



In support of this motion, Spamhaus states:

**Introduction And Factual Background**

Since November 2007, Spamhaus has diligently sought to discover the factual basis for Plaintiffs' \$11 million damages claim, but has been repeatedly hindered in these attempts by Plaintiffs' delinquent and inadequate responses to discovery requests, and failure to appear for properly noticed depositions. We have been before the Court twice before and have previously summarized Plaintiffs' dilatory and non-responsive conduct through the date of those appearances; we attach as Exhibit 1 that summary. As a result of that conduct, Your Honor ruled:

[I]f you do not give [Spamhaus] what he has asked for and has coming – and any objections are waived to the breadth of that or their, otherwise, status of production – then you are going to have to deal with me. Okay? And I will not view kindly someone who takes this long to start interposing objections this late in the day on a case that has been to the Court of Appeals and back. (Exhibit 2, April 29, 2008 Tr. at p. 9).

Your Honor specifically ordered that complete responses, and a full production, be made by May 13, 2008. (Exhibit 3, 4/29/08 Order). Your Honor ordered additional discovery, which currently closes on August 5, 2008.

Despite Spamhaus' repeated attempts to gain compliance, that simply has not happened. Indeed, despite having properly noticed Plaintiffs' depositions three times, Spamhaus has yet to obtain the depositions. And, at this point, Plaintiffs' counsel has indicated that the depositions will not be scheduled before the now twice-extended discovery cutoff. Here is what happened since Your Honor's order compelling production by May 13, 2008:

5/13/2008	Plaintiffs make an additional document production of one gusset and provide inadequate Revised Answers to First Set of Interrogatories and Responses to First Request for Production. (Ex. 4). The majority of the responses state either: (1) "See documents produced in response to Defendant's Request to Produce;" or (2) "without providing a narrative here, it is anticipated that Mr. Linhardt will discuss the subject matter of this interrogatory during his deposition."
5/16/2008	Spamhaus' counsel emails Plaintiffs' counsel detailing the deficiencies in Plaintiffs' Revised Response to Spamhaus' First Set of Interrogatories and requesting a Local Rule 37.2 Conference (Ex. 5).
5/28/2008	Spamhaus serves deposition notices on Plaintiffs calling for the deposition of Mr. Linhardt and the Rule 30(b)(6) deposition of e360 on June 17 and 19, 2008, respectively (Ex. 6).
5/30/2008	Plaintiffs provide Amended Responses to First Request for Production and Amended Answers to First Set of Interrogatories (Ex. 7). These discovery responses remain insufficient for a number of reasons: (1) Amended Response to the Request for Production state that the Plaintiffs' "investigation continues;" (2) some Interrogatory responses state "without providing a narrative here, it is anticipated that Mr. Linhardt will discuss the subject matter of this Interrogatory during his deposition;" (3) some Responses simply direct Spamhaus to documents, rather than providing an appropriate narrative; and (4) many responses make unsupported statements.
6/13/2008	Spamhaus' counsel emails Plaintiffs' counsel detailing the deficiencies in Plaintiffs' Amended Response to Spamhaus' First Set of Interrogatories and First Request for Production (Ex. 8).
6/13/2008	Because Spamhaus had heard nothing about the properly noticed depositions of Mr. Linhardt and the Rule 30(b)(6) witness, Spamhaus' counsel calls Plaintiffs' counsel to confirm the dates. Plaintiffs' counsel states that additional documents (a thumb drive) would be produced on June 16, 2008 and that these documents would require some processing time and suggests that the depositions be rescheduled. As a result, Spamhaus' counsel requests that Plaintiffs provide availability to reschedule within the next couple weeks (Ex. 9).
6/16/2008	Plaintiffs fail to provide the thumb drive of additional documents (Ex. 10).
6/17/2008; 6/19/2008	The properly noticed depositions of Mr. Linhardt and the Rule 30(b)(6) witness are not taken because Plaintiffs indicated they would be producing substantial additional documents.
6/25/2008	Nine days after they indicated, Plaintiffs provide a thumb drive of documents to Spamhaus without reviewing the contents of the thumb drive (Ex. 11).
7/2/2008	Spamhaus serves deposition notices on Plaintiffs calling for the deposition of Mr. Linhardt and the Rule 30(b)(6) deposition of e360 on July 15 and 17, 2008, respectively (Ex. 12).

