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9 FEGISTRY, LLC, RADIX DOMAIN SOLUTIONS PTE. LTD.,  
10 and DOMAIN VENTURE PARTNERS PCC LIMITED

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR**  
13 **LOS ANGELES COUNTY**

14 Fegistry, LLC, Radix Domain )  
15 Solutions PTE LTD., and Domain ) CASE No. 20STCV42881  
16 Venture Partners PCC Limited, )  
17 ) **FIRST AMENDED COMPLAINT**  
18 Plaintiffs, )  
19 v. ) **JURY DEMAND**  
20 )  
21 Internet Corporation for Assigned Names )  
22 and Numbers, a California public benefit )  
23 corporation, and DOES I-X, )  
24 )  
25 Defendants. )  
26 \_\_\_\_\_ )

27 For their First Amended Complaint against the Internet Corporation for Assigned Names  
28 and Numbers (“ICANN”), Plaintiffs allege as follows:

29 **NATURE OF THE ACTION**

30 1. Plaintiffs bring this action to force ICANN to implement certain dispute resolution  
31 procedural mechanisms and safeguards specifically required by its bylaws (the ICANN  
32 “Accountability Mechanisms”) which are incorporated into Plaintiffs’ contracts with ICANN.  
33 The relevant ICANN bylaws, and hence Plaintiffs’ contracts with ICANN, require: (1) a  
34 “Reconsideration” process, (2) an independent Ombudsman review process, (3) a specially-  
35 trained, expert Standing Panel from which panelists will be drawn to hear and decide the merits

1 of Plaintiffs’ disputes with ICANN pursuant to its bylaws’ “Independent Review Process”  
2 (“IRP”) and which would *en banc* and *de novo* hear any appeal from any such decision; (4)  
3 procedural rules of practice within IRP proceedings (“IRP Rules”), and (5) that ICANN pay all  
4 administrative costs of an IRP.

5  
6 2. ICANN has breached all of the related contractual provisions (and its bylaws), as  
7 well as agreed modifications to several of the provisions, and has also misrepresented both the  
8 provisions and its intent to implement them, damaging each and all of the Plaintiffs. In fact,  
9 none of these supposed dispute resolution mechanisms have ever been implemented or followed  
10 by ICANN and are a sham whose design and actual effect is to deny *all* meaningful relief to  
11 claimants like the Plaintiffs who have disputes with ICANN.  
12

### 13 **THE PARTIES**

14 3. Plaintiff Fegistry, LLC is a Washington limited liability company with its principal  
15 place of business in Washington.  
16

17 4. Plaintiff Radix Domain Solutions PTE Ltd. is an Indian limited liability company  
18 with its principal place of business in India.

19 5. Plaintiff Domain Venture Partners PCC Ltd. is a Gibraltar limited liability  
20 company with its principal place of business in Gibraltar.  
21

22 6. By their contracts with ICANN, Plaintiffs each effectively own and/or control  
23 independent applications to ICANN to own and operate the generic top-level domain (“gTLD”)  
24 “.hotel” registry. By their additional contracts with ICANN, Plaintiffs each effectively own  
25 and/or control multiple Registry Agreements with ICANN, by which they operate various gTLD  
26 registries. Each of those agreements expressly and repeatedly incorporates ICANN’s Bylaws.  
27

28 7. Defendant ICANN is a California public benefit corporation with its principal  
place of business in Los Angeles, California. ICANN is the entity responsible for governing the

1 entire internet global domain name system (“DNS”), including domain name and IP address  
2 allocations throughout the world. ICANN’s responsibilities include whether and how to add new  
3 gTLDs to the root zone of the internet DNS. For example, whether, through whom, and on what  
4 terms to allow “.hotel” domain names such as hilton.hotel, westin.hotel, best.hotel,  
5 california.hotel, etc., to be registered and used on the internet for commerce, comment or any  
6 other legitimate purpose. ICANN currently governs more than one thousand gTLD registries  
7 that sell domain names for use on the internet, including legacy operations like .com and .org,  
8 and new gTLDs like .vacations, .viajes, .Google, .site, .London, .gay, .guitar, .horse, .hotels, and  
9 .hoteles. ICANN’s DNS governance covers virtually every web user and every website in the  
10 world, including those used personally, in the public sector, and in commerce. ICANN’s  
11 governance affects almost all aspects of private and public life, and trillions of dollars in  
12 commerce annually – including the vast majority of Plaintiffs’ business interests. The so-called  
13 Accountability Mechanisms in the ICANN bylaws and Plaintiffs’ contracts are checks on  
14 ICANN’s power and actions, as it is not overseen by any governmental entity.

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18 8. The true identities of defendants sued as DOES I-X are unknown to Plaintiffs at  
19 this time. Plaintiffs will amend this Complaint when these Defendants’ true identities become  
20 known. Each Defendant, including ICANN and each DOE, were at all relevant times acting as  
21 agents or other jointly liable parties in doing and failing to do the acts and omissions alleged.  
22 Whether express or implied, every allegation made against ICANN in this complaint is also  
23 made against each defendant DOE.

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1 **JURISDICTION AND VENUE**

2 9. This Court has personal jurisdiction over ICANN, and venue is appropriate in this  
3 Court. Defendant is a California public benefit corporation with its headquarters and principal  
4 place of business in Los Angeles County. In addition, a substantial part of the events giving rise  
5 to Plaintiffs’ claims occurred in Los Angeles County.  
6

7 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

8 **(Plaintiffs’ Original & Modified Contracts with ICANN & ICANN’s Related**  
9 **Misrepresentations)**

10 10. Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE Ltd. and Domain Venture  
11 Partners PCC Ltd. each submitted their .hotel gTLD application contracts to ICANN in May  
12 2012. ICANN accepted each on June 13, 2012. In each contract, Plaintiffs applied to ICANN  
13 for the rights to exclusively own and operate the new gTLD “.hotel.” Each contract required  
14 each Plaintiff to pay an application fee to ICANN of \$185,000.00 and required each Plaintiff to  
15 pay consultant and technical fees of hundreds of thousands of dollars more to prepare each  
16 application and move through the application process. That contract also incorporated by  
17 reference the “dispute resolution process as set forth in the application.” [Exhibit A, June 4,  
18 2012 ICANN New gTLD Applicant Guidebook, Module 6, para. 4 (emphasis supplied)]:  
19  
20

21 Applicant agrees to pay all fees that are associated with this application. These fees  
22 include the evaluation fee (which is to be paid in conjunction with the submission of this  
23 application), and any fees associated with the progress of the application to the extended  
24 evaluation stages of the review and consideration process with respect to the application,  
*including any and all fees as may be required in conjunction with the dispute resolution  
process as set forth in the application.*

25 11. Each of Plaintiffs’ application contracts also contained an ambiguous provision  
26 that purports to be either a release or a covenant not to sue (“CNTS”), or both, that also  
27 incorporates by reference ICANN’s bylaw alternative dispute resolution procedures (the so-  
28 called “Accountability Mechanisms”), which, where applicable, were to be used to resolve issues

1 and disputes that might arise with respect to the delegation of gTLDs. The release/CNTS  
2 provision, including its incorporation of ICANN’s ADR mechanisms, provides [*Id.*, para. 6  
3 (emphasis supplied)]:

