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INTRODUCTION

Plaintiff John Zuccarini filed this action against Defendants Internet Corporation for Assigned Names and Numbers (“ICANN”), Network Solutions, LLC, and NameJet, LLC, alleging that each were in some way negligent in allowing fourteen domain names co-held by a California receiver and Network Solutions, LLC for the benefit of Plaintiff’s creditors, to be transferred and placed in a series of Internet auctions. Plaintiff’s Amended Complaint must be dismissed on several independent grounds, including lack of personal jurisdiction, improper venue, and for failure to state a claim against ICANN.

First, Plaintiff improperly seeks to have this United States District Court in Florida exercise personal jurisdiction over Defendant ICANN (a California non-profit public benefit corporation), despite the fact that ICANN maintains no offices, facilities or other presence in Florida, has no assets in Florida, does not otherwise conduct any business in this State, and thus does not have sufficient contacts with Florida that would render it subject to suit here. Plaintiff, who bears the burden of establishing this Court’s jurisdiction over ICANN, fails to allege the “minimum contacts” necessary for a Court to assert personal jurisdiction.

Second, other than Plaintiff’s residence, this case has nothing to do with this District. It should therefore be dismissed for lack of venue under Federal Rule of Civil Procedure 12(b)(3).

Finally, Plaintiff, who admits that he has not entered into any contract or other agreement with ICANN, fails to allege facts sufficient to establish that ICANN owed a duty of care to Plaintiff, which defeats Plaintiff’s negligence claim. For all these reasons, Plaintiff’s entire Amended Complaint should be dismissed with prejudice.

FACTUAL BACKGROUND

Background on ICANN.

ICANN is a California non-profit public benefit corporation with its principal place of business in Marina del Rey, California. It does not engage in commercial business, but rather administers the Internet's domain name system on behalf of the Internet community, pursuant to a series of agreements with the United States Department of Commerce. ICANN's coordination role is fulfilled in certain ways. For example, and relevant to Plaintiff's allegations, consumers may obtain the right to use second-level domain names (such as google.com or uscourts.gov) through companies known as "registrars." ICANN operates the accreditation system that has produced a highly competitive registrar marketplace, with over 900 accredited registrars, including defendant Network Solutions, LLC.

ICANN has no company facilities, assets or real estate in Florida, is not registered to do business in Florida, does not solicit business in Florida, does not have any phone number or mailing address in Florida, does not sell any goods or services in Florida, does not have a bank account in Florida, and does not have any employees in Florida. Declaration of Akram Atallah In Support of ICANN's Motion to Dismiss ("Atallah Decl."), ¶¶ 4-8, 10-11, 14.

The only plausible ICANN-Florida contact, Florida shares with the rest of the world. ICANN operates a few websites on the Internet that provide information regarding its Internet coordination activities, as well as publicly available information about domain name registrants, including the websites at <http://www.icann.org>, <http://www.iana.org>, and <http://www.internic.net>. None of these websites are operated from web servers physically located in Florida. *See, e.g.*, Atallah Decl., ¶ 14 (declaring that www.icann.org "is operated from web servers physically located in El Segundo, California and Reston, Virginia"). The websites contain a wealth of information about ICANN, about the people who work for ICANN, and

about the projects that ICANN has undertaken in connection with the Internet. The websites also contain “links” to other information that is related to ICANN’s activities. ICANN does not offer anything for sale on its websites; in fact, ICANN does not sell anything. *Id.*

Plaintiff’s Amended Complaint.

Plaintiff alleges that he, beginning in 1998, registered a “certain number of domain names with the domain name registrar Network Solutions.” Am. Compl. at ¶ 28. In 2007, to satisfy a judgment obtained against Plaintiff, the United States District Court for the Northern District of California appointed a receiver and ordered that Network Solutions transfer Plaintiff’s domain name registrations to the appointed receiver, Michael Blacksburg. *Id.* at ¶¶ 29-32. Pursuant to the Court’s order, Network Solutions transferred ninety domain name registrations from Plaintiff to Mr. Blacksburg. *Id.* at ¶ 32.

In May of 2010, Mr. Blacksburg allegedly failed to renew the registration for fourteen of the ninety domain names, which needed to be done on a yearly basis in order for Mr. Blacksburg to maintain his status as the registered domain name holder. *Id.* at ¶ 35. As a result of Mr. Blacksburg’s alleged failure to renew the fourteen domain names, the domain names proceeded to an automated Internet auction process, through a mutual agreement between Network Solutions and defendant NameJet. *Id.* at ¶ 36. Plaintiff alleges that the domain names proceeded to auction because of Mr. Blacksburg’s non-renewal. Further, had Mr. Blacksburg followed certain post-auction processes (which it is alleged he did not), Blacksburg would have been entitled to up to twenty percent of the auctioned price, the proceeds of which would have gone toward the satisfaction of Plaintiff’s debt. *Id.* at ¶¶ 38, 40.

Plaintiff claims that, because the fourteen domain name registrations were part of the court-ordered receivership estate, Network Solutions was negligent in failing to place a “hold”

status on the fourteen domain names and allowing those domain names to proceed to automatic auction. *Id.* at ¶¶ 41-54. Plaintiff further claims that NameJet, in auctioning the fourteen domain names “without any regard to their legal status,” was “concurrent[ly] negligen[t] in aiding the loss of the domain names from the receiver Blacksborg, and in detriment to Zuccarini and his creditors.” *Id.* at ¶ 55.

Plaintiff’s only allegations with respect to ICANN relate to the Registrar Accreditation Agreement that ICANN maintains with Network Solutions. *See id.*, ¶¶ 59-66. Plaintiff is not a party to that agreement. *Id.*, ¶ 64 (Plaintiff alleges that he is “a party who has *not* entered into any agreement with ICANN or Network Solutions.”) (emphasis added). Nonetheless, Plaintiff alleges that ICANN was negligent in “overseeing the actions of Network Solutions,” *id.*, ¶ 62, and that ICANN was negligent in not requiring Network Solutions to “place on hold or lock status any domain name that is the subject of court proceedings.” *Id.*, ¶ 63.

It is on these allegations that Plaintiff sued ICANN in the Southern District of Florida.

I. PLAINTIFF’S AMENDED COMPLAINT AGAINST ICANN SHOULD BE DISMISSED UNDER RULE 12(B)(2) FOR A LACK OF PERSONNEL JURISDICTION.

Determining whether personal jurisdiction can be exercised over a non-resident defendant like ICANN involves a two-part inquiry: (1) whether the exercise of jurisdiction is appropriate pursuant to Florida’s long-arm statute, *see Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 925 (11th Cir. 2007); and (2) whether exercising jurisdiction would violate the Due Process Clause of the Fourteenth Amendment. *See id.* The second part of the inquiry asks whether there are sufficient “minimum contacts . . . such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984); *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L.Ed. 95 (1945). In other words, to satisfy constitutional concerns, the

non-resident defendant should reasonably expect to be haled into court in the forum. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

It is Plaintiff's burden to "[establish] a prima facie case of personal jurisdiction." *Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino*, 447 F.3d 1357, 1360 (11th Cir. 2006). Even if such a prima facie case is made, "[w]here, as here, Defendant submits affidavits to the contrary, the burden traditionally shifts back to the plaintiff to produce evidence supporting jurisdiction." *Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1268-69 (11th Cir. 2002).

Here, Plaintiff has not alleged sufficient material facts to support personal jurisdiction over ICANN in Florida under either the long-arm statute or the Due Process Clause. Indeed, Plaintiff has made *no* specific factual allegations regarding personal jurisdiction. Am. Compl. at ¶ 4. Plaintiff's Amended Complaint should be dismissed with prejudice.

A. Plaintiff Has Not Satisfied Florida's Long-Arm Statute And ICANN Has Established That He Cannot.

"Since the extent of the long-arm statute is governed by [state law], federal courts are required to construe it as would the Florida Supreme Court." *Cable/Home Communication v. Network Prods.*, 902 F.2d 829, 856 (11th Cir. 1990) (citation omitted). The Florida courts have held that "Florida's long-arm statute is to be strictly construed." *Sculptchair Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 627 (11th Cir. 1996); *see also Thomas Jefferson Univ. v. Romer*, 710 So. 2d 67, 71 (Fla. Ct. App. 1998).

Plaintiff's Amended Complaint fails to invoke any provision of Florida's long-arm statute. What is more, the statute *cannot* be satisfied because ICANN has not undertaken any of the activities enumerated in the statute. At best, the activities alleged in Plaintiff's Amended Complaint may (but actually do not) implicate only three provisions of Florida's long-arm statute. These three arguably relevant provisions of the long-arm statute may subject a

nonresident defendant to Florida jurisdiction if the plaintiff's cause of action arises from the defendant's: (1) operation of a business within the state; (2) tortious acts within the state; or (3) causing of injury to person or property within the state. Fla. Stat. § 48.193(1)(a), (b), and (f).

