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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

VERANDAGLOBAL.COM, INC., a Florida corporation, and BRYAN TALLMAN, a California citizen,

Plaintiffs,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California Corporation, and DOES 1–10,

Defendants.

Case No. 23STCV19554

Assigned to Hon. Stephen I. Goorvitch

DEFENDANT ICANN'S REPLY IN SUPPORT OF DEMURRER TO THE VERIFIED COMPLAINT OF VERANDAGLOBAL.COM, INC. AND BRYAN TALLMAN.

Date: February 15, 2024
Time: 8:30 A.M.
Dept: 39

Complaint Filed: August 16, 2023

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INTRODUCTION

Plaintiffs' Opposition to ICANN's Demurrer highlights the fundamental flaw with Plaintiffs' Complaint: ICANN has not made a statement, or issued any "policy," that entitles Plaintiffs to the domain names they seek to operate, and Plaintiffs will ***never*** be able to allege otherwise. Nor do Plaintiffs allege facts in the Complaint that could demonstrate any "relationship" between Plaintiffs and ICANN because there is none. The absence of any "policy," combined with the absence of any "relationship" means that Plaintiffs do not and cannot plead a viable cause of action, and their Complaint should be dismissed with prejudice.

Plaintiffs' contentions about ICANN's alleged Bylaws violations and fiduciary obligations are all contingent upon ICANN having "adopted" as "policy" the contents of a letter *Verisign wrote to ICANN* by ICANN merely *posting the letter on its website,* along with thousands of other letters written by third parties. (Compl. ¶¶ 55–58.) Nowhere do Plaintiffs allege—because they cannot—that ICANN's posting of a letter constitutes a "policy" that ICANN has adopted. Plaintiffs' addition of quotations from Christmas stories and new, yet irrelevant, factual allegations cannot cure the Complaint's obvious defects.

The law is clear: a demurrer should be sustained "when [t]he pleading does not state facts sufficient to constitute a cause of action." *Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.*, 2 Cal. 5th 505, 512 (2017) (quoting Cal. Civ. Proc. Code § 430.10(e)) (internal quotation marks omitted). Plaintiffs' Opposition further illuminates why the Complaint fails. For example, the Complaint does not specify what the contract between ICANN and Plaintiffs actually is, when it was formed, or what the terms are—nor do Plaintiffs dispute in their Opposition that they cannot assert any such allegations. Ironically, Plaintiffs' Opposition argues that ICANN is trying "to confuse the issues." (Opp'n at 2:13.) But there is little doubt that the Opposition intentionally attempts to distract the Court from how simple this case really is: Plaintiffs do not, and cannot, allege that there is a policy, action, contract, or duty that entitles Plaintiffs to any relief under the law.

ARGUMENT

I. PLAINTIFFS FAIL TO STATE A CLAIM FOR DECLARATORY RELIEF.

A claim for declaratory relief requires an actual controversy involving justiciable questions of law relating to the rights and obligations of the parties. *Wilson & Wilson v. City Council of Redwood City*, 191 Cal. App. 4th 1559, 1582 (2011). Plaintiffs have not adequately pled legal rights against ICANN that are capable of declaration, and Plaintiffs' Opposition does not cure the deficiency. *Otay Land Co. v. Royal Indem. Co*., 169 Cal. App. 4th 556, 563 (2008) ("[o]ne cannot analyze requested declaratory relief without evaluating the nature of the rights and duties that plaintiff is asserting, which must follow some recognized or cognizable legal theories[.]").

Plaintiffs rely on *Kremen v. Cohen*, 337 F.3d. 1024 (2003), which actually supports ICANN's position. Indeed, Plaintiffs fail to acknowledge that the court in *Kremen* held that the plaintiff lacked legal rights as a matter of law on claims similar to those at issue here. *Id.* at 1028–29. In *Kremen*, the court dismissed the breach of contract action on summary judgment after finding there was neither an express contract between Kremen (a registrant) and the registrar nor consideration given for the domain name at issue. *Id.* at 1028. As demonstrated in ICANN's Demurrer, there is no express contract here either and, like in *Kremen*, no consideration has been provided for the ASCII domain names Plaintiffs seek to acquire because Plaintiffs have not registered or otherwise paid for the rights to use those domain names. Instead, Plaintiffs' entire claim for declaratory relief hinges on a letter that was neither written by ICANN nor directed to Plaintiffs. Further, Plaintiffs' Opposition does not even try to respond to the fact that ICANN posts thousands of pieces of correspondence on its website in an effort to be open and transparent with the public.[1] Nor do Plaintiffs identify any other basis on which this letter could have created

