OPENING BRIEF IN MARTIN V. GOOGLE

S. LOUIS MARTIN V GOOGLE, INC

San Francisco Superior Court Number: CGC-14-539972

Court of Appeals Case Number:

A145657

First Appellate District

Division 2

Judges: Ernest Goldsmith and Joseph Quinn

Plaintiff S. LOUIS MARTIN, Pro Se

588 Sutter Street, No. 105

San Francisco, CA 94102

Defendant GOOGLE, INC., represented by:

Scott Andrew Sher

Wilson, Sonsini, , Goodrich & Rosatti

650 Page Mill Rd., Palo Alto, CA 94304

Bradley Tennis

Wilson, Sonsini, , Goodrich & Rosati

650 Page Mill Rd., Palo Alto, CA 94304

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SUMMARY OF SIGNIFICANT FACTS

This action seeks relief for S. LOUIS MARTIN for having his business destroyed by GOOGLE, INC., via deception and anticompetitive behavior. S. LOUIS MARTIN seeks compensation of five-million dollars. The judgment appealed from is as fraudulent as the methods used by Google to destroy S. LOUIS MARTIN's business. In a friendly collaboration with the court, the Defendant used every means possible to prevent the case and facts from seeing the light of day. Martin wasted over a year in Superior Court in San Francisco without a single pleading being read, no question every asked by Judge Ernest Goldsmith, and the Defendant writing all the judge's orders, denials, and judgments. Google's attorneys might just have well put on judicial robes and sat on the bench with the judge.

The judgment appealed from simply affirms the 425.16-based Special Motion to Strike of 13 November 2014, for which the Plaintiff S. LOUIS MARTION filed: first a motion

to vacate; then, when that was denied and judgment was entered, a motion to vacate the judgment. At no time were Plaintiff's arguments ever heard or considered, and no question was ever asked, in what appeared to be a "done deal" to kill the case from the outset. Ccp 425.16, California's Anti-SLAPP law, was the weapon used.

The appeal is from a judgment under 904.1 (a) (2) and is timely, as has been shown in the Civil Case Information Statement accepted by the court.

The facts are thoroughly discussed below in the Memorandum of Points below, with summaries of each point included, but here is an overall summary of the facts in the case:

A 425.16 Special Motion to Strike was used to kill the case, preventing any real consideration or discussion. 425.16 may be a handy tool to kill meritless lawsuits, but it is even a handier tool to kill meritorious ones. In the case of S. LOUIS MARTIN V GOOGLE, INC., the case was highly meritorious, and its use was fallacious for this reason: 425.16

does not provide protection to speech that is deceptive per Section 5 of the Federal Trade Communication Act. And Google's search results fit that description to a T. This was clearly laid out in the pleadings. But the judge in this case suppressed the majority of the pleadings (5 of 7) and refused to read the ones that he did not suppress. This was a fine deal for Defendant Google and a rotten one for Plaintiff S. LOUIS MARTIN.

First, the judge made the false statement, verifiable in the Register of Actions, that no opposition to the 425.16-based motion was filed. Fact: It was combined with the opposition and rebuttal to the Demurrer, which was appropriate, as the issues were nearly identical. But the fact is, 425.16 ***does not require*** an opposition. What it ***does require***, per 425.16 (b) (2), is that the judge read the pleadings, which he did not do. Instead he suppressed the majority of the pleadings. This in itself constitutes Obstruction of Justice. It is abundantly clear from the pleadings that the Plaintiff had an excellent chance of prevailing in the case. And he had the backing of almost every expert in the industry.

Failure to follow the rules of 425.16 is malfeasance, and denial that an opposition to 425.16 was filed is perjury, as this was the statement made in the order to strike. One suppressed pleading, "Shifting Search Scenarios, Extreme Bias," shows Google's motive for its deception. It can make orders of magnitude more money by killing high-quality publishers who get in their way of returning unmarked ads as search results.

There were two false statement made by the judge in his order granting the motion to strike. One was that Google had "met its burden" of proof that its activity arose from constitutionally protected activity. That may sound nice, roll easily off the tongue, but it is a false statement when you are talking about deceptive speech. Deceptive speech is not protected speech, just as yelling "fire" in a crowded theatre is not protected speech. Second, the judge said that the Plaintiff had failed to oppose the motion to strike. Look in the Register of Actions and you will see that this is not the case. But not filing an opposition is not a failure because it is not a requirement. The requirement is that the judge read or consider the pleadings.

Another blatantly false statement was made by the other judge in the case, Joseph Quinn, in the denial of the motion to vacate the judgment. This came in his statement that the Plaintiff had failed to address ccp 663. The Plaintiff's whole argument for vacating the case was based on 663 (1) and (2). The Plaintiff showed copious instances of legal errors, especially regarding 425.16, and demonstrated that the judgment was out of touch with reality and all known facts in the matter. The denial was written by Google in advance of the hearing, so what else would be expected? But surely this judge knew that he was signing was a false statement.

It should also be pointed out that Google's 425.16-based motion to strike was filed 73 days after the complaint, was not flagged by the court as late, and no Motion for Leave or application for delay was filed. In fact, the judge noted nothing about this and proceeded as if it were timely. It was not, showing a pattern of favoritism throughout all these proceedings. Note also that the Demurrer was filed 30 days late, again with no request or flagging by the clerk or judge. This is simply unfair and undemocratic.

While on the theme of Google's untimeliness, it should also be noted that Google did not file its request for judgment, following the granting of the special motion to strike, for five months. It is due in five days! But again, no consequences for Google.

In fact, no request for a delay was ever made by Google! And request for continuance filed by S. LOUIS MARTIN regarding investigation of perjury by the judge and computer hacking by Google -- truly a good causes for a delay! -- was denied.

This lawsuit began with Google using the Communication Decency Act in "bad faith" to remove CoastNews.com from Google search results, as CoastNews.com's restaurant listings were interfering with Google's unmarked paid advertisement. Based on quality, CoastNews.com had occupied the top positions in San Francisco restaurants searches for a number of years. Then in May 3013 Google claimed that CoastNews.com was a pornography site because there was one article on a popular nudist colony in the Santa Cruz Mountains! Google ceased ad delivery. CoastNews.com is

not a pornography site, while Google is the biggest conduit of pornography in the world. However, per Google's request, CoastNews.com removed Google's *AdSence* code from this page. Google's appeal automated appeals process then said that there could be another problem, but it would not say what it was. This was nothing but a sham to get CoastNews.com out of the way of the rigged delivery of ads that are dressed up to look like honest search results.

From beginning to end -- from the filing of the complaint to judgment -- this case appears to be a done deal between the court and Google, involving perjury, malfeasance, and obstruction of justice, as well as Google hacking of the CoastNews.com computer. It smacks loudly of collusion and corruption. To William Shakespeare, who said over 400-hundred years ago,

In the corrupted currents of this world

Offense's gilded hand may shove by justice,

And oft 'tis seen the wicked prize itself

Buys out the law; ...

this would be nothing new. Still it leaves a bitter taste.

MEMORANDUM OF POINTS AND AUTHORITIES:

OPENING BRIEF IN MARTIN V GOOGLE, INC. (A145657):

I. Introduction: The Human perspective

The human story of Martin v. Google, Inc., is chilling. After years of hard work by one company, CNS Publishing, Inc., later reduced to former-CEO S. Louis Martin, another much-larger one decides to destroy the smaller one. The motive? Money, of course, and a take-it-all model of profitability not seen in years. The big company can make orders of magnitude more (three+ as will be shown later) with the little company out of the way. And what is the method used to destroy the little guy? In the Internet Age, it is simply to make the little guy invisible, to "disappear" him, with the false accusation that the little guy is violating the Communications Decency Act, which he is not, while the Big

Guy is the Master Pornographer of all time. Hypocrisy? So what? Who cares if it’s true? Demur to it!

We live in era where passing gas in the Post Office has the same legal protection as reading Shakespeare's "Hamlet" in the park. Say what you want, gesture as you will, you're protected. And the Big Guy, being an unregulated monopoly, has the power. All it has to do is remove the little guy from the network, pull his plug. With political connections everywhere and money to burn, it is no problem. The gilded hand shoves justice aside, while the prize itself buys out the law, to paraphrase the bard. In fact to many it is a success story, like "American Sniper". Anything to protect "buddies" is moral conduct in furtherance of ... well, something.

That is the human perspective, once considered important but no longer. Now let us take a look from a legal point of view at how all this played out in the court.

II. Legal Perspective

On 29 June 2015 Plaintiff S. LOUIS MARTIN, per ccp 663 (1), asked that the judgment be set aside based on (1) numerous legal errors made by the court as well as (2) a judgment "not consistent with or not supported by the facts."

The motions was denied, stating that "Plaintiff does not set forth a valid grounds for vacating the judgment" per ccp 473 or 663. (See page 159 in Appellant's Appendix.)

This is blatantly false. The arguments presented at the hearing were clearly and explicitly based on ccp 663 (1). (Ccp 473 was inappropriate.) In fact, the opening statement by S. LOUIS MARTIN began:

Well, my argument is based around ccp 663.1, which says that the judgment may be set aside and another judgment rendered if there is an incorrect or erroneous legal basis for

the judgment, or the judgment is not supported by facts. And I will argue both of those cases are true ...

The Plaintiff then proceeded to a detailed description of the legal errors and a judgment not consistent with the facts.

Please see the testimony for 29 June 2015.

Let me reiterated those arguments.

