

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

FILED *a*
SEP 20 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. : 3:10-cv-02381-CW

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

**REBUTTAL TO DEFENDANT GOOGLE,
INC.'S OPPOSITION TO PLAINTIFFS'
MOTION TO STAY**

Plaintiffs,

vs.

Courtroom: 2

(Hon. Claudia Wilken)

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

The Court Order Is Erroneous

The Defendant sites a cause whereby a Court may stay it's order as follows: "(1)
whether the stay applicant has made a strong showing that he is likely to succeed on the merits;..."

The Court never closely considered the merits of the "Complaint for Damage" and the
"Declaration Of Gary Black, with exhibits A through L". This is because the Plaintiffs' complaint
factually alleged the Defendant Google, rather than a third party was liable for Plaintiffs damages.

The Courts order creates a third party based upon the Defendants "Motion To Dismiss". The
order of the Court states a basis and premise for the Defendants' immunity and resulting order. The

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1 premise upon which the order is based is found at Page 5 Lines 11 through 18 of the order and reads
2 specifically as follows:

3 "They aver that the allegedly defamatory comment is "anonymous," Id. ¶ 21, but they do not allege
4 that Defendant was its author." "... Based on these allegations, Defendant is immune from their suit."

5 On May 28, 2010 the Plaintiff filed the instant action against Google for denial of due process, unfair
6 business practices, violation of law, emotional distress, etc.. Within each of the causes of action (¶s
7 41 & 42 1st Cause of Action & incorporated into each following Cause of Action) the Plaintiff 'plainly' stated that
8 Google not only sponsors but also publishes online business reviews to quote as follows [underlining
9 highlights]:

10 "41.) Plaintiff alleges the Defendant, Google, Inc., sponsors and publishes online business reviews for profit while
11 at the same time neglecting the legal needs of said reviews thereby failing to meet jurisdictional and administrative
12 requirements of the State of California and others..."

13 "42.) Plaintiff further alleges that the Defendants, Google, Inc., intentionally conspired to cause illegal acts..."

14 and within the Declaration Of Gary Black (Exhibit 'F') the Plaintiff pointed a finger directly at Google not
15 a third party:

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

20 The complaint as cited above clearly states in each cause of action that Google is the publisher of the
21 business reviews; this is supported further by the Plaintiffs declaration stated above ie: "*I know you
22 don't want to hear it but all my problems lead directly to Google.*"

23 The Courts' basis for the dismissal order and the Defendants immunity is erred when closely
24 examined because it utilizes a false fact that Plaintiffs, never alleged Google to be the reviews author,
25 when in fact they did within each cause of action. Publisher and author are synonymous when
26 pertaining to anonymity. The above excerpts are quotes directly from the Courts order and record of
27 the proceedings. Consequently, the Courts order is untrue and does not view the complaint within a
28 favorable light towards the Plaintiff.

1 Therefore, on the Courts own motion, the Plaintiffs believe the Court should 'Stay' the Court
2 order pending appeal, as the premise upon which the order is based is erroneous and most probably will
3 be overruled.

4 **The Court Order Is Off Point & Moot**
(The Court order fails to address the complaint.)

5 At Page 2, lines 2 through 3, the Court order again errs factually, stating as follows:

6 *"They aver that the comment misrepresents their work and has devastated their businesses."*

7 While the Plaintiffs were made aware of the Defendants business review practices by said comment, the
8 complaint itself is very diverse in showing that collaborative efforts by the Defendants caused Plaintiffs
9 damage, not simply a comment. The Court order simply failed to address the diversity of the complaint.
10

11 The Plaintiffs damages were allegedly caused by multiple acts of conspiracy, profiteering, and
12 collaboration by the Defendants with others and were alleged throughout 60 paragraphs in the
13 complaint.

