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 6 **SERVICES and JOEL HOUSEHOLTER**

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

10 **ASIS INTERNET SERVICES, a California**
 11 **corporation, and JOEL HOUSEHOLTER, dba**
 12 **KNEELAND ENGINEERING, dba FOGGY.NET,**

13 **Plaintiffs,**

14 **vs.**

15 **CONSUMERBARGAINGIVEAWAYS, LLC, et al.,**

16 **Defendants.**

Case No. C-08-4856 WHA

PLAINTIFFS' APPLICATION TO AMEND
OPPOSITION WITH SUPPLEMENTAL
MATERIALS TO DEFENDANTS'
MOTION TO DISMISS AND
(PROPOSED) ORDER

17 Plaintiffs, **ASIS INTERNET SERVICES** and **JOEL HOUSEHOLTER**, request the
 18 Court's permission to amend their Opposition (filed as Docket 31) with supplemental materials.
 19 (See Civil Local Rule 7-3 and 7-4; also see the Court's Order of March 4, 2009 (Docket 42).)
 20 The supplemental materials have been incorporated in the original Opposition papers
 21 amended in a manner that keeps the paper within the 25 page requirement of Civil Local Rule
 22 7-3(a).

23 Plaintiff's wish to amend the opposition to add arguments and legal support for key
 24 issues within this matter. The basic argument, proposed by Defendants in their Motion to
 25 dismiss, is that **California Business & Professions Code** §17529.5 is preempted by the **CAN**
 26 **SPAM Act of 2003** unless it sounds in common law fraud. Defendants' premise is based on
 27 the holding in the Northern District Court decision of **Hoang v. Reunion.com, Inc.**, Slip Copy,
 28 2008 WL 4542418 (N.D. Cal., October, 2008); relying on **Omega World Travel, Inc. v.**

1 **Mummagraphics, Inc.**, 469 F.3d 348, 353-56 (4th Cir.2006) and **Kleffman v. Vonage**
2 **Holdings Corp.**, 2007 WL 1518650, *3 (C.D. Cal. 2007). Further research has revealed that
3 all of these cases are in fact decisions concerning consumers. Both ASIS and Joel
4 Householter are email service providers, not consumers within the definition of the statute.
5 This makes Plaintiffs into third party representatives assigned by the legislature to bring
6 actions, and Supreme Court decisions allow that they may rely on the interests of the general
7 public in brining those actions. This distinction is key to this matter. In the amended paper
8 Plaintiffs have separated the issue and provided support, legal and factual, as to why this
9 distinction is important to the Court's decision in this case.

10 Therefore, for good cause shown, Plaintiffs request that the Court allow the Amended
11 Opposition.

12
13 **SINGLETON LAW GROUP**

14 Dated: March 5, 2009

15 /s/ Richard E. Grabowski
16 Jason K. Singleton
17 Richard E. Grabowski
18 Attorneys for Plaintiffs, **ASIS INTERNET SERVICES**
19 **and JOEL HOUSEHOLTER, dba FOGGY.NET**

20 **(PROPOSED) ORDER ALLOWING AMENDED OPPOSITION**

21 Plaintiffs' Application having come before the Court and for good cause shown, it is
22 hereby ordered that Plaintiffs' Application to file the Amended Opposition is granted.

23 DATED: March 16, 2009

24 HONORABLE WILLIAM H. ALSUP
25 UNITED STATES DISTRICT JUDGE

