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

11 **ASIS INTERNET SERVICES, a California**
12 **corporation,**
13 **Plaintiff,**
14 **vs.**
15 **OPTIN GLOBAL, INC., a Delaware**
16 **Corporation, also dba Vision Media Limited**
17 **Corp., USA Lenders Network, USA Lenders,**
18 **and USA Debt Consolidation Service; et al.,**
Defendants.

Case No. C-05-5124 JCS

**SUPPLEMENTAL CASE MANAGEMENT
STATEMENT**

DATE: JUNE 1st, 2007

TIME: 9:30 A.m.

CTRM: A, 15TH FLOOR, SAN FRANCISCO

19 Pursuant to Civil L.R. 16-10(d), Plaintiff, ASIS Internet Services ("ASIS") and Defendant,
20 AzoogLeAds.com, Inc. ("AzoogLe") (collectively, the "Parties", individually, the "Party") submit
21 this Supplemental Case Management Conference Statement and Proposed Order. The
22 Parties certify that they met and conferred prior to drafting this Statement and request that the
23 Court adopt this Statement as a Supplemental Case Management Order in this case.

24 **DESCRIPTION OF SUBSEQUENT CASE DEVELOPMENTS**

25 The following progress or changes have occurred since the last case management
26 statement filed by the Parties:

- 27 1. Plaintiff has entered into settlement agreements and dismissed all Defendants
28 with the exception of Defendant LEADS LIMITED (whose default was granted by the Clerk of

1 the Court and a Default Judgment will be sought at the conclusion of this action) and
2 Defendant AZOOGLE.

3 2. Defendant AZOOGLE and Plaintiff have exchanged multiple discovery
4 requests.

5 3. Defendant Azoogle did not consent to certain portions of Plaintiff's draft
6 Supplemental Case Management Conference Statement and Proposed Order, and Plaintiff
7 was unwilling to consent to any edits to those portions. Accordingly, the Parties decided file
8 partial separate statements. Plaintiff's appears below under the heading "PLAINTIFF'S
9 DISCUSSION"; Azoogle's appears under the heading "AZOOGLE'S DISCUSSION."

10 PLAINTIFF'S DISCUSSION:

11 During the parties meet and confer, in the within Court's jury room, the parties reached
12 many compromises on discovery. After Plaintiff's counsel returned from ten days overseas,
13 Plaintiff compromised Azoogle's deemed admitted admissions, the waiver of objections to
14 interrogatory and document demands due to late responses. Plaintiff withdrew many
15 discovery requests and offered to narrow the scope of many others. Plaintiff also
16 supplemented many responses to discovery.

17 The Court had clearly stated it would not "cabin" discovery simply to the Bruce Wolf
18 lead. However, Azoogle has agreed to compromise very little on much of Plaintiff's discovery
19 requests, preferring to wait until there is a ruling on the pending summary adjudication
20 motions. Plaintiff suspects a discovery motion will likely be needed, even on the issues which
21 are ostensibly addressed by the pending summary adjudication motions.

22 Regarding the pending discovery disputes, Plaintiff would point out that counsel met
23 and conferred initially in writing, at length regarding them. Counsel have then conferred,
24 three different times, in person, in San Francisco on the same issues. In the interim, letters
25 and emails have also been exchanged, in addition to briefing legal issues on "summary
26 adjudication" to shed light on the issues. Several revisions of two different joint letters on
27 discovery have been circulated, repeatedly, in preparation for filing with the Court.

28 Plaintiff would also point out that Plaintiff delayed sending some of the discovery

1 requests out, while the parties attended mediation, in an effort to hold down fees and costs
2 for all concerned in the event the matter was resolved at mediation.

3 Plaintiff has a concern this process, and the actual production of the materials, will not
4 be completed prior to the discovery cut off. Plaintiff requested of Defendant, to stipulate to
5 continuing the CMC dates, and particularly the discovery cut off. Azoogole declined to so
6 stipulate.

7 While this case was filed quite some time ago, Azoogole only filed their answer five
8 months ago, on November 27th, 2006, as the Complaint was amended to add Azoogole as a
9 Defendant after two consecutive motions to dismiss. The first CMC with Azoogole
10 participating was just held last February. The trial schedule initially contemplated, simply is
11 insufficient to address what has transpired.

12 The information showing that Azoogole knew it was hiring spammers to send the
13 subject emails, is intrinsically within the control of Azoogole. Showing Azoogole's knowledge of
14 that fact, is inherently fact, and detail, intensive. Plaintiff needs access to a host of
15 information, and obtaining that information, in normal circumstances, is time consuming. In
16 the present context, particularly so. Nonetheless, Plaintiff has been diligent trying to get
17 depositions set, and proceed wherever possible, for example, sending out over a dozen third
18 party subpoena's, including a deposition subpoena for a former employee of Azoogole, Alex
19 Baydin. Mr. Baydin appears to be avoiding service.

20 Plaintiff respectfully submits the present circumstances support modifying the current
21 Case Management Schedule to allow sufficient time for Plaintiff to conduct discovery and
22 obtain the materials it has requested, notice depositions, and fully prepare the matter for trial.

23 AZOOGLE'S DISCUSSION

24 I. Case Developments

25 A. During a March 20, 2007 *in camera* meet-and-confer, the Parties agreed to file
26 cross-motions for summary adjudication ("Cross-Motions") as to two legal issues, the
27 resolution of which could help focus discovery and otherwise streamline this litigation. The
28 Parties also agreed to stay a number of discovery disputes pending resolution of the Cross-

1 Motions. The hearing on the Cross-Motions is set for June 1, 2007.

2 B. The Parties have engaged in several rounds of discovery. Both Plaintiff and
3 Azoogle have served multiple sets of Interrogatories, Requests for Admission, and Document
4 Requests. In addition to responding to this supplemental discovery, both Parties have
5 amended their responses to the other Party's initial discovery requests in an effort to resolve
6 discovery disputes short of Court action. On May 23, 2007, Plaintiff took the deposition of
7 Azoogle Chief Operating Officer Don Mathis, Azoogle's organizational deponent on issues
8 selected by Plaintiff (in particular, Azoogle's CAN-SPAM-related legal compliance efforts).
9 Azoogle is scheduled to depose Plaintiff's organizational deponent(s), as well as Plaintiff's
10 CEO, COO and one other Plaintiff employee, on June 5 and 6, 2007.

11 C. Despite the foregoing, both Parties maintain that the other Party has failed to
12 adequately respond to a number of discovery requests. For the most part, and as agreed
13 during the Parties' *in camera* meet-and-confer, the Parties have agreed to postpone bringing
14 these discovery issues to the Court's attention until after the disposition of the Cross-Motions.
15 The Parties have continued to meet and confer during the pendency of the Cross-Motions in
16 an attempt to resolve those and other outstanding discovery disputes.

17 **II. Proposals for Remainder of Case**

18 A. Azoogle disagrees that the current trial schedule does not provide enough time for
19 discovery. Plaintiff filed its second Amended Complaint on October 4, 2006, and Azoogle
20 participated in its first Case Management Conference on December 15, 2006. Azoogle
21 believes that Plaintiff has had, and will have, sufficient time to conduct discovery and to
22 prosecute its case.

23 B. Azoogle will ask the Court to set limits on further discovery – including as relate to
24 the deposition of Azoogle personnel and to Plaintiff's use of unnoticed third-party subpoenas
25 – and to set a schedule for the filing and briefing of summary judgment motions. Azoogle
26 also will request that the Court entertain setting a further schedule for the filing and briefing of
27 motions for fees/sanctions, to begin after the Court's decision on summary judgment.

28 **III. Further Use of ADR**

1 On March 9, 2007, the Parties engaged in a Mediation before Michael Duncheon.
2 Despite the Parties' good faith efforts at the Mediation, no resolution was achieved and a
3 substantial difference of opinion regarding the case remains. Accordingly, the Parties do not
4 believe that further alternative dispute resolution would help resolve this case, at least at this
5 juncture.

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