

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-14052-CIV-MARTINEZ/LYNCH

JOHN ZUCCARINI,  
Plaintiff,

v.

NETWORK SOLUTIONS, LLC, et al.  
Defendants.

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**JOINT SCHEDULING REPORT**

Plaintiff John Zuccarini and Defendants Network Solutions, LLC (“Network Solutions”), NameJet, LLC (“NameJet”), and Internet Corporation for Assigned Names and Numbers (“ICANN”) (collectively, the “parties”), pursuant to Rule 16.1(b) of the Local Rules for the Southern District of Florida (“S.D. Fla. L.R.”) and the Court’s March 2, 2011 Order, met in person on April 11, 2011 and hereby submit this Joint Scheduling Report.<sup>1</sup>

**Information required by S.D. Fla. L.R. 16.1(B):**

**(A) Likelihood of Settlement.**

Defendants view Plaintiff’s allegations as wholly unfounded and without any evidentiary support and have filed motions to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6). Settlement is therefore unlikely at this time, but the parties will attempt in good faith to resolve this matter and will notify the Court if they do so.

**(B) Likelihood of Appearance in the Action of Additional Parties.** It is unlikely that other parties will appear in this action.

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<sup>1</sup> Defendants Network Solutions, NameJet, and ICANN participated in the scheduling conference pursuant to the Court’s March 2, 2011 Order but do not waive their arguments and defenses that the Court lacks personal jurisdiction over ICANN and/or that this jurisdiction is an improper venue for Plaintiff’s claims.

(C) **Discovery Schedule.** The parties propose the following pretrial discovery schedule, which is based on the standard case management track pursuant to S.D. Fla. L.R.

16.1.A.2:<sup>2</sup>

<b>Date</b>	<b>Action</b>
14 days after denial of a Defendant's motion to dismiss or, if a motion to dismiss is granted with leave to amend, 14 days after service of an order stating that Plaintiff has stated a valid cause of action	Parties to provide initial disclosures pursuant to Rule 26(a)(1)(A)
October 7, 2011	Deadline for Joinder of Additional Parties
October 7, 2011	Fact Discovery Cut Off
November 4, 2011	Exchange of Expert Reports
November 16, 2011	Exchange of Witness Lists
December 6, 2011	Exchange of Expert Rebuttal Reports
January 25, 2012	Expert Discovery Cut Off
February 3, 2012	Last Day to Select a Mediator
March 5, 2012	Last Day to File Summary Judgment or Other Dispositive Motion
April 2, 2012	Last Day to Complete Mediation
April 20, 2012	Deadline for Pretrial Motions and Memoranda of Law
May 7, 2012	Deadline for Joint Pretrial Stipulation
May 16, 2012	Deadline for Resolution of Pretrial Motions
May 16, 2012	Pretrial Conference
May 25, 2012	Deadline for Proposed Jury Instructions and/or Proposed Findings of Fact and Conclusions of Law
June 1, 2012	Deadline for Filing of Deposition Designations
June 4, 2012	Trial

(D) **Proposals for the Formulation and Simplification of Issues.** At this time, the parties do not have any proposals for the formulation and simplification of any issues. As the case progresses, the parties will, if appropriate, in good faith, confer to discuss proposals for the formulation and simplification of issues in this case.

<sup>2</sup> These dates are also reflected on Attachment A, as required by this Court's March 2, 2011 Scheduling Order.

(E) **Necessity of Amendments to Pleadings.** An amendment to Plaintiff's Amended Complaint may be necessary depending on the outcome of Defendants' motions to dismiss. Defendants have not yet filed responsive pleadings as their motions to dismiss are pending.

(F) **Admissions and Stipulations Which Will Avoid Unnecessary Proof.** The parties will work together to obtain admissions and stipulations that will avoid unnecessary proof at trial.

(G) **Suggestions for the Avoidance of Unnecessary Proof and of Cumulative Evidence.** The parties will work together to obtain admissions and stipulations that will avoid unnecessary proof and presentation of cumulative evidence at trial.

(H) **Referral of Matters to Magistrate Judge.** The parties do not consent to trial by the Magistrate Judge, nor to the disposition of dispositive pre-trial motions by a Magistrate Judge.

(I) **Preliminary Estimate of the Time Required for Trial.** The parties believe this matter will require 3-5 days of trial.

(J) **Pretrial Conference and Trial Dates.** The parties request that the pretrial conference be scheduled for May 16, 2012 and that trial be scheduled to commence on or after June 4, 2012. Plaintiff has requested a jury trial in his Amended Complaint.

(K) **Other Information Helpful to the Court in Setting the Case for Status or Pretrial Conference.** At this time, the parties are unaware of any other information that might be helpful to the Court in setting the case for status or pretrial conference. Defendant ICANN would note, however, that it raised the defenses of lack of personal jurisdiction and improper venue in its pending motion to dismiss. To the extent ICANN is ordered to appear at a status or pretrial conference, ICANN will do so by special appearance and expressly preserves its defense

of lack of personal jurisdiction. Defendant Network Solutions similarly raised improper venue in its pending motion to dismiss.

**Additional information required by the Court's March 2, 2011 Order:**

(1) **whether the trial will be jury or non-jury.** Plaintiff has demanded a jury trial.

(2) **an outline of the legal elements of each claim and defense raised by the pleadings.** (the parties are advised that this section shall not be a summary of allegations, but should be modeled on pattern substantive jury instructions applicable in this Court);

Plaintiff alleges that NameJet, Network Solutions, and ICANN were each negligent for allowing fourteen domain name registrations, co-held by a court-appointed California receiver and Network Solutions for the benefit of Plaintiff's creditors, to be transferred and placed in a series of Internet auctions conducted by NameJet in May of 2010. In order to prevail on his negligence claim, Plaintiff must prove the following by a preponderance of the evidence:

(1) defendant owed a duty of care; (2) defendant breached that duty of care; (3) the breach of duty both actually and proximately caused plaintiff's injuries; and (4) plaintiff suffered damages as a result of the breach.

Plaintiff has also asserted a claim for unjust enrichment against Network Solutions and NameJet. To prevail on his unjust enrichment claim, Plaintiff must prove the following by a preponderance of the evidence: (1) a benefit conferred by the plaintiff on the defendant who has knowledge thereof; (2) the defendant voluntarily accepted and retained the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit.

Regarding defenses, on March 22, 2011, ICANN filed a motion to dismiss Plaintiff's Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(2) (lack of personal

jurisdiction), 12(b)(3) (improper venue), and 12(b)(6) (failure to state a claim). *See* Dkt. # 19.

To the extent ICANN's motion to dismiss for lack of personal jurisdiction and improper venue is denied, ICANN will file an answer asserting appropriate defenses if and when Plaintiff states a valid cause of action against ICANN.

Defendants Network Solutions has also filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(3) (improper venue), and 12(b)(6) (failure to state a claim). *See* Dkt. # 14. Defendant NameJet has filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (failure to state a claim). *See* Dkt. # 13. To the extent Network Solutions and NameJet's respective motions to dismiss are denied, Network Solutions and NameJet will file an answer asserting appropriate defenses if and when Plaintiff states a valid cause of action against them.

**(3) a good faith estimate of the specific dollar valuation of actual damages and other relief at issue.** Plaintiff alleges \$1.57 million in damages. Defendants each deny that they are liable to Plaintiff for any amount of damages.

**(4) the need for variance from the discovery limitations imposed by Local Rule and/or the Federal Rules of Civil Procedure.** Defendants' respective motions to dismiss are pending. Because the motions to dismiss will likely dispose of this case in its entirety, the parties have stipulated and agree to delay the production of initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) until (and if) the Court determines that Plaintiff has stated a valid cause of action. If a Defendant's motion to dismiss is denied, that Defendant and Plaintiff will produce their initial disclosures within fourteen (14) days of service of an order denying that Defendant's motion to dismiss. If a Defendant's motion to dismiss is granted with leave to amend, that Defendant and Plaintiff will produce their initial disclosures within fourteen (14)

days of service of an order stating that Plaintiff has stated a valid cause of action. The parties are concurrently filing a joint motion to extend the time to serve initial disclosures pursuant to Federal Rule of Civil Procedure 16(a)(1)(A).

Respectfully submitted;

/s/ John Zuccarini

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*Plaintiff*

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

[Electronically filed by Maria H. Ruiz with consent of all parties.]

**Pretrial Deadlines and Trial Date**

**DATE**

month/day/year

<u>Oct. 7, 2011</u>	Joinder of Additional Parties and motions for class certification.
<u>Oct. 7, 2011</u>	Fact Discovery cut off
<u>Nov. 4, 2011</u>	Parties shall exchange expert witness summaries and reports as required by Local Rule 16.1.K.
<u>Nov. 16, 2011</u>	Parties shall exchange written lists containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify.
<u>Dec. 6, 2011</u>	Parties exchange rebuttal expert witness summaries and reports as required by Local Rule 16.1.K. <u>Note:</u> These provisions pertaining to <u>expert</u> witnesses do not apply to treating physicians, psychologists or other health providers (if a <i>Daubert</i> or <i>Markman</i> hearing may be necessary, the parties are to add that as an additional deadline at the bottom of Attachment A).
<u>Jan. 25, 2012</u>	<del>All discovery, including</del> expert discovery, shall be completed.
<u>Feb. 3, 2012</u>	A mediator must be selected.
<u>Mar. 5, 2012</u>	All summary judgment, <i>Daubert</i> , and other dispositive motions must be filed. A <b>minimum of eight (8) weeks</b> is required for the Court to review dispositive motions prior to filing of the joint pretrial stipulation. <b>If no dispositive motions will be filed, clearly note this fact in the Joint Scheduling Report.</b>
<u>Apr. 2, 2012</u>	Mediation shall be completed.
<u>Apr. 20, 2012</u>	All Pretrial Motions and Memoranda of Law must be filed.
<u>May 7, 2012</u>	Joint Pretrial Stipulation must be filed.
<u>May 16, 2012</u>	Pretrial Conference and Deadline for Resolution of Pretrial Motions
<u>May 25, 2012</u>	Proposed jury instructions and/or proposed findings of fact and conclusions of law must be filed.
<u>June 1, 2012</u>	Deposition designations must be filed.
<u>June 4, 2012</u>	Beginning of Trial Period.
_____	Additional deadlines (please specify).

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Ft. Pierce Division

Case Number: 11-14052-CIV-MARTINEZ-LYNCH

JOHN ZUCCARINI,

Plaintiff,

vs.

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.

\_\_\_\_\_ /

**ELECTION TO JURISDICTION BY A UNITED STATES  
MAGISTRATE JUDGE FOR FINAL DISPOSITION OF MOTIONS**

In accordance with the provisions of 28 U.S.C. §636(c), the undersigned parties to the above-captioned civil matter hereby jointly and voluntarily elect to have a United States Magistrate Judge decide the following motions and issue a final order or judgment with respect thereto:

- 1. Motions for Costs Yes \_\_\_ No X
- 2. Motions for Attorney's Fees Yes \_\_\_ No X
- 3. Motions for Sanctions Yes \_\_\_ No X
- 4. Motions to Dismiss Yes \_\_\_ No X
- 5. Motions for Summary Judgment Yes \_\_\_ No X
- 6. Other (specify): Discovery motions Yes X No \_\_\_

4/11/2011  
(Date)

[Signature]  
(Signature--Plaintiff's Counsel) Pro Se

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature--Plaintiff's Counsel)

4/11/2011  
(Date)

[Signature]  
(Signature--Defendant's Counsel) Network Solutions/NameJet

4/11/2011  
(Date)

[Signature]  
(Signature--Defendant's Counsel) ICANN.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-14052-CIV-MARTINEZ/LYNCH

JOHN ZUCCARINI,  
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**JOINT PROPOSED SCHEDULING ORDER**

The Court, after considering the matters discussed in the parties' Joint Scheduling Report, finds that good cause exists for entry of this Joint Proposed Scheduling Order.

**A. Case Management Track**

This matter is assigned to the standard case management track pursuant to Local Rule 16.1.A.2.

**B. Discovery Schedule Agreed to by the Parties**

The parties shall comply with the deadlines set forth below.

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June 4, 2012	Trial

DONE AND ORDERED in Chambers at Miami, Florida, this \_\_\_\_ day of \_\_\_\_\_

2011.

\_\_\_\_\_  
 JOSE E. MARTINEZ  
 District Judge

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