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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 ASIS INTERNET SERVICES, a California  
14 corporation,

15 Plaintiff,

16 vs.

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

21 Defendants.

Case No. C-05-5124 CW

SUPERSEDING CASE MANAGEMENT  
STATEMENT

DATE: December 15, 2006

TIME: 1:30 p.m.

CTRM: 2, 4th Floor, Oakland

22 This Case Management Statement shall supersede the Case Management  
23 Statement filed on September 26, 2006.

24 Defendant QUICKEN LOANS contends that it did not consent to the Case  
25 Management Statement filed on September 26, 2006.

26 Plaintiff, ASIS INTERNET SERVICES, and Defendants OPTIN GLOBAL, VISION  
27 MEDIA LIMITED CORP., PEONIE CHEN, RICK YANG, BRUCE LERNER, STATESIDE  
28 MORTGAGE, INC., QUICKEN LOANS, INC., and AZOOGLEADS.COM, INC., sued herein as  
AZOOGLE.COM, INC., submit the following joint report.

Plaintiff has entered into a Confidential Settlement Agreement and dismissed from this  
action Defendant AEGIS LENDING CORPORATION. Plaintiff has also negotiated a  
Confidential Settlement Agreement with NATIONAL FIDELITY FUNDING AND CHRIS

1 VALLEY; EMERALD HOME LOAN, INC.; MICHAEL CUERVO dba NORTHSTAR FINANCIAL  
2 AND JOHN "TERRY" DORLAND; AMERICAN HOME EQUITY CORP., and MICHAEL  
3 GARCIA, and anticipates submitting stipulations of dismissal on behalf of these Defendants  
4 within the next fifteen (15) to thirty (30) days.

5 Plaintiff has also obtained a Clerk's Default against Defendant LEADS LIMITED, INC.,  
6 for failing to respond to the Summons and Second Amended Complaint served on it.

#### 7 DESCRIPTION OF THE CASE

8 1. A brief description of the events underlying the action:

9 **Plaintiff claims it is an Internet Access Provider and accuses Defendants of**  
10 **violating the CAN SPAM Act of 2003 and California Business and Professions**  
11 **Code §17529.5 from October 25, 2005 through November 14, 2005. Plaintiff's**  
12 **complaint is for injunctive relief and damages per the applicable statutes.**

13 **Defendants deny plaintiff's claims.**

14 2. The principal factual issues which the parties dispute:

15 **Defendants contend generally that plaintiff has failed to make allegations**  
16 **with enough particularity to allow them to adequately assess the principal factual**  
17 **issues in dispute.**

18 **Defendants Optin Global, Inc., Vision Media Limited Corp., Rick Yang and**  
19 **Peonie Chen contend that they were not in the email business during the period**  
20 **referred to in the complaint October 25, 2005 to November 14, 2005, and that they**  
21 **have never conducted business under the fictional business names "USA**  
22 **Lenders Network," "USA Lenders," or "USA Debt Consolidation Service."**

23 **The alleged Mortgage Broker defendants deny that they sent illegal emails**  
24 **to Plaintiff's email servers or participated in any way with the sending of such**  
25 **emails by any other Defendant or any other person or entity. Further said**  
26 **Defendants assert that they reasonably believed at all times that all sales leads**  
27 **they obtained were not the product of illegal emails and were legally obtained by**  
28 **the person or persons who provided such leads. In addition said Defendants**

1 deny that they advertised in a commercial email in violation of the California  
2 Business and Professions Code.

3 Alleged Lead Generator Defendant AzoogleAds.com, Inc. (improperly  
4 named in the Second Amended Complaint as Azoogle.com, Inc.) denies, without  
5 limitation, that it sent, or in any way participated in the sending of, illegal emails  
6 to Plaintiff's alleged email servers, or that it advertised in a commercial email in  
7 violation of the California Business and Professions Code or any other law or  
8 regulation. Also without limitation, AzoogleAds.com denies that it: employed,  
9 controlled or managed the day-to-day activities of, or enjoyed any agency, joint  
10 venturer, partner or similar relationship or commonality of enterprise with, any  
11 other defendant; conspired with, aided or abetted, or in any way supported or  
12 participated in the alleged wrongdoing of any other defendant; or knew, had  
13 reason or the opportunity to know, or consciously avoided knowing, of any other  
14 defendant's alleged wrongdoing. Defendant AzoogleAds.com finds itself  
15 handicapped in assessing the existence of additional factual issues, since the  
16 Second Amended Complaint does not with any degree of specificity allege a  
17 basis for AzoogleAds.com's supposed wrongdoing, including without limitation  
18 the particular email advertisements giving rise to AzoogleAds.com's alleged  
19 liability or the basis of AzoogleAds.com's alleged knowledge of other defendants'  
20 activities.

21 The parties further agree that the principal factual issues at this time are as  
22 follows:

23 Whether plaintiff provides an internet access service or is an electronic  
24 mail service provider.

25 Whether any defendant, or some or all of all defendants, transmitted from  
26 October 25, 2005 through November 14, 2005 to Plaintiff's protected computer up  
27 to or in excess of 10,000 electronic mail advertisements with a subject line that a  
28 person would know would be likely to mislead a recipient, acting reasonably

1 under the circumstances, about a material fact regarding the contents and  
2 subject matter of the message, or transmitted any such messages.

3 Whether any defendant, or some or all of all defendants, transmitted to  
4 plaintiff's protected computer from October 25, 2005 through November 14, 2005,  
5 up to or in excess of 10,000 commercial email messages or transactional and  
6 relationship messages that contained or was accompanied by header information  
7 that is materially false or materially misleading, or transmitted any such  
8 messages.

9 Whether any defendant, or some or all of all defendants, initiated the  
10 transmission of up to or in excess of 10,000 commercial electronic mail  
11 messages to Plaintiff's protected computer from October 25, 2005 through  
12 November 14, 2005, without a clear and conspicuous identification that the  
13 message was an advertisement or solicitation, or initiated any such messages.

14 Whether any defendant, or some or all of all defendants, used a harvest  
15 and directory attack or used an automated creation of multiple email accounts to  
16 send up to or in excess of 10,000 commercial electronic mail messages to  
17 Plaintiff's protected computer from October 25, 2005 through November 14, 2005,  
18 or to send any such messages.

19 Whether any defendant procured the alleged emails sent to Plaintiff's  
20 protected computer and knew or consciously disregarded knowing that another  
21 defendant was engaged in a pattern or practice of sending such messages.

22 Whether any defendant advertised in any alleged email message.

23 3. The principal legal issues which the parties dispute:

24 Defendants contend generally that plaintiff has failed to make allegations  
25 with enough particularity to allow them to adequately assess the principal legal  
26 issues in dispute.

27 Defendants initially refer to the legal issues identified in the various  
28 motions to dismiss the Plaintiff's first amended complaint and the answers on file

1 and incorporate those pleadings by reference.

2 Whether any of the challenged conduct constitutes a violation of state or  
3 federal law.

4 Whether plaintiff has standing to pursue its claims.

5 Whether any defendant violated the CAN-SPAM Act of 2003 (15 U.S.C. §§  
6 7701 et seq.) and whether any remaining defendants can be held liable for any  
7 such alleged violations.

8 Whether any defendant violated California Business and Professions Code  
9 § 17529.5 and whether any remaining defendants can be held liable for any such  
10 alleged violations.

11 Whether plaintiff can show a pattern or practice as required for certain  
12 alleged violations.

13 Whether any defendant intentionally procured the alleged illegal emails.

14 Whether any defendant had actual knowledge or consciously avoided  
15 knowing whether any other defendant was engaging in or would engage in a  
16 pattern or practice that violated the CAN-SPAM Act.

17 Whether plaintiff agreed to release Quicken Loans or should be  
18 promissory estopped from pursuing its case against Quicken Loans.

19 Whether plaintiff is entitled to injunctive relief, liquidated damages,  
20 statutory damages, aggravated damages, or any other remedy from any  
21 defendant.

22 Whether any defendant is entitled to indemnity from another defendant.

23 Whether any party is entitled to attorneys' fees.

24 4. The other factual issues [*e.g. service of process, personal jurisdiction, subject matter jurisdiction or*  
25 *venue*] which remain unresolved for the reason stated below and how the parties propose to  
26 resolve these issues:

27 The parties do not dispute subject matter jurisdiction, personal jurisdiction,  
28 or venue at this time, except to the extent those issues were raised or preserved

1 in the parties' pleadings.

2 5. The parties which have not been served and the reasons:

3 All parties known at this time have been served.

4 6. The additional parties which the below-specified parties intend to join and the intended  
5 time for such joinder:

6 None known at this time.

7 7. The following parties consent to assignment of this case to a United States Magistrate  
8 Judge for [court or jury] trial:

9 Plaintiff does not consent to assignment to a United States Magistrate  
10 Judge. Plaintiff requests a jury trial.

11 Defendants OPTIN GLOBAL, INC., VISION MEDIA LIMITED CORP., RICK  
12 YANG AND PEONIE CHEN consent to assignment to a United States Magistrate  
13 Judge and a Court trial.

14 Other defendants do not consent to assignment to a United States  
15 Magistrate Judge. Defendants also request a jury trial.

16 ALTERNATIVE DISPUTE RESOLUTION

17 8. [Please indicate the appropriate response(s).]

18  The case was automatically assigned to Nonbinding Arbitration at filing and will  
19 be ready for the hearing by (date)\_\_\_\_\_.

20  The parties have filed a Stipulation and Proposed Order Selecting an ADR process  
21 (specify process): \_\_\_\_\_

22  The parties filed a Notice of Need for ADR Phone Conference and the phone  
23 conference was held on or is scheduled for \_\_\_\_\_

24  The parties have not filed a Stipulation and Proposed Order Selecting an ADR  
25 process and the ADR process that the parties jointly request [or a party  
26 separately requests] is \_\_\_\_\_

27 9. Please indicate any other information regarding ADR process or deadline.

28 Plaintiff and Defendants consent to Alternative Dispute Resolution and are

1 amenable to mediation. Quicken Loans favors early Court mediation to  
2 potentially avoid further costs.

3 **DISCLOSURES**

4 10. The parties certify that they have made the following disclosures *[list disclosures of persons,*  
5 *documents, damage computations and insurance agreements]:*

6 **The Parties agree that initial disclosures are to be made pursuant to the**  
7 **Federal Rules. Quicken Loans contends that Plaintiff has failed to provide its**  
8 **initial disclosures as required on October 19, 2006.**

9 **Confidential documents will not be produced until the entry of a protective**  
10 **order by the Court.**

11 **DISCOVERY & MOTIONS**

12 11. The parties agree to the following discovery plan *[Describe the plan e.g., any limitations on the*  
13 *number, duration or subject matter for various kinds of discovery; discovery from experts; deadlines for*  
14 *completing discovery]:* The parties propose the following dates.

15 **As to those parties that have completed their Rule 26(f) conference,**  
16 **discovery has commenced.**

17 **Plaintiff requests an exception to the maximum number of depositions and**  
18 **requests to be allowed to take up to 20 depositions. Plaintiff anticipates ten (10)**  
19 **may be no more than one (1) hour in length and via phone if desired by**  
20 **Defendants.**

21 **Defendants seek no change in the ten (10) depositions rule.**

22 **Plaintiff and Defendants consent to a two-tier protective order. The parties**  
23 **have exchanged a draft and are waiting for all parties' approval before providing**  
24 **to the Court.**

25 **Plaintiff, Defendants AZOOGLE, STATESIDE, and OPTIN, propose the**  
26 **following discovery plan:**

27 Non-Expert Discovery Cut-off: 8/10/07

28 Designation of Experts: 9/10/07