14 Plaintiffs damages were not simply caused by the Defendants professional crafting of an
15 anonymous complaint and business review of Plaintiffs businesses. The Courts order doesn't go deep
16 into the issues and veers off point by failure to reconcile the complaints' diversity with the
17 declarations and evidentiary by Plaintiffs as follows. **First:** The Court order erroneously applies
18 authorship of Googles business reviews of Plaintiffs businesses to a non-existent third party; The
19 Plaintiff never alleged a third party and there is not evidence to support the theory of a third party. To
20 the contrary, the evidence does reveal, beyond doubt, that the Defendant authored the defamatory
21 comments. **Second:** Comments by a third party would have had little or no effect upon the Plaintiffs
22 businesses. The complaint is based upon advertising law and the Defendants market influence and
23 strength (Pl. Compl. P. 7, ¶ 21, lines 11 - 17); meaning that the Plaintiffs business is damaged by consumer
24 access to Google.com, Googles unauthorized use of Plaintiff identity to sell advertising (Pl. Compl. P. 5, ¶
25 17, line 10), and the Defendants blatant ignoring of the Plaintiffs notices of illegal postings on the review
26 of Plaintiffs businesses (Pl. Compl. ¶ 22.). Plaintiffs are also damaged by the Defendant's advertising
27
28

1 scheme which stalks the Plaintiffs daily movements, intervenes into the Plaintiffs bidding of projects,
2 and is unlawful as it's without the Plaintiffs permission and results in risk to Plaintiffs and theft of the
3 Plaintiffs daily work (Pl. Compl. ¶s 1,2, 16, 17 &35 collaborative efforts/conspiracy). The mere suggestion that
4 the Plaintiffs complaint is confined to a single comment is unnerving to the Plaintiff. **Third:** As stated
5 in the Plaintiffs original objection to the Court order, Google is a major intelligence, thereby making the
6 complaint diverse and complex. The Court erred by misconstruing the Plaintiffs politeness within the
7 complaint as moot rather than diverse.
8

9 **The Court Procedurally Erred**

10 1.

11 In this case, substantive constitutional rights were at issue before the Court. The Plaintiff closely
12 recognizes that parties have a duty to be truthful before the Court to preserve efforts of mediation and
13 the *honor of the Court*. Plaintiff knows that false testaments and pleadings by parties often result in
14 false orders and are overturned on appeal. False testament before a Federal Court is generally
15 considered very serious. The Plaintiff hereinafter shows a pattern of abuse relevant to this action and
16 the Courts decision.

17 2.

18 The Plaintiffs as door-to-door sales people, operated many years without issues until the
19 Defendant decided recently "*...to help consumers make more informed decisions.*" The Defendants were
20 providing information to consumers but ignoring the accuracy of the information provided and ignoring
21 the program participants pleas of illegal content on their web site. The sites are titled Google Places and
22 Google Maps. Google was very badly negligent in ignoring Plaintiffs notifications of illegal content
23 within the reviews of Plaintiffs businesses.

24 3.

25 Immediately following the Plaintiffs' writing to the Defendants' national headquarters in
26 Mountain View, addressed to the Defendants' legal dept. the Defendants in-house counsel instantly
27 crafted and posted another complaint upon the Plaintiffs business review, rather than resolving the issue
28 by removing the Plaintiff from their program, this is because they believe they're immune. Now the

1 Defendant states in their instant opposition to Plaintiffs motion that the Plaintiffs have been removed
2 from the Google Places Program to imply to the Court that the Plaintiff is not harmed now by the
3 Courts' order. "Defendants Opposition To Plaintiffs' Motion To Stay" at P.2; lines 22 & 23 states:

4 "...their claims are based on the alleged presence of a third-party review of their
5 roofing business that has been removed from the Google Places service."

6 The Plaintiff sadly replies that their self imposed injunction of the review is unacceptable because the
7 council for the Defendants can not be trusted.

8 Defendants legal department acted immature when notified by Plaintiff on April 22, 2010. The
9 acts of posting a second complaint against the Plaintiff after he wrote to their legal department and the
10 threatening of Plaintiff concerning Plaintiff's on line writings only four hours after the Plaintiff filed
11 proof of service for the complaint were unconscionable. Google attorneys seem to pretend power and
12 control of the Plaintiffs personal writings as well as the Plaintiffs business by threatening investigation
13 of Plaintiffs writings; writings the Plaintiff denied the Defendant publication of. Those acts by counsel
14 were not only immature but invasive.