4  
5 Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all  
6 claims by applicant that arise out of, are based upon, or are in any way related to, any  
7 action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with  
8 ICANN’s or an ICANN Affiliated Party’s review of this application, investigation or  
9 verification, any characterization or description of applicant or the information in this  
10 application, any withdrawal of this application or the decision by ICANN to recommend,  
11 or not to recommend, the approval of applicant’s gTLD application. *APPLICANT*  
12 *AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA,*  
13 *ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE*  
14 *APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR*  
15 *PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY*  
16 *OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES*  
17 *WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND*  
18 *ACCEPTS THAT APPLICANT’S NONENTITLEMENT TO PURSUE ANY RIGHTS,*  
19 *REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED*  
20 *PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE*  
21 *APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY*  
22 *RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS*  
23 *INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS*  
24 *THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A*  
25 *REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY*  
26 *ACCOUNTABILITY MECHANISM SET FORTH IN ICANN’S BYLAWS FOR PURPOSES*  
27 *OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO*  
28 *THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN*  
*AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS*  
*SECTION 6 AND MAY ENFORCE EACH PROVISION.*

21 12. Plaintiffs’ claims in this action are not within the scope of the release/CNTS  
22 because, among other things, the provision is limited in scope to the itemized activities, none of  
23 which are challenged in this case. All of the itemized activities relate to the “review,”  
24 “investigation,” “verification,” and “characterization of an application” and the decision to  
25 recommend it for approval or not. This language says nothing about claims related to any other  
26 ICANN activities, including, relevant here, things such as “bylaw compliance” or “ADR process  
27 mechanisms” or “dispute resolution provisions” or “fraud.” Further, as a matter of contractual  
28 construction, that the activities encompassed by the release/CNTS are specifically itemized

1 underscores an intent to cover only such items; if the intent was broad and not limited,  
2 supposedly covering undescribed activities, there would be no need to itemize specific activities  
3 at all. If ICANN wanted to try to enforce a release and covenant not to sue that barred actions  
4 against it for violating its bylaws or other business torts with respect to such bylaws, it at a very  
5 minimum needed to make that perfectly clear. It did not, and Plaintiffs agreed to nothing like  
6 that.  
7

8 13. In turn, this action (at least so far) does not challenge ICANN's wrongful intention  
9 to delegate of the .HOTEL gTLD. It also does not claim that ICANN did anything wrong related  
10 to its "review" of Plaintiffs' applications or its "investigation," "verification," and  
11 "characterization of any application," or any decision to recommend any application for approval  
12 or not. Rather, and again, all of Plaintiffs' claims are for ICANN's breach of its contractual  
13 obligations and fraud related to implementation of ICANN's bylaw-enshrined Accountability  
14 Mechanisms.  
15

16 14. ICANN's covenant not to sue language is also facially inapplicable here. It only  
17 purports to bar court actions challenging a "FINAL DECISION WITH RESPECT TO THE  
18 APPLICATION." However, ICANN has not made any "Final Decision" with respect to the  
19 applications, as each of them are shown on ICANN's website to be in "On Hold" status because  
20 the applications all remain in a "contention set" that has not been resolved.  
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23 15. Moreover, "WITH RESPECT TO THE APPLICATION" is defined and means:  
24 THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES,  
25 MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS  
26 AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM  
27 THE OPERATION OF A REGISTRY FOR THE TLD." This language further confirms that the  
28 CNTS portion of the provision applies narrowly, only to specifically itemized court actions and

1 the itemized monetary damages, and not to other court actions for different damages or for  
2 equitable relief. However, and again, Plaintiffs' claims in this action do not challenge a final  
3 ICANN delegation decision with respect to any application whatsoever and none of the damages  
4 sought are claimed to have been suffered due to any such final delegation decision. Instead,  
5 Plaintiffs only seek damages and equitable relief (including a public injunction) for breach of  
6 contract and fraud for ICANN's failure to implement the agreed Accountability Mechanisms.  
7

8 16. ICANN's own admissions further refute any broad interpretation of the CNTS.  
9 One of ICANN's supposed "Guiding Principle[s]" in developing the Accountability Mechanisms  
10 is that the "[a]ccountability structures should not preclude any party from filing suit against  
11 ICANN in a court of competent jurisdiction." [Exhibit B, 10/26/12 Report by ICANN  
12 Accountability Structures Expert Panel ("ASEP"), p. 6]. That confirms that ICANN knows that  
13 there is a specie of claims not encompassed by the CNTS. The intent to preserve civil fora is  
14 further proven because the CNTS ADR scheme is permissive, not a mandatory: *APPLICANT*  
15 *MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS*  
16 *FOR PURPOSES OF CHALLENGING ANY FINAL DECISION.*  
17

18 17. The limited scope of the provision is also confirmed by ICANN's own position  
19 taken in two prior ADR IRP proceedings, that it was not required by such panel decisions to  
20 implement the Standing Panel bylaw, one of the bylaws about which Plaintiffs complain here.  
21 As ICANN has refused to follow the IRP decisions regarding these procedural mechanisms (or to  
22 otherwise implement them as intended), its attempt to foreclose judicial review by use of the  
23 CNTS would leave Plaintiffs (and every other ICANN gTLD registry applicant) without any  
24 remedy at all to enforce ICANN's bylaws. That would also render ICANN's ADR "Core  
25 Principle" meaningless and its years'-long promises to implement the bylaw Accountability  
26 Mechanisms illusory.  
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1 18. Further, the release/CNTS is unenforceable as a matter of law for several reasons.

2 Thus, Plaintiffs allege, and will prove, that:

3 (i) The release language as a matter of law cannot be effective to bar claims for willful  
4 injuries (Cal. Civ. Code section 1668).

5  
6 (ii) ICANN's ADR process is not just a typical ADR process like an arbitration  
7 agreement but instead actually releases all substantive rights and denies all related relief by  
8 preventing their adjudication in any forum (and so is also subject to Cal. Civ. Code section  
9 1668). More specifically, for example, under ICANN's Independent Review Process, arbitrators  
10 *only* have the power to decide whether ICANN has violated any of its articles of incorporation or  
11 its bylaws. [E.g., **Exhibit C**, 4/11/13 ICANN Bylaws (excerpts), Art. IV, Section 3.11; 6/18/18  
12 ICANN Bylaws (excerpts), Art. IV, Sections 4.3(o)(iii), (iv).] As such, the arbitrators have no  
13 power, in example, to determine that ICANN has breached any contract or committed any fraud  
14 in any manner. In other words, once applicants (like Plaintiffs) become subject to the ADR  
15 provisions they *cannot* get any relief whatsoever for any claims of any species other than  
16 whether ICANN violated its articles or bylaws. Any other rights of an applicant are thus *de facto*  
17 waived and released, and applicants (like Plaintiffs) are unable to get any substantial relief  
18 whatsoever. This, of course, starkly contrasts to typical ADR agreements in which the ADR  
19 proceeding supplies a forum for the application and adjudication of substantive claims under  
20 substantive law, but which do not by fiat simply do away with such claims and law.

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23 (iii) ICANN's ADR process is also, in actual practice, a sham because it includes no  
24 means to garner any testimony under oath, i.e., ICANN can simply lie in the discovery process,  
25 and it has been found by at least one panel to have done so (in the *DotRegistry* matter). More to  
26 the point, the process is a sham because the arbitrators have no power whatsoever to require  
27 ICANN to do anything at all, even in cases where it violates its articles of incorporation or  
28



1 bylaws. Instead, the arbitrators' only power is to decide if there was a violation, and it is left to  
2 ICANN whether it will comply. [**Exhibit C**, 4/11/13 ICANN Bylaws (excerpts), Art. IV,  
3 Section 3.11; 6/18/18 ICANN Bylaws (excerpts), Art. IV, Sections 4.3(o)(iii), (iv) (“[e]ach IRP  
4 Panel shall have the authority to . . . [d]eclare whether a Covered Action constituted an action or  
5 inaction that violated the Articles of Incorporation or Bylaws, . . . [and to] [r]ecommend that  
6 ICANN stay any action or decision, or take necessary interim action, . . . .).]

8 19. And while ICANN's bylaws state that ICANN will comply with panel decisions  
9 [**Exhibit C**, 4/11/13 ICANN Bylaws, Art. IV, Section 3.21 (“The declarations of the IRP Panel,  
10 and the Board's subsequent action on those declarations, are final and have precedential value.”);  
11 6/18/18 ICANN Bylaws, Art. IV, Section 4.3(x) (“The IRP is intended as a final, binding  
12 arbitration process”)], ICANN has consistently refused to do so. Indeed, ICANN has refused to  
13 comply with two separate IRP panel decisions rendered as far back as 2015 and 2017 (in the  
14 *.Africa* matter and in the *.Islam* matter) stating that ICANN is and has been required to  
15 implement the IRP Standing Panel bylaw, one of the very bylaws about which Plaintiffs  
16 complain in this action. In other words, history has proven that ICANN's promise (in the bylaw)  
17 to follow panel decisions is a rank lie. As such, ICANN's ADR process is not only an  
18 insufficient process, but instead a process that supplies no meaningful relief *at all*, and for this  
19 reason too operates as a *de facto* release of rights. Moreover, ICANN's refusal to act on the  
20 Standing Panel bylaw in the face of two IRP panel decisions obviously illustrates why court  
21 intervention is required here: Even if Plaintiffs litigate their procedural bylaw issues in the  
22 context of an ICANN-sponsored IRP and prevail, ICANN won't abide by the decision, rendering  
23 Plaintiffs' efforts futile. ICANN has absolutely proved this by its own conduct in the prior  
24 matters. So again, by insisting that Plaintiffs go forward with an IRP (under threat of its  
25 dismissal and concomitant loss of their gTLD applications altogether), ICANN has herded  
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1 Plaintiffs into a flawed process, violative of its own bylaws, while at the same time hiding behind  
2 a purported covenant not to sue whose enforcement would thus preclude review of ICANN's  
3 related conduct altogether.

4 (iv) Finally, as to Plaintiffs, the release/CNTS was procured by fraud and is therefore  
5 unenforceable for that reason as well. ICANN's misrepresentations, alleged below, were directly  
6 material to Plaintiffs and induced them to accept the CNTS and the ADR bylaw provisions, and  
7 the contracts more generally, and to do so several times over as the parties' agreements were  
8 successively modified. ICANN has had almost 9 years to implement meaningful  
9 Reconsideration processes and Ombudsman review, to constitute the promised Standing Panel,  
10 implement the promised discovery and other rules, and to pay the promised fees. In 9 years,  
11 ICANN should have been able to create rules for and staff several universities and hospitals, let  
12 alone a single arbitration panel and some procedural rules. But ICANN has instead chosen to  
13 drag its feet in the face of admonitions from its own lawyers and experts that it should timely  
14 implement the bylaw ADR procedures, and at least two IRP decisions telling ICANN the same  
15 thing. ICANN has no excuse for failing to implement the Standing Panel and otherwise comply  
16 with its own bylaws for 9 years.

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20 20. While Plaintiffs' claims in this action are not within the factual scope of the  
21 release/CNTS provision, and that it is otherwise legally unenforceable, they agreed to the  
22 release/CNTS precisely because of the incorporated bylaw ADR processes. In other words, the  
23 supposed ADR process as incorporated into their contracts induced Plaintiffs to accept and agree  
24 to the release/CNTS (and, in part, to agree to the contracts as a whole) because the ADR process  
25 was supposed to provide a forum for the fair and meaningful resolution of disputes that might be  
26 within the scope of the release/CNTS.  
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1           21. Plaintiffs also agreed to the release/CNTS because of misrepresentations made by  
2 ICANN’s “Accountability and Transparency Review Team” (“ATRT”) to Plaintiffs *before* the  
3 execution of the original contracts, actually on 12/31/10, that (emphasis supplied):

4           D. Review mechanism(s) for Board decisions

5  
6           23. *As soon as possible, but no later than June 2011, the ICANN Board should implement*  
7 *Recommendation 2.7 of the 2009 Draft Implementation Plan for Improving Institutional*  
8 *Confidence which calls on ICANN to seek input from a committee of independent experts*  
9 *on the restructuring of the three review mechanisms - the Independent Review Panel*  
10 *(IRP), the Reconsideration Process and the Office of the Ombudsman. This should be a*  
11 *broad, comprehensive assessment of the accountability and transparency of the three*  
12 *existing mechanisms and of their inter-relation, if any (i.e., whether the three processes*  
13 *provide for a graduated review process), determining whether reducing costs, issuing*  
14 *timelier decisions, and covering a wider spectrum of issues would improve Board*  
15 *accountability. . . . Upon receipt of the final report of the independent experts, the Board*  
16 *should take actions on the recommendations as soon as practicable.*

17  
18           24. *As soon as possible, but no later than the March 2011 ICANN meeting, the operations*  
19 *of the Office of Ombudsman and the relationship between the Office of the Ombudsman*  
20 *and the Board of Directors should be assessed and, to the extent they are not, should be*  
21 *brought into compliance with the relevant aspects of internationally recognized standards*  
22 *for: a) an Ombudsman function; and b) a Board supporting such a function under the*  
23 *Standards of Practice of the International Ombudsman Association.*

24  
25           25. *As soon as possible, but no later than October 2011, the standard for Reconsideration*  
26 *requests should be clarified with respect to how it is applied and whether the standard*  
27 *covers all appropriate grounds for using the Reconsideration mechanism.*

28           26. As soon as possible, but no later than October 2011 the ICANN Board, to improve  
transparency, should adopt a standard timeline and format for Reconsideration Requests  
and Board reconsideration outcomes that clearly identifies the status of deliberations and  
then, once decisions are made, articulates the rationale used to form those decisions.

[**Exhibit D** (12/31/10 ICANN ATRT Final Recommendations, pp. 6.)

29           22. These representations by ICANN were made by ATRT team members Urs Gasser,  
30 Herbert Burkert, John Palfrey and Jonathan Zittrain. [ATRT Final Recommendations, p. 74.]  
31 The ATRT was given specific authority to make its recommendations by ICANN’s governing  
32 board. [12/31/10 ATRT Final Recommendations, p. 79 (the ATRT was “selected by the Chair of

1 the ICANN Board and the Chair of the [ICANN] GAC [Governmental Advisory Committee] in  
2 order to perform a review of ICANN's execution of its commitments.”).]

3 23. The ATRT representations were made via publication on ICANN's internet site on  
4 or about 12/31/10 and thereby communicated to each of Plaintiffs' principals, including Jay  
5 Westerdal, Chief Executive Officer of Plaintiff Fegistry, Shweta Asher, Vice President of  
6 Plaintiff Radix, and to a predecessor-in-interest of Plaintiff Domain Venture Partners, on or  
7 about the same date.

8  
9 24. In originally contracting with ICANN in 2012, Plaintiffs relied on these 2010  
10 ATRT representations as supposedly truthful statements that ICANN was serious about making  
11 its Accountability Mechanisms more fair and meaningful and that improvements would soon be  
12 in place. While Plaintiffs were unaware of it at that time, these ICANN representations were  
13 false, ICANN knew they were false when made, they were made with the intention to induce  
14 Plaintiffs (and others) to enter into their contracts with ICANN and to accept and agree to the  
15 release/CNTS, and Plaintiffs reasonably relied upon the representations in agreeing to the  
16 release/CNTS and their contracts with ICANN more generally.

17  
18 25. Also, *before* the date of each Plaintiff's original contract with ICANN, at least two  
19 prior iterations of its Accountability Mechanisms provided for both a Reconsideration process  
20 and an independent Ombudsman review. [**Exhibit E**, 12/8/11 ICANN Bylaws (excerpts), Art.  
21 IV, Sections 2, 9, 10, Art. V, Sections 1, 2, 3; 3/16/12 ICANN Bylaws (excerpts), Art. IV,  
22 Sections 2, 9, 10, Art. V, Sections 1, 2, 3.] Material here, the Reconsideration process set forth  
23 in the 3/16/12 bylaws provided, *inter alia*, that (emphasis supplied):

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26 2. *ICANN shall have in place a process by which any person or entity materially*  
27 *affected by an action of ICANN may request review or reconsideration of that*  
28 *action by the Board.*

1           26.     Also material here, before Plaintiffs originally contracted with ICANN, the  
2 3/16/12 bylaw independent Ombudsman review process provided, *inter alia*, that (emphasis  
3 supplied):

- 4           1.     There shall be an Office of Ombudsman, to be managed by an Ombudsman and to  
5 include such staff support as the Board determines is appropriate and feasible.
- 6           2.     *The principal function of the Ombudsman shall be to provide an independent  
7 internal evaluation of complaints by members of the ICANN community who  
8 believe that the ICANN staff, Board or an ICANN constituent body has treated  
9 them unfairly. The Ombudsman shall serve as an objective advocate for fairness,  
10 and shall seek to evaluate and where possible resolve complaints about unfair or  
11 inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies,  
12 clarifying the issues and using conflict resolution tools such as negotiation,  
13 facilitation, and "shuttle diplomacy" to achieve these results.*
- 12          3.     The Office of Ombudsman shall:
  - 13           1.     *facilitate the fair, impartial, and timely resolution of problems and  
14 complaints that affected members of the ICANN community (excluding  
15 employees and vendors/suppliers of ICANN) may have with specific  
16 actions or failures to act by the Board or ICANN staff which have not  
17 otherwise become the subject of either the Reconsideration or Independent  
18 Review Policies.*

17          27.     These representations were made in ICANN bylaws duly enacted by ICANN's  
18 governing board which under law and in fact has the authority to control and run ICANN. [See,  
19 e.g., Cal. Corp. Code sections 300(a), 5210.] At the time these representations were made on  
20 12/8/11, ICANN's governing board consisted of: Steve Crocker, George Sadowsky, Ram  
21 Mohan, Mike Silber, Erika Mann, Bruce Tonkin, Suzanne Wolf, Kuo-Wei Wu, Gonzalo  
22 Navarro, Ray Plzak, Bill Graham, Sebastien Bachollet, Heather Dryden, Judith Duavit Vazquez,  
23 Bertrand de La Chapelle, Thomas Narten, Thomas Roessler, R. Ramaraj, Rod Beckstrom and,  
24 possibly, Goran Mabry. At the time these representations were again made on 3/16/12,  
25 ICANN's governing board consisted of: Thomas Roessler, R. Ramaraj, Rod Beckstrom, Judith  
26 Duavit Vazquez, Bertrand de La Chapelle, Thomas Narten, Francisco da Silva, Olga Madruga-  
27 Forti, Bill Graham, Sebastien Bachollet, Heather Dryden, Gonzalo Navarro, Ray Plzak, Fadi  
28

1 Chehade, Erika Mann, Bruce Tonkin, Suzanne Wolf, Kuo-Wei Wu, Steve Crocker, George  
2 Sadowsky, Ram Mohan, Mike Silber, Cherine Chalabe, Chris Disspain and, possibly, Goran  
3 Mabry.

4 28. These representations were made via publication on ICANN's internet site on or  
5 about 12/8/11 and 3/16/12 and thereby communicated to each of Plaintiffs' principals, Jay  
6 Westerdal, Chief Executive Officer of Plaintiff Fegistry, Shweta Asher, Vice President of  
7 Plaintiff Radix, and a predecessor-in-interest of Plaintiff Domain Venture Partners, on or about  
8 the same date.

9 29. As alleged, the presence of the ATRT Final Recommendations and the 12/8/11 and  
10 3/16/12 bylaw Reconsideration and independent Ombudsman review processes (and ICANN's  
11 whole supposed ADR process) induced Plaintiffs to accept and agree to the release/CNTS.  
12 However, when Plaintiffs formally sought Reconsideration of their substantive dispute with  
13 ICANN, ICANN breached its contracts (and its bylaws) with each Plaintiff by never providing a  
14 fair and meaningful Reconsideration process, or any Reconsideration process at all. Similarly,  
15 when Plaintiffs requested independent Ombudsman review of their dispute with ICANN, that too  
16 was wholly refused based on the sham excuse that the Ombudsman supposedly had a "conflict of  
17 interest." No replacement Ombudsman was offered despite Plaintiffs' requests.

18 30. Further, while Plaintiffs were unaware of it at the time, ICANN, knowingly, never  
19 intended to comply with the Reconsideration or Ombudsman contractual (and bylaw) provisions  
20 but both failed to disclose and misrepresented that intention to Plaintiffs. To the contrary, the  
21 provisions were false and illusory in that ICANN knew it never intended to comply with them  
22 but instead made them with the intention to induce Plaintiffs (and others) to enter into their  
23 contracts with ICANN and to accept and agree to the release/CNTS, and Plaintiffs reasonably  
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1 relied upon ICANN's misrepresentations in agreeing to the release/CNTS and their contracts  
2 with ICANN more generally.

3 31. That ICANN breached its Reconsideration obligations, and that they were false  
4 promises, is proven in part by the facts that (i) ICANN denied Plaintiffs any opportunity at all to  
5 Reconsideration of at least one disputed claim, and (ii) in ICANN's supposedly fair and  
6 meaningful ADR process, all requests for Reconsideration are undertaken by the very same  
7 group of ICANN Board Members that rendered the original decision, without further input or  
8 oversight, and, predictably, that renders the Reconsideration process illusory.

9  
10 32. That ICANN breached its independent Ombudsman review obligations, and that  
11 they were false promises, is proven in part by the facts that while Plaintiffs were formally  
12 entitled to independent Ombudsman review of their Reconsideration requests, ICANN never  
13 provided any such review for any party or any matter -- some 14 matters since 2017 -- including  
14 Plaintiffs'. Nor has ICANN provided an alternate Ombudsman as requested by Plaintiffs.  
15 Neither ICANN nor the Ombudsman has provided any intelligible reason for this flouting of  
16 Plaintiffs' contractual rights (and ICANN's bylaws) and the Ombudsman's dereliction of duty,  
17 other than a vague and wholly unsupported claim of "conflict of interest."

18  
19 33. On April 11, 2013, *after* Plaintiffs and ICANN originally contracted as to the  
20 applications, but *before* Plaintiffs entered into any of their Registry Agreements with ICANN,  
21 ICANN offered a modification to each of Plaintiffs' contracts. The modification came in the  
22 form of revisions to ICANN's Accountability Mechanisms (i.e., to the related bylaws) as  
23 incorporated into each and all of Plaintiffs' contracts with ICANN. Material to Plaintiffs' claims  
24 in this action, the modification included revisions to the ADR provisions that would provide for  
25 the IRP process. [**Exhibit C**, 4/11/13 ICANN Bylaws (excerpts), Art. IV, Section 3.] The  
26 modification provided, in relevant part (emphasis supplied):  
27  
28

1 *Section 3. INDEPENDENT REVIEW OF BOARD ACTION*

2 *In addition to the reconsideration process described in Section 2 of this Article, ICANN*  
3 *shall have in place a separate process for independent third-party review of Board*  
4 *actions alleged by an affected party to be inconsistent with the Articles of Incorporation*  
5 *or Bylaws.*

6 *Requests for such independent review shall be referred to an Independent Review Process*  
7 *Panel (“IRP Panel”), which shall be charged with comparing contested actions of the*  
8 *Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board*  
9 *has acted consistently with the provisions of those Articles of Incorporation and Bylaws.*

10 *There shall be an omnibus standing panel of between six and nine members with a variety*  
11 *of expertise, including jurisprudence, judicial experience, alternative dispute resolution*  
12 *and knowledge of ICANN's mission and work from which each specific IRP Panel shall*  
13 *be selected. The panelists shall serve for terms that are staggered to allow for continued*  
14 *review of the size of the panel and the range of expertise. A Chair of the standing panel*  
15 *shall be appointed for a term not to exceed three years. Individuals holding an official*  
16 *position or office within the ICANN structure are not eligible to serve on the standing*  
17 *panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel*  
18 *must be convened for a given proceeding, the IRP proceeding will be considered by a one-*  
19 *or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii)*  
20 *is in place but does not have the requisite diversity of skill and experience needed for a*  
21 *particular proceeding, the IRP Provider shall identify one or more panelists, as required,*  
22 *from outside the omnibus standing panel to augment the panel members for that*  
23 *proceeding.*

24 34. These representations were made in ICANN bylaws duly enacted by ICANN’s  
25 governing board which under law and in fact has the authority to control and run ICANN. [See,  
26 e.g., Cal. Corp. Code sections 300(a), 5210.] At the time these representations were made on  
27 April 11, 2013, ICANN’s governing board consisted of: Chris Disspain, Cherine Chalabe, Jonne  
28 Soininen, Mike Silber, Ram Mohan, George Sadowsky, Steve Crocker, Fadi Chehade, Erika  
Mann, Bruce Tonkin, Suzanne Wolf, Kuo-Wei Wu, Gonzalo Navarro, Ray Plzak, Olga  
Madruga-Forti, Bill Graham, Sebastien Bachollet, Heather Dryden, Judith Duavit Vasquez,  
Bertrand de La Chapelle, Thomas Narten, Francisco da Silva and, possibly, Goran Mabry.

35. These representations were made via publication on ICANN’s internet site on or  
about April 11, 2013 and communicated thereby to each of Plaintiffs’ principals, Jay Westerdal,



1 Chief Executive Officer of Plaintiff Fegistry, Shweta Asher, Vice President of Plaintiff Radix,  
2 and a predecessor-in-interest of Plaintiff Domain Venture Partners, on or about the same date.

3 36. While they were not obligated to do so, Plaintiffs accepted and agreed to the  
4 modification and supplied legally sufficient (and considerable) consideration for it, in part  
5 because the ADR revisions being offered were promised to make the ADR process more  
6 protective and meaningful for parties such as Plaintiffs and to provide them with greater rights,  
7 such as to the Standing Panel of expert arbitrators with *de novo* appeal rights.  
8

9 37. While no consideration for the modification was necessary given that it was a  
10 written amendment to a written contract, Plaintiffs in fact gave in return substantial consideration  
11 in that they accepted new terms promulgated and offered by ICANN and accepted new and often  
12 more burdensome obligations. [Cf. 3/16/2012 ICANN Bylaw, Art. IV, Sections 2, 3 *with*  
13 4/11/13 ICANN Bylaw Art. IV, Sections 2, 3 (additional notice, filing and information  
14 requirements, time limits, granting ICANN greater powers to approve panel arbitrators, but  
15 stripping arbitration panels of some power to force ICANN compliance with panel decisions).]  
16 Plaintiffs also forbore in the assertion of their rights not to accept the offered modification, and to  
17 sue.  
18

19 38. The presence of the new, more robust ADR protections induced Plaintiffs to accept  
20 and agree again to the release/CNTS rather than reject it, seek rescission and sue because, as  
21 alleged, the modification was supposed to make the ADR process more fair and meaningful for  
22 Plaintiffs.  
23

24 39. Plaintiffs were also induced to accept the April 11, 2013, contractual modification  
25 (and bylaw revisions) based on representations made by ICANN's Accountability Structures  
26 Expert Panel ("ASEP") on October 26, 2012, and communicated to Plaintiffs on or about the  
27  
28

1 same date, that, among other things, the coming revisions to ICANN's bylaw Accountability  
2 Mechanisms would (emphasis supplied):

- 3 \* *"Create stability through building of precedent."*
- 4 \* *"Where possible, reduce burden and costs to those accessing structures."*
- 5 \* *"That the Accountability structures should not preclude any party from filing suit*  
6 *against ICANN in court of competent jurisdiction."*

7  
8 40. ICANN's ASEP also recommended on the same date that (emphasis supplied):

9 **Independent Review - Omnibus Standing Panel**

- 10 \* *"The ASEP recommends establishing an omnibus standing panel of six-to-nine*  
11 *members, taking account of geographic diversity."*
- 12 \* *"Each IRP panel will be selected from among the omnibus standing panel*  
13 *members."*
- 14 \* *"The declarations of the IRP, and ICANN's subsequent actions on those*  
15 *declarations, should have precedential value."*

16 [**Exhibit B**, 10/26/12 ICANN Report by Accountability Structures Expert Panel, pp. 5, 29, 48.]

17 41. These ASEP representations were made by ASEP expert members Mervyn E.  
18 King, Graham McDonald and Richard Moran. [*Id.*, p. 53-55.] The ASEP was given specific  
19 authority to make its recommendations by ICANN's governing board, with the strong  
20 presumption those recommendations would be adopted.

21 42. These ASEP representations were made via publication on ICANN's internet site  
22 on or about 10/26/12 and thereby communicated to each of Plaintiffs' principals, Jay Westerdal,  
23 Chief Executive Officer of Plaintiff Fegistry, Shweta Asher, Vice President of Plaintiff Radix,  
24 and a predecessor-in-interest of Plaintiff Domain Venture Partners, on or about the same date.

25 43. Plaintiffs were also induced to accept the April 11, 2013, contractual modification  
26 based on representations made by ICANN's in-house counsel Amy Stathos, Esq., Deputy  
27  
28

1 General Counsel of ICANN, and Samantha Eisner, Senior Counsel of ICANN, just days before,  
2 on April 8, 2013, that the impending bylaw revisions were (emphasis supplied):

- 3 \* geared towards instituting more predictability into the processes, and  
4 certainty in ICANN's decision making, . . . .”
- 5 \* *The adoption of these recommendations will have a fiscal impact on ICANN, in  
6 that there are anticipated costs associated with maintaining a Chair of the  
7 standing panel for the Independent Review process and potential costs to retain  
8 other members of the panel. However, the recommendations are expected to result  
9 in less costly and time consuming proceedings, which will be positive for ICANN,  
10 the community, and those seeking review under these accountability structures.  
11 The outcomes of this work are expected to have positive impacts on ICANN and  
12 the community in enhanced availability of accountability mechanisms.*

13 \*\*\*\*\*

#### 14 ***Immediate Adoption Is Important for Scalability***

15 *Now that initial evaluation results for new gTLD applications are being released,  
16 it is of utmost importance that the enhanced Reconsideration and Independent  
17 Review processes be put into place. The ASEP recommendations provide more  
18 clarity for the community on scope and standing, and will allow for more  
19 scalability in proceedings, the ability for summary disposition of claims, the  
20 consolidation of proceedings where appropriate, the institution of page limitations,  
21 and more predictability on timing. To the extent that decisions arising out of the  
22 New gTLD Program result in initiation of Reconsideration or Independent Review  
23 proceedings, having the new Bylaws in place will provide consistency to those  
24 seeking reconsideration or independent review.*

25 \*\*\*\*\*

#### 26 ***Independent Review Process -- Creation of Standing Panel***

27 ICANN has coordinated with the current IRP Provider, the International Centre for  
28 Dispute Resolution (ICDR) to determine how to best create the standing panel.  
The ICDR is in the process of recommending a fee structure that can help mitigate  
costs within the proceedings. *As the ICDR is working to identify panelists for  
ICANN consideration, and finalizing fee structure recommendations, we  
recommend that the Bylaws can now be implemented.*

[Exhibit F, 4/8/13 ICANN Board Briefing Materials, p. 4-5.]

44. As alleged, all of these misrepresentations were made by ICANN's in-house  
lawyers, Amy Stathos, Esq., Deputy General Counsel of ICANN and Samantha Eisner, Senior

1 Counsel of ICANN, starting on 4/8/13 and were posted on the internet on ICANN's website.

2 These misrepresentations were communicated thereby to each of Plaintiffs' principals, Jay  
3 Westerdal, Chief Executive Officer of Plaintiff Fegistry, Shweta Asher, Vice President of  
4 Plaintiff Radix, and a predecessor-in-interest of Plaintiff Domain Venture Partners, on or about  
5 the same date.  
6

7 45. However, while Plaintiffs have formally demanded implementation and use of the  
8 Standing Panel and their appeal rights since at least 2018, ICANN breached the modified  
9 contracts (and its bylaws) with each Plaintiff by never implementing the Standing Panel or any  
10 appeal process for any party or any matter, including Plaintiffs'. Still today, there is no Standing  
11 Panel, and ICANN has done almost nothing to further the implementation process for at least the  
12 past two years.  
13

14 46. Further, while Plaintiffs were unaware of it at that time, ICANN, knowingly, never  
15 intended to comply with the contractual modification (or its revised bylaws) but both failed to  
16 disclose and misrepresented that intention to Plaintiffs. To the contrary, the modification (and  
17 related bylaw revisions) were and are false and illusory and ICANN knew it never intended to  
18 comply with them but made them with the intention to induce Plaintiffs (and others) to enter into  
19 modified contracts with ICANN, pay more in fees to ICANN, and to again accept and agree to  
20 the release/CNTS. Plaintiffs reasonably relied upon ICANN's representations in again accepting  
21 and agreeing to the release/CNTS and the modified contracts more generally.  
22  
23

24 47. That ICANN breached its Standing Panel obligations is proven in part by the facts,  
25 *inter alia*, that (i) ICANN has had over 9 years to implement the process that it admits should  
26 have taken only 6 months but has not done so, and (ii) there is still no appeal mechanism  
27 whatsoever.  
28

1           48.     On June 18, 2018, after Plaintiffs and ICANN originally contracted in their  
2 applications and after those original contracts were modified at least once, and after entering  
3 various Registry Agreements, ICANN offered another modification to each of Plaintiffs'  
4 contracts. The modification came in the form of additional revisions to ICANN's ADR  
5 provisions (i.e., to the related bylaws) as incorporated into Plaintiffs' contracts with ICANN.  
6 Material to Plaintiffs' claims in this action, the modification again included revisions to the ADR  
7 provisions that would provide for the IRP related to ICANN actions, new rules of procedure and  
8 for the payment of IRP-related costs by ICANN. [**Exhibit C**, 6/18/18 ICANN Bylaws  
9 (excerpts), Art. IV, Section 3.] The modification provided in relevant part (emphasis supplied):

- 12           (i)     *Each IRP Panel shall conduct an objective, de novo examination of the Dispute.*
- 13           (ii)     With respect to Covered Actions, the IRP Panel shall make findings of fact to  
14 determine whether the Covered Action constituted an action or inaction that  
15 violated the Articles of Incorporation or Bylaws.
- 16           (iii)    *All Disputes shall be decided in compliance with the Articles of Incorporation and*  
17 *Bylaws, as understood in the context of the norms of applicable law and prior*  
18 *relevant IRP decisions.*
- 19           (iv)     For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel  
20 shall not replace the Board's reasonable judgment with its own so long as the  
21 Board's action or inaction is within the realm of reasonable business judgment.
- 22           (j)     *Standing Panel*
- 23           (i)     *There shall be an omnibus standing panel of at least seven members (the*  
24 *"Standing Panel") each of whom shall possess significant relevant legal expertise*  
25 *in one or more of the following areas: international law, corporate governance,*  
26 *judicial systems, alternative dispute resolution and/or arbitration. Each member of*  
27 *the Standing Panel shall also have knowledge, developed over time, regarding the*  
28 *DNS and ICANN's Mission, work, policies, practices, and procedures. Members*  
*of the Standing Panel shall receive at a minimum, training provided by ICANN on*  
*the workings and management of the Internet's unique identifiers and other*  
*appropriate training as recommended by the IRP Implementation Oversight Team*  
*(described in Section 4.3(n)(i)).*

\*\*\*\*\*

- (k)     *IRP Panel*

- 1 (i) *A three-member IRP Panel shall be selected from the Standing Panel to hear a*  
2 *specific Dispute.*
- 3 (ii) *The Claimant and ICANN shall each select one panelist from the Standing Panel,*  
4 *and the two panelists selected by the parties will select the third panelist from the*  
5 *Standing Panel. In the event that a Standing Panel is not in place when an IRP*  
6 *Panel must be convened for a given proceeding or is in place but does not have*  
7 *capacity due to other IRP commitments or the requisite diversity of skill and*  
8 *experience needed for a particular IRP proceeding, the Claimant and ICANN shall*  
9 *each select a qualified panelist from outside the Standing Panel and the two*  
10 *panelists selected by the parties shall select the third panelist. In the event that no*  
11 *Standing Panel is in place when an IRP Panel must be convened and the two party-*  
12 *selected panelists cannot agree on the third panelist, the IRP Provider's rules shall*  
13 *apply to selection of the third panelist.*
- 14 \*\*\*\*\*
- 15 (n) *Rules of Procedure*
- 16 (i) *An IRP Implementation Oversight Team shall be established in consultation with*  
17 *the Supporting Organizations and Advisory Committees and comprised of*  
18 *members of the global Internet community. The IRP Implementation Oversight*  
19 *Team, and once the Standing Panel is established the IRP Implementation*  
20 *Oversight Team in consultation with the Standing Panel, shall develop clear*  
21 *published rules for the IRP (“Rules of Procedure”) that conform with*  
22 *international arbitration norms and are streamlined, easy to understand and apply*  
23 *fairly to all parties. Upon request, the IRP Implementation Oversight Team shall*  
24 *have assistance of counsel and other appropriate experts.*
- 25 (ii) *The Rules of Procedure shall be informed by international arbitration norms and*  
26 *consistent with the Purposes of the IRP. Specialized Rules of Procedure may be*  
27 *designed for reviews of PTI service complaints that are asserted by direct*  
28 *customers of the IANA naming functions and are not resolved through mediation.*  
*The Rules of Procedure shall be published and subject to a period of public*  
*comment that complies with the designated practice for public comment periods*  
*within ICANN, and take effect upon approval by the Board, such approval not to*  
*be unreasonably withheld.*
- (iii) *The Standing Panel may recommend amendments to such Rules of Procedure as it*  
*deems appropriate to fulfill the Purposes of the IRP, however no such amendment*  
*shall be effective without approval by the Board after publication and a period of*  
*public comment that complies with the designated practice for public comment*  
*periods within ICANN.*
- (iv) *The Rules of Procedure are intended to ensure fundamental fairness and due*  
*process and shall at a minimum address the following elements . . . .*
- .....

1           49.    These representations by ICANN were made in ICANN bylaws duly enacted by  
2 ICANN's governing board which under law and in fact has the authority to control and run  
3 ICANN. [See, e.g., Cal. Corp. Code sections 300(a), 5210.] At the time these representations  
4 were made on 6/18/18, ICANN's governing board consisted of: George Sadowsky, Ram Mohan,  
5 Mike Silber, Lousewies van der Laan, Jonne Soininen, Matthew Shears, Kaveh Ranjbar, Akinori  
6 Maemura, Manal Ismail, Avri Doria, Sarah Deutsch, Becky Burr, Harald Alvestrand, Leon  
7 Sanchez, Maarten Bottreman and, possibly, Goran Mabry.

8  
9           50.    These representations were made via publication on ICANN's internet site on or  
10 about June 18, 2018 and communicated to each of Plaintiffs' principals, Jay Westerdal, Chief  
11 Executive Officer of Plaintiff Fegistry, Shweta Asher, Vice President of Plaintiff Radix, and a  
12 predecessor-in-interest of Plaintiff Domain Venture Partners, on or about the same date.

13  
14           51.    Again, while they were not obligated to do so, Plaintiffs accepted and agreed to the  
15 modification and supplied legally-sufficient (and considerable) consideration for it, in part  
16 because the ADR revisions being offered were promised to make the ADR process more  
17 protective and meaningful for parties such as Plaintiffs and to provide them with greater rights,  
18 such as to the Standing Panel of expert arbitrators and appeal rights, and new and more fair rules  
19 of procedure for IRP proceedings.

20  
21           52.    While no consideration for the modification was necessary given that it was a  
22 written amendment to a written contract, Plaintiffs in fact gave in return substantial consideration  
23 in that they accepted new terms promulgated and offered by ICANN and accepted new and often  
24 more burdensome obligations. [Cf. 3/16/2012 ICANN Bylaw, Arts. IV, Sections 2, 3 *with*  
25 6/18/18 ICANN Bylaw Arts. IV, Sections 2, 3 (additional notice, filing and informant  
26 requirements, time limits, granting ICANN greater powers to approve panel arbitrators, but  
27  
28

1 stripping arbitration panels of some power to force ICANN compliance with panel decisions).]

2 Plaintiffs also forbore in the assertion of their rights not to accept the offered modification and to  
3 sue.

4  
5 53. The presence of the new, more robust ADR protections induced Plaintiffs to accept  
6 and agree again (a third time) to the release/CNTS rather than reject it, seek rescission and sue,  
7 because, as alleged, the modification was supposed to make the ADR process more fair and  
8 meaningful for Plaintiffs.

9  
10 54. However, while Plaintiffs have formally demanded implementation and use of the  
11 Standing Panel, their appeal rights, the new procedural rules, and payment of fees since at least  
12 2018, ICANN breached its contracts (and its bylaws) with each Plaintiff by never implementing  
13 the Standing Panel or any appeal process for any party or any matter, including Plaintiffs'.  
14 Plaintiffs have also never gotten the benefit of the promised new rules of procedure and ICANN  
15 continues to pay the IRP administrative fees.

16  
17 55. Further, while Plaintiffs were unaware of it at that time, ICANN, knowingly, never  
18 intended to comply with this contractual modification (or its revised bylaws) but both failed to  
19 disclose and misrepresented that intention to Plaintiffs. To the contrary, the modification (and  
20 related bylaw revisions) were and are false and illusory and ICANN knew it never intended to  
21 comply with them but made them with the intention to induce Plaintiffs (and others) to enter into  
22 modified contracts with ICANN, pay more in fees to ICANN, and to again accept and agree to  
23 the release/CNTS, and Plaintiffs reasonably relied upon ICANN's misrepresentations in again  
24 accepting and agreeing to the release/CNTS and the modified contracts more generally.

25  
26  
27 56. That ICANN breached its Standing Panel and appeal obligations is proven in part  
28 by the facts that (i) ICANN has had over 9 years to implement these processes that it admits  
should have taken only 6 months, and (ii) Plaintiffs still have no Standing Panel or appeal



1 mechanism whatsoever. Still today, there is no Standing Panel and ICANN has done almost  
2 nothing to further the implementation process for at least the past two years.

3 .....  
4 57. Also starting on June 18, 2018, ICANN misrepresented in its ADR bylaws that its  
5 Accountability Mechanisms would afford “meaningful, affordable and accessible expert review”  
6 and deference to prior IRP precedents. The mechanisms would (emphasis supplied):

- 7 (i) *Ensure that ICANN does not exceed the scope of its Mission and otherwise*  
8 *complies with its Articles of Incorporation and Bylaws.*
- 9 (ii) *Empower the global Internet community and Claimants to enforce compliance*  
10 *with the Articles of Incorporation and Bylaws through meaningful, affordable and*  
11 *accessible expert review of Covered Actions . . . .*
- 12 (iii) *Ensure that ICANN is accountable to the global Internet community and Claimants*  
13 *. . . .*
- 14 (vi) *Reduce Disputes by creating precedent to guide and inform [ICANN] and the*  
15 *global Internet community in connection with policy development and*  
16 *implementation.*
- 17 (vii) *Secure the accessible, transparent, efficient, consistent, coherent, and just*  
18 *resolution of Disputes.*
- 19 (viii) *Lead to binding, final resolutions consistent with international arbitration norms*  
20 *that are enforceable in any court with proper jurisdiction.*
- 21 (ix) *Provide a mechanism for the resolution of Disputes, as an alternative to legal*  
22 *action in the civil courts of the United States or other jurisdictions.*

23 [Exhibit C, 6/18/18 ICANN Bylaws (excerpts), Art. IV, Section 4.3(a).]

24 58. As stated, these representations were made by ICANN itself in its ADR bylaws  
25 (6/18/18 ICANN Bylaws, Art. IV), having been duly enacted by its governing board. These  
26 misrepresentations were made via publication on ICANN’s internet site on or about 6/18/18 and  
27 thereby communicated to each of Plaintiffs’ principals, Jay Westerdal, Chief Executive Officer  
28 of Plaintiff Fegistry, Shweta Asher, Vice President of Plaintiff Radix, and to a predecessor-in-  
interest of Plaintiff Domain Venture Partners, on or about the same date.



1 fundamental quality and its substantive outcome, in addition to also causing more protracted  
2 proceedings and far greater expense.

3 65. Fifth, had ICANN properly implemented the Reconsideration, Ombudsman  
4 review, Standing Panel and new procedural rules' bylaws, Plaintiffs' competitor would not have  
5 been presumptively delegated the .hotel gTLD because (i) the entire ADR process would have  
6 been fair and meaningful instead of a sham, and a meaningful process would led to a different  
7 result, and (ii) the Standing Panel and ICANN would have had to adhere to IRP precedents that  
8 would also require delegation of the .hotel gTLD to Plaintiffs.  
9

10 66. Finally, the intended and improper delegation of the .hotel gTLD causes Plaintiffs  
11 inestimable and irreparable financial damage and lost commercial opportunities.  
12

13 67. A portion of Plaintiffs' related injuries are qualitative and inestimable -- the value  
14 of fairness of proceedings and quality of adjudication and outcome is not capable of  
15 quantification. And it would not be debatable if ICANN actually created the Accountability  
16 Mechanisms that it enacted in its own bylaws. And of course, Plaintiffs have had to pay more  
17 because ICANN is supposed to pay for the Standing Panel if it existed. Plaintiffs also suffer  
18 under the greater expense of potentially unnecessary litigation caused by decisions that a bylaw-  
19 compliant Standing Panel might make differently, which decisions are not subject to appellate  
20 review because there is no Standing Panel. The lack of a Standing Panel results in less or no  
21 adherence to panel precedents, and so again, less certainty of outcome and greater expense where  
22 none would be incurred at all if effective Reconsideration and independent Ombudsman review  
23 processes were in place and the Standing Panel was properly constituted. Plaintiffs are left with  
24 a toothless and flawed dispute resolution process that ignores many specific and admittedly  
25 critical features of ICANN's so-called Accountability Mechanisms, and causes greater expense.  
26  
27 At the same time, Plaintiffs are also left to labor under ICANN's purported, related  
28

1 release/CNTS to the extent these may be applicable to a given issue or dispute. In other words,  
2 ICANN wants to keep people out of court and in its dispute resolution process, but it doesn't  
3 want to follow its own bylaws to even create that process.

