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7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10

11 THE INTERNET CORPORATION FOR) ASSIGNED NAMES AND NUMBERS,)	CASE NO. CV 07-2089 R (PLAx)
12 Plaintiff,)	SUPPLEMENTAL DECLARATION
13 v.)	OF KEVIN MEDINA RE:
14 REGISTERFLY.COM, INC., and)	COMPLIANCE WITH COURT
15 UNIFIED NAMES, INC. ,)	ORDER OF MAY 25, 2007
16 Defendants.)	Place: Ctrm. 8 (Hon. Manuel L. Real)

17

18

19 I, Kevin Medina, declare:

20 1. I am the principal of RegisterFly.com, Inc. and UnifiedNames, Inc.,
21 defendants in the above-referenced action. Unless otherwise stated, I have first hand
22 personal knowledge of the facts set forth herein. I have reviewed the declarations of
23 Mr. Conte and Ms. Eisner provided by ICANN in support of their assertion that
24 RegisterFly has failed to comply with the orders of this Court. I submit this
25 declaration in response to the statements made therein to demonstrate where the
26 statements are false or misleading.

27 2. *ICANN claims that it still does not have a complete copy of the*
28 *registration data for the equitable registrants of those domain names currently*

1 *identified as registered through a proxy registration service, such as "ProtectFly."*

2 This is simply false. Prior to June 1, we uploaded 2 files which contained
3 underlying "proxy" data. In addition, on June 1, 2007 at approximately 9:00 p.m.
4 via SFTP, approximately 200,000 records were uploaded in a file. This file
5 contained 800,000 rows, which represented 4 rows per domain name representing a
6 total of 200,000 rows or domain names protected by Privacy Protection. *We have*
7 *provided ALL data we have on file. We cannot manufacture data which we do not*
8 *have.*

9 3. *ICANN claims that it has only received equitable registrant data*
10 *relating to fewer than 35,000 of the proxy-registered names and ICANN claims that*
11 *there are approximately 180,000 affected proxy-registered domain names. ICANN*
12 *also claims that, of the records received on May 24, 2007 purporting to relate to the*
13 *equitable registrants, over 1,300 of the records still refer to "ProtectFly" and do not*
14 *provide the required equitable registrant data.*

15 This is false. As with the point addressed in paragraph 2 (above), *RegisterFly*
16 *has produced all of the data that it has. We do not have the additional data about*
17 *which ICANN is complaining. There is no more data to be produced.*

18 4. *ICANN claims we have not complied as follows: 'At approximately*
19 *5:00 p.m. PDT on June 1, 2007, ICANN received another transmission from*
20 *RegisterFly purporting to be data relating to proxy-registered names. This new data*
21 *has records for approximately 200,000 of the proxy-registered names, and*
22 *approximately 2,700 of the records still refer to "ProtectFly" and do not provide the*
23 *required equitable registrant data.'*

24 This is false. The data provided is all the data that RegisterFly has. This is
25 data the client(s) may have coerced or manipulated (e.g. copy and paste registrant
26 info from a protected name to a non-protected name). Some clients may do this to
27 avoid paying the renewal fee of the privacy service – but this is not RegisterFly's
28 doing. *Nonetheless, RegisterFly.com has provided all of the data that it has in its*

1 *possession and has complied with the order.*

2 5. *ICANN also claims that RegisterFly did not timely comply as follows:*
3 *"The June 1, 2007 call was the first time that anyone from RegisterFly contacted the*
4 *staff at ICANN to discuss how RegisterFly may be able to standardize its .csv format*
5 *to RFC 4180 standards or an otherwise usable. I reached an agreement with Mr.*
6 *Medina, who was present on the call for RegisterFly, regarding what RegisterFly*
7 *could do to standardize their files, though I indicated that the process may require*
8 *additional refining."*

9 This statement is misleading. During the June 1, 2007 call, ICANN admitted
10 that the data was complete and usable with minor modifications – but that they
11 didn't want to make the modifications themselves. The issues identified were (1) a
12 few extra lines of text called SQL (Structured Query Language) statements being
13 present at the top four rows and the bottom four rows of the file, and (2) A missing
14 Delimiter on the end of the each record. Both items took approximately 30 minutes
15 to resolve in the file provided, and *a modified file was transmitted to ICANN on*
16 *June 1, 2007.*

17 6. *ICANN claims that it did not receive a complete, compliant set of the*
18 *entirety of the Data that RegisterFly was required to produce under Paragraphs 1-3*
19 *of the PI until June 2, 2007.*

20 This statement is true. However, we did reach an understanding during the
21 June 1, 2007 call that the file would be uploaded Saturday morning and this is
22 exactly what we did.

23 7. *ICANN also claims that '[a]ll prior data submissions made by*
24 *RegisterFly were not made in compliance with RFC 4180 specifications, nor were*
25 *they in the negotiated format. Though the submissions were all made in some type of*
26 *.csv format, each was made in a non-standardized form. Mr. Medina's assertion that*
27 *"it is clear that [the submissions] are in the required .csv format," as stated in his*
28 *June 1, 2007 Declaration at Paragraph 8, is just not true.'*

1 This statement is wholly incorrect. The file provided to ICANN was in .csv
2 format – has were all prior files provided by RegisterFly to ICANN. What was not
3 correct was that there were some irregularities – those described in paragraph 5,
4 above. I had no knowledge that these issues raised problems for ICANN until after
5 my declaration regarding compliance was submitted. There was no intent to
6 mislead the Court in any respect by making that statement.

7 One of the reasons I had no knowledge of ICANN's problem with the file is
8 that I have transferred the same information in the same format to Godaddy in
9 connection with the bulk transfer we recently completed (at ICANN's request).
10 Godaddy had no problem whatsoever using the files and never raised any issues
11 with formatting irregularities to them.

12 8. *ICANN also claims that "[o]n May 31, 2007, ICANN finally received a*
13 *file purporting to be an MD5 hash from RegisterFly to accompany a data*
14 *transmission. ICANN had never received an MD5 hash from RegisterFly before.*
15 *This May 31, 2007 MD5 hash –required for its use as a comparison tool to assure*
16 *file integrity – did not match the hash generated by ICANN over the transmitted*
17 *file."*

18 This statement is misleading. It was determined that the file was in the
19 correct format, but was additionally encrypted for added security. This additional
20 pass phrase may be the reason for the discrepancy. ***Nonetheless the file was***
21 ***corrected and uploaded again on June 2, 2007.***

22 9. *ICANN also suggests that there was a lack of compliance with respect*
23 *to the MD5 hash which was provided by RegisterFly. Mr. Conte states "In*
24 *Paragraph 3 of his declaration, Mr. Medina relies upon a March 27, 2007 email*
25 *from me as a basis for his understanding that he was not required to produce an*
26 *MD5 hash to ICANN. The email, however, only addressed encryption standards,*
27 *and makes no mention of an MD5 hash file, which has never been mentioned as an*
28 *encryption tool."*

1 This statement is also misleading. There was a misunderstanding, it seems,
2 based on the semantics of the Injunction. During the meeting we had on Friday,
3 June 1, 2007, it was determined the request was basically to provide a simple MD5
4 hash file of the uploaded file which would be the basis of a comparison of the
5 uploaded file. The verbiage "MD5 algorithm" added to the confusion when all that
6 was expected was a simple Md5 hash. **This "MD5" hash was provided in the files
7 uploaded on June 2, 2007.**

8 10. *ICANN claims that the notice was finally posted to the home page of
9 RegisterFly's sight as of June 4, 2007 and that the notice only appears on the bottom
10 of the page.*

11 This claim is false. *The site was updated with the notice on June 2 at 9:13
12 a.m. by our webmaster.* As I previously explained, due to the urgency of time, the
13 location on the bottom of the home page and the help center was the location we
14 could most expeditiously post the notice to consumers. Attached hereto as Exhibit
15 A is a true and correct copy of the notices presently appearing on the
16 www.registerfly.com website as of June 2, 2007.

17 11. *ICANN claims that, as of June 4, 2007, the most recent privacy/proxy
18 data submission from RegisterFly contained records for approximately 2,700
19 domain names still masked with a proxy who is identifier.*

20 That may be true. However, this does **not** mean RegisterFly is not in
21 compliance. We provided to ICANN all of the information in our files. In order to
22 figure out what names are "masked" and do research to determine whether it is
23 possible for us to provide a detailed response, we would need a detailed listing of
24 the 2700 names. If we are provided with this list, we can see if the default profile
25 can be restored for that domain name in the event there is some additional
26 information that was entered into that profile by the registrant. We have not been
27 provided a list of those names.

28 12. *ICANN claims that RegisterFly has not provided all of the data to*

1 which ICANN is entitled pursuant to Paragraph 8 of the Injunction. The Order
2 clearly provides that RegisterFly must provide all data discussed in Section 3.4.3 of
3 Registrar Accreditation Agreement. RegisterFly has provided all of the data
4 mentioned therein which is in its possession. However, there is some additional
5 information which falls within the categories of Section 3.4.3 which RegisterFly has
6 attempted to obtain for ICANN, but it is in the possession of Tucows, RegisterFly's
7 Hosted Registrar Solution which maintains all data for RegisterFly. Tucows has
8 informed RegisterFly that it will take up to three weeks to provide that additional
9 information. Therefore despite RegisterFly's best efforts, Tucows is not able to
10 provide the additional audit data for ICANN until approximately three weeks.

11 13. *ICANN claims that RegisterFly has never provided ICANN with the*
12 *identification of the physical locations of where the data is stored.*

13 This statement is misleading, as ICANN knows that RegisterFly does not
14 maintain its own data and does not know where Tucows maintains the data.
15 However, ICANN fails to inform the Court is that ICANN has always been aware
16 that RegisterFly does not store its own data, and ICANN has been in direct contact
17 with Tucows regarding the management of RegisterFly's data. ICANN has had
18 direct discussions with Tucows regarding the data to be transferred, and Tucows
19 participated at the request of ICANN on a 3/2/2007 call to discuss the handling of
20 deleted names. *Interestingly, while Tucows has indicated to RegisterFly that it*
21 *cannot obtain the additional audit information requested for another three weeks,*
22 *ICANN has the right and ability – by virtue of this Court's sanctions order – to go*
23 *to Tucows and obtain a copy of that data for itself. Thus, ICANN has immediate*
24 *access to this information, but RegisterFly does not.*

25 14. *ICANN asserts that, as a reseller, there were an unusual number of*
26 *customer service issues.* This statement by ICANN is no longer relevant.
27 RegisterFly has acted a reseller from 2000 to the present. We only became
28 operational in January of 2006. While we are not disputing there may have been

1 customer service issues in the past, the reality is that, compared to the number of
2 clients being serviced, the names under management, and the price points for which
3 we provided our services, RegisterFly's rate of customer service issues is on par
4 with the industry. In addition, since the bulk transfer to names to Godaddy.com
5 which was recently completed, the customer service demand has dropped
6 significantly and now our response rates are within 24 hours – which is well within
7 industry standards.

8 15. *ICANN claims that "RegisterFly's description of its reseller activities*
9 *still leave it open to responsibilities such as the collection and maintenance of*
10 *registration data for the names registered through its reselling service, as well as*
11 *customer service responsibilities – the same actions that precipitated (in part) the*
12 *instant suit and termination."*

13 This is false. The actual data collection/storage is the primary responsibility
14 of the registrar that we use – not of RegisterFly. We are provisioning names via their
15 API and pass the appropriate registrant data at the time of purchase. *We are not*
16 *going to be providing proxy data service in the future so we will not have the*
17 *responsibility to store the underlying data.*

18 16. *ICANN claims that its consumer protection goals in assuring a posting*
19 *of Notice to Consumers regarding termination are even more essential now that it*
20 *has confirmation that RegisterFly intends to remain active in the domain name*
21 *registration business as a reseller.*

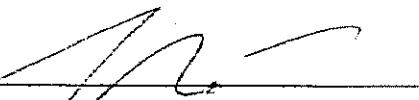
22 There is no increased interest in protecting customers as a result of
23 RegisterFly providing reseller services. RegisterFly has posted on our home page
24 and the client services page a notice advising consumers of the change. See
25 <http://registerfly.com/help/>, <http://registerfly.com/>, and
26 <http://registerfly.com/scripts/account.php>

27 In addition, we have additional messaging within the account manager
28 advising as such. Godaddy has also done a comprehensive notification to consumers

1 alerting the change of registrar. Thus, all former RegisterFly customers have been
 2 personally notified and all future RegisterFly customers will see the notice on the
 3 home page, on the client services page, and in the account manager portion of the
 4 website.

5 17. ICANN complains that it was able to find additional references on
 6 www.registerfly.com to RegisterFly serving as a registrar. Unfortunately, and
 7 despite my best efforts and knowledge as of the date of my prior declaration, this
 8 may be true. The website is over 4000 pages and we have been diligent in removing
 9 all of the references that we could find. However, we continue to find ones that we
 10 unintentionally missed. However, this is not something included in the Court's
 11 Order and, therefore, this failure is not a basis for imposing future sanctions. We
 12 continue to remove any references that we find.

13
 14 I declare under penalty of perjury under the laws of the United States of
 15 America that the foregoing is true and correct and that this was executed on the 10th
 16 day of June, 2007, at _____.

17
 18 
 19 Kevin Medina

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EXHIBIT A



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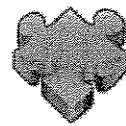


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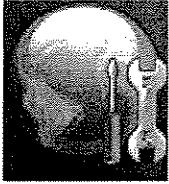
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PROOF OF SERVICE BY HAND-DELIVERY

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 350 S. Figueroa Street, Suite 299, Los Angeles, California 90071.

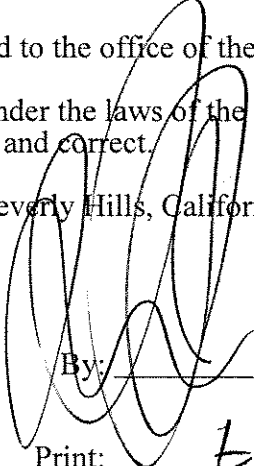
On June 11, 2007, I served the document described as **SUPPLEMENTAL DECLARATION OF KEVIN MEDINA RE: COMPLIANCE WITH COURT ORDER OF MAY 25, 2007** on the parties in this action by delivering a true copy thereof enclosed in a sealed envelope addressed as follows:

Jeffrey A. LeVee
Samantha Eisner
Jones Day
555 S. Flower Street, 50th Floor
Los Angeles, CA 90071-2300
Tel: (213) 489-3939
Fax: (213) 243-2539
Attorneys for Plaintiff

I delivered such envelope(s) by hand to the office of the addressee(s).

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

EXECUTED on June 11, 2007 at Beverly Hills, California.

By: 
Print: Tim Lawson