EXHIBIT H

TO DECLARATION OF SEAN W. JAQUEZ
IN SUPPORT OF ICANN'S OPPOSITION TO
PLAINTIFF'S *EX PARTE* APPLICATION
FOR TEMPORARY RESTRAINING ORDER

Priority
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JS-5/JS-6
JS-2/JS-3

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REGISTERSITE.COM, an Assumed Name of ABR PRODUCTS INC., a New York corporation, et al.,

Plaintiff,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation, et al.,

Defendants.

CASE NO.: CV 04-1368 ABC (CWx)

ORDER RE: DEFENDANTS' MOTIONS TO DISMISS

Pending before the Court are Defendants' motions to dismiss. The motions came on regularly for hearing on July 12, 2004. Upon consideration of the submissions of the parties, the case file, and oral argument of counsel, the motion to dismiss filed by Defendants Verisign, Inc. and Network Solutions, Inc. is hereby GRANTED IN PART and DENIED IN PART. The remaining motions are MOOT for reasons discussed below.

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I. FACTUAL AND PROCEDURAL HISTORY

On April 8, 2004, Plaintiffs filed a First Amended Complaint ("FAC") asserting a federal antitrust claim under the Sherman Act, 15 U.S.C. § 1, and eleven various state law claims. The Plaintiffs[1] consist of eight businesses that assist consumers in registering expired Internet domain names. (FAC ¶ 1.4.) Plaintiffs assert claims against four defendants: Verisign, Inc. ("Verisign"), Network Solutions, Inc. ("NSI"), Internet Corporation for Assigned Names and Numbers ("ICANN"), and eNom, Inc. ("eNom").

Verisign is a registry operator responsible for maintaining the database of domain registrations for the <.com> and <.net> domain names. (FAC ¶ 4.9.) Verisign plans to launch a new service, the Wait Listing Service ("WLS"). (FAC ¶ 1.1.) The WLS purports to give consumers, for an annual fee, the right to be "first in line" on the "waiting list" for currently-registered <.com> and <.net> domain names. (FAC ¶ 1.1.) According to Plaintiffs, Verisign requires that each consumer who purchases a WLS subscription also purchase any resulting domain name registration from the same registrar from whom he purchased the WLS subscription. (FAC ¶¶ 13.6, 13.7.) NSI and eNom are registrars who are currently advertising and taking "pre-orders" for the Verisign WLS service. (FAC ¶¶ 2.11-2.14, 7.6, 8.6.) Plaintiffs allege that a consumer will receive no benefit from purchasing a WLS subscription unless and until the current registrant decides to abandon its domain name, which is unlikely. (FAC ¶ 1.1.) As such, the WLS service will fail to provide any value to consumers.

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[1] Plaintiffs include: (1) Registersite.com, (2) Name.com, (3) R. Lee Chambers Company LLC, (4) Fiducia LLC, (5) Spot Domain, LLC, (6) !$6.25 Domains! Network, Inc., (7) Ausregistry Group PTY LTD., and (8) !$! Bid It Win It, Inc.

(FAC ¶ 4.55-4.58.).

In their ninth cause of action, Plaintiffs allege that the WLS service is an illegal tying arrangement in violation of the Sherman Act. Verisign allegedly exercises market power with respect to registry services, including WLS subscriptions. (FAC ¶ 13.9.) WLS subscriptions and domain name registrations are separate, distinct services. (FAC ¶ 13.8.) Consumers are free to transfer their registered domain names between registrars. (FAC ¶ 13.3.) However, consumers will be unable to purchase a WLS subscription without agreeing to purchase a domain name registration if the subscription is successful. (FAC ¶ 13.9.) Plaintiffs claim that "a not insubstantial volume of commerce in [domain name registrations] will be affected by Verisign's tying agreement." (FAC ¶ 13.16.)

On May 28, 2004, the Court received Defendant eNom's motion to dismiss the FAC, Defendant ICANN's motion to dismiss certain causes of action, Defendant Verisign's motion to dismiss the eleventh cause of action, and Defendants Verisign's and NSI's motion to dismiss the FAC. On June 17, 2004, Plaintiffs filed oppositions to each of the motions and a motion to strike certain portions of ICANN's motion. The Defendants filed replies on June 30, 2004.

II. LEGAL STANDARD

A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the complaint. See Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) must be read in conjunction with Rule 8(a) which requires a "short and plain statement of the claim showing that the pleader is entitled to relief." 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 (1990). "The Rule 8 standard contains 'a powerful presumption against rejecting pleadings for failure to

state a claim.'" Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997). A Rule 12(b)(6) dismissal is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 969, 699 (9th Cir. 1988); accord Gilligan, 108 F.3d at 249 ("A complaint should not be dismissed 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief").

The Court must accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from them. See Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th Cir. 1998). Moreover, the complaint must be read in the light most favorable to plaintiff. See id. However, the Court need not accept as true any unreasonable inferences, unwarranted deductions of fact, and/or conclusory legal allegations cast in the form of factual allegations. See, e.g., Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

Moreover, in ruling on a 12(b)(6) motion, a court generally cannot consider material outside of the complaint (e.g., those facts presented in briefs, affidavits, or discovery materials). See Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). A court may, however, consider exhibits submitted with the complaint. See id. at 453-54. Also, a court may consider documents which are not physically attached to the complaint but "whose contents are alleged in [the] complaint and whose authenticity no party questions." Id. at 454. Further, it is proper for the court to consider matters subject to judicial notice pursuant to Federal Rule of Evidence 201. Mir, M.D. v. Little Co. of Mary Hospital, 844 F.2d 646, 649 (9th Cir. 1988).

III. DISCUSSION

A. Plaintiffs' Federal Antitrust Claim

Plaintiffs' ninth claim alleges that Verisign, eNom, and NSI have established an illegal *per se* tying arrangement in violation of the Sherman Act, 15 U.S.C. § 1. A tying arrangement involves a seller's refusal to sell one product (the tying product) unless the buyer also purchases a second product (the tied product) from the seller. Hamro v. Shell Oil Co., 674 F.2d 784, 786 (9th Cir. 1982). In this case, Plaintiffs allege that Verisign has established a tying arrangement because "[e]ach consumer who purchases a WLS subscription [the tying product] will be required to agree to purchase any resulting domain name registration [the tied product] from the same registrar from whom he purchased the WLS subscription." (FAC ¶ 13.6.)

In response to these allegations, Defendants argue that Plaintiffs lack standing because Defendants have yet to sell any WLS subscriptions. Plaintiffs counter that threatened injury confers standing. The Court agrees with Plaintiffs. "In order to establish standing, a plaintiff must first show that she has suffered an 'injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.'" Scott v. Pasadena Unified Sch. Dist., 306 F.3d 646, 654 (9th Cir. 2002) (citation omitted). Here, Plaintiffs allege that Verisign plans to launch the WLS no more than thirty days after it is approved, that approval is likely, and that eNom and NSI are currently advertising the WLS and are accepting pre-orders for WLS subscriptions on their Web sites. (FAC ¶¶ 4.66-4.68.) The Court finds that these allegations sufficiently state an imminent injury. Furthermore, Defendants' contention that the threatened

injury is not substantial enough is not relevant to a standing inquiry. Instead, the magnitude of the threatened injury is relevant to whether Plaintiffs have sufficiently pled each of the elements of a tying claim.

To establish that a tying arrangement is illegal *per se*, plaintiffs must prove: (1) a tie between two separate products or services sold in relevant markets, (2) sufficient economic power in the tying product market to affect the tied market, (3) an effect on a not-insubstantial volume of commerce in the tied product market, and (4) the defendant's economic interest in the tied product. County of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1157-58 (9th Cir. 2001) (citation omitted).

Plaintiffs' allegations fail to satisfy the third and fourth requirements.[2] As Defendants point out, Plaintiffs must do more than state mere legal conclusions. While Plaintiffs do state that a "not insubstantial volume of commerce in the tied product will be affected by Verisign's tying agreement," Plaintiffs' FAC fails to include facts to support this legal conclusion. In fact, the FAC includes facts which suggest that WLS subscriptions will not have an effect on domain name registrations because "of WLS subscriptions on the most desirable domain names,[3] ninety five percent (95%) of consumers will never obtain the domain names to which they subscribe." (FAC ¶ 4.58)

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[2] Plaintiffs' allegations also fail to satisfy the second requirement with respect to Defendants eNom and NSI. Plaintiffs have not alleged that eNom and NSI have market power in WLS subscriptions, the tying product.

[3] According to Plaintiffs, "WLS subscriptions are likely to be purchased on the most desirable domain names, and are unlikely to be purchased on the least desirable domain names." (FAC ¶ 4.56.)

(emphasis in original). As a result, Plaintiffs claim "VERISIGN WILL PROVIDE NO VALUE TO CONSUMERS PURCHASING WLS." (FAC at 20:4.) If Plaintiffs are correct, and the Court must assume they are, that consumers' WLS subscriptions will be overwhelmingly unsuccessful, and that only successful WLS subscriptions will result in domain name registrations, then the facts in Plaintiffs' FAC do not support the legal conclusion that the WLS will affect a not-insubstantial volume of commerce in domain name registrations. Instead, Plaintiffs' FAC suggests that the majority of WLS consumers will be free to register their domain names with either their current registrar or other registrars. In fact, Plaintiffs allege that "[c]onsumers are free to transfer their registered domain names between registrars." (FAC ¶ 13.3).

Plaintiffs have also failed to allege that Verisign has a sufficient economic interest in domain name registration. "In the typical tying scheme, the seller of the tying product also sells the tied product. The tying product seller's interest need not be so direct, however, as long as the seller has an economic interest in the sale of the tied product." Robert's Waikiki U-Drive, Inc., v. Budget Rent-A-Car Sys., Inc., 732 F.2d 1403, 1407-08 (9th Cir. 1984) (citation omitted). In this case, Plaintiffs' FAC makes clear that in the unlikely event that a WLS subscription is successful, domain name registrations will be sold by registrars, not Verisign. (FAC ¶ 13.6.) Plaintiffs further allege that "[d]omain registration fees are not included in the $24 fee Verisign will charge registrars for each WLS subscription sold." (FAC ¶ 13.5.) Thus, according to Plaintiffs' allegations, Verisign's economic interest is in the sale of WLS

subscriptions, not domain name registrations.[4]

For the reasons articulated, Plaintiffs have failed to sufficiently allege an illegal tying arrangement. Therefore, the Court dismisses this claim without prejudice.[5]

B. Plaintiffs' State Law Claims

Plaintiffs' remaining eleven claims arise out of state law. Defendants argue for dismissal of these claims on the merits for various reasons. However, the Court declines to exercise supplemental jurisdiction over the state law claims for two reasons. First, where federal claims are disposed of well before trial, it is appropriate for pendent state claims to be dismissed as well. 28 U.S.C. § 1367(c)(3). Because the Court has dismissed the sole federal claim, judicial economy and comity weigh in favor of dismissing the state claims.

Second, a district court may decline to exercise supplemental jurisdiction if the state law claims substantially predominate over the federal law claim. 28 U.S.C. § 1367(c)(2). Here, Plaintiffs allege several claims arising under California's Unfair Competition Act, intentional interference with prospective economic advantage, and breach of contract. These claims would substantially expand the scope

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[4] Plaintiffs do contend that "Verisign owns 15% of NSI and has an economic interest in restricting registrars' ability to compete with NSI for domain name registrations." (FAC ¶ 13.17.) However, Plaintiffs have not contended that Verisign will limit WLS subscriptions to NSI. Instead, Plaintiffs' allegations indicate that Verisign intends to force other registrars to agree to offer WLS subscriptions. (FAC ¶¶ 13.21, 13.22.)

[5] Although the Court grants Plaintiffs leave to amend, the amended complaint may only allege other facts consistent with the original complaint. See Reddy v. Litton Indus., Inc., 912 F.2d 291, 297 (9th Cir. 1990).

of this case. To support these claims, Plaintiffs allege, inter alia, that Defendants are engaging in an illegal lottery, making false, misleading, and defamatory statements, and selling contingent future interests in property they do not own. Plaintiffs' submissions demonstrate that the state law claims predominate this action and the dispute between the parties. While the allegations necessary for the federal antitrust claim are contained on three brief pages, the allegations for the state law claims span the remaining 47 pages of Plaintiffs' 51-page FAC. In responding to Defendants' motion to dismiss, Plaintiffs dedicated only one page of their 25-page opposition to the federal antitrust claim. Not only are the various state law claims numerous, but, as discussed above, the facts alleged to support these state law claims are in some ways inconsistent with Plaintiffs' deficient antitrust claim, which is the sole basis for original jurisdiction.[6] For these reasons, the Court exercises its discretion to dismiss Plaintiffs' state law claims without prejudice.

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IV. CONCLUSION

For the foregoing reasons, Defendants Verisign, Inc.'s and Network Solutions, Inc's motion to dismiss the First Amended Complaint is hereby GRANTED IN PART and DENIED IN PART. Accordingly, Plaintiffs' First Amended Complaint is DISMISSED WITHOUT PREJUDICE as to the federal and state law claims. Plaintiffs may amend their

[6] In their FAC, Plaintiffs assert § 57b of the Federal Trade Commission Act ("FTCA") as an additional basis for jurisdiction. (FAC ¶ 3.1). However, § 57b of the FTCA authorizes suits by the Federal Trade Commission, not private individuals. See 15 U.S.C. § 57b. As such, Plaintiffs may not rely on § 57b as a basis for federal jurisdiction.

federal antitrust claim by filing a second amended complaint within 14 days of entry of this Order. Failure to refile within 14 days will result in a dismissal of the antitrust claim with prejudice.[7]

The Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claims. Accordingly, the Court finds that:

Defendant Verisign Inc.'s motion to dismiss the eleventh claim for relief for improper venue is MOOT;

Defendant Internet Corporation for Assigned Names and Numbers' motion to dismiss certain causes of action is MOOT;

Defendant eNom, Inc's motion to dismiss the First Amended Complaint is MOOT; and

Plaintiffs' motion to strike certain portions of Defendant ICANN's motion is MOOT.

SO ORDERED.

DATED: July 12, 2004

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

[7] The Court waives the requirement that the parties comply with the requirements of Local Rule 7-3, as the parties have already complied with its meet and confer requirements. However, Plaintiffs should be cognizant of their obligations under Federal Rule of Civil Procedure 11 in deciding whether to refile this claim.

→ Tentative

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REGISTERSITE.COM, an Assumed Name of ABR PRODUCTS INC., a New York corporation, et al., Plaintiff, v. INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation, et al., Defendants.	CASE NO.: CV 04-1368 ABC (CWx) ORDER RE: DEFENDANTS' MOTIONS TO DISMISS Tentative Only

Pending before the Court are Defendants' motions to dismiss. The motions came on regularly for hearing on July 12, 2004. Upon consideration of the submissions of the parties, the case file, and oral argument of counsel, the motion to dismiss filed by Defendants Verisign, Inc. and Network Solutions, Inc. is hereby GRANTED IN PART and DENIED IN PART. The remaining motions are MOOT for reasons discussed below.

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I. FACTUAL AND PROCEDURAL HISTORY

On April 8, 2004, Plaintiffs filed a First Amended Complaint ("FAC") asserting a federal antitrust claim under the Sherman Act, 15 U.S.C. § 1, and eleven various state law claims. The Plaintiffs[1] consist of eight businesses that assist consumers in registering expired Internet domain names. (FAC ¶ 1.4.) Plaintiffs assert claims against four defendants: Verisign, Inc. ("Verisign"), Network Solutions, Inc. ("NSI"), Internet Corporation for Assigned Names and Numbers ("ICANN"), and eNom, Inc. ("eNom").

Verisign plans to launch a new service, the Wait Listing Service ("WLS"). (FAC ¶ 1.1.) The WLS purports to give consumers, for an annual fee, the right to be "first in line" on the "waiting list" for currently-registered <.com> and <.net> domain names. (FAC ¶ 1.1.) According to Plaintiffs, Verisign requires that each consumer who purchases a WLS subscription also purchase any resulting domain name registration from the same registrar from whom he purchased the WLS subscription. (FAC ¶¶ 13.6, 13.7.) NSI and eNom are registrars who are currently advertising and taking "pre-orders" for the Verisign WLS service. (FAC ¶¶ 2.11-2.14, 7.6, 8.6.) Plaintiffs allege that a consumer will receive no benefit from purchasing a WLS subscription unless and until the current registrant decides to abandon its domain name, which is unlikely. (FAC ¶ 1.1.) As such, the WLS service will fail to provide any value to consumers. (FAC ¶ 4.55-4.58.).

In their ninth cause of action, Plaintiffs allege that the WLS service is an illegal tying arrangement in violation of the Sherman

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[1] Plaintiffs include: (1) Registersite.com, (2) Name.com, (3) R. Lee Chambers Company LLC, (4) Fiducia LLC, (5) Spot Domain, LLC, (6) !$6.25 Domains! Network, Inc., (7) Ausregistry Group PTY LTD., and (8) !$! Bid It Win It, Inc.

Act. Verisign allegedly exercises market power with respect to registry services, including WLS subscriptions. (FAC ¶ 13.9.) WLS subscriptions and domain name registrations are separate, distinct services. (FAC ¶ 13.8.) Consumers are free to transfer their registered domain names between registrars. (FAC ¶ 13.3.) However, consumers will be unable to purchase a WLS subscription without agreeing to purchase a domain name registration if the subscription is successful. (FAC ¶ 13.9.) Plaintiffs claim that "a not insubstantial volume of commerce in [domain name registrations] will be affected by Verisign's tying agreement." (FAC ¶ 13.16.)

On May 28, 2004, the Court received Defendant eNom's motion to dismiss the FAC, Defendant ICANN's motion to dismiss certain causes of action, Defendant Verisign's motion to dismiss the eleventh cause of action, and Defendants Verisign's and NSI's motion to dismiss the FAC. On June 17, 2004, Plaintiffs filed oppositions to each of the motions and a motion to strike certain portions of ICANN's motion. The Defendants filed replies on June 30, 2004.

II. LEGAL STANDARD

A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the complaint. See Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) must be read in conjunction with Rule 8(a) which requires a "short and plain statement of the claim showing that the pleader is entitled to relief." 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 (1990). "The Rule 8 standard contains 'a powerful presumption against rejecting pleadings for failure to state a claim.'" Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997). A Rule 12(b)(6) dismissal is proper only where there is either a "lack of a cognizable legal theory" or "the absence of

sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 969, 699 (9th Cir. 1988); accord Gilligan, 108 F.3d at 249 ("A complaint should not be dismissed 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief").

The Court must accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from them. See Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th Cir. 1998). Moreover, the complaint must be read in the light most favorable to plaintiff. See id. However, the Court need not accept as true any unreasonable inferences, unwarranted deductions of fact, and/or conclusory legal allegations cast in the form of factual allegations. See, e.g., Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

Moreover, in ruling on a 12(b)(6) motion, a court generally cannot consider material outside of the complaint (e.g., those facts presented in briefs, affidavits, or discovery materials). See Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). A court may, however, consider exhibits submitted with the complaint. See id. at 453-54. Also, a court may consider documents which are not physically attached to the complaint but "whose contents are alleged in [the] complaint and whose authenticity no party questions." Id. at 454. Further, it is proper for the court to consider matters subject to judicial notice pursuant to Federal Rule of Evidence 201. Mir, M.D. v. Little Co. of Mary Hospital, 844 F.2d 646, 649 (9th Cir. 1988).

III. DISCUSSION

A. Plaintiffs' Federal Antitrust Claim

Plaintiffs' ninth claim alleges that Verisign, eNom, and NSI have established an illegal *per se* tying arrangement in violation of the

Sherman Act, 15 U.S.C. § 1. A tying arrangement involves a seller's refusal to sell one product (the tying product) unless the buyer also purchases a second product (the tied product) from the seller. Hamro v. Shell Oil Co., 674 F.2d 784, 786 (9th Cir. 1982). In this case, Plaintiffs allege that Verisign has established a tying arrangement because "[e]ach consumer who purchases a WLS subscription [the tying product] will be required to agree to purchase any resulting domain name registration [the tied product] from the same registrar from whom he purchased the WLS subscription." (FAC ¶ 13.6.)

In response to these allegations, Defendants argue that Plaintiffs lack standing because Defendants have yet to sell any WLS subscriptions. Plaintiffs counter that threatened injury confers standing. The Court agrees with Plaintiffs. "In order to establish standing, a plaintiff must first show that she has suffered an 'injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.'" Scott v. Pasadena Unified Sch. Dist., 306 F.3d 646, 654 (9th Cir. 2002) (citation omitted). Here, Plaintiffs allege that Verisign plans to launch the WLS no more than thirty days after it is approved, that approval is likely, and that eNom and NSI are currently advertising the WLS and are accepting pre-orders for WLS subscriptions on their Web sites. (FAC ¶¶ 4.66-4.68.) The Court finds that these allegations sufficiently state an imminent injury. Furthermore, Defendants' contention that the threatened injury is not substantial enough is not relevant to a standing inquiry. Instead, the magnitude of the threatened injury is relevant to whether Plaintiffs have sufficiently pled each of the elements of a tying claim.

To establish that a tying arrangement is illegal *per se*, plaintiffs must prove: (1) a tie between two separate products or services sold in relevant markets, (2) sufficient economic power in the tying product market to affect the tied market, (3) an effect on a not-insubstantial volume of commerce in the tied product market, and (4) the defendant's economic interest in the tied product. County of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1157-58 (9th Cir. 2001) (citation omitted).

Plaintiffs' allegations fail to satisfy the third and fourth requirements.[2] As Defendants point out, Plaintiffs must do more than state mere legal conclusions. While Plaintiffs do state that a "not insubstantial volume of commerce in the tied product will be affected by Verisign's tying agreement," Plaintiffs' FAC fails to include facts to support this legal conclusion. In fact, the FAC includes facts which suggest that WLS subscriptions will not have an effect on domain name registrations because "of WLS subscriptions on the most desirable domain names,[3] ninety five percent (95%) of consumers will never obtain the domain names to which they subscribe." (FAC ¶ 4.58) (emphasis in original). As a result, Plaintiffs claim "VERISIGN WILL PROVIDE NO VALUE TO CONSUMERS PURCHASING WLS." (FAC at 20:4.) If Plaintiffs are correct, and the Court must assume they are, that consumers' WLS subscriptions will be overwhelmingly unsuccessful, and

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[2] Plaintiffs' allegations also fail to satisfy the second requirement with respect to Defendants eNom and NSI. Plaintiffs have not alleged that eNom and NSI have market power in WLS subscriptions, the tying product.

[3] According to Plaintiffs, "WLS subscriptions are likely to be purchased on the most desirable domain names, and are unlikely to be purchased on the least desirable domain names." (FAC ¶ 4.56.)

that only successful WLS subscriptions will result in domain name registrations, then the facts in Plaintiffs' FAC do not support the legal conclusion that the WLS will affect a not insubstantial volume of commerce in domain name registrations. Instead, Plaintiffs' FAC suggests that the majority of WLS consumers will be free to register their domain names with either their current registrar or other registrars. In fact, Plaintiffs allege that "[c]onsumers are free to transfer their registered domain names between registrars." (FAC ¶ 13.3).

Plaintiffs have also failed to allege that Verisign has a sufficient economic interest in domain name registration. "In the typical tying scheme, the seller of the tying product also sells the tied product. The tying product seller's interest need not be so direct, however, as long as the seller has an economic interest in the sale of the tied product." Robert's Waikiki U-Drive, Inc., v. Budget Rent-A-Car Sys., Inc., 732 F.2d 1403, 1407-08 (9th Cir. 1984) (citation omitted). In this case, Plaintiffs' FAC makes clear that in the unlikely event that a WLS subscription is successful, domain name registrations will be sold by registrars, not Verisign. (FAC ¶ 13.6.) Plaintiffs further allege that "[d]omain registration fees are not included in the $24 fee Verisign will charge registrars for each WLS subscription sold." (FAC ¶ 13.5.) Thus, according to Plaintiffs' allegations, Verisign's economic interest is in the sale of WLS subscriptions, not domain name registrations.[4]

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[4] Plaintiffs do contend that "Verisign owns 15% of NSI and has an economic interest in restricting registrars' ability to compete with NSI for domain name registrations." (FAC ¶ 13.17.) However, Plaintiffs have not contended that Verisign will limit WLS

(continued...)

For the reasons articulated, Plaintiffs have failed to sufficiently allege an illegal tying arrangement. Therefore, the Court dismisses this claim without prejudice.[5]

B. Plaintiffs' State Law Claims

Plaintiffs' remaining eleven claims arise out of state law. Defendants argue for dismissal of these claims on the merits for various reasons. However, the Court declines to exercise supplemental jurisdiction over the state law claims for two reasons. First, where federal claims are disposed of well before trial, it is appropriate for pendent state claims to be dismissed as well. 28 U.S.C. § 1367(c)(3). Because the Court has dismissed the sole federal claim, judicial economy and comity weigh in favor of dismissing the state claims.

Second, a district court may decline to exercise supplemental jurisdiction if the state law claims substantially predominate over the federal law claim. 28 U.S.C. § 1367(c)(2). Here, Plaintiffs allege several claims arising under California's Unfair Competition Act, intentional interference with prospective economic advantage, and breach of contract. These claims would substantially expand the scope of this case. To support these claims, Plaintiffs allege, inter alia, that Defendants are engaging in an illegal lottery, making false, misleading, and defamatory statements, and selling contingent future

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[4](...continued)
subscriptions to NSI. Instead, Plaintiffs' allegations indicate that Verisign intends to force other registrars to agree to offer WLS subscriptions. (FAC ¶¶ 13.21, 13.22.)

[5] Although the Court grants Plaintiffs leave to amend, the amended complaint may only allege other facts consistent with the original complaint. See Reddy v. Litton Indus., Inc., 912 F.2d 291, 297 (9th Cir. 1990).

interests in property they do not own. Plaintiffs' submissions demonstrate that the state law claims predominate this action and the dispute between the parties. While the allegations necessary for the federal antitrust claim are contained on three brief pages, the allegations for the state law claims span the remaining 47 pages of Plaintiffs' 51-page FAC. In responding to Defendants' motion to dismiss, Plaintiffs dedicated only one page of their 25-page opposition to the federal antitrust claim. Not only are the various state law claims numerous, but, as discussed above, the facts alleged to support these state law claims are in some ways inconsistent with Plaintiffs' deficient antitrust claim, which is the sole basis for original jurisdiction.[6] For these reasons, the Court exercises its discretion to dismiss Plaintiffs' state law claims without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendants Verisign, Inc.'s and Network Solutions, Inc's motion to dismiss the First Amended Complaint is hereby GRANTED IN PART and DENIED IN PART. Accordingly, Plaintiffs' First Amended Complaint is DISMISSED WITHOUT PREJUDICE as to the federal and state law claims. Plaintiffs may amend their federal antitrust claim by filing a second amended complaint within 14 days of entry of this Order. Failure to refile within 14 days will

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[6] In their FAC, Plaintiffs assert § 57b of the Federal Trade Commission Act ("FTCA") as an additional basis for jurisdiction. (FAC ¶ 3.1). However, § 57b of the FTCA authorizes suits by the Federal Trade Commission, not private individuals. See 15 U.S.C. § 57b. As such, Plaintiffs may not rely on § 57b as a basis for federal jurisdiction.

result in a dismissal of the claim with prejudice.[7]

The Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claims. Accordingly, the Court finds that:

Defendant Verisign Inc.'s motion to dismiss the eleventh claim for relief for improper venue is MOOT;

Defendant Internet Corporation for Assigned Names and Numbers' motion to dismiss certain causes of action is MOOT;

Defendant eNom, Inc's motion to dismiss the First Amended Complaint is MOOT; and

Plaintiffs' motion to strike certain portions of Defendant ICANN's motion is MOOT.

SO ORDERED.

DATED: _____

_____

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

[7] The Court waives the requirement that the parties comply with the requirements of Local Rule 7-3, as the parties have already complied with its meet and confer requirements. However, Plaintiffs should be cognizant of their obligations under Federal Rule of Civil Procedure 11 in deciding whether to refile this claim.

EXHIBIT I

TO DECLARATION OF SEAN W. JAQUEZ
IN SUPPORT OF ICANN'S OPPOSITION TO
PLAINTIFF'S *EX PARTE* APPLICATION
FOR TEMPORARY RESTRAINING ORDER

11/16

TENTATIVE RULINGS

November 16, 2004

CASE NAME: Registersite.com, et al. v. Internet Corporation
CASE NUMBER: SC 082479

1. DEMURRER OF DEFENDANTS VERISIGN, INC. AND NETWORK SOLUTIONS, INC.

The joinder of Defendants eNOM, Inc., eNOM, Incorporated, and Network Solutions, LLC is granted. The demurrer of Defendants Verisign, Inc. and Network Solutions, Inc. is sustained with 20 days leave to amend.

Requests for Judicial Notice

Both sides file requests for judicial notice with their papers, and both sides object to the other's requests. Defendants, with the demurrer, submit a request for judicial notice of documents from the Registersite federal action [Exhibits A-C], and a printout of the advertisement Plaintiffs purportedly quote in ¶¶ 6.6 and 6.8 of the Complaint [Exhibit D].

Judicial notice may be taken of the files in other proceedings, but not necessarily of the truth of factual matters asserted therein. Thus, the court cannot sustain a demurrer on the basis of hearsay allegations in documents in the other court's files. 4 Witkin, Cal. Procedure, Pleading, § 401 [4th Ed.], citing Ramsden v. Western Union (1977) 71 Cal.App.3d 873, 879. This Court can take judicial notice of Defendants' Exhibits A-C, but not rely on the truth of the matters therein.

With respect to the website, neither Defendants nor Plaintiffs provide case law that is on point. The case of Walt Rankin & Assocs. v. City of Murietta (2000) 84 Cal.App.4th 605, cited by Defendants, only states in passing that the Court took judicial notice of a website. Id., at 622-623, fn. 12. The opinion does not discuss the issue of whether it is proper to do so. The case cited by Plaintiffs, Teamsters Local 856 v. Priceless, LLC (2003) 112 Cal.App.4th 1500, 1523, is also distinguishable. In that case, the Appellate Court found that the information to be judicially noticed was not provided to the trial court. Here, it is provided. Plaintiffs do not object to the judicial notice of the advertisement [Exhibit D], but request that its scope be limited "accordingly," without explaining what this means. Defendants' request for judicial notice submitted with the demurrer is granted. None of Plaintiffs' objections have merit.

1st cause of action

Business & Professions Code § 17200 provides:

"As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading

advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

Plaintiffs must state facts supporting the statutory elements of the alleged violations with reasonable particularity. 5 Witkin, Cal. Procedure, Pleading, § 35 [4th Ed.]. It appears that all that must be alleged for a claim for unfair business practices/unfair competition is (1) the statute the claim is based on, (2) the act or acts committed by Defendant [the predicate offense], and (3) that the acts were unfair.

Plaintiffs attempt to state this § 17200 claim based on the theory that the WLS is an illegal lottery under Penal Code § 319, and that Defendants' conduct violates Penal Code §§ 320, 321, and 322 as a result. Penal Code § 319 provides:

> "A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known."

Defendants argue, based on Gaver v. Whelan (1943) 59 Cal.App.2d 255, that a lottery must involve 2 or more persons vying for the same prize, and that Plaintiffs do not allege this in the Complaint. Plaintiffs admit that only one WLS subscription will be accepted for each domain name [see Complaint, ¶¶ 4.42, 4.46 and Plaintiffs' opposition to demurrer of Network Solutions, LLC]. The Gaver case, provided for the Court's reference, does support Defendants' position. Id., at 259. Also, the plain language of Penal Code § 319 states that an illegal lottery is conducted among "persons" who have paid consideration.

Plaintiffs argue, based on Bell Gardens Bicycle Club v. Department of Justice (1995) 36 Cal.App.4th 717 and other cases, that a lottery need not involve multiple players competing for a single prize. However, neither Bell Gardens nor Finster v. Keller (1971) 18 Cal.App.3d 836 specifically state that a lottery can exist with only one participant. The case of Western Telcon, Inc. v. California State Lottery (2996) 13 Cal.4th 475 focuses on the distinction between a lottery prize and a gambling wager, and does not specifically hold that an illegal lottery need not have multiple participants. The references in that case to a lottery involve multiple contestants for a single prize. Id., at 484-486. The case of California Gasoline Retailers v. Regal Petroleum Corp. (1958) 50 Cal.2d 844, 851 does not say that a lottery can involve "a single person who has paid valuable consideration" as contended by Plaintiffs. In fact, Plaintiffs put the word "single" in brackets in their quotation from the case, so the addition of that word was theirs, it was not in the case [see Plaintiffs' Opposition, page 6].

It is undisputed that Plaintiffs allege in the Complaint that only one WLS subscriber per domain name will be allowed to subscribe to be first in line. Thus, under the case law discussed above, as well as the plain language of Penal Code § 319, Plaintiffs have not alleged an essential element of an illegal lottery – multiple [at least 2] participants for a single prize [the right to "reserve" a domain name if it expires]. The demurrer to the 1st cause of action is sustained on this basis alone.

Plaintiffs also attempt to argue that the WLS has multiple participants, and that Defendants have already accepted subscriptions from multiple persons for the prize, which is one of many domain names [see Opposition, page 9]. However, this argument and the allegation in ¶ 5.18 of the Complaint are unclear. Plaintiffs allege that "The defendants are selling to multiple WLS subscribers multiple chances to win domain names." This allegation contradicts ¶¶ 4.42 and 4.46 and Plaintiffs' admissions in their opposition briefs that only one WLS subscriber per domain name will be allowed.

Defendants next argue that Plaintiffs fail to allege the element of chance, because human decision [the current registrant's] determines whether WLS subscribers will win the right to register the domain name. Defendants make a purely semantic and factual argument on this issue. Plaintiffs allege in ¶ 5.17 that the "chance" in this case is whether the current domain name owner abandons its property. This is sufficient to pass the pleading stage on this element. There are elements beyond the control of the subscriber. Finster v. Keller (1971) 18 Cal.App.3d 836, 844. Nevertheless, as noted above, the demurrer to this cause of action is sustained.

2nd cause of action

This cause of action is a § 17200 claim based on Defendants' alleged violation of the CLRA, Civil Code §§ 1750, et seq. "NSI"'s allegedly deceptive advertisement that forms the basis of this claim is described in ¶¶ 6.5 and 6.6. Plaintiffs admit that they are not injured "consumers" as required by Civil Code § 1761(d). Instead, they argue that they do not have to state the elements of a CLRA violation, because they only have to show that members of the public are likely to be deceived by Defendants' advertisement. As discussed above, and as argued by Defendants on reply, pleading the elements of the predicate offense [the CLRA violation] is required to properly plead a § 17200 claim. The demurrer to this cause of action is sustained on this basis.

Defendants also argue that there is no underlying CLRA violation anyway, because the ad in question is not deceptive. The alleged misrepresentation in ¶ 6.6 of the Complaint is not deceptive on its face. According to Plaintiffs' own allegations, "NSI" represents that the registration occurs only if the domain name becomes available during the subscription period. This Court can also take judicial notice of the alleged advertisement [Network Solutions, Inc.'s Request for Judicial Notice, Exhibit D], which does show the context in which the allegedly deceptive statement is made. This is another basis to sustain the demurrer to this cause of action.

4th cause of action

This cause of action is a § 17200 claim that "NSI"'s advertisement is false and misleading. Plaintiffs allege that Defendants do not disclose the low likelihood that a subscriber will obtain the domain name it seeks [¶ 8.6]. The alleged misrepresentations in ¶¶ 8.8 and 8.11 are similar to that in ¶ 6.6. Plaintiffs allege the "truth" in ¶¶ 8.9, 8.10, and 8.12-8.14, and then allege that reasonable consumers are likely to be deceived [¶¶ 8.15-8-17]. Plaintiffs allege in ¶ 8.18 that "NSI" should disclose that almost all WLS subscriptions will not result in the registration of any domain name, and for each subscription, Defendants should disclose the likelihood that the subscription will result in registration of the domain name.

The allegations regarding deception of a reasonable consumer are purely conclusory, and contradicted by other allegations in the Complaint, and Network Solutions, Inc.'s advertisement. Plaintiffs allege in ¶ 6.6 of the Complaint that "NSI" represents that the registration occurs only if the domain name becomes available during the subscription period. The ad clearly states that the registrant gets the domain name if it becomes available. There are insufficient allegations to show that "NSI's" ad is false and misleading. There is also no authority offered by Plaintiffs to support the claim that Defendants must disclose the probability of a subscriber being successful, and Plaintiffs also fail to explain how this probability is to be calculated. The demurrer to this cause of action is sustained.

5th cause of action

This cause of action is a § 17200 claim that "NSI"'s advertisement is false and deceptive with respect to expiration dates of domain names. In other words, Defendants are accepting WLS subscriptions for domain names that are not set to expire during the subscription period, so the consumer gets nothing. Plaintiffs allege that Defendants must tell subscribers to check the expiration dates [¶¶ 9.5, 9.9].

In this cause of action, Plaintiffs have not alleged any specific facts to support the contention that reasonable consumers are likely to be deceived regarding the expiration dates of sought-after domain names. In addition, exhibits attached to the Complaint show that potential WLS subscribers can look up expiration dates on the WHOIS and similar databases, and that the RAA between Verisign and registrars requires that the expiration dates be provided in such a database [Exhibit A to Complaint, § 2.4.5, § 2.8; Exhibit B to Complaint, § 3.3 – both tabbed for the Court's reference]. Although Plaintiffs allege that "some domain name registration dates are not available to the public" [¶ 4.47] and that the expiration dates for names registered for 100 years are not publicly accessible [¶ 4.48], the allegations that consumers' understanding of the internet and the WLS is limited [¶¶ 4.49-4.53] are still conclusory. There is also no authority offered by Plaintiffs to support their contention that Defendants have a duty to inform potential WLS subscribers to check the expiration dates of the domain names they want to register for. The demurrer to this cause of action is sustained.

6th cause of action

This cause of action is a § 17200 claim which alleges that it is unlawful and deceptive for Defendants to advertise that the WLS can be used by a current domain

name owner as protection to keep his/her/its registration in the event it expires inadvertently.

In ¶¶ 10.7-10.8, Plaintiffs allege facts regarding grace periods for expiration of domain names, and then allege in ¶ 10.7 that the WLS will not add any protection. However, simply because there is "protection" in the form of grace periods and disabling of domain names during those periods, does not render the WLS ineffective as another level of protection for a domain name holder. Defendants point out that Plaintiffs allege in ¶ 10.9 of the Complaint that registrars such as Verisign have the right to delete a domain name if all renewal grace periods have expired. Thus, Verisign is not advising consumers of an impossibility [i.e., the deletion of their domain names]. Even after the grace periods and warnings, registrars have the right to delete a domain name, in which case another registrant can take it.

Plaintiffs argue that no reasonable domain name owner would purchase a WLS subscription, because those subscriptions are only for one year but domain name registrations are available for much longer periods. Thus, Plaintiffs allege in ¶ 10.11 that Defendants' marketing of the WLS as protection creates an unreasonable fear that registrants could lose their domain names, and that there is no benefit in a domain name holder buying a WLS subscription [¶ 10.13]. However, as discussed above, there is some benefit.

Moreover, as Defendants point out in reply, Plaintiffs have not addressed the demurrer on the basis that this cause of action lacks sufficient facts to show that a reasonable domain name registrant is likely to be deceived by the ad. The demurrer to this cause of action is sustained.

Defendants' final argument on this cause of action is that Verisign's role in the advertisement by "NSI" is not properly alleged in the Complaint. Plaintiffs allege in ¶ 10.10 that Verisign originated, authorized, approved, or was otherwise involved in the decision to market WLS subscriptions as protection for domain name owners. However, there are insufficient facts to support Plaintiffs' argument that Verisign participated in the advertisement by the other Defendants.

Plaintiffs cannot rely on a vicarious liability theory in this case. "The concept of vicarious liability has no application to actions brought under the unfair business practices act." "A defendant's liability must be based on his personal 'participation in the unlawful practices' and 'unbridled control' over the practices that are found to violate section 17200 or 17500." Emery v. Visa Internat. Serv. Ass'n. (2002) 95 Cal.App.4th 952, 960, citing People v. Toomey (1984) 157 Cal.App.3d 1, 14-15.

However, "if the evidence establishes [a] defendant's participation in the unlawful practices, either directly or by aiding and abetting the principal, liability under sections 17200 and 17500 can be imposed." Toomey, supra, 157 Cal.App.3d at 15. Thus, in order to state this cause of action against Verisign, Plaintiffs must allege more facts

regarding its participation in the allegedly deceptive and fraudulent advertising. Verisign's demurrer on this issue is sustained.

7th cause of action

This claim is for violation of § 17200 based on lack of consideration, i.e., consumers pay for WLS subscriptions but get nothing in return [¶¶ 11.5-11.9] and based on restraint of competition in the market for domain name registration services [¶¶ 11.10, 11.11].

The lack of consideration theory does not support a § 17200 claim. First, as pled in the Complaint, a WLS subscriber does receive consideration for his/her/its subscription payments, the right to be first in line to register a domain name should it expire. Just because this right may never vest does not mean it has no value at all. As stated in Harris v. Time, Inc. (1987) 191 Cal.App.3d 449, 456, "*any* bargained-for act or forbearance will constitute adequate consideration."

This cause of action also fails because Plaintiffs have not alleged the second basis, i.e., anticompetitive conduct. "When a plaintiff who claims to have suffered injury from a direct competitor's 'unfair' act or practice invokes section 17200, the word 'unfair' in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co. (1999) 20 Cal.4th 163, 187. Plaintiffs have not alleged facts showing that the WLS is "unfair" under § 17200. Moreover, the allegations in the Complaint are too conclusory to show that Defendants' conduct is unlawful or fraudulent. Gregory v. Albertson's, Inc. (2002) 104 Cal.App.4th 845, 856. The demurrer to this cause of action is sustained.

Proposition 64

As pointed out on reply by the eNOM Defendants, the passage of Proposition 64 affects this case. Pursuant to Article 2, § 10(a) of the California Constitution, an initiative, statute, or referendum approved by a majority of votes takes effect the day after the election. Since Proposition 64 did not specify an effective date, it became effective on 11-3-04.

Plaintiffs cannot maintain any § 17200 claims on behalf of the general public if they have not themselves sustained any damage. The 1st through 7th causes of action allege damage to "consumers," not Plaintiffs. This may be another basis to sustain the demurrer to these claims. However, I am unsure if Proposition 64 is retroactive. Since Plaintiffs' claims were filed before 11-3-04, the impact of Proposition 64 is unclear.

8th cause of action

Pursuant to this cause of action, Plaintiffs request declaratory relief based on the RAA [Registry-Registrar Agreement] they have with Verisign. Plaintiffs ask the Court to find that if the WLS were implemented, it would constitute a breach of the contract.

Plaintiffs essentially argue that the RRA gives the registrars the right and ability to cancel and delete domain names, and that if WLS is implemented, Verisign will ignore delete commands for those domain names on which WLS subscriptions have been placed. Plaintiffs claim that the current system under the RRA allows deleted domain names to become available for registration by any accredited registrar, and Plaintiffs claim that this obligation is a part of the contract. Under the WLS, Plaintiffs allege that deleted domain names will not be equally available to any registrar, which would breach the agreement.

Plaintiffs allege in ¶ 12.2 that Verisign is contractually obligated to delete expired domain names if the sponsoring registrar makes such a request. In ¶ 4.45, Plaintiffs allege that [without the WLS] this will result in the domain name going back into a pool available to all registrars on a first-come, first-served basis. However, the Complaint and the opposition do not point to a specific provision of the agreement that supports these allegations.

Defendants argue that, contrary to Plaintiffs' interpretation of the RRA, the current contract does not provide that Verisign make deleted domain names available for registration by any accredited registrar. The RRA only gives Plaintiffs the right to delete the names they sponsor. The Court does not have to accept Plaintiffs' allegations regarding the terms of the RRA as true on demurrer if they are contradicted by the RRA itself, which is attached as an exhibit to the Complaint.

The RRA gives the registrars [i.e., Plaintiffs, the rights to register, re-register, and cancel domain names [Exhibit A to Complaint, § 3.1(ii)-(iv)]. There is nothing in the RRA that indicates what Plaintiffs allege, i.e., that they have any right to determine what happens to a domain name once it is deleted. Therefore, there is no basis for Plaintiffs' declaratory relief claim.

Uncertainty/No conduct by Network Solutions, Inc.

Network Solutions, Inc. demurs to the Complaint on the basis that Plaintiffs' allegations as to the conduct of "NSI" are uncertain, because there are 2 NSI Defendants, this moving party, and Network Solutions, LLC [which is represented by different counsel]. In ¶ 2.12, Plaintiffs allege that Network Solutions, LLC may have acquired certain rights and assets from Network Solutions, Inc., so they will be referred together as "NSI" throughout the Complaint. This is improper pleading.

First, the allegation in ¶ 2.12 does not indicate a date when Network Solutions, LLC acquired rights and assets from Network Solutions, Inc., or the extent to which Network Solutions, Inc. still retained control over the WLS system after that. Thus, the Complaint is ambiguous as to conduct by Network Solutions, Inc. on this basis.

Second, the entire Complaint is ambiguous as to the NSI Defendants, because it is impossible to ascertain which actions were allegedly done by Network Solutions, Inc. versus its alleged successor in interest, Network Solutions, LLC. Plaintiffs argue that it is proper to allege that these Defendants are joint tortfeasors. However, the Complaint does

not allege joint action by these Defendants, but rather successive action, i.e., at some point, Network Solutions, LLC took over for Network Solutions, Inc. The demurrer on this basis is sustained.

2. DEMURRER OF DEFENDANT NETWORK SOLUTIONS, LLC

The demurrer of Defendant Network Solutions, LLC is sustained with 20 days leave to amend.

Requests for Judicial Notice

Plaintiffs object to Network Solutions, LLC's request for judicial notice. These objections are overruled. The items sought to be judicially noticed by Network Solutions, LLC are proper.

The Court can take judicial notice of the dictionary definition of the word "chance." There is nothing in Penal Code § 319 or the cases interpreting it that indicates that the dictionary definition is irrelevant as Plaintiffs contend.

It is proper for the Court to take judicial notice of the ad, which is the same ad noticed in the demurrer of Network Solutions, Inc. and Verisign [see above]. Also, judicial notice of court documents from the federal cases is proper, for the same reasons as discussed above.

Network Solutions, LLC presents 2 objections to Plaintiffs' request for judicial notice. These objections are sustained.

The arguments made in this demurrer, the opposition, and the reply are almost identical to the arguments summarized and analyzed above with respect to the demurrer by Network Solutions, Inc. Thus, the ruling is the same. The Court need not repeat the analysis here.

3. DEMURRER BY DEFENDANT ICANN

Defendant Network Solutions, LLC's joinder in Defendant ICANN's demurrer is granted. Defendant ICANN's demurrer is overruled as to the ripeness issue and the 9th cause of action, and is otherwise sustained with 20 days leave to amend.

Plaintiffs' Objection to Request for Judicial Notice

Plaintiffs filed a brief arguing that ICANN's request for judicial notice is improper. However, Plaintiffs use this document to argue against ICANN's res judicata argument, which should have been done in the opposition itself. The Court can and should take judicial notice of documents from the Dotster case. Nevertheless, Plaintiffs' arguments made in the objection brief have merit, to the extent discussed below, because the res judicata/collateral estoppel argument fails.

Joinder

Defendant Network Solutions, LLC filed a joinder in this motion. The joinder is granted.

Ripeness

Determining whether a controversy is "ripe" requires the Court to evaluate (1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding Court consideration. BKHN, Inc. v. Department of Health Services (1992) 3 Cal.App.4th 301, 309, citing Pacific Legal Foundation v. California Coastal Comm. (1982) 33 Cal.3d 158, 171 and Abbott Laboratories v. Gardner (1967) 387 U.S. 136, 148-149. This ripeness test is referred to as the "Abbott test" in many cases. "A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." Pacific Legal, supra, 33 Cal.3d at 171.

ICANN argues that the WLS has not been implemented [approval from the Department of Commerce is pending] so the controversy is not ripe. However, Plaintiffs allege in ¶¶ 4.72, 4.73, and 4.76-4.78 that they have suffered damages, because Defendants are taking pre-orders and pre-sales that are causing Plaintiffs to lose business. Only ¶ 4.79 [and part of ¶ 4.80] discusses future damages that would occur after DoC approval. ICANN's demurrer based on ripeness is overruled.

1st cause of action – illegal lottery

ICANN argues that the allegation in ¶ 4.44 shows that Plaintiffs concede that there is [or will be] only one WLS registrant per domain name. Plaintiffs admit this in opposition to this and the other demurrers, but argue that the case cited by Defendants, Gayer v. Whelan (1943) 59 Cal.App.2d 255, is inapplicable. As discussed above in the analysis of the demurrer by Verisign and Network Solutions, Inc., this demurrer has merit. Plaintiffs have not alleged a required element of this cause of action, namely, multiple participants vying for the same prize. The demurrer to this cause of action is sustained.

ICANN next argues that the alleged lottery is not dominated by chance, because a subscriber's ability to obtain a domain name depends on whether the current registrant wants to delete it or let it expire, and whether the WLS subscriber decides to reserve it. ICANN claims these are decisions, not chances. ICANN also makes an improper factual argument that Plaintiffs' system leaves much more up to chance that the WLS.

However, the case of Partanian v. Flodine (1950) 95 Cal.App.2d Supp. 931, cited by ICANN, is distinguishable, as Plaintiffs argue. That case involved an option to purchase a car. "The plaintiff was not placing his order for a car, but was being allotted a place in line by virtue of which, when his turn came, if it ever did, he could purchase a car if he then wished to do so." Id., at 933. The Court in Partanian did not analyze whether the transaction constituted a lottery. Also, the case is normally cited for the parol evidence issue addressed, not the lottery dicta.

In ¶¶ 5.13-5.18, Plaintiffs use the terms "chance" or "chances" many times. Plaintiffs allege in ¶ 5.18 that Defendants are selling to multiple subscribers multiple chances to win domain names. Thus, the alleged situation is distinguishable from the situation in Partanian anyway, because there are multiple customers contending for the same domain name once it becomes available. There are elements beyond the control of the subscriber. Finster v. Keller (1971) 18 Cal.App.3d 836, 844. As discussed above, the Complaint does allege the element of chance. However, the demurrer to this cause of action is sustained.

5th cause of action

This cause of action is a § 17200 claim that the WLS advertisements by the other Defendants are false and deceptive with respect to expiration dates of domain names. In other words, Defendants are accepting WLS subscriptions for domain names that are not set to expire during the subscription period, so the consumer gets nothing. Plaintiffs allege that Defendants must tell subscribers to check the expiration dates [¶¶ 9.5, 9.9]. ICANN is allegedly responsible for the WLS because it approved and ratified the system.

As discussed above, this cause of action fails with respect to the allegedly deceptive and fraudulent nature of the advertisements by the other Defendants. Therefore, ICANN's alleged approval and ratification cannot lead to its liability under this claim [i.e., ICANN allegedly approved and ratified something that did not violate § 17200]. The aiding and abetting theory fails as discussed below. The demurrer to this cause of action is sustained.

7th cause of action

This claim is for violation of § 17200 based on lack of consideration and restraint of competition in the market for domain name registration services. As discussed above, the lack of consideration theory does not support a § 17200 claim. However, ICANN does not address the anticompetitive conduct part of the claim in its demurrer. But, since ICANN's only role as alleged in this cause of action is approving and enabling the WLS [¶¶ 11.12, 11.13], and since the aiding and abetting theory fails, the demurrer to this cause of action is sustained.

Also, as discussed above, this claim fails with respect to the other Defendants. Therefore, ICANN's alleged approval and ratification of the WLS cannot lead to its liability under this claim [i.e., ICANN allegedly approved and ratified something that did not violate § 17200].

Aiding and abetting

Both ICANN and Plaintiffs agree that § 17200 liability can be imposed if the defendant is found to have aided and abetted others. But, ICANN argues that Plaintiffs have not pled facts showing that ICANN aided and abetted improper acts of the other Defendants.

ICANN's role as alleged in the Complaint is approving, ratifying, and enabling the WLS [¶¶ 2.9, 9.6-9.8, 11.12, 11.13]. Aside from the fact that the § 17200 claims fail

as against the other Defendants [and thus ICANN did not aid and abet anything unlawful to begin with], there are insufficient facts in the Complaint to show that ICANN participated in the alleged unlawful practices, either directly or by aiding and abetting the other Defendants. Toomey, supra, 157 Cal.App.3d at 15. The demurrer on this basis is sustained.

General Public

ICANN next argues that the § 17200 claims fail because Plaintiffs cannot bring claims on behalf of the general public. First, I note that this is an improper demurrer argument, because the § 17200 claims are brought both on behalf of Plaintiffs themselves AND on behalf of the general public. This is, in essence, a demurrer to only part of these causes of action that should have been brought as a motion to strike the allegations regarding injuries to the general public.

Second, this argument is based on the contention by ICANN that no consumer has been harmed. As discussed above with respect to the analysis of the demurrer of Network Solutions, Inc. and Verisign, Plaintiffs have not shown that any consumers have been harmed, despite the allegations of harm to subscribers in ¶¶ 4.76-4.80 and throughout the various causes of action. The demurrer on this basis is sustained.

9th cause of action

ICANN's final argument on demurrer is that the breach of contract claim is barred by res judicata and/or collateral estoppel due to the Dotster litigation. However, the federal court's ruling in Dotster on which ICANN relies is a ruling on a preliminary injunction, which is not provided. ICANN also provides a copy of the request for dismissal of that case, which does not reflect a dismissal on the merits, because it was a dismissal pursuant to a stipulation. The federal court proceedings are not binding rulings on the merits for purposes of collateral estoppel in this matter.

4. DEMURRER BY DEFENDANT eNOM, INC. AND eNOM, INCORPORATED

Defendants eNOM, Inc. and eNOM, Incorporated's demurrer to the 3rd cause of action is sustained [with 20 days leave to amend/without leave to amend]. Plaintiffs' request for judgment on the pleadings on the 3rd cause of action is denied.

Joinder

Defendant Network Solutions, LLC joins in this demurrer. However, this joinder is improper and unnecessary, because eNOM's own demurrer is only to the 3rd cause of action, to which Network Solutions, LLC is not a party. eNOM's only other "motion" is to join in Verisign and Network Solutions, Inc.'s demurrer.

Plaintiffs' request

It is completely improper for Plaintiffs to request judgment on the pleadings in the opposition papers. Plaintiffs must bring a noticed motion requesting this relief. There is

no authority offered for Plaintiffs' contention that this Court can grant judgment on the pleadings *sua sponte*.

Requests for Judicial Notice

eNOM requests judicial notice of its web pages. Plaintiffs objected to this request with a brief. The case cited by Plaintiffs, Teamsters Local 856 v. Priceless, LLC (2003) 112 Cal.App.4th 1500, 1523, is distinguishable, as discussed in the analysis of Verisign's and Network Solutions, Inc.'s demurrer. The information to be judicially noticed has been provided to this Court. The eNOM Defendants' request for judicial notice submitted with the demurrer is granted. None of Plaintiffs' objections have merit.

3rd cause of action

This cause of action is a § 17200 claim that eNOM's advertisement is false and misleading. eNOM's arguments are similar to those made by Network Solutions, LLC and Network Solutions, Inc. to the 4th cause of action.

The Court can take judicial notice of the website portions, which do show the context in which the statement [alleged in ¶ 7.13] is made. As with the NSI Defendants, eNOM's advertisement clearly states that there is no guarantee that a subscriber will get a particular domain name. This is confirmed by Plaintiffs' allegations in ¶¶ 7.12 and 7.13.

The allegations in this cause of action that consumers will be deceived are purely conclusory, and contradicted by eNOM's ad and other allegations in the Complaint. The demurrer to this cause of action is sustained.

5. MOTION TO STAY OR DISMISS

Defendant Verisign's motion to stay or dismiss is granted as to all claims against Verisign. This matter is dismissed as to Defendant Verisign, based on the forum selection clause in the RRA.

A forum selection clause is valid in the absence of the resisting party meeting a heavy burden of proving enforcement of the clause would be unreasonable under the circumstances of the case. Bancomer, S.A. v. Superior Court (1996) 44 Cal.App.4th 1450, 1457 [citations omitted]. More specifically, with a mandatory forum selection clause, the test is whether application of the clause would be unfair or unreasonable. Berg v. MTC Electronics Technologies Co. (1998) 61 Cal.App.4th 349, 358; Intershop Communications AG v. Superior Court (2002) 104 Cal.App.4th 191, 198. A forum selection clause will be disregarded if (1) it is the result of overreaching or (2) it is the result of the unfair use of unequal bargaining power, or (3) if the forum chosen by the parties would be a seriously inconvenient one for the trial of the particular action. No public policy reason has been suggested why a forum selection clause appearing in a contract entered into freely and voluntarily by parties who have negotiated at arms' length should be deemed unenforceable. Cal-State Business Products & Services, Inc. v. Ricoh (1993) 12 Cal.App.4th 1666, 1679.

"Given the significance attached to forum selection clauses, the courts have placed a substantial burden on a plaintiff seeking to defeat such a clause, requiring it to demonstrate enforcement of the clause would be unreasonable under the circumstances of the case. . . . That is, that the forum selected would be unavailable or unable to accomplish substantial justice. . . . Moreover, in determining reasonability, the choice of forum requirement must have some rational basis in light of the facts underlying the transaction. . . . However, 'neither inconvenience nor additional expense in litigating in the selected forum is part of the test of unreasonability.' . . . Finally, a forum selection clause will not be enforced if to do so will bring about a result contrary to the public policy of the forum." CQL Original Products, Inc. v. National Hockey League Players Association (1995) 39 Cal. App. 4th 1347, 1354.

Here, the parties do not dispute that there is a mandatory forum selection clause in the RRA between Plaintiffs and Verisign. Plaintiffs also only dispute a few of Verisign's arguments, namely the argument that all claims against Verisign are subject to the RRA [not just the 8th cause of action], that enforcement of the forum selection clause dispels confusion and conserves resources [judicial economy], and that there is a rational basis to choose Virginia as a forum [the corollary of which is that enforcing the clause comports with California public policy].

The causes of action in the Complaint are as follows:

The 1st cause of action is a § 17200 claim based on the theory that the WLS is an illegal lottery under Penal Code § 319, and that Defendants' conduct violates Penal Code §§ 320, 321, and 322 as a result.

The 2nd cause of action is a § 17200 claim based on Defendants' alleged violation of the CLRA, Civil Code §§ 1750, et seq., based on "NSI"'s allegedly deceptive advertisement of the WLS. The 3rd cause of action is a similar claim based on eNOM's advertisement.

The 4th cause of action is a § 17200 claim that "NSI"'s advertisement is false and misleading. Plaintiffs allege that Defendants do not disclose the low likelihood that a subscriber will obtain the domain name it seeks

The 5th cause of action is a § 17200 claim that "NSI"'s advertisement is false and deceptive with respect to expiration dates of domain names. Plaintiffs allege that Defendants are accepting WLS subscriptions for domain names that are not set to expire during the subscription period, so the consumer gets nothing. Plaintiffs also allege that Defendants must tell subscribers to check the expiration dates.

The 6th cause of action is a § 17200 claim which alleges that it is unlawful and deceptive for Defendants to advertise that the WLS can be used by a current domain name owner as protection to keep his/her/its registration in the event it expires inadvertently.

The 7th cause of action is for violation of § 17200 based on lack of consideration, i.e., consumers pay for WLS subscriptions but get nothing in return. This claim is also based on the alleged restraint of competition in the market for domain name registration services caused by the WLS.

The 8th cause of action requests declaratory relief based on the RAA [Registry-Registrar Agreement] Plaintiffs have with Verisign. Plaintiffs ask the Court to find that if the WLS were implemented, it would constitute a breach of the contract. Note that even if the claims against Verisign were not dismissed [and "sent" to Virginia], Virginia law applies to the claims against Verisign, pursuant to the RRA.

The 9th cause of action is a breach of contract claim against ICANN only.

Forum Selection Clause applies to all claims against Verisign?

The forum selection clause at issue is provided on page 3 of the motion. It applies to "[a]ny legal action or other legal proceeding relating to [the RRA] or the enforcement of any provision of [the RRA]." Verisign argues that all of the causes of action in the Complaint against it are subject to this clause. Plaintiffs argue contradictory positions in the opposition. On the one hand, Plaintiffs argue that the RRA [the agreement between Verisign and Plaintiffs] is at issue in this case. On the other hand, Plaintiffs argue that only the 8th cause of action for declaratory relief is subject to the forum selection clause.

The § 17200 claims against Verisign clearly "relate to" the RRA. They all arise by virtue of the fact that Plaintiffs have a contract with Verisign whereby Plaintiffs claim they are entitled to delete domain names that then go into a pool available to all registrars on a first-come, first-served basis. The gravamen of Plaintiffs' claim against Verisign is that the WLS would prevent the free availability of deleted domain names, and would create a monopoly whereby the WLS would be the only service to provide deleted domain names to consumers. Plaintiffs would lose business as a result.

Plaintiffs argue that transferring the claims against Verisign to Virginia would result in inconsistent rulings and unnecessarily splitting and complicating the case.

Plaintiffs first argue that there are actually 3 sets of contracts involved in this case: (1) between Verisign and ICANN, (2) between ICANN and Plaintiffs, and (3) between Verisign and Plaintiffs. However, as shown above, none of the causes of action except for the 9th involve the contract between ICANN and Plaintiffs, and none of the claims involve the contract between Verisign and ICANN. The Complaint does not allege violation of or declaratory relief based on the contracts between ICANN and Plaintiffs or between Verisign and ICANN. Thus, contrary to Plaintiffs' contention, there are no conflicting venue clauses in this case with respect to Verisign.

Plaintiffs also argue that Verisign and ICANN are jointly and severally liable. But, Plaintiffs has not offered any authority showing why the potential joint and several liability of Verisign and ICANN requires overriding the forum selection clause.

Plaintiffs also claim that Verisign and ICANN will likely raise cross-claims against one another in this case. There is no proof from Verisign or ICANN that this will occur here. However, in the alleged related matter [now in the Central District], Verisign has sued ICANN. The Complaint in that case is provided as Exhibit A to Plaintiffs' notice of related cases. That case does not appear to be related to this case [see analysis of notice of related cases].

In the Central District Complaint, ¶¶ 38-45 pertain to the WLS, but the WLS is only one of several issues raised. Basically, Verisign alleges that ICANN has prevented the launching of the WLS by imposing conditions on it, which is a breach of the agreement between Verisign and ICANN. There is no indication in the Complaint that the legality or propriety of the WLS is at issue in the Central District case. Thus, the fact that the Central District case must be litigated in Los Angeles [due to the forum selection clause in the agreement between Verisign and ICANN] does not appear to have any impact on this case. The ICANN-Verisign agreement is not at issue in this case.

As Verisign points out, Plaintiffs have no authority in support of their positions that considerations of judicial economy override contractually agreed upon forum selection clauses. Moreover, judicial economy will not be served by keeping the case against Verisign here. There are no overlapping issues with respect to the contract between Plaintiffs and Verisign and any other contracts, so there does not appear to be a danger of inconsistent rulings or duplication of effort. Staying or dismissing the claims against Verisign will not "split" this case unnecessarily.

CCP § 410.40

Plaintiffs also argue that CCP § 410.40 requires denial of this motion. That statute provides:

"Any person may maintain an action or proceeding in a court of this state against a foreign corporation or nonresident person where the action or proceeding arises out of or relates to any contract, agreement, or undertaking for which a choice of California law has been made in whole or in part by the parties thereto and which (a) is a contract, agreement, or undertaking, contingent or otherwise, relating to a transaction involving in the aggregate not less than one million dollars ($1,000,000), and (b) contains a provision or provisions under which the foreign corporation or nonresident agrees to submit to the jurisdiction of the courts of this state.

This section applies to contracts, agreements, and undertakings entered into before, on, or after its effective date; it shall be fully retroactive. Contracts, agreements, and undertakings selecting California law entered into before the effective date of this section shall be valid, enforceable, and effective as if this section had been in effect on the date they were entered into; and actions and proceedings commencing in a court of this state before the effective date of this section may be maintained as if this section were in effect on the date they were commenced."

Plaintiffs claim that the contracts between Verisign and ICANN are involved in this case, that the contract requires venue here, and therefore under this statute, venue is proper in California. Plaintiffs must show that this case (1) "arises out of or relates to" the agreement between Verisign and ICANN, (2) that the contract "[relates] to a transaction involving in the aggregate not less than one million dollars ($1,000,000), and (3) that the contract contains a provision under which the foreign corporation or nonresident [i.e., Verisign] agrees to submit to the jurisdiction of the courts of this state. Although Plaintiffs have shown the 3rd requirement above, they have not shown the 1st or 2nd. The amount of the transaction between Verisign and ICANN is not mentioned at all. As discussed above, Plaintiffs' Complaint has nothing to do with the contract between ICANN and Verisign.

Public Policy

Plaintiffs' public policy argument is basically that it must bring the § 17200 claims on behalf of consumers in California. However, there is no discussion by Plaintiffs as to whether Virginia has similar statutes that would allow them to bring consumer claims, or why they must represent California consumers versus consumers in Virginia or other states.

I also note that the § 17200 claims may not be brought on behalf of the general public anymore, based on the passage of Proposition 64.

Waiver

Plaintiffs argue that Verisign waived its right to move to transfer all claims against it to Virginia, because in the underlying federal case filed by Plaintiffs, Verisign only sought to remove the 8th cause of action. However, Plaintiff only shows that in the federal case, Verisign only admitted that the antitrust claims did not involve contractual interpretation. Verisign did not admit that the other claims were not "related to" the RRA. The waiver argument fails.

6. REQUEST TO RELATE CASES

The request to relate the cases set forth in the Notice is denied.

The causes of action in the Complaint in our case are as follows:

The 1st cause of action is a § 17200 claim based on the theory that the WLS is an illegal lottery under Penal Code § 319, and that Defendants' conduct violates Penal Code §§ 320, 321, and 322 as a result.

The 2nd cause of action is a § 17200 claim based on Defendants' alleged violation of the CLRA, Civil Code §§ 1750, et seq., based on "NSI"'s allegedly deceptive advertisement of the WLS. The 3rd cause of action is a similar claim based on eNOM's advertisement.

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The 9th cause of action is a breach of contract claim against ICANN only.

Related Case

In the Central District Complaint, ¶¶ 38-45 pertain to the WLS, but the WLS is only one of several issues raised. Basically, Verisign alleges that ICANN has prevented the launching of the WLS by imposing conditions on it, which is a breach of the agreement between Verisign and ICANN. There is no indication in the Complaint that the legality or propriety of the WLS is at issue in the Central District case. Thus, the fact that the Central District case must be litigated in Los Angeles [due to the forum selection clause in the agreement between Verisign and ICANN] does not appear to have any impact on this case. The ICANN-Verisign agreement is not at issue in this case.

EXHIBIT J

TO DECLARATION OF SEAN W. JAQUEZ
IN SUPPORT OF ICANN'S OPPOSITION TO
PLAINTIFF'S *EX PARTE* APPLICATION
FOR TEMPORARY RESTRAINING ORDER

NEWMAN & NEWMAN, LLP
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Seattle, Washington 98104
(206) 274-2800 phone
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

WEST DISTRICT - SANTA MONICA

REGISTERSITE.COM, an Assumed Name of ABR PRODUCTS INC., a New York Corporation, *et al.*,

Plaintiffs,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California Corporation, *et al.*,

Defendants.

Case No. SC082479

Assigned for all purposes to Judge Gerald Rosenberg

STIPULATION AND ~~[PROPOSED]~~ ORDER RE: DISMISSAL

By Fax

STIPULATION

Plaintiffs and defendant Verisign, Inc., defendant Network Solutions, Inc., defendant Enom, Inc. and defendant Enom Incorporated (collectively the "Defendants"), through their respective counsel, hereby state as follows:

WHEREAS, Plaintiffs commenced this action against Defendants (among others) through the filing of the Complaint on August 4, 2004; and

WHEREAS, on November 17, 2004, the Court sustained certain demurrers with twenty (20) days leave for Plaintiffs to file a First Amended Complaint; and

WHEREAS, the Court dismissed all claims as to defendant Verisign, Inc. on the

basis of forum non conveniens, without Prejudice to Plaintiffs' right to bring their claims against Verisign, Inc. in Virginia; and

WHEREAS, Plaintiffs requested, and Defendants agreed to provide, an extension of time in which to file and serve the First Amended Complaint up to and including January 10, 2005; and

WHEREAS, Plaintiffs now wish to dismiss their claims against Defendants without prejudice to their ability to assert such claims in the future;

NOW, THEREFORE, Plaintiffs and Defendants do hereby stipulate and agree as follows:

1. Plaintiffs' claims against Defendants are dismissed without prejudice; and
2. Each party shall bear its own costs, expenses and attorneys' fees; and
3. To the extent (if any) that Plaintiffs (or any of them) elect to file any action in the future against Verisign, Inc. arising from the same operative facts as the instant action, such future action shall be commenced in a state or federal court located in the eastern district of the Commonwealth of Virginia.

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Dated: January 10th 2005

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

By: _____
DEREK A. NEWMAN (State Bar No. 190467)
Attorneys for Plaintiffs

Dated: January 6, 2005

ARNOLD & PORTER LLP

By: _____
LAURENCE J. HUTT
JOHN D. LOMBARDO
Attorneys for Defendants VeriSign, Inc. and Network Solutions, Inc.

Dated: January __, 2005

DAVIS WRIGHT TREMAINE LLP

By: _____
FREDERICK F. MUMM
Attorneys for Defendants
eNOM, Inc. and
eNOM Foreign Holdings Corporation

Dated: January __, 2005

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

By: _____
DEREK A. NEWMAN (State Bar No. 190467)
Attorneys for Plaintiffs

Dated: January __, 2005

ARNOLD & PORTER LLP

By: _____
LAURENCE J. HUTT
JOHN D. LOMBARDO
Attorneys for Defendants VeriSign, Inc. and Network Solutions, Inc.

Dated: January 7, 2005

DAVIS WRIGHT TREMAINE LLP

By: _____
FREDERICK F. MUMM
Attorneys for Defendants
eNOM, Inc. and
eNOM Foreign Holdings Corporation

~~[PROPOSED]~~ ORDER

1. Plaintiffs' claims against defendants VERISIGN, INC., NETWORK SOLUTIONS, INC., ENOM, INC., and ENOM INCORPORATED are dismissed without prejudice.

2. Each party shall bear its own costs, expenses and attorneys' fees.

3. To the extent (if any) that Plaintiffs (or any of them) elect to file any action in the future against Verisign, Inc. arising from the same operative facts as the instant action, such future action shall be commenced in a state or federal court located in the eastern district of the Commonwealth of Virginia.

PURSUANT TO THE STIPULATION, FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: 1-12-05

GERALD ROSENBERG
~~Los Angeles Superior Court Judge~~

PROOF OF SERVICE

I, Lynne E. Trotti, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071-2300. On November 29, 2005, I caused to be served a copy of the within document(s):

DECLARATION OF SEAN W. JAQUEZ IN SUPPORT OF ICANN'S OPPOSITION TO PLAINTIFF'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery.

☒ by electronically delivering the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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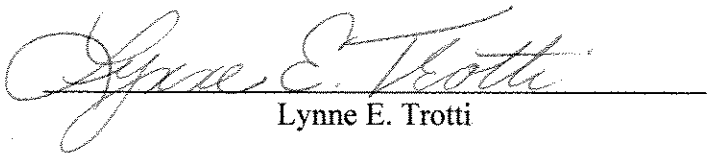
I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party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

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 29, 2005, at Los Angeles, California.



Lynne E. Trotti