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

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

File by Fax

15 WILLIAM SILVERSTEIN, an
16 individual,
17 Plaintiff,

18 vs.

19 E360INSIGHT, LLC, BARGAIN
20 DEPOT ENTERPRISES, LLC, AKA
21 BARGAINDEPOT.NET, DAVID
22 LINHARDT, an individual, MONIKER
23 ONLINE SERVICES, LLC, And DOES
24 1-50; inclusive,
25 Defendants

) Case No.: cv07-2835 CAS (VBKx)

) **NOTICE OF FILING AND**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN RESPONSE TO**
) **PLAINTIFF'S MOTION TO**
) **STRIKE AND REMAND**

26 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

27 PLEASE TAKE NOTICE that Defendants e360Insight, LLC, Bargain Depot

28 Enterprises, LLC, AKA Bargaindepot.net, Davie Linhardt and Moniker Online

Services, LLC caused to be filed their Response to Plaintiff's Motion to Strike and

Remand on June 11, 2007, a copy of which is attached hereto. Plaintiff's Motions

1 will be heard on June 25, 2007 at 10:00 a.m. in Courtroom 5 on the 2nd floor,
2 located at 312 N Spring St., Los Angeles, CA 90012.
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5 Dated June 11, 2007

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7 Joseph L. Kish
8 Attorney for Defendants e360 Insight,
9 Bargain Depot Enterprises, LLC, a.k.a.
10 Bargaindepot.net, Moniker Online
11 Services, LLC and David Linhardt
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1 Defendants e360 and Bargain Depot are limited liability corporations. See ¶
2 2 of the affidavit of David Linhardt attached hereto. E360 and Bargain Depot each
3 have a sole member, Maverick Direct Marketing Solutions, Inc. (“Maverick”). *Id.*
4 at ¶ 3. Dave Linhardt is the sole shareholder of Maverick. *Id.* at ¶ 4. As the sole
5 shareholder of Maverick, Mr. Linhardt is the only person or entity with any
6 pecuniary interest in the outcome of this litigation. *Id.* at ¶ 5. Maverick is not the
7 parent company of e360 or Bargain Depot. *Id.* at ¶ 6. No other entity controlled
8 by Mr. Linhardt has a pecuniary interest in the outcome of this litigation. *Id.* at ¶ 9.

12 Local Rule 7.1-1 states in pertinent part that the Notice of Interested Parties
13 “shall list all persons, associations of persons, firms, partnerships and corporations
14 (including parent corporations clearly identified as such) which may have a
15 pecuniary interest in the outcome of the case...” In this case, the only person with
16 any such interest is Mr. Linhardt.

19 In the event that this Court believes that Defendants e360 and Bargain Depot
20 should have included Maverick or any other entity in their Notice of Interested
21 Parties, the remedy is to require that e360 and Bargain Depot file an amended
22 Notice of Interested Parties. See: *Lightfoot v. Rosskoph*, 374 F. Supp.2d 69, 72 (D
23 DC 2005) (where defendant failed to file a disclosure statement court merely
24 required defendant to file the disclosure within ten days of being ordered to do so);
25 *Smith v. Argent Mortgage Co., LLC*, 2006 U.S. Dist. LEXIS 12455 *2 (D. COLO
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1 2006) (court held that plaintiff's motion to strike defendant's motion to dismiss
2 due to the defendant's failure to file a disclosure statement was frivolous because
3 the defendant's "failure to timely file a corporate disclosure statement does not
4 have any bearing on the validity of its motion to dismiss."); *Fashion Fragrance &*
5 *Cosmetics v. Croddick et. al.*, 2003 U.S. Dist. LEXIS 5641 *3 (S.D. NY 2003)
6
7 (where clerk refused to accept an answer because defendant did not provide the
8 disclosure required by Fed. R. Civ. P. 7.1, court directed the clerk to accept the
9 answer and ordered the defendant to comply with the Rule within seven days of the
10 order to do so.); and, *Hall v. Tyco International, LTD.*, 223 F.R.D. 219, 258 (M.D.
11 NC 2004)(court held that defendant's filing of its disclosure 4 days late did not
12 prejudice the plaintiff and did not give rise to sanctions.)
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17 The disclosure required by Local Rule 7.1-1 and Fed. R. Civ. P. 7.1 is not
18 jurisdictional in nature. Rather, the rule is merely an aide to "identify
19 circumstances that are likely to call for disqualification of a judge 'on the basis of
20 financial information that a judge may not know or recollect.'" *Smith*, LEXIS
21 12455 *2. (quoting Fed. R. Civ. P. 7.1. Advisory Committee Notes). Here, the
22 court has been advised as to participation of Mr. Lindhardt in this litigation and for
23 the companies he controls, he is the only person with a pecuniary interest in this
24 litigation.
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1 **C. There Is No Basis For Remanding This Matter To State Court.**

2 This case was removed to this Court pursuant to 28 U.S.C. § 1441(a). The
3 law in this district is clear that its courts cannot remand a case unless they
4 determine “that it lacks jurisdiction or that a defendant failed to observe such
5 procedural requirements as removing within thirty days of discovering the right to
6 remove.” *Contemporary Services Corp. v. Universal City Studios, Inc.*, 655 F.
7 Supp. 885, 892 (C.D. Cal 1987). Here, the Court has jurisdiction of the dispute as
8 it involves citizens of different states and a federal question. Moreover,
9 Defendants complied with the procedural requirements of removal by removing
10 the matter within the 30 day time limit proscribed by 28 U.S.C. § 1446. Plaintiff
11 does not contest that removal was improper for any reason other than the purported
12 deficient disclosure statement. There is no case law or statute, however, that
13 makes the adequacy of the notice of interested parties germane in determining
14 whether a court has jurisdiction to hear a matter or if the party removing a matter
15 has complied with the procedural requirements of removal. Therefore, no basis
16 exists for remanding this case to state court, Plaintiff’s Motion to Remand should
17 be dismissed.

18 **D. Conclusion**

19 Defendants filed a complete notice of interested parties. Any deficiency in
20 the notice can be cured by an amendment to the notice. Furthermore, the
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1 sufficiency of the notice is not a jurisdictional issue. Finally, there is no basis for
2 remand as this Court has jurisdiction of the claim and Defendants complied with
3 all procedural requirements of removal.
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5 Dated May 11, 2007

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8 Joseph L. Kish

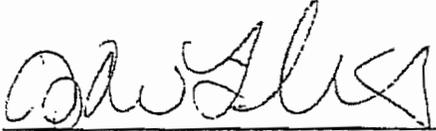
9 Attorney for Defendants e360 Insight,
10 Bargain Depot Enterprises, LLC, a.k.a.
11 Bargaindepot.net, David Linhardt and
12 Moniker Online Services, LLC
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1 DECLARATION OF DAVID LINHARDT

2 DAVID LINHARDT declares and states as follows:

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- 4 1. I am the President of e360Insight (“e360”) and a Defendant in this action. I
5 make this declaration in support of Defendants’ Response to Plaintiff’s
6 Motion to Strike and to Remand. The facts set out below are known to me
7 personally, and if called on I could testify to those facts, under oath.
- 8
- 9 2. e360 and Bargain Depot Enterprises, LLC (“Bargain Depot”) are limited
10 liability corporations.
- 11
- 12 3. e360 and Bargain Depot have a single member, Maverick Direct Marketing
13 Solutions, Inc. (“Maverick”).
- 14
- 15 4. I am the sole shareholder of Maverick.
- 16
- 17 5. As the sole shareholder of Maverick, I am the only person or entity with a
18 pecuniary interest in the outcome of this litigation.
- 19
- 20 6. Maverick is not a parent corporation of e360 or Bargain Depot.
- 21
- 22 7. Maverick does not have a pecuniary interest in the outcome of this litigation.
- 23
- 24 8. Maverick is the sole member of Bay City Hosting, Rocky Mountain Internet,
25 Ravina Hosting Company, LLC, Discount Accessories, LLC, Northshore
26 Hosting Company, LLC and Northgate Internet Services, LLC.
- 27
- 28 9. None of the entities in the preceding paragraph have a pecuniary interest in
the outcome of this litigation.

1 I declare under penalty of perjury under the laws of the United States that
2 the foregoing is true and correct and that this declaration was executed on June 8,
3 2007.
4

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6 
7
8 DAVID LINHARDT

EXHIBIT

A

FILED

2007 APR 30 PM 4:06

CLERK OF DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

1 Joseph L. Kish (SBN 136429)
2 Synergy Law Group
3 730 West Randolph, 6th Floor
4 Chicago, IL 60661
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8 Attorney for e360 Insight, Bargain Depot
9 Enterprises, LLC, a.k.a. Bargaindepot.net,
10 Moniker Online Services, LLC and David
11 Linhardt

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

15 WILLIAM SILVERSTEIN, an)
16 individual,)
17 Plaintiff,)
18 vs.)
19 E360 INSIGHT, LLC, BARGAIN)
20 DEPOT ENTERPRISES, LLC, AKA)
21 BARGAINDEPOT.NET, DAVID)
22 LINHARDT, an individual, MONIKER)
23 ONLINE SERVICES, LLC, And DOES)
24 1-50; inclusive,)
25 Defendants)

Case No.: CV 07-02835 CAS(VBLX)

24 *certification and notice*
25 *of interested parties (LOCAL Rule 7-1-1)*
26 Defendants, e360 Insight, Bargain Depot Enterprises, LLC, a.k.a.

27 Bargaindepot.net, Moniker Online Services, LLC and David Linhardt, pursuant to
28 F.R.Civ.P. 7.1, Disclosure Statement, state as follows:

1 The undersigned, counsel of record for e360 Insight, Bargain Depot
2 Enterprises, LLC, a.k.a. Bargaindepot.net, Moniker and David Linhardt, certifies
3 that the following listed parties may have a pecuniary interest in the outcome of
4 this case. These representations are made to enable the Court to evaluate possible
5 disqualification or recusal.
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- 8 1. William Silverstein – Plaintiff
- 9
- 10 2. e360 Insight – Defendant
- 11
- 12 3. Bargain Depot Enterprises, LLC, aka Bargaindepot.net – Defendant
- 13
- 14 4. David Linhardt – Defendant
- 15
- 16 5. Moniker Online Services, LLC – Defendant
- 17
- 18 6. Seevast Corporation – Parent company of Defendant Moniker Online
19 Services, LLC
- 20 7. There is no insurance coverage in this case.
- 21
- 22 8. Does 1-50 – Defendants

23 Dated April 30, 2007

24 

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