

1 RONALD L. JOHNSTON (S.B. #057418)  
LAURENCE J. HUTT (S.B. #066269)  
2 JAMES S. BLACKBURN (S.B. #169134)  
ARNOLD & PORTER LLP  
3 777 South Figueroa Street, 44th Floor  
Los Angeles, California 90017-5844  
4 Telephone: (213) 243-4000  
Facsimile: (213) 243-4199  
5 ronald.johnston@aporter.com

6 Attorneys for VeriSign, Inc.

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION  
12

13 COALITION FOR ICANN )  
TRANSPARENCY INC., a Delaware )  
14 corporation, )

15 Plaintiff, )

16 v. )

17 VERISIGN, INC., a Delaware corporation; )  
INTERNET CORPORATION FOR )  
18 ASSIGNED NAMES AND NUMBERS, a )  
California corporation, )

19 Defendants. )  
20  
21

Case No. 5:05-CV-04826 RMW

DECLARATION OF LAURENCE J. HUTT  
IN SUPPORT OF OPPOSITION BY  
DEFENDANT VERISIGN, INC. TO *EX*  
*PARTE* APPLICATION FOR TEMPORARY  
RESTRAINING ORDER FILED BY  
COALITION FOR ICANN  
TRANSPARENCY INC.

Action Filed: November 28, 2005



1 California and assigned to Judge Walter. VeriSign was not a named defendant in Dotster, but since  
2 the subject matter of the case related directly to WLS, I monitored the proceedings on VeriSign's  
3 behalf. The case was brought by three named registrars: Dotster, Inc., Go Daddy Software, Inc.,  
4 and eNom, Inc. The plaintiffs asserted causes of action for declaratory relief and specific  
5 performance of the Registrar Accreditation Agreement between VeriSign and registrars ("RAA").  
6 More particularly, they alleged, among other things, that WLS would "restrain competition" for the  
7 registration of expiring second-level domain names in the .com TLD. On that basis, they expressly  
8 sought to enjoin ICANN from approving WLS. A true and correct copy of the Complaint in Dotster  
9 (without its exhibits) is attached as Exhibit "A" to this Declaration.

10 5. Shortly after the commencement of the Dotster case, plaintiffs applied for a  
11 temporary restraining order ("TRO") to prohibit ICANN from negotiating and discussing WLS with  
12 VeriSign or the United States Department of Commerce, approving VeriSign's launch of WLS, and  
13 implementing WLS. A true and correct copy of plaintiffs' proposed TRO is attached as Exhibit "B"  
14 to this Declaration. To assist ICANN in opposing the TRO, I obtained a declaration from an officer  
15 of VeriSign, Benjamin R. Turner, which describes in detail the problems that led VeriSign to  
16 propose WLS, the manner in which WLS would work, and the benefits WLS would have for the  
17 Internet, registrars, and consumers, among other subjects. ICANN filed that declaration as part of  
18 its TRO opposition in Dotster on July 17, 2003. A true and correct copy of that Declaration of  
19 Benjamin Turner (without its exhibits) is attached as Exhibit "N" to this Declaration. After  
20 considering moving and opposing papers, the Court denied a TRO on July 21, 2003. A true and  
21 correct copy of the Court's minute order denying the TRO is attached as Exhibit "C" to this  
22 Declaration.

23 6. Almost two months later, the Dotster plaintiffs filed a motion for preliminary  
24 injunction seeking to prohibit ICANN from "taking any steps or actions to facilitate or encourage  
25 the implementation" of WLS. Again, the Dotster plaintiffs argued that WLS would "preempt the  
26 competitive process," enable VeriSign to "hoard" registration services for expired domain names,  
27 and put them out of business. However, after receiving voluminous declarations and briefs from the  
28 Dotster plaintiffs and from ICANN, and hearing lengthy oral argument from counsel, the Court

1 denied the motion and refused to issue a preliminary injunction, finding that WLS fostered  
2 competition and appeared to be in the public interest. The Court's decision is published and appears  
3 at 296 F. Supp. 2d 1159 (C.D. Cal. 2003). The Dotster case was thereafter dismissed upon  
4 stipulation and order *with prejudice*. A true and correct copy of that stipulation and order, entered  
5 on December 5, 2003, is attached as Exhibit "D" to this Declaration.

6  
7 THE REGISTERSITE.COM I CASE

8 7. A bare three months later, on March 1, 2004, a group of eight registrars consisting of  
9 Registersite.com, Name.com LLC, R. Lee Chambers Company LLC, Fiducia LLC, Spot Domain  
10 LLC, !\$6.25 Domains! Network, Inc., Ausregistry Group Pty Ltd., and ! & ! Bid It Win It, Inc.,  
11 commenced an action against ICANN and VeriSign in the United States District Court for the  
12 Central District of California, entitled *Registersite.com, et al. v. ICANN, et al.*, Case No. CV 04-  
13 1368 ABC. The case was assigned to Judge Collins. The complaint purported to assert claims for  
14 violation of sections 1 and 2 of the Sherman Act, violation of RICO, unfair trade practices,  
15 violations of the California unfair competition law, intentional interference with prospective  
16 economic advantage, breach of contract, and declaratory relief. Among the relief sought by the  
17 plaintiffs in the Complaint in the Registersite.com I case was a declaration that "ICANN will be in  
18 breach of the [Registrar] Accreditation Agreements if it approves the WLS because implementation  
19 of the WLS will unreasonably restrain competition . . ." and injunctive relief requiring ICANN to  
20 withdraw its approval of WLS and to "refrain from approving any registry-level wait listing service  
21 in the future" subject to certain condition. A true and correct copy of the Complaint in the  
22 Registersite.com I case (without its exhibits) is attached as Exhibit "E" to this Declaration.

23 8. The Registersite.com I plaintiffs subsequently filed a First Amended Complaint  
24 modifying their purported claims for relief and including additional defendants. The amended  
25 complaint contained supposed claims for violation of section 1 of the Sherman Act, violations of the  
26 California unfair competition law, intentional interference with prospective economic advantage,  
27 breach of contract, and declaratory relief. Plaintiffs again prayed for injunctive relief prohibiting  
28 VeriSign from launching WLS and requiring ICANN to withdraw its approval of WLS and to

1 refrain from granting approval for WLS or any similar service, unless WLS were modified in ways  
2 plaintiffs demanded. Among other responses, VeriSign and ICANN filed motions to dismiss the  
3 amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the ground  
4 that a proper claim for relief had not been stated. After full briefing and argument, the Court  
5 dismissed the Sherman Act section 1 claim with leave to amend and declined to exercise  
6 supplemental jurisdiction over the state law claims, dismissing them without prejudice. A true and  
7 correct copy of the Court's order, filed on July 12, 2004, is attached as Exhibit "F" to this  
8 Declaration. Plaintiffs did not attempt to amend their Sherman Act claim.

9  
10 THE REGISTERSITE.COM II CASE

11 9. Less than a month after the Court's order in the Registersite.com I case, the same  
12 group of plaintiffs filed a Complaint in Los Angeles Superior Court against ICANN, VeriSign, and  
13 others, asserting purported causes of action for violations of the California unfair competition law,  
14 breach of contract, and declaratory relief. Both the allegations in the Complaint and the relief  
15 sought were similar to those for the state law claims in the amended complaint in the  
16 Registersite.com I case. Specifically, plaintiffs again alleged that "[u]nless enjoined, the WLS will  
17 unreasonably restrain competition . . ." and they prayed for "preliminary and permanent injunctions  
18 prohibiting VeriSign . . . from selling WLS subscriptions," among other relief. A true and correct  
19 copy of the Complaint in the Registersite.com II case (without its exhibits) is attached as Exhibit  
20 "G" to this Declaration.

21 10. VeriSign interposed general and special Demurrers to the Complaint, and it also filed  
22 a motion to stay or to dismiss causes of action asserted against it based upon forum non convenient  
23 due to plaintiffs' failure to comply with the forum selection clause in the Registry-Registrar  
24 Agreement ("RRA") between VeriSign and registrars, including the Registersite.com plaintiffs.  
25 Following full briefing and argument, the court issued a minute order expressly adopting and  
26 incorporating by reference its previously issued "tentative rulings." Simply stated, the court  
27 sustained VeriSign's demurrers with leave to amend and, further, dismissed the claims against  
28 VeriSign based upon the forum selection clause in the RRA, thereby rendering "moot" plaintiffs'

1 leave to amend. True and correct copies of the court's "tentative rulings" on the demurrers and  
2 motion to dismiss (adopted as the ruling of the court in its minute order) are attached respectively as  
3 Exhibits "H" and "I" to this Declaration. A true and correct copy of the court's minute order of  
4 November 16, 2004, is attached as Exhibit "J" to this Declaration.

5 11. After receiving an extension of time to consider filing an amended complaint, the  
6 Registersite.com plaintiffs agreed, in consideration of a waiver of costs, to dismiss all of its claims  
7 against all defendants without prejudice and also agreed that to the extent they may elect to file claims  
8 against VeriSign arising out of the same operative facts, they would bring such claims in a court  
9 located in the Eastern District of Virginia. A true and correct copy of the stipulation and order re  
10 dismissal entered on January 12, 2005, is attached as Exhibit "K" to this Declaration. The  
11 Registersite.com plaintiffs did not thereafter refile or pursue claims against VeriSign in Virginia or  
12 elsewhere.

#### 14 THE POOL.COM CASE


15 12. In or about September 2004, Pool.com Inc. ("Pool"), a back-order service provider, and  
16 a group of approximately 100 registrars affiliated with Pool filed a Statement of Claim against  
17 VeriSign in the Ontario (Canada) Superior Court of Justice (Case No. 04-CV-28857). In the Claim,  
18 Pool and the other plaintiffs sought declaratory relief, as well as general, special and punitive  
19 damages. The gist of the allegations in the Claim is that VeriSign had delayed the "ramp up" process  
20 to make various Pool-affiliated registrars operational and that VeriSign intended to use the alleged  
21 delays to change the registration system, thereby supposedly rendering those registrars' accreditations  
22 valueless. Given the fact that VeriSign was still waiting to launch WLS at the time, that VeriSign was  
23 then proposing CLS as an auction platform for expiring domain names, and that Pool was an  
24 outspoken opponent of WLS, Pool's Claim, coupled with its references to changes in the system, were  
25 reasonably understood to be references to WLS and/or CLS and an attack on those proposed services.  
26 A true and correct copy of the Claim is attached as Exhibit "L" to this Declaration.

27 13. VeriSign responded to the Claim in the Pool.com case with a motion to dismiss  
28 based on jurisdictional and forum non-conveniens grounds. After the motion and supporting

1 affidavits had been filed, and before Pool had filed opposition to the motion, Pool unilaterally gave  
2 notice of the abandonment of the case. A true and correct copy of that notice is attached as Exhibit  
3 “M” to this Declaration.

4  
5 I declare under penalty of perjury pursuant to the laws of California and the United States of  
6 America that the foregoing is true and correct, and that this declaration was executed on November  
7 29, 2005, in Los Angeles, California.

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LAURENCE J. HUTT

# EXHIBIT

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1 Stuart M. Brown (SBN 170028)  
2 PRESTON GATES & ELLIS LLP  
3 222 SW Columbia Street  
4 Suite 1400  
5 Portland, OR 97201-6632  
6 Telephone: (503) 228-3200  
7 Facsimile: (503) 248-9085  
8 Email: sbrown@prestongates.com

6 Kathleen O. Peterson (SBN 124791)  
7 Aaron M. McKown (SBN 208781)  
8 PRESTON GATES & ELLIS LLP  
9 1900 Main Street, Suite 600  
10 Irvine, CA 92614  
11 Telephone: (949) 253-0900  
12 Facsimile: (949) 253-0902  
13 Email: aaronm@prestongates.com

10 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

15 DOTSTER, INC., a Washington  
16 corporation, GO DADDY SOFTWARE,  
17 INC., an Arizona corporation, and  
18 eNOM, INC., a Washington corporation

18 Plaintiffs,

19 v.

21 INTERNET CORPORATION FOR  
22 ASSIGNED NAMES AND  
23 NUMBERS, a California corporation,

24 Defendant.

Case No.

COMPLAINT:

- 20 (1.) DECLARATORY JUDGMENT
- (2.) BREACH OF CONTRACT
- (Demand for Jury Trial)

25 Plaintiffs, Dotster, Inc., Go Daddy Software, Inc., and eNOM, Inc.  
26 (collectively, "Plaintiffs") file this Complaint against Defendant Internet Corporation  
27 for Assigned Names and Numbers ("Defendant") and allege as follows:  
28



1 **ALLEGATIONS COMMON TO ALL CLAIMS**

2 **Background of the Domain Name System**

3 9. Each computer connected to the Internet is identified by a unique numeric  
4 code, known as an Internet Protocol address, or IP address. A computer's IP address  
5 denotes both its physical and virtual location.

6 10. In order to locate a particular computer, its IP address must be determined.  
7 However, IP addresses can contain up to 12 digits, and can be difficult to remember.  
8 For that reason, Internet-connected computers can also be located by a domain name,  
9 an alphanumeric phrase which is tied to a specific IP address (a "Domain").

10 11. The United States Department of Commerce has delegated authority to  
11 administer the DNS to Defendant.

12 12. Defendant has delegated its authority for registering Domains to certain third  
13 parties, referred to as Registries. Two Registries include VeriSign Global Registry  
14 Services, a division of VeriSign, Inc., (which is the Registry responsible for  
15 managing the top level domains (or TLDs) .COM and .NET), and The Public Interest  
16 Registry, (which is the Registry responsible for managing the .ORG TLD).

17 13. A corporation that is approved by Defendant to register Domains for the  
18 public and enters into a Registrar Accreditation Agreement (an "Accreditation  
19 Agreement") with Defendant is known as a Registrar. Registrars are responsible to  
20 register Domains through Registries with Defendant. Plaintiffs are all Registrars. An  
21 individual or corporation wishing to register a particular Domain, and thereby obtain  
22 the right to control that Domain, must do so through a Registrar. The Registrar then  
23 provides the individual or corporation's information to the applicable Registry, who  
24 assigns the particular domain to the individual or corporation (a "Registrant").

25 14. Domains are registered for a limited period of time. If that period expires  
26 without renewal by the Registrant, the Domain registration is deleted and the Domain  
27 again becomes available for registration by the first Registrant who requests  
28

1 registration. Currently, several Registrars offer services that allow a potential  
2 Registrant to attempt to register expired Domains almost immediately after their  
3 expiration.

#### 4 **The Registrar Accreditation Agreement**

5 15. As Registrars, each Plaintiff has entered into an identical Accreditation  
6 Agreement with Defendant. In connection with the Accreditation Agreement, each  
7 Plaintiff has paid accreditation fees to Defendant in an amount greater than \$75,000.  
8 Under the Accreditation Agreement, Registrars are granted the right to register  
9 Domains in accordance with Defendant's procedures. The most recent version of the  
10 Accreditation Agreement is dated May 2001 and is attached hereto as Plaintiffs'  
11 Exhibit 1 and incorporated herein by this reference. All Registrars are required to sign  
12 the Accreditation Agreement without modification. Defendant and all Plaintiffs are  
13 party to the Accreditation Agreement.

14 16. The Accreditation Agreement obligates each Registrar to comply with  
15 Defendant's existing specifications and policies regarding the DNS. Section 4.1.1 of  
16 the Accreditation Agreement specifies that Registrars are only required to comply  
17 with additional specifications and policies that are established by Defendant as  
18 Consensus Policies.

19 17. Section 4.3 of the Accreditation Agreement provides that a new specification  
20 or policy can only become official policy of Defendant, and thereby bind Registrars, if  
21 a consensus can be reached among Internet stakeholders, including Registrars such as  
22 Plaintiffs. Adoption of a Consensus Policy requires three steps: first, an action by  
23 Defendant's Board of Directors ("Board") establishing the specification or policy;  
24 second, a recommendation adopted by at least a two-thirds vote of the council of the  
25 Defendant-appointed supporting organization (which is Defendant's term for a formal  
26 committee within its structure) to which the matter is delegated; and third, the  
27 preparation of a written report and supporting materials that document the extent,  
28

1 nature and intensity of agreement and disagreement among impacted groups.

2 18. The Accreditation Agreement allows a Registrar to dispute the existence of a  
3 "consensus" by seeking review of the issue by an Independent Review Panel  
4 established under Defendant's bylaws. If the Panel concludes that a consensus does  
5 exist, and the Registrar continues to dispute the presence of a consensus, the  
6 Accreditation Agreement provides that a Registrar may file suit (or initiate arbitration)  
7 in Los Angeles, California to contest the issue, and the Registrar may seek specific  
8 performance of the requirement that a consensus be obtained under Section 5.1 of the  
9 Accreditation Agreement.

10 19. Section 2.3 of the Accreditation Agreement states:

11 "With respect to all matters that impact the rights, obligations, or role of  
12 Registrar, ICANN shall during the Term of this Agreement:

13 2.3.1 exercise its responsibilities in an open and transparent  
14 manner;

15 2.3.2 not unreasonably restrain competition and, to the  
16 extent feasible, promote and encourage robust competition;

17 2.3.3 not apply standards, policies, procedures or practices  
18 arbitrarily, unjustifiably, or inequitably and not single out  
19 Registrar for disparate treatment unless justified by  
20 substantial and reasonable cause; and

21 2.3.4 ensure, through its reconsideration and independent  
22 review policies, adequate appeal procedures for Registrar, to  
23 the extent it is adversely affected by ICANN standards,  
24 policies, procedures or practices."

25 20. If a Registrar feels that compliance by Defendant with any of the above  
26 obligations is an issue, Section 5.1 of the Accreditation Agreement allows the  
27 Registrar to initiate a lawsuit or arbitration requesting specific performance.  
28

## The Current System for Registering Expiring Domains

1  
2 21. Domains may be registered for differing lengths of time. When the  
3 registration period for a Domain expires, the Domain goes back into the pool of  
4 available Domains unless the existing Registrant renews the registration.

5 22. When a Domain Registrant fails to renew his or her Domain, the Registrar  
6 with whom the Domain is registered has up to 45 days from the date the registration  
7 expires to send a "delete command" to the Registry.

8 23. After the delete command has been sent to the Registry, the Registry then  
9 places the Domain on a 30-day redemption grace period ("Redemption Period").  
10 During the Redemption Period, the Domain Registrant can either decide to renew the  
11 Domain by filling out a form to retain ownership of the Domain and complete a  
12 renewal or to take no action and allow the Domain to be deleted, as described below.

13 24. If a Domain Registrant takes no action to renew the Domain and intends to  
14 allow the Domain to expire, once the Redemption Period ends, the Domain enters a  
15 "Pending Delete" status. When the Domain enters the Pending Delete status, the  
16 Domain is placed on a pending delete report, which is updated daily by the Registry  
17 for Registrars to download, should they wish to do so. The pending delete report is  
18 the complete list of all .COM and .NET Domains that are scheduled to be deleted on a  
19 particular day. The Pending Delete status lasts for five days. At the end of the five  
20 days, the Domain is deleted in a batch delete process, which takes place at 11am PST  
21 and usually lasts for less than one hour (the "Batch Delete"). There are typically  
22 approximately 25,000 Domains deleted daily in the Batch Delete. Currently, there are  
23 approximately 45 active, highly competitive Registrars using their connections to the  
24 Registry to obtain such Domains during Batch Deletes.

25 25. Due to the fierce competition between Registrars, the Registry has set up  
26 specialized equipment the Registrars use for the purpose of registering Domains that  
27 are being deleted. Such equipment is generally referred to as the "Batch Pool." The  
28

1 Batch Pool provides equal access for all Registrars attempting to register the Domains  
2 that are being deleted.

3 26. During a Batch Delete, each competing Registrar sends a command from  
4 their computers to the Registry computers attempting to register wanted Domains in  
5 the Batch Pool. The first competing Registrar to have their command accepted for the  
6 wanted Domain registers the Domain for its customer. A desirable Domain that is  
7 deleted during a Batch Delete will generally be re-registered within a few milliseconds  
8 of it being deleted by the Registry.

9 27. Potential Domain Registrants can choose from many different models  
10 offered by Registrars to obtain Domains during a Batch Delete, including, among  
11 other models, fixed price, first-come-first-serve, auction models, or contacting a  
12 Domain reseller.

13 28. Currently, each Registrar that attempts to obtain Domains during the Batch  
14 Delete sets its own pricing and has its own recommendations as to which is the best  
15 model for potential Domain Registrants. Potential Domain Registrants can register  
16 Domains deleted during the Batch Delete process from as low as \$8.75 to as high as  
17 thousands of dollars.

### 18 **Proposed Changes to the Existing Systems**

19 29. VeriSign Global Registry Services, a division of VeriSign, Inc. ("VeriSign")  
20 is the Registry that maintains the central registries for the .COM and .NET Domains.  
21 In addition, VeriSign, Inc.'s wholly owned subsidiary, Network Solutions, Inc., is a  
22 Registrar. Each Registrar that registers .COM or .NET Domains can only do so  
23 through VeriSign, which receives \$6 for each such Domain registration.

24 30. In late 2001, VeriSign proposed a change to Defendant's policies called  
25 Wait Listing Service or WLS. This change requires the approval of Defendant.

26 31. Under VeriSign's WLS proposal, a potential Registrant who wishes to  
27 register a Domain that is already registered can pay a fee for the opportunity to  
28

1 register that Domain if and when the current registration expires (that is the potential  
2 Registrant would obtain the Domain only if the current Registrant did not renew its  
3 registration). The WLS is a first-come first-served service, and only one WLS  
4 subscription may be purchased per Domain. Under the WLS, a Domain that is being  
5 deleted by the Registry would be checked to determine if a WLS subscription had  
6 been purchased for that Domain. If a WLS subscription has been purchased, the  
7 Domain would be generally registered to the WLS subscription holder. VeriSign  
8 would administer the WLS program, and would receive \$24 for each WLS  
9 subscription, plus the standard \$6 registration fee, should the WLS subscription result  
10 in the Domain being registered by the WLS subscription holder.

11 32. Under the proposed WLS, a person seeking to register an expiring Domain  
12 (at least one that has any commercial value) must not only pay the WLS subscription  
13 fee in order to obtain that expiring Domain, but would be forced or coerced to pay the  
14 additional \$6 registration fee to VeriSign to register the Domain. In essence, the WLS  
15 subscription fee and the registration fee are tied together. For Domains of any value, a  
16 Potential Registrant cannot purchase one without purchasing the other.

17 33. Currently, many Registrars (including Plaintiffs) have competing  
18 services that offer functionality similar to WLS, but those services are able to compete  
19 to register a Domain that is being deleted only after the Domain has been deleted by  
20 the Registry. As those signed up for VeriSign's proposed WLS would have the "first  
21 shot" to register an expiring name, WLS would effectively replace the various "waiting  
22 list" services currently available through the various Registrars including those offered  
23 by Plaintiffs, creating a monopoly run by VeriSign in place of the currently  
24 competitive services offered by Plaintiffs and other Registrars.

25 34. VeriSign's position as the operator of the .COM and .NET Registries  
26 would allow it to operate WLS. A Registrar such as any of the Plaintiffs would not be  
27 able to implement a universal system such as WLS.

28



1  
2 **Reaction To Proposed WLS**

3 35. When the WLS was proposed by VeriSign, opposition was expressed by  
4 virtually all Registrars, and by a substantial number of other Internet stakeholders, on  
5 the grounds that WLS would restrict or eliminate competition in the provision of  
6 services to potential Registrants of expiring Domain , and increase prices to potential  
7 Registrants.

8 36. A Task Force of the Domain Name Supporting Organization ("Task Force"),  
9 a Supporting Organization of Defendant, was asked by the Defendant's Board of  
10 Directors to prepare a report and recommendations on WLS. The Task Force  
11 consulted the various constituents and determined that the consensus was  
12 overwhelmingly opposed to implementing the WLS, and recommended that the Board  
13 deny the WLS proposal, on the grounds that it would restrain competition, add to  
14 VeriSign's monopoly on the .COM and .NET Registries, and not benefit consumers.

15 37. After intense lobbying by, or on behalf of VeriSign, the Task Force was  
16 persuaded to include in its report conditions that should be placed on WLS, should the  
17 Board approve it. Specifically, the Final Report of the Task Force stated:

18 "TR-TR Preferred Recommendation: Recommendation to deny  
19 the WLS:

- 20 A. The ICANN board move with all haste to implement and  
21 actively enforce the proposed Redemptions Grace Period for  
22 Deleted Names policy and practice
- 23 B. The ICANN Board reject Verisign's request to amend its  
24 agreement to enable it to introduce its proposed WLS.
- 25 C. The ICANN Board reject Verisign's request to trial the WLS  
26 for 12 months." (emphasis added).

27 The Task Force's final report, dated as of July 14, 2002, is attached as Plaintiffs'  
28

1 Exhibit 2 and is incorporated herein by this reference.

2 38. On August 23, 2002, Defendant's Board, in contravention of the Task Force  
3 recommendation that WLS not be adopted or implemented, and the consensus of the  
4 various constituencies in opposition to WLS, adopted a resolution authorizing  
5 Defendant's President and General Counsel to negotiate with VeriSign for the  
6 establishment of WLS. That resolution is attached as Plaintiffs' Exhibit 3 and is  
7 incorporated herein by this reference.

8 39. On September 9, 2002, pursuant to Section 4.3.2 of the Accreditation  
9 Agreement, Plaintiff Dotster submitted a request for review under the Independent  
10 Review Policy requesting an independent review of Defendants' actions and disputing  
11 the presence of a Consensus as required by the Accreditation Agreement. In  
12 contravention of Defendant's then-current Bylaws, Defendant did not, and to  
13 Plaintiffs' knowledge has not, established the required Independent Review Panel.  
14 That Independent Review request is attached as Plaintiff Dotster's Exhibit 4.

15 40. On September 12, 2002, pursuant to Defendant's policies, Plaintiff Dotster  
16 submitted a Reconsideration Request ("Request") and formal request for review under  
17 Defendant's Reconsideration Request Policy, asking Defendant to reconsider its  
18 August 23 decision. Plaintiff Dotster's Request is attached as Plaintiffs' Exhibit 5 and  
19 is incorporated herein by this reference.

20 41. On May 20, 2003, Defendant issued a Recommendation on Dotster's  
21 request, recommending that the Board take no action on Dotster's request. Defendant  
22 also indicated that it was not obligated to institute an independent review of its  
23 actions, as requested by Plaintiff Dotster. That Recommendation is attached as  
24 Plaintiffs' Exhibit 6 and is incorporated herein by this reference.

25 42. On June 2, 2003, Defendant's Board adopted the Recommendation issued on  
26 May 20, and again authorized negotiations between itself and VeriSign toward the  
27 establishment of WLS. Upon information and belief, those negotiations continue.  
28

1 VeriSign has announced that it will begin implementation of the WLS on October 11,  
2 2003.

3 **Plaintiffs' Injuries**

4 43. Under the Accreditation Agreement, Defendant's liability to any Registrar  
5 for money damages resulting from any breach of the Accreditation Agreement by  
6 Defendant is limited to the amounts paid to Defendant as accreditation fees under the  
7 Accreditation Agreement. Although each Plaintiff has paid Defendant over \$75,000  
8 in Accreditation Fees, each Plaintiffs' damages, should the WLS be implemented, is  
9 far greater than those amounts. The implementation of WLS would eliminate a  
10 growing industry, and would reduce the choices available to consumers. Defendant's  
11 consideration of the WLS proposal has been arbitrary and capricious, and has violated  
12 its own written procedures in ignoring the overwhelming consensus of Internet  
13 stakeholders opposed to WLS.

14 44. Plaintiffs cannot be made whole from any damage claim against  
15 Defendant and will suffer irreparable harm if Defendant is not restrained from  
16 approving the implementation of WLS until it has complied with its obligations under  
17 the Accreditation Agreement. Additionally, if the WLS is implemented, Plaintiffs  
18 will not be able to maintain their present independent and competing systems for  
19 acquiring expiring Domains, so that when Defendant is required by this litigation to  
20 terminate the WLS until it has followed its consensus policy and considered the anti-  
21 competitive nature of the WLS (which will result in termination of the proposed  
22 WLS), Plaintiffs will be unable to return their systems to operational status.

23 45. Plaintiffs have no adequate remedy at law.

24 46. Plaintiffs are not, themselves, in default under the Accreditation Agreement.

25 **FIRST CLAIM FOR RELIEF**

26 **(Declaratory Judgment)**

27 47. Plaintiffs reallege paragraphs 1 through 47 above.

28

1 48. The Accreditation Agreement between Plaintiffs and Defendant obligates  
2 Defendant to refrain from unreasonably restraining competition, and to promote and  
3 encourage robust competition in the Domain industry.

4 49. Implementation of WLS would essentially allow VeriSign to become the  
5 sole provider of services to potential Registrants seeking to register expiring Domain  
6 names thereby eliminating the robust competition for registering expiring Domains  
7 currently offered by a number of Registrars and it will virtually eliminate competition  
8 in the provision of services to potential Registrants seeking to register expiring  
9 Domain names. If WLS is implemented, each Plaintiff will suffer substantial  
10 monetary damages in excess of \$75,000.

11 50. The adoption of the WLS will unreasonably restrain competition in the  
12 breach of the Accreditation Agreements between Defendant and each of the Plaintiffs  
13 for which Plaintiffs have no immediate and adequate remedy at law.

14 51. Defendant's May 20 Recommendation denies that WLS restrains  
15 competition and rejects Plaintiff Dotster's arguments. Thus, an actual controversy  
16 exists between the parties concerning Defendant's contractual obligation to foster  
17 competition and avoid unreasonably restraining competition.

18 52. The Accreditation Agreements between Plaintiffs and Defendant obligate  
19 Defendant to establish proposed new policies and specifications only through a  
20 procedure that demonstrates that a consensus of Internet stakeholders agrees with the  
21 proposal. Approval of the WLS will require Defendant to amend the existing  
22 specifications and schedules of the Accreditation Agreements pertaining to the  
23 amounts that can be billed to those seeking Domains.

24 53. Defendant has disregarded the consensus requirements of the Accreditation  
25 Agreements, has denied that it must follow these requirements, has ignored that the  
26 consensus is opposed to implementation of the WLS, and is instead proceeding with  
27 private negotiations between itself and VeriSign, intended to culminate in the official  
28

1 launch of WLS on October 11, 2003. An actual dispute exists between the parties  
2 with respect to Defendant's obligation to follow its consensus procedures, and  
3 whether a consensus actually opposing implementation of the WLS.

4 54. Section 2.3.3 of the Accreditation Agreements between Plaintiffs and  
5 Defendant obligates Defendant to "not apply standards, policies, procedures or  
6 practices arbitrarily, unjustifiably, or inequitably" with respect to all matters that  
7 "impact the rights, obligations, or role of Registrar."

8 55. Defendant has breached its obligations under Section 2.3.3 of the  
9 Accreditation Agreement because there has been no justification for the  
10 implementation of the WLS, and results in harm to a substantial number of  
11 Registrars, including specifically Plaintiffs, and potential Domain Registrants.

12 56. For the above reasons, Plaintiffs seek, and are entitled to, a declaration of  
13 this Court that:

- 14 a. Defendant will be in breach of the Accreditation Agreements if it  
15 proceeds to approve the WLS because implementation of the WLS  
16 will unreasonably restrain competition in the provision of services  
17 to those potential Registrants attempting to register expiring  
18 Domain names; and that Defendant should deny VeriSign's WLS  
19 proposal on the grounds that it fails to promote and encourage  
20 robust competition, and violates Defendant's obligations under the  
21 Accreditation Agreement.
- 22 b. When deciding whether to approve WLS, Defendant is obligated to  
23 follow its consensus policy for the establishment of new  
24 specifications and policies, as detailed in the Accreditation  
25 Agreement; that a consensus has been established by the Task  
26 Force rejecting the proposed WLS; and that Defendant is  
27 contractually required to comply with the established consensus.  
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1 57. Plaintiffs are entitled to a Temporary Restraining Order, preliminary  
2 injunction, and permanent injunction prohibiting Defendant from approving any  
3 further steps toward the implementation of WLS until such time as Defendant has  
4 complied with its contractual obligations.

5 **SECOND CLAIM FOR RELIEF**

6 **(Specific Performance)**

7 58. Plaintiffs reallege paragraphs 1 through 56 above.

8 59. Section 2.3.1 of the Accreditation Agreements between Plaintiffs and  
9 Defendant obligates Defendant to “exercise its responsibilities in an open and  
10 transparent manner” with respect to all matters that “impact the rights, obligations, or  
11 role of Registrar.”

12 60. Defendant has breached Section 2.3.1 of the Accreditation Agreement by  
13 authorizing its General Counsel and President to negotiate exclusively with VeriSign  
14 to establish the implementation of WLS, a single-source provider of Domain “waiting  
15 list” services. The issues that Defendant and VeriSign are negotiating will  
16 dramatically impact Registrars, and the rights that they will have should WLS be  
17 implemented as scheduled.

18 61. These confidential negotiations prevent Registrars, including Plaintiffs, from  
19 meaningfully participating in discussions and decision-making that will impact  
20 Registrars’ rights. Such confidentiality also results in Defendant making decisions in  
21 an essential vacuum, without the benefit of input regarding the far-reaching, and  
22 potentially disastrous impacts that specific implementation decisions will have on  
23 Registrars, including Plaintiffs.

24 62. Section 2.3.2 of the Accreditation Agreements between Plaintiffs and  
25 Defendant obligates Defendant to “not unreasonably restrain competition and, to the  
26 extent feasible, promote and encourage robust competition” with respect to all matters  
27 that “impact the rights, obligations, or role of Registrar.”  
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1           63. Currently, a robust and vibrant competition exists between approximately 45  
2 Registrars to register Domains that are being deleted during Batch Deletes  
3 (“Competing Registrars”). The Competing Registrars compete with regards to the  
4 models that they use to attract potential Domain Registrants and with regards to the  
5 technology that they have developed, and which continues to develop. For example,  
6 Competing Registrars may use an auction model, a first-come, first-served model, or  
7 work with domain resellers. Each model has unique benefits, different price-points,  
8 and attracts a different type of potential Domain Registrant. Further, Competing  
9 Registrars compete against one another to develop the most effective technology with  
10 which to register expiring Domains.

11           64. Thus, Defendant has breached its obligations under Section 2.3.2 of the  
12 Accreditation Agreement because implementation of the WLS would result in a  
13 single-source, Registry service of obtaining expiring Domains, and would result in the  
14 Competing Registrars’ services becoming “preempted” by the priority afforded to  
15 WLS subscriptions to register an expiring Domain, should a WLS subscription be  
16 purchased on such expiring Domain.

17           65. The WLS is unlike the services provided competitively by the Competing  
18 Registrars, as it is implemented by bypassing the normal return of Domains being  
19 deleted as part of the Batch Delete process and instead assigning them to the WLS  
20 subscription holder.

21           66. Section 2.3.3 of the Accreditation Agreements between Plaintiffs and  
22 Defendant obligates Defendant to “not apply standards, policies, procedures or  
23 practices arbitrarily, unjustifiably, or inequitably” with respect to all matters that  
24 “impact the rights, obligations, or role of Registrar.”

25           67. Defendant has breached its obligations under Section 2.3.3 of the  
26 Accreditation Agreement because there has been no justification for the  
27 implementation of the WLS, and results in harm to a substantial number of  
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1 Registrars, including specifically Plaintiffs, and potential Domain Registrants.

2 68. In permitting VeriSign to implement the WLS, Defendant failed to follow  
3 the Consensus Policy procedures it was contractually obligated to employ in its  
4 Accreditation Agreements with each of the Plaintiffs.

5 69. The Accreditation Agreements between Plaintiffs and Defendant obligates  
6 Defendant to establish any proposed new policy or specification through a procedure  
7 that demonstrates that a consensus of Internet stakeholders agrees with the proposal.  
8 Section 4.3 of the Accreditation Agreements provides the procedure for establishing a  
9 consensus policy.

10 70. As part of the consensus policy process, Defendant requested that the Task  
11 Force that it established present recommendations to Defendant's Board. The Task  
12 Force recommended that WLS not be implemented.

13 71. Defendant has disregarded the results of the Task Force's recommendations  
14 and other consensus-establishing requirements, and is now proceeding with private  
15 negotiations between itself and VeriSign, which are intended to culminate in the  
16 implementation of WLS. None of the Plaintiffs, nor any other Registrar or Internet  
17 stakeholders have been allowed to participate in these negotiations.

18 72. Defendant's failure to follow the consensus requirements outlined in the  
19 Accreditation Agreement constitutes a breach of the Accreditation Agreement.

20 73. Plaintiffs have performed all of their obligations under the Accreditation  
21 Agreement.

22 74. Defendant should be required to specifically perform the Accreditation  
23 Agreement, as required by Section 5.1 of the Accreditation Agreement, and should be  
24 required to:

- 25 a. In accordance with its obligations under Section 2.3.1 of the  
26 Accreditation Agreement, fully inform all Registrars of the substance of  
27 any ongoing negotiations between Defendant and VeriSign regarding the  
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1 WLS and to the extent required by the Accreditation Agreement, permit  
2 Registrars and other interested Internet stakeholders to participate in  
3 negotiations with Defendant and VeriSign regarding the implementation  
4 of WLS;

5 b. Act in accordance with its obligations under Section 2.3.2 of the  
6 Accreditation Agreement to promote competition by prohibiting the  
7 implementation of WLS in its present format;

8 c. Follow the consensus procedure provided for under the  
9 Accreditation Agreements and prohibit implementation of WLS until a  
10 consensus of Registrars approves implementation; and

11 d. Follow its own internal procedures in considering, and deciding on  
12 the merits of, Plaintiff Dotster's requests for review and reconsideration  
13 of implementation of the WLS.

14 75. The negotiations between Defendant and VeriSign, if allowed to proceed,  
15 will irreparably harm Plaintiffs. That harm is not fully remediable at trial. A  
16 temporary restraining order, preliminary injunction, and permanent injunction should  
17 be issued preventing Defendant from any steps toward implementation of the WLS,  
18 until such time as Defendant has complied with its contractual obligations.

19 WHEREFORE, Plaintiffs pray for relief against Defendant:

20 1. On Plaintiffs' First Claim for Relief, declaratory judgments as follows:

21 a. Defendant will be in breach of the Accreditation Agreements if it  
22 proceeds to approve the WLS because implementation of the WLS  
23 will unreasonably restrain competition in the provision of services  
24 to those potential Registrants attempting to register expiring  
25 Domain names; and that Defendant should deny VeriSign's WLS  
26 proposal on the grounds that it fails to promote and encourage  
27 robust competition, and violates of Defendant's obligations under  
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the Accreditation Agreement; and

b. When deciding whether to approve WLS, Defendant is obligated to follow its consensus policy for the establishment of new specifications and policies, as detailed in the Accreditation Agreement, that a consensus has been established by the Task Force rejecting the proposed WLS, and that Defendant is contractually required to comply with the established consensus.

2. On Plaintiffs' Second Claim for Relief, an order of this court requiring Defendant to specifically perform the Accreditation Agreement, in particular requiring Defendant to:

- a. In accordance with its obligations under Section 2.3.1 of the Accreditation Agreement, fully inform all Registrars of the substance of any ongoing negotiations between Defendant and VeriSign regarding the WLS and to the extent required by the Accreditation Agreement, permit Registrars and other interested Internet stakeholders to participate in negotiations with Defendant and VeriSign regarding the implementation of WLS; and
- b. Follow its own internal procedures in considering, and deciding on the merits of, Plaintiff Dotster's requests for review and reconsideration of implementation of the WLS.

3. On Plaintiffs' First and Second Claims for Relief, injunctive relief restraining Defendant from conducting further negotiations with VeriSign, as argued in Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction that accompanies this filing.

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4. For such further additional relief as this court deems appropriate.

DATED this 15<sup>th</sup> day of July, 2003.

PRESTON GATES & ELLIS LLP

By 

Stuart M. Brown  
Aaron M. McKown  
Attorneys for Plaintiffs  
Dotster, Inc., Go Daddy  
Software, Inc., and eNOM, Inc.

ESTD AUG 26

# EXHIBIT

## B

1 **Stuart M. Brown (SBN 170028)**  
2 PRESTON GATES & ELLIS LLP  
3 222 SW Columbia Street  
4 Suite 1400  
5 Portland, OR 97201-6632  
6 Telephone: (503) 228-3200  
7 Facsimile: (503) 248-9085  
8 Email: sbrown@prestongates.com

9 **Kathleen O. Peterson (SBN 124791)**  
10 **Aaron M. McKown (SBN 208781)**  
11 PRESTON GATES & ELLIS LLP  
12 1900 Main Street, Suite 600  
13 Irvine, CA 92614  
14 Telephone: (949) 253-0900  
15 Facsimile: (949) 253-0902  
16 Email: aaronm@prestongates.com

17 Attorneys for Plaintiffs

18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 **DOTSTER, INC., a Washington**  
21 **corporation, GO DADDY**  
22 **SOFTWARE, INC., an Arizona**  
23 **corporation, and eNOM, INC., a**  
24 **Washington corporation,**

25 Plaintiffs,

26 v.

27 **INTERNET CORPORATION FOR**  
28 **ASSIGNED NAMES AND**  
**NUMBERS, a California corporation,**

Defendant.

Case No.

**[PROPOSED] TEMPORARY  
RESTRAINING ORDER,  
ORDER TO SHOW CAUSE  
RE: PRELIMINARY  
INJUNCTION, AND ORDER  
FOR EXPEDITED  
DISCOVERY**

Upon reading the Complaint on file in this action, the Motion for a Temporary Restraining Order, Order to Show Cause Re Preliminary Injunction, and Order for Expedited Discovery, the Memorandum of Points and Authorities, and the Declaration

1 of Clint Page and Exhibits in support thereof, it appears to the satisfaction of this  
2 Court that there is good cause, and this is a proper cause, for granting a temporary  
3 restraining order. Pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, the  
4 Court finds as follows:

5 1. Plaintiffs have applied *ex parte* for a Temporary Restraining Order and  
6 Order to Show Cause Re Preliminary Injunction to prevent Defendant Internet  
7 Corporation for Assigned Names and Numbers from breaching its Registrar  
8 Accreditation Agreement with Plaintiffs; and

9 2. Plaintiffs have applied *ex parte* for an Order for Expedited Discovery;  
10 and

11 3. Plaintiffs have established that it is probable that they will prevail at trial  
12 on the merits of their claims for relief against Defendant; and

13 4. There is a likelihood that Plaintiffs will be irreparably injured if this  
14 temporary restraining order is not granted and Defendant is allowed to continue to  
15 breach the Registrar Agreement; and

16 5. Plaintiffs have established that the balance of hardships tips sharply in  
17 Plaintiffs' favor in that the hardship to Defendant if this temporary restraining order is  
18 granted is outweighed by the hardship to Plaintiffs if it is not granted; and

19 6. Unless Defendant is restrained as provided herein, Plaintiffs will have no  
20 adequate remedy; and

21 7. Plaintiffs will post a bond for the requested injunction in the amount of  
22 \$ \_\_\_\_\_.

23 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

24 Defendant Internet Corporation for Assigned Names and Numbers, its agents,  
25 servants, and employees, all persons acting or purporting to act under its authority,  
26 direction, or control, and all persons acting in concert or in participation with it who  
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1 receive notice of this Order, pending hearing on the order to show cause, shall be and  
2 are restrained and enjoined from:

3 1. All further negotiations and discussions with VeriSign, Inc. regarding the  
4 proposed Wait List Service ("WLS"); and

5 2. All negotiations and discussions with the United States Department of  
6 Commerce regarding WLS; and

7 3. Any final approval of an amendment of the Registry Agreement between  
8 Defendant and VeriSign, Inc, attached to Plaintiffs' Complaint as Exhibit 1; and

9 4. Implementation of WLS; and

10 5. All advertising or public announcements regarding WLS.

11 IT IS FURTHER ORDERED:

12 That Defendant appear before this Court on July \_\_, 2003, at \_\_\_\_, to show  
13 cause, if there be any, why a preliminary injunction should not be issued enjoining and  
14 restraining them, their agents, servants, and employees, and all persons acting in  
15 concert with them or on their behalf:

16 1. All further negotiations and discussions with VeriSign, Inc. regarding the  
17 proposed Wait List Service ("WLS"); and

18 2. All negotiations and discussions with the United States Department of  
19 Commerce regarding WLS; and

20 3. Any final approval of an amendment of the Registry Agreement between  
21 Defendant and VeriSign, Inc, attached to Plaintiffs' Complaint as Exhibit 1; and

22 4. Implementation of WLS; and

23 5. All advertising or public announcements regarding WLS.

24 IT IS FURTHER ORDERED:

25 1. Plaintiffs, upon three calendar days' notice given by personal service,  
26 may take the deposition of any and all Defendants (not to exceed four such  
27 depositions), including Defendants' officers, directors, principals, shareholders,  
28

1 agents, servants, employees, and successors, including depositions conducted pursuant  
2 to Fed.R.Civ.P. 30(b)(6), if such testimony is reasonably believed to be necessary to  
3 obtain evidence for the hearing on the Order to Show Cause Re: Preliminary  
4 Injunction in this matter;

5       2. Plaintiffs may propound written discovery which they reasonably believe  
6 is necessary for plaintiffs to prevail at the hearing on the Order to Show Cause Re:  
7 Preliminary Injunction in this matter. Such written discovery shall be served by  
8 personal service, not to exceed ten requests for admissions, ten interrogatories and ten  
9 requests for production of documents per Defendant. Each Defendant must serve a  
10 written response via personal service to plaintiffs' counsel within three calendar days'  
11 of receipt. Such written discovery shall concern Defendant's interpretation of clauses  
12 contained in the Accreditation Agreement that are at issue in this case, Defendant's  
13 negotiations with VeriSign concerning WLS, and any other actions taken by  
14 Defendant with regard to WLS.

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17 DATED: \_\_\_\_\_

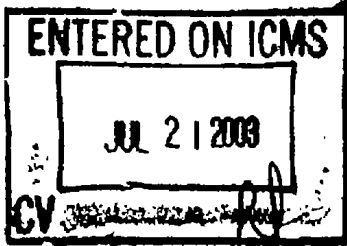
18 United States District Judge  
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# EXHIBIT

## C



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES -- GENERAL

Case No. **CV 03-5045-JFW (MANx)**

Date: July 18, 2003

Title: **DOTSTER, INC., etc., et al. -v- INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, etc.**

**DOCKET ENTRY**

**PRESENT:**

**HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE**

**K. Leigh Ray  
Courtroom Deputy**

**None Present  
Court Reporter**

**ATTORNEYS PRESENT FOR PLAINTIFFS:**  
None

**ATTORNEYS PRESENT FOR DEFENDANTS:**  
None

**PROCEEDINGS (IN CHAMBERS):** ORDER DENYING PLAINTIFFS' REQUEST FOR TEMPORARY RESTRAINING ORDER, REQUEST FOR ISSUANCE OF AN ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION, AND REQUEST FOR EXPEDITED DISCOVERY

On July 16, 2003, Dotster, Inc., Go Daddy Software, Inc., and eNOM, Inc. (collectively "Plaintiffs") filed a complaint against Internet Corporation For Assigned Names And Numbers ("ICANN") alleging two claims for relief: (1) Declaratory judgment; and (2) Specific performance. On the same day, Plaintiffs filed a Motion For Temporary Restraining Order, Preliminary Injunction, And Expedited Discovery. On July 17, 2003, ICANN filed a Preliminary Opposition To Plaintiffs' Motion For Temporary Restraining Order, Preliminary Injunction, And Expedited Discovery. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. After considering the moving and opposing papers and the arguments therein, the Court rules as follows:

**I. Standard**

In the Ninth Circuit, "preliminary injunctive relief is available to a party who demonstrates either (1) a combination of probable success and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardships tips in its favor." *Arcamuzi v. Continental Airlines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987). "Under any formulation of the test, the moving party must demonstrate a significant threat of irreparable injury." *Id.* "Speculative

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injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." *Carribbean Marine Services Company, Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); see also *Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994) (holding that "[b]ecause injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate—as opposed to a merely conjectural or hypothetical—threat of future injury"). It is "well-settled law that [i]njunctions will not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties." *Cambell Soup Co. v. Conagra, Inc.*, 977 F.2d 86, 92 (3d Cir. 1992) (citations and quotations omitted). Thus, courts will not grant preliminary injunctive relief where "[multiple contingencies must occur before [the plaintiff's] injuries ripen into concrete harms." *Carribbean Marine Services*, 844 F.2d at 674; see also *Skelly v. Dockweiler*, 75 F. Supp. 11, 17 (S.D.Cal. 1947) (denying a preliminary injunction because the alleged damage was "not immediate, but remote and flowing from contingencies which have not arisen and may never arise").

## II. Discussion

In this case, Plaintiffs have failed to demonstrate a significant threat of irreparable injury. Plaintiffs argue that they will be irreparably injured when the Wait Listing Service ("WLS") proposed by Verisign, Inc. ("Verisign") is implemented. According to Plaintiffs' complaint, negotiations between ICANN and Verisign regarding the implementation of WLS are on ongoing. (Compl. ¶ 42.) The complaint also states that WLS will not be implemented until October 11, 2003, nearly three months from the date Plaintiffs filed their current motion. (*Id.*) Moreover, according to evidence submitted by Defendant, whether WLS will ever be implemented is dependent upon several contingencies: (1) Verisign would have to actually reach an agreement with ICANN; (2) the United States Department of Commerce would have to approve the agreement; and (3) Verisign would have to undertake the significant technical and operational tasks of implementing WLS. (Halloran Decl. ¶ 14.) Thus, assuming that Plaintiffs will actually be damaged from the implementation of WLS, such damage will not be immediate, but remote and flowing from contingencies which have not arisen and may never arise. Accordingly, the Plaintiffs have not demonstrated a significant threat of irreparable harm for purposes of obtaining a temporary restraining order.

## III. Conclusion

For the foregoing reasons, the Court **DENIES** Plaintiffs' request for temporary restraining order, request for issuance of an order to show cause re preliminary injunction, and request for expedited discovery. If Plaintiffs wish to pursue their request for injunctive relief, they should proceed by way of noticed motion. Any issues regarding discovery shall be addressed by the magistrate judge assigned to this case.

IT IS SO ORDERED.

The Clerk shall serve a copy of this Minute Order on all parties to this action.

# EXHIBIT

## D

1 J. W. Ring (Oregon State Bar #85430)  
2 Melissa A. Boge (SBN 200688)  
3 PRESTON GATES & ELLIS LLP  
4 222 S W Columbia Street, Suite 1400  
Portland, OR 97201-6632  
Telephone: (503) 228-3200  
Facsimile: (503) 248-9085

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CLERK, U.S. DISTRICT COURT  
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CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY

5 Attorneys for Plaintiffs DOTSTER, INC.  
6 and GODADDY SOFTWARE, INC.

7 Benjamin E. Soffer (SBN 180252)  
8 PERKINS COIE LLP  
9 1620 26<sup>th</sup> Street, Sixth Floor South  
Santa Monica, CA 90404-4013  
Telephone: (310) 788-9900  
Facsimile: (310) 788-3399

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10 Attorneys for Plaintiff eNOM, INC.

11 Jeffrey A. LeVee (SBN 125863)  
12 Emma Killick (SBN 192469)  
13 Courtney M. Schaberg (SBN 193728)  
14 JONES DAY  
15 555 West Fifth Street, Suite 4600  
Los Angeles, CA 90013  
Telephone: (213) 489-3939  
Facsimile: (213) 243-2539

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16 Attorneys for Defendant  
INTERNET CORPORATION FOR  
17 ASSIGNED NAMES AND NUMBERS

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA

20  
21 DOTSTER, INC., GO DADDY  
22 SOFTWARE, INC., and eNOM,  
23 INC.,

Case No. CV03-5045 JFW (MANx)

24 Plaintiffs,

25 STIPULATION AND PROPOSED  
26 ORDER FOR DISMISSAL WITH  
27 PREJUDICE

28 v.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND  
NUMBERS,

Defendant.

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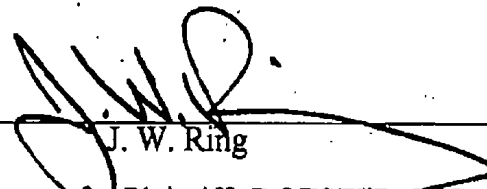
Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiffs Dotster, Inc. GoDaddy, Inc., and eNom, Inc. by and through their respective counsel of record hereby request dismissal of this matter with prejudice. Defendant Internet Corporation for Assigned Names and Numbers, by and through its counsel of record, hereby stipulates to Plaintiffs' request. Each of the undersigned parties agrees that it shall bear its own costs and attorney's fees associated with this matter.

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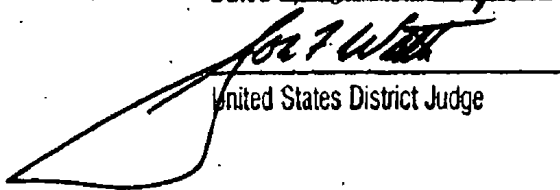
**IT IS SO STIPULATED.**

Dated: December 2, 2003

PRESTON GATES & ELLIS LLP

By:   
J. W. Ring  
Attorneys for Plaintiffs DOTSTER, INC.  
AND GODADDY, INC.

**IT IS SO ORDERED**  
Dated December 4, 2003

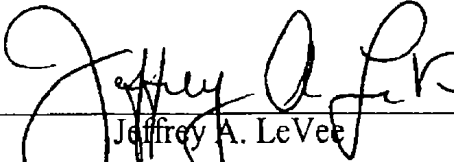
  
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Dated: December 02, 2003

JONES DAY

By:   
Jeffrey A. LeVee

SCANNED


Attorneys for Defendant INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

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Dated: December 2, 2003

PERKINS COIE LLP

By: 

Benjamin E. Soffer

Attorneys for Plaintiff eNOM, INC.

U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
SOUTHERN DISTRICT

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**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

UNITED STATES DISTRICT  
COURT JUDGE

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

UNNED

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 West Fifth Street, Suite 4600, Los Angeles, California 90013.

On December 3, 2003, I caused to be served the document described as **STIPULATION AND (PROPOSED) ORDER FOR DISMISSAL WITH PREJUDICE** on the interested parties in this action.

X BY (U.S. MAIL) I placed \_\_\_ the original X a true copy thereof enclosed in sealed envelope(s) to the addressee(s) as follows:

**See attached Service List**

\_\_\_ BY PERSONAL SERVICE I placed \_\_\_ the original \_\_\_ true copies thereof enclosed in sealed envelope(s) and caused such envelope to be hand delivered via messenger to the offices of the addressee(s) as follows:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit of mailing in affidavit.

\_\_\_ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 3, 2003, at Los Angeles, California.

Grace M. Salter  
Type or Print Name

  
Signature

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SERVICE LIST

SCANNED

J.W. Ring, Esq.  
Preston Gates & Ellis LLP  
222 SW Columbia Street, Suite 1400  
Portland, Oregon 97201-6632

Kathleen O. Peterson, Esq.  
Aaron M. McKown, Esq.  
Preston Gates & Ellis LLP  
1900 Main Street, Suite 600  
Irvine, CA 92614-7319

Martin S. Garthwaite  
General Counsel  
eNom, Inc.  
2002 156<sup>th</sup> Avenue NE, Suite 300  
Bellevue, WA 98007

Benjamin Soffer, Esq.  
Perkins Coie LLP  
1620 26th Street, 6th Floor  
Santa Monica, CA 90404-4013

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