

COPY

1 Jeffrey A. LeVee (State Bar No. 125863)
2 Emma Killick (State Bar No. 192469)
3 Sean W. Jaquez (State Bar No. 223132)
4 JONES DAY
5 555 West Fifth Street, Suite 4600
6 Los Angeles, CA 90013-1025
7 Telephone: (213) 489-3939
8 Facsimile: (213) 243-2539

9 Joe Sims (*pro hac vice* pending)
10 JONES DAY
11 51 Louisiana Avenue, N.W.
12 Washington, D.C. 20001-2113
13 Telephone: (202) 879-3939
14 Facsimile: (202) 626-1700

15 Attorneys for Defendant
16 INTERNET CORPORATION FOR
17 ASSIGNED NAMES AND NUMBERS

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 REGISTERSITE.COM, et al.,

21 Plaintiff,

22 v.

23 INTERNET CORPORATION FOR
24 ASSIGNED NAMES AND
25 NUMBERS, a California
26 Corporation; VERISIGN, INC., a
27 Delaware Corporation; and DOES 1-
28 150, inclusive,

Defendants.

Case No. CV 04-1368 ABC (CWx)

**NOTICE OF ERRATA TO
DEFENDANT INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS' MOTION
TO DISMISS CERTAIN CAUSES OF
ACTION FOR FAILURE TO STATE
A CLAIM UNDER FRCP RULE
12(b)(6)**

BY _____

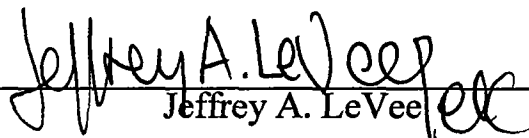
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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

1 Please take notice that Defendant Internet Corporation for Assigned Names
2 and Numbers' ("ICANN") Motion to Dismiss Certain Causes of Action for Failure
3 to State A Claim Under FRCP Rule 12(b)(6) ("Motion to Dismiss") was
4 inadvertently submitted without a Table of Contents and a Table of Authorities. As
5 such, ICANN hereby submits a copy of its Notice of Motion and Motion to
6 Dismiss, with the Table of Contents and Table of Authorities attached thereto, as
7 Exhibit A. No changes have been made to either ICANN's Notice of Motion or
8 Motion to Dismiss, other than the addition of the Table of Contents and Table of
9 Authorities. ICANN respectfully requests that the Court recognize this copy of
10 ICANN's Notice of Motion and Motion to Dismiss.

11 Dated: June 1, 2004

JONES DAY

13 By: 
14 Jeffrey A. LeVeque

15 Attorneys for Defendant INTERNET
16 CORPORATION FOR ASSIGNED
17 NAMES AND NUMBERS

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1 Jeffrey A. LeVee (State Bar No. 125863)
Emma Killick (State Bar No. 192469)
2 Sean W. Jaquez (State Bar No. 223132)
JONES DAY
3 555 West Fifth Street, Suite 4600
Los Angeles, CA 90013-1025
4 Telephone: (213) 489-3939
Facsimile: (213) 243-2539

5
6 Joe Sims (admitted *pro hac vice*)
JONES DAY
7 51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
8 Telephone: (202) 879-3939
Facsimile: (202) 626-1700

9 Attorneys for Defendant
10 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 REGISTERSITE.COM, et al.,
16 Plaintiff,
17 v.
18 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
19 NUMBERS, a California
Corporation; VERISIGN, INC., a
20 Delaware Corporation; and DOES 1-
150, inclusive,
21 Defendants.

Case No. CV041368 ABC (CWx)
**DEFENDANT INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS' NOTICE
OF MOTION AND MOTION TO
DISMISS CERTAIN CAUSES OF
ACTION FOR FAILURE TO STATE
A CLAIM UNDER FRCP 12(B)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: July 12, 2004
Time: 10:00 a.m.
Dept: 680

Honorable Audrey B. Collins

1 PLEASE TAKE NOTICE that, on July 12, 2004, at 10:00 a.m. or as soon
2 thereafter as counsel may be heard at the courtroom of the Honorable Audrey B.
3 Collins, United States District Judge, located at 255 East Temple Street, Los
4 Angeles, CA 90012, Defendant Internet Corporation for Assigned Names and
5 Numbers ("ICANN") will and hereby does move this Court, pursuant to
6 Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing the
7 following claims for relief contained in the complaint filed by Registersite.com,
8 Name.com, R. Lee Chambers Company LLC, Fiducia LLC, Spot Domain, LLC,
9 !\$6.25 Domains! Network, Inc., AusRegistry Group Pty Ltd and !\$!Bid It Win It,
10 Inc.'s ("Plaintiffs"):

- 11 • first claim for relief for violation of California Business and Professions
12 Code Section 17200 et seq., as against ICANN;
- 13 • fifth claim for relief for violation of California Business and Professions
14 Code Section 17200 et seq., as against ICANN;
- 15 • seventh claim for relief for violation of California Business and
16 Professions Code Section 17200 et seq., as against ICANN; and
17 • twelfth claim for relief for breach of contract.

18 Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, none of
19 these claims for relief states a claim upon which relief may be granted, as against
20 ICANN. These are the only claims for relief in the complaint that are asserted
21 against ICANN.
22

23 ICANN originally met and conferred with Plaintiffs on April 1, 2004, during
24 which ICANN notified Plaintiffs that ICANN intended to file a motion to dismiss
25 plaintiffs' original complaint. Plaintiffs elected to file an amended complaint,
26 which they did on April 8, 2004.

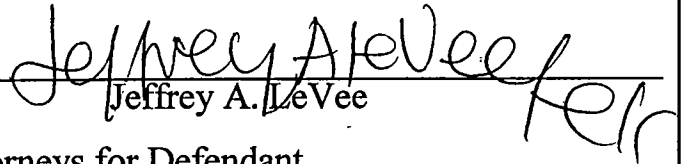
27 Although the first amended complaint deleted some of the defects in its
28 claims against ICANN, it retained several others, and even introduced some

1 additional defects. This motion is made following the conference of counsel
2 pursuant to Local Rule 7-3, which took place on May 20, 2004. Counsel were
3 unable to reach any agreements that would obviate the need for the motion.

4 This motion is based upon this Notice of Motion and Motion, the
5 Memorandum of Points and Authorities attached hereto, the concurrently-filed
6 Request for Judicial Notice, all the papers, pleadings, and records on file herein,
7 and on such other matters as may properly come before the Court before or at the
8 hearing.

9 Dated: May 28, 2004

JONES DAY

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11 By: 
12 Jeffrey A. LeVee

13 Attorneys for Defendant
14 INTERNET CORPORATION FOR
15 ASSIGNED NAMES AND NUMBERS
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1 **STATEMENT OF RELEVANT FACTS**

2 Although Plaintiffs' first amended complaint is lengthy, its allegations with
3 respect to ICANN may be summarized as follows:

4 Defendant VeriSign is the Internet "registry" for the ".com" and ".net"
5 domains. FAC ¶¶ 4.9, 4.44. A "registry" is analogous to a telephone book in that it
6 maintains a list (and other relevant information) of all of the Internet domain names
7 registered in that particular domain (i.e., ".com"). If a consumer wishes to register
8 a name in either of those domains, the consumer contacts an Internet "registrar"
9 (such as one of the Plaintiffs), which in turn contacts VeriSign to see if the domain
10 name is available or if it is already registered. FAC. ¶¶ 4.10-4.11. Domain name
11 registrations typically are for one or two years. FAC ¶ 4.38. At the end of the
12 registration period, some registrants elect not to renew their domain name
13 registrations, in which case VeriSign deletes the name from the registry. FAC
14 ¶¶ 4.26-4.28.

15 Some time ago, VeriSign proposed to offer WLS. Via WLS, a consumer
16 (through a registrar) could purchase the ability to "stand in line" for a domain name
17 that might be deleted from the registry. FAC ¶¶ 4.46. If the current subscriber of
18 the domain name elected not to renew her subscription, VeriSign would
19 automatically register the domain name in the name of the person who had
20 purchased the WLS subscription. FAC ¶ 4.48. The Internet registrars could elect
21 to offer WLS to consumers if they wished, but they would be under no obligation to
22 offer WLS.

