

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

5 Plaintiffs are acting:
6 "In Propria Persona"

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NINTH CIRCUIT

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7 UNITED STATES COURT OF APPEALS

8 for the

9 NINTH CIRCUIT

10
11 GARY BLACK, individually d/b/a Cal Bay
12 Construction and,

NO. 10-16992

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

D. C. No. : 4:10-cv-02381-CW
U. S. District Court for Northern
California, Oakland

15 Plaintiffs,

16 vs.


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

Constitutional Challenge to
Federal Statute

19 NOTICE OF CHALLENGE TO FEDERAL STATUTE

20 Notice is hereby given that Gary Black, individually d/b/a Cal Bay Construction and Holli Beam-
21 Black, individually d/b/a Castle Roofing plaintiffs, appeal to the United States Court of Appeals for the
22 Ninth Circuit from two district court orders and pursuant to rule FRAP 44 plaintiffs hereby give written
23 notice to the clerk of the Ninth District in this proceeding of a constitutional question contained within
24 the proceedings. A party must give written notice to the circuit clerk immediately upon the filing of the
25 record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact
26 to the Attorney General. The statute being challenged is 47 U.S.C. §230(c).

27 Respectfully submitted,

28 
Gary Black, individually plaintiff

Dated: 10/7/2010

1
2
3 CERTIFICATE OF SERVICE BY US MAIL

4 I, Jose G. Torres, declare:

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

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

10
11 **"Constitutional Challenge to
Federal Statute"**

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

15 Wilson Sonsini Goodrich & Rosati
16 attorneys at law
650 Page Mill Road
17 Palo Alto, California 94304-1050
Telephone (650) 493-9300
18

19 I declare under the penalty of perjury under the laws of the United States that the foregoing is
20 true and correct. Executed at Benicia, California 94510 on October 7, 2010.
21

22 JOSE G TORRES
23 Jose G. Torres
24
25
26
27
28

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

Plaintiffs are acting:
"In Propria Persona"

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UNITED STATES COURT OF APPEALS

for the

NINTH CIRCUIT

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

NO. 10-16992

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

D. C. No. : 4:10-cv-02381-CW
U. S. District Court for Northern
California, Oakland

Plaintiffs,

vs.

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

**Notice of Amended Appeal
and Amended Appeal**
With Exhibits A through J

Notice and Appeal

Notice is hereby given that Gary Black, individually d/b/a Cal Bay Construction and Holli Beam-Black, individually d/b/a Castle Roofing plaintiffs, appeal to the United States Court of Appeals for the Ninth Circuit from two district court orders. This amended appeal is filed pursuant to the Ninth Circuit ruling filed on September 17th, 2010 and attached hereto as exhibit 'A'. The plaintiffs herein appeal two district court rulings as cited below, ask the appellate court to consider a stay of the district court orders pending a re-examination of the matter before the Ninth Circuit Court Of Appeals, and further ask the Ninth Circuit to consider a reversal of the district court orders in favor of the plaintiffs. Plaintiffs believe the district court orders weigh too heavily against U. S. advertising law, the constitutional and civil rights of the plaintiffs, procedural law of the court, and the rights of businesses and professionals within the community at large.

1 The two district court orders on appeal are an "Order Granting Defendant's Motion To Dismiss
2 And Denying As Moot Plaintiffs' Motion For Judgment On The Pleadings (Docket Nos. 10 and 15)",
3 entered in this action on the 13th day of August, 2010 and an "Order On Plaintiffs' Objection, Denying
4 Defendant's Motion To Strike And Denying Plaintiffs' Motion To Stay (Docket Nos. 28, 29, and 32)",
5 entered in this action on the 20th day of September, 2010. Both are attached hereto as exhibit 'B'.

6 The appeal does not rely upon new evidence and is based upon this notice of appeal, the
7 foregoing arguments, all filings with the district court clerk, and this appeal. The matter is now final
8 within the district court after being dismissed as moot in 78 days, without a hearing. The plaintiffs
9 damages Ex. 'F' were allegedly caused by Google.com and were very large as the plaintiffs were
10 one of the largest proprietorship roofers in California. (Please see attached exhibit 'F' - "Plaintiffs
11 Declaration Of Damages").

12 I. Introduction

13 1.
14 The plaintiffs filed a complaint Ex. 'D' and the "Declaration Of Gary Black" Ex. 'C' attached
15 hereto; thereafter the defendants, Google, Inc. filed a Motion To Dismiss", Ex. 'E' and plaintiffs filed for
16 judgment on the pleadings and a "Declaration Of Damages", Ex. 'F' attached hereto. The matter was
17 taken under submission by the district court and dismissed within 78 days pursuant to defendants'
18 "Motion To Dismiss".

19 2.
20 Plaintiffs demonstrate what they believe are errs by the district court involving procedure,
21 misapplication of law, and judgment within each of the orders on appeal. **First** the district court erred in
22 noticing the defendants' "Motion To Dismiss" as it was untimely filed. **Second**, the district court
23 erroneously applied law to bar plaintiffs' claims against the defendants under 47 U.S.C. §230(c) which
24 placed a mere statute above the constitutional and civil rights of the plaintiffs and left half of the
25 complaint that was not eligible for immunity under 47 U.S.C. §230(c) unanswered. **Third**, the district
26 court erred in granting immunity under 47 U.S.C. §230(c) for defendants because the defendant was
27 complicit in violating the plaintiffs civil rights under the 1st and 14th Amendments of the constitution.
28 The plaintiffs are U.S. citizens and the rights of Google behind anonymity are not known to be
protected under the constitution as they are global and the Internet is World Wide. **Fourth**, the district

1 court orders erred in analysis of the complaint. The orders state the plaintiffs never alleged the
2 defendants as authors of the anonymous comments defaming plaintiffs businesses. The plaintiffs
3 within each cause of action alleged the defendants as sponsors and publishers of the business
4 reviews to wit:

5 Ex. 'D'; ¶ 41, First Cause Of Action:

6 "Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes online business reviews for profit
7 while at the same time neglecting the legal needs of said reviews thereby failing to meet jurisdictional
8 and administrative requirements of the State of California and others."

9 **Fifth**, the district court erroneously determined the plaintiffs complaint as moot, rather than diverse,
10 thereby failing to consider the wrongful collaboration by the defendants against U.S. advertising law
11 for profit in an unfair advertising scheme against the financial interest of plaintiffs. The defendants
12 advertising scheme allegedly steals plaintiffs sales leads and was alleged within the complaint to wit:

13 Ex. 'D'; ¶ 17, First Cause Of Action:

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

26 Plaintiffs further alleged the defendants violated the commercial and public trust to wit:

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

The diversity of plaintiffs' complaint was improperly set aside by the district court in err, while the
plaintiff all along was legally entitled to a monetary damage judgment and a default judgment by law.

II. The District Court Orders Show Clear Err

3.

The two district court orders create a third party based upon the defendants allegations within
their "Motion To Dismiss". The original order of the court states a basis and premise for the

1 defendants' immunity and resulting order. The premise upon which the order is based is found at Page
2 5 Lines 11 through 18 of the order (Ex. 'B' attached hereto.) and reads specifically as follows:

3 "They aver that the allegedly defamatory comment is "anonymous," Id. ¶ 21, but they do not allege
4 that Defendant was its author." "... Based on these allegations, Defendant is immune from their suit."

5 On May 28, 2010 the plaintiff filed the instant action against Google for denial of due process, unfair
6 business practices, violation of law, emotional distress, etc.. Within each of the causes of action (Pl.
7 Compl. Ex. 'D'; ¶s 41 & 42 1st Cause of Action & incorporated into each following Cause of Action) the Plaintiff
8 'plainly' stated that Google not only sponsors but also publishes online business reviews to quote as
9 follows [underlining highlights]:

10 "41.) Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes online business reviews for
11 profit while at the same time neglecting the legal needs of said reviews thereby failing to meet
12 jurisdictional and administrative requirements of the State of California and others..."

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

15 And within the "Declaration Of Gary Black" (Exhibit 'C'; please see Ex. 'F' within the declaration.), the
16 plaintiff pointed a finger directly at Google not a third party as excerpted below:

17 "I see now that after writing to your headquarters just last week that I now have another complaint posted
18 on your web site."... "Now I have two complaints the newest is also a blatant lie. Additionally I'm
19 receiving hate mail at my e-mail address I previously used on my Google Account
20 (gerald@raymondavich.com). I know you do not want to hear it but all my recent problems lead directly
21 to Google."

22 Therefore the district court err is clear because the court order is based upon and cites "*...but they do*
23 *not allege that Defendant was its author.*" and the complaint as excerpted above clearly states in each
24 cause of action that Google is the publisher of the business reviews; this is supported further by the
25 evidence and plaintiffs declaration stated above ie: "*I know you don't want to hear it but all my*
26 *problems lead directly to Google*". It's also supported because the plaintiff never mentioned a third
27 party in the complaint, the district court simply and clearly erred.

28 4.

The Courts' basis for the dismissal order and the defendants immunity is therefore erred when
closely examined because it utilizes a false fact that Plaintiffs never alleged Google to be the reviews
author, when **in fact**, plaintiff did within each cause of action. The above excerpts are quotes directly
from the Court order and record of the proceedings. Consequently, the Courts order is untrue and

1 does not view the complaint within a favorable light towards the plaintiff and within a "fair reading" of
2 the complaint the Court should, "...take all material allegations as true and construe them in the light
3 most favorable to the Plaintiff." NL Indus., Inc. v. Kaplan, 792 F. 2d 896, 898 (9th Circuit Court of
4 Appeals, 1986). Plaintiffs therefore believe the Ninth Circuit court could stay the district court orders
5 on those grounds alone pending appeal and reverse after full examination of the matter, as the
6 premise upon which the district court orders are based is erroneous.

7 5.

8 Per plaintiffs declaration and evidentiary, (Exhibit 'C' the "Declaration Of Gary Black"), the plaintiffs
9 had sent about six communications to Google asking for removal of illegal allegations and postings
10 upon a business review Google recently sponsored. Google ignored all communications, not even an
11 auto-response - thanks for inquiry. On April 22 in a last ditch effort at resolution the plaintiff sent a
12 letter to Googles' legal department, headquartered in Mountain View, Ca.. Immediately, within hours of
13 Googles receipt of plaintiffs letter, another posting reviewed plaintiff's businesses. The plaintiffs
14 concluded the odds to be **10,000,000:1** that Googles legal dept. did the second posting which was not
15 fashioned as from a roofing customer, but rather from police enforcement claiming the plaintiffs were
16 unlicensed contractors, were telemarketers misrepresenting their businesses to the public, and not
17 legitimate. Plaintiffs immediately wrote to Google, on May 3rd, over three weeks prior to plaintiffs filing
18 of the complaint and following the second defamation of plaintiffs businesses to wit:

19 "Declaration Of Gary Black" (Exhibit 'C'; please see Ex. 'F' within the declaration.):

20 "I see now that after writing to your headquarters just last week that I now have another complaint posted
21 on your web site."... "Now I have two complaints the newest is also a blatant lie. Additionally I'm
22 receiving hate mail at my e-mail address I previously used on my Google Account
(gerald@raymondavich.com). I know you do not want to here it but all my recent problems lead directly
23 to Google."

24 The two on line postings associated with the plaintiff's business information were professionally
25 crafted, negative, and purposely intended to deprive the plaintiffs of their work and reputation because
26 the postings were accessible to the public from the front page of Google.com by searching the
27 plaintiffs business name. By the search engine giants market penetration, notoriety, and influence the
28 plaintiff discovered he was actually being followed on a daily basis as he went to work every day, door-
to-door (Ex. 'D' - ¶ 17 Pl. Compl.). Plaintiffs sales prospects turned away, roofing contracts began
canceling, and consumers with roofs in progress became vicious and difficult (Ex. 'F' - "Plaintiffs'

1 Declaration of Damages"). Plaintiffs sales abilities were subsequently impaired, plaintiffs lost purchasing
2 power, and plaintiffs were emotionally distressed and helpless; not because of the postings but
3 because Google ignored and never responded to the plaintiffs inquiries for resolution; their programs
4 were completely unattended. On May 28, 2010, the plaintiff filed the instant action against Google for
5 denial of due process, unfair business practices, violation of law, emotional distress, etc..

6 6.

7 Another proof that Google posted the defamations is that only after being served the instant
8 action did they remove the comments, not from the several notices plaintiff sent them in the months
9 preceding the action, in other words Google stood by the comments. On August 13, 2010 seventy-
10 eight (78) days later the district court ordered the defendant Google not liable for plaintiffs damages
11 pursuit to 47 U.S.C. §230(c) with prejudice, and on September 20, 2010, denied plaintiffs motion to
12 stay the orders pending appeal. Plaintiffs being telemarketers and door-to-door salespeople now
13 expect another posting by Google.com will leave plaintiffs and plaintiffs' employees without work
14 or recourse. The plaintiffs are therefore asking the Ninth Circuit to consider a stay of the district court
15 orders pending appeal and reverse after examination of the matter, as the premise upon which the
16 district court orders are based is erroneous. Plaintiffs believe this to be a clear err or oversight within
17 the district courts' reading of the case.

18 **III. The District Court Procedurally Erred - Default**

19 7.

20 The Plaintiff closely recognizes that parties have a duty to be truthful before the Court to
21 preserve efforts of mediation and the *honor of the Court*. Plaintiff knows that false testaments and
22 pleadings by parties often result in false orders and are overturned on appeal. False testament before
23 a Federal Court is generally considered very serious. The Plaintiff hereinafter shows a pattern of
24 abuse relevant to this action and the district courts erroneous orders.

25 8.

26 Defendants legal department acted immature when notified by letter on April 22, 2010.
27 Immediately following the plaintiffs' writing to the defendants' national headquarters in Mountain View,
28 addressed to the defendants' legal dept., the defendants in-house counsel instantly crafted and posted
another complaint upon the plaintiffs business review (10,000,000:1 odds), rather than resolving the

1 issue by removing the plaintiff from their program. This is because they believe they're immune. Now
2 the defendant states their comments have been removed from the Google Places program to imply to
3 the court that the plaintiff is not harmed by the Courts' order. "Defendant Google Inc.'s Opposition To
4 Plaintiffs' Motion To Stay"; Exhibit 'G' attached hereto, at P.2, lines 22 and 23 excerpted below:

5 "...their claims are based on the alleged presence of a third-party review of their
6 roofing business that has been removed from the Google Places service."

7 The plaintiff sadly replies that they and the district court alleged a third party, not the plaintiffs, and
8 that Googles self imposed injunction of the review is unacceptable.

9.

9 The acts of posting a second complaint against the plaintiffs businesses after he wrote to their
10 legal department and threatening of plaintiff concerning the plaintiff's on line writings four hours after
11 the plaintiff filed proof of service for the complaint were unconscionable. The plaintiff confirmed via
12 email with Googles' in-house counsel, that he'd refused a voluntary dismissal and understood Google
13 would investigate plaintiffs writings he'd removed from Google's web site; Google then hired outside
14 counsel. (Exhibit 'C' the "Declaration Of Gary Black" ¶ 9).

10.

16 The new counsel contacted the plaintiff for an extension of time to answer by telephone. After
17 plaintiffs second refusal to voluntarily dismiss the complaint the plaintiff graciously agreed orally to an
18 extension of time for an answer by defendants. The defendants counsel said, "We'll answer the
19 complaint." and the plaintiff stated he would, "Answer the answer".

11.

21 Thereafter, the plaintiff went on vacation and upon returning discovered he'd been bombarded
22 by emails concerning a testament "Stipulation Extending Defendant's Time To Answer, Move, or
23 Otherwise Respond To Complaint". The testament by defendants' counsel extended the time to
24 respond rather than answer from June 22nd to July 2 and was not filed with the court until July 2; ten
25 days after the defendants filing deadline. This is because the plaintiff never agreed to an extended
26 time for filing of anything other than an answer. The plaintiff only agreed to an extended time for an
27 answer; not for a Motion To Dismiss, A Quash, a Demurrer or otherwise. The defendants could have
28 sought an extension from the court, but they did not. The defendants thereafter filed declarations

1 but the declaration by defendants' counsel Mr. Bart E. Volkmer below only makes Exhibit 'H',
2 defendants' "Stipulation Extending Defendant's Time To Answer, Move, Or Otherwise Respond To
3 Complaint" filed with the district court on July 2, false. The facts, are that the district court did not have
4 on file a timely "Motion To Dismiss" by the defendants, the filing deadline for defendants' "Motion To
5 Dismiss" was June 22nd and the plaintiff had orally extended the defendants time for only an answer
6 to July 2. The defendants were therefore in default at the time of the district court rulings because the
7 court has nothing in file which timely extends and nothing in file that honestly extends the time for
8 defendants to file a "Motion To Dismiss".

9 12.

10 The plaintiffs objected before the district court within plaintiffs' "Rebuttal To Defendants'
11 Google, Inc.'s Opposition To plaintiffs' Motion For Judgment On The Pleadings" filed on July 28, 2010
12 at Exhibit 'I', Page 1; lines 27 and 28 (Exhibit 'I' attached hereto.). The following caption from Ex. 'I',
13 reveals the plaintiff knew the defendants' counsel were trying to deceive the court and had breached
14 the agreed upon oral stipulation of the parties for an answer, this is record of plaintiffs' objection:

15 "... The parties did not agree as stated in Defendant's written stipulation placed on file with the Court by
16 opposing counsel..."

