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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 NAMECHEAP, INC., a Delaware
Corporation,
11
Plaintiff,
12 v.
13 INTERNET CORPORATION FOR
14 ASSIGNED NAMES AND NUMBERS, a
California Nonprofit Corporation,
15
Defendant.
16

Case No. 24SMCP00066
Assigned to: Hon. H. Jay Ford
**NAMECHEAP INC.'S NOTICE OF
MOTION AND MOTION TO ENFORCE
JUDGMENT; MEMORANDUM IN
SUPPORT THEREOF**
*[Filed concurrently with the Declaration of
Eugene Rome and [Proposed] Order]*
Date: July 1, 2025
Time: 8:30 a.m.
Dept.: O
Reservation ID: 096340866860
Petition Filed: January 31, 2024

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 1, 2025, at 8:30 a.m. or as soon thereafter as the
3 matter may be heard in Department O of the above-entitled Court, located at 1725 Main Street,
4 Santa Monica, California, 90401, Petitioner Namecheap, Inc. (“Petitioner” or “Namecheap”) will
5 move for an order enforcing the Judgment Upon Confirmed Arbitration Award (the “Judgment”)
6 entered on February 18, 2025 in favor of Namecheap and against Respondent Internet Corporation
7 For Assigned Names And Numbers (“ICANN”).

8 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities,
9 the Declaration of Eugene Rome, and [Proposed] Order filed herewith, the files and records in this
10 action, and such further evidence and argument as may be presented at the at the hearing of this
11 matter.

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DATED: April 4, 2025

ROME LLP

By: /s/ Eugene Rome
EUGENE ROME
Attorneys for Plaintiff
NAMECHEAP, INC.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Internet Corporation for Assigned Names and Numbers’ (“ICANN”) violated its
4 Articles and Bylaws by failing to act in an open and transparent manner and by failing to comply
5 with certain procedural requirements for ICANN Board action when it reached its decision to renew
6 the 2019 Registry Agreements for .INFO and .ORG without price control provisions. The
7 Independent Review Process (“IRP”) Panel made this determination as a matter of law after a
8 lengthy arbitration resulting in the Final Declaration of the IRP Panel entered on December 23, 2022
9 (the “Award”). *See* Declaration of Eugene Rome in Support of Motion to Enforce Judgment (“Rome
10 Decl.”), Ex. A.

11 As part of its determination, the Panel also provided a list of recommended actions for
12 ICANN to take in order to remedy its past violations and to prevent future violations. These were
13 recommendations that ICANN was obligated under its Bylaws to consider at its next board meeting.
14 *Id.*, ¶¶ 498-504. And yet, more than two years later, ICANN has still not acted in accordance with
15 its Bylaws, and ICANN has made no sincere attempt to remedy its wrongs or take steps to prevent
16 future violations.

17 Indeed, ICANN’s unwavering position is that ICANN is judgment-proof – that is, ICANN’s
18 Bylaws protect it from ever being ordered to take any action at all, not by the Panel, and not by this
19 Court, even when the IRP, the sole dispute resolution procedure permitted under ICANN’s Bylaws,
20 results in an unfavorable ruling. And despite extensive communications and various attempts at
21 enforcement, Petitioner Namecheap, Inc.’s (“Petitioner” or “Namecheap”) efforts have been
22 frustrated at every turn. The Court confirmed the arbitration award in its February 18, 2025, Order
23 (the “Judgment”) (*see* Rome Decl., Ex. B, Order), and Namecheap now moves this Court for an
24 order enforcing the Judgment and ordering ICANN to follow the recommendations of the IRP Panel,
25 as the Court has indicated its “broad authority to enforce a judgment.” Rome Decl. Ex. C, Transcript
26 of Proceedings, dated Jan. 24, 2025, 5:27-6:3.

27 Specifically, Namecheap requests that the Court order ICANN to: (1) approach the registry
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1 operators for .ORG and .INFO to agree to some form of price control; (2) consider revisions to
2 ICANN’s decision-making process to reduce risk of procedural violations in the future; and (3) if
3 the ICANN Board concludes, following a process that encouraged participation of diverse
4 stakeholders, and after having directly and fully considered and responded to the primary concerns
5 raised, that price controls are in the global public interest – seek to amend the 2019 Registry
6 Agreements.

