* action are identical to the defendants in
13 the *Arcell* action. Likewise, Plaintiff in the *Crane* action is represented by the same counsel as
14 Plaintiffs in the *Arcell* action. Moreover, the actions feature materially identical—indeed, mostly
15 verbatim—allegations regarding the same alleged transactions, events, and claims. Broadly,
16 Plaintiffs in both actions allege that, since 2005, Apple has agreed with Google not to compete in the
17 “search business.” To support the existence of this fanciful scheme, Plaintiffs in both actions
18 reference, *inter alia*, the same alleged meetings between Defendants’ executives, the same pictures
19 of Defendants’ executives, the same scattered quotations by Defendants’ employees, and the same
20 legitimate vertical revenue sharing agreement. Based on these allegations, Plaintiffs bring the same
21 claims: a claim under Section 1 of the Sherman Act alleging a *per se* illegal agreement not to compete
22 and a claim under Section 2 of the Sherman Act alleging a conspiracy to monopolize the “search
23 business.” And based on those claims, Plaintiffs in both actions seek substantially the same relief,
24 which includes equitable relief in the form of disgorgement and divestiture.

25 While they have refused to stipulate to Defendants’ administrative motion, Plaintiffs, too,
26 recognize these similarities. During an April 18, 2022 meet and confer in the *Crane* action, counsel
27 for Plaintiffs stated that (1) he intended to file a separate case based on the same allegations as in the
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1 *Crane* action on behalf of users of Google Search; and (2) he would say it is related to the *Crane*
2 action. Declaration of Julia K. York ¶¶ 5–7 (“York Decl.”) (filed herewith). In filing the complaint
3 in the *Arcell* action, Plaintiffs, represented by the same counsel, did just that—listing *Crane* as a
4 related case in their civil cover sheet. Counsel for Plaintiffs ultimately acknowledged that despite
5 the fact that *Crane* was noticed as a related case in the *Arcell* civil cover sheet, Plaintiffs would
6 oppose this administrative motion. *Id.* ¶ 8. Mere hours after stating that opposition, Plaintiffs sent
7 to counsel for Defendants a petition for a writ of mandamus filed by Plaintiff California Crane School
8 in the Ninth Circuit seeking to set aside this Court’s Order granting Defendants’ motion to stay
9 discovery; that petition also lists *Arcell* as a related case. *Id.* ¶¶ 9, 12, Ex. 3.

10 Courts routinely relate cases featuring similarities like those between—and even cases
11 featuring fewer similarities than those between—the *Crane* action and the *Arcell* action. *See, e.g.,*
12 *Zakinov v. Ripple Labs, Inc.*, 2020 WL 2768966, at *2 (N.D. Cal. May 28, 2020) (relating cases
13 where “the defendants in both actions” were “the same” and the cases involved “materially identical
14 allegations of misconduct”); *JaM Cellars, Inc. v. The Wine Grp. LLC*, 2020 WL 2322992, at *1 (N.D.
15 Cal. May 11, 2020) (Gilliam, J.) (relating cases that “involve[d] the same parties and the same
16 underlying legal claims” even though “the underlying products, marks, and some portion of evidence
17 differ[ed]”); *Pepper v. Apple Inc.*, 2019 WL 4783951, at *1 (N.D. Cal. Aug. 22, 2019) (relating cases
18 where “each case stem[med] from the use of the exact same technology and the economics regarding
19 that same technology” and “[t]he time periods overlap[ped],” even though “[t]he plaintiffs differ[ed]
20 and their relationship to the defendant also differ[ed]”). This Court should follow suit.

21 **Second**, it is likely that there will be an unduly burdensome duplication of labor or conflicting
22 results if the cases proceed before different judges. With respect to duplication of labor, Defendants
23 have already filed a motion to dismiss in the *Crane* case and intend to file a similar motion to dismiss
24 in the *Arcell* case. Any consideration of these motions by different judges would necessarily entail
25 an unduly burdensome duplication of labor. *See Zakinov*, 2020 WL 2768966, at *2 (explaining that
26 examination together of the “core contention at issue” in two actions would “avoid the duplication
27 of labor”). This Court has already undertaken some of that labor in granting Defendants’ motion to
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1 stay discovery in the *Crane* action, which required the Court to take a “preliminary peek” at the
2 merits. *Yamasaki v. Zicam LLC*, 2021 WL 3675214, at *1 (N.D. Cal. Aug. 19, 2021) (Gilliam, J.).
3 Moreover, if Plaintiffs’ claims survive Defendants’ motions, having different judges oversee
4 discovery, likely on different schedules, would similarly require an unduly burdensome duplication
5 of labor by the Court and by the parties, given the near-complete overlap of the allegations in the
6 two actions. In short, “significant economies exist in terms of case management and resolution of
7 motions tied to an understanding of the technology, platform[s], markets, and [alleged] transactions
8 at issue” in the two actions. *Pepper*, 2019 WL 4783951, at *1.

9 As regards the likelihood of conflicting results, consideration of Defendants’ motions to
10 dismiss by different judges unavoidably risks conflicting results. The motions bear not only on
11 dispositive issues but also, to the extent Plaintiffs’ claims survive, on the scope of discovery and on
12 the remedies Plaintiffs ultimately may seek. Beyond the pleadings, “the fact that both sets of
13 plaintiffs seek injunctive relief [also] presents a sufficient risk of inconsistent results to warrant
14 relation.” *Id.* That is, different judges might very well consider fashioning different forms of
15 equitable relief. Relating the cases would eliminate these risks.

16 For the foregoing reasons, and pursuant to Civil Local Rules 3-12 and 7-11, Defendants
17 respectfully request that the Court designate *Arcell v. Google LLC*, No. 5:22-cv-02499 (“*Arcell*”) as
18 related to the earlier-filed *California Crane School, Inc. v. Google LLC*, No. 4:21-cv-10001-HSG
19 (“*Crane*”) action.

20 DATED: May 27, 2022

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM
LLP**

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22 By: /s/ Steven C. Sunshine

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