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David Linhardt and Moniker Online Services,  
LLC

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

WILLIAM SILVERSTEIN, an individual,  
Plaintiff,  
vs.  
E360INSIGHT, LLC *et. al.*  
Defendants

) Case No.: cv07-2835 CAS (VBKx)  
) **DEFENDANTS' REPLY IN**  
) **SUPPORT OF THEIR MOTION TO**  
) **DISMISS**  
)  
) Date: June 25, 2007  
) Time: 10:00 a.m.  
) Location: Courtroom 5  
)  
) Honorable Christina A. Snyder

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants e360Insight, LLC, Bargain Depot Enterprises, LLC, AKA Bargaindepot.net, Dave Linhardt and Moniker Online Services, LLC caused to be filed their Reply in support of their Motion to Dismiss on June 18, 2007, a copy of which is attached hereto. The Motion will be heard on

Defendants Reply In Support Of Motion To Dismiss

07 JUN 18 AM 10:35  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

1 June 25, 2007 at 10:00 a.m. in Courtroom 5 on the 2nd floor, located at 312 N  
2 Spring St., Los Angeles, CA 90012.  
3  
4

5 Dated June 18, 2007

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7

8 Joseph L. Kish  
9 Attorney for Defendants e360 Insight,  
10 Bargain Depot Enterprises, LLC, a.k.a.  
11 Bargaindepot.net, Moniker Online  
12 Services, LLC and David Linhardt  
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1 insufficient allegations to establish that they violated the applicable statutes at issue  
2 in this lawsuit. The Counts against Defendants e360Insight and Bargain Depot  
3 Enterprises should be dismissed because Plaintiff has failed to plead the allegations  
4 against them with the specificity required by Fed. R. Civ. P. 9(b). Finally,  
5 California Business and Professions Code §17529.5 is preempted by the  
6 Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-  
7 SPAM) 15 U.S.C. §7701 *et seq.*

11 In an effort to save the Complaint from being dismissed, Plaintiff attempts to  
12 interject unsubstantiated “facts” that are not contained in the Complaint or  
13 supported by an affidavit, declaration or other appropriate means and are  
14 insufficient to correct the Complaint’s deficiencies. This Court should consider  
15 this information only in so far as it demonstrates that granting Plaintiff leave to  
16 amend would be futile, warranting dismissal with prejudice.

19 **B. Defendants Linhardt and Moniker Are Not Subject To The Jurisdiction  
20 Of This Court.**

21 Plaintiff bears the burden of proving by a preponderance of the evidence the  
22 prima facie facts entitling the court to assume personal jurisdiction over a  
23 defendant. *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1392 (9th Cir. 1986).  
24 Here, Plaintiff has failed to meet his burden.  
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1           **1. General Jurisdiction on Moniker does not exist.**

2           Plaintiff, in his Response, asserts that Moniker owns<sup>2</sup> the domain names  
3  
4 from which the alleged spam was sent. However, that allegation is not contained  
5 anywhere in the complaint and is not supported by an affidavit, declaration or any  
6 other means by which this Court can attribute these assertions to Moniker.  
7

8 Moreover, the Declaration of Monte Cahn, CEO of DomainSystems, Inc., which is  
9 the sole member of Moniker, unequivocally denies that Moniker owned any of the  
10 domains at issue in this lawsuit. (See Declaration of Monte Cahn, attached as  
11 Exhibit B). Furthermore, Plaintiff vaguely asserts that Moniker “regularly and  
12 systematically solicit business from and conducts business with California  
13 residents” or that it “operates highly interactive web sites that are specifically  
14 programmed to conduct business with California residents.” However, Plaintiff is  
15 required to “assert particular facts which establish the necessary ties between the  
16 defendant and the forum state.” *Greenspun v. Del E. Webb Corp.*, 634 F.2d 1204,  
17 1208 (9th Cir. 1980). Conclusory allegations, such as those made by Plaintiff in  
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23 <sup>2</sup> Plaintiff attempts to assign culpability to Moniker for the actions of the other  
24 Defendants based on the incorrect presumption that Moniker owns the domains  
25 involved in this litigation. It does not. (See Exhibit B). Furthermore, Plaintiff  
26 argues, without any support that users of the internet are the intended beneficiaries  
27 of Moniker’s contract with ICANN. There are no allegations why this would be so  
28 and no legal support for such a proposition even if such allegations existed.

1 this case, are insufficient to assign personal jurisdiction. *Id.* Moreover, Plaintiff's  
2 reliance on Moniker's mere attendance at a trade show in CA is misplaced as it  
3 relates to specific jurisdiction as the contact with the forum must be related to the  
4 claim. *See Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). No such relation  
5 is alleged in this case and indeed none exists. The Declaration of Mr. Wagner,  
6 attached to Plaintiff's Response, provides no solace to Plaintiff. It should be  
7 stricken pursuant to Fed. R. Civ. P. 12(f) because the operative representation, on  
8 which Plaintiff relies, that Moniker "appeared" to be "soliciting business" is  
9 unsubstantiated speculation and should not be considered by this Court.  
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## 14 **2. Specific Jurisdiction over Moniker does not exist.**

15 Plaintiff similarly does not assert any basis for exercising personal  
16 jurisdiction over Moniker based on specific jurisdiction. The Complaint concedes  
17 that "Moniker's only involvement in the activities complained of herein is  
18 Moniker's concealment of the identity of the Defendants." Complaint at ¶ 4.  
19 Such conduct, even if true, is insufficient for this court to exercise personal  
20 jurisdiction over Moniker.  
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24 To be subject to personal jurisdiction based on specific jurisdiction, "(1) the  
25 nonresident defendant must do some act or consummate some transaction with the  
26 forum or perform some transaction with the forum by which he purposely avails  
27 himself of the privilege of conducting activities in the forum, thereby invoking the  
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1 benefits and protections; (2) the claim must be one which arises out of or results  
2 from the defendant's forum-related activities; and(3) the exercise of jurisdiction  
3 must be reasonable.” *Ballard*, 65 F.3d at 1498. The complaint is devoid of any  
4 allegations that Moniker had any contacts with this forum. Moreover, the singular  
5 allegation that Moniker concealed the identity of the Defendants does not  
6 demonstrate any contact whatsoever between Moniker and the state of California.  
7

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10 **3. Linhardt is not subject to this Court’s jurisdiction.**

11 Plaintiff contends that Linhardt is subject to general jurisdiction because he  
12 maintains an office in Laguna Hills, California. That is not true. A separate entity  
13 for which Linhardt works, Bay City Hosting, utilized a commercial mail receiving  
14 agency in California. (See Declaration of Linhardt attached as Exhibit B). Bay  
15 City Hosting is not a party to this suit, however, and its connection to California in  
16 no way subjects Linhardt to this Court’s jurisdiction.  
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19 Plaintiff also argues that because Linhardt asserted in another case that he had a  
20 single business relationship with a California business, he is subject to general  
21 jurisdiction in this case. (See Plaintiff’s Opposition to Dismiss at p. 7<sup>3</sup>). This  
22 conduct, however, is not sufficient to base personal jurisdiction on any Defendant  
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26 <sup>3</sup> Plaintiff’s repeated references to other lawsuits involving Defendant e360 and  
27 Linhardt should be stricken pursuant to Fed. R. Civ. P. 12(f) because they are not  
28 relevant to this litigation.

1 in this case. "The standard for establishing general jurisdiction is fairly high".  
2  
3 *Bancroft & Masters, Inc. v. Augusta Nat'l, Inc.*, 223 F.3d 1082, 1086 (9<sup>th</sup> Cir.  
4 2000). General jurisdiction "exists where it is established that the defendant has  
5 continuous and systematic contacts with the forum that the exercise of jurisdiction  
6 does not offend traditional notions of fair play and substantial justice." *Phillips v.*  
7 *Worldwide Internet Solutions*, 2006 U.S. Dist. LEXIS 44152 at p. 9 (N. D. Cal  
8 2006) See also: *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d  
9 1122, 1129 (9<sup>th</sup> Cir. 2003). Here, Plaintiff relies on a single connection between  
10 e360 (but no other Defendant) and California. This single and distinct contact does  
11 not rise to the level of continuous and systematic contacts.  
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15 Moreover, this contact is wholly unrelated to the claims asserted in this lawsuit,  
16 and thus cannot form the basis for specific jurisdiction even to Defendant e360 let  
17 alone Linhardt. Finally, as discussed below in this section, jurisdiction of an  
18 individual, Linhardt, cannot be based on the actions they took on behalf of his  
19 business.  
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22 Plaintiff also claims that Linhardt is subject to specific jurisdiction because  
23 of his acts as an officer or director of e360Insight and Bargain Depot. In the  
24 context of establishing jurisdiction, the acts of officers and directors of an entity  
25 are considered the acts of the entity exclusively and are not material for purposes  
26 of establishing minimum contacts as to the officers and directors. *Shearer v.*  
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1 *Superior Court*, 70 Cal.App.3d 424, 430, 138 Cal.Rptr. 824 (1977). Moreover,  
2 Plaintiff's response does not even address this issue but rather tries to side step it  
3 by alleging in conclusory fashion that Linhardt was personally involved in the  
4 actions complained of in the complaint. However, under California law,  
5 corporations are separate legal entities and cannot act on their own and therefore  
6 must act through their agents. *Mihlon v. Superior Court*, 169 Cal.App.3d 703, 713,  
7 215 Cal.Rptr. 442 (1985). Acts performed by the corporate agents, in their official  
8 capacity, cannot reasonably be attributed to the agent creating personal  
9 jurisdiction. *Colt Studio, Inc. v. Badpuppy Enterprises*, 75 F.Supp.2d 1104, 1119  
10 (C.D. Cal. 1999). In this case, there are no allegations that even remotely  
11 demonstrate that Linhardt acted in any capacity other than in an official one.  
12 Therefore, personal jurisdiction cannot attach to Linhardt merely because of his  
13 actions as an authorized agent of e360Insight and Bargain Depot, Linhardt must be  
14 dismissed from this lawsuit for this reason alone.

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21 In sum, Linhardt and Moniker have not had systematic and continuous  
22 contact with this forum and are therefore not subject to the general jurisdiction of  
23 this Court. Likewise, any contact they have had with this forum is unrelated to this  
24 litigation and therefore insufficient to asses jurisdiction based on specific  
25 jurisdiction. Linhardt and Moniker should be dismissed from this lawsuit  
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1 **C. Defendants Linhardt And Moniker Have Not Violated The California**  
2 **Business And Professions Code §17529.5 Or CAN-SPAM.**

3 Plaintiff's response, like Plaintiff's complaint before it, completely fails to  
4 identify how Linhardt and Moniker violated the California Business and  
5 Professions Code or CAN-SPAM (even assuming the Court asserts personal  
6 jurisdiction over them). Rather, Plaintiff stretches beyond recognition the  
7 definition of "advertise" in an attempt to capture Linhardt and Moniker.  
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10 To establish liability under either §17529.5 or CAN-SPAM, Plaintiff must  
11 allege that Defendants either sent, or caused to be sent, the offending e-mails.  
12 Here, the Complaint does not allege that Defendants Linhardt and Moniker  
13 transmitted any e-mail messages. Indeed, quite the contrary, the declarations  
14 attached to the Motion to Dismiss establish that neither Moniker nor Linhardt sent  
15 any e-mails or initiated the sending of any of the allegedly offending e-mails about  
16 which Plaintiff complains. Not surprisingly, the Complaint is devoid of any  
17 allegation that Moniker initiated any of the allegedly offending e-mails. Likewise,  
18 the Complaint does not have any factual allegations that Linhardt acted outside the  
19 scope of his role as an officer in initiating the allegedly offending e-mails and sent  
20 or initiated these e-mails in that role.  
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26 Because §17529.5 only applies to those who "advertise" through e-mail.  
27 There are no allegations or even any argument that Defendants Linhardt and  
28

1 Moniker advertised through the allegedly offending e-mails, Defendants Linhardt  
2 and Moniker should be dismissed from this lawsuit.  
3

4 **D. California Business And Professions Code §17529.5 Is Preempted By**  
5 **CAN-SPAM.**

6 CAN-SPAM prohibits the very types of e-mail prohibited under the  
7 California Business and Professions Code. Specifically, Cal. Bus. & Prof. Code  
8 §17529.5 prohibits the sending of e-mail that “contains or is accompanied by  
9 falsified, misrepresented, or forged header information” and that “has a subject line  
10 that a person knows would likely mislead a recipient...” Likewise, CAN-SPAM  
11 prohibits the sending of e-mail that contains “header information that is materially  
12 false or materially misleading.” §7704(a)(1) and prohibits “deceptive subject  
13 headings”. §7704(a)(2).  
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17 The Congressional findings and policy section of CAN-SPAM makes clear  
18 that Congress intended CAN-SPAM to supersede state statutes. Specifically,  
19 §7701(11) states that  
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22 “[m]any States have enacted legislation intended to regulate or  
23 reduce unsolicited commercial electronic mail, but these statutes  
24 impose different standards and requirements. As a result, they do  
25 not appear to have been successful in addressing the problems  
26 associated with unsolicited commercial electronic mail, in part  
27 because, since an electronic mail address does not specify a  
28 geographic location, it can be extremely difficult for law-abiding  
businesses to know with which of these disparate statutes they  
are required to comply.

1 That was, in part, the basis for the decision to preempt state law by the Fourth  
2 Circuit Court of Appeals in *Omega World Travel, Inc. v. Mummagraphics, Inc.*,  
3 469 F.3d 348, 356 (4th Cir. 2006). The *Omega* court recognized that senders of e-  
4 mail often don't know where the e-mail is being sent and thus, if state laws were  
5 not preempted, senders of e-mail would have to adhere to the strictest state's law  
6 and that law would become "a de facto national standard". *Id.* Cal. Bus. & Prof.  
7 Code §17529.5 is clearly preempted by CAN-SPAM and Count I should be  
8 dismissed with prejudice.  
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12 In response to CAN-SPAM's clear preemption of state laws under the  
13 circumstances Plaintiff alleges here, Plaintiff asks this Court to ignore the ruling in  
14 *Omega*, yet gives no basis or reasoning for doing so. Plaintiff argues that CAN-  
15 SPAM does not preempt state laws that address falsified, misrepresented, or forged  
16 header information. To follow Plaintiff's logic would, as stated in *Omega*, turn an  
17 "exception to a preemption provision into a loophole so broad that it would  
18 virtually swallow the preemption clause itself." *Id.* at 355.  
19  
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22 CAN-SPAM clearly preempts §17529.5 because the very harm which  
23 §17529.5 seeks to address is covered explicitly by CAN-SPAM. Count II should  
24 be dismissed with prejudice.  
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1 **E. Count I And II Must Be Dismissed Because Plaintiff Has Failed to Plead**  
2 **With the Requisite Particularity.**

3 Plaintiff contends that the allegations contained in Count I and II do not  
4 sound in fraud, but clearly they do. Specifically, Count I is based on an alleged  
5 violation of Cal. Bus. & Prof. Code §17529.5. §17529.5 is a sub-part of Cal. Bus.  
6 & Prof. Code § 17500 *et seq.*, which prohibits various forms of false advertising.  
7 A Plaintiff alleging a violation under Cal. Bus. & Prof. Code §17500 *et seq* “must  
8 state with reasonable particularity the facts supporting the statutory elements of the  
9 violation.” *Khoury v. Maly's of Cal., Inc.*, 14 Cal.App.4th 612, 619 (1993). Here,  
10 Plaintiff alleges only that “the complained of e-mails contained or was  
11 accompanied by false, misrepresented, or forged header information.” (*See*  
12 *Complaint par. 43*). No other allegations address the purported misrepresentations.  
13 Equally telling, Plaintiff makes no attempt to argue that *Khoury* is not applicable  
14 here. In Count II, Plaintiff alleges that the e-mails contained “header information  
15 that is materially false or materially misleading” and that the subject lines “mislead  
16 recipients, acting reasonably under the circumstances, about a material fact  
17 regarding the contents or subject matter of the message.” (*See Complaint par. 52-*  
18 *54*). Those allegations are insufficiently pled. *See Asis Internet Services v. Optin*  
19 *Global, Inc.*, 2006 U.S. Dist. LEXIS 46309 at p. 15 (N.D. Cal. 2006). Plaintiff is  
20 unable to distinguish the facts of *Asis* and simply argues that a Northern District  
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1 case is not binding on this Court. While *Asis* is not binding, it is certainly  
2 persuasive and provides this Court with a basis for the only logical conclusion that  
3 can be reached in this case.  
4

5 Plaintiff inexplicably asserts that to require a party to meet the pleading  
6 requirements of Fed. R. Civ. P. 9(b) would require that party to plead facts that the  
7 party would not be required to prove at trial. Plaintiff offers no support for this  
8 proposition, and indeed none exists. Rule 9(b), only "requires particularity as to  
9 the circumstances of the fraud" including identifying the "time, place, persons,  
10 [and] statements made, [and an] explanation of why or how such statements are  
11 false or misleading." *Decker v. GlenFed, Inc. (In re GlenFed, Inc. Sec. Litig.)*, 42  
12 F.3d 1541, 1548 (9th Cir. 1994) (superseded by statute on other grounds). That is  
13 precisely what Plaintiff will have to prove in this case if the case proceeds to trial.  
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18 In this case, Plaintiff is required to plead with particularity the allegedly  
19 false information regarding the headers and the subject lines. The Complaint  
20 should be dismissed due to Plaintiff's failure to do so.  
21

22 **F. Plaintiff's Request For Punitive Damages Should Be Stricken.**  
23

24 Contrary to Plaintiff's assertions, this District has unarguably held that  
25 punitive damages are not available under Bus. & Prof. Code § 17500 et seq.  
26 *Anunziato v. eMachines, Inc.*, 402 F. Supp. 2d 1133, 1137 (C.D. Cal. 2005)  
27  
28

1 Plaintiff does not refute Defendants' assertion that where the legislature has  
2 specified a civil penalty, plaintiffs can not recover punitive damages. *See Freeman*  
3 *v. Alta Bates Summit Med. Ctr. Campus*, 2004 U.S. Dist. LEXIS 21402, at p. 9  
4 (N.D. Cal. 2004). Here, §17529.5 provides a civil penalty of \$1,000 per e-mail in  
5 addition to actual damages. Cal. Bus. & Prof. Code §17529.5. Likewise, Plaintiff  
6 apparently agrees that "under California law, a plaintiff who relies solely on a  
7 statutory violation is deemed to have waived entitlement to punitive damages." *See*  
8 *Freeman*, 2004 U.S. Dist. LEXIS 21402, at p. 9. Here, Plaintiff is relying solely  
9 on a statutory violation, namely, §17529.5 and CAN-SPAM, and thus is not  
10 entitled to punitive damages. As a result, Plaintiff's prayer for punitive damages  
11 must be stricken pursuant to Fed. R. Civ. P. 12(f) because it is immaterial to the  
12 claims Plaintiff asserts.

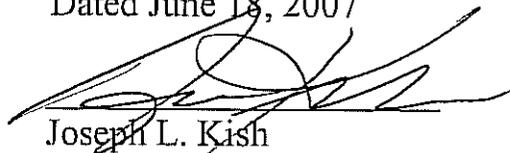
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18 Plaintiff also argues that punitive damages are recoverable under CAN-  
19 SPAM because the triple damages provided by CAN-SPAM are not meant to be  
20 punitive. Here, the express language of §7706(g)(3)(c) makes clear that it is  
21 designed to punish defendants for violating the statute "willfully and knowingly".  
22 Where the award of treble damages is meant to be punitive, a plaintiff cannot  
23 recover separate punitive damages. *Doran v. Embassy Suites Hotel*, 2002 U.S.  
24 Dist. LEXIS 16116, p. 4 (N.D. Cal. 2002). Additional punitive damages in this  
25 case would be duplicative and therefore not recoverable. As a result, Plaintiff's  
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1 prayer for punitive damages must be stricken pursuant to Fed. R. Civ. P. 12(f)  
2 because it is immaterial to the claims Plaintiff asserts.  
3

4 **G. Conclusion**

5 Plaintiff's Complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2)  
6 and (6). Defendants Linhardt and Moniker are not subject to this Court's  
7 jurisdiction and they did not commit any violation of the Cal. Bus. & Prof. Code §  
8 17529.5 or CAN-SPAM. Moreover, the Complaint should be dismissed because it  
9 is not plead with the necessary particularity for actions based on fraud. Count I  
10 should also be dismissed because Cal. Bus. & Prof. Code § 17529.5 is preempted  
11 by CAN-SPAM. Finally, Plaintiff's prayer for punitive damages should be  
12 stricken pursuant to Fed. R. Civ. P. 12(f) because punitive damages are not  
13 recoverable under the facts of this case or the claims asserted by Plaintiff. Nothing  
14 in Plaintiff's response, which goes well beyond the allegations contained in the  
15 complaint, sufficiently rectify the Complaint's deficiencies. Defendants are  
16 entitled to a dismissal of all counts, with prejudice.  
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22 Dated June 18, 2007

23 

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

# **EXHIBIT**

**A**

## DECLARATION OF KANEISHA ROSE

KANEISHA ROSE declares and states as follows:

1. I am an employee of Rapid Legal Inc.– Los Angeles Branch located at 1199 Monterey Pass Rd, Monterey Park, California, a company that offers legal filing and service support. The facts set out below are known to me personally, and if called upon I would testify to these facts, under oath.
2. On May 7, 2007, I supervised the filing of Defendants' Motion to Dismiss in the Silverstein v. e360Insight, LLC, et al. matter, case number cv07-2835 CAS (VBKx) at the U.S. District Court for the Central District of California, Western Division, Los Angeles.
3. I personally prepared the Proof of Service for this document with the intention of mailing these documents to the intended recipient as shown on the Proof of Service.
4. When the conformed copies arrived back to my office, the time for our U.S. Mail pickup had elapsed.
5. On May 8, 2007, I mailed the documents to the intended recipient, but failed to change the Proof of Service to reflect the correct date.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on June 15, 2007.



KANEISHA ROSE

**EXHIBIT**

**B**

## DECLARATION OF MONTE CAHN

MONTE CAHN declares and states as follows:

1. I am the CEO of DomainSystems, Inc., which is the sole member of Moniker Online Services, LLC, a Defendant in this action. I make this declaration in support of Defendants' Response to Plaintiff's Opposition to Defendants' Motion to Dismiss. The facts set out below are known to me personally, and if called on I could testify to those facts, under oath.
2. Moniker does not own or control bargaindepot.net
3. Moniker does not own any domain names that are at issue in this lawsuit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on June 14, 2007.

A handwritten signature in black ink, appearing to read 'Monte Cahn', with a large, stylized initial 'M' at the beginning.

Monte Cahn, CEO

**EXHIBIT**

**C**

## DECLARATION OF DAVID LINHARDT

DAVID LINHARDT declares and states as follows:

1. I am the President of e360Insight (“e360”) and a Defendant in this action. I make this declaration in support of Defendants’ Response to Plaintiff’s Opposition to Defendants’ Motion to Dismiss. The facts set out below are known to me personally, and if called on I could testify to those facts, under oath.
2. I am the President of Bay City Hosting.
3. Bay City Hosting utilized a commercial mail receiving agency in California.
4. The commercial mail receiving agency was not for my personal use.
5. Bay City Hosting is not a party to this litigation and does not have a pecuniary interest in the outcome of this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on June 15, 2007.

  
\_\_\_\_\_  
DAVID LINHARDT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): JOSEPH KISH SBN 136429 SYNERGY LAW GROUP, LLC 730 WEST RANDOLPH SUITE 600 CHICAGO IL 60661 ATTORNEY FOR Defendant		TELEPHONE NUMBER  Fax No. or File No. 2389.06.01	FOR COURT USE ONLY	
Insert name of court and name of judicial district and branch if any. District Court Central District, Los Angeles 312 N Spring St #G-8 Los Angeles CA 90012				
SHORT TITLE OF CASE: William Silverstein v E360 Insight, LLC, et al				
INVOICE NO.	DATE:	TIME:	DEF./DIV.	CASE NUMBER:
550861				CV072835

PROOF OF SERVICE BY MAIL

I AM A CITIZEN OF THE UNITED STATES AND EMPLOYED IN THE COUNTY OF LOS ANGELES STATE OF CALIFORNIA. I AM AND WAS ON THE DATES HEREIN MENTIONED, OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY TO THE ACTION.

ON 06/18/07, I SERVED THE WITHIN:

AMENDED MEMORANDUM OF POINTS AND AUTHORITIES  
 REPLY MEMORANDUM  
 PROOF OF SERVICE BY MAIL

ON THE DEFENDANT, IN SAID ACTION BY PLACING A TRUE COPY THEREOF ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON PRE-PAID FOR FIRST CLASS IN THE UNITED STATES MAIL AT: MONTEREY PARK, CALIFORNIA, ADDRESSED AS FOLLOWS:

F. BARI NEJADPOUR  
 3540 WILSHIRE BLVD.  
 #715  
 LOS ANGELES CA 90010

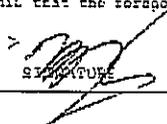
DECLARANT: JOSE P. SOLIS

RAPID LEGAL INC.  
 1199 MONTEREY PASS RD.  
 MONTEREY PARK, CA 91754  
 323-526-7300 FAX 323-526-7377

- d. Registered California process server
- (1)  Employee or  Independent Contractor
- (2) Registration No. PSC 1812
- (3) County: ORANGE
- (4) Expiration: 05-02-08

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: 06/18/07

  
 SIGNATURE