23 Plaintiffs are Internet registrars (FAC ¶ 1.4) that "act[] as an interface
24 between registrants [consumers] and the registry operator [in this case, VeriSign],
25 providing domain name registration and other related services to consumers." FAC
26 ¶¶ 4.8-4.10. For various periods of time,¹ Plaintiffs have been offering similar

27 ¹ ICANN notes that some of the Plaintiffs actually became registrars and
28 commenced offering their wait listing services well after VeriSign began public
discussions of WLS in 2001, or even after ICANN agreed that it would revise its

1 types of “wait listing” services to consumers. The difference between Plaintiffs’
2 services and WLS is that Plaintiffs offer no guarantee that they can obtain a
3 domain name for their customers if the name is deleted from the registry. Instead,
4 under Plaintiffs’ version of “wait listing,” if VeriSign deletes a domain name from
5 the registry, multiple registrars attempt, on behalf of their various customers, to
6 acquire the name in a “split-second” race to be first-in-line when the domain name
7 becomes available. Only one registrar will be successful in obtaining the deleted
8 name for its customer; the other customers will be out of luck. Unlike under WLS,
9 the current system for re-registration of deleted domain names, a customer would
10 simply have to sign up with any one registrar to be placed on the waiting list. This
11 would guarantee the customer the right to be next in line to acquire the domain
12 name should it be deleted.

13 ICANN is a not-for-profit California corporation that, in 1998, entered into a
14 Memorandum of Understanding with the United States Department of Commerce
15 (“DOC”), which charged ICANN with certain responsibilities for managing and
16 administering the Domain Name System. FAC ¶¶ 4.1-4.7, 4.15-4.18; Bylaws, Art.
17 1, § 1.² The mission of ICANN is to coordinate, at the overall level, the global
18 Internet's systems of unique identifiers, and in particular to ensure the stable and
19 secure operation of the Internet's unique identifier systems. Bylaws, Art. 1, § 1.
20 ICANN conducts no commercial business, and its bylaws do not permit it to
21 function as an Internet registrar or registry. Bylaws, Art. 2, § 2.

22
23
24 (continued...)

25 agreement with VeriSign to remove the contractual prohibition against its
26 introduction. In fact, a few of the Plaintiffs actually commenced offering this
27 service after the *Dotster* case was filed. These Plaintiffs obviously entered the
28 registrar business knowing that WLS was approaching introduction.

² See <http://www.icann.org/general/bylaws.htm> for ICANN's Bylaws.

1 One of ICANN’s purposes has been to “accredit” companies that serve as
2 Internet registrars. When ICANN “accredits” a registrar, ICANN and the registrar
3 enter into a Registrar Accreditation Agreement (“RAA”). Each of the Plaintiffs has
4 signed an essentially identical RAA with ICANN. FAC ¶ 2.15.

5 After VeriSign submitted its WLS proposal to ICANN, ICANN solicited
6 comment from the Internet community with respect to VeriSign’s proposal. FAC
7 ¶¶ 4.60-4.62. After receipt of those comments, ICANN’s Board adopted a
8 resolution in August 2002 authorizing ICANN’s president to negotiate amendments
9 to its agreements with VeriSign to permit WLS to proceed. FAC ¶ 4.64. After
10 several procedures to review that decision – including reconsideration at the
11 requests of registrars and VeriSign and the filing of a lawsuit in this Court by a
12 group of registrars (the *Dotster* litigation) requesting preliminary and permanent
13 injunctions against ICANN’s negotiations with VeriSign – Plaintiffs filed their
14 original complaint on March 1, 2004, only five days before the WLS proposal was
15 to be considered at a regularly-scheduled meeting of ICANN’s Board.

16 On March 6, 2004, the ICANN Board passed a resolution approving the
17 results of negotiations with VeriSign concerning its WLS proposal, which
18 authorized ICANN to seek approval of the United States Department of Commerce
19 (as required by ICANN’s agreement with that agency) to amend the VeriSign
20 registry agreements to permit the offering of WLS. FAC ¶ 4.65.

21 A few days before plaintiffs filed their original complaint in this action, on
22 February 27, 2004, VeriSign filed suit against ICANN, Case No. CV 04-1292
23 AHM (CTx), which is pending before Judge Matz in the Central District. In that
24 suit, VeriSign alleges, among other things, that ICANN has, in refusing to amend
25 its agreement with VeriSign at an earlier time, (1) conspired with yet-to-be-named
26 registrars and others in violation of section 1 of the Sherman Act; and (2) breached
27 the .com contract between ICANN and VeriSign. On May 10, 2004, Judge Matz
28

1 granted ICANN's motion to dismiss VeriSign's complaint, while allowing VeriSign
2 an opportunity to amend.

3 After ICANN raised objections to the original complaint's sufficiency, on
4 April 8, 2004, Plaintiffs filed their first amended complaint against ICANN
5 ("FAC") and VeriSign. Plaintiffs also added as defendants two other registrars
6 (Network Solutions, Inc., and eNom, Inc.) and an affiliated company (eNom
7 Foreign Holdings Corp.). Plaintiffs claim that WLS threatens Plaintiffs' businesses
8 because "Plaintiffs each offer a service to assist consumers in registering expired
9 domain names." Thus, Plaintiffs seek "to enjoin the defendants' proposed unfair
10 and unlawful WLS activities." FAC ¶¶ 1.4, 1.9. Plaintiffs also claim that ICANN
11 has breached the RAA that each of the Plaintiffs has entered into with ICANN.
12 FAC ¶¶ 2.15, 16.2, 16.3. Plaintiffs allege that WLS would violate the terms of the
13 RAA because WLS does not treat all registrars equally. Further, Plaintiffs claim
14 ICANN breached section 2.3 of the RAA by failing to follow certain procedures in
15 its decision to negotiate with VeriSign regarding the WLS. FAC ¶¶ 16.6, 16.15-16.

16 As noted in the introduction, Plaintiffs are the second group of registrars that
17 have filed suit against ICANN to try to stop the implementation of WLS. In
18 *Dotster, Inc. v. Internet Corporation for Assigned Names and Numbers*, CV 03-
19 5045-JFW (MANx), three registrars that offered "wait listing" services to assist
20 consumers in registering expired domain names claimed that ICANN had breached
21 sections 2 and 4 of the RAA in its decision to authorize negotiations with VeriSign
22 about the proposed WLS. The *Dotster* plaintiffs unsuccessfully sought a
23 preliminary injunction. In denying the motion for a preliminary injunction, Judge
24 Walter explained that plaintiffs had failed to demonstrate a likelihood of success on
25 the merits of their claims because the RAA clearly did *not* require ICANN to follow
26 the procedures set forth in sections 2 or 4 because WLS did not "affect a right or
27 obligation" of the plaintiff-registrars. November 10, 2003 Order at 6 (attached as
28 Exhibit A to ICANN's concurrently-filed Request For Judicial Notice ("RJN")).

1 After evaluating this order, the *Dotster* plaintiffs stipulated to dismissal of their
2 action with prejudice; the Court entered that dismissal on December 5, 2003
3 (attached as Exhibit B to ICANN's concurrently-filed RJN).

4 LEGAL STANDARD

5 Although this Court must accept as true material factual allegations in the
6 complaint, “[c]onclusory allegations of law and unwarranted inferences are
7 insufficient to defeat a motion to dismiss for failure to state a claim.” *Anderson v.*
8 *Clow (In re Stac Electronics Sec. Litig.)*, 89 F.3d 1399, 1403 (9th Cir. 1996)
9 (internal quotation omitted). To withstand scrutiny under Rule 12(b)(6), the
10 complaint “must contain either direct or inferential allegations respecting all the
11 material elements to sustain a recovery under some viable legal theory.” *Scheid v.*
12 *Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988) (internal
13 quotations omitted). In undertaking this analysis, the Court is not required to
14 “accept as true allegations that contradict matters properly subject to judicial notice
15 or by exhibit.” *Sprewell v. Golden St. Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).
16 If the complaint falls victim to a motion to dismiss, it should be dismissed with
17 prejudice if amendment would be futile. *See Reddy v. Litton Indus., Inc.*, 912 F.2d
18 291, 296 (9th Cir. 1990).

