

# EXHIBIT A

E-filing

1 GARY BLACK,  
2 HOLLI BLACK  
3 101 Auld Court  
4 Green Valley Falls, California 94534  
5 Telephone (707) 373-2960

6 Plaintiffs are acting:  
7 "In Propria Persona"

FILED

MAY 28 2010

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

File  
page  
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8 UNITED STATES DISTRICT COURT

9 for the

10 NORTHERN DISTRICT OF CALIFORNIA

11 GARY BLACK, individually d/b/a Cal Bay  
12 Construction and,  
13 HOLLI BEAM-BLACK, individually d/b/a Castle  
14 Roofing

15 Plaintiffs,

16 vs.

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

ADR  
C10-02381  
MEJ  
Case No. : \_\_\_\_\_

COMPLAINT FOR DAMAGES,  
REQUEST FOR JUDICIAL NOTICE,  
PERMANENT INJUNCTIVE, AND  
OTHER EQUITABLE RELIEF

INTRODUCTION

1.) The foregoing complaint arises from an online comment posted upon the Google web site located at <http://www.google.com>; attached hereto as exhibit 'A'. 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.

2.) The Plaintiff alleges that the Defendant, Google, Inc. in fact allows so called 'courtesy

Green Valley Falls, California 94534  
101 Auld Court  
Gary and Holli Black

GO 44 SEC. N  
NOTICE OF ASSIGNMENT  
TO MAGISTRATE JUDGE SEW

1 *advertising*' of the Plaintiff's businesses to be placed on it's web site without the Plaintiff's  
2 permission while exaggerating the benefits of a free product to the public at large and fails to  
3 disclose to businesses a material relationship where one exists between the public at large and  
4 the Plaintiff's business. Plaintiffs herein allege that these acts combine to constitute a violation  
5 of law under Title 15 USC 45 - Sec. 45 (a)(1)(2). and Title 15 USC 53 (a)(b).

6 3.) By the Defendant, Google, Inc., employing said means of marketing the '*courtesy*  
7 *advertising*' for the Plaintiff's businesses the Plaintiffs are harmed by assuming a risk of  
8 product and services being misrepresented and the potential liability that accompanies said  
9 risk. Specifically, for more than the past six months, an on line comment upon the  
10 Defendant's web site effectually devastates the plaintiffs income producing small businesses  
11 and it's reputation. Following is the text of the original on line comment posted on the  
12 Defendant, Google, Inc.'s, *courtesy advertising* web site for business reviews. The comment  
13 was made anonymously on or about October 20, 2009 defaming the Plaintiffs businesses:  
14

15  
16 "Having had my roof re-roofed by Cal Bay Construction which is now Castle Roofing & Construction, and  
17 then finding that they did such a poor job and my roof leaked from the beginning of rains in 2008, they  
18 still have not repaired my roof and it still leaks after a year and a half. They say they will fix it but  
19 changing names from Cal bay Construction to Caslte Roofing & Construction should have tipped me off  
20 that I may never get my roof repaired. This company says it will fix my roof but all I get is excuses. After  
21 18 months you would think they would fix it. Cal Bay Construction may no longer exist but the new  
22 company Castle Roofing & Construction as the new entity needs to come out and fix my roof. I find this  
23 to be totally unsatisfactory work and would not recommend this company (Caslte Roofing &  
24 Construction) to anyone. They just do not know how to fix a bad roof job."

#### 25 **PLAINTIFFS**

26 4.) The plaintiffs are land based businesses and derive profits from direct sales rather  
27 than advertising on line. Plaintiffs are sole proprietorships d/b/a Cal Bay Construction and  
28 Castle Roofing with their principle place of business at 1440 Military West; suite #104;

1 Benicia, California 94510.

2 5.) The Plaintiffs are licensed California contractors representing themselves in the  
3 instant matter "*In Propria Persona*". Plaintiffs are acting on their own behalf and not  
4 appointed or under the employ of others. The Plaintiffs are both U.S. Citizens living and doing  
5 business within the Northern Judicial District Of California and request the Courts permission  
6 to proceed with this case "*In Propria Persona*" or in the alternative have the case moved to  
7 Governmental supervision.  
8

9 **DEFENDANTS**

10 6.) The Defendant, Google, Inc. is headquartered in Santa Clara County at 1600  
11 Amphitheatre Parkway; Mountain View, CA 94043. The Defendant, Google, Inc., transacts or  
12 has transacted business in this District and throughout the United States. At all times material  
13 to this Complaint, acting alone or in concert with others, Google, Inc. has advertised,  
14 marketed, distributed, or sold advertising within this district and nation wide.  
15

16 **JURISDICTION AND VENUE**

17 7.) This Court has jurisdiction pursuant to Title 28 U.S.C. § 133 1. The district courts  
18 shall have original jurisdiction of all civil actions arising under the Constitution, laws, or  
19 treaties of the United States.

20 8.) This Court has jurisdiction pursuant to Title 28 USC §1337 (a). Commerce  
21 and antitrust regulations. The district courts shall have original jurisdiction of any civil action  
22 or proceeding arising under any Act of Congress regulating commerce or protecting trade and  
23 commerce against restraints and monopolies.  
24

25 9.) This Court has jurisdiction and may prohibit unlawfulness and unfair business  
26 practices pursuant to Title 15 USC 45 - Sec. 45 (a)(1)(2).

27 10.) This Court has jurisdiction and may prohibit false advertisements; and issue  
28 injunctions and restraining orders pursuant to Title 15 USC 53 (a)(b).

1 11.) Venue is proper in this District under 28 USC § 53 (b).

2 12.) Defendant, Google, Inc. conducts business makes financial transactions or has  
3 transacted business in this district and throughout the United States. At all times relevant to  
4 this Complaint, Defendants have maintained a substantial course of trade in or affecting  
5 commerce as defined in Section 4 of the FTC Act. 2.  
6

7 **PUBLIC INTEREST & REQUEST FOR JUDICIAL NOTICE**

8 13.) The substance matter of this complaint wishes to help make the Internet a  
9 safer place for professionals and businesses by bringing into focus an understanding of  
10 the sponsoring responsibly, if any, that the Defendant, Google, Inc., should bear.

11 14.) Judicial notice is requested to the fact that people may have complaints  
12 against a professional or business that lack merit.

13 15.) The Plaintiffs have investigated various web sites that sponsor '*courtesy*  
14 *advertising*' and on line business review programming for businesses and professions and  
15 allege that it's against law under Title 15 USC 45 - Sec. 45 (a)(1)(2), Title 15 USC 53 (a)(b), and  
16 18 USC 1365 - Sec. 1365(b), when an Internet business knows it's on line programming will do  
17 harm to others and/or advertises another parties business or profession while allowing  
18 competitor advertising and consumer generated content to accompany the advertising without  
19 the business's or professional's knowledge.  
20

21 **DEFENDANTS' BUSINESS ACTIVITIES**

22 16.) Since at least October 2009, Defendant, Google, Inc. has conducted a nationwide  
23 on line advertising campaign and on line business review scheme to sell advertising to local  
24 businesses for financial gain and profit; purportedly for the benefit of it's on line community  
25 of paid advertisers and others, as well as, individuals who may be seeking background  
26 information pertaining to potential business transaction or professional engagement on line.  
27 More specifically, in this case, many individuals regularly are using the Defendant's on line  
28

1 Business Reviews, referred to herein as '*courtesy advertising*', to check on a contractor before  
2 making a purchase or in many cases before even allowing the contractor to visit the  
3 prospective customer; thereby placing themselves within the contractors bid and the  
4 prospective customers decision making process.

5 17.) The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a  
6 instant and direct result of the plaintiff's direct telemarketing and door-to-door selling efforts  
7 rather than from Defendant's own efforts. The Defendant accomplishes this by allowing what  
8 is referred herein as "*courtesy advertising*" on their business review web site which is posted  
9 publicly on line at <http://www.google.com>. Everyday the Plaintiff prospects door-to-door,  
10 canvasses door-to-door, or sends out mailings he/she produces traffic to the Defendants,  
11 Google, Inc.'s web site. Plaintiffs prospects are then able to view an ever changing  
12 advertisement sponsored upon the Defendant's web site along with other companies offering  
13 the same or similar services. Plaintiff alleges that these acts by the Defendants combine as a  
14 major market force *intervention* that is wrongful in that the Plaintiff's prospects are faced with  
15 advertising which is misrepresentative, ever changing, 24/7, and very difficult and costly for  
16 Plaintiff to adjust when incorrect, illegal, or improper information is being disseminated.  
17

18 18.) Any member of the general public or the Defendant, Google, Inc., may post a  
19 businesses name, address, and phone number upon the Defendant's web site then  
20 defame anonymously in review of that business. Said public postings are then easily  
21 referenced by the general public by way of a home page search on the Defendant's search  
22 engine front page. Said practice of on line public reviews may be malicious with regards to  
23 persons or parties taking revenge on line rather than seeking justice or administrative  
24 remedies; (Reference is made to ¶ 13 - 14 - 15 PUBLIC INTEREST & JUDICIAL NOTICE) .  
25

26 19.) The defamatory business review of Plaintiff's business (¶ 1) is anonymous and  
27 unverifiable as to the comments accuracy. In the instant matter, the Plaintiff alleges that said  
28

1 comment was posted on the Defendant, Google, Inc.'s, web site against law as it's without any  
2 due process or administrative action and the Defendant, Google, Inc., has not contacted the  
3 Plaintiff after repeated attempts by the plaintiff to remedy the on line public comment. The  
4 Plaintiff has essentially been ignored by the Defendant; not even a return e-mail.

