

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

JOHN ZUCCARINI, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NETWORK SOLUTIONS, LLC, a )  
 Delaware limited liability company; )  
 NAMEJET, LLC, a Delaware limited )  
 liability company; INTERNET )  
 CORPORATION FOR ASSIGNED )  
 NAMES AND NUMBERS, INC., a )  
 California non-profit corporation, )  
 )  
 Defendants. )

CASE NO. 11-14052-CIV-  
MARTINEZ/LYNCH

**DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND  
NUMBERS’ NOTICE OF UNRESOLVED DISCOVERY MOTIONS**

Pursuant to paragraph 8 of the Court’s May 20, 2011 Order Setting Civil Trial Date And Pretrial Schedule (Dkt. # 45),<sup>1</sup> Defendant Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby advises the Court that ICANN’s Motion to Stay Discovery Pending Ruling on its Motion to Dismiss (“Motion to Stay”) (Dkt. # 52) has been fully briefed and is pending resolution by the Court.<sup>2</sup>

In its Motion to Stay, ICANN moved the Court for an order staying discovery pending resolution of ICANN’s motion to dismiss Plaintiff’s amended complaint for lack of personal jurisdiction, improper venue, and for failure to state a claim against ICANN (“Motion to Dismiss”) (Dkt. No. 19, filed March 22, 2011). ICANN’s Motion to Stay demonstrated that discovery should be stayed for two independent reasons.

<sup>1</sup> In relevant part, Paragraph 8 states as follows: “In the event that there are any unresolved discovery motions pending fifteen days prior to [December 5, 2011, the deadline to file dispositive motions], the moving party shall immediately advise the Court of all such unresolved motions together with their status.”

<sup>2</sup> ICANN filed its Motion to Stay on September 14, 2011. Plaintiff John Zuccarini (“Plaintiff”) filed his response on September 19, 2011 (Dkt. # 54) and ICANN filed its reply brief on September 26, 2011 (Dkt. # 55).

First, ICANN is a California corporation with no contacts with the State of Florida. As such, ICANN moved to dismiss Plaintiff's amended complaint on the ground that it is not, as a matter of constitutional due process, subject to jurisdiction in this forum. Because a favorable resolution of ICANN's motion to dismiss on this basis would eliminate the need for discovery, good cause exists to stay discovery pending resolution of ICANN's motion to dismiss.

Second, ICANN also moved to dismiss Plaintiff's amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim against ICANN. The law is undisputed: "Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before discovery begins." *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997) (emphasis added). Clear Eleventh Circuit precedent requires a stay pending resolution of ICANN's dispositive motion to dismiss.

In his opposition, Plaintiff stated that he "would not oppose the delay of further discovery till (sic) ICANN's motion to dismiss is ruled upon if the Court would extend the time for discovery from the current November 30, 2011 date, till (sic) a date the Court deems appropriate if ICANN's motion to dismiss is denied." (Dkt. No. 54.)

In its reply brief, ICANN did not oppose Plaintiff's request to continue the discovery cutoff date in this matter if discovery is stayed pending resolution of ICANN's potentially dispositive motion to dismiss and respectfully requested that all other pretrial deadlines be similarly continued. (Dkt. No. 55.)

Dated: November 17, 2011

Respectfully submitted,

/s/ Maria Ruiz

Maria Ruiz

Kasowitz, Benson, Torres & Friedman LLP

1441 Brickell Avenue, Suite 1420

Miami, Florida 33131

Telephone: (786) 587-1044

Facsimile: (305) 675-2601

Email: MRuiz@kasowitz.com

Kathleen P. Wallace (Admitted *Pro Hac Vice*)

Jones Day

555 S. Flower Street, 50th Floor

Los Angeles, CA 90071

Telephone: (213) 489-3939

Facsimile: (213) 243-2539

Email: kwallace@jonesday.com

*Attorneys for Defendant Internet Corporation for Assigned Names and Numbers*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> day of November 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record, and mailed a copy of the foregoing to Plaintiff at the address listed below.

John Zuccarini  
190 SW Kanner Highway  
Stuart, FL 34997

/s/ Maria H. Ruiz  
\_\_\_\_\_  
Maria H. Ruiz