[1] *See* https://www.icann.org/resources/pages/correspondence ("This page provides a centralized location to publish letters received by ICANN from external sources and track outgoing letters. As part of our commitment to transparency, ICANN publishes applicable written communication to this public Correspondence page."). Nowhere on ICANN's Correspondence page (or anywhere else on ICANN's website) is there any indication that all this correspondence, which dates back to ICANN's founding in 1998, is intended to form or in any way constitutes ICANN policy. Indeed, many of the letters are complaining to ICANN about various positions ICANN has considered or taken.

"ICANN policy."[2]

The bottom line is that all of Plaintiffs' claims depend on a letter written by Verisign and posted on ICANN's website in 2013, and that letter cannot possibly give rise to any claims against ICANN. Any other interpretation would be untenable and would result in hundreds of millions of potential claimants asserting claims against ICANN for statements ***not*** made by ICANN but merely posted on ICANN's website as part of ICANN's transparency activities.

II. PLAINTIFFS FAIL TO STATE A CLAIM UNDER CALIFORNIA'S UNFAIR COMPETITION LAW.

A. Plaintiffs Lack Standing to Sue Under the UCL.

In order to have standing under the UCL, a plaintiff must: "(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic injury*, and (2) show that that economic injury was the result of, i.e., *caused by*, the unfair business practice or false advertising that is the gravamen of the claim." *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 322 (2011). Plaintiffs' Opposition introduces facts not alleged in the Complaint (i.e., that Plaintiffs' allegedly "lost money in that they paid $0.18 for each domain name they registered or renewed each year"), and Plaintiffs do not cite to any portion of their Complaint that establishes standing. (Opp'n at 7:16–17.) Indeed, it is impossible for ICANN to ***cause*** the economic injury Plaintiffs allege when ***ICANN did not make any statement*** that entitles Plaintiffs to use the domain names they seek to use. (*See* Compl. Exhibit A1, A2.)

Plaintiffs' introduction of new facts in their Opposition is improper.[3] Even so, Plaintiffs' have ***not*** registered or paid any money for the domain names they seek to operate. (*See* Compl. Ex. A1, A2.) Moreover, ICANN does ***not*** receive any fees or monies directly from registrants, contrary to Plaintiffs' claim. (Opp'n at 1:17.) Plaintiffs cite to an ICANN webpage titled

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[2] Plaintiffs argue that ICANN has stated that registrants could rely on policies created by registries (Opp'n at 2), but there is no indication whatsoever that the "letter" Plaintiffs reference created a policy by Verisign (the registry for .COM), much less an ICANN policy.

[3] "A demurrer tests the legal sufficiency of factual allegations in *a complaint*." *Rakestraw v. Cal. Physicians' Serv.*, 81 Cal. App. 4th 39, 42–43 (2000) (citing *Title Ins. Co. v. Comerica Bank-California*, 27 Cal. App. 4th 800, 807 (1994) (emphasis added). *Rodas v. Spiegel*, 87 Cal. App. 4th 513, 517–518 (2001) (internal citations and quotations omitted) (finding that the court could only consider facts pleaded in plaintiff's complaint, facts capable of judicial notice, and admissions in plaintiff's opposition to demurrer).

"Registrar Fees,"[4] but the text of the webpage clearly states that Registrars, ***not registrants*** like Plaintiffs, pay ICANN a transaction fee of $0.18 per transaction.

B. Plaintiffs Cannot Properly Allege Unlawful, Unfair, or Fraudulent Action by ICANN.

1. Plaintiffs are *required* to plead a violation of an independent statute under the law.

As the California Supreme Court stated in *Berryman v. Merit Prop. Mgmt., Inc.,* 152 Cal. App. 4th 1544 (2007), "a violation of another law is a predicate for stating a cause of action under the UCL's unlawful prong." *Id.* at 1554. Nevertheless, Plaintiffs do not reference any statute that ICANN has allegedly violated.[5] Indeed, even if Plaintiffs listed a host of statutes that ICANN allegedly violated, Plaintiffs would still be required to plead facts to support their allegations, which Plaintiffs are unable to do. *See id.* ("While purporting to incorporate its factual allegations by reference, the SAC nonetheless fails to plead facts to support its allegations that [the defendant] has violated each of these statutes."). Without a reference to a statute allegedly violated by ICANN (and supported by facts), Plaintiffs' UCL claim must fail as a matter of law.

