

1 William Silverstein
2 XXX
3 XXXX
4 (213) 738-8975
5 in propria persona
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 WILLIAM SILVERSTEIN, an individual,

11 Plaintiff,

12 vs.

13 WORLD WIDE WEB ENTERPRISES, LC,
14 ROBERT SMOLEY, DARIN GREY, ICOM
15 GROUP, LLC, a Florida Corporation,
16 PRIORITY RESPONSE GROUP
INTERNATIONAL, LLC,
AND DOES 1-48,

17 Defendants.
18

Case No.: CV05-07193-MMM (JWJx)

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

Date: Monday, January 30, 2006

Time: 10:00 am

Place: Courtroom 720-Roybal

Honorable Margaret M. Morrow

19
20 **I. Introduction**

21 Plaintiff respectfully submits his reply to Defendants' opposition to Plaintiff's motion to
22 remand. Defendants failed to comply with procedure when removing this case. Defendants fail to
23 provide any admissible evidence that service was improper. Defendants confuse person authorized
24 to receive mail with agent for service of process. Defendants purposely confuse person authorized
to receive substitute service and mail with agent for service of process.

25 As argued and evidenced in Plaintiff's motion to remand and Plaintiff's opposition to
26 Defendant's motion to quash, service was proper despite Defendants' efforts to evade service.
27 Defendant should not be rewarded for evading service. Despite the great lengths Defendants

1 have gone through to avoid service, Defendants were properly served. This Court should not
2 reward Defendants for their malfeasance.

3 Argument

4 **A. Defendants failed to properly remove.**

5 _____ Defendants failed to file required notice of the removal and all Defendants did not join in
6 the removal.

7 Defendants failed to promptly file notice of this removal with the State Court, as required
8 by 28 U.S.C. 1446(d). Defendants filed the notice with the State Court on November 14, 2005,
9 over a month after filing this removal. This is not a minor delay, but Defendants failed appear at
10 the case management conference, where the Plaintiff appeared. Defendants only filed the notice
11 of this removal with the Superior Court after order to show cause was scheduled.

12 World Wide Web Enterprises (“WWWeb”) could not join in the removal, as it was
13 administratively dissolved on September 16, 2005 (See Plaintiff’s Request for Judicial Notice
14 1:20-23 filed with the opposition to the motion to quash). Section 608.4511(7) of the Florida
15 Statutes prohibits a dissolved LLC from defending any action in court.¹ WWWeb is a Florida
16 LLC, therefore FRCP 17(b) and Florida Statute Section 608.4511(7) prevents WWWeb from
17 defending in this case. All defendants must join in the removal, otherwise the removal is
18 defective.²

24 1. Florida Statute section 607.4511(7) reads: “Any limited liability company failing to file an
25 annual report which complies with the requirements of this section shall not be permitted to prosecute,
26 maintain, or defend any action in any court of this state until such report is filed and all fees, penalties,
and taxes due under this chapter are paid and shall be subject to dissolution or cancellation of its
certificate of authority to do business as provided in this chapter.”

27 2. “The failure to join all proper defendants in a removal petition may otherwise render the
28 removal petition procedurally defective.” Emrich v. Touche Ross & Co., 846 F.2d 1190 (9th Cir.
1988).”

1 **B. Defendants' removal was untimely.**

2 While Plaintiff agrees with Defendants that the time runs from 30 days after Defendants
3 have been effectively served with the summons and complaint, Plaintiff contends that the 30 day
4 period starts on August 15, 2005.³

5 Defendants doesn't dispute that the original complaint was removable. Defendants doesn't
6 dispute that Smoley and WWWeb were properly served with the a original summons and
7 complaint on December 18, 2004. Defendants never disputed that Grey was personally served
8 with original summons and complaint on May 16, 2005. Defendants only dispute the service of
9 the amended complaint and summons.

10 Defendant **never** deny receipt of the amended complaint and summons, they only deny the
11 propriety of the service. Defendants claim that the building security guard, Derek Matson, was
12 not the proper person for the substitute service. Contrary to Defendants' protestations, service
13 on Defendants' security guard is valid substitute service. *Bein v. Brechtel-Jochim Group Inc.*, 6
14 Cal. App. 4th 1387, 8 Cal. Rptr. 2d 351 (Cal.App.Dist.4 05/28/1992), ruled that substitute
15 service on a gate guard is valid. *Bein* endorsed *F. I. duPont, Glore Forgan & Co. v. Chen* (1977)
16 41 N.Y.2d 794 [396 N.Y.S.2d 343, 364 N.E.2d 1115] which found that substitute service on a
17 doorman to an apartment building to be valid.

18 Defendants only now claim that service of the amended complaints under § 415.40 was
19 invalid as it was Matson who appear to sign the receipt card. Defendant provides no evidence
20 that Matson is not authorized to accept mail for Defendants. Defendants never claimed, or
21 provide proof, that Matson illegally accepted Defendants mail. The court in *Dill v. Berquist*
22 *Construction Co.*, 24 Cal.App.4th 1426, 1437 (Cal.App. Dist.4 05/05/1994) is instructive in this
23 circumstance where it said, "Therefore, Dill could be held to have substantially complied with the
24 statute if, despite his failure to address the mail to one of the persons to be served on behalf of the
25 defendants, the summons was actually received by one of the persons to be served." Here, the
26 mail was properly addressed, and received by Defendants.

27
28 3. Both California Code of Civil Procedure § 415.40 and § 415.20 deems service complete
on the 10th day after mailing.

1 Conclusion

2 Where service is valid, and California jurisdiction is proper, Plaintiff respectfully requests
3 that the Court should rule that all Defendants were properly served with the amended complaint
4 and summons and remand this case to California Superior Court. Furthermore, this Court should
5 award Plaintiff \$435.00 in attorney fees and costs for the remand, as authorized under 28 U.S.C.
6 1447(c).

7 Dated: January 10, 2006

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William Silverstein