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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

MICHAEL MOORE;	)	
RONALD P. GENTRY;	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**CIVIL ACTION NO. : 07-P-1153-W**
	)	
ENOM, INC. et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION TO STRIKE CERTAIN EXHIBITS SUBMITTED IN SUPPORT OF DEFENDANTS ICANN AND E,NONM, INC.'S MOTIONS TO DISMISS AND OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

COME NOW, Plaintiffs, Ronald P. Gentry and Michael Moore, and file this their Motion to Strike certain exhibits submitted in support of Defendants ICANN and e, Nom, Inc.'s Motions to Dismiss. Additionally, Plaintiffs file this Opposition to Defendants ICANN and, e, Nom, Inc.'s Motion to Dismiss As grounds for the Motion to Strike and Opposition, Plaintiffs state the following:

INTRODUCTION

To begin with, a complaint may not be dismissed under *Rule 12(b)(6) of the Federal Rules of Civil Procedure* unless it appears beyond a doubt that a plaintiff can prove no set of facts that would entitle them to relief. *Maguluta v. Samples*, 256 F. 3d 1282 (11th Cir. 2001). Furthermore, a complaint is subject to dismissal under Rule 12(b)(6) only when the allegations, on their face, show that an affirmative defense bars recovery. *Cottone v. Jenne*, 326 F. 3d 1352 (11th Cir. 2003). Finally, since this a Rule 12(b)(6) motion, this Honorable Court must construe

all allegations, including the Statement of Facts, within Plaintiffs' Complaint and Amended Complaints as true.

In its motion, Defendant e, Nom seems to suggest to this Court that the standard for review for whether this Court should grant or deny a motion to dismiss has changed after the United States Supreme Court's holding in *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007). Defendant e, Nom's assertion is simply not true and is not supported by the Courts holding in *Bell Atlantic.* In fact, its assertion amounts to nothing more than a "red herring." which by definition is something that distracts attention from the real issues. In *Bell Atlantic*, the United States Supreme Court was very specific for the reason that it decided to grant review of the lower Court's decision. The Supreme Court expressly stated that "we granted certiorari to address the **proper standard for pleading an antitrust conspiracy through allegations of parallel conduct."** *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1563 (2007). Based on the aforementioned, it is clear that the *Bell Atlantic* opinion is wholly inapplicable to the claims asserted by Mr. Moore and Mr. Gentry in the current matter. Further in the opinion, the Supreme Court stated "**Here in contrast we do not require heightened fact pleading of specifics, but only enough plausible facts to state a claim for relief that is plausible on its face."** *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1563 (2007). Therefore, despite representations by Defendants, there is no change in the standard of review with regard to Defendants' motions. Thus, this Honorable Court should not grant Defendants' motions unless it appears beyond a doubt that Mr. Moore and Mr. Gentry can prove no set of facts that would entitle them to relief. *Maguluta v. Samples*, 256 F. 3d 1282 (11th Cir. 2001).

The Supreme Court's holding in *Bell Atlantic* would be applicable to the claims asserted by Plaintiffs pursuant to Section One of the Sherman Act if they were asserting a conspiracy

claim based on the parallel conduct of the Defendants. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1563 (2007). In *Bell Atlantic*, the Court set forth to determine "what a plaintiff must plead in order to state a claim Section One of the Sherman Act." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1563 (2007). It noted that a complaint attacked by a Rule 12(b)(6) motion does not have to possess "detailed factual allegations." Here, despite a requirement to do so, Mr. Gentry and Mr. Moore have plead detailed facts in support. With regard to the claims that they asserted pursuant to the Sherman Act, Plaintiffs plead over six pages of facts entitling them to relief.

