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7 NAMES AND NUMBERS

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO**

11 SURAJ KUMAR RAJWANI, an individual,  
12  
13 Plaintiff,

14 v.

15 B52 MEDIA LLC, a Limited Liability  
Company; JONATHAN W. BIERER as  
16 personal representative of the Estate of  
Lonnie Borck; INTERNET CORPORATION  
FOR ASSIGNED NAMES AND  
17 NUMBERS, a Corporation; eNOM, Inc., a  
Corporation; WHOIS PRIVACY  
18 PROTECTION SERVICE, INC., a  
corporation and DOES 1 THROUGH 100,  
19  
20 Defendant.

**CASE NO. CGC-16-554684**

**DEFENDANT ICANN'S REQUEST  
FOR JUDICIAL NOTICE IN  
SUPPORT OF DEMURRER TO  
PLAINTIFF'S SECOND AMENDED  
COMPLAINT**

[Notice of Demurrer and Demurrer,  
Memorandum of Points and Authorities,  
Declaration of Amanda Pushinsky, and  
[Proposed] Order filed concurrently  
herewith]

Date: June 29, 2017  
Time: 9:30 a.m.  
Dept: 302

Complaint Filed: October 6, 2016

**RESERVATION ID: 05250629-06**

1           **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2           PLEASE TAKE NOTICE that, pursuant to Sections 452 and 453 of the California  
3 Evidence Code, Defendant Internet Corporation for Assigned Names and Numbers (“ICANN”)  
4 hereby respectfully requests that, in considering its concurrently-filed Demurrer pursuant to  
5 California Code of Civil Procedure section 430.10(e), the Court take judicial notice of the  
6 following documents, which are attached to the Declaration of Amanda Pushinsky In Support of  
7 ICANN’s Demurrer to Plaintiff’s Second Amended complaint (“Pushinsky Decl.”):

- 8           1.       “Domain Name Registration Process,” available at  
9 <https://whois.icann.org/en/domain-name-registration-process>. [Pushinsky Decl. Ex. A];
- 10          2.       “About Change of Registrant,” available at  
11 <https://www.icann.org/resources/pages/ownership-2013-05-03-en>. [Pushinsky Decl. Ex. B];
- 12          3.       “What Does ICANN do?,” available at  
13 <https://www.icann.org/resources/pages/what-2012-02-25-en>. [Pushinsky Decl. Ex. C];
- 14          4.       “ICANN FAQs” available at [https://www.icann.org/resources/pages/faqs-2014-01-](https://www.icann.org/resources/pages/faqs-2014-01-21-en)  
15 [21-en](https://www.icann.org/resources/pages/faqs-2014-01-21-en). [Pushinsky Decl. Ex. D];
- 16          5.       Excerpt of ICANN’s Bylaws, as amended October 1, 2016, available at  
17 <https://www.icann.org/resources/pages/governance/bylaws-en>. [Pushinsky Decl. Ex. E];
- 18          6.       “About Unauthorized Transfers and Changes of Registrant,” available at  
19 <https://www.icann.org/resources/pages/unauthorized-2013-05-03-en>. [Pushinsky Decl. Ex. F];
- 20          7.       January 30, 2017 “Stipulation re: Disclaimer of Interest by eNOM, Inc. and  
21 WHOIS Privacy Protection Service, Inc.,” filed on January 30, 2017 in conjunction with  
22 Plaintiff’s Case Management Statement. [Pushinsky Decl. Ex. G].

23           These documents, which are proper subjects of judicial notice, are relevant because they  
24 will assist the Court in determining whether ICANN’s Demurrer should be sustained on the  
25 grounds that ICANN is not a necessary party to the action and cannot provide the relief Plaintiff  
26 seeks.

1 **LEGAL STANDARD**

2 In considering a demurrer, a court may consider facts that are properly the subject of  
3 judicial notice. Cal. Civ. Proc. Code §430.30(a); Cal. Evid. Code §§452-454.

4 **I. ICANN WEBSITE PAGES**

5 Exhibits A through D, and F, are properly the subject of judicial notice, as the public  
6 archive pages on ICANN’s website constitute “[f]acts and propositions that are not reasonably  
7 subject to dispute and are capable of immediate and accurate determination by resort to sources of  
8 reasonably indisputable accuracy.” Cal. Evid. Code § 452(h); *see also Monterey Peninsula*  
9 *Taxpayers Ass’n v. Cnty. of Monterey*, 8 Cal. App. 4th 1520, 1532, n.8 (1992) (recognizing the  
10 court may take judicial notice of matters of public records not reasonably subject to dispute).

11 Each exhibit is publicly available on the website of the source of the document (here,  
12 ICANN’s website). ICANN is a California non-profit public benefit corporation, responsible for  
13 administrating portions of the Internet’s Domain Name System. These documents come directly  
14 from ICANN’s website, and are therefore not reasonably subject to dispute. Further, because  
15 each of these documents is publicly available on ICANN’s website, they are capable of  
16 immediate and accurate determination. Because Exhibits A through D and F are publicly  
17 available on the noted website, and because their existence is not reasonably subject to dispute,  
18 these items may be judicially noticed.

19 **II. ICANN’S BYLAWS**

20 Exhibit E is properly the subject of judicial notice, as ICANN’s bylaws are pertinent to  
21 Plaintiff’s claims, not subject to reasonable dispute, and are publicly available on ICANN’s  
22 website. *See El-Attar v. Hollywood Presbyterian Med. Ctr.*, 56 Cal. 4th 976, 989 (2013) (taking  
23 judicial notice of the model bylaws of the California medical association); *People v. Lofchie*, 229  
24 Cal. App. 4th 240, 260 (2014) (“We granted the Regents’ request that we take judicial notice of  
25 the University’s conflict of interest code, faculty code of conduct, code of ethics, and its policies,  
26 guidelines, and personnel manuals implementing those codes.”)

27 Indeed, previous iterations of ICANN’s Bylaws have been determined to be proper  
28 subjects of judicial notice. *Verisign, Inc. v. Internet Corp. for Assigned Names & Nos.*, No. CV

1 04-1292 AHM (CTx), 2004 U.S. Dist. LEXIS 17330 (C.D. Cal. Aug. 26, 2004) (taking judicial  
2 notice of earlier version of Bylaws when granting Rule 12(b)(6) motion).

3 Because Exhibit D is publicly available on ICANN's website and its existence is not  
4 reasonably subject to dispute, it may be judicially noticed.

5 **III. STIPULATION**

6 Exhibit G is properly the subject of judicial notice, as the "Stipulation re: Disclaimer of  
7 Interest by eNOM, Inc. and WHOIS Privacy Protection Service, Inc." is part of the record of this  
8 case. Cal. Evid. Code § 452(d). A trial court may properly take judicial notice of the records of  
9 any court of record of California or any other state of the United States. *Id.*; *see Williams v.*  
10 *Wraxall*, 33 Cal. App. 4th 120, 130, fn. 7 (1995) ("We may take judicial notice of the *existence* of  
11 judicial opinions and court documents . . .") (emphasis in original).

12 Section 453 of the Evidence Code further provides that the trial court "shall" take  
13 judicial notice of any matter specified in section 452 if a party requests it and gives sufficient  
14 notice of the request and provides the court with sufficient information to enable it to take judicial  
15 notice. Cal. Evid. Code § 453; *see also Aaronoff v. Martinez-Senftner*, 136 Cal. App. 910, 919  
16 (2006) ("Although the clerk's transcript does not contain an order granting judicial notice, we  
17 may assume the trial court granted judicial notice inasmuch as defendants gave plaintiff sufficient  
18 notice of the request and furnished the trial court with sufficient information to enable it to take  
19 judicial notice of the matter").

20 Exhibit G was filed on January 30, 2017 in conjunction with Plaintiff's Case Management  
21 Statement. Because Exhibit G constitutes a record of a California court and its existence is not  
22 reasonably subject to dispute, it must be judicially noticed.

23 **CONCLUSION**

24 For the foregoing reasons, ICANN respectfully requests that the Court take judicial notice  
25 of and consider Exhibits A-G, attached to the Declaration of Amanda Pushinsky, in its  
26 determination of ICANN's Demurrer.

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Dated: June 2, 2017

Jones Day

By:   
Amanda Pushinsky

Attorneys for Defendant  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS