

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

6 Plaintiffs are acting:  
7 "In Propria Persona"

**FILED**  
JUL - 8 2010  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

8 **UNITED STATES DISTRICT COURT**  
9 for the  
10 **NORTHERN DISTRICT OF CALIFORNIA**

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

15 Plaintiffs,

16 vs.

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

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

PLAINTIFF'S RESPONSE TO DEFENDANT'S  
"MOTION TO DISMISS" and  
NOTICE OF MOTION and  
MOTION FOR JUDGEMENT ON THE  
PLEADINGS

21 **NOTICE OF MOTION AND MOTION**

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on August 12, 2010, at 2:00 p.m., before the Honorable Claudia  
24 Wilken of the United States District Court for the Northern District of California, 1301 Clay  
25 Street, Suite 400 S, Oakland, California a hearing will take place in the above mentioned case  
26 whereby the defendant, Google, Inc., has put on file with the Court a "Motion To Dismiss"  
27 Plaintiff's complaint. The Plaintiff herein responds to the Defendant's "Motion To Dismiss" and  
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Green Valley Falls, California 94534  
Gary and Holli Black  
101 Auld Court

1 respectfully moves the Court for 'Judgment On The Pleadings'. This motion is based upon this  
2 Notice of Motion, the Motion itself, the foregoing arguments, the pleadings, records, Judicial  
3 Notice, the "Declaration of Gary Black", exhibits, oral arguments at hearing, and any other  
4 matters pertinent in this matter.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **INTRODUCTION**

7 The Defendant has grounded their "Motion To Dismiss" upon the Communications  
8 Decency Act, 47 U.S.C. § 230. The Plaintiff has at least twice in telephone conversations  
9 whereby the Defendants called the Plaintiff and at least once by email has stated that Plaintiffs  
10 support the Decency Act as it provided jobs and protections for on line service providers. The  
11 Defendants grounds within the "Motion To Dismiss" are fatal to the motion and off point. The  
12 Plaintiff's "Complaint For Damages" is specifically against the Defendant, Google Inc. et.al. for  
13 it's advertising of the Plaintiff's businesses without permission and in an unlawful manner.

14 The Plaintiffs very much support anonymity, free speech, and the Decency Act. Plaintiffs  
15 herein are not presently considering a motion to the Court for identity of anonymous third party  
16 content on the Defendant's web site.

17 The Defendant's 'Introduction' claim, at lines 21 - 24, page 1 of Defendant's "Motion To  
18 Dismiss", states that Plaintiff's are attempting to hold them liable for the content of third party  
19 reviews of it's business on line. These claims are false and misguided. Nor is Plaintiff accusing  
20 them of being the publisher or speaker of the third party content. These are merely the  
21 Defendants' counsel, attempting to side step the complaint. The Plaintiff's complaint focuses  
22 almost entirely upon the deficiencies of Google's programming, improper oversight of their  
23 programming, and the evil existence of such a program.

24 **A TIME FOR ORDER**

25 As defined in the complaint and within the "Declaration of Gary Black" with evidentiary  
26 attachments, the Defendants' program permits "Courtesy Advertising" of Plaintiff's businesses  
27 without permission from the Plaintiff in such a way that it violates U. S. advertising law by  
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1 allowing an anonymous ever changing consumer-generated content (Pro or Con) to accompany  
2 the advertisement along side of Googles' paid advertisers/competitors. That is not the same as  
3 accusing them of being the publisher or speaker of third party content.

4 Furthermore, the Plaintiffs are standing on their own rights not those of the FTC or other  
5 governmental agencies, in fact the Plaintiff did within the complaint leave an open invitation  
6 for intervention by Governmental Authority if the Court were to deem so proper.

7 The Plaintiff's fears are the uncontrollable nature of Defendant's programming. The  
8 Defendants' argue in their "Motion To Dismiss" at page 11, lines 15, 16, and 17 as follows:

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

11 The Plaintiff in part agrees with the Defendant's statement; however, in the United States  
12 we have laws and regulations whereby it's citizens and enterprises, must presuppose a respect  
13 for the law in order to avoid chaos and serious violation to the rights of others. In doing so the  
14 duties and responsibilities of being in business are born on each and every business including  
15 the Defendant, Google, Inc. and need not necessarily be made in writing within the "Complaint  
16 For Damages". The Plaintiff has alleged that the Defendant, Google, Inc. was reckless in it's  
17 designing of a program that allows anonymous defamation, destruction, and misrepresentation  
18 of Plaintiff's businesses. The Plaintiff alleges the Defendant does owe the business and  
19 professional community a duty whether stated or not for responsible conduct as has been  
20 established for many years throughout the United States business community.

21 The Defendant's claim that it is an *impossible-to-fulfill duty* are completely false. Good  
22 examples of on line conduct are described within the complaint and other pleadings. For  
23 example, Angies List and the BBB both conduct web sites on line and maintain fairness and  
24 equally towards the business community, while at the same time, not allowing anonymity or  
25 unqualified accusations to accompany the name of a business or profession.

26 The expense of Google judging on line abuse reports and complaints against businesses  
27 or professionals in a fair and consistent manner is clearly substantial. Those that do it, such as,  
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1 the BBB and Angies List, charge their members dues or are non-profit. The Plaintiff fears that  
2 if Google is not held accountable or liable for their misconduct that others will seek to destroy  
3 Plaintiff's businesses in the same manner or perhaps those businesses that currently police the  
4 business community will alter their policies to a more profitable practice such as Googles.

5 Defendant's admissions of having no control over their 'Courtesy Advertising' program  
6 [ie: "...an impossible-to-fulfill duty..."] clearly reveals proof that the Defendants manner of  
7 conduct and ethics breach that of an orderly business society.

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

11 The Complaint For Damages and the Plaintiff's Declaration if examined broadly and as a  
12 whole, clearly demonstrates that Defendant's on line programming which alters the Plaintiff's  
13 business reputation beyond the control of Plaintiff are not only illegal but also unsuited for  
14 consideration in a civilized and orderly business community.

15 **THE COMPLAINT HAS A DESTINY**

16 The Plaintiff believes and is near 100% certain that it is not possible for the Defendant, Google,  
17 Inc. to ever prevail by motion, answer, discovery, or footwork in the instant matter. Not ever on  
18 a legal or factual basis and here's why:

19 Imagine an order of business within the United States whereby one simply goes to  
20 Google Places or Google Maps looks up there least favorite people who own a business  
21 or profession and destroys them while the owner of the program simply smiles in  
22 ignorance of the entire matter. Gangs, vandals, or simply mean spirited people will  
23 ultimately be open to the same sport of bullying on line once such a notion were to  
24 become popular, if not already. If that were the new order within the business and  
25 professions community there would be no real pressing need for legitimate dispute  
26 resolution at the licensing agencies, places such as Angies List, or the BBB. This is why  
27 the Plaintiff was so shocked, blindsided, and ambushed as stated in the complaint. The  
28

1 plaintiff literally couldn't believe a company like Google, Inc. could be so bold as it  
2 should be difficult for them to claim ignorance.

### 3 ARGUMENT

4 The issue facing the Court seems to be an order allowing basic freedoms while at the same  
5 time enforcing law and order.

6 In short the Defendants base their "Motion To Dismiss" on faulty grounds to avoid the  
7 essence of the "Complaint For Damages" and seek to distract the Courts attention to their well  
8 known immunity under § 230 of the Communications Decency Act.

9 The Plaintiff notices the Defendant has put forth a boiler plate laundry list of case  
10 histories and authorities for the Decency Act after the Plaintiff had already informed the  
11 Defendant of his support of the Decency Act; Plaintiff's complaint blames Google the  
12 Defendant not any third parties.

13 Therefore the Plaintiff assumes the Defendant's arguments are complete as they are  
14 seeking judgment of the Court on the "Complaint For Damages" and that the Defendant,  
15 Google, Inc., will not be requesting a second opportunity to answer the Plaintiff's complaint as  
16 the Plaintiff has already once graciously stipulated with Defendant's council for an extension of  
17 time to 'answer' the complaint.

### 18 CONCLUSION

19 The Plaintiff fully realizes the anonymous parties using the Defendant, Googles  
20 programming on line are possibly liable for damages and that the Plaintiff may have causes  
21 against them; however, the Plaintiff believes they're possibly kids as the Plaintiff's short stories  
22 on line are children's stories or a person that's possibly not well with a grudge against  
23 telemarketing. The Plaintiff's businesses were attacked at the BBB, Yahoo, and Google. but yet  
24 only the Defendant, Google, Inc. acted in what the Plaintiff would describe as an 'outrageous'  
25 showing of ignorance toward the matter.

26 Therefore as Google is seeking resolution in the form of a dismissal of the matter the  
27 Plaintiff is in response hereby motioning the Court for "Judgment On The Pleadings". The  
28 Plaintiff is asking the Court to construe the complaint as true and correct and apply the law to

1 the facts in this case in making a ruling. It seems only suiting to the Plaintiff as the Defendant,  
2 Google, Inc. played ignorant and left Plaintiff's family and businesses standing at a loss for six  
3 months or more until the Defendant was faced with the instant Federal action.

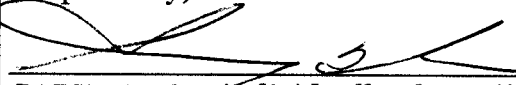
4 If the complaint and declaration of Plaintiff are considered true and correct, the Plaintiff  
5 believes the only issue outstanding is whether or not the Defendant's programming is  
6 "outrageous" and/or exceeds the bounds of an orderly business environment. *Hughes v. Pair*,  
7 46 Cal. 4th 1035, 1050 (2009) Conduct is considered "outrageous" when it is "so extreme as to  
8 exceed all bounds of that usually tolerated in a civilized community." *Id.* at 1050-51  
9 (quotations and citations omitted).

10 Furthermore, the Plaintiff believes any deficiencies within the technique of the complaint  
11 may by Judicial Notice be remedied by lines 12-21 of page 3 above or in the alternative the  
12 Plaintiff hereby request Leave of Court for thirty days to amend the complaint.

13  
14 **PRAYER FOR RELIEF**

15 **W**herefore, the Plaintiff prays for an immediate judgment in favor of the Plaintiff for  
16 Statutory damages in the amount of five hundred and seventy five thousand U. S. dollars  
17 (\$575,000.00) and a separate hearing or trial date schedule for the issue of punitive damages,  
18 and/or any other such relief as the Court may deem proper. The Plaintiff is asking for twenty  
19 million U.S. dollars (\$20,000,000.00) in punitive damages against the Defendant Google, Inc.

20  
21 Respectfully,

22   
GARY BLACK, individually plaintiff

Dated: July 8, 2010

23   
HOLLI BEAM-BLACK, individually plaintiff

Dated: July 8, 2010

24  
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1  
2  
3  
4 CERTIFICATE OF SERVICE BY US MAIL  
5

6 I, Jose G. Torres, declare:  
7

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

10 I am readily familiar with depositing mail with the United States Postal Service. On this date, I  
11 served on each party listed below  
12

13 PLAINTIFF'S RESPONSE TO DEFENDANT'S "MOTION TO DISMISS" and NOTICE OF MOTION and  
14 MOTION FOR JUDGEMENT ON THE PLEADINGS

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

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

22 I declare under the penalty of perjury under the laws of the United States that the foregoing is  
23 true and correct. Executed at Benicia, California 94510 on July 8, 2010.  
24

25 JOSE G TORRES

26 Jose G. Torres  
27  
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