

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CIVIL APPEALS DOCKETING STATEMENT

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COURT OF APPEALS DOCKET # 10-16992

TITLE IN FULL: GARY BLACK, INDIVIDUALLY D/B/A CALBAY CONSTRUCTION AND, HOLLI BEAM-BLACK, INDIVIDUALLY D/B/A CASTLE ROOFING PLAINTIFFS, VS. GOOGLE, INCORPORATED, ET AL; AND DOES 1-100, INCLUSIVE DEFENDANTS BLACK V. GOOGLE		DISTRICT: NORTHERN CA.	JUDGE: CLAUDIA WILKEN
DATE COMPLAINT FILED: MAY 28, 2010		DISTRICT COURT DOCKET NUMBER: 10-15 10-02381 CW	
DATE NOTICE OF APPEAL FILED: SEPTEMBER 10, 2010		IS THIS A CROSS-APPEAL? YES NO <input checked="" type="checkbox"/>	
HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> IF YES, STATE WHEN:		CASE NAME: GARY BLACK, INDIVIDUALLY D/B/A CALBAY CONSTRUCTION AND HOLLI BEAM-BLACK, INDIVIDUALLY, D/B/A CASTLE ROOFING CITATION: VS. GOOGLE, INC. ET AL. DOCKET NUMBER: 10-15 10-02381 CW	
CHECK AS MANY AS APPLY			
JURISDICTION		DISTRICT COURT DISPOSITION	
1. FEDERAL	2. APPELLATE	1. STAGE OF PROCEEDINGS	2. TYPE OF JUDGMENT/ ORDER APPEALED
() FEDERAL QUESTION () DIVERSITY () OTHER (SPECIFY):	(X) FINAL DECISION OF DISTRICT COURT () INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT () INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY) () OTHER (SPECIFY)	() PRE-TRIAL () DURING TRIAL (X) AFTER TRIAL	() DEFAULT JUDGMENT (X) JUDGMENT/COURT DECISION () DISMISSAL/JURISDICTION () JUDGMENT/JURY VERDICT () DISMISSAL/MERITS () SUMMARY JUDGMENT () JUDGMENT NOV () DECLARATORY JUDGMENT () DIRECTED VERDICT () OTHER (SPECIFY)
		3. RELIEF	
		(X) DAMAGES: AMOUNT SOUGHT \$20,525,000.00 AMOUNT GRANTED: \$0 () DENIED \$ (X) INJUNCTIONS () PRELIMINARY OR () PERMANENT () GRANTED OR (X) DENIED	

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

ATTACHED WITHIN MOTION TO STAY A COURTS ORDER

ISSUES PROPOSED TO BE RAISED ON APPEAL:

ALL ISSUES AS OUTLINED IN THE
ATTACHED WITHIN MOTION TO STAY.

GARY BLACK,
HOLLI BLACK
101 Auld Court
Green Valley Falls, California 94534
Telephone (707) 373-2960

Plaintiffs are acting:
"In Propria Persona"

UNITED STATES COURT OF APPEALS

for the

NINTH DISTRICT

GARY BLACK, individually d/b/a Cal Bay
Construction and,

HOLLI BEAM-BLACK, individually d/b/a Castle
Roofing

Plaintiffs,

vs.

GOOGLE, INCORPORATED et al;
and Does 1 through 100 inclusive, Defendants.

District Court

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

Motion To Stay:

THE COURTS' ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
AND DENYING AS MOOT PLAINTIFFS'
MOTION FOR JUDGMENT ON THE
PLEADINGS

Notice Of Motion

To All Parties And Their Attorneys Of Record:

PLEASE TAKE NOTICE that on September 13, 2010, before the Ninth District United States
Court of Appeals the Plaintiffs have put on file with the Clerk of the Court the following:

**Motion To Stay: THE COURTS' ORDER GRANTING DEFENDANTS' MOTION TO DISMISS
AND DENYING AS MOOT PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS**

This motion in it's initial form was filed with the District Court on September 10, 2010 pursuant to
Federal Rule; FRAP 8(a)(1)(A); STAY OR INJUNCTION PENDING APPEAL. The rule cites as follows: (a)
Motion for Stay. (1) Initial Motion in the District Court. A party must ordinarily move first in the
district court for the following relief: (A) a stay of the judgment or order of a district court pending

1 appeal. This motion is based upon this filing, the above notice of motion, the motion itself, the
2 foregoing arguments, all pleadings on file with the clerk for this action, and all other filings by the
3 parties on file with the District Court Clerk. The foregoing does not rely upon new evidence. The
4 instant matter was dismissed within 78 days by the lower Court without a review of the evidence
5 submitted by the Plaintiffs and without a hearing. The Court either did not believe the Plaintiffs case
6 which was a matter of Constitutional rights or the Court was inattentive and erred. The Plaintiffs hereby
7 are requesting a stay of the District Courts order and a re-hearing of the case or review of the evidence
8 before the United States Court of Appeals for the Ninth District. To wit are the motion and grounds:

9 Motion

10 The Plaintiffs, acting *pro se*, have great indifference with the Courts Order dated August 13, 2010. The
11 Plaintiffs hereby motion the District Court and Court of Appeals to review the specificity below, stay
12 the District Courts order, and reverse the District Courts order in favor of the Plaintiffs. In short the
13 Plaintiffs believe the Courts' Order weighs too heavily against law, is biased, and against the
14 constitutional rights of the Plaintiffs. Plaintiffs motion the Appellant Court and the District Court to
15 'stay' the District Courts Order in the above entitled case during these appeal processes to protect the
16 rights of Plaintiffs and others during the appeal proceedings. Plaintiffs believe they should have
17 prevailed; a closer reading of the matter would have granted the Plaintiff Judgment On The Pleadings
18 and read in similarity to the following proposed verdict:

19 Proposed Verdict

20 In a fair view of the matter, it's apparent that 1st Amendment (anonymity) and 5th Amendment (Due-Process)
21 rights are opposed within Googles business review process. Said opposition imposes an inherent responsibility
22 upon Google to presuppose the laws of responsible behavior when advised of wrongful acts associated with their
23 program. Entities such as Google, possessing a large market force penetration should not attempt profits from
24 purposely constructing programs with opposing substantive rights of the people.

25 Defendant's admissions of having no control over their business review /courtesy advertising program
26 [ie: "...an impossible-to-fulfill duty..."] clearly reveals proof that the Defendants manner of conduct and
27 ethics breach that of an orderly business society. Once made aware of misconduct or illegal acts, even
28 banks processing billions of transactions daily, can not avoid liability. While the Internet is still immature
it should be recognized that profiteering on the rights of others imposes great responsibility upon the
profiteer.

Hughes v. Pair, 46 Cal. 4th 1035, 1050 (2009) Conduct is considered "outrageous" when it is "so extreme as to
exceed all bounds of that usually tolerated in a civilized community." Id. at 1050-51 (quotations and citations
omitted).

Judgment is granted to Plaintiffs based upon the Plaintiffs' "Motion For Judgment On The Pleadings", arguments, and Plaintiffs' declarations in the amount of \$20,575,000.00.

Introduction

1.

On or about October 20, 2009 an anonymous posting appeared on Google defaming the Plaintiffs roofing businesses. Google had just recently launched a program purportedly "*... to help people make more informed decisions about where to go, from restaurants and hotels to dry cleaners and bike shops...*" (Def. Motion To Dismiss p. 2, lines 8 - 18). The Plaintiffs became almost immediately aware of the defamatory posting as the Plaintiff is a door-to-door salesman and subject to great scrutiny by consumers when canvassing neighborhoods for roofing sales. The on line postings associated with the Plaintiffs business information were professionally crafted, negative, and purposely intended to deprive the Plaintiff of his work and reputation as the posting was very accessible to the public from the front page of Google.com by searching the Plaintiffs business name. By the search engine giants market penetration the Plaintiff discovered he was actually being followed on a daily basis as he went to work every day door-to-door (¶ 17 Pl. Compl.). Plaintiffs sales prospects turned away, roofing contracts began canceling, and consumers with roofs in progress became vicious and difficult (Pl. Decl. of Damages). Plaintiffs sales abilities were subsequently impaired and Plaintiffs were emotionally distressed; not because of the comments but because Google ignored and never responded to the Plaintiffs inquiries for resolution. On May 28, 2010 the Plaintiff filed the instant action against Google for denial of due process, unfair business practices, violation of law, emotional distress, etc. and within each of the causes of action (¶s 41 & 42 1st Cause of Action & incorporated into each following Causes of Action) the Plaintiff 'plainly' stated that Google not only sponsors but also publishes online business reviews to quote as follows:

"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..."

"42.) Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal acts..."

Google thereafter removed the comments. On August 13, 2010 only seventy-eight (78) days later the District Court Ordered the Defendant Google not liable for Plaintiffs damages pursuant to 47 U.S.C. §230(c) with prejudice. Plaintiff now expects another posting on Google.com will leave Plaintiffs without work or recourse. Plaintiffs complaint taken as a whole, consist of two unrelated causes. One of

1 anonymity within Googles business review process v. a proprietors rights to due process of law because
2 of the Defendants negligence and ignoring of Plaintiffs pleas for relief; the other is allegation of unfair
3 competition and theft of the proprietors business identity, sales leads, and prospects for purposes of
4 selling advertising to Plaintiffs competition for profit and stalking.

5 2.

6 The Plaintiff filed with the District Court a declaration on July 2, 2010 explaining that the Plaintiff
7 began writing publicly on July 4, 2009 approximately three and a half months prior to the anonymous
8 postings on Google's business review of Plaintiffs business. The evidence shows proof beyond
9 reasonable doubt that Google rather than a third party engaged the Plaintiffs business practices and
10 posted the anonymous defamations against the Plaintiffs business which purposely intended to deprive
11 the Plaintiff of his work and reputation. The Plaintiffs therefore did not seek damages from a non
12 existent third party because the evidence shows Google is behind the anonymity and responsible for the
13 professional crafting of the defamations against the Plaintiffs businesses. Details of - Google Appears
14 To Be Responsible - Not A Third Party are at Page 7 below under: A Fair Weighing Of The Evidence.

15 3.

16 To fully understand the case requires examination of Plaintiffs recent activities and examination of the
17 evidentiary, which why the Plaintiff filed a declaration following the filing of the complaint. Plaintiffs
18 and Defendants have examined the evidentiary, however the District Court failed to acknowledge or
19 address the matter within the order. Exhibit 'T' attached to the Plaintiffs' declaration and filed on July
20 2, 2010 is a work of suggestion toward the growing U.S. unemployment rate; a jobs program creating
21 millions of jobs without use of tax dollars. Plaintiff shared the work with 100 or so U. S. Senators. It's
22 entitled "Politics Against A Sea Of Social Economic Change" and was published on line a few months
23 prior to the instant attack on Plaintiff's businesses. While the Plaintiff is not politically inclined at all,
24 the Plaintiff felt required to share his direct selling knowledge because news media were reacting in
25 fear towards the current economic collapse and baffled at Governments failed efforts in creating jobs. It
26 represents the Plaintiffs first attempt at writing, was very dull, and the Plaintiff thereafter began writing
27 fiction, as it was more fun. If one were to comprehend the work of suggestion, it's easily noticed that
28 the Plaintiff found the missing jobs but established a political conflict as well; land v. Internet. Direct
selling in America is without doubt nearly non-existent and Plaintiff may be one of the last door-to-

1 door salespeople left. While only intending to share rather than lobby, the suggestion is detrimental
2 financially to those who sell advertising. The instant matter involves Googles' proprietary business
3 model to sell advertising v. land based direct sales in America. Google additionally has been
4 perceived publicly as too pushy in terms of peoples privacy with an intense agenda of exposing peoples
5 homes, businesses, and private lives publicly. So motive is not an issue in this matter and is further
6 discussed below at Section II, Page 8 captioned as follows:

7 "The Court and Google came up with the third party theory, while the Plaintiffs were amazed, afraid, and emotionally
8 disturbed by Googles acts; the evidence speaks for itself. It's not the Plaintiffs job to Judge the evidence; that goes to the
9 Court or a jury. If in fact, Google was not attacking the Plaintiffs' writing or lobbying effort, then it perhaps was simply
10 Googles' legal department telling the door-to-door salesman/roofer to get lost because the letter of April 22 to Googles
11 headquarters was addressed to Googles legal department and at 10,000,000:1 odds, the anonymity is Google not a third
12 party. Perhaps someone on the receiving end of the letter gave instructions to someone else (Googles' attorneys/legal team
13 probably collaborated with a third party). The Plaintiffs, of course, would never sabotage their own business interest.
14 Perhaps Google was angered by the Plaintiffs many notices of abusive content associated with Plaintiffs business listing. So
15 the Plaintiffs continue in disbelief that Google first, would have so many motives, and second, that they would actually do
16 such a thing."

17 The Plaintiffs declaration makes clear his business was attacked because of his writings rather than his
18 roofing expertise (§ 10; P. 5 Decl. Of Gary Black). The Plaintiff has installed thousands of roofs, maintained
19 a perfect reputation, and has clean hands.

Request For Judicial Notice

4.

17 First, the Plaintiffs herein are asking the Appellate Court to 'Judicially Notice' that substantive U. S.
18 constitutional rights under the 1st Amendment provisions for anonymity and 5th Amendment rights to
19 due process for proprietors are opposed within Google's business review process. Said opposition of
20 those substantive rights within Google's business review process impose an inherent responsibility
21 upon Google to presuppose the laws of responsible behavior when advised of wrongful acts associated
22 with their program. Just as the banking industry is liable once put on notice, even though they process
23 billions of transactions daily and that the Fifth Amendment to the U. S. Constitution states, "...no
24 person shall be "deprived of life, liberty, or property, without due process of law."

5.

