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CENTRAL DISTRICT OF CALIFORNIA
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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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THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

ENTERED
CLERK, U.S. DISTRICT COURT
JUL 14 2004
CENTRAL DISTRICT OF CALIFORNIA
BY mc DEPUTY

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I. FACTUAL AND PROCEDURAL HISTORY

On April 8, 2004, Plaintiffs filed a First Amended Complaint ("FAC") asserting a federal antitrust claim under the Sherman Act, 15 U.S.C. § 1, and eleven various state law claims. The Plaintiffs[1] consist of eight businesses that assist consumers in registering expired Internet domain names. (FAC ¶ 1.4.) Plaintiffs assert claims against four defendants: Verisign, Inc. ("Verisign"), Network Solutions, Inc. ("NSI"), Internet Corporation for Assigned Names and Numbers ("ICANN"), and eNom, Inc. ("eNom").

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

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[1] Plaintiffs include: (1) Registersite.com, (2) Name.com, (3) R. 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.

(FAC ¶ 4.55-4.58.).

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

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

II. LEGAL STANDARD

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

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

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

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

III. DISCUSSION

A. Plaintiffs' Federal Antitrust Claim

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

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

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

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

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

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[2] Plaintiffs' allegations also fail to satisfy the second 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.

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

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

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

subscriptions, not domain name registrations.[4]

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

B. Plaintiffs' State Law Claims

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

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

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

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

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IV. CONCLUSION

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

[6] In their FAC, Plaintiffs assert § 57b of the Federal Trade Commission Act ("FTCA") as an additional basis for jurisdiction. (FAC ¶ 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.

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

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

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

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

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

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

SO ORDERED.

DATED: July 12, 2004

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

[7] The Court waives the requirement that the parties comply with the requirements of Local Rule 7-3, as the parties have already 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.

→ Tentative

cc Sims
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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 Tentative Only

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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I. FACTUAL AND PROCEDURAL HISTORY

On April 8, 2004, Plaintiffs filed a First Amended Complaint ("FAC") asserting a federal antitrust claim under the Sherman Act, 15 U.S.C. § 1, and eleven various state law claims. The Plaintiffs[1] consist of eight businesses that assist consumers in registering expired Internet domain names. (FAC ¶ 1.4.) Plaintiffs assert claims against four defendants: Verisign, Inc. ("Verisign"), Network Solutions, Inc. ("NSI"), Internet Corporation for Assigned Names and Numbers ("ICANN"), and eNom, Inc. ("eNom").

Verisign plans to launch a new service, the Wait Listing Service ("WLS"). (FAC ¶ 1.1.) The WLS purports to give consumers, for an annual fee, the right to be "first in line" on the "waiting list" for currently-registered <.com> and <.net> domain names. (FAC ¶ 1.1.) According to Plaintiffs, Verisign requires that each consumer who purchases a WLS subscription also purchase any resulting domain name registration from the same registrar from whom he purchased the WLS subscription. (FAC ¶¶ 13.6, 13.7.) NSI and eNom are registrars who are currently advertising and taking "pre-orders" for the Verisign WLS service. (FAC ¶¶ 2.11-2.14, 7.6, 8.6.) Plaintiffs allege that a consumer will receive no benefit from purchasing a WLS subscription unless and until the current registrant decides to abandon its domain name, which is unlikely. (FAC ¶ 1.1.) As such, the WLS service will fail to provide any value to consumers. (FAC ¶ 4.55-4.58.).

In their ninth cause of action, Plaintiffs allege that the WLS service is an illegal tying arrangement in violation of the Sherman

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[1] Plaintiffs include: (1) Registersite.com, (2) Name.com, (3) R. 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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On May 28, 2004, the Court received Defendant eNom's motion to dismiss the FAC, Defendant ICANN's motion to dismiss certain causes of action, Defendant Verisign's motion to dismiss the eleventh cause of action, and Defendants Verisign's and NSI's motion to dismiss the FAC. On June 17, 2004, Plaintiffs filed oppositions to each of the motions and a motion to strike certain portions of ICANN's motion. The Defendants filed replies on June 30, 2004.

II. LEGAL STANDARD

A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the complaint. See Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) must be read in conjunction with Rule 8(a) which requires a "short and plain statement of the claim showing that the pleader is entitled to relief." 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 (1990). "The Rule 8 standard contains 'a powerful presumption against rejecting pleadings for failure to state a claim.'" Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997). A Rule 12(b)(6) dismissal is proper only where there is either a "lack of a cognizable legal theory" or "the absence of

sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 969, 699 (9th Cir. 1988); accord Gilligan, 108 F.3d at 249 ("A complaint should not be dismissed 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief").

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

III. DISCUSSION

A. Plaintiffs' Federal Antitrust Claim

Plaintiffs' ninth claim alleges that Verisign, eNom, and NSI have established an illegal *per se* tying arrangement in violation of the

Sherman Act, 15 U.S.C. § 1. A tying arrangement involves a seller's refusal to sell one product (the tying product) unless the buyer also purchases a second product (the tied product) from the seller. Hamro v. Shell Oil Co., 674 F.2d 784, 786 (9th Cir. 1982). In this case, Plaintiffs allege that Verisign has established a tying arrangement because "[e]ach consumer who purchases a WLS subscription [the tying product] will be required to agree to purchase any resulting domain name registration [the tied product] from the same registrar from whom he purchased the WLS subscription." (FAC ¶ 13.6.)

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

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

Plaintiffs' allegations fail to satisfy the third and fourth requirements.[2] As Defendants point out, Plaintiffs must do more than state mere legal conclusions. While Plaintiffs do state that a "not insubstantial volume of commerce in the tied product will be affected by Verisign's tying agreement," Plaintiffs' FAC fails to include facts to support this legal conclusion. In fact, the FAC includes facts which suggest that WLS subscriptions will not have an effect on domain name registrations because "of WLS subscriptions on the most desirable domain names,[3] ninety five percent (95%) of consumers will never obtain the domain names to which they subscribe." (FAC ¶ 4.58) (emphasis in original). As a result, Plaintiffs claim "VERISIGN WILL PROVIDE NO VALUE TO CONSUMERS PURCHASING WLS." (FAC at 20:4.) If Plaintiffs are correct, and the Court must assume they are, that consumers' WLS subscriptions will be overwhelmingly unsuccessful, and

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[2] Plaintiffs' allegations also fail to satisfy the second 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.

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

that only successful WLS subscriptions will result in domain name registrations, then the facts in Plaintiffs' FAC do not support the legal conclusion that the WLS will affect a not insubstantial volume of commerce in domain name registrations. Instead, Plaintiffs' FAC suggests that the majority of WLS consumers will be free to register their domain names with either their current registrar or other registrars. In fact, Plaintiffs allege that "[c]onsumers are free to transfer their registered domain names between registrars." (FAC ¶ 13.3).

Plaintiffs have also failed to allege that Verisign has a sufficient economic interest in domain name registration. "In the typical tying scheme, the seller of the tying product also sells the tied product. The tying product seller's interest need not be so direct, however, as long as the seller has an economic interest in the sale of the tied product." Robert's Waikiki U-Drive, Inc., v. Budget Rent-A-Car Sys., Inc., 732 F.2d 1403, 1407-08 (9th Cir. 1984) (citation omitted). In this case, Plaintiffs' FAC makes clear that in the unlikely event that a WLS subscription is successful, domain name registrations will be sold by registrars, not Verisign. (FAC ¶ 13.6.) Plaintiffs further allege that "[d]omain registration fees are not included in the $24 fee Verisign will charge registrars for each WLS subscription sold." (FAC ¶ 13.5.) Thus, according to Plaintiffs' allegations, Verisign's economic interest is in the sale of WLS subscriptions, not domain name registrations.[4]

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[4] Plaintiffs do contend that "Verisign owns 15% of NSI and has an economic interest in restricting registrars' ability to compete with NSI for domain name registrations." (FAC ¶ 13.17.) However, Plaintiffs have not contended that Verisign will limit WLS

(continued...)

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

B. Plaintiffs' State Law Claims

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

Second, a district court may decline to exercise supplemental jurisdiction if the state law claims substantially predominate over the federal law claim. 28 U.S.C. § 1367(c)(2). Here, Plaintiffs allege several claims arising under California's Unfair Competition Act, intentional interference with prospective economic advantage, and breach of contract. These claims would substantially expand the scope of this case. To support these claims, Plaintiffs allege, inter alia, that Defendants are engaging in an illegal lottery, making false, misleading, and defamatory statements, and selling contingent future

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[4](...continued)
subscriptions to NSI. Instead, Plaintiffs' allegations indicate that Verisign intends to force other registrars to agree to offer WLS 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).

interests in property they do not own. Plaintiffs' submissions demonstrate that the state law claims predominate this action and the dispute between the parties. While the allegations necessary for the federal antitrust claim are contained on three brief pages, the allegations for the state law claims span the remaining 47 pages of Plaintiffs' 51-page FAC. In responding to Defendants' motion to dismiss, Plaintiffs dedicated only one page of their 25-page opposition to the federal antitrust claim. Not only are the various state law claims numerous, but, as discussed above, the facts alleged to support these state law claims are in some ways inconsistent with Plaintiffs' deficient antitrust claim, which is the sole basis for original jurisdiction.[6] For these reasons, the Court exercises its discretion to dismiss Plaintiffs' state law claims without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendants Verisign, Inc.'s and Network Solutions, Inc's motion to dismiss the First Amended Complaint is hereby GRANTED IN PART and DENIED IN PART. Accordingly, Plaintiffs' First Amended Complaint is DISMISSED WITHOUT PREJUDICE as to the federal and state law claims. Plaintiffs may amend their federal antitrust claim by filing a second amended complaint within 14 days of entry of this Order. Failure to refile within 14 days will

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[6] In their FAC, Plaintiffs assert § 57b of the Federal Trade Commission Act ("FTCA") as an additional basis for jurisdiction. (FAC ¶ 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.

result in a dismissal of the claim with prejudice.[7]

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

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

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

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

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

SO ORDERED.

DATED: _____

_____

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

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[7] The Court waives the requirement that the parties comply with the requirements of Local Rule 7-3, as the parties have already 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.