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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REGISTERSITE.COM, an Assumed)
Name of ABR PRODUCTS INC., a)
New York corporation, et al.,)
Plaintiff,)
v.)
INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS, a)
California corporation, et al.)
Defendants.)

CASE NO.: CV 04-1368 ABC (CWx)
ORDER RE: DEFENDANTS' MOTIONS TO
DISMISS

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

//

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CENTRAL DISTRICT OF CALIFORNIA
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Exhibit F Page 54 99

1 I. FACTUAL AND PROCEDURAL HISTORY

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

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

26
27 ¹ Plaintiffs include: (1) Registersite.com, (2) Name.com, (3) R.
28 Lee Chambers Company LLC, (4) Fiducia LLC, (5) Spot Domain, LLC, (6)
!\$6.25 Domains! Network, Inc., (7) Ausregistry Group PTY LTD., and (8)
!\$! Bid It Win It, Inc.

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1 (FAC ¶ 4.55-4.58.).

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

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

21 **II. LEGAL STANDARD**

22 A Rule 12(b)(6) motion tests the legal sufficiency of the claims
23 asserted in the complaint. See Fed. R. Civ. P. 12(b)(6). Rule
24 12(b)(6) must be read in conjunction with Rule 8(a) which requires a
25 "short and plain statement of the claim showing that the pleader is
26 entitled to relief." 5A Charles A. Wright & Arthur R. Miller, Federal
27 Practice and Procedure § 1356 (1990). "The Rule 8 standard contains
28 'a powerful presumption against rejecting pleadings for failure to

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

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

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

Exhibit F Page 102

1 III. DISCUSSION

2 A. Plaintiffs' Federal Antitrust Claim

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

14 In response to these allegations, Defendants argue that
15 Plaintiffs lack standing because Defendants have yet to sell any WLS
16 subscriptions. Plaintiffs counter that threatened injury confers
17 standing. The Court agrees with Plaintiffs. "In order to establish
18 standing, a plaintiff must first show that she has suffered an 'injury
19 in fact - an invasion of a legally protected interest which is (a)
20 concrete and particularized and (b) actual or imminent, not
21 conjectural or hypothetical.'" Scott v. Pasadena Unified Sch. Dist.,
22 306 F.3d 646, 654 (9th Cir. 2002) (citation omitted). Here,
23 Plaintiffs allege that Verisign plans to launch the WLS no more than
24 thirty days after it is approved, that approval is likely, and that
25 eNom and NSI are currently advertising the WLS and are accepting pre-
26 orders for WLS subscriptions on their Web sites. (FAC ¶¶ 4.66-4.68.)
27 The Court finds that these allegations sufficiently state an imminent
28 injury. Furthermore, Defendants' contention that the threatened

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

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

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

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

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

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1 (emphasis in original). As a result, Plaintiffs claim "VERISIGN WILL
2 PROVIDE NO VALUE TO CONSUMERS PURCHASING WLS." (FAC at 20:4.) If
3 Plaintiffs are correct, and the Court must assume they are, that
4 consumers' WLS subscriptions will be overwhelmingly unsuccessful, and
5 that only successful WLS subscriptions will result in domain name
6 registrations, then the facts in Plaintiffs' FAC do not support the
7 legal conclusion that the WLS will affect a not-insubstantial volume
8 of commerce in domain name registrations. Instead, Plaintiffs' FAC
9 suggests that the majority of WLS consumers will be free to register
10 their domain names with either their current registrar or other
11 registrars. In fact, Plaintiffs allege that "[c]onsumers are free to
12 transfer their registered domain names between registrars." (FAC ¶
13 13.3).

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

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1 subscriptions, not domain name registrations.⁴

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

5 **B. Plaintiffs' State Law Claims**

6 Plaintiffs' remaining eleven claims arise out of state law.
7 Defendants argue for dismissal of these claims on the merits for
8 various reasons. However, the Court declines to exercise supplemental
9 jurisdiction over the state law claims for two reasons. First, where
10 federal claims are disposed of well before trial, it is appropriate
11 for pendent state claims to be dismissed as well. 28 U.S.C. §
12 1367(c)(3). Because the Court has dismissed the sole federal claim,
13 judicial economy and comity weigh in favor of dismissing the state
14 claims.

15 Second, a district court may decline to exercise supplemental
16 jurisdiction if the state law claims substantially predominate over
17 the federal law claim. 28 U.S.C. § 1367(c)(2). Here, Plaintiffs
18 allege several claims arising under California's Unfair Competition
19 Act, intentional interference with prospective economic advantage, and
20 breach of contract. These claims would substantially expand the scope
21

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

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

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

17
18 **IV. CONCLUSION**

19 For the foregoing reasons, Defendants Verisign, Inc.'s and
20 Network Solutions, Inc's motion to dismiss the First Amended Complaint
21 is hereby GRANTED IN PART and DENIED IN PART. Accordingly,
22 Plaintiffs' First Amended Complaint is DISMISSED WITHOUT PREJUDICE as
23 to the federal and state law claims. Plaintiffs may amend their
24

25
26 ⁶ In their FAC, Plaintiffs assert § 57b of the Federal Trade
27 Commission Act ("FTCA") as an additional basis for jurisdiction. (FAC
28 ¶ 3.1). However, § 57b of the FTCA authorizes suits by the Federal
Trade Commission, not private individuals. See 15 U.S.C. § 57b. As
such, Plaintiffs may not rely on § 57b as a basis for federal
jurisdiction.

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

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

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

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

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

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

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SO ORDERED.

DATED: July 12, 2004

Audrey B. Collins

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

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

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Los Angeles Superior Court

AUG 04 2004

John A. Clarke, Executive Officer/Clerk

By E. Gurish, Deputy

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

Case No. **SC082479**

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

26 Plaintiffs,

27 v.

28 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS, a
California Corporation; VERISIGN, INC., a
Delaware Corporation; NETWORK
SOLUTIONS, LLC, a Limited Liability
Company of unknown origin; NETWORK
SOLUTIONS, INC., a Delaware
Corporation; ENOM, INCORPORATED, a
Nevada Corporation; ENOM, INC., a
Washington Corporation; and DOES 1-10,
inclusive;

Defendants.

Case No.

COMPLAINT FOR:

- (1) Violations of CAL. BUS. & PROF. CODE §§ 17200, *et seq.*
- (2) Declaratory Relief, CAL. CODE OF CIVIL PROC. § 1060; and
- (3) Breach of Contract

GERALD ROSENBERG

Judge _____ Dept. 4

Initial Status Conference &
OSC Re: Proof of Service Set NOV 17 2004 at 8:30 a.m.
1725 Main Street, Santa Monica Courthouse

1 Plaintiffs REGISTERSITE.COM, an assumed name of ABR PRODUCTS INC.,
2 NAME.COM, LLC, R. LEE CHAMBERS COMPANY LLC which does business as
3 DOMAINSTOBESEEN.COM, FIDUCIA LLC, SPOT DOMAIN, LLC, !\$6.25
4 DOMAINS! NETWORK, INC., which does business as ESITE CORPORATION,
5 AUSREGISTRY GROUP PTY LTD., and ! \$! BID IT WIN IT, INC. (collectively
6 "Plaintiffs") file this Complaint against defendants INTERNET CORPORATION FOR
7 ASSIGNED NAMES AND NUMBERS, VERISIGN, INC., NETWORK SOLUTIONS,
8 INC., NETWORK SOLUTIONS, LLC, ENOM, INC., ENOM INCORPORATED and
9 DOES 1-10, inclusive (collectively "Defendants"), for themselves and as a representative
10 of all others similarly situated, and on behalf of the general public pursuant to Business &
11 Professions Code §§ 17200, on personal knowledge as to Plaintiffs' own activities, and
12 on information and belief as to the activities of others, as follows:

13 14 I. NATURE OF THE CASE

15 1.1. In March, 2004, Defendant Internet Corporation for Assigned Names and
16 Numbers ("ICANN") approved, and authorized Defendant Verisign to implement, an
17 exploitative and deceptive new "service" that the other defendants intend to foist upon
18 unsuspecting consumers in California, the United States and worldwide. Verisign's
19 so-called *Wait Listing Service* ("WLS") purports to give consumers, for an annual fee, the
20 right to be "first in line" on the "waiting list" for already-registered <.com> and <.net>
21 Internet domain names. Though the WLS may appear innocuous and even helpful at first
22 blush, it offers no benefit to the consumers who would purchase WLS subscriptions and
23 pay defendants annually.

24 1.2. Theoretically, a WLS consumer has a remote chance of winning an Internet
25 domain name, but such consumer will never own the domain name unless the current
26 registrant decides to abandon it. Whether WLS consumers receive benefit from their
27 payments is beyond the control of the defendants and, more importantly, the WLS
28 consumers. The WLS is nothing more than an illegal lottery in which almost all

1 consumers will receive nothing for their money, but the WLS operators will profit
2 handsomely from the scheme.

3 1.3. Defendants' advertising of WLS subscriptions speaks of guarantees, but is
4 devoid of the material information that almost no WLS subscriptions will result in any
5 domain name registration or other benefit. The failure to disclose the low likelihood of
6 "winning" (*i.e.*, of actually registering) the subscribed domain name renders the
7 defendants' sale of WLS subscriptions misleading and deceptive to consumers. Plaintiffs
8 therefore bring this action on behalf of themselves and on behalf of the people of the
9 State of California to enjoin defendants from completing deployment of their unlawful
10 plan.

11 1.4. The plaintiffs are domain name registrars accredited by defendant ICANN.
12 Plaintiffs each offer a service to assist consumers in registering expired domain names.
13 None of the plaintiffs charges a fee for its service unless and until it actually registers a
14 domain name on behalf of its customer. The plaintiffs do not make any spurious
15 "guarantees" about their services in marketing materials or elsewhere.

16 1.5. Verisign has the technical ability to offer the WLS by virtue of its role as
17 the operator of the authoritative database of domain names for each of <.com> and
18 <.net>. In that role, Verisign has no ownership interest in the domain names in the
19 database, and its *de facto* control over all <.com> and <.net> domain names does not give
20 it any interest in those domain names. A WLS subscription is a contingent future interest
21 in a domain name, and by selling WLS subscriptions Verisign is selling contingent future
22 interests in property that it *does not own*.

23 1.6. Each of the plaintiffs has a contract with both ICANN and Verisign which
24 entitles them to register deleted domain names for their customers. However, the WLS
25 only works when domain names are not deleted. Consequently, the plaintiffs are
26 deprived of the right to register domain names subject to WLS subscriptions on behalf of
27 their customers, and their consumers are denied the opportunity to register domain names
28 they could register if not for the unfair and unlawful WLS scheme. Defendants ICANN

1 and Verisign will breach their contracts with Plaintiffs by fully implementing the WLS.

2 1.7. Defendants' conduct as alleged herein violates the California Unfair Trade
3 Practices Act, BUS. & PROF. CODE §§ 17200 *et. seq.* and the California Consumers Legal
4 Remedies Act, CAL. CIV. CODE §§ 1750 *et. seq.* In addition, the WLS constitutes an
5 illegal lottery pursuant to CAL. PENAL CODE § 319.

6 1.8. This lawsuit seeks to enjoin the defendants' unfair and unlawful WLS
7 activities, and in the event defendants complete their launch of the WLS, to recover the
8 damages Plaintiffs will suffer as a result.

9
10 **II. THE PARTIES**

11 2.1. Plaintiff ABR PRODUCTS INC. is a New York corporation doing business
12 as REGISTERSITE.COM, with its principal place of business at 2 Tamarck Circle,
13 Fishkill, New York 12524.

14 2.2. Plaintiff NAME.COM, LLC is a Wyoming limited liability company with
15 its principal place of business at 360 Franklin St., Denver, CO 80218.

16 2.3. Plaintiff R. LEE CHAMBERS COMPANY LLC is a Tennessee Limited
17 Liability Company doing business as "domainstobeseen.com" with its principal place of
18 business at 6441 Bonny Oaks Drive, Suite "C", Chattanooga, TN 37416-3537.

19 2.4. Plaintiff FIDUCIA LLC is a Nevada limited liability company with its
20 principal place of business at 12-14 Vilandes St., Riga, LV-1010, Latvia.

21 2.5. Plaintiff SPOT DOMAIN, LLC is a Wyoming limited liability company
22 with its principal place of business at 1539 Platte St., Denver, CO 80202.

23 2.6. Plaintiff !\$6.25 DOMAINS! NETWORK, INC. is a Delaware corporation
24 doing business as Esite, with its principal place of business at 7711 O'Connor Blvd, Suite
25 416, Round Rock, TX 78681. !\$6.25 DOMAINS! NETWORK, INC. intends to merge
26 into WEB.VU, INC., a Nevada corporation; and if such merger occurs, Plaintiffs will
27 move to supplement WEB.VU, INC. for !\$6.25 DOMAINS! NETWORK, INC. as a
28 plaintiff in this action.

1 2.7. Plaintiff AUSREGISTRY GROUP PTY LTD. is an Australian Proprietary
2 Limited Company with its principal place of business located at Level 6, 10 Queens Rd.,
3 Melbourne, Victoria, Australia.

4 2.8. Plaintiff ! \$! BID IT WIN IT, INC. is a Minnesota corporation with its
5 principal place of business at 5400 Vernon Ave. S, Suite 218, Minneapolis, MN 55436.

6 2.9. Defendant INTERNET CORPORATION FOR ASSIGNED NAMES AND
7 NUMBERS ("ICANN") is a California corporation with its principal place of business at
8 4676 Admiralty Way, Suite 330, Marina Del Rey, California 90292-6601. Defendant
9 Verisign could not offer, and defendants eNom and NSI could not sell, WLS
10 subscriptions but for ICANN's approval of the WLS. ICANN has therefore aided and
11 abetted the conduct of defendants Verisign, eNom and NSI alleged herein, and is
12 responsible for same as a principal pursuant to California Penal Code section 31.

13 2.10. Defendant VERISIGN, INC. ("Verisign") is a Delaware corporation with
14 its principal place of business located in California at 487 East Middlefield Road,
15 Mountain View, California 94043.

16 2.11. Defendant NETWORK SOLUTIONS, INC. is a Delaware corporation
17 registered to do business, and which does business, in the state of California, with its
18 registered office located in the city and county of Los Angeles at 818 West Seventh
19 Street, Los Angeles, California 90017, with its principal place of business located at 505
20 Huntmar Park Drive, Herndon, Virginia, 20170-5139.

21 2.12. Defendant NETWORK SOLUTIONS, LLC is a limited liability company
22 of unknown origin with its principal place of business located at 13200 Woodland Park
23 Drive, Herndon, Virginia 20171-3025, but which regularly conducts business in Los
24 Angeles, California. Though NETWORK SOLUTIONS, LLC maintains its headquarters
25 in Virginia, the only limited liability company with such name registered to do business
26 in Virginia is NETWORK SOLUTIONS, LC [sic], which apparently is not related to the
27 defendant. This lawsuit arises out of NETWORK SOLUTIONS, LLC's ability to sell
28 domain names as a registrar pursuant to a Registrar Accreditation Agreement executed in

1 Los Angeles County. NETWORK SOLUTIONS, LLC may have acquired certain rights
2 and assets from Defendant NETWORK SOLUTIONS, INC. Together, NETWORK
3 SOLUTIONS, INC. and NETWORK SOLUTIONS, LLC will be referred to herein as
4 "NSI" (in the singular form, though identifying both defendants).

5 2.13. Defendant ENOM, INC. is a terminated Washington corporation with its
6 principal place of business located at 2002 156th Ave. NE, Suite #300, Bellevue, WA
7 98007, but which regularly conducts business in Los Angeles, California. This lawsuit
8 arises out of ENOM, INC.'s ability to sell domain names as a registrar pursuant to a
9 Registrar Accreditation Agreement executed in Los Angeles County. The Washington
10 Secretary of State records indicate that ENOM, INC. has been dissolved, and is no longer
11 validly existing and in good standing.

12 2.14. Defendant ENOM, INCORPORATED is a Nevada corporation with its
13 principal place of business located at 2002 156th Ave. NE, Suite #300, Bellevue, WA
14 98007. Plaintiffs are informed and believe, and on that basis allege, that ENOM,
15 INCORPORATED has assumed all liability, rights and obligations of Defendant ENOM,
16 INC., or is an alter-ego of Defendant ENOM, INC., which has been dissolved, and is no
17 longer validly existing and in good standing. Consequently, Plaintiffs sue ENOM,
18 INCORPORATED both for its own acts giving rise to the claims alleged herein, and as
19 the alter-ego and successor-in-interest to the liability of ENOM, INC. Together, ENOM,
20 INC. and ENOM, INCORPORATED will be referred to herein as "Enom" (in the
21 singular form, though identifying both defendants).

22 2.15. Defendants NSI and Enom are agents of defendant Verisign. Defendants
23 NSI and Enom are each authorized by Verisign to accept "pre-orders" for WLS
24 subscriptions, and each has agreed to sell WLS subscriptions on Verisign's behalf.
25 Defendants NSI and Enom are each authorized to bind Defendant Verisign as Verisign's
26 agent.

27 2.16. Plaintiffs are domain name registrars. Each Plaintiff is empowered to be a
28 domain name registrar by virtue of a contract into which that Plaintiff entered with

1 defendant ICANN. Said contract between ICANN and each respective Plaintiff provides
2 that such contract is "made . . . at Los Angeles, California, USA." Additionally, said
3 contract provides that disputes arising under or in connection with that contract shall be
4 resolved in Los Angeles, California. Each Plaintiff is the registrant of at least one domain
5 name in <.com> or <.net>, and is a consumer of domain names to that extent.

6 2.17. DOES 1-10, inclusive, are ICANN-accredited domain name registrars, each
7 of which has agreed to sell WLS subscriptions on Verisign's behalf. The true names of
8 defendants DOES 1 through 10, inclusive, are unknown to Plaintiffs, who therefore sue
9 said defendants by such fictitious names. Plaintiffs are informed and believe, and on
10 such information and belief allege, that each of the defendants sued herein as a DOE is
11 legally responsible in some manner for the events and happenings alleged herein, and that
12 the damages to Plaintiffs and members of the general public as herein alleged were
13 proximately caused by such DOE Defendants' conduct. Plaintiffs will ask leave of this
14 Court to amend this complaint to insert the true names and capacities of DOES 1-10 in
15 place and instead of the fictitious names when the same become known to Plaintiffs.

16
17 **III. JURISDICTION AND VENUE**

18 3.1. This Court has original subject matter jurisdiction over this action pursuant
19 to California Constitution Article VI, § 10.

20 3.2. This Court has personal jurisdiction over the defendants and each of them
21 pursuant to Code of Civil Procedure § 410.10 because: (i) each of the Defendants was
22 empowered to commit the acts alleged herein as a result of executing an agreement with
23 Defendant ICANN pursuant to California state law, and the acts alleged herein arose out
24 of said agreement; (ii) each of the Defendants has done, and is doing, business in this
25 state; (iii) the Defendants and each of them have committed crimes and unfair
26 competition having an effect in this state; and (iv) certain of the Defendants are present,
27 domiciled, resident, or a citizen of this state.

28 3.3. This Court is the proper venue for this action pursuant to Code of Civil

1 Procedure §§ 395 and 395.5 because defendant ICANN is a corporation organized under
2 the laws of the state of California, with its principal place of business in Los Angeles
3 County, California. Defendants Verisign and NSI each maintain their registered office in
4 Los Angeles, California. Enom is a corporation doing business in California, and this
5 action arises out of wrongful acts committed by all defendants in this judicial district and
6 which subject the defendants to personal jurisdiction here. Additionally, the contract
7 between Plaintiffs and defendant ICANN that forms the basis of Plaintiffs' breach of
8 contract claim against ICANN states that venue for any litigation concerning the contract
9 will be a court located in Los Angeles, California, USA. Similarly, defendants Verisign,
10 NSI, and Enom have entered into contracts with ICANN, directly related to the claims
11 alleged herein, providing for this Court as the exclusive venue for a lawsuit relating to the
12 contract.

14 IV. FACTS

15 A. THE DOMAIN NAME SYSTEM

16 4.1. The Internet is an interconnected network of computer networks.

17 4.2. Similar to each business having a telephone number, each computer
18 connected to the Internet has a unique number assigned to it called an Internet protocol
19 address (an "IP address"). IP addresses are difficult to remember because they are
20 lengthy and presented in a disorganized dotted decimal form. For example, the IP
21 address identifying the computer which hosts the web site for Los Angeles Superior Court
22 is 207.38.120.63.

23 4.3. In or around November, 1983, the "domain name system" (or "DNS") was
24 developed. The domain name system, instead of using numbers, is founded upon the use
25 of words and other alphanumeric character strings which Internet users can easily
26 remember. Domain names are "mapped" to IP addresses. In other words, domain names
27 identify IP addresses which, in turn, identify computers on the Internet. For example, the
28 domain name <LASuperiorCourt.org> is mapped to the IP address which identifies the

1 computer which hosts the web site for the Los Angeles Superior Court. Accordingly,
2 instead of remembering the Court's IP address, an Internet user can simply remember the
3 domain name.

4 **B. THE DOMAIN NAME HIERARCHY**

5 4.4. The DNS defines a hierarchical name space divided into zones, each of
6 which has authority over the zones below it. The top zone is divided into top-level
7 domains, or "TLDs". Each TLD is divided into second-level domains. Second-level
8 domains can be further divided into third-level domains, and so on.

9 4.5. The top-level domain name space of the DNS includes fourteen "generic"
10 top-level domains (*e.g.*, <.com>, <.net>, <.biz>, etc.), two hundred forty-three (243) two-
11 letter country code domains (*e.g.*, <.uk> identifying the United Kingdom, <.ca>
12 identifying Canada, etc.), and one top level domain (*i.e.*, <.arpa>) reserved for Internet
13 infrastructure purposes.

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

15 4.6. A "registrant" is a consumer who registers a domain name. A registrant has
16 the exclusive right to use the domain name it registers, and is the owner of its domain
17 name.

18 4.7. A "registry" is an organization responsible for maintaining the authoritative
19 database of all second-level domain name registrations under a given TLD space. This
20 database is known as the "zone file". The registry is often referred to as a "registry
21 operator" and the zone file is referred to as the "registry". There can be only one registry
22 for each top-level domain. Verisign is the registry operator for the <.com> and <.net>
23 TLDs.

24 4.8. A "registrar" acts as an interface between consumers and the registry
25 operator. A registrar causes registrations, renewals, transfers and deletions of domain
26 names on behalf of consumers by issuing the appropriate commands to the registry. Only
27 registrars accredited by defendant ICANN can register domain names in <.com> and
28 <.net>. Plaintiffs are ICANN-accredited registrars, as are defendants Enom and NSI.

1 4.9. From a sales standpoint, a registry sells domain names to registrars on a
2 wholesale basis. Registrars, in turn, sell those domain names to registrants on a retail
3 basis. Registrars bill and collect fees from registrants for domain names. Registries
4 almost always charge per-domain fees to registrars.

5 **D. HISTORY OF gTLD¹ DOMAIN NAME ADMINISTRATION**

6 4.10. Today's Internet has its origins in a network called the ARPANET, which
7 was launched by the Department of Defense in 1969. ARPANET was superceded by
8 NSFNET, a network developed by the National Science Foundation (the "NSF") in 1990.
9 NSFNET began allowing commercial activity in 1992, and thus evolved into today's
10 Internet.

11 4.11. In 1993, NSF signed a cooperative agreement with defendant NSI under
12 which NSI became the exclusive registrar for second-level domain names in <.com>,
13 <.net>, <.org>, and <.edu> , as well as the exclusive registry operator for each of those
14 top-level domains. Pursuant to that agreement, NSI registered domain names in <.com>
15 and <.net> (among other TLDs) to registrants on a first-come, first-served basis. NSI
16 remained both registry operator and sole registrar in those TLDs until 1999.

17 4.12. On June 10, 1998, the Clinton administration issued a policy statement on
18 electric commerce known as the "White Paper". The White Paper called upon the
19 private sector to create a new, not-for-profit corporation to assume responsibility, over
20 time, for the management of certain aspects of the DNS. The White Paper identified four
21 specific functions to be performed by this new corporation, which included development
22 of "policies for . . . the establishment of domain name registries and domain name
23 registrars and the terms, including licensing terms, applicable to new and existing gTLDs
24 and registries under which registries, registrars, and gTLDs are permitted to operate."
25 The White Paper also articulated the fundamental policies that would guide United States
26

27
28 ¹gTLD 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 participation in the transfer of DNS management responsibility to the private sector:
2 ① stability; ② competition; ③ private, bottom-up coordination; and ④ representation.

3 4.13. The White Paper listed a number of tasks to be undertaken on a priority
4 basis, including in particular the creation and organization of a new, not-for-profit
5 corporation (which it called "NewCo") to manage the DNS and the rapid introduction of
6 competition in for domain name registration services. The Department of Commerce
7 committed to enter into an agreement with NSI by which NSI would agree to take specific
8 actions, including commitments as to pricing and equal access, designed to permit the
9 development of competition in domain name registration.

10 4.14. In fulfillment of the commitment expressed in the White Paper, on October
11 7, 1998, the Department of Commerce and NSI entered into Amendment 11 to their
12 existing Cooperative Agreement. Among other things, Amendment 11 provided for the
13 development, deployment, and licensing by NSI (under a license agreement to be
14 approved by the Department of Commerce) of a mechanism to allow multiple registrars to
15 submit registrations for the gTLDs for which NSI acted as the registry. Verisign later
16 acquired NSI and became the registry.

17 4.15. The United States government made clear that NSI (and consequently its
18 successor, Verisign) would be prohibited from charging more than a reasonable fee for
19 the registration of second-level domain names. That fee was set as, and remains, \$6.00
20 per domain name charged to the registrar. The registrar may mark up the price of the
21 domain name for its ultimate sale thereof to the registrant.

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

23 4.16. Defendant Internet Corporation for Assigned Names and Numbers was
24 formed in September 1998. ICANN is a not for profit California corporation organized
25 without members. According to its bylaws, the board of directors of ICANN controls it.

26 4.17. In November 1998, the Department of Commerce entered into a
27 Memorandum of Understanding with ICANN that recognized ICANN as the envisioned
28 "NewCo". In the Memorandum of Understanding, ICANN expressly agreed to abide by

1 principles of stability, competition, private, bottom-up coordination, and representation.

2 4.18. On September 28, 1999 the U.S. Department of Commerce, NSI, and
3 ICANN announced a series of tentative agreements among them (including a Registrar
4 Accreditation Agreement and a Registry-Registrar Agreement) concerning operation of
5 the <.com>, <.net>, and <.org> top-level domains in a competitive environment. Those
6 agreements were approved by ICANN's Board of Directors on November 4, 1999 and
7 signed by ICANN, the Department of Commerce, and NSI on November 10, 1999.

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

9 4.19. As the total number of domain names registered in <.com> and <.net> has
10 grown past thirty million, the pool of unregistered names² has been reduced accordingly.
11 As early as 1999, news media were reporting a "shortage" of domain names in <.com>.
12 In April 1999, for example, in an article entitled "Domain Name List is Dwindling,"

13 *Wired News* reported:

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

16 Well, forget it. You don't stand a chance. Start-ups, squatters, and speculators
17 already have bought up all the Internet's prime real estate. A *Wired News*
18 investigation found that the .com versions of nearly all popular words have
19 been taken. Of 25,500 standard dictionary words we checked, only 1,760 were
20 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.

21 The result: The once-fierce pace of domain name registration is slowing. In the
22 last month, only about 100 new dictionary-word .com domains have been
snatched up.³

24
25 ²The pool of unregistered domain names is equal to all possible second-level domain names minus the
26 sum of (i) registered domain names and (ii) domain names the registration of which is prohibited by law or policy
(such as <example.com>, which is reserved for demonstration pursuant to RFC 2606). Because a domain name
27 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 ³McCulloch, 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 4.20. As the number of registered domain names increases, not only the quantity
2 but the quality of available unregistered names decreases.

3 4.21. The shortage of desirable domain names in <.com> and <.net> is alleviated
4 to some degree by the number of registered domain names that expire because they are
5 not renewed by their current registrants.

6 4.22. Expired domain names⁴ are a critical resource for registrars and consumers.
7 Approximately 800,000 domain names expire each month and are returned, at least
8 momentarily, to the pool of unregistered domains available for registration. In light of the
9 shortage of desirable domain names, competition for expired domain names can be fierce.

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

11 4.23. Domain names are registered for fixed periods, which the Verisign registry
12 will allow for up to 10 years, but which are renewable at the option of the domain name
13 registrant forever.

14 4.24. Defendant NSI offers 100 year domain name registration terms.

15 4.25. As the end of the registration period (the "expiry date") approaches, the
16 registrar associated with the domain name (the "sponsoring registrar") typically sends the
17 registrant one or more reminders that the domain name will expire unless the domain
18 name renewal fee is paid.

19 4.26. If the registrant renews the domain name, the registrar sends a command to
20 the registry to extend the expiry date by the number of years for which the registrant has
21 renewed. The domain name remains in active status until the next expiry date.

22 4.27. If the registrant does not renew the domain name by the expiry date, the
23 registry automatically adds one year to the expiry date and debits the sponsoring
24 registrar's account \$6.00 for the one-year renewal.

25 _____
26 ⁴"Expired domain names" is also an oxymoron. As used herein, "expired" domain names are assumed to
27 have been deleted from the registry, and therefore do not exist as domain names. Although an expired domain
28 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 4.28. Although each registrar has its own policy regarding expiration, most
2 provide a "grace period" after the expiry date during which a domain name can be
3 renewed and reactivated. If the registrant renews the domain name during the grace
4 period, the domain name returns to active status until the next expiry date.

5 4.29. If the registrant does not renew the domain within the grace period provided
6 by the sponsoring registrar (if any), the sponsoring registrar sends a "delete" command to
7 the registry within forty-five (45) days following the expiry date, and the registry credits
8 the \$6.00 renewal fee back to the sponsoring registrar's account. The forty-five day
9 period during which the sponsoring registrar may cancel a domain name and receive a
10 credit for the registration fee is referred to as the "Auto-Renew Grace Period."

11 4.30. Additionally, many registrars offer a service to registrants whereby domain
12 names will be automatically renewed, and registration fees will be automatically billed to
13 customer credit cards. Consumers who elect that service need not ever take any
14 affirmative act to renew domain names. Consumers have no way of determining which
15 domain name registrants elect this auto-renewal service.

16 4.31. Upon receipt of a "delete" command, the registry places the domain name
17 on Redemption Period (RP) status for thirty (30) days, during which it can be recovered
18 by the registrant. This period is referred to as the "Redemption Grace Period." Domain
19 names in RP status do not appear in the zone file (and thus cannot be accessed via the
20 Internet). The Redemption Grace Period was implemented in January 2003 to prevent
21 domain names from being lost as a result of unintentional non-renewal.

22 **H. REGISTRATION OF DELETED DOMAIN NAMES**

23 4.32. If the registrant does not redeem the domain name within the Redemption
24 Grace Period, the registry changes the domain name to "Pending Delete" status, where it
25 remains for five (5) days. When in Pending Delete status, the domain name's status
26 cannot be changed by either a registrar or the registry, and the domain name will be
27 deleted. On the sixth day after being placed on Pending Delete status, the domain name
28 is deleted from the registry.

1 4.33. Domain names are deleted from the registry in a batch process that takes
2 place once each day (the "Batch Delete"). Approximately 20,000 domain names are
3 deleted each day in the Batch Delete. All registrars have equal access to deleted (*i.e.*,
4 once registered, but now unregistered) domain names.

5 4.34. During a Batch Delete, many registrars compete to register expired domain
6 names on behalf of their customers. Each competing registrar sends a series of "add"
7 commands to the registry for each of the domain names it is attempting to register. The
8 first registrar to have its command accepted for a given domain name may register that
9 domain name for its customer. A desirable domain name that is deleted during a Batch
10 Delete will often be re-registered within a few milliseconds of being deleted by the
11 registry.

12 I. PLAINTIFFS' SERVICES

13 4.35. When domain names are placed on Pending Delete status, Plaintiffs publish
14 a list of many of them. Consumers may peruse that list and engage any of the Plaintiffs
15 to attempt to secure one of those domain names when it is subject to the Batch Delete.
16 Each plaintiff provides the service of registering for new customers immediately after the
17 Batch Delete domain names that were Pending Delete days before.

18 4.36. Plaintiffs charge no annual or other fees for their services unless and until a
19 domain name is registered on the customer's behalf. Because a consumer does not pay
20 any plaintiff anything, except for a domain name the consumer actually registers,
21 customers can place order for dozens if not hundreds of domain names. Thus, consumers
22 greatly increase the likelihood they will be successful in registering at least one of the
23 domain names they seek to own.

24 4.37. Plaintiffs make no guarantee that any order will be successful, and
25 plaintiffs' customers understand that plaintiffs are competing with other registrars to be
26 the first to register expired domain names.

27 4.38. Plaintiffs also offer their customers, at no charge, various valuable services
28 relating to expired domain names. Such services include, but are not limited to, daily e-

1 mail notification of soon-to-be-available domain names, and e-mail notification of soon-
2 to-be-available domain names containing user specified keywords.

3 4.39. Currently, there are several models for the sale of recently deleted domain
4 names. One company⁵ charges customers an annual subscription fee of approximately
5 \$70 per domain name before it expires. Other of Plaintiffs' competitors charge lower
6 subscription fees, or one-time fees, or charge high recurring fees to monitor a large
7 number of domain names. Consumers now have substantial choice in ordering domain
8 names recently deleted, or due to delete. The WLS will eliminate that choice.

9 **J. THE VERISIGN WAIT LISTING SERVICE**

10 4.40. Defendant Verisign operates the <.com> and <.net> registries by virtue of
11 having acquired NSI in March 2000.

12 4.41. Verisign cannot offer registry services in <.com> and <.net> without the
13 approval of ICANN. In March 2002, Verisign requested ICANN's permission to launch
14 the WLS.

15 4.42. If the WLS is fully deployed, accredited registrars who choose to offer the
16 WLS will be able to subscribe (on behalf of customers) to currently registered <.com>
17 and <.net> domain names. Only one WLS subscription will be accepted for each domain
18 name, and each WLS subscription will be for a one-year period. WLS subscriptions will
19 be accepted on a first-come/first-served basis.

20 4.43. Verisign will charge the registrar a \$24.00 fee for each WLS subscription
21 placed. Consequently, Verisign will generate \$30.00 per domain name, instead of the
22 \$6.00 fee it currently generates (*i.e.*, \$6.00 registration fee, plus \$24.00 WLS fee). The
23 registrar's fee to its customer will be established by the registrar, but is estimated to be
24 around \$40.00.

25 4.44. Before deleting registered domain names from the registry, Verisign will
26

27 ⁵Specifically, SnapNames is a company providing services similar to those offered by Plaintiffs. Plaintiffs
28 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 first check to determine whether a subscription has been placed for the name. If there is a
2 reservation, Verisign will not delete the name, but instead will assign the name to the
3 registrar who placed the reservation. The registrar will then register the name to its
4 customer, charging a fee determined by agreement of the registrar and customer.

5 4.45. If there is no WLS subscription on a domain name, Verisign will delete the
6 name from the registry so that the name is returned to the pool of names available for
7 registration through all registrars on a first-come, first-served basis.

8 4.46. The WLS will initially be offered for a one-year trial period. At the end of
9 the year, ICANN and Verisign will evaluate whether the service should be continued.
10 Effectively, the one-year trial will last for two years (to accommodate one-year
11 subscriptions purchased on the last day of the one year trial). Although Verisign will
12 allow only one WLS subscription per domain name during the trial period, it has
13 expressed its desire to offer a "deeper subscription queue"⁶ in the future (*e.g.*, second in
14 line, third in line, etc.).

15 4.47. Though some domain name expiration dates are publically accessible, some
16 domain name registration dates are not accessible to the public.

17 4.48. For example, the expiration dates for domain names registered through NSI
18 for 100 year terms are never accessible to the public.

19 4.49. Most reasonable consumers have no knowledge of how to determine the
20 expiration dates of domain names.

21 4.50. Reasonable consumers have a limited understanding of the workings of the
22 Internet and of the domain name system, and are unlikely to immediately or easily
23 understand the distinction between a domain name registration and a domain name
24 "subscription."

25 4.51. The average reasonable consumer is unfamiliar with any database that may
26 publish domain name expiration dates.

27 _____
28 ⁶Domain Name Wait Listing Service proposal by Defendant Verisign dated January 28, 2002, at page 6.

1 4.52. Even sophisticated consumers may believe that a domain name will be
2 available for registration on its expiration date.

3 4.53. Reasonable consumers lack knowledge of, and access to, information
4 relating to domain names, including statistical information relating to the likelihood that a
5 particular domain name will be renewed.

6 4.54. Unlike Plaintiffs, who market their services to a relatively sophisticated
7 clientele, Defendants are marketing WLS subscriptions to a broad audience of potential
8 domain name registrants.

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

10 4.55. If the WLS is fully implemented, the only expired domain names that will
11 be deleted from the registry, and thus made available for registration by any accredited
12 registrar, are those for which no one is willing to pay the (approximate) \$40 retail price of
13 a WLS subscription.

14 4.56. Verisign's control of the registry precludes any possibility of competition in
15 WLS services. No registrar will be able to offer a service that charges a fee only if it
16 succeeds in registering a domain name on the customer's behalf, or that charges a one-
17 time fee rather than an annual fee; nor will registrars be allowed to auction expired
18 domain names in a fair and equitable manner. By imposing an annual \$24 per domain
19 name subscription fee, Verisign prohibits those competitive and alternative business
20 models.

21 4.57. If the WLS is implemented, Plaintiffs will be prevented from offering the
22 services they currently provide. Several of the Plaintiffs derive their entire revenue from
23 services relating to deleted domain names, and will be put out of business if the WLS is
24 implemented. Others, if not put out of business, will lose their primary source of revenue
25 and the entire goodwill associated with their businesses and business models.

26 4.58. For consumers, the replacement of a "pay if successful" model with an
27 annual subscription model is a significant loss. The "pay if successful" model is the
28 market's successful attempt at accommodating the fact that most currently registered

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

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

4 4.59. If WLS subscriptions are distributed randomly among all domain names,
5 only about 23% will result in the consumer obtaining the domain name to which such
6 consumer subscribes, because only 23% of domain names are deleted each year.

7 4.60. But, WLS subscriptions are unlikely to be distributed randomly among all
8 domain names. Rather, WLS subscriptions are likely to be purchased on the most
9 desirable domain names, and are unlikely to be purchased on the least desirable domain
10 names. Shorter domain names are considered more desirable than longer domain names,
11 and domain names that are words in the English language are commonly considered more
12 desirable than domain names that are not words in the English language.

13 4.61. The likelihood that a domain name will not be renewed from the registry
14 varies according to (among other things) the number of years that it has already been
15 registered, the number of characters it contains, and whether or not it is a word in the
16 English language. In general, the longer a domain name has already been registered, and
17 the shorter it is, the less likely it is to be allowed to expire. Domain names that are words
18 in the English language are less likely to be allowed to expire than domain names that are
19 not.

20 4.62. Less than five percent (5%) of domain names that have been registered for
21 three years or more, and are less than five characters (not including the TLD), or that are
22 words in the English language, are allowed to expire. Accordingly, of WLS subscriptions
23 on the most desirable domain names, ninety five percent (95%) of consumers will
24 absolutely never obtain the domain names to which they subscribe.

25 4.63. These 5% odds decrease further. The WLS requires Verisign or the
26 registrar to notify the current domain name owner of the WLS subscription upon his/her
27 name. Consequently, even if such domain name owner intended to be one of the 5% to
28 abandon its domain name, s/he will probably not do so upon learning that a WLS

1 subscription is placed. Instead, the current registrant can put its domain name up for
2 auction, rather than lose it when there is someone who has already paid a fee in an
3 attempt to secure the name. The consequence of providing notice to the current registrant
4 when a WLS subscription is placed is that almost no WLS subscriptions will ever mature
5 into actual domain name registrations. To the contrary, only a tiny fraction of a percent
6 of WLS consumers will ever receive anything of value in consideration for the WLS
7 subscription fee.

8 4.64. Moreover, as the Internet matures, the overall renewal rate for domain
9 names shows a strong positive trend - that is, fewer and fewer domain names are
10 abandoned each year. As such, the success rate of WLS subscriptions can be expected to
11 decrease each year the service is offered.

12 M. ICANN'S CONSIDERATION OF THE WLS PROPOSAL

13 4.65. Verisign first made its WLS proposal in December, 2001 by sending it to
14 the ICANN Registrar Constituency, which represents the stakeholders who would be
15 most directly impacted by the WLS proposal. The reaction from the members of the
16 Registrar Constituency was overwhelmingly negative. On March 10, 2002, the Registrars
17 Constituency adopted a resolution opposing implementation of the WLS and urging
18 ICANN to withhold permission for its implementation.

19 4.66. Verisign then submitted the WLS proposal to the ICANN board, in the form
20 of a request to amend Appendix G of the <.com> and <.net> registry agreements to allow
21 it to offer the service. On April 17, 2002, ICANN general counsel Louis Touton, in an
22 analysis of the WLS for the Board of Directors, noted that "ICANN has not yet developed
23 a well-defined procedure for considering requests by registry operators to amend
24 Appendix G to allow charging for an additional registry service." Recognizing that
25 "action on [Verisign]'s proposal may serve as a model for future actions," Mr. Touton
26 cautioned the Board that "it is important to carefully consider the process that should be
27 followed."

28 4.67. After noting that the registry operator is in a sole-source position in

1 providing registry services and that its position as such “carries with it the potential for
2 various types of harm to the legitimate interests of others,” Mr. Touton concluded that
3 “[u]nder [the] circumstances, and given the existing conceptual approach of ICANN to
4 seek consensus where possible, it is my judgment that *the Board should not seek to
5 decide how to deal with this request without invoking the formal consensus development
6 processes* currently established within ICANN” (emphasis added).

7 4.68. On April 22, 2002, the Board considered Mr. Touton’s analysis, and
8 resolved to solicit community comment on Verisign’s request. The Board also requested
9 the Names Council within ICANN to coordinate within the Domain Name Supporting
10 Organization (“DNSO”), an ICANN constituency concerned with DNS issues, a task
11 force (the “Task Force”) to prepare and submit its recommendations regarding the WLS.

12 4.69. The Task Force consulted the various constituents whose interests would be
13 impacted by the WLS and determined that the *consensus was overwhelmingly opposed to
14 implementing the WLS*. On July 12, 2002, the Task Force recommended that the Board
15 “*reject Verisign’s request to amend its agreement to enable it to introduce its proposed
16 WLS,*” and “*reject Verisign’s request to trial the WLS for 12 months.*” (emphasis added).

17 4.70. On August 23, 2002, despite the opposition of the Registrar Constituency,
18 the Task Force, and the vast majority of constituents who expressed their opinions on the
19 ICANN web site, the ICANN Board adopted a resolution authorizing ICANN’s President
20 and General Counsel to negotiate with VeriSign for the establishment of WLS.

21 4.71. The ICANN Board approved the amendments necessary for Verisign to
22 offer the WLS on March 6, 2004.

23 4.72. Soon after ICANN’s approval, Verisign, NSI, and Enom began deployment
24 of the WLS. Those defendants are now taking “pre-orders” for WLS subscriptions. NSI
25 and Enom are taking consumer credit card numbers and they are requiring payment from
26 the consumers once the WLS is fully deployed.

27 4.73. Defendants Verisign, NSI and Enom are currently making representations
28 to consumers about the WLS. As a result, Plaintiffs are informed and believe, and on that

1 basis allege, that consumers who would use Plaintiffs' services are diverting their
2 business to defendants NSI and Enom based upon said representations.

3 4.74. To complete WLS deployment, Verisign must secure approval from the
4 United States Department of Commerce (the "DoC"). Plaintiffs are informed and believe
5 that the DoC intends to "rubber stamp" the WLS proposal without giving it meaningful
6 substantive consideration, and that Verisign will not be materially delayed in fully
7 implementing the WLS.

8 4.75. Plaintiffs are informed and believe, and on that basis allege, that Verisign
9 plans to complete the WLS launch no more than thirty (30) days after the Department of
10 Commerce and the ICANN Board give final approval of the amendments to Appendix G
11 to the registry agreements.

12 **N. DAMAGES TO CONSUMERS AND PLAINTIFFS**

13 4.76. Consumers who have agreed to "pre-sale" purchases of WLS subscriptions
14 are suffering damages because they agreed to pay consideration to Defendants without
15 receiving any benefit in exchange. Fortunately, though these consumers agreed that
16 Defendants may bill their credit cards after the WLS is fully implemented, this Court may
17 stop Defendants from taking these consumers' money if the WLS is enjoined before it is
18 fully implemented.

19 4.77. After full deployment of the WLS, consumers will be deceived into
20 purchasing WLS subscriptions believing they will receive a domain name registration.
21 As a result, consumers will pay Defendants substantial fees annually, but will receive no
22 benefit in return. Within weeks of full implementation of the WLS, Defendants will have
23 generated millions of dollars from consumers, but provided no value to the consumers.
24 This scheme will continue until enjoined. This Court may enjoin the WLS before
25 consumers lose millions of dollars.

26 4.78. Plaintiffs are now suffering damages as a result the WLS "pre-sales". For
27 example, consumers who would, but for the WLS, use Plaintiffs' services are instead
28 buying Defendants' WLS subscriptions believing the WLS will return a domain name

1 registration. If Defendants' scheme were lawful, perhaps this competition would be fair;
2 but, the scheme is deceptive to consumers, and Plaintiffs are losing business as a result.

3 4.79. After the WLS is fully implemented, Plaintiffs will be unable to offer their
4 deleted domain name services. Many of the Plaintiffs will be put out of business by the
5 unlawful WLS scheme.

6 4.80. Plaintiffs are now suffering, and after full implementation of the WLS will
7 suffer to a much greater extent, competitive injury due to Defendants' unfair and
8 unlawful WLS enterprise.

9
10
11 **V. FIRST CAUSE OF ACTION**
12 **UNFAIR TRADE PRACTICES ACT**
13 **BUSINESS & PROFESSIONS CODE §§ 17200 et seq.**
14 **(Against All Defendants)**

15 5.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
16 4.80 above as though fully set forth herein.

17 5.2. 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 Trade
19 Practices Act, California Business & Professions Code §§ 17200 et seq.

20 5.3. California Business & Professions Code §§ 17200, et seq. declares unfair
21 competition unlawful and defines unfair competition as, *inter alia*, "any unlawful, unfair
22 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
23 advertising . . ."

24 5.4. The activity proscribed under Business & Professions Code § 17200
25 includes anything that can properly be called a business practice and that at the same time
26 is forbidden by law.

27 5.5. California Penal Code § 319 defines a lottery as follows:

28 A lottery is any scheme for the disposal or distribution of property by chance,
among persons who have paid or promised to pay any valuable consideration
for the chance of obtaining such property or a portion of it, or for any share or
any interest in such property, upon any agreement, understanding, or
expectation that it is to be distributed or disposed of by lot or chance, whether

1 called a lottery, raffle, or gift-enterprise, or by whatever name the same may
2 be known.

3 5.6. California Penal Code § 320 provides that "Every person who contrives,
4 prepares, sets up, proposes, or draws any lottery, is guilty of a [crime]."

5 5.7. California Penal Code § 321 criminalizes the act of selling or otherwise
6 conveying the chance to win a prize in a lottery. Specifically, Penal Code § 321
7 provides:

8 Every person who sells, gives, or in any manner whatever, furnishes or
9 transfers to or for any other person any ticket, chance, share, or interest, or any
10 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].

11 5.8. California Penal Code § 322 makes it a crime for any person to merely
12 assist with a lottery. Specifically, Penal Code § 322 provides that:

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

16 5.9. Lotteries are illegal in California and in every other state in this country⁷.

17
18 ⁷ **Alabama:** Code of Ala. §§ 37A-37-20, -21, -22 (2000)(illegal lottery consists of (1) a prize, (2) awarded
19 by chance, (3) for consideration); **Alaska:** Alaska Stat. §§37.66.200, -210, -220, -280(2), (37)(2000); *Morrow v.*
20 *State*, 537 P.2d 377, 378 (Alas.1973)(private lottery consists of: consideration; chance, and prize); **Arizona:** Ariz.
21 *Rev. Stat* §§37-3303, -3304 (2000); *Ex Parte Gray*, 204 P. 1029, 1031 (Ariz. 1922)(lottery is species of illegal
22 gaming consisting of consideration, chance, and prize); **Arkansas:** Ark. Stat. Ann. §5-66-373 (1999); *Burks v. Harris*,
370 S.W. 979, 980 (Ark. 1909); **California:** Cal. Pen. Code §319 (2000); *California Gasoline Retailers v. Regal*
23 *Petroleum Corp.*, 330 P.2d 778, 783 (Cal. 1958); **Colorado:** Colo. Const. Art. XVIII, §2(1)-(3), (7)(1999); *Cross*
24 *v. State*, 32 P. 821, 822 (Colo. 1893); **Connecticut:** Conn. Gen Stat. §§53-278a(3), -278b(b)(1999); **Delaware:** Del.
25 *Code*, tit. 37, §3701 (1999); *Affiliated Enterprises Inc. v. Waller*, 5 A.2d 257, 259 (Del. 1939); **Florida:** Fla. Stat.
26 §849.09 (1999); *Blackburn v. Ippolito*, 376 So.2d 550, 551 (Fla. App. 1963); **Georgia:** Ga. Code Ann. §§16-37-20,
27 -22 (1999); **Hawaii:** Haw. Rev. Stat. §§712-1220(6), -1221, -1222, -1223 (2000); **Idaho:** Idaho Code §18-4901, -
28 4902 (1999); **Illinois:** 720 Ill. Comp. Stat. Ann. 5/28-1 (2000); *People v. Eagle Food Centers, Inc.*, 202 N.E.2d 473,
476 (1964); **Indiana:** Ind. Code Ann. §§35-45-5-1, -3 (2000); **Iowa:** Iowa Code §725.12 (1999); *State v. Hundling*,
264 N.W. 608 (Iowa 1935); **Kansas:** Kan. Stat. Ann. §§21-4302(b), -4303, -4304 (1999); **Kentucky:** Ky. Rev. Stat.
Ann. §§528.010(5)(a), -020, -030, -070 (1998); **Louisiana:** La. Rev. Stat. Ann. §§14:90(A)(1)(a), (b), 14:90.3
(2000); *State v. Boneil*, 8 So. 298 (La. 1890); **Maine:** Me. Stat. Rev. Ann. tit. 17-A, §§952(6), 953, 954 (1999);
Maryland: Md. Code Ann. §356 (1999); *Silbert v. State*, 12 Md. App. 516, 280 A.2d 55 (Md.Ct. Spec. App. 1971);
Massachusetts: Mass. Ann. Laws ch. 271, §7 (2000); *Commonwealth v. Lake*, 317 Mass. 264, 57 N.E.2d 923
(Mass. 1944); **Michigan:** Mich. Stat. Ann. §28.604(1) (1999); *United-Detroit Theater Corp. v. Colonial Theatrical*
Enterprise, 280 Mich. 425, 273 N.W. 756 (Mich. 1937); **Minnesota:** Minn. Stat. §§609.75(a), .755 (1999);

1 5.10. The WLS constitutes a "lottery" pursuant to Penal Code § 319.

2 5.11. Domain names are a form of intangible personal property

3 5.12. Defendants' WLS scheme provides for allocating domain names to certain
4 WLS subscribers. This constitutes "distributing property".

5 5.13. Defendants' WLS distribution of domain names is by chance.

6 5.14. Whether a WLS subscriber will be awarded the domain name subscribed is
7 not within the control of the WLS subscriber and will not depend on the WLS
8 subscriber's skill.

9 5.15. WLS subscribers will pay ample consideration for a chance to obtain
10 property in this manner.

11 5.16. Defendants Enom and NSI are now accepting "pre-orders" for WLS
12 subscriptions at \$35 and \$39 annually, respectively.

13 5.17. Defendants require consideration (*i.e.* payment of money) for the chance
14 (*i.e.*, whether a current domain name owner abandons its property) to win the valuable
15 domain name prize.

16 5.18. The defendants are selling to multiple WLS subscribers multiple chances to
17 win domain names.

18
19
20 **Mississippi:** Miss. Code Ann. §97-33-31 (2000); **Missouri:** Mo. Const. art. II, §§39, 572.020 (2000); **Montana:**
21 **Mont.** Code Ann. §§23-5-102, -112(23)(1999); **Nebraska:** Neb. Rev. Stat. §§28-1101(4), 28-1102 (1999); **Nevada:**
22 **Nev.** Rev. Stat. §§462.105 (2000); **New Hampshire:** N.H. Rev. Stat. Ann. §647.2 (1999); *State v. Powell*, 567 A.2d
23 568 (1989); **New Jersey:** N.J. Stat. Ann. §§2C:37-1(h), :37-2(a), (b)(2000); **New Mexico:** N.M. Stat. Ann. §30-19-
24 1(E)(2000); **New York:** N.Y. Penal Law §225.00 (Consol. 1999); **North Carolina:** N.C. Gen. Stat. §14-290 (1999);
25 *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);
26 **Ohio:** Ohio Rev. Code §2915.02(2000); **Oklahoma:** Okla. Stat. tit. 21, §§1051-1053 (1999); **Oregon:** Or. Rev. Stat.
27 §§167.117, .122, .127 (1997); **Pennsylvania:** 18 Pa. Cons. Stat. §5512(1999); **Rhode Island:** R.I. Gen. Laws. §11-
28 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 Wn. App. 455, 628 P.2d 829
(1980); **West Virginia:** W.Va. Code §§29-22A-1, 61-10-11 (2000); *State ex. Rel. Mountaineer Park, Inc. v. Polan*,
190 W.Va. 276, 438 S.E.2d 308 (1993); **Wisconsin:** Wis. Stat. §§945.01(5)(a), (b), 945.02 (2000); **Wyoming:** Wyo.
Stat. Ann. §6-7-101(a)(iii) (1998); **District of Columbia:** D.C. Code §22-1501 (1999); *National Conference on*
Legalizing Lotteries, Inc. v. Farley, 68 App. D.C. 319, 96 F.2d 861, 863 (D.C.Cir. 1938).

1 5.19. Two or more persons have promised to pay consideration to Enom, NSI,
2 and ultimately Verisign for the chance of obtaining a domain name prize.

3 5.20. The WLS is a business practice.

4 5.21. As described above, the WLS is unlawful and unfair.

5 5.22. Neither the illegal WLS lottery enterprise, nor any part of it, constitutes a
6 charitable raffle.

7 5.23. The defendants and each of them have contrived, prepared, set up,
8 proposed, and/or drawn the lottery in the illegal WLS lottery enterprise. Accordingly, the
9 defendants and each of them are guilty of a crime pursuant to Penal Code § 320.

10 5.24. The defendants and each of them have sold or transferred to would-be
11 registrants the chance to register a currently-registered domain name, and understood or
12 represented the same to be such a chance. Consequently, the defendants, and each of
13 them, are guilty of a crime pursuant to Penal Code § 321.

14 5.25. The defendants and each of them have aided or assisted in setting up,
15 managing, or drawing the lottery in the WLS lottery enterprise. Thus, the defendants, and
16 each of them, are guilty of a crime pursuant to Penal Code § 322.

17 5.26. By engaging in the conduct alleged herein, the defendants, and each of
18 them, are liable to Plaintiffs and members of the general public for violating Business &
19 Professions Code §§ 17200 *et seq.*

20
21 **VI. SECOND CAUSE OF ACTION**
22 **UNFAIR TRADE PRACTICES ACT**
23 **BUSINESS & PROFESSIONS CODE §§ 17200 *et seq.***
24 **(Against Enom, NSI, and DOES 1-10, Inclusive)**

25 6.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
26 5.26 above as though fully set forth herein.

27 6.2. Plaintiffs assert this cause of action on behalf of the general public, acting
28 as a private attorney general under California's Unfair Trade Practices Act, California
Business & Professions Code §§ 17200 *et seq.*

6.3. The activity proscribed under Business & Professions Code § 17200

1 includes anything that can properly be called a business practice and that at the same time
2 is forbidden by law.

3 6.4. The Consumers Legal Remedies Act, Civ. Code §§ 1750, 1770, provides in
4 relevant part:

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

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

9 6.5. Defendants Enom and NSI are representing to consumers that they will
10 receive an economic benefit (*i.e.*, the right to register a valuable domain name), the
11 earning of which is contingent on an event to occur subsequent to the consummation of
12 the transaction (*i.e.*, the unlikely event the current registrant abandons the subscribed
13 domain name, which occurs (if ever) after the WLS subscription is purchased).

14 6.6. In its advertising for its "Next Registration Rights" service, NSI states:

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

18 (Emphasis added).

19 6.7. Similarly, in its advertising for its "First Dibs" service, Enom states:

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

23 (Emphasis added).

24 6.8. The advertisements described above, which are published by their
25 respective authors on the Internet, are intended to result in the sale of WLS subscriptions
26 to consumers.

27 6.9. The acts alleged herein are unfair and detrimental to consumers, and have
28 no countervailing benefit for competition.

1 6.10. In addition to offering WLS subscriptions to businesses, Defendants offer
2 WLS subscriptions as services for other than a commercial or business use.

3 6.11. Many of the WLS subscribers are, or will be, individuals who seek or
4 acquire domain names for personal, family, or household purposes.

5 6.12. By engaging in the conduct alleged herein, Enom and NSI are violating, or
6 unless enjoined will violate, the Consumers Legal Remedies Act, Civ. Code § 1750 et
7 seq., and said violation constitutes a violation of Business & Professions Code §§ 17200
8 *et seq.* as a result.

9
10 **VII. THIRD CAUSE OF ACTION**
11 **UNFAIR TRADE PRACTICES ACT**
12 **BUSINESS & PROFESSIONS CODE §§ 17200 *et seq.***
13 **(Against Enom)**

14 7.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
15 6.12 above as though fully set forth herein.

16 7.2. Plaintiffs assert this cause of action on their own behalf and on behalf of
17 the general public, acting as a private attorney general under California's Unfair Trade
18 Practices Act, California Business & Professions Code §§ 17200 *et seq.*

19 7.3. Business & Professions Code § 17200 imposes a duty to avoid making false
20 or misleading statements of fact to the public when marketing, soliciting, advertising, or
21 otherwise inducing the public to enter into any obligation.

22 7.4. False and misleading statements of fact include omissions of material fact
23 which, by the exercise of reasonable care, should be known to affect the average
24 consumer's decision as to whether to enter into such obligation.

25 7.5. As a business that is advertising, promoting, and soliciting the opportunity
26 for potential registrants to purchase WLS subscriptions, Enom has an obligation to fully
27 disclose to potential subscribers all material facts which would reasonably affect the
28 potential registrants' decision as to whether to purchase a WLS subscription.

7.6. Reasonable consumers have a limited understanding of the workings of the
Internet and of the domain name system, and are unlikely to immediately or easily

1 understand the distinction between a domain name registration and a domain name
2 "subscription."

3 7.7. The average reasonable consumer is unfamiliar with any database that may
4 publish domain name expiration dates.

5 7.8. Even sophisticated consumers may believe that a domain name will be
6 available for registration on its expiration date.

7 7.9. Reasonable consumers lack knowledge of, and access to, information
8 relating to domain names, including statistical information relating to the likelihood that a
9 particular domain name will be renewed.

10 7.10. Unlike Plaintiffs, who market their services to a relatively sophisticated
11 clientele, Defendants are marketing WLS subscriptions to a broad audience of potential
12 domain name registrants.

13 7.11. Defendant Enom is currently advertising to consumers, and taking "pre-
14 orders" for "First Dibs", Enom's branding of the Verisign WLS service. Nowhere in any
15 part of Enom's advertising, or elsewhere in the sales process, does Enom disclose the
16 likelihood that a subscriber will obtain the domain name to which it subscribes.

17 7.12. Enom expressly disclaims any guarantee that any particular WLS
18 subscription will be available when the service launches.

19 7.13. Indeed, Enom advises its customers that it is not obligated to even attempt
20 to obtain WLS subscriptions on the customer's behalf when the WLS launches, and may
21 claim any of the domain names requested by consumers as Enom's own should it choose
22 to do so:

23 When VeriSign's Wait List Service ("WLS") goes live and begins accepting
24 orders from the public, Enom will attempt to acquire the WLS subscription on
25 some or all of the domain names which the ETPs bid on. If Enom succeeds in
26 acquiring a WLS subscription with respect to one of these domains, then Enom
27 will award the First Dibs subscription to the highest bidder unless Enom had
28 listed the domain name itself, in which case Enom will award itself the First
Dibs subscription.

27 7.14. Orders for "First Dibs" subscriptions cannot be cancelled, and by placing
28 an order the customer authorizes Enom to charge its credit card if the subscription sought

1 is available.

2 7.15. Although Enom fails to disclose the likelihood that a First Dibs subscription
3 will be successful, the tone of its advertising certainly suggests that optimism would be
4 appropriate: "If you were given the opportunity to have ANY domain name, which name
5 would you choose? Get the domain name you want" (Emphasis in original).

6 7.16. Enom's express and implied misrepresentations and omissions of material
7 fact are, or by the exercise of reasonable care should be, known to Enom to affect the
8 average consumer's decision as to whether to purchase a WLS subscription.

9 7.17. For example, Enom's failure to disclose the likelihood that a WLS
10 subscription will be successful creates a false expectation in the mind of reasonable
11 consumers that WLS subscriptions will result in the actual registration of domain names.

12 7.18. Representing to consumers that they can "Get the domain name [they]
13 want" creates a false expectation in the mind of reasonable consumers that WLS
14 subscriptions will result in the actual registration of domain names.

15 7.19. The truth that Enom should disclose to consumers is that most subscriptions
16 will not result in the actual registration of any domain name. In addition, for each
17 domain name for which a consumer seeks to purchase a WLS subscription, Enom should
18 disclose the likelihood that the WLS subscription will result in registration of the domain
19 name.

20 7.20. Even if domain name expiration dates may be available to consumers, most
21 consumers do not know where to find those expiration dates, nor do consumers know the
22 effect of domain name expiration dates.

23 7.21. Enom's failure to disclose such material facts in its advertisements,
24 solicitations, promotions, and marketing for WLS subscriptions constitutes false and
25 misleading statements to the public.

26 7.22. Reasonable consumers exercising a reasonable degree of care are likely to
27 be deceived by the acts, representations, and omissions described herein.

28 7.23. By engaging in the conduct alleged herein, Enom is violating, and unless

1 enjoined will continue to violate, Business & Professions Code §§ 17200 *et seq.*, and
2 consumers and Plaintiffs have been and will continue to be harmed as a result.

3
4
5 **VIII. FOURTH CAUSE OF ACTION**
6 **UNFAIR TRADE PRACTICES ACT**
7 **BUSINESS & PROFESSIONS CODE §§ 17200 *et seq.***
8 **(Against NSI)**

9 8.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
10 7.23 above as though fully set forth herein.

11 8.2. Plaintiffs assert this cause of action on their own behalf and on behalf of
12 the general public, acting as a private attorney general under California's Unfair Trade
13 Practices Act, California Business & Professions Code §§ 17200 *et seq.*

14 8.3. Business & Professions Code § 17200 imposes a duty to avoid making false
15 or misleading statements of fact to the public when marketing, soliciting, advertising, or
16 otherwise inducing the public to enter into any obligation.

17 8.4. False and misleading statements of fact include omissions of material fact
18 which, by the exercise of reasonable care, should be known to affect the average
19 consumer's decision as to whether to enter into such obligation.

20 8.5. In advertising, promoting, and soliciting the opportunity for potential
21 registrants to purchase WLS subscriptions, NSI has the obligation to fully disclose to
22 potential subscribers all material facts which would reasonably affect the potential
23 registrants' decision as to whether to purchase a WLS subscription.

24 8.6. Defendant NSI is currently advertising to consumers, and taking "pre-
25 orders" for "Next Registration Rights", NSI's branding of the Verisign WLS service.
26 Nowhere in any part of NSI's advertising, or elsewhere in the sales process, does NSI
27 disclose the low likelihood that a subscriber will obtain the domain name to which it
28 subscribes.

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

1 8.8. Defendant NSI is currently representing to consumers about WLS: "Now
2 you can get the domain name you want when it becomes available. Next Registration
3 Rights is a new service from Network Solutions that lets you order a .com or .net domain
4 name that is already registered."

5 8.9. In truth, very few, if any, consumers can "get the domain name [they] want
6 when it becomes available."

7 8.10. Most domain names will never become available.

8 8.11. Defendant NSI is also currently representing to consumers about WLS:

9 Act now. Only one pre-order will be accepted for each domain name. Next
10 Registration Rights helps you: . . .

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

11 (Ellipses in original).

12 8.12. In truth, the WLS does not allow consumers to "get a domain name [they]
13 always wanted... but somebody else already has".

14 8.13. Rather, no reasonable domain name registrant would allow its name to
15 expire after learning there is a WLS subscription on it.

16 8.14. Accordingly, almost no WLS consumers will get any domain name
17 somebody else already has, let alone the domain names they always wanted.

18 8.15. The representations and omissions as alleged herein are likely to deceive
19 reasonable consumers exercising a reasonable degree of care, and to cause harm to
20 plaintiffs including loss of goodwill.

21 8.16. For example, defendants' failure to disclose the likelihood that a WLS
22 subscription will be successful creates a false expectation in the mind of consumers that
23 WLS subscriptions will result in actual domain name registrations.

24 8.17. The express representations that consumers can "get a domain name [they]
25 always wanted" creates a false expectation in the mind of consumers that WLS
26 subscriptions will result in actual domain name registrations.

27 8.18. The truth that NSI fails to disclose, but should disclose, is that almost all
28 WLS subscriptions will not result in the registration of any domain name. In addition, for

1 each domain name for which a consumer seeks to purchase a WLS subscription, NSI
2 should disclose the likelihood that the WLS subscription will result in registration of the
3 domain name.

4 8.19. NSI's failure to disclose such material facts in its advertisements,
5 solicitations, promotions, and marketing for WLS subscriptions constitutes false and
6 misleading statements to the public.

7 8.20. Consumers are likely to be deceived by the acts and omissions described
8 herein.

9 8.21. By engaging in the conduct alleged herein, NSI is violating, and unless
10 enjoined will continue to violate, Business & Professions Code §§ 17200 *et seq.*, and
11 consumers and Plaintiffs have been and will continue to be harmed as a result.

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

17 9.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
18 8.21 above as though fully set forth herein.

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

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

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

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.

1 9.6. By requiring approval of Verisign's WLS, ICANN created a duty to ensure
2 that the WLS is legal, and ICANN became responsible for the WLS.

3 9.7. ICANN approved the WLS for a one-year trial without requiring Verisign
4 to disclose (or to require registrars to disclose) that consumers may not have the
5 opportunity to renew their WLS subscriptions after the one-year trial period.

6 9.8. ICANN ratified the WLS and allowed Verisign to sell WLS subscriptions
7 relating to domain names that cannot expire during the subscription term.

8 9.9. By selling WLS subscriptions that *cannot* result in a domain name (because
9 the expiration date of the domain name falls later than the trial subscription period),
10 Verisign and its agents Enom and NSI are defrauding consumers.

11 9.10. By selling WLS subscriptions, the defendants are impliedly representing
12 that a WLS subscriber has a likelihood of obtaining the subscribed domain name as a
13 result of the WLS subscription. In connection with WLS subscriptions that cannot result
14 in the subscriber obtaining the domain name during the subscription period, this
15 representation will be false, and the defendants know that it will be false.

16 9.11. Consumers are likely to be deceived by the acts and omissions described
17 herein.

18 9.12. By engaging in the conduct alleged herein, defendants are liable to
19 Plaintiffs and members of the general public for violating Business & Professions Code
20 §§ 17200 *et seq.*

21
22 **X. SIXTH CAUSE OF ACTION**
23 **UNFAIR TRADE PRACTICES ACT**
24 **BUSINESS & PROFESSIONS CODE §§ 17200 *et seq.***
25 **(Against Verisign, Enom and NSI)**

26 10.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
27 9.12 above as though fully set forth herein.

28 10.2. Plaintiffs assert this cause of action on their own behalf and on behalf of
the general public, acting as a private attorney general under California's Unfair Trade
Practices Act, California Business & Professions Code §§ 17200 *et seq.*

1 10.3. California Business & Professions Code §§ 17200, *et seq.* declares unfair
2 competition unlawful and defines unfair competition as, *inter alia*, “any unlawful, unfair
3 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
4 advertising . . .”

5 10.4. Defendants Enom and NSI are currently accepting “pre-orders” for WLS
6 subscriptions. Enom and NSI are advertising said subscriptions as, among other things,
7 “protection” against inadvertent loss of domain names.

8 10.5. For example, Enom represents to current domain name consumers
9 concerning WLS that “Your domain name is a unique and valuable asset, there is only one
10 like it in the world. Protect your existing domain names [with WLS]”.

11 10.6. Defendant NSI is currently representing to consumers about WLS:

12 Act now. Only one pre-order will be accepted for each domain name. Next
13 Registration Rights helps you:

- 14 • Protect the domain names you have

15 10.7. In truth, the WLS does not help any domain name registrant protect the
16 domain names it has. Rather, domain name registrants already have both a grace period
17 through their registrar, and then a Redemption Grace Period provided by the registry. The
18 WLS will not add any protection for domain names.

19 10.8. Since the implementation of the Redemption Grace Period in <.com> and
20 <.net> on January 25, 2003, registrants have at least a thirty (30) day period after the
21 expiry date during which they can recover their domain names. During the Redemption
22 Grace Period, neither any Web site nor any e-mail addresses associated with the domain
23 name are operational, thus giving registrants clear notice that their domain name requires
24 attention.

25 10.9. Domain names can only be deleted from the registry by the sponsoring
26 registrar or, if all grace periods have elapsed, by the registry.

27 10.10. Plaintiffs are informed and believe, and on that basis allege, that defendant
28 Verisign originated, authorized, approved, or was otherwise involved in the decision to
market WLS subscriptions to domain name owners as a form of protection, and that in

1 selling or soliciting such subscriptions, Enom and NSI are acting as Verisign's agents.

2 10.11. By causing registrars to represent that domain names need to be "protected"
3 in this manner, Defendants are intentionally inculcating an unreasonable fear among
4 domain name registrants regarding the likelihood of "unintentional expiration" and other
5 harm that might befall a domain name at its registrar's (or registry's) hand. For the price
6 of a single year's WLS subscription, a registrant could renew a domain for three or more
7 years, and in the event a domain name "unintentionally expires," the registrant has ample
8 time to retrieve it.

9 10.12. Domain name consumers may register domain names for up to one hundred
10 years. There are no circumstances under which it would be fair to sell an unknowing
11 WLS subscriber a one year subscription on a domain that is not scheduled to be deleted
12 until the year 2104.

13 10.13. By selling WLS subscriptions to domain name holders, Defendants are
14 impliedly representing that there is a benefit to be obtained from doing so, and therefore
15 that there is a reasonable likelihood that a registrant will need such protection. In fact, the
16 likelihood of inadvertent deletion is impossibly low, and Defendants' representation is
17 false. The defendants know, or should know, that it is false.

18 10.14. The acts and omissions described herein are unfair to consumers.

19 10.15. By engaging in the conduct alleged herein, Verisign, Enom and NSI are
20 liable to Plaintiffs and members of the general public for violating Business & Professions
21 Code §§ 17200 *et seq.*

22
23 **XI. SEVENTH CAUSE OF ACTION**
24 **UNFAIR TRADE PRACTICES ACT**
25 **BUSINESS & PROFESSIONS CODE §§ 17200 *et seq.***
26 **(Against All Defendants)**

27 11.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
28 10.15 above as though fully set forth herein.

11.2. Plaintiffs assert this cause of action on their own behalf and on behalf of the
general public, acting as a private attorney general under California's Unfair Trade

1 Practices Act, California Business & Professions Code §§ 17200 *et seq.*

2 11.3. California Business & Professions Code §§ 17200 *et seq.* declares unfair
3 competition unlawful and defines unfair competition as, *inter alia*, “any unlawful, unfair
4 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
5 advertising . . .”

6 11.4. Verisign, Enom, NSI, and DOES 1-10 are implementing the WLS.

7 11.5. The WLS is a scheme by which defendants Verisign, Enom, NSI, and DOES
8 1-10 sell to consumers the chance to register a domain name.

9 11.6. However, in all but a tiny fraction of cases, no consumer will actually be
10 granted the right to register a domain name through the WLS.

11 11.7. Accordingly, defendants Verisign, Enom, NSI, and DOES 1-10 are charging
12 consumers valuable consideration for WLS subscriptions, but the consumers do not
13 receive any consideration in return.

14 11.8. The acts described herein are a business act or practice.

15 11.9. The acts described herein are unfair to consumers.

16 11.10. The acts described herein are also unfair to Plaintiffs. Plaintiffs will be
17 entirely foreclosed from offering the services they currently offer, and registrars will no
18 longer have the equal opportunity to register domain names that registrants decide to
19 abandon.

20 11.11. Plaintiffs and other registrars who decline to offer WLS subscriptions to
21 their customers will be entirely precluded from competing to register desirable expiring
22 domain names. Defendants’ WLS impedes competition, increases prices, and replaces a
23 vibrant competitive market with a Verisign monopoly.

24 11.12. Defendants Verisign, Enom, NSI, and DOES 1-10 could not operate the
25 WLS without ICANN’s approval.

26 11.13. ICANN approved of and enabled the WLS.

27 11.14. By engaging in the conduct alleged herein, Defendants are liable to Plaintiffs
28 and members of the general public for violating Business & Professions Code §§ 17200 *et*

1 seq.

2 **XII. EIGHTH CAUSE OF ACTION**
3 **DECLARATORY RELIEF, CODE OF CIVIL PROCEDURE § 1060**
4 **(Against Verisign)**

5 12.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
6 11.14 above as though fully set forth herein.

7 12.2. Verisign is contractually obligated to delete expired domain names in
8 response to a "delete" command sent by the sponsoring registrar.

9 12.3. Verisign's contractual obligation to delete expired domain names
10 encompasses the necessary (pre-WLS) consequence of such deletion, which is the deleted
11 domain names become available for registration by any accredited registrar.

12 12.4. Thus, Verisign has a contractual obligation to make expired domain names
13 equally available for registration by any accredited registrar.

14 12.5. Verisign will breach the obligation to delete expired domain names by
15 denying registrars' requests to delete domain names in favor of causing registration of
16 those domain names to WLS subscribers.

17 12.6. Plaintiffs have each entered an agreement with Verisign (the "Registry-
18 Registrar Agreement") that governs Registrars' use of, and Verisign's provision of, the
19 Shared Registration System. Each Plaintiff is a party to the Registry-Registrar Agreement
20 with Verisign, which is attached hereto as Exhibit A and incorporated herein by this
21 reference.

22 12.7. Section 2.1 of the Registry-Registrar Agreement obligates Verisign to
23 provide registrars with access to the registry according to a specific protocol known as the
24 "Registry-Registrar Protocol":

25 2.1. System Operation and Access. Throughout the Term of this Agreement,
26 NSI shall operate the System and provide Registrar with access to the System
27 enabling Registrar to transmit domain name registration information for the
28 Registry TLD to the System according to a protocol developed by NSI and
known as the Registry-Registrar Protocol ("RRP").

12.8. Section 4.3.3 of the RRP defines the "DEL" command, which "allows a
registrar to delete (cancel the registration) of a domain name or delete a name server."

1 12.9. Section 4.3.3.1 of the RRP specifies who is authorized to issue a "DEL"
2 command: "Authorized User: The current registrar of a domain name MAY use the DEL
3 command to delete a domain name from the System."

4 12.10. Verisign's obligation to provide domain name deletion functionality is also
5 set forth in section 3.1 of the Registry-Registrar Agreement:

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

8 (Emphasis added).

9 12.11. Pursuant to section 3.1 of the Registry-Registrar Agreement, Verisign is
10 obligated to enable registrars to cancel the registration of domain names they have
11 registered in any updated or redesigned RRP.

12 12.12. Verisign will ignore registrar "delete" commands for domain names upon
13 which a WLS subscription has been placed, in that deleting a domain name will not result
14 in the domain name becoming equally available for registration by any registrar.

15 12.13. No registrar will have the meaningful ability to "cancel the registration of a
16 domain name it has registered" if a WLS subscription has been placed on that domain
17 name.

18 12.14. If the WLS is implemented, registrar "delete" commands for domain names
19 on which WLS subscriptions have been placed will not result in those domains becoming
20 available for registration by any registrar.

21 12.15. The WLS is not a part of the RRP or the Shared Registration System, and
22 implementation of the WLS will interfere with the functionality that Verisign is obligated
23 to provide via the RRP and the Shared Registration System.

24 12.16. Each plaintiff has complied with its obligations under the Registry-Registrar
25 Agreement, and no Plaintiff is in material breach of its obligations under the Registry-
26 Registrar Agreement.

27 12.17. Through the WLS, Verisign will materially breach its obligations under the
28 Registry-Registrar Agreement, and by doing so will impair Plaintiffs' ability to function as

1 ICANN-accredited registrars and will cause Plaintiffs significant financial harm.

2 12.18. Verisign denies that implementation of the WLS would constitute a breach
3 of its obligations under the Registry-Registrar Agreements, and an actual dispute exists
4 between the parties with respect to Verisign's obligation to delete, and thereby make
5 available for registration, expired domain names for which a "delete" command is received
6 from the Registrar.

7 12.19. There exists an actual controversy relating to the legal rights and duties of
8 the respective parties, and specifically whether Verisign would breach its agreements with
9 Plaintiffs by failing to delete domain names in response to "delete" commands.

10 12.20. Plaintiffs are entitled to a declaration of their rights and duties in the
11 premises of their contracts with Verisign, including a determination of questions of
12 construction arising under the contract.

13 12.21. Therefore, pursuant to Code of Civil Procedure § 1060, Plaintiffs request the
14 Court declare that a breach would occur if, in carrying out the WLS, Verisign fails to
15 delete domain names in response to registrar "delete" commands, in such a manner that
16 the deleted domains become equally available for registration by any accredited registrar.

17
18 **XIII. NINTH CAUSE OF ACTION**
19 **BREACH OF CONTRACT**
20 **(Against ICANN)**

21 13.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through
22 12.21 above as though fully set forth herein.

23 13.2. As ICANN-accredited registrars, each Plaintiff has entered into an identical
24 Accreditation Agreement with defendant ICANN. The Accreditation Agreement grants
25 each registrar the right to register domain names in accordance with procedures
26 established by ICANN and Verisign in consultation with the Department of Commerce.

27 13.3. All registrars are required to sign the Accreditation Agreement, which was
28 drafted by ICANN, and executed without allowing for registrar negotiation.

13.4. Each Plaintiff is a party to the Accreditation Agreement with ICANN dated

1 May 2001 (the "2001 RAA"), which is attached hereto as Exhibit B and incorporated
2 herein by this reference.

3 13.5. The Registrar Accreditation Agreement is one of several agreements among
4 ICANN and other organizations involved in the Internet domain-name system. Those
5 agreements are closely interrelated and operate cooperatively to implement those
6 organizations' agreements to adhere to various policies developed through the private-
7 sector, consensus-based process for management of the technical aspects of the Internet
8 that has been established under the auspices of ICANN.⁸

9 13.6. The Registrar Accreditation Agreement includes language limiting the
10 Registrars' obligation to implement ICANN-developed policies to those policies consistent
11 with, and reasonably related to, the goals of ICANN as set forth in the White Paper.⁹

12 13.7. Consistent with that position, Section 2.3 of the 2001 RAA imposes broad
13 obligations of "stability, competition, bottom-up coordination, and representation" on
14 ICANN in *all matters that impact registrars*, not only under the RAA, but in general:

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

17 2.3.1. exercise its responsibilities in an open and transparent manner;

18 2.3.2. not unreasonably restrain competition and, to the extent feasible, promote
and encourage robust competition;

19 2.3.3. not apply standards, policies, procedures or practices arbitrarily,
20 unjustifiably, or inequitably and not single out Registrar for disparate treatment
unless justified by substantial and reasonable cause; and

21 2.3.4. ensure, through its reconsideration and independent review policies,
22 adequate appeal procedures for Registrar, to the extent it is adversely affected
23 by ICANN standards, policies, procedures or practices.

24 ///

26 ⁸Register.com, Inc. v. Verio, Inc., 00-Civ-5747 (BSJ) Submission of Amicus Curiae Internet Corporation
27 for Assigned Names and Numbers.

28 ⁹Minutes of Meeting of ICANN Board of Directors, July 16 1999.

1 13.8. Unless enjoined, the WLS will impact registrars' right to delete domain
2 names according to the RRP, by eliminating that right altogether as to domain names on
3 which WLS subscriptions have been placed.

4 13.9. Because ICANN's approval of the WLS impacts the rights of registrars,
5 ICANN is obligated to refrain from acting arbitrarily, unjustifiably, or inequitably in
6 policies, procedures and practices relating to the WLS.

7 13.10. ICANN's mandate, and its stated goal, is to become an effective consensus
8 development body for the entire Internet community in the areas for which it is
9 responsible.

10 13.11. ICANN is required by its Bylaws, the 2001 RAA, and the Memorandum of
11 Understanding to obtain consensus with respect to issues concerning domain name
12 allocation.

13 13.12. ICANN is required by its bylaws and the Memorandum of Understanding to
14 operate from the bottom-up; to foster and then recognize consensus rather than force it.

15 13.13. Consensus reached in ICANN's constituent organizations should not be
16 disregarded or overturned by the ICANN Board.

17 13.14. ICANN did not obtain consensus that the WLS should be approved, and
18 indeed ignored the consensus that it should not be approved.

19 13.15. By approving the WLS without obtaining consensus, ICANN acted
20 unjustifiably, arbitrarily, inequitably, and unfairly, and in so doing breached its contractual
21 obligations to each Plaintiff.

22 13.16. Section 2.3.3 of the 2001 RAA requires ICANN to treat all registrars
23 equally. The Memorandum of Understanding between ICANN and the Department of
24 Commerce requires ICANN to require Verisign to do the same.

25 13.17. Registrars who do not offer the WLS, whether because of the expense
26 associated with implementing it or concern for potential liability to consumers, will not
27 have equivalent access to the registry as do registrars who offer the WLS.

28 13.18. Specifically, registrars who do not offer the WLS will not be able to

1 determine whether a WLS subscription has been purchased on a particular domain name,
2 which information will be contained in the registry.

3 13.19. Nothing in the 2001 RAA or any other agreement allows ICANN to make
4 equivalent access to the registry conditional on a registrar's offering additional services
5 that they do not wish to offer, or on bearing the expense associated with offering such
6 services.

7 13.20. By approving the WLS, ICANN breached its obligation to each Plaintiff
8 under Section 2.3.3 of the 2001.

9 13.21. If the WLS is implemented, no registrar will be able to offer services based
10 on competition for deleting domain names.

11 13.22. If the WLS is implemented, certain Plaintiffs will be forced out of business.

12 13.23. Unless enjoined, the WLS will unreasonably restrain competition, and
13 ICANN's approval of the WLS constitutes a material breach of its obligation to foster
14 competition established by section 2.3.2 of the Accreditation Agreement.

15 13.24. Section 5.1 of the 2001 RAA provides, "[w]hile this Agreement is in effect,
16 either party may seek specific performance of any provision of this Agreement in the
17 manner provided in Section 5.6 below, provided the party seeking such performance is not
18 in material breach of its obligations."

19 13.25. Each Plaintiff has performed, and continues to perform, all of its obligations
20 under its respective Accreditation Agreement, and none is in material breach of its
21 obligations under that Accreditation Agreement.

22 13.26. ICANN's failure to perform its contractual obligations to Plaintiffs has
23 caused, and continues to cause, significant damages to Plaintiffs, including without
24 limitation loss of reputation and goodwill.

25 ///

26 ///

27 ///

28 ///

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 names;

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

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

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

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

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

26 7. On Plaintiffs' Seventh Cause of Action, for preliminary and permanent
27 injunctions prohibiting Verisign and its agents, sales representatives, and affiliates from
28 selling WLS subscriptions;

