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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12
13 COALITION FOR ICANN TRANSPARENCY,
INC., a Delaware Corporation,

14 Plaintiff,

15 v.

16 VERISIGN, INC., a Delaware Corporation;
17 INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, a California
18 Corporation,

19 Defendants.

Case No. 05-4826 (RMW) PVT

PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE A
SECOND AMENDED COMPLAINT

Honorable Ronald M. Whyte

20
21 Plaintiff respectfully moves the Court, pursuant to Federal Rule of Civil Procedure 15(a),
22 for leave to file a Second Amended Complaint. A copy of the proposed Second Amended
23 Complaint is attached to this motion as Exhibit A.¹ This motion is based upon this document and
24 the other documents and pleadings on file in this case.

25
26 ¹ In the interests of saving filing space and paper for all involved, CFIT has not filed its proposed
27 exhibits to the Second Amended Complaint with this motion. The exhibits to the Second Amended
28 Complaint remain the same as those in the prior and current complaint. If leave to amend is
granted, CFIT can and will file a copy with appropriate exhibits.

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1 The proposed Second Amended Complaint, which does not add any causes of action,
2 makes the following changes: (1) it updates information concerning plaintiff and provides a more
3 detailed statement of the factual basis of the claims based on subsequent events and documents
4 reviewed during discovery; (2) it makes clear that the market for .com domain names is a separate
5 relevant market for purposes of this action; (3) it provides more detail supporting Plaintiffs'
6 allegation that the expiring names registration services market is a separate relevant market and
7 provides further explanation as to why it is a separate relevant market; and, (4) it clarifies that the
8 lawsuit is filed on behalf of registrants, including registrants with tens of thousands of domain
9 names affected by the actions described in this action .

10 **I. ARGUMENT**

11 **A. Leave to Amend A Complaint Should Be Freely Granted When Justice So**
12 **Requires.**

13 Federal Rule of Civil Procedure 15(a) provides that “a party may amend the party’s
14 pleading only by leave of court or by written consent of the adverse party; and leave shall be freely
15 given when justice so requires.” In *Foman v. Davis*, 371 U.S. 178, 182 (1962), the Supreme Court
16 listed factors that the district court should consider in deciding whether to grant leave to amend:

17 Rule 15(a) declares that leave to amend “shall be freely given when
18 justice so requires”; this mandate is to be heeded...In the absence of
19 any apparent or declared reason—such as undue delay, bad faith or
20 dilatory motive on the part of the movant, repeated failure to cure
21 deficiencies by the amendments previously allowed, undue
22 prejudice to the opposing party by virtue of allowance of the
23 amendment, futility of the amendment, etc.—the leave sought
24 should, as the rules require, by “freely given.”

25 The Ninth Circuit stresses that Rule 15(a) is to be applied liberally. In *Eminence Capital,*
26 *LLC v. Aspeon, Inc.*, 316 F.3d 1048 (9th Cir. 2003), the Court held that the district court erred by
27 failing to grant the plaintiff leave to amend its complaint. The Court stated:

28 After a party has amended a pleading once as a matter of course, it
may only amend further after obtaining leave of the court, or by
consent of the adverse party. Fed.R.Civ.P. 15(a). Generally, Rule
15 advises the court that “leave shall be freely given when justice so
requires.” This policy is “to be applied with extreme liberality.”
Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th
Cir. 2001).

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1 *Id.* at 1051. After listing the *Foman v. Davis* factors, the Court stated:

2 Not all of the factors merit equal weight. As this circuit and others
3 have held, it is the consideration of prejudice to the opposing party
4 that carries the greatest weight. Absent prejudice, or a strong
5 showing of any of the remaining *Foman* factors, there exists a
6 *presumption* under Rule 15(a) in favor of granting leave to amend.

7 *Id.* at 1052 (emphasis added).

8 **B. This Court Should Grant CFIT Leave to Amend**

9 **1. The Complaint is Based on New Facts.**

10 Based both on discovery in this case and Verisign statements made under oath at
11 Congressional hearings, Verisign understands and appreciates that .com is a separate market, with
12 no adequate substitutions in either other generic top-level domains or in country code top-level
13 domains. Discovery also has revealed that Verisign understands and appreciates that the expiring
14 domains market is a separate market from the market for new registrations. New factual
15 allegations emphasize these points, which belie arguments Verisign has made in its motions to
16 dismiss.

17 **2. VeriSign and ICANN Would Not Suffer Prejudice**

18 Defendants would suffer no prejudice from the filing of the Second Amended Complaint.
19 As one court has explained, “to show prejudice to the party opposing the amendment of a
20 complaint ‘must show that it was unfairly disadvantaged or deprived of the opportunity to present
21 facts or evidence which it would have offered had the...amendments been timely.” *Lundy v.*
22 *Adamar of New Jersey, Inc.* 34 F.3d 1173, 1189 n.22 (3d Cir. 1994). As the Ninth Circuit has
23 stated, “The party opposing amendment bears the burden of showing prejudice.” *DCD Programs,*
24 *Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

25 Defendants cannot demonstrate any prejudice, because they will have ample to time to
26 prepare their case in response to the Second Amended Complaint. Neither Plaintiff has yet to file
27 an Answer to the current complaint on file. Moreover, Plaintiff is complying with the deadline of
28 October 13 set by the Court for filing amended pleadings. (Supplemental Joint Case Management
Conference Statement.) The discovery deadline is March 1, 2007. (*Id.*) The trial is set for

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1 December 3, 2007. (*Id.*) Plaintiffs are not adding any new causes of action, and are not adding
2 any new defendants.

3 **3. There is No Delay or Bad Faith.**

4 There is no undue delay. The proposed Second Amended Complaint has been submitted
5 prior to the Court's deadline for amending pleadings. Moreover, the case has been pending for
6 less than one year. As the Ninth Circuit stated in *Howey v. United States*, 481 F.2d 1187, 1191
7 (9th cir. 1973):

8 [W]e know of no case where delay alone was deemed sufficient
9 grounds to deny a Rule 15(a) motion to amend. here there is a lack
10 of prejudice to the opposing party and the amended complaint is
11 obviously not frivolous, or made as a dilatory maneuver in bad faith,
12 it is an abuse of discretion to deny such a motion. The purpose of
13 the litigation process is to vindicate meritorious claims. Refusing
14 solely because of delay, to permit an amendment to a pleading in
15 order to state a potentially valid claim would hinder this purpose
16 while not promoting any other sound judicial policy. Only where
17 prejudice is shown or the movant acts in bad faith are courts
18 protecting the judicial system or other litigants when they deny
19 leave to amend a pleading.

20 Here, no prejudice would result to Defendants and Plaintiff's Second Amended Complaint is not
21 frivolous or made as a dilatory maneuver in bad faith.

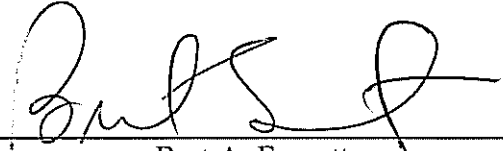
22 **II. CONCLUSION**

23 For the foregoing reasons, Plaintiff's motion for leave to file a Second Amended
24 Complaint should be granted.

25 DATED: October 13, 2006

26 Respectfully submitted,

27 CATHCART COLLINS & KNEAFSEY LLP

28 By: 
Bret A. Fausett

Attorneys for Plaintiff
COALITION FOR ICANN TRANSPARENCY INC.

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

COALITION FOR ICANN
TRANSPARENCY INC., a Delaware
Corporation,

Plaintiff,

v.

VERISIGN, INC., a Delaware
Corporation; INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, a
California Corporation,

Defendants.

Case No. 05-4826 (RMW) PVT

[P R O P O S E D]

**SECOND AMENDED COMPLAINT
FOR VIOLATION OF THE
ANTITRUST LAWS AND
DECLARATORY AND INJUNCTIVE
RELIEF**

Honorable Ronald M. Whyte

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1 Plaintiff Coalition for ICANN Transparency Inc. (“CFIT”) brings this action against
2 Internet Corporation for Assigned Names and Numbers (“ICANN”) and VeriSign, Inc.
3 (“VeriSign”), and alleges as follows:

4 **I. NATURE OF THE ACTION**

5 1. This action is brought to enjoin and prevent defendants ICANN and VeriSign from
6 carrying out their unlawful agreement to establish a permanent monopoly over the relevant
7 markets as alleged herein, and for declaratory and other relief. The unlawful agreement gives
8 VeriSign a permanent monopoly over all the “.com” and “.net” domain name registrations, a
9 monopoly for related services that it does not currently enjoy, and permits VeriSign to
10 permanently and indefinitely increase prices above the natural rate of inflation and what a fair
11 market would otherwise bear.

12 2. This is an action to restore competitive conditions in markets for “.com” and “.net”
13 Internet domain names, and to prevent VeriSign from expanding its monopoly control over the
14 .com and .net domain name registries into downstream and adjacent markets. CFIT seeks an
15 injunction against the defendants and their respective management personnel preventing them
16 from taking further steps to implement their unlawful agreement, including without limitation
17 preventing the signing or implementation of a proposed .com Registry Agreement between
18 ICANN and VeriSign (the “2006 .com Agreement”); an injunction against VeriSign’s monopoly
19 leveraging conduct as specified herein; an injunction requiring ICANN to adhere to its
20 governmental mandate to maintain competition and prevent discrimination in markets related to
21 Internet domain names; and an injunction requiring VeriSign and ICANN to abide by the terms of
22 the current .com agreement (the “2001 .com Agreement”) until it expires and requiring ICANN to
23 entertain competing bids for the operation of the .com registry at that time. Plaintiff also requests
24 declaratory relief that the agreements and understandings between the defendants, as reflected in
25 the terms of the 2006 .com Agreement, as well as the similar “2005 .net Agreement,” constitute
26 violations of federal and state antitrust laws, and ordering appropriate relief to restore competitive
27 conditions in affected markets.

1 United States, and are therefore not subject to United States antitrust laws and statutes.
2 Registration with ccTLDs requires a Registrant to leave the borders and protection of the United
3 States. Therefore these ccTLDs cannot be counted as part of the relevant market for determining
4 antitrust violations.

5 17. Many of the generic TLDs, or gTLDs, are restricted either in use or in meaning.
6 Specifically, gTLDs such as “.edu,” “.mil,” “.gov,” “.aero,” and “.coop” are reserved for specific
7 types of institutions and are not available to businesses or private persons. Many gTLDs carry
8 inherent meanings which cause confusion Registrants would want to avoid. The gTLD “.org”
9 carries the connotation of a non-profit organization, and similarly “.travel” connotes a travel-
10 related Registrant. As a result, “.com” and “.net” have become more than just the most used
11 TLD, they have become the definitive TLDs for all commercial and private Registrants within the
12 United States who seek to avoid confusion with other types of associations.

13 18. As between .com and .net, Verisign agrees that .com is a distinct market.

14 19. No top-level domain is a substitute for the .com top-level domain.

15 20. As a matter of business strategy, Verisign operates as though .com is a distinct
16 market, and it markets its registration services for the .com TLD differently than it markets any
17 other registration services.

18 21. The relevant geographic market as to each relevant product market is the world.

19 22. VeriSign is a participant in each relevant market. ICANN is a participant in each
20 relevant market in that it collects fees that are either directly or ultimately borne by registrars and
21 registrants for each registration.

22 23. VeriSign is the sole Registry for the .com and .net domains. As a result, any
23 arrangements Verisign enters into to control competition in the expired domain names market or
24 in the site finder market, or to fix prices, constitutes an unjustifiable use of monopoly power.

25 ///

26 ///

27 ///

28 ///

1 **VI. INTERSTATE COMMERCE**

2 24. The conduct of defendants VeriSign and ICANN complained of herein will take
3 place in and affect interstate trade and commerce of the United States in that the purchases and
4 sales of services in the relevant markets are transacted across state lines.

5 25. The conduct of defendants VeriSign and ICANN complained of herein will
6 directly, substantially, and foreseeably affect interstate trade and commerce in that defendants
7 will obstruct free and open competition in the .com and .net Registration Markets and in the
8 Expiring Names Registration Services Market.

9
10 **VII. BACKGROUND**

11 **A. THE INTERNET DOMAIN NAME SYSTEM**

12 26. The Internet is a network of interconnected computers and computer networks.
13 Every computer connected directly to the Internet has a unique numerical address. These
14 addresses, which are known as Internet Protocol (“IP”) addresses, are necessary for computers to
15 communicate with each other over the Internet. An example of an IP address is 64.233.161.147.

16 27. Because numerical IP addresses can be cumbersome and difficult for Internet users
17 to remember or to use, the numerical IP address system has been overlaid with a more user-
18 friendly system of domain names, the Domain Name System or DNS.

19 **B. DOMAIN NAME SYSTEM HIERARCHY**

20 28. The DNS defines a hierarchical name space divided into zones, each of which has
21 authority over the zones below it. For purposes of the DNS, domain names are read from right to
22 left. The top zone is divided into top-level domains, or “TLDs” such as “.com” and “.net.” Each
23 TLD is divided into second-level domains or “SLDs” such as “example.com” or “example.net.”
24 Second-level domains can be further divided into third-level domains, such as
25 “another.example.com,” and so on.

26 29. A set of “root servers” provides a list of the registries responsible for maintaining
27 each TLD. For example, at present, the root servers tell users looking for .com or .net domain
28 names to find the location for that domain name on name servers operated by VeriSign. For

1 example, a user looking for google.com would be directed to VeriSign's .com name server to find
2 the entry for "google." The VeriSign server, in turn, would tell the user that google could be
3 found at the host identified by the address 64.233.161.147.

4 30. There are currently two different types of TLDs: seventeen generic TLDs
5 ("gTLDs"): ".aero," ".biz," ".com," ".coop," ".info," ".jobs," ".mobi," ".museum," ".name,"
6 ".net," ".org," ".pro," ".travel," ".gov," ".edu," ".mil," and ".int" and approximately 240 two-
7 letter country code TLDs ("ccTLDs"), such as ".us," ".uk," ".jp," and ".kr."

8 31. Because domain names are essentially "addresses" that allow computers connected
9 to the Internet to communicate with each other, each domain name must be unique, even if it
10 differs from another domain name by only one character (*e.g.*, "uscourts.com" is different from
11 "uscourt.com" or "us-courts.com"). A given domain name, therefore, can be registered to only
12 one entity.

13 C. REGISTRIES, REGISTRARS, AND REGISTRANTS

14 32. VeriSign acts as the "Registry" for domain names registered in the .com and .net
15 gTLDs in accordance with a written agreement with ICANN. As the Registry for the .com and
16 .net gTLDs, VeriSign maintains the definitive database that associates registered domain names
17 in these gTLDs with the corresponding IP numbers of their respective domain name servers. The
18 domain name servers, in turn, direct Internet queries to resources such as websites and e-mail
19 systems. This database is known as a "zone file." Oftentimes, the Registry is referred to as a
20 "Registry operator" and the zone file is referred to as the "Registry."

21 33. A domain name is created by an individual or organization that registers the
22 domain name and thereby includes it in the zone file. The individual or organization that registers
23 a specific domain name is a "Registrant."

24 34. Registrants do not have direct access to the VeriSign Registry and do not interact
25 directly with the Registry in connection with domain name registrations. Instead, prospective
26 registrants must register domain names through any one of over 130 private companies located in
27 the United States and throughout the world that act as domain name "Registrars" for the second-
28 level domain names in the .com and .net gTLDs.

1 35. Internet users typically interact with the DNS through their Internet Service
2 Providers (“ISP”). Specifically, when a user requests a Web site associated with a domain name,
3 the user’s computer searches its local cache for the IP address associated with that domain name.
4 If the IP address is not found locally, the computer will query the ISP’s name server. If the ISP’s
5 name server does not have the address for the domain name requested, it will query the
6 appropriate Registry’s name server (*i.e.*, its zone file), from which it will obtain the name and IP
7 address of the name server associated with the domain name requested. It will then query the
8 name server associated with the domain name, and pass the IP address back to the user’s
9 computer.

10 **D. COMPETITION FOR THE TLD REGISTRY AGREEMENTS**

11 36. Historically, ICANN has sought to obtain the benefits of competition by putting
12 TLD registry agreements out for bid, and by selecting a registry operator on the basis of the
13 benefits to consumers in price and quality of service presented by each prospective registry
14 operator.

15 37. In fact, one of the principal reasons ICANN was created was to enable competition
16 in the registration of domain names.

17 38. As set forth more completely below, on July 1, 1997, as part of the Clinton
18 Administration’s Framework for Global Electronic Commerce, the President directed the
19 Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases
20 competition and facilitates international participation in its management.

21 39. This Presidential directive resulted in a policy process that created ICANN. One
22 of the principal statements of United States policy behind the creation of ICANN was a document
23 released by the U.S. Department of Commerce on June 5, 1998, and titled “Management of
24 Internet Names and Addresses,” Docket Number: 980212036-8146-02. This document is often
25 referenced by ICANN and the entities that are involved in ICANN as the “White Paper.” The
26 White Paper specifically provided that the corporation which would become ICANN should seek
27 to use “Where possible, market mechanisms that support competition and consumer choice.” The
28

1 United States believed that competition would “lower costs, promote innovation, encourage
2 diversity, and enhance user choice and satisfaction.”

3 40. This mandate to create competition is one of the core values currently written into
4 ICANN's by-laws (“In performing its mission, the following core values should guide the
5 decisions and actions of ICANN:....(6) Introducing and promoting competition in the registration
6 of domain names where practicable and beneficial in the public interest.”).

7 41. Periodic bidding for the TLD registry agreements has yielded substantial benefits
8 for consumers. For example, VeriSign and others recently bid competitively for the right to
9 operate the .net registry beginning in July 2005. VeriSign’s bid was selected as the winning bid
10 in part because VeriSign promised immediately to *lower* .net registration fees by more than thirty
11 percent.

12 42. Because there can be only one registry operator at a time for each TLD registry,
13 there is no competition among prospective registry operators during the term of each registry
14 agreement. The only time there can be competition among prospective registry operators is at the
15 end of a registry agreement, when the next registry operator must be selected.

16 43. The only competitive constraint on a TLD registry operator is the meaningful
17 prospect that the operator could lose the registry in the next round of bidding on the basis of
18 overcharging or poor performance during the current contract term.

19 44. The threat of future competitive bidding not only constrains the TLD operator at
20 the moment when it bids, but also during its operation of the registry. A failure to act reasonably
21 and provide service on competitive terms and conditions throughout the contract term poses a
22 potential for the current operator to lose in future bidding competition for the TLD registry
23 agreement.

24 45. Until June 2005, VeriSign had operated both the .net and the .com registries under
25 the competitive threat of future competitive bidding. When ICANN awarded the contract for the
26 .net registry to VeriSign in July 2005, however, ICANN and VeriSign eliminated all realistic
27 prospects that VeriSign would face competitive bidding for that registry in the future. The new
28 2005 .net Agreement included a renewal provision that allowed ICANN to solicit competitive

1 bids for the .net registry only if a court or arbitrator issued a non-appealable final order finding
2 VeriSign to be in breach of the agreement, and VeriSign failed to cure the breach. The proposed
3 2006 .com Agreement challenged in this action includes an identical provision, thereby
4 eliminating all realistic prospect that VeriSign will face competitive bidding for the .com registry
5 in the future.

6 **E. OTHER TLDs ARE NOT SUBSTITUTES FOR .COM AND .NET**

7 46. The .com registry does not compete with other TLDs. The .net registry also does
8 not compete with other TLDs. The .com and .net registries cannot compete with each other for an
9 additional, separate reason: VeriSign controls both the .com and the .net registries.

10 47. Consumers do not regard .com domain names as having reasonable substitutes in
11 any other top-level domain name registries. Demand cross-elasticities between .com domain
12 names, on the one hand, and domain names in other TLDs such as .net, .info, .biz and in country
13 code TLDs, are low. Decreases in the price of domain name registrations in other TLDs (such as
14 occurred on July 1, 2005 when .net domain name registration prices were cut by more than thirty
15 percent) do not result in price decreases for .com domain name registrations. As a promotional
16 device, .info domain names were given away for free for a significant period when that registry
17 first started to operate. During that time, there was no discernible number of registrants switching
18 from .com domain names to .info domain names. The prices that consumers are willing to pay
19 for .com domain name registrations in auctions substantially exceed the prices they are willing to
20 pay for domain name registrations in other TLDs when they are offered at auctions. For example,
21 during the past year, nine .com domain names sold for \$600,000.00 or more, while the highest
22 selling .biz domain name was \$15,000.00.

23 48. Many .com domain name registrants regard domain names in other TLDs as
24 complements to, rather than substitutes for, .com domain name registrations and seek similar
25 domain name registrations in a number of TLDs. In fact, VeriSign itself has registered not only
26 “verisign.com” but also “verisign.net,” “verisign.info,” and “verisign.biz,” among others.
27 Moreover, most .com domain name registrants would experience overwhelming costs to switch
28 from a .com domain name registration to the complementary domain name in another TLD (for

1 example, a switch from cook.com to cook.net or to cook.info), including potential lost traffic, e-
2 mails, and goodwill, as well as slippage in search engine results and costs associated with revising
3 letterhead, business cards, Internet listings, and websites. As a result, they would not regard
4 domain names in other TLDs as reasonable substitutes for domain names in the .com TLD.

5 49. For many .com domain name registrants, their .com domain name has become
6 their trademark or trade name, such as “Amazon.com” and “Pool.com.” These registrants do not
7 regard domain names in other TLDs, such as “Amazon.net,” to be reasonable substitutes for
8 their .com domain name registrations. For a company that has branded its online identity with a
9 .com domain name, the costs of changing that branding to a new TLD are enormous. For this
10 reason, .com registrants are locked into their use of the .com registry.

11 50. .com domain names are the primary commercial domain names and dominate the
12 market for domain names registered for commercial purposes. There are in excess of 46,000,000
13 .com domain name registrations, which is 76 percent of domain names registered in generic TLDs
14 (.com, .net, .org, .info, and .biz) and roughly 46 percent of all domain names registered in any
15 TLD (including those registered in restricted TLDs such as .gov or .museum, and the country
16 code TLDs).

17 51. Consumers likewise do not regard .net registrations as having reasonable
18 substitutes in any other top level domain name registries. Demand cross-elasticities between
19 domain names in the .net TLD, on the one hand, and domain names in other TLDs such as .com,
20 .info, .biz and country code TLDs, are low. The significant decrease in the registration fee for
21 .net domain names in July 2005 (more than thirty percent) did not result in significant numbers of
22 consumers switching to .net domain names from domain names in other TLDs. When .info
23 domain names were being given away for free when that registry first started to operate, there was
24 no discernible number of registrants switching from .net domain names to .info domain names.
25 The prices that consumers are willing to pay at auctions for .net domain name registrations
26 substantially exceed the prices they are willing to pay for domain names in all other TLDs when
27 they are offered at auction, with the sole exception of .com domain names. For example, during
28

1 the past year the highest selling .net domain name was \$150,000.00, which more than double
2 what anyone was willing to pay for a domain name in the other TLDs (other than the .com TLD).

3 52. As with registrants of .com domain names, many .net domain name registrants use
4 their .net domain name as their trademark or trade name, such as “earthlink.net.” They would be
5 unwilling to incur the substantial switching costs involved in switching from their .net domain
6 name to a complementary domain name in another TLD (such as a switch from “att.net” to
7 “att.info”). Moreover, because .net domain names are the primary domain names used for
8 networking purposes and dominate the market for such names, they are commonly used by
9 Internet and e-mail service providers who could not easily substitute a domain name in an
10 alternative TLD without potentially disrupting traffic for thousands if not millions of customers.
11 Domain names in the .net TLD exceed 6,500,000, comprising 11 percent of all domain names
12 registered in unrestricted generic TLDs and roughly 7 percent of all registered domain names.

13 53. There are a limited number of generic TLDs. A number of these generic TLDs,
14 such as .mil, .museum, and .travel, impose restrictions on who can register a domain name in the
15 TLD and the purpose for which such a domain name can be used. Other generic TLDs, such as
16 .org and .edu, are recognized by consumers as being used in connection with particular purposes,
17 such as non-profit organizations and educational institutions. None of these generic TLDs
18 compete with the .com or .net TLDs.

19 54. The country codes TLDs do not compete with either the .com TLD or the .net
20 TLD. Many ccTLDs impose nexus requirements between the prospective registrant and the host
21 country for the ccTLD, preserving the idea that domain names in ccTLDs should be used by
22 individuals and entities that have a nexus with the host country. Some of these nexus
23 requirements can be quite onerous, for example, limiting domain name registrations to entities
24 formed or incorporated in the host country. Even in those cases where there is no nexus
25 requirement, a ccTLD is not viewed as a reasonable substitute for a .com or .net domain name for
26 individuals and entities who have no nexus with the host country because it could lead to
27 consumer confusion. For example, a company located in the United States would not view a
28 domain name registered in the Mexican TLD as a substitute for a domain name registered in the

1 .com or .net TLDs. Additionally, all country code TLDs are operated and managed outside of the
2 United States, and are therefore not subject to United States antitrust laws and statutes.
3 Registration with ccTLDs requires a Registrant to leave the borders and protection of the United
4 States. Therefore, these ccTLDs cannot be counted as part of the relevant market for determining
5 antitrust violations.

6 **F. COMPETITION IN REGISTRATION OF EXPIRING NAMES**

7 55. Qualified registrars are granted a limited number of connections to VeriSign's
8 registry computers, which they use to register domain names on behalf of registrants. To register
9 a new or expiring domain name, a registrar sends an "add" command to VeriSign's registry
10 computer for that domain name; if the name is available, the "add" command is accepted, and the
11 domain name is registered on behalf of a registrant.

12 56. There currently exists a competitive marketplace for obtaining expired domain
13 names.

14 57. Expired domain names become available for a variety of reasons.

15 58. As domain name registrations age, the likelihood that a registrant dies or becomes
16 uninterested in maintaining an Internet presence increases. Over time, every individual who has
17 registered a domain name will die. Those domain names eventually will fall into the market for
18 expiring domain names.

19 59. For commercial registrations, most businesses started in the United States, and
20 elsewhere, fail with a few years from the time they are created. Commercial registrations from
21 failed businesses are not renewed and eventually will fall into the market for expiring domain
22 names.

23 60. Many commercial registrations center on specific product lines or promotions.
24 Oftentimes, these products or promotions have a limited lifetime, and the domain name registrant
25 may decide not to renew the domain name once the immediate need for it has passed. Such
26 domain names eventually will fall into the market for expiring domain names.

27 61. Both individuals and corporations commonly register domain names for time-
28 specific events, such as meetings, conferences, concerts, picnics, etc. Once the event has passed,

1 the registrant may decide not to renew the domain name. Such domain names eventually will fall
2 into the market for expiring domain names.

3 62. Expiring domain names have more value than newly registered domain names in
4 part because they have been advertised by the previous registrant and/or because websites
5 associated with the domain name have been indexed by search engines. This means that expiring
6 domain names typically have visitors to, links to, and traffic to the web sites and other Internet
7 services associated with the domain name. Such Internet traffic makes it easier for a new domain
8 name registrant to monetize the domain name registration by associating advertisements or other
9 services with the domain name.

10 63. Expiring domain names also often have more value than newly registered domain
11 names because they were registered at a time when good, short domain names were less scarce.
12 For example, every dictionary word in English was registered many years in the past. Currently,
13 the only way to register a common dictionary word in the .com TLD is to buy it directly from its
14 current registrant or acquire the domain registration in the expiring domains market.

15 64. This market for expired domain names is comprised of back order service
16 providers, who compete to provide the lowest prices and highest quality service to customers
17 seeking to register recently-expired domain names. Many companies, such as SnapNames and
18 Pool.com, compete in this Expiring Names Registration Services Market. Back-order service
19 providers compete on the basis of price and on quality of service to obtain customers who are
20 seeking recently-expired domain names. Price competition has at times been fierce. For
21 example, at one time SnapNames charged approximately \$60 to a customer seeking an expired
22 domain name irrespective of whether SnapNames was ultimately successful in obtaining the
23 domain name for the customer.

24 65. Pool.com introduced "pay-for-performance" as a competitive initiative, offering a
25 back order service for which the customer paid only if it obtained the domain name for the
26 customer. The competitive market has largely adopted "pay-for-performance." In order to attract
27 customers, back order service providers have had to compete on quality of service. The more
28 effective a back order service provider is in obtaining domain names, the more customers it

1 attracts, resulting in more income. Consumers have benefited in both price and quality of service
2 from competition in the Expiring Name Registration Services Market.

3 66. Verisign understands and appreciates that the market for expiring domain names is
4 a separate and distinct market from the market for new registrations.

5
6 **G. HISTORY OF gTLD DOMAIN NAME ADMINISTRATION**

7 67. Today's Internet has its origin in a network called the ARPAnet which was
8 launched by the Department of Defense ("DOD") in 1969. ARPAnet was later linked to other
9 networks established by various government agencies, universities, and research facilities. In
10 1990, NSFnet, the network developed by the National Science Foundation superseded ARPAnet.

11 68. In 1992, Congress passed the Scientific and Advanced-Technology Act of 1992,
12 42 U.S.C. § 1862(g), which allowed commercial activity on NSFnet and permitted NSFnet to
13 interconnect with commercial networks.

14 69. In 1993, NSF signed a cooperative agreement with Network Solutions ("NSI")
15 under which NSI became the exclusive registrar for second-level domains in .com, .net, .org, and
16 .edu, as well as the exclusive Registry operator for each of those top-level domains. The NSF
17 initially underwrote NSI's domain registration services, thereby allowing Internet users to register
18 domain names free of charge. However, on or about September 13, 1995, NSF and NSI entered
19 into Amendment 4 of the cooperative agreement, which permitted NSI to charge Internet users
20 \$100 for a two-year registration of a second-level domain in the .com, .net, and .org domains.
21 Thirty percent of the registration fees were to be paid into an NSF Infrastructure fund. In April
22 1998, the portion of the fee allocated to the Infrastructure fund was held to constitute an
23 unconstitutional tax, and the effective rate for domain registrations dropped to \$35 per year.

24 70. On July 1, 1997, the Clinton administration issued a report on electronic
25 commerce, "*A Framework for Global Electronic Commerce*." The report supported private
26 efforts to address Internet governance and made the Department of Commerce ("DOC") the lead
27 agency on this initiative. Accompanying the report was a presidential directive that called on the
28 DOC to "support efforts to make the governance of the domain name system private and

1 competitive and to create a contractually based self-regulatory regime that deals with potential
2 conflicts between domain name usage and trademark laws on a global basis.” To carry out this
3 mission, the DOC first issued a Request for Comment on DNS administration, and then on
4 February 20, 1998, it published “*Proposal to Improve Technical Management of Internet Names
5 and Addresses*” (commonly referred to as the “Green Paper”).

6 71. After receiving more than 650 comments, the DOC ended the proposed
7 rulemaking and instead published on June 10, 1998, a policy statement also known as the “White
8 Paper.” The White Paper, reflecting the views of the overwhelming majority of comments, called
9 upon the private sector to create a new, not-for-profit corporation to assume responsibility, over
10 time, for the management of certain aspects of the DNS. The White Paper identified four specific
11 functions to be performed by this new corporation: (i) To set policy for and direct the allocation
12 of Internet Protocol number blocks; (ii) To develop overall policy guidance and control of top-
13 level domains and the Internet root server system; (iii) To develop policies for the addition,
14 allocation, and management of gTLDs, and the establishment of domain name registries and
15 domain name registrars and the terms, including licensing terms, applicable to new and existing
16 gTLDs and registries under which registries, registrars, and gTLDs are permitted to operate; and
17 (iv) To coordinate maintenance and dissemination of the protocol parameters for Internet
18 addressing. The White Paper also articulated the fundamental policies that would guide United
19 States participation in the transfer of DNS management responsibility to the private sector:
20 stability; competition; private, bottom-up coordination; and representation.

21 72. The White Paper listed a number of tasks to be undertaken on a priority basis,
22 including, in particular, the creation and organization of a new, not-for-profit corporation
23 (“NewCo”) to manage the DNS and the rapid introduction of competition in the provision of
24 domain name registration services. The Department of Commerce committed to enter into an
25 agreement with NSI by which NSI would agree to take specific actions, including commitments
26 as to pricing and equal access, designed to permit the development of competition in domain
27 name registration.
28

1 73. In fulfillment of the commitment expressed in the White Paper, on October 7,
2 1998, the DOC and NSI entered Amendment 11 to the Cooperative Agreement. In Amendment
3 11, NSI agreed to recognize NewCo “when recognized by the [DOC] in accordance with the
4 provisions of the Statement of Policy.” NSI further committed to enter into a contract with
5 NewCo, and acknowledged “that NewCo will have the authority, consistent with the provisions of
6 the Statement of Policy and the agreement between the [DOC] and NewCo, to carry out NewCo’s
7 Responsibilities.” Under Amendment 11, “NewCo’s Responsibilities” specifically include the
8 establishment and implementation of DNS policy and the terms, including licensing terms,
9 applicable to new and existing gTLDs and registries under which registries, registrars and gTLDs
10 are permitted to operate.” Amendment 11 also provided for the development, deployment, and
11 licensing by NSI (under a license agreement to be approved by the Department of Commerce) of
12 a mechanism to allow multiple registrars to submit registrations for the gTLDs for which NSI
13 acted as the Registry (the “Shared Registration System,” or “SRS”).

14 **H. ICANN’S ROLE IN THE INTERNET DOMAIN NAME SYSTEM**

15 74. In September 1998, Defendant Internet Corporation for Assigned Names and
16 Numbers was formed. ICANN is a non-profit public benefit corporation organized without
17 members pursuant to California Corporation Code § 5110 et. seq. According to its by-laws, the
18 board of directors of ICANN controls it.

19 75. In October 1998, ICANN transmitted to the Department of Commerce a copy of
20 its articles of incorporation, and proposed by-laws. In November 1998, the DOC entered into a
21 Memorandum of Understanding (“MOU”) with ICANN that recognized ICANN as the new, now
22 completely independent, not-for-profit corporation for DNS management and specifically
23 contemplated ultimate transition of management responsibility to ICANN. The MOU expressly
24 identified the promotion of competition in the DNS as one of its central principles.

25 76. In the MOU, ICANN expressly agreed to abide by principles of stability,
26 competition, private, bottom-up coordination, and representation:

27 C. The Principles:

28 The parties will abide by the following principles:

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1. Stability

This Agreement promotes the stability of the Internet and allows the Parties to plan for a deliberate move from the existing structure to a private-sector structure without disruption to the functioning of the DNS. The Agreement calls for the design, development, and testing of a new management system that will not harm current functional operations.

2. Competition

This Agreement promotes the management of the DNS in a manner that will permit market mechanisms to support competition and consumer choice in the technical management of the DNS. This competition will lower costs, promote innovation and enhance user choice and satisfaction.

3. Private, Bottom-Up Coordination

This Agreement is intended to result in the design, development, and testing of a private coordinating process that is flexible and able to move rapidly enough to meet the changing needs of the Internet and of Internet users. This Agreement is intended to foster the development of a private sector management system that, as far as possible, reflects a system of bottom-up management.

4. Representation.

This Agreement promotes the technical management of the DNS in a manner that reflects the global and functional diversity of Internet users and their needs. This Agreement is intended to promote the design, development, and testing of mechanisms to solicit public input, both domestic and international, into a private-sector decision making process. These mechanisms will promote the flexibility needed to adapt to changes in the composition of the Internet user community and their needs.

77. The MOU also obligated ICANN to “act in a non-arbitrary and reasonable manner with respect to design, development, and testing of the DNS Project and any other activity related to the DNS Project,” and to refrain from acting “unjustifiably or arbitrarily to injure particular persons or entities or particular categories of persons or entities.”

78. Under the MOU, ICANN exclusively awards the generic and country code TLD registry agreements, including the registry agreements for the .com and .net TLDs.

79. The original MOU was scheduled to terminate on September 30, 2000, and has been amended six times. The most recent amendment, which was entered into on or around September 17, 2003, is scheduled to terminate on September 30, 2006. In this amendment, the

1 DOC reaffirmed “its policy goal of privatizing the technical management of the DNS in a manner
2 that promotes stability and security, competition, coordination, and representation.”

3 80. Most recently, ICANN and the United States Department of Commerce extended
4 their agreement by means of a Joint Project Agreement (“JPA”). This new JPA reaffirmed
5 ICANN’s operational principles, including that ICANN foster and enable “competition.”

6 81. ICANN’s by-laws also explicitly recognize “core values,” which “should guide the
7 decisions and actions of ICANN,” including:

- 8 1. “Where feasible and appropriate, depending on market mechanisms to
9 promote and sustain a competitive environment.”
- 10 2. “Introducing and promoting competition in the registration of domain
11 names where practicable and beneficial in the public interest.”

12 82. Within the mandate contained in the MOU, ICANN has had and continues to have
13 very broad discretion over how it fulfills its obligations under the MOU. The DOC no longer has
14 any control over the workings of ICANN, nor does it actively influence ICANN’s decision-
15 making procedures. The DOC has recognized that ICANN is subject to federal anti-trust laws.

16 **I. ICANN’S AGREEMENTS WITH VERISIGN**

17 **1. The 2001 .com and .net Agreements (“the 2001 Registry Agreements”)**

18 83. On or about November 10, 1999, NSI and ICANN entered into a written Registry
19 Agreement (the “1999 Registry Agreement”) with respect to NSI’s operation of the Registry for
20 the .com and .net gTLDs.

21 84. On or about May 25, 2001, VeriSign and ICANN entered into the 2001 .com
22 Agreement with respect to VeriSign’s operation of the .com registry and the 2001 .net Agreement
23 with respect to VeriSign’s operation of the .net registry. The 2001 Registry Agreements
24 superseded the 1999 Registry Agreement with NSI.

25 85. In accordance with the 2001 Registry Agreements, Verisign undertook to operate
26 the .com and .net gTLD registry and to pay certain registry-level fees to ICANN. Verisign is the
27 sole registry for the .com and .net gTLDs and therefore maintains a monopoly over the .com and
28 .net gTLDs.

1 86. The 2001 .com Agreement is set to expire on November 10, 2007, but provides
2 that VeriSign may submit a written proposal to extend the agreement between November 10,
3 2005, and May 10, 2006. ICANN is required to consider this proposal for a period not to exceed
4 six (6) months “before deciding whether to call for competing proposals from potential successor
5 registry operators.” VeriSign “shall be awarded a four-year renewal term” unless ICANN
6 determines that VeriSign is in material breach of the 2001 .com Agreement, or the proposal to
7 extend the agreement contains a maximum price that exceeds the price allowed under Section 22
8 of the 2001 .com Agreement or certain other conditions apply. This four-year renewal term, if
9 granted, would expire on November 10, 2011.

10 87. VeriSign has repeatedly breached the terms of the 2001 .com Agreement, and
11 ICANN itself has sought to redress certain of VeriSign’s breaches in litigation against VeriSign.
12 These breaches give ICANN the right to seek competitive bids to replace VeriSign at the
13 expiration of the current term, or even earlier. The MOU’s mandate that ICANN support
14 competition requires it to exercise its right to seek competitive bids because of VeriSign’s
15 repeated breaches.

16 88. VeriSign and ICANN have agreed to bypass this process by entering into a new
17 .com Registry Agreement that will replace the current .com Registry Agreement prior to its
18 expiration. In the new 2006 .com Agreement, negotiated and agreed to by defendants, VeriSign
19 is proposing to set a new maximum price for domain name registrations that exceeds the price
20 allowed under Section 22 of the 2001 .com Agreement. If VeriSign had proposed this pricing
21 change to ICANN as part of a written proposal to extend the 2001 .com Agreement (as
22 contemplated by that agreement), ICANN would have had the right, and (because of the MOU)
23 the obligation, to seek competitive bids for the .com registry.

24 89. The 2001 .net Agreement also allowed for competitive bidding, which took place
25 in advance of its expiration on June 30, 2005. That agreement established a procedure by which
26 ICANN was to select as a successor operator of the .net registry “the eligible party that it
27 reasonably determines is best qualified to perform the registry function . . . taking into account all
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1 factors relevant to the stability of the Internet, promotion of competition, and maximization of
2 consumer choice”

3 90. Under both the 2001 .com Agreement and the 2001 .net Agreement, VeriSign is
4 required to provide “Registry Services” to ICANN-accredited registrars in a manner meeting the
5 performance and functional specifications attached to the agreement. “Registry Services” are
6 defined in the 2001 .com Agreement as follows:

7 “Registry Services” means services provided as an integral part of
8 the Registry TLD, including all subdomains. These services
9 include: receipt of data concerning registrations of domain names
10 and nameservers from registrars; provision to registrars of status
11 information relating to the Registry TLD zone servers,
12 dissemination of TLD zone files, operation of the Registry zone
13 servers, dissemination of contact and other information concerning
14 domain name and nameserver registrations in the Registry TLD,
15 and such other services required by ICANN through the
16 establishment of Consensus Policies as set forth in Definition 1 of
17 this Agreement.

18 The 2001 .net Agreement contains a substantially similar definition of “Registry Services.”

19 91. Under both the 2001 .com Agreement and the 2001 .net Agreement, VeriSign is
20 also obligated to comply with “Consensus Policies,” which consist of specifications and policies
21 established on the basis of a consensus among Internet stakeholders represented in the ICANN
22 process, as demonstrated by compliance with detailed procedures prescribed in the agreement.
23 The consensus policy limits VeriSign’s ability to exact monopoly pricing or other monopoly
24 terms.

25 92. The 2001 .com Registry Agreement defines “Consensus Policies” as consisting of
26 those specifications and policies established on the basis of a consensus among Internet
27 stakeholders represented in the ICANN process, as demonstrated by compliance with specific,
28 detailed procedures prescribed in the agreement. Exh. 1, section I.1.

93. The 2001 Registry Agreements set forth “General Obligations of Registry
Operator [VeriSign].” VeriSign generally is obligated to comply with Consensus Policies if,
among other requirements, they are properly adopted by ICANN and consistent with ICANN’s
other contractual obligations, and (A) they “do not unreasonably restrain competition”; and (B)

1 relate to “(1) issues for which uniform or coordinated resolution is reasonably necessary to
2 facilitate interoperability, technical reliability, and/or stable operation of the Internet or DNS, (2)
3 Registry policies reasonably necessary to implement Consensus Policies relating to registrars, or
4 (3) resolution of disputes regarding the registration of domain names (as opposed to the use of
5 such domain name).” Exh. 1, section II.

6 94. In an effort avoid federal antitrust violations by VeriSign, the 2001 .com Registry
7 Agreement further sets forth the following “General Obligations of ICANN.” “With respect to all
8 matters that impact the rights, obligations, or role of Registry Operator,” the agreement explicitly
9 provides that ICANN shall, among other obligations: (i) “exercise its responsibilities in an open
10 and transparent manner,” (ii) “not unreasonably restrain competition and, to the extent feasible,
11 promote and encourage robust competition....” As discussed below, these goals were abandoned
12 in the 2005 .net and 2006 .com Registry Agreements. Exh. 1, section II.4.

13 95. Appendix G to both the 2001 .com Agreement and the 2001 .net Agreement sets
14 forth the maximum prices VeriSign can charge for specified services. Among other things,
15 Appendix G sets a maximum price of six dollars (\$6.00) per year for registration of a domain
16 name and six dollars (\$6.00) per year for renewal or extension of the registration of a domain
17 name. In addition, for each one-year domain name registration a “registry-level transaction fee”
18 of \$0.25 is charged and paid to ICANN. Under the 2001 .com Agreement, a registrar currently
19 pays \$6.00 per year to register each domain name registered with VeriSign. The registrar also
20 pays \$0.25 to ICANN for the registry-level transaction fee. Any amount above \$6.25 that is
21 charged to the registrant is kept by the registrar. On information and belief, VeriSign has always
22 charged the maximum price allowed under the 2001 .com Agreement and 2001 .net Agreement to
23 register a .com or .net domain name. Thus, the maximum price has been more than a price cap; it
24 has been the *de facto* price.

25 96. Appendix I to both the 2001 .com Agreement and the 2001 .net Agreement
26 includes a Code of Conduct. Under the Code of Conduct, VeriSign is obligated to “at all times
27 strive to operate as a trusted and neutral third-party provider of Registry Services.” Among other
28 obligations, the Code of Conduct requires VeriSign to treat all ICANN-accredited registrars

1 equally and to give them equivalent access to the registry and prohibits VeriSign from
2 warehousing or registering domain names in its own right other than through an ICANN-
3 accredited registrar.

4 **2. The Unlawful and Anticompetitive 2005 Registry Agreements**

5 97. Unrestrained by any competition, ICANN and VeriSign have now abandoned their
6 commitments to avoid unreasonable restraints of trade and promote fair competition in the
7 “Covenants” or “General Obligations” to this effect.

8 98. Moreover, VeriSign is now using its monopoly power to raise prices above their
9 natural level and permit VeriSign to leverage their power into other markets. The antitrust and
10 unfair competition laws were enacted to prohibit this very conduct.

11 99. Defendants have agreed to eliminate the competitive constraints imposed by the
12 competitive bidding process, the Consensus Policies and the Code of Conduct, and thereby to
13 secure for VeriSign an unlawful monopoly in each of the relevant markets. Pursuant to the
14 conspiracy, ICANN allowed VeriSign to alter substantial terms of its bid for the 2005 .net
15 Agreement, after the bid was accepted by ICANN and after bidding was closed to other
16 participants. The conspiracy led to the implementation of the monopolistic provisions in the 2005
17 .net Agreement, and also includes an understanding between the conspirators as to the terms for
18 the .com Registry Agreement.

19 100. The objectives of the unlawful conspiracy are to replace the 2001 .com and .net
20 Agreements with successor agreements that eliminate permanently all vestiges of competition in
21 the operation of these two registries and in the Relevant Markets; to secure for VeriSign free
22 reign to impose supracompetitive prices for registrations of domain names in the .com and .net
23 TLDs; to free VeriSign from current limitations that prevent it from leveraging monopolies in
24 downstream and adjacent markets; and to divide between VeriSign and ICANN the monopoly
25 profits achieved by operation of the conspiracy.

26 101. ICANN and VeriSign have agreed (a) to extend the term of VeriSign’s control of
27 the .com registry for an additional five years beyond the termination date under the current 2001
28 .com Agreement, in violation of its terms and without ever submitting the renewal to any sort of

1 competitive bidding; (b) to eliminate any meaningful prospect that VeriSign will ever have to
2 compete to operate the .net registry or the .com registry or that there will be any competitive
3 bidding to operate either of them; (c) to increase the overall prices to consumers of domain names
4 in the .com and .net TLDs; (d) to assure that any contractual price caps will be identical to the
5 actual prices by having eliminated any competitive constraint on VeriSign in the relevant
6 markets; (e) to free VeriSign to launch preemptive services that, by virtue of its control of the
7 .com and .net registries, will eliminate rivalry and permit VeriSign to exploit a complete
8 monopoly over traffic data and other resources it has never paid or competed for the right to
9 exploit; and (f) to provide mechanisms by which ICANN shares in the resulting monopoly profits.

10 102. **Elimination of Competitive Bidding.** Under the terms of the conspiracy, ICANN
11 has agreed to divest itself of any meaningful ability to require VeriSign to bid for a renewal term
12 against competing registry operators for the .com TLD. Under the existing 2001 .com
13 Agreement, ICANN has the right to require VeriSign to bid for a renewal term to begin in
14 November 2007. Under the MOU between ICANN and the Department of Commerce, ICANN is
15 required to avail itself of every available opportunity to harness competition for the benefit of
16 consumers and the Internet.

17 103. The 2006 .com Registry Agreement provides for the automatic renewal of the
18 agreement, *inter alia*, as follows:

19 Renewal. This Agreement shall be renewed upon the expiration of
20 the term set forth in Section 4.1 above and each later term, unless
21 the following has occurred : (i) following notice of breach to
22 Registry Operator in accordance with Section 6.1 and failure to cure
23 such breach within the time period prescribed in Section 6.1, an
24 arbitrator or court has determined that Registry Operator has been
25 in fundamental and material breach of Registry Operator's
26 obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or
27 Section 7.3 and (ii) following the final decision of such arbitrator or
28 court, Registry Operator has failed to comply within ten days with
the decision of the arbitrator or court, or within such other time
period as may be prescribed by the arbitrator or court.

Upon renewal, in the event that the terms of this Agreement are not
similar to the terms generally in effect in the Registry Agreements
of the 5 largest gTLDs (determined by the number of domain name
registrations under management at the time of renewal), renewal
shall be upon terms reasonably necessary to render the terms of this
Agreement similar to such terms in the Registry Agreements for

1 those other gTLDs. The preceding sentence, however, shall not
2 apply to the terms of this Agreement regarding the price of Registry
3 Services... Upon renewal, Registry-Level Transaction Fees may be
4 reasonably modified so long as any increase in such fees shall not
5 exceed the average of the percentage increase in Registry-Level
6 Transaction Fees for the 5 largest gTLDs (determined as for the 5
7 largest gTLDs (determined as above), during the prior three-year
8 period.

9 104. ICANN's conspiratorial agreement to waive its right to impose competitive
10 bidding with respect to operation of the .com registry, and to violate its contract with the federal
11 government, is a keystone of the overall conspiracy with VeriSign. ICANN has similarly
12 conspired with VeriSign to eliminate future competitive bidding for operation of the .net registry.
13 In 2005, competitive bidding for the .net registry yielded a reduction in the price for .net domain
14 name registrations that was in excess of thirty percent. ICANN's and VeriSign's conspiracy
15 eliminates this possibility in the future.

16 105. **Increasing Prices.** The conspiracy increases significantly the prices that VeriSign
17 will charge for .com and .net domain name registrations. The conspiracy also, in effect, raises the
18 amounts that registrants ultimately bear for the registry level transaction fees paid to ICANN. By
19 eliminating periodic rivalry to run the registry, VeriSign will be unconstrained in setting prices
20 and will charge the maximum cap allowed by the terms of the conspiracy.

21 106. The 2006 .com Registry Agreement affects prices by not only redrafting the
22 previous provisions for maximum price, but also redefining which terms are included in the
23 maximum price. In the 2006 .com Registry Agreement VeriSign and ICANN effectively fix the
24 price for .com domain name registration at \$6 through December 31, 2006, and further conspire
25 to permit VeriSign to permanently raise the price of .com registration 7% for four out of the next
26 six years. This price exceeds the historical rate of inflation and is greater than what a fair market
27 would otherwise bear.²

28 ² In the 2005 .net Registry Agreement, entered into on June 29, 2005, ICANN and VeriSign agree to set the price for new and renewed domain name registrations at \$4.25. The Agreement then goes on to say that, effective January 1, 2007, the "controls on [VeriSign's] pricing set forth in this Agreement shall be eliminated...." Exh. 3, section 7.3. Virtually the only restriction the Agreement places on pricing is that all registrars be equally subject to the price VeriSign sets and treated equally under any incentive programs VeriSign offers. The unfettered ability to raise prices indefinitely demonstrates the collusive manipulation and control which ICANN and VeriSign are perpetrating. Only with certain monopolistic control over the market could the two defendants create such an agreement.

1 107. Furthermore, the 2006 .com Registry Agreement specifically excludes the
2 “registry-level transaction fee” from the definition of the maximum price. Therefore, the actual
3 price is not simply \$6.00 plus the ICANN sanctioned 7% increase in four of the next six years,
4 but these two terms plus the registry-level transaction fee. Exh. 2, section 7.3(d). Under the
5 terms of the 2006 .com Registry Agreement, the increase in the registry-level transaction fee is an
6 automatic process. The Agreement makes no provision for registrars and Internet stakeholders to
7 provide any input into the process. *Id.*

8 108. VeriSign and ICANN each believe that VeriSign could raise prices to the
9 maximum permitted by the caps under .com and to any price whatsoever under .net without
10 running afoul of the antitrust laws.

11 109. In addition, pursuant to the conspiracy, the 2005 .net Agreement provides for
12 higher prices in the future for new or renewal domain name registrations in the .net TLD. Until
13 December 31, 2006, the maximum price is set at \$4.25, which includes a \$0.75 Registry-Level
14 Transaction Fee that is paid to ICANN by the registrars. Beginning in 2007, the price controls set
15 forth in the 2005 .net Registry Agreement will be eliminated. Without the constraint of
16 competitive bidding, VeriSign will be free to impose, and will impose, monopoly pricing on .net
17 domain name registrations.

18 110. **Monopoly Leveraging.** The conspiracy also suspends the application of
19 Consensus Policies, contractual restrictions and competitive constraints that otherwise could limit
20 VeriSign’s freedom to exact monopoly profits from the relevant markets that are downstream and
21 adjacent to the relevant markets for .com and .net domain name registrations.

22 111. The 2006 .com Registry Agreement sets forth a “Process for Consideration of
23 Proposed Registry Services” whereby ICANN makes a preliminary determination as to whether a
24 Registry Service “(i) could raise significant Security or Stability issues; or (ii) could raise
25 significant competition issues.” If ICANN determines that the proposed Registry Service raises
26 significant competition issues, then it must refer the issue “to the appropriate governmental
27 competition authority.” If ICANN finds that no competition concerns exist, VeriSign is permitted
28 to provide the new Registry Service.

1 112. Thus, VeriSign will be free to launch the very services, among others, that ICANN
2 and the Internet community have previously thwarted on competitive grounds, including services
3 that would displace the competitive back order services market (such as VeriSign's proposed
4 Central Listing Service ("CLS") or Wait List Service ("WLS")) or similar services. The
5 conspiracy allows VeriSign to mine the economic value of all unregistered domain names by
6 monitoring traffic data (which allows VeriSign to see which unregistered names Internet users
7 attempt to visit), eliminating all forms of competition for which competitive and fair access to this
8 data is necessary. The 2006 .com Agreement permits VeriSign to use its exclusive access to this
9 traffic data for its own commercial benefit, including to promote the sale of domain names.

10 113. One of the services VeriSign intends to re-launch under the conspiracy is a
11 modified and expanded version of the Wait List Service, which it has renamed the Central Listing
12 Service ("CLS") (hereafter, both the Waiting List Service and the Central Listing Service are
13 identified as "CLS"). On information and belief, VeriSign intends to launch CLS as soon as
14 possible. The CLS service will affect the manner in which expired .com domain names are
15 released to the public. Under the current system, when a .com domain name is not renewed by
16 the registrant, VeriSign automatically renews it upon expiration and gives the registrar up to
17 forty-five days to inform the registry that the domain name is to be deleted. Once the registrar
18 confirms with the registry that the domain name is to be deleted, the domain name enters the
19 redemption grace period. During this period, a registrant who failed to renew its domain name
20 may do so upon payment of a fee above the standard registry fee. At the end of the redemption
21 grace period, the domain name is added to the pending delete file and all of the registrars are
22 notified that it is pending deletion. At that point, the registrars may use their back order service
23 providers to try to register the domain name on behalf of their registrants.

24 114. Under the proposed CLS service, the pending delete period, as well as the daily
25 release of deleted domain names, will be eliminated. Instead, VeriSign will notify all registrars
26 who have signed the CLS service agreement of the domain names to be deleted, and will hold a
27 five-day auction for all of the domain names. If there are no bids on a particular domain name, it
28 will be released by VeriSign and can be registered as with any other previously unused domain

1 name. If there is a successful bid for the domain name, VeriSign will deduct the bid amount (plus
2 the registry fee and any ICANN fees) from the successful registrar's account and the domain
3 name will enter a ten-day grace period designed to permit the registrar to collect the bid amount
4 from the successful registrant to complete the auction. Although a registrar has no ownership
5 interest in a domain name, if the registrar that released the domain name has signed the CLS
6 agreement, then the registrar will receive ninety percent of the auction bid. VeriSign will receive
7 the remaining ten percent.

8 115. The 2006 .com Agreement would create a new definition of "Consensus Policies,"
9 including new limitations on what policies can be "Consensus Policies." The effect of the new
10 limitations on "Consensus Policies" is to restrict the ability of Internet stakeholders other than
11 VeriSign to require VeriSign to act in the interest of the entire Internet community and
12 consistently with the pro-competitive mandate of the Department of Commerce MOU.

13 116. In conspiring with VeriSign to allow VeriSign to leverage its monopoly, ICANN
14 intentionally abdicated its responsibility under the MOU to support competition and to ensure that
15 new proposed registry services are not anticompetitive. As part of the 2006 .com Agreement,
16 ICANN swears off any attempt to review the competitive effect of any proposed registry service.
17 As a result, anticompetitive services that ICANN previously resisted, and new services that
18 ICANN should resist under the MOU's pro-competition mandate, would be approved under the
19 2006 .com Agreement. Under this agreement, if ICANN determines that the proposed registry
20 service "might raise significant competition issues, ICANN shall refer the issue to the appropriate
21 governmental competition authority." The agreement further provides that "[f]ollowing such
22 referral, ICANN shall have no further responsibility, and [VeriSign] shall have no further
23 obligation to ICANN, with respect to any competition issues relating to" the proposed registry
24 service.

25 117. **ICANN's Economic Motives to Conspire.** ICANN is motivated to enter into the
26 conspiracy by economic factors.

27 118. First, the conspiracy provides for ICANN to share in the monopoly profits,
28 including among other things, through the payment by VeriSign to ICANN of a "registry level

1 fee,” beginning at \$6 million dollars per year and increasing over the next two years to potentially
2 in excess of \$12 million dollars per year.

3 119. Second, VeriSign has put ICANN in financial jeopardy through a stream of costly
4 and aggressive litigation: VeriSign brought claims in federal court that were dismissed without
5 prejudice; filed similar claims again in federal court that were dismissed with prejudice;
6 proceeded to file for a third time in state court; and has also proceeded in arbitration against
7 ICANN.

8 120. ICANN has acquiesced to VeriSign’s pressure to conspire, and ICANN has further
9 been lured by the share of monopoly profits that it will receive from VeriSign’s operations of the
10 .net and .com registries.

11 121. In addition, the 2005 .net Agreement provides for a maximum price per year for
12 each new or renewal domain name registration. Until December 31, 2006, the maximum price is
13 set at \$4.25, which includes a \$0.75 Registry-Level Transaction Fee that is paid to ICANN by the
14 registrar. The increase in the “Registry-Level Transaction Fee” from \$0.25 under the 2001 .net
15 Agreement to \$0.75 under the 2005 .net Agreement allows ICANN to share in the monopoly
16 profit generated by VeriSign’s and ICANN’s conspiracy.

17 122. The conspiracy hands VeriSign an additional windfall by relieving it of its
18 obligation under the 2001 .com Agreement to expend a minimum of two hundred million dollars
19 (\$200,000,000) “for research, development, and infrastructure improvements to the .com, .net,
20 and .org Registries” between May 25, 2001, and December 31, 2010.

21 123. The conspiracy also frees VeriSign from the Code of Conduct in Appendix I to the
22 2001 .com Agreement.

23
24 **VIII. ICANN’S AND VERISIGN’S ANTICOMPETITIVE, EXCLUSIONARY AND**
25 **PREDATORY CONDUCT IN THE RELEVANT MARKETS**

26 124. The history of ICANN’s oversight of the Internet domain name system has seen an
27 ever-expanding empire-building by VeriSign, most recently with ICANN’s capitulation.
28

1 125. VeriSign has repeatedly taken steps to expand its limited-duration contractual
2 monopoly over the registry itself into a permanent monopoly over that registry and over markets
3 for various domain name services. VeriSign's misconduct has included in several instances
4 outright breaches of its contracts with ICANN. Indeed, these breaches have led to litigation
5 between VeriSign and ICANN in which ICANN brought a counterclaim alleging that VeriSign
6 was in violation of material provisions of its contracts with ICANN. However, ICANN's
7 resistance to VeriSign's misconduct has all along been feeble, and now ICANN has capitulated
8 entirely in return for a share of the monopoly profits its acquiescence will afford to VeriSign.

9 **A. ANTICOMPETITIVE CONDUCT IN THE DOMAIN NAME REGISTRATION**
10 **MARKET**

11 126. VeriSign's persistence in challenging ICANN's oversight authority has been
12 rewarded with a steady erosion of competition under ICANN.

13 127. For example, in negotiating to take over operation of the .com registry in 2001,
14 VeriSign deployed its substantial economic muscle to extract from ICANN a renewal term that
15 would make it difficult for ICANN to reopen the registry contract to competitive bidding. Now,
16 the conspiracy all but eliminates that potential for competition in all of the relevant markets, and
17 virtually ensures VeriSign's monopoly control over these markets. Without the threat of future
18 open bidding on its registry operation contracts, VeriSign is free to increase the prices consumers
19 are charged for registering domain names. In just one manifestation of VeriSign's monopoly
20 control, the proposed .com Registry Agreement calls for an increase in registration fees coupled
21 with guaranteed annual additional increases (in four of the next six years) – and with the renewal
22 provision for four of every six years, in perpetuity.

23 128. By contrast, because VeriSign failed to secure similar favorable renewal terms in
24 its initial 2001 contract to operate the .net registry, VeriSign faced competitive bidding when it
25 sought to renew the .net registry agreement in 2005. As a result, VeriSign was forced to agree to
26 lower registration fees by thirty percent in connection with that registry in order to win renewal of
27 the contract. The conspiracy frees VeriSign from competitive bidding for either registry in the
28 future.

1 129. VeriSign also used its litigation with ICANN and the confidential settlement
2 negotiations attendant to that litigation to obtain an unfair competitive advantage in its 2005 bid
3 to operate the .net registry. In its settlement negotiations for .com, which preceded the
4 submission of competitive bids for .net, VeriSign learned of material changes in ICANN's
5 registry contractual terms, including the release of price caps and changes in the approval process
6 for new registry services, that allowed VeriSign to submit a more competitive bid for .net than it
7 could have had it been subject to the rules applicable to other bidders.

8 130. VeriSign, insulated from the threat of future competition, has engaged in
9 monopolistic conduct that has disrupted the competitive balance of the Internet, and at times has
10 included flagrant breaches of its obligations under the existing .com and .net registry agreements.
11 For example, VeriSign has taken impermissible steps, without obtaining required consent from
12 ICANN, to introduce, *inter alia*, fee-based services, including "IDN" (international domain name)
13 and "ConsoliDate," in each case undermining ICANN's ability to maintain competitive and
14 nondiscriminatory balance in the markets for domain name services.

15 131. VeriSign engaged in a predatory and exclusionary campaign that included
16 depleting ICANN's resources while at the same time luring it with a share of monopoly profits, in
17 order to exclude rivals from the relevant markets.

18 132. Through its own conduct, including its unlawful conspiracy with ICANN,
19 VeriSign has monopolized and will continue to monopolize the relevant markets for .com domain
20 name registrations, has imposed and will impose supracompetitive prices on consumers in those
21 markets, and has eliminated and will continue to eliminate any economic pressure on itself to
22 innovate or offer improvements in service including security and stability.

23 133. Through its own conduct, including its unlawful conspiracy with ICANN,
24 VeriSign has monopolized and will continue to monopolize the relevant markets for .net domain
25 name registrations, has imposed and will impose supracompetitive prices on consumers in those
26 markets, and has eliminated and will continue to eliminate any economic pressure on itself to
27 innovate or offer improvements in service including security and stability.

1 **B. ANTICOMPETITIVE CONDUCT IN THE EXPIRING NAMES REGISTRATION**
2 **SERVICES MARKET**

3 134. Acting alone and also in collusion with ICANN, VeriSign has leveraged, and
4 threatens to leverage, contractual registry monopolies into monopolies over other adjacent and
5 downstream markets and to destroy and completely transform a functioning and competitive
6 marketplace for Internet domain names and related services.

7 135. As described above in more detail, there is strong competition within the Expiring
8 Names Registration Services Market for the registration of expiring domain names. A number of
9 back order service providers compete in this market, and their services have been well-received
10 by consumers.

11 136. ICANN and VeriSign have conspired to eliminate all competition for such services
12 and share between themselves the monopoly profits that VeriSign will take by excluding all other
13 back order service providers. Under the conspiracy, VeriSign will discontinue the existing
14 competitive process through which it currently releases expiring domain names to the public.
15 Instead, VeriSign will implement the Central Listing Service (“CLS”) whereby it will retain all
16 expiring .com and .net domain names, and open them up for auction through a dedicated auction
17 site. Registrants will continue to order domain names through registrars, but registrars must deal
18 directly with VeriSign in order to receive expiring names to offer to prospective clients.

19 137. The conspiracy will immediately and permanently substitute a complete VeriSign
20 monopoly in place of the existing competition among back order service providers, with
21 predictable adverse price effects for consumers. At the outset, VeriSign, again with ICANN’s
22 blessing, will skim ten percent off winning bids and nothing in the contracts or otherwise will
23 prevent VeriSign from further increasing prices.

24 138. VeriSign’s CLS auction monopoly entirely displaces the currently competitive
25 market for back order services.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

Monopolization Under Section 2 of the Sherman Act

(Against VeriSign-.com and .net Registration Markets)

139. Plaintiff repeats and incorporates by reference the allegations set forth above as if fully set forth herein.

140. For purposes of this claim, the relevant product markets are the .com and .net Registration Markets. The relevant geographic markets are global.

141. VeriSign has a complete monopoly in the .com and .net Registration Markets, and exercises market power in those markets. VeriSign has acted alone and in concert with ICANN unlawfully to maintain its monopoly indefinitely into the future in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

142. VeriSign’s monopoly control of the .com and .net Registration Markets has been maintained and extended through exclusionary and predatory conduct.

143. It is unnecessary and unreasonable for a single company to continue indefinitely to maintain monopoly control over the .com and .net registries.

144. VeriSign’s unlawful conduct has caused and, unless enjoined by this Court, will continue to cause adverse and anticompetitive injury to consumers and to the business and property of Internet stakeholders and to CFIT’s Members and Supporters, including Pool.com and R. Lee Chambers Company LLC.

SECOND CAUSE OF ACTION

Attempted Monopolization Under Section 2 of the Sherman Act

(Against VeriSign - .com and .net Registration Markets)

145. Plaintiff repeats and incorporates by reference the allegations set forth above as if fully set forth herein.

146. For purposes of this claim, the relevant product markets are the .com and .net Registration Markets. The relevant geographic markets are global.

1 147. For purposes of this claim, CFIT alleges that .com and .net are separate markets
2 and that Verisign has engaged in exclusionary and predatory conduct with respect to each of them
3 separately and individually.

4 148. VeriSign has a complete monopoly in the .com and .net Registration Markets, and
5 each of them individually, and exercises market power in those markets.

6 149. VeriSign has engaged in exclusionary and predatory conduct with the specific
7 intent to extend and perpetuate its monopoly over these relevant markets in violation of Section 2
8 of the Sherman Act, 15 U.S.C. § 2.

9 150. The acts done and threatened by VeriSign are exclusionary insofar as they have
10 prevented and threaten to further prevent in perpetuity any other entity from ever competing to
11 operate the .com and .net registries such as by offering lower prices, superior service or
12 innovation.

13 151. By virtue of VeriSign's exclusionary scheme and unlawful conduct, there is a
14 dangerous probability that VeriSign will succeed in extending its monopoly control over the .com
15 and .net Registration Markets in perpetuity in violation of Section 2 of the Sherman Act, 15
16 U.S.C. § 2.

17 152. If not enjoined, there is a dangerous likelihood that VeriSign's monopolization
18 will continue, with the result that all other existing and potential competitors will be forever
19 excluded from competition in the relevant .com and .net Registration Markets, and VeriSign will
20 continue to impose supra-competitive price increases.

21 153. If not enjoined by this Court, VeriSign will continue to cause adverse and
22 anticompetitive injury to consumers and to the business and property of Internet stakeholders and
23 to CFIT's Supporters, including Pool.com and R. Lee Chambers Company LLC.

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THIRD CAUSE OF ACTION

Attempted Monopolization Under Section 2 of the Sherman Act

(Against VeriSign – Expiring Names Registration Services Market)

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4 154. Plaintiff repeats and incorporates by reference the allegations set forth above as if
5 fully set forth herein.

6 155. For purposes of this claim, the relevant product market is the Expiring Names
7 Registration Services Market. The relevant geographic market is the world.

8 156. VeriSign has a complete monopoly in the .com and .net Registration Markets, and
9 exercises market power in those markets.

10 157. The Expiring Names Registration Services Market is currently highly competitive.

11 158. VeriSign has engaged in exclusionary and predatory conduct with the specific
12 intent to acquire and maintain unlawfully a monopoly in each of the currently competitive
13 relevant markets, including the Expiring Names Registration Services Market.

14 159. VeriSign’s unlawful monopoly, if not enjoined and restrained, will result in the
15 elimination of competition from rival service providers, including CFIT’s Supporters, as well as
16 supra-competitive price increases.

17 160. The acts done and threatened by VeriSign pursuant to the 2006 .com Agreement,
18 and the acts undertaken pursuant to the 2005 .net Agreement, as well as the other acts taken by
19 VeriSign to implement this scheme, are exclusionary and predatory insofar as they preclude
20 others from competing for the provision of registration services in the Expiring Names
21 Registration Services Market.

22 161. By virtue of VeriSign’s exclusionary scheme and unlawful conduct, there is a
23 dangerous probability that VeriSign will succeed in gaining monopoly control over the currently
24 competitive markets for registering expiring domain names, in violation of Section 2 of the
25 Sherman Act, 15 U.S.C. § 2.

26 162. If not enjoined, there is a dangerous likelihood that VeriSign’s monopolization
27 will continue, with the result that all other existing and potential competitors will be forever
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1 excluded from competition in the relevant Expiring Names Registration Services Market, and that
2 VeriSign will continue to impose supra-competitive price increases.

3 163. If not enjoined by this court, VeriSign will continue to cause adverse and
4 anticompetitive injury to consumers and to the business and property of Internet stakeholders and
5 to CFIT's Supporters, including Pool.com and R. Lee Chambers Company LLC.

6 **FOURTH CAUSE OF ACTION**

7 **Conspiracy to Monopolize Under Section 2 of the Sherman Act**

8 **(Against VeriSign and ICANN – All Relevant Markets)**

9 164. Plaintiff repeats and incorporates by reference the allegations set forth above as if
10 fully set forth herein.

11 165. For purposes of this claim, the relevant product markets are the .com and .net
12 Registration Markets and the Expiring Names Registration Services Market. The relevant
13 geographic markets are global.

14 166. VeriSign has a complete monopoly in the .com and .net Registration Markets, and
15 exercises market power in those markets. It is unnecessary and unreasonable for a single
16 company to continue indefinitely to maintain monopoly control over the .com and .net registries.

17 167. VeriSign has acted in concert with ICANN unlawfully to acquire and maintain
18 VeriSign's monopoly over these relevant markets indefinitely into the future in violation of
19 Section 2 of the Sherman Act, 15 U.S.C. § 2, and both have acted with the specific intent to
20 confer upon VeriSign unlawful monopoly power in these relevant markets.

21 168. The Expiring Names Registration Services Market is currently highly competitive.
22 VeriSign and ICANN have combined and conspired to act together to obtain monopoly power for
23 VeriSign in each of the relevant markets. In furtherance of their conspiracy, VeriSign and
24 ICANN negotiated and entered into agreements and profit-sharing arrangements whereby
25 VeriSign and ICANN will in various ways share the monopoly overcharges that the conspiracy
26 will impose on consumers in the relevant markets.

27 169. Defendants' conspiracy to monopolize the relevant markets has been in violation
28 of § 2 of the Sherman Act.

1 170. Defendants' unlawful conspiracy has caused and, unless enjoined by this Court,
2 will continue to cause adverse and anticompetitive injury to consumers and to the business and
3 property of Internet stakeholders and to CFIT's Supporters, including Pool.com and R. Lee
4 Chambers Company LLC.

5 171. If not enjoined, defendants' conspiracy and restraint on trade will continue.

6 **FIFTH CAUSE OF ACTION**

7 **Conspiracy in Restraint of Trade Under Section 1 of the Sherman Act**

8 **(Against VeriSign and ICANN – All Relevant Markets)**

9 172. Plaintiff repeats and incorporates by reference the allegations set forth above as if
10 fully set forth herein.

11 173. For purposes of this claim, the relevant product markets are the .com and .net
12 Registration Markets and the Expiring Names Registration Services Market. The relevant
13 geographic markets are global.

14 174. For purposes of this claim, CFIT alleges that .com and .net are separate markets
15 and that Verisign has engaged in exclusionary and predatory conduct with respect to each of them
16 separately and individually.

17 175. VeriSign has a complete monopoly over the relevant .com and .net Registration
18 Markets, and each of them individually, and exercises market power in those markets. It is
19 unnecessary and unreasonable for a single company to continue indefinitely to maintain
20 monopoly control over the .com and .net registries.

21 176. VeriSign has acted in concert with ICANN unlawfully to secure monopoly power
22 and to restrain and eliminate competition in the relevant .com and .net Registration Markets
23 indefinitely into the future in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

24 177. The Expiring Names Registration Services Market is currently highly competitive.

25 178. VeriSign and ICANN have conspired to act together to restrain trade and
26 competition in each of these relevant markets in violation of Section 1 of the Sherman Act, 15
27 U.S.C. § 1.
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1 179. Defendants' conspiracy to restrain trade in the relevant markets has had, and
2 unless enjoined will continue to have, the effect of harming the competitive process in interstate
3 commerce.

4 180. If not enjoined, defendants' restraint on trade will continue, with the result that all
5 other existing and potential competitors will be excluded from competing in the relevant markets
6 and consumers will be forced to pay, and continue to pay in perpetuity, supra-competitive prices
7 for the registration of .com and .net domain names.

8 181. Defendants' conspiracy has caused, and unless enjoined will continue to cause,
9 injury to consumers and to the business and property of VeriSign's existing and potential
10 competitors and Internet stakeholders and to CFIT's Supporters, including Pool.com and R. Lee
11 Chambers Company LLC.

12 **SIXTH CAUSE OF ACTION**

13 **Conspiracy in Restraint of Trade Under the Cartwright Act**

14 **(Against VeriSign and ICANN – All Relevant Markets)**

15 182. Plaintiff repeats and incorporates by reference the allegations set forth above as if
16 fully set forth herein.

17 183. For purposes of this claim, the relevant product markets are the .com and .net
18 Registration Markets and the Expiring Names Registration Services Market. The relevant
19 geographic markets are global, including California.

20 184. VeriSign has a complete monopoly over the relevant .com and .net Registration
21 Markets, and exercises market power in those markets. It is unnecessary and unreasonable for a
22 single company to continue indefinitely to maintain monopoly control over the .com and .net
23 registries.

24 185. VeriSign has acted in concert with ICANN unlawfully to restrain and eliminate
25 competition in the relevant .com and .net Registration Markets indefinitely into the future in
26 violation of the Cartwright Act, California Business & Professions Code sections 16720 *et seq.*

27 186. The Expiring Names Registration Services Market is currently highly competitive.
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1 187. VeriSign and ICANN have conspired to act together to restrain trade and
2 competition in each of these relevant markets in violation of the Cartwright Act California
3 Business & Professions Code sections 16720 *et seq.*

4 188. Defendants' conspiracy to restrain trade in the relevant markets has had, and
5 unless enjoined will continue to have, the effect of harming the competitive process in California.

6 189. If not enjoined, defendants' restraint on trade will continue, with the result that all
7 other existing and potential competitors will be excluded from competing in the relevant markets
8 in California and consumers will be forced to pay, and continue to pay in perpetuity, supra-
9 competitive prices for the registration of .com and .net domain names.

10 190. Defendants' conspiracy has caused, and unless enjoined will continue to cause,
11 injury to consumers and to the business and property of VeriSign's existing and potential
12 competitors and Internet stakeholders and to CFIT's Supporters, including Pool.com and R. Lee
13 Chambers Company LLC.

14 **PRAYER**

15 WHEREFORE, CFIT prays for judgment as follows:

16 1. For a declaration that the 2005 .net Agreement and the proposed new 2006 .com
17 Registry Agreement are unlawful and in violation of Sections 1 and 2 of the Sherman Act, 15
18 U.S.C. §§ 1 and 2; and the Cartwright Act, California Business & Professions Code
19 sections 16720 *et seq.*;

20 2. For a declaration that Section 3.1(b)(v) (the limitations on Consensus Policies),
21 Section 3.1(d) (the definition of Registry Services), Section 4.2 ("Renewal"), and Appendix 9
22 (explicitly authorizing the provision of specified new services) of the 2005 .net Agreement are
23 unlawful in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; and the
24 Cartwright Act, California Business & Professions Code sections 16720 *et seq.*;

25 3. That the Court adjudge and decree that VeriSign has monopolized interstate trade
26 and commerce in the relevant markets in violation of Section 2 of the Sherman Act, 15 U.S.C.
27 § 2;

1 4. That the Court adjudge and decree that VeriSign has attempted to monopolize
2 interstate trade and commerce in the relevant markets in violation of Section 2 of the Sherman
3 Act, 15 U.S.C. § 2;

4 5. That the Court adjudge and decree that ICANN and VeriSign have combined and
5 conspired to monopolize interstate trade and commerce in the relevant markets in violation of
6 Section 2 of the Sherman Act, 15 U.S.C. § 2;

7 6. That the Court adjudge and decree that ICANN and VeriSign have combined and
8 conspired to restrain interstate trade and commerce in the relevant markets in violation of
9 Section 1 of the Sherman Act, 15 U.S.C. § 1;

10 7. That the Court adjudge and decree that ICANN and VeriSign have combined and
11 conspired to restrain trade, and to have formed a trust, in violation of the Cartwright Act,
12 California Business & Professions Code §§ 16720 *et seq.*;

13 8. That Defendants and all persons, firms, and corporations acting on their behalf and
14 under their direction or control be permanently enjoined from engaging in, carrying out, renewing
15 or attempting to engage, carry out, or renew, any contracts, agreements, practices, or
16 understandings in violation of the Sherman Act, the Lanham Act, the Cartwright Act, or the
17 Unfair Competition Act, and specifically including, without limitation, the renewal provisions of
18 the proposed .com registry agreement and Section 2.4 "Renewal" of the 2005 .net Agreement;

19 9. That VeriSign be enjoined and prohibited from engaging in any "Registry
20 Services" except for services that are defined as "Registry Services" in the 2001 .com Agreement;

21 10. That VeriSign be ordered to divest promptly and in any event within 90 days the
22 registry business and all assets used or reasonably necessary to its operation to a separate
23 company that will be prohibited from engaging in any business except for services that are
24 defined as "Registry Services" in the 2001 .com Agreement;

25 11. That ICANN be prohibited from approving any service offered by VeriSign, its
26 divestee, or any future party operating the .com or .net registries where the effect may be to tend
27 to create a monopoly, to substantially harm competition, or to restrain trade and competition in
28 any line of commerce;

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1 12. That CFIT and other third parties who shall have been or might be injured in their
2 business or property as a result of any violation by ICANN or Verisign of any of the provisions of
3 the Court's order, including CFIT's Supporters, be specifically authorized to enforce the
4 provisions of thereof in this Court, including without limitation pursuant to the antitrust laws of
5 the United States as well as any applicable state antitrust or unfair competition laws;

6 13. That VeriSign and ICANN be ordered to abide by the terms of the 2001 .com
7 Agreement until it expires on November 10, 2007, and that ICANN be ordered to entertain
8 competing bids for the operation of the .com registry by that time;

9 14. That VeriSign and ICANN be ordered and required to comply with the price
10 provisions of Appendix G of the 2001 .com Agreement, and the Code of Conduct provisions of
11 Appendix I of the 2001 .com Agreement and 2001 .net Agreement;

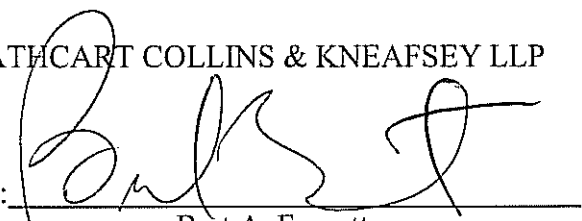
12 15. That VeriSign and ICANN be ordered and required to comply with the research
13 and development provisions of Appendix W of the 2001 .com Agreement and make public the
14 required annual reports thereunder;

15 16. That plaintiff have such other relief as the Court may consider necessary or
16 appropriate to restore competitive conditions in the markets affected by defendants' unlawful
17 conduct; and

18 17. That plaintiff recover the costs of this action and its attorneys fees.

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Dated: October 13, 2006

CATHCART COLLINS & KNEAFSEY LLP
By: 
Bret A. Fausett

Attorneys for Plaintiff
COALITION FOR ICANN TRANSPARENCY INC.