

1 Joseph L. Kish (SBN 136429)  
2 Synergy Law Group  
3 730 West Randolph, 6<sup>th</sup> Floor  
4 Chicago, IL 60661  
5 Telephone: 312.454.0015  
6 Facsimile: 312.454.0261  
7 E-Mail: jkish@synergylawgroup.com

8 Attorney for e360Insight, Bargain Depot  
9 Enterprises, LLC, a.k.a. Bargaindepot.net, and  
10 Moniker Online Services, LLC

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION, LOS ANGELES

14	WILLIAM SILVERSTEIN, an individual,	)	Case No.: cv07-2835 CAS (VBKx)
15	Plaintiff,	)	<b>DECLARATION OF JOSEPH L. KISH (RE: MOTION TO FILE A COUNTERCLAIM)</b>
16	vs.	)	
17	E360INSIGHT, LLC, BARGAIN DEPOT ENTERPRISES, LLC, AKA BARGAINDEPOT.NET, DAVID LINHARDT, an individual, MONIKER ONLINE SERVICES, LLC, And DOES 1-50; inclusive,	)	
18	Defendants	)	Date: January 28, 2008
19		)	Time: 10:00 a.m.
20		)	Courtroom: 5 on 2nd Floor

21  
22  
23 DECLARATION OF JOSEPH L. KISH (Re: Motion to File a Counterclaim)

24 JOSEPH L. KISH declares and states as follows:

25 1. I am an attorney licensed in California and Illinois, and counsel for  
26 Defendants in this matter. I make this declaration in support of Defendants' Motion  
27  
28

1 to File a Counterclaim. The facts set out below are known to me personally, and if  
2 called on I could testify to those facts, under oath.

3  
4 2. Ever since this case was filed, Defendants have sought, on numerous  
5 occasions, the purportedly offending emails that Plaintiff alleged formed the bases  
6 for his lawsuit. These emails have never been provided to Defendants.  
7

8 3. Defendants previously ascertained that the emails in Exhibit A-2 to the  
9 Amended Complaint were not theirs and strongly suspected that the other emails  
10 did not exist or would not evidence the violations alleged in Plaintiff's Amended  
11 Complaint.  
12

13  
14 4. The need for the proposed Counterclaim was borne out of the fact that  
15 Defendant's purportedly offending emails did not exist or were not Defendants.  
16 This fact could not be fully ascertained until Plaintiff's Initial Disclosure, which  
17 indicated that Plaintiff would be able to provide the emails only after Defendants  
18 provide a list of domain names and IP addresses of Defendants and companies  
19 related to Defendants. (A true and correct copy of Plaintiff's Initial Disclosure is  
20 attached as Exhibit A.) Plaintiff's Initial Disclosure indicates that it was mailed on  
21 December 6, 2007 but I did not receive it until December 11, 2007.  
22  
23

24  
25 5. I immediately discussed the proposed Counterclaim with Plaintiff's counsel,  
26 Bari Nejadpour, by phone and email on December 11 and 12. Mr. Nejadpour  
27 would not stipulate to Defendants Motion to File a Counterclaim. Mr.  
28

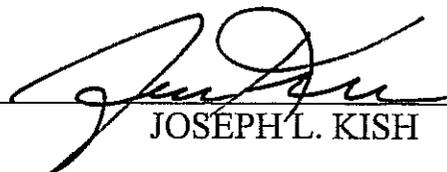
1 Nejadapour's only stated objection was that he felt it would unduly delay  
2 discovery in this case.  
3

4 6. In light of Plaintiff's stated objection to Defendants' Motion to File a  
5 Counterclaim, Defendants did not want to wait for the lapse of the requisite time  
6 period after conferring with Plaintiff pursuant to Local Rule 7-3, and after  
7 informing Mr. Nejadpour of this concern, Defendants filed its Motion to File a  
8 Counterclaim on December 26, 2007.  
9  
10

11 7. At the time of this December 26 filing, my office had not yet received any  
12 written discovery from Plaintiff, which I noted in Defendants original Motion To  
13 File A Counterclaim. Plaintiff's discovery was sent via U.S. Mail only, which has  
14 been consistently slow in delivering mail from Mr. Nejadapour's office.  
15  
16

17 8. Attached as Exhibit B is a true and correct copy of the discovery I received  
18 after filing the Motion To File A Counterclaim.  
19

20 I declare under penalty of perjury under the laws of the United States that  
21 the foregoing is true and correct and that this declaration was executed on  
22 January 21, 2007.  
23

24   
JOSEPH L. KISH  
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26  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing **Declaration of Joseph L. Kish (Re: Motion to File Counterclaim)** was served upon the attorneys listed below electronically through CM/ECF on January 21, 2008.

Joseph L Kish jkish@synergylawgroup.com,nmcdonald@synergylawgroup.com

F. Bari Nejadpour federalcourt@calspam.com

By: /s/ Joseph L. Kish

Joseph L. Kish  
Attorney for Defendants e360 Insight, and  
Bargain Depot Enterprises, LLC, a.k.a.  
Bargaindepot.net, Moniker Online Services,  
LLC, and David Linhardt

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**EXHIBIT A**

1 F. Bari Nejadpour (SBN 216825)  
2 Law Offices of F. Bari Nejadpour & Associates P.L.C.  
3 3540 Wilshire Blvd. #715  
4 Los Angeles, CA 90010  
5 (213) 632-5297  
6 (213) 632-5299 (FAX)  
7 Attorney for: William Silverstein

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 WILLIAM SILVERSTEIN, an individual,  
11 Plaintiff,

Case No.: CV07-02835-CAS (VBKx)

12 PLAINTIFF'S DISCLOSURES  
13 PURSUANT TO F.C.R.P. 26(a)(1)

14 vs.

15 E360INSIGHT, LLC, et al,  
16 Defendants.

17  
18 Plaintiff, William Silverstein, by and through his undersigned attorney, F. Bari  
19 Nejadpour, and for their disclosures pursuant to F.C.R.P. 26 states as follows:

20 **DISCLOSURES**

21 **26(a)(1)(A):** The name and, if known, the address and telephone number of each  
22 individual likely to have discoverable information that the disclosing party may use to  
23 support its claims or defenses, unless solely for impeachment, identifying the subjects of  
24 the information.  
25  
26  
27

1        Response

2        1. Plaintiff incorporates in its Initial Disclosure those witnesses disclosed by  
3  
4 Defendants in their Initial Disclosure.

5        26(a)(1)(B)

6        A copy of, or a description by category and location of, all documents, data  
7  
8 compilations, and tangible things that are in the possession, custody, or control of the  
9 party and that the disclosing party may use to support its claims or defenses, unless solely  
10 for impeachment.

11        Response

12  
13        1. Copies of all e-mails. Plaintiff will be able to provide this information only after  
14 Defendants provide a list of domain names and IP addresses of Defendants and  
15 companies related to Defendants. Plaintiff also requires a protective agreement regarding  
16 some of the information contained within the e-mails, prior to disclosure.

17  
18        2. DNS data file of Silverstein's server.

19        26(a)(1)(C)

20  
21        A computation of any category of damages claimed by the disclosing party, making  
22 available for inspection and copying as under Rule 34 the documents or other evidentiary  
23 material, not privileged or protected from disclosure, on which such computation is  
24 based, including materials bearing on the nature and extent of injuries suffered;  
25 and A copy of, or a description by category and location of, all documents, data material,  
26 not privileged or protected from disclosure, on which such computation is based,  
27 including materials bearing on the nature and extent of injuries suffered.  
28

1 Response

2 1. Statutory damages are \$1,500 for each e-mail received. The number of e-mails  
3  
4 received by Plaintiff will be the key determining factor in all causes of action. The other  
5 determining factor will be the number of private domain name registrations provided by  
6 Defendant Moniker. Once Defendants provide a list of domain names and IP addresses of  
7  
8 Defendants and companies related to Defendants, Plaintiff will be able to provide  
9 substantive discovery towards sanctions.

10 26(a)(1)(D)

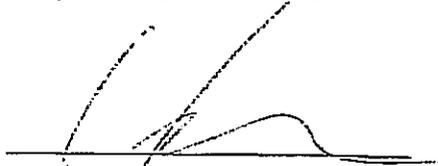
11 For inspection and copying as under Rule 34 any insurance agreement under which any  
12 person carrying on an insurance business may be liable to satisfy part or all of a judgment  
13 which may be entered in the action or to indemnify or reimburse for payments made to  
14 satisfy the judgment.  
15

16 Response

17  
18 1. Plaintiff does not believe he has any insurance agreements that would apply to this  
19 case.

20  
21  
22 Dated: November 6, 2007

23  
24 Respectfully submitted,

25  
26  
27 By: 

28 F. Bari Nejadpour  
Attorney for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, )  
COUNTY OF LOS ANGELES )

I am a resident of the County of Los Angeles, State of California and I am over the age of 18 and not a party to the within action. My work address is 3540 Wilshire Blvd. Suite 715, Los Angeles, CA 90010.

