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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KRONENBERGER BURGOYNE, LLP
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San Francisco, CA 94108
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ASIS INTERNET SERVICES, a California corporation,

Plaintiff,

vs.

OPTIN GLOBAL, INC., a Delaware Corporation, also dba Vision Media Limited Corp., USA Lenders Network, USA Lenders, and USA Debt Consolidation Service; et al.,

Defendants.

Case No. C-05-5124 CW

ANSWER TO SECOND AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1 Defendant, Azoogole.com, Inc. ("Azoogole" or "Defendant"), by and through its
2 counsel, Kronenberger Burgoyne, LLP, for itself and no other party, as and for its
3 Answer to Plaintiff Asis Internet Services' ("Plaintiff" or "Asis") Second Amended
4 Complaint ("Complaint"), denies each and every allegation not specifically addressed
5 herein, including Plaintiff's introductory paragraph, and admits, avers and denies as
6 follows:

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8 **JURISDICTION AND VENUE**

9 1. The allegations contained in paragraph 1 of the Complaint call for a
10 conclusion of law to which no response is required. To the extent that a response is
11 required, Defendant denies same.

12 2. The allegations contained in paragraph 2 of the Complaint call for a
13 conclusion of law to which no response is required. To the extent that a response is
14 required, Defendant denies same.

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16 **FACTUAL ALLEGATIONS**

17 3. Denies knowledge or information sufficient to form a belief as to the truth
18 of the allegations contained in paragraph 3 of the Complaint. To the extent that a
19 response is required, Defendant denies same.

20 4. Denies knowledge or information sufficient to form a belief as to the truth
21 of the allegations contained in paragraph 4 of the Complaint. To the extent that a
22 response is required, Defendant denies same.

23 5. Denies knowledge or information sufficient to form a belief as to the truth
24 of the allegations contained in paragraph 5 of the Complaint. To the extent that a
25 response is required, Defendant denies same.
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1 6. Denies knowledge or information sufficient to form a belief as to the truth
2 of the allegations contained in paragraph 6 of the Complaint. To the extent that a
3 response is required, Defendant denies same.

4 7. Denies knowledge or information sufficient to form a belief as to the truth
5 of the allegations contained in paragraph 7 of the Complaint. To the extent that a
6 response is required, Defendant denies same.

7 8. Denies knowledge or information sufficient to form a belief as to the truth
8 of the allegations contained in paragraph 8 of the Complaint. To the extent that a
9 response is required, Defendant denies same.
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11 9. Admits the allegation contained in paragraph 9 of the Complaint that
12 Azoogle is an Internet marketing company, and denies knowledge or information
13 sufficient to form a belief as to the truth of those allegations contained in paragraph 9 of
14 the Complaint as to Leads Limited, Inc.
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16 10. Denies the allegations contained in paragraph 10 of the Complaint as to
17 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
18 of those allegations contained in paragraph 10 of the Complaint as to Leads Limited,
19 Inc.
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21 11. Denies the allegations contained in paragraph 11 of the Complaint as to
22 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
23 of those allegations contained in paragraph 11 of the Complaint as to Leads Limited,
24 Inc.

25 12. Denies knowledge or information sufficient to form a belief as to the truth
26 of the allegations contained in paragraph 12 of the Complaint. To the extent that a
27 response is required, Defendant denies same.
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1 13. Denies the allegations contained in paragraph 13 of the Complaint as to
2 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
3 of those allegations contained in paragraph 13 of the Complaint as to parties other than
4 Azoogle.

5 14. Denies the allegations contained in paragraph 14 of the Complaint as to
6 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
7 of those allegations contained in paragraph 14 of the Complaint as to parties other than
8 Azoogle.

9 15. Denies the allegations contained in paragraph 15 of the Complaint as to
10 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
11 of those allegations contained in paragraph 15 of the Complaint as to parties other than
12 Azoogle.

13 16. Denies the allegations contained in paragraph 16 of the Complaint as to
14 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
15 of those allegations contained in paragraph 16 of the Complaint as to parties other than
16 Azoogle.

17 17. Given that there is no allegation asserted against Azoogle in paragraph 17
18 of the Complaint, no response is required. To the extent that a response, is required
19 Defendant denies same.

20 18. Denies the allegations contained in paragraph 18 of the Complaint as to
21 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
22 of those allegations contained in paragraph 18 of the Complaint as to parties other than
23 Azoogle.

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1 19. Denies the allegations contained in paragraph 19 of the Complaint as to
2 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
3 of those allegations contained in paragraph 19 of the Complaint as to parties other than
4 Azoogle.

5 20. Denies knowledge or information sufficient to form a belief as to the
6 corporate structure and location of Plaintiff. The remaining allegations contained in
7 paragraph 20 of the Complaint call for a conclusion of law to which no response is
8 required. To the extent a response is required, Defendant denies same.

9 21. Denies the allegations contained in paragraph 21 of the Complaint as to
10 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
11 of those allegations contained in paragraph 21 of the Complaint as to parties other than
12 Azoogle. The remaining allegations contained in paragraph 21 of the Complaint call for
13 a conclusion of law to which no response is required. To the extent a response is
14 required, Defendant denies same.

