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10 Attorneys for DIGITAL ENVOY, INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14 DIGITAL ENVOY, INC.,
 15 Plaintiff/Counter defendant,
 16 v.
 17 GOOGLE, INC.,
 18 Defendant/Counterclaimant.

Case No. C 04 01497 RS

**DECLARATION OF TIMOTHY KRATZ
 IN SUPPORT OF DIGITAL ENVOY,
 INC.'S MOTION FOR SANCTIONS
 AGAINST GOOGLE, INC.**

Date: June 15, 2005
Time: 9:30 a.m.
Courtroom: 4, 5th Floor

The Honorable Richard Seeborg

23 I, Timothy H. Kratz, declare as follows:

24 1. I am an attorney of law duly licensed to practice in the State of Georgia and
 25 admitted to practice before this court *pro hac vice*. I am a partner at the firm McGuireWoods LLP
 26 and attorney for the Plaintiff/Counterdefendant Digital Envoy, Inc. ("Digital Envoy"). I have
 27 personal knowledge of all facts set forth herein.
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1 2. On July 29, 2004, Digital Envoy served its first Request for Production of
2 Documents, Interrogatories, and Requests for Admissions on Google. On August 30, 2004,
3 Google served its responses to Digital Envoy's first set of discovery requests. On November 10,
4 2004, Google served its Supplemental and Amended Responses to Digital Envoy's First Set of
5 Interrogatories in response to numerous efforts on the part of Digital Envoy to obtain complete
6 responses to its discovery requests.

7 3. On December 3, 2004, Digital Envoy served its second set of Interrogatories and
8 second Request for Production of Documents to Google. On January 3, 2005, Google served its
9 responses to Digital Envoy's second set of discovery requests.

10 4. Following Google's second discovery responses, Digital Envoy contacted Google
11 in writing and by telephone to detail the deficiencies in the responses and to attempt to secure
12 Google's commitment to supplement with appropriate responses. On February 9, 2005, Timothy
13 H. Kratz sent a letter to David H. Kramer, counsel for Google describing each of the deficiencies
14 in Google's responses to Digital Envoy's discovery requests. A true and correct copy of the
15 February 9, 2005 letter is attached hereto as Exhibit A.

16 5. On March 9, 2005, undersigned counsel participated in a conference call with
17 Steven C. Holmes to discuss the outstanding discovery issues. Digital Envoy followed this
18 conference with additional written contact in a final effort to obtain the requested information
19 from Google without court intervention. Notwithstanding these efforts, Google has not adequately
20 responded or otherwise properly supplemented its responses.

21 6. I have been practicing law for 16 years and I am a member in good standing of the
22 bar of the State of Georgia.

23 7. My hourly rate is \$375 per hour which is competitive, reasonable and consistent
24 with the hourly rates charged by attorneys in the Atlanta market with similar experience and
25 expertise. I have expended 5 hours of time preparing the Motion to Compel Discovery Responses
26 and conferring with counsel in connection therewith. The amount of time that I have spent
27 preparing the motion is reasonable.

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1 8. Attorney Milo S. Cogan expended 8.9 hours of time at an hourly rate of \$235 per
2 hour preparing the Motion to Compel Discovery Responses and conferring with counsel in
3 connection therewith. Mr. Cogan has been practicing law since 2001 and is currently a member in
4 good standing of the bar of the State of Georgia. Mr. Cogan's hourly rate is competitive,
5 reasonable and consistent with the hourly rates charged by attorneys in the Atlanta market with
6 similar experience and expertise. The amount of time that Mr. Cogan spent preparing the motion
7 is also reasonable.

8 9. Attorney Sam H. Han expended 3.3 hours of time at an hourly rate of \$240 per
9 hour assisting with the preparation of the Motion to Compel Discovery Responses and conferring
10 with counsel in connection therewith. Mr. Han has been practicing law since 2001 and is currently
11 a member in good standing of the bar of the State of Georgia. Mr. Han's hourly rate is
12 competitive, reasonable and consistent with the hourly rates charged by attorneys in the Atlanta
13 market with similar experience and expertise. The amount of time that Mr. Han spent working on
14 the motion is also reasonable.

15 10. Digital Envoy has incurred attorneys' fees in connection with bringing the Motion
16 to Compel Discovery Responses in the amount of \$4,758.50.

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct. Executed on April 29, 2005, at Atlanta, Georgia.

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/s/ Timothy H. Kratz

Timothy H. Kratz

