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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

**DECLARATION OF BART E.
VOLKMER IN SUPPORT OF
DEFENDANT GOOGLE INC.'S
REPLY IN SUPPORT OF ITS
MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

Hearing Date: August 12, 2010
Hearing Time: 2:00 p.m.
Courtroom: 2
(Hon. Claudia Wilken)

1 I, Bart E. Volkmer, declare as follows:

2 1. I am an attorney duly licensed to practice before this Court, and an
3 attorney at the law firm of Wilson, Sonsini, Goodrich & Rosati, counsel for
4 defendant Google Inc. (“Google”). I am over the age of eighteen and competent to
5 make this declaration. I make each of the following statements based on my
6 personal knowledge, and I could, if necessary, testify to the truth of each of them.

7 2. On June 15, 2010, I called plaintiff Gary Black to introduce myself as
8 Google’s outside counsel in this matter. I explained that 47 U.S.C. § 230(c) bars his
9 claims and requested that he dismiss his case against Google. Mr. Black declined.
10 Based on my schedule, I then asked for a short extension of time for Google to
11 respond to the Complaint from June 22, 2010 to July 2, 2010. Mr. Black agreed to
12 this request. We did not discuss in any manner that Google’s response would be
13 limited to an answer. And I never would have agreed to an extension that limited
14 Google’s substantive ability to respond to the complaint. On June 15, 2010, I sent
15 Mr. Black a letter memorializing our agreement that Google had until July 2, 2010
16 “to answer, plead, move or otherwise respond to the complaint.” A true and correct
17 copy of that letter is attached hereto as Exhibit A. Plaintiffs never indicated to me
18 a belief that my confirming letter was in any way inaccurate.

19 3. On June 22, 2010, I sent Mr. Black a draft stipulation that
20 memorialized the parties’ agreement that Google had until July 2, 2010 “answer,
21 move, or otherwise respond to the Complaint” and requested his consent to its
22 filing. A true and correct copy of that message is attached hereto as Exhibit B. I
23 sent Mr. Black a follow-up email on June 23, 2010, again asking for his consent to
24 the filing of the stipulation. A true and correct copy of that message is attached
25 hereto as Exhibit C.

26 4. On June 25, 2010, Mr. Black responded to my email messages by
27 stating that he had been on vacation and that “[i]t looks like you’ve gotten the
28 stipulation properly filed.” A true and correct copy of that message is attached

1 hereto as Exhibit D. Mr. Black did not indicate to me that he had any disagreement
2 with the form of the stipulation and I inferred from his statement that he had none.

3 5. On July 1, 2010, I called Mr. Black to secure his agreement regarding
4 the hearing date on Google's planned motion to dismiss. During that conversation,
5 I informed Mr. Black that Google intended to file the draft stipulation and he told
6 me that plaintiffs consented to its filing.

7 6. On July 2, 2010, Google filed the joint stipulation extending "Google's
8 deadline to answer, move, or otherwise respond to the Complaint" to July 2, 2010.
9 Plaintiffs never indicated to me a belief that the stipulation was in any way
10 inaccurate.

11 7. On July 19, 2010, plaintiffs claimed for the first time in a Court
12 submission entitled "Plaintiff's Brief" that their agreement to extend Google's time
13 to respond to the Complaint was conditioned on Google answering the Complaint.
14 Plaintiffs are mistaken. The parties never discussed any limitation on the form of
15 Google's response to the Complaint, and Google would not have agreed to an
16 extension of time that was conditioned on it giving up the substantive right to
17 attack the sufficiency of the Complaint. If Mr. Black had made such a demand,
18 Google would have sought relief from the Court or would have withdrawn its
19 extension request.

20 I declare under penalty of perjury under the laws of the State of California
21 and the United States that the foregoing is true and correct to the best of my
22 knowledge. Executed on July 29, 2010 at Palo Alto, California.

23
24 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

25
26 By: /s/ Bart E. Volkmer
Bart E. Volkmer

27 Attorneys for Defendant
28 Google Inc.