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6 Attorneys for Plaintiff and Counter Defendant  
 7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

11 GOOGLE INC., a Delaware corporation,  
 12  
 13 Plaintiff,

14 v.

15 AMERICAN BLIND & WALLPAPER  
 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 COUNTER-  
 DEFENDANT GOOGLE INC.'S MOTION  
 TO COMPEL COUNTER-PLAINTIFF  
 ABWF TO SATISFY OUTSTANDING  
 DISCOVERY OBLIGATIONS**

Date: October 18, 2006  
 Time: 9:30 a.m.  
 Courtroom: 4  
 Judge: Hon. Richard Seeborg

18 AMERICAN BLIND & WALLPAPER  
 19 FACTORY, INC., a Delaware corporation  
 d/b/a decoratetoday.com, Inc.,  
 20  
 21 Counter-Plaintiff,

22 v.

23 GOOGLE INC.,  
 24 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 Google Inc.'s  
14 Second Set of Requests for Production of Documents and Things from American Blind &  
15 Wallpaper Factory, Inc. (the "Document Requests"). It is dated May 10, 2006.

16 5. Attached hereto as **EXHIBIT D** is a true and correct copy of American Blind &  
17 Wallpaper Factory, Inc.'s Responses to Google Inc.'s Second Set of Requests for Production of  
18 Documents and Things. It is dated June 19, 2006.

19 6. Attached hereto as **EXHIBIT E** is a true and correct copy of Google Inc.'s First  
20 Set of Requests for Admission to American Blind & Wallpaper Factory. It is dated January 26,  
21 2006.

22 7. Attached hereto as **EXHIBIT F** is a true and correct copy of American Blind &  
23 Wallpaper Factory, Inc.'s Response to Plaintiff Google Inc.'s First Set of Requests for  
24 Admission. It is dated February 27, 2006.

25 8. Attached hereto as **EXHIBIT G** is a true and correct copy of Google Inc.'s  
26 Second Set of Interrogatories to American Blind & Wallpaper Factory, Inc. It is dated May 10.  
27 2006.

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1 9. Attached hereto as **EXHIBIT H** is a true and correct copy of American Blind &  
2 Wallpaper Factory, Inc.'s Answer to Google Inc.'s Second Set of Interrogatories. It is dated  
3 June 19, 2006.

4 10. Attached hereto as **EXHIBIT I** is a true and correct copy of the Amended Notice  
5 of 30(b)(6) Deposition of American Blind and Wallpaper Factory, Inc. It is dated July 12, 2006.

6 11. Attached hereto as **EXHIBIT J** is a true and correct copy of documents Bates  
7 labeled ABWF48851 – ABWF48860, ABWF48864 - ABWF48873, and ABWF48988 –  
8 ABWF48997. Google Inc. has under separate cover requested that these documents be filed  
9 under seal.

10 12. Attached hereto as **EXHIBIT K** is a true and correct copy of pages from the  
11 deposition transcript of Jeffrey A. Alderman, taken on August 4, 2006.

12 13. Attached hereto as **EXHIBIT L** is a true and correct copy of documents Bates  
13 labeled ABWF005530 – ABWF005534, and ABWF005605 - ABWF005609. Google Inc. has  
14 under separate cover requested that these documents be filed under seal.

15 14. Attached hereto as **EXHIBIT M** is a true and correct copy of pages from the  
16 deposition transcript of Gerald B. Curran, taken on August 3, 2006.

17 15. Attached hereto as **EXHIBIT N** is a true and correct copy of a document a  
18 document Bates labeled ABWF 047376 – ABWF 047377. Google Inc. has under separate cover  
19 requested that this document be filed under seal.

20 16. Attached hereto as **EXHIBIT O** is a true and correct copy of a letter from  
21 Caroline Plater to myself, dated August 14, 2006, and attached documents Bates labeled ABWF  
22 049364 – ABWF 049369. Google Inc. has under separate cover requested that these documents  
23 be filed under seal.

24 17. Attached hereto as **EXHIBIT P** is a true and correct copy of a document labeled  
25 ABWF 001308 – ABWF 001310.

26 18. Attached hereto as **EXHIBIT Q** is a true and correct copy of document  
27 production enclosure letters from Dawn Beery and Caroline Plater to Klaus Hamm and myself,  
28

1 with dates ranging from October 26, 2005 – September 6, 2006.

2 19. Attached hereto as **EXHIBIT R** is a true and correct copy of a document Bates  
3 labeled ABWF 046106 – ABWF 046114. Google Inc. has under separate cover requested that  
4 this document be filed under seal.

5 20. Attached hereto as **EXHIBIT S** is a true and correct copy of a document Bates  
6 labeled ABWF 043139 – ABWF 043140. Google Inc. has under separate cover requested that  
7 this document be filed under seal.

8 **Facts Related to the Online Customer Satisfaction Survey**

9 21. On August 1, 2006, ABWF produced documents that it described, in the cover  
10 letter accompanying the production, as “an online customer survey conducted by American  
11 Blind regarding customer satisfaction with the products and services of American Blind” (the  
12 “Online Customer Satisfaction Survey”). The Online Customer Satisfaction Survey actually  
13 consists of three documents: a 13-page file entitled “survey data comments 2001.txt” (Bates  
14 Range ABWF 48851 - 48863), a 125-page file entitled “product surveys.txt” (Bates Range  
15 ABWF 48864 – 48987), and a 247-page file entitled “customer surveys.txt” (Bates Range  
16 ABWF 48988 – 49232).

17 22. On August 2, 2006, I wrote a letter to Caroline Plater, counsel for ABWF, asking  
18 for more readable versions of the Online Customer Satisfaction Survey, and all documents  
19 associated with the survey, including the survey results, analysis, questions, and methodology.  
20 On August 3, 2006, Ms. Plater conceded that the survey documents were “difficult to read,” and  
21 stated that if better versions of the survey exist or if any of the associated documents were found,  
22 ABWF would produce them. On August 14, Ms. Plater represented in a letter that more readable  
23 versions of the survey did not exist, and that there were no documents associated with the survey.

24 23. Ms. Plater confirmed this position in a September 5, 2006 letter.

25 **Facts Related to the Improperly Printed Spreadsheets**

26 24. On July 21, 2006, I wrote Ms. Plater a letter in which I requested copies of  
27 ABWF 5530 – 5534 and ABWF 5605 – 7802 in a readable format such that all of the

1 information in the individual cells was readable. Ms. Plater responded in a letter on July 26,  
2 2006, "I suggest you review the manner in which Google produced its spreadsheets and charts  
3 before you demand that we provide our documents in special formats." She then listed several  
4 Bates ranges and noted, "These are just a sampling of the numerous charts that Google produced  
5 in the exact manner that American Blind produced the charts you refer to in your letter." After  
6 reviewing these charts, I explained to Ms. Plater, in a letter dated August 29, 2006, that Google's  
7 charts did not appear to be deficient, and repeated my request for more readable versions of the  
8 two sets of documents. In a letter dated September 5, 2006, Ms. Plater announced, "unless and  
9 until Google agrees to reproduce all of its spreadsheets in electronic or more readable form, we  
10 will not be doing the same." In a letter dated September 6, 2006, I repeated my request for  
11 complete versions of the spreadsheets, and I stated, "If there are specific charts that we have  
12 produced that likewise appear to omit information or contain misaligned headings, we will of  
13 course attempt to provide you with the missing information."

14 **Facts Related to ABWF's Inadequately Prepared 30(b)(6) Witness**

15 25. On June 22, 2006, Ms. Plater wrote a letter to Klaus Hamm, an attorney at my law  
16 firm. In that letter Ms. Plater announced that Gerald Curran had been designated as ABWF's  
17 corporate representative with regard to Topic 19 of Google's 30(b)(6) Deposition Notice of  
18 ABWF.

19 **Facts Related to Google's First Set of Requests for Admissions**

20 26. In a letter dated September 5, 2006, Ms. Plater cited the following cases in  
21 support of the accompanying objections to Google's First Set of Requests for Admissions:  
22 *Playboy Enterprises, Inc. v. Welles*, 60 F. Supp. 2d 1050, 1057 (S.D. Cal. 1999) (cited for the  
23 proposition that requests for admission cannot be used to compel an admission on a question of  
24 law); *Abbott v. United States*, 177 F.R.D. 92, 93 (N.D. N.Y. 1997) (cited for the proposition that  
25 hypothetical questions are not within the purview of Rule 36); *California v. The Joules Fribourg*,  
26 19 F.R.D. 432, 436 (N.D. Cal. 1955) (cited for the proposition that requests for admission cannot  
27 be applied to controverted legal issues that lie at the heart of a case); *Herrera v. Scully*, 143

1 F.R.D. 545, 549 (S.D.N.Y. 1992) (cited for the proposition that requests for admission must be  
2 direct, simple and limited to a singular relevant fact so that it can be admitted or denied without  
3 explanation). Ms. Plater did not re-assert ABWF's objection that it had no readily available  
4 information that would permit it to admit or deny the request.

5 **Facts Related to Google's Interrogatory Concerning ABWF's Names for Itself**

6 27. With regard to Interrogatory No. 1 in Google's Second Set of Interrogatories, on  
7 August 29, 2006, I wrote a letter to Ms. Plater asking her, *inter alia*, to specify the dates that  
8 ABWF had used the names "American Blind," "American Blind and Wallpaper Factory,"  
9 "American Blinds, Wallpaper & More," and "decoratetoday.com." I explained that the 700  
10 pages of documents to which ABWF's interrogatory response referred were not responsive to the  
11 interrogatory. In a responsive letter on September 5, 2007, Ms. Plater referred me, once more, to  
12 the 700 pages of documents.

13 **Facts Related to the Kaden Company Questionnaires**

14 28. ABWF has produced reports in this litigation from the Kaden Company. Those  
15 reports indicate that the Kaden Company conducted three focus groups on behalf of ABWF in  
16 the past several years. The reports offered to provide ABWF with the questionnaires that  
17 accompanied these focus groups.

18 29. In a letter dated July 21, 2006, I asked Ms. Plater to produce these questionnaires.  
19 In a responsive letter on July 26, 2006, she refused to do so without legal authority showing that  
20 ABWF was obligated to produce documents in the possession of third parties. I provided her  
21 that legal authority in a letter on August 29, 2006. In a September 5, 2007 letter, Ms. Plater  
22 agreed to produce the Kaden information "if it still exists."

23 **Facts Related to the American Wallpaper Survey**

24 30. ABWF has produced a document in this litigation showing that it conducted an  
25 online survey of those individuals who visited ABWF's website after performing an internet  
26 search for the phrase "american wallpaper" (the "American Wallpaper Survey"). According to  
27 the document, which is attached as Exhibit N, individuals were asked why they visited ABWF's  
28

1 website. The survey appears to have been conducted by Michael Layne, ABWF's Vice-  
2 President of Internet Content.

3 31. At the time of Google's deposition of Mr. Layne (who was testifying on behalf of  
4 ABWF), ABWF had only produced two sets of documents associated with the American  
5 Wallpaper Survey: (1) four CDs containing the raw data from the survey, which consisted of  
6 captured screenshots indicating how the survey participants navigated the online survey, which  
7 was placed on ABWF's website, and (2) an 8-line e-mail from May 2006—two years after the  
8 survey was conducted—in which Mr. Layne explained the survey results that were obtained in  
9 July 2004, using very specific numbers (*i.e.*, Exhibit N).

10 32. In two letters on August 2, 2006, I requested that ABWF produce *all* documents  
11 related to the American Wallpaper Survey, including any documents discussing the survey  
12 methodology or analyzing the results. I pointed out that there must at least have been a  
13 document from July 2004 describing the survey results, because Mr. Layne could not have  
14 possibly remembered the precise results of the survey two years after the fact. Ms. Plater  
15 responded on August 3, 2006, that she had produced all documents received from her client, but  
16 that she would check for further documents from Mr. Layne.

17 33. Roughly one week later, ABWF produced only one additional document—a July  
18 2004 email to which Mr. Layne had referred when he drafted his May 2006 email (*i.e.*, Exhibit  
19 O). This July 2004 email was sent to at least seven non-lawyers at ABWF. ABWF's position  
20 was, therefore, that it had no other documents related to the American Wallpaper Survey.

21 **Facts Related to ABWF 1308 – 1310**

22 34. The top portion of a document produced by ABWF, ABWF 1308 – 1310, was  
23 redacted on the basis of attorney-client privilege. On August 29, 2006, I wrote a letter to Ms.  
24 Plater asking why this portion of the document was redacted. Ms. Plater responded, “at this  
25 time, I can only speculate as to why ABWF 1308 was redacted because we have been unable to  
26 locate the original. We are continuing to look for it.”

27 **Facts Related to the Form of ABWF's Production**