17 Also, defendants' counsel had called the plaintiff informing the plaintiff he was filing for dismissal on
18 July 1st the day before defendants deadline for answering to tell the plaintiff they were asking the
19 court for dismissal. So the plaintiff being diligent, took immediate action and filed an evidentiary
20 declaration, hours before the defendant filed for dismissal, purely in fear of a premature dismissal. The
21 defendants counsel had attempted to duck answering the complaint but knew Google was suppose to
22 answer. In fear that the court would summarily dismiss plaintiffs case, the plaintiff filed a motion for
23 judgment on the pleadings, and shortly thereafter filed evidentiary for compensatory losses. The case
24 was dismissed in only 78 days, without hearing.

25 13.

26 Following are excerpts from arguments before the district court which detail defendants'
27 counsel orally stipulating to an extended time to answer the complaint with the plaintiff. The detail
28 excerpts the declaration of defendants' counsel which proves: **First:** That the parties had an oral
stipulation only for an answer. **Second:** That defendants counsel filed a false stipulation, Ex. 'H',

1 before the court because it pretends that the plaintiffs agreed to it, which is proven not true by
2 defendants' counsels own declaration cited below.

3 14.

4 Defendants acts of attempting a disingenuous extension of time to 'otherwise respond' with a
5 "Motion To Dismiss" left the plaintiff no option, other than to immediately make the plaintiffs case with a
6 declaration and exhibits. The district court, thereafter, failed to even acknowledge Exhibits 'C' and 'F'
7 the "Declaration Of Gary Black" with exhibits, as well as, "Plaintiffs Declaration Of Damages" and
8 instead acknowledged only the defendants untimely "Motion For Dismissal". The plaintiff had made the
9 district court aware of the false stipulation on July 28, as cited above, and the very next day on July 29,
10 the defendants' counsel filed Exhibit 'J' attached hereto, a "Declaration Of Bart E. Volkmer In Support
11 Of Defendant Google Inc.'s Reply In Support Of Its Motion To Dismiss Plaintiffs' Complaint" The
12 declaration proves the defendants filed stipulation on July 2, was false. Following are the pertinent
13 excerpts:

14 **Mr. Volkmer in declaration, Ex. 'J', at ¶ 2, Lines 8 through 9; [underlined highlighting]:**

15 "On June 15, 2010, I called plaintiff Gary Black to introduce myself as Google's outside counsel in this
16 matter. I explained that 47 U.S.C. § 230 (c) bars his claims and requested that he dismiss his case
against Google. Mr. Black declined."

17 **Mr. Volkmer in declaration, Ex. 'J', at ¶ 2, Lines 13 through 14:**

18 "And I never would have agreed to an extension that limited Google's substantive ability to respond to
19 the complaint."

20 By defense counsels' declaration, excerpted above, the plaintiff would not agree to a dismissal when
21 counsel called plaintiff on June 15th and Mr. Volkmer states in his declaration that he would never
22 have agreed to only an answer. This is proof that, **if in fact**, there was an extension of time
23 agreed to by the parties that it was for an answer rather than a motion that would resolve the case.
24 This is correct because defense declares the plaintiff refused a dismissal and defense claims it also
25 would not have agreed. The defendants were therefore in default and the district court has the record
26 verifying it. Additionally, a written stipulation to a later filing would need to be filed prior to existing
27 legal deadlines, not ten days after the filing deadline of June 22. So the "Motion To Dismiss", filed by
28 defendants on July 2, was filed in default and untimely.

15.

1 The plaintiffs were therefore totally entitled to an answer by law on July 2, but instead were
2 served with a "Motion To Dismiss". The Court does not have on record an agreed to extension of time
3 for the defendants to "Otherwise Respond" because the evidence shows the existing stipulation on
4 record was a false testament by the defendants' counsel. The district court erred by noticing an
5 untimely filed and final determining motion by defendants. As the plaintiff stated in declaration he
6 refused Google a dismissal in the first phone call from Googles' in house counsel and the defendants
7 declaration above states the plaintiff refused a dismissal again when the current attorneys took the
8 case. The defendants could have asked the court rather than the plaintiff for an extension, but they did
9 not.

16.

10 Therefore the court erred by even noticing the defendants "Motion To Dismiss" and should
11 have ruled a default in favor of the plaintiff because within the defendants "Motion To Dismiss" they did
12 somewhat answer but in a way that admitted to ¶ 2 and 16 of plaintiffs complaint. The complaint was
13 engaged with a partial answer but failed to answer most allegations. This is because the defendants'
14 "Motion To Dismiss" was not filed timely, and defendants were alleging an immunity defense for the
15 entire complaint including the half of the complaint which would not involve any potential third party.
16 Only an 'answer' from the defendant, pursuant to the parties stipulation, should have been considered
17 by the district court, not a final determining motion of dismissal. It was the plaintiffs time to answer the
18 complaint that was extended graciously to the defendants, not the district courts' time and the
19 complaint actually required an answer which was never filed. The district court therefore
20 erred by noticing a "Motion To Dismiss" that was untimely before the court and erred in making a ruling
21 based upon third-party immunity for a complaint that alleged the defendant, not a third party harmed
22 plaintiffs. The district court orders at issue are thereby fatally erred in allowing an untimely "Motion To
23 Dismiss" to deprive the plaintiff of a judgment that plaintiffs were entitled to by law.

17.

25 The plaintiff is asking the Ninth Circuit to recognize defendants default based upon the above
26 cited grounds but also that immunity, even if granted to the defendants, still leaves half of the plaintiffs
27 diverse complaint and allegations unanswered; plaintiffs complaint did require an answer. Following
28

are only a few examples from the complaint: **First**, §230(c) only applies to third parties while the complaint never alleged a third party, all allegations are against Google, Inc. as a publisher; **Secondly**, the plaintiff alleged *unfair market force intervention* which has nothing to do with a third party, and was directed specifically at Google, Inc. at Ex. 'D', ¶ 17 and 47 Pl. Compl.. The plaintiff alleged Google to be competing unfairly by stealing his sales leads and stalking which has nothing to do with a third party at Ex. 'D', ¶ 17 Pl. Compl.; **Third**, the plaintiffs alleged his business names and information were being used in an illegal manner against advertising laws and without plaintiffs permission. Again having nothing to do with third parties but only alleged at Google, Inc. at Ex. 'D' ¶ 49; **Fourth**, at Ex. 'D' ¶ 52 the plaintiff alleged Google was wronging plaintiffs in an advertising scheme: "...the plaintiff's prospects are wrongfully subjected to competitors advertising against the plaintiff's wishes."; **Fifth**, at Ex. 'D' ¶ 47 the plaintiff alleged the defendant falsely advertises the plaintiffs businesses. This is because the plaintiff does not accept Internet call-ins for roofing estimates, the plaintiff does 6-9 estimates daily, in targeted areas; call-ins do not hit the plaintiffs area because plaintiffs use direct selling methods, door-to-door rather than commercial advertising; again having nothing to do with third parties, to wit:

"4.) The plaintiffs are land based businesses and derive profits from direct sales rather than advertising on line. Plaintiffs are sole proprietorships d/b/a Cal Bay Construction and Castle Roofing with their principle place of business at 1440 Military West; suite #104; Benicia, California 94510."

"47.) ...the Defendant, Google, Inc., benefits financially selling advertising to the Plaintiff's competition while falsely advertising the Plaintiff's businesses in violation of law under Title 15 USC 45 - Sec. 45 (a)(1)(2). and Title 15 USC 53 (a)(b)."

"3.) ...the Plaintiffs are harmed by assuming a risk of product and services being misrepresented and the potential liability that accompanies said risk."

17.) "The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct result of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own efforts. The Defendant accomplishes this by allowing what is referred herein as "courtesy advertising" on their business review web site which is posted publicly on line at <http://www.google.com>.

"20.) 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..."

47.) The Plaintiff contends the Defendant, Google, Inc., is by force, albeit market force, causing Plaintiff's business to constantly monitor and look over it's shoulder so as not to be ambushed by unknown Internet sources and that the practice of forcing small land based businesses to become Internet savvy constitutes an unfair business practice.

"49.) The Plaintiff alleges that the Defendant, Google, Inc. in fact allows so called 'courtesy advertising' of the Plaintiff's businesses to be placed on it's web site without the Plaintiff's permission while

exaggerating the benefits of a free product to the public at large and failing to disclose to businesses a material relationship where one exists between the public at large and the Plaintiff's business."

The plaintiff alleges that at least half to two-thirds of the complaint against Google, Inc. is unrelated to third-party immunity under 47 U.S.C. §230(c) and therefore not immune, the district court clearly erred in reading the complaint, as the complaint should have required an answer. The plaintiff is asking the Ninth Circuit to consider a ruling of default against the defendants and award plaintiffs damages on the basis the district court orders are erred in not recognizing the diversity of the complaint in conjunction with the default and untimely filing of the defendants motion to dismiss.

IV. Conspiracy Google Is A Profiteer - Not Immune

18.

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 to wit:

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

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

First Google vested themselves with police powers by deliberately choosing "...to help people make more informed decisions..." by admission in their "Motion To Dismiss" cited above and after listing the plaintiff's businesses the defendants made the listings (Google Maps - web page) available to the public from the front page of Google's search engine to Google Maps (Ex. 'C' Pl. Decl. see Ex. 'G' within the declaration.); thereby placing themselves within the plaintiffs bidding processes. (Ex. 'D', ¶ 17 and 20 Pl. Compl.) **Second**, Google deliberately chose to use anonymity within it's 'mapping and review' of plaintiff's businesses which denies the plaintiffs a due process of law under the Fourteenth Amendment because; **Third**, Google deliberately chose to ignore the plaintiffs inquiries as a matter of policy, businesses are not acknowledged when objecting to complaints against their businesses at Google Maps, and many other local roofers are paying to advertise alongside the Google Map Review while complaints are only against the plaintiffs business. (Fascist Police Powers - Please see Map at

1 Ex. 'C' Pl. Decl. see Ex. 'G' within) and alleged at Ex. 'D' Pl. Compl. ¶'s 22:

2 *"...refused on multiple occasions throughout the past six months to remove, mediate, or even*
3 *acknowledge damaging advertising directed at the Plaintiffs businesses.*

4 **Fourth, Google deliberately chose to hide behind anonymity against the plaintiffs right to due process**
5 **in regards to complaints Google published against plaintiff's businesses, thereby allowing plaintiffs**
6 **sales leads to be swayed towards plaintiffs' competition, because the public inquiry follows the**
7 **plaintiffs day to day door-to-door selling activity. It's the same as if a telemarketer were caught stealing**
8 **plaintiffs sales leads from the telemarketing room and giving them to the competition. (Ex. 'D', ¶ 17 Pl.**
9 **Compl.). As the plaintiff goes door-to-door so go the inquiries on Google.com. Plaintiffs believe this to**
10 **be a major civil rights violation to free oral sales expression and rights to due process of business**
11 **complaints. Who would ever believe within the U.S., that an entity could review businesses with**
12 **anonymity in complaints, on an unattended program that's used by three quarters of the public within**
13 **the Bay area. Perhaps twenty or so, ten to twenty million dollar a year geniuses at Google would!**

14 19.

15 Due process of law is provided by the Fifth Amendment to the U. S. Constitution, whereby, no
16 person shall be "...deprived of life, liberty, or property, without due process of law." In this instance the
17 courts could give great recognition to the police powers stated above by Google and Congresses'
18 intention with regards to immunity — which certainly was not for Google to violate the peoples
19 constitutional rights by first stealing millions of business names and locations to use market force with
20 anonymity to require all businesses to go to Google. Plaintiffs believe it was also not Congresses'
21 intent to allow Google to steal plaintiffs sales leads in a 'free advertising' heist and scam to enhance
22 Googles' advertising offering to other roofers in the plaintiffs local, by use of defamations. Plaintiff
23 alleged in the complaint that paid advertisers benefit directly from the plaintiffs day to day door-to-door
24 activities while Google falsely and illegally advertises the plaintiff's business name without neutrality.

25 20.

26 The complaint at (¶ 17; p. 5; ¶ 20 p. 6; and ¶ 22 p. 7) alleges a profit making scheme by
27 defendants which steals the plaintiffs sales leads, without plaintiffs permission and alleges that the
28 defendant Google, profits it's paid advertisers and interrupts the plaintiffs business. These parts of
plaintiffs' complaint are directed at Googles use of plaintiffs business name and information wrongfully

1 for profit, a criminal conspiracy; The plaintiffs believe Google should not have police powers to help
2 people make more informed decisions about where to go in a malicious and anonymous advertising
3 scam. The plaintiffs are certain that abusing complaints against business, by ignoring inquiry from
4 plaintiff's business on Google Maps and Google Places against any business to enhance the
5 advertising offer to others of like kind in business, is not only irresponsible and not neutral, but also
6 criminal in the U.S.. The complaint correctly alleged that unattended anonymous content added to and
7 in conjunction with said on line '*courtesy advertising*' - Google Maps - combine to be in violation of 18
8 USC 1365 - Sec. 1365(b) and Title 15 U.S.C. § 45(a), prohibiting "unfair or deceptive acts or practices
9 in or affecting commerce, at ¶ 35 Pl. and 38 of the complaint as follows:

10 "35.) ...Plaintiff alleges that consumer-generated content added to and in conjunction with said on
11 line '*courtesy advertising*' combine to be in violation of 18 USC 1365 - Sec. 1365(b)"

12 "38.) ...Plaintiffs herein allege that these acts combine to constitute a violation of law under Title 15
13 U.S.C. § 45(a), prohibiting "unfair or deceptive acts or practices in or affecting commerce." and Title 15
14 USC 53 (a)(b) and violations of the FTC ACT 17. Section 5(a)."

15 The defendants exercised police powers over the plaintiffs business by defaming plaintiffs businesses
16 and then by ignoring plaintiffs' many notices to them so they could profit and enhance their offering to
17 other roofers in the plaintiffs area. This is policy and ingenious at Google Maps because it's very rare
18 that people or the public will advertise or comment positively on behalf of a business without
19 compensation; even the suggestion that a person get another bid or opinion is defamatory if you're a
20 business in the process of making a sale, because it interrupts the sale which is perhaps lost forever,
21 as Google Maps and Google Places engage the contractors bidding process. The plaintiffs in the
22 instant action alleged Google, Inc. as the identity behind the anonymity in each cause of action as
23 publisher, the conspiracy is alleged in the complaint, to wit:

24 17 - "The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and
25 direct result of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from
26 Defendant's own efforts. The Defendant accomplishes this by allowing what is referred herein as
27 "*courtesy advertising*" on their business review web site which is posted publicly on line at
28 <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..."

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

1 advertising from other roofing companies in competition with Plaintiff's business. The Defendant's policy
2 of ignoring the content and nature of the negative anonymous review at issue within this complaint does
3 harm to the Plaintiff in that the negative review sways the Plaintiffs' prospect toward those businesses
4 who have paid the Defendant, Google, Inc., for advertising alongside the 'courtesy
5 advertisement' of Plaintiff's businesses. Once the Plaintiff has spent hard efforts to locate a prospect and
6 identified a need for a prospective customer that otherwise may not have been noticed by a prospective
7 customer the customer is swayed away from the Plaintiff by false statements and misrepresentations by
8 way of consumer generated content on the Defendant, Google, Inc.'s, web site. The plaintiff has tried on
9 several occasions to remove itself from the Defendant's web site without success."

10 22 - "The defendant, Google, Inc., has refused on multiple occasions throughout the past six months to
11 remove mediate, or even acknowledge damaging advertising directed at the Plaintiffs businesses."

12 21.

13 The district courts' order presumes incorrectly (Bias/Misunderstood) that advertisements on
14 Google Maps web site for plaintiffs businesses and comments, pro or con (Ex. 'D', Pl. Compl.; ¶ 33, at
15 line 8 pro/con) as stated in the complaint, are business reviews and helpful to the general public. The
16 anonymous content is actually Google or their employee advertising representatives on big
17 commissions enhancing (Ex. 'D'; Pl. Compl. at ¶s 33 38 excerpted below) and soliciting free content from
18 the public anonymously for the benefit of paid advertisers, of like kind, that paid Google to be on the
19 same page with the plaintiffs business listing. Plaintiffs know Google then ignores as policy, the
20 anonymity on Google Maps because it profits their paid advertisers making their ad offering to them
21 more valuable and because they believe (abusively) that they have immunity. Google does this like a
22 411 director type assistance; listing all businesses with telephone listings for free ("Courtesy
23 Advertising"), under the misconception that a business wants their free advertising services without
24 permission of the business owner (Plaintiffs). This choice decision by Google is in fact a conspiracy
25 only for profit (¶ 35 Pl. Compl. excerpt below) and deceptive to many who believe the anonymous and
26 unattended business reviews are true. In fact they are very harmful to an unsuspecting thousands of
27 small businesses like the plaintiffs who are forced and strong-armed into going to Google because of
28 the evil nature of Googles advertising scheme, even if they do not own a computer. Within Ex. 'C' the
"Declaration Of Gary Black" at Ex. 'K' within the declaration and also Ex. 'D' Pl. Compl. at ¶ 35, there
is insight and a Yahoo technical email sent to plaintiff warning of the compromise/harm noticed in on
line directory assistance type business reviews [However, Yahoo does monitor and respond to program
participants when notified of problems immediately.]. Google's programs are not neutral because the
solicited content from the public is only directed at the plaintiffs business listed not the other roofers on

1 the same page. Yahoo also explains this in a way that leans towards admitting to extortion, to wit:

2 ("Declaration Of Gary Black" at Ex. 'K' within the declaration):

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

5 The district court by order in this matter holds Google, Inc. of the same advertising program immune
6 when in fact it's easily noticed that this practice is no different than walking into a store and saying give
7 us your proceeds or will damage your store and reputation. Plaintiffs believe the Ninth Circuit could
8 notice that a business really is being required to pay Google or Yahoo for enhancement advertising in
9 order to not be in harms way. Perhaps it's short of proving extortion but it could certainly be noticed as
10 not neutral enough and void any kind of immunity the Congress may have intended. It is actually
11 profiteering off the substantive rights of others. Congresses' enacting of the Decency Act was to
12 protect service providers from third parties so they may flourish and not intended as an illegal
13 collaborative advertising scheme for profits. These new concepts in 411 business reviews may result
14 in the unconstitutionality of the Decency Act as complaints pour in and work against Google as well;
15 plaintiffs believe it's an obvious abuse of the Decency Act and should be ruled as such in cases where
16 Google abuses anonymity against business in advertising schemes. (Please see plaintiffs proposed
17 verdict in the summary p. 16 below.) Following are complaint excerpts of public interest:

18 (¶ 33 Pl. Compl.) "Plaintiff alleges, that large market forces, such as the defendant Google, Inc., should
19 not enable '*courtesy advertising*' that places business and professions at risk without written consent and
20 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."

21 (¶ 35 Pl. Compl.) "Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to
22 cause illegal 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
23 is now continuing on a business as usual basis."

24 (¶ 38 Pl. Compl.) "...without the Plaintiff's permission while exaggerating the benefits of a free product to
the public at large and fails to disclose to businesses a material relationship where one exists between
the public at large and the Plaintiff's business."

25
26 22.

27 If Google's comments (Solicited Advertisements) are positive it drives call ins to plaintiff which
28 result in false advertising (¶ 17 ¶ 33 Pl. Compl.) because the plaintiff is a door-to-door salesman in
targeted areas each day and can not give up 6-9 sales appointments to run a single call-in even 10-40

1 miles away. If Google's comment is negative the plaintiff looses hundreds of thousands of dollars in
2 sales by contract cancellations. This is because when going door-to-door and making sales the
3 consumer will frequently check Googles review after the plaintiff has left with a sale and promptly
4 cancel if Google has stated most anything. The plaintiff looses hundreds of thousands of dollars in
5 sales lead generation cost simply by Googles intrusion with the business listing even without
6 commentary. This is because Google places paid advertisers alongside the plaintiffs business name in
7 the same roofing business and neighborhoods as plaintiffs, and is therefore stealing the plaintiffs hard
8 earned sales leads or put another way selling the Plaintiffs efforts. The leads are expensive because
9 of plaintiffs use direct selling techniques, such as, telemarketing, canvassing, and door-to-door sales
10 efforts in getting them. The plaintiffs do not wish to be on Googles home search page or Google
11 Mapping or Google Places which gives the plaintiffs work and daily efforts to others, it's an illegal
12 intrusion just as if a telemarketer were stealing them from within the sales phone room and giving them
13 to competitors.

23.

14 Door-to-door sales is hard work and the plaintiffs believe, the courts should recognize that
15 every day the plaintiff goes to work he's driving traffic to Google for the benefit of Googles paid
16 advertisers who receive the benefit of plaintiffs hard work (Ex. 'D'; Pl. Compl. ¶ 17 below). Google
17 enhances their advertising offer to said paid advertisers by essentially selling the plaintiffs efforts via
18 plaintiffs business name being accessed at Google.com, not a 'phantom' third party. These acts are all
19 alleged within the complaint as clear violations of the plaintiffs proprietary right to work. Leads and
20 lead generation is nearly the most expensive part of being a roofing contractor and door-to-door
21 salesman. For the non-sales experienced academia types it's **thousands of dollars per week to**
22 **generate door-to-door sales leads** within the plaintiffs small proprietorship, 'direct selling' is expensive
23 but targeted:

24 Ex. 'D'; Pl. Compl. ¶ 17 excerpted below:

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

27 The district court clearly erred in analysis of plaintiffs' complaint by granting immunity status to Google,
28 Inc. because Google was allegedly in the process of criminal activity during an advertising scam and

1 atrociously abusing the Decency Act for it's own profiteering interest by ignoring the plaintiff and others
2 as a policy, even as illegal defamations were lodged against plaintiffs business. Google was
3 required to on first notice from plaintiff to remove the illegal postings because Google nor it's programs
4 possess standing in the community with police powers for governing over the plaintiffs businesses.
5 The district court, nor the defendants identified the anonymity, it's nation, or it's origin and the plaintiffs
6 are identified as citizens within the complaint at ¶ 5 "... The Plaintiffs are both U.S. Citizens living and doing
7 business within the Northern Judicial District Of California...". Plaintiffs allege the district court orders are
8 erred as the plaintiffs have rights to do business freely without police power intervention by Google's
9 unattended use of anonymity against plaintiffs businesses within their programs. The district court
10 orders are erroneously based upon the plaintiffs damages being caused by anonymous commenting
11 rather than upon the plaintiffs' civil rights being violated by the unconstitutional and illegal nature and
12 essence of the defendants' program which maps the plaintiffs daily activity. Plaintiffs believe the
13 district courts' order allowing immunity for criminal advertising scams, is unconstitutional and
14 unconscionable within an orderly society such as the U.S.. The district court or the defendant would
15 have to first identify the anonymity to ascertain weather the claimant had rights within the U. S. and
16 merit, because the plaintiff alleged the defendant was the publisher of the anonymity. The plaintiffs
17 believe the Ninth District should stay the district court orders pending appeal, grant plaintiffs injunctive
18 relief, and reverse the district court orders after examination of the matter.

19 **V. Constitutionality**

20 **A. Plaintiffs' First Amendment Rights**

21 **24.**

22 The "First Amendment" to the United States Constitution (Bill of Rights) states that Congress
23 shall make no law... "*...abridging the freedom of speech,...*". In the instant matter plaintiffs alleged
24 Googles market strength, influence, and placement of plaintiff's business names within the search from
25 Googles home page leads to an unauthorized and illegal stealing of the plaintiffs sales leads,
26 advertisement of plaintiffs business, and stalking of plaintiffs' day to day door-to-door sales activity.
27 The plaintiffs' *constitutional rights to free expression of speech* under the "First Amendment" are
28 impinged upon as he is stalked during his sales presentations because of the frequent public inquiry of

1 plaintiffs' business reviews at Google.com which is not a third party intervention. The district court
2 orders held the business reviews' comments were alleged by plaintiffs as anonymous which is true;
3 however, the plaintiffs also alleged the defendants Google published the defamations. Googles'
4 refusal to remove them after several notices over six months, aside from other proof, makes the
5 defamation Googles. Plaintiffs believe this true because Google admittedly engaged plaintiffs
6 businesses which arouses a duty of responsible behavior and accuracy in reporting; and Google
7 thereafter failed to fulfill that duty; any comprise to the contrary would jeopardize American business
8 because Google is admittedly engaging millions of business in their new programs. The district court
9 orders are fundamentally erred as unconstitutional because the court orders are erroneously based
10 upon a third-party, not alleged by plaintiff, rather than upon the plaintiffs' civil rights being violated by
11 Google. The defendants at a minimum, were by all constitutional rights, required to remove anonymity
12 from the plaintiffs business review on first notice to protect the plaintiffs rights as U. S. citizens. Google
13 alternatively had a choice to not use anonymity in business reviews because it gives police powers to
14 Google and their employed. Plaintiffs believe and the Ninth Circuit could notice, that entities such as
15 Google who possess a large market force penetration, should not necessarily expect immunity from
16 the courts under 47 U.S.C. §230(c) when collaborating for profit in a business review scheme that
17 implicates the substantive rights of the people in an unattended manner. To be concise, the plaintiffs
18 alleged numerous violations of constitutional and civil rights within their complaint and the United
19 States Congress is not permitted to enact legislation or statutes that would impair the substantive
20 rights of plaintiffs or the people. Therefore, the plaintiffs believe the district court orders exceed the
21 power of the court as they allow 47 U.S.C. §230(c) a mere statute, to set aside the plaintiffs' complaint;
22 where substantive rights violations were alleged.

23 25.

24 B. Plaintiffs' Fourteenth Amendment Rights § 1

25 Plaintiff also alleged a denial of due process of law at ¶'s 18 and 19 [underlining highlights]:

26 "18.) ...public postings are then easily referenced by the general public by way of a home page search
27 on the Defendant's search engine front page. Said practice of on line public reviews may be malicious
28 with regards to persons or parties taking revenge on line rather than seeking justice or administrative
remedies; (Reference is made to ¶ 13 - 14 - 15 PUBLIC INTEREST & JUDICIAL NOTICE). 19.) The
defamatory business review of Plaintiff's business (¶ 1) is anonymous and unverifiable as to the

1 comments accuracy. In the instant matter, the Plaintiff alleges that said comment was posted on the
2 Defendant, Google, Inc.'s, web site against law as it's without any due process..."

3 The "Fourteenth Amendment" to the United States Constitution at § 1 states: *"All persons born or*
4 *naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States*
5 *and of the State wherein they reside. No state shall make or enforce any law which shall abridge the*
6 *privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,*
7 *liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal*
8 *protection of the laws."* The plaintiffs, as proprietors, are entitled to XIV Amendments rights to 'due
9 process' and 'equal protection under the law' as citizens. Said entitlement stands far above any on line
10 programming which allows open complaints [¶ 3 Pl. Compl.] against a business to stand as
11 irremovable; one may not follow a salesman around saying his work or product is faulty weather he
12 sells airplanes or pencils with intent to do harm to that persons business, it's illegal in the U. S. as
13 alleged in the complaint. Google.com followed the plaintiffs sales activities, not a third party. The
14 district court erred by barring plaintiffs' declaration and complaint to deny plaintiffs' civil rights in light of
15 the defendants allegedly being served with several notices within the complaint and declaration.
16 Plaintiffs believe, defendants' answer within their motion to dismiss of having no control over accuracy
17 within their programs and default, combined with defendants' alleged refusal to remove or even
18 communicate with plaintiffs concerning the open complaints against plaintiffs businesses, entitled the
19 plaintiffs to judgment when the district court took the matter under submission. This is because the
20 totality of the merits, reveals Google's programs as not neutral and breaching acceptable conduct and
21 ethics within the U. S. orderly business society. Google admitted an *"...impossible-to-fulfill duty..."* as
22 to *accuracy* and anyone doing business reviews, especially millions of them, such as Google Maps
23 and Google Places, are bound to accuracy under U.S. law, when reporting on commerce; to wit:

24 Defendants' "Motion To Dismiss" at page 11, lines 15, 16, and 17 as follows:

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

27 Defendant's admissions of having no control over their business review /courtesy advertising program
28 clearly reveals that the defendants' manner of conduct and ethics breach that of an orderly business
society when the complaints against a business are by Google or without identity or place of origin.

1 Google does not have to allow anonymity within their programs, they do it for profit which is
2 unconscionable to wit:

3 "Conduct is only considered "outrageous" when it is "so extreme as to exceed all bounds of that usually
4 tolerated in a civilized community." Hughes v. Pair, 46 Cal. 4th 1035, 1050 (2009)"

5 As the defendants conduct was alleged as not tolerable within a civilized and orderly business
6 community by U. S. law, and has not been for nearly a hundred years; plaintiffs believe the two district
7 court orders are against law and that plaintiffs were entitled by law, to judgment on the pleadings for
8 intentional infliction of emotional distress as well as actual damages. Within the complaint the plaintiff
9 alleged the same as Googles' 'quasi answer' from within their "Motion To Dismiss" at ¶ 34 of plaintiffs
10 complaint; to wit:

11 "...no single business entity such as the Defendant, Google, Inc., would ever be capable of adjudicating
12 the entire business complaint community."

13 Therefore, in a fair view of the matter the plaintiffs and defendants are in agreement that Google can
14 not accurately review businesses. As open complaints against plaintiffs commerce in this case were
15 only identified as Google, by plaintiffs, and unidentified as to person or place of origin by defendants;
16 the plaintiffs rights to due process under the XIV Amendment were certainly violated by Googles'
17 policy of not communicating with plaintiffs in resolution on first notice. Plaintiffs believe and the Ninth
18 Circuit Court may notice that entities such as Google, possessing a large market force penetration,
19 should not necessarily expect immunity from the courts under 47 U.S.C. §230(c) when collaborating,
20 for profit, in a business review scheme that **first**, forces all businesses to go and monitor Google and
21 **second** implicates the substantive rights of the people in an unattended manner. Plaintiffs believe, it's
22 apparent that 1st Amendment (Plaintiffs Free Sales Speech) and 14th Amendment (Plaintiffs' rights to Due-
23 Process) rights of the plaintiffs are compromised by Googles' policy of ignorance and Google's Mapping
24 within their business review processes. Plaintiffs believe, when Google engaged the plaintiffs
25 businesses a duty was born upon Google, to report responsibly, weather the reporting is done by
26 Google employees or others, because it's Google engaging plaintiff's businesses, not a third party.
27 Google.com placed Google Maps within the plaintiffs bidding of jobs on a regular and daily basis. The
28 plaintiffs are door-to-door salespeople, as plaintiff went door-to-door so went the inquiries at the

1 popular Google.com and Google Maps for their business review and the unattended and open
2 complaints against plaintiffs businesses followed. The complaint alleged market force intervention and
3 intrusion upon the plaintiffs bidding and sales of contracts to wit [underlining highlights]:

4 ¶ 16, of the complaint:

5 "...many individuals regularly are using the Defendant's on line Business Reviews, referred to herein as
6 'courtesy advertising', to check on a contractor before making a purchase or in many cases before even
7 allowing the contractor to visit the prospective customer; thereby placing themselves within the
8 contractors bid and the prospective customers decision making process."

9 ¶ 17, of the complaint:

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

20 While the district court order and the defendants pleading may plead a third party is responsible for the
21 plaintiffs damages that thinking is erred because without Googles' imposing of their market strength
22 from their home page search, as alleged in the complaint, the open complaints would have had no
23 impact upon the plaintiffs businesses and plaintiffs most likely would never of known of the comments.
24 Plaintiffs believe the defendants were therefore more than complicit in violating the plaintiffs rights
25 under the 1st and 14th Amendments of the constitution. The plaintiffs know the district court orders
26 exceed the power of the court as they allow 47 U.S.C. §230(c) a mere statute, to set aside the
27 plaintiffs' complaint; where substantive rights violations were alleged. The plaintiffs are therefore
28 asking the Ninth Circuit to consider a stay of the district court orders and then reversal of the
district court orders following a review of the matter with a substantive judgment against Google, Inc. in
favor of the plaintiffs.

29 VI. District Court Order Is Against Ninth Circuit Opinion

30 26.

31 Plaintiffs presume It is illegal within U. S. advertising law and the business and professions
32 code to knowingly review businesses falsely in a disorderly, uneven, harmful, and unattended manner.
33 Plaintiffs complaint alleged unattended business at Google whereby open complaints against
34 plaintiff's businesses were left ignored after several notifications to the dictators. Plaintiffs believe

1 plaintiff's businesses were left ignored after several notifications to the dictators. Plaintiffs believe
2 those acts make the program owner, Google, Inc., responsible for damages because they purposely
3 engaged the business of plaintiff. In this case Google admits to engaging millions of businesses to
4 help consumers make more informed decisions which is a police powers declaration, by Google, Inc..
5 Just because one may own a gun or a car legally, does not entitle one to run over and shoot people;
6 responsible conduct and neutrality is required as a duty in reviewing businesses and peoples
7 livelihoods. Google is attempting to change American values of business reporting, declaring police
8 powers, and avoiding the cost of accuracy in reporting against businesses. As cited below the district
9 court cites authority averring that Google Maps and Places are neutral tools; the plaintiffs have
10 great indifference with that, because neutral tools do not kill businesses. The plaintiffs business was
11 destroyed and a dozen or more jobs were lost by Googles broadcasting open complaints against
12 plaintiff's businesses rather than the content itself, not neutral! Google selling hundreds of millions in
13 advertising for profit, without cost or oversight, is Googles' stake within the present lawsuit. The courts
14 order: "Order On Plaintiffs' Objection, Denying Defendant's Motion To Strike And Denying Plaintiffs'
15 Motion To Stay (Docket Nos. 28, 29, and 32)", entered on the 20th day of September, 2010 at page 3,
16 lines 5 through 18 cites a Ninth Circuit ruling on the case Carafano v. Metrosplash.com Inc. 339 F. 3d
17 1119, 1121 (9th Cir. 2003) in support, for authority in making the orders. **First**, the orders are erred
18 because the Ninth Circuit opinion is based upon a web site lacking Googles market penetration;
19 **Second**, the district court erred by misapplying the Ninth Circuit opinion to this case because Googles
20 tools are not neutral. This is because open complaints on Google's listing of plaintiffs businesses are
21 against the plaintiffs commerce and not against the other roofers who are paid advertisers on the
22 same page. The paid advertisers ads when selected by a visitor lead directly to the paid advertisers
23 web sites which completes Googles enhancement for the paid advertisers ad and adds value to
24 Googles' advertising offer to them. In short it's a conspiracy theft of the plaintiffs sales leads and
25 prospects in an unfair competition because the plaintiffs customers were searching for the plaintiff
26 when they went to Google.com not the paid advertisers as alleged within the complaint. The Ninth
27 Circuit opinion cited within the district courts order at p. 3 lines 11 - 12 within the order, dated
28 September 20th, is as follows:

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

3 Plaintiffs alleged in complaint, that Google's tools are false advertising and unfair business practices,
4 not neutral. Plaintiffs further alleged the tools (programs) should be responsibly managed, and that
5 they're dangerous and destructive to plaintiff's businesses. This is because Google does not
6 communicate with businesses, unless the business wishes to buy advertising. Google Maps and
7 Places are designed specifically to strong arm the business community into going to Googles web site
8 first, then to buy advertising. The strong arm tactic or "*market force intervention*" as described within
9 the complaint at ¶'s 17, 35, 41, is true, because open complaints destroy businesses as sales are
10 swayed to the business owners competition or lost. As a business (plaintiffs) learns of it and makes
11 inquiry at Google, they're allegedly ignored and left with only two options one: to contact Googles
12 advertising sales representative and **two**, to sue Google in Federal court. The plaintiffs believe the two
13 available options and the advertising scheme makes Google's tools definitely not neutral, meaning the
14 district court clearly erred in misapplying an inappropriate authority to the plaintiffs' complaint.

15 27.

16 In this case the plaintiffs alleged Google as the publishers of the open complaints against
17 plaintiffs businesses, but the Ninth Circuit may notice that Google Places and Google Maps are not
18 only, not neutral, they're open to police stings, marital disputes, cyber bullying, public grievances
19 against telemarketers, and all sorts of other attacks. The programs are certainly not neutral when
20 posted against a proprietors right to work, invade constitutional rights, and are irremovable. The district
21 courts orders giving licensure to condoning this type of conduct by defendants is erred as they
22 contradict the civil rights of proprietors, advertising law, and the constitutional rights of all small
23 business proprietors nation wide. The laws and business codes Google's programs allegedly violate
24 are cited within the attached complaint Ex. 'D' at ¶'s 2, 9, 10, 15, and 27. Plaintiffs believe Immunity
25 simply does not appropriately apply when the party requesting the immunity is in the act of abusing the
26 immunity statute to profiteer by ignoring American business interest and violating nearly every known
27 law and standard of business conduct ever created within the U. S.. It's important to note that plaintiffs
28 businesses were damaged by the public searching from the home page of Google.com (Ex. 'D' - ¶ 17 Pl.

1 Compl.) which leads to 'Google Places' and 'Google Maps' for plaintiffs local business review, not by a
2 third party.

28.

3 It is without need of an argument a conspiracy and collaboration, because Google admitted to
4 engaging millions of businesses by taking their identities then openly using their market influence
5 and strength for an advertising scam based upon unmonitored business complaints and "*an*
6 *impossible-to-fulfill duty*" for profit; certainly not a neutral program. The plaintiffs therefore are asking
7 the Ninth Circuit court to consider a stay of the district court orders pending appeal and reversal of the
8 district court orders after examination of the matter, because the premise and basis of the order
9 alleges incorrectly that Google's advertising schemes are neutral which plaintiffs know is a clear err by
10 the district court and against the Ninth Circuit opinion. The plaintiffs are therefore asking the Ninth
11 Circuit to consider a stay of the district court orders and then reversal of the district court orders
12 following a review of the matter with judgment in favor of the plaintiffs.

13 **VII. The Court Orders Are Off Point & Against The Public Interest**

14 29.

15 At Ex. 'B', page 2, lines 2 through 3, the district court order again errs factually, stating as
16 follows: "*They aver that the comment misrepresents their work and has devastated their businesses.*"
17 While the Plaintiffs were made aware of the defendants business review practices by said comment,
18 the complaint itself is very diverse in showing that collaborative efforts by the defendants and front
19 page exposure on Google.com caused plaintiffs damage, not simply a single comment. The plaintiffs
20 believe the district court order inappropriately bared the plaintiffs complaint by misapplying various
21 diversities and allegations within the complaint to a single comment rather than holding the individual
22 allegations as independently separate affirmations.

23 30.

24 The plaintiffs damages as alleged were caused by multiple acts of conspiracy, profiteering, and
25 collaboration by the defendants and were alleged throughout 60 paragraphs within a very diverse
26 complaint involving substantive rights of business, and various constitutional issues. Plaintiffs
27 damages were not simply caused by the defendants professional crafting of business reviews against
28 plaintiff's businesses. The court orders do not go deep into the issues and veer off point

as follows: **First:** The plaintiffs know, the Court order erroneously applied authorship of Googles business reviews of plaintiff's businesses to a non-existent third party; The plaintiff never alleged a third party in the complaint, and there is not evidence to support the theory of a third party. To the contrary, the evidence does reveal, beyond doubt at 10,000,000:1 odds, that the defendant, Google, Inc. authored the defamatory comments because within hours of plaintiffs April 22nd letter to Googles legal dept., prior to filing complaint, the plaintiff's business review received a second defamation. **Second:** Comments by a third party would have had little or no effect upon the plaintiffs businesses. The complaint is based upon advertising law, and the defendants market influence, popularity, and strength (Pl. Compl. P. 7, ¶ 21, lines 11 - 17). Meaning that the plaintiff's businesses are damaged by consumer access from Google.com's home page search connecting to Google Maps for plaintiffs business; Googles unauthorized use of plaintiff's identity to sell advertising to others (Pl. Compl. P. 5, ¶ 17, line 10), and Googles' blatant ignoring of the plaintiffs notices of the illegal postings that destroy plaintiffs businesses (Pl. Compl. ¶ 22.). **Third:** Plaintiffs are also damaged by the defendant's advertising scheme which stalks the plaintiffs daily movements, Google intervened into the plaintiffs bidding of projects without the plaintiffs permission and caused risk with financial harm to plaintiffs by theft of the plaintiffs daily work (Pl. Compl. Ex. 'D'; ¶s 1,2, 16, 17 & 35 collaborative efforts/conspiracy). Plaintiffs believe the Ninth Circuit court should therefore stay the district court orders pending appeal, as the orders are incorrectly based upon a single comment. Google was alleged as placing themselves wrongfully within the bidding process of the plaintiff and was caught stealing the plaintiffs expensive sales leads; this is prominent throughout the complaint to wit [underlining highlights]:

Ex. 'D', ¶ 16 "...thereby placing themselves within the contractors bid and the prospective customers decision making process."

Ex. 'D', ¶ 17 "The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct result of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own efforts..." "...Everyday the Plaintiff prospects door-to-door, canvasses door-to-door, or sends out mailings he/she produces traffic to the Defendants, Google, Inc.'s web site. Plaintiffs prospects are then able to view an ever changing advertisement sponsored upon the Defendant's web site along with other companies offering the same or similar services..."

31.

Google allegedly used it's market strength from the front page of Google.com to advertise the plaintiff's businesses on Google Maps which in this case intentionally, stalks the plaintiffs daily door-to-

1 door sales activity in violation of plaintiffs civil rights. It's extremely invasive upon the plaintiffs' rights to
2 free expression and the plaintiffs right to speak publicly in sales presentation and steals the plaintiffs
3 hard earned work. Additionally, these unattended business reviews by Google, force the plaintiff, like
4 millions of other business, to go to Google.com Places and Maps against will; because in most all
5 business cases a salesman does not want interruptions of any kind. The plaintiffs allege the orders are
6 erred because in a favorable and fair view of the complaint, the mere suggestion that the complaint is
7 confined to a single comment is unnerving to the plaintiffs. The defendants are allegedly
8 misrepresenting their program to the public at large at ¶ 2 of the complaint cited below and Google
9 alleged their business reviews as an *impossible duty to fulfill* and admitted to *inaccuracy* within their
10 content by their motion to dismiss just as the plaintiff alleged within their complaint as follows

11 [underlining highlights] :

12 Ex. 'D', ¶ 2 "The Plaintiff alleges that the Defendant, Google, Inc. in fact allows so called '*courtesy*
13 *advertising*' of the Plaintiff's businesses to be placed on it's web site without the Plaintiff's
14 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..."

15 Purportedly, Google is attempting "... *to help people make more informed decisions about where to go,*
16 *from restaurants and hotels to dry cleaners and bike shops...*" (Ex. 'E' - Defs. "Motion To Dismiss" p. 2,
17 lines 8 - 18). This representation to the public is a misrepresentation because Google also admitted as
18 follows within their "Motion To Dismiss" at page 11, lines 15, 16, and 17 as follows "*Google does not*
19 *owe an impossible-to-fulfill duty to the world to ensure that all speech on the Internet is accurate.*"
20 Google then abuses the Decency Act by ignoring businesses, in this case the plaintiffs, and allows
21 unverified information to be disseminated to the public against business interest, and legal rights. This
22 of course can not be helpful to people in making more informed buying decisions. The public
23 statement made by Google also admits to engaging the plaintiffs' contracting and bidding processes as
24 a police power to help people with their decisions. These facts are then combined with Googles
25 immense public influence as people access Google.com and are taken to Google Maps in search of
26 the plaintiffs' business review, this constitutes a major market force intervention as millions of
27 businesses, much like the plaintiffs, are having to by force having to go to Google and then monitor
28

1 Google Places and Maps 24/7 as alleged in the plaintiffs complaint to wit:

2 Ex. 'D', ¶ 17 "...Plaintiff alleges that these acts by the Defendants combine as a major market force
3 intervention that is wrongful in that the Plaintiff's prospects are faced with advertising which is
4 misrepresentative, ever changing, 24/7, and very difficult and costly for Plaintiff to adjust when incorrect,
illegal, or improper information is being disseminated..."

5 In short, the plaintiffs alleged Google, Inc., by deliberate collaboration and orchestration of Google
6 Places and Google Maps is destroying thousands of businesses nationally in a profiteering scheme to
7 sell advertising. One more valid point in argument, is the poor slob that advertises in a newspaper, is
8 perhaps waiting on a consumer to call from his paid advertisement; but no one calls him because of
9 unverified complaints at Google and the poor slob is unfamiliar with the genius of it, he's sixty years
10 old and his neighbor had a grudge. Plaintiffs believe the defendant must be held to a responsible
11 conduct in reporting because they're engaging American business and commercial interest. The
12 plaintiffs believe the district court was simply on the wrong side of right and clearly erred in its'
13 analysis of the complaint. Plaintiffs are therefore asking the Ninth District to consider a stay
14 of the district court orders pending appeal, and reversal of the district court orders after examination
15 of the matter.

16 **VIII. Memorandum Of Understanding**

17 32.

18 Plaintiff puts forth the following few paragraphs of argument with best intentions and as a
19 matter of plaintiffs thought processes and experience. Before the plaintiffs began business in California
20 the plaintiff (husband) worked for a company in Concord, Ca.. One night late, about 10:00 p.m., while
21 dropping a sale into the companies mail slot, the plaintiff was unnerved by a security cop. The cop was
22 abusively harassing a couple very young salesman (19 - 21 yrs. old) who were very excited about
23 going out to find some girls to celebrate with, as they were also dropping off their evenings sale. The
24 plaintiff being much older, turned and looked at the officer with a, clearing of the throat. The next day
25 at about 4:00 p.m. upon the cops arrival to work, he simply approached the warehouse doors where
26 about twenty-five telemarketers and installers were on break with refreshments. He assassinated,
27 gunned down, I recall, about five young girls, cut them in half with a .357 magnum and injured
28 countless others because he did not like telemarketers. The point is that when the plaintiff saw these

1 new unattended business reviews on Google, especially the telemarketing complaint, plaintiffs feared
2 for their well being, as well as, their livelihood.

33.

3 Google may believe they're riding the white horse of righteousness to protect consumers in
4 helping people make more informed decisions, but the plaintiffs and many others will see them
5 as terrorist kids, gaming the system by declaring police powers over business, thereby putting
6 Googles' employees in harms way, organized crime to be precise. The plaintiffs truly believe Google
7 Maps and Google Places, because of their unattended nature, are and will, cause more damage than
8 gangs and rioting nationally. This is because the defendants programs are uncontrolled and
9 unattended as Google maintains ignorance, as a policy. More importantly Google themselves and their
10 employees may hide behind anonymity to terrorize a business in a belief that they have immunity,
11 which is why the plaintiffs believe immunity can not be granted for a business review scheme involving
12 substantive rights and advertising profits for the one asking the court for immunity.

34.

14 Plaintiffs believe it is not safe for Google employees in Mountain View to review contractors or
15 others in an unattended an anonymous manner. Police powers are dangerous; and in this instance
16 even if Googles intentions are honorable, law enforcement officials may see their unattended reviews
17 as a sting toy, marital disputes are very vicious and fit nicely within Googles unattended business
18 reviews, neighborhood lot split grievances for business owners are like dog fights, and just ordinary
19 malicious people may use an unattended and anonymous business review program like Google
20 Places and Google Maps to harass and destroy their unwanted or disliked opponent. The party
21 damaged may not understand Googles police powers and proceed to Mountain View rather than filing
22 a complaint. As alleged in complaint, Google's programs, "...cause harm by enticing members of the
23 general public to commit illegal acts..." - ¶ 42 Pl. Complaint. So in short, Googles employees may be in
24 harms way without even realizing it, just as those kids above were also unaware of an impending
25 attack while they gathered before work.

35.

27 The plaintiffs fully understand how the mountain from the top looks much different than from
28 the bottom. Not that it should matter, but Mountain View may rest assured in this instance, because

1 the plaintiff is not a roofer with a hammer looking for his next meal. Plaintiffs employ many people and
2 became one, if not the largest proprietorship roofing business in California, with multiple phones and
3 licensing; plaintiffs businesses are non-seasonal because their direct selling is consistent year round.
4 Plaintiffs work around the wind, rain, and heat of summer and enjoy occasional nature days off.
5 Plaintiffs are selective by only selling single family residences, and the roofs only take two days to
6 complete. Plaintiffs business is like a factory on a production line and never stopping as the plaintiffs,
7 (wife's dept.) sets appointments, the plaintiff (husband) writes orders, and the applicators install the
8 roofs. Plaintiffs enjoy a perfect reputation and have an A+ business rating. In short, a very well oiled
9 cookie cutter with all the bugs worked out many years ago. — Until! — Google decided to help people
10 make more informed decisions and intervene! Plaintiffs live in a private multi-million dollar estate that
11 is privately fenced, gated, and secure. The plaintiffs sales were devastated, and a dozen or more
12 employees lost their long term employment as a direct result of Google, Inc. advertising the plaintiffs
13 business identities in an unfair and illegal manner by ignoring and refusing to acknowledge the
14 plaintiffs many inquiries. The plaintiffs emotions, during Googles six months of aggressive behavior,
15 can not be properly expressed, without a twitching in the right eye and — a spit; as his business and
16 employees proceeded down the mountain. The plaintiffs declaration of damages, depicts actual
17 (\$75,000.00) and statutory damages (\$500,000.00); as well as an emotional damage distress claim in
18 the amount of (\$20,000,000.00). All damages totaled \$20,575,000.00 (Please see attached exhibit 'F' -
19 "Plaintiffs Declaration Of Damages"). Now plaintiffs have begun rebuilding but great damage has been
20 done as the inquiries and defamations followed the plaintiffs door-to-door activity for six months
21 throughout the plaintiffs market area; uncertainty looms as these advertising scams spread to many
22 cities and counties across the Internet as cited in the complaint at ¶ 29 as follows:

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

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

27 36.

28 Very simply the plaintiffs are door-to-door salespeople and telemarketers, (direct sales), under
high scrutiny daily. Plaintiffs do not advertise and do not wish to be advertised for free by others, in any

1 way, especially Googles way. The plaintiffs are requesting a permanent injunctive order prohibiting
2 Google, Inc., it's partners, and subsidiaries from advertising the plaintiffs businesses for purposes of
3 selling advertising to others. The plaintiffs are also asking the Ninth District to consider a stay of the
4 district court orders during these appeal processes and reversal of the district court orders after
5 examination of the matter. The injunctive protection was requested within the original complaint
6 attached hereto as Exhibit 'D' at ¶ 62 to wit:

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

9 A.) Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the
10 likelihood of other consumer injuries during the pendency of this action and to preserve the possibility of
11 effective final relief, including but not limited to, temporary and preliminary injunctions;

12 B. Enter a permanent injunction to prevent future violations of law by Defendants;..."

13 IX. Summary Of Appeal

14 37.

15 The plaintiffs alleged numerous violations of constitutional and civil rights within their complaint
16 and the United States Congress is not permitted to enact legislation or statutes that would impair those
17 substantive rights. Therefore, the plaintiffs believe the district court orders exceed the power of the
18 court as they allow 47 U.S.C. §230(c) a mere statute, to set aside the plaintiffs' complaint; where
19 substantive rights violations were alleged. The plaintiffs believe the district court orders are
20 unconstitutional as discussed in detail at pages 17 through 21 of this appeal.

21 38.

22 The premise upon which the district court orders are based is erroneous. Within each cause of
23 action, the plaintiff 'plainly' stated that Google not only sponsors but also publishes online business
24 reviews against businesses, and against law; the plaintiffs firmly believe that and 10,000,000:1 odds
25 it's also shown to be most likely. Plaintiffs believe this to be a clear err or oversight within the district
26 courts' order because the order alleges a third party published the complaints against plaintiffs
27 business rather than Google being the publisher as alleged in each cause of action. (Pages 3 through
28 6 of this appeal.)

39.

The plaintiff is asking the Ninth Circuit to recognize defendants default, based upon the above
arguments at pages 6 through 11 of this appeal. Additionally, grounds cited beyond the actual default

1 are that immunity under 47 U.S.C. §230(c), even if granted to the defendants, still leaves half of
2 plaintiffs diverse complaint and allegations unanswered; plaintiffs believe a complaint should require
3 an answer by law and argues it at pages 10 through 11 of this appeal.

