

1 RONALD L. JOHNSTON (State Bar No. 057418)  
LAURENCE J. HUTT (State Bar No. 066269)  
2 SUZANNE V. WILSON (State Bar No. 152399)  
JAMES BLACKBURN (State Bar No. 169134)  
3 ARNOLD & PORTER LLP  
1900 Avenue of the Stars, 17<sup>th</sup> Floor  
4 Los Angeles, California 90067-4408  
Telephone: (310) 552-2500  
5 Facsimile: (310) 552-1191

6 Of Counsel:  
RICHARD L. ROSEN (*pro hac vice*)  
7 ARNOLD & PORTER LLP  
555 Twelfth Street NW  
8 Washington, D.C. 20004-1206  
Telephone: (202) 942-5000  
9 Facsimile: (202) 942-5999

10 Brian A. Davis (*pro hac vice*)  
VeriSign, Inc.  
11 21355 Ridgetop Circle  
Dulles, Virginia 20166  
12 Telephone: (703) 948-2300  
Facsimile: (703) 450-7326

13 Attorneys for Plaintiff  
14 VeriSign, Inc.

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
17

18 VERISIGN, INC., a Delaware  
corporation,

19 Plaintiff,

20 v.

21 INTERNET CORPORATION FOR  
22 ASSIGNED NAMES AND  
NUMBERS, a California corporation

23 Defendants.  
24  
25

Case No. CV 04-1292 AHM (CTx)

**FIRST AMENDED COMPLAINT  
FOR VIOLATION OF THE  
ANTITRUST LAWS, SPECIFIC  
PERFORMANCE OF  
CONTRACT, DAMAGES FOR  
BREACH OF CONTRACT,  
INTERFERENCE WITH  
CONTRACTUAL RELATIONS,  
DECLARATORY AND  
INJUNCTIVE RELIEF**

26  
27 Plaintiff VERISIGN, INC. ("VeriSign") alleges, upon information and belief,  
28 as follows:

## PRELIMINARY STATEMENT

1. This is an action for declaratory relief, specific performance, damages, and preliminary and permanent injunctive relief arising out of improper and unlawful actions by the Internet Corporation for Assigned Names and Numbers ("ICANN") designed to: (1) prohibit or otherwise restrict VeriSign from offering services valuable to Internet users, (2) impose improper conditions on the offering of such services by VeriSign, (3) regulate and set the prices at which such services may be offered, and/or (4) delay the introduction of new services. The conduct of ICANN as alleged herein constitutes actual and threatened violations of the federal antitrust laws and state law, and breaches of ICANN's registry agreement with VeriSign.

2. ICANN was originally established to assist in the transition of the Internet domain name system from one of a single domain name registrar to one with multiple companies competing to provide domain name registration services to Internet users "in a manner that will permit market mechanisms to support competition and consumer choice in the technical management of the [domain name system]." ICANN's ongoing role is to provide technical coordination of the Internet's domain name system by encouraging coordination among various constituent groups using the Internet.

3. VeriSign serves as the Internet registry for second-level domain names registered in the ".com" and ".net" global top-level domains. Notwithstanding the narrow purposes for which ICANN was established, and ICANN's clear and express mandate to promote competition, ICANN has purported to assert progressively broader authority to "regulate" the services VeriSign may offer and the price at which they may be offered. Through this course of conduct, ICANN repeatedly has blocked, delayed and/or restricted VeriSign's introduction of new and valuable Internet services, or has attempted to do so, in violation of the terms of the registry agreement between the parties and applicable federal and state law.

1           4.     Among other specific acts of ICANN in derogation of VeriSign's rights,  
2 shortly before the filing of this action, ICANN wrongfully demanded that VeriSign  
3 shut down an important and valuable new service for Internet users, VeriSign's Site  
4 Finder service, which is a type of service contemplated and allowed by the parties'  
5 registry agreement. This brazen attempt by ICANN to assume "regulatory power"  
6 over VeriSign's business, in collaboration with VeriSign's competitors, is a serious  
7 abuse of ICANN's technical coordination function, a blatant breach of the registry  
8 agreement, and an interference with VeriSign's contractual relations and prospective  
9 economic relationships. The suspension of the Site Finder service as a consequence  
10 of ICANN's arbitrary and anticompetitive actions, as well as the other actions alleged  
11 in this Complaint, are subjecting VeriSign to ongoing irreparable injury.

#### 12                               **JURISDICTION AND VENUE**

13           5.     Plaintiff VeriSign is a corporation, duly organized and existing under the  
14 laws of the State of Delaware, with its principal office and place of business located  
15 in Mountain View, California. Since 1992, VeriSign or its predecessor, Network  
16 Solutions, Inc. ("NSI"), has acted as the exclusive registry for the ".com" top-level  
17 domain, among others.

18           6.     Defendant ICANN is a nonprofit corporation, organized and existing  
19 under the laws of the State of California, with its principal office and place of  
20 business located in Marina del Rey, California.

21           7.     This Court has subject matter jurisdiction over this action under 28  
22 U.S.C. §§ 1331 and 1337, and 15 U.S.C. §§ 15 and 26; the Declaratory Judgment  
23 Act, 28 U.S.C. § 2201; and the principles of supplemental jurisdiction under  
24 28 U.S.C. § 1367.

25           8.     Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) and (c)  
26 and 15 U.S.C. § 22, in that defendant resides, transacts business and is found in this  
27 district.

## THE INTERNET DOMAIN NAME SYSTEM

9. The Internet is a network of interconnected computers and computer networks. Every computer connected directly to the Internet has a unique address. These addresses, which are known as Internet Protocol (“IP”) numbers, are necessary for computers to “communicate” with each other over the Internet. An example of an IP number might be: 98.27.241.30.

10. Because IP numbers can be cumbersome and difficult for Internet users to remember or to use, the IP number system has been overlaid with a more “user-friendly” system of domain names: the Internet domain name system (“DNS”). This overlay associates a unique alpha-numeric character string – or domain name – with a specific IP number.

11. Internet domain names consist of a string of “domains” separated by periods. “Top-level” domains, or “TLDs”, are found to the right of the period and include (among others) “.com,” “.gov,” “.net” and “.biz,” which are sometimes referred to as “generic” TLDs (also known as “gTLDs”). Other top-level domains are referred to as country code TLDs (also known as “ccTLDs”), and are represented by two-letter abbreviations for each country, such as “.uk” (United Kingdom) and “.ca” (Canada). For relevant purposes herein, gTLDs are functionally equivalent to ccTLDs. There are approximately 250 top-level domains, which are administered and operated by numerous entities, both in and outside of the United States.

12. “Second-level” domains (“SLDs”) are those domains immediately to the left of the top-level domains, such as “uscourts” in the domain name “uscourts.gov.” There are over 50 million second-level domains currently registered within the various TLDs.

13. Because domain names are essentially “addresses” that allow computers connected to the Internet to communicate with each other, each domain name must be unique, even if it differs from another domain name by only one character (e.g.,

1 “uscourts.com” is different from “uscourt.com” or “us-courts.com”). A given domain  
2 name, therefore, can be registered to only one entity.

3 14. VeriSign acts as the “registry” for domain names registered in the .com  
4 gTLD in accordance with a written agreement with ICANN. As the “registry” for the  
5 .com gTLD, VeriSign maintains the definitive directory that associates registered  
6 domain names in this gTLD with the corresponding IP numbers of their respective  
7 domain name servers. The domain name servers, in turn, direct Internet queries to  
8 resources such as websites and email systems.

9 15. A domain name is created by an individual or organization that registers  
10 the domain name and thereby includes it in the registry’s master database. The  
11 individual or organization that registers a specific domain name is a “registrant.”  
12 Registrants do not have direct access to the VeriSign registry. Instead, prospective  
13 registrants must register domain names through any one of approximately 175  
14 operational private companies located in the United States and throughout the world  
15 that act as domain name “registrars” for the second-level domain names in the .com  
16 gTLD.

## 17 THE PARTIES

18 16. From 1993 until November 1999, in accordance with Cooperative  
19 Agreement NCR 92-18742 (“Cooperative Agreement”) entered into between NSI and  
20 the National Science Foundation (“NSF”), NSI performed domain name registration  
21 and registry functions for the .com and .net gTLDs, among others, in exchange for  
22 financial and other support from the United States Government. The National  
23 Telecommunications and Information Administration of the United States  
24 Department of Commerce (“DOC”) assumed responsibility from NSF for  
25 administering the Cooperative Agreement on or about October 1, 1998, pursuant to  
26 Amendment 10 of the Cooperative Agreement. For a period of time subsequent to  
27 November 1999, NSI continued to serve as a registrar of domain names, and  
28

1 VeriSign has operated the registries for the .com and .net (among other) gTLDs, as  
2 more specifically described below.

3 17. ICANN is a private corporation that was created in 1998 in response to a  
4 plan by the DOC to introduce competition into the field of domain name registration,  
5 among other objectives. ICANN is governed by and acts through an international  
6 Board of Directors that is elected by members of various constituent groups and  
7 supporting organizations within ICANN. As more specifically alleged below, among  
8 the members of these groups are operators of gTLDs that compete with each other  
9 and with VeriSign; domain name registrars that are present or potential competitors  
10 of each other and of VeriSign for certain services; and foreign governments and  
11 foreign registries that have ccTLDs that compete with the gTLD registries operated  
12 by VeriSign. ICANN frequently carries out its activities, including the conduct  
13 alleged herein, through the collective action of its supporting organizations (which, in  
14 turn, are comprised of various constituent groups). In fact, in certain circumstances,  
15 ICANN was bound by its By-Laws to follow the actions of its supporting  
16 organizations.

17 18. In November 1998, the DOC entered into a Memorandum of  
18 Understanding ("MOU") with ICANN. In accordance with the MOU, ICANN was to  
19 perform certain technical coordination functions in connection with the domain name  
20 system. Among other things, ICANN was to study and develop procedures for the  
21 transition from a system of one domain name registrar to a system of multiple  
22 registrars of second-level domain names in the ".com," ".net," and ".org" gTLDs, and  
23 for the creation of new gTLDs. The MOU established the promotion of competition  
24 in the domain name system as one of its central principles. Furthermore, the MOU  
25 explicitly prohibits ICANN from acting arbitrarily or unjustifiably to injure any  
26 person or entity, or from "singl[ing] out any particular party for disparate treatment  
27 unless justified by substantial and reasonable cause."  
28

1           19. Following execution of the MOU, ICANN has entered into registry  
2 agreements with VeriSign for the “.com” and “.net” (among other) gTLDs. In  
3 addition to these registry agreements, ICANN has entered into forms of registry  
4 agreements with the registries of other gTLDs, such as “.biz” and “.info,” and with  
5 the registries of certain ccTLDs that have come into existence since the MOU was  
6 executed. These other registries compete with the .com and .net gTLD registries. In  
7 addition to the registries with which ICANN has entered agreements, there are  
8 numerous TLD registries, including the vast majority of the more than 240 ccTLD  
9 registries, that compete with the .com gTLD registry operated by VeriSign and that  
10 have not entered into any form of registry agreement with ICANN.

#### 11                           **THE 2001 .COM REGISTRY AGREEMENT**

12           20. On or about November 10, 1999, NSI and ICANN entered into a written  
13 Registry Agreement (the “1999 Registry Agreement”) with respect to NSI’s operation  
14 of the registry for the .com gTLD.

15           21. On or about May 25, 2001, VeriSign, which succeeded to the registry  
16 business of NSI, entered into a new written .com Registry Agreement (the “2001  
17 .com Registry Agreement”) with ICANN, which superseded the 1999 Registry  
18 Agreement with NSI. Subject to certain extension rights provided for therein, the  
19 2001 .com Registry Agreement expires on November 10, 2007.

20           22. In accordance with the 2001 .com Registry Agreement, VeriSign  
21 undertook to operate the .com gTLD registry and to pay certain registry-level fees to  
22 ICANN. Since a registry maintains the authoritative database of second-level domain  
23 names and IP addresses within a TLD, there necessarily can be only one registry for  
24 each TLD. VeriSign is that sole registry for the .com gTLD.

25           23. Under the 2001 .com Registry Agreement, VeriSign is required to  
26 provide “Registry Services” to ICANN-accredited registrars in a manner meeting the  
27 performance and functional specifications attached to the agreement. “Registry  
28 Services” generally are defined in the agreement as follows:

1 “Registry Services” means services provided as an integral  
2 part of the Registry TLD, including all subdomains. These  
3 services include receipt of data concerning registrations of  
4 domain names and name servers from registrars, provision  
5 to registrars of status information relating to the Registry  
6 TLD zone servers, dissemination of contact and other  
7 information concerning domain name and name server  
8 registrations in the Registry TLD, and such other services  
9 required by ICANN through the establishment of Consensus  
10 Policies as set forth in Definition 1 of this Agreement.

11 24. The 2001 .com Registry Agreement defines “Consensus Policies” as  
12 consisting of those specifications and policies established on the basis of a consensus  
13 among Internet stakeholders represented in the ICANN process, as demonstrated by  
14 compliance with specific, detailed procedures prescribed in the agreement.

15 25. VeriSign generally is obligated to comply with Consensus Policies if,  
16 among other requirements, they are properly adopted by ICANN and consistent with  
17 ICANN’s other contractual obligations, and: (A) they “do not unreasonably restrain  
18 competition”; and (B) relate to: “(1) issues for which uniform or coordinated  
19 resolution is reasonably necessary to facilitate interoperability, technical reliability  
20 and/or stable operation of the Internet or DNS, (2) registry policies reasonably  
21 necessary to implement Consensus Policies relating to registrars, or (3) resolution of  
22 disputes regarding the registration of domain names (as opposed to the use of such  
23 domain name).”

24 26. Recognizing the potential for harm to VeriSign from ICANN’s  
25 subsequent adoption of specifications or policies, the parties included in the 2001  
26 .com Registry Agreement a provision entitled “Protection from Burdens of  
27 Compliance With ICANN Policies.” That provision expressly provides: “ICANN  
28 shall indemnify, defend, and hold harmless Registry Operator [VeriSign] . . . from



1 and against any and all claims, damages, liabilities, costs, and expenses, including  
2 reasonable legal fees and expenses, arising solely from Registry Operator's  
3 compliance as required by this Agreement with an ICANN specification or policy  
4 (including a Consensus Policy) established after the Effective Date . . . ."

5 27. The 2001 .com Registry Agreement further sets forth the following  
6 "General Obligations of ICANN." "With respect to all matters that impact the rights,  
7 obligations, or role of Registry Operator," the agreement explicitly provides that  
8 ICANN shall, among other obligations: (i) "exercise its responsibilities in an open  
9 and transparent manner," (ii) "not unreasonably restrain competition and, to the  
10 extent feasible, promote and encourage robust competition," and (iii) "not apply  
11 standards, policies, procedures and practices arbitrarily, unjustifiably or inequitably  
12 and not single out Registry Operator for disparate treatment unless justified by  
13 substantial and reasonable cause." These and other obligations of ICANN to VeriSign  
14 under the 2001 .com Registry Agreement are not limited to VeriSign's provision of  
15 "Registry Services," but are owed by ICANN to VeriSign in connection with any  
16 conduct of ICANN that impacts VeriSign's "rights, obligations, or role of Registry  
17 Operator."

18 28. The 2001 .com Registry Agreement establishes affirmative obligations  
19 of ICANN: (i) to establish and maintain "independent review policies" and "adequate  
20 appeal procedures" to be available to VeriSign to the extent it "is adversely affected  
21 by ICANN standards, policies, procedures or practices," and (ii) to take all reasonable  
22 steps, and make substantial progress, towards entering into agreements, similar to the  
23 2001 .com Registry Agreement, with registries competing with the .com gTLD  
24 registry operated by VeriSign.

25 29. In addition to such express obligations not unreasonably or inequitably  
26 to interfere with VeriSign's registry business, ICANN is subject to an implied  
27 covenant of good faith and fair dealing not to take actions unfairly or in bad faith to  
28 deprive VeriSign of the intended benefits of the 2001 .com Registry Agreement.

1 Further, at all times relevant hereto it was understood and agreed between the parties  
2 that ICANN would not unreasonably withhold or delay consent to reasonable  
3 updates, upgrades or other changes in the operation of or specifications for the  
4 registry.

5 30. Nothing in the 2001 .com Registry Agreement authorizes ICANN to do  
6 any of the following: (i) prohibit, regulate, or restrict VeriSign's provision of  
7 services that are not defined Registry Services governed by the agreement;  
8 (ii) regulate or fix the prices at which VeriSign may offer such services; or  
9 (iii) regulate, restrict, or prohibit the marketing methods or promotions VeriSign uses  
10 to promote its services.

11 **ICANN'S CONDUCT WITH RESPECT TO VERISIGN'S PROPOSED**  
12 **NEW SERVICES HAS RESTRAINED COMPETITION AND VIOLATED**  
13 **THE 2001 .COM REGISTRY AGREEMENT**

14 31. As the operator of the registry for the .com gTLD, VeriSign competes  
15 with the operators of registries for other gTLDs and ccTLDs. VeriSign's commercial  
16 and competitive success in operating the .com registry depends in substantial part on  
17 its ability to offer services that are attractive to its customers, which include the  
18 registrars of second-level domain names and the domain name registrants who are  
19 customers of those registrars. In order to serve its customers and preserve its  
20 competitive position, VeriSign has attempted to provide a variety of new innovative  
21 value-added services to its customers to enhance the value and attractiveness of  
22 second-level domain names registered in the .com gTLD. These services have been  
23 blocked, delayed and/or restricted by ICANN's wrongful conduct. This conduct of  
24 ICANN, which was undertaken in combination with, and through the capture and  
25 control of, VeriSign's competitors, has injured competition and restrained trade in the  
26 relevant markets in violation of the antitrust laws, as more specifically alleged in  
27 paragraphs 84 through 187 below, and has violated the terms and provisions of the  
28 2001 .com Registry Agreement.

## Site Finder

32. VeriSign created and, on or about September 15, 2003, implemented a new service known as Site Finder. Site Finder provided an Internet user who makes an error in typing a web address, such that the second-level domain name of the address does not appear in the .com gTLD's zone files, with a list of alternative web addresses to which the user may choose to navigate. For example, if a user typed www.bokkstore.com into his Internet browser and no such web address existed, Site Finder would respond with a message that the address entered could not be found and asking whether the user meant www.bookstore.com or www.bookstores.com.

33. Prior to the introduction of Site Finder, when a user mistyped a web address, the user typically would receive a message (known as a "404 error message") that simply told the user that the web page he or she is seeking is "not found," without any other assistance. With the Site Finder service, however, the user receives a user-friendly help screen that includes not only a clear message that what was entered could not be found but also such information as: (i) alternative web addresses the user may have been seeking; (ii) a search engine, and (iii) links to contextually popular categories of websites the user can search. Thus, the Site Finder screen provides the user with helpful information and options beyond a simple error message.

34. Other gTLD and ccTLD registries that compete with the .com gTLD registry, including the .museum gTLD registry, with which ICANN has a registry agreement, and ccTLD registries, many of which have no agreements with ICANN, are currently offering services similar to Site Finder for domain names within their TLDs, and the operators of other gTLD and ccTLD registries have stated that they intend to launch similar services. ICANN has never objected to the offering of such services by these other gTLD and ccTLD registries, and ICANN facilitated the offering of a service similar to Site Finder by the .museum gTLD.

1           35. The Site Finder service is not integral to the operation of the .com gTLD  
2 registry nor a Registry Service within the meaning of the 2001 .com Registry  
3 Agreement. All actions by VeriSign, including services provided by VeriSign in  
4 connection with Site Finder, are fully compliant with all specifications provided in  
5 the 2001 .com Registry Agreement.

6           36. Nonetheless, on October 3, 2003, ICANN demanded that VeriSign  
7 suspend its Site Finder service, wrongly asserting, *inter alia*, that Site Finder is a  
8 Registry Service within the meaning of the 2001 .com Registry Agreement and that  
9 ICANN has the right to restrict or prohibit the offering of Site Finder and/or establish  
10 the terms and conditions upon which the service may be offered ("Suspension  
11 Ultimatum"). In its Suspension Ultimatum, ICANN further asserted that the  
12 operation of Site Finder by VeriSign constituted a breach of VeriSign's obligations  
13 under the 2001 .com Registry Agreement and threatened VeriSign that, unless Site  
14 Finder was suspended forthwith, ICANN would initiate legal proceedings against  
15 VeriSign. ICANN's further performance of its obligations under the 2001 .com  
16 Registry Agreement was conditioned upon VeriSign's compliance with ICANN's  
17 demands with respect to Site Finder, thereby threatening VeriSign's continuing  
18 operation of the .com registry under the 2001 .com Registry Agreement. In  
19 connection with the Suspension Ultimatum, ICANN also issued false public  
20 statements that VeriSign was violating its obligations as registry operator and  
21 interfering with the stability of the Internet. In contrast, with respect to other  
22 registries offering services similar to Site Finder, ICANN made no such threats or  
23 public statements.

24           37. ICANN's demands upon VeriSign were made in conjunction with and at  
25 the behest of various constituent groups within ICANN and other businesses that  
26 compete with VeriSign, as more fully alleged in paragraphs 84 through 187 of this  
27 Complaint. Operation of the .com registry pursuant to the 2001 .com Registry  
28 Agreement constitutes a material portion of VeriSign's business. As a direct result of

1 the Suspension Ultimatum and related actions by ICANN, VeriSign had no  
2 reasonable, present and existing choice under the circumstances but to submit to  
3 ICANN's threats and to suspend Site Finder to the detriment of VeriSign and millions  
4 of Internet users.

5 38. ICANN's conduct regarding Site Finder prior to the commencement of  
6 this action constituted present and existing breaches of the 2001 .com Registry  
7 Agreement in the following respects, among others:

- 8 • ICANN acted to regulate and control Site Finder, even though Site  
9 Finder was not a "registry service" and was not subject to ICANN  
10 regulation or control;
- 11 • ICANN treated VeriSign in an unequal and disparate manner compared  
12 to other gTLD and ccTLD registries offering services similar to Site  
13 Finder as to which ICANN never issued any Suspension Ultimatum,  
14 never made disparaging or untrue public statements, and never imposed  
15 regulation or control;
- 16 • ICANN did not act openly and transparently regarding Site Finder,  
17 instead refusing meetings with and evidence from VeriSign in the course  
18 of the events leading to ICANN's issuance of the Suspension  
19 Ultimatum;
- 20 • ICANN did not have independent review policies in effect when the  
21 Suspension Ultimatum was issued or at any time prior to VeriSign's  
22 filing of this action; and
- 23 • ICANN unreasonably restrained competition, and did not promote and  
24 encourage competition, by regulating and controlling Site Finder and by  
25 forcing the suspension of Site Finder.

26 These breaches have deprived consumers of a beneficial new service and VeriSign of  
27 revenues and profits it would generate from and in connection with Site Finder. In  
28 addition, by unjustifiably imposing improper conditions on the Site Finder service,

1 ICANN has deprived VeriSign of the ability to formulate and offer a service in the  
2 manner best designed to meet the needs of customers and the competitive and  
3 financial goals of VeriSign.

#### 4 Wait Listing Service

5 39. In or about December 2001, VeriSign informed ICANN of the details of  
6 a proposed Wait Listing Service (“WLS”) that VeriSign intended to begin offering.  
7 VeriSign designed WLS to meet a market demand for an orderly and reliable, open  
8 and transparent, way for domain name registrants, through their selected,  
9 participating registrars, to submit a subscription to register a currently registered  
10 domain name in the event the current registration is deleted.

11 40. Using WLS, a prospective domain name registrant, through any of the  
12 approximately 175 operational ICANN-accredited registrars, could submit a  
13 subscription on a first-come, first-served basis for a domain name currently registered  
14 in the .com gTLD registry. In the event that a registered domain name in the .com  
15 gTLD registry, on which a WLS subscription is placed, is thereafter deleted from the  
16 registry, and thereby becomes available for creation and registration – and more than  
17 25,000 domain names are deleted each day – the holder of the WLS subscription  
18 would become the registrant of the domain name.

19 41. If there is no WLS subscription for a domain name in the .com gTLD  
20 registry, upon the deletion of the domain name registration by the sponsoring  
21 registrar, the domain name is deleted from the VeriSign registry’s database and  
22 becomes available for creation and registration through any ICANN-accredited  
23 registrar, on a first-come, first-served basis.

24 42. As proposed by VeriSign, WLS is not integral to the operation of the  
25 .com gTLD registry and is not a Registry Service within the meaning of the 2001  
26 .com Registry Agreement.

27 43. Nevertheless, ICANN discussed VeriSign’s proposed offering of WLS  
28 with, and sought agreements with respect to WLS from, ICANN’s Registrar

1 Constituency, the members of which are in competition or potential competition with  
2 VeriSign and potential customers of VeriSign for WLS. Based upon opposition to  
3 WLS from its Registrar Constituency, ICANN announced to the Internet community  
4 that WLS is a Registry Service within the meaning of the 2001 .com Registry  
5 Agreement. In addition, ICANN has asserted against VeriSign the authority to: (i)  
6 prevent the offering of WLS, (ii) set the price at which it may be offered, (iii)  
7 establish the terms and conditions of the service, and (iv) restrict when WLS can be  
8 introduced. The intended and inevitable effect of ICANN's conduct has been to  
9 delay VeriSign's offering of WLS, if not to preclude the offering of WLS altogether.

10 44. VeriSign would have been ready and able to begin offering WLS to  
11 registrars and their customers in or before August 2002, and would have done so, but  
12 for ICANN's conduct alleged herein. As a condition purportedly to approving WLS,  
13 ICANN insisted that VeriSign must, among other things: (i) introduce new  
14 procedures not required by the 2001 .com Registry Agreement; (ii) delay offering  
15 WLS at least until approximately October 2003, and then indefinitely; (iii) reduce the  
16 price at which VeriSign intended to offer WLS based on input from competitors; and  
17 (iv) accept other "conditions" of ICANN suggested by and intended to benefit various  
18 ICANN constituent groups to the detriment of VeriSign, competition, and the  
19 proposed service. These conditions were imposed by ICANN in combination and  
20 conspiracy with and at the behest of members of the Registrar Constituency within  
21 ICANN who would compete with VeriSign's WLS, as more fully alleged in  
22 paragraphs 90 through 127 of this Complaint. While VeriSign's offering of WLS is  
23 being delayed by ICANN's conduct, members of ICANN's Registrar Constituency  
24 who have objected to WLS, and others, are free, and have been free, without these or  
25 other impediments and conditions by ICANN, to offer similar services that are  
26 competitive with but inferior to WLS, and some have done so. Numerous registrars  
27 have offered and are offering such services, including registrars who initially  
28

1 supported WLS but, during the period of ICANN's delay, have begun offering  
2 services competitive with WLS themselves.

3 45. Furthermore, ICANN has imposed conditions on VeriSign, changed  
4 conditions, and imposed new conditions for offering WLS arbitrarily, unjustifiably,  
5 and inequitably, delaying and preventing introduction of WLS, and ICANN has done  
6 so in a manner that is not open or transparent.

7 46. ICANN's conduct regarding WLS prior to the commencement of this  
8 action constituted present and existing breaches of the 2001 .com Registry Agreement  
9 in the following respects, among others:

- 10 • ICANN acted to regulate and control WLS, even though WLS was not a  
11 "registry service" and was not subject to ICANN regulation or control;
- 12 • ICANN did not act openly and transparently in its consideration of WLS  
13 and in the imposition of numerous and changing conditions on WLS;
- 14 • ICANN did not have independent review policies in effect when ICANN  
15 imposed conditions on VeriSign's offering of WLS or at any time prior  
16 to VeriSign's filing of this action;
- 17 • ICANN unreasonably restrained competition in collaboration with  
18 VeriSign's competitors, and did not promote and encourage competition,  
19 by regulating and delaying VeriSign's offering of WLS, which would  
20 compete with inferior unguaranteed "backorder" services offered by  
21 registrars and which, as even ICANN contemporaneously recognized,  
22 would give consumers a greater choice;
- 23 • ICANN treated VeriSign in an unequal and disparate manner compared  
24 to registrars offering competitive "backorder" services as to which  
25 ICANN has never sought to exercise any regulation or control and has  
26 never imposed conditions similar to those imposed on WLS; and  
27  
28



- ICANN conditioned further performance of its obligations under the 2001 .com Registry Agreement upon VeriSign's acceptance of ICANN's control over non-registry services such as WLS.

These breaches by ICANN have deprived consumers of a beneficial new service and have deprived VeriSign of the revenues and profits it would have generated from and in connection with WLS. In addition, by unjustifiably imposing other conditions on the service and purporting to restrict its price, ICANN has deprived VeriSign of the ability to formulate and offer a service in the manner best designed to meet the needs of customers and the competitive and financial goals of VeriSign. At the same time, the delay in offering WLS has benefited other businesses that offer similar or competitive services, including businesses who have combined and conspired with ICANN and caused ICANN to delay and obstruct VeriSign's offering of WLS.

### **ConsoliDate**

47. In or about January 2003, VeriSign began offering a new domain name registration expiration date ("anniversary date") synchronization service known as "ConsoliDate." ConsoliDate was designed to make it easier for domain name registrants, through any of the approximately 175 operational ICANN-accredited registrars, to manage the registration and renewal of multiple domain names, by adjusting and synchronizing the anniversary dates of their various domain name registrations.

48. The average domain name registrant maintains from 10 to 15 domain names in the .com gTLD registry. Large corporations maintain hundreds or even thousands of domain name registrations. Different domain name registrations usually have different anniversary dates for purposes of renewal of the registrations. Registrants therefore receive multiple renewal notices; must keep track of multiple renewal dates; and pay renewal fees on multiple dates throughout the year.

49. ConsoliDate allows domain name registrants in the .com gTLD to add from 1 to 364 days to an existing domain name registration term. For example, a

1 registrant with one domain name registration with an anniversary date of June 13,  
2 2005, and another with an anniversary date of October 4, 2005, could use  
3 ConsoliDate to synchronize these expiration dates by adding 113 days to the term of  
4 the first domain name registration period, so that it will also have an anniversary date  
5 of October 4, 2005. ConsoliDate thereby allows domain name registrants to create a  
6 single anniversary date for their entire domain name registration portfolio in the .com  
7 gTLD, reducing registrant errors and permitting registrants to streamline their  
8 payment processes.

9 50. ConsoliDate is not integral to the operation of the .com gTLD registry  
10 and is not a Registry Service within the meaning of the 2001 .com Registry  
11 Agreement.

12 51. While ICANN provisionally supported the introduction of ConsoliDate,  
13 it has claimed that ConsoliDate is a Registry Service and has purported to condition  
14 permanent approval of ConsoliDate on VeriSign's entering into certain amendments  
15 to the 2001 .com Registry Agreement.

16 52. ICANN has made statements and engaged in conduct that presuppose  
17 ConsoliDate is a Registry Service within the meaning of the 2001 .com Registry  
18 Agreement, and ICANN has asserted authority to: (i) restrict the offering of  
19 ConsoliDate, (ii) set the price at which it may be offered, and (iii) establish the terms  
20 and conditions of the service. ICANN's actions have threatened, among other  
21 adverse effects on competition, a future interruption in the offering of ConsoliDate.

22 53. Further, ICANN has imposed conditions, and then imposed new  
23 conditions for Consolidate arbitrarily, unjustifiably, and inequitably, and ICANN has  
24 done so in a manner that was not open and transparent.

25 54. By improperly purporting to impose conditions on ConsoliDate and  
26 control its price and other terms, ICANN has deprived VeriSign of the ability to  
27 formulate and offer a service in the manner best designed to meet the needs of  
28 customers and the competitive and financial goals of VeriSign, and has deprived

1 VeriSign of revenues and profits it would have generated from and in connection  
2 with ConsoliDate.

### 3 **Internationalized Domain Names**

4 55. In or about November 2000, VeriSign began an internationalized domain  
5 name service ("IDN") in a third-level domain testbed environment. IDN allows  
6 Internet users to use non-ASCII (that is, non-English) character sets to register and  
7 use domain names in the .com gTLD. In other words, a speaker of Mandarin  
8 Chinese, for example, could type a web address including a registered second-level  
9 domain name within the .com gTLD, using the non-ASCII character set of her native  
10 language. IDN would permit a translation of that address to the appropriate  
11 registered domain name within the .com gTLD. VeriSign intended thereafter to offer  
12 IDN on a permanent basis with respect to second-level domain names within the .com  
13 gTLD.

14 56. In the early days of the Internet, the vast majority of users and domain  
15 name registrants spoke English as their native language and used ASCII (English)  
16 character sets on their computers. However, there are Internet users worldwide  
17 whose native languages are represented in non-ASCII character sets. Currently or in  
18 the near future this group will comprise the majority of Internet users.

19 57. Languages represented in non-ASCII character sets are not widely  
20 supported in the global domain name system. IDN meets the important need for a  
21 global multilingual DNS solution, supporting the billions of people who require or  
22 want Internet access in their native languages. IDN would significantly increase  
23 Internet availability and e-commerce opportunities for this group and for those who  
24 do business with them, and it would increase the value and attractiveness of second-  
25 level domain names in the .com gTLD, thereby stimulating competition among TLD  
26 registries.

27 58. IDN is not integral to the operation of the .com registry and is not a  
28 "Registry Service" within the meaning of the 2001 .com Registry Agreement.

1           59. While IDN makes possible the use of non-ASCII character sets in users'  
2 native languages, the registered second-level domain name within the .com gTLD  
3 must be in ASCII characters. To trigger the translation of the domain name from  
4 ASCII characters to the corresponding non-ASCII characters, these domain names  
5 include the prefix "bq--" in the testbed, and now include the prefix "xn--".

6           60. An appendix to the 2001 .com Registry Agreement purports to "reserve"  
7 to ICANN all "tagged domain names" with "hyphens in the third and fourth  
8 characters." VeriSign therefore sought ICANN's authorization to use domain names  
9 with an "xn--" prefix to enable the .com gTLD registry to provide IDN service, as  
10 other competing gTLD registries, and ccTLD registries that are not under contract  
11 with ICANN, are already doing or have publicly announced they intend to do.  
12 ICANN had an obligation under the 2001 .com Registry Agreement not to withhold  
13 its consent to such request unreasonably or in bad faith.

14           61. Contrary to that obligation, ICANN unreasonably and in bad faith  
15 conditioned its approval of the release of domain names with hyphens in the third and  
16 fourth characters from reserved status, however, on VeriSign's formal agreement to  
17 abide by certain "Guidelines for the Implementation of Internationalized Domain  
18 Names," among other conditions. These "Guidelines" and other conditions ICANN  
19 has sought to impose would require costly and burdensome procedures not within the  
20 contemplation of the 2001 .com Registry Agreement. Even though VeriSign  
21 operated the IDN testbed for nearly three years and maintained IDN registrations for  
22 nearly one million names in that testbed, ICANN arbitrarily and unreasonably  
23 withheld its consent to the new service. These conditions were imposed by ICANN  
24 in conjunction with and at the behest of various constituent groups within ICANN  
25 and other businesses that compete with VeriSign's .com gTLD registry but, in many  
26 instances, are not themselves bound by the same conditions, as more fully alleged in  
27 paragraphs 157 through 187 of this Complaint.  
28

1           62. ICANN's conditions for giving consent are not consistent with the  
2 requirements of the 2001 .com Registry Agreement or covenants of good faith and  
3 fair dealing therein, and they impose arbitrary, long-term, fixed obligations on  
4 VeriSign with respect to a rapidly emerging technology.

5           63. ICANN's actions have caused, among other adverse affects on  
6 competition, a delay in VeriSign's offering of IDN (other than on a third-level testbed  
7 environment) with consequent loss of volume and market share of, and loss of  
8 revenues from, IDN registrations in the .com gTLD compared to what they would  
9 have been absent ICANN's wrongful conduct alleged herein.

10          64. ICANN's conduct regarding IDN prior to the commencement of this  
11 action constituted present and existing breaches of the 2001 .com Registry Agreement  
12 in the following respects, among others:

- 13           • ICANN acted to regulate and control IDN, even though IDN was not a  
14 "registry service" and was not subject to ICANN regulation or control;
  - 15           • ICANN did not act openly and transparently in its consideration of IDN,  
16 including in the imposition of numerous conditions on VeriSign's  
17 offering of IDN and in the evaluation of VeriSign's satisfaction of those  
18 conditions;
  - 19           • ICANN treated VeriSign in an unequal and disparate manner compared  
20 to other gTLD and ccTLD registries seeking to offer IDN, by approving  
21 other registries' offering of IDN and not approving, or delaying  
22 approval, of VeriSign's offering of IDN, even though VeriSign and such  
23 other registries were similarly situated with respect to their support for  
24 and implementation of the substance of ICANN's IDN "guidelines";
  - 25           • ICANN did not have independent review policies in effect when ICANN  
26 imposed conditions on VeriSign's offering of IDN or at any time prior to  
27 VeriSign's filing of this action;
- 28

- 1 • ICANN unreasonably restrained competition (in collaboration with  
2 VeriSign's competitors), and did not promote and encourage  
3 competition, by authorizing other similarly situated registries to  
4 commence offering IDN while prohibiting or delaying VeriSign's  
5 offering of IDN; and
- 6 • ICANN conditioned further performance of its obligations under the  
7 2001 .com Registry Agreement upon VeriSign's acceptance of ICANN's  
8 control over non-registry services such as IDN.

9 These breaches by ICANN deprived consumers of a beneficial new service and have  
10 deprived VeriSign of the revenues and profits it would have generated from and in  
11 connection with IDN. In addition, by unjustifiably imposing other conditions on the  
12 service, ICANN has attempted to deprive VeriSign of the ability to formulate and  
13 offer a service in the manner best designed to meet the needs of customers and the  
14 competitive and financial goals of VeriSign. At the same time, the delay of  
15 VeriSign's IDN has benefited other businesses that offer similar or competitive  
16 services, including those who have acted in concert with ICANN to cause ICANN to  
17 impose the foregoing conditions and impediments on VeriSign.

18 **ICANN'S CONDUCT WITH RESPECT TO VERISIGN'S INCENTIVE**  
19 **MARKETING PROGRAM HAS RESTRAINED COMPETITION**  
20 **AND VIOLATED THE 2001 .COM REGISTRY AGREEMENT**

21 65. In or about November 2001, VeriSign launched an incentive promotion  
22 program that encouraged domain name registrars to promote the sale of second-level  
23 domain names in the .com gTLD on their web sites. Under the promotion,  
24 participating webmasters were offered an incentive on non-discriminatory terms to  
25 display an advertisement for .com domain names on their site. The promotion  
26 required participants to display a VeriSign advertisement prominently on every web  
27 page on which a participating registrar offered domain names for registration. In  
28 exchange for such advertisements, VeriSign would pay placement fees and provide

1 other consideration to participants in the promotional program. The impetus for and  
2 purpose of this marketing program was to enable VeriSign to meet the increased  
3 competition for domain name registrations from new and rapidly growing ccTLDs  
4 and from newly established gTLDs.

5 66. Nonetheless, within days of the launch of VeriSign's marketing  
6 program, ICANN improperly demanded that VeriSign cease the program on the  
7 ground that it had not been approved by ICANN, even though nothing in the 2001  
8 .com Registry Agreement or elsewhere required ICANN's approval therefor, and  
9 ICANN threatened to declare VeriSign in formal breach of the 2001 .com Registry  
10 Agreement unless the program was suspended. ICANN refused to withdraw its threat  
11 to declare VeriSign in breach of the agreement, until VeriSign committed to modify  
12 its marketing program to conform to ICANN's arbitrary and improper dictates. In so  
13 doing, ICANN conditioned further performance of its obligations under the 2001  
14 .com Registry Agreement upon VeriSign's acceptance of ICANN's control over non-  
15 registry services such as VeriSign's marketing program.

16 67. ICANN has no right to approve, or jurisdiction over, VeriSign's  
17 marketing practices. By unjustifiably imposing improper conditions on VeriSign's  
18 marketing practices, ICANN has deprived VeriSign of the ability to promote and  
19 market its services in the manner best designed to enhance its business. Moreover,  
20 the ccTLD registries with which VeriSign competes can implement similar or other  
21 promotional programs freely, without ICANN's approval or involvement. ICANN's  
22 unauthorized and wrongful interference with VeriSign's business has improperly  
23 restrained VeriSign's ability to compete for domain name registrations and deprived  
24 it of revenues and profits it would generate from, and as a result of, its intended  
25 marketing program. ICANN's actions also have harmed competition among TLD  
26 registries by unreasonably restricting VeriSign's ability to promote registrations in  
27 the .com gTLD.  
28

## ICANN'S BREACHES OF THE REGISTRY AGREEMENT

68. By its course of conduct commencing in 2001 and continuing through the date of commencement of this action, ICANN repeatedly breached and repudiated its express and implied obligations to VeriSign under and in connection with the 2001 .com Registry Agreement, and the implied covenant of good faith and fair dealing therein, as more fully alleged in paragraphs 31 through 67, above, and in paragraphs 188 through 200 and 207 through 230, below.

### Issuing Improper Ultimatum to Shut Down Site Finder

69. Prior to the suspension of Site Finder as alleged above, Site Finder provided a helpful service to users of the Internet; enabled VeriSign to compete more effectively with operators of competitive gTLD and ccTLD registries that are offering or intend to offer a similar service; made the registration of domain names within the .com gTLD more desirable and attractive, to the benefit of .com gTLD registrars and registrants; and generated additional revenues for VeriSign.

70. No proper basis existed for ICANN's issuance of the Suspension Ultimatum, which was a violation of the 2001 .com Registry Agreement. The Suspension Ultimatum was issued, and ICANN acted to terminate Site Finder despite the facts that: (i) Site Finder was fully compliant with all applicable specifications and standards; (ii) Site Finder did not destabilize the operation of the .com gTLD registry, the DNS, or the infrastructure of the Internet; and (iii) other competing gTLD and ccTLD registries continue to offer services similar to Site Finder. In taking this action, ICANN singled VeriSign out for arbitrary and disparate treatment, failed to act in an open and transparent manner, referred the matter to a committee controlled by VeriSign's competitors and relied on its "report" for its decision, and acted without having in place a functional mechanism for independent review of its action, all as required by the 2001 .com Registry Agreement. In addition, the Suspension Ultimatum was undertaken without ICANN's compliance with the procedural and substantive safeguards necessary to adopt a valid Consensus



1 Policy. Further, by this conduct, ICANN conditioned further performance of its  
2 obligations under the 2001 .com Registry Agreement upon VeriSign's acceptance of  
3 ICANN's control over non-registry services such as Site Finder.

4 71. Since the Suspension Ultimatum is not authorized by, and was issued in  
5 violation of, the 2001 .com Registry Agreement, the Suspension Ultimatum has the  
6 effect of a new ICANN policy or specification adopted subsequent to the effective  
7 date of said agreement. As such, in addition to VeriSign's other rights under the  
8 agreement, VeriSign is entitled to indemnity from ICANN for the costs and injury to  
9 VeriSign resulting from the Suspension Ultimatum.

10 **Improperly Purporting to Broaden the Definition of Registry Services**

11 72. ICANN's unjustified and overreaching attempt over a three-year period  
12 to regulate services that VeriSign offers to registrars and to domain name registrants,  
13 in breach of the parties' registry agreement, has delayed and otherwise impeded the  
14 introduction of new services by VeriSign. ICANN has also attempted improperly to  
15 regulate and to fix the prices at which those services may be offered by VeriSign. As  
16 a result, ICANN's conduct has harmed competition and caused injury to VeriSign,  
17 and threatens to continue to cause such harm and injury to VeriSign in the future, as  
18 more specifically alleged below.

19 73. ICANN has asserted the authority to "regulate" as Registry Services  
20 governed by the agreement, new services of VeriSign that, in fact, do not fall within  
21 the definition of "Registry Services" and are not properly the subject of the .com  
22 Registry Agreement or any proper restriction by ICANN. Furthermore, ICANN has  
23 purported to assert the authority to fix the price at which such services may be  
24 offered.

25 74. As alleged in more detail above with respect to specific new services of  
26 VeriSign, the effect of ICANN's improper attempt to broaden the definition of  
27 Registry Services governed by the agreement has been: (i) to prohibit, delay and  
28 impede the introduction of beneficial new services by VeriSign, (ii) to impose

1 conditions on the offering of these services, (iii) improperly to set or regulate the  
2 prices of those services, (iv) unreasonably to restrain competition for such services  
3 and interfere with VeriSign's business, and (v) unfairly to prevent VeriSign from  
4 securing the benefits contemplated by the Registry Agreement.

5 75. ICANN further has asserted the authority to "regulate" VeriSign's  
6 marketing practices, even though they do not fall within the definition of "Registry  
7 Services" and are not properly the subject of the .com Registry Agreement or any  
8 proper restriction by ICANN. As a result, ICANN's conduct has harmed competition  
9 and caused injury to VeriSign, and threatens to continue to cause such harm and  
10 injury to VeriSign in the future.

11 76. The improper conduct of ICANN has been facilitated by, and has inured  
12 to the benefit of, competitors and potential competitors of VeriSign who have  
13 misused ICANN's processes, often with the active and knowing encouragement and  
14 participation of ICANN, to impede VeriSign's offering of new services and to fix,  
15 and attempt to fix, the prices for services offered by VeriSign.

16 **Failing to Promote Competition and**  
17 **Unreasonably Restraining Competition**

18 77. The foregoing course of conduct places VeriSign at a competitive  
19 disadvantage in comparison to other gTLDs and ccTLDs under contract with ICANN  
20 that have been allowed to offer and market similar, competitive services without the  
21 same restrictions, delays, and impediments that ICANN has placed on VeriSign. This  
22 conduct is a breach of ICANN's obligations under the 2001 .com Registry Agreement  
23 "not [to] apply standards, policies, procedures and practices arbitrarily, unjustifiably  
24 or inequitably and not single out Registry Operator for disparate treatment," as well  
25 as a breach of ICANN's affirmative obligation in the 2001 .com Registry Agreement  
26 "not unreasonably to restrain competition and, to the extent feasible, promote and  
27 encourage robust competition."  
28

1           78. In addition, the foregoing course of conduct by ICANN has placed  
2 VeriSign at a competitive disadvantage in comparison to ccTLDs as to which ICANN  
3 has no agreements and claims no power to regulate. The latter registries are free to  
4 offer, and are offering, new and improved services to registrars and registrants, and to  
5 market their services to the public, while VeriSign's offering and marketing of  
6 similar and other services for the .com gTLD is being unreasonably and arbitrarily  
7 prevented, delayed, regulated and impeded by ICANN.

8                   **Failure to Reach Agreements with Other Registry Operators**

9           79. At the time VeriSign and ICANN entered into the 2001 .com Registry  
10 Agreement, the parties understood and intended, and ICANN committed to VeriSign,  
11 that ICANN would use all reasonable efforts, and make substantial progress, toward  
12 signing agreements similar to the 2001 .com Registry Agreement with registries,  
13 particularly the over 240 ccTLD registries, that compete with the .com gTLD registry  
14 operated by VeriSign. The mutually understood purpose of this commitment was to  
15 assure that, to the maximum extent feasible, competitive registries would be  
16 competing on an equal footing with the .com gTLD registry. This obligation on the  
17 part of ICANN was carried over from the 1999 Registry Agreement with NSI.

18           80. Notwithstanding this obligation, ICANN has failed to make substantial  
19 progress toward entering into any agreements, much less agreements similar to the  
20 2001 .com Registry Agreement, with competing registries, thereby severely and  
21 adversely affecting VeriSign from a competitive perspective.

22           81. In fact, only 11 of the approximately 240 competing ccTLD registries  
23 have entered into Registry Agreements with ICANN, and ICANN has publicly  
24 admitted making little or no effort to have ccTLD registries do so. Moreover, of the  
25 11 competing ccTLD registries with which ICANN does have agreements, those  
26 agreements are not similar to the 2001 .com Registry Agreement, and do not impose  
27 on the competing registries the obligations and restrictions that ICANN imposes, and  
28 seeks to impose, on VeriSign based upon the 2001 .com Registry Agreement. As a

1 result, ICANN's failure in this regard has exacerbated the harm to competition from  
2 ICANN's actions as alleged herein and the losses and damages VeriSign has incurred  
3 and will continue to incur in the future.

#### 4 **Other Breaches by ICANN**

5 82. ICANN has additionally breached its obligations to VeriSign under the  
6 2001 .com Registry Agreement by, among other actions and omissions, and as more  
7 fully alleged in this Complaint, consistently failing to exercise its responsibilities in  
8 an open and transparent manner; applying its standards, policies, procedures, and  
9 practices arbitrarily, inequitably, and in bad faith, and repeatedly and unjustifiably  
10 singling VeriSign out for disparate treatment; and failing to establish any meaningful,  
11 adequate, and independent review policies and procedures.

#### 12 **FIRST CLAIM FOR RELIEF FOR** 13 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

14 83. Plaintiff repeats and realleges the averments of paragraphs 1 through 82  
15 above as though fully set forth herein.

16 84. The conduct of ICANN in restricting and purporting to "regulate" non-  
17 Registry Services offered or proposed to be offered by VeriSign, and in delaying the  
18 introduction and setting the prices or terms of those services, represents the collective  
19 and conspiratorial acts of ICANN and existing and potential competitors of VeriSign,  
20 including competitors who are members of the constituent groups and supporting  
21 organizations of ICANN, in the relevant markets and submarkets as defined below.

22 85. The constituent groups and supporting organizations of ICANN engaged  
23 in the conduct alleged in this Complaint are substantially controlled by existing and  
24 potential competitors of VeriSign and others sharing similar economic interests with  
25 VeriSign's competitors. As ICANN has acknowledged, its processes are especially  
26 subject to control or capture by small groups of competitive interests for, among other  
27 reasons, that competitors have strong interests directly affected by particular actions  
28 of ICANN while other members of ICANN's constituent groups and supporting

1 organizations, generally part time volunteers, are not interested in or directly affected  
2 by such actions and/or lack time or resources fully to participate in the ICANN  
3 processes, therefore not attending meetings of or voting on issues presented to the  
4 supporting organizations. The result is that a small number of highly motivated  
5 competitors can and do control actions and decisions of ICANN's constituent groups  
6 and supporting organizations.

7 86. As described by ICANN's President in his February 2002 Report: "The  
8 current ICANN concept is based on the notion of "bottom-up" policy development,  
9 with the Supporting Organizations responsible for the development of policy and *the*  
10 *Board theoretically just the implementing device* for those policies. In hindsight, the  
11 notion of truly "bottom-up" consensus decision-making simply *has not proven*  
12 *workable, partly because the process is too exposed to capture by special interests*  
13 and partly because ICANN relies entirely on volunteers to do all the work." Indeed,  
14 as more specifically alleged below, at times relevant hereto, the Board of ICANN was  
15 required by ICANN's Bylaws to accept the recommendations of the relevant  
16 supporting organizations. In testimony before a Congressional committee in June  
17 2002, ICANN's President testified that members of ICANN's supporting  
18 organizations push ICANN "to perform *only* those policy functions that *hamstring*  
19 *their competitors.*"

20 87. In reports leading to the establishment of ICANN, the United States  
21 Department of Commerce ("DOC") admonished: "The new corporation's processes  
22 should be fair, open and pro-competitive, protecting against *capture by a narrow*  
23 *group of stakeholders.*" The DOC further stated that ICANN "can face antitrust  
24 liability if it is dominated by an economically interested entity, or if standards are set  
25 in secret by a few leading competitors."

26 88. ICANN unlawfully has combined and conspired with VeriSign's  
27 competitors, and others sharing similar economic interests with them, to restrain trade  
28 with respect to the WLS, Site Finder service and IDN service. VeriSign's

competitors have captured or controlled ICANN's processes with respect to each of these beneficial new services, using those processes improperly to "regulate" VeriSign's business and to block, delay or impose unwarranted and burdensome conditions on the offering of competitive services by VeriSign. Furthermore, ICANN has failed to act with transparency or accountability in doing the things alleged herein, thereby encouraging, facilitating, and contributing to the capture and control of its processes by VeriSign's competitors, and the promotion of these competitors' economic interests to the detriment of competition.

89. ICANN possesses market power in relevant markets and submarkets alleged herein. ICANN has asserted the power to prevent VeriSign from offering the WLS, SiteFinder and IDNs, and through its actions has prevented VeriSign from doing so. ICANN has authority with respect to technical coordination functions for the Internet's DNS, including the development of standards and policies. ICANN's standards, policies and actions are influential among certain providers of Internet services, governmental bodies and users of the Internet, among others. Furthermore, ICANN has authority for contracting for the operation of all of the gTLDs, including for choosing registry operators and for the renewal of registry agreements; ICANN has contracts with the operators of a number ccTLDs; and ICANN has other powers with respect to certain actions (*e.g.*, changes of registry operators) of all Internet registries. ICANN also accredits and enters into contracts with all registrars for the registration of domain names in the gTLDs, including all of VeriSign's customers. ICANN exercises such authority and powers over registries and registrars to implement its standards and policies. Non-compliance with ICANN's standards and policies can place a provider of DNS and certain other Internet services at a great disadvantage in the marketplace.

## The Wait Listing Service

### The Conspiracy to Restrain Competition

90. ICANN and existing and potential competitors of VeriSign have conspired to use, and have in fact used, ICANN's processes improperly to regulate VeriSign's attempted introduction of the WLS and to delay and impose anti-competitive conditions on the WLS. The existing or potential competitors of VeriSign who, at times relevant hereto, have actively combined with ICANN to restrain competition with respect to the WLS include, among others, the operators of the following registrars or competitive services: GoDaddy Software, Inc.; Alice's Registry, Inc.; eNom Inc.; Dotster, Inc.; Pool.com, Inc.; and TuCows, Inc. (the "WLS co-conspirators"). As ICANN's President recently testified before a Congressional committee, such registrars or operators of related services had a "direct competitive interest" in the WLS, "the availability of the WLS (with its guarantee of performance) to consumers would reduce the demand for their services (which were not able to offer a comparable guarantee), and thus they strongly opposed approval of the WLS."

91. At all times relevant hereto, ICANN was comprised of a board of directors, supported by three "supporting organizations," each of which had primary responsibility for policy development in its area of expertise. The Domain Name Supporting Organization ("DNSO") had primary responsibility for developing policy relating to domain names. The Address Supporting Organization and Protocol Supporting Organization had responsibilities in other areas.

92. The policymaking body of the DNSO is known as the Names Council. As formally organized, the Names Council includes representatives from each of seven constituencies, including registrars, gTLD registries, and ccTLD registries. The constituencies are self-organized and determine their own criteria for participation. The Names Council has appointed certain Task Forces composed of volunteers to carry out the substantive policy development work of the DNSO. As a

1 practical matter, for the reasons alleged above, a very few highly interested or highly  
2 motivated representatives can easily capture, dominate and control the work of a Task  
3 Force, Names Council, and DNSO, as in fact occurred with respect to consideration  
4 of WLS.

5 93. At all times relevant hereto, the members of the Registrar Constituency  
6 of ICANN, including the WLS co-conspirators, have provided the single largest  
7 source of ICANN's funding. The President of ICANN concluded in his February  
8 2002 Report that ICANN has been seriously underfunded and its dependence on  
9 registrars for a significant portion of its funding leaves ICANN "overly vulnerable."  
10 As a result, he noted, there have been "deficiencies" in ICANN's decision-making  
11 resulting from ICANN's budget being dependent on the "consent of those subject to  
12 its policy control." One or more of the WLS co-conspirators have offered to fund  
13 expenses of ICANN in defense of the claims made in this litigation.

14 94. Indeed, the representative of the Registrar Constituency, and a WLS co-  
15 conspirator, on the task force concerned with the WLS, has publicly stated: "[W]e  
16 are ICANN... Work doesn't need to get to the [Domain Name Supporting  
17 Organization (the "DNSO")]] or the Board before ICANN officially gets involved."

18 95. At times relevant hereto, ICANN's Bylaws provided that the DNSO had  
19 "primary responsibility" for developing and recommending policies pertaining to  
20 domain names, and, except for a few narrowly defined exceptions, the Board was  
21 *bound to accept the DNSO's recommendations*, notwithstanding control of the DNSO  
22 by existing and potential competitors of VeriSign. The President of ICANN  
23 concluded in his February 2002 Report that the Board's dependence on the decisions  
24 of the supporting organizations freed these groups from having to support their  
25 decisions. In fact, as the President of ICANN observed at other times, such a  
26 structure for ICANN's processes has allowed competitors to use those processes for  
27 anti-competitive purposes, including to "hamstring their competitors."  
28



1           96. Following VeriSign's announcement of the WLS in December 2001, the  
2 operators of certain registrars and related services, who are existing or potential  
3 competitors of VeriSign with respect to the WLS (as more specifically alleged  
4 below), formed a conspiracy to control ICANN's processes and use them to delay,  
5 block or impose anti-competitive conditions on VeriSign's offering of WLS.  
6 Pursuant to this conspiracy, on or about March 10, 2002, the Registrar Constituency  
7 of the DNSO, which, with respect to the WLS was controlled by the WLS co-  
8 conspirators, issued a purported Position Paper asserting that ICANN should exercise  
9 control over the WLS and limit or block its introduction by VeriSign. The Registrar  
10 Constituency undertook these actions for anti-competitive purposes, despite the fact  
11 that there was no proper basis for ICANN to assert control over the WLS and despite  
12 the fact that the WLS would not adversely affect the technical operation or stability of  
13 the Internet.

14           97. The head of the Registrar Constituency has admitted that the result of the  
15 Position Paper was that the ICANN Board had to deem WLS to be "policy related  
16 and thus subject to the current DNSO quagmire," which was "subject to capture." In  
17 fact, by causing the Registrar Constituency to issue the Position Paper, when no such  
18 formal statement of position was required or called for, the WLS co-conspirators  
19 ensured that they would keep control of the process of review of the WLS within  
20 ICANN and could thereby "hamstring their competitor" VeriSign. The WLS co-  
21 conspirators did assert control over and captured the DNSO proceedings, including  
22 the Names Counsel, with respect to the WLS.

23           98. Based on the purported Position Paper and a desire to avoid the adverse  
24 impact of the WLS on the competitive position of WLS co-conspirators, the Board of  
25 Directors of ICANN agreed with the WLS co-conspirators to assert control over  
26 WLS, substantially delay its implementation by VeriSign, and allow the ICANN  
27 process to be controlled by VeriSign's competitors. Pursuant to this concerted action  
28 of the Board and the WLS co-conspirators, the Board purported to initiate a

1 Consensus Review Process and referred the review process of the WLS to the DNSO.  
2 As alleged above, the DNSO was controlled, as relevant hereto, by the Registrar  
3 Constituency and the WLS co-conspirators. An employee of one of the WLS  
4 co-conspirators in the Registrar Constituency has publicly acknowledged that the  
5 Registrar Constituency controls the adoption of domain name registration policies by  
6 the DNSO and ICANN.

7 99. Pursuant to the 2001 .com Registry Agreement between VeriSign and  
8 ICANN, the Consensus Review Process is a specific, defined process through which  
9 ICANN can, under certain limited circumstances, adopt policies concerning *non-*  
10 *Registry Services*, but only where necessary to protect the technical stability of the  
11 Internet and only where those policies do not unreasonably restrain competition. In  
12 fact, ICANN's actions in purporting to invoke the Consensus Review Process were  
13 part of a combination designed unreasonably to restrain competition; as ICANN has  
14 admitted, the WLS did not implicate the technical stability of the Internet; and, as  
15 alleged below, ICANN has incorrectly asserted at other times that the WLS *is* a  
16 Registry Service. Contrary to ICANN's actions, the Consensus Review Process had  
17 no proper application to the WLS, and ICANN never did complete the process or  
18 adopt a Consensus Policy regarding the WLS under the 2001 .com Registry  
19 Agreement. ICANN's purported invocation of the Consensus Review Policy served  
20 as a pretext to keep the review of WLS in the hands of the DNSO, the Names  
21 Counsel and its Task Force, which ICANN knew were controlled by the WLS co-  
22 conspirators.

23 100. Pursuant to the Board action, the DNSO referred consideration of the  
24 WLS to a Task Force that had previously been created for other purposes and was  
25 controlled in proceedings related to WLS by VeriSign's competitors, including the  
26 WLS co-conspirators. The Task Force included a leading representative of the  
27 Registrar Constituency, who had been an active and vocal critic of WLS and a  
28 supporter of the Position Paper, and who worked for one of the WLS co-conspirators.

1 Like all of ICANN's constituent groups and supporting organizations, the members  
2 of the Task Force are volunteers and have other jobs. For most of the members, WLS  
3 affected neither their own businesses nor those of the members of the constituencies  
4 they represented. In contrast, the WLS was perceived as an important competitive  
5 issue for registrars, some of whom, including the WLS co-conspirators, were then  
6 offering or planning to offer a competing service. As a result, a small number of  
7 highly motivated competitors and those sharing similar economic interests were able  
8 to capture and control the work, report and recommendations of the Task Force.

9 101. In response to ICANN's action in delaying WLS and referring its  
10 consideration to a known group of VeriSign's existing and potential competitors,  
11 VeriSign objected to ICANN on the grounds that ICANN had no basis or authority to  
12 conduct such a "process." ICANN turned a deaf ear to VeriSign's objections.

13 102. On or about July 14, 2002, the Task Force issued a Report seeking to  
14 delay, block and/or place anti-competitive conditions on the implementation by  
15 VeriSign of WLS. As part of the conspiracy between ICANN and the WLS co-  
16 conspirators, the DNSO, which was controlled by the WLS co-conspirators as  
17 relevant hereto, adopted the position of the Registrar Constituency and Task Force.  
18 Due to the requirements of the then existing ICANN Bylaws, the Board of ICANN  
19 had to adopt and approve the substance of the DNSO's position, and, in furtherance of  
20 the conspiracy, it did so.

21 103. By adopting the position of the DNSO, ICANN, which was captured and  
22 controlled by VeriSign's competitors, improperly asserted control over WLS and  
23 imposed anti-competitive conditions on its implementation by VeriSign. The  
24 conditions imposed by ICANN in concert with the WLS co-conspirators substantially  
25 restricted the operation and value of WLS, diminished the features and attractiveness  
26 of WLS for consumers, delayed the implementation of WLS, and made the  
27 implementation of WLS more costly and potentially impractical or infeasible. To  
28 comply with those conditions, among other things, VeriSign would have had to incur

1 engineering and other expenses to modify WLS, defer further the launch of WLS, and  
2 limit substantially the offering of the service. ICANN has admitted that the  
3 conditions on the implementation of WLS were adopted as a consequence of and in  
4 deference to the position of the Registrar Constituency, which was dominated by the  
5 WLS co-conspirators.

6 104. In its resolution conditioning and impairing the WLS, the Board of  
7 ICANN purported to exercise control over VeriSign's business on the pretense that  
8 the WLS constituted a Registry Service under the 2001 .com Registry Agreement,  
9 which was contrary to the position of the Board in referring the WLS to the DNSO,  
10 as alleged above. No proper Consensus Policy was ever adopted, or even attempted,  
11 by ICANN as a result of the DNSO process for WLS, notwithstanding the fact that  
12 ICANN had purported to assert control over the WLS, and to transfer such control to  
13 the DNSO, on the false basis that ICANN was initiating a Consensus Review Policy.

14 105. ICANN has never adopted procedures for the independent review of its  
15 actions, as required by, among other sources, the 2001 .com Registry Agreement. As  
16 a result, in or about October 2002, VeriSign objected to the decision of the DNSO  
17 and ICANN regarding the WLS by seeking reconsideration from ICANN's Board.  
18 Pursuant to the conspiracy between ICANN and the WLS co-conspirators, and  
19 knowing that at a minimum further delay regarding WLS meant additional time that  
20 WLS co-conspirators could operate and profit from their competitive services without  
21 competition from VeriSign, ICANN delayed WLS for an additional period of over  
22 seven months by deferring its response to VeriSign's request for reconsideration.  
23 Notwithstanding its duty under its Bylaws to "act with a speed that is responsive to  
24 the needs of the Internet," and in no case more than "*ninety days* following its receipt  
25 of the request," ICANN did not finally act on the reconsideration until June 3, 2003,  
26 further delaying the service to the benefit of the WLS co-conspirators. ICANN's  
27 decision on the reconsideration again improperly asserted control over the WLS as a  
28 Registry Service and imposed conditions on the implementation of the service that

1 would further delay VeriSign's offering of WLS, decrease its utility and  
2 attractiveness for consumers, and otherwise adversely affect the WLS service in  
3 restraint of trade.

#### 4 Injury to Competition

5 106. There is a relevant product market for the provision of services for the  
6 secondary domain name market, including the provision of domain name "backorder"  
7 and similar services. The relevant geographic market is worldwide. The secondary  
8 domain name market includes the market for registered (or existing) domain names,  
9 including various forms of direct sales and auctions. "Backorder" and similar  
10 services consist of various services designed to register a domain name in the name of  
11 a new registrant in the event the domain name is deleted from the registry, including  
12 related auctions.

13 107. There are several means by which a prospective party can obtain an  
14 existing (or currently registered) domain name of his or her choice. The prospective  
15 registrant can seek to obtain the registration for that domain name from the current  
16 registrant, either through a direct transaction or through a domain name auction.  
17 Alternatively, the prospective registrant can take advantage of one or more  
18 "backorder" services that seek to register the name for the prospective registrant in  
19 the event that domain name is deleted or otherwise becomes available for new  
20 registration.

21 108. At all relevant times, the WLS co-conspirators have been existing or  
22 potential competitors of VeriSign for the WLS service. From at least early 2002, the  
23 WLS co-conspirators have offered the following services for prospective registrants  
24 wishing to secure an existing domain name: eNom's Club Drop service, Dotster's  
25 NameWinner service, Alice Registry's backorder service, and TuCows' backordering  
26 service (offered to consumers through its resellers). Since at least early 2003,  
27 POOL.com's Domain Marketplace and Backorder services, and GoDaddy's  
28

1 DomainAlert Monitoring, Backordering, and PowerGrab services have been  
2 operating. WLS competes with such “backorder” and similar services.

3 109. Registrars and providers of such “backorder” services cannot guarantee  
4 that their customers will receive the chosen domain name because a competing  
5 registrar may be able to register the domain name first on behalf of another party (or  
6 itself, such as to auction the domain name to others). For example, multiple potential  
7 registrants may pay (indeed, to the same registrar) to “backorder” the same domain  
8 name, despite the fact that none of them will secure the registration even if the  
9 domain name is deleted from the registry. As a result, existing services are wasteful  
10 of consumer resources, and uncertain, unreliable, inefficient and overly costly to  
11 consumers. Furthermore, such services impose demands on the registry system by  
12 transmitting continuous automated “add” requests, using registry system resources,  
13 potentially blocking other registrars’ access to the registry, and imposing  
14 unreimbursed costs on VeriSign.

15 110. The WLS subscriptions would be distributed by ICANN-accredited  
16 domain name registrars, rather than directly by VeriSign to registrants. All ICANN-  
17 accredited registrars would have an equal opportunity, at an equal wholesale price, to  
18 participate in the WLS and to sell WLS subscriptions to prospective registrants.  
19 Those registrars that offer “backorder” and similar services are seeking to distribute  
20 these services through many of the same domain name registrars who are VeriSign’s  
21 potential customers.

22 111. The WLS would compete directly with “backorder” and similar services  
23 offered by others, including the WLS co-conspirators, who cannot offer a guarantee  
24 of registration if the sought-after domain name becomes available for registration, but  
25 who can compete for the business of prospective registrants in other ways. The WLS  
26 would also compete with the “backorder services” of WLS co-conspirators in  
27 offering domain name registrars, as distributors, a value-added service that can be  
28 provided along with their other domain name registration services.

1 112. ICANN and the WLS co-conspirators have blocked and delayed the  
2 implementation of WLS for almost three years and have imposed anti-competitive  
3 conditions on its implementation. The WLS co-conspirators have used this delay to  
4 introduce competitive but inferior, and often higher priced, products to WLS, beating  
5 VeriSign to the market by reason of their conspiratorial conduct. By reason of these  
6 delays, among other things, consumers have been denied a superior service and have  
7 paid artificially inflated prices for inferior services.

8 113. The WLS would have expanded the range of alternatives available to  
9 prospective registrants seeking to register currently-registered second-level domain  
10 names and to registrars seeking to offer such "backorder" services to customers.  
11 None of the currently available backorder services is able to guarantee that its  
12 customer will obtain the desired domain name registration if it becomes available.  
13 Indeed, many providers of competitive services exploit this inefficiency in the system  
14 to auction a domain name to multiple "backorder" customers who have paid for the  
15 same domain name, thereby using the uncertainty in existing services to cause a  
16 further waste of consumer resources.

17 114. In contrast to current competitive services, a WLS subscriber would be  
18 guaranteed that it would get the domain name if that domain name became available.  
19 The WLS would thereby have been a superior service that would have stimulated  
20 quality and price competition in the relevant markets.

21 115. As of the filing of this Complaint, ICANN still has not agreed to terms  
22 for the introduction WLS, and WLS has not been made available to registrars or  
23 registrants.

24 116. Representatives of ICANN repeatedly have acknowledged the unique  
25 benefits for consumers and competition that the WLS would provide. In July 2003,  
26 for example, ICANN's President testified before a Senate Committee that "[t]he  
27 VeriSign [WLS] proposal offered a significant improvement from a consumer  
28 perspective to the various services already offered by registrars," and that "[I]t would

1 be anomalous to ‘protect’ competition between providers of non-guaranteed products  
2 by preventing the new competition of a guaranteed product that at least some  
3 consumers would likely prefer.”

4 117. Notwithstanding that ICANN recognized the clear benefits that WLS  
5 would have provided to competition and consumers, ICANN insisted on conditions,  
6 proposed at the behest of the registrars who stood to benefit competitively from any  
7 obstacles thrown in WLS’s path, that made the WLS service uneconomical and that,  
8 at a minimum, would delay its introduction.

9 118. By preventing and delaying the offering of WLS and imposing  
10 conditions that would materially interfere with the WLS and adversely impact its  
11 availability and attractiveness to consumers, the WLS co-conspirators have deprived  
12 consumers of a new, superior competitive service that would have offered them  
13 substantial and unique benefits over existing competitive services. In addition, the  
14 WLS would have forced the co-conspirators to improve the service, pricing or terms  
15 on which they offered competing services.

16 119. The WLS co-conspirators had an economic and competitive interest in  
17 preventing plaintiff from offering the WLS. These co-conspirators captured,  
18 controlled and manipulated the processes of ICANN, as set forth above, and  
19 combined and conspired with ICANN to delay VeriSign’s offering of WLS and to  
20 force VeriSign to accept conditions on the offering of WLS that would make it less  
21 competitive with domain name “backorder” and similar services offered by those co-  
22 conspirators and others.

23 120. The operation of TLD registries also is a relevant product market. The  
24 relevant geographic market is worldwide.

25 121. In addition to its pro-competitive impact on the markets for services to  
26 the secondary domain name market and for domain name “backorder” and similar  
27 services, WLS also would have increased the utility of second-level domain names  
28 registered in the .com gTLD, which would have stimulated competition between the



1 .com registry and other TLD registries. VeriSign competes with other TLD  
2 registries.

3 122. VeriSign's revenue from .com registrations is a function of the  
4 desirability of second level domain names in the .com gTLD as compared with other  
5 TLDs. Thus, VeriSign, like operators of other TLD registries, is continually seeking  
6 ways to assure that potential domain name registrants will choose to register second  
7 level domain names in the .com gTLD rather than to register in or switch to  
8 competing TLDs. Other TLD registries do the same.

9 123. The registrar customers for the WLS offer registration services for .com  
10 as well as other TLDs. The WLS would have increased the utility and popularity of  
11 second-level domain names registered in the .com gTLD, by making it easier and less  
12 costly for potential domain name registrants to reserve the ability to register a desired  
13 domain name in the .com gTLD even if that name were currently registered. This in  
14 turn would have stimulated competition between the .com registry and other TLD  
15 registries.

16 124. By preventing the offering of the WLS and imposing conditions on the  
17 service as alleged above, the WLS co-conspirators injured competition among TLD  
18 registries by denying VeriSign, as the operator of the .com registry, the ability to  
19 offer a service that would have induced registrants to seek out domain names within  
20 the .com gTLD rather than domain names offered in other TLDs, thereby stimulating  
21 competition among TLD registries.

22 125. The WLS co-conspirators had an economic and competitive interest in  
23 preventing plaintiff from offering the WLS. These conspirators captured, controlled  
24 and manipulated the processes of ICANN, as set forth above, and combined and  
25 conspired with ICANN to delay its offering of the WLS and to force VeriSign to  
26 accept conditions on the offering of the WLS that would make it less competitive  
27 with domain name backorder services offered by those conspirators and others.  
28

1           126. The conduct of ICANN and the WLS co-conspirators denied consumers  
2 and registrars a superior service at lower prices and, instead, forced consumers to  
3 purchase inferior services at artificially high, anti-competitive prices. Such conduct  
4 further restricted output, including, without limitation, by limiting the efficient  
5 transfer of existing domain name registrations.

6           127. Through their actions in preventing the offering of the WLS and  
7 imposing conditions that made it less viable, ICANN and the WLS co-conspirators  
8 restrained and lessened competition in the markets for the operation of TLD registries  
9 and services for secondary domain names, including the provision of domain name  
10 “backorder” and similar services, and the operation of submarkets thereof, and have  
11 deprived consumers of the benefits of free and open competition in violation of  
12 Section 1 of the Sherman Act, 15 U.S.C. § 1.

### 13                           **The Site Finder Service**

#### 14                   **The Conspiracy to Restrain Competition**

15           128. ICANN, existing and potential competitors of VeriSign, and those  
16 sharing economic interests with VeriSign’s competitors, have conspired to control,  
17 and in fact have controlled, ICANN’s processes improperly to close down the Site  
18 Finder service in restraint of trade in the relevant markets and submarkets alleged  
19 below. The co-conspirators who have combined with ICANN to restrain competition  
20 with respect to Site Finder include, among others: Afilias Limited; Alice’s Registry,  
21 Inc.; Paul Vixie; certain registrars; and Steve Crocker (the “Site Finder co-  
22 conspirators”). As more specifically alleged below, the Site Finder co-conspirators  
23 include existing and potential operators of registries competing with VeriSign’s .com  
24 registry, potential providers of competitive Site Finder type services, and others  
25 sharing similar economic interests with VeriSign’s competitors.

26           129. The Site Finder service is not a Registry Service within the meaning of  
27 the 2001 .com Registry Agreement nor otherwise properly subject to control by  
28 ICANN. Despite these facts, at or about the time Site Finder was introduced, the

1 Site Finder co-conspirators joined and agreed with ICANN that ICANN would assert  
2 control over Site Finder as a purported Registry Service and would shut down the  
3 service.

4 130. The Site Finder co-conspirators specifically identified above are all  
5 members of ICANN's Security and Stability Advisory Committee ("SECSAC")  
6 either themselves (in the case of the individual Site Finder co-conspirators) or  
7 through employees of theirs (in the case of the company Site Finder co-conspirators).  
8 At all times relevant hereto, the Site Finder co-conspirators captured and controlled  
9 the processes of SECSAC with respect to Site Finder.

10 131. Pursuant to ICANN's Bylaws, SECSAC is an advisory committee that  
11 reports to the ICANN Board. The SECSAC is composed of part time volunteers.  
12 The Committee's website notes that "[b]ecause the Committee is composed of people  
13 actively working in the field, conflicts of interest arise from time to time." Indeed,  
14 the website explicitly acknowledges that "several members work for companies . . .  
15 competing with VeriSign."

16 132. In connection with the conduct of SECSAC alleged herein, no members  
17 of SECSAC working for companies competing with VeriSign recused themselves  
18 from the SECSAC proceedings and decision regarding Site Finder. In addition,  
19 contrary to the Bylaws of ICANN, during the course of the SECSAC proceedings  
20 concerning Site Finder, the Site Finder co-conspirators, who dominated and  
21 controlled the proceedings, added to SECSAC outspoken opponents of the Site  
22 Finder service, including persons affiliated with Site Finder co-conspirators,  
23 specifically in order to secure and retain control of SECSAC, bias the proceedings  
24 against VeriSign and Site Finder, dictate the conclusions and contents of SECSAC  
25 reports concerning Site Finder, and compel ICANN to take action to terminate Site  
26 Finder.

27 133. On September 19, 2003, just four days after VeriSign launched the Site  
28 Finder service, the Chairman of SECSAC, Steve Crocker, circulated to certain

1 committee members a draft "report" entitled Recommendations Regarding VeriSign's  
2 Introduction of Wild Card Response to Unregistered Domains within .com and .net.  
3 This draft "report" already included what purported to be SECSAC's opinions and  
4 recommendations that the Site Finder service should be terminated, but no facts,  
5 evidence, or analysis was included in the report – nor existed. To the contrary, the  
6 draft report reads: "This is where we need to include the factual information to  
7 support the opinions and recommendations that follow. Paul Vixie and Suzanne,  
8 among others, please dump stuff into this section." Paul Vixie is a Site Finder co-  
9 conspirator, and Suzanne Woolf was an outspoken critic of Site Finder, improperly  
10 added to SECSAC by the Site Finder co-conspirators, and a Vixie collaborator. At  
11 the time of circulating the draft report, members of SECSAC, which was controlled,  
12 with respect to Site Finder, by the Site Finder co-conspirators, had reached a  
13 "conclusion" to stop Site Finder, despite having no evidence that the service affected  
14 the security or stability of the domain name system or of the infrastructure of the  
15 Internet.

16 134. SECSAC issued its report based on the above-referenced draft on  
17 September 22, 2003. The SECSAC report was, in fact, a subterfuge and pretext to  
18 attempt to justify the actions of ICANN, the Site Finder co-conspirators and SECSAC  
19 in forcing the termination of VeriSign's Site Finder service. The report does not  
20 include any facts concerning the effects of Site Finder or any analysis supporting the  
21 report's opinions and recommendations that the service be immediately terminated.

22 135. The SECSAC Report itself admits that rather than setting forth facts  
23 supporting its conclusions, SECSAC would meet the following month purportedly to  
24 gather facts to support its predetermined conclusion. However, despite subsequent,  
25 repeated promises by SECSAC that a report with supporting facts would be issued in  
26 November 2003, after almost *nine months* from the issuance of the SECSAC Report,  
27 SECSAC has yet to issue any report to support its conclusions. No such support in  
28 fact exists.

1           136. Pursuant to the conspiracy among ICANN and the Site Finder co-  
2 conspirators, and despite the fact that Site Finder is neither a Registry Service nor  
3 otherwise properly subject to control by ICANN or SECSAC, in September 2003,  
4 ICANN purported to assert “authority” over Site Finder and took action based on the  
5 SECSAC Report, and without proper independent review or consideration, to force  
6 VeriSign to shut down the service, with the specific purpose and intent to interfere  
7 with the service and to restrain trade in the market and submarkets alleged below.

8           137. As contemplated and intended by ICANN and the Site Finder co-  
9 conspirators, ICANN used the SECSAC report, which itself was a product of  
10 SECSAC proceedings captured and controlled by Site Finder co-conspirators, as a  
11 pretext to justify its action in furtherance of the conspiracy, including ICANN’s  
12 demand that Site Finder be suspended.

13           138. At the time ICANN took these actions, Steve Crocker, one of the Site  
14 Finder co-conspirators and the author of the SECSAC report, sat on the ICANN  
15 board as a non-voting liaison. The Board of Directors of ICANN never adopted a  
16 lawful resolution regulating Site Finder.

17           139. The actions of SECSAC and ICANN were not open or transparent, but  
18 rather were staged, arbitrary and in furtherance of the conspiracy among them.  
19 ICANN did not adopt independent review procedures, as required by the 2001 .com  
20 Registry Agreement, among other sources, and ICANN did not act with  
21 accountability. In this manner, ICANN further encouraged, facilitated, and  
22 contributed to the domination and control of its processes by the Site Finder co-  
23 conspirators.

24           *Injury to Competition*

25           140. There is a relevant product market for the provision of Web address  
26 directory assistance services. Such services include various services designed to help  
27 Internet users locate a pre-determined website. The relevant geographic market is  
28 worldwide.

1           141. The Site Finder co-conspirators consist of existing and potential  
2 providers of TLD registry operations and web address directory assistance services in  
3 competition with VeriSign, and those who share similar economic interests with  
4 them. Afilias Limited is an existing provider of competitive gTLD and ccTLD  
5 registry operations, a competitor of VeriSign for new registry operations, and a  
6 potential provider of web address directory assistance services in competition with  
7 VeriSign. Paul Vixie is an existing provider of competitive services for registry  
8 operations, including providing TLD domain name hosting services for ccTLDs and  
9 gTLDs, and a competitor of VeriSign for new registry operations. Alice's Registry,  
10 Inc. is an existing and potential competitor of VeriSign for various services, including  
11 a competitor for new registry operations and services relating to secondary domain  
12 name registrations, and it shares economic interests with other VeriSign competitors.  
13 Steve Crocker is a consultant regarding Internet services. The Site Finder co-  
14 conspirators have combined with other VeriSign competitors to prevent the offering  
15 of Site Finder on the grounds that Site Finder would make VeriSign a more effective  
16 competitor and stimulate and enhance competition in the relevant markets alleged  
17 herein.

18           142. Prior to the introduction of Site Finder, a user who typed an erroneous  
19 web address or a web address that included a non-existent domain and received a 404  
20 error message, received no assistance in locating the chosen website. Such a user  
21 would have to resort to other inferior services or means to attempt to find the web  
22 address he or she was seeking. To utilize a search engine for web address directory  
23 assistance, for example, the user would be required to access and separately launch a  
24 search engine, and then to formulate an appropriate query to reach a desired website.

25           143. In contrast to such general purpose search services, with Site Finder,  
26 when a non-existent web address is typed, the user does not receive a 404 error  
27 message page and, instead, is automatically presented with a web page suggesting  
28 possible alternative addresses for the webpage the user is seeking, a search engine

1 box, and other useful information. Thus, for many consumers, Site Finder would  
2 have offered substantially more efficient and convenient functionality than existing  
3 search engine services. Site Finder would have been a material improvement for  
4 Internet users who otherwise receive error messages when attempting to locate a  
5 predetermined website and who have to engage in multiple steps to attempt to find  
6 the address of the site.

7 144. Certain web browsers and Internet service providers ("ISP") also provide  
8 web address directory assistance services as an integral feature of their service.  
9 However, an Internet user would have access to such directory services only if the  
10 user employed a specific web browser or ISP that provided the service as a feature of  
11 the web browser or ISP service. Many millions of Internet users do not have access  
12 to such a browser or ISP.

13 145. During the several days that Site Finder was operational, more than  
14 40,000,000 Internet users made use of the service and benefitted from it. Before Site  
15 Finder was launched, and after Site Finder was closed down, many of these users had  
16 no such service available to them.

17 146. Certain entities that have shared economic relationships with registrars  
18 market services to Internet users that they claim will assist users in finding a correct  
19 web address.

20 147. Site Finder would also have provided a unique alternative for sponsors  
21 of web links and advertisers choosing to reach Internet users. Those link sponsors  
22 and advertisers contract with search providers to provide links to their content and  
23 advertisers aimed at Internet users who are seeking particular types of content.  
24 Because Site Finder would reach a large number of users seeking more specialized  
25 content, and because it would offer greater ease of use for them than competing  
26 services, Site Finder would offer significant and unique benefits to many sponsors of  
27 web links and advertisers, and thus stimulate competition with other web address  
28 directory assistance services.

1           148. The operation of TLD registries and submarkets thereof also are a  
2 relevant product market. The relevant geographic market for such services is  
3 worldwide.

4           149. In addition to competing with existing and potential providers of web  
5 address directory assistance services, VeriSign also competes with other TLD  
6 registries. VeriSign's revenue from .com registrations is a function of the desirability  
7 of second level domain names in the .com TLD as compared with other TLDs. Thus,  
8 VeriSign, like operators of other TLD registries, is continually seeking ways to assure  
9 that potential domain name registrants will choose to register second level domain  
10 names in the .com TLD rather than to register in or switch to competing TLDs. Other  
11 TLD registries do the same.

12           150. Site Finder would have increased the utility of second-level domain  
13 names registered in the .com TLD, by making it easier for Internet users to locate  
14 websites that include a .com name as part of the web address in the .com TLD when  
15 they were unsure of the web address. This in turn would have stimulated competition  
16 between the .com registry and other TLD registries.

17           151. Some other gTLD and ccTLD registries that compete with the .com  
18 gTLD registry, including the .museum gTLD registry, with which ICANN has a  
19 registry agreement, and ccTLD registries, are currently offering services similar to  
20 Site Finder, and the operators of other gTLD and ccTLD registries have either already  
21 tested or stated that they intend to launch similar services. These registries recognize  
22 the unfulfilled demand for services similar to Site Finder. However, none of their  
23 services could be used to locate web addresses for domain names registered in the  
24 .com registry.

25           152. There are approximately 32,000,000 second level domain names  
26 registered in the .com registry. While more than 40,000,000 consumers used Site  
27 Finder to locate pre-determined websites with domains registered in the .com registry  
28 during the brief period Site Finder was operational. On an annualized basis Site



1 Finder would have created a huge benefit both for Internet users and websites using  
2 domain names registered in the .com registry, and an equal loss to consumers was  
3 caused by reason of ICANN shutting down Site Finder.

4 153. Plaintiff projected that Site Finder would generate profits of  
5 approximately \$12.75 million in 2004. This also reflects the impact it would have on  
6 competition in the market for web address directory assistance services and on the  
7 market for the operation of TLD registries.

8 154. The conspiracy between ICANN and its co-conspirators has deprived  
9 consumers of a beneficial new service and VeriSign of revenues and profits it would  
10 have generated and would generate in the future from and in connection with Site  
11 Finder.

12 155. The Site Finder co-conspirators had an economic and competitive  
13 interest in preventing VeriSign from offering Site Finder in that, as described above,  
14 each of them operates or has been seeking to operate a competitive registry or  
15 provides services for registries competing with VeriSign's .com registry. These  
16 conspirators captured, controlled and manipulated the processes of ICANN, as set  
17 forth above, and combined and conspired with ICANN to force VeriSign to withdraw  
18 its offering of Site Finder.

19 156. By forcing VeriSign to withdraw its offering of Site Finder, ICANN and  
20 the Site Finder co-conspirators restrained and eliminated competition in the market  
21 for web address directory assistance services and in the market for the operation of  
22 TLD registries and submarkets thereof, and have deprived consumers of the benefits  
23 of free and open competition in violation of Section 1 of the Sherman Act, 15 U.S.C.  
24 § 1.

## 25 **Internationalized Domain Names**

### 26 *The Conspiracy to Restrain Trade*

27 157. ICANN and existing and potential competitors of VeriSign have  
28 combined and conspired to delay and limit the offering of internationalized domain

1 names by VeriSign, thereby restraining trade in the relevant market and submarkets  
2 for such services. Pursuant to this combination, competitors of VeriSign have  
3 captured and controlled the ICANN process concerned with IDNs, improperly  
4 delaying and conditioning VeriSign's offering of IDN services, and limiting the  
5 quantity and choice of IDN services available to consumers. By virtue of this  
6 conduct, VeriSign's competitors have secured important competitive advantages not  
7 otherwise available to them, including enabling them to achieve a head start in  
8 entering the market for IDN services and acquire increased market share  
9 notwithstanding their inferior services. The co-conspirators who have combined with  
10 ICANN to restrain competition with respect to IDN services include, among others:  
11 the China Internet Network Information Center ("CNNIC") and the Taiwan Network  
12 Information Center ("TWNIC"), who operate, respectively, the .cn and .tw ccTLDs  
13 (the "IDN co-conspirators") in competition with VeriSign's operation of the .com  
14 gTLD.

15 158. In December 2002, the ICANN Board resolved that ICANN should form  
16 an IDN Registry Implementation Committee ("RIC") to "consider and exchange  
17 information on ways to resolve the issues associated with implementation of IDN  
18 capabilities in existing top level domains." In January 2003, as part of forming the  
19 RIC, the President of ICANN explained: "It is important to emphasize that the  
20 committee is not intended to set hard rules for registries, but rather to facilitate  
21 dialogue and information sharing so that IDNA project managers can educate and  
22 learn from each other and develop common solutions to common problems."

23 159. On or about February 4, 2003, ICANN's RIC began work on  
24 formulating a set of guidelines for the deployment of IDNs into TLDs around the  
25 globe. VeriSign, as well as certain gTLDs and ccTLDs, including the IDN co-  
26 conspirators, became participants in this group.

27 160. Prior to or upon the formation of RIC, the IDN co-conspirators  
28 combined to pursue a common plan to delay VeriSign's introduction of IDN services

1 in order to secure a head start for the ccTLD registries they operate in the  
2 introduction of their own competitive IDN services and thereby to allow the IDN co-  
3 conspirators to be first to enter the market for such services with respect to the  
4 language spoken in their countries. Pursuant to this combination, the IDN co-  
5 conspirators determined to capture and control the IDN process at ICANN, including  
6 the process of the RIC, and to secure the agreement of ICANN to impose conditions  
7 delaying VeriSign's introduction of an IDN service. During times relevant to this  
8 claim, ICANN and the IDN co-conspirators combined to accomplish, and in fact  
9 accomplished, these unlawful objectives.

10 161. The ICANN guidelines, as originally conceived, were intended to be just  
11 that -- guidelines, voluntary and providing guidance and suggestions but not legal  
12 requirements or operational directives. Mandatory guidelines, by contrast, would  
13 operate to VeriSign's competitive disadvantage, including as alleged more  
14 specifically below.

15 162. On or about March 13, 2003, ICANN published a report acknowledging  
16 its responsibility under Appendix K of the Registry Agreement "to expressly  
17 authorize the registration of IDNA-compliant internationalized domain names."  
18 Nonetheless, because of the combination alleged herein, including the domination  
19 and control of the IDN co-conspirators over the processes of ICANN relating to IDN,  
20 including the RIC, the report proposed that the "guidelines" be "*mandatory*  
21 *requirements that the registries would be required to agree as the conditions for*  
22 *ICANN authorization to begin accepting IDNA-compliant domain name*  
23 *registrations.*"

24 163. On or about March 27, 2003, the ICANN Board simply adopted and  
25 "endorsed the IDN implementation approach set forth in the draft Guidelines" and  
26 authorized the President of ICANN "to implement the Guidelines by authorizing  
27 registration of IDNs in registries with agreements with ICANN on the basis of those  
28 Guidelines." At times relevant hereto, the consultant to the Board on IDN also served

1 as a consultant to CNNIC, one of the DNS co-conspirators, and participated in the  
2 RIC meetings; and a representative of CNNIC joined the Board of ICANN.

3 164. On June 20, 2003, ICANN proceeded to use its approval authority  
4 effectively to expand the scope of its authority under registry agreements, by  
5 publishing *IDN Registry Implementation Committee (RIC) Guidelines for the*  
6 *Deployment of IDNs* and establishing the “*Guidelines*” as the gating requirement for  
7 approval under Appendix K of the 2001 .com Registry Agreement between VeriSign  
8 and ICANN. The *Guidelines* specified numerous conditions to obtain ICANN  
9 approval for IDN services.

10 165. Adopting the *Guidelines* as mandatory requirements for the offering of  
11 IDN services operated to the competitive disadvantage of VeriSign. Unlike ccTLDs,  
12 who would be VeriSign’s primary competitors for offering IDN services and would  
13 offer the IDN services only for a single language, VeriSign, as the operator of the  
14 global .com TLD, would be required to design its IDN services in such a manner as to  
15 accommodate, and be operational for, a large number of languages with varying  
16 requirements.

17 166. Mandatory individual guidelines further operated to VeriSign’s  
18 competitive disadvantage. One of the guidelines required the use of variant tables to  
19 be developed in cooperation with local Internet authorities and DNS registries in  
20 individual countries. There are not identifiable authorities for the adoption of such  
21 tables in certain countries, there are no country boundaries for certain languages, and  
22 the DNS registries in individual countries are competitors of VeriSign and in a  
23 position use the adoption of such tables to delay the introduction of an IDN service  
24 by VeriSign or other gTLDs. For purposes of Chinese languages, for example,  
25 VeriSign was required by the *Guidelines* to work with local stakeholders who  
26 included the IDN co-conspirators and who were thus empowered by the *Guidelines* to  
27 delay and impede VeriSign’s IDN efforts by their own conduct while they launched  
28 their competitive IDN services.

1           167. The *Guidelines* further imposed on VeriSign long-term, fixed obligations  
2 that would require the implementation of costly and burdensome procedures over and  
3 above compliance with the extensive technical standards for IDN (the IDNA  
4 standard) set by other groups. If implemented by VeriSign, these *Guidelines* would  
5 hinder its ability to solve operational inefficiencies and to market its IDN services  
6 effectively to serve the enormous preexisting demand worldwide for second level  
7 domain names in non-Roman characters.

8           168. On or about June 20, 2003, ICANN provided written authorization to the  
9 co-conspirator's to deploy IDNs. VeriSign would have launched its IDN service in or  
10 before mid 2003, but for the delays imposed by the conduct of ICANN and the IDN  
11 co-conspirators. Instead, as a consequence of the conduct alleged herein, VeriSign  
12 was unable to launch IDN until approximately April 2004.

13           *Injury to Competition*

14           169. IDNs are a relevant product market. The relevant geographic market for  
15 IDNs is worldwide.

16           170. IDN service offered by VeriSign is a new and innovative service that  
17 will allow domain name registrants to use a .com domain name to reach Internet users  
18 around the world even if those users do not speak or read English or any other  
19 language using the Roman alphabet. IDN allows domain names represented by  
20 characters used in other languages, such as Chinese, Japanese and others that use  
21 non-ASCII character sets, to be recognized within the .com TLD registry. Thus, a  
22 website in, for example, Chinese, could use a .com domain name as part of the  
23 address for the website with Mandarin Chinese characters, that would resolve to the  
24 registrant's website.

25           171. At times relevant hereto, ICANN repeatedly "recognized the importance  
26 of adding to the domain-name system Internationalized Domain Name (IDN)  
27 capabilities to enhance the accessibility of the domain-name system to all those using  
28 non-Roman alphabets." Nonetheless, the conduct alleged herein delayed the

1 introduction of a system by VeriSign that would have brought IDN to millions of  
2 Internet users using non-Roman alphabets worldwide.

3 172. IDN meets the important need for a global multilingual DNS solution,  
4 supporting the billions of people who require or want Internet access in their native  
5 languages. IDN enhances the ability of domain name registrants to reach audiences  
6 around the world through a single web identity irrespective of the target audience's  
7 language. It expands competition among TLD registries that could offer domain  
8 names in non-ASCII character sets; at times relevant to this action, no TLDs offered  
9 such services.

10 173. The operation of TLD registries also is a relevant product market. The  
11 relevant geographic market is worldwide.

12 174. IDN significantly increases Internet availability and e-commerce  
13 opportunities for speakers of non-English languages and for those who do business  
14 with them, and it would therefore increase the value and attractiveness of second-  
15 level domain names in the .com gTLD.

16 175. In contrast, without IDN, a business that wants its website to be  
17 accessible to Internet users who speak and read languages that do not use ASCII  
18 character sets is forced separately to register an additional domain name in one of the  
19 few TLDs that utilize the language of the desired target audience. For example,  
20 without IDN, a registrant seeking to reach native speakers of Mandarin Chinese  
21 would be forced to register a domain name in the .cn TLD or .tw TLD. Similarly, at  
22 times relevant hereto, .jp has been the only TLD registry using Japanese characters  
23 for web addresses.

24 176. The IDN co-conspirators had a strong economic and competitive interest  
25 in preventing VeriSign from offering IDN. The greatest demand for IDN services is  
26 in East Asian languages, and the IDN co-conspirators are major competitors of  
27 VeriSign in the offering of IDN services to domain name registrants seeking to reach  
28 Internet users in Asia. By controlling and manipulating the processes of ICANN,

1 including the RIC, as set forth above, and by combining and conspiring with ICANN,  
2 the conspirators eliminated VeriSign from offering IDN services in that market (or  
3 elsewhere) for almost an entire year after such services first became available to  
4 registrants, enabling the IDN co-conspirators to capture for their ccTLD registries  
5 increased registrations, market share, and revenues than they would have been able to  
6 obtain in competition with VeriSign.

7 177. Most registrants of Internet domain names find ASCII characters  
8 completely satisfactory for their needs and do not have any need for IDNs. Those  
9 registrants who wish to reach multilingual audiences and who seek to maintain a  
10 single, consistent web identity are the potential consumers of IDNs. Without IDN,  
11 these registrants are required to register domain names in multiple TLDs supporting  
12 each language and character set that they need. The IDN co-conspirators used the  
13 delay in VeriSign's receipt of authorization from ICANN to offer IDN services – a  
14 delay they had brought about in combination and conspiracy with ICANN – to reduce  
15 the output of IDN services to registrants and to channel registrants to their ccTLDs  
16 and away from VeriSign's .com gTLD.

17 178. As of the commencement of this action, VeriSign had not yet received  
18 formal authorization to implement its IDN service, while other registries, expressing  
19 their mere "support" for but not agreement to comply with the Guidelines, received  
20 immediate written authorization from ICANN to launch competitive IDN services.  
21 Indeed, ICANN attempted to impose on VeriSign's offering of IDN services  
22 conditions over and beyond even those set forth in the *Guidelines*.

23 179. The delay in approving VeriSign's entry into the relevant market and  
24 submarkets for IDN has had the effect of artificially raising prices for and restricting  
25 output for IDN services for the following, among other, reasons. First, VeriSign's  
26 IDN service was a small fraction of the price charged by CNNIC prior to VeriSign's  
27 entry into the market. Second, the increase in usage of IDN services once VeriSign  
28 entered the market demonstrates the unmet demand of consumers while ICANN and

1 the IDN co-conspirators delayed VeriSign's entry into the IDN market. Third,  
2 consumers were denied important product choices by the delay of VeriSign's entry  
3 into the market. VeriSign's IDN product was superior to the IDN product offered by  
4 CNNIC, including in terms of its reliability and features. Consumers also would have  
5 been able to choose from a wider group of registrars and ISPs if VeriSign's entry had  
6 not been delayed.

7 180. The delay in introducing IDN caused by the conduct of ICANN and the  
8 IDN co-conspirators has therefore deprived consumers of a beneficial new service  
9 and has deprived VeriSign of the revenues and profits it would have generated from  
10 and in connection with IDN. In addition, by unjustifiably imposing the numerous  
11 conditions of the *Guidelines* on the service, ICANN has attempted to deprive  
12 VeriSign of the ability to formulate and to offer a service in the manner best designed  
13 to meet the needs of customers and the competitive and financial goals of VeriSign.  
14 At the same time, the delay has benefited other registries and businesses that offer  
15 similar or competitive services, including those who have acted in concert with  
16 ICANN to cause ICANN to impose the foregoing conditions and impediments on  
17 VeriSign.

18 181. During the delays in launching its IDN service due to the conspiracy of  
19 ICANN and the IDN co-conspirators alleged above, VeriSign lost significant  
20 numbers of both IDN and other registrations by registrants interested in IDN, as well  
21 as related market share. Furthermore, during the delay, VeriSign's largest registrars,  
22 questioning whether VeriSign would ever get to offer IDN, simply dropped out of the  
23 intended IDN program.

24 182. By preventing and delaying VeriSign from offering IDN, ICANN and  
25 the IDN co-conspirators restrained and eliminated competition in the market for the  
26 operation of TLD registries and submarkets thereof, and have deprived consumers of  
27 the benefits of free and open competition in violation of Section 1 of the Sherman  
28 Act, 15 U.S.C. § 1.



183. The specific wrongful acts of ICANN alleged above with respect to the WLS and Site Finder and IDN services have not been expressly or impliedly authorized or directed by DOC or any other agency of the United States Government, nor have these specific acts been the subject of active supervision by any agency of the United States Government.

184. VeriSign has been injured in its business and property, and is threatened with continued injury to its business and property, as a result of the anti-competitive conduct of ICANN and its co-conspirators as alleged above.

185. VeriSign is therefore entitled to an award of three times the damages it has sustained as a result of defendants' antitrust violations, as provided by Section 4 of the Clayton Act, 15 U.S.C. § 15, including damages sustained during the pendency of this litigation and to be sustained in the future, according to proof at trial, and to recover its costs of litigation, including reasonable attorneys' fees, as provided by Section 4 of the Clayton Act, 15 U.S.C. § 15.

186. VeriSign is further entitled to entry of a judicial declaration finally determining and adjudicating that ICANN's collective action in restricting the price, terms, conditions and timing on which VeriSign may offer services violates Section 1 of the Sherman Act, 15 U.S.C. § 1.

187. VeriSign is also entitled to a preliminary and permanent injunction restraining ICANN from continuing to violate Section 1 of the Sherman Act, 15 U.S.C. § 1, through collective action in restricting the price, terms, conditions and timing on which VeriSign may offer new services.

## **SECOND CLAIM FOR RELIEF**

### **FOR INJUNCTIVE RELIEF FOR BREACH OF CONTRACT**

188. Plaintiff repeats and realleges the averments contained in paragraphs 1 through 187 above as though fully set forth herein.

189. VeriSign has duly and properly performed, and is continuing duly and properly to perform, all of its obligations under the 2001 .com Registry Agreement,

except those obligations it has been prevented or excused from performing as a result of ICANN's breaches and other misconduct averred in this Complaint.

190. ICANN has materially breached its obligations to VeriSign under and in connection with the 2001 .com Registry Agreement, including covenants of good faith and fair dealing therein, in that, among other conduct, ICANN issued the Suspension Ultimatum demanding the suspension of Site Finder without any proper ground therefor, without acting in an open and transparent manner, and without having independent review policies in place. ICANN also conditioned performance of its obligations to VeriSign under the 2001 .com Registry Agreement upon VeriSign's acquiescence in ICANN's regulation of and control over non-registry services, such as Site Finder.

191. As a result, VeriSign has suspended Site Finder. VeriSign therefore has suffered, and will continue to suffer, substantial injuries and losses as a proximate result of the breaches and other conduct of ICANN averred herein with respect to the suspension of Site Finder, including, without limitation, losses of revenues from third-parties, profits, consequential costs and expenses, market share, reputation, and good will.

192. VeriSign has no adequate legal remedy against ICANN to obtain full compensation or other monetary redress for its injuries and losses in that, among other things: (i) ICANN is interfering with the business of VeriSign and injuring its reputation; (ii) ICANN has insufficient assets to compensate VeriSign for its losses; (iii) some of VeriSign's injuries and losses may be difficult to calculate precisely in dollar terms; and (iv) the 2001 .com Registry Agreement purports to limit ICANN's liability for damages in the event of a breach of the agreement to only a fraction of VeriSign's actual injuries and losses, which limitation may be applicable to certain of the injuries alleged herein.

193. VeriSign is entitled to preliminary and permanent injunctive relief prohibiting ICANN, its officers, directors, employees, agents, and others acting in

concert or in association with it, from directly or indirectly taking any action, or engaging in any conduct, to promote, effectuate, or enforce its Suspension Ultimatum with respect to Site Finder or otherwise to interfere with, limit, restrict, impede, or delay the implementation and operation of Site Finder.

194. The 2001 .com Registry Agreement expressly requires ICANN to indemnify VeriSign against any and all damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising from VeriSign's compliance with an ICANN policy or specification established after the Effective Date of the agreement. VeriSign is therefore entitled to a recovery of its reasonable attorneys' fees incurred herein.

### **THIRD CLAIM FOR RELIEF FOR DAMAGES FOR BREACH OF CONTRACT**

195. Plaintiff repeats and realleges the averments contained in paragraphs 1 through 194 above as though fully set forth herein.

196. VeriSign has duly and properly performed, and is continuing duly and properly to perform, all of its obligations under the 2001 .com Registry Agreement, except those obligations it has been prevented or excused from performing as a result of ICANN's breaches and other misconduct averred in this Complaint.

197. ICANN has materially breached its obligations to VeriSign under and in connection with the 2001 .com Registry Agreement, including covenants of good faith and fair dealing therein, in that, among other conduct, ICANN issued the Suspension Ultimatum demanding the suspension of Site Finder without any proper ground therefor, without acting in an open and transparent manner, and without having independent review policies in place. ICANN also conditioned performance of its obligations to VeriSign under the 2001 .com Registry Agreement upon VeriSign's acquiescence in ICANN's regulation of and control over non-registry services, such as Site Finder.

1           198. As a result, VeriSign has suspended Site Finder. VeriSign therefore has  
2 suffered, and will continue to suffer, substantial injuries and losses as a proximate  
3 result of the breaches and other conduct of ICANN averred herein with respect to the  
4 suspension of Site Finder, including, without limitation, losses of revenues from  
5 third-parties, profits, consequential costs and expenses, market share, reputation, and  
6 good will.

7           199. The 2001 .com Registry Agreement expressly requires ICANN to  
8 indemnify VeriSign against any and all damages, liabilities, costs, and expenses,  
9 including reasonable legal fees and expenses, arising from VeriSign's compliance  
10 with an ICANN policy or specification established after the Effective Date of the  
11 agreement.

12           200. Consequently, both pursuant to ICANN's indemnity obligation in the  
13 2001 .com Registry Agreement and as a matter of law, VeriSign is entitled to an  
14 award from ICANN of monetary damages therefor and of its reasonable attorneys'  
15 fees, according to proof at trial.

#### 16                           **FOURTH CLAIM FOR RELIEF**

##### 17                   **FOR INTERFERENCE WITH CONTRACTUAL RELATIONS**

18           201. Plaintiff repeats and realleges the averments contained in paragraphs 1  
19 through 200 above as though fully set forth herein.

20           202. At times relevant hereto, VeriSign has had a valid and existing contract  
21 with a provider of search and other services ("Provider"), under which the Provider  
22 agreed to provide to VeriSign Internet search services and other services that support  
23 VeriSign's Site Finder service.

24           203. The terms and provisions of the contract between VeriSign and the  
25 Provider are confidential and cannot be disclosed by VeriSign absent further  
26 agreement. Nonetheless, ICANN knew of the existence of this contract, and  
27 ICANN's conduct with respect to Site Finder, including, without limitation, its  
28

1 issuance of the Suspension Ultimatum, as alleged in this Complaint, was designed  
2 and intended to disrupt this contractual relationship and did disrupt that relationship.

3 204. As a direct result of ICANN's intentional acts and conduct, the value to  
4 VeriSign of the contractual relationship between VeriSign and the Provider has been  
5 injured and VeriSign has been, and is being, deprived of revenues it would otherwise  
6 have derived from performance of its contract.

7 205. ICANN's intentional interference with the contractual relationship  
8 between VeriSign and the Provider has directly and proximately resulted in a  
9 substantial loss of revenues and profits to VeriSign. VeriSign is entitled to an award  
10 from ICANN of monetary damages therefor, according to proof at trial.

11 206. ICANN's interference and conduct alleged herein was, *inter alia*,  
12 intentional, undertaken for the purpose of harming VeriSign and assisting its  
13 competitors, sought to be justified by ICANN on grounds known by it to be false and  
14 baseless, and otherwise malicious, oppressive, and fraudulent within the meaning of  
15 California Civil Code Section 3294. Consequently, VeriSign is entitled to an award  
16 of punitive or exemplary damages sufficient in amount to punish and to make an  
17 example of ICANN.

18 **FIFTH CLAIM FOR RELIEF**  
19 **FOR SPECIFIC PERFORMANCE OF CONTRACT**  
20 **AND INJUNCTIVE RELIEF**

21 207. Plaintiff repeats and realleges the averments contained in paragraphs 1  
22 through 206 above as though fully set forth herein.

23 208. The 2001 .com Registry Agreement constitutes a valid and binding  
24 contract between VeriSign and ICANN. The material terms of that agreement,  
25 insofar as they are pertinent to this action, include those set forth in paragraphs 24  
26 through 30 above.

1           209. All of the terms of the 2001 .com Registry Agreement are just and  
2 reasonable to ICANN, and the consideration for ICANN's obligations under the  
3 agreement, to the extent relevant to this action, is fair and adequate to ICANN.

4           210. VeriSign has duly and properly performed, and is continuing duly and  
5 properly to perform, all of its obligations under the 2001 .com Registry Agreement,  
6 except those obligations it has been prevented or excused from performing as a result  
7 of ICANN's breaches and other misconduct averred in this Complaint.

8           211. ICANN has materially breached its obligations to VeriSign under and in  
9 connection with the 2001 .com Registry Agreement, including covenants of good  
10 faith and fair dealing therein, in that, among other conduct:

- 11           • Commencing in or about 2002, and continuing to the present time,  
12 ICANN has repudiated the restrictions on the scope of Registry Services  
13 in its conduct under the 2001 .com Registry Agreement and, without any  
14 contractual right or other legal basis therefor, has acted in such a manner  
15 as to delay and impede the introduction of beneficial new value-added  
16 services by VeriSign, to impose conditions on the introduction of such  
17 new services, and to restrict and regulate the prices of those services,  
18 including, without limitation, the services alleged above. Among its  
19 other wrongful actions, ICANN has conditioned performance of its  
20 obligations to VeriSign under the 2001 .com Registry Agreement upon  
21 VeriSign's acquiescence in ICANN's regulation of and control over non-  
22 registry services.
- 23           • Commencing in or about 2002, and continuing to the present time,  
24 ICANN has applied its standards, policies, procedures, and practices in  
25 an arbitrary, unjustifiable, and inequitable fashion with respect to  
26 VeriSign, and has singled out VeriSign for disparate treatment, not  
27 justified by any substantial and reasonable cause, in violation of the  
28 2001 .com Registry Agreement, in that ICANN has, among other

1           conduct: (i) delayed and impeded the introduction of beneficial new  
2           services by VeriSign; (ii) placed conditions on the offering of such  
3           services; (iii) restricted and regulated the prices of those services; and  
4           (iv) otherwise interfered with VeriSign's business, while allowing other  
5           registries for competitive TLDs, as well as members of ICANN's  
6           various constituent groups which are competitors of VeriSign, to offer  
7           similar services to consumers without any interference, restriction, or  
8           attempted regulation by ICANN.

- 9           •     Commencing in or about 2002, and continuing to the present time,  
10           ICANN has ignored its obligation under the 2001 .com Registry  
11           Agreement to promote and encourage robust competition and, instead,  
12           has unreasonably restrained competition, in violation of the agreement,  
13           in that ICANN has, among other conduct: (i) delayed and impeded the  
14           introduction of beneficial new value-added services by VeriSign;  
15           (ii) placed conditions on the introduction of such new services;  
16           (iii) restricted and regulated the prices of those services; and  
17           (iv) otherwise interfered with VeriSign's business, while allowing other  
18           registries for competitive TLDs, as well as other members of ICANN's  
19           various constituent groups which are competitors of VeriSign, to offer  
20           similar services without any interference, restriction or attempted  
21           regulation by ICANN.
- 22           •     Commencing in or about 2001, and continuing to the present time,  
23           ICANN has regulated, and attempted to regulate, VeriSign's marketing  
24           practices and other facets of its business operations that are not governed  
25           by the 2001 .com Registry Agreement and that ICANN is without any  
26           contractual right or other legal basis to control.
- 27           •     Despite its obligation in the 2001 .com Registry Agreement, ICANN has  
28           failed to enter into registry agreements similar to the 2001 .com Registry

1 Agreement, and even to make a serious or good faith effort to enter into  
2 such registry agreements, with more than a small handful of competing  
3 ccTLD registries. Even as to those few ccTLD registries that do have  
4 agreements with ICANN, their agreements are not similar and do not  
5 contain the same provisions under which ICANN claims a purported  
6 right to prohibit or restrict services offered by VeriSign. These  
7 competing ccTLD registries are consequently able to offer similar  
8 services to those VeriSign wants to offer, and others, without any  
9 interference, prohibition, restriction or attempted regulation by ICANN.

- 10 • Throughout the term of the 2001 .com Registry Agreement, and contrary  
11 to the express provisions thereof, ICANN has failed to exercise its  
12 responsibilities with respect to VeriSign and the .com gTLD registry in  
13 an open and transparent manner; has failed to establish any meaningful,  
14 adequate, and independent review policies and appeal procedures; and  
15 has applied its standards, policies, procedures, and practices arbitrarily,  
16 inequitably, and in bad faith, and repeatedly and unjustifiably singled  
17 VeriSign out for disparate treatment.

18 212. ICANN threatens to persist, throughout the remaining term of the 2001  
19 .com Registry Agreement, in the foregoing or similar conduct constituting breaches  
20 of the agreement, thereby increasing and exacerbating VeriSign's injuries and losses.

21 213. VeriSign has suffered, and will continue to suffer, substantial injuries  
22 and losses as a proximate result of the breaches and other conduct of ICANN averred  
23 herein, including, without limitation, losses of revenues from third-parties, profits,  
24 market share, reputation, and good will.

25 214. VeriSign has no adequate legal remedy against ICANN to obtain full  
26 compensation or other monetary redress for its injuries and losses in that, among  
27 other things: (i) ICANN is interfering with the business of VeriSign and injuring its  
28 reputation; (ii) ICANN has insufficient assets to compensate VeriSign for its losses;



(iii) some of VeriSign's injuries and losses may be difficult to calculate precisely in dollar terms; and (iv) the 2001 .com Registry Agreement purports to limit ICANN's liability for damages in the event of a breach of the agreement to only a fraction of VeriSign's actual injuries and losses, which limitation may be applicable to certain of the injuries alleged herein.

215. The 2001 .com Registry Agreement provides and contemplates that VeriSign can obtain a decree of specific performance and other equitable relief for a breach of the agreement.

216. Accordingly, VeriSign is entitled to a judicial decree of specific performance commanding and compelling ICANN to perform fully the terms and conditions of the 2001 .com Registry Agreement, including, without limitation: (i) to abide the definition of Registry Services in the agreement; (ii) to comply with and adhere to the limits on its exercise of authority provided by the agreement; (iii) to apply its standards, policies, procedures, and practices in a fair, non-arbitrary, reasonable, and equitable fashion with respect to VeriSign; (iv) to promote and encourage robust competition in the operation of TLD registries and other services associated with domain name registration; (v) to exercise its responsibilities with respect to VeriSign and the .com gTLD registry in an open and transparent manner; (vi) to establish meaningful, adequate, and independent review policies and appeal procedures; and (vii) to take all reasonable steps to enter into registry agreements similar to the 2001 .com Registry with competing ccTLD registries.

217. VeriSign is also entitled to preliminary and permanent injunctive relief prohibiting ICANN, its officers, directors, employees, agents, and others acting in concert or in association with it, from directly or indirectly taking any action, or engaging in any conduct: (i) to restrict, regulate, interfere with, or exercise control over the offering, introduction, or performance of any services by VeriSign (or its affiliates) to consumers that are not Registry Services within the meaning of the 2001 .com Registry Agreement; (ii) to delay or impede the introduction of any new

services by VeriSign (or its affiliates) that are not Registry Services within the meaning of the 2001 .com Registry Agreement, to impose conditions on the introduction of such services, or to restrict or regulate the prices VeriSign may charge consumers for any services that are not Registry Services within the meaning of the 2001 .com Registry Agreement; (iii) to control, regulate, or limit, or attempt to control, regulate, or limit, VeriSign's marketing practices and other business conduct that is not governed by the 2001 .com Registry Agreement or otherwise subject to ICANN's authority; (iv) to apply its standards, policies, procedures, and practices in an arbitrary, unjustifiable, and inequitable fashion with respect to VeriSign, or to single out VeriSign for disparate treatment, not justified by any substantial and reasonable cause; and (v) to unreasonably restrain competition for the operation of TLD registries and for services that may be offered by VeriSign.

#### **SIXTH CLAIM FOR RELIEF**

##### **FOR DAMAGES FOR BREACH OF CONTRACT**

218. Plaintiff repeats and realleges the averments contained in paragraphs 1 through 217 above as though fully set forth herein.

219. VeriSign has duly and properly performed, and is continuing duly and properly to perform, all of its obligations under the 2001 .com Registry Agreement, except those obligations it has been prevented or excused from performing as a result of ICANN's breaches and other misconduct averred in this Complaint.

220. ICANN has materially breached its obligations to VeriSign under and in connection with the 2001 .com Registry Agreement, including covenants of good faith and fair dealing therein, in that, among other conduct:

- Commencing in or about 2002, and continuing to the present time, ICANN has repudiated the restrictions on the scope of Registry Services in its conduct under the 2001 .com Registry Agreement and, without any contractual right or other legal basis therefor, has acted in such a manner as to delay and impede the introduction of beneficial new value-added

services by VeriSign, to impose conditions on the introduction of such new services, and to restrict and regulate the prices of those services, including, without limitation, the services alleged above. Among its other wrongful actions, ICANN has conditioned performance of its obligations to VeriSign under the 2001 .com Registry Agreement upon VeriSign's acquiescence in ICANN's regulation of and control over non-registry services.

- Commencing in or about 2002, and continuing to the present time, ICANN has applied its standards, policies, procedures, and practices in an arbitrary, unjustifiable, and inequitable fashion with respect to VeriSign, and has singled out VeriSign for disparate treatment, not justified by any substantial and reasonable cause, in violation of the 2001 .com Registry Agreement, in that ICANN has, among other conduct: (i) delayed and impeded the introduction of beneficial new services by VeriSign; (ii) placed conditions on the offering of such services; (iii) restricted and regulated the prices of those services; and (iv) otherwise interfered with VeriSign's business, while allowing other registries for competitive TLDs, as well as members of ICANN's various constituent groups which are competitors of VeriSign, to offer similar services to consumers without any interference, restriction, or attempted regulation by ICANN.
- Commencing in or about 2002, and continuing to the present time, ICANN has ignored its obligation under the 2001 .com Registry Agreement to promote and encourage robust competition and, instead, has unreasonably restrained competition, in violation of the agreement, in that ICANN has, among other conduct: (i) delayed and impeded the introduction of beneficial new value-added services by VeriSign; (ii) placed conditions on the introduction of such new services;

(iii) restricted and regulated the prices of those services; and  
(iv) otherwise interfered with VeriSign's business, while allowing other registries for competitive TLDs, as well as other members of ICANN's various constituent groups which are competitors of VeriSign, to offer similar services without any interference, restriction or attempted regulation by ICANN.

- Commencing in or about 2001, and continuing to the present time, ICANN has regulated, and attempted to regulate, VeriSign's marketing practices and other facets of its business operations that are not governed by the 2001 .com Registry Agreement and that ICANN is without any contractual right or other legal basis to control.
- Despite its obligation in the 2001 .com Registry Agreement, ICANN has failed to enter into registry agreements similar to the 2001 .com Registry Agreement, and even to make a serious or good faith effort to enter into such registry agreements, with more than a small handful of competing ccTLD registries. Even as to those few ccTLD registries that do have agreements with ICANN, their agreements are not similar and do not contain the same provisions under which ICANN claims a purported right to prohibit or restrict services offered by VeriSign. These competing ccTLD registries are consequently able to offer similar services to those VeriSign wants to offer, and others, without any interference, prohibition, restriction or attempted regulation by ICANN.
- Throughout the term of the 2001 .com Registry Agreement, and contrary to the express provisions thereof, ICANN has failed to exercise its responsibilities with respect to VeriSign and the .com gTLD registry in an open and transparent manner; has failed to establish any meaningful, adequate, and independent review policies and appeal procedures; and has applied its standards, policies, procedures, and practices arbitrarily,

inequitably, and in bad faith, and repeatedly and unjustifiably singled  
VeriSign out for disparate treatment.

221. VeriSign has suffered, and will continue to suffer, substantial injuries  
and losses as a proximate result of the breaches of contract and other conduct of  
ICANN averred herein, including, without limitation, losses of revenues from third-  
parties, profits, market share, reputation, and good will.

222. VeriSign is entitled to an award of monetary damages therefor from  
ICANN, according to proof at trial.

**SEVENTH CLAIM FOR RELIEF  
FOR DECLARATORY JUDGMENT**

223. Plaintiff repeats and realleges the averments contained in paragraphs 1  
through 222 above as though fully set forth herein.

224. An actual and justiciable controversy has arisen, and now exists,  
between VeriSign and ICANN with respect to the interpretation of essential terms of  
the 2001 .com Registry Agreement and the application of those terms, if any, to a  
continuing series of new value-added services VeriSign desires, now or in the future,  
to offer to consumers during the remaining term of the agreement, including, without  
limitation, Site Finder, ConsoliDate, WLS and IDN.

225. More particularly, VeriSign contends:

- Registry Services as used in the 2001 .com Registry Agreement means  
and is limited to (i) those services expressly identified in the paragraph  
I(9) of the 2001 .com Registry Agreement and subject to the  
specifications and functionality set forth in Exhibits “C” and “D” to the  
agreement; and (ii) those services required by Consensus Policies duly  
and formally adopted pursuant to paragraph I(1) of the Registry  
Agreement.

- 1 • Site Finder, ConsoliDate, WLS and IDN are not Registry Services and,  
2 therefore, are not subject to the terms or restrictions of the 2001 .com  
3 Registry Agreement.
- 4 • ICANN has no legal or contractual right, directly or indirectly, to  
5 interfere with, restrict, regulate, or control, the introduction, offering or  
6 performance by VeriSign now or in the future of any services that are  
7 not Registry Services, including, without limitation, Site Finder,  
8 ConsoliDate, WLS and IDN, or to impose conditions on the introduction  
9 of such services, or to set or limit the prices VeriSign may charge or the  
10 conditions under which it may offer such services to consumers, or to  
11 regulate VeriSign's marketing practices.
- 12 • As a result of ICANN's failure to enter into registry agreements similar  
13 to the 2001 .com Registry Agreement with any competing ccTLD  
14 registries (and any agreements with only approximately ten of the 240  
15 competing ccTLD registries), VeriSign has a right under the 2001 .com  
16 Registry Agreement to terminate the agreement with the approval of the  
17 Department of Commerce.
- 18 • ICANN has failed to exercise its responsibilities with respect to  
19 VeriSign and the .com gTLD registry in an open and transparent manner.
- 20 • ICANN has failed to establish any meaningful, adequate, and  
21 independent review policies and appeal procedures.
- 22 • ICANN's issuance of the Suspension Ultimatum regarding Site Finder is  
23 baseless and wrongful.

24 226. ICANN has expressly and openly denied, or does deny, each of these  
25 contentions by VeriSign and contends the opposite.

26 227. VeriSign and ICANN are bound to perform under the 2001 .com  
27 Registry Agreement for at least another 4 years.  
28

228. If VeriSign relies on its interpretation of the 2001 .com Registry Agreement and proceeds to offer new services to consumers without ICANN's approval, over its asserted objections, or in a manner inconsistent with pricing and other conditions and limitations ICANN has imposed or threatens to impose, as VeriSign believes it has an absolute legal and contractual right to do, VeriSign risks ICANN's declaring it to be in breach of the 2001 .com Registry Agreement and/or attempting to terminate the agreement prematurely, with resulting losses of revenue from third-parties, profits, extension rights, reputation, and good will.

229. Alternatively, were VeriSign to defer offering such services to the public during the effective period of the 2001 .com Registry Agreement, or to modify such services due to ICANN's conduct and threats, VeriSign will suffer irreparable losses of revenue from third-parties, profits, market share, competitive position, reputation, and good will. Furthermore, millions of Internet users will be deprived of the improved functionality and quality of VeriSign's services.

230. In either event, for the reasons averred in paragraphs 117-118 above, among others, VeriSign has and will have no adequate legal remedy against ICANN for any of these losses. VeriSign is therefore in need of immediate declaratory relief from the Court consistent with its contentions set forth above.

WHEREFORE Plaintiff prays for entry of judgment against Defendant as follows:

A. On the First Claim for Relief:

1. For an award of three times the damages it has sustained as a result of ICANN's antitrust violations, as provided by Section 4 of the Clayton Act, 15 U.S.C. § 15, including damages sustained during the pendency of this litigation and to be sustained in the future, according to proof.

2. For entry of a final and binding judicial declaration determining and adjudicating that ICANN's collective action in restricting the price, terms,

conditions and timing on which VeriSign may offer services violates Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. For entry of a preliminary and permanent injunction prohibiting ICANN, its officers, directors, employees, agents, and others acting in concert or in association with it, from directly or indirectly continuing to violate Section 1 of the Sherman Act, 15 U.S.C. § 1, through collective action in restricting the price, terms, conditions, and timing on which VeriSign may offer services.

4. For its reasonable attorneys' fees, as provided by Section 4 of the Clayton Act, 15 U.S.C. § 15.

B. On the Second Claim for Relief:

1. For entry of a preliminary and permanent injunction prohibiting ICANN, its officers, directors, employees, agents, and others acting in concert or in association with it, from directly or indirectly taking any action, or engaging in any conduct, to promote, effectuate, or enforce its Suspension Ultimatum with respect to Site Finder or otherwise to interfere with, limit, restrict, impede, or delay the implementation and operation of Site Finder.

2. For its reasonable attorneys' fees pursuant to contract.

C. On the Third Claim for Relief:

1. For an award of monetary damages, according to proof.

2. For its reasonable attorneys' fees pursuant to contract.

D. On the Fourth Claim for Relief:

1. For an award of monetary damages, according to proof.

2. For an award of punitive or exemplary damages.

E. On the Fifth Claim for Relief:

1. For entry of a judicial decree of specific performance commanding and compelling ICANN to perform fully the terms and conditions of the 2001 .com Registry Agreement, including, without limitation: (i) to abide by the definition of Registry Services in the agreement; (ii) to comply with and adhere to the



limits on its exercise of authority provided by the agreement; (iii) to apply its standards, policies, procedures, and practices in a fair, reasonable, and equitable fashion with respect to VeriSign; (iv) to promote and encourage robust competition in the operation of TLD registries and other services associated with domain name registration; (v) to exercise its responsibilities with respect to VeriSign and the .com gTLD registry in an open and transparent manner; (vi) to establish meaningful, adequate, and independent review policies and appeal procedures; and (vii) to take all reasonable steps to enter into registry agreements similar to the 2001 .com Registry with competing ccTLD registries.

2. For entry of a preliminary and permanent injunction prohibiting ICANN, its officers, directors, employees, agents, and others acting in concert or in association with it, from directly or indirectly taking any action, or engaging in any conduct: (i) to restrict, regulate, interfere with, or exercise control over the offering, introduction, or performance of any services by VeriSign (or its affiliates) to consumers that are not Registry Services within the meaning of the 2001 .com Registry Agreement; (ii) to delay or impede the introduction of any new services by VeriSign (or its affiliates) that are not Registry Services within the meaning of the 2001 .com Registry Agreement, to impose conditions on the introduction of such services, or to restrict or regulate the prices VeriSign may charge consumers for any services that are not Registry Services within the meaning of the 2001 .com Registry Agreement; (iii) to control, regulate, or limit, or attempt to control, regulate, or limit, VeriSign's marketing practices and other business conduct that is not governed by the 2001 .com Registry Agreement or otherwise subject to ICANN's authority; (iv) to apply its standards, policies, procedures, and practices in an arbitrary, unjustifiable, and inequitable fashion with respect to VeriSign, or to single out VeriSign for disparate treatment, not justified by any substantial and reasonable cause; and (v) to unreasonably restrain competition for the operation of TLD registries and for services that may be offered by VeriSign.

1 F. On the Sixth Claim for Relief

2 1. For an award of monetary damages, according to proof.

3 G. On the Seventh Claim for Relief:

4 1. For entry of a final and binding judicial declaration determining  
5 and adjudicating each and all of VeriSign's contentions as set forth in paragraph 129  
6 above.

7 H. On All Claims for Relief:

8 1. For its costs of suit incurred herein.

9 2. For such further relief as is just and proper.

10  
11 DATED: June 14, 2004

ARNOLD & PORTER LLP  
RONALD L. JOHNSTON  
LAURENCE J. HUTT  
SUZANNE V. WILSON  
JAMES BLACKBURN

12  
13  
14  
15 By: Ronald L. Johnston  
16 Ronald L. Johnston  
17 Attorneys for Plaintiff

18 Of Counsel:

19 ARNOLD & PORTER LLP  
RICHARD L. ROSEN

20 VERISIGN, INC.  
21 BRIAN A. DAVIS  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 777 South Figueroa Street, 44th Floor, Los Angeles, California 90017-5844.

On June 14, 2004, I served the foregoing document described as: FIRST AMENDED COMPLAINT FOR VIOLATION OF THE ANTITRUST LAWS, SPECIFIC PERFORMANCE OF CONTRACT, DAMAGES FOR BREACH OF CONTRACT, INTERFERENCE WITH CONTRACTUAL RELATIONS, DECLARATORY AND INJUNCTIVE RELIEF

☒ by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

☒ **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the office of the addressee. Executed on June 14, 2004 at Angeles, California.

☒ **BY MAIL** I placed such envelope with postage thereon prepaid in the United States Mail at 777 South Figueroa Street, 44<sup>th</sup> Floor, Los Angeles, California 90017-5844. Executed on June 14, 2004 at Los Angeles, CA.

☐ **BY ELECTRONIC TRANSMISSION** The above-referenced document (together with all exhibits and attachments thereto) was transmitted via electronic transmission to the addressee(s) as indicated on the attached mailing list on the date thereof. The transmission was reported as completed and without error. Executed on April 20, 2004 Los Angeles, California.

☐ **STATE** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Rosie K. Nishi  
Type or Print Name

  
Signature

List of Parties Served

Jeffrey A. LeVee, Esq. (by hand delivery)  
Courtney Schaberg, Esq.  
Jones Day  
555 West Fifth Street, Suite 4600  
Los Angeles, CA 90013-1025

Joe Sims, Esq. (by U.S. Mail)  
Jones Day  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001-2113