

1 Joseph L. Kish (SBN 136429)  
2 Synergy Law Group  
3 730 West Randolph, 6<sup>th</sup> Floor  
4 Chicago, IL 60661  
5 Telephone: 312.454.0015  
6 Facsimile: 312.454.0261  
7 E-Mail: jkish@synergylawgroup.com

8 Attorney for e360Insight, Bargain Depot  
9 Enterprises, LLC, a.k.a. Bargaindepot.net,  
10 David Linhardt and Moniker Online Services,  
11 LLC

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION, LOS ANGELES

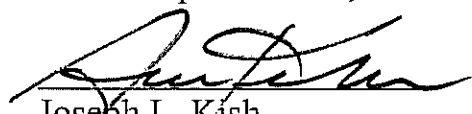
13 WILLIAM SILVERSTEIN, an	)	Case No.: cv07-2835 CAS (VBKx)
14 individual,	)	
15 Plaintiff,	)	<b>NOTICE OF OPPOSITION TO</b>
16 vs.	)	<b>MOTION FOR</b>
17	)	<b>RECONSIDERATION</b>
18 E360INSIGHT, LLC, BARGAIN	)	
19 DEPOT ENTERPRISES, LLC, AKA	)	
20 BARGAINDEPOT.NET, DAVID	)	
21 LINHARDT, an individual, MONIKER	)	
22 ONLINE SERVICES, LLC, And DOES	)	
23 1-50; inclusive,	)	Date: October 1, 2007
24 Defendants	)	Time: 10:00 a.m.
	)	Courtroom: 5 on 2nd Floor

25 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that Defendant, David Linhardt, files the attached  
27 Memorandum of Points and Authorities in opposition to Plaintiff's Motion for  
28 Reconsideration. The Motion for Reconsideration is set for hearing on Monday,

1 October 1, 2007 in Courtroom 5 on the 2nd floor in the United States District  
2 Court for the Central District of California, Western Division.  
3

4 Dated September 17, 2007

5 

6 Joseph L. Kish  
7 Attorney for Defendants e360 Insight,  
8 Bargain Depot Enterprises, LLC, a.k.a.  
9 Bargaindepot.net, Moniker Online  
10 Services, LLC and David Linhardt  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Introduction**

3  
4 Plaintiff's Motion raises nothing viable for reconsideration, but instead  
5 regurgitates prior unavailing arguments that were rejected by this Court. Plaintiff  
6 cites a New Jersey Superior Court case that is readily distinguishable from the facts  
7 of this case and not binding on this Court in any event. Plaintiff erroneously  
8 claims that a legal argument asserted by Linhardt, in another lawsuit filed in  
9 Illinois<sup>1</sup> ("Ferguson case") results in judicial estoppel. Plaintiff is wrong because  
10 there was no judgment in the Illinois case and, in fact, that lawsuit has been  
11 dismissed. Plaintiff presents no new evidence despite Plaintiff's prior  
12 representation that he could obtain this information if given more time. Plaintiff's  
13 Motion for Reconsideration should be denied.

14  
15 **B. Legal Standard**

16  
17 Local Rule 7-18 states that a "motion for reconsideration of the decision on  
18 any motion may be made *only* on the grounds of (a) a material difference in fact or  
19 law from that presented to the Court before such decision that in the exercise of  
20 reasonable diligence could not have been known to the party moving for  
21 reconsideration at the time of such decision, or (b) the emergence of new material

22  
23  
24  
25  
26  
27 

---

<sup>1</sup> *E360Insight, LLC and David Linhardt v. Mark James Ferguson et. al.*, Case No.  
28 07 L 004983

1 facts or a change of law occurring after the time of such decision, or (c) a manifest  
2 showing of a failure to consider material facts presented to the Court before such  
3 decision. No motion for reconsideration shall in any manner repeat any oral or  
4 written argument made in support of or in opposition to the original motion.”<sup>2</sup>  
5  
6

7 **C. There Is No New Law Applicable To This Case.**

8 Plaintiff asks this Court to reconsider its previous ruling based on the  
9 existence of new case law. However, the case cited by Plaintiff, *Goldhaber v.*  
10 *Kohlenberg*, is not “new” law but rather a case that applies the 1984 Supreme  
11 Court case of *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482 (1984), to internet  
12 postings. *Goldhaber v. Kohlenberg*, 2007 WL2198181 (N.J.Super.AD). Plaintiff  
13 could have argued for the same application in this case originally but failed to do  
14 so. Moreover, the *Goldhaber* case itself sites to a New Jersey Supreme Court case  
15 that existed well before Plaintiff’s original argument here, *Blakey v. Cont’l*  
16 *Airlines*, which while not deciding the issue directly, clearly contemplated that  
17 under a certain set of facts (that don’t exist here) a non-resident party could be  
18 subject to a state’s personal jurisdiction. *Blakey v. Cont’l Airlines*, 164 N.J. 38, 64;  
19 751 A.2d 538, 553 (N.J. Sup. 2000) (noting that “An intentional act calculated to  
20  
21  
22  
23  
24  
25

---

26  
27 <sup>2</sup> Plaintiff’s has made no argument that this Court failed to consider material facts  
28 and thus Plaintiff’s Motion should be adjudged under LR 7-18 (a) or (b).

