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INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

VERANDAGLOBAL.COM, INC., a Florida corporation, and BRYAN TALLMAN, a California citizen,

Plaintiffs,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California Corporation, DOES 1–10, and ALL PERSONS UNKNOWN, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud upon plaintiff's title thereto,

Defendants.

Case No. 23STCV19554

Assigned to Hon. Tony L. Richardson

DEFENDANT ICANN'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS' VERIFIED SECOND AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[[Proposed] Order and Declaration of Kelly M. Watne Filed Concurrently Herewith]

Date: May 28, 2025
Time: 8:30 A.M.
Dept: 39

Complaint Filed: August 16, 2023
SAC Filed: February 18, 2025

Reservation ID: 677029364434

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 28, 2025, at 8:30 A.M., in Department 39 of this Court, located at 111 North Hill Street, Los Angeles, CA 90012, Defendant the Internet Corporation for Assigned Names and Numbers ("ICANN") will and hereby does demur to Plaintiffs VerandaGlobal.com d/b/a First Place Internet, Inc. ("FPI") and Bryan Tallman's (collectively, "Plaintiffs") Verified Second Amended Complaint ("SAC") in its entirety pursuant to California Code of Civil Procedure ("CCP") § 430.30. Plaintiffs again lack standing to pursue any of their claims and the SAC fails to state a claim for each cause of action asserted. Given that Plaintiffs have had two opportunities to amend, the SAC should be dismissed with prejudice.

This motion is based upon this notice of motion, the accompanying memorandum of points and authorities, the declaration of Kelly M. Watne pursuant to CCP § 430.41, pleadings and other records on file herein, and such further evidence and argument as may be presented to the Court.

Dated: March 20, 2025

JONES DAY

By: */s/ Jeffrey A. LeVee*
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

DEMURRER

Defendant the Internet Corporation for Assigned Names and Numbers ("ICANN") hereby demurs to Plaintiffs VerandaGlobal.com d/b/a First Place Internet, Inc. ("FPI") and Bryan Tallman's (collectively, "Plaintiffs") Verified Second Amended Complaint ("SAC") on each of the following grounds:

DEMURRER TO ALL CAUSES OF ACTION

1. All causes of action fail to state facts sufficient to constitute a cause of action against ICANN because Plaintiffs lack standing to sue ICANN. Cal. Civ. Proc. Code § 430.10.

DEMURRER TO FIRST CAUSE OF ACTION

2. The first cause of action for unfair competition under California Business and Professions Code Sections 17200 *et seq*. fails to state facts sufficient to constitute a cause of action against ICANN. Cal. Civ. Proc. Code § 430.10.

DEMURRER TO SECOND CAUSE OF ACTION

3. The second cause of action for breach of contract fails to state facts sufficient to constitute a cause of action against ICANN. Cal. Civ. Proc. Code § 430.10.

4. The second cause of action for breach of contract also fails to specify whether the contract sued upon is oral, written, or implied by conduct. Cal. Civ. Proc. Code § 430.10.

DEMURRER TO THIRD CAUSE OF ACTION

5. The third cause of action for breach of duty of good faith and fair dealing fails to state facts sufficient to constitute a cause of action against ICANN. Cal. Civ. Proc. Code § 430.10.

DEMURRER TO FOURTH CAUSE OF ACTION

6. The fourth cause of action for breach of quasi-contract fails to state facts sufficient to constitute a cause of action against ICANN. Cal. Civ. Proc. Code § 430.10.

DEMURRER TO FIFTH CAUSE OF ACTION

7. The fifth cause of action for breach of fiduciary duty[1] fails to state facts sufficient to

[1] On the SAC caption page, this is labeled as Count 6 and the Conversion claim is labeled as Count 5, but in the body of the SAC, they are switched. For consistency and to avoid confusion, ICANN requests that Plaintiffs likewise adopt the numbers set forth in the body of the SAC.

constitute a cause of action against ICANN. Cal. Civ. Proc. Code § 430.10.

DEMURRER TO SIXTH CAUSE OF ACTION

8. The sixth cause of action for conversion fails to state facts sufficient to constitute a cause of action against ICANN. Cal. Civ. Proc. Code § 430.10.

DEMURRER TO SEVENTH CAUSE OF ACTION

9. The seventh cause of action for tortious interference with contract fails to state facts sufficient to constitute a cause of action against ICANN. Cal. Civ. Proc. Code § 430.10.

DEMURRER TO EIGHTH CAUSE OF ACTION

10. The eighth cause of action for quiet title fails to state facts sufficient to constitute a cause of action against ICANN. Cal. Civ. Proc. Code § 430.10.

