

R E C E I V E D
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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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DATE INITIAL

GARY BLACK AND HOLLI BEAM-BLACK
Appellant,

9th Cir. Case No. 10-16992

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

vs.

GOOGLE, INC.
Appellee(s).

APPELLANT'S INFORMAL BRIEF
(attach additional sheets as necessary)

1. Jurisdiction

a. Timeliness of Appeal:

- (i) Date of entry of judgment or order of originating court: August 13, 2010
- (ii) Date of service of any motion made after judgment (other than for fees and costs):
August 25, 2010 Objection; Sept.10, 2010 Motion To Stay
- (iii) Date of entry of order deciding motion:
September 20, 2010 - All motions are now closed.
- (iv) Date notice of appeal filed:
Original Notice: Sept. 10, 2010 Amended Appeal: Oct. 7, 2010
- (v) For prisoners, date you gave notice of appeal to prison authorities: N/A

2. What are the facts of your case?

Plaintiffs businesses were injured by maps.google.com, a new program belonging to the defendant, Google, Inc.. The defamations are irremovable by policy at Google after several notifications. Plaintiffs alleged Google sponsors and publishes business reviews. It's unqualified speech against the good will and interest of plaintiffs and U.S. commerce. The programs seriously injure business and professions by unwanted publication with local competitors abilities to illicitly profit from the efforts of plaintiffs. Google enhances their profits by defaming plaintiffs, by plaintiffs prospecting daily, and by deceit and misrepresentation within Google's publication. The brief will show proof that Google does this not third parties and plaintiffs never alleged a third party. First: allowing a competitor to advertise alongside a door-to-door salesman is alleged as without plaintiffs permission and allows competitors to '*steal his prospecting efforts*' every day because as plaintiff goes door-to-door so go the inquiries on Google's new 411 directory advertising.

Plaintiffs privacy and substantive rights to free commercial speech are violated by Google's program stalking of plaintiffs daily activity, even as this brief is filed. A search of Google Maps for "**Castle Roofing**" on Saturday the 18th of December 2010, just before filing this brief, is attached with this informal brief, not as evidence but to show defendants procedural malice and deceit even before the Ninth District. Their deceitful conduct in this manner has been ongoing since the beginning of the proceedings. First, they were going to answer changed plan at last minute, filed a false testament instead in district court as cited at section III of the "Amended Appeal". Now , they've stated again the plaintiffs alleged a third party which is not true! That plaintiffs are not irreparably harmed because the listings have been *long since removed*, well that may be true of Google Places but not Google Maps, as shown, so it's also not true. Plaintiffs are destroyed by Google's publication, conduct, and lies. "Armstrong Foam Roofing" now gets plaintiffs sales leads as plaintiffs go door-to-door as may easily be noticed.

See: "DEFENDANT- APPELLEE GOOGLE INC.'S RESPONSE TO APPELLANTS' MOTION TO STAY" (quoting)

"**Second**, the Blacks have failed to show irreparable injury. That is not surprising given that their claims are based on the alleged presence of a third-party review of their roofing business that has long since been removed from the Google Places service. See Appellants' Motion to Stay at 3 (stating that Google removed the allegedly defamatory review after the Blacks filed suit)."

The reviews you'll see are two of the three spoken of in the brief are professionally crafted to do harm and false. Cal-Bay is a B-1 Builders license of plaintiffs. Cal-Bay has not solicited roofs and been inactive since 2008, but still has a telephone. No person has contacted Castle Roofing the wife's business or Cal Bay the husbands business with a leak. They're complete fabrications not associated with plaintiffs 20 year old businesses which use to employ 30+ people. The defamations continue by Google Maps, in spite of Googles' having told the Ninth District that they had long since been removed. Plaintiffs can not do business in this hostile environment with Google's constant 24/7 stalking and harassment of plaintiffs in the absence of relief. Plaintiffs are harassed daily by the publication as they sell and prospect! Plaintiffs will dismiss the remaining 15 employees, sell the house, and leave dodge as the plaintiffs wife was excerpted in the complaint at ¶ 32! Plaintiffs have more copies of the "Amended Appeal" which has the exhibits if the court so requires. Please see attached 40 page brief.



To see all the details that are visible on the screen, use the "Print" link next to the map.

Cal-Bay Construction

Ste 104, 1440 Military West, Benicia, CA 94510
 (707) 745-8366
[Directions](#) [Search nearby](#) [more ▼](#)

Categories: General Contractor, Roofing Contractors...., ...

2 reviews **Your rating:**

Reviews by Google users

Been here? [Sign in to rate](#)

another_bozo - May 1, 2010

Still soliciting work - tho' contracting license is expired

Castle Roofing and Construction no longer has an active license with the California state contractor licensing board (inactive since 1/30/10) and is still soliciting residential roofing work. They cold call residential homeowners with the line "we are doing work in your area..." which they are not. I have documented at least 3 calls to my residence in the last week and a half (the calls have been going on for the last 3 months despite my requests to remove my name from their lists). They are in violation of the do-not call request legislation (as if anyone prosecutes those complaints). BTW - Cal-Bay construction is a legitimate firm in Livermore, ca

Was this review helpful? Yes - No- Flag as inappropriate

A Google User - Oct 20, 2009

Poor Follow-up - Won't repair leaky roof 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.

0 out of 1 people found this review helpful. Was this review helpful? Yes - No- Flag as inappropriate

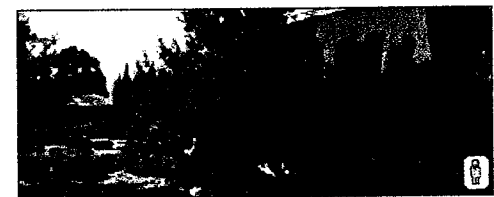
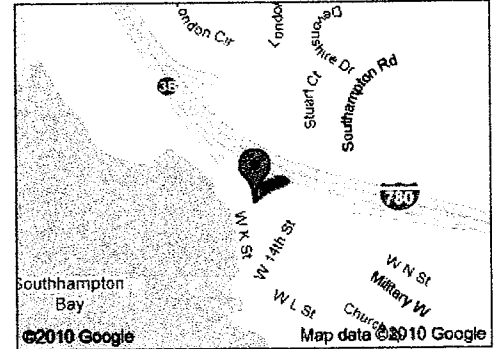
More about this place

[Bay Ridge Apartment - 1061 Rose Dr, Benicia, CA 94510 - \(707\) 745-5200](#)
[| Fave Business Community](#)
 Similar businesses near Benicia, CA. Cal -bay Construction (707) 746-8755. 1440 Military W, Benicia, CA 94510. www.getfave.com/8062034-cal-bay-construction
www.getfave.com/6196640-bay-ridge-apartment

[Powerhouse Property Management - 831 E 2nd St, Benicia, CA 94510 - \(707\) 745-8800 | Fave ...](#)
 Similar businesses near Benicia, CA. Cal -bay Construction (707) 746-8755. 1440 Military W, Benicia, CA 94510. www.getfave.com/8062034-cal-bay-construction
www.getfave.com/10859557-powerhouse-property-managem...
 More results from www.getfave.com »

Castle Roofing And Construction - Benicia, California (CA) | Company Profile

Castle Roofing And Construction is a private company categorized under Roof Maintenance and located in Benicia, CA. Current estimates show this company has an annual revenue of 66000 and employs a ...



Ads

Who's the best roofer?

Angie's List Has Reviews & Ratings of Best, Local Roofers Near You!
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Armstrong Foam Roofing

"Do It Once Do It Right!"
 The Most Energy Efficient Roofing
www.armstrong1234.com

www.manta.com/c/mtb6k6y/castle-roofing-and-construction

Benicia **Roofing** in Benicia CA Yellow Pages by SuperPages

Benicia, CA

www.superpages.com/yellowpages/C-Roofing/S.../T-Benicia/

Local **Roofing** Contractors covering Vallejo, CA

Roofing Contractors in Vallejo, Solano County, CA. Cal-Bay Construction, 4690 E 2nd

St, Benicia, CA 94510 (707) 745-8366

de.lirio.us/find/vallejo-solano-county-ca/roofing-contractors/

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castle roofing

Search Maps

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3. What did you ask the originating court to do (for example, award damages, give injunctive relief, etc.)?

Plaintiff asked for judicial notice of a fact:

(Complaint for Damages; ¶14): "Judicial notice is requested to the fact that people may have complaints against a professional or business that lack merit."

Injunctive relief was requested.

Plaintiffs requested damages and were denied.

Plaintiff filed a "Declaration of Damages" in district court Exhibit "F" attached to plaintiffs "amended Appeal". Included in the declaration were requested amounts for actual, statutory, and emotional distress damages. Punitive and exemplary damages and other relief as deemed appropriate by the court were also requested.

4. State the claim or claims you raised at the originating court.

Plaintiff submitted the complaint, declarations, evidence and declaration of damages in district court. Plaintiffs have attached forty pages in discussion and legal arguments in support of reversal for those claims.

5. What issues are you raising on appeal? What do you think the originating court did wrong?

All issues raised by filings within the district court. — Plaintiffs believe the defendants are liable in all causes of action alleged within the complaint. The district court err in discretion dismissed the complaint against the merits, intent of statutory immunity law, the best interest of plaintiffs, and the publics interest in gainful economy. The following 40 page attachment refers to the "Amended Appeal", the exhibits attached to the "Amended Appeal", and clearly show the district courts err in discretion and request reversal of the district court.

6. Did you present all issues listed in #5 to the originating court?

If not, why not?

Yes, but the case was start to finish in 78 days as defendants "Motion To Dismiss" was granted without a hearing.

7. What law supports these issues on appeal?

(You may, but need not, refer to cases and statutes.)

Please see attached 40 pages of legal arguments.

8. Do you have any other cases pending in this court? If so, give the name and docket number of each case.

No other cases pending in this court.

9. Have you filed any previous cases which have been decided by this court? If so, give the name and docket number of each case.

No previous cases which have been decided by this court.

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?

Not a prisoner, this section is not applicable in this case.

GARY BLACK AND HOLLI BEAM-BLACK

101 Auld Court

Green Valley Falls, California 94534

(707) 373-2960

Plaintiffs are acting: *"In Propria Persona"*

A handwritten signature in black ink, appearing to be a cursive name, written over a horizontal line.

Signature

Date: December 20, 2010

CERTIFICATE OF SERVICE

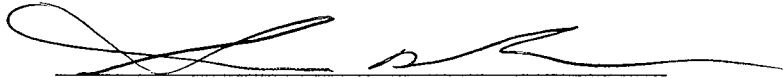
GARY BLACK AND HOLLI BEAM-BLACK v. GOOGLE, INC.

9th Cir. Case No.: 10-16992

IMPORTANT: You must send a copy of ALL documents filed with the Court and any attachments to counsel for ALL parties in this case. You must attach a copy of the certificate of service to each of the copies and the original you file with the Court. Please fill in the title of the document you are filing. Please list the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below.

I certify that a copy of the: **APPELLANTS BRIEF**

and any attachments was served, either in person or by mail, on the persons listed below.



Signature: Gary Black

Name:

Wilson Sonsini, Goodrich & Rosati attorneys at law

Address:

650 Page Mill Road
Palo Alto, California 94304-1050
Telephone (650) 493-9300

Date Served: December 20, 2010

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NO. 10-16992

UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT

GARY BLACK AND HOLLI BEAM-BLACK

Plaintiffs/Appellants,

v.

GOOGLE, INC.

Defendant/Appellee.

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

APPELLANTS BRIEF

Plaintiffs provide the following pages as attachment to a permissible informal brief form.
This briefing references plaintiffs' "Amended Appeal" and exhibits on file with the clerk of the Appeals Court.

GARY BLACK AND HOLLI BEAM-BLACK

101 Auld Court

Green Valley Falls, California 94534

(707) 373-2960

Plaintiffs are acting: "*In Propria Persona*"

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III

I. Introduction - District Court Errs

1.

1
2 Plaintiffs businesses are injured by maps.google.com, a new program belonging to the
3 defendant, Google, Inc.. Unqualified speech is deemed irremovable by policy at Google after several
4 notifications. Plaintiffs alleged Google sponsors and publishes business reviews allowing for unqualified
5 speech against the good will and interest of U.S. commerce. The allegations are that the combination of
6 Google's programming, policy choices in allowing unqualified speech, and declaring immunity in
7 reviewing businesses is in violation of the intent of law, statutory immunity, and unconscionable. It's a
8 tradition that if a business is legitimate that one may find them within the public telephone directory.
9 Google intervenes into a contract that businesses and professionals all possess, a telephone listing so
10 consumers may locate them. Google engages that contract as a third party thereafter changing the terms
11 of that contract to it's present unconscionable state discussed throughout this brief. Google therefore
12 breaches the contract as an intervening third party and thereafter is ¶ 2 complaint:

13
14 "...exaggerating the benefits of a free product to the public at large and fails to disclose to businesses a
15 material relationship where one exists between the public at large and the Plaintiff's business. Plaintiffs
16 herein allege that these acts combine to constitute a violation of law under Title 15 USC 45 - Sec. 45
(a)(1)(2). and Title 15 USC 53 (a)(b). ¶ 3 complaint: By the Defendant, Google, Inc., employing said means
of marketing the 'courtesy advertising' for the Plaintiff's businesses the Plaintiffs are harmed by assuming a
risk of product and services being misrepresented and the potential liability that accompanies said risk."

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

The law Unconscionable Contracts

20 The laws violated at the onset are U.C.C. - Article 2 - sales: "**Good faith**" means honesty in fact and the
21 observance of reasonable commercial standards of fair dealing. § 2-302(1)(2). Unconscionable contract or
22 Term. Part 7. Remedies § 2-722. Who Can Sue Third Parties for Injury to Goods. Where a third party so
deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to
that contract. Where third party intervention causes unconscionable terms to a contract between others the
court may limit the application of any unconscionable term as to avoid any unconscionable result.

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

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

23
24 2.

25 Plaintiffs are husband and wife with separate and distinct licenses for contracting residential
26 roofing in the State of California. The plaintiffs, are '*door-to-door salespeople*', and for decades have
27 been in reliance upon only '*word-of-mouth*' commerce, maintain perfect reputations, and are '*stalked*' and
28 '*harassed*' by defendants program. Their rights of free expression in commerce are quashed, and their
livelihoods devastated as Google allegedly became the deciding factor in plaintiffs bidding processes. —

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

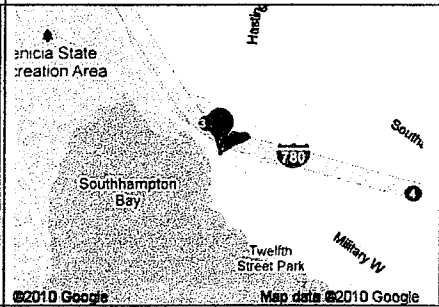
5 Plaintiffs filed a complaint in the Federal court, Ex. "D" on May 28th, 2010. Plaintiffs now appeal and
6 argue that district court orders erroneously allow defendants to violate plaintiffs' substantive rights
7 and law while engaged in criminal collaboration, stalking, and harassment of plaintiffs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

12 (Amended Appeal; Ex."D" Complaint; ¶ 41) "Plaintiff alleges the Defendant, Google, Inc.,
13 sponsors and publishes online business reviews for profit while at the same time neglecting
14 the legal needs of said reviews thereby failing to meet jurisdictional and administrative
15 requirements of the State of California and others."

16 3.

17 For over twenty years plaintiffs maintained a 100% customer satisfaction while becoming one of
18 the largest proprietor roofers in California without the use of commercial advertising. Google's publication
19 of plaintiff's businesses online at maps.google.com are accompanied by "*Google*" logos atop the
20 publications; the advertisings included photographing of plaintiff's store fronts, a photo geographical
21 mapping of their store locale, and detailed print of plaintiff's names, address, and phone numbers in an
22 advertising scheme, without plaintiffs permission. Google, after several notifications in evidence and
23 within the complaint, allowed the publication of plaintiffs businesses to remain published. In fact, after
24 notification of the damages caused by the publication, the evidence shows that Google themselves used
25 the 411 directory advertising programs to purposely, and with intent, slander plaintiffs and plaintiff's
26 businesses as a 'state actor' in exercising police power. As shown below any reasonable consumer would
27 ascertain not to use the plaintiffs as roofers because their roofs purportedly leaked and for eighteen
28 months plaintiffs kept lying. (Amended Appeal; Ex. "C" Pls. Decl.; excerpts from Ex. "A" &"G" within the decl.)—
This is evidence submitted in the lower court illustrating how Google unconscionably sells advertising to
plaintiffs competition,

"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."



Google maps

Castle Roofing
Benicia, California



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

<p>Local Roofing Contractors Free Estimates From Pre-Screened Roofing Contractors In Your Area. www.homeblue.com/Roofing</p>	<p>Repair, Maintenance, Re-roofing San Jose and surround Bay Area www.aboveallroofingsolutions.com roof removal</p>	<p>The Bay Area Roof Removal Company Roof Removal Specialist www.anbecontractors.com</p>
<p>Barcik Roofing Since 1947, Everything From Foundation to Roofs www.barcikconstruction.com</p>	<p>Roofing Contractors Find Local Roofing Contractors. Prescreened & Customer Rated. Free. www.TheContractorSpot.com</p>	<p>Roofing Estimates Find Top-Rated Roofing Pros in Your Area. Get 4 Free Bids Today! www.ServiceMagic.com</p>

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

(Amended Appeal; Ex. "C" Pls. Decl.; Ex. "J" within the declaration at ¶ 2 of a Yahoo letter):

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

4.

The law is very clear, if you throw a rock through someone's window it's a misdemeanor as long as the intent wasn't to hurt someone and accidental; but if you tell someone else to throw a rock through a window it's a conspiracy or if you knew someone was going to throw a rock and participated in profiteering upon the event it's a conspiracy. The complaint was also very clear with evidence alleging the defendant's publications and conspiracy as an illicit and illegal profiteering scheme. —

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

II. Preliminary Facts - District Court Errs

5.

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

(Am App; Ex. "E" Def. Motion To Dismiss at page 2, lines 8 - 18); (underlined highlights) — Google admitted in district court to engaging the bidding processes to help others and to the taking of millions of business identities: "The purpose of Google places is "to help people make more informed decisions about where to go, from restaurants and hotels to dry cleaners and bike shops [.]"" Google places contains listings for millions of hotels, restaurants, and other businesses. Listings typically contain the address and phone number of the listed business. In addition, users of Google Places can write and post reviews of the businesses."

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

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

6.

Second: The publishers advertising scheme is intentional and with scienter knowledge, done in a manner that's harmful to U.S. commerce. Google made a decision, not a third party, to allow people, including themselves, to make anonymous defamations for the precise purpose of disingenuously enhancing profits. Unqualified speech combined with ignoring business responses to unqualified speech enhances Google's profit a hundred fold as local competitors feed on what might be left of an injured plaintiff's business or profession. It's a thief stalking a store front like standing in front of a butcher shop with a sign reading: 'the meat is bad', as all the other local butchers stand ready to receive his orders; in

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

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

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

19 "2.) Google is a global and powerful market influence. However, it's not proper to issue a fatal blow against
20 small businesses ..."

21 "3.) In the current business climate, it would not be in Google's best interest to be publicly known as a
22 powerful market influence (bully) shutting down thousands of small businesses across America."

23 "c) An online stalker seeking revenge rather than a true and just remedy on Google's platform without
24 Google providing a method of resolution is guaranteed to be a small business tragedy."

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

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

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

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

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

4 (Am App; Ex."D" Complaint; ¶ 20) "The Defendant Google, Inc. thereafter ambushes and blindsides the
5 plaintiff's business with an on line advertising scheme, referred to herein as 'courtesy advertising', while
6 wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts." ... "Once the Plaintiff has
7 spent hard efforts to locate a prospect and identified a need for a prospective customer that otherwise may
8 not have been noticed by a prospective customer the customer is swayed away from the Plaintiff by false
9 statements and misrepresentations"

7.

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

22 (Am App; Ex."D" Complaint; ¶ 1) "...the Defendant, Google, Inc., chose to sponsor consumer-generated
23 content in conjunction with paid advertisements and on line business reviews in such a matter that it has
24 established an endorser sponsor relationship with the public at large.

24 (Am App; Ex. "D" complaint ¶ 41) "Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes
25 online business reviews for profit while at the same time neglecting the legal needs of said reviews thereby
26 failing to meet jurisdictional and administrative requirements..." (Am App; Ex. "D" complaint ¶ 42) "Plaintiff
27 further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal acts. Throughout
28 the on line 'courtesy advertising' program distributed to the public by the Defendant, Google, Inc..."

8.

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

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

6 9.

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

24 10.

25 Plaintiffs complained to the defendants of being stalked, harassed, and that it is devastating to
26 their livelihoods. After a couple notices to Google, beginning on Nov. 8th, (Amended Appeal; Ex."D" Cmpl. ¶
27 24 & 26.) the plaintiffs were almost immediately defamed a second time. The defamation is dated, Dec.
28 16, 2009 (Am App; Ex. "C" pls. decl.; Ex. 'G' within the decl.), it used the same unqualified comment under a
different anonymous identity at Yahoo's 411 directory ad program. Plaintiff wondered would a consumer

1 stay on for a couple months to do it a second time two months later, right after first notices! Or did Google
2 do it when notified, to cover their own acts of publishing and trafficking in defamation! Plaintiffs notices
3 are very pointed but using the 411 directory of others in covering ones own tracks may be common
4 between the advertising scams online. Plaintiffs tried several offered methods of remedy using Google's
5 allegedly misrepresented abuse notification features. Plaintiffs wrote several times afterwards but was
6 ignored by Google.— See: (Am App; Ex. "D" pls. compl.; ¶s 21-22). On April 22, 2010, plaintiffs wrote a final
7 warning to defendants legal dept. in Mountain View, concerned their programs are illegal, illicit, and that
8 they are being stalked with a vengeance perhaps against plaintiffs' telemarketing and word-of-mouth
9 practices and warned of an impending suit if the listings were not removed. The allegations are pointed
10 and against Google while assuring them plaintiff did not want litigation.

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

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

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

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

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

5 11.

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

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

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

21 12.

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

24 **sponsors** - "one who assumes responsibility for some other person or thing." — <http://www.merriam-webster.com/dictionary>

25 **publishes** — West's Encyclopedia of American Law
26 verb - verb introduction: -lished, -lish-ing, -lish-es.

27 "1. To issue a publication. 2. To be the writer or author of published works or a work. 3. To prepare and
28 issue (printed material) for public distribution or sale. 4. To bring to the public attention; announce."

13.

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

1 (1938); Johnson Publishing Co. v. Davis, 271 Ala. 474, 494-495, 124 So. 2d 441, 457- 458 (1960). The
2 defendants, Google, Inc., provided no responsive affirmative defenses to the allegations within the
3 complaint, but alleged plaintiff failed to state a proper claim. Plaintiff believe that to be untrue and filed for
4 judgment on the pleadings. Defendants repeatedly alleged a statutory immunity without pleading
5 responsively to the complaint. It is a defense but plaintiffs believed it requires a defendant to plead
6 responsively to each precise allegation within the complaint and that the defendants had agreed orally in
7 an extension of time to do just that, while changing their minds at the last moment. — See: Page 6;
8 Amended Appeal; section III. - The District Court Procedurally Erred - Default. Therefore plaintiffs
9 believe they may prevail in a prima-fascia showing of cause. See: Gomez v. Toledo, 446 U.S. 635, 640
10 (1980).

11 14.

12 Several years ago, internet defamation was ruled upon in the courts concerning two legal
13 cases involving Prodigy and CompuServe. In the Prodigy case, Prodigy was sued for defamation
14 based upon the statements made by a third party. In determining whether Prodigy was liable, a New
15 York state judge was left to determine whether Prodigy was a "distributor" of information, such as a
16 bookstore or library, or whether Prodigy was a "publisher" of information, such as a newspaper. As a
17 distributor, Prodigy would not be liable for the statement. In contrast, if Prodigy was considered a
18 publisher (with greater control over the information's content), Prodigy would be liable. In a decision
19 that shocked most on-line service providers, the judge held that, as a result of Prodigy's well-publicized
20 policies of monitoring and censoring its forums, Prodigy was a publisher and was potentially liable for
21 the defaming statement. Although the case was settled by the parties and Prodigy moved for a
22 withdrawal of the judge's decision, the judge refused. In this case, very similarly, Google had a stated
23 mission, as an affirmative defense. Google stated their programs are "*to help people make more*
24 *informed decisions about where to go*" while at the same time maintaining an '*elective policy*' of ignorance
25 of the program combined with an '*illicit selection of qualified immunity*' rather than the election of
26 permissible immunity as a "Good Samaritan". Googles selection of immunity options is illicit by their
27 known genius within the programs, their mission, and the unqualified invitation to the public for content
28

1 advertising. Plaintiffs argue that Google forfeited the statutory policy of ignorance because to do
2 otherwise results in a systemic attack on American commerce because of their present policies in
3 reporting on business and professions. Google Maps and Places are tools that may gut a small business
4 or profession like a pig; Google knows that, and by abuse of law and policy choice profiteers. In the
5 CompuServe case, a similar factual situation was encountered by a federal court. In that case the court
6 found that CompuServe acted merely as a distributor, not a publisher, of information in its discussion
7 groups, and therefore was not liable. It is important to note that CompuServe avoided liability because it
8 did not know about the defaming statement, nor did it have any reason to know about the statement.

9 III. Standards For Review On Appeal

10 15.

11 The district court orders erroneously allow the defendants to rape, pillage, and plunder
12 plaintiff's businesses and profession. The loss of jobs in America and defendants attack on free
13 speech in commerce in favor of unqualified speech, arguably and easily outpaces governments ability to
14 create new jobs while in a disaster economy. Some supreme court judges in the past have properly
15 pointed out the potential for criminal conduct by ISP's. —

16 See: Doe v. America Online, Inc., 783 So. 2d 1010 - Florida Supreme Court 2001. —

17 "In my view, the interpretation adopted today provides a foundation for far-ranging forms of illegal conduct
18 (possibly harmful to society in far different ways) which ISPs can, very profitably and with total immunity,
19 knowingly allow their customers to operate through their Internet services. I fear that the blanket immunity
20 interpretation adopted by the majority today thrusts Congress into the unlikely position of having enacted
21 legislation that encourages and protects the involvement of ISPs as silent partners in criminal enterprises
22 for profit. Confident that Congress did not intend such an incongruous result, I respectfully dissent.
23 PARIENTE and QUINCE, JJ., concur.

24 Plaintiffs believe it's like watching an invisible, but silent atrophy through the heart of American
25 commerce, destroying thousands of jobs and discouraging countless others.

26 16.

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

1 L.Ed.2d 502 (1984); New York Times Co. v. Sullivan, 376 U.S. 254, 285, 84 S.Ct. 710, 729, 11
2 L.Ed.2d 686 (1964). First, the appellate court reviews the trial court's judgment to determine whether the
3 evidence in the record is strong enough to support the judgment and whether substantive rights may be
4 at issue. The appellate court has the duty to weigh the evidence and determine whether the findings of
5 the trial court were so against the weight of evidence, as to require a reversal. In the instant matter,
6 plaintiffs 166 page "Amended Appeal" evidences that the district court orders are not supported by the
7 evidence or pleadings and a plaintiff can prevail upon an established prima-facie case against a
8 defendant by demonstrating that the evidence submitted in the district court was in fact sufficient to raise
9 a presumption of fact or establish the fact in question in the absence of an affirmative defense and
10 responsive pleading. A prima-facie case is a lawsuit that alleges facts and submits evidence sufficient to
11 prove the alleged conduct supports any of the causes of action and thereby prevail. See: Gomez
12 v. Toledo, 446 U.S. 635, 640 (1980). The Ninth District in those circumstances may reverse the judgment
13 of the district court as the orders are shown to be erroneous and misguided by err within the amended
14 appeal. Given the evidence on review the orders are unjust and therefore the orders of the district court
15 must be reversed as the merits of the case and law are given the greater consideration. In this case the
16 defendants motion for dismissal was based upon an alleged immunity. Plaintiffs argue that the immunity,
17 for which dismissal was based, is mundane, and is qualified rather than absolute; that defendants are
18 in violation of the statutory intent and the district court erred in its' discretion as a matter of law.
19 Plaintiffs further argue that Google is required to presuppose the law to forfeiture of their rights under
20 §230(c) immunity because of a combination of *scienter knowledge* of the illicit inducement from the public
21 combined with an ingenious scheme for profiteering upon the inducement. Their programs misrepresent
22 their intent by allowing unqualified speech against businesses which does not help people make more
23 informed choices as defendants aver. The "Good Samaritan" statutory immunity rather than 'ignorance',
24 upon substantial notice, is available to Google. Their program genius, legally abated their purported
25 immunity as their program violates the statutory intent at §230(b) and the substantive rights of plaintiffs.
26 .
27 Given the stalking nature of their programs, in consideration of the rights of others, Google by law must
28 presuppose the law and chose responsible behavior once engaging the livelihood of others to avoid

1 serious substantive injuries and liability for damages. Furthermore, the Supreme Court in Siegert v.
2 Gilley, 500 US 226 P. 236 - Supreme Court 1991 "clarif [ied] the analytical structure under which a claim
3 of qualified immunity should be addressed." —

4 "...I would reject, however, the Court of Appeals' statement that a plaintiff must present direct, as opposed
5 to circumstantial, evidence. 282 U. S. App. D. C. 392, 398-399, 895 F. 2d 797, 803-804 (1990).
6 Circumstantial evidence may be as probative as testimonial evidence. See Holland v. United States, 348 U.
7 S. 121, 140 (1954)."

