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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 REPLY IN SUPPORT OF DEMURRER TO PLAINTIFFS' VERIFIED SECOND AMENDED COMPLAINT

Date: June 25, 2025
Time: 8:30 A.M.
Dept: 39

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

Reservation ID: 677029364434

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INTRODUCTION

Plaintiffs' Opposition to ICANN's Demurrer actually confirms that the Second Amended Complaint ("SAC") should be dismissed, this time with prejudice. In their Opposition, Plaintiffs act as if this Court's two previous rulings granting ICANN's demurrers do not exist, and they argue no new facts or theories that warrant a different conclusion this third time around. Fatal to Plaintiffs' Opposition and the SAC are the following findings from the Court sustaining ICANN's previous demurrers that Plaintiffs simply ignore:

(i) the complaint does not "establish[] a policy that ICANN will approve a single character domain name" (2024 Order at 3);

(ii) "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 letter constitutes a stated policy of Defendant's" (2025 Order at 2); and

(iii) the complaint "does not allege a duty[,] [n]or could Plaintiffs allege a duty under these circumstances" (2024 Order at 3).

The SAC alleges no new facts that could address these fatal deficiencies.

In an attempt to side-step these findings, Plaintiffs raise a number of red herrings that do not save their deficient claims and merely obfuscate the issues. The primary red herring is that ICANN has voluntarily assumed a role in the "internet ecosystem" to enforce unidentified and vague "policies" by all registries and all registrars on behalf of the entire Internet community—which is literally billions of individuals and businesses. This theory does not sound in fact, law, or logic. At bottom, Plaintiffs still have not identified any policy—much less an ICANN policy—that grants them the uncontested sole right to register the ASCII domain names at issue, nor have Plaintiffs established any relationship with ICANN (contractual or otherwise) that would confer standing to sue ICANN for these causes of action.

Plaintiffs have had three opportunities to state a claim against ICANN, with explicit and detailed orders issued by the Court. They have failed to do so and, 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).

ARGUMENT

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

Plaintiffs' primary "theory" regarding standing is that ICANN supposedly "voluntarily assumed the role of applying and enforcing all policies – its own, VeriSign's, and the registrars'" and that ICANN has "sole enforcement responsibility" of those policies. (Opp. at 9.) Under Plaintiffs' far-fetched theory (which Plaintiffs do not support with any facts or case law), ICANN allegedly undertook the responsibility to the entire Internet community to enforce alleged policies of (i) registries for any of the over 1,200 gTLDs in the domain name space, and (ii) any of the approximately 3,000 ICANN-accredited registrars. Further, according to Plaintiffs, because ICANN purportedly has "sole enforcement" responsibility for these policies, if any potential or actual registrants (like Plaintiffs) have a legal dispute with a registrar or registry, those registrants have to pursue such claims against ICANN. While not trying to denigrate Plaintiffs, this is absurd.

Plaintiffs do not plead any facts or cite to any law supporting their argument, nor is Plaintiffs' interpretation of ICANN's role reasonable. Further dispositive of Plaintiffs' argument is the fact that Plaintiffs are not parties to either the contract between ICANN and Verisign (or any other registry) or the contract between ICANN and its accredited registrars, nor are Plaintiffs third-party beneficiaries of these contracts. *See The 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).

The fact that ICANN describes its role as "*ensuring that registries and registrars comply with policies related to those issues*" (Opp. at 9) does not somehow mean that there is any policy granting Plaintiffs the uncontested sole right to the domain names they seek, or that ICANN is in any way required to act on Plaintiffs' behalf in obtaining those domain names for Plaintiffs. In fact, Plaintiffs misleadingly quote only a portion of the noted Question and Answer on the registrant FAQ webpage on ICANN's website: "Q: Does ICANN help with domain ownership or registration disputes? A: No, **ICANN does not get involved in disputes regarding domain**

ownership or registration. ICANN's role is at the policy level, in ensuring that registries and registrars comply with policies related to those issues, developed through a bottom-up, consensus-based multistakeholder process." (SAC ¶ 128, n.65 (emphasis added).)

Simply because Plaintiffs paid a fee to a registrar, and that registrar later paid a fee to ICANN, does not mean that Plaintiffs have standing to sue ICANN. Nevertheless, that appears to be the entire thrust of the Opposition. Plaintiffs now claim that ICANN's argument has been "eviscerated," but do not and cannot explain how. (Opp. at 5, 9.) Plaintiffs cannot allege that they pay any money to ICANN (because they do not), such that they are then authorized to sue ICANN by virtue of those payments. In fact, Plaintiffs' Opposition demonstrates that the exact opposite is true: "Every time a domain transaction occurs . . . *registrars*"—not registrants like Plaintiffs—"*give ICANN its share*." (Opp. at 5 (emphasis in original).[1]) In short, Plaintiffs' payment of registration fees to registrars does not give them standing to sue ICANN.

