

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

_____)
 BENJAMIN LIGERI,)
)
 Plaintiff,)
)
 v.)
)
 YOUTUBE, INC.,)
 YOUTUBE, LLC.,)
 THE YOUTUBE TEAM, THE YOUTUBE)
 PARTNER SUPPORT TEAM, and All)
 Other EMPLOYEES and AGENTS of)
 YouTube, Inc. and Google, Inc.)
 involved in the allegations set forth)
 in this Complaint,)
 GOOGLE, INC.,)
 HARRY L/N/U, personally, and in)
 his capacity as employee or agent)
 of YouTube, Inc. and/or Google, Inc.,)
 HEATHER L/N/U, personally, and in)
 her capacity as employee or agent)
 of YouTube, Inc. and/or Google, Inc.,)
 WYNSTON L/N/U, personally, and in)
 his capacity as employee or agent)
 of YouTube, Inc. and/or Google, Inc.,)
 KAVITHA L/N/U, personally, and in)
 her capacity as employee or agent)
 of YouTube, Inc. and/or Google, Inc., and)
 EVELYN L/N/U, personally, and in)
 her capacity as employee or agent)
 of YouTube, Inc. and/or Google, Inc.)
)
 Defendant.)
 _____)

No.: _____

**COMPLAINT FOR DAMAGES;
ANTITRUST VIOLATIONS;
CAN-SPAM ACT VIOLATIONS;
UNPAID WAGES; UNPAID SHARES;
and BREACH OF CONTRACT**

JURY TRIAL REQUESTED & DEMANDED

COMES NOW the plaintiff, BENJAMIN LIGERI, for his Complaint against defendants YOUTUBE, INC.; YOUTUBE, LLC.; THE YOUTUBE TEAM, THE YOUTUBE PARTNER SUPPORT TEAM and All Other EMPLOYEES and AGENTS of YouTube, Inc. and Google, Inc. involved in the allegations set forth in this Complaint; GOOGLE, INC.; and HARRY L/N/U, HEATHER L/N/U, WYNSTON L/N/U, KAVITHA L/N/U, and EVELYN L/N/U, personally, and in his/her capacity as employee or agent of YouTube, Inc. and/or Google, Inc., (collectively "Defendants" -- or "GooTube" for defendants YouTube and Google) and alleges as follows:

I. PARTIES

1.1(a). Plaintiff Benjamin Ligeri (hereinafter "Plaintiff") is a resident of Rehoboth, Massachusetts at the address of 39 Wheaton Ave., Rehoboth, MA, 02769, and was at all times during of the events of this Action.

1.1(b). Plaintiff operates several channels on YouTube.com. Plaintiff's main channel is located at the URL: 'Youtube.com/Bennybaby' (hereinafter "Bennybaby"). A "channel" is a centralized location where YouTube users or visitors can see the public videos and other content of YouTube account holders.

1.1(c). Plaintiff has created and uploaded over 100 videos to his Bennybaby channel, which can be found via a search of the channel as well as through other various means, such as through search engine queries or by a direct link provided by Plaintiff directing a potential viewer to one of Plaintiff's videos located on YouTube.com. Plaintiff's creative content has garnered over 3.5 million views on YouTube.com, and over 2 million views through his Bennybaby account.

1.2(a). Defendant YOUTUBE, INC. is a Delaware corporation with its principal place of business in San Bruno, California, and owns and operates the website: 'YouTube.com'.

1.2(b). Defendant YouTube, LLC is a Delaware limited liability company with its principal place of business in San Bruno, California. On information and belief, YouTube, LLC is the successor in interest of YouTube, Inc. YouTube, Inc. and YouTube, LLC and YouTube.com are referred to collectively herein as "YouTube" or "GooTube".

1.2(c). YOUTUBE.COM--ranked in the top five most visited sites on the internet--is a website that uses the traffic derived predominantly from the creative content and marketing efforts of Laborers ("Laborers" defined below)--as well as the pirated content of other YouTube users--to market products and services to all YouTube users and visitors -- including the heavy marketing of obesity-inducing foods and alcohol to minors. GOOGLE.COM is ranked number 1, and according to Nielsen NetRatings, Yahoo.com comes in distant second with not even half of Google's traffic. [As used herein the Complaint, a "Laborer"--which includes Plaintiff--is anyone who's exhausted substantial effort or resources, without payment, to the betterment of GooTube's businesses or revenue. Capitalized derivatives of "Laborer"--such as "Labored"--invoke the same definition].

1.3. Defendant THE YOUTUBE TEAM, THE YOUTUBE PARTNER SUPPORT TEAM, and All Other EMPLOYEES and AGENTS of YouTube, Inc. and/or Google, Inc. are the employees of GooTube who are involved in the allegations of this Complaint. THE YOUTUBE TEAM are also the employees/agents of Defendants that sign their emails "The YouTube Team". THE YOUTUBE PARTNER SUPPORT TEAM are the employees and agents of Defendants who sign their email correspondences "The Youtube Partner Support Team" as well as all those who have corresponded with Plaintiff in the processing (or lack thereof) of his application to the revenue sharing YouTube "Partner Program". All defendants referenced in this paragraph of the Complaint are referred to collectively herein as "YouTube Agents" or "YouTube" as well.

1.4(a). YouTube is a wholly owned and controlled subsidiary of defendant Google, Inc., a Delaware corporation with its principal place of business in Mountain View, California.

1.4(b) In addition to owning YouTube, Google is also a partner or teammate of YouTube's. Google *powers* certain aspects of YouTube.com, meaning they provide ads as well as the tools for search, etc. Google affixes its "Ads by Google" on numerous areas of YouTube.com.

1.4(c). Defendant Google, Inc. additionally operates in all fifty states and internationally on the internet as 'Google.com' et al, which is ranked the most popular website on the internet. Google, Inc. and Google.com are referred to collectively herein as "Google" or "GooTube".

1.4(d). Pursuant to a transaction that was publicly announced on October 9, 2006, and closed on November 13, 2006, Google acquired YouTube for \$1.65 billion. Google stock closed at \$481.03 per share on November 13, 2006, and has since soared as high as \$741.79 per share (on 11/06/07), and has currently closed at \$554.53 per share (as of 7/8/08).

1.5. Defendant HARRY L/N/U (hereinafter "Harry") is an employee/agent of YouTube, Inc. (and/or Google, Inc.) who has corresponded with Plaintiff via email on behalf of YouTube's Copyright Agent office and who has violated the Digital Millennium Copyright Act ("DMCA") and who has personally and intentionally afflicted Plaintiff with emotional distress. Harry's last name may be incorporated into this Complaint upon lawful disclosure by Defendants. For Defendants' purposes and other reference purposes, certain emails between Harry and Plaintiff can be identified with the reference number #175848596 located in the subject heading of the email.

1.6. Defendant HEATHER L/N/U (hereinafter "Heather"), is an employee/agent of YouTube, Inc. (and/or Google, Inc.) who has corresponded with Plaintiff via email on behalf of YouTube's Copyright department, and who is believed to have violated the DMCA. If the Heather

who communicated with Plaintiff is the same Heather as YouTube's designated "Copyright Agent", then her name is Heather Gillette and she works for YouTube at 901 Cherry Ave., San Bruno, CA 94066. Heather's last name may be further incorporated into this Complaint upon verification that she in fact Heather Gillette or upon further lawful disclosure by Defendants. For Defendants' purposes and other reference purposes, certain emails from Heather to Plaintiff can be identified with the reference number #149993131 located in the subject heading of the email.

1.7. Defendant WYNSTON L/N/U (hereinafter "Wynston"), is an employee/agent of YouTube, Inc. (and/or Google, Inc.) who has corresponded with Plaintiff via email on behalf of YouTube and who has made false promises to--and breached agreements with--Plaintiff, including, but not limited to, false promises and agreements to provide information and answers on Plaintiff's application to YouTube's revenue-sharing Partner Program and advertising program, to support and applaud Plaintiff's efforts, to promote or to investigate the possibility of promoting Plaintiff's content, which would've carried monetary compensation in some form or another. For Defendants' purposes and other reference purposes, certain emails between Wynston and Plaintiff can be identified with the reference number #166225283 located in the subject heading of the email.

1.8. Defendant KAVITHA L/N/U (hereinafter "Kavitha") is an employee/agent of YouTube, Inc. (and/or Google, Inc.) who has corresponded with Plaintiff via email on behalf of YouTube and has made false promises to--and breached agreements with--Plaintiff with respect to such things as his application to both the YouTube Partner Program and advertising program. For Defendants' purposes and other reference purposes, certain emails from Kavitha to Plaintiff can be identified with the reference number #165339782 located in the subject heading of the email.

1.9. Defendant EVELYN L/N/U (hereinafter "Evelyn"), is an employee/agent of YouTube, Inc. (and/or Google, Inc.) who has corresponded with Plaintiff via email on behalf of YouTube and YouTube's "Partner Program", and who has, inter alia, aided YouTube in their free engorgement of Plaintiff's creative content and labor through, but not limited to, such means as avoiding Plaintiff's application to the YouTube Partner Program, failure to adequately handle said application, and through deception, fraud, and avoidance tactics such as feigning ignorance. For Defendants' purposes and other reference purposes, certain emails between Evelyn and Plaintiff can be identified with the reference number #246027886 located in the subject heading of the email.

1.10 The only information Plaintiff has to identify above-listed defendants Harry, Heather, Wynston, Kavitha, and Evelyn is said name that they used to sign their correspondences to Plaintiff. It is possible that, like exotic dancers, these first names are made up as well. However, said correspondences are issued reference codes by YouTube which appear in the subject heading as well as the body of many of these saved email correspondences. GooTube should be able to provide Plaintiff or this Court with the full identity of these parties. And is instructed to do so.

II. JURISDICTION & VENUE

2.1. Jurisdiction is conferred upon this court under 28 U.S.C. § 1331 and §1332.

2.2. Venue is proper pursuant to 28 U.S.C. § 1391.

III. GENERAL ALLEGATIONS

3.1. YouTube.com, like most websites, isn't worth much without its traffic -- which is generated by its content. As YouTube CEO, Chad Hurley, stated, "[W]e're a network built around the content." The content that YouTube offers is predominantly other people's content; just as the content that Google offers is predominantly other people's content - i.e., website and video content.

3.2 The main reason that serious content providers or Laborers, such as Plaintiff, provide content to YouTube.com at all, is to make a profit off of their creative work.

3.3 This isn't to say that the chief goal or original draw to the entertainment business or the content-creating business is to make money; however, it is an absolute necessary to sustain the work of content creating, especially when content creating is your full-time job. Notoriety, in itself, is of little consequence and is more of a myth of success than an actual reality.

3.4 Plaintiff has met people on the street who had stated that they knew him from--or saw him on--YouTube.com; but that doesn't mean anything to Plaintiff in the way of turning a profit or being able to continue creating content, as it also doesn't mean anything to Viacom in the way of making a profit when someone recognizes their popular shows on YouTube.

3.5 Viacom content gets unfathomable notoriety from various video clips of their content (posted without Viacom's permission) on YouTube.com, but is suing YouTube to have those same clips removed. Why, because notoriety without compensation equals a monetary loss and can serve only the ego.

3.6(a) Comedy Central, NBC, ABC, HBO, and all of the major TV Networks, do not have their shows on the air for the purposes of notoriety. Any notoriety they receive serves the purpose of gaining paying sponsors and/or paying subscribers, which entertainment, on the whole, does not exist in the absence of.

3.6(b) As is the case with TV networks, if YouTube were operating for the purpose of notoriety, they would not be in business. No one would know who they were, for they never would've been able to pay the bills if they weren't turning a profit. This is not a new business concept: that those providing a [profitable] service must be compensated or they cannot feasibly

continue providing that service. Said concept applies to all online and offline businesses, it applies to GooTube, it applies to Plaintiff, yet Defendants have not effected any payment to Laborers such as Plaintiff, but have induced Plaintiff into believing that they'd effect payment and other comp.

3.7 Plaintiff has created and uploaded over one hundred (100) original and professional videos to YouTube.com, which have aggregated over 3,500,000 (3.5 million) views--a traffic value woth up to 26 million based on Google indexes--and over 600 subscribers--a subscription value worth approximately \$9,000 to \$15,000. Generally speaking, Plaintiff has in fact uploaded over a thousand videos to YouTube.com, including promo and ad videos discussed below, but he claims traffic and monetary awards predominantly for the videos he uploaded to the accounts he applied to the YouTube Partner Program, referenced below, which is a number of videos totaling under 300.

3.8(a) Just considering Plaintiff's two main accounts ('Youtube.com/Bennybaby' and 'Youtube.com/ProfessorCarlton')--containing about 130 videos between them, Plaintiff has had about 5,000 people comment on those videos (not counting SPAM comments) and maintains about a FOUR out of FIVE 'star' rating from YouTube users on those videos.

3.8(b) However, despite the traffic (and notoriety) that Plaintiff and Plaintiff's content has generated on YouTube.com, and despite the hundreds to thousands of hours that Plaintiff has Labored in creating said content, generating said traffic, and managing his YouTube channels and webpages, Plaintiff has not been paid so much as one cent by Defendants.

3.8(c) Further, and as a direct result of the intentional acts and omissions of Defendants, Plaintiff has been deadlocked by Defendants in his attempts to monetize his own content, traffic, and notoriety on YouTube.com. And furthermore, Defendants have deadlocked Plaintiff's attempts to monetize his marketing-based content on YouTube.com, in addition to his more artistic content.

3.9 Defendants know that Plaintiff and other content creators can't feasibly continue to exhaust their time, money, and resources creating entertainment serials with no compensation, so Defendants fraudulently convey that they will provide compensation--to those account holders or Laborers who fit a certain criteria--but then Defendants simply do not follow said criteria.

3.10 GooTube extracts and/or subcontracts and/or hires creative services from artists such as Plaintiff with the consideration of future consideration (and future promises) which they don't deliver on. Defendants employ an array of frauds and psychological manipulations to induce content creation and forced labor and other services on the part of content creators such as Plaintiff, in violation of state and federal law, as well as in violation of state, federal, and international labor laws.

3.11 Defendants are quite duplicitous in their dealings. They induce and manipulate their account holders and prospective account holders into believing that a certain amount of work on YouTube.com will lead to their success. Defendants do so to create a frenzy of Laborers working to serve the growth of their websites. Defendants create a general aire of fame and fortune for those immersed in YouTube.com. Plaintiff recently received two "get-rich" emails on his Google email account; one email was entitled "Living the American Dream Thanks to YouTube" and the other was entitled "Why is You Tube the next best money maker?" Usually, emails are mass-mailed about an idea that has already reached mass consciousness as an easy and rewarding potential, such as free credit reports, Lasik surgery, diet solutions, penis enlargement, and "success" on YouTube.

3.12 Plaintiff hereby incorporates, as allegations in this paragraph of the Complaint, the following paragraph from Viacom's DMCA suit against GooTube, with Plaintiff's own addendums in brackets []:

"YouTube has harnessed technology to willfully infringe copyrights [and induce labor and content creation from users] on a huge scale, depriving writers, composers and performers [and other content creators] of the rewards they are owed for effort and innovation, reducing the incentives of America's creative industries, and profiting from the illegal conduct of others as well. Using the leverage of the Internet, YouTube appropriates the value of creative content on a massive scale for YouTube's benefit without payment or license. YouTube's brazen disregard of the intellectual property laws fundamentally threatens not just [Plaintiff], but the economic underpinnings of one of the most important sectors of the United States economy."

3.13 Essentially, YouTube is the 'Wal-Mart' of entertainment and other video content, but unlike Wal-Mart, YouTube owns none (by and large) of the merchandise which they sell and reap the profit from. In fact, they hardly sell it either, they just reap the profit from it. Unpaid artists like Plaintiff are the owners and predominant salesmen--or traffic aggregators--of the product which YouTube engorges the revenue from The product in this case: video entertainment/video content.

3.14 And so it goes, Plaintiff creates a video, uploads it to YouTube.com and directs people to see it. And for directing over 3.5 million viewers to Plaintiff's product on YouTube.com, Plaintiff has received no payment from YouTube, nor even the slightest sincere appreciation.

3.15 In fact, Defendants will not even communicate in any true or wholesome manner with Plaintiff (as well as other Laborers), despite the fact that Plaintiff is one of the top content providers and traffic aggregators to their site--estimated to be in the top 500 most viewed this past month, even though Plaintiff had essentially stopped adding videos to YouTube.com months prior.

3.16 If Plaintiff were to continue at the rate of video production and viewership he was aiming for about six to twelve months back when he was getting such 'YouTube Honors' as "#1 Most Viewed Comedian", and if Plaintiff had believed more in the chances that YouTube would pay him for his efforts, he would certainly be in the top 100 to 300 'most viewed' by now. However, the process that Defendants have taxed Plaintiff with in his attempts to garner a response on sharing revenue with YouTube took, to say the least, a great deal of the wind out of his sails.

3.17 Plaintiff's level of viewership cited above doesn't even take into account the fact that most of the other content creators or distributors that Plaintiff is comparing himself with are and have been promoted and "featured" by YouTube at the expense or resources of YouTube (and at the expense of Plaintiff), as opposed to Plaintiff's content which is predominantly promoted at his own expense and through his own resources. Plaintiff has not been promoted by YouTube--he has only been somewhat indexed in their search engine -- as well as hidden from their search engine.

3.18 Plaintiff has promoted his own work and webpages on YouTube by various means such as email, website and search engine marketing, video marketing and through other means of advertising. For an example, in his very early days on YouTube, Plaintiff wore a long sleeve shirt that read front and back "Youtube.com/Bennybaby" up and down Hollywood BLVD--and other hot and heavily trafficked L.A. streets--for a period of about a week.

3.19 Additionally, and not by his own choice, but forced upon him by Defendants, Plaintiff and his content have been used by YouTube to promote other content and sponsors.

3.20 When YouTube expends money or resources to promote a less popular user of their website than Plaintiff is, which YouTube has very regularly done and currently does, they are doing so partly at the expense of Plaintiff's and Plaintiff's Labors, as well and in violation of their

agreements with Plaintiff -- including, but not limited to, the agreement to promote their most popular users, not a chosen few as they do.

3.21 Defendants have and are embezzling the revenue (and traffic) generated by Plaintiff's creative content and Labors and using it to promote those who aren't as qualified--based on YouTube terms, agreements and promulgations--to be promoted as Plaintiff was and still is.

3.22 When YouTube promotes a user or sponsor of their site against Plaintiff's content or traffic (as they do and have done) without effecting any payment to Plaintiff (as they have not effected), especially after agreeing to effect such payment (which they've done), YouTube defrauds Plaintiff and employs said promotion of a user or sponsor at the expense of Plaintiff's.

3.23 Traffic directed to YouTube's website, generated by Plaintiff and his content, has been redirected by Defendants to other content and sponsored ads on and off of YouTube.com.

3.24 Plaintiff directed traffic to YouTube.com with the ultimate goal of monetizing said traffic. Defendants have prevented Plaintiff from monetizing his traffic on YouTube.com, however, Defendants have monetized Plaintiff's traffic wholly for themselves and their users and sponsors.

3.25(a) When a video is "featured", it means it is promoted by YouTube.com on the homepage or on another prominent area of their site. YouTube promulgates that one cannot "purchase" this featured slot, that it is an earned process. Popular video-sharing website www.Break.com has advertised paying content creators up to \$2,000 dollars if chosen by Break.com to have their video 'featured' on Break.com's homepage.

3.25(b) Plaintiff contends that YouTube.com, being tens to hundreds of times bigger than Break.com, probably pays their users--whose video content they feature--at least ten times what Break.com pays--or \$20,000 dollars--or if they don't, that they must lawfully do so.

3.25(c) Plaintiff has exceeded YouTube's criteria to be featured yet has not been featured-- while YouTube has featured those who haven't even come close to meeting YouTube's [earned] criteria to be featured. By creating a set of criteria to be featured on YouTube.com, and then by not following said criteria, YouTube induces their account holders to work towards the goal of meeting and exceeding said criteria for monetary and other consideration--by creating content for and drawing traffic to YouTube.com. But by not following said criteria, YouTube Extorts and induces labor from users such as Plaintiff who have trusted the criteria and worked towards fulfilling it. YouTube Unjustly Enriches itself by and through said Extortion and Inducement.

IV. DEFENDANTS' UNPAID SHARES AND TRAFFIC-AGGREGATION DEBT OWED TO PLAINTIFF

4.1 If one multiplies Plaintiff's daily traffic of approximately 11,200 views by 9,000, one arrives at over 100 million views per day, which is what YouTube boasts receiving in total approximate daily traffic--making Plaintiff's traffic equal to about 1/9000th of YouTube's traffic.

4.2 Plaintiff is a major contributors of content and traffic to YouTube.com. Subtracting porn spam, promoted and pirated content from the "1/9000th" equation of Paragraph 4.1, Plaintiff's daily traffic is estimated to be more like 1/1000th to 1/500th of YouTube's total daily traffic.

4.3 Using the unquestionable "1/9000th" figure to estimate Plaintiff's unpaid stake (or shares) in the company, Plaintiff's shares in YouTube (or Google) are worth approximately \$200,000--or \$3.6 million using the 1/500th figure--a figure derived basing the stock value of YouTube on the \$1.65 billion they were bought for by Defendant Google in November of 2006.

4.4 Google stock has only surged higher since and as a result of acquisitions such as YouTube and since Plaintiff has started adding content to the YouTube website.

4.5 These aforementioned figures do not consider an estimate of the value of Plaintiff's traffic itself. In the last 75 days alone, Plaintiff videos on YouTube.com have garnered over 800,000 views, or the various webpages on YouTube.com hosting Plaintiff's content have had over 800,000 hits. A "hit" is measured each time a page is accessed or visited.

4.6 Additionally, Nielsen and internet ranking sites and professionals now track the value of "duration traffic" (the amount of time a person spends on a webpage) because engagement and behavior have become a much greater indicator of a website's worth than just mere "hits", which could just be for a fleeting moment.

4.7 Duration traffic (or time-based traffic) also creates a better environment for sponsors, and the ad space for potential sponsors is consequently worth more money than under a hits-only metric. For example, and on information and belief on the manner in which YouTube pays its revenue-sharing Partners, YouTube pays most of its Partners only a percentage of revenue accrued from actual ad 'clicks', and not on the five minutes a user of their website watching a Partner's video may spend staring at the animated ad displayed directly to the right of that video or on that video itself. The time spent viewing a sponsor's ad, in many cases, is the utmost consummation of the marketing goal that the sponsor could hope for. For further example, Dunkin Donuts and Heineken place ads on YouTube.com with the ultimate goal of branding their product, not to entice viewers to visit their webpage and read about the history of their company.

4.8 This is what Google knows that most others--especially critics of YouTube's worth--don't know or don't consider when calculating the value of a site like YouTube.com: that duration traffic is of much greater value than mere hits; the sites where people spend most of their engaged time (such as YouTube.com) are by far the most valuable websites on the internet.

4.9(a) Plaintiff's fans and even his non-fans usually watch most or all the video of Plaintiff's that they have elected to watch; but even if they only watch 25% of the video (avg. length being about 4 minutes), users are spending over 180 hours per day on YouTube.com consuming Plaintiff's material and more time viewing Defendants' ads and promoted content; and this doesn't consider the additional time these users spend on other YouTube pages, viewing other content, as a direct result of Plaintiff's content driving them to YouTube.com in the first place.

4.9(b) A person who visits www.MichaelMoore.com, and clicks on the homepage link to see Plaintiff's video: the "Go See SiCKO" rap by "MC Artificial", will be redirected to YouTube's website where the video will begin playing. To the right of Plaintiff's video, Defendants direct that person to see 18 other videos not by Plaintiff, which Defendants state are "Related" to Plaintiff's video. And beneath those videos, in addition to the option of seeing another 20 "Related Videos" not of Plaintiff's, Defendants direct said person--who came to YouTube to view Plaintiff's video--to four "Promoted Videos", and to the accounts of the users with said "Promoted Videos".

4.9(c) Half of those above-referenced four users ('mammoth9119', 'ijustine', 'CSPAN', and 'francedeforce'), who have YouTube "Promoted Videos" listed under Plaintiff's videos, have both less viewership and less subscribers than Plaintiff has on his Bennybaby account alone. However, Plaintiff isn't "Promoted" by YouTube as they are, despite the fact that YouTube leads off and has stated that they will promote or reward their "top-drawing" users. Plaintiff's account and the content thereof is more "top-drawing" than several of these "Promoted" users.

4.10 For the same keywords (and web content descriptions) that Plaintiff uses to drive traffic to Defendants' websites with no compensation from Defendants (keywords such as "Avril Lavigne", "Parody", "Comedy", "Humor", "Funny Video", "Akon", "Britney Spears",

"Paris Hilton", "Rap", "Rapper", "50 Cent", "Spider-Man", "Halo", "Mad tv" | hereinafter "Keywords"), Google would charge Plaintiff \$5 to \$10 dollars per hit if he wanted to send someone to his own website using those same Keywords.

4.11 And so, if said Keywords are worth an average of \$7.50 per click to Google, the over 3.5 million views that Plaintiff garnered for YouTube would be worth, according to defendant Google, over \$26 million (\$26,000,000) dollars. Even Plaintiff's character names, such as "Bigga BLD", "Professor Carlton", "Wesley Johnson", and "MC Artificial"--which Plaintiff owns the sole rights to and the content thereof--are ringing up in Google Adwords (where traffic clicks are purchased through Google) at .50 cents each, except "Wesley Johnson" at \$5 dollars per click.

4.12 GooTube can't have it both ways. They can't charge \$10 dollars to someone, such as Plaintiff, for the same traffic that GooTube pays Plaintiff **nothing** for when the traffic is directed to their websites. Plaintiff contends that this and other conduct by GooTube, in addition to being grossly unfair, constitutes--among other egregious and unlawful conduct--Theft, Embezzlement, fraud (including Constructive Fraud and Fraud In the Inducement), Unjust Enrichment, Deception, and Bad Faith, as well as constitutes Antitrust and other state and federal violations of unfair competition, **Unfair Leverage, Restraint of Trade, and Monopolization**; as well as a breach of the fiduciary responsibilities that Defendants share--and the inducements they make--with their users, partners, affiliates, and/or Laborers, of which Plaintiff is one.

4.13 Even at the lowest conceivable end of .50 cents per click, Plaintiff's traffic would be worth, according to Defendant Google, over \$1.75 million (\$1,750,000).

4.14 No matter how you look at it, Plaintiff's Labor for Defendants thus far has accrued him well over a million dollars by defendant Google's standards.

4.15 The last time Plaintiff checked, Yahoo.com's lowest cost-per-click price for traffic on any click-through term was .10cents, even if the term was unsued or completely uncompleted with by other bidders. Even at this very low rate of .10 cents for click-through traffic, Plaintiff's traffic aggregated to YouTube.com would be worth over \$350,000.

4.16 Internet traffic is worth money. Most of those who run a business on the internet or consult for one will attest to this fact, and this Court could take judicial notice of this fact.

4.17 Additionally, "related traffic" (traffic specific to a user's interest) is worth volumes more than unrelated traffic.

4.18 In the same way that a basic telemarketing lead may cost .10 cents per lead, but a specific qualified mortgage lead may cost as much as 50 dollars, a basic hit may be worth ten cents but a hit derived from a more popular or valuable keyword, such as "Spider-Man" (a mainstream movie which Plaintiff owns several parodies of) Google charges \$10 dollars per click.

4.19 Although Plaintiff is currently looking for every way to avoid dependence on YouTube, and has done quite everything reasonably possible to avoid litigation against Defendants, including initiating dozens of contact attempts (several of which are listed in the "YOUTUBE EMAIL DIGEST" appended to this Complaint and hereby incorporated as the allegations of the foregoing Paragraph 4.20 of the Complaint), it ranges from extremely difficult to impossible to gain independence from the internet-dominating GooTube, or even make contact with them. Plaintiff contends that this feigned inability to communicate of GooTube's is, inter alia, a disinformation ploy used to induce free labor for their own Unjust Enrichment.

4.20 Document entitled "YOUTUBE EMAIL DIGEST" appended to this Complaint serves as the allegations of this paragraph of the Complaint.

V. ALLEGATIONS OF ANTITRUST, UNFAIR LEVERAGE AND FORCED LABOR INDUCEMENTS

5.1 The reason GooTube doesn't go out of its way to set up payment systems for its traffic aggregating Laborers, or even negotiate or answer emails is because they've figured out how to get away with not doing so, and because they're pretty close to owning the internet (in a business domination sense); and content-creating Laborers for GooTube can't feasibly go anywhere else, and that's exactly the type of leghold that GooTube is drivng to maintain over its Laboring victims. And by dominating on the internet, GooTube also dominates off the internet by commandeering off-the-internet material for their appropriation on the internet via their websites.

5.2(a) Industry expert Shelly Palmer, Chairman of The Advanced Media Committee and Managing Director of Advanced Media Ventures Group, LLC, states in his industry-welcomed book "Television Disrupted":

"Certainly Google [which Shelly calls a "Contact Provider"] enjoys an extraordinary market cap for a company that does not create any original content. ... Google's market cap is bigger than the total commercial television advertising business... Are we likely to see an industry death match with marquee billing like "The entire television industry vs. the contact providers?" It is inevitable.

5.3(b) GooTube put itself in a position to be pitted against the entire television industry in a similar way that Napster pitted itself against the entire music industry: By inducing everyone else's content onto their websites, on demand and free of commercial breaks and costs to viewers. Napster meets Shelly's definition of a "Contact Provider" too.

5.3(c) GooTube operates in an unlawful manner similar to that of the bygone Napster.

5.4(a) Continuing from Paragraph 5.1: And commandeering material is exactly what GooTube does. Plaintiff has never listed his various websites on Google.com, yet they show up on Google.com. One might ask Plaintiff, "Why would you complain about free notoriety?" Because, it isn't free and it isn't true notoriety. By so listing Plaintiff's and everyone else's material without their permission, Google can then charge Laborers, such as Plaintiff, for higher placement (or sponsored listings) on Google.com. And the Laborers will pay because they are getting traffic in return-- traffic which was generated solely by the content that their collective businesses created in the first place! In other words, GooTube charges businesses to sponsor themselves, as well as GooTube.

5.4(b) GooTube's entire business practice is the equivalent of making itself Czar of the world, taking everyone's land and then appropriating all the land back to everyone equally in one square-foot lots. And then anyone who is struggling to domesticate themselves on their one square-foot allotment can pay Czar GooTube an exorbitant fee, and GooTube will give them an acre's worth of land by pushing an acre's worth of square-foot lot holders into an even smaller area.

5.4(c) Plaintiff contends that Defendants owe their Laborers and the owners of the websites or videos or other content that Defendants list on GooTube's websites, a percentage of the revenue that Defendants collect from sponsors and could collect from sponsors, as well as a percentage of the value increase of their business or stock, because Defendants are only able to reap this revenue as a direct and sole result of their Laborers' efforts and their Laborers' content-- which Defendants have unlawfully commandeered.

5.4(d) As a direct result of their Laborers and their Laborers' content, Defendants are able to charge exorbitant prices, which they would not be able to charge otherwise, for Laborers to move to the top--on Google.com--of the very content for which the Laborers all collectively own.

5.4(e) Instead of paying its Laborers, as they are required by law to do, GooTube is essentially levying an unlawful tax on its Laborers, and GooTube is required by law to pay back or disgorge that tax.

5.4(f) Even if Defendants didn't owe their Laborers a percentage of the profits that their Laborers created for them, Defendants would still owe those who have garnered traffic to Defendants' websites, of which Plaintiff is one.

5.4(g) When Plaintiff directs traffic to Google.com or YouTube.com, which he has done, Plaintiff is owed--by GooTube--a comparable fee to that which Google charges or would charge Plaintiff to direct traffic to Plaintiff's website.

5.4(h) When Plaintiff's content aggregates traffic to Google.com or YouTube.com, which it has, Plaintiff--as well as other Laborers--is owed a reasonable fee for said traffic aggregation.

5.5 To restate or reiterate, by creating such easy access to be listed on the internet at a massive level--though it is not valuable access (much like the "one square foot lots" were not valuable land) **because it is access on a massive level**--GooTube makes it unfeasible for businesses to market their internet content directly to people because now people don't need to look for content anymore or follow business ads or other traditional methods to content, they can just "Google" everything. And since "everyone" is going to Google and YouTube to find everyone else's content, GooTube can step in and charge exorbitant fees to the traffic-squabbling Laborers--who collectively own all of Google's content--to be listed on the top of Google.com for certain searches.

5.6 If GooTube continues working with Yahoo.com, as they've already begun doing--and brought antitrust scrutiny from the federal government as a result--you could pretty much call GooTube's ownership/dominance of the internet a closed deal, if it's not already.

5.7 To name a few, Google owns mega video web portals: Google video, YouTube video, Flixya.com video, and has its 'Ads by Google' on Revver.com's, VideoWebTown.com's, and Nelsok.com's video sites [note: GooTube bought Motiono.com video but then shut it down].

5.8 Even when mega companies like News Corp. and NBC Universal tried to team up to create a video site for their own content--to isolate themselves from the internet-dominating GooTube, Google snickered down at them calling them the "Clown Co," according to the article in the LA Times by Dawn C. Chmielewski referenced below in this Complaint. When someone--in this case Google--who owns essentially nothing, can snicker at media kings who partly own the entire television industry and unfathomable volumes of content, something unlawful is going on.

5.9 How could Google not only not be intimidated by attempted media competition by some of the biggest media companies in the world, but laugh at the media conglomerates' very attempts to compete, if Google didn't have a grossly unfair amount of leverage? Plaintiff contends that it is GooTube's unfair leverage that allows them to belittle even grand-scale competition. And Plaintiff contends that, if that leverage suffocates competition from the biggest media companies in the world, then it essentially annihilates competition or leverage on the part of its independent Laborers such as Plaintiff--independent Laborers being the predominant Laborers for GooTube.

5.10 GooTube dominates the internet and as the cyber dictators that they are, they have the utmost leverage in negotiations, and they wield that leverage against their very Laborers, to avoid providing their Laborers or content creators with any payment for their efforts.

5.11 GooTube wields their unfair leverage against their Laborers unlawfully and strategically, and they gain said leverage through, but not limited to through, false promises and inducements (including labor inducements), Psychological Manipulation, Coercion, Fraud, feigned

ignorance, systematically planned communication errors, and 'Forced Labor', in violation of state and federal law as well as in violation of Antitrust law and international law.

5.12 And as a direct result of Defendants [unlawfully usurped] Unfair Leverage, GooTube reaps astronomical volumes of valuable and monetizable traffic on GooTube's websites.

VI. ALLEGATIONS OF UNPAID CONTENT ACQUISITION

6.1 The Writers Guild of America ("WGA") mandates payment of \$360 dollars to the writers of comedy programs up to two minutes in length, plus an additional \$180 for each minute over. And that's just for the writer's of those programs.

6.2 Assuming Plaintiff's average length of four minutes for his comedy programs on YouTube.com, if YouTube owned the rights to Plaintiff's content, Plaintiff would be owed \$720 dollars just for the writing aspect of the works he created and uploaded to YouTube.com -- an amount equal to over \$82,800, not to mention Guild-mandated Pension and Health Fund Provisions.

6.3 However, notwithstanding the allegations of paragraph 6.1 and paragraph 6.2 of the Complaint, Plaintiff has not sold the rights of his content to YouTube, he has only leased YouTube the rights for a period of approximately one year. Therefore, Plaintiff estimates a 10% to 15% lease value (based on WGA-mandated buy-out figures) of his content to YouTube in the amount of \$40,000 dollars; \$10,000 for the writing aspect of the material, and another \$30,000 to account for other production costs, bringing the total lease value to an estimated \$40,000.

6.4 The creation of Plaintiff's content has most certainly cost him anywhere from \$30,000 dollars to \$100,000 dollars and arguably much more -- not so much for the production costs of the video content itself, but moreso for his inability to work during the times he created it.

VII. GOOTUBE'S MODUS OPERANDI

7.1 Plaintiff has contacted YouTube and Google about the matters in this Complaint--as well as with the threat of litigation itself--numerous times and Defendants did not respond.

7.2 Plaintiff has a taped recording to Google corporate where the agent for Google refuses to transfer Plaintiff's call to anyone, refuses to direct him to any helpful resource, refuses to even give his own name or even employee ID, and smugly hides all of these said refusals under the protections of 'Google Policy'.

7.3 The only realistic way to communicate with Google is, sadly, to file a lawsuit against them, which doesn't ordinarily worry them because they already have the average attorney's systematic response digitally and algorithmically assessed -- which is why they didn't bat an eye when Viacom sued them for billions of dollars. Even though GooTube has absolutely no defense whatsoever to Viacom's case, Gootube doesn't fear it at all because they're much smarter and trickier than Viacom, or at least that belief comforts them greatly.

7.4 GooTube's scheme is actually quite intriguing and the philosophy of it can be better understood by viewing the document, entitled "GOOTUBE'S MODUS OPERANDI", appended to this Complaint and hereby incorporated as the allegations of paragraph 7.5 of the Complaint.

7.5 Document entitled "GOOTUBE'S MODUS OPERANDI" appended to this Complaint serve as the allegations of this paragraph of the Complaint.

7.6 Defendants have earned money and built a business off of the traffic that Plaintiff and Plaintiff's content has aggregated to Defendants' websites including YouTube.com, but Defendants have returned no payment to Plaintiff for said traffic. Plaintiff was one of the first big contributors to Motiono.com and helped build their site which later fostered its sale to GooTube.

7.7 A Businessweek article, entitled "Artists Have to Get Paid" cites Geoffrey Moore--tech consultant and venture capitalist--throughout as saying that the most fundamental aspect of any attempt to digitally distribute content is that "artists have to get paid", or the business will fail.

7.8 Defendants know this fact--that "artists have to get paid"--all too well, which is why they promise to pay artists like Plaintiff for their content and viewership/traffic on YouTube or induce them to believe that they will be paid for their labor. Defendants do so, because, without such a belief embedded in the mind of their Laborers, their Laborers will cease to be so highly motivated on behalf of GooTube's business -- as has happened with Plaintiff and other laborers upon discovering said reward to be a false, induced belief, implanted in their minds by Defendants.

7.9 Defendants sent Plaintiff an email telling him that he was extra suitable to be a revenue-sharing "Partner" with YouTube in the YouTube "Partner Program".

7.10 Defendants sent Plaintiff the above-referenced email, which is listed in the "YOUTUBE EMAIL DIGEST" and quoted below in section 12 of this Complaint, because they know that as long as artists like Plaintiff believe that they will get paid for their work on behalf of YouTube, that they'll keep working on behalf of YouTube toward that payday. But when it came down to paying Plaintiff, Defendants not only didn't deliver, they turned a deaf ear to Plaintiff.

7.11 It took about a year for Defendants to finally "rule" on Plaintiff's application to the Partner Program, all the while dodging communication along the way. And correspondences sent by Plaintiff to Defendants and defendant Evelyn post his denial from the Partner Program--inquiring more information on his [unlawful] denial from the Partner Program and for an explanation of certain criteria, went unanswered by Defendants.

7.12 Defendants have never paid Plaintiff for the traffic he generated on YouTube.com.

7.13 Faced with litigation from large tv corporations and content owners, such as Viacom, for allowing piracy of their content on YouTube.com, YouTube has struck deals with these large tv corporations, such as CBS, to display these corporations' content on YouTube.com.

7.14 Defendants are using the traffic and revenue from Plaintiff's original content to partner with large tv corporations in order to curtail litigation from said corporations that are victims of piracy on YouTube.com from a host of YouTube video uploaders who do not create original content as Plaintiff does. So, in effect, Plaintiff's original content serves as a litigation buffer for Defendants and helps them build their business even further, through unjust enrichment.

7.15 Instead of rewarding Plaintiff for his work in creating original content and drawing millions of viewers to YouTube.com, Defendants are using what would be his reward to do such things as perform damage control and cover legal costs, as well as to serve Defendants' ultimate goal: to move as much of network and cable television as possible to the internet to be available predominantly via "video sharing" websites that they own, such as YouTube.com.

7.16 This is how Defendants' plan works and has worked: First, they get Laborers to create content to draw millions of people to YouTube.com on a daily basis; then they use that monstrous storm of traffic to dictate what is watched and therefore be put in a prime position to seal deals with major tv networks to get the networks' material watched. Essentially, Defendants are paying back their victims of piracy with the traffic generated by the piracy, as well as the traffic generated by original content creators and Laborers such as Plaintiff, and they are only able to pay back the victims of piracy and network with them for their content because of the existence of original content such as Plaintiff's. The networks in turn have no choice but to deal, it's either do or die, be half victimized or completely victimized.

**VIII. DEFENDANTS' CONTRACTUAL BREACHES AND FAILURE
TO ABIDE BY THEIR OWN TERMS AND AGREEMENTS**

8.1 The aforementioned article in the LA Times by Dawn C. Chmielewski, entitled "First fame, now cash for stars on YouTube" (dated May 5, 2007) opens with the following two paragraphs:

"The budding comedians and quirky entertainers who helped YouTube earn \$1.65 billion from its sale to Google Inc. are about to start getting their own paydays. YouTube said Friday that it would soon start rewarding its top-drawing performers with better promotion and a cut of the revenue it generates from placing banner ads around the online videos."

8.2 Such a statement or promise made by Defendants, that they would start rewarding their top-drawing (or top-viewed) performers with better promotion and a cut of the revenue, would lead a reasonable person to believe that such would be the case; and that if one performer was a larger draw than another performer who was already getting a cut of the revenue, then the larger-drawing performer should not only be included in the revenue cut as well, but should come first in the line of revenue sharing before the lower-drawing performer. However, such is not the case, as Plaintiff is a much higher draw than dozens, if not hundreds, of other YouTube Partners who are sharing revenue with YouTube in the YouTube "Partner Program".

8.3 YouTube user '10,000 Maniacs' (Youtube.com/10000maniacs) is a Partner with defendant YouTube and has only 38 subscribers and their combined video content has accrued less than 75,000 total views. Plaintiff has accrued over 3.5 million views. It would seem to any calculation that Plaintiff's videos are more "top-drawing" than this user's.

8.4 YouTube user '1UPGameVideos' is a Partner with defendant YouTube who has zero views and hasn't even released a video yet. The two comments on his YouTube channel are "How the hell are you a partner..." and "you are a partner?" The user who wrote the first comment has since closed his account.

8.5 YouTube Partner 'grapl' has less than 60,000 combined views on all of its videos.

8.6 YouTube Partner 'sheltonfilms' has less than 200,000 combined views on all of her videos, with the exception of her first video (entitled "my name is lisa") which was assumptively featured by YouTube and has over 2 million views alone. Her combined viewership is still less than Plaintiff's combined viewership, despite her promotion by YouTube.

8.7 YouTube user '20thCFoxMovies' was made a Partner with one video--a preview for a mainstream movie--and a total of 171,195 views.

8.8 One of Plaintiff's videos alone on YouTube has more than twice the number of views of the sole video of the YouTube Partner '20thCFoxMovies'.

8.9 Plaintiff has about 35 times the views that YouTube Partner '3DoorsDown' has -- who is also a band with multiple albums in national record stores.

8.10 Even YouTube user and Partner 'FocusFeatures', a world-renowned production company, has only about 1.5 million views on YouTube. FocusFeatures' combined viewership in their YouTube Partner account is less than half of Plaintiff's combined viewership on just the accounts which Plaintiff applied to the YouTube Partner Program. Plaintiff has seen Focus Features' insignia on many of the movies he's rented. This goes to show that, even a world-renowned company that is additionally promoted by YouTube, still can't aggregate the traffic that Plaintiff--who was not promoted by YouTube--has labored to aggregate to YouTube.com.

8.11 There are numerous other YouTube Partners who not only don't compare to Plaintiff's "draw" on YouTube, they have essentially no draw on YouTube; and for that reason, but not limited to that reason, Defendants have broken their agreements, promises, and inducements to reward their "top-drawing" performers with Partnership and a cut of revenue.

8.12 Essentially what's happening is this, content creators like Plaintiff who helped build YouTube into a "sustainable eyeball business" as Google's Chief Executive Eric Schmidt calls YouTube, are not being rewarded for building YouTube's traffic.

8.13 Instead of rewarding eyeball aggregators (such as Plaintiff) for drawing the viewer (or eyeball) base to YouTube, as Defendants should do and have promised to do, Defendants are stealing the viewer base from these original eyeball aggregators and shifting those eyeballs to those with less to no presence on YouTube or, more aptly, to those whom YouTube wants to promote.

8.14 As of this writing, when one types in "I'm Fucking Jimmy Kimmel" into Yahoo's search engine, one can click to watch Plaintiff's same-titled video on YouTube (which is a parody of the YouTube-promoted "I'm Fucking Matt Damon" video); but, below Plaintiff's Jimmy Kimmel video are four YouTube "Promoted Videos". Each of these YouTube users/Partners whose videos are being promoted by YouTube--off of Plaintiff's content and traffic--have less views than Plaintiff, or have aggregated less eyeballs than Plaintiff has, despite their promotion.

8.15 YouTube is shifting Plaintiff's aggregation of eyeballs (or traffic aggregation) to other users to share revenue with them -- the revenue that Plaintiff generated from the traffic that Plaintiff generated. In short, Defendants are using Plaintiff's traffic to promote their revenue-sharing Partners or other users and sponsors, as opposed to revenue-sharing with Plaintiff himself for bringing in the traffic, as Defendants have agreed to do and have promulgated to do.

8.16 About a year ago, a SPAM epidemic swept YouTube and Plaintiff was in the middle of it, spending sometimes as much as a half hour to an hour per day just marking and removing SPAM from the comments section of his videos--additional Labor in service to Defendants. The SPAM consisted of various URL's that all predominantly redirected to the adult website: www.Camazon.com and the adult website www.Camaholic.com, which is a porn site where users pay to watch live sex shows via webcam. Naturally, Plaintiff was eager to see the end of this SPAM, as he no doubt expected YouTube would be as well, as YouTube users were being tormented by it in the comment section of their videos, and were speaking out against it in videos and blogs. YouTube also sent Plaintiff over 500 SPAM emails notifying him of this porn SPAM.

8.17 Plaintiff emailed YouTube offering to make a video that would give people proactive steps to combat the SPAM referenced above in paragraph 8.16 of the Complaint.

8.18 The reason Plaintiff emailed YouTube before making the video and didn't just make the video on his own, is because he was only make the vide if he would be recognized for one of his contributions to YouTube. Plaintiff had hoped to, for a change, maybe get some promotion (and hence revenue) out of this service that he would be providing to YouTube.

8.19 Defendant Wynston replied to Plaintiff's inquiry, stating that "*we would certainly support and applaud such an effort*" to help combat the SPAM on YouTube.com.

8.20 When Plaintiff read those words "support and applaud" coming from YouTube--who normally didn't even respond coherently or respond at all to inquiries he had made in the past--Plaintiff was in a state of liberation and ecstasy, like he had just been knighted. And so Plaintiff put in some heavy overtime into this content-creating project.

8.21 After receiving the above-referenced email from Wynston, Plaintiff, in an effort to make YouTube account holders more proactive in the battle against SPAM, spent about 20 to 30 hours assembling a video that would later be entitled "CELEBRITIES AGAINST SPAM" (hereinafter "Celebrities") featuring Plaintiff impersonating a celebrity committee as "they" brainstormed a system to defeat SPAM --the system was taken from YouTube's guidelines, also restated by Wynston, for combating SPAM, and consisted mainly of first marking the SPAM, then blocking the user who created the SPAM, and then removing the SPAM comment itself.

8.22 Plaintiff emailed Wynston the link to the Celebrities video. Wynston responded, "*I thought it was great..*" and suggested that Plaintiff cut it down to the 3-4 minute range and he would then look into the "possibilities" of featuring it.

8.23 Wynston said, "*No promises here. Basically features are done in the following way. YouTube's members rate videos they like, and our editorial staff reviews highly-rated and recent videos for consideration in the "Featured Videos" section of the home page and the featured videos on the "Categories" page.*" He also stated, "*I appreciate your efforts on the site's behalf. We need more members like you who are empowering the community to take action and cease their apathy.*" Plaintiff was delighted at the time and couldn't have agreed more with Wynston.

8.24 Plaintiff cut a 4-minute version of the Celebrities video. Within about a day or less, the two videos had received six YouTube Honors, such as Top Rated video, Most Discussed video, and Top Favorited video. These Honors were extraordinary feats, especially considering that one of the videos only had 65 views at this point. These honors do not take viewership into account. For example, a video with 10 comments and 10 views loses out in the "Most Discussed" ranking to a video with 11 comments, even if that video with 11 comments has a million views.

8.25 Plaintiff sent Wynston a link to the abridged version of the Celebrities video and that's when Wynston stated that he was getting some feedback from his colleagues and looking into some "possibilities". It would take Wynston a month to write to Plaintiff again.

8.26 A month later, after several emails from Plaintiff, Wynston finally writes back, but doesn't comment on the "possibilities" he had said he was looking into, but comments only on a separate issue of Plaintiff's application to the YouTube Partner Program. And Wynston's comment on said issue was that he was waiting to hear a response on Plaintiff's application. Wynston never contacted Plaintiff with said response or said "possibilities." In fact, Wynston never contacted Plaintiff again at all, despite numerous followup emails from Plaintiff to Wynston.

8.27 Let's take a moment to look at the merits that Plaintiff's video had for being featured--compared with other videos that were featured--in accordance with Wynston's (as well as YouTube's) statement for what YouTube looks for to feature a video: Highly-rated and recent.

8.28 A video entitled "LisaNova does YOUTUBE!!!!" (hereinafter "Lisa's Video") was featured in numerous prominent places on YouTube.com including several times on the homepage of YouTube.com and was even promoted alongside Plaintiff's videos.

8.29 Lisa's Video had 3 out of 5 stars, compared with Plaintiff's Celebrities video which had a full 5 out of 5 stars--for both the full-length and abridged versions of the video--a perfect rating which remains to date on both versions.

8.30 Also featured above Lisa's Video at the time was a video entitled "Law & Order Pilot" with only 2 stars and 211 views. It currently has over 280,000 views (after being being featured) but only 1 in 650 viewers favorited that video.

8.31 A currently featured video (entitled "Mochipet "Get Your Whistle Wet"...") has only 2 stars and was only favorited by 1 in 2,600 of its viewers.

8.32 YouTube video entitled "Yellow Lab Puppy" was featured with a rating of one star out of five stars. It had over 5,000 ratings when Plaintiff saved the page documenting its average one-star rating.

8.33 YouTube had four CSPAN videos featured back to back on their homepage around April 25, 2008, half of which had two-star ratings. Clearly, CSPAN wasn't featured four times because they exceeded the criterion of being highly rated. And clearly, the videos aforementioned in paragraphs 8.28, 8.29, 8.30, and 8.31 of the Complaint weren't featured because they exceeded said criterion either. Said videos didn't even come close to meeting the criterion. CSPAN was clearly featured, against YouTube policy, because of CSPAN's relationship with YouTube.

8.34 Plaintiff's Celebrities video had not one negative comment, as opposed to two very negative comments on the first page of Lisa's Video: *"..this is so stupid and pathetic.."* and *"Lisa Nova, I will kill you..."*

8.35 Plaintiff's Celebrities video had straight positive comments such as *"awesome post"*, *"so funny"*, *"so true"*, *"top job... that gay camznow shit [said porn SPAM] is everywhere!!"*, *"glad that someones trying to do something about SPAM"*, *"Funny, this is the first time I actually see soemone do something to try to stop spam."*, etc.

8.36 Lisa's Video had been favorited by 1 out of 500 (0.2%) of its viewers. Plaintiff's Celebrities video had been favorited by 1 out of 4 (or 25.00%) of its viewers. In this respect, Plaintiff's video was 125 times more liked than Lisa's Video which was featured by YouTube, and 657 times more liked than the featured video aforementioned in paragraph 8.30 of the Complaint.

8.37 When Lisa's Video had 958,759 views, it had 8,201 comments. When Plaintiff's video had only 65 views, it had already 10 comments. Which means 1 in 116 people commented on Lisa's Video; whereas, 1 in 6 people commented on Plaintiff's Celebrities video.

8.38 Also, 25% of the viewers of one of Plaintiff's stop spam videos had joined the YouTube group "Stop Spam" which was associated with said video and advertised in said video.

8.39 Considering the ratio of ratings (and favoriting) to views, Plaintiff's Celebrities video was one of the, if not the, most liked and popular video in the history of YouTube videos, according to defendant YouTube's stats.

8.40 Additionally, Plaintiff's Celebrities video served the purpose of solving one of YouTube's biggest problems for users at the time--SPAM, and without making YouTube look bad; and it was a video effort that, in the words of Wynston, would be something that YouTube would "support and applaud". At the time, Plaintiff could think of no reason why this video wouldn't have been proudly featured by YouTube. However, Wynston never even got back to Plaintiff, as promised, about looking into featuring said video or otherwise promoting it, or even about working on the actual SPAM issue itself.

8.41 All of the allegations above, including those in this section 8 of the Complaint, prove that YouTube doesn't follow its own guidelines for featuring videos and that Defendants breached contract with Plaintiff on their terms for featuring videos and promoting content.

8.42 By Defendants' breach of their agreed-upon and promulgated terms for featuring videos, Plaintiff was deprived of tens of thousands of dollars in actual revenue or traffic revenue that he would have accrued by having his content promoted by YouTube rather than by his own regular and exhaustive efforts of aggregating traffic to YouTube.com.

IX. GOOTUBE'S MONOPOLIZATION & ABUSE OF POWER

9.1 GooTube's monopolization of the online entertainment business violates The Sherman Antitrust Act (15 U.S.C. 1-7) and other Antitrust law, so much so that it has forced larger companies to strike inferior deals with GooTube or lose out anyway to GooTube-induced piracy.

9.2 Given GooTube's dominance of the non subscription-based online entertainment and video market, it is all the more important that they be made to deal with their Laborers and their Laborers' creative content contributions (and the revenue/traffic thereof) in a fair and equitable way.

9.3 Defendants' abuse of power and disregard for their Laborers--who are the direct and sole cause of Defendants' profit--is made self-evident by the fact that Defendants haven't paid Plaintiff one cent for drawing the same amount of traffic to YouTube.com that they would charge Plaintiff millions for, and is further made self-evident by their lack of communication with Plaintiff.

9.4 YouTube attracts Laborers and users through promises of various consideration, which is one of the reasons everyone knows about YouTube and few know about other video websites and even much higher-quality video sites such as Blip.tv, which displays videos in near DVD-quality, as opposed to grainy "YouTube quality," and gives its users their own dynamic flash player, which Plaintiff was quoted \$25,000 to have duplicated for his website. Plaintiff could obtain a video player similar to YouTube's for free.

9.5 Defendants use the traffic aggregated by Plaintiff and Plaintiff's content to promote other content and sponsored ads, without paying Plaintiff a percentage of the revenue they engorge as a result of said traffic. However, when Plaintiff sends traffic to his Blip.tv page, Blip does not promote any other content but Plaintiff's on said page -- a user can watch only Plaintiff's videos on Plaintiff's Blip page and can see no sponsored ads. Additionally, Plaintiff could embed his Blip

player onto his website or blog and the player would display only Plaintiff's videos, as opposed to YouTube's embeddable player which YouTube uses to promote their own videos, and any click on the YouTube embeddable player sends the clicker/viewer right to the YouTube website.

9.6 In the past, Plaintiff placed a few videos on Blip.tv for the purposes of embedding them on his website. Plaintiff never drove traffic TO Blip, never asked for nor expected a dime from Blip, and Blip never offered. Additionally, Plaintiff has at one time considered paying Blip for some additional features.

X. DEFENDANTS' DEADLOCKING OF PLAINTIFF'S ATTEMPTS TO SELF-MONETIZE YOUTUBE

10.1 In addition to not paying Plaintiff for his content and the traffic generated thereof, Defendants have also discriminately deadlocked Plaintiff's attempts to monetize YouTube.com for his own business purposes.

10.2 After receiving no compensation for his creative Labors on YouTube, and in need of drawing an income, Plaintiff began affiliating with websites which evenly split revenue accrued from any traffic directed by affiliates to their sites.

10.3 Plaintiff spent hundreds of hours making countless "promo videos" for the websites and services of various affiliate programs.

10.4 One of these such websites that Plaintiff affiliated with was www.Domai.com, a 'nude art' site that not only contained no pornographic content, but had an essay explaining why the models weren't even permitted to assume "erotic" poses as it would defeat the site's artistic goals.

10.5 Plaintiff opened a new YouTube account and uploaded several promo videos depicting various dressed (non-nude) Domai models with a URL directing users to Domai.com.

10.6 Plaintiff began making a few bucks from the viewership of said promo videos when YouTube began aggressively deleting these promo videos, making it unfeasible for Plaintiff to continue this business venture on YouTube.

10.7 One of these such promo videos that YouTube kept deleting was only head shots of a model with a URL on it that redirected to www.Domai.com, while tracking Plaintiff's traffic.

10.8 If the "head shots" promo video of Plaintiff's violated YouTube policy or videos with links to content that may be questionable for minors were not allowed on YouTube.com by YouTube policy and practice, then Plaintiff wouldn't have uploaded such videos to YouTube.com, nor exhausted hundreds of hours making these promo videos. However, YouTube policy disallows only "pornography" and their practice of not removing suggestive videos confirms this.

10.9 Plaintiff flagged a YouTube video a year ago entitled "Teen bangs her boyfriends brother in bathroom" with a link to www.ThatTeenBoobSite.com on it. If you enter said URL in a web browser, a hardcore pornography site immediately starts playing XXX sodomy videos with no prior age verification. This video has over one million views on YouTube, has been reviewed numerous times by YouTube staff, 'flagged' inappropriate by users, yet not deleted. YouTube does even request that you click a button confirming that you are 18 years old or older (hereinafter "Age Confirmation") before allowing you to view the video. This Age Confirmation button is something that Plaintiff was never even afforded with his "head shots" video depicting a graceful model.

10.10 A video entitled "A Tribute to Every Video Site" displays a girl rubbing her breasts in front of the camera. Plaintiff flagged the video, it was not removed and no Age Confirmation button was added to it by YouTube. Further, said video was featured by YouTube.

10.11 A video on YouTube.com entitled "college girl caught masturbating" shows a girl sitting naked in a shower and has a quarter of a million views. It was flagged but not deleted.

10.12 A video on YouTube.com entitled "Strip tease xxx girl strippin..." has 2 million views and a link to the porn webcam sex site www.SexTek.info. It was flagged but not deleted.

10.13 There's also a video of a nude model shoot on YouTube with over 12 million views which has not been deleted by YouTube.

10.14 The point of illustrating these "inappropriate videos" and their extremely high viewership is that videos viewed a lot are flagged a lot by YouTube users--who flag videos often for minor to no reason as a means of "policing" the site. And so, a video with a million views is bound to have been flagged hundreds, if not thousands or tens of thousands of times, which means YouTube has reviewed the video countless times and allowed it to remain on YouTube.com (often without Age Confirmation). Yet Plaintiff's videos, with low viewcounts, which were benign in comparison, were almost immediately deleted by YouTube, often without even being flagged. Among several potential reasons for this, Plaintiff contends that, despite GooTube promulgations to the contrary, GooTube isn't vying for mutual success between YouTube and its Laborers, they're vying for their Laborers to create content that GooTube can solely monetize and engorge the revenue thereof. Plaintiff also contends that Defendants are in some way affiliated with the adult content which they do not remove from their site (i.e., a GooTube employee knows the user).

10.15 Plaintiff's Domai promo videos were also uploaded to the popular video sharing site www.DailyMotion.com, a company very strict on inappropriate content, and his promo videos remain on Daily Motion to this day. But they were deleted from YouTube and Google video.

10.16 Months later, Plaintiff was approached to advertise a family-friendly dating site, and he created a few PG-rated promo videos of a man and woman holding hands on a beach with a URL advertising the dating site. All of these videos were deleted within days by YouTube.

10.17 These section 10 actions by YouTube are further examples that the policies, terms, and agreements made by YouTube are only followed when YouTube wants to follow them or when they are in YouTube's sole interest to follow or benefit solely YouTube and no one else.

10.18 Plaintiff has even had promo videos deleted by YouTube when they were set to private and only viewable by YouTube staff. This goes to show that YouTube is very aggressive in their content selection as well as in their pre-screening process--when they want to be--and are not merely the "hosting providers" that they claim to be in their answer to Viacom's complaint. And this also goes to show that YouTube does not in fact only monitor content brought to their attention by YouTube users, as they have led on to doing so many times, including in hearings.

10.19 When it is convenient for them, YouTube acts as if they are a data hosting company that doesn't examine what's being "stored" on their websites: "Oh, people put videos on our site too??" Yet they aggressively remove Plaintiff's promo videos because they may have benefited Plaintiff more than YouTube or more than YouTube's end goal--because they directed YouTube visitors to other commercial sites. But when the video content is less of an ad encouraging users to go elsewhere for a product, Defendants allow the videos to stay on their site to aggregate more traffic to their site and promote other videos and sponsors on their site. This conduct is not YouTube policy, it is YouTube practice, and it is contrary to YouTube promulgation.

10.20 YouTube recently added a "Video Annotations" feature so account holders can now append a note on their video to alert viewers to changes or updates to the content that have occurred

since the video was originally uploaded. You can also add a link to an updated version of the video or a related video, etc... However, YouTube only allows you to add a link to a video or page on YouTube.com. If you enter any other URL (that doesn't contain YouTube.com), the YouTube software states "You have entered an invalid URL." With said new feature, Defendants don't even allow Plaintiff and other Laborers the small monetization courtesy of providing a text link to their personal websites--and even on Plaintiff's own videos that he has Labored to create and market.

XI. DEFENDANTS' VIOLATIONS AND MANIPULATIONS OF THE DIGITAL MILLENNIUM COPYRIGHT ACT ("DMCA")

11.1 Videos are additionally also removed by YouTube when they tend to detract from the content of their Partners. Plaintiff's Avril Lavigne parody video (entitled "Girlfriend - Avril Lavigne - Live Analysis by Dr. Carlton") was removed twice by YouTube under the guise of its content violating the DMCA, and allegedly at the request of mega YouTube Partner and mega music company 'RCA Records' (Youtube.com/RCA Records).

11.2 A search for "*Avril Lavigne Girlfriend*" brought up Plaintiff's Girlfriend parody (hereinafter "Plaintiff's Video") on the first page before RCA Records' ("RCA") actual music video for Avril Lavigne's song *Girlfriend* was even on the first page under said search terms.

11.3 After Plaintiff's Video was originally removed by Defendants, Plaintiff filed a DMCA counter-notification, and YouTube subsequently put Plaintiff's Video back on YouTube.com, and Heather at YouTube copyright informed Plaintiff that RCA Records had made an error with respect to their copyright claim on Plaintiff's Video--as well as other of his videos.

11.4 Once Plaintiff's Video was restored to YouTube.com, it lost its first-page ranking and, to Plaintiff's recollection, could be found on somewhere around the tenth page.

11.5 RCA's Girlfriend music video would go on to receive over **90 million views** and now comes up first by the same search terms "*Avril Lavigne Girlfriend*" that it didn't even come up on the first page for when Plaintiff's Video originally did.

11.6 This action by Defendants of 'chilling' Plaintiff's creative content is highly significant for several reasons, including, but not limited to, because:

(a) Plaintiff would've received a great deal of promotion for his work because it dealt in a popular term searched for on YouTube.com's search engine, rather than just because it was promoted solely through Plaintiff's own efforts and on other search engines.

(b) The chilling of Plaintiff's creative content is only done after the traffic generated from said content has served YouTube's purpose: i.e., populating YouTube's website, and right before it serves Plaintiff's purpose: natural promotion to a monetizable end. Plaintiff's content and Labor is used by Defendants to monetize with mega entertainment corporations like RCA Records. Defendants only share revenue with content creators when they have to or when it is in their sole interest to, as opposed to when their promulgated criteria for becoming a YouTube Partner is met by a YouTube account holder or Laborer.

(c) Plaintiff's creative content, and the content of other like YouTube Laborers (who are not mega entertainment corporations like RCA Records) which had originally served to draw all of the traffic to YouTube.com in the first place and make YouTube the number one traffic-drawing entertainment website it is today--is now, not only not being monetized between YouTube and Plaintiff (and YouTube and other like Laborers as Plaintiff), but said content is being replaced (by Defendants) by the content of mega entertainment corporations (like RCA Records) in efforts such as the effort to show these corporations that they are now the most valued on YouTube...

As well as to increase the monetization that they share with these corporations who are enjoying the traffic originally aggregated by the independent content creators and Laborers such as Plaintiff. YouTube additionally kicks the independent content creator (who lives and breathes the YouTube motto and proclamation "Broadcast Yourself") to the curb in place of mega entertainment corporations in order to stave off litigation from these mega corporations who are now forced to provide their content to YouTube--since YouTube pirating users were giving it away free anyway--in order to split revenue with YouTube. And so, Plaintiff and his creative content laborers bear the brunt of this intentional "business debacle" of Defendants' and their YouTube.com.

(d) This also goes to show that any time YouTube could be responsible for promoting Plaintiff, rather than the other way around, YouTube finds a way to put a stop to it. After the surge of traffic for Plaintiff's Video died down, Plaintiff's Video found its way back to the first page for the search terms "Girlfriend Avril Lavigne"--where it could be found just recently, but today (July 4, 2008) is not listed whatsoever under said search terms.

11.7 YouTube clearly manipulates their search results, as videos entitled "Lesbians Having Sex xxx Porn" and "xxx porn xxx" show up in the search results for the terms "Avril Lavigne Girlfriend" yet Plaintiff's Video, an Avril Lavigne Girlfriend parody, thoroughly tagged as such, does not. Further, the video entitled "xxx porn xxx" has only the following tags (keywords) listed: "PORN anal sex oral ass tit fuck get fucked cunt dick pussy porno fucking naked lingerie horny milf hot " yet comes up under a search for "Avril Lavigne Girlfriend".

11.8 By manipulating their search results, Defendants control the view count of the content found through a search on YouTube.com, which lends further credence to Plaintiff's allegations that the content he aggregated to YouTube.com was had mostly by his own efforts,

as well as to the allegation that YouTube cultivates and predestines its own Partners, rather than rewarding the naturally "top-drawing" as they have agreed and promulgated to do.

11.9 A month after Plaintiff's Video was originally removed by Defendants, RCA Records released another popular Avril Lavigne music video and Plaintiff's Girlfriend video began to garner hundreds of views again.

11.10 At that point, Plaintiff's same Girlfriend video was immediately removed again by YouTube, allegedly at the request of RCA once again, who were allegedly once again claiming that Plaintiff's Video violated their copyright, even though YouTube told Plaintiff a month prior that RCA had stated that their DMCA claim against Plaintiff's Video was made in error and that they had retracted it. Also, and reportedly by YouTube, RCA Records had filed DMCA claims against several other of Plaintiff's videos and, according to Heather and YouTube copyright, those DMCA claims by RCA were retracted as well, and those videos restored to Plaintiff's accounts as well.

11.11 After YouTube removed Plaintiff's Video a second time, in violation of the DMCA, Plaintiff sent YouTube copyright the email that defendant Heather sent him the month prior which stated that RCA Records had made an error in their copyright claim with respect to Plaintiff's Video and had thereby retracted their claim against Plaintiff's Video.

11.12 Defendant Harry replied to Plaintiff with a *form* response that provided a link to the DMCA counter-notification process. Harry completely ignored the email that Plaintiff forwarded to Harry which was sent to Plaintiff a month prior from defendant Heather--who is believed to be Harry's boss--and which cleared Plaintiff on RCA's 'mistaken' DMCA claim.

11.13 Plaintiff re-replied to Harry re-explaining the issue once again, yet Harry sent Plaintiff the exact same email, word for word, once again. And so Plaintiff was forced to file

another DMCA counter notification.

11.14 Harry emailed Plaintiff telling him that the DMCA counter process takes between 10 to 14 days, which is the proper and maximum amount of time afforded by the DMCA. (THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998, "[U]nless the copyright owner files an action seeking a court order against the subscriber, the service provider must put the material back up within 10-14 business days after receiving the counter notification.")

11.15 Twenty-one days after Plaintiff filed his second DMCA counter notification, and over two months since Plaintiff had been cleared by YouTube and the DMCA on this exact same video, Harry wrote back to Plaintiff, stating that Plaintiff's video content was being restored "*in accordance with the DMCA*".

