

\*\*E-Filed 5/18/09\*\*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

12  
13 JENNA GODDARD, individually and on behalf of  
all others similarly situated,

14 Plaintiff,

15 v.

16  
17 GOOGLE, INC., a Delaware corporation,

18 Defendant.

Case Number C 08-2738 JF (PVT)

**ORDER<sup>1</sup> GRANTING MOTION  
FOR LEAVE TO FILE  
SUPPLEMENTAL BRIEFING**

RE: Docket No. 60.

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20 Plaintiff Jenna Goddard (“Plaintiff”) has filed a motion for leave to file supplemental  
21 opposition to Defendants’ earlier-argued and -submitted motion to dismiss in light of the Ninth  
22 Circuit’s recent decision in *Barnes v. Yahoo!*, \_\_ F.3d \_\_, 2009 WL 1232367 (9th Cir. May 7,  
23 2009), which interprets § 230 of the Communications Decency Act. In particular, Plaintiff wishes  
24 to address the Ninth Circuit’s holdings that (1) § 230 provides an affirmative defense and may  
25 not serve as the basis for dismissal pursuant to Rule 12(b)(6), and (2) certain promissory conduct  
26 by a defendant may remove it from the scope of immunity provided by § 230.

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28 <sup>1</sup> This disposition is not designated for publication in the official reports.

1 The Court has read *Barnes* and finds that supplemental briefing would be useful. While  
2 Plaintiff's breach of contract claim—which is predicated not on any “clear and well defined  
3 [promise] . . . that could serve as an offer . . . or . . . otherwise . . . give rise to a traditional  
4 contract supported by consideration,” but on a “general [content] policy. . . on the part of [the]  
5 interactive computer service,” *id.* at 9-10—bears little or no resemblance to the promissory  
6 estoppel claim at issue in *Barnes* and in fact appears to be foreclosed as a matter of law by the  
7 CDA as interpreted by the court in *Barnes*, there is a legitimate question as to whether Google  
8 now must assert CDA immunity as an affirmative defense through a responsive pleading.  
9 Goddard may file a five-page supplemental opposition brief addressing either issue not later than  
10 Friday, May 29, 2009. Google may file a five-page supplemental reply brief not later than  
11 Friday, June 12, 2009.

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13 **IT IS SO ORDERED.**

14 DATED: 5/18/09

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17 JEREMY FOGEL  
18 United States District Judge  
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1 This Order has been served electronically upon the following persons:

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7 This Order has NOT been served by other means upon the following persons:

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