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

22           21.) The Defendant, Google, Inc.'s business review programming list on line for  
23 public viewing business names, addresses, and phone numbers. The '*courtesy advertising*' of  
24 the Plaintiff's business has programming links which provide that the Plaintiff may click a link  
25 to '*take ownership*' of the advertising, verify the address and phone numbers, and even  
26  
27  
28

1 suspend the 'courtesy advertising' by telephone or mail. The public nor the business owner  
2 may remove someone's comment or paid advertisements which are in conjunction with the  
3 Plaintiffs so called '*courtesy advertisement*', rather this can only be done by the Defendant,  
4 Google, Inc. or the party making the comment. Additionally, the public can not suspend or  
5 delete the '*courtesy advertising*' or business listing from the Defendant's web site. The  
6 problem is that a visitor did in this case post an anonymous defamatory comment against the  
7 Plaintiff's businesses while the entire system of programming assumes a small *land based*  
8 business such as the Plaintiff's business is familiar with the Internet, has a computer, and  
9 knows his or her profession or business is being damaged by an ever changing advertisement.  
10 The Plaintiff contends the Defendant, Google, Inc., is by force, albeit market force, causing  
11 Plaintiff's business to constantly monitor and look over it's shoulder so as not to be ambushed  
12 by unknown Internet sources and that the practice of forcing small *land based* businesses to  
13 become Internet savvy constitutes an unfair business practice. In this case it's an anonymous  
14 and defamatory comment destroying a large portion of the Plaintiff's business while the  
15 Defendant benefits financially selling advertising to the Plaintiff's competition.  
16

17  
18 22.) The defendant, Google, Inc., has refused on multiple occasions throughout the  
19 past six months to remove, mediate, or even acknowledge damaging advertising directed at  
20 the Plaintiffs businesses.

21 23.) Plaintiffs have repeatedly tried using the Google, Inc. web site to remove  
22 not only the comments but also the advertised business listing in it's entirety from the  
23 Google, Inc. web site. In short, the defendant Google, Inc. has held itself out by way of  
24 it's programming as a deciding factor in the plaintiff's bidding process and ignored  
25 plaintiff's requests for a fair or reasonable dispute/resolution process while in violation  
26 of Federal and State law. The Plaintiff herein in the interest of expediency and respect  
27 for the Courts time only details the highlights of the Plaintiff's efforts within this  
28 original complaint. Following are perhaps thirty percent of Plaintiff's pleadings to the



1 Defendant Google, Inc. detailed below.

2 24.) November 8th, 2009 excerpt of Plaintiff's first response sent to Google,  
3 Inc. via Google, Inc.'s abuse report system which is built into their business review  
4 programming on Google's web site:

5 "... The defamation within the posting is anonymous, hiding behind Googles, Yahoo, and others. It  
6 reads more true as a defamation and a complaint; a customer claiming my roof is leaking and they say  
7 they'll fix it but don't know how and that they should fix it.

8 How is it possible to have an anonymous complaint with a roof leaking, presumably causing  
9 emanate damage and possible bodily harm to someone's person or home and at the same time not be  
10 able to find out who is in trouble. Goggles and Yoyo both refuse to reveal the identity of the posting or  
11 give any detail.

12 In California were I did business up until last year an insurance company stands with there hand out  
13 holding \$12,500.00 in deposit to guarantee the performance of my work, even if I'm dead.

14 The party complaining and defaming my good company name obviously can not or did not make a  
15 complaint with the CSLB, Cal-Bay Construction, or the Insurance Company. They've instead chosen an  
16 incredible technology for anonymous revenge.

17 My first reaction here is I worked twenty five years, maintained a great reputation, and retired to  
18 only have my career finish with an anonymous defamation posted here for millions to see indefinitely.

19 My second reaction is that Googles and Yahoo both ignore and refuse repeated request to  
20 validate the anonymous roofing complaint, even though the party is screaming for help and the  
21 company reputation is being destroyed. . ."

22 Google, Inc.'s abuse report system nor Google's employees had a response to Plaintiff's '*first*  
23 *response*'.

24 25.) On or about November 8th, 2009, was Plaintiff's second correspondence. Plaintiffs  
25 used the Defendant's business listings web site again in an effort to dispose of the on line  
26 defamation and complaint. The Defendant, Google, Inc. provides that a business is able to  
27 '*claim ownership*' of Google's on line '*Courtesy Advertisement*'. So the plaintiff did as  
28 instructed and claimed ownership of the *courtesy* business listing on the Defendant's Google

1 web site using an e-mail ID of hollibeam@yahoo.com, which is required by Defendant's  
2 programming. Now as owner of the on line '*Courtesy*' business listing, Plaintiff was offered a  
3 way to opt out of the on line business listing by mail. Via Defendant Googles programming the  
4 plaintiff tried to opt out of Google's on line courtesy advertising. Google sent via US Mail a  
5 post card containing a pin number so that the Plaintiff, as business owner, could enter the pin  
6 number and suspend the business listings in their entirety on line. Plaintiff re-entered the  
7 Defendant's on line program, logged in as hollibeam@yahoo.com, and entered the pin  
8 numbers received from the Defendant's US MAIL to suspend the business listings so that they  
9 would not appear on line. Immediately a web page appeared acknowledging the suspension of  
10 the business listings. The pin number by US Mail and suspension process took approximately  
11 two - three weeks. After the listings were suspended the Plaintiff discovered by word of mouth  
12 from a prospective customer, while on sales calls, that Plaintiff had a problem advertisement  
13 on line. The Plaintiff then checked on line to discover that the defamatory comments and  
14 business listings were again visible to the general public via Defendant Googles on line  
15 courtesy advertising program.

16 26.) During the months of January through April the Plaintiffs reviewed, on line, the  
17 problems surrounding on line defamation and legal rights surrounding anonymous 1st  
18 amendment rights while also having to answer to Yahhoo.com about the on line defamation,  
19 as the defamatory comment (§ 1) somehow migrated or was placed separately by someone  
20 upon Yahoo's 'courtesy advertisement' for Plaintiff's businesses. The comment was precisely  
21 the same defamatory comment as on the Defendants Google, Inc.'s web site. Yahoo's so called  
22 '*courtesy business listing*' programming was similar to Google's except that Yahoo.com  
23 responded to the Plaintiff each time the Plaintiff wrote to them and ultimately after several  
24 attempts Yahoo.com did not remove the courtesy listing but did remove the defamatory  
25 comments that were damaging the Plaintiff's business. Following is the Plaintiff's and  
26 Yahoo.com e-mail exchange:

27 First e-mail To Yahoo from Plaintiff Gary G. Black:

28 Danielle Bluen,

1 I'm not sure who's the most stubborn, the online stalker, Holli, or Yahoo. She says she's not writing you a  
2 letter or intending to sue Yahoo. In short she thinks you're the devil and is afraid of you and others like  
3 you.

4 The rational:

5 1) The same posting is appearing to spread throughout the Internet.

6 2) Yahoo provides a platform enabling a person or competitor to seek revenge rather than justice  
7 without providing a method of resolution for small businesses.

8 3) Yahoo is hiding behind first amendment laws causing great damage to small businesses everywhere  
9 regardless of facts, government licensing, trade marking ...etc. etc..

10 4) Yahoo forces businesses to post phony reviews to mitigate bad reviews, as very few people will  
11 actually take time, without compensation, to promote a business they do not own and Yahoo is enabling  
12 and promoting this fraud to perpetuate a review process and advertising revenue.

13 5) Something about Yahoo not acting responsibly and different degrees of influence pertaining to on line  
14 defamation - Courts should intervene creating new law prohibiting large market influences such as  
15 Yahoo from destroying small mom and pop businesses when online postings come under dispute.

16 She assumes as I do that you're unaware of the identity or any facts surrounding the online posting. If  
17 you do have contact information please let her know, her cell is (707) 373-4615.

18 Castle Roofing generates daily business by way of telemarketing and canvassing door to door which  
19 reveals instantly and daily damages caused by your online posting. Commercial advertising such as T.V.,  
20 radio, online ads are not in the business model.

21 Thank you though for investigating this matter.

22 (Holli's husband)

23 Another e-mail to Yahoo.com dated April 8th to Yahoo, under their report abusive  
24 content programming from Plaintiff Gary G. Black:

25  
26 The above review of Castle Roofing is posted on your web site. Castle Roofing is owned by Holli  
27 Beam which has been in business for less than one year. Holli is requesting the post be removed  
28 as it violates Yahoo's policy against defamation of others or entities.

1 Castle Roofing customers have begun rescinding contracts and competitors have begun using  
2 copies of the online postings abusively to deprive Castle Roofing from winning bids for  
3 residential roofing.

4 This request is being made in good faith solely for the purpose of remedy and not for any  
5 improper purpose.

6 This request is directly and materially relevant to Castle Roofing's right to freely do business  
7 without being stalked 24/7 by a claimant weather the review in question is true or false.

8 Castle Roofing does not have sufficient information to contact the author of the review, establish  
9 or disprove the claims made, and defense against the allegations are unavailable from any other  
10 source.

11 Yahoo has remedy under the TOS agreement if it believes the rights of another person are being  
12 violated. In the instant matter the review is patently false but regardless of the reviews value it is  
13 most defamatory of Holli Beam and Castle Roofing.

14 Yahoo has the right under it's terms of service to remove defamatory content even if the nature of  
15 the content may be true but demonstrates cause for substantial damage to others.

16 Thank you for your cooperation.

17 Yahoo.com response E-mail to the Plaintiff Gary G. Black whereby Yahoo.com did  
18 remove the defamation from the so called '*Courtesy Business Listing*' :

19 Hello,

20 Thank you for writing to Yahoo! Local.

21 We're sorry, but the feature you are requesting is not available, and we  
22 do not have an estimated date as to when or if it will be available. We  
23 are always looking for ways to make Yahoo! Local more useful to our  
24 users, and we will be sure to keep your comments in mind as we continue  
25 to make improvements to our service.

26 Please let us know if you need any further assistance. Your patience is  
27 greatly appreciated.

28 Thank you again for contacting Yahoo! Local.

1           Regards,

2           David Blake

3           Yahoo! Customer Care

4           27.) During the month of February the Plaintiffs sent an e-mail to the Defendant  
5 Google, Inc. explaining that there had been no administrative actions regarding the on line  
6 defamatory comment, no complaints at the Contractors State License Board, or any matching  
7 criteria from any on going customer service. The Plaintiff inform the defendant that Plaintiff,  
8 Holli Beam, owner of Castle Roofing had only been selling roofs for a little over a year, thus  
9 making the on line comment false and that such a defamatory disclosure on line was illegal  
10 because it lacked any previous administrative action or review and may be in the contractors  
11 favor pursuant to the BUSINESS AND PROFESSIONS CODE SECTION 7090-7124.6 (c)

12  
13           7124.6. (a) The registrar shall make available to members of the  
14 public the date, nature, and status of all complaints on file against  
15 a licensee that do either of the following:  
16 (c) A complaint resolved in favor of the contractor shall not be  
17 subject to disclosure.

18 The Plaintiff believed then that surely the Defendant Google, Inc. would at least respond to the  
19 Plaintiff's concerns but never received any communication from the Defendant Google, Inc. at  
20 all.

21           28.) On April 22, 2010 the Plaintiff was emotionally disturbed by the Defendants'  
22 ignorance of the Plaintiff and mailed a very brash letter because the Plaintiff's businesses were  
23 suffering financially on a daily basis from the on line defamation. The Plaintiff mailed a hard  
24 copy letter to the Defendants' legal department via US Mail, addressed to the Defendant's  
25 headquarters in Mountain View, California. Again the Plaintiffs never received a response  
26 from the Defendant and the Defamation was still on line. The letter sent by Plaintiff reads as  
27 follows:

28           First hand, you have my apologies if I sound brash. This letter is out of necessity and only

1 intended to resolve a small business problem expeditiously.

2 I've done business as Cal Bay Construction and other names going back to 1989 and never heard  
3 of your business review process until recently. I've been trying to retire for the past year or so  
4 and up until recently had a perfect track record.

5 Holli Beam owns Castle Roofing and relies heavily upon the good will and excellent reputation I  
6 built under the Cal Bay Construction name. She is now *administrator* over all the employees,  
7 staff, and bidding processes. She uses her own license and decided on the name Castle as it  
8 would be more fanciful should she decide to advertise as opposed to Cal Bay which is very  
9 generic in style.

10 Castle Roofing generates daily business by way of telemarketing and door to door canvassing  
11 which reveals instantly and daily damages caused by the online posting. Commercial advertising  
12 such as T.V., radio, and online ads are not and have never been in the business model.

13 The posting at hand not only defames but is devastating to Holli's business and my own  
14 reputation. This week alone she has a \$15,000, a \$13,000 & two 9,000 deals on the table not  
15 counting others incoming throughout the week. The point is that these are not lunch tickets and  
16 'apparently' a minimum of one third of all clients using contractors check the contractors name  
17 on Google during or before the transaction takes place with the contractor. The defamatory  
18 commit on your web site is costing Holli as much as thirty thousand weekly in sales.

19 Below are some specifics you may wish to consider while deciding whether or not to remove the  
20 defamatory content from your web site:

21 1.) Hopefully you can put yourself in the small shoes of a business that's losing thousands of  
22 dollars weekly because of your questionable business practice.

23 2.) Google is a global and powerful market influence. However, it's not proper to issue a fatal  
24 blow against small businesses on behalf of a single disgruntled person having an anonymous  
25 grudge that might not even be related to that business. For example it may be that my dog  
26 urinates on the neighbors property when their dog isn't looking or worse it could be an online  
27 stalker with a vengeance perhaps against a proprietor or a proprietors telemarketing practice.

28 3.) In the current business climate, it would not be in Googles best interest to be publicly known

1 as a powerful market influence (bully) shutting down thousands of small businesses across  
2 America.

3 4.) While Google may not be liable for the anonymous postings of others, it may be liable  
4 proportionately for the malicious damage caused by very bad oversight of the review process.

5 Examples: a) Failure to accommodate and fairly evaluate both sides of an anonymous contractor  
6 dispute. b) Enabling a person or persons to exact meaningful revenge against a business whether  
7 they are in the right or in the wrong. c) An online stalker seeking revenge rather than a true and  
8 just remedy on Google's platform without Google providing a method of resolution is guaranteed  
9 to be a small business tragedy.

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

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

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

17 8.) Google is not acting responsibly and with regard concerning different degrees of market  
18 influence pertaining to an on line defamation. Said ignorance is highly discriminatory towards  
19 small mom and pop businesses.

20 [The Courts should perhaps intervene in creating new case law prohibiting large market  
21 influences such as Google and Yahoo from destroying small mom and pop businesses when  
22 online postings come under dispute.]

23 9.) The posting violates Google's own terms of service (TOS) in that it defames and does great  
24 damage to a business on a 24/7 continuous basis. It's not like a bad day for a business but more  
25 like a death sentence for a small business whether the accusation is true or not.

26  
27 The same defamatory posting was placed on Yahoo under a different still anonymous user  
28 account and has recently been removed from Yahoo. For your convenience following is Yahoo's

1 reply after the removal of the defamatory comment:

2 From: Yahoo! Local <[local-ratings@cc.yahoo-inc.com](mailto:local-ratings@cc.yahoo-inc.com)>

3 Date: Tue, April 13, 2010 6:24 pm

4 To: <[gerald@raymondavich.com](mailto:gerald@raymondavich.com)>

5 Hello,

6 Thank you for writing to Yahoo! Local.

7 We're sorry, but the feature you are requesting is not available, and we  
8 do not have an estimated date as to when or if it will be available. We  
9 are always looking for ways to make Yahoo! Local more useful to our  
10 users, and we will be sure to keep your comments in mind as we continue  
11 to make improvements to our service.

12 Please let us know if you need any further assistance. Your patience is  
13 greatly appreciated.

14 Thank you again for contacting Yahoo! Local.

15 Regards,

16 David Blake

17 Yahoo! Customer Care

18  
19 \_\_\_\_\_  
20 The Google web site posting at issue is patently false, malicious, and defamatory with intent to  
21 harm as can be easily evidenced.

22 Holli of Castle Roofing is urging me to make formal a complaint against Google for allowing the  
23 defamation, trade mark infringement issues, abusive and ineffective business practices,  
24 negligence, stalking, ...etc. along with a motion to expose the posting party in the next several  
25 days.

26 I've tried talking her into a hard copy letter to Google first but she's getting high rates of people  
27 canceling sales appointments after appointments have been set by canvassers and by telephone,  
28 contract cancellations, and embarrassing personal inquiries.

Even though Cal Bay Construction no longer contracts, we still take calls for valid service on a



1 few thousand roofs. The posting adversely impacts Castle Roofing at the old Cal Bay location  
2 where she (Castle Roofing) wants the posting removed from your web site on an ASAP basis.  
3 Should you wish more information please feel free to contact me at anytime. My cell (707) 373-  
4 2960. I'll give the matter a little more time, as I too would like it resolved -- rather than being a  
5 party to litigation.

6 Thank you in advance for your valuable consideration.

7 Gary Black owner of Cal Bay Construction a/k/a Gerald Raymondavich

8 29.) On or about May 20th, 2010, again emotionally discouraged the Plaintiff  
9 exchanged e-mail with a Medical Doctor who is also a neighbor near the Plaintiff's residence.  
10 Following is an exchange whereby the Doctor labels such on line activities regarding the  
11 evaluation of professionals and businesses "scary". The plaintiff herein had directed the  
12 Doctors attention to a Doctor in San Francisco that was battling for her reputation from an  
13 anonymous on line posting about her child support which had nothing to do with her  
14 practicing medicine. Following is Plaintiff's e-mail exchange with the Plaintiffs' neighbor who  
15 is a doctor:

16 FROM THE PLAINTIFF, GARY BLACK on May 20th, 2010

17 Hello,

18 This abuse is happening to thousands all over the Internet. Unfortunately, they hide behind the  
19 first amendment right to free speech. It's very costly to file Federal complaints to get a Judge to  
20 authorize the tracing you speak of. One must prove that your rights as a business are more  
21 important or greater than the anonymous parties right to speak anonymously.

22 FROM THE PLAINTIFFS' NEIGHBOR WHO IS A DOCTOR on May 20th, 2010

23 "Wow,

24 i am not sure where to start. One thing that concerns me is the **system** used to rate professionals and  
25 businesses. I notice one rating system listed all docs in solano county and the opportunity for anyone to  
26 give a rating of a specific doctor. This is scary! Anyone, ie) neighbor can write anything. Of course this  
27 can be considered slander. . ."

28 30.) The Defendant, Google, Inc., at all times material to this Complaint acting alone or

1 in concert with others directed, controlled, and had the authority to control or participated in  
2 the acts and practices set forth in this complaint via software programming on their web site  
3 within the United States of America and in the State of California. At all times relevant to this  
4 Complaint, Defendants have maintained a substantial course of trade in or affecting  
5 commerce, as "commerce" is defined in Section 4 of the FTC Act. 2 Title 15 U.S.C. § 44.  
6

7 31.) On or about May 10th, 2010 Plaintiff examined a business review site named  
8 Angie's List located at <http://www.angieslist.com/angieslist/> . The Plaintiff was pleasantly  
9 surprised to find responsible business review practices. At Angies List all business and  
10 professional complaints anonymous or not are verified and investigated so that a business  
11 may make amends. Then the web site gives the complaining party an opportunity to re-rate  
12 the business positively.  
13

14 32.) Plaintiffs herein are husband and wife with separate and distinct business licenses  
15 for contracting in the State of California. Both the Plaintiff's reputations, incomes, and  
16 businesses have been severely damaged by the on line programming and 'courtesy advertising'  
17 sponsored by Google, Inc. and others. In the current very tough business environment both  
18 Plaintiffs have suffered emotionally as a direct result of the Defendants acts detailed above.  
19 The Plaintiffs' wife, Plaintiff HOLLI BEAM-BLACK, especially has become distressed emotionally  
20 and sent the following e-mail to Plaintiff just a few weeks ago:

21 "... ready to leave "Dodge". Can we PLEASE just move ?! I'm so ready to get  
22 out of this rat race. Let's sell the house, move to the midwest , I'll get a job and you  
23 can do your hobbies. I'm really serious Gene. I'm done working my @\$@\$ off and  
24 having so much stress. I feel as tho I'm dying here."

25 Plaintiff, GARY GENE BLACK, also spouse explained that the Defendants, such as, GOOGLE, INC.  
26 are everywhere on a 24/7 basis, and that running away doesn't provide a remedy of the issue.  
27 Plaintiffs' wife Holli Beam - Black was unaware of the making of this complaint until just a few  
28 days before it's filing.

## CONCLUSION

33.) Plaintiff alleges, that large market forces, such as the defendant Google, Inc., should not enable '*courtesy advertising*' that places business and professions at risk without written consent and disclosure of said risk 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.

34.) Therefore the Plaintiffs herein allege the Defendants, Google, Inc.'s business review '*courtesy advertisement*' process which allows for consumer generated content is illegal and inappropriate as it manifest into allowing parties to seek revenge against businesses and professionals rather than due process and justice whereby no single business entity such as the Defendant, Google, Inc., would ever be capable of adjudicating the entire business complaint community.

35.) Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal acts. Throughout the on line '*courtesy advertising*' programming 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 is now continuing on a business as usual basis. Plaintiff alleges that consumer-generated content added to and in conjunction with said on line '*courtesy advertising*' combine to be in violation of 18 USC 1365 - Sec. 1365(b): Tampering with consumer products, which reads as follows.

(b) Whoever, with intent to cause serious injury to the business of any person, taints any consumer product or renders materially false or misleading the labeling of, or container for, a consumer product, if such consumer product affects interstate or foreign commerce, shall be fined under this title or

1 imprisoned not more than three years, or both.

2  
3 **FIRST CAUSE OF ACTION**

4 **Breach of Authority; Violation of Law**

5 36.) Plaintiff herein incorporates paragraphs one through thirty-five into this First  
6 Cause Of Action.

7 37.) The Plaintiff alleges that the Defendant, Google, Inc., chose to sponsor  
8 consumer-generated content in such a matter that it has established an endorser sponsor  
9 relationship with the public at large.

10 38.) The Plaintiff alleges that the Defendant, Google, Inc. in fact allows so called  
11 '*courtesy advertising*' of the Plaintiff's businesses to be placed on it's web site without the  
12 Plaintiff's permission while exaggerating the benefits of a free product to the public at large  
13 and fails to disclose to businesses a material relationship where one exists between the public  
14 at large and the Plaintiff's business. Plaintiffs herein allege that these acts combine to  
15 constitute a violation of law under Title 15 U.S.C. § 45(a), prohibiting "unfair or deceptive acts  
16 or practices in or affecting commerce." and Title 15 USC 53 (a)(b) and violations of the FTC  
17 ACT 17. Section 5(a).

18 39.) By the Defendant, Google, Inc., employing said means of marketing '*courtesy*  
19 *advertising*' for the Plaintiff's businesses the Plaintiffs are harmed by assuming a risk of  
20 product and services being misrepresented and the potential liability that accompanies said  
21 risk. Specifically, for more than the past six months, an on line comment upon the  
22 Defendant's web site effectually devastates the plaintiffs income producing small businesses  
23 and it's reputation.

24 40.) The Plaintiffs have made every effort to dodge, answer, settle, or suspend  
25 the on line defamation of their businesses and even tried labeling the business closed and  
26 disconnecting the telephone number used in the on line advertising with the Defendant's  
27  
28

1 programming without results.

2  
3 41.) Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes online  
4 business reviews for profit while at the same time neglecting the legal needs of said reviews  
5 thereby failing to meet jurisdictional and administrative requirements of the State of  
6 California and others. In the instant matter said defamatory disclosure on line is illegal  
7 pursuant to the BUSINESS AND PROFESSIONS CODE SECTION 7090-7124.6 (c) as there has not been  
8 an attempt by the Defendant, Google, Inc. or the claimant at an administrative or just due  
9 process resolution as required by § 7090-7124.6 (c) of the BUSINESS AND PROFESSIONS CODE which  
10 reads as follows:

11 (c) A complaint resolved in favor of the contractor shall not be  
12 subject to disclosure.

13 42.) Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to  
14 cause illegal acts. Throughout the on line 'courtesy advertising' program distributed to the  
15 public by the Defendant, Google, Inc., there exist options whereby the general public may  
16 report suspect content to the Defendant, Google, Inc.. The general public may select and  
17 report content that they believe to be abusive or illegal; Therefore one may conclude that the  
18 Defendant, Google, Inc. knew in advance that their programming was hostile, could and does  
19 cause harm by enticing members of the general public to commit illegal acts which are now  
20 continuing on a business as usual basis. Plaintiff alleges these acts combined are in violation of  
21 18 USC 1365 - Sec. 1365(b): Tampering with consumer products, which reads as follows.

22 (b) Whoever, with intent to cause serious injury to the business of any person, taints any  
23 consumer product or renders materially false or misleading the labeling of, or container for, a  
24 consumer product, if such consumer product affects interstate or foreign commerce, shall be  
25 fined under this title or imprisoned not more than three years, or both.

26 **SECOND CAUSE OF ACTION**

27 **Breach of Contract**

28 43.) Plaintiff herein incorporates paragraphs one through forty-two into this Second

1 Cause Of Action and alleges that a contract exist between the Plaintiffs and Defendants via the  
2 Defendant, Google, Inc.'s on line terms of service (TOS).

3 44.) The plaintiff alleges the Defendant, Google, Inc., was negligent and inflicted  
4 injury intentionally upon the Plaintiffs by very bad oversight of the their business review  
5 programming and breach of their terms of service (TOS) made public upon their web site and  
6 said contract (¶43). Specifically, section three of Defendant's TOS copied from Defendant,  
7 Google, Inc.'s web site, which reads as follows:

8 **3. Appropriate Conduct; Compliance with Law and Google Policies.** You agree that you are  
9 responsible for your own conduct and content while using the Products, and for any consequences thereof.  
10 You agree to use the Products only for purposes that are legal, proper and in accordance with the Terms  
11 and any applicable policies or guidelines Google may make available. By way of example, and not as a  
12 limitation, you agree that when using the Products or the Content, you will not:  
13 (a) defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and  
14 publicity) of others.

15 45.) The Plaintiffs allege they were damaged financially and emotionally by said  
16 breach of contract.

17 **THIRD CAUSE OF ACTION**

18 **Unfair Business Practices/False Advertising**

19 46.) Plaintiff herein incorporates paragraphs one through forty-five into this Third  
20 Cause Of Action and alleges that the Defendants, Google, Inc., and others are ambushing and  
21 blindsiding the Plaintiff with on line advertising while wrongfully benefiting financially as a  
22 result of the plaintiff's daily direct selling efforts. The plaintiff alleges that defendants et al,  
23 should not benefit by the plaintiff's daily direct selling and prospecting efforts and that the  
24 Plaintiffs are injured and damaged as a result of the Defendant, Google, Inc.'s on line business  
25 review processes.

26 47.) The Plaintiff contends the Defendant, Google, Inc., is by force, albeit market  
27 force, causing Plaintiff's business to constantly monitor and look over it's shoulder so as not  
28 to be ambushed by unknown Internet sources and that the practice of forcing small *land*

1 based businesses to become Internet savvy constitutes an unfair business practice. In this case  
2 it's an anonymous and defamatory comment destroying a large portion of the Plaintiff's  
3 business while the Defendant, Google, Inc., benefits financially selling advertising to the  
4 Plaintiff's competition while falsely advertising the Plaintiff's businesses in violation of law  
5 under Title 15 USC 45 - Sec. 45 (a)(1)(2). and Title 15 USC 53 (a)(b).  
6

7 48.) The Plaintiff alleges that the Defendant, Google, Inc., chose to sponsor  
8 consumer-generated content in such a matter that it has established an endorser sponsor  
9 relationship with the public at large.  
10

11 49.) The Plaintiff alleges that the Defendant, Google, Inc. in fact allows so called  
12 '*courtesy advertising*' of the Plaintiff's businesses to be placed on it's web site without the  
13 Plaintiff's permission while exaggerating the benefits of a free product to the public at large  
14 and failing to disclose to businesses a material relationship where one exists between the  
15 public at large and the Plaintiff's business. Plaintiffs herein allege that these acts combine to  
16 constitute a violation of law under Title 15 USC 45 - Sec. 45 (a)(1)(2). and Title 15 USC 53  
17 (a)(b).  
18

19 50.) By the Defendant, Google, Inc., employing said means of marketing '*courtesy*  
20 '*advertising*' for the Plaintiff's businesses the Plaintiffs are harmed by assuming a risk of  
21 product and services being misrepresented and the potential liability that accompanies said  
22 risk. Specifically, for more than the past six months, an on line comment upon the  
23 Defendant's web site effectually devastates the plaintiffs income producing small businesses  
24 and it's reputation.  
25

26 51.) Specifically, the plaintiff's sell residential roofing and generate daily business  
27 by way of telemarketing and canvassing door to door. Commercial advertising such as T.V.,  
28 radio, and online ads are not in the plaintiff's business model. The plaintiff alleges that  
Plaintiffs' prospects and customers are wrongfully influenced, without the plaintiff's

1 permission, by the defendants failure to allow the plaintiffs to remove themselves from the on  
2 line advertising process and further allege that Defendants, Google, Inc. allow others to  
3 adversely influence the so called '*courtesy advertising*' without Plaintiff's knowledge or  
4 permission. Therefore the Plaintiffs herein allege the business review '*courtesy advertisement*'  
5 process which allows for consumer generated content is illegal and inappropriate as it  
6 manifest into allowing parties to seek revenge against businesses and professionals rather  
7 than due process and justice as no single business such as the Defendant, Google, Inc., would  
8 ever be capable of adjudicating the entire business complaint community.

9 52.) Because of the plaintiff's direct marketing efforts, the public in general  
10 frequently investigate on line as to the identity of the plaintiff's businesses. If there are  
11 negative business reviews online for public viewing the plaintiff's business suffers instant and  
12 daily damages which are directly attributable to the negative online postings. On the other  
13 hand, if there exist positive or no reviews of the plaintiff's business on line the plaintiff's  
14 prospects are wrongfully subjected to competitors advertising against the plaintiff's wishes.

#### 15 FOURTH CAUSE OF ACTION

##### 16 Negligence

17 53.) Plaintiff herein incorporates paragraphs one through fifty-two into this Fourth  
18 Cause Of Action and alleges that the Defendants, Google, Inc., acted negligently in handling the  
19 on line business review '*Courtesy Advertising*' processes and damaged the Plaintiffs financially  
20 and emotionally as a direct result of their negligence.

21 54.) The plaintiff further alleges the Defendant, Google, Inc., was negligent and  
22 inflicted injury intentionally upon the Plaintiffs by very bad oversight of the their business  
23 review programming.

24 55.) The plaintiff further alleges the Defendant, Google, Inc., was negligent and  
25 inflicted injury intentionally upon the Plaintiffs by ignorance of the Plaintiff's many notices to  
26 the Defendant, Google, Inc. informing them that Plaintiff was being harmed illegally and was  
27 suffering financially as a result thereof.



