

GARY BLACK,  
HOLLI BLACK  
101 Auld Court  
Green Valley Falls, California 94534  
Telephone (707) 373-2960

**FILED** *R*

SEP 10 2010

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

Plaintiffs are acting:  
"In Propria Persona"

**UNITED STATES DISTRICT COURT**

for the

**NORTHERN DISTRICT OF CALIFORNIA**

GARY BLACK, individually d/b/a Cal Bay  
Construction and,

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

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

**Motion To Stay:**

Plaintiffs,

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

vs.

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

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

\_\_\_\_\_  
Notice Of Motion

To All Parties And Their Attorneys Of Record:

PLEASE TAKE NOTICE that on September 10, 2010, before the Honorable Claudia Wilken  
of the United States District Court for the Northern District of California the Plaintiffs have put  
on file with the Clerk of the Court the following:

**Motion To Stay:** THE COURTS' ORDER GRANTING DEFENDANTS' MOTION TO DISMISS  
AND DENYING AS MOOT PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

This motion in it's initial form is filed with the District Court pursuant to Federal Rule; FRAP 8(a)(1)(A);  
STAY OR INJUNCTION PENDING APPEAL. The rule cites as follows: (a) Motion for Stay. (1) Initial  
Motion in the District Court. A party must ordinarily move first in the district court for the following

1 relief: (A) a stay of the judgment or order of a district court pending appeal.

2  
3 This motion is based upon this filing, the above notice of motion, the motion itself, the foregoing  
4 arguments, all pleadings on file with the clerk for this action, and all other filings by the parties on file  
5 with the District Court Clerk.

#### 6 Motion

7 The Plaintiffs, acting *pro se*, have great indifference with the Courts Order dated August 13, 2010. The  
8 Plaintiffs hereby motion the District Court and Court of Appeals to review the specificity below, stay  
9 the District Courts order, and reverse the District Courts order in favor of the Plaintiffs. In short the  
10 Plaintiffs believe the Courts' Order weighs too heavily against law, is biased, and against the  
11 constitutional rights of the Plaintiffs. Plaintiffs motion the Appellant Court and the District Court to  
12 'stay' the District Courts Order in the above entitled case during these appeal processes to protect the  
13 rights of Plaintiffs and others during the appeal proceedings. Plaintiffs believe they prevailed; a closer  
14 reading of the matter would have granted the Plaintiff Judgment On The Pleadings and read in  
15 similarity to the following proposed verdict:

#### 16 Proposed Verdict

17 In a fair view of the matter, it's apparent that 1st Amendment (anonymity) and 5th Amendment (Due-Process)  
18 rights are opposed within Googles business review process. Said opposition imposes an inherent responsibility  
19 upon Google to presuppose the laws of responsible behavior when advised of wrongful acts associated with their  
20 program. Entities such as Google, possessing a large market force penetration should not attempt profits from  
21 purposely constructing programs with opposing substantive rights of the people.

22 Defendant's admissions of having no control over their business review /courtesy advertising program  
23 [ie: "...an impossible-to-fulfill duty..."] clearly reveals proof that the Defendants manner of conduct and  
24 ethics breach that of an orderly business society. Once made aware of misconduct or illegal acts, even  
25 banks processing billions of transactions daily, can not avoid liability. While the Internet is still immature  
26 it should be recognized that profiteering on the rights of others imposes great responsibility upon the  
27 profiteer.

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

Judgment is granted to Plaintiffs based upon the Plaintiffs' "Motion For Judgment On The Pleadings", arguments,  
and Plaintiffs' declarations in the amount of \$20,575,000.00.

#### Introduction

1.

On or about October 20, 2009 an anonymous posting appeared on Google defaming the Plaintiffs  
roofing businesses. Google had just recently launched a program purportedly "... to help people make

1 *more informed decisions about where to go, from restaurants and hotels to dry cleaners and bike*  
2 *shops..."* (Def. Motion To Dismiss p. 2, lines 8 - 18). The Plaintiffs became almost immediately aware of the  
3 defamatory posting as the Plaintiff is a door-to-door salesman and subject to great scrutiny by  
4 consumers when canvassing neighborhoods for roofing sales. The on line posting associated with the  
5 Plaintiffs business information was professionally crafted, negative, and purposely intended to deprive  
6 the Plaintiff of his work and reputation as the posting was very accessible to the public from the front  
7 page of Google.com by searching the Plaintiffs business name. By the search engine giants market  
8 penetration the Plaintiff discovered he was actually being followed on a daily basis as he went to work  
9 every day door-to-door (¶ 17 Pl. Compl.). Plaintiffs sales prospects turned away, roofing contracts began  
10 canceling, and consumers with roofs in progress became vicious and difficult (Pl. Decl. of Damages).  
11 Plaintiffs sales abilities were subsequently impaired and Plaintiffs were emotionally distressed; not  
12 because of the comment but because Google ignored and never responded to the Plaintiffs inquiries for  
13 resolution. On May 28, 2010 the Plaintiff filed the instant action against Google for denial of due  
14 process, unfair business practices, violation of law, emotional distress, etc. and Google thereafter  
15 removed the comment. On August 13, 2010 only seventy-eight (78) days later the District Court  
16 Ordered the Defendant Google not liable for Plaintiffs damages pursuant to 47 U.S.C. §230(c) with  
17 prejudice. Plaintiff now expects another posting on Google.com will leave Plaintiffs without work or  
18 recourse. Plaintiffs complaint taken as a whole, consist of two unrelated causes. One of anonymity  
19 within Googles business review process v. a proprietors rights to due process of law and Defendants  
20 negligence the other is allegation of unfair competition and theft of the proprietors business identity for  
21 purposes of selling advertising to Plaintiffs competition for profit and stalking.