Dated: March 20, 2025

JONES DAY

By: */s/ Jeffrey A. LeVee*
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

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INTRODUCTION

Plaintiffs VerandaGlobal.com d/b/a First Place Internet ("FPI") and Bryan Tallman's (collectively "Plaintiffs") Verified Second Amended Complaint ("SAC") against the Internet Corporation for Assigned Names and Numbers ("ICANN") fails to cure ***any*** of the deficiencies that caused this Court to sustain ICANN's demurrers to Plaintiffs' original Complaint and First Amended Complaint ("FAC"). Importantly, Plaintiffs still have not identified any policy—much less an ICANN policy—that grants them the uncontested sole right to register the ASCII[2] domain names at issue. Indeed, the crux of the SAC continues to be a 2013 letter from Verisign to ICANN, which two different judges have already determined does ***not*** comprise ICANN policy, no matter how many times, or how "virulently" (to use Plaintiffs' term), Plaintiffs claim otherwise. Plaintiffs' entire SAC falls apart as a result.

Apparently recognizing the likelihood that the Court would dismiss each of their claims a third time, Plaintiffs add four new (and somewhat bizarre) causes of action in the SAC. Not surprisingly, none of the new causes of action states a claim against ICANN. The claims are either wholly speculative ("Plaintiffs suspect but do not know," SAC ¶ 243), are meritless, or conflict with other allegations in the SAC. For instance, while Plaintiffs claim that the 2013 Verisign letter comprises ICANN policy, they now acknowledge that "Verisign sets the policies that govern the registration of the .com and .net top-level domains." (SAC ¶ 140; *see also id.* ¶ 27.) Similarly, while Plaintiffs claim that they formed a contract with ICANN when they registered certain domain names for purposes of their breach of contract claims, they later admit with respect to their interference claim that these contracts were actually between Plaintiffs and their Internet registrar, not ICANN. (*Compare* SAC ¶¶ 164–166 *with id.* ¶ 224.) The Court should therefore disregard Plaintiffs' inconsistent allegations. *Faulkner v. California Toll Bridge Auth.*, 40 Cal. 2d 317, 328 (1953) ("[T]he rule does not permit the pleader to blow both hot and cold in the same complaint on the subject of facts of which he purports to speak with knowledge under oath.") (citation omitted).

[2] "ASCII" stands for American Standard Code for Information Interchange. As Plaintiffs note, ASCII colloquially refers to the English language. (SAC ¶ 47.)

Finally, the Court has twice determined that Plaintiffs lack standing to pursue their claims, and the new allegations in the SAC do not warrant a different conclusion. It is still obvious that Plaintiffs have ***no*** relationship with ICANN—contractual or otherwise—such that they could properly bring any of their causes of action against ICANN.

Despite having ample opportunity to do so, Plaintiffs have failed to cure any of the deficiencies identified in the two prior demurrer orders. Accordingly, the Court should sustain ICANN's demurrer to the SAC without leave to amend. *See Cansino v. Bank of Am.*, 224 Cal. App. 4th 1462, 1468 (2014).

SUMMARY OF FACTS[3]

A. ICANN's Role In The DNS And Plaintiffs' Domain Registrations.

In order to obtain a second-level domain name, consumers, known as "registrants," contract with entities called "registrars" to register the second-level domain name in a specific gTLD (for instance, a registrant may wish to register weather.com or weather.net, which are separate registrations and could be registered by different registrants through different registrars). (Compl. ¶ 24; SAC ¶ 65.) In turn, those registrars register the domain name with the appropriate gTLD registry (in the example above, in .COM or .NET). (*Id*. at ¶ 55, n.24.) Each gTLD registry is managed by a registry operator.[4] (*Id*. at ¶ 140.) Plaintiffs' original Complaint conceded that ICANN does not contract with individual registrants such as Plaintiffs. (Compl. ¶ 24.) ICANN contracts with "registry operators" and "registrars." (*Id*.; SAC ¶ 55.)

Initially, second-level domains and gTLDs were only available in ASCII script. In 2009, ICANN supported implementation of Internationalized Domain Names ("IDNs"), which allows registry operators to operate gTLDs, and allows registrants to register domain names, in the native scripts of certain languages; the native script could be utilized in either the second-level portion of the domain or the top-level portion or both. (*See* Compl. ¶ 38.) For example, users can register domains that could be in the following script combinations (using native Japanese (Katakana)

[3] To avoid repetition, ICANN incorporates by this reference the background information set forth in its demurrers to the original and First Amended Complaints, filed on September 18, 2023 and April 15, 2024, respectively. ICANN will repeat here only the most salient background facts.

[4] A gTLD registry operator may be referred to as either a "registry" or a "registry operator."

script as an example): ASCII.ASCII (friend.COM), ASCII.IDN (friend.コム), IDN.IDN (ともだち.コム), or IDN.ASCII (ともだち.COM), which are separate domain registrations that could have different registrants and be registered through different registrars, and are found in different registries. (*See id*.)

From 2015 through 2020, Plaintiffs registered various ASCII.IDN domain registrations: ASCII second-level domains in the IDN Katakana, Hangul, and Hebrew scripts of .COM and .NET (e.g., 1.コム (Katakana ".COM")). (SAC ¶ 37.) Plaintiffs mistakenly believe that because they have registered these ASCII.IDN domain names, they somehow have the "uncontested sole right" to the ASCII.ASCII versions of these domains in .COM and .NET (e.g., 1.COM). (SAC ¶ 6.) Based on this mistaken belief, Plaintiff FPI wrote to ICANN and demanded these registrations in .COM and .NET. (SAC ¶ 104.) Plaintiffs allege that ICANN violated its Bylaws and "policies," as well as agreements with Verisign, Inc. (the registry operator of .COM and .NET) and the Department of Commerce, by not providing these domain names to Plaintiffs. (SAC ¶¶ 106–110.)

B. There Is No "Policy" That Entitles Plaintiffs To The Relief They Seek.

Plaintiffs' claims are still based on the allegation that ICANN adopted a "policy" by posting on ICANN's website a 2013 letter from Verisign that, according to Plaintiffs, gave Plaintiffs the "sole right" to obtain these domains in the ASCII versions of .COM and .NET simply because Plaintiffs had registered these second-level domains in certain IDN versions of .COM and .NET. (SAC ¶¶ 5, 6, 20, 34, 35, 78–85.) Plaintiffs claim the "policies" that support this allegation are "quoted verbatim in Exhibits A1 and A2." (SAC ¶ 20.) But Exhibits A1 and A2 are just compilations of statements ***doctored by Plaintiffs*** in an attempt to address the deficiencies noted in this Court's orders, and certainly do not constitute ICANN policy. In some instances, the compilations are terribly misleading because they contain no identifying information as to who authored the statement or its context; and in all instances, the compilations are incomplete and do not represent any ICANN policy that relates to, much less supports, Plaintiffs' claims. For example, Plaintiffs allege that the ICANN Board adopted a policy regarding single-character domain names in its June 26, 2008 Resolution. (SAC ¶¶ 4, 20, 34.) Plaintiffs' allegation stems

from the Board's statement that "based on both the support of the community for new gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO policy recommendations for the introduction of new gTLDs." (SAC ¶ 4, Exhibit A1.) However, the underlying GNSO recommendations that Plaintiffs reference do not, in any way, support Plaintiffs' claim or requested relief. The GNSO's recommendations are ***silent*** regarding whether single-character registrants in IDN gTLDs (like Plaintiffs) have any right to automatically obtain the corresponding domain in the ASCII gTLD equivalent (e.g., that registering <1.ㅋㅅ> somehow entitles the registrant to <1.COM>).[5] In short, ***nothing*** in the Board's Resolution or the GNSO recommendations establish the "policy" that Plaintiffs are trying to conjure. (SAC ¶ 6, 20.)

C. Verisign's July 2013 Letter Is Not An "ICANN Policy."

Plaintiffs' SAC is nearly unintelligible when discussing Verisign's July 2013 letter to ICANN. Plaintiffs seem to allege that, because the IDN Guidelines state that "any information fundamental to the understanding of a ***registry's IDN policies*** that [is] not published by the IANA will be made directly available online by the registry," then Plaintiffs were "reasonably" entitled to rely on Verisign's letter as "ICANN policy." (SAC ¶¶ 35–42, 78–85, 94.) Notably, the statement Plaintiffs quote about IDN Guidelines implementation pertains to a "***registry's*** IDN policies," not ***ICANN's*** policies. (SAC ¶ 94 (emphasis added).) Plaintiffs also fail to acknowledge that Verisign's letter does not actually state that it grants an automatic entitlement to registrants like Plaintiffs (i.e., the relief sought) or that it intends to create a policy, much less an ***ICANN policy***. To the contrary, the letter states that the purpose of the letter was to "provide ICANN with more detail about [Verisign's] IDN.IDN ***plans***[.]" (SAC ¶ 77, n. 39 (emphasis added).) In short, as the Court has found twice, the "policy" on which Plaintiffs rely is not a policy at all, and certainly is not an ICANN policy.

Plaintiffs also seem to allege that merely posting Verisign's letter on ICANN's website

[5] Plaintiffs attempt to summarize a host of alleged ICANN policies on pages 7 and 8 of the SAC. These "policies" are not relevant and seem to be an attempt to confuse the issues. Simply put, ICANN does not have a policy granting registrants an automatic right to equivalent domains as Plaintiffs claim.

somehow constitutes "adoption" of a "policy." (*See*, *e.g.*, SAC ¶¶ 78–85.) No visitor to ICANN's website would (or reasonably could) conclude that ICANN has somehow adopted or sanctioned as "policy" the contents of each of the ***thousands*** of letters posted on ICANN's Correspondence webpage. Plaintiffs also outlandishly claim (again without any factual support) that "ICANN assumed responsibility for enforcing ***all*** VeriSign policies for the .com and .net top-level domains, including the transliteration policy at issue here." (SAC ¶ 139 (emphasis in original).) Plaintiffs' conclusory allegations continue to fall far short of reflecting an accurate or logical understanding of how ICANN makes or implements policy, but it certainly is not by posting a third-party's letter on its website. As this Court already recognized, "attributing a letter from VeriSign to Defendant does not establish Plaintiffs had any interaction with Defendant that would constitute a breach of any agreement, let alone such a letter constitutes a stated policy of Defendant's." (Minute Order on Demurrer, Jan. 29, 2025 ("2025 Order") at 2.)

