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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

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

Case No.

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

1 Plaintiff VERISIGN, INC. (“VeriSign”) alleges as follows:

2 **PRELIMINARY STATEMENT**

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

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

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

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

14 JURISDICTION AND VENUE

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

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

23 7. Defendants Does 1-50 are persons who instigated, encouraged,
24 facilitated, acted in concert or conspiracy with, aided and abetted, or are otherwise
25 responsible in some manner or degree for the breaches and wrongful conduct of
26 ICANN averred herein. VeriSign is presently ignorant of the true names and
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1 capacities of Does 1-50, and will amend this complaint accordingly once they are
2 known.

3 8. This Court has subject matter jurisdiction over this action under 28
4 U.S.C. §§ 1331 and 1337, and 15 U.S.C. §§ 15 and 26; the Declaratory Judgment
5 Act, 28 U.S.C. § 2201; and the principles of supplemental jurisdiction under
6 28 U.S.C. § 1367.

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

10 **THE INTERNET DOMAIN NAME SYSTEM**

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

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

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

3 13. "Second-level" domains ("SLDs") are those domains immediately to the
4 left of the top-level domains, such as "uscourts" in the domain name "uscourts.gov."
5 There are over 50 million second-level domains currently registered within the
6 various TLDs.

7 14. Because domain names are essentially "addresses" that allow computers
8 connected to the Internet to communicate with each other, each domain name must be
9 unique, even if it differs from another domain name by only one character (*e.g.*,
10 "uscourts.com" is different from "uscourt.com" or "us-courts.com"). A given domain
11 name, therefore, can be registered to only one entity.

12 15. VeriSign acts as the "registry" for domain names registered in the .com
13 gTLD in accordance with a written agreement with ICANN. As the "registry" for the
14 .com gTLD, VeriSign maintains the definitive directory that associates registered
15 domain names in this gTLD with the corresponding IP numbers of their respective
16 domain name servers. The domain name servers, in turn, direct Internet queries to
17 resources such as websites and email systems.

18 16. A domain name is created by an individual or organization that registers
19 the domain name and thereby includes it in the registry's master database. The
20 individual or organization that registers a specific domain name is a "registrant."
21 Registrants do not have direct access to the VeriSign registry. Instead, prospective
22 registrants must register domain names through any one of over 130 private
23 companies located in the United States and throughout the world that act as domain
24 name "registrars" for the second-level domain names in the .com gTLD.

25 THE PARTIES

26 17. From 1993 until November 1999, in accordance with Cooperative
27 Agreement NCR 92-18742 ("Cooperative Agreement") entered into between NSI and
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1 the National Science Foundation (“NSF”), NSI performed domain name registration
2 and registry functions for the .com and .net gTLDs, among others, in exchange for
3 financial and other support from the United States Government. The National
4 Telecommunications and Information Administration of the United States
5 Department of Commerce (“DOC”) assumed responsibility from NSF for
6 administering the Cooperative Agreement on or about October 1, 1998, pursuant to
7 Amendment 10 of the Cooperative Agreement. Subsequent to November 1999, NSI
8 has continued to serve as a registrar of domain names, and VeriSign has operated the
9 registries for the .com and .net (among other) gTLDs, as more specifically described
10 below.

11 18. ICANN is a private corporation that was created in 1998 in response to a
12 plan by the DOC to introduce competition into the field of domain name registration,
13 among other objectives. ICANN is governed by and acts through an international
14 Board of Directors that is elected by members of various constituencies within the
15 Internet community. Among the members of these groups are operators of gTLDs
16 that compete with each other and with VeriSign; domain name registrars that are
17 present or potential competitors of each other and of VeriSign for certain services;
18 foreign governments and foreign registries that have ccTLDs that compete with the
19 gTLD registries operated by VeriSign; and others. ICANN also operates in
20 cooperation with various industry boards that are comprised of existing or potential
21 competitors of VeriSign. ICANN frequently carries out its activities, including the
22 conduct alleged herein, through the collective action of these constituent groups.