8 17.

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

17 (Amended Appeal; Ex. "D"; ¶ 51): " Specifically, the plaintiff's sell residential roofing and generate daily
18 business by way of telemarketing and canvassing door to door. Commercial advertising such as T.V.,
19 radio, and online ads are not in the plaintiff's business model." (Amended Appeal; Ex. "D"; P. 13; Lines 11-
20 12 of Pls. Compl.) "Commercial advertising such as T.V., radio, and online ads are not and have never been
21 in the business model."

22 After three attacks and the district courts dismissal of plaintiffs claims, plaintiffs are irreparably harmed
23 by the courts decision. Plaintiffs are forced to non-publish their business telephones to avoid the
24 defendants use of their business information to preserve their livelihoods. The harm is that many
25 consumers upon not finding the plaintiff's businesses listed publicly, which has been a tradition for
26 nearly a hundred years in phone directories, will cancel their contracts after the sale, or will not engage
27 with plaintiffs' in bidding. Plaintiffs know this because of having tried door-to-door sales in areas
28 outside their normal calling region. Plaintiffs concluded that losing 10 - 15% of their business is better
than losing their home, livelihoods, and retirement to the defendants programs. Most businesses would
only notice their phone not ringing, advertising not working, or no foot traffic within their stores resulting
from the on line scam, but the plaintiffs fought the program daily and head-on as they prospected for
sales and noticed the damage immediately by consumer responses. This case may be unique with
insight for damage to others, but in this case it's clear that plaintiffs rights to 'free commercial speech'

1 are directly impaired as plaintiffs use direct sales methods. Though the defamations were reported to the
2 Ninth District as long removed from Google Places, averring the plaintiffs are therefore not harmed
3 irreparably, plaintiffs just lost a \$21,780.00 project last week because Google continues publishing the
4 defamations on Google Maps. Google deceived the Ninth District, because they removed them from
5 Google Places but not Google Maps which continues to harm plaintiffs even though the business phones
6 at plaintiffs businesses are now long since unpublished.

7 18.

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

14 IV. Memorandum Of Points And Authorities
15 Immunity v. substantive rights

16 19.

17 The district court should have applied less stringent standards than when a plaintiff is represented
18 by counsel. See: Hughes v. Rowe, 449 U.S. 5, 9 (1980); Phillips v. Girdich, 408 F.3d 124, 127 (2d Cir.
19 2005); Tapia-Ortiz v. Doe, 171 F.3d 150, 152 (2d Cir. 1999). "[A] well-pleaded complaint may proceed
20 even if it strikes a savvy judge that actual proof of the facts alleged is *improbable*" See: Neitzke v.
21 Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not
22 countenance...dismissals based on a judge's disbelief of a complaint's factual allegations"). Under Rule
23 12(b)(6), the critical inquiry with respect to each of plaintiffs' claims is whether the complaint contains
24 "enough facts to state a claim to relief that is plausible on its face. *Also*; Phillips v. County of Allegheny,
25 515 F. 3d 224 - Court of Appeals, 3rd Circuit 2008 (quoting Conley v. Gibson, US 41 355 U.S. at 47, 78
26 S. Ct. 99 Supreme Court 1957). — The Supreme Court also reaffirmed that, "On a Rule 12(b)(6) motion,
27 the facts alleged must be taken as true and a complaint may not be dismissed merely because it appears
28 Under Rule 12(b)(6), the critical inquiry with respect to each of plaintiffs' claims is whether the complaint

1 contains "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic. v. Twombly, 550
2 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In this case, the plaintiffs not only had a
3 complaint sufficient to place defendants on notice of the claim and its foundations, but also submitted
4 evidence in support of the claims within hours of defendants call to plaintiff that they had changed their
5 minds about answering and deceitfully file a motion for dismissal instead. The procedural malice is
6 detailed within the "Amended Appeal" at page 6; section III. "The District Court Procedurally Erred -
7 Default " As shown herein the claims are probable and supported by evidentiary; therefore, the plaintiffs
8 complaint was improperly dismissed in district court. "In determining whether this standard has been met,
9 the complaint is to be construed liberally, with "all factual allegations in the complaint [accepted] as true,
10 and all reasonable inferences [drawn] in plaintiff's favor." Hayden v. Paterson, 594 F.3d 150, 160 (2d
11 Cir.2010).

12 20.

13 **Scienter** is defined as a mental state embracing intent to deceive, manipulate, or defraud.

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

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

1 As the plaintiffs notified the defendants several times, and as the false defamations went directly to the
2 heart of plaintiffs ability to trade, there can also be no doubt that defendants had '*direct knowledge*' of
3 serious damage being caused to plaintiffs and plaintiff's businesses.

4 21.

5 Stalking is well defined within our society: (Encarta® World English Dictionary) —**Stalking**: "*the act or*
6 *process of stealthily following or trying to approach somebody or something.*" and harassment is

7 **Harassment**: "*the crime of harassing somebody with persistent, inappropriate, and unwanted attention.*"

8 By definition the maps.google.com programs are published, in evidence, and owned by Google, Inc..

9 They are stealthy because they're without notice to plaintiffs, cause ambush and blindsiding, are
10 persistently inappropriate, and as alleged unwanted. Defendant's programs fit perfectly the definition of
11 stalking and harassment in english language, within the complaint, and as stated within §230(B). —

12 (Ex."D" Complaint; ¶ 20) "The Defendant Google, Inc. thereafter ambushes and blindsides the
13 plaintiff's business with an on line advertising scheme, referred to herein as 'courtesy advertising', while
14 wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts." ... "Once the Plaintiff has
15 spent hard efforts to locate a prospect and identified a need for a prospective customer that otherwise may
not have been noticed by a prospective customer the customer is swayed away from the Plaintiff by false
statements and misrepresentations" to ensure vigorous enforcement of Federal criminal laws to deter and
punish trafficking in obscenity, stalking, and harassment by means of computer." *Id.* §230(b)(5).

16 22.

17 The International definition of the word, "trafficking", as stated by United Nations protocol for
18 defining the word trafficking, equates to whether the acts are by force or without permission. The
19 inquiry into the definition resulted from cases involving the trafficking of humans for prostitution. This
20 case is best served by the International definition as the defendants are International. The International
21 community agreed and determined that if the acts are initiated by force or without permission, then
22 the acts are to be considered '*trafficking*' by definition. So for purposes of statutory clarity, the plaintiffs
23 argue the defendants' acts are '*trafficking*' in unwanted business listings, unqualified accusations against
24 businesses and professionals, stalking, harassment, and defamation.

25 23.

26 Immunity v. substantive rights: Plaintiffs herein argue the district courts' ruling is erred because in
27 a proper ruling the strict "*plain text*" of a statute does not require such an adherence to the letter as would
28 defeat an obvious legislative purpose. — *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783, 72 S.Ct. 1011,
1014, 96 L.Ed. 1294 (1952) ; *Jamison v. Encarnacion*, 281 U.S. 635, 640, 50 S.Ct. 440, 442, 74 L.Ed.

1 1082 (1930); Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 110-11, 111 S.Ct. 2166, 2170-
2 71, 115 L.Ed.2d 96 (1991). While Congress acted to keep government regulation of the Internet to a
3 minimum, it also stated very clearly its' intent by finding it to be the policy of the United States, — "to
4 ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity,
5 stalking, and harassment by means of computer." *Id.* §230(b)(5). It's very obvious that congress foresaw
6 potential abuses of common law tort when granting immunity to ISPs from information provided by others.
7 Congress also saw potential abuse of the immunity statute, as in this case, which is why congress
8 qualified the immunity under §230(b)(5). Furthermore, in United States v. Texas, 507 U.S. 529, 113 S.Ct.
9 1631, 123 L.Ed.2d 245 (1993), the Supreme Court recognized that, "*In order to abrogate a common-law*
10 *principle, the statute must "speak directly" to the question addressed by the common law.*" The immunity
11 clauses defendants cite are broad, vague, and unspecific in not speaking directly to a business or
12 professions first amendment rights to commercial speech. Additionally, mapping of millions of businesses
13 online with illicit public relationships in advertising and commentary are not specifically addressed in the
14 immunity statute. Congress may not have foreseen precisely the genius of defendants programming to
15 engage in advertising schemes to game the immunity statute for profit, but it did *qualify the immunity* in
16 the event of it. Congress foresaw the possibility that an immune internet service provider might become
17 partnered in public criminal activity and in enacting the immunity to help the Internet police itself,
18 congress was specific in stating their intention "*to deter and punish trafficking in obscenity, stalking, and*
19 *harassment by means of computer.*". Plaintiff argues in point that stalking and harassment are precisely
20 definitive of defendants programs which encompass two known special relationships alleged as
21 disingenuous; first between the defendant and the public in soliciting unqualified advertising excerpts and
22 second, defendants relationship with paid advertisers in an illicit scheme localized to steal plaintiffs daily
23 prospecting efforts. Once immunity in this case should be qualified and forfeited, the substantive rights of
24 the plaintiff and others are protected in business and professions, common law justice prevails, and
25 business may again thrive.