1. Incorrect Legal Basis of Judgment per ccp 663 (1)

Summary of Point 1: Gross legal errors were made in this case, apparently with the intention to throw it to Defendant Google. It is the old story of power and money buying out the law. Google wrote the court orders, judgments, and denials; the court questioned nothing, asking not a signal question. This is all clear from the Register of Actions, the suppression of the Plaintiff's pleadings, and the court's failure to follow

the law, especially regarding 425.16, the special motion to strike. The details regarding these violations follow.

In the 13 November 2014 order granting the Defendant's Special Motion to Strike pursuant to ccp 425.16 (see page 121 in Appellant's Apendix), Judge Goldsmith made numerous legal errors in the order granting the Special Motion to Strike. The most egregious is this statement:

Plaintiff has failed to file an opposition to Defendant's Motion, and has produced no evidence supporting a probability of success.

This rolls off the tongue pretty easily, but let us examine the facts.

Fact 1: The Plaintiff did file an opposition (see page 77 in Appellant's Appendix); the judge simply refused to read or acknowledge it. And if read, it would have demonstrated a high probability of success. It is in the Register of Actions with a filing date of 10 September 2014 (see page 164 in

Appellant's Appendix). Nevertheless, and despite objections, the order was signed in open court.

Fact 2: But there were five other critical documents filed that also demonstrated a high probability of success (see pages 91, 96, 108, 111, 115 in the Appellant's Appendix). The problem, however, was this: All had been made invisible (unviewable) by the court without any explanation despite numerous demands for one. Had these documents been viewed, they, too would have demonstrated a high probability of success.

Of the seven pleadings filed by the Plaintiff, only two showed up in the Register of Actions as viewable. (The five others were treated as if they did not exist.) This issue was raised in all three hearing. In all three hearings the court did not respond to the issue, maintaining the stony silence of one tacitly invoking the Fifth Amendment. In desperation the day before the 13 November 2014 hearing, Martin double-filed documents with the same result: None was ever made viewable, and no explanation was ever offered. (See Register of Actions, page 164 in the Appellants Appendix, for

verification of double-filing.) Martin made inquiries at the Clerk, Records, and the Court Administration offices. No explanation was offered there either. And Martin made phone call after phone call. None was returned. Martin also wrote the Presiding Judge of the court, asking for some explanation. (Please see "Document Filing and Public Viewablity: An Open Letter to San Francisco Superior Court Presiding Judge Cynthia Ming-mei Lee." This letter can be viewed here: http://coastnews.com/google/viewability-question-letter-1.html .) Plaintiff Martin received no reply. Was the entire court tacitly invoking the Fifth Amendment? So it seemed.

Fact 3: An examination of other Superior Court cases by a third party 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 Plaintiff's Martin's filings viewable, this can hardly be called fair or democratic. Moreover, university law schools and members of 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 they could not view the supporting pleadings. What more could the Defendant ask for!

What ccp 425.16 requires, doesn't require

But the fact is, 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 clearly 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 CPC 182 (5).

Now consider this: While no opposition to a 425.16-based special motion to strike is required, in fact an opposition to the motion to strike was combined with the rebuttal to Defendant Google's demurrer response in a document called "THE CASE FOR CONTINUING THE CASE AGAINST GOOGLE—AND REJECTING ITS DEMURRER REQUEST". (Moreover, this was detailed in the document called "Attachment to Case Management Statement for Case CGC-14-539972 (S. LOUIS MARTIN V GOOGLE, INC.), for 22 April 2015 Meeting: MOTION-TO-STRIKE ISSUES ADDRESSED IN REBUTTAL DOCUMENTS AS WELL AS DEMURRER ISSUES". See page 77 in the Appellant's Appendix for the document called "THE CASE FOR CONTINUING THE CASE AGAINST GOOGLE—AND REJECTING ITS DEMURRER REQUEST".)

Since the issues were nearly identical, as would be expected, this was deemed proper. It was also perfectly acceptable per court rules to combine the responses. Nevertheless, the judge refused to look at it, denying that it even existed; while, per 415.16 (b) (2), it was his duty to "consider the pleadings," and that includes all the pleadings. Thus he should have considered it under all circumstances, even if for some odd reason he did not think it was the opposition. 425.16 requires that. He should also have considered all suppressed documents. There is nothing in 425.16 that says only non-suppressed or viewable filings need be considered.

Also, it should be noted that Defendant Google filed its Anti-SLAPP motion late. Per 415.16 (f) it is due within 60 days; Google filed it in 73 days without a Motion for Leave to delay, with the clerk not catching or flagging the error, and with this violation going unnoticed or unnoted by the judge. Why it was not filed before or with the Demurrer (also filed late) is anyone's guess, though by filing it late (following the filing of the Demurrer), this did tend to cause confusion. What was the Defendant up to? In *Olsen v Harbison* the, the appeals court ruled against a late filing of a 425.16-based motion to strike, stating that the anti-SLAPP motion “is

denied on the ground that it is dilatory, without good cause for failing to bring the motion earlier….” Likewise, in the case of S. LOUIS MARTIN V GOOGLE, INC. the filing by Google was “dilatory” and no good cause -- or any cause at all! -- was ever stated, formally or informally. It therefore should not have been allowed. And it is another instance of Google’s privileged attitude of entitlement. In *PLATYPUS WEAR, INC. v. Martin GOLDBERG*, an appeals court overturned the decision of the Superior Court to grant a late filing of a 425.16-based motion to strike, stating,: “[T]he grounds given by the court for finding the anti-SLAPP motion [timely] are inconsistent with the substantive law of section 425.16, …”

