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ENDORSED  
FILED  
San Francisco County Superior Court  
MAR 16 2012  
ENDORSED  
FILED  
San Francisco County Superior Court

CLERK OF THE COURT  
By: RONNIE OTERO  
Deputy Clerk  
CLERK OF THE COURT  
By: RONNIE OTERO  
Deputy Clerk  
MAR 16 2012

Attorneys for Defendant  
INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
(UNLIMITED JURISDICTION)**

CORPORATE CONCEPTS,  
  
Plaintiff,  
  
v.  
  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS; and  
DOES 1-10,  
  
Defendants.

CASE NO. CGC-12-518251  
  
**INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS'  
NOTICE OF DEMURRER AND  
DEMURRER TO COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**  
  
Date: April 19, 2012  
Time: 9:30 a.m.  
Courtroom: Dept. 302  
  
Complaint Filed: February 14, 2012

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**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT**, on April 19, 2012, at 9:30 a.m., or as soon thereafter as counsel may be heard, in Department 301 of the above-entitled Court, located at 400 McAllister Street, San Francisco, California, 94102, Defendant Internet Corporation for Assigned Names and Numbers will and hereby does generally demur to the Complaint of Plaintiff Corporate Concepts.

The Demurrer is made pursuant to Code of Civil Procedure section 430.10, subdivision (e) on the grounds that the allegations contained in Corporate Concepts' Breach of Written Contract claim (First Cause of Action), Breach of Implied Contract claim (Second Cause of Action), Goods and Services Rendered claim (Third Cause of Action) and Negligent Misrepresentation claim (Fourth Cause of Action) fail to state facts sufficient to constitute causes of action.

This Demurrer is based on this Notice of Demurrer, the attached Demurrer, the attached Memorandum of Points and Authorities in support thereof, all records and proceedings in this action, and on such other and further matter as may be presented to the Court in connection with the hearing on this Demurrer.

Dated: March 16, 2012

JONES DAY

By:   
Kate Wallace

Attorneys for Defendant  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS

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**DEMURRER**

Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") hereby demurs to Plaintiff Corporate Concepts' ("Plaintiff") Complaint on each of the following grounds:

**DEMURRER TO THE FIRST CAUSE OF ACTION**

1. Plaintiff's purported First Cause of Action, alleging a breach of written contract fails to state facts sufficient to constitute a cause of action against Defendant ICANN, pursuant to California Code of Civil Procedure section 430.10, subdivision (e).

**DEMURRER TO THE SECOND CAUSE OF ACTION**

2. Plaintiff's purported Second Cause of Action, alleging a breach of implied contract fails to state facts sufficient to constitute a cause of action against Defendant ICANN, pursuant to California Code of Civil Procedure section 430.10, subdivision (e).

**DEMURRER TO THE THIRD CAUSE OF ACTION**

3. Plaintiff's purported Third Cause of Action, alleging goods and services rendered fails to state facts sufficient to constitute a cause of action against Defendant ICANN, pursuant to California Code of Civil Procedure section 430.10, subdivision (e).

**DEMURRER TO THE FOURTH CAUSE OF ACTION**

4. Plaintiff's purported Fourth Cause of Action, alleging negligent misrepresentation fails to state facts sufficient to constitute a cause of action against Defendant ICANN, pursuant to California Code of Civil Procedure section 430.10, subdivision (e).

WHEREFORE, Defendant ICANN prays that its Demurrer to the First through Fourth Causes of Action in Plaintiff's Complaint, and each of them, be sustained without leave to amend.

Dated: March 16, 2012

JONES DAY

By: Kate Wallace  
Kate Wallace

Attorneys for Defendant  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 ICANN did not enter into a contract with Corporate Concepts. Corporate Concepts has  
4 not and cannot allege otherwise. Corporate Concepts tries to create a “contract” out of a series of  
5 communications it had with a third party representing a separate organization—not ICANN.  
6 There are no facts alleged—nor can they be—establishing that the third party was ICANN’s  
7 agent. Absent an agency relationship, no facts can support a breach of contract claim against  
8 ICANN. ICANN therefore requests that this Court sustain its demurrer without leave to amend.

9 Specifically, Corporate Concepts’ (“Plaintiff”) lawsuit against Defendant Internet  
10 Corporation for Assigned Names and Numbers (“ICANN”) for breach of contract and associated  
11 causes of action is premised entirely on Plaintiff’s alleged communications not with ICANN, but  
12 with ICANN’s purported agent. Plaintiff, however, does not allege any facts supporting the  
13 existence of an agency relationship. Indeed, the Complaint is devoid of any allegation even  
14 arguably suggesting that ICANN, the alleged principal, undertook any conduct or made any  
15 representations to Plaintiff that would reasonably cause Plaintiff to believe that ICANN had  
16 authorized this “agent” to contract on ICANN’s behalf. This is fatal to each of Plaintiff’s claims.  
17 Without intentional or negligent conduct by the alleged principal creating a reasonable belief in  
18 the minds of third persons that an agency relationship exists, no such relationship can exist.  
19 Plaintiff’s entire Complaint should be dismissed on this ground alone.

20 Second, the so-called “contract” upon which Plaintiff has sued is nothing more than a  
21 vague and uncertain email from ICANN’s purported “agent” to Plaintiff (ICANN was not copied  
22 on the communication) that fails to identify the essential terms of the “contract.” There is no  
23 articulation of what services would be provided or the cost for such services. The performance  
24 promised by Plaintiff in this so-called “contract” is not articulated, and the supposed “contract”  
25 does not set out any obligations agreed to by any party. The email itself, therefore, is not a valid  
26 contract and Plaintiff’s First and Second Causes of Action should be dismissed on this separate  
27 and independent ground.

28 Third, because Plaintiff’s Third Cause of Action, a common count for goods and services

1 rendered, is premised on the same facts and seeks the same recovery demanded in Plaintiff's  
2 breach of contract claims, it must be dismissed for the same reasons the contract claims fail.

3 Finally, Plaintiff's Fourth Cause of Action for negligent misrepresentation must be  
4 dismissed because Plaintiff has not alleged facts sufficient to establish that Plaintiff's reliance on  
5 ICANN's "agent's" alleged representations was justified, as there was no representation or  
6 conduct by ICANN confirming this agent's authority to act on ICANN's behalf.

7 ICANN respectfully requests that Plaintiff's entire Complaint be dismissed with prejudice.

## 8 **II. SUMMARY OF PLAINTIFF'S ALLEGATIONS**

9 Plaintiff is in the business of planning and executing corporate events. (Compl., ¶ 6.)  
10 Defendant ICANN is a not-for-profit public benefit corporation that administers certain features  
11 of the Internet's domain name system pursuant to a series of agreements with the United States  
12 Government. (*See id.* at ¶ 7.) On "information and belief," Plaintiff alleges that ICANN relies on  
13 organizations called Internet Societies ("ISOCs"), including the San Francisco Bay Internet  
14 Society ("SF Bay ISOC"), to plan and organize local events for ICANN. (*Ibid.*)

15 On November 21, 2010, Ms. Annalisa Roger, the Vice Chair of the SF Bay ISOC,  
16 contacted Plaintiff and allegedly identified herself as ICANN's "agent." (*Id.* at ¶ 8.) Ms. Roger  
17 purportedly told Plaintiff that ICANN had asked her to plan a gala event in connection with  
18 ICANN's annual meeting, to be held in San Francisco, California from March 12-17, 2011.  
19 (*Ibid.*)

20 Upon a purported request by Ms. Roger, Plaintiff subsequently submitted to SF Bay ISOC  
21 (through Ms. Roger) three budgets for three different proposed venues for the gala event, each  
22 containing a "management fee" of \$40,000.00. (*Id.* at ¶ 9.) Plaintiff does not allege that Ms.  
23 Roger, SF Bay ISOC or ICANN approved any of the three budgets submitted by Plaintiff.  
24 Plaintiff alleges that Ms. Roger subsequently entered into a contract with Plaintiff on behalf of  
25 ICANN by email on December 4, 2010, in which "Ms. Roger stated that she had 'just finished a  
26 meeting with ICANN' in which ICANN and Ms. Roger had agreed to hire Corporate Concepts  
27 and to pay its management fee, with the choice of venue to be decided." (*Id.* at ¶ 10; Ex. A to  
28 Compl.) Plaintiff does not allege that ICANN was an author or recipient of the December 4, 2010



1 email or that Plaintiff had any oral or written communication with ICANN—as opposed to Ms.  
2 Roger, ICANN’s purported agent—at any time prior to the formation of the alleged contract on  
3 December 4, 2010.

4 On January 6, 2011, Plaintiff summarized the terms to which ICANN had allegedly  
5 agreed in a formal Letter of Agreement. (Compl., ¶ 17; Ex. B to Compl.) The Letter of  
6 Agreement was sent to Ms. Roger at SF Bay ISOC, not ICANN, and was never executed by  
7 either party. (Ex. B to Compl.) On January 11, 2011, Plaintiff allegedly forwarded to ICANN an  
8 invoice in the amount of \$206,142.50; this was Plaintiff’s first direct communication with  
9 ICANN. (Compl., ¶ 18.) The invoice indicated that it was “per [the] Letter of Agreement, dated  
10 January 6, 2011.” (Ex. B to Compl.)

11 Plaintiff alleges that, on February 4, 2011, ICANN informed Plaintiff that it had engaged  
12 another company to plan the gala event and that Plaintiff’s services were not required. (Compl.,  
13 ¶ 20.) Plaintiff brings this lawsuit because ICANN has “refused to compensate Plaintiff for its  
14 services, and has refused to pay the [\$40,000.00] non-refundable management fee under the  
15 contract.” (*Id.* at ¶ 21.)

16 Based on the foregoing alleged conduct, Plaintiff asserts four causes of action against  
17 ICANN: (1) breach of written contract; (2) breach of implied contract; (3) goods and services  
18 rendered; and (4) negligent misrepresentation. Each of these claims fails as a matter of law, as  
19 explained below.

### 20 **III. LEGAL STANDARD ON DEMURRER**

21 The function of a demurrer is to test the sufficiency of the allegations of the complaint.  
22 (Code Civ. Proc., § 589; *Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706.) A  
23 demurrer is appropriate where the complaint “does not state facts sufficient to constitute a cause  
24 of action.” (Code Civ. Proc., § 430.10, subd. (e).) A court is to “treat the demurrer as admitting  
25 all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law.”  
26 (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

1 **IV. ARGUMENT**

2 **A. Because The Complaint Is Devoid Of Any Facts To Substantiate Plaintiff's**  
3 **Bare Legal Conclusion That Ms. Roger Was ICANN's "Agent," Each Of**  
4 **Plaintiff's Claims Fails As A Matter Of Law.**

5 Each of Plaintiff's claims is premised on Plaintiff's conclusory allegation that  
6 Ms. Roger—who is the Vice Chair of SF Bay ISOC and not an ICANN employee—entered into a  
7 contract with Plaintiff as ICANN's "agent." (Compl., ¶ 7.) The incurable problem faced by  
8 Plaintiff, however, is that ICANN never authorized Ms. Roger or SF Bay ISOC to contract on its  
9 behalf and never undertook any conduct toward Plaintiff that would reasonably cause Plaintiff to  
10 believe that Ms. Roger or SF Bay ISOC was so authorized. This is made clear by the complete  
11 dearth of facts in the Complaint linking ICANN to Ms. Roger or SF Bay ISOC. Instead, Plaintiff  
12 asserts only the legal conclusion ("[o]n information and belief," Compl., ¶ 7), wholly  
13 unsubstantiated by a single fact, that ICANN relies on SF Bay ISOC to act "as ICANN's agent to  
14 plan and organiz[e] local events." (*Ibid.*) Case law could not be clearer: The court does not  
15 assume the truth of such conclusions on demurrer. (*Barnett v. Fireman's Fund Insurance Co.*  
16 (2001) 90 Cal.App.4th 500, 505.)

17 An agency is either actual or ostensible. (Cal. Civ. Code, § 2298.) An agency is actual  
18 when the agent is really employed by the principal. (Cal. Civ. Code, § 2299.) An agency is  
19 ostensible when the principal intentionally, or by want of ordinary care, causes a third person to  
20 believe another to be his agent, but is not really employed by him. (Cal. Civ. Code, § 2300.)

21 First, Plaintiff alleges no facts suggesting that Ms. Roger or any SF Bay ISOC  
22 representative were employed or engaged by ICANN in any manner sufficient to give rise to an  
23 actual agency relationship.<sup>1</sup> Second, any attempt by Plaintiff to plead an ostensible agency  
24 relationship likewise fails because an ostensible agency cannot be established by the  
25 representations or conduct of the purported agent; the statements or acts of the principal must be  
26 such as to cause the third party to reasonably believe the agency existed. Specifically, to prevail  
27 on an ostensible agency theory, a plaintiff must establish three elements:

28 <sup>1</sup> To the contrary, Plaintiff alleges that Ms. Roger was the Vice Chair of the SF Bay ISOC.  
(Compl., ¶ 8.)  
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- 1           1. The third party (here, Plaintiff) must have had a reasonable belief in the agent’s  
2           authority;
- 3           2. That belief must be generated by some act or negligence of the principal (here,  
4           ICANN); and
- 5           3. The third party (here, Plaintiff) must be non-negligent in relying on the agent’s  
6           apparent authority.

6           (*Kaplan v. Coldwell Banker Residential Affiliates, Inc.* (1997) 59 Cal.App.4th 741, 747)

7           Notably, in proving the second element, California courts are clear that “[o]stensible  
8           authority of an agent cannot be based on the agent’s conduct alone; there must be evidence of  
9           conduct by the principal which causes a third party reasonably to believe the agent has authority.”

10          (*Lindsay-Field v. Friendly* (1995) 36 Cal.App.4th 1728, 1734; *see also Kaplan, supra*,

11          59 Cal.App.4th at p. 747 [“The ostensible authority of an agent cannot be based solely upon the

12          agent’s conduct.”]; *McMurry v. Pacific Ready-Cut Homes, Inc.* (1931) 111 Cal.App. 341, 343

13          [“To state the same requirements in different terms and in reverse order, there must be some

14          intentional conduct or neglect on the part of the alleged principal creating a belief in the minds of  
15          third persons that an agency exists, and a reasonable reliance thereon by such third persons.”].)

16          Plaintiff does not allege that ICANN, the purported principal, undertook any conduct or  
17          made any representations to Plaintiff that would reasonably cause Plaintiff to believe that ICANN  
18          had authorized Ms. Roger or SF Bay ISOC to contract on its behalf.<sup>2</sup> All Plaintiff alleges is that  
19          the purported agent Ms. Roger—not ICANN—made statements to Plaintiff that Plaintiff believed  
20          showed a valid agency relationship. (Compl., ¶¶ 8 [“Annalisa Roger of SFBayISOC contacted  
21          Ms. Tonneson of Corporate Concepts, identifying herself as an agent of ICANN . . . .”], emphasis  
22          added; *id.* [“Ms. Roger told Ms. Tonneson ICANN had designated her to plan a gala event . . . .”],  
23          emphasis added; ¶ 9 [“At Ms. Roger’s request, Corporate Concepts . . . submitted three estimated  
24          budgets.”], emphasis added; ¶ 10 [“On December 4, 2010, Ms. Roger accepted Corporate  
25          Concepts’ bid on behalf of ICANN by email. Ms. Roger stated that she had ‘just finished a

26  
27          <sup>2</sup> As noted, while Plaintiff alleges “[o]n information and belief” that ICANN relies on SF  
28          Bay ISOC to act “as ICANN’s agent to plan and organiz[e] local events” (Compl., ¶ 7), Plaintiff  
28          cannot overcome demurrer by pleading bare legal conclusions wholly unsubstantiated by facts.  
(*Barnett v. Fireman’s Fund Insurance Co.* (2001) 90 Cal.App.4th 500, 505.)

1 meeting with ICANN' in which ICANN and Ms. Roger had agreed to hire Corporate Concepts . .  
2 . ."], emphasis added.)

3 But representations by the agent are not sufficient, as the law is clear that statements made  
4 by the purported agent cannot establish an ostensible agency. (*Kaplan, supra*, 59 Cal.App.4th at  
5 p. 747; *Lindsay-Field, supra*, 36 Cal.App.4th at p. 1734; *see also McMurry, supra*, 111 Cal.App.  
6 at p. 343 ["[T]he third person must believe that the agent possessed the authority assumed, and []  
7 this belief must have arisen by reason of the acts and declaration of the principal, recognizing the  
8 authority of the agent in similar previous transactions."]; *cf. Howell v. Courtesy Chevrolet, Inc.*  
9 (1971) 16 Cal.App.3d 391, 401 ["The declarations of an agent are not admissible to prove the fact  
10 of his agency or the extent of his power as such agent."].)<sup>3</sup>

11 In short, Plaintiff cannot establish that its belief in the purported agency relationship was  
12 generated by some act or negligence of ICANN. Plaintiff therefore cannot establish that either  
13 Ms. Roger or SF Bay ISOC was ICANN's ostensible agent as a matter of law. Accordingly,  
14 ICANN's demurrer to every single cause of action should be sustained, without leave to amend.

15 **B. Plaintiff's First and Second Causes Of Action For Breach Of Contract Fail As**  
16 **A Matter Of Law Because The December 4, 2010 Email Is Too Uncertain To**  
**Constitute An Acceptance Of A Definite Offer.**

17 Even had ICANN authorized Ms. Roger or SF Bay ISOC to contract with Plaintiff on  
18 ICANN's behalf (which it did not), the December 4, 2010 email from Ms. Roger to Plaintiff does  
19 not constitute a valid contract. (*See Ex. A to Compl.*) A valid contract requires an offer,  
20 acceptance and consideration. An offer must be sufficiently definite, or must call for such  
21 definite terms in the acceptance, that the performance promised is reasonably certain.  
22 (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811-812 ["A proposal  
23 ""cannot be accepted so as to form a contract unless the terms of the contract are reasonably  
24 certain. . . . The terms of a contract are reasonably certain if they provide a basis for determining  
25 the existence of a breach and for giving an appropriate remedy."], citation omitted.) "If, by

26 \_\_\_\_\_  
27 <sup>3</sup> Moreover, the fact that Plaintiff forwarded ICANN an (unsolicited) invoice on January  
28 6, 2011 does not, absent further evidence of an agreement, establish the existence of an agency  
relationship or a contract. (*India Paint & Lacquer Co. v. United Steel Products Corp.* (1954) 123  
Cal.App.2d 597, 607 ["The prevailing rule is that an invoice, standing alone, is not a contract."].)  
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1 contrast, a supposed 'contract' does not provide a basis for determining what obligations the  
2 parties have agreed to, and hence does not make possible a determination of whether those agreed  
3 obligations have been breached, there is no contract." (*Ibid.* (quoting 1 Williston on Contracts  
4 (4th ed. 1990) § 4:18, p. 414 ["It is a necessary requirement that an agreement, in order to be  
5 binding, must be sufficiently definite to enable the courts to give it an exact meaning."])); *see*  
6 *also* Cal. Civ. Code, § 3390, subd. 5 [a contract is not specifically enforceable unless the terms  
7 are "sufficiently certain to make the precise act which is to be done clearly ascertainable."].)

8 Putting aside the fact that ICANN was not even copied on the December 4, 2010 email  
9 from Ms. Roger to Plaintiff,<sup>4</sup> the email itself is too uncertain to constitute an acceptance of a  
10 definite offer. Indeed, it is impossible to discern the elements of the contract. There is no  
11 articulation of what services would be provided or the cost for such services. The performance  
12 promised by Plaintiff in this so-called "contract" is not articulated, and the supposed "contract"  
13 does not provide a basis for determining what obligations the parties have agreed to. The email  
14 itself, therefore, is not a valid contract and Plaintiff's First and Second Causes of Action must be  
15 dismissed. (*Weddington Productions, supra, Inc.*, 60 Cal.App.4th at pp. 811-812.)<sup>5</sup>

16 **C. Plaintiff's Third Cause Of Action For Goods And Services Rendered Falls**  
17 **With Plaintiff's Breach Of Contract Claims.**

18 Plaintiff's third cause of action is framed as a common count for goods and services  
19 rendered. (Compl., ¶¶ 35-38.) "A common count is not a specific cause of action, however;  
20 rather, it is a simplified form of pleading normally used to aver the existence of various forms of  
21 monetary indebtedness . . ." (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 394-395,  
22 citation omitted.) When a common count is used as an alternative way of seeking the same

23 <sup>4</sup> Nor did ICANN (or Ms. Roger or any other representative of SF Bay ISOC) sign the  
24 January 6, 2011 formal Letter of Agreement, which allegedly summarized the terms to which  
ICANN had agreed. (Ex. B to Compl.)

25 <sup>5</sup> Moreover, Ms. Roger was clear in her December 4, 2010 email that her ability to host  
26 the gala was contingent upon the SF Bay ISOC's ability to raise the funds needed to cover the  
27 event, thus constituting a condition precedent to Ms. Roger executing any "contract" with  
28 Corporate Concepts. (*See* Ex. A to Compl. [Ms. Roger's expressly stated that she "still [has] the  
challenge of sponsorship to confirm."].) Thus, even if the December 4, 2010 email could be  
properly construed as a contract (which it cannot), it would not become binding until Ms. Roger  
raised the funds sufficient to cover the event, which never happened. (*Paratore v. Scharetg*  
(1942) 53 Cal.App.2d 710, 713.)

1 recovery demanded in a specific cause of action, and is based on the same facts, the common  
2 count is demurrable if the cause of action is demurrable. (*Id.*; see also *Zumbrun v. Univ. of*  
3 *Southern Cal.* (1972) 25 Cal.App.3d 1, 14 [“[I]f plaintiff is not entitled to recover under one  
4 count in a complaint wherein all the facts upon which his demand is based are specifically  
5 pleaded, it is proper to sustain a demurrer to a common count set forth in the complaint, the  
6 recovery under which is obviously based on the set of facts specifically pleaded in the other  
7 count.”].)

8 Here, Plaintiff’s claim for goods and services rendered is premised on the same facts and  
9 seeks the same recovery demanded in Plaintiff’s breach of contract claims. Thus, Plaintiff’s  
10 common count for goods and services rendered must fall with its first and second causes of  
11 action. Dismissal is appropriate for the same reasons articulated above in Sections IV.A and  
12 IV.B.

13 **D. Plaintiff’s Fourth Cause Of Action For Negligent Misrepresentation Fails**  
14 **Because Plaintiff Has Not Sufficiently Alleged “Justifiable Reliance.”**

15 The elements of negligent misrepresentation are: (1) the misrepresentation of a past or  
16 existing material fact; (2) without reasonable ground for believing it to be true; (3) with intent to  
17 induce another’s reliance on the fact misrepresented; (4) justifiable reliance on the  
18 misrepresentation; and (5) resulting damage. (*Apollo Capital Fund, LLC v. Roth Capital*  
19 *Partners, LLC* (2007) 158 Cal.App.4th 226); *Agosta v. Astor* (2004) 120 Cal.App.4th 596, 603)  
20 [“The tort of negligent misrepresentation . . . does, of course, require proof of justifiable reliance  
21 and resulting damage.”].)

22 Here, Plaintiff’s negligent misrepresentation claim fails because Plaintiff has not—and  
23 cannot—allege facts sufficient to establish that Plaintiff’s reliance on Ms. Roger’s alleged  
24 representations was justified. As explained above, ICANN never authorized Ms. Roger or SF  
25 Bay ISOC to contract on its behalf (and there is no allegation to the contrary). Nor is ICANN  
26 alleged to have undertaken any conduct toward Plaintiff that would reasonably cause Plaintiff to  
27 believe that Ms. Roger or SF Bay ISOC were authorized to contract on ICANN’s behalf. As  
28 noted, all Plaintiff alleges is that Ms. Roger—not ICANN—made statements to Plaintiff that

1 Plaintiff believed showed a valid agency relationship. Absent any representation or conduct by  
2 ICANN confirming Ms. Roger or SF Bay ISOC's authority to act on ICANN's behalf, Plaintiff  
3 could not reasonably or justifiably rely on Ms. Roger's purported statements. (*Lindsay-Field*,  
4 *supra*, 36 Cal.App.4th at p. 1734 ["there must be evidence of conduct by the principal which  
5 causes a third party reasonably to believe the agent has authority"].)

6 Moreover, Ms. Roger's own statements to Plaintiff make it impossible for Plaintiff to now  
7 claim that Plaintiff reasonably and justifiably relied on Ms. Roger's alleged statements that  
8 ICANN had authorized her to plan ICANN's gala event. Specifically, Ms. Roger told Plaintiff in  
9 her December 4, 2010 email that her (Ms. Roger's) ability to host the gala was contingent upon  
10 the SF Bay ISOC's ability to raise the funds needed to cover the event. (*See* Ex. A to Compl.  
11 [Ms. Roger's expressly stated that she "still [has] the challenge of sponsorship to confirm."].)  
12 Plaintiff therefore cannot reasonably assert that its reliance on Ms. Roger's purported  
13 representation that she was acting as ICANN's agent was justified.

14 Plaintiff's fourth cause of action for negligent misrepresentation therefore fails as well.<sup>6</sup>

15 **E. Plaintiff's Complaint Should Be Dismissed Without Leave To Amend.**

16 When a demurrer is sustained, leave to amend should be denied where the plaintiff cannot  
17 make a sufficient offer of proof demonstrating that the complaint can be cured through a truthful  
18 amendment. (*See Taxpayers for Improving Pub. Safety v. Schwarzenegger* (2009) 172  
19 Cal.App.4th 749, 781; *see also Vaillette v. Fireman's Fund Insurance Co.* (1993) 18 Cal.App.4th  
20 680, 685 [leave to amend should not be granted when "in all probability, amendment would be  
21 futile"].)

22 Here, ICANN did not undertake any conduct or make any representations to Plaintiff that

23 \_\_\_\_\_  
24 <sup>6</sup> Plaintiff also concludes (albeit in passing) that ICANN "directly" made "knowing and/or  
25 reckless false and misleading statements about its intent to hire Plaintiff and pay Plaintiff for its  
26 work" (Compl., ¶ 40), but Plaintiff does not allege any facts supporting this conclusion. Indeed,  
27 the Complaint does not contain any facts supporting the notion that ICANN directly represented  
28 to Plaintiff that ICANN was interested in Plaintiff's services or that ICANN had authorized  
Ms. Roger or SF Bay ISOC to contract with Plaintiff on ICANN's behalf. The only allegation  
regarding an ICANN-to-Plaintiff communication was ICANN's statement to Plaintiff in February  
2011 that ICANN was not interested in Plaintiff's services. (Compl., ¶ 20.) Plaintiff's  
conclusory allegations need not be accepted as true and do not state a claim for negligent  
misrepresentation. (*Barnett, supra*, 90 Cal.App.4th at p. 505.)

1 would reasonably cause Plaintiff to believe that ICANN had authorized Ms. Roger or SF Bay  
2 ISOC to contract on its behalf. As such, Plaintiff cannot plead any facts demonstrating the  
3 existence of an agency relationship, ostensible or otherwise, between ICANN and Ms. Roger or  
4 SF Bay ISOC. This is fatal to each of Plaintiff's claims and warrants dismissal with prejudice,  
5 without leave to amend.


6 **V. CONCLUSION**

7 Under no circumstances could Plaintiff state a claim for relief against ICANN.  
8 Accordingly, Plaintiff's entire Complaint should be dismissed with prejudice.

9 Dated: March 16, 2012

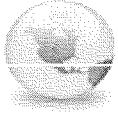
JONES DAY

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By:   
Kate Wallace

Attorneys for Defendant  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS





**Subject:** POD for Control Number 3155904  
**From:** Jeff Oberlink  
**To:** jjew

03/16/2012 01:13 PM

NATIONWIDE LEGAL LLC

PROOF OF DELIVERY

Sign: FILED CC301  
Del Date: 3/16/12  
Time: 13:00

Case Number: CGC12518251  
Case Name: CORPORATE CONCEPTS/  
Docs: INTERNET CORP  
NTC OF DEMURRER,  
PROP ORD  
FILE/CONFORM/RETURN

Advance Fees: \$0410  
Reference#: 172210665007  
Requested By: JEANNIE JEW  
Control#: 3155904  
Order Date: 3/16/12  
Service Types: STANDARD FILE

p/u: JONES DAY  
555 CALIFORNIA STREET  
SAN FRANCISCO CA 94104

Del: SAN FRANCISCO SUPERIOR COURTHOUSE  
400 MCALLISTER STREET  
SAN FRANCISCO CA 94102



**Subject:** POD for Control Number 3155905  
**From:** Jeff Oberlink  
**To:** jjew

03/16/2012 11:09 AM

NATIONWIDE LEGAL LLC

PROOF OF DELIVERY

Sign: MANSA DHEA  
Del Date: 3/16/12  
Time: 11:04

Case Number: DELIVER ENV

Advance Fees: \$0000  
Reference#: 172210665007  
Requested By: JEANNIE JEW  
Control#: 3155905  
Order Date: 3/16/12  
Service Types: STANDARD BIKE

p/u: JONES DAY  
555 CALIFORNIA STREET  
SAN FRANCISCO CA 94104  
To See: JEANNIE JEW

Del: AXCEL LAW PARTNERS  
4 EMBARCADERO CENTER  
SAN FRANCISCO CA 94101  
To See: CRAIG DANIEL