

FILED  
JUL 28 2010  
RICHARD W. WELLS  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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

6 Plaintiffs are acting:  
7 *"In Propria Persona"*

8 **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

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

15 Plaintiffs,

16 vs.

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

REBUTTAL TO DEFENDANTS GOOGLE,  
INC.'S OPPOSITION TO PLAINTIFFS'  
MOTION FOR JUDGEMENT ON THE  
PLEADINGS

Hearing Date: August 12, 2010

Hearing Time: 2:00 p.m.

Courtroom: 2

(Hon. Claudia Wilken)

21 **REBUTTAL**

22 **1.**

23 At line 5, page 1 of the Defendants' opposition to Plaintiffs' "Motion For Judgment On The  
24 Pleadings" the Defendant makes a very surprising statement as follows:

25 *"But Google has not answered the complaint; it moved to dismiss it."*

26 The Plaintiff alleges Google did in fact 'Answer' the complaint, albeit in 'disguise' as a "Motion  
27 To Dismiss", because that's what the parties had agreed to by oral stipulation. The parties did  
28 not agree as stated in Defendant's written stipulation placed on file with the Court by opposing

Gary and Holli Black  
101 Auld Court  
Green Valley Falls, California 94534

1 counsel. Therefore, the pleadings are not open and the Defendant is either in default for  
2 failure to answer the complaint timely or in fact has answered each and every cause of action  
3 within the complaint with argument, as previously stated: (Please see Plaintiffs' Brief;  
4 INTRODUCTION ¶ 1)

5  
6 2.

7 At lines 8 and 9, at page 1 of the Defendants' opposition to Plaintiffs' "Motion For Judgment  
8 On The Pleadings" the Defendant states as follows:

9 *"As Google's motion to dismiss shows, Google is immune from suit under  
10 Section 230(c) and plaintiffs fail to state a claim for relief."*

11 At ¶ 6, page 7 of "Plaintiffs' Brief", the Plaintiff demonstrates that the Defendant  
12 did in fact go beyond the bounds of requesting a dismissal on legal technicality  
13 and in fact did completely 'Answer' the complaint and **admitted to it's**  
14 **allegations**. The Defendants admit to a purpose, a sponsorship, and  
15 endorsement of defamation because they also admit to ignorance of their  
16 programs content, as follows: (Please see ¶ 6 of Plaintiffs' Brief below or on file a few days  
17 prior to Defendants' opposition.)

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19 

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To wit: ¶ 6 of Plaintiffs' Brief:

20 Defendant's primary defense throughout the answer was in reliance upon  
21 the "Decency Act", 47 U.S.C. section 230(c) protecting on line providers  
22 from liability for third party content. The Defendants' argue in their  
23 "Motion To Dismiss" and really admits to a large portion of Plaintiff's  
24 allegations at page 11, lines 15, 16, and 17 as follows:

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

28 PLAINTIFF'S LAW ARGUMENTS ON THE DECENCY ACT

1) Plaintiff supports the Decency Act protections provided by

1 established and long standing traditions adhered to by honest and reputable consumer  
2 protection entities.

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### 3. SUMMARY

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6 The facts of the complaint incorporated into each cause of action and the Defendants'  
7 admission to the complaints' basis, that is to say the Defendants intrusion upon the Plaintiff's  
8 businesses, namesake, and bidding processes along with the Defendants admission to ignoring  
9 multiple causes of Plaintiff's damage, make self-evident that negligence or other responsibility  
10 lies with the Defendant. It should not be necessary to provide extraneous details, since  
11 anyone may immediately find the facts of the case in Plaintiffs' favor simply by Defendants  
12 admission and conduct. The Defendants should not by footwork be entitled to a *second*  
13 *answer* (2 turns at bat); accordingly, the Plaintiffs should be granted relief.

14  
15 The Plaintiffs' believe the Defendants' conduct is outrageous; surpassed only by their  
16 admissions to it. Defendant's mission stated above (p. 3, lines 11-15) and their admission to  
17 ignorance (p. 2, lines 25-26) with regards to content within their programming is  
18 outrageously unexceptionable within any orderly business society.

19  
20 With exception to Plaintiffs' request for damages totaling \$20,575,000.00 and any further  
21 orders by the Court, the Plaintiffs concede to being poor proprietors of a small family owned  
22 business. Having stated Plaintiffs case and asked for ruling whereby the Defendants have  
23 admitted to the majority of the complaint, the Plaintiffs feel it unnecessary to proceed further  
24 and hereby withdraw a previous request, in the alternative, for leave to amend the complaint.

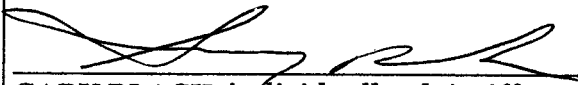
25  
26  
27 In the event of a Court decision in the Defendants' favor, the Plaintiffs allege the Defendants  
28 and each of them, should not be entitled to attorney fees or cost as there has been no discovery

1 conducted by the Defendants upon the Plaintiffs in this matter.

2 Therefore the Plaintiffs graciously thank the Court and its staff for their time in consideration  
3 of this matter and rest their case.  
4

5  
6 Plaintiffs REST.

7  
8 Respectfully,

9  
10 

Dated: July 28, 2010

11 GARY BLACK, individually plaintiff

12 

Dated: July 28, 2010

13 HOLLI BEAM-BLACK, individually plaintiff  
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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 "REBUTTAL TO DEFENDANTS GOOGLE,  
14 INC.'S OPPOSITION TO PLAINTIFFS'  
15 MOTION FOR JUDGEMENT ON THE  
16 PLEADINGS;  
17 **Hearing date: August 12, 2010; 2:00 P. M.**  
18 **Before: Honorable Claudia Wilken"**

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

21 Wilson Sonsini Goodrich & Rosati  
22 attorneys at law  
23 650 Page Mill Road  
24 Palo Alto, California 94304-1050

25 I declare under the penalty of perjury under the laws of the United States that the foregoing is  
26 true and correct. Executed at Benicia, California 94510 on July 28, 2010.  
27  
28

JOSE G TORRES  
Jose G. Torres