

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

e360INSIGHT, LLC, and)	
DAVID LINHARDT, an individual)	
)	
Plaintiffs,)	06 CV 3958
)	
v.)	Hon. Charles P. Kocoras
)	
THE SPAMHAUS PROJECT,)	Magistrate Judge Geraldine Soat Brown
)	
Defendant.)	

**e360INSIGHT, LLC AND DAVID LINHARDT’S RESPONSE TO DEFENDANT’S
REPLY TO DEFENDANT’S MOTION TO DISMISS PURSUANT TO RULE 37(B)(2)(A)**

Plaintiffs, e360Insight, LLC and David Linhardt (collectively “Plaintiffs”), by and through their attorneys, Synergy Law Group, L.L.C., and for their Response to Defendant’s Reply to Defendant’s Motion to Dismiss Pursuant to Rule 37(B)(2)(A), state as follows:

1. Plaintiff wishes to have the miscommunication which arose from the Court’s prior Order before the Court in as complete a manner as possible, thus in an attempt to do so, submits the Affidavits of Daniel Peters, Bartly J. Loethen, and David Linhardt (Attached respectively as Exhibits A, B, and C.)

Respectfully submitted,
e360Insight, LLC and David Linhardt, Plaintiffs.

By: /s/ Bartly J. Loethen
One of Their Attorneys

Bartly J. Loethen (6225484)
Joseph L. Kish (6197916)
Synergy Law Group, L.L.C.
730 West Randolph, 6th Floor
Chicago, Illinois 60661
Telephone: (312) 454-0015
Facsimile: (312) 454-0261

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Plaintiffs' Response to Defendant's Reply to Defendant's Motion to Dismiss Pursuant to Rule 37(B)(2)(A) was served upon the attorneys listed below electronically through CM/ECF on September 25, 2008.

Chad Emerson Bell cbell@jenner.com, docketing@jenner.com

Carrie A Fino cfino@jenner.com

Stephen M Geissler sgeissler@jenner.com

David Eric Jimenez-Ekman djimenez-ekman@jenner.com, docketing@jenner.com

Joseph L Kish jkish@synergylawgroup.com, nmcdonald@synergylawgroup.com

Bartly Joseph Loethen bart@synergylawgroup.com, nmcdonald@synergylawgroup.com

Craig Christopher Martin cmartin@jenner.com, docketing@jenner.com

Matthew M. Neumeier neumeierm@howrey.com, basak@howrey.com

By: /s/ Bartly J. Loethen
One of Their Attorneys

Bartly J. Loethen (6225484)
Joseph L. Kish (6197916)
Synergy Law Group, LLC
730 West Randolph, 6th Floor
Chicago, Illinois 60661
Telephone: (312) 454-0015
Facsimile: (312) 454-0261

EXHIBIT

A

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

AFFIDAVIT OF DANIEL PETERS


I, Daniel Peters, under oath states as follows:

1. I am over 18 and competent to testify as to the matters contained in this affidavit.
2. I represented the Plaintiff in connection with a motion to compel filed by the Defendant which was heard for oral argument on July 30, 2008.
3. On July 30, 2008 the Court entered an Order requiring certain actions by Defendant by August 13, 2008.
4. I was granted leave to withdraw my appearance for the Plaintiff on July 30, 2008.
5. The July 30, 2008 Order required the Defendant to file amended answers to written discovery by August 13, 2008.
6. I communicated the contents of the July 30, 2008 Order to Bart Loethen who was then on trial in a state court matter in Waukegan, Illinois which was scheduled to continue through August 14, 2008.
7. The client submitted a draft revision of answers to Defendant's interrogatories on July 30, 2008.
8. The revision of the answers to interrogatories necessitated several hours of revisions (converting references to documents into a detailed description of the information contained in those documents as the Court Ordered that Plaintiff could not cite to records in its response to Interrogatory Answers) in addition to the information supplied by the client and given the fact that I had withdrawn from the case and was leaving Plaintiff's law firm, Synergy

Law Group, LLC on August 1, 2008 I believed that another attorney would undertake to revise the answers as required by the July 30, 2008 Order.

9. It was not my understanding that I was responsible for the filing of the Amended Responses.

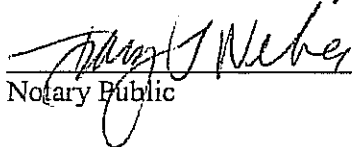
Further Affiant Sayeth Naught.



Daniel Peters

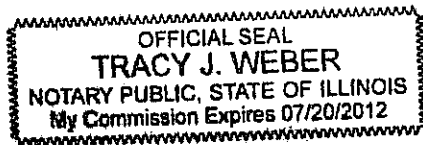
Signed and Sworn to before me on

this 24th day of Sept. 2008.



Notary Public

(Seal)



EXHIBIT

B

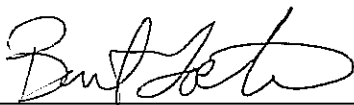
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF BARTLY J. LOETHEN

I, Bartly J. Loethen, under oath states as follows:

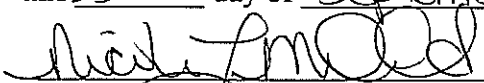
1. I am over 18 and competent to testify as to the matters contained in this affidavit.
2. I have represented the Plaintiff in connection with this case since its inception.
3. On July 30, 2008 I was made aware of the results of the motion to compel discovery from plaintiff by Daniel Peters which would require such action be taken on or before August 13, 2008.
4. I was quite displeased with the result of the order as on that day and on most days through August 14, 2008 I was to be involved in a trial in state court in Waukegan, Illinois.
5. During the conversation with Mr. Peters, I recall informing him of my displeasure with the timing and informing him that I would not be able to take any action at all with respect to this discovery issue given my trial schedule and that he would need to handle this matter.
6. I communicated the contents of the July 30, 2008 Order to our client, adding that there was urgency for him to provide feedback on the discovery responses, and to ensure he was to get the responses to Mr. Peters as soon as possible.
7. I was pleased that the client responded to Mr. Peters the same day, and, trusting this would enable Mr. Peters sufficient time to review and file the answers, I returned my focus to my state court trial.
8. I was not notified by anyone prior to the time I received Defendant's Motion to Dismiss the Complaint that the amended answers had not been filed.

Further Affiant Sayeth Naught.

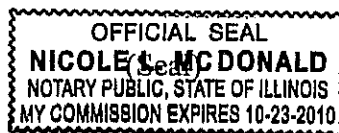


Bartly J. Loethen

Signed and Sworn to before me on
this 25th day of September 2008.



Notary Public



EXHIBIT

C

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF DAVID LINHARDT

I, David Linhardt, under oath states as follows:

1. I am over 18 and competent to testify as to the matters contained in this affidavit.

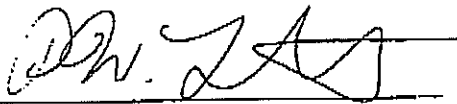
2. I am one of the plaintiffs in this action.

3. On July 30, 2008 I spoke with Bart Loethen regarding the results of the motion to compel discovery from plaintiff which would require additional detail on certain interrogatories by August 13, 2008.

4. Mr. Loethen communicated the urgency with which I needed to respond given the circumstances of Mr. Peters' imminent departure from the Synergy firm. He also informed me to provide copies of the responses to Mr. Peters directly, as he was engaged in a trial on another matter.

5. I worked on the responses all that day and provided them to Mr. Peters, copying Mr. Loethen the same day the request was provided.

Further Affiant Sayeth Naught.



David Linhardt

Signed and Sworn to before me on
this 24 day of September 2008



Notary Public

(Seal)

