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12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 OAKLAND DIVISION

15 GARY BLACK, et al.,
 16 Plaintiffs,
 17 v.

18 GOOGLE INC.,
 19 Defendant.

No. C 10-02381 CW
**DEFENDANT GOOGLE INC.'S
 NOTICE OF MOTION AND
 MOTION TO DISMISS
 PLAINTIFFS' COMPLAINT**
 Hearing Date: August 12, 2010
 Hearing Time: 2:00 p.m.
 Courtroom: 2
 (Hon. Claudia Wilken)

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 12, 2010, at 2:00 p.m., before the Honorable Claudia Wilken of the United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, Defendant Google Inc. (“Google”) will, and hereby does, move this Court pursuant to the Communications Decency Act, 47 U.S.C. § 230, and Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) for an order dismissing Plaintiffs’ Complaint with prejudice.

The motion is based upon this Notice of Motion; the Memorandum of Points and Authorities in support thereof; the pleadings, records, and papers on file in this action, oral argument of counsel, and any other matters properly before the Court.

STATEMENT OF ISSUES

1. Are Plaintiffs’ claims barred as a matter of law by Section 230 of the Communications Decency Act, 47 U.S.C. § 230, which immunizes any provider of an interactive computer service from liability for hosting content provided by another information content provider?

2. Do Plaintiffs’ claims fail to state a claim for which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6) and/or Fed. R. Civ. P. 12(b)(1)?

MEMORANDUM OF POINTS & AUTHORITIES

INTRODUCTION

This case involves an allegedly defamatory review of Plaintiffs’ roofing business that was written by an unknown third party. Plaintiffs allege that Google should be responsible for the content of that review because the review can be found using a service that Google provides called Google Places. Plaintiffs’ claims should be dismissed with prejudice because they are barred by the Communications Decency Act (“CDA”), 47 U.S.C. § 230(c). That statute provides broad immunity from claims for relief that seek to treat an online service like Google as the publisher or speaker of information created by third parties. The plain text of

1 Section 230(c) disposes of Plaintiffs' claims because they all seek to hold Google
2 liable for third-party content. And the cases interpreting Section 230(c)
3 unanimously confirm that online services are immune from suit for content posted
4 by others regardless of the labels that plaintiffs attach to their claims. Plaintiffs'
5 Complaint also should be dismissed with prejudice because it fails to state a claim
6 for which relief can be granted under Rule 12(b)(6) and Rule 12(b)(1).

7 STATEMENT OF FACTUAL ALLEGATIONS

8 A. Defendant Google Inc.

9 Defendant Google Inc. is a Delaware corporation headquartered in Mountain
10 View, California that provides Internet services to the public through its website
11 located at <http://www.google.com>. ¶ 6.¹ Among other things, Google operates an
12 online directory of local businesses known as Google Places. ¶ 16.

13 The purpose of Google Places is “to help people make more informed decisions
14 about where to go, from restaurants and hotels to dry cleaners and bike shops[.]”²
15 Google Places contains listings for millions of hotels, restaurants, and other
16 businesses. Listings typically contain the address and phone number of the listed
17 business. ¶¶ 16-18. In addition, users of Google Places can write and post reviews
18 of the businesses. *Id.*

19 B. Plaintiffs Gary Black And Holli Beam-Black.

20 Plaintiffs Gary Black and Holli Beam-Black are California residents. ¶ 4.
21 They allegedly operate sole proprietorships known as Cal Bay Construction and
22 Castle Roofing. *Id.*

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27 ¹ Specific paragraphs of the Complaint are referred to as “¶ __.”

28 ² See <http://googleblog.blogspot.com/2010/04/introducing-google-places.html>.

1 supply essential elements of the claim that were not initially pled.” *Pena v.*
2 *Gardner*, 976 F.2d 469, 471 (9th Cir. 1992) (citation omitted). When a plaintiff
3 lacks standing to bring a claim, it is properly dismissed for lack of subject-matter
4 jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). *See White v. Lee*, 227 F.3d 1214,
5 1242 (9th Cir. 2002).

