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7 *Attorney for: William Silverstein*

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 WILLIAM SILVERSTEIN, an individual,  
11 Plaintiff,

Case No.: CV08-02433-SJO (RCx)

12 vs.

13 LIQUID MINDS LLC, AKA TECHIE  
14 GROUP LLC AKA EAST GROUP LLC  
15 AKA AXS CHARGE LTD AKA DEV8  
16 ENTERTAINMENT LIMITED,  
17 DATATIME IDEAS LIMITED,

1 1 NOTICE OF MOTION AND MOTION  
2 FOR REMAND OF IMPROPERLY  
3 REMOVED CASE AND FOR JUST COSTS  
4 AND EXPENSES, INCLUDING  
5 ATTORNEY'S FEES, INCURRED DUE TO  
6 THE IMPROPER REMOVAL;

18 and DOES 1-50,

7 2 MEMORANDUM OF POINTS AND  
8 AUTHORITIES IN SUPPORT THEREOF;

9 3 DECLARATION OF F. BARI  
10 NEJADPOUR

11 Date: Monday, June 9, 2008  
12 Time: 10:00 am  
13 Place: Courtroom 880

14 Honorable S. James Otero

15 **NOTICE OF MOTION**

16 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

17 PLEASE TAKE NOTICE that on Monday, June 9, 2008 at 10:00am, or as soon  
18 thereafter as parties can be heard, in the Courtroom of Honorable S. Jame Otero,  
19 Courtroom 880 in the Edward R. Roybal Federal Building and Courthouse, 255 East  
20

21 PLAINIFF'S MOTION TO REMAND

1 Temple St., Los Angeles, CA 90012. Plaintiff will, and does move the court pursuant to  
2 28 U.S.C 1447(c) to remand this case to California Superior Court.

3  
4 **MOTION**

5 William Silverstein, the plaintiff herein, hereby moves within 30 days of removal,  
6 pursuant to § 1447(c) of Title 28 of the United States Code, for an order of this Court  
7 directing:

8  
9 (1) that this case be remanded back to the California Superior Court of Los Angeles  
10 County;

11  
12 (2) that the defendants pay the plaintiff his just costs, expenses and attorneys fees,  
13 incurred as a result of the improper removal as permitted under 28 U.S.C. 1447(c);<sup>1</sup>

14  
15 Dated: May 12, 2008

16  
17 Law Offices of Nejadpour & Associates

18  
19  
20 /s/ F. Bari Nejadpour

F. Bari Nejadpour

21 Attorney for Plaintiff

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24  
25 1. This motion is made following the conference of counsel, John DuWors by telephone  
26 pursuant to L.R. 7-3 which took place on May 2, 2008. Plaintiff counsel also attempted to  
discuss the issues with DuWors by e-mail since, but received no response.

27  
28 \_\_\_\_\_  
PLAINTIFF'S MOTION TO REMAND

1 **Memorandum of Points and Authorities**

2 **I. SUMMARY**

3 Plaintiff respectfully requests that this case be remanded to State Court as  
4 Defendants untimely and improperly removed this case from State Court. Defendants  
5 filed the notice of removal with this court April 14, 2008, 256 days after Defendants were  
6 served, August 2, 2007.<sup>2</sup> In fact, Defendants waited until after a default judgment was  
7 entered against them in this case before removing to this Court.  
8  
9

10  
11 **II. FACTUAL AND PROCEDURAL HISTORY**

12 This is the fourth default judgment against these Defendants for illegal spamming.  
13 This Plaintiff's third default judgment against Defendants for violating both California  
14 and Federal anti-SPAM laws. The three prior judgments were enforced levying over  
15 \$400,000 from their payment processor account, as recently as July 2007.  
16  
17

18 On February 27, 2006, Plaintiff received a judgment of \$150,719.50 against these  
19 Defendants, an order enjoining Defendants from violating either CAN-SPAM Act or  
20 California Business & Professions Code § 17529.5, and a ruling that Liquid Minds LLC,  
21 Techie Group LLC, East Group LLC AXS Charge LTD and Dev8 Entertainment Limited  
22 were alter-egos of each other. On March 1, 2006, Plaintiff sent Defendants a copy of the  
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25 2. Defendants were served pursuant to California Code of Civil Procedure § 415.40. See  
26 Exhibit A, the proof of service. Exhibit B is a copy of Liquid Minds, LLC corporate information  
27 page indicating that Eastbiz.com is their agent for service.