Furthermore, in deciding what is sufficient pleading with regard to a conspiracy claim based on parallel conduct pursuant to Section One of the Sherman Act, the Court held that the complaint must contain "**enough factual matter (taken as true) to suggest an agreement was made."** The Court goes on to state that **"it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement**. Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. **And of course, a well-pleaded complaint may proceed, even if it strikes a savvy judge that actual proof of those facts is improbable and that recovery is very remote or not likely."** *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1563 (2007**).** Here,

Furthermore, Defendants seem to allege that Plaintiffs failed to state a single claims for relief in their 29 page, eight count and 115 paragraph Complaint. It has hard to imagine how this is possible especially given the fact that Plaintiffs have plead approximately 13 pages of facts in support of their claims entitling them to relief. Additionally, Defendants have asked this

Honorable Court to consider matters outside the face of the Complaint in order to resolve key issues in their present motions. This practice is not proper. Therefore, Plaintiffs move to strike the following exhibits submitted in support of Defendant e, Nom, Inc.'s Motion to Dismiss: the Declaration of John Kane and Exhibit Two. In addition, Plaintiffs move to strike exhibits that were offered by Defendant ICANN in support of its motion to dismiss. Specifically, Plaintiffs move to dismiss the declaration of Doug Brent. See Rule 12(b) and 12(c) of the *Federal Rules of Civil Procedure*. *Filo America, Inc. v. Olhoss Trading Company*, LLC 321 F. Supp. 2d 1266 (M. D. Ala. 2004). In the event that this Honorable Court chooses to consider the aforementioned evidence, Plaintiffs have sought leave of Court to conduct discovery regarding issues of jurisdiction, the matters set forth in the affidavits and other material outside of the pleadings that Defendants submitted.

ARGUMENT

A. This Court has personal jurisdiction over all Defendants, including ICANN.

1. Specific jurisdiction.

In this case, Defendant ICANN correctly argues that there two types of personal jurisdiction, general and specific. However, Defendant ICANN is incorrect in its assertion that Plaintiffs "have not, and cannot establish either type." Generally, personal jurisdiction requires a two-step inquiry. First, the Court must determine whether the exercise of jurisdiction is appropriate pursuant to the forum state's long arm statute. *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F. 3d. 623 (11th Cir. 1996) *Sloss Industries Corporation v. Eurisol*, 488 F. 3d. 922 (11th Cir. 2007) and *Molina v. Meritt & Furman Insurance Agency, Inc.* 207 F. 3d. 1351 (11th Cir. 2000). Because Alabama is the forum state, its long-arm statute would be applicable to this Court's analysis. Alabama's long-arm statute allows Courts to exercise jurisdiction over

nonresident defendants to the fullest extent allowed under the Due Process clause of the Fourteenth Amendment. *Martin v Robbins*, 628 So. 2d 614 (Ala. 1993) and *Horn v. Effort Shipping Company, Ltd.* 777 F. Supp. 927 (S. D. Ala. 1991). The Due Process clause allows Courts to exercise jurisdiction over a nonresident defendant so long as that defendant has some minimum contacts with the state and, the exercise of jurisdiction over said defendant would not offend traditional notions of fair play and substantial justice. *International Shoe Company, Inc. v. Washington*, 326 U. S. 310 (1945) and *Sloss Industries Corporation v. Eurisol*, 488 F. 3d. 922 (11th Cir. 2007)**.**

In cases of specific jurisdiction, jurisdiction will arise out of the party's activities in the forum state that are related to the causes of action alleged in the complaint. *McGow v. McCurry*, 412 F. 3d. 1207 (11th Cir. 2005).*Sloss Industries Corporation v. Eurisol*, 488 F. 3d. 922 (11th Cir. 2007). In cases involving specific jurisdiction, defendant's contacts with the forum state must satisfy three requirements. First, the contacts must be related to the plaintiff's cause of action or given rise to it. Then, the contacts must involve some act by which the defendant purposefully avails himself of the privilege of conducting activities in the forum state and, they must be such that defendant should have reasonably anticipated being haled into court there. *McGow v. McCurry*, 412 F. 3d. 1207 (11th Cir. 2005).*Sloss Industries Corporation v. Eurisol*, 488 F. 3d. 922 (11th Cir. 2007).

Here, Defendant ICANN has argued that it does not have sufficient minimum contacts with Alabama so that Plaintiffs can establish personal, specific jurisdiction. Plaintiffs disagree. In this case, Defendant ICANN entered into a series of contracts with Defendants RegisterFly.com, Inc. and eNom, Inc. so that they could become accredited Internet name registrars. Because of these contracts, Defendant ICANN knew that Defendants, eNom, Inc.

and RegisterFly.com, Inc. would be doing business in Alabama and collecting fees from Alabama citizens as those citizens registered Internet domain names with them. As a result of the registration of Internet domain names by Alabama citizens, Defendant ICANN expected to and received substantial benefits from this ongoing business. Also, in the present matter, Plaintiffs, who are Alabama citizens, paid fees to the Defendants and registered 109 Internet names with them. These Internet names were directed via IP address to computer, Internet servers Those servers are located in Jefferson County, Alabama. These Internet names, (domain) were related to web sites on a server that was connected to the Internet. Internet users were allowed to access web sites that were installed on these servers. Even though there was direct contract between Plaintiffs and ICANN, ICANN has purposefully availed itself of the opportunity to conduct business in Alabama with Alabama citizens through its contracts with Defendants, eNom, Inc. and RegisterFly.com, Inc**.**

The fact that the aforementioned contract with Defendants Defendants, eNom, Inc. and RegisterFly.com, Inc. occurred outside of Alabama and, Defendant ICANN did not enter into a direct contract with Plaintiffs does not mean that this Court does not have personal jurisdiction over ICANN. The United States Supreme Court has previously held that a nonresident defendant may be subject to specific jurisdiction even though the actions giving rise to the suit took place outside the forum state and defendant had no direct contact with plaintiff. *World-Wide Volkswagon Corp. v. Woodson*, 444 U. S. 286 (1980). In the same case, the United States Supreme Court went on to hold that a forum state, such as Alabama, does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its product into the stream of commerce with the expectation that it will be purchased by consumers in the forum state. *Id.* Additionally, the stream of commerce test as set forth in *World-Wide*

Volkswagon Corp is met if he nonresident's product is purchased by or delivered to a consumer in the forum state as long as the nonresident defendant could have reasonably anticipated being hauled into court for its conduct. In this matter, there is no reason why the services and products offered by Defendants, including ICANN, should be treated any differently than the product in the *World-Wide Volkswagon Corp. v. Woodson*, 444 U. S. 286 (1980).

Furthermore, as plaintiffs in *World-Wide Volkswagon Corp*., Plaintiffs in this matter have asserted claims of more than mere negligence against Defendants, ICANN and e, Nom, Inc. In fact, Plaintiffs have asserted claims of misrepresentation, suppression, breach of contract and conspiracy. (See Complaint). Contrary to Defendant ICANN's assertions, the email Plaintiffs received from it and other communications do form the basis of portions of Plaintiffs' claims. Accordingly, at least some of the allegations asserted by Plaintiffs against ICANN are intentional torts. Assuming the allegations in Plaintiffs' complaints are true, which this Court must, Defendants should have certainly anticipated being hauled into Alabama courts for their actions since at least portions of those actions were intentional. *Shrout v. Thorsen*, 470 So. 2d. 1222 (Ala. 1985) and *Caulder v. Jones*, 465 U. S. 783 (1984).

In its motion, ICANN seems to be suggesting to this Court that Plaintiffs, who are Alabama citizens, would have to sue it in California in order for jurisdiction to be proper. This very issue was addressed by the Supreme Court who completely disagreed with ICANN's reasoning. Alabama citizens who are injured by ICANN are not required to travel to California to seek redress from ICANN who, even though it remains in California, knowingly causes injury to Alabama citizens. *Shrout v. Thorsen*, 470 So. 2d. 1222 (Ala. 1985) and *Caulder v. Jones*, 465 U. S. 783 (1984). Based on the aforementioned, Plaintiffs have established that Defendants have sufficient minimum contacts with Alabama to justify this Court's jurisdiction over them.