26 V. Other Interested Parties - Public Interest

27 24.

28 The courts look at whether a reversal will substantially injure the other parties interested

1 in the proceeding and where the public interest might lie. Google filed a statement of interested parties
2 indicating that no other interested parties exist; however, the plaintiffs believe this case is important in
3 bringing to focus online behavior of *major market forces* and their impact by *intervention* upon commerce.
4 Plaintiffs argue that impulse buying and discretionary spending are systemic within the U.S. economy and
5 that rights of free expression for salespeople in commerce enable the economy and are substantive. The
6 courts are empowered to reverse the lower court by ¶'s 7-10 within the complaint. Plaintiffs argued in
7 district court that defendants gaming is against long standing tradition in business and defendants are
8 standing upon the public's substantive right of business. The ad scheme is illicit for profiteering. —

9 **First**, by the taking of millions of business identities under the guise of public telephone listing
10 information; thereby making the phone listings an unconscionable contract risk to plaintiffs by intervention.

11 **Second**, by making and allowing irremovable false and unqualified complaints against plaintiffs,
12 businesses, and professionals that ignore reasonable remedies and administrative processes.

13 **Third**, by unconscionable profiteering on those complaints against businesses to enhance their ad offering
14 to paid advertisers of like kind and local while trampling the substantive rights of the injured.

15 **Fourth**, by ignoring injured businesses inquiries the acts become the defendants by *forfeiture* and *scienter*
16 *knowledge* of causing harm in an unconscionable and unqualified manner unacceptable within our society.

17 25.

18 The public should realize the scheme of unqualified commentary against business is flawed
19 constitutionally and threatens not only commerce systemically but also the justice in a 100 year old
20 American tradition of amicable dispute resolution; it's an unfair business practice! On tradition *See*:
21 *Griswold v. Connecticut*, 381 US 479 - Supreme Court 1965. —

22 "The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted
23 in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts*,
24 291 U. S. 97, 105. In *Gitlow v. New York*, 268 U. S. 652, 666,

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

1 The plaintiffs argue that people are much more likely to behave in the absence of anonymity and that
2 anonymity combined with a *'blind eye policy'* towards a business in review, is a dangerous abuse of
3 immunity law and gaming of the system.

4 26.

5 Absent some compelling justification, inducing, producing, and allowing imminent lawless
6 action against plaintiffs and U.S. business concerns by unqualified speech can not be of public value. It's
7 a harmful disruption of commerce, destroys jobs, and grants police power to users of the program and
8 Google! Google misrepresented their program to the public, as cited at Ex. "D" ¶ 2 of the complaint,
9 because the genius of their program is of no public value other than as a 411 directory. It is not a help to
10 people in making more informed decisions by unqualified speech in business reviews; it only deceives
11 and extrapolated into a grand scale, such as in this case, is harmful to business systemically and
12 therefore harmful to the people.

13 (Amended Appeal; Ex. "D"; ¶ 2) "Defendant, Google, Inc. in fact allows so called '*courtesy*
14 *advertising*' of the Plaintiff's businesses to be placed on it's web site without the Plaintiff's
15 permission while exaggerating the benefits of a free product to the public at large..."

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

26 VI. Googles Special Relationship
27 A Casual Connection - Active Inducement

28 27.

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

1 (Amended Appeal; Ex. "D" Pls. Compl. ¶ 35) "Therefore one may conclude that the Defendant, Google, Inc.
2 knew in advance that their programming was hostile, could and does cause harm by *enticing* members of
the general public to commit illegal acts, which is now continuing on a business as usual basis."

3 "One infringes contributorily by intentionally inducing or encouraging direct infringement and infringes
4 vicariously by profiting from direct infringement while declining to exercise a right to stop or limit it" Metro-
5 Goldwyn-Mayer Studios Inc. v. Grosser, Ltd., 545 U.S. 913, 930, 125 S. Ct. 2764, 2776, 162 L. Ed. 2d
6 781 (2005). In this case the defendants do both as shown by their affirmative defense "to help people
7 make more informed decisions about where to go". In profiteering vicariously from the results of the
8 inducements Google adopted an irremovable policy concerning the serious damage to plaintiff's
9 livelihood. **Vicariously** is defined as: "*performed or suffered by one person as a substitute for another or*
10 *to the benefit or advantage of another*" - (Webster's Dictionary). Defendants are shown to meet both
11 standards as explained by the Eighth Circuit Court of Appeals. First, by having an obvious financial
12 interest as unqualified speech against a business enhances their advertising offering to local competitors
13 a hundred fold; Second, defendants had the immunity as a 'Good Samaritan' to stop abuse and to make
14 their advertising fair, as in get permission first. "...the prerequisites for vicarious copyright infringement are
15 (1) the right and ability to supervise the infringing activity and (2) an obvious and direct financial interest in
16 exploitation of copyright materials. (quoting - RCA/Ariola International, Inc. v. Thomas & Grayston Co., 845
17 F.2d 773, 781 (8th Cir. 1988); Blair v. World Tropics Productions, Inc., 502 F. Supp. 2d 828, 837 (W.D.
18 Ark. 2007). To succeed on this theory under 35 U.S.C. § 271(b), a plaintiff must prove that the
19 defendants' "actions induced infringing acts and that [they] knew or should have known [their] actions
20 would induce actual infringement. "Manville Sales Corp. v. Paramount Sys., Inc., 917 F.2d 544, 553, 16
21 USPQ 2d 1587, 1594 (Fed. Cir.1990). It is alleged and is obvious that defendants knew of the
22 enticement of their programs for solicitation of content against businesses and '*judicial notice*' of the fact
23 is requested within the complaint. Defendants never answered with responsive affirmative defenses. —

24 (Amended Appeal; Ex. "D" Complaint; ¶ 42) "Therefore one may conclude that the Defendant, Google, Inc.
25 knew in advance that their programming was hostile, could and does cause harm by enticing
26 members of the general public to commit illegal acts which are now continuing on a business
as usual basis."

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

28 "While proof of intent is necessary, direct evidence is not required; rather, circumstantial evidence may

1 suffice." Water Techs. Corp. v. Calco, Ltd., 850 F.2d 660, 668, 7 USPQ 2d 1097, 1103 (Fed.Cir.1988).

2 28.

3 Noticeably, Eric S., Googles' CEO, was just convicted personally, along with *Google France* for
4 defamation in a French Court. Again recently, a judge in Milan, Italy convicted David D., Peter
5 F. and George R. of Google for failure to comply with the Italian privacy code. The cases both involved
6 Google's algorithms and prominent indexing of defamation from their home page against individuals.
7 Google has clearly done it with intent, as Google is building a special relationship with the public against
8 tradition, the interest of U. S. commerce, and justice.

9 29.

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

1 (Amended Appeal; Ex. "D" Complaint; ¶ 20) "The Defendant Google, Inc. thereafter ambushes and
2 blindsides the plaintiff's business with an on line advertising scheme, referred to herein as "courtesy
3 advertising', while wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts."
4 ..."Once the Plaintiff has spent hard efforts to locate a prospect and identified a need for a prospective
5 customer that otherwise may not have been noticed by a prospective customer the customer is swayed
6 away from the Plaintiff by false statements and misrepresentations"

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

21 (Amended Appeal; Ex. "D"; ¶17 Pls. Compl.; underlining highlights) "The Plaintiff alleges, the Defendant,
22 Google, Inc., derives advertising revenue as a instant and direct result of the plaintiff's direct telemarketing
23 and door-to-door selling efforts rather than from Defendant's own efforts..."

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

28 (Amended Appeal; Ex. "D"; ¶17 Pls. Compl.) "The Defendant accomplishes this by
allowing what is referred herein as "courtesy advertising" on their business review web site
which is posted publicly on line at <http://www.google.com>."

The bottom line is Google can not be in the mapping (stalking) of businesses and then maliciously
intervene or have the ability to intervene in a malicious unfair manner. Taking our pictures is one thing
interfering with our businesses and livelihoods afterwards is quite another. Google's mission statement,

1 "...to help consumers make more informed decisions." — is not compatible with law or the intentions of
2 47 U.S.C. §230. In plaintiffs opinion, Google should be seriously deterred into changing its policies or
3 prosecuted.

4 (Amended Appeal; Ex. "D"; ¶20 Pls. Compl.; underlining highlights) " while wrongfully benefiting financially
5 on nearly a daily basis from Plaintiff's sales efforts. The Defendant, Google, Inc. benefits financially because
6 prospective clients inquire on line of the Plaintiff's businesses at the Defendant's web site where the
7 prospect is then bombarded by paid advertising from other roofing companies in competition with Plaintiff's
8 business. The Defendant's policy of ignoring the content and nature of the negative anonymous review at
9 issue within this complaint does harm to the Plaintiff in that the negative review sways the Plaintiffs'
10 prospect toward those businesses who have paid the Defendant, Google, Inc., for advertising alongside the
11 'courtesy advertisement' of Plaintiff's businesses.

12 30.

13 Defamation of plaintiffs businesses on line would have had little or no effect upon plaintiffs if it
14 were not for the defendants market strength inducement, collaborative efforts, and special relationships.
15 In other words an average consumer, web site, or blog would not gain a front row seat at the top of the
16 SERP's indexed from the front page of Google.com; only Google's market strength, technical savvy, and
17 popularity could do that continuously 24/7 pursuant to their misrepresented mission. Intentional stalking
18 by search algorithm holds true because many thousands of companies are named Castle Roofing and
19 a thousand cities across the U.S. bear the same name, all while a roofer from N.Y. would not enhance
20 Googles profits in the form of clicks if alongside plaintiffs local business review. In other words the
21 reviews and taking of millions of business identities at Google are only for profiteering not "*...to help*
22 *consumers make more informed decisions.*" Unqualified anonymous bullying and bogus commentary do
23 not, and are not, of any public value instead they harm thousands of businesses. It's a bold
24 misrepresentation by Google to the public as thousands of doctors, lawyers, contractors, and
25 professionals are now being maliciously defamed daily. The idea that the programs are 'even' within the
26 district court orders is outrageous and flawed because of Googles use of '*protocol technology*' and
27 '*localization or pairing*'. One may not suspend defamation or fabricate numerous positive comments to
28 combat defamation because the programs are supervised and do not allow multiple entries from the
same IP address (*See: Amended Appeal Ex."D" Cmpl. ¶ 26.*). Of course, one could use proxy servers,
masked IDs, and other forms of deceit to combat defamation, if they knew how. The necessary
monitoring of the programs of course are more proof of defendants collaboration and special relationship
with end users and advertisers for profit. Google puts the package together by use of the end users

1 typed search location and their normal search algorithms from the front page of Google. The SERP's list
2 maps.google.com at the top to maximize Google's profit. Then Google finds the paid advertisers of like
3 kind in plaintiffs area to place next to the plaintiffs business information, without plaintiffs permission,
4 enabling the competitors to feed off plaintiffs injuries illicitly which enhances the offering to those
5 competitors a hundredfold. Google provides unqualified complaints against plaintiffs and plaintiffs
6 sales techniques, Google's profits are enhanced as local competition feeds on what's left of plaintiffs
7 sales prospects and business. It's an unconscionable conspiracy of events, done intentionally only for
8 Google's profiteering. Just as when plaintiffs catch someone in the phone room giving plaintiffs sales
9 leads to their boy friend contractor after work. Googles acts are done stealthily as described in stalking,
10 and with malice by publishing and allowing noticed unqualified speech and defamations, ones centric to
11 the heart of a mans livelihood, and holding them as irremovable without court intervention as in this case.

12 31.

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

28 32.

In this case the defendants, not an unknown third party, made four deliberate policy decisions:

1 First, Google vested themselves with police powers by deliberately choosing "...to help people make
2 *more informed decisions...*" by admission within their "Motion To Dismiss" cited below.

3 (Amended Appeal; Ex. 'E' Def. Motion To Dismiss; p. 2, lines 8 - 18): "The purpose of Google Places is "to
4 help people make more informed decisions about where to go, from restaurants and hotels to dry cleaners
5 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."

6 After intervening plaintiffs telephone agreements and creating unconscionable consequences in
7 relationships without plaintiffs permission, the defendants indexed their own business review program, via
8 SERPs, to maps.google.com, showing the public plaintiffs business name, localized by algorithm for the
9 end user to view plaintiffs competitors, thereby placing themselves within the plaintiffs bidding processes.

10 Once there, the business listings are accompanied by paid local advertisers and unqualified commentary

11 (Amended Appeal; Ex. 'D', ¶ 17 and 20 Pl. Compl.) Second, Google deliberately chose to use irremovable
12 unqualified speech within it's 'mapping' (Stalking) of plaintiff's businesses which denies which enhances
13 their ad offering a hundred fold to others in an outrageous and unacceptable competition but denies
14 plaintiffs important State and Federal rights as it creates an unjust police power. The defamations in this
15 case (*Professional Hits*) are illegal and torturous accusations only against the plaintiffs businesses not the
16 competitor advertisers paying Google. Sales canceled and prospects are swayed away every day with
17 competitors paying to advertise next to the defamations as plaintiffs continued prospecting door-to-door
18 each day. In other words the reviews are not even. Third, Google deliberately chose to ignore the
19 plaintiffs inquiries; as a matter of *'blind eyed policy'* towards plaintiff's businesses. —

20 (Amended Appeal; Ex. 'D' Pl. Compl. ¶ 22): "...refused on multiple occasions throughout the past six months
to remove, mediate, or even acknowledge damaging advertising directed at the Plaintiffs businesses."

21 Fourth, Google deliberately chose to hide behind anonymity when they themselves believed they're
22 immune. This is because of Googles' market popularity and strength; the public inquiry followed the
23 plaintiffs daily door-to-door selling activity because it's a 411 directory. Defendants believed they could
24 run over a roofer. Plaintiffs believe this to be a major civil rights violation against plaintiffs privacy,
25 commercial expression, rights to due process, and fair business. In deciding fairness and the
26 issue of whether the comments are defamation, one only needs to recall the anonymous defamation with
27 the leaking roof; still believe it's true? "...False statements of fact are particularly valueless" especially
28

1 when they're anonymous "...they cause damage to an individual's reputation that cannot easily be
2 repaired by counter speech, however persuasive or effective." Celle v. Filipino Reporter Enterprises Inc.,
3 209 F. 3d 163, 171 Court of Appeals, 2nd Circuit 2000. No one called with a roof leak to plaintiffs
4 companies and the original perpetrator did not hang around to defame with extraordinary timing twice
5 afterwards, that had to be Google. The plaintiffs pursue only the defendant, Google; the identity or
6 identities behind the anonymity within the business reviews are alleged as Google. —

7 (Ex. "D"; ¶ 41 Pls. Compl.) "Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes online
8 business reviews for profit while at the same time neglecting the legal needs of said reviews thereby failing
to meet jurisdictional and administrative requirements of the State of California and others..."

9 Emotional distress in this case is high and persistent, it's like being helpless, similar to being held at gun
10 point, while Google acts in ignorance taking your money. As plaintiffs work they receive disparaging
11 comments from prospects, sales canceled, and customers with roofs in progress would turn hostile, per
12 plaintiffs declaration of damages. The plaintiffs sales abilities are consequently impaired as a result of
13 unqualified speech at Google. The evidence in this case shows beyond doubt that the unqualified speech
14 associated with plaintiffs business review on Google intends only harm by use of a computer and that
15 Google acts with intent to profit from the injury and conspires in special relationships with
16 discriminatory purpose as cited in Ashcroft v. Iqbal, 129; 1948 S. Ct. 1937 - Supreme Court 2009 the
17 supreme court stated — "*Where the claim is invidious discrimination in contravention of the First and Fifth*
18 *Amendments, our decisions make clear that the plaintiff must plead and prove that the defendant acted*
19 *with discriminatory purpose.*" Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520, 540-541, 113
20 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (First Amendment); Washington v. Davis, 426 U.S. 229, 240, 96
21 S.Ct. 2040, 48 L. Ed. 2d 597 (1976). As so many read Googles reviews, emotional distress is heightened
22 by plaintiffs losing most all bids and being mentally impaired in sales presentation each day. Impairment
23 was natural for fear a prospect would discover the defamation. The plaintiffs ages, reliance upon
24 commercial speech, and the risk of losing their home, retirement, and wealth to Googles defamation
25 leave plaintiffs no choice but to sue Google. Google still has not removed the program listings of plaintiff's
26 businesses. The plaintiffs will need to sell their home and dismiss remaining employees in the absence of
27 relief.
28

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

33.

1
2
3 Plaintiffs presume It is illegal within U. S. advertising law and the business and professions
4 code to knowingly review businesses falsely in a disorderly, uneven, harmful, and unprofessional manner.
5 Plaintiffs complaint alleged unqualified complaints against plaintiff's businesses are left ignored even
6 today after several notifications and a law suit. Plaintiffs believe those acts make the program owner,
7 Google, Inc., responsible for damages because Google purposely engaged the business of plaintiffs for
8 profit without permission. Google admits to engaging millions of businesses *to help consumers make*
9 *more informed decisions* which is a police powers declaration. Just because one may own a gun or a car
10 legally, does not entitle one to run over and shoot people; responsible conduct and neutrality is required
11 as a duty in reviewing businesses and peoples livelihoods. Google attempts changing American values of
12 business reporting, declares police powers, and avoids the cost of hiring people to ensure accuracy in
13 reporting against businesses. As cited below the district court cites authority averring that Google Maps
14 and Places are neutral tools; the plaintiffs have great indifference with that, because neutral tools do not
15 kill businesses. Plaintiff's business is destroyed and a dozen or more jobs were lost by Googles malicious
16 broadcasting of open and unqualified complaints against plaintiff's business in a program that's by no
17 stretch of the imagination neutral! The courts order: "Order On Plaintiffs' Objection, Denying Defendant's
18 Motion To Strike And Denying Plaintiffs' Motion To Stay (Docket Nos. 28, 29, and 32)", entered on the
19 20th day of September, 2010 at page 3, lines 5 through 18 cites a Ninth Circuit ruling on the case
20 Carafano v. Metrosplash.com Inc. 339 F. 3d 1119, 1121 (9th Cir. 2003) in support, for authority in making
21 the orders. The Ninth Circuit opinion cited within the district courts order at page 3 lines 11-12 within the
22 order, dated September 20th, is as follows:

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

25 First, the orders are erred because the Ninth Circuit opinion is based upon a web site lacking Googles
26 market penetration in a 411 directory; Second, the district court erred by misapplying the Ninth Circuit
27 opinion to this case because Googles tools are shown above as certainly not neutral. This is because
28 open complaints on Google's listing of plaintiffs businesses are against the plaintiffs commerce and not

1 against the other roofers who are paid advertisers on the same page. The paid advertisers ads when
2 selected by a visitor lead directly to the paid advertisers web sites which completes Googles
3 enhancement for the paid advertisers ad and adds value to Googles' advertising offer to them. In short it's
4 an unfair competition because the plaintiffs customers are searching for the plaintiff when they go to
5 Google Maps but are illicitly directed to paid advertisers. The allegations within the complaint are all true
6 and need not simply be construed as true. The Ninth Circuit may notice that Google Maps are not only,
7 not neutral, they're open to Google in enhancing their sales, race discrimination, police stings by dirty
8 cops, marital disputes, cyber bullying, grievances against telemarketers, a 'State actor' as Google using
9 the directories others to cover their own illicit behavior, and all sorts of other attacks behind anonymity.
10 The programs are certainly not neutral when posted against a proprietors right to work, invade
11 constitutional rights to commercial expression, and are irremovable. The district court orders giving
12 licensure and condoning this type of theft by defendants is erred in discretion as the orders contradict
13 substantive rights of proprietors, advertising law, constitutional rights, and the immunity statute itself that
14 defendants rely upon. The district court orders are discussed in full detail with evidentiary within plaintiffs
15 166 page "Amended Appeal". On the face of the orders their misguided and erroneous because: First,
16 the defendants are the ones alleged as wrongdoers, sponsors and publishers of the defamations not
17 third parties; Second, the defendants are evidenced with special relationships as extrapolated from the
18 evidence in the introduction above, and not immune for their own acts, as argued and alleged. —

19 (Amended Appeal; Ex. "D"; ¶1 Pls. Compl.) "The Plaintiff alleges that the Defendant, Google, Inc., chose to
20 sponsor consumer-generated content in conjunction with paid advertisements and on line business reviews
21 in such a matter that it has established an endorser sponsor relationship with the public at large."
22 (Amended Appeal; Ex. "D" Complaint; ¶ 42) " Plaintiff further alleges that the Defendants, Google, Inc.,
23 intentionally conspired to cause illegal acts. Throughout the on line 'courtesy advertising' program
24 distributed to the public by the Defendant, Google, Inc., there exist options whereby the general public may
25 report suspect content to the Defendant, Google, Inc.. The general public may select and report content that
26 they believe to be abusive or illegal; Therefore one may conclude that the Defendant, Google, Inc.
27 knew in advance that their programming was hostile, could and does cause harm by enticing members of
28 the general public to commit illegal acts which are now continuing on a business as usual basis."

24 On special relationships "*It is well established that individuals owe no duty to protect others from harm by*
25 *third persons, absent a special relationship with either the wrongdoer or the person subject to harm.*" See:
26 *Emerich v. Phila. Ctr. for Human Dev.*, 720 A.2d 1032,1036 (Pa. 1998). Restatement (Second) of Torts §
27 315 or § 324A (1964). In district court plaintiff argued special relationships and profiteering between the
28 defendant Google, and others, as evidenced throughout the complaint, declaration, and evidence. Below

1 is an excerpt from plaintiffs' "Motion For Judgment on the Pleadings" at P. 3; Lines 7 - 26 —

2 "The Plaintiff's fears are the uncontrollable nature of Defendant's programming..." "... in the United
3 States we have laws and regulations whereby it's citizens and enterprises, must presuppose a
4 respect for the law in order to avoid chaos and serious violation to the rights of others. In doing so
5 the duties and responsibilities of being in business are born on each and every business including
6 the Defendant, Google, Inc." "The Plaintiff has alleged that the Defendant, Google, Inc. was
7 reckless in it's designing of a program that allows anonymous defamation, destruction, and
8 misrepresentation of Plaintiff's businesses."

9 34.

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

14 (Amended Appeal; Ex. "D"; ¶18 Pls. Compl.) "...Said public postings are then easily referenced by the
15 general public by way of a home page search on the Defendant's search engine front page."
16 (Amended Appeal; Ex. "D"; ¶17 Pls. Compl.; underlining highlights) "The Plaintiff alleges, the
17 Defendant, Google, Inc., derives advertising revenue as a instant and direct result of the
18 plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own
19 efforts...Plaintiff alleges that these acts by the Defendants combine as a major market force
20 intervention that is wrongful..."

21 35.

22 In a fair view with the light most favorable towards plaintiffs citing NL Indus., Inc. v. Kaplan, 792 F.
23 2d 896, 898 and Anderson v. Clow, 89 F.3d 1399,1403 in the absence of a meaningful or responsive
24 affirmative defense by defendants, there were no material facts at issue in the case. See: Gomez
25 v. Toledo, 446 U.S. 635, 640 (1980). Defendants did not dispute being accused of the wrong doer in
26 anonymity. Plaintiffs argue they were entitled by law to judgment on the pleadings in district court and
27 believe the Ninth Circuit should reverse. For further discussion on the district court errors please see the
28 "Amended Appeal", page restraints prohibit the duplication of the errors in their entirety herein.

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

36.

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

"Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression
are violated, but because of a judicial prediction or assumption that the statute's very existence may

1 *cause others not before the court to refrain from constitutionally protected speech or expression."*

2 In this instant where Google policies have opted for irremovable defamations against businesses
3 their program at maps.google.com does trample the substantive free commercial speech of others.
4 Plaintiffs believe the statute could be read as constitutional under §230(b) in this matter. If the
5 district court orders are correct and the constitutional rights of plaintiffs are ruled unprotected by §230(b),
6 the entire statute would become unconstitutional, against commerce, and the greater public interest. The
7 validity of competing First Amendment rights should be gauged by balancing the various competing
8 interests, with due regard paid to identifiable speech in U.S. commerce v. unqualified anonymous speech
9 against businesses and professions. It's even more tilted to identifiable speech in this instance as
10 plaintiffs were uniformed of being a target because Google's acts are without permission or notification
11 to plaintiffs. As the defendant's programming obviously has the likelihood to entice imminent lawless
12 actions, the plaintiffs business interest and livelihood should prevail in court as should the business and
13 professional interest of others in the same instance. The district court clearly failed, in reviewing
14 standards for protected speech, therefore the orders should be reversed and plaintiffs should have been
15 granted judgment on the pleadings in the absence of responsive pleadings on the merits.

16 37.

17 Plaintiffs argue, the Internet as a whole and the defendant in this case, mistakenly assume
18 absolute immunity rather than qualified immunity under §230, even while they conceive programming
19 methods and policy for gaming the statute illicitly in violation of the legislative intent and U.S. policy under
20 §230(b) to '*deter and punish trafficking*', stalking, and harassment —

21 **47 U.S.C. § 230 (b) Policy:**

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

24 38.

25 Moreover, in support of reversal for a case such as this, where substantive rights are paramount,
26 the separability of constitutional and unconstitutional applications of statutes may not apply where their
27 effect is to leave standing a statute patently capable of many unconstitutional applications, threatening
28 those substantive rights of the plaintiffs to word-of-mouth commercial speech and expression in sales. In
a Supreme Court ruling for United States v. X-Citement Video, Inc., 513 U.S. 64 (1994) the high court
determined that the weight of a statute construed as constitutional will prevail over literal and material

1 clashes of lesser importance. In the instant matter, plaintiffs substantive rights are systemic and far
2 outweigh the rights of unqualified speech and the defendants as profiteers. Therefore, divisibility of the
3 constitutional and unconstitutional applications of 47 U.S.C. §230 are inapplicable as ruled by the district
4 court because the statute may be construed constitutionally as the court accepts factual allegations in the
5 complaint as true, and draws all reasonable inferences to plaintiff's favor. See: Monahan v. Dorchester
6 Counseling Ctr., Inc., 961 F.2d 987, 988 (1st Cir.1992).

7 39.

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

16 40.

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

25 IX. Defamation

26 41.

27 The complaint, evidence, and declarations cited herein demonstrate clearly the four elements of a
28 defamation. Those elements are defined as — "Any statement, whether written or oral, that injures a third
party's reputation. See: Buckley v. Fitzsimmons, 509 U.S. 259 (1993). First, the defamations of plaintiff's

1 businesses are certain statements of unqualified fact rather than opinion satisfying the first of four
2 elements generally required in a prima facie case of defamation which is — a false statement purporting
3 to be fact concerning another person or entity. Second — publication or communication of that statement
4 to a third person. This is established by plaintiffs Declaration of Damages and evidence excerpted in
5 introduction above. Third — fault on the part of the person making the statement amounting to intent or at
6 least negligence. Plaintiffs believe the defendants, at trial were without immunity and affirmative
7 defenses, and that they are required upon notice from plaintiffs to remove the illegal postings because
8 the postings obviously strike to the heart of plaintiffs trade, as the defendant became a 'state actor'. See:
9 Stanley v. Goodwin, 475 F. Supp. 2d 1029 - Dist. Court, D. Hawaii 2006. Chapman v. The Higbee Co.,
10 319 F.3d 825, 833 (6th Cir.2003); Googles conduct as 'state actor' is evidenced by Google's direct
11 knowledge upon several notifications by plaintiffs of damage; Google performed as a 'state actor'
12 disclosing contractor complaints and profiteering from the complaints without proper standing in the
13 community. Fourth — some harm caused to the person or entity who is the subject of the statement. The
14 plaintiffs filed a "Declaration of Damages" in the district court. See: Am. Appeal, Exhibit "F".

15 X. Emotional Distress

16 42.

17 The court considers several factors when deciding whether a complaint may prevail on a cause
18 of emotional distress. In this case, if any party should be expert on defamation and its' effect on others it
19 should be the defendants at Google, after all for decades now, they have had the issue before them daily.
20 As cited in memorandum, "...they cause damage to an individual's reputation that cannot easily be
21 repaired by counter speech, however persuasive or effective." and "...so long as the utterance was
22 intended to inflict emotional distress, was outrageous, and does in fact inflict serious emotional distress, it
23 is of no constitutional import whether the statement was a fact or an opinion, or whether it was true or
24 false. It is the intent to cause injury that is the gravamen of the tort, and the State's interest in preventing
25 emotional harm simply outweighs whatever interest a speaker may have in speech of this type."
26 Therefore it should not be surprising to the defendants or the court that even a 42 year veteran at door-to-
27 door sales had trouble selling in the face of Google's business review and that Google knew or should
28 have known, especially in light of so many notices, the stress they are imposing upon plaintiffs

1 livelihoods, especially in light of so many notices. It was the gravest of policy decision that Google
2 executives had to make, and should have, in plaintiffs opinion, reversed in light of the guilty knowledge of
3 having so many complaints daily from businesses and professions through their abuse reporting on the
4 program that they can not even communicate with plaintiffs. Plaintiffs believe it is a misguided case
5 of *executive policy* at Google in abusing the immunity statute in favor of profiteering, the essence *per se*
6 for obscene executive pay upwards of \$20,000,000 per year. The policy once passed through to their
7 employees, charged employees with the responsibility to escape culpability resulting in the egregious and
8 outrageous conduct exhibited throughout district court proceedings. This case exhibits Googles slight of
9 hand even now before the Ninth District with deceit. As directed by their superiors, defense informed the
10 appellant court that defamations of plaintiffs businesses were removed and therefore plaintiffs are not
11 irreparably harmed while they clearly are not. The intentional infliction of emotional distress perhaps
12 even systemic to the economy is inflicted by Googles deceitful behavior, massive market penetration,
13 popularity, and cavalier approach to small business.

14 43.

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

27 **1): extreme and outrageous conduct:** defamation — "*that is, with knowledge that it was false or with*
28 *reckless disregard of whether it was false or not.*" *St. Amant v. Thompson*, 390 U. S. 727, 731 (1968), *Id.*,
at 279-280. As the defamations are unqualified, Google exhibited complete reckless disregard in not

1 (Amended Appeal; "Ex. "D"; Pls. Compl. ¶32 - e-mail from wife): "... ready to leave "Dodge". Can we
PLEASE just move?! I'm so ready to get out of this rat race. Let's sell the house, move to the midwest, I'll
2 get a job and you can do your hobbies. I'm really serious Gene. I'm done working my @\$@ off and
having so much stress. I feel as tho I'm dying here."

3 (Amended Appeal; "Ex. "D"; Pls. Compl. ¶28) "On April 22, 2010 the Plaintiff was emotionally disturbed by
4 the Defendants' ignorance of the Plaintiff..." "This week alone she has a \$15,000, a \$13,000 & two 9,000
deals on the table not counting others incoming throughout the week..." "The defamatory commit on your
5 web site is costing Holli as much as thirty thousand weekly in sales." ("Ex. "D"; Pls. Compl. ¶28) "...it could
be an online stalker with a vengeance perhaps against a proprietor or a proprietors telemarketing practice."
6 Also see argument memorandum of understanding within the plaintiffs "Amended Appeal".

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

11 44.

12 The court could properly remand to a jury for plaintiffs cause of action for intentional infliction of
13 emotional distress because Googles' "good motives and belief in truth, do not negate an inference of
malice..." Johnson Publishing Co. v. Davis, 271 Ala., at 495, 124 So. 2d, at 458. Additionally, and as
14 cited in the supreme court defendant, Googles' intent after sufficient notification are 'gravamen' rather
15 than the merit of the comment itself: "...so long as the utterance was intended to inflict emotional distress,
16 was outrageous, and does in fact inflict serious emotional distress, it is of no constitutional import whether
17 the statement was a fact or an opinion, or whether it was true or false. It is the intent to cause injury that
18 is the gravamen of the tort, and the State's interest in preventing emotional harm simply outweighs
19 whatever interest a speaker may have in speech of this type." Hustler Magazine, Inc. v. Falwell; 485 US
20 46, 108 S. Ct. 876, 99 L. Ed. 2d 41 Supreme Court, 1988.

21 XI Punitive damages

22 45.

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

notification are gravamen rather than the merit of the comment itself to wit. —

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

46.

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

1 profiteering within and behind anonymity in Google Maps may violate substantive rights of the peoples
2 and plaintiffs by Googles acts as 'state actor' in official impropriety. If this case does involve third party or
3 official impropriety stemming from plaintiffs' local (County) as noticed to Google (excerpted below) or
4 a *quasi* state function, plaintiffs argue that Google would have needed to included that defense within
5 an answer in district court, but they did not. —

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

10 Literally speaking, Google violates the statutory intent of the very immunity they seek, because behind
11 anonymity one will not know that it is not Google who discriminates racially, culturally, or ethnically,
12 stalks, harasses, and violates the substantive rights of businesses and professions in all sorts of
13 unconscionable manners of conduct as again noticed by the Florida state supreme court. *See; Doe v.*
14 *America Online, Inc.*, 783 So. 2d 1010 - Florida Supreme Court 2001. —

15 "In my view, the interpretation adopted today provides a foundation for far-ranging forms of illegal conduct
16 (possibly harmful to society in far different ways) which ISPs can, very profitably and with total immunity,
17 knowingly allow their customers to operate through their Internet services. I fear that the blanket immunity
18 interpretation adopted by the majority today thrusts Congress into the unlikely position of having enacted
19 legislation that encourages and protects the involvement of ISPs as silent partners in criminal enterprises
20 for profit. Confident that Congress did not intend such an incongruous result, I respectfully dissent.
21 PARIENTE and QUINCE, JJ., concur.

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

25 XII. Conclusion

26 47.

27 Plaintiffs believe judgment should be granted favoring plaintiffs based: First, and most importantly
28 upon the merits of the case and evidence. Plaintiffs alleged supported by the evidence in district court a
29 fault on Googles part as the party making the statements amounting to intent or at least negligence as
30 cited in *Siegert v. Gilley*, 500 US 226 P. 236 - Supreme Court 1991 "clarif [ied] the analytical structure
31 under which a claim of qualified immunity should be addressed." —

32 "...I would reject, however, the Court of Appeals' statement that a plaintiff must present direct, as opposed
33 to circumstantial, evidence. 282 U. S. App. D. C. 392, 398-399, 895 F. 2d 797, 803-804 (1990).
34 Circumstantial evidence may be as probative as testimonial evidence. See *Holland v. United States*, 348 U.
35 S. 121, 140 (1954)."

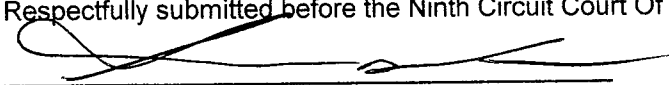
1 Second: Plaintiffs should prevail on the law, as the defendants, as an intelligent business, should be as
2 are plaintiffs, required to presuppose the law argued by plaintiffs to forfeiture of certain rights in qualified
3 immunity. Defendants failed to answer the complaint responsively by responsive pleading in affirmative
4 defenses and were procedurally in default per oral agreement. In the absence of immunity the defendants
5 were required upon substantive notice from plaintiffs to remove the illegal postings because the postings
6 obviously strike to the heart of plaintiffs livelihood, as Google's processes hold themselves out as a
7 deciding factor in plaintiffs bidding practices with a mission to help people make more informed decisions,
8 a paramount engagement of ones livelihood. Having therefore become a 'state actor' defendants should
9 be liable for all causes of action within the complaint under negligence, misrepresentation, unfair
10 business practices, (third party) breach of contract, and intentional infliction of emotional distress. The
11 allegations in district court were that Google published the defamatory business reviews and the evidence
12 was so strong that the burden shifted from plaintiffs to the defendants. Defendants thereafter, only
13 repeated a mundane statute of immunity without any responsive affirmative defenses. Plaintiffs were
14 therefore entitled to judgment on the pleadings. See: Gomez v. Toledo, 446 U.S. 635, 640 (1980).

15 Accordingly, the Ninth Circuit Court should reverse the orders of the district court as the verdict
16 does unfairly deny plaintiffs important substantive rights and causes an unjust result. The actual and
17 statutory damages declared were \$575,000.00 dollars. The court should further award intentional
18 infliction of emotional distress and punitive damages of not less than \$20,000,000.00 to deter ISP abuse
19 of law in profiteering upon the rights of plaintiff's small business.

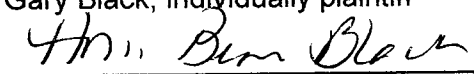
20 ORDERS TO VACATE upon reversal:

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

26 Respectfully submitted before the Ninth Circuit Court Of Appeals,

27 
28 _____
29 Gary Black, individually plaintiff

Dated: December 20, 2010

30 
31 _____
32 Holli Beam Black, individually plaintiff

Dated: December 20, 2010

1
2 CERTIFICATE OF SERVICE BY US MAIL

3 I, Jose G. Torres, declare:
4

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

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

9 **"APPELLANTS BRIEF"**

10 Case no. 10-16992

11 Before

12 UNITED STATES COURT OF APPEALS
13 FOR THE NINTH DISTRICT

14 GARY BLACK AND HOLLI BEAM-BLACK
15 *Plaintiffs/Appellants, V. GOOGLE, INC., Defendant/Appellee.*

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

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

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

24 I declare under the penalty of perjury under the laws of the United States that the foregoing is
25 true and correct. Executed at Benicia, California 94510 on December 20, 2010.

26 JOSE G TORRES
27 Jose G. Torres
28