25 Secondly, the Plaintiffs ask the Appellate Court to 'Judicially Notice' the Plaintiffs' trade as a door-to-
26 door salesman who chooses and can not practically advertise his business; this is because commercial
27 advertising will not produce sales prospects within his daily targeted market. Commercial advertising of
28

1 Plaintiffs business results in false advertising as the Plaintiff can not be in two places at the same time
2 and chooses not to forfeit six to nine (6-9) roofing estimates daily for an advertised call-in for a roofing
3 estimate miles away. When calling Plaintiffs for a roofing estimate from commercial advertising
4 consumers are turned away and become irate if not afforded a lengthy explanation; even then
5 consumers are sometimes left confused. ¶ 4 of the complaint states "*The plaintiffs are land based*
6 *businesses and derive profits from direct sales rather than advertising on line.*"

7 6.
8 Googles advertising of Plaintiffs business without permission results in the Plaintiffs daily efforts being
9 followed and stalked daily as his sales leads and prospects are swayed towards other roofers who have
10 paid Google to advertise alongside the Plaintiffs business name on Google without Plaintiffs
11 permission (Pl. Compl. ¶ 17, lines 8-14). Plaintiffs daily business is thus interrupted and impinged upon by
12 Googles' using the Plaintiffs name to sell advertising to other roofers wishing to follow the Plaintiffs
13 door-to-door efforts daily. Google provides the on line business review programming for purposes of
14 profiteering rather than "... *to help people make more informed decisions about where to go, from*
15 *restaurants and hotels to dry cleaners and bike shops...*" (Def. Motion To Dismiss p. 2, lines 8 - 18). Google
16 then abuses the §230(c) Decency Act by ignoring program participants (Plaintiffs complaint and evidentiary)
17 and admittedly disseminates unverified information to consumers per Defendants response to Plaintiffs'
18 complaint by "Motion To Dismiss" p. 11, lines 15 - 17:

19 "Google does not owe an impossible-to-fulfill duty to the world to ensure that all speech on the Internet is
20 accurate."

21 By Googles' collaborative efforts with third-parties, Google steals the proprietors (Plaintiffs) business
22 identity to sell on line advertising to Plaintiffs competition which results in an unfair competition; this
23 is because of Googles market strength and notoriety stalking of the Plaintiffs daily efforts, meaning that
24 as the Plaintiff goes door-to-door so goes the inquiries on Google.com in search of Plaintiffs business
25 review. By collaborative efforts cited as conspiracy within the complaint, Google forces all businesses
26 to go to their web site. It's like a 411 directory assistance call except the directory post unverified and
27 unattended reviews of your business and then refers you to their preferred 'paid advertisers' while you're
28 seeking directions or confirming validity. Google then ignores inquiry, as in this case, and the Plaintiffs
many written request for remedy as a matter of policy because dispute resolution is expensive, but more

1 importantly because negative business reviews enhance Googles advertising offering to those other
2 roofers who pay Google to advertise alongside the Plaintiff, this means that the Plaintiffs hard earned
3 sales prospect or lead generated by Plaintiffs door-to-door efforts is daily presented to Plaintiffs
4 competition, which by default is a collaborative effort between the Internet provider Google and the
5 third party content provider of advertising. The benefits of Google ignoring anonymity and other third
6 party postings on their business reviews by policy and collaborative efforts between parties are further
7 discussed below.

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Section I
Grounds For Appeal And Motion To Stay
Court Exceeds It's Power

7.

On August 12, 2010 the Court on it's own motion took the matter under submission. The Court was
exposed to malfeasance thereafter by the Defendants' Objection to procedure. While the Court was in
deliberation of the matter on the papers; the Plaintiff had already rested and Defendants were insecure,
as the Plaintiffs' complaint was very clear and the Plaintiffs declaration and evidence was very
incriminating for the Defendant. Defendants feared a ruling of default and/or a decision against them
because council for the Defendant, had filed a false testament concerning a stipulated answer. The
malfeasance was that the Defendants council filed an objection to the Courts' deliberation on the papers.
The objection warned the Court without specificity, to not 'Judicially Notice' certain things. The
Plaintiffs know the Defendant did not want the Court to 'Judicially Notice' Plaintiffs Declaration, this is
because anyone may easily conclude that the third party and basis for Googles claim to immunity is not
a third party at all but actually Google's Corporate offices in Mountain View. The Defendant
threatening appeal during the Courts deliberation deprived the Plaintiff of a fair reading of the case
which should constitute grounds for appeal. It should be noted that the arguments and tit tat between the
parties were under duress as little people such as the Plaintiffs as roofers get very stressed when
attacked by International super powers and harassment is a factor; however the complaint and
declarations if intelligibly noticed by the Courts should be plenty for Plaintiff to prevail.

8.

The Court thereafter exceeded it's powers by identifying the anonymity within this matter as a third-
party based merely upon the Defendants assertions and a threatening objection by the Defendant during

1 the Courts deliberation process. The "Motion To Dismiss" filed by the Defendant was in and of itself an
2 abuse of the Decency Act because the Defendant knew it could not credibly answer the complaint (And
3 never intended to.), Defendants use the Decency act for profiteering (Certainly an abuse.), use the Decency
4 Act to not respond to businesses at all when illegal postings appear under business identities (Such as in
5 this case.), and because dismissals of such matters immediately leaves open the possibility of Google
6 becoming all to power within the business and professional community.

7 9.

8 The Court then exceeded it's powers by making law from the bench in an elaborate Order that
9 circumvents the facts of the case and ultimately places 47 U.S.C. §230(c). a mere statute. above the
10 substantive Constitutional rights of the Plaintiff and peoples as stated in the above 'Proposed Verdict'.
11 The Court should not have judicially noticed an anonymous protected third party identity based solely
12 upon the Defendants allegations and the Courts psychic powers; especially in light of the Plaintiffs
13 declaration filed prior to the Defendants "Motion To Dismiss" and unopposed during the arguments.
14 Instead the Court should have reviewed the facts of the Plaintiffs undisputed declaration and complaint
15 to find the Defendant complicit in placing itself within the Plaintiffs bidding process, stealing Plaintiffs
16 work, and in collaborating with others in an advertising scheme which denies the Plaintiffs their Fifth
17 Amendment rights to due process as proprietors.

18 10.

19 The Plaintiffs believe it was not the intention of Congress when enacting the 47 U.S.C. §230(c)
20 immunity that our American values (right & wrong) and constitutional rights as proprietors and
21 professionals would be destroyed by Google. The Court failed to follow the laws as intended by
22 Congress. The Court did this by failing to acknowledge that Google's anonymity reviews lay the
23 business and professional community wide open to attack by neighbors, relatives, and political
24 anarchist (Pl. Compl. ¶ 29; line 26). Anonymity has no place when large market forces attempt a
25 profiteering advertising scheme. By Googles own admissions their review of businesses on line is
26 unverified and ignorantly unattended (Complaint. ¶ 2 & Def. Mot. To Dismiss p. 2, lines 8 -
27 18/ p. 11, lines 15 - 17) . Because of Googles profiteering, proprietors and professionals, in this case the
28 Plaintiff, are left standing without recourse because Google ignores the program inquiries. Traditionally

business review programs, such as those at the BBB, Angies List, or CSLB hold that anonymity has no place as it violates the Fifth Amendment of the constitution. By the simple doctrine of common sense, the courts Order is absurd and outrageous as it would hold the traditional agencies BBB, Angies List, or CSLB no longer responsible for accuracy in reports or reviews of businesses. This is why the Appellant Court needs to review the case in it's entirety and reverse the District Courts decision.

Section II
A Fair Weighing Of The Evidence
Google Appears To Be Responsible - Not A Third Party

11.

Several months ago the Plaintiffs caught Google (red handed) stealing sales and sales leads from the Plaintiffs while substantially damaging the Plaintiffs reputation and businesses (Pl. Compl. ¶ 17):

"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..."

A few months prior to this litigation, the Plaintiff as a new writer, battled Google for control of his own writings almost daily for months. A writer must battle Googles web crawlers and insert code in writings to prevent exploitation on Google which would then spread across the Net; exploitation of personal writings and information is one of Googles top agendas. The battle continued within the Court processes and proceedings from the very first day when Googles 'in house' council threatened the Plaintiff in a phone call only four hours after Plaintiffs filing of the complaint (Ex. 'L' Pl. Declaration & Pl. Obj. p. 13-14, & excerpts below).

The Plaintiff in the DECLARATION OF GARY BLACK (P. 5 ¶ 9) :

"On June 10th only about four hours after filing proof of service with the Courts in the instant matter I was telephoned by one Tamara Jih claiming to be in-house from the Google defense team. She first stated, "Do you want to voluntarily dismiss your complaint?", in a somewhat threatening tone then asked if I was aware of the Decency Act. I told her I was and that I supported it. She then informed me that they'd seek all legal fees and cost against me and investigate my on line activities, including items involving my own content which I had previously requested they remove from the Google search. The items I removed from Google were my own recently authored short stories, as well as, a letter to Senators..."

DECLARATION OF GARY BLACK (Exhibit 'H') an e-mail sent to Googles defense team:

"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 online activities on your web site." "...we're not willing to initiate a voluntary dismissal at this time."

The Plaintiff had difficulty with the conversation above, hence the documentation. The difficulty of

1 course is in being able to connect the on line writings Plaintiff denied Google access to with this case.
2 The thought of Googles defense team mentioning the items Plaintiff removed from Google just did not
3 seem to have relevance at the time but upon examining the other facts detailed below fit perfectly.
4

12.

5 On April 22nd via U. S. Mail (Ex. 'E' Declaration Of Gary Black), five weeks prior to filing the complaint,
6 the Plaintiff wrote directly to Googles Mountain View headquarters as Plaintiffs many efforts to notify
7 Google on line (Pl. Compl.) were ignored. To the Plaintiffs amazement within five days another on line
8 complaint stating that Plaintiffs were telemarketers, unlicensed contractors, and that Plaintiffs were
9 misrepresenting themselves to the public over the telephone. It appeared on Googles business review of
10 Plaintiffs business. The Plaintiffs as husband and wife discussed the above message and on line
11 complaint in disbelief ; it appeared the odds of getting a second complaint more malicious than the first
12 five days after Plaintiffs wrote to Google in Mountain View (Ex. 'E' Declaration Of Gary Black) were at least
13 ten million to one [10,000,000 : 1 odds]. The Plaintiffs had been in business for some 19 years without
14 complaints and it had been six months since the initial anonymous complaint (Pl. Compl. ¶ 3) appeared
15 on Google. The Plaintiffs to this day have never revealed to anyone, not even family, this matter. So the
16 evidence is pointed in revealing Google as the anonymous party responsible for the defamation of
17 Plaintiffs business. In motioning the Court for judgment on the pleadings the Plaintiffs opted to not
18 seek identity of the anonymous party because of the evidence. Plaintiffs then e-mailed Google a few
19 days after seeing the second anonymous complaint on Googles business review of Plaintiffs business.
20 Plaintiffs wrote to Google via Google's report abuse programming on May 3, nearly a month before
21 filing the complaint, and evidenced it within the Declaration Of Gary Black (Exhibit 'F') to wit:

22 "I see now that after writing to your headquarters just last week that I now have another complaint posted on your
23 web site."... "Now I have two complaints the newest is also a blatant lie. Additionally I'm receiving hate mail at my
24 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."

13.

25 The Courts Order at page 5; lines 11-13 states "...but they do not allege that Defendant was its author."
26 The Plaintiff never mentioned a third party in the complaint or the Plaintiffs declaration on file. This is
27 because there is no third party. The Court and Google came up with the third party theory, while the
28

1 Plaintiffs were amazed, afraid, and emotionally disturbed by Googles acts; the evidence speaks for
2 itself. It's not the Plaintiffs job to Judge the evidence; that goes to the Court or a jury. If in fact, Google
3 was not attacking the Plaintiffs' writing or lobbying effort, then it perhaps was simply Googles' legal
4 department telling the door-to-door salesman/roofer to get lost because the letter of April 22 to Googles
5 headquarters was addressed to Googles legal department and at 10,000,000:1 odds, the anonymity is
6 Google not a third party. Perhaps someone on the receiving end of the letter gave instructions to
7 someone else (Googles' attorneys/legal team probably collaborated with a third party). The Plaintiffs, of
8 course, would never sabotage their own business interest. Perhaps Google was angered by the Plaintiffs
9 many notices of abusive content associated with Plaintiffs business listing. So the Plaintiffs continue in
10 disbelief that Google first, would have so many motives, and second, that they would actually do such a
11 thing.
12

13 14.

14 Fear and distress caused the Plaintiff to motion for judgment on the pleadings quickly. The evidence
15 was in, Defendants were asking for immunity while making several admissions central to Plaintiffs
16 causes, and the Court with regularity according to the defense grants immunity. The Court simply did
17 not examine the evidence closely and erred by 'Judicially Noticing' a non existent third party.

18 15.

19 'In a fair weighing of the evidence' it's easily noticed that the Googles' review of Plaintiffs businesses
20 constitute an assassination of Plaintiffs' business and reputation (Pl. Compl. ¶ 3; lines 16-23). Plaintiffs
21 notices to Google prior to this case were very pointed at Google and not shy in exclamation of
22 Plaintiff's business being damaged daily by Google. The Plaintiffs sued the Defendant for violating
23 Plaintiffs right to work, rights, and entitlements as a proprietor to due process and did not pursue an
24 unknown third party or even state one in the complaint, as it did not seem possible (10,000,000 : 1 odds).
25 Plaintiffs further made a "Declaration Of Damages" explaining the Plaintiffs damages were caused by
26 public access to the Google.com web site, not that of an unidentified third party; an obscure third party
27 web site would have no impact on Plaintiffs business, it's Google's popularity, notoriety, and market
28 strength by public inquiry that's at issue within the complaint (Pl. Compl. ¶ 17).

Section III
The Court Erred In Reading The Complaint
The Complaint Consist Of Two Unrelated Causes.

16.

The Court erroneously applied all Plaintiffs allegations within the complaint to a third party anonymous posting rather than to the paid advertising of other roofers along side of Plaintiffs business name as stated in the complaint. As stated in ¶ 6 above and within the complaint: Googles advertising of Plaintiffs business without permission results in the Plaintiffs daily efforts being followed and stalked daily as his sales leads and prospects are swayed towards other roofers who have paid Google to advertise alongside the Plaintiffs business name on Google without Plaintiffs permission (Pl. Compl. ¶ 17, lines 8-14). Plaintiffs daily business is thus interrupted and impinged upon by Googles' using the Plaintiffs name to sell advertising to other roofers that wish to follow the Plaintiff's door-to-door efforts daily; again this is an intervention and theft of Plaintiffs sales leads which are very expensive because of the public inquiring of the Plaintiffs business name at Google.com during Plaintiffs daily door-to-door selling. Again the Plaintiff does not want Googles free advertising as it's a theft in this instance. Examination of the complaint in a knowledgeable and fair reading shows it consist of two unrelated causes. One of anonymity within Googles business review process v. a proprietors rights to due process of law because of Defendants ignoring the Plaintiff and the other an allegation of unfair competition and theft of the proprietors business identity for purposes of selling advertising to Plaintiffs competition for profit and stalking. Plaintiff should be entitled to damages simply by Defendants unfair competition of stalking (¶ 17 Pl. Compl.) the Plaintiffs day to day activities as stated in the complaint [underlined highlights] at ¶s 16 - 20 to wit:

"16.) Since at least October 2009, Defendant, Google, Inc. has conducted a nationwide on line advertising campaign and on line business review scheme to sell advertising to local businesses for financial gain and profit; purportedly for the benefit of it's on line community of paid advertisers and others, as well as, individuals who may be seeking background information pertaining to potential business transaction or professional engagement on line. 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."

"17.) The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct

1 result of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own
2 efforts."

3 "20.) The Plaintiffs prospect roofing sales using direct selling methods allowed by law; they include
4 telemarketing, direct mail, and canvassing door-to-door. The Defendant Google, Inc. thereafter ambushes
5 and blindsides the plaintiff's business with an on line advertising scheme, referred to herein as "courtesy
6 advertising', while wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts.
7 The Defendant, Google, Inc. benefits financially because prospective clients inquire on line of the Plaintiff's
8 businesses at the Defendant's web site where the prospect is then bombarded by paid advertising from other
9 roofing companies in competition with Plaintiff's business."

10 Section IV

11 Judgment On The Pleadings - Defendants Admissions

12 Google Collaboration With A Third Party

13 17.

14 A problem exist in this case as the attorney for Google could not and can not answer material
15 allegations within the complaint, not even one, without incriminating his client (Complaint. ¶ 2 & Def. Mot.
16 To Dismiss p. 2, lines 8 - 18/ p. 11, lines 15 - 17). The Plaintiffs case is centrally based upon Googles
17 dissemination of false information in conjunction with the Plaintiffs business information and review
18 described as "Courtesy Advertising" within the complaint and Googles ignoring the Plaintiffs efforts to
19 resolve illegal postings on their web page. The Defendant can not admit to engaging the Plaintiffs
20 bidding processes, admit to an impossible duty to fulfill, and to disseminating false or unattended
21 reviews and at the same time credibly answer the Plaintiffs complaint. The admissions below are not
22 only collaborative with third parties but also admissions of blindness and wrongfully collaborative.
23 Google admitted within in their "Motion To Dismiss" to allowing unverified information to be
24 associated with the Plaintiffs business and not having a duty to correct or remove the information even
25 after being notified several times. Taken together the admissions below by Google within their "Motion
26 To Dismiss" admit to exaggerating or misrepresenting their services to the public (Pl. Compl. ¶ 2 below)
27 because they also admit the information may be false and unverified which is certainly not helpful in
28 helping people make better choices; which means Google admits to scamming everyone, not just the
Plaintiff. - A BIG ADMISSION! Most people when going to the CSLB, BBB, Angies List etc. believe
what they read in business reviews, and react accordingly. So the admissions are that Googles business
reviews are disseminating inaccurate information in review of businesses but more importantly, the

1 Defendant admits to placing themselves within the Plaintiffs bidding processes for roofing sales ie:
2 "...The purpose of Google Places is "to help people make more informed decisions about where to
3 go..." [underlined sections for reference] To wit:

4 Plaintiffs Complaint:

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

8 "16.) ...More specifically, in this case, many individuals regularly are using the Defendant's on line
9 Business Reviews, referred to herein as '*courtesy advertising*', to check on a contractor before
10 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."

11 Def. Motion To Dismiss p. 2, lines 8 - 18:

12 "The purpose of Google Places is "to help people make more informed decisions about where to go,
13 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."

14 Def. Motion To Dismiss p. 11, lines 15 - 17:

15 "Google does not owe an impossible-to-fulfill duty to the world to ensure that all speech on the Internet is accurate."

16 18.

17 Accordingly, the Plaintiffs "Motion For Judgment On The Pleadings" could have been adjudicated in a
18 more favorable light to the Plaintiff in this instance, as the Plaintiffs Declaration was filed shortly after
19 the Complaint which certainly allowed plenty of time for Defendants to respond if they had chosen to.
20 The Defendants again may have simply made a bad choice to rely solely upon immunity instead of
21 fully answering the complaint and declaration of the Plaintiffs. This is especially true within the context
22 of Google interrupting, stalking, and engaging the Plaintiffs bidding processes with paid advertisers and
23 false information on line as they would not respond to the Plaintiffs' many notices and request for relief
24 for six months prior to this action. Essentially the District Court attributed 50% or so of the complaint
25 erroneously to third party content, meaning the on line defamation by Google, and ignored, forgot, or
26 failed to acknowledge the rights of the Plaintiff within the occupation as a door-to-door salesman which
27 is obviously heavy scrutinized by the public daily as he works.
28

Section V
Conspiracy - Googles' Collaboration With Third Parties
& Complicity With Third Parties For Profit

19.

The Plaintiffs believe cases involving anonymity should be adjudicated on a case by case basis giving weight to the decisions, rights, and entitlements of all parties concerned. In this case the Defendants not an unknown third party made four deliberate decisions which constitute a conspiracy (§ 35, Pl. Compl.) or collaboration of various parties to wit:

Google first chose to sponsor a program reviewing Plaintiffs businesses online, purportedly to help people which seems innocent (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."

The Court may 'Judicially Notice' without discovery and by the simple doctrine of common sense that Google conspired as a collaboration of parties as follows. First Google deliberately chose *"...to help people make more informed decisions..."* by admission in their "Motion To Dismiss". Second, Google deliberately chose to allow anonymity within it's review of Plaintiffs businesses which denies Plaintiffs a due process of law under the Fifth Amendment because Google also deliberately chose to ignore Plaintiffs pleas for relief, inquiries, and notices for resolution of an obvious violation of law (§s 1-3; Pl. Compl.).

20.

Due process of law is provided by the Fifth Amendment to the U. S. Constitution, whereby, no person shall be *"...deprived of life, liberty, or property, without due process of law."* In this instance the Courts must give great recognition to the purpose stated above by Google and Congresses intention with regards to immunity — which certainly was not for Google to violate Plaintiffs constitutional rights by taking Plaintiff's sales leads, and prospects from Plaintiff in a 'free advertising' scam.

21.

The complaint at (§ 17; p. 5; § 20 p. 6; and § 22 p. 7) alleges a profit making scheme by Defendants which steals the Plaintiffs sales leads (his prospects) wrongfully, as it's without the Plaintiffs permission and alleges the Defendant Google profits it's paid advertisers and interrupts the Plaintiffs business. These

1 parts of Plaintiffs complaint are directed at Googles use of Plaintiffs business name and information
2 wrongfully for profit in conspiracy :

3 17 - "The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct result
4 of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own efforts. The
5 Defendant accomplishes this by allowing what is referred herein as "*courtesy advertising*" on their business review
6 web site which is posted publicly on line at <http://www.google.com>. Everyday the Plaintiff prospects door-to-door,
7 canvasses door-to-door, or sends out mailings he/she produces traffic to the Defendants, Google, Inc.'s web site..."

8 20 - "The Plaintiffs prospect roofing sales using direct selling methods allowed by law; they include telemarketing,
9 direct mail, and canvassing door-to-door. The Defendant Google, Inc. thereafter ambushes and blindsides the
10 plaintiff's business with an on line advertising scheme, referred to herein as "courtesy advertising", while
11 wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts. The Defendant, Google, Inc.
12 benefits financially because prospective clients inquire on line of the Plaintiff's businesses at the Defendant's web
13 site where the prospect is then bombarded by paid advertising from other roofing companies in competition with
14 Plaintiff's business. The Defendant's policy of ignoring the content and nature of the negative anonymous review at
15 issue within this complaint does harm to the Plaintiff in that the negative review sways the Plaintiffs' prospect
16 toward those businesses who have paid the Defendant, Google, Inc., for advertising alongside the 'courtesy
17 advertisement' of Plaintiff's businesses. Once the Plaintiff has spent hard efforts to locate a prospect and identified a
18 need for a prospective customer that otherwise may not have been noticed by a prospective customer the customer
19 is swayed away from the Plaintiff by false statements and misrepresentations by way of consumer generated
20 content on the Defendant, Google, Inc.'s, web site. The plaintiff has tried on several occasions to remove itself from
21 the Defendant's web site without success."

22 22 - "The defendant, Google, Inc., has refused on multiple occasions throughout the past six months to remove
23 mediate, or even acknowledge damaging advertising directed at the Plaintiffs businesses."

24 22.

25 The Courts' Order presumes incorrectly (Bias/Misunderstood) that consumer generated advertisements
26 on Googles web site Pro or Con (§ 33, Pl. Compl. line 8 pro/con) as stated in the complaint, are business
27 reviews and helpful to the general public. Nothing could be farther from the truth. As stated in Google's
28 pleading "... to help consumers make better choices." The Court Order omits and avoids Googles'
admissions of allowing unverified information and anonymous information within Googles' business
reviews; apparently in holding that admission as innocent, when in fact, it is a lot like dog fighting but
worse as it pits the substantive rights of the people to anonymity against a proprietors right to due
process in regards to consumer complaints. This is another collaboration of Google with the third party
provider of the content. The content is actually Google enhancing (§ 33 38 Pl. Compl. excerpt below) and
soliciting free content from the public for the benefit of either the Plaintiff's business if the comment is
pleasant or the advertisers, of like kind, that paid Google to be on the same page with the Plaintiffs
business listing if the comment is neutral or negative (A dog fight; Anonymous Courtesy Advertising). Google
does this like a 411 directory type assistance; listing all businesses with telephone listings for free
("Courtesy Advertising") under the misconception that a business wants their free advertising services
without permission of the business owner (Plaintiffs). This choice decision by Google is in fact a

1 conspiracy only for profit (§ 35 Pl. Compl. excerpt below) and deceptive to many who believe the unverified
2 and unattended business reviews are true. In fact they are very harmful to an unsuspecting thousands of
3 small businesses like the Plaintiffs who are forced and strong-armed into going to Google even if they
4 do not own a computer because of the evil nature of Googles advertising scheme. At Ex. 'K'
5 Pl. Declaration & Pl. Compl. § 35 there is insight and a Yahoo technical email sent to Plaintiff warning
6 of the compromise/harm noticed in on line directory assistance type business reviews [However, Yahoo
7 does monitor and respond to program participants when notified of problems immediately.]. They're
8 scathingly criminal, towards admitting to extortion wit is Yahoo's email comment/excerpt to Plaintiff.
9 (Ex. 'K' /Yahoo letter attached to Pl. Declaration):

10 "Please note that all Local Listings are considered public information and do have the possibility of being comprised
11 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."

12 The Court by Order in this matter holds the producer Google of the same type program immune when
13 in fact it's easily noticed that this practice is no different than walking into a store and saying give us
14 your proceeds or will damage your store and reputation. The Courts should have noticed that a small
15 business really is being required to pay Google or Yahoo for enhancement advertising in order to not be
16 in harms way. Perhaps it's short of extortion but it could certainly be noticed as close enough to void
17 any kind of immunity the Congress may have intended. It is actually profiteering off the substantive
18 rights of others and profiteering. Congresses' enacting the Decency Act was to protect service providers
19 from third parties so they may flourish and not intended as a collaborative advertising scheme for
20 profits. These new concepts in 411 business reviews will actually result in the unconstitutionality of the
21 Decency Act as complaints pour in and work against Google as well - it's obvious abuse of the Act and
22 should be ruled as such. (Plaintiffs proposed verdict above.)

23 (§ 33 Pl. Compl.) Plaintiff alleges, that large market forces, such as the defendant Google, Inc., should not enable
24 'courtesy advertising' that places business and professions at risk without written consent and disclosure of said risk
25 from the parties being advertised. 'Courtesy Advertising' allowing for public defamation or promotion of a business
or professional, may as in this case, cause meaningful damage towards others, whether the consumer generated
content is anonymous or not, whether pro or con, without a due process.

26 (§ 35 Pl. Compl.) "Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal
27 acts." — "...Defendant, Google, Inc. knew in advance that their programming was hostile, could and does cause
28 harm by **enticing members of the general public to commit illegal acts**, which is now continuing on a business as
usual basis."

(¶ 38 Pl. Compl.) "...without the Plaintiff's permission while exaggerating the benefits of a free product to the public at large and fails to disclose to businesses a material relationship where one exists between the public at large and the Plaintiff's business."

23.

If the public comment (Solicited Advertisement) is positive it drives call ins to Plaintiff which result in false advertising (¶ 17 ¶ 33 Pl. Compl.) because the Plaintiff is a door-to-door salesman in targeted areas each day and can not give up 6-9 sales appointments to run a single call-in even 10-40 miles away and if the comment is negative the Plaintiff losses hundreds of thousands of dollars in sales by contract cancellations; this is because when going door-to-door and making sales the consumer will frequently check Googles web site after the Plaintiff has left with a sale and promptly cancel if anyone has stated most anything, other than how great the Plaintiff might be. The Plaintiff loses thousands of dollars simply by Googles intrusion with the business listing even without third party commentary because Google places paid advertisers alongside the Plaintiffs business name in the same roofing business and neighborhoods as plaintiffs and is therefore stealing the Plaintiffs hard earned sales prospects or put another way selling the Plaintiffs efforts.

24.

Door-to-door sales is hard work and the Courts should recognize that every day the Plaintiff goes to work he's driving traffic to Google for the benefit of Googles paid advertisers who receive the benefit of Plaintiffs hard work (Pl. Compl. ¶ 17 below). Google enhances their advertising offer to said paid advertisers by essentially selling the Plaintiffs efforts via Plaintiffs business name being posted on line. These acts are all alleged in the complaint and a violation of the Plaintiffs proprietary rights to work; leads and lead generation is nearly the most expensive part of being a roofing contractor and door-to-door salesman. For the non-sales experienced academia types it's thousands of dollars per week to generate door-to-door sales leads within the Plaintiffs small proprietorship, Direct selling is expensive but targeted:

"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. "

Section VI - Summary

25.

The District Courts 'Fair Reading' of the complaint within the order (P. 5; lines 7 - 9) states correctly as follows: "...fair reading of Plaintiffs' complaint demonstrates that they seek to impose liability on Defendant for content created by an anonymous third party."

26.

1 The complaint alleges throughout that the Defendants were using Plaintiff trade names for advertising
2 alongside others without permission (§ 2, § 4, § 3 lines 6-10 Pl. Compl. & others). The District Court
3 improperly assumes this to be acceptable because the Plaintiff is receiving free advertising from
4 Google. That thinking is unfounded as shown above. The Plaintiffs did more than sufficiently make
5 allegation supported with evidence within the Complaint and Plaintiff's Declaration to demonstrate how
6 the Plaintiffs rights to due process were being violated and his business names were being misused.
7 Therefore, within the "fair reading" of the complaint the Court should, "...take all material allegations
8 as true and construe them in the light most favorable to the Plaintiff." NL Indus., Inc. v. Kaplan, 792 F.
9 2d 896, 898 (9th Circuit Court of Appeals, 1986)

10 27.

11 All during these proceedings, and never previously, both Plaintiffs were hammered by numerous
12 Google robot telemarketers trying to sell Plaintiff advertising for their roofing business, harassment. In
13 particular a company called 'Contractors Exchange' which may be Goggle affiliated/commissioned got
14 extremely upset in trying to get Plaintiff to answer the WHY question, because they were offering free
15 advertising for the Plaintiff and Plaintiff would not tell them why he refused. The BBB is also on
16 commission and was attempting to sell the Plaintiff Google advertising for free during these
17 proceedings; again Plaintiff does not advertise as stated in the complaint; the Plaintiff is a door-to-door
18 salesman. Following is a simple outline of the case alleged by Plaintiff and resulting effects:

- 19 1. Google first takes Plaintiffs identity without permission (§ 38 Pl. Compl.);
- 20 2. Google then uses it on their web site without Plaintiffs' permissions; sales reps. call it
'Courtesy Advertising'; The Plaintiffs case may be unique because the Plaintiff is a door-to-door
21 salesman, but the advertising results in stalking the Plaintiffs daily activity;
- 22 3. Google then sells Plaintiffs identity to the public (<http://google.com>) paid for by
Plaintiffs competition who pay Google for ad placement next to Plaintiffs business
name;
- 23 4. Then Plaintiffs competition interrupts by stealing the Plaintiffs prospects and sales leads
when Plaintiffs customers inquire on the Plaintiff's business. Door-to-door salesman are
often scrutinized by their prospects. (§§ 16 17 Pl. Compl.);
- 24 5. Google then solicits the public, as well as anyone else that may have a difference with
the Plaintiff, for advertising in the form of consumer-generated content, pro or con or
25 anonymous which creates a blindfolded dog fight over the substantive rights of the
parties;
- 26 6. Google refuses to communicate with Plaintiff when postings associated with his
business are in violation of due process law and cause great damage (§§ 22 & 23 Pl. Compl.)
- 27 7. Google's programming (pin number system) doesn't work to allow Plaintiff to remove
the 'Courtesy Advertisement' of Plaintiffs business, but purportedly allows it and the
28 'report abuse' programming on the Plaintiffs business review page at Google is ignored
by Google or unattended. (§ 19 Pl. Compl.)

1 The damage: Plaintiff losses huge amounts of money, no longer writes publicly, loses his right to due
2 process of law by Court order with prejudice; while waiting 24/7 for the next pirate to attack him and
3 review his business, emotional distress, grief, etc. etc. etc. (Pl. Decl. Of Damages)

4 Section VII - Conclusion

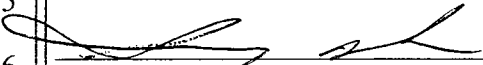
29.

5 Based upon the preceding arguments and indifferences of the Plaintiff, the Plaintiffs respectfully
6 pray for relief in asking the Court of Appeals of the Ninth District to grant this 'Motion To Stay' the
7 District Courts Order dated August 13, 2010 in the above entitled matter while taken on appeal.


8 30.

9 Additionally, worth noting is harassment during the proceedings. The first Google lawyers
10 threatened Plaintiffs personal writings about four hours after filing proof of service. The second
11 lawyers lied to Plaintiff in agreeing to answer the complaint when asking Plaintiff for an extension
12 of time to answer. Council never intended to answer but instead filed for dismissal. This is evidenced
13 in arguments whereby the Plaintiff in Motioning for Judgment objected by saying Plaintiff would
14 never have agreed to a "Motion To Dismiss" in the oral stipulation which was also Plaintiffs
15 response by email to the first in-house attorney at Google. The Defendants new council thereafter
16 filed a false testament and a false declaration in open Court saying he never would have agreed to
17 only an answer and hammered the Plaintiff thereafter with phone calls and emails insisting he was
18 getting ready to file for dismissal. When the complaint was filed and the declaration of the Plaintiff
19 was filed the Plaintiff was entitled to an answer and actually received a "Motion To Dismiss. When
20 fully examined the Court will readily notice the disingenuous declarations and testaments of the
21 Defendants' is in alignment with the fact that this was a matter of strict liability against Google from
22 the beginning not a third party as stated in the Order .
23

24 Respectfully Submitted,

25 
26 Gary Black, individually plaintiff

Dated: 9/13/2010

27 
28 Holli-Beam Black, individually plaintiff

Dated: 9/13/10

GARY BLACK,
HOLLI BLACK
101 Auld Court
Green Valley Falls, California 94534
Telephone (707) 373-2960

Plaintiffs are acting:
"In Propria Persona"

ORIGINAL
FILED

SEP 10 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF CALIFORNIA

GARY BLACK, individually d/b/a Cal Bay
Construction and,

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

Notice of Appeal

HOLLI BEAM-BLACK, individually d/b/a Castle
Roofing

Plaintiffs,

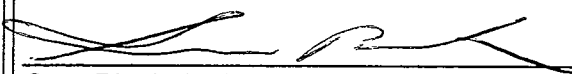
vs.

GOOGLE, INCORPORATED et al;
and Does 1 through 100 inclusive, Defendants.

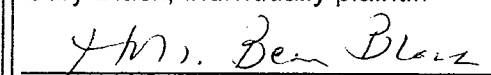
Notice is hereby given that Gary Black, individually d/b/a Cal Bay Construction and

Holli Beam-Black, individually d/b/a Castle Roofing, Plaintiffs in the above named case, hereby
appeal to the United States Court of Appeals for the Ninth Circuit from 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.

Respectfully Submitted,


Gary Black, individually plaintiff

Dated: 9/10/2010


Holli-Beam Black, individually plaintiff

Dated: September 14, 2010

1
2
3 CERTIFICATE OF SERVICE BY US MAIL
4

5 I, Jose G. Torres, declare:
6

7 I am employed in Solano County. I am over the age of 18 years and not a party to the within
8 action. My business address is: 1440 Military West; suite #104 Benicia, California 94510.
9

10 I am readily familiar with depositing mail with the United States Postal Service. On this date, I
11 served on each party listed below a

12 "Notice of Appeal"
13

14 by placing them into an envelope with fully paid postage thereon, sealed the envelope, and
15 delivered the envelope for mailing to the United States Post Office in Benicia, California.
16

17 Wilson Sonsini Goodrich & Rosati
18 attorneys at law
19 650 Page Mill Road
20 Palo Alto, California 94304-1050

21 I declare under the penalty of perjury under the laws of the United States that the foregoing is
22 true and correct. Executed at Benicia, California 94510 on September 10, 2010.
23

24 JOSE G TORRES

25 Jose G. Torres
26
27
28

1
2
3 CERTIFICATE OF SERVICE BY US MAIL
4

5 I, Jose G. Torres, declare:
6

7 I am employed in Solano County. I am over the age of 18 years and not a party to the within
8 action. My business address is: 1440 Military West; suite #104 Benicia, California 94510.
9

10 I am readily familiar with depositing mail with the United States Postal Service. On this date, I
11 served on each party listed below a:

12 "United States Court Of Appeals For The Ninth District - Civil Appeals Docketing Statement"

13 "No. 10-02381 CW Order Granting Defendant's Motion To Dismiss And Denying As Moot
14 Plaintiffs' Motion For Judgment On The Pleadings (Docket Nos. 10 and 15)"

15 "Notice Of Appeal"

16 "Motion To Stay: The Courts' Order Granting Defendants' Motion To Dismiss And Denying As
17 Moot Plaintiffs' Motion For Judgment On The Pleadings"

18
19 by placing them into an envelope with fully paid postage thereon, sealed the envelope, and
20 delivered the envelope for mailing to the United States Post Office in Benicia, California.
21

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

27 I declare under the penalty of perjury under the laws of the United States that the foregoing is
28 true and correct. Executed at Benicia, California 94510 on September 10, 2010.

JOSE G TORRES

Jose G. Torres

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 GARY BLACK and HOLLI BEAM-BLACK,

No. 10-02381 CW

8 Plaintiffs,

ORDER GRANTING
DEFENDANT'S
MOTION TO DISMISS
AND DENYING AS
MOOT PLAINTIFFS'
MOTION FOR
JUDGMENT ON THE
PLEADINGS
(Docket Nos. 10
and 15)

9 v.

10 GOOGLE INC.,

11 Defendant.
12 _____/

13
14 Plaintiffs Gary Black and Holli Beam-Black, who are proceeding
15 pro se, plead several claims against Defendant Google Inc. related
16 to an anonymous "online comment" on Defendant's website. Defendant
17 moves to dismiss their claims. Plaintiffs oppose Defendant's
18 motion and move for judgment on the pleadings. The motions were
19 taken under submission on the papers. Having considered the papers
20 submitted by the parties, the Court GRANTS Defendant's motion to
21 dismiss and DENIES as moot Plaintiffs' motion for judgment on the
22 pleadings.

23 BACKGROUND

24 Plaintiffs, who are husband and wife, allege that they are
25 sole proprietors of Cal Bay Construction and Castle Roofing. Both
26 businesses appear to provide roofing services.

27 They allege that, on or about October 20, 2009, an anonymous
28

1 and construe them in the light most favorable to the plaintiff. NL
2 Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).
3 However, this principle is inapplicable to legal conclusions.
4 "Threadbare recitals of the elements of a cause of action,
5 supported by mere conclusory statements," are not taken as true.
6 Ashcroft v. Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1949-50 (2009)
7 (citing Twombly, 550 U.S. at 555).

8 When granting a motion to dismiss, the court is generally
9 required to grant the plaintiff leave to amend, even if no request
10 to amend the pleading was made, unless amendment would be futile.
11 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911
12 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment
13 would be futile, the court examines whether the complaint could be
14 amended to cure the defect requiring dismissal "without
15 contradicting any of the allegations of [the] original complaint."
16 Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990).
17 Leave to amend should be liberally granted, but an amended
18 complaint cannot allege facts inconsistent with the challenged
19 pleading. Id. at 296-97.

20 DISCUSSION

21 Defendant asserts that, under the Communications Decency Act
22 of 1996 (CDA), it is immune from Plaintiffs' action and that, in
23 the alternative, Plaintiffs fail to state claims upon which relief
24 can be granted.

25 "Section 230 of the CDA immunizes providers of interactive
26 computer services against liability arising from content created by
27 third parties: 'No provider . . . of an interactive computer

1 Based on the congressional intent discussed above, courts
2 "have treated § 230(c) immunity as quite robust, adopting a
3 relatively expansive definition of 'interactive computer service'
4 and a relatively restrictive definition of 'information content
5 provider.'" Carafano, 339 F.3d at 1123. All doubts "must be
6 resolved in favor of immunity." Roommates.Com, 521 F.3d at 1174.

7 A fair reading of Plaintiffs' complaint demonstrates that they
8 seek to impose liability on Defendant for content created by an
9 anonymous third party. They assert that their lawsuit "arises from
10 an online comment posted upon the Google web site" ¹ Compl.

11 ¶ 1. They aver that the allegedly defamatory comment is
12 "anonymous," id. ¶ 21, but they do not allege that Defendant was
13 its author. Finally, they summarize their action by stating that
14 Defendant's "business review 'courtesy advertisement' process which
15 allows for consumer generated content is illegal and inappropriate
16 as it manifest into allowing parties to seek revenge against
17 businesses and professionals." Id. ¶ 34. Based on these
18 allegations, Defendant is immune from their suit.

19 Plaintiffs appear to argue that CDA immunity does not apply
20 because their claims are based on Defendant's "programming," not
21 the third-party content. Pl.'s Br. of July 19, 2010 at 6.
22 Plaintiffs seem to be referring to the source code underlying the
23 services offered on Defendant's website. See Compl. ¶ 30

24
25 ¹ Plaintiffs do not dispute that Defendant is an interactive
26 computer service. Several other courts have recognized Defendant
27 as such a service. See, e.g., Jurin v. Google Inc., 695 F. Supp.
28 2d 1117, 1123 (E.D. Cal. 2010); Parker v. Google, Inc., 422 F.
Supp. 2d 492, 501 (E.D. Pa. 2006).

1 Defendant's failure to provide an adequate "dispute resolution"
2 system to resolve their concerns about the comment. Pl.'s Br. of
3 July 19, 2010 at 6. Again, this argument fails because the
4 predicate for liability remains the third-party content. In
5 addition, several courts have held that immunity is not vitiated
6 because a defendant fails to take action despite notice of the
7 problematic content. See, e.g., Universal Commc'ns Sys., Inc. v.
8 Lycos, Inc., 478 F.3d 413, 420 (1st Cir. 2007) ("It is, by now,
9 well established that notice of the unlawful nature of the
10 information provided is not enough to make it the service
11 provider's own speech."); Zeran, 129 F.3d at 333 ("Liability upon
12 notice would defeat the dual purposes advanced by § 230 of the
13 CDA."); Barrett v. Rosenthal, 40 Cal. 4th 33, 45 (2006).
14 Plaintiffs offer no persuasive argument that their theory presents
15 an exception.

16 Accordingly, Plaintiffs' claims are barred by § 230. Because
17 their complaint makes clear that their action "arises from an
18 online comment posted upon" Defendant's website, Compl. ¶ 1, any
19 amendment would be futile and dismissal with prejudice is
20 warranted.

21 CONCLUSION

22 For the foregoing reasons, the Court GRANTS Defendant's motion
23 to dismiss. (Docket No. 10.) Plaintiffs' action is dismissed with
24 prejudice as barred by 47 U.S.C. § 230. Consequently, their motion
25 for judgment on the pleadings is DENIED as moot. (Docket No. 15.)
26 The case management conference set for September 14, 2010 is
27 VACATED.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GARY BLACK and HOLLI BEAM-BLACK,
Plaintiffs,

Case Number: CV10-02381 CW

CERTIFICATE OF SERVICE

v.

GOOGLE INC.,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 13, 2010, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy into an inter-office delivery receptacle located in the Clerk's office.

Gary Black
101 Auld Court
Green Valley Falls, CA 94534

Holli Beam-Black
101 Auld Court
Green Valley Falls, CA 94534

Dated: August 13, 2010

Richard W. Wieking, Clerk
By: MP, Deputy Clerk