UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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
"AMENDED"
(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?

First, the district court erred factually in not comprehending the conspiracy and theft alleged.

Plaintiffs businesses were injured by maps.google.com, a new program belonging to the defendant, Google, Inc.. Plaintiffs alleged Google sponsors and publishes business reviews. The programs seriously injure business and professions by unwanted publication with local competitors abilities to illicitly profit from the efforts of plaintiffs. Plaintiffs alleged unfair business practices and conspiracy. Key elements of the allegations were ignored and not comprehended by the lower court. Those key elements are italicized here: Google allegedly 'steals' and '*devastates*' plaintiffs businesses by '*conspiracy*' (collaboration with others), unfair market force '*intervention*', that Google '*knew*' (scienter knowledge), and that Google '*enticed*' others (inducement). The lower court erred in its' own reading of the complaint without considering the plaintiffs declarations or examination of the plaintiffs evidence submitted. A defamation suit was not alleged against Google and the complaint did not have a defamation cause of action within it and was not against a third party. The illicit acts by Google were all alleged as profiteering illicitly upon the plaintiffs efforts rather than their own. A forced slavery to put it simply as 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, as alleged. 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. In district court three separate defamations all occurring within a six month period were evidenced. These defamations were alleged as false, anonymous, and illegal. The plaintiffs alleged Googles acts resulted in *'unfair business practices'* and were in *'breach of contract'* in special relationships with others resulting in emotional distress and the devastation of plaintiffs livelihoods and substantive rights as plaintiffs are stalked by Googles conspiracy.

Second, the district court erred by ruling against law as the immunity the court granted Google is against the definitive statutory purpose. The immunity in this instance was qualified rather than full and defendants were not entitled to it.

Third, the district court erred procedurally by not shifting the burden of proof to the defendants following a fair view of the papers. The defendants were alleged as the publishers of the program causing plaintiffs damages. The evidence pointed to three anonymous postings, advertisements by others in plaintiffs same local and business, and alleged the unfair conspiracy and theft by defendants. The burden of proof should have been shifted to Google to show by affirmative defenses that they were not causing plaintiffs financial damages and destroying plaintiffs lives as alleged.

Allegedly it's a constant 24/7 stalking and harassment of plaintiffs in the absence of relief, as plaintiffs are harassed daily as they sell and prospect sales by Googles illicit and illegal publication! Plaintiffs can not continue their businesses in the hostile environment. Plaintiffs will by force dismiss their remaining 15 employees, sell the house, and leave dodge pursuant to excerpt in the complaint at ¶ 32. Attached pages, demonstrate the lower court errs by using only the papers already on file with the district court and allegations already within the complaint. The errs in law made by the district court in orders are made patently clear and obvious to any reasonably minded interpretation.

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.

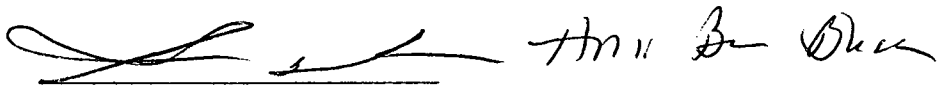
GARY BLACK AND HOLLI BEAM-BLACK

101 Auld Court

Green Valley Falls, California 94534

(707) 373-2960

Plaintiffs are acting: *"In Propria Persona"*



Signature

Date: January 3, 2011

PART A - District Court Legal Analysis Is Clearly Erroneous

I. Introduction - District Court Errs

1.

Plaintiffs businesses are injured by maps.google.com, a new program belonging to the defendant, Google, Inc.. Unqualified speech is deemed irremovable by policy at Google after several notifications. Plaintiffs alleged Google sponsors and publishes business reviews allowing for unqualified speech against the good will and interest of U.S. commerce. The allegations are that the combination of Google's programming, policy choices in allowing unqualified speech, and declaring immunity in reviewing businesses is in violation of the intent of law, statutory immunity, and unconscionable. It's a tradition that if a business is legitimate that one may find them within the public telephone directory. Google intervenes into a contract that businesses and professionals all possess, a telephone listing so consumers may locate them. Google engages that contract as a third party thereafter changing the terms of that contract to it's present unconscionable state discussed throughout this brief. Google therefore breaches the contract as an intervening third party and thereafter is ¶ 2 complaint:

> "...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. Plaintiffs herein allege that these acts combine to constitute a violation of law under Title 15 USC 45 - Sec. 45 (a)(1)(2). and Title 15 USC 53 (a)(b). ¶ 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."

Plaintiffs are not able to find anything granting Google rights to the phone listings, per plaintiffs declaration. *See*: (Amended Appeal; Ex. "C" Pls. Decl. at P. 7, ¶ 12; Ex. "K" within the declaration -Legal Notice - White Pages.) and —

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.

Immunity is qualified rather than absolute in this instance and should have been forfeited by Google the moment the program began. Google purports gathering millions of business and professional phone listings they consider public. They then advertise the business information on line without permission of the owner in a 411 directory assistance style, making it publicly accessible from the front page of Google's home page via SERP's. Google combines a photograph of the business establishment, a photo

map, and provides for anonymous reviews of the business or professional. Google then places local competitors of the business or profession listed as paid advertisers alongside the listing. When unqualified speech occurs against a business or professional listed, inquiring prospects and sales are swayed to the business or professionals local competition that is paying to advertise alongside. The programs permit serious injury against business and professions by unwanted publication with allowance for anonymous and unqualified speech and allow local competitors the ability to illicitly profit from the efforts of plaintiffs. Google's profits are enhanced by plaintiffs prospecting daily and by deceit and misrepresentation within Google's publication. First: allowing a competitor to advertise alongside a door-to-door salesman is alleged as without plaintiffs permission and allows competitors to *'steal his prospecting efforts.'* It occurs every day because as plaintiff goes door-to-door so go the inquiries on Google's new 411 directory advertising. Plaintiffs privacy and substantive rights to free commercial speech are violated by Google's program stalking of plaintiffs daily activity. Second: if there exist an unqualified statement, anonymous or not, alongside the advertisement of plaintiffs business, the plaintiffs business or profession is seriously diminished. This is very simply because of Googles market strength and popularity in replacing 411 directory assistance. Google's acts in programming combined with ignorance towards their responsibilities of the program, cause forfeiture of qualified immunities, meaning the program genius is barred by 230(B). Google took pictures of plaintiffs establishment, photographed local maps of plaintiffs businesses, engaged their businesses daily activity, and granted themselves police powers over plaintiff's business. They do it to profiteer while misrepresenting the program publicly *"...to help consumers make more informed decisions."* Unqualified speech that Google allegedly knows will occur on millions of business listings enhance Googles advertising sales profits a hundred fold deceitfully, as in fraud, and unfair business practices. Google designated themselves police power over U. S. commerce and is using those police powers for profiteering.

2.

Plaintiffs are husband and wife with separate and distinct licenses for contracting residential roofing in the State of California. The plaintiffs, are '*door-to-door salespeople*', and for decades have been in reliance upon only *'word-of-mouth'* commerce, maintain perfect reputations, and are '*stalked*' and 'harassed' by defendants program. Their rights of free expression in commerce are quashed, and their

livelihoods devastated as Google allegedly became the deciding factor in plaintiffs bidding processes. —

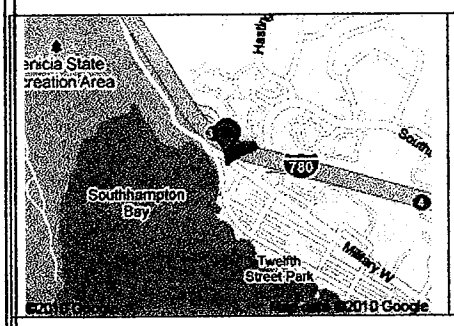
> (Ex."D" Complaint; ¶ 23) *"In short, the defendant Google, Inc. has held itself out by way of it's programming as a deciding factor in the plaintiff's bidding process and ignored plaintiff's requests for a fair or reasonable dispute/resolution process while in violation of Federal and State law."*

Plaintiffs filed a complaint in the Federal court, Ex. "D" on May 28th, 2010. Plaintiffs now appeal and argue that district court orders erroneously allow defendants to violate plaintiffs' substantive rights and law while engaged in criminal collaboration, stalking, and harassment of plaintiffs and plaintiff's business; plaintiffs further argue the district court orders are against the public interest and against U.S. commerce. In complaint, the defendants are alleged as *sponsors and publishers* of a new 411 directory style advertising referred to as "*Courtesy Advertising*" accompanied by allegations of injury to plaintiffs from Googles publication of maps.google.com business reviews. —

> (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."

