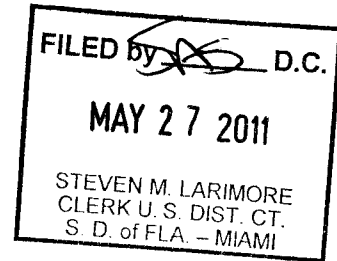


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-14052-CIV-MARTINEZ/LYNCH

JOHN ZUCCARINI, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NETWORK SOLUTIONS, LLC, )  
 a Delaware Limited Liability Company; )  
 NAMEJET, LLC, )  
 a Delaware Limited Liability Company; )  
 INTERNET CORPORATION )  
 FOR ASSIGNED NAMES )  
 AND NUMBERS, INC. )  
 a California non-profit Corporation; )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )



**PLAINTIFF JOHN ZUCCARINI'S RESPONSE TO NETWORK SOLUTIONS, LLC'S AND NAMJET, LLC'S MOTION FOR SANCTIONS PURSUANT TO FED. R. CIV. P. 11**

Plaintiff, John Zuccarini ("Zuccarini") hereby moves the Court to deny the Motion for all Sanctions filed by Defendants Network Solutions, LLC ("Network Solutions") and NameJet, LLC ("NameJet") against Zuccarini pursuant to Fed. R. Civ. P. 11(b)(1) and in support thereof, state as follows:

**I. INTRODUCTION**

Plaintiff Zuccarini finds this motion for sanctions filed by Defendants Network Solutions and NameJet against Zuccarini inappropriate at this time as this Court has not yet ruled on the original Complaint or any of the motions to dismiss filed by the Defendants. Never the less, Zuccarini will respond to the arguments made by the Network Solutions and NameJet for sanctions.

Zuccarini believes this current action before the Court is not one that has been litigated before despite the claims of Defendants Network Solutions and NameJet. While the claims of Zuccarini in this action are related to previous actions filed by Zuccarini, findings by the Courts of California and Virginia did not address the specific issues raised by Zuccarini in this instant action, specifically the negligence of Network Solutions in not protecting the domain names that Network Solutions knew they had been ordered to transfer for the purpose of being placed in a receivership, and the negligence of NameJet in not conducting due diligence before it auctioned any of the domain names that the Federal Court in California had ordered to placed in receivership. Due Diligence which would have made it clear to NameJet that the domain names they were auctioning had been ordered, and expected to remain in the receivership created by the California District Court.

While Zuccarini has done his best to state to Court the facts of this action and how he believes they relate to the law that would allow him to file this Complaint, Zuccarini acknowledges he is not trained in the law and may misunderstand or misinterpret certain aspects of the law and how it effects what has been filed before the Court. There is an attempt by different parties to portray Zuccarini as sophisticated in the law and as a seasoned litigant, implying Zuccarini knows exactly what he is doing in every way in his filings to the Court, unfortunately that is not the case, but Zuccarini believes his pleadings in this action are correct and valid and can be heard by this Court.

Zuccarini has lost over \$80,000 worth of value in the domain names that were auctioned by NameJet. This \$80,000 was specifically meant to go towards to payment of a judgment held by DS Holdings, LLC against Zuccarini and towards an amount of over \$250,000 still owed by Zuccarini to the Internal Revenue Service (“IRS”) and of which the IRS holds liens against

Zuccarini for that amount.

Instead this approximately \$80,000 is now in the possession of Network Solutions and NameJet, because of what Zuccarini believes to be the negligence of both Network Solutions and NameJet. Zuccarini seeks the return of what he believes is justly his, and that is the reason this action has been filed.

## II. FACTS

In presenting their motion for sanctions against Zuccarini, both Network Solutions and NameJet purposely misrepresent the facts of previous actions filed by Zuccarini.

On page 3 of their motion for sanctions Network Solutions and NameJet claim Zuccarini sought injunctive relief against Network Solutions and NameJet in, *Office Depot, Inc. v. Zuccarini*, 621 F. Supp. 2d 773 (N.D. Cal. 2007), “He then sought - unsuccessfully – injunctive relief against Network Solutions and NameJet in the California District Court, despite the fact that neither was a party to the case pending in that Court.”

This statement is absolutely false, as Zuccarini sought injunctive relief in California not against Network Solutions and NameJet, but against DS Holdings, LLC (“DSH”) and the receiver, Michael Blacksburg to not further sell any domain names held in the receivership after the initial loss of the 14 domain names that are the subject domain names of this action.

As stated in Zuccarini's, *Emergency Ex Parte Application for a Temporary Restraining Order*, in *Office Depot, Inc. v. Zuccarini*, 621 F. Supp. 2d 773 (N.D. Cal. 2007), *Exhibit A*, page 3, ¶ 2 - 4, filed on June 1, 2010:

*“Defendant Moves this Court to Grant TRO/Injunction to prevent further sales of the Domain Names at such a great loss.*

*Further, The United States of America has filed a motion to intervene in the case as an*

*additional defendant. 05/28/2010 [Doc.17] Stipulation To Add Party And [proposed] Order Thereon by United States of America.*

*For this reason, the Defendant Moves this Honorable Court for an Order Granting a Temporary Restraining Order/Preliminary Injunction to restrain DS Holdings and the receiver from selling the domain names until the United States can be added and heard in this case.”*

Nowhere in Zuccarini's request for a Temporary Restraining Order is Network Solutions and NameJet even mentioned, nor was any specific implication directed to Network Solutions and NameJet intended by Zuccarini.

The fact that Network Solutions and NameJet would somehow construe this Motion for a Temporary Restraining Order filed by Zuccarini in California against DSH, and the California receiver, as a request for injunctive relief against Network Solutions and NameJet and as evidence to support a motion for sanctions against Zuccarini in this action, lacks serious credibility.

Network Solutions and NameJet also misrepresent facts and circumstances of the first Florida action that was transferred to the Eastern District of Virginia in, *Zuccarini v. Network Solutions, Inc., et al*, Civil Action No. 1:10-cv-01327.

The claims made by Zuccarini in this action are different than those in made to the Court in the the Eastern District of Virginia in, *Zuccarini v. Network Solutions, Inc., et al*, Civil Action No. 1:10cv1327. Specifically, Zuccarini claimed in the Virginia District Court action that the Order to transfer the domain names in, *Office Depot, Inc. v. Zuccarini*, 621 F. Supp. 2d 773 (N.D. Cal. 2007), was directed to the California receiver Michael Blacksborg, to act upon a pre-arranged agreement entered into by Karl Kronenberger for DSH and the domain name registrars to transfer Zuccarini's domain names to the receiver. That the Order to transfer the domain names

was not directed to the domain name registrars, and therefore they were not required to transfer the domain names. The Virginia District Court disagreed and stated so in the Court's opinion that the registrars were required to comply with the California Court Order to transfer the domain names.

Although the Virginia District Court ruled the November 14, 2007 California District Court Order for the transfer the domain names was valid, the originating Court for the Northern District of California had already previously clarified the November 14, 2007 that showed Network Solutions and all the other domain name registrars misunderstood the November 14, 2007 Order to transfer the domain names. That all the registrars did in fact incorrectly transfer domain names to the California receiver that the California Court did not order transferred.

As jurisdiction for, *Office Depot, Inc. v. Zuccarini*, 621 F. Supp. 2d 773 (N.D. Cal. 2007), was based on VeriSign Inc., the registry for .com and .net domain names being headquartered in California, only .com and .net domain names were subject to the November 14, 2007 Order to transfer the domain names.

Network Solutions transferred freemovies.org to the California receiver. This was an obvious error on their part. DomainDiscount24.net incorrectly transferred 14 .eu domain names to the California receiver.

Despite the fact that these incorrectly transferred domain names appear in the Exhibit N, supplied by Network Solutions and NameJet that supplements the Order to transfer the domain names, the California Court stated in it's Order of July 12, 2010, doc. 137, that the California Court never ordered the .eu domain names transferred to the receiver. The California Court in it's July 12, 2010 Order: "*This Court did not order transfer of the .eu domain names to the receiver, and Zuccarini is likely correct that the Court would have lacked jurisdiction to do so. Cf. Office*

*Depot, 596 F.3d at 703 (“[W]e conclude under California law that domain names are located where the registry is located for the purpose of asserting quasi in rem jurisdiction.”* Here the Court is referring to the VeriSign Inc. registry as being in California. *Exhibit B, page 3, lines 26-28, and page 4, line 1.*

As the registry for .org domain names is located in Virginia not California, and as DomainDiscount24.net misunderstood the Order to transfer only .com and .net domain names, so did Network Solutions when they transferred the domain name, freemovies.org to the California receiver.

Network Solutions and NameJet next claim that the Motion for Relief pursuant to Rule 60(b) filed by Zuccarini in the Virginia District Court in, *Zuccarini v. Network Solutions, Inc., et al, Civil Action No. 1:10-cv-1327*, is based upon the very same theories of negligence against Network Solutions and NameJet that he alleges in this instant matter. This simply is not true.

Zuccarini claimed in the Rule 60(b) filed in Virginia that Network Solutions was in error for not notifying the California District Court that their registrar agreements do not recognize third party beneficiaries. As Zuccarini was a third party beneficiary in the California action, therefore Network Solutions was in error for not notifying the California Court that Network Solutions could not protect Zuccarini's interest in the domain names, despite the fact that the receivership was created by the California District Court solely for the benefit of Zuccarini and his creditors.

As Zuccarini stated in the Rule 60(b), *Exhibit C, page 1, ¶ 3 – page 2, ¶ 1*, “*Zuccarini believes however, that in spite of the fact that the Order has been found to be a valid legitimate order, that Network Solutions and Enom were negligent for not notifying The California Court that their Registrar/Registrant Agreements do not recognize third-party beneficiaries, the third-*

*party beneficiaries in this case being Zuccarini and his creditors, and that Network Solutions and Enom were negligent for not notifying The California Court that they could not provide the secure setting necessary to protect the domain names from any unauthorized transfer from the receiver Michael Blackburg ("Blackburg"), a transfer that was not approved by The California Court."*

The claims made by Zuccarini in the action before this Court center around Network Solutions negligence in not placing Zuccarini's domain names that were ordered transferred on a legal hold, which would have prevented the domain names from being lost to an auction that was unauthorized by the California Court.

As the claims made by Zuccarini in this action are different than those made to the Virginia District Court, the claims in this action are not barred by the Virginia District Court's Orders in, *Zuccarini v. Network Solutions, Inc., et al, Civil Action No. 1:10-cv-01327*.

Network Solutions and NameJet also make an unusual unsupported claim in their motion for sanctions related to Zuccarini's finances. On page 9 of their motion it is stated, "*Zuccarini undoubtedly can afford the imposition of sanctions that would include the attorneys' fees incurred by Network Solutions and NameJet in this matter.*"


Network Solutions and NameJet are also most likely aware of Zuccarini's finances from Court documents filed in the related matters. To inform all parties, Zuccarini's only income is from Social Security payments he receives. The only other assets held by Zuccarini are the 2006 Mitsubishi Eclipse car that he owns and half of the furnishings in the residence that he rents, with the other furnishings owned by the landlord of the property. In addition to two small IRA's in his name that total less than \$10,000. Zuccarini's debts at this time include three liens held by the IRS in his name that total over \$250,000, in addition to other civil judgments held by private

parties towards Zuccarini that have not been acted upon.

While Zuccarini believes that sanctions of any type are not warranted in this action, Zuccarini is not certain if the Court takes an individual's financial circumstances into account when considering financial sanctions, but presents it as information for the Court to review.

### **III. CONCLUSION**

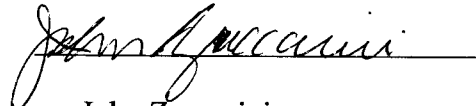
For the foregoing reasons, Zuccarini respectfully request that this Court deny all requests for sanctions filed against Zuccarini in the motion of Network Solutions and NameJet.

By:   
JOHN ZUCCARINI, Pro Se  
190 SW Kanner Highway  
Stuart, FL 34997  
(772) 631-3887  
raveclub@comcast.net



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiff John Zuccarini's Response to Network Solutions, LLC's and NameJet, LLC's Motion for Sanctions Pursuant to Fed. R. Civ. P.11, was served by first class mail, postage prepaid, on May 26th, 2011, on all counsel or parties of record on the service list and by email to the respective addresses.

  
John Zuccarini

**SERVICE LIST**

**Network Solutions, LLC and NameJet, LCC**

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Timothy B. Hyland  
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**Internet Corporation for Assigned Names and Numbers, Inc.**

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kwallace@jonesday.com

# **Exhibit A**

John Zuccarini  
190 SW Kanner Highway  
Stuart, Florida 34997  
(772) 631-3887

Pro Se Defendant

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

OFFICE DEPOT INC., a Delaware Corporation	)	Case No. C-06-80356-SI
	)	
Plaintiff,	)	
	)	
vs.	)	EMERGENCY EX PARTE
	)	APPLICATON FOR A
	)	TEMPORARY RESTRAINING
JOHN ZUCCARINI, individually and	)	ORDER / PRELIMINARY
d.b.a. COUNTRY WALK; and DOES 1	)	INJUNCTION
through 10, inclusive,	)	
	)	IMMEDIATE HEARING
Defendants.	)	REQUESTED
_____	)	
	)	
DS HOLDINGS, LLC a Colorado limited liability company,	)	
	)	
Assignee,	)	PLACE: Courtroom 10, 19 <sup>th</sup> Floor
	)	The Honorable Susan Illston
vs.	)	
	)	
JOHN ZUCCARINI, individually and	)	
d.b.a. COUNTRY WALK; and DOES 1	)	
through 10, inclusive,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANT'S EX PARTE APPLICATION FOR EMERGENCY  
TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION**

COMES NOW, Defendant John Zuccarini who moves this Court pursuant to Federal Rules of Civil Procedure Rule 65(a) and (b) for an Emergency Order granting a Temporary Restraining Order/Preliminary Injunction in order to preserve the status quo.

In support of this Petition, Defendant states the following:

On May 25, 2010 Defendant found that the receiver, Michael Blacksbury did not capably perform the task bestowed upon him by this Court. During the month of May 2010, thirteen (13) domain names previously in the possession of the receiver were prematurely placed in auction and are now in the ownership of new entities due to the fact the registrations of the domain names were not renewed by the receiver.

The domain names in not being renewed, went to auction without the receiver's knowledge or consent. The registrar of the domain names Network Solutions Inc., (NSI) has in place an automated process by which non renewed domain names are placed in auction after an approximate period of one month passes after a domain names renewal date in which no action is taken to renew the domain name.

In addition, it appears the receiver for the duration of his receivership did not adequately notify or request the domain name registrars, such NSI of the Courts actions, by which the registrars could have placed a legal hold on the domain names that would have prevented their loss even if the registrations were not renewed.

Because of the premature auctioning of the domain names, only 20 percent of the auctioned prices can be acquired by the receiver, though even that is not guaranteed as it is

contingent on the receiver following certain protocol as required by the domain name registrar NSI. An article on the Internet describes the auction of seven of the thirteen lost domain names. "After 7 Hours of Bidding, GovernmentGrants.com Sells For \$53K On NameJet (Yes It's a Typo)"<sup>1</sup> "Exhibit A" shows that this one domain name, governmentgrants.com sold at auction for Fifty-three thousand dollars (\$53,000.00). The article shows that on that one day, Domain Names taken from the Defendant sold for Sixty-five Thousand Dollars (\$65,000.00). Had the receiver been properly managing what he had been entrusted, a large portion of the debt that Defendant's Domain names were taken to satisfy, would have been eliminated.

Defendant Moves this Court to Grant TRO/Injunction to prevent further sales of the Domain Names at such a great loss.

Further, The United States of America has filed a motion to intervene in the case as an additional defendant. 05/28/2010 [Doc.17] Stipulation To Add Party And [proposed] Order Thereon by United States of America.

For this reason, the Defendant Moves this Honorable Court for an Order Granting a Temporary Restraining Order/Preliminary Injunction to restrain DS Holdings and the receiver from selling the domain names until the United States can be added and heard in this case.

Four factors govern the Court's decision whether to issue a preliminary injunction:

- 1) whether the movant has shown a reasonable probability of success on the merits;
- 2) whether the movant will be irreparably injured by the denial of the relief;
- 3) whether granting the preliminary relief will result in greater harm to the non-moving party (i.e., balancing of the hardships);
- 4) whether granting the preliminary relief will be in the public interest.

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<sup>1</sup> "After 7 Hours of Bidding, GovernmentGrants.com Sells For \$53K On NameJet (Yes It's a Typo)" <http://www.thedomains.com/2010/05/25/after-5-hours-govermentgrants-com-sells-for-53k-on-namejet-yes-its-a-typo/>

It is without question that the grounds necessary for this Court to Grant Defendant's Application, have been met.

### **ARGUMENT AND CITATION OF AUTHORITY**

The very purpose of a preliminary injunction, is to preserve the status quo and the rights of the parties until a final judgment issues in the cause. See *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held."); *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984) ("A preliminary injunction . . . is not a preliminary adjudication on the merits but rather a device for preserving the status quo and preventing the irreparable loss of rights before judgment.").

Because of the past Judgment in the Third Circuit by the Federal Trade Commission (FTC) in 2:01-cv-04854-BMS a suit involving FTC and Defendant, and fees owed not only to the Plaintiff, but to the IRS as well. The Preliminary Injunction/TRO should be granted until all parties, including The United States, can be heard on the matter.

Further, this Court previously held :

"The court is concerned, however, with DS Holdings' ultimate plan to auction off the domain names at issue. As Zuccarini points out, many of the domain names at issue are deliberate misspellings and variations of legitimate domain names, both generic and proprietary. Such names may have legitimate purposes, as counsel argued at the hearing, but they may also be used to misdirect consumers, as apparently Zuccarini himself did."

Further, the auction of the domain names has the probability of being used in the nature of cybersquatting. In essence, this Court is promoting cybersquatting, which the Federal Trade Commission found Defendant guilty of. It would only be fair to see what The United States can contribute to the case.

Furthermore, the California Court of Appeals, has in fact actually held that you cannot levy upon domain names. The door was not “left open” as the 9<sup>th</sup> Circuit claims, the door was closed when The California Court of Appeals held that domain names are intangible, they cannot be taken into custody.

***Intangible property.*** Property that lacks a physical existence - Examples include bank account, stock options, and business goodwill. Cf. *Tangible property.*<sup>2</sup>

Domain names are “intangible property under California law”. *Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th Cir. 2003). In *Palacio Del Mar Homeowners Ass’n, Inc. v. McMahon*, 174 Cal. App. 4<sup>th</sup> 1386, 1391 (2009), a California Court of Appeals held that domain names do not constitute property subject to a turnover order because they cannot be taken into custody.

Further, even had the California Appellate Courts not so held, the Federal Courts would have been obligated to Certify the question to California’s Supreme Court. “Effective Jan. 1, 1998, California Rule of Court 29.5 created a process whereby sister state courts of last resort and federal appellate courts could certify unresolved questions of California law to the California Supreme Court.”<sup>3</sup>

### **CONCLUSION**

Defendant has shown this Court that, under the circumstances, it is necessary to Petition the Court for TRO/Injunction. Not only has there been a misinterpretation of California state law and that the auctioning of the domain names can promote violations of the ACPA; but the receiver has not properly preserved the worth of said Domain Names. In addition the United States has filed a motion to intervene in the case and should be heard before any further actions

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<sup>2</sup> Black’s Law Dictionary, 7<sup>th</sup> Ed. page 1233.

<sup>3</sup> Originally published in the June 7, 2000 issue of the Los Angeles Daily Journal.

are taken relevant to the auctioning of the domain names.

Defendant Moves this Honorable Court to Grant the Temporary Restraining Order/Preliminary Injunction to give consideration to the arguments in his foregoing brief, Rule 60 (b) Relief from Judgment, which is scheduled for July 16, 2010.

Respectfully submitted this 1<sup>st</sup> day of June, 2010

By: \_\_\_\_\_  
John Zuccarini

Pro Se Defendant



**EXHIBIT A**

<http://www.thedomains.com/2010/05/25/after-5-hours-governmentgrants-com-sells-for-53k-on-namejet-yes-its-a-typo/>

After 7 Hours of Bidding, GovernmentGrants.com Sells For \$53K On NameJet  
(Yes It's a Typo)  
2010 May 25

by MHBAfter

7 hours of extended bidding on NameJet.com, the auction for the domain name GovernmentGrants.com finally ended with a sales price of \$53,022.

Yes its a typo.

The correctly spelled domain, governmentgrants.com has some nice traffic, with compete.com showing over 30K monthly visitors and Alexa gives it a rank of 555K.

The ownership of GovernmentGrants.com is under Moniker privacy.

The typo that sold today has an Alexa rank of 5.5M.

According to WordTracker.com there is about 10% of the search volume for the typo as for the correct term.

So if GovernmentGrants.com sold for \$53K is GovernmentGrants.com worth in excess of \$500K?

Yes its kind of unfortunate to see the highest selling domain on my NameJet.com board for 2010 to be a typo.

Its also the highest domain sale on my NameJet.com board since the mid-February auction of Historia.com (sold for \$40K).

A few other "Government" typo domains sold today:

USGovernment.com \$4,950

GovernmentGrant.com \$3,950

GovernmentAuction.com \$2,750

GovernmentAuctions.com \$2,500

The correctly spelled domains of FloridaGovernment.com and CaliforniaGovernment.com also sold today for only around \$2K each.

Since all of these domains appeared to drop on the same day, it looks like one domain holder just let \$65K in domains just drop.

Ouch.

In a non-government domain sale today, ComputerUpgrade.com went for just \$3,773 on NameJet

# **Exhibit B**

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OFFICE DEPOT, INC.,  
Plaintiff,

No. C 06-80356 SI

v.

**ORDER DENYING DEFENDANT'S  
MOTION FOR RELIEF FROM  
JUDGMENT AND MOTION TO ORDER  
RETURN OF DOMAIN NAMES**

JOHN ZUCCARINI,  
Defendant,

DS HOLDINGS, LLC,  
Judgment Creditor,

v.

JOHN ZUCCARINI,  
Judgment Debtor.

Defendant has filed a motion for relief from judgment and a motion to order the return of certain domain names. These matters are currently set for hearing on July 16, 2010. Pursuant to Civil Local Rule 7-1(b), the Court finds these matters appropriate for resolution without oral argument and hereby VACATES the hearing. Having considered the papers submitted, and for good cause shown, the Court DENIES both motions.

**BACKGROUND**

On September 10, 2007, the Court granted the ex parte application of assignee DS Holdings, LLC to appoint a receiver to hold internet domain names owned by defendant and judgment debtor John

United States District Court  
For the Northern District of California

1 Zuccarini so that the domain names could be auctioned off to satisfy the judgment against him. (Docket  
2 No. 30). In appointing the receiver, the Court addressed a matter of first impression in this circuit: the  
3 appropriate location to levy upon intangible property such as domain names. The Court concluded that  
4 because the domain name registry for .com and .net domain names, Verisign, is located within this  
5 district, the Court had *in rem* jurisdiction to oversee the levy upon the domain names and appoint a  
6 receiver in this district. *Id.* at \*5-7. The Ninth Circuit affirmed this Court’s ruling in a published  
7 opinion issued on February 26, 2010. *Office Depot v. Zuccarini*, 596 F.3d 696 (9th Cir. 2010).

8 Since the Ninth Circuit issued its opinion, Zuccarini has filed a number of motions in this Court  
9 seeking various forms of relief related to his efforts to seek certiorari from the Ninth Circuit’s decision  
10 and related to the receiver’s management of the domain names. In his two most recent motions,  
11 Zuccarini moves for relief from judgment and for the return of .eu domain names to his possession and  
12 control.

## 14 DISCUSSION

### 15 I. Motion for Relief From Judgment

16 Zuccarini first seeks relief from judgment pursuant to Federal Rule of Civil Procedure 60(b).  
17 Rule 60(b), in relevant part, permits a court to

18 relieve a party or its legal representative from a final judgment, order, or proceeding for  
19 the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (3)  
20 fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct  
by an opposing party; (4) the judgment is void; . . . or (6) any other reason that justifies  
relief.

21 Although Zuccarini does not clearly specify from which “judgment” he is seeking relief, it appears that  
22 he challenges this Court’s September 2007 order appointing the receiver and the Ninth Circuit’s  
23 February 2010 decision affirming this Court’s order.

24 The Court finds that Zuccarini’s motion is both untimely and procedurally improper. A motion  
25 for relief from judgment premised on mistake or fraud must be brought within a year of entry of the  
26 challenged judgment, and a motion brought for any other reason “must be made within a reasonable  
27 time.” Fed. R. Civ. P. 60(c)(1). Nearly three years have passed since Court issued its order appointing  
28 the receiver to oversee auction of the domain names, and Zuccarini has availed himself of his right to

1 appeal this Court's decision. Any purported errors in this Court's or the Ninth Circuit's decisions must  
2 be raised through the appropriate channels, not through a belated request for relief from judgment in this  
3 Court, which is without power to grant relief from a Ninth Circuit ruling no matter the ground raised.

4 In addition, Zuccarini has not raised a valid ground for relief from judgment. Zuccarini argues  
5 first that the Ninth Circuit's decision affirming this Court's appointment of the receiver is at odds with  
6 Third Circuit precedent and with the position taken by the FTC in briefs filed in the Eastern District of  
7 Pennsylvania in 2001 and 2006. Zuccarini does not identify the specific Third Circuit ruling to which  
8 he refers, and in any event, a decision by the Third Circuit is not binding upon the Ninth Circuit or this  
9 Court. Additionally, representations made by the FTC in the context of other litigation do not provide  
10 a basis for granting relief from this Court's or the Ninth Circuit's decision. Zuccarini also argues that  
11 the California Court of Appeal's holding in *Palacio Del Mar Homeowners Association, Inc. v.*  
12 *McMahon*, 95 Cal. Rptr. 3d 445 (Cal. Ct. App. 2009) undermines the decision to appoint a receiver in  
13 this district. The Ninth Circuit has already considered and rejected this argument. *See Office Depot*,  
14 596 F.3d at 701-02. Finally, although Zuccarini vaguely references due process violations and extreme  
15 and undue hardship worked upon him by this Court's ruling, he fails to provide any explanation of these  
16 alleged violations or how they entitle him to the relief he seeks.

17 Zuccarini's motion for relief from judgment is therefore DENIED.

18  
19 **II. Motion to Return Domain Names**

20 Zuccarini also seeks an order compelling the domain name registrar domaindiscount.net to return  
21 all .eu domain names to him on the ground that, because the registry and registrars for the .eu domain  
22 names are located in Europe, this Court never had jurisdiction to order transfer of the names to the  
23 receiver's control. DS Holdings does not dispute that both the registry and the registrars of the .eu  
24 domain names are located in Europe, but argues that Zuccarini's motion should be denied because the  
25 registrar domaindiscount.net has already relinquished control of the domain names to the receiver.

26 This Court did not order transfer of the .eu domain names to the receiver, and Zuccarini is likely  
27 correct that the Court would have lacked jurisdiction to do so. *Cf. Office Depot*, 596 F.3d at 703 (“[W]e  
28 conclude under California law that domain names are located where the registry is located for the

United States District Court  
For the Northern District of California

1 purpose of asserting *quasi in rem* jurisdiction. Although the question is not directly before us, we add  
2 that we see no reason why for that purpose domain names are not also located where the relevant  
3 registrar is located.”). Because the registrar has already transferred the domain names at issue to the  
4 receiver for purposes of executing the judgment against Zuccarini, however, there is no basis to order  
5 their return to Zuccarini. The motion for return of .eu domain names is therefore DENIED.

6

7 **III. Miscellaneous Requests**

8 In a brief sentence in the concluding paragraph of its opposition brief, DS Holdings requests an  
9 order requiring Zuccarini to obtain leave of Court before making any further filings. At the conclusion  
10 of his reply brief, Zuccarini purports to move for sanctions against DS Holdings’ attorney Karl  
11 Kronenberger. Both of these unsupported requests are DENIED.

12

13 **CONCLUSION**

14 For the foregoing reasons and for good cause shown, defendant’s motion for relief from  
15 judgment and motion for return of domain names are both DENIED. (Docket Nos. 100, 101).

16

17 **IT IS SO ORDERED.**

18 Dated: July 12, 2010

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SUSAN ILLSTON  
United States District Judge

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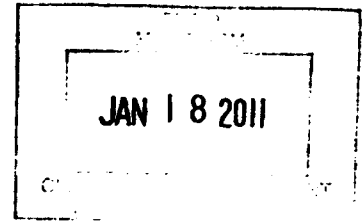
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28

# **Exhibit C**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**



JOHN ZUCCARINI,

Plaintiff,

v.

Civil Action No. 1:10-CV-01327 LMB/TCB

NAMEJET, LLC, *et al.*,

Defendants,

---

**PLAINTIFF ZUCCARINI FILES A SECOND CORRECTED MOTION 60(B)(1) FOR  
RELIEF FROM THE ORDER GRANTING NETWORK SOLUTIONS, LLC /  
NAMEJET, LLC / ENOM INC. AND VERISIGN'S REVISED MOTIONS TO DISMISS**

Plaintiff, John Zuccarini ("Zuccarini") files this Second Corrected Motion 60(B)(1) For Relief From The Order Granting Defendants Network Solutions, LLC ("Network Solutions"), NameJet, LLC ("NameJet") and Enom Inc. ("Enom") and VeriSign Inc. ("VeriSign") Revised Motions to Dismiss.

**MEMORANDUM OF LAW**

**I. INTRODUCTION**

Zuccarini accepts this Courts findings for the hearing of January 14, 2011, that the United States District Court for Eastern District of Virginia finds for it's jurisdiction, that the Order of November 14, 2007 of The California District Court, directing the registrars in *Office Depot Inc., v. Zuccarini*, to transfer Zuccarini's .com and .net domain names to a receiver in California was a valid Order issued by the California District Court.

Zuccarini believes however, that in spite of the fact that the Order has been found to be a valid legitimate order, that Network Solutions and Enom were negligent for not notifying

The California Court that their Registrar/Registrant Agreements do not recognize third-party beneficiaries, the third-party beneficiaries in this case being Zuccarini and his creditors, and that Network Solutions and Enom were negligent for not notifying The California Court that they could not provide the secure setting necessary to protect the domain names from any unauthorized transfer from the receiver Michael Blacksburg ("Blacksburg"), a transfer that was not approved by The California Court.

The result of this negligent behavior by Network Solutions was the unauthorized auction of fourteen of Zuccarini's domain names in May of 2010, that had been transferred by Network Solutions to the California receiver. An auction by which Zuccarini and his creditors, the intended third-party beneficiaries of the receivership, received very little if any compensation from the value of the auctioned domain names, over \$80,000, the obvious exact opposite of the intended purpose of the receivership as created by the California District Court.

That in fact the majority of the profits, if not all, from the auction of the domain names went to Network Solutions and NameJet themselves, with Network Solutions being the very entity who cooperated with and stated their willingness to Karl Kroneberger, the attorney for DS Holdings, LLC ("DSH"), the assignee of the California judgment in *Office Depot Inc., v. Zuccarini*, to transfer Zuccarini's domain names to a receiver if one was appointed.

In addition to the remaining domain names being held by the receiver Blacksburg, that had been transferred by Network Solutions and Enom and that exist in Registrar/Registrant Agreements that do not recognize third-party beneficiaries, and that are still at risk at being lost by an unauthorized transfer similar to the one of May, 2010.

In consideration of these circumstances, Network Solutions and Enom were also negligent for not citing to The California Court, "Good Cause" language, within California Code

of Civil Procedure, section 701.010, which would have allowed the registrars to refuse to transfer the domain names to the receiver Blacksburg for justifiable good cause.

## **II. Grounds For Filing Motion 60(B)(1)**

Zuccarini files this *Motion 60(B)(1) for Relief from The Order Granting the Motion to Dismiss* based on mistake and inadvertence, in his not including the relative arguments to this Motion for Relief in *Zuccarini's Responsive Objections to Defendant's Network Solutions's, Enom's and NameJet's Motions to Dismiss*.

Zuccarini also files this Motion for Relief based on surprise, as Zuccarini had prepared for the hearing held on January 14, 2011 in Alexandria, Virginia for this action, and *Addendum to Zuccarini's Responsive Objections to Defendant's Network Solutions, Enom's and NameJet's Motions to Dismiss*, that makes the relatively same arguments that are made in this Motion for Relief, absent the comments related to the January 14, 2011 hearing.

It was Zuccarini's understanding from the hearing held on December 10, 2010, in which Zuccarini participated by telephone that Judge Brinkema had stated The Court would only schedule a hearing if the facts of the case found it warranted. Therefore Zuccarini expected that it would be a certainty that he would be able to speak and submit the Addendum he had prepared, or at least speak to the arguments within the Addendum at the January 14, 2011 hearing.

At the onset of the hearing of January 14, 2011, while Judge Brinkema did in fact indicate she had scheduled the hearing with the thought that Judge Brinkema would give Zuccarini an opportunity to speak, as the hearing progressed it became evident that most likely this would not occur, and Judge Brinkema did subsequently grant the Motions to Dismiss, without asking Zuccarini if he had any comments to make, or if he had anything to say or add to the hearing.

After Judge Brinkema did grant the Motions to Dismiss, Zuccarini attempted to address Judge Brinkema, beginning by stating, "*Your honor, can I..*", but before any further words could be spoken by Zuccarini, Judge Brinkema stated "*No.*" At that point the hearing was over.

As Zuccarini had prepared for the hearing the Addendum to his Responses, and had the original and copies with him at the hearing, Zuccarini was uncertain of what action to take, but ultimately decided he should file the Addendum in the Clerk's Office that day, as it would be best for the record to show that he had the Addendum ready to submit to The Court and the arguments within the Addendum to be heard at the hearing of January 14, 2011.

### **III. Zuccarini and his Creditors are the Third Party Beneficiaries**

NameJet in it's revised Motion to Dismiss asserts Zuccarini cannot claim to be a third-party beneficiary as the parties, the receiver Blacksbury and Network Solutions did not intend to confer a direct benefit upon Zuccarini. Nothing could be further from the truth. The California District Court appointed the receiver for specific reasons, to provide for Zuccarini and his creditors a safe and secure means to retain the domain names until legal issues in the case were resolved, and to satisfy outstanding judgments, in addition to award Zuccarini any amounts remaining when the creditors have been paid. From the *Order Granting Application for Appointment of Receiver*, Exhibit 1, page 2 @21:

California Code of Civil Procedure section 708.620 allows the Court to appoint a receiver to aid in recovery of a money judgment, in certain circumstances. It provides: "The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment." § 708.620.

Clearly the beneficiaries of the receivership and any financial gain from the domain names were meant for Zuccarini and his creditors, and the absurdity is to suggest otherwise.

Network Solutions and Enom knew that the November 14, 2007 Order, which the registrars claim required them to transfer the domain names to the receiver, was an Order in direct conflict with the Registrar/Registrant Agreements of both Network Solutions and Enom, as those agreements do not recognize third-party beneficiaries.

Network Solutions and Enom also knew that by following The Court's November 14, 2007 Order and transferring Zuccarini's domain names to the receiver Blacksburg, they were entering into contractual agreements with the receiver they could not honor, as specified under the terms of the receivership created by the California District Court and California Code of Civil Procedure 708.620, and by the registrars own contractual terms. That Network Solutions and Enom, in light of these facts, were negligent in transferring the domain names to Blacksburg and placing the domain names in unlawful contractual agreements.

Network Solutions and Enom were equally negligent, although specifically there is a direct statement attributed to Network Solutions attorney Michael Mauseth, who told DS Holdings attorney, Karl Kronenberger, that absent a Court Order from the California Court requiring Network Solutions to transfer Zuccarni's domain names, Network Solutions would be receptive to and cooperate in the transfer of Zuccarini's domain names to a receiver if one was appointed. Here, Network Solutions states they would cooperate in transferring Zuccarini's domain names to a receiver, yet knew at the same time, their Registrar/Registrant Agreements did not recognize third-party beneficiaries, and knew they could not live up to the terms of the receivership as stated by The California Court in providing the secure setting necessary to insure there was no unauthorized transfer of the domain names while being held in the receivership.

The end result of these unlawful Registrar/Registrant Agreements was the unauthorized auction in May of 2010 of fourteen domain names being held by the receiver Blacksburg through

Network Solutions, and auctioned by NameJet. In addition to, the remaining domain names still being held Blacksburg through Network Solutions and Enom, existing in unlawful contractual agreements, that do not recognize third-party beneficiaries, and that cannot prevent another unauthorized transfer from occurring again similar to the unauthorized auction of May 2010.

Considering the fact Network Solutions and Enom knew they could not honor the terms of their Registrar/Registrant Agreements, and could not provide a secure setting for the domain names of the receivership, the transfer of Zuccarini's domain names to the receiver Blacksburg was negligent and unlawful, and remains so.

**IV. California Code of Civil Procedure, Section 701.010 Allows Third Parties to Refuse to Transfer Property When Good Cause Exists**

Network Solutions and Enom contend they had no choice but to transfer the domain names to Blacksburg under the November 14, 2007 Order. This simply is not true. California Code of Civil Procedure § 701.010 allows third parties the right to refuse to transfer property when good cause exists. California Code of Civil Procedure 701.010:

701.010. (a) Except as otherwise provided by statute, when a levy is made by service of a copy of the writ of execution and a notice of levy on a third person, the third person at the time of levy or promptly thereafter shall comply with this section.

(b) Unless the third person has good cause for failure or refusal to do so:...

(c) For the purposes of this section, "good cause" includes, but is not limited to, a showing that the third person did not know or have reason to know of the levy from all the facts and circumstances known to the third person.

Zuccarini believes that by The California Court issuing an Order to Network Solutions and Enom to enter into contractual relationships with the receiver Blacksburg, which the registrars knew they could not honor as their Registrar/Registrant Agreements do not recognize third-party beneficiaries, that in addition to, Network Solutions and Enom not being able to supply the secure setting needed to retain the domain names, Network Solutions and Enom were

legally bound to notify The Court of such circumstances and to, for “Good Cause”, refuse to transfer Zuccarini's domain names to the receiver.

**V. Arguments Made in The Virginia Court Are Different Than Those Made In The California Court**

The Court in the hearing of January 14, 2010 stated it believed this case had already been decided in the California Court. While certain aspects of the issue of the transfer of Zuccarini's domain names were addressed in the California Court, since none of the Defendants in this case were parties to the California action, any claims of wrongdoing against the Defendants and any request to correct those wrongdoings, in addition to, any request of compensation for damages directed towards Network Solutions, Enom, NameJet and VeriSign could not be made in California, as jurisdiction to file such claims in California does not exist.

**VI. Zuccarini Asks The Court to Order Network Solutions and NameJet to Transfer to The Internal Revenue Service the Full Auctioned Price of the Fourteen Domain Names**

Network Solutions was fully aware that Zuccarini and his creditors were the intended third-party beneficiaries of the California receivership when Network Solutions agreed to transfer Zuccarini's domain names to the receiver Blacksbury. In light of this fact, Network Solutions was negligent for not notifying The California Court it could not protect the rights of the third-party beneficiaries and because of this, refuse to transfer the domain names as California Code of Civil Procedure § 701.010 allows a third party to refuse the transfer of property for “good cause”.

In consideration of these circumstances Network Solutions and NameJet should not be rewarded by retaining any of the funds acquired by the unauthorized auction of the fourteen domain names in May of 2010. Zuccarini is actually surprised that Network Solutions and NameJet have not done the “right thing”, and surrendered the funds they both received from the

auctioning of the fourteen domain names in May of 2010.

Zuccarini asks this Court to order Network Solutions and NameJet to transfer the full auctioned price of the fourteen domain names to the Internal Revenue Service ("IRS") towards the amounts owed by Zuccarini to the IRS, which at this date totals over \$400,000.

Zuccarini specifies the "full auctioned price", as it his understanding that at least one of the domain names, governmentgrants.com, which was originally auctioned for \$53,022, was given to the winning bidder by Network Solutions/NameJet for substantially less than the auctioned price of \$53,022, because of the bidders concern over ongoing litigation related to the domain names.

**VII. Zuccarini Notified the United States Attorney Representing the IRS Two Months Prior to the Unauthorized May 2010 Auction, of Concerns Over the Competency of the Receiver Blacksbury and Asked to Help Zuccarini Have Blacksbury Replaced**

Zuccarini hopes to demonstrate to the Virginia District Court that Zuccarini takes this action very seriously and is not just filing this suit to delay or for any other unnecessary reason as Zuccarini feels maybe The Virginia District Court believes from The Courts reaction to Zuccarini's filings at the January 14, 2011 hearing.

Zuccarini's number one concern in any actions he takes is towards paying the amounts owed by Zuccarini to the IRS, as Zuccarini was in the process of doing so even before DS Holdings LLC ("DSH"), filed it's action in *Office Depot Inc., v. Zuccarini*, in California in 2007.

From the first time Zuccarini had contact with the appointed receiver Blacksbury it was evident to Zuccarini that Blacksbury either intentionally or unintentionally was unable or unwilling to provide Zuccarini with even the most fundamental information related to a receivership and was unable or unwilling to perform even the most fundamental duties of a receiver. This ranges from not notifying the IRS, which he was legally obligated to do within in a month of his



appointment, to not providing Zuccarini with monthly revenue reports which he is legally required to do. In addition, Blacksburgs close professional relationship with Karl Kronenberger, the attorney representing DSH has been well documented in the California District Court and Blacksburg has been shown to be anything but a neutral party in his role as a receiver, and is in fact currently being represented by Kronenberger in ongoing litigation in The California Federal Courts.

It was because of these numerous and obvious deficiencies in the performance of Blacksburg as a receiver that Zuccarini on March 5, 2010 sent to Thomas Moore, the United States Attorney representing the IRS in *Office Depot Inc., v. Zuccarini*, an email message asking Mr. Moore if he would file a motion in support of a motion Zuccarini intended to file to have Blacksburg replaced as the receiver, Exhibit 2.

It was Zuccarini's understanding from speaking with those familiar with such matters, that having a receiver replaced is not often done and it is hard to convince a Court to do so. It was Zuccarini's feeling that only with a motion from Mr. Moore would the California Court consider having the receiver Blacksburg replaced. As all United States Attorneys are very busy and need to make priorities in the duties they perform, it appeared Mr. Moore was not able to respond to Zuccarini request. Zuccarini's subsequent motions to have Blacksburg replaced have been denied by the California Court.

Zuccarini though, in detailing this information in relation to Blacksburg's inability to perform the necessary functions of a receiver, does not excuse the responsibilities that Network Solutions and Enom should have taken upon themselves in considering the frailties of any individual, whether they are a receiver or someone with no experience in registering domain names, that any person may not perform the necessary tasks needed to re-register domain names

as they should, and may lose the domain name to another. Hundreds if not thousands of domain names are lost every year by their original owners through misinformation or neglect, and Network Solutions and Enom should have taken this into account and notified the California District Court they could not guarantee that the rights of the third-party beneficiaries, Zuccarini and his creditors, would be protected and refused to transfer the domain names to the receiver as California Code of Civil Procedure § 701.010 allows.

#### **VIII. This Action is Timely Under Virginia Law and Relative Agreements**

This action filed towards the unauthorized auction of the fourteen domain names of May of 2010 is timely, as Zuccarini filed this suit just two months after the unauthorized auction on July 7, 2010. In addition, this action is also timely towards all the other remaining domain names held by the receiver Blackburg, as Network Solutions and Enom by accepting the yearly re-registration of the domain names by Blackburg, reasserts its action in the original transfer of the domain names, thereby the filing of this suit by Zuccarini falls within the one year time frame as stated in the Registrar/Registrant Agreements for all the domain names.

#### **CONCLUSION**

For the foregoing reasons, Zuccarini respectfully requests that The Court grant Zuccarini's *Second Corrected Motion 60(B)(1) For Relief From The Order Granting Defendants Network Solutions's, NameJet's, Enom's and VeriSign's Revised Motions to Dismiss*.

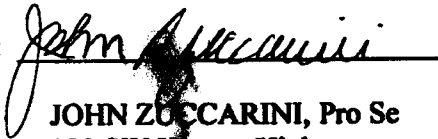
Zuccarini also asks The Court to Order Network Solutions and NameJet to transfer to The Internal Revenue Service the "full auctioned price" of any funds acquired through the unauthorized auction of the fourteen domain names in May 2010, to go towards the amounts owed by Zuccarini to the IRS.

As VeriSign Inc. ("VeriSign"), is no longer located in California, but is now located in

Dulles, Virginia, and the California District Court can no longer claim in rem jurisdiction over the domain names held by the receiver, Zuccarini asks The Court to Order VeriSign, to transfer to Zuccarini, the unauthorized auctioned fourteen domain names, and all other .com and .net domain names that were unlawfully transferred from Zuccarini, and currently held by the California receiver.

In addition, to award Zuccarini any monetary damages in deems appropriate from Network Solutions, Namejet, Enom and VeriSign.

Respectfully submitted, this 17th day of January, 2011.

By: 

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