


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**   
AUG 25 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,

Case No. : 4:10-cv-02381-CW

13 HOLLI BEAM-BLACK, individually d/b/a Castle  
14 Roofing

**OBJECTION**

15 Plaintiffs,

TO ORDER GRANTING  
DEFENDANTS'  
MOTION TO DISMISS AND  
DENYING AS MOOT PLAINTIFFS'  
MOTION FOR JUDGMENT  
ON THE PLEADINGS

16 vs.

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


19 \_\_\_\_\_  
20 **Notice Of Objection and Objection**

21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on August 25, 2010, before the Honorable Claudia Wilken of  
23 the United States District Court for the Northern District of California the Plaintiffs have put on file  
24 with the Clerk of the Court the following:

25 " OBJECTION TO THE ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND  
26 DENYING AS MOOT PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS "

27 This objection in it's initial form is filed with the District Court first prior to filing a motion to stay  
28 pursuit to Federal Rule; FRAP 8(a)(1)(A); STAY OR INJUNCTION PENDING APPEAL. The rule cites as

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

1 follows: (a) Motion for Stay. (1) Initial Motion in the District Court. A party must ordinarily move first  
2 in the district court for the following relief: (A) a stay of the judgment or order of a district court  
3 pending appeal.

4  
5 The objection is based upon this filing, the above notice of Objection, the objection itself, the  
6 foregoing arguments, all pleadings on file with the clerk for this action, all the filings by the parties on  
7 file with the clerk, the Courts records including the final order at issue herein, Judicial Notice, the  
8 original complaint, the testimonies, all declarations by the parties, the exhibits on file in this action,  
9 and any other proper matters pertinent.

10 The Plaintiffs acting *pro se* respectfully has great indifference with the Courts Order dated August  
11 13, 2010. The Plaintiffs are asking the Court to acknowledge the specificity below and reverse the  
12 Courts order. In short the Plaintiffs believe the order weighs too heavily against law, is biased, and  
13 against the constitutional rights of the Plaintiffs.

#### 14 Introduction

15 1.

16 Plaintiff is attempting to grasp the Courts order and disappointed the Court has not taken a broader  
17 view of facts plead (papers) by both parties. First Plaintiff wishes to expose serious underlying bias. For  
18 decades contractors, sales schemes, telemarketers, and door to door salespeople have been fair  
19 game for authorities and others. Before any Court, credibility is therefore very low for the Plaintiff as  
20 is also true in this case; Plaintiff is also acting pro se on a lower academia level than council, and  
21 without proper standing in the community according to Defendants pleadings. In light of the heavy bias  
22 the Plaintiff is forced to attack the judgment in trial court throughout this objection to regain credibility.

23 The Plaintiff may be one of the last door-to-door salesman left unscathed in America after 41 years  
24 of selling; see: Exhibit 'I' attached to Plaintiffs Declaration entitled "Politics Against A Sea Of Social  
25 Economic Change". This is because Plaintiff is honest and does not lie to wit:

#### 26 1.) Bias and Lying

27 Lying is complicated as demonstrated by the Defendants' in declaration. The Plaintiff had believed  
28 Defendants stipulation had already been filed while Plaintiff was on vacation, per the email attached

1 within the Defendants declaration. Defendants declaration thereafter declares phone conversations  
2 about the stipulation with Plaintiff just prior to his filing a motion to dismiss; this is not true (lying) the  
3 Plaintiff thought the stipulation had already been filed as Plaintiff had received them by mail and email.  
4 The phone conversation prior to the Defendants filing was simply trying to talk the Plaintiff into using  
5 the e-filing system with the Court, in fact Council was emphatic about it which seemed strange to  
6 Plaintiff at the time but Plaintiff sees now he was generating needed phone record for the lie.

7  
8 Also, Plaintiffs stated in pleadings prior to Defendants declaration that the Plaintiff would never have  
9 agreed to a motion to dismiss and the Defendant stated in declaration that he would never have agreed  
10 only to an answer.

11 These are true statements by Plaintiffs and Defendants because the only conversation ever with mention  
12 of a stipulation was the one original phone call asking Plaintiff for an extension of time to answer. The  
13 Plaintiff agreed and told defendants council he would answer the answer. That's it, all the emails,  
14 phone calls, and the declaration of the Defendants are a lie and discoverable on the face of the  
15 pleadings filed with the clerk. The pleadings/arguments on file reveal Defendants' declaration as a  
16 written lie, though a good one, before the Court to avoid a ruling of default. The lie was filed with the  
17 court just after Plaintiff rested which was very smart for a lie; the Plaintiff had thought the Court would  
18 notice it as it was so very obvious to the Plaintiff and in written argument before the Court.

