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UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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U.S.C.A. - 7th Circuit  
**FILED**

No. 09-3569

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U.S.C.A. - 7th Circuit  
**RECEIVED**

OCT 28 2009 RJT

**GOOGLE INC.**

OCT 28 2009 RJT

**GINO J. AGNELLO**  
CLERK

*Appellee and Plaintiff,*

**GINO J. AGNELLO**  
CLERK



v.

**CENTRAL MFG. INC. A/K/A CENTRAL MFG. CO.  
A/K/A CENTRAL MFG. CO. (INC.), A/K/A CENTRAL MANUFACTURING COMPANY,  
INC. AND A/K/A CENTRAL MFG. CO. OF ILLINOIS; AND STEALTH INDUSTRIES,  
INC. A/K/A RENTAMARK AND A/K/A RENTAMARK.COM,**

*Defendants.*

**LEO STOLLER,**

*Appellant and Applicant In Intervention.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
CASE No. 07 C 385

THE HONORABLE VIRGINIA M. KENDALL, UNITED STATES DISTRICT JUDGE

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**RESPONSE OF GOOGLE INC. TO STOLLER'S PURPORTED  
"NOTICE OF GRANTING *IN FORMA PAUPERIS* PETITION"**

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Michael T. Zeller (ARDC No. 6226433)  
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Google Inc. ("Google") respectfully responds to Leo Stoller's ("Stoller") "Notice of Granting *In Forma Pauperis* Petition," filed October 22, 2009.

Stoller relies on a district court Order from over two and a half years ago -- dated March 19, 2007 -- to show his supposed entitlement to proceed in forma pauperis on this appeal. The filing is misleading and improper. The March 19, 2007 Order relates to a prior appeal proceeding,<sup>1</sup> not this one. Stoller made no motion to proceed in forma pauperis on this recently filed appeal before the district court, as the Circuit Rule 3(b) Notice required him to do.<sup>2</sup> Nor, in either the district court or in this Court, has he made any disclosure of his "assets and income" by sworn affidavit "in the form prescribed by Form 4" on such a motion.<sup>3</sup> The Form 4 affidavit, in turn, mandates financial disclosures that relate to an appellant's financial condition in the prior six to twelve months as well his or her current and anticipated future financial condition.<sup>4</sup> Stoller's cursory citation to a

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<sup>1</sup> The prior appeal proceeding in this Court was *Google Inc. v. Central Mfg. Inc.*, Nos. 07-1569, 07-1612 and 07-1651.

<sup>2</sup> Circuit Rule 3(b) Notice, at 2 (requiring in forma pauperis motion to be filed in the first instance in the district court), copy attached as Exhibit 1 to the Declaration of Michael T. Zeller, filed concurrently herewith and dated October 27, 2009 ("Zeller Dec.").

<sup>3</sup> Circuit Rule 3(b) Notice, at 2 (in forma pauperis motion "must be supported by a sworn affidavit in the form prescribed by Form 4 of the Appendix of Forms to the Federal Rules of Appellate Procedure (as amended 12/01/98), listing the assets and income of the appellant(s).") (bold and italics omitted).

<sup>4</sup> *E.g.*, Form 4, Question 1 (requiring for each source of income "the average amount of money received from each of the following sources during the past 12 months"), Questions 2-3 (requiring employment information up to present), Question 4 (requiring disclosure of current cash on hand and disclosure of bank accounts), Question 5 (requiring "asset" information up to present), Question 6 (requiring disclosure of current debts), Question 7 (requiring disclosure of current dependents), Question 8 (requiring disclosure of "average monthly expenses" by specific categories), Question 9 (requiring statement as to whether appellant anticipates "any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months").

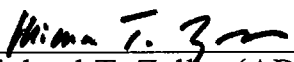
2007 Order does not and cannot substitute for the financial disclosures covering these time periods required by the Form 4 affidavit.

Furthermore, Stoller fails to disclose that the Seventh Circuit more recently considered his financial condition and *rejected* his requests that he be relieved from paying appeal fees.<sup>5</sup> In doing so, the Seventh Circuit noted that Stoller had the financial wherewithal to pay the \$10,000 sanction it had ordered on the prior appeal in this case -- a fact that shows he is capable of paying routine court fees.<sup>6</sup> It would not be appropriate in such circumstances to permit Stoller to proceed in forma pauperis here, particularly where he has filed no motion or Form 4 affidavit in the district court or in this Court in connection with the current appeal and has indicated in his docketing statement that he has ordered (and thus evidently able to pay for) a transcript of proceedings before the district court.

For the foregoing reasons, Google respectfully submits that Stoller's purported Notice should be disregarded.

DATED: October 27, 2009

Respectfully submitted,

  
\_\_\_\_\_  
Michael T. Zeller (ARDC No. 6226433)  
QUINN EMANUEL URQUHART  
OLIVER & HEDGES, LLP

Jonathan M. Cyrluk (ARDC No. 6210250)  
STETLER & DUFFY, LTD

*Attorneys for Appellant Google Inc.*

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<sup>5</sup> See Zeller Dec., Exh. 2.

<sup>6</sup> *Id.* In the aftermath of this Court's denial, Stoller then paid the appeal fee. As a result of the inconsistency between Stoller's in forma pauperis petition and his ability to pay the appeal fee after his petition was denied, this Court then issued an OSC as to why the *Mack* bar against Stoller should not be reinstated and appointed the Honorable Geraldine Soat Brown to act as Special Master to determine the truthfulness of Stoller's financial claims. Zeller Dec., Exh. 3. That proceeding remains pending.

**CERTIFICATE OF SERVICE**

I, Jonathan M. Cyrluk, an attorney, certify that I caused copies of the **Response of Google Inc. To Stoller's Purported "Notice of Granting *In Forma Pauperis* Petition"** to be served on the persons listed below by via first class mail, postage prepaid, originating from 11 S. LaSalle Street, Chicago, Illinois, this 28<sup>th</sup> day of October, 2009.

Leo Stoller 7115 W. North Avenue, #272 Oak Park, IL 60302 E-Mail: <a href="mailto:ldms4@hotmail.com">ldms4@hotmail.com</a>	Richard M. Fogel Brian Shaw Shaw, Gussis, Fishman, Glantz, Wolfson & Towbin, LLC 321 North Clark Street, Suite 800 Chicago, IL 60610 E-Mail: <a href="mailto:rfogel@shawgussis.com">rfogel@shawgussis.com</a> and <a href="mailto:bshw@shawgussis.com">bshw@shawgussis.com</a>
Michael T. Zeller Quinn Emanuel Urquhart Oliver & Hedges, LLP 865 South Figueroa Street, Tenth Floor Los Angeles, CA 90017 E-Mail: <a href="mailto:michaelzeller@quinnemanuel.com">michaelzeller@quinnemanuel.com</a>	

  
Jonathan M. Cyrluk

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**U.S.C.A. – 7th Circuit  
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**GINO J. AGNELLO  
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UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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No. 09-3569

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U.S.C.A. – 7th Circuit  
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GOOGLE INC.

OCT 28 2009 RJT

*Appellee and Plaintiff,*

GINO J. AGNELLO  
CLERK

v.

CENTRAL MFG. INC. A/K/A CENTRAL MFG. CO.  
A/K/A CENTRAL MFG. CO. (INC.), A/K/A CENTRAL MANUFACTURING COMPANY,  
INC. AND A/K/A CENTRAL MFG. CO. OF ILLINOIS; AND STEALTH INDUSTRIES,  
INC. A/K/A RENTAMARK AND A/K/A RENTAMARK.COM,

*Defendants.*

LEO STOLLER,

*Appellant and Applicant In Intervention.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
CASE No. 07 C 385  
THE HONORABLE VIRGINIA M. KENDALL, UNITED STATES DISTRICT JUDGE

---

**DECLARATION OF MICHAEL T. ZELLER IN SUPPORT OF GOOGLE  
INC.'S RESPONSE TO STOLLER'S PURPORTED  
"NOTICE OF GRANTING *IN FORMA PAUPERIS* PETITION"**

---

Michael T. Zeller (ARDC No. 6226433)  
QUINN EMANUEL URQUHART  
OLIVER & HEDGES, LLP  
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11 South LaSalle Street, Suite 1200  
Chicago, Illinois 60603  
Telephone: (312) 338-0200  
Facsimile: (312) 338-0070

I, Michael T. Zeller, declare as follows:

1. I am a member of the bar of the State of Illinois, New York and California, am admitted to practice before this Court and am a partner of Quinn Emanuel Urquhart Oliver & Hedges, LLP, attorneys for plaintiff Google Inc. ("Google"). I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

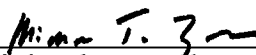
2. Attached as Exhibit 1 is a true and correct copy of the Circuit Rule 3(b) Notice in *Google Inc. v. Central Mfg. Inc., et al.*, Case No. 07 C 385 (N.D. Ill.), entered on October 20, 2009.

3. Attached as Exhibit 2 is a true and correct copy of the April 24, 2009 Order in *In re: Leo D. Stoller*, Appeal No. 08-4240 (7th Cir.).

4. Attached as Exhibit 3 is a true and correct copy of the May 14, 2009 Order in *In re: Leo D. Stoller*, Appeal No. 08-4240 (7th Cir.).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 27, 2009, at Los Angeles, California.

  
\_\_\_\_\_  
Michael T. Zeller

**CERTIFICATE OF SERVICE**

I, Jonathan M. Cyrluk, an attorney, certify that I caused copies of the **Declaration of Michael T. Zeller in Response of Google Inc. To Stoller's Purported "Notice of Granting In Forma Pauperis Petition"** to be served on the persons listed below by via first class mail, postage prepaid, originating from 11 S. LaSalle Street, Chicago, Illinois, this 28<sup>th</sup> day of October, 2009.

Leo Stoller 7115 W. North Avenue, #272 Oak Park, IL 60302 E-Mail: <a href="mailto:ldms4@hotmail.com">ldms4@hotmail.com</a>	Richard M. Fogel Brian Shaw Shaw, Gussis, Fishman, Glantz, Wolfson & Towbin, LLC 321 North Clark Street, Suite 800 Chicago, IL 60610 E-Mail: <a href="mailto:rfogel@shawgussis.com">rfogel@shawgussis.com</a> and <a href="mailto:bshaw@shawgussis.com">bshaw@shawgussis.com</a>
Michael T. Zeller Quinn Emanuel Urquhart Oliver & Hedges, LLP 865 South Figueroa Street, Tenth Floor Los Angeles, CA 90017 E-Mail: <a href="mailto:michaelzeller@quinnemanuel.com">michaelzeller@quinnemanuel.com</a>	

  
Jonathan M. Cyrluk

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UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
[www.ca7.uscourts.gov](http://www.ca7.uscourts.gov)

CIRCUIT RULE 3(b) NOTICE

October 20, 2009

No.: 09-3569	GOOGLE INCORPORATED, Plaintiff - Appellee  v.  CENTRAL MANUFACTURING, INCORPORATED, et al., Defendants  APPEAL OF: LEO STOLLER
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**Originating Case Information:**

District Court No: 1:07-cv-00385  
Northern District of Illinois, Eastern Division  
Clerk/Agency Rep Michael W. Dobbins  
Court Reporter April Metzler  
District Judge Virginia M. Kendall

Circuit Rule 3(b) empowers the clerk to dismiss an appeal if the docket fee is not paid within fourteen (14) days of the docketing of the appeal. This appeal was docketed on October 20, 2009. The District Court has indicated that as of October 20, 2009, the docket fee has not been paid. Depending on your situation, you should:

1. Pay the required \$450.00 docketing fee PLUS the \$5.00 notice of appeal filing fee to the District Court Clerk, if you have not already done so. The Court of Appeals cannot accept this fee. You should keep a copy of the receipt for your records.

2. File a motion to proceed on appeal in forma pauperis with the District Court, if you have not already done so. An original and three (3) copies of that motion, with proof of service on your opponent, is required. This motion must be supported by a sworn affidavit in the form prescribed by **Form 4** of the *Appendix of Forms to the Federal Rules of Appellate Procedure* (as amended 12/01/98), listing the assets and income of the appellant(s).
3. If the motion to proceed on appeal in forma pauperis is denied by the district court, you must either pay the required \$450.00 docketing fee PLUS the \$5.00 notice of appeal filing fee to the District Court Clerk, within fourteen (14) days after service of notice of the action to the district court, or within thirty (30) days of that date, renew your motion to proceed on appeal in forma pauperis with this court.

If the motion is renewed in this court, it must comply with the terms of *Fed.R.App.P. 24(a)*.

If one of the above stated actions is not taken, the appeal will be dismissed.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
www.ca7.uscourts.gov

ORDER

April 24, 2009

BEFORE

FRANK H. EASTERBROOK, Chief Judge  
RICHARD A. POSNER, Circuit Judge  
DIANE S. SYKES, Circuit Judge

No.: 08-4240	IN RE: LEO D. STOLLER, Debtor - Appellant
Originating Case Information:	
District Court No: 1:07-cv-05118 Northern District of Illinois, Eastern Division District Judge John W. Darrah	

Upon consideration of the MOTION FOR STAY, filed on April 20, 2009, by the pro se appellant,

IT IS ORDERED that the motion is DENIED.

