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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HYPERTOUCH, INC., a California
corporation,

Plaintiff,

vs.

KENNEDY-WESTERN UNIVERSITY,

Defendant.

Case No. C 045203 SI

**DECLARATION OF JOHN L. FALLAT
IN SUPPORT OF RESPONSE AND
OPPOSITION TO MOTION FOR
ORDERS OVERRULING
OBJECTIONS TO
INTERROGATORIES**

**Date: August 12, 2005
Time: 9:00 a.m.
Dept. 10**

I, John L. Fallat, declare:

1. I am an attorney at law, licensed to practice before all courts of the State of California, and am counsel of record for Plaintiff. I make this Declaration from my own personal knowledge, except as to matters stated on information and belief and as to those matters I believe to be true. If called upon as a witness, I would competently testify as to the truth of the matters herein stated.

2. Together with my associate, Brian J. Triplett, Esq., I have been actively involved in the prosecution of this case.

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1 3. I am familiar with the interrogatories propounded by defendant in this litigation.

2 4. Interrogatory no. 21 asks for identification of all complaints filed by plaintiff against
3 spammers.

4 5. Interrogatory no. 22 asks for something called “quantification” of income from spammers.

5 6. Interrogatory no. 23 asks for something called “quantification” of income from sources other
6 than spammers.

7 7. Interrogatory no. 25 asks for witnesses.

8 8. Mr. Triplett and I are unclear as to what years are intended by “quantify” in interrogatories
9 nos. 22 and 23.

10 9. Mr. Triplett and I are unclear as to what years are at issue in interrogatories nos. 22 and 23.

11 10. As an experienced litigation I am aware that indiscriminate disclosure of case information
12 such as demand letters can be detrimental to such cases.

13 11. Further, I am aware that blanket distribution of case information can result in defendant
14 obtaining the kinds of lists that assist it in breaking the very law that is at issue herein.

15 12. Plaintiff is a closely held corporation.

16 13. Plaintiff’s shareholders can therefore be direct victims of this invasion of privacy when
17 discovery calls for disclosure of case information in other matters and most particularly information that
18 reveals income and sources.

19 14. In response to defendant’s production requests (first and second) plaintiff has already provided
20 documents sufficient to show that Hypertouch is an Internet access service (please see attached Exhibit A).

21 15. In communication with defense counsel, she has never been able to explain how the discovery
22 sought in the interrogatories would potentially disconfirm plaintiff’s status as an Internet access service.
23 Issues such as litigation and income sources all would go to an Internet access service as the Act
24 contemplates that they would be the entity that would be bringing the action. In the absence of a valid,
25 logical explanation, Mr. Triplett and I are convinced that discovery for such purpose is pretextual.

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