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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REGISTERSITE.COM, an Assumed Name of ABR PRODUCTS INC., a New York Corporation, et al.,

Plaintiffs,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation; VERISIGN, INC., a Delaware Corporation; NETWORK SOLUTIONS, INC., a Delaware Corporation; ENOM, INC., a Washington Corporation; ENOM FOREIGN HOLDINGS CORPORATION, a Washington Corporation; and DOES 1-10, inclusive,

Defendants.

Case No. CV 04-1368 ABC (CWx)

MEMORANDUM OF POINTS AND AUTHORITIES OF DEFENDANTS VERISIGN, INC. AND NETWORK SOLUTIONS, INC. IN SUPPORT OF MOTION TO DISMISS THE FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(b)(6)

Date: July 12, 2004
Time: 10:00 a.m.
Courtroom: 680 – Roybal Fed. Bldg.
Hon. Audrey B. Collins

[Notice of Motion and Motion filed concurrently herewith]

Defendants VeriSign, Inc. ("VeriSign") and Network Solutions, Inc. ("NSI") respectfully submit this joint memorandum in support of their Motion to Dismiss all claims asserted against them in the First Amended Complaint filed herein by Plaintiffs (the "Complaint" or "FAC").

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I. INTRODUCTION

Plaintiffs contend they are eight businesses that offer, among other things, services purportedly designed to assist persons in obtaining registrations for recently deleted Internet domain names in the event the prior registrant allowed the domain name registration to lapse and the domain name to be deleted.[1] They have filed a 51-page complaint based on a service, the Wait Listing Service ("WLS"), that VeriSign proposed over two years ago, but which is not launched or active. Nevertheless, Plaintiffs assert that WLS should be enjoined because it purportedly would harm competition and consumers. However, as Plaintiffs are aware, in another action filed last year in this Court by three registrars to block WLS, Judge Walter found that "WLS has the potential to benefit registries, registrars . . . and, *most importantly, the public.*"[2] *Dotster, Inc. v. Internet Corp. for Assigned Names & Numbers*, 296 F. Supp. 2d 1159, 1166 (C.D. Cal. 2003) (emphasis added).

Viewed in the light most favorable to Plaintiffs, their allegations do not reflect any unlawful action by VeriSign or NSI. Plaintiffs have accused VeriSign and NSI – based solely on VeriSign's *proposal* to implement WLS – of operating an "illegal lottery," violating federal antitrust laws, and deceiving "consumers" about the value of WLS. Plaintiffs' own Complaint reveals that these allegations are baseless. The facts alleged in the Complaint establish that by *proposing* to offer WLS, VeriSign and NSI have proposed no illegal lottery, have committed no antitrust violation, and have disrupted no existing business relationship between Plaintiffs and others, and that no

[1] In fact, at least two of the Plaintiffs, Esite and BidItWinIt, apparently have no active business operations and have *never* provided any domain name registration services. *See* http://www.esite.com; http://www.biditwinit.com. In addition, AusRegistry Group does not even offer registration services to consumers. *See* http://www.registrarsasia.com.

[2] In the *Dotster* action, this Court denied a preliminary injunction motion brought by several registrars against ICANN that sought to enjoin the implementation of WLS. The *Dotster* action was later dismissed with prejudice. Certain Plaintiffs in this action, namely R. Lee Chambers Co. LLC and Fiducia LLC, are members of an organization called the Domain Justice Coalition ("DJC"), of which the *Dotster* plaintiffs also are members. The DJC publicly has claimed responsibility for the *Dotster* action. *See* http://www.stopwls.com/lawsuit.html.

reasonable "consumer" could be misled by VeriSign's and NSI's promotions for the proposed WLS service.

Plaintiffs' Complaint demonstrates only the lengths to which Plaintiffs will go to stop WLS – a service that will bring certainty and order to the currently chaotic process by which prospective domain name registrants seek to be the first to register a domain name that has been deleted. Plaintiffs' anti-competitive litigation maneuvers cannot create a claim for relief. The Complaint should be dismissed in its entirety. Moreover, the Court should not grant Plaintiffs leave to amend further because Plaintiffs have already tried, without success, to correct its deficiencies by amending their original pleading after VeriSign explained the defects therein in the parties' "meet and confer."

II. SUMMARY OF THE COMPLAINT'S ALLEGATIONS

A. The Parties

The Complaint asserts claims on behalf of eight businesses, all of which purport to offer services to assist customers who seek to register a domain name that has been registered to someone else and was recently deleted. (FAC ¶ 1.4.) Plaintiffs assert claims against four defendants: VeriSign, NSI, eNom, Inc. ("eNom"), and Internet Corporation for Assigned Names and Numbers ("ICANN"). They allege that VeriSign, pursuant to an agreement with ICANN, operates the exclusive "registry" for the .com and .net top-level domains ("TLDs"). (*Id.* ¶¶ 4.13, 4.44.) Plaintiffs allege a "registry" is an organization responsible for maintaining the authoritative list of second-level domain names within a TLD. (*Id.* ¶ 4.9 & n.2.)

Plaintiffs allege that domain name registrants do not interact directly with the registry to register a domain name; instead, they register names only through registrars, such as some of the Plaintiffs, which interface with the registry operator to determine the availability of requested domain names and to register domain names. (*Id.* ¶¶ 4.10-4.11.) Plaintiffs allege that NSI and eNom are domain name registrars.[3] (*Id.* ¶ 1.3.)

[3] As Plaintiffs admit, the registrar business of NSI was sold last year. (FAC ¶ 2.11.) NSI does not currently act as a domain name registrar and does not offer, advertise, or promote WLS.

According to Plaintiffs, ICANN is a not-for-profit corporation recognized by the U.S. Department of Commerce as the entity responsible for administering the domain name system. (*See generally id.* ¶¶ 4.12-4.19.)

B. Plaintiffs' Registration of Recently Deleted Domain Names

Plaintiffs allege that there currently are 258 TLDs, including fourteen "generic" domains (such as the .com, .net, and .gov TLDs) and 243 "country code" domains (such as .us and .uk). (*Id.* ¶¶ 4.5-4.7.) They assert that, as the total number of domain names registered in the .com and .net TLDs has grown, the quantity and quality of domain names available for registration in those TLDs has been reduced, resulting in a "shortage" of desirable domain names. (*Id.* ¶¶ 4.20-4.24.) According to Plaintiffs, the shortage of domain names is ameliorated by the number of registered domain names that expire because the registrations are not renewed by the current registrants. (*Id.* ¶ 4.23.) Plaintiffs allege that approximately 800,000 domain names expire each month and are returned, at least momentarily, to a supposed "pool" of unregistered domain names available for registration.[4] (*Id.* ¶ 4.24.)

Plaintiffs allege that domain names can be registered for periods from one to ten years. (*Id.* ¶ 4.25.) If not renewed at the end of the term, the domain name registration is deleted and is no longer included in the registry's master database. At that point, the domain name can be registered by anyone. (*Id.* ¶¶ 4.25-4.34.) According to the Complaint, when domain names expire, many registrars compete to register the names on behalf of their customers. (*Id.* ¶ 4.34.) Plaintiffs allege that, if the domain name is desirable, at least 100 registrars typically compete to register it, and it is often "re-registered" within a few milliseconds of being deleted. (*Id.* ¶¶ 4.34, 4.36.) To register a .com or .net domain name that is about to be deleted, each competing registrar sends a

[4] Plaintiffs admit that references to a "shortage" or "pool" of "unregistered" or "expired" domain names is a misnomer. (FAC ¶ 4.24 n.6.) Domain names either are registered, and thus included in the registry's database, or are not registered and do not exist. (*Id.*) *See generally Smith v. Network Solutions, Inc.*, 135 F. Supp. 2d 1159, 1160-64 (N.D. Ala. 2001).

series of "add" commands to the particular TLD Registry (the .com and .net registries are operated by VeriSign). (*Id.* ¶ 4.34.) The first competing registrar to have its command accepted for a given domain name registers that name. (*Id.*)

Registrars offer their customers (*i.e.*, potential registrants) different types of services to obtain the registration of a recently deleted domain name. (*Id.* ¶¶ 4.35-4.38.) Unlike some registrars, Plaintiffs allegedly do not charge their customers for their services unless and until the requested domain name is registered. (*Id.* ¶ 4.40.) However, Plaintiffs admit that they accept multiple "orders" to register a given domain name and will auction that domain name off to the highest bidder if they are successful in registering the domain name after it has been deleted from the registry's database. (*Id.*) Accordingly, a customer of Plaintiffs has no certainty that he or she will ultimately obtain registration of a selected domain name even if Plaintiffs are able to register the sought-after domain name. (*Id.* ¶ 4.41.) Further, while Plaintiffs reference a $60 price point for their services, compared to $24 for VeriSign's, Plaintiffs acknowledge that there is no limit on the price of a domain name when it is auctioned off to the highest bidder. (*Id.*)

C. VeriSign's Proposed WLS

Plaintiffs allege that VeriSign has proposed to permit registrars to offer potential registrants another option for registration of recently deleted domain names. (*See generally id.* ¶¶ 4.44-4.50, 4.59-4.68.) According to Plaintiffs, WLS would operate as follows: Registrars, acting on behalf of customers, could place "reservations" for currently-registered domain names in the .com and .net TLDs. (*Id.* ¶ 4.46.) Only one WLS "subscription" would be accepted for each domain name, and each subscription would last one year. (*Id.*) Subscriptions would be sold on a first-come, first-served basis, and subscribers would have the option to renew at the end of the subscription period. (*Id.* ¶¶ 4.46, 9.6.) For domain names with a WLS subscription, upon cancellation of the domain name registration and deletion of the domain name, the recently deleted domain name would automatically be registered through the registrar

that sold the WLS subscription to its customer, the WLS subscriber. (*Id.* ¶ 4.48.) WLS remains a proposal. The Complaint admits that WLS has not been implemented and is not available for registrars to sell to their customers at this time. (*Id.* ¶¶ 4.66-4.67.)

III. ARGUMENT

A complaint fails under Federal Rule of Civil Procedure 12(b)(6) if it either does not allege a cognizable legal theory or alleges insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Although the Court must assume the truth of all properly pleaded allegations of fact, "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss." *Ove v. Gwinn*, 264 F.3d 817, 821 (9th Cir. 2001). On a Rule 12(b)(6) motion, a district court may consider documents attached to, or referred to in, the complaint, if they form the basis of the plaintiff's claim, and may assume their contents are true. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003).

Applying these standards, VeriSign and NSI respectfully submit that the Complaint fails to state any claim against them and, thus, should be dismissed.

A. Plaintiffs Lack Article III Standing To Maintain Their Seven UCL Claims

Plaintiffs lack standing in federal court to pursue all *seven* of their claims against VeriSign and NSI under the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17210 (the "UCL"), because they allege no injury to themselves as a result of VeriSign's and NSI's allegedly wrongful conduct. "Article III of the Constitution . . . limits the jurisdiction of the federal courts to 'cases and controversies,' a restriction that has been held to require a plaintiff to show that he actually has been injured by the defendant's challenged conduct."[5] *Lee v. Am. Nat'l Ins. Co.*, 260 F.3d 997, 1001 (9th Cir. 2001). The Ninth Circuit has made clear that plaintiffs may not proceed in federal

[5] Plaintiffs bear the burden of establishing federal jurisdiction over their UCL claims. *See Schmier v. United States Court of Appeals for the Ninth Circuit*, 279 F.3d 817, 821 (9th Cir. 2002). Moreover, "the standing doctrine's injury requirement" is a "proper basis for the grant of a motion to dismiss." *Id.* at 823.

court as "private attorneys general" under the UCL *unless* they have suffered "individualized injury as a result of the defendant's challenged conduct." *Id.* at 1001-02; *Toxic Injuries Corp. v. Safety-Kleen Corp.*, 57 F. Supp. 2d 947, 952, 957 (C.D. Cal. 1999) (no jurisdiction over UCL claim absent "concrete and particularized" injury).

In their First, Second, and Fourth through Eighth Claims, Plaintiffs seek to vindicate alleged injuries to "consumers" (*i.e.*, WLS subscribers), a group that does not include them. Not one of Plaintiffs' UCL claims alleges injury to Plaintiffs themselves:

- *Claim One (Illegal Lottery)*: There is no allegation that Plaintiffs participated in the alleged lottery (*i.e.*, that VeriSign or NSI sold them a "chance to register a currently-registered domain name" (FAC ¶ 5.18)) or were harmed by it.
- *Claim Two (CLRA Violations)*: There is no allegation that Plaintiffs purchased a WLS subscription in reliance upon a representation that they would receive an "economic benefit" that was "contingent" on the occurrence of a subsequent event. (*Id.* ¶¶ 6.4, 6.5.)
- *Claim Four (Deceptive Advertising)*: Plaintiffs do not allege that VeriSign's and NSI's alleged failure to disclose the "likelihood that a WLS subscription will succeed" has harmed them in any way. (*Id.* ¶¶ 8.6, 8.8, 8.13, 8.14.)
- *Claim Five (Deceptive Sales)*: Plaintiffs do not allege that *they* have been "defraud[ed]" by VeriSign's and NSI's alleged practice of "selling WLS subscriptions that *cannot* result in a domain name." (*Id.* ¶ 9.7.)

  Claim Six (False Representations): Plaintiffs do not allege *they* have been harmed by VeriSign's and NSI's alleged marketing of "WLS subscriptions to domain name owners as a form of protection." (*Id.* ¶¶ 10.8, 10.10.)
- *Claim Seven (Deceptive and Unfair Practices)*: Plaintiffs do not allege any harm to *them* from VeriSign's and NSI's alleged sale of "contingent future interests in property" in which they have "[no] ownership interest." (*Id.* ¶ 11.8.)
- *Claim Eight (FTCA Violations)*: There are no allegations that *Plaintiffs* have been harmed by VeriSign's and NSI's alleged "failure to disclose the likelihood that a WLS subscription will be successful." (*Id.* ¶¶ 12.6, 12.8.)

Although Plaintiffs purport to sue "on their own behalf and on behalf of the general public," they lack Article III standing because they have alleged *no* injury to themselves and, thus, no *federal* court jurisdiction. *See Lee*, 260 F.3d at 1001-02.

B. The Seven UCL Claims Also Fail To State A Claim

Plaintiffs' seven purported UCL claims also fail because they are substantively defective. The UCL proscribes "unlawful, unfair or fraudulent business act[s] or

practice[s]" and "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200. An "unlawful" business practice is one that is "forbidden by law." *Farmers Ins. Exch. v. Superior Ct.*, 2 Cal. 4th 377, 383, 6 Cal. Rptr. 2d 487 (1992). A business practice is "fraudulent" if its audience is "likely to be deceived" by it. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1151, 131 Cal. Rptr. 2d 29 (2003). If a communication, read as a whole, together with its qualifying language and stated conditions, is *un*likely to deceive a reasonable person, then the court may decide *as a matter of law* that it is not fraudulent within the meaning of the UCL. *See Freeman v. Time, Inc.*, 68 F.3d 285, 289-90 (9th Cir. 1995). "[T]he question whether it is misleading to the public will be viewed from the vantage point of members of the targeted group, not others to whom it is not primarily directed." *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 512, 129 Cal. Rptr. 2d 486 (2003).

Finally, an "unfair" business practice is one where "the gravity of the alleged victim's harm" outweighs "the utility of the defendant's conduct." *E.g.*, *Shvarts v. Budget Group, Inc.*, 81 Cal. App. 4th 1153, 1158, 97 Cal. Rptr. 2d 722 (2000); *cf. S. Bay Chevrolet v. Gen. Motors Acceptance Corp.*, 72 Cal. App. 4th 861, 886-87, 85 Cal. Rptr. 2d 301 (1999) (a practice is unfair when it "offends an established public policy or . . . is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers").

At a minimum, a plaintiff must plead "the facts supporting the . . . elements" of a UCL claim "with reasonable particularity." *GlobeSpan, Inc. v. O'Neill*, 151 F. Supp. 2d 1229, 1236 (C.D. Cal. 2001). If the plaintiff avers *fraudulent* conduct to support a UCL claim, he or she must satisfy Federal Rule 9(b)'s heightened particularity requirement. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-05 (9th Cir. 2003).

1. <u>Plaintiffs' UCL Claim Based on an "Illegal Lottery" Fails</u>

Plaintiffs' First Claim alleges that WLS is an "unlawful" business practice because it constitutes an "illegal lottery." An illegal lottery is "any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property."

Cal. Penal Code § 319. The three defining features of an illegal lottery are (1) a prize, (2) distributed by chance, (3) among persons who have paid consideration. *See W. Telcon, Inc. v. Cal. State Lottery*, 13 Cal. 4th 475, 484, 53 Cal. Rptr. 2d 812 (1996).

First, there can be no lottery unless *two or more* persons have paid for the chance to win a prize. *See Gayer v. Whelan*, 59 Cal. App. 2d 255, 259, 138 P.2d 763 (1943) ("[I]n order to constitute a lottery two or more persons must have paid or promised to pay a consideration for the chance of obtaining the prize. . . ."); Cal. Penal Code § 319 ("persons" who have paid consideration). With WLS, Plaintiffs admit that only *one* potential registrant may purchase a subscription to register a particular domain name, if deleted. (FAC ¶ 4.46.) Thus, WLS does not distribute prizes (*i.e.*, domain names) among *multiple* competing participants, as all lotteries must do. *Gayer*, 59 Cal. App. 2d at 259.

Second, Plaintiffs have failed to allege, and cannot allege, that WLS involves the necessary element of *chance*. They contend that VeriSign and NSI are operating a lottery because "WLS distribution of domain names is by chance" (*i.e.*, it is "not within the control of the WLS subscriber and will not depend on the WLS subscriber's skill"). (FAC ¶¶ 5.11, 5.12.) These allegations miss the mark. The "chance" associated with illegal lotteries refers to the distribution of a prize based solely on random mathematical probability. *See Bell Gardens Bicycle Club v. Dep't of Justice*, 36 Cal. App. 4th 717, 747, 42 Cal. Rptr. 2d 730 (1995) (lottery where distribution of poker jackpot depended on "fortuity or random event"). In contrast, uncertainty over whether a person will allow his domain name registration to lapse (*see* FAC ¶ 5.18 ("chance to register a currently-registered domain name . . . depend[s] upon the decision of the current registrant to renew the domain name")) does not constitute "chance." *See Att'y Gen. v. Preferred Mercantile Co.*, 187 Mass. 516, 519, 73 N.E. 669 (1905) ("It has repeatedly been held that such a chance as the uncertainty in regard to the number of contracts that will be allowed to lapse . . . is not a chance which makes the scheme a lottery.").

2. Plaintiffs Fail To State a UCL Claim Based on the CLRA

Plaintiffs' Second Claim alleges that VeriSign and NSI have committed an "unlawful" business practice by violating the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1784 (the "CLRA"). Plaintiffs allege that VeriSign's and NSI's WLS advertisements violate the CLRA's prohibition against "[r]epresenting that the consumer will receive a[n] . . . economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction." *Id.* § 1770(a)(17). (FAC ¶ 6.5.) However, state law precludes Plaintiffs from enforcing the CLRA.

a. Plaintiffs are not "consumers" under the CLRA

Only a "consumer who suffers . . . damage" from a CLRA violation may sue. Cal. Civ. Code § 1780(a). The CLRA defines "consumer" as "an individual who seeks or acquires, by purchase or lease, any goods or services *for personal, family, or household purposes.*" *Id.* § 1761(d) (emphasis added). As the Complaint admits, Plaintiffs are all business entities that purport to offer services to assist customers who seek to register recently deleted domain names. (FAC ¶ 1.4.) Plaintiffs also fail to allege that *they* have sought or acquired any WLS subscriptions – which purportedly are the "goods or services" that are the subject of the alleged CLRA violation – or that they did so for "personal, family or household purposes." Plaintiffs clearly are not "consumers" under the CLRA.

b. Plaintiffs have not suffered any damage

Plaintiffs have not alleged, as they must, that they have "suffer[ed] any damage." *See* Cal. Civ. Code § 1780. The Complaint alleges that WLS is only a proposal; it has not been implemented and is not available for registrars to sell to their customers. (FAC ¶¶ 4.66-4.67.) Thus, even if VeriSign and NSI were advertising WLS in violation of the CLRA, no damage could have been caused by the representations because WLS is not yet available.

c. Plaintiffs have alleged no representation by VeriSign

The CLRA prohibits, in some circumstances, "[r]epresenting that the consumer

will receive a[n] . . . economic benefit." Cal. Civ. Code § 1770(a)(17). Plaintiffs, however, have pleaded no facts that *VeriSign* made any such "representation"; only NSI and eNom are alleged to have made "representations." (FAC ¶¶ 6.6, 6.7.)

Moreover, Plaintiffs' allegation that NSI and eNom are VeriSign's "agents" does not save their claim. (*Id.* ¶ 2.14.) The UCL does not permit vicarious liability. *See People v. Toomey*, 157 Cal. App. 3d 1, 14, 203 Cal. Rptr. 642 (1984) ("The concept of vicarious liability has no application to actions brought under the [UCL]."). Therefore, "[a] defendant's liability [under the UCL] must be based on [its] personal '*participation* in the unlawful practices' and '*unbridled control*' over the practices that are found to violate [the UCL]." *Emery v. Visa Int'l Serv. Ass'n*, 95 Cal. App. 4th 952, 960, 116 Cal. Rptr. 2d 25 (2002) (emphasis added). Plaintiffs do not allege any facts indicating that VeriSign exercised "unbridled control" over, or even "participated" in, the alleged representations of eNom and NSI. *See id.* at 964 (no UCL liability where the defendant "played no part in preparing or sending any 'statement' that might be construed as untrue or misleading under the unfair business practices statutes").

d. <u>The lone alleged representation by NSI is not deceptive</u>

Plaintiffs have alleged a single representation by NSI that supposedly violates the CLRA. However, as Plaintiffs' allegations reveal, that advertisement explicitly states, on its face, that a WLS subscription will result in a domain name registration only "*[i]f the domain name becomes available during [the WLS] subscription period.*"[6] (*Id.*

[6] Plaintiffs did not quote the alleged ad in full or attach it to the Complaint. On a motion to dismiss, a court may examine the entirety of an allegedly misleading communication that was only partially quoted in the complaint. *Haskell v. Time, Inc.*, 857 F. Supp. 1392, 1396-98 (E.D. Cal. 1994). A copy of the complete advertisement is attached as Exhibit 1 hereto and can be found at "www.nextregistrationrights.com/backorder." The advertisement contains additional disclosures that negate Plaintiffs' allegation of deception. For example, the advertisement states: "*If the domain name is not renewed and completes the registry deletion cycle during your subscription term*, then the domain name is yours," and Next Registration Rights "[a]utomatically grants you the next registration *if the domain name becomes available.*" (Ex. 1 at 1 (emphases added).) Finally, this advertisement is located at a website that is not operated by NSI since, as Plaintiffs admit, VeriSign sold NSI's domain name registrar business last year. (FAC ¶ 2.11.) As previously stated, NSI does not currently act as a domain name registrar and does not offer, advertise, or promote WLS.

¶ 6.6.) Far from deceiving "consumers" about the contingent nature of the benefit to be received from a WLS subscription, NSI has disclosed up front that a WLS subscription may not result in a domain name registration.

The CLRA was enacted to protect consumers from *deception*. *See Broughton v. CIGNA Healthplans*, 21 Cal. 4th 1066, 1077, 90 Cal. Rptr. 2d 334 (1999) (CLRA designed to "alleviate social and economic problems stemming from deceptive business practices"); Cal. Civ. Code § 1760. In view of this purpose, it is not the law that a representation can violate the CLRA even if it expressly discloses the contingent nature of the benefit to be derived from the good or service. If it were, no seller could advertise a good or service that offered an economic benefit dependent on the occurrence of a future event. For example, sellers of stolen vehicle recovery systems (such as LoJack) could not legally advertise that their goods and services increase the likelihood of recovering a stolen car, because the economic benefit (recovery of the car) is contingent upon an uncertain future event (the car being stolen and recovered). Such an absurd interpretation of the CLRA would ignore its very purpose, which is to protect consumers from *deception*. Here, there is no deception. The Court should dismiss the Second Claim for Relief.

3. The UCL Does Not Require VeriSign and NSI Individually To Counsel Each WLS Subscriber as to the Likelihood of Success

In their Fourth Claim for Relief, Plaintiffs allege that VeriSign and NSI have committed a "fraudulent" business practice by publishing promotional materials for WLS that do not disclose "the likelihood that a subscriber will obtain the domain name to which it subscribes." (FAC ¶ 8.6; *see also id.* ¶ 8.8.) Although Plaintiffs conclusorily assert that this omission is "likely to deceive consumers" (*id.* ¶ 8.12), the facts actually alleged in the Complaint negate the allegation of deception.

Specifically, Plaintiffs admit that domain name registrants already are aware of "the fact that most currently registered domain names will be renewed." (*Id.* ¶ 4.54.) Indeed, Plaintiffs developed their "pay if successful" business models in response to