2. Plaintiffs do not properly allege unfair acts under the UCL.

When pleading an action under the unfair prong of the UCL, the burden is on Plaintiffs to show why ICANN is not permitted to take a certain action. *Berryman,* 152 Cal. App. 4th at 1555 (finding plaintiff's allegations insufficient and noting that "we are unaware of any statutory or case law that requires a for-profit business to point to a statute or contract that allows it to charge a fee for a service."). The same logic applies here: ICANN is not required to point to a statute or case that allows it to act. Rather, Plaintiffs must set forth a statute or case that prohibits the conduct. But Plaintiffs cannot do this because, no matter how many times Plaintiffs cite the provisions of ICANN's Bylaws, Plaintiffs cannot point to any statement made by ICANN that entitles Plaintiffs to the "sole right" to operate the "English/Latin Script" versions of the domain names in Exhibits A1 and A2.

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[4] Opp'n at 12 n.10 (citing https://www.icann.org/resources/pages/registrar-fees-2018-08-10-en.).

[5] Plaintiffs reference Evidence Code § 669 but then specifically state that "Plaintiffs do not allege a violation of the California Evidence Code to meet the 'unlawful' prong of their UCL claim," which further highlights the unintelligible nature of their Complaint. (Opp'n at 8:3–4). Indeed, despite directly referring to Evidence Code § 669, with no explanation for its reference, Plaintiffs now admit this is not a statute ICANN violated and Plaintiffs present no additional basis for their claim under the unlawful prong of the UCL. (*See* Compl. ¶ 112.)

3. Plaintiffs do not properly allege fraudulent acts under the UCL.

Plaintiffs' Opposition cites to four statements in their Complaint that allegedly plead fraud. (Opp'n at 9.) These statements, however, are conclusory and non-particular and therefore insufficient, such as "[ICANN is] knowingly and willfully making false and misleading claims regarding its promise to comply with its own policies and procedures regarding the issuance of Single-Character domain names listed in Exhibit A1 and A2." (Compl. ¶ 114.)

In *Daugherty v. Am. Honda Motor Co., Inc.*, 144 Cal. App. 4th 824 (2006), the court held that plaintiff's UCL claim under the fraudulent prong failed to state a claim because "[w]e cannot agree that a failure to disclose a fact one has no affirmative duty to disclose is 'likely to deceive' anyone within the meaning of the UCL." *Id.* at 838. The court went on to quote *Bardin v. DaimlerChrysler Corp*., 136 Cal. App. 4th 1255 (2006), stating "[i]n order to be deceived, members of the public must have had an expectation or an assumption about [the matter in question]." *Id*. at 1275 (holding that the plaintiff's second amended complaint "merely conclude[d] the public would likely be deceived, without pleading any facts showing the basis for that conclusion."). Here, like in the *Daugherty*, the Court has the power to find Plaintiffs' allegations insufficient and their "expectations" unreasonable at the demurrer stage. Plaintiff must adequately allege that "members of the *public* are likely to be deceived" by ICANN's practices.[6] *Daugherty*, 144 Cal. App. 4th at 838 (emphasis added). Plaintiffs have not done so nor could they. Indeed, the much more likely scenario is that no members of the public would mistakenly believe that a third party letter posted on ICANN's correspondence webpage somehow constitutes an "ICANN adopted policy[.]" (*See* Compl. ¶¶ 55–58.)

III. <u>PLAINTIFFS FAIL TO STATE A CLAIM FOR BREACH OF CONTRACT</u>.

The elements of a breach of contract claim are simple: (1) the existence of a contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damage to plaintiff. *Wall St. Network, Ltd. v. N.Y. Times Co*., 164 Cal. App. 4th 1171, 1178 (2008). Instead of pointing to statements in the Complaint that show the existence of a contract, Plaintiffs

[6] Plaintiffs concede the relevant standard for the fraudulent prong of the UCL is whether the public is likely to be deceived by the defendant's conduct. (*See* Opp'n at 9–10.)

devise an entirely new theory of contract in their Opposition—which is unstated in their Complaint—and label it as an issue of "first impression" for the Court to decide.[7] (Opp'n at 11:11.) Now, Plaintiffs want to allege a breach of contract claim on the basis that "[t]he Complaint identifies numerous policies and Bylaws that ICANN breached[,]" and that "Plaintiffs are performing on that contract in the form of payment[.]" (Opp'n at 11:25 & 12:1, 5.)

Such statements, even if they were present in Plaintiffs' Complaint, do not adequately plead a breach of contract claim. First, and foremost, there is no contract between Plaintiffs and ICANN. And, as Plaintiffs admit, they have no legal basis for claiming that ICANN's Bylaws form any sort of contract between ICANN and Plaintiffs, and Plaintiffs do not allege any other basis for a contract between them and ICANN, much less the terms of that alleged contract.[8] (Opp'n at 11.) Second, ICANN does not receive payment directly from registrants, as evidenced by Plaintiffs' own citations.[9] Finally, the legal standard is clear, as Plaintiffs cite, a complaint is required to "set forth the essential facts of his [or her] case with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent [of the plaintiff's cause of action.]" *Doe v. City of Los Angeles*, 42 Cal. 4th 531, 550 (2007). Plaintiffs have not met this burden in their Complaint or with the new facts and theories in their Opposition.

IV. <u>PLAINTIFFS FAIL TO STATE A CLAIM FOR BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING</u>.

Plaintiffs fourth claim for breach of the duty of good faith and fair dealing further highlights the deficiencies with all of Plaintiffs' contract actions (Counts Three through Five). Plaintiffs cannot identify any contract provisions tasking ICANN with a specific duty to deal fairly with Plaintiffs because there is no contract, which is a requisite for any duty of good faith and fair dealing claim. *Racine & Laramie, Ltd. v. Dep't of Parks & Recreation*, 11 Cal. App. 4th 1026, 1031–32 (1992). Simply alleging that ICANN violated its Bylaws does not create a

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[7] *See supra*, n.3.

[8] Plaintiffs also fail to acknowledge in their Opposition that Count Three for breach of contract fails to specify whether the contract sued upon is oral, written, or implied by conduct, as is required under Cal. Civ. Proc. Code § 430.10(g).

[9] Again, as clearly stated from the webpage Plaintiffs cite in their Opposition, Registrars—not registrants—pay transaction fees to ICANN. (*See* Opp'n at 12 n.10) (citing https://www.icann.org/resources/pages/registrar-fees-2018-08-10-en.). Plaintiffs are not Registrars.

contractual obligation on behalf of ICANN on which Plaintiffs could file suit. (*See* Opp'n at 11.)

V. **PLAINTIFFS FAIL TO STATE A CLAIM FOR QUASI-CONTRACT.**

Plaintiffs do not respond to ICANN's argument that the Court of Appeal's decision in *Cal. Med. Ass'n, Inc. v. Aetna U.S. Healthcare of Cal., Inc.*, 94 Cal. App. 4th 151 (2001) is on all fours.[10] *Cal. Med.* held that at the demurrer stage plaintiff could not proceed under its quasi-contract claim because the claim was based on the express terms of an actual contract. *Id.* at 172. ("However, *as a matter of law*, a quasi-contract action for unjust enrichment does not lie where, as here, express binding agreements exist and define the parties' rights.") (emphasis added).[11] Here, Plaintiffs want to maintain an action for breach of contract *and* quasi-contract, but they cannot state either claim. Plaintiffs' quasi-contract claim alleges entry into "an *implied or actual* contract with ICANN and/or its agents that is specified or governed by ICANN's policies and procedures." (Compl. ¶ 152.) (emphasis added). Yet, the law is clear that Plaintiffs cannot maintain an unjust enrichment claim off an actual contract. *Lloyd v. Williams*, 227 Cal. App. 2d 646, 649 (1964).

As for Plaintiffs' contention that ICANN retained an unjust benefit, *Cal. Med.* also held that any benefit conferred on defendants that was simply incident to their own obligations is not the basis for a quasi-contract action. *Cal. Med. Ass'n*, *Inc.*, 94 Cal. App. 4th at 174. Plaintiffs do not allege a specific benefit ICANN gets from allegedly holding certain domain names.