**FIFTH CAUSE OF ACTION**

**Misrepresentation**

1  
2  
3 56.) Plaintiff herein incorporates paragraphs one through fifty-five into this Fifth  
4 Cause Of Action and alleges that the Defendants, Google, Inc., misrepresented the Plaintiff's  
5 businesses in that the implication to the general public within the Defendant's 'Courtesy  
6 Advertising' of Plaintiffs businesses was such that Plaintiff's roofing projects leak, thereby  
7 causing prospective consumers of Plaintiffs to purchase elsewhere.

8 57.) Specifically, the plaintiff alleges that Plaintiffs' prospects and customers are  
9 wrongfully influenced, without the plaintiff's permission, by the defendants failure to allow the  
10 plaintiffs to remove themselves from the on line advertising process or inhibiting said  
11 removal.

12 58.) Plaintiffs further allege that Defendants, Google, Inc. allow others  
13 (Consumer Generated input directly along side of the 24/7 on line advertising) to  
14 misrepresent the Plaintiff's business, avoid administrative due processes, and adversely  
15 influence the so called 'Courtesy Advertising' without Plaintiff's knowledge or permission.  
16 Therefore, the making of the representation as set forth in ¶1 of this complaint constitutes a  
17 deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act,  
18 15 U.S.C. § 45(a).

19 59.) The Plaintiffs allege that they were completely blindsided by the current  
20 instance of misrepresentation and damaged as a result.

**SIXTH CAUSE OF ACTION**

**Intentional Infliction of Emotional Distress**

21  
22  
23 60.) Plaintiff herein incorporates paragraphs one through fifty-nine into this Seventh  
24 Cause Of Action and alleges that the Defendants, Google, Inc., intentionally inflicted emotional  
25 distress upon the Plaintiffs by intentional negligence, inattentive business practices, violation  
26 of common decency, violation of law, and unfair business practices for the purpose of selling  
27 advertising rather than the purpose of free marketing of 'Courtesy Advertising' for businesses  
28 and professionals.

THIS COURT'S POWER TO GRANT RELIEF

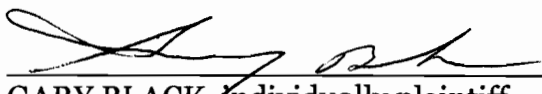
61.) Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate.

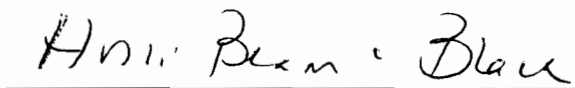
PRAYER FOR RELIEF

62.) Wherefore, Plaintiffs, pursuant to Sections 13(b) of the FTC Act, 15 U.S.C. § 53(b) and the Court's own equitable powers, requests that the Court:

- A.) Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of other consumer injuries during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions;
- B. Enter a permanent injunction to prevent future violations of law by Defendants;
- C. Award Plaintiffs actual damages in accordance with law;
- D. Award Plaintiffs punitive damages in accordance with law;
- E. Award Plaintiffs compensatory damages including reimbursement for lost wages and time in bringing this action;
- F. Award Plaintiffs the costs and fees of bringing this action, as well as such other just and proper relief as the Court may determine.

Respectfully,

 5/28/2010  
 \_\_\_\_\_  
 GARY BLACK, individually plaintiff

 5/28/10  
 \_\_\_\_\_  
 HOLLI BEAM-BLACK, individually plaintiff

## EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARY BLACK and HOLLI BEAM-BLACK,  
Plaintiffs,  
v.  
GOOGLE INC.,  
Defendant.

No. 10-02381 CW  
ORDER GRANTING  
DEFENDANT'S  
MOTION TO DISMISS  
AND DENYING AS  
MOOT PLAINTIFFS'  
MOTION FOR  
JUDGMENT ON THE  
PLEADINGS  
(Docket Nos. 10  
and 15)

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

BACKGROUND

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

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

1 defamatory comment was posted on Defendant's website about Cal Bay  
2 Construction. They aver that the comment misrepresents their work  
3 and has devastated their businesses.

4 According to Plaintiffs, Defendant enables any "member of the  
5 general public or the Defendant, Google, Inc., . . . to post a  
6 businesses name, address, and phone number upon the Defendant's  
7 website then defame anonymously in review of that business."

8 Compl. ¶ 18. Plaintiffs plead that they undertook several efforts  
9 to have Defendant remove the comment.

10 Plaintiffs claim that they have been "emotionally disturbed"  
11 by Defendant's conduct and that their businesses "were suffering  
12 financially on a daily basis from the on line defamation." Compl.  
13 ¶ 28. They plead six causes of action: (1) a "Breach of Authority"  
14 claim for violations of 15 U.S.C. §§ 45(a) and 53(a)-(b);  
15 (2) breach of contract; (3) unfair business practices and false  
16 advertising in violation of 15 U.S.C. §§ 45(a)(1)-(2) and 53(a)-  
17 (b); (4) negligence; (5) misrepresentation; and (6) intentional  
18 infliction of emotional distress.

#### 19 LEGAL STANDARD

20 A complaint must contain a "short and plain statement of the  
21 claim showing that the pleader is entitled to relief." Fed. R.  
22 Civ. P. 8(a). Dismissal under Rule 12(b)(6) for failure to state a  
23 claim is appropriate only when the complaint does not give the  
24 defendant fair notice of a legally cognizable claim and the grounds  
25 on which it rests. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555  
26 (2007). In considering whether the complaint is sufficient to  
27 state a claim, the court will take all material allegations as true

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 service shall be treated as the publisher or speaker of any  
2 information provided by another information content provider.'"  
3 Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC,  
4 521 F.3d 1157, 1162 (9th Cir. 2008) (quoting 47 U.S.C. § 230(c);  
5 alteration in original; footnotes omitted). In enacting § 230,  
6 "Congress wanted to encourage the unfettered and unregulated  
7 development of free speech on the Internet, and to promote the  
8 development of e-commerce." Batzel v. Smith, 333 F.3d 1018, 1027  
9 (9th Cir. 2003). As a result, "courts construing § 230 have  
10 recognized as critical in applying the statute the concern that  
11 lawsuits could threaten the 'freedom of speech in the new and  
12 burgeoning Internet medium.'" Id. (quoting Zeran v. Am. Online,  
13 Inc., 129 F.3d 327, 330 (4th Cir. 1997)).

14 The statute defines an "interactive computer service" to be  
15 "any information service, system, or access software provider that  
16 provides or enables computer access by multiple users to a computer  
17 server, including specifically a service or system that provides  
18 access to the Internet and such systems operated or services  
19 offered by libraries or educational institutions." 47 U.S.C.  
20 § 230(f)(2). The immunity applies to such a service "so long as it  
21 does not also function as an 'information content provider' for the  
22 portion of the statement or publication at issue." Carafano v.  
23 Metrosplash.com Inc., 339 F.3d 1119, 1123 (9th Cir. 2003). An  
24 "information content provider" is "any person or entity that is  
25 responsible, in whole or in part, for the creation or development  
26 of information provided through the Internet or any other  
27 interactive computer service." 47 U.S.C. § 230(f)(3).

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 . . . ." <sup>1</sup> 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

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24  
25 <sup>1</sup> 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 (asserting that Defendant engaged "in the acts and practices set  
2 forth in this complaint via software programming on their web  
3 site"). In light of Plaintiffs' complaint, this argument is  
4 unavailing; they aver that their lawsuit arises from the third-  
5 party content and that their businesses suffered damage therefrom.  
6 Further, Defendant's programming does not transform it into the  
7 creator of the offending comment. Indeed, several courts have  
8 considered and rejected theories that an interactive computer  
9 service could be held liable merely because its programming  
10 facilitated the creation of the content at issue. See, e.g.,  
11 Carafano, 339 F.3d at 1124-25 (concluding defendant was immune,  
12 even though "the content was formulated in response" to its  
13 questionnaire); Gentry v. eBay, Inc., 99 Cal. App. 4th 816, 833-34  
14 (2002) (holding that plaintiffs could not avoid § 230 by attacking  
15 the structure of defendant's "safety program").

16 Plaintiffs also argue that Defendant could be held liable  
17 because it sponsored and endorsed the comment. However, Plaintiffs  
18 make no allegations that suggest any sponsorship or endorsement of  
19 the comment by Defendant. Even if they did, Defendant would remain  
20 entitled to immunity. Plaintiffs' attempt to depict Defendant as a  
21 sponsor or endorser of the comment is, in effect, an end-around the  
22 prohibition on treating it as the publisher or speaker of it. Such  
23 a ploy, if countenanced, would eviscerate the immunity granted  
24 under § 230. Further, even if Defendant were a sponsor or  
25 endorser, the fact remains that Plaintiffs seek to hold it liable  
26 for content generated by a third-party.

27 Finally, Plaintiffs contend that their claims rest on  
28

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.

1           The Clerk shall enter judgment and close the file. The  
2 parties shall bear their own costs.

3           IT IS SO ORDERED.

4 Dated: August 13, 2010



CLAUDIA WILKEN  
United States District Judge

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

## EXHIBIT C

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

**FILED**

SEP 10 2010

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

Plaintiffs are acting:  
"In Propria Persona"

**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

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

**Motion To Stay:**

Plaintiffs,

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

vs.

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

Gary and Holli Black  
101 Auld Court  
Green Valley Falls, California 94534

Notice Of Motion

To All Parties And Their Attorneys Of Record:

PLEASE TAKE NOTICE that on September 10, 2010, before the Honorable Claudia Wilken  
of the United States District Court for the Northern District of California 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 is filed with the District Court 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

1 relief: (A) a stay of the judgment or order of a district court pending appeal.

2  
3 This motion is based upon this filing, the above notice of motion, the motion itself, the foregoing  
4 arguments, all pleadings on file with the clerk for this action, and all other filings by the parties on file  
5 with the District Court Clerk.

6 Motion

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

16 Proposed Verdict

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

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

28 *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

1 *more informed decisions about where to go, from restaurants and hotels to dry cleaners and bike*  
2 *shops..."* (Def. Motion To Dismiss p. 2, lines 8 - 18). The Plaintiffs became almost immediately aware of the  
3 defamatory posting as the Plaintiff is a door-to-door salesman and subject to great scrutiny by  
4 consumers when canvassing neighborhoods for roofing sales. The on line posting associated with the  
5 Plaintiffs business information was professionally crafted, negative, and purposely intended to deprive  
6 the Plaintiff of his work and reputation as the posting was very accessible to the public from the front  
7 page of Google.com by searching the Plaintiffs business name. By the search engine giants market  
8 penetration the Plaintiff discovered he was actually being followed on a daily basis as he went to work  
9 every day door-to-door (¶ 17 Pl. Compl.). Plaintiffs sales prospects turned away, roofing contracts began  
10 canceling, and consumers with roofs in progress became vicious and difficult (Pl. Decl. of Damages).  
11 Plaintiffs sales abilities were subsequently impaired and Plaintiffs were emotionally distressed; not  
12 because of the comment but because Google ignored and never responded to the Plaintiffs inquiries for  
13 resolution. On May 28, 2010 the Plaintiff filed the instant action against Google for denial of due  
14 process, unfair business practices, violation of law, emotional distress, etc. and Google thereafter  
15 removed the comment. On August 13, 2010 only seventy-eight (78) days later the District Court  
16 Ordered the Defendant Google not liable for Plaintiffs damages pursuant to 47 U.S.C. §230(c) with  
17 prejudice. Plaintiff now expects another posting on Google.com will leave Plaintiffs without work or  
18 recourse. Plaintiffs complaint taken as a whole, consist of two unrelated causes. One of anonymity  
19 within Googles business review process v. a proprietors rights to due process of law and Defendants  
20 negligence the other is allegation of unfair competition and theft of the proprietors business identity for  
21 purposes of selling advertising to Plaintiffs competition for profit and stalking.

## 2.22

23 The Plaintiff filed with the District Court a declaration on July 2, 2010 explaining that the Plaintiff  
24 began writing publicly on July 4, 2009 approximately three and a half months prior to the anonymous  
25 postings on Google's business review of Plaintiffs business. The evidence proves beyond reasonable  
26 doubt that Google rather than a third party engaged the Plaintiffs business practices and posted the  
27 anonymous defamations against the Plaintiffs business which purposely intended to deprive the  
28 Plaintiff of his work and reputation. The Plaintiffs therefore did not seek damages from a non existent



1 third party because the evidence shows Google is behind the anonymity and responsible for the  
2 professional crafting of the defamations against the Plaintiffs business. Details of - Google Appears  
3 To Be Responsible - Not A Third Party are at Page 7 below under A Fair Weighing Of The Evidence.

4 3.  
5 To fully understand the case requires knowing Plaintiffs recent activities and an examination of the  
6 evidentiary. Plaintiffs and Defendants have examined the evidentiary, however the District Court failed  
7 to acknowledge or address the matter. Exhibit 'I' attached to the Plaintiffs' declaration and filed on July  
8 2, 2010 is a work of suggestion toward the growing U.S. unemployment rate; a jobs program creating  
9 millions of jobs without use of tax dollars. Plaintiff shared the work with 100 or so U. S. Senators. It's  
10 entitled "Politics Against A Sea Of Social Economic Change" and was published on line a few months  
11 prior to the instant attack on Plaintiffs business. While the Plaintiff is not politically inclined at all, the  
12 Plaintiff felt required to share his direct selling knowledge because news media were reacting in fear  
13 towards the current economic collapse and baffled at Governments failed efforts in creating jobs. It  
14 represents the Plaintiffs first attempt at writing, was dull, and the Plaintiff thereafter began writing  
15 fiction, as it was more fun. If one were to comprehend the suggestion, it's easily noticed that the  
16 Plaintiff found the missing jobs but established a political conflict as well; land v. Internet. Direct  
17 selling in America is without doubt nearly non-existent and Plaintiff may be one of the last door-to-  
18 door salespeople left. While only intending to share rather than lobby, the suggestion is detrimental  
19 financially to those who sell advertising. The instant matter involves Googles' proprietary business  
20 model to sell advertising v. land based direct sales in America. Google additionally has been  
21 perceived publicly as too pushy in terms of peoples privacy with an intense agenda of exposing peoples  
22 homes, businesses, and private lives publicly. So motive is not an issue in this matter. The Plaintiffs  
23 declaration makes clear his business was attacked because of his writings rather than his roofing  
24 expertise (§ 10; P. 5 Decl. Of Gary Black). The Plaintiff has installed thousands of roofs, maintained a  
25 perfect reputation, and has clean hands.

#### 26 Request For Judicial Notice

27 4.  
28 First, the Plaintiffs herein are asking the Appellate Court to 'Judicially Notice' that substantive U. S.  
constitutional rights under the 1st Amendment provisions for anonymity and 5th Amendment rights to

1 due process for proprietors are opposed within Google's business review process. Said opposition of  
2 those substantive rights within Google's business review process impose an inherent responsibility  
3 upon Google to presuppose the laws of responsible behavior when advised of wrongful acts associated  
4 with their program. Just as the banking industry is liable when put on notice, even though they process  
5 billions of transactions daily. The Fifth Amendment to the U. S. Constitution states, "*...no person shall*  
6 *be "deprived of life, liberty, or property, without due process of law."*

7 5.

8 Secondly, the Plaintiffs ask the Appellate Court to 'Judicially Notice' the Plaintiffs' trade as a door-to-  
9 door salesman who chooses and can not practically advertise his business; this is because commercial  
10 advertising will not produce sales prospects within his daily targeted market. Commercial advertising of  
11 Plaintiffs business results in false advertising as the Plaintiff can not be in two places at the same time  
12 and chooses not to forfeit six to nine (6-9) roofing estimates daily for an advertised call-in for a roofing  
13 estimate miles away. When calling Plaintiffs for a roofing estimate from commercial advertising  
14 consumers are turned away and become irate if not afforded a lengthy explanation; even then  
15 consumers are sometimes left confused. ¶ 4 of the complaint states "*The plaintiffs are land based*  
16 *businesses and derive profits from direct sales rather than advertising on line."*

17 6.

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

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

2 By Googles' collaborative efforts with third-parties, Google steals the proprietors (Plaintiffs) business  
3 identity to sell on line advertising to Plaintiffs competition which results in an unfair competition; this  
4 is because of Googles market strength and notoriety stalking of the Plaintiffs daily efforts, meaning that  
5 as the Plaintiff goes door-to-door so goes the inquiries on Google.com in search of Plaintiffs business  
6 review. Google ignored the Plaintiffs many written request for remedy as a matter of policy because  
7 dispute resolution is expensive, but more importantly because negative business reviews enhance  
8 Googles advertising offering to those other roofers who pay Google to advertise alongside the Plaintiff,  
9 this means that the Plaintiffs hard earned sales prospect or lead generated by Plaintiffs door-to-door  
10 efforts is daily presented to Plaintiffs competition, which by default is a collaborative effort between the  
11 Internet provider Google and the third party content provider of advertising. The benefits of Google  
12 ignoring anonymity and other third party postings on their business reviews by policy and collaborative  
13 efforts between parties are further discussed below.

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

17 7.

17 The Court overlooked malfeasance while in deliberation of the Order. When the Defendants  
18 council filed an objection to the Courts' deliberation on the papers, the objection warned the Court  
19 without specificity, to not 'Judicially Notice' certain things. The Plaintiffs know the Defendant did not  
20 want the Court to 'Judicially Notice' Plaintiffs Declaration, this is because anyone may easily conclude  
21 that the third party and basis for Googles claim to immunity is not a third party at all but actually  
22 Google's Corporate offices in Mountain View. The Defendant threatening appeal during the Courts  
23 deliberation deprived the Plaintiff of a fair reading of the case which should constitute grounds for  
24 appeal.

25 8.

25 The Court thereafter exceeded it's powers by identifying the anonymity within this matter as a third-  
26 party based merely upon the Defendants assertions and a threatening objection by the Defendant during  
27 the Courts deliberation process. The "Motion To Dismiss" filed by the Defendant was in and of itself an  
28 abuse of the Decency Act because the Defendant knew it could not credibly answer the complaint.

9.

1 The Court then exceeded its powers by making law from the bench in an elaborate Order that  
2 circumvents the facts of the case and ultimately places 47 U.S.C. §230(c), a mere statute, above the  
3 substantive Constitutional rights of the Plaintiff and peoples as stated in the above 'Proposed Verdict'.  
4 The Court should not have judicially noticed an anonymous protected third party identity based solely  
5 upon the Defendants allegations and the Courts psychic powers. Instead the Court should have  
6 reviewed the facts of the Plaintiffs undisputed declaration and complaint to find the Defendant  
7 complicit in placing itself within the Plaintiffs bidding process, stealing Plaintiffs work, and in  
8 collaborating with others in an advertising scheme which denies the Plaintiffs their Fifth  
9 Amendment rights to due process as proprietors.  
10

10.

11 The Plaintiffs believe it was not the intention of Congress when enacting the 47 U.S.C. §230(c)  
12 immunity that our American values (right & wrong) and constitutional rights as proprietors and  
13 professionals would be destroyed by Google. The Court failed to follow the laws as intended by  
14 Congress. The Court did this by failing to acknowledge that Google's anonymity reviews lay the  
15 business and professional community wide open to attack by neighbors, relatives, and political  
16 anarchist (Pl. Compl. ¶ 29; line 26). Anonymity has no place when large market forces attempt a  
17 profiteering advertising scheme. By Google's own admissions their review of businesses on line is  
18 unverified and ignorantly unattended (Complaint. ¶ 2 & Def. Mot. To Dismiss p. 2, lines 8 -  
19 18/ p. 11, lines 15 - 17) . Because of Google's profiteering, proprietors and professionals, in this case the  
20 Plaintiff, are left standing without recourse because Google ignores the program inquiries. Traditionally  
21 business review programs, such as those at the BBB, Angies List, or CSLB hold that anonymity has no  
22 place as it violates the Fifth Amendment of the constitution. By the simple doctrine of common sense,  
23 the courts Order is absurd and outrageous as it would hold the traditional agencies BBB, Angies List, or  
24 CSLB no longer responsible for accuracy in reports or reviews of businesses. This is why the Appellant  
25 Court needs to review the case in its entirety and reverse the District Courts decision.  
26

27 Section II  
A Fair Weighing Of The Evidence  
Google Appears To Be Responsible - Not A Third Party  
28

11.

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

3 "17.) The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a  
4 instant and direct result of the plaintiff's direct telemarketing and door-to-door selling efforts  
rather than from Defendant's own efforts..."

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

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

13 "On June 10th only about four hours after filing proof of service with the Courts in the instant matter I was  
14 telephoned by one Tamara Jih claiming to be in-house from the Google defense team. She first stated, "Do you  
15 want to voluntarily dismiss your complaint?", in a somewhat threatening tone then asked if I was aware of the  
16 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  
17 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..."

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

19 "Confirming our conversation I am very aware of 230(C), that Google will seek fees and cost against me,  
20 and that Google will investigate my online activities on your web site." "...we're not willing to initiate a  
voluntary dismissal at this time."

21 The Plaintiff had difficulty with the conversation above, hence the documentation. The difficulty of  
22 course is in being able to connect the on line writings Plaintiff denied Google access to with this case.  
23 The thought of Googles defense team mentioning the items Plaintiff removed from Google just did not  
24 seem to have relevance at the time but upon examining the other facts detailed below fit perfectly.

12.

25 On April 22nd via U. S. Mail (Ex. 'E' Declaration Of Gary Black), five weeks prior to filing the complaint,  
26 the Plaintiff wrote directly to Googles Mountain View headquarters as Plaintiffs many efforts to notify  
27 Google on line (Pl. Compl.) were ignored. To the Plaintiffs amazement within five days another on line  
28

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

15 "I see now that after writing to your headquarters just last week that I now have another complaint posted on your  
16 web site."... "Now I have two complaints the newest is also a blatant lie. Additionally I'm receiving hate mail at my  
17 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."

18 13.

19 The Courts Order at page 5; lines 11-13 states "...but they do not allege that Defendant was its author."  
20 The Plaintiff never mentioned a third party in the complaint or the Plaintiffs declaration on file. This is  
21 because there is no third party. The Court and Google came up with the third party theory, while the  
22 Plaintiffs were amazed, afraid, and emotionally disturbed by Googles acts; the evidence speaks for  
23 itself. It's not the Plaintiffs job to Judge the evidence; that goes to the Court or a jury. If in fact, Google  
24 was not attacking the Plaintiffs' writing or lobbying effort, then it perhaps was simply Googles' legal  
25 department telling the door-to-door salesman/roofer to get lost because the letter of April 22 to Googles  
26 headquarters was addressed to Googles legal department and at 10,000,000:1 odds, the anonymity is  
27 Google not a third party. Perhaps someone on the receiving end of the letter gave instructions to  
28

1 someone else (Googles' attorneys/legal team probably collaborated with a third party). The Plaintiffs, of  
 2 course, would never sabotage their own business interest. Perhaps Google was angered by the Plaintiffs  
 3 many notices of abusive content associated with Plaintiffs business listing. So the Plaintiffs continue in  
 4 disbelief that Google first, would have so many motives, and second, that they would actually do such a  
 5 thing.

6 14.

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

11 15.

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

22 Section III

23 The Court Erred In Reading The Complaint  
 24 The Complaint Consist Of Two Unrelated Causes.

25 16.

26 The Court erroneously applied all Plaintiffs allegations within the complaint to a third party anonymous  
 27 posting rather than to the paid advertising of other roofers along side of Plaintiffs business name as  
 28 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

1 daily as his sales leads and prospects are swayed towards other roofers who have paid Google to  
 2 advertise alongside the Plaintiffs business name on Google without Plaintiffs permission (Pl. Compl. ¶  
 3 17, lines 8-14). Plaintiffs daily business is thus interrupted and impinged upon by Googles' using the  
 4 Plaintiffs name to sell advertising to other roofers that wish to follow the Plaintiff's door-to-door efforts  
 5 daily; again this is an intervention and theft of Plaintiffs sales leads which are very expensive because  
 6 of the public inquiring of the Plaintiffs business name at Google.com during Plaintiffs daily door-to-  
 7 door selling. Again the Plaintiff does not want Googles free advertising as it's a theft in this instance.  
 8 Examination of the complaint in a knowledgeable and fair reading shows it consist of two unrelated  
 9 causes. One of anonymity within Googles business review process v. a proprietors rights to due process  
 10 of law because of Defendants ignoring the Plaintiff and the other an allegation of unfair competition  
 11 and theft of the proprietors business identity for purposes of selling advertising to Plaintiffs competition  
 12 for profit and stalking. Plaintiff should be entitled to damages simply by Defendants unfair competition  
 13 of stalking (¶ 17 Pl. Compl.) the Plaintiffs day to day activities as stated in the complaint [underlined  
 14 highlights] at ¶'s 16 - 20 to wit:

17 "16.) Since at least October 2009, Defendant, Google, Inc. has conducted a nationwide on line advertising  
 18 campaign and on line business review scheme to sell advertising to local businesses for financial gain and profit;  
 19 purportedly for the benefit of it's on line community of paid advertisers and others, as well as, individuals who may  
 20 be seeking background information pertaining to potential business transaction or professional engagement on line.  
 21 More specifically, in this case, many individuals regularly are using the Defendant's on line Business Reviews,  
 22 referred to herein as 'courtesy advertising', to check on a contractor before making a purchase or in many cases  
 23 before even allowing the contractor to visit the prospective customer; thereby placing themselves within the  
 24 contractors bid and the prospective customers decision making process."

25 "17.) The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct  
 26 result of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own  
 27 efforts."

28 "20.) The Plaintiffs prospect roofing sales using direct selling methods allowed by law; they include  
 telemarketing, direct mail, and canvassing door-to-door. 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.  
 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."

Section IV  
 Judgment On The Pleadings - Defendants Admissions



## Google Collaboration With A Third Party

17.

1  
2 A problem exist in this case as the attorney for Google can not answer material allegations within the  
3 complaint, not even one, without incriminating his client (Complaint. ¶ 2 & Def. Mot. To Dismiss p. 2, lines 8 -  
4 18/ p. 11, lines 15 - 17). The Plaintiffs case is centrally based upon Googles dissemination of false  
5 information in conjunction with the Plaintiffs business information (review) described as "Courtesy  
6 Advertising" within the complaint; The admissions below are not only collaborative with a third party  
7 but also wrongfully collaborative. Google admitted within in their "Motion To Dismiss" to allowing  
8 unverified information to be associated with the Plaintiffs business and not having a duty to correct or  
9 remove the information even after being notified several times. Taken together the admissions below by  
10 Google within their "Motion To Dismiss" admit to exaggerating or misrepresenting their services to the  
11 public because they also admit the information may be false and unverified. Most people when going to  
12 the CSLB, BBB, Angies List etc. believe what they read in business reviews, and react accordingly. So  
13 the admissions are that Googles business reviews are disseminating inaccurate information in review of  
14 businesses but more importantly, the Defendant admits to placing themselves within the Plaintiffs  
15 bidding processes for roofing sales ie: "...*The purpose of Google Places is "to help people make more*  
16 *informed decisions about where to go...*" [underlined sections for reference] To wit:

## Plaintiffs Complaint:

18 "2.) The Plaintiff alleges that the Defendant, Google, Inc. in fact allows so called '*courtesy*  
19 *advertising*' of the Plaintiff's businesses to be placed on it's web site without the Plaintiff's  
20 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."

21 "16.) ...More specifically, in this case, many individuals regularly are using the Defendant's on line  
22 Business Reviews, referred to herein as '*courtesy advertising*', to check on a contractor before  
23 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."

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

24 "The purpose of Google Places is "to help people make more informed decisions about where to go,  
25 from restaurants and hotels to dry cleaners and bike shops [.]<sup>2</sup> Google Places contains listings for  
26 millions of hotels, restaurants, and other businesses. Listings typically contain the address and phone  
27 number of the listed business. In addition, users of Google Places can write and post reviews of the  
businesses."

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

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

18.

Accordingly, the Plaintiffs "Motion For Judgment On The Pleadings" could have been adjudicated in a more favorable light to the Plaintiff. This is especially true within the context of Google interrupting, stalking, and engaging the Plaintiffs bidding processes with paid advertisers and false information on line as they would not respond to the Plaintiffs' many notices and request for relief for six months! Essentially the District Court attributed 50% or so of the complaint erroneously to third party content, meaning the on line defamation by Google, and ignored, forgot, or failed to acknowledge the rights of a door-to-door salesman.

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 [.]<sup>2</sup> 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.

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

21.

6 The complaint at (¶ 17; p. 5; ¶ 20 p. 6; and ¶ 22 p. 7) alleges a profit making scheme by Defendants which  
 7 steals the Plaintiffs sales leads (his prospects) wrongfully, as it's without the Plaintiffs permission and  
 8 alleges the Defendant Google profits it's paid advertisers and interrupts the Plaintiffs business. These  
 9 parts of Plaintiffs complaint are directed at Googles use of Plaintiffs business name and information  
 10 wrongfully for profit in conspiracy :

11  
 12 17 - "The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct result  
 13 of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own efforts. The  
 14 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>. 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..."

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

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

22.

23 The Courts' Order presumes incorrectly (Bias/Misunderstood) that consumer generated advertisements  
 24 on Googles web site Pro or Con (¶ 33, Pl. Compl. line 8 pro/con) as stated in the complaint, are business  
 25 reviews and helpful to the general public. Nothing could be farther from the truth. As stated in Google's  
 26 pleading "... to help consumers make better choices." The Court Order omits and avoids Googles'  
 27 admissions of allowing unverified information and anonymous information within Googles' business  
 28

1 reviews; apparently in holding that admission as innocent, when in fact, it is a lot like dog fighting but  
2 worse as it pits the substantive rights of the people to anonymity against a proprietors right to due  
3 process in regards to consumer complaints. This is another collaboration of Google with the third party  
4 provider of the content. The content is actually Google enhancing (§ 33 38 Pl. Compl. excerpt below) and  
5 soliciting free content from the public for the benefit of either the Plaintiff's business if the comment is  
6 pleasant or the advertisers, of like kind, that paid Google to be on the same page with the Plaintiffs  
7 business listing if the comment is neutral or negative (A dog fight; Anonymous Courtesy Advertising). Google  
8 does this like a 411 directory type assistance; listing all businesses with telephone listings for free  
9 ("Courtesy Advertising") under the misconception that a business wants their free advertising services  
10 without permission of the business owner (Plaintiffs). This choice decision by Google is in fact a  
11 conspiracy only for profit (§ 35 Pl. Compl. excerpt below) and deceptive to many who believe the unverified  
12 and unattended business reviews are true. In fact they are very harmful to an unsuspecting thousands of  
13 small businesses like the Plaintiffs. At Ex. 'K' Pl. Declaration & Pl. Compl. § 35 there is insight and  
14 a Yahoo technical email sent to Plaintiff warning of the compromise/harm noticed in on line directory  
15 assistance type business reviews [However, Yahoo does monitor and respond to program participants  
16 when notified of problems immediately.]. They're scathingly criminal, towards admitting to extortion  
17 wit is Yahoo's email comment/excerpt to Plaintiff. (Ex. 'K' /Yahoo letter attached to Pl. Declaration):

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

21 The Court by Order in this matter holds the producer Google of the same type program immune when  
22 in fact it's easily noticed that this practice is no different than walking into a store and saying give us  
23 your proceeds or will damage your store and reputation. The Courts should have noticed that a small  
24 business really is being required to pay Google or Yahoo for enhancement advertising in order to not be  
25 in harms way. Perhaps it's short of extortion but it could certainly be noticed as close enough to void  
26 any kind of immunity the Congress may have intended. It is actually profiteering off the substantive  
27 rights of others.

28 (§ 33 Pl. Compl.) Plaintiff alleges, that large market forces, such as the defendant Google, Inc., should not enable

1 'courtesy advertising' that places business and professions at risk without written consent and disclosure of said risk  
 2 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.

3 (¶ 35 Pl. Compl.) "Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal  
 4 acts." — "...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."

5 (¶ 38 Pl. Compl.) "...without the Plaintiff's permission while exaggerating the benefits of a free product to the  
 6 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."

7 23.

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

19 24.

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

1 "17.) The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a  
2 instant and direct result of the plaintiff's direct telemarketing and door-to-door selling efforts  
rather than from Defendant's own efforts. "

3 Section VI  
4 Summary

5 25.

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

9 26.

10 The complaint alleges throughout that the Defendants were using Plaintiff trade names for advertising  
11 alongside others without permission (§ 2, § 4, §3 lines 6-10 Pl. Compl. & others). The District Court  
12 improperly assumes this to be acceptable because the Plaintiff is receiving free advertising from  
13 Google. That thinking is unfounded as shown above. The Plaintiffs did more than sufficiently make  
14 allegation supported with evidence within the Complaint and Plaintiff's Declaration to demonstrate how  
15 the Plaintiffs rights to due process were being violated and his business names were being misused.  
16 Therefore, within the "fair reading" of the complaint the Court should, "...take all material allegations  
17 as true and construe them in the light most favorable to the Plaintiff." NL Indus., Inc. v. Kaplan, 792 F.  
18 2d 896, 898 (9th Circuit Court of Appeals, 1986)

19 27.

20 All during these proceedings both Plaintiffs has been hammered by Google robot telemarketers trying  
21 to sell Plaintiff advertising for their roofing business, harrasment. In particular a company called  
22 'Contractors Exchange' which may be Goggle affiliated/commissioned got extremely upset in trying to  
23 get Plaintiff to answer the WHY question, because they were offering free advertising for the Plaintiff  
24 and Plaintiff would not tell them why he refused. The BBB is also on commission and was attempting  
25 to sell the Plaintiff Google advertising for free during these proceedings; again Plaintiff does not  
advertise as stated in the complaint; the Plaintiff is a door-to-door salesman.

26 28.

27 Following is a simple outline of the case alleged by Plaintiff and resulting effects:

- 28 1. Google first takes Plaintiffs identity without permission (§ 38 Pl. Compl.);

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 door-to-door salesman, but the advertising results in stalking the Plaintiffs daily activity;
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;
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.);
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 anonymous which creates a blindfolded dog fight over the substantive rights of the parties;
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.)
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 'report abuse' programming on the Plaintiffs business review page at Google is ignored by Google or unattended. (§ 19 Pl. Compl.)

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

Section VII  
Conclusion


29.

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

Respectfully Submitted,

  
Gary Black, individually plaintiff

Dated: 9/10/2010

  
Holli-Beam Black, individually plaintiff

Dated: September 10, 2010

CERTIFICATE OF SERVICE BY US MAIL

I, Jose G. Torres, declare:

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

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

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

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

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

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

JOSE G TORRES  
Jose G. Torres



## EXHIBIT D

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

4 GARY BLACK and HOLLI BEAM-BLACK,

No. 10-02381 CW

5 Plaintiffs,

ORDER ON  
PLAINTIFFS'  
OBJECTION,  
DENYING  
DEFENDANT'S  
MOTION TO STRIKE  
AND DENYING  
PLAINTIFFS'  
MOTION TO STAY  
(Docket Nos. 28,  
29 and 32)

6 v.

7 GOOGLE INC.,

8 Defendant.  
9 \_\_\_\_\_/

10  
11 Plaintiffs Gary Black and Holli Beam-Black, who are proceeding  
12 pro se, asserted several claims against Defendant Google Inc.  
13 related to an anonymous "online comment" on Defendant's website.  
14 On August 13, 2010, the Court granted Defendant's motion to  
15 dismiss, finding Plaintiffs' claims barred by the Communications  
16 Decency Act (CDA) of 1996, 47 U.S.C. § 230. On August 25, 2010,  
17 Plaintiffs filed an "objection" to the Court's August 13 Order,  
18 which Defendant has moved to strike. Plaintiffs have also filed a  
19 motion to stay the Court's judgment pending their appeal.  
20 Defendant opposes that motion.

21 Read liberally, Plaintiffs' objection appears to be a motion  
22 under Federal Rule of Civil Procedure 59(e) to alter or amend the  
23 Court's judgment. Rule 59(e) motions are interpreted as motions  
24 for reconsideration, and are appropriate if the district court  
25 "(1) is presented with newly discovered evidence, (2) committed  
26 clear error or the initial decision was manifestly unjust, or  
27 (3) if there is an intervening change in controlling law." Sch.  
28

1 Dist. No. 1J, Multnomah County, Oregon v. AcandS, Inc., 5 F.3d  
2 1255, 1263 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1994). A  
3 motion for reconsideration shall not "repeat any oral or written  
4 argument made by the applying party in support of or in opposition  
5 to the . . . order which the party now seeks to have reconsidered."  
6 Civil L.R. 7-9(c).

7 Plaintiffs' objection raises many of the same arguments they  
8 made in their opposition to Defendant's Motion to Dismiss. For the  
9 reasons stated in the Court's Order of August 13, Plaintiffs'  
10 action is barred by the CDA. Plaintiffs' objection does not  
11 warrant reconsideration of this ruling.

12 Further, Plaintiffs have not established that a stay of the  
13 Court's decision is warranted. A party seeking a stay must show  
14 either (1) a strong likelihood of success on the merits of its  
15 appeal and the possibility of irreparable harm, or (2) that serious  
16 questions regarding the merits exist and the balance of hardships  
17 tips sharply in its favor. See Golden Gate Restaurant Ass'n v.  
18 City and County of San Francisco, 512 F.3d 1112, 1115-16 (9th Cir.  
19 2008). These two alternatives "represent two points on a sliding  
20 scale in which the required degree of irreparable harm increases as  
21 the probability of success decreases." Id. at 1116. (citation and  
22 internal quotation marks omitted). A court must "consider where  
23 the public interest lies separately from and in addition to whether  
24 the applicant for stay will be irreparably injured absent a stay."  
25 Id. (citation and internal quotation and alteration marks omitted).

26 Plaintiffs do not establish a strong likelihood that they will  
27 prevail on their appeal or the existence of serious questions

1 regarding the merits of this case. Without citation, Plaintiffs  
2 appear to argue that Congress did not intend to grant immunity  
3 under § 230 in circumstances involving anonymity.<sup>1</sup> See Pls.' Mot.  
4 to Stay at 7. However, there is no provision in the CDA that  
5 imposes such a limit. Further, in Carafano v. Metrosplash.com  
6 Inc., the Ninth Circuit held that § 230 immunized an interactive  
7 computer service from liability based on an anonymous post on the  
8 defendant's website. 339 F.3d 1119, 1121 (9th Cir. 2003). The  
9 Ninth Circuit later explained the Carafano holding as follows:

10 The allegedly libelous content there -- the false  
11 implication that Carafano was unchaste -- was created and  
12 developed entirely by the malevolent user, without  
13 prompting or help from the website operator. To be sure,  
14 the website provided neutral tools, which the anonymous  
15 dastard used to publish the libel, but the website did  
16 absolutely nothing to encourage the posting of defamatory  
17 content -- indeed, the defamatory posting was contrary to  
18 the website's express policies. The claim against the  
19 website was, in effect, that it failed to review each  
20 user-created profile to ensure that it wasn't defamatory.  
21 That is precisely the kind of activity for which Congress  
22 intended to grant absolution with the passage of section  
23 230. With respect to the defamatory content, the website  
24 operator was merely a passive conduit and thus could not  
25 be held liable for failing to detect and remove it.

26 Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC,  
27 521 F.3d 1157, 1171-72 (9th Cir. 2008) (discussing Carafano).

28 Here, as stated above, Plaintiffs attempt to hold Defendant liable  
for an anonymous comment. Thus, the CDA and Carafano preclude  
Plaintiffs' claims.

For the foregoing reasons, the Court DENIES (1) Plaintiffs'

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<sup>1</sup> Plaintiffs also appear to assert that Google authored the  
disputed comment. However, this allegation runs contrary to  
Plaintiffs' complaint, which states that the comment was anonymous.  
Compl. ¶ 19.

1 motion to alter or amend the Court's judgment, styled as an  
2 objection (Docket No. 28); (2) Defendant's motion to strike (Docket  
3 No. 29); and (3) Plaintiffs' motion to stay the Court's judgment  
4 (Docket No. 32).

5 IT IS SO ORDERED.

6  
7 Dated: September 20, 2010



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CLAUDIA WILKEN  
United States District Judge

United States District Court  
For the Northern District of California

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 September 20, 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: September 20, 2010

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