40.

4 The complaint at (¶¶ 17; p. 5; ¶¶ 20 p. 6; and ¶¶ 22 p. 7) alleges a profit making scheme by
5 defendants in conspiracy. It alleges Google as a profiteer declared police powers, and should not be
6 granted immunity while in the process of stealing the plaintiffs sales leads, without plaintiffs permission
7 and alleges that the defendant Google, profits it's paid advertisers in conspiracy and interrupts the
8 plaintiffs business in a way that is not neutral. These parts of plaintiffs' complaint are directed at
9 Googles use of plaintiffs business name and information wrongfully for profit, a criminal conspiracy.
10 Google vested themselves with police powers by deliberately choosing "*...to help people make more*
11 *informed decisions...*" by admission in their "Motion To Dismiss" cited above and after listing the
12 plaintiff's businesses the defendants made the on line listings available to the public from the front
13 page of the Google.com search engine which connects directly to Google Maps (Ex. 'D', ¶¶ 17 and 20 Pl.
14 Compl.); thereby placing themselves within the plaintiffs bidding processes. Thereafter, Google abused
15 anonymous complaints on Google Maps and Places Google by ignoring plaintiffs as a matter of policy
16 for all businesses, to enhance the advertising offer to others of like kind in business in the same local,
17 which is criminal within the U.S.. When Google engaged the plaintiffs businesses a duty was born
18 upon Google to report responsibly, weather the reporting is done by employees or others, because it's
19 Google allegedly engaging plaintiff's and millions of other business. The complaint alleged that
20 unattended and not neutral content, added to and in conjunction with said on line '*courtesy*
21 *advertising*' combine to be in violation of 18 USC 1365 - Sec. 1365(b) and Title 15 U.S.C. § 45(a),
22 prohibiting "unfair or deceptive acts or practices in or affecting commerce at ¶¶ 35 Pl. and 38 of the
23 complaint and at pages 11 through 17 above. In short, the defendants lack standing in the community
24 to exercise such malicious police powers over business for profit.

41.

26 Plaintiff believes the district court orders are erred in misapplying law when citing a Ninth
27 Circuit ruling on the case Carafano v. Metrosplash.com Inc. 339 F. 3d 1119, 1121 (9th Cir. 2003) in
28 support for authority in making the orders. **First**, the orders are erred because the Ninth Circuit opinion

1 is based upon a web site lacking Googles market strength, penetration, and popularity; **Second**, the
2 district court erred by misapplying the Ninth Circuit opinion to this case because Googles tools are not
3 neutral. This is because open complaints on Google Maps and Places of plaintiffs businesses are
4 against the plaintiffs commerce and not against the other roofers who are paid advertisers on the
5 same page. The paid advertisers advertisement, when selected by a visitor, leads directly to the paid
6 advertisers web site which completes the conspiracy and Googles enhancement for the paid
7 advertisers which adds value to Googles' advertising offer to them. In short it's a conspiracy theft of the
8 plaintiffs sales leads in an unfair competition and misrepresentative because the plaintiffs customers
9 were searching for the plaintiffs legitimacy when they went to Google.com and Maps, not the paid
10 advertisers as alleged within the complaint and at pages 21 through 24 above.

11 42.

12 The district court orders are off point against the public interest, Google allegedly used it's
13 market strength from the front page of Google.com to advertise the plaintiff's businesses which in this
14 case stalks the plaintiffs daily door-to-door sales activity in violation of plaintiffs civil rights. It's
15 extremely invasive upon the plaintiffs' rights to free expression and the plaintiffs right to speak publicly
16 in sales presentation and steals the plaintiffs hard earned work. Additionally, these unattended
17 business reviews by Google, force the plaintiff, like millions of other business, to go to Google.com
18 Maps and Places against our will. The plaintiffs allege the orders are erred because in a favorable and
19 fair view of the complaint the mere suggestion that the complaint is confined to a single comment is
20 unnerving to the plaintiffs. The defendants are allegedly misrepresenting their program to the public at
21 large in a couple different ways. Google first admits to business reviews being an *impossible duty to*
22 *fulfill* and to *inaccuracy* within their content by their motion to dismiss and as cited just above the
23 plaintiffs customers were searching for the plaintiffs legitimacy when they went to Google.com and
24 Maps, not the paid advertisers and unattended online defamations as the plaintiff alleged within
25 their complaint and at pages 24 through 27 above.

26 43.

27 Police powers are dangerous, and in this instance even if Googles intentions are honorable,
28 law enforcement officials may see their unattended reviews as a sting toy, marital disputes are very

1 vicious and fit nicely within Googles unattended business reviews, neighborhood lot split grievances
2 for business owners are like dog fights, and just ordinary malicious people may use an unattended and
3 anonymous business review program like Google Maps and Places to harass and destroy their
4 unwanted or disliked opponent. The party damaged may not understand Googles police powers and
5 proceed to Mountain View rather than filing a complaint. Google's programs, "...cause harm by enticing
6 members of the general public to commit illegal acts..." - ¶ 42 Pl. Complaint and at pages 27 through 29
7 above.

8 **44.**

9 In furtherance, the defendants, if given a second chance, can not credibly defend themselves
10 against the plaintiffs complaint on the merits. Raking in profits from selling advertising to support
11 Google Maps is fine and admirable, however it should be done in a responsible manner as to protect
12 business interest in the U.S. by conforming to constitutional law. **First**, within their "Motion To Dismiss"
13 they admitted at page 11, lines 15, 16, and 17 as follows: *"Google does not owe an impossible-to-fulfill*
14 *duty to the world to ensure that all speech on the Internet is accurate."* This clearly reveals the
15 defendants' manner of conduct and ethics breach that of an orderly business society when associated
16 with the peoples businesses and livelihoods. **Second**, defendants reliance upon an immunity statute
17 rather than fair conduct in answering the complaint and unreasonable conduct within their business
18 reviews, prevents a credible defense by defendants in this instance. Perhaps if policies were realigned
19 at Google Maps to a neutral status, and if there were oversight of the review processes, Google Maps
20 would be suitable for public viewing. Plaintiffs know this is presently not the case; the fix would
21 need to be Federal intervention by the courts.

22 **45.**

23 For all the reasons cited herein, the plaintiffs are asking the Ninth Circuit Court Of Appeals to
24 stay the current district court orders at issue and for a reversal to favor judgment for the plaintiffs.
25 Plaintiffs present the following proposed order which is only a work in progress, it is perhaps close to
26 a concise analysis of the case from the plaintiffs perspective as follows:

27 **Proposed Ruling**

28 In a fair view of the matter, it's apparent that plaintiffs' 1st Amendment rights to free speech and
expression in sales presentation and plaintiffs' 14th Amendment rights to due process under the law are
compromised within Googles business review process. Said complicity of plaintiffs' substantive rights
imposes an inherent responsibility upon Google to presuppose the laws of responsible behavior when
advised of wrongful acts associated with their business review program. Entities such as Google,

possessing a large market force penetration, should not necessarily expect immunity from the courts under 47 U.S.C. §230(c) when collaborating for profit in business review schemes that implicate the substantive rights of the people in an unattended manner.

Defendant's admissions of having no control over their business review /courtesy advertising program [Defendants' "Motion To Dismiss" at page 11, lines 15, 16, and 17 as follows: "Google does not owe an impossible-to-fulfill duty to the world to ensure that all speech on the Internet is accurate."] and conduct in ignoring the several notices by plaintiffs, clearly reveals that the defendants' manner of conduct and ethics breach that of an orderly business society. While the Internet is still immature, it should be recognized that profiteering upon the rights of others imposes great responsibility upon the profiteer. Wherefore, within a "fair reading" of the complaint the court should, "...take all material allegations as true and construe them in the light most favorable to the Plaintiff." NL Indus., Inc. v. Kaplan, 792 F. 2d 896, 898 (9th Circuit Court of Appeals, 1986).

Accordingly, and pursuant to the matters at hand, the defendants use of anonymity within business reviews without communication with a business in an irremovable fashion combined with the influence, strength, and popularity possessed by the defendants, combines as an outrageous act against the plaintiffs livelihood and civil rights as a door-to-door salesman. Conduct is only considered "outrageous" when it is "so extreme as to exceed all bounds of that usually tolerated in a civilized community." Hughes v. Pair, 46 Cal. 4th 1035, 1050 (2009) As the defendants conduct is not tolerable within a civilized and orderly business community and has not been for nearly a hundred years, the two district court orders cited below are ordered to be vacated by the district court and judgment is granted to plaintiffs based upon the merits of the case and default in the amount of \$20,575,000.00.

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

X. Prayer For Relief

46.

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. The plaintiffs are therefore asking the Ninth District to consider a stay of the district court orders during these appeal processes, requesting temporary injunctive relief for plaintiffs, and a reversal of the district court orders after examination of the matter. Additionally the plaintiffs are asking for financial relief to wit:

A.) Award plaintiffs a judgment in similarity to plaintiffs' proposed ruling as cited above.

Plaintiffs documented actual and statutory damages within the attached exhibit 'F' - "Plaintiffs Declaration Of Damages" which is on file with the district court and in alignment with the proposed order cited above.

47.

As cited within the original complaint:

A.) Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert

1 the likelihood of other consumer injuries during the pendency of this action and to preserve the
2 possibility of effective final relief, including but not limited to, temporary and preliminary
3 injunctions;

4 B. Enter a permanent injunction to prevent future violations of law by Defendants;

5 C. Award Plaintiffs actual damages in accordance with law;

6 D. Award Plaintiffs punitive damages in accordance with law;

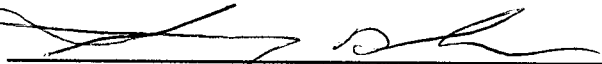
7 E. Award Plaintiffs compensatory damages including reimbursement for lost wages and
8 time in bringing this action;

9 F. Award Plaintiffs the costs and fees of bringing this action, as well as such other
10 just and proper relief as the Court may determine.

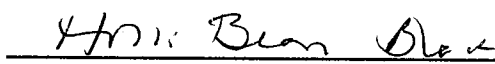
11 48.

12 The undersigned plaintiffs attest to the foregoing allegations and statements as true and
13 correct to the best of plaintiffs knowledge under the penalty of perjury under laws of the United States.
14

15
16 Respectfully submitted before the Ninth Circuit Court Of Appeals,

17
18 
19 Gary Black, individually plaintiff

Dated: October 7, 2010

20 
21 Holli-Beam Black, individually plaintiff

Dated: October 7, 2010

1
2
3 CERTIFICATE OF SERVICE BY US MAIL
4

5 I, Jose G. Torres, declare:
6

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

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

12 "Notice of Amended Appeal
13 and Amended Appeal
14 With Exhibits A through J"

15 by placing them into an envelope with fully paid postage thereon, sealed the envelope, and
16 delivered the envelope for mailing to the United States Post Office in Benicia, California.
17

18 Wilson Sonsini Goodrich & Rosati
19 attorneys at law
20 650 Page Mill Road
21 Palo Alto, California 94304-1050
22 Telephone (650) 493-9300

23 I declare under the penalty of perjury under the laws of the United States that the foregoing is
24 true and correct. Executed at Benicia, California 94510 on October 7, 2010.
25

26
27 JOSE G. TORRES
28 Jose G. Torres

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 17 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GARY BLACK, DBA Cal Bay
Construction and HOLLI BEAM-
BLACK, DBA Castle Roofing,

Plaintiffs - Appellants,

v.

GOOGLE, INC.,

Defendant - Appellee.

No. 10-16992

D.C. No. 4:10-cv-02381-CW

U.S. District Court for Northern
California, Oakland

ORDER

The court's records indicate that this appeal was filed during the pendency of a timely-filed Fed. R. App. P. 4(a)(4) motions. The notice of appeal is therefore ineffective until entry of the order disposing of the last such motion outstanding. *See* Fed. R. App. P. 4(a)(4). Accordingly, proceedings in this court shall be held in abeyance pending the district court's resolution of the August 25, 2010 and August 30, 2010 pending motions. *See Leader Nat'l Ins. Co. v. Industrial Indemnity Ins. Co.*, 19 F.3d 444 (9th Cir. 1994).

If appellant wishes to challenge the district court's ruling on the pending motions for reconsideration, appellant shall file an amended notice of appeal

within 30 days from entry of the district court's ruling on the motions. *See* Fed. R. App. P. 4(a)(4). A copy of this order shall be served on the district court. *See* Fed. R. App. P. 3(d).

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

Corina Orozco
Deputy Clerk

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 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
28

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

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

¶ 1. They aver that the allegedly defamatory comment is "anonymous," id. ¶ 21, but they do not allege that Defendant was its author. Finally, they summarize their action by stating that Defendant'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." Id. ¶ 34. Based on these allegations, Defendant is immune from their suit.

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

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

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

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

21 CONCLUSION

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

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GARY BLACK and HOLLI BEAM-BLACK,

Plaintiffs,

Case Number: CV10-02381 CW

CERTIFICATE OF SERVICE

v.

GOOGLE INC.,

Defendant.

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

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

Gary Black
101 Auld Court
Green Valley Falls, CA 94534

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

Dated: August 13, 2010

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

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

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

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

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.¹ 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'

¹ 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 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"
8
9

ORIGINAL
FILED

JUL - 2 2010

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

10 UNITED STATES DISTRICT COURT
11 for the
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 GARY BLACK, individually d/b/a Cal Bay
15 Construction and,
16 HOLLI BEAM-BLACK, individually d/b/a Castle
17 Roofing

Case No. : 3:10-cv-02381-CW

18 Plaintiffs,

19 vs.

20 GOOGLE, INCORPORATED et al;
21 and
22 Does 1 through 100 inclusive,
23 Defendants.
24
25
26
27
28

DECLARATION
OF GARY BLACK,
with exhibits A through L

/

"My dilemma came full circle and back to the fact that on line programs altering a professional or business reputation beyond the control of the owner are illegal and unsuited for public use."

1.

On or about October 20th, 2009 an anonymous party posted a very damaging comment/complaint against Plaintiff's business using the Defendant's 'Courtesy Advertising' program on line. [Exhibit 'A'] As described in the complaint [Exhibit 'J'], the anonymous posting had a serious and detrimental impact upon our family and our family owned businesses. We were robbed of our time and psychologically impaired as we discovered taking care of the matter was no easy task. We lost business, leads, contracts, and suffered damage to our reputation all through the foregoing time period.

2.

Plaintiff initially responded to Google via their on line 'Report Abuse' feature associated with the 'Courtesy advertisements at issue in November/December of 2009. The notices were something to the effect that the anonymous complaint was synonymous to a death sentence for the Plaintiff's roofing company, but the Plaintiff failed to make copy of the first couple notices to Google thinking they'd surely be reasonable and remove the comment. Then wise to the Defendant's ignorance of the matter, the plaintiff began making copy of most everything. Plaintiff then pleaded with Google for mercy and wrote to Google in November/December attached as [Exhibit 'B'] via their 'Courtesy Advertising' report abuse or inappropriate content email programming. There were never responses from Google not even acknowledgements which was not the case with Yahoo; Yahoo always responded to Plaintiff with a return email message and follow-up actions.

3.

Plaintiffs attempted on three separate occasions to suspend/delete the 'Courtesy Advertisements'. Google does this by mailing pin numbers to a business or by telephone automation calling the business if the business owner so requests it on the 'Courtesy Advertisement' web page. Each attempt by Plaintiffs' to suspend/delete the 'Courtesy Advertisements' failed. On or about November 6, 2009 using Googles on line suspension process and the Plaintiff's email account name hollibeam@yahoo.com Plaintiff's were unsuccessful at suspending the defamatory advertisements from the maps.google.com web site and Google Places. More importantly Google did not respond to any of Plaintiff's inquiries, ever, until after they were served in the instant matter. Plaintiff made many attempts at using the pin numbers via phone and mail; some of the pin numbers attached as [Exhibit 'C'], were 61667 ~ 55038 ~ 10461. Plaintiff has more numbers buried in emails or files somewhere.

4.

The pin number process took weeks to comply with Googles requirement of waiting on the mail then we were going into the holidays. During January and the first part of February 2010 Plaintiff made attempts at responding to the on line defamation. Plaintiff edited the 'Courtesy Advertising' by changing the phone number corresponding to the ad. Plaintiff placed the toll free number 800-321-2752 for the California State License Board (CSLB) and posted a comment under the 'Courtesy Advertisement' further directing viewers to the companies insurance company and the CSLB. This was done to hopefully steer the complainant into making a monetary claim for damages. Plaintiff's had never had any serious roofing problems with customers and therefore were not able to accurately assess the on line defamation. Three to four weeks later the Plaintiff then removed the CSLB comment (On Googles advertisements one is able to remove there own comment.) Plaintiff noticed that someone else, presumably Google had removed the CSLB phone number from the advertised listing and replaced it with the Plaintiff's phone numbers.

5.

During the first part of February, 2010 Plaintiff responded to the on line defamation again. Plaintiff reported the anonymous defamation and 'Courtesy Advertisement' abuse to Google twice using their on line 'Report Abuse' program; the communications are attached as [Exhibit 'D'].

6.

Following more attempts in March 2010 to use the Defendant's pin number telephone process the Plaintiff realized that all on line attempts using Google's 'Courtesy Advertising' program had failed. Their programs were obviously not being supervised and intended only for driving traffic to their web site and for purposes of selling advertising. The Plaintiff then sent a letter to Defendant's headquarters in Mountain View, California as well as email using Google's

1
2 'Report Abuse' link associated with the defamatory 'Courtesy Advertisement'. The letter dated
3
4 April 22, 2010 is attached as [Exhibit 'E'].

5
6 7.

7
8 Immediately following Google's receipt of Plaintiff's US Mail letter of April 22 [Exhibit 'E'] the
9
10 Plaintiff's 'Courtesy Advertisement' received another complaint; this time for telemarketing.
11
12 Previously in January/February, after removing the CSLB comment I had place under the
13
14 defamatory 'Courtesy Advertisement', I placed my personal cell phone number within the
15
16 'Courtesy Advertisement' so that complainants might call me directly. I fielded two or three
17
18 telemarketing complaints shortly thereafter via my cell phone while my wife was dealing with a
19
20 filed complaint with the BBB (Better Business Bureau) in regards to a telemarketing complaint
21
22 and our businesses BBB on line rating had been changed from a long standing B+ to an 'F'.
23
24 We had never belonged to the BBB or paid fees to them; B+ was always the highest rating we
25
26 could obtain as the BBB claimed not to have enough information on our businesses. So again
27
28 using the Google 'Report Abuse' feature the Plaintiff on May 3rd, 2010 sent Google the
following message attached as [Exhibit 'F']. In June the plaintiff's joined the BBB and now have
zero complaints filed and an A+ highest ranking without advertising beside others.

8.

On May 17th and again on May 19th just a few days prior to filing the instant Federal action
with the Courts I noticed the plaintiffs and their businesses were still being damaged by
Google's 'Courtesy Advertising' program. Attached as [Exhibit 'G'] : May 17th, 2010 - **Google
Maps** showing defamation has been shortened by the anonymous on line predator and the
Castle Roofing 'Courtesy Advertisement' **at Google Maps** shows the defamation along with
advertisements by numerous competitors. Attached as well is a May 19th, 2010 photocopy of
Google Maps 'Courtesy Advertisement' for Castle Roofing which belongs to the Plaintiff's wife
and just a few days before filing of the complaint in the Northern District. The defamation

1
2 along with advertisements by others were also easily accessed by the public via Google
3
4 Places.

5 9.

6
7 On June 10th only about four hours after filing proof of service with the Courts in the instant
8
9 matter I was telephoned by one Tamara Jih claiming to be in-house from the Google defense
10
11 team. She first stated, "Do you want to voluntarily dismiss your complaint?", in a somewhat
12
13 threatening tone then asked if I was aware of the Decency Act. I told her I was and that I
14
15 supported it. She then informed me that they'd seek all legal fees and cost against me and
16
17 investigate my on line activities, including items involving my own content which I had
18
19 previously requested they remove from the Google search. The items I removed from
20
21 Google were my own recently authored short stories, as well as, a letter to Senators. Attached
22
23 is [Exhibit 'H'] whereby I emailed Tamara Jih confirming our phone conversation.
24

25 10.

26
27 The following day after the phone conversation and confirmation email on June 11th, 2010 it
28
dawned on me what was really happening; maybe it was the attorney's threat or perhaps just
the stress of possibly losing our home, what income we have left, or the wife blaming me for
taking on Google. Here's what actually happened and this is why we are in Court:

Both myself and my wife (Plaintiffs) knew the online defamations for roofing and telemarketing,
received phone complaints about telemarketing, and the BBB telemarketing complaint were
blatantly false and occurred within only a short period of time meaning within a few months. We
know because we corresponded with our past customers who may have had a roofing issue
immediately following the on line defamation. Additionally, we've telemarketed since about
1989 in California nearly everyday. At no time have we ever received a serious telemarketing
complaint much less four serious and false telemarketing complaints in just a couple months
time which occurred on my personal cell phone, on Googles 'Courtesy advertisement' of our

1 company, as well as at the BBB.

2
3
4 Therefore the plaintiffs now realize the attack is without doubt because of my on line writings
5 which are attached hereto as [Exhibit 'I']. So the complaint filed now takes on another
6 meaning to me in that my rights to communicate in writing freely under my own name on line
7 are greater than some 'anonymous coward' trying to destroy my livelihood by use of the
8 Defendant's malicious advertising program.
9

10
11
12 My dilemma then came full circle and back to the fact that on line programs altering a
13 professional or business reputation beyond the control of the owner are illegal and unsuited for
14 public use.
15
16

17
18
19 My apologies to the Court for the time involved but attached are two Internet short stories
20 intended to be for children and funny along with my letter to the Senators. The political letter
21 was simply my fear that I knew something about the current economic crisis and wanted to
22 make sure they knew as well or at least know that I wasn't the only one that knew. Accordingly,
23 I sent it to all 100 or so Senators via their web sites; my stories and letter were also before
24 nearly 20,000 Twitter followers under <http://www.twitter.com/storystalker> and
25
26
27
28 <http://www.twitter.com/raymondavich>.

So there it is, I confess to writing the Senators, writing a few children's
short stories, and publishing them on line. Here's a caption from 'Cat Scratches':

So the StoryStalker asked, "How's your writing coming along." I reply, "I've filled my think tank like you taught me and the fish are getting really big tales." He replies, "That's great, maybe now you could take some time off for an adventure". "What kind of adventure?" I asked. . . . He says, "Well maybe go surfing on the Internet". "But I'm scared!" I declared, and explained further, "It scares me, that there's so much unknown out there." The StoryStalker quickly responds, "You have to be brave, . . just think of it as an adventure; go there and bring all the unknown you can find back home for my next story." He continued, "Everybody wins, you get your adventure, I get my next story, and the unknown becomes known."

11.

On June 10th, 2010 I received an enlightening email [Exhibit 'J'] whereby a '*whistle blower*' in the tech department at Yahoo explained how the content of the programming for on line

1 'Courtesy Advertising' is really beyond Yahoo's control.

2
3
4 Well, I immediately disagree as the web site does belong to Yahoo and they allow the third
5
6 party access of others and designed the on line program. So after seeing online that
7
8 thousands of other businesses and professionals are fighting for control of their reputations, I
9
10 realized that the owners of businesses and professionals nor the Defendants had full control
11
12 over 'Courtesy Advertising' programs and that the only real remedy is a take down of on line
13
14 programs altering a professional or business reputation beyond the control of the owner as
15
16 they are illegal and unsuited for public use.

17 12.

18
19 Still suspicious of the Defendants marriage of public listings, ads by others in competition, and
20
21 consumer generated content I decided in June 2010 to check the 411 directory i.e. the White
22
23 and Yellow Pages legal disclosures as it seemed to me they would not want their product
24
25 used with any product or service that is not theirs. Sure enough I was right. The totality of the
26
27 411 directory commonly used is derived directly from ones published phone listing in the
28
White Pages. The full legal disclosure of copyright and trade dress published by White Pages
is attached hereto as [Exhibit 'K'].


13.

Having been a door-to-door salesperson for nearly 41 years I emailed the current Google
attorney about my concerns prior to his filing a motion to dismiss my complaint before the
Court. Incorporated into my declaration is an email, proper or not; identified herein as
[Exhibit 'L']. I stand by it as a salesman's analysis of:

"How To Sell Advertising In A Disaster Economy"

I Declare under the penalty of perjury within the United States of America that the foregoing is
true and correct to the best of my knowledge.

Respectfully,


GARY BLACK, individually plaintiff

Dated: July 1, 2010

EXHIBIT A

[Get Directions](#) [My Maps](#)

[Edit this place](#) - [Business owner?](#)

Cal-Bay Construction

This place has unverified edits. [Show all edits »](#)

1440 Military West, Benicia, CA 94510

(800) 321-2752

[Directions](#) [Search nearby](#) [more ▼](#)

[Category:](#) Roofing Contractor

[Details](#)

[Products And Services:](#) Construction

[SuperPages.com](#)

[More details »](#)

[Reviews](#)

[Write a review](#)

Plur Follow-up - Won't repair leaky roof

★☆☆☆☆ By [lucsfu](#) - Oct 20 2009

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

[maps.google.com](#)

2 out of 5 people found this review helpful Was this review helpful? [Yes](#) - [No](#) - [Flag as inappropriate](#)

Google maps cal bay construction benicia

Find businesses, addresses and places of interest

[Search Maps](#)

[Show search options](#)

[Directions](#) [My Maps](#)

[Edit this place](#) - [Business owner?](#)

«

[Print](#) [Email](#) [Link](#)

al-Bay Construction: Reviews

1 of about 1

[Write a review](#)

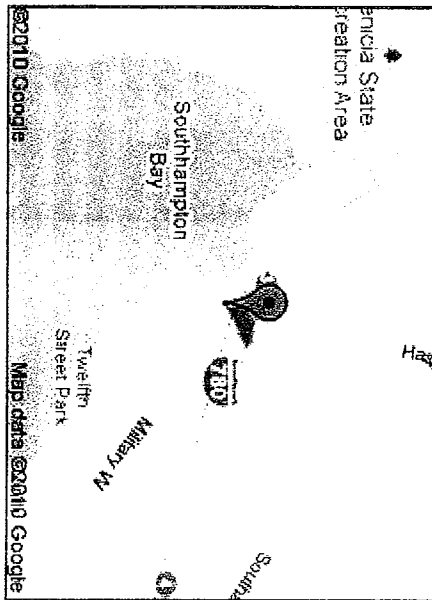
or Follow-up - Won't repair leaky roof

By [hcsft](#) · Oct 20, 2008

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

[ps.google.com](#)

Out of 1 people found this review helpful? [Yes](#) - [No](#) - [Flag as inappropriate](#)



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[Roofing Estimates](#)

[Find Top-Rated Roofing Pros in Your Area. Get 4 Free Bids Today!](#)
[www.ServiceMagic.com](#)

[Roofing Contractors](#)

[Find Local Roofing Contractors. Prescreened & Customer Rated. Free.](#)
[www.TheContractorSpot.com](#)

[Find Local Roofers](#)

[Compare Roofing Contractors Get Fast, Free, Estimates.](#)
[www.RoofingNetworks.com](#)

[Roofing Contractor](#)

[Repair, Maintenance, Re-roofing San Jose and surround Bay Area](#)
[www.aboveallroofingsolutions.com](#)

cal bay construction benicia

[Search Maps](#)

EXHIBIT B

A message from Plaintiff to Google in December of 2009 using their 'Report Abusive' feature associated with the on line 'Courtesy Advertisement' for Cal Bay Construction and Castle Roofing the message to Google reads as follows:

Hello,

I'm the owner of Cal-Bay Construction and the other name mentioned of Castle Roofing And Construction. I had thought I would start advertising in Yellow Pages and Newspapers when the economy turned South. This is something I had never had to do before, because my business was always successful without it. I thought Cal-Bay Construction was to generic of a name and decided to change it to Castle Roofing And Construction for advertising purposes, after doing so I decided to retire instead. Castle Roofing And Construction never contracted with anyone and I inactivated my licenses and retired. Besides roofing I built homes as well or did before I retired.

Because of over 5,000 successful roof completions as Cal-Bay Construction and over 25 years of roofing I gave my phone and office to another contractor - this is necessary because of call backs, leaks, request for warranty service, etc. which I am legally bound to take care of. My licenses are now inactive because I retired but still valid as a B-1 General & Roofing C-39 (Without ever a complaint I might add); they are with the (CSLB) State License Board and the bonding is current with a \$12,500 deposit for injured consumers in the event a contractor doesn't perform his rightful duties or dies; bonding is in effect for any and all contracts I ever had for four years from the date of the contract, weather I'm around or not.

I pay 'Castle Roofing' - [not to be confused with 'Castle Roofing And Construction' a name I never used in trade but registered with the CSLB before retiring] to remedy any and all roof related problems on behalf of my closed company Cal-Bay Construction; my understanding is that the statute of limitations on my written contracts is five years in California. Castle Roofing has done a great job with my current customers in servicing their needs.

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

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

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

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

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

My second reaction is that Goggles and Yoyo both ignore and refuse repeated request to validate the anonymous roofing complaint, even though the party is screaming for help and the company reputation is being destroyed. The bigger issue is, "What Should Goggles Do?"

When Goggles received notice of the problematic publication, it's was their decision to turn a blind eye toward the victim of the roofer and leave the career damaging post for all to see. Leaving both victims to suffer.

My thought is when Goggles sees a victim of civil wrong doing or someone injured and can fix it with a couple mouse clicks they should. Or should they? It takes time to read and correct peoples problems. Should they fix problems for free?

Perhaps the complaining party wants the roofer to fix something for free. Should he do it? Perhaps the roofer is just like Goggles and did not fix someone's roof because it was someone else's work. Perhaps a solar system or roof windows were leaking and someone wanted it fixed for free. That would explain an anonymous post rather than a legitimate complaint resolution.

Confucius said something about if the motive is revenge prepare two caskets.

I love Goggles, if they weren't so cute one could just smack 'em.

Associated 'Courtesy Advertisement'

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


EXHIBIT C

[Print](#) | [Close Window](#)

Subject: Black v. Google 1
From: gerald@raymondavich.com
Date: Fri, Jun 25, 2010 1:48 pm
To: bvolkmer@wsgr.com

----- Original Message -----

Subject: Discussion follow-up, Black v. Google.
From: gerald@raymondavich.com
Date: Thu, June 10, 2010 6:24 pm
To: tammyjih@google.com
Cc: hollibeam@yahoo.com

Intended for: tammyjih@google.com 

Hello Tamara Jih,

It was a pleasure connecting with you by phone earlier today. Phone is easiest for me as I do not check my email everyday unless I'm expecting something, but please note my email address above.

Confirming our conversation I am very aware of 230(c), that Google will seek fees and cost against me, and that Google will investigate my on line activities on your web site.

As I stated in conversation a great deal of thought went into the making of the complaint, it's from the heart, and we're not willing to initiate a 'voluntary dismissal' at this time.

We're seeking damages for months of grief, humility, and monetary losses; as well as a change in your on line procedures. It is our belief, that if Google is to continue the 'Courtesy Advertisement' practice of merging business and professional advertisements with consumer-generated content and ads by their competition that businesses should be notified by U.S. mail of the FREE 'Courtesy Advertisement' the moment it goes on line and advised of a risk as well as given an opportunity to opt out immediately by return mail.

We believe it's the only decent thing for a good company like Google to do; (IE: lead the way for businesses and others to enjoy a safe Internet experience.). We also believe if it doesn't happen in this case that it will in the very near future anyway, as small business jobs and unemployment are increasingly in focus right now nationally.

Our motives were not initiated by money and we really don't have any money that Google would be interested in as we barely make it financially. Our motives were initiated out of a necessity to preserve our home and livelihood.

Even if you're able to spin the case legally you're still at risk of trial and bad public relations if trial is granted as we do fully intend to proceed to discovery and request for trial if not settled.

So as a good faith gesture in the interest of putting this complaint to rest, we would examine any cash settlement offer you wish to put forth which includes a mutually acceptable 'Google policy' alteration and a written stipulation for approval by the Court. Otherwise a voluntary dismissal is not acceptable on our end.

Sincerely,
Gary Black

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EXHIBIT I

THE UGLY BUG

THE UGLY BUG - A Short Story
August 1, 2009 by Gene Black

We are just your normal working couple married without children, however, we do admire our English Springer named Sam. Sam is a daddy's boy following and protecting the area, everywhere we go. The wife provides some protection as well, meaning she takes care of the occasional spider webs in the ceiling moldings, swats misguided mosquitoes, and even removed a snake one time that had crawled into our industrial office complex. Thankfully, I was on the telephone during the snake incident.

Like most couples, I suppose our routine is just that, routine. Today, like others, was just another routine day, with a planned evening of cable TV, as is usual after a long days work. So its' off to the master suite with Sam leading the way.

On arrival he's all wiggles and wags, graciously expecting the followers reward as usual. Hitting the showers, brush, comfortable, lost and found the remote. We're set, what is this? "What's this!" I discover I can not find channels. Surely the cable company is having technical difficulties, as I'm only receiving channels my grandmother might watch. Immediately, I summons my problem solving wife on the cell. Proclaiming my distress, she says, "I'm b-u-s-y!", and something about digital. "What do you mean digital?", I stutter. She tells me, . . . "the cable company needs an appointment for the following week to come out to do installation of a box or we'll have no cable TV!". My quick retort was, . . . "without warning and on a Friday ". Talk about a emergency and difficulty thinking straight, I suggested we get a room. She quickly grounded me . . . "why not just save the money"?

This is not good, unconnected, . . . without my TV friends, . . . grounded by a technically incompetent, . . . whatever! Quickly, I'm dressed and rush down to the local buck's cafe' for an extra double shot.

Now about half an hour into this, we're getting our bearings and sitting in a parking lot, fuming about circumstances beyond our control. Not that I'm an addict or compulsive, but how can anyone in today's modern age survive this. We're thinking of solutions, what am I saying to myself, "we", I'm only one person, I have to remind myself of that repeatedly these days. The shots are kicking in, the mind's defaulting toward conclusions on the bright side. I'm all for saving money, after all we are in a slumping economy. Maybe I can do this, I think. I think, and I think some more. So what now?

After about an hour as I'm arriving back home it came to me, "I got it!" . . . "I'm still on line with the computer."

I had previously sworn off the Internet for several years after the .com burst as we had lost lots of money in investments and start ups. So with my faithful friend, he likes this sort of thing, we started digging through the attic and garage, piecing together some antiques. We're coming up with a Vintage 2000 server once used for web hosting along with some old software and rusted computer skills cataloged deep within my mind.

After just a couple long nights, things are almost as it used to be with the cable TV. I've made the rounds, clicking on my favorite cable buddies web sites. We're back, . . . we're rolling again, . . . let's see what we can do now, it's been a good while. I'm starting to feel connected; we're at last getting some relief. Now that I'm somewhat back to normalcy, I'm thinking again . . . "What's next?"

In a click of the mouse, something jogs my memory and I think I got it! An issue that had been on my mind for several years involving millions of job losses in direct sales and unemployment. Let's set some small goals here, try to be reasonable, I tell myself, . . . let's see if we can make things right, a little bit of justice for free speech, let's change today's World. I say to myself, O. K. as I talk myself into it. . . "I'm on it."

I discover the politicians are all online and I'm thinking; . . . I'm thinking some more, . . . I should give them all a fair shot, as I know they won't have much chance of ducking my opinion, after all it's mine. I'll send them all a direct e-mail from their own websites directly to their individual e-mail addresses. I'm thinking of fairness, we'll send it to each

politician democrat or republican, so they all have a fair shot, . . . I'm thinking some more . . . that this is the only way to begin a fair argument.

I'm tired, this is like having a job, I think to myself. . . It's break time. Outdoors with my faithful follower it's the middle of the night, I'm thinking again . . . writing has not been something I do, but I do need to write something, it's not like Sams' going to help. "Well what are we going to say?"; I asked of my furry little friend. I'm thinking, . . . these politicians are professionals, very intimidating, most were probably in school half their lives.

Thinking some more I got it . . . we'll go to Harvard. I'm thinking Bill Gates and Barrack Obama went there so it must be what I need too. After three or four hours of Harvard reading, I'm thinking to myself, . . . Wow, these people write really smooth and with humor too. I just finished reading a professors article on how Twitter might substantially reduce GDP and trend productivity downward, furthering the global recession. So now we know how to write and we can get started on our mission.

On the mission plus a few days later, we're writing and have gotten a brief outline of our intended presentation. Sam's helping in a different way, so I may freely use we and our. I begin realizing that July 4th is just around the corner; I think jokingly with use of my new found Harvard education . . . that this seems to be an appropriate deadline for this small task, after all it's only a couple million jobs on the line.

A couple more days, it's a rough draft, I desperately need to learn editing. So we're back online, finding the old guys are grumpy because they didn't think of key words when they use to write, . . . thinking . . . O.K. that's enough of that, we start editing . . . chop . . . chop.... nip. Done!.

Quickly, before the July 4th deadline, we must get it sent to all Senators and House members. It takes an entire day working at near light speed. Each member of government must be addressed separately and individually from their respective web sites, apparently to avoid Spam. We visit each legislators site, find the contact link, fill out an application, and finally submit a further chopped up and down version of my message to fit the allowable word limitations on each site.

O.K. we did it, surely this will create millions of jobs and not cost taxpayers a dime. Great job. Save the World economy with a letter. . . . Not Bad! Sam and I are thinking we're pretty cool at this point.

So several days go by, we're content with our cable buddies online and we get a bite. Two Senatorial responses about Cap & Trade . . . I'm thinking what kind of disconnect is this; my letter was about creating jobs. These were form responses all two of them. Oh no, . . . nobody reads the mail; now it makes sense, I had heard in the news, that no one actually reads legislation they sign; so how could I expect to deliver a letter.

This is not good, unconnected, grounded again, this time by a seemingly insurmountable, . . . whatever! My goodness, I'm thinking . . . the Internet is like Auz and the amount of file transport and information is totally overwhelming the real World. This is really bad, now that I'm really invested, at least with my time at stake. I quickly rush down to buck's cafe for another extra double shot.

We're sitting in the parking lot again, just thinking . . . Like the previous days of cable TV, the computer is absorbing all my free time . . . I think, . . . What's this Twitter thing I keep hearing about?

Back home and not even an hour has passed, WA la! . . . we got it! . . . We'll tweet 'em until they gasp for relief and beg for the solution to unemployment; and we'll put up a web site.

After a couple of days of being a good twitter, I'm thinking . . . nobody could sort through this maze. But wait, there's followers. A Senator is following me, and a tweet congress site, and news stations, . . . maybe there's hope. Better tell the wife to get ready. She doesn't believe it, . . . something about auto responders, I'd forgotten all about those rusted old things. Well, I'm thinking again . . . I guess this might take some time.

Next day, middle of the night again, surfing, tweeting, and I'm thinking . . . We need a web site. So we're checking out the available domain names for a new .com. What's this, if they're recognizable they're all taken or the domain name owners want thousands of dollars based on i-m-a-g-i-n-a-r-y perceived value. Mark one up for Auz, again swatting me down like a lady's fly on the wall. I'm thinking . . . the wife is never going to let me buy a good name, after all what's the point in saving the cable TV money.

I'm thinking, step it up a little, . . . now moving up to the t-u-r-b-o thinking with my faithful friend. It's starting to hurt . . . Got a bite, Got one! . . . storystalker.com . . . It's mine, Auz is nothing, we win, game over, and for less than twenty bucks. No need to ask the wife, I'm thinking . . . that was close.

Deep in thought, thinking again, it's late . . . what do you do with a cool name like that? Just thinking about it congers up ghost stories, reporters, mythology, wicked thoughts, and writing of all sorts. On further thought it might be like a Pandora's Box. One can not just unleash a name like that on a mind maze like mine available or not.

Maybe I need more shots, thinking bucks'. Sams' rustling round snorting, I'm feverishly focused, better look, Sam shuffling some more, . . . "NO Sam!" . . . I shouted. Sam takes off running upstairs and I find myself facing off with the biggest and ugliest bug I've ever seen in my life. It's a monster BUG. . . . maybe it's not even a bug more like a creature. I've never seen a creature so ugly. Looks like six or eight legs, crème colored bottom and maybe three to four inches long. Perhaps a scorpion except that the tail end looks like an oversized wasp but no sign of a stinger, maybe it's in Sam's nose.

I'm suddenly too scared to think straight. Over to the fire place, I've got a poker, no that won't do . . . now I've got the fireplace broom . . . SWAT! The creature jumped, . . . maybe it bounced. My goodness, it's alive. From a distance, I deliver another . . . SWAT! I think I got it, at least the creature's maybe unconscious, but its' still wiggling its ugly legs. I'm opening the down stairs door to use the broom as intended. I'm thinking . . . how'd this thing get in here.

I eventually get my breath back, Sam's O.K. and I rush quickly down to the local buck's cafe for an extra double shot.

In the parking lot again, thinking. . . . Where was the wife when I needed her, after all she's the outdoor athletic one, the person in charge of bugs and such. . . . I realize then that, . . . Of course, at this hour she's sleeping.

Once emotionally settled down we're back home and off to bed; had enough turmoil for one day. I say to my wife . . . "I might have nightmares," she's acting asleep. She mutters . . . "something about late and Internet taking all my time." I reply . . . "yeah, maybe I need a few days, I'm really tired", and barely thinking . . . after all I'd just done battle with the ugliest bug ever before imagined, maybe it came in on a computer file . . . off to sleep.

After a few days, Sam and I are recovering just fine. The weather seems perfect, I'm putting air in the wife's bicycle tires and the wife's gardening. I walked over near where she was digging, and she asked, . . . "Did your bug look something like this one, honey?" I replied, . . . "No, not even close".

But then it dawned on me by the sound in her voice, that something's just not adding up . . . or is it! Over the course of the day, I came to realize, that perhaps my months turmoil and frustration had been destiny in some fashion, or suspiciously my minds now wondering; . . . Did she really do it? As the next few days pass, I come to realize that she possibly tossed me off the TV cable like a rogue mosquito and railroaded me out of the basement with an ugly bug . . . on purpose! Could she really be that clever and mischievous?

My goodness, I think I get it, my wife wants me to balance my time more to her favor. Perhaps I am too compulsive and obsessive? She probably just wants to spend more time together. Like I wrote earlier, "We are just your normal working couple, married without children".

I dedicate this short story to my loving and mysterious, wonderful wife.

Gene Black/StoryStalker

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POLITICS AGAINST A SEA OF SOCIAL ECONOMIC CHANGE

POLITICS AGAINST A SEA OF SOCIAL ECONOMIC CHANGE - A work of suggestion toward the growing U.S. unemployment rate; a jobs program creating millions of jobs without use of tax dollars.

July 4, 2009 by Gene Black

I recall standing next to my father at an old farmhouse in Southern Indiana. Through a screen door from the wooden porch I looked fondly towards a woman resembling my grandmother. Because of previous times awaiting my fathers' return to the car, I remember this as my very first sales call. The reward for magazine subscribers and myself was a free movie in town, "Ben Hur" on a reel, and benefits for the local police charity, a win-win scenario for all. Some fifty years later, I'd like to forward an argument for resurrecting millions of jobs in America.

The recent economic expansion was overly stimulated by low interest rates resulting in home/investor windfall profits for some, only to be followed by catastrophic lending and timing for others. While many economic issues discussed today are problematic, a significant part of the underlying cause may be eluding most everyone, as did the housing bubble.

Just A few years prior to the housing boom, great restrictions on small businesses changed local business economies across the Nation; which are only now resulting in massive unemployment leading to even more foreclosures. Working middle class families go to foreclosure in many cases after loss of employment and there employers' inability to sell directly to a consumer. The country has shifted away from businesses recognizing possible need, and filling it, to waiting for citizens to feel motivated to spend, which conceivably may lead to another lost decade as is referred to in Japan.

Businesses, banks, and government officials are often the scapegoats for the current economic crisis, but perhaps history will tell a story of how "We The People" were unintentionally leading the economic recession.

Under the guise of privacy and as U. S. citizens many of us now opt in and on to a Federally sponsored do not call list. As citizens we of course do not want salespeople or a telemarketer knocking and calling with proposals we do not want or need. As a result nearly every homeowner and business telephone number in the country has opted onto the do not call registry. During the same years heretofore, many municipalities adopted stringent licensing requirements such as; fingerprinting, photographs, and background checks for canvassers prospecting sales door-to-door in our communities. Said restrictions essentially negated a businesses ability to canvass, telemarket, email, or prospect sales on American Streets.

While many of the young canvassers and telemarketers retained such employment for only a few months, the employment did provide millions with learning opportunities, provided a stepping stone to better employment, supplemental income for the elderly, and in some cases long term satisfactory wages. Additionally, these typically undesirable jobs provided employment for young people working their way through college and more importantly provided a non-taxpayer supported safety net program of employment and supplemental income for the working class. Within the working classes, one could always obtain a sales job and at any time, as they were once abundant in every City throughout America.

Direct consumer sales may be defined as, without the use of print advertising or commercial media advertisements, in other words a person speaking directly to an owner/resident of a home or business.

The loss of millions of jobs and massive unemployment experienced today may be imparted and/or directly attributable to stagnated direct consumer sales within the U.S. economy. These staggering losses of employment and social-economic changes likely went unnoticed as lost jobs were absorbed and substituted with better paying bubble jobs, the rise in housing, and with real estate windfall profits. Not only the direct sales jobs were lost, but also jobs related to the

manufacturing of the products and services sold, as well as, the employment taxes and insurance's required as a result of the direct selling efforts.

Massive unemployment in the U.S. of course impacts discretionary spending at most all businesses and dominos throughout the economy. Now that the housing bubble has burst, taking with it those more desirable bubble jobs, will our new economy have full employment at 10% or more unemployed instead of the traditional 5% we've come accustomed to?

By observation the fall out from losses in direct sales grows exponentially within the governments tax policies. Because our economy remains stagnant, meaning without economic growth in sales and manufacturing, government proposes stimulus tax programs to correct shortcoming within our markets and motivate businesses and citizens toward economic growth. Economic growth is of coarse essential to remaining a global leader; oil is still priced in U.S. Dollars.

The issue at point is how we balance motivation. Do we stimulate with policies that motivate business toward greater sales and production creating new jobs, or do we place more obstacles and mandates through policy and taxation?

Our newest energy tax credits do not seem to be stimulating retail consumer spending and green job creation. However, under similar energy tax policies in the 1980's, the economy soared; Thus creating many thousands of solar energy and weatherizing home improvement jobs. The difference may very well be the previously free and open direct selling within the marketplace vs. the current very tight restrictions on direct selling.

Time and time again American ingenuity, contractors, salespeople, and small businesses expelled our economic recessions by prospecting and marketing. For decades small businesses brought win-win products and ideas to the marketplace while innovative technologies helped businesses place products rapidly into public markets. History has shown that small businesses and salespeople have been the backbone of previous economic recoveries.

Early in the last century then small manufacturers like Ford Motor Company were of the very first telemarketers and direct salespeople in America, followed by companies like Westinghouse and GE.

More recently markets flourished throughout the 70's, 80's, and 90's. I recall Metropolitan Life Insurance representatives would telephone newlyweds and parents of new babies as likely insurance buyers. Meanwhile, the newspapers were soliciting subscriptions door-to-door while auto dealerships were calling prospects on the phone for sales and trades. Salespeople and-canvassers once walked our neighborhood streets nearly every day.

Of notable interest are the energy tax credits of the 1980's that instantly produced thousands of new businesses, blue-collar middle class jobs, and thousands of direct sales jobs all over America. Some of those new businesses later became publicly traded companies.

I can still recall the very words that began one of our greatest economic recoveries in American history. Ronald Reagan was the speaker and with an unforgettable sparkle in his eyes, he stated five words . . . "be all you can be".

"Motivation is the key ingredient to the success of a free market system."

Gene Black



CAT SCRATCHES

Cat Scratches - A Short Story
August 9, 2009 by Gene Black

I'm just your normal working guy married and without children; I follow our English Springer named Sam a lot. Sam enjoys chasing golf balls on the fairway and bringing them home, so we plan autographs for Sam once he's the country club's "most wanted".

Today, like others, is just another routine day except I'm recovering from oral surgery and three razor sharp incisions on the left hand and forearm. A prospective customer, A.K.A. "cat owner", seemed instantly prepared for the cat scratching. She immediately brought on the alcohol and gauze to stop the bleeding. I'm told the pain will subside within a few days and that the itching is just part of the healing process. Fortunately, the antibiotic I'm taking can knock out the infection in both wounds, and it appears I will be just fine. So the cat got a free swat, and the routines contentious for the wounded one.

Thankfully the week is now over, I'm relaxing with some soft jazz in the background. I'm nearly asleep . . . I hear a mysterious scratching noise downstairs; it seems to be at the rear door. . . Sam and I go to check it out. Surprisingly, there seems to be nothing there, but I pondered a moment the beautifully tempered evening and soft breezes with just a sliver of sunlight shuttering through the trees. I noticed Sam's running off . I yelled, "Come Sam!"; Repeating differently, "Sam come!" he's gone and I give chase once again. I soon catch up to the boy and stop for a moment to rest; Sam and I exchange eye contact which is dog speak for togetherness.

Then I hear some rustling from behind me, through the leaves my new friend StoryStalker is coming over for a chat. I noticed he's scratching quit a lot, and I say, "You shouldn't scratch so much, you'll just make it worse". He replies, "I know -- I know".

So the StoryStalker asked, "How's your writing coming along." I reply, "I've filled my think tank like you taught me and the fish are getting really big tales." He replies, "That's great, maybe now you could take some time off for an adventure". "What kind of adventure?" I asked. . . . He says, "Well maybe go surfing on the Internet". "But I'm scared!" I declared, and explained further, "It scares me, that there's so much unknown out there." The StoryStalker quickly responds, "You have to be brave, . . just think of it as an adventure; go there and bring all the unknown you can find back home for my next story." He continued, "Everybody wins, you get your adventure, I get my next story, and the unknown becomes known."

I'm thinking, we've already been cut up by the doctor and attacked by a cat this week, . . . maybe we should just lay low for awhile; On the other hand, this may be a good adventure and we certainly don't want to miss out. I also remember to have a friend you have to be a friend. So I respond to the StoryStalker, "I would be honored to find the unknown and bring it back for you. Why don't you come with me?" He replies, "Oh, . . . I needs to get something for this itching, maybe I'll catch up later."

Thinking this might take a moment, I remembers my habit and rushes down to the Buck's Cafe for an extra double shot. So we're getting some relief, just sitting in the dark enjoying the parking lot and thinking about the new adventure. I'm thinking of how curious it seems to get intimate with a mouse and a cat in the same week. More importantly I'm thinking about how I'm going to find the unknown if nobody knows? I notice there's a full moon and I'm feeling nervous again, now starting to sweat. . .

After about an hour, I'm back at the house, but I notice the wife's asleep and the lights are out. I walk toward the computer in the dark, not wanting to wake the wife. I'm not able to see the key board well enough for pecking so I make it my first order of business to get rid of the superstitious mouse. Then quite to my surprise, I jump into the monitor and through the screen, then downstream a few million bits, and I'm online inside the Internet.

So first things first, while I'm still realizing nothings impossible, I wonder, what is first? I think I got it . . . online security, of course. I proceed to leave a good trail, bread crumbs don't work anymore, so I quickly trip the browser history refresher and set it to maximum. I'm thinking now I can not get lost. I'll just cruise toward some of these big search engines to start, that should be easy. Wow, how they've changed. Being very old I recall their beginnings as rogue message exchangers . . . Everything seems so sterile, even the content writings are sterilized.

Watch out! . . . I think to myself here comes a spider patrol, better duck into these empty meta tags. Safely inside of the empty tags, I'm immune to capture by search engine spiders. I noticed right away that they've switched identities from spiders to web-crawlers and they've gotten so much more sophisticated. They look at the meta page descriptions rather than meta key words abused by schemers. . . I'm thinking . . . the search engines were thinking the same thing I was, viewer interest.

I'm thinking, I need to find out the word on the streets, let's see. . . . The unknown? I got it! . . . of course! We need some psychics to find the unknown. Wait! What's this? No - - - there coming! I'm gone. . . with a hundred web-crawlers right on my tail, there so sophisticated these days and smart too.

I'll just follow these new web sites, there can't be much interest in them, after all there new the web-crawlers ignore them, surely. There must be several hundred web sites in this new group. They're moving quickly and there's lots of activity including me following all of them. We're really moving so very fast; in the distance I begin seeing the shadows of the StoryStalker. He's just standing there. He's waving his arms, scratching and hollering at the same time, "Watch out!", he yells. But I'm looking around and I don't see anything to watch out for. What's this I cried, "Whoops!" I trip and fall, . . . but I'm O.K.

The StoryStalker ever so slowly walks over to me. Then he says, "You tripped on one of the Twitter Twit Switches." So I asked, "What's a Twit?" The StoryStalker tells me the geeks at Twitter are referred to as Twits by users locked out or suspended on Twitter. So I asked, "Why do they get suspended?" The StoryStalker then tells me, "Twitter's problem is placing limits on their users but not telling the users what the limits are. Twitters a new program going through some growing pains suspending thousands of unsuspecting users every day. So I would say you found another unknown, which is why we're here."

So still a little unclear I asked, "Why is the switch a problem?" The StoryStalker says, "It's usually not if you're on the outside of the computer. We're inside the Internet itself and now the account we came in on is suspended." I replied, "So we can't get home! OH! Nothing to say right now. I needs a moment to think." . . .

Now I'm getting my thoughts and thinking no Buck's Cafe' and we're very far from home. Then I say, "Surely the Twitter Twits will save us, right?" The StoryStalker then looks at me and says, We've got a Twitter ticket; It says, "We're suspended for strange or unknown activity." I said, "So we're trapped until the Twits fix the switch?" The StoryStalker says, "It sure looks that way." The StoryStalker then says, "What's that sound, It's like a deep roar, I hear? Run fast - - run, it's a lion." I replied with a yell, "What's a lion doing loose in hear?" StoryStalker says, "It's probably television's idea of a joke, Come . . . quickly!"

The StoryStalker latches to a bit stream, and we're instantly uploaded into the unknown Internet files. We landed in a sea of unread e-mails, unnamed folders, and unknown files; hundreds of millions and millions of them. I said, "That was really close, I thought they kept those lions in Las Vegas." StoryStalker then says, "Well on the bright side we've sure found the jackpot of the unknown." The StoryStalker started scratching again, I could tell he was a little shaken by the assignment; And in a blink of my eyes, the StoryStalker disappears, leaving me all alone on a mountain of files and folders.

I'm looking around, but it's dark in here; Then I sees my letter to the Senate right over there, marked 'Unread'. I'm thinking, they'll never get my letter. I'm asking myself, how much unknown information should I grab, there's got to be value in here? So I grabbed my government letter and several more for the return home.

Then I hear sounds coming from the bottom of the mountain, so I starts sliding and wadding to the bottom. It's getting windy, now I'm hearing whistling, howls, and more howls. I'm slipping into a canyon that's leveling; then I tripped, this time over a trash link. "No", I screams; without any control, I'm falling into a shadowed haze of darkness. It's eerily fogged with dust and appears heavily haunted. Then I sees a finger pointing to a sign that reads, "The Internet Graveyard". "Why am I by myself?" I think out loud.

Then I hear echoing voices, "I'm over here, I'm over here." Thankfully, I quickly realized that the dead are not talking, it's the StoryStalker calling to have me join him. I walk through twenty seven tombstones, counting and memorizing every one along the way. Then I lunge toward the StoryStalker and I said, "What happened to you? Where'd you go?" He replied that he'd just fallen into a hole and ended up in the graveyard. I'm of course thinking, how superstitious is that. Then I replied, "That's what they all say."

Then the StoryStalker says, "Shush!; I hear voices from over there." He's pointing and I'm following him slowly. We both hear them now, I'm whispering to the StoryStalker, "... they're saying things about going legit. More about loved ones hanging on to the past via video chats produced by people before they die. I whispered to the StoryStalker, "You know, these are psychics having meetings in a graveyard, looking for sales ideas and discussing market strategies." Then I pointed out to the StoryStalker that some of the psychics over there are trying to truly discover the unknown.

We giggled and laughed and quickly took off running. Once a safe distance from the graveyard the StoryStalker says, "One must be careful of which doors they open, there are some things, best left unknown." I replied, "Let's try finding a way out of here. I want to go home." So we walk and walk and keep walking all through the darkness and into the night.

Finally, we come across something pretty interesting. We discover hundreds of thousands of online users masking fake identities. Their real identities are totally unknown to the public or the paparazzi. I said to the StoryStalker, "This is a monumental unknown. The paparazzi would pay big money for this information." StoryStalker replies, "Yes, the Internet is host to a breeding ground of deception and mischief." Then I said loudly, "Look, there's Nicholas Cage!"; The StoryStalker yelled back, "Not really, come on... I think I found a way out."

I'm thinking, boy those are welcome words. I replied, "Let's get out of here!" Suddenly, and without a trace the StoryStalker disappears again, leaving me once more, alone in the dark... I'm wiping the sweat from my forehead and getting nervous. I'm thinking I better gather all the unknowns. Then I begin putting them in my satchel for the trip home and I'm thinking, maybe I'll never find my way.

Then I hear scratching noises, it's not the StoryStalker but it sounds familiar. Then I hear faint voices. "Honey! Wake up!" "Honey... you fell asleep... Why are you sweating?"

So as I'm stumbling to consciousness, I hear important barking from afar. So I quickly wander to the downstairs, and there's my faithful friend Sam, scratching at the rear door, all wiggles and wags.

Gene Black/StoryStalker

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EXHIBIT J

**Fw: Re: Case #225125170**

Saturday, June 12, 2010 3:03 AM

From: "Holli Beam" <hollibeam@yahoo.com>**To:** gerald@raymondavich.com

— On Thu, 6/10/10, "Yahoo! Search Marketing" <customersolutions-ysm@yahoo-inc.com> wrote:

From: "Yahoo! Search Marketing" <customersolutions-ysm@yahoo-inc.com>

Subject: Re: Case #225125170

To: hollibeam@yahoo.com

Date: Thursday, June 10, 2010, 11:03 PM

Jun 10 2010 16:01 PT

Hello Holli,

Thank you for contacting Yahoo! Local Listings. We apologize for any inconvenience you are experiencing with deleting your Basic Listing #2055019133 for "Castle Roofing".

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

<http://local.yahoo.com/info-21413080>

You have the ability to cancel your listing from within your account at your convenience. We are providing instructions for you to access your account below for reference. You will need the Yahoo! ID (juicystuffings@ymail.com) and password connected to your business listing.

To access and view your current listing status and cancel in the future, sign into your Yahoo! ID and account, and then go to this link:

<http://listings.local.yahoo.com/account>

Enter in your login information and access your account. If you wish to cancel your listing, click on "Cancel". Make sure to "Delete Listing". Please allow 3-5 days for your listing to go offline.

We also suggest you contact the database providers, InfoUSA.com and TargusInfo.com to prevent them from resubmitting your information into our system in the future.

The phone number for TargusInfo.com is 800.935.9644 or can email them by going to the link below:

<https://webapp2.targusinfo.com/Support/Contact.aspx>

To contact InfoUSA.com: 800.321.0869.

We hope this information is helpful to you. We thank you for choosing Yahoo! Local Listings. If you should have any further questions feel free to contact us at anytime.

Sincerely,

Maria Rhyse
Customer Solutions
Yahoo! Local Listings

-----Original Message-----

Mail-Id: w12.help.sp1.yahoo.com-/l/us/yahoo/ysm/l/technical.html-1276062033-8338

1. What is your name and Yahoo! ID?

Name: Holli Beam

Yahoo! ID: hollibeam

2. What is your email address?

Email Address: hollibeam@yahoo.com

3. About which type of listing do you have a question?

Listing type: Basic Listing

4. Provide your computer system information.

Operating System:

Type of Browser:

Browser Version:

5. In what area do you need assistance?

Subject: Display on Yahoo! Local

6. Describe your problem:

NewField: Want listing deleted

Hello, We do not wish to have advertising on line which also accompanies consumer-generated content please remove your listing number 2055129319 Basic. Thanks Holli at Castle Roofing.

While Viewing: <http://help.yahoo.com/l/us/yahoo/ysm/l/contact/contact-01.html>

Last URL: <http://help.yahoo.com/l/us/yahoo/ysm/l/contact/contact-01.html>

Form Name: <http://help.yahoo.com/l/us/yahoo/ysm/l/technical.html>

Yahoo ID: hollibeam : Yahoo id from cookie

"<https://amt.yahoo.com/amt/dosearch?token=MgRjl3nFuXFllhhZ2D5l6Cimw.d.VHB.y9C4Z3ogSlw-->"

Other ID:

Machine: PC

OS: WinVista

Browser: IE 7.0

REMOTE_ADDR: 98.234.13.6

REMOTE_HOST: c-98-234-13-6.hsd1.ca.comcast.net

Date Originated: Tuesday June 8, 2010 - 22:40:33

Cookies: enabled

AOL: no

EXHIBIT K

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LAST REVISION: 03/15/2007

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To expedite our ability to process an Infringement Notice, please provide the following information:

- (a) Identify in sufficient detail the location of the copyrighted work that you believe has been infringed (e.g., www.whitepages.com/exampleurl);
- (b) Identify the material that you claim is infringing the copyrighted work listed in subsection (a) above;
- (c) Provide information reasonably sufficient to permit WhitePages to contact you (email address is preferred);
- (d) Provide information, if possible and applicable, sufficient to permit WhitePages to notify the owner/administrator of the web page that allegedly contains infringing material (email address is preferred);
- (e) Include the following statement (if you are not the copyright owner): "I have a good faith belief that use of the copyrighted materials described in this Infringement Notice on the allegedly infringing web pages is not authorized by the copyright owner, its agent, or the law."; and
- (f) Include the following statement (if you are the copyright owner): "I swear, under penalty of perjury, that the information in this Infringement Notice is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."

Sign the Infringement Notice and send the written communication to Balasubramani Law PLLC, attn: Venkat Balasubramani, 8426 40th Ave SW, Seattle, WA 98136, Fax: 206.260.3966.

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EXHIBIT L

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Subject: Black v. Google 3
From: gerald@raymondavich.com
Date: Fri, Jun 25, 2010 1:49 pm
To: bvolkmer@wsgr.com

----- Original Message -----

Subject: CASE NOTES Black v. Google
From: gerald@raymondavich.com
Date: Sun, June 13, 2010 11:47 pm
To: tammyjih@google.com

Intended for: tammyjih@google.com

Hello Tamara Jih,

Having given our phone conversation further thought and knowing it's your intentions to seek fees and cost from us, I want to hopefully clarify some highlights of the complaint. I don't want to hide anything from you or have the complaint drag out as I don't believe that to be in either parties interest. So to further a dismissal or settlement of the case, I'm putting forward the following so that valuable time need not be wasted and to help you in your response to the complaint.

First off, I'm all for fairness, but at this point will argue in favor of an injunction being placed upon your entire web site before the Court. My wife, however is for money, we've established that as (husband and wife) Plaintiffs here at home.

Please note the complaint has allegations incorporated into each cause of action and that there are does 1-100 listed as Defendants.

I believe the issues that most concern me and should you are as follows:

The complaint centers upon the laws of truthfulness in advertising and disclosure. The allegations are unlawful conduct, unfair business practices, breach of contract, misrepresentation, etc. In short we allege that Google is illegally '*strong arming*' us as well as the public business and professional community into visiting your web site. Businesses and professionals must come to you to save themselves from other competitors and consumer-generated content. They save themselves by visiting your website, participating in the consumer-generated comments on your web site, and by buying your advertisements. The *strong arm tactics* are for Google's web traffic and for financial gain, but cause countless professional and business injuries.

I also want you to be aware that we have done some investigating of our own prior to filing the complaint. More specifically, we believe we can prove each and every cause of action. We have photo evidence from

your site and witnesses which will surprise you (whistle blowers).
One such witness states as follows:

"Listings are gathered from public information and are often compromised by the public, database providers, or the owner of the business listed. The only way to have sole ownership of a business listing and its content is to upgrade to paid advertising."

Following is a partial of the allegations and issues at hand:

A. Google knows that consumers are likely to make on line comment/complaint reviews, whether meritorious or not, against businesses and professionals.

Reality: People are more unlikely to promote a business they do not own; but will quickly defame a competitor, a telemarketer, or more simply a professional or business they don't like.

B. Google then provides a platform for consumers to post their comments/complaint on line in conjunction with the business or professionals name, address, and phone number. The comments force businesses to look over their shoulder 24/7 and search the skies constantly for wrong doing under their 'advertised company name', even if they don't own a computer or can not read. Thus bringing business traffic to the Google web site whereby Google is then able to harvest leads for their advertising department sales campaign. Traffic is also generated to the Google web site as a result of Google programming the Plaintiff's business name in the search from the front page of Google's web site; said traffic is from the efforts of the Plaintiff's day to day business of prospecting door-to-door rather than from Google's own work.

C. Google knows the program may and does do harm by way of consumers complaining, database provider errors, and even the business owner or professional that's listed. Therefore Google allows anyone to report abusive conduct or defamation within the program by selecting and reporting the abuse, presumably to Google. Providing said means of reporting abuse, defamation, spam, etc. makes Google look good in the public eye.

Reality: Google ignores the reports of abuse and misconduct within the program and does not communicate with injured inquiries as that does not generate income for Google resulting in a gross misrepresentation.

D. Google then misrepresents publicly a process by which the business or professional may suspend the 'courtesy listing', again this makes Google look good in the public eye.

Reality: Google inhibits a business from removal of the 'courtesy advertisement' by creating a system by which it may take weeks or months to suspend a business listing. Google does not disclose to the business or professional that the suspension or deletion of the advertisement is only temporary as Google allows others to re-list the business or professional advertisement. Therefore Googles ability to really suspend or remove a business that's suffering from abusive content on the so called 'courtesy advertisement' is impinged upon by inadequacies within the program itself.

E. Google then misrepresents publicly on line that a business or professional may 'take ownership' of the business listing, this makes them look good in the public eye as 'ownership' implies control.

Reality: Google offers to businesses and professionals an enhanced or paid version of the advertisement allowing the business or professional to have full control of Google's on line business review program. Upon purchasing the upgraded version of the 'Courtesy Advertisement' or paid advertisement, Google has profited by standing on the rights of others while at the same time abusing and shredding the purpose and intent of the 230(c) decency act passed by Congress.

F. Google publishes advertising without the advertised business or professionals knowledge combined with an ever changing 24/7 content and the advertisements of other like business, usually with the business or professionals public name, address, and phone. The changing nature of the advertisement in many cases defames or misrepresents the business or professional products being offered causing a business or professional to pay Google for complete control (ownership) of the advertisement in order to prevent his business or profession from be damaged.

Reality: Google is threatening the business and professional community by publishing a program that as a whole does harm to ones business and violates law. The business or professional must then go see Google's web site and perhaps discover that for a fee Google will give full ownership of a business or profession back to its' rightful owner.

G. Google then contacts the business and professional community via robot-calling (Telemarketing); "Push #1 if you'd like to be on the front page of Google.com".... This is where advertising sales are generated if a business or professional hasn't already called in to Google's ad department in distress.

Conclusion:

Again I'm only trying to make clear my most prominent issues within the

complaint to help you with your response. In all fairness I'm still in shock at what I've discovered about Google; but at least I answered two questions:

1. Why would a company like Google want a program that they know does harm?

Of course the answer is PROFIT.

2. Why would Google then ignore business and professional inquiries when problems occur with abuse of the program?

Of course it's because they don't want to even tell their employees for fear that a tech or help desk person may leak the dirty little secret of how to sell advertising to businesses and professionals in a 'disaster' plagued economy.

So it's my belief that Google employees or assigns are not allowed to communicate with businesses or professionals regarding problems of abuse within Google's

on line 'courtesy advertising' program because of the malicious nature of the program; IE: Misrepresentation of taking ownership of a listing and abuse of the

listing by the public facilitates a potential advertising sale for Google. Bottom line is that Google abuses the law and good will of others for profit.

I know that these allegations are horrible; If you can satisfy me that I wasn't abused as a business, I'll consider your request for a 'Voluntary Dismissal'; otherwise my recommendation is you try buying your way out and consider changing some of your programming.

I really hope that this helps to make our position clear on at least part of the complaint and enables you to more accurately answer. If I can be of any further assistance in moving the case forward please feel free to write or call me.

Gary Black  

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1
2
3
4
5 CERTIFICATE OF SERVICE BY US MAIL
6
7

8 I, Jose G. Torres, declare:
9

10
11 I am employed in Solano County. I am over the age of 18 years and not a party to the within
12
13 action. My business address is: 1440 Military West; suite #104 Benicia, California 94510.
14

15
16 I am readily familiar with depositing mail with the United States Postal Service. On this date, I
17
18 served on each party listed below the **DECLARATION OF GARY BLACK, with exhibits A**
19
20 through L FILED UNDER SEAL by placing it into an envelope with fully paid postage thereon,
21
22 sealed the envelope, and delivered the envelope for mailing to the United States Post Office
23 in Benicia, California.
24

25
26 Wilson Sonsini Goodrich & Rosati
27 attorneys at law
28 650 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 July 2, 2010.

JOSE GARCIA TORRES
Jose G. Torres