15 4. Googles First Counsel

16 In summary, the first counsel for the Defendant; **First:** were grossly negligent in a belief that they
17 have unquestionable immunity which precludes them of liability for illegal activity on their web site
18 and adherence to responsible behavior; **Second:** Google counsel portray themselves as powerful and
19 laugh at simply being able to destroy a small proprietor, such as a roofer, by destroying their reputation
20 with defamatory on line postings; **Third:** counsel threatened leverage against the Plaintiffs by
21 threatening his on line Google removal of writings (§ 9 Decl. of Gary Black).

22 5. Googles Second Counsel

23 Faced with a complaint the Defendants could not credibly answer or defend, the new counsel contacts
24 the Plaintiff for an extension of time to answer by telephone, while all along planning to file a "Motion
25 To Dismiss" the complaint, this is to avoid an answer. Plaintiff graciously agrees to the extension of
26 time for an answer by Defendants and states he'll "answer the answer".
27
28

1 Following is an excerpt from within the Plaintiffs "Declaration Of Gary Black" which was filed on July
 2 2nd just before the Defendant filed a "Motion To Dismiss" the Plaintiff clearly stated in declaration that
 3 he'd been tipped by the Defendants' counsel to the fact that a dismissal was forthcoming rather than an
 4 answer. Plaintiffs' Declaration at page 7, ¶ 13 is captioned below [underlining]:

5
 6 "Having been a door-to-door salesperson for nearly 41 years I emailed the current Google
 7 attorney about my concerns prior to his filing a motion to dismiss my complaint before the
 8 Court."

9 The Plaintiff knew the Defendant was preparing to file a motion for dismissal and knew it was against
 10 the oral stipulation the parties had for an extended time to answer. The Plaintiff being diligent, took
 11 immediate action and filed his evidentiary, purely for fear of a premature dismissal, not in an effort to
 12 maliciously hang the Defendant; however the evidence does incriminate the Defendant badly. So the
 13 Defendants counsel attempted to duck answering but knew he was suppose to answer, and thereafter
 14 scarcely did answer by addressing each cause of action within the complaint as he motions for
 15 dismissal. This of course leaves the Defendant without factual rebuttals concerning the complaint and
 16 open to the risk of judgment on the pleadings and papers on file with the Court. Following is detail of
 17 Defendants' counsel orally stipulating to an answer with the Plaintiff; alongside are details of the
 18 Defendants counsels' spectacular behavior to deprive the Court and Plaintiffs by deceit of any order:

19 Within Plaintiffs' "REBUTTAL TO DEFENDANTS GOOGLE, INC.'S OPPOSITION TO PLAINTIFFS'
 20 MOTION FOR JUDGEMENT ON THE PLEADINGS" which was filed with the Court on July 28, 2010
 21 it may be noted at Page 7; ¶ 13 the following caption which reveals the Plaintiff knew the
 22 Defendants counsel was trying to deceive the Court and agreed upon oral stipulation of the
 23 parties:

24 **Plaintiff:**

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

28 So the Defendants did answer the complaint but claimed immunity and titled the pleading a "Motion To
 Dismiss". This act, which the Plaintiff saw coming, left the Plaintiff no option other than to
 immediately make the Plaintiffs case with a declaration and exhibits. The Court thereafter failed to even

1 acknowledge Plaintiffs declaration or exhibits and instead acknowledged the Defendants "Motion For
2 Dismissal".

3
4 On July 29, 2010 the following day the Defendants' counsel one Bart E. Volkmer filed a false
5 declaration, which is false on its' face at page 1, as follows:

6 **Mr. Volkmer:**

7 ¶ 2, Lines 8 through 9:

8 "On June 15, 2010, I called plaintiff Gary Black to introduce myself as Google's outside counsel in this matter. I
9 explained that 47 U.S.C. § 230 (c) bars his claims and requested that he dismiss his case against Google. Mr. Black
10 declined."

11 ¶ 2, Lines 13 through 14:

12 "And I never would have agreed to an extension that limited Google's substantive ability to respond to the
13 complaint."

14 By defense counsels' declaration, captioned above, the Plaintiff would not agree to a dismissal when
15 counsel called Plaintiff on June 15th and Mr. Volkmer states in the declaration that he would never
16 have agreed to only an answer. This is proof that, if in fact, there was an extension of time agreed to by
17 the parties that it was for an answer rather than a motion that would resolve the case because defense
18 declares the Plaintiff refused a dismissal and defense claims it also would not have agreed. The
19 Plaintiffs were therefore totally entitled to an answer by law, but instead were served with a "Motion To
20 Dismiss" and were buried in emails, phone calls, and deception by the Defendants counsel. The Court
21 does not have on record an agreed to extension of time for the Defendants to answer the complaint and
22 must rely upon what the parties stipulated which was an answer rather than a "Motion To Dismiss". As
23 the Plaintiff stated in declaration he refused Google a dismissal in the first phone call from Google and
24 the Defendants declaration above states the Plaintiff refused a dismissal. The Court can not rely upon
25 the Defendants testament to a stipulation while the Plaintiff was away on vacation and that Plaintiff has
26 already denied being a party to. The court could have noticed a declaration, a testament, and several
27 emails with exhibits filed by the Defendants all in an effort to bring the Plaintiff into compliance with
28

1 their extension of time the Plaintiff opposed. The Defendants could have asked the Court rather than
2 plague everyone with all the paper and explanation.

3 Therefore the Court erred by even noticing the Defendants "Motion To Dismiss" and should
4 have only acknowledged the Defendants answer to the causes of action against them or ruled a default
5 in favor of the Plaintiff. This is because the Defendants' "Motion To Dismiss" was not filed timely.
6 Only an 'answer' from the Defendant, pursuant to the parties stipulation, may be considered by the
7 Court, not a final determining motion of dismissal. It was the Plaintiffs time to answer the complaint
8 that was extended graciously to the Defendants, not the Courts time. The Court therefore erred by
9 noticing a "Motion To Dismiss" that was untimely before the Court. The Courts order at issue is
10 thereby erred in allowing an untimely filing against law as it impinges upon the Plaintiffs legal right to
11 an answer, rights to timeliness, and gracious good will.


12
13 **Conclusion**

14 The Plaintiff has an expanded version of the "Motion To Stay" on file with the Court of Appeals. The
15 Plaintiff believes that the filing of any testament, with the intent to deceive the Court into believing a
16 filing is timely, is serious and should not go unnoticed. The Plaintiff therefore believes it in the Districts
17 Courts interest to 'Stay', 'Vacate', or 'Reverse' the order on its' own motion. Granting Plaintiffs motion
18 would preserve the *honor of the Court* in light of the matter taking only 78 days without a hearing.
19 The Court may also recognize counsels' malfeasance and harassment of the Plaintiff as instrumental in
20 causing a circus of events. In short, the Plaintiffs believe they'll succeed on appeal and apologize for
21 rambling; law and deceit are not something Plaintiffs are accustomed to.
22
23

24 Respectfully,

25 
26 _____
27 GARY BLACK, individually plaintiff

Dated: 9/20/2010

28 
29 _____
30 HOLLI BEAM-BLACK, individually plaintiff

Dated: 9/20/10

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 "REBUTTAL TO DEFENDANT GOOGLE,
13 INC.'S OPPOSITION TO PLAINTIFFS'
14 MOTION TO STAY"

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

18 Wilson Sonsini Goodrich & Rosati
19 attorneys at law
20 650 Page Mill Road
21 Palo Alto, California 94304-1050
22 Telephone (650) 493-9300

23 I declare under the penalty of perjury under the laws of the United States that the foregoing is
24 true and correct. Executed at Benicia, California 94510 on September 10, 2010.
25

26 JOSE G TORRES
27 Jose G. Torres
28