15 22. Denies the allegations contained in paragraph 22 of the Complaint as to
16 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
17 of those allegations contained in paragraph 22 of the Complaint as to parties other than
18 Azoogle.

19 23. Denies the allegations contained in paragraph 23 of the Complaint as to
20 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
21 of those allegations contained in paragraph 23 of the Complaint as to parties other than
22 Azoogle.

23 24. Denies the allegations contained in paragraph 24 of the Complaint as to
24 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
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1 of those allegations contained in paragraph 24 of the Complaint as to parties other than
2 Azoogle.

3 25. Denies the allegations contained in paragraph 25 of the Complaint as to
4 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
5 of those allegations contained in paragraph 25 of the Complaint as to parties other than
6 Azoogle.
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8 26. Denies the allegations contained in paragraph 26 of the Complaint as to
9 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
10 of those allegations contained in paragraph 26 of the Complaint as to parties other than
11 Azoogle.

12 27. Denies the allegations contained in paragraph 27 of the Complaint as to
13 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
14 of those allegations contained in paragraph 27 of the Complaint as to parties other than
15 Azoogle.
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17 **FIRST CAUSE OF ACTION**
18 **(Violation of CAN-SPAM Act of 2003 – 15 U.S.C. §7704(a)(1), (2), (3), and (5) and 15**
19 **U.S.C. §7704(b)(1) and (2))**

20 28. In response to paragraph 28 of the Complaint, Defendant incorporates its
21 responses to paragraphs 1 through 27, inclusive, with the same force and effect as if
22 fully set forth herein.

23 29. Denies the allegations contained in paragraph 29 of the Complaint as to
24 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
25 of those allegations contained in paragraph 29 of the Complaint as to parties other than
26 Azoogle.
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1 30. Denies the allegations contained in paragraph 30 of the Complaint as to
2 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
3 of those allegations contained in paragraph 30 of the Complaint as to parties other than
4 Azoogle. The remaining allegations contained in paragraph 30 of the Complaint call for
5 a conclusion of law to which no response is required. To the extent a response is
6 required, Defendant denies same.
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8 31. The allegation contained in paragraph 31 that “the electronic mail violated
9 15 U.S.C. §7704(a)(1)(A)” calls for a conclusion of law to which no response is required.
10 To the extent that a response is required, Defendant denies same. Azoogle denies the
11 remaining allegations contained in paragraph 31 of the Complaint as to Azoogle, and
12 denies knowledge or information sufficient to form a belief as to the truth of those
13 allegations contained in paragraph 31 of the Complaint as to parties other than Azoogle.
14

15 32. The allegation contained in paragraph 32 of the Complaint that “conduct
16 was in violation of 15 U.S.C. §7704(a)(1)(A) calls for a conclusion of law to which no
17 response is required. To the extent that a response is required, Defendant denies
18 same. Azoogle denies the remaining allegations contained in paragraph 32 of the
19 Complaint as to Azoogle and denies knowledge or information sufficient to form a belief
20 as to the truth of those allegations contained in paragraph 32 of the Complaint as to
21 parties other than Azoogle.
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23 33. Denies the allegations contained in paragraph 33 of the Complaint as to
24 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
25 of those allegations contained in paragraph 33 of the Complaint as to parties other than
26 Azoogle.
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1 34. The definition provided by 15 U.S.C. §7704(a)(2)(1) speaks for itself. To
2 the extent the allegations contained in paragraph 34 of the Complaint call for a
3 conclusion of law, no response is required. To the extent that a response is required,
4 Defendant denies same. Azoogole denies the remaining allegations contained in
5 paragraph 34 of the Complaint as to Azoogole and denies knowledge or information
6 sufficient to form a belief as to the truth of those allegations contained in paragraph 34
7 of the Complaint as to parties other than Azoogole.

9 35. The allegation contained in paragraph 35 of the Complaint that “conduct
10 was in violation of 15 U.S.C. §7704(b)(1)” calls for a conclusion of law to which no
11 response is required. To the extent that a response is required, Defendant denies
12 same. Azoogole denies the allegations contained in paragraph 35 of the Complaint as to
13 Azoogole, and denies knowledge or information sufficient to form a belief as to the truth
14 of those allegations contained in paragraph 35 of the Complaint as to parties other than
15 Azoogole.

17 36. The allegation contained in paragraph 36 of the Complaint that “conduct
18 was in violation of 15 U.S.C. §7704(b)(2)” calls for a conclusion of law to which no
19 response is required. To the extent that a response is required, Defendant denies
20 same. Azoogole denies the allegations contained in paragraph 36 of the Complaint as to
21 Azoogole, and denies knowledge or information sufficient to form a belief as to the truth
22 of those allegations contained in paragraph 36 of the Complaint as to parties other than
23 Azoogole.

25 37. Denies the allegations contained in paragraph 37 of the Complaint as to
26 Azoogole, and denies knowledge or information sufficient to form a belief as to the truth
27 of those allegations contained in paragraph 37 of the Complaint as to parties other than
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1 Azoogle. Whether Plaintiff is entitled to damages under the statute is a question of law
2 to which no response is required. To the extent a response is required, Defendant
3 denies same.

4 38. Denies the allegations contained in paragraph 38 of the Complaint as to
5 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
6 of those allegations contained in paragraph 38 of the Complaint as to parties other than
7 Azoogle. Whether Plaintiff is entitled to damages under the statute is a question of law
8 to which no response is required. To the extent a response is required, Defendant
9 denies same.
10

11 39. Denies the allegations contained in paragraph 39 of the Complaint as to
12 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
13 of those allegations contained in paragraph 39 of the Complaint as to parties other than
14 Azoogle. Whether Plaintiff is entitled to injunctive relief is a question of law to which no
15 response is required. To the extent a response is required, Defendant denies same.
16

17 40. The allegations contained in paragraph 40 of the Complaint call for a
18 conclusion of law to which no response is required. To the extent that a response is
19 required, Defendant denies same.
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21 **SECOND CAUSE OF ACTION**

22 **(Violation of California Business and Professions Code §17529.5 – Unlawful
23 activities relating to commercial email advertisements)**

24 41. In response to paragraph 41 of the Complaint, Defendant incorporates its
25 responses to paragraphs 1 through 40, inclusive, with the same force and effect as if
26 fully set forth herein.

27 42. The language of California Business and Professions Code §17529.5
28 speaks for itself. To the extent the allegations contained in paragraph 42 of the

1 Complaint call for a conclusion of law, no response is required. To the extent that a
2 response is required, Defendant denies same.

3 43. The allegations contained in paragraph 43 of the Complaint call for a
4 conclusion of law to which no response is required. To the extent that a response is
5 required, Defendant denies same.

6 44. The language of California Business and Professions Code §17529.1(a)
7 speaks for itself. To the extent the allegations contained in paragraph 44 of the
8 Complaint call for a conclusion of law, no response is required. To the extent that a
9 response is required, Defendant denies same.
10

11 45. The allegations contained in paragraph 45 of the Complaint call for a
12 conclusion of law to which no response is required. To the extent that a response is
13 required, Defendant denies same.
14

15 46. The allegations contained in paragraph 46 of the Complaint call for a
16 conclusion of law to which no response is required. To the extent that a response is
17 required, Defendant denies same.

18 47. The language of California Business and Professions Code §17529.1(c)
19 speaks for itself. To the extent the allegations contained in paragraph 47 of the
20 Complaint call for a conclusion of law, no response is required. To the extent that a
21 response is required, Defendant denies same.
22

23 48. The language of California Business and Professions Code §17529.1(i)
24 speaks for itself. To the extent the allegations contained in paragraph 48 of the
25 Complaint call for a conclusion of law, no response is required. To the extent that a
26 response is required, Defendant denies same.
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1 49. Denies the allegations contained in paragraph 49 of the Complaint as to
2 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
3 of those allegations contained in paragraph 49 of the Complaint as to parties other than
4 Azoogle.

5 50. Denies the allegations contained in paragraph 50 of the Complaint as to
6 Azoogle, and denies knowledge or information sufficient to form a belief as to the truth
7 of those allegations contained in paragraph 50 of the Complaint as to parties other than
8 Azoogle.

9 51. The allegations contained in paragraph 51 of the Complaint that the
10 electronic mail violated California Business and Professions Code §17529.5(a)(2) call
11 for a conclusion of law to which no response is required. To the extent that a response
12 is required, Defendant denies same. Azoogle denies the remaining allegations
13 contained in paragraph 51 of the Complaint as to Azoogle and denies knowledge or
14 information sufficient to form a belief as to the truth of those allegations contained in
15 paragraph 51 of the Complaint as to parties other than Azoogle.

16 52. The allegations contained in paragraph 52 of the Complaint that the
17 electronic mail violated California Business and Professions Code §17529.5(a)(3) call
18 for a conclusion of law to which no response is required. To the extent that a response
19 is required, Defendant denies same. Azoogle denies the remaining allegations
20 contained in paragraph 52 of the Complaint as to Azoogle and denies knowledge or
21 information sufficient to form a belief as to the truth of those allegations contained in
22 paragraph 52 of the Complaint as to parties other than Azoogle.

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1 7. Damages, if any, were proximately caused by Plaintiff and, therefore,
2 require an allocation of fault.

3 8. Plaintiff invited and consented to the acts of Defendant alleged in the
4 Complaint.

5 9. Plaintiff waived any claim or cause of action against Defendant for the acts
6 alleged in the Complaint.
7

8 10. Plaintiff has failed to bring this action in the appropriate venue.

9 11. Plaintiff's claims are barred in whole, or in part, under the doctrine of pre-
10 emption.
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DATED: November 27, 2006

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KRONENBERGER BURGOYNE, LLP

23

24

/s/

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Henry M. Burgoyne, III
Attorneys for Defendant, Azoogle

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