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

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

17 **THE 2001 .COM REGISTRY AGREEMENT**

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

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

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

4 24. Under the 2001 .com Registry Agreement, VeriSign is required to
5 provide “Registry Services” to ICANN-accredited registrars in a manner meeting the
6 performance and functional specifications attached to the agreement. “Registry
7 Services” generally are defined in the agreement as follows:

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

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

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

5 27. Recognizing the potential for harm to VeriSign from ICANN’s
6 subsequent adoption of specifications or policies, the parties included in the 2001
7 .com Registry Agreement a provision entitled “Protection from Burdens of
8 Compliance With ICANN Policies.” That provision expressly provides: “ICANN
9 shall indemnify, defend, and hold harmless Registry Operator [VeriSign] . . . from
10 and against any and all claims, damages, liabilities, costs, and expenses, including
11 reasonable legal fees and expenses, arising solely from Registry Operator’s
12 compliance as required by this Agreement with an ICANN specification or policy
13 (including a Consensus Policy) established after the Effective Date”

14 28. The 2001 .com Registry Agreement further sets forth the following
15 “General Obligations of ICANN.” “With respect to all matters that impact the rights,
16 obligations, or role of Registry Operator,” the agreement explicitly provides that
17 ICANN shall, among other obligations: (i) “exercise its responsibilities in an open
18 and transparent manner,” (ii) “not unreasonably restrain competition and, to the
19 extent feasible, promote and encourage robust competition,” and (iii) “not apply
20 standards, policies, procedures and practices arbitrarily, unjustifiably or inequitably
21 and not single out Registry Operator for disparate treatment unless justified by
22 substantial and reasonable cause.”

23 29. The 2001 .com Registry Agreement establishes affirmative obligations
24 of ICANN: (i) to establish and maintain “independent review policies” and “adequate
25 appeal procedures” to be available to VeriSign to the extent it “is adversely affected
26 by ICANN standards, policies, procedures or practices,” and (ii) to take all reasonable
27 steps, and make substantial progress, towards entering into agreements, similar to the
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1 2001 .com Registry Agreement, with registries competing with the .com gTLD
2 registry operated by VeriSign.

3 30. In addition to such express obligations not unreasonably or inequitably
4 to interfere with VeriSign's registry business, ICANN is subject to an implied
5 covenant of good faith and fair dealing not to take actions unfairly or in bad faith to
6 deprive VeriSign of the intended benefits of the 2001 .com Registry Agreement.
7 Further, at all times relevant hereto it was understood and agreed between the parties
8 that ICANN would not unreasonably withhold or delay consent to reasonable
9 updates, upgrades or other changes in the operation of or specifications for the
10 registry.

11 31. Nothing in the 2001 .com Registry Agreement authorizes ICANN to do
12 any of the following: (i) prohibit, regulate, or restrict VeriSign's provision of
13 services that are not defined Registry Services governed by the agreement;
14 (ii) regulate or fix the prices at which VeriSign may offer such services; or
15 (iii) regulate, restrict, or prohibit the marketing methods or promotions VeriSign uses
16 to promote its services.

17 **ICANN'S CONDUCT WITH RESPECT TO VERISIGN'S PROPOSED**
18 **NEW SERVICES HAS RESTRAINED COMPETITION AND VIOLATED**
19 **THE 2001 .COM REGISTRY AGREEMENT**

20 32. As the operator of the registry for the .com gTLD, VeriSign competes
21 with the operators of registries for other gTLDs and ccTLDs. VeriSign's commercial
22 and competitive success in operating the .com registry depends in substantial part on
23 its ability to offer services that are attractive to its customers, which include the
24 registrars of second-level domain names and the domain name registrants who are
25 customers of those registrars. In order to serve its customers and preserve its
26 competitive position, VeriSign has attempted to provide a variety of new innovative
27 value-added services to its customers to enhance the value and attractiveness of
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1 second-level domain names registered in the .com gTLD. These services have been
2 blocked, delayed and/or restricted by ICANN's wrongful conduct.

