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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **ASIS INTERNET SERVICES, a California** )  
corporation, )

11 )  
12 **Plaintiff,** )  
**vs.** )

13 )  
14 **OPTIN GLOBAL, INC., a Delaware** )  
Corporation, also dba Vision Media )  
15 **Limited Corp., USA Lenders Network,** )  
**USA Lenders, and USA Debt** )  
16 **Consolidation Service; et al.,** )

17 **Defendants.** )  
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**Case No. C-05-5124 JCS**

**OPPOSITION TO DEFENDANT AZOOGLE'S  
MOTION FOR SUMMARY ADJUDICATION**

**DATE: June 1, 2007**

**TIME: 9:30 A.M.**

**CTRM: A, 15th FLOOR, SAN FRANCISCO**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I. Specific evidence requested by Plaintiff of Defendant’s prior acts as relates to commercial emails represent pattern and practice of actual knowledge or consciously avoiding knowing is admissible and proper in an action brought under the CAN SPAM Act.**

**1**

**II. Defendant Azoogle can be held to have advertised in the subject emails.**

**9**

**TABLE OF AUTHORITIES**

**Cases**

*Dosier v. Miami Valley Broadcasting Corp.*, 656 F.2d 1295 at 1300 (9th Cir., 1981)..... 12

*Hypertouch v Kennedy Western University*, Not Reported in F.Supp.2d, 2006 WL 648688 (N.D.Cal., 2006) ..... 6

*Jones v. Southern Pacific R.R.*, 962 F.2d 447 (5th Cir.,1992)..... 11

*Optinrealbig.com, LLC v. Ironport Systems, Inc.*, 323 F.Supp.2d 1037 at 1039 (N.D.Cal., 2004) .....10, 11

**Statutes**

15 USC § 7706(g)(1) and (2) ..... 12

15 USCA § 7702 (a) and (b) ..... 10

*California Business and Professions Code § 17529.5* ..... 13

*California Business and Professions Code § 17529.5(a)* ..... 13

*CAN SPAM Act* ..... passim

**Rules**

*FRCP Rule 26(b)* ..... 7

*FRCP Rule 26(b)(1)* ..... 7

*FRE Rule 404* ..... 8

*FRE Rule 404(b)* ..... 12

1 **I. Specific evidence requested by Plaintiff of Defendant's prior acts as relates**  
2 **to commercial emails represent pattern and practice of actual knowledge or**  
3 **consciously avoiding knowing is admissible and proper in an action**  
4 **brought under the CAN SPAM Act.**

5 Reduced to its substance, Azoogle's core argument is that evidence of Azoogle's  
6 general reputation as a spammer is inadmissible to prove that Azoogle knew or consciously  
7 avoided knowing that its contractors were sending spam, including the emails at issue in this  
8 litigation.

9 The flaw in Defendant's reasoning is that Plaintiff is not seeking to conduct discovery  
10 into Azoogle's general reputation. The discovery that Plaintiff seeks, and that Defendant  
11 refuses to produce based upon its argument, is intended to reveal the nature of Defendant's  
12 relationship and management of its email sending contractors, and the details of how Azoogle  
13 has managed spam complaints.

14 Defendant's argument is circular. Essentially Defendant argues that since Plaintiff has  
15 not concretely shown Azoogle knew (or avoided knowing) its contractor(s) would spam,  
16 Plaintiff is precluded from conducting discovery to establish that fact. Defendant's position is  
17 without merit.

18 The discovery Plaintiff seeks is clearly set out in Plaintiff's Opening Brief, and does not  
19 consist of "general reputation evidence". (see P. 5 L. 23 through P. 6 L. 17 of Plaintiff's Motion  
20 for Summary Adjudication – Document No. 199). It is clear that such material is relevant, and  
21 discoverable:

22 "Subsection (g)(2) contains a special definition of "procure" for  
23 purposes of ISP enforcement actions that includes a scienter  
24 requirement with regard to whether a person who initiates  
25 commercial email on their behalf is engaging or will engage in a  
26 pattern or practice that violates this Act. It is the intent, with regard  
27 to the falsification violations of Section 5(a)(1), that "conscious  
28 avoidance of actual knowledge" be construed broadly in a manner  
consistent with a fundamental purpose of this Act to prohibit and  
deter falsification techniques in commercial e-mail. Therefore if the  
procurer has an indication that the initiator is \*E73 or has engaged  
in any falsified spamming technique prohibited by Section 5(a)(1) or  
18 U.S.C. 1037, the Act is intended to be read so that such a  
procurer meets the standard of "conscious avoidance of actual  
knowledge" of violations of the Act by an initiator unless the  
procurer and takes reasonable steps to prevent such violations by

1 the initiator.

2 Actual knowledge or conscious avoidance of actual knowledge  
3 could be evidenced, for example, by information obtained by the  
4 procurer directly from an initiator, or via a complaint, warning or  
5 cease and desist communication received from a recipient, Internet  
6 access service, or law enforcement alerting the procurer that an  
7 initiator to whom the procurer is providing consideration is violating  
8 the law. Conscious avoidance of actual knowledge could also be  
9 evidenced, for example, by: (1) Doing little or nothing to determine  
10 whether suspect initiators who are marketing partners, resellers,  
11 affiliates, agents or contractors of the procurer are violating or have  
12 violated Federal or State law; (2) failing to follow the procurer's  
13 stated policies or procedures prohibiting illegal e-mail advertising  
14 methods by initiators who are marketing partners, resellers,  
15 affiliates, agents or contractors; (3) repeatedly allowing initiators  
16 who are engaged in illegal e-mail advertising methods to provide  
false information or to fail to identify themselves when they sign up  
to conduct e-mail advertising for the procurer's products or  
services; (4) repeatedly paying initiators whom the procurer has  
terminated for violating the procurer's e-mail policies prohibiting  
illegal spamming methods; or (5) allowing initiators who have been  
terminated for violating the procurer's policies prohibiting illegal e-  
mail activities repeatedly to sign up for new accounts. The above is  
not an exhaustive list of ways in which the requisite state of mind  
can be evidenced. **150 Cong. Rec. E72-02**, 2004 WL 170208  
(Cong.Rec.), SPEECH OF HON. JOHN D. DINGELL OF  
MICHIGAN, Wednesday, January 28, 2004.

17 “The intent of this definition is to make a company responsible for  
18 e-mail messages that it hires a third party to send, unless that third  
19 party engages in renegade behavior that the hiring company did not  
20 know about. However, the hiring company cannot avoid  
21 responsibility by purposefully remaining ignorant of the third party's  
22 practices. The ‘consciously avoids knowing’ portion of this definition  
23 is meant to impose a responsibility on a company hiring an e-mail  
24 marketer to inquire and confirm that the marketer intends to comply  
25 with the requirements of this Act.” **S. REP. 108-102, S. Rep. No.**  
26 **102, 108TH Cong., 1ST Sess. 2003, 2004 U.S.C.C.A.N. 2348 at**  
27 **2360.** (underline added for emphasis.)

24 This type of evidence, what Defendant knew or avoided knowing, is intrinsically within  
25 Defendant’s control, and Plaintiff’s discovery is designed to reveal that information, and not  
26 general reputation evidence.

27 As a practical matter, Plaintiff already has evidence of Azoogle’s reputation. Azoogle,  
28 during the period at issue in this case, was listed on SPAMHAUS’s “ROKSO” (Registrar of

1 Known Spamming Operations) list. See Exhibit “A” to Declaration of Richard E. Grabowski  
2 (hereafter “REG”). To get listed on ROKSO, Azoogole had to have its internet access  
3 terminated for spamming complaints, three times within a rolling two year period. Azoogole is  
4 not a small company. One would assume it purchases a considerable amount of bandwidth. It  
5 is unlikely Azoogole’s internet access providers would terminate Azoogole’s account for isolated  
6 instances of spam complaints. More likely, there were hundreds or thousands. For example,  
7 Plaintiff does not seek to prove Azoogole knew or consciously avoided knowing, based on the  
8 ROKSO listing. Rather, Plaintiff seeks to discover those thousands of specific complaints that  
9 caused the ROKSO listing, and how they were dealt with by Azoogole. This will tend to show  
10 whether Defendant knew or consciously avoided knowing whether its contractors were  
11 spammers.

12 A nearly identical discovery dispute was before Judge Laporte in **Ritchie Phillips v**  
13 **Netblue** (C-05-4401 SC (EDL)) Docket Nos. 40 and 138 attached as Exhibit B and C to  
14 Declaration of REG. Plaintiff sought discovery into Netblue’s: spam abuse desk practices;  
15 affiliate identities; affiliate relationships including payments; opt-in and suppression lists, and  
16 communications relating to spam. Judge Laporte ordered Netblue to produce the materials  
17 and provide that discovery.

18 To bolster its argument, Defendant states Plaintiff must prove that Azoogole knew “or  
19 had every reason to know” that the sender of the subject emails had violated, or would violate,  
20 CAN-SPAM, Def Motion for SA, page 5. Defendant cites **Hypertouch v Kennedy Western**  
21 **University**, Not Reported in F.Supp.2d, 2006 WL 648688 (N.D.Cal., 2006) for this  
22 proposition<sup>1</sup>. Defendant is asserting that Plaintiff must have conclusive proof of this prior to  
23 discovery to allow discovery. There is nothing in **Hypertouch** to support Defendant’s  
24 narrowing of the **CAN SPAM Act**.

25 The court in **Hypertouch** decided the case in favor of defendant because plaintiff

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26 <sup>1</sup> On page 6 of Defendants brief, Defendant also cites S. Rep No. 108-102 reprinted in 2003 U.S.C.C.A.N. 2348,  
27 2360 for the proposition liability only attaches for those who remained willfully ignorant of the practices of third  
28 parties. Actually the report states: “The bill would hold the promoted businesses responsible if they: (i) know or  
should know about such deceptive promotion; (ii) are receiving or expect to receive an economic benefit from it;  
and (iii) are taking no reasonable precautions to prevent such promotion or to detect and report it to the FTC.” Id at  
2354 The term “willfully”, used by Defendant, does not appear anywhere Plaintiff’s counsel could find.

1 offered no evidence of “actual knowledge” or “consciously avoid knowing” of violations of the  
2 CAN-SPAM Act after discovery was conducted. The Defendant in *Hypertouch* had provided  
3 evidence that they had contracts, practices, and procedures in place to prevent spamming by  
4 their affiliates. *Hypertouch v Kennedy Western University*, Not Reported in F.Supp.2d,  
5 2006 WL 648688 (N.D.Cal., 2006). The *Hypertouch* case was decided after extensive  
6 discovery was conducted.

7 In contrast, the case before the court has had virtually no discovery. Defendant has  
8 refused to produce any of the materials that Plaintiff has requested that would tend to prove or  
9 disprove “actual knowledge” or “consciously avoid knowing” of violations of the CAN-SPAM  
10 Act. Even the contract that Defendant provided with their affiliate Seamless Media Corp., who  
11 Defendant states provided the “Bruce Wolf” lead, does not support Defendant’s contention.  
12 See Plaintiff’s Motion for Summary Adjudication P. 12 L. 4 – 19. Plaintiff is seeking information  
13 specifically about Defendant’s knowledge in its discovery requests.

14 If Defendant’s interpretation were the law then the **CAN SPAM** would be eviscerated.  
15 Defendant, and internet marketing companies generally, have hundreds of contractors that  
16 send millions, if not billions of emails. To require proof that a company such as Azoogole had  
17 scienter as to specific affiliates and emails prior to discovery would be virtually impossible.  
18 Defendant’s interpretation flies in the face of the plain meaning and purpose of the **CAN SPAM**  
19 **Act**, and John Dingle’s explanation of the operation of the law in his speech to Congress, as  
20 set forth above.

21 Defendant’s interpretation also ignores what is the allowable scope of discovery under  
22 **FRCP** Rule 26(b). Evidence does not have to be admissible to be discoverable. “Relevant  
23 information need not be admissible at the trial if the discovery appears reasonably calculated  
24 to lead to the discovery of admissible evidence.” **FRCP** Rule 26(b)(1). Evidence of actual  
25 knowledge or consciously avoiding knowing would be admissible at trial and is therefore within  
26 the allowable scope of discovery. Plaintiff does not have to prove every element of its case  
27 prior to discovery. Plaintiff has met the threshold barriers to bringing this suit by filing its  
28 complaint and surviving two motions to dismiss. Defendant’s references to Judge Wilkins’

1 decisions in the motions to dismiss are ludicrous. Judge Wilkins required only minor changes  
2 to the Complaint and First Amended Complaint. See Documents 72 and 114 filed herein.

3 Defendant's repeated assertion that "reputation evidence" is insufficient to allow Plaintiff  
4 discovery into Defendant's actual practices, is simply inapplicable. (e.g. Defendant's **FRE** Rule  
5 404 argument) Defendant's motion is a motion in limine under the guise of summary  
6 adjudication. Plaintiff respectfully posits that what specific evidence of Defendant's practices is  
7 or is not admitted should be ruled upon after the close of discovery and prior to trial. It may be  
8 that in the course of presenting evidence of Defendant's practices, information such as  
9 Defendant's ROKSO listing might necessarily be intertwined with presenting specific practices.  
10 The scope of how that evidence might be presented, and or limited, if at all, should be ruled  
11 upon in context of the entirety of the evidence, and not at this early stage of the litigation.

12 Defendant also cites to a line of conspiracy cases arguing the law applicable to  
13 conspiracy defines the "consciously avoids knowing" language of the **CAN SPAM Act**. (e.g.  
14 liability "only where the defendant decided not to learn the key fact, not merely to have failed to  
15 learn it through negligence" Def Mot, P 7). Defendant cites no authority that supports this  
16 position. As noted above, this interpretation conflicts with the purpose of the **CAN SPAM Act**,  
17 and various authorities set forth herein. Again, if Defendant's interpretation of the **Act** were the  
18 law, the **CAN SPAM Act** would be unenforceable. It would mean that companies such as  
19 Azoogole would be legally permitted to negligently hire and retain spamming contractors, with  
20 impunity, as long as they purposely decided not to learn the key facts.

21 The Legislature has enacted language that explains exactly why the **CAN SPAM Act**  
22 was passed and what is the purpose of the law:

23 (a) FINDINGS.--The Congress finds the following:

24 (1) Electronic mail has become an extremely important and popular  
25 means of communication, relied on by millions of Americans on a  
26 daily basis for personal and commercial purposes. Its low cost and  
27 global reach make it extremely convenient and efficient, and offer  
28 unique opportunities for the development and growth of frictionless  
commerce.

(2) The convenience and efficiency of electronic mail are  
threatened by the extremely rapid growth in the volume of  
unsolicited commercial electronic mail. Unsolicited commercial

1 electronic mail is currently estimated to account for over half of all  
2 electronic mail traffic, up from an estimated 7 percent in 2001, and  
3 the volume continues to rise. Most of these messages are  
4 fraudulent or deceptive in one or more respects.

5 (3) The receipt of unsolicited commercial electronic mail may result  
6 in costs to recipients who cannot refuse to accept such mail and  
7 who incur costs for the storage of such mail, or for the time spent  
8 accessing, reviewing, and discarding such mail, or for both.

9 (4) The receipt of a large number of unwanted messages also  
10 decreases the convenience of electronic mail and creates a risk  
11 that wanted electronic mail messages, both commercial and  
12 noncommercial, will be lost, overlooked, or discarded amidst the  
13 larger volume of unwanted messages, thus reducing the reliability  
14 and usefulness of electronic mail to the recipient.

15 (5) Some commercial electronic mail contains material that many  
16 recipients may consider vulgar or pornographic in nature.

17 (6) The growth in unsolicited commercial electronic mail imposes  
18 significant monetary costs on providers of Internet access services,  
19 businesses, and educational and nonprofit institutions that carry  
20 and receive such mail, as there is a finite volume of mail that such  
21 providers, businesses, and \*2700 institutions can handle without  
22 further investment in infrastructure.

23 (7) Many senders of unsolicited commercial electronic mail  
24 purposefully disguise the source of such mail.

25 (8) Many senders of unsolicited commercial electronic mail  
26 purposefully include misleading information in the messages'  
27 subject lines in order to induce the recipients to view the messages.

28 (9) While some senders of commercial electronic mail messages  
provide simple and reliable ways for recipients to reject (or "opt-out"  
of) receipt of commercial electronic mail from such senders in the  
future, other senders provide no such "opt-out" mechanism, or  
refuse to honor the requests of recipients not to receive electronic  
mail from such senders in the future, or both.

(10) Many senders of bulk unsolicited commercial electronic mail  
use computer programs to gather large numbers of electronic mail  
addresses on an automated basis from Internet websites or online  
services where users must post their addresses in order to make  
full use of the website or service.

(11) Many States have enacted legislation intended to regulate or  
reduce unsolicited commercial electronic mail, but these statutes  
impose different standards and requirements. As a result, they do  
not appear to have been successful in addressing the problems  
associated with unsolicited commercial electronic mail, in part  
because, since an electronic mail address does not specify a  
geographic location, it can be extremely difficult for law-abiding

1 businesses to know with which of these disparate statutes they are  
2 required to comply.

3 (12) The problems associated with the rapid growth and abuse of  
4 unsolicited commercial electronic mail cannot be solved by Federal  
5 legislation alone. The development and adoption of technological  
6 approaches and the pursuit of cooperative efforts with other  
7 countries will be necessary as well.

8 (b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.--  
9 On the basis of the findings in subsection (a), the Congress  
10 determines that--

11 (1) there is a substantial government interest in regulation of  
12 commercial electronic mail on a nationwide basis;

13 (2) senders of commercial electronic mail should not mislead  
14 recipients as to the source or content of such mail; and

15 (3) recipients of commercial electronic mail have a right to decline  
16 to receive additional commercial electronic mail from the same  
17 source.

18 15 USCA § 7702 (a) and (b)

19 The court has used the information provided by the legislature to discriminate between  
20 spammers and commercially acceptable marketing companies. In *Optinrealbig.com, LLC v.*  
21 *Ironport Systems, Inc.*, 323 F.Supp.2d 1037 at 1039 (N.D.Cal., 2004) the court described  
22 what spam was and the effect it has on the consumer and business:

23 Spam is “unsolicited e-mail, often of a commercial nature, sent  
24 indiscriminately to multiple mailing lists, individuals, or newsgroups;  
25 junk e-mail.” *American Heritage Dictionary of the English*  
26 *Language*, (4th ed.2000). As much as 80 percent of the e-mail  
27 received through the nation's largest ISP, America Online, is spam.  
28 (Newby Decl., Exh. F.1, *Newsday, Junk Mail Joust* (June 22, 2003))  
AOL filters 2.4 billion spams a day. (Id.) According to one  
consulting firm, coping with spam will cost U.S. companies more  
than \$10 billion this year in cash wasted. (Id.) According to another  
research group, around \$2 of the typical monthly Internet service  
bill goes toward fighting spam. (Id.)

A representative for Sonic.Net, an ISP, has complained that, “Spam  
consumes system resources such [as] disk storage space,  
processor cycles and bandwidth, which slows delivery of normal  
communications ... and consumes, and in most cases wastes, the  
time and energy of network administrative personnel and users.”  
(Cummins Decl. ¶ 4.) Mr. Cummins describes spam as a  
“pernicious problem for ISPs ... [as it is] relatively inexpensive for  
the sender to send compared to the costs of printing and mailing  
paper advertisements, and yet imposes a heavy cost on ISPs and

1 their customers who do not wish to receive spam.” (Id.) These costs  
2 include “[f]iltering incoming mail, protecting network security and  
3 clearing spam from users' email inboxes [which,] takes a significant  
4 amount of time and resources, including the time and energy of [an  
5 ISP's] staff of system administrators and purchase or development  
6 of spam filtering software tools.” (Id.)

