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 AMERICAN BLIND AND WALLPAPER  
 10 FACTORY, INC.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 GOOGLE INC., a Delaware corporation,

14 Plaintiff,

15 v.

16 AMERICAN BLIND & WALLPAPER  
 FACTORY, INC., a Delaware corporation  
 17 d/b/a decoratetoday.com, Inc.; and DOES 1-  
 100, inclusive,

18 Defendants.

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

**COUNTER-PLAINTIFF AMERICAN  
 BLIND AND WALLPAPER FACTORY,  
 INC.'S OPPOSITION TO COUNTER-  
 DEFENDANT GOOGLE INC.'S MOTION  
 TO COMPEL COUNTER-PLAINTIFF  
 ABWF TO SATISFY ITS OUTSTANDING  
 DISCOVERY OBLIGATIONS**

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

21 AMERICAN BLIND & WALLPAPER  
 FACTORY, INC., a Delaware corporation  
 22 d/b/a decoratetoday.com, Inc.,

23 Counter-Plaintiff,

24 v.

25 GOOGLE, INC.

26 Counter-Defendants.

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1 **I. INTRODUCTION**

2 Google's Motion to Compel unnecessarily seeks the Court's intervention on issues that  
3 either were resolved or could be resolved by the parties. As the Court implicitly recognized when  
4 it ordered the parties to further meet and confer, Google's motion is not only premature, but it is  
5 also, on a large scale, a waste of this Court's time. American Blind has made every reasonable  
6 effort to moot the need for a decision on the Motion to Compel. Notwithstanding the Court's  
7 Order directing the parties to further meet and confer to resolve some or all of the issues raised in  
8 the Motion to Compel, Google has remained intractable in its positions and has not offered to  
9 compromise on a single issue. Indeed, Google did not reach out to American Blind to further  
10 meet and confer as per the Court's order. Instead, American Blind took the initiative to try to  
11 resolve the matters raised in the motion prior to filing the instant Opposition by making numerous  
12 offers to compromise by letter dated September 19, 2006.<sup>1</sup> (See Declaration of Caroline C.  
13 Plater, ("Plater Decl."), Exhibit A.)

14 On September 21, 2006, Google responded to American Blind's numerous concessions,  
15 with no concessions of its own. (Plater Decl. Ex. B.). Rather, Google's positions became even  
16 more combative and intractable. Google did not make any good faith effort to compromise, even  
17 on the most minor points. For example, after American Blind had offered to produce the items  
18 Google sought in electronic form, Google objected to the suggestion that each side should pay for  
19 the cost of conversions from a document's native form if that conversion cannot be done in house.  
20 (Plater Decl. Ex. A and B). Google did not even acknowledge that it had gotten what it asked for  
21 – it just found another point of contention.

22 As set forth below, most of the practical issues have been resolved by virtue of American  
23 Blind's willingness to compromise. The only remaining points, on which American Blind cannot  
24 further compromise, are legal issues for which American Blind has a good faith basis for its  
25 positions. American Blind has presented Google with its supporting legal authority on these  
26

27 <sup>1</sup> American Blind sent its further meet and confer letter to Google on September 19, 2006,  
28 because the prior week the parties had a settlement conference on September 13, 2006 and  
counsel was attending an out of town deposition in this matter on September 14, 2006.

1 positions. Google, however, has refused to recognize the legal authority provided and has not  
2 extended any offers of compromise.

3 **II. ARGUMENT**

4 **A. American Blind has agreed to produce a more readable version of the Online**  
5 **Customer Satisfaction survey and has produced all documents that currently**  
6 **exist regarding the same.**

7 Google's request with regard to the Online Customer Satisfaction Survey is moot.  
8 American Blind has agreed to produce this survey and its associated documents in more readable  
9 form. In fact, American Blind does not have a more readable version for the full range of the data  
10 that was produced in raw format to Google. Yet, its has agreed to produce this information to  
11 Google in a format that will allow Google to run it on a spreadsheet program (such as Excel) to  
12 create a more readable document.

13 With regard to the associated documents to this survey, American Blind has repeatedly  
14 assured Google that it did not have any other documentation associated with this survey. Google,  
15 never one to concede, has continued to insist that other documents must exist regarding this  
16 survey based on the testimony of one of American Blind's 30(b)(6) designee, Jeffery Alderman.  
17 Specifically, with regard to that survey, Mr. Alderman testified that American Blind would run  
18 weekly spreadsheets in Excel from the raw data contained in the survey. When Google requested  
19 these weekly spreadsheets following Mr. Alderman's testimony, counsel for American Blind  
20 inquired and was told that American Blind did not generally retain these weekly spreadsheets  
21 generated off the raw data, but that they could be recreated if necessary.

22 Notwithstanding that American is not obligated to create documents that do not exist, in  
23 an effort to show its good faith in complying with Google's discovery requests, American Blind  
24 has informed Google that it can recreate these weekly spreadsheets from the raw data, and will  
25 produce these recreated spreadsheets in electronic form prior to the date Google's reply is due.<sup>2</sup>

26 Based on the foregoing, American Blind has fulfilled its discovery obligations to Google

27 <sup>2</sup> With regard to providing the raw data of the survey in a more readable form, this is a  
28 technical issue that must be addressed between the parties with regard to what is  
compatible or useful. American Blind has indicated its willingness to address that issue.

1 regarding the Online Customer Satisfaction Survey and Google's Motion to Compel regarding  
2 this issue is moot.

3 **B. American Blind has agreed to produce more readable copies of the**  
4 **spreadsheets requested by Google.**

5 Again, Google's motion to compel is moot on this issue. American Blind has agreed to  
6 produce the two identified sets of spreadsheets requested by Google in the form requested. The  
7 one spreadsheet, ABWF 5530-5534, will be produced electronically prior to the date Google's  
8 reply on this motion is due. The other spreadsheet, ABWF 5605-7802, was produced to counsel  
9 for American Blind in paper form and is quite voluminous. Therefore, American Blind cannot, as  
10 of the date of this filing, assure that this material will be produced in electronic form prior to  
11 Google's reply.

12 **C. Google is not entitled to an additional deposition on the issue of damages.**

13 Google received adequate testimony from American Blind's 30(b)(6) designee, Gerald  
14 Curran, on the injuries or damages suffered by American Blind as a result of Google's trademark  
15 policy. Re-deposition on this issue should be denied. Re-deposition on a 30(b)(6) topic should  
16 only be ordered in the most extreme cases. *See, e.g., Alexander v. Federal Bureau of*  
17 *Investigation*, 186 F.R.D. 137, 142-43 (re-deposition denied where 30(b)(6) deponent was unable  
18 to testify to several lines of inquiry by opposing counsel for which opposing counsel was entitled  
19 to answers; responding to written questions was sufficient). Google has failed to demonstrate that  
20 Mr. Curran failed to adequately address Topic 19 of Google's Notice of 30(b)(6) Deposition  
21 ("Topic 19").<sup>3</sup>

22 Topic 19 states: "The injuries and damages allegedly suffered by American Blind as a  
23 result of Google's actions." (Plater Decl. Ex. C.) Mr. Curran provided testimony on the damages  
24 or "harm American Blind claims to have suffered as a result of Google's actions," (Plater Decl.  
25 Ex. D, 13:17-2; *see also id.*, 14:1-13, 20-24). Mr. Curran specifically testified regarding the  
26

27 <sup>3</sup> Notably, it was not until Google's September 6, 2006 letter that Google clarified which  
28 30(b)(6) topic was at issue. Initially, Google had identified Topic 22, only to admit the  
day before it filed its Motion to Compel that it meant Topic 19, not 22.

1 financial injury of American Blind as a result of Google's trademark policy. (*Id.*). Thus, Topic  
2 19 has been adequately addressed.

3 Google's only claim regarding the alleged deficiency of Mr. Curran's testimony is that he  
4 was unable to testify as to the exact calculation of potential damages to American Blind as a  
5 result of Google's trademark policy. Topic 19, however, does not ask for any calculations – just  
6 “injuries and damages”. Moreover, Google's motion fails to include Mr. Curran's explanation  
7 why no one at American Blind has performed the calculation. Mr. Curran testified that American  
8 Blind would have a difficult time calculating that figure because it was dependant on information  
9 that Google — not American Blind — possessed. (*Id.* at 15:13-19.) Though this is not the  
10 answer that Google wanted, it is an answer and, in total, Mr. Curran provided adequate testimony  
11 on the Topic 19.

12 Nonetheless, after Google objected and sought re-deposition on this issue, American Blind  
13 offered to answer written questions submitted by Google on the issue of the calculation of  
14 potential damages. (Plater Decl. Ex. A.). American Blind suggested this as the most expedient  
15 and comprehensive way for addressing this issue, especially in light of the fact that Mr. Curran is  
16 no longer with the company. (*Id.*). Google refused this offer by letter on September 21, 2006 and  
17 in the conference call conducted on September 25, 2006. (Plater Decl. Ex. B.)

18 Finally, Google is not prejudiced by the lack of live testimony on this issue. The issue of  
19 American Blind's calculation of potential damages is for American Blind to prove at trial.

20 Despite American Blind's objection that it is not legally obligated to produce another  
21 witness on the issue of damages, American Blind has offered a reasonable compromise. Google,  
22 however, has made no attempt to compromise. Based on the foregoing, Google has failed to  
23 establish a compelling reason why it is entitled to re-deposition on Topic 19. Google's motion on  
24 this issue should be denied in full.<sup>4</sup>

25  
26  
27 <sup>4</sup> Because Google has insisted on pursuing this issue, American Blind has withdrawn its  
28 prior offer to compromise on this issue by answering the written questions.

1           **D. Google is not entitled to re-depose Jeffery Alderman and American Blind has**  
2           **produced all documents on which Mr. Alderman relied for his testimony.**

3           Google is not entitled to re-depose Mr. Alderman regarding American Blind's Affiliate  
4 Program simply because Google did not have at his deposition 11 pages of documents on which  
5 he relied for his testimony regarding this issue. Again, re-deposition is an extreme request and  
6 should not be ordered absent compelling circumstances. *See, e.g., Alexander v. Federal Bureau*  
7 *of Investigation*, 186 F.R.D. at 142-43. American Blind has offered to answer written questions  
8 submitted by Google on the 11 pages produced after Mr. Alderman's deposition. Google, of  
9 course, declined this offer and chose to pursue this issue with the Court. (Plater Decl. Ex. A and  
10 B.) Google's position, as set forth in its motion and correspondence regarding the same, is  
11 unreasonable and does not justify its request for re-deposition of Mr. Alderman.

12           First, it is important to note that counsel for American Blind has asked Mr. Alderman no  
13 less than four times what he relied upon in providing the testimony at issue. Each time, he  
14 indicated that he relied on the Coremetrics and Commission Junction materials, which Google  
15 had at the time of his deposition, absent the 11 pages that were subsequently produced. Despite  
16 having informed Google of Mr. Alderman's response, Google repeatedly refers to  
17 Mr. Alderman's testimony that he relied upon "an analysis of ABWF's natural search results" —  
18 a "document" Google insists American Blind must have, but has not produced. Mr. Alderman  
19 has assured counsel that there is no specific document which contains the "analysis of ABWF's  
20 natural search results." Mr. Alderman has surmised that his testimony was likely based on an  
21 *analysis* he ran from the data (data Google has) but never saved in any form.

22           Second, the 11 pages must be viewed in context. The additional pages produced after  
23 Mr. Alderman's deposition are only 11 out of more than 35,000 pages of Coremetrics materials  
24 that were produced prior to Mr. Alderman's deposition.

25           Third, the explanation that Google is seeking with regard to why these 11 pages were not  
26 originally produced is neither suspect nor a secret. Upon further inquiry following Google's  
27 request, it was determined that not all documents had been collected and produced. Therefore,  
28 American Blind produced those pages to Google belatedly, but immediately upon their discovery.



1 Given that Google provided the same explanation to American Blind when it belatedly produced  
2 responsive documents that it had in its possession for over two years (and since it began its  
3 production in this matter), it would seem reasonable that Google would accept this as something  
4 that happens from time to time in litigation.

5 American Blind objects to Google's request to re-depose Mr. Alderman. Google's only  
6 legitimate questions for Mr. Alderman are based on the 11 pages of documents that were  
7 produced after Mr. Alderman's deposition. Written questions more than adequately address  
8 issues Google may have regarding the 11 pages of documents. Notably, Google offered this same  
9 compromise when American Blind sought to re-depose Google's witness Alana Karen on a  
10 document that was not properly available prior to or at her deposition. As has been the theme of  
11 Google's current motion, it does not expect to be held to the same standard to which it seeks to  
12 hold American Blind.

13 Google should not be rewarded for its obstinate behavior and unreasonable demands.  
14 Google has failed to establish a compelling reason why it is entitled to re-depose Jeffery  
15 Alderman. Google's motion on this issue should be denied.

16 **E. American Blind has provided legally sufficient responses to Google's First Set**  
17 **of Requests For Admission.**

18 As Google acknowledges in its motion, American Blind provided Google with legal  
19 support for the objections it made the two requests for admission contained in Google's First Set  
20 of Requests for Admission. (Plater Decl. Ex. E and F.) American Blind did not make any  
21 boilerplate objections and has not waived any properly stated objection by virtue of any  
22 correspondence with Google.

23 Request for Admission No. 1 is improper for a number of reasons. First, it poses a  
24 hypothetical question that is not proper material for a request for admission. *See Abbott v. U.S.*,  
25 177 F.R.D. 92, 93 (N.D. N.Y. 1997) (hypothetical questions are not within the purview of Rule  
26 36). Second, the hypothetical posed is compound. *See Herrera v. Scully*, 143 F.R.D. 545, 549  
27 (S.D. N.Y. 1992) (request for admission must be direct, simple and limited to singular relevant  
28 fact so that it can be admitted or denied without explanation; requests should not require the

1 answering party to qualify responses). Third, the compound hypothetical posed improperly seeks  
2 a legal conclusion. *See Playboy Enterprises, Inc. v. Welles*, 60 F. Supp. 2d 1050, 1057 (S.D. Cal.  
3 1999) (requests for admission cannot be used to compel an admission on a question of law).  
4 Request No. 1 contains two causative “if” phrases and then asks for an admission on whether  
5 those two “ifs” together result in a violation of the Lanham Act. This is neither direct nor factual  
6 and asks American Blind to make a legal conclusion regarding the key issue in this case —  
7 whether Google’s actions violate the Lanham Act. *See Goldberg v. Int’l Testing Corp.*, 30 F.R.D.  
8 367, 368 (S.D. Cal. 1962) (plaintiff not allowed to use requests for admission to compel  
9 defendant to prove plaintiff’s case); *People v. The Jules Fribourg*, 19 F.R.D. 432, 435-36 (N.D.  
10 Cal. 1955) (cannot apply requests for admission to controverted legal issues lying at the heart of  
11 the case). Request No. 1 is improper for the foregoing reasons and, therefore, American Blind  
12 should not be compelled to further answer this request for admission.

13 With regard to Request for Admission No. 2, similar issues exist on Google’s improper  
14 phrasing. First, Request No. 2 seeks a factual conclusion that American Blind cannot make based  
15 on the incomplete hypothetical posed. *See Abbott*, 177 F.R.D. at 93. Second, the use of such  
16 phrases as “no way to determine for certain” and “some other word or phrase” are so ambiguous  
17 that there is no way this request could be answered with out qualification or explanation. *See*  
18 *Herrera*, 143 F.R.D. at 549. Third, American Blind cannot ascertain from any information at its  
19 disposal what a hypothetical Google user would know “for certain”; particularly without  
20 knowledge of the “other word or phrase” that may or may not have been used by this hypothetical  
21 Google user when conducting the hypothetical search posed in Request No. 2. *See Booth Oil Site*  
22 *Admin. Group v. Safety Kleen Corp*, 194 F.R.D. 76, 79 (W.D. N.Y 2000) (“Ambiguous and vague  
23 requests which cannot be fairly answered will not be enforced...Absent a statement ‘that the party  
24 has made a reasonable inquiry and that the information known or readily obtainable to by the  
25 party is insufficient to enable the party to admit or deny,’ the request is to be answered by its  
26 admission or denial.”) Request No. 2 is improper for the foregoing reasons and, therefore,  
27 American Blind should not be compelled to further answer this request for admission.

28

1           **F. American Blind will provide Google with the requested information**  
2           **regarding Google's Second Set of Interrogatories.**

3           American Blind has agreed to provide Google with the dates that correspond to the name  
4 changes referred to in American Blind's Answer to Google's First Interrogatory in its Second Set  
5 of Interrogatories. This will be done prior to the due date for Google's reply.

6           **G. All Kaden documents have been produced.**

7           As of September 19, 2006, American Blind had produced all Kaden documents in its  
8 possession and control and assured Google that The Kaden Company ("Kaden") had confirmed  
9 that it did not possess any additional materials. (*See* Plater Decl. Ex. A.) At Google's request,  
10 American Blind contacted Kaden to determine if Kaden had any additional materials regarding  
11 the studies it had conducted for American Blind. (Plater Decl. Ex. G.) Kaden responded that it  
12 did not have anything other than the DVDs of the session — which have already been produced  
13 to Google. (*Id.*) This, however, did not satisfy Google. Google continued to raise this as an  
14 issue in its September 21, 2006 correspondence. American Blind went one step further to assure  
15 Google that it had asked Kaden to provide anything and everything regarding the American Blind  
16 studies. To that end, Jeffery Alderman of American Blind spoke with Kaden by telephone, again  
17 asking Kaden to review all of its files (electronic and paper) to look for any additional  
18 documentation regarding the focus groups conducted on American Blind's behalf. Mr. Alderman  
19 informed Kaden that it was critical that Kaden send American Blind any documents, including  
20 but not limited to meeting notes, phone call notes and interview screening questionnaires. Kaden  
21 again stated the only thing the company sometimes keeps is the tapes or DVDs of the focus  
22 groups. This information was all conveyed to Google by telephone conference on September 25,  
23 2006. Google, however, refused to withdraw this issue from submission to the Court.

24           Based on the foregoing, American Blind has more than fulfilled its discovery obligation  
25 regarding the Kaden Studies. There is nothing further American Blind can provide, and nothing  
26 more to compel.

1           **H.    American Blind has produced all documents regarding the “American**  
2           **Wallpaper Survey.”**

3           American Blind has repeatedly conveyed to Google, in multiple letters and by telephone  
4 conference on September 25, 2006, that it does not possess any additional materials regarding the  
5 American Wallpaper Survey. Google, however, refuses to accept this answer and likewise  
6 refused to withdraw this issue from submission to the Court.

7           As of September 25, 2006, American Blind has indicated that it has again searched for any  
8 additional materials regarding this survey and none were turned up. This is at least the third time  
9 a search has been conducted to locate any additional documents regarding this survey. It was  
10 explained to Google that American Blind had concluded that the survey questions and  
11 methodology was most likely created by a number of ex-employees including Steve Katzman,  
12 Sam Stephens and possibly Ron Myers and that was why no additional materials could be  
13 located. As of the date of this filing, counsel for American Blind has requested that American  
14 Blind search the email of these departed employees for any responsive material, if that is possible  
15 and if that was not done in the prior three searches. If any additional materials are recovered,  
16 they will be produced immediately.

17           **I.    The issue regarding ABWF 1308-1310 is moot.**

18           In its September 21, 2006 letter, Google agreed that this issue is now moot. (*See* Plater  
19 Decl., Ex. B at p. 4.)

20           **J.    American Blind’s document production complies with Fed. R. Civ. P. 34(b).**

21           American Blind has informed Google that it has produced its documents as they are kept  
22 in the usual course of business and has provided an index and description of the documents, by  
23 Bates range, for the documents produced.<sup>5</sup> This is more than sufficient under Rule 34(b), which  
24 allows American Blind to either produce documents “as they are kept in the usual course of  
25 business or shall organize and label them to correspond with the categories in the request.” Fed.

26           <sup>5</sup> American Blind acknowledges that it did not provide an index or description by Bates  
27 range for one shipment of document to Google in October 2005. American Blind  
28 maintains that this is not explicitly required by Rule 34(b). If, however, the Court  
requires, American Blind will do so.

1 R. Civ. P. 34(b).

2 Courts have noted that Rule 34 does not explain what it means to produce documents “as  
3 they are kept in the usual course of business.” *See Cardenas v. Dorel Juvenile Group, Inc.*, 230  
4 F.R.D. 611, 618 (D. Kan. 2005); *Williams v. Taser Int’l Inc.*, 2006 WL 1835437 (N.D. Ga. June  
5 30, 2006). The fact that American Blind produced its documents as they are kept in the usual  
6 course of business and also provided an index and description of the documents, by Bates range,  
7 is in accord with what courts have required when the organization of a production has been  
8 challenged. *See Williams*, 2006 WL 1835437 \*7 (while party had the option to produce  
9 documents as they are kept in the ordinary course of business, it also had an obligation to  
10 organize the documents in such a manner that other party may obtain, with reasonable effort, the  
11 documents responsive to their requests). American Blind has produced its documents in such a  
12 manner that Google can easily obtain the documents responsive to their requests.

13 In contrast to Google’s evasive behavior, which the Court will no doubt recall from its  
14 February 8, 2006 discovery order (Docket Item No. 94), American Blind has always stated that it  
15 was producing its documents as they are kept in the ordinary course of business and along with  
16 each production, has provided a guide and description of each distinct Bates range. (*See Plater*  
17 *Decl. Ex. H.*) In doing so, American Blind has complied with Rule 34(b), as well as the spirit of  
18 the Court’s Discovery Order.<sup>6</sup>

19 American Blind has provided a great deal more organization and relevant categorization  
20 in its production than Google. For every Bates range American Blind has produced since April  
21

22 <sup>6</sup> Google’s position that American Blind must heed the Court’s Discovery Order is at odds  
23 with Google’s position that the Court’s Discovery Order did not extend to its further  
24 productions, which it has apparently produced as they are maintained in the ordinary  
25 course of business. This issue was addressed via email and telephone conversations  
26 between counsel for American Blind, Caroline Plater, and counsel for Google, Klaus  
27 Hamm on or about March 27, 2006. In these exchanges, American Blind objected to the  
28 manner in which Google produced documents on or about March 23, 2006, following this  
Court’s Order. American Blind believed Google was under a continuing obligation to  
produce its documents in the manner instructed by the Court’s Discovery Order. Google  
disagreed. In compromise, Google sent American Blind a new and more detailed  
explanation of the production, which American Blind accepted as sufficient. (*Plater Decl.*  
*Ex. I.*) Thereafter, American Blind produced its documents in the ordinary course and  
with similar descriptions.

1 2006, nearly 47,000 pages of documents, American Blind has provided Google with a detailed  
2 description of the type of documents produced, in addition to producing them as they were kept  
3 by American Blind. For example, correspondence dated June 30, 2006, from Caroline Plater to  
4 Ajay Krishnan, its states:

5 Bates ranges ABWF 008806- 042980, produced on CD, and ABWF 043173-  
6 044471, produced on paper, contain information regarding Coremetrics' analysis  
7 of the American Blind internet search engine results and other data regarding  
8 online searches for American Blind. Bates range ABWF 042981-043172 are  
documents which contain information regarding keyword and search engine  
analysis and strategy, including financial analysis regarding the same.

9 (Plater Decl. Ex. H.) This is more than adequate to comply with Rule 34. The same or greater  
10 level of specificity has been employed by American Blind in every other description provided.<sup>7</sup>

11 (*See Id.*)

12 Finally, Google does not claim that it has had difficulty searching and using the American  
13 Blind's documents for purposes of conducting depositions and further discovery. Given that the  
14 descriptions provided by American Blind can easily be correlated to Google's 30(b)(6) topics and  
15 document requests, it is hard to imagine that Google cannot determine which witness should be  
16 questioned about which documents.

17 Google has failed to demonstrate that American Blind's production does not comply with  
18 Rule 34(b) and, therefore, its Motion to Compel should be denied.

19 **III. CONCLUSION**

20 Google's Motion to Compel should not be before the Court. Google has obtained or

21 <sup>7</sup>  
22 Google, on the other hand, has provided far less useful descriptions of the documents it  
23 has produced "in the ordinary course of business." For example, by letter dated March 20,  
24 2006, Google provided the following descriptions of its production: "GGL002855-  
25 GGL002868 consists of settlement agreements with third parties regarding AdWords;  
26 GGL002869-GGL002904 consists of documents regarding the appearance of the alleged  
27 ABWF marks in the text of Sponsored Links or as keywords; GGL002905-GGL002912  
28 consists of financial documents regarding Google's AdWord's program..." (Plater Decl.  
Ex. I.) In a letter dated March 23, 2006, described its production as: "GGLE00000001-  
00006523 [sic] and GGLE00006259-GGLE00017351 are documents from Britton  
Picciolini's files; GGLE0001756-00018767 are documents from Carrie Chung's files;  
GGLE00018768-00018861 are documents from Rose Hagan's files..." (*Id.*) These  
descriptions in the March 23, 2006 letter provided no guidance and, therefore, American  
Blind requested further descriptions of what was in these individuals' files. On March 28,  
2006, Google provided the further descriptions. (*Id.*)

1 shortly will obtain all documents in the form it has requested. Google's requests for additional  
2 depositions and for American Blind to re-produce its documents are not grounded in law or  
3 reason. Google's actions in bringing this motion and its failure to compromise despite this  
4 Court's order to further meet and confer, demonstrate Google's lack of good faith. Google's  
5 Motion to Compel should be denied in its entirety as moot and/or unsubstantiated.

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DATED: September 27, 2006

HOWREY LLP

By:           /s/ Ethan B. Andelman            
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