19  
20 Plaintiff believes council should be sanctioned for it.

21 The Courts 'Fair Reading' of the complaint within the order (P. 5; lines 7 - 9) states correctly as  
22 follows: "...fair reading of Plaintiffs' complaint demonstrates that they seek to impose liability on  
23 Defendant for content created by an anonymous third party."

24  
25 This is a good read which shows the Plaintiff did not violate any Fed. rules in drafting the complaint,  
26 and within a "fair reading" of the complaint the Court should, "...take all material allegations as true and  
27 construe them in the light most favorable to the Plaintiff." NL Indus., Inc. v. Kaplan, 792 F. 2d 896,  
28 898 (9th Circuit Court of Appeals, 1986)

1 The Plaintiffs did more than sufficiently make allegation supported with evidence within the Complaint  
2 and Plaintiff's Declaration to demonstrate how the Plaintiffs rights to due process were being violated  
3 and his business names were being misused.

4 The Courts and many others on this issue have some well conditioned biases the Plaintiff addresses  
5 with the following attack on judgment in trial court.

## 6 The Objections & Grounds For Reversal

### 7 2. Bias/Misunderstood

8 The complaint alleges throughout that the Defendants were using Plaintiff trade names for advertising  
9 alongside others without permission (§ 2, § 4, § 3 lines 6-10 Pl. Compl. & others). The Court improperly  
10 assumes this to be acceptable because the Plaintiff is receiving free advertising from Google. That  
11 thinking is unfounded and the Plaintiff believed that alleging they had stolen his identity was sufficient  
12 if taken as true by the Court and without the Courts bias.

13  
14 The problem in this case with stealing Plaintiffs identity for use on line is that it is misrepresentation or  
15 false advertising. When consumers call-in to Plaintiffs offices from commercial advertising they are  
16 in every case told that Plaintiff will not give them an estimate on their roof project. Of course this  
17 makes the public furious and they scream false advertising. Now the Court like others recently, will  
18 say Why not accept the free advertising?

19 All during these proceedings both Plaintiffs has been hammered by Google robot telemarketers trying  
20 to sell Plaintiff advertising for their roofing businesses. In particular a company called 'Contractors  
21 Exchange' which may be Goggle affiliated/commissioned got extremely upset in trying to get Plaintiff  
22 to answer the WHY question, because they were offering free advertising for the Plaintiff and Plaintiff  
23 would not tell them why he refused. The BBB is also on commission and was attempting to sell the  
24 Plaintiff Google advertising for free during these proceedings; again Plaintiff does not advertise as  
25 stated in the complaint, and here is why.

26  
27 The Plaintiff is a door-to-door salesman and does direct selling by telemarketing, mailings, and  
28 canvassing. The Plaintiff will typically run 6 - 9 sales appointments in one day and estimate prospects

1 roofs. Plaintiff can not accept call ins because sales lead generation is daily and targeted to specific  
2 neighborhoods throughout eleven or so different cities. When someone calls Plaintiff's place of  
3 business for a roofing estimate it is extremely rare, if ever, that a call in will hit Plaintiffs sales target  
4 for that day. Plaintiff considers it a trade secret; now the Court knows why the "Courtesy Advertising"  
5 produced by Google is a misrepresentation of Plaintiffs business. Everyday Google advertises Plaintiffs  
6 business the Plaintiff is at risk as stated in the complaint. So if the Court believes a free advertisement  
7 isn't harmful, the Court now knows it is bias. The seriousness of business identity theft and free  
8 advertising as stated throughout the complaint when the complaint is interpreted as truthful is great and  
9 the Court should recognize Googles use of Plaintiffs business name as damaging.

### 10 3. Bias/Misunderstood

11 The Court seems to think incorrectly that these consumer generated advertisements on Googles web  
12 site Pro or Con (¶ 33, Pl. Compl. line 8 pro/con) as stated in the complaint, are business reviews and helpful  
13 to the general public. Nothing could be farther from the truth. As stated in Google's pleading "... to help  
14 consumers make better choices." The Court and the public believe this is innocent, when in fact it is  
15 Google enhancing (¶ 33 38 Pl. Compl.) and soliciting free content from the public for the benefit of  
16 Plaintiff or the advertisers that paid Google on the same page (E.R.) with Plaintiffs business listing.  
17 ("Courtesy Advertising"). Google does this under the assumption that a business wants their free  
18 advertising services when in fact it's a conspiracy for profit (¶ 35 Pl. Compl.) and deceptive to many.

19  
20 (¶ 33 Pl. Compl.) Plaintiff alleges, that large market forces, such as the defendant Google, Inc., should not enable  
21 '*courtesy advertising*' that places business and professions at risk without written consent and disclosure of said risk  
22 from the parties being advertised. '*Courtesy Advertising*' allowing for public defamation or promotion of a business  
23 or professional, may as in this case, cause meaningful damage towards others, whether the consumer generated  
24 content is anonymous or not, whether pro or con, without a due process.

25 (¶ 35 Pl. Compl.) "Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal  
26 acts." — "...Defendant, Google, Inc. knew in advance that their programming was hostile, could and does cause  
27 harm by *enticing members of the general public to commit illegal acts*, which is now continuing on a business as  
28 usual basis."

29 (¶ 38 Pl. Compl.) "...without the Plaintiff's permission while exaggerating the benefits of a free product to the  
30 public at large and fails to disclose to businesses a material relationship where one exists between the public  
31 at large and the Plaintiff's business."

32 If the public comment is positive it drives call ins to Plaintiff which result in false advertising (¶ 17 ¶ 33  
33 Pl. Compl.) and if the comment is negative the Plaintiff losses hundreds of thousands of dollars in sales

1 and valuable sales leads as alleged, but loses sales leads whether the comment is pro or con. These acts  
2 are all alleged in the complaint if the complaint is taken as true.

3 (¶ 35 Pl. Compl.) "Plaintiff alleges, that large market forces, such as the defendant Google, Inc., should not enable  
4 '*courtesy advertising*' that places business and professions at risk without written consent and disclosure of said risk  
5 from the parties being advertised. '*Courtesy Advertising*' allowing for public defamation or promotion of a business  
6 or professional, may as in this case, cause meaningful damage towards others, whether the consumer generated  
7 content is anonymous or not, whether pro or con, without a due process."

8 The anonymous third party content is a 'conspiracy' or 'collaborative effort' between Google.com (¶ 35  
9 Pl. Compl.) the designer/producer of the program and the third-party content provider for the purposes of  
10 driving traffic and profits to there paid advertisers as alleged in the complaint (¶ 17 ¶ 33 Pl. Compl.).

11 35.) Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal acts.  
12 Throughout the on line '*courtesy advertising*' programming distributed to the public by the Defendant, Google, Inc.,  
13 there exist options whereby the general public may report suspect content to the Defendant, Google, Inc.. The  
14 general public may select and report content that they believe to be abusive or illegal; Therefore one may conclude  
15 that the Defendant, Google, Inc. knew in advance that their programming was hostile, could and does cause harm  
16 by *enticing* members of the general public to commit illegal acts, which is now continuing on a business as usual  
17 basis.

18 "17.) The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a  
19 instant and direct result of the plaintiff's direct telemarketing and door-to-door selling efforts  
20 rather than from Defendant's own efforts. "

21 So the complaint is not moot as the Court suggest the Court simply is having a hard time believing it. If  
22 the Complaint and allegations are accepted as true which should be due process in this case the  
23 Defendant is the producer of the third-party content by complicity. In section 5 below Plaintiff  
24 explains why Google is 100% liable and more for the solicited third party content.

#### 25 4. Fair Reading In Best Light For Plaintiff

26 Following is a simple outline of the case alleged by Plaintiff and resulting effects if taken as true  
27 reverses the Courts verdict:

- 28 1. Google first takes Plaintiffs identity without permission (¶ 38 Pl. Compl.);
2. Google then uses it on their web site without Plaintiffs' permissions; sales reps. call it '*Courtesy Advertising*';
3. Google then sells Plaintiffs identity to the public (<http://google.com>) paid for by Plaintiffs competition paying Google for ad placement next to Plaintiffs business name;
4. Then Plaintiffs competition interrupts by stealing the Plaintiffs prospects and sales leads (¶¶16 17 Pl. Compl.);
5. Google then solicits the public (as well as anyone else that may have difference with Plaintiff) for advertising in the form of consumer-generated content, pro or con or anonymous;
6. Google refuses to communicate with Plaintiff (¶¶ 22 &23 Pl. Compl.)

1 7. (¶ 19 Pl. Compl.) Google refuses to allow Plaintiff to remove the 'Courtesy Advertisement'  
2 of his name but has programming which purportedly allows it which doesn't work and  
3 abuse reporting programming which Google ignores.