VI. **PLAINTIFFS FAIL TO STATE A CLAIM FOR NEGLIGENCE.**

Plaintiffs' Complaint does not adequately allege any duty owed by ICANN to Plaintiffs. Plaintiffs' Opposition cites to several statements describing what ICANN does as an entity, including its general mission, but such statements do not even remotely establish a duty owed by ICANN to the Plaintiffs. (*See* Compl. ¶ 24; Opp'n at 13–14.)[12] As noted above, Plaintiffs have

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[10] Plaintiffs' citation to *Fremont Indem. Co. v. Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 113–14 (2007) is irrelevant. Not only does *Fremont* have nothing to do with quasi-contract actions, but the portion of *Fremont* Plaintiffs cite is in the context of judicial notice. *See id.*

[11] Further, the court explicitly cautioned against plaintiff using contract claims interchangeably. "[T]he record indicates that CMA is improperly seeking to proceed on a quasi-contract claim only after trying unsuccessfully by its first amended complaint to enforce various express contracts against defendants directly." *Cal. Med. Ass'n, Inc.*, 94 Cal. App. 4th at 173.

[12] The statements that Plaintiffs cite to in ¶ 24 of Plaintiffs' Complaint are taken from a lawsuit ICANN was involved in. Such general statements about ICANN's mission cannot be mistaken for (or convoluted into) ICANN assuming a

had no interaction with ICANN; instead, Plaintiffs registered certain domain names through Registrars, who pay a separate transaction fee to ICANN. This does not create a "duty of care" that runs from ICANN to Plaintiffs or to any of the other millions of persons and entities that have registered domain names.

Even more perplexing is Plaintiffs' introduction of a new set of damages in their Opposition, which were not raised in Plaintiffs' Complaint[13] and are plainly inapplicable under the economic loss rule. The economic loss rule states that "[i]n general, there is no recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by *physical or property damage*." *See Sheen v. Wells Fargo Bank, N.A.*, 12 Cal. 5th 905, 922 (2022) (emphasis added) (also noting "[a]n actor has no general duty to avoid the unintentional infliction of economic loss on another.") (citations omitted). Clearly, there has been no physical or property damage to either Plaintiff and, despite Plaintiffs' seemingly new theory that non-economic damages are asserted in Plaintiffs' negligence claim, the damages sought in Count Six are clear. Specifically, paragraph 165 of Plaintiffs' Complaint (pertaining to Count Six) seeks only economic damages. (Compl. ¶ 165.) Plaintiffs' Prayer for Relief is likewise devoid of any reference to non-economic damages. (Compl. at 37.)

Plaintiffs' analysis of the *Biakanja* and *J'Aire* factors are misguided. *See Biakanja v. Irving*, 49 Cal. 2d 647, 650 (1958); *J'Aire Corp. v. Gregory*, 24 Cal. 3d 799, 804 (1979). It is plainly not foreseeable that ICANN could cause harm to other entities, including Plaintiffs, based on a letter written by a third party and posted on ICANN's correspondence webpage, along with the hundreds of other letters ICANN receives and posts each year. Moreover, there is no "closeness of connection" between ICANN and Plaintiffs. Indeed, ICANN's point is that ICANN had virtually no relationship with Plaintiffs and took no action directed at Plaintiffs prior to Plaintiffs' initiation of this lawsuit.

Finally, Plaintiffs do not respond coherently to ICANN's argument that "[i]f Plaintiffs are in a special relationship with ICANN, it would follow that all other registrants and billions of

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general duty to the public.

[13] *See supra*, n.3.

individual Internet users are as well." (Opp'n at 18:11–12.) Plaintiffs' Opposition describes a general "duty of care" owed by ICANN to all users of the Internet, but ICANN does not have such a duty and certainly not to individual registrants. (*See* Opp'n at 13–14, 18.)