1. ICANN Does Not "Carry On" Business In Florida.

Section 1(a) of Florida's long-arm statute subjects a defendant to jurisdiction if it carries on business in Florida. Fla. Stat. §48.193(1)(a). "In order to establish that a defendant is 'carrying on business' for the purposes of the long-arm statute, the activities of the defendant must be considered collectively and show a general course of business activity in the State for pecuniary benefit." *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000).

Plaintiff has failed to allege that ICANN has conducted any such business activity in Florida, and ICANN's evidence establishes the exact opposite. ICANN is a not-for-profit California corporation with its principal place of business in California. Atallah Decl., ¶ 2. ICANN has no employees, offices or agents in Florida. *Id.* at ¶¶ 4-5, 9. ICANN holds no business licenses in Florida. *Id.* at ¶ 10. ICANN does not offer anything for sale to Florida residents; in fact, ICANN does not sell anything. *Id.* at ¶ 14. On similar facts, the Eleventh Circuit found that it lacked personal jurisdiction over a group of defendants under Florida's long-arm statute because the defendants did not manufacture, sell or solicit orders for products in Florida and they did not maintain offices or agents in the State. *See Sculptchair, Inc.*, 94 F.3d at 627-28; *see also Response Reward Sys., L.C. v. Meijer Inc.*, 189 F. Supp. 2d 1332, 1336-37 (M.D. Fla. 2002) (ruling that the defendant did not operate a business in Florida because it "has no employees, officers, property, telephone number or mailing address in Florida"). The result should be no different here.

Plaintiff may argue that ICANN conducts business in Florida because it maintains a passive Internet website that can be viewed by Florida residents if they so chose. But the Middle District of Florida has already held that the maintenance of a passive website, such as ICANN's, does not constitute operating a business for the purposes of the long-arm statute. *See Miller v. Berman*, 289 F. Supp. 2d 1327, 1332-33 (M.D. Fla. 2003) (defendants' Internet website did not constitute "conducting or carrying on business in the state of Florida" because defendants did not solicit business or contract with Florida residents over the Internet).

2. ICANN Has Not Committed A Tort Within The State.

Section (1)(b) of Florida's long-arm statute subjects a nonresident defendant to jurisdiction if the defendant has committed "a tortious act within this State." Fla. Stat. §48.193(1)(b). Section 1(b) is not applicable here.

To utilize the tort prong of Florida's long-arm statute, not only must Plaintiff sufficiently state a tort claim against ICANN, but Plaintiff must also establish that the alleged tort arose from ICANN's contacts with Florida. *See Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (S. Ct. Fla. 2002); *see also Miami Breakers Soccer Club, Inc. v. Women's United Soccer Ass'n*, 140 F. Supp. 2d 1325, 1329-30 (S.D. Fla. 2001). Plaintiff has done neither. First, as explained in Section III, *infra*, Plaintiff has not sufficiently stated a cause of action against ICANN for negligence and thus has not properly alleged that ICANN has committed a tort. Second, as noted, the only arguable contact ICANN has with Florida is its website, which is accessible to anyone in the world. Plaintiff has not alleged, and cannot allege, that his purported cause of action arose out of ICANN's website or any website that ICANN maintains. As such, Plaintiff cannot utilize Section (1)(b) of Florida's long-arm statute to secure Florida jurisdiction over ICANN. *See Miami Breakers Soccer Club*, 140 F. Supp. 2d at 1329-30 (ruling that section (1)(b) was

inapplicable because plaintiffs' tort claims did not arise from the defendants' passive website accessible in Florida).

3. ICANN Has Not Caused Injury To Persons Or Property In Florida.

Section 1(f) of Florida's long-arm statute subjects a nonresident defendant to jurisdiction in Florida if the defendant caused injury to persons or property in Florida. *See Fla. Stat.* §48.193(1)(f). But, here too, it is clear that the section is inapplicable.

It is well-settled in Florida that Section (1)(f) "does not permit jurisdiction over nonresidents for acts arising outside the State that cause financial injury within the State, in the absence of personal injury or property damage." *Response Reward Sys.*, 189 F. Supp. 2d at 1337 (ruling that Section (1)(f) was inapplicable because the plaintiff alleged only patent infringement, not personal injury or property damage); *see also Aetna Life & Cas. Co. v. Therm-O-Disc, Inc.*, 511 So. 2d 992, 994 (S. Ct. Fla. 1987) ("We hold that the provisions of Section 48.193(1)(f) contemplate personal injury or physical property damage."); *Sculptchair, Inc.*, 94 F.3d at 629 ("It is well-established, however, that mere economic injury without accompanying personal injury or property injury does not confer personal jurisdiction over nonresident defendants under Section 48.193(1)(f).") Because Plaintiff has not alleged that ICANN caused him any physical injury or that ICANN damaged his physical property, Section (1)(f) is inapplicable.

In sum, Plaintiff has not alleged facts sufficient to satisfy Florida's long-arm statute. Indeed, Plaintiff has not identified which subsection of Florida's long-arm statute allegedly confers jurisdiction over ICANN, and, in fact, no subsection does. Without going any further, this Court therefore has sufficient justification to dismiss Plaintiff's entire Amended Complaint against ICANN for want of personal jurisdiction under Florida's long-arm statute.

B. Plaintiff Has Not Satisfied The Due Process Clause And ICANN Has Established That He Cannot.

If the Court finds it necessary to go beyond analysis of Florida's long-arm statute, the Due Process Clause of the Fourteenth Amendment provides further justification to dismiss Plaintiff's claims against ICANN. Plaintiff has not alleged sufficient material facts to establish that Florida jurisdiction over ICANN comports with due process and ICANN has shown that Plaintiff cannot.

"The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). Due process requires two elements be established: (1) the defendant must have certain "minimum contacts" with the forum state; and (2) the maintenance of the suit must not offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 316.

"Minimum Contacts within the forum may give rise to two types of personal jurisdiction: specific or general jurisdiction." *Response Reward Sys.*, 189 F. Supp. at 1338; *see Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 414-15. Here, Plaintiff has not and cannot establish either.

1. The Court Does Not Have General Jurisdiction Over ICANN.

To assert general jurisdiction, Plaintiff must establish that ICANN has "continuous and systematic" contacts with Florida. *Fraser v. Smith*, 594 F.3d 842, 846 (11th Cir. 2010). Factors that weigh against general jurisdiction include a lack of business or a business license in the forum, *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416, a lack of property ownership in the forum, *Nat'l Enquirer, Inc. v. News Group News, Ltd.*, 670 F. Supp. 962, 966-67 (S.D. Fla. 1987), or a lack of any bank accounts, telephone listings, or mailing addresses in the forum. *Id.*

at 966. General jurisdiction does not arise because a party maintains a website or otherwise offers information nationwide. *Miller*, 289 F. Supp. 2d at 1336 (“[T]he exercise of [general] jurisdiction over Defendants in the State of Florida is not proper because placing an informational website on the Internet does not amount to sufficient contacts with the forum.”); *Bird v. Parsons*, 289 F.3d 865, 874 (6th Cir. 2002) (ruling that the fact that the defendant “maintains a website that is accessible to anyone over the Internet is insufficient to justify general jurisdiction”); *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336-37 (5th Cir. 1999) (nationwide toll-free telephone number and website insufficient); *see also ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F. 3d 707, 715 (4th Cir. 2002); *Soma Med. Int’l v. Standard Chartered Bank*, 196 F.3d 1292, 1297 (10th Cir. 1999). Nor can general jurisdiction be premised on a “stream of commerce” theory; *i.e.*, that a defendant has contacts with third parties who then do business in the forum state. *See, e.g., Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 778 (7th Cir. 2003); *Alpine View Co. Ltd. v. Atlas Copco AB*, 205 F.3d 208, 216 (5th Cir. 2000).

ICANN is not subject to general jurisdiction in Florida. ICANN has no employees, assets, bank accounts, real property, personal property, offices, or other facilities in Florida. Atallah Decl., ¶¶ 4, 6-8. ICANN is not licensed to do business in Florida, does not have a registered agent for service of process in Florida, and has no phone numbers or mailing addresses in Florida. *Id.* at ¶¶ 5, 9-10. ICANN does not collect fees directly from domain name registrants, such as Mr. Zuccarini, and has no contracts with Mr. Zuccarini. *Id.* at ¶¶ 3, 13. Finally, ICANN’s website, which is operated from web servers physically located in Southern California and Virginia, does not offer anything for sale. *Id.* at ¶ 14.

ICANN thus has none of the contacts with Florida that are relevant to the general jurisdiction inquiry. *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416; *Nat'l Enquirer, Inc.*, 670 F. Supp. at 967. That Florida residents may access ICANN's website is far from sufficient to satisfy the rigorous "continuous and systematic" test for general jurisdiction. *Miller*, 289 F. Supp. 2d at 1336. Nor is it sufficient that ICANN accredits non-Florida registrars who *themselves* provided services to Florida residents. *Purdue*, 338 F.3d at 778; *Alpine View*, 205 F.3d at 216.

2. The Court Lacks Specific Jurisdiction Over Plaintiff's Claim.

"Specific" jurisdiction arises "out of a party's activities in the forum state that are related to the cause of action alleged in the complaint." *Sloss Indus. Corp.*, 488 F.3d at 925 (quotation marks and citation omitted). The Eleventh Circuit employs a three-part test for determining whether minimum contacts sufficient to support specific personal jurisdiction exist: (1) the defendant's contacts with Florida must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the State; (2) the defendant's contacts with the State must give rise to the plaintiff's cause of action; and (3) the defendant's contacts with the State must be such that the defendant should reasonably anticipate being haled into court there. *See Future Technology Today*, 218 F.3d at 1250-51; *Miami Breakers Soccer Club*, 140 F. Supp. 2d at 1330. "The touchstone of sufficient contacts is that the defendant 'purposefully directed' its activities at residents of the forum-state." *JB Oxford Holdings, Inc. v. Net Trade, Inc.*, 76 F. Supp. 2d 1363, 1366 (M.D. Fla. 1999); *see Burger King*, 471 U.S. at 472-73, *Response Reward Sys.*, 189 F. Supp. 2d at 1338 (finding no specific personal jurisdiction because the defendant's activities could not be considered to be "purposefully directed to the State of Florida").

As noted, ICANN does no business in Florida and is not party to any contracts with Plaintiff. Atallah Decl., ¶ 4-11, 13-14. Plaintiff's Amended Complaint fails to identify ICANN's contacts with the state of Florida, much less prove that his claims against ICANN arise out of these contacts. Specific personal jurisdiction is therefore absent here. *Fraser*, 594 F.3d at 850 (11th Cir. 2010) (“[A] fundamental element of the specific jurisdiction calculus is that plaintiff's claim must ‘arise out of or relate to’ at least one of defendant's contacts with the forum.”) (citation omitted). Plaintiff's Amended Complaint should be dismissed with prejudice for this reason alone.

Specific personal jurisdiction is also lacking because ICANN did nothing to “purposefully avail[] itself of the privilege of conducting activities” in Florida, and could not “reasonably anticipate being haled into [this] court.” *Sloss Indus. Corp.*, 488 F.3d at 925 (quotation marks and citation omitted).¹

In short, Plaintiff has not alleged any facts sufficient to satisfy the Due Process Clause. ICANN has established that it has no meaningful contacts with Florida and that the exercise of Florida jurisdiction over ICANN would be unreasonable. This Court therefore has more than ample justification to dismiss Plaintiff's Amended Complaint against ICANN for want of personal jurisdiction under the Due Process Clause.

¹ Plaintiff alleges that “ICANN in approving the Uniform Name Dispute Resolution Policy (“UDRP”) in October 24, 1999, recognized that third parties had rights to contest the ownership of domain names and that those rights should be protected.” Am. Compl. at ¶ 65. The mere fact that ICANN—through the community-driven policy development process—created a uniform policy applicable to all gTLD domain name registrations does not subject ICANN to jurisdiction every time a registrar enters into a separate contract with a domain name registrant that incorporates that policy. ICANN did not contract with Plaintiff, Am. Compl. at ¶ 64, and had no control where, or with whom, registrars would choose to do business. ICANN did not “purposefully avail” itself of the privilege of doing business in Florida simply because a third-party registrar did business there. *See Rank v. Hamm*, No. 2:04-0997, 2007 WL 894565, at * 12 (S.D. W. Va. Mar. 21, 2007) (holding that “adoption of a nationwide policy does not of itself result in [the policy creator's] purposefully directing personal activities toward West Virginia,” where that policy was implemented by third-parties within the State).

In any event, even if the application of the UDRP policy could somehow be considered a “contact” by ICANN with Florida, this suit does not arise under the UDRP and it not related to it. By the terms of the UDRP, ICANN is not a party to UDRP proceedings.

II. PLAINTIFF’S AMENDED COMPLAINT AGAINST ICANN SHOULD BE DISMISSED UNDER RULE 12(b)(3) FOR IMPROPER VENUE.

The Court should dismiss Plaintiff’s Amended Complaint against ICANN on the additional, independent ground that venue is improper under Rule 12(b)(3) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 12(b)(3); 28 U.S.C. § 1406(a). Like jurisdiction, Plaintiff bears the burden of establishing that his claims are brought in the proper judicial district. *See Burger King Corp. v. Thomas*, 755 F. Supp. 1026, 1028 (S.D. Fla. 1991). Plaintiff’s attempt at meeting this burden fails.

Plaintiff asserts that “[v]enue is proper in this judicial district pursuant to 28 U.S.C. §1391, as all Defendants conduct business in the State of Florida.” Am. Compl. at ¶ 5. The allegations of the Complaint, however, do not establish that ICANN does business in Florida. Indeed, as explained above, ICANN does not conduct any business in Florida and has not entered into any contract with Plaintiff, much less any contract in this District. Other than Plaintiff’s residence, this case has nothing to do with this District and should therefore be dismissed for lack of venue under Rule 12(b)(3).

In the alternative, if the Court declines to dismiss this action, ICANN moves for a change of venue and requests that the Court transfer this case to the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a), which provides “[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district court or division where it might have been brought.” 28 U.S. C. § 1404(a). The purpose of § 1404(a) is “to prevent the waste of time, energy, and money and to protect litigants, witnesses, and the public against unnecessary inconvenience and expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616, 84 S. Ct. 805, 11 L. Ed. 2d 945 (1964) (superseded by statute on other grounds).

Here, the convenience of the parties and witnesses favors transfer to the Central District of California. ICANN resides in the Central District of California. Atallah Decl., ¶ 2. Plaintiff's allegations suggest that he may wish to depose ICANN employees. Most of these employees work in Marina del Rey, California and none reside in Florida. No foreseeable witnesses reside in Florida, other than Plaintiff. *Id.* at ¶ 12. Further, the interests of justice would be served by transferring this action to California where ICANN, other material witnesses, and many of the sources of proof are located.

III. PLAINTIFF'S AMENDED COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(b)(6) FOR FAILURE TO STATE A CLAIM AGAINST ICANN.

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court should dismiss a complaint when the plaintiff can prove no set of facts that would entitle it to relief. *See Linder v. Portocarrero*, 963 F.2d 332, 334 (11th Cir. 1992). Here, Plaintiff's Amended Complaint fails to state a claim against ICANN and should be dismissed.

Plaintiff asserts a single cause of action for negligence against ICANN. The elements of a cause of action for negligence are well-established in Florida: (1) defendant owed a duty of care; (2) defendant breached that duty of care; (3) the breach of duty both actually and proximately caused plaintiff's injuries; and (4) plaintiff suffered damages as a result of the breach. *Williams v. Davis*, 974 So. 2d 1052, 1056 (Fla. 2007). As with all pleadings, Plaintiff must provide more than a "formulaic recitation of the elements of a cause of action," and "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). While issues of breach, causation and damages are typically questions to be resolved by the finder of fact, the determination of duty is generally a matter of law for the court. *See, e.g., Fla. Dep't of Corr. v. Abril*, 969 So. 2d 201, 205 (Fla. 2007); *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1105,

1110 (Fla. 2005); *McCain v. Florida Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992) (whether a duty of care existed is a question of law to be determined by the Court).

With respect to the duty requirement, the Florida Supreme Court has held that for a Plaintiff “to bring a common law action for negligence in Florida, the ‘minimal threshold *legal* requirement for opening the courthouse doors’ is finding that a defendant’s alleged actions created a foreseeable ‘zone of risk’ of harming others.” *Kitchen v. K-Mart Corp.*, 697 So. 2d 1200, 1202 (Fla. 1997) (quoting *McCain*, 593 So. 2d at 502). In *McCain*, the Florida Supreme Court explained that:

Florida . . . recognizes that a legal duty will arise whenever a human endeavor creates a generalized and foreseeable risk of harming others. . . . ‘Where a defendant’s conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon [the] defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses.’

. . . . Each defendant who creates a risk is required to exercise prudent foresight whenever others may be injured as a result. This requirement of reasonable, general foresight is the core of the duty element.

McCain, 593 So. 2d at 503 (quoting *Kaisner v. Kolb*, 543 So. 2d 732, 735 (Fla. 1989) (footnotes omitted)). In applying the foreseeable “zone of risk” test, courts focus on the likelihood that a defendant’s conduct will result in the *type* of injury suffered by the plaintiff. *Palm Beach-Broward Med. Imaging Ctr, Inc. v. Cont’l Grain Co.*, 715 So. 2d 343, 345 (Fla. Ct. App. 1998). Significantly, “[t]he absence of a foreseeable zone of risk means that the law imposes no legal duty on a defendant, and therefore defeats a negligence claim.” *Biglen v. Fla. Power & Light Co.*, 910 So. 2d 405, 408 (Fla. Ct. App. 2005).

In the instant case, Plaintiff's Amended Complaint is devoid of any allegations that would establish that ICANN created a foreseeable zone of risk of harming Plaintiff. With respect to ICANN, Plaintiff alleges only that:

- ICANN manages the Domain Name System to ensure that every IP address is unique and that Internet users can find all valid addresses. Am. Compl., ¶ 21.
- For these purposes, ICANN oversees the distribution of unique IP addresses and domain names. *Id.*
- ICANN maintains a Registrar Accreditation Agreement with domain name registrars, such as Network Solutions, which manages and registers domain names. *Id.* ¶¶ 23-25, 60.

There are no allegations that ICANN had any relationship with Plaintiff that could conceivably create a foreseeable risk to Plaintiff. In fact, the Amended Complaint alleges that consumers, such as Plaintiff, do not deal directly with ICANN. *Id.* ¶ 24 (“A consumer cannot directly register and manage their domain name information with ICANN.”); *see also id.* at ¶ 64 (“Zuccarini files this action as a party who has not entered into any agreement with ICANN”). Instead, the Amended Complaint makes clear that a registrant “must utilize a domain name registrar to have his or her domain registered and managed with the appropriate domain name registry.” *Id.* at ¶ 24.

To state the implication—that ICANN's administration of the domain name system led to the foreseeable risk that an unknown court-appointed receiver, somewhere in the world, could fail to timely renew domain name registrations with a domain name registrar, resulting in that registrar auctioning off such domain names, thereby causing the receiver to lose assets held for the benefit of Plaintiff's creditors—is to prove its absurdity. Quite simply, it is not likely or even

foreseeable that ICANN's conduct, in executing a Registrar Accreditation Agreement with Network Solutions, would result in the type of injury alleged by Plaintiff here. Plaintiff's negligence claim against ICANN must be dismissed. *Palm Beach-Broward Med. Imaging Ctr, Inc.*, 715 So. 2d at 344-45 (affirming dismissal of complaint with prejudice because it was not foreseeable that defendant's actions would result in the type of injury suffered by plaintiff and thus defendant owed no duty of care toward plaintiff); *Aguila v. Hilton, Inc.*, 878 So. 2d 392, 295-98 (Fla. Ct. App. 2004) (affirming dismissal of complaint because defendant motel did not create foreseeable zone of danger that motorist would be killed by intoxicated student who attended a party at the motel).

Rather than allege that ICANN created a foreseeable zone of risk of harming Plaintiff, Plaintiff's negligence claim against ICANN is entirely predicated on the allegations that ICANN (1) failed to oversee the actions of another entity, Network Solutions; and (2) failed to establish a protocol to force other entities, such as Network Solutions, to place a hold on any domain name that is the subject of court proceedings. Am. Compl. at ¶¶ 62-63. But Plaintiff does not and cannot allege that the facts within his complaint resulted in a breach of Network Solutions' Registrar Accreditation Agreement. Plaintiff likewise fails to allege any facts that would suggest that Network Solutions took any act that would warrant contractual compliance review of Network Solutions. Plaintiff's allegations are based on pure conjecture of obligations he wishes existed, obligations which have no basis in fact, and obligations that are not supported by Plaintiff's allegations in any event.² To extend this wish list to ICANN as a source of liability has no basis in law.

² Furthermore, it is well settled in this State that a party has no legal duty to control the conduct of a third person to prevent that person from causing harm to others. *Michael & Philip, Inc. v. Sierra*, 776 So. 2d 294, 298 (Fla. Ct. App. 2000); *Vic Potamkin Chevrolet, Inc. v. Horne*, 505 So. 2d 560, 562-63 (Fla. Ct. App. 1987) (automobile dealer owed no duty to control buyer's negligent driving once ownership of automobile transferred to the buyer); *Boynton v. Burglass, M.D.*, 590 So. 2d 446, 448-49 (Fla. Ct. App. 1991) (psychiatrist had no duty to control outpatient or warn victim who patient killed). Because Plaintiff alleged no facts to support the theory that

IV. CONCLUSION

Plaintiff's Amended Complaint is deficient on a number of grounds. Principally, however, Plaintiff has sued the wrong defendant in the wrong court—ICANN has no meaningful or relevant contacts with Florida and there is no link between ICANN and Plaintiff's alleged injuries. For these reasons, and given the futility of Plaintiff's substantive cause of action against ICANN, Plaintiff's entire Amended Complaint should be dismissed with respect to ICANN.

Dated: March 22, 2011

Respectfully submitted,

/s/ Maria Ruiz

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INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

(continued...)

ICANN had a duty to oversee Network Solutions or other registrars' actions so as to prevent the injury alleged, Plaintiff's negligence claim against ICANN must be dismissed.

CERTIFICATE OF GOOD FAITH CONFERENCE
Local Rule 7.1(a)(3)

I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues but has been unable to do so.

/s/ Maria Ruiz

Maria Ruiz

Counsel for Internet Corporation
for Assigned Names and Numbers

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOHN ZUCCARINI,)
)
 Plaintiff,)
)
 v.)
)
 NETWORK SOLUTIONS, LLC, a)
 Delaware limited liability company;)
 NAMEJET, LLC, a Delaware limited)
 liability company; INTERNET)
 CORPORATION FOR ASSIGNED)
 NAMES AND NUMBERS, INC., a)
 California non-profit corporation,)
)
 Defendants.)
)
)
)

CASE NO.
11-14052-CIV-MARTINEZ/LYNCH

**DECLARATION OF AKRAM J. ATALLAH IN SUPPORT OF DEFENDANT ICANN'S
MOTION TO DISMISS**

I, Akram J. Atallah, declare and affirm as follows:

1. I am the Chief Operating Officer of the Internet Corporation for Assigned Names and Numbers ("ICANN"), a defendant in this action. I have personal knowledge of the matters set forth herein and am competent to testify to those matters. I make this declaration in support of ICANN's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6).

Background on ICANN

2. ICANN is a not-for-profit public benefit corporation organized under the laws of the State of California. Its principal place of business is in Marina del Rey, which is in Los Angeles County, California. ICANN is responsible for the global coordination of the Internet's domain name system unique identifiers. Background on the privatization of the Internet is

available in a publication published by the Department of Commerce on June 5, 1998 entitled *Management of Internet Names and Addresses* and is available at 63 Fed. Reg. 31741 (1998).

3. ICANN maintains a series of agreements with generic TLD Internet registries (such as .com and .net) and registrars, and these agreements provide that the registries and registrars pay ICANN fees, some of which are based on a per-registration basis. ICANN collects these fees only from the registries or registrars, and not from the registrants.

ICANN's Lack of Connection to Florida

4. ICANN does not have any office or other company facilities in Florida.

5. ICANN does not have any phone number or mailing address in Florida.

6. ICANN does not have any employee or staff member in Florida.

7. ICANN has not applied for any loan or opened any bank account in Florida.

8. ICANN has not owned any tangible personal property or real estate property or assets in Florida.

9. ICANN has not appointed any agent in Florida for service of process.

10. ICANN is not licensed to do business in Florida.

11. ICANN has never released any advertisement to the residents of Florida, nor has it released any advertisement in any magazine targeted at residents of Florida.

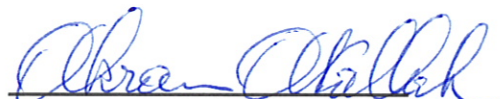
12. To the extent ICANN has witnesses who have knowledge of the facts alleged in the Amended Complaint, none of those witnesses are in Florida.

13. No contract exists between ICANN and Plaintiff John Zuccarini.

14. ICANN maintains a website that is located at <http://www.icann.org>. That website is operated from web servers physically located in El Segundo, California and Reston, Virginia. The website contains a wealth of information about ICANN, about the people who work for ICANN, and about the projects that ICANN has undertaken in connection with the Internet. The website also contains "links" to other information that is related to ICANN's activities. ICANN does not offer anything for sale on its website; in fact, ICANN does not sell anything.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

This declaration was signed on March 17, 2011 at San Francisco, California.


Akram J. Atallah