4 The damage:

- 5 1. Negative anonymity on Google takes away Plaintiffs rights as a business to due process  
6 (¶ 19 Pl. Compl.) and positive comments cause call-ins which are false advertising;
- 7 2. Plaintiffs sales contracts cancel, existing customers turn violent, and Plaintiff can no  
8 longer work in the neighborhoods he's worked for the past 19 years or so (¶ 17 Complaint  
9 throughout & Pl. Declaration of Damages.);
- 10 3. Plaintiff abandons his real name and acquires a Russian namesake because Plaintiff is a  
11 new writer being attacked online for his short stories rather than his business activities  
12 (see Pl. Declaration.);
- 13 4. Six months into the attack, Plaintiff has to sue in Fed. Court to get Google to respond;
- 14 5. Plaintiffs lose income (¶ 32 Pl. Compl.) and are emotionally distressed and must work  
15 twice the hours and drive twice the distances to get work;
- 16 6. Google motions for dismissal on grounds of immunity;
- 17 7. Plaintiff responds as Google admitted to reviewing businesses to help consumers make  
18 better choices and admitted to not being responsible for the anonymous third party  
19 (advertisements pro or con) in review of Plaintiffs business;
- 20 8. The Court Grants Defendants' Motion To Dismiss;
- 21 9. Plaintiff no longer writes publicly and loses his right to due process of law by Court  
22 order; while waiting 24/7 for the next pirate to attack him and review his business.
- 23 10. Plaintiffs must look over their shoulder 24/7 daily, to know if they're being robbed or  
24 attacked by such programs of "Courtesy Advertising" that do not notify businesses of  
25 complaints or publication.

#### 26 5. In A Fair Reading Google Is Denied Immunity For Third Party Content

27 First it was not the intention of Congress when enacting the 47 U.S.C. §230(c) immunity that our  
28 American values and constitutional rights as businesses and professionals would be destroyed by  
Google; The Courts should be inclined to follow the laws as intended by Congress rather than  
attempting to make or change law from the bench. Anonymity has no place when large market forces  
attempt advertising schemes which review businesses on line. Anonymity positively by it's mere nature  
violates the Fifth Amendment of the constitution which entitles Plaintiffs to due process of law  
and Google knows that; Google is smarter than the rest of us.

Google decided as a deliberate choice to solicit for and allow anonymity, in review of Plaintiffs  
businesses. This constitutes a collaborative effort between the internet provider and the third-party  
pirates, making Google liable in part for any actual consumer comments posted which are anonymous  
advertisements pro or con for Plaintiffs businesses, in this instance. Google places these  
advertisements in a specific location beneath the Plaintiffs business information which is accessed by

1 the public from the Google.com web site.

2  
3 The Plaintiffs believe cases involving anonymity should be adjudicated on a case by case basis giving  
4 weight to the decisions, rights, and entitlements of all parties concerned. In this case the Defendants  
5 chose to sponsor a program reviewing businesses online (Def. Motion To Dismiss; p. 2, lines 8 - 18)

6 "The purpose of Google Places is "to help people make more informed decisions about  
7 where to go, from restaurants and hotels to dry cleaners and bike shops [.]"<sup>2</sup> Google Places  
8 contains listings for millions of hotels, restaurants, and other businesses. Listings  
9 typically contain the address and phone number of the listed business. In addition, users of  
10 Google Places can write and post reviews of the businesses."

11 and also chose to allow anonymity which obviously denies Plaintiffs businesses a due process of law as  
12 the identity of the party is unknown. Due process of law is provided by the Fifth Amendment to the U.  
13 S. Constitution, whereby, no person shall be "deprived of life, liberty, or property, without due process  
14 of law." In this instance the Courts must give great recognition to the purpose stated above by  
15 Google and Congresses intention with regards to immunity — which certainly was not for  
16 Google to violate Plaintiffs constitutional rights.

17 An "information content provider" is "any person or entity that is responsible, in whole or  
18 in part, for the creation or development of information provided through the Internet or any  
19 other interactive computer service." 47 U.S.C. Sec. 230(f) (3)

20 Google can not claim they do not own the entire web page as it is url addressed as Google  
21 Maps and Google Places where a business review showing plaintiffs businesses, paid  
22 advertising by Plaintiffs competitors, and Google solicited third party advertisements from  
23 the public. It is in fact their web page.