6 **B. Plaintiffs’ Claims Are Barred By The CDA.**

7 Section 230(c) of the CDA immunizes websites from liability for hosting
8 content created by third parties. Section 230(c) provides: “No provider or user of an
9 interactive computer service shall be treated as the publisher or speaker of any
10 information provided by another information content provider.” 47 U.S.C. §
11 230(c)(1). The immunity encourages free speech by allowing companies to run
12 online services without fear that they will be held liable for the speech of others.
13 *See Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (“Section 230 was
14 enacted, in part, to maintain the robust nature of Internet communication and,
15 accordingly, to keep government interference in the medium to a minimum.”)³
16 Section 230 is more than an affirmative defense; it provides immunity from suit in
17 the first instance. 47 U.S.C. § 230(e)(3) (“No cause of action may be brought and no
18 liability may be imposed under any State or local law that is inconsistent with this
19 section.”). This protection is expansive. *See Goddard v. Google, Inc.*, Case No. 08-
20 cv-2738, 2008 WL 5245490 (N.D. Cal. Dec. 17, 2008), at *2 (“Courts consistently
21 have held that Section 230 provides a ‘robust’ immunity, and that all doubts ‘must
22 be resolved in favor of immunity.’”) (citing *Carafano v. Metrosplash.com, Inc.*, 339
23 F.3d 1119, 1123 (9th Cir. 2003)).

24
25 ³ *See also Batzel v. Smith*, 333 F.3d 1018, 1027-28 (9th Cir. 2003) (In enacting
26 Section 230, “Congress wanted to encourage the unfettered and unregulated
27 development of free speech on the Internet, and to promote the development of e-
28 commerce. . . . Making interactive computer services and their users liable for the
speech of third parties would severely restrict the information available on the
Internet. Section 230 therefore sought to prevent lawsuits from shutting down
websites and other services on the Internet.”).

1 Under the CDA, a defendant is immune from suit if: (1) it qualifies as a
2 “provider or user of an interactive computer service”; (2) the information at issue
3 comes from “another information content provider”; and (3) the claims asserted seek
4 to treat the defendant as a “publisher or speaker” of the information. 47 U.S.C. §
5 230(c)(1). These factors are easily satisfied here. Plaintiffs’ Complaint should be
6 dismissed. *See Goddard*, 2008 WL 5245490 at *7 (dismissing claims against Google
7 on the ground that it is immune under Section 230); *Jurin v. Google Inc.*, -- F. Supp.
8 2d --, 2010 WL 727226, at *5 (E.D. Cal. Mar. 1, 2010) (same); *Langdon v. Google*,
9 474 F. Supp. 2d 622, 631 (D. Del. 2007) (same); *Parker v. Google*, 422 F. Supp. 2d
10 492, 500 (E.D. Pa. 2006), *aff’d*, 242 Fed. Appx. 833 (3d Cir. 2007) (same); *Novak v.*
11 *Overture Servs., Inc.*, 309 F. Supp. 2d 446, 452 (E.D.N.Y. 2004) (same).

12 **1. Google Is A Provider Of An “Interactive Computer**
13 **Service.”**

14 Section 230 broadly defines “interactive computer service” as “any
15 information service, system, or access software provider that provides or enables
16 computer access by multiple users to a computer server[.]” 47 U.S.C. § 230(f)(2).
17 Google meets this definition by providing a website—Google Places—that allows
18 users to find and post information about businesses online.⁴ Indeed, courts have
19 held repeatedly that Google meets the statutory definition of an “interactive
20 computer service.” *See Parker*, 422 F. Supp. 2d at 501 (“there is no doubt that
21 Google qualifies as an ‘interactive computer service.’”); *Goddard*, 2008 WL 5245490
22 at *2 n.2 (N.D. Cal. Dec. 17, 2008) (“a number of courts already have determined
23

24 _____
25 ⁴ *See also Universal Comm’n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir.
26 2007) (“web site operators . . . are providers of interactive computer services within
27 the meaning of Section 230.”); *Carafano*, 339 F.3d at 1123 (Matchmaker.com is an
28 interactive computer service); *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*,
591 F.3d 250, 255 (4th Cir. 2009) (same for Consumeraffairs.com); *Doe v. MySpace,*
Inc., 528 F.3d 413, 422 (5th Cir. 2008) (same for MySpace.com).

