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 7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11 GOOGLE INC., a Delaware corporation,
 12 Plaintiff,
 13 v.
 14 AMERICAN BLIND & WALLPAPER
 15 FACTORY, INC., a Delaware corporation
 d/b/a decoratetoday.com, Inc., and DOES 1-
 16 100, inclusive,
 17 Defendants.

Case No. C 03-5340-JF (EAI)

**DECLARATION OF AJAY S. KRISHNAN
 IN SUPPORT OF GOOGLE INC.'S
 MOTION TO COMPEL COUNTER-
 PLAINTIFF ABWF TO (1) PRODUCE
 DOCUMENTS, (2) PRODUCE AN
 AFFIDAVIT DETAILING ABWF'S
 DOCUMENT COLLECTION EFFORTS,
 AND (3) SCHEDULE DEPOSITIONS**

Date: TBD
 Time: TBD
 Courtroom: 4
 Judge: Hon. Richard Seeborg

18 AMERICAN BLIND & WALLPAPER
 19 FACTORY, INC., a Delaware corporation
 d/b/a decoratetoday.com, Inc.,
 20 Counter Plaintiff,
 21 v.
 22 GOOGLE INC.,
 23 Counter Defendant.

1 I, Ajay S. Krishnan, declare as follows:

2 1. I am an attorney duly licensed to practice before this Court and an associate at the
3 law firm of Kecker & Van Nest LLP in San Francisco. I represent Plaintiff Google Inc. in the
4 above-captioned litigation. Unless otherwise specified, I have knowledge of the facts set forth
5 herein, and if called to testify as a witness thereto, could do so competently under oath.

6 **List of Attached Exhibits**

7 2. Attached hereto as **EXHIBIT A** is a true and correct copy of Google Inc.'s First
8 Set of Requests for Production of Documents and Things from American Blind & Wallpaper
9 Factory, Inc. (the "Document Requests"). It is dated May 21, 2004.

10 3. Attached hereto as **EXHIBIT B** is a true and correct copy of American Blind &
11 Wallpaper Factory, Inc.'s Responses to Google, Inc.'s First Set of Requests for Production of
12 Documents and Things. It is dated June 10, 2005.

13 4. Attached hereto as **EXHIBIT C** is a true and correct copy of the cover page of
14 American Blind & Wallpaper Factory, Inc.'s ("ABWF") October 26, 2005 production of
15 documents in response to the Document Requests.

16 5. Attached hereto as **EXHIBIT D** is a true and correct copy of Google's March 16,
17 2006 letter to ABWF regarding document production. The letter was from Ajay Krishnan,
18 counsel for Google, to David Rammelt, counsel for ABWF.

19 6. Attached hereto as **EXHIBIT E** is a true and correct copy of Google's March 28,
20 2006 letter to ABWF regarding document production. The letter was from Ajay Krishnan,
21 counsel for Google, to David Rammelt, counsel for ABWF.

22 7. Attached hereto as **EXHIBIT F** is a true and correct copy of ABWF's April 10,
23 2006 letter to Google regarding document production. The letter was from Caroline Plater,
24 counsel for ABWF, to Ajay Krishnan, counsel for Google.

25 8. Attached hereto as **EXHIBIT G** is a true and correct copy of e-mail
26 correspondence between Google and ABWF from April 13, 2006 to April 18, 2006 regarding
27 document production. The correspondents are Ajay Krishnan, counsel for Google, and Caroline
28

1 Plater, counsel for ABWF.

2 9. Attached hereto as **EXHIBIT H** is a true and correct copy of the cover page of
3 ABWF's April 21, 2006 supplemental production of documents in response to the Document
4 Requests.

5 10. Attached hereto as **EXHIBIT I** is a true and correct copy of Google's May 12,
6 2006 letter to ABWF regarding document production. The letter was from Ajay Krishnan,
7 counsel for Google, to Caroline Plater, counsel for ABWF.

8 11. Attached hereto as **EXHIBIT J** is a true and correct copy of ABWF's June 6,
9 2006 letter to Google regarding document production and depositions. The letter was from
10 Caroline Plater, counsel for ABWF, to Klaus Hamm and Ajay Krishnan, both of whom are
11 counsel for Google.

12 12. Attached hereto as **EXHIBIT K** is a true and correct copy of a cover letter from
13 Google and an enclosure, Google's Notice of 30(b)(6) Deposition of American Blind &
14 Wallpaper Factory, Inc. The deposition notice and the letter are dated February 15, 2006. The
15 letter is from Ajay Krishnan, counsel for Google, to three attorneys who serve as counsel for
16 ABWF.

17 13. Attached hereto as **EXHIBIT L** is a true and correct copy of e-mail
18 correspondence between Google and ABWF from March 29, 2006 to March 30, 2006 regarding
19 document production and scheduling depositions. The correspondents are Ajay Krishnan,
20 counsel for Google, and Caroline Plater, counsel for ABWF.

21 14. Attached hereto as **EXHIBIT M** is a true and correct copy of a cover letter from
22 Google and four enclosures, which are deposition notices for Joe Charno, Bill Smith, Jeff
23 Alderman, and Scot Powers. The deposition notices and the letter are dated May 19, 2006. The
24 letter is from Klaus Hamm, counsel for Google, to David Rammelt, counsel for ABWF.

25 15. Attached hereto as **EXHIBIT N** is a true and correct copy of a cover letter from
26 Google and an enclosure, a deposition subpoena for Steve Katzman. The deposition notice and
27 the letter are dated June 1, 2006. The letter is from Klaus Hamm, counsel for Google, to David
28

1 Rammelt, counsel for ABWF.

2 **Facts Related to the Document Requests**

3 16. The Document Requests, attached hereto as Exhibit A, are dated May 21, 2004.
4 On information and belief, discovery was then stayed for roughly one year, pending briefing and
5 a ruling on Google's motion to dismiss. ABWF's responses to the Document Requests are dated
6 June 10, 2005. ABWF's production consists of one box of documents. The cover letter
7 accompanying the production is dated October 26, 2005.

8 17. On March 16, 2006, Google sent a letter to ABWF demanding certain financial
9 documents covered by Document Requests 9-12, to which ABWF had objected earlier. ABWF
10 did not respond to this letter.

11 18. On March 28, 2006, Google sent ABWF a letter containing six clearly-labeled
12 issues, one of which was ABWF's failure to respond to Google's March 16th letter. Although
13 Google requested a response by April 3, 2006, ABWF requested a one-week extension, and
14 Google granted it. On April 10, 2006, ABWF responded to Google's March 28th letter.

15 19. On April 21, 2006, ABWF mailed Google a supplemental document production,
16 consisting of roughly 140 pages of documents.

17 20. On May 12, 2006, Google sent ABWF a letter containing eleven clearly-labeled
18 issues pertaining to the Document Requests. Google requested that ABWF respond by May 18,
19 2006. ABWF asked for three extensions. First, ABWF attorney Caroline Plater requested an
20 extension until May 22, 2006. On information and belief, on the afternoon of May 22, 2006,
21 ABWF attorney David Rammelt called Google attorney Michael Page to request an extension of
22 a few days, because of a change in management at ABWF. ABWF did not contact Google in a
23 few days; as such Google threatened to file this motion. On information and belief, on June 1,
24 2006, ABWF attorney Susan Greenspon called Page to ask for an extension until June 5, 2006.
25 ABWF finally responded to Google's May 12th letter on June 6, 2006.

26 21. ABWF's April 21st supplemental document production contains monthly internal
27 financial statements from 1997 to 2005. I have reviewed these financial statements. They are
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1 designated “Confidential” and “Attorney’s Eyes Only,” pursuant to the protective order in this
2 case. Each statement contains monthly financial figures. There is a single line item in these
3 statements for “Advertising.” Thus, the statements appear to indicate a monthly dollar value
4 spent on advertising by ABWF. This single figure for each month, labeled “Advertising,” is all
5 of the information contained in ABWF’s April 21st supplemental production concerning
6 advertising expenditures.

7 **Facts Related to the Depositions that Google Noticed**

8 22. On February 15, 2006, Google noticed a Federal Rule of Civil Procedure
9 30(b)(6) deposition of ABWF for March 15, 2006. ABWF represented that its Rule 30(b)(6)
10 designee, Steve Katzman, was unavailable on March 15, and asked Google to suggest alternative
11 dates. After Google suggested several other dates, ABWF agreed to make Mr. Katzman
12 available on April 20.

13 23. As a result of ABWF’s failure to produce documents in a timely fashion, ABWF
14 forced Google to reschedule the 30(b)(6) deposition of ABWF for May 11, 2006. This
15 agreement is memorialized in Exhibit L.

16 24. Just ten days before it was set to take place, ABWF cancelled the May 11th
17 deposition. ABWF explained that its lead counsel, Mr. Rammelt, had to attend a hearing in a
18 foreign court on May 11. ABWF proposed rescheduling the deposition for June 6, and even
19 though Google had requested an earlier date, Google accepted.

20 25. On May 22, ABWF cancelled the June 6th deposition. ABWF explained that it
21 had just undergone a change in management, and as such, Mr. Katzman would no longer be its
22 30(b)(6) designee. On information and belief, Google has pressed ABWF numerous times since
23 May 22 to designate a new 30(b)(6) deponent and to offer deposition dates. ABWF’s current
24 position is that due to the management change, it does not know when it will be able to designate
25 a 30(b)(6) deponent.

26 26. On information and belief, on May 19, 2006, Google attorney Klaus Hamm
27 issued deposition notices for four individuals listed in ABWF’s initial disclosures: Joe Charno,
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