

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2012 FEB 14 PM 3:54

CLERK OF THE COURT

DEPUTY CLERK

D. STEPPE

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6
7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED JURISDICTION

CGC-12-518251

11 CORPORATE CONCEPTS,
12 Plaintiff
13
14 v.
15 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS;
and DOES 1-10
16 Defendants

No.

COMPLAINT FOR:

- 1. BREACH OF WRITTEN CONTRACT
- 2. BREACH OF IMPLIED CONTRACT
- 3. GOODS AND SERVICES RENDERED
- 4. NEGLIGENT MISREPRESENTATION

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19 GENERAL ALLEGATIONS

20 COMES NOW plaintiff CORPORATE CONCEPTS and alleges as follows:

21 Parties and Jurisdiction

22 1. Plaintiff CORPORATE CONCEPTS is, and at all times herein mentioned was, a
23 commercial entity with its principal place of business in Mill Valley, California.

24 2. Defendant INTERNET CORPORATION FOR ASSIGNED NAMES AND
25 NUMBERS ("ICANN") is, and at all times herein mentioned was, a California corporation with its
26 principal place of business in Los Angeles County, California.

1 3. The contract alleged in this Complaint was to be performed wholly in San
2 Francisco County, California.

3 4. The amount at issue in this Complaint exceeds the jurisdictional minimum of this
4 Court.

5 5. The true names or capacities, whether individual, corporate, associate or otherwise,
6 of defendants DOE 1 to DOE 20, inclusive, are unknown to Plaintiff, who therefore sues said
7 defendants by such fictitious names, and Plaintiff prays leave of Court to amend this complaint to
8 insert their true names and capacities when the same are ascertained. Plaintiff is informed and
9 believes, and thereon alleges, that each of the defendants designated herein as a DOE is legally
10 responsible in some manner for the events and happenings referred to herein.

11 **Background of the Dispute**

12 6. Plaintiff Corporate Concepts is in the business of planning and executing large-
13 scale corporate events. Kelli Tonnesen is Corporate Concepts' principal and founder.

14 7. Defendant ICANN is an international corporation that assigns Internet addresses.
15 On information and belief, ICANN relies on local affiliated organizations called Internet Societies
16 ("ISOCs") to support ICANN's efforts by, among other things, acting as ICANN's agent to plan
17 and organizing local events. The San Francisco Bay Internet Society ("SFBayISOC") is one such
18 affiliate.

19 8. On November 21, 2010, Annalisa Roger of SFBayISOC contacted Ms. Tonnesen of
20 Corporate Concepts, identifying herself as an agent of ICANN and Vice Chair of its local chapter
21 SFBayISOC. Ms. Roger told Ms. Tonnesen ICANN had designated her to plan a gala event in
22 connection with its annual conference, to be held in San Francisco from March 12-17, 2011. The
23 gala was scheduled for March 16, 2011.

24 9. At Ms. Roger's request, Corporate Concepts designed, researched, and proposed
25 three potential venues for the gala—The Academy of Sciences in Golden Gate Park, Union
26 Square, and Treasure Island—and submitted three estimated budgets. Each budget contained a
27

1 line item for Corporate Concepts' non-refundable management fee. The management fee for the
2 selected venue at the Academy of Sciences was \$40,000.00.

3 10. On December 4, 2010, Ms. Roger accepted Corporate Concepts' bid on behalf of
4 ICANN by email. Ms. Roger stated that she had "just finished a meeting with ICANN" in which
5 ICANN and Ms. Roger had agreed to hire Corporate Concepts and to pay its management fee, with
6 the choice of venue to be decided. As of December 4, therefore, ICANN and Corporate Concepts
7 had a contract. A true and correct copy of the December 4, 2010 email is attached hereto as
8 **Exhibit A.**

9 11. Four days later, Ms. Roger confirmed Corporate Concepts' status as "our event
10 planner" in an email that was copied to ICANN.

11 12. With an agreement in place, Ms. Tonnesen blocked out the months of January
12 through March to devote to the ICANN project. From that point forward, planning the gala was
13 Ms. Tonnesen's full-time job.

14 13. Industry standard lead time for securing a venue and planning an event of this
15 magnitude would be approximately twelve to eighteen months prior to event. With only 90 days'
16 lead time, the ICANN gala required an extremely tight time schedule. Ms. Tonnesen forewent all
17 Corporate Concepts business generation activities, including attendance at industry functions over
18 the lucrative holiday period, to devote her time to ICANN

19 14. Between December 8 and 15, ICANN selected the Academy of Sciences as its
20 venue, and at ICANN's request, Ms. Tonnesen undertook substantial efforts to creatively design
21 and customize the event to ICANN specifications, and to secure bids for catering, equipment,
22 transportation, entertainment, décor, florals, staging, audio visual, signage, staffing and other
23 elements of the event.

