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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF LOS ANGELES**

17 **DAVID SCOTT SMILEY**, individually and  
doing business as **SMILEY**  
18 **PRODUCTIONS**, a sole proprietorship; and  
19 **SKYSCRAPER PRODUCTIONS, LLC**, a  
California limited liability company,

20 Plaintiffs,

21 vs.

22 **INTERNET CORPORATION FOR**  
**ASSIGNED NAMES AND NUMBERS**, a  
23 California corporation; **NEULEVEL, INC.**, a  
Delaware corporation; **ABACUS AMERICA,**  
24 **INC.**, a California corporation;  
25 **ALLDOMAINS.COM**, a California  
corporation; **BLUEBERRY HILL**  
**COMMUNICATIONS, INC.**, a California  
26 corporation; **BULKREGISTER.COM, INC.**,  
a Maryland corporation; **CATALOG.COM,**  
27 **INC.**, a California corporation;

CASE NO. BC 254659

**CLASS ACTION**

**FIRST AMENDED COMPLAINT**  
**FOR:**

1. **VIOLATIONS OF BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.;**
2. **PRELIMINARY AND PERMANENT INJUNCTION (CODE CIV. PROC., §§ 526, 527)**

**ORIGINAL FILED**

**AUG 01 2001**

**LOS ANGELES SUPERIOR COURT**

1 DOMAIN REGISTRATIONS SERVICES,  
2 INC., a Florida corporation; DOTSTER,  
3 INC., a Washington corporation;  
4 MARKMONITOR INC., an Idaho  
5 corporation; ENOM, INC., a Washington  
6 corporation; GO DADDY SOFTWARE,  
7 INC., an Arizona corporation;  
8 INTERCOSMOS MEDIA GROUP INC., a  
9 Delaware corporation; INTERNET NAMES  
10 WORLDWIDE(US), INC., a Delaware  
11 corporation; NAMESECURE INC., a  
12 California corporation; NETWORK  
13 SOLUTIONS, INC., a Delaware corporation;  
14 PARAVA NETWORKS, INC., a Texas  
15 corporation; REGISTER.COM, INC., a  
16 Delaware corporation; THE REGISTRY AT  
17 INFO AVENUE, a South Carolina  
18 corporation; VERISIGN, INC., a Delaware  
19 corporation; DOMAIN BANK, INC, a  
20 Pennsylvania corporation; CYDIAN  
21 TECHNOLOGIES, LLC, a New York  
22 limited liability company; YAHOO! INC., a  
23 Delaware corporation; #1 DOMAIN NAMES  
24 INTERNATIONAL, INC.; 007NAMES,  
25 INC.; 1 ENAMECO; 123 REGISTRATION,  
26 INC.; 21 COMPANY; 4DOMAINS.COM;  
27 ALTERNATEDOMAINS.COM;  
28 AMERICAN DATA TECHNOLOGY INC.;  
BB ONLINE UK LTD.;  
BUDGETREGISTER.COM; CASDNS INC;  
CORE INTERNET COUNCIL OF  
REGISTRARS; CORPORATE DOMAINS,  
INC.; CSL COMPUTER SERVICE  
LANGENBACH; CYBERSEARCH-US,  
INC.; CYBERVISORS, INC.; DIRECT  
INFORMATION PVT LTD.; DIVERSITY  
NETWORK SERVICES; DOMAIN-IT!,  
INC.; DOMAININFO; DOMAINMART;  
DOMAINNAMEREGISTRATION.COM;  
DOMAINPEOPLE, INC.;  
DOTBIZLOTTERY.COM; EARLY BIRD  
DOMAIN; EDIFAX INTERNET SERVICES  
LLC; FIRSTDOMAIN.NET; G+D  
INTERNATIONAL LLC; GAL  
COMMUNICATIONS, LTD; I.D.R.  
INTERNET DOMAIN REGISTRY;  
INTERNET DOMAIN REGISTRARS;  
INTERNETREGISTRATION.COM, LLC;  
MARKMONITOR; MELBOURNE IT  
LIMITED; NAMEENGINE, INC.;  
NAMESCOUT.COM CORP.; NDN  
REGISTRY; NETBENEFIT; NETLOGIN;  
NET NAMES INTERNATIONAL LTD.;  
NETPIA.COM, INC.;

1 NOMINALIA INTERNET SL;  
2 ONLINENIC, INC.; PROCUREMENT  
3 SERVICES, INC.; RAPID HOST;  
4 RESERVEME.COM;  
5 SIGNDOMAINS.COM; SPEEDNAMES,  
6 INC.; SPY PRODUCTIONS.COM; THE  
7 NAMEIT CORP.; TUCOWS, INC.;  
8 VIRTUAL INTERNET PLC; WEB  
9 EXPRESS, INC.; WEB COSTASOL;  
10 WEBCITY AUSTRALIA PTY LTD.;  
11 WORLDWIDEMEDIA.COM; and DOES 1-  
12 500, inclusive ,

13 Defendants.

14 Plaintiffs DAVID SCOTT SMILEY, who does business as SMILEY  
15 PRODUCTIONS, and SKYSCRAPER PRODUCTIONS, LLC, for themselves and as a  
16 representative of all others similarly situated, and on behalf of the general public pursuant  
17 to Business & Professions Code §§ 17200 (collectively, the plaintiffs are referred to herein  
18 as “Plaintiffs” and each individually as a “Plaintiff”) hereby allege for their complaint against  
19 the defendants named above (collectively, the defendants are referred to herein as  
20 “Defendants” and each individually as a “Defendant”), on personal knowledge as to their  
21 own activities, and on information and belief as to the activities of others, as follows:

## 22 I. NATURE OF CASE

23 1.1. Defendants are engaged in a criminal lottery enterprise, illegal in California  
24 and every state of this country. Specifically, Defendants are offering the chance to win the  
25 right to register <.biz><sup>1</sup> domain names<sup>2</sup> in exchange for a fee from Plaintiffs, Plaintiff Class

26 <sup>1</sup> Internet domain names are surrounded by the caret symbols (“< >”) herein to distinguish  
27 them. The caret symbols, themselves, are not part of any domain name.

28 <sup>2</sup> As used herein, “<.biz> domain name” means any domain name the top-level of which is  
<.biz>. For example, <example.biz> is a <.biz> domain name and, likewise,  
<.this.is.an.example.of.biz> is a <.biz> domain name. The terms “domain” and “domain name” are  
used synonymously and interchangeably herein, though technically they may have different

1 members, and members of the general public. The Plaintiffs can increase their odds of  
2 winning the right to register a domain name by purchasing additional chances.

3 1.2. Plaintiffs are consumers and/or businesses which desire to register certain  
4 <.biz> domain names. Accordingly, Plaintiffs have paid Defendants fees for the chance to  
5 win the right to register such domain names. As a result of Defendants' lottery enterprise,  
6 Plaintiffs and similarly situated consumers and/or businesses around the world have paid  
7 Defendants money, but Defendants have not provided anything of value to Plaintiffs.