11.16 YouTube had no DMCA right to remove Plaintiff's Video, especially after the already-completed DMCA process restored said Video a month earlier. Harry and YouTube were in clear and grossly cavalier violation of the DMCA.

11.17 Plaintiff emailed YouTube copyright asking what had happened, why the "mistake" was made twice and what could be done to prevent it in the future, or would Plaintiff have to file a DMCA counter notification on a monthly basis. Plaintiff never heard back from Harry at all, or anyone else at GooTube on this matter whatsoever, despite Plaintiff's numerous emails.

11.18 Plaintiff's Video was taken down and restored a second time, not in accordance with the DMCA, but in direct accordance with the opening popularity of RCA's new Avril Lavigne video, and in direct assault of the DMCA. And also because Plaintiff's Video may have served to detract from the views and record sales of YouTube's Partner, RCA Records, as Plaintiff's video was a pretty sharp criticism of RCA's and was received well by [once] Avril fans.

XII. YOUTUBE'S DECEPTIVE CONTESTS AND PROMOTIONS

12.1 TurboTax sponsored a contest on YouTube calling for the "Best Tax Rap" music video to be voted on by YouTube users with a cash prize of \$25,000 to go to the winner.

12.2 Plaintiff thought he had a good chance of winning the contest only if YouTube users were the ones voting--as it would be a parody, of course--so he set out to make a music video for the contest. TurboTax, by and through YouTube, denied Plaintiff's music video entry into the contest, against YouTube's contest terms. Plaintiff appealed to YouTube who deleted Plaintiff's video. See a further account of these allegations in the "YOUTUBE EMAIL DIGEST".

12.3 Around June of 2007, YouTube hosted the "YouTube Sketches Contest" which called for anyone in the United States to enter a 3-minute sketch and YouTube users would vote for the winner--who would receive \$25,000 cash and some other promotional offer as well.

12.4 Plaintiff didn't expect a lot of competitive sketches to be entered into the contest, so he created a low-budget version of a high concept sketch that he had written a few years earlier. It didn't come out nearly as good as Plaintiff had wanted, he didn't quite have the tools to actualize a complex skit like this, but he entered it anyway and felt it had a good chance of winning. Since Plaintiff's family was in this sketch, he had them enter the sketch as their entry, and Plaintiff entered another video from his own YouTube account as his entry.

12.5 Neither of Plaintiff's sketches were selected by YouTube as the top 20 semi-finalists that YouTube users would then be allowed to vote for the winner from.

12.6 However, YouTube did select some pretty unfunny sketches as semi-finalists. But since "unfunny" is an opinion, YouTube figured they could get away with controlling the outcome of this [contest] too. Here's how YouTube worked it: they chose a few of their top-drawing

Partners with fair sketches as semi-finalists, and then chose a bunch of even less amusing sketches to remove the competition for their Partners and thereby see their predestined user to victory.

12.7 'Awkward Pictures', a YouTube Partner selected as a semi-finalist in the contest (who would later go on to win the contest) additionally had their contest entry featured on the home page of YouTube.com, so that their sketch--the sketch that YouTube clearly wanted to win--would get over a hundred thousand views; whereas, most of the other semi-finalists were lucky to get a few thousand views. And since you won the contest by the number of votes you received, it was only simple math that the entry by Awkward Pictures would win.

12.8 A YouTube Partner 'TokenBlackChic' states in her video entitled "Sketchies", *"I think a lot of people notice this: when you enter a contest on YouTube, it's usually the person that has the most subscribers that will win."* Having the most views is substantially the same leverage, so YouTube's featuring of the video they want to win essentially guarantees the victory.

12.9 In addition, YouTube made it almost impossible for YouTube users to vote for the semi-finalist entrants, further eliminating competition for their predestined winner -- this fact is made self-evident by the unusually low number of views that the other sketches garnered when the voting was advertised on the homepage of YouTube.com. Plaintiff personally spent hours trying to find out where to vote or even find the semi-finalists, and that was after clicking the 'VOTE HERE' link on YouTube's homepage. Plaintiff additionally emailed YouTube for instructions on where to vote, an email which YouTube never answered.

12.10 Further, while the entry by 'Awkward Pictures' wasn't a bad joke or anything, it was merely a 20-second "knock knock" type joke and the YouTube contest terms called for a "3-minute sketch."

12.11 To reiterate, the whole YouTube Sketchies Contest was an obvious fraud, perpetrated by Defendants, and the winner was effectually pre-chosen by YouTube, in violation of YouTube's contest terms to have YouTube users select the winner, as well as contrary to YouTube's promulgation of the nature of the contest.

12.12 Without faulting YouTube, Plaintiff emailed YouTube to alert them to a fraud in their Sketchies Contest, and received a reply signed by Mike from "YouTube, LLC" asking, "*What is the nature of the fraud you allege?*" Plaintiff believes that this email from Mike was being posed to garner any information that Plaintiff might have to prove the nature of the contest fraud that they were already aware of. Plaintiff replied generally, wanting to establish communication before opening up too much; however, Mike never responded, nor did anyone else from YouTube.

XIII. THE YOUTUBE "PARTNER PROGRAM"

13.1 Plaintiff applied to the YouTube "Partner Program" (hereinafter "Program") over a year ago through various means such as emailing his request to YouTube, filling out forms that YouTube staff had directed him with links to, such as the aforementioned advertising request form. In one email, Plaintiff told YouTube that he would be airing his content on TV and he would only be able to direct viewers to his YouTube webpages if he could share in revenue for that effort. Plaintiff never heard back on that proposal.

13.2(a) On June 28, 2007, Plaintiff received an email from YouTube signed by defendant Kavitha, which stated:

Hi there, Thanks for your email. We appreciate your interest in working with YouTube. The quickest way to speak with us about forming a content partnership is to enter your information at <http://www.youtube.com/advertise>. Someone will get in touch with you shortly once you've done that. Hope this helps," [signed] Kavitha, The YouTube Team.

13.2(b) Plaintiff filled out that form (located at <http://www.youtube.com/advertise>) again, but didn't hear back shortly on it, nor did he ever hear back on it. Plaintiff emailed Kavitha back again, telling her that he had already filled out that form awhile ago. And she wrote back,

"Please be patient, someone will get in touch with you shortly."

13.3 Plaintiff never heard back on the status of this, his original application to the Program, despite his numerous followup correspondences to YouTube on the matter.

13.4 **Eight months later**, on February 26, 2008, Plaintiff received an email from YouTube which had a link to a new and improved Partner Program application and which stated:

*"Hi there,
As you may have heard, we're expanding the YouTube Partner Program and we thought you may be a good candidate.
Becoming a partner will enable you to participate in ad revenue sharing and new syndication opportunities.
Here's what you'll need to do:"*

[followed by a link to a new and improved Partner Program application located at the URL: <http://www.YouTube.com/Partners>]

13.5 Plaintiff completed this new Partner application and attached seven other accounts in an area that allowed you to add multiple accounts to be considered altogether for the Program.

13.6(a) Several days after re-applying for the Program on this new Partner application, Plaintiff visited the application page and it showed his completed application and where it once said "Apply now", it now said, "Your Application is Processing."

13.6(b) Every day or two, Plaintiff revisited the application page and each time it said "Your Application is Processing." However, on March 10, 2008, about two weeks after filling out this new application, Plaintiff revisited the application page again, but instead of it saying "Your Application is Processing", it reverted back to saying "Apply now."

13.7 Plaintiff emailed YouTube about the application form reverting from stating "Your Application is Processing" back to stating "Apply now" and defendant Evelyn responded telling Plaintiff that she couldn't find his application and that he should try applying again if he was seeing the "Apply now" button.

13.8 Plaintiff re-applied, but the form was still saying "Apply now", so Plaintiff copied the completed application and emailed it to Evelyn who responded to Plaintiff, telling him that she now saw the application and that the "screening team" should get to it soon.

13.9 About a week later, with still no reply from YouTube on the status of Plaintiff's application to the Program, Plaintiff emailed Evelyn asking for a non-precise estimate of how long it might take: *"Ya know, a ballpark (1 to 6 weeks), whatever, I'm not looking for a precise answer."*

13.10 About another week later, with still no reply from YouTube on the status of Plaintiff's application to the Program, nor a reply on a ballpark time frame estimate, Plaintiff wrote Evelyn, stating *"What normally happens with Youtube and I is some nice lady like yourself puts in these requests and then I never hear back. This has been going on for years..."*

13.11 The next day, on March 27, 2008, over a month after this new re-application to the Program, and most likely due to Plaintiff's rigorous followup, Plaintiff received an email response to his Program application (hereinafter "Denial Letter") from YouTube, which stated:

"Dear BennyBaby,

Thank you for your interest in the YouTube Partner Program. Our goal is to extend invitations to as many partners as we can. Unfortunately we are unable to accept your application at this time. Advertisers on YouTube are currently looking to advertise against family safe content.

Applications are reviewed for a variety of criteria, including but not limited to the size of your audience, country of residence, quality of content, and consistency with our Community Guidelines and Terms of Use. Please review the program qualifications (<http://www.youtube/partners>) for a complete list of our criteria.

As we continue to expand the program we hope to be able to accept a broader group of partners. We have registered your interest in the program and will continue to monitor your account for potential future acceptance into the program.

*Thank you for your understanding.
The YouTube Team"*

13.12 And so now, about a year after Plaintiff's original applications to the Program, and a month after his latest application to the Program, Plaintiff finally receives an answer on his application to the Program: that he is being denied on the grounds that his content isn't "family safe" enough for these "advertisers" who are looking to advertise against it. Or at least that's how Plaintiff interpreted YouTube's meaning in their Denial Letter. It was somewhat vague.

13.13 And since it was vague, Plaintiff replied to the Denial Letter several times with several different inquiries about the Program and requesting further clarification on the denial grounds. Defendant Evelyn eventually replied with an indirect email that at least gave Plaintiff an answer to an inquiry that he didn't actually query: a confirmation of what the general reason for the denial was. Plaintiff did not hear back on his other queries regarding the Program and the specifics of his denial. The following is the full text of the email that Plaintiff received from Evelyn:

*Hi Ben,
As mentioned before, as we continue to expand the program we hope to be able to accept a broader group of partners. We have registered your interest in the program and will continue to monitor your account for potential future acceptance into the program. Unfortunately we are unable to accept your application at this time as advertisers on YouTube are currently looking to advertise against family safe content.
[signed] Sincerely, Evelyn*

The last sentence of the above email contained the confirmation that the original Denial Letter wasn't 100% clear on: that a lack of "family safe" content was the reason (though completely unfounded) for Defendants' denial of Plaintiff's application to the Program.

13.14(a) The winged Denial Letter lists a set of criteria used to accept or deny applicants into the revenue-sharing Program. One of these criterion is subjective: "quality of content", the others are substantially objective: "size of audience", "country of residence", and consistency with YouTube's "Community Guidelines" and "Terms of Use." Plaintiff is not given any of these reasons as the reasons for denial, nor is he given any subjective reason at all. He is given the somewhat objective reason that his content wasn't "family safe" enough for advertisers to be willing to advertise against. A denial reason that isn't even one of the denial reasons.

13.14(b) On the Program application page (www.youtube.com/partners), the qualifications are: *"To become a partner, you need to meet these criteria:"* 1, *"You **create original videos** suitable for online streaming";* 2, *"You **own the copyrights...**";* and 3, *"You regularly upload videos that are viewed by thousands of YouTube users."* Plaintiff met all of these criteria, and, additionally, he was not given failure to meet any of these criteria as the reasons for his denial to the Program anyway. He was given the not-having-"family safe"-content reason for denial.

13.15 This "family safe" reason for denial, also somewhat objective, is completely bogus and fraudulent on its face and there is **too much** proof of the falsity of this claim by YouTube. For one, "Ads by Google" (Google being a popular advertiser on YouTube) are regularly placed on adult content--or content that isn't family safe by any conventional standards--and the Google ads often themselves advertise adult content. On YouTube.com, Ads by Google appear alongside Playboy videos on Playboy's YouTube Partner account.

13.16(a) *The term "family safe", when **quoted** herein this Complaint, is used to explain what YouTube considers suitable for families by illustrating the content that they have deemed "family safe" by their admission of said content--and the user who generated it--into their Partner Program, and/or by the practice of allowing Partner videos with non-family safe content to remain in their Partner accounts. The term "family safe" will also be used to expose YouTube's fraudulent Denial Letter in denying Plaintiff entry into the revenue-sharing Partner Program on the grounds of not having "family safe" content for advertisers to advertise against. And so the term will be used to illustrate content that is not actually family safe or that is in fact less family safe than Plaintiff's content, by YouTube's standards. In other words, "family safe" when quoted herein, doesn't necessarily mean family safe, it means "family safe" by YouTube policy and/or practice.*

13.6(b) In TokenBlackChic's aforementioned "sketchies" video, Jamie attempts to have you look up her ultra mini-skirt. Not surprisingly, this "upskirt video" is Jamie's highest viewed video--and possibly her highest-quality video as well--with the exception of her e-Valentine video which was more highly viewed because it was featured and promoted by YouTube. Jamie also uses the phrase, "..throwing his entire cock into a prostitute" in another one of her YouTube-deemed "family safe" videos.

13.17 The #19 Most Viewed YouTube Partner of all time, the infamous 'LonelyGirl15' has "family safe" content consisting of teen soap operas--which use sexual allure to attract young viewers--starring a girl who was 16 at the time she aired her first video in her YouTube serial. The thumbnails for many of her videos feature a close up shot of her breasts. Some of the more "family safe" titles include "Boy Tied Up", "Girl Tied Up", "Getting Wet", "Stiff", "Groping in the Dark", "Playing with Wood", "4 Girls, 2 Guys" (with 1.6 million views), "Cant' Sleep... with Me",

"xxKissKissxx", and "Deep Throat." Plaintiff reminisces similar "family safe" titles while once scanning the DVD's listed in an internet porn movie catalog.

