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

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12 **ASIS INTERNET SERVICES**, a California
corporation,

13 Plaintiff,

14 vs.

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

18 Defendants.
19
20

Case No. C-05-5124 JCS

**DECLARATION OF HENRY M.
BURGOYNE III IN SUPPORT OF
AZOOGLEADS.COM, INC.'S MOTION
FOR 1) PROTECTIVE ORDER AND 2)
LEAVE TO AMEND DISCOVERY
RESPONSES**

Date: April 20, 2007
Time: 9:30 A.M.
Courtroom A, 15th Floor
Honorable Joseph C. Spero

21
22 I, Henry M. Burgoyne III, declare as follows:

23 1. I am an attorney admitted to practice in the State of California and the United
24 States District Court for the Northern District of California. I am a partner at the law firm
25 of Kronenberger Burgoyne, LLP, counsel of record for Defendant AzoogLeads.com, Inc.
26 ("AzoogLe"). Unless otherwise stated, I have personal knowledge of the facts stated
27 herein.

28 2. A true and correct copy of an excerpt of the transcript of proceedings before the

1 Honorable Claudia Wilken on April 21, 2006 is attached hereto as **Exhibit A**.

2 3. A true and correct copy of Plaintiff's responses to Azoogole's First Set of
3 Interrogatories, excluding the exhibits thereto, is attached hereto as **Exhibit B**.

4 4. A true and correct copy of Plaintiff's responses to Azoogole's First Set of
5 Document Requests, excluding the confidential exhibit thereto, is attached hereto as
6 **Exhibit C**.

7 5. A true and correct copy of an excerpt of Plaintiff's Opposition to Defendant
8 Aegis Corp., American Home Equity Corp, Quicken Loans Inc., Stateside Mortgage Inc.,
9 Michael Cuervo, and National Fidelity Funding's Motion to Dismiss is attached hereto as
10 **Exhibit D**.

11 6. During a February 19, 2007 meeting, Plaintiff's counsel Jason Singleton stated
12 that he had retained two "experts" for use in this litigation: 1) the son of his associate,
13 Richard Grabowski, whom Plaintiff described as the chief technology officer of an
14 Internet-related company; and 2) Jeffrey Posluns, an admitted "spammer" and author of
15 "Inside the SPAM Cartel: Trade Secrets from the Dark Side," a book purporting to
16 describe the inner workings of the email marketing industry.

17 7. A true and correct copy of Plaintiff's Special Interrogatories to Azoogoleads.com,
18 Inc., Set One is attached hereto as **Exhibit E**.

19 8. A true and correct copy of Plaintiff's Requests for Admission to
20 Azoogoleads.com, Inc., Set One is attached hereto as **Exhibit F**.

21 9. A true and correct copy of Plaintiff's Request for Production of Document and
22 Things, Set One is attached hereto as **Exhibit G**.

23 10. True and correct copies of emails from me to Jason Singleton, dated February
24 8 and February 19, 2007 and identifying Lee Herrera, including by Mr. Herrera's title, are
25 attached hereto as **Exhibit H**.

26 11. A true and correct copy of a joint letter brief, dated March 8, 2007, submitted by
27 the parties to the Honorable Joseph C. Spero, is attached hereto as **Exhibit I**.

28 12. True and correct copies of emails from Jason Singleton to me, dated February

1 5 and February 7, 2007, in which Mr. Singleton represents that he identified Lee Herrera
2 and Mr. Herrera's email address by means of the Internet, are attached hereto as

3 **Exhibit J.**

4 13. True and correct copies of emails from Jason Singleton to me, dated January
5 24, January 30 and February 2, 2007, in which Plaintiff request that Azoogle designate a
6 "PMK" witness, are attached hereto as **Exhibit K.**

7 14. Plaintiff served its Initial Disclosures on December 15, 2006, the day of
8 Azoogle's first status conference. At the time Plaintiff served its initial disclosures, this
9 litigation had been ongoing for more than a year. Azoogle accepted Plaintiff's late
10 service of its Initial Disclosures without dispute. A true and correct copy of Plaintiff's
11 Initial Disclosures, including proof of service, is attached hereto as **Exhibit L.**

12 15. During a March 9, 2007 meeting occurring after the parties' mediation, Mr.
13 Singleton and I discussed an extension of time for Azoogle to respond to Plaintiff's
14 discovery requests. Mr. Singleton refused to agree to any extension of time.

15 16. A true and correct copy of Plaintiff's responses to former defendant Quicken
16 Loans Inc. ("Quicken")'s First Set of Interrogatories, excluding exhibits thereto, is
17 attached hereto as **Exhibit M.**

18 17. A true and correct copy of an email from me to Jason Singleton, dated
19 February 8, 2007 and initiating the meet-and-confer process regarding Plaintiff's
20 responses to Azoogle's first set of written discovery, is attached hereto as **Exhibit N.**
21 Also on February 8, Mr. Singleton and I discussed deposition scheduling. During the
22 second of two calls (the first included Quicken), Mr. Singleton stated that he would
23 "preview" Plaintiff's case at the parties' upcoming mediation. I asked Mr. Singleton to
24 describe the information and theories he planned to preview; Mr. Singleton refused on
25 the ground that such information was "attorney work product."

26 18. A true and correct copy of a letter from me to Jason Singleton, dated February
27 16, 2007 and emailed to Mr. Singleton February 17, 2007, which letter continued the
28 meet-and-confer process regarding Plaintiff's responses to Azoogle's first sets of written

1 discovery, is attached hereto as **Exhibit O**.

2 19. True and correct copies of U.S. mail and email correspondence between
3 counsel for Plaintiff and counsel for former defendant Quicken from between January
4 22, 2006 and February 13, 2007 are attached hereto as **Exhibit P**.

5 20. On February 19, 2007 I met with Jason Singleton to address the parties'
6 pending discovery concerns. During this meeting, Mr. Singleton:

- 7 • Responded "I don't know if I can or not," when asked to identify which of
- 8 Azoogle's lead providers Plaintiff had alleged to be "spammers";
- 9 • Stated that Plaintiff would not place any limits on the scope of Plaintiff's planned
- 10 third-party discovery from Azoogle's lead providers, including as to the number of
- 11 depositions he might seek; and
- 12 • Refused to describe the violations in the 11,000 emails alleged in Plaintiff's
- 13 Second Amended Complaint, stating, "it's not [Plaintiff's] obligation to tell you."

14 21. Plaintiff's counsel has refused several requests by Azoogle for an extension of
15 time to respond to Plaintiff's requests for admissions and other written discovery. A true
16 and correct copy of an email from Jason Singleton to me, dated March 7, 2007, refusing
17 to grant any extension of time for Azoogle to respond to its discovery requests, is
18 attached hereto as **Exhibit Q**.

19 22. At the outset of the March 9, 2007, meeting following the parties' mediation, I
20 suggested that Mr. Singleton and I address all outstanding discovery issues. Mr.
21 Singleton responded that he would not engage in a "[q]uid pro quo" discussion. As
22 such, the parties proceeded to address only designation and extension issues, and not
23 the other pending discovery concerns. Plaintiff refused to reconsider its position as to
24 either of the two discussed issues.

25 23. True and correct copies of emails from me to Jason Singleton, dated March 6
26 and March 12, 2007 and requesting an extension of time for Azoogle to serve its
27 discovery responses, are attached hereto as **Exhibit R**.

28 24. The week of March 12, Mr. Singleton and Mr. Grabowski on the one hand, and

1 I on the other hand, met-and-conferred at length concerning Plaintiff's refusal to grant an
2 extension for Azoogole to respond to Plaintiff's requests for admissions and regarding
3 Plaintiff's discovery requests. That process included two telephone calls, on each on
4 March 14 and March 15.

5 25. During the March 15 call, which lasted for more than an hour and primarily
6 concerned Plaintiff's discovery requests, each party agreed to consider a range of points
7 raised by the other party. The only issue resolved, however, concerned certain of
8 Plaintiff's requests that Azoogole considered overbroad. With respect to those requests,
9 Mr. Singleton agreed to limit its demands to information and documents relating to what
10 Mr. Singleton and Mr. Grabowski described as "Azoogole's email affiliates," rather than
11 "Azoogole's affiliates" generally.

12 26. Also during the March 15 call, Mr. Singleton again refused to grant an
13 extension for Azoogole to respond to Plaintiff's requests for admission. Mr. Singleton
14 further stated Plaintiff's intention to use Azoogole's supposed admissions in support of a
15 motion for summary adjudication, likely to include the issue of Azoogole's alleged
16 knowledge.

17 27. Mr. Singleton and I agreed during our March 15 call that additional discussions
18 would not lead to a resolution regarding Azoogole's request for an extension to serve its
19 responses to Plaintiff's requests for admission. With regards Plaintiff's discovery
20 responses, Mr. Singleton and Mr. Grabowski stated that they would send, likely by
21 March 22, a draft letter brief to the Court and setting forth Plaintiff's position. After the
22 call, I concluded that additional meet-and-confer on the issue of Plaintiff's discovery
23 responses, including by exchange of draft letter briefs, would lead to a resolution of few
24 if any issues not resolved during the call.

25 28. A true and correct copy of *Hypertouch, Inc. v. Kennedy-Western University*,
26 2006 WL 648688 (N.D.Cal.) is attached hereto as **Exhibit S**.

27 I declare under penalty of perjury under the laws of the United States that the
28 foregoing is true and correct and that this Declaration was executed this 16 day of March

1 2007, at San Francisco, CA.

/s/

Henry M. Burgoyne III

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