

1 William Silverstein

2  
3 in propria persona

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

9 WILLIAM SILVERSTEIN, an  
10 individual,  
11 Plaintiff,  
12 vs.  
13 EYEFIVE, INC,  
14 GLOBAL WEB PROMOTIONS PTY, LTD,  
15 AND DOES 1-19,  
16 Defendants.

Case No.: CV04-1200-TJH (CWx)  
  
(1) NOTICE OF MOTION AND  
MOTION FOR REMAND OF IMPROPERLY  
REMOVED CASE AND FOR JUST COSTS  
AND EXPENSES, INCLUDING  
ATTORNEY'S FEES, INCURRED DUE TO  
THE IMPROPER REMOVAL, AND  
SANCTIONS DEFENDANTS AGAINST THE  
DEFENDANT'S ATTORNEY;  
  
(2) MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
  
Date: Monday, April 19, 2004  
Dept: 17, Hon. Terry J. Hatter

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19 **NOTICE OF MOTION**

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on Monday April 19, 2004, or as soon  
22 thereafter as counsel can be heard, in the Courtroom of Honorable  
23 Terry J. Hatter Jr., Courtroom 17 in the United States  
24 Courthouse, 312 N. Spring St., Los Angeles, CA 90012. Plaintiff  
25 will bring on the following hearing. Pursuant to this Court's  
26 FAQs ABOUT JUDGES' PROCEDURES AND SCHEDULES, no indication of the  
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1 hearing time is necessary.

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**MOTION**

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William Silverstein, the plaintiff herein, hereby moves

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within 30 days of removal, pursuant to § 1447(c) of Title 28 of

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the United States Code, for an order of this Court directing:

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(1) that this case be remanded back to the California Superior

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Court of Los Angeles County, as this case was improperly removed

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(2) that the defendants pay the plaintiff his just costs,

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expenses and attorneys fees, incurred as a result of the improper

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removal of this case.<sup>1</sup>

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(3) that Counsel for Defendant be sanctioned for both failing to

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properly comply with Local Rule 83-1.5 and knowingly remanding

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after the time limit specified by 28 USC 446(b).

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Dated: March 24, 2004

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\_\_\_\_\_  
William Silverstein

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1. Under Local Rule 7-2, plaintiff unsuccessfully sought consent to remand this action in multiple conversations with the defendants' counsel, Janene P. Bassett of Sheppard, Mullin, Richter & Hampton, LLP.

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1 Memorandum of Points and Authorities

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3 A Brief Factual Background

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5 1. Silverstein returned product ordered from Global Web,  
6 to 16742 Stagg St., Suite 101, Van Nuys, CA - the same address as  
7 Eyefive, Inc., along with a cease and desist letter.<sup>2</sup>

8  
9 2. In response to this return, Global sent an e-mail  
10 confirming that the refund is being processed.<sup>3</sup>

11 3. On August 18, 2003, Plaintiff William Silverstein  
12 ("Silverstein") filed this case in Los Angeles County Superior  
13 Court against EyeFive, Inc. ("Eyefive") and Does 1-20 in  
14 California Superior Court entitled William Silverstein v.  
15 Eyefive, Inc., and Does 1-20. The complaint alleged six causes of  
16 action stemming from illegal unsolicited commercial e-mail.

17 4. Based on the representations that Eyefive provided  
18 fulfillment services for Global, Plaintiff amended the complaint  
19 to include the actions by Global.<sup>4</sup>

20  
21 5. On November 19, 2003, Silverstein filed a a First  
22 Amended Complaint ("FAC") including Global Web Promotions Pty,  
23 Ltd. ("Global"), and Does 1-19.

24 6. On November 25, 2003, Plaintiff dismissed EyeFive from  
25 the Superior Court action with prejudice.

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27 2. See Balsam declaration §§ 4,5.

28 3. See Silverstein declaration § 5.

4. Ibid. § 7.



1        **corporations (including parent corporations)** of the case,  
2        including any insurance carrier which may be liable in  
3        whole or in part (directly or indirectly) for a judgment  
4        that may be entered in the action or for the cost of  
5        defense." [emphasis added]  
6

7 The Certification and Notice of Interested Parties filed by  
8 Counsel for Global, only identified Silverstein and Global.<sup>6</sup>  
9 Counsel failed to list any party with a significant interest in  
10 Global, as well as any agents of Global that will be included in  
11 the case, the DOE defendants.<sup>7</sup> As L.R. 83-1.5 is a entry  
12 requirement to this court, the failure to completely comply  
13 should be a bar to entry.

14        Global has the information required L.R. 83-1.5, but chose  
15 not to comply. Global's due process rights can be satisfied by  
16 litigating this case in state court, as Global apparently does  
17 not want to comply with the entry requirements of this court.  
18 Global cannot be permitted use this court where Global scoffs at  
19 the rules of this court.  
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21 **II. Global removed more than 30 days after receiving notification**  
22 **of the lawsuit.**

23        Global was served on January 7, 2004, though Global argues  
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27 6. See exhibit A.

28 7. It is probable that one or more of the DOE defendants are indemnifying Global in exchange for anonymity.

1 that service in this manner may not be valid.<sup>8</sup> Valid service is  
2 not required to start the thirty day clock under 28 U.S.C  
3 1446(b), as it reads reads:

4 "The notice of removal of a civil action or proceeding  
5 shall be filed within thirty days after the **receipt by**  
6 **the defendant**, through service **or otherwise**, of a copy of  
7 the initial pleading setting forth the claim for relief  
8 upon which such action or proceeding is based, or within  
9 thirty days after the service of summons upon the  
10 defendant if such initial pleading has then been filed in  
11 court and is not required to be served on the defendant,  
12 whichever period is shorter." [emphasis added]  
13

14 Until some time after January 13, 2004, Global listed their  
15 shipping department address as 16742 Stagg St, Unit 101, Van  
16 Nuys, CA ("Van Nuys address") - the same address of Eyefive,  
17 Inc.<sup>9</sup> Whereas products sold by Global are delivered with the  
18 Global name, using the Van Nuys return address, and then accepts  
19 returns at the Van Nuys address, Global cannot disavow the Van  
20 Nuys address. The Van Nuys address is the defacto Global shipping  
21 department, by Global's own representation to the public,  
22 therefore Global is estopped from claiming otherwise when it  
23 inconveniences them. Even if the court should allow Global to  
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27 8. Plaintiff's holds that the January 7<sup>th</sup> service is valid, and  
28 will be fully argue that in response to the defendants' pending  
motion to dismiss.

9. See Silverstein declaration § 6.

1 benefit from their deceit, the complaint was received by Eyefive,  
2 an agent authorized by Global to receive packages, mail, and  
3 deliveries.<sup>10</sup> Once received at the Van Nuys address, in person,  
4 on January 6, 2004, the thirty day clock ticked until February 6.  
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8 **Conclusion**

9 As GWP was served and otherwise was in receipt on January 6,  
10 2004, GWP waived their right to remand. Silverstein respectfully  
11 requests that the court that remands this case back to state  
12 court. Furthermore Silverstein requests \$568.55 for attorneys  
13 fees and costs associated with this motion.  
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16 Dated: March 24, 2004  
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William Silverstein  
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26 10. *"There is no basis, then, to assume that for purposes of §*  
27 *1446, "service or otherwise" must have been made upon Mr.*  
28 *Hulhorst personally rather than upon any other responsible*  
*employee of the defendant."* Maglio v. F.W. Woolworth Company 542  
F. Supp. 39; 1982 U.S. Dist. LEXIS 13161.