7 **II. FACTUAL OVERVIEW**

8 **A. Background on ICANN and the Registry Agreements**

9 ICANN was created for the benefit of the internet community as a whole, as stated in its
10 mission, commitment and core values. ICANN enters into contracts with registry operators laying
11 down the terms and conditions to operate specific generic Top-Level Domains (“gTLDs”), such as
12 .ORG and .INFO, in the internet domain name system. Rome Decl., Ex. A, ¶ 2. Registrars such as
13 Namecheap purchase the non-exclusive rights to specific domain names from registry operators and
14 sell them to end-users. *Id.*

15 Until 2019, the Registry Agreements for .ORG and .INFO included price caps, limiting the
16 price charged to registrars for domain name registrations to \$8.25 USD until the end of 2013, with
17 a maximum price increase of 10% for each subsequent calendar year. *Id.*, ¶¶ 4, 5, 29. But when the
18 2013 .ORG and .INFO Registry Agreements expired in June 2019, ICANN announced that the new
19 Registry Agreements would not contain those same – or any – price controls. *Id.*, ¶¶ 5, 30-32. As a
20 result, the registry operators of the .ORG and .INFO would be able to increase prices by more than
21 10% annually. *Id.*, ¶ 5.

22 According to ICANN, the renewal negotiations for .ORG and .INFO began in May 2018 and
23 were conducted mostly by telephone. *Id.*, ¶ 30. The agreement renewals themselves were discussed
24 during ICANN staff meetings in December 2018 and January 2019, and during an ICANN Board
25 workshop in January 2019; however, there are no minutes of those meetings. *Id.*, ¶ 29. Evidently,
26 ICANN presented the history of the price controls in various gTLD contracts, how the concepts of
27 price control and price protection were considered by the community during the development of the

1 response to IRP Panel “*decisions*” at the Board’s next meeting, if feasible, and shall “*accept or*
2 *reject compliance with the decision on the public record based on an expressed rationale.*” *Id.*, ¶
3 498 (emphasis added).

4 *Second*, the ICANN Board should consider creating and implementing a process to conduct
5 further analysis of whether including price caps in the Registry Agreements for .ORG and .INFO is
6 in the global public interest, encouraging participation of diverse stakeholders and directly and fully
7 considering and responding to the primary concerns raised, and conducted in an open and
8 transparent manner that avoids the violations found by the Panel. *Id.*, ¶ 499.

9 *Third*, the ICANN Board should consider what remedial measures to take as to both .ORG
10 and .INFO, recognizing that the measures for .ORG may be stronger and more extensive than for
11 .INFO. *Id.*, ¶ 500.

12 *Fourth*, the Board should consider whether to retain an expert consultant to conduct a study
13 on issues raised by the Price Cap Decision, such as a formal study of the extent of market power of
14 .ORG and .INFO. *Id.*, ¶ 501.

15 *Fifth*, if the Board concludes that some form of price controls for .ORG and/or .INFO are in
16 the global public interest, ICANN should seek to amend the 2019 Registry Agreements to include
17 appropriate price controls. *Id.*, ¶ 502.

18 *Sixth*, the ICANN Board should consider approaching the registry operators for .ORG and
19 .INFO about agreeing to some form of price controls, even before evaluating whether price caps are
20 needed and taking the other measures noted above. *Id.*, ¶ 503.

21 *Seventh*, the Board should consider revisions to ICANN’s decision-making process to reduce
22 the risk of similar procedural violations in the future. *Id.*, ¶ 504.

23 In making the above recommendations to ICANN, the IRP Panel engaged in a lengthy
24 analysis of the Panel’s own limited powers to “declare” and “recommend” arising out of conflicting
25 provisions contained within ICANN’s Bylaws. *Id.*, ¶¶ 471-482. The IRP Panel determined that the
26 IRP Panel could “declare” that ICANN violated its Articles and Bylaws but could only
27 “recommend” that ICANN take specific action. *Id.*, ¶ 472. However, in the same discussion, the
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1 Panel noted that the ICANN Board had an obligation to consider the recommendations and “affirm
2 or reject compliance with the decision on the public record based on an expressed rationale.” *Id.*, ¶
3 476, citing Bylaws § 4.3(o)(iii), (iv). Moreover, the IRP Panel cautioned ICANN that should the
4 ICANN Board choose to reject compliance with the Panel’s recommendations, the Bylaws authorize
5 Namecheap “to enforce compliance in a court of competent jurisdiction.” *Id.*, ¶¶ 458, 479.

6 **C. ICANN’s Non-Action in Response to the IRP Ruling**

7 On January 21, 2023, the ICANN Board considered the IRP Panel’s decision as a whole, but
8 the Board only considered the *declarations* of the IRP Panel, and not the Panel’s specific
9 *recommendations*. See Rome Decl., Ex D (January 21, 2023 ICANN Board Minutes, Section 2. b
10 (Consideration of the Namecheap, Inc. v. ICANN (.BIZ, .INFO, .ORG) Independent Review
11 Process Final Declaration). The ICANN Board then recommended that ICANN’s Board
12 Accountability Mechanisms Committee (BAMC) more fully evaluate the Panel’s Declaration and
13 recommendations. *Id.*

14 On June 2, 2023, the BAMC determined that ICANN should retain an economist to provide
15 input regarding the current marketplace with respect to the market power of .INFO and .ORG. See
16 Rome Decl., Ex. E (Minutes from ICANN’s Board of Directors meeting held on June 2, 2023). The
17 ICANN Board accepted the BAMC’s recommendation on June 11, 2023, and on February 14, 2024,
18 ICANN’s economist delivered his analysis. See Rome Decl., Ex. F (Report prepared by ICANN’s
19 Economist on February 14, 2024 and published on ICANN’s website on March 5, 2024).

20 Namecheap reviewed the report, and provided comments to ICANN on May 9, 2024,
21 pointing out the deficiencies therein and explaining why the report fell woefully short of addressing
22 the issues identified by the IRP Panel. See Rome Decl., Ex. G (Namecheap’s May 9, 2024, letter to
23 ICANN). For example, the report did not comply with the Panel’s recommendation because it failed
24 to study the issues raised by the Price Cap Decision such as whether .ORG and .INFO have sufficient
25 market power such that price caps may be desirable. Moreover, the report lacked transparency and
26 indicated bias and faulty methodology. *Id.*

27 On January 31, 2024, Namecheap filed a Petition to Confirm the Arbitration Award seeking
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1 injunctive relief. However, in opposing Namecheap’s Petition, ICANN maintained its position that
2 it had no obligation to follow the recommendations of the IRP Panel and no obligation to consider
3 the Panel’s recommendations, and neither the Panel nor this Court could order ICANN to take any
4 action whatsoever. Moreover, on November 10, 2024, during the pendency of Namecheap’s Petition
5 before this Court, the ICANN Board decided to maintain the .ORG and .INFO registry agreements
6 without the price caps, effectively ignoring the Panel’s findings and recommendations. See Rome
7 Decl., Ex. H (Minutes from ICANN’s Board of Directors meeting held on November 10, 2024). The
8 Court confirmed the Petition in its Judgment on February 18, 2025. Rome Decl., Ex. B. Moreover,
9 the Court indicated at the hearing on the Petition that it has “broad authority to enforce a judgment
10 to fulfill it.” *Id.*, Ex. C.

11 Namecheap now seeks enforcement of that Judgment from this Court.

12 **III. ARGUMENT**

13 As discussed above, the IRP Panel declared that ICANN violated certain of its Articles and
14 Bylaws in reaching its decision to renew the 2019 Registry Agreements or .INFO and .ORG without
15 price control provisions, and the Panel issued seven (7) recommendations to remedy these violations
16 and/or prevent future violations. Rome Decl., Ex. A, ¶ 486(a)-(c); ¶¶ 498-504. The Panel engaged
17 in a lengthy analysis of the distinction in ICANN’s Bylaws between the Panel’s power to “declare”
18 and its power to “recommend.” *Id.*, ¶¶ 471-482. The Panel recognized that its purpose under the IRP
19 is to ensure that ICANN comply with its own Articles and Bylaws, but that purpose does not –
20 pursuant to ICANN’s own charter – allow the Panel to “order” remedial action. *Id.*, ¶ 474.

21 The Panel held that, although “ICANN intends, agrees, and consents to be bound by all IRP
22 Panel decisions,” the ICANN Board retains the power to “affirm or reject compliance with the
23 decision on the public record based on an expressed rationale.” Rome Decl., Ex. A, ¶ 476, citing
24 ICANN’s Bylaws Section 4.3(x)(iii), (iv). Thus, the Panel determined that it had the power to
25 “declare” that ICANN violated its Articles and Bylaws, but it could only “recommend” remedial
26 action. *Id.*, ¶ 478.

27 However, ICANN’s Bylaws expressly acknowledge the power of the Court to *enforce* the

1 Panel’s decision. *See* Rome Decl., Ex. I (ICANN Bylaws Section 4.3(x)(ii) (“IRP Panel decisions
2 and decisions of an *en banc* Standing Panel upon an appeal are intended to be enforceable in any
3 court with jurisdiction over ICANN. .”); (iii) (“If the Board rejects an IRP Panel decision without
4 undertaking an appeal to the *en banc* Standing Panel or rejects an *en banc* Standing Panel decision
5 upon appeal, the Claimant or the EC may seek enforcement in a court of competent jurisdiction.”)).

6 Thus, even though ICANN’s Articles limit the power of the IRP *Panel* to order compliance
7 with its decision, the Bylaws place no such limitation on the *courts* – nor could they, as a corporate
8 charter declaring the corporation beyond the reach of the law would be improper. The IRP Panel
9 recognized the power of the Court when it expressly stated that ICANN’s “option to reject
10 compliance does not mean the ICANN Board should choose that option, especially since the Bylaws
11 authorize the Claimant ‘to enforce compliance in a court of competent jurisdiction.’” Rome Decl.,
12 Ex. A, ¶ 479. Simply because the Panel could not order remedial action does not mean that the Court
13 also lacks that authority. Otherwise, ICANN’s Bylaws on this issue – and the Panel’s citation thereto
14 – would be superfluous. *United Farmers Agents Assn., Inc. v. Farmers Group, Inc.* (2019) 32
15 Cal.App.5th 478, 495 (courts strive to “give effect to all of a contract’s terms, and to avoid
16 interpretations that render any portion superfluous, void or inexplicable”) citing *Brandwein v. Butler*
17 (2013) 218 Cal.App.4th 1485, 1507.

18 Namecheap is now seeking enforcement of the Award from this Court. Specifically,
19 Namecheap requests that the Court order ICANN to: (1) approach the registry operators for .ORG
20 and .INFO to agree to some form of price control; (2) consider revisions to ICANN’s decision-
21 making process to reduce risk of procedural violations in the future; and (3) if the ICANN Board
22 concludes, following a process that encouraged participation of diverse stakeholders, and after
23 having directly and fully considered and responded to the primary concerns raised, that price
24 controls are in the global public interest – seek to amend the 2019 Registry Agreements.

25 Trial courts have the inherent authority to enforce their rulings. *See, e.g., Security Trust &*
26 *Savings Bank v. Southern Pac. R. Co.* (1935) 6 Cal.App.2d 585, 588 (“It is a well-established
27 principle of law that a court possesses inherent power to enforce its judgments.”); *see* C.C.P. § 128,
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1 subd. (a)(4) (court has inherent power to compel obedience to the court’s judgments, orders, and
2 process in any pending action); C.C.P § 717.010 (“A judgment not otherwise enforceable pursuant
3 to this title may be enforced by personally serving a certified copy of the judgment on the person
4 required to obey it and invoking the power of the court to punish for contempt.”); C.C.P. § 1209,
5 subd. (a)(5) (“(a) The following acts or omissions in respect to a court of justice, or proceedings
6 therein, are contempts of the authority of the court: (5) Disobedience of any lawful judgment, order,
7 or process of the court.”)

8 ICANN believes it has no accountability, notwithstanding its directive to operate for the
9 good of the global internet community. The Court should grant Namecheap’s Motion and order
10 ICANN to take affirmative action to comply with the recommendations of the IRP Panel.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Namecheap requests that this Court grant Namecheap’s Motion
13 in its entirety.

14 Dated: April 4, 2025

ROME LLP
Eugene Rome

By: /s/ Eugene Rome
EUGENE ROME
Attorneys for Plaintiff NAMECHEAP, INC.