1 BC340643 judgment, to Defendants' e-mail address info@dev8entertainment.com. On  
2 March 23, 2007 the Court, in BC351414, awarded Plaintiff \$48,000.00 in damages  
3 against these same Defendants for sending illegal spam. Inherent in the BC351414  
4 judgment is the determination that Liquid Minds, LLC, Techie Group, LLC, East  
5 Group, LLC, Axs Charge Ltd, Dev8 Entertainment Limited were alter-egos of each  
6 other. Unbeknownst to Plaintiff, while Plaintiff was filing the instant lawsuit, on August  
7 1, 2007, Liquid Minds, LLC was administratively dissolved by the State of Nevada. On  
8 August 2, 2007, Plaintiff served Defendants with the summons and complaint in the  
9 instant case, as he did in the prior two lawsuits - upon their agent of process, Eastbiz.com.  
10 Default was entered on instant case on September 21, 2007. On April 16, 2008, an order,  
11 by the State Court, amend the judgment to add that the notice of punitive damages in the  
12 amount of \$8,000,000.00 was properly served upon Defendants and \$698,400.00 in CAN-  
13 SPAM damages to the judgment. On April 17, 2008, the Court instructed Plaintiff if he  
14 wants punitive damages then file a motion to add punitive damages with the Default  
15 judge. On April 22, 2008, an amended judgment in the amount of \$1,962,657.29 was  
16 entered by the State Court.  
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### 23 **III. ARGUMENT**

#### 24 **A. The Removal was Untimely.**

25 28 U.S.C. 1446(b) requires a removal to be filed within 30 days after receipt of the  
26  
27

1 summons and complaint. The initial complaint, which was removable, was properly  
2 served on Defendants' agent for service of process on August 2, 2007. As the complaint  
3 was served in accordance with Cal. Code Civ. Proc. § 415.40, there is an additional 10  
4 days added to the time limit, making their last day to remove September 11, 2007.<sup>3</sup>  
5  
6 Though administratively dissolved, service upon Eastbiz.com is still in accordance with  
7 CCP § 416.20(b) and California Corporations Code § 2011 is valid. Defendants' removal  
8 on April 14, 2008 is 210 days too late to remove.  
9

10 Defendants' have been adjudged, twice, as alter-egos, eliminating the need to serve  
11 each alter-ego separately. The judgment in BC340643 explicitly stated that all the  
12 Defendants are alter-egos of each other. The Court in BC351414, in its judgment against  
13 all Defendants – established that Defendants to be alter-egos of each other.<sup>4</sup>  
14

15  
16 **B. Defendant failed to serve Plaintiff with a copy of the notice of removal.**  
17

18 Defendants failed to serve a copy of the notice of removal upon Plaintiff, as required  
19 by 28 U.S.C. 1446(d).  
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21 **C. Not all Defendants joined in removal rendering the removal defective.**  
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23 In as much as Defendants' AXS Charge and Dev8 Entertainment are separate  
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25 3. Defendants' assertion of learning of this action on March 19, 2008 is without basis. If the  
26 Court wish to consider that assertion, Plaintiff respectfully requests that Defendants' officers are  
27 produced so that they may be cross-examined on this issue.

28 4. See Exhibit C, the judgment in BC340643 and Exhibit D, the judgment in BC351414.

1 entities from Liquid Minds, Techie Group, and East Group, removing Defendants failed  
2 to include all named Defendants in notice of removal.

3  
4 *"The failure to join all proper defendants in a removal petition may*  
5 *otherwise render the removal petition procedurally defective."* Emrich v.  
6 Touche Ross & Co., 846 F.2d 1190 (9th Cir. 1988).

7  
8 **IV. CONCLUSION**

9 Defendants removal is clearly procedurally defective. Not only Defendants were  
10 over two hundred days tardy in their removal, Defendants failed to join all Defendants in  
11 the removal.

12 Where the notice of removal was filed late and improperly, Plaintiff respectfully  
13 requests that the court remands this case back to state court. Plaintiff further respectfully  
14 requests that this Court order Defendants to pay Plaintiff his costs and attorney fees  
15 related to this motion.

16 Dated: May 12, 2008

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18  
19 Respectfully submitted,

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22 By /s/ F. Bari Nejadpour  
23 F. Bari Nejadpour  
24 Attorney for William Silverstein