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

10 WILLIAM SILVERSTEIN, an
11 individual,
12 Plaintiff,
13 vs.
14 E360INSIGHT, LLC, BARGAIN
15 DEPOT ENTERPRISES, LLC AKA
16 BARGAINDEPOT.NET,
17 DAVID LINHARDT,
18 MONIKER ONLINE SERVICES, LLC,
19 and DOES 1-50;
20 Defendants.

21 E360INSIGHT, LLC and BARGAIN
22 DEPOT ENTERPRISES, LLC,
23 Counter-Plaintiffs,
24 vs.
25 WILLIAM SILVERSTEIN,
26 Counter-Defendant.

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

EXPERT DECLARATION OF
DR. JOHN R. LEVINE
IN SUPPORT OF
SILVERSTEIN'S ANTI-SLAPP
MOTION.

Date: April 7, 2008
Time: 10:00 am
Location: Courtroom 5

Honorable Christina A. Snyder

27 I, John R. Levine, declare:

28 1. The following facts are based on my own personal knowledge, except as to those stated
on information and belief, and as to those matters, I believe them to be true. If called as a
witness, I could and would testify competently to them under oath.

EXPERT DECLARATION OF
DR. JOHN R. LEVINE

1
2 2. I am over 18 years of age and am not a party to the above captioned case.
3

4
5 3. I have been a network manager for a private network that hosts over 300 Internet
6 domains and websites, totaling over 300,000 web pages, since 1995.
7

8
9 4. I chair the Anti Spam Research Group of the Internet Research Task Force. The ASRG
10 evaluates and experiments with potential anti-spam technology and forward promising ideas
11 to the Internet Engineering Task Force for potential standardization.
12

13
14 5. I have authored or co-authored over a dozen books on computer issues including: The
15 Internet for Dummies (now in its 11th edition, with over eight million copies in print),
16 Internet Privacy for Dummies (2002), Fighting Spam for Dummies (2004), Unix for
17 Dummies (5th Ed, 2004), Qmail (2004), Graphics File Formats (2nd Ed 1995), Programming
18 for Graphics Files in C and C++ (1994), and Internet Secrets (2d Ed. 2000).
19

20
21
22 6. I have been active in the computer industry for nearly thirty years, working for
23 Interactive Systems Corp. (the first commercial provider of UNIX software) between 1979
24 and 1984 and Javelin Software (creators of an award winning PC modeling tool) from 1984
25 to 1987. In 1989, I co-founded Segue Software, currently a leading provider of web and
26 client/server testing software, where I continued as a director and consultant until the
27 company was sold in April 2006. I received a B.A in Computer Science with a minor in
28

1 Mathematical Economics from Yale University in 1975, and a Ph.D. in Computer Science
2 from Yale University in 1984. Attached hereto as Exhibit A is a true and correct copy of my
3 Curriculum Vitae.
4

5
6 7. I have testified as an expert in deposition or at trial in three cases in the past four years:

7 a. I was the Commonwealth of Virginia's technical expert and testified at trial in
8 Commonwealth of Virginia v. Jaynes et al., Loudon County Case No.

9 CR0001588501;

10
11 b. I have been deposed as Hewlett-Packard's expert in VLIW Technology, LLC. v.
12 Hewlett-Packard Co. and STMicroelectronics, Inc., Delaware Chancery Court

13 Civil Action No. 20069-NC; and

14
15 c. I have been deposed as Microsoft's fact witness in Spreadsheet Automation Corp.
16 v. Microsoft Corp., Eastern District of Texas, Marshall Division, Civil Case No.

17 2:05-CV-127-DF.

18
19 d. I have been deposed as Google's expert in Perfect 10 vs. Google et al., Central
20 District of California Case No. CV04-9484 NM; and

21
22 e. I have testified at trial in State of Arizona vs. Speers, Yuma County Case No.

23 CR2006-00318.
24

25
26 8. I am knowledgeable about the Qmail mail server and various options and configurations
27 associated with the use of this server software.
28

1 9. I examined the e-mail samples that have been attached to the "Declaration of Joseph L.
2 Kish in Support of Defendants' Motion for Summary Judgment." (Marked as ECF Doc. No.
3 56-4.)
4

5
6 10. I examined the e-mail samples that have been attached as Exhibits C and D, to the
7 "Declaration of William Silverstein in Support of Counter-defendant's Special Motion to
8 Strike Counterclaim Pursuant to California Rules of Civil Procedure § 425.16 anti-SLAPP
9 Statute (ECF Doc. No. 54-2.)
10

11
12
13 11. In my expert opinion, the headers in the samples, excepting the redacted portion, are
14 consistent with a normally operating Qmail mail server. There is no indication, excepting the
15 redacted field, that the headers have been tampered with.
16

17
18 12. In the samples, the recipient of the e-mails, as intended by the sender, is indicated by the
19 "To:," "cc:," or "bcc:" fields contained within the header. In the aforementioned samples, the
20 intended recipient is "none@sorehands.com," as indicated by the "To:" field.
21

22
23 13. The redacted portion in the aforementioned e-mail samples, the "Delivered-To:" field is
24 solely an internal routing account name. Redacting this portion of the samples does not
25 interfere with the ability to track the sender of the e-mails.
26
27
28

1 14. It is my expert opinion that the "To:" or "Recipient:" e-mail addresses contained within
2 an e-mail header are not helpful in tracing the origin of the spam.
3

4
5 15. The sending IP addresses within the aforementioned samples are present, and have not
6 been redacted.
7

8
9 16. Spam is unsolicited bulk e-mail. Spammers are people who either send or have their
10 products or services advertised using spam.
11

12
13 17. In my expert opinion and experience, spam is unwanted, regardless of whether it is
14 illegal.
15

16
17 18. In my expert opinion and experience, most Internet Service Providers have policies
18 forbidding their customers to send any spam, whether on not legal, using their networks or
19 servers.
20

21
22 19. It is my experience and expert opinion that a e-mail sender using large numbers of
23 domain names, large numbers of From addresses, and using domain names registered with
24 hidden contact information is likely to be sending unsolicited commercial e-mail, as opposed
25 to solicited.
26
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1 20. I am familiar with the Atriks service. It is a service whereby Atriks pays individuals
2 (agents) to install a program onto a computer. This program permits the user of the Atriks
3 service to relay e-mails through computers of Atriks' agents. One of the characteristics of this
4 service is to mask the true IP address of the sender.
5

6
7 21. I have seen multiple reports, that are known to be reliable, that e360Insight /Bargain
8 Depot have used the Atriks service until at least 2006.
9

10
11 22. A zombie is a computer that has been infected with a virus or trojan that allows the
12 computer to be remotely controlled without its owner's knowledge or consent. A botnet is a
13 group of zombies. A botnet allows a person to silently remotely control the infected
14 computers as a means to attack other computers, run illegal web sites, or to send unsolicited
15 commercial e-mail -- unbeknown to the owner of the computers.
16
17

18
19 23. Botnets provide another way for an e-mailer to hide the true sending IP address of his or
20 her computer.
21

22
23 24. Email servers store information regarding their outbound transmissions into a "log file."
24

25 25. I have seen reports of thousands of complaints of e360Insight's spam.
26
27
28

1 26. e360Insight and Bargain Depot Enterprises have a well known reputation for sending
2 spam. I have been aware of this reputation prior to 2007.
3
4
5

6 **VERIFICATION**

7 I declare under penalty of perjury under the laws of the United States of America that
8 the foregoing is true and correct.
9

10 Executed on March 31, 2008 at Trumansburg, New York.
11
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13

14 
15 _____
16 John Levine
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