

1 Jeffrey A. LeVee (State Bar No. 125863)
Courtney M. Schaberg (State Bar No. 193728)
2 Christina Coates (State Bar No. 206602)
Sean W. Jaquez (State Bar No. 223132)
3 JONES DAY
555 West Fifth Street, Suite 4600
4 Los Angeles, CA 90013-1025
Telephone: (213) 489-3939
5 Facsimile: (213) 243-2539

6 Joe Sims (admitted *pro hac vice*)
JONES DAY
7 51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
8 Telephone: (202) 879-3939
Facsimile: (202) 626-1700

9 Attorneys for Defendant
10 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 VERISIGN, INC., a Delaware
corporation,

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND NUMBERS,
a California corporation,

20 Defendant.
21
22

Case No. CV-04-1292 AHM (CTx)

**DEFENDANT INTERNET
CORPORATION FOR
ASSIGNED NAMES AND
NUMBERS' RENEWED
SPECIAL MOTION TO STRIKE
VERISIGN'S SECOND, THIRD,
FOURTH, FIFTH, AND SIXTH
CLAIMS AS STRATEGIC
LAWSUITS AGAINST PUBLIC
PARTICIPATION (CAL. CIV.
PROC. CODE § 425.16);
MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: August 23, 2004
Time: 10:00 a.m.
Place: Courtroom of the
Honorable A. Howard Matz

1 PLEASE TAKE NOTICE that Defendant Internet Corporation for Assigned
2 Names and Numbers' ("ICANN") Renewed Special Motion to Strike VeriSign's
3 Second, Third, Fourth, Fifth, and Sixth causes of action will be heard on August 23,
4 2004, at 10:00 a.m. or as soon thereafter as counsel may be heard at the courtroom
5 of the Honorable A. Howard Matz, United States District Judge, located at 312
6 North Spring Street, Los Angeles, California.

7 ICANN moves this Court for an order, pursuant to California Code of Civil
8 Procedure section 425.16, striking VeriSign's second, third, fourth, fifth, and sixth
9 claims for relief. This motion is based on the grounds that these claims, which arise
10 from a letter that ICANN sent to VeriSign and other ICANN statements about
11 VeriSign's operation of the ".com registry" of the Internet, impinge on ICANN's
12 rights of petition and free speech under the United States and California
13 Constitutions and are therefore subject to a special motion to strike. Pursuant to
14 California Code of Civil Procedure section 425.16(c), ICANN also seeks recovery
15 of its attorneys' fees in connection with this motion and the prior Special Motion to
16 Strike that ICANN filed on April 20, 2004 (and which the Court deferred pending
17 VeriSign's repleading of its antitrust claim).

18 This motion is made following the conference of counsel pursuant to Local
19 Rule 7-3, which took place on June 25, 2004. Counsel were unable to reach any
20 agreements that would obviate the need for the motion.

21 This motion is based upon this Notice of Motion and Motion, the
22 Memorandum of Points and Authorities filed herewith, the pleadings and
23 declarations that ICANN filed on April 20, 2004 and May 10, 2004, in conjunction
24 with its original Special Motion to Strike, the pleadings that ICANN filed on
25 April 5, 2004 and May 3, 2004, in conjunction with its original Motion to Dismiss

26 //

27 //

28 //

1 VeriSign's claims pursuant to Federal Rule of Civil Procedure 12(b)(6), ICANN's
2 motion to dismiss VeriSign's First Amended Complaint (filed July 6, 2004), the
3 papers and records on file in this action, and upon all other matters and argument
4 that may appropriately be presented to the Court at or before the hearing.

5

6 Dated: July 6, 2004

JONES DAY

7

8

By: _____
Jeffrey A. LeVee

9

10

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **PRELIMINARY STATEMENT**

3 Pursuant to this Court's Order Dismissing Complaint Without Prejudice (the
4 "Order"), entered on May 18, 2004, defendant Internet Corporation for Assigned
5 Names and Numbers ("ICANN") hereby renews its Special Motion to Strike
6 VeriSign's Second, Third, Fourth, Fifth, and Sixth Claims as Strategic Lawsuits
7 Against Public Participation. In the Order, the Court dismissed without prejudice
8 VeriSign's antitrust claim, the only claim pursuant to which this Court had subject
9 matter jurisdiction. As a result, the Court elected not to rule on ICANN's original
10 Special Motion to Strike. As stated in the Court's Order, upon VeriSign's filing of
11 an amended complaint, "regardless of whether VeriSign amends any or all of the
12 second through sixth claims in any FAC, ICANN may incorporate into a renewed
13 motion to strike the facts and arguments it relied on in the current set of motion
14 papers regarding the original Complaint." Order, 14:1-4.

15 On June 14, 2004, VeriSign filed its first amended complaint. VeriSign's
16 amendments to the allegations regarding its second through sixth claims do not
17 necessitate any additional argument or facts not already presented in ICANN's
18 original moving and reply papers and the declarations filed concurrently therewith.
19 Accordingly, ICANN hereby renews its Special Motion to Strike and incorporates
20 into its renewed motion all pleadings, arguments, facts, and evidence filed in
21 conjunction with its original Special Motion to Strike, including:

- 22 • Defendant Internet Corporation for Assigned Names and Numbers'
23 Special Motion to Strike VeriSign's Second, Third, Fourth, Fifth, and
24 Sixth Claims as Strategic Lawsuits Against Public Participation, filed on
25 April 20, 2004;
- 26 • Declaration of John O. Jeffrey In Support of Defendant Internet
27 Corporation for Assigned Names and Numbers' Special Motion to Strike
28

1 VeriSign's Second, Third, Fourth, Fifth, and Sixth Claims as Strategic
2 Lawsuits Against Public Participation, filed on April 20, 2004;

- 3 • Reply Memorandum In Support of Defendant Internet Corporation for
4 Assigned Names and Numbers' Special Motion to Strike VeriSign's
5 Second, Third, Fourth, Fifth, and Sixth Claims as Strategic Lawsuits
6 Against Public Participation, filed on May 10, 2004; and
- 7 • Supplemental Declaration of John O. Jeffrey In Support of Defendant
8 Internet Corporation for Assigned Names and Numbers' Reply on Special
9 Motion to Strike VeriSign's Second, Third, Fourth, Fifth, and Sixth
10 Claims as Strategic Lawsuits Against Public Participation, filed on
11 May 10, 2004.

12 ICANN also incorporates by reference its motion to dismiss the first six
13 claims for relief of VeriSign's First Amended Complaint, filed on this date.

14 **BRIEF SUMMARY OF ARGUMENT**

15 Pursuant to a May 2001 contract between VeriSign and ICANN, VeriSign
16 operates the "Internet registry" for the ".com" zone of the Internet. ICANN and
17 VeriSign disagree about several aspects of VeriSign's rights and obligations under
18 that contract. These disagreements have resulted in ICANN advising VeriSign
19 from time to time that certain VeriSign activities in its operation of the .com
20 registry violate the contract. In the past, VeriSign has alternately responded by
21 proceeding in conformity with ICANN's stated positions or by asserting its
22 disagreement with ICANN's positions and ignoring them. Until the filing of this
23 litigation (and, in particular, the seventh claim for relief), VeriSign never invoked
24 the contractually agreed dispute-resolution mechanism.

25 VeriSign's First Amended Complaint ("FAC"), like its original complaint,
26 goes well beyond seeking judicial resolution of the contract interpretation dispute.
27 VeriSign's FAC includes five contract and tort claims that seek to impose monetary
28 and injunctive liability on ICANN merely for articulating ICANN's positions.

1 Specifically, VeriSign's second, third, and fourth claims for relief are based entirely
2 on ICANN's October 3, 2003 letter that "threatened" to "initiate legal proceedings"
3 with respect to VeriSign's conduct and alleged breach of the parties' contract.

4 VeriSign's fifth and sixth claims are also based on that "threatening letter," as well
5 as other instances in which ICANN made statements about inconsistencies between
6 VeriSign's operation of the .com registry of the Internet and the parties' contract.

7 Thus, these five claims seek to impose liability on ICANN simply for adopting and
8 stating contractual positions with which VeriSign disagrees. And VeriSign's breach
9 of contract and tort claims are legally unsupportable for multiple reasons.

10 California's anti-SLAPP statute (Cal. Civ. Proc. Code § 425.16) was enacted
11 to combat lawsuits that arise from free-speech and petitioning activities. The
12 statute establishes a procedure—followed by federal as well as state courts in
13 California—for prompt review and disposal of state law claims arising from acts "in
14 furtherance of the person's right of petition or free speech under the United States or
15 California Constitution in connection with a public issue." Because VeriSign's
16 second, third, fourth, fifth, and sixth claims arise from ICANN's free-speech and
17 petitioning activities in stating its contractual positions and indicating that it would
18 seek judicial redress if necessary, those claims should be stricken under the anti-
19 SLAPP statute.

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the foregoing reasons, ICANN requests that the Court grant ICANN's Renewed Special Motion to Strike VeriSign's second, third, fourth, fifth, and sixth claims for relief and order VeriSign to pay ICANN's costs and attorneys' fees.

Dated: July 6, 2004 JONES DAY

By: _____
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS