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7 NAMES AND NUMBERS

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 SURAJ KUMAR RAJWANI, an individual,
12
13 Plaintiff,

14 v.

15 B52 MEDIA LLC, a Limited Liability
Company; JONATHAN W. BIERER as
16 personal representative of the Estate of
Lonnie Borck; INTERNET CORPORATION
FOR ASSIGNED NAMES AND
17 NUMBERS, a Corporation; eNOM, Inc., a
Corporation; WHOIS PRIVACY
18 PROTECTION SERVICE, INC., a
corporation and DOES 1 THROUGH 100,
19
20 Defendant.

CASE NO. CGC-16-554684

**DEFENDANT ICANN'S REQUEST
FOR JUDICIAL NOTICE IN
SUPPORT OF DEMURRER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

[Notice of Demurrer and Demurrer,
Memorandum of Points and Authorities,
Declaration of Amanda Pushinsky, and
[Proposed] Order filed concurrently
herewith]

Date: June 29, 2017
Time: 9:30 a.m.
Dept: 302

Complaint Filed: October 6, 2016

RESERVATION ID: 05250629-06

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that, pursuant to Sections 452 and 453 of the California
3 Evidence Code, Defendant Internet Corporation for Assigned Names and Numbers (“ICANN”)
4 hereby respectfully requests that, in considering its concurrently-filed Demurrer pursuant to
5 California Code of Civil Procedure section 430.10(e), the Court take judicial notice of the
6 following documents, which are attached to the Declaration of Amanda Pushinsky In Support of
7 ICANN’s Demurrer to Plaintiff’s Second Amended complaint (“Pushinsky Decl.”):

- 8 1. “Domain Name Registration Process,” available at
9 <https://whois.icann.org/en/domain-name-registration-process>. [Pushinsky Decl. Ex. A];
- 10 2. “About Change of Registrant,” available at
11 <https://www.icann.org/resources/pages/ownership-2013-05-03-en>. [Pushinsky Decl. Ex. B];
- 12 3. “What Does ICANN do?,” available at
13 <https://www.icann.org/resources/pages/what-2012-02-25-en>. [Pushinsky Decl. Ex. C];
- 14 4. “ICANN FAQs” available at [https://www.icann.org/resources/pages/faqs-2014-01-](https://www.icann.org/resources/pages/faqs-2014-01-21-en)
15 [21-en](https://www.icann.org/resources/pages/faqs-2014-01-21-en). [Pushinsky Decl. Ex. D];
- 16 5. Excerpt of ICANN’s Bylaws, as amended October 1, 2016, available at
17 <https://www.icann.org/resources/pages/governance/bylaws-en>. [Pushinsky Decl. Ex. E];
- 18 6. “About Unauthorized Transfers and Changes of Registrant,” available at
19 <https://www.icann.org/resources/pages/unauthorized-2013-05-03-en>. [Pushinsky Decl. Ex. F];
- 20 7. January 30, 2017 “Stipulation re: Disclaimer of Interest by eNOM, Inc. and
21 WHOIS Privacy Protection Service, Inc.,” filed on January 30, 2017 in conjunction with
22 Plaintiff’s Case Management Statement. [Pushinsky Decl. Ex. G].

23 These documents, which are proper subjects of judicial notice, are relevant because they
24 will assist the Court in determining whether ICANN’s Demurrer should be sustained on the
25 grounds that ICANN is not a necessary party to the action and cannot provide the relief Plaintiff
26 seeks.

1 **LEGAL STANDARD**

2 In considering a demurrer, a court may consider facts that are properly the subject of
3 judicial notice. Cal. Civ. Proc. Code §430.30(a); Cal. Evid. Code §§452-454.

4 **I. ICANN WEBSITE PAGES**

5 Exhibits A through D, and F, are properly the subject of judicial notice, as the public
6 archive pages on ICANN’s website constitute “[f]acts and propositions that are not reasonably
7 subject to dispute and are capable of immediate and accurate determination by resort to sources of
8 reasonably indisputable accuracy.” Cal. Evid. Code § 452(h); *see also Monterey Peninsula*
9 *Taxpayers Ass’n v. Cnty. of Monterey*, 8 Cal. App. 4th 1520, 1532, n.8 (1992) (recognizing the
10 court may take judicial notice of matters of public records not reasonably subject to dispute).