8 1.3. Defendants' illegal lottery enterprise constitutes unfair competition under the  
9 laws of the state of California and most other states.

10 1.4. Plaintiffs are entitled to a refund of monies paid to Defendants, and additional  
11 damages, costs, and attorneys' fees, as described herein. Additionally, this lawsuit seeks to  
12 stop Defendants' unfair and illegal lottery enterprise.

## 13 14 II. PARTIES

15 2.1. Plaintiff DAVID SCOTT SMILEY is an individual doing business as  
16 SMILEY PRODUCTIONS (together, "Smiley"), a sole proprietorship doing business in San  
17 Diego, California and Phoenix, Arizona. Smiley is owned and operated by David Scott  
18 Smiley, with its principal place of business located in Scottsdale, Arizona. Smiley brings this  
19 action individually, as a representative of all others similarly situated, and on behalf of the  
20 general public pursuant to Business & Professions Code § 17200, et. seq.

21 2.2. Plaintiff SKYSCRAPER PRODUCTIONS, LLC ("Skyscraper") is a  
22 California limited liability company with its principal place of business located in Glendale,  
23 California. Skyscraper brings this action on behalf of itself, as a representative of all others  
24 similarly situated, and on behalf of the general public pursuant to Business & Professions  
25 Code § 17200, et. seq.

26 2.3. Defendant INTERNET CORPORATION FOR ASSIGNED NAMES AND  
27 \_\_\_\_\_  
28 meanings.

1 NUMBERS (“Defendant ICANN”) is a California corporation with its principal place of  
2 business located at 4676 Admiralty Way, Suite 330, Marina Del Rey, California  
3 90292-6601.

4 2.4. Defendant NEULEVEL, INC. (“Defendant Neulevel”), is a Delaware  
5 corporation with its principal place of business located at Loundoun Tech Center, 45980  
6 Center Oak Plaza, Sterling, Virginia 20166, which has transacted, and currently does  
7 transact, business in the state of California.

8 2.5. Defendant NETWORK SOLUTIONS, INC. (“Defendant NSI”) is a Delaware  
9 corporation registered to do business, and which does business, in the state of California,  
10 with its registered office located in the city and county of Los Angeles at 818 West Seventh  
11 Street, Los Angeles, California 90017, with its principal place of business located at 505  
12 Huntmar Park Drive, Herndon, Virginia, 20170-5139.

13 2.6. Defendant VERISIGN, INC. (“Defendant Verisign”) is a Delaware  
14 corporation with its principal place of business located in California at 487 East Middlefield  
15 Road, Mountain View, California 94043. Plaintiffs are informed and believe, and on that  
16 basis allege, that Defendant Verisign is, among other things, the alter ego of NSI.

17 2.7. Defendant TUCOWS, INC. (“Defendant Tucows”) is a corporation, which  
18 Plaintiffs believe and therefore allege is, organized under the laws of Ontario, Canada with  
19 its principal place of business located at 96 Mowat Ave., Toronto, Ontario M6K 3M1,  
20 Canada, which locates its principal place of business in the United States at 535 5th Avenue,  
21 New York, New York 10017, and which has transacted, and currently does transact, business  
22 in the state of California.

23 2.8. Defendant MELBOURNE IT LTD. (“Defendant Melbourne IT”) is a  
24 corporation, which Plaintiffs believe and therefore allege is, organized under the laws of  
25 Victoria, Australia, with its principal place of business located at Level 2, 120 King Street,  
26 Melbourne Vic 3000, Australia, which locates its principal place of business in the United  
27 States in California at 2020 Stuart St, Berkeley, California 94703, and which has transacted,  
28 and currently does transact, business in the state of California. Defendant Melbourne IT

1 wholly owns INWW, and owns at least fifty percent (50%) of the shares of Defendant  
2 Neulevel.

3 2.9. Defendant INTERNET NAMES WORLDWIDE(US),INC. (“Defendant  
4 INWW”) is a division of Defendant Melbourne IT, and a Delaware corporation which is  
5 registered to do business, does business, and locates its principal place of business, in the  
6 state of California at 2020 Stuart St, Berkeley, California 94703. Defendant INWW is a  
7 wholly owned subsidiary of Defendant Melbourne IT, and is also the alter ego of Defendant  
8 Melbourne IT.

9 2.10. Plaintiffs allege that the remaining Defendants named in the above-entitled  
10 caption are businesses entities, most of whose form is unknown, all of which are doing  
11 business in California, and most of which are doing business in the county of Los Angeles.

12 2.11. Most of the Defendants named in the above-entitled caption are Registrars<sup>3</sup>.  
13 Each of the Registrars is empowered to be a Registrar by virtue of a contract into which each  
14 such Registrar entered with Defendant ICANN. Said contract between ICANN and each  
15 respective Registrar provides that such contract is “made . . . at Los Angeles, California,  
16 USA.” Additionally, said contract provides that disputes arising under or in connection with  
17 that contract shall be resolved in Los Angeles, California. All of the Registrars undertook  
18 the wrongful acts alleged herein pursuant to authority vested in them by said contract with  
19 ICANN.

20 2.12. Some of the Defendants named in the above-entitled caption (collectively,  
21 “Agent Defendants”) are “partners” or “affiliates” or “resellers” or “registered service  
22 providers” of Defendant Tucows, Defendant Melbourne IT, Defendant INWW, or other  
23 Defendants (collectively “Principal Defendants”), and all of which such Agent Defendants  
24 are agents of at least one of such Principal Defendants. Each such Agent Defendant has  
25 entered into an agreement with at least one Principal Defendant providing that such Agent  
26 Defendant has the authority to cause registration of domain names as if such Agent  
27

28 <sup>3</sup> See *infra*, ¶ 5.9, p. 14

1 Defendant had entered into a contract with ICANN directly. Many of the agreements  
2 between Principal Defendants and Agent Defendants also provide that the Agent Defendants  
3 must abide by all policies which ICANN imposes on Principal Defendants. For example, the  
4 agreement between Principal Defendant Tucows and its Agent Defendants provides that such  
5 agent Defendants shall be bound by "terms or conditions established by . . . ICANN" and  
6 "shall comply with all policies of . . . ICANN that may be established from time to time  
7 regarding the . . . registration of second-level domain names or related matters."  
8 Accordingly, because the agreement between such Agent Defendants and such Principal  
9 Defendants provides that such Agent Defendants may register domain names as if such  
10 Agent Defendants were Registrars empowered directly by ICANN, such Agent Defendants  
11 are referred to herein as "Registrars" to the same extent as Principal Defendants and other  
12 Registrars are referred to herein as such. Therefore, the term "Registrar" as used herein  
13 refers to all Defendants except Defendant ICANN and Defendant Neulevel.

14 2.13. The true name or capacities, whether individual, corporate, associate, or  
15 otherwise, of defendants DOES 1 through 500, inclusive, are unknown to Plaintiffs, who  
16 therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe,  
17 and on such information and belief allege, that each of the Defendants sued herein as a DOE  
18 is legally responsible in some manner for the events and happenings alleged herein, and that  
19 the damages to Plaintiffs, other Class members, and members of the general public, as herein  
20 alleged were proximately caused such DOE Defendants' conduct. Plaintiffs will ask leave  
21 of this Court to amend this complaint to insert the true names and capacities of DOES 1-500  
22 in place and instead of the fictitious names, when the same become known to Plaintiffs.

23 2.14. All of the Defendants except Defendant ICANN are agents of Neulevel. Each  
24 Defendant, except for Defendant ICANN, is empowered to cause requests of <.biz> domain  
25 names to be sent to Defendant Neulevel. Neulevel is, by virtue of such Defendant accepting  
26 a <.biz> domain request, bound to enter the request into its Lottery Enterprise system for  
27 processing. Each Defendant, except Defendant ICANN, therefore is authorized to bind  
28 Defendant Neulevel as Defendant Neulevel's agent.

1 **III. JURISDICTION AND VENUE**

2 3.1. This Court has personal jurisdiction over the Defendants and each of them  
3 pursuant to Code of Civil Procedure § 410.10 because: (i) each of the Defendants were  
4 empowered to commit the acts alleged herein as a result of executing an agreement with  
5 Defendant ICANN pursuant to California state law, or are agents of other Defendants which  
6 executed said agreement, and the acts alleged herein arose out of said agreement; (ii) each  
7 of the Defendants have done, and are doing, business in this state; (iii) the Defendants and  
8 each of them have committed crimes and unfair competition having an effect in this state;  
9 and (iv) certain of the Defendants are present, domiciled, resident, or a citizen of this state.

10 3.2. This Court has original subject matter jurisdiction over this action pursuant  
11 to California Constitution Article VI, § 10.

12 3.3. This Court is the proper venue for this action pursuant to Code of Civil  
13 Procedure §§ 395 and 395.5.

14  
15 **IV. CLASS ACTION ALLEGATIONS**

16 4.1. Plaintiffs bring this suit as a class action pursuant to section 382 of the Code  
17 of Civil Procedure on behalf of themselves and a plaintiff class (the "Class") defined as  
18 follows:

19 "All persons or entities who (i) requested a domain name from the Defendants,  
20 any one of the Defendants, any agent of any of the Defendants, any reseller of  
21 any of the Defendants, or any affiliate of any of the Defendants (collectively,  
22 "Registrars"), and (ii) paid consideration for the chance to register such domain  
23 name to any Registrar, which consideration such Registrar accepted  
24 understanding that it was tendered in exchange for the chance to register a  
25 domain name. Excluded from the Class are the Defendants, their directors,  
26 officers, managers, members, and employees, and their families, legal  
27 representatives, heirs, successors and assigns."

28 4.2. This action has been brought and may be properly maintained as a class action  
pursuant to section 382 of the Code of Civil Procedure. The Plaintiff Class is ascertainable  
and there is a well-defined community of interest among the members of the Class.

4.3. Based upon the nature of the transactions involved in the litigation, Plaintiffs  
believe the total number of Class members in the Class is at least in the thousands, and



1 perhaps in the millions. Accordingly, joinder of all members of the Class is not practicable.

2 4.4. There are issues of law or fact which are common to the Plaintiff Class, and  
3 predominate over any questions which affect only individual members of the Class including,  
4 but not limited to, the following:

- 5 a. Whether the Defendants sold chances to register domain names to  
6 Plaintiff Class members;
- 7 b. Whether the Defendants received consideration from Plaintiff Class  
8 members in exchange for providing the chance to register domain  
9 names;
- 10 c. Whether the domain names for which Plaintiff Class members paid  
11 consideration for the chance to register constitute prizes;
- 12 d. Whether the Defendants' business of selling chances to register domain  
13 names constitutes an unfair and illegal lottery enterprise;
- 14 e. Whether the Defendants advertising and/or conducting of an unfair  
15 and/or illegal lottery enterprise constitutes an unfair, unlawful, and/or  
16 fraudulent business practice pursuant to Business & Professions Code  
17 § 17200, et. seq.;
- 18 f. The nature of relief available by reason of Defendants' violations of law;
- 19 g. Whether Plaintiffs and the Plaintiff Class are entitled to damages for  
20 the acts of the Defendants;
- 21 h. Whether Plaintiffs and the Plaintiff Class are entitled to disgorgement  
22 of all wrongfully retained revenue received by the Defendants resulting  
23 from the violations alleged herein;
- 24 i. Whether Plaintiffs and other members of the Class were injured in their  
25 business or property by reason of the Defendants' unlawful conduct;
- 26 j. The appropriate Class-wide measure of damages;
- 27 k. Whether Plaintiffs and the Plaintiff Class are entitled to restitution for  
28 any monies which unjustly enriched Defendants resulting from the

1 violations alleged herein; and

- 2 1. Whether non-monetary relief should be awarded, including but not  
3 limited to, an order directing Defendants to stop engaging in the Lottery  
4 Enterprise described herein.

5 These and other questions of law or fact, which are common to the Class predominate  
6 over any questions affecting only individual members of the Class.

7 4.5. Plaintiffs' claims are typical of the claims of the members of the Class.  
8 Plaintiffs and all members of the Class have suffered harm arising out of Defendants'  
9 common course of conduct in violation of statutory law as complained of herein.

10 4.6. Plaintiffs will fairly and adequately protect the interests of the members of the  
11 Class. None of the Plaintiffs have any interests that are antagonistic to other members of the  
12 Class. Plaintiffs have retained counsel who are experienced in the prosecution of class  
13 actions and other complex litigation including unfair competition class actions, and Plaintiffs  
14 will vigorously prosecute this case on behalf of the Class.

15 4.7. A class action is superior to other available methods for the fair and efficient  
16 adjudication of this controversy since individual joinder of all members of the Class is  
17 impracticable. Furthermore, as the damages suffered by many of the members of Class may  
18 be relatively small, the expense and burden of individual litigation would make it difficult  
19 or impossible for individual members of the Class to redress the wrongs done to them. The  
20 cost to the court system of adjudication of such individualized litigation would be substantial.  
21 Individualized litigation would also present the potential for inconsistent or contradictory  
22 judgments and would magnify the delay and expense to all parties and the court system in  
23 multiple trials of the complex factual and legal issues of the case. By contrast, the conduct  
24 of this action as a class action presents fewer management difficulties, conserves the  
25 resources of the parties and the court system, and protects the rights of each member of the  
26 Class.

27 4.8. In addition, this action is certifiable for equitable relief because:

- 28 a. the prosecution of separate actions by the individual members of the

1 Class would create a risk of inconsistent or varying adjudications with  
2 respect to individual Class members which would establish  
3 incompatible standards of conduct for defendants;

4 b. the prosecution of separate actions by individual Class members would  
5 create a risk of adjudications with respect to them which would, as a  
6 practical matter, be dispositive of the interests of the other Class  
7 members not parties to the adjudications, or substantially impair or  
8 impede their ability to protect their interests; and

9 c. Defendants have acted or refused to act on grounds generally applicable  
10 to the Class thereby making appropriate final injunctive relief with  
11 respect to the members of the Class as a whole.

12 4.9. The primary questions of law and fact raised by this Complaint are common  
13 to all individual members of the Plaintiff Class and center on the issue of whether the  
14 Defendants are engaged in an illegal lottery constituting unfair competition. In addition, all  
15 factual issues to be resolved are virtually identical and common to all Plaintiff Class  
16 members. These questions of law and fact common to the Plaintiff Class predominate over  
17 any questions affecting only possible individual Plaintiffs.

## 18 19 V. FACTS

### 20 A. The Domain Name System

21 5.1. The Internet is a super-network of networks of computers.

22 5.2. Similar to each business having a telephone number, each computer connected  
23 to the Internet has a unique number assigned to it called an Internet protocol address (an "IP  
24 address"). IP addresses are difficult to remember because they are lengthy and presented in  
25 a disorganized dotted decimal form. For example, the IP address identifying the computer  
26 which hosts the web site for Los Angeles Superior Court is 207.38.120.63. The IP address  
27 system is an integral part of a communications protocol known as TCP/IP (*i.e.*, Transmission  
28 Control Protocol (TCP) and Internet Protocol (IP)) which was developed in parts in the 1970s

1 and integrated and completed in or around 1982. Communications over the Internet are made  
2 possible in large part because of the development of the TCP/IP communication protocol.

3 5.3. In or around November, 1983, the “domain name system” (or “DNS”) was  
4 developed. The domain name system, instead of using numbers, is founded upon the use of  
5 words and other alphanumeric character strings which Internet users can easily remember.  
6 Domain names are “mapped” to IP addresses. In other words, domain names identify IP  
7 addresses which, in turn, identify computers on the Internet. For example, the domain name  
8 <LASuperiorCourt.org> is mapped to the IP address which identifies the computer which  
9 hosts the web site for the Los Angeles Superior Court. Accordingly, instead of remembering  
10 the Court's IP address, an Internet user can simply remember the domain name.

#### 11 12 **B. The Domain Name Hierarchy**

13 5.4. The DNS defines a hierarchical name space. That name space is divided into  
14 top-level domains, or “TLDs”. Each TLD is divided into second-level domains. Second-  
15 level domains can be further divided into third-level domains, and so on. A domain name  
16 appears in a form similar to the following example, which example will be used throughout  
17 this paragraph: <this.is.a.domain.com>. The levels of domain names are separated by “dots”  
18 (*i.e.* periods), with the number of levels ascending from left to right. The top-level domain  
19 is the portion of the domain name that appears after the last dot on the right; and in the  
20 example, “.com” is the TLD. The second level domain name includes the TLD but begins  
21 before the last dot on the right; and in the example, “domain.com” is the second level domain  
22 name. The third-level domain includes the second-level domain, but includes all of the  
23 alphanumeric characters before the dot to the left of the second-level domain; and in this  
24 example, “a.domain.com” is the third level domain. Theoretically, levels of domains can  
25 continue infinitely, with each new higher level beginning to the left of the lower levels.

26 5.5. The top-level domain name space of the DNS is virtually unchanged from  
27  
28

1 when it was implemented in 1985. Until a few weeks ago<sup>4</sup>, there existed just seven (7)  
2 generic, three-letter top-level domains, or “gTLDs”: <.com>, <.net>, <.org>, <.edu>, <.gov>,  
3 <.mil>, and <.int>. At the outset, it was thought that <.com> would be used by commercial  
4 entities, <.net> by entities involved with the Internet networking infrastructure, <.org> by  
5 nonprofit organizations, and <.edu> by educational institutions. The restrictions on the first  
6 three of these were never enforced, and individuals, businesses, network organizations, and  
7 non-profit organizations alike are permitted to register in any of them.

8 5.6. There also exists two hundred forty three (243) two-letter country code top-  
9 level domains, or “ccTLD”s. ccTLDs are each comprised of the two letter country codes  
10 developed by the International Standards Organization ostensibly identifying nations and  
11 territories. To illustrate, <.us> is the country code identifying the United States, and <.CA>  
12 is the country code identifying Canada.

### 13 14 **C. Registrants, Registries, and Registrars**

15 5.7. The “Registrant” is the person who registers a given domain name, and  
16 thereafter has the exclusive right to use that domain name. Registrants are commonly  
17 referred to as “domain name owners” or “domain name holders”. The Los Angeles Superior  
18 Court, for example, is the Registrant of the domain name <LASuperiorCourt.org>.

19 5.8. As used herein, the “Registry” means the organization responsible for  
20 maintaining the zone files in a top-level domain space, which zone files contain the name of  
21 each second-level domain name in such TLD, as well as each second-level domain's  
22 corresponding IP address. In other words, the Registry maintains the master database of all  
23 second-level domain names existing under a single top-level domain name, and the routing  
24 information for each second-level domain. Often times, the Registry is referred to as a  
25 “registry operator” and the master database of zone files is referred to as the “registry”.  
26 When an Internet user requests information over the Internet by entering a domain name, the

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27  
28 <sup>4</sup> On June 26, 2001, ICANN caused the creation and activation of the <.biz> and <.info> TLDs as further described herein.

1 Registry's master database (*i.e.* its zone files) is queried in order to find the IP address and  
2 corresponding computer associated with the domain name. If more than one (1) Registry  
3 existed for a single top-level domain space, Internet traffic would be unpredictable because  
4 it would route to one computer identified by one Registry, and then perhaps to a different  
5 computer identified by a second Registry. Accordingly, there can be only one (1) Registry  
6 for each top-level domain name. Therefore, a Registry holds a monopoly with respect to a  
7 given top-level domain name which yields considerable power to the Registry. Defendant  
8 Neulevel is the Registry for the <.biz> top-level domain.

9 5.9. The "Registrar" acts as an interface between Registrants and the Registry,  
10 providing registration and generally value-added services. The Registrar causes domain  
11 name registrations by allowing Registrants to register domain names from it. The Registrar  
12 then submits to the Registry zone file information and other data (including contact  
13 information) for each of its customers. The Registrant deals with the Registrar, and never  
14 deals directly with the Registry. There can be an unlimited amount of Registrars for any top-  
15 level domain, all of which can interface with the Registry which maintains the master  
16 database of domain names. With the exception of Defendant ICANN and Defendant  
17 Neulevel, all of the other Defendants are Registrars (or agents of Registrars with the  
18 authority to register domain names to the same extent as a Registrar<sup>5</sup>).

19 5.10. From a domain name sales standpoint, the Registry sells domain names in its  
20 domain space to Registrars on a wholesale basis. The Registrars, in turn, sell those domain  
21 names to Registrants on a retail basis. Registrars bill and collect fees from Registrants for  
22 domain names. The Registry almost always charges a per-domain fee to the Registrar.

#### 23 24 **D. History of Generic Top-Level Domain Name Administration**

25 5.11. In 1993, Defendant NSI was granted the right to be the exclusive Registry and  
26 Registrar for second-level domains in <.com>, <.net>, <.org>, and <.edu> and to maintain  
27

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28 <sup>5</sup> See *supra*, ¶ 2.12, p. 6

1 the master database (*i.e.* zone files) for those top-level domains. The National Science  
2 Foundation underwrote those services so that Internet users could register domain names  
3 without charge. However, in 1995, Defendant NSI negotiated the right to charge a fee to  
4 Internet users for the registration of second-level domain names in <.com>, <.net>, and  
5 <.org> domain spaces.

6 5.12. In early 1998, pursuant to instruction from the President, the United States  
7 Department of Commerce published *Proposal to Improve Technical Management of Internet*  
8 *Names and Addresses*<sup>6</sup> (commonly referred to as the “Green Paper”) in the Federal Register.  
9 The Green Paper proposed moving control of the Internet to the private sector, the creation  
10 of a non-profit corporation to oversee domain names and IP addresses, and that five (5) new  
11 generic top-level domains be created immediately. Four months later, the United States  
12 government published *Management of Internet Names and Addresses*<sup>7</sup> (commonly referred  
13 to as the “White Paper”), a followup to the Green Paper based on comments received relating  
14 to the Green Paper. The White Paper also advocated moving control of the Internet to the  
15 private sector and the creation of a non-profit corporation to oversee Internet IP addresses  
16 and the DNS, but it did not recommend the implementation of new domain names.

17  
18 **E. Defendant ICANN**

19 5.13. In September 1998, Defendant Internet Corporation for Assigned Names and  
20 Numbers was formed. In October, 1998, ICANN transmitted to the United States  
21 Department of Commerce a copy of Defendant ICANN's articles of incorporation, and  
22 proposed bylaws. By, November 1998, the United States government entered into an  
23 agreement with Defendant ICANN providing that ICANN oversee the DNS and IP address  
24 system.

25 5.14. ICANN is a not for profit California corporation organized without members.

26  
27 <sup>6</sup> 63 Fed. Reg. 8825 (1998)

28 <sup>7</sup> 63 Fed. Reg. 31741 (1998)

1 According to its bylaws, the board of directors of ICANN controls it. ICANN is self-funded.

2  
3 **F. Domain Names Can Be Extremely Valuable**

4 5.15. Domain names can become exceptionally valuable, especially if they are  
5 generic in the sense that they describe a product, service, trade, or industry. For example, the  
6 domain name <business.com> was sold for seven million five hundred thousand dollars  
7 (\$7,500,000.00) in 1999. Recent domain name sale transactions include <beauty.cc>, which  
8 sold for one million dollars (\$1,000,000.00), and <loans.com>, which sold for three million  
9 dollars (\$3,000,000.00). As of the date of this Complaint, the domain name <america.com>  
10 is on sale for thirty million dollars (\$30,000,000.00), and the domain name <stocks.com> is  
11 on sale for two million five hundred thousand dollars (\$2,500,000.00).

12 5.16. Many people have begun businesses of domain name speculation. Similar to  
13 land speculation, these businesses register domain names for the purpose of selling the  
14 domain names for substantial amounts of money. Likewise, there exists several domain  
15 name appraisal services, and domain name sale escrow agents.

16 5.17. Accordingly, when a new top-level domain is created, and the corresponding  
17 second-level domain names are all available, there is likely to be a "land rush" of businesses  
18 making all efforts to register the very valuable generic domain names.

19  
20 **G. Creation of the <.biz> Top-Level Domain**

21 5.18. On July 16, 2000, the board of directors of Defendant ICANN adopted a  
22 policy for introduction of new Internet top-level domains. Pursuant to its policy, ICANN  
23 would select a limited number of new Registries to operate new top-level domains based on  
24 ICANN's review of applications submitted by would-be Registries. ICANN charged a non-  
25 refundable fifty thousand dollar (\$50,000.00) application fee, which ICANN required to be  
26 paid before ICANN would consider the application. ICANN began accepting applications  
27 from organizations desiring to be Registries of new top-level domains on September 5, 2000,  
28 and by its deadline of October 2, 2000, ICANN had received forty seven (47) total



1 applications.

2 5.19. During ICANN's new TLD application process, Defendant Neulevel<sup>8</sup> applied  
3 to become the Registry for the <.biz> top-level domain. On November 16, 2000, ICANN  
4 announced that it would implement <.biz> as a new top-level domain, as well as six (6) other  
5 TLDs, and that it had chosen Defendant Neulevel to be the Registry for the <.biz> TLD.  
6 Thereafter, Defendant Neulevel and Defendant ICANN entered into a series of negotiations  
7 for policies and agreements relating to Defendant Neulevel's operation of the <.biz> top-level  
8 domain.

9 5.20. On June 26, 2001, Defendant ICANN caused <.biz> to become added to the  
10 Authoritative Root<sup>9</sup> such that Internet users could send and receive information to and from  
11 computers which <.biz> domain names identify.

12 5.21. Soon thereafter, Defendant Neulevel announced its policies for registration  
13 of <.biz> second-level domain names. Among other policies, "Registrations in the .biz TLD  
14 must be used or intended to be used primarily for bona fide business or commercial  
15 purposes."  
16

#### 17 **H. The Defendants' Illegal Lottery Scheme**

18 5.22. On or about May 11, 2001, Defendant Neulevel developed, and ICANN  
19 approved, a three step process for implementing the registration of <.biz> second-level  
20 domain names to business consumers. The first step is an Intellectual Property claim service  
21 which continues for a certain amount of time during which trademark owners may cause  
22 notification to potential Registrants of their trademark rights relating to certain domain  
23 names. The second step is the "Domain Name Application" step. The third step, which  
24

---

25 <sup>8</sup> At the time Neulevel submitted its application to ICANN, its legal name was JVTeam, LLC.

26 <sup>9</sup> The Authoritative Root, also known as the "A" Root, is the master database which contains the  
27 "zone files" for each of the top-level domains. The zone files identify the Registry for each top-level  
28 domain. Thus, the A Root identifies that Defendant NeuLevel controls which entities can register the  
second-level domains in the <.biz> top-level domain space.

1 begins October 1, 2001, is when Defendant Neulevel will actually begin accepting  
2 registrations for <.biz> domain names from Registrars.

3 5.23. On June 27, 2001, Defendant Neulevel implemented and began the Domain  
4 Name Application step. Until September 17, 2001, the Defendants and each of them are  
5 selling the chance to win the right to register <.biz> second-level domain names.

6 5.24. Specifically, for a monetary fee, the Defendants and each of them, through  
7 Registrars, are selling "applications" to would-be Registrants, including Plaintiffs and Class  
8 members, which provide the *chance* to win the right to register certain <.biz> domain names.  
9 The purchase of a chance to register a domain name does not entitle any would-be Registrant  
10 to *actually* register a domain name, it merely provides them with the *chance* to win the right  
11 to register a <.biz> domain name.

12 5.25. The just described enterprise of offering for consideration the chance to  
13 register a <.biz> second-level domain name is referred to herein as the "Lottery Enterprise".

14 5.26. Each time a Registrar sells a chance to register a <.biz> domain name in the  
15 Lottery Enterprise, the Registrar transmits the name of the purchaser to Defendant Neulevel.

16 5.27. Defendant Neulevel maintains a list of all purchasers of the chances to register  
17 <.biz> domain names, and the corresponding domain names which each purchaser desires  
18 to register.

19 5.28. On or soon after September 18, 2001, and before October 1, 2001, for each  
20 domain name for which multiple "applications" have been received in the Lottery Enterprise,  
21 Defendant Neulevel will randomly select a would-be Registrant purchaser who will win the  
22 right to register such domain name. Because of the random process, a would-be Registrant  
23 may increase its chances of registering a domain name by purchasing more chances from  
24 Defendant Neulevel. For example, in the event the Los Angeles Superior Court wishes to  
25 purchase the domain name <court.biz>, it can purchase a single chance, or it can purchase  
26 several chances, thereby increasing its odds of winning the right to actually register the  
27 <court.biz> domain name.

28 5.29. Would-be Registrants, including Plaintiffs and Class members, must pay

1 consideration in the form of a monetary fee in order to obtain a chance to win a <.biz>  
2 domain name during Defendant Neulevel's "Step 2" Lottery Enterprise. Defendant Neulevel  
3 receives two dollars (\$2.00) for each chance to register a domain name which a Registrar  
4 sells in the Lottery Enterprise. Further, Defendant Neulevel permits the Registrars to, and  
5 all Defendant Neulevel approved Registrars actually do, charge an additional fee for the  
6 chance to register a <.biz> domain name. For example, one Registrar, Defendant NSI,  
7 charges businesses five dollars (\$5.00) for the chance to register a <.biz> domain name.  
8 Another Registrar, Defendant BudgetRegister.com, charges nine dollars and 99/100 (\$9.99)  
9 for the chance to register a <.biz> domain name.

10 5.30. As further described below, Defendant Neulevel's Domain Name Application  
11 process (*i.e.*, the Lottery Enterprise) constitutes a lottery illegal in California and every state  
12 of the United States.

13 5.31. In fact, even Registrars accredited by Defendant Neulevel promote and  
14 explain the scheme as a "lottery". For example, Defendant Tucows, a Neulevel approved  
15 Registrar, which does business as Domain Direct, advertises:

16 "Pre-registration can be likened to a **lottery**. You purchase a **ticket** for a  
17 **chance to win a prize** - in this case, a domain name. A lot of people may have  
18 already purchased a ticket for the same domain name, but only one can be the  
19 winner. Through a **randomized** process, the **winner** for a particular domain  
names(s) will be registered because of this randomization."  
[emphasis added]

20 5.32. Similarly, a Registrar offering <.biz> domain names via the Internet site  
21 located at <http://DotBiz.Lottery.com> promotes "Get your Name in the Hat and Win!" and  
22 explains that:

23 "NeuLevel, the registry operator for the new .biz top-level domain names has  
24 opened the preregistration phase for .biz domain name extensions. They are  
25 treating the .biz domain name selection process like a **lottery**. That means that  
26 everyone has a **chance** at getting a really great domain name like sex.biz or  
27 show.biz - just think - these names **could be worth millions!** . . . the more  
28 applications/entries that you submit for a domain name, the better your **chances**  
of **winning** the right to register that domain name. For example if there are 100  
applications/entries submitted by different people for the same domain name,  
if you have submitted 25 of those applications you will have a 25% of getting  
it!"  
[emphasis added]

1 5.33. Moreover, none of the Defendants have disclosed to the public how many  
2 chances have been sold to date. Consequently, no consumer and/or business which desires  
3 to purchase the opportunity to win the right to register a <.biz> domain name, has any idea  
4 as to its chances.

5 5.34. ICANN oversees the domain name system and is responsible for approving  
6 the policies of Registries. ICANN approved the Lottery Enterprise just described, and  
7 enables Defendant Neulevel and its Registrar agents to engage in the Lottery Enterprise. If  
8 ICANN did not approve of the Lottery Enterprise, all of the Defendants would be unable to  
9 engage in the same.

10  
11 **VI. FIRST CAUSE OF ACTION**  
12 **VIOLATIONS OF BUSINESS & PROFESSIONS**  
13 **CODE § 17200 AGAINST ALL DEFENDANTS**

14 6.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through 5.34  
15 above as though fully set forth herein.

16 6.2. California Penal Code § 319 defines a lottery as follows:

17 “A lottery is any scheme for the disposal or distribution of property by chance,  
18 among persons who have paid or promised to pay any valuable consideration  
19 for the chance of obtaining such property or a portion of it, or for any share or  
20 any interest in such property, upon any agreement, understanding, or  
21 expectation that it is to be distributed or disposed of by lot or chance, whether  
22 called a lottery, raffle, or gift-enterprise, or by whatever name the same may be  
23 known.”

24 6.3. California Penal Code § 320 provides that “Every person who contrives,  
25 prepares, sets up, proposes, or draws any lottery, is guilty of a [crime].”

26 6.4. California Penal Code § 321 criminalizes the act of selling or otherwise  
27 conveying the chance to win a prize in a lottery. Specifically, Penal Code § 321 provides:

28 “Every person who sells, gives, or in any manner whatever, furnishes or  
transfers to or for any other person any ticket, chance, share, or interest, or any  
paper, certificate, or instrument purporting or understood to be or to represent  
any ticket, chance, share, or interest in, or depending upon the event of any  
lottery, is guilty of a [crime].”

6.5. California Penal Code § 322 makes it a crime for any person to merely assist  
with a lottery. Specifically, Penal Code § 322 provides that:

1 "Every person who aids or assists, either by printing, writing, advertising,  
2 publishing, or otherwise in setting up, managing, or drawing any lottery, or in  
3 selling or disposing of any ticket, chance, or share therein, is guilty of a  
4 [crime]."

5 6.6. Lotteries are illegal in California and in every other state in this country<sup>10</sup>.

