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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AT LOS ANGELES

JFW

DOTSTER, INC., a Washington corporation, GO DADDY SOFTWARE, INC., an Arizona corporation, and eNOM, INC., a Washington corporation,	Civil Case No. 03-5045
Plaintiffs,	DECLARATION OF CLINT PAGE IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
v.	
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California nonprofit corporation	
Defendant.	

I, Clint Page, declare and state as follows:

I am president of Plaintiff Dotster, Inc. ("Dotster"). I make this declaration of my own knowledge, and after a review of documents maintained by Dotster in the normal course of business. If called as a witness I could testify to each of the following facts:

1. Every computer connected to the Internet is identified by a unique numeric code, known as an Internet Protocol address, or IP address. IP addresses can contain up to 12 digits, and can be difficult to easily remember. For that reason, Internet-connected computers can also be located by a domain name, an alphanumeric phrase which is tied to a specific IP address ("Domains").

2. The U.S. Department of Commerce ("DOC") delegated the technical management of the domain name system ("DNS") to the Internet Corporation for Assigned Names and Numbers, a California nonprofit corporation ("Defendant"), in a Memorandum of Understanding/Joint Project Agreement with U.S. Department of Commerce dated 25 November 1998 (the "MOU"). A copy of the MOU is attached hereto as <u>Exhibit A</u>, and is incorporated herein by reference. Defendant was tasked with operating the DNS based on the principles of promoting stability, competition, bottom-up coordination, representation, and in a manner that would develop robust competition. The MOU has been amended and extended multiple times, with the most recent being Amendment 5 to the Defendant/DOC MOU, which is dated September 19, 2002.

3. Defendant has been specifically tasked with coordinating the assignment of Domains, IP address numbers, and protocol parameter and port numbers, which must be globally unique for the Internet to function.

4.   Defendant has delegated certain of its functions relating to the assignment of Domains by contracting with third party registries, each of which is responsible for managing a top level domain ("TLDs") (such as .COM, .ORG, or .BIZ). Specifically, on May 25, 2001, Defendant and VeriSign Global Registry Services, a division of VeriSign, Inc. (the "Registry"), entered into two Registry Agreements under which the Registry was delegated to operate the .COM and .NET TLDs (the "Registry Agreements"). A copy of the .COM Registry Agreement is attached hereto as Exhibit B, and a copy of the .NET Registry Agreement is attached hereto as Exhibit C, both are incorporated hereon by reference. The appendices to Exhibits B and C, other than Appendix G, are not included, as they are technical in nature and not relevant to this matter. VeriSign, Inc.'s wholly owned subsidiary, Network Solutions, Inc., is a Registrar.

5.   The Registry and Defendant both individually contract with third parties, or Domain registrars ("Registrars"), who have a relationship with businesses or individuals who register and use the Domains ("Domain Registrants").

6.   To become a Registrar, a business must apply for accreditation with Defendant, submit certain supporting documents pertaining to commercial general liability insurance coverage and proof of adequate working capital, pay a non-refundable application fee, and sign a Registrar Accreditation Agreement ("Accreditation Agreement"). The Accreditation Agreement governs the relationship between a Registrar and Defendant.

7.   As part of becoming an Defendant-accredited Registrar, and in addition to the steps required in Paragraph 6, the prospective Registrar must also determine which TLDs it will offer to register. For example, a Registrar may offer to register the .COM, .NET, .INFO and .ORG TLDs for potential Domain Registrants. The determination of which names to offer is a business decision, and requires a

prospective Registrar to pass compatibility testing for each Registry and to execute certain appendices to the Accreditation Agreement. For example, to register .COM and .NET Domains, a Registrar must contract with the Registry, and sign an Appendix to the Accreditation Agreement.

8.   To register Domains, the Registry operates and maintains one shared, central registry in which competing Defendant-accredited Registrars register .COM and .NET Domains. There are currently 168 Defendant-accredited Registrars that are permitted to register Domains. Of those 168 Defendant-accredited Registrars, 135 of those Registrars are accredited by the Registry to register .COM and .NET Domains. There are certain Registrars that do not register the .COM and .NET Domains. However, the .COM Domains are generally considered to be the most popular Domains.

9.   Registrars compete against one another to register and host Domain Registrants' Domains. The Domain registration arena has become increasingly competitive in recent years. Each Registrar that registers .COM or .NET Domains can only do so through the Registry, which receives $6 for each such Domain registration.

10.   Registrars compete not only to register new, never-before registered Domains, approximately 45 Registrars also compete to re-register Domains that are expiring or otherwise being deleted by the Registry.

11.   When a Domain Registrant fails to renew his or her Domain, the Registrar with whom the Domain was originally registered has up to 45 days from the date the registration expires to send a "delete command" to the Registry.

12.   After the delete command has been sent to the Registry, the Registry then places the Domain on a 30-day redemption grace period ("Redemption Period"). During the Redemption Period, the Domain Registrant can either decide to renew the

Domain by filling out a form to retain ownership of the Domain and complete a renewal or to take no action and allow the Domain to be deleted, as described below.

13.   If a Domain Registrant takes no action to renew the Domain and intends to allow the Domain to expire, once the Redemption Period ends, the Domain enters a "Pending Delete" status. When the Domain enters the Pending Delete status, the Domain is placed on a pending delete report, which is updated daily by the Registry for Registrars to download, should they wish to do so. The pending delete report is the complete list of all .COM and .NET Domains that are scheduled to be deleted on a particular day. The Pending Delete status lasts for five days. At the end of the five days, the Domain is deleted in a batch delete process, which takes place at 11am PST and usually lasts for less than one hour (the "Batch Delete"). There are typically approximately 25,000 Domains deleted daily in the Batch Delete. As stated in Paragraph 10, there are approximately 45 active, highly competitive Registrars using their connections to the Registry to obtain such Domains during Batch Deletes.

14.   Due to the fierce competition between Registrars, the Registry has set up specialized equipment the Registrars use for the purpose of registering Domains that are being deleted. Such equipment is generally referred to as the "Batch Pool." The Batch Pool provides equal access for all Registrars attempting to register the Domains that are being deleted.

15.   During a Batch Delete, each competing Registrar sends a command from their computers to the Registry computers attempting to register wanted Domains in the Batch Pool. The first competing Registrar to have their command accepted for the wanted Domain registers the Domain for its customer. A desirable Domain that is deleted during a Batch Delete will generally be re-registered within a few milliseconds of it being deleted by the Registry.

16. Potential Domain Registrants can choose from many different models offered by Registrars to obtain Domains during a Batch Delete, including, among other models, fixed price, first-come-first-serve, auction models, or contacting a Domain reseller.

17. Currently, each Registrar that attempts to obtain Domains during the Batch Delete sets its own pricing and has its own recommendations as to which is the best model for potential Domain Registrants. Potential Domain Registrants can register Domains deleted during the Batch Delete process from as low as $8.75 to as high as thousands of dollars.

18. Dotster is a Defendant-accredited Registrar. As part of the requirement for becoming an Defendant-accredited registrar, Dotster entered into the Accreditation Agreement with Defendant, which is dated effective May 17, 2001. The Accreditation Agreement governs the relationship between Dotster and Defendant. Dotster is also active in the registration of expiring Domains. A copy of Dotster's Accreditation Agreement is attached as Exhibit D, and is incorporated herein by this reference.

19. Dotster markets the technology and processes that Dotster has developed to register expiring Domains that are being deleted in a Batch Delete to potential Domain Registrants under the name "NameWinner." NameWinner does not operate on a first-come first-served model; instead, it operates on an auction model, which allows all interested potential Domain Registrants to place a bid on a Domain that is about to expire.

20. NameWinner requires a potential Domain Registrants to make a minimum starting bid of $8.75 on a particular Domain, and then allows others to bid back and forth. Bidding ends for a Domain approximately one hour before the Domain is scheduled to be deleted in a Batch Delete. A potential Domain Registrants pays

Dotster only if NameWinner is able to successfully register the requested Domain; the potential Domain Registrants pays nothing if he or she does not get the Domain requested.

21. On an annual basis, Dotster pays registrar accreditation fees to Defendant in accordance with the Accreditation Agreement and Defendant's then-current policies. Since Dotster became and accredited Registrar, it has paid in excess of $75,000 in accreditation fees.

22. In late 2001, the Registry proposed a change to Defendant's policies, which would allow it to offer a new service that is commonly referred to as a Wait Listing Service or WLS.

23. The proposed WLS would allow a potential Registrant who wishes to register a Domain that is already registered can pay a fee for the opportunity to register that Domain if and when the current registration expires. Under the WLS, a Domain that is being deleted by the Registry would be checked to determine if a WLS subscription had been purchased for that Domain. If a WLS subscription has been purchased, the Domain would be generally registered to the WLS subscription holder. The Registry would administer the WLS program, and it initially proposed that it would receive $40 for each WLS subscription, plus the standard $6 registration fee, should the WLS subscription result in the Domain being registered by the WLS subscription holder. The WLS subscription fee is now proposed to be $24 for each WLS subscription.

24. The Registry's unique position as the entity with exclusive control over the registration of the .COM and .NET TLDs will allow it to operate WLS. A Registrar such as any of the Plaintiffs would not be able to implement a universal system such as WLS.

25.   As the WLS would be a new fee or charge implemented by the Registry, the Registry requested to Defendant that Appendix G to the .COM and .NET Registry Agreements be amended. Appendix G specifies the maximum price that the Registry may charge for "Registry Services." Registry Services are defined in the Registry Agreement as those services that are "provided as an integral part of the operation of the Registry TLD."

26.   According to Defendant's General Counsel in a letter to Defendant's Board of Directors ("Board") dated April 17, 2002, which has been publicly posted on Defendant's Internet website, "Registry Services" are those that a registry operator is enabled to provide on a sole-source basis by virtue of its appointment as such by Defendant, rather than services that are provided on a freely competitive basis. The proposed WLS is a registry service because, unlike the wait-listing services provided competitively by registrars, it is implemented by bypassing the normal return of deleted names to the available pool and by instead assigning them to the registrar and customer holding the reservation." A copy of the General Counsel's letter is attached as Exhibit E and is incorporated herein by this reference.

27.   In deciding to whether to permit the implementation of WLS, Defendant established a task force (the "Task Force") of the Domain Name Supporting Organization (which is similar to a "committee" within Defendant) and Defendant's Board requested that the Task Force prepare a report and recommendations on whether to implement WLS. The Task Force initially recommended that the Board deny the WLS proposal, however, it was then persuaded to include in its report certain conditions should the WLS proposal actually be implemented.

28.   On August 23, 2002, Defendant's Board adopted a resolution authorizing Defendant's President and General Counsel to negotiate with the Registry for the

establishment of WLS, despite stiff opposition to the WLS articulated by the Task Force and other Internet stakeholders.

29. On September 9, 2002, pursuant to Section 4.3.2 of the Accreditation Agreement, Plaintiff Dotster submitted a request for review under the Defendant's Independent Review Policy requesting an independent review of Defendants' actions and disputing the presence of a Consensus as required by the Accreditation Agreement. In contravention of Defendant's then-current Bylaws, Defendant has not, and to Plaintiffs' knowledge has not, established the required Independent Review Panel.

30. On September 12, 2002, pursuant to the requirements of the Accreditation Agreement, Dotster submitted a Reconsideration Request and formal request for review under Defendant's Independent Review Policy, asking Defendant to reconsider its August 23 decision.

31. On May 20, 2003, Defendant issued a Recommendation on Dotster's request, recommending that Defendant's Board take no action on the request. On June 2, 2003, Defendant's Board adopted the Recommendation issued on May 20, and again authorized negotiations between itself and the Registry toward the establishment of WLS.

32. On June 2, 2003, Defendant's Board adopted the Recommendation issued on May 20, and again authorized negotiations between itself and the Registry toward the establishment of WLS. Upon information and belief, those negotiations continue. The Registry has announced that it will begin implementation of the WLS on October 11, 2003, however a "soft launch" is planned to occur prior to October 11.

33. Implementation of the proposed WLS will effectively destroy the NameWinner and other competing businesses in the expiring Domain market because WLS creates a single, first-come, first-served model that preempts the competitive

Batch Delete process that currently exists. If WLS is implemented, instead of simply deleting the name from the Registry as part of the Batch Delete process, the Registry will first check to determine whether a WLS subscription has been purchased for the Domain.

34. If a WLS subscription has been purchased for a Domain, the Domain will generally be automatically registered to the purchaser of the WLS subscription. If no WLS subscription has been purchased, the Batch Delete process will then take place.

35. The WLS subscription is currently scheduled to cost $24 annually, and is non-refundable, even if the Domain is not deleted. Potential Domain Registrants will have to pay for the WLS subscription, but are not guaranteed to get anything for the fee. If the WLS subscription does result in a Domain being registered, there will be an additional $6 wholesale cost from the Registry for the Domain registration.

36. Implementation of the WLS will essentially end the current business model Dotster has created with its NameWinner product (and all of those business models created by its competitors). There will no longer be deleting Domains of value for potential Domain Registrants to bid on, as valuable Domains will likely have WLS subscriptions placed on them.

37. The innovation, creativity, and resources that have been devoted to a maturing, increasingly competitive deleted Domain market will be destroyed by a standardized, sole-source product offered by the Registry. Today, potential Domain Registrants have a choice for registering deleted Domains. If the proposed WLS is implemented, the only choice will be WLS.

38. I have read the Complaint and it is accurate and complete.

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PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION

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39.   The estimated value of the business that Dotster will lose (on an annual basis) if WLS is implemented substantially exceeds $100,000.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on July 14, 2003 at Kelso, Washington.

Clint Page

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Clint Page