UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

E-VENTURES WORLDWIDE, LLC, Plaintiff, v. GOOGLE INC., Defendant.	Case No.: 2:14-cv-00646-PAM-CM

GOOGLE INC.'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF LAW

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PUBLIC VERSION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

RULES

TABLE OF ABBREVIATIONS

CDA	Communications Decency Act (47 U.S.C. § 230)
e-ventures	Plaintiff e-ventures Worldwide, LLC
e-ventures Tr.	30(b)(6) Deposition of Jeev Trika (November 9, 2016), attached as Exhibit 6 to the Willen Decl.
Falls Decl.	Declaration of Brandon Falls in support of Defendant Google Inc.'s Motion for Summary Judgment
Falls Tr.	Deposition of Brandon Falls (October 28, 2016), attached as Exhibit 2 to the Willen Decl.
FDUTPA	Florida Deceptive and Unfair Trade Practices Act (Fla. Stat. Ann. § 501.201-213)
Google	Defendant Google Inc.
Google Tr.	30(b)(6) Deposition of Brandon Falls (October 27, 2016), attached as Exhibit 1 to the Willen Decl.
Interrog. Resp.	Google Inc.'s Responses and Objections to Plaintiff's First Set of Interrogatories (served June 12, 2015)
Kwok Tr.	Deposition of Cody Kwok (November 3, 2016), attached as Exhibit 4 to the Willen Decl.
Plaintiff	e-ventures Worldwide, LLC
RFA Resp.	Google Inc.'s Responses and Objections to Plaintiff's First Set of Requests for Admission (served October 14, 2016)
SAC	Second Amended Complaint (Dkt. No. 75) (filed Nov. 2, 2015)
Trika Tr.	Deposition of Jeev Trika (November 8, 2016), attached as Exhibit 5 to the Willen Decl.
White Decl.	Declaration of Brian White in support of Defendant Google Inc.'s Motion for Summary Judgment
White Tr.	Deposition of Brian White (November 2, 2016), attached as Exhibit 3 to the Willen Decl.
Willen Decl.	Declaration of Brian Willen in support of Defendant Google Inc.'s Motion for Summary Judgment

GOOGLE'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, Google moves for summary judgment on the grounds that all of Plaintiff's claims are barred by Section 230 of the CDA, 47 U.S.C. § 230, and the First Amendment to the U.S. Constitution, and because there is no genuine dispute as to any material fact and Google is entitled to judgment as a matter of law.

MEMORANDUM OF LAW IN SUPPORT OF GOOGLE'S MOTION

Google's search engine helps millions of people more efficiently find what they are looking for on the Internet. Search results reflect Google's editorial judgments about what information is most relevant and responsive to users' search queries. But some websites use deceptive tactics (called "webspam") to try to trick their way to the top of results pages. Webspam degrades the quality of search results, making it harder for users to obtain high-quality information and crowding out better websites that play by the rules. Google works hard to fight this abuse, including by excluding from search results websites found engaging in it.

That is what happened here. In September 2014, Google removed from its search results 366 websites operated by e-ventures. Google took that action after an investigation led by the most experienced member of its search quality team found that e-ventures' websites were violating Google's webspam policies. Those violations were obvious, serious, and widespread. They involved countless artificial links to and from e-ventures' websites, content cut and pasted from other sites, and dozens of duplicate sites with no evident purpose other than to fool users. And this was all happening on a large scale, across hundreds of websites under common control. Removing these websites was a "clear-cut" application of Google's rules. Falls Decl., Ex. 17. Indeed, shortly after the removal, e-ventures was told by its own consultant that its sites were [redacted] Willen Decl., Ex. 9.

Nevertheless, after e-ventures worked to clean up several of its websites, Google restored them to search results. That should have been the end of the matter. Instead, Plaintiff

brought this lawsuit, seeking tens of millions of dollars in damages because Google enforced its established policies to stop e-ventures' efforts to manipulate Google's search engine and deceive its users. Google is entitled to summary judgment.

Plaintiff's whole case is barred by federal law. Section 230 of the CDA establishes a "broad statutory immunity," *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321-22 (11th Cir. 2006), which "protects from liability any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009). That is exactly the situation here. Google's decision to remove e-ventures' websites for engaging in deceptive tactics in violation of Google's policies reflects the "exercise of a publisher's traditional editorial functions"—and lawsuits seeking to hold internet service providers liable for such functions "are barred." *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997). This robust federal immunity protects Google not just against liability, but also against the burdens of further litigation in this case.

Google's removal decision is also protected by the First Amendment. Deciding what websites to include in search results is an editorial judgment, no less than a newspaper's decision about what articles to publish. *Zhang v. Baidu.com, Inc.*, 10 F. Supp. 3d 433, 437-39 (S.D.N.Y. 2014). While the Court agreed that "search engine output results are protected by the First Amendment," it allowed Plaintiff's claims to survive based on the allegations that Google acted with "anti-competitive motives" and that "the representations made by Google that e-ventures pages violate Google's policies are false." Dkt. 86, at 15-17. But these allegations are baseless. The undisputed evidence shows that Google acted because it concluded that e-ventures' websites were engaged in webspam. No jury could conclude there was an improper motive or malicious falsehood associated with that judgment. Plaintiff cannot overcome Google's First Amendment right to decide what websites to include in its search results.

Beyond these overriding federal immunities, summary judgment is warranted because

Plaintiff cannot carry its burden of supporting any of its claims on the merits. Plaintiff's Lanham Act claim requires a showing that Google made a misleading statement about the "affiliation" or "association" between Google and e-ventures, or about the "origin, sponsorship, or approval" of Google's services or commercial activities. 15 U.S.C. § 1125(a)(1)(A). There is nothing like that here. Plaintiff also has no viable claim under FDUTPA because there is nothing in the record that supports the allegation that Google removed e-ventures' websites "for anticompetitive and punitive reasons" (Dkt. 86, at 22) or engaged in any deceptive practice. Finally, the tortious interference claim is barred by Florida's "single action" rule, as it is based on the same facts as Plaintiff's failed defamation claim, and because there is no evidence that Google "wrongfully and intentionally harmed" any of e-ventures' business relationships (Dkt. 86, at 26-27).

The Court allowed e-ventures' claims to survive a motion to dismiss to see whether Plaintiff could come forward with evidence to support the allegations in its complaint. Plaintiff has not come close to doing so. There is no basis for letting this case go to trial, and doing so would erode the robust protections that Congress and the Constitution provide to Google for the editorial decisions it makes about what information to include in its search results.

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Google's Search Engine, Webspam, and the Webmaster Guidelines

Google's search engine indexes billions of websites from across the Internet. Falls Decl. ¶2. In response to users' search queries, Google scans its index and returns a list of websites that reflects Google's editorial judgment about what information will be most relevant and useful. *Id.* ¶¶2-3. This judgment determines both what websites appear in search results for a given query and how those websites are ordered (or "ranked") within those results. *Id.*; White Decl. ¶3.

Some website operators try to undermine Google's editorial judgments by using tactics intended to artificially boost the ranking of their sites. Falls Decl. ¶4; Falls Tr. 12:16-13:11; Google Tr. 196:22-197:14; White Tr. 11:20-12:2; Falls Decl., Ex. 2. These tactics are referred to

as "webspam" (or "search engine manipulation"). Falls Decl., ¶4. Webspam takes different forms, but its aim is to trick search engines into giving some websites greater prominence in search results than is warranted based on the value of their content. *Id.* ¶4. Webspam distorts search results, making them less useful, relevant, and responsive. *Id.* ¶5. It is a form of cheating that diminishes the integrity of Google's search engine, deceives users into clicking on lower-quality websites, and pushes out sites that follow the rules. *Id.* ¶¶5-6; Google Tr. 196:22-197:14.

That is why Google works hard to fight webspam. Falls Decl. ¶6; White Decl. ¶6. Doing so is vital to maintaining high-quality search results and maintaining users' trust. Google Tr. 154:1-11; Falls Decl. ¶6. Google has automated algorithms that do some of that work, but those software programs cannot catch everything. Falls Tr. 18:13-19:6; Kwok Tr. 14:4-12, 42:10-17; Falls Decl. ¶7; White Decl. ¶11. That is where Google's experienced team of search quality analysts comes in. Google Tr. 205:15-24; Falls Decl. ¶7. Google's analysts investigate suspected webspam and take "manual action" against websites found to be engaging in it. Falls Tr. 15:20-24; Google Tr. 216:10-18; Falls Decl. ¶7; White Decl. ¶10. Manual action may involve lowering the ranking of websites that use deceptive tactics or excluding those sites from Google search results altogether. White Tr. 53:14-22; Falls Decl. ¶8.

Google's policies for addressing webspam are set out in the "Search Quality" portion of Google's Webmaster Guidelines. Falls Decl. ¶12 & Ex. 2; Google Tr. 12:9-11, 36:24-37:3. These public-facing guidelines "outline some of the illicit practices that may lead to a site being removed entirely from the Google index," including "the most common forms of deceptive or manipulative behavior," Falls Decl., Ex. 2. Google makes clear that websites found to be violating the Guidelines may be removed from search results. *Id.* ¶14 & Ex. 2. Website operators thus are on notice that sites are subject to removal if caught using spam tactics. *Id.* ¶14.

B. Google's Investigation of e-ventures' Websites

e-ventures describes itself as an online publishing and research company. SAC ¶9. It op-

erates a network of websites, which purport to provide information about various kinds of services, including law firms, credit card processing, insurance, and search engine optimization ("SEO"). Trika Tr. 42:19-44:10; e-ventures Tr. 22:15-23:18, 178:14-179:5; Falls Decl., Ex. 18. e-ventures uses a "pay-for-play" model, where companies pay to be included on e-ventures' lists of "top" services in various fields. *See* Trika Tr. 40:13-42:18; e-ventures Tr. 23:23-25.

Google has repeatedly found e-ventures' websites to be using techniques that violate Google's Guidelines. Google Tr. 61:2-8; Falls Decl. ¶36-37. In 2010, e-ventures even issued a public apology for its behavior. Falls Decl., Ex. 4; Google Tr. 147:22-148:10. But the violations continued. Between 2005 and July 2014, e-ventures' websites were subject to numerous manual actions by Google's search quality team. Falls Decl. ¶36; Google Tr. 49:22-50:3. But those actions had been focused only on isolated e-ventures sites that Google happened to come across. Google Tr. 49:6-50:9; 51:1-14; 61:20-62:8.

On August 25, 2014, Google's most experienced search quality analyst, Brandon Falls (White Tr. 21:14-24; Falls Tr. 10:8-18), was prompted to "do a deep dive" into e-ventures' network. Falls Tr. 20:7-17. One of e-ventures' websites, www.topseos.com, had rated as its "top" SEO service a malicious spam network that Mr. Falls was in the process of removing from search results for rampant violations of Google's guidelines. Falls Tr. 20:3-17, 22:19-23:6; Google Tr. 58:12-21; Falls Decl. ¶40 & Ex. 5. Between this "red flag" (Google Tr. 59:1-11), and the fact that Mr. Falls had himself penalized e-ventures' websites for prior violations on six different occasions (Falls Decl. ¶37), Google started a more thorough investigation. *Id.* ¶40; Google Tr. 60:21-62:1.

Starting with topseos.com, Mr. Falls soon arrived at a list of over 350 websites that he was "strongly confident" were part of a single network that was "doing egregious things." Falls Tr. 55:14-56:6, 72:10-12. As he started to review those sites, Mr. Falls saw significant and widespread violations of Google's Webmaster Guidelines. Google Tr. 51:1-52:1, 84:10-85:2, 94:11-

96:13; Falls Decl. ¶42. He began to document what he was finding in an "incident" report that he created in Google's manual action tool. Falls Decl. ¶41 & Ex. 16; Google Tr. 181:20-183:6; Falls Tr. 103:12-21. As his investigation progressed, Mr. Falls used this incident report to list the hundreds of e-ventures websites he had reviewed, note the violations he found, and document specific examples of those violations. Falls Decl. ¶¶41-43 & Ex. 16; Google Tr. 110:18-111:5, 135:11-22, 182:13-183:6, 198:9-22; Falls Tr. 34:9-35:23, 47:15-48:8, 78:18-81:16, 124:5-125:7.

C. e-ventures' "Clear-Cut" Violations of the Webmaster Guidelines

During the course of Mr. Falls' investigation, which ultimately took him around 8 hours over several days in August and September 2014 (Falls Tr. 54:17-56:6), he personally reviewed each of the e-ventures websites that were ultimately removed from Google search results. Falls Decl. ¶43; Google Tr. 52:14-25, 55:5-18. Mr. Falls observed on each of those websites some violation of the Webmaster Guidelines. Google Tr. 52:14-53:16, 55:5-18, 93:25-94:10; Falls Tr. 131:8-132:12; Falls Decl. ¶43. He focused on three types of violations, which he saw repeated across e-ventures' different websites: (1) link schemes; (2) scraped content; and (3) doorway pages. Google Tr. 38:11-39:11, 84:10-85:2, 94:5-96:13, 98:8-19; Falls Tr. 52:25-53:8; Falls Decl. ¶44. These are common tactics clearly prohibited by Google's guidelines. Falls Decl. ¶¶16-27.[1]

"Link schemes" refer to the use of "[a]ny links intended to manipulate … a site's ranking in Google search results." Falls Decl. ¶17-18 & Falls Decl., Ex. 2. Because links to a website generally indicate a "vote" of endorsement for that site, they are used by search engines to rank websites. Accordingly, websites trying to manipulate search results often try to gather unnatural or illegitimate links to artificially boost their rankings. *Id.* ¶17 & Ex. 2. This "ballot stuffing" undermines the integrity of Google's search results by tricking Google into giving greater promi-

[1] These violations—and specific examples of the e-ventures websites that engaged in them—are described in extensive detail in Mr. Falls' attached declaration (¶¶44-51 & Exs. 6-13), Google's interrogatory responses (Interrog. Resp. 3), the "incident" report that Mr. Falls created to document his investigation (Falls Decl., Ex. 16), and a prior declaration that Mr. Falls submitted in this case. (Dkt. 31-1).

nence to less deserving websites. *Id.* ¶21. That is what Mr. Falls observed in connection with many e-ventures sites. *Id.* ¶¶44-46. Among other things, those sites were using "forum profile link schemes" (which invoked fake user profiles on other sites with collections of artificial links to various e-ventures websites) and "expired domain link schemes" (where e-ventures accessed expired websites that it filled with artificial links to e-ventures sites). *Id.* ¶¶45-46; Interrog. Resp. 3 at 15-16; Google Tr. 116:13-117:24, 122:2-123:23. e-ventures' use of these schemes, along with other improper practices, were obvious violations of Google's Guidelines. Falls Decl. ¶¶45-46.

"Scraped content" refers to content copied from other websites (usually without permission or attribution). Falls Decl. ¶22 & Ex. 2. It can boost the ranking of the site copying the content relative to the sites that actually created the content, undermining both the efforts of the originating websites and the users who do not want to visit site after site with the same content. *Id.* ¶22 & Ex. 2. Mr. Falls saw many instances of scraped content on e-ventures websites, including entire articles copied from third-party websites. *Id.* ¶¶48-49 (citing examples); Falls Tr. 83:15-19, 124:5-125:7; Google Tr. 125:10-22. This was a clear indication that those websites were not providing high-quality unique content, but were instead attempting to cheat their way to better placement in search rankings, in violation of Google's Guidelines. Falls Decl. ¶¶22, 47-49.

"Doorway pages" are multiple webpages published by the same operator that contain nearly identical content. Falls Decl. ¶24 & Ex. 2. They degrade the quality of search results and mislead users by filling their results with multiple listings that are effectively identical. *Id.* ¶24. This also harms higher-quality websites that may be crowded out by the duplicate results. *Id.* Mr. Falls observed that many dozens of e-ventures' websites were doorway pages that did little more than duplicate the content of some other e-ventures site or redirect users to another e-ventures property. *Id.* ¶¶50-51; Google Tr. 105:7-23. e-ventures' widespread use of these doorway pages was deceptive webspam and an obvious violation of Google's Guidelines. Falls Decl. ¶¶50-51.

Having identified one or more of these tactics on hundreds of websites that were part of

the same network, Mr. Falls had no trouble concluding that e-ventures' websites were violating Google's guidelines on a massive scale. *Id.* ¶¶43-52. Given the scope and severity of the violations, and aware of e-ventures' prior history of similar violations, Mr. Falls determined that the activity qualified as "pure spam," under the guidelines. Falls Decl. ¶¶27, 52; & Ex. 2 (defining "pure spam" to include "repeated or egregious violations"); Google Tr. 94:11-95:15, 101:2-10; Falls Tr. 132:3-12; White Tr. 95:18-96:5. Based on this determination, the appropriate manual action was to remove from Google's search results the entire network of websites engaging in these violations. Google Tr. 49:6-52:1, 84:10-19, 101:2-10, 197:25-198:7; Falls Tr. 52:24-53:15; Interrog. Resp. 3 at 16; Falls Decl. ¶¶52, 61-66 (explaining basis for removal).

Mr. Falls was not the only member of his team to come to that conclusion. On September 15, 2014, Mr. Falls shared his incident report with his manager, Brian White. Falls Decl. ¶59 & Ex. 15; White Decl. ¶16.[2] Based on Mr. Falls' report, as well as Mr. White's own review of some of the websites, it was evident to Mr. White that e-ventures' websites were engaging in "egregious" violations of Google's guidelines. White Tr. 88:24-90:7; *id.* at 63:5-10, 91:21-93:23, 114:4-18, 124:12-22; White Decl. ¶17. On September 18, Mr. Falls emailed Mr. White's manager, Cody Kwok, to inform him of the decision to remove e-ventures' websites from Google's search results. Google Tr. 140:14-141:5. Mr. Falls explained that this was a "pretty clear cut-case" for removal, noting that e-ventures was "creating hundreds of doorway domains and sending expired domain links to them." Falls Decl. ¶68 & Ex. 17. Mr. Kwok had no objection. Falls Decl., Ex. 17; Falls Tr. 83:4-84:2; Kwok Tr. 30:9-23.

On September 18, Mr. Falls submitted the manual action, which caused the 366 e-

[2] That was the same day that Google received a tip from an outside source about webspam on top-seos.com. Falls Decl. ¶¶56 & Ex. 14. At the time this tip was received, Google's investigation of e-ventures was well underway. Google Tr. 56:11-13, 58:12-61:8, 93:3-9. While it corroborated much of what Mr. Falls observed, Google's manual action was based not on the tip, but on its independent conclusion that the sites were egregiously violating Google's Guidelines. *Id.* 23:5-16; Falls Decl. ¶¶52-61.

ventures websites found in violation of the guidelines to be removed from Google's search results. Google Tr. 46:4-47:6, 140:14-24, 183:14-17; Falls Decl. ¶69. Google's action did not remove those websites from the Internet, however, and they could still be accessed directly as well as through other search engines. *Id.* While Google sent private messages to e-ventures explaining what had happened and how e-ventures could change its websites to allow Google to restore them to search results, Google made no public statement about the removal. *Id.* ¶¶88-89.