Plaintiffs also argue that, because they have "consummated roughly 1000 transactions" in the past, they are entitled to the domain names they ***seek*** to register here. (Opp. at 10.) This Court, however, has already rejected Plaintiffs' argument: "absent any breached promise to Plaintiffs, the disparate treatment of Plaintiffs versus Elon Musk do not constitute an injury to Plaintiffs, as Plaintiffs do not allege Defendant discriminated against Plaintiffs on a legally prohibited basis." (2025 Order at 3.) Further, Plaintiffs' registration of other unrelated domain names does not establish any policy ***by ICANN***.[2]

Accordingly, Plaintiffs have not alleged any standing to sue ICANN for any cause of action, and the entire SAC should be dismissed with prejudice.[3]

[1] ICANN does not understand how its citation to the Registrar Accreditation Agreement is "highly misleading." (Opp. at 5.) The website Plaintiffs cite in their Opposition and SAC likewise "refer[s] to Section 3.9 of the 2013 Registrar Accreditation Agreement (RAA) for more details." (Opp at 5, SAC ¶ 40, n.15.)

[2] Plaintiffs also try to revive their hotel analogy by citing to case law regarding franchisor liability. (Opp at 10.) ICANN, however, is not a franchisor, nor does it exercise any similar level of control over Verisign (or any registry for that matter).

[3] Plaintiffs cannot pursue a quiet title cause of action against ICANN or any other entity because they have not established legal title to the domain names they seek, as set forth in more detail below.

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

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

Plaintiffs fail to allege that ICANN engaged in any unlawful or unfair conduct under California's UCL, and its Opposition does not demonstrate otherwise. As to the unlawful prong, Plaintiffs' entire argument apparently rests on their claim that ICANN tortiously interfered with their contracts with registrars (even though Plaintiffs do not plead this in the SAC) and fails for the same reasons as discussed below.

As to the unfair prong, Plaintiffs do not meaningfully respond to any of the arguments ICANN made in its Demurrer. Instead, Plaintiffs again claim that, because they paid a fee to the registrar for their ***non-ASCII*** domain names, and the registrar subsequently paid a small fee to ICANN, ICANN undertook the responsibility of ensuring that Plaintiffs would be able to register the ***ASCII*** version of those domain names (despite the absence of any ICANN policy in this respect). Plaintiffs do not cite to any law supporting this argument, and the case they do cite is inapposite here. In that case, the plaintiffs—direct customers of the defendant—filed a lawsuit for breach of contract and violation of California's UCL on the ground that when the defendant charged them for its products, it added additional misleading fees to the invoices. *Sepanossian v. Nat'l Ready Mixed Concrete Co.*, 97 Cal. App. 5th 192, 197 (2023). Here, however, Plaintiffs pay no money directly to ICANN, have not entered into any contract with ICANN, and have no other direct relationship with ICANN.

Plaintiffs also allege that they reasonably relied on the 2013 letter by Verisign because "VeriSign invited Plaintiffs to discuss the policy, Plaintiffs traveled to VeriSign at their own expense, had a one-hour meeting with the letter's author, and complimented VeriSign on its *perfect design for implementation of ICANN policy*." (Opp at 16–17.) Conspicuously missing, however, is any allegation that ***ICANN*** participated in any of those discussions, attended the meeting, had any interaction with Plaintiffs on this topic, or otherwise adopted any plan set forth in Verisign's 2013 letter as ICANN's own policy. (In fact, plaintiffs never met with ICANN on any of these issues.) Plaintiffs' alleged meeting with Verisign does not amount to unfair action on

ICANN's part, as ICANN literally did nothing to or with Plaintiffs.

Plaintiffs continue to allege that they relied on other vague "ICANN policies" in registering and renewing their domain names, notwithstanding that this Court has twice ruled 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." (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.

Finally, Plaintiffs cannot demonstrate that ICANN caused any economic injury to Plaintiffs. *See Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 322 (2011). ICANN has never made any statement or representation to Plaintiffs that Plaintiffs are automatically entitled to the ASCII gTLD versions of the domains listed in Exhibits E1 or E2. ICANN's posting a letter from Verisign, along with thousands of other correspondence on its webpage, is plainly insufficient (moreover, that letter does not establish that Plaintiffs are entitled to the domain names they seek). *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).

B. Plaintiffs Fail To State A Claim For Breach Of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing (Counts Two and Three).