LEGAL STANDARD

A demurrer tests the legal sufficiency of the allegations in a complaint. *Schmidt v. Found. Health*, 35 Cal. App. 4th 1702, 1706 (1995) (citing Cal. Civ. Proc. Code § 589(a)). A demurrer should be sustained where the "pleading does not state facts sufficient to constitute a cause of action." *Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.*, 2 Cal. 5th 505, 512 (2017) (quoting Cal. Civ. Proc. Code § 430.10(e)). "A general demurrer searches the complaint for all defects going to the existence of a cause of action and places at issue the legal merits of the action on assumed facts." *Carman v. Alvord*, 31 Cal. 3d 318, 324 (1982) (citing *Banerian v. O'Malley*, 42 Cal. App. 3d 604, 610–11 (1974)). The court "accept[s] as true all the material allegations of the complaint, but do[es] not assume the truth of contentions, deductions or conclusions of fact or law." *Roy Allan Slurry Seal, Inc.*, 2 Cal. 5th at 512 (internal quotation marks and citations omitted). A demurrer should be granted without leave to amend where "no amendment could cure the defect in the complaint[.]" *See Cansino*, 224 Cal. App. 4th at 1468.

ARGUMENT

Plaintiffs lack standing to pursue any of the eight causes of action against ICANN, and each cause of action fails to state a claim.

A. PLAINTIFFS LACK STANDING TO PURSUE THEIR CLAIMS AGAINST ICANN.

Plaintiffs lack standing to pursue a claim that ICANN has breached any alleged policies, as this Court has now held twice. In California, "[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." CCP § 367; *see Angelucci v. Century Supper Club*, 41 Cal. 4th 160, 175 (2007) ("In general terms, in order to have standing, the plaintiff must be able to allege injury—that is, some 'invasion of the plaintiff's legally protected interests.'") (citation omitted). When "the complaint shows the plaintiff does not possess the substantive right or standing to prosecute the action, 'it is vulnerable to a general demurrer on the ground that it fails to state a cause of action.'" *Schauer v. Mandarin Gems of Cal., Inc.*, 125 Cal. App. 4th 949, 955 (2005) (citation omitted).

Plaintiffs' new standing allegations do not establish that they can pursue a cause of action against ICANN. Plaintiffs appear to allege that they can sue ICANN because ICANN "is the only party responsible for ensuring that domain names are unique and for enforcing the relevant policies." (SAC ¶ 129.) In so doing, Plaintiffs seem to argue that ICANN is responsible for enforcing supposed policies in ICANN's contract with Verisign at the behest of and for the benefit of Plaintiffs. To be clear, Plaintiffs are not a party to the contract between ICANN and Verisign nor are they third-party beneficiaries. Plaintiffs fail to explain how their theory makes sense and how a contract between ICANN and Verisign somehow allows Plaintiffs to sue ICANN.[6]

Plaintiffs also claim that, because they paid a fee to a registrar, and that registrar paid the equivalent of a small portion of the fee to ICANN, Plaintiffs magically have standing. That is incorrect. ICANN does not transact with registrants; nor can Plaintiffs allege that they ever paid any money directly to ICANN. That the registrar pays a small portion of the registration fee to ICANN does not confer standing upon Plaintiffs. In fact, it is clear from the face of the agreement between ICANN and registrars (the Registrar Accreditation Agreement or "RAA") that the

[6] Plaintiffs are "not a named party, not an intended signatory" and are "not even expressly identified in any capacity, let alone as a third party beneficiary" to ICANN's contract with Verisign. *See H.N. & Frances C. Berger Found. v. Perez*, 218 Cal. App. 4th 37, 45 (2013) (sustaining demurrer without leave to amend where facts and allegations established, as a matter of law, that the plaintiff was not an intended third-party beneficiary).

payment of fees does not create a relationship between ICANN and any third party, including registrants like Plaintiffs: "***This Agreement shall not be construed to create any obligation by either ICANN or Registrar to any non-party to this Agreement, including any Registered Name Holder***."[7] Moreover, any fees Plaintiffs paid to the registrar are for transactions that relate to domain names that are already registered, not to potential domain names that have yet to be registered.

Plaintiffs then present a bizarre analogy about booking hotel rooms that is inapposite here. An individual booking a hotel room through a travel agent and visiting that hotel, which then discriminates against that individual, is not even close to the situation before the Court. Plaintiffs registered domain names with a registrar, which had obtained the right to provide domain name subscriptions from the registry operator, which in turn obtained its right to operate that registry from ICANN. Plaintiffs never interacted with ICANN, and ICANN never "discriminated" against Plaintiffs. In short, Plaintiffs have never visited the "ICANN hotel," and ICANN has never performed any services for Plaintiffs.

B. EACH OF PLAINTIFFS' AMENDED CAUSES OF ACTION FAILS TO STATE A CLAIM.

Plaintiffs failed to cure the deficiencies identified in the two prior Court orders sustaining ICANN's demurrers. There simply is no policy, statement, contract, or representation made by ICANN that could support any of the causes of action.

1. Plaintiffs Fail To State A Claim Under California's Business And Professions Code (Count One).

In order to state a claim under California Business and Professions Code § 17200 ("UCL"), a plaintiff must establish that the business practice or act is either unlawful, unfair, or fraudulent. *Berryman v. Merit Prop. Mgmt. Inc.*, 152 Cal. App. 4th 1554, 1554 (2007). Plaintiffs dropped their claim that ICANN acted fraudulently, and instead re-allege that ICANN acted unlawfully and unfairly. Plaintiffs, however, do not state sufficient facts under either prong.

[7] Registrar Accreditation Agreement, Section 5.10 ("No Third-Party Beneficiaries"), May 21, 2009. A true and correct copy of the 21 May 2009 Registrar Accreditation Agreement referenced in SAC ¶ 40 n.15 is available at https://www.icann.org/resources/pages/ra-agreement-2009-05-21-en (updated 2 August 2012).

"[A] violation of another law is a predicate for stating a cause of action under the UCL's unlawful prong." *Id*. Plaintiffs continue to rely on California Evidence Code § 669 and California Code of Civil Procedure 1021.5, neither of which comprise laws that ICANN supposedly violated. (*See* SAC ¶¶ 148, 150.) As such, Plaintiffs' assertion that ICANN engaged in "unlawful" conduct fails as a matter of law. (SAC ¶¶ 147–150.)

As to the unfair prong, an "act or practice is unfair if the consumer injury is substantial, is not outweighed by any countervailing benefits to consumers or to competition, ***and is not an injury the consumers themselves could reasonably have avoided***." *Daugherty v. Am. Honda Motor Co., Inc.*, 144 Cal. App. 4th 824, 839 (2006) (emphasis added). The burden is on the plaintiff to show why the unfair conduct was not allowed. *Berryman*, 152 Cal. App. 4th at 1555 (sustaining a demurrer under the UCL and finding plaintiff's allegations insufficient, noting that "we are unaware of any statutory or case law that requires a for-profit business to point to a statute or contract that allows it to charge a fee for a service."). Here, Plaintiffs continue to allege that they relied on ICANN "policies" in registering and renewing their domain names (SAC ¶ 154), notwithstanding that this Court has ruled twice that ICANN's alleged failure to abide by these so-called "policies" was neither unlawful nor unfair because "[n]one of these . . . establishes a policy that ICANN will approve a single character domain name." (Feb. 15, 2024 Minute Order on Demurrer ("2024 Order") at 3.) Thus, Plaintiffs cannot point to ***any*** policy by ICANN that suggests that Plaintiffs have the "sole right" to operate the ASCII gTLD versions of the second-level domain names at issue.

Even if there was an injury to Plaintiffs (which there is not), Plaintiffs' mistaken assumption does not equate to unfair action on ICANN's part. Plaintiffs chose to use their own unreasonable judgment by relying on a letter that was ***not*** directly on point, ***not*** written by ICANN, ***not*** intended to form (and did not form) binding policy, and ***not*** intended for Plaintiffs. Indeed, the very foundation of Plaintiffs' theory is that Verisign (not ICANN) adopted a "policy," but Verisign's letter explicitly states that it was intended to "provide ICANN with more detail about [Verisign's] IDN.IDN ***plans***." (SAC, Exhibit A3 (noting "[c]learly, [Verisign's] policies and validation rules are more detailed" and that Verisign would "initiate a broad communications plan

to educate and inform [its] community about [its] IDN implementation planning.").) Tellingly, Plaintiffs do not quote this portion of Verisign's letter. Moreover, common sense dictates that Plaintiffs' interpretation of the alleged "policy" in Verisign's letter is untenable—for instance, different registrants may register <A. 닷컴> and <A. コム>; however, both such registrants could not then be automatically entitled to register <A.COM>.

Plaintiffs also lack standing to bring a § 17200 claim. In order to bring a claim under the UCL, a plaintiff must: "(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic injury*, and (2) show that that economic injury was the result of, i.e., *caused by*, the unfair business practice or false advertising that is the gravamen of the claim." *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 322 (2011). Plaintiffs cannot meet this burden because ICANN did not make a statement (nor can Plaintiffs allege it did) that: (1) Plaintiffs are automatically entitled to the ASCII gTLD versions of the domains listed in Exhibits E1 or E2; or (2) was deceptive or caused injury to Plaintiffs. In other words, ***ICANN did not cause an economic injury*** to Plaintiffs such that Plaintiffs can sue under the UCL. *See Ivie v. Kraft Foods Glob., Inc*., 961 F. Supp. 2d 1033, 1047 (N.D. Cal. 2013) (plaintiffs lacked standing to bring UCL claim relating to statements on defendant's webpage).

2. Plaintiffs Fail To State A Claim For Breach Of Contract (Count Two).

Once again, Plaintiffs have not cured the deficiencies identified in the Court's Orders because there is no contract between ICANN and Plaintiffs. The elements of a claim for breach of contract are: (1) the existence of a contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damage to plaintiff. *Wall St. Network, Ltd. v. N.Y. Times Co.*, 164 Cal. App. 4th 1171, 1178 (2008). In order to state a claim for breach of contract, Plaintiffs' SAC must identify the contract at issue as well as the specific provisions that ICANN allegedly breached. *See Holcomb v. Wells Fargo Bank, N.A.*, 155 Cal. App. 4th 490, 501 (2007) ("Without specifying the nature of the contract, nor the specific terms Holcomb claims the bank had breached, the complaint fails to adequately state a cause of action for breach of contract."). As this Court noted in its Order dismissing the original Complaint, "[i]f the action is based on an alleged breach of a written contract, the terms ***must*** be set out verbatim in the body of

the complaint or a copy of the written instrument ***must*** be attached or incorporated by reference." (2024 Order at 2 (quoting *Harris v. Ruden, Richmond & Appel*, 74 Cal. App. 4th 299, 307 (1999) (emphasis added).) Indeed, Plaintiffs' counsel represented to the Court at the hearing on ICANN's demurrer to Plaintiffs' FAC that Plaintiffs would allege "the date of the contract, when [it was] formed, how [it was] formed, et cetera." (Jan. 29, 2025 Hr'g Tr. at 11:28-12:1, Demurrer Exhibit A.)

However, the SAC does not contain any allegations regarding any purported contract between Plaintiffs and ICANN, the date of the contract, when it was formed, or how it was formed.[8] Plaintiffs appear to claim that the contracts on which they sue are the contracts they entered into with registrars to purchase and renew the non-ASCII domain name registrations. (SAC ¶¶ 164–166.) But those contracts were between Plaintiffs and the registrars, not with ICANN, which Plaintiffs concede. (SAC ¶ 224 ("In registering and renewing the domain names with a registrar, Plaintiffs entered into contracts with that registrar.").)

The Court is left with the same vague references to ICANN's "policies," Bylaws, and information posted on ICANN's website, none of which could be alleged to constitute a "contractual relationship" between ICANN and Plaintiffs. Plaintiffs also appear to claim, without any support, that they entered into a mythical contract with ICANN under which ICANN agreed "to enforce policies to protect Plaintiffs." (SAC ¶ 175.) Unsurprisingly, Plaintiffs have not attached or quoted from any such contract, nor can they.

Further, Plaintiffs still do not adequately identify a "policy" or Bylaws provision that ICANN is allegedly violating in breach of any (nonexistent) contract. Plaintiffs try to muddy the issue by mislabeling *dozens* of statements as "ICANN Policy." (*See* SAC ¶¶ 19–33; Exhibits A1, A2.) Such efforts are not only misleading, but also show that Plaintiffs remain unable to point to any ICANN policy that establishes their "uncontested sole right" to register and operate the ASCII versions of the domains that they seek (as listed in exhibits E1 and E2). (SAC ¶ 6.) And Plaintiffs

[8] Whether the contract is written, oral, or implied by conduct ***must*** be ascertainable in Plaintiffs' complaint in order to properly state an action for breach of contract. CCP § 430.10(g). By failing to identify the specific contract, the nature of the contract, the terms of the contract, and when it was formed, Plaintiffs fail to state a claim.

again point to the 2013 letter from Verisign to ICANN. (SAC ¶ 182.) But Verisign's letter is obviously not a contract between Plaintiffs and ICANN, nor is it an ICANN policy, as confirmed by the Court.[9] (2025 Order at 2.) In sum, because Plaintiffs cannot allege there is an ICANN policy granting Plaintiffs the "uncontested sole right" to certain domain names, Plaintiffs also cannot allege that ICANN owes Plaintiffs the contractual responsibilities of enforcing and following those alleged "policies."

Plaintiffs also misrepresent that they paid consideration to ICANN. They did not. Plaintiffs "paid consideration to the registrar in the form of registration or renewal fees." (SAC ¶ 167.) That the equivalent of a small fraction of what Plaintiffs paid to the registrar is paid by the registrar to ICANN for transactions related to those domain names does not establish any contract between ICANN and registrants.

