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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

VERANDAGLOBAL.COM, INC., a Florida corporation, and BRYAN TALLMAN, a California citizen, Plaintiffs, vs. INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, INC., 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 **PLAINTIFFS' OPPOSITION TO INTERNET CORPORATION FOR ASSISGNED NAMES AND NUMBERS, INC.'S DEMURRER** Date: June 25, 2025 Time: 8:30 am Dept: 39 Complaint Filed: August 16, 2023 SAC Filed: February 18, 2025 Reservation ID: 677029364434

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Plaintiffs VerandaGlobal.com, Inc. (d/b/a First Place Internet ("FPI")) and Bryan Tallman hereby respond ("Opp.") to Defendant Internet Corporation for Assigned Names and Numbers' ("ICANN") Demurrer ("Dem.") against Plaintiffs' Second Amended Complaint ("SAC") as follows:[1]

I. FACTS.

A. Transaction Fees.

ICANN states that "it is clear from the face of the agreement between ICANN and registrars (the Registrar Accreditation Agreement or 'RAA') that the payment of fees does not create a relationship between ICANN and … registrants like Plaintiffs" and cites to the 2009 RAA § 5.10. Dem. 13-14. **This is a highly misleading citation.** The RAA provides for only for **Accreditation Fees**. 2009 RAA § 3.9. Plaintiffs alleged ICANN is accepting Plaintiffs' **transaction-based fees**, SAC ¶ 40 n.15, which are not provided for in the 2009 RAA. The **transaction-based fees** are located on the ICANN website page referenced by Plaintiffs in SAC ¶ 40 n.15. ICANN's reference to the RAA also demolishes ICANN's argument that the *registrar* pays the transaction fees, Dem. 13, 18, as the RAA does not mention or obligate the registrar to pay transaction fees. Aside from the fact that all inferences are resolved in Plaintiffs' favor, Tentative at 2, Plaintiffs' allegation that ICANN is accepting Plaintiffs' money has the added virtue of being true. SAC ¶ 131 (quoting registrar domain.com: "Every time a domain transaction occurs … *registrars give ICANN its share*").

B. Policy.

ICANN argues VeriSign's letter is not "policy", Dem. 11, but ignores Plaintiffs' allegation that Plaintiff FPI registered and renewed with a registrar the domain name 1firstplace.com,[2] and *thereafter obtained the Katakana equivalent to "1firstplace.com" consistent with the Use Case #1 transliteration policy set forth in the VeriSign letter and ICANN did nothing to block or attempt to impede that transaction*. SAC ¶ 134. If the VeriSign letter is not "policy", then how was FPI able to register this transliteration? This allegation

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[1] This Court understands the standard of review. Tentative Order, Jan. 29, 2025 ("Tentative"). Except where otherwise noted, ICANN correctly states the elements of each cause of action. Plaintiffs incorporate both by reference.

[2] "1firstplace.com" was intended in SAC ¶ 134 but either registration holds the same allegation.

alone shows that the VeriSign letter *is* policy governing .com and .net domain names. Indeed, VeriSign's letter is "Re: VeriSign's *Implementation* of the new IDN.IDN Transliterations of .com and .net" and is a high-level communication between Senior Officers of both companies. SAC ¶ 77 (link at n.39) (emphasis added). ICANN's "Guidelines for the *Implementation* of Internationalized Domain Names Version 4.1" (emphasis added) state:

> "**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*.** […] The registry should also encourage its registrars to call attention to **these policies** for all prospective IDN registrants [Plaintiffs]. If material is provided both via the IANA and other channels the registry must ensure that its substance is concordant across all platforms." (emphasis added).

SAC ¶ 80. VeriSign (and ICANN) made the Implementation letter directly available online. SAC ¶ 78. ICANN states under the heading "Domain Name Registrants' Responsibilities" that "You must comply with the terms and conditions posted by your Registrar, *including applicable policies from your Registrar, the Registry and ICANN*." SAC ¶ 89 (emphasis added).

The Implementation letter states that "a registrant in [Hebrew, Hangul, or Katakana] … *will have the sole right* … to register the second level name *across all or any of our IDN TLDs, including the .com or .net TLDs*…" and that "*That second level domain name will be unavailable* in all other transliterations of .com IDN TLDs and *in the .com registry* unless and until John Doe (and only John Doe) registers it in another .com IDN TLD or in the .com registry." SAC ¶¶ 35, 87.

The signatory of the letter, Pat Kane, reiterated this position on a recorded call. SAC ¶ 142. VeriSign invited Plaintiff FPI to discuss the policy, and FPI met with the letter's author for over an hour, where FPI complimented VeriSign on its *perfect design for implementation of ICANN Policy*. SAC ¶ 38. After that meeting, Plaintiff FPI paid a premium price (over $25k) for the Hangul version of "1.net". SAC ¶ 39. To paraphrase, the policy states that if a registrant owns in one language, that registrant has the "sole right" to register in all languages. Thus, ICANN's claim that a registrant in Hangul could be competing with a registrant in Katakana for the .com version is not possible (Dem. 16) – "That second level domain name *will be unavailable in all other transliterations*". SAC ¶¶ 35, 87, 142.

ICANN argues that because the letter talks about "plans", it cannot be policy. Dem. 11, 15-16.

"Plans" are "a scheme or method of acting, doing, proceeding, making, etc., developed in advance".[3] Further, ICANN repeatedly called these "IDN policies". *Id.* ¶ 79. VeriSign "readily advertised" the material online and the Case Use #1 and #2 remain on VeriSign's blog. *Id.* ¶ 36.

Plaintiffs do not "allege that merely posting a letter on ICANN's website" constitutes adoption of a policy. Dem. 11. Plaintiffs allege that "ICANN solicited a letter from VeriSign setting forth a transliteration policy". SAC ¶¶ 75, 76. "In response to these solicitations, VeriSign" sent ICANN the letter containing Case Use #1 and Case Use #2. *Id.* ¶ 77. ICANN published the letter on its website, meaning ICANN received the letter and had reason to know its contents. *Id.* ¶ 78. ICANN thereafter emphasized that the "IDN policies" would be available on registries' websites. *Id.* ¶ 79. ICANN instructed the registries to "encourage its registrars to call attention to these policies". *Id.* ICANN also noted that registries seeking to deploy IDNs "have been authorized to do so", thus validating the VeriSign's implementation and letter. *Id.* ¶ 81. Plaintiffs know of no "public objection, retraction, or clarification that ICANN has ever made" regarding VeriSign's Letter. *Id.* ¶ 84. ICANN also adopts policies in multiple ways. *Id.* ¶ 41. These allegations go far beyond merely posting and give rise to at least an inference (Tentative at 2) that the Implementation letter was ICANN policy. However, as Plaintiffs' additional standing allegations make clear, whether or not the letter is VeriSign policy or ICANN policy is not determinative, as ICANN assumed responsibility for enforcing both ICANN and registry (VeriSign) policies. SAC ¶¶ 123-129, 139, 140; Opp. 9-11.

ICANN *ipse dixits* that the other policies listed by the SAC are "not relevant", Dem. 11 n.5, but they are relevant: If ICANN applied ICANN's policy against warehousing to the domain names listed in column 3 of Exhibits E1 and E2 (*e.g.*, "1.com"), as ICANN does to every other domain name, then ICANN would have to release these domain names for registration and Plaintiffs under the transliteration policy articulated by VeriSign would have priority access to register them. SAC ¶ 142 (p. 37:6-10). If ICANN would stop violating its policy of acting as a registrar, then ICANN could not keep

[3] https://www.dictionary.com/browse/plan.

renewing its illegitimate registration of the domain names. *Id.*[4] The other policies are also highly relevant to ICANN's fiduciary duties, as the policies mimic the Restatement of Agency. SAC ¶ 210.

C. ICANN "Asserts" Without Referencing Authorities or The Record.

The Demurrer repeatedly relies on *ipse dixit* and fails to develop argument or cite to authority. *Foster v. Reverse Mortg. Sols., Inc.*, No. CV1910039DSFFFMX, 2020 WL 4390374, at *9 (C.D. Cal. May 13, 2020) ("We require contentions to be accompanied by reasons … Perfunctory, undeveloped arguments without discussion or citation to pertinent legal authority are waived"). For example, ICANN states without argument or authority that Plaintiffs were not intended beneficiaries of the registry or RAA agreements, "[t]hus, just as **the law** forbids Plaintiffs from prevailing on a breach of contract claim, they cannot prevail on a quasi-contract theory." Dem. 20 (emphasis added). What law? ICANN cites no authority, *id.*, and did not even argue the RAA in the breach of contract section. Dem. 16-18. Further, the RAA argument was eviscerated by ICANN's misleading citation to the 2009 RAA. Opp. 5. ICANN's statements here are emblematic of the entire Demurrer: "law" without citation, *ipse dixit* without analysis, and mischaracterizations of documents and allegations.

D. Denigration

ICANN also avoids argument through denigration. *United Grand Corp. v. Malibu Hillbillies, LLC*, 36 Cal. App. 5th 142, 153, 248 Cal. Rptr. 3d 294, 303 (2019) ("Name calling and ridicule are not cogent legal arguments."). For example, ICANN "argues" Plaintiffs' fiduciary duty claim is "nonsensical", "ludicrous", and "[e]ven more ludicrous" but fails to respond to all but one of Plaintiffs' fiduciary duty allegations. Dem. 20. ICANN ignores the allegations that (emphasis added):

- The foundational conceptual document for ICANN required that ICANN "operate as a private entity *for the benefit of the Internet community as a whole*." SAC ¶ 206.
- ICANN was set up to have fiduciary responsibilities to the Internet community. Indeed, attorney Kathryn Kleiman, in "[h]elping set up ICANN 20 years ago" candidly confessed that *she "applied principles of fiduciary duty* she'd learned from [her professor], '*running the internet for the benefit of the world.*'" SAC ¶ 209.

[4] The GNSO allegations were plainly included "To address this Court's February 15, 2024 Order on the Demurer" (SAC ¶ 4) requiring Plaintiffs to establish that ICANN allowed for single-character domain names, not to show a transliteration policy as ICANN inaccurately claims. Dem. 10-11.

- As ICANN has explained, "ICANN is *a unique model* and therefore ICANN *accountability structures do not fit into any one traditional definition*." However, consistent with Attorney Kleiman's admission, *the duties ICANN assumes in its policies directly mirror the duties assumed by a fiduciary in the Restatement Third of Agency §§ 8.01-8.05*. SAC ¶ 210.

ICANN responds only to Plaintiffs' allegation that "ICANN acknowledges it is a fiduciary, stating that 'At all times, the Board will continue to make all decisions in furtherance of ICANN's mission, under consideration of *its* duty of care and *its* fiduciary responsibility.' SAC ¶ 208; Dem. 20. It is unclear whether "its" refers to ICANN or the Board, and all inferences are resolved in favor of Plaintiffs. Tentative at 2. To repeat, *ICANN ignores all of Plaintiffs' remaining fiduciary duty allegations*, including that ICANN operates for the benefit of the internet community as a whole and was created using principles of fiduciary duty for "running the internet for the benefit of the world". SAC ¶¶ 206-210.

II. PLAINTIFFS ADEQUATELY ALLEGE THEIR CLAIMS.

A. Standing.

Plaintiffs agree a party must allege injury to have standing. Dem. 13. Contrary to ICANN's claim, Dem. 13, the 2024 Tentative Order did not even mention standing. 2024 Tentative at 1-4. ICANN then argues that Plaintiffs fail to explain how the "standing theory makes sense". Dem. 13. Assuming that is required, the SAC does so: ICANN has voluntarily set up a system where each party has unique roles. SAC ¶¶ 123-25, 128. ICANN voluntarily assumed the role of applying and enforcing all policies – its own, VeriSign's, and the registrars'. *Id.* ICANN states in an FAQ directed at registrants that "ICANN's role is at the policy level, *in ensuring that registries and registrars comply with policies related to those issues*". SAC ¶ 128. Registrars and registrants plainly understand ICANN's sole enforcement responsibility. SAC ¶¶ 126-29. ICANN further states that it can be sued. SAC ¶ 130. Again, ICANN set up a system where ICANN *is the only party responsible for enforcing policy*. SAC ¶¶ 123-28.

ICANN next argues that the transaction-based fees ICANN receives are paid by the registrar, but that claim has been eviscerated. Opp. 5. ICANN is accepting Plaintiffs' money with each transaction. *Id.* These fees "play a role in sustaining ICANN's core functions". SAC ¶ 142 (p.37:4-5). In summary, with these fees Plaintiffs are buying something from ICANN that Plaintiffs cannot get from any other participant in the "internet ecosystem": application of ICANN policies and the

enforcement of all policies. Over 26 years, an FPI principal has consummated roughly 1000 transactions utilizing the same procedures used to register the domain names at issue here. SAC ¶ 133. In none of those cases did ICANN fail to follow or enforce its policies or those of the registry. *Id.*

ICANN then states without explanation that Plaintiffs fees were not paid on transactions yet to take place, Dem. 14, but Plaintiffs' SAC is about domain names already registered and renewed. Ex. E1 and E2; SAC ¶ 132 ("Plaintiffs made payments to ICANN with each registration and renewal").

ICANN next tries to discredit Plaintiffs' analogy to a franchise by calling it "bizarre" (more denigration) and then tries to distinguish the analogy by misstating it. *Compare* Dem. 14 *with* SAC ¶ 135. Even parties at the top of the franchise (the franchisor) who never come into contact with the guest are liable where the franchisors exercise control over whatever caused the injury. *B.J. v. G6 Hosp., LLC*, No. 22-CV-03765-MMC, 2023 WL 3569979, at *8 (N.D. Cal. May 19, 2023). As ICANN notes, "injury" is at the core of standing. Dem. 13.

ICANN ignores Plaintiffs' allegation that ICANN is the sole party responsible for preventing Plaintiffs from receiving the benefits of the transliteration policy. SAC ¶ 141. In *Kremen v. Cohen*, the Court clearly viewed plaintiff as having standing to sue the con man on the lam who stole the domain name, even though the con man dealt only with the registrar. 337 F.3d 1024, 1035 (9th Cir. 2003). ICANN also fails to explain how Plaintiffs lack standing to sue their own fiduciary, or to sue ICANN for intentionally interfering with Plaintiffs' contracts. Dem. 13-14.

ICANN also makes no argument that Plaintiffs lack standing to quiet title. Plaintiffs unquestionably own the domain names on Exhibits E1 and E2. SAC ¶ 236, 238. ICANN has seemingly put into question whether Plaintiffs have sole exclusive rights not only to the English .com and .net versions of the domain names, but also versions in other languages as well. Dem. 16 (arguing the same domain name could be registered in multiple languages). Plaintiffs have the right to determine the scope of their ownership. *Water for Citizens of Weed Cal. v. Churchwell White*, 88 Cal. App. 5th 270, 281–82, 304 Cal. Rptr. 3d 613, 620–21 (2023), *review denied* (Apr. 26, 2023) ("The action may be brought whether the adverse claim be founded on evidence or utterly baseless. The action even lies against any

adverse interest that might by regarded by third persons as a cloud on title."). And even if ICANN subsequently takes no interest in the outcome, ICANN remains a defendant. *Id.*

B. Plaintiffs Have Stated Claims for Relief.

1. Quiet Title.

ICANN claims that "Plaintiffs have not alleged that they have title to the domain names at issue." Dem. 22. That is unequivocally false. SAC ¶ 240 ("The property at issue in this action to quiet title, therefore, can be described as the domain names listed in Exhibits E1 and E2, with all rights and responsibilities attached thereto.") SAC ¶ 241 ("Plaintiffs' legal titles are the registrations and renewals for each of the domain names set forth on Exhibits E1 and E2."). As owners of legal title to the domain names, Plaintiffs are presumed to be owners of *the full beneficial title*. CAL. R. EVID. 662. This presumption may be rebutted only by clear and convincing proof. *Id.* According to the registry (VeriSign), full beneficial title is every transliteration of the domain names. Opp. 5-8. No proof – let alone clear and convincing proof – has been proffered that the registry (VeriSign) is not empowered to set the bounds of full beneficial title or that the registry's words mean anything other than what they say. *Id.* Indeed, all "proof" at this early stage is to the contrary. *Id.*

ICANN also claims that "Plaintiffs plead no facts suggesting ICANN has any adverse claims to the domain names at issue, because they cannot." Dem. 22. But ICANN ignores the sentence following the selectively quoted portion of the SAC:

> Plaintiffs cannot know whether or not ICANN intends to claim an interest in the domain names. *On one hand, ICANN continues to renew the registrations.* On the other hand, ICANN's Board voted unanimously to make the domain names available for registration.

SAC ¶ 13. Further, Plaintiffs make the very allegation ICANN claims is absent:

> Despite ICANN's 2008 vote to release the Single-Character domain names for registration, ICANN has not released the Single-Character domain names listed in column 3 of Exhibits E1 and E2. *Therefore, upon information and belief, Plaintiffs allege that ICANN continues to reserve the Plaintiff's Single-Character domain names.* In so doing, ICANN improperly and contrary to ICANN policies against warehousing domain names, *continues to reserve and/or claim an adverse ownership interest in the domain names listed on column 3 of Exhibits E1 and E2*. ICANN's conduct in reserving and, thus not releasing the domain names to Plaintiffs, while taking Plaintiff's registration and renewal fees, has directly

> financially injured Plaintiffs by the loss of their money, i.e., registration and renewal fees, and separately, the inability to realize the full value of the domain names.

SAC ¶ 245. Both ICANN's cases are distinguishable. In *West v. JPMorgan Chase Bank, N.A.*, 214 Cal. App. 4th 780, 802–03, 154 Cal. Rptr. 3d 285, 303 (2013), the property had been sold to a third party who was not named in the Complaint. Here, Plaintiffs allege that ICANN is warehousing the domain names and ICANN produced no evidence of transfer. SAC ¶ 245. In *McElroy v. Chase Manhattan Mortg. Corp.*, 134 Cal. App. 4th 388, 394, 36 Cal. Rptr. 3d 176, 180–81 (2005), plaintiffs' instrument allegedly conveying title was "worthless on its face". Here, Plaintiffs hold valid registrations. *Id.* ¶ 241. ICANN's claim about domain names not being property (Dem. n.11) is addressed *infra*. Opp. 13.

ICANN made no other arguments about quiet title, including any argument concerning CAL. R. EVID. 662, which was set forth in the SAC ¶ 242. Because the SAC contains the very allegations ICANN claims were missing, the Court should deny the demurrer as to this claim.

2. Fiduciary Duty.

ICANN's primary argument (denigration), was addressed previously, as were the numerous allegations establishing a fiduciary duty that ICANN ignored. Opp. 8-9. ICANN knowingly took on enforcement and policy-making duties because it tells the market it has them. SAC ¶ 128. ICANN's remaining *ipse dixit* is that Plaintiffs failed to allege "any breach by ICANN of a purported duty to Plaintiffs in all events." Dem. 20. Plaintiffs allege *nearly two pages of fiduciary duties ICANN breached*, and ICANN addressed none of them. SAC ¶¶ 212(a-c), 213 (a-g), 214(a-f). Plaintiffs allege common fiduciary duties: Not compete with Plaintiffs. Restatement (Third) Of Agency § 8.04 (2006) (SAC ¶ 214(e)). Not use Plaintiffs' property for ICANN's purposes. Rest. 3d Agency § 8.05 (SAC ¶ 213(a-e)). Act for Plaintiffs' benefit. Rest. 3d Agency § 8.01 (SAC ¶¶ 212(a-c), 213(a-e)). Transparency. *Yazdi v. Dental Bd. of California*, 57 Cal. App. 5th 25, 43, 270 Cal. Rptr. 3d 835, 850 (2020) ("a fiduciary relationship … gives rise to a duty to make full and fair disclosure"); *Kingsway Cap. Partners, LLC v. Sosa*, 549 B.R. 897, 906 (N.D. Cal. 2016) ("must behave in a fully transparent, rational manner.") (SAC ¶ 213(f), 214(d)). Non-discrimination. *NTD Architects v. Baker*, 950 F. Supp. 2d 1151, 1157–58 (S.D. Cal. 2013) (act "in a fair, just, and equitable manner.") (SAC ¶¶ 121, 214(e)). Good faith. *Skone v. Quanco*

Farms, 261 Cal. App. 2d 237, 241, 68 Cal. Rptr. 26, 29 (Ct. App. 1968) ("act in the highest good faith") (SAC ¶ 213(a-e)). Notably, many of these fiduciary duties mirror ICANN policies. *See, e.g.*, SAC ¶¶ 24, 57 (transparency), 22, 56, 57 (not competing with registrants), 21, 56, 57 (non-discrimination), 210 (Restatement).

Further, the transparency claim is not dependent on Plaintiffs having the right to the English version single-character domain names. ICANN initiated the process of auctioning O.com and concealed the recipients of the intended auction beneficiaries. SAC ¶¶ 64, 112-119. ICANN received Plaintiff FPI's letter requesting the release of the English single-character domain names and failed to respond. SAC ¶ 34. Plaintiff FPI has an entire business plan built around 1.com. SAC ¶ 122. If 1.com cannot be obtained through the transliteration policy, then how can it be obtained? ICANN's lack of transparency alone damages Plaintiffs.

3. Conversion.

ICANN claims Plaintiffs have no interest in the domain names "for the reasons set forth above" without internal citation. Dem 20. Plaintiffs have refuted those arguments. Opp. 5-8. ICANN then drops a footnote without analysis stating that "domain names are not property rights (and thus not capable of being 'converted')" citing to *Palacio Del Mar Homeowners Ass'n, Inc.* and *In re Forchion.* Dem. 20-21 n.11. However, the Ninth Circuit did analyze *Palacio* (which is certainly more persuasive than no analysis) and found that *Kremen* is still an accurate statement of California law. *Off. Depot Inc. v. Zuccarini*, 596 F.3d 696, 701–02 (9th Cir. 2010). Likewise, the Northern District of California extensively analyzed *In re Forchion* (also more persuasive then no analysis), and found *Forchion* also did not hold that domain names were not property rights subject to conversion. *CRS Recovery, Inc. v. Laxton*, No. C 06-7093 CW, 2013 WL 140084, at *9 (N.D. Cal. Jan. 10, 2013). The *Palacio* and *Forchion* Courts were clearly aware of *Kremen*, and, given the significance of the issue, would have surely directly and conclusively corrected *Kremen* if either Court believed *Kremen* was inaccurate.

ICANN next argues that ICANN's "lack of action" defeats the second (wrongful act) and third (damages) elements of conversion, and claims that Plaintiffs concede that ICANN "has not registered" the domain names at issue. Dem. 22. But Plaintiffs did not allege the domain names were *not*

registered. SAC ¶ 52 ("Those domain names remain registered by and through an ICANN-controlled registrar"). Plaintiffs alleged the domain names "were not first registered/created by ICANN through an *accredited* registrar". SAC ¶ 142 (emphasis added). Plaintiffs clearly allege a "wrongful act":

> ICANN substantially interfered with Plaintiffs' rights to possess the domain names by knowingly or intentionally and in violation of ICANN's own policies (a) *acting as its own registrar* to renew the registration of the domain names; (b) *warehousing* the domain names; (c) *competing* with Plaintiffs for ownership of the domain names; and (d) *preventing* Plaintiffs from utilizing the single character domain names.

SAC ¶ 219. These *actions* violate ICANN's own policies against acting as a registrar, SAC ¶ 23 (quoted verbatim ¶¶ 56, 57), warehousing domain names, SAC ¶ 25 (quoted verbatim ¶ 59), competing with Plaintiffs for ownership, SAC ¶ 22 (quoted verbatim ¶¶ 56, 57), and preventing Plaintiffs from utilizing single character domain names that are designed to be released. SAC ¶¶ 1, 2. ICANN does not explain how ICANN's alleged lack of action impacts damages, but Plaintiffs clearly plead that ICANN's conversion is preventing Plaintiffs from realizing the full value of the domain names. SAC ¶ 221.

4. Quasi Contract.

ICANN states without analysis that "there is no benefit for ICANN to unjustly retain." Dem. 19. A portion of Plaintiffs' transaction fees (money) is clearly a benefit. SAC ¶¶ 178, 198 (incorporating ¶ 178). ICANN then implies without authority, argument, or citation to the SAC that because ICANN receives Plaintiffs' money from the registrar, it is not receiving a benefit, even though the first element is "receipt of a benefit" without the further requirement that the benefit come directly from a plaintiff. Dem. 20; *see Lectrodryer v. SeoulBank*, 77 Cal. App. 4th 723, 725, 91 Cal. Rptr. 2d 881, 882 (2000) (plaintiff recovered on money paid by third party).

ICANN also implies without authority or argument that the payment of fees for non-English versions of the single-character domain names does not entitle Plaintiffs to anything from ICANN. Dem. 20. Plaintiffs have plainly alleged that Plaintiffs and the market understand the fees paid to ICANN are in exchange for ICANN enforcing and abiding by its and the registry's policies, SAC ¶¶ 127, 129, including not warehousing nor acting as a registrar. SAC ¶ 172 (c, d). ICANN is not applying or enforcing ICANN or Registry policies. SAC ¶¶ 181, 182. Moreover, ICANN is telling this Court it has no obligation to do anything in exchange for Plaintiffs' money. Dem. 20. That is the epitome of

unjust enrichment.

ICANN then claims that Plaintiffs cannot maintain claims for both breach of contract and unjust enrichment, but Plaintiffs are permitted to plead inconsistent counts in the alternative:

> But NHV and VMG were permitted to plead inconsistent counts. "When a pleader is in doubt about what actually occurred or what can be established by the evidence, the modern practice allows that party to plead in the alternative and make inconsistent allegations." "The plaintiff remains free to allege any and all 'inconsistent counts' that a reasonable attorney would find legally tenable on the basis of the facts known to the plaintiff at the time." Thus, a plaintiff may plead inconsistent causes of action for breach of contract and common count. NHV and VMG cannot recover for both breach of contract and quantum meruit, but they can plead both causes of action.

Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism, 6 Cal. App. 5th 1207, 1222–23, 212 Cal. Rptr. 3d 216, 228–29 (2016), *aff'd*, 4 Cal. 5th 637, 413 P.3d 650 (2018) (citations omitted). Because ICANN denies the existence of any contract, ICANN's authorities are distinguishable. Dem. 20. In *Cal. Med. Ass'n, Inc. v. Aetna U.S. Healthcare of Cal., Inc.*, 94 Cal. App. 4th 151 (2001), the defendants embraced the contracts. *Aetna, et al.,* Br., 2001 WL 34157388, at *3 (asserting "express contracts govern the subject matter at issue"). *Lloyd v. Williams*, 227 Cal. App. 2d 646, 648, 38 Cal. Rptr. 849 (Ct. App. 1964), has no application to this case, as "[t]he first properly presented motion to amend was heard less than one week before trial." Plaintiffs already addressed ICANN's *ipse dixit* that "the law" prevents Plaintiffs from prevailing on unjust enrichment. Opp. 8.

5. Unfair Competition Law ("UCL").

"The UCL is intended to provide a remedy for such conduct where the law may not otherwise provide one." *Republican Nat'l Comm. v. Google LLC*, 742 F. Supp. 3d 1099, 1115 (E.D. Cal. 2024). The UCL is "directed toward the public's right to protection from fraud, deceit, and unlawful conduct." *Paduano v. Am. Honda Motor Co.*, 169 Cal. App. 4th 1453, 1468 (2009) (UCL is to be interpreted broadly).

"Tortious interference with contractual relations constitutes an "unlawful" act under the UCL." *JGTV, LLC v. Abate*, No. 2:24-CV-03165-JLS-MAR, 2024 WL 5274595, at *6 (C.D. Cal. Oct. 25, 2024). Plaintiffs have alleged a claim under the unlawful prong, as ICANN failed to address Plaintiffs' claim for tortious interference with Plaintiffs' *registrar* contracts. Opp. 18, Dem. 21.

"The 'unfair' prong of the UCL creates a cause of action for a business practice that is unfair even if not proscribed by some other law." *In re Anthem, Inc. Data Breach Litig.* (N.D. Cal. May 27, 2016) No. 15-MD-02617-LHK, 2016 WL 3029783, at *33; *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal. 4th 163, 181 ("[I]t would be impossible to draft in advance detailed plans and specifications of all acts and conduct to be prohibited, since unfair or fraudulent business practices may run the gamut of human ingenuity and chicanery."). "Whether a practice is deceptive, fraudulent, or unfair is generally a question of fact which requires consideration and weighing of evidence from both sides and which usually cannot be made on demurrer." *Brady v. Bayer Corp.*, 26 Cal. App. 5th 1156, 1164 (2018) (overruling a demurrer).

Sepanossian v. Nat'l Ready Mixed Concrete Co., 97 Cal. App. 5th 192, 315 Cal. Rptr. 3d 373 (2023), is analogous: the defendant charged fees for services it did not provide. *Id.* at 206. Here, ICANN claims to undertake policy making and enforcement. SAC ¶ 128. ICANN has led the entire market to believe the fees ICANN receives are for applying ICANN policies and enforcing all policies. SAC ¶¶ 127, 129 (registrars and registrants like Plaintiffs), SAC ¶ 97 (VeriSign). ICANN is not applying ICANN policies or VeriSign policies, SAC ¶¶ 155, 156, providing no countervailing benefit to consumers. Further, ICANN disclaims any enforcement or policy obligation in return for the fees. Dem. 20. The UCL does not require Plaintiffs to have directly paid ICANN the renewal fees. *Troyk v. Farmers Grp., Inc.*, 171 Cal. App. 4th 1305, 1340 (2009) ("plaintiff must once have had an ownership interest in the money or property"). Indeed, because the *registrars give ICANN its share* of the fees *every time* a domain transaction occurs, SAC ¶¶ 40, 131, consumers cannot reasonably avoid the substantial injury ICANN causes – each time they purchased and renewed a domain name "they had to pay the fees." *Sepanossian*, 97 Cal. App. 5th at 205. <u>This claim survives irrespective of whether or not the VeriSign Implementation letter is policy</u>, because Plaintiffs have identified numerous other ICANN policies that ICANN is not applying and disclaims any obligation to enforce. Opp. 12, 14 (listing violated policies).

Plaintiffs reasonably relied on the VeriSign Implementation letter. Dem. 15-16. As noted, 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. SAC ¶ 38. Only after that did Plaintiffs purchase the Hangul "1.net". SAC ¶ 39. That is far more due diligence than an ordinary consumer of domain names exercises.

Plaintiffs also have standing. Dem. 16. Plaintiffs paid money to register and renew their domain names, a share of which ICANN accepted under Plaintiffs' and the markets' understanding that the fees supported ICANN's core functions of applying and enforcing ICANN and VeriSign policy. SAC ¶¶ 40, 127, 129, 131. ICANN did neither, causing two injuries: (1) forcing Plaintiffs to pay for a service that does not exist in general; *id.* ¶ 136, and (2) specifically depriving Plaintiffs of the full value of their domain names. *Id.* ¶ 138.

6. Breach of Contract / Good Faith & Fair Dealing.

ICANN *ipse dixits* that "there is no contract between ICANN and Plaintiffs". Dem. 16. ICANN does not argue that the SAC failed to allege the contract formation elements. *Id.* "It is essential to the existence of a contract that there should be: 1. Parties capable of contracting; 2. Their consent; 3. A lawful object; and, 4. A sufficient cause or consideration." Cal. Civ. Code § 1550.

Plaintiffs have alleged these elements: (1) ICANN set up the highly sophisticated "internet ecosystem" and has contracts with numerous entities, SAC ¶¶ 123-28, so ICANN is clearly "capable of contracting". (2) Plaintiffs consented by registering and re-registering their domain names and paying their money into the "internet ecosystem", where ICANN pledged to apply and enforce the policies of ICANN and VeriSign. SAC ¶¶ 167, 168. ICANN consented by creating 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. SAC ¶¶ 123-28. ICANN also consented by accepting Plaintiffs' money so Plaintiffs could participate in that scheme. SAC ¶¶ 167, 168. (3) ICANN has never argued that each of ICANN's and VeriSign's policies is unlawful. (4) ICANN receives consideration each time Plaintiffs register or re-register their domain names. SAC ¶¶ 167, 168. Plaintiffs receive in return for that consideration ICANN's enforcement and policy-making, which is supposed to be performed in a manner that is transparent and non-discriminatory. SAC ¶ 127, 136.

Plaintiffs clearly plead the dates of the contract (each registration and renewal date Ex. E1 and 2), how it was formed, Opp. 17, and the specific terms of the contract (policies), as each contract is set

forth in its entirety through links incorporated by reference into the SAC.[5] ICANN asserts without authority that the "small" transaction fee "does not establish any contract between ICANN and registrants", Dem. 18, which is legally inaccurate. *Herbert v. Lankershim*, 9 Cal. 2d 409, 475, 71 P.2d 220, 253 (1937) (consideration adequacy is immaterial). Registrant payments are advertised as providing a registrant with application and enforcement of ICANN, registry, and registrar policies. SAC ¶¶ 127, 128. The sentence immediately prior to ICANN's enforcement obligation (see link n.65) pledges "ICANN does not get involved in disputes regarding domain ownership or registration", and yet by warehousing, re-registering, and failing to release the domain names in violation of ICANN policy, ICANN *continues to cause* a dispute regarding domain ownership and registration!

ICANN also argued that it was "inconsistent" to allege contracts with both ICANN and a registrar and Plaintiffs are "blowing both hot and cold", Dem. 8, but one transaction can have multiple contracts: ICANN has multiple contracts governing each transaction, one with the registrar and one with the registry. SAC ¶ 126. ICANN also *ipse dixits* that Plaintiffs fail to allege bad faith, Dem. 18 n.10, but Plaintiffs plainly allege ICANN has violated its own policies. SAC ¶¶ 181, 182.

7. Tortious Interference.

ICANN *ipse dixits* citing only SAC ¶ 228 that the VeriSign letter does not constitute a contract between Plaintiffs and VeriSign the same way it does not constitute ICANN policy, Dem. 21, but Plaintiffs demonstrate it does constitute ICANN policy. Opp. 5-8. ICANN also states Plaintiffs fail to plead any intentional acts by ICANN to disrupt "Plaintiffs' supposed contract with VeriSign", Dem. 21, which is, again false. SAC ¶ 232 (warehousing). **ICANN ignores the contracts entered *with the registrar* and that ICANN has interfered with those, so that claim was *uncontested* in the demurrer.** SAC ¶¶ 224, 225, 227-233.

[5] SAC ¶¶ 20-32 (policies summarized with reference to quoted portion), 33 ("a link to the entire instrument … appears in a footnote, which instrument is incorporated herein by reference."), 128 (with link to instrument), 172 (what ICANN agreed it would not do), 173 (what ICANN agreed it would do), 175 (ICANN responsibility for policy and enforcement).

III. CONCLUSION.

ICANN's demurrer fails to distract the fact Plaintiffs hold protected special interests and standing for cause to register their same Single-Character .com/.net domain names under its design. As this Court is aware, ICANN began threatening sanctions even before reviewing a copy of the SAC. Judge Goorvitch granted ICANN's Demurrer on grounds ICANN never argued: that Plaintiffs failed to plead an ICANN policy allowing for single-character domain names. Plaintiffs filed an Amended Complaint designed to address that single issue, reasoning that if the Court did not comment on the merits of ICANN's Demurrer, the Court viewed the Complaint as adequate. ICANN then filed a Demurrer virtually identical to the first Demurrer, the case was re-assigned to Your Honor, and Your Honor granted the Demurrer with leave to amend. ICANN knows full well that Plaintiffs' Maine-based counsel is committing significant resources to helping to alleviate the critical shortage of indigent criminal defense attorneys in Maine, and any sanctions would be devastating to that effort. Despite this threat to counsel and their state, counsel decided to re-plead *because this case has merit*. Given the gravity of ICANN's sanctions threat, ICANN needed to file a demurrer specific enough that the arguments and proof were before the Court. That did not happen. As demonstrated above, ICANN repeatedly failed to cite to specific allegations and made *ipse dixit* assertions. ICANN should not be permitted on reply, when Plaintiffs have no opportunity to respond, to argue the numerous allegations ICANN failed to address, to backfill *ipse dixit* with analysis, or to otherwise repair a fatally defective demurrer. *American Drug Stores, Inv. v. Stroh*, 10 Cal.App.4th 1446, 1453, 13 Cal.Rptr.2d 432 (1992) (arguments "raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument").

Respectfully Submitted,

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