IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

E360INSIGHT, LLC, an Illinois Limited Liability Company, and DAVID LINHARDT, and individual,	)	
Plaintiffs,	)	
v.	)	
	)	Case No. 07 L 004983
MARK JAMES FERGUSON, an individual, SUSAN WILSON A.K.A. SUSAN GUNN, an individual, ROB SAECKER A.K.A. FUDO, an individual, RICH TIETJENS A.K.A. MORELY DOTES, an individual, WILLIAM SILVERSTEIN, an individual, and TIM SKIRVIN, an individual	)	Judge Quinn
Defendants.		

REPLY BRIEF IN RESPONSE TO OPPOSITION
TO MOTION TO DISMISS

NOW COMES Defendant, MARK JAMES FERGUSON, pro se defendant, reply to Plaintiff's response to Defendant's Motion to Dismiss, and state as follows:

1. Plaintiff has filed their Response Brief to Defendant's Motion to Dismiss. The arguments put forth by Plaintiffs have not altered the facts of the case to their advantage nor has their response changed the requirements for this Court to exercise Personal Jurisdiction nor has Plaintiffs' counsel put forth any valid points that would allow this Court to exercise Personal Jurisdiction under 735 ILCS 5/2-101.

Personal Jurisdiction

2. There are over sixty-thousand newsgroups on Usenet and over one-hundred specific to Illinois and twenty or more specific to Chicago (Exhibit "11," attached). The Defendant did not post to these newsgroups and instead chose to post to only a single

newsgroup, news.net,admin-abuse.email, hereafter NANAE whose charter is for the discussion of spammers like the Plaintiffs as the name implies. The posts made by the Defendant were on topic and consistent with the charter for that newsgroup and therefore cannot be considered targeted towards the Plaintiff other than Plaintiffs being the current subject of discussion or targeted towards the forum state.

3. When Plaintiff was made aware that the spam received was unwanted and unwelcome Plaintiff, Dave Linhardt offered to remove Defendant's email address from Plaintiffs' lists January 19, 2007 (Exhibit "5," attached to the Declaration of Mark James Ferguson in Support of the Motion) Plaintiffs simply lied in this statement and continued to spam Defendant for an additional forty-two [42] days. Plaintiffs acknowledge receipt of Defendant's Letter for Damages dated February 9, 2007 (Exhibit "12," attached) but the spam from Defendant increased in volume and frequency and continued until February 23, 2007 subsequently followed immediately by a Federal Lawsuit for the exact same claims presented in this Court.

4. When Plaintiff saw what was posted Plaintiffs simply chose to compound their error by fabricating evidence and making false claim that Defendant signed up at some third party site (Exhibit "7," attached to the Declaration of Mark James Ferguson in Support of the Motion). Plaintiffs' counsel had knowledge that this signup was questionable but chose not to question the validity instead choosing to believe Defendant was lying.

5. Plaintiffs make false claim Defendant signed up using his current IP address [131.191.63.103] on November 29, 2006 at exactly midnight or 00:00:00. The time stamp alone should have alerted any reasonable individual that this was a forgery and I would suggest Plaintiff's counsel to be of reasonable intellect and perhaps competent and this speaks directly to the character of the Plaintiffs and their motives for filing litigation such as this.

6. Defendant did inform Plaintiffs' counsel the fact that the IP address in question did not belong to the Defendant until January 12, 2007 at approximately 10:00AM (Exhibit "13," attached). So unless Defendant can predict future events and what IP address will be assigned to him by a company Defendant does not yet know exists, Defendant simply could not have fabricated the signup and that leaves either Plaintiffs or their scapegoat 123freetravel.com as they have continued to claim to be the origin of the fabrication.

7. The nature of the Defendant's online services with Defendant's primary email, hosting and Usenet services being obtained solely from Sonic.net Inc., in California and Defendant's broadband access to the Internet being delivered by Advanced Stream, a sub-contractor of the Click-Network! of the city of Tacoma precludes 123freetravel.com of knowing the Defendant's IP address and precludes 123freetravel.com as the source of the fabricated information. The Defendant's current IP address is only visible in HTTP log files or when Defendant views a website. Defendant viewed Plaintiffs' multiple sites during the course of his investigation into the 93 spam from Plaintiffs.

8. Plaintiff Dave Linhardt found Defendant's IP address that only after January 12, 2007 was assigned to my home computer named, cindy.ferguson.betta.products in his log files connected the IP address with me and my spouse and then proceeded to fabricate the signup information and then backdated that fabrication to October 29, 2007 to cover himself in case he was sued for spamming.

9. Only Plaintiff Dave Linhardt had motive, opportunity and most importantly was the only one with the means to fabricate the signup he himself created and then posted to NANAE in an attempt to paint Defendant as an individual that signs up for mailing lists and then complains about them.

10. Plaintiffs cite Bombliss v. Cornelsen and Keller v. Henderson where the parties had entered into a business relationship prior to any litigation and in Keller v. Henderson the original parties signed a contract to litigate any and all disputes in Illinois.

> "The contract further provided that it was "deemed to be made in Illinois" and that Courtesy was acting as an agent for defendant to facilitate the sale of the plane. Additionally, the contract provided that any disputes arising out of the contract "shall be" litigated in Illinois."

11. Next in Goldhaber v. Kohlenberg, Plaintiff's counsel conveniently leaves out the messages in question were not accessible to any others than the Plaintiff's peers and therefore specifically targeted whereas in NANAE the readers are from all over the world and not specific to Illinois, not all system administrators, not all end users, not all blocklist maintainers and therefore Goldhaber v. Kohlenberg is completely contrary to the case before the Court.

> "…. accessible only to other Continental pilots"

12. Plaintiffs' counsel then makes the claim that Howard v. Missouri Bone and Joint Center, Inc., does not apply simply because Defendant knew Plaintiffs were an Illinois company and the harm occurred in Illinois. What harm has occurred? Plaintiffs have not supported any claims of harm with anything that can be attributable to Defendant's statements. The harm was done by Plaintiff's litigious nature and the Plaintiffs' incessant need for publicity. Defendant posted to a single newsgroup with approximately five-hundred readers whereas Plaintiff interviewed no less than six times for the DMNews, an online news reporting agency with potentially thousands of readers that are in the industry.

<u>Venue</u>

13. Defendant used a computer in his home in Tacoma, Washington to compose and post his messages to a server located in Santa Rosa, California that belongs to Sonic.net Inc.,

Plaintiff used a computer in his home to access a server that was located in California and belongs to Google Inc., to access the post made by Defendant.

14. Lastly in an attempt to further muddy the proceedings Plaintiffs attempt to use Calder v. Jones in a final attempt to claim Jurisdiction and or Venue. The Defendant knew a large percentage of readers were from Southern California where the Plaintiff resides and the harm was to have taken place. Defendants are in the business of publishing information for shock value. Defendant does not publish for money, Defendant has no knowledge of who reads his posts that reside in Illinois and Defendants is not posting with the intent of shocking people into reading his posts.

WHEREFORE, Defendant request his Motion to Dismiss be granted with prejudice and for any additional relief this Court deems just.

Respectfully Submitted,

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