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COURT OF APPEAL

FIRST APPELLATE DISTRICT

DIVISION 2

S. LOUIS MARTIN,	) Case Number A145657
Plaintiff and Appellant	)
V	) **Opposition to Motion to**
GOOGLE, INC.	) **Dismiss Appeal**
Defendant and Respondent	)
_____	) 26 August 2015

OPPOSITION TO MOTION TO DISMISS APPEAL

Timeliness of Appeal

GOOGLE, INC. claims that Plaintiff's Appeal was not filed in a "timely" manner. This is false. Here are the facts:

A request for judgment ("proposed order") is supposed to be filed within 5 days following the granting of a CCP 425.16-based motion per CRC 3.1312 (a); but Google filed its request in 5 months, which is a pretty liberal interpretation of the law by the Defendant. In this case, the violation was noted by the Presiding Judge, John K. Stewart, and Google was ordered to "show cause"; but when Google finally complied with CRC3.1312 (a), no sanctions were imposed for this violation of court rules. It was the old story: no consequences for Defendant Google -- not even a "don't do it again," a common admonishment used for school children who don't do their homework on time.

An 8 April 2015 entry in the Register of Actions shows this when Google finally complied:

"ORDER TO SHOW CAUSE SET FOR JUN-23-2015 IN DEPARTMENT 610 AT 10:30 AM FOR FAILURE TO FILE JUDGMENT FOLLOWING ORDER

GRANTING MOTION TO STRIKE. THE APR-22-2015 CASE MANAGEMENT CONFERENCE IS OFF CALENDAR. NOTICE SENT BY COURT."

Who has a "timeliness" issue? Clearly Google does.

As to the filing of the Appeal by S. LOUIS MARTIN, it was timely per CRC 8.104, which extends time for filing in the case that a Motion to Vacate a Judgment has been filed. 29 July 2015 was the "sooner of" applicable dates here, and S. LOUIS MARTIN filed his appeal on 8 July 2015 (it appears in the Register of Actions on 9 July 2015); thus Plaintiff easily met the Appeal deadline, whereas Defendant Google did not and failed to even file a Motion for Leave.

Defendant in his dismissal request talks of the Plaintiff as "appealing from a formal judgment that does no more than recapitulate a final Order of dismissal," by which he refers to the original Anti-SLAPP; but an examination of the two judgments show them to be different. The 21 April 2015 judgment says almost nothing; or if it does, it say that "Plaintiff shall take nothing," which the former judgment did not say. It offers no explanation, simply alluding to the 13 November 2014 strike order that contains two easily provable false statements.

The “recapitulation” turns out to be theme and variations on a defective theme that, were it music, would make Bach cringe, Mozart weep, and Beethoven throw a fit.

The first false statement is that the Defendant has met "its burden of showing that the claims asserted against it arise from constitutionally protected activity." Facile sounding but untrue, as Google's search results constitute a deceptive business practice as defined by Section 5 of the Federal Trade Commission Act. In short, the magic cape of free-speech protection applies until you cross the border into the land of lies (consumer deception). Google's unmarked ads cross that border.

The second false statement is that the Plaintiff "has failed to file an opposition to Defendant's Motion." Plaintiff filed a vigorous opposition that the court refused to look at, even suppressing much of it.

More will be discussed about these issues later. But it should be noted that both became "taboo" topics during the course of the proceedings. Any attempt at discussing them was met with stony silence.

While on this topic of timeliness and its opposite, the following should also be noted:

- Google's Demurrer Response to the Complaint was filed 30 days late (60 days following the complaint) in violation of CCP 430.30. No Motion for Leave was filed, and the violation was neither noted nor sanctioned by court.

- The CCP 425.16-based Anti-SLAPP motion is supposed to be filed in 60 days but it was filed by Google in 72 days with no Motion for Leave filed. This is in violation of 425.16 (f). This violation was neither noted by court nor did the court impose sanctions.

Anti-SLAPP by another name

Google's attempt to use CRC 8.57 -- "Motions before the record is filed" (a) -- is nothing but an attempt to get this case dismissed before it gets started, in the same manner as Google used the 425.16-based Special Motion to Strike to get a dismissal in Superior Court before any facts or evidence in the case were considered. Many legal errors were made by the judge in the Superior Court, and they need to be considered in the Appeal Court and not be brushed aside. Once again, Defendant is attempting to brush aside the case. First, Defendant didn't want facts to be known about Google; now Defendant does not want legal errors surrounding the case to be considered. This needs to stop.

Consider this: In the San Francisco Superior Court, no questions were ever asked of the Plaintiff. Not one! Other than for Supreme Court Justice Clarence Thomas, Is that normal judicial behavior? Also, the majority of the pleadings (five of seven) were suppressed without explanation. Is that normal behavior?

