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Attorneys for Plaintiffs Verandaglobal.com, Inc.
and Bryan Tallman

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, INC., a California corporation, and DOES 1-10,

Defendants.

Case No.: 23STCV19554

Assigned for all purposes to:
Hon. Tony L. Richardson

PLAINTIFFS' NOTICE AND EX PARTE APPLICATION FOR RELIEF

[Filed with Declaration of Christopher Hellmich; [Proposed] Order]

Hrng Date:	October 1, 2024
Time:	8:30 AM
Dept.:	39
Complaint Filed:	August 16, 2023
FAC Filed:	March 14, 2024

TO THE COURT AND ALL PARTIES OF RECORD PLEASE TAKE NOTICE THAT, on Tuesday, October 1, 2024, at 8:30 AM, in Department 39 in the Stanley Mosk Courthouse located at 111 N. Hill Street, Los Angeles, CA 90012, Plaintiffs Verandaglobal.com, Inc and Bryan Tallman, shall and hereby do apply Ex Parte to continue the hearing set for October 3, 2024, at 8:30 AM on Defendant Internet Corporation for Assigned Names and Numbers, Inc.' ("ICANN") demurrer to a date and time convenient for the Court and to permit ICANN to file a supplemental reply brief in support of its demurrer that exceeds the reply brief page length as provided in Cal. Rules of Court 3.1113(d), if ICANN should so choose.

Good cause exists to grant the relief requested because (i) Plaintiffs' lead counsel, Talcott Franklin's, mother is gravely ill and he will be unavailable for the hearing on October 3, 2024 (see Declaration of Talcott Franklin), and (ii) to equitably ensure ICANN is not prejudiced by Plaintiffs' counsel's mistake in miscalendaring Plaintiff's brief in opposition to the demurrer such that it was filed one day late and exceeding the permissible page length.

On Thursday, September 26, 2024, Plaintiff's counsel, Talcott Franklin, gave notice of this Ex Parte Application to ICANN's lead counsel, Jeff Levee, by phone before 10:00 AM PT and email at 12:45 pm PT. See, Declaration of Christopher Hellmich, ¶ 11. Mr. Franklin offered to request the hearing on this Application be set for either September 30 or October 1 and Mr. Levee selected October 1, 2024. *Id.* Mr. Levee advises that ICANN opposes the Ex Parte relief the Plaintiffs seek. *Id.*

This Application will be based upon this notice, the attached memorandum of points and authorities, the declaration of Christopher Hellmich, and the records and files in this action.

FURTHER, Plaintiffs ask that the October 3, 2024 hearing be continued because lead counsel just learned that his mother is in critical condition at Salem (OR) Hospital and unlikely to survive.

Date: September 30, 2024

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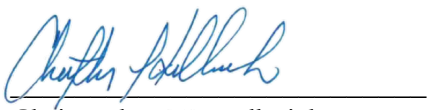

Christopher W. Hellmich
Attorney for Plaintiffs Verandaglobal.com, Inc. and Bryan Tallman

MEMORANDUM

PART I

Plaintiffs' lead counsel learned over the weekend that his mother is unlikely to survive her hospitalization (Franklin Decl.), and therefore asks the Court to continue the October 3, 2024 hearing on Defendant's demurer, as well as any hearing on the relief requested in Part II of this Application.

PART II

On the evening of September 25, 2024, Plaintiffs' counsel read Defendant ICANN's reply and its argument that Plaintiffs' brief exceeded the 15-page limit and was filed a day late due to the September 27, 2024, Indigenous People's court holiday. ICANN Reply at 1. Declaration of Christopher Hellmich ("Hellmich Decl.") ¶ 4.

Mr. Hellmich serves as local counsel for Plaintiffs and the out-of-state Plaintiffs attorneys Talcott Franklin and Jonathan Sahrbeck. *Id.* ¶ 5. The Court approved Messrs. Franklin and Sahrbeck's pro hac vice applications on January 3, 2024. Mr. Hellmich was solely responsible for calendaring and filing the demurrer as well as the formatting of Plaintiffs' opposition brief. *Id.*

Mr. Hellmich uses Clio legal software for managing litigation including calendaring due dates, however, the version he used does not populate federal and state holidays. *Id.* ¶ 6. Mr. Hellmich states he is solely responsible for failing to calculate the filing date of Plaintiffs' opposition brief to include the Court holiday on September 27, 2024. *Id.* Mr. Hellmich's federal and appellate practice caused him to erroneously approve and file Plaintiffs' opposition brief that exceeded the 15 pages permissible under Cal. Rules. Ct. 3.1113(d). *Id.* None of Mr. Hellmich's clients had any role in the two mistakes he made. *Id.*

The Demurer at issue is a virtual repeat of the Demurer filed by ICANN on which Judge Goovitch gave Plaintiffs leave to amend their Complaint to allege that ICANN had policies permitting single-character domain names. The Reply ICANN filed on September 25, 2024 is very similar to the Reply ICANN filed on February 6, 2024.

Within hours of discovering the errors Plaintiffs' lead counsel, Mr. Franklin, called ICANN's lead counsel, Mr. Levee, to discuss the errors. Id. ¶ 11. Mr. Franklin stated Plaintiffs intended to file an ex parte application to continue the October 3, 2024 hearing and either allow ICANN to file a reply brief not to exceed 25 pages or withdraw Plaintiffs' existing opposition and file a 15 page opposition nine court days before the continued hearing. Mr. Franklin asked whether ICANN opposed such an application. *Id.* Mr. Levee later informed Mr. Franklin via email that ICANN rejected Mr. Franklin's proposals. *Id.*

Plaintiffs counsel represent they did not maliciously or for any improper purpose commit these errors. *Id.* ¶ 7.

"The law strongly favors trial and disposition on the merits." *Mink v. Superior Ct.*, 2 Cal. App. 4th 1338, 1343 (1992). ICANN cites *Jack v. Ring LLC*, 91 Cal. App. 5th 1186, 1210, 309 Cal. Rptr. 3d 130, 149–50 (2023), review denied (Sept. 13, 2023), in arguing the drastic remedy of dismissing Plaintiffs' amended complaint with prejudice, has no application here. According to the *Jack* Court:

> Here, after the time to file papers on the motion to compel [arbitration] had passed, plaintiffs sought to file supplemental papers three days before the hearing and Ring sought to file supplemental papers on the day of the hearing. At the hearing, the trial court stated that "both sides seem to be under the impression that once a matter is fully briefed, you can just keep filing papers," noting it "was just handed ... additional papers a few minutes ago." The court then denied *both parties'* requests. We see no abuse of discretion.

91 Cal. App. 5th at 1210, 309 Cal. Rptr. 3d at 149–50 (emphasis in original). Neither party in *Jack* was denied a determination on the merits, as the Court denied a motion to compel arbitration.

To ensure ICANN is not prejudiced in any manner and to ensure the Court considers all Plaintiffs arguments Plaintiffs propose the equitable resolution would be for the Court to (i) continue the October 3 hearing on ICANN's demurrer until a date convenient for the Court and ICANN, and (ii) permit ICANN to file a new or supplemental reply brief not to exceed 25 pages total to address any

points it determines it was unable to address due to the 10-page brief limit. Alternatively, Plaintiffs are prepared to file a 15-page opposition brief nine court days in advance of the reset hearing date.

Should the case go forward, Plaintiffs counsel commit to taking concrete steps to ensure this never happens again. Hellmich Decl. ¶ 8.

Our history in this case has been one of courtesy and professionalism. *Id.* ¶ 9. When ICANN's counsel asked to adjourn the hearing date for this motion to go on a personal vacation, Plaintiffs consented. *Id.* When ICANN asked to stay its responses to the discovery Plaintiffs served last year, Plaintiffs consented. *Id.* Just as ICANN should not suffer prejudice due to Mr. Hellmich's errors, neither should his clients.

While the Court has equitable powers to ensure the case is resolved on its merits and to cure any prejudice that may have arisen from Plaintiffs' counsel's mistake "the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice." *Elston v. City of Turlock*, 38 Cal. 3d 227, 233 (1985).

Here, Plaintiffs' counsel acted within hours of discovering their error and offered equitable solutions to cure whatever prejudice ICANN may assert. Under these circumstances, "very slight evidence is required to justify relief [from attorney error]. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." *Mink*, 2 Cal. App. 4th at 1343.

Finally, it goes without saying that Mr. Hellmich sincerely apologizes to ICANN, its counsel, and the Court for his error. Hellmich Decl. ¶ 10. To that end, if the Court chooses to have Plaintiffs file a 15-page Opposition, Mr. Franklin has offered to pay ICANN's reasonable attorneys' fees for the time spent crafting any arguments not used in response to the new Opposition. Depending on the fees allowed, Mr. Franklin respectfully requests that he be given six months to make such payments, as he and Mr. Sahrbeck just formed a law firm to have newly licensed attorneys do indigent criminal defense

in Maine, and have newly hired attorneys that they must support.[1]

For these reasons, Plaintiffs respectfully request the Court grant the relief sought herein.

Date: September 30, 2024

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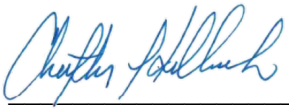

Christopher W. Hellmich

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SAHRBECK P.C.
Jonathan Sahrbeck (*pro hac vice* filed) **
** Licensed only in ME

Attorneys for Plaintiffs Verandaglobal.com, Inc. and Bryan Tallman

[1] Maine relies on private attorneys to perform the vast majority of indigent criminal defense, and the lack of counsel willing to do the work has led to what the Maine Supreme Court Chief Justice called a "crisis" within the criminal justice system. Each newly licensed attorney at the new firm must agree to perform 40 hours of indigent criminal defense per week, and the firm hopes to grow significantly over the coming year in order to address this crisis.