Furthermore, traditional notions of fair play and substantial justice are not offended by permitting jurisdiction in Alabama because Defendants have failed to show how the imposition of jurisdiction by Alabama Courts would be unreasonable after Plaintiffs have established the sufficient minimum contacts. *Shrout v. Thorsen*, 470 So. 2d. 1222 (Ala. 1985) and *Caulder v. Jones*, 465 U. S. 783 (1984) *Burger King Corp. v. Rudzewicz*, 471 U. S.462 (1985).

2. General Jurisdiction.

Contrary to Defendants' assertions, Plaintiffs can establish personal jurisdiction based on general jurisdiction. General jurisdiction is not related to or arising out of some specific contact with the forum state, but relies on a systematic and continuous contact with the forum state. *Helicopters Nacionales de Colombia, S. A., v. Hall*, 466 U. S. 408 (1984). By its own admission, Defendant ICANN administers the Internet domain name system of behalf of the Internet community. Thus, each time an Alabama citizen registers and Internet domain name; some one visits a website that is maintained by an Alabama citizen; visits a website that is owned by an Alabama citizen; an Alabama citizen purchases goods or services via the Internet, Defendant ICANN has as continuous and systematic contact with Alabama.

Furthermore, one of the many issues in this litigation revolves around 109 separate, Internet domain names. The domain names are maintained on computers that are located in Jefferson County, Alabama. As such, this was not a one time transaction or contact with Alabama. In fact, there were at least 109 separate and distinct contacts with Alabama just related to the 109 names registered by Plaintiffs. Additionally, defendant ICANN candidly admits that after the domain name is registered Alabama citizens can view ICANN's website and email questions to ICANN. As such, there is a continuous and systematic contact with Alabama and its citizens. Accordingly, Plaintiffs have established personal jurisdiction. *McGow v.*

McCurry, 412 F. 3d. 1207 (11th Cir. 2005). *Sloss Industries Corporation v. Eurisol*, 488 F. 3d. 922 (11th Cir. 2007). As such, Defendants' motions to dismiss should be denied.

B. Misrepresentation and suppression.

Defendants ICANN and e, Nom, Inc. submit that Ronald P. Gentry and Michael Moore improperly alleged their misrepresentation and suppression claims pursuant to Rule 9(b) of the *Alabama Rules of Civil Procedure*. As a preliminary matter, the qualification of the generalized pleading rules attributed to fraud and mistake **"does not require every element in such actions to be stated with particularity."** Comments to Rule. 9(b) of the *Alabama Rules of Civil Procedure*. The original Complaint and Amended Complaints in this action more than satisfies the requirement "to use more than generalized or conclusory statements to set out the fraud complained of" and "gives fair notice to the opposing party." *Id.* In this case, Plaintiffs have plead approximately 13 pages of pertinent facts to alert Defendants of the circumstances of the misrepresentation/suppression, contents of the false statements, the facts misrepresented/suppressed and the time frame in which the fraud occurred. Therefore, Plaintiffs' misrepresentation and suppression claims were plead with sufficient particularity to comply with Rule 9(b) of the *Alabama Rules of Civil Procedure* and, Defendants were given fair notice so that they could respond to Plaintiffs' misrepresentation and suppression claims. Based on the aforementioned, Defendants' Motion to Dismiss are due to be denied. *Caron v. Teagle*, 345 So. 2d 1331 (Ala. 1977).

In order to maintain a claim for misrepresentation, Alabama Courts have required the following elements: (1) A false representation of a material fact; (2) which the defendant knew was false when the statement was made or was made recklessly without regard to its truth or falsity or was made by telling plaintiff that defendant had knowledge that the representation was

true while not having such knowledge; (3) reliance by the plaintiff on the representation that he was deceived by; (4) the reliance was justified under the circumstances and; (5) the plaintiff was damaged. *Army Aviation Court Federal Credit Union v. Poston* 460 So.2d 139 (Ala. 1988). Additionally, Plaintiffs' suppression claim is codified in Alabama Code Section 6-5-102, and provides in pertinent part: (1) the defendant had a duty to disclose a material fact; (2) the defendant concealed or failed to disclose this material fact; (3) the defendant's concealment or failure to disclose this material fact induced plaintiff to act or refrain from acting: (4) the plaintiff suffered actual damage as a proximate result; and (5) the defendant had actual knowledge of the material fact allegedly suppressed. *State Farm Fire and Casualty Company v. Owen*, 729 So.2d 834, 837 (Ala. 1998). Accordingly, Plaintiffs' Complaints can set forth an abundance of facts establishing all the necessary elements in order to satisfy their misrepresentation and suppression claims against all Defendants in this matter. Accordingly, Defendants' motions are due to be denied with regard to those claims.

Furthermore, under Alabama law, **a third person who is injured by deceit, may recover against the one who made possible the damages to him by practicing deceit.** *Delta Health Group, Inc. v. Stafford 2004 LEXIS*; *Thomas v. Halstead*, 605 So. 2d 1181, 1184 (Ala. 1992), *Potter v. First Real Estate Company, Inc*. 844 So. 2d 540 (Ala. 2002),*Johnny Spradlin Auto Parts, Inc. v. Cochran*, 568 So. 2d 738, 742-43 (Ala. 1990); *Lawyers Title Ins. Corp. v. Vella*, 570 So. 2d 578, 585 (Ala. 1990); *Hopkins v. Lawyers Title Ins. Corp.*, 514 So. 2d 786 (Ala. 1986); *Mid-State Homes, Inc. v. Startley*, 366 So. 2d 734 (Ala. Civ. App. 1979) and *Chandler v. Hunder*, 340 So. 2d 818 (Ala. Civ. App. 1976). In this case, it is clear that Plaintiffs have been injured by Defendants' suppression/misrepresentation of material facts regarding the conditions for registering Internet domain names; complete ineffectiveness of dispute resolution

policy; illegal tying/bundling of certain services and fees; rights plaintiff would obtain by re-registering domain names; plaintiffs ability to re-register said names and as further set forth in their Complaints. Under Alabama law, a third person, such as Plaintiffs, who are injured by Defendants' suppression/misrepresentation of material facts may recover from said Defendants because it was Defendants who was practicing the deceit in the first place. *Delta Health Group, Inc. v. Stafford 2004 LEXIS*; *Thomas v. Halstead*, 605 So. 2d 1181, 1184 (Ala. 1992), *Potter v. First Real Estate Company, Inc*. 844 So. 2d 540 (Ala. 2002). Accordingly, Defendants' motions are due to be dismissed with regard to Plaintiffs' suppression and misrepresentation claims.

C. Breach of contract.

With regard to Plaintiffs' breach of contract claim, Defendants have stated that Plaintiffs failed to allege enough facts to state a claim for relief that is plausible on its face. However, in fact, the opposite is true. Here, Plaintiffs plead approximately 13 pages of facts entitling them to relief. Accordingly, Defendants' motions are due to be denied with regard to Plaintiffs' breach of contract claim.

D. Third party beneficiary claim.

In order to recover under a third-party beneficiary theory, the claimant must show three things: (1) the claimant must show that the contracting parties intended to bestow a direct benefit upon a third party at the time the contract was created; (2) the claimant was the intended beneficiary of the contract; and (3) the contract was breached. *Sheetz, Aiken & Aiken, Inc. v. McGowan v. Chrysler Corp.* 631 So. 2d 842 (Ala. 1993).

Third-party principles focus on the intent of the contracting parties. *Loerch v. National Bank of Commerce of Birmingham*, 624 So. 2d 552 (Ala. 1993). The Alabama Supreme Court

has held that one can be a third-party beneficiary to an oral contract and, therefore, a written contract is not even required. *H.R. H. Metals, Inc. v. Carl Miller* 833 So. 2d. 18 (Ala. 2002) and *Swan v. Hunter* 630 So. 2d 374 (Ala. 1993). Furthermore if a contract or one of its provisions is ambiguous, the Alabama Supreme Court has previously held that the **surrounding circumstances** may determine the intent of the contracting parties. *Mann v. GTE Mobilnet of Birmingham, Inc*. 730 So. 2d 150 (Ala. 1999). In addition, there is no requirement that the intended beneficiary be in existence or be identifiable at the time the contract was entered into. It is sufficient that he be identifiable at the time performance is due. Restatement of (Second) Contracts 308 (1981).

In this case, Defendants cannot successfully argue that the contracts between themselves were not for the direct benefit of those individuals or entities who decided to register Internet domain names with Defendants. Those individuals or citizens were the direct beneficiary of those contracts and, certain provisions of the contracts between the Defendants are strictly for their benefit. Consider the case of *Swan v. Hunter* 630 So. 2d 374 (Ala. 1993). In *Swan,* the **developer** orally contracted with the surveyor and engineer to perform percolation tests and draw a plat for the subdivision. The developer sold one of the lots to a builder who eventually built a home on the lot. The home was then sold to the *Swan* plaintiffs. Shortly after moving into the home, the plaintiffs began having trouble with their septic tank. The plaintiffs had additional percolation tests performed, which revealed that the lot was unsuitable for a septic tank. Subsequently, the *Swan* plaintiffs sued the county, engineer, surveyor and **developer** for breach of contract under a third party beneficiary theory when their sewage disposal system failed. **The Alabama Supreme Court held that the *Swan* plaintiffs were third party beneficiaries to the contracts both oral and written.** Since Plaintiffs have satisfied all three

prongs of the test set forth by the Alabama Supreme Court in *Sheetz, Aiken & Aiken, Inc. v. McGowan v. Chrysler Corp.*, they are entitled to recover damages under a third-party beneficiary theory. Accordingly, Defendants' motions are due to be denied with regard to Plaintiffs' third party beneficiary claim.

E. Antitrust claims.

1. Standing.

In this case, Defendants allege that Plaintiffs cannot maintain their antitrust claims for two reasons. First, Defendants allege that Plaintiffs do not have standing to bring their antitrust claims. Private parties seeking damages under the antitrust laws must establish standing to sue. *Florida Seed Company, Inc. v. Monsanto Company* 105 F. 3d. 1372 (11th Cir. 1997) and *Association of General Contractors of California v. California State Council of Carpenters, Inc*. 459 U. S. 519 (1983). In deciding whether a plaintiff has antitrust standing, Courts follow a two- pronged test. First, the plaintiff must prove that he suffered an antitrust injury. In other words, the antitrust laws were enacted to prevent the type of harm that the plaintiff suffered and, the injury flows from that which makes the defendants conduct unlawful. *Brunswick Corp v. Pueblo Bowl-O-Mat, Inc*. 429 U. S. 477 (1977) and *Florida Seed Company, Inc. v. Monsanto Company* 105 F. 3d. 1372 (11th Cir. 1997) . Then, the plaintiff must establish that he is an efficient enforcer of the antitrust laws. This determination is predicated on the target area test. *Austin v. Blue Cross and Blue Shield of Alabama*, 903 F. 2d. 1385 (11th Cir. 1990).

Section 1 of the Sherman Act provides that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or

with foreign nations is illegal. 15 U. S. C. 1 (1973). Therefore, Plaintiffs must prove an agreement between two or more people in an attempt to restrain trade. *Fisher v. City of Berkley California*, 475 U. S. 260 (1986) and *Levine v. Central Florida Medical Affiliates*, 72 F. 3d. 1538 (11th Cir. 1996).

Antitrust law does not require that the defendants be the exclusive cause of Plaintiffs' injuries, but only a material one. In other words, the defendant's illegal conduct had to materially contribute to the injury. *Cable Holdings of Georgia, Inc. v. Home Video, Inc*. 825 F. 2d 1559 (11th Cir. 1987) and *Gulf States Reorganization Group, Inc. v. Nucor Corp*. 466 F. 3d. 961 (11th Cir. 2006). Here, Plaintiffs alleged that Defendants entered into a series of contracts and engaged in conduct that lead to a complete absence of competition in domain name registration market. Because of the complete absence of competition, Plaintiffs were forced to pay higher fees to register their domain names. In addition, due to the lack of competition, certain terms and conditions were forced upon Plaintiffs when they registered their domain names. Finally, as a result of these agreements in restraint of trade and illegal tying by Defendants, Plaintiffs were required to purchase certain services and pay fees for those services which they would not have had to do, but for the illegal agreements restricting competition in the domain name registration market. As the legislative history shows, the Sherman Act was enacted to assure customers/consumers, like Plaintiffs in this case, the benefits of price competition. *Association of General Contractors of California v. California State Council of Carpenters, Inc*. 459 U. S. 519 (1983). Thus, the injuries that Plaintiffs have sustained are the type that the antitrust laws were aimed at preventing and are a direct result of Defendants' illegal conduct. Accordingly, Plaintiffs have established that they suffered an antitrust injury. *Blue Shield of Virgina, Inc. v. McCready*, 102 S. Ct. 2540 (1982); *Brunswick Corp v. Pueblo Bowl-O-*

Mat, Inc. 429 U. S. 477 (1977) and *Florida Seed Company, Inc. v. Monsanto Company* 105 F. 3d. 1372 (11th Cir. 1997) .

Plaintiffs must also satisfy the second prong in order for satisfy the standing requirements. Plaintiffs must show that they are efficient enforcers of the antitrust laws. This determination is predicated on the target area test. *Austin v. Blue Cross and Blue Shield of Alabama*, 903 F. 2d. 1385 (11th Cir. 1990). With regard to this test there are a number of factors to consider. The first factor to consider is whether Plaintiffs' harm and injuries are directly related to Defendants' conduct that violates the antitrust laws. Furthermore, Plaintiffs' damages cannot be speculative in nature as Defendants claim, but are clearly set forth in Plaintiffs' complaints and directly related to Defendants' conduct that violates the antitrust laws. *Blue Shield of Virgina, Inc. v. McCready*, 102 S. Ct. 2540 (1982); *Brunswick Corp v. Pueblo Bowl-O-Mat, Inc*. 429 U. S. 477 (1977); *Association of General Contractors of California v. California State Council of Carpenters, Inc*. 459 U. S. 519 (1983) and *Florida Seed Company, Inc. v. Monsanto Company* 105 F. 3d. 1372 (11th Cir. 1997) Based on the aforementioned, Plaintiffs are efficient enforcers of the antitrust laws because the injuries that they have suffered are directly related to Defendants' conduct that violates the antitrust laws and are not speculative. Accordingly, they have met the standing requirements in order to pursue their claims under the antitrust laws and, Defendants' motions are due to be denied. *Blue Shield of Virgina, Inc. v. McCready*, 102 S. Ct. 2540 (1982); *Brunswick Corp v. Pueblo Bowl-O-Mat, Inc*. 429 U. S. 477 (1977); *Association of General Contractors of California v. California State Council of Carpenters, Inc*. 459 U. S. 519 (1983) and *Florida Seed Company, Inc. v. Monsanto Company* 105 F. 3d. 1372 (11th Cir. 1997).

2. Plaintiffs have alleged a violation of the antitrust laws.

In this matter, Defendants have also asserted that Plaintiffs have not alleged a violation of any of the antitrust laws. In this regard, Defendants' assertions are incorrect. Section 1 of the Sherman Act provides that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is illegal. 15 U. S. C. 1 (1973). Therefore, Plaintiffs must prove an agreement between two or more people in an attempt to restrain trade. *Fisher v. City of Berkley California*, 475 U. S. 260 (1986) and *Levine v. Central Florida Medical Affiliates*, 72 F. 3d. 1538 (11th Cir. 1996). Here, Plaintiffs specifically alleged that Defendants entered into numerous contracts that restrain trade to include some exclusive dealing or exclusionary arrangements and also agreements that unlawfully tied various products and services together through these same contracts. Accordingly, Plaintiffs have alleged a violation of the antitrust laws. Accordingly, Defendants' motions are due to be dismissed.

E. RICCO allegations.

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request this Honorable Court issue an order denying Defendants ICANN and e, Nom, Inc.'s Motions to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing; and I hereby certify that any non-E-filing participants to whom the foregoing is due will have a copy of same placed in the United States mail, first class postage prepaid and properly addressed this same day.

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