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

ASIS INTERNET SERVICES, a California corporation,

Plaintiff,

vs.

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

Defendants.

Case No. C-05-5124 JCS

DECLARATION OF HENRY M. BURGOYNE IN OPPOSITION TO PLAINTIFF'S MOTION TO SUPPLEMENT SECOND AMENDED COMPLAINT

I, Henry M. Burgoyne, declare as follows:

1. I am an attorney admitted to practice in the State of California. I am a partner at the law firm of Kronenberger Burgoyne, LLP, counsel of record for Defendant Azoogles.com, Inc. ("Azoogles"). Unless otherwise stated, I have personal knowledge of the facts stated herein.

2. While Plaintiff, ASIS Internet Services ("ASIS"), has been litigating this case for a year and a half, Plaintiff waited until May 23, 2007 to inform me that it intended to move the court for leave to file a supplemental complaint. Plaintiff did not file its Motion Requesting to Supplement the Second Amended Complaint ("Motion") until June 1,

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1 2007.

2 3. Plaintiff's proposed supplemental complaint—which Plaintiff has failed to file
3 with the Court or serve on Azoogole—is apparently based on emails that were sent as
4 early as December 12, 2005 ("Supplemental Emails"). This date is before Plaintiff filed
5 the initial complaint in this action, nearly a year before Plaintiff named Azoogole as a
6 defendant in its Second Amended Complaint ("SAC"), and a year-and-a-half before
7 Plaintiff filed this Motion.

8 4. On May 18, 2005—before Plaintiff filed this Motion or informed me of its intent
9 to file this Motion—Azoogole served on Plaintiff its Notice of Deposition of ASIS Internet
10 Services, pursuant to Federal Rule of Civil Procedure 30(b)(6) ("Deposition Notice").¹
11 Several of the topics designated in the Deposition Notice covered the alleged receipt of
12 spam by Plaintiff after it filed this action. Subsequent to serving the Deposition Notice,
13 Plaintiff's counsel informed me that Nella White would serve as the corporate
14 representative for all of the topics designated within the Deposition Notice.

15 5. Also before Plaintiff filed this Motion or informed me of its intent to file this
16 Motion, Azoogole had already conducted the bulk of its written discovery, and had
17 received no information whatsoever regarding Plaintiff's intended supplemental claims,
18 except for the Supplemental Emails themselves, which we did not receive until June 7,
19 2007.

20 6. On June 20, 2007 I attended the deposition of Nella White, serving as the
21 organizational representative of Plaintiff, pursuant to Federal Rule of Civil Procedure
22 30(b)(6).

23 7. During the deposition of Ms. White and ASIS, Ms. White conceded complete
24 ignorance as to the Supplemental Emails or the substance of Plaintiff's new claims.
25 Despite Ms. White's lack of knowledge of the Supplemental Emails, she did testify that
26 in the months after Plaintiff filed this action, Plaintiff, working in tandem with its counsel,
27

28 ¹ Azoogole subsequently served an Amended Deposition Notice of ASIS Internet Services, changing the deposition date to June 20, 2007.

1 directed the emails sent to the addresses of former customers to a single location
2 (Plaintiff's "SPAM Database"). Plaintiff then essentially turned off Plaintiff's email
3 filtering software—which normally prevents the bulk of unlawful and lawful commercial
4 email from reaching Plaintiff's email server—so that all email sent to those addresses
5 flowed freely into the email accounts of former customers. Ms. White further testified
6 that periodically, Plaintiff then supplied the contents of its SPAM Database to Plaintiff's
7 counsel, which, using the third-party discovery obtained in this lawsuit, searched those
8 emails for any domain name, IP addresses or any other information relating to Azoogle.

9 8. The parties agreed during their June 22, 2007 meet-and-confer that certain
10 discovery would appropriately be limited to Azoogle's 90 or so lead vendors, as
11 opposed to Azoogle's thousands of "email affiliates." Plaintiff's counsel stated his
12 opinion, however, that any supplemental pleading, containing claims as to the
13 Supplemental Emails, would entitle Plaintiff to additional discovery concerning all of
14 Azoogle's email affiliates.

15 I declare under penalty of perjury under the laws of the United States that the
16 foregoing is true and correct and that this Declaration was executed this 22nd day of
17 June 2007, at San Francisco, CA.

18 _____
19 /s/
Henry M. Burgoyne