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

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

Case No. C 04 01497 RS

**DECLARATION OF CRAIG CARDON IN  
SUPPORT OF DIGITAL ENVOY'S  
REQUEST FOR AN ORDER ALLOWING  
SURREPLY**

Date: September 22, 2004  
Time: 9:00 a.m.  
Crtrm.: 4, 5th Floor

The Honorable Richard Seeborg

21 I, P. Craig Cardon, declare:

22 1. I am an attorney licensed to practice before this Court and am a member of  
23 Sheppard Mullin Richter & Hampton LLP, counsel of record for plaintiff and counterdefendant  
24 Digital Envoy, Inc. in this matter. I make this declaration based on my personal knowledge,  
25 except where noted otherwise, and would competently testify to these statements if called to do so.

26 2. On August 20, 2004, I received a fax letter from counsel for Google, Stephen  
27 Holmes. A true and correct copy of this letter is attached as Exhibit A. That letter asked Digital  
28 Envoy to provide a California Code of Civil Procedure ("C.C.P.") section 2019(d) trade secret

1 disclosure. This was the first time Google ever raised the C.C.P. § 2019(d) issue. That same day I  
2 sent Mr. Holmes an email reminding him that this case was in Federal court and not State court.

3 3. On August 23, 2004, I spoke with Mr. Holmes and told him that no case in the  
4 Northern District nor any opinion of the Ninth Circuit had ever held that a C.C.P. section 2019(d)  
5 disclosure is required in Federal court. Mr. Holmes maintained that the case out of the Central  
6 District did mandate such disclosure in the Northern District.

7 4. After I got off of the phone with Mr. Holmes, I received a letter from him at 5:10  
8 p.m. asserting that the Central District case applied and requiring that Digital Envoy provide a  
9 C.C.P. section 2019(d) disclosure. A true and correct copy of this letter is attached as Exhibit B.  
10 Realizing the inconsistency of Google's demand and its Motion to Stage Discovery, I filed a  
11 Surreply in opposition to Google's motion at or about 11:30 p.m. that same day. I did not seek a  
12 stipulation from opposing counsel prior to filing the reply brief in light of the late hour at which I  
13 filed the Surreply.

14 I declared under the penalty of perjury that the above statement are true. Executed this  
15 24th day of August 2004 in San Francisco, California.

16  
17 /s/

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P. CRAIG CARDON