7 In response to these growing concerns regarding spam, in  
8 December 2003, Congress enacted the Controlling the Assault  
9 \*1040 of Non-Solicited Pornography and Marketing Act of 2003, or  
10 the CAN-SPAM Act of 2003. Pub.L. 108-187 (Dec. 16, 2003)  
11 (“CAN-SPAM Act” or “the Act”). It took effect in January 2004. In  
12 enacting CAN-SPAM, Congress found that:

13 The convenience and efficiency of electronic mail are threatened by  
14 the extremely rapid growth in the volume of unsolicited commercial  
15 electronic mail. Unsolicited commercial electronic mail is currently  
16 estimated to account for over half of all electronic mail traffic, up  
17 from an estimated 7 percent in 2001, and the volume continues to  
18 rise. Most of these messages are fraudulent or deceptive in one or  
19 more respects.

20 The *OptinRealBig* court has laid out a convincing argument for allowing ISPs to pursue  
21 spammers and others.

22 Plaintiff’s prosecution of Defendant Azoogle is well within the stated purpose of the **CAN**  
23 **SPAM Act** and the court’s definition of spam. The court therefore, should allow Plaintiff the  
24 right to discover the information it is pursuing in order to further the true purpose of the **CAN**  
25 **SPAM Act**.

26 Defendant’s arguments regarding Plaintiff’s responses to Defendant’s requests for  
27 discovery are not relevant. Plaintiff has answered all of Defendant’s requests and there are no  
28 outstanding discovery requests from Defendant that are still contested. In addition, there is no  
legal basis for refusing to respond to discovery based on the opposing parties responses or  
non-responses to discovery. Defendant’s argument is ridiculous and would bring the civil  
discovery process to the level of a school yard finger pointing match – “he didn’t so I don’t  
have to”.

Defendant’s reliance on the Fifth Circuit case *Jones v. Southern Pacific R.R.*, 962  
F.2d 447 (5th Cir.,1992) ignores the facts and the cause of action presented in that case. It  
also ignores the plain language of the **CAN SPAM Act** and 9th Circuit precedent. The *Jones*

1 case involved a suit for negligence. In a suit for negligence, a parties prior bad acts cannot be  
2 used to show a history of acting in a certain manner, and can only be introduced to impeach a  
3 witnesses testimony. However, the **CAN SPAM Act** incorporates evidence of prior activities  
4 as proof of violation by allowing evidence of pattern and practice in 15 **USC** § 7706(g)(1) and  
5 (2). The 9th Circuit has already decided this issue. Evidence of prior acts may clearly be  
6 used to establish the existence of a pattern or scheme. **FRE** Rule 404(b); **Dosier v. Miami**  
7 **Valley Broadcasting Corp.**, 656 F.2d 1295 at 1300 (9th Cir., 1981). Therefore, evidence of  
8 prior bad acts is both relevant and admissible to show a pattern and practice as described in  
9 the **CAN SPAM Act**. See Plaintiff's discussion of this issue in Plaintiff's Motion for Summary  
10 Adjudication P. 16 L. 18 – P. 17 L. 25.

11 Finally, Defendant ignores the body of evidence that Plaintiff has presented regarding  
12 Defendant's connection to this case. Defendant attempts to argue that Plaintiff's entire case is  
13 based on Defendant Azoogole's reputation. However, Plaintiff has shown that Defendant  
14 Azoogole was connected directly to the "Bruce Wolf" lead. Plaintiff has demonstrated that there  
15 is no way for the "Bruce Wolf" lead to have been acquired except through the email containing  
16 the wumort.net internet link. Plaintiff has demonstrated that at a minimum 1658 emails can be  
17 directly linked to the same source as the email used to generate the "Bruce Wolf" lead.  
18 Plaintiff has provided proof that Defendant Azoogole uses affiliates and that it received the  
19 "Bruce Wolf" lead from its affiliate. See Plaintiff's Motion for Summary Adjudication P. 12 – 14.  
20 Therefore, Plaintiff is not relying on reputation evidence to make its case. Plaintiff has already  
21 provided a direct connection between Defendant Azoogole and the spam emails that are  
22 complained of in this action. Therefore, the court should compel the discovery requested by  
23 Plaintiff in order to determine the remaining issues in this case.

## 24 **II. Defendant Azoogole can be held to have advertised in the subject emails.**

25 California uses a broad definition of the term advertise, that does not include a  
26 requirement that the advertiser's identity be included in the advertisement. The evidence in  
27 this case and Defendant's own documents declare Defendant to be an advertiser linked to the  
28 subject emails. Defendant benefited directly from the emails at issue in this case. Therefore,

1 the evidence produced to date indicate that Azoogole caused the email advertisement  
2 contained in the subject emails to be sent in violation of **California Business and**  
3 **Professions Code** § 17529.5. See Plaintiff’s Motion for Summary Adjudication P. 17 L. 21 –  
4 P. 21 L. 8.

5 Defendant wishes to make the action against it into an argument concerning vicarious  
6 liability. Vicarious liability is not an issue in this case. Liability is prescribed to the advertiser  
7 directly by **California Business and Professions Code** § 17529.5(a): “It is unlawful for any  
8 person or entity to advertise in a commercial e-mail advertisement...”

9 Defendant has produced a contract to an affiliate for insertion of advertisements for  
10 mortgage leads. See Exhibit J to Declaration of REG filed in support of Motion for Summary  
11 Adjudication filed under seal. Therefore, vicarious liability is not an issue, as all evidence  
12 produced to date indicates that Defendant is the advertiser in the emails at issue.

13 Defendant has argued that it is an innocent bystander who purchased the lead from  
14 someone else and resold it to Quicken. Nothing could be farther from the truth. Defendant’s  
15 contract with its affiliate, Seamless Media Corp., states that Azoogole will purchase 1200  
16 Mortgage Refinance leads and the leads must conform to Azoogole’s refi leads criteria  
17 document. See Exhibit J, pg. AZ-000005, to Declaration of REG filed in support of Motion for  
18 Summary Adjudication filed under seal.

19 In a letter to Quicken Loans dated July 6, 2005, Ragi Mahil, Campaign Manager –  
20 AzoogoleAds.com, Inc., states:

21 **“Mortgage leads are generated by our own web properties**  
22 **allowing for greater quality control, submitted by nationwide**  
23 **consumers, who are ready to buy – leaving you with the**  
**invaluable opportunity to close!”** (underline added for  
emphasis). .....

24 “Our **performance based** online advertising network of over 4000  
25 affiliates provides a full realm of advertising tools. **For you,**  
26 **Azoogoleads.com delivers the targeted volume needed to**  
**generate real-time direct marketing results and a fast return on**  
**investment.”**

27 Exhibit D to Declaration of REG P. QL-0023. Submitted under seal.

28 ///

1 On page QL-0024 of Exhibit D to Declaration of REG, Azoogle states that “[e]ach lead is  
2 pre-screened and delivered to our partners in real-time.” Since the call from Quicken Loans  
3 came in less than 12 hours from the entry of the “Bruce Wolf” information by Nella White of  
4 ASIS, it is believable that the lead did move from the on-line form to Quicken through Azoogle  
5 in real-time.

6 This hardly meets the description of an unaware innocent third party caught up purely  
7 by chance. This evidence points to a highly organized operation to acquire consumer profile  
8 information, through the use of spam, and deliver it to mortgage companies under pre-existing  
9 contracts.

10 Defendant Azoogle is the advertiser in the emails at issue. Defendant should be  
11 compelled to produce the evidence regarding their marketing programs as demanded by  
12 Plaintiff.

13 Respectfully submitted,

14 **SINGLETON LAW GROUP**

15 Dated: April 20, 2007

16 /s/ Jason K. Singleton  
17 Jason K. Singleton,  
18 Richard E. Grabowski, Attorneys for Plaintiff,  
19 **ASIS INTERNET SERVICES**