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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **ASIS INTERNET SERVICES, a California**
16 **corporation,**

17 **Plaintiff,**
18 **vs.**

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

22 **Defendants.**

Case No. C-05-5124 JCS

SUPPLEMENTAL CASE MANAGEMENT STATEMENT

DATE: August 3, 2007

TIME: 1:30 p.m.

CTRM: A, 15TH FLOOR, SAN FRANCISCO

23 Pursuant to Civil L.R. 16-14(d), the parties to the above-entitled action certify that they
24 met and conferred prior to the subsequent case management conference scheduled in this
25 case and jointly submit this Supplemental Case Statement and Proposed Order and request
26 the Court to adopt it as a Supplemental Case Management Order in this case.

27 **DESCRIPTION OF SUBSEQUENT CASE DEVELOPMENTS**

28 The following progress or changes have occurred since the last case management

1 statement filed by the Parties:

2 1. Defendant AZOOGLE and Plaintiff have exchanged multiple discovery requests
3 and conducted depositions. Plaintiff has served numerous subpoenas for production of
4 documents on Defendant Azoogle's identified Third Party Vendors and Affiliates. Plaintiff is
5 also preparing a response to the Court's ordered interrogatories pursuant to the Order of
6 June 29, 2007, which are due August 10, 2007.

7 PLAINTIFF'S DISCUSSION:

8 The Court directed Azoogle to produce an Excel spreadsheet maintained by Azoogle
9 on its affiliates, at the hearing of June 1st, 2007. Plaintiff repeatedly requested such
10 spreadsheet, and other documents Azoogle had agreed to produce, be produced prior to
11 Plaintiff taking the deposition of Ryan McVey, Alex Zhardanovsky and Rick Olkin. A few
12 documents were produced just prior to the deposition of Mr. Zhardanovsky, (the last
13 deposition scheduled that week) but the remainder, including the Excel spreadsheet, were
14 not produced prior to the depositions. Indeed, the referenced spreadsheet has not been
15 produced as of the time of this writing, contrary to Azoogle's statement below that it has.
16 Plaintiff's counsel will present at the hearing an email from Mr. Burgoyne that said
17 spreadsheet "will be produced next week" (referring to the week of July, 30th).

18 Plaintiff proceeded to take the depositions anyway, without the benefit of the
19 documents Azoogle agreed to produce many weeks prior.

20 A few days before the scheduled depositions, Azoogle informed Plaintiff's counsel that
21 one of the scheduled deponents, Jen Evans, would not be produced as she was having
22 difficulty with her pregnancy. Plaintiff's counsel is now getting dates from Defendant to take
23 Ms. Evans deposition in Toronto, Canada.

24 Defendant produced at the meet and confer of June 22nd, a list of its third party vendors
25 (entities that sold mortgage leads to Azoogle). Many of the addresses, and contact information
26 generally, for such vendors were missing from the list. Azoogle has not produced such contact
27 information at the time of this writing. There was testimony at the recent depositions that the
28 addresses and contact information for such vendors appear on the contracts executed with the

1 vendors. There are less than 80 such vendors. Plaintiff has long sought the actual contracts
2 with the vendors. The contracts indicate what marketing channels (email) will be used by the
3 third party vendors, consequently, production of the actual contracts is required. Defendant
4 has only offered to provide a sample of the form used by all vendors, together with a statement
5 such form was used in relation to all third party vendors.

6 Plaintiff had early on, requested Azoogle to produce an "opt-in" list. Azoogle replied in
7 discovery that it does not send emails, and consequently does not maintain an opt-in list.
8 During the depositions, it came out that Azoogle has a list of some ten to fifteen million names
9 and email addresses, generated as a result of end users coming to Azoogle's web pages.
10 There was testimony that Azoogle allows an affiliate to email to those addresses. Plaintiff
11 seeks either production of the opt-in list, or a statement from Defendant that no email
12 addresses from the domain of "ASIS" appear on that list. Azoogle states below that it is a "log
13 of information" and not an email list. However, there was testimony that email addresses
14 appear in that "information", and that an Azoogle Affiliate sends bulk email to that list.
15 Presumably, Azoogle's end users that came to Azoogle web properties, indicated they agreed,
16 or "opted in" to receive emails. If Azoogle does not contend that ASIS's clients appear in that
17 list, and thus have not opted in to received emails, they can so state. If Azoogle does contend
18 that ASIS's clients opted in to receive emails, by their appearance in this list, then the list
19 should be produced.

20 During the recent set of depositions, and including the Deposition of Don Mathis,
21 several witnesses identified Alex Baydin and Ryan McVey as the persons who managed the
22 third party vendors and could answer questions regarding how the third party vendors were
23 managed, contracts entered into, etc. During the depositions of Mr. McVey and Mr. Baydin,
24 both witnesses testified they only worked with selling the leads to mortgage brokers, not
25 obtaining the leads from third party vendors, and generally had no contact with, or managed,
26 third party vendors. Plaintiff, should the currently noticed depositions take place, will have
27 taken ten depositions. Plaintiff requests the court grant Plaintiff the right to take two
28 additional three hour depositions, of selected third party vendors of Azoogle. This is

1 necessary to determine many things, including how such vendors were vetted, managed, and
2 whether any email suppression list was ever provided to such vendors. Plaintiff also seeks
3 one additional deposition to take the deposition of Defendant's expert witness, when
4 designated.

5 DEFENDANT AZOOGLE'S DISCUSSION:

6 Defendant Azoogleads.com, Inc. understands that Plaintiff intends to submit a rebuttal
7 statement. Azoogle will confine its comments to this single statement, except to note two
8 inaccuracies in Plaintiff's initial discussion:

- 9 • During the past two months, Azoogle has produced numerous documents and other
10 information, including the referenced spreadsheet from the computer of Don Mathis
11 (produced July 18, bates number AZ-SP000051-52) and addresses for third-party
12 vendors. Azoogle continues to search for and produce addresses, and has agreed to
13 produce a supplemental version of the spreadsheet.
- 14 • The "opt-in" list referenced by Plaintiff is not an email list, but a log of information
15 regarding individuals who, in the past six months, responded to an Azoogle marketing
16 offer. Furthermore, the contract (inaccurately) referenced by Plaintiff expired in
17 February 2006. Azoogle does not send marketing emails and (like Plaintiff) does not
18 know who sent the alleged emails. It is axiomatic that Azoogle does not therefore
19 have relevant "opt-in" information.

20 To date, Plaintiff has served more than 115 third-party subpoenas on ISP's,
21 government agencies, domain name registrars, telecommunications companies, technology
22 providers, former Azoogle employees, marketing companies, current and former Azoogle
23 clients, and other Azoogle lead providers, contractors and business associates. As a result,
24 Azoogle has suffered significant reputational and business harm. Prior to the CMC, Azoogle
25 will file a joint letter seeking leave to file a motion for a protective order and to quash.

26 Azoogle has produced, or scheduled the depositions of, nine Azoogle employees, to
27 include Azoogle's two founders, its Chief Information Officer, its Chief Operating Officer, and
28 all current employees referenced in documents relating to the Bruce Wolf lead, Seamless

1 Media or other defendants. Defending those depositions has and will cost Azoogole scores of
2 thousands of dollars, not including time lost by its most senior personnel. Azoogole is
3 informed that Plaintiff seeks three additional depositions, which request should be denied.

4 Azoogole remains concerned about Plaintiff's treatment of Azoogole's confidential
5 information as produced in this action. One of Plaintiff's written discovery responses contains
6 what appears to be confidential information provided to Plaintiff's counsel in a separate and
7 unrelated email marketing action. Furthermore, during the June 2 hearing, Plaintiff counsel
8 publicly disclosed trade secrets learned by Plaintiff during the deposition of Don Mathis.
9 Azoogole continues to meet and confer with Plaintiff regarding this issue.

10 Plaintiff has produced just one piece of information promised at the June 22 meet and
11 confer, in the form of a single amended discovery response. As set forth in a July 27 email to
12 Plaintiff, Azoogole continues to await the production of a range of other promised materials,
13 including: amended responses to other discovery requests (Doc. Req. No. 21, RFA No. 32);
14 a complete privilege log; documents received in relation to third-party subpoenas (Doc. Req.
15 No. 20); documents regarding "adverse affects" (Doc. Req. No. 19); and documents reviewed
16 by Plaintiff's organizational witness in preparation for her deposition (including an ASIS
17 balance sheet and profit/loss statement). Plaintiff has yet even to provide a complete list of
18 persons with knowledge of Plaintiff's allegations, first requested in January (Int. Nos. 1 and
19 2). Azoogole continues to meet and confer regarding these and other issues, including a
20 renewed deposition of Ms. White, and believes that, with \minimal cooperation, discovery can
21 be completed on schedule.

22 **PLAINTIFF'S RESPONSE TO AZOOGLE'S DISCUSSION:**

23 Azoogole sets forth that Plaintiff has not produced any of the material that Plaintiff has
24 agreed to during the parties various discovery conferences. This statement is cut from whole
25 cloth. Plaintiff, with one exception, has produced everything Azoogole has requested, and
26 same can be presented to the Court at the CMC hearing, together with the proof of service
27 for each such document.

28 The one outstanding request was identified by Mr. Burgoyne on Friday July 27th where

1 Mr. Burgoyne asked Plaintiff to produce:

2 *"The document described by Nella White during her deposition and containing*
3 *information regarding the email accounts to which the alleged emails were sent."*

4 Plaintiff has no idea what Azoogole sought, and wrote back:

5 Hank:

6 You request in your email to Jason "The document described by
7 NellaWhite during her deposition and containing information regarding the
8 email accounts to which the alleged emails were sent." Please advise
9 what page(s) of the deposition transcript this refers to as we don't know
10 what document you are referring to.

11 In response, Mr. Burgoyne wrote back:

12 Roberta - Re the Nella document, I don't have the depo in front of me, and
13 won't have time to dig it out today. (And Jason's told me that he's not
14 received the transcript, so page numbers wouldn't help.) It's the document
15 that Nella said was used as a source document in the preparation of
16 Exhibit A to Plaintiff's response to Azoogole's first set of document
17 requests, and which included information concerning the accounts at
18 which the alleged emails were received. Jason and I have discussed this
19 repeatedly. I think a more productive route -- productive in the sense that
20 it would facilitate a complete response by Plaintiff, in keeping w/the rules,
21 and not limited to those documents already known to Azoogole -- would be
22 for Jason to ask Nella to describe and/or produce all documents relevant
23 to our requests, including any remotely resembling my description above.
24 If Nella doesn't have a document (she testified that she disposed of it, or
25 may have done so), then Jason should check his own files, since Jason
26 and/or Richard prepared Plaintiff's discovery responses. And if nobody
27 has a particular document, Jason should disclose what happened to it.

28 While the foregoing is more detail than the Court likely wanted, Plaintiff submits same
is necessary as an example of how each issue requires great effort to resolve. Plaintiff would
love to produce this document, if it can, and end silly disputes like this one. Instead of
Azoogole simply identifying what the document is, so Plaintiff can look for it, Azoogole asks
Plaintiff's counsel to sit down with his client and question ASIS, again, about each and every
discovery response to date in the action.

SINGLETON LAW GROUP

Dated: July 31, 2007

/s/ Jason K. Singleton

Jason K. Singleton,
Richard E. Grabowski, Attorneys for Plaintiff,
ASIS INTERNET SERVICES

KRONENBERGER BURGOYNE, LLP

Dated: July 31, 2007

/s/ Jeff Rosenfeld
Jeffrey Rosenfeld, Attorneys for Defendants
AZOOGLEADS.COM, INC.

I hereby attest that I have on file all holograph signatures or written authorizations for any signatures indicated by a "conformed" signature (/S/) within this efiled document.

Dated: July 31, 2007

/s/ Jason K. Singleton

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