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INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS
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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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11
12 SYNCALOT, INC., a California
corporation, and DAVID BLOOM, an
13 individual, in individual and representative
capacities, on behalf of themselves and all
14 others similarly situated,

15 Plaintiffs,

16 v.

17 VERISIGN, INC., a Delaware corporation,
INTERNET CORPORATION FOR
18 ASSIGNED NAMES AND NUMBERS, a
not-for-profit California corporation, and
19 the UNITED STATES DEPARTMENT
OF COMMERCE,
20

21 Defendants.
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Case No. 03 C 4378 MJJ

**NOTICE OF MOTION AND MOTION OF
DEFENDANT INTERNET
CORPORATION FOR ASSIGNED NAMES
AND NUMBERS TO DISMISS
PLAINTIFFS' FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Filed concurrently with Request for
Judicial Notice]

Date: June 15, 2004
Time: 9:30 a.m.
Dept.: Courtroom 11, 19th Floor
Judge: Honorable Martin J. Jenkins

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 15, 2004 at 9:30 a.m., or as soon thereafter as the
3 matter may be heard, in Courtroom 11, 19th Floor of the above-entitled Court, Defendant Internet
4 Corporation for Assigned Names and Numbers ("ICANN") will and hereby does move this Court,
5 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing all
6 claims against ICANN in the First Amended and Supplemental Class Action Complaint ("First
7 Amended Complaint" or "FAC") filed by Plaintiffs Syncalot, Inc. and David Bloom (collectively,
8 "Plaintiffs").

9 **RELIEF SOUGHT**

10 ICANN seeks an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure
11 dismissing Plaintiffs' First Amended Complaint against ICANN. Plaintiffs' First Amended
12 Complaint fails to allege a case or controversy against ICANN and fails to state a claim against
13 ICANN upon which relief can be granted. Plaintiffs' sole claim against ICANN is a request for
14 declaratory relief as to whether defendant VeriSign, Inc. ("VeriSign") has breached the .com and
15 .net Registry Agreements between ICANN and VeriSign. Plaintiffs are not signatories to either
16 agreement, and both agreements expressly state that there are no third-party beneficiaries.
17 Therefore, Plaintiffs cannot base any claim against ICANN on an assertion that they have
18 contractual rights under either agreement. ICANN has no legal interest in this dispute and is not a
19 proper (and certainly not a necessary or indispensable) party.

20 **ISSUES TO BE DECIDED**

- 21 1. Whether Plaintiffs' First Amended Complaint alleges an actual controversy
22 between Plaintiffs and ICANN sufficient to confer standing upon Plaintiffs to sue ICANN.
23 2. Whether Plaintiffs' First Amended Complaint states a claim against ICANN upon
24 which relief can be granted.

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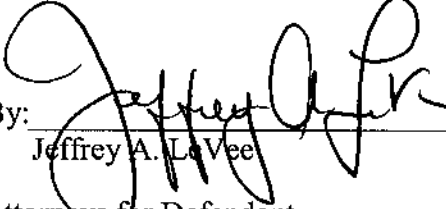
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This motion is based upon this Notice, the Memorandum of Points and Authorities attached hereto, the concurrently-filed Request for Judicial Notice, the papers and records filed herein, and other such evidence and argument as the Court may entertain at the hearing on the Motion.

Dated: April 13, 2004

JONES DAY

By: 

Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs' First Amended Complaint presents no dispute between Plaintiffs and ICANN.
4 The sole reason that Plaintiffs have named ICANN as a party to this matter is that Plaintiffs wish
5 to litigate two contracts that exist between ICANN and VeriSign. Plaintiffs have no rights either
6 directly or indirectly under either agreement. Plaintiffs' First Amended Complaint fails to allege
7 a case or controversy against ICANN and fails to state a claim against ICANN upon which relief
8 can be granted.

9 **STATEMENT OF FACTS**

10 ICANN is a not-for-profit corporation that was organized under California law in 1998.
11 FAC, ¶ 9. Pursuant to a series of agreements with the United States Department of Commerce
12 ("DOC"), ICANN is responsible for administering certain technical aspects of the Internet's
13 domain name system. FAC, ¶¶ 1.10, 9, 105. Among its various activities, ICANN contracts with
14 Internet "registries" who maintain the master database of domain names for a particular top-level
15 domain ("TLD"). FAC, ¶¶ 1.10, 33. Each TLD — such as .com and .net — is operated by a
16 single registry that functions similar to a phone book, making sure that each domain name
17 registered in that TLD is unique. FAC, ¶¶ 32-33. The registry then makes this information
18 available to the Internet community, which allows computers to access each domain name within
19 that TLD. FAC, ¶¶ 31-33.

20 VeriSign, through its .com and .net Registry Agreements with ICANN, performs the
21 registry function for the .com and .net TLDs. FAC, ¶¶ 1.10, 69. Plaintiffs contend that, in
22 September 2003, "without notice and apparently without any outside consultation," VeriSign
23 began intercepting all domain name lookup requests in the .com and .net TLDs and diverted
24 requests where no domain name existed to "VeriSign's own for-profit website," which VeriSign
25 referred to as Site Finder. FAC, ¶¶ 1.4, 1.8. Plaintiffs allege that, prior to VeriSign's action, if a
26 domain name request asked for a specified domain name that did not exist, a standard form
27 response, called a "NXDOMAIN" ("no such domain"), was returned. FAC, ¶ 1.8. Plaintiffs
28

1 allege that this change to the .com and .net TLDs by VeriSign has directly harmed Plaintiffs, who
2 are entitled to declaratory, equitable, and injunctive relief. FAC, ¶¶ 1-8 of Prayer for Relief.

3 Plaintiffs' initial complaint named only VeriSign as a defendant. Plaintiffs' First Amended
4 Complaint now adds ICANN and the United States Department of Commerce ("DOC") as
5 defendants. In addition, the First Amended Complaint revises a number of Plaintiffs' initial
6 causes of action.

7 Plaintiffs now claim third-party beneficiary status to the .com and .net Registry
8 Agreements between ICANN and VeriSign.¹ The First Amended Complaint, however, never
9 alleges that ICANN committed any breach under these agreements or caused any wrong to
10 Plaintiffs in general. Rather, the First Amended Complaint requests declaratory relief against
11 VeriSign, and attempts to obtain that relief via court-ordered interpretations of agreements
12 between ICANN and VeriSign. FAC, ¶ 107(e)-(g).

13 The .com and .net Registry Agreements are the only two agreements "expressed or
14 implied . . . involving . . . ICANN" that could relate to Plaintiffs' request. *Id.* Both agreements,
15 however, contain an express "No Third-Party Beneficiary" provision which reads: "[t]his
16 Agreement shall not be construed to create any obligation by either ICANN or Registry Operator
17 to any non-party to this Agreement, including any registrar or Registered Name holder." RJN,
18 Ex. A (.com Registry Agreement) at ¶ 32; *see* RJN, Ex. B (.net Registry Agreement) at ¶ 5.14
19 (substituting "Registered Name holder" for "SLD [secondary level domain] holder"). Nor is there
20 any express language in either the .com or .net Registry Agreement that could confer any distinct
21 right in favor of third parties.

22
23 ¹ Plaintiffs specifically allege that they are third-party beneficiaries to the "Tentative
24 Registry Agreement' or such other Agreement as covers that subject matter." FAC, ¶ 69.
25 However, there is no "Tentative Registry Agreement" between VeriSign and ICANN. Pursuant
26 to Federal Rule of Evidence 201, ICANN respectfully requests that this Court take judicial notice
27 of the current .com and .net Registry Agreements between VeriSign and ICANN that are publicly
28 available on ICANN's web site. *See* Exhibit A (.com Registry Agreement) and Exhibit B (.net
Registry Agreement) to the concurrently-filed Request for Judicial Notice ("RJN"). Upon a
motion to dismiss, a court may take judicial notice of a contract whose authenticity is not in
question and upon which a plaintiff's complaint necessarily relies. *Parrino v. FHP, Inc.*, 146 F.3d
699, 706 (9th Cir. 1998).

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LEGAL STANDARD

Although this Court must accept as true material factual allegations in the complaint, "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Anderson v. Clow (In re Stac Elecs. Sec. Litig.)*, 89 F.3d 1399, 1403 (9th Cir. 1996) (internal quotation omitted). To withstand scrutiny under Rule 12(b)(6), the complaint "must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988) (internal quotations omitted). In undertaking this analysis, the Court is not required to "accept as true allegations that contradict matters properly subject to judicial notice or by exhibit." *Spewell v. Golden St. Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). If the complaint fails on a motion to dismiss, it should be dismissed with prejudice if amendment would be futile. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990).

ARGUMENT

15 Plaintiffs' First Amended Complaint is devoid of any allegations against ICANN and must
16 be dismissed. Plaintiffs' sole basis for bringing ICANN into this lawsuit is to litigate contractual
17 rights that Plaintiffs do not possess. Plaintiffs' allegations fail to demonstrate that Plaintiffs have
18 standing to sue ICANN or that Plaintiffs have a cognizable legal theory against ICANN because
19 Plaintiffs are not third-party beneficiaries to the contracts and ICANN is not a necessary party.

20 **I. PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF**
21 **SHOULD BE DISMISSED BECAUSE PLAINTIFFS LACK STANDING TO SUE**
22 **ICANN.**

23 Before a federal court can hear any matter, the court must have jurisdiction over the
24 subject matter of the suit. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992). One
25 aspect of a federal court's subject matter jurisdiction is Article III of the United States
26 Constitution's case-or-controversy requirement. *Allen v. Wright*, 468 U.S. 737, 750 (1984).
27 Standing is a core element of the case-or-controversy requirement. *Allen*, 468 U.S. at 750-51. A
28 motion to dismiss a claim for lack of standing is proper under Federal Rule of Civil Procedure
12(b)(6). *Glen Holly Entertainment Inc. v. Tektronix Inc.*, 343 F.3d 1000, 1014 n.5 (9th Cir.

1 2003) (stating that a motion to dismiss for lack of standing is proper under Fed. R. Civ. P.
2 12(b)(6)); *Mai Systems Corp. v. UIPS*, 856 F. Supp. 538, 540 (N.D. Cal. 1994) ("Failure to
3 properly allege standing is a ground for dismissal under Rule 12(b)(6).") (citing *Western Mining*
4 *Council v. Watt*, 643 F.2d 618 (9th Cir. 1980)).

5 An action seeking declaratory relief is not exempt from the Article III standing
6 requirement. *Government Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1222 (9th Cir. 1998) (en
7 banc) (citing *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239-40 (1937)) ("[L]awsuit seeking
8 federal declaratory relief must first present an actual case or controversy within the meaning of
9 Article III, section 2 of the United States Constitution."). To warrant the issuance of a declaratory
10 judgment, the plaintiff's allegations must show that there is a substantial controversy between
11 parties having adverse legal interests of sufficient immediacy and reality. *Public Utilities*
12 *Commission v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996) (quoting *Maryland Casualty Co. v.*
13 *Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)).

14 The Supreme Court has articulated three components that form the irreducible
15 constitutional minimum for standing that Plaintiffs must establish with respect to ICANN:
16 (1) Plaintiffs have suffered an "injury in fact" that is concrete and particularized, and actual or
17 imminent, not conjectural or hypothetical; (2) Plaintiffs' injury is "fairly traceable" to the
18 challenged action of ICANN; and (3) it is likely, as opposed to merely speculative, that Plaintiffs'
19 injury will be redressed by a decision against ICANN. *Friends of the Earth, Inc. v. Laidlaw*
20 *Envil. Services*, 528 U.S. 167, 180-81 (2000). "The party invoking federal jurisdiction bears the
21 burden of establishing these elements." *Lujan*, 504 U.S. at 559-61. The absence of any one
22 element of standing requires dismissal. *Id.* at 561.

23 The allegations in Plaintiffs' First Amended Complaint are insufficient to maintain a
24 declaratory relief action against ICANN because they fail to state *any* legal issue with ICANN
25 that needs to be decided by this Court. *Government Employees Ins. Co.*, 133 F.3d at 1222
26 ("[L]awsuit seeking federal declaratory relief must first present an actual case or controversy
27 within the meaning of Article III, section 2 of the United States Constitution." (citation omitted)).
28 Even assuming Plaintiffs have suffered some alleged injury, Plaintiffs' allegations fail to satisfy

1 the second and third prongs of the Supreme Court's *Friends of the Earth* test, and Plaintiffs
2 therefore lack standing to sue ICANN.

3 Plaintiffs' alleged injury is "degraded Internet performance" and damage to "owners of
4 domain names, providers of Internet service and Internet software applications developers."
5 FAC, ¶ 41. This injury is alleged to have been caused by "VeriSign's interceptions and/or
6 SiteFinder Diversion Technology." *Id.* There is no allegation, nor could there be, that this injury
7 is "fairly traceable to" conduct by ICANN. Indeed, there is no allegation of *any conduct* by
8 ICANN — challenged or otherwise.

9 Moreover, there is no allegation that Plaintiffs' alleged injury could possibly be redressed
10 by a decision against ICANN. The only "relief sought" that even mentions ICANN is a request
11 for a determination as to whether *VeriSign* has breached the .com and .net Registry Agreements
12 between ICANN and VeriSign. FAC, ¶ 107(e)-(g). In fact, all of Plaintiffs' requests for relief
13 challenge actions by, or seek judicial action solely against, VeriSign, and Plaintiffs' First
14 Amended Complaint does not even seek to obtain a judgment against ICANN.

15 The First Amended Complaint shows there exists no dispute between Plaintiffs and
16 ICANN. Without allegations of an actual dispute between Plaintiffs and ICANN, there exists no
17 basis for declaratory relief. *Government Employees Ins. Co.*, 133 F.3d at 1222. *See Audette v.*
18 *Int'l Longshoremen's & Warehousemen's Union*, 195 F.3d 1107, 1111 n.3 (9th Cir. 1999) (stating
19 that a request for a declaratory judgment that merely seeks relief, rather than states a cause of
20 action, fails to state a claim). That is, because there is no "substantial controversy between parties
21 having adverse legal interests of sufficient immediacy and reality," *Public Utilities Commission*
22 directs that Plaintiffs' First Amended Complaint against ICANN for declaratory relief must be
23 dismissed for lack of standing.

24 **II. PLAINTIFFS' FIRST AMENDED COMPLAINT FAILS TO STATE A**
25 **COGNIZABLE LEGAL THEORY AGAINST ICANN.**

26 Under Federal Rule of Civil Procedure 12(b)(6), a trial court should dismiss a complaint
27 where there is a "lack of a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d
28 696, 699 (9th Cir. 1990); *see Securities Investor Protection Corp. v. Vigman*, 764 F.2d 1309,

1 1318 (9th Cir. 1985) ("plaintiff's complaint must set out more than mere bald allegations of a
2 claim"). In addition, a Rule 12(b)(6) motion should be granted if it appears from the face of the
3 complaint "that the plaintiff can prove no set of facts in support of his claim which would entitle
4 him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

5 Plaintiffs have failed to allege a cognizable legal theory against ICANN. Plaintiffs' claims
6 are contract-based but Plaintiffs are not parties to any contract with ICANN, and Plaintiffs'
7 declaratory relief claim against ICANN cannot be rescued by alleging that Plaintiffs are third-
8 party beneficiaries to the agreements. *See* RJN, Ex. A (.com Registry Agreement), Ex. B (.net
9 Registry Agreement). Further, because Plaintiffs have no rights under the Registry Agreements
10 between ICANN and VeriSign, ICANN is not a necessary or indispensable party to this lawsuit.

