

1 **Jason K. Singleton, State Bar #166170**
2 **Richard E. Grabowski, State Bar #236207**
3 **SINGLETON LAW GROUP**
4 **611 "L" Street, Suite A**
5 **Eureka, CA 95501**
6 **lawgroup@sbcglobal.net**

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10 **(707) 441-1177**
11 **FAX 441-1533**

12 **Attorneys for Plaintiff, ASIS Internet Services**

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 **ASIS INTERNET SERVICES, a California**
17 **corporation,**

18 **Plaintiff,**
19 **vs.**

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

24 **Defendants.**

25 **Case No. C-05-5124 JCS**

26 **AMENDED**
27 **APPLICATION FOR ENTRY OF**
28 **DEFAULT JUDGMENT, AND**
DECLARATION OF JASON K.
SINGLETON IN SUPPORT HEREOF

I, Jason K. Singleton hereby declare as follows:

1. I have personal and firsthand knowledge of each fact hereinafter set forth and if called to testify could and would competently testify thereto.

2. I am the attorney for Plaintiff in this matter. Defendant Leads Limited, Inc. has been served with the summons and complaint and Default was entered in the above captioned matter against Defendant Leads Limited, Inc. on 11\16\06. (Docket # 132).

3. Said Defendant Leads Limited, Inc. is neither a minor or incompetent person, nor an individual serving in the United States armed forces.

4. Notice of entry of Default was served on Leads Limited, Inc. on November 21, 2006.

5. Notice of the within Application for Entry of Default Judgment was served upon

1 Defendant Leads Limited, Inc. on January 5, 2007, via U.S. Mail.

2 6. The liability of Defendant Leads Limited, Inc. is joint and several with the
3 remaining Defendants, and no just reason for delaying the entry of Judgment appears.
4 Consequently, the Court may enter Judgment against Leads Limited, Inc. at this time.
5 (*Farzetta v. Turner & Newall, Ltd.* (3rd Cir 1986) 797 F.2d 151; *In re Uranium Antitrust Litig.*
6 (7th Cir 1980) 617 F2d 1248, 1262)

7 7. Plaintiff seeks statutory penalties, as set forth in the Complaint, against
8 Defendant Leads Limited, Inc. as follows:

9 **CAN SPAM Act:**

10 **15 USC 7706(g)(3) Statutory damages**

11 "(A) In general

12 For purposes of paragraph (1)(B)(ii), the amount determined under this
13 paragraph is the amount calculated by multiplying the number of violations
14 (with each separately addressed unlawful message that is transmitted or
15 attempted to be transmitted over the facilities of the provider of Internet
16 access service, or that is transmitted or attempted to be transmitted to an
17 electronic mail address obtained from the provider of Internet access
18 service in violation of section 7704(b)(1)(A)(i) of this title, treated as a
19 separate violation) by--

- 20 (i) up to \$100, in the case of a violation of section 7704(a)(1)
21 of this title; or
22 (ii) up to \$25, in the case of any other violation of section
23 7704 of this title.

24 (B) Limitation

25 For any violation of section 7704 of this title (other than section 7704(a)(1)
26 of this title), the amount determined under subparagraph (A) may not
27 exceed \$1,000,000.

28 (C) Aggravated damages

The court may increase a damage award to an amount equal to not more
than three times the amount otherwise available under this paragraph if--

- (i) the court determines that the defendant committed the
violation willfully and knowingly; or
(ii) the defendant's unlawful activity included one or more of
the aggravated violations set forth in section 7704(b) of this
title.

15 USC 7706(g)(4) Attorney fees

In any action brought pursuant to paragraph (1), the court may, in its
discretion, require an undertaking for the payment of the costs of such

1 action, and assess reasonable costs, including reasonable attorneys' fees,
2 against any party.”

3 **CAN SPAM Act** penalties based on violations:

4 Violation of 15 **USC** 7704(a)(1) – initiation of commercial electronic mail message to protected
5 computer containing false or misleading header information. \$100 per email.

6 Plaintiff has currently received 9324 emails, so damages are \$100 X 9324 emails = \$932,400.

7 Violation of 15 **USC** 7704(a)(2) deceptive subject line. \$25 per email.

8 Plaintiff has currently received 9324 emails, so damages are \$25 X 9324 emails = \$233,100.

9
10 Subtotal = \$932,400 + \$233,100 = \$1,165,500

11
12 Damages may be trebled for a violation of 15 **USC** 7704(b)(1) or (2) or (3) – directory harvest,
13 or automated creation of multiple electronic mail accounts, or relay or retransmission through
14 unauthorized access.

15
16 Plaintiff has alleged and provided evidence of all three violations. Treble all damages for a
17 Total of 3 X \$1,165,500 = \$3,496,500.

18 **California Business and Professions Code** §17529.5(b)(1)(B)(ii):

19 “(ii) Liquidated damages of one thousand dollars (\$1,000) for each
20 unsolicited commercial e-mail advertisement transmitted in violation of this
21 section, up to one million dollars (\$1,000,000) per incident.”

22 Subtotal = \$1000 * 9324 emails = \$9,324,000.

23 The total is limited to \$1,000,000 per incident. Since the incident occurred over 87 separate
24 daily incidents from October 25, 2005, to January 29, 2006, the limitation does not apply to
25 reduce the total penalty. Therefore, the total applicable penalty under **California Business**
26 **and Professions Code** §17529.5 is \$9,324,000.

27 **Attorney fees and costs**

28 Plaintiff submits that apportionment of attorney fees and costs should await a fee

1 petition at the conclusion of this matter.

2 **TOTAL Damages**

3 The minimum damages are:

4 $\$3,496,500 + \$9,324,000 = \$12,820,500.$

5

6 I declare under the penalty of perjury under the laws of the United States that the
7 foregoing is true and correct.

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SINGLETON LAW GROUP

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10 Dated: January 4, 2007

/s/ Jason K. Singleton
Jason K. Singleton,
Richard E. Grabowski, Attorneys for Plaintiff,
ASIS INTERNET SERVICES

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