24 The Court should give even greater recognition to Googles choice to deny the Plaintiffs  
25 businesses a due process by allowing anonymity and refusing to remove the Plaintiffs from  
26 their program.. The Court should recognize this as a hostile attack on the businesses of the  
27 Plaintiffs and in violation of the Fifth Amendment due process. The Plaintiff did state a  
28



1 denial of due process and anonymity within the complaint at ¶ 19 to satisfy the specificity  
2 of Fed. R. Civ. P. 8(a) -- "without any due process" in ¶ 19 is a simple statement which  
3 means Google had a duty and failed to fulfill it:  
4

5 "19.) The defamatory business review of Plaintiff's business (¶ 1; Pl. Compl.) is anonymous and  
6 unverifiable as to the comments accuracy. In the instant matter, the Plaintiff alleges that said  
7 comment was posted on the Defendant, Google, Inc.'s, web site against law as it's without any  
8 due process or administrative action and the Defendant, Google, Inc., has not contacted the  
9 Plaintiff after repeated attempts by the plaintiff to remedy the on line public comment. The  
10 Plaintiff has essentially been ignored by the Defendant; not even a return e-mail."

11 Plaintiffs also stated within the complaint At ¶'s 53, 54, 55 of the complaint,

12 **"... Google, Inc., acted negligently in handling the on line business review 'Courtesy Advertising' processes and  
13 damaged the Plaintiffs financially and emotionally as a direct result of their negligence."**

14 "... Google, Inc., was negligent and inflicted injury intentionally upon the Plaintiffs by very bad oversight of  
15 the their business review programming."

16 "... Google, Inc., was negligent and inflicted injury intentionally upon the Plaintiffs by ignorance of the Plaintiffs  
17 many notices to the Defendant, Google, Inc. informing them that Plaintiff was being harmed illegally and was  
18 suffering financially as a result thereof."

19 The Plaintiffs therefore believe an order by the Court granting immunity under 47 U.S.C. §230(c) to the  
20 Defendant Google is outrageous as it grants Federal licensure for the Defendants to commit further  
21 wrongful acts during Googles choice and course of denying due process of law to Plaintiffs and against  
22 law as it was not Congresses intent to deny Constitutional rights with the immunity §230(c).

23 Again the Courts 'Fair Reading' of the complaint within the order (P. 5; lines 7 - 9) states correctly as  
24 follows: "...fair reading of Plaintiffs' complaint demonstrates that they seek to impose liability on  
25 Defendant for content created by an anonymous third party."

26 Plaintiffs seek to hold Google liable for advertising the Plaintiffs business without permission in an  
27 unlawful manor which intentionally denys Plaintiffs a due process of law and causes Plaintiffs harm  
28 making Google liable to Plaintiff in spite of the allegations that the content might be third party.

The Court should weigh the facts of a case in making a determination as to weather Google should have  
removed the comment when notified several times that the Plaintiffs were suffering financially on a  
daily basis; see notices at(Exhibits B, C, D, E, & F attached to the DECLARATION OF GARY BLACK, with exhibits  
A through L). In examining the facts it may easily be noticed that the Google.com review of Plaintiffs

1 business constitutes an assassination of Plaintiffs' business with an open unresolved anonymous  
2 complaint and that the Plaintiffs notices to Google were very pointed and not shy in exclamation of  
3 Plaintiffs businesses being damaged daily. The Decency Act was in part design to allow Internet  
4 companies to remove offensive content without becoming the publisher but in this instance Google  
5 choose to ignore Plaintiffs demands even though they knew it was denying the Plaintiff a due process.  
6 Therefore, Google is responsible for the third party not others because Googles more intelligent than  
7 the rest of us.

8  
9 In a fair weighing of the evidence it's easily noticed that the Plaintiff has sued the Defendant for  
10 violation of due process and identity theft (Stealing sales leads) rather than for an unknown party which  
11 may not even be a third party. The immunity under 47 U.S.C. §230(c) the Defendants seek and were  
12 thereafter awarded by order of the Court (P. 7; lines 23, 24, & 25) can not be granted in this case because  
13 the immunity was not designed for anonymity only for third parties. The burden of proof of third party  
14 rest with the Defendants as they are the parties seeking the immunity and the Court should not  
15 judicially notice an anonymous protected identity without a due process being afforded to the third  
16 party if one exist. The instant matter is closed without the Defendants having provided a third party,  
17 and the Defendants lie and can not be believed. So the Defendants were simply not diligent and instead  
18 relied upon the Courts psychic powers of Judicial Notice.