11 **A. Plaintiffs Are Not Third-Party Beneficiaries To The .Com And .Net Registry**
12 **Agreements And Cannot Assert Any Rights Thereunder.**

13 In order for a third-party to recover under a contract, the third party must demonstrate that
14 the contract was intentionally made for its direct benefit. *Klamath Water Users Protective Ass'n*
15 *v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999) (citation omitted) (showing of contractual
16 intent to directly benefit the third party was required even though the contract operated to the
17 benefit of the third party and was entered into with the third party in mind); *Norse v. Henry Holt*
18 *& Co.*, 991 F.2d 563, 568 (9th Cir. 1993) (finding that a contract provision preventing
19 interference with existing third-party rights did not demonstrate the requisite intent to turn holders
20 of such rights into third-party beneficiaries); *Williams v. Fenix & Scission, Inc.*, 608 F.2d 1205,
21 1208 (9th Cir. 1979) (stating that third party was not a beneficiary where promisor had no "reason
22 to know" that such benefit was a motivating cause for the promisee in making the contract).

23 The requisite intent to benefit a third party must be that of "the parties to the contract."
24 *Britton v. Co-op Banking Group*, 4 F.3d 742, 745 (9th Cir. 1993). Without the requisite showing
25 of intent to benefit a third party, the "third party has no rights under the contract." *Id.* (citing
26 *Sherman v. British Leyland Motors, Ltd.*, 601 F.2d 429, 440 n.13 (9th Cir. 1979) (denying third-
27 party beneficiary status where the agreement was not found to provide rights or responsibilities
28 expressly intended for third parties)).

1 In analyzing whether a contract demonstrates an intent to benefit a third party, the
2 contracting parties' intent "must appear from the terms of the contract" to be "expressly" made for
3 the third party's benefit. *Lincoln Alameda Creek v. Cooper Indus., Inc.*, 829 F. Supp. 325, 329-30
4 (N.D. Cal. 1992) (holding that a third party's reliance on the contract was without merit where the
5 contract did not "clearly intend[] to inure to her benefit" and the third party failed to present "any
6 facts to prove that [the contracting parties] intended for her to rely on it."). "'Expressly' means in
7 an express manner; in direct or unmistakable terms; explicitly; definitely; directly." *Lazar v. Tans*
8 *Union LLC*, 195 F.R.D. 665, 674 (C.D. Cal. 2000) (citations omitted).

9 A "No Third-Party Beneficiary" clause in a contract is a significant, if not controlling,
10 factor in determining the contracting parties intent. *See McKesson HBOC, Inc. v. New York State*
11 *Common Ret. Fund, Inc.*, 339 F.3d 1087, 1091 (9th Cir. 2003) (finding under comparable
12 Delaware law, that a "no third-party beneficiary" clause represents an express rejection of any
13 intent to create a class of third-party beneficiaries); *Ratcliff Architects v. Vanir Construction*
14 *Mgmt.*, 88 Cal. App. 4th 595, 603-04 (2001) (finding a "no third-party beneficiary" clause to be
15 "particular" in showing that the agreement creates no rights in persons not a party to the
16 agreement). Under California law, a "no third-party beneficiary" clause is an express disclaimer
17 that the contract "creates any rights or confers any benefits on third parties." *Sessions Payroll*
18 *Mgmt., Inc. v. Noble Const. Co., Inc.*, 84 Cal. App. 4th 671, 680-81 (2000); *see Sofias v. Bank of*
19 *America*, 172 Cal. App. 3d 583, 587 (1985) (finding a "no third-party beneficiary" clause
20 sufficient to deny third-party rights under the agreement).

21 Plaintiffs are plainly not third-party beneficiaries of the .com or .net Registry Agreements.
22 Neither agreement explicitly or implicitly grants such rights to Plaintiffs or any other similarly
23 situated party. *See* RJN, Ex. A (.com Registry Agreement), Ex. B (.net Registry Agreement). In
24 fact, both the .com and .net Registry Agreements contain provisions explicitly denying *any* third-
25 party beneficiary rights:

26 No Third-Party Beneficiaries. This Agreement shall not be
27 construed to create any obligation by either ICANN or Registry
28 Operator [VeriSign] to any non-party to this Agreement, including
any registrar or Registered Name holder. RJN, Ex. A (.com
Registry Agreement) at ¶ 32;

1 No Third-Party Beneficiaries. This Agreement shall not be
2 construed to create any obligation by either ICANN or Registry
3 Operator [VeriSign] to any non-party to this Agreement, including
4 any registrar or SLD holder. RJN, Ex. B (.net Registry Agreement)
5 at ¶ 5.14.

6 In a recent Second Circuit decision applying California law, the court held that the "No
7 Third-Party Beneficiary" provision in an ICANN Registrar Accreditation Agreement "expressly
8 and intentionally excluded non-parties from claiming rights under it in court proceedings."
9 *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 400 (2nd Cir. 2004). Moreover, the court was
10 "not persuaded" by plaintiff's allegations that the third-party should still be able to enforce the
11 agreement because: (1) "public policy interests [were] at stake"; (2) plaintiff registrar had
12 "indisputable obligations to ICANN as a registrar"; or (3) plaintiff registrar had "unclean hands"
13 in imposing a restriction it was contractually bound not to impose." *Id.*

14 **B. Plaintiffs' Claim That ICANN Is A Necessary Or Indispensable**
15 **Party Lacks Merit.**

16 Plaintiffs allege that ICANN is a necessary or indispensable party. FAC, ¶ 104. Whether
17 a party is necessary or indispensable is determined by application of Federal Rule of Civil
18 Procedure 19. *Virginia Surety Co. v. Northrop Grumman Corp.*, 144 F.3d 1243, 1247-48 (9th
19 Cir. 1998). A party is deemed "necessary" if complete relief is impossible among the existing
20 parties and the absent party has a legally protected interest in the outcome of the litigation. *Pit*
21 *River Home & Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1099 (9th Cir. 1994). After
22 determining whether the party is necessary to the litigation, the court may then determine if the
23 party is indispensable. *Id.* A party is "indispensable" if in "equity and good conscience," the
24 court should not allow the action to proceed in its absence." *Dawavendewa v. Salt River Project*
25 *Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1161-62 (9th Cir. 2002) (quoting *Kescoli v.*
26 *Babbitt*, 101 F.3d 1304, 1310 (9th Cir. 1996)).

27 It is clear from the First Amended Complaint that ICANN is not a proper party to this
28 action, let alone a necessary or indispensable party. Plaintiffs have alleged a number of different
29 grounds for their claims against VeriSign. ICANN's relationship to this lawsuit is as a party to
30 the .com and .net Registry Agreements only. Plaintiffs cannot, however, assert any rights —

1 directly or as third parties — under these agreements. It would be unnecessary and improper for
2 the Court to adjudicate ICANN and/or VeriSign's rights or obligations under either agreement.
3 *Register.com, Inc.*, 356 F.3d 393, 400-01 (stating that ICANN need not intervene on behalf of
4 defendant in an effort to enforce contractual obligations between ICANN and plaintiff registrar).
5 ICANN has certainly not requested that this Court make any such determination. Without the
6 involvement of the agreements, the only remaining disputes in the First Amended Complaint are
7 between Plaintiffs and VeriSign. Therefore, ICANN is an improper defendant in this action, and
8 Plaintiffs' claims against it should be dismissed.

9
10 **CONCLUSION**

11 For all of the foregoing reasons, Plaintiffs' First Amended Complaint must be dismissed
12 with prejudice against defendant ICANN pursuant to Federal Rules of Civil Procedure 12(b)(6),
13 for lack of standing and for a failure to state a claim.

14 Dated: April 13, 2004

JONES DAY

15 By: 

16 Jeffrey A. LeVee

17 Attorneys for Defendant
18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND NUMBERS
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