6 6.7. Defendants are responsible for, engaging in, and perpetuating the Lottery

7 <sup>10</sup> **Alabama:** Code of Ala. §§ 37A-37-20, -21, -22 (2000)(illegal lottery consists of (1) a prize, (2)  
8 awarded by chance, (3) for consideration); **Alaska:** Alaska Stat. §§37.66.200, -210, -220, -280(2),  
9 (37)(2000); *Morrow v. State*, 537 P.2d 377, 378 (Alas.1973)(private lottery consists of: consideration;  
10 chance, and prize); **Arizona:** Ariz. Rev. Stat §§37-3303, -3304 (2000); *Ex Parte Gray*, 204 P. 1029, 1031  
11 (Ariz. 1922)(lottery is species of illegal gaming consisting of consideration, chance, and prize); **Arkansas:**  
12 Ark. Stat. Ann.§5-66-373 (1999); *Burks v. Harris*, 370 S.W. 979, 980 (Ark. 1909); **California:** Cal. Pen.  
13 Code §319 (2000); *California Gasoline Retailers v. Regal Petroleum Corp.*, 330 P.2d 778, 783 (Cal. 1958);  
14 **Colorado:** Colo. Const. Art. XVIII, §2(1)-(3), (7)(1999); *Cross v. State*, 32 P. 821, 822 (Colo. 1893);  
15 **Connecticut:** Conn. Gen Stat. §§53-278a(3), -278b(b)(1999); **Delaware:** Del. Code, tit. 37, §3701 (1999);  
16 *Affiliated Enterprises Inc. v. Waller*, 5 A.2d 257, 259 (Del. 1939); **Florida:** Fla. Stat. §849.09 (1999);  
17 *Blackburn v. Ippolito*, 376 So.2d 550, 551 (Fla. App. 1963); **Georgia:** Ga. Code Ann. §§16-37-20, -22  
18 (1999); **Hawaii:** Haw. Rev. Stat.§§712-1220(6), -1221, -1222, -1223 (2000); **Idaho:** Idaho Code §18-4901,  
19 -4902 (1999); **Illinois:** 720 Ill. Comp. Stat. Ann. 5/28-1 (2000); *People v. Eagle Food Centers, Inc.*, 202  
20 N.E.2d 473, 476 (1964); **Indiana:** Ind. Code Ann. §§35-45-5-1, -3 (2000); **Iowa:** Iowa Code §725.12 (1999);  
21 *State v. Hundling*, 264 N.W. 608 (Iowa 1935); **Kansas:** Kan. Stat. Ann. §§21-4302(b), -4303, -4304 (1999);  
22 **Kentucky:** Ky. Rev. Stat. Ann. §§528.010(5)(a), -020, -030, -070 (1998); **Louisiana:** La. Rev. Stat. Ann.  
23 §§14:90(A)(1)(a), (b), 14:90.3 (2000); *State v. Boneil*, 8 So. 298 (La. 1890); **Maine:** Me. Stat. Rev. Ann. tit.  
24 17-A, §§952(6), 953, 954 (1999); **Maryland:** Md. Code Ann. §356 (1999); *Silbert v. State*, 12 Md. App. 516,  
25 280 A.2d 55 (Md. Ct. Spec. App. 1971); **Massachusetts:** Mass. Ann. Laws ch. 271, §7 (2000);  
26 *Commonwealth v. Lake*, 317 Mass. 264, 57 N.E.2d 923 (Mass. 1944); **Michigan:** Mich. Stat. Ann.  
27 §28.604(1) (1999); *United-Detroit Theater Corp. v. Colonial Theatrical Enterprise*, 280 Mich. 425, 273  
28 N.W. 756 (Mich. 1937); **Minnesota:** Minn. Stat. §§609.75(a), 755 (1999); **Mississippi:** Miss. Code Ann.  
§97-33-31 (2000); **Missouri:** Mo. Const. art. II, §§39, 572.020 (2000); **Montana:** Mont. Code Ann. §§23-5-  
102, -112(23)(1999); **Nebraska:** Neb. Rev. Stat. §§28-1101(4), 28-1102 (1999); **Nevada:** Nev. Rev. Stat.  
§§462.105 (2000); **New Hampshire:** N.H. Rev. Stat. Ann. §647.2 (1999); *State v. Powell*, 567 A.2d 568  
(1989); **New Jersey:** N.J. Stat. Ann. §§2C:37-1(h), :37-2(a), (b)(2000); **New Mexico:** N.M. Stat. Ann. §30-  
19-1(E)(2000); **New York:** N.Y. Penal Law §225.00 (Consol. 1999); **North Carolina:** N.C. Gen. Stat. §14-  
290 (1999); *State v. Lipkin*, 169 N.C. 265, 84 S.E. 340 (N.C. 1915); **North Dakota:** N.D. Cent. Code §§12.1-  
28-01, -02 (2000); **Ohio:** Ohio Rev. Code §2915.02(2000); **Oklahoma:** Okla. Stat. tit. 21, §§1051-1053  
(1999); **Oregon:** Or. Rev. Stat. §§167.117, 122, 127 (1997); **Pennsylvania:** 18 Pa. Cons. Stat. §5512(1999);  
**Rhode Island:** R.I. Gen. Laws. §11-19-1 (2000); **South Carolina:** S.C. Const. art. XVII, §7; S.C. Code Ann.  
§§16-19-10, -20, -30 (1999); *Darlington Theatres, Inc. v. Coker*, 190 S.C. 282, 2 S.E.2d 782 (S.C. 1939);  
**South Dakota:** S.D. Const. art. III, §25; S.D. Codified Laws §§22-25-24, -26(1997); **Tennessee:** Tenn.  
Const. art. XI, §5; Tenn. Code Ann. §37-15-501(5), 39-17-506 (1999); **Texas:** Tex. Penal code §47.03  
(2000); **Utah:** Utah Code Ann. §§76-10-1101, 1102, -1104(2000); **Vermont:** 13 Vt. Stat. Ann. §§2101, 2102  
(2000); Vt. A.G. Op. 83-9 (1982); **Virginia:** Va. Code Ann. §18.2-325 (2000); **Washington:** Wash. Rev.  
Code §9.46.0257 (2000); *State v. Langford*, 29 Wn. App. 455, 628 P.2d 829 (1980); **West Virginia:** W.Va.  
Code §§29-22A-1, 61-10-11 (2000); *State ex. Rel. Mountaineer Park, Inc. v. Polan*, 190 W.Va. 276, 438  
S.E.2d 308 (1993); **Wisconsin:** Wis. Stat. §§945.01(5)(a), (b), 945.02 (2000); **Wyoming:** Wyo. Stat. Ann  
§6-7-101(a)(iii) (1998); **District of Columbia:** D.C. Code §22-1501 (1999); *National Conference on  
Legalizing Lotteries, Inc. v. Farley*, 68 App. D.C. 319, 96 F.2d 861, 863 (D.C.Cir. 1938).

1 Enterprise described above.

2 6.8. The Lottery Enterprise constitutes a “lottery” pursuant to Penal Code § 319  
3 because Defendants are *distributing property* (i.e., domain names) by *chance* (i.e. random  
4 process), among persons (i.e., would-be Registrants, including Plaintiffs and Class members)  
5 who have paid valuable *consideration* (i.e., the “application” fee) for said chance.

6 6.9. Neither the Lottery Enterprise, nor any part of it, constitutes a charitable raffle.

7 6.10. The Defendants and each of them have contrived, prepared, set up, proposed,  
8 and/or drawn the lottery in the Lottery Enterprise. Accordingly, the Defendants and each of  
9 them are guilty of a crime pursuant to Penal Code § 320.

10 6.11. The Defendants and each of them have sold or transferred to would-be  
11 Registrants, including Plaintiffs and Class members, the chance to register a <.biz> domain  
12 name, and understood or represented the same to be such a chance, depending upon the event  
13 of said lottery in the Lottery Enterprise. Consequently, the Defendants, and each of them,  
14 are guilty of a crime pursuant to Penal Code § 321.

15 6.12. The Defendants and each of them have aided or assisted in setting up,  
16 managing, or drawing the lottery in the Lottery Enterprise. Thus, the Defendants, and each  
17 of them, are guilty of a crime pursuant to Penal Code § 322.

18 6.13. California Business & Professions Code § 17200, *et seq.* declares unfair  
19 competition unlawful and defines unfair competition as, *inter alia*, “any unlawful, unfair or  
20 fraudulent business act or practice and unfair, deceptive, untrue or misleading  
21 advertising . . .”

22 6.14. The “unlawful business activity”, proscribed under Business & Professions  
23 Code, § 17200, includes anything that can properly be called a business practice and that at  
24 the same time is forbidden by law.

25 6.15. The Lottery Enterprise is a business practice.

26 6.16. As described above, the Lottery Enterprise is unlawful and unfair.

27 6.17. The Plaintiffs and each of them have suffered damages as a result of  
28 Defendants’ unlawful and unfair business practices.

1           6.18. Further, Business & Professions Code § 17200 imposes a duty to avoid  
2 making false or misleading statements of fact to the public when marketing, soliciting,  
3 advertising, or otherwise inducing the public to enter into any obligation.

4           6.19. False and misleading statements of fact include omissions of material fact  
5 which, by the exercise of reasonable care, should be known to affect the average consumer's  
6 decision as to whether to enter into such obligation.

7           6.20. As businesses advertising, promoting, and soliciting the opportunity for  
8 potential Registrants to purchase from Defendants, Defendants have an obligation to fully  
9 disclose to the potential Registrants all material facts which would reasonably affect the  
10 potential Registrants' decision as to whether to purchase chances to register domain names  
11 from Defendants.

12           6.21. However, Defendants failed to disclose to the public how many chances have  
13 already been sold. *A fortiori*, Defendants failed to disclose to each Plaintiff the likelihood  
14 of winning the right to register the certain <.biz> domain name(s) each Plaintiff requested.

15           6.22. Said failure to disclose creates a false assumption in the mind of the public  
16 that the right to register <.biz> domain names may be easier than they believe.

17           6.23. Defendants knew, or should have known by the exercise of reasonable care,  
18 that such omission of facts relating to chances already sold creates a false assumption in the  
19 mind of the public that the right to register <.biz> domain names may be easier than they  
20 believe.

21           6.24. Thus, Defendants' failure to disclose such material facts in its advertisements,  
22 solicitations, promotions, and marketing for <.biz> domain names constitutes false and  
23 misleading statements to the public.

24           6.25. By committing the acts as hereinabove alleged, the Defendants, and each of  
25 them, are liable to Plaintiffs, members of the Plaintiff Class, and members of the general  
26 public, for violating Business & Professions Code § 17200, *et seq.*

27 ///

28 ///

1 **VII. SECOND CAUSE OF ACTION FOR**  
2 **PRELIMINARY AND PERMANENT INJUNCTION**  
3 **AGAINST ALL DEFENDANTS**

4 7.1 Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through 6.25  
5 above as though fully set forth herein.

6 7.2 Plaintiffs request that Defendants be preliminarily and permanently enjoined  
7 from: (1) continuing to accept applications from Registrants for <.biz> domain names  
8 pursuant to the Lottery Scheme; and (2) from distributing <.biz> domain names pursuant to  
9 the Lottery Scheme.

10 7.3 Plaintiffs are entitled to equitable relief under the common law and Code of  
11 Civil Procedure, section 526, in that:

- 12 a. Plaintiffs have provided valuable consideration to defendants pursuant  
13 to an illegal lottery;
- 14 b. Absent equitable relief this illegal activity threatens to continue to the  
15 detriment of Plaintiffs;
- 16 c. Monetary relief would not adequately compensate Plaintiffs, as a  
17 domain name is akin to real property. Each domain name is unique in  
18 all the world and may have substantial value that cannot be accurately  
19 ascertained at the present time<sup>11</sup>.

20 7.4 Plaintiffs are entitled to preliminary equitable relief under the common law  
21 and Code of Civil Procedure, section 527, in that:

- 22 a. Plaintiffs have demonstrated that the Lottery Scheme is illegal under  
23 the Penal Code, constitutes unfair competition, and there is a strong  
24 likelihood Plaintiffs will prevail on the merits. Concurrently, Plaintiffs  
25 have been injured in that they have paid valuable consideration to enter  
26 the Lottery Scheme without any idea of their chances of “winning”  
27 their requested domain name. Plaintiffs will continue to be injured in

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28 <sup>11</sup> See *supra* ¶ 5.15, p. 16



1 this matter if the injunction is not granted. Additionally, each domain  
2 name itself is valuable property which Plaintiffs are prevented from  
3 acquiring through competitive bidding, or some other lawful means, as  
4 a result of the Lottery Scheme.

- 5 b. Serious questions have been raised as to the legality of the Lottery  
6 Scheme. Until resolution of these questions there will be grave harm  
7 to Plaintiffs if preliminary relief is not granted and little harm to  
8 Defendants if preliminary relief is granted.

9  
10 **VIII. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for the following relief:

- 12 1. For a preliminary injunction against the Defendants and each of them;  
13 2. For a permanent injunction against Defendants and each of them;  
14 3. For any other and further equitable relief, including, without limitation,  
15 restitutionary relief, and/or disgorgement of wrongfully gained monies, revenue, or profit;  
16 4. For attorneys' fees and costs; and

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1           5.       That the Court grant such other and further relief as it shall deem just.

2  
3 Dated: July 31, 2001

4                               Respectfully Submitted,

5                               NEWMAN & NEWMAN  
6                               ATTORNEYS AT LAW, LLP

7  
8 By:

  
\_\_\_\_\_  
DEREK A. NEWMAN, ESQ.


9  
10                              ENGSTROM, LIPSCOMB & LACK  
11                              A PROFESSIONAL CORPORATION

12  
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