3 Site Finder

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

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

22 35. Other gTLD and ccTLD registries that compete with the .com gTLD
23 registry, including the .museum gTLD registry, with which ICANN has a registry
24 agreement, and ccTLD registries, many of which have no agreements with ICANN,
25 are currently offering services similar to Site Finder, and the operators of other gTLD
26 and ccTLD registries have stated that they intend to launch similar services. ICANN
27 has never objected to the offering of such services by these other gTLD and ccTLD
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1 registries, and ICANN facilitated the offering of a service similar to Site Finder by
2 the .museum gTLD.

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

8 37. Nonetheless, on October 3, 2003, ICANN demanded that VeriSign
9 suspend its Site Finder service, wrongly asserting, *inter alia*, that Site Finder is a
10 Registry Service within the meaning of the 2001 .com Registry Agreement and that
11 ICANN has the right to restrict or prohibit the offering of Site Finder and/or establish
12 the terms and conditions upon which the service may be offered (“Suspension
13 Ultimatum”). In its Suspension Ultimatum, ICANN further asserted that the
14 operation of Site Finder by VeriSign was inconsistent with the 2001 .com Registry
15 Agreement and threatened VeriSign that, unless Site Finder was suspended forthwith,
16 ICANN would initiate legal proceedings against VeriSign, thereby threatening
17 VeriSign’s operation of the .com registry. In connection with the Suspension
18 Ultimatum, ICANN issued false public statements that VeriSign was violating its
19 obligations as registry operator and interfering with the stability of the Internet.

20 38. ICANN’s demands upon VeriSign were made in conjunction with and at
21 the behest of various constituent groups within ICANN and other businesses that
22 compete with VeriSign. As a direct result of the Suspension Ultimatum and related
23 actions by ICANN, VeriSign was forced to suspend Site Finder to the detriment of
24 VeriSign and millions of Internet users.

25 39. ICANN’s improper conduct has deprived consumers of a beneficial new
26 service and VeriSign of revenues and profits it would generate from and in
27 connection with Site Finder. In addition, by unjustifiably imposing improper
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1 conditions on the Site Finder service, ICANN has deprived VeriSign of the ability to
2 formulate and offer a service in the manner best designed to meet the needs of
3 customers and the competitive and financial goals of VeriSign.

4 Wait Listing Service

5 40. 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 41. Using WLS, a prospective domain name registrant, through any of the
12 approximately 130 ICANN-accredited registrars, could submit a subscription on a
13 first-come, first-served basis for a domain name currently registered in the .com
14 gTLD registry. In the event that a registered domain name in the .com gTLD
15 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 42. 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 43. As proposed by VeriSign, WLS is not integral to the operation of the
25 .com TLD registry and is not a Registry Service within the meaning of the 2001 .com
26 Registry Agreement.

1 44. Nevertheless, ICANN discussed VeriSign's proposed offering of WLS
2 with, and sought agreements with respect to WLS from, ICANN's registrar
3 constituency, the members of which are in competition or potential competition with
4 VeriSign, potential customers of VeriSign for WLS, and other Internet constituency
5 groups. Based in part on opposition to WLS from its registrar constituency, ICANN
6 announced to the Internet community that WLS is a Registry Service within the
7 meaning of the 2001 .com Registry Agreement. In addition, ICANN has asserted
8 against VeriSign the authority to: (i) prevent the offering of WLS, (ii) set the price at
9 which it may be offered, (iii) establish the terms and conditions of the service, and
10 (iv) restrict when WLS can be introduced.

