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9 UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

11

12 | DANIEL JURIN, an Individual,

13 Plaintiff,

14 | VS.

15 | GOOGLE INC.,

16 | Defendant.

CASE NO. 2:09-cv-03065-MCE-KJM

**GOOGLE INC.'S NOTICE OF RENEWED  
MOTION TO STAY, OR IN THE  
ALTERNATIVE, MOTION TO STRIKE  
JURIN'S COMPLAINT; MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: June 24, 2010

Time: 2 p.m.

Judge: Morrison C. England, Jr.

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**NOTICE OF MOTION AND RENEWED MOTION TO STAY, OR IN THE  
ALTERNATIVE, MOTION TO STRIKE JURIN'S COMPLAINT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 24, 2010, at 2 p.m. in Courtroom 7 of the United States District Court for the Eastern District of California, Sacramento Division, located at 501 I Street, Suite 4-200, Sacramento, CA, 95814, defendant Google Inc. (“Google”) will and hereby does move for an order to stay the current proceedings until plaintiff Daniel Jurin (“Jurin”) complies with the Court’s order dated March 1, 2010 to pay Google’s costs pursuant to Federal Rule of Civil Procedure 41(d) or in the alternative to strike Jurin’s First Amended Complaint.

This motion is based on the accompanying memorandum of points and authorities, all judicially noticeable facts, as well as the pleadings, records and files in this action.

DATED: April 4, 2010

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/Margret M. Caruso

Margret M. Caruso

Attorneys for Defendant Google Inc.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

This Court previously ordered plaintiff Daniel Jurin (“Jurin”) to pay defendant Google Inc.’s (“Google”) costs incurred in connection with Jurin’s original suit pursuant to Fed. R. Civ. P. 41(d), for voluntarily dismissing his complaint before renewing the same allegations in the instant suit. *See* Memorandum and Order at 12, *Jurin v. Google Inc.*, Civ. No. 2:09-cv-03065-MCE-KJM (Docket No. 19), March 1, 2010. The Court required Jurin to pay Google by March 22, 2010. *Id.* at 13. To date, Jurin has failed to comply with the Court’s order.

8 A conversation with Jurin's lawyer yielded no promise to pay by a date certain or even a  
9 commitment that Jurin intends ever to comply with the Court's order. See Declaration of Margaret  
10 M. Caruso, ¶¶ 3-4, dated April 4, 2010. Under these circumstances, Google respectfully submits  
11 that it should not be required to continue defending this action. Therefore, Google requests that  
12 this matter be stayed until Jurin complies with the Court's order. Alternatively, Google requests  
13 that this Court strike Jurin's First Amended Complaint, filed March 1, 2010 (Docket No. 21), in its  
14 entirety as a sanction for failing to comply with the Court's order.

15 Fed. R. Civ. P. 41(d) grants federal courts “broad discretion” to grant a stay until the  
16 plaintiff has complied with the Court’s order to pay costs. *See Esquivel v. Arau*, 913 F.Supp.  
17 1382, 1386 (C.D. Cal 1996). The purpose of Rule 41(d) is to deter vexatious litigation and to  
18 shield a party who is entitled to costs from further litigation until those costs are paid. *Id.* at 1386  
19 (“Rule 41(d) is intended to serve as a deterrent to forum shopping and vexatious litigation.”); *see*  
20 *also Hacopian v. United States Dept. of Labor*, 709 F.2d 1295, 1296 (9th Cir. 1983) (“This  
21 practice was designed to prevent oppressive and vexatious litigation and also to enable a party  
22 who has recovered costs to obtain payment before being subjected to further litigation relating to  
23 the same subject-matter.”). Jurin’s failure to comply, or even to commit to comply, with this  
24 Court’s order warrants a stay of the current proceedings until Jurin pays Google’s costs.

25 Alternatively, Google requests that this Court strike Jurin's First Amended Complaint as a  
26 sanction for failure to comply with the Court's order. Federal courts are vested with inherent  
27 powers to ensure obedience to their orders, including the power to, among other things, dismiss  
28 cases. *See Aloe Vera of America, Inc. v. U.S.*, 376 F.3d 960, 964-65 (9th Cir. 2004) (citing *F.J.*

1 *Hinshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001)). This  
2 power includes imposing sanctions for a litigant’s failure to pay previously imposed sanctions.  
3 *Hymes v. U.S.*, 993 F.2d 701, 702 (9th Cir. 1993) (dismissing appeal for failure to pay costs  
4 imposed as sanction for bringing previous frivolous appeal) (citing *Schiff v. Simon & Schuster,*  
5 *Inc.*, 766 F.2d 61, 62 (2d Cir. 1985)). Further, Eastern District of California Local Rule 110  
6 provides that a failure of counsel or a party to comply with a Court order may be grounds for the  
7 imposition of “any and all sanctions authorized by statute or Rule or within the inherent power of  
8 the Court.” E.D. Cal. L.R. 110. As such, this Court has the inherent power to strike.

9       The remedy of striking Jurin's First Amended Complaint is warranted here. Jurin has  
10      repeatedly displayed contempt for the judicial process in this action. He failed to comply with the  
11      Court's order; he filed an amended complaint that did not address the very deficiencies identified  
12      by the Court with his first complaint (*see* Google's Motion to Dismiss Jurin's First Amended  
13      Complaint, filed April 4, 2010); and he failed to participate in the required Rule 26(f) conference  
14      (*see* Status Report, filed Jan. 11, 2010, Docket No. 12). Jurin's actions (and inactions), even at  
15      this early stage, leave Google with little optimism for a "just, speedy, and inexpensive  
16      determination of [this] action." Fed. R. Civ. P. 1.

## CONCLUSION

18 For the foregoing reasons, the Court should stay the proceedings until Jurin complies with  
19 the Court's order to pay Google's costs or strike Jurin's First Amended Complaint and dismiss the  
20 action with prejudice.

21 | DATED: April 4, 2010

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/Margret M. Caruso

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Margret M. Caruso

Attorneys for Defendant Google Inc.

## **CERTIFICATE OF SERVICE**

2 I certify that counsel of record who are deemed to have consented to electronic service are  
3 being served on April 4, 2010 with a copy of this document via the Court's CM/ECF system per  
4 Local Rule 135(a).

/s/ Margret M. Caruso  
Margret M. Caruso