

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
CLERK, U.S. DISTRICT COURT
MAY 18 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
MAY 19 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VERISIGN, INC.,
Plaintiff,
v.
INTERNET CORP. FOR
ASSIGNED NAMES AND
NUMBERS,
Defendant.

CASE NO. CV 04-1292 AHM (CTx)

ORDER DISMISSING
COMPLAINT WITHOUT
PREJUDICE

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

On February 26, 2004, VeriSign filed a complaint against Defendant Internet Corp. for Assigned Names and Numbers ("ICANN") alleging causes of action for: (1) violation of Section 1 of the Sherman Act, (2) injunctive relief for breach of contract, (3) damages for breach of contract, (4) interference with contractual relations, (5) specific performance of contract and injunctive relief, (6) damages for breach of contract, and (7) declaratory judgment. Subject matter jurisdiction is premised on federal questions arising under the Sherman Act and the Declaratory Judgment Act. Compl. ¶ 8. Now ICANN has moved to dismiss claims one through six of Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6), and also has moved to strike the second through sixth claims as strategic lawsuits against public participation, pursuant to Cal. Civ. Proc. Code Section

1 425.15.

2 The Court GRANTS ICANN's motion to dismiss the antitrust claim
3 without prejudice. At this stage, the Court elects not to rule on the motion to
4 dismiss the remaining state law claims because if VeriSign fails to state an
5 antitrust claim in any First Amended Complaint ("FAC") or chooses not to file a
6 FAC, the Court will decline to exercise supplemental jurisdiction. The Court also
7 defers any ruling on the Special Motion to Strike until VeriSign's ability to state a
8 viable federal claim has been conclusively resolved.

9 FACTUAL ALLEGATIONS

10 ICANN is a non-profit corporation that was organized in 1998 "in response
11 to a plan by the [Department of Commerce] to introduce competition into the
12 field of domain name registration, among other objectives." Compl. ¶ 18. The
13 Internet is comprised of numerous top level domains ("TLDs") – some are
14 generic TLDs ("gTLDs") like .com, .net, .gov, and .biz, while others are country
15 code TLDs ("ccTLDs") such as .uk and .ca.¹ *Id.* ¶ 12. Each TLD has a "registry"
16 or operator, a single entity responsible for keeping the records and a directory of
17 all the domain names registered within that TLD. *Id.* ¶ 15. A person seeking to
18 register a domain name within any given TLD must do so through a "registrar"
19 for that TLD. *Id.* ¶ 16. There are approximately 250 TLDs throughout the world
20 that compete with each other, through their respective registries, to attract
21 registrars and registrants. *Id.* ¶¶ 12, 32.

22 One of ICANN's functions is to enter into registry agreements that
23 authorize an entity to act as the registry for a particular gTLD. *Id.* ¶ 20. The
24 Complaint describes how ICANN functions:

25 ICANN is governed by and acts through an international
26 _____

27 ¹ ICANN does not claim to have any power to regulate ccTLDs. *Id.* ¶ 78.
28 Nonetheless, 10 of the approximately 240 ccTLDs have entered into registry
agreements with ICANN. *Id.* ¶ 81. "ccTLDs" compete with other TLD registries.
Id. ¶ 20.

1 Board of Directors that is elected by members of various
2 constituencies within the Internet community. Among
3 the members of these groups are operators of gTLDs that
4 compete with each other and with VeriSign; domain
5 name registrars that are present or potential competitors
6 of each other and of VeriSign for certain services;
7 foreign governments and foreign registries that have
8 ccTLDs that compete with the gTLD registries operated
9 by VeriSign; and others. ICANN also operates in
10 cooperation with various industry boards that are
11 comprised of existing or potential competitors of
12 VeriSign. ICANN frequently carries out its activities,
13 including the conduct alleged herein, through the
14 collective action of these constituent groups.

15 *Id.* ¶ 18. In 2001, VeriSign and ICANN entered into a registry agreement
16 authorizing VeriSign to act as the sole registry for the .com gTLD. *Id.* ¶¶ 22-23
17 Under the agreement, VeriSign must provide certain “registry services” to
18 accredited registrars in accordance with ICANN’s specifications. *Id.* ¶ 24.

19 The core of this dispute is that ICANN allegedly has taken actions to: (1)
20 prohibit or otherwise restrict VeriSign from offering services valuable to Internet
21 users,² (2) impose improper conditions on the offering of such services by
22 VeriSign, (3) regulate and set the prices at which such services may be offered,
23 and/or (4) delay the introduction of new services. *Id.* ¶ 1. Because ICANN has
24 allegedly blocked, delayed, and restricted the “value-added” services VeriSign
25

26
27 ² In particular, the services to which VeriSign refers are Site Finder (described
28 at ¶¶ 33-34 of the Complaint), Wait Listing Service (¶¶ 40-42), ConsoliDate (¶¶ 48-
50), Internationalized Domain Names (¶¶ 56-60), and the Incentive Marketing
Program (¶ 66).

1 has sought to offer its customers, VeriSign is “at a competitive disadvantage”
2 since other TLD registries have been able to introduce similar services without
3 restriction or delay. *Id.* ¶¶ 77-78. VeriSign claims that ICANN’s various actions
4 have breached their 2001 registry agreement, *Id.* ¶¶ 92-104, 111-126; interfered
5 with a contract VeriSign had with an unidentified third party, *Id.* ¶¶ 105-110; and
6 violated the antitrust laws, *Id.* ¶¶ 83-91.

7 APPLICABLE LEGAL STANDARD

8 On a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of
9 Civil Procedure for failure to state a claim, the allegations of the complaint must
10 be accepted as true and are to be construed in the light most favorable to the
11 nonmoving party. *Wylar Summit P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d
12 658, 661 (9th Cir. 1998). A Rule 12(b)(6) motion tests the legal sufficiency of
13 the claims asserted in the complaint. Thus, if the complaint states a claim under
14 any legal theory, even if the plaintiff erroneously relies on a different legal theory,
15 the complaint should not be dismissed. *Haddock v. Bd. of Dental Examiners*, 777
16 F.2d 462, 464 (9th Cir. 1985). On the other hand, dismissal is proper where “it
17 appears beyond doubt that the plaintiff can prove no set of facts in support of his
18 claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46
19 (1957); *Moore v. City of Costa Mesa*, 886 F.2d 260, 262 (9th Cir. 1989)
20 (employing *Conley v. Gibson* standard). Where a motion to dismiss is granted, a
21 district court should provide leave to amend unless it is clear that the complaint
22 could not be saved by any amendment. *Chang v. Chen*, 80 F.3d 1293, 1296 (9th
23 Cir. 1996).

24 “Generally, a district court may not consider any material beyond the
25 pleadings in ruling on a Rule 12(b)(6) motion. . . . However, material which is
26 properly submitted as part of the complaint may be considered” on a motion to
27 dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555
28 n.19 (9th Cir.1990) (citations omitted). Similarly, “documents whose contents are

1 alleged in a complaint and whose authenticity no party questions, but which are
2 not physically attached to the pleading, may be considered in ruling on a Rule
3 12(b)(6) motion to dismiss” without converting the motion to dismiss into a
4 motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.
5 1994) (citing *Romani v. Shearson Lehman Hutton*, 929 F.2d 875, 879 n.3 (1st Cir.
6 1991)). If the documents are not physically attached to the complaint, they may
7 be considered if their “authenticity ... is not contested” and “the plaintiff’s
8 complaint necessarily relies” on them. *Parrino v. FHP, Inc.*, 146 F.3d 699,
9 705-06 (9th Cir. 1998). “The court will not accept as true allegations that are
10 contradicted by facts that can be judicially noticed or by other allegations or
11 exhibits attached to or incorporated in the pleading.” 5A Wright & Miller, *Fed.*
12 *Prac. and Pro.* § 1363 (2d. ed. 1990).

13 DISCUSSION

14 VeriSign’s antitrust claim is brought under Section 1 of the Sherman Act,
15 which states, in pertinent part, that “[e]very contract, combination in the form of
16 trust or otherwise, or conspiracy, in restraint of trade or commerce among the
17 several States, or with foreign nations, is declared to be illegal.” 15 U.S.C. § 1.
18 The elements required to allege a Section 1 violation are: “(1) an agreement or
19 conspiracy among two or more persons or distinct business entities; (2) by which
20 the persons or entities intend to harm or restrain competition; and (3) which
21 actually injures competition.” *Les Shockley Racing, Inc. v. Nat’l Hot Rod Assoc.*,
22 884 F.2d 504, 507 (9th Cir. 1989).³ Although Section 1 claims are not subject to a
23 heightened pleading standard, the plaintiff must plead facts to support each
24 element of the claim. Von Kalinowski, Sullivan & McGuirl, *Antitrust Law and*

25
26 ³ The parties jointly proceed in treating this case under the “rule of reason”
27 standard rather than the “per se” rule reserved for presumptively illegal practices such
28 as price-fixing, and the Court does the same. See *McGlinchy v. Shell Chem. Co.*, 845
F.2d 802, 811 n.3 (9th Cir. 1988).

1 *Trade Regulation* § 164.01 (Matthew Bender 2002). “The pleader may not evade
2 these requirements by merely alleging a bare legal conclusion; if the facts do not
3 at least outline or adumbrate’ a violation of the Sherman Act, the plaintiffs will
4 get nowhere merely by dressing them up in the language of antitrust.” *Rutman*
5 *Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 736 (9th Cir. 1987).

6 Section 4 of the Clayton Act, pursuant to which VeriSign seeks to recover
7 treble damages for the alleged Sherman Act violation, authorizes a private
8 individual to bring suit under the antitrust laws if that individual has been
9 “injured in his business or property by reason of anything forbidden in the
10 antitrust laws.” 15 U.S.C. § 15. The Supreme Court has interpreted this language
11 to mean that “Plaintiffs must prove antitrust injury, which is to say injury of the
12 type the antitrust laws were intended to prevent and that flows from that which
13 makes defendants’ acts unlawful. The injury should reflect the anticompetitive
14 effect either of the violation or of anticompetitive acts made possible by the
15 violation.” *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489
16 (1977). These requirements are referred to as “antitrust standing.” *See, e.g., Pool*
17 *Water Prods. v. Olin Corp.*, 258 F.3d 1024, 1034 (9th Cir. 2001). There is no
18 antitrust violation “[i]f the injury flows from aspects of the defendant’s conduct
19 that are beneficial or neutral to competition...[A]n act is deemed
20 *anticompetitive*...only when it harms both allocative efficiency *and* raises the
21 prices of goods above competitive levels or diminishes their quality.” *Rebel Oil*
22 *Co., Inc. v. Atl. Richfield Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995), *cert. denied*,
23 516 U.S. 987 (1995) (emphasis in original).

24 VeriSign alleges that “the collective and conspiratorial acts of ICANN and
25 its members, including constituent groups within ICANN and members of those
26 groups,” have “unreasonably restrained and restricted competition in the market
27 for the operation of TLD registries and submarkets thereof, and have deprived
28 consumers of the benefits of free and open competition...” Compl. ¶¶ 85-86. In a

1 recurring manner, VeriSign alleges that ICANN's conduct "has deprived
2 consumers of a beneficial new service and VeriSign of revenues and profits it
3 would generate..." Compl. ¶ 39; *see also* ¶¶ 47, 55, 65, 69, 72, 86. By making
4 "the registration of domain names within the .com gTLD more desirable and
5 attractive," these new services are alleged to be important to enable "VeriSign to
6 compete more effectively with operators of competitive gTLD and ccTLD
7 registries that are offering or intend to offer a similar service." *Id.* ¶ 69; *see also* ¶
8 32. While VeriSign has been blocked, delayed, or restricted from offering these
9 new services, other gTLD registries regulated by ICANN "have been allowed to
10 offer and market similar, competitive services..." *Id.* ¶ 77; *see also* ¶¶ 35, 45, 65,
11 68. In particular, VeriSign alleges that ICANN has facilitated ".museum," one of
12 its gTLD competitors, in offering a service similar to VeriSign's Site Finder. *Id.*
13 ¶ 35. In addition, ccTLD registries, which constitute some 240 out of 250 of all
14 TLDs, are not regulated by ICANN and "are free to offer, and are offering, new
15 and improved services to registrars and registrants..." *Id.* ¶¶ 12, 20, 78. VeriSign
16 does not allege how the market for these services operates or the pricing structure
17 for such services.

18 ICANN argues that VeriSign has not, and cannot, sufficiently plead
19 antitrust standing or facts supporting *any* of the elements of a Section 1 claim.
20 Def.'s Mot., pp. 8-17. VeriSign disagrees with each of these assertions. Pl.'s
21 Opp'n, pp. 5-15.

22 **A. Conspiracy Allegations**

23 ICANN summarizes the defects in the allegations concerning the first
24 required element of a Section 1 violation as follows:

- 25 • VeriSign argues that it has alleged that ICANN's
26 competitors exercised control over ICANN, but
27 there are *no* such allegations in the complaint.
- 28 • VeriSign argues that these unnamed competitors

1 consist of a “finite group,” but the complaint
2 alleges *multiple* groups of conspirators, as well as
3 the undefined phrase “*and others.*”

- 4 • VeriSign argues that the “conspiracy” – the terms
5 of which are not defined – has had an
6 anticompetitive effect because it has resulted in a
7 decrease in efficiency, increase in prices, and
8 unavailability of products, but the complaint
9 contains no such allegations and, instead, alleges
10 that products similar to VeriSign’s *are* available to
11 consumers.

12 Def.’s Reply, 1:11-22 (emphasis in original).

13 Trade associations or industry groups that set standards or promulgate
14 regulations, such as ICANN, can be held liable for Section 1 violations because
15 “[t]here is no doubt that the members of such associations often have economic
16 incentives to restrain competition and that the product standards set by such
17 associations have a serious potential for anticompetitive harm.” *Allied Tube &*
18 *Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500 (1988). As the Supreme
19 Court explained in *Am. Soc’y of Mech. Eng’rs v. Hydrolevel Corp.*, 456 U.S. 556
20 (1982):

21 Although, undoubtedly, most [officials] serve [the
22 industry organization] without concern for the interests
23 of their corporate employers, some may well view their
24 positions..., at least in part, as an opportunity to benefit
25 their employers. When the great influence of [the
26 organization’s] reputation is placed at their disposal, the
27 less altruistic of [the organization’s] agents have an
28 opportunity to harm their employers’ competitors

1 through manipulation of [the organization's] codes.
2 *Id.* at 571. The Ninth Circuit elaborated on the issue of organizational
3 conspiracies in *Hahn v. Oregon Physicians' Serv.*, 868 F.2d 1022, 1029, holding
4 that "the proper inquiry is whether [decisionmakers] sharing substantially similar
5 economic interests collectively exercised control of [the organization] under
6 whose auspices they have reached agreements which work to the detriments of
7 competitors."

8 Thus, in order to sufficiently plead a conspiracy, VeriSign must allege that
9 ICANN's decisionmaking process was controlled or greatly influenced by
10 economic competitors who have agreed to injure VeriSign. Instead, VeriSign
11 simply alleges that "ICANN is governed by and acts through an international
12 Board of Directors that is elected by members of various constituencies within the
13 Internet community...that compete with each other and with VeriSign" and that
14 "ICANN also operates in cooperation with various industry boards that are
15 comprised of existing or potential competitors." Compl. ¶ 18. VeriSign also
16 claims that ICANN's decisions regarding the various services it seeks to offer
17 were "made in conjunction with and at the behest of various constituent groups
18 within ICANN and other businesses that compete with VeriSign," *Id.* ¶ 38, and
19 this has benefitted "businesses who have combined and conspired with ICANN."
20 *Id.* ¶ 47; *see also* 44-45, 65.

21 ICANN properly notes that VeriSign's factual allegations fall far short of
22 the mark. There is not even an allegation (much less factual allegations
23 supporting it) that the Board of ICANN has actually conspired with any of
24 VeriSign's competitors. Nor are there sufficient allegations that competitors
25 control or influence ICANN. VeriSign has not alleged how ICANN operates,
26 makes decisions, and regulates Internet registries and registry services. For all
27
28

1 these reasons, VeriSign has not sufficiently alleged a Section 1 conspiracy.⁴ *Am.*
2 *Soc'y of Mech. Eng'rs, supra.*

3 **B. Antitrust Standing**

4 ICANN argues that VeriSign does not have antitrust standing because even
5 if it has been injured by being put at a competitive disadvantage, that injury is not
6 one that the antitrust laws were designed to address. Def.'s Mot, 15:18-16:15.

7 ICANN relies on many key cases, including *McGlinchy, supra*, which held that a
8 plaintiff's claim that its business had been injured did not amount to an antitrust
9 injury because "the antitrust laws were enacted for the protection of *competition*,
10 not *competitors*." *Id.* at 811-13 (internal citations omitted, emphasis in original).

11 VeriSign, in turn, contends that its .com gTLD customers have not been able to
12 purchase its "new innovative value-added services" and that some Ninth Circuit
13 cases have found antitrust standing where only one competitor is harmed
14 "because consumers faced fewer product or service choices...from the remaining
15 competitors." Pl.'s Opp'n, 12:10-14:7. In *Hasbrouck v. Texaco, Inc.*, 842 F.2d
16 1034, 1040 (9th Cir. 1988), *aff'd* 496 U.S. 543 (1990), the Ninth Circuit cautioned
17 courts not to be too dismissive of an injury to one competitor:

18 The purpose of drawing a distinction between harm to
19 competition and harm to competitors is to point out that
20 not all acts that harm competitors harm competition.

21 However, the converse is *not* true. Injury to competition
22 necessarily entails injury to at least some competitors.

23 Competition does not exist in a vacuum; it consists of
24 rivalry among competitors. Clearly, injury to

25 _____
26 ⁴ ICANN argues that its bylaws, which outline how ICANN and its Board of
27 Directors function, preclude VeriSign from ever being able to plead conspiracy. *See*
28 Def.'s Request for Judicial Notice, Exh. B. The Court declines, at this stage, to
determine whether these documents would preclude VeriSign from alleging a
conspiracy against ICANN.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

competitors may be probative of harm to competition, although the weight to be attached to such evidence depends on its nature and on the nature of the challenged conduct. The aphorism may not be invoked blindly in response to a showing that competitors have been harmed; otherwise it would often serve to shield unlawful conduct that adversely affects competition.

Id.; see also *USA Petroleum Co. v. Atl. Richfield Co.*, 859 F.2d 687, 696 (9th Cir. 1988), *rev'd* 495 U.S. 328 (1990).

ICANN cites several Ninth Circuit cases dismissing Section 1 antitrust claims that fail to allege the requisite injury to competition in the relevant market. See, e.g., *Les Shockley Racing*, *supra* at 508 (removal of one competitor from market does not injure competition without allegation of unreasonable disruption in pricing, resource allocation, market entry, or output); *McGlinchy*, *supra* at 811-12 (injury to competitor is not injury to competition); *Rutman Wine Co.*, *supra* at 734-35 (same).⁵ Occasionally, of course, there are situations of “convergence of injury to a market competitor and injury to competition...when the relevant market is both narrow and discrete and the market participants are few.” *Les Shockley Racing, Inc.*, *supra*, at 508-09 (citation omitted). None of the cases VeriSign cites changes this analysis.

⁵ For similar results at the summary judgment stage, see also *Pool Water Prods.*, *supra* at 1035-36 (neither decreased prices nor a competitor’s decreased market share are antitrust injuries harming competition); *Adaptive Power Solutions, LLC v. Hughes Missile Sys. Co.*, 141 F.3d 947, 952 (9th Cir. 1998), *cert. denied*, 525 U.S. 875 (1998) (in missile component market with only two or three competitors, forced exclusion of plaintiff resulting in temporary decline in number of competitors not a significant restraint of trade entitling antitrust injury); *McDaniel v. Appraisal Inst.*, 117 F.3d 421, 423 (9th Cir. 1997), *cert. denied*, 523 U.S. 1022 (1998) (real estate appraiser who was not certified was at competitive disadvantage, but no harm to competition); *Rebel Oil Co., Inc.*, *supra* at 1444 (below-cost pricing by competitor who lacks market power is a “boon to consumers,” not an antitrust injury).

1 VeriSign relies on three cases where courts found that an antitrust claim
2 was stated by one competitor: *Pinhas v. Summit Health, Ltd.*, 894 F.2d 1024,
3 1032 (9th Cir. 1990), *aff'd* 500 U.S. 322 (1991); *Oltz v. St. Peter's Cmty. Hosp.*,
4 861 F.2d 1440, 1448 (9th Cir. 1988); and *Industrial Bldg. Materials, Inc. v.*
5 *Interchemical Corp.*, 437 F.2d 1336, 1342-43 (9th Cir. 1971). ICANN correctly
6 notes that the plaintiffs in these three cases *did* sufficiently allege impacts on
7 services, prices, or the number of entrants in the marketplace to allege an injury to
8 competition. Def.'s Reply, p. 8 n.10.

9 VeriSign alleges that ICANN's conduct "has deprived consumers of a
10 beneficial new service and VeriSign of revenues and profits it would generate..."
11 Compl. ¶ 39; *see also* ¶¶ 47, 55, 65, 69, 72, 86. These new services are important
12 to enable "VeriSign to compete more effectively with operators of competitive
13 gTLD and ccTLD registries that are offering or intend to offer a similar service"
14 by making "the registration of domain names within the .com gTLD more
15 desirable and attractive." *Id.* ¶ 69; *see also* ¶ 32. Thus, the crux of VeriSign's
16 injury is that it is being placed at a "competitive disadvantage" *vis-a-vis* other
17 TLDs since ICANN prevents, delays, or restricts VeriSign's ability to make new
18 services its competitors offer from being made available to customers in the .com
19 gTLD it operates. *Id.* ¶¶ 77-78.

20 VeriSign's very theory of damage depends on and arises out of the fact that
21 it has vigorous competitors who will be able to compete more vigorously.
22 Moreover, this is not a case in which the marketplace is small and the participants
23 are few. To the contrary, VeriSign defines the relevant market as the operation of
24 TLD registries worldwide, both gTLD and ccTLD. Compl. ¶ 84. There are
25 approximately 250 TLDs throughout the world and numerous registries operating
26 those TLDs and competing to attract domain name registrations, most of which
27 are ccTLDs unregulated by ICANN. *Id.* ¶¶ 12, 20, 32. By VeriSign's own
28 account, many of its competitors already offer (or plan to offer) similar or

1 competitive services. *Id.* ¶¶ 77-78. Its Complaint seems to be based on the
2 unstated assumption that ICANN has a duty to help it compete more effectively.
3 VeriSign has not alleged anything more than injury to its own business and
4 therefore, does not have antitrust standing.

5 The Court DISMISSES the first cause of action for violation of Section 1
6 of the Sherman Act without prejudice. ICANN states that VeriSign “has not
7 adequately pled an antitrust claim against ICANN and could never do so,”
8 suggesting that leave to amend would be futile. Def.’s Mot., 17:10-11. Although
9 VeriSign has not requested leave to amend, it is entitled to attempt to cure the
10 defects. If VeriSign can do so with a good faith basis and consistent with the
11 obligations of Fed. R. Civ. P. 11, it may have until June 7, 2004 to file a FAC. If
12 VeriSign does not timely amend and cure all defects, the antitrust claim will be
13 dismissed with prejudice and the Court will decline to exercise supplemental
14 jurisdiction.

15 CONCLUSION

16 For the foregoing reasons, the Court hereby GRANTS Defendant’s motion
17 to dismiss claim one of the Complaint, without prejudice.⁶ The Court declines to
18 rule on the remainder of the motion to dismiss, which addresses the state law
19 claims two through six. If, in any FAC, VeriSign sufficiently states an antitrust
20 claim, but does not change any of the allegations pertaining to claims two through
21 six, the parties shall incorporate into their respective motion papers the precise
22 language and arguments they made in their respective current motion papers.

23 As to the Special Motion to Strike, in order to provide for docketing clarity,
24 the Court ORDERS that it be withdrawn from the active calendar, without
25 prejudice to it being renewed.⁷ If the Court eventually rules on a dismissal
26 motion directed at counts two through six, it will also rule on the motion

27 _____
28 ⁶ Docket No. 16.

⁷ Docket No. 19.

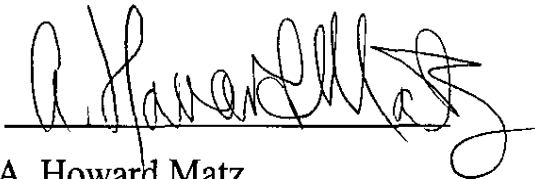
1 to strike. In that event, regardless of whether VeriSign amends any or all of the
2 second through sixth claims in any FAC, ICANN may incorporate into a renewed
3 motion to strike the facts and arguments it relied on in the current set of motion
4 papers regarding the original Complaint.

5 In light of this ruling, the Court need not rule on the parties' various
6 requests for judicial notice and related disputes.

7 This Order is not intended for publication.

8
9
10 IT IS SO ORDERED.

11
12 DATE: May 18, 2004



13 A. Howard Matz

14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28