11 45. VeriSign would have been ready and able to begin offering WLS to
12 registrars and their customers in or before August 2002, and would have done so, but
13 for ICANN's conduct alleged herein. As a condition purportedly to approving WLS,
14 ICANN insisted that VeriSign must, among other things: (i) introduce new
15 procedures not required by the 2001 .com Registry Agreement; (ii) delay offering
16 WLS at least until approximately October 2003, and now indefinitely; (iii) reduce the
17 price at which VeriSign intended to offer WLS based on input from competitors; and
18 (iv) accept other "conditions" of ICANN suggested by and intended to benefit various
19 ICANN constituencies to the detriment of VeriSign, competition, and the proposed
20 service. While VeriSign's offering of WLS is being delayed by ICANN's conduct,
21 members of ICANN's registrar constituency who have objected to WLS, and others,
22 are free, without these impediments by ICANN, to offer similar services that are
23 competitive with WLS, and numerous registrars have offered and are offering such
24 services.

25 46. Furthermore, ICANN has imposed conditions on VeriSign, changed
26 conditions, and imposed new conditions for offering WLS arbitrarily, unjustifiably,
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1 and inequitably, delaying and preventing introduction of WLS, and ICANN has done
2 so in a manner that is not open or transparent.

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

13 ConsoliDate

14 48. In or about January 2003, VeriSign began offering a new domain name
15 registration expiration date ("anniversary date") synchronization service known as
16 "ConsoliDate." ConsoliDate was designed to make it easier for domain name
17 registrants, through any of the approximately 130 ICANN-accredited registrars, to
18 manage the registration and renewal of multiple domain names, by adjusting and
19 synchronizing the anniversary dates of their various domain name registrations.

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

26 50. ConsoliDate allows domain name registrants in the .com gTLD to add
27 from 1 to 364 days to an existing domain name registration term. For example, a
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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 51. 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 52. 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 53. 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 threaten, among other adverse effects
21 on competition, a future interruption in the offering of ConsoliDate.

22 54. 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 is not open and transparent.

25 55. 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
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1 customers and the competitive and financial goals of VeriSign, and has deprived
2 VeriSign of revenues and profits it would have generated from and in connection
3 with ConsoliDate.

4 **Internationalized Domain Names**

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

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

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

1 59. IDN is not integral to the operation of the .com registry and is not a
2 “Registry Service” within the meaning of the 2001 .com Registry Agreement.

3 60. While IDN makes possible the use of non-ASCII character sets in users’
4 native languages, the registered second-level domain name within the .com gTLD
5 must be in ASCII characters. To trigger the translation of the domain name from
6 ASCII characters to the corresponding non-ASCII characters, these domain names
7 include the prefix “bq--” in the testbed, and will include the prefix “xn--” when IDN
8 is launched.

9 61. An appendix to the 2001 .com Registry Agreement purports to “reserve”
10 to ICANN all “tagged domain names” with “hyphens in the third and fourth
11 characters.” VeriSign therefore sought ICANN’s authorization to use domain names
12 with an “xn--” prefix to enable the .com gTLD registry to provide IDN service, as
13 other competing ccTLD registries that are not under contract with ICANN are already
14 doing or have publicly announced they intend to do.

15 62. ICANN has conditioned its approval of the release of domain names
16 with hyphens in the third and fourth characters from reserved status, however, on
17 VeriSign’s formal agreement to abide by certain “Guidelines for the Implementation
18 of Internationalized Domain Names,” among other conditions. These “Guidelines”
19 and other conditions ICANN has sought to impose would require costly and
20 burdensome procedures not within the contemplation of the 2001 .com Registry
21 Agreement. Even though VeriSign has operated the IDN testbed for nearly three
22 years and has maintained IDN registrations for nearly one million names in that
23 testbed, ICANN has arbitrarily and unreasonably withheld its consent to the new
24 service.

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

3 64. ICANN's actions have caused, among other adverse affects on
4 competition, a delay in VeriSign's offering of IDN, other than on a third-level testbed
5 environment.

