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KRONENBERGER BURGOYNE, LLP
Henry M. Burgoyne, III (CA Bar No. 203748)
Karl S. Kronenberger (CA Bar No. 226112)
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Attorneys for Defendant, AZOOGLEADS.COM, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ASIS INTERNET SERVICES, a California corporation,

Plaintiff,

vs.

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

Defendants.

Case No. C-05-5124 JCS

DECLARATION OF HENRY M. BURGOYNE, III IN SUPPORT OF AZOOGLEADS.COM, INC.'S MOTION FOR SANCTIONS

Date: June 20, 2008
Time: 1:30 AM
Ctrm: A, 15th Floor

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

2 1. I am an attorney admitted to practice in the State of California and the
3 United States District Court for the Northern District of California. I am a partner at the
4 law firm of Kronenberger Burgoyne, LLP, counsel of record for Defendant
5 Azoogles.com, Inc. ("Azoogles"). Unless otherwise stated, I have personal knowledge
6 of the facts stated herein.

7 2. Attached hereto as Exhibit A is a true and correct copy of an excerpt from
8 the hearing transcript before the Honorable Claudia Wilken on April 21, 2006.

9 3. Attached hereto as Exhibit B is a true and correct copy of a settlement
10 proposal that Azoogles sent to counsel for ASIS Internet Services, Inc. ("ASIS") on April
11 16, 2008. ASIS never responded to the letter.

12 4. Attached hereto as Exhibit C is a true and correct copy of ASIS's verified
13 response to Azoogles's Interrogatory No. 39.

14 5. Attached hereto as Exhibit D is a true and correct copy of excerpts from
15 the certified deposition transcript of Joshua Mohland.

16 6. Attached hereto as Exhibit E is a true and correct copy of excerpts from the
17 certified deposition transcript of Carl Scoles.

18 7. Attached hereto as Exhibit F is a true and correct copy of an email I
19 received from ASIS counsel Jason Singleton on January 8, 2007 responding to a
20 request that ASIS withdraw the Second Amended Complaint ("SAC").

21 8. Attached hereto as Exhibit G is a true and correct copy of experts from the
22 hearing transcript before the Honorable Joseph C. Spero on March 21, 2008.

23 9. Attached hereto as Exhibit H is a true and correct copy of a printout from
24 the Singleton Law Group's website. I printed Exhibit H at the date and time indicated
25 thereon.

26 10. In a January 2007 meet-and-confer telephone call regarding Azoogles's
27 request that ASIS withdraw the SAC as to Azoogles, Mr. Singleton stated that ASIS
28 named several defendants for the sole purpose of extracting information and

1 settlements.

2 11. Attached hereto as Exhibit I are true and correct copies of ASIS's
3 interrogatories served on Azoogole.

4 12. Attached hereto as Exhibit J are true and correct copies of ASIS's
5 requests for production served on Azoogole.

6 13. During a March 20, 2007, in camera meet-and-confer regarding Azoogole's
7 motion for a protective order and for leave to amend certain of Azoogole's discovery
8 responses, the Court commented that ASIS's first round of written discovery requests
9 would have to be "narrowed dramatically." The Court further observed that Azoogole
10 would "inevitably" be permitted to amend its discovery responses, despite ASIS's
11 insistence that Azoogole's supposed failure to timely serve such responses was
12 dispositive of Azoogole's liability.

13 14. Attached hereto as Exhibit K is a true and correct copy of the attachment to
14 the 120-plus subpoenas issued by ASIS.

15 15. Attached hereto as Exhibit L is a true and correct copy of experts from the
16 certified deposition transcript of Nella White.

17 **Information Re Attorneys' Fees Pursuant to Local Rule 54-6(b)**

18 16. Kronenberger Burgoyne, LLP devoted a total of 3,136 hours to defending
19 this case. I am familiar with the legal fees charged by attorneys in the San Francisco
20 area for matters similar to the instant action. Kronenberger Burgoyne's rates are
21 comparable to, and in many cases lower than, other qualified attorneys in this area.

22 17. On April 10, 2008, counsel for Azoogole met-and-conferred with counsel for
23 ASIS regarding Azoogole's planned requests for attorneys' fees, with the hopes of
24 resolving this issue without the need for a motion. During this conference, counsel for
25 ASIS stated that ASIS would not agree to pay a dime in costs or fees, and would file for
26 bankruptcy if any award of costs or fees was granted.

27 18. The following employees and contractors of Kronenberger Burgoyne
28 assisted in the defense of Azoogole in this litigation:

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- Henry M. Burgoyne, III – partner at Kronenberger Burgoyne;
- Karl S. Kronenberger – partner at Kronenberger Burgoyne
- Jeffrey M. Rosenfeld – senior associate at Kronenberger Burgoyne
- Deepa Krishnan – associate at Kronenberger Burgoyne
- Matthew M. Thomson – associate at Kronenberger Burgoyne
- Margarita Calpotura – associate at Kronenberger Burgoyne
- Peter Toushner – former legal assistant at Kronenberger Burgoyne
- Adam Schneider – legal assistant at Kronenberger Burgoyne
- Sumeena Birdi – legal assistant at Kronenberger Burgoyne
- Lauren Creamer – legal assistant at Kronenberger Burgoyne
- Rachael P. Melliar-Smith – temporary attorney at Kronenberger Burgoyne
- Christian J. Martinez – temporary attorney at Kronenberger Burgoyne
- Alan Cohen – temporary attorney at Kronenberger Burgoyne

