

EXHIBIT

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REGISTERSITE.COM et al.

CASE NUMBER

PLAINTIFF(S)

CV04-1368 ABC (CNX)

INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, a California corporation;
VERISIGN, INC., a Delaware Corporation; and
DOES 1-150, inclusive

SUMMONS

See Attached

DEFENDANT(S).

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
Newman & Newman, LLP, whose address is:

505 Fifth Avenue South, Suite 610, Seattle, WA 98104

an answer to the complaint _____ amended complaint counterclaim cross-claim
which is herewith served upon you within 20 days after service of this Summons upon you, exclusive
of the day of service. If you fail to do so, judgement by default will be taken against you for the relief
demanded in the complaint.

Clerk, U.S. District Court

Dated: MAR - 1 2004

By: TERRY BAKER

Deputy Clerk

(Seal of the Court)



FILED BY FAX

FILED

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
FOSBUE BUILDING

6 Attorneys for Plaintiffs

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8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 **REGISTERSITE.COM, an Assumed**
 12 **Name of ABR PRODUCTS INC., a New**
 13 **York Corporation; NAME.COM, LLC, a**
 14 **Wyoming Limited Liability Company; R.**
 15 **LEE CHAMBERS COMPANY LLC, a**
 16 **Tennessee Limited Liability Company**
 17 **d/b/a DOMAINSTOBESEEN.COM;**
 18 **FIDUCIA LLC, a Nevada Limited**
 19 **Liability Company; SPOT DOMAIN,**
 20 **LLC, a Wyoming Limited Liability**
 21 **Company; ! \$ 6.25 DOMAINS!**
 22 **NETWORK, INC., a Delaware**
 23 **Corporation d/b/a/ ESITE**
 24 **CORPORATION; AUSREGISTRY**
 25 **GROUP PTY LTD., an Australian**
 26 **Proprietary Limited Company; ! \$! BID**
 27 **IT WIN IT, INC., a Minnesota**
 28 **Corporation,**

Plaintiffs,

v.

23 **INTERNET CORPORATION FOR**
 24 **ASSIGNED NAMES AND NUMBERS,**
 25 **a California corporation; VERISIGN,**
 26 **INC., a Delaware Corporation; and**
 27 **DOES 1-10, inclusive;**

Defendants.

Case No. **CVO4-1368 ABC (CWx)**

COMPLAINT FOR:

- (1) Unfair Trade Practices Act Violation;
- (2) Violations of California Business & Professions Code §§ 17200, et seq.
- (3) Sherman Act, § 1, Unlawful Tying Arrangement
- (4) Sherman Act § 2, Attempted Monopolization
- (5) Violation of Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964, Predicated on Violation of 18 U.S.C. § 1951
- (6) Intentional Interference with Prospective Economic Advantage
- (7) Breach of Contract; and
- (8) Declaratory Relief, 28 U.S.C. § 201

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1 Plaintiffs REGISTERSITE.COM, an Assumed Name of ABR PRODUCTS
2 INC., NAME.COM, LLC, R. LEE CHAMBERS COMPANY LLC which does
3 business as DOMAINSTOBESEEN.COM, FIDUCIA LLC, SPOT DOMAIN, LLC,
4 !\$6.25 DOMAINS! NETWORK, INC., which does business as ESITE
5 CORPORATION, AUSREGISTRY GROUP PTY LTD., and ! \$! BID IT WIN IT,
6 INC. (collectively "Plaintiffs") file this Complaint against Defendants Internet
7 Corporation for Assigned Names and Numbers, Verisign, Inc. and Does 1-10,
8 inclusive (collectively "Defendants"), and allege as follows:
9

10 I. NATURE OF THE CASE

11 1.1. The plaintiffs are domain name registrars accredited by defendant
12 Internet Corporation for Assigned Names and Numbers ("ICANN"). Plaintiffs each
13 offer a service to assist consumers in registering expired domain names. None of
14 the plaintiffs charges a fee for its service unless and until it actually registers a
15 domain name on behalf of its customer. The plaintiffs do not make any spurious
16 "guarantees" about their services in marketing materials or elsewhere.

17 1.2. Defendant ICANN has, or has threatened to, enable Defendant
18 Verisign to implement what they call the *Wait Listing Service* (the "WLS").
19 Defendants purport to offer consumers a "guaranteed" right to register an already
20 registered domain name if the current registrant lets it expire. However, under most
21 circumstances the guarantee is meaningless because the desirable domain names
22 will never become available. Defendants have withheld any information about the
23 likelihood (or lack thereof) that the WLS will provide any value to consumers. Such
24 information, if provided, would reveal that most consumers purchasing WLS
25 subscriptions would have a negligible chance of ever registering the domain names
26 that they expect will become available.

27 1.3. Moreover, Defendant ICANN has, or has threatened to, enable
28 Defendant Verisign and third party domain name registrars to intimidate current

1 registrants into buying unnecessary "insurance" to "protect" their domain names.
2 Current registrants, who are dependent on defendants to preserve their rights and
3 investments in their domain names, will have little choice but to purchase such
4 insurance.

5 1.4. For example, if the WLS were implemented, Verisign could sell
6 consumers the "right" to be first in line to register <microsoft.com> knowing that the
7 Microsoft Corporation will not permit their rights to the domain name to become
8 available. Verisign can then sell the Microsoft Corporation insurance to protect its
9 valuable domain name from ever becoming available to the WLS consumer. The
10 WLS thereby allows Verisign and ICANN to generate fees by playing their
11 unknowing customers against each other for merely maintaining the status quo.

12 1.5. Simply put, the defendants are planning to implement (i) a scheme to
13 dupe consumers into buying domain names the consumers will never be able to
14 register, and (ii) an unlawful and fraudulent protection racket, all in violation of state
15 and federal consumer protection, unfair competition, and racketeering laws. Several
16 of the plaintiffs base their entire businesses on registering expired domain names.
17 Consequently, those plaintiffs will literally go out of business if the defendants
18 implement the WLS.

19 1.6. This lawsuit seeks to enjoin the defendants' proposed unfair and
20 unlawful WLS activities, and in the event the defendants launch the WLS, the
21 plaintiffs seek to recover the damages they will suffer as a result thereof.

22 II. THE PARTIES

23 2.1. Plaintiff ABR PRODUCTS INC. ("ABR Products") is a New York
24 corporation doing business as REGISTERSITE.COM, with its principal place of
25 business at 2 Tamarck Circle, Fishkill, New York 12524.

26 2.2. Plaintiff NAME.COM, LLC ("Name.com") is a Wyoming limited
27 liability company with its principal place of business at 360 Franklin St., Denver,
28

1 CO 80218.

2 2.3. Plaintiff R. LEE CHAMBERS COMPANY LLC
3 (“domainstobeseen.com”) is a Tennessee Limited Liability Company doing business
4 as “domainstobeseen.com” with its principal place of business at 6441 Bonny Oaks
5 Drive, Suite “C”, Chattanooga, TN 37416-3537.

6 2.4. Plaintiff FIDUCIA LLC, (“Fiducia”) is a Nevada limited liability
7 company with its principal place of business at 12-14 Vilandes St., Riga, LV-1010,
8 Latvia.

9 2.5. Plaintiff SPOT DOMAIN, LLC (“Spot Domain”) is a Wyoming limited
10 liability company with its principal place of business at 1539 Platte St., Denver, CO
11 80202.

12 2.6. Plaintiff !\$6.25 DOMAINS! NETWORK, INC. (“Esite”) is a Delaware
13 corporation doing business as Esite, with its principal place of business at 7711
14 O'Connor Blvd, Suite 416, Round Rock, TX 78681.

15 2.7. Plaintiff AUSREGISTRY GROUP PTY LTD. (“AusRegistry Group”)
16 is an Australian Proprietary Limited Company with its principal place of business
17 located at Level 6, 10 Queens Rd., Melbourne, Victoria, Australia.

18 2.8. Plaintiff ! \$! BID IT WIN IT, INC. (“BidItWinIt”) is a Minnesota
19 corporation with its principal place of business at 5400 Vernon Ave. S, Suite 218,
20 Minneapolis, MN 55436.

21 2.9. Defendant INTERNET CORPORATION FOR ASSIGNED NAMES
22 AND NUMBERS (“ICANN”) is a California corporation with its principal place of
23 business at 4676 Admiralty Way, Suite 330, Marina Del Rey, California 90292-
24 6601.

25 2.10. Defendant VERISIGN, INC. (“Verisign”) is a Delaware corporation
26 with its principal place of business located in California at 487 East Middlefield
27 Road, Mountain View, California 94043.

28 2.12. Plaintiffs are domain name registrars. Each Plaintiff is empowered to

1 be a domain name registrar by virtue of a contract into which that Plaintiff entered
2 with defendant ICANN. Said contract between ICANN and each respective
3 Plaintiff provides that such contract is "made . . . at Los Angeles, California, USA."
4 Additionally, said contract provides that disputes arising under or in connection with
5 that contract shall be resolved in Los Angeles, California.

6 2.13. The true names or capacities, whether individual, corporate, associate,
7 or otherwise, of defendants DOES 1 through 10, inclusive, are unknown to
8 Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are
9 informed and believe, and on such information and belief allege, that each of the
10 Defendants sued herein as a DOE is legally responsible in some manner for the
11 events and happenings alleged herein, and that the damages to Plaintiffs and
12 members of the general public, as herein alleged were proximately caused such
13 DOE Defendants' conduct. Plaintiffs will ask leave of this Court to amend this
14 complaint to insert the true names and capacities of DOES 1-10 in place and instead
15 of the fictitious names, when the same become known to Plaintiffs.

17 III. JURISDICTION AND VENUE

18 3.1. This Court has jurisdiction over this action pursuant to
19 15 U.S.C. §§ 1, 2 and 18 U.S.C. § 1964.

20 3.2. In addition, this Court has jurisdiction over this action pursuant to
21 28 U.S.C. § 1332(a)(1) and 28 U.S.C. § 2201, as there is complete diversity of
22 citizenship between the parties and the amount in controversy exceeds the sum or
23 value of \$75,000, exclusive of interest and costs.

24 3.3. This Court has personal jurisdiction over the defendants to this action
25 because they have each engaged in business transactions and wrongful conduct in
26 the state of California and specifically in this judicial district, and the claims alleged
27 herein arise out of those transactions and conduct. Additionally, each of the
28 defendants has systematic and continuous contacts with the state of California.

1 3.4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (c)
2 because Defendant ICANN is a corporation organized under the laws of the state of
3 California and Defendant Verisign is a corporation doing business in California.
4 Additionally, the contract between Plaintiffs and defendant ICANN that forms the
5 basis of Plaintiffs' breach of contract claim states that venue for any litigation
6 concerning the contract will be a court located in Los Angeles, California, USA.
7 This action also arises out of wrongful acts committed by Defendants in this judicial
8 district and which subject Defendants to personal jurisdiction here. Because a
9 substantial part of the events giving rise to these claims occurred in this judicial
10 district, venue is also proper under 28 U.S.C. §1391(b)(2).

12 IV. FACTS

13 A. THE DOMAIN NAME SYSTEM

14 4.1. The Internet is an interconnected network of computer networks.

15 4.2. Each computer connected to the Internet has a unique 32 bit number
16 assigned to it called an Internet protocol address (an "IP address"). The IP address
17 is represented by four decimal numbers (octets) separated by periods. For example,
18 the IP address identifying the computer which hosts the web site for defendant
19 ICANN is 192.0.34.163.

20 4.3. The IP address system is an integral part of a communications protocol
21 known as TCP/IP (*i.e.*, Transmission Control Protocol (TCP) and Internet Protocol
22 (IP)) which was developed in part in the 1970s and integrated and completed in or
23 around 1982. Communications over the Internet are made possible in large part
24 because of the development of the TCP/IP communication protocol.

25 4.4. In or around November 1983, the "domain name system" (or "DNS")
26 was developed. The domain name system allows the use of user-friendly
27 alphanumeric domain names, such as <example.com>, to identify computers on the
28 Internet instead of harder-to-remember IP addresses. The domain name system

1 operates through a series of databases that “resolve” or link domain names with the
2 IP addresses with which they are associated.

3 **B. THE DOMAIN NAME HIERARCHY**

4 4.5. The DNS defines a hierarchical name space divided into zones, each of
5 which has authority over the zones below it. The top zone is divided into top-level
6 domains, or “TLDs”. Each TLD is divided into second-level domains. Second-
7 level domains can be further divided into third-level domains, and so on.

8 4.6. In the domain <www.example.com>, <.com> is the top-level domain,
9 <example.com> is the second level domain, and <www.example.com> is the third
10 level domain, also referred to as the “hostname.” Each element of the domain is
11 unique in its level in its zone. Thus, there can be any number of hosts named
12 “www”, but there can only be one host named “www” in <example.com> (or any
13 particular second-level domain). Similarly, although there can only be one second-
14 level domain <example.com>, there can be as many second-level domains beginning
15 with “example” as there are TLDs (e.g., <example.info>, <example.us>, etc.).

16 4.7. A set of “root servers” provides a list of the registries responsible for
17 maintaining each top-level domain. Each registry’s name server provides references
18 to the name servers associated with each domain name within that TLD, which in
19 turn provide the IP address associated with the domain name.

20 4.8. The top-level domain name space of the DNS includes fourteen
21 “generic” top-level domains, two hundred forty-three (243) two-letter country code
22 domains, and one top level domain (*i.e.*, <.arpa>) reserved for Internet infrastructure
23 purposes. Seven of the generic top domains, or “gTLDs” <.com>, <.net>, <.org>,
24 <.edu>, <.gov>, <.mil>, <.int> (the “Original gTLDs”) were established in the
25 1980s. The remainder, <.biz>, <.info>, <.museum>, <.coop>, <.name>, <.pro> and
26 <.aero> (the “New gTLDs,”), were authorized by defendant ICANN in 2000 and
27 activated between 2001 and 2002.

28 4.9. At the time the Original gTLDs were established, it was contemplated

1 that <.com> would be used by commercial entities, <.net> by entities involved with
2 the Internet networking infrastructure, <.org> by nonprofit organizations, <.edu> by
3 educational institutions, <.gov> by the United States government, <.mil> by the
4 United States Military, and <.int> by international organizations. No restrictions on
5 registration were ever enforced in <.com> and <.net>, however, and individuals,
6 businesses, network organizations, and non-profit organizations alike are permitted
7 to register second-level domain names in those gTLDs.

8 4.10. Of the New gTLDs, four (<.biz>, <.info>, <.name>, and <.pro>) are
9 unsponsored, while three (<.aero>, <.coop>, and <.museum>) are sponsored.

10 Generally speaking, an unsponsored TLD operates under policies established by
11 ICANN, while a sponsored TLD operates under policies established by the
12 sponsoring organization.

13 C. REGISTRANTS, REGISTRIES, AND REGISTRARS

14 4.11. A "registrant" is a person who registers a domain name. A registrant
15 has the exclusive right to use the domain names they register during the registration
16 period. A registrant is a consumer.

17 4.12. As used herein, a "registry" is an organization responsible for
18 maintaining the authoritative database of domain name/nameserver information for a
19 top-level domain space. This database is known as the "zone file". Often times, the
20 registry is referred to as a "registry operator" and the zone file is referred to as the
21 "registry".

22 4.13. Internet users typically interact with the DNS through their Internet
23 Service Providers. Specifically, when a user requests a Web site associated with a
24 domain name, the user's computer looks in its local cache for the IP address
25 associated with that domain name. If the IP address is not found locally, the
26 computer will query the ISP's name server. If the ISP's name server does not have
27 the IP address for the domain name requested, it will query the appropriate
28 registry's name server (*i.e.* its zone file), from which it will obtain the name and IP

1 address of the name server associated with the domain name requested. It will then
2 query the name server associated with the domain name, and pass the IP address
3 back to the user's computer.

4 4.14. If more than one zone file existed for a top-level domain, Internet
5 traffic would be unpredictable because two users might be routed to different
6 destinations depending on which zone file their computer queried. Consequently,
7 there can only be one authoritative registry for each top-level domain. As the
8 operator of the sole authoritative registry for a top-level domain, a registry operator
9 holds a monopoly with respect to registry services for that domain, and exercises
10 market power with respect to that domain.¹

11 4.15. A "registrar" acts as an interface between registrants and the registry
12 operator, providing domain name registration and other related services to
13 consumers.

14 4.16. In a typical transaction, a consumer visits a registrar's Web site and
15 enters a second-level domain name such consumer is interested in registering in a
16 search box provided for that purpose, and indicates the TLDs in which he is
17 interested in registering that domain. The registrar then queries the appropriate
18 registries and informs the customer whether, and in what TLDs, the desired domain
19 name is available.

20 4.17. Thus, a customer who searches for the second-level domain "example"
21 might find that "example.com" is already registered, but that "example.info" is
22 available. The registrar may also suggest alternative domain names that are
23 available for registration. If the customer decides to register a domain name, the
24 registrar collects the customer's contact and payment information, processes the
25

26 ¹ See, e.g., letter from Andrew J. Pincus, Department of Commerce, to Hon. Tom Bliley,
27 Chairman, House Committee on Commerce, 7/8/1999 ("With respect to NSI's provision of registry
28 services - as to which an unsupervised NSI would be able to exercise market power today and for the
foreseeable future - we believe the NSI-ICANN agreement must assure reasonable supervision to prevent
the exercise of that market power in a way that injures consumers.")

1 payment, and adds the domain name and its associated name server information to
2 the appropriate registry.

3 4.18. Registrants register and administer domain names through registrars,
4 and do not interact directly with the registry in connection with domain name
5 registrations.

6 4.19. There can (but need not) be multiple registrars for each top-level
7 domain, all of which interface with the registry.

8 4.20. From a domain name sales standpoint, a registry sells domain names in
9 its name space to registrars on a wholesale basis. Registrars, in turn, sell those
10 domain names to registrants on a retail basis. Registrars bill and collect fees from
11 registrants for domain names. Registries almost always charge per-domain fees to
12 registrars.

13 **D. HISTORY OF GTLD DOMAIN NAME ADMINISTRATION**

14 4.21. Today's Internet has its origins in a network called the ARPANET,
15 which was launched by the Department of Defense (DOD) in 1969. ARPANET
16 was superceded by NSFNET, a network developed by the National Science
17 Foundation (the "NSF") in 1990.

18 4.22. In 1992, Congress passed the Scientific and Advanced-Technology Act
19 of 1992, 42 U.S.C. § 1862(g), which allowed commercial activity on NSFNET and
20 permitted NSFNET to interconnect with commercial networks.

21 4.23. In 1993, NSF signed a cooperative agreement with Network Solutions,
22 Inc. ("NSI") under which NSI became the exclusive registrar for second-level
23 domains in <.com>, <.net>, <.org>, and <.edu> , as well as the exclusive registry
24 operator for each of those top-level domains. The NSF initially underwrote NSI's
25 domain registration services, thereby allowing Internet users to register domain
26 names free of charge. However, on September 13, 1995, NSF and Network
27 Solutions entered into Amendment 4 of the cooperative agreement, which permitted
28 Network Solutions to charge Internet users \$100 for a two-year registration of a

1 second-level domain in the<.com>, <.net>, and <.org> domains. Thirty percent
2 (30%) of the registration fees were to be paid into an NSF Infrastructure fund. In
3 April 1998, the portion of the fee allocated to the Infrastructure fund was held to
4 constitute an unconstitutional tax, and the effective rate for domain registrations
5 dropped to \$35/year.

6 4.24. Beginning with the development of the domain name system in the mid
7 1980s and continuing through the present, domain names in <.com> and <.net>
8 (among other TLDs) have been registered on a first-come, first-serve basis.

9 4.25. On July 1, 1997, the Clinton administration issued a report on
10 electronic commerce, "*A Framework for Global Electronic Commerce.*" Among
11 other things, the report supported private efforts to address Internet governance and
12 made the Department of Commerce the lead agency on this initiative.

13 Accompanying the report was a presidential directive that called on the Department
14 to "support efforts to make the governance of the domain name system private and
15 competitive and to create a contractually based self-regulatory regime that deals
16 with potential conflicts between domain name usage and trademark laws on a global
17 basis." To carry out this mission, the Department first issued a Request for
18 Comment on domain names system administration, and then on February 20, 1998,
19 it published *Proposal to Improve Technical Management of Internet Names and*
20 *Addresses*² (commonly referred to as the "Green Paper"). After receiving more than
21 650 comments, the Department ended the proposed rulemaking and instead
22 published on June 10, 1998, a policy statement, also known as the "White Paper".
23 The White Paper, reflecting the views of the overwhelming majority of comments,
24 called upon the private sector to create a new, not-for-profit corporation to assume
25 responsibility, over time, for the management of certain aspects of the DNS. The
26 White Paper identified four specific functions to be performed by this new
27

28 ² 63 Fed. Reg. 8825 (1998)

1 corporation: (i) To set policy for and direct the allocation of Internet protocol (IP)
2 number blocks; (ii) To develop overall policy guidance and control of top level
3 domains (TLDs) and the Internet root server system; (iii) To develop policies for the
4 addition, allocation, and management of gTLDs, and the establishment of domain
5 name registries and domain name registrars and the terms, including licensing terms,
6 applicable to new and existing gTLDs and registries under which registries,
7 registrars, and gTLDs are permitted to operate; and (v) To coordinate maintenance
8 and dissemination of the protocol parameters for Internet addressing. The White
9 Paper also articulated the fundamental policies that would guide United States
10 participation in the transfer of DNS management responsibility to the private sector:
11 stability; competition; private, bottom-up coordination; and representation.

12 4.26. The White Paper listed a number of tasks to be undertaken on a
13 priority basis, including in particular the creation and organization of a new, not-for-
14 profit corporation ("NewCo") to manage the DNS and the rapid introduction of
15 competition in the provision of domain name registration services. The Department
16 of Commerce committed to enter into an agreement with NSI by which NSI would
17 agree to take specific actions, including commitments as to pricing and equal access,
18 designed to permit the development of competition in domain name registration.

19 4.27. In fulfillment of the commitment expressed in the White Paper, on
20 October 7, 1998, the Department of Commerce and NSI entered Amendment 11 to
21 the Cooperative Agreement. In Amendment 11, NSI agreed to recognize NewCo
22 "when recognized by the USG in accordance with the provisions of the Statement of
23 Policy." NSI further committed to enter into a contract with NewCo, and
24 acknowledged "that NewCo will have the authority, consistent with the provisions
25 of the Statement of Policy and the agreement between the USG and NewCo, to
26 carry out NewCo's Responsibilities." Under Amendment 11, NewCo's
27 Responsibilities specifically include the establishment and implementation of DNS
28 policy and the terms, including licensing terms, applicable to new and existing

1 gTLDs and registries under which registries, registrars and gTLDs are permitted to
2 operate." Amendment 11 also provided for the development, deployment, and
3 licensing by NSI (under a license agreement to be approved by the Department of
4 Commerce) of a mechanism to allow multiple registrars to submit registrations for
5 the gTLDs for which NSI acted as the registry (the "Shared Registration System,"
6 or "SRS").

7 **E. THE FORMATION OF DEFENDANT ICANN**

8 4.28. In September 1998, Defendant Internet Corporation for Assigned
9 Names and Numbers was formed. ICANN is a not for profit California corporation
10 organized without members. According to its bylaws, the board of directors of
11 ICANN controls it.

12 4.29. In October, 1998, ICANN transmitted to the United States Department
13 of Commerce a copy of Defendant ICANN's articles of incorporation, and proposed
14 bylaws. In November 1998, the Department of Commerce entered into a
15 Memorandum of Understanding with ICANN that recognized ICANN as the new,
16 not-for-profit corporation for DNS management and specifically contemplated
17 ultimate transition of management responsibility to ICANN. In the Memorandum of
18 Understanding, ICANN expressly agreed to abide by principles of stability,
19 competition, private, bottom-up coordination, and representation:

20 **C. The Principles:**

21 The parties will abide by the following principles:

22 1. Stability

23 This Agreement promotes the stability of the Internet and allows the
24 Parties to plan for a deliberate move from the existing structure to a
25 private-sector structure without disruption to the functioning of the DNS.
The Agreement calls for the design, development, and testing of a new
management system that will not harm current functional operations.

26 2. Competition

27 This Agreement promotes the management of the DNS in a manner that
28 will permit market mechanisms to support competition and consumer
choice in the technical management of the DNS. This competition will

1 lower costs, promote innovation, and enhance user choice and
2 satisfaction.

3 **3. Private, Bottom-Up Coordination**

4 This Agreement is intended to result in the design, development, and
5 testing of a private coordinating process that is flexible and able to move
6 rapidly enough to meet the changing needs of the Internet and of Internet
7 users. This Agreement is intended to foster the development of a private
8 sector management system that, as far as possible, reflects a system of
9 bottom-up management.

10 **4. Representation.**

11 This Agreement promotes the technical management of the DNS in a
12 manner that reflects the global and functional diversity of Internet users
13 and their needs. This Agreement is intended to promote the design,
14 development, and testing of mechanisms to solicit public input, both
15 domestic and international, into a private-sector decision making process.
16 These mechanisms will promote the flexibility needed to adapt to changes
17 in the composition of the Internet user community and their needs.

18 4.30. The Memorandum of Understanding also obligated ICANN to "act in a
19 non-arbitrary and reasonable manner with respect to design, development, and
20 testing of the DNS Project and any other activity related to the DNS Project," and to
21 refrain from acting "unjustifiably or arbitrarily to injure particular persons or entities
22 or particular categories of persons or entities."

23 **F. THE SHARED REGISTRATION SYSTEM**

24 4.31. On February 8, 1999, ICANN issued proposed guidelines for the
25 selection and accreditation of registrars in the <.com>, <.net>, and <.org> domains.
26 On March 4, 1999, after discussion of the guidelines within the Internet community,
27 ICANN's Board of Directors adopted a Statement of Registrar Accreditation Policy.

28 4.32. On April 21, 1999 ICANN selected America Online, CORE (Internet
Council of Registrars), France Telecom/Oléane, Melbourne IT and register.com as
the five registrars that would compete with NSI in the "testbed" phase of the SRS.
On April 27, 1999 Register.com signed the original Registrar Accreditation
Agreement, and on June 2, 1999 Register.com, the first competitive registrar, began
registrations in <.com>, <.net>, and <.org> top-level domains. On September 28,

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1 1999 the U.S. Department of Commerce, NSI, and ICANN announced tentative
2 agreement on a series of agreements among them (including a revised Registrar
3 Accreditation Agreement and a Registry-Registrar Agreement) concerning the post-
4 testbed operation of the <.com>, <.net>, and <.org> top-level domains in a
5 competitive environment. Those agreements were approved by ICANN's Board of
6 Directors on November 4, 1999 and signed by ICANN, the Department of
7 Commerce, and NSI on November 10, 1999.

8 **G. DOMAIN NAME EXPIRATION AND DELETION**

9 4.33. As the total number of domain names registered in <.com> and <.net>
10 has grown past thirty million, the pool of unregistered names³ has been reduced
11 accordingly. As early as 1999, news media were reporting a "shortage" of domain
12 names in <.com>.

13 4.34. In April 1999, for example, in an article entitled "Domain Name List is
14 Dwindling," *Wired News* reported:

15 Wouldn't it be great to own a domain name that's also a popular word?
16 Your site could be an instant classic like amazon.com or broadcast.com.
Or sex.com or news.com.

17 Well, forget it. You don't stand a chance. Start-ups, squatters, and
18 speculators already have bought up all the Internet's prime real estate. A
19 *Wired News* investigation found that the .com versions of nearly all
20 popular words have been taken. Of 25,500 standard dictionary words we
21 checked, only 1,760 were free. And those were hardly winners. Who
really wants to pay good money for maggoty.com or gluttonous.com? No
smart entrepreneur has yet decided to lug around encumbrance.com or
puzzle out what should go up at eigenfunction.com.

22 The result: The once-fierce pace of domain name registration is slowing.
23 In the last month, only about 100 new dictionary-word .com domains
have been snatched up.⁴

24 4.35. As the number of registered domain names increases, not only the

25
26 ³The pool of unregistered domain names is equal to all possible second-level domain names minus
27 the sum of i) registered domain names and ii) domain names the registration of which is prohibited by law
or policy (such as <example.com>, which is reserved for demonstration pursuant to RFC 2606).

28 ⁴McCulloch, Declan, *Domain Name List is Dwindling*, *Wired News*, April 14, 1999
<http://www.wired.com/news/technology/0,1282,19117,00.html> (last accessed February 21, 2004).

1 quantity but the quality of available unregistered names decreases.

2 4.36. The shortage of desirable domain names in <.com> and <.net> is
3 ameliorated to some degree by the number of registered domain names that expire
4 because they are not renewed by their current registrants.

5 4.37. Expired domain names are a critical resource for registrars and
6 consumers. Approximately 800,000 domain names expire each month and are
7 returned, at least momentarily, to the pool of unregistered domains available for
8 registration. In light of the shortage of desirable domain names, competition for
9 expired domain names can be fierce.

10 **H. THE DOMAIN NAME DELETION PROCESS**

11 4.38. Domain names are registered for fixed periods from a minimum of one
12 year to a maximum of ten years, in one year increments.

13 4.39. As the end of the registration period (the "expiry date") approaches,
14 the registrar associated with the domain name (the "sponsoring registrar") typically
15 sends the registrant one or more reminders that they must pay the domain name
16 renewal fee or the domain name will expire.

17 4.40. If the registrant renews the domain name, the registrar sends a
18 command to the registry to extend the expiry date by the number of years for which
19 the registrant has renewed. The domain name remains in active status until the next
20 expiry date.

21 4.41. If the customer has not renewed the domain name by the expiry date,
22 the registry automatically adds one year to the expiry date and debits the sponsoring
23 registrar's account \$6.00 for the one-year renewal.

24 4.42. Although different registrars have different policies regarding
25 expiration, most provide a "grace period" after the expiry date during which a
26 domain name can be renewed and reactivated, albeit often at a higher fee. If the
27 registrant renews the domain name during the grace period, the domain name returns
28 to active status until the next expiry date.

1 4.43. If the registrant does not renew the domain within whatever grace
2 period the sponsoring registrar may provide (if any), the sponsoring registrar sends a
3 "delete" command to the registry within forty-five (45) days following the expiry
4 date (the "Auto-Renew Grace Period" or "ARGP"), and the registry credits the
5 \$6.00 renewal fee back to the sponsoring registrar's account.

6 4.44. Upon receipt of a "delete" command, the registry places the domain
7 name on Redemption Period (RP) status for thirty (30) days, during which it can be
8 recovered by the registrant (the "Redemption Grace Period" or "RGP") upon
9 payment of a recovery fee determined by the sponsoring registrar (typically over
10 \$100). Domain names in RP status do not appear in the zone file (and thus cannot
11 be accessed via the Internet). The RGP was implemented in January 2003 to
12 prevent domain names from being lost as a result of unintentional non-renewal.

13 4.45. If the registrant does not redeem the domain name within the RGP, the
14 registry changes the domain name to "Pending Delete" status, where it remains for
15 five (5) days. When in Pending Delete status, the domain name's status cannot be
16 changed by either a registrar or the registry, and the domain name will be deleted.
17 On the sixth day after being placed on Pending Delete status, the domain name is
18 deleted from the registry.

19 4.46. Domain names are deleted from the registry in a batch process that
20 takes place once a day (the "Batch Delete"). Approximately 20,000 domain names
21 are deleted each day in the Batch Delete. All registrars have equal access to deleted
22 (*i.e.*, expired) domain names.

23 4.47. During a Batch Delete, many registrars compete to register expired
24 domain names on behalf of their customers. Each competing registrar sends a series
25 of "add" commands to the registry for each of the domains in the Batch Pool that it
26 is attempting to register. The first competing registrar to have its command accepted
27 for a given domain name registers that domain name. A desirable domain name that
28 is deleted during a Batch Delete will often be re-registered within a few

1 milliseconds of being deleted by the registry.

2 4.48. Verisign has set up specialized equipment to accommodate the high
3 volume of "add" commands received from registrars competing to register domains
4 deleted in the Batch Delete. Such equipment is generally referred to as the "Batch
5 Pool." The Batch Pool helps insure that all registrars attempting to register the
6 domain names in the Batch Delete have equivalent access.

7 **I. COMPETITION FOR EXPIRED DOMAIN NAMES**

8 4.49. Consumers who wish to obtain a domain name that is currently
9 registered can choose from many different companies that will assist them in doing
10 so, through various business models including fixed price, first-come-first-serve,
11 auction, and brokering.

12 4.50. Currently, each registrar that attempts to register domain names deleted
13 in the Batch Delete offers its customers whatever services it thinks best, at whatever
14 prices it chooses to set. Prices for domain names registered after being deleted in
15 the Batch Delete can range from less than ten dollars to tens of thousands of dollars.

16 4.51. Many (if not most) ICANN-accredited domain name registrars offer
17 backorder services in some form. There are typically at least 100 registrars
18 competing to be the first to register desirable domain names as they are deleted from
19 the registry.

20 4.52. Those registrars that do not offer backorder services are in no way
21 precluded from registering expired domain names, as all registrars have equal access
22 to the entire pool of unregistered domain names.

23 **J. PLAINTIFFS' SERVICES**

24 4.53. Plaintiffs each offer a service to assist consumers in registering domain
25 names immediately upon expiration. More than ninety percent (90%) of the domain
26 name orders Plaintiffs receive from consumers relate to domain names that are
27 scheduled to be deleted, rather than to active, currently-registered domain names.

28 4.54. Plaintiffs charge no annual or other fees for their services unless and

1 until a domain name is registered on the customer's behalf, in which case the
2 customer is charged a \$60 registration fee. If multiple orders have been placed for
3 the same domain name, the domain name is sold at an auction in which only those
4 who placed backorders are allowed to participate. Because plaintiffs do not charge
5 their customers unless the customers obtain a domain, customers can (and do) place
6 backorders on dozens if not hundreds of domain names, thereby greatly increasing
7 the likelihood that they will obtain at least one of the domain names they order.

8 4.55. Plaintiffs make no guarantee that any backorder will be successful, and
9 plaintiffs' customers understand that plaintiffs are competing with other registrars to
10 be the first to register expired domain names. Plaintiffs' auction model insures that
11 each domain name successfully registered will ultimately be registered to the person
12 who places the highest value on it based on their own business needs.

13 4.56. Plaintiffs offer their customers, at no charge, various valuable services
14 relating to expired domain names. Such services include, without limitation, daily e-
15 mail notification of soon-to-be-available domain names and e-mail notification of
16 soon-to-be-available domain names containing user specified keywords.

17 4.57. Some of plaintiffs' competitors, such as SnapNames, charge an annual
18 subscription fee to backorder a domain name. SnapNames allows only one
19 "backorder" per domain name and, for \$69/year, attempts to be the first to register
20 that domain name when (and if) it is deleted from the registry. SnapNames has a
21 strategic partnership with defendant Verisign.

22 4.58. Other competitors offer backorder services at a lower annual fee, or for
23 a one-time fee, or charge a higher recurring fee for monitoring a larger number of
24 domain names. Currently, consumers have substantial choice in domain name
25 backordering.

26 4.59. Although many who use backorder services are individuals and
27 businesses who hope to obtain a domain name to use themselves, others are brokers
28 and resellers who attempt to obtain domain names through the expired domain name

E 60

1 services described above, and then resell them.

2 **K. DEFENDANT VERISIGN'S ATTEMPTS TO SEIZE EXPIRING DOMAIN NAMES**

3 4.60. Defendant Verisign operates the <.com> registry by virtue of having
4 acquired NSI in March 2000. In October 2003, Verisign sold 85% of the NSI
5 registrar to a private investment group, but retained the NSI registry (and 15% of the
6 NSI registrar). Verisign, both as registry operator and through NSI, has a long
7 history of attempting to seize (among other things) expiring and expired domain
8 names for its own benefit.

9 4.61. In February 1999, for example, prior to the implementation of the SRS,
10 Network Solutions announced that it would limit public access to the zone files. At
11 the time, companies offering services related to soon-to-be-available domains used
12 the zone files to determine which domains were due to expire.⁵ NSI ultimately
13 restored zone file access at the insistence of the Department of Commerce.

14 4.62. In March 1999, NSI blocked access to certain WHOIS information
15 (*i.e.*, registrant contact information required by the government to be public), and
16 asserted that it was the exclusive owner of the information in the WHOIS database
17 and could not be required to share it. All data in the WHOIS database had been
18 collected by NSI under the authority of the Department of Commerce.⁶ NSI
19 ultimately restored WHOIS access at the insistence of the Department of
20 Commerce.

21 4.63. Also in March 1999, NSI redirected traffic to the InterNic web site,
22 which it operated on behalf of the U.S. government, to its own NSI registrar site.
23 NSI ultimately removed the redirect at the insistence of the Department of
24 Commerce.

25
26
27 ⁵See Oakes, Chris, *Companies Decry NetSol Policy*, Wired News, February 19, 1999
<http://www.wired.com/news/politics/0,1283,17973,00.html> (last accessed February 21, 2004).

28 ⁶See *Commerce to NSI: Give it Up*, Wired News, July 26, 1999
<http://www.wired.com/news/print/0,1294,20950,00.html> (last accessed February 21, 2004).

1 4.64. In May 2000, NSI stopped deleting expired names and accumulated an
2 inventory estimated at more than one million expired domain names.

3 4.65. In June 2000, NSI announced that it would no longer delete expiring
4 domain names, and instead would auction them off.⁷ NSI ultimately dropped the
5 plan at ICANN's insistence.

6 4.66. In September 2003, without warning or discussion, Verisign added a
7 "wildcard" to the DNS root for <.com> and <.net>, as a result of which *all*
8 *unregistered domains* resolved to Verisign's own advertising-supported search site
9 rather than to the standard "The Page Cannot be Displayed" DNS error page
10 (which is generated locally on the user's computer).⁸ Many software applications
11 that relied on being able to distinguish between "good" and "bad" domain names
12 (especially spam-prevention software) failed as a result of the configuration change.
13 In response to public outrage and at ICANN's insistence, Verisign disabled the
14 "service," but states that it plans to reactivate it in the future.⁹

15 **L. THE PROPOSED VERISIGN WAIT LISTING SERVICE**

16 4.67. In March 2002, Verisign requested that Appendix G to the .com and
17 .net Registry Agreements between Verisign and ICANN be amended. That
18 appendix specifies the maximum price that Verisign may charge for "Registry
19 Services." Registry Services are defined as those that are "provided as an integral
20 part of the operation of the Registry TLD". In essence, "Registry Services" are those
21 that a registry operator is enabled to provide on a sole-source basis by virtue of its
22 appointment as such by ICANN, rather than services that are provided on a freely
23 competitive basis.

24 4.68. The proposed WLS is a registry service because, unlike the expired
25

26 ⁷See Oakes, Chris, *NSI Commandeers Deadbeat Domains*, Wired News, June 26, 2000.

27 ⁸See *VeriSign Sued Over Search Service*, Wired News, September 19, 2003
<http://www.wired.com/news/business/0,1367,60518,00.html> (last accessed February 21, 2004).

28 ⁹See *Internet Users Give Thumbs-Up to Site Finder Service*,
http://www.verisign.com/corporate/news/2003/pr_20031007b.html (last accessed February 21, 2004).

1 domain name services currently provided competitively by registrars, it is
2 implemented bypassing the normal return of deleted names to the available pool.
3 Instead, the WLS automatically causes an expired domain name to be assigned to
4 the registrar who sold the WLS subscription, and ultimately to its customer who
5 purchased the WLS subscription on that domain name.

6 4.69. As proposed by Verisign, the WLS would operate as follows: Acting
7 on behalf of customers, accredited registrars could place reservations for currently
8 registered domain names in the .com and .net top-level domains. Only one
9 reservation would be accepted for each registered domain name, and each
10 reservation would be for a one-year period. Registrations for names would be
11 accepted on a first-come/first-served basis, with the opportunity for renewal.

12 4.70. Verisign would charge the registrar a \$24.00 fee for each WLS
13 subscription placed. The registrar's fee to its customer would be established by the
14 registrar.

15 4.71. Before deleting registered domain names from the registry, Verisign
16 would first check to determine whether a reservation has been placed for the name.
17 If there is a reservation, Verisign would not delete the name, but instead would
18 assign the name to the registrar who placed the reservation, charging the \$6.00
19 annual registration fee to the registrar. The registrar would then register the name to
20 its customer, charging a fee determined by agreement of the registrar and customer.

21 4.72. If there is no reservation, Verisign would delete the name from the
22 registry, so that the name is returned to the pool of names available for re-
23 registration through all registrars on a first-come/first-served basis.

24 4.73. Verisign proposed to implement the WLS for a one-year trial. At the
25 end of the year, ICANN and Verisign would evaluate whether the service should be
26 continued. In the event the WLS is not continued, reservations extending beyond the
27 trial would be honored. Although Verisign proposes to allow only (1) subscription
28 pending at a time during the trial period, it has indicated its desire to offer a "deeper

1 subscription queue" in the future (e.g., "second in line", "third in line", etc.).

2 4.74. The VeriSign Registry Registrar Protocol (RRP) would not be used in
3 the implementation of WLS. Rather, Registrars would perform all subscription
4 transactions with Verisign using Verisign's "Name Store" interface, separate from
5 the Shared Registration System (SRS). Registrars cannot offer WLS subscriptions
6 unless they use the "Name Store" interface. Installation of the Name Store interface
7 requires potentially hundreds of hours of programming, at a cost of tens of
8 thousands of dollars.

9 4.75. If the WLS is implemented, Verisign will become the sole source
10 provider from which consumers could secure an expiring domain name. Although
11 WLS subscriptions would be sold by registrars, rather than by Verisign itself,
12 Verisign's control of the registry precludes any possibility of competition. Thus, no
13 registrar will be able to offer a service that charges a fee only if it succeeds in
14 registering a domain name on the customer's behalf, or that charges a one-time fee
15 rather than an annual fee; nor will registrars be allowed to auction expired domain
16 names in a fair and equitable manner. Verisign's \$24 per year fee for WLS
17 subscriptions precludes those business models.

18 4.76. If the WLS is implemented, Plaintiffs will be unable to offer the
19 services they currently provide. Several of the Plaintiffs derive their entire revenue
20 from services relating to expired domain names, and will be put out of business if
21 the WLS is implemented. Others, if not put out of business, will lose their primary
22 source of revenue and the entire goodwill associated with their businesses and
23 business models.

24 4.77. For consumers, the replacement of a "pay if successful" model with an
25 annual subscription model is a significant loss. The "pay if successful" model is the
26 market's successful attempt at accommodating the fact that most currently
27 registered domains will be renewed, and that back orders on currently-registered
28 names are therefore of inherently uncertain value (and of no value at all with respect

1 to certain domain names).

2 4.78. As of October 2003, the latest month for which figures are available,
3 there were 26,226,110 registered domain names in <.com> and 4,387,134 registered
4 domain names in <.net>, for a total of 30,618,929 registered domain names in those
5 TLDs.

6 4.79. In October 2003, 462,247 domain names were deleted from the
7 <.com> registry, and 83,367 domain names were deleted from the <.net> registry,
8 for a total of 545,614 domain names deleted altogether. Assuming that October
9 2003 was typical, approximately 23% of domain names in <.com> and <.net> are
10 deleted each year.

11 4.80. If WLS subscriptions are distributed randomly among all domain
12 names, only about 23% will result in the consumer obtaining the domain name to
13 which such consumer subscribes.

14 4.81. WLS subscriptions are unlikely to be distributed randomly among all
15 domain names. Rather, WLS subscriptions are likely to be purchased on the most
16 desirable domain names, and are unlikely to be purchased on the least desirable
17 domain names. Shorter domain names are commonly considered more desirable
18 than longer domain names, and domain names that are words in the English
19 language are commonly considered more desirable than domain names that are not
20 words in the English language.

21 4.82. The likelihood that a domain name will be allowed to expire and will
22 be deleted from the registry varies according to (among other things) the number of
23 years that it has already been registered, the number of characters it contains, and
24 whether or not it is a word in the English language. In general, the longer a domain
25 name has already been registered, and the shorter it is, the less likely it is to be
26 allowed to expire. Domain names that are words in the English language are less
27 likely to be allowed to expire than domain names that are not.

28 4.83. Less than five percent (5%) of domain names that have been registered

1 for three years or more that are less than five characters (not including the TLD), or
2 that are words in the English language, are allowed to expire. Consequently, of
3 WLS subscriptions on the most desirable domain names, ninety five percent (95%)
4 of consumers will never obtain the domain names to which they subscribe.

5 4.84. Consumers have a significant information disadvantage relative to
6 Verisign in connection with WLS subscriptions. With a sufficiently large data set, it
7 is likely possible to predict with some accuracy which desirable domain names will
8 be allowed to expire and which will not. A robust model would likely analyze not
9 only the domain name's desirability and stability, as described above, but also such
10 matters as whether the domain name resolves to a Web site, how frequently that
11 Web site (if existent) is unavailable, whether the registrant has allowed other
12 domain names to expire, the timing of any previous renewals of the domain name
13 relative to the expiry date, etc.

14 4.85. As the former sole owner of NSI registrar, and the current operator of
15 the <.com> and <.net> registries, Verisign has exclusive access to a vast amount of
16 data that would be relevant in building a model to predict which domain names are
17 likely to be allowed to expire. Indeed, it is likely that Verisign will be the only party
18 in the world capable of building such a data set.

19 4.86. The only limitation on Verisign's ability to purchase WLS
20 subscriptions on its own behalf is that it must do so through an accredited registrar.
21 If Verisign purchases WLS subscriptions through NSI, at the current NSI price of
22 \$35 per year (including registration fee), Verisign's effective price for a WLS
23 subscription will be \$4.25 (before volume discounts). For each \$35 that Verisign
24 pays to NSI, NSI will pay Verisign \$24 for the WLS subscription, \$6 for the domain
25 registration, and 15% of the balance (corresponding to Verisign's equity interest in
26 NSI).

27 4.87. There will not be any equivalent of the WHOIS database for WLS
28 subscriptions. Only those registrars who offer WLS will be able to determine

1 whether a particular domain name has a WLS subscription on it, and then only by
2 querying one domain at a time through the Name Store interface.

3 **M. ICANN'S CONSIDERATION OF THE WLS PROPOSAL**

4 4.88. Verisign first made its WLS proposal in December, 2001 by sending it
5 to the ICANN Registrar Constituency, which represents the stakeholders who
6 would be most directly impacted by the WLS proposal. The reaction from the
7 members of the Registrar Constituency was overwhelmingly negative. On 10 March
8 2002, the Registrars Constituency adopted a resolution opposing implementation of
9 the WLS and urging ICANN to withhold permission for its implementation.

10 4.89. Verisign then submitted the WLS proposal to the ICANN board, in the
11 form of a request to amend Appendix G of the <.com> and <.net> registry
12 agreements to allow it to offer the service. On April 17 2002, ICANN general
13 counsel Louis Touton, in an analysis of the WLS for the Board of Directors, noted
14 that "ICANN has not yet developed a well-defined procedure for considering
15 requests by registry operators to amend Appendix G to allow charging for an
16 additional registry service." Recognizing that "action on VGRS's proposal may
17 serve as a model for future actions," Mr. Touton cautioned the Board that "it is
18 important to carefully consider the process that should be followed."

19 4.90. After noting that the registry operator is in a sole-source position in
20 providing registry services and that its position as such "carries with it the potential
21 for various types of harm to the legitimate interests of others," Mr. Touton
22 concluded that "[u]nder [the] circumstances, and given the existing conceptual
23 approach of ICANN to seek consensus where possible, it is my judgment that *the*
24 *Board should not seek to decide how to deal with this request without invoking the*
25 *formal consensus development processes* currently established within ICANN"
26 (emphasis added).

27 4.91. On April 22, 2002, the Board considered Mr. Touton's analysis, and
28 resolved to solicit community comment on Verisign's request. The Board also

1 requested the Names Council to coordinate within the Domain Name Supporting
2 Organization ("DNSO"), an ICANN constituency concerned with DNS issues, a
3 task force (the "Task Force") to prepare and submit its recommendations regarding
4 the WLS.

5 4.92. The Task Force consulted the various constituents whose interests
6 would be impacted by the WLS and determined that the *consensus was*
7 *overwhelmingly opposed* to implementing the WLS. On July 12, 2002, the Task
8 Force recommended that the Board "*reject Verisign's request to amend its*
9 *agreement to enable it to introduce its proposed WLS,*" and "*reject Verisign's*
10 *request to trial the WLS for 12 months.*" (emphasis added).

11 4.93. On August 23, 2002, notwithstanding the opposition of the Registrar
12 Constituency, the Task Force, and the vast majority of constituents who expressed
13 their opinions on the ICANN web site, the ICANN Board adopted a resolution
14 authorizing ICANN's President and General Counsel to negotiate with VeriSign for
15 the establishment of WLS.

16 4.94. On September 9, 2002, ICANN-accredited registrar Dotster invoked
17 Section 4.3.2 of the 2001 Registrar Accreditation Agreement (the "RAA") and
18 requested an independent review of the Board's actions and disputing the presence
19 of a consensus. ICANN had not then, and on information and belief has not now,
20 established any Independent Review Panel. On September 12, 2002, Dotster
21 submitted a reconsideration request and formal request for review under ICANN's
22 Reconsideration Request Policy, asking ICANN to reconsider its August 23
23 decision.

24 4.95. ICANN took no action on Dotster's request until May 20, 2003, when
25 it issued a recommendation that the Board take no action on Dotster's
26 reconsideration request. ICANN also indicated that it was not obligated to institute
27 an independent review of its actions, as requested by Dotster.

28 4.96. On June 2, 2003, the ICANN Board adopted the recommendation

1 issued on May 20, and again authorized negotiations between itself and VeriSign
2 toward the establishment of WLS. Those negotiations recently concluded.

3 4.97. Some Registrars are currently promoting the WLS and are accepting
4 “pre-orders” for WLS subscriptions on their Web sites.

5 4.98. Plaintiffs are informed and believe, and on that basis allege, that
6 Verisign plans to launch the WLS no more than thirty (30) days after the
7 Department of Commerce and the ICANN Board give final approval of the
8 amendments to Appendix G to the registry agreements.

9 4.99. Plaintiffs are informed and believe that the ICANN Board plans to
10 approve said amendments on March 6, 2004. Plaintiffs are further informed and
11 believe that the Department of Commerce intends to “rubber stamp” the WLS
12 proposal without giving it meaningful substantive consideration, and that Verisign
13 will not be materially delayed in implementing the WLS as a result of the
14 requirement that it secured Department of Commerce approval.

15
16
17 **V. FIRST CAUSE OF ACTION**
18 **UNFAIR TRADE PRACTICES ACT**
19 **BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**
20 **(Against Verisign and Does 1-5)**

21 5.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
22 4.99 above as though fully set forth herein.

23 5.2. Plaintiffs assert this cause of action on their own behalf and on behalf
24 of the general public, acting as a private attorney general under California’s Unfair
25 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

26 5.3. California Business & Professions Code § 17200, *et seq.* declares
27 unfair competition unlawful and defines unfair competition as, *inter alia*, “any
28 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
or misleading advertising . . .”

5.4. Business & Professions Code § 17200 imposes a duty to avoid making

1 false or misleading statements of fact to the public when marketing, soliciting,
2 advertising, or otherwise inducing the public to enter into any obligation.

3 5.5. False and misleading statements of fact include omissions of material
4 fact which, by the exercise of reasonable care, should be known to affect the
5 average consumer's decision as to whether to enter into such obligation.

6 5.6. Defendant Verisign is currently soliciting ICANN-accredited registrars
7 to enroll in its "Name Store" program in order to be able to offer their customers
8 WLS subscriptions when the WLS is implemented. As Verisign's customers,
9 registrars are "consumers" for the purposes of § 17200.

10 5.7. On its Web site, Verisign publishes promotional materials intended to
11 induce registrars to offer the WLS service to their customers. Verisign also
12 provides sample sales and marketing materials for participating registrars to use on
13 their own Web sites, in order to solicit consumers to purchase WLS subscriptions.

14 5.8. The WLS is a business act by Verisign, and promoting the WLS to
15 registrars is a business practice. Providing marketing materials for registrars to use
16 to solicit consumers to purchase WLS subscriptions is also a business act.

17 5.9. The quality of the WLS is material to registrars' decisions about
18 whether to offer the WLS to their customers.

19 5.10. Nowhere in the promotional materials directed at registrars is there any
20 disclosure of the likelihood that a WLS subscription will result in a domain name
21 registration. Registrars who have inquired about the likelihood that a WLS
22 subscription will result in a domain name registration have been told that the
23 likelihood is 100%, if the domain name is not renewed during the subscription
24 period – that is, Verisign has refused to provide information regarding the success
25 rate of WLS subscriptions even when directly asked.

26 5.11. Verisign's failure to disclose the likelihood that a WLS subscription
27 will result in a domain name registration renders its sales and promotional materials
28 inherently deceptive and misleading. Moreover, to the extent that registrars are

1 misled into offering the WLS, Verisign's sample sales and marketing materials are
2 intended to cause such registrars to deceive consumers into purchasing WLS
3 subscriptions.

4 5.12. Verisign's publication "Value of the Wait Listing Service (WLS)¹⁰"
5 for example, states:

6 **Leveling the Playing Field for Expiring Names**

7 Until now registrars wishing to participate in the expiring domain name
8 market have had one of two choices; either invest heavily in proprietary
9 systems or partner with existing services provided by other registrars.
10 Both options come at significant cost with no guaranteed results for their
11 customers. By providing standard results to all customers, WLS levels the
12 playing field for all registrars wishing to participate in the expiring names
13 market.

14 5.13. Verisign thus implies that the WLS provides "guaranteed" results, and
15 expressly represents that the WLS provides "standard results to all customers" and
16 "levels the playing field for all registrars." These statements, which are material to
17 a registrar's decision to offer the WLS to its customers, are deceptive and
18 misleading.

19 5.14. The "guaranteed result" referred to is that *if* the domain name is
20 deleted during the subscription period, it will be registered to the subscriber.¹¹ In
21 truth, as described in paragraph 4.83 above, in most cases less than five (5%) of
22 subscriptions will be successful.

23 5.15. Use of the word "guarantee" under these circumstances is inherently
24 misleading, because the performance that the guarantee refers to will not occur in
25 the majority of cases. That is, for most people, Verisign's ability to successfully
26 register an expiring domain will not be relevant, because the domains to which they
27 subscribe will never expire.

28

¹⁰ http://www.verisign.com/nds/naming/namestore/wls/wls_value_guide.pdf (last accessed
February 25, 2004)

¹¹ Although ICANN refers to the WLS as a "guaranteed service," Verisign itself is more
circumspect, saying only that it "virtually ensures" that a domain name that expires will be registered to
the WLS subscriber on the domain, if there is one (*see infra*).

E 71

1 5.16. The statement that the WLS provides "standard results" to all
2 customers is similarly misleading. Customers who subscribe to the most desirable
3 domain names will stand almost no chance of obtaining them. Customers who
4 subscribe to the least desirable domain names, or domain names that are scheduled
5 for deletion, will stand a far better chance of obtaining them (but still less than
6 25%). These results are not "standard".

7 5.17. The statement that the "WLS levels the playing field for all registrars
8 wishing to participate in the expiring names market" is also misleading. To
9 whatever extent it might be true with respect to "all registrars who choose to offer
10 WLS subscriptions to their customers," it is clearly false with respect to all
11 registrars wishing to participate in the expiring names market," many (if not most) of
12 whom do not wish to offer WLS subscriptions, but who will have no playing field at
13 all (much less a level one) unless they do. The considerable cost associated with
14 entering the playing field (in the form of programming fees, etc.) only accentuates
15 this discrepancy.

16 5.18. "The Value of the Wait Listing Service" continues:

17 Improved Customer Experience

18 While it's frustrating to those desiring a registered domain name when the
19 current registrations renews or transfers, it's understood to be par for the
20 course in this business. What cannot be justified in the customer's mind
21 is when the name is deleted and becomes available, they still miss out on
22 the registration. Today, this can happen even after holding an expensive
23 subscription for a long period of time.

24 WLS exponentially increases customer satisfaction by virtually ensuring
25 delivery of a registration to the subscriber if and when the current
26 registration is deleted. If a name is renewed, the subscriber can exchange
27 the subscription to another domain up to 3 times within a subscription
28 period of 12 months. If the subscriber has their heart set on a particular
name they can exercise their option to have the subscription renewed
automatically.

26 5.19. These statements would be misleading even if accompanied by
27 appropriate disclosures: A WLS subscriber, of course, can similarly "hold an
28 expensive subscription for a long period of time", and never obtain a domain name,

1 just as happens today. In contrast to the current situation, however, if the WLS is
2 implemented, consumers will have no other alternatives.

3 5.20. It is extremely unlikely that the WLS will “exponentially increase
4 customer satisfaction,” given that most consumers may receive nothing for their
5 investment. Because Verisign not only fails to provide the data upon which one
6 might base such a conclusion, but refuses to provide it, its claim regarding customer
7 satisfaction is not only misleading but fraudulent.

8 5.21. The sample sales and marketing materials that Verisign provides for
9 registrars to use in soliciting consumers to purchase WLS subscriptions are
10 illustrative. Not only are there no disclosures regarding the likelihood that the WLS
11 subscription will succeed, but WLS subscriptions are presented in such a way that
12 they are virtually indistinguishable from actual domain registrations.

13 5.22. Unless enjoined by this Court, Verisign will accept WLS subscriptions,
14 without regard to whether the domain name to which the subscription is attached is
15 due to expire during the subscription period. Verisign does not suggest that
16 consumers be advised to check the expiration date of any domain for which they are
17 purchasing a WLS subscription, nor does it disclose (or suggest that registrars
18 disclose) that the WLS is being offered as a one-year trial period. Verisign’s
19 acceptance of WLS subscriptions that *cannot* result in a domain name (because the
20 expiration date of the domain name falls later than the trial subscription period) is
21 outright fraud.

22 5.23. By committing the acts as hereinabove alleged, Verisign is liable to
23 Plaintiffs and members of the general public for violating Business & Professions
24 Code § 17200, et seq.

25
26 **VI. SECOND CAUSE OF ACTION**
27 **UNFAIR TRADE PRACTICES ACT,**
28 **BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**
(Against ICANN and Does 6-10)

6.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through

1 5.23 above as though fully set forth herein.

2 6.2. Plaintiffs assert this cause of action on their own behalf and on behalf
3 of the general public, acting as a private attorney general under California's Unfair
4 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

5 6.3. California Business & Professions Code § 17200, *et seq.* declares
6 unfair competition unlawful and defines unfair competition as, *inter alia*, "any
7 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
8 or misleading advertising . . ."

9 6.4. ICANN's approval of the WLS, without which Verisign cannot offer
10 the service, is an unfair and fraudulent business act. ICANN had a duty to impose
11 appropriate limits on Verisign's ability to exploit its monopoly position to the
12 detriment of consumers. ICANN entirely abdicated that responsibility, in violation
13 of its own bylaws, its contractual agreements with the US Government, and its
14 agreements with Plaintiffs.

15 6.5. The Federal Trade Commission Act, 15 U.S.C. § § 41 *et seq.*, declares
16 unlawful "[u]nfair methods of competition in or affecting commerce, and unfair or
17 deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45.

18 6.6. ICANN's failure to impose any meaningful limits on Verisign's ability
19 to misappropriate community resources (including but not limited to domain names)
20 for its own use and benefit, or to reap excessive fees for selling consumers
21 worthless contingent future options on domain names that may never expire,
22 constitutes an unfair practice affecting commerce. ICANN's endorsement of the
23 WLS as potentially beneficial to consumers similarly constitutes an unfair practice
24 affecting commerce. ICANN's approval of Verisign's illegal tying agreement further
25 constitutes an unfair practice affecting commerce.

26 6.7. By committing the acts as hereinabove alleged, ICANN is liable to
27 Plaintiffs and members of the general public, for violating the FTC Act, 15 U.S.C. §
28 41 *et seq.*

1 6.8. By violating the FTC Act, ICANN is also in violation of Business &
2 Professions Code § 17200, *et seq.*

3
4 **VII. THIRD CAUSE OF ACTION**
5 **SHERMAN ACT, § 1, UNLAWFUL TYING ARRANGEMENT**
6 **(Against All Defendants)**

7 7.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
8 6.8 above as though fully set forth herein.

9 7.2. Every second-level domain name is unique within its TLD, and only
10 certain currently-registered second-level domain names are considered valuable.
11 The market for expired domain names, which focuses on identifying and obtaining
12 valuable currently-registered domain names, is conceptually and practically distinct
13 from the market for unregistered domain names. Among other things, the expired
14 domain market has different business methods, different marketing strategies, uses
15 different technologies (or uses the same technologies differently), and meets
16 different customer needs than the unregistered domain market.

17 7.3. VeriSign exercises market power with respect to registry services for
18 the <.com> and <.net> TLDs. Verisign's operation of the registries for the <.com>
19 and <.net> TLDs is separate and distinct from offering a "Wait Listing Service."

20 7.4. Consumers may register domain names at any ICANN accredited
21 registrar, including plaintiffs. Consumers are free to transfer their registered domain
22 names between registrars. Thus, consumers may register their domain names with
23 one registrar, then transfer the domain names to another registrar to administer them.

24 7.5. WLS services are not transferable between registrars.

25 7.6. Each successful WLS subscription will result in a domain name
26 registration. Domain registration fees are not included in the \$24 fee Verisign will
27 charge to registrars for each WLS subscription sold.

28 7.7. Different registrars are likely to charge different amounts for WLS
subscriptions, just as different registrars currently charge different amounts for
domain name registrations.

1 7.8. In the event that a subscribed domain name expires and is registered to
2 the WLS subscriber, the registration will be accomplished through the same registrar
3 from whom the consumer purchased the (non transferable) WLS subscription.

4 7.9. Each consumer who purchases a WLS subscription will be required to
5 agree to purchase a domain name registration in the event the WLS subscription is
6 successful.

7 7.10. Each consumer for whom a WLS subscription results in obtaining a
8 domain name will be compelled to purchase that domain name registration from the
9 same registrar from which he purchased the WLS subscription.

10 7.11. VeriSign's WLS will unreasonably restrain commerce in domain name
11 registration services, and will substantially limit the free choice consumers now have
12 in such services. Among other things, registrars who do not offer WLS
13 subscriptions will not be able to register for any consumer any domain name
14 obtained via a WLS subscription.

15 7.12. In addition, the registrar who offers the lowest price for WLS
16 subscriptions will not necessarily be the registrar who offers the lowest price on
17 domain name registrations, but consumers will be compelled to purchase domain
18 name registration from that registrar nonetheless.

19 7.13. ICANN and Verisign have conspired to restrain trade by agreeing that
20 WLS subscriptions will not be transferable among registrars, and by further agreeing
21 that consumers who purchased WLS subscriptions will be compelled to agree to
22 purchase a domain name registration from the same registrar. Indeed, Verisign
23 presents this anti-competitive conduct as a benefit of offering WLS:

24 Generate New Registrations

25 WLS can increase your new .com and .net registration and renewal
26 business. Every time one of your customers' subscriptions is fulfilled, you
27
28

1 become the registrar of record.¹²

2 7.14. ICANN and Verisign's conduct as alleged herein is prohibited by the
3 antitrust laws. Plaintiffs have been, and continue to be, damaged as a proximate
4 result of ICANN and Verisign's conspiracy to restrain trade.

5
6 **VIII. FOURTH CAUSE OF ACTION**
7 **SHERMAN ACT § 2, ATTEMPTED MONOPOLIZATION**
8 **(Against All Defendants)**

9 8.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
10 7.14 above as though fully set forth herein.

11 8.2. VeriSign is a natural monopolist that exercises market power with
12 respect to registry services in the <.com> and <.net> TLDs.

13 8.3. With the WLS, Verisign is seeking to monopolize a separate, adjacent,
14 currently competitive market for expiring domain names. ICANN and Verisign
15 have conspired to eliminate competition in this market.

16 8.4. If the WLS is implemented, Plaintiffs will be precluded from
17 competing for soon-to-be-available domain names except through competition for
18 WLS subscriptions, for each of which they will be required to pay Verisign \$24 per
19 year.

20 8.5. Verisign's monopoly control of the registry gives it an unfair
21 advantage in seizing control over the adjacent market for expiring domain names,
22 which Verisign has no right to divert from the regular deletion process.

23 8.6. The acts of VeriSign and ICANN in connection with the WLS were
24 predatory and undertaken with the specific goal of exploiting Verisign's
25 monopolistic position to obtain an unfair advantage over the current competitive
26 market and to eliminate competition from that market.

27 8.7. By virtue of ICANN's participation in Verisign's predatory scheme,

28 ¹²http://www.verisign.com/nds/naming/namestore/wls/wls_value_guide.pdf (last accessed February 25, 2004)

1 there is a dangerous probability that Verisign will succeed at obtaining monopoly
2 control over the expiring domain name market.

3
4
5 **IX. FIFTH CAUSE OF ACTION**
6 **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**
7 **18 U.S.C. § 1964 PREDICATED ON VIOLATION OF 18. U.S.C. § 1951**
8 **(Against All Defendants)**

9 9.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
10 8.7 above as though fully set forth herein.

11 9.2. Since the implementation of the Redemption Grace Period in <.com>
12 and <.net> on January 25, 2003, registrants have at least a thirty (30) day period
13 after the expiry date during which they can recover their domain names. During the
14 Redemption Grace Period, neither the Web site nor any e-mail addresses associated
15 with the domain name are operational, thus giving registrants clear notice that their
16 domain name requires attention.

17 9.3. Domain names can only be deleted from the registry by the sponsoring
18 registrar or, if all grace periods have elapsed, by the registry.

19 9.4. Registrars are currently accepting "pre-orders" for WLS subscriptions.
20 Said subscriptions are being offered as, among other things, "protection" against
21 inadvertent loss of domain names. ICANN-accredited Registrar eNom's Web site,
22 for example, advertises "First Dibs," eNom's implementation of the Verisign WLS,
23 as follows:

24 **With First Dibs™ You Can Protect Your Existing Domain Names**

25 eNom's First Dibs service enables you to securely protect your valuable
26 domain names.

27 A domain name is a unique and valuable asset: there is only one like it in
28 the world. A domain name provides a gateway where people from all
around the world can stay connected with you and your business. Now
with First Dibs you can protect this valuable asset. First Dibs will provide
protection in the event your domain name unintentionally expires, by
putting you at the front of the line at the registry should it inadvertently
become available.

1 9.5. NSI's Web site <NextRegistrationRights.com> similarly advertises
2 "Next Registration Rights," NSI's implementation of the Verisign WLS, as follows:

3 Next Registration Rights helps you:

4 Protect the domain names you have

5 Get a domain name you always wanted... but somebody else already has!

6 9.6. Plaintiffs are informed and believe, and on that basis allege, that
7 Defendant Verisign provided, developed, approved, or was otherwise involved in
8 creation of the materials cited herein.

9 9.7. Plaintiffs are informed and believe, and on that basis allege, that
10 Defendant Verisign could decline to accept any WLS subscription placed by the
11 current registrant of the domain name to which the subscription applies.

12 9.8. Defendant ICANN approved the sale of WLS subscriptions to current
13 registrants of the domain names to which the subscriptions apply.

14 9.9. By permitting Registrars to represent that domain names need to be
15 "protected" in this manner, Defendants are intentionally inculcating an unreasonable
16 fear among domain name registrants regarding the likelihood of "unintentional
17 expiration" and other harm that might befall a domain name at its registrar's (or
18 registry's) hand. For the price of a single year's WLS subscription, a registrant
19 could renew a domain for three or more years, and in the event a domain name
20 "unintentionally expires," the registrant has ample time to retrieve it.

21 9.10. Defendants have conspired with Registrars to commit extortion within
22 the meaning of 18 U.S.C. 1951 by inculcating fear among registrants of a problem
23 that does not exist and that the WLS will not solve (registrants who ignore
24 expiration notices from their registrar are unlikely to pay attention to notices from
25 Verisign that their WLS subscription was used and is no longer protecting the
26 domain name) and offering spurious "protection" from that problem in exchange for
27 \$35 per domain name, per year.

28 9.11. The defendants conduct constitutes an illegal protection racket.

1 9.12. By engaging in such conduct, Defendants have conspired to affect, and
2 have affected, interstate commerce and have damaged consumers and Plaintiffs as a
3 result.

4
5 **X. SIXTH CAUSE OF ACTION**
6 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
7 **(Against All Defendants)**

8 10.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
9 9.12 above as though fully set forth herein.

10 10.2. On repeated occasions beginning in January 2002 and continuing
11 through the present, Defendants have made false and defamatory statements
12 regarding Plaintiffs and Plaintiffs' services, including statements comparing
13 Plaintiffs' services unfavorably to the WLS.

14 10.3. Among other things, Defendant ICANN has referred to the WLS as a
15 "guaranteed" service, and has stated that Plaintiffs' services are not guaranteed.
16 Plaintiffs' services are guaranteed, in a far more meaningful way than the WLS, in
17 that Plaintiffs do not charge for their services unless they succeed in registering a
18 domain name on the consumer's behalf. Verisign's "guarantee," in contrast (which
19 Verisign does not state in the form of a guarantee), is that IF the current registrant
20 allows a domain name to expire, and does not redeem it, Verisign will register that
21 domain name to the holder of a WLS subscription on that domain name, if any.
22 Unlike Plaintiffs, Verisign does not guarantee that the consumer will receive
23 anything of value for his money.

24 10.4. ICANN President and CEO Dr. Paul Twomey, in testifying to the
25 Senate Committee on Commerce on July 31, 2003, stated that:

26 In the absence of a registry service such as that proposed by VeriSign,
27 various ICANN registrars had created products that purported to take
28 reservations for names that might be deleted in the future. Those registrars
then regularly queried registries in an attempt to be the first to learn of a
deletion, in which case they would then seek to register the name for their
clients. Obviously, no registrar could guarantee that any particular
registration would be successful, and since there were commonly a

1 number of registrars seeking to register any given deleted name, most
2 people who signed up for those services were destined to be disappointed.

3 The VeriSign proposal offered a significant improvement from a
4 consumer perspective to the various services already offered by registrars.
5 Because VeriSign operated two registries, it could guarantee that a
6 reservation made in the WLS for names registered in those registries
7 would always be successful IF the name was ever deleted. Obviously,
8 such a guarantee can only be offered by the registry or its agent, since
9 only the registry can guarantee such performance. This fact lead some
10 registrars to conclude that the availability of the WLS (with its guarantee
11 of performance) to consumers would reduce the demand for their services
12 (which were not able to offer a comparable guarantee), and thus they
13 strongly opposed approval of the WLS. While reaction from other parts
14 of the ICANN community that did not have a direct competitive interest
15 was more mixed, it would be fair to characterize the majority view as
16 opposed to approval of the WLS proposal.

17 After considering the full range of views expressed, the ICANN Board
18 concluded that ICANN should act whenever possible in a way that
19 promotes consumer choice and innovative services, and that its general
20 goal to seek to increase competition when possible did not require it to
21 prevent consumers from having the option of purchasing services they
22 may decide are beneficial. It would be anomalous to "protect" competition
23 between providers of non-guaranteed products by preventing the new
24 competition of a guaranteed product that at least some consumers would
25 likely prefer. Considering all these factors, the Board approved the WLS
26 proposal with certain conditions that it felt appropriate under the
27 circumstances to protect consumer interests. Among these were a
28 limitation of the approval to a twelve month experimental period, after
which time the Board would be required to review and make an
independent decision on the continuation of the WLS. The Board
authorized ICANN's CEO and its General Counsel to negotiate
amendments to the registry agreements with VeriSign that were consistent
with its approval.

19 10.5. Dr. Twomey's statements were transcribed and published.

20 10.6. The statement "various ICANN registrars had created products that
21 purported to take reservations for names that might be deleted in the future" is false.
22 Registrars did not purport to take "reservations" for names that might be deleted in
23 the future, but rather took orders that they would attempt to fill if the domain name
24 ordered became scheduled for deletion. ICANN's statement that Plaintiffs and
25 other ICANN registrars defrauded consumers by offering services that they could
26 not, in fact, provide, is defamatory.

27 10.7. The statement "[t]his fact lead [sic] some registrars to conclude that
28

1 the availability of the WLS (with its guarantee of performance) to consumers would
2 reduce the demand for their services (which were not able to offer a comparable
3 guarantee), and thus they strongly opposed approval of the WLS” is false and
4 defamatory.

5 10.8. Defendant Verisign has similarly stated that Plaintiffs’ services do not
6 offer consumers any guarantee, and has represented that the WLS does offer
7 consumers such a guarantee. Verisign’s statements in this regard are false and
8 defamatory.

9 10.9. At the time Defendants made the false and defamatory statements
10 referenced herein, they knew that Plaintiffs were seeking business from prospective
11 customers. Defendants’ conduct was designed to disrupt the economic relationships
12 between plaintiffs and their prospective customers, and did in fact disrupt those
13 economic relationships.

14 10.10. Defendants’ conduct as alleged herein violated laws including the
15 Sherman Act and the FTC Act.

16 10.11. As a proximate result of Defendants’ wrongful conduct, prospective
17 customers have been deterred from doing business with Plaintiffs, and Plaintiffs
18 have suffered damages in an amount to be determined at trial.

19 10.12. Plaintiffs are informed and believe and on that basis allege that the
20 conduct of the Defendants was willful, fraudulent, malicious and oppressive, thereby
21 entitling plaintiffs to punitive damages in an amount to be established at trial.

22
23 **XI. SEVENTH CAUSE OF ACTION**
24 **DECLARATORY RELIEF, 28 U.S.C. § 201**
(Against Verisign)

25 11.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
26 10.12 above as though fully set forth herein.

27 11.2. Plaintiffs have each entered an agreement with Verisign (the “Registry-
28 Registrar Agreement”) that governs Registrars’ use of, and Verisign’s provision of,

1 the Shared Registration System. Each Plaintiff is a party to the Registry-Registrar
2 Agreement with Verisign, which is attached hereto as Exhibit A and incorporated
3 herein by this reference.

4 11.3. Section 2.1 of the Registry-Registrar Agreement provides:

5 2.1. System Operation and Access. Throughout the Term of this
6 Agreement, NSI shall operate the System and provide Registrar with
7 access to the System enabling Registrar to transmit domain name
8 registration information for the .com, .org and .net TLDs to the System
9 according to a protocol developed by NSI and known as the Registry
10 Registrar Protocol ("RRP").

11 11.4. The process by which expiring domain names are deleted from the
12 registry (and thereby made available for registration) is an element of the functional
13 specification for the Shared Registration System (the "Specifications"). The
14 Specifications, which include the RRP, are set forth at Appendix "C" to the ICANN-
15 Verisign <.com> Registry Agreement (among other places) and are binding on all
16 ICANN-accredited registrars as well as on defendant Verisign.¹³

17 11.5. According to the Specifications, only the sponsoring registrar may
18 cause a domain name to be deleted from the registry.¹⁴ Each domain name is added
19 to the registry by its sponsoring registrar when originally registered, and remains in

20 ¹³See, e.g., Minutes of Special Meeting of Board of Directors, February 10, 2000 ("the
21 registration of domain names containing trailing hyphens contravenes the specification for the Shared
22 Registry System, the elements of which are binding on NSI-Registry and the ICANN-accredited
23 registrars") (emphasis added).

24 ¹⁴Because of security and functional considerations (such as the RGP), registrar "delete"
25 commands have never been directly executed on the registry database, and as such do not result in the
26 immediate deletion of domain names. Rather, the "delete" command changes the status of the domain name
27 for which it is sent, and that status change triggers other processes that ultimately result in the domain
28 name being deleted from the database. Prior to October 31, 2003, registry operators lacked any primary
authority to delete domain names from the registry, and could only delete a domain name in response to a
"delete" instruction from the sponsoring registrar. On October 31, 2003 the Board adopted the
recommendations of the GNSO Council Deletes Task Force Report, including allowing registry operators
to delete domain names from the registry after the redemption grace period if an affirmative "renew"
command is not received during the auto-renew grace period. This authority, however, is essentially a
housekeeping function; the registry cannot delete the domain name until after all grace periods have passed.
The new deletion policy, which was adopted as a Consensus policy, applies to all domains registered after
October 31, 2003, and becomes effective retroactively to all domain names registered before that date on
April 28, 2004.

1 the registry until removed in response to a "delete" command sent by the sponsoring
2 registrar.

3 11.6. The Specifications consist of, among other things, the Grace Period
4 Policy. The Grace Period Policy provides in relevant part:

5 2.3 Auto-Renew Grace Period

6 The Auto-Renew Grace Period is a specified number of calendar
7 days following an auto-renewal. An auto-renewal occurs if a
8 domain name registration is not renewed by the expiration date; in
9 this circumstance the registration will be automatically renewed by
10 the system the first day after the expiration date. The current value
of the Auto-Renew Grace Period is 45 calendar days. If a Delete,
Extend, or Transfer occurs within the Auto-Renew Grace Period,
the following rules apply:

11 Delete. If a domain is deleted within the Auto-Renew Grace
12 Period, the sponsoring Registrar at the time of the deletion receives
13 a credit of the Auto-Renew fee. *The domain is deleted from the
Registry database and is immediately available for registration by
any Registrar. (emphasis added).*

14 11.7. The Registry-Registrar Agreement provides in relevant part that:

15 Registrar, using the RRP, APIs and Software, as well as updates and
16 redesigns thereof, will be able to invoke the following operations on the
17 System: (i) check the availability of a domain name, (ii) register a domain
18 name, (iii) re-register a domain name, (iv) *cancel the registration of a
domain name it has registered*, (v) update the nameservers of a domain
19 name, (vi) transfer a domain name from another registrar to itself with
proper authorization, (vii) query a domain name registration record, (viii)
register a nameserver, (ix) update the IP addresses of a nameserver, (x)
delete a nameserver, (xi) query a nameserver, and (xii) establish and end
an authenticated session. (Emphasis added).

20 11.8. The WLS, if implemented, will materially change the Specifications by
21 causing registrar "delete" commands to be ignored with regard to domain names on
22 which a WLS subscription has been placed, rather than to cause the deleted domain
23 name to become available for immediate registration by any registrar, as is
24 contractually required.

25 11.9. The WLS is not a part of the RRP, the Specifications, or the Shared
26 Registration System, and implementation of the WLS would constitute a material
27 breach of each Plaintiff's Registry-Registrar Agreement.
28

1 11.10. Verisign's breach of the Registry-Registrar Agreement in this regard
2 would impair Plaintiffs' ability to function as ICANN-accredited registrars and
3 would cause significant financial harm.

4 11.11. Verisign denies that implementation of the WLS would constitute a
5 breach of its obligations under the Registry-Registrar Agreements, and an actual
6 dispute exists between the parties with respect to Verisign's obligation to delete
7 expired domain names for which a "delete" command is received from the
8 Registrar.

9 **XII. EIGHTH CAUSE OF ACTION**
10 **BREACH OF CONTRACT**
11 **(Against ICANN)**

12 12.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
13 11.11 above as though fully set forth herein.

14 12.2. As ICANN-Accredited Registrars, each Plaintiff has entered into an
15 identical Accreditation Agreement with Defendant ICANN. The Accreditation
16 Agreement grants Registrars the right to register domain names in accordance with
17 procedures established by ICANN and Verisign in consultation with the Department
18 of Commerce. All Registrars are required to sign the Accreditation Agreement,
19 which was drafted by ICANN, without alteration or modification. Each Plaintiff is a
20 party to the Accreditation Agreement with ICANN dated May 2001 (the "2001
21 RAA"), which is attached hereto as Exhibit B and incorporated herein by this
22 reference.

23 12.3. The Registrar Accreditation Agreement is one of several agreements
24 among ICANN and other organizations involved in the Internet domain-name
25 system. Those agreements are closely interrelated and operate cooperatively to
26 implement those organizations' agreements to adhere to various policies developed
27 through the private-sector, consensus-based process for management of the
28 technical aspects of the Internet that has been established under the auspices of

1 ICANN.¹⁵

2 12.4. The Registrar Accreditation Agreement includes language limiting the
3 Registrars' obligation to implement ICANN-developed policies to those policies
4 consistent with, and reasonably related to, the goals of ICANN as set forth in the
5 White Paper.¹⁶

6 12.5. Consistent with that position, Section 2.3 of the 2001 RAA imposes
7 broad obligations of "stability, competition, bottom-up coordination, and
8 representation" on ICANN in *all matters that impact registrars*, not only under the
9 RAA, but in general:

10 General Obligations of ICANN. With respect to all matters that impact
11 the rights, obligations, or role of Registrar, ICANN shall during the Term
of this Agreement:

12 2.3.1. exercise its responsibilities in an open and transparent manner;

13 2.3.2. not unreasonably restrain competition and, to the extent feasible,
14 promote and encourage robust competition;

15 2.3.3. not apply standards, policies, procedures or practices arbitrarily,
16 unjustifiably, or inequitably and not single out Registrar for disparate
treatment unless justified by substantial and reasonable cause; and

17 2.3.4. ensure, through its reconsideration and independent review policies,
18 adequate appeal procedures for Registrar, to the extent it is adversely
affected by ICANN standards, policies, procedures or practices.

19 12.6. The 2001 RAA obligates Registrars to comply with ICANN policies
20 only if they are adopted pursuant to ICANN consensus procedures and do not
21 unreasonably restrain competition.

22 12.7. Section 2.3.3 of the 2001 RAA requires ICANN to treat all Registrars
23 equally. The Memorandum of Understanding between ICANN and the Department
24 of Commerce requires ICANN to require Verisign to do the same.

25 12.8. Registrars who do not offer the WLS, whether because of the expense
26

27 ¹⁵Register.com, Inc. v. Verio, Inc., 00-Civ-5747 (BSJ) Submission of Amicus Curiae Internet
28 Corporation for Assigned Names and Numbers.

¹⁶Minutes of Meeting of ICANN Board of Directors, July 16 1999.

1 associated with implementing it or concern for potential liability to consumers, do
2 not have equivalent access to the registry as do Registrars who offer the WLS.

3 12.9. Nothing in the 2001 RAA or any agreement allows ICANN to make
4 equal treatment conditional on a Registrar's offering additional services that they do
5 not wish to offer, or on bearing the expense associated with offering such services.

6 12.10. With respect to expiring domain names, the 2001 RAA requires that
7 expired domain names be deleted from the registry:

8 3.7.5 Registrar shall register Registered Names to Registered Name
9 Holders only for fixed periods. At the conclusion of the registration
10 period, failure by or on behalf of the Registered Name Holder to pay a
11 renewal fee within the time specified in a second notice or reminder *shall*,
12 in the absence of extenuating circumstances, result in cancellation of the
13 registration. In the event that ICANN adopts a specification or policy
14 concerning procedures for handling expiration of registrations, Registrar
15 shall abide by that specification or policy. (emphasis added).

16 12.11. ICANN is required by its Bylaws, the 2001 RAA, and the
17 Memorandum of Understanding to use its consensus policy process with respect to
18 issues concerning domain name allocation.

19 12.12. If the WLS is implemented, no Registrar will be able to offer services
20 based on competition for deleting domain names, and the current robust market for
21 such services would be destroyed and replaced by Verisign's services. Many
22 Registrars, including certain Plaintiffs, will be forced out of business.

23 12.14. If implemented, the WLS will unreasonably restrain competition, and
24 ICANN's approval of the WLS constitutes a material breach of the Accreditation
25 Agreements between ICANN and each of the Plaintiffs for which Plaintiffs have no
26 immediate and adequate remedy at law.

27 12.15. The 2001 RAA obligates ICANN to use consensus procedures in
28 connection with policies concerning allocation of domain names.

12.16. ICANN did not use consensus procedures in approving the WLS, and
has denied that it was obligated to. ICANN's failure to use consensus procedures in
approving the WLS constitutes a material breach of the Accreditation Agreements

1 between ICANN and each of the Plaintiffs for which Plaintiffs have no immediate
2 and adequate remedy at law.

3 12.18. Section 2.3.3 of the 2001 RAA obligates ICANN to “not apply
4 standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably”
5 with respect to all matters that “impact the rights, obligations, or role of Registrar.”

6 12.19. ICANN has applied its procedures arbitrarily, unjustifiably and
7 inequitably in approving the WLS, and ICANN’s approval of the WLS constitutes a
8 material breach of the Accreditation Agreements between ICANN and each of the
9 Plaintiffs for which Plaintiffs have no immediate and adequate remedy at law.

10 12.20. Section 5.1 of the 2001 RAA provides, “[w]hile this Agreement is in
11 effect, either party may seek specific performance of any provision of this
12 Agreement in the manner provided in Section 5.6 below, provided the party seeking
13 such performance is not in material breach of its obligations.”

14 12.21. Each Plaintiff has performed, and continues to perform, all of its
15 obligations under its respective Accreditation Agreement, and none is in material
16 breach of its obligations under that Accreditation Agreement.

17 12.22. ICANN’s failure to perform its contractual obligations to Plaintiffs has
18 caused, and continues to cause, significant damages to Plaintiffs, including without
19 limitation loss of reputation and goodwill.

20 12.23. Each Plaintiff is entitled to a decree of specific performance
21 compelling ICANN to fulfill its obligations under the 2001 RAA.

22 **XIII. NINTH CAUSE OF ACTION**
23 **DECLARATORY JUDGMENT, 28 U.S.C. § 201**
24 **(Against ICANN)**

25 13.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
26 12.23 above as though fully set forth herein.

27 13.2. The 2001 RAA obligates Registrars to comply with ICANN policies
28 only if they are adopted pursuant to ICANN consensus procedures and do not
unreasonably restrain competition.

1 13.3. Section 2.3.3 of the 2001 RAA requires ICANN to treat all Registrars
2 equally. The Memorandum of Understanding between ICANN and the Department
3 of Commerce requires ICANN to require Verisign to do the same.

4 13.4. Registrars who do not offer the WLS, whether because of the expense
5 associated with implementing it or concern for potential liability to consumers, do
6 not have equivalent access to the registry as do Registrars who offer the WLS.

7 13.5. Nothing in the 2001 RAA or any agreement allows ICANN to make
8 equal treatment conditional on a Registrar's offering additional services that they do
9 not wish to offer, or on bearing the expense associated with offering such services.

10 13.6. The 2001 RAA requires that expired domain names be deleted from
11 the registry:

12 3.7.5 Registrar shall register Registered Names to Registered Name
13 Holders only for fixed periods. At the conclusion of the registration
14 period, failure by or on behalf of the Registered Name Holder to pay a
15 renewal fee within the time specified in a second notice or reminder *shall*,
16 in the absence of extenuating circumstances, result in cancellation of the
17 registration. In the event that ICANN adopts a specification or policy
18 concerning procedures for handling expiration of registrations, Registrar
19 shall abide by that specification or policy. (emphasis added).

20 13.7. ICANN is required by its Bylaws, the 2001 RAA, and the
21 Memorandum of Understanding to use its consensus policy process with respect to
22 issues concerning domain name allocation.

23 13.8. If implemented, the WLS will unreasonably restrain competition in
24 breach of ICANN's obligations under the Accreditation Agreements between
25 ICANN and each of the Plaintiffs, for which Plaintiffs have no immediate and
26 adequate remedy at law.

27 13.9. ICANN denies that the WLS restrains competition. Thus, an actual
28 controversy exists between the parties concerning ICANN's obligation under the
2001 RAA to avoid unreasonably restraining competition.

13.10. The 2001 RAA obligates ICANN to use consensus procedures in
connection with policies concerning allocation of domain names.

1 13.11. ICANN did not use consensus procedures in approving the WLS, and
2 has denied that it was obligated to, in breach of its obligation under the 2001 RAA
3 and other agreements.

4 13.12. An actual dispute exists between the parties with respect to ICANN's
5 obligation to follow consensus procedures before approving the WLS.

6 13.13. Section 2.3.3 of the 2001 RAA obligates ICANN to "not apply
7 standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably"
8 with respect to all matters that "impact the rights, obligations, or role of Registrar."

9 13.14. ICANN has applied its procedures arbitrarily, unjustifiably and
10 inequitably in approving the WLS.

11 13.15. ICANN denies that it applied its procedures inequitably in approving
12 the WLS, and an actual dispute exists between the parties with respect to ICANN's
13 obligations under the 2001 RAA.

14
15 **XIV. TENTH CAUSE OF ACTION**
16 **VIOLATIONS OF BUSINESS & PROFESSIONS CODE § 17200, et seq.**
17 **(Against All Defendants)**

18 14.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
19 13.15 above as though fully set forth herein.

20 14.2. California Penal Code § 319 defines a lottery as follows:

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

28 14.3. California Penal Code § 320 provides that "Every person who
contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a [crime]."

14.4. California Penal Code § 321 criminalizes the act of selling or otherwise
conveying the chance to win a prize in a lottery. Specifically, Penal Code § 321
provides:

1 "Every person who sells, gives, or in any manner whatever, furnishes or
2 transfers to or for any other person any ticket, chance, share, or interest,
3 or any paper, certificate, or instrument purporting or understood to be or
to represent any ticket, chance, share, or interest in, or depending upon
the event of any lottery, is guilty of a [crime]."

4 14.5. California Penal Code § 322 makes it a crime for any person to merely
5 assist with a lottery. Specifically, Penal Code § 322 provides that:

6 "Every person who aids or assists, either by printing, writing, advertising,
7 publishing, or otherwise in setting up, managing, or drawing any lottery,
or in selling or disposing of any ticket, chance, or share therein, is guilty
8 of a [crime]."

9 14.6. Lotteries are illegal in California and in every other state in this
10 country¹⁷.

11
12 ¹⁷ **Alabama:** Code of Ala. §§ 37A-37-20, -21, -22 (2000)(illegal lottery consists of (1) a prize, (2)
awarded by chance, (3) for consideration); **Alaska:** Alaska Stat. §§37.66.200, -210, -220, -280(2), (37)(2000);
13 *Morrow v. State*, 537 P.2d 377, 378 (Alas. 1973)(private lottery consists of: consideration; chance, and prize);
Arizona: Ariz. Rev. Stat §§37-3303, -3304 (2000); *Ex Parte Gray*, 204 P. 1029, 1031 (Ariz. 1922)(lottery
14 is species of illegal gaming consisting of consideration, chance, and prize); **Arkansas:** Ark. Stat. Ann. §5-66-
373 (1999); *Burks v. Harris*, 370 S.W. 979, 980 (Ark. 1909); **California:** Cal. Pen. Code §319 (2000);
15 *California Gasoline Retailers v. Regal Petroleum Corp.*, 330 P.2d 778, 783 (Cal. 1958); **Colorado:** Colo.
Const. Art. XVIII, §2(1)-(3), (7)(1999); *Cross v. State*, 32 P. 821, 822 (Colo. 1893); **Connecticut:** Conn. Gen
16 Stat. §§53-278a(3), -278b(b)(1999); **Delaware:** Del. Code, tit. 37, §3701 (1999); *Affiliated Enterprises Inc.*
v. Waller, 5 A.2d 257, 259 (Del. 1939); **Florida:** Fla. Stat. §849.09 (1999); *Blackburn v. Ippolito*, 376 So.2d
17 550, 551 (Fla. App. 1963); **Georgia:** Ga. Code Ann. §§16-37-20, -22 (1999); **Hawaii:** Haw. Rev. Stat. §§712-
1220(6), -1221, -1222, -1223 (2000); **Idaho:** Idaho Code §18-4901, -4902 (1999); **Illinois:** 720 Ill. Comp.
18 Stat. Ann. 5/28-1 (2000); *People v. Eagle Food Centers, Inc.*, 202 N.E.2d 473, 476 (1964); **Indiana:** Ind.
Code Ann. §§35-45-5-1, -3 (2000); **Iowa:** Iowa Code §725.12 (1999); *State v. Hundling*, 264 N.W. 608 (Iowa
19 1935); **Kansas:** Kan. Stat. Ann. §§21-4302(b), -4303, -4304 (1999); **Kentucky:** Ky. Rev. Stat. Ann.
20 §§528.010(5)(a), -020, -030, -070 (1998); **Louisiana:** La. Rev. Stat. Ann. §§14:90(A)(1)(a), (b), 14:90.3
(2000); *State v. Boneil*, 8 So. 298 (La. 1890); **Maine:** Me. Stat. Rev. Ann. tit. 17-A, §§952(6), 953, 954
21 (1999); **Maryland:** Md. Code Ann. §356 (1999); *Silbert v. State*, 12 Md. App. 516, 280 A.2d 55 (Md. Ct.
22 Spec. App. 1971); **Massachusetts:** Mass. Ann. Laws ch. 271, §7 (2000); *Commonwealth v. Lake*, 317 Mass.
264, 57 N.E.2d 923 (Mass. 1944); **Michigan:** Mich. Stat. Ann. §28.604(1) (1999); *United-Detroit Theater*
23 *Corp. v. Colonial Theatrical Enterprise*, 280 Mich. 425, 273 N.W. 756 (Mich. 1937); **Minnesota:** Minn. Stat.
§§609.75(a), .755 (1999); **Mississippi:** Miss. Code Ann. §97-33-31 (2000); **Missouri:** Mo. Const. art. II,
24 §§39, 572.020 (2000); **Montana:** Mont. Code Ann. §§23-5-102, -112(23)(1999); **Nebraska:** Neb. Rev. Stat.
25 §§28-1101(4), 28-1102 (1999); **Nevada:** Nev. Rev. Stat. §§462.105 (2000); **New Hampshire:** N.H. Rev. Stat.
Ann. §647.2 (1999); *State v. Powell*, 567 A.2d 568 (1989); **New Jersey:** N.J. Stat. Ann. §§2C:37-1(h), :37-
26 2(a), (b)(2000); **New Mexico:** N.M. Stat. Ann. §30-19-1(E)(2000); **New York:** N.Y. Penal Law §225.00
(Consol. 1999); **North Carolina:** N.C. Gen. Stat. §14-290 (1999); *State v. Lipkin*, 169 N.C. 265, 84 S.E. 340
27 (N.C. 1915); **North Dakota:** N.D. Cent. Code §§12.1-28-01, -02 (2000); **Ohio:** Ohio Rev. Code
28 §2915.02(2000); **Oklahoma:** Okla. Stat. tit. 21, §§1051-1053 (1999); **Oregon:** Or. Rev. Stat. §§167.117,
.122, .127 (1997); **Pennsylvania:** 18 Pa. Cons. Stat. §5512(1999); **Rhode Island:** R.I. Gen. Laws. §11-19-1

1 14.7. Defendants are responsible for, engaging in, and perpetuating the Wait
2 Listing System described above (the "Lottery Enterprise").

3 14.8. The Wait Listing System constitutes a "lottery" pursuant to Penal Code
4 § 319 because Defendants are *distributing property* (i.e., domain names) by *chance*
5 (i.e. process beyond the control of the Defendants), among persons (i.e., WLS
6 Subscribers) who have paid valuable *consideration* (i.e., the "application" fee) for
7 said chance.

8 14.9. Neither the Lottery Enterprise, nor any part of it, constitutes a
9 charitable raffle.

10 14.10. The Defendants and each of them have contrived, prepared, set up,
11 proposed, and/or drawn the lottery in the Lottery Enterprise. Accordingly, the
12 Defendants and each of them are guilty of a crime pursuant to Penal Code § 320.

13 14.11. The Defendants and each of them have sold or transferred to would-be
14 Registrants the chance to register a currently-registered domain name, and
15 understood or represented the same to be such a chance, depending upon the event
16 of the current registrant to renew the domain name, which Defendants do not
17 control. Consequently, the Defendants, and each of them, are guilty of a crime
18 pursuant to Penal Code § 321.

19 14.12. The Defendants' enterprise is worse than a traditional lottery because
20 in most cases there will be no winner. Accordingly, Defendants' unfair and
21

22
23 (2000); **South Carolina**: S.C. Const. art. XVII, §7; S.C. Code Ann. §§16-19-10, -20, -30 (1999); *Darlington*
24 *Theatres, Inc. v. Coker*, 190 S.C. 282, 2 S.E.2d 782 (S.C. 1939); **South Dakota**: S.D. Const. art. III, §25;
25 S.D. Codified Laws §§22-25-24, -26(1997); **Tennessee**: Tenn. Const. art. XI, §5; Tenn. Code Ann. §37-15-
26 501(5), 39-17-506 (1999); **Texas**: Tex. Penal code §47.03 (2000); **Utah**: Utah Code Ann. §§76-10-1101,
27 1102, -1104 (2000); **Vermont**: 13 Vt. Stat. Ann. §§2101, 2102 (2000); Vt. A.G. Op. 83-9 (1982); **Virginia**:
28 Va. Code Ann. §18.2-325 (2000); **Washington**: Wash. Rev. Code §9.46.0257 (2000); *State v. Langford*, 29
Wn. App. 455, 628 P.2d 829 (1980); **West Virginia**: W.Va. Code §§29-22A-1, 61-10-11 (2000); *State ex.*
Rel. Mountaineer Park, Inc. v. Polan, 190 W.Va. 276, 438 S.E.2d 308 (1993); **Wisconsin**: Wis. Stat.
§§945.01(5)(a), (b), 945.02 (2000); **Wyoming**: Wyo. Stat. Ann §6-7-101(a)(iii) (1998); **District of Columbia**:
D.C. Code §22-1501 (1999); *National Conference on Legalizing Lotteries, Inc. v. Farley*, 68 App. D.C. 319,
96 F.2d 861, 863 (D.C.Cir. 1938).

1 unlawful conduct stems beyond just a basic illegal lottery.

2 14.13. The Defendants and each of them have aided or assisted in setting up,
3 managing, or drawing the lottery in the Lottery Enterprise. Thus, the Defendants,
4 and each of them, are guilty of a crime pursuant to Penal Code § 322.

5 14.14. California Business & Professions Code § 17200, *et seq.* declares
6 unfair competition unlawful and defines unfair competition as, *inter alia*, “any
7 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
8 or misleading advertising . . .”

9 14.15. The “unlawful business activity”, proscribed under Business &
10 Professions Code, § 17200, includes anything that can properly be called a business
11 practice and that at the same time is forbidden by law.

12 14.16. The Lottery Enterprise is a business practice.

13 14.17. As described above, the Lottery Enterprise is unlawful and unfair.

14 14.18. The Plaintiffs and each of them have suffered damages as a result of
15 Defendants’ unlawful and unfair business practices.

16 14.19. Further, Business & Professions Code § 17200 imposes a duty to
17 avoid making false or misleading statements of fact to the public when marketing,
18 soliciting, advertising, or otherwise inducing the public to enter into any obligation.

19 14.20. False and misleading statements of fact include omissions of material
20 fact which, by the exercise of reasonable care, should be known to affect the
21 average consumer’s decision as to whether to enter into such obligation.

22 14.21. As businesses advertising, promoting, and soliciting the opportunity
23 for potential Registrants to purchase from Defendants, Defendants have an
24 obligation to fully disclose to the potential Registrants all material facts which
25 would reasonably affect the potential Registrants’ decision as to whether to
26 purchase chances to register domain names from Defendants.

27 14.22. However, Defendants failed to disclose to the public the likelihood of
28 winning the right to register the domain name(s) each (pre-order) WLS subscriber

1 requested.

2 14.23. Said failure to disclose creates a false assumption in the mind of the
3 public that the right to register currently-registered domain names may be easier
4 than they believe.

5 14.24. Defendants knew, or should have known by the exercise of reasonable
6 care, that such omission of facts creates a false assumption in the mind of the public
7 that the right to register currently-registered domain names may be easier than they
8 believe.

9 14.25. Thus, Defendants' failure to disclose such material facts in its
10 advertisements, solicitations, promotions, and marketing for WLS subscriptions
11 constitutes false and misleading statements to the public.

12 14.26. By committing the acts as hereinabove alleged, the Defendants, and
13 each of them, are liable to Plaintiffs and members of the general public, for violating
14 Business & Professions Code § 17200, *et seq.*

15

16

XV. PRAYER FOR RELIEF

17 WHEREFORE, Plaintiffs pray for the following relief against Defendants:

18 1. On Plaintiffs' First Cause of Action, unless the WLS is otherwise
19 enjoined as prayed for herein, for preliminary and permanent injunctions:

20 a. Ordering Verisign and its agents, sales representatives, and
21 affiliates to conspicuously disclose the average likelihood that a WLS
22 subscription will result in the subscriber obtaining the domain name in all
23 advertising, marketing, and promotional materials, and on all WLS order
24 forms;

25 b. Ordering Verisign and its agents, sales representatives, and
26 affiliates to conspicuously disclose the likelihood that the specific WLS
27 subscription being ordered will result in the subscriber obtaining the domain
28 name based on the number of characters it contains, the number of times it

1 has previously been renewed, and any other information in Verisign's
2 possession relevant to determination of the likelihood that a domain name will
3 be renewed;

4 c. Prohibiting Verisign and its agents, sales representatives, and
5 affiliates from accepting WLS subscriptions for domains that are not
6 scheduled to expire within the WLS subscription period during the one-year
7 trial of the WLS; and

8 d. Prohibiting Verisign and its agents, sales representatives, and
9 affiliates from using the word "guarantee" in connection with the WLS.

10 2. On Plaintiffs' Second Cause of Action, unless the WLS is otherwise
11 enjoined as prayed for herein, for preliminary and permanent injunctions:

12 a. Ordering ICANN to withdraw its approval of the WLS, and
13 refrain from approving any registry-level wait listing service in the future
14 unless approved by relevant stakeholders using consensus procedures;

15 b. Unless the WLS is otherwise enjoined as prayed for herein,
16 ordering ICANN to impose meaningful conditions on its approval of the WLS
17 including without limitation restrictions on sales of WLS subscriptions on
18 domain names not scheduled to expire during the subscription period, and on
19 sales of WLS subscriptions to domain name holders;

20 3. On Plaintiffs' Third Cause of Action, unless the WLS is otherwise
21 enjoined as prayed for herein:

22 a. For preliminary and permanent injunctions against Verisign
23 pursuant to 15 U.S.C. § 26, prohibiting implementation of the WLS unless
24 and until:

25 (i) Verisign enables transfer of subscriptions between
26 registrars in a manner no more burdensome than transfer of domain
27 names; and

28 (ii) Verisign enables customers to specify, at the time the

1 WLS subscription is placed, the registrar to which the domain name
2 should be registered if the domain name expires during the WLS
3 subscription period;

4 b. For preliminary and permanent injunctions pursuant to 15 U.S.C.
5 § 26 Ordering ICANN to withdraw its approval of the WLS and to refrain
6 from granting approval to the WLS or any similar service unless subscriptions
7 are transferable between registrars and subscriptions and resulting domain
8 name registrations may be purchased from different registrars; and

9 c. For treble damages and attorney's fees and costs as authorized
10 by 15 U.S.C. § 15;

11 4. On Plaintiffs' Fourth Cause of Action, unless the WLS is otherwise
12 enjoined as prayed for herein:

13 a. For preliminary and permanent injunctions pursuant to 15 U.S.C.
14 § 26 ordering ICANN to withdraw its approval of the WLS, and refrain from
15 approving any registry-level wait listing service in the future;

16 b. For preliminary and permanent injunctions pursuant to 15 U.S.C.
17 § 26 ordering Verisign to refrain from further violations of the antitrust laws;
18 and

19 c. For treble damages and attorney's fees and costs as authorized
20 by 15 U.S.C. § 15;

21 5. On Plaintiffs' Fifth Cause of Action, unless the WLS is otherwise
22 enjoined as prayed for herein:

23 a. For preliminary and permanent injunctions ordering ICANN to
24 withdraw its approval of the WLS, and refrain from approving any registry-
25 level wait list service in the future that allows registrants to purchase wait list
26 subscriptions on domain names of which they are the registrant;

27 b. For preliminary and permanent injunctions prohibiting Verisign
28 and its agents from accepting WLS subscriptions from any registrant of the

1 domain name to which the subscription applies;

2 c. For preliminary and permanent injunctions prohibiting Verisign
3 and its agents, sales representatives, and affiliates from referring to WLS
4 subscriptions as "protection", "insurance" or the equivalent in any sales,
5 marketing, promotional or advertising materials; and

6 d. For treble damages and attorney's fees and costs as authorized
7 by 18 U.S.C. § 1964;

8 6. On Plaintiffs' Sixth Cause of Action:

9 a. For damages according to proof at trial;

10 b. For punitive damages according to proof at trial;

11 7. On Plaintiffs' Seventh Cause of Action, for a declaratory judgment that
12 Verisign will be in breach of the Registry-Registrar Agreements if it implements the
13 WLS because Verisign is obligated by the Registry-Registrar Agreements to delete
14 domain names from the registry at the direction of the sponsoring registrar;

15 8. On Plaintiffs' Eighth Cause of Action, for a judicial decree of specific
16 performance compelling ICANN to perform its obligations under each 2001
17 Registrar Accreditation Agreement.

18 9. On Plaintiffs' Ninth Cause of Action, for a declaratory judgment that:

19 a. ICANN will be in breach of the Accreditation Agreements if it
20 approves the WLS because implementation of the WLS will unreasonably
21 restrain competition and ICANN's approval of the WLS fails to promote and
22 encourage robust competition;

23 b. ICANN will be in breach of the Accreditation Agreements if it
24 approves the WLS because the WLS creates a two-tier system in which
25 ICANN-accredited registrars do not have equal access to the registry; and

26 c. ICANN is obligated to use consensus procedures in connection
27 with policies relating to the allocation of domain names;

28 10. On Plaintiffs' Tenth Cause of Action, for preliminary and permanent

1 injunctions prohibiting Defendants, and each of them, from accepting consideration
2 in exchange for the chance to register currently-registered domain names, unless
3 those domain names are on "pending delete" status;

4 11. On all causes of action:

5 a. For any other and further equitable relief, including, without
6 limitation, restitutionary relief, and/or disgorgement of wrongfully gained
7 monies, revenue, or profit;

8 b. For attorneys' fees and costs; and


9 c. For such other and further relief as the Court may deem just and
10 proper.

11
12 Dated this 27th day of February, 2004.

13
14 Respectfully Submitted,

15 **NEWMAN & NEWMAN,**
16 **ATTORNEYS AT LAW, LLP**

17
18 By:


19 _____
20 Derek A. Newman (190467)
21 S. Christopher Winter (190474)
22 Venkat Balasubramani (189192)
23 Roger M. Townsend (*pro hac vice* pending)
24
25
26
27
28