

**UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT**

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GARY BLACK AND HOLLI BEAM-BLACK
Appellant,

9th Cir. Case No. 10-16992

Originating Court Case No.
4:10-cv-02381-CW

vs.

GOOGLE, INC.
Appellee(s).

APPELLANT'S INFORMAL BRIEF
(attach additional sheets as necessary)

1. Jurisdiction

a. Timeliness of Appeal:

- (i) Date of entry of judgment or order
of originating court: August 13, 2010
- (ii) Date of service of any motion made after judgment (other
than for fees and costs):
August 25, 2010 Objection; Sept.10, 2010 Motion To Stay
- (iii) Date of entry of order deciding motion:
September 20, 2010 - All motions are now closed.
- (iv) Date notice of appeal filed:
Original Notice: Sept. 10, 2010 Amended Appeal: Oct. 7, 2010
- (v) For prisoners, date you gave notice of appeal to prison
authorities: N/A

2. What are the facts of your case?

The plaintiffs appeal the orders because they're based upon a defamation cause of action and grant full immunity for defendants by attributing defamation to a third party under 47U.S.C. §230. The orders are completely ignorant of the complaint and merits, they create a different complaint, one for defamation not alleged. By submitting to the defendants "Motion For Dismissal" the court altered the matter to one of defamation rather than the unfair business practices alleged and the matter at hand. The orders thereafter granted immunity for the intervening cause of defamation. Therefore the orders, in their entirety, lie in the face of the allegations within the complaint and the merits of the case. The district court erred as it ignored the allegations and merits of the case by improperly reasoning the plaintiffs' damage to be caused by defamation rather than as alleged by plaintiffs. So the plaintiffs are suffering irreparable harm following the district court final orders and can not figure out how many pages are appropriate in brief on appeal, as the *informal brief form* says attach pages as necessary.

Plaintiffs have great indifference with the orders because plaintiffs never filed a complaint for defamation and even if they had the defendants are not eligible for the immunity afforded by the court. Plaintiffs appealed and provide the following brief showing cause why the orders should be expunged from the district court records as irrelevant to plaintiffs' causes of action and against law. The brief will show cause why the defendants, Google, Inc., are not entitled to immunity when businesses are harmed under any circumstances, government licensure, or governments' contracts. In short it is because Google poses a great threat to U. S. Commerce, tradition, and government authority illicitly by declaring itself police powers over commerce.

Plaintiffs' businesses are allegedly injured by maps.google.com, a publication belonging to the defendant, Google, Inc.. Plaintiffs alleged violation of law, unfair business practices, negligence, misrepresentation, breach of contract, and emotional distress but not defamation. Plaintiffs also alleged that Google, Inc. sponsors and publishes business reviews in a 411 directory style format termed as "Courtesy Advertising" in an irresponsible unfair manner, beguiling plaintiffs of their money and substantive rights to commerce.

The maps.google.com program and the defendants' acts were alleged as without permission and as seriously injuring plaintiffs by an unwanted program publication which allows Google and local competitors to illicitly profit from the efforts of plaintiffs. Those unfair business practices were allegedly conspired by Google in special relationships with others.

Some of the actual '*key words*' extracted from the complaint are italicized as follows: Google allegedly '*devastates*' (emotionally and monetarily as alleged by illicit police power) plaintiffs' businesses by '*conspiracy*' (collaboration with others), unfair market force '*intervention*', that Google '*knew*' (scienter knowledge), and that Google '*enticed*' (inducement). Google is posing a great threat to commerce in the U.S. and tradition in '*business and professions law*' as alleged. Google '*profiteers*' from anonymity and by '*misrepresentation*' of Google's publications to the public at large. Plaintiffs in circuit court did not sue Google for defamation but rather unfair business practices and never alleged a third party but rather collaboration with others in conspiracy. The plaintiffs alleged Google's acts resulted in '*unfair business practices*' and were in special relationships with others resulting in emotional distress and financial devastation of plaintiffs' livelihoods and substantive rights as plaintiffs are stalked and harassed by Google's programming, 24/7.

3. What did you ask the originating court to do (for example, award damages, give injunctive relief, etc.)?

Plaintiff asked for judicial notice of a fact central to defendants *scienter knowledge* and guilt in conspiracy. The request was erroneously ignored by the court.

(Complaint for Damages; ¶14): "Judicial notice is requested to the fact that people may have complaints against a professional or business that lack merit."

Injunctive relief was requested and ignored by the court.

Plaintiffs requested damages and were denied.

Plaintiff filed a "Declaration of Damages" in district court Exhibit "F" attached to plaintiffs "amended Appeal". Included in the declaration were requested amounts for actual, statutory, and emotional distress damages. Punitive and exemplary damages and other relief as deemed appropriate by the court were also requested.

4. State the claim or claims you raised at the originating court.

Plaintiff submitted a complaint, declaration, evidence, and declaration of damages in district court. Plaintiffs have attached pages hereto with excerpts from those papers.

5. What issues are you raising on appeal? What do you think the originating court did wrong?

The district court erred in procedure, factual analysis of the merits, and analysis of law. Please see the district court errs noted at question 1 above and permissible page attachments, hereto.

6. Did you present all issues listed in #5 to the originating court?

If not, why not?

Yes.

7. What law supports these issues on appeal?

(You may, but need not, refer to cases and statutes.)

Please see attached additional pages of law.

8. Do you have any other cases pending in this court? If so, give the name and docket number of each case.

No other cases pending in this court.

9. Have you filed any previous cases which have been decided by this court? If so, give the name and docket number of each case.

No previous cases which have been decided by this court.

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?

Not a prisoner, this section is not applicable in this case.

GARY BLACK AND HOLLI BEAM-BLACK

101 Auld Court

Green Valley Falls, California 94534

(707) 373-2960

Plaintiffs are acting: *"In Propria Persona"*



Signature



Signature

Date: January 10, 2011

I. Introduction - District Court Errs

1.

Plaintiffs are husband and wife with separate and distinct licenses for contracting in the State of California. The plaintiffs, as '*door-to-door salespeople*', have for decades relied upon only '*word-of-mouth*' commerce, maintain a 100% customer satisfaction, and became one of the largest proprietor roofers in California. Plaintiffs filed a complaint in the Federal court, (Amended Appeal Ex. "D") on May 28th, 2010. Plaintiffs alleged the defendant, Google, Inc., wrongfully engaged plaintiff's businesses and became the deciding factor in plaintiffs bidding processes while in special relationships for profiteering with others.

(Amended Appeal Ex. "D" Complaint; ¶ 23) "In short, the defendant Google, Inc. has held itself out by way of it's programming as a deciding factor in the plaintiff's bidding process and ignored plaintiff's requests for a fair or reasonable dispute/resolution process while in violation of Federal and State law."

Plaintiffs alleged their contracting businesses were devastated and their livelihoods destroyed by maps.google.com, a publication belonging to the defendant, Google, Inc.. Google accomplishes their profiteering scheme by a series of unconscionable acts and irresponsible behavior while believing themselves fully immune from liability under 47 U.S.C. §230(c)(e). As the lower court agreed with Google in ruling plaintiffs' emotional and financial damages continue. This document is an attachment to an informal brief. Below is a table of contents to the plaintiffs examination, the plaintiffs believe the district court errs number four:

A. The district court orders are erroneous as they create a defamation cause of action against a third party while neither exist within the complaint. Plaintiffs damages were caused and alleged as from Google's unfair business practices not defamation and not by a third party as the court orders aver. — See: Section II, p. 2 below - "**Unfair Business Practices**".

B. The district court erred by ruling against law. The immunity the court granted Google is against definitive particulars of this case and the statutory purpose defined within 47 U.S.C. §230. The immunity in this instance was qualified rather than full and defendants were not entitled to it. — See: Section III, p. 21 below - "**Court Erred in Granting Immunity**".

C. The court erred procedurally in failing to shift the burden of proof onto the defendants following a fair view of the papers. The defendants were alleged as the publishers and sponsors in special relationships for illicit profiteering. The legal burden was shifted to Google by plaintiff's complaint, declaration, and evidentiary detailed in A and B above.

D. The court erred procedurally by failing to acknowledge plaintiff's damages and irreparable harm to plaintiff's livelihoods and substantive rights. A constant, 24/7 stalking and harassment of plaintiff's businesses is an unconscionable act by any legal standard. In the absence of relief sought, plaintiffs are harassed daily as they attempt bidding projects and prospect daily for sales. The actual damages are shown within plaintiffs declaration of damages and have been ongoing even since the district court orders. See: Section IV p. 26 below - "**Irreparable Harm**".

II. Unfair Business Practices (A)

2.

Google's profiteering scheme begins with the simple extraction of all business listings they consider public based upon a businesses telephone records. Google list those business names, addresses, and telephone numbers publicly on their web site at maps.google.com. Plaintiff pointed out several times in complaint that plaintiffs business information was being used and advertised without plaintiffs' permission, that plaintiffs also believed it to be without the phone companies permission, and that Yahoo also does it purported by a letter from Yahoo in evidence —

(Amended Appeal; Ex. "C" Pls. Decl. at P. 7, ¶ 12):

"Still suspicious of the Defendants marriage of public listings, ads by others in competition, and consumer generated content I decided in June 2010 to check the 411 directory i.e. the White and Yellow Pages legal disclosures as it seemed to me they would not want their product used with any product or service that is not theirs. Sure enough I was right."

(Amended Appeal; Ex. "C" Pls. Decl.; Ex. "J" within the declaration at ¶ 2 of a Yahoo letter):

"Please note that all Local Listings are considered public information and do have the possibility of being comprised by information submitted by local users and/or database providers in addition to yourself. The only way to have sole ownership of a business listing and its content is to upgrade to an Enhanced."

3.

It's a tradition that if a business is legitimate, one may find them within the public telephone directory, that tradition is being challenged by Google as people everyday are using of the Internet instead. Google, as well as others, are recently more in control of the 411 directory than paper directories. Central to this case is that one may search Google's 411 directory for the plaintiff's businesses and be told by Google or anyone anonymously that plaintiffs are very bad businesses but here's a few we sponsor. Following is one of the many of plaintiff's allegation of stalking and unfair business practices —

(Amended Appeal; Ex. "D" ¶ 20 complaint)

"Google, Inc. thereafter ambushes and blindsides the plaintiff's business with an on line advertising scheme, referred to herein as 'courtesy advertising', while wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts. The Defendant, Google, Inc. benefits financially because prospective clients inquire on line of the Plaintiff's businesses at the Defendant's web site where the prospect is then bombarded by paid advertising from other roofing companies in competition with Plaintiff's business. The Defendant's policy of ignoring the content and nature of the negative anonymous review at issue within this complaint does harm to the Plaintiff in that the negative review sways the Plaintiffs' prospect toward those businesses who have paid the Defendant, Google, Inc., for advertising alongside the 'courtesy advertisement' of Plaintiff's businesses. Once the Plaintiff has spent hard efforts to locate a prospect and identified a need for a prospective customer that otherwise may not have been noticed by a prospective customer the customer is swayed away from the Plaintiff by false statements and misrepresentations..."

Google intervenes into that contract that most all businesses and professionals possess, a telephone listing so consumers may locate them, not someone else. Google engages that contract as a third party changing the terms of that contract to it's present unconscionable state, which is without permission, as alleged —

(Amended Appeal; Ex. "D" ¶ 2 complaint): "The Plaintiff alleges that the Defendant, Google, Inc. in fact allows so called '*courtesy advertising*' of the Plaintiff's businesses to be placed on it's web site without the Plaintiff's permission while exaggerating the benefits of a free product to the public at large and fails to disclose to businesses a material relationship where one exists between the public at large and the Plaintiff's business.

4.

That said, Google then publishes the millions of the business listings on line in a 411 directory type advertising format and admits to a *mission of engaging* the plaintiffs businesses —

(Am App; Ex. "E" Def. Motion To Dismiss at page 2, lines 8 - 18); (underlined highlights) —
*"The purpose of Google places is "to help people make more informed decisions about where to go, from restaurants and hotels to dry cleaners and bike shops [.]"*² *Google places contains listings for millions of hotels, restaurants, and other businesses. Listings typically contain the address and phone number of the listed business. In addition, users of Google Places can write and post reviews of the businesses."*

Because of plaintiffs many years of only door-to-door and word of mouth commerce, the plaintiff's included a cause of action for misrepresentation of plaintiffs business by Google's unconscionable intervention —

(Amended Appeal; Ex. "D" ¶ 3 complaint)
"By the Defendant, Google, Inc., employing said means of marketing the '*courtesy advertising*' for the Plaintiff's businesses the Plaintiffs are harmed by assuming a risk of product and services being misrepresented and the potential liability that accompanies said risk."

The undeniable reality is that Google is, as a third party, breaching the contract plaintiffs have with the phone companies and others as they've altered that contract to an unconscionable state and whether or not they had permission from the phone company becomes irrelevant. Below is the citing under the UCC which describes honesty and third party intervention causing unconscionable terms to a contract between others as is in this case by Google to the phone listings of plaintiffs. —

The law Unconscionable Contracts

The laws violated at the onset are U.C.C. - Article 2 - sales: "**Good faith**" means honesty in fact and the observance of reasonable commercial standards of fair dealing. § 2-302(1)(2). Unconscionable contract or Term. Part 7. Remedies § 2-722. Who Can Sue Third Parties for Injury to Goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract. Where third party intervention causes unconscionable terms to a contract between others the court may limit the application of any unconscionable term as to avoid any unconscionable result.

Plaintiff alleged the market force intervention in complaint again as stalking and theft. The forceful

1 intervention without permission was alleged in complaint as wrongful. —

2 (Amended Appeal; Ex."D" Complaint; ¶ 17)

3 "The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct result
4 of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own
5 efforts"...."Everyday the Plaintiff prospects door-to-door, canvasses door-to-door, or sends out mailings
6 he/she produces traffic to the Defendants, Google, Inc.'s web site. Plaintiffs prospects are then able to view
7 an ever changing advertisement sponsored upon the Defendant's web site along with other companies
8 offering the same or similar services. Plaintiff alleges that these acts by the Defendants combine as a major
9 market force *intervention* that is wrongful..."

10 5.

11 Google purports gathering millions of business and professional phone listings then advertises
12 the business information on line, as in this case, without the permission of the plaintiffs in a 411 directory
13 assistance style listing. Once they acquire the listings they're made publicly accessible from the front
14 page of Google's home page via SERP's. Google combines a photograph of the business establishment,
15 a photo map, and provides for anonymous reviews of the business or professional. Google then places
16 local competitors of the business or profession listed as paid advertisers alongside the listing. When
17 unqualified speech occurs against a business or professional listed, inquiring prospects and sales are
18 swayed to the business or professionals local competition that is paying Google to advertise alongside.
19 The programs permit serious injury against business and professions by unwanted publication with
20 allowance for anonymous and unqualified speech and allow local competitors the ability to illicitly profit
21 from plaintiff's work. Google's profits are then enhanced by plaintiffs daily prospecting as his prospects
22 search for his phone number or legitimacy on line. Allowing a competitor to advertise alongside a door-
23 to-door salesman is alleged in complaint as without plaintiffs permission and allows competitors to 'steal'
24 plaintiff's prospecting efforts, which cost thousands of dollars per week. It occurs every day plaintiffs
25 prospect because as plaintiff goes door-to-door so go the inquiries on Google's new 411 directory
26 advertising program. If there exist an unqualified statement, anonymous or not, alongside the
27 advertisement of plaintiffs business, the plaintiffs business or profession is immediately devastated.
28 Without commentary on the listing plaintiff is robbed of his door-to-door prospecting because of Googles
market strength as even the suggestion of getting three opinions when one is in the process of a sale is
defamatory. Plaintiff is very simply damaged by maps.google.com as a program because of Googles
market strength and popularity in replacing 411 directory assistance without plaintiffs permission.

6.

Google took pictures of plaintiffs establishment, photographed local maps of plaintiffs businesses, engaged their businesses daily activity, and granted themselves control and police powers over plaintiff's business. Plaintiffs privacy and substantive rights to free commercial speech are violated because as plaintiff goes door-to-door so go the inquiries at Google.com, thereby Google is '*program stalking*' the plaintiffs daily activity. Unqualified speech that Google knows is occurring on the millions of business listings enhance Googles advertising sales profits a hundred fold but also clearly represent an unfair business practices. Google designated themselves police power over U. S. commerce when they crafted the program then electively ignore their responsibilities to the injured as in this case to profiteer from plaintiffs injuries by preying like vultures to sway plaintiffs business to others. They're *heat merchants* or *pirates* to put it in friendly terms, as it's done intentionally and with full knowledge of the fact that thousands of business complaints pour into Google and are ignored; the evidence also shows that Google themselves use the 411 directory advertising programs themselves and by algorithm behind anonymity to purposely defame plaintiffs. The fact was addressed in the complaint —

(Amended Appeal; Ex. "D"; Pls. Compl. ¶ 14) "Judicial notice is requested to the fact that people may have complaints against a professional or business that lack merit."

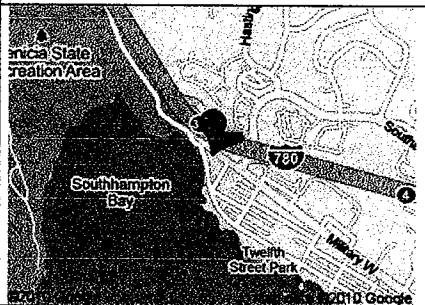
(Amended Appeal; Ex. "D" Complaint; ¶ 41) "Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes online business reviews for profit while at the same time neglecting the legal needs of said reviews thereby failing to meet jurisdictional and administrative requirements of the State of California and others."

7.

Google's publication of plaintiff's businesses online at maps.google.com are accompanied by "Google" logos atop the publications; the advertisings include photographing of plaintiff's store fronts, a photo geographical mapping of their store locale, and detailed print of plaintiff's names, address, and phone numbers in an advertising scheme, without plaintiffs permission. Google, after several notifications in evidence and within the complaint, allowed the publication of plaintiffs businesses to remain published. As excerpted below any reasonable consumer would ascertain not to use the plaintiffs as roofers because their roofs purportedly leaked and for eighteen months plaintiffs kept lying. Plaintiffs have been roofing for decades with 100% satisfaction and dozens of employees; the point is no one called plaintiffs about a leak! — Below is pictorial evidence submitted in the lower court to illustrate how Google unconscionably sells advertising alongside of anonymous unqualified speech to plaintiffs local competition.

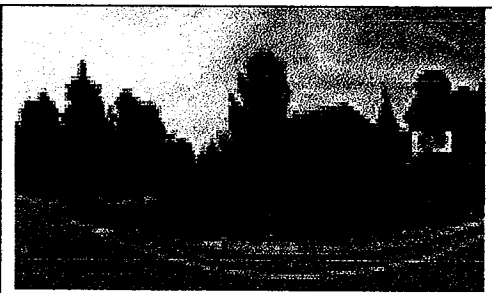
Google is doing it even now after several written notices and a federal lawsuit.

(Amended Appeal; Ex. "C" Pls. Decl.; excerpts from Ex. "A" & "G") —



Google maps

Castle Roofing
Benicia, California



"Having had my roof re-roofed by **Cal Bay Construction** which is now **Castle Roofing & Construction**, and then finding that they did such a poor job and my roof leaked from the beginning of rains in 2008, they still have not repaired my roof and it still leaks after a year and a half. They say they will fix it but changing names from Cal bay Construction to **Castle Roofing & Construction** should have tipped me off that I may never get my roof repaired. This company says it will fix my roof but all I get is excuses. After 18 months you would think they would fix it. Cal Bay Construction may no longer exist but the new company **Castle Roofing & Construction** as the new entity needs to come out and fix my roof. I find this to be totally unsatisfactory work and would not recommend this company (**Castle Roofing & Construction**) to anyone. They just do not know how to fix a bad roof job."

Local Roofing Contractors
Free Estimates From Pre-Screened
Roofing Contractors In Your Area.
www.homeblue.com/Roofing

Repair, Maintenance, Re-roofing
San Jose and surround Bay Area
www.aboveallroofingsolutions.com
roof removal

The Bay Area Roof Removal Company
Roof Removal Specialist
www.anbecontractors.com

Barcik Roofing
Since 1947,
Everything From Foundation to
Roofs
www.barcikconstruction.com

Roofing Contractors
Find Local Roofing Contractors.
Prescreened & Customer Rated. Free.
www.TheContractorSpot.com

Roofing Estimates Find Top-Rated Roofing
Pros in
Your Area. Get 4 Free Bids Today!
www.ServiceMagic.com

These are only some of defendants acts as a publisher plaintiffs alleged as "Courtesy Advertising" or "Business Reviews" within the complaint.

8.

The law is very clear, if you throw a rock through someone's window it's a misdemeanor as long as the intent wasn't to hurt someone and accidental; but if you tell someone else to throw a rock through a window it's a conspiracy or if you knew someone was going to throw a rock and participated in special relationships by using search algorithms to throw the rock for profiteering upon the event it's a conspiracy. The complaint alleged a conspiracy in profiteering and plaintiff submitted the evidence to show proof of it.—

(Am App; Ex."D" Complaint; ¶ 35) Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal acts.

1 Fairly stated, it is a theft; an unfair competition of grand proportion, as the plaintiffs paid for the
2 development of the prospects, not Google! Plaintiffs argue the conduct is an unfair business practice and
3 not excusable by any manner of lingual acrobatics.

4 9.

5 Whether a doctor, a contractor, or a restaurateur — *What chance does a business have, if a*
6 *powerful market force like Google approaches each prospect telling them the meat is bad?* Standing
7 in Americas door way to commerce with a nation wide 411 anonymous defamation directory and
8 a policy of ignorance, if not presently, will in the very near future, systemically undermine governments
9 efforts in creating jobs. This case puts forth the importance of commercial speech in U. S. commerce, and
10 plaintiffs substantive rights to that '*commercial speech*'. The district court orders clearly err by not noticing
11 the defendants were alleged as publishers/authors in a special relationship with others and by not
12 noticing the diversity of the complaint and supporting evidence within an alleged conspiracy. Instead the
13 orders focus entirely upon one anonymous unqualified comment using the courts discretion to improperly
14 determine the plaintiffs damages to be by an unknown third party rather than Google. A single unknown
15 and anonymous person typically can not overpower million dollar enterprises which take years to build,
16 only Google would or could do that. Beginning at the complaints first paragraph and thereafter plaintiffs
17 alleged the defendant publishes as in authors, and sponsors business reviews in special relationships
18 within each cause of action to wit. —

19 (Am App; Ex."D" Complaint; ¶ 1) "...the Defendant, Google, Inc., chose to sponsor consumer-generated
20 content in conjunction with paid advertisements and on line business reviews in such a matter that it has
21 established an endorser sponsor relationship with the public at large.

22 (Am App; Ex. "D" complaint ¶ 41) "Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes
23 online business reviews for profit while at the same time neglecting the legal needs of said reviews thereby
24 failing to meet jurisdictional and administrative requirements..." (Am App; Ex. "D" complaint ¶ 42) "Plaintiff
25 further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal acts. Throughout
26 the on line 'courtesy advertising' program distributed to the public by the Defendant, Google, Inc..."

27 10.

28 The publishers advertising scheme is intentional and with scienter knowledge, done in a manner
that's harmful to U.S. commerce. Google made a decision, not a third party, to allow anyone, including
themselves, to make anonymous defamations for the precise purpose of disingenuously enhancing
profits. Unqualified speech combined with ignoring business responses to unqualified speech enhances
Google's profit a hundred fold as local competitors feed on what might be left of an injured plaintiff's

1 business or profession. In this case, the comments are intentionally crafted to harm plaintiff's business ad
2 consumers as they steer prospective consumers away from an A+ rated company. The only value the
3 anonymous comments have is to Googles obvious profiteering and the plaintiffs want to retrieve that
4 money from Google.

11.

5 The plaintiffs, alleged they are *stalked*' by malicious programming. In complaint, the plaintiffs
6 rights of expression in commerce are defined as destroyed and their livelihoods devastated as the
7 defendants became the deciding factor in plaintiffs bidding processes. —

8 (Am App; Ex."D" Complaint; ¶ 16) "More specifically, in this case, many individuals regularly are
9 using the Defendant's on line Business Reviews, referred to herein as 'courtesy advertising',
10 to check on a contractor before making a purchase or in many cases before even allowing
11 the contractor to visit the prospective customer; thereby placing themselves within the
12 contractors bid and the prospective customers decision making process."

13 Prospecting customers and sales are systemic to most all the millions of small businesses within the
14 U. S. economy. Defendants allegedly took away plaintiffs abilities and substantive business rights to
15 prospect with their program and uncommunicative policy. The 411 directory advertising program at issue,
16 unfairly destroys a door-to-door salesman and telemarketers prospecting efforts, thereby destroying
17 commerce and jobs. Plaintiffs alleged systemic concerns as well within the complaint, not only to
18 plaintiff's livelihood, but also in the public interest. (Am App; Ex."D" Complaint; ¶ 28) —

19 "2.) Google is a global and powerful market influence. However, it's not proper to issue a fatal blow against
20 small businesses ..."

21 "3.) In the current business climate, it would not be in Googles best interest to be publicly known as a
22 powerful market influence (bully) shutting down thousands of small businesses across America."

23 "c) An online stalker seeking revenge rather than a true and just remedy on Google's platform without
24 Google providing a method of resolution is guaranteed to be a small business tragedy."

25 "5.) There should be a fair dispute/resolution process if Google intends to hold itself out as the deciding
26 factor in a contractor's bid."

27 "6.) Google forces businesses to post phony reviews to mitigate bad reviews, as very few people will
28 actually take time, without compensation, to promote a business they do not own and Google is enabling
and promoting the fraud to perpetuate a review process and advertising revenue."

"7.) Fraudulent and defamatory postings spread throughout the Internet and the brick and mortar community
as they're copied from the Google web site."

Googles Hand In Defamation

12.

Plaintiff first addresses the defamatory comments as one of them seemed important to the district
court; however, the case will turn on Google's own acts as publisher/author, conspiracy, and collaboration

1 with others in special relationships. The evidence entered in district court demonstrates three
2 defamations not one as was cited in the court orders.

3 13.

4 On or about Oct. 20, 2009 an unknown and unqualified anonymous comment appeared on
5 Google's 411 directory listing of plaintiffs' businesses. It is alleged as a stalker, standing in the plaintiff's
6 doorway proclaiming the plaintiff's roofs are bad and asserting the plaintiff as incompetent liars for six
7 months. Like a stalker it stood in front of the butcher shop with a sign reading: *'the meat is bad', with only*
8 *the intent to harm plaintiff's livelihood; — it is in essence a brainless act or a professional hit. It gets*
9 worse because unqualified speech, anonymous or not, increases Google's profit potential a hundred fold;
10 Google sells ad space to plaintiff's local competitors and places those advertisements alongside plaintiff's
11 listing while defaming plaintiff's and not the competitors. Google then knowingly manipulates it's massive
12 market notoriety with the 411 program to penetrate and influence plaintiff's prospects as the deciding
13 factor in plaintiff's bidding, at least to the extent that plaintiff's will not be winning any bids. Certainly this
14 damages plaintiff's business even without commentary. The plaintiff is stalked and robbed of their
15 prospecting efforts as they proceed door-to-door after spending thousands of dollars in lead generation to
16 do so. This is why plaintiff would never grant permission to such an advertising venture and alleged
17 Google's publication as without permission. As plaintiff went door-to-door and on the phone prospecting
18 each day the public inquiry from plaintiff's prospecting went to Google's online directory instead of any
19 phone book; prospects and existing customers then treated plaintiff like pariah! Plaintiff is clearly
20 being stalked by Google's notoriety, police powers, and market penetration not an anonymous nobody.

21 14.

22 Plaintiff complained to the defendant of being stalked, harassed, and that it is devastating to
23 their livelihoods. After a couple notices to Google, beginning on Nov. 8th, (Amended Appeal; Ex."D" Cmpl. ¶
24 24 & 26.) the plaintiff was almost immediately defamed a second time. The defamation is dated, Dec.
25 16, 2009 (Am App; Ex. "C" pls. decl.; Ex. 'G' within the decl.), it used the same unqualified comment under a
26 different anonymous identity at Yahoo's 411 directory ad program but Google picked it up by algorithmic
27 search and cached it on the plaintiff's business review even though Yahoo removed it as a 'Good
28 Samaritan' by plaintiff's request. Plaintiff wondered would a consumer stay on for a couple months to do it
a second time two months later, right after first notices! Or did Google do it when notified, to cover their

1 own acts of publishing and trafficking in defamation! Plaintiffs notices are very pointed but using the 411
2 directory of others in duplicating or complicating their own tracks may be common between the
3 advertising scams online after a business owner complains to them. Plaintiffs tried several offered
4 methods of remedy using Google's allegedly misrepresented abuse notification features. Plaintiffs wrote
5 several times afterwards but was ignored by Google.— See: (Am App; Ex. "D" pls. compl.; ¶s 21-22). On
6 April 22, 2010, plaintiffs wrote a final warning to defendants legal dept. in Mountain View, concerned
7 their programs are illegal, illicit, and that they are being stalked with a vengeance perhaps against
8 plaintiffs' telemarketing and word-of-mouth practices and warned of an impending suit if the listings were
9 not removed. The allegations are pointed and against Google while assuring them plaintiff did not want
10 litigation.

11 (Amended App; Ex. "D" complaint P. 15-16; lines 21-5) "Holli of Castle Roofing is urging me to make formal
12 a complaint against Google for allowing the defamation, trade mark infringement issues, abusive and
13 ineffective business practices, negligence, stalking, etc..." "I'll give the matter a little more time, as I too
14 would like it resolved -- rather than being a party to litigation."

15 Plaintiff warned the defendant that in the current business climate, it would not be in their best
16 interest to be publicly known as a powerful market influence (*bully*) shutting down thousands of small
17 businesses across America, but would engage as a matter of economic necessity. Within 5 days of the
18 April 22nd letter, a telemarketing attack ensued, and another defamation! Plaintiff wondered again would
19 a consumer stay on for six months and with extraordinary timing, do it again, really-y! Plaintiff thinks not,
20 really. It was the second '*extraordinary event*' during the same six month ordeal. The third unqualified
21 review attacked plaintiffs telemarketing practices on the business review, as was noticed and feared
22 within the letter to Google,. —See: the "DECLARATION OF GARY B." ¶ 7. Plaintiff immediately wrote to
23 Google again a few days later on May 3, 2010. —

24 (Am App; Ex."C" pls. decl.; Ex. 'F' within the decl.) "I see now that after writing to your headquarters just last
25 week that I now have another complaint posted on your web site. The first posting which I've detailed below
26 from October I've tried having remove but you've obviously opted to leave it up there. I believe it crosses the
27 line and is criminal... Now I have two complaints the newest is also a blatant lie. Additionally I'm receiving
28 hate mail at my e-mail address I previously used on my Google Account (gerald@raymondavich.com). I
29 know you do not want to here it but all my recent problems lead directly to Google. I'm preparing a
30 complaint as I said in my letter to your home office. I should have it completed by the end of the week. If
31 these two malicious postings are still on your web site by the time I'm finished, I file it."

32 Google ignored plaintiffs threat of a suit and plaintiff thereafter filed the complaint on May 28, 2010.
33 Plaintiff had bought into the first '*extraordinary event*' from the initial notices to Google before Dec.16th,

1 but plaintiff had difficulty buying into two 'extraordinary events' as defamation again followed the plaintiffs
2 letter to their legal dept. on April 22. Plaintiffs alleged Google as the sponsors and publishes of the
3 business reviews, as in authors with full police power and control, supported by evidence Google is
4 circumstantially behind two of the three defamations.

5 15.

6 A week later, when plaintiff filed the proof of service with the court, Googles' in-house counsel
7 called just four hours later threatening to investigate plaintiffs on line activities and attorney fees when
8 plaintiff wouldn't voluntarily dismiss the complaint. Plaintiff verified the call in writing immediately on
9 June 10th, 2010. Google hired outside counsel immediately after that confirmation. —

10 (Amended App; Ex. "C" "Declaration of Gary B."; Ex. 'H' within the decl.) "Confirming our conversation
11 I am very aware of 230(c), that Google will **seek fees and cost against me**, and that Google
12 **will investigate my on line activities on your web site.**"

13 Plaintiff had difficulty connecting his online activities with this case and the conversational tone seemed
14 malicious. The plaintiff couldn't believe a company like Google, could be so bold in their conduct, as it
15 should be difficult for them to claim ignorance. Plaintiffs believe perhaps that type conduct would silence
16 others and believe that was Google's intent. A showing of actual malice is a prerequisite to recovery of
17 punitive damages. *"Good motives and belief in truth do not negate an inference of malice, but are
18 relevant only in mitigation of punitive damages if the jury chooses to accord them weight."* Johnson
19 Publishing Co. v. Davis, 271 Ala., at 495, 124 So. 2d, at 458. Punitive damages are among the
20 damages outlined within the complaint at ¶ 62(D) and plaintiffs "Declaration of Damages".

21 **Googles Special Relationships** 22 **A Casual Connection - Active Inducement**

23 16.

24 The connection of Google and their culpability is the search engine giants technical savvy
25 combined with their active inducement of consumers. Plaintiffs alleged Google '*enticed*' consumers and
26 '*knew*' the consequences of the act and exercised police powers. —

27 (Amended Appeal; Ex. "D" Pls. Compl. ¶ 35) "Therefore one may conclude that the Defendant, Google, Inc.
28 knew in advance that their programming was hostile, could and does cause harm by *enticing* members of
the general public to commit illegal acts, which is now continuing on a business as usual basis."

"One infringes contributorily by intentionally inducing or encouraging direct infringement and infringes
vicariously by profiting from direct infringement while declining to exercise a right to stop or limit it" Metro-

1 Goldwyn-Mayer Studios Inc. v. Gresser, Ltd., 545 U.S. 913, 930, 125 S. Ct. 2764, 2776, 162 L. Ed. 2d
2 781 (2005). In this case the defendants do both as shown by their affirmative defense "to help people
3 make more informed decisions about where to go". In profiteering vicariously from the results of the
4 inducements Google adopted an irremovable policy concerning the serious damage to plaintiff's
5 livelihood. **Vicariously** is defined as: "*performed or suffered by one person as a substitute for another or*
6 *to the benefit or advantage of another*" - (Webster's Dictionary). Defendants are shown to meet both
7 standards as explained by the Eighth Circuit Court of Appeals. First, by having an obvious financial
8 interest as unqualified speech against a business enhances their advertising offering to local competitors
9 a hundred fold; Second, defendants had the immunity as a 'Good Samaritan' to stop abuse and to make
10 their advertising fair, as in get permission first. "...the prerequisites for vicarious copyright infringement are
11 (1) the right and ability to supervise the infringing activity and (2) an obvious and direct financial interest in
12 exploitation of copyright materials. (quoting - RCA/Ariola International, Inc. v. Thomas & Grayston Co., 845
13 F.2d 773, 781 (8th Cir. 1988); Blair v. World Tropics Productions, Inc., 502 F. Supp. 2d 828, 837 (W.D.
14 Ark. 2007). To succeed on this theory under 35 U.S.C. § 271(b)., a plaintiff must prove that the
15 defendants' "actions induced infringing acts and that [they] knew or should have known [their] actions
16 would induce actual infringement. "Manville Sales Corp. v. Paramount Sys., Inc., 917 F.2d 544, 553, 16
17 USPQ 2d 1587, 1594 (Fed. Cir.1990). It is alleged and is obvious that defendants knew of the
18 enticement of their programs for solicitation of content against businesses and '*judicial notice*' of the fact
19 is requested within the complaint. Defendants never answered with responsive affirmative defenses. —

20 (Amended Appeal; Ex. "D" Complaint; ¶ 42) "Therefore one may conclude that the Defendant, Google, Inc.
21 knew in advance that their programming was hostile, could and does cause harm by enticing
members of the general public to commit illegal acts which are now continuing on a business
as usual basis."

22 (Amended Appeal; Ex. "D" Complaint; ¶ 14) "Judicial notice is requested to the fact that people
23 may have complaints against a professional or business that lack merit."

24 "While proof of intent is necessary, direct evidence is not required; rather, circumstantial evidence may
25 suffice." Water Techs. Corp. v. Calco, Ltd., 850 F.2d 660, 668, 7 USPQ 2d 1097, 1103 (Fed.Cir.1988).

26 17.

27 Noticeably, Eric S., Googles' CEO, was just convicted personally, along with *Google France* for
28 defamation in a French Court. Again recently, a judge in Milan, Italy convicted David D., Peter
F. and George R. of Google for failure to comply with the Italian privacy code. The cases both involved

1 Google's algorithms and prominent indexing of defamation from their home page against individuals.

2 Google has clearly done it with intent, as Google is building a special relationship with the public against
3 tradition, the interest of U. S. commerce, and justice.

4 18.

5 Plaintiffs refer to maps.google.com photos at P. 6, *Supra*; and (Am. App. Ex. "C" "Declar. of Gary B."
6 Exhibits "A, G, & J" within declaration). At maps.google.com plaintiffs are harmed by *defendants collaborative*
7 *efforts in 'pairing'* the plaintiffs business information and the end users 'locale' by use of a combination of
8 'search algorithms, collating algorithmic data bases, and protocol technology' to maximize advertising
9 revenue. In other words, it's not a roofer from N.Y. advertising alongside the plaintiffs east bay area
10 business at maps.google.com. It's Googles direct acts algorithmically which follow the plaintiffs daily sales
11 activities door-to-door and give plaintiffs prospecting efforts to a roofer right down the street. The
12 prospecting and sales leads are expensive, thousands of dollars weekly. The intentional '*pairing*' done by
13 Google is for illicit profiteering in advertising with local roofers paying Google to feed on plaintiffs sales
14 efforts; plaintiffs alleged that it's illegal from the beginning and an extremely unfair competition, it's a theft!
15 Induced unqualified commentary and local pairing of the competition enhances the number of clicks
16 Google paid advertisers (competitors) receive a hundred fold. A New York roofer would receive very few
17 clicks, but the plaintiffs local competitor, within plaintiffs local area, will pay — big, because he's capturing
18 plaintiffs prospects even without a extraneous comment or defamation. Googles programming
19 assumption is that all businesses advertise; This is grossly mistaken and the genius of their programs
20 destroy all who do not advertise. Google sells plaintiffs daily efforts without permission and wrongfully. As
21 plaintiffs go door-to-door Google conspires in special relationships with paid advertisers and known
22 contingencies, certain to occur, meaning complaints against businesses and professions that lack merit
23 or are police power acts by Google invading privacy and free speech by stalking. —

24 (Amended Appeal; Ex."D" Complaint; ¶ 20) "The Defendant Google, Inc. thereafter ambushes and
25 blindsides the plaintiff's business with an on line advertising scheme, referred to herein as "courtesy
26 advertising", while wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts."
27 "Once the Plaintiff has spent hard efforts to locate a prospect and identified a need for a prospective
28 customer that otherwise may not have been noticed by a prospective customer the customer is swayed
away from the Plaintiff by false statements and misrepresentations"

29 With defamation, the local competitors capture all plaintiffs efforts in sales and essentially put plaintiffs out
30 of business, intentionally. Plaintiffs can no longer do business profitably because of Googles programs.

1 In short, as the plaintiffs go door to door, so go the inquiries on Google's front page in search of plaintiffs
2 business. In other words it's bad enough to be injured by defamation and unqualified commentary but is
3 made much worse by Googles' mugging an injured plaintiff while they lay unconscious losing sales.
4 Plaintiffs believe the employees and salespeople with Google are people aware of purported immunities;
5 some of those people at Google and others working in programs like Google's may defame purposely for
6 profiteering in commission ad sales behind anonymity. They cover their tracks by abusing one anothers
7 programs behind anonymity and spread defamation across the Internet for profit as the evidence does
8 not lie. Plaintiffs believe Google, and no others like Google, should possess such police powers over
9 plaintiff's business and financial well being. The alleged acts are unconscionable and unacceptable within
10 an orderly business society. Defendants wrongfully capitalize on the plaintiffs daily efforts and injured
11 plaintiffs monetarily and emotionally in the act of stealing. —

12 (Amended Appeal; Ex. "D"; ¶17 Pls. Compl.; underlining highlights) "The Plaintiff alleges, the Defendant,
13 Google, Inc., derives advertising revenue as a instant and direct result of the plaintiff's direct telemarketing
and door-to-door selling efforts rather than from Defendant's own efforts..."

14 Because of Googles stalking and trafficking in illicit and deceitful behavior by use of a computer, the
15 plaintiffs sales and prospects are intentionally and everyday swayed to Googles' paid advertisers by
16 'pairing' the like kind businesses by 'locales' together with localized algorithmic search functions from the
17 front page of Google.com as alleged. —

18 (Amended Appeal; Ex. "D"; ¶17 Pls. Compl.) "The Defendant accomplishes this by
19 allowing what is referred herein as "*courtesy advertising*" on their business review web site
which is posted publicly on line at <http://www.google.com>."

20 The bottom line is Google can not be in the mapping (stalking) of businesses and then maliciously
21 intervene or have the ability to intervene in a malicious unfair manner. Taking our pictures is one thing
22 interfering with our businesses and livelihoods afterwards is quite another. Google's mission statement,
23 "*...to help consumers make more informed decisions.*" — *is not compatible* with law or the intentions of
24 47 U.S.C. §230. In plaintiffs opinion, Google should be seriously deterred into changing it's policies or
25 prosecuted.

26 (Amended Appeal; Ex. "D"; ¶20 Pls. Compl.; underlining highlights) " while wrongfully benefiting financially
27 on nearly a daily basis from Plaintiff's sales efforts. The Defendant, Google, Inc. benefits financially because
28 prospective clients inquire on line of the Plaintiff's businesses at the Defendant's web site where the
prospect is then bombarded by paid advertising from other roofing companies in competition with Plaintiff's
business. The Defendant's policy of ignoring the content and nature of the negative anonymous review at
issue within this complaint does harm to the Plaintiff in that the negative review sways the Plaintiffs'

1 prospect toward those businesses who have paid the Defendant, Google, Inc., for advertising alongside the
2 'courtesy advertisement' of Plaintiff's businesses.

3 19.

4 Defamation of plaintiffs businesses on line would have had little or no effect upon plaintiffs if it
5 were not for the defendants market strength inducement, collaborative efforts, and special relationships.
6 In other words an average consumer, web site, or blog would not gain a front row seat at the top of the
7 SERP's indexed from the front page of Google.com; only Google's market strength, technical savvy, and
8 popularity could do that continuously 24/7 pursuant to their misrepresented mission. Intentional stalking
9 by search algorithm holds true because many thousands of companies are named Castle Roofing and
10 a thousand cities across the U.S. bear the same name, all while a roofer from N.Y. would not enhance
11 Googles profits in the form of clicks if alongside plaintiffs local business review. In other words the
12 reviews and taking of millions of business identities at Google are only for profiteering not "*...to help*
13 *consumers make more informed decisions.*" Unqualified anonymous bullying and bogus commentary do
14 not, and are not, of any public value instead they harm thousands of businesses. It's a bold
15 misrepresentation by Google to the public as thousands of doctors, lawyers, contractors, and
16 professionals are now being maliciously defamed daily. The idea that the programs are 'even' within the
17 district court orders is outrageous and flawed because of Googles use of '*protocol technology*' and
18 '*localization or pairing*'. One may not suspend defamation or fabricate numerous positive comments to
19 combat defamation because the programs are supervised and do not allow multiple entries from the
20 same IP address (*See: Amended Appeal Ex."D" Cmpl. ¶ 26.*). Of course, one could use proxy servers,
21 masked IDs, and other forms of deceit to combat defamation, if they knew how. The necessary
22 monitoring of the programs of course are more proof of defendants collaboration and special relationship
23 with end users and advertisers for profit. Google puts the package together by use of the end users
24 typed search location and their normal search algorithms from the front page of Google. The SERP's list
25 maps.google.com at the top to maximize Google's profit. Then Google finds the paid advertisers of like
26 kind in plaintiffs area to place next to the plaintiffs business information, without plaintiffs permission,
27 enabling the competitors to feed off plaintiffs injuries illicitly which enhances the offering to those
28 competitors a hundredfold. Google provides unqualified complaints against plaintiffs and plaintiffs
sales techniques, Google's profits are enhanced as local competition feeds on what's left of plaintiffs

1 sales prospects and business. It's an unconscionable conspiracy of events, done intentionally only for
2 Google's profiteering. Just as when plaintiffs catch someone in the phone room giving plaintiffs sales
3 leads to their contractor friend after work. Googles acts are done stealthily as described in stalking,
4 and with malice by publishing and allowing noticed unqualified speech and defamations, ones centric to
5 the heart of a mans livelihood, and holding them as irremovable as in this case.

6 20.

7 Google then combines the programming with an advertising sales force and billing for accounting
8 of clicks and page views to maximize profits and ad exposure for their paid advertisers. In other words the
9 ad exposure and number of clicks from having a roofer follow plaintiff from plaintiffs market locale is
10 enhanced profit for Google rather than one from N.Y.. It shows that Google is obviously profiteering, as
11 alleged, upon plaintiffs good will which is great incentive for Google to not remove defamations and
12 possible motive for Google to defame. It's a simple case of following the money to determine Google's
13 policies. Plaintiffs would never of known or been harmed by stalking and defamation if it were not for
14 Google's market popularity, policies, profiteering, indexing, and collaboration with others in an unfair
15 advertising scheme for profit. — It can also be argued that in this circumstance the public does not fit into
16 the definition of an "information provider". This is because behind anonymity, the defaming party intended
17 only harm, while Google with scienter knowledge of the certainty of business complaints by irremovable
18 and unfair policies intended and harvests enhancement of their profits in selling advertising to plaintiffs
19 local competition in very strong relationships as the evidence shows. Plaintiffs and plaintiff's businesses
20 are stalked and harassed as defined in the complaint by Google Maps market force penetration as the
21 new 411 directory engages plaintiffs livelihood daily bequiles plaintiffs of their bids and monies.

22 21.

23 In this case the defendants, not an unknown third party, made four deliberate policy decisions:
24 First, Google vested themselves with police powers by deliberately choosing "...to help people make
25 more informed decisions..." by admission within their "Motion To Dismiss" cited below.

26 (Amended Appeal; Ex. 'E' Def. Motion To Dismiss; p. 2, lines 8 - 18): "The purpose of Google Places is "to
27 help people make more informed decisions about where to go, from restaurants and hotels to dry cleaners
28 and bike shops [.]"² Google Places contains listings for millions of hotels, restaurants, and other businesses.
Listings typically contain the address and phone number of the listed business. In addition, users of Google
Places can write and post reviews of the businesses."

After intervening plaintiffs telephone agreements and creating unconscionable consequences in

relationships without plaintiffs permission, the defendants indexed their own business review program, via SERPs, to maps.google.com, showing the public plaintiffs business name, localized by algorithm for the end user to view plaintiffs competitors, thereby placing themselves within the plaintiffs bidding processes. Once there, the business listings are accompanied by paid local advertisers and unqualified commentary (Amended Appeal; Ex. 'D', ¶ 17 and 20 Pl. Compl.) Second, Google deliberately chose to use irremovable unqualified speech within it's 'mapping' (Stalking) of plaintiff's businesses which denies which enhances their ad offering a hundred fold to others in an outrageous and unacceptable competition but denies plaintiffs important State and Federal rights as it creates an unjust police power. The defamations in this case (*Professional Hits*) are illegal and torturous accusations only against the plaintiffs businesses not the competitor advertisers paying Google. Sales canceled and prospects are swayed away every day with competitors paying to advertise next to the defamations as plaintiffs continued prospecting door-to-door each day. In other words the reviews are not even. Third, Google deliberately chose to ignore the plaintiffs inquiries; as a matter of 'blind eyed policy' towards plaintiff's businesses. —

(Amended Appeal; Ex. 'D' Pl. Compl. ¶ 22): "...refused on multiple occasions throughout the past six months to remove, mediate, or even acknowledge damaging advertising directed at the Plaintiffs businesses."

Fourth, Google deliberately chose to hide behind anonymity when they themselves believed they're immune. This is because of Googles' market popularity and strength; the public inquiry followed the plaintiffs daily door-to-door selling activity because it's a 411 directory. Plaintiffs believe this to be a major civil rights violation against plaintiffs privacy, commercial expression, rights to due process, and fair business. In deciding fairness and the issue of whether the comments are defamation, one only needs to recall the anonymous defamation with the leaking roof; still believe it's true? "...False statements of fact are particularly valueless" especially when they're anonymous "...they cause damage to an individual's reputation that cannot easily be repaired by counter speech, however persuasive or effective." Celle v. Filipino Reporter Enterprises Inc., 209 F. 3d 163, 171 Court of Appeals, 2nd Circuit 2000. The plaintiffs pursue only the defendant, Google; the identity or identities behind the anonymity within the business reviews are alleged as Google. —

(Ex. "D"; ¶ 41 Pls. Compl.) "Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes online business reviews for profit while at the same time neglecting the legal needs of said reviews thereby failing to meet jurisdictional and administrative requirements of the State of California and others..."

1 Emotional distress in this case is high and persistent, it's like being helpless, similar to being held at gun
2 point, while Google acts in ignorance taking your money. As plaintiffs work they receive disparaging
3 comments from prospects, sales canceled, and customers with roofs in progress would turn hostile, per
4 plaintiffs declaration of damages. The plaintiffs sales abilities are consequently impaired as a result of
5 unqualified speech at Google. The evidence in this case shows beyond doubt that the unqualified speech
6 associated with plaintiffs business review on Google intends only harm by use of a computer and that
7 Google acts with intent to profit from the injury and conspires in special relationships with
8 discriminatory purpose as cited in Ashcroft v. Iqbal, 129; 1948 S. Ct. 1937 - Supreme Court 2009 the
9 supreme court stated — "*Where the claim is invidious discrimination in contravention of the First and Fifth*
10 *Amendments, our decisions make clear that the plaintiff must plead and prove that the defendant acted*
11 *with discriminatory purpose.*" Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520, 540-541, 113
12 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (First Amendment); Washington v. Davis, 426 U.S. 229, 240, 96
13 S.Ct. 2040, 48 L. Ed. 2d 597 (1976). As so many read Googles reviews, emotional distress is heightened
14 by plaintiffs losing most all bids and being mentally impaired in sales presentation each day. Impairment
15 is natural for fear a prospect will discover the defamation and having to look over ones shoulder
16 constantly in fear.

17 Public Interest

22.

18 The public should realize the scheme of unqualified commentary against business is flawed
19 constitutionally and threatens not only commerce systemically but also the justice in a 100 year old
20 American tradition of amicable dispute resolution; it's an unfair business practice! On tradition See:
21 Griswold v. Connecticut, 381 US 479 - Supreme Court 1965. —

22 "The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted
23 in the traditions and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts,
24 291 U. S. 97, 105. and in Gillow v. New York, 268 U. S. 652, 666"

25 If extrapolated out a few years, in anticipation of hundreds of online business review sites wanting to
26 make a buck on anonymity, systemic is not a question of if, but when! The Internet is built in large part on
27 trust; if that trust becomes adulterate, people, government, and businesses will cease to use the Internet.
28 The plaintiffs argue that people are much more likely to behave in the absence of anonymity and that
anonymity combined with a 'blind eye policy' towards a business in review, is a dangerous abuse of

immunity law and gaming of the system.

23.

Absent some compelling justification, inducing, producing, and allowing imminent lawless action against plaintiffs and U.S. business concerns by unqualified speech can not be of public value. It's a harmful disruption of commerce, destroys jobs, and grants police power to users of the program and Google! Some supreme court judges in the past have properly pointed out the potential for criminal conduct by ISP's. — See: Doe v. America Online, Inc., 783 So. 2d 1010 - Florida Supreme Court 2001. —

"In my view, the interpretation adopted today provides a foundation for far-ranging forms of illegal conduct (possibly harmful to society in far different ways) which ISPs can, very profitably and with total immunity, knowingly allow their customers to operate through their Internet services. I fear that the blanket immunity interpretation adopted by the majority today thrusts Congress into the unlikely position of having enacted legislation that encourages and protects the involvement of ISPs as silent partners in criminal enterprises for profit. Confident that Congress did not intend such an incongruous result, I respectfully dissent.
PARIENTE and QUINCE, JJ., concur.

Plaintiffs believe it's like watching an invisible and silent atrophy through the heart of American commerce, destroying thousands of jobs and discouraging countless others as these new 411 directory style programs race across the Internet. The Google Maps as they're presently designed allow for illegal and illicit conduct against commercial interest. The programs behind anonymity against millions of small business people are wide open to cyber bullying, racial discrimination, billing disputes, unqualified medical and professional abuse, official impropriety, police power misconduct, and the meat is bad. Commerce relies upon orderly and predictable outcomes which Google sets out to destroy by statutory abuse and illicit use of anonymity. As in this case, Google's programs, literally exterminate telemarketing and door-to-door sales. Prospecting and selling is systemic to most all small businesses and professions while at the same time no one wants to be sold something they don't already want. It is the tradition and mission of U. S. commerce to find a need and fill it. The type advertising Google proffers is beyond unethical and unconscionable within our orderly society, it destroys the systemic values of small businesses that sell and prospect. Everyone in the U. S. wants economic prosperity and *everyone* should win in this instance, — that's American commerce!

Summary

24.

Plaintiffs believe the district court should have applied less stringent standards than when a plaintiff is represented by counsel. See: Hughes v. Rowe, 449 U.S. 5, 9 (1980); Phillips v. Girdich, 408

1 F.3d 124, 127 (2d Cir. 2005); Tapia-Ortiz v. Doe, 171 F.3d 150, 152 (2d Cir. 1999). As shown herein the
2 claims are probable, meritorious, and supported by evidentiary. On the merits the plaintiffs believe the
3 complaint was improperly dismissed in district court. "In determining whether this standard has been met,
4 the complaint is to be construed liberally, with "all factual allegations in the complaint [accepted] as true,
5 and all reasonable inferences [drawn] in plaintiff's favor." Hayden v. Paterson, 594 F.3d 150, 160 (2d
6 Cir.2010). By precedent a complaint should be considered true when determining a motion for dismissal,
7 even if it strikes a savvy judge that actual proof of facts alleged is *improbable*" See: Neitzke v.
8 Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not
9 countenance...dismissals based on a judge's disbelief of a complaint's factual allegations"). Under Rule
10 12(b)(6), the critical inquiry with respect to each of plaintiffs' claims is whether the complaint contains
11 "enough facts to state a claim to relief that is plausible on its face. *Also*; Phillips v. County of Allegheny,
12 515 F. 3d 224 - Court of Appeals, 3rd Circuit 2008. In this case, the plaintiffs not only had a complaint
13 sufficient to place defendants on notice of the claim and it's foundations, but also submitted evidence in
14 support of the claims. Defendants repeatedly alleged a statutory immunity without pleading responsively
15 to the complaint. It is a defense but plaintiffs believed it requires a defendant to plead responsively to
16 each precise allegation within the complaint. Defendants, in fact, had agreed orally in an extension of
17 time to answer the complaint then breached the oral agreement and changed their minds at the last
18 moment. Plaintiffs informed the district court of the default and excepted the defendants motion to dismiss
19 as an answer closing the pleadings. The default proven as procedural malice within the amended appeal
20 — See: Page 6; Amended Appeal; section III. - The District Court Procedurally Erred - Default. aside
21 from the default, plaintiffs believe it's important to note the communications between the parties whereby
22 one may easily conclude the defendants filing of the motion to dismiss as a disingenuously filed motion
23 against the complaint. The key elements of the complaint, known well to the parties, are italicized here:
24 Google allegedly 'steals' and 'devastates' plaintiffs businesses by 'conspiracy' (collaboration with others),
25 unfair market force 'intervention', that Google 'knew' (scienter knowledge), and that Google 'enticed'
26 others (inducement). The lower court erred in its' own reading of the complaint without considering the
27 plaintiffs declarations or examination of the plaintiffs evidence submitted. A defamation suit was not
28

1 alleged against Google and the complaint did not have a defamation cause of action within it and was not
2 against a third party. The illicit acts by Google were all alleged as profiteering illicitly upon the plaintiffs
3 efforts rather than the defendants own effort. Therefore on appeal, plaintiffs believe they should have
4 prevailed in district court by a prima-fascia showing of cause against a final determining order. See:
5 Gomez v. Toledo, 446 U.S. 635, 640 (1980).

6 **III. Court Erred in Granting Immunity (B)**

7 Immunity Is Granted Erroneously For Googles Own Acts
8 Immunity Is Qualified By Statutory Intent - Google Was Not Entitled To It

9 25.

10 Plaintiffs believe there are two reasons the defendants were not entitled to the dismissal based
11 upon immunity. **First** the district court erred in reading the complaint failing to notice that the defendants
12 were alleged as publishers and authors of the business reviews. The words sponsors and publishes are
13 alleged within each cause of action. The complaint excerpt is above at page 7, lines 23-25. The verb
14 tense meaning of the allegation is responsible party and author as alleged and intended according to
15 the dictionary excerpt below. The district court over sighted the allegation stating within the orders that
16 plaintiff had not alleged Google as author. The of course supports an obvious shift in the burden of proof
as defined below. —

17 **sponsors** - "one who assumes responsibility for some other person or thing." — [http://www.merriam-](http://www.merriam-webster.com/dictionary)
18 [webster.com/dictionary](http://www.merriam-webster.com/dictionary)

19 **publishes** — West's Encyclopedia of American Law
verb - verb introduction: -lished, -lish-ing, -lish-es.

20 "1. To issue a publication. 2. To be the writer or author of published works or a work. 3. To prepare and
21 issue (printed material) for public distribution or sale. 4. To bring to the public attention; announce."

22 In this case "*Libel per se*" was established by evidentiary and allegations within the complaint. The
23 defendant, having not made any defense as to the stated facts other than to claim immunity for third party
24 content which was not the allegation, failed to meet a prima-fascia showing in affirmative defense. See,
25 *old* - definitive discussion on responsive affirmative defenses to complaint allegations at : Alabama Ride
26 Co. v. Vance, 235 Ala. 263, 178 So. 438 (1938); Johnson Publishing Co. v. Davis, 271 Ala. 474, 494-495,
27 124 So. 2d 441, 457- 458 (1960). Therefore the err of the court is clear in failing to read the complaint
28 allegations as true and failing to realize defendants defense as insufficient. The error appears

1 to be procedural or discretionary on the part of the district court as Google could not be held immune from
2 their own acts, as alleged.

3 26.

4 **Second**, the plaintiffs argue the district courts' ruling is erred because in a proper ruling the strict
5 "plain text" of a statute does not require such an adherence to the letter as would defeat an obvious
6 legislative purpose. — Isbrandtsen Co. v. Johnson, 343 U.S. 779, 783, 72 S.Ct. 1011, 1014, 96 L.Ed.
7 1294 (1952) ; Jamison v. Encarnacion, 281 U.S. 635, 640, 50 S.Ct. 440, 442, 74 L.Ed. 1082 (1930);
8 Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 110-11, 111 S.Ct. 2166, 2170-71, 115 L.Ed.2d
9 96 (1991). While Congress acted to keep government regulation of the Internet to a minimum, it also
10 stated very clearly its' intent by finding it to be the policy of the United States, — "to ensure vigorous
11 enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and
12 harassment by means of computer." *Id.* §230(b)(5). The immunity at issue is qualified rather than full and
13 only intended to be granted in particular circumstances under specific conditions which is not the case
14 within the instant matter. To reveal the courts error the following discussion and definitions are necessary
15 to describe the particulars of the district court error.

