

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

AARON C. BORING AND CHRISTINE
BORING, husband and wife respec-
tively,

CIVIL DIVISION

Plaintiffs,

CASE NO. 08-cv-694 (ARH)

v.

GOOGLE, Inc., a California cor-
poration,

Defendant.

**PLAINTIFFS' REPLY TO DEFENDANT GOOGLE'S RESPONSE
TO PLAINTIFFS' MOTION TO STAY
PENDING PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES SUPREME COURT**

AND NOW, come Plaintiffs, by and through the law firm of TECHNOLOGY & ENTREPRENEURIAL VENTURES LAW GROUP, P.C.:

1. Defendant Google has no objection to the stay sought by Plaintiffs. At the same time, Google seeks to strike the exhibits from Plaintiffs' motion. Google's request is mooted thereby based upon the standard of review; however, in prudence and caution, Plaintiffs briefly address Google's request to strike.

2. This case was instituted to address the basic American and human substantive rights to protect private property rights, and the basic American and human substantive rights to protect privacy rights.¹ In the course of trying to make their case for these important substantive rights (such as Plaintiffs see it as important), Plaintiffs were denied the basic Constitutional right to a trial to make their case, which denies procedural due process. This little case wraps into it three of the most fundamental human rights.

3. Plaintiffs respectfully assert that this Court and the Third Circuit have misapplied the law in dismissing Plaintiffs' claims. To wit, Plaintiffs' claims are plausible.

¹ See, generally, The Universal Declaration of Human Rights, December 10, 1948 ("No one shall be subjected to arbitrary interference with his privacy, family, home").

4. A 12(b)(6) motion is on the pleadings, with inferences in favor of the plaintiff. To deny plausibility on the pleadings is a somewhat abstract assessment in draconian form, which is part of the pain and confusion of the recent *Twombly/Iqbal* standard.

5. A Rule 68 Offer is not an offer of settlement, nor is it confidential. A Rule 68 Offer is an admitted cram-down. Google offers absolutely no law whatsoever that its Rule 68 Offer must be removed from indexing, freedom of information or public inspection, because that law does not exist. The existence of the document and its content is the truth and speaks for itself; however, why the document exists is for this Court's consideration.

6. Let us keep our eye on the ball: Plaintiffs assert that it is plausible that Google can intentionally disregard private property and privacy rights. It was pleaded, and it is plausible. This Court, with the United States Third Circuit Court of Appeals, ruled that it is not plausible. Because a 12(b)(6) motion is on the pleadings, the question is ruled upon in the abstract.

So, how will the undersigned demonstrate that the issue is judiciable for appeal in light of the stay that Plaintiffs request? The exhibits are merely offered to this Court to demonstrate judiciability of the appeal, which is relevant to the question presented. Admissions by Google are exceptions to hearsay. Google admits it intentionally disregards obtaining property owner consents because it would slow down deployment, and, at the same time, Google admits it is responsible for filtering. Because Google did not obtain Plaintiffs' consent, nor did Google filter the content, in addition to driving past signage - all pleaded - collectively demonstrates factual plausibility despite the application of the law. It demonstrates the very problem with *Twombly*: Plaintiffs are entitled to make their case, and Plaintiffs have a true basis to do so.

7. This is a jury trial. Google makes no analytical distinction whatsoever between filing the Rule 68 for admissibility and its intended substantive purpose of constraining the award at trial, versus offering the document to this Court for such weight as this Court will give it, as any public record, for the procedural question before it. After taking the full 14 days to file a non-objection, Google fails to cite any applicable case whatsoever

8. Plaintiffs' argument has been stated now many times, to wit: Google seeks forgiveness, rather than permission. And, now it discloses more of its intention that, if you do not forgive it, it will destroy you in Rule 68 costs. That is the truth. Google's factual argument: Google can drive on your private property, past signage, take pictures and publish them worldwide for a profit. Google's legal argument: You cannot sue for punitive damages, you cannot sue for compensatory damages, you can sue for nominal damages of \$1, but, if you get \$1, being less than \$10, it will claim all of the bully costs that a \$34B company can generate against a mom and a pop vindicating their legal rights in America.² This is the truth.

9. This Court seeks the truth. The documents attached to Plaintiffs' motion are true. The motion exhibits speak for themselves and should be given such weight as the Court deems appropriate; this Court can consider the authority of each document and its source (*e.g.*, *Google*, *CNN* and *The Press Democrat*), in the context of the issues before this Court.

Although Plaintiffs accept the admission of Google's argument for the more constrained legal appeal point of extrinsic evidence on a 12(b)(6) motion, that argument is not applicable here.

WHEREFORE, Plaintiffs respectfully request that this Court grant a stay of this proceeding as requested in their motion.

² A dog that bites after the fact is relevant to prove its latent vicious propensity before the fact. Google's intention is relevant to the judiciability of the question presented.

Dated: April 22, 2010

s/Gregg R. Zegarelli/
Gregg R. Zegarelli, Esq.
PA I.D. #52717

Dennis M. Moskal
Gregg R. Zegarelli, Esq.
PA I.D. #80106

Counsel for Plaintiff
Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, P.C.
Allegheny Building, 12th Floor
Pittsburgh, PA 15219-1616
mailroom.grz@zegarelli.com
412.765.0401

CERTIFICATE OF SERVICE

The undersigned hereby certifies service of process of a true and correct copy of this document as follows:

The following person or persons are believed to have been served electronically in accordance with the procedures and policies for Electronic Case Filing (ECF) on this date:

Brian P. Fagan, Esq.
Keevican Weiss Bauerle & Hirsch LLC
1001 Liberty Avenue
11th Floor, Federated Investors Tower
Pittsburgh, PA 15222, USA

Tonia Ouellette Klausner, Esq.
Wilson Sonsini Goodrich & Rosati, PC
1301 Avenue of the Americas
New York, NY 10019

Joshua A. Plaut, Esq.
Wilson Sonsini Goodrich & Rosati, PC
1301 Avenue of the Americas
New York, NY 10019

Jason P. Gordon, Esq.
Wilson Sonsini Goodrich & Rosati, PC
1301 Avenue of the Americas
New York, NY 10019

Elise M. Miller, Esq.
Wilson Sonsini Goodrich & Rosati, PC
1301 Avenue of the Americas
New York, NY 10019

Gerard M. Stegmaier, Esq.
Wilson Sonsini Goodrich & Rosati, PC
1301 Avenue of the Americas
New York, NY 10019

s/Gregg R. Zegarelli/
Gregg R. Zegarelli, Esq.
PA I.D. #52717
mailroom.grz@zegarelli.com
412.765.0401

Counsel for Plaintiffs

Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, P.C.
Allegheny Building, 12th Floor
Pittsburgh, PA 15219-1616