

1 P. CRAIG CARDON, Cal. Bar No. 168646
 BRIAN R. BLACKMAN, Cal. Bar No. 196996
 2 KENDALL M. BURTON, Cal. Bar No. 228720
 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 3 Four Embarcadero Center, 17th Floor
 San Francisco, California 94111-4106
 4 Telephone: 415-434-9100
 Facsimile: 415-434-3947
 5

6 TIMOTHY H. KRATZ (Admitted *Pro Hac Vice*)
 LUKE ANDERSON (Admitted *Pro Hac Vice*)
 7 MCGUIRE WOODS, L.L.P
 1170 Peachtree Street, N.E., Suite 2100
 8 Atlanta, Georgia 30309
 Telephone: 404.443.5500
 9 Facsimile: 404.443.5751

10 Attorneys for DIGITAL ENVOY, INC.

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

14 DIGITAL ENVOY, INC.,
 15 Plaintiff/Counterdefendant,
 16 v.
 17 GOOGLE, INC.,
 18 Defendant/Counterclaimant.

Case No. C 04 01497 RS

**NOTICE OF MOTION AND MOTION
 FOR SANCTIONS AGAINST GOOGLE,
 INC.**

Date: June 15, 2005
 Time: 9:30 a.m.
 Courtroom: 4, 5th Floor

The Honorable Richard Seeborg

Notice Of Motion And Motion

22 PLEASE TAKE NOTICE that on June 15, 2005 at 9:30 a.m. in Courtroom 4, Fifth Floor
 23 of the United States District Court for the Northern District of California, United States
 24 Courthouse, 280 South First Street, San Jose, California, plaintiff/counterdefendant Digital Envoy,
 25 Inc. ("Digital Envoy") shall move the court pursuant to Fed. R. Civ. P. 37(a) and Civil Local Rules
 26 7-8 and 37-3 for an order sanctioning Google, Inc. in the amount of \$4,758.50, representing the
 27 total amount of attorney's fees Digital Envoy incurred as a result of Google's failure and refusal to
 28

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Fed. R. Civ. P. 33 and 34 obligate a party responding to interrogatories or requests for
3 production of documents to answer each request and interrogatory fully and completely. If the
4 responding party objects to all or any part of a request or interrogatory, then the propounding party
5 may move under Fed. R. Civ. P. 37(a) for an order compelling a complete response. Fed. R. Civ.
6 P. 33(b)(5) and 34(b).

7 Digital Envoy propounded its first and second sets of Interrogatories and Requests for
8 Production of Documents on Google in January and December 2004, respectively. Google served
9 timely responses. (Declaration of Timothy Kratz ("Kratz Dec.") at ¶ 2.) Several of Google's
10 responses, however, were incomplete, based on boilerplate and improper objections. (Kratz Dec.
11 at ¶ 3.) Following Google's second set of deficient responses, Digital Envoy repeatedly
12 communicated with Google's counsel regarding those deficiencies, but Google refused to amend
13 its responses adequately. (*Id.* at ¶¶ 4-5.) Digital Envoy, therefore, was left with no choice but to
14 prepare and file a motion to compel – which motion was filed in conjunction with this motion and
15 set for hearing on the same day.

16 If Digital Envoy's motion to compel is successful, then under Fed. R. Civ. P. 37(a)(4) the
17 Court may require the party whose conduct necessitated a motion to compel [Google] to pay to the
18 moving party [Digital Envoy] the reasonable expenses incurred in making the motion, including
19 attorney's fees. Digital Envoy has incurred \$4,758.50 in attorney's fees in meeting and conferring
20 over Google's incomplete responses, and preparing and filing its motion to compel. (*Id.* at 6-10.)
21 These costs and expenses would not have been incurred had Google satisfied its obligations under
22 Fed. R. Civ. P. 33 and 34 to provide full and complete responses to Digital Envoy's first and
23 second sets of Interrogatories and Requests for Production of Documents.

24 The Court, therefore, should sanction Google in an amount equal to the fees and costs
25 incurred by Digital Envoy in bring the accompanying motion to compel pursuant to Fed. R. Civ. P
26 37(a)(4).

