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14 VERISIGN, INC.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 VERISIGN, INC., a Delaware
18 corporation,
19 Plaintiff,
20 v.
21 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
22 NUMBERS, a California corporation;
DOES 1-50,

23 Defendants.
24

Case No. CV 04-1292 AHM (CTx)

25 **DECLARATION OF LAURENCE
J. HUTT IN SUPPORT OF
26 PLAINTIFF VERISIGN, INC.'S
EX PARTE APPLICATION TO
CONTINUE DEFENDANT
27 ICANN'S MOTION TO STRIKE
TO ALLOW FOR DISCOVERY**

Date: None Set
Time: None Set
Courtroom: 14 – Spring Street Bldg.
Hon. A. Howard Matz

[*Ex Parte* Application; Memorandum
of Points and Authorities and
[Proposed] Order concurrently filed
and lodged herewith]

1 I, LAURENCE J. HUTT, declare:

2
3 1. I know all of the following matters of my own personal knowledge, and if
4 called upon as a witness, I could and would testify competently thereto.

5 2. I am an attorney duly admitted to practice law in the State of California and
6 a partner in the law firm of Arnold & Porter LLP, counsel of record in this action for
7 plaintiff VeriSign, Inc. (“VeriSign”). I am one of the Arnold & Porter attorneys
8 principally responsible for handling this action on behalf of VeriSign, and I make this
9 declaration in support of VeriSign’s *Ex Parte* Application to Continue the Internet
10 Corporation for Assigned Names and Numbers’s (“ICANN’s”) Special Motion to
11 Strike to Allow Discovery.

12 3. VeriSign filed its complaint against ICANN on February 26, 2004. In its
13 complaint, VeriSign alleges seven claims for relief: (i) violation of section 1 of the
14 Sherman Act; (ii) injunctive relief for breach of contract; (iii) damages for breach of
15 contract; (iv) interference with contractual relations; (v) specific performance and
16 injunctive relief for breach of contract; (vi) damages for breach of contract; and
17 (vii) declaratory relief.

18 4. On March 24, Jeffrey LeVee, counsel of record for defendant ICANN,
19 contacted me by telephone in an effort to meet and confer regarding ICANN’s proposed
20 motion to dismiss VeriSign’s first through sixth claims for relief. During that
21 discussion, we agreed on the following briefing and hearing schedule for the motion.
22 ICANN would serve its motion to dismiss on April 5, VeriSign’s opposition would be
23 due on April 22, and ICANN’s reply would be due on May 3. Although the motion
24 was originally contemplated to be heard on May 10, by subsequent agreement, the
25 motion to dismiss was noticed to be heard on May 17.

26 5. Thereafter, on April 2, Mr. LeVee contacted me by telephone and informed
27 me that ICANN also intended to file a special motion to strike VeriSign’s second
28 through fourth, and possibly fifth and sixth claims for relief based upon California’s

1 anti-SLAPP statute. He explained to me that he believed the anti-SLAPP statute
2 required ICANN's motion to be filed within 60 days of the filing of VeriSign's
3 complaint and to be heard within 30 days of the filing the motion, unless the Court's
4 calendar required a longer interval. Based on this understanding, Mr. Levee and I then
5 tentatively agreed on a briefing and filing schedule for ICANN's special motion to
6 strike. This schedule was later finalized as follows: ICANN would serve the special
7 motion to strike on VeriSign on April 12, file that motion with the Court on April 22,
8 and notice it for hearing on May 17, the same day as its motion to dismiss would be
9 heard. VeriSign's opposition to the motion to strike would be due on Thursday,
10 April 29 and ICANN's reply on May 10.

11 6. On April 5, 2004, ICANN moved to dismiss VeriSign's First Claim for
12 violation of section 1 of the Sherman Act, the Second, Third, Fifth, and Sixth Claims
13 for breach of contract, and the Fourth Claim for interference with contractual relations.
14 ICANN has not moved against the Seventh Claim for Relief, in which VeriSign seeks
15 declaratory relief. In accordance with the earlier agreed upon schedule, VeriSign's
16 opposition to that motion is due on April 22, and the hearing on the motion has been
17 noticed for May 17.

18 7. On April 12, ICANN served, but did not file, a special motion to strike
19 VeriSign's Second through Sixth Claims for Relief under California's anti-SLAPP
20 statute. As noted above, VeriSign's opposition is due April 29, and the hearing on the
21 special motion to strike has been noticed for May 17, the same day as ICANN's motion
22 to dismiss is scheduled to be heard. A true and correct copy of ICANN's special
23 motion to strike that was served on VeriSign on April 12, 2004 (but that, as of the
24 signing of this declaration, has not yet been filed) is attached hereto as Exhibit A.

25 8. The parties have not held or scheduled their Rule 26 conference. No
26 discovery has been propounded by either side, nor have the parties entered into any
27 agreement to permit discovery in advance of the Rule 26 meeting.

1 9. I believe *ex parte* relief continuing the hearing on ICANN's motion to strike
2 is appropriate in light of the Court's procedures requiring requests for continuances to
3 be made by *ex parte* application, in the absence of a stipulation by the parties.

4 10. Moreover, sufficient time does not exist for VeriSign to file a regularly
5 noticed motion for continuance before April 29, when its opposition to the motion to
6 strike is due. Additional time is needed before the opposition can be prepared and filed,
7 so that VeriSign may conduct discovery regarding the applicability of the anti-SLAPP
8 statute to its claims and obtain information that is in ICANN's possession essential to
9 demonstrate the probable validity of these claims as it may be required to do to oppose
10 the motion. Illustrative examples of the type of discovery VeriSign requires are set
11 forth at pages 10-11 of VeriSign's Memorandum of Points and Authorities in Support
12 of this Application.

13 11. On Monday, April 19, at around 11:30 a.m., I left voice mail messages for
14 Jeffrey LeVee and Courtney Schaberg of Jones, Day, counsel of record for defendant
15 ICANN, giving notice of VeriSign's intention to file this *ex parte* application on
16 April 20. Mr. LeVee's and Ms. Schaberg's address is 555 West 5th Street, Suite 4600,
17 Los Angeles, California, 90013, and their telephone number is 213-489-3939.

18 12. In my voice mail messages to Mr. LeVee and Ms. Schaberg, I explained that
19 a copy of VeriSign's Application and supporting papers would be served on ICANN
20 and that ICANN would have 24 hours from service to oppose the Application. I further
21 informed them that, pursuant to the Court's procedures, *ex parte* applications are
22 decided on the papers unless the Court elects to convene a hearing thereon.

23 13. I spoke by telephone this morning with Mr. LeVee and Ms. Schaberg about
24 aspects of VeriSign's instant *ex parte* Application. They acknowledged that they had
25 received notice yesterday of the Application through my voicemail messages described
26 above, and they advised that ICANN would oppose the relief sought in the Application.
27 We did agree that the Application would be served on them by electronic means and
28 that ICANN's opposition would be served on us by like means within 24 hours of

1 service on ICANN of the Application. Mr. LeVee also informed me that in light of the
2 Application, he would proceed today to file ICANN's anti-SLAPP special motion to
3 strike with the Court (instead of waiting to file it on April 22 as had earlier been
4 agreed).

5 I declare under penalty of perjury under the laws of the United States that the
6 foregoing is true and correct. Executed this 20th day of April, 2004, at Los Angeles,
7 California.

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LAURENCE J. HUTT

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