NO. 10-16992

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GARY BLACK AND HOLLI BEAM-BLACK

Plaintiffs/Appellants,

v.

GOOGLE INC.

Defendant/Appellee.

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

DEFENDANT-APPELLEE GOOGLE INC.'S RESPONSE TO APPELLANTS' MOTION TO SUBMIT AN OVERSIZED, SUBSTITUTED, OR CORRECTED BRIEF

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RESPONSE

On December 20, 2010, Appellants Gary Black and Holli Beam-Black tried to file an opening brief. Dkt. # 9. The Court rejected it under Circuit Rule 32-5 because it was too long. *Id*. The Court ordered the Blacks to file a compliant brief within fourteen days. *Id*. On January 3, 2011, the Blacks tried to file a brief that was nearly identical to their original draft. Dkt. # 10. The Court rejected the Blacks' new brief and again instructed them to submit a compliant brief within fourteen days. *Id.*

On January 10, 2011, the Blacks submitted another opening brief. Dkt. # 12. They say that they are "not able to ascertain the page limitations required by the rules or even which rules apply to unrepresented litigants" and request that the Court accept their filing, regardless of what the rules provide. Dkt. # 11.

The Court should reject the Blacks' most recent brief because it does not comply with the rules. The Ninth Circuit allows unrepresented parties to file either a form brief or a memorandum that complies with Federal Rule of Appellate Procedure 28. *See* Ninth Cir. R. 28-1(c), 32-5. The Blacks have tried to do both by giving the Court a form brief and a twenty-nine-page memorandum. That is a problem because their difficult-to-follow memorandum fails to comply with Rule 28 and would benefit from the structure that the rule commands.

For these reasons, Appellee Google Inc. asks the Court to order the Blacks to file: (1) a form brief (with few, if any, attachments); or (2) a brief that complies with Federal Rule of Appellate Procedure 28 and Circuit Rule 28-2.

Dated: January 14, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Bart E. Volkmer
Bart E. Volkmer

Attorneys for Defendant-Appellee Google Inc.

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 14, 2011. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Gary Black
Holli Beam-Black
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Green Valley Falls, CA 94534

/s/ Robin Pezzimenti