1 that Google is an interactive computer service provider[.]”); *Jurin*, 2010 WL 727226
2 at *5 (Google “meets the definition of a protected interactive computer service”).⁵

3 **2. Plaintiffs Seek To Hold Google Liable For Information**
4 **Provided By “Another Information Content Provider.”**

5 It is equally clear that Plaintiffs base their claims on information provided by
6 “another information content provider.” 47 U.S.C. § 230(c)(1). Section 230 defines
7 an “information content provider” as “any person or entity that is responsible, in
8 whole or in part, for the creation or development of information provided through
9 the Internet or any other interactive computer service.” 47 U.S.C. § 230(f)(3).
10 Information is provided by *another* “information content provider” whenever the
11 defendant did not “creat[e] or develo[p] the particular information at issue.”
12 *Carafano*, 339 F.3d at 1125. “[S]o long as a third party willingly provides the
13 essential published content, the interactive service provider receives full immunity
14 regardless of the specific editing or selection process.” *Id.* at 1124.

15 Plaintiffs do not allege that Google or anyone affiliated with Google authored
16 the review at issue. Rather, they admit that an anonymous user posted the review.
17 ¶¶ 19, 21. As Google played no role in creating the review underlying Plaintiffs’
18 claims, the information was provided by another “information content provider” and
19 Section 230(c) applies. *See, e.g., Goddard*, 2008 WL 5245490 at *3 (N.D. Cal. Dec.
20 17, 2008) (“providing third parties with neutral tools to create web content is
21 considered to be squarely within the protections of § 230”); *Nemet Chevrolet*, 591
22 F.3d at 258 (complaints posted by third parties to Consumeraffairs.com triggered
23 Section 230(c) because they were provided by another information content provider);

24
25 ⁵ *See also Steele v. Mengelkoch*, Case No. A07-1375, 2008 WL 2966529, at *2
26 (Minn. Ct. App. Aug. 5, 2008) (Google is eligible for Section 230(c) immunity);
27 *Novak*, 309 F. Supp. 2d at 452 (same); *Langdon*, 474 F. Supp. 2d at 631 (same); *cf.*
28 *Maughan v. Google Tech., Inc.*, 143 Cal. App. 4th 1242, 1254 (2006) (affirming order
requiring plaintiff to pay Google’s attorneys fees incurred in defending claims
barred by Section 230(c)).

1 *Prickett v. InfoUSA, Inc.*, 561 F. Supp. 2d 646, 652 (E.D. Tex. 2006) (same for user-
2 submitted listing in online business directory); *Universal Commc'n*, 478 F.3d at 415,
3 421 (1st Cir. 2007) (same for “defamatory postings made under pseudonymous
4 screen names on an Internet message board”); *Schneider v. Amazon.com, Inc.*, 31
5 P.3d 37, 42-43 (Wash. Ct. App. 2001) (2001) (same for user-submitted book reviews
6 on Amazon.com); *Parker*, 422 F. Supp. 2d at 501 (same for message board postings
7 archived by Google); *Carafano*, 339 F.3d at 1125 (same for unauthorized profile on
8 Internet dating website); *Zeran*, 129 F.3d at 330 n.2 (same for “offensive messages”
9 posted on America Online).

10 **3. All Of Plaintiffs’ Claims Seek To Treat Google As The**
11 **“Publisher Or Speaker” Of Third-Party Content.**

12 Plaintiffs’ claims for relief are barred by Section 230’s robust immunity
13 because each seeks to treat Google as the “publisher or speaker” of content created
14 by a third party. In similar circumstances, other courts have had no trouble
15 dismissing on Section 230(c) grounds the very claims for relief that Plaintiffs assert
16 here:

- 17 • **Breach of Contract:** Plaintiffs obliquely allege that Google failed to enforce
18 properly its Terms of Use by allowing the third-party review at issue to be
19 accessed on the Google Places service. ¶¶ 43-45. Courts have rejected nearly
20 identical claims against online services generally and Google in particular
21 based on CDA immunity. *See Green v. Am. Online*, 318 F.3d 465, 470 (3d Cir.
22 2003) (CDA bars breach of contract claim alleging that AOL failed to enforce
23 its Terms of Use concerning allegedly harmful online messages created by
24 third parties); *Goddard*, 2008 WL 5245490 at *5 (N.D. Cal. Dec. 17, 2008)
25 (CDA bars breach of contract claim alleging that Google failed to enforce its
26 content policy to protect the plaintiff from third-party content). Plaintiffs’
27 breach of contract claim is not any different and should suffer the same fate.
28 *See Schneider*, 31 P.3d at 42 (holding that breach of contract claim asserted
against Amazon was barred by the CDA because Section 230 “does not limit
its grant of immunity to tort claims”); *Jane Doe One v. Oliver*, 755 A.2d 1000,
1004 (Conn. Super. Ct. 2000) (striking claim for breach of contract against
AOL as barred by the CDA).
- **Unfair Competition:** While the contours of Plaintiffs’ unfair competition
claim are unclear, the basis for liability stems from a review created by a third
party. It is therefore properly dismissed even if packaged as an unfair

1 competition claim. See *Goddard v. Google*, Case No. 08-cv-2738, 2008 WL
2 5245490, at *5 (N.D. Cal. Dec. 17, 2008) (rejecting plaintiff's attempt to avoid
3 Section 230(c) by asserting a hodgepodge of claims under the label "unfair
4 competition"); *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 836 (2002) (unfair
5 competition claim premised on content provided by a third party barred by
6 Section 230(c)).

- 7 • **Negligence:** Courts uniformly have rejected claims against online services
8 that were based on their alleged negligent treatment of content created by
9 third parties. See *Parker v. Google, Inc.*, Case No. 06-3074, 2007 WL 1989660,
10 at *4 (3d Cir. July 10, 2007) (affirming dismissal of negligence claim against
11 Google based on Section 230(c) concerning online messages created by a third
12 party); *Goddard*, 2008 WL 5245490 at *5 ("Plaintiff's . . . negligence claims . .
13 . . are barred because they would hold Google responsible for third party
14 content"); *Gentry*, 99 Cal. App. 4th at 833-35 (rejecting plaintiff's attempt to
15 "plead around" Section 230(c) by bringing a claim for negligence); *Carafano*,
16 339 F.3d at 1124; *Green*, 318 F.3d at 469-72; *Ben Ezra, Weinstein, & Co., Inc.*
17 *v. Am. Online Inc.*, 206 F.3d 980, 986 (10th Cir. 2000); *Zeran*, 129 F.3d 327;
18 *PatentWizard, Inc. v. Kinko's, Inc.*, 163 F. Supp. 2d 1069, 1072 (D.S.D. 2001);
19 *Doe v. Am. Online, Inc.*, 783 So.2d 1010, 1013-17 (Fla. 2001); *Jane Doe One*,
20 755 A.2d at 1004. The result should be the same here.
- 21 • **Misrepresentation:** Plaintiffs claim that Google engaged in
22 misrepresentation by allowing the review at issue to be accessed through
23 Google Places. That claim fares no better than Plaintiffs' others under a
24 Section 230(c) analysis and also should be dismissed. See *Jurin*, 2010 WL
25 727226 at *5 (Section 230(c) bars fraud claim arising from advertisements
26 provided by third parties); *Ramey v. Darkside Prods., Inc.*, Case No. 02-730,
27 2004 WL 5550485, at *1 (D.D.C. May 17, 2004) (same); *Schneider*, 31 P.3d at
28 39 (Section 230(c) bars negligent misrepresentation claim concerning
anonymous reviews posted to the Amazon.com website).
- **Intentional Infliction of Emotional Distress:** Section 230(c) also bars
intentional infliction of emotional distress claims when they are asserted
against online services concerning material created by third parties. See
Dimeo v. Max, 433 F. Supp. 2d 523, 532 (E.D. Pa. 2006), *aff'd*, 248 Fed. Appx.
280 (3d Cir. 2007) (Section 230(c) bars intentional infliction of emotional
distress claim concerning third-party posts to the defendant's website);
Delfino v. Agilent Techs., Inc., 145 Cal. App. 4th 790, 807 (2006) (Section
230(c) bars intentional infliction of emotional distress claim concerning third-
party email messages sent using the defendant's computer system); *Donato v.*
Moldow, 865 A.2d 711, 719 (N.J. Super. A.D. 2005) (Section 230(c) bars
intentional infliction of emotional distress claim concerning third-party posts
to the defendant's online message board).

1 The law has advanced to the point where every single one of Plaintiffs' claims
2 for relief has been considered and serially rejected based on Section 230(c). There is
3 no basis to depart from that judicial consensus.

4 **C. Plaintiffs Fail To State A Claim For Relief.**

5 In addition to being barred by Section 230(c), Plaintiffs' factual allegations
6 fail to state any claim for relief under Rule 12(b)(6) and Rule 12(b)(1).

7 **1. Plaintiffs Fail To State A Claim For "Breach of
8 Authority."**

9 Plaintiffs' first claim for relief is a hodgepodge entitled "Breach of Authority;
10 Violation of Law." ¶ 19. They seem to contend that Google has violated Section 5 of
11 the FTC Act in unspecified ways when running Google Places. ¶ 38. That
12 allegation is misguided on the merits, but fails for an even more basic reason:
13 Plaintiffs lack standing to bring claims under the FTC Act. *See Carlson v. Coca-*
14 *Cola Co.*, 483 F. 2d 279, 280 (9th Cir. 1973) ("The protection against unfair trade
15 practices afforded by the Act vests initial remedial power solely in the Federal
16 Trade Commission."); *Dreisbach v. Murphy*, 658 F.2d 720, 730 (9th Cir. 1981) ("This
17 circuit has held that private litigants may not invoke the jurisdiction of the federal
18 district courts by alleging that defendants engaged in business practices proscribed
19 by § 5(a)(1). The Act rests initial remedial power solely in the Federal Trade
20 Commission."). Plaintiffs, as private citizens, also lack standing to assert a
21 violation of 18 U.S.C. § 1365, a federal criminal statute that prohibits tampering
22 with consumer products. *See Glassey v. Amano Corp.*, Case No. C-05-01604 RMW,
23 2006 WL 889519, at *3 (N.D. Cal. March 31, 2006) (dismissing all claims under
24 Title 18 because "[p]rivate parties generally lack standing to enforce federal
25 criminal statutes."); *Williams v. Sy*, Case No. C-05-00322 RMW, 2005 WL 1629930,
26 at *1 (N.D. Cal. July 11, 2005) (dismissing claims because "a private citizen does not
27 have standing to enforce criminal laws.").

1 Plaintiffs’ claim for “Breach of Authority; Violation of Law” should be
2 dismissed with prejudice.⁶

3 **2. Plaintiffs Fail To State A Claim For Breach Of Contract.**

4 Plaintiffs’ breach of contract claim should be dismissed with prejudice
5 because it fails to allege that Google breached any contract with them. Plaintiffs
6 reference a portion of Google’s terms of use under which users agree that they will
7 not use Google’s services to “defame, abuse, harass, stalk, threaten or otherwise
8 violate the legal rights . . . of others.” ¶ 44. The gist of Plaintiffs’ contract claim
9 appears to be that one of Google’s users breached its contract with Google. If that
10 were proven, Google might have a breach of contract claim against the user. But
11 Plaintiffs would not have one against Google. The breach of contract claim should
12 be dismissed with prejudice. *See Mulato v. WMC Mortg. Corp.*, Case No. 09-03443
13 CW, 2010 WL 1532276, at *3-4 (N.D. Cal. Apr. 16, 2010) (dismissing with prejudice
14 breach of contract claim where the plaintiff failed to plead the existence of a
15 contract with the defendants).

16 **3. Plaintiffs Fail To State An FTC Act Claim.**

17 Plaintiffs’ third cause of action is a stand-alone claim alleging violations of
18 Section 5 of the FTC Act. ¶¶ 47, 49. As noted above, Plaintiffs lack standing to
19 pursue this claim and it should be dismissed with prejudice pursuant to Rule
20 12(b)(1).

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23 ⁶ Plaintiffs also point to an entire article of California’s Business and
24 Professions Code. ¶ 41. That statutory regime authorizes the Registrar of
25 Contractors to suspend or revoke the licenses of contractors “upon the verified
26 complaint in writing of any person.” Cal. Bus. & Prof. Code § 7090. The registrar
27 must inform the public about the status of complaints lodged against contractors.
28 Cal. Bus. & Prof. Code § 7124.6. “A complaint resolved in favor of the contractor” is
not subject to disclosure by the registrar. Cal. Bus. & Prof. Code § 7124.6(c). These
provisions are irrelevant here. Plaintiffs have not pled the existence of a verified
complaint resolved in their favor that the registrar disclosed. And even if they had,
Plaintiffs’ grievance would be with the registrar, not Google.

1 **4. Plaintiffs Fail To State A Negligence Claim.**

2 A valid negligence claim requires the plaintiff to plead that: (1) the defendant
3 owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) that the
4 breach was the proximate cause of injury to plaintiff; and (4) damages. *See Mulato*,
5 2010 WL 1532276, at *2. Plaintiffs claim that Google owed them a duty to ensure
6 the accuracy of any report on the Internet concerning their businesses that could be
7 found using Google’s services. They are profoundly mistaken. Courts routinely
8 dismiss negligence claims where the relationship between the plaintiff and the
9 defendant is too attenuated to support liability. *Id.* (rejecting claim that a bank
10 owed an expansive duty of care to a borrower); *Thornbrough v. W. Placer Unified*
11 *Sch. Dist.*, Case No. 2:09-cv-02613-GEB-GGH, 2010 WL 2179917, at *10 (E.D. Cal.
12 May 27, 2010) (dismissing negligence claim because attorney does not owe an
13 independent duty of care to an employee of his client). And that is the proper result
14 here. Google operates Internet search services that allow users to find billions upon
15 billions of pages of content created by third parties. Google does not owe an
16 impossible-to-fulfill duty to the world to ensure that all speech on the Internet is
17 accurate. That duty rests, if at all, with the myriad creators of that content.
18 Plaintiffs’ negligence claim should be dismissed with prejudice. *See Mulato*, 2010
19 WL 1532276, at *3.

20 **5. Plaintiffs Fail To State A Claim For Misrepresentation.**

21 Plaintiffs’ claim for fraudulent misrepresentation fails for a host of reasons.
22 The elements of this claim are: “(1) a knowingly false representation by the
23 defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the
24 plaintiff; and (4) resulting damages.” *Serv. by Medallion, Inc. v. Clorox Co.*, 44 Cal.
25 App. 4th 1807, 1816 (1996). Plaintiffs contend that Google has made
26 misrepresentations to the public about the quality of their roofing projects. ¶ 56.
27 But that allegation does not state a fraud claim. First, the statements at issue were
28 not made by Google, but some anonymous online commentator. ¶ 19 (alleging that

1 the review in question “is anonymous and unverifiable as to [its] accuracy”).
2 Second, Plaintiffs concede that Google is not able to verify whether the review is
3 accurate or not. *Id.* Therefore, Google could not be charged with making a
4 knowingly false statement even if the speech of an anonymous online poster were
5 somehow attributable to Google. Third, there are no allegations that Google made
6 any statement with intent to deceive Plaintiffs or induce their reliance. Fourth,
7 there are no allegations that Plaintiffs relied on any false statement made by
8 Google. Fifth, Plaintiffs do not allege that Google’s statements caused them injury.
9 Plaintiffs’ fraud claim is baseless and should be dismissed with prejudice.

10 **6. Plaintiffs Fail To State A Claim For Intentional Infliction**
11 **Of Emotional Distress.**

12 Finally, Plaintiffs assert a claim for intentional infliction of emotional
13 distress. They allege that Google engaged in “intentional negligence, inattentive
14 business practices, violation of common decency, violation of law and unfair
15 business practices for the purpose of selling advertising rather than the purpose of
16 ‘Courtesy Advertising’ for businesses and professionals.” ¶ 60. While this
17 allegation is difficult to decipher, it certainly does not state a claim for intentional
18 infliction of emotional distress. That tort requires the plaintiff to plead facts
19 showing: “(1) extreme and outrageous conduct by the defendant with the intention
20 of causing, or reckless disregard of the probability of causing, emotional distress; (2)
21 the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and
22 proximate causation of the emotional distress by the defendant’s outrageous
23 conduct.” *Hughes v. Pair*, 46 Cal.4th 1035, 1050 (2009) (quotations and citations
24 omitted). Conduct is considered “outrageous” only when it is “so extreme as to
25 exceed all bounds of that usually tolerated in a civilized community.” *Id.* at 1050-51
26 (quotations and citations omitted). Google’s provision of an online forum to which
27 users can post business reviews does not come anywhere close to meeting that
28 standard. Plaintiffs’ intentional infliction of emotional distress claim should be

1 dismissed with prejudice. *See Thornbrough*, 2010 WL 2179917 at *9; *Mulato*, 2010
2 WL 1532276 at *4; *Bonner v. Redwood Mortg. Corp.*, Case No. 10-00479 WHA, 2010
3 WL 1267069, at *11 (N.D. Cal. Mar. 29, 2010); *Delfino*, 145 Cal. App. 4th at 808-16.

4 **CONCLUSION**

5 For the foregoing reasons, Google respectfully requests that the Court
6 dismiss Plaintiffs' Complaint with prejudice.

7
8 Respectfully submitted,

9 Dated: July 2, 2010

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