An examination of other court cases revealed that occasionally documents were not viewable. But in the case of S. LOUIS MARTIN V GOOGLE, INC. the suppression of pleadings was systematic and extensive. Note that 100 percent of Google's pleadings were viewable in the Register of Actions. With 100 percent of Defendant Google's filings viewable and only 28 percent of Plaintiffs S. LOUIS MARTIN's filings viewable, this can neither be called fair nor worthy of the democratic process. One might even call it a model of injustice.

Moreover, university law schools and the press were interested in the case. Harvard and Santa Clara universities even posted the complaint, which they *were* able to access, on their own websites. But critical documents they could not access. The press got the impression that the First Amendment had triumphed, whereas it had been misappropriated by bad actors to protect the deceptive "speech" of a piece of software (search algorithm) that deliberately misleads consumers. This is a classic case of using something good to do something bad.

This, and many other issues, need to be examined in the Court of Appeal. When asked for an explanation for the suppression of S. LOUIS MARTIN's filings, nothing but stonewalling occurred in the Superior Court on this issue, suggesting tacit invocation of the Fifth Amendment. Such behavior would likely be considered Obstruction of Justice in a criminal court. Added all together, there are issues of perjury, malfeasance, and Obstruction of Justice, suggesting a darker side to this

case. And on the Google side, there is hacking, per RFC 7258 of the Internet Engineering Task Force (IETF): "Pervasive monitoring is an attack." Neither the court nor Google displayed any interest in, or raised any objections to, these allegations. Two months of `netstat` reports back up the hacking allegations.

Let us also consider the denial of the Motion to Vacate the Judgment. It says simply this:

"On June 29, 2015, Plaintiff S. Louis Martin's Motion to Vacate Judgment of 21 April 2015 came to hearing. The Motion is denied. Plaintiff does not set forth a valid ground for vacating the judgment. (See CCP secs. 473 (B) and 663.)"

This is a sham and a most shameful one. It was written by Google in advance of the hearing and simply signed by the judge in court despite the written motion and the testimony. The fact is the material presented by S. LOUIS MARTIN was based entirely around 663 (1). In S. Louis MARTIN's opening testimony on 29 June 2015 he states:

13 MR. MARTIN: Well, my argument is based around CCP 663.1,

14 which says that the judgment may be set aside and another

15 judgment rendered if there is an incorrect or erroneous legal

16 basis for the judgment, or the judgment is not supported by

17 facts. And I will argue both of those cases are true, that it's
18 not supported by the facts. And to back up, there are big, big
19 errors in the legal assessment of the case.
20 Starting off with the legal basis to overthrow the judgment,
21 Rule 425.16 was not properly followed by the Court. 425.16 says
22 that the special motion to vacate can be granted unless the
23 plaintiff has a probability of winning, essentially, success.
24 And 425.16 Section (b) (2) says that the way to determine whether
25 the plaintiff has a probability of succeeding is to examine,
26 to -- well, literally, it says to consider the pleadings and the
27 affidavits, okay. The judge is required to consider them.
28 Now, moving along there, the pleadings of the plaintiff have

1 been largely suppressed by the Court. Five out of seven of our
2 pleadings were suppressed by the Court without any explanation
3 ever given, and I went all over this court trying to get some
4 answer to this. And quite bluntly, asked Judge Goldsmith what
5 had happened. I got nothing at all, no answer period, just
6 stonewalling of the question. They were critical pleadings.
7 My contention is that if you don't have the pleadings, if

8 you suppress the pleadings, you cannot meet the obligations of

9 425.16(b)2, which says that you have to look at the pleadings in ...

.

The transcripts have been created and filed with the appeal court. Please see them. You will readily see that the judgment is a complete contradiction to what went into the Motion to Vacate by S. LOUIS MARTIN. How could Judge Quinn have signed such a statement? Surely he knew it was untrue.

But the point is this. In signing a prefabricated denial written by Google, the court once again committed perjury. Judge Quinn surely knew that the document he was signing was false. And he surely knew CCP 663 was the topic of discussion. What is really odd is that Google made no comments during this session. It was as if Google knew what the outcome would be and made no effort whatsoever to raise an objection. It appeared to be a "done deal" between the court and the Defendant!

The Record, which is nearly complete, and the Opening Brief, which is now complete but being reviewed (both due 28 September 2015), will amply demonstrate this; but it will go beyond this, showing that both judges signed orders written by Google in advance of the hearings and that they knew their rulings to be pure fabrications. My protests produced nothing but icy silence. Are prefabricated rulings written by

Defendants in favor of themselves consistent with justice and fair mindedness? I think not.

In the case of Judge Goldsmith, I have filed complaints with both the Commission on Judicial Performance and the office of the Attorney General.

Judge or Politician?

He is a judge who is up for re-election, while Quinn is new to the court and may not want to make waves in contradicting more senior staff. (Quinn was the judge for the 29 June 2015 hearing.) Are they acting as judges or politicians? Their behavior would indicate more the later.

Let us take a look at several other critical issues in the court's handling of this case.

Consider the application of CCP 425.16 by the judge in the Special Motion to Strike.

Misuse of CCP 425.16

Judge Goldsmith stated that the Plaintiff "failed to file an opposition." Quite the opposite. S LOUIS MARTIN did file an opposition but the judge refused to look at it.

But the fact is, CCP 425.16 does not require an opposition on the part of the Plaintiff. What it does require, per 425.16 (b) (1), is that the judge determine "that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." That is what 425.16 actually requires.

And 424.16 (b) (2) specifies just how the court is to determine that:

"In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based."

The onus is therefore on the judge, and the judge failed to meet the requirements of the law. That is of course malfeasance. But the judge went even further by suppressing five critical filings in the case. That is Obstruction of Justice per California Penal Code 182 (5).

While S. LOUIS MARTIN objected in the hearing on 13 November 2014, Judge Goldsmith simply signed the order anyway, stating, "This seems clear to me. I'm going to adopt the tentative." The only thing clear to S. LOUIS MARTIN was that the judge was signing a statement he knew to be false.

Emerging Pattern

Following the 13 November 2014 hearing, a pattern of fraud was quickly emerging. Client Google was getting extremely favorable treatment by the court while Plaintiff's voice was not being heard. Things seemed to be worked out in advance under the protective banner of the First Amendment. Search results, even when deceptive, were considered sacrosanct, above the laws of man. Don't dare yell “fire” in a crowded theatre or incite a riot but do go right ahead and mislead online consumers.

The same sort of treatment ensued with my Motion to Vacate the Strike Order. By an honest mistake -- I thought I had thirty days, as with a default judgment -- I filed late. My motion was denied; there was no leniency, whereas Google filed all documents late without any Motion for Leave and suffered no consequences. What a deal! Following the granting of its motion to strike, Google was even allowed a 5-month delay in filing its request for judgment, while the Plaintiff was not

allowed a small delay in filing its motion to vacate the strike order. This is not fair and equal treatment when the gilded hand of Google is allowed huge leniency while the poor-boy Defendant is denied any! Talk about shoving aside justice and buying out the law, to paraphrase William Shakespeare. Here you have it lavishly on display.

What is really clear is that Google does not want this case to see the light of day. If it did, it would be extremely damaging to Google. One of the critical suppressed documents shows exactly why Google is disappearing the best publishers on the Internet and substituting unmarked ads.

In the 29 June 2015 hearing, S. LOUIS MARTIN also addressed the other part of 663 (1), a judgment "not consistent with or not supported by the facts."

First, two volumes of evidence were filed in this case but suppressed by the court. Both quoted numerous industry experts, including Steve Balmer of Microsoft, Jeremy Stoppleman of yelp, Jeff Katz of Nextag ... as well as the Stanford Encyclopedia of Search Ethics. The supporting statements of these authorities should have been enough to validate the legitimacy of this lawsuit and the likelihood of its success.

But as pointed out in the Motion to Vacate the Judgment and the testimony at the 29 June 2015 hearing, there has been much new "competent" evidence.

Consider the following:

New "competent" evidence

a. The FTC documents leaked to the Wall Street Journal show that the real investigators for the FTC stated that Google was guilty of antitrust violations, causing harm both to the consumer and to competition. According to the Wall Street Journal:

"In its investigation, FTC staff said Google's conduct 'helped it to maintain, preserve and enhance Google's monopoly position in the markets for search and search advertising' in violation of the law. Google's behavior 'will have lasting negative effects on consumer welfare,' the report said."

FTC staff recommended punishing Google. But the politically appointed administrative law judges who make the ultimate decisions for the FTC chose to ignore their own staff and only put Google on probation for 20 years.

Google stated in its response to the S. LOUIS MARTIN's complaint that it had been "exonerated" by the FTC, which is a false statement. Clearly it was not exonerated. It was found guilty, but as a result of political pressure -- 24-million dollars of lobbying and 68 Google visits to the White House -- it was not punished. Clearly the decision to not punish was purchased via influence peddling. It is a well known law both of human and corporate behavior that no punishment means no change in behavior, and no change of behavior has been observed since the FTC's decision.

b. Clearly the EU lawsuit, spearheaded by American companies such as Microsoft, yelp, Nextag, TripAdvisor, etc., who can't get justice on home soil, is not a frivolous lawsuit. The EU does not engage in frivolous lawsuits. And being based on the same kind of complaint filed by S. LOUIS MARTIN, it backs up the legitimacy of the lawsuit by S. LOUIS MARTIN, indicating a probability of prevailing.

c. Likewise, the new US Senate antitrust investigations (Senate Judiciary Committee’s Antitrust Subcommittee) into Google following the leaks to the Wall Street Journal clearly indicate a serious concern with the issues raised by S. LOUIS MARTIN.

d. The recent conciliatory statement made by Matt Brittin, head of Google Europe -- "We don't always get it right" -- also lends support to the claims of S. LOUIS MARTIN that all is not well at Google.

All of these issues were raised in the Motion to Vacate the Judgment and in the testimony in the 29 June 2015 hearing, all going unopposed by Google. And while the judge listened and may have even read the motion, he offered not a single comment. Does this material sound unworthy of comment? Even S. LOUIS MARTIN's Internet-hating aunt Millie would have had something to say! The denial of the motion says that S. LOUIS MARTIN failed to address CCP 663, which is clearly not true. Such a denial can only be interpreted to mean that it was written in advance of the hearing, then simply signed after perfunctory toleration of the arguments put forth by S. LOUIS MARTIN. As such, one might call it a "done deal."

No protection for deception

Did the court take this seriously? Who knows? It did not get a single comment. And yet this new evidence said loudly and clearly that this was a significant case with legitimacy. And clearly it was not about suppressing the right to petition, free speech, or public participation of Google by S. LOUIS MARTIN. He has simply no ability to do that. **Moreover, First Amendment rights of free speech do not extend to**

speech that is a deceptive business practice, per the definition of the Federal Trade Commission Act, Section 5. For deceptive speech, protection evaporates, as it does for someone who yells "fire" in a crowded theatre, or for someone inciting a riot. Unmarked ads are deceptive. The FTC has stated this loudly and clearly.

More recently, law professors from both Harvard University and Columbia University (Michael Luca and Tim Wu, respectively) have thrown powerful support to the claim that Google harms both competitors and consumers.

Finally, one really has to ask the question: Does the court think that the European Trade Commission, the FTC, the Congress of the United States, the head of Google in Europe, and the good law professors at Harvard and Columbia universities are all making things up when they detect antitrust violations at Google? Or is the court helping out a buddy and an "American Hero"?

Killing Publishers

S. LOUIS MARTIN, in one of his court-suppressed document, "Shifting Search Scenarios, Extreme Bias," tells the same story and shows in detail why Google is running unmarked ads and disappearing real

publishers. While the good law professors from Harvard and Columbia universities are on the right track, I do not think they quite understand the full economic implications of what Google is doing. The money from returning unmarked advertisers is hugely more lucrative than returning honest search results. When you do the math, it is almost staggering. MARTIN explains in detail why Google is disappearing publishers in its search results and instead returning unmarked advertisers.

Let's do the math, based on the research analysis of "Shifting Search Scenarios, Extreme Bias," a critical filing that was suppressed by the court.

In the case that Google returns an actual publisher (honest search result based on ranking, sometimes called "organic" or "natural" search result) with an ad on the page, for 1,000 clicks on that publisher's URL, Google would make about 32 percent of 2.5 clicks * 6 USD. That comes out to be 4.80 USD, the price of a cheap bottle of wine.

Notes:

- 2.5 clicks is used because only 2 to 3 out of 1000 users would click on an ad if they knew it were an ad;
- 6 USD is the average cost to the advertiser for the click for the click;
- Google keeps 32 percent of the 6 USD.

In the case that Google returns an unmarked advertiser, Google would make 100 percent of 1,000 * 6 USD. That comes out to be 6,000 USD, the cost of some pretty pampered weekend fun for a Google-glassed executive in a self-driving car.

In short, Google makes 1,250 times as much returning an unmarked ad than it does a real publisher!

But note that it is very important that Google does not label an ad as an ad, because if it did the click rate would go down to 2 to 3 in 1000. The practice is of course very deceptive, as the assumption by the consumer is that if the ad is not marked as an ad, then it is a bone fide search result. And, ironically, the presence of a few labeled ads enhances that perception. It says, "Those are the ads; here are the real search results." While this strategy is clever, it is also extremely devious. And Google does not want this information to go public. The strategy it is using is truly insidious.

But of course, with Google's current attempt at dismissal, it simply does not want legal errors and inconsistent facts concerning the Strike Order, motions, denials, or judgments to be scrutinized. It would not look good for Google; and it would not look good for Google’s friends, Judges Goldsmith and Quinn.

This case is much about politics and money, and little about justice; in fact, it is almost a model of injustice in the Internet Age.

With the reporters' transcripts, which are part of the Record, already filed; the Opening Brief done; and the Appellant' Appendix, which will contain the suppressed filings; I am ready to move forward. This Motion to Dismiss the Appeal comes 41 days after the Appeal was filed and seems anything but timely. I sincerely hope that Google does not succeed with its second, last-minute attempt to slap this case down. It is time that the facts about Google be made known.

By Dr. S. LOUIS MARTIN

/s/ Dr. S. Louis Martin

26 August 2015