3.

For over twenty years plaintiffs maintained a 100% customer satisfaction while becoming one of the largest proprietor roofers in California without the use of commercial advertising. Google's publication of plaintiff's businesses online at maps.google.com are accompanied by *"Google"* logos atop the publications; the advertisings included 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. In fact, after notification of the damages caused by the publication, the evidence shows that Google themselves used the 411 directory advertising programs to purposely, and with intent, slander plaintiffs and plaintiff's businesses as a 'state actor' in exercising police power. As shown 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. (Amended Appeal; Ex. "C" Pls. Decl.; excerpts from Ex. "A" &"G" within the decl.)— This is evidence below submitted in the lower court illustrating how Google unconscionably sells advertising to plaintiffs competition. —



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

Yahoo defines is as an extortion in explaining it properly in uncontroverted evidence before the district court. —

> (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."

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

4.

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 profiteering upon the event it's a conspiracy. The complaint alleged a conspiracy in profiteering —

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

II. Preliminary Facts - District Court Errs

5.

As door-to-door sales people, the plaintiffs prospects inquire daily on Google's Maps, a new 411 directory advertising instead of using a phone book. First: While plaintiffs prospects inquire daily, Google streams them to plaintiffs local competitors paying to be alongside plaintiff's business information. Just as if one were caught in the telemarketing room stealing the companies sales leads or following the plaintiffs door-to-door to give the leads to their boy friend contractor which happened to be plaintiffs competition, a local roofer. Fairly stated, it is a theft; an unfair competition of grand proportion, as the plaintiffs paid for the development of the prospects, not Google! Plaintiffs argue the conduct is unfair and not excusable by any manner of lingual acrobatics in a court of reasonable concept in law. Google purported and alleged by affirmative defense to taking millions of them in the district court! —

> (Am App; Ex. "E" Def. Motion To Dismiss at page 2, lines 8 - 18); (underlined highlights) — Google admitted in district court to engaging the bidding processes to help others and to the taking of millions of business identities: *"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."*

The forceful intervention without permission should not be perceived in any other way, as it is alleged as wrongful. —

> (Am App; Ex."D" Complaint; ¶ 17) "The Plaintiff alleges, the Defendant, 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"...."Everyday the Plaintiff prospects door-to-door, canvasses door-to-door, or sends out mailings he/she produces traffic to the Defendants, Google, Inc.'s web site. Plaintiffs prospects are then able to view an ever changing advertisement sponsored upon the Defendant's web site along with other companies offering the same or similar services. Plaintiff alleges that these acts by the Defendants combine as a major market force *intervention* that is wrongful..."

6.

Second: 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 people, 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 business or profession. It's a thief stalking a store front like standing in front of a butcher shop with a sign reading: '*the meat is bad*', as all the other local butchers stand ready to receive his orders; in

this case it just happens to be a roofer and his wife relying upon their substantive rights and first party freedoms in commercial speech as they prospect. The publication of the 411 directory advertising at maps.google.com started shortly before Oct. 20, 2009. In this case, the comments are intentionally crafted to harm plaintiff's business without any other intent purported by the program other than Googles precise purpose in helping consumers *make more informed decisions about where to shop* and obvious profiteering. The announcements proclaim plaintiffs roofs are bad and assert the plaintiffs as incompetent liars; plaintiffs are forced to sue the defendants after six months of defendant ignoring plaintiffs' distress notices. The plaintiffs, alleged they are s*talked'* by malicious programming. In complaint, the plaintiffs rights of expression in commerce are defined as destroyed and their livelihoods devastated as the defendants became the deciding factor in plaintiffs bidding processes. —

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

The 411 directory advertising programs at issue, unfairly destroy a door-to-door salesman and a telemarketers prospecting efforts simply by the publics perceived adverse relationship, thereby destroying commerce and jobs. In the complaint, as alleged, defendants took away plaintiffs abilities and substantive business rights to prospect. Plaintiffs, at ¶ 28 in complaint alleged systemic concerns, not only to plaintiff's livelihood, but also in the public interest. Excerpted in part below. —

> "2.) Google is a global and powerful market influence. However, it's not proper to issue a fatal blow against small businesses ..."
>
> "3.) In the current business climate, it would not be in Googles best interest to be publicly known as a powerful market influence (bully) shutting down thousands of small businesses across America."
>
> "c) An online stalker seeking revenge rather than a true and just remedy on Google's platform without Google providing a method of resolution is guaranteed to be a small business tragedy."
>
> "5.) There should be a fair dispute/resolution process if Google intends to hold itself out as the deciding factor in a contractor's bid."
>
> "6.) Google forces businesses to post phony reviews to mitigate bad reviews, as very few people will 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."

Plaintiffs writings in evidence pointedly demonstrate plaintiffs belief that prospecting customers and sales

are systemic to most all small businesses and the U. S. economy. Plaintiffs argue now and alleged that it's especially true in plaintiff's business and that plaintiffs are ambushed and robbed by Googles publication. —

> (Am App; Ex."D" Complaint; ¶ 20) "The Defendant 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." ..."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"

7.

Whether a doctor, a contractor, or a restaurateur — *What chance does a business have, if a powerful market force like Google approaches each prospect telling them the meat is bad?* Standing in Americas door way to commerce with a nation wide 411 anonymous defamation directory and a policy of ignorance, if not presently, will in the very near future, systemically undermine governments efforts in creating jobs. This case puts forth the importance of commercial speech in U. S. commerce, and plaintiffs substantive rights to that '*commercial speech'.* The district court orders clearly err by not noticing the defendants alleged as publishers in a special relationship with others, and not noticing the diversity of the complaint and supporting evidence in alleging conspiracy. Instead the orders focused entirely upon an anonymous unqualified comment using the courts discretion to improperly determine the plaintiffs damages in complaint to be by an unknown third party not alleged within the complaint. The district court exercised a well conditioned bias for consumer protection in its' discretion and ordered against law in spite of numerous allegations against defendants as publishers in a conspiracy with special relationships. Beginning at the complaints first paragraph and thereafter plaintiffs alleged the defendant publishes and sponsors business reviews within each cause of action. —

> (Am App; Ex."D" Complaint; ¶ 1) "...the Defendant, Google, Inc., chose to sponsor consumer-generated content in conjunction with paid advertisements and on line business reviews in such a matter that it has established an endorser sponsor relationship with the public at large.
>
> (Am App; 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..." (Am App; Ex. "D" complaint ¶ 42) "Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal acts. Throughout the on line 'courtesy advertising' program distributed to the public by the Defendant, Google, Inc..."

8.

Plaintiff first addresses the defamatory comments as one of them seemed important to the district court; however, the case will turn on the conspiracy and publisher conduct as alleged. The defendants

alleged immunity in affirmative defenses, are mundane, none of us are liable for the acts of others in the absence of a special relationship. Plaintiff will point to the evidence entered in district court, which show three defamations not one, as cited within the orders, and expose extraordinary evidentiary and pleadings by date, and in order to show the malicious conduct that is evident in the courts record and the orders that allow defendants to perform as a *'state actor'* with state powers.

9.

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

10.

Plaintiffs complained to the defendants of being stalked, harassed, and that it is devastating to their livelihoods. After a couple notices to Google, beginning on Nov. 8th, (Amended Appeal; Ex."D" Cmpl. ¶ 24 & 26.) the plaintiffs were almost immediately defamed a second time. The defamation is dated, Dec. 16, 2009 (Am App; Ex. "C" pls. decl.; Ex. 'G' within the decl.), it used the same unqualified comment under a different anonymous identity at Yahoo's 411 directory ad program. 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 own acts of publishing and trafficking in defamation! Plaintiffs notices are very pointed but using the 411 directory of others in covering ones own tracks may be common between the advertising scams online. Plaintiffs tried several offered methods of remedy using Google's allegedly misrepresented abuse notification features. Plaintiffs wrote several times afterwards but was ignored by Google.— See: (Am App; Ex. "D" pls. compl.;¶'s 21-22). On April 22, 2010, plaintiffs wrote a final warning to defendants legal dept. in Mountain View, concerned their programs are illegal, illicit, and that they are being stalked with a vengeance perhaps against plaintiffs' telemarketing and word-of-mouth practices and warned of an impending suit if the listings were not removed. The allegations are pointed and against Google while assuring them plaintiff did not want litigation.

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

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

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

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

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

11.

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

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

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

12.

The words *sponsors and publishes* in the verb tense means the responsible party and author as alleged and intended according to these dictionaries:

> **sponsors** - "one who assumes responsibility for some other person or thing." — http://www.merriam-webster.com/dictionary
>
> **publishes** — West's Encyclopedia of American Law
> verb - verb introduction: -lished, -lish·ing, -lish·es.
>
> "1. To issue a publication. 2. To be the writer or author of published works or a work. 3. To prepare and issue (printed material) for public distribution or sale. 4.To bring to the public attention; announce."

13.

"Libel per se" is established by evidence and in allegations within the complaint; the defendant, in this case, made no defense as to stated facts. *Alabama Ride Co. v. Vance*, 235 Ala. 263, 178 So. 438

(1938); Johnson Publishing Co. v. Davis, 271 Ala. 474, 494-495, 124 So. 2d 441, 457- 458 (1960). The defendants, Google, Inc., provided no responsive affirmative defenses to the allegations within the complaint, but alleged plaintiff failed to state a proper claim. Plaintiff believe that to be untrue and filed for judgment on the pleadings. Defendants repeatedly alleged a statutory immunity without pleading responsively to the complaint. It is a defense but plaintiffs believed it requires a defendant to plead responsively to each precise allegation within the complaint and that the defendants had agreed orally in an extension of time to do just that, while changing their minds at the last moment. — *See:* Page 6; Amended Appeal; section III. - The District Court Procedurally Erred - Default. Therefore plaintiffs believe they may prevail in a prima-fascia showing of cause. See: Gomez v. Toledo, 446 U.S. 635, 640 (1980).

14.

Several years ago, internet defamation was ruled upon in the courts concerning two legal cases involving Prodigy and CompuServe. In the Prodigy case, Prodigy was sued for defamation based upon the statements made by a third party. In determining whether Prodigy was liable, a New York state judge was left to determine whether Prodigy was a "distributor" of information, such as a bookstore or library, or whether Prodigy was a "publisher" of information, such as a newspaper. As a distributor, Prodigy would not be liable for the statement. In contrast, if Prodigy was considered a publisher (with greater control over the information's content), Prodigy would be liable. In a decision that shocked most on-line service providers, the judge held that, as a result of Prodigy's well-publicized policies of monitoring and censoring its forums, Prodigy was a publisher and was potentially liable for the defaming statement. Although the case was settled by the parties and Prodigy moved for a withdrawal of the judge's decision, the judge refused. In this case, very similarly, Google had a stated mission, as an affirmative defense. 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 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 because of their present policies in reporting on business and professions. 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 choice profiteers. In the CompuServe case, a similar factual situation was encountered by a federal court. In that case the court found that CompuServe acted merely as a distributor, not a publisher, of information in its discussion groups, and therefore was not liable. It is important to note that CompuServe avoided liability because it did not know about the defaming statement, nor did it have any reason to know about the statement.

III. Standards For Review On Appeal

15.

The district court orders erroneously allow the defendants to rape, pillage, and plunder plaintiff's businesses and profession. The loss of jobs in America and defendants attack on free speech in commerce in favor of unqualified speech, arguably and easily outpaces governments ability to create new jobs while in a disaster economy. 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, but silent atrophy through the heart of American commerce, destroying thousands of jobs and discouraging countless others.

16.

In review on appeal, the court considers several factors when deciding whether to act upon a district court order. In cases involving substantive rights, "an appellate court has an obligation to make an independent examination of the whole record. This is particular in first amendment cases, to ensure that a judgment of the lower court does not constitute an intrusion upon the field of free expression. See: *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499, 104 S.Ct. 1949, 1985, 80

L.Ed.2d 502 (1984); *New York Times Co. v. Sullivan,* 376 U.S. 254, 285, 84 S.Ct. 710, 729, 11 L.Ed.2d 686 (1964). First, the appellate court reviews the trial court's judgment to determine whether the evidence in the record is strong enough to support the judgment and whether substantive rights may be at issue. The appellate court has the duty to weigh the evidence and determine whether the findings of the trial court were so against the weight of evidence, as to require a reversal. In the instant matter, plaintiffs 166 page "Amended Appeal" evidences that the district court orders are not supported by the evidence or pleadings and a plaintiff can prevail upon an established prima-facie case against a defendant by demonstrating that the evidence submitted in the district court was in fact sufficient to raise a presumption of fact or establish the fact in question in the absence of an affirmative defense and responsive pleading. A prima-facie case is a lawsuit that alleges facts and submits evidence sufficient to prove the alleged conduct supports any of the causes of action and thereby prevail. *See*: *Gomez v.Toledo*, 446 U.S. 635, 640 (1980). The Ninth District in those circumstances may reverse the judgment of the district court as the orders are shown to be erroneous and misguided by err within the amended appeal. Given the evidence on review the orders are unjust and therefore the orders of the district court must be reversed as the merits of the case and law are given the greater consideration. In this case the defendants motion for dismissal was based upon an alleged immunity. Plaintiffs argue that the immunity, for which dismissal was based, is mundane, and is qualified rather than absolute; that defendants are in violation of the statutory intent and the district court erred in its' discretion as a matter of law. Plaintiffs further argue that Google is required to presuppose the law to forfeiture of their rights under §230(c) immunity because of a combination of *scienter knowledge* of the illicit inducement from the public combined with an ingenious scheme for profiteering upon the inducement. Their programs misrepresent their intent by allowing unqualified speech against businesses which does not help people make more informed choices as defendants aver. The "Good Samaritan" statutory immunity rather than 'ignorance', upon substantial notice, is available to Google. Their program genius, legally abated their purported immunity as their program violates the statutory intent at §230(b) and the substantive rights of plaintiffs. Given the stalking nature of their programs, in consideration of the rights of others, Google by law must presuppose the law and chose responsible behavior once engaging the livelihood of others to avoid

serious substantive injuries and liability for damages. Furthermore, the Supreme Court in *Siegert 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)."

17.

Second, the court reviews the effects of judgment upon each of the parties and whether or not a party is irreparably harmed in the absence of a reversal. In this instance the plaintiffs are losing the greater portion of there livelihood for six months while being stalked and harassed by defendants malicious programming, for profit. As defined throughout the complaint and declaration, Google acted *in violation of the plaintiffs rights to free expression in commerce and privacy* as plaintiffs businesses are known within a community of friends, family, and neighbors. With Yahoo's technical insight excerpted in introduction and by plaintiffs having never advertised the plaintiffs easily deduced the defendants "public listings" are acquired from telephone records. —

> (Amended Appeal; Ex. "D"; ¶ 51): " Specifically, the plaintiff's sell residential roofing and generate daily business by way of telemarketing and canvassing door to door. Commercial advertising such as T.V., radio, and online ads are not in the plaintiff's business model." (Amended Appeal; Ex. "D"; P. 13; Lines 11-12 of Pls. Compl.) "Commercial advertising such as T.V., radio, and online ads are not and have never been in the business model."

After three attacks and the district courts dismissal of plaintiffs claims, plaintiffs are irreparably harmed by the courts decision. Plaintiffs are forced to non-publish their business telephones to avoid the defendants use of their business information to preserve their livelihoods. The harm is that many consumers upon not finding the plaintiff's businesses listed publicly, which has been a tradition for nearly a hundred years in phone directories, will cancel their contracts after the sale, or will not engage with plaintiffs' in bidding. Plaintiffs know this because of having tried door-to-door sales in areas outside their normal calling region. Plaintiffs concluded that losing 10 - 15% of their business is better than losing their home, livelihoods, and retirement to the defendants programs. 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' reviews of plaintiffs businesses were alleged, in Ninth District, by defendants in declaration only two months ago as long since removed from Google Places, averring the plaintiffs are therefore not harmed irreparably, plaintiffs lost a $21,780.00 project last week because Google continues publishing Google Maps. Google Maps continue to harm plaintiffs even though business phones at plaintiffs businesses are now unpublished!

18.

Third, the court may upon its' own motion examine the issue in the public interest as the acts of the defendants within the complaint are defined as substantive upon plaintiffs and U.S. commerce systemically. See: *Broadrick v. Oklahoma*, 413 U.S. 601, 612, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Defendants acts, as alleged and argued in district court, may in part be systemic cause of slow job growth and disincentive to new and existing business. Google's programs do in fact invade direct sales companies prospecting efforts, thereby interrupting impulse buying and discretionary spending.

IV. Memorandum Of Points And Authorities

Immunity v. substantive rights

19.

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 F.3d 124, 127 (2d Cir. 2005); *Tapia-Ortiz v. Doe*, 171 F.3d 150, 152 (2d Cir. 1999). "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of the facts alleged is *improbable" See*: *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not countenance...dismissals based on a judge's disbelief of a complaint's factual allegations"). Under Rule 12(b)(6), the critical inquiry with respect to each of plaintiffs' claims is whether the complaint contains "enough facts to state a claim to relief that is plausible on its face. *Also*; *Phillips v. County of Allegheny*, 515 F. 3d 224 - Court of Appeals, 3rd Circuit 2008 (quoting *Conley v. Gibson*, US 41 355 U.S. at 47, 78 S. Ct. 99 Supreme Court 1957). — The Supreme Court also reaffirmed that, *"On a Rule 12(b)(6) motion, the facts alleged must be taken as true and a complaint may not be dismissed merely because it appears Under Rule 12(b)(6), the critical inquiry with respect to each of plaintiffs' claims is whether the complaint contains "enough facts to state a claim to relief that is plausible on its face."* *Bell Atlantic. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In this case, the plaintiffs not only had a

complaint sufficient to pl[illegible] defendants on notice of the claim an[illegible]'s foundations, but also submitted evidence in support of the claims within hours of defendants call to plaintiff that they had changed their minds about answering and deceitfully file a motion for dismissal instead. The procedural malice is detailed within the "Amended Appeal" at page 6; section III. "The District Court Procedurally Erred - Default " As shown herein the claims are probable and supported by evidentiary; therefore, the plaintiffs complaint was improperly dismissed in district court. *"In determining* whether this standard has been met, the complaint is to be construed liberally, with "all factual allegations in the complaint [accepted] as true, and all reasonable inferences [drawn] in plaintiff's favor." *Hayden v. Paterson*, 594 F.3d 150, 160 (2d Cir.2010).

20.

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

As the plaintiffs notified the defendants several times, and as the false defamations went directly to the heart of plaintiffs ability to trade, there can also be no doubt that defendants had '*direct knowledge'* of

serious damage being caused to plaintiffs and plaintiff's businesses.

21.

Stalking is well defined within our society: (Encarta® World English Dictionary) —**Stalking**: *"the act or process of stealthily following or trying to approach somebody or something."* and harassment is **Harassment**: *"the crime of harassing somebody with persistent, inappropriate, and unwanted attention."* By definition the maps.google.com programs are published, in evidence, and owned by Google, Inc.. They are stealthy because they're without notice to plaintiffs, cause ambush and blindsiding, are persistently inappropriate, and as alleged unwanted. Defendant's programs fit perfectly the definition of stalking and harassment in english language, within the complaint, and as stated within §230(B). —

> (Ex."D" Complaint; ¶ 20) "The Defendant 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." ..."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" to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer." *Id.* §230(b)(5).

22.

The International definition of the word, "trafficking", as stated by United Nations protocol for defining the word trafficking, equates to whether the acts are by force or without permission. The 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 the defendants' acts are '*trafficking*' in unwanted business listings, unqualified accusations against businesses and professionals, stalking, harassment, and defamation.

23.

Immunity v. substantive rights: Plaintiffs herein argue the district courts' ruling is erred because in a proper ruling the strict *"plain text"* of a statute does not require such an adherence to the letter as would defeat an obvious legislative purpose. — *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783, 72 S.Ct. 1011, 1014, 96 L.Ed. 1294 (1952) ; *Jamison v. Encarnacion*, 281 U.S. 635, 640, 50 S.Ct. 440, 442, 74 L.Ed. 1082 (1930); *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 110-11, 111 S.Ct. 2166, 2170-71, 115 L.Ed.2d 96 (1991). While Congress acted to keep government regulation of the Internet to a

minimum, it also stated very clearly its' intent by finding it to be the policy of the United States, — "to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer." *Id.* §230(b)(5). It's very obvious that congress foresaw potential abuses of common law tort when granting immunity to ISPs from information provided by others. Congress also saw potential abuse of the immunity statute, as in this case, which is why congress qualified the immunity under §230(b)(5). Furthermore, in *United States v. Texas*, 507 U.S. 529, 113 S.Ct. 1631, 123 L.Ed.2d 245 (1993), the Supreme Court recognized that, *"In order to abrogate a common-law principle, the statute must "speak directly" to the question addressed by the common law."* The immunity clauses defendants cite are broad, vague, and unspecific in not speaking directly to a business or professions first amendment rights to commercial speech. Additionally, mapping of millions of businesses online with illicit public relationships in advertising and commentary are not specifically addressed in the immunity statute. Congress may not have foreseen precisely the genius of defendants programming to engage in advertising schemes to game the immunity statute for profit, but it did *qualify the immunity* in the event of it. Congress foresaw the possibility that an immune internet service provider might become partnered in public criminal activity and in enacting the immunity to help the Internet police itself, congress was specific in stating their intention *"to deter and punish trafficking in obscenity, stalking, and harassment by means of computer."*. Plaintiff argues in point that stalking and harassment are precisely definitive of defendants programs which encompass two known special relationships alleged as disingenuous; first between the defendant and the public in soliciting unqualified advertising excerpts and second, defendants relationship with paid advertisers in an illicit scheme localized to steal plaintiffs daily prospecting efforts. 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.

V. Other Interested Parties - Public Interest

24.

The courts look at whether a reversal will substantially injure the other parties interested in the proceeding and where the public interest might lie. Google filed a statement of interested parties indicating that no other interested parties exist; however, the plaintiffs believe this case is important in

bringing to focus online behavior of *major market forces* and their impact by *intervention* upon commerce. Plaintiffs argue that impulse buying and discretionary spending are systemic within the U.S. economy and that rights of free expression for salespeople in commerce enable the economy and are substantive. The courts are empowered to reverse the lower court by ¶'s 7-10 within the complaint. Plaintiffs argued in district court that defendants gaming is against long standing tradition in business and defendants are standing upon the public's substantive right of business. The ad scheme is illicit for profiteering. —

> **First**, by the taking of millions of business identities under the guise of public telephone listing information; thereby making the phone listings an unconscionable contract risk to plaintiffs by intervention.
>
> **Second**, by making and allowing irremovable false and unqualified complaints against plaintiffs, businesses, and professionals that ignore reasonable remedies and administrative processes.
>
> **Third**, by unconscionable profiteering on those complaints against businesses to enhance their ad offering to paid advertisers of like kind and local while trampling the substantive rights of the injured.
>
> **Fourth**, by ignoring injured businesses inquiries the acts become the defendants by *forfeiture* and *scienter knowledge* of causing harm in an unconscionable and unqualified manner unacceptable within our society.

25.

The public should realize the scheme of unqualified commentary against business is flawed constitutionally and threatens not only commerce systemically but also the justice in a 100 year old American tradition of amicable dispute resolution; it's an unfair business practice! On tradition *See*:

Griswold v. Connecticut, 381 US 479 - Supreme Court 1965. —

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

Defendants programs combined with a *'blind eyed policy'* allows a single unqualified comment with an unverified anonymous issue to devastate a million dollar proprietorship or professional practice that may have taken years to build. The defendants purport that their new programs currently list millions of businesses. If extrapolated out a few years, in anticipation of hundreds of online business review sites wanting to make a buck on anonymity, systemic is not a question of if, but when! The Internet is built in large part on trust; if that trust becomes adulterate, people, government, and businesses will cease to use the Internet; the courts must intervene, if for no other reason, simply to save Google from themselves. 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.

26.

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! Google misrepresented their program to the public, as cited at Ex. "D" ¶ 2 of the complaint, because the genius of their program is of no public value other than as a 411 directory. It is not a help to people in making more informed decisions by unqualified speech in business reviews; it only deceives and extrapolated into a grand scale, such as in this case, is harmful to business systemically and therefore harmful to the people.

> (Amended Appeal; Ex. "D";¶ 2) "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..."

The district court failed to notice plaintiffs' complaint as even against Google, Inc., as a publisher of the programs. Plaintiffs objected in district court by explaining it was a blindness or well conditioned bias towards consumer protection. This argument demonstrates that if Googles' policies are evenly dispersed across millions of listings as purported, this could very well be the biggest U.S. disaster in commerce ever contrived, and certainly the most devastating to commercial word-of-mouth speech. The Google Maps as they're presently designed allow for illegal and illicit conduct in cyber bullying, racial discrimination, billing disputes, doc poisoned me, official impropriety, police misconduct, and the meat is bad. Their programs, and others of that type, literally exterminate telemarketing and door-to-door sales. No one wants to be sold something they don't already want, sometimes even if they need it; yet everyone wants economic prosperity. *Everyone* should win in this instance, — that's American commerce!

VI. Googles Special Relationship
A Casual Connection - Active Inducement

27.

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

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

> (Amended Appeal; Ex. "D" Complaint; ¶ 42) "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."
> (Amended Appeal; Ex. "D" Complaint; ¶ 14) "Judicial notice is requested to the fact that people may have complaints against a professional or business that lack merit."

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

28.

Noticeably, Eric S., Googles' CEO, was just convicted personally, along with *Google France* for

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 Google's algorithms and prominent indexing of defamation from their home page against individuals. Google has clearly done it with intent, as Google is building a special relationship with the public against tradition, the interest of U. S. commerce, and justice.

29.

Plaintiffs refer to maps.google.com photos and Yahoo letter excepted above at ¶ 3 and at Ex. "C" "Declaration of Gary B." Exhibits "A, G, & J' within the declaration. At maps.google.com plaintiffs are harmed by *defendants collaborative efforts in 'pairing'* the plaintiffs business information and the end users '*locale*' by use of *a* combination of *'search* algorithms, collating algorithmic data bases, and protocol technology' to maximize advertising revenue. In other words, it's not a roofer from N.Y. advertising alongside the plaintiffs east bay area business at maps.google.com. It's Googles direct acts algorithmically which follow the plaintiffs daily sales activities door-to-door and give plaintiffs prospecting efforts to a roofer right down the street. The prospecting and sales leads are expensive, thousands of dollars weekly. The intentional *'pairing'* done by Google is for illicit profiteering in advertising with local roofers paying Google to feed on plaintiffs sales efforts; plaintiffs alleged that it's illegal from the beginning and an extremely unfair competition, it's a theft! Induced unqualified commentary and local pairing of the competition enhances the number of clicks Google paid advertisers (competitors) receive a hundred fold. A New York roofer would receive very few clicks, but the plaintiffs local competitor, within plaintiffs local area, will pay — big, because he's capturing plaintiffs prospects even without a extraneous comment or defamation. Googles programming assumption is that all businesses advertise; This is grossly mistaken and the genius of their programs destroy all who do not advertise. Google sells plaintiffs daily efforts without permission and wrongfully. As plaintiffs go door-to-door Google conspires in special relationships with paid advertisers and known contingencies, certain to occur, meaning complaints against businesses and professions that lack merit or are police power acts by Google invading privacy and free speech by stalking. —

> (Amended Appeal; Ex."D" Complaint; ¶ 20) "The Defendant 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." ..."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"

With defamation, the local competitors capture all plaintiffs efforts in sales and essentially put plaintiffs out of business, intentionally. Plaintiffs can no longer do business profitably because of Googles programs. In short, as the plaintiffs go door to door, so go the inquiries on Google's front page in search of plaintiffs business. In other words it's bad enough to be injured by defamation and unqualified commentary but is made much worse by Googles' mugging an injured plaintiff while they lay unconscious losing sales. Plaintiffs believe the employees and salespeople with Google are people aware of purported immunities; some of those people at Google and others working in programs like Google's may defame purposely for profiteering in commission ad sales behind anonymity. Plaintiffs do not believe consumers in any normal situation will hang on for six months to defame with precise timing as in this instance twice. They cover their tracks by abusing one anothers programs behind anonymity and spread defamation across the Internet for profit as the evidence does not lie. Plaintiffs believe Google, and no others like Google, should possess such police powers over plaintiff's business and financial well being. The alleged acts are unconscionable and unacceptable within an orderly business society. Defendants wrongfully capitalize on the plaintiffs daily efforts and injured plaintiffs monetarily and emotionally in the act of stealing. —

> (Amended Appeal; Ex. "D"; ¶17 Pls. Compl.; underlining highlights) "The Plaintiff alleges, the Defendant, 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..."

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

> (Amended Appeal; Ex. "D"; ¶17 Pls. Compl.) "The Defendant accomplishes this by 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."

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

> (Amended Appeal; Ex. "D"; ¶20 Pls. Compl.; underlining highlights) " 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.

30.

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

enabling the competitors to feed off plaintiffs injuries illicitly which enhances the offering to those 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 sales prospects and business. It's an unconscionable conspiracy of events, done intentionally only for Google's profiteering. Just as when plaintiffs catch someone in the phone room giving plaintiffs sales leads to their boy friend contractor after work. Googles acts are done stealthily as described in stalking, and with malice by publishing and allowing noticed unqualified speech and defamations, ones centric to the heart of a mans livelihood, and holding them as irremovable without court intervention as in this case.

31.

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

32.

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

> (Amended Appeal; Ex. 'E' Def. Motion To Dismiss; p. 2, lines 8 - 18): "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."

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. Defendants believed they could run over a roofer. 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. No one called with a roof leak to plaintiffs companies and the original perpetrator did not hang around to defame with extraordinary timing twice

afterwards, that had to be Google. 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..."

Emotional distress in this case is high and persistent, it's like being helpless, similar to being held at gun point, while Google acts in ignorance taking your money. As plaintiffs work they receive disparaging comments from prospects, sales canceled, and customers with roofs in progress would turn hostile, per plaintiffs declaration of damages. The plaintiffs sales abilities are consequently impaired as a result of unqualified speech at Google. The evidence in this case shows beyond doubt that the unqualified speech associated with plaintiffs business review on Google **intends** only harm by use of a computer and that **Google acts with intent to profit** from the injury and conspires in special relationships with discriminatory purpose as cited in *Ashcroft v. Iqbal*, 129; 1948 S. Ct. 1937 - Supreme Court 2009 the supreme court stated — *"Where the claim is invidious discrimination in contravention of the First and Fifth Amendments, our decisions make clear that the plaintiff must plead and prove that the defendant acted with discriminatory purpose."* *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 540-541, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (First Amendment); *Washington v. Davis*, 426 U.S. 229, 240, 96 S.Ct. 2040, 48 L. Ed. 2d 597 (1976). As so many read Googles reviews, emotional distress is heightened by plaintiffs losing most all bids and being mentally impaired in sales presentation each day. Impairment was natural for fear a prospect would discover the defamation. Google still has not removed the program listings of plaintiff's businesses; plaintiffs in reliance upon commercial speech, are presently losing their home, retirement, wealth, and employment because of Googles publication. The plaintiffs will need to sell their home and dismiss remaining employees in the absence of relief.

PART B - Violation Of Substantive Rights Unfair Practices

VII. District Court Order Is Against Ninth Circuit Opinion District Court Erred

33.

Plaintiffs presume It is illegal within U. S. advertising law and the business and professions code to knowingly review businesses falsely in a disorderly, uneven, harmful, and unprofessional manner. Plaintiffs complaint alleged unqualified complaints against plaintiff's businesses are left ignored even

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

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

First, the orders are erred because the Ninth Circuit opinion is based upon a web site lacking Googles market penetration in a 411 directory; Second, the district court erred by misapplying the Ninth Circuit opinion to this case because Googles tools are shown above as certainly not neutral. This is because open complaints on Google's listing of plaintiffs businesses are against the plaintiffs commerce and not against the other roofers who are paid advertisers on the same page. The paid advertisers ads when selected by a visitor lead directly to the paid advertisers web sites which completes Googles enhancement for the paid advertisers ad and adds value to Googles' advertising offer to them. In short it's an unfair competition because the plaintiffs customers are searching for the plaintiff when they go to Google Maps but are illicitly directed to paid advertisers. The allegations within the complaint are all true

and need not simply be construed as true. The Ninth Circuit may notice that Google Maps are not only, not neutral, they're open to Google in enhancing their sales, race discrimination, police stings by dirty cops, marital disputes, cyber bullying, grievances against telemarketers, a *'State actor'* as Google using the directories others to cover their own illicit behavior, and all sorts of other attacks behind anonymity. The programs are certainly not neutral when posted against a proprietors right to work, invade constitutional rights to commercial expression, and are irremovable. The district court orders giving licensure and condoning this type of theft by defendants is erred in discretion as the orders contradict substantive rights of proprietors, advertising law, constitutional rights, and the immunity statute itself that defendants rely upon. The district court orders are discussed in full detail with evidentiary within plaintiffs 166 page "Amended Appeal". On the face of the orders their misguided and erroneous because: First, the defendants are the ones alleged as wrongdoers, sponsors and publishers of the defamations not third parties; Second, the defendants are evidenced with special relationships as extrapolated from the evidence in the introduction above, and not immune for their own acts, as argued and alleged. —

> (Amended Appeal; Ex. "D"; ¶1 Pls. Compl.) "The Plaintiff alleges that the Defendant, Google, Inc., chose to sponsor consumer-generated content in conjunction with paid advertisements and on line business reviews in such a matter that it has established an endorser sponsor relationship with the public at large." (Amended Appeal; Ex. "D" Complaint; ¶ 42) " Plaintiff further alleges that the Defendants, Google, Inc., 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."

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

> "The Plaintiff's fears are the uncontrollable nature of Defendant's programming..." "... in the United States we have laws and regulations whereby it's citizens and enterprises, must presuppose a respect for the law 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."

34.

The district court err in general was in not recognizing the diversity, essence, and basis for the complaint. The court instead focused upon a single paragraph, one comment, and labeled it third party merely because it was anonymous, why not Google as alleged? There is no mention of third parties within the complaint and Google did not deny being that party.

> (Amended Appeal; Ex. "D"; ¶18 Pls. Compl.) "...Said public postings are then easily referenced by the general public by way of a home page search on the Defendant's search engine front page." (Amended Appeal; Ex. "D"; ¶17 Pls. Compl.; underlining highlights) "The Plaintiff alleges, the Defendant, 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...Plaintiff alleges that these acts by the Defendants combine as a major market force *intervention* that is wrongful..."

35.

In a fair view with the light most favorable towards plaintiffs citing *NL Indus., Inc. v. Kaplan*, 792 F. 2d 896, 898 and *Anderson v. Clow* , 89 F.3d 1399,1403 in the absence of a meaningful or responsive affirmative defense by defendants, there were no material facts at issue in the case. See: *Gomez v.Toledo*, 446 U.S. 635, 640 (1980). Defendants did not dispute being accused of the wrong doer in anonymity. Plaintiffs argue they were entitled by law to judgment on the pleadings in district court and believe the Ninth Circuit should reverse. For further discussion on the district court errors please see the "Amended Appeal", page restraints prohibit the duplication of the errors in their entirety herein.

VIII. Constitutionality - District Court Erred
§230(c)(e) immunity is barred in collaborative cases.

36.

Anonymous speech, like speech from identifiable sources, does not have absolute protection. As is specific to this case, a party may not use the First Amendment to trammel on legally recognized rights of others. *See:* *In re Capital Cities/ABC, Inc.*, 918 F.2d 140, 143 (11th Cir.1990). In *Broadrick v. Oklahoma*, 413 U.S. 601, 612, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) the Supreme Court stated —

> *"Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."*

In this instant where Google policies have opted for irremovable defamations against businesses their program at maps.google.com does trample the substantive free commercial speech of others. Plaintiffs believe the statute could be read as constitutional under §230(b) in this matter. If the district court orders are correct and the constitutional rights of plaintiffs are ruled unprotected by §230(b),

the entire statute would become unconstitutional, against commerce, and the greater public interest. The validity of competing First Amendment rights should be gauged by balancing the various competing interests, with due regard paid to identifiable speech in U.S. commerce v. unqualified anonymous speech against businesses and professions. It's even more tilted to identifiable speech in this instance as plaintiffs were uniformed of being a target because Google's acts are without permission or notification to plaintiffs. As the defendant's programming obviously has the likelihood to entice imminent lawless actions, the plaintiffs business interest and livelihood should prevail in court as should the business and professional interest of others in the same instance. The district court clearly failed, in reviewing standards for protected speech, therefore the orders should be reversed and plaintiffs should have been granted judgment on the pleadings in the absence of responsive pleadings on the merits.

37.

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

47 U.S.C. § 230 (b) **Policy:**

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

38.

Moreover, in support of reversal for a case such as this, where substantive rights are paramount, the separability of constitutional and unconstitutional applications of statutes may not apply where their effect is to leave standing a statute patently capable of many unconstitutional applications, threatening those substantive rights of the plaintiffs to word-of-mouth commercial speech and expression in sales. In a Supreme Court ruling for *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994) the high court determined that the weight of a statute construed as constitutional will prevail over literal and material clashes of lesser importance. In the instant matter, plaintiffs substantive rights are systemic and far outweigh the rights of unqualified speech and the defendants as profiteers. Therefore, divisibility of the 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 complaint as true, and draws all reasonable inferences to plaintiff's favor. See: *Monahan v. Dorchester*

Counseling Ctr., Inc., 961 F.2d 987, 988 (1st Cir.1992).

39.

Plaintiffs argue that anonymity combined with Google Maps' *'blind eye'* stalking of millions of small businesses and professionals amounts to *'trafficking'*. It is true in this case because defendants admitted in affirmative defense to listing millions of business identities and plaintiff's without permission; defendants then, intentionally turn a blind eye towards injuries they know are going to happen, as supported by evidence, even when notified. The collaborative acts and policy decisions discussed at, section VI, "Googles Special Relationship" above, were conspired by the defendants while in possession of *'scienter knowledge'* of the detriments and imminent illicit acts that would occur and damage those businesses listed.

40.

In this instance the plaintiffs are losing the greater portion of there livelihood while being stalked and harassed by defendants malicious programming for profits *in violation of the plaintiffs rights to free expression in commerce and privacy as plaintiffs business is known within the community.* Plaintiffs believe on first notice the defendant had a duty to act: First, especially in light of the "Good Samaritan" clause within the statute which is specifically intended for Google to be able to police abusive and illegal content from their web site upon notification; Second, Google's policy choices for profiteering against business interest and goodwill in a stalking and harassing manner under the law causes forfeiture of the qualified immunity because of being against the intent of the statute affording the immunity and because of the illicit profiteering and unfair business practices.

IX. Unfair Business Practices - Defamatory Publication For Profiteering

41.

The complaint, evidence, and declarations cited herein demonstrate clearly the four elements of a defamation. Those elements are defined as — "Any statement, whether written or oral, that injures a third party's reputation. See: *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993). First, the defamations of plaintiff's businesses are certain statements of unqualified fact rather than opinion satisfying the first of four elements generally required in a prima facie case of defamation which is — a false statement purporting to be fact concerning another person or entity. Second — publication or communication of that statement to a third person. This is established by plaintiffs Declaration of Damages and evidence excerpted in introduction above. Third — fault on the part of the person making the statement amounting to intent or at

least negligence. Plaintiffs believe the defendants, at trial were without immunity and affirmative defenses, and that they are required upon notice from plaintiffs to remove the illegal postings because the postings obviously strike to the heart of plaintiffs trade, as the defendant became a 'state actor'. *See:* Stanley v. Goodwin, 475 F. Supp. 2d 1029 - Dist. Court, D. Hawaii 2006. Chapman v. The Higbee Co., 319 F.3d 825, 833 (6th Cir.2003); Googles conduct as '*state actor*' is evidenced by Google's direct knowledge upon several notifications by plaintiffs of damage; Google performed as a '*state actor*' disclosing contractor complaints and profiteering from the complaints without proper standing in the community. Fourth — some harm caused to the person or entity who is the subject of the statement. The plaintiffs filed a "Declaration of Damages" in the district court. *See:* Am. Appeal, Exhibit "F".

X. Emotional Distress

42.

The court considers several factors when deciding whether a complaint may prevail on a cause of emotional distress. In this case, if any party should be expert on defamation and its' effect on others it should be the defendants at Google, after all for decades now, they have had the issue before them daily. As cited in memorandum, "...they cause damage to an individual's reputation that cannot easily be repaired by counter speech, however persuasive or effective." and "...so long as the utterance was intended to inflict emotional distress, was outrageous, and does in fact inflict serious emotional distress, it is of no constitutional import whether the statement was a fact or an opinion, or whether it was true or false. It is the intent to cause injury that is the gravamen of the tort, and the State's interest in preventing emotional harm simply outweighs whatever interest a speaker may have in speech of this type." Therefore it should not be surprising to the defendants or the court that even a 42 year veteran at door-to-door sales had trouble selling in the face of Google's business review and that Google knew or should have known, especially in light of so many notices, the stress they are imposing upon plaintiffs livelihoods, especially in light of so many notices. It was the gravest of policy decision that Google executives had to make, and should have, in plaintiffs opinion, reversed in light of the guilty knowledge of having so many complaints daily from businesses and professions through their abuse reporting on the program that they can not even communicate with plaintiffs. Plaintiffs believe it is a misguided case of *executive policy* at Google in abusing the immunity statute in favor of profiteering, the essence *per se* for obscene executive pay upwards of $20,000,000 per year. The policy once passed through to their

employees, charged employees with the responsibility to escape culpability resulting in the egregious and outrageous conduct exhibited throughout district court proceedings. This case exhibits Googles slight of hand even now before the Ninth District with deceit. As directed by their superiors, defense informed the appellant court that defamations of plaintiffs businesses were removed and therefore plaintiffs are not irreparably harmed while they clearly are not. The intentional infliction of emotional distress perhaps even systemic to the economy is inflicted by Googles deceitful behavior, massive market penetration, popularity, and cavalier approach to small business.

43.

On the standards for cause in *'emotional distress'* claims there are four elements: i) extreme and outrageous conduct; ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; iii) a casual connection between the conduct and injury; and iv) severe emotional distress. *Howell v. New York Post. Co., Inc.*, 81 N.Y.2d 115, 121 (1993). The seventh circuit court clarified in *United States v. Balistrieri,* 981 F.2d 916, 932 (7th Cir.1992), that an injured parties testimony may, by itself or in conjunction with the circumstances of a given case, be sufficient to establish emotional distress without more. "[I]n determining whether the evidence of emotional distress is sufficient to support an award of damages, we must look at both the direct evidence of emotional distress and the circumstances of the act that allegedly caused the distress...." *Alston v. King*, 231 F. 3d 383 P. 389 - Court of Appeals, 7th Circuit 2000. Plaintiffs believe the emotional distress factors cited below individually are supported by evidentiary showing the defendant acted deliberately and outrageously against plaintiffs in a deliberate and executive capacity with extreme recklessness. —

1): extreme and outrageous conduct: defamation — *"that is, with knowledge that it was false or with reckless disregard of whether it was false or not." St. Amant v. Thompson,* 390 U. S. 727, 731 (1968), *Id.,* at 279-280. As the defamations are unqualified, Google exhibited complete reckless disregard in not removing them as unqualified, whether true or false, in light of direct knowledge from plaintiffs as to their falsity and resulting damages. The results of Google's extreme recklessness thereafter became malicious in covering up their indiscretions with further abusive commentary within the business listing itself and thereafter with counsel intentionally attempting to silence the plaintiffs followed by procedural malice.

2): intent to cause, or disregard of a substantial probability of causing, severe emotional distress: Intent is discussed above in detail to illustrate Google's special relationships with end users in known

scienter contingencies based upon the inevitability of complaints against business, along with a further special relationship with paid advertisers for illicit profiteering. Plaintiffs detailed authorities for *"scienter knowledge", "trafficking", "stalking", "harassment" and exhibited the evidence to support the allegations within the complaint.* There should be no question that through Google policies, choices, and conduct Google executives inflicted emotional distress and monetary damages towards plaintiffs in a vicarious fashion through the rank and file granting permission for employees at Google to bully and cheat. The collaborative acts and policy decisions discussed above are intentionally crafted in policy and programming by defendants while in possession of the '*scienter knowledge*' of imminent detriments to plaintiffs businesses and those not present would suffer. Defendants, in this case, disregarded six months of distress notices sent to them.

3): a casual connection between the conduct and injury: Plaintiffs further detailed the casual connection the defendants had using evidence submitted in the district court. The evidence is clear that the relationships Google maintains are far greater than casual. The conduct resulting from Googles programs and policies destroy careers, discourage employment, and deprived, as in this case, plaintiffs of their substantive rights to commercial speech and monies as Google engaged plaintiffs businesses and bidding of jobs intentionally and with a stated mission executed in an unfair and uneven manner.

4): severe emotional distress: Defendants disregarded all the distress notices sent to them over a six month period. It should be obvious to any reasonable person that the defamations struck through the heart of plaintiffs livelihood as with a sign reading *"the meat is bad".* Had plaintiffs done nothing plaintiffs would have lost their livelihood, home, retirement, and wealth to Google's program. The thought of losing everything at plaintiffs ages is extreme emotional distress, as evidenced in complaint, the plaintiffs declaration of damages, and below with only a few excerpts plaintiffs sent to Google. —

> (Amended Appeal; "Ex. "D"; Pls. Compl. ¶32 - e-mail from wife): "... ready to leave "Dodge". Can we PLEASE just move ?! I'm so ready to get out of this rat race. Let's sell the house, move to the midwest , I'll get a job and you can do your hobbies. I'm really serious Gene. I'm done working my @#$@$ off and having so much stress. I feel as tho I'm dying here."
>
> (Amended Appeal; "Ex. "D"; Pls. Compl. ¶28) "On April 22, 2010 the Plaintiff was emotionally disturbed by the Defendants' ignorance of the Plaintiff..."..."This week alone she has a $15,000, a $13,000 & two 9,000 deals on the table not counting others incoming throughout the week."..." The defamatory commit on your web site is costing Holli as much as thirty thousand weekly in sales." ("Ex. "D"; Pls. Compl. ¶28) "...it could be an online stalker with a vengeance perhaps against a proprietor or a proprietors telemarketing practice." Also see argument memorandum of understanding within the plaintiffs "Amended Appeal".

> (Amended Appeal; "Ex. "D"; Pls. Compl. ¶28): "2.) Google is a global and powerful market influence. However, it's not proper to issue a fatal blow against small businesses ..." "3.) In the current business climate, it would not be in Googles best interest to be publicly known as a powerful market influence (bully) shutting down thousands of small businesses across America." "c) An online stalker seeking revenge rather than a true and just remedy on Google's platform without Google providing a method of resolution is guaranteed to be a small business tragedy." "6.) Google forces businesses to post phony reviews to mitigate bad reviews, as very few people will 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."

44.

The court could properly remand to a jury for plaintiffs cause of action for intentional infliction of emotional distress because Googles' "good motives and belief in truth, do not negate an inference of malice..." *Johnson Publishing Co. v. Davis*, 271 Ala., at 495, 124 So. 2d, at 458. Additionally, and as cited in the supreme court defendant, Googles' intent after sufficient notification are '*gravamen*' rather than the merit of the comment itself: *"...so long as the utterance was intended to inflict emotional distress, was outrageous, and does in fact inflict serious emotional distress, it is of no constitutional import whether the statement was a fact or an opinion, or whether it was true or false. It is the intent to cause injury that is the gravamen of the tort, and the State's interest in preventing emotional harm simply outweighs whatever interest a speaker may have in speech of this type."* *Hustler Magazine, Inc. v. Falwell*; 485 US 46, 108 S. Ct. 876, 99 L. Ed. 2d 41 Supreme Court, 1988.

XI Punitive damages

45.

The interest of the State and perhaps justice, is and should be, to *close potential gateways of prosecutorial* misconduct and official impropriety as evidenced herein. This may be accomplished by the courts awarding damages accompanied by punitive judgment. Repeating the above authority Googles' "good motives and belief in truth, do not negate an inference of malice, but are relevant only in mitigation of punitive damages if the jury chooses to accord them weight. *See: Johnson Publishing Co. v. Davis*, 271 Ala., at 495, 124 So. 2d, at 458. As cited just above, Googles' intent upon sufficient notification are gravamen rather than the merit of the comment itself to wit. —

> "...in the view of the 53*53 Court of Appeals, so long as the utterance was intended to inflict emotional distress, was outrageous, and did in fact inflict serious emotional distress, it is of no constitutional import whether the statement was a fact or an opinion, or whether it was true or false. It is the intent to cause injury that is the gravamen of the tort, and the State's interest in preventing emotional harm simply outweighs whatever interest a speaker may have in speech of this type."

46.

A punitive judgment may be deemed proper by the court in this case as plaintiffs have exhibited

Googles' genius in special relationships for profiteering illicitly and malice — *Supra*. The threatening to investigate plaintiffs on line activities (writings), and procedural malice as described within the "Amended Appeal" at Page 6, ¶'s 7 through 17; § III. The District Court Procedurally Erred - Default, were completely uncalled for as are the continuance of the defamations at issue and in evidence, cited as *'extraordinary events'* and uncontroverted in the introduction above. The court may, as did the plaintiffs, deem Google, *"...a private actor a 'state actor' if he exercises powers that are traditionally reserved for the State."* Chapman v. The Higbee Co., 319 F.3d 825, 833 (6th Cir.2003); Stanley v. Goodwin, 475 F. Supp. 2d 1029 - Dist. Court, D. Hawaii 2006. "States undeniably have an interest in affording individuals some measure of protection from unwarranted defamatory attacks. False *statements of fact are particularly valueless;... they cause damage to an individual's reputation that cannot easily be repaired by counter speech, however persuasive or effective."* Herbert v. Lando, 441 U.S. 153, 203, 99 S.Ct. 1635, 60 L.Ed.2d 115 (1979) ; Celle v. Filipino Reporter Enterprises Inc., 209 F. 3d 163, 171 Court of Appeals, 2nd Circuit 2000. Combining the authorities shown above with the *extraordinary events,* facts, and evidence detailed in introduction, one may easily deduce the defendants as a *'state actor'.* If held to that standard by the court, Google becomes liable for all plaintiffs causes of damage punitively. The facts and evidence are easiest for plaintiffs to grasp because plaintiffs know that all three anonymous defamations are complete fabrications, no one contacted plaintiffs about a roofing problem. Plaintiffs therefore alleged all acts within the complaint against Google, not any third parties. Googles conduct as a 'state actor' explains the two *'extraordinary events'*, plaintiff refers to as nearly '*abnormal'* and their malicious conduct afterwards procedurally because a consumer would not have the abilities to execute such remarkable timing to immediately follow plaintiffs written notices to Google and would not hang around for six months to do so. As is alleged and argued above, Google's genius in law and programming is used illicitly by perhaps their legal dept. and others used by Google in monitoring on line abuse. This illustrates how illicit profiteering within and behind anonymity in Google Maps may violate substantive rights of the peoples and plaintiffs by Googles acts as 'state actor' in official impropriety. If this case does involve third party or official impropriety stemming from plaintiffs' local (County) as noticed to Google (excerpted below) or a *quasi* state function, plaintiffs argue that Google would have needed to included that defense within an answer in district court, but they did not. —

> ("Amended Appeal; Ex. "C" at Ex."D" within the "Declaration of Gary B.") "I live at 101 Auld Court, in Fairfield, Ca. and believe this posting came from this neighborhood within a few blocks of my home or even next door. I also believe the comment comes from a personal neighborhood dispute, over a lot split and housing development, not a Cal Bay Construction customer.

Literally speaking, Google violates the statutory intent of the very immunity they seek, because behind anonymity one will not know that it is not Google who discriminates racially, culturally, or ethnically, stalks, harasses, and violates the substantive rights of businesses and professions in all sorts of unconscionable manners of conduct as again noticed by the Florida state supreme court. *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.

The plaintiffs therefore believe a punitive award for damages in this case proper to '*close potential gateways of prosecutorial* misconduct, official impropriety, and public abuses of all sorts towards businesses and professionals, as argued and evidenced herein.

XII. Conclusion

47.

Plaintiffs believe judgment should be granted favoring plaintiffs based: First, and most importantly upon the merits of the case and evidence. Plaintiffs alleged supported by the evidence in district court a fault on Googles part as the party making the statements amounting to intent or at least negligence as cited in Siegert 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)."

Second: Plaintiffs should prevail on the law, as the defendants, as an intelligent business, should be as are plaintiffs, required to presuppose the law argued by plaintiffs to forfeiture of certain rights in qualified immunity. Defendants failed to answer the complaint responsively by responsive pleading in affirmative defenses and were procedurally in default per oral agreement. In the absence of immunity the defendants were required upon substantive notice from plaintiffs to remove the illegal postings because the postings

obviously strike to the heart of plaintiffs livelihood, as Google's processes hold themselves out as a deciding factor in plaintiffs bidding practices with a mission to help people make more informed decisions, a paramount engagement of ones livelihood. Having therefore become a *'state actor'* defendants should be liable for all causes of action within the complaint under negligence, misrepresentation, unfair business practices, (third party) breach of contract, and intentional infliction of emotional distress. The allegations in district court were that Google published the defamatory business reviews and the evidence was so strong that the burden shifted from plaintiffs to the defendants. Defendants thereafter, only repeated a mundane statute of immunity without any responsive affirmative defenses. Plaintiffs were therefore entitled to judgment on the pleadings. *See*: Gomez v. Toledo, 446 U.S. 635, 640 (1980).

Accordingly herein, the Ninth District is urged to acknowledge that it is the unfair business practices and Google's program profiteering methods that are alleged as illegal, illicit, and unfairly cause plaintiffs harm economically and emotionally. The complaint was not a defamation suit; upon recognition of that diversity and distinct nature of the complaint, the Ninth Circuit Court could reverse the orders of the district court as the verdict does unfairly deny plaintiffs important substantive rights and causes an unjust result. The actual and statutory damages declared were $575,000.00 dollars, and ongoing. The court could further award intentional infliction of emotional distress and punitive damages of to deter ISP abuse of law in profiteering upon the rights of plaintiff's in small business. ORDERS TO VACATE upon reversal:

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

Respectfully submitted before the Ninth Circuit Court Of Appeals,

Gary Black, individually plaintiff — Dated: January 3, 2011

Holli Beam Black, individually plaintiff — Dated: January 3, 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
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Date Served: January 3, 2011

Signature: Holli Beam Black

Signature: Gary Black