



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

REGISTERSITE COM, et al

CASE NUMBER

CV04 - 1368 ABC (CWx)

PLAINTIFF(S)

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation, VERISIGN, INC., a Delaware corporation, NETWORK SOLUTIONS, INC, a Delaware corporation, ENOM, INC., a Washington corporation; ENOM FOREIGN HOLDINGS CORPORATION, a Washington corporation, and DOES 1 - 10, inclusive

DEFENDANT(S).

SUMMONS

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, Washington 98104

an answer to the  complaint  First 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: April 8, 2004

By: \_\_\_\_\_

Deputy Clerk

(Seal of the Court)

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

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

20  
21 Plaintiffs,

22 v.

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

28 Defendants.

Case No. CV04-1368 ABC (CWx)

**FIRST AMENDED COMPLAINT  
FOR:**

- (1) Violations of California  
Business & Professions Code  
§§ 17200, *et seq.*
- (2) Sherman Act, § 1, Unlawful  
Tying Arrangement
- (3) Intentional Interference with  
Prospective Economic  
Advantage
- (4) Declaratory Relief, 28 U.S.C.  
§ 201; and
- (5) Breach of Contract

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 First Amended Complaint against defendants  
7 INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,  
8 VERISIGN, INC., NETWORK SOLUTIONS, INC., ENOM, INC. and DOES 1-  
9 10, inclusive (collectively "Defendants"), and allege as follows:

#### 10 11 I. NATURE OF THE CASE

12 1.1. This lawsuit concerns an exploitative and fraudulent new "service" that  
13 defendant Verisign, Inc. ("Verisign"), through its agents eNom, NSI and DOES 1-  
14 10, inclusive (collectively the "Participating Registrars"), plans to foist upon  
15 unsuspecting consumers in the United States and worldwide. Verisign's so-called  
16 *Wait Listing Service* ("WLS") purports to give consumers, for an annual fee, the  
17 right to be "first in line" on the "waiting list" for currently-registered <.com><sup>1</sup> and  
18 <.net> domain names. Inherent in the nature of the service is that a consumer will  
19 receive no benefit from purchasing a WLS "subscription" *unless and until* the  
20 current registrant of the domain name (the "subscribed domain name") decides to  
21 abandon it, which is unlikely. In any event, that decision is beyond the defendants'  
22 control, and the "service" is nothing more than an illegal lottery in which most  
23 consumers will receive nothing for their money.

24 1.2. Even if defendants' WLS scheme were permissible (which it is not),  
25 the Participating Registrars' failure to disclose the likelihood of "winning" (*i.e.*, of  
26 obtaining the subscribed domain name as a result of the subscription) renders their  
27

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28 <sup>1</sup>Domain names are surrounded by caret symbols (*i.e.*, "<>") herein for the purpose of  
distinguishing them. However, the caret symbols are not a part of the domain name itself.

1 sale of WLS subscriptions misleading and deceptive to consumers. Plaintiffs  
2 therefore bring this action on behalf of themselves and on behalf of the people of the  
3 State of California to enjoin defendants from implementing their unlawful plan.

4 1.3. Disclosing the likelihood that a WLS subscription will be successful  
5 would not suffice to make the Participating Registrars' advertising for WLS  
6 subscriptions fair. Participating Registrars NSI and eNom (which act as Verisign's  
7 agents in selling WLS subscriptions) are advertising WLS subscriptions to  
8 consumers as a form of "insurance" that will "protect" their domain names. Current  
9 domain name registrants, who depend on defendants to preserve their rights and  
10 investments in their domain names, or to refrain from interfering with those rights,  
11 will have little choice but to purchase WLS subscriptions in the face of such a  
12 threatening "offer".

13 1.4. The plaintiffs are domain name registrars accredited by defendant  
14 Internet Corporation for Assigned Names and Numbers ("ICANN"). Plaintiffs each  
15 offer a service to assist consumers in registering expired domain names. None of  
16 the plaintiffs charges a fee for its service unless and until it actually registers a  
17 domain name on behalf of its customer. The plaintiffs do not make any spurious  
18 "guarantees" about their services in marketing materials or elsewhere.

19 1.5. ICANN has authorized Verisign to implement the WLS. Verisign has  
20 the technical ability to offer the WLS by virtue of its role as the operator of the  
21 authoritative database of domain names for each of <.com> and <.net>. In that role,  
22 Verisign has no ownership interest in the domain names in the database, and its *de*  
23 *facto* control over all <.com> and <.net> domain names does not give it any interest  
24 in those domain names. A WLS subscription is a contingent future interest in a  
25 domain name, and by selling WLS subscriptions Verisign (through Participating  
26 Registrars) is selling contingent future interests in property that it *does not own*.

27 1.6. Verisign's conduct is analogous to that of a bank selling  
28 "subscriptions" to its customers' accounts. A bank holds the authoritative records

1 for its customers' accounts, and could therefore sell "subscriptions" whereby at the  
2 exact moment an account would otherwise become "unclaimed" by operation of  
3 law, ownership would be transferred to the subscriber. This would obviously be  
4 improper; the fact that the bank is in a position to declare its subscriber the rightful  
5 owner of an account does not give it the right to do so.

6 1.7. Just as banks are required to transfer unclaimed funds to the  
7 government, Verisign is required to delete expired domain names, rendering them  
8 available for registration by any registrar. This obligation is contained in (among  
9 other things) the agreement that each Plaintiff, like all registrars in <.com> and  
10 <.net>, entered into with Verisign. Verisign will breach those agreements by  
11 launching the WLS.

12 1.8. Defendants' conduct as alleged herein violates the California Unfair  
13 Trade Practices Act, Bus. & Prof. Code § 17200 *et. seq.*, as well as the Sherman  
14 Act, 15 U.S.C. § 1 *et. seq.*, the FTC Act, 15 U.S.C. § 41 *et. seq.*, and the California  
15 Consumers Legal Remedies Act, Civ. Code § 1750 *et. seq.*. In addition, the WLS  
16 constitutes an illegal lottery pursuant to California Penal Code section 319.

17 1.9. This lawsuit seeks to enjoin the defendants' proposed unfair and  
18 unlawful WLS activities, and in the event defendants launch the WLS, to recover  
19 the damages Plaintiffs will suffer as a result.

## 20 21 **II. THE PARTIES**

22 2.1. Plaintiff ABR PRODUCTS INC. ("ABR Products") is a New York  
23 corporation doing business as REGISTERSITE.COM, with its principal place of  
24 business at 2 Tamarck Circle, Fishkill, New York 12524.

25 2.2. Plaintiff NAME.COM, LLC ("Name.com") is a Wyoming limited  
26 liability company with its principal place of business at 360 Franklin St., Denver,  
27 CO 80218.

28 2.3. Plaintiff R. LEE CHAMBERS COMPANY LLC

1 (“domainstobeseen.com”) is a Tennessee Limited Liability Company doing business  
2 as “domainstobeseen.com” with its principal place of business at 6441 Bonny Oaks  
3 Drive, Suite “C”, Chattanooga, TN 37416-3537.

4 2.4. Plaintiff FIDUCIA LLC, (“Fiducia”) is a Nevada limited liability  
5 company with its principal place of business at 12-14 Vilandes St., Riga, LV-1010,  
6 Latvia.

7 2.5. Plaintiff SPOT DOMAIN, LLC (“Spot Domain”) is a Wyoming limited  
8 liability company with its principal place of business at 1539 Platte St., Denver, CO  
9 80202.

10 2.6. Plaintiff !\$6.25 DOMAINS! NETWORK, INC. (“Esite”) is a Delaware  
11 corporation doing business as Esite, with its principal place of business at 7711  
12 O'Connor Blvd, Suite 416, Round Rock, TX 78681.

13 2.7. Plaintiff AUSREGISTRY GROUP PTY LTD. (“AusRegistry Group”)  
14 is an Australian Proprietary Limited Company with its principal place of business  
15 located at Level 6, 10 Queens Rd., Melbourne, Victoria, Australia.

16 2.8. Plaintiff! \$ ! BID IT WIN IT, INC. (“BidItWinIt”) is a Minnesota  
17 corporation with its principal place of business at 5400 Vernon Ave. S, Suite 218,  
18 Minneapolis, MN 55436.

19 2.9. Defendant INTERNET CORPORATION FOR ASSIGNED NAMES  
20 AND NUMBERS (“ICANN”) is a California corporation with its principal place of  
21 business at 4676 Admiralty Way, Suite 330, Marina Del Rey, California 90292-  
22 6601. Defendant Verisign could not offer, and defendants eNom and NSI could not  
23 sell, WLS subscriptions but for ICANN’s approval of the WLS. ICANN has  
24 therefore aided and abetted the conduct of defendants Verisign, eNom and NSI  
25 alleged herein, and is responsible for same as a principal pursuant to California  
26 Penal Code section 31.

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

1 Road, Mountain View, California 94043.

2 2.11. Defendant NETWORK SOLUTIONS, INC. ("NSI") is a Delaware  
3 corporation registered to do business, and which does business, in the state of  
4 California, with its registered office located in the city and county of Los Angeles at  
5 818 West Seventh Street, Los Angeles, California 90017, with its principal place of  
6 business located at 505 Huntmar Park Drive, Herndon, Virginia, 20170-5139.

7 Defendant Verisign acquired NSI in March 2000. Defendant Verisign sold 85% of  
8 NSI's registrar division in October 2003, and currently retains a 15% ownership  
9 interest in NSI's registrar division.

10 2.12. Defendant ENOM, INC. is a terminated Washington corporation with  
11 its principal place of business in Washington, but which regularly conducts business  
12 in Los Angeles, California. This lawsuit arises out of ENOM, INC.'s ability to sell  
13 domain names as a registrar pursuant to a Registrar Accreditation Agreement  
14 executed in Los Angeles County. The Washington Secretary of State records  
15 indicate that ENOM, INC. has been dissolved, and is no longer validly existing and  
16 in good standing.

17 2.13. Defendant ENOM FOREIGN HOLDINGS CORPORATION is a  
18 Washington corporation with its principal place of business in Washington.  
19 Plaintiffs are informed and believe, and on that basis allege, that ENOM FOREIGN  
20 HOLDINGS CORPORATION has assumed all liability, rights and obligations of  
21 Defendant ENOM, INC., or is an alter-ego of Defendant ENOM, INC., which has  
22 been dissolved, and is no longer validly existing and in good standing.  
23 Consequently, Plaintiffs sue ENOM FOREIGN HOLDINGS CORPORATION both  
24 for its own acts giving rise to the claims alleged herein, and as the alter-ego and  
25 successor-in-interest to the liability of ENOM, INC. Together, ENOM, INC. and  
26 ENOM FOREIGN HOLDINGS CORPORATION will be referred to herein as  
27 "eNOM" (in the singular form, though identifying both defendants).

28 2.14. Defendants NSI and eNom are agents of defendant Verisign.

1 Defendants NSI and eNom are each authorized by Verisign to accept "pre-orders"  
2 for WLS subscriptions, and each has agreed to sell WLS subscriptions on Verisign's  
3 behalf. Defendants NSI and eNom are each authorized to bind Defendant Verisign  
4 as Verisign's agent.

5 2.15. Plaintiffs are domain name registrars. Each Plaintiff is empowered to  
6 be a domain name registrar by virtue of a contract into which that Plaintiff entered  
7 with defendant ICANN. Said contract between ICANN and each respective  
8 Plaintiff provides that such contract is "made . . . at Los Angeles, California, USA."  
9 Additionally, said contract provides that disputes arising under or in connection with  
10 that contract shall be resolved in Los Angeles, California. Each Plaintiff owns at  
11 least one domain name in <.com> or <.net>, and is a consumer of domain names to  
12 that extent.

13 2.16. DOES 1-10, inclusive, are ICANN-accredited domain name registrars,  
14 each of which has agreed to sell WLS subscriptions on Verisign's behalf. The true  
15 names of defendants DOES 1 through 10, inclusive, are unknown to Plaintiffs, who  
16 therefore sue said defendants by such fictitious names. Plaintiffs are informed and  
17 believe, and on such information and belief allege, that each of the defendants sued  
18 herein as a DOE is legally responsible in some manner for the events and  
19 happenings alleged herein, and that the damages to Plaintiffs and members of the  
20 general public as herein alleged were proximately caused by such DOE Defendants'  
21 conduct. Plaintiffs will ask leave of this Court to amend this complaint to insert the  
22 true names and capacities of DOES 1-10 in place and instead of the fictitious names  
23 when the same become known to Plaintiffs.

### 24 25 **III. JURISDICTION AND VENUE**

26 3.1. This Court has jurisdiction over this action pursuant to  
27 28 U.S.C. § 1331, 28 U.S.C. § 1337, 15 U.S.C. § 26, and 15 U.S.C. § 57b.

28 3.2. This Court has personal jurisdiction over the defendants to this action



1 because they have each engaged in business transactions and wrongful conduct in  
2 the state of California and specifically in this judicial district, and the claims alleged  
3 herein arise out of those transactions and conduct. Additionally, each of the  
4 defendants has systematic and continuous contacts with the state of California.

5 3.3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c)  
6 because defendant ICANN is a corporation organized under the laws of the state of  
7 California, with its principal place of business in Los Angeles County, California.  
8 Defendants Verisign and NSI each maintain their registered office in Los Angeles,  
9 California. eNom is a corporation doing business in California, and this action  
10 arises out of wrongful acts committed by all defendants in this judicial district and  
11 which subject the defendants to personal jurisdiction here. Additionally, the contract  
12 between Plaintiffs and defendant ICANN that forms the basis of Plaintiffs' breach of  
13 contract claim against ICANN states that venue for any litigation concerning the  
14 contract will be a court located in Los Angeles, California, USA. Similarly,  
15 defendants Verisign, NSI, and eNOM have entered into contracts with ICANN,  
16 directly related to the claims alleged herein, providing for this Court as the exclusive  
17 venue for a lawsuit relating to the contract.

#### 18 IV. FACTS

##### 19 A. THE DOMAIN NAME SYSTEM

20 4.1. The Internet is an interconnected network of computer networks.

21 4.2. Each computer connected to the Internet has a unique 32 bit number  
22 assigned to it called an Internet protocol address (an "IP address"). The IP address  
23 is represented by four decimal numbers (octets) separated by periods. For example,  
24 the IP address identifying the computer which hosts the web site for defendant  
25 ICANN is 192.0.34.163.

26 4.3. The IP address system is an integral part of a communications protocol  
27 known as TCP/IP (*i.e.*, Transmission Control Protocol (TCP) and Internet Protocol  
28 (IP)) which was developed in part in the 1970s and integrated and completed in or

1 around 1982. Communications over the Internet are made possible in large part  
2 because of the development of the TCP/IP communication protocol.

3 4.4. In or around November 1983, the “domain name system” (or “DNS”)  
4 was developed. The domain name system allows the use of user-friendly  
5 alphanumeric domain names, such as <example.com>, to identify computers on the  
6 Internet instead of harder-to-remember IP addresses. The domain name system  
7 operates through a series of databases that “resolve” or link domain names with the  
8 IP addresses with which they are associated.

9 **B. THE DOMAIN NAME HIERARCHY**

10 4.5. The DNS defines a hierarchical name space divided into zones, each of  
11 which has authority over the zones below it. The top zone is divided into top-level  
12 domains, or “TLDs”. Each TLD is divided into second-level domains. Second-  
13 level domains can be further divided into third-level domains, and so on.

14 4.6. In the domain <www.example.com>, <.com> is the top-level domain,  
15 <example.com> is the second level domain, and <www.example.com> is the third  
16 level domain, also referred to as the “hostname.” There can be any number of hosts  
17 named “www”, but there can only be one host named “www” in <example.com>  
18 (or any particular second-level domain). Similarly, although there can only be one  
19 second-level domain <example.com>, there can be as many second-level domains  
20 named “example” as there are TLDs (e.g., <example.info>, <example.us>, etc.).

21 4.7. The top-level domain name space of the DNS includes fourteen  
22 “generic” top-level domains (e.g., <.com>, <.net>, <.biz>, etc.), two hundred forty-  
23 three (243) two-letter country code domains (e.g., <.uk>, <.cc>, etc.), and one top  
24 level domain (i.e., <.arpa>) reserved for Internet infrastructure purposes.

25 ///  
26 ///  
27 ///  
28 ///

1 **C. REGISTRANTS, REGISTRIES, AND REGISTRARS**

2 4.8. A “registrant” is a person who registers a domain name. A registrant  
3 has the exclusive right to use the domain names it registers during the registration  
4 period.

5 4.9. A “registry” is an organization responsible for maintaining the  
6 authoritative database of domain registrations and domain name/IP address<sup>2</sup> pairs  
7 for a top-level domain space. This database is known as the “zone file”. The  
8 registry is often referred to as a “registry operator” and the zone file is referred to as  
9 the “registry”. There can be only one registry for each top-level domain. Verisign  
10 is the registry operator for the <.com> and <.net> TLDs.

11 4.10. A “registrar” acts as an interface between registrants and the registry  
12 operator, registering, renewing, transferring and deleting domain names on behalf of  
13 consumers by issuing the appropriate commands to the registry. Only registrars  
14 accredited by defendant ICANN can register domain names in <.com> and <.net>.  
15 Plaintiffs are ICANN-accredited registrars, as are defendants eNom and NSI.

16 4.11. From a sales standpoint, a registry sells domain names to registrars on  
17 a wholesale basis. Registrars, in turn, sell those domain names to registrants on a  
18 retail basis. Registrars bill and collect fees from registrants for domain names.  
19 Registries almost always charge per-domain fees to registrars.

20 **D. HISTORY OF GTLD<sup>3</sup> DOMAIN NAME ADMINISTRATION**

21 4.12. Today’s Internet has its origins in a network called the ARPANET,  
22 which was launched by the Department of Defense in 1969. ARPANET was  
23 superceded by NSFNET, a network developed by the National Science Foundation  
24 (the “NSF”) in 1990. NSFNET began allowing commercial activity in 1992, and  
25

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26 <sup>2</sup>The registry actually matches domain names with nameservers, which in turn match domain names  
27 with IP addresses, but that distinction is not relevant to this Complaint.

28 <sup>3</sup>gTLD means generic top-level domain (such as <.com.> and <.net>), which is not to be confused  
with a ccTLD, a country code top-level domain (such as <.uk> or <.ca>).

1 thus evolved into today's Internet.

2 4.13. In 1993, NSF signed a cooperative agreement with defendant NSI  
3 under which NSI became the exclusive registrar for second-level domains in  
4 <.com>, <.net>, <.org>, and <.edu> , as well as the exclusive registry operator for  
5 each of those top-level domains. Pursuant to that agreement, NSI registered domain  
6 names in <.com> and <.net> (among other TLDs) to registrants on a first-come,  
7 first-served basis. NSI remained both registry operator and sole registrar in those  
8 TLDs until 1999.

9 4.14. On June 10, 1998, the Clinton administration issued a policy statement  
10 on electric commerce known as the "White Paper". The White Paper called upon  
11 the private sector to create a new, not-for-profit corporation to assume  
12 responsibility, over time, for the management of certain aspects of the DNS. The  
13 White Paper identified four specific functions to be performed by this new  
14 corporation, which included development of "policies for . . . the establishment of  
15 domain name registries and domain name registrars and the terms, including  
16 licensing terms, applicable to new and existing gTLDs and registries under which  
17 registries, registrars, and gTLDs are permitted to operate." The White Paper also  
18 articulated the fundamental policies that would guide United States participation in  
19 the transfer of DNS management responsibility to the private sector: ① stability;  
20 ② competition; ③ private, bottom-up coordination; and ④ representation.

21 4.15. The White Paper listed a number of tasks to be undertaken on a  
22 priority basis, including in particular the creation and organization of a new, not-for-  
23 profit corporation ("NewCo") to manage the DNS and the rapid introduction of  
24 competition in the provision of domain name registration services. The Department  
25 of Commerce committed to enter into an agreement with NSI by which NSI would  
26 agree to take specific actions, including commitments as to pricing and equal access,  
27 designed to permit the development of competition in domain name registration.

28 4.16. In fulfillment of the commitment expressed in the White Paper, on

1 October 7, 1998, the Department of Commerce and NSI entered into Amendment  
2 11 to their existing Cooperative Agreement. Among other things, Amendment 11  
3 provided for the development, deployment, and licensing by NSI (under a license  
4 agreement to be approved by the Department of Commerce) of a mechanism to  
5 allow multiple registrars to submit registrations for the gTLDs for which NSI acted  
6 as the registry (the "Shared Registration System," or "SRS").

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

8 4.17. Defendant Internet Corporation for Assigned Names and Numbers was  
9 formed in September 1998. 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 4.18. In November 1998, the Department of Commerce entered into a  
13 Memorandum of Understanding with ICANN that recognized ICANN as NewCo  
14 and specifically contemplated ultimate transition of management responsibility to  
15 ICANN. In the Memorandum of Understanding, ICANN expressly agreed to abide  
16 by principles of stability, competition, private, bottom-up coordination, and  
17 representation.

18 4.19. On September 28, 1999 the U.S. Department of Commerce, NSI, and  
19 ICANN announced a series of tentative agreements among them (including a  
20 Registrar Accreditation Agreement and a Registry-Registrar Agreement) concerning  
21 operation of the <.com>, <.net>, and <.org> top-level domains in a competitive  
22 environment. Those agreements were approved by ICANN's Board of Directors on  
23 November 4, 1999 and signed by ICANN, the Department of Commerce, and NSI  
24 on November 10, 1999.

25 ///

26 ///

27 ///

28 ///

1 **F. DOMAIN NAME EXPIRATION AND DELETION**

2 4.20. As the total number of domain names registered in <.com> and <.net>  
3 has grown past thirty million, the pool of unregistered names<sup>4</sup> has been reduced  
4 accordingly. As early as 1999, news media were reporting a “shortage” of domain  
5 names in <.com>.

6 4.21. In April 1999, for example, in an article entitled “Domain Name List is  
7 Dwindling,” *Wired News* reported:

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

10 Well, forget it. You don't stand a chance. Start-ups, squatters, and  
11 speculators already have bought up all the Internet's prime real estate. A  
12 *Wired News* investigation found that the .com versions of nearly all  
13 popular words have been taken. Of 25,500 standard dictionary words we  
14 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.

15 The result: The once-fierce pace of domain name registration is slowing.  
16 In the last month, only about 100 new dictionary-word .com domains  
have been snatched up.<sup>5</sup>

17 4.22. As the number of registered domain names increases, not only the  
18 quantity but the quality of available unregistered names decreases.

19 4.23. The shortage of desirable domain names in <.com> and <.net> is  
20 alleviated to some degree by the number of registered domain names that expire  
21 because they are not renewed by their current registrants.

22  
23  
24  
25 <sup>4</sup>The pool of unregistered domain names is equal to all possible second-level domain names minus  
26 the sum of (i) registered domain names and (ii) domain names the registration of which is prohibited by law  
27 or policy (such as <example.com>, which is reserved for demonstration pursuant to RFC 2606). Because  
a domain name only exists as such if it appears in the registry, the phrase “unregistered domain names” is  
something of an oxymoron. It is used herein for simplicity nonetheless.

28 <sup>5</sup>McCulloch, 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 4.24. Expired domain names<sup>6</sup> are a critical resource for registrars and  
2 consumers. Approximately 800,000 domain names expire each month and are  
3 returned, at least momentarily, to the pool of unregistered domains available for  
4 registration. In light of the shortage of desirable domain names, competition for  
5 expired domain names can be fierce.

6 **G. THE DOMAIN NAME DELETION PROCESS**

7 4.25. Domain names are registered for fixed periods from a minimum of one  
8 year to a maximum of ten years with most registrars, and up to 100 years with  
9 Defendant NSI, in one year increments.

10 4.26. As the end of the registration period (the “expiry date”) approaches,  
11 the registrar associated with the domain name (the “sponsoring registrar”) typically  
12 sends the registrant one or more reminders that the domain name will expire unless  
13 the domain name renewal fee is paid.

14 4.27. If the registrant renews the domain name, the registrar sends a  
15 command to the registry to extend the expiry date by the number of years for which  
16 the registrant has renewed. The domain name remains in active status until the next  
17 expiry date.

18 4.28. If the registrant does not renew the domain name by the expiry date,  
19 the registry automatically adds one year to the expiry date and debits the sponsoring  
20 registrar’s account \$6.00 for the one-year renewal.

21 4.29. Although different registrars have different policies regarding  
22 expiration, most provide a "grace period" after the expiry date during which a  
23 domain name can be renewed and reactivated, albeit often at a higher fee. If the  
24 registrant renews the domain name during the grace period, the domain name returns  
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26 <sup>6</sup> “Expired domain names” is also an oxymoron. As used herein, “expired” domain names are  
27 assumed to have been deleted from the registry, and therefore do not exist as domain names. Although an  
28 expired domain name is technically no different from any other unregistered domain name, as a practical  
matter they are distinct. Among other things, the marketing tools employed in connection with expired  
domain names are inapplicable to other unregistered domain names.

1 to active status until the next expiry date.

2 4.30. If the registrant does not renew the domain within the grace period  
3 provided by the sponsoring registrar (if any), the sponsoring registrar sends a  
4 “delete” command to the registry within forty-five (45) days following the expiry  
5 date, and the registry credits the \$6.00 renewal fee back to the sponsoring  
6 registrar’s account. The forty-five day period during which the sponsoring registrar  
7 may cancel a domain name and receive a credit for the registration fee is referred to  
8 as the “Auto-Renew Grace Period.”

9 4.31. Upon receipt of a “delete” command, the registry places the domain  
10 name on Redemption Period (RP) status for thirty (30) days, during which it can be  
11 recovered by the registrant upon payment of a recovery fee determined by the  
12 sponsoring registrar (typically over \$100). This period is referred to as the  
13 “Redemption Grace Period.” Domain names in RP status do not appear in the zone  
14 file (and thus cannot be accessed via the Internet). The RGP was implemented in  
15 January 2003 to prevent domain names from being lost as a result of unintentional  
16 non-renewal.

17 4.32. If the registrant does not redeem the domain name within the RGP, the  
18 registry changes the domain name to “Pending Delete” status, where it remains for  
19 five (5) days. When in Pending Delete status, the domain name’s status cannot be  
20 changed by either a registrar or the registry, and the domain name will be deleted.  
21 On the sixth day after being placed on Pending Delete status, the domain name is  
22 deleted from the registry.

23 4.33. Domain names are deleted from the registry in a batch process that  
24 takes place once a day (the “Batch Delete”). Approximately 20,000 domain names  
25 are deleted each day in the Batch Delete. All registrars have equal access to deleted  
26 (*i.e.*, unregistered) domain names.

27 4.34. During a Batch Delete, many registrars compete to register expired  
28 domain names on behalf of their customers. Each competing registrar sends a series



1 of “add” commands to the registry for each of the domains it is attempting to  
2 register. The first competing registrar to have its command accepted for a given  
3 domain name registers that domain name. A desirable domain name that is deleted  
4 during a Batch Delete will often be re-registered within a few milliseconds of being  
5 deleted by the registry.

#### 6 **H. COMPETITION FOR EXPIRED DOMAIN NAMES**

7 4.35. Consumers who wish to obtain a domain name that is currently  
8 registered can choose from many different companies that will assist them in doing  
9 so. The various business models include fixed price, first-come-first-serve, auction,  
10 and brokering. The services that compete for expiring domain names are known as  
11 “backorder” services.

12 4.36. Many (if not most) ICANN-accredited domain name registrars offer  
13 backorder services in some form. There are typically at least 100 registrars  
14 competing to be the first to register desirable domain names as they are deleted from  
15 the registry.

16 4.37. Currently, each registrar providing backorder services offers its  
17 customers whatever services it thinks best, at whatever prices it chooses to set.  
18 Prices for domain names registered after being deleted in the Batch Delete can range  
19 from less than ten dollars to tens of thousands of dollars.

20 4.38. Registrars offering backorder services are in no way precluded from  
21 registering expired domain names, as all registrars have equal access to the entire  
22 pool of unregistered domain names, including expired domain names.

#### 23 **I. PLAINTIFFS’ SERVICES**

24 4.39. 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 4.40. 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 4.41. 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 4.42. Plaintiffs also offer their customers, at no charge, various valuable  
14 services relating to expired domain names. Such services include, but are not  
15 limited to, daily e-mail notification of soon-to-be-available domain names and e-mail  
16 notification of soon-to-be-available domain names containing user specified  
17 keywords.

18 4.43. Currently, there are several models for the sale of expired domain  
19 names. One company<sup>7</sup> charges customers an annual subscription fee of  
20 approximately \$70 per domain name before it expires. Other of Plaintiffs'  
21 competitors charge lower subscription fees, or one-time fees, or charge high  
22 recurring fees to monitor a large number of domain names. Consumers now have  
23 substantial choice in domain name back-ordering. The WLS will eliminate that  
24 choice.

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27  
28 <sup>7</sup>Specifically, SnapNames, which is a company providing services similar to those offered by  
Plaintiffs. Plaintiffs have no relation to SnapNames and believe that its service is illusory similar to the  
WLS. Verisign has agreed to license SnapNames's technology to power the WLS,

1 **J. THE PROPOSED VERISIGN WAIT LISTING SERVICE**

2 4.44. Defendant Verisign operates the <.com> registry by virtue of having  
3 acquired NSI in March 2000. In October 2003, Verisign sold 85% of the NSI  
4 registrar to a private investment group, but retained the NSI registry (and 15% of the  
5 NSI registrar).

6 4.45. Verisign cannot offer registry services in <.com> and <.net> without  
7 the approval of ICANN and the Department of Commerce. In March 2002,  
8 Verisign requested ICANN's permission to launch the WLS.

9 4.46. If the WLS is implemented, accredited registrars who choose to offer  
10 the WLS will be able to subscribe (on behalf of customers) to currently registered  
11 <.com> and <.net> domain names. Only one WLS subscription will be accepted for  
12 each domain name, and each WLS subscription will be for a one-year period. WLS  
13 subscriptions will be accepted on a first-come/first-served basis.

14 4.47. Verisign will charge the registrar a \$24.00 fee for each WLS  
15 subscription placed. Consequently, Verisign will generate \$30.00 per domain name,  
16 instead of the \$6.00 fee it currently generates. The registrar's fee to its customer  
17 will be established by the registrar, but is estimated to be around \$40.00.

18 4.48. Before deleting registered domain names from the registry, Verisign  
19 will first check to determine whether a subscription has been placed for the name. If  
20 there is a reservation, Verisign will not delete the name, but instead will assign the  
21 name to the registrar who placed the reservation, charging the \$6.00 annual  
22 registration fee to the registrar. The registrar will then register the name to its  
23 customer, charging a fee determined by agreement of the registrar and customer.

24 4.49. If there is no reservation, Verisign will delete the name from the  
25 registry, so that the name is returned to the pool of names available for re-  
26 registration through all registrars on a first-come, first-served basis.

27 4.50. The WLS will initially be offered for a one-year trial period. At the end  
28 of the year, ICANN and Verisign will evaluate whether the service should be

1 continued. In the event the WLS is not continued, subscriptions extending beyond  
2 the trial period will be honored. Effectively, the one-year trial will last for two years  
3 (to accommodate one-year subscriptions purchased on the last day of the one year  
4 trial). Although Verisign will allow only one WLS subscription per domain name  
5 during the trial period, it has expressed its desire to offer a “deeper subscription  
6 queue”<sup>8</sup> in the future (e.g., second in line, third in line, etc.).

7 **K. CONSUMER CHOICE IN EXPIRED DOMAIN NAMES WILL END**

8 4.51. If the WLS is implemented, the only expired domain names that will be  
9 deleted from the registry are those for which no one is willing to pay the  
10 (approximate) \$40 retail price of a WLS subscription.

11 4.52. Verisign’s control of the registry precludes any possibility of  
12 competition in WLS services. No registrar will be able to offer a service that  
13 charges a fee only if it succeeds in registering a domain name on the customer’s  
14 behalf, or that charges a one-time fee rather than an annual fee; nor will registrars be  
15 allowed to auction expired domain names in a fair and equitable manner. By  
16 imposing an annual \$24 per domain name subscription fee, Verisign precludes those  
17 business models.

18 4.53. If the WLS is implemented, Plaintiffs will be prevented from offering  
19 the services they currently provide. Several of the Plaintiffs derive their entire  
20 revenue from services relating to expired domain names, and will be put out of  
21 business if the WLS is implemented. Others, if not put out of business, will lose  
22 their primary source of revenue and the entire goodwill associated with their  
23 businesses and business models.

24 4.54. 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

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28 <sup>8</sup>Domain Name Wait Listing Service proposal by Defendant Verisign dated January 28, 2002, at page 6.

1 registered domains will be renewed, and that backorders on currently-registered  
2 names are therefore of inherently uncertain value (and of no value at all with respect  
3 to certain domain names).

4 **L. VERISIGN WILL PROVIDE NO VALUE TO CONSUMERS PURCHASING WLS**

5 4.55. If WLS subscriptions are distributed randomly among all domain  
6 names, only about 23% will result in the consumer obtaining the domain name to  
7 which such consumer subscribes, because only 23% of domain names are deleted  
8 each year.

9 4.56. But, WLS subscriptions are unlikely to be distributed randomly among  
10 all domain names. Rather, WLS subscriptions are likely to be purchased on the  
11 most desirable domain names, and are unlikely to be purchased on the least  
12 desirable domain names. Shorter domain names are commonly considered more  
13 desirable than longer domain names, and domain names that are words in the  
14 English language are commonly considered more desirable than domain names that  
15 are not words in the English language.

16 4.57. The likelihood that a domain name will not be renewed from the  
17 registry varies according to (among other things) the number of years that it has  
18 already been registered, the number of characters it contains, and whether or not it is  
19 a word in the English language. In general, the longer a domain name has already  
20 been registered, and the shorter it is, the less likely it is to be allowed to expire.  
21 Domain names that are words in the English language are less likely to be allowed  
22 to expire than domain names that are not.

23 4.58. Less than five percent (5%) of domain names that have been registered  
24 for three years or more, and are less than five characters (not including the TLD), or  
25 that are words in the English language, are allowed to expire. Consequently, of  
26 WLS subscriptions on the most desirable domain names, ninety five percent (95%)  
27 of consumers will never obtain the domain names to which they subscribe.

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

2 4.59. Verisign first made its WLS proposal in December, 2001 by sending it  
3 to the ICANN Registrar Constituency, which represents the stakeholders who  
4 would be most directly impacted by the WLS proposal. The reaction from the  
5 members of the Registrar Constituency was overwhelmingly negative. On  
6 March 10, 2002, the Registrars Constituency adopted a resolution opposing  
7 implementation of the WLS and urging ICANN to withhold permission for its  
8 implementation.

9 4.60. Verisign then submitted the WLS proposal to the ICANN board, in the  
10 form of a request to amend Appendix G of the <.com> and <.net> registry  
11 agreements to allow it to offer the service. On April 17, 2002, ICANN general  
12 counsel Louis Touton, in an analysis of the WLS for the Board of Directors, noted  
13 that "ICANN has not yet developed a well-defined procedure for considering  
14 requests by registry operators to amend Appendix G to allow charging for an  
15 additional registry service." Recognizing that "action on [Verisign]'s proposal may  
16 serve as a model for future actions," Mr. Touton cautioned the Board that "it is  
17 important to carefully consider the process that should be followed."

18 4.61. After noting that the registry operator is in a sole-source position in  
19 providing registry services and that its position as such "carries with it the potential  
20 for various types of harm to the legitimate interests of others," Mr. Touton  
21 concluded that "[u]nder [the] circumstances, and given the existing conceptual  
22 approach of ICANN to seek consensus where possible, it is my judgment that *the*  
23 *Board should not seek to decide how to deal with this request without invoking the*  
24 *formal consensus development processes* currently established within ICANN"  
25 (emphasis added).

26 4.62. On April 22, 2002, the Board considered Mr. Touton's analysis, and  
27 resolved to solicit community comment on Verisign's request. The Board also  
28 requested the Names Council to coordinate within the Domain Name Supporting

1 Organization (“DNSO”), an ICANN constituency concerned with DNS issues, a  
2 task force (the “Task Force”) to prepare and submit its recommendations regarding  
3 the WLS.

4 4.63. The Task Force consulted the various constituents whose interests  
5 would be impacted by the WLS and determined that the *consensus was*  
6 *overwhelmingly opposed* to implementing the WLS. On July 12, 2002, the Task  
7 Force recommended that the Board “*reject* Verisign’s request to amend its  
8 agreement to enable it to introduce its proposed WLS,” and “*reject* Verisign’s  
9 request to trial the WLS for 12 months.” (emphasis added).

10 4.64. On August 23, 2002, despite the opposition of the Registrar  
11 Constituency, the Task Force, and the vast majority of constituents who expressed  
12 their opinions on the ICANN web site, the ICANN Board adopted a resolution  
13 authorizing ICANN’s President and General Counsel to negotiate with VeriSign for  
14 the establishment of WLS.

15 4.65. The ICANN Board approved the amendments necessary for Verisign  
16 to offer the WLS on March 6, 2004.

17 4.66. Plaintiffs are informed and believe that the Department of Commerce  
18 intends to “rubber stamp” the WLS proposal without giving it meaningful  
19 substantive consideration, and that Verisign will not be materially delayed in  
20 implementing the WLS as a result of the requirement that it secure Department of  
21 Commerce approval.

22 4.67. Plaintiffs are informed and believe, and on that basis allege, that  
23 Verisign plans to launch the WLS no more than thirty (30) days after the  
24 Department of Commerce and the ICANN Board give final approval of the  
25 amendments to Appendix G to the registry agreements.

26 4.68. Defendants eNom and NSI are currently advertising the WLS and are  
27 accepting “pre-orders” for WLS subscriptions on their Web sites.

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1  
2 **V. FIRST CAUSE OF ACTION**  
3 **UNFAIR TRADE PRACTICES ACT**  
4 **BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**  
5 **(Against All Defendants)**

6 5.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
7 4.68 above as though fully set forth herein.

8 5.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
9 of the general public, acting as a private attorney general under California's Unfair  
10 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

11 5.3. California Business & Professions Code § 17200, *et seq.* declares  
12 unfair competition unlawful and defines unfair competition as, *inter alia*, "any  
13 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
14 or misleading advertising . . ."

15 5.4. The activity proscribed under Business & Professions Code § 17200  
16 includes anything that can properly be called a business practice and that at the  
17 same time is forbidden by law.

18 5.5. California Penal Code § 319 defines a lottery as follows:

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

26 5.6. California Penal Code § 320 provides that "Every person who  
27 contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a [crime]."

28 5.7. 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:

"Every person who sells, gives, or in any manner whatever, furnishes or  
transfers to or for any other person any ticket, chance, share, or interest,  
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]."



1 5.8. California Penal Code § 322 makes it a crime for any person to merely  
2 assist with a lottery. Specifically, Penal Code § 322 provides that:

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

7 5.9. Lotteries are illegal in California and in every other state in this  
8 country<sup>9</sup>.

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9 <sup>9</sup> **Alabama:** Code of Ala. §§ 37A-37-20, -21, -22 (2000)(illegal lottery consists of (1) a prize, (2)  
10 awarded by chance, (3) for consideration); **Alaska:** Alaska Stat. §§37.66.200, -210, -220, -280(2), (37)(2000);  
11 *Morrow v. State*, 537 P.2d 377, 378 (Alas.1973)(private lottery consists of: consideration; chance, and prize);  
12 **Arizona:** Ariz. Rev. Stat §§37-3303, -3304 (2000); *Ex Parte Gray*, 204 P. 1029, 1031 (Ariz. 1922)(lottery  
13 is species of illegal gaming consisting of consideration, chance, and prize); **Arkansas:** Ark. Stat. Ann.§5-66-  
14 373 (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.  
16 Const. Art. XVIII, §2(1)-(3), (7)(1999); *Cross v. State*, 32 P. 821, 822 (Colo. 1893); **Connecticut:** Conn. Gen  
17 Stat. §§53-278a(3), -278b(b)(1999); **Delaware:** Del. Code, tit. 37, §3701 (1999); *Affiliated Enterprises Inc.*  
18 *v. Waller*, 5 A.2d 257, 259 (Del. 1939); **Florida:** Fla. Stat. §849.09 (1999); *Blackburn v. Ippolito*, 376 So.2d  
19 550, 551 (Fla. App. 1963); **Georgia:** Ga. Code Ann. §§16-37-20, -22 (1999); **Hawaii:** Haw. Rev. Stat. §§712-  
20 1220(6), -1221, -1222, -1223 (2000); **Idaho:** Idaho Code §18-4901, -4902 (1999); **Illinois:** 720 Ill. Comp.  
21 Stat. Ann. 5/28-1 (2000); *People v. Eagle Food Centers, Inc.*, 202 N.E.2d 473, 476 (1964); **Indiana:** Ind.  
22 Code Ann. §§35-45-5-1, -3 (2000); **Iowa:** Iowa Code §725.12 (1999); *State v. Hundling*, 264 N.W. 608 (Iowa  
23 1935); **Kansas:** Kan. Stat. Ann. §§21-4302(b), -4303, -4304 (1999); **Kentucky:** Ky. Rev. Stat. Ann.  
24 §§528.010(5)(a), -020, -030, -070 (1998); **Louisiana:** La. Rev. Stat. Ann. §§14:90(A)(1)(a), (b), 14:90.3  
25 (2000); *State v. Boneil*, 8 So. 298 (La. 1890); **Maine:** Me. Stat. Rev. Ann. tit. 17-A, §§952(6), 953, 954  
26 (1999); **Maryland:** Md. Code Ann. §356 (1999); *Silbert v. State*, 12 Md. App. 516, 280 A.2d 55 (Md. Ct.  
27 Spec. App. 1971); **Massachusetts:** Mass. Ann. Laws ch. 271, §7 (2000); *Commonwealth v. Lake*, 317 Mass.  
28 264, 57 N.E.2d 923 (Mass. 1944); **Michigan:** Mich. Stat. Ann. §28.604(1) (1999); *United-Detroit Theater*  
*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,  
§§39, 572.020 (2000); **Montana:** Mont. Code Ann. §§23-5-102, -112(23)(1999); **Nebraska:** Neb. Rev. Stat.  
§§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-  
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  
(N.C. 1915); **North Dakota:** N.D. Cent. Code §§12.1-28-01, -02 (2000); **Ohio:** Ohio Rev. Code  
§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  
(2000); **South Carolina:** S.C. Const. art. XVII, §7; S.C. Code Ann. §§16-19-10, -20, -30 (1999); *Darlington*  
*Theatres, Inc. v. Coker*, 190 S.C. 282, 2 S.E.2d 782 (S.C. 1939); **South Dakota:** S.D. Const. art. III, §25;  
S.D. Codified Laws §§22-25-24, -26(1997); **Tennessee:** Tenn. Const. art. XI, §5; Tenn. Code Ann. §37-15-  
501(5), 39-17-506 (1999); **Texas:** Tex. Penal code §47.03 (2000); **Utah:** Utah Code Ann. §§76-10-1101,  
1102, -1104 (2000); **Vermont:** 13 Vt. Stat. Ann. §§2101, 2102 (2000); Vt. A.G. Op. 83-9 (1982); **Virginia:**  
Va. Code Ann. §18.2-325 (2000); **Washington:** Wash. Rev. Code §9.46.0257 (2000); *State v. Langford*, 29

1           5.10. The WLS constitutes a “lottery” pursuant to Penal Code § 319.  
2 Domain names are a form of intangible personal property, and the WLS will allocate  
3 domain names to certain WLS subscribers. This constitutes “distributing property”.

4           5.11. Defendants’ WLS distribution of domain names is by chance.

5           5.12. Whether a WLS subscriber will be awarded the domain name  
6 subscribed is not within the control of the WLS subscriber and will not depend on  
7 the WLS subscriber’s skill.

8           5.13. WLS subscribers will pay ample consideration for a chance to obtain  
9 property in this manner; defendants eNom and NSI are accepting “pre-orders” for  
10 WLS subscriptions at \$35 and \$39 annually, respectively. Each of the elements of  
11 an illegal lottery is therefore established.

12           5.14. The WLS is a business practice.

13           5.15. As described above, the WLS is unlawful and unfair.

14           5.16. Neither the illegal WLS lottery enterprise, nor any part of it, constitutes  
15 a charitable raffle.

16           5.17. The Defendants and each of them have contrived, prepared, set up,  
17 proposed, and/or drawn the lottery in the illegal WLS lottery enterprise.

18 Accordingly, the Defendants and each of them are guilty of a crime pursuant to  
19 Penal Code § 320.

20           5.18. The Defendants and each of them have sold or transferred to would-be  
21 registrants the chance to register a currently-registered domain name, and  
22 understood or represented the same to be such a chance, depending upon the  
23 decision of the current registrant to renew the domain name, which Defendants do  
24 not control. Consequently, the Defendants, and each of them, are guilty of a crime  
25

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26 \_\_\_\_\_  
27 Wn. App. 455, 628 P.2d 829 (1980); **West Virginia**: W.Va. Code §§29-22A-1, 61-10-11 (2000); *State ex.*  
28 *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 pursuant to Penal Code § 321.

2 5.19. The Defendants and each of them have aided or assisted in setting up,  
3 managing, or drawing the lottery in the WLS lottery enterprise. Thus, the  
4 Defendants, and each of them, are guilty of a crime pursuant to Penal Code § 322.

5 5.20. By engaging in the conduct alleged herein, the Defendants, and each of  
6 them, are liable to Plaintiffs and members of the general public for violating  
7 Business & Professions Code § 17200 *et seq.*

8  
9 **VI. SECOND CAUSE OF ACTION**  
10 **UNFAIR TRADE PRACTICES ACT**  
11 **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
12 **(Against Verisign, eNom, NSI, and DOES 1-10, Inclusive)**

13 6.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
14 5.20 above as though fully set forth herein.

15 6.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
16 of the general public, acting as a private attorney general under California's Unfair  
17 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

18 6.3. The activity proscribed under Business & Professions Code § 17200  
19 includes anything that can properly be called a business practice and that at the  
20 same time is forbidden by law.

21 6.4. The Consumers Legal Remedies Act, Civ. Code § 1750 *et seq.*,  
22 provides in relevant part:

23 The following unfair methods of competition and unfair or deceptive acts  
24 or practices undertaken by any person in a transaction intended to result  
25 or which results in the sale or lease of goods or services to any consumer  
26 are unlawful:

27 (17) Representing that the consumer will receive a rebate, discount, or  
28 other economic benefit, if the earning of the benefit is contingent on an  
event to occur subsequent to the consummation of the transaction.

Civ. Code § 1770.

6.5. Defendant Verisign, both itself and acting by and through the  
Participating Registrars, is representing to consumers that they will receive an

1 economic benefit (*i.e.*, the right to register a valuable domain name), the earning of  
2 which is contingent on an event to occur subsequent to the consummation of the  
3 transaction (*i.e.*, the unlikely event the current registrant abandons the subscribed  
4 domain name, which occurs after the WLS subscription is purchased).

5 6.6. In its advertising for its “Next Registration Rights” service, NSI states:

6 Next Registration Rights is a new service from Network Solutions that  
7 lets you order a .com or .net domain name that is already registered. *If the*  
8 *domain name becomes available during your subscription period*, the  
9 registration is yours.

10 (Emphasis added).

11 6.7. Similarly, in its advertising for its “First Dibs” service, eNom states:

12 With eNom's First Dibs service, you can back-order ANY .COM or .NET  
13 domain name, even if it is currently registered by someone else. We  
14 monitor the status of your desired domain name 24 hours a day, 365 days  
15 a year and *if the domain becomes available*, since you have First Dibs,  
16 you become the registered owner of the domain name. It's that simple.

17 (Emphasis added).

18 6.8. The advertisements described above, which are published by their  
19 respective authors on the Internet, are intended to result in the sale of WLS  
20 subscriptions to consumers.

21 6.10. The acts alleged herein are unfair and detrimental to consumers, and  
22 have no countervailing benefit for competition.

23 6.11. By engaging in the conduct alleged herein, Verisign, eNom and NSI  
24 are violating, or unless enjoined will violate, the Consumers Legal Remedies Act,  
25 Civ. Code § 1750 *et seq.*, and said violation constitutes a violation of Business &  
26 Professions Code § 17200 *et seq.* as a result.

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1  
2 **VII. THIRD CAUSE OF ACTION**  
3 **UNFAIR TRADE PRACTICES ACT**  
4 **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
5 **(Against eNom)**

6 7.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
7 6.11 above as though fully set forth herein.

8 7.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
9 of the general public, acting as a private attorney general under California's Unfair  
10 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

11 7.3. Business & Professions Code § 17200 imposes a duty to avoid making  
12 false or misleading statements of fact to the public when marketing, soliciting,  
13 advertising, or otherwise inducing the public to enter into any obligation.

14 7.4. False and misleading statements of fact include omissions of material  
15 fact which, by the exercise of reasonable care, should be known to affect the  
16 average consumer's decision as to whether to enter into such obligation.

17 7.5. As a business that is advertising, promoting, and soliciting the  
18 opportunity for potential registrants to purchase WLS subscriptions, eNom has an  
19 obligation to fully disclose to potential subscribers all material facts which would  
20 reasonably affect the potential registrants' decision as to whether to purchase a  
21 WLS subscription.

22 7.6. Defendant eNom is currently advertising to consumers, and taking  
23 "pre-orders" for "First Dibs", eNom's branding of the Verisign WLS service.  
24 Nowhere in any part of eNom's advertising, or elsewhere in the sales process, does  
25 eNom disclose the likelihood that a subscriber will obtain the domain name to which  
26 it subscribes.

27 7.7. eNom expressly disclaims any guarantee that any particular WLS  
28 subscription will be available when the service launches. Indeed, eNom advises its  
customers that it is not obligated to even attempt to obtain WLS subscriptions on the  
customer's behalf when the WLS launches, and may claim any of the domain names

1 requested by consumers as eNOM's own should it choose to do so:

2 When VeriSign's Wait List Service ("WLS") goes live and begins  
3 accepting orders from the public, eNom will attempt to acquire the WLS  
4 subscription on some or all of the domain names which the ETPs bid on.  
5 If eNom succeeds in acquiring a WLS subscription with respect to one of  
6 these domains, then eNom will award the First Dibs subscription to the  
7 highest bidder unless eNom had listed the domain name itself, in which  
8 case eNom will award itself the First Dibs subscription.

9 7.8. Orders for "First Dibs" subscriptions cannot be cancelled, and by  
10 placing an order the customer authorizes eNom to charge his credit card if the  
11 subscription sought is available.

12 7.9. Although eNom fails to disclose the likelihood that a First Dibs  
13 subscription will be successful, the tone of its advertising certainly suggests that  
14 optimism would be appropriate:

15 If you were given the opportunity to have ANY domain name, which  
16 name would you choose?

17 7.10. eNom's express and implied misrepresentations and omissions of  
18 material fact are, or by the exercise of reasonable care should be, known to eNom to  
19 affect the average consumer's decision as to whether to purchase a WLS  
20 subscription.

21 7.11. For example, eNom's failure to disclose the likelihood that a WLS  
22 subscription will be successful creates a false assumption in the mind of consumers  
23 that WLS subscriptions will result in the actual registration of domain names.

24 7.12. The truth that eNOM should disclose to consumers is that most  
25 subscriptions will not result in the actual registration of any domain name.

26 7.13. eNom's failure to disclose such material facts in its advertisements,  
27 solicitations, promotions, and marketing for WLS subscriptions constitutes false and  
28 misleading statements to the public.

7.14. Consumers are likely to be deceived by the acts and omissions  
described herein, which are unfair and deceptive and have no countervailing benefit  
for competition.

1           7.15. By engaging in the conduct alleged herein, eNom is violating, and  
2 unless enjoined will continue to violate, Business & Professions Code § 17200 *et*  
3 *seq.*, and consumers and Plaintiffs have been and will continue to be harmed as a  
4 result.

5  
6                                   **VIII. FOURTH CAUSE OF ACTION**  
7                                   **UNFAIR TRADE PRACTICES ACT**  
8                                   **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
9                                   **(Against Verisign and NSI)**

10           8.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
11 7.15 above as though fully set forth herein.

12           8.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
13 of the general public, acting as a private attorney general under California's Unfair  
14 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

15           8.3. Business & Professions Code § 17200 imposes a duty to avoid making  
16 false or misleading statements of fact to the public when marketing, soliciting,  
17 advertising, or otherwise inducing the public to enter into any obligation.

18           8.4. False and misleading statements of fact include omissions of material  
19 fact which, by the exercise of reasonable care, should be known to affect the  
20 average consumer's decision as to whether to enter into such obligation.

21           8.5. As businesses advertising, promoting, and soliciting the opportunity for  
22 potential registrants to purchase WLS subscriptions, Verisign and NSI have the  
23 obligation to fully disclose to potential subscribers all material facts which would  
24 reasonably affect the potential registrants' decision as to whether to purchase a WLS  
25 subscription.

26           8.6. Defendant NSI is currently advertising to consumers, and taking "pre-  
27 orders" for "Next Registration Rights", NSI's branding of the Verisign WLS service.  
28 Nowhere in any part of NSI's advertising, or elsewhere in the sales process, does  
NSI disclose the likelihood that a subscriber will obtain the domain name to which it  
subscribes.

1           8.7. The pre-orders cannot be cancelled, and by placing an order the  
2 customer authorizes NSI to charge its credit card if the WLS subscription sought is  
3 available.

4           8.8. Defendant Verisign, on its Web site, provides sample sales and  
5 marketing materials such as Web site pages and product information sheets to  
6 registrars who wish to sell WLS subscriptions, and that are intended to be used by  
7 such registrars in soliciting consumers to purchase WLS subscriptions. The sales  
8 and marketing materials do not include any disclosure of the likelihood that a WLS  
9 subscription will succeed. In addition, in the materials, WLS subscriptions are  
10 presented in such a way that they are virtually indistinguishable from actual domain  
11 registrations.

12           8.9. NSI expressly disclaims any guarantee that any particular WLS  
13 subscription will be available when the service launches.

14           8.10. Defendant NSI, on its Web site <nextregistrationrights.com>,  
15 represents that “[t]his new service is superior to traditional back-order services,  
16 which are not administered by the .com/.net registry and frequently accept more  
17 than one name per backorder.”

18           8.11. The factual representation that the service is "superior" is material and  
19 is misleading, given that Plaintiffs do not charge for their services unless they  
20 register a domain name on the customer's behalf, whereas NSI will charge \$35 per  
21 year, per domain regardless of whether it obtains the subscribed domain name.

22           8.12. The representations and omissions as alleged herein are likely to  
23 deceive consumers and cause harm to plaintiffs including loss of goodwill.

24           8.13. For example, defendants' failure to disclose the likelihood that a WLS  
25 subscription will be successful creates a false assumption in the mind of consumers  
26 that WLS subscriptions will result in actual domain name registrations.

27           8.14. The truth that Verisign and NSI fail to disclose, but should disclose, is  
28 that most WLS subscriptions will not result in the registration of any domain name.



1 8.15. NSI and Verisign's failure to disclose such material facts in their  
2 respective advertisements, solicitations, promotions, and marketing for WLS  
3 subscriptions constitutes false and misleading statements to the public.

4 8.16. Consumers are likely to be deceived by the acts and omissions  
5 described herein, which are unfair and deceptive and have no countervailing benefit  
6 for competition.

7 8.17. By engaging in the conduct alleged herein, NSI and Verisign are  
8 violating, and unless enjoined will continue to violate, Business & Professions Code  
9 § 17200 *et seq.*, and consumers and Plaintiffs have been and will continue to be  
10 harmed as a result.

11  
12 **IX. FIFTH CAUSE OF ACTION**  
13 **UNFAIR TRADE PRACTICES ACT**  
14 **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
15 **(Against All Defendants)**

16 9.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
17 8.17 above as though fully set forth herein.

18 9.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
19 of the general public, acting as a private attorney general under California's Unfair  
20 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

21 9.3. California Business & Professions Code § 17200, *et seq.* declares  
22 unfair competition unlawful and defines unfair competition as, *inter alia*, "any  
23 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
24 or misleading advertising . . ."

25 9.4. Verisign, through eNom and NSI, is accepting WLS subscriptions  
26 without regard to whether the subscribed domain name is due to expire during the  
27 subscription period.

28 9.5. Verisign does not suggest that consumers be advised to check the  
expiration date of any domain for which they are purchasing a WLS subscription.

9.6. ICANN approved the WLS for a one-year trial without requiring

1 Verisign to disclose (or to require registrars to disclose) that consumers may not  
2 have the opportunity to renew their WLS subscriptions after the one-year trial  
3 period.

4 9.7. By selling WLS subscriptions that *cannot* result in a domain name  
5 (because the expiration date of the domain name falls later than the trial subscription  
6 period), Verisign and its agents eNom and NSI are defrauding consumers.

7 9.8. By selling WLS subscriptions (through the Participating Registrars),  
8 Verisign is impliedly representing that a WLS subscriber has a likelihood of  
9 obtaining the subscribed domain name as a result of the WLS subscription. In  
10 connection with WLS subscriptions that cannot result in the subscriber obtaining the  
11 domain name (among other WLS subscriptions) this representation will be false, and  
12 Verisign and the Participating Registrars know, or should know, that it will be false.

13 9.9. Consumers are likely to be deceived by the acts and omissions  
14 described herein, which are unfair and deceptive.

15 9.10. By engaging in the conduct alleged herein, defendants are liable to  
16 Plaintiffs and members of the general public for violating Business & Professions  
17 Code § 17200 *et seq.*

18  
19 **X. SIXTH CAUSE OF ACTION**  
20 **UNFAIR TRADE PRACTICES ACT**  
21 **BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**  
22 **(Against Verisign, eNom and NSI)**

23 10.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
24 9.10 above as though fully set forth herein.

25 10.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
26 of the general public, acting as a private attorney general under California's Unfair  
27 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

28 10.3. California Business & Professions Code § 17200, *et seq.* declares  
unfair competition unlawful and defines unfair competition as, *inter alia*, "any  
unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue

1 or misleading advertising . . .”

2 10.4. Defendants eNom and NSI are currently accepting “pre-orders” for  
3 WLS subscriptions. Said subscriptions are being advertised by eNom and NSI as,  
4 among other things, “protection” against inadvertent loss of domain names.

5 10.6. Since the implementation of the Redemption Grace Period in <.com>  
6 and <.net> on January 25, 2003, registrants have at least a thirty (30) day period  
7 after the expiry date during which they can recover their domain names. During the  
8 Redemption Grace Period, neither the Web site nor any e-mail addresses associated  
9 with the domain name are operational, thus giving registrants clear notice that their  
10 domain name requires attention.

11 10.7. Domain names can only be deleted from the registry by the sponsoring  
12 registrar or, if all grace periods have elapsed, by the registry.

13 10.8. Plaintiffs are informed and believe, and on that basis allege, that  
14 defendant Verisign originated, authorized, approved, or was otherwise involved in  
15 the decision to market WLS subscriptions to domain name owners as a form of  
16 protection.

17 10.10. By causing registrars to represent that domain names need to be  
18 “protected” in this manner, Defendants are intentionally inculcating an unreasonable  
19 fear among domain name registrants regarding the likelihood of “unintentional  
20 expiration” and other harm that might befall a domain name at its registrar’s (or  
21 registry’s) hand. For the price of a single year’s WLS subscription, a registrant  
22 could renew a domain for three or more years, and in the event a domain name  
23 “unintentionally expires,” the registrant has ample time to retrieve it.

24 10.11. NSI is currently offering to consumers the ability to register domain  
25 names for one hundred years. There are no circumstances under which it would be  
26 fair to sell an unknowing WLS subscriber a subscription on a domain that is not  
27 scheduled to be deleted until 2104.

28 10.12. By selling WLS subscriptions to domain name holders (through the

1 Participating Registrars), Defendants are impliedly representing that there is a benefit  
2 to be obtained from doing so, and therefore that there is a reasonable likelihood that  
3 a registrant will need such protection. In fact, the likelihood of inadvertent deletion  
4 is impossibly low, and Defendants' representation is false. The defendants know, or  
5 should know, that it is false.

6 10.13. The acts and omissions described herein are unfair to consumers.

7 10.14. By engaging in the conduct alleged herein, Verisign, eNom and NSI  
8 are liable to Plaintiffs and members of the general public for violating Business &  
9 Professions Code § 17200 *et seq.*

10  
11 **XI. SEVENTH CAUSE OF ACTION**  
12 **UNFAIR TRADE PRACTICES ACT**  
13 **BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**  
14 **(Against All Defendants)**

15 11.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
16 10.14 above as though fully set forth herein.

17 11.2. Plaintiffs assert this cause of action on their own behalf and on behalf of  
18 the general public, acting as a private attorney general under California's Unfair  
19 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

20 11.3. California Business & Professions Code § 17200, *et seq.* declares unfair  
21 competition unlawful and defines unfair competition as, *inter alia*, "any unlawful,  
22 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
23 misleading advertising . . ."

24 11.4. By offering to sell an interest in property, a seller impliedly represents  
25 that he has good and marketable title in the property he sells.

26 11.5. Domain names are a form of intangible personal property.

27 11.6. By registering a domain name in the registry, registrars grant Verisign a  
28 limited, non-transferable, non-exclusive license to, among other data, the domain  
name. The Registry-Registrar Agreement entered into between each ICANN-  
accredited registrar provides in relevant part :

1 2.5. License. Registrar grants VGRS as Registry a non-exclusive  
2 non-transferable limited license to the data elements consisting of the  
3 Registered Name, the IP addresses of nameservers, and the identity of the  
registering registrar for propagation of and the provision of authorized  
access to the TLD zone

4 11.7. Verisign's agreements with ICANN (to which Plaintiffs are not parties)  
5 similarly restricts Verisign's rights with regard to the domain names contained in the  
6 registry:

7 12. Rights in Data. Except as permitted by the Registry-Registrar  
8 Agreement, Registry Operator shall not be entitled to claim any intellectual  
9 property rights in data in the registry supplied by or through registrars. In  
10 the event that Registry Data is released from escrow under Section 9, any  
rights held by Registry Operator in the data shall automatically be licensed  
on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or  
to a party designated in writing by ICANN.

11 11.8. Defendant Verisign, through the Participating Registrars, is selling (in  
12 the guise of non-refundable, non-cancellable "pre-orders") contingent future interests  
13 in property in which neither Verisign nor the Participating Registrars has any  
14 ownership interest whatsoever.

15 11.9. Verisign has no authority to refuse to delete any expired domain name  
16 from the registry, much less to refuse to do so at the instruction of anyone willing to  
17 pay it \$24 per year. Verisign's WLS is no different than any other instance one can  
18 imagine in which a bailee or trustee decides to raffle off the property with which he  
19 has been entrusted, whether that be the valet parking attendant raffling off diners'  
20 cars or the coat check attendant raffling off their furs.

21 11.10. Neither ICANN nor the Department of Commerce has authority to  
22 approve Verisign's attempt to leverage its *de facto* control into *de jure* rights.

23 11.11. The acts and omissions described herein are unfair to consumers, and  
24 are likely to mislead consumers into believing that purchasing a WLS subscription  
25 gives them a legitimate right in a domain name, which it does not.

26 11.12. By engaging in the conduct alleged herein, Defendants are liable to  
27 Plaintiffs and members of the general public for violating Business & Professions  
28 Code § 17200 *et seq.*

1  
2 **XII. EIGHTH CAUSE OF ACTION**  
3 **UNFAIR TRADE PRACTICES ACT**  
4 **BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**  
5 **(Against Verisign, eNom and NSI)**

6 12.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
7 11.12 above as though fully set forth herein.

8 12.2. Plaintiffs assert this cause of action on their own behalf and on behalf of  
9 the general public, acting as a private attorney general under California's Unfair  
10 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

11 12.3. California Business & Professions Code § 17200, *et seq.* declares unfair  
12 competition unlawful and defines unfair competition as, *inter alia*, "any unlawful,  
13 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
14 misleading advertising . . ."

15 12.4. 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 12.5. A method of competition is unfair if it causes substantial injury to  
19 consumers that is not outweighed by any countervailing benefit to consumers that  
20 results from the practice, and that could not reasonably have been avoided by  
21 consumers.

22 12.6. Defendants' conduct as alleged herein, including but not limited to  
23 defendants' failure to disclose the likelihood that a WLS subscription will be  
24 successful, will cause substantial injury to consumers unless enjoined by this Court.  
25 Verisign estimates that it will ultimately sell (through registrars) approximately 1.5  
26 million WLS subscriptions per year, for which it will receive approximately 36  
27 million dollars per year. Even if only one consumer in a hundred purchases a WLS  
28 subscription that turned out to be worthless, it would amount to substantial harm.  
The number of consumers harmed is likely to be far greater than one in a hundred,  
and may be as high as two in three.

1 12.7. There is no overall countervailing benefit to consumers from  
2 defendants' conduct, indeed, the law is clear that consumers must be protected from  
3 such schemes. Unless the WLS is enjoined, defendants' scheme will more than  
4 quadruple the annual cost of a domain name for many consumers. To whatever  
5 extent Verisign may argue that consumers will prefer its WLS subscription service to  
6 Plaintiffs' pay-if-successful services, it should be noted that defendants' scheme  
7 replaces the traditional policy of "first-come, first-served" domain name allocation  
8 with one of "first-come, first-served provided you are willing to pay to stand in line  
9 while receiving no assurance that there is anything for sale." Plaintiffs' model puts all  
10 consumers on an equal playing field, whereas defendants' model favors the  
11 extremely wealthy. A "choice" is no benefit to those consumers who cannot afford  
12 it.

13 12.8. Defendants' failure to disclose the likelihood that a WLS subscription  
14 will be successful, and other conduct alleged herein, deprives consumers of the  
15 information they need to make an informed decision. Because defendants omit  
16 critical material information and actively misrepresent the nature and quality of the  
17 WLS, consumers cannot reasonably avoid the injury.

18 12.9. By engaging in the conduct alleged herein, defendants, and each of  
19 them, are liable to Plaintiffs and members of the general public for violating the FTC  
20 Act, 15 U.S.C. § 41 *et seq.*

21 12.10. By violating the FTC Act, defendants are also in violation of Business  
22 & Professions Code § 17200 *et seq.*

23  
24 **XIII. NINTH CAUSE OF ACTION**  
25 **SHERMAN ACT, § 1, UNLAWFUL TYING ARRANGEMENT**  
**(Against Verisign, eNom, NSI and DOES 1-10, Inclusive)**

26 13.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
27 12.10 above as though fully set forth herein.

28 13.2. A tying agreement is unreasonable *per se* if 1) there is a tie-in between

1 two distinct products or services; 2) the defendant has sufficient economic power in  
2 the tying market to impose significant restrictions in the tied product market; 3) a not  
3 insubstantial volume of commerce in the tied product market is affected; and 5) a  
4 "modicum of coercion" was exerted upon the purchaser by the seller of the tying  
5 item.

6 13.3. Consumers may register domain names at any ICANN accredited  
7 registrar, including plaintiffs. Consumers are free to transfer their registered domain  
8 names between registrars. Thus, consumers may register their domain names with  
9 one registrar, then transfer the domain names to another registrar to administer them.

10 13.4. WLS subscriptions are not transferable between registrars.

11 13.5. Each successful WLS subscription will result in a domain name  
12 registration. Domain registration fees are not included in the \$24 fee Verisign will  
13 charge registrars for each WLS subscription sold.

14 13.6. Each consumer who purchases a WLS subscription will be required to  
15 agree to purchase any resulting domain name registration from the same registrar  
16 from whom he purchased the WLS subscription.

17 13.7. The requirement that WLS subscriptions and resulting domain name  
18 registrations be purchased from the same registrar is imposed on registrars by  
19 Verisign.

20 13.8. WLS subscriptions and domain name registrations are separate, distinct  
21 services. Verisign's aggregation of WLS subscriptions and domain name  
22 registrations does not serve to facilitate competition by promoting product quality,  
23 but amounts to no more than a naked effort to impede competition on the merits.

24 13.9. Verisign exercises market power with respect to registry services for  
25 the <.com> and <.net> TLDs, including WLS subscriptions. Indeed, Verisign will  
26 be the sole provider of WLS subscriptions. Consumers will be unable to purchase a  
27 WLS subscription without agreeing to purchase a domain registration if the  
28 subscription is successful.



1 13.10. By compelling registrars to compel their customers to purchase a  
2 domain name registration with each WLS subscription, Verisign will impose  
3 significant restrictions on competition in the market for domain name registrations.

4 13.11. VeriSign's WLS will unreasonably restrain commerce in domain name  
5 registration services, and will in fact eliminate consumer choice in such services with  
6 respect to the transactions affected. Among other things, registrars who do not offer  
7 WLS subscriptions will not be able to register for any consumer any domain name  
8 obtained via a WLS subscription.

9 13.12. In addition, the registrar who offers the lowest price for WLS  
10 subscriptions will not necessarily be the registrar who offers the lowest price on  
11 domain name registrations, but consumers will be compelled to purchase domain  
12 name registration from that registrar nonetheless.

13 13.13. By denying registrars who choose not to sell WLS subscriptions the  
14 opportunity to register domain names that result from those subscriptions, Verisign's  
15 tying requirement undermines the goal of free competition in domain name  
16 registrations stated in the White Paper. Verisign's tying requirement strongly favors  
17 larger registrars, to the disadvantage of smaller registrars, and favors registrars that  
18 offer WLS subscriptions over those who do not.

19 13.14. Defendant NSI, still benefitting from its previous monopoly status, is  
20 the largest registrar. NSI sponsors nearly one-fourth of all registered domain names  
21 in <.com> and <.net>, more than twice as many as its nearest competitor.

22 13.15. Defendant NSI charges \$34.99 for a one-year domain registration.  
23 Plaintiff Registersite.com charges \$10.00 for the same service. Consumers who  
24 purchase WLS subscriptions from NSI will, if those subscriptions are successful, be  
25 precluded from choosing to register their domain names with Plaintiff  
26 Registersite.com or anyone other than NSI.

27 13.16. A not insubstantial volume of commerce in the tied product market will  
28 be affected by Verisign's tying agreement.

1 13.17. Verisign owns 15% of NSI and has an economic interest in restricting  
2 registrars' ability to compete with NSI for domain name registrations.

3 13.18. Verisign brazenly touts this anti-competitive conduct as a benefit of  
4 offering WLS:

5 Generate New Registrations

6 WLS can increase your new .com and .net registration and renewal  
7 business. Every time one of your customers' subscriptions is fulfilled, you  
become the registrar of record.<sup>10</sup>

8 13.19. Registrars cannot offer WLS subscriptions in any manner other than  
9 that described herein. Registrars cannot sell, and consumers cannot purchase, WLS  
10 subscriptions unless they agree to Verisign's tying agreement.

11 13.20. Verisign's tying agreement is intended to, and is likely to, harm  
12 registrars who do not offer WLS subscriptions. There is no technical reason for  
13 tying the two products, and there is no competitive or other benefit gained as a result  
14 of aggregating the products.

15 13.21. ICANN, by authorizing Verisign's unlawful tying agreement, has  
16 conspired with Verisign to restrict competition in a manner that favors registrars that  
17 agree to offer WLS subscriptions.

18 13.22. Registrars cannot offer WLS subscriptions in any manner other than  
19 that described herein. Registrars cannot sell, and consumers cannot purchase, WLS  
20 subscriptions unless they agree to Verisign's tying agreement.

21  
22 **XIV. TENTH CAUSE OF ACTION**  
23 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**  
**(Against Verisign)**

24 14.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
25 13.22 above as though fully set forth herein.

26 14.2. On repeated occasions beginning in January 2002 and continuing  
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28 <sup>10</sup>[http://www.verisign.com/nds/naming/namestore/wls/wls\\_value\\_guide.pdf](http://www.verisign.com/nds/naming/namestore/wls/wls_value_guide.pdf) (last accessed February 25, 2004)

1 through the present, defendant Verisign has made false and defamatory statements  
2 regarding Plaintiffs and Plaintiffs' services, including statements comparing  
3 Plaintiffs' services unfavorably to the WLS.

4 14.3. Defendant Verisign has stated that Plaintiffs' services do not offer  
5 consumers any guarantee, and has represented that the WLS does offer consumers  
6 such a guarantee. Verisign's statements in this regard are false and defamatory.

7 14.4. At the time Defendants made the false and defamatory statements  
8 referenced herein, Plaintiffs had beneficial economic relationships with their  
9 respective customers that were likely to continue generating revenue in the future.

10 14.5. Verisign knew that Plaintiffs had such relationships and that Plaintiffs  
11 had an expectancy of future economic benefit from such relationships. Verisign's  
12 conduct was designed to disrupt these economic relationships, and did in fact disrupt  
13 those economic relationships.

14 14.6. In particular, Verisign engaged in a campaign intended to discredit  
15 Plaintiffs' services in the eyes of ICANN, the United States Senate, and consumers,  
16 among others, in order to obtain approval for its WLS service.

17 14.7. As a proximate result of Verisign's wrongful conduct, ICANN  
18 approved the WLS, and customers have been deterred from doing business with  
19 Plaintiffs. Plaintiffs goodwill has irreparably suffered, as have the beneficial  
20 economic relationships Plaintiffs had each developed with their respective customers.  
21 As a consequence of Verisign's conduct, which was independently wrongful as  
22 described hereinabove, Plaintiffs have suffered damages in an amount to be  
23 determined at trial.

24 14.8. Plaintiffs are informed and believe and on that basis allege that  
25 Verisign's conduct was willful, fraudulent, malicious and oppressive, thereby  
26 entitling plaintiffs to punitive damages in an amount to be established at trial.

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1 **XV. ELEVENTH CAUSE OF ACTION**  
2 **DECLARATORY RELIEF, 28 U.S.C. § 201**  
3 **(Against Verisign)**

4 15.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
5 14.8 above as though fully set forth herein.

6 15.2. Verisign is contractually obligated to delete expired domain names in  
7 response to a “delete” command sent by the sponsoring registrar, and will breach  
8 that obligation if the WLS is launched.

9 15.3. Plaintiffs have each entered an agreement with Verisign (the “Registry-  
10 Registrar Agreement”) that governs Registrars’ use of, and Verisign’s provision of,  
11 the Shared Registration System. Each Plaintiff is a party to the Registry-Registrar  
12 Agreement with Verisign, which is attached hereto as Exhibit A and incorporated  
13 herein by this reference.

14 15.4. Section 2.1 of the Registry-Registrar Agreement obligates Verisign to  
15 provide registrars with access to the registry according to a specific protocol known  
16 as the “Registry-Registrar Protocol”:

17 2.1. System Operation and Access. Throughout the Term of this  
18 Agreement, NSI shall operate the System and provide Registrar with  
19 access to the System enabling Registrar to transmit domain name  
20 registration information for the Registry TLD to the System according to  
21 a protocol developed by NSI and known as the Registry-Registrar Protocol  
22 (“RRP”).

23 15.5. Section 4.3.3 of the RRP defines the “DEL” command, which “allows a  
24 registrar to delete (cancel the registration)of a domain name or delete a name server.”

25 15.6. Section 4.3.3.1 of the RRP specifies who is authorized to issue a  
26 “DEL” command: “Authorized User: The current registrar of a domain name MAY  
27 use the DEL command to delete a domain name from the System.”

28 15.7. The RRP does not permit anyone other than the current registrar of a  
domain name to delete a domain name from the system.

15.8. Verisign’s obligation to provide domain name deletion functionality is  
also set forth in section 3.1 of the Registry-Registrar Agreement:

1 Registrar, using the RRP, APIs and Software, as well as updates and  
2 redesigns thereof, will be able to invoke the following operations on the  
3 System: . . .(iv) *cancel the registration of a domain name it has registered*  
4 . . . .

4 (Emphasis added).

5 15.9. Pursuant to section 3.1 of the Registry-Registrar Agreement, Verisign is  
6 obligated to enable registrars to cancel the registration of domain names they have  
7 registered in any updated or redesigned RRP.

8 15.10. If the WLS is implemented, Verisign will ignore registrar ‘delete’  
9 commands for domain names upon which a WLS subscription has been placed.

10 15.11. If the WLS is implemented, a registrar will not have the ability to  
11 “cancel the registration of a domain name it has registered” if a WLS subscription  
12 has been placed on that domain name.

13 15.12. If the WLS is implemented, registrar “delete” commands for domain  
14 names on which WLS subscriptions have been placed will not result in those  
15 domains becoming available for registration by any registrar.

16 15.13. The WLS is not a part of the RRP or the Shared Registration System,  
17 and implementation of the WLS will interfere with the functionality that Verisign is  
18 obligated to provide via the RRP and the Shared Registration System.

19 15.14. Each plaintiff has complied with its obligations under the Registry-  
20 Registrar Agreement, and no Plaintiff is in material breach of its obligations under  
21 the Registry-Registrar Agreement.

22 15.15. If the WLS is implemented, Verisign will materially breach its  
23 obligations under the Registry-Registrar Agreement, and by doing so will impair  
24 Plaintiffs’ ability to function as ICANN-accredited registrars and will cause Plaintiffs  
25 significant financial harm.

26 15.16. Verisign denies that implementation of the WLS would constitute a  
27 breach of its obligations under the Registry-Registrar Agreements, and an actual  
28 dispute exists between the parties with respect to Verisign’s obligation to delete

1 expired domain names for which a “delete” command is received from the Registrar.

2 **XVI. TWELFTH CAUSE OF ACTION**  
3 **BREACH OF CONTRACT**  
4 **(Against ICANN)**

5 16.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
6 15.16 above as though fully set forth herein.

7 16.2. As ICANN-accredited registrars, each Plaintiff has entered into an  
8 identical Accreditation Agreement with defendant ICANN. The Accreditation  
9 Agreement grants each registrar the right to register domain names in accordance  
10 with procedures established by ICANN and Verisign in consultation with the  
11 Department of Commerce.

12 16.3. All registrars are required to sign the Accreditation Agreement, which  
13 was drafted by ICANN, without alteration or modification. Each Plaintiff is a party  
14 to the Accreditation Agreement with ICANN dated May 2001 (the “2001 RAA”),  
15 which is attached hereto as Exhibit B and incorporated herein by this reference.

16 16.4. The Registrar Accreditation Agreement is one of several agreements  
17 among ICANN and other organizations involved in the Internet domain-name  
18 system. Those agreements are closely interrelated and operate cooperatively to  
19 implement those organizations' agreements to adhere to various policies developed  
20 through the private-sector, consensus-based process for management of the technical  
21 aspects of the Internet that has been established under the auspices of ICANN.<sup>11</sup>

22 16.5. The Registrar Accreditation Agreement includes language limiting the  
23 Registrars' obligation to implement ICANN-developed policies to those policies  
24 consistent with, and reasonably related to, the goals of ICANN as set forth in the  
25 White Paper.<sup>12</sup>

26 16.6. Consistent with that position, Section 2.3 of the 2001 RAA imposes

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27 <sup>11</sup>Register.com, Inc. v. Verio, Inc., 00-Civ-5747 (BSJ) Submission of Amicus Curiae Internet  
28 Corporation for Assigned Names and Numbers.

<sup>12</sup>Minutes of Meeting of ICANN Board of Directors, July 16 1999.

1 broad obligations of “stability, competition, bottom-up coordination, and  
2 representation” on ICANN in *all matters that impact registrars*, not only under the  
3 RAA, but in general:

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

7       2.3.1. exercise its responsibilities in an open and transparent manner;

8       2.3.2. not unreasonably restrain competition and, to the extent feasible,  
9 promote and encourage robust competition;

10       2.3.3. not apply standards, policies, procedures or practices arbitrarily,  
11 unjustifiably, or inequitably and not single out Registrar for disparate  
12 treatment unless justified by substantial and reasonable cause; and

13       2.3.4. ensure, through its reconsideration and independent review policies,  
14 adequate appeal procedures for Registrar, to the extent it is adversely  
15 affected by ICANN standards, policies, procedures or practices.

16       16.7. Unless enjoined, the WLS will impact registrars’ right to delete domain  
17 names according to the RRP, by eliminating that right altogether as to domain names  
18 on which WLS subscriptions have been placed.

19       16.8. Because ICANN’s approval of the WLS impacts the rights of registrars,  
20 ICANN is obligated to refrain from acting arbitrarily, unjustifiably, or inequitably in  
21 policies, procedures and practices relating to the WLS.

22       16.9. ICANN's mandate, and its stated goal, is to become an effective  
23 consensus development body for the entire Internet community in the areas for which  
24 it is responsible.

25       16.10. ICANN is required by its Bylaws, the 2001 RAA, and the  
26 Memorandum of Understanding to obtain consensus with respect to issues  
27 concerning domain name allocation.

28       16.11. ICANN is required by its bylaws and the Memorandum of  
Understanding to operate from the bottom-up; to foster and then recognize consensus  
rather than force it.

16.12. Consensus reached in ICANN’s constituent organizations should not

1 be disregarded or overturned by the ICANN Board.

2 16.13. ICANN did not obtain consensus that the WLS should be approved,  
3 and indeed ignored the consensus that it should not be approved.

4 16.14. By approving the WLS without obtaining consensus, ICANN acted  
5 unjustifiably, arbitrarily, inequitably, and unfairly, and in so doing breached its  
6 contractual obligations to each Plaintiff.

7 16.15. Section 2.3.3 of the 2001 RAA requires ICANN to treat all registrars  
8 equally. The Memorandum of Understanding between ICANN and the Department  
9 of Commerce requires ICANN to require Verisign to do the same.

10 16.16. Registrars who do not offer the WLS, whether because of the expense  
11 associated with implementing it or concern for potential liability to consumers, will  
12 not have equivalent access to the registry as do registrars who offer the WLS.

13 16.17. Specifically, registrars who do not offer the WLS will not be able to  
14 determine whether a WLS subscription has been purchased on a particular domain  
15 name, which information will be contained in the registry.

16 16.18. Nothing in the 2001 RAA or any other agreement allows ICANN to  
17 make equivalent access to the registry conditional on a registrar's offering additional  
18 services that they do not wish to offer, or on bearing the expense associated with  
19 offering such services.

20 16.19. By approving the WLS, ICANN acted breached its obligation to each  
21 Plaintiff under Section 2.3.3 of the 2001.

22 16.20. If the WLS is implemented, no registrar will be able to offer services  
23 based on competition for deleting domain names, and the current robust market for  
24 such services would be destroyed and replaced by a pseudo competitive market for  
25 WLS subscriptions in which Verisign would exact a \$24 fee on each transaction  
26 from all "competitors".

27 16.21. If the WLS is implemented, certain Plaintiffs will be forced out of  
28 business.



1 16.23. Unless enjoined, the WLS will unreasonably restrain competition, and  
2 ICANN's approval of the WLS constitutes a material breach of its obligation to  
3 foster competition established by section 2.3.2 of the Accreditation Agreement.

4 16.25. Section 5.1 of the 2001 RAA provides, "[w]hile this Agreement is in  
5 effect, either party may seek specific performance of any provision of this Agreement  
6 in the manner provided in Section 5.6 below, provided the party seeking such  
7 performance is not in material breach of its obligations."

8 16.26. Each Plaintiff has performed, and continues to perform, all of its  
9 obligations under its respective Accreditation Agreement, and none is in material  
10 breach of its obligations under that Accreditation Agreement.

11 16.27. ICANN's failure to perform its contractual obligations to Plaintiffs has  
12 caused, and continues to cause, significant damages to Plaintiffs, including without  
13 limitation loss of reputation and goodwill.

14 16.28. Each Plaintiff is entitled to a decree of specific performance compelling  
15 ICANN to fulfill its obligations under the 2001 RAA.

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1 **XIV. PRAYER FOR RELIEF**

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

3 1. On Plaintiffs' First and Second Causes of Action, for preliminary and  
4 permanent injunctions prohibiting Defendants, and each of them, from accepting  
5 consideration in exchange for the chance to register currently-registered domain  
6 names, unless those domain names are on "pending delete" status;

7 2. On Plaintiffs' Third and Fourth Causes of Action, for preliminary and  
8 permanent injunctions:

9 a. Ordering Verisign and its agents, sales representatives, and  
10 affiliates to conspicuously disclose the average likelihood that a WLS  
11 subscription will result in the subscriber obtaining the domain name in all  
12 advertising, marketing, and promotional materials, and on all WLS order  
13 forms;

14 b. Ordering Verisign and its agents, sales representatives, and  
15 affiliates to conspicuously disclose the likelihood that the specific WLS  
16 subscription being ordered will result in the subscriber obtaining the domain  
17 name based on the number of characters it contains, the number of times it has  
18 previously been renewed, and any other information in Verisign's possession  
19 relevant to determination of the likelihood that a domain name will be  
20 renewed;

21 3. On Plaintiffs' Fifth Cause of Action, for preliminary and permanent  
22 injunctions prohibiting Verisign and its agents, sales representatives, and affiliates  
23 from selling WLS subscriptions for domains that are not scheduled to expire within  
24 the WLS subscription period during the one-year trial of the WLS;

25 4. On Plaintiffs' Sixth Cause of Action, for preliminary and permanent  
26 injunctions prohibiting Verisign and its agents, sales representatives, and affiliates  
27 from referring to WLS subscriptions as "protection", "insurance" or the equivalent in  
28 any sales, marketing, promotional or advertising materials; and prohibiting Verisign

1 and its agents, sales representatives, and affiliates from selling WLS subscriptions to  
2 the registrants of the domain names to which the WLS subscriptions apply;

3 5. On Plaintiffs' Seventh Cause of Action, for preliminary and permanent  
4 injunctions prohibiting Verisign and its agents, sales representatives, and affiliates  
5 from selling WLS subscriptions;

6 6. On Plaintiffs' Eighth Cause of Action, for preliminary and permanent  
7 injunctions ordering Verisign and its agents, sales representatives, and affiliates to  
8 conspicuously disclose the average likelihood that a WLS subscription will result in  
9 the subscriber obtaining the domain name in all advertising, marketing, and  
10 promotional materials, and on all WLS order forms;

11 7. On Plaintiffs' Ninth Cause of Action,

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

15 (i) Verisign enables transfer of subscriptions between  
16 registrars in a manner no more burdensome than transfer of domain  
17 names; and

18 (ii) Verisign enables customers to specify, at the time the WLS  
19 subscription is placed, the registrar to which the domain name should  
20 be registered if the domain name expires during the WLS subscription  
21 period;

22 b. For preliminary and permanent injunctions pursuant to 15 U.S.C.  
23 § 26 ordering ICANN to withdraw its approval of the WLS and to refrain from  
24 granting approval to the WLS or any similar service unless subscriptions are  
25 transferable between registrars and subscriptions and resulting domain name  
26 registrations may be purchased from different registrars; and

27 c. For treble damages and attorney's fees and costs as authorized by  
28 15 U.S.C. § 15;

- 1           8.    On Plaintiffs' Tenth Cause of Action:  
2           a.    For damages according to proof at trial;  
3           b.    For punitive damages according to proof at trial;  
4           9.    On Plaintiffs' Eleventh Cause of Action, for a declaratory judgment that  
5 Verisign will be in breach of the Registry-Registrar Agreements if it implements the  
6 WLS because Verisign is obligated by the Registry-Registrar Agreements to delete  
7 domain names from the registry at the direction of the sponsoring registrar;  
8           10.   On Plaintiffs' Twelfth Cause of Action, for a judicial decree of specific  
9 performance compelling ICANN to perform its obligations under each 2001  
10 Registrar Accreditation Agreement.  
11          11.   On all causes of action:  
12          a.    For attorneys' fees and costs; and  
13          b.    For such other and further relief as the Court may deem just and  
14 proper.

15  
16           Dated this 8<sup>th</sup> day of April, 2004.

17  
18                                   Respectfully Submitted,

19                                   **NEWMAN & NEWMAN,**  
20                                   **ATTORNEYS AT LAW, LLP**

21                                   

22           By:

23                                   Derek A. Newman (190467)  
24                                   S. Christopher Winter (190474)  
25                                   Venkat Balasubramani (189192)  
26                                   Roger M. Townsend (*pro hac vice* pending)