

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

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

JOHN ZUCCARINI,

Plaintiff,

vs.

NETWORK SOLUTIONS, LLC, *et al.*,

Defendants.

**ORDER GRANTING NAMEJET, LLC'S AND NETWORK SOLUTION, LLC'S
MOTIONS TO DISMISS**

THIS CAUSE came before the Court upon Defendants NameJet, LLC's ("NameJet") and Network Solutions, LLC's ("Network Solutions") Motions to Dismiss. (D.E. Nos. 13, 14). Plaintiff John Zuccarini ("Zuccarini" or "Plaintiff") brought the above-captioned action alleging that NameJet and Network Solutions were negligent in auctioning 14 domain names which resulted in damages to Plaintiff and NameJet and Network Solutions being unjustly enriched.

Background

Zuccarini filed his Amended Complaint "as a beneficiary of the receivership appointed by the California District Court in, *Office Depot, Inc. v. Zuccarini*." See D.E. No. 7 ¶ 6. In *Office Depot, Inc. v. Zuccarini*, 621 F. Supp. 2d 773 (N.D. Cal. 2007), the Court entered an order requiring Network Solutions and other domain name registrars to transfer control of the Zuccarini domain names to Michael Blacksborg as receiver. *Id.* at 778. The receiver entered into a servicing agreement with a domain name registrar, Network Solutions. (Am. Compl. ¶¶ 35-36). Registration of 14 of the domain names were not renewed by the receiver and, pursuant

to the servicing agreement with Network Solutions, these domain names were auctioned through NameJet's auction platform and transferred to successful bidders. *Id.* at 35-40.

Zuccarini filed an action in the Southern District of Florida in July 2010 against NameJet, Network Solutions and other defendants. *See Zuccarini v. NameJet, Inc.*, 2:10-cv-14178-KMM. He alleged that during May 2010, the above-referenced 14 domain names were auctioned by NameJet in violation of California and Virginia statutes. He sought damages for auction of the 14 domain names based on breach of contract and conversion. *Id.* at (D.E. No. 20). He also sought declaratory and injunctive relief. *Id.* This Court transferred venue to the United States District Court for the Eastern District of Virginia. *See Zuccarini v. NameJet, Inc.*, 2:10-cv-14178-KMM, D.E. No. 57. The Eastern District of Virginia dismissed the action. *Id.* at (D.E. No. 13-2). In his subsequent motion for relief, Zuccarini attempted to argue a previously unasserted claim that the defendants were negligent. The Court denied the motion for relief and explained that even if those arguments had merit, they should have been raised during the litigation in the Northern District of California, or on direct appeal to the United States Court of Appeals for the Ninth Circuit. *Id.* at (D.E. No. 13-3).

Analysis

Zuccarini's claims in the current action are barred by the doctrine of *res judicata*. This doctrine prevents a party from relitigating a claim that was previously litigated. *Casines v. Murchek*, 766 F.2d 1494, 1498-99 (11th Cir. 1985). Specifically, those claims actually brought, as well as those that potentially could have been brought are barred. *In re Piper Aircraft Corp.* 244 F.3d 1289, 1296 (11th Cir. 2001). "[I]f a case arises out of the same nucleus of operative facts, or is based upon the same factual predicate, as a former action, ... the two cases are really

the same 'claim' or 'cause of action' for purposes of res judicata." *Griswold v. County of Hillsborough*, 598 F.3d 1289, 1293 (11th Cir. 2010) (quoting *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235,1239 (11th Cir. 1999)).

The prior action brought by Zuccarini in the Southern District of Florida, which was transferred to the Eastern District of Virginia and dismissed (*see Zuccarini v. Network Solutions, Inc., et al.*, 1:10cv1327) arises from the "same nucleus of operative facts" alleged in this action. Zuccarini reasserts allegations relating to auctioning the same 14 domain names including the same facts, damages and again brings this action against NameJet. Simply adding a defendant to an action and asserting a different remedy (in this case negligence) does not circumvent the doctrine of *res judicata*. "It is well settled that res judicata turns primarily on the commonality of the facts of the prior and subsequent actions, not on the nature of the remedies sought." *In re Piper Aircraft Corp.*, 244 F.3d at 1295; *Olmstead v. Amoco Oil Co.*, 725 F.2d 627, 632 (11th Cir.1984) (res judicata "extends not only to the precise legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same 'operative nucleus of fact.'"). Because this action has already been litigated, *res judicata* bars Zuccarini from reasserting these claims against NameJet and Network Solutions.¹ Accordingly, after careful

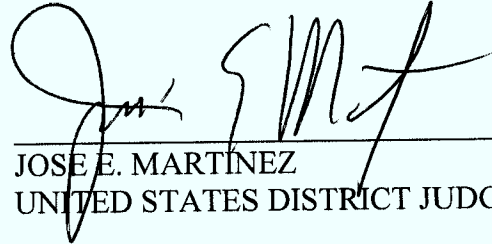
¹Although this Court finds it unnecessary to address, Zuccarini has failed to state any claim for which relief can be granted. Specifically, his negligence claims fail to show that NameJet or Network Solutions owed him any duty. Additionally, NameJet and Network Solutions did not receive any benefit from Zucarrini and thus were not unjustly enriched. Additionally, this Court finds it unnecessary to address that portion of Network Solutions'

consideration, it is hereby:

ORDERED AND ADJUDGED that

1. Defendants NameJet, and Network Solutions Motions to Dismiss (D.E. Nos. 13, 14) are **GRANTED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 7 day of December, 2011.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Lynch
All Counsel of Record

Motion to Dismiss relating to Federal Rule of Civil Procedure 12(b)(3) and the mandatory forum selection clause in the domain name servicing agreements.