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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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

15 Plaintiffs,

16 v.

17 INTERNET CORPORATION FOR
18 ASSIGNED NAMES AND
19 NUMBERS, a California corporation,
20 *et al.*,

21 Defendants.

Case No. CV 04-1368 ABC (CWx)

Hon. Audrey B. Collins

**PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE OF
DEMURRER FILED BY
DEFENDANTS VERISIGN, INC.
AND NETWORK SOLUTIONS,
INC. IN *SMILEY V. INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS ET AL.*,
LOS ANGELES SUPERIOR
COURT CASE NO. BC 254659
(2001)**

[Filed Concurrently with Plaintiffs'
Opposition to Motion by Verisign, Inc.
and Network Solutions, Inc. to Dismiss
Plaintiffs' First Amended Complaint
Pursuant to FED. R. CIV. P. 12(b)(6)]

DATE: July 12, 2004
TIME: 10:00 a.m.
COURTROOM: Room 680 -
Roybal Bldg.

1 Pursuant to Rule 201 of the Federal Rules of Evidence, Plaintiffs hereby
2 request that the Court take judicial notice of the following matter in adjudicating the
3 motion by defendants Verisign, Inc. and Network Solutions, Inc. (collectively,
4 "Defendants") to dismiss Plaintiffs' First Amended Complaint pursuant to FED. R.
5 Civ. P. 12(b)(6) (the "Motion"):

6 The Corrected Memorandum of Points and Authorities in Support of
7 Defendants Network Solutions, Inc.'s and Verisign, Inc.'s Demurrer to the First
8 Amended Complaint (the "Memorandum") in Smiley v. Internet Corporation for
9 Assigned Names and Numbers et al., Los Angeles Superior Court Case No. BC
10 254659 (2001), a true and correct copy of which is attached hereto as **Exhibit A**.

11 Grounds for Judicial Notice: In ruling on a FED. R. CIV. P. 12(b)(6) motion to
12 dismiss, the district court may rely not only on matters contained or referred to in
13 the pleadings, but may also rely on "facts... contained in materials of which the
14 court may take judicial notice," without converting the motion to dismiss into one
15 for summary judgment." Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir. 1994);
16 accord, e.g., In re Stac Electronics Sec. Litig., 89 F.3d 1399, 1405 (9th Cir. 1996);
17 Asdar Group v. Pillsbury, Madison & Sutro, 99 F.3d 289, 290 n. 1 (9th Cir. 1996);
18 MGIC Indem. Corp. v. Wiseman, 803 F.2d 500, 504 (9th Cir. 1986); Mack v. South
19 Bay Beer Distribs., Inc., 798 F.2d 1279, 1282 (9th Cir. 1981); In re Silicon
20 Graphics, Inc. Sec. Litig., 1997 U.S. Dist. LEXIS 7551, *7 (N.D.Cal. May 23,
21 1997).

22 Among matters subject to judicial notice on the FED. R. CIV. P. 12(b)(6)
23 motion are those covered in FED. R. EVID. 201(b) -- *i.e.*, any fact "not subject to
24 reasonable dispute in that it is either (1) generally known within the jurisdiction of
25 the trial court or (2) capable of accurate and ready determination by resort to
26 sources whose accuracy cannot reasonably be questioned." Silicon Graphics,
27 *supra*, 1997 U.S. Dist. LEXIS at *28. Pleadings in state court actions are within the
28 latter category. See Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank,

1 136 F.3d 1360 (9th Cir. 1998) (taking judicial notice of pleadings filed in a related
2 state court action); Richard E. Shaw & Assocs. v. Pointe De Sante, 2001 U.S. Dist.
3 LEXIS 8791 (S.D.Cal. 2001) (taking judicial notice of facts in plaintiff's
4 interpleader complaint after removal to federal court); Medimatch, Inc. v. Lucent
5 Techs., Inc., 120 F.Supp.2d 842, 863 (N.D.Cal. 2000) (taking judicial notice of
6 complaint and answer in state court action between parties).

7 In their motion to dismiss, Defendants argue that Plaintiffs lack Article III
8 standing to bring a CAL. BUS. & PROF. CODE §17200 claim based on Defendants'
9 creation and operation of an illegal lottery because Plaintiffs cannot be harmed by
10 such a lottery if they have not participated in it. (Motion, 6:5-9.) The same
11 Defendants, however, argued in an earlier case (through the same legal counsel) that
12 participation in an illegal lottery **barred** the plaintiffs from making a §17200 claim
13 against the parties that operated the lottery because the plaintiffs had unclean hands
14 due to their participation. (Memorandum, 4:4 - 7:21.) Each of the defendants to
15 this action were defendants in the Smiley case, which alleged a violation of CAL.
16 BUS. & PROF. CODE §17200 for conducting an illegal lottery.


17 Judicial notice of the above document is necessary to make the Court aware
18 that Defendants have taken inconsistent positions on the above issue and that, taken
19 together, Defendants' arguments lead to the illogical conclusion that a party harmed
20 by an illegal lottery may **never** sue the operators of that lottery under CAL. BUS. &
21 PROF. CODE §17200.

22 Dated this 17th day of June, 2004.

23 Respectfully Submitted,

24 **NEWMAN & NEWMAN,**
25 **ATTORNEYS AT LAW, LLP**

26 By:


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