19 Therefore the Plaintiffs conclude the Order of the Court granting immunity to the Defendants is biased  
20 because the Court wishes to blame someone else for Googles poor choice of allowing anonymity and  
21 Googles poor choice of ignoring the Plaintiffs many attempts at resolution - for profit. The Court in this  
22 instance should placed the blame where it belongs, squarely on Google.com. and note that the Plaintiff  
23 never sued Yahoo or the BBB. Stated within "Plaintiffs Declaration Of Damages" the Plaintiff stated:

24 "Plaintiffs were forced by Google's market strength to monitor the Google.com web site as Google used Plaintiffs  
25 business information publicly for purposes of selling advertising from Oct. 20, 2009 thru about the first week of  
26 June 2010. The Plaintiffs did not consent to these acts by Google. Plaintiffs' prospects, detailed below, were able to  
27 easily access the Plaintiff's business information from the front page of the Google.com web site not an unknown  
28 third party. Plaintiffs were emotionally disturbed and devastated by said access..."

The courts in weighing cases such as this may note the UNIQUE nature of business reviews online or

1 as in this case "Courtesy Advertising" by Google as being done for profits which differs this case from  
2 a simple case of online defamation in that web site owner such as Google profits by taking Plaintiffs  
3 identity and profits from anonymous defamation as it helps their paid advertisers take plaintiffs sales  
4 leads and prospects, thereby enhancing Googles offer to those other roofers that are paying Google for  
5 ad placement with Plaintiffs identity. Google further profits by ignoring defamations because they  
6 believe they're immune which is why the Plaintiff could not get a response from Google which  
7 constitutes an abuse by google of the immunity statute. Google still says they haven't responded but  
8 they confessed in their Motion To Dismiss.

9 In the instant matter the complaint at (¶ 17; p. 5; ¶ 20 p. 6; and ¶ 22 p. 7) alleges a profit making scheme by  
10 Defendants which steals the Plaintiffs sales leads (his prospects) wrongfully, as it's without the  
11 Plaintiffs permission and demonstrates that the Defendant Google profits it's paid advertisers and  
12 interrupts the Plaintiffs business. These parts of Plaintiffs complaint really have more to do with the  
13 identity theft rather than solicited third party advertisements. ¶'s 17, 20, 22 as follows:

14 17 - "The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct result  
15 of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own efforts. The  
16 Defendant accomplishes this by allowing what is referred herein as "*courtesy advertising*" on their business review  
web site which is posted publicly on line at <http://www.google.com>. Everyday the Plaintiff prospects door-to-door,  
canvasses door-to-door, or sends out mailings he/she produces traffic to the Defendants, Google, Inc.'s web site..."

17 20 - "The Plaintiffs prospect roofing sales using direct selling methods allowed by law; they include telemarketing,  
18 direct mail, and canvassing door-to-door. The Defendant Google, Inc. thereafter ambushes and blindsides the  
19 plaintiff's business with an on line advertising scheme, referred to herein as 'courtesy advertising', while  
20 wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts. The Defendant, Google, Inc.  
21 benefits financially because prospective clients inquire on line of the Plaintiff's businesses at the Defendant's web  
22 site where the prospect is then bombarded by paid advertising from other roofing companies in competition with  
23 Plaintiff's business. The Defendant's policy of ignoring the content and nature of the negative anonymous review at  
issue within this complaint does harm to the Plaintiff in that the negative review sways the Plaintiffs' prospect  
toward those businesses who have paid the Defendant, Google, Inc., for advertising alongside the 'courtesy  
advertisement' of Plaintiff's businesses. Once the Plaintiff has spent hard efforts to locate a prospect and identified a  
need for a prospective customer that otherwise may not have been noticed by a prospective customer the customer  
is swayed away from the Plaintiff by false statements and misrepresentations by way of consumer generated  
content on the Defendant, Google, Inc.'s, web site. The plaintiff has tried on several occasions to remove itself from  
the Defendant's web site without success."

24 22 - "The defendant, Google, Inc., has refused on multiple occasions throughout the past six months to remove  
25 mediate, or even acknowledge damaging advertising directed at the Plaintiffs businesses."

26 Defendants stated within their 'Motion To Dismiss' (p.11, lines 15, 16, & 17) as follows:

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

1 Again that is a choice Google makes to deny they owe a duty and deny Plaintiff a due process of law  
2 for profit in reviewing Plaintiffs businesses for the sale of advertising to Plaintiffs competitors. It is a  
3 choice Google made because as stated within Plaintiffs Brief (P. 14; lines 19 - 23):

4 "Google was the only on line program causing the Plaintiffs damages because they would not  
5 respond; Yahoo and the BBB were difficult but always communicated and took proper action as  
6 Plaintiffs businesses were being attacked on line.