22 2.

23 The Plaintiff filed with the District Court a declaration on July 2, 2010 explaining that the Plaintiff  
24 began writing publicly on July 4, 2009 approximately three and a half months prior to the anonymous  
25 postings on Google's business review of Plaintiffs business. The evidence proves beyond reasonable  
26 doubt that Google rather than a third party engaged the Plaintiffs business practices and posted the  
27 anonymous defamations against the Plaintiffs business which purposely intended to deprive the  
28 Plaintiff of his work and reputation. The Plaintiffs therefore did not seek damages from a non existent

1 third party because the evidence shows Google is behind the anonymity and responsible for the  
2 professional crafting of the defamations against the Plaintiffs business. Details of - Google Appears  
3 To Be Responsible - Not A Third Party are at Page 7 below under A Fair Weighing Of The Evidence.

4 3.  
5 To fully understand the case requires knowing Plaintiffs recent activities and an examination of the  
6 evidentiary. Plaintiffs and Defendants have examined the evidentiary, however the District Court failed  
7 to acknowledge or address the matter. Exhibit 'I' attached to the Plaintiffs' declaration and filed on July  
8 2, 2010 is a work of suggestion toward the growing U.S. unemployment rate; a jobs program creating  
9 millions of jobs without use of tax dollars. Plaintiff shared the work with 100 or so U. S. Senators. It's  
10 entitled "Politics Against A Sea Of Social Economic Change" and was published on line a few months  
11 prior to the instant attack on Plaintiffs business. While the Plaintiff is not politically inclined at all, the  
12 Plaintiff felt required to share his direct selling knowledge because news media were reacting in fear  
13 towards the current economic collapse and baffled at Governments failed efforts in creating jobs. It  
14 represents the Plaintiffs first attempt at writing, was dull, and the Plaintiff thereafter began writing  
15 fiction, as it was more fun. If one were to comprehend the suggestion, it's easily noticed that the  
16 Plaintiff found the missing jobs but established a political conflict as well; land v. Internet. Direct  
17 selling in America is without doubt nearly non-existent and Plaintiff may be one of the last door-to-  
18 door salespeople left. While only intending to share rather than lobby, the suggestion is detrimental  
19 financially to those who sell advertising. The instant matter involves Googles' proprietary business  
20 model to sell advertising v. land based direct sales in America. Google additionally has been  
21 perceived publicly as too pushy in terms of peoples privacy with an intense agenda of exposing peoples  
22 homes, businesses, and private lives publicly. So motive is not an issue in this matter. The Plaintiffs  
23 declaration makes clear his business was attacked because of his writings rather than his roofing  
24 expertise (§ 10; P. 5 Decl. Of Gary Black). The Plaintiff has installed thousands of roofs, maintained a  
25 perfect reputation, and has clean hands.

#### 26 Request For Judicial Notice

27 4.  
28 First, the Plaintiffs herein are asking the Appellate Court to 'Judicially Notice' that substantive U. S.  
constitutional rights under the 1st Amendment provisions for anonymity and 5th Amendment rights to

1 due process for proprietors are opposed within Google's business review process. Said opposition of  
2 those substantive rights within Google's business review process impose an inherent responsibility  
3 upon Google to presuppose the laws of responsible behavior when advised of wrongful acts associated  
4 with their program. Just as the banking industry is liable when put on notice, even though they process  
5 billions of transactions daily. The Fifth Amendment to the U. S. Constitution states, "...no person shall  
6 be "deprived of life, liberty, or property, without due process of law."

7 5.

8 Secondly, the Plaintiffs ask the Appellate Court to 'Judicially Notice' the Plaintiffs' trade as a door-to-  
9 door salesman who chooses and can not practically advertise his business; this is because commercial  
10 advertising will not produce sales prospects within his daily targeted market. Commercial advertising of  
11 Plaintiffs business results in false advertising as the Plaintiff can not be in two places at the same time  
12 and chooses not to forfeit six to nine (6-9) roofing estimates daily for an advertised call-in for a roofing  
13 estimate miles away. When calling Plaintiffs for a roofing estimate from commercial advertising  
14 consumers are turned away and become irate if not afforded a lengthy explanation; even then  
15 consumers are sometimes left confused. ¶ 4 of the complaint states "*The plaintiffs are land based*  
16 *businesses and derive profits from direct sales rather than advertising on line.*"

17 6.

18 Googles advertising of Plaintiffs business without permission results in the Plaintiffs daily efforts being  
19 followed and stalked daily as his sales leads and prospects are swayed towards other roofers who have  
20 paid Google to advertise alongside the Plaintiffs business name on Google without Plaintiffs  
21 permission (Pl. Compl. ¶ 17, lines 8-14). Plaintiffs daily business is thus interrupted and impinged upon by  
22 Googles' using the Plaintiffs name to sell advertising to other roofers wishing to follow the Plaintiffs  
23 door-to-door efforts daily. Google provides the on line business review programming for purposes of  
24 profiteering rather than "... to help people make more informed decisions about where to go, from  
25 *restaurants and hotels to dry cleaners and bike shops...*" (Def. Motion To Dismiss p. 2, lines 8 - 18). Google  
26 then abuses the §230(c) Decency Act by ignoring program participants (Plaintiffs complaint and evidentiary)  
27 and admittedly disseminates unverified information to consumers per Defendants response to Plaintiffs'  
28 complaint by "Motion To Dismiss" p. 11, lines 15 - 17:

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

2 By Googles' collaborative efforts with third-parties, Google steals the proprietors (Plaintiffs) business  
3 identity to sell on line advertising to Plaintiffs competition which results in an unfair competition; this  
4 is because of Googles market strength and notoriety stalking of the Plaintiffs daily efforts, meaning that  
5 as the Plaintiff goes door-to-door so goes the inquiries on Google.com in search of Plaintiffs business  
6 review. Google ignored the Plaintiffs many written request for remedy as a matter of policy because  
7 dispute resolution is expensive, but more importantly because negative business reviews enhance  
8 Googles advertising offering to those other roofers who pay Google to advertise alongside the Plaintiff,  
9 this means that the Plaintiffs hard earned sales prospect or lead generated by Plaintiffs door-to-door  
10 efforts is daily presented to Plaintiffs competition, which by default is a collaborative effort between the  
11 Internet provider Google and the third party content provider of advertising. The benefits of Google  
12 ignoring anonymity and other third party postings on their business reviews by policy and collaborative  
13 efforts between parties are further discussed below.

14 Section I  
15 Grounds For Appeal And Motion To Stay  
16 Court Exceeds It's Power

17 7.

17 The Court overlooked malfeasance while in deliberation of the Order. When the Defendants  
18 council filed an objection to the Courts' deliberation on the papers, the objection warned the Court  
19 without specificity, to not 'Judicially Notice' certain things. The Plaintiffs know the Defendant did not  
20 want the Court to 'Judicially Notice' Plaintiffs Declaration, this is because anyone may easily conclude  
21 that the third party and basis for Googles claim to immunity is not a third party at all but actually  
22 Google's Corporate offices in Mountain View. The Defendant threatening appeal during the Courts  
23 deliberation deprived the Plaintiff of a fair reading of the case which should constitute grounds for  
24 appeal.

25 8.

25 The Court thereafter exceeded it's powers by identifying the anonymity within this matter as a third-  
26 party based merely upon the Defendants assertions and a threatening objection by the Defendant during  
27 the Courts deliberation process. The "Motion To Dismiss" filed by the Defendant was in and of itself an  
28 abuse of the Decency Act because the Defendant knew it could not credibly answer the complaint.

1 9.

2 The Court then exceeded its powers by making law from the bench in an elaborate Order that  
3 circumvents the facts of the case and ultimately places 47 U.S.C. §230(c), a mere statute, above the  
4 substantive Constitutional rights of the Plaintiff and peoples as stated in the above 'Proposed Verdict'.  
5 The Court should not have judicially noticed an anonymous protected third party identity based solely  
6 upon the Defendants allegations and the Courts psychic powers. Instead the Court should have  
7 reviewed the facts of the Plaintiffs undisputed declaration and complaint to find the Defendant  
8 complicit in placing itself within the Plaintiffs bidding process, stealing Plaintiffs work, and in  
9 collaborating with others in an advertising scheme which denies the Plaintiffs their Fifth  
10 Amendment rights to due process as proprietors.

11 10.

12 The Plaintiffs believe it was not the intention of Congress when enacting the 47 U.S.C. §230(c)  
13 immunity that our American values (right & wrong) and constitutional rights as proprietors and  
14 professionals would be destroyed by Google. The Court failed to follow the laws as intended by  
15 Congress. The Court did this by failing to acknowledge that Google's anonymity reviews lay the  
16 business and professional community wide open to attack by neighbors, relatives, and political  
17 anarchist (Pl. Compl. ¶ 29; line 26). Anonymity has no place when large market forces attempt a  
18 profiteering advertising scheme. By Googles own admissions their review of businesses on line is  
19 unverified and ignorantly unattended (Complaint. ¶ 2 & Def. Mot. To Dismiss p. 2, lines 8 -  
20 18/ p. 11, lines 15 - 17) . Because of Googles profiteering, proprietors and professionals, in this case the  
21 Plaintiff, are left standing without recourse because Google ignores the program inquiries. Traditionally  
22 business review programs, such as those at the BBB, Angies List, or CSLB hold that anonymity has no  
23 place as it violates the Fifth Amendment of the constitution. By the simple doctrine of common sense,  
24 the courts Order is absurd and outrageous as it would hold the traditional agencies BBB, Angies List, or  
25 CSLB no longer responsible for accuracy in reports or reviews of businesses. This is why the Appellant  
26 Court needs to review the case in its entirety and reverse the District Courts decision.