1 create an actionable event in a forum state, will give that state jurisdiction over the  
2 actor.")

3  
4 Plaintiff's reliance on the *Goldhaber* case is readily distinguishable from the  
5 facts of this case. In *Goldhaber*, the defendant "not only knew that the plaintiffs  
6 resided in New Jersey, he knew the municipality in which they resided and made  
7 specific disparaging reference to that specific municipality in many of his postings  
8 ... made insulting comments about that municipality's police department ...  
9 referred to plaintiffs' neighbors in the apartment complex in which they resided  
10 and at one point even posted their addresses." *Id.* The Court in *Goldhaber*  
11 determined that the postings were such that the defendant should have reasonably  
12 anticipated that he could be hauled into court in New Jersey. *Id.*

13  
14 The facts that give rise to the *Goldhaber* court's conclusion do not exist in  
15 this case. Linhardt made *one* posting to USENET. The First Amended Complaint  
16 alleges that the particular USENET Linhardt posted to is an "international  
17 collection of organizations and individuals (known as 'peers') whose computers  
18 connect to one another and exchange messages posted by USENET users." (First  
19 Amended Complaint at par. 134). Unlike the situation in *Goldhaber*, Linhardt did  
20 not purposefully target a state, here California, or make any reference to California  
21 in the one post which Plaintiff alleges is libelous.

1 Finally, a ruling by a New Jersey court is not binding on this Court as  
2 decisions of other jurisdictions have no precedential weight. *American Economy*  
3 *Ins. Co. v. Reboans, Inc.*, 900 F. Supp. 1246, 1257 (N.D. Cal. 1995). Plaintiff's  
4 reliance on *Goldhaber* is without merit for a number of reasons. Plaintiff's Motion  
5 for Reconsideration should be denied.  
6  
7

8 **D. Estoppel Is Not Applicable To This Case.**

9 Plaintiff's argument that Linhardt should be estopped from seeking dismissal  
10 based on the proposition that he took a contrary position in the Ferguson case fails  
11 because Plaintiff has not and cannot allege the necessary elements of judicial  
12 estoppel. The Supreme Court requires that a party seeking to bar an opposing  
13 party's argument based on judicial estoppel must demonstrate that the party  
14 opposing judicial estoppel "achieved success [in asserting a contrary position] in  
15 the prior proceeding." *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S. Ct.  
16 1808, 149 L. Ed. 2d 968. Here, Plaintiff cannot assert that Linhardt was successful  
17 in taking a position contrary to his position in this case because the Ferguson case  
18 was dismissed before the court made any rulings. Plaintiff's brief erroneously sets  
19 forth the standard established by California state courts in analyzing judicial  
20 estoppel. Plaintiff's claim of judicial estoppel fails under the state standard as  
21 well because it too requires that the party opposing judicial estoppel "was  
22 successful in asserting the first position (i.e. the tribunal adopted the position or  
23  
24  
25  
26  
27  
28

1 accepted it as true)". *Jackson v. County of L.A.*, 60 Cal.App.4th 171, 183 (Cal. Ct.  
2 App. 1997). (Plaintiff's Memorandum at p. 9, section E). Plaintiff's Motion for  
3 Reconsideration based on judicial estoppel should be denied.  
4


5 **E. Plaintiff Cannot Reassert The Same Arguments Already Addressed By**  
6 **This Court.**

7 Plaintiff once again argues that because Linhardt had standing as a Plaintiff  
8 in a case filed in the Northern District of Illinois, *E360 Insight, LLC and David*  
9 *Linhardt v. The Spamhaus Project*, Case No. 06-CV-03958 (N.D. of Ill.), he is  
10 subject to this Court's jurisdiction. This is a complete non-sequitur. There is no  
11 basis for making the connection Plaintiff seeks between this case and *Spamhaus*.  
12 Moreover, this Court has already ruled that Linhardt is not subject to its  
13 jurisdiction based on his participation in *Spamhaus*. *Silverstein v. Linhardt*, 2007  
14 U.S. Dist. LEXIS 57695, \*23 (C.D. Cal). In apparent disregard to LR 7-18,  
15 Plaintiff cites to the very same "evidence" that was presented in a previous filing.  
16 Specifically, Plaintiff cites to three exhibits that were part of previous filings.  
17 (Plaintiff's Memorandum at p. 8, section D footnotes 6-8). This Court is being  
18 asked to reexamine previously submitted arguments in the hope that it will come to  
19 a different conclusion. The Court should deny Plaintiff's Motion because it is  
20 improper under the Local Rules.  
21  
22  
23  
24  
25  
26  
27  
28

1 **Conclusion**

2  
3 Plaintiff's Motion for Reconsideration must be dismissed because it does not  
4 satisfy any of the requirements of Local Rule 7-18. Plaintiff fails to introduce "a  
5 material difference in fact or law"; fails to demonstrate "the emergence of new  
6 material facts or a change of law"; and fails to demonstrate "a manifest showing of  
7 a failure to consider material facts presented to the Court." Plaintiff's Motion is  
8 nothing more than an attempt to revisit arguments his Court previously rejected.  
9  
10 Plaintiff's Motion for Reconsideration should be denied.

11  
12 Dated September 17, 2007

13  
14 

15 Joseph L. Kish  
16 Attorney for Defendants e360 Insight,  
17 Bargain Depot Enterprises, LLC, a.k.a.  
18 Bargaindepot.net, David Linhardt and  
19 Moniker Online Services, LLC  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 Joseph L. Kish (SBN 136429)  
 2 Synergy Law Group  
 3 730 West Randolph, 6<sup>th</sup> Floor  
 Chicago, IL 60661  
 4 Telephone: 312.454.0015  
 5 Facsimile: 312.454.0261  
 E-Mail: jkish@synergylawgroup.com

7 Attorney for e360Insight, Bargain Depot  
 8 Enterprises, LLC, a.k.a. Bargaindepot.net,  
 David Linhardt and Moniker Online Services,  
 9 LLC

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 12 WESTERN DIVISION, LOS ANGELES

13 WILLIAM SILVERSTEIN, an )  
 individual, )  
 14 Plaintiff, )  
 vs. )  
 16 E360INSIGHT, LLC, BARGAIN )  
 17 DEPOT ENTERPRISES, LLC, AKA )  
 BARGAINDEPOT.NET, DAVID )  
 18 LINHARDT, an individual, MONIKER )  
 19 ONLINE SERVICES, LLC, And DOES )  
 20 1-50; inclusive, )  
 Defendants )


) Case No.: cv07-2835 CAS (VBKx)  
 ) **AGREED STIPULATION TO**  
 ) **CHANGE HEARING DATE FOR**  
 ) **PLAINTIFF'S MOTION TO**  
 ) **RECONSIDER 8/6/07 RULING**  
 ) **FROM OCTOBER 15, 2007 TO**  
 ) **OCTOBER 1, 2007**  
 ) Date: October 1, 2007  
 ) Time: 10:00 a.m.  
 ) Courtroom: 5 on 2nd Floor

28 **AGREED STIPULATION TO CHANGE HEARING DATE FOR**  
**PLAINTIFF'S MOTION TO RECONSIDER 8/6/07 RULING FROM**  
**OCTOBER 15, 2007 TO OCTOBER 1, 2007**

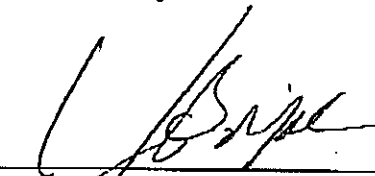
STIPULATION

The parties agree to change the hearing date for Plaintiff's Motion to Reconsider 8/6/07 Ruling from October 15, 2007 to October 1, 2007. The parties also agree that Defendants shall have until September 17, 2007 to file their response and Plaintiff shall have until September 24, 2007 to file his reply.

Date: 9/17/07

  
Joseph L. Kish  
Attorney for Defendants

Date: 9-11-07

  
F. Bari Nejadpour  
Attorney for Plaintiff

IT IS SO ORDERED.

Entered on: \_\_\_\_\_

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

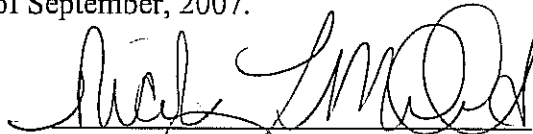
Judge Susan Snyder

**AGREED STIPULATION TO CHANGE HEARING DATE FOR PLAINTIFF'S MOTION TO RECONSIDER 8/6/07 RULING FROM OCTOBER 15, 2007 TO OCTOBER 1, 2007**

CERTIFICATE OF SERVICE

TO: F. Bari Nejadpour  
Law Offices of Nejadpour & Assocs.  
3540 Wilshire Blvd., #715  
Los Angeles, CA 90010  
213-632-5297  
Fax: 213-632-5299  
bari@calspam.com

The undersigned, a non-attorney, certifies that she caused a copy of the attached Opposition to Motion for Reconsideration and Agreed Stipulation to Change Hearing Date, to be served upon the above named party, via Electronic Mail from Chicago, Illinois before 5:00 p.m. on the 17<sup>th</sup> day of September, 2007.



Nicole L. McDonald

Synergy Law Group, LLC  
730 West Randolph Street, 6<sup>th</sup> Floor  
Chicago, IL 60661  
(312) 454-0015