On December 6, 2007, I served the foregoing document(s) entitled: **PLAINTIFF'S DISCLOSURES PURSUANT TO F.C.R.P. 26(a)(1)**

on the interested parties in this action by placing a true and correct copy of such document(s) in a sealed envelope(s) addressed as follows:

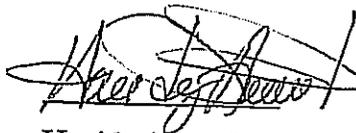
Joseph L. Kish  
Synergy Law Group  
730 West Randolph, 6<sup>th</sup> Floor  
Chicago, IL 60661  
*Attorney for Defendants*

(the "Addressee") and serving such document(s) as follows:

X REGULAR MAIL. On the service date set forth hereinabove in the County of Los Angeles, I deposited such envelope(s) with postage thereon fully prepaid in the United States mail.

Executed on December 6, 2007, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Heidy Acevedo

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**EXHIBIT B**

1 F. Bari Nejadpour (SBN 216825)  
2 Law Offices of F. Bari Nejadpour & Associates P.L.C.  
3 3540 Wilshire Blvd. #715  
4 Los Angeles, CA 90010  
5 (213) 632-5297  
6 (213) 632-5299 (fax)  
7 Attorney for: William Silverstein

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 WILLIAM SILVERSTEIN, an individual, Case No.: CV07-02835-CAS (VBKx)  
11 Plaintiff,  
12 vs. PLAINTIFF SILVERSTEIN'S FIRST  
13 E360INSIGHT, LLC, et al., SET OF INTERROGATORIES  
14 Defendants. PROPOUNDED TO DEFENDANT  
15 E360INSIGHT, LLC

16 PROPOUNDING PARTY: William Silverstein  
17 RESPONDING PARTY: E360INSIGHT, LLC  
18 SET: One

19 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff William  
20 Silverstein hereby requests that defendant Moniker Online Systems, LLC ("Moniker")  
21 answer these interrogatories separately and fully, in writing and under oath, within 30  
22 days of service hereof.

23 These interrogatories shall be deemed continuing and Moniker shall be  
24 obligated to change, supplement and amend their answers thereto as required by Fed. R.  
25 Civ. P. 26(e).

26 DEFINITIONS

- 27 1. "YOU" and "YOUR" refers to Moniker Online Services, LLC ("Moniker"), and any  
28 of its EMPLOYEES, AGENTS, REPRESENTATIVES, and related corporation, as well  
as any other PERSON acting on his behalf or at its direction.
2. "PRIVACY SERVICE" refers to any type of service provided by YOU that hides  
any details of the true registrant of a domain name. This includes services that YOU refer  
to as "WhoIs Privacy" or "Moniker Privacy Services."

1 3. "ACCOUNT NUMBER" is an numeric or alpha numeric identifier that uniquely  
2 identifies a registrant of a domain name. There should be a one to one correlation of  
3 Account number to individual Moniker customer.

4 4. "RELATED ENTITY" shall have the meaning of any entity that shares an office,  
5 mailing address, officer, manager.

6 5. "IDENTIFY", when used in regards to a RELATED ENTITY shall mean to name,  
7 means to provide or disclose name, address, and telephone number of the entity, and to  
8 state the name the officers, managers, members, and employees of each of the related  
9 entities.

10 6. "IDENTIFY", when used in regards to a marketing partner shall mean to state the  
11 name, address, and telephone number of the marketing partner, the dates of the  
12 partnership, and the exact terms of that partnership.

13 7. "IDENTIFY", when used in regards to a domain name, means to provide or disclose  
14 the domain name, the registration date, the current expiration date, and the name, address,  
15 and telephone number of the registrant.

16 8. The "RELEVANT DATES" for this interrogatory is January 1, 2004 to present date.

17 INTERROGATORIES

18 1. Please identify ALL domains that YOU have control of.

19 2. Please identify ALL domain names all related entities to YOU have control of.

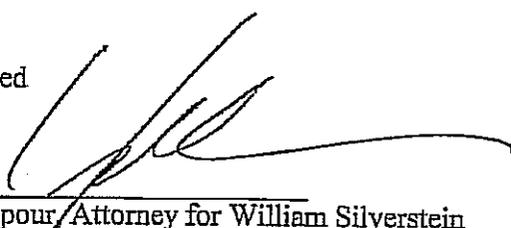
20 3. Please IDENTIFY ALL your MARKETING PARTNERS.

21 4. Please state how you came into possession of any e-mail address at the  
22 sorehands.com domain.

23 Date: December 19, 2007

24  
25  
26 Respectfully submitted

27 By

28   
F. Bari Nejadpour Attorney for William Silverstein

1 F. Bari Nejadpour (SBN 216825)  
2 Law Offices of F. Bari Nejadpour & Associates P.L.C.  
3 3540 Wilshire Blvd. #715  
4 Los Angeles, CA 90010  
5 (213) 632-5297  
6 (213) 632-5299 (fax)  
7 Attorney for: William Silverstein

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

10 WILLIAM SILVERSTEIN, an individual,  
11 Plaintiff,  
12 vs.  
13 E360INSIGHT, LLC, et al.,  
14 Defendants.

Case No.: CV07-02835-CAS (VBKx)

**PLAINTIFF SILVERSTEIN'S FIRST  
SET OF INTERROGATORIES  
PROPOUNDED TO DEFENDANT  
MONIKER ONLINE SERVICES, LLC**

15 PROPOUNDING PARTY: William Silverstein  
16 RESPONDING PARTY: Moniker Online Systems, LLC  
17 SET: One

18 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff William  
19 Silverstein hereby requests that defendant Moniker Online Systems, LLC ("Moniker")  
20 answer these interrogatories separately and fully, in writing and under oath, within 30  
21 days of service hereof.

22 These interrogatories shall be deemed continuing and Moniker shall be  
23 obligated to change, supplement and amend their answers thereto as required by Fed. R.  
24 Civ. P. 26(e).

25 **DEFINITIONS**

26 1. "YOU" and "YOUR" refers to Moniker Online Services, LLC ("Moniker"), and any  
27 of its EMPLOYEES, AGENTS, REPRESENTATIVES, and related corporation, as well  
28 as any other PERSON acting on his behalf or at its direction.

1 2. "PRIVACY SERVICE" refers to any type of service provided by YOU that hides  
2 any details of the true registrant of a domain name. This includes services that YOU refer  
3 to as "WhoIs Privacy" or "Moniker Privacy Services."

4 3. "ACCOUNT NUMBER" is an numeric or alpha numeric identifier that uniquely  
5 identifies a registrant of a domain name. There should be a one to one correlation of  
6 Account number to individual Moniker customer.

7 4. "IDENTIFY", when used in regards to a domain name, means to provide or disclose  
8 the domain name, the registration date, the current expiration date, and the name, address,  
9 and telephone number of the registrant. The responding party, may, provide the account  
10 number of the registrant as an alternative to providing the registrant's name, address, and  
11 telephone number.

12 5. The meaning of "PROVIDE" shall include in the broad sense of providing a service  
13 (in any tense) or maintain (in any tense).

14 6. The "RELEVANT DATES" for this interrogatory is January 1, 2004 to present date.

15  
16 INTERROGATORIES

17 1. Please state the number of domain names that YOU PROVIDE with PRIVACY  
18 SERVICE during the RELEVANT DATES.

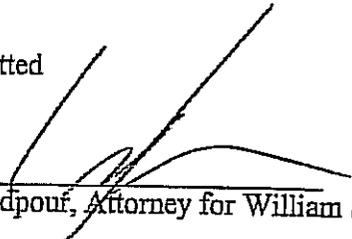
19 2. Please state the amount of income that YOU derived from providing PRIVACY  
20 SERVICE.

21 3. Please identify ALL domains that YOU provided PRIVACY SERVICE for.

22  
23 Date: December 19, 2007

24 Respectfully submitted

25  
26 By

  
27 F. Bari Nejadpouf, Attorney for William Silverstein  
28

PROOF OF SERVICE

STATE OF CALIFORNIA,        )  
COUNTY OF LOS ANGELES    )

I am a resident of the County of Los Angeles, State of California and I am over the age of 18 and not a party to the within action. My work address is 3540 Wilshire Blvd. Suite 715, Los Angeles, CA 90010.

On December 19, 2007, I served the foregoing document(s) entitled: **PLAINTIFF SILVERSTEIN'S FIRST SET OF INTERROGATORIES PROPOUNDED TO DEFENDANT MONIKER ONLINE SERVICES, LLC; PLAINTIFF SILVERSTEIN'S FIRST SET OF INTERROGATORIES PROPOUNDED TO DEFENDANT E360INSIGHT, LLC**

on the interested parties in this action by placing a true and correct copy of such document(s) in a sealed envelope(s) addressed as follows:

Joseph L. Kish  
Synergy Law Group  
730 West Randolph, 6<sup>th</sup> Floor  
Chicago, IL 60661  
*Attorney for Defendants*

(the "Addressee") and serving such document(s) as follows:

X REGULAR MAIL. On the service date set forth hereinabove in the County of Los Angeles, I deposited such envelope(s) with postage thereon fully prepaid in the United States mail.

Executed on December 19, 2007, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

\_\_\_\_\_  
Heeidy Acevedo