I. Description of Relevant Qualifications, Hourly Charges, and Services Rendered

19. I received my undergraduate degree from Georgetown University, a masters degree in journalism from the University of Arizona, and my Juris Doctor from Stanford University. I clerked for the Honorable William Alsup following law school. For most of the past eight years, I have been litigating and advising clients on complex intellectual property and technology-related issues. My hourly rate rose from \$350 to \$425 during the course of this action, as applied to my time spent on this matter (Kronenberger Burgoyne instituted firm-wide billing increases during the course of the litigation for all of its clients). I served as lead litigation counsel for this matter and drafted and responded to discovery, engaged in motion practice, met and conferred with opposing counsel, performed legal and fact research, conducted and defended deposition, communicated with the client, and attended hearings before the Court. Throughout this case, I and every other Kronenberger Burgoyne partner and associate

1 listed below were members in good standing of the California Bar. I billed 1,069.43
2 hours to Azoogle for my legal services in connection with this matter.

3 20. Karl S. Kronenberger received his undergraduate degree from Notre Dame
4 University and his Juris Doctor from the University of Cincinnati. Following law school,
5 he served as an officer of the Army JAG Corps. For the past several years, Mr.
6 Kronenberger has been litigating and advising clients on complex intellectual property
7 and technology-related issues. Mr. Kronenberger's hourly rate ranged from \$350-\$425
8 for his time spent on this matter. Mr. Kronenberger reviewed and drafted pleadings and
9 discovery responses, consulted on strategy, and communicated with the client regarding
10 this matter. Mr. Kronenberger billed 25.13 hours for his legal services in connection with
11 this matter.

12 21. Jeffrey M. Rosenfeld received his undergraduate degree from Stanford
13 University and his Juris Doctor from Georgetown University Law Center. Following law
14 school, he worked as a litigation associate at Covington & Burling and Howard Rice
15 Nemerovski Canady Falk & Rabkin. For the past several years, Mr. Rosenfeld has been
16 litigating and advising clients on complex intellectual property and technology-related
17 issues. Mr. Rosenfeld's hourly rate ranged from \$280-\$340 for his time spent on this
18 matter. Mr. Rosenfeld drafted and responded to discovery, engaged in motion practice,
19 performed legal and fact research, communicated with the client, and attended hearings
20 before the Court. Mr. Rosenfeld billed 689.85 hours for his legal services in connection
21 with this matter.

22 22. Deepa Krishnan received her undergraduate degree from Princeton
23 University and her Juris Doctor from the University of California, Los Angeles. Following
24 law school, she worked as a litigation associate at Winston & Strawn and Liner
25 Yankelevitz Sunshine & Regenstreif. Ms. Krishnan has obtained extensive experience
26 in legal research and writing, and in technology-related and other complex litigation
27 practice. Ms. Krishnan's hourly rate was \$260 for her time spent on this matter. Ms.
28 Krishnan drafted and responded to discovery, engaged in motion practice, met-and-

1 conferred with opposing counsel, and communicated with the client. Ms. Krishnan billed
2 186.95 hours for her legal services in connection with this matter.

3 23. Matthew M. Thomson received his undergraduate degree from University
4 of California, Santa Barbara and his Juris Doctor from George Washington Law School.
5 Following law school, he held legal positions with eMusic.com, the Recording Industry
6 Association of America, the Software & Information Industry Association, and the
7 International Intellectual Property Institute. Mr. Thomson has obtained extensive
8 experience in legal research and writing, as well as in technology and intellectual
9 property law. Mr. Thomson's hourly rate was \$200 for his time spent on this matter. Mr.
10 Thomson performed legal research as to relevant issues for this matter. Mr. Thomson
11 billed 11.57 hours for his legal services in connection with this matter.

12 24. Margarita Calpotura received her undergraduate degree from the
13 University of California, Davis and her Juris Doctor from the Golden Gate University.
14 Ms. Calpotura has obtained extensive experience in legal research and writing, as well
15 as in technology law generally and CAN-SPAM litigation in particular. Ms. Calpotura's
16 hourly rate ranged from \$180-\$220 for her time spent on this matter. Ms. Calpotura
17 drafted and responded to discovery, engaged in motion practice, and performed legal
18 and fact research as to relevant issues for this litigation. Ms. Calpotura billed 404.31
19 hours for her legal services in connection with this matter.

20 25. Peter Toushner, Adam Schneider, Sumeena Birdi, and Lauren Creamer
21 served as legal assistants at various times in connection with this litigation. All four of
22 these individuals possess college degrees and have experience in litigation practice.
23 These legal assistants engaged in filing of documents, preparation of discovery
24 materials, calendaring of Court events, and other administrative matters. The legal
25 assistants billed 720.28 hours for their legal services in connection with this matter.

26 26. Rachael P. Melliar-Smith, Christian J. Martinez, and Alan Cohen provided
27 limited litigation support in this matter as temporary attorneys. These individuals
28 assisted in drafting discovery documents. To my knowledge, at all relevant times Ms.

