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8
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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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.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 This Court previously ordered plaintiff Daniel Jurin (“Jurin”) to pay defendant Google
3 Inc.’s (“Google”) costs incurred in connection with Jurin’s original suit pursuant to Fed. R. Civ. P.
4 41(d), for voluntarily dismissing his complaint before renewing the same allegations in the instant
5 suit. *See* Memorandum and Order at 12, *Jurin v. Google Inc.*, Civ.No. 2:09-cv-03065-MCE-KJM
6 (Docket No. 19), March 1, 2010. The Court required Jurin to pay Google by March 22, 2010. *Id.*
7 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 Margret
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.

17 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

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23 By /s/Margret M. Caruso
24 Margret M. Caruso
25 Attorneys for Defendant Google Inc.
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CERTIFICATE OF SERVICE

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

/s/ Margret M. Caruso
Margret M. Caruso