Despite repeated promises from Plaintiffs to identify the contract between them and ICANN, and despite explicit instructions from the Court, the SAC again fails to attach, quote from, or allege any contract between Plaintiffs and ICANN. Accordingly, the contract claims must fail, as they have twice before. *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."); *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."); 2024 Order at 2 ("Plaintiffs do not attach a copy of the complaint or quote the relevant provisions verbatim in the body of the complaint,

which is problematic."); 2025 Order at 3 ("Plaintiffs do not allege when Plaintiffs entered into such an agreement, what the terms of the agreement were, and how the parties reached that agreement. Plaintiffs' allegations amount to bare legal conclusions.").

Plaintiffs' arguments in the Opposition regarding the so-called contract are esoteric: Plaintiffs register "their domain names and pay[] their money into the 'internet ecosystem', where ICANN pledged to apply and enforce the policies of ICANN and VeriSign[,]" and ICANN "create[ed] a scheme where the registrars sold domain names, the registries set policy governing the domain names, and ICANN set additional policies and pledged to enforce *all* policies." (Opp at 17 (emphasis in original).) If all that is true (which it is not), where is the contract that says each of those things? In fact, there is no such contract.[4] Plaintiffs' counsel represented to the Court at the hearing on ICANN's demurrer to Plaintiffs' First Amended Complaint that Plaintiffs would allege "the date of the contract, when [it was] formed, how [it was] formed, et cetera," yet the SAC fails to allege any such facts. (Jan. 29, 2025 Hr'g Tr. at 11:28-12:1, Demurrer Exhibit A.)

Moreover, the only actual contracts to which Plaintiffs refer—but notably do not attach—are Plaintiffs' contracts with the ***registrars*** to register the non-ASCII domain names. (Opp. at 17 (citing to Ex. E1 and E2).) ICANN is not a party to those contracts, which Plaintiffs concede. (SAC ¶ 224 ("In registering and renewing the domain names with a registrar, Plaintiffs entered into contracts with that registrar[.]").)

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 an "uncontested sole right" to register and operate the ASCII versions of the domains that they seek.

Plaintiffs likewise cannot establish that the contents of Verisign's 2013 letter comprise any policy, much less ICANN policy. Plaintiffs claim (again) that ICANN "published the letter on its

[4] Plaintiffs' argument that ICANN has *capacity* to enter into a contract is beside the point because it does nothing to establish that ICANN *did* enter into any such contract with Plaintiffs.

website, meaning ICANN received the letter and had reason to know its contents," but did not publicly object, retract, or clarify Verisign's letter. (Opp. at 7.) As a reminder, ICANN publishes thousands of letters from the Internet community on its website in accordance with its transparency efforts under its Bylaws. According to Plaintiffs' theory, all statements in any one of the thousands of letters amount to ICANN policy unless ICANN publicly objects, retracts, or clarifies the statements in each of those letters sent by third parties—which is not feasible and makes no sense. This Court has now ruled twice that the 2013 Verisign letter does not comprise ICANN policy, and Plaintiffs do not plead any new facts demonstrating otherwise.

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

Plaintiffs' quasi-contract claim fails for the same reasons their breach of contract claim does: there is no interaction, statement, or conduct between ICANN and Plaintiffs to warrant any implied or actual contractual relationship. *See 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 continue to rely on their theory that, by registering ***non-ASCII*** domain names with a registrar, which then pays a tiny fee to ICANN, ICANN supposedly was required to help Plaintiffs obtain the ***ASCII*** domain names they *seek* to register, including by "enforcing and abiding by" vague "policies." (Opp. at 14.) Tellingly, Plaintiffs cite to no facts or arguments to support this novel theory.

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

Plaintiffs' arguments in support of their breach of fiduciary duty claim largely are a recitation of their claims regarding standing, namely that ICANN supposedly voluntarily accepted broad enforcement duties on behalf of the entire Internet community, including Plaintiffs. Plaintiffs rely on an article regarding a professor's retirement to suggest that ICANN was formed with the principles of fiduciary duties in mind. (Opp at 8, citing SAC ¶ 209.) The article (which of course is not evidence of anything) does not say whether ICANN actually has fiduciary duties to anyone but, more importantly, the article does not establish any fiduciary duty between ICANN and the individual Plaintiffs here (or anyone else). At bottom, Plaintiffs have not 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 3 ("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.").)

Further, Plaintiffs have not alleged any fiduciary duty that ICANN supposedly breached, and Plaintiffs' Opposition makes clear that there are none. Plaintiffs vaguely refer to supposed fiduciary duties that ICANN breached, which "mirror ICANN's policies." (Opp at 12–13.) Notably, however, this Court already ruled that "[n]one of these sections . . . establishes a policy that ICANN will approve a single character domain name." (2024 Order at 3.) For the same reason, none of the "duties" identified in Plaintiffs' Opposition amount to a duty to approve the single character domain names at issue here. The bottom line is that the SAC does not allege that ICANN owes a fiduciary obligation to Plaintiffs (or to any of the other billions of members of the Internet community), and ICANN has not breached any such duty to Plaintiffs in all events.

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

Plaintiffs' claim for conversion fails because they cannot plead any facts supporting that they have an ownership interest in—much less the "uncontested sole right" to register—the domain names they seek, for the reasons set forth above.[5] *See Archer v. Coinbase, Inc.*, 53 Cal. App. 5th 266, 276 (2020). Nor has ICANN taken any "affirmative action to exercise dominion over or deprive a plaintiff of his or her property." *Archer*, 53 Cal. App. 5th at 276. In fact, both Plaintiffs and this Court have acknowledged that ICANN has not registered or transferred the ASCII domain names at issue. (SAC ¶ 142; 2025 Order at 4.) Plaintiffs' vague allegations regarding ICANN supposedly "acting as its own registrar[,]" "warehousing the domain names[,]"

[5] Plaintiffs urge this Court to adopt the Ninth Circuit's ruling in *Kremen* over the findings of California courts regarding whether domain names are property rights. *See Palacio Del Mar Homeowners Ass'n, Inc. v. McMahon*, 174 Cal. App. 4th 1386, 1391 (2009) (quoting *Network Sols., Inc. v. Umbro Int'l*, Inc., 529 S.E.2d 80, 86 (Va. 2000)); *In re Forchion*, 198 Cal. App. 4th 1284, 1309 (2011) (The "consensus among courts nationwide is that [a] domain name is a product of contract for services, not property owned by registrant[.]"). While this argument is not critical to ICANN's Demurrer because Plaintiffs' conversion claim fails for other reasons, this Court has already held that *Kremen* "does not bind this Court." (2025 Order at 4.)

"competing with Plaintiffs for ownership of the domain names[,]" and "preventing Plaintiffs from utilizing the single character domain names" (Opp. at 14) are conclusory allegations that are unsupported by any facts. There is no conversion.

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

Plaintiffs' Opposition confirms that their tortious interference claim (and therefore their UCL claim based on alleged "unlawful" conduct) must fail. ICANN argued in its Demurrer that Plaintiffs have not identified a contract between Plaintiffs and Verisign, and instead Plaintiffs point to the 2013 Verisign letter (which on its face is not a contract that Verisign or Plaintiffs signed).[6] Plaintiffs argue that this letter comprises "ICANN policy" (Opp. at 18), and in so doing, Plaintiffs essentially concede that there is no contract between Plaintiffs and Verisign.

Plaintiffs also argue that ICANN is interfering with Plaintiffs' contracts with registrars (Opp. at 18), even though the SAC does not contain any allegations regarding Plaintiffs' inability to perform on such a contract(s) or ICANN's intent or efforts to induce Plaintiffs to breach that alleged contract(s). *See Farmers Ins. Exch. v. State of California*, 175 Cal. App. 3d 494, 506 (1985). Moreover, to the extent such contracts exist between Plaintiffs and certain registrars, those contracts relate only to the non-ASCII domain names that Plaintiffs have already registered and presumably are silent as to the ASCII domain names that Plaintiffs ***seek*** to register through this litigation—noting, of course, that any such (potential future) registrations would be completely separate and distinct domain name registrations.

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

Plaintiffs' quiet title action fails for the simple reason that Plaintiffs do not have legal title over the domain names they ***seek*** in this lawsuit. *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). As set forth above and in ICANN's Demurrer, Plaintiffs have registered various ASCII.IDN domain registrations, but this

[6] As noted in ICANN's Demurrer, 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.

entire dispute relates to Plaintiffs' desire to obtain the ASCII.ASCII versions of these domains in .COM and .NET, which Plaintiffs concede they do not have. (*See, e.g.*, SAC ¶ 50 ("Plaintiffs sue to register their same English script second-level domain names"); Prayer for Relief (asking the court to "transfer" the domain names at issue in Exhibits E1 and E2 to Plaintiffs).) Plaintiffs cannot seek to quiet title to (potential future) domain names that they have not yet registered. There is no title to quiet.

CONCLUSION

Given that Plaintiffs have had two opportunities to amend their complaint and have not been able to state a claim against ICANN, ICANN respectfully requests that the Court dismiss the SAC 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[.]"); 2025 Order at 5 (recognizing that the "Court has already provided Plaintiffs with an opportunity to state claims against Defendants, and Plaintiff failed to do so. As such, leave to amend is likely futile.").

Dated: June 17, 2025

JONES DAY

By: */s/ Jeffrey A. LeVee*
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