3. Plaintiffs Cannot State A Claim For Breach Of Covenant Of Good Faith And Fair Dealing (Count Three).

Because Plaintiffs' fail to plead the existence of a contract, their claim for breach of the covenant of good faith and fair dealing likewise fails. "The implied covenant of good faith and fair dealing ***rests upon the existence of some specific contractual obligation*** . . . . There is no obligation to deal fairly or in good faith absent an existing contract." *Racine & Laramie, Ltd. v. Dep't of Parks & Recreation*, 11 Cal. App. 4th 1026, 1031–32 (1993) (emphasis added); *see also Kim v. Regents of Univ. of Cal.*, 80 Cal. App. 4th 160, 164 (2000) ("Since the good faith covenant is an implied term of a contract, the existence of a contractual relationship is thus a prerequisite for any action for breach of the covenant."). Because Plaintiffs' SAC does not sufficiently allege the existence of any contract between Plaintiffs and ICANN, Plaintiffs' claim for breach of the covenant of good faith and fair dealing must fail.[10] (*See* 2025 Order at 4.)

4. Plaintiffs' Claim For Breach Of Quasi-Contract Fails (Count Four).

Plaintiffs' quasi-contract claim fails for the same reasons their breach of contract claim

[9] Even Plaintiffs admit it is not an ICANN policy, stating in the SAC that "each registry shall set the **Policy** respecting how the ownership of domains across different languages would be treated." (SAC ¶ 27 (emphasis added).)

[10] Furthermore, even if there was a contract between ICANN and Plaintiffs (which there is not), Plaintiffs do not allege facts to support allegations that ICANN acted unfairly and in bad faith.

does: there is no interaction, statement, or conduct between ICANN and Plaintiffs to warrant any implied or actual contractual relationship. "The elements of a claim of quasi-contract or unjust enrichment are (1) a defendant's receipt of a benefit and (2) unjust retention of that benefit at the plaintiff's expense." *MH Pillars Ltd. v. Realini*, 277 F. Supp. 3d 1077, 1094 (N.D. Cal. 2017) (citing *Peterson v. Cellco P'ship*, 164 Cal. App. 4th 1583, 1593 (2008)). Plaintiffs' SAC does not allege facts supporting that ICANN "unjustly" retained a benefit because there is no benefit for ICANN to unjustly retain. Plaintiffs have only alleged that ICANN was eventually paid transaction-based fees *by the registrars* (not Plaintiffs) that were related to the transactions for *non*-ASCII domain names that Plaintiffs registered.

Moreover, even if Plaintiffs had sufficiently stated breach of contract and breach of quasi-contract claims, which they have not, Plaintiffs are not permitted to maintain an action for both claims. *See Cal. Med. Ass'n, Inc. v. Aetna U.S. Healthcare of Cal., Inc*., 94 Cal. App. 4th 151, 172–73 (2001) (holding that plaintiff *could not* proceed under its quasi-contract claim because the claim was based on the express terms of an actual contract); *Lloyd v. Williams*, 227 Cal. App. 2d 646, 649 (1964) ("A party cannot retain substantial benefits under an express contract and recover under the theory of an implied contract.").

Further, as set forth above, Plaintiffs were explicitly not intended beneficiaries of the RAA or the registry operator agreements with ICANN. Thus, just as the law forbids Plaintiffs from prevailing on a breach of contract claim, they cannot prevail on a quasi-contract theory.

C. PLAINTIFFS' NEW CAUSES OF ACTION EACH FAIL TO STATE A CLAIM.

In a final attempt to survive demurrer, Plaintiffs add four new causes of action, none of which states a claim against ICANN.

1. Plaintiffs Cannot State A Claim For Breach Of Fiduciary Duty (Count Five).

Plaintiffs' claim for breach of fiduciary duty fails because Plaintiffs do not allege sufficient facts that ICANN owes any duty to Plaintiffs. To bring a claim for breach of fiduciary duty, a plaintiff must establish: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage caused by the breach. *Apollo Cap. Fund, LLC v. Roth Cap. Partners, LLC*, 158 Cal. App.

4th 226, 244, 246 (2007). The first element is met only where a party "knowingly undertake[s] to act on behalf and for the benefit of another, or [] enter[s] into a relationship which imposes that undertaking as a matter of law." *Id.* at 246 (citation omitted).

Plaintiffs have not adequately alleged *any* relationship with ICANN, much less that of a fiduciary. In fact, this Court has already determined that Plaintiffs failed to allege a duty under their negligence claim, and Plaintiffs have not alleged any new facts to meet this higher fiduciary standard. (2024 Order at 4 ("The Court sustains the demurrer [with prejudice] to the sixth cause of action—negligence—because the complaint does not allege a duty. Nor could Plaintiffs allege a duty under these circumstances.").) Instead, Plaintiffs make the nonsensical argument that ICANN acts as a fiduciary *for the whole of the Internet community*. (SAC ¶ 206.) It is ludicrous to think that ICANN acts as a fiduciary to the millions (or billions) of people and businesses in the Internet community. Even more ludicrous is the supposed "facts" on which Plaintiffs rely to support this claim. They cite to a statement by the ICANN Board regarding its fiduciary duties to ICANN (not the entire Internet community), namely that the ICANN Board would "continue to make all decisions in furtherance of ICANN's mission, under consideration of its duty of care and its fiduciary responsibility." (SAC ¶ 208.) A fiduciary duty by a board to its corporation does not equate to a duty by the corporation to millions of people. Nor have Plaintiffs alleged any breach by ICANN of a purported duty to Plaintiffs in all events.

