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6 Attorneys for Plaintiff and Counter Defendant
7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT
9
10 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.

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.
24

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

**SUPPLEMENTAL DECLARATION OF
AJAY S. KRISHNAN IN SUPPORT OF
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
Judge: Hon. Richard Seeborg

25
26 **REDACTED VERSION**
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1 I, Ajay S. Krishnan, declare as follows:

2 1. I am associated with the firm of Kecker & Van Nest LLP, counsel for Plaintiff and
3 Counter-Defendant Google Inc., and am admitted to practice before this Court. I make this
4 declaration in support of Google's Motion to Compel Counter-Plaintiff American Blind &
5 Wallpaper Factory, Inc. ("ABWF") to Satisfy Its Outstanding Discovery Obligations. Unless
6 otherwise stated, I know the facts stated herein of my personal knowledge and if called as a
7 witness, I would testify competently thereto.

8 **List of Exhibits**

9 2. Attached hereto as Exhibit A is a true and correct copy of American Blind &
10 Wallpaper Factory, Inc.'s Initial Disclosures Pursuant to Federal Rule of Civil Procedure 26,
11 dated April 27, 2005.

12 3. Attached hereto as Exhibit B is a true and correct copy of pages from the
13 deposition of Scot M. Powers, taken on July 11, 2006. Google has under separate cover
14 requested that this document be filed under seal.

15 4. Attached hereto as Exhibit C is a true and correct copy of pages from the
16 deposition of Joseph Charno, taken on July 21, 2006. Google has under separate cover requested
17 that this document be filed under seal.

18 5. Attached hereto as Exhibit D is a true and correct copy of pages from the
19 deposition of Jeffrey A. Alderman, taken on August 4, 2006.

20 **Issue A—The Online Customer Satisfaction Survey**

21 6. On October 3, 2006, the day before the deadline for filing the reply brief, I
22 received from ABWF two CDs containing newly produced documents. The cover letter, from
23 ABWF counsel Caroline Plater, indicated that the CDs contained those copies of the weekly
24 spreadsheets, derived from the Online Customer Satisfaction Survey, that had not been
25 destroyed. The cover letter also indicated that the CDs contained specially created Excel
26 Spreadsheets that contained all of the raw data from the Online Customer Satisfaction Survey.

27 **Issue D—Follow-up Deposition of Jeffrey Alderman**

28 7. In a letter to me, dated September 19, 2006, Ms. Plater stated that Mr. Alderman

1 had relied on certain Commission Junction materials (which numbered roughly 100 pages), 11
2 pages of recently produced documents, and Coremetrics reports to provide his 30(b)(6)
3 testimony on the issue of the May/June 2006 affiliate-bidding experiment conducted at ABWF.
4 On information and belief, ABWF produced roughly 35,000 pages of Coremetrics reports. In a
5 responsive letter on September 21, 2006, I asked Ms. Plater to identify which Coremetrics
6 reports Mr. Alderman had relied on. I asked again in a September 25, 2006 phone call with Ms.
7 Plater. ABWF has never provided a response to that question.

8 **Issue H—The “American Wallpaper Survey” Documents**

9 8. Prior to his leaving ABWF in May of 2006, Steve Katzman had been designated
10 by ABWF as its 30(b)(6) witness on all topics noticed by Google.

11 9. Counsel for ABWF has represented at various points during this litigation that
12 Steve Katzman, Joe Charno, and Bill Smith no longer work at ABWF. Additionally, each of
13 them has so testified during subpoenaed depositions. Katzman, Charno, and Smith are three of
14 the five ABWF employees identified in ABWF’s initial disclosures as individuals with relevant
15 knowledge.

16 **Issue J—The Manner of ABWF’s Production**

17 10. I have reviewed ABWF’s initial production of roughly 3000 documents. That
18 production contains cease-and-desist correspondence, litigation files, email correspondence
19 between Google and ABWF, correspondence between ABWF and other search engines, and
20 other types of documents. But these documents are not in neat categories. Each of the types of
21 documents listed above occur at numerous different locations within the production. I did not
22 find any dividers or labels between individual documents. I could not determine why the
23 documents were kept in this order. In the cease-and-desist correspondence and in the litigation
24 files it is difficult (and sometimes impossible) to tell where one matter ends and the next matter
25 begins.

26
27 I state under penalty of perjury of the laws of the United States of American that the
28 foregoing statements are true and correct. Executed October 4, 2006, at San Francisco,

1 California.

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3 /s/ Ajay S. Krishnan
4 AJAY S. KRISHNAN
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