27 Section II  
28 A Fair Weighing Of The Evidence  
Google Appears To Be Responsible - Not A Third Party

1 Several months ago the Plaintiffs caught Google (red handed) stealing sales and sales leads from the  
 2 Plaintiffs while substantially damaging the Plaintiffs reputation and businesses (Pl. Compl. ¶ 17):

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

5 A few months prior to this litigation, the Plaintiff as a new writer, battled Google for control of his own  
 6 writings almost daily for months. A writer must battle Googles web crawlers and insert code in  
 7 writings to prevent exploitation on Google which would then spread across the Net; exploitation of  
 8 personal writings and information is one of Googles top agendas. The battle continued within the Court  
 9 processes and proceedings from the very first day when Googles 'in house' council threatened the  
 10 Plaintiff in a phone call only four hours after Plaintiffs filing of the complaint (Ex. 'L' Pl. Declaration & Pl.  
 11 Obj. p. 13-14, & excerpts below).

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

13 "On June 10th only about four hours after filing proof of service with the Courts in the instant matter I was  
 14 telephoned by one Tamara Jih claiming to be in-house from the Google defense team. She first stated, "Do you  
 15 want to voluntarily dismiss your complaint?", in a somewhat threatening tone then asked if I was aware of the  
 16 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  
 17 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..."

18 DECLARATION OF GARY BLACK (Exhibit 'H') an e-mail sent to Googles defense team:

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

21 The Plaintiff had difficulty with the conversation above, hence the documentation. The difficulty of  
 22 course is in being able to connect the on line writings Plaintiff denied Google access to with this case.  
 23 The thought of Googles defense team mentioning the items Plaintiff removed from Google just did not  
 24 seem to have relevance at the time but upon examining the other facts detailed below fit perfectly.

25 On April 22nd via U. S. Mail (Ex. 'E' Declaration Of Gary Black), five weeks prior to filing the complaint,  
 26 the Plaintiff wrote directly to Googles Mountain View headquarters as Plaintiffs many efforts to notify  
 27 Google on line (Pl. Compl.) were ignored. To the Plaintiffs amazement within five days another on line  
 28



1 complaint stating that Plaintiffs were telemarketers, unlicensed contractors, and that Plaintiffs were  
2 misrepresenting themselves to the public over the telephone. It appeared on Googles business review of  
3 Plaintiffs business. The Plaintiffs as husband and wife discussed the above message and on line  
4 complaint in disbelief ; it appeared the odds of getting a second complaint more malicious than the first  
5 five days after Plaintiffs wrote to Google in Mountain View (Ex. 'E' Declaration Of Gary Black) were at least  
6 ten million to one [10,000,000 : 1 odds]. The Plaintiffs had been in business for some 19 years without  
7 complaints and it had been six months since the initial anonymous complaint (Pl. Compl. ¶ 3) appeared  
8 on Google. The Plaintiffs to this day have never revealed to anyone, not even family, this matter. So the  
9 evidence is pointed in revealing Google as the anonymous party responsible for the defamation of  
10 Plaintiffs business. In motioning the Court for judgment on the pleadings the Plaintiffs opted to not  
11 seek identity of the anonymous party because of the evidence. Plaintiffs then e-mailed Google a few  
12 days after seeing the second anonymous complaint on Googles business review of Plaintiffs business.  
13 Plaintiffs wrote to Google via Google's report abuse programming on May 3, nearly a month before  
14 filing the complaint, and evidenced it within the Declaration Of Gary Black (Exhibit 'F') to wit:

15 "I see now that after writing to your headquarters just last week that I now have another complaint posted on your  
16 web site."... "Now I have two complaints the newest is also a blatant lie. Additionally I'm receiving hate mail at my  
17 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."

18 13.

19 The Courts Order at page 5; lines 11-13 states "...but they do not allege that Defendant was its author."  
20 The Plaintiff never mentioned a third party in the complaint or the Plaintiffs declaration on file. This is  
21 because there is no third party. The Court and Google came up with the third party theory, while the  
22 Plaintiffs were amazed, afraid, and emotionally disturbed by Googles acts; the evidence speaks for  
23 itself. It's not the Plaintiffs job to Judge the evidence; that goes to the Court or a jury. If in fact, Google  
24 was not attacking the Plaintiffs' writing or lobbying effort, then it perhaps was simply Googles' legal  
25 department telling the door-to-door salesman/roofer to get lost because the letter of April 22 to Googles  
26 headquarters was addressed to Googles legal department and at 10,000,000:1 odds, the anonymity is  
27 Google not a third party. Perhaps someone on the receiving end of the letter gave instructions to  
28

1 someone else (Googles' attorneys/legal team probably collaborated with a third party). The Plaintiffs, of  
2 course, would never sabotage their own business interest. Perhaps Google was angered by the Plaintiffs  
3 many notices of abusive content associated with Plaintiffs business listing. So the Plaintiffs continue in  
4 disbelief that Google first, would have so many motives, and second, that they would actually do such a  
5 thing.

6 14.

7 Fear and distress caused the Plaintiff to motion for judgment on the pleadings quickly. The evidence  
8 was in, Defendants were asking for immunity while making several admissions central to Plaintiffs  
9 causes, and the Court with regularity according to the defense grants immunity. The Court simply did  
10 not examine the evidence closely and erred by 'Judicially Noticing' a non existent third party.

11 15.

12 'In a fair weighing of the evidence' it's easily noticed that the Googles' review of Plaintiffs businesses  
13 constitute an assassination of Plaintiffs' business and reputation (Pl. Compl. ¶ 3; lines 16-23). Plaintiffs  
14 notices to Google prior to this case were very pointed at Google and not shy in exclamation of  
15 Plaintiff's business being damaged daily by Google. The Plaintiffs sued the Defendant for violating  
16 Plaintiffs right to work, rights, and entitlements as a proprietor to due process and did not pursue an  
17 unknown third party or even state one in the complaint, as it did not seem possible (10,000,000 : 1 odds).  
18 Plaintiffs further made a "Declaration Of Damages" explaining the Plaintiffs damages were caused by  
19 public access to the Google.com web site, not that of an unidentified third party; an obscure third party  
20 web site would have no impact on Plaintiffs business, it's Google's popularity, notoriety, and market  
21 strength by public inquiry that's at issue within the complaint (Pl. Compl. ¶ 17).

22 Section III

23 The Court Erred In Reading The Complaint  
24 The Complaint Consist Of Two Unrelated Causes.

25 16.

26 The Court erroneously applied all Plaintiffs allegations within the complaint to a third party anonymous  
27 posting rather than to the paid advertising of other roofers along side of Plaintiffs business name as  
28 stated in the complaint. As stated in ¶ 6 above and within the complaint: Googles advertising of  
Plaintiffs business without permission results in the Plaintiffs daily efforts being followed and stalked

1 daily as his sales leads and prospects are swayed towards other roofers who have paid Google to  
2 advertise alongside the Plaintiffs business name on Google without Plaintiffs permission (Pl. Compl. ¶  
3 17, lines 8-14). Plaintiffs daily business is thus interrupted and impinged upon by Googles' using the  
4 Plaintiffs name to sell advertising to other roofers that wish to follow the Plaintiff's door-to-door efforts  
5 daily; again this is an intervention and theft of Plaintiffs sales leads which are very expensive because  
6 of the public inquiring of the Plaintiffs business name at Google.com during Plaintiffs daily door-to-  
7 door selling. Again the Plaintiff does not want Googles free advertising as it's a theft in this instance.  
8 Examination of the complaint in a knowledgeable and fair reading shows it consist of two unrelated  
9 causes. One of anonymity within Googles business review process v. a proprietors rights to due process  
10 of law because of Defendants ignoring the Plaintiff and the other an allegation of unfair competition  
11 and theft of the proprietors business identity for purposes of selling advertising to Plaintiffs competition  
12 for profit and stalking. Plaintiff should be entitled to damages simply by Defendants unfair competition  
13 of stalking (¶ 17 Pl. Compl.) the Plaintiffs day to day activities as stated in the complaint [underlined  
14 highlights] at ¶'s 16 - 20 to wit:

17 "16.) Since at least October 2009, Defendant, Google, Inc. has conducted a nationwide on line advertising  
18 campaign and on line business review scheme to sell advertising to local businesses for financial gain and profit;  
19 purportedly for the benefit of it's on line community of paid advertisers and others, as well as, individuals who may  
20 be seeking background information pertaining to potential business transaction or professional engagement on line.  
21 More specifically, in this case, many individuals regularly are using the Defendant's on line Business Reviews,  
22 referred to herein as 'courtesy advertising', to check on a contractor before making a purchase or in many cases  
23 before even allowing the contractor to visit the prospective customer; thereby placing themselves within the  
24 contractors bid and the prospective customers decision making process."

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

28 "20.) The Plaintiffs prospect roofing sales using direct selling methods allowed by law; they include  
29 telemarketing, direct mail, and canvassing door-to-door. The Defendant Google, Inc. thereafter ambushes  
30 and blindsides the plaintiff's business with an on line advertising scheme, referred to herein as "courtesy  
31 advertising', while wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts.  
32 The Defendant, Google, Inc. benefits financially because prospective clients inquire on line of the Plaintiff's  
33 businesses at the Defendant's web site where the prospect is then bombarded by paid advertising from other  
34 roofing companies in competition with Plaintiff's business."