VII. **PLAINTIFFS FAIL TO STATE A CLAIM FOR FRAUDULENT INDUCEMENT.**

"In civil actions for fraud [i]t is a cardinal rule of pleading that fraud must be pleaded in specific language descriptive of the acts which are relied upon to constitute fraud. It is not sufficient to allege it in general terms, or in terms which amount to mere conclusions." *People v. Croft*, 134 Cal. App. 2d 800, 802 (1955) (internal quotation marks and citations omitted). Plaintiffs' Opposition does not dispute this point or cite any allegations that meet this burden. (*See generally*, Opp'n.) Indeed, even the case cited by the Plaintiffs notes the importance of the specificity requirement. *See Comm. On Children's Television, Inc. v. Gen. Foods Corp*., 35 Cal. 3d 197, 216 (1983). First, specificity provides "notice to the defendant, to furnish the defendant with certain definite charges which can be intelligently met[;]" and second, "a complaint should be sufficiently specific that the court can weed out nonmeritorious actions on the basis of the pleadings. Thus, the pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud." *Id*. at 216–17 (internal quotation marks and citations and omitted). Here, the sheer lack of any specificity in Plaintiffs' Complaint demonstrates that Plaintiffs' fraud claim must be dismissed.

Plaintiffs contend that lesser specificity is needed for Plaintiffs' fraud allegations because ICANN supposedly knows more about the alleged fraud than Plaintiffs. (Opp'n at 19.) Plaintiffs are mistaken. Less specificity is permitted *only* "*when it appears from the nature of the allegations* that the defendant *must* necessarily possess full information concerning the facts of the controversy[.]" *Comm. On Children's Television, Inc.,* 35 Cal. 3d. at 217 (emphasis added) (internal quotation marks and citations omitted). Here, the nature of the allegations reveal that ICANN possesses no more knowledge than Plaintiffs. ICANN posted a letter it received, as is ICANN's standard practice,[14] and now has been sued because Plaintiffs contend that the contents of that letter magically constitute "ICANN policy." Moreover, Plaintiffs plainly ignore that "[a]

[14] *See* https://www.icann.org/resources/pages/correspondence.

fraud claim based upon the suppression or concealment of a material fact *must* involve a defendant who had a legal duty to disclose the fact." *Hoffman v. 162 N. Wolfe LLC*, 228 Cal. App. 4th 1178, 1186 (2014) (citing Cal. Civ. Code § 1710(3), defining deceit) (emphasis added). ICANN owed no legal duty to disclose anything to Plaintiffs, and Plaintiffs cannot cite any authority that states otherwise. (*See* Compl. ¶¶ 166–74) (merely using the word "concealment" ad nauseum in Count Seven does not meet the specificity requirement).

VIII. PLAINTIFFS LACK STANDING TO SUE ICANN.

Plaintiffs plainly lack standing to sue ICANN. In the Complaint, Plaintiffs cite to various alleged agreements[15] to which Plaintiffs are not a party nor a beneficiary, yet try to argue that these alleged agreements somehow confer standing on Plaintiffs. (*See* Opp'n at 21–22.) *Kremen* (the case cited by Plaintiffs), however, explicitly held that the plaintiff ***lacked*** the ability to sue on agreements and documents where the plaintiff was not a clear intended beneficiary. *Kremen* noted in contracts with government entities, "[p]arties that benefit … are generally assumed to be incidental beneficiaries, and may not enforce the contract absent a clear intent to the contrary." *Kremen*, 337 F.3d at 1029 (citation omitted). Notably, "[t]he contract must establish not only an intent to confer a benefit, but also 'an intention ... to grant [the third party] enforceable rights.'" *Id.* (citation omitted). The same is true with regard to the agreements (between ICANN and third parties) that Plaintiffs reference in their Complaint—there is no clear intent, or even room for misguided interpretation, to confer enforceable rights to Plaintiffs.

CONCLUSION

For the foregoing reasons, ICANN respectfully requests that this Court sustain ICANN's Demurrer and dismiss Plaintiffs' Complaint with prejudice.

[15] Plaintiffs cite to the following alleged agreements in their Complaint: Department of Commerce ("DoC") License Agreement (¶ 25); DoC Memorandum of Understanding (¶ 25); Cooperative Agreement between National Science Foundation and Network Solutions (¶ 29); Cooperative Agreement and amendments between NTIA and Verisign (¶ 31); and ICANN and Verisign's Registry Agreements (¶¶ 32, 35, 70, 88).

Dated: February 6, 2024

JONES DAY

By: */s/ Jeffrey A. LeVee*
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS