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INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

11 REGISTERSITE.COM, et. al.,

12 Plaintiffs,

13 v.

14 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,
15 a California Corporation, et. al.; and
DOES 1-10, inclusive,
16

17 Defendants.

CASE NO. SC082479

Assigned for all purposes to Judge Gerald
Rosenberg

Complaint Filed: August 4, 1004

**INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS'
NOTICE OF DEMURRER AND
DEMURRERS TO PLAINTIFFS' FIRST,
FIFTH, SEVENTH AND NINTH CAUSES
OF ACTION AGAINST ICANN**

**[Filed concurrently with Memorandum of
Points and Authorities in Support of
Demurrers, Request for Judicial Notice and
[Proposed] Orders]**

Date: November 16, 2004

Time: 8:30 a.m.

Place: Department

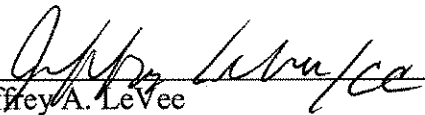
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TO ALL PARTIES AND THE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Demurrer filed herewith has been set for hearing on November 16, 2004, at 8:30 a.m., in Department F of Los Angeles Superior Court, West Division, located at 1725 Main Street, Santa Monica, California, 90401. The Demurrer filed herewith will be, and is, based on this Notice of Demurrer, the Demurrer, the attached Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, and upon all other matters that may appropriately be presented to the Court before or at the hearing on the Demurrer.

DATED: October 4, 2004

JONES DAY

By: 
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

1 **DEMURRER**

2 Pursuant to section 430.10(e) of the California Code of Civil Procedure and additional
3 authority cited below, Defendant Internet Corporation for Assigned Names and Numbers
4 ("ICANN") hereby specially demur to Plaintiffs' Complaint for Damages on the following
5 grounds:

6 **GROUND FOR DEMURRER TO THE FIRST CAUSE OF ACTION**

7 1. The first cause of action must be dismissed because it is not ripe for adjudication.
8 *See Schell v. Southern Cal. Edison Co.*, 204 Cal. App. 3d 1039, 1047 (1988). WLS has not yet
9 been implemented and it cannot be implemented unless and until it is approved by the United
10 States Department of Commerce. No "intelligent or useful" decision can be made at this stage
11 because the facts are not sufficiently developed to permit an "intelligent or useful" decision.
12 *Pacific Legal Found. v. California Coastal Comm'n*, 33 Cal. 3d 158, 171 (1982).

13 2. The first cause of action must be dismissed because the complaint does not
14 adequately plead that WLS is an illegal lottery under California Penal Code § 319. Where there
15 is no violation of the underlying law, there can be no claim under California Business and
16 Professions Code section 17200 based on the alleged violation. *Aguilar v. Atlantic Richfield Co.*,
17 25 Cal. 4th 826 (2001), 856-857.

18 3. The first cause of action must be dismissed because the complaint does not
19 adequately plead that ICANN engaged in any unlawful business practice. Cal. Civ. Proc. Code. §
20 430.10(e).

21 **GROUND FOR DEMURRER TO THE FIFTH CAUSE OF ACTION**

22 4. The fifth cause of action must be dismissed because it is not ripe for adjudication.
23 *See Schell v. Southern Cal. Edison Co.*, 204 Cal. App. 3d 1039, 1047 (1988). WLS has not yet
24 been implemented and it cannot be implemented unless and until it is approved by the United
25 States Department of Commerce. No "intelligent or useful" decision can be made at this stage
26 because the facts are not sufficiently developed to permit an "intelligent or useful" decision.
27 *Pacific Legal Found. v. California Coastal Comm'n*, 33 Cal. 3d 158, 171 (1982).

1 5. The fifth cause of action must be dismissed because the complaint does not
2 adequately plead that WLS is an unfair business practice under California Business and
3 Professions Code section 17200. Cal. Civ. Proc. Code. § 430.10(e)

4 6. The fifth cause of action must be dismissed because the complaint fails to
5 adequately plead that ICANN engaged in any unfair business practice under California Business
6 and Professions Code section 17200. Cal. Civ. Proc. Code. § 430.10(e).

7 **GROUND FOR DEMURRER TO THE SEVENTH CAUSE OF ACTION**

8 7. The fifth cause of action must be dismissed because it is not ripe for adjudication.
9 *See Schell v. Southern Cal. Edison Co.*, 204 Cal. App. 3d 1039, 1047 (1988). WLS has not yet
10 been implemented and it cannot be implemented unless and until it is approved by the United
11 States Department of Commerce. No "intelligent or useful" decision can be made at this stage
12 because the facts are not sufficiently developed to permit an "intelligent or useful" decision.
13 *Pacific Legal Found. v. California Coastal Comm'n*, 33 Cal. 3d 158, 171 (1982).

14 8. The fifth cause of action must be dismissed because the complaint fails to
15 adequately plead that ICANN engaged in any fraudulent or deceptive business practice under
16 California Business and Professions Code section 17200. Cal. Civ. Proc. Code. § 430.10(e).

17 **GROUND FOR DEMURRER TO THE NINTH CAUSE OF ACTION**

18 9. The ninth cause of action must be dismissed because plaintiffs breach of contract
19 claims are barred by the doctrines of collateral estoppel and res judicata. *See Silver v. Los*
20 *Angeles County Metro. Transp. Authority*, 79 Cal. App. 4th 338, 357 (2000); *People v. Barragan*,
21 32 Cal. 4th 236, 253 (2004).

22 DATED: October 4, 2004

JONES DAY

24 By: 
25 Jeffrey A. LeVee

26 Attorneys for Defendant
27 INTERNET CORPORATION FOR
28 ASSIGNED NAMES AND NUMBERS