13.18 The more sexually-based a video by 'LonelyGirl15' appears, the more views it normally has. For example, LonelyGirl's video entitled "Bullet to the Head"--which features a video thumbnail of a dressed man--only has about 24,000 views, compared with her video entitled "Girl Tied Up"--which features a video thumbnail close up of LonelyGirl's breasts--and has over 11 million views.

13.19 YouTube Partner 'raz0rsex' has a "family safe" video where she, 'raz0rsex', a young lady, goes around asking adult men what their favorite sexual position is.

13.20 Plaintiff doesn't know of anyone who would call "50Cent" family friendly, including the music ratings board which places "EXPLICIT LYRICS" warnings on his albums. 50 Cent is not considered by anyone to be a comedian, and in 50 Cent's latest video, he states, *"I hold a grudge. I'll shoot you. I'll stab you. I'll kill you. Or maybe you'll just disappear."* and in an uncensored music video, 50 Cent raps the YouTube-deemed "family safe" lyrics *"Let her ass drop, like my '64. ... I dismiss a hoe, Bitch leave me now, I fuck when I want, I do what I like...I give her something to suck..."*

13.21 YouTube Partner 'PerezHilton' has a "family safe" video entitled "He Stuck His Finger Up His...!" where he uses such "family safe" phrases as *"suck cock"*, an actor who *"blew his load"* and *"came"*, and how he'd like to have his *"hole"* *"fingered"*. An ad for 'EarthKeepers' is overlaid on the video--and to the right of the video--by YouTube. Clearly, this 'EarthKeepers' sponsor doesn't mind being advertised against non-family safe content.

13.22 'PerezHilton' also has a video entitled "Warning: Nudity In This Video"--with a Hewlett-Packard ad overlaid *on* the video and to the right--where 'Perez' drops his pants at the end of the video. To his credit, PerezHilton does have a video entitled, "You Tube Doesn't Care About You" where he likens YouTube to an "inconsiderate boyfriend" and ends the video with "*Fuck You YouTube! Fuck You!!*" Of course he made this video after becoming a Partner.

13.23 PerezHilton also has a "family safe" music video called "Wild Thing" with girls in g-strings gyrating their butts at the camera and a lot of other "family safe" references.

13.24 YouTube Partner 'Zzx4k' has a "family safe" video where a man shoots himself in the head.

13.25 YouTube Partner 'Montagraph' has a video entitled "Blow It Out Your ASS" where he repeatedly uses such YouTube-deemed "family safe" phrases as "*fuck you*", "*motherfuckers*", "*rub dicks*", "*jerk off*", and "*blow it out your fucking ass!*"

13.26 YouTube Partner 'College Humor' has a "family safe" video that takes place at a boozing college party where a kid talks about putting his teeth around a girl's nipple and pulls his head out from a passed-out girl's shirt.

13.27 YouTube Partner 'BarelyPolitical' has a "family safe" video entitled "She Wants My ... Stimulus PACKAGE", the operative sexual word being "package", and features a girl in a bikini rubbing her breasts on a man's face.

13.28 YouTube Partner "TheRealParis" has a "family safe" video featuring Chris Crocker in very skimpy underwear with his legs spread wide open and his crotch aimed at the camera. TheRealParis' first two videos feature an [underage?] girl in just a bra.

13.29 YouTube Partner Andy Milonakis ('Youtube.com/AMilonakis') has a "family safe" video where he raps verses such as "Got a hard [something??] so I put it in their butts."

13.30 YouTube Partner 'MyDamnChannel' has a segment called "Bedtime Stores" where a young girl dressed in a child's pajamas reads a "pornographic" version of bedtime stories like "Rapunzel". In the "Bedtime Stories: Rapunzel" video, the "little girl" talks about how Rapunzel's admirers would "masturbate furiously" upon seeing her hair. The video also depicts the prince with his pants dropped in a masturbation position. Another similar-styled video (entitled "Bedtime Stories: The Emperor's New Clothes") depicts such language as "I can see the Emperor's scrotum" and "I can see the Emperor's saggy old nutsack and scraggly pubic hairs." There's several more "family safe" Bedtime Stories videos by this YouTube Partner. Both of these videos currently have an ad for EarthKeepers on them as well (YouTube.com/earthkeepers).

13.31 YouTube Partner 'Universal Media Group', one of the most-viewed YouTube Partners, is currently featuring artist Ace Hood's "Cash Flow" music video for a song which has mature-content lyrics like: "Where the cash at? If you ain't got it [I'll] leave you bloody like a tampax" and "So she gotta suck four dicks..." To their credit, Universal does censor some of the more mature lyrics but that doesn't make this anymore suitable for families, nor does Ace's uncensored death threat to anyone who messes with his "cash flow."

13.32 And of course there is the ultra "family safe" 'Playboy' Partner. While Playboy doesn't show porn on this YouTube-Partnered channel of theirs, they do direct people to porn websites which do. YouTube Partner 'Playboy' has videos on their YouTube Partner account with such "family safe" depictions as girls rubbing their breasts and pulling down their g-strings and revealing their naked butts.

A video of theirs, entitled "The Hottest Playboy Models! - PlayboyVideo.com', depicts fully naked girls with censor strips that read "DIRTY" placed over the models' nipples and genitalia. The censor strips barely cover a model's clitoris in one shot. And there's an ad at the end of the video which tells users to go to PlayboyVideo.com to see the "family safe" uncensored version.

13.33 When one goes to PlayboyVideo.com, one instantly sees "family safe" nudity without even having to confirm their age. To YouTube's credit, however, they do write in tiny print above the video "This video may not be suitable for minors." If Defendants recall, they never so marked Plaintiff's promo videos--which were much more tactful--but rather just deleted them every time they were uploaded.

13.34 YouTube Partner "nogoodtv" is simply chock full of non-family friendly content. They have 116 videos that all appear to be about nudity, perversion, porn, foul language, and/or graphic horror. They have a video entitled "HOT GIRLS of HOSTEL 2 Uncensored!! pt. 2". Plaintiff just skipped through it and observed talk about masturbation and rape interspersed with clips from Hostel 2, quite possibly the most violent and graphic horror movie in the history of mainstream cinema, which features in one scene a naked girl masturbating as blood pours on her from the naked body hanging above of her which she just sliced into several times. Not to mention a graphic onscreen castration. This video also displays an ad from Bank of America on it "Who has a hot fantasy about banking?" Plaintiff would bet his life savings that GooTube would call Hostel 2 a truly "family safe" movie and would call The Flintstones cartoon a porn if it was amicable to their defense or engorgement of profits.

13.35 YouTube Partner "nogoodtv" also has a video entitled "Girls of Penthouse go wild! pt. 1" where a girl re-enacts reverse doggy style sex with a man, grinding her crotch on his butt as

he's postured like a dog. Most shocking about this video is the GOOGLE AD to the right that says "Take the Miley Cyrus Quiz!" to get a free Miley ringtone. Miley Cyrus is a young teen with a mostly pre-teen following, and Google is advertising Ms. Cyrus against content containing nudity, dry porn, and that promotes X-rated pornographic content. And further, YouTube deems them "family safe"?

13.36 After this recent research into the diametrically non-family friendly content that embodies many of the videos of YouTube users and YouTube Partners, it seems holistically clear to Plaintiff, and should to this Court as well, that YouTube has fabricated this "family safe" criteria as the denial grounds of Plaintiff's application into the Program. And it should seem equally as clear that GooTube generally fabricates and commits a great deal of fraud in their operations, to hoodwink the masses (and the elite) to Labor for GooTube.

13.37 Probably the biggest reason of all why YouTube's "family safe" claim for denying Plaintiff entry into the Partner Program is completely fraudulent is because Plaintiff's videos are predominantly family safe by most standards, especially YouTube's. There might be a dozen curse words combined in the last 60 videos that Plaintiff uploaded to YouTube, with the exception of two videos with excessive use of the "F" word which were uploaded after Plaintiff's denial into the Partner Program -- one of which is a parody of a YouTube-promoted video entitled "I'm Fucking Matt Damon" by Sarah Silverman, Jimmy Kimmel and Matt Damon; and the other is a parody of 'gangsta rappers' and their homophobias--such as the 'gangsta rappers' featured in several of YouTube's Partner accounts--and graphic language can be a necessary evil in a parody of graphic language. However, YouTube features and promotes videos with foul and graphic language and even nudity.

13.38 Additionally, Plaintiff's content is still nonetheless much more family safe than much of the material by YouTube Partners. Further, and although this clearly wasn't an option offered to Plaintiff by Defendants (although Plaintiff is told by YouTube Partners that this is an option that YouTube gives them), Plaintiff would've gladly opted out of the Partner Program his few videos with foul language if that would've gained him entry into the Program. And furthermore, Plaintiff had attached numerous other accounts for consideration in the Program, many of which only contained G-rated videos.

13.39 Clearly, not having family safe content wasn't the reason that Plaintiff was denied entry into the Program and said reason was a complete fabrication by Defendants.

13.40 Additionally, there's virtually no sexuality in any of Plaintiff's videos. Plaintiff's content is all pretty much mainstream and it has even been cleared for airing on tv -- a much more restricted medium than YouTube.

13.41 Even if YouTube had a legitimate claim for denying Plaintiff's content on the grounds that it wasn't "family safe" enough for advertisers, which they clearly didn't, YouTube has not even allowed Plaintiff to put his own banner ads next to his videos advertising his own website (an opportunity that they afford to other Partners), nor have they answered his inquiry on what of his content might not be "family safe" and the possibility of removing said content or simply making said content ad-free. Of course they haven't answered that inquiry, an answer doesn't exist.

13.42 Further, YouTube already advertises next to Plaintiff's content and promotes videos containing sponsored ads next to Plaintiff's content. And furthermore, Defendants have no issue whatsoever with engorging the profits derived from Plaintiff's content and the traffic it aggregates. They only have an issue with cutting Plaintiff in on the revenue his labor generates.

Of course Defendants don't admit to having an issue with cutting Laborers like Plaintiff into the revenue sharing, they rather promulgate to the direct contrary.

13.43 Plaintiff's 'BetterStream' and 'ProfessorCarlton' accounts were both denied entry into YouTube's revenue sharing Partner Program under the guise of not meeting "viewership" requirements for the Program, but said accounts each had and have more views than other Partner accounts had and have.

13.44 Although Plaintiff attached his 'ProfessorCarlton' account to his Partner application that he received the Denial Letter for, he decided to try applying it individually, knowing YouTube wouldn't be able to even attempt denying it for not being "family safe."

13.45 YouTube emailed Plaintiff--at "Professor Carlton's" email--with the following letter (hereinafter "Carlton's Denial Letter") denying Plaintiff's ProfessorCarlton account entry into the Partner Program on the grounds of not meeting viewership requirements:

*Dear ProfessorCarlton,
Thank you for your interest in the YouTube Partner Program. Our goal is to extend invitations to as many partners as we can. Unfortunately we are unable to accept your application at this time. The current level of viewership of your account has not met our threshold for acceptance.*

Applications are reviewed for a variety of criteria, including but not limited to the size of your audience, country of residence, quality of content, and consistency with our Community Guidelines and Terms of Use. Please review the program qualifications (<http://www.youtube.com/partners>) for a complete list of our criteria.

*As we continue to expand we hope to be able to accept a broader group of partners. We have registered your interest in the program and will continue to monitor your account for potential future acceptance into the program.
Thank you for your understanding.*

[unsigned]

13.46 Plaintiff's ProfessorCarlton account has garnered over a half a million views. And Plaintiff hasn't added a video to said account--which contains only ten videos--in over a year.

13.47 Of course, YouTube won't reveal to Plaintiff what this additional mysterious level of "viewership" is that only Plaintiff must achieve to be considered for the Partner Program-- although they state on the Partner Program application page that one need only have videos that are "**viewed by thousands**" (which defines practically all of Plaintiff's videos individually). However, even if YouTube didn't state "**viewed by thousands**" as the viewership level required for entry into the Program, and some additional secret viewership level was in fact required--said viewership level can clearly be derived from the level of viewership that other YouTube users--made Partners by YouTube--have.

13.48 Plaintiff recalls Defendants and this Court to section 8 of the Complaint for a listing of several partners who have attained less viewership than Plaintiff's ProfessorCarlton account alone has -- of course, all of the Partners listed in section 8 have attained much less viewership than Plaintiff has attained for his combined accounts -- that is, just the combined accounts which Plaintiff applied to the YouTube Partner Program.

13.49 The reasons given by YouTube to deny Plaintiff's applications to the Program are completely false and fraudulent, and are made by Defendants with the motive of inducing further Labor from Plaintiff and other "prospective candidates".

13.50 It would be an entirely different situation if YouTube said "We're just going to pick and choose our Partners based on whatever reasons we so desire" or had some other random criteria. Plaintiff doesn't contend that such a selection process would be legitimate or lawful, especially considering Defendants' already Unfair Leverage; however, it would be an entirely

different situation, as it would be honest and wouldn't constitute a breach of contract and terms. Unlike the manner that Defendants currently operate under, which does constitute a breach of contract as well as a breach of agreements and promulgations and generally constitutes bad faith and unfair dealings. The reason YouTube doesn't tell the truth in this matter, but instead lies and says that they base Program acceptance on certain criteria--which they don't in fact base it on--is because they want to hook Plaintiff and other Laborers and content aggregators on the idea of revenue sharing, and they want to continue reaping the profit from Plaintiff's content and traffic aggregation, but without revenue sharing with him, despite their promulgations.

13.51 Additionally, and in conjunction with Defendants' fraudulent scheme, Defendants don't give you ALL of the grounds up front that they are denying you for the Program on; instead, they give you one at a time, to keep you hanging on. For example, first YouTube doesn't answer Plaintiff.. Then, they tell Plaintiff his viewership is too low. Or then, once he raises his viewership, they tell him that his material isn't "family safe". All to keep him clinging to an ultimate nothing.

13.52 Once Plaintiff garnered his viewership up to over 2 million views, YouTube told him that his content wasn't "family safe" enough for him to be included in the Program.

