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

13 **ASIS INTERNET SERVICES**, a California
14 corporation,

15 Plaintiff,

16 vs.

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

19 Defendants.

Case No. C-05-5124 JCS

**DECLARATION OF HENRY M.
BURGOYNE, III IN SUPPORT OF
AZOOGLEADS.COM, INC.'S MOTION
FOR SUMMARY JUDGMENT OR IN
THE ALTERNATIVE SUMMARY
ADJUDICATION**

Date: March 14, 2008
Time: 1:30 p.m.
Ctm: A, 15th Floor

The Honorable Joseph C. Spero

23 I, Henry M. Burgoyne, III, declare as follows:

24 1. I am an attorney admitted to practice in the State of California and the United States
25 District Court for the Northern District of California. I am a partner at the law firm of
26 Kronenberger Burgoyne, LLP, counsel of record for Defendant AzoogLeAds.com, Inc.
27 (“AzoogLe”). Unless otherwise stated, I have personal knowledge of the facts stated herein.

28 2. The 12,576 emails at issue in this case were provided to AzoogLe in a “.dbx” file

1 consisting of 1,421 individual messages, some or all of which were directed to multiple email
2 addresses. Ninety-six (96) of the 1,421 individual messages in the .dbx file provided by Plaintiff
3 ASIS Internet Services (“ASIS”) were duplicates of other messages in that .dbx file.

4 3. ASIS produced a list of 242 user account names and corresponding expiration dates. A
5 true and correct copy of this list is attached hereto as Exhibit A, which is filed under seal.

6 4. ASIS’s systems administrator FalconKnight produced a nearly identical list of user
7 account names but with different expiration dates.

8 5. ASIS’s production of user account names omitted any reference to “ng.”

9 6. At least 81 messages in the .dbx file were sent to the email address that Nella White
10 used as her fictitious contact information for the Bruce Wolf Lead. A Google search of this email
11 address returns no less than 40 matches. Each of the 40 matches referred is a publicly-accessible
12 Web page. Based on a review of less than half of those 40 matches, at least three active Web
13 pages identify the user of the email address pertaining to the Bruce Wolf Lead by physical
14 address, and at least two identify that user by the user’s business name.

15 7. A true and correct copy of the Frequently Asked Questions from the Wayback
16 Machine, located at <http://www.archive.org/about/faqs.php>, is attached hereto as Exhibit B.

17 8. A true and correct copy of excerpts from the certified deposition transcript of Nella
18 White is attached hereto as Exhibit C.

19 9. A true and correct copy of excerpts from the certified deposition transcripts (Volumes I
20 & II) of Joshua Mohland is attached hereto as Exhibit D.

21 10. A true and correct copy of excerpts from the certified deposition transcripts (Volumes I
22 & II) of Carl David Scoles is attached hereto as Exhibit E.

23 11. A true and correct copy of excerpts from the certified deposition transcript of Nicholas
24 Grabowski is attached hereto as Exhibit F.

25 12. A true and correct copy of excerpts from the certified deposition transcript of Jeffrey
26 Posluns is attached hereto as Exhibit G.

27 13. A true and correct copy of excerpts from the certified deposition transcript of Sally
28 Then is attached hereto as Exhibit H.

1 14. A true and correct copy of excerpts from the certified deposition transcript of Dave
2 Marshall is attached hereto as Exhibit I.

3 15. A true and correct copy of excerpts from the certified deposition transcript of Shawn
4 O'Connor is attached hereto as Exhibit J, which are filed under seal.

5 16. A true and correct copy of a declaration executed by Scott Tessler, as received from
6 Plaintiff's counsel Jason Singleton, is attached hereto as Exhibit K.

7 17. A true and correct copy of ASIS's Motion Requesting to Supplement the Second
8 Amended Complaint per FRCP Rule 15(d) is attached hereto as Exhibit L.

9 18. A true and correct copy of a declaration executed by Seamless Media Corp. principal
10 Jay Williams on December 10, 2007 is attached hereto as Exhibit M.

11 19. A true and correct copy of a declaration executed by Seamless Media Corp. principal
12 Jay Williams on December 11, 2007 is attached hereto as Exhibit N.

13 20. A true and correct copy of ASIS's Amended Supplemental Response to Azoogles First
14 Set of Interrogatories, No. 11, pages 3-5, is attached hereto as Exhibit O.

15 21. A true and correct copy of ASIS's Response to Court Ordered Interrogatories is
16 attached hereto as Exhibit P.

17 22. True and correct copies of email correspondence between ASIS and its spam filtering
18 service, Postini, Inc., produced by Postini, Inc. in response to a third party subpoena, are attached
19 hereto as Exhibit Q, which are filed under seal.

20 23. A true and correct copy of ASIS's balance sheet for the period through December 2006,
21 is attached hereto as Exhibit R, which is filed under seal.

22 24. True and correct copies of service agreements between Postini, Inc. and ASIS,
23 produced by Postini, Inc. in response to a third party subpoena are attached hereto as Exhibit S,
24 which are filed under seal.

25 25. A true and correct excerpt of the Postini, Inc. Email Security Service Administration
26 Guide, produced by Postini, Inc. in response to a third party subpoena, is attached hereto as
27 Exhibit T.

28 26. True and correct copies of Postini, Inc.'s billing statements to ASIS, produced by

1 Postini, Inc. in response to a third party subpoena, are attached hereto as Exhibit U, which are
2 filed under seal.

3 27. A true and correct copy of ASIS's Expert Witness Disclosure of Jeffrey Posluns is
4 attached hereto as Exhibit V.

5 28. A true and correct copy of a declaration executed by Joshua Mohland in Support of
6 ASIS's Court Ordered Interrogatories is attached hereto as Exhibit W.

7 29. A true and correct copy of ASIS's Amended Response to Third Set of Interrogatories is
8 attached hereto as Exhibit X.

9 30. A true and correct copy of ASIS's Opposition to Defendant Aegis Corporation, et al.'s
10 Motion to Dismiss is attached hereto as Exhibit Y.

11 31. True and correct copies of email correspondence between Azoogole and Spamhaus are
12 attached hereto as Exhibit Z, which are filed under seal.

13 32. A true and correct copy of the Order Re: Motion for Summary Judgment or Summary
14 Adjudication by Defendant Global Resources and Others issued by the Superior Court of
15 California for Santa Clara County on October 30, 2006 is attached hereto as Exhibit AA.

16 I declare under penalty of perjury under the laws of the United States that the foregoing is
17 true and correct and that this Declaration was executed this 18th day of January, at San Francisco,
18 California.

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/s/

Henry M. Burgoyne, III