19 ARGUMENT

20 **I. PLAINTIFFS' CLAIMS AGAINST ICANN BASED ON VIOLATIONS** 21 **OF CALIFORNIA'S UNFAIR COMPETITION LAW ARE FATALLY** 22 **DEFICIENT.**

23 Plaintiffs' first three claims against ICANN (the first, fifth and seventh
24 claims) are brought against all defendants and allege violations of California's
25 Unfair Competition Law (“UCL”). Plaintiffs are allegedly bringing these claims on
26 behalf of the individual plaintiffs as well as the general public. FAC ¶¶ 5.2, 5.20,
27 9.2, 9.10, 11.2, 11.12. However, Plaintiffs are not “competent” to bring these
28 claims on behalf of the general public and, therefore, lack standing to bring a

1 representative action. Indeed, even as claims brought by the individual Plaintiffs,
2 these causes of action, at least as against ICANN, fail to meet the pleading
3 requirements for UCL claims.

4 **A. Plaintiffs Are Not “Competent” To Bring A UCL Claim On Behalf**
5 **Of The General Public.**

6 A plaintiff must be “competent” to prosecute a UCL claim on behalf of the
7 general public. Cal. Bus. & Prof. Code section 17204; *Kraus v. Trinity Mgmt.*
8 *Serv., Inc.*, 23 Cal. 4th 116, 138 (2000). To make a showing of competency, the
9 plaintiff must demonstrate that the claim truly is brought on behalf of the “general
10 public.” *Rosenbluth Int’l, Inc. v. Super. Ct.*, 101 Cal. App. 4th 1073, 1075 (2002).
11 By contrast, a representative UCL action “based on a contract is not appropriate
12 where the public in general is not harmed by the defendant's alleged unlawful
13 practices.” *Id.* at 1077; *see South Bay Chevrolet v. GMAC*, 72 Cal. App. 4th 861,
14 888-90 (1999) (ruling that a representative action was inappropriate because there
15 was no showing that members of the public were likely to be deceived by a
16 wholesale security agreement between a lender and automotive dealers). Although
17 actions brought to assert claims of individual consumers lend themselves to
18 representative UCL actions, actions brought to vindicate commercial business
19 interests do not. *Prata v. Super. Ct.*, 91 Cal. App. 4th 1128, 1143 (2001)
20 (recognizing a distinction between “actions brought to vindicate the rights of
21 individual consumers” and actions involving “sophisticated business finance
22 issues”); *see also South Bay Chevrolet*, 72 Cal. App. 4th at 883.

23 In *Rosenbluth*, plaintiff alleged that a travel agency serving large corporate
24 clients used fraudulent accounting methods in order to understate the amount of
25 rebates due to its customers. 101 Cal. App. 4th at 1076. The plaintiff brought the
26 UCL action on behalf of the travel agency's customers, mostly corporations that had
27 contracts with the travel agency. The court recognized that a UCL action brought
28 on behalf of sophisticated parties to business contracts raises significant

1 “constitutional issues” in that it deprives the businesses of the decision of whether
2 or not to sue, and the right to be represented by their own counsel. *Rosenbluth*, 101
3 Cal. App. 4th at 1078-79; see *Bronco Wine Co. v. Frank A. Logoluso Farms*, 214
4 Cal. App. 3d 699, 718 (1989) (ruling that a UCL action against a winery brought on
5 behalf of absent grape growers raised due process concerns because the absent
6 grape growers were deprived of the decision of whether to participate in the action
7 and to represent themselves). In addition, the *Rosenbluth* court found that actions
8 to redress business interests foreclose absent plaintiffs from recovering
9 individualized damages in that each of the “victims' damages would have to be
10 calculated separately” because they have separate, specific contracts. *Rosenbluth*,
11 101 Cal. App. 4th at 1079; *Bronco Wine Co.*, 214 Cal. App. 3d at 720. The court,
12 therefore, ruled that plaintiff was not “competent” to bring the action because the
13 purported victims – the large corporations that had individual relationships with the
14 travel agency – were not the general public. *Id.* at 1078-79.

