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6 **Attorneys for Plaintiff, ASIS Internet Services**

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

10 **ASIS INTERNET SERVICES, a California ) Case No. C-05-5124 JCS**  
 corporation, )  
 11 )  
 12 **Plaintiff, ) JOINT STATEMENT OF STIPULATED FACTS**  
**vs. ) IN SUPPORT OF MOTION FOR SUMMARY**  
 13 ) **JUDGMENT**  
 14 )  
**OPTIN GLOBAL, INC., et al., ) DATE: March 14, 2008**  
 15 **Defendants. ) TIME: 1:30 pm**  
**) CTRM: 15, 18<sup>TH</sup> FLOOR**  
 )

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 17 Pursuant to the Court's standing order, the parties, by and through their respective  
 18 counsel, have stipulated to the following undisputed facts for the purposes of each party's  
 19 motion for summary judgment or summary adjudication.

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NO.	FACT	CITATION
21 22 23 24 25 26	1. Plaintiff, ASIS Internet Services, Inc., ASIS is a provider of Internet Access Service within the meaning of 15 USC 7706 (g) (1), 15USC 7702 (11); and 47 U.S.C. § 231(e) (4).	Declaration of Nella White 1/8/08 Para. 2; Deposition of Nella White Pg. 76, L. 100; Pg. 149, L 7 – 12; Para. 6 and Exhibit B to Dec. of NW – Customer invoices; ASIS's ownership of various domain names used to provide email service – Dec. of Nella White Para. 4; Bandwidth graphs and Server Configuration files attached as Exhibit F to Expert Disclosure of Posluns;

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1	2.	ASIS is an Electronic Mail Service Provider within the definition of CA B&P Code 17529.5 and CA B&P Code 17529.1 (h)	Declaration of Nella White 1/8/08, Para. 3; Para. 6 and Exhibit B to Dec. of NW-vendor invoices and customer bills; ASIS's ownership of various domain names used to provide email service – Dec. of Nella White Para. 4; Bandwidth graphs and Server Configuration files attached as Exhibit F to Expert Disclosure of Posluns;
2	3.	ASIS Internet Services owns the domain name "asis.com".	Declaration of Nella White 1/8/08, Para. 4 and Exhibit A;
3	4.	Defendant does not possess evidence that the ASIS customers with the electronic-mail addresses to which the alleged e-mails were directed consented to receive the alleged e-mails	Plaintiff's Response to Defendant's Request for Production No. 4 and the emails list attached to the Response. Docket 249 – Court ordered Stipulation. Inactive and admin accounts that received the subject emails, Plaintiff's Response to Defendant's Request for Production No. 4 and the emails list attached to the Response. Identical emails sent to R&D computers, Plaintiff's Supplemental Disclosure No. 23.
4	5.	The e-mails from the incident period of October 24, 2005 – November 14, 2005 do not contain physical opt-out addresses.	The subject emails and Para. 4 and Exhibit A to Dec. of Carl Scoles (Carl2-Exhibit D)
5	6.	"In order to respond to ASIS's requests, Azoogle engaged in multiple searches of differing databases in an attempt to locate third party vendor contracts. Despite Azoogle's diligent efforts, it has located only one such contract, with Seamless Media Corp. (the "Seamless Media Contract"), which has, upon information and belief, been provided to ASIS.	Declaration of Azoogleads General Counsel, David Graf (Docket 258)
6	7.	Defendant has produced the contract with third party vendor Seamless Media, titled "Azoogleads Insertion Order for Mortgage Lead Test" dated August 10, 2005.	AZ-05-08, AZ-018-021

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1 2 3 4 5	8. The contract with Seamless Media dated August 10, 2005 contains the term: "Payment Terms: prepay 50%, balance upon completion of order." On August 9, 2005, Julian Mossanen stated he would send a prepayment for the renewal insertion order at a later date.	AZ-05, AZ-0017
6 7	9. Defendant received the "Bruce Wolf" lead from Seamless Media	Azoogles' response to Interrogatories at Pg. 15 L. 21-24

**SINGLETON LAW GROUP**

Dated: January 18, 2008

/s/ Jason K. Singleton  
 Jason K. Singleton, Attorney for Plaintiff,  
 ASIS INTERNET SERVICES

**KRONENBERGER BURGOYNE, LLP**

Dated: January 18, 2008

/s/ Henry M. Burgoyne  
 Henry M. Burgoyne, Attorneys for Defendants,  
 AZOOGLE.COM, INC., and AZOOGLEADS  
 US, INC., dba AZOOGLEADS.COM