Section IV  
Judgment On The Pleadings - Defendants Admissions

Google Collaboration With A Third Party

17.

A problem exist in this case as the attorney for Google can not answer material allegations within the complaint, not even one, without incriminating his client (Complaint. ¶ 2 & Def. Mot. To Dismiss p. 2, lines 8 - 18/ p. 11, lines 15 - 17). The Plaintiffs case is centrally based upon Googles dissemination of false information in conjunction with the Plaintiffs business information (review) described as "Courtesy Advertising" within the complaint; The admissions below are not only collaborative with a third party but also wrongfully collaborative. Google admitted within in their "Motion To Dismiss" to allowing unverified information to be associated with the Plaintiffs business and not having a duty to correct or remove the information even after being notified several times. Taken together the admissions below by Google within their "Motion To Dismiss" admit to exaggerating or misrepresenting their services to the public because they also admit the information may be false and unverified. Most people when going to the CSLB, BBB, Angies List etc. believe what they read in business reviews, and react accordingly. So the admissions are that Googles business reviews are disseminating inaccurate information in review of businesses but more importantly, the Defendant admits to placing themselves within the Plaintiffs bidding processes for roofing sales ie: "...*The purpose of Google Places is "to help people make more informed decisions about where to go..."* [underlined sections for reference] To wit:

Plaintiffs Complaint:

"2.) The Plaintiff alleges that the Defendant, Google, Inc. in fact allows so called '*courtesy advertising*' of the Plaintiff's businesses to be placed on it's web site without the Plaintiff's permission while exaggerating the benefits of a free product to the public at large and fails to disclose to businesses a material relationship where one exists between the public at large and the Plaintiff's business."

"16.) ...More specifically, in this case, many individuals regularly are using the Defendant's on line Business Reviews, referred to herein as '*courtesy advertising*', to check on a contractor before making a purchase or in many cases before even allowing the contractor to visit the prospective customer; thereby placing themselves within the contractors bid and the prospective customers decision making process."

Def. Motion To Dismiss p. 2, lines 8 - 18:

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

Def. Motion To Dismiss p. 11, lines 15 - 17:

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

18.

1 Accordingly, the Plaintiffs "Motion For Judgment On The Pleadings" could have been adjudicated in a  
2 more favorable light to the Plaintiff. This is especially true within the context of Google interrupting,  
3 stalking, and engaging the Plaintiffs bidding processes with paid advertisers and false information on  
4 line as they would not respond to the Plaintiffs' many notices and request for relief for six months!  
5 Essentially the District Court attributed 50% or so of the complaint erroneously to third party content,  
6 meaning the on line defamation by Google, and ignored, forgot, or failed to acknowledge the rights of a  
7 door-to-door salesman.  
8

9  
10 Section V  
11 Conspiracy - Googles' Collaboration With Third Parties  
& Complicity With Third Parties For Profit

12 19.

13 The Plaintiffs believe cases involving anonymity should be adjudicated on a case by case basis giving  
14 weight to the decisions, rights, and entitlements of all parties concerned. In this case the Defendants not  
15 an unknown third party made four deliberate decisions which constitute a conspiracy (§ 35, Pl. Compl.) or  
16 collaboration of various parties to wit:

17 Google first chose to sponsor a program reviewing Plaintiffs businesses online, purportedly to  
18 help people which seems innocent (Def. Motion To Dismiss; p. 2, lines 8 - 18):

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

24 The Court may 'Judicially Notice' without discovery and by the simple doctrine of common sense that  
25 Google conspired as a collaboration of parties as follows. First Google deliberately chose "...to help  
26 *people make more informed decisions...*" by admission in their "Motion To Dismiss". Second, Google  
27 deliberately chose to allow anonymity within it's review of Plaintiffs businesses which denies Plaintiffs  
28 a due process of law under the Fifth Amendment because Google also deliberately chose to ignore  
Plaintiffs pleas for relief, inquiries, and notices for resolution of an obvious violation of law (§'s 1-3; Pl.  
Compl.).

20.

1 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 — which certainly was not for Google to violate Plaintiffs constitutional  
5 rights by taking Plaintiff's sales leads, and prospects from Plaintiff in a 'free advertising' scam.

21.

6 The complaint at (¶ 17; p. 5; ¶ 20 p. 6; and ¶ 22 p. 7) alleges a profit making scheme by Defendants which  
7 steals the Plaintiffs sales leads (his prospects) wrongfully, as it's without the Plaintiffs permission and  
8 alleges the Defendant Google profits it's paid advertisers and interrupts the Plaintiffs business. These  
9 parts of Plaintiffs complaint are directed at Googles use of Plaintiffs business name and information  
10 wrongfully for profit in conspiracy :

11  
12 17 - "The Plaintiff alleges, the Defendant, Google, Inc., derives advertising revenue as a instant and direct result  
13 of the plaintiff's direct telemarketing and door-to-door selling efforts rather than from Defendant's own efforts. The  
14 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..."

15 20 - "The Plaintiffs prospect roofing sales using direct selling methods allowed by law; they include telemarketing,  
16 direct mail, and canvassing door-to-door. The Defendant Google, Inc. thereafter ambushes and blindsides the  
17 plaintiff's business with an on line advertising scheme, referred to herein as "courtesy advertising", while  
18 wrongfully benefiting financially on nearly a daily basis from Plaintiff's sales efforts. The Defendant, Google, Inc.  
19 benefits financially because prospective clients inquire on line of the Plaintiff's businesses at the Defendant's web  
20 site where the prospect is then bombarded by paid advertising from other roofing companies in competition with  
21 Plaintiff's business. The Defendant's policy of ignoring the content and nature of the negative anonymous review at  
22 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."

23 22 - "The defendant, Google, Inc., has refused on multiple occasions throughout the past six months to remove  
24 mediate, or even acknowledge damaging advertising directed at the Plaintiffs businesses."

22.

24 The Courts' Order presumes incorrectly (Bias/Misunderstood) that consumer generated advertisements  
25 on Googles web site Pro or Con (¶ 33, Pl. Compl. line 8 pro/con) as stated in the complaint, are business  
26 reviews and helpful to the general public. Nothing could be farther from the truth. As stated in Google's  
27 pleading "... to help consumers make better choices." The Court Order omits and avoids Googles'  
28 admissions of allowing unverified information and anonymous information within Googles' business

1 reviews; apparently in holding that admission as innocent, when in fact, it is a lot like dog fighting but  
2 worse as it pits the substantive rights of the people to anonymity against a proprietors right to due  
3 process in regards to consumer complaints. This is another collaboration of Google with the third party  
4 provider of the content. The content is actually Google enhancing (§ 33 38 Pl. Compl. excerpt below) and  
5 soliciting free content from the public for the benefit of either the Plaintiff's business if the comment is  
6 pleasant or the advertisers, of like kind, that paid Google to be on the same page with the Plaintiffs  
7 business listing if the comment is neutral or negative (A dog fight; Anonymous Courtesy Advertising). Google  
8 does this like a 411 directory type assistance; listing all businesses with telephone listings for free  
9 ("Courtesy Advertising") under the misconception that a business wants their free advertising services  
10 without permission of the business owner (Plaintiffs). This choice decision by Google is in fact a  
11 conspiracy only for profit (§ 35 Pl. Compl. excerpt below) and deceptive to many who believe the unverified  
12 and unattended business reviews are true. In fact they are very harmful to an unsuspecting thousands of  
13 small businesses like the Plaintiffs. At Ex. 'K' Pl. Declaration & Pl. Compl. § 35 there is insight and  
14 a Yahoo technical email sent to Plaintiff warning of the compromise/harm noticed in on line directory  
15 assistance type business reviews [However, Yahoo does monitor and respond to program participants  
16 when notified of problems immediately.]. They're scathingly criminal, towards admitting to extortion  
17 wit is Yahoo's email comment/excerpt to Plaintiff. (Ex. 'K' /Yahoo letter attached to Pl. Declaration):

18 "Please note that all Local Listings are considered public information and do have the possibility of being comprised  
19 by information submitted by local users and/or database providers in addition to yourself. The only way to have sole  
20 ownership of a business listing and its content is to upgrade to an Enhanced."

21 The Court by Order in this matter holds the producer Google of the same type program immune when  
22 in fact it's easily noticed that this practice is no different than walking into a store and saying give us  
23 your proceeds or will damage your store and reputation. The Courts should have noticed that a small  
24 business really is being required to pay Google or Yahoo for enhancement advertising in order to not be  
25 in harms way. Perhaps it's short of extortion but it could certainly be noticed as close enough to void  
26 any kind of immunity the Congress may have intended. It is actually profiteering off the substantive  
27 rights of others.

28 (§ 33 Pl. Compl.) Plaintiff alleges, that large market forces, such as the defendant Google, Inc., should not enable

1 'courtesy advertising' that places business and professions at risk without written consent and disclosure of said risk  
2 from the parties being advertised. 'Courtesy Advertising' allowing for public defamation or promotion of a business  
or professional, may as in this case, cause meaningful damage towards others, whether the consumer generated  
content is anonymous or not, whether pro or con, without a due process.

3 (¶ 35 Pl. Compl.) "Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal  
4 acts." — "...Defendant, Google, Inc. knew in advance that their programming was hostile, could and does cause  
harm by **enticing members of the general public to commit illegal acts**, which is now continuing on a business as  
usual basis."

5 (¶ 38 Pl. Compl.) "...without the Plaintiff's permission while exaggerating the benefits of a free product to the  
6 public at large and fails to disclose to businesses a material relationship where one exists between the public  
at large and the Plaintiff's business."

7  
8 23.

9 If the public comment (Solicited Advertisement) is positive it drives call ins to Plaintiff which result in false  
10 advertising (¶ 17 ¶ 33 Pl. Compl.) because the Plaintiff is a door-to-door salesman in targeted areas each  
11 day and can not give up 6-9 sales appointments to run a single call-in even 10-40 miles away and if the  
12 comment is negative the Plaintiff losses hundreds of thousands of dollars in sales by contract  
13 cancellations; this is because when going door-to-door and making sales the consumer will frequently  
14 check Googles web site after the Plaintiff has left with a sale and promptly cancel if anyone has stated  
15 most anything, other than how great the Plaintiff might be. The Plaintiff loses thousands of dollars  
16 simply by Googles intrusion with the business listing even without third party commentary because  
17 Google places paid advertisers alongside the Plaintiffs business name in the same roofing business and  
18 neighborhoods as plaintiffs and is therefore stealing the Plaintiffs hard earned sales prospects or put  
19 another way selling the Plaintiffs efforts.

20 24.

21 Door-to-door sales is hard work and the Courts should recognize that every day the Plaintiff goes to  
22 work he's driving traffic to Google for the benefit of Googles paid advertisers who receive the benefit  
23 of Plaintiffs hard work (Pl. Compl. ¶ 17 below). Google enhances their advertising offer to said paid  
24 advertisers by essentially selling the Plaintiffs efforts via Plaintiffs business name being posted on line.  
25 These acts are all alleged in the complaint and a violation of the Plaintiffs proprietary rights to work;  
26 leads and lead generation is nearly the most expensive part of being a roofing contractor and door-to-  
27 door salesman. For the non-sales experienced academia types it's thousands of dollars per week to  
28 generate door-to-door sales leads within the Plaintiffs small proprietorship, Direct selling is expensive  
but targeted:



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

3 Section VI  
4 Summary

5 25.

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

9 26.

10 The complaint alleges throughout that the Defendants were using Plaintiff trade names for advertising  
11 alongside others without permission (§ 2, § 4, § 3 lines 6-10 Pl. Compl. & others). The District Court  
12 improperly assumes this to be acceptable because the Plaintiff is receiving free advertising from  
13 Google. That thinking is unfounded as shown above. The Plaintiffs did more than sufficiently make  
14 allegation supported with evidence within the Complaint and Plaintiff's Declaration to demonstrate how  
15 the Plaintiffs rights to due process were being violated and his business names were being misused.  
16 Therefore, within the "fair reading" of the complaint the Court should, "...take all material allegations  
17 as true and construe them in the light most favorable to the Plaintiff." NL Indus., Inc. v. Kaplan, 792 F.  
18 2d 896, 898 (9th Circuit Court of Appeals, 1986)

19 27.

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

26 28.

27 Following is a simple outline of the case alleged by Plaintiff and resulting effects:

- 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'; The Plaintiffs case may be unique because the Plaintiff is adoor-to-door salesman, but the advertising results in stalking the Plaintiffs daily activity;
3. Google then sells Plaintiffs identity to the public (<http://google.com>) paid for by Plaintiffs competition who pay Google for ad placement next to Plaintiffs business name;
4. Then Plaintiffs competition interrupts by stealing the Plaintiffs prospects and sales leads when Plaintiffs customers inquire on the Plaintiff's business. Door-to-door salesman are often scrutinized by their prospects. (§§16 17 Pl. Compl.);
5. Google then solicits the public, as well as anyone else that may have a difference with the Plaintiff, for advertising in the form of consumer-generated content, pro or con or anonymous which creates a blindfolded dog fight over the substantive rights of the parties;
6. Google refuses to communicate with Plaintiff when postings associated with his business are in violation of due process law and cause great damage (§§ 22 & 23 Pl. Compl.)
7. Google's programming (pin number system) doesn't work to allow Plaintiff to remove the 'Courtesy Advertisement' of Plaintiffs business, but purportedly allows it and the 'report abuse ' programming on the Plaintiffs business review page at Google is ignored by Google or unattended. (§ 19 Pl. Compl.)

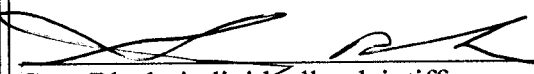
The damage: Plaintiff losses huge amounts of money, no longer writes publicly, loses his right to due process of law by Court order with prejudice; while waiting 24/7 for the next pirate to attack him and review his business, emotional distress, grief, etc. etc. etc. (Pl. Decl. Of Damages)

Section VII  
Conclusion

29.

Based upon the preceding arguments and indifferences of the Plaintiff, the Plaintiffs respectfully pray for relief in asking the District Court and the Court of Appeals to grant this 'Motion To Stay' the District Courts Order dated August 13, 2010 in the above entitled matter while taken on appeal.

Respectfully Submitted,



Dated: 9/10/2010

Gary Black, individually plaintiff



Dated: September 10, 2010

Holli-Beam Black, individually plaintiff

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CERTIFICATE OF SERVICE BY US MAIL

I, Jose G. Torres, declare:

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

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

**"Motion To Stay: THE COURTS' ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING AS MOOT PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS"**

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

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

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Benicia, California 94510 on September 10, 2010.

JOSE G TORRES  
Jose G. Torres