

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

E360INSIGHT, LLC, an Illinois Limited  
Liability Company, and DAVID LINHARDT,  
an individual, )  
Plaintiffs, )

v. )

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 A.K.A. SCREWTAPE III, an )  
individual )

Defendants. )

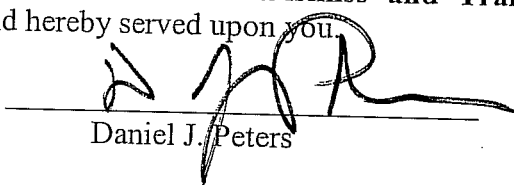
No.: 07 L 004983

JURY DEMAND

NOTICE OF FILING

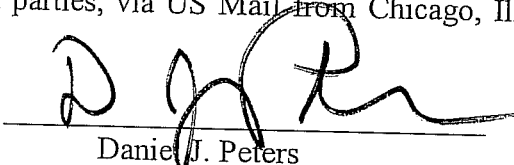
TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on August 10, 2007, I caused to be filed  
**Plaintiff's Response to Defendant Ferguson's Motion to Dismiss and Transfer  
Venue**, a copy of which is attached hereto and hereby served upon you.

  
Daniel J. Peters

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the attached  
**Plaintiff's Response to Defendant Ferguson's Motion to Dismiss and Transfer  
Venue** to be served upon the above named parties, via US Mail from Chicago, Illinois  
before 5:00 p.m. on August 10, 2007.

  
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COUNTY DEPARTMENT, LAW DIVISION**

E360INSIGHT, LLC, an Illinois Limited  
Liability Company, and DAVID LINHARDT,  
an individual,

Plaintiffs,

v.

MARK JAMES FERGUSON, an individual,  
SUSAN WILSON A.K.A. SUSAN GUNN, an  
individual, KELLY CHIEN, 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

Defendants.

Case No. 07 L 004983

**RESPONSE TO MOTION TO DISMISS**

Plaintiffs, e360Insight, LLC (e360) and David Linhardt (“Linhardt”) (collectively “Plaintiffs”), by and through their attorneys, Synergy Law Group, LLC, for their Response to Defendant Mark James Ferguson’s (“Ferguson”) Motion to Dismiss and Motion to Transfer venue, state as follows:

1. Defendant Ferguson has filed a Motion to Dismiss and a Motion to Transfer Venue. The Motions should be denied because Ferguson does not articulate a basis for dismissal under 735 ILCS 5/2-615 or 619 and this county, Cook, is where “the transaction ...occurred out of which the cause of action arose.” 735 ILCS 5/2-101.

**Personal Jurisdiction**

2. Under Illinois law, this Court can exercise jurisdiction over Ferguson based on general or specific jurisdiction. This Court can exercise personal jurisdiction on any basis permitted by the Illinois Constitution and the Constitution of the United States. 735

ILCS 5/2-209(c). "Federal due process analysis requires a three-prong analysis consisting of whether (1) the nonresident defendant had 'minimum contacts' with the forum state such that there was 'fair warning' that the nonresident defendant may be haled into court there; (2) the action arose out of or related to the defendant's contacts with the forum state; and (3) it is reasonable to require the defendant to litigate in the forum state." *Keller v. Henderson*, 359 Ill. App. 3d 605, 613, 834 N.E.2d 930 (2nd Dist. 2005). Here, Ferguson clearly had minimum contact by knowingly posting defamatory comments on an internet site he knew would be accessed by an Illinois resident. Ferguson knows that e360Insight and David Linhardt are located in Illinois. This cause of action arises out of Ferguson's contact with this forum and it is reasonable to require Ferguson to litigate here because he committed a tort in this state.

3. Illinois courts have subjected a defendant to its jurisdiction based on internet postings. *See Bombliss v. Cornelsen*, 355 Ill.App.3d 1107, 824 N.E.2d 1175 (Ill.App. 3d Dist. 2005). In *Bombliss*, plaintiff dog-breeders sued non-resident defendants in Illinois state court for, *inter alia*, defamation resulting from chat room postings on the internet. The court in *Bombliss*, while looking at a variety of factors, found that exercising jurisdiction over the non-resident defendants was proper because "it was entirely foreseeable that the injury resulting from defendants' allegedly false assertions of genetic defects over the Internet would be felt primarily in Illinois." *Bombliss*, 355 Ill.App.3d 1107, 1116 (Ill.App. 3d Dist. 2005). Here, it was foreseeable that Ferguson's actions would result in injury to Plaintiffs in Cook County.

4. Jurisdictions other than Illinois have justified exercising jurisdiction over non-resident defendants based on internet activity, illustrating the emerging precedent of

allowing plaintiffs to file suit where the effects of a defendant's internet activity are felt. *See Goldhaber v. Kohlenberg*, --- A.2d ----, 2007 WL 2198181 (N.J.Super.A.D.).

5. Ferguson's reliance on *Howard v. Mo. Bone & Joint Ctr., Inc.*, 869 N.E.2d 207 (5<sup>th</sup> Dist. 2007) is misplaced. In *Howard*, the Court merely held that "Illinois could not exercise jurisdiction over out-of-state defendants merely because they advertised in Illinois and had clients from Illinois." *Id.* at \*16. That is not the issue in this case. In this case Ferguson knew this was an Illinois company, and the harm occurred in Illinois and therefore jurisdiction is appropriate.

### Venue

6. "A plaintiff's right to select the forum is substantial, and unless the factors weigh strongly in favor of transfer, the plaintiff's choice of forum should rarely be disturbed. Further, if the plaintiff's chosen forum is its home forum, that choice will be given substantial deference." *Community Merchant Services v. Jonas*, 354 Ill.App.3d 1077, 1082, 822 N.E.2d 515, 520 (Ill.App. 4th Dist. 2004).

7. In the Complaint, Plaintiffs allege that Ferguson made defamatory statements regarding Plaintiffs. (Complaint at ¶ 17-18). Ferguson has not contested the validity of the allegations. Likewise, Ferguson has not contested the fact that his defamatory statements had an effect in this forum.

8. In determining whether to grant a Motion to Transfer Venue, this Court's inquiry involves questions of fact and law. *Corral v. Mervis Indus.*, 217 Ill. 2d 144, 153 (2005). Here, Ferguson raises no question as to the facts.

9. The United States Supreme Court has established that venue is proper in the forum where the effect of the alleged wrongful conduct is felt. *Calder v. Jones*, 465 U.S.

783, 104 S.Ct. 1482 (1984). In *Calder*, Florida reporters published articles in a national magazine that the Court found were calculated to cause injury to their subject in her home state of California, justifying a California court exercising jurisdiction over the non-resident defendants. *See Calder*, 465 U.S. 783, 791, 104 S.Ct. 1482, 1488 (1984). Here, the alleged defamatory comments by Ferguson concern Plaintiffs' Cook County activities. Cook County is the focal point of Ferguson's comments and the harm suffered by Plaintiffs. Ferguson's defamatory internet postings were calculated to cause injury in Cook County, and Plaintiffs indeed suffered injury in Cook County.

WHEREFORE, Plaintiffs request that this Court enter and Order denying Defendant Ferguson's Motion to Transfer Venue and for any other relief the Court deems just.

Respectfully submitted,

E360Insight, LLC. and David Linhardt

By: \_\_\_\_\_

One of Their Attorneys

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