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April 16, 2007

The Hon. Joseph C. Spero
Magistrate Judge
U.S. District Court for Northern California
450 Golden Gate Ave., Courtroom A, 15th Floor
San Francisco, CA 94102

AS FILED

**RE: ASIS Internet Services v Optin Global, Inc., et al
USDC, Northern District of California, CV-05-5124 JCS**

Plaintiff's April 16, 2007 Letter to the Court

Dear Judge Spero,

We are counsel to defendant Azoogleads.com, Inc. ("Azoogle"). We write to make several points in connection with a letter filed today by Plaintiff ASIS Internet Services, Inc. ("Plaintiff") and concerning the parties' April 12 telephone meet-and-confer and other discovery issues.

First, Azoogle played no part in the drafting or filing of Plaintiff's letter. Plaintiff did not solicit Azoogle's input, or inform Azoogle that such letter was to be filed. (Previously, Plaintiff had stated its intention to incorporate a description of the parties' April 12 telephone meet-and-confer into a separate letter requested by the Court. Plaintiff backed off that idea after Azoogle pointed out that the letter requested by the Court was to describe the parties' March 20 *in camera* meet-and-confer specifically, and not the status of discovery in general.)

Second, Plaintiff provides no authority for the filing of its letter. Plaintiff does not appear to rely on the Court's procedures governing discovery motions – in particular since the Court recently instructed the parties to work out discovery issues by themselves. For the past several months, Plaintiff repeatedly has threatened to initiate "discovery conferences" regarding a variety of issues. At this point, Azoogle believes it would be appropriate for the Court to remove Plaintiff's letter from the file of this case, to remind Plaintiff that the parties' are not to randomly involve the Court in discovery, and to instruct Plaintiff not to create work by submitting unsolicited and unauthorized letter briefs.

Third, Plaintiff's letter is highly misleading in certain respects, outright inaccurate in others. All but all the issues raised in Plaintiff's letter are ones the parties have either resolved or agreed to set aside pending the Court's summary

adjudication ruling. Plaintiff's decision to nevertheless submit what amounts to a letter brief on those issues constitutes a blatant attempt to create a false record of Azoogole's supposed discovery misconduct.

Fourth and finally, as it relates to the scheduling of depositions, Plaintiff and Azoogole agreed during the parties' March 20 *in camera* meet-and-confer to postpone depositions of Azoogole personnel until two weeks after the hearing on the parties' cross-motions for summary adjudication. (The reason for the agreement was obvious: Why hold depositions at a time the parties were awaiting a ruling that, either way, would dramatically affect the scope of all discovery?) As reflected by Plaintiff's letter, Plaintiff recently disavowed that agreement, on the grounds that it was not "official" and was not contained in a written stipulation. Plaintiff also has begun demanding a deposition of Azoogole's CEO, Alex Zhardanovsky. If the Court were to involve itself in discovery issues at all, Azoogole believes it would be appropriate for the Court to instruct Plaintiff to stand by the common-sense agreement requiring that depositions of Azoogole personnel be postponed until two weeks after the June 1 summary adjudication hearing.

Of course, Azoogole would be happy to provide an additional, substantive response to the bulk of Plaintiff's letter, if the Court would like Azoogole to submit one.

Thank you for your consideration of this letter.

Respectfully,

KRONENBERGER BURGOYNE, LLP

A handwritten signature in black ink, appearing to read 'H. M. Burgoyne III', written over a horizontal line.

Henry M. Burgoyne III