11 Each exhibit is publicly available on the website of the source of the document (here,
12 ICANN’s website). ICANN is a California non-profit public benefit corporation, responsible for
13 administrating portions of the Internet’s Domain Name System. These documents come directly
14 from ICANN’s website, and are therefore not reasonably subject to dispute. Further, because
15 each of these documents is publicly available on ICANN’s website, they are capable of
16 immediate and accurate determination. Because Exhibits A through D and F are publicly
17 available on the noted website, and because their existence is not reasonably subject to dispute,
18 these items may be judicially noticed.

19 **II. ICANN’S BYLAWS**

20 Exhibit E is properly the subject of judicial notice, as ICANN’s bylaws are pertinent to
21 Plaintiff’s claims, not subject to reasonable dispute, and are publicly available on ICANN’s
22 website. *See El-Attar v. Hollywood Presbyterian Med. Ctr.*, 56 Cal. 4th 976, 989 (2013) (taking
23 judicial notice of the model bylaws of the California medical association); *People v. Lofchie*, 229
24 Cal. App. 4th 240, 260 (2014) (“We granted the Regents’ request that we take judicial notice of
25 the University’s conflict of interest code, faculty code of conduct, code of ethics, and its policies,
26 guidelines, and personnel manuals implementing those codes.”)

27 Indeed, previous iterations of ICANN’s Bylaws have been determined to be proper
28 subjects of judicial notice. *Verisign, Inc. v. Internet Corp. for Assigned Names & Nos.*, No. CV

1 04-1292 AHM (CTx), 2004 U.S. Dist. LEXIS 17330 (C.D. Cal. Aug. 26, 2004) (taking judicial
2 notice of earlier version of Bylaws when granting Rule 12(b)(6) motion).

3 Because Exhibit D is publicly available on ICANN's website and its existence is not
4 reasonably subject to dispute, it may be judicially noticed.

5 **III. STIPULATION**

6 Exhibit G is properly the subject of judicial notice, as the "Stipulation re: Disclaimer of
7 Interest by eNOM, Inc. and WHOIS Privacy Protection Service, Inc." is part of the record of this
8 case. Cal. Evid. Code § 452(d). A trial court may properly take judicial notice of the records of
9 any court of record of California or any other state of the United States. *Id.*; *see Williams v.*
10 *Wraxall*, 33 Cal. App. 4th 120, 130, fn. 7 (1995) ("We may take judicial notice of the *existence* of
11 judicial opinions and court documents . . .") (emphasis in original).

12 Section 453 of the Evidence Code further provides that the trial court "shall" take
13 judicial notice of any matter specified in section 452 if a party requests it and gives sufficient
14 notice of the request and provides the court with sufficient information to enable it to take judicial
15 notice. Cal. Evid. Code § 453; *see also Aaronoff v. Martinez-Senftner*, 136 Cal. App. 910, 919
16 (2006) ("Although the clerk's transcript does not contain an order granting judicial notice, we
17 may assume the trial court granted judicial notice inasmuch as defendants gave plaintiff sufficient
18 notice of the request and furnished the trial court with sufficient information to enable it to take
19 judicial notice of the matter").

20 Exhibit G was filed on January 30, 2017 in conjunction with Plaintiff's Case Management
21 Statement. Because Exhibit G constitutes a record of a California court and its existence is not
22 reasonably subject to dispute, it must be judicially noticed.

23 **CONCLUSION**

24 For the foregoing reasons, ICANN respectfully requests that the Court take judicial notice
25 of and consider Exhibits A-G, attached to the Declaration of Amanda Pushinsky, in its
26 determination of ICANN's Demurrer.

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Dated: June 2, 2017

Jones Day

By: 
Amanda Pushinsky

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS