

1 1. I, David A. Rammelt, am over the age of eighteen and attest to the matters herein
2 contained based upon my personal knowledge.

3 2. I am a partner with Kelley Drye & Warren, and am admitted *pro hac vice* to serve
4 as trial counsel for defendant/counter-plaintiff American Blind & Wallpaper Factory, Inc., in
5 connection with this litigation.

6 3. I was directly involved in the negotiations of the terms of the Stipulated Protective
7 Order entered in this case. Originally, we submitted to opposing counsel, Kecker & Van Nest, a
8 drafted proposed order on June 9, 2005. On June 14, 2005, Michael Page, a partner at Kecker &
9 Van Nest, explained that he objected to our draft because it did not contain an “Attorneys’ Eyes
10 Only” level of confidentiality. Accordingly, Kecker & Van Nest sent to us a brand new proposed
11 order that, among other differences with our proposal, contained a second level of confidentiality.

12 4. I objected to Mr. Page’s proposed draft for several reasons, chief of which was that
13 the proposed “Attorneys’ Eyes Only” classification was much too broad. Accordingly, on June
14 28, 2005, I caused to be sent to Mr. Page a revised draft that, among other things, significantly
15 limited the types of documents that could be designated “Attorneys’ Eyes Only.” Furthermore, in
16 addition to an express “good faith” obligation under the proposed order, I added specific language
17 that the “Attorneys’ Eyes Only” would only be used in “limited circumstances.” On July 8, Mr.
18 Page agreed to this inclusion, which is set forth in the Stipulated Protective Order entered by
19 Judge Seeborg in this case.

20 5. In this capacity, I had several telephone conversations between November 29 and
21 30, 2005, with Klaus Hamm, also an attorney with Kecker & Van Nest representing
22 plaintiff/counter-defendant Google, Inc., concerning Google’s discovery responses in the case.
23 Specifically, we discussed Google’s designation of the majority of the documents it has produced
24 in this case as “Confidential – Attorneys’ Eyes Only,” which is the highest level of secrecy
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1 permitted under the Stipulated Protective Order in this case. During these phone conversations,
2 Mr. Hamm explained that the documents were affixed with the “Confidential – Attorneys’ Eyes
3 Only” because they had been produced in another case.

4 6. I asked Mr. Hamm whether he or anyone at his firm had reviewed the documents
5 produced by Google in this case to determine whether they individually qualified for the
6 “Confidential – Attorneys’ Eyes Only” designation under the express terms of the Stipulated
7 Protective Order in this case. Mr. Hamm admitted that no such review had been conducted.

8 7. When I asked Mr. Hamm how I could tell whether a document was to be treated as
9 “Confidential – Attorneys’ Eyes Only” under the express terms of the Stipulated Protective Order
10 in this case, he stated that he was not aware of any way to do so. When I asked him to advise me
11 specifically which documents should be treated as “Confidential – Attorneys’ Eyes Only” under
12 the express terms of the Stipulated Protective Order in this case, he declined.

13 8. I explained to Mr. Hamm during these conversations that the terms of our
14 Stipulated Protective Order had been specifically and carefully negotiated by me and others at his
15 firm over the course of five weeks, and that I had spent hours narrowly tailoring the categories of
16 documents that qualify as “Confidential – Attorneys’ Eyes Only” under the express terms of the
17 Stipulated Protective Order in this case. I referred to examples of documents that I believe have
18 been marked “Confidential – Attorneys’ Eyes Only” in violation of the terms of the Stipulated
19 Protective Order in this case, and I asked that he review all of the documents produced by Google
20 and to advise me of those that qualify in good faith for this restriction. I explained that these
21 improper designations are hampering my ability to prepare our case and to consult with my client
22 – who is barred under the terms of the Stipulated Protective Order from looking at anything
23 marked “Confidential – Attorneys’ Eyes Only” – because I cannot show or discuss (or have to
24 stop and call opposing counsel to seek approval before disclosing) the overwhelming number of
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1 documents in this case. Mr. Hamm again declined to revisit the existing designations or to advise
2 me of the particular documents he believes in good faith are subject to the “Confidential –
3 Attorneys’ Eyes Only” under the express terms of the Stipulated Protective Order in this case.

4 9. Alternatively, I asked Mr. Hamm to advise me of the documents – by Bates
5 Number, box or disk location, or otherwise – that Google had produced specifically in this case in
6 response to American Blind’s specific discovery requests (as opposed to the documents that
7 Google claims it is re-producing from another lawsuit in this case). Mr. Hamm declined.

8 10. I also asked Mr. Hamm to identify the origin and source of each of the documents
9 produced in this case and to advise me whether they are being produced as the files were
10 maintained in the ordinary course of business. Mr. Hamm declined. Alternatively, I asked Mr.
11 Hamm to identify or categorize the documents produced by Google to correspond with American
12 Blind’s specific discovery requests. Mr. Hamm declined.

13 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
14 and accurate this 23d day of December 2005.

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18 /s/ David A. Rammelt
19 David A. Rammelt

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21 **ATTESTATION OF CONCURRENCE OF FILING**

22 I, Ethan B. Andelman, under penalty of perjury of the laws of the United States of
23 America, attest that concurrence in the filing of this document has been obtained from each of the
24 other signatories to this document.

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27 /s/ Ethan B. Andelman
28 Ethan B. Andelman