16 27.

17 **Scienter** is defined as a mental state embracing intent to deceive, manipulate, or defraud.
18 South Cherry St., LLC v. Hennessee Group LLC, 573 F.3d 98 (2d Cir. N.Y. 2009). To determine
19 whether a complaint's scienter allegations can survive threshold inspection for sufficiency, a court
20 must engage in a comparative evaluation; it must consider, not only inferences urged by the plaintiff,
21 as the Seventh Circuit did, but also competing inferences rationally drawn from the facts alleged."
22 "...To qualify as "strong" ... an inference of *scienter* must be more than merely plausible or reasonable."
23 — Tellabs, Inc. v. Makor Issues & Rights, Ltd., 127 S. Ct. 2499 - Supreme Court 2007. *Scienter* means to
24 have guilty knowledge. An act is done "knowingly" if done voluntarily and intentionally, and not because
25 of mistake or accident. It is an element required to be proven in certain crimes. The Courts construe the
26 federal statutes to require *scienter* of the nature and character of the material which is at subject. There
27 can reasonably be no doubt in this instance that defendants possessed *scienter knowledge* of the nature
28 and character of unqualified speech causing harm to businesses especially in light of the thousands of

1 complaints Google must have received and common knowledge as is requested by '*Judicial Notice*'
2 within the complaint. —

3 (Amended Appeal; Ex. "D"; Pls. Compl. ¶ 14) "Judicial notice is requested to the fact that people
4 may have complaints against a professional or business that lack merit."

5 As the plaintiffs notified the defendants several times, and as the false defamations went directly to the
6 heart and substantive rights concerning plaintiffs abilities to trade, there can also be no doubt that
7 defendants had '*direct knowledge*' of serious damage being caused to plaintiffs and plaintiff's businesses.

8 28.

9 Stalking is well defined within our society: (Encarta® World English Dictionary) —**Stalking**: "*the act or
10 process of stealthily following or trying to approach somebody or something.*" and harassment is

11 **Harassment**: "*the crime of harassing somebody with persistent, inappropriate, and unwanted attention.*"

12 By definition the maps.google.com programs are published, in evidence, and owned by Google, Inc..

13 They are stealthy because the business listing and reviews sport anonymous speech, are alleged without
14 permission, there are no communications or notices to plaintiffs upon activity or change in status, they're
15 persistently inappropriate and unwanted, and as a matter of factual allegation they're alleged as stealthy:
16 "*ambushes and blindsides*". See —

17 (Ex."D" Complaint; ¶ 20) "The Defendant Google, Inc. thereafter ambushes and blindsides the
18 plaintiff's business with an on line advertising scheme, referred to herein as "courtesy advertising", while
19 wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts." ... "Once the Plaintiff has
20 spent hard efforts to locate a prospect and identified a need for a prospective customer that otherwise may
21 not have been noticed by a prospective customer the customer is swayed away from the Plaintiff by false
22 statements and misrepresentations"

23 Defendant's programs, as alleged, therefore fit perfectly the *English* definitions of stalking and
24 harassment. Again the defendants lacked affirmative defense against the allegations.

25 29.

26 The International definition of the word, "**trafficking**", as stated by United Nations protocol for
27 defining the word trafficking, equates to whether the acts are by force or without permission. The
28 inquiry into the definition resulted from cases involving the trafficking of humans for prostitution. This
case is best served by the International definition as the defendants are International. The International
community agreed and determined that if the acts are initiated by force or without permission, then
the acts are to be considered '**trafficking**' by definition. So for purposes of statutory clarity, the plaintiffs
argue and believe the defendants' acts are appropriately defined and alleged as '*trafficking*' in unwanted

1 business listings, unqualified accusations against plaintiff's businesses, stalking, harassment, and
2 defamation. It's very obvious that congress foresaw potential abuses of common law tort when granting
3 the immunity for ISPs from information provided by others. Congress also saw potential abuse of the
4 immunity statute, as in this case, which is why congress qualified the immunity under §230(b)(5).
5 Furthermore, in United States v. Texas, 507 U.S. 529, 113 S.Ct. 1631, 123 L.Ed.2d 245 (1993), the
6 Supreme Court recognized that, "*In order to abrogate a common-law principle, the statute must "speak*
7 *directly" to the question addressed by the common law.*" The immunity clauses defendants cite are broad,
8 vague, and unspecific in not speaking directly to a business or professions first amendment rights to
9 commercial speech. Additionally, mapping of millions of businesses online with illicit public relationships
10 in advertising and commentary are not specifically addressed in the immunity statute.

11 ***Congress may not have foreseen precisely the genius of defendants programming to engage in***
12 ***advertising schemes thereby gamming the immunity statute for profit; but it did qualify the***
immunity in the event of it.

13 Congress foresaw the possibility that an immune internet service provider might become partnered in
14 public criminal activity and in enacting the immunity to help the Internet police itself, congress was
15 specific in stating their intention "*to deter and punish trafficking in obscenity, stalking, and harassment by*
16 *means of computer.*" *Id.* §230(b)(5).

17 30.

18 Plaintiff can now make the argument strong that stalking and harassment are precisely definitive
19 of defendants programs as alleged. which encompass two known special relationships alleged as
20 disingenuous; first between the defendant and the public in soliciting unqualified advertising excerpts and
21 second, defendants relationship with paid advertisers in an illicit scheme localized to steal plaintiffs daily
22 prospecting efforts.

23 31.

24 Plaintiffs further argue that Google's program genius, legally abates their purported immunity as
25 their program violates the statutory intent at §230(b) and the substantive rights of plaintiffs. Given the
26 stalking nature of their programs and in consideration for the rights of others, Google by law must
27 presuppose the law and chose responsible behavior once engaging the livelihood of others to avoid
28 serious substantive injuries and liability for damages. Furthermore, the Supreme Court in Siebert v.
Gilley, 500 US 226 P. 236 - Supreme Court 1991 "clarif [ied] the analytical structure under which a claim

of qualified immunity should be addressed." —

"...I would reject, however, the Court of Appeals' statement that a plaintiff must present direct, as opposed to circumstantial, evidence. 282 U. S. App. D. C. 392, 398-399, 895 F. 2d 797, 803-804 (1990). Circumstantial evidence may be as probative as testimonial evidence. See Holland v. United States, 348 U. S. 121, 140 (1954)."

Summary

32.

Google stated their programs are "to help people make more informed decisions about where to go" while at the same time maintaining an 'elective policy' of ignorance of the program combined with an 'illicit selection of qualified immunity' rather than the election of permissible immunity as a "Good Samaritan". Googles selection of immunity options is illicit by their known genius within the programs, their stated mission, and the unqualified invitation to the public for content advertising. Plaintiffs argue that Google forfeited the statutory policy of ignorance because to do otherwise results in a systemic attack on American commerce. Google Maps and Places are tools that may gut a small business or profession like a pig; Google knows that, and by abuse of law and policy profiteers.

33.

Plaintiffs argue that the immunity, for which dismissal was based, is mundane and qualified rather than absolute. As reconciled with the allegations and definitive conduct by defendants the immunity granted by the district court order is clearly against the statutory intent. The district court erred in its' discretion as a matter of law. Once immunity in this case should be qualified and forfeited, the substantive rights of the plaintiff and others are protected in business and professions, common law justice prevails, and business may again thrive. Given the evidence on review the orders are unjust as the merits of the case discussed above and law are given the greatest consideration on appeal.

IV. IRREPARABLE HARM

34.

Most businesses would only notice their phone not ringing, advertising not working, or no foot traffic within their stores resulting from the on line scam, but the plaintiffs fought the program daily and head-on as they prospected for sales and noticed the damage immediately by consumer responses. This case may be unique with insight for damage to others, but in this case it's clear that plaintiffs rights to 'free commercial speech' are directly impaired as plaintiffs use direct sales methods. Googles' review of

1 plaintiffs businesses were alleged, in Ninth District, by defendants in declaration only two months ago as
2 long since removed from Google Places, averring the plaintiffs are therefore not harmed irreparably. This
3 is not true as plaintiffs just lost a \$21,780.00 project just before the holidays because Google continues
4 publishing maps.google.com even though business phones at plaintiffs businesses are now unpublished!

5 District Court Orders Are Against Ninth Circuit Opinion

6 35

7 Plaintiffs presume it is illegal within U. S. advertising law and the business and professions
8 code to knowingly review businesses falsely in a disorderly, uneven, harmful, and unprofessional manner.
9 Plaintiffs complaint alleged unqualified complaints against plaintiff's businesses are left ignored even
10 today after several notifications and a law suit. Plaintiffs believe those acts make the program owner,
11 Google, Inc., responsible for damages because Google purposely engaged the business of plaintiffs for
12 profit without permission. Google admits to engaging millions of businesses *to help consumers make*
13 *more informed decisions* which is a police powers declaration. Just because one may own a gun or a car
14 legally, does not entitle one to run over and shoot people; responsible conduct and neutrality is required
15 as a duty in reviewing businesses and peoples livelihoods. Google attempts changing American values of
16 business reporting, declares police powers, and avoids the cost of hiring people to ensure accuracy in
17 reporting against businesses. As cited below the district court cites authority averring that Google Maps
18 and Places are neutral tools; the plaintiffs have great indifference with that, because neutral tools do not
19 kill businesses. Plaintiff's business is destroyed and a dozen or more jobs lost by Googles malicious
20 broadcasting of unattended and unqualified against plaintiff's business in a program that's by no
21 stretch of the imagination neutral! The courts order: "Order On Plaintiffs' Objection, Denying Defendant's
22 Motion To Strike And Denying Plaintiffs' Motion To Stay (Docket Nos. 28, 29, and 32)", entered on the
23 20th day of September, 2010 at page 3, lines 5 through 18 cites a Ninth Circuit ruling on the case
24 Carafano v. Metrosplash.com Inc. 339 F. 3d 1119, 1121 (9th Cir. 2003) in support, for authority in making
25 the orders. The Ninth Circuit opinion cited within the district courts order at page 3 lines 11-12 within the
26 order, dated September 20th, is as follows:

27 "...To be sure, the web site provided neutral tools, which the anonymous dastard used to publish
28 the libel, but the website did absolutely nothing to encourage the posting of defamatory content..."