13.53 There is also a great deal more inconsistency with what YouTube says and what YouTube does. For example, YouTube states in their Terms of Use or Community Guidelines:

"Graphic or gratuitous violence is not allowed. If your video shows someone getting hurt, attacked, or humiliated, don't post it."

13.54 There's essentially no violence in any of Plaintiff's videos.

13.55 Violence and humiliation are a staple in YouTube videos, but YouTube does not go after these videos or remove them.

13.56 The Hostel video mentioned in Paragraph 13.34 shows clips from one of the most violent and horrific movies ever.

13.57 Plaintiff flagged RCA's Girlfriend video because it was a direct violation of the above-quoted YouTube terms. In said video (which has over 90 million views), Avril Lavigne attempts to break up the relationship between a boy and a girl because Avril thinks she would make a better "girlfriend" because she can do a better job of making him *"feel alright"*, and she proves this by grinding her butt on his crotch throughout the video. Avril and her friends gather round and snicker at the boy's girlfriend and then Avril swings a golf club at a golf ball and hits the boy's girlfriend in the head with the golf ball. And then Avril and her friends laugh at his girlfriend as she falls face first into a shallow pond. The video ends with the soaking-wet, concussioned girlfriend falling into a 'Porta-John' toilet as Avril leads her 'new' boyfriend into another portable toilet while undressing him.

13.58 YouTube has not removed this aforementioned "Family Safe", violent, and humiliating Avril Lavigne video, nor has YouTube even added an Age Confirmation button to the video. Additionally, another Avril Lavigne video has an ad for the "family safe" beer Amstel Light. Considering the fact that most of Avril's fans or viewers aren't old enough to drink, or at least millions of them aren't old enough to drink, Plaintiff contends that this is an unlawful ad, or a highly inappropriate one at the very least.

13.59 Plaintiff also contends that the availability of YouTube sponsors--who advertise alcohol--is another reason why YouTube's claim that all of their advertisers are looking to advertise against "family safe" content is bogus, as alcohol ads aren't family safe, and they would be more suitable, lawful, and effective being displayed against non-family safe videos.

13.60 Additionally, YouTube has approximately 300 different sponsors listed in their sponsor directory, surely more than a few of those would've been suitable for Plaintiff's content; if not, certainly "Ads by Google" would've been.

XIV. GENERAL ALLEGATIONS

14.1 Defendants' operate in a manner indicative of a dishonest scheme.

14.2 Defendants' have scammed and defrauded Plaintiff out of monetizable traffic and creative content.

14.3 Defendants have solely engorged for themselves the revenue accrued from Plaintiff's labors that they should've shared with Plaintiff.

14.4 Defendants have not paid Plaintiff anything for his labors in conjunction with YouTube.com or Google.com.

14.5 Defendants promulgated the issuance of compensation and payment to Plaintiff, directly and indirectly, but did not effect any payment or compensation to Plaintiff.

14.6 Plaintiff and Plaintiff's content have mitigated Defendants' damages to Viacom and Plaintiff should be compensated for that.

14.7 In stark contrast to YouTube's practice, on Plaintiff's newly-launched website: 'www.BetterStream.com', where he is transitioning his content (which was originally placed on YouTube.com and other video sharing sites) to, Plaintiff intends to and does give content creators their own page (or channel), where they can have their own banner ad alongside their own content; **and reap one hundred percent (100%) of the revenue accrued from that banner ad.**

This revenue-sharing program of Plaintiff's is offered to the content creator before they achieve any views, as opposed to YouTube's unknown and lofty "viewership requirements."

Additionally, if Plaintiff were to turn someone down from his partnership program, he wouldn't then also accept their content, as opposed to YouTube engorging the profits off the content that they deem "inadequate" for a user to profit from but perfectly adequate enough for GooTube to profit from. Alternatively, Plaintiff will completely buy out the rights to a content creator's content and then display it on BetterStream.com. Plaintiff may also share revenue or share ad placement, which would also be legitimate; however, he contends that it would not be legitimate for him to have people labor to create content for his site for free--even if they were willing to do so--and not at least allow them the option to monetize their share of the site. Additionally, Plaintiff plans to advertise BetterStream.com on TV and through other mediums, as opposed to YouTube who relies solely on the advertising of its Laborers and the word of mouth generated thereof -- those same Laborers who are also solely responsible for creating the content on YouTube.com.

14.8 Plaintiff calls this Honorable Court's attention to the very length of this Complaint and the detail in which it is forced to account for Defendants' wrongdoing and the surrounding proof of said wrongdoing, as evidence of the level of Defendants' acute intent in their wrongdoing. Plaintiff contends that is the very nature of GooTube's stratagem of operation to make it conducive for them to commit a multitudinous legion of wrongful acts and omissions, in a manner too multifarious to account for, which underpins the system by which they unjustly benefit while simultaneously and collaterally buttressing their defense. In other words, GooTube cascades an array of mini frauds throughout their entire operation to make it unfeasible for those wronged by GooTube to assemble the accounts of GooTube's unlawful conduct into a Complaint. And Plaintiff asserts great emotional distress as a direct and highly foreseeable result of Defendants' unlawful conduct which gave Plaintiff no option but to litigate its resolution.

14.9 Over a year ago, Plaintiff proudly--and many people will confirm the proudly--wore a long sleeve shirt proclaiming his channel on YouTube.com's website; however, Plaintiff now feels stupid and ashamed if he wears that same shirt in the privacy of his own bedroom. Said shirt may become an exhibit in this case.

XV. SPECIFIC OR ADDITIONAL ALLEGATIONS OF MONETARY DAMAGES

15.1 UNPAID SHARES:

Defendants owe Plaintiff between \$200,000 and an estimated \$3.6 million for unpaid shares, in accordance with the Securities and Exchange Act and other state and federal law.

15.2 CONTENT & TRAFFIC ENGORGEMENT:

In the unreasonable time it took YouTube to "process" Plaintiff's application to the YouTube Partner Program, YouTube's delay tactics in the processing of Plaintiff's application allowed them to engorge themselves with millions of views from Plaintiff's creative content. The value of that traffic, according to Google's traffic prices, is approximately \$15 million dollars, given the \$7.50 cost per click ratio. Therefore, Defendants have engorged \$15 million in traffic from Plaintiff during their deceitful handling of said application, or a total of \$26 million worth of total traffic.

15.3 MINIMUM AND OPPRESSIVE WAGES (STATE AND FEDERAL):

Defendants have failed to compensate Plaintiff at minimum wage, or at any wage for that matter, in violation of state and federal minimum wage and fair wage laws.

(a) The State of Massachusetts deems a wage of less than \$8.00 per hour for any work to be an oppressive wage (M.G.L. c. 151 § 1). The State of California's minimum wage is also \$8.00 per hour. Federal minimum wage is \$5.85 per hour.

(b). Plaintiff has worked approximately 2,000 hours on behalf of Defendants, and/or to the betterment of Defendants, doing such work as, inter alia, creating content for YouTube.com, adding said content to YouTube.com, and managing his webpages on YouTube.com. At state minimum wage standards, Defendants would owe Plaintiff \$16,000 in unpaid wages. At federal minimum wage standards, Defendants would owe Plaintiff \$12,000 in unpaid wages. Of course, Plaintiff would never accept minimum wage for creating tens of thousands of dollars worth of raw content with thousands of dollars worth of his own equipment and software. A minimum fair wage commensurate with Plaintiff's type of labor would be at least \$50 to \$150 dollars per hour. At the low end of the spectrum--at \$50 per hour--Defendants' would owe Plaintiff \$100,000 dollars in fair unpaid wages.

(c). Plaintiff is either an employee owed \$100,000 in unpaid wages and other benefits, or an independent traffic aggregator worth approximately \$15 million or \$26 million by Google's standards. Plaintiff contends that he is an independent content creator/traffic aggregator owed either \$15 or \$26 million in unpaid traffic aggregation -- depending on whether the Court starts the traffic count after Plaintiff's application to the YouTube Partner Program or, in the \$26 million case, if the Court considers the totality of traffic which is the standard in which Google would charge Plaintiff, and the standard in which Plaintiff contends GooTube should be held equally accountable under.

15.4 CAN-SPAM ACT VIOLATIONS:

(a). Defendants induced, conspired with, and/or aided multiple porn SPAMMERS-- such as those promoting www.Camazon.com--in their unlawful SPAM of Plaintiff.

(b). Defendants have sent Plaintiff over 500 SPAM emails with links to said porn SPAM, in violation of the CAN-SPAM Act and/or in violation of other state and federal laws

against SPAMMING. The quantity of said SPAM emails sent by Defendants was at least 500 to approximately 1,500. At 500 SPAM's, Defendants owe Plaintiff \$5.5 million (\$5,500,000) in federal statutory fines. Any assertion of indemnification by Defendants to the SPAMMERS would allow Plaintiff to add the SPAMMERS, such as www.Camazon.com, as parties in this action.

15.5 By virtue of their conduct as set forth in this Complaint, Defendants have deprived Plaintiff of the benefit of their bargains and breached the Implied Covenant of Good Faith and Fair Dealing in their agreements, contracts, and promulgations.

15.6 Defendants have been Unjustly Enriched by the benefit they received, and have retained the benefit they received.

15.7 Plaintiff seeks restitution and disgorgement of the profit--or the benefit--that Defendants have derived from their unlawful conduct described herein this Complaint.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests this Honorable Court for the following relief:

- A. An award ranging from a minimum of \$1.75 million (\$1,750,000) to \$26 million (\$26,000,000) for Plaintiff's aggregated traffic (over 3.5 million page views) on YouTube.com.
- B. An award of \$200,000 for emotional distress and time wasted by Defendants, for reasons not nearly limited to Defendants' scheme of non-communication and delay tactics in their correspondence as well as their general emotionally distressing-manner of operation.
- C. An award ranging from a minimum of \$12,000 to \$100,000 or greater in unpaid wages to be awarded only if the award in paragraph A of the Prayer For Relief is not awarded as requested.

D. A disengagement award--the value of which to be determined by this Court and/or by Plaintiff in discovery--for, but not limited to for, the revenue which Defendants have engorged by breaking the DMCA to profit Partners; the revenue which Defendants have engorged by using Plaintiff's traffic to build YouTube.com's value and advertise revenue-sharing Partners as well as advertise other content on YouTube.com; the revenue which Defendants have engorged by way of Plaintiff's traffic; the revenue which Defendants have engorged through sponsor advertisements in connection with Plaintiff's content, of which Defendants shared nothing with Plaintiff; and the revenue which Defendants have engorged through stock gains, and/or the revenue which Defendants have engorged through their effectual practice of unlawful taxing.

E. An award of \$40,000 for Defendants' unpaid leases on Plaintiff's content.

F. An award of \$25,000 for YouTube's breach of their TurboTax contest terms in not allowing Plaintiff's contest entry to be included in the vote.

G. An award of \$25,000 for YouTube's breach of their Sketchies Contest terms, which cost Plaintiff the chance to win the prize money for his labors.

H. And award of \$20,000 for not featuring Plaintiff's Celebrities video--or any other video of Plaintiff's. If awarded, Plaintiff still grants YouTube the right to feature his Celebrities video and wholly retain the revenue earned from the featuring of said video.

I. An award of \$5.5 million in statutory damages for violations of the CAN-SPAM Act and/or other state and federal laws against SPAMMING, or any less or greater award deemed by statutes.

J. An award of restitution--to be determined by this Court and/or by Plaintiff--for 'Forced Labor' and/or induced labor. Half of said restitution award--if awarded for 'Forced Labor'

in accordance with Massachusetts law--to go to Plaintiff, and the other half to be deposited into the Victims of Human Trafficking Trust Fund established by Massachusetts law.

K. An award of Treble Damages for all of Plaintiff's damages which are deemed to be the result of Defendants' antitrust violations or any other unlawful conduct by Defendants that is established by law to be awarded at a trebled ratio.

L. An award of compensatory damages, and any sequential and incidental damages and costs suffered by Plaintiff due to Defendants' wrongful conduct as described herein.

M. An award of reasonable attorney's fees and costs of suit.

N. An award of \$50,000 for the great emotional distress Plaintiff endured in unnecessarily having to prepare this lengthy Complaint (as well as in the litigation stages which would've preceded this award) and because the issues of this Complaint could've easily been solved by the wanton Defendants, and this lawsuit prevented, if Defendants had exerted the slightest effort and/or minimal courtesy of attempting to resolve these issues. Defendants' wanton disregard for attempting to solve the issues of this Complaint is also incorporated into the rationale for Plaintiff's request for an award of punitive damages below in Paragraph O of the Prayer for Relief.

O. AN AWARD OF PUNITIVE (/COMPENSATORY) DAMAGES:

1. Everything GooTube does in the way of building their business, they do with such an inordinate amount of forethought that it makes their competitors look like dolts; and it is for the reason that GooTube acts with knowledge, that Gootube's failure to rectify the issues with Plaintiff or provide him with any consideration whatsoever was intentionally, maliciously, and/or systemically schemed and such future behavior must be deterred with punitive damages.

2. Plaintiff requests that this Court award punitive damages in a sum of \$302 million (\$302,000,000) dollars, which Plaintiff believes may begin to deter Defendants' unlawful dealings. Plaintiff asks that only \$2 million (\$2,000,000) dollars be awarded himself, or any other higher amount deemed just and equitable by this Court, and that the other \$300 million (\$300,000,000) dollars be awarded and split between the 9,000 independent YouTube Laborers/account holders with the highest views--who are not corporate entities but rather independent content creators--because YouTube.com (and Video.Google.com) are the most viewed entertainment/video websites (and "TV networks") in the world as a direct result of the labors of GooTube's unpaid independent content creators who are mostly living below the poverty line, despite their having collectively built a multi-billion-dollar entertainment/video regime that will never be forgotten.

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DATED THIS _____ DAY OF JULY, 2008.

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