

1 William Silverstein
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2 XXXXXX
3 in propria persona
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6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

8 WILLIAM SILVERSTEIN, an
9 individual,

10 Plaintiff,

11 vs.

12 WORLD WIDE WEB ENTERPRISES, LC,
13 a Florida Corporation,
14 ROBERT SMOLEY, an individual,
15 DARIN GREY, an individual,
16 ICOM GROUP, LLC, a Florida
17 Corporation,
18 PRIORITY RESPONSE GROUP
19 INTERNATIONAL, LLC, a Florida
20 Corporation
21 AND DOES 1-48,

22 Defendants.
23

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

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;

2. MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

Date: Monday, December 5, 2005
Time: 10:00 am
Place: Courtroom 720
Honorable Margaret M. Morrow

24 **NOTICE OF MOTION**

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on Monday December 5, 2005 at
27 10:00am, or as soon thereafter as parties can be heard, in the
28 Courtroom of Honorable Margaret M. Morrow, Courtroom 720 in the
Edward R. Roybal Federal Building and Courthouse, 255 East Temple
St., Los Angeles, CA 90012. Plaintiff will, and does move the
court pursuant to 28 U.S.C 1447(c) to remand this case to
California Superior Court.

MOTION

1 William Silverstein, the plaintiff herein, hereby moves
2 within 30 days of removal, pursuant to § 1447(c) of Title 28 of
3 the United States Code, for an order of this Court directing:

4 (1) that this case be remanded back to the California Superior
5 Court of Los Angeles County;

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7 (2) that the defendants pay the plaintiff his just costs,
8 expenses and attorneys fees, incurred as a result of the improper
9 removal as permitted under 28 U.S.C. 1447(c);¹

10 (3) that Counsel for Defendants be sanctioned for knowingly
11 remanding after the time limit specified by 28 USC 446(b),
12 failing to properly remove, and practicing law in this
13 jurisdiction without a license.

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15 Dated: October 23, 2005

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William Silverstein

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28 1. This motion is made following the conference of counsel,
John Waller, pursuant to L.R. 7-3 which took place on October 14,
2005.

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2 **Memorandum of Points and Authorities**

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4 **SUMMARY**

5 Plaintiff respectfully requests that this case be remanded to
6 State Court as Defendants untimely and improperly removed this
7 case from State Court. Defendants filed the notice of removal
8 with this court October 3, 2005, fifty-nine days after the last
9 Defendant was served - August 5, 2005.

10 **FACTUAL BACKGROUND**

11 Plaintiff filed a complaint which includes a count for
12 violating the CAN-SPAM act (15 U.S.C. 7703 et seq.), in
13 California Superior Court on December 16, 2004 against World Wide
14 Web Enterprises LC ("WWWeb"), Robert Smoley, and Darin Grey.
15 WWWeb and Robert Smoley was served in accordance with Cal. Bus. &
16 Prof. Code §415.40 on December 18, 2004. Darin Grey was
17 personally served on May 16, 2005.² On July 11, 2005, In response
18 to Defendant Grey's State Court motion to quash, Plaintiff filed
19 the first amended complaint ("FAC") adding Icom Group, LLC and
20 Priority Response Group International as Defendants. The FAC was
21 served on all corporate defendants and Smoley, in accordance with
22 both Cal. Bus. & Prof. Code §415.20 and §415.40. on August 5,
23 2005.³ Defendants filed the notice of removal with this court on
24 October 3, 2005.
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27 2. See exhibit A, copy of the proof of personal service on
28 Darin Grey.

3. See exhibits B and C, copy of proofs of services under Cal.
Bus. & Prof. Code §415.20 and §415.40 respectively.

ARGUMENT

The Removal was Untimely.

28 U.S.C. 1446(b) requires the removal be filed within 30 after receipt of the summons and complaint. The initial complaint was removable, as where there was a count for the violation of the CAN-SPAM Act.⁴ The last party to receive service of the complaint or amended complaint was served on August 5, 2005 making September 14, 2005 the last day for Defendants to properly remove to this court.⁵ Defendants filed their notice of removal with this court on October 3, 2005 - 29 days late.

Defendants Failed to Properly Remove.

Defendants only included the amended complaint with the notice of removal, not "with a copy of all process, pleadings, and orders served"⁶ Defendants failed to include the original complaint, filed services. Defendants failed to include all the papers related to Grey's state court motion to quash. Defendant failed to serve Plaintiff the notice of interested parties, filed with this court under L.R. 7-11.

Robert Smoley Practiced Law without a license.

Robert Smoley, acting as attorney for all Defendants filed the notice of removal with this court on October 3, 2005 - dated September 23, 2005 and served on Plaintiff on September 23rd. Smoley did not file a pro hac vice application with this court until October 7, 2005. When making this removal, Smoley was practicing law in this case, without being properly licensed to do so.

4. See attachment D, the first page of the original complaint

5. Both Cal. Bus. & Prof. Code §415.20 and §415.40 adds 10 days from the date of mailing for service to be completed.

6. 28 U.S.C. 1446(a).

1 Conclusion

2 Where the notice of removal was filed late and improperly,
3 Plaintiff respectfully requests that the court remands this case
4 back to state court. Plaintiff also respectfully requests that
5 Defendant be required to pay Plaintiff his costs and attorney
6 fees related to this motion.
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8 Dated: October 23, 2005
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10 _____
11 William Silverstein

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15 ORDER

16 Plaintiff's motion to remand is granted. Defendant shall pay
17 Plaintiff's attorney's fees and costs related to this action.
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20 Dated: _____
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22 _____
23 Judge
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