

1 F. Bari Nejadpour (SBN 216825)
2 Law Offices of F. Bari Nejadpour & Associates P.L.C.
3 3540 Wilshire Blvd. #715
4 Los Angeles, CA 90010
5 (213) 632-5297

6 *Attorney for: William Silverstein*

7 CALIFORNIA SUPERIOR COURT
8 COUNTY OF LOS ANGELES
9 CENTRAL DISTRICT - UNLIMITED CIVIL

10 WILLIAM SILVERSTEIN, an individual,
11 Plaintiff,

12 vs.

13 E360INSIGHT, LLC, BARGAIN DEPOT
14 ENTERPRISES, LLC AKA
15 BARGAINDEPOT.NET,
16 DAVID LINHARDT,
17 [REDACTED],
18 and DOES 1-50;

19 Defendants,

CASE NO.: **BC368026**

**VERIFIED COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

1. Violations of Business and Professions Code § 17529.5
2. Violations of the CAN-SPAM ACT (15 U.S.C. § 7703 et seq)

20 Plaintiff alleges as follows:

21 **INTRODUCTION**

22 [REDACTED] status is non-monetary.

23 This is a case where Defendants E360Insight, LLC and David Lindhardt is in the
24 business of sending illegal unsolicited commercial e-mail, many of which are relayed
25 networks without authorization. Both E360Insight and David Lindhardt have intentionally
26 misrepresented to the Courts the nature of their business and have sued people who have
27 exposed the true nature E360'Insight's business. Lindhart has created a web of
28 wholly-internet businesses have been designed with a system of veiled ownership, divided
assets, misnamed corporations, and hidden information, for which there is no legitimate
business purpose.

1 PARTIES

2 1. Plaintiff WILLIAM SILVERSTEIN is an individual that resides in Los Angeles,
3 California. Plaintiff provides internet web hosting and e-mail services as a sole
4 proprietorship. Plaintiff is a professional software engineer that has more than twenty years
5 of programming experience which includes writing operating system code for IBM, writing
6 e-mail parsing and analysis code, and writing servers that process e-mail.

7 2. Plaintiff is informed and believes and thereon alleges that at all times relevant
8 herein E360insight, LLC (“E360”), is a limited liability corporation duly organized and
9 recognized under the laws of the State of Illinois with its principle office located at 600
10 Northgate Parkway, Suite A, Wheeling, Illinois.

11 3. Plaintiff is informed and believes and thereon alleges that at all times relevant
12 herein Bargain Depot Enterprises, LLC (“Bargain Depot”), is a limited liability corporation
13 duly organized and recognized under the laws of the State of Illinois with its principle office
14 located at 600 Northgate Parkway, Suite A, Wheeling, Illinois. Plaintiff further alleges that
15 Bargain Depot also operated under the name BargainDepot.net which is also the domain
16 name that Bargain Depot operates a web site at.

17 4. Plaintiff is informed and believes and thereon alleges that at all times relevant
18 herein [REDACTED].

19 5. Plaintiff is informed and believes and thereon alleges that at all times relevant
20 herein David Linhardt (“Linhardt”) is an individual that resides at 500 Sumac Road,
21 Highland Park, Illinois. Plaintiff is informed and believes and thereon further alleges that
22 Linhardt actively control, managed, and approved of all activities complained of herein.

23 6. Plaintiff is ignorant of the true names and capacity of Defendants sued herein as
24 DOES 1-50, inclusive, and therefore sues those Defendants by such fictitious names.
25 Plaintiff will amend this complaint to allege their true names and capacities when
26 ascertained.

27 7. Plaintiff is informed and believes and thereon alleges that each of the fictitiously
28 named Defendants are responsible in some manner for the occurrences herein. Plaintiff is
informed and believes and thereon alleges that these occurrences are the proximate cause of
damages to Plaintiff.

8. Plaintiff is informed and believes and thereon alleges that at all times relevant

1 herein DOE Defendants were the agents, servants, employees, and the co-conspirators of the
2 named Defendants and all Defendants are doing the things hereinafter mentioned were
3 acting within the course and scope of their authority as such agents, servants, and employees
4 with the permission, consent, and encouragement of their co-Defendants.

5 9. Plaintiff is informed and believes and thereon alleges that Defendants have a
6 high degree of control over any agents that have been contracted and paid to send
7 advertising through email.

8
9 **JURISDICTION AND VENUE**

10 10. Plaintiff brings this action pursuant to Section 17529.5 of the California Business
11 and Professions Code and and pursuant to 15 U.S.C.A. § 7706(g)(1). This Court has
12 concurrent jurisdiction over the federal claims..

13 11. The harm occurred within the jurisdiction of this Court as the email messages
14 complained of herein were received by Plaintiff in Los Angeles, California.

15 12. Plaintiff is informed and believes and thereon alleges that Defendants were aware
16 that Plaintiff is located in Los Angeles California.

17 13. Plaintiff is informed and believes and thereon alleges that Defendants regularly
18 and systematically solicit business from and conducts business with California residents.

19 14. Defendants Bargain Depot and [REDACTED] operates highly interactive web
20 sites that are specifically programmed to conduct business with California residents.

1 **FACTS COMMON TO ALL CLAIMS**

2 15. "Spam" is a term commonly used to refer to unsolicited commercial e-mail,
3 which is a method of Internet advertising that involuntarily shifts the cost onto the ISP, the
4 email service provider, and the recipient.

5 16. The practice of sending spam, also known as spamming, is so reviled on the
6 Internet that the people sending spam ("spammers") go to great lengths to conceal their
7 identities to avoid complaints made by recipients, Internet service providers, and
8 government agencies.

9 17. Opening spam e-mails can be dangerous, as some spam contain programs (ie.
10 keyloggers, zombie attack robots, etc.) that can infect a user's computer upon opening an e-
11 mail. Many spam e-mails contain "web bugs" which report back to a spammer that the e-
12 mail has been opened indicating that the e-mail address is valid.

13 18. A spam filter software that analyzes e-mail and based on complex heuristics
14 makes a determination that an e-mail is spam.

15 19. Many internet service providers ("ISPs") use spam filters to identify spam.

16 20. Many e-mail recipients use spam filters to identify spam. Many of these
17 recipients will only open e-mails that are determined not to be spam.

18 21. Plaintiff has installed spam filtering software on his servers.

19 22. Plaintiff's e-mail client program segregates all e-mails from his inbox that have
20 been determined to be spam, by the spam filters that are installed on Plaintiff's mail server.

21 23. Most e-mail recipients will use the e-mail's "From:" field and "Subject:" fields
22 to determine if they are to open an e-mail.

23 24. Spam filters use the "From:" e-mail address in its heuristic analysis to determine
24 if an e-mail is spam.

25 25. Spam filters use all the information contained within the e-mail header as part of
26 their heuristic analysis determining whether an e-mail is spam.

27 26. Plaintiff did not have a preexisting relationship with any of the Defendants.

28 27. Plaintiff did not opt-in to Defendants' web sites.

29 28. Plaintiff is informed and believes and therefore alleges that Defendants sent the
30 complained of spam messages knowing that the spam were not welcome, not wanted, and in
31 violation of State and Federal law.

1 29. Plaintiff has identified at least 87 illegal spams advertising Defendants web sites
2 which were received by Plaintiff since May 2005 and expects to find many more as
3 discovery and investigation is ongoing.

4 30. Where Plaintiff personally analyzed the aforementioned spam and found that the
5 originating IP addresses of those spam belong to an internet service provider that explicitly
6 prohibits the sending of spam across its network facilities, Plaintiff alleges that many, of not
7 of the complained of spams were sent through a computer network that such person has
8 accessed without authorization.

9 31. Many of the complained of spams contains different domain names contained
10 within the advertised hyperlinks.

11 32. Many of the complained of spams contains different domain names contained
12 within email address in the "From:" field of the e-mail header.

13 33. Plaintiff believes and therefore alleges that there is no valid reason for
14 Defendants to use multiple domain names in the "*From:*" fields of their spam. Plaintiff
15 further believes that the only purpose for the multiple domain names is to deceive the spam
16 filters and trick recipient into opening and reading the e-mail.

17 34. Plaintiff believes and therefore alleges that there is no valid reason for
18 Defendants to use multiple domain names in the hyperlinks advertised by Defendants spam.
19 Plaintiff further believes that the only purpose for the multiple domain names is to deceive
20 the spam filters in an attempt to trick the recipient into opening and reading the e-mail.

21 35. Plaintiff alleges that each of the "*From:*" field in the complained of spam do not
22 do not accurately identify the sender. Some examples are the complained of "*From:*" field
23 are: "Brighton Handbags," "Prada & Fendi," "6for48 Shades," "Louis Vuitton," "Cheaper
24 Oakleys," "Compare to Oakley," "Designer Eyewear."

25 36. Plaintiff believes and therefore alleges that neither the manufacture of "Brighton
26 Handbags" nor the handbags themselves sent the e-mails complained of.

27 37. Plaintiff alleges that each of the complained of spam fail to include the valid
28 physical postal address of the sender.

 38. Plaintiff is informed and believe and therefore alleges that Defendants will
continue to advertise in this unlawful manner unless enjoined by this Court. This Court has
jurisdiction to issue a permanent injunction because restraint is necessary to prevent a

1 multiplicity of judicial proceedings.
2

3
4 **FIRST CAUSE OF ACTION**

5 (VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17529.5)
6 (Against All Defendants)

7 39. Plaintiff hereby incorporates by reference paragraphs 1 through 27, inclusive, as
8 if the same were fully set forth herein.

9 40. Defendants are “advertisers” pursuant to Cal. Bus. & Prof. Code § 17529.1(a)
10 because they are persons or entities that advertise through the use of commercial e-mail
11 advertisements.

12 41. Plaintiff’s email addresses are “California email addresses” pursuant to Cal. Bus.
13 & Prof. Code § 17529.1(b).

14 42. Pursuant to Cal. Bus. & Prof. Code § 17529.1(m), Plaintiff is a “recipient” of
15 unsolicited commercial email advertisements initiated by Defendants.

16 43. Plaintiff is informed and believes and therefore alleges that the complained of
17 emails contained or was accompanied by falsified, misrepresented, or forged header
18 information.

19 44. Plaintiff suffered damages as a result of Defendants’ wrongful conduct.

20 45. Plaintiff is informed and believes and thereon alleges that Defendants have
21 willfully engaged in, and are willfully engaging in, the acts complained of with oppression,
22 fraud, and malice, and in conscious disregard of the rights of Plaintiff. Plaintiff therefore is
23 entitled to and demands exemplary damages in an amount sufficient to deter the Defendants,
24 and others, from behaving in such egregious behavior.

25 WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as
26 set forth in the Prayer for relief.

27 **SECOND CAUSE OF ACTION**

28 (Violation of CAN-SPAM Act of 2003)
(Against All Defendants)

46. Plaintiff hereby incorporates by reference paragraphs 1 through 55, inclusive, as

1 if the same were fully set forth herein.

2 47. Defendants are each a “Sender” of commercial electronic mail messages because
3 each is “a person who initiates such a message and whose product, service, or Internet Web
4 site is advertised or promoted by the message.” 15 U.S.C. § 7702(16)(B).

5 48. Plaintiff is informed and believes that and therefore alleges that Defendants
6 “initiated” the emails complained of herein as that term is defined by 15 U.S.C. § 7702(9).

7 49. Plaintiff’s servers and personal computers are “protected computers” as that term
8 is defined in section 18 U.S.C. 1030(e)(2)(B).

9 50. Defendants used Plaintiff’s servers to relay spam without authorization.

10 51. Plaintiff did not authorize Defendants to use Plaintiff’s servers to relay spam.

11 52. Plaintiff is informed and believes and therefore alleges that Defendants sent spam
12 to Plaintiff that contains, or was accompanied by, header information that is materially false
13 or materially misleading.

14 53. Plaintiff is informed and believes and therefore alleges that Defendants engaged
15 in a pattern and practice of sending spam that is accompanied by, header information that is
16 materially false or materially misleading.

17 54. Plaintiff is informed and believes and therefore alleges that Defendants engaged
18 in a pattern and practice of sending spam containing subject lines intended to, and likely to,
19 mislead recipients, acting reasonably under the circumstances, about a material fact
20 regarding the contents or subject matter of the message.

21 55. Plaintiff is informed and believe that and therefore alleges that Defendants
22 knowingly relayed their spam though Plaintiff’s servers.

23 56. Plaintiff is informed and believes and therefore alleges that Defendants engaged
24 in a pattern and practice of sending spam that failed to contain senders’ physical postal
25 address.

26 57. Plaintiff objected to Defendants sending spam to Plaintiff.

27 58. Plaintiff is informed and believes and therefore alleges that Defendants engaged
28 in a pattern and practice of sending spam to Plaintiff more than 10 days after objections.

59. Defendants profited from their wrongful conduct.

60. Plaintiff suffered damages as a result of Defendants’ wrongful conduct.

61. Plaintiff is informed and believes and thereon alleges that Defendants have

1 willfully engaged in, and are willfully engaging in, the acts complained of with oppression,
2 fraud, and malice, and in conscious disregard of the rights of Plaintiff. Plaintiff therefore is
3 entitled to and demands exemplary damages in an amount sufficient to deter the Defendants,
4 and others, from behaving in such egregious behavior.
5

6 WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as
7 set forth in the Prayer for relief.
8

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them
12 as follows:

13 A. An Order of this Court enjoining Defendants, and each of them, and their agents,
14 affiliates, servants, employees, and all persons acting under, in concert with them,
15 from:

- 16 1. sending commercial e-mail to Plaintiff or through Plaintiff's servers;
- 17 2. sending misleading commercial e-mail advertising;
- 18 3. from registering domain names that do not fully and properly identify their
19 business; and
- 20 4. from using multiple domain names in their e-mail advertising.
21

22 B. Statutory damages of \$1,000 for each the complained of e-mails in accordance with
23 California Business & Professions Code 17529.5;

24 C. Statutory damages of \$125.00 per e-mail under CAN-SPAM.

25 D. Aggravated damages of \$375.00 per e-mail accordance with 15 U.S.C. §
26 7706(g)(3)(C)
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- E. General damages in an amount to be determined at trial;
- F. Punitive damages in an amount to be determined by this Court, but not less than \$11,700,000.00;
- G. Attorney's fees, at \$350.00 per hour and costs owed by law; and
- H. For such other and further relief as the Court may deem just and proper.

Dated: March 16, 2007

Respectfully submitted

By _____
F. Bari Nejadpour
Attorney for William Silverstein

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

The undersigned, for himself, declares:

I am Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. With respect the causes of action alleged by me, the same is true of my own knowledge, except as those matters which are therein stated on information and belief, and, to those matters, I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Dated: March 16, 2007

William Silverstein, Plaintiff