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

9 WILLIAM SILVERSTEIN, an individual,
10 Plaintiff,

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

11 vs.

12 E360INSIGHT, LLC, BARGAIN DEPOT
13 ENTERPRISES, LLC AKA
14 BARGAINDEPOT.NET,
15 DAVID LINHARDT,
16 MONIKER ONLINE SERVICES, LLC,
17 and DOES 1-50;
18 Defendants.

**1. NOTICE OF MOTION AND
MOTION TO STRIKE DEFENDANT'S
NOTICE OF INTERESTED PARTIES
AND MOTION TO REMAND**

**2. MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that on Monday June 25, 2007, or as soon thereafter as
21 counsel can be heard, in the Courtroom of Christina A. Snyder, Courtroom 5, at 10:00 am in
22 the United States Courthouse, 312 N. Spring St., Los Angeles, CA 90012. Specially appearing
23 Plaintiff will, and does move the Court to strike Defendants' fraudulent Notice of Interested
24 Parties that was filed pursuant to L.R. 7.1-1.

1 MOTION¹

2 William Silverstein, the specially appearing Plaintiff herein, hereby respectfully moves
3 this Court to for an order of this Court directing:²
4

- 5 (1) That Defendants Notice of Interested Parties, filed pursuant to Local Rule 7.1-1, is
6 deemed to be fraudulent and hereby stricken;
- 7 (2) that this case be remanded back to the California Superior Court of Los Angeles County;
- 8 (3) that the defendants pay the plaintiff his just costs, expenses and attorneys fees, incurred
9 as a result of the improper removal as permitted under 28 U.S.C. 1447(c);
- 10 (4) that Plaintiff shall within 10 days of this order file a declaration of costs and fees
11 associated with the improper removal; and
- 12 (5) that this Court shall retain jurisdiction in this case solely for the purpose of bringing of a
13 motion for sanctions under FRCP 11 against Defendants.
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17 Dated: May 29, 2007

18 Respectfully submitted,
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21 _____
22 F. Bari Nejadpour
23 Attorney for Plaintiff, William Silverstein
24
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26 _____
27 1. This motion is made following the conference of counsel, Joseph Kish, pursuant to L.R. 7-3
28 which took place via e-mail on May 7, 2007 and May 17, 2007. Counsel for Plaintiff was unable to
contact Counsel for Defendant by telephone.

2. Plaintiff disputes the propriety of the removal of the instant case to this Court.

1 Memorandum of Points and Authorities

2 **SUMMARY**

3 Defendants' Counsel filed a knowingly fraudulent *Notice of Interested Parties* in an attempt
4 to dupe this Court into believing that Defendants fully complied with their obligations under
5 L.R. 7-1.1. Where a proper notice under L.R. 7-1.1 is an entrance requirement to this Court,
6 Defendants should not be permitted the privilege of litigating in this Court where they failed
7 to fully comply with the requirement to provide a truthful *Notice of Interested Parties*. Based on
8 Defendants' fraudulent submission to this Court, Plaintiff respectfully requests that this case
9
10 be remanded to State Court as Defendants' entry to this Court was wrapped in fraud.
11

12 In a separate but related action, case 06-CV-03958, now pending in Northern District
13 of Illinois, Defendants E360Insight ("E360") and Linhardt obtained a judgment and
14 injunction, by default judgment, by perpetuating a fraud upon that Court. The injunction
15 granted in that case prevents Spamhaus, non-profit UK-based organization that publishes a
16 widely used resource for identifying and blocking unsolicited commercial e-mail ("spam") ,
17 from listing any of the Defendants' companies, including sister companies, and affiliates in
18 its anti-spam blocking lists. Defendants' own valuation of this injunction exceeds nine
19 million dollars per year.³
20

21
22 In aforementioned Illinois case (E360Insight et al v. Spamhaus et al.) Defendants in the
23 instant case claimed damages for defamation because Spamhaus identified Defendants as
24 spammers. The instant suit accuses Defendants of sending illegal spam. If this Court finds
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27

28 3. Please see ¶¶ 32-35 of **Exhibit B**, in which Defendant Linhardt, in his declaration, describes his damages.

1 that Defendants sent illegal spam, then Defendants injunction in their case against Spamhaus
2 may reasonably be affected.

3
4 Where the aforementioned injunction in the pending Illinois case of *E360Insight et al. v.*
5 *Spamhaus et al.* is of value to Defendants, its sister companies, and its affiliates, all these
6 entities should be listed in Defendants' Notice of Interested Parties in the instant case.
7 Defendants' failure to properly declare these other and additional parties with an interest in
8 the instant case is not simply an oversight, but an intentional misrepresentation – especially
9 since the same attorneys are representing Defendants in both cases.⁴
10

11 12 **FACTUAL BACKGROUND**

13
14 1. Defendants E360 and Linhardt filed a lawsuit (06-CV-3958), on June 21, 2006,
15 .against The Spamhaus Project, claiming that Spamhaus defamed them by publically
16 identifying them as spammers (persons who send spam).

17
18 2. On September 13, 2006 E360 and Linhardt were granted a default judgment in
19 that case.

20
21 3. In addition to money damages, Defendants E360 and Linhardt were granted an
22 injunction which prevents Spamhaus from listing E360Insight, Linhardt, and any related
23 company or partner as in its data base or on its web site as known sources of spam.