24 15. On December 15, 2010, Corporate Concepts submitted a detailed initial budget.
25 The December 15 budget contained a line item for "Corporate Concepts Management Fee" of
26 \$40,000.00, which was consistent with the proposal ICANN accepted on December 4.

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1 16. On January 5, 2011, after considerable preparation, Ms. Tonnesen led Ms. Roger on
2 a site visit of the museum, introducing Ms. Roger to the facility and the caterers, and giving her a
3 timeline of the event.

4 17. On January 6, Ms. Tonnesen summarized the terms to which ICANN had agreed,
5 and under which she had been operating, in a formal Letter of Agreement, which incorporated the
6 December 15 budget and an initial invoice. The Letter of Agreement clearly stated the terms on
7 which Corporate Concepts would handle the event: among other things, ICANN would pay
8 Corporate Concepts a non-refundable management fee of \$40,000.00. The initial invoice included
9 the management fee (labeled as a "non-refundable good faith deposit") and additional amounts to
10 secure the venue and other third-party services. A true and correct copy of the Letter of
11 Agreement is attached hereto as **Exhibit B**.

12 18. At Ms. Roger's request, Ms. Tonnesen forwarded the invoice to ICANN on January
13 11, 2011. In her email, copied to three individuals at ICANN as well as to Ms. Roger, Ms.
14 Tonnesen referenced the "many hours of planning and creative development" she had spent
15 preparing for the event. The invoice itself references the "Letter of Agreement, dated January 6,
16 2011."

17 19. Thus, as of January 11, 2011, ICANN was on notice that

- 18 (1) Ms. Roger, expressly acting as ICANN's agent, had hired Corporate
19 Concepts to plan and execute the gala;
20 (2) Starting in November 2010, Ms. Tonnesen had blocked out time and
21 expended numerous hours in collaboration with Ms. Roger to plan the gala
22 at ICANN's request; and
23 (3) Should ICANN cancel the event or terminate the contract, Corporate
24 Concepts would retain a nonrefundable management fee for its services.

25 20. With tight deadlines and an enormous amount of work ahead, Ms. Tonnesen pushed
26 forward with her efforts to plan the gala on ICANN's behalf until, on February 4, ICANN
27
28

1 informed her that it had engaged a competitor to plan the gala and that Plaintiff's services were no
2 longer required.

3 21. As of the date of this filing, ICANN has refused to compensate Plaintiff for its
4 services, and has refused to pay the non-refundable management fee required under the contract.

5 **FIRST CAUSE OF ACTION**
6 **(Breach of Written Contract)**

7 22. Plaintiff incorporates by reference paragraphs 1 through 21 of this Complaint, as if
8 set forth herein.

9 23. At all times described in this Complaint, Annalisa Roger represented to Plaintiff
10 that she was an agent of defendant ICANN. Ms. Roger repeatedly held herself out as an agent of
11 ICANN in communications that were directed to and/or copied to ICANN.

12 24. As of December 4, 2010, Plaintiff and Defendant entered into a contract, which was
13 reduced to writing in a series of emails and a written contract dated January 6, 2011. The written
14 contract specifies that Plaintiff will perform certain services on behalf of ICANN in preparation for
15 ICANN's March 16, 2011 gala in San Francisco. In exchange, ICANN was obligated to pay
16 Plaintiff a non-refundable "good faith deposit" of \$40,000.00.

17 25. Plaintiff duly and expertly performed the services required of her under the
18 contract. On February 4, 2011, ICANN breached the contract by informing Ms. Tonnesen that
19 Plaintiff's services were no longer desired.

20 26. As of this date, specific performance of the contract is no longer possible.

21 27. ICANN has refused to pay Plaintiff the \$40,000.00 management fee to which it
22 agreed. As a result of ICANN's breaches, Plaintiff forewent alternative employment opportunities
23 and incurred other expenses, in an amount to be proven at trial.

24 **SECOND CAUSE OF ACTION**
25 **(Breach of Implied Contract)**

26 28. Plaintiff incorporates by reference paragraphs 1 through 21 of this Complaint, as if
27 set forth herein.

1 29. Pursuant to California Civil Code section 1619 et seq., a contract may be implied by
2 the conduct of the parties to it.

3 30. As described above, Beginning on or about November 21, 2010, Defendant,
4 through its agent Ms. Roger, asked Plaintiff to plan its March 16, 2011 gala in San Francisco.
5 Over the ensuing weeks, Ms. Roger and Plaintiff discussed the terms pursuant to which Plaintiff
6 would perform services to ICANN, and at ICANN's request, Plaintiff in fact performed those
7 services.

8 31. Each party intended that a contract be formed, and acted as though a contract had
9 been formed. The parties reduced the agreement to writing.

10 32. Defendant breached the implied contract between the parties.

11 33. ICANN has refused to pay Plaintiff the \$40,000.00 management fee to which it
12 agreed. As a result of ICANN's breaches, Plaintiff forewent alternative employment opportunities
13 and incurred other expenses, in an amount to be proven at trial.

14 **THIRD CAUSE OF ACTION**
15 **(Goods and Services Rendered)**

16 34. Plaintiff incorporates by reference paragraphs 1 through 21 of this Complaint, as if
17 set forth herein.

18 35. As described above, Defendant expressly requested, through its agent Ms. Roger,
19 that Plaintiff render certain services for its benefit.

20 36. Plaintiff performed the requested services on Defendant's behalf and to Defendant's
21 benefit.

22 37. Defendant has not paid Plaintiff for the value of the services rendered.

23 38. The negotiated minimum value of the services rendered to Defendant is \$40,000.00.

24 **FOURTH CAUSE OF ACTION**
25 **(Negligent Misrepresentation)**

26 39. Plaintiff incorporates by reference paragraphs 1 through 21 of this Complaint, as if
27 set forth herein.

1 40. At all times material hereto, ICANN, directly and indirectly, made knowing and/or
2 reckless false and misleading statements about its intent to hire Plaintiff and pay Plaintiff for its
3 work.

4 41. ICANN knew that Plaintiff was relying on ICANN's representations and
5 performing services on its behalf.

6 42. Reasonably believing ICANN's misrepresentations, Plaintiff expended numerous
7 hours planning ICANN's gala event and refrained from pursuing other opportunities, to its
8 detriment.

9 43. As a direct and proximate result of Defendant's misrepresentations and/or
10 omissions, Plaintiff has suffered significant financial loss.

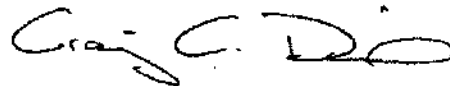
11 **PRAYER**

12 By reason of the foregoing, Plaintiff Corporate Concepts prays for judgment as follows:

- 13 1. A determination that Defendant ICANN breached its contract with Plaintiff
14 Corporate Concepts;
- 15 2. Damages for breach of contract sufficient to restore to Corporate Concepts the
16 bargained-for benefits of the contract, in an amount to be determined at trial, but which will be not
17 less than \$40,000.00;
- 18 3. Interest to the extent allowed by law; and
- 19 4. Such other and further relief as this court deems just and equitable.
- 20

21 Dated: February 14, 2012

AXCEL LAW PARTNERS LLP

22 

23
24 Craig C. Daniel
25 Attorneys for Plaintiff CORPORATE
26 CONCEPTS
27
28

EXHIBIT A

Subject: Re: Streets of San Francisco Gala Budget Estimate and Photos

Date: Saturday, December 4, 2010 1:24:05 PM PT

From: annalisaroger@dotgreen.org

To: Kelli Tonnesen

Hi Kelly

I have just finished a meeting with ICANN. Thank you for the draft proposal.

We have not agreed on the venue. We have agreed on the following:

me to hire you, the event planner at your price. :-). Thank you :-). (while I still have the challenge of sponsorship to confirm.)

We have agreed on the number of guests to be 1300

We need to lower venue costs...(which includes astroturf and buses, etc) ...an idea is to hold the party in Union Square. (Hotel event guy Ryan will interface with us in this...I will send you more info about this soon

We will need a live band...Chris Isaac or other?

We like your Beach Blanket Babylon actors idea...

We want your streets of SF Buffet food tables and decor.

Riser and production same ?

High tables and stools...and seating...but no sit down dinner.

Street artists, palm reader, hippy actor , other.

I would like flowers handed out "for your hair" to guests. And maybe a string of beads, optional peace signs and smiley faces? No \$25 gifts.

Add printing banners and signs for sponsor logos

Photographer - free from ICANN

No security

Can you please run the numbers table and see where we are?

I think I can get buyin for under \$400,000

but it has to be spectacular.

I am working on the venue price and will send to you later today.

Best

A

EXHIBIT B



January 6, 2011

Nick Tomasso
ICANN
4676 Admiralty Way #330
Marina del Rey, CA 90292

Re: ICANN Streets of San Francisco Gala
California Academy of Sciences
March 16, 2011
1,700 Guests

INVOICE
#9489-1

Per Letter of Agreement, dated January 6, 2011

- 50% of total event costs due upon signature, representing \$40,000.00 non-refundable good faith deposit, venue & vendor deposits, site inspection, collateral design and print production to include monies on account at Corporate Concepts

Total Amount due Corporate Concepts.....\$206,142.50

Due upon receipt
Wire transfer information attached

Tax ID #567-96-2201



**Corporate Concepts Wire Transfer
Bank Information**

BANK NAME: Bank of Marin
19 Sunnyside Avenue
Mill Valley, California 94941
Heidi Duckor, Branch Manager
PHONE 415 380-4661
FAX 415 388-5562

BANK ROUTING NUMBER: Private Financial Info Redacted

NAME ON ACCOUNT: CORPORATE CONCEPTS

BANK ACCOUNT NUMBER: Private Financial Info Redacted

\$25.00 processing fee

EIN Private Financial Info Redacted



January 6, 2011

Annalisa Roger
SF Bay ISOC c/o ICANN

Re: ICANN Streets of San Francisco Gala
California Academy of Sciences
March 16, 2011
1,700 Guests

Corporate Concepts is looking forward to handling arrangements in conjunction with ICANN Gala Event, March 16, 2011 at the California Academy of Sciences in San Francisco, California. This letter will serve as a contractual agreement between ICANN and Corporate Concepts for our involvement in the preparation, planning and operation of the above-referenced program.

Appointment of Corporate Concepts

ICANN hereby appoints Corporate Concepts as the company of record for this event. Corporate Concepts will immediately begin to confirm arrangements as outlined in the Corporate Concepts budget dated December 15, 2010. Corporate Concepts acknowledges that certain modifications to the program may be made prior to program date. Corporate Concepts will submit a revised cost estimate based upon final program destination and inclusions.

Event Arrangements & Services to be Delivered

For purposes of this Agreement, event arrangements will be defined as all services outlined in the Corporate Concepts Ball budget dated December 15, 2010, (Attachment A). Our event arrangements and budget for this event is \$412,285.00 based upon a minimum attendance of 1,500 guests. Any changes to the program as outlined may cause changes in the event arrangements price.

301 Oakdale Avenue
Mill Valley, California 94941
T: 415 381 8144
F: 415 381 4154
www.corporateconcepts.com



Accordingly, ICANN agrees as follows:

Pre Program Service

Printed Materials: Seven banner signs (sponsor recognition and SF neighborhood)
Ten Easel Floor plan Signs (Westin Lobby and Academy)
One "Register Now" easel Sign (sfisoc)
One "Event Information" easel sign
1,700 "Event Menu" name badge inserts
Event Directional and Bus Signage
Lombard Street Signs
Venue Entrance Sign w/ICANN logo

Program Implementation: Program finalization, status reviews, team management, vendor communications and negotiations, contract/budget/timeline management, food and beverage, set up and facilities, venue and hotel liaison quality control

On Site Services

Travel Staff: Services of one Corporate Concepts Account Executive and 8 travel directors.

Logistics: Detailed coordination and supervision all aspects of Gala event program at venue and Westin.

Transportation: 20- 50 passenger motor coaches to provide round trip transport for 1,000 guests from Westin to Academy plus 5 - 9 passenger Lincoln Town Cars for VIPS. Guests who drive to event (estimate 700 guests) on own will be responsible for parking fees at Academy.

Post Program: Full accounting, preparation and presentation of the final bill within 60 days of program completion.

Additional Billing

Charges and services that are not a part of the proposed program as outlined but which we are subsequently instructed and authorized to perform, will be invoiced on a basis of net cost, plus \$125 per hour.

Project Administration Fee

A minimum Corporate Concepts Management Fee of \$40,000.00 is included as outlined in the budget based upon a minimum participation of 1,500 guests. Corporate Concepts will charge ICANN for actual, telephone, fax, auto transportation/parking, and Federal Express charges associated with this event.



Taxes and Gratuities

All taxes, gratuities and service charges applicable to the services and items stated in the budget are included. Any increases in taxes or service charges will be reflected in the final billing statement.

Deposit and Payment Schedule

So that we may make necessary deposits, order materials and satisfy advance payments for services to be performed during the event, as well as schedule office staff to proceed at this time, the following payment schedule will apply:

- 50% of total event costs due upon signature, representing \$40,000.00 non-refundable good faith deposit, venue & vendor deposits, site inspection, collateral design & print production to include monies on account at Corporate Concepts.
- 50% of total event costs due thirty (30) days prior to event (February 16, 2011).
- Final balance of total event costs due two weeks (14 days) prior to event to include any additional billing authorized to date. (March 2, 2011).
- Corporate Concepts will submit a final bill detailing all costs approximately sixty (60) days after the completion of the program.

Re-scheduled and/or Cancellation Policies:

Corporate Concepts

In the event that this program is canceled or re-scheduled for any reason, Corporate Concepts will invoice ICANN representing 100% of total Management Fee. This fee represents all Corporate Concepts staff time for research, planning, budgeting, event activity flow, negotiation, supplier coordination, site inspection trips, and all other works in process. It is understood that Corporate Concepts will use its best efforts to minimize vendor cancellation fees and supplier penalties and negotiate on behalf of ICANN to secure return deposits. Transparent supporting documentation will be provided to ICANN. All deposit monies will be applied to the final bill.

San Francisco Academy of Science

A: Rescheduling. Subject to availability, ICANN may reschedule an Event to another date no later than six (6) months after the original Date of Event, provided that ICANN notifies the Academy of such request for rescheduling at least sixty (60) days prior to the original Date of Event. If ICANN so reschedules an Event, the Rental Fee Deposit will be applied to the rescheduled Event.
Default by ICANN. If ICANN fails to pay the Rental Fee, Service Fee, Security Deposit or other amount when due, fails to timely provide evidence of required insurance, or otherwise fails to perform any obligation of Renter under this Agreement, the Academy may terminate this Agreement and Renter's right to use the Reserved Area.



B: Cancellation. If the Academy terminates this Agreement for any reason other than the default of ICANN, the Academy shall refund the Rental Fee Deposit and any other fees paid by ICANN within sixty (60) days after such cancellation. If ICANN cancels the Event or is unable or unwilling to reschedule the Event as set forth in Paragraph A above or the Academy terminates this Agreement due to the default of ICANN, the Academy shall be entitled to retain the Rental Fee Deposit as liquidated damages. The parties acknowledge that the actual damages the Academy would suffer in such circumstances are impracticable and extremely difficult to determine, and that the Rental Fee Deposit is a reasonable estimate of such damages.

Responsibility and Indemnification Clause

Corporate Concepts, 301 Oakdale Avenue, Mill Valley, CA 94941 and employees act only as representatives and agents of the various air carriers, hotels, cruise ships, public transportation companies and tour operators upon the expressed condition that they shall not be liable for any injury damage, loss, accident, delay or irregularities which may be occasioned wither by reason or defect in any vehicle, or through acts of default of any company or person engaged in conveying the passenger, operating contracted tour arrangements, or otherwise of any hotel proprietor or servant. Corporate Concepts and/or associated companies accept no responsibility for loss, damage or additional expenses due to common carrier delays, cancellations or changes, weather, sickness, strikes, war, lost baggage, quarantine, acts of God or other causes beyond their immediate and direct control. ICANN will indemnify and hold Corporate Concepts harmless for any injury caused to a person or property resulting in the use of Corporate Concepts services.

Impossibility

Should events beyond the control of Corporate Concepts such as strikes, acts of God or civil disturbances materially affect either party's ability to perform, ICANN or Corporate Concepts may either:

1. Terminate this Agreement or any part hereof as to Services not provided

OR

2. Suspend this Agreement in whole or in part for the duration of the delaying cause, and with both parties in agreement, provide the Service elsewhere.

Notwithstanding the above, the group cancellation and rescheduling fee described above will remain in force.

Dispute Resolution

ICANN agrees that in the event a dispute arises with respect to the enforcement or interpretation of this Agreement, the matter shall be submitted to binding arbitration and in accordance with the American Arbitration Association rules governing commercial disputes. Jurisdiction and venue for the hearing of such disputes shall be in San Francisco, California. Notwithstanding the above, the cancellation fee described above will remain in force.

If the arrangements and procedures covered in this letter agree with your understanding, kindly return to us the original with your acknowledgment, keeping one copy for your files. This will permit us to proceed as outlined.



CORPORATE CONCEPTS

Annalisa, we are very pleased to be working with the ICANN team on this program. Please be assured of my fullest cooperation in making Gala Event the success you anticipate.

Sincerely,

Accepted by

Kelli Tonnesen
Corporate Concepts
President

Date: _____

Name
ICANN
TITLE

Date: _____