7 Plaintiffs total bill for damages cited within "Plaintiffs Declaration For Damages" (P. 2; lines 2-3): is  
8  
9 \$20, 575,000.00.

### 10 Partial Proposed New Verdict

11 The previous Courts order has exceeded its' power beyond the U. S. Constitution; the Court upon  
12 reconsidering the case now reverses it's order.

13 The Decency Act; 47 U.S.C. §230(c) was not designed specifically with anonymity in mind because  
14 anonymity as discussed, automatically deprives the Plaintiff in this instance an important entitlement of  
15 due process of law under the Fifth Amendment. Google made the choice to allow the anonymity in  
16 advertising Plaintiffs businesses and the complaint is specific upon the denial of due process of law and  
17 Googles use of Plaintiffs identity for the benefit and publicizing of paid advertisers along side Plaintiffs  
18 business name without Plaintiffs permission.

19 Therefore the Court can not grant immunity in this anonymity case without declaring the Decency Act  
20 unconstitutional when against a businesses right to due process of law. Cases before the Court  
21 involving anonymity on line should be adjudicated on a case by case basis giving weight to the  
22 decisions, rights, and entitlements of all parties concerned. In this case the Defendants chose to sponsor  
23 a program reviewing Plaintiffs businesses online (Def. Motion To Dismiss; p. 2, lines 8 - 18) as follows:

24 "The purpose of Google Places is "to help people make more informed decisions about  
25 where to go, from restaurants and hotels to dry cleaners and bike shops [.]"<sup>2</sup> Google Places  
26 contains listings for millions of hotels, restaurants, and other businesses. Listings  
27 typically contain the address and phone number of the listed business. In addition, users of  
28 Google Places can write and post reviews of the businesses."

and also chose to allow anonymity which obviously denied the Plaintiffs businesses a due process of  
law as the identity of the party is unknown, and ignore Plaintiffs many attempts to communicate with

1 Google. Due process of law is provided by the Fifth Amendment to the U. S. Constitution, whereby, no  
2 person shall be “deprived of life, liberty, or property, without due process of law.” In this instance the  
3 Courts must give great recognition to the purpose stated above by Google and Congresses intention  
4 with regards to immunity — 47 U.S.C. §230(c).

5 Defendants Motion To Dismiss is Denied and Plaintiffs Judgment on the Pleadings is  
6  
7 Granted in the amount of \$20,575,000.00.

### 8 6. Burden of Proof

9 Defendants seeking protection under 47 U.S.C. §230(c) must bear a heavy burden of proving their  
10 rights to know the 'protected identity' of anonymity outweigh the First Amendment rights of the  
11 anonymous party to anonymity. The Courts should not appoint identity as third party to shift  
12 liability without a showing of due process when the evidence shows the Plaintiff suspects the  
13 Defendant and the Defendant is making money off the anonymity; the bias in this case would be to  
14 great as Plaintiffs constitutional rights were clearly violated.

15 In filing the complaint the Plaintiff suggested that Google was attacking the Plaintiff but Google has  
16 never responded to the accusation.

17 The Plaintiff did not know if in fact there existed a third party but Plaintiff suspected Google in a May 3,  
18 2010 letter, a month prior to this action and also attached it to the Plaintiffs' Declaration. Google, their  
19 employees, or sales agents are the Plaintiffs top suspects as the originators of the anonymous content;  
20 that is not an accusation but rather the Plaintiff saying they are parties of interest to Plaintiff.

21 Evidenced within the complaint by DECLARATION OF GARY BLACK (Exhibit 'F') A letter sent to Google on  
22 May 3; Excerpts as follows:

23  
24 "I see now that after writing to your headquarters just last week that I now have another complaint posted on your  
25 web site."... "Now I have two complaints the newest is also a blatant lie. Additionally I'm receiving hate mail at my  
e-mail address I previously used on my Google Account (gerald@raymondavich.com). I know you do not want to  
here it but all my recent problems lead directly to Google."

26 The Defendant's never questioned the exhibits in this case nor did they ever respond prior to this action;  
27 the letter was sent to them a month prior to filing the complaint and is in the Plaintiffs' Declaration on  
28 file with the Clerk. It should also be noted that when a consumer goes to the CSLB or BBB to check on

1 a contractor most consumers believe the review of the business they're seeking information on is that of  
2 the CSLB and BBB. So when companies new to the field enter the arena such as in Googles case they  
3 may not wholly understand that many consumers think the comment section of the advertising is in fact  
4 Google. The Plaintiff did think it was Google when he first saw it, while in disbelief, but the Plaintiff is  
5 old.

6 The Plaintiff in the DECLARATION OF GARY BLACK (P. 5 ¶ 9) :

7 "On June 10th only about four hours after filing proof of service with the Courts in the instant matter I was  
8 telephoned by one Tamara Jih claiming to be in-house from the Google defense team. She first stated, "Do you  
9 want to voluntarily dismiss your complaint?", in a somewhat threatening tone then asked if I was aware of the  
10 Decency Act. I told her I was and that I supported it. She then informed me that they'd seek all legal fees and cost  
against me and investigate my on line activities, including items involving my own content which I had  
previously requested they remove from the Google search. The items I removed from Google were my own  
recently authored short stories, as well as, a letter to Senators..."

11 Here's an email excerpt from the DECLARATION OF GARY BLACK (Exhibit 'H') confirming the  
12 phone call from the Google defense team:

13 "Confirming our conversation I am very aware of 230(C), that Google will seek fees and cost against me, and that  
14 Google will investigate my online activities on your web site." "...we're not  
willing to initiate a voluntary dismissal at this time."

15 Plaintiffs' Declaration was filed prior to the Defendants Motion To Dismiss/Answer. Plaintiff suspected  
16 Google of the defamation because their attorney mentioned investigating items Plaintiff removed from  
17 Google search. Items removed were numerous, mostly children's short stories. For authors the web  
18 crawlers depicted in the short story "Cat Scratches" are vicious little monsters that eat online writers  
19 (Declaration Exhibit 'I'). Then of course there was Plaintiff's political letter "Politics Against A Sea Of  
20 Social Economic Change" about direct sales and telemarketing in America. All these stories were  
21 Federally registered and StoryStalker® is a registered Fed. Trademark, whereby removal was my right  
22 and should not have been a connected thought in the phone conversation with Googles defense team,  
23 thereby raising my suspicion level even higher that Google was indeed the anonymity as they are the  
24 ones profiting from the anonymity - a simple case of following the money.  
25

26 The Plaintiffs believes the identity behind the anonymity is also unknown to the Court and 'identity  
27 protected' under the First Amendment.  
28

1 The Courts' judicial notice order identifying the consumer-generated content at issue as third party and  
2 entitling Google to immunity under 47 U.S.C. §230(c) is very biased towards the Plaintiffs case as it  
3 shifts liability away from the Defendant. The Court should not seek to identify the anonymity in this  
4 case where denial of constitutional rights of the Plaintiff are severe. The Court can not know that a third  
5 party is behind the anonymity in this case because it could easily be any one of Googles sales agents or  
6 employees, a disgruntled employee of either party, or the parties themselves.

7 The Plaintiffs believe since the Defendants requested the third party immunity under 47 U.S.C. §230(c)  
8 that Defendants should be under the burden of proof for their defense rather than in reliance upon the  
9 physic powers of the Court. To the Plaintiff this is a risk associated by their choice of allowing  
10 anonymity in Plaintiffs name, taking Plaintiff name without permission for advertising purposes, and  
11 ignoring the Plaintiff.

12  
13 Therefore the Courts order granting immunity to Google on the basis of third party content is based  
14 upon mere assumption that there exist a third party and unfair to the Plaintiff as it exceeds the Courts  
15 powers of Judicial Notice because the Courts not physic.


#### 16 6. Pro Se Litigation

17 Standards for Procedure within the Court system should not hold the pro se Plaintiffs who are  
18 common working people to the strictest of standards on Court rules or lingual acrobatics when against  
19 super powers with a battalion of well practiced attorneys.


#### 20 7. Conclusion

21 The Plaintiff believes the Court should reverse it's order.

22  
23 Respectfully Submitted,

24   
25 GARY BLACK, individually plaintiff

Dated: 8/25/2010

26   
27 HOLLI BEAM-BLACK, individually plaintiff

Dated: 8/25/10

1  
2  
3 CERTIFICATE OF SERVICE BY US MAIL  
4

5 I, Jose G. Torres, declare:  
6

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

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 a

12  
13 **"OBJECTION**

14 **TO ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING AS MOOT**  
15 **PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS"**  
16

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

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

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

27 JOSE G. TORRES  
28 Jose G. Torres