

1 ROBERT T. HASLAM (#71134)
 2 ROBERT D. FRAM (#126750)
 3 M. PATRICIA THAYER (#90818)
 4 S. ELIZABETH MITCHELL (#187053)
 5 ANDREW C. BYRNES (#191516)
 6 HELLER EHRMAN WHITE & MCAULIFFE LLP
 7 333 Bush Street
 8 San Francisco, CA 94104-2878
 9 Telephone: (415) 772-6000
 10 Facsimile: (415) 772-6268

8 BRINKS HOFER GILSON & LIONE
 9 JACK C. BERENZWEIG
 10 WILLIAM H. FRANKEL
 11 JASON C. WHITE
 12 NBC Tower--Suite 3600
 13 455 North Cityfront Plaza Drive
 14 Chicago, Illinois 60611
 15 Telephone: (312) 321-4200
 16 Facsimile: (312) 321-4299

14 Attorneys for Plaintiff,
 15 OVERTURE SERVICES, INC.

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 OVERTURE SERVICES, INC.,
 20
 21 Plaintiff,
 22 v.
 23 GOOGLE INC.,
 24
 25 Defendant.

E-Filing Case No.: 02-01991 JSW (EDL)
DECLARATION OF ANDREW C. BYRNES IN SUPPORT OF PLAINTIFF OVERTURE SERVICES, INC.'S MOTION TO COMPEL PRODUCTION OF DAMAGES DOCUMENTS
 Hearing Date: March 2, 2004
 Hearing Time: 9:00 a.m.
 Hon. Elizabeth D. Laporte

1 I, Andrew C. Byrnes, declare:

2 1. I am an associate with the law firm of Heller Ehrman White & McAuliffe
3 LLP, counsel to plaintiff Overture Services, Inc. in this action. I make this declaration in
4 support of plaintiff's Motion to Compel Production of Damages-Related Documents by
5 defendant Google Inc. Unless otherwise noted, the factual assertions herein are made on
6 my personal knowledge and, if called upon to do so, I could and would testify competently
7 thereto.

8 2. I am admitted to practice law in the courts of California

9 3. Attached hereto as Exhibit A is a true and correct copy of the Joint Report,
10 Case Management Statement and [Proposed] Order submitted jointly by plaintiff and
11 defendant on August 19, 2002.

12 4. Attached hereto as Exhibit B is a true and correct copy of the Court's August
13 30, 2002 Minute Order.

14 5. Attached hereto as Exhibit C is a true and correct copy of Overture's First Set
15 of Document Requests served on defendant Google on August 5, 2002.

16 6. Attached hereto as Exhibit D is a true and correct copy of a letter from Jack
17 Berenzweig to Michael Kwun dated September 18, 2002.

18 7. Attached hereto as Exhibit E is a true and correct copy of the Joint Case
19 Management Statement and Order dated January 7, 2003.

20 8. Attached hereto as Exhibit F is a true and correct copy of the Court's Case
21 Management Order dated January 31, 2003.

22 9. Attached hereto as Exhibit G is a true and correct copy of the Court's Second
23 Case Management Order dated February 7, 2003.

24 10. Attached hereto as Exhibit H is a true and correct copy of the Court's Order
25 Granting Stipulated Request For an Order Changing Time, dated March 31, 2003.

26 11. Attached hereto as Exhibit I is a true and correct copy of the Court's Order
27 Granting Plaintiff's Miscellaneous Requests and Setting New Dates, dated September 2,
28 2003.

1 12. Attached hereto as Exhibit J is a true and correct copy of Overture's Fourth
2 Set of Document Requests served on defendant Google on August 12, 2003.

3 13. Attached hereto as Exhibit K is a true and correct copy of Overture's Fifth Set
4 of Document Requests served on defendant Google on December 5, 2003.

5 14. Attached hereto as Exhibit L is a true and correct copy of a letter from
6 Andrew Byrnes to Daralyn Durie, dated January 8, 2004.

7 15. Attached hereto as Exhibit M is a true and correct copy of a letter sent via
8 facsimile from Christine Sun to Andrew Byrnes, dated January 9, 2004.

9 16. Attached hereto as Exhibit N is a true and correct copy of a letter from
10 Andrew Byrnes to Christine Sun, dated January 12, 2004.

11 17. On January 20, I telephoned Ms. Sun and left a voicemail message stating that
12 Overture was interested in reaching a compromise and avoiding motion practice on the
13 issue of damages discovery, and requesting that Ms. Sun return my call. I spoke with her
14 the following day, January 21, in which conversation I made a compromise proposal that
15 the parties set a date certain shortly after the claim construction hearing, such as but not
16 necessarily April 1, 2004, on which they would exchange damages discovery. During that
17 conversation, I emphasized the need for timely resolution of the dispute (preferably by
18 compromise between the parties but by the Court if necessary) and, in turn, timely
19 production of the documents.

20 18. Attached hereto as Exhibit O is a true and correct copy of a letter from
21 Andrew Byrnes to Christine Sun, dated January 22, 2004, memorializing our January 21
22 telephone conversation.

23 19. Attached hereto as Exhibit P is a true and correct copy of a letter from
24 Andrew Byrnes to Christine Sun, dated January 23, 2004, noting that if Overture did not
25 receive a response to its compromise proposal by Monday, Overture would seek the Court's
26 assistance in resolving the matter.

27 20. Attached hereto as Exhibit Q is a true and correct copy of a letter sent via
28 facsimile from Christine Sun to Andrew Byrnes, dated January 23, 2004, stating that "Gogle

1 is still considering Overture's proposal regarding damages discovery."

2 21. Ms. Sun telephoned me on Monday, January 26. She made a counterproposal
3 that Google produce "summary financial data" in "early April," and produce the remaining
4 damages discovery in "phases" at an unspecified later time. I told her that Overture could
5 not accept the counterproposal as proposed because it failed to provide any date certain for
6 the document production as we had discussed previously. In addition, I told Ms. Sun that
7 Overture continued to reserve its right to ask the Court to compel Google to produce the
8 damages documents on or before a date certain, specifically April 1, 2004, and that I would
9 inform her in advance if Overture decided to make such a motion.

10 22. Attached hereto as Exhibit R is a true and correct copy of a letter from
11 Andrew Byrnes to Christine Sun, dated January 27, 2004, in which I memorialized our
12 January 26 telephone conversation and indicated that if Google was not willing to provide a
13 date certain by which damages discovery will be produced by noon Wednesday, January 28,
14 Overture would move to compel. Google did not provide a date certain or any further
15 counterproposal.

16 I declare under penalty of perjury pursuant to the laws of the United States that the
17 foregoing is true and correct of my own knowledge and that this Declaration is executed
18 this 28th day of January, 2004 in San Francisco, California.

19
20 /s/ Andrew C. Byrnes
21
22
23
24
25
26
27
28