

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

ROCKSTAR CONSORTIUM US LP )  
AND NETSTAR TECHNOLOGIES LLC, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
GOOGLE INC. )  
 )  
Defendant. )  
 )  
 )

Civil Action No. 13-cv-00893-RG

**JURY TRIAL DEMANDED**

**GOOGLE INC.'S SURREPLY TO ROCKSTAR'S MOTION TO STRIKE UNDER  
LOCAL RULE CV-7(A) GOOGLE INC.'S OPPOSITION TO PLAINTIFFS' MOTION  
FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF IN RESPONSE TO GOOGLE'S  
MOTION TO TRANSFER, AND, IN THE ALTERNATIVE, CROSS-MOTION TO STAY  
CASE PENDING RESOLUTION OF GOOGLE'S TRANSFER MOTION**

Plaintiff argues that Google has no “authority” for its interpretation of the Local Rule CV-7(a). But it is not surprising that there is no authority on point here; a motion to strike under Local Rule CV-7(a) is itself highly unusual. Plaintiff certainly cites no cases where any court has stricken an Opposition that includes an alternative request for relief that goes directly to the merits of the opposed motion. And Rockstar is incorrect that Google “combined” its Opposition with a separate, cross-motion to stay. (*See* Rockstar’s Mot. to Strike at 2; Rockstar’s Reply at 1.) Indeed, there is no dispute that Google’s requested relief focuses on the availability of a continuance to cure prejudice to the non-moving party – a factor of the *Intel* test for whether good cause exists to modify a scheduling order, and thus relevant to the opposed motion.<sup>1</sup> (Opp. at 3.)

Rockstar also again argues that Google seeks to “limit [Rockstar’s] ability to fully oppose the merits of a stay.” (Reply at 3.) As Google explained in its Opposition to Rockstar’s Motion to Strike, this is untrue. Google offered to give Rockstar additional pages for its reply, and to discuss additional briefing to address this purported concern. (Opp. at 5.) Rockstar seeks to avoid this clear record by arguing that Google’s offer was “conditioned” on the expedited briefing schedule. (Mot. at 4 n.2; Reply at 3-4.) But it was Rockstar that rejected this offer on the sole basis that it objected to Google’s expedited briefing schedule.<sup>2</sup> (*id.*; *see also* Opp. at 5)

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<sup>1</sup> Rockstar is incorrect that *Intel* is inapposite simply because Google requests the alternative relief of a stay in addition to analyzing the availability of a continuance. (Reply at 3.) That *Intel* did not address this precise issue is not surprising as neither party analyzed the availability of a continuance to cure prejudice. *See* Defendants’ Mot. to for Leave to Supplement in Light of Reexamination, *Intel*, No. 06-CV-551 (Dkt. No. 460); Plaintiffs’ Opp. to Defendants’ Mot. for Leave, *Intel*, No. 06-CV-551 (Dkt. No. 482). Rather, the Court raised the issue *sua sponte*.

<sup>2</sup> Rockstar’s Reply argues that “[i]f Google truly did not intend to condition an offer for additional pages of briefing . . . on Plaintiffs’ acceptance of an expedited schedule, it could have provided for such additional briefing in its motion to expedite. Google did not do so.” (Reply at 4.) But given that Rockstar that did not even want to engage on additional pages or briefing

Rockstar further criticizes Google because Google did not address the merits of whether a stay should be granted in its Opposition to Rockstar's Motion to Strike. (Reply at 4-5.) Rockstar's argument is inconsistent with its Motion to Strike based on the supposed impropriety of Google's raising issues in its Opposition that Rockstar argued should have been raised in another brief. Yet now, Rockstar complains that Google did not follow Rockstar's lead in addressing the merits of Google's separate request for a stay in briefing on Rockstar's Motion to Strike, even though the merits of the stay have no relevance to whether Google's Opposition should be stricken but rather are the subject of a separate brief.<sup>3</sup>

For the foregoing reasons, this Court should deny Rockstar's Motion to Strike.

DATED: July 14, 2014

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merely because Google sought an expedited briefing schedule, there was no reason for Google to do so.

<sup>3</sup> It would have been appropriate for Rockstar to address the merits of Google's request for a stay in its reply brief in support of its Motion for Leave, which it chose not to file.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on July 14, 2014.

*/s/ Andrea Pallios Roberts* \_\_\_\_\_

Andrea Pallios Roberts