24
25 4. Both prior to and subsequent to the default judgment, E360Insight and Linhardt
26 made multiple motions for A Rule to Show Cause of Spamhaus listing corporate entities
27 related to E360 and Linhardt.

28 4. Please see paragraph 5 of page 23 of **Exhibit B**, which indicates that Mr. Kish billed for almost 70 hours in the Spamhaus case.

1 Inc. (“Maverick”) , Bay City Hosting, Rocky Mountain Internet, and Ravina Hosting
2 Company, LLC, Discount Accessories. LLC, Northshore Hosting Company, LLC, and
3 Northgate Internet Services, LLC. Counsel for Defendants are well aware of this web of
4 alter-egos.⁶

5
6 Defendants, through their counsel, filed a *Notice of Interested Parties* to satisfy their
7 requirement to enter this court. L.R. 7-1.1 states that parties

8 “...shall file with their first appearance an original and two copies of a
9 Notice of Interested Parties which shall list all persons, associations of persons,
10 firms, partnerships and corporations (including parent corporations clearly
11 identified as such) which may have a pecuniary interest in the outcome of the case,
12 including any insurance carrier which may be liable in whole or in part (directly or
13 indirectly) for a judgment that may be entered in the action or for the cost of
14 defense.”

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16
17 Furthermore and FRCP 11(b) states that:

18 “(3) the allegations and other factual contentions have evidentiary support or, if
19 specifically so identified, are likely to have evidentiary support.”
20

21 Where parent corporations of Defendants’ corporations are easily determined by Defendants
22 and their counsel, the factual assertions contained within the *Statement of Interested Parties*
23 should be 100% accurate, and any inaccuracy would not be from mistake but rather from
24 intentional misrepresentation.
25

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28 6. Defendants also fail to identify any party that is financing their litigation, in this case or in its multiple defamation cases. **Exhibit C**, page 33, clearly shows that Maverick is the parent company for E360.

1 Defendants' failure to list E360's parent company, Maverick, is clearly an intentional
2 misrepresentation to this Court – especially in light of the fact that E360, through the same
3 counsel, submitted filings to another Federal Court that clearly indicates that Maverick is the
4 parent of E360.⁷ Under the plain language of the rule, E360's parent and sister corporations
5 should clearly be listed in its Statement of Interest Parties in this case, unless it is
6 demonstrated that these parent and sister corporations cannot be affected by the outcome or
7 rulings in this case.
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10 Any person or legal entity that can or will benefit from the injunction in the *E360Insight*
11 *et al v. Spamhaus et al.* defamation case has a pecuniary interest in the outcome of the
12 defamation case and **must be listed as an interested party**. The default judgment and
13 injunction in *E360Insight et al v. Spamhaus et al.* makes Defendants' failure to list E360's
14 parent, sister, and affiliate companies a clearly intentional misrepresentation to this Court.
15 Obviously, if this Court, in due course, reaches the conclusion that E360 or Linhardt sent
16 illegal spam, then any ruling to that effect will raise the issue of collateral estoppel in the
17 *E360Insight et al v. Spamhaus et al.*
18

19 The Spamhaus injunction states,
20

21 “Spamhaus shall not take any action to cause email sent by Plaintiffs or their
22 affiliates, subsidiaries, or related companies owned or controlled by Plaintiffs to be
23 blocked, delayed, altered, or interrupted in any way (including, without limitation,
24 by listing Plaintiffs on Spamhaus’s ROKSO list, within an SBL listing on
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28

7. Please see page 34, **Exhibit C**, which is E360's and Linhardts appellee brief.

1 Spamhaus’s website, using blacklisting technology in concert or conjunction with
2 others, or taking any other action to cause any such interference).”⁸

3
4 The injunction that is currently in place permits Defendants (E360 or Linhardt), or their
5 affiliates, subsidiaries, or any related company owned or controlled by Defendants to earn
6 greater monies than they would if that injunction did not exist. Defendant Linhardt stated to
7 the Spamhaus Court that not being listed on the Spamhaus blacklists is worth more than nine
8 million dollars to E360, its parent, and its sister companies.⁹ It strains credibility to argue
9 that anyone who benefits from an injunction valued in excess of nine million dollars does not
10 have a pecuniary interest in a case that may invalidate that injunction.
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27 8. The injunction is attached as **Exhibit D**.

28 9. Please see **Exhibit B**, ¶¶ 32-34 for Defendant Linhardt’s valuation on the cost of Spamhaus not being enjoined.

1 **SUMMARY**

2 Defendants failed their duty to file a truthful disclosure under L.R. 7.1-1. Defendants
3 must not be permitted commit a fraud upon this Court.
4

5 Plaintiff respectfully asks this Court to strike Defendants' *Notice of Interested Parties* as
6 fraudulent. Plaintiff also respectfully requests this court to find that Defendants' removal was
7 defective. Lastly, Plaintiff requests that this Court remand this case back to Los Angeles
8 Superior Court.
9

10 Complying with the procedural requirement of a truthful and complete Notice of
11 Interested Parties is a requirement for entry into this Court. Defendants **failure to comply**
12 should **ban them from entry in this Court**. Defendants still can have their day in Court –
13 Los Angeles Superior Court.
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16 Dated: May 29, 2007

17 Respectfully submitted,
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20 By: _____
21 F. Bari Nejadpour
22 Attorney for Plaintiff
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