

1 F. Bari Nejadpour (SBN 216825)  
2 Law Offices of Bari Nejadpour & Associates  
3 A Professional Law Corporation  
4 3540 Wilshire Blvd. #715  
5 Los Angeles, CA 90010  
6 (213) 632-5297  
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, BARGAIN DEPOT  
14 ENTERPRISES, LLC AKA  
15 BARGAINDEPOT.NET,  
16 DAVID LINHARDT,  
17 MONIKER ONLINE SERVICES, LLC,  
18 and DOES 1-50;  
19 Defendants.

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

**PLAINTIFF'S REPLY TO**  
**DEFENDANTS' OPPOSITION TO**  
**PLAINTIFF'S MOTION TO STRIKE**  
**AND REMAND**

Date: June 25, 2007

Time: 10:00 am

Location: Courtroom 5

Honorable Christina A. Snyder

20 Plaintiff William Silverstein, by and through his attorney of record, replies to  
21 Defendants' Opposition to Plaintiff's Motion to Strike Defendants' Notice of Interested  
22 Parties and Motion to Remand as follows:

23 **I. INTRODUCTION**

24 Defendants, in their opposition to the instant motion, continues to commit a fraud  
25 upon this Court.<sup>1</sup> Defendant Linhardt continues to put forth the fiction that the only parties

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26  
27 1. Fool me once shame on you! Fool me twice, shame on me!

1 with pecuniary interest have already been listed on their 7.1-1 notice. In fact, Defendants  
2 submit NO evidence, except the self-serving declaration of Linhardt to support this fictions.

3  
4 Defendants claim that there is no legal basis for Plaintiff's motion to strike and remand.  
5 This is only correct if fraud and misrepresentation upon this Court is an invalid reason to  
6 strike a filing. Defendants' Notice of Interested Parties **is not technically deficient, but is**  
7 **clearly fraudulent.**

## 10 **II. THE NOTICE OF INTERESTED PARTIES IS FRAUDULENT.**

11 Despite Defendants' hand waiving, Maverick Direct Marketing Solutions ("Maverick")  
12 has a pecuniary interest in the outcome of this case and should have been listed in  
13 Defendants's 7.1-1 disclosure.<sup>2</sup> Linhardt's assertion that Maverick is not e360's parent  
14 company is directly controverted by Linhardt's assertion that Maverick is e360's sole  
15 member. Regardless, as the sole member of e360, Maverick has a pecuniary interest in the  
16 outcome of this case.<sup>3</sup> Linhardt claims that e360's sister companies have no pecuniary  
17 interest in the outcome of this case, while failing to provide any evidence that the e360's  
18 sister corporations are operated independently of each other and of e360.  
19  
20

21  
22 Defendants concede that the beneficiaries of Spamhaus injunction **do have a**  
23 **pecuniary interest** in the outcome of this case. A ruling in the instant case will raise the  
24

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25 2. Local Rule 7.1-1 states: "...shall file with their first appearance an original and two copies of a Notice of  
26 Interested Parties which shall **list all persons, associations of persons, firms, partnerships and**  
27 **corporations** (including parent corporations clearly identified as such) which **may have** a pecuniary interest in the  
28 *outcome of the case...*" [emphasis added].

3. Defendants fail to provide any information regarding e360's stock ownership.

1 issue of collateral estoppel in E360Insight et al v. Spamahus et al. and may completely  
2 dissolve the e360's injunction against Spamhaus. Linhardt established the multi-million dollar  
3 value of this injunction to any sister companies, affiliates, subsidiaries, and any related  
4 company owned or controlled by Defendants e360 or Linhardt. Therefore **ANY** of the  
5 aforementioned parties **must be identified** in Defendants' Notice of Interested Parties.  
6  
7

8 **III. DEFENDANTS FRAUDULENT NOTICE OF INTERESTED PARTIES**  
9 **CANNOT BE AMENDED.**  
10

11 Allowing Defendants to amend their Notice of Interest Parties would be granting a free  
12 pass to Defendants for their fraud upon this Court. Defendants provide no support that  
13 their fraudulent Notice of Interested Parties can be amended. Each case cited by Defendants  
14 permits a late filing of a corporate disclosure statement – not the amending of a fraudulent  
15 statement.  
16

17 Defendants' citation of Smith v. Argent Mortg. Co., 2006 U.S. Dist. LEXIS 12455 (D.  
18 Colo. 2006) as a basis to call the instant motion is clearly disingenuous. The Smith Court  
19 ruled that the motion to frivolous when it said:  
20

21 “The Motion is frivolous. The plaintiffs do not provide any factual basis for their  
22 assertions that HomEq's counsel is not authorized to practice in federal court and  
23 is not authorized to represent HomEq. To the contrary, the Court's records reflect  
24 that HomEq's counsel is admitted to practice in this Court and that he has been  
25 active and in good standing since October 17, 1977.” Smith v. Argent Mortg. Co.,  
26 2006 U.S. Dist. LEXIS 12455 (D. Colo. 2006).

27 Proper compliance LR 7.1-1 is a procedural requirement for removal.  
28

1 **IV. CONCLUSION**

2 “Removal statutes are strictly construed to favor state court jurisdiction.  
3 Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 85 L. Ed. 1214, 61 S. Ct. 868  
4 (1941); Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979).  
5 Consequently, if a plaintiff challenges a defendant's removal of a case, the  
6 defendant bears the burden of establishing the propriety of the removal. Gaus v.  
7 Miles, Inc. 980 F.2d 564, 566 (9th Cir. 1992); Duncan v. Stuetzle, 76 F.3d 1480,  
8 1485 (9th Cir. 1996). In addition, the Ninth Circuit favors remanding procedurally  
9 defective removals, even in cases of clear ERISA preemption. See Cantrell v.  
10 Great Republic Insurance, 873 F.2d 1249 (9th Cir. 1989); Schwartz v. FHP  
11 International Corp., 947 F. Supp. 1354 (D. Ariz. 1996); Samura v. Kaiser  
12 Foundation Health Plan, 715 F. Supp. 970 (N.D. Cal. 1989).” Olsen v.  
13 Foundation Health Plan, 1999 U.S. Dist. LEXIS 8843, 5-6 (D. Cal. 1999).

14 Defendants intentionally failed to comply with the procedural requirements for removal  
15 – the requirement to file a **truthful** Notice of Interested Parties. This is not a simple  
16 oversight or late filing, but an intentional fraud upon this Court. Permitting Defendants to  
17 amend their fraudulent filings, this Court will be telling Defendants that is it permissible to lie  
18 to this Court with impunity.<sup>4</sup>

19 The Striking of Defendants’ **Notice of Interested Parties** and the remanding the  
20 instant case sends a message to Defendants, and others, that this Court expects truthfulness  
21 by litigants.

22 Dated: June 18, 2007

23 Respectfully submitted,

24  
25 By: \_\_\_\_\_  
26 F. Bari Nejadpour  
27 Attorney for Plaintiff

28 \_\_\_\_\_  
4. Can Defendants be expected to be any more truthful in their amended filing?