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

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

19 66. In or about November 2001, VeriSign launched an incentive promotion
20 program that encouraged domain name registrars to promote the sale of second-level
21 domain names in the .com gTLD on their web sites. Under the promotion,
22 participating webmasters were offered incentive on non-discriminatory terms to
23 display an advertisement for .com domain names on their site. The promotion
24 required participants to display a VeriSign advertisement prominently on every web
25 page on which a participating registrar offered domain names for registration. In
26 exchange for such advertisements, VeriSign would pay placement fees and provide
27 other consideration to participants in the promotional program. The impetus for and
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1 purpose of this marketing program was to enable VeriSign to meet the increased
2 competition for domain name registrations from new and rapidly growing ccTLDs
3 and from newly established gTLDs.

4 67. Nonetheless, within days of the launch of VeriSign's marketing
5 program, ICANN improperly demanded that VeriSign cease the program on the
6 ground that it had not been approved by ICANN, even though nothing in the 2001
7 .com Registry Agreement or elsewhere required ICANN's approval therefor, and
8 ICANN threatened to declare VeriSign in formal breach of the 2001 .com Registry
9 Agreement unless the program was suspended. ICANN refused to withdraw its threat
10 to declare VeriSign in breach of the agreement, until VeriSign committed to modify
11 its marketing program to conform to ICANN's arbitrary and improper dictates.

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

24 **ICANN'S BREACHES OF THE REGISTRY AGREEMENT**

25 **Issuing Improper Ultimatum to Shut Down Site Finder**

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

5 70. No proper basis existed for ICANN's issuance of the Suspension
6 Ultimatum, which was a violation of the 2001 .com Registry Agreement. The
7 Suspension Ultimatum was issued despite the facts: (i) that Site Finder was fully
8 compliant with all applicable specifications and standards; (ii) did not destabilize the
9 operation of the .com gTLD registry, the DNS, or the Internet; and (iii) other
10 competing gTLD and ccTLD registries continue to offer services similar to Site
11 Finder. In taking this action, ICANN singled VeriSign out for arbitrary and disparate
12 treatment, failed to act in an open and transparent manner, and acted without having
13 in place a functional mechanism for independent review of its action, all as required
14 by the 2001 .com Registry Agreement. Furthermore, the Suspension Ultimatum was
15 undertaken without ICANN's compliance with the procedural and substantive
16 safeguards necessary to adopt a valid Consensus Policy.

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

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

24 72. ICANN's unjustified and overreaching attempt to regulate services that
25 VeriSign offers to registrars and to domain name registrants, in breach of the parties'
26 registry agreement, has delayed and otherwise impeded the introduction of new
27 services by VeriSign. ICANN has also attempted improperly to regulate and to fix
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1 the prices at which those services may be offered by VeriSign. As a result, ICANN's
2 conduct has harmed competition and caused injury to VeriSign, and threatens to
3 continue to cause such harm and injury to VeriSign in the future.

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

10 74. As alleged in more detail above with respect to specific new services of
11 VeriSign, the effect of ICANN's improper attempt to broaden the definition of
12 Registry Services governed by the agreement has been: (i) to prohibit, delay and
13 impede the introduction of beneficial new services by VeriSign, (ii) to impose
14 conditions on the offering of these services, (iii) improperly to set or regulate the
15 prices of those services, (iv) unreasonably to restrain competition for such services
16 and interfere with VeriSign's business, and (v) unfairly to prevent VeriSign from
17 securing the benefits contemplated by the Registry Agreement.

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

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

3 **Failing to Promote Competition and**
4 **Unreasonably Restraining Competition**

5 77. The foregoing course of conduct places VeriSign at a competitive
6 disadvantage in comparison to other gTLDs under contract with ICANN that have
7 been allowed to offer and market similar, competitive services without the same
8 restrictions, delays, and impediments that ICANN has placed on VeriSign. This
9 conduct is a breach of ICANN's obligations under the 2001 .com Registry Agreement
10 "not [to] apply standards, policies, procedures and practices arbitrarily, unjustifiably
11 or inequitably and not single out Registry Operator for disparate treatment."

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

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

20 79. At the time VeriSign and ICANN entered into the 2001 .com Registry
21 Agreement, the parties understood and intended, and ICANN committed to VeriSign,
22 that ICANN would use all reasonable efforts, and make substantial progress, toward
23 signing agreements similar to the 2001 .com Registry Agreement with registries,
24 particularly the over 240 ccTLD registries, that compete with the .com gTLD registry
25 operated by VeriSign. The mutually understood purpose of this commitment was to
26 assure that, to the maximum extent feasible, competitive registries would be

1 competing on an equal footing with the .com gTLD registry. This obligation on the
2 part of ICANN was carried over from the 1999 Registry Agreement with NSI.

3 80. Notwithstanding this obligation, ICANN has failed to make substantial
4 progress toward entering into any agreements, much less agreements similar to the
5 2001 .com Registry Agreement, with competing registries, thereby severely and
6 adversely affecting VeriSign from a competitive perspective.

7 81. In fact, only 10 of the approximately 240 competing ccTLD registries
8 have entered into Registry Agreements with ICANN, and ICANN has publicly
9 admitted making little or no effort to have ccTLD registries do so. Moreover, of the
10 10 competing ccTLD registries with which ICANN does have agreements, those
11 agreements are not similar to the 2001 .com Registry Agreement, and do not impose
12 on the competing registries the obligations and restrictions that ICANN imposes, and
13 seeks to impose, on VeriSign based upon the 2001 .com Registry Agreement. As a
14 result, ICANN's failure in this regard has exacerbated the harm to competition from
15 ICANN's actions as alleged herein and the losses and damages VeriSign has incurred
16 and will continue to incur in the future.

17 **Other Breaches by ICANN**

18 82. ICANN has additionally breached its obligations to VeriSign under the
19 2001 .com Registry Agreement by, among other actions and omissions, and as more
20 fully alleged in this Complaint, consistently failing to exercise its responsibilities in
21 an open and transparent manner; applying its standards, policies, procedures, and
22 practices arbitrarily, inequitably, and in bad faith, and repeatedly and unjustifiably
23 singling VeriSign out for disparate treatment; and failing to establish any meaningful,
24 adequate, and independent review policies and procedures.

1 **FIRST CLAIM FOR RELIEF FOR**
2 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

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

5 84. The operation of TLD registries is a relevant product market. The
6 relevant geographic market is worldwide.

7 85. The acts of ICANN in restricting or purporting to “regulate” the non-
8 Registry Services offered, or proposed to be offered, by VeriSign, and to delay the
9 introduction or to set the prices or terms of those services, as alleged above, are the
10 collective and conspiratorial acts of ICANN and its members, including constituent
11 groups within ICANN and the members of those groups, and represent the collective
12 action of competitors in the relevant market and submarkets.

13 86. The acts of ICANN alleged above have unreasonably restrained and
14 restricted competition in the market for the operation of TLD registries and
15 submarkets thereof, and have deprived consumers of the benefits of free and open
16 competition in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and threaten
17 to continue to restrain such competition in those markets in the future unless enjoined
18 by the Court.

19 87. The specific wrongful acts of ICANN alleged above have not been
20 expressly or impliedly authorized or directed by DOC or any other agency of the
21 United States Government, nor have these specific acts been the subject of active
22 supervision by any agency of the United States Government.

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

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

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

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

13 **SECOND CLAIM FOR RELIEF**

14 **FOR INJUNCTIVE RELIEF FOR BREACH OF CONTRACT**

15 92. Plaintiff repeats and realleges the averments contained in paragraphs 1
16 through 91 above as though fully set forth herein.

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

21 94. ICANN has materially breached its obligations to VeriSign under and in
22 connection with the 2001 .com Registry Agreement, including covenants of good
23 faith and fair dealing therein, in that, among other conduct, ICANN issued the
24 Suspension Ultimatum demanding the suspension of Site Finder without any proper
25 ground therefor, without acting in an open and transparent manner, and without
26 having independent review policies in place.