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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
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR JUDGMENT ON
 THE PLEADINGS**

Hearing Date: August 12, 2010

Hearing Time: 2:00 p.m.

Courtroom: 2

(Hon. Claudia Wilken)

1 OPPOSITION MEMORANDUM

2 INTRODUCTION

3 Plaintiffs’ motion for judgment on the pleadings is procedurally improper and
4 fails on the merits. A party may file a Rule 12(c) motion only “after the pleadings
5 are closed.” But Google has not answered the complaint; it moved to dismiss it.
6 Accordingly, the pleadings are open and plaintiffs’ motion is premature. It should be
7 denied on that basis alone. To the extent it can be parsed, the motion is also
8 meritless. As Google’s motion to dismiss shows, Google is immune from suit under
9 Section 230(c) and plaintiffs fail to state a claim for relief. Accordingly, even if
10 plaintiffs’ motion for judgment on the pleadings were proper, it would fail completely
11 on the merits.

12 PROCEDURAL BACKGROUND

13 On May 28, 2010, plaintiffs filed a complaint against Google. (Docket No. 1).
14 The parties stipulated that Google’s deadline to answer, move, or otherwise respond
15 to the Complaint would be July 2, 2010. (Docket No. 8). On July 2, 2010, Google
16 moved to dismiss the complaint. (Docket No. 10). On July 8, 2010, plaintiffs
17 opposed Google’s motion to dismiss and filed a motion for judgment on the
18 pleadings. (Docket No. 15). Google has not answered the complaint.

19 ARGUMENT

20 **A. Plaintiffs’ Motion For Judgment On The Pleadings Should Be**
21 **Denied As Premature Under Controlling Ninth Circuit Law.**

22 A party may file a motion for judgment on the pleadings “[a]fter the
23 pleadings are closed.” Fed. R. Civ. P. 12(c). At the earliest, the pleadings close
24 when the defendant answers the plaintiff’s complaint. *See* Fed. R. Civ. P. 7(a)
25 (setting forth the pleadings allowed under the Federal Rules). Plaintiffs’ motion for
26 judgment on the pleadings is premature because Google has not filed an answer.
27 Under controlling Ninth Circuit law, their motion must be denied. *See Doe v.*
28 *United States*, 419 F.3d 1058, 1061 (9th Cir. 2005) (ruling that a motion for

1 judgment on the pleadings that was filed before an answer and during the pendency
2 of a motion to dismiss was “procedurally premature and should have been denied.”).

3 **B. Plaintiffs’ Motion For Judgment On The Pleadings Lacks**
4 **Merit.**

5 Plaintiffs’ motion should also be denied because it lacks merit. The
6 substantive basis for plaintiffs’ motion for judgment on the pleadings is nearly
7 impossible to decipher. Plaintiffs seem to contend that they are entitled to
8 judgment if the factual allegations in the complaint and a free-floating declaration
9 are accepted as true. But that is not how Rule 12(c) works. The Court does not
10 consider materials extraneous to the pleadings and accepts as true only those
11 matters that are admitted by the defendant in its answer when deciding a plaintiff’s
12 Rule 12(c) motion. *See Quest Commc’ns Corp. v. City of Berkeley*, 208 F.R.D. 288,
13 291 (N.D. Cal. 2002). Applying that standard here, there are no facts which can be
14 found in plaintiffs’ favor to support their motion because Google has not answered
15 the complaint. More fundamentally, Google’s motion to dismiss shows that Google
16 is immune from liability under 47 U.S.C. § 230(c) and that plaintiffs have failed to
17 state a claim upon which relief can be granted under Rule 12(b)(6) and Rule
18 12(b)(1). (Docket No. 10). Accordingly, even setting aside the procedural flaws in
19 plaintiffs’ motion, there is no conceivable basis for a judgment in their favor (on the
20 pleadings or otherwise).

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CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court deny plaintiffs' motion for judgment on the pleadings.

Dated: July 22, 2010

WILSON SONSINI GOODRICH & ROSATI
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By: /s/ David H. Kramer
David H. Kramer

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