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11 **UNITED STATES DISTRICT COURT**  
12 **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.,

21 Defendants.

Case No. C-05-5124 JCS

**DECLARATION OF DAVID GRAFF  
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, 15<sup>th</sup> Floor

The Honorable Joseph C. Spero

22 I, David Graff, declare as follows:

23 1. I am the General Counsel for AzoogleAds.com, Inc. ("Azoogle"), a party to this  
24 action. I provide this declaration in support of Azoogle's Motion for Summary Judgment or in the  
25 Alternative Summary Adjudication. Unless otherwise stated, I have personal knowledge of the  
26 facts stated herein.

27 2. Azoogle is an Internet marketing company that assists its clients, by means of  
28 arms length contracts with independent marketers, in the marketing of certain goods and services.

1 In this case, Azoogle assisted certain mortgage refinancing clients by contracting with an  
2 independent marketer for the purchase of potential sales contacts, otherwise known as a  
3 “Marketing Lead” (or “Lead”). As is relevant to this case, Azoogle purchased Marketing Leads  
4 from a third party pursuant to the terms of a contract negotiated by the parties. Azoogle itself has  
5 never sent unsolicited email to generate Leads or for any other reason.

6 3. Specifically, on August 11, 2005, Azoogle entered into a written contract with  
7 Seamless Media Corp. (“Seamless”) for the acquisition of 1200 mortgage refinance leads. This  
8 contract was comprised of Azoogle’s Insertion Order and the Azoogle Refinance Lead Criteria  
9 Document. This contract prohibited Seamless from generating Leads “by any means or method  
10 which is in violation of state and/or federal law including, but not limited to, the CAN-SPAM act  
11 of 2003 . . .” A true and correct copy of the Insertion Order is attached hereto as Exhibit A,  
12 which is filed under seal. A true and correct copy of the Azoogle Refinance Lead Criteria  
13 Document is attached hereto as Exhibit B, which is filed under seal.

14 4. On or about October 28, 2005, Seamless provided the Bruce Wolf Lead to  
15 Azoogle, ostensibly pursuant to the terms of the Insertion Order and Refinance Lead Criteria  
16 Document. A true and correct copy of Azoogle’s summary information regarding its receipt of  
17 the Bruce Wolf Lead is attached hereto as Exhibit C, which is filed under seal.

18 5. At the time Seamless provided the Bruce Wolf Lead to Azoogle, Azoogle did not  
19 know or suspect that such lead had been generated in connection with a violation of any law,  
20 including without limitation CAN-SPAM or California Business and Professions Code Section  
21 17529.5.

22 6. At the time Seamless provided the Bruce Wolf Lead to Azoogle, Azoogle did not  
23 suspect and had no reason to suspect that that Seamless would engage in any unlawful conduct,  
24 including any violation of CAN-SPAM or California Business and Professions Code Section  
25 17529.5.

26 7. At the time Seamless provided the Bruce Wolf Lead to Azoogle, Azoogle did not  
27 know that Seamless had itself acquired the Bruce Wolf Lead from a third party, who in turn had  
28 acquired it from another third party, or that Seamless used third parties to generate Leads.

1           8.       At the time Seamless provided the Bruce Wolf Lead to Azoogle, Azoogle did not  
2 know or suspect or reasonably anticipate that any of Seamless’s contractors or agents had  
3 committed, or would commit, a violation of CAN-SPAM or California Business and Professions  
4 Code Section 17529.5.

5           9.       Moreover, at the time Seamless provided the Bruce Wolf Lead to Azoogle,  
6 Azoogle did not know or suspect that the Bruce Wolf Lead had been provided to any third party,  
7 including without limitation any competitor of Azoogle.

8           10.      Prior to this litigation, Azoogle had never heard of Scribe Interactive, Inc.  
9 (“Scribe”), nor has Azoogle had any form of relationship with Scribe.

10          11.      Prior to this litigation, Azoogle had never heard of John Stothers (“Stothers”), nor  
11 has Azoogle had any form of relationship with Stothers.

12          12.      Prior to this litigation, Azoogle had never heard of BestLeadz, not has Azoogle  
13 had any form of relationship with BestLeadz.

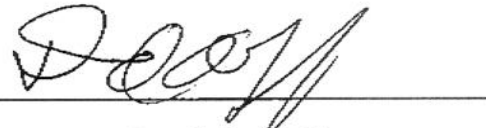
14          13.      Azoogle never owned or operated any of the websites linked to the Bruce Wolf  
15 Lead emails at issue in this lawsuit. Nor does Azoogle know who operated these websites.

16          14.      Relying upon its contract with Seamless, Azoogle justifiably believed that the  
17 Bruce Wolf Lead provided from Seamless was a valid, lawful Lead, which adhered to the terms  
18 and conditions of the Insertion Order and the Refinance Lead Criteria Document.

19          15.      Accordingly, Azoogle thereafter provided the Bruce Wolf Lead to Quicken Loans,  
20 Inc., Aegis Lending, Inc., and GoApply, Inc. dba eLeadZ.com.

21          16.      Following Azoogle’s investigation into the Bruce Wolf Lead, Azoogle suspended  
22 and then terminated its relationship with Seamless, and Seamless credited to Azoogle all money  
23 paid to Seamless in connection with the Bruce Wolf Lead. Azoogle has since initiated arbitration  
24 against Seamless relating to this action. A true and correct copy of an email chain between  
25 Azoogle employee Julian Mossanen and Seamless employee Shaun McCracken regarding  
26 Azoogle’s suspension of its relationship with Seamless is attached hereto as Exhibit D, which is  
27 filed under seal. A true and correct copy of the Demand for Arbitration is attached hereto as  
28 Exhibit E, which is filed under seal.

1 I declare under penalty of perjury of the laws of the United States that the foregoing is  
2 true and correct and that this Declaration was executed on January 18, 2008, at New York, New  
3 York.



David A. Graff

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**Exhibit A**

**(Conditionally Filed Under Seal)**

## **Exhibit B**

**(Conditionally Filed Under Seal)**

# Exhibit C

(Conditionally Filed Under Seal)

**Exhibit D**

**(Conditionally Filed Under Seal)**

# Exhibit E

(Conditionally Filed Under Seal)