Of course, in the case of S. LOUIS MARTIN v GOOGLE, INC., no application for late filing of the Anti-SLAPP was even filed! The late filing was simply tacitly accepted by the clerk of the court and the judge, again indicating a privileged status for Defendant GOOGLE, INC.

Moreover, the Demurrer was filed 30 days late (60 days after the Complaint was filed) -- ccp 430.30 requires it to be filed

in 30 days -- likewise without a Motion for Leave and with the violation going unnoticed or unnoted by the court. This is part of a pattern of favoritism to Defendant Google that will be outlined later in this document. In general, however, the court has behaved in a Google-friendly, non-neutral, client-like manner suggesting the influence of politics and money. It should also be noted that Judge Goldsmith is up for re-election, and in the state of California it is not illegal for judges to solicit campaign contributions, a practice that the United States Supreme Court commented on in *WILLIAMS-YULEE v. FLORIDA BAR*, stating that "Judges are not politicians."

Summary of legal errors

Summary of legal errors: ccp 425.16 says nothing about a requirement to file an opposition. Thus S. LOUIS MARTIN did not "fail" to do so by the standards of 425.16, as stated by the judge. But in fact he did file an opposition, which the court refused to acknowledge or read. The major failures here are the court's failure to consider the pleadings

(malfeasance), a requirement of 425.16; and the court's suppression of a majority of the Plaintiff's pleadings absolutely without explanation (Obstruction of Justice per CPC 182 (5)). Of course added to this are three violations of the required schedule for filings -- ccp 425.16 (f), ccp 430.30, and CRC 3.1312. Moreover, it should be noted that everything discussed by Plaintiff Martin in the 29 June 2015 hearing was ccp 663 (1)- related, contradicting the statement made by Judge Quinn in the order denying the Motion to Vacate the Judgment. All arguments of S. LOUIS MARTIN were clearly made in the context and framework of 663 (1).

Use of 425.16

But there is a broader issue at stake here: the appropriateness of the use of 425.16 at all in this case.

As stated in 425.16 (a):

The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process."

Clearly, S. LOUIS MARTIN V GOOGLE, INC. has nothing to do with chilling "participation in matters of public significance" of Google the company. This is a complaint against one of its products, not the company; clearly Google Search is the target of the complaint. That is abundantly clear in the details of the complaint. Nor from a practical point of view would it be possible for S. LOUIS MARTIN to prevent Google from signing a petition, speaking freely in a public place, or participating in public matters. Moreover, S. LOUIS MARTIN has no desire to prevent GOOGLE, INC., from doing anything at all other than destroying his business. In fact, if GOOGLE, INC. would obey the law, there would be no lawsuit to consider here.

And surely the court was well aware of this. Living right next door to ccp 425.16 is its responsible big brother, ccp 425.17, which states:

(a) The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process or Section 425.16.

And that is exactly what is occurring here in Martin v. Google, Inc. -- the "abuse of the judicial process." Google is misusing 425.16 to deflect a legitimate lawsuits related to the dubious behavior of one of its products, a product that not only misleads consumers but kills competitors.

425.16 is written so broadly per 425.16 (e) (4) -- "any other conduct in furtherance of the exercise of the constitutional right ..." -- that passing gas in a public place, per the California Legislature, would qualify as protected speech. By

this low standard, Google's Search results would certainly meet the threshold of "passing gas" in a public place if it were not for this: ***Google's search results are a deceptive business practice as defined by the Federal Trade Commission Act, Section 5***, as well be described in detail later in this document. They also violate the Sherman Act and Clayton Act.

But even if Google Search results were not deceptive, would those results, as information about information, i.e., as URL pointers to information, qualify as "information" per the United States Supreme Court ruling in *Sorrell v. IMS Health*? (In *Sorrell v. IMS Health* the Supreme Court declares that "creation and dissemination of information are speech within the meaning of the First Amendment.") Would they not impose limits on whether information about information also qualifies as information? And what about information about information about information ...? Would the first reference to information inherit legitimacy for consideration as information? And where in the chain would inheritance stop? Any reasonable person would find this a stretch; but no court, let alone the US Supreme Court, has taken up this matter. Nevertheless, the question remains: Where does sense

stop and nonsense begin? And who is allowed to stretch the law and who isn't? While the "spirit of the law" may be invoked in some matters, care must be exercised when evil spirits are at work.

Imagine, for instance, a list of street addresses where witnesses to a murder in Mountain View, California, live. Imagine the bureau chief in charge of the investigation telling one of his detectives, "I put the list on your desk." Does that make his statement information about the murder itself or some other kind of information? And consider this: What if the detective's wife had left him the day before and he, feeling lonely or insecure, brought his dog to work that day? Now suppose further that the dog ate the list before the detective got back to his desk and then -- Heavens! -- deposited the list on the lawn of the detective's neighbor the next day. Would that lump on the neighbor's lawn still qualify as "protected speech"? According to a broad interpretation of 425.16 it might. But back to Google:

While Google Search generates URL pointers to information that others create, does this mean that these pointers inherit

status as speech? Are they talking pointers? Are they symbolic, like pumping your fist at a political rally? Or consider the question this way: While the writings of Voltaire, the historical father of free speech, are clearly speech, and some of the finest ever written, is the index file at the public library that tells you where to locate, say, *Candide, ou l'Optimisme*, in the stacks also speech? Are they on the same level of speech as the great author's books? And what if there were an error in the index and a card pointed to no book at all? Would that card still be speech? Would it be a talking card with the right to petition, public participation …? Perhaps the high court would say yes, but the great libertarian thinker and philosopher Voltaire would probably draw a line somewhere and say, *ce n'est pas, monsieur*, cards don't talk. After all, he was a sensible man and knew where to draw the line, as per Leibniz' optimism. What right then would the California Legislature or the US Supreme Court have to deny him is "opinion"? Voltaire was concerned with truth, not the specious politics of the day.

While these arguments may sound ludicrous, they present a kind of *reductio ad absurdum* method used by philosophers

to deal with nuisance questions created by individuals or institutions that are a nuisance.

Here follows a list (Martin won't attempt to determine if it is "protected speech" or not!) of other legal violations by Defendant Google:

-- Its 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 425.16-based Anti-SLAPP motion is supposed to be filed in 60 days but it was filed in 73 days with no Motion for Leave filed. This is in violation of 425.16 (f). This violation was neither noted by court nor sanctioned.

-- A Request for Judgment (dismissal) is supposed to be filed within 5 days following the granting of a 425.16-based motion per CRC 3.1312 (a), but Google filed its in 5 months, which is a pretty liberal interpretation of the law by Google. In this rare case, the violation was noted by the presiding

judge of the court, John Stewart, but no sanctions were imposed for this gross 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 on school children who don't do their homework on time.

(See the Register of Action on page 164 or the Appellant's Appendix to verify any of the above statements.)

Please note that no extensions were ever granted to Plaintiff S. LOUIS MARTIN, even for a formal, justifiable request. A prime example of this is Martin's "Request for Continuance" made when there were alleged criminal allegations: perjury pending against the judge and computer hacking against Defendant Google. Apparently ordinary procrastination is considered a better excuse for being late than a valid reason and "showing cause." (See page 137 of the Appellant's Appendix for the filing called "This is a Request for continuance of the hearing set for 3 February 2015 in Case S. LOUIS MARTIN V GOOGLE, INC. (Case CGC-14-539972)".)

2. Judgment Not Consistent With or Not Supported by the Facts per ccp 663 (1)

Summary of Point 2: The Judgment made by the court is totally out of touch with reality. All "competent" evidence shows that the Plaintiff, S. Louis Martin, had an excellent chance of winning this case if it ever saw the light of day. The court and Google, Inc. appeared to function as a well-co-ordinated team to make sure that never happened. Read on for the details. And please pay special attention to the section called "Killing Publishers," which outlines the motive for the attack on high-quality organic search results of bone fide publishers.

The judgment is clearly not supported by the facts. The facts, in fact, support quite a different judgment.

First, two volumes of evidence were filed in this case but suppressed by the court. Both quoted numerous industry experts, including Steve Ballmer of Microsoft, Jeremy Stoppleman of yelp, Jeff Katz of Nextag ... as well as the Stanford Encyclopedia of Search Ethics. (See "Corroboration

of Experts" on page 92 of the Appellant's Appendix.) The supporting statements of these authorities should have been enough to validate the legitimacy of this lawsuit and the likelihood of its succeeding.

But as pointed out in the Motion to Vacate the Judgment (page 153 in the Appellant's Appendix) and the testimony at the 29 June 2015 hearing (see reporter's transcript), there has been much new "competent" evidence.

New "competent" evidence

Consider the following:

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's recommendations 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 in behavior has been

observed since the FTC's decision. It is Google as usual in cyberspace.

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-loathing aunt Millie would have had something to say! The denial of the motion (see page 159 in the Appellant's Appendix) says that S. LOUIS MARTIN failed to address ccp 663, which is clearly not true. Such a denial can 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. One might even call it a "done deal" of the backroom type.

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 Federal Trade Commission, 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 trouble? Or is the court helping out an American Hero “buddy” named Google?

Killing publishers

S. LOUIS MARTIN, in one of his court-suppressed document, "Shifting Search Scenarios, Extreme Bias," (see page 115 of the Appellant’s Appendix) tells the same story and shows in detail why Google is doing it. While the good law professors from Harvard and Columbia universities are on the right track, Martin does not think they 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."

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 at Trader Joe’s.

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;
- 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.

Thus the motivation is clear and obvious for disappearing real publishers and, by the deception of the unmarked ad, returning an ad instead. Real publishers get in the way of ad delivery on the Google ad network, so they must go. (See "Introduction to What Is Google?" on page 108 of the Appellant's Appendix and "What Is Google?" (page 111 in

the Appellant's Appendix), two other suppressed documents.) ***And, ironically, the higher the quality of real publishers, the greater is the urgency to get rid of them!***

There is no mystery about what is going on anymore, but there has been a great effort made by Google, and apparently the court too, to conceal it by suppressing the real story.

In short, anyone who had access to Martin's pleadings could not have concluded other than this: S. LOUIS MARTIN had an excellent chance of prevailing in this lawsuit. Like yelp, TripAdvisor, and others, he did his homework while the court suppressed critical documents and tipped the scale of justice hugely in favor of Defendant Google.

Certainly the judge's behavior is subject to CPC 182 (5), Obstruction of Justice, in the matter of suppression of filings; and Google's is subject to Section 5 of the Federal Trade Communication Act, as discussed below, for deceptive practices. And please note: While Google makes the dubious claim that its search results are "protected speech," that protection evaporates when it comes to deceptive business

practices. No one has the right to knowingly fib, mislead, or deceive. Such "speech," like shouting "fire" in a crowded theatre, is not protected, even if Google, with all its money and powerful political connections, declares that it is!

Consider the case of *Flatley v Mauro*, decided by the California Supreme Court. The court denied Mauro's 425.16-based motion to strike on the grounds that extortion, as employed by Mauro, was not protected speech. The court held that the defendant cannot use the Anti-SLAPP law if "either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law."

While Google is not directly extorting money from clients -- though some would argue that its *AdWords* program for bidding on keywords amounts to the same thing -- it ***is*** engaging in deceptive business practices regarding unmarked advertising and should never have been granted the 425.16-based motion to strike. The free-speech rights of its search algorithm, if they exist at all, do not apply when it is telling lies to consumers or deceiving them!

3. Google Has Not Met its Burden

Summary of Point 3: "Google has met its burden" is a nice phrase if it were true. It is not. Google has willingly misused the law to escape punishment for unfair business practices per the FTC and California Business law. It has willingly deceived the public for profit while destroying competition. And its use of 425.16 is totally disingenuous. It is invoked for the opposite reason for which the law was intended. It is being used to suppress legitimate complaints by smaller business, thereby preventing redress of grievances. Please read on.

Google has not met its "burden of showing that the claims asserted against it arise from constitutionally protected activity," as stated in the order granting the special motion to strike.

425.16 (e) lays out what is included in an "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue."

Specifically, 425.16 (e) (4) clarifies what is meant by an "act in furtherance of a person's right of petition or free speech ...":

any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

The problem for Google is that speech that falls under the description of deceptive business practices per the Federal Trade Commission Act, Section 5, as Google's search results do, does not qualify for First Amendment protection. And it is abundantly clear that Google's search results are deceptive as described earlier. Like climate change, this is no longer an issue of conjecture. What such “speech” does qualify for is punishment for violations of rules per the Federal Trade Commission Act, Section 5; the Sherman Act; and BPC 17200-17210 and 17500-17509 of California state law.

In short, **in no way does Google meet its "burden"** as stated in the order granting Google's Special Motion to Strike

pursuant to 425.16. While the statement may sound superficially plausible, it is no more than that.

But there are other issues worth looking at in regard to the use of 425.16. Consider this:

The clear intent of 425.16 is to protect a company ("person") from a lawsuit brought to chill/muzzle public participation, free speech, and/or the right to petition. While "broad interpretation is intended," Google has stretched its interpretation to the point where meaning is no longer meaningful.

Consider what Google is suggesting: that one of its products, its search algorithm, is a manufactured "act" of the company, even though this software has no ability to sign a petition, speak freely in a public place (after all, it is only a software generator of lists and has been programmed to ***not*** speak freely), or participate in anything; it is trapped inside of an unseen computer and can't even pass gas in a public place, as a human could in a defiant act of "symbolic" speech per the United States Supreme Court (*Virginia v. Black*).

It also has no content, which means it has nothing to say; only the advertisers and/or publishers that the URLs point to have content and therefore anything to say. The algorithm is a list-generator of web addresses or URLs. When there is money to be made, the URLs point almost exclusively to advertisers these days; when there is no money to be made, the URLs may point to a few real publishers with content. But even the brief descriptions of content associated with the URLs are taken without permission from the advertisers and/or publishers to which the URLs point. Thus the content, which should be afforded protection, is not on the Google side. Google generates no content of its own. And, ironically, it is using 425.16 to silence any real publisher who complains about the injustice of this practice. Let us hope this was not the intention of 425.16 and the California Legislature because, if it were, it works against justice, not for it.

Thus the notion that Google "has met its burden" is nonsense. Google is the burden that competitors have to bypass in order to be seen. In the restaurant business, which was a specialty of CoastNews.com, the burden -- you might call it the Google tax -- is 5 to 7 USD per click. Google's involvement is better described as a "racket" than a business. It is like the

"Suge tax" that rappers wanting to play Vegas had to pay before Marion “Suge” Knight was arrested in 2015 for the murder of Terry Carter, co-founder of Heavyweight Records.

Moreover, the lists are both deceptive and unfair and fall into the category of deceptive/unfair business practices. Section 5 of the Federal Trade Communication Act defines a deceptive business practice, among other things, as when:

A representation, omission, or practice misleads or is likely to mislead the consumer.

Where the worst may be first, the best last

Clearly, "search results" that are unmarked ads paid for by advertisers by keyword bidding are deceptive. Other than the most cynical of consumers, or intelligent or astute, consumers assumes search results are objective and honestly selected, not the result of some background-bidding process

on ranking, where the worst may be first and the best may be last or even disappeared.

In 2013 the FTC updated guidelines on the "Need to Distinguish Between Advertisements and Search Results." Said the FTC:

The updated guidance emphasizes the need for visual cues, labels, or other techniques to effectively distinguish advertisements, in order to avoid misleading consumers, and it makes recommendations for ensuring that disclosures commonly used to identify advertising are noticeable and understandable to consumers....

Further on it states:

The guidance advises that regardless of the precise form that search takes now or in the future, paid search results and other forms of advertising should be clearly distinguishable from natural search results.

Nevertheless, Google continues to thumb its nose at the FTC in this matter, providing search results so biased that Business Insider has drubbed them "horribly biased." (see “Additional Collaboration” on page 119 of the Appellant’s Appendix.)

In the category of unfair business practices, the FTS lists, among other things, a practice that:

Causes or is likely to cause substantial injury to consumers.

Unmarked ads for pharmaceutical products could clearly do that, as mentioned in the complaint. Consider taking the least effective cancer drug rather than the most effective. Death or a shortened life span could easily be the result. Or consider taking the pharmaceutical equivalent of heroin for pain relief and becoming slowly addicted, as so many people are these days. (See page 94 in the Appellant’s Appendix regarding “Corroboration of Experts”.)

While Google likes to talk about the "right to order its search results as it wants," what it is really doing is "rigging" its

search results to make the most money at the expense of both the consumer and competition. There is a big difference between the concept of ordering something or rigging it. Google search results make an excellent illustration of the difference.

If one were to take Google's argument about "meeting its burden" seriously, then one could also argue that an automobile manufacturer, on the basis of free speech rights, can publish erroneous manuals or videos on the operation and maintenance of its automobiles, even if death or serious injury resulted. The Plaintiff sincerely hopes it is not the intention of 425.16 to absolve criminals of responsibility for what they say or do in public places.

Google has not "met its burden"; rather it has violated Section 5 of the Federal Trade Communication Act and the Sherman Act, as well as California Business and Professional law.

Like yelling "fire" in a crowded theatre or inciting a riot, Google's search results, because of their deceptive nature, are not protected speech.

Google also returns the URLs of advertisers/publishers that show how to get around background checks for purchasing firearms. Is that also "protected speech"? What if a mentally ill consumer reads those instructions, illegally purchase firearms, then goes on a rampage that kills children at a public school? Is this free speech, or does it make Google an accessory to murder?

According to Google, its right to make money via free-speech protection comes before public safety issues.

No content, no nothing

While Google cites California Court of Appeal cases *Tampkin v. CBS Broadcasting, Inc.* and *Braun v. Chronicle Publishing* in its "Memorandum of Points and Authorities in

Support of Defendant Google to Strike Plaintiff's Compliant Pursuant to CCP 425.16," it should be noted that CBS Broadcasting and Chronicle Publishing generate content, unlike Google, who just points at content via URLs and steals their descriptions. Google's URLs do not express thoughts or feelings and do not constitute "speech" in any normal use of the word. Nor are these URLs the type of "information" alluded to in *Sorrell v. IMS Health* by the Supreme Court. The Supreme Court ruling is about real information, not possible pointers to it.

There is a big difference between a shopping list and a delicious meal. You can't eat the shopping list, nor does it tell you how to cook the meal, as a recipe might. Nor does the purloined description of a tomato make you a publisher; on the contrary, it makes you a thief subject to CPC 484-502.9.

4. Other Issues Ignored by Court and Google

Summary of Point 4. Both the court and Google chose to address only one issue in this complaint, that relating to

antitrust law. But there were two other related issues, as discussed below. Please read on.

Also raised in the complaint were issues regarding Deceptive Business Practices and Destruction of Business Property. (Sections 2 and 3 of the Complaint on page 9 and 11, respectively, in the Appellant's Appendix.) These are not trivial issues.

The method that Google used to disappear CoastNews.com was to falsely charge CoastNews.com with being a pornography website, which it clearly is not. Google used the Communications Decency Act falsely to do this. (Discussed in the pleading titled "THE CASE FOR CONTINUING THE CASE AGAINST GOOGLE—AND REJECTING ITS DEMURRER REQUEST", items #2 (page 80 in the Appellant's Appendix). In essence, Google used CDA section 230 (c) (2) in bad faith to justify disappearing CoastNews. CDA section 230 (c) (2) requires "good faith" usage, as explicitly stated by this law.) This charge was based on one article on a popular nudist colony in the Santa Cruz Mountains. As discussed in the complaint, photographs in

The National Geographic and of nudist colonies are not considered to be pornographic. (See *Supreme Judicial Court of Massachusetts case COMMONWEALTH v. John REX*.) And while Martin complied with Google's request to either delete the article in its entirety from the Internet or remove Google's ad delivery code from it (Martin removed the ad code), Google then told Martin via its automated "appeal" process that there could be other problems but did not state what they might be. This all smacks of deceptive business practices. It is also the epitome of hypocrisy, as Google is the largest conduit of hard-core pornography in the world. Want to see a 40-year-old “hunk” having sex with a 13-year-old girl? Go to videos.google.com and enter "young naked girls". In the UK, Prime Minister David Cameron, following two copy-cat murders, made Google remove pointers to articles on the sexual torture and mutilation of young girls. Google did so only reluctantly when Cameron threatened to block Google in the UK. Does Google sound like a company that cares about decency or morality?

Finally, Google destroyed the aesthetics of the CoastNews.com layout by giving only three days of notice before shutting off ad delivery, leaving inexplicable blank holes all over the website. That was clearly not enough time

to cope with the situation. CoastNews.com has some 1000 pages with carefully imbedded Google ad code. It took years to carefully insert it, and it would take a considerable amount of time to carefully find and remove it. Thus beyond disappearing CoastNews.com, Google has also knowingly destroyed the aesthetics of it.

Apparently the only issue that interested the court and Google was the one related to antitrust law, but there were two other related issues that needed to be addressed.

Summary

With so many legal errors in this case, it is hard to know whether to call it a comedy or a tragedy. But with the various attempts by Defendant Google to portray evil as good and good as evil -- everything as its opposite -- there is little levity to be observed. Therefore, let us declare it a tragedy, one most modern and authentic. But it is a tragedy more tragic than the usual tragedy, as it appears to involve politics, money, and a pattern of collusion -- or at a least happy

collaboration ---of the Defendant and the court. Clearly, the use of the 425.16-based motion to strike should never have been allowed. Clearly, it is nothing other than an attempt to dismiss as rapidly as possible a legitimate complaint against a company's product. But given that it was allowed, the judge then failed to follows rules laid down in 425.16. He stated that the Plaintiff “failed” to file an opposition to the motion. But that is not a failure because no opposition is required. In fact, however, the Plaintiff did file an opposition but the judge refused to read it, even going so far as to deny that it existed. And 425.16 (b) (2) clearly states that the judge must consider the pleadings. Instead of doing that, the judge suppressed the majority of the pleadings and did not read the existing one. There is also the violation of the deadline for 425.16. It must be filed in 60 days per 425.16 (f), whereas it was filed in 73. Surely the court and the judge were aware of this. Per ccp 430.30, the Demurrer was also filed late (30 days). Moreover, in violation of CRC 3.1312 (a) the request for judgment was filed 5 months late! But the wrong doing doesn't end there. Google's search results are mostly unmarked ads, in violation of the Federal Communication Act, Section 5, which deals with deceptive and unfair business practices. And those results do not qualify as

protected speech per the First Amendment, which excludes, as it does yelling "fire" in a crowded theatre or inciting a riot, deceptive speech from its protective umbrella. There are also issues of alleged perjury on the part of the judge, which falls under CPC 182 (5), and allegations of criminal hacking against Google (violation of RFC 7258 of the Internet Engineering Task Force; see page 140 in the Appellant's Appendix). Finally, given the evidence (public statements by industry leaders) and analysis presented in the suppressed pleadings, and the new evidence presented in writing in the Motion to Vacate the Judgment and in court testimony on 29 June 2015, a very high probability to succeed with this case was demonstrated. Instead, Google's bogus First Amendment rights were used to violate the authentic First Amendment rights of Plaintiff S. LOUIS MARTIN. While the stars did not fall out of the sky, it was said that the constellation Libra, representing Justice in ancient times, blushed for shame.

Prepared by Dr. S. Louis Martin

/s/ Dr. S. Louis Martin

22 September 2015