D. e-ventures' Admissions About Its Websites

It was not just Google that concluded that e-ventures' websites were engaging in web-spam tactics. Shortly after the removal, [redacted] Trika Tr. 133:8-136:15. [redacted] Willen Decl., Ex. 9.

And e-ventures itself admitted these practices to Google when it sought to have the removed websites restored to search results. Falls Decl. ¶¶77-82 & Exs. 19-20, 22-23. The day after the removal, e-ventures told Google that its "portfolio of 231 websites has now been consolidated to 60 websites." Falls Decl. ¶77 & Ex. 19. This was a clear admission that 171 of the removed websites were doorway pages leading to essentially identical content that e-ventures could immediately abandon. Google Tr. 95:17-23, 96:6-19, 217:21-218:3; White Tr. 96:18-97:19.

Similar admissions kept coming. On October 18, 2014, e-ventures told Google that it had "DELETED 200+ websites" and "consolidat[ed] topseos.com to one domain, essentially removed all country websites, or any permutations of the topseos domains that were online to avoid linking penalties." Falls Decl. ¶79 & Ex. 20; Google Tr. 98:8-19. This was a clear acknowledgment that hundreds of e-ventures' websites were duplicates that provided no unique content and instead existed to crowd search results and generate artificial links. Google Tr. 95:10-23, 98:8-19; Trika Tr. 177:10-178:10, 206:8-207:4, 244:5-20; *see also* Interrog. Resp. 3 at 18. Subse-

quent requests confirmed that e-ventures had also been engaging in massive content scraping: e-ventures explained that it had removed from topseos.com over *18,000 scraped articles, 46,000 scraped press releases, and 28,126 scraped job listings*. Falls Decl. ¶81 & Ex. 22; *see also id.* at ¶82 & Ex. 23. And alongside these admissions, it appeared that e-ventures was trying to circumvent Google's removal action by migrating content to new websites that also violated Google's guidelines. Google Tr. 192:13-194:7, 198:24-199:21; Falls Decl. ¶74; Interrog. Resp. 3

Ultimately, as e-ventures made changes to its websites that fixed the many violations that had prompted Google's manual action, Google restored those sites to search results. Falls Decl. ¶83, 87. By November 14, 2014, Google had relisted 50 of e-ventures' websites. *Id.* ¶83. e-ventures had abandoned many of the other removed sites, effectively acknowledging that they had no value except as vehicles for spam. *Id.* ¶¶84-86; Google Tr. 99:8-17.

E. Plaintiff's Lawsuit Against Google

In the face of all of this, e-ventures sued Google on November 4, 2014. Dkt. 1. Plaintiff moved for a preliminary injunction (Dkt. 11), but withdrew that request (Dkt. 35) after Google opposed it with a declaration laying out the facts described above (Dkt. 31-1 (2014 Falls Decl.)). Following two rounds of amendments, Google moved to dismiss the SAC. Dkt. 78. The Court dismissed Plaintiff's defamation claim without prejudice (Dkt. 86, at 24), but e-ventures never tried to revive that claim, which is now out of the case. Willen Decl. ¶2. The Court allowed Plaintiff's other claims to proceed based on the allegations in the SAC, which it accepted as true. Dkt. 86. But the Court made clear: "Whether or not plaintiff can support these assertions and carry its burden at a later stage of the proceedings is for a different day." Dkt. 86, at 17.

ARGUMENT

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is "genuine" only if there is sufficient evidence for a reasona-

ble fact finder to decide for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). "Rule 56(a) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "[T]he non-moving party cannot satisfy its burden if the rebuttal evidence 'is merely colorable, or is not significantly probative' of a disputed fact." *Josendis v. Wall to Wall Residence Repairs Inc.*, 662 F.3d 1292, 1315 (11th Cir. 2011) (quoting *Anderson*, 477 U.S. at 249-50). Google is entitled to summary judgment here based on two overarching federal immunities and because Plaintiff cannot carry its burden of creating a triable issue of fact material to any of its claims.

I. PLAINTIFF'S CLAIMS ARE BARRED BY SECTION 230 OF THE CDA

Congress has spoken directly to the central issue in this case. Under section 230(c) of the CDA, "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, *withdraw*, postpone, or alter content—are barred.'" *Zeran*, 129 F.3d at 330 (emphasis added). "[C]ourts have generally accorded § 230 immunity a broad scope," *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254-55 (4th Cir. 2009), recognizing its purpose to "prevent lawsuits from shutting down websites and other services on the Internet," *Batzel v. Smith*, 333 F.3d 1018, 1027-28 (9th Cir. 2003). *Accord Doe v. Backpage.com, LLC*, 817 F.3d 12, 19 (1st Cir. 2016) ("Congress sought to encourage websites to make efforts to screen content without fear of liability.").

This protection is offered in two reinforcing ways. First, under Section 230(c)(1), no cause of action may be brought "for any claim that purports to treat an 'interactive computer service' 'as the publisher or speaker of any information provided' by someone else." *O'Kroley v. Fastcase, Inc.*, 831 F.3d 352, 354-55 (6th Cir. 2016) (quoting 47 U.S.C. § 230(c)(1)). Second, Section 230(c)(2) provides that "[n]o provider or user of an interactive computer service shall be held liable on account of any action voluntarily taken in good faith to restrict access to or availa-

bility of material that the provider or user considers to be obscene, … harassing, or otherwise objectionable." 47 U.S.C. § 230(c)(2). Both of these immunities apply here.

Section 230(c)(1). The Court has held that Google is the provider of an "interactive computer service." Dkt. 86, at 13; *accord O'Kroley*, 831 F.3d at 355. And because this case involves Google removing content provided by someone else (e-ventures), it implicates a classic publisher function. "[R]emoving content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher." *Sikhs for Justice "SFJ", Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1095 (N.D. Cal. 2015) (quoting *Barnes*, 570 F.3d at 1103); *id.* at 1094 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." (quoting *Barnes*, 570 F.3d at 1102)); *see also Klayman v. Zuckerberg*, 753 F.3d 1354, 1359 (D.C. Cir. 2014) ("the very essence of publishing is making the decision whether to print or retract a given piece of content"). That is why "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008); *see also Murawski v. Pataki*, 514 F. Supp. 2d 577, 591 (S.D.N.Y. 2007) ("Deciding whether or not to remove content or deciding when to remove content falls squarely within [a search engine's] exercise of a publisher's traditional role and is therefore subject to the CDA's broad immunity.").

Applying this principle, courts have invoked Section 230(c)(1) to reject claims against Facebook for removing a plaintiff's page from the service, *Sikhs for Justice*, 144 F. Supp. 3d at 1094-96, and against YouTube for taking down the plaintiffs' videos, *Lancaster v. Alphabet Inc.*, 2016 U.S. Dist. LEXIS 88908, at *6-8 (N.D. Cal. July 8, 2016); *Darnaa, LLC v. Google Inc.*, 2016 U.S. Dist. LEXIS 152126, at *21-23 (N.D. Cal. Nov. 2, 2016). Google is entitled to the same protection here. In removing e-ventures' websites from Google's search results, Google made an editorial decision about whether to continue publishing someone else's material. Falls Decl. ¶¶3,

9; White Decl. ¶¶2-5. Plaintiff's attack on that decision seeks to do exactly what the CDA forbids: impose "publisher liability on a service provider for the exercise of its editorial and self-regulatory functions." *Ben Ezra, Weinstein, & Co. v. Am. Online Inc.*, 206 F.3d 980, 986 (10th Cir. 2000) ("By deleting the allegedly inaccurate stock quotation information, Defendant was simply engaging in the editorial functions Congress sought to protect."). Those claims are categorically barred. *Barnes*, 570 F.3d at 1105 ("Subsection (c)(1), by itself, shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties."). And because Section 230(c)(1) has no good faith requirement, it applies "regardless of defendants' alleged motive." *Darnaa*, 2016 U.S. Dist. LEXIS 152126, at *23 (dismissing tortious interference claim). That resolves this case.

Section 230(c)(2). Section 230(c)(2) independently requires the same result. This provision provides "an additional shield from liability," *Barnes*, 570 F.3d at 1105, for "any action voluntarily taken in good faith to restrict access to or availability of material that the provider … considers to be … harassing, or otherwise objectionable," 47 U.S.C. § 230(c)(2)(A). "The language of section 230(c)(2) is clearly inconsistent with state law that makes interactive service providers liable based on their efforts to screen content." *Almeida*, 456 F.3d at 1321 n.3. It provides a "robust immunity," *Holomaxx Techs. Corp. v. Microsoft Corp.*, 2011 U.S. Dist. LEXIS 94316, at *6 (N.D. Cal. Aug. 23, 2011), which gives "fairly absolute protection to those who choose to block." *e360Insight, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605, 607-08 (N.D. Ill. 2008) (granting immunity for claims based on blocking spam); *see also Holomaxx Techs. v. Microsoft Corp.*, 783 F. Supp. 2d 1097, 1104 (N.D. Cal. 2011) (same).

That is exactly the situation here. It is undisputed that Google took "voluntary" action to "restrict" the "availability" of e-ventures' websites in its search results (without removing those sites entirely from the Internet). Falls Decl. ¶¶8, 69; White Decl. ¶18. And it is clear that Google "consider[ed]" those sites to be "harassing or otherwise objectionable." § 230(c)(2)(A). Just as

email spam ("unsolicited and bulk e-mails") "are the sort of communications an entity like Comcast could deem to be objectionable," *e360Insight*, 546 F. Supp. 2d at 607-08, "webspam" is material that Google considers highly objectionable and harassing to its users. It is a form of fraud that distorts Google's search results, deceives users, and drowns out higher-quality content offered by other websites. Google Tr. 196:22-197:14; Falls Decl. ¶¶12-27 & Ex. 2; White Decl. ¶¶7-9. The CDA was enacted to allow providers like Google to protect their services and users against this kind of harassing and objectionable material. *Batzel*, 333 F.3d at 1030 n.14.

That leaves only the issue of good faith. Under § 230(c)(2), even a "mistaken choice to block, if made in good faith, cannot be the basis for liability under federal or state law." *e360Insight,* 546 F. Supp. 2d at 609. The Court found that "plaintiff's claims against Google are subject to the CDA," but he declined to apply Section 230(c)(2) at the pleading stage because Plaintiff's complaint alleged that "Google failed to act in good faith when removing its websites from Google's search results." Dkt. 86, at 13-14. But this allegation has not been supported by discovery. The record makes abundantly clear that Google acted in good faith.

The CDA's good faith requirement "is focused upon the provider's subjective intent." *Holomaxx*, 2011 U.S. Dist. LEXIS 94316, at *6-7; *cf. Rossi v. Motion Picture Ass'n of Am., Inc.*, 391 F.3d 1000, 1004 (9th Cir. 2004) (similar "good faith" requirement is subjective). Because the language of the statute "imposes a subjective element into the determination of whether a provider or user is immune from liability," *e360Insight*, 546 F. Supp. 2d at 608-09, what matters is not whether e-ventures' websites *actually* violated Google's policies (or whether a reasonable person might think so), but whether Google *believed* that they did. After all, forcing service providers "to litigate the question of whether what it blocked was or was not spam would render § 230(c)(2) nearly meaningless." *Id.* at 609. It is indisputable that Google subjectively believed the websites it removed were engaged in tactics prohibited by the Webmaster Guidelines. *Supra* 4-10 & n.1; Falls Decl. ¶¶42-52; White Decl. ¶¶17-20. No evidence suggests otherwise.

Because Google is protected independently by both prongs of the CDA, it is entitled to summary judgment on all of Plaintiff's claims. *See, e.g.*, *Roca Labs, Inc. v. Consumer Op. Corp.*, 140 F. Supp. 3d 1311, 1319, 1324 (M.D. Fla. 2015) (CDA's "broad preemptive effect" barred claims under FDUTPA and for tortious interference). And it is vital to apply this protection now. Section 230 provides an "*immunity from suit* rather than a mere defense to liability, [and] is effectively lost if a case is erroneously permitted to go to trial." *Nemet*, 591 F.3d at 254. Courts "thus aim to resolve the question of § 230 immunity at the earliest possible stage of the case because that immunity protects websites not only from 'ultimate liability,' but also from 'having to fight costly and protracted legal battles.'" *Id.* at 255 (quoting *Roommates.com*, 521 F.3d at 1175); *accord Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 417 (6th Cir. 2014) (faulting court for having let claims go to trial: "Given the role that the CDA plays in an open and robust internet by preventing the speech-chilling threat of the heckler's veto, we point out that determinations of immunity under the CDA should be resolved at an earlier stage of litigation.").

II. PLAINTIFF'S CLAIMS ARE BARRED BY THE FIRST AMENDMENT

The immunity provided to search engines by Section 230 of the CDA is reinforced by the First Amendment.

> The central purpose of a search engine is to retrieve relevant information from the vast universe of data on the Internet and to organize it in a way that would be most helpful to the searcher. In doing so, search engines inevitably make editorial judgments about what information (or kinds of information) to include in the results and how and where to display that information (for example, on the first page of the search results or later).

Zhang, 10 F. Supp. 3d at 438. These editorial judgments are "fully protected First Amendment expression." *Id.* at 439. They are no different from "the newspaper editor's judgment of which wire-service stories to run and where to place them in the newspaper." *Id.* at 438.

Because the First Amendment extends to "the decision of both what to say and what *not* to say," *Riley v. Nat'l Fed'n of Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988), search engines have the right to decide not only what to include in their results but also what to *exclude*. Applying

these principles, courts have consistently rejected claims against search engines based on their ranking—or exclusion—of certain websites. *Zhang*, 10 F. Supp. 3d at 443 (search engine had First Amendment right to exclude websites promoting democracy); *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 629-30 (D. Del. 2007) (First Amendment required dismissal of claim seeking to require Google to "'honestly' rank Plaintiff's websites"); *Search King, Inc. v. Google Tech., Inc.*, 2003 U.S. Dist. LEXIS 27193, at *3-4, *10-12 (W.D. Okla. May 27, 2003) (First Amendment barred claim that Google "maliciously" demoted and removed plaintiff's website from search results).

In ruling on Google's motion to dismiss, the Court agreed with Google about all this: "The Court has little quarrel with the cases cited by Google for the proposition that search engine output results are protected by the First Amendment." Dkt. 86, at 15. But, at that early stage, the Court deferred to Plaintiff's factual allegation that by removing e-ventures' websites "Google falsely stated that e-ventures' websites failed to comply with Google's policies." *Id.* at 15-16. The Court also held that "[w]hile publishers are entitled to discretion for editorial judgment decisions, plaintiff has alleged that Google's reasons for banning its websites was not based on 'editorial judgments,' but instead based upon anti-competitive motives." *Id.* at 16. But here again discovery has now confirmed that Plaintiff has no support for those allegations. The First Amendment entitles Google to summary judgment for at least two reasons.

First, even assuming that the removal communicated a factual statement that e-ventures' websites violated Google's policies,[3] that statement was true—and it certainly was not "published maliciously with knowledge of its falsity or serious doubts as to its truth." Dkt. 86, at 16-17. As the undisputed record makes clear, Google's removal of e-ventures' websites was the

[3] It is undisputed that Google did not make any public statement about the removal of e-ventures' websites. Falls Decl. ¶¶88-89 & Ex. 24; White Decl. ¶25. And Plaintiff's allegation that the removal action amounts to an *implied* factual statement that e-ventures' websites had violated Google's Guidelines (SAC ¶¶66, 88-89, 92) is unsupported by the record. The fact that a given set of websites may not appear in response to a given query is not a statement that those sites violated Google's policies, and Plaintiff has no evidentiary basis for treating it as such.

product of a thorough investigation by Brandon Falls, Google's most experienced search quality analyst. *See supra* 4-10; Falls Decl. ¶¶42-52; White Decl. ¶¶12-20. Mr. Falls observed serious violations of multiple provisions of Google's Webmaster Guidelines on each of the hundreds of e-ventures' websites that were ultimately removed. Google Tr. 52:14-25; Falls Decl. ¶43 & Exs. 6-13. What he saw were textbook examples of spam tactics forbidden by Google's guidelines. Google Tr. 101:2-10; Falls Decl. ¶¶42-52, 73. Mr. Falls documented his findings in a report that he shared with his manager, who reviewed the report and came to the same conclusion. Falls Tr. 83:4-84:21; Falls Decl. ¶¶59 & Ex. 16 (excerpts of report), Ex. 15; White Decl. ¶¶17-18.

e-ventures has no contrary evidence, and certainly nothing to create a triable issue of fact. That is only highlighted by its own admissions. Following the removal, e-ventures acknowledged that its websites had used improper tactics, including hundreds of doorway pages and massive amounts of scraped content (Falls Decl. ¶¶77-82 & Exs. 19-20, 22-23), and Plaintiff's own consultant agreed that e-ventures' linking practices were [redacted] (Willen Decl., Ex. 9). No reasonable person reviewing this record could conclude that Google had any "serious doubts" about whether e-ventures had violated the Webmaster Guidelines. Dkt. 86, at 16-17. Thus, even assuming that Google somehow communicated a factual statement through its removal action, Google is entitled to full First Amendment protection.[4]

Second, the record makes equally clear that the removal of e-ventures' websites was a protected editorial decision not based on any "anti-competitive motives." There were three people

[4] Google maintains that *all* of its decisions regarding what should appear in search results—whether how to rank websites or whether a site should be included—are protected by the First Amendment because they are "fundamentally subjective in nature" and, as a matter of law, not capable of being proven false. *Search King*, 2003 U.S. Dist. LEXIS 27193, at *10-12. Google disagrees with the artificial distinction between ranking and removal decisions. Dkt. 86, at 15-16. That ignores, among other things, that the cases applying the First Amendment to search engines involved exclusions, not just rankings. *See Zhang*, 10 F. Supp. 3d at 434; *Langdon*, 474 F. Supp. 2d at 626-27; *Search King*, 2003 U.S. Dist. LEXIS 27193, at *3-4. While the Court accepted that distinction at the pleading stage, it is not supported by the record, which makes clear that Google's removal action was based on a protected opinion. Falls Decl. ¶¶2-3; White Decl. ¶¶3-5, 8-10. Nonetheless, even based on the First Amendment framework set out in the Court's Order, Google is entitled to summary judgment.

involved in Google's decision: Mr. Falls, Mr. White, and Mr. Kwok. Plaintiff can point to no evidence that they even considered whether e-ventures could be a competitor of Google, much less acted with any thought of inflicting competitive harm. Google Tr. 81:13-20, 121:9-19, 200:20-201:5; Falls Decl. ¶¶70-71; White Decl. ¶28. Nor did the decision to remove the websites have anything to do with e-ventures' involvement in the SEO industry. Falls Decl. ¶¶70-71; White Decl. ¶¶26-27, 29; Google Tr. 70:6-11, 144:1-17; White Tr. 35:23-36:7, 78:8-20. As the undisputed evidence confirms, Google was motivated by only one thing: the fact that its investigation found serious violations of its guidelines across hundreds of websites operated by e-ventures. Falls Decl. ¶70; White Decl. ¶¶17-19, 29; Google Tr. 119:21-120:15, 142:20-143:20, 200:20-201:5; Falls Tr. 52:24-53:15; White Tr. 111:6-16. In taking action against this activity, Google's aim was nothing more (and nothing less) than to protect the integrity of its service and ensure that its users would receive the most relevant and useful search results. Falls Decl. ¶¶70.[5]

Google's "exercise of editorial control and judgment" regarding what websites to include in search results is protected by the First Amendment. *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974); *Zhang*, 10 F. Supp. 3d at 441. By making such decisions, including the decision to remove e-ventures' websites, Google offers its judgment about what information is most relevant and useful for its users. Falls Decl. ¶3; White Decl. ¶3. Allowing Plaintiff to premise liability on that judgment would violate "the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message." *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995).

[5] Plaintiff has suggested that Google acted to increase ad revenue. SAC ¶¶15-18. This theory is flatly contrary to the evidence. Falls Decl. ¶70; White Decl. ¶¶34-38. Indeed, under Google's policies, the e-ventures websites that were removed from search results were not allowed, while that removal was in effect, to run ads through Google's AdWords program. White Decl. ¶¶35-37 & Ex. 1. With that block in place, Google would not have earned revenue from ads seeking to drive traffic to the removed websites. White Decl. ¶37; RFA Resp. 4. But even where a publisher engages in editorial conduct "with a view toward increased sales," it is "incompatible with the First Amendment" to regulate its decisions on that basis. *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 385 (1973).

III. PLAINTIFF CANNOT CARRY ITS BURDEN ON ANY OF ITS CLAIMS

Even apart from these statutory and constitutional protections, Google is entitled to summary judgment because Plaintiff cannot carry its burden on any of its remaining claims.

A. Plaintiff Has No Viable Claim Under the Lanham Act

Section 1125(a) of the Lanham Act "creates two distinct bases of liability: false association, § 1125(a)(1)(A), and false advertising, § 1125(a)(1)(B)." *Lexmark Int'l, Inc. v. Static Control Components , Inc.*, 134 S. Ct. 1377, 1384 (2014); *see also Lipscher v. LRP Publ'ns, Inc.*, 266 F.3d 1305, 1312-13 (11th Cir. 2001). Here, Plaintiff "has not alleged a claim for false advertising." Dkt. 86, at 19. Thus, the only claim at issue is under Section 1125(a)(1)(A). But there is no legal or factual basis for applying that provision to this case.[6]

"Because of its inherently limited wording, [the Lanham Act] can never be a federal codification of the overall law of unfair competition, but can apply only to certain unfair trade practices prohibited by its text." *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 29 (2003). The text of Section 1125(a)(1)(A) creates liability only against someone who, "in connection with any goods or services," makes a "false or misleading representation of fact" that "is likely to cause confusion, or to cause mistake, or to deceive *as to the affiliation, connection, or association* of such person with another person, *or as to the origin, sponsorship, or approval* of his or her goods, services, or commercial activities *by another person*." 15 U.S.C. § 1125(a)(1)(A) (emphases added). This language does not create a general "tort of misrepresentation, actionable as to any goods or services in commerce affected by the misrepresentation." *Halicki v. United Artists Commc'ns, Inc.*, 812 F.2d 1213, 1214 (9th Cir. 1987). Plaintiff would have to show not just that Google made a false representation, but that the representation was likely to cause "confusion as

[6] Plaintiff's 1125(a)(1)(A) claim is procedurally tenuous, given e-ventures' express and repeated representations that it was only seeking to assert a claim under Section 1125(a)(1)(B). Dkt. 63, at 19-20; Dkt. 79, at 20. Google reserves all of its rights in that respect. Dkt. 87. Moreover, even though the Court declined to dismiss the Lanham Act claim, it made clear that it never ruled that Plaintiff had "adequately stated a claim under Section 1125(a)(1)(A)." Dkt. 103, at 4.

to plaintiff's sponsorship or endorsement of the defendant's goods or services," *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 441-42 (2d Cir. 2004), or about the "origin, sponsorship, or approval" of Google's services or commercial activities by someone else, *e.g.*, *Dastar*, 539 U.S. at 32.

There is nothing remotely like that here. *First*, Google did not make a "false or misleading representation of fact" in connection with any of its "goods or services." Google did not make *any* representation of fact to the public about e-ventures in connection with the removal action. *See supra* n. 3; Falls Decl. ¶88-89; White Decl. ¶25. But even if it had, as discussed above, any implied statement that Google had determined that e-ventures violated the Guidelines was true, and no reasonable jury could conclude otherwise. *See supra* 4-10, 16-17.

Second, Plaintiff cannot show that any such statement would likely have "caused confusion" about the "affiliation," "connection," or "association" between Google and e-ventures (or anyone else). Indeed, e-ventures has not even *alleged* that Google ever created a misleading association of the sort covered by Section 1125(a)(1)(A) (SAC ¶¶63-71), and there certainly is no evidence to support such a claim. White Decl. ¶25. Plaintiff similarly has not pleaded, much less come forward with evidence, that Google's removal action suggested anything misleading regarding "the origin, sponsorship, or approval of [Google's] goods, services, or commercial activities by another person." 15 U.S.C. § 1125(a)(1)(A). The theory set out in the SAC is not that Google somehow tricked the public into believing that Google is affiliated with e-ventures or that e-ventures (or anyone else) approved Google's services or activities. Instead, Plaintiff claims that Google allegedly deceived consumers "into believing that e-ventures' websites had violated Google's removal policies." SAC ¶66. In addition to being wholly unsupported by the record, that theory has nothing to do with false association and is not actionable under §1125(a)(1)(A).

B. Plaintiff Has No Support For Its FDUTPA Claim

FDUTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat.

Ann. § 501.204(1). Here, however, Plaintiff cannot show that Google engaged in an unfair practice or deceptive act. An "unfair practice is one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003). Google's removal of e-ventures' websites from search results, based on its determination that they were using prohibited spam tactics to deceive Google's search engine, offends no public policy. To the contrary, this action protected consumers, including search engine users and legitimate website operators, from harm. Google Tr. 154:1-11, 196:22-197:14; Falls Decl. ¶¶4-6.

The only basis on which the Court allowed Plaintiff's claim to survive Google's motion to dismiss was the bare allegation that "Google removed its websites from its search results for anti-competitive and punitive reasons." Dkt. 86, at 22. But nothing in the record supports these assertions. As described above, the undisputed evidence shows that Google acted for only one reason: to protect its search results, and therefore its users, from websites that it concluded were violating the Webmaster Guidelines. There is no support for Plaintiff's claim that Google considered e-ventures to be a competitor, much less that it acted with any goal of diminishing competition. Falls Decl. ¶71; White Decl. ¶¶26-29 ; Google Tr. 121:9-19, 144:14-17; e-ventures Tr. 243:21-245:4 ([redacted]). Nor is there any basis for Plaintiff's claim that Google acted to increase ad revenues. *See supra* n. 5.

It is equally clear that e-ventures has no viable deception claim. Plaintiff would have to make "a showing of probable, not possible, deception that is likely to cause injury to a reasonable relying consumer." *Zlotnick v. Premier Sales Grp., Inc.*, 480 F.3d 1281, 1284 (11th Cir. 2007) (quotations omitted). No reasonable jury could make such a finding. Google makes abundantly clear to the public that it will act against websites found to be using spam tactics, and that is exactly what it did here. Falls Decl. ¶¶14-16 & Ex. 2; White Decl. ¶¶8-9; Google Tr. 120:4-15, 154:1-11, 200:24-201:5; Falls Tr. 52:24-53:15. The Webmaster Guidelines describe each violation

that e-ventures committed and make clear not only that Google is "willing to take manual action on sites that use spammy techniques," but that violations "may lead to a site being removed entirely from the Google index." Falls Decl. ¶¶15 & Ex. 2; White Decl. ¶9; Google Tr. 120:4-15; Falls Tr. 52:24-53:15. Plaintiff cannot bring a deception claim against Google for doing what it said it would do. *See Zlotnick*, 480 F.3d at 1287 (rejecting FDUTPA claim where defendant's statements "eliminated any possibility that a reasonable [consumer] would be misled").[7]

C. Plaintiff's Tortious Interference Claim Is Legally And Factually Baseless

Google is entitled to summary judgment on Plaintiff's tortious interference claim for two reasons. *First*, as the Court recognized, under Florida's "single publication/single action rule," a plaintiff cannot maintain a tortious interference claim arising "from the same publication upon which a failed defamation claim is based." Dkt. 86, at 25. This "rule is designed to prevent plaintiffs from circumventing a valid defense to defamation by recasting essentially the same facts into several causes of action." *Id.* at 26. At the pleading stage, the Court agreed that this rule applied, but held that it was "premature" to dismiss the tortious interference claim because the defamation claim was dismissed without prejudice, and "plaintiff may or may not choose to seek to amend and re-assert its defamation cause of action." *Id.* In response, however, e-ventures chose *not* to revive its defamation claim. Because that claim is out of the case for good, the single publication rule now bars the tortious interference claim. Plaintiff cannot recast its failed defamation allegations into a different cause of action meant to "compensate for the same harm." *Callaway Land & Cattle Co. v. Banyon Lakes C. Corp.*, 831 So. 2d 204, 208 (Fla. Dist. Ct. App. 002).

Second, e-ventures cannot carry its burden of proving that Google engaged in an "intentional and unjustified interference with" e-ventures' contractual or business relationships. *Ethan*

[7] Nor can Plaintiff make out a deception claim by arguing that Google's removal of e-ventures' websites was itself a misleading statement that those sites violated the Webmaster Guidelines. As described above, while Google made no public statement about e-ventures, any possible implication from the removal that Google had found e-ventures' websites in violation of the guidelines was true. *See supra* 16-17, 19-20.

Allen, Inc. v. Georgetown Manor, Inc., 647 So. 2d 812, 814 (Fla. 1994). The Court allowed Plaintiff to survive a motion to dismiss based on the allegations in the SAC (Dkt. 86, at 27-28), but discovery has shown that e-ventures cannot support those allegations. A tortious interference claim requires deliberate, wrongful conduct. *Pharma Supply, Inc. v. Stein*, 2015 U.S. Dist. LEXIS 71183, at *21 (S.D. Fla. June 2, 2015). Here, however, even assuming that Google knew about e-ventures' specific contractual or business relationships, which it did not (Google Tr. 81:13-20), there is nothing in the record to suggest that Google was trying *intentionally* to harm those relationships, much less that it did so through legally improper means. The undisputed facts show that Google applied its established guidelines to protect its users against websites that it determined were engaged in deceptive tactics. *See supra* 4-10; Falls Decl. ¶¶70, 72; White Decl. ¶¶8-9, 17-20. There is no genuine issue for trial on this point.

Under established Florida law, taking protective measures to ensure the integrity of one's service cannot give rise to tortious interference. *Genet Co. v. Annheuser-Busch, Inc.*, 498 So. 2d 683, 684 (Fla. Dist. Ct. App. 1986) ("there can be no claim where the action complained of is undertaken to safeguard or promote one's financial or economic interest"); *FSC Franchise Co., LLC v. Express Corp. Apparel, LLC*, 2009 U.S. Dist. LEXIS 133235, at *12 (M.D. Fla. Oct. 2, 2009) (same). e-ventures cannot overcome that rule. Because there is no evidence of any "intent to interfere," summary judgment "must be granted." *Ingenuity, Inc. v. Linshell Innovations Ltd.*, 2014 U.S. Dist. LEXIS 40336, at *18 (M.D. Fla. Mar. 25, 2014); *Border Collie Rescue, Inc. v. Ryan*, 418 F. Supp. 2d 1330, 1344-45 (M.D. Fla. 2006) (granting summary judgment absent "evidence that [defendants] intentionally and unjustifiably interfered with plaintiffs' … business relationship").

CONCLUSION

For the reasons stated above, Google respectfully requests that the Court grant summary judgment on all of the claims in Plaintiff's Second Amended Complaint.

Dated: December 1, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2016, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF system.

/s/ Nathan M. Berman
Nathan M. Berman