15 The present case is like *Rosenbluth*. While claiming to bring the action on
16 behalf of “consumers,” Plaintiffs are simply attempting to protect their own
17 business interests, which are opposed to the interests of consumers. Plaintiffs
18 allege that *they* will lose money and business if WLS is instituted, because
19 consumers will then choose the more effective WLS in preference to Plaintiffs' wait
20 listing services. By bringing this action, Plaintiffs seek to block WLS and deny
21 consumers a choice in the matter.

22 As in *Rosenbluth*, “[t]he alleged victims here are not unwary targets of false
23 advertising, innocent youths corrupted by lawbreaking retailers, aggrieved used car
24 purchasers, or a 'singularly dense' group of consumers who fall prey to misleading
25 advertising designed to lure them into high-interest loan contracts.” *Rosenbluth*,
26 101 Cal. App. 4th at 1078 (citations omitted). The alleged victims – the various
27 other registrars accredited by ICANN – are sophisticated entities that have
28 demonstrated, by the filing of the *Dotster* case, that they are capable of asserting

1 their own interests and have no need for Plaintiffs' representation. They also have
2 different interests than Plaintiffs, as shown by the naming of two of them as
3 defendants in this lawsuit. Plaintiffs' differing corporate interests, and the due
4 process concerns raised by a representative suit in the face of those differences,
5 render Plaintiffs incompetent to bring a representative action. *See Kraus*, 23 Cal.
6 4th at 138 (“[B]ecause a UCL action is one in equity, in any case in which a
7 defendant can demonstrate a potential for harm or show that the action is not
8 brought by a competent plaintiff for the benefit of injured parties, the court may
9 decline to entertain the action as a representative suit.”).

10 **B. Plaintiffs’ UCL Claims Do Not Meet The Heightened Pleading**
11 **Requirements Under Section 17200 .**

12 In order to bring any claim under the UCL, the plaintiff “must state with
13 reasonable particularity the facts supporting the statutory elements of the violation.”
14 *Silicon Knights, Inc. v. Crystal Dynamics, Inc.*, 983 F. Supp. 1303, 1316 (N.D. Cal.
15 1997) (citing *Khoury v. Maly’s of Cal.*, 14 Cal. App. 4th 612, 619 (1993)); *Nicolosi*
16 *Distrib. Co. v. FinishMaster, Inc.*, 2000 U.S. Dist. LEXIS 505 *1, *5 (N.D. Cal.
17 2000) (“claims brought under California's unfair competition statute must satisfy a
18 heightened pleading standard”). The allegations cannot simply mirror other claims
19 in the complaint but must state specific facts that support the alleged UCL
20 violation. *GlobeSpan, Inc. v. O’Neill*, 151 F. Supp. 2d 1229, 1236 (C.D. Cal.
21 2001); *see The Official Comm. of Unsecured Creditors v. Donaldson, Lufkin &*
22 *Jenrette Sec. Corp.*, 2002 WL 362794 *1, *17-18 (S.D.N.Y. March 6, 2002) (citing
23 *Silicon Knights* for the proposition that plaintiffs must do more than reference the
24 rest of their claims and assert that this represents an unlawful or unfair business
25 practice under California's UCL).

26 If the complaint contains claims against multiple defendants, the plaintiff is
27 required to allege the specific facts tying each defendant to the alleged UCL
28 violation. *See Silicon Knights*, 983 F. Supp. at 1316. In *Silicon Knights*, plaintiff, a

1 video game designer, sued its partner-corporation, as well as the corporation's
2 individual officers alleging, among other things, violations of the UCL. *Id.* at
3 1305-06. The trial court agreed with the individual defendants that plaintiff failed
4 to allege facts sufficient to support a UCL claim against the individual defendants.
5 *Id.* at 1316. Even though the body of the complaint contained factual detail
6 regarding the conduct of the individual defendants, the majority of plaintiff's claims
7 were brought against the corporate-partner and not the individual defendants. *Id.*
8 As such, there was no underlying basis for the UCL claims as alleged against the
9 individual defendants. *Id.*

10 The present case is similar to *Silicon Knights* in that the majority of the
11 claims are brought against defendants other than ICANN. In addition, Plaintiffs
12 allege no basis for any UCL-based claim against ICANN, let alone facts sufficient
13 to support three separate UCL claims. Indeed, even if Plaintiffs had included
14 allegations specifically directed to ICANN's conduct, these still would be
15 insufficient, because by its very nature that conduct – failure of ICANN to use its
16 contractual relationships to prohibit the other defendants from offering WLS in a
17 manner that the Plaintiffs allege violate the UCL – does not itself violate the UCL.
18 Laws of general application such as the UCL are enforced by courts and the
19 executive branch; Plaintiffs have not shown why ICANN is obliged (or, indeed,
20 even equipped) to affirmatively use its agreements with VeriSign and other
21 registrars to compel those companies to comply with the UCL and the myriad other
22 laws around the world that may apply to them. And because ICANN itself does not
23 engage in the commercial registrar or registry businesses, there can be no allegation
24 that ICANN will participate in the actions about which Plaintiffs complain.

25 In Plaintiffs' first claim, there is only one allegation that could possibly be
26 directed against ICANN: “The Defendants and each of them have aided or assisted
27 in setting up, managing, or drawing the lottery in the WLS lottery enterprise.” FAC
28 ¶ 5.19. All the other allegations in the first claim are aimed at the activities of the

1 other defendants – VeriSign, NSI, and/or eNom and its holding company (FAC
2 ¶¶ 5.2-5.18). ICANN is not even mentioned by name and therefore no specific
3 facts are alleged, as required by *Silicon Knights*, tying ICANN to the alleged UCL
4 violation. In fact, even the complaint makes clear that ICANN will not be involved
5 in “setting up” or “managing” WLS, but at most will fail to use its contracts to
6 prohibit it.

7 As for the fifth claim, there is only one mention of ICANN: “ICANN
8 approved the WLS for a one-year trial without requiring Verisign to disclose (or to
9 require registrars to disclose) that consumers may not have the opportunity to renew
10 their WLS subscriptions after the one-year trial period.” FAC ¶ 9.6. It appears that
11 Plaintiffs are attempting to allege that the sale of WLS subscriptions by VeriSign
12 constitutes false advertising. FAC ¶ 9.8. But ICANN does not (and will never) sell
13 WLS subscriptions. ICANN has not required (and does not propose to require)
14 VeriSign to engage in the acts alleged to constitute false advertising. Therefore, the
15 statement regarding ICANN's approval of the WLS for a one-year trial is irrelevant
16 to the alleged false advertising by VeriSign and is not sufficient to satisfy the
17 pleading requirements for a violation of the UCL. ICANN does not, by merely
18 allowing VeriSign under its agreements to sell WLS subscriptions, become liable
19 under the UCL in the event VeriSign advertises WLS in a manner that Plaintiffs
20 consider to constitute false advertising.

21 Finally, Plaintiffs’ seventh claim is also brought against all defendants. It
22 alleges that VeriSign and the “Participating Registrars” are violating the UCL by
23 misleading consumers by purporting to sell ownership in domain names, when they
24 have no interest (Plaintiffs argue) to sell. FAC ¶¶ 11.6-11.11. In this claim, the
25 only mentions of ICANN are Plaintiffs' references to the registry agreement
26 between Verisign and ICANN and the Registry-Registrar Agreements between
27 VeriSign and all ICANN-accredited registrars (FAC ¶¶ 11.6-11.7) and their
28 assertion that “[n]either ICANN nor the Department of Commerce has authority to