In *Stoller v. Pure Fishing, Inc.*, No. 07-1936, we warned Stoller that continued frivolous filings would result in sanctions. Stoller ignored this warning, and in *In re Stoller*, No. 07-1934, we fined Stoller \$2,500 and explained that failure to pay that sum within 14 days would result in the entry of a filing bar in accordance with *Suppor Sys. Int'l v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995) (per curiam). Stoller paid the fine a week later.

In *Google, Inc. v. Central Mfg., Inc.*, Nos. 07-1569, 07-1612 & 07-1651, we sanctioned Stoller \$10,000 for additional frivolous filings. A Mack bar was entered on August 23, 2007, and Stoller paid the \$10,000 fine in June 2008.

Seven months later, in January 2009, Stoller moved for leave to proceed in forma pauperis in this case. Unsure how Stoller could have paid such a large fine so recently, yet now was virtually destitute, we ordered Stoller to show cause why this appeal should not be dismissed under 28 U.S.C. s 1915(e). We discharged the rule to show cause when Stoller suggested that it was his brother Christopher Stoller, who who Stoller says is now bankrupt, who provided the funds to pay the fine.

We denied Stoller leave to proceed on appeal in forma pauperis and Stoller has now paid the \$455 filing fee. We note that in the affidavit supporting his motion for leave to proceed in forma pauperis, Stoller stated, under oath, that he subsisted only on the \$589 per month he receives in Social Security benefits, and that he spends this entire amount each month.

Based on the inconsistency between the lack of discretionary income noted in Stoller's affidavit and the fact that he has paid the filing fee, the amount of the filing fee as compared to Stoller's stated monthly income, and Stoller's demonstrated ability to pay large fines when necessary, IT IS FURTHER ORDERED that Leo Stoller show cause why this appeal should not be dismissed pursuant to 28 U.S.C. s 1915(e)(2)(A). If we conclude that Stoller has been untruthful regarding his alleged indigency, the Mack bar will be reinstated. Stoller's response to this order shall be filed on or before May 1, 2009.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



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Phone: (312) 435-5850  
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CERTIFIED COPY

ORDER

May 14, 2009

BEFORE

FRANK H. EASTERBROOK, Chief Judge  
RICHARD A. POSNER, Circuit Judge  
DIANE S. SYKES, Circuit Judge

A True Copy

Teste:

Deputy Clerk  
of the United States  
Court of Appeals for the  
Seventh Circuit

No.: 08-4240	IN RE: LEO D. STOLLER, Debtor - Appellant
<b>Originating Case Information:</b>	
District Court No: 1:07-cv-05118 Northern District of Illinois, Eastern Division District Judge John W. Darrah	

On April 24, 2008, we ordered Stoller to show cause why this appeal should not be dismissed under 28 U.S.C. § 1915(e)(2)(A) for making false representations on his motion for leave to proceed in forma pauperis. Stoller has responded, and we permitted Pure Fishing, Inc., one of Stoller's creditors, to file a response as well.

**IT IS ORDERED** that this matter is referred to a Special Master for recommended disposition. The Honorable Geraldine Soat Brown, United States Magistrate Judge for the Northern District of Illinois, is appointed Special Master to take testimony, hear evidence, make appropriate submissions concerning this matter, and make a report and recommendation of the proper disposition of this appeal. Stoller contends that he has been truthful, but there appears to be contradictory evidence. The recommendation of the appropriate disposition of this appeal, in its present posture, depends principally on a determination of Stoller's honesty, and the Special Master should make any credibility findings that are required. The clerk of this court shall forthwith furnish the Special Master with a certified copy of this order, the relevant papers filed by the appellant in this court and orders this court has issued in this appeal, and any items in the court's files which the Special Master requires. As soon as practicable after the conclusion of any proceedings, the Special Master shall file with the clerk of this court any exhibits, transcripts or proceedings, or other evidence along with the Special Master's report and recommendation. The clerk of this court shall immediately mail notice to the parties of the filing of the Special Master's report. Within 15 days after such notice, the parties may file a response with this court. The clerk of the district court is appointed the agent of this court for purposes of issuance of summons and any other steps deemed necessary by the Special Master.