2. Plaintiffs Fail To State A Claim For Conversion (Count Six).

The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's wrongful act or disposition of property rights that interferes with the plaintiff's possession; and (3) damages. *Archer v. Coinbase, Inc.*, 53 Cal. App. 5th 266, 276 (2020). Plaintiffs cannot meet the first element because they do not plead any facts supporting that they have an ownership interest in—much less the "uncontested sole right" to register—the domain names at issue, for the reasons set forth above.[11]

[11] Moreover, California courts have ruled that domain names are not property rights (and thus not capable of being "converted") because domain name registration merely "supplies the intangible 'contractual right to use a unique domain name for a specified period of time.'" *Palacio Del Mar Homeowners Ass'n, Inc. v. McMahon*, 174 Cal. App. 4th 1386, 1391 (2009) (quoting *Network*

Plaintiffs also fail to meet the second and third elements because ICANN has not wrongfully disposed of any property rights that resulted in damages to Plaintiffs. "Conversion requires the defendant to take some affirmative action to exercise dominion over or deprive a plaintiff of his or her property"; a "lack of action" is insufficient. *Archer*, 53 Cal. App. 5th at 276. Here, Plaintiffs concede—and this Court has recognized—that ICANN has not registered or transferred the ASCII domain names at issue. (SAC ¶ 142; 2025 Order at 4.)

3. Plaintiffs Fail To State A Claim For Tortious Interference (Count Seven).

A claim for tortious interference with contractual relations requires (1) a valid contract between the plaintiff and a third party; (2) the defendant's "knowledge of the contract"; (3) the defendant's "intent to induce" a breach of the contract; and (4) resulting damages. *Farmers Ins. Exch. v. State of California*, 175 Cal. App. 3d 494, 506 (1985). Although Plaintiffs allege that ICANN interfered with Plaintiffs' contract with Verisign, Plaintiffs have not actually identified a contract that they have with Verisign, much less a specific contract term granting them the right to register the domain names at issue.[12] Instead, Plaintiffs again point to the 2013 Verisign letter, which decidedly does ***not*** constitute a contract between Verisign and Plaintiffs, the same way it does not constitute an ICANN policy. (*See* SAC at ¶ 228.) Further, Plaintiffs fail to plead any intentional acts by ICANN designed to induce a breach or disruption of Plaintiffs' supposed contract with Verisign.

4. Plaintiffs' Quiet Title Action Fails (Count Eight).

Plaintiffs' quiet title action fails for the simple reasons that Plaintiffs do not have title and ICANN does not have an adverse claim to title. Under California law, a quiet title action must contain "[t]he title of the plaintiff" and "[t]he adverse claims to the title of the plaintiff against which a determination is sought." Cal. Civ. Proc. Code § 761.020(b), (c); *see also West v.*

Sols., Inc. v. Umbro Int'l, Inc., 529 S.E.2d 80, 86 (Va. 2000)). Indeed, the "consensus among courts nationwide is that [a] domain name is a product of contract for services, not property owned by registrant[.]" *In re Forchion*, 198 Cal. App. 4th 1284, 1309 (2011). This argument likewise refutes Plaintiffs' claim for quiet title.

[12] As noted above in the Summary of Facts, Plaintiffs register domains from a registrar, not from Verisign (a registry operator), so there is no contract between Plaintiffs and Verisign related to the domain names that Plaintiffs have registered.

JPMorgan Chase Bank, N.A., 214 Cal. App. 4th 780, 802 (2013) (demurrer is proper where "none of the defendants to the [] amended complaint has adverse claims to title."). Here, Plaintiffs have not alleged that they have title to the domain names at issue so there is no "title" to quiet. *See McElroy v. Chase Manhattan Mortg. Corp.*, 134 Cal. App. 388, 394 (2005) (affirming grant of demurrer without leave to amend where plaintiffs failed to plead facts of their claim to the property at issue). Further, Plaintiffs have made clear that they cannot allege that ICANN claims title to the domain names listed in Column 3 of Exhibits E1 and E2. (SAC ¶ 243; *see also id*. at ¶ 13 ("Plaintiffs cannot know whether or not ICANN intends to claim an interest in the domain names.").) Plaintiffs plead no facts suggesting ICANN has any adverse claims to the domain names at issue, because they cannot.

Given that Plaintiffs have had two opportunities to amend their complaint and have not come anywhere close to stating a claim against ICANN, the SAC should be dismissed with prejudice. *Cansino*, 224 Cal. App. 4th at 1468 (A demurrer should be granted without leave to amend where "no amendment could cure the defect in the complaint[.]").

CONCLUSION

For the foregoing reasons, ICANN respectfully requests that this Court sustain ICANN's demurrer and dismiss Plaintiffs' Second Amended Complaint with prejudice.

Dated: March 20, 2025

JONES DAY

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