1 2 3 4 5 6 7	DAVID H. KRAMER, State Bar No. 168 BART E. VOLKMER, State Bar No. 223 JACOB T. VELTMAN, State Bar No. 243 WILSON SONSINI GOODRICH & ROS Professional Corporation 650 Page Mill Road Palo Alto, CA 94304-1050 Telephone: (650) 493-9300 Facsimile: (650) 565-5100 dkramer@wsgr.com Attorneys for Defendant Google Inc.	8452 3732 47597 SATI		
8	UNITED STATE	ES DIS	STRICT COURT	
9	NORTHERN DISTRICT OF CALIFORNIA			
10	OAKLAND DIVISION			
11	GARY BLACK, et al.,)	No. C 10-02381 CW	
12 13	Plaintiffs,)	DEFENDANT GOOGLE INC.'S OPPOSITION TO PLAINTIFFS MOTION TO STAY	
13	v.			
15	GOOGLE INC.,))		
16	Defendant.))		
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	DEF. GOOGLE INC.'S OPP'N TO MOTION TO STAY CASE NO. C 10-02381 CW	-1-	Docket	s.Justia.com

OPPOSITION TO MOTION TO STAY

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On September 10, 2010, Plaintiffs filed a motion to stay this Court's August
13, 2010 Order granting Google's motion to dismiss with prejudice ("Dismissal
Order"). Plaintiffs' motion should be denied because a stay would serve no purpose:
the Dismissal Order did not alter the status quo or impose any obligations on
Plaintiffs from which they need relief. Moreover, Plaintiffs cannot demonstrate any
of the requirements for entry of a stay.

8 A district court considers the following factors when deciding whether to stay 9 an order during appeal: "(1) whether the stay applicant has made a strong showing 10 that he is likely to succeed on the merits; (2) whether the applicant will be 11 irreparably injured absent a stay; (3) whether issuance of the stay will substantially 12 injure the other parties interested in the proceeding; and (4) where the public interest lies." Hilton v. Braunskill, 481 U.S. 770, 776 (1987). The first two factors 13 14 are "the most critical." Nken v Holder, 129 S.Ct. 1749, 1761 (2009). These 15 considerations militate against a stay here.

16 **First**, Plaintiffs are unlikely to prevail on appeal. The Dismissal Order 17 carefully analyzed the law and came to the correct conclusion that Plaintiffs' claims 18 are barred by Section 230(c). Indeed, Plaintiffs' rambling motion to stay itself 19 demonstrates how unlikely it is that they will prevail on appeal by ignoring the 20 governing law and making bizarre and inscrutable factual assertions. Second, 21 Plaintiffs have failed to show irreparable injury. That is not surprising given that 22 their claims are based on the alleged presence of a third-party review of their 23 roofing business that has been removed from the Google Places service. Third, a 24 stay would cause injury to Google by calling into question the broad protections of 25 Section 230(c) that the Dismissal Order recognized. Fourth, the public interest 26 cuts against a stay because providers and users of interactive computer services are 27 entitled to the certainty that attaches to dismissals of lawsuits that seek to hold 28 them liable for third-party content in direct contravention of a federal immunity.

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1	See 47 U.S.C. § 230(e)(3) ("No cause of action may be brought and no liability may				
2	be imposed under any State or local law that is inconsistent with this section.").				
3	For these reasons, Plaintiffs' motion to stay should be denied.				
4					
5		Respectfully submitted,			
6	Dated: September 15, 2010	WILSON SONSINI GOODRICH & ROSATI			
7		Professional Corporation			
8		By: <u>/s/ David H. Kramer</u>			
9		David H. Kramer			
10		Attorneys for Defendant Google Inc.			
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	DEF. GOOGLE INC.'S OPP'N TO MOTION TO STAY CASE NO. C 10-02381 CW	-3-			

1	I, Deborah Grubbs, declare:				
2	I am employed in Santa Clara County, State of California. I am over the age of 18 years				
3	and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati,				
4	650 Page Mill Road, Palo Alto, California 94304-1050.				
5	On this date I served:				
6	DEFENDANT GOOGLE INC.'S OPPOSITION TO PLAINTIFFS'				
7	MOTION TO STAY				
8	VIA U.S. MAIL: By placing the document(s) in a sealed envelope for collection				
9	and mailing with the United States Postal Service on this date addressed to the person(s) listed				
10	below. I am familiar with our business practices for collecting and processing of mail for the				
11	United States Postal Service. Mail placed by me within the office for collection for the United				
12	States Postal Service would normally be deposited with the United States Postal Services that				
13	same day in the ordinary course of business.				
14	NON-ECF FILERS				
15	Gary Black Holli Beam-Black				
16	101 Auld Court Green Valley Falls, CA 94534				
17					
18	BY E-MAIL: by causing to be transmitted via e-mail the document(s) listed				
19	above to the addressee(s) at the e-mail address(es) listed below.				
20	NON-ECF FILERS				
21	Gary Black Holli Beam-Black				
22	Email: gerald@raymondavich.com				
23	I declare under penalty of perjury under the laws of the United States of America that the				
24	foregoing is true and correct. Executed at Palo Alto, California on September 15, 2010.				
25	/s Deborah Grubbs Deborah Grubbs				
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	CERTIFICATE OF SERVICE -1- CASE NO.: C 10-02381 CW				