7/14/2008	While reviewing documents for Mr. Linhardt's deposition, Spamhaus' counsel discovers communications between David Linhardt and counsel. Spamhaus informs Plaintiffs' counsel that because Plaintiffs produced these documents without reviewing them, it believes the production constituted an intentional production and that any attorney-client privilege has been waived and the documents will be used at Mr. Linhardt's deposition. (Ex. 13).
7/15/2008	Plaintiffs' counsel refuses to provide Mr. Linhardt for his properly noticed deposition unless Spamhaus' counsel agrees not to ask questions about the disputed documents or demands that the deposition be delayed so Plaintiffs' counsel can review for the first time the thumb drive documents that had been produced (Ex. 14). As a result, after Plaintiffs failed to appear the morning of the depositions, the parties agree to reschedule the depositions for the following week (Ex. 15). <sup>1</sup>
7/15/2008	Plaintiffs' counsel sends Spamhaus' counsel a letter demanding the return of 12 documents produced on the thumb drive (Ex. 16).
7/17/2008	Spamhaus' counsel suggests the deposition of Linhardt and Rule 30(b)(6) deposition of e360 be scheduled on July 28 and 31, 2008, respectively (Ex. 17).
7/17/2008	Spamhaus responds to Plaintiffs' counsel's request for the return of the 12 documents produced on the thumb drive. (Ex. 18).
7/18/2008	Plaintiffs' counsel refuses to reschedule the deposition of Mr. Linhardt and the 30(b)(6) witness pending resolution of the thumb drive privilege issue (Ex. 19). Spamhaus' counsel responds that withholding the deponent is improper and requests a Rule 37.2 Conference (Ex. 20). Plaintiffs' counsel responds that he would be unavailable to discuss the issues or defend the deposition until after August 13, 2008 (Ex. 21). <sup>2</sup>

<sup>1</sup> We also agreed to seek a further extension of the discovery deadline in order to permit follow up discovery from third parties after the depositions of Plaintiffs. We did not agree to wait until after the current discovery deadline to have the depositions of Plaintiffs, which have been noticed three times and which Plaintiffs have simply failed to attend twice.

<sup>2</sup> We have thoroughly complied with the letter and spirit of Local Rule 37.2. Counsel for Plaintiffs and Spamhaus have met twice for Rule 37.2 Conferences and have had numerous telephone conversations to discuss these discovery disputes. Counsel met on May 23, 2008 to discuss the deficiencies in both parties' discovery responses. As a result of that conference, both Plaintiffs and Spamhaus supplemented their discovery responses, but Plaintiffs' responses remained deficient. A second Rule 37.2 Conference took place on July 9, 2008, where the parties came to an impasse on the necessity to further supplement their respective discovery responses. Additionally, the parties have had numerous telephone conversations on July 15-18, 2008 related to the rescheduling of the depositions, but Plaintiffs refuse to produce Mr. Linhardt and the Rule 30(b)(6) witness prior to Judge Kocoras' discovery deadline – August 5, 2008.

## ARGUMENT

As the Seventh Circuit held in *e360 Insight, LLC v. The Spamhaus Project*, 500 F.3d 594, 603 (7th Cir. 2007), Plaintiffs are *required* to present evidence in order to support and prove their damages claims – Mr. Linhardt’s prior affidavit made under oath does not “provide the requisite ‘reasonable certainty’” to determine Plaintiffs’ damages.<sup>3</sup> Despite this burden and the fact that this evidence should have been readily available given Mr. Linhardt’s sworn statements in his damages affidavit, Plaintiffs have failed in all of their discovery responsibilities, responding in an untimely, inadequate fashion and failing on three separate occasions to provide Mr. Linhardt or a Rule 30(b)(6) witness for properly noticed depositions.

### **I. The Court Should Bar David Linhardt From Providing Any Testimony**

Given Plaintiffs’ repeated failure to appear for properly noticed depositions, this Court should bar Plaintiffs from presenting Mr. Linhardt as a witness in any capacity in these damages proceedings. Under Federal Rule of Civil Procedure 37(d), a court may order sanctions if a party or a person designated as a Rule 30(b)(6) witness fails to appear for a deposition after being properly served with notice. Allowable sanctions include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi), including under Rule 37(b)(2)(A)(ii), which states that the Court may sanction the party by “prohibiting the disobedient party from supporting or opposing designated

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<sup>3</sup> “Mr. Linhardt’s affidavit is a conclusory statement of the lost value of his business, based largely on his calculations of lost future profits. . . . That is, the affidavit claims profit loss in absolute numbers, but provides no information whatsoever to support a finding that such future profits were certain prior to Spamhaus’ act. Particularly given the difficulties that Illinois courts have acknowledged in proving non-speculative amounts of lost future profits, *see, e.g., SK Hand Tool Corp. v. Dresser Indus., Inc.*, 672 N.E.2d 341, 348 (Ill App. Ct. 1996); *see also TAS Distrib. Co. v. Cummins Engine Co.*, \_\_\_ F.3d \_\_\_, 2007 WL 1704114, No. 05-1371, slip op. at 12-16 (7th Cir. June 14, 2007) (collecting Illinois authority on the difficulty of proving lost future profits as damages), this affidavit alone cannot provide the requisite ‘reasonable certainty’ for a damages award without the necessity of a hearing.” 500 F.3d at 600.

claims or defenses, or from introducing designated matters in evidence.”<sup>4</sup> Additionally, the Court may require the payment of reasonable expenses (including attorney’s fees and court reporter costs). Fed. R. Civ. P. 37(d)(3).

Sanctions may be imposed under Rule 37(d) without a prior order to compel if a “party or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party” does not appear for a properly noticed deposition. *Charter House Ins. Brokers, Ltd. v. New Hampshire Ins. Co.*, 667 F.2d 600, 603-04 (7th Cir. 1981); *Hindmon v. National-Ben Franklin Life Ins. Co.*, 677, F.2d 617, 620 (7th Cir. 1982). In *Stevens v. Greyhound Lines, Inc.*, 710 F.2d 1224 (7th Cir. 1984), the Seventh Circuit held that “the court may impose sanctions directly, without first issuing an order to compel discovery where ‘a party . . . fails . . . to appear before the officer who is to take his deposition after being served with a proper notice,’” although sanctions should be limited to cases where a party literally fails to show up for a deposition session. (*Id.*, quoting *Charter House*, 667 F.2d at 604).

Because Plaintiffs exclusively control, possess, and have knowledge of all of the information related to their alleged damages (including information on contracts, lost profits, company revenue, and the identity of other sources of potential relevant evidence), it is imperative to Spamhaus’ defense that it be allowed to depose Mr. Linhardt and e360’s Rule 30(b)(6) designee. Plaintiffs’ failure to appear for three properly noticed depositions has seriously hampered Spamhaus’ ability to adequately prepare a defense, and thus sanctioning Plaintiffs by barring Mr. Linhardt from testifying in this case is appropriate under Rule 37(d). Furthermore, Plaintiffs’ conduct in delaying the discovery process and preventing Spamhaus

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<sup>4</sup> This Court would also, in fact, have the power to “dismiss[ ] the action or proceeding in whole or in part” as a sanction under Rule 37(b)(2)(A)(v) for Plaintiffs’ failure to appear at properly scheduled depositions.

from gathering the evidence needed for its defense borders on contumacious and sanctionable under Rule 37(b), given Judge Kocoras' April 29, 2008 order to compel directed at Plaintiffs. Barring Mr. Linhardt from testifying in this case, including in any damages hearing, would be a suitable sanction for Plaintiffs' multiple failures in conducting discovery.

Furthermore, this sanction is well-supported by Seventh Circuit precedent. "Courts in the Seventh Circuit routinely bar witnesses from testifying at trial, where the witnesses have not been produced in accordance with a court's discovery deadlines, thereby impeding opposing party's opportunity to adequately prepare for trial." *Anglin v. Sears, Roebuck and Co.*, 139 F. Supp.2d 914, 917 (N.D. Ill. 2001); *accord Hill v. Porter Memorial Hosp.*, 90 F.3d 220, 224 (7th Cir. 1996); *Coclanes v. City of Chicago*, No. 93 C 557, 1994 WL 10007, at \*3 (N.D. Ill. Jan. 13, 1994).

In *Johnson v. J.B. Hunt Transport, Inc.*, 280 F.3d 1125 (7th Cir. 2002), a case remarkably similar to this one, the Seventh Circuit upheld the barring of witnesses from testifying for failing to appear at depositions; the defendant "repeatedly failed to produce [the witnesses] for depositions" and "failed to respond to written discovery in a timely manner," in what the Seventh Circuit deemed a "sequence of events reveal[ing] a pattern of dilatory conduct by" the defendant. *Id.* at 1131-32. As the Seventh Circuit summarized:

"That is precisely the type of conduct for which discovery sanctions are appropriate. Litigants are expected to act in good faith in complying with their discovery obligations, and [defendant]'s reliance on its own delay to justify refusing to produce [the witnesses] was anything but good faith.... The record amply supports the court's decision that sanctions were appropriate, and those sanctions were tailored to the nature of the violation."

*Id.* at 1132. Likewise, in *Collins v. State of Illinois*, 514 F.Supp.2d 1106 (C.D. Ill. 2007), the court entered judgment in favor of defendants as a sanction for plaintiff's refusal to sit for her properly noticed deposition – according to the court, the impossibility of defending the case

without being certain of plaintiff's claims made a deposition of plaintiff necessary to defend the case, and the proper sanction for failing to appear for that deposition was judgment in favor of the defendants. *Id.* at 1110-11.

Given the factual similarities between this case and both *Johnson* and *Collins*, Spamhaus believes this Court should exercise its proper authority under Rule 37(d) and bar Mr. Linhardt from presenting any testimony in this litigation as a sanction for Plaintiffs' failure to appear for three properly noticed depositions. Plaintiffs have shown a pattern of noncompliance with discovery rules and the orders entered by this Court, and Spamhaus cannot prepare its defense without deposing Mr. Linhardt – the only person Plaintiffs have designated in their own Responses to Interrogatories that has information regarding Plaintiffs' damages. Furthermore, whereas the Court entered a default judgment against Spamhaus (a non-profit United Kingdom corporation) for a 30 day failure to appear, Plaintiffs have blatantly disregarded their discovery responsibilities and stalled this case for almost seven months. Barring Mr. Linhardt from testifying in this case is certainly warranted given Plaintiffs' pattern of delinquency in observing discovery deadlines and failure to appear for the three properly noticed deposition dates.

**II. Alternatively, the Court Should Compel David Linhardt's Deposition Prior to the Discovery Close Date and Provide Spamhaus An Additional 30 Days to Complete Fact Discovery**

Should this Court decline to bar Mr. Linhardt from testifying as a sanction for Plaintiffs' dilatory conduct in discovery and failure to appear for properly noticed depositions, Spamhaus alternatively requests that this Court compel Plaintiffs to present Mr. Linhardt and e360's Rule 30(b)(6) representative for depositions. Spamhaus initiated a number of phone calls on July 15-18, 2008 with Plaintiffs' counsel to reschedule these depositions in accordance with Local Rule 37.2 and without involving the Court, but, after failing to show at the deposition, and offering to

reschedule, Plaintiffs' counsel has declined to produce Mr. Linhardt and the Rule 30(b)(6) witness prior to the discovery close date set by Judge Kocoras (on the ground of another trial commitment for lead counsel). Spamhaus respectfully believes that an order under Rule 37(a) from this Court compelling Plaintiffs to produce Mr. Linhardt and e360's Rule 30(b)(6) designee for depositions will be necessary for Spamhaus to have meaningful discovery and adequately prepare its defense.

Additionally, Spamhaus believes that Plaintiffs' delays in this case have once again created the need for an extension of the discovery deadline. Your Honor has already extended the discovery cut-off date twice due to Plaintiffs' failure to timely and completely respond to discovery requests, even though Plaintiffs presumably should have had all their evidence gathered regarding damages given Mr. Linhardt's sworn statements regarding damages made in an earlier affidavit. Spamhaus has used the prior two extensions of the discovery deadline to gather evidence necessary for its defense, serving third-party subpoenas on companies identified by Plaintiffs as having knowledge regarding the damages claim, and in a futile attempt to depose Mr. Linhardt himself. Plaintiffs' failure to have Mr. Linhardt and/or e360's Rule 30(b)(6) designee attend properly noticed depositions has prevented Spamhaus from adequately marshalling evidence for its defense, and it is highly probable that these depositions (*if* they occur) will provide Spamhaus with new information that Spamhaus will need an opportunity to investigate. Additionally, Spamhaus has attempted to serve third-party subpoenas on companies that Mr. Linhardt has sworn that he owns and are part of Plaintiffs' damages calculation. Service of some of these subpoenas was thwarted because the companies have closed their offices and not updated the registered agent, while other companies allegedly owned by Mr. Linhardt completely failed to respond to the subpoenas that were served on them. Therefore, Spamhaus

requests that this Court provide Spamhaus an additional 30 days to complete fact discovery.

As part of this request, however, Spamhaus specifically requests that Plaintiffs be afforded no more additional time beyond the August 5, 2008 discovery cut-off date to complete their own discovery in this case. Despite the extensions provided by Judge Kocoras, Plaintiffs have not made any attempt to gather evidence to prove their damages claim, or provide any such evidence to Spamhaus. To afford Plaintiffs additional time to conduct discovery, issue subpoenas, or notice their own depositions when Plaintiffs have frittered away the seven months of time the Court has already generously afforded them would be unjust and reward their delay of discovery. This Court should enter an order compelling Plaintiffs to produce Mr. Linhardt and e360's Rule 30(b)(6) designee for depositions by a date certain, and allow Spamhaus exclusively an extension of 30 days to September 5, 2008 to complete its discovery and prepare its defenses.

### **III. The Court Should Compel Plaintiffs to Provide Complete Discovery Responses.**

Finally, Spamhaus also requests that this Court compel Plaintiffs to provide complete responses to Spamhaus' First Set of Interrogatories and First Request for Production of Documents. Under Fed. R. Civ. P. 37(a), a party may move for an order compelling disclosure or discovery when another party has failed to make disclosure or discovery. For purposes of Rule 37(a), "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond," Fed. R. Civ. P. 37(a)(4), and a court may grant a motion to compel where a party responds to discovery requests by providing insufficient responses in an untimely manner. *Johnson v. Kakvand*, 192 F.3d 656, 658 (7th Cir. 1999); *Shapo v. Engle*, 2001 WL 629303, at \*7 (N.D. Ill. May 25, 2001). An order to compel is also appropriate where a

party responds to discovery in a manner intended to delay discovery. *Swift v. First USA Bank*, 1999 WL 1212561, at \*7 (N.D. Ill. Dec. 15, 1999).

In this case, despite Your Honor's clear prior order, Plaintiffs have failed to adequately respond to Spamhaus' First Set of Interrogatories and Spamhaus' First Request for the Production of Documents. Spamhaus has attempted to resolve these discovery disputes without Court intervention by holding Rule 37.2 conferences with Plaintiffs' counsel. Despite Spamhaus' diligent efforts and Judge Kocoras' order that Plaintiffs fully respond to Spamhaus' discovery requests by May 13, 2008, Plaintiffs continued to fail to comply with their discovery obligations. (Ex. 3, 4/29/2008 Order; Ex. 2, April 29, 2008 Tr. at p. 9). Plaintiffs first served Revised Answers to First Set of Interrogatories and Responses to First Request for Production on May 13, 2008. (Ex. 4). These responses were completely flawed. For example, although Plaintiffs removed the specific wording of the objections from their previous responses, the revised responses provided almost no additional substantive information. Indeed, the majority of the responses Spamhaus received on May 13, 2008 stated either: (1) "See documents produced in response to Defendant's Request to Produce;" or (2) "without providing a narrative here, it is anticipated that Mr. Linhardt will discuss the subject matter of this interrogatory during his deposition." As Spamhaus' counsel informed Plaintiffs' counsel, the purpose of written discovery before a deposition is to ascertain information about the claims to assist in the deposition questioning. Interrogatories would be truly useless if a sufficient answer was "you'll hear about it in depositions." For a complete description of the deficiencies in the May 13, 2008 responses, see Exhibit 5.

After a Rule 37.2 Conference, Plaintiffs provided Amended Responses to First Request for Production and Amended Answers to First Set of Interrogatories (Ex. 7) on May 30, 2008. These discovery responses remained insufficient for many reasons.<sup>5</sup>

*First*, Plaintiffs decline to answer some of the Interrogatories by stating “without providing a narrative here, it is anticipated that Mr. Linhardt will discuss the subject matter of this Interrogatory during his deposition.” (See e.g. Interrogatory Resps. 10, 16, 17). This is an inappropriate and incomplete response for many reasons: (1) Your Honor ordered Plaintiffs to fully respond to Spamhaus’ discovery requests without any objections. (Ex. 3, 4/29/2008 Order; Ex. 2, April 29, 2008 Tr. at 9); (2) Fed. R. Civ. P. 33 requires that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath,” and a narrative is precisely what is called for in those Interrogatories; and (3) Plaintiffs have not made Mr. Linhardt available for depositions, and even if he were made available, Spamhaus is entitled to have its Interrogatories responded to prior to Mr. Linhardt’s deposition.

*Second*, many of Plaintiffs’ Interrogatory responses simply direct Spamhaus to documents, rather than providing a narrative response. (See e.g. Interrogatory Resps. 4, 8, 13, 17). This is inappropriate under Fed. R. Civ. P. 33(d), which states that a responding party may only refer to documents in response to an interrogatory when (1) the document is a business record, (2) the answer to the interrogatory is apparent by examining the business record, and (3) the burden of examining and understanding the document is substantially the same for both

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<sup>5</sup> In addition to all of the deficiencies detailed above, all of the answers in the Amended Response to the Request for Production state that the Plaintiffs’ “investigation continues.” While Spamhaus appreciates the need to regularly supplement responses to document requests as additional documents come to light, Plaintiffs have had an extraordinary amount of time to find the documents they possess related to their damages. Spamhaus believes that this Court and Spamhaus are entitled to an explanation of why the investigation has not been completed, and requests that this Court order Plaintiffs to provide this explanation. For a complete description of the deficiencies in the May 30, 2008 responses, see Ex. 8.

parties. Plaintiffs may not refer vaguely to documents rather than provide a narrative response. For example, in Response to Interrogatory No. 4, Plaintiffs direct Spamhaus to documents 001723-001727. These documents are incomplete spreadsheets regarding e360's financials that cannot be understood as easily by Spamhaus as by Plaintiffs, do not readily answer the Interrogatory upon examination, and lack any indicia that they are regularly kept "business records."

Finally, a majority of Plaintiffs' Interrogatory responses are unsupported and insufficient. (See e.g. Interrogatory Resps. Nos. 7, 8, 14). A few examples include:

- Plaintiffs answer that "Defendant was advised on numerous occasions, of the impact the blocks and ROKSO listings were having on Plaintiff's business." However, Plaintiffs provide no information as to when such communications occurred, who was involved, or exactly what was said. (Interrogatory Resp. 7).
- "Over time, e360 has learned that the tactic of pressuring customers and suppliers is Spamhaus' standard operating procedure. Spamhaus followed a similar tactic with the same result, effectively breaking the agreements with many other e360 vendors and customers as documented elsewhere in this case." This response is unsupported, incomplete, and insufficient. (Interrogatory Resp. 8).
- Numerous blanket claims about the reputational harm to e360 and Linhardt without providing any evidence of the basis of these claims. Specifically, Plaintiffs' claim that Linhardt was denied employment on at least one occasion, but do not provide details on when, with who, or the circumstances surrounding that alleged denial. (Interrogatory Resp. 14).

In addition to all of the above deficiencies, Plaintiffs have never provided Spamhaus with a sworn copy of their Responses to Spamhaus' Interrogatories signed by Mr. Linhardt as required under Rule 33(b), making the responses deficient on their face. Plaintiffs should be compelled to fully respond to both Spamhaus' First Request for Production of Documents and First Set of Interrogatories and be ordered to make a complete production by a date certain.

Respectfully submitted,

THE SPAMHAUS PROJECT

Dated: July 28, 2008

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**CERTIFICATE OF SERVICE**

I, Carrie A. Fino, an attorney, hereby certify that I served the foregoing **Defendant The Spamhaus Project's Motion for Various Relief for Persistent Discovery Defaults** upon:

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by electronic mail and U.S. Mail on this 28th day of July 2008.

s/Carrie A. Fino  
Carrie A. Fino