1 First, the orders are erred because the Ninth Circuit opinion is based upon a web site lacking Googles
2 market penetration in a 411 directory; Second, the district court erred by misapplying the Ninth Circuit
3 opinion to this case because Googles tools evidenced above are certainly not neutral. This is because
4 open complaints on Google's listing of plaintiffs businesses are against the plaintiffs commerce and not
5 against the other roofers who are paid advertisers on the same page. The paid advertisers ads when
6 selected by a visitor lead directly to the paid advertisers web sites which completes Googles
7 enhancement for the paid advertisers ad and adds value to Googles' advertising offer to them. In short it's
8 an unfair competition because the plaintiffs customers are searching for the plaintiff when they go to
9 Google Maps but are illicitly directed to paid advertisers. The allegations within the complaint are all true
10 and need not simply be construed as true. The Ninth Circuit may notice that Google Maps are not only,
11 not neutral, they're open to Google in enhancing their sales, race discrimination, police stings, official
12 impropriety, marital disputes, cyber bullying, grievances against telemarketers, a 'State actor' as Google
13 using the directories others to cover their own illicit behavior, and all sorts of other attacks behind
14 anonymity. The programs are certainly not neutral when posted against a proprietors right to work, invade
15 constitutional rights to commercial expression, and are irremovable. The district court orders giving
16 licensure and condoning this type of theft by defendants is erred in discretion as the orders contradict
17 substantive rights of proprietors, advertising law, constitutional rights, and the immunity statute itself that
18 defendants rely upon. The district court orders are discussed in full detail with evidentiary within plaintiffs
19 166 page "Amended Appeal".

20 V. Conclusion

21 36.

22 As evidenced with special relationships and extrapolated from the complaint and introduction
23 above, Google can not be immune for their own acts, as argued and alleged. —

24 (Amended Appeal; Ex. "D"; ¶1 Pls. Compl.) "The Plaintiff alleges that the Defendant, Google, Inc., chose to
25 sponsor consumer-generated content in conjunction with paid advertisements and on line business reviews
26 in such a matter that it has established an endorser sponsor relationship with the public at large."

27 (Amended Appeal; Ex. "D" Complaint; ¶ 42) " Plaintiff further alleges that the Defendants, Google, Inc.,
28 intentionally conspired to cause illegal acts. Throughout the on line 'courtesy advertising' program
distributed to the public by the Defendant, Google, Inc., there exist options whereby the general public may
report suspect content to the Defendant, Google, Inc.. The general public may select and report content that
they believe to be abusive or illegal; Therefore one may conclude that the Defendant, Google, Inc.
knew in advance that their programming was hostile, could and does cause harm by enticing members of
the general public to commit illegal acts which are now continuing on a business as usual basis."

1 On special relationships alleged, "It is well established that individuals owe no duty to protect others from
2 harm by third persons, absent a special relationship with either the wrongdoer or the person subject to
3 harm." See: Emerich v. Phila. Ctr. for Human Dev., 720 A.2d 1032,1036 (Pa. 1998). Restatement
4 (Second) of Torts § 315 or § 324A (1964). In district court plaintiff argued special relationships and
5 profiteering between the defendant Google, and others, as evidenced throughout the complaint,
6 declaration, and evidence. Below is an excerpt from plaintiffs' "Motion For Judgment on the Pleadings" at
7 P. 3; Lines 7 - 26 —

8 "The Plaintiff's fears are the uncontrollable nature of Defendant's programming..." "... in the United States
9 we have laws and regulations whereby it's citizens and enterprises, must presuppose a respect for the law
10 in order to avoid chaos and serious violation to the rights of others. In doing so the duties and
responsibilities of being in business are born on each and every business including the Defendant, Google,
Inc." "The Plaintiff has alleged that the Defendant, Google, Inc. was reckless in it's designing of a program
that allows anonymous defamation, destruction, and misrepresentation of Plaintiff's businesses."

11 37.

12 Plaintiffs argue, the Internet as a whole and the defendant in this case, mistakenly assume
13 absolute immunity rather than qualified immunity under §230, even while they conceive programming
14 methods and policy for gaming the statute illicitly in violation of the legislative intent and U.S. policy under
15 §230(b) to 'deter and punish trafficking', stalking, and harassment —

16 47 U.S.C. § 230 (b) Policy:

17 "It is the policy of the United States — to ensure vigorous enforcement of Federal criminal
18 laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer."

19 38.

20 Moreover, in support of reversal for a case such as this, where substantive rights are paramount,
21 the separability of constitutional and unconstitutional applications of statutes may not apply where their
22 effect is to leave standing a statute patently capable of many unconstitutional applications, threatening
23 those substantive rights of the plaintiffs to word-of-mouth commercial speech and expression in sales. In
24 a Supreme Court ruling for United States v. X-Citement Video, Inc., 513 U.S. 64 (1994) the high court
25 determined that the weight of a statute construed as constitutional will prevail over literal and material
26 clashes of lesser importance. In the instant matter, plaintiffs substantive rights are systemic and far
27 outweigh the rights of unqualified speech and the defendants as profiteers. Therefore, divisibility of the
28 constitutional and unconstitutional applications of 47 U.S.C. §230 are inapplicable as ruled by the district
court because the statute may be construed constitutionally as the court accepts factual allegations in the

1 complaint as true, and draws all reasonable inferences to plaintiff's favor. See: Monahan v. Dorchester
2 Counseling Ctr., Inc., 961 F.2d 987, 988 (1st Cir.1992).

3 39.

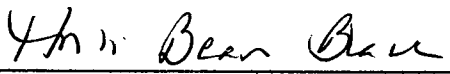
4 Accordingly herein, the Ninth District is urged to acknowledge that it is the unfair business
5 practices and Google's program profiteering methods that are alleged and that the acts unfairly cause
6 plaintiffs harm economically and emotionally, thereby making Google in large part responsible for those
7 damages. The complaint was not a defamation suit as indicated within the district court orders. Upon
8 recognition of the diversity and distinct nature of the complaint, the Ninth Circuit Court could reverse the
9 orders of the district court as the verdict does unfairly deny plaintiffs substantive rights and causes an
10 unjust result. The actual and statutory damages declared were \$575,000.00 dollars, and ongoing. The
11 court could further award intentional infliction of emotional distress and punitive damages of to deter ISP
12 abuse of law in profiteering upon the rights of plaintiffs in small business. ORDERS TO VACATE upon
13 reversal:

14 The Northern District of Oakland orders on appeal before the Ninth Circuit Court Of Appeals are
15 an "Order Granting Defendant's Motion To Dismiss And Denying As Moot Plaintiffs' Motion For
16 Judgment On The Pleadings (Docket Nos. 10 and 15)", entered in this action on the 13th day of
17 August, 2010 and an "Order On Plaintiffs' Objection, Denying Defendant's Motion To Strike And
18 Denying Plaintiffs' Motion To Stay (Docket Nos. 28, 29, and 32)", entered in this action on the 20th
19 day of September, 2010.

20 Respectfully submitted before the Ninth Circuit Court Of Appeals,

21 
22 Gary Black, individually plaintiff

Dated: January 10, 2011

23 
24 Holli Beam Black, individually plaintiff

Dated: January 10, 2011

CERTIFICATE OF SERVICE

GARY BLACK AND HOLLI BEAM-BLACK v. GOOGLE, INC.

9th Cir. Case No.: 10-16992

IMPORTANT: You must send a copy of ALL documents filed with the Court and any attachments to counsel for ALL parties in this case. You must attach a copy of the certificate of service to each of the copies and the original you file with the Court. Please fill in the title of the document you are filing. Please list the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below.

I certify that a copy of the: **APPELLANT'S INFORMAL BRIEF "AMENDED"**
and any attachments was served, either in person or by mail, on the persons listed below:

Name:

Wilson, Sonsini, Goodrich & Rosati attorneys at law

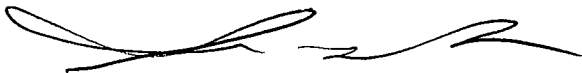
Address:

650 Page Mill Road
Palo Alto, California 94304-1050
Telephone (650) 493-9300

Date Served: January 10, 2011



Signature: Holli Beam Black



Signature: Gary Black

1
2 CERTIFICATE OF SERVICE BY US MAIL

3 I, Jose G. Torres, declare:

4 I am employed in Solano County. I am over the age of 18 years and not a party to the within
5 action. My business address is: 1440 Military West; suite #104 Benicia, California 94510.

6 I am readily familiar with depositing mail with the United States Postal Service. On this date, I
7 served on each party listed below, a document entitled:
8

9 **" APPELLANTS MOTION TO SUBMIT AN OVERSIZED,
10 SUBSTITUTED, OR CORRECTED BRIEF "**

11 Case no. 10-16992

12 Before

13 UNITED STATES COURT OF APPEALS
14 FOR THE NINTH DISTRICT

15 GARY BLACK AND HOLLI BEAM-BLACK
16 *Plaintiffs/Appellants, V. GOOGLE, INC., Defendant/Appellee.*

17 On Appeal from the United States District Court for the
18 Northern District of California
19 Case No. 4:10-cv-02381-CW
20 The Honorable Claudia Wilken

21 by placing it into an envelope with fully paid postage thereon, sealed the envelope, and
22 delivered the envelope for mailing to the United States Post Office in Benicia, California.

23 Wilson Sonsini Goodrich & Rosati
24 attorneys at law
25 650 Page Mill Road
26 Palo Alto, California 94304-1050
27 Telephone (650) 493-9300

28 I declare under the penalty of perjury under the laws of the United States that the foregoing is
true and correct. Executed at Benicia, California 94510 on January 10, 2011.

29 JOSE G. TORRES
30 Jose G. Torres