



August 2, 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**

Dear Judge Spero:

Counsel for defendant Azoogles.com, Inc. ("Azoogles") and counsel for Plaintiff, ASIS Internet Services ("ASIS"), hereby submit this joint letter requesting that the Court determine whether leave should be granted to Azoogles to file a motion for a protective order and to quash Plaintiff's outstanding third-party subpoenas.

Azoogles's Statement

At a prior case management conference, Azoogles expressed concern at Plaintiff's third-party discovery. The Court declined to intercede, on the ground that any resulting burden would be minimal. More than 100 third-party subpoenas later, Azoogles requests the opportunity to again seek relief.

Since this action began, Plaintiff has served more than 115 subpoenas on ISPs, government agencies, domain name registrars, telecommunications companies, technology providers, former Azoogles employees, marketing companies, current and former Azoogles clients, and other Azoogles lead providers, contractors and business associates. Essentially, Plaintiff has subpoenaed every entity appearing in any document produced by Azoogles, or enjoying any relationship with Azoogles, or suspected by Plaintiff to be in any way associated with Azoogles.

Despite an Azoogles discovery request, Plaintiff continues to withhold objections and documents received from subpoenaed third parties. To be sure, Plaintiff has received more than a few objections, in particular as to scope. (See form attachment to Plaintiff's subpoenas, attached hereto as **Exhibit A**.) Plaintiff now threatens to subpoena 50 or so remaining lead vendors and, if Plaintiff's motion to supplement is granted, Azoogles's thousands of "affiliate" lead providers.

The inevitable fallout from Plaintiff's third-party discovery has significantly harmed Azoogles. As a direct result of Plaintiff's overuse of subpoenas, a

business partner of Azoogole has cancelled two deals with Azoogole. (See Declaration of Azoogole Chief Operating Officer Don Mathis, attached hereto as **Exhibit B**.)

"The subpoena power is a substantial delegation of authority to private parties, and those who invoke it have a grave responsibility to ensure it is not abused." *Theofel v. Farey-Jones*, 341 F.3d 978, 984 (9th Cir. 2003). With its 115 actual and dozens or hundreds of additional threatened subpoenas, Plaintiff has crossed the line. Azoogole requests the right to seek protection from that abuse.

ASIS's Statement

Plaintiff did not wish to join in this joint letter, for the reasons that are set forth below in an email that Plaintiff's counsel sent to Azoogole's counsel:

"Jeff,

I have read the letter. I am not sure what this paragraph means or is referring to:

"Despite an Azoogole discovery request, Plaintiff continues to withhold objections and documents received from subpoenaed third parties. To be sure, Plaintiff has received more than a few objections, in particular as to scope. (See form attachment to Plaintiff's subpoenas, attached hereto as **Exhibit A**.) Plaintiff now threatens to subpoena 50 or so remaining lead vendors and, if Plaintiff's motion to supplement is granted, Azoogole's thousands of "affiliate" lead providers."

What is it that is not produced? This is the first I have heard of it. We have produced every single response to each and every subpoena. Honestly, before we go into court on this, I think we should have a real meet and confer and try to reach some common ground. This is true because I am not sure what you contend we have not produced, nor is it clear from your letter the scope of protection Defendant seeks. Is Defendant contending that Plaintiff should send no more subpoenas? Ten more... twenty... what? Also, I don't have the Mathis Declaration referred to in the letter, so I could not offer Plaintiff's portion till I receive that, even if I thought it appropriate to do so.

The Court's standing order requires the parties to meet and confer, in person, before drafting and submitting a joint letter. I think we should follow the Court's instructions. We can meet after the CMC hearing, or after the hearing on the motion to supplement, in SF, if you like. In the meantime, can you please identify any documents or objections whatsoever that you contend Plaintiff has received that has not been produced? I don't think there is, but if there is... tell me what it is... so that I can either send it over, or make it available. Some of the entities have called and asked for extensions of time to respond, so maybe that is what you are referring to.

Again, please point to the pages of the Nella White deposition that discuss this document you seek to have produced. We honestly do not know what it is you are referring to.

Jason.”

Plaintiff's counsel submits Azoogle's contentions are without merit. If there remains a dispute following the parties holding a discovery conference, Plaintiff would then thoroughly set forth its contentions.

Sincerely,

KRONENBERGER BURGOYNE, LLP

A handwritten signature in black ink, appearing to read "H. M. Burgoyne, III". The signature is stylized and cursive.

Henry M. Burgoyne, III