4  
5 68. Because at their core Plaintiffs' injuries and damages are chiefly qualitative and  
6 irreparable rather than quantitative, and because it may not even be possible to quantify many  
7 such injuries and damages, Plaintiffs have no adequate remedy at law. As such, Plaintiffs seek  
8 specific performance of the contractual bylaws' provisions regarding ICANN's so-called  
9 Accountability Mechanisms. Moreover, Plaintiffs seek both mandatory and prohibitory public  
10 injunctions directing ICANN and its officers to implement the promised dispute resolution  
11 procedures and safeguards prior to adjudicating Plaintiffs' substantive claims thereunder.

12  
13 **Plaintiffs' Injury & Their Discovery of the Falsity of ICANN's Representations**

14 69. Plaintiffs were injured by ICANN's breaches and misrepresentations at  
15 approximately the same time in 2018 when they were denied Reconsideration and independent  
16 Ombudsman review and were thereafter forced into a pending IRP.

17  
18 70. Each Plaintiff discovered ICANN's fraud at about the same time, although each's  
19 discovery may have been at different specific times. While Plaintiffs' may have become aware  
20 of ICANN's misrepresentations at varying times, all Plaintiffs relied on ICANN's repeated and  
21 continuing representations and promises of performance and renewed promises of performance,  
22 i.e., of implementation and adherence to its Accountability Mechanisms bylaws. ICANN,  
23 moreover, continues to make such promises even up until today. Plaintiffs discovered ICANN's  
24 true intent as it affected Plaintiffs when they repeatedly requested and were denied  
25 implementation and use of the bylaw Accountability Mechanisms before and in their 2019 IRP.  
26 Prior to that time, Plaintiffs relied on ICANN's plainly stated, supposed intent to implement the  
27 Accountability Mechanisms. They relied on its very public statements to that effect. They relied  
28

1 on its enactment of bylaws to that effect. They relied on its successive revision and amendment  
2 of those bylaw, each time stating more detailed descriptions of the procedural mechanisms and  
3 safeguards, and their fundamental importance to ICANN's mission, and describing the  
4 implementation efforts as ongoing and imminent.

5  
6 71. Plaintiffs relied on ICANN's seriatim misrepresentations, including its experts'  
7 (ATRT and ASEP) and attorney's (in-house counsel) pronouncements that the Accountability  
8 Mechanisms bylaws should and would be implemented expeditiously and as expressed.  
9 Plaintiffs did not and could not have previously discovered that ICANN had no real intention of  
10 compliance because ICANN continually misrepresented its intentions, stating repeatedly that  
11 compliance was both important to ICANN and its mission, and imminent. In sum, ICANN  
12 concealed its true intentions by continuing to make exactly contrary -- equally misleading --  
13 misrepresentations, precluding Plaintiffs' discovery of the true facts. Together with Plaintiffs'  
14 participation in ICANN's ultimately flawed dispute resolution process, ICANN's concealment of  
15 the related, true facts not only prevented discovery of Plaintiffs' claims, but also requires  
16 equitable tolling of any intervening statute of limitations, if any.  
17  
18

19  
20 **FIRST CAUSE OF ACTION**  
**(Breach of Contracts & Modified Contracts)**

21 72. Plaintiffs incorporate by reference each and every paragraph above as if restated  
22 here.

23  
24 73. As alleged above in Paragraphs 25 and 26, Plaintiffs' original contracts with  
25 ICANN (and ICANN's then-effective 3/16/12 bylaws) required that ICANN provide both  
26 Reconsideration and independent Ombudsman review processes, pursuant to bylaws Articles IV  
27 and V.

28 74. As alleged above in Paragraphs 31 and 32, and although superseded by Plaintiffs'  
modified contracts with ICANN, ICANN breached these original contractual obligations (i) by

1 failing to provide any legitimate and fair Reconsideration process to Plaintiffs despite their  
2 repeated requests, or (ii) by providing a process that was a sham that was designed to and did  
3 provide no meaningful relief at all, and (iii) by providing no independent Ombudsman review at  
4 all. Thus, ICANN breached its March 16, 2012, bylaws Arts. IV and V as incorporated into  
5 Plaintiffs' original contracts with ICANN.  
6

7 75. As alleged above in Paragraphs 33 and 39, and although they were superseded by  
8 the second modification of Plaintiffs' contracts with ICANN, ICANN also breached its first  
9 modified contracts with Plaintiffs (and ICANN's April 11, 2013, revised bylaws, Arts. VI and  
10 V), which required that ICANN provide a Reconsideration process, an independent Ombudsman  
11 review process and a Standing Panel of experts to hear Plaintiffs' IRP dispute with ICANN and  
12 to hear any appeal, and to pay all related administrative fees.  
13

14 76. As alleged above in Paragraph 43, ICANN breached these contractual obligations  
15 by (i) not providing a fair and meaningful Reconsideration process, (ii) not providing any  
16 independent Ombudsman review process, (iii) not providing the Standing Panel or any appeal  
17 process, and (iv) by failing to pay related administrative fees totaling thousands of dollars,  
18 despite Plaintiffs' repeated requests.  
19

20 77. As alleged above in Paragraphs 48, 56, 57 and 58, ICANN also breached its  
21 second modified (operative) contracts with Plaintiffs (and ICANN's June 18, 2018, revised  
22 bylaws, Arts. IV and V), which require that ICANN provide a Reconsideration process, an  
23 independent Ombudsman review process, and a Standing Panel of experts to hear Plaintiffs' IRP  
24 dispute with ICANN and any appeal *de novo*, to promulgate new rules of procedure and to pay  
25 related fees. Regarding the Standing Panel requirement in specific, ICANN has claimed that it  
26 has, essentially, an escape clause proviso that allows ICANN to put off implementing the  
27 Standing Panel indefinitely rather than allowing ICANN a reasonable time to get the Standing  
28

1 Panel in place or to use another process when actually needed. ICANN's claim is refuted by (i)  
2 ICANN's own contemporaneous admissions and those of its lawyers and experts regarding the  
3 immediate need for and the importance of the Standing Panel, (ii) ICANN's successive  
4 refinement of the related bylaws and its continuing promises of imminent implementation of the  
5 Standing Panel, and (iii) the two IRP prior decisions finding ICANN lacking for having failed to  
6 implement the Standing Panel. These ICANN representations and actions inform both the  
7 meaning of that bylaw and the parties' intent in contracting under it. Plaintiffs allege that the  
8 supposed proviso was to allow a reasonable time for panel implementation (promised by ICANN  
9 to have started in 2013). The supposed proviso was never intended to give ICANN a 9-year pass  
10 or to allow it to *never* appoint a panel at all. ICANN's proffered interpretation would be an  
11 unreasonable construction of the bylaw, rendering the Standing Panel provision illusory.  
12  
13

14 78. As alleged above in Paragraph 56, ICANN breached its contractual obligations (i)  
15 by failing to provide a meaningful and fair Reconsideration process, (ii) by failing to provide an  
16 independent Ombudsman review process, (iii) by failing to constitute the Standing Panel or any  
17 appeal process, (iv) by failing to promulgate and institute new, more fair rules of procedure for  
18 IRP proceedings, and (v) by failing to pay IRP-related fees.  
19

20 79. Moreover, Plaintiffs each reasonably relied upon ICANN's 3/16/12, 4/11/13 and  
21 6/18/18 promises to their detriment, changed their respective positions accordingly by accepting  
22 ICANN's promises and different and more burdensome obligations to it, and by foregoing suit  
23 for breach of contract or rescission, and so ICANN is estopped from denying its promises or  
24 from finally complying with them.  
25

26 80. As a direct and proximate result of ICANN's breaches, Plaintiffs have been injured  
27 and damaged in that (i) they have been denied the specific benefits of their bargain with ICANN,  
28 (ii) they have been denied benefits for which they paid substantial monies, (iii) they have been

1 denied the promised fair and meaningful Reconsideration and independent Ombudsman review  
2 processes, (iv) they have been denied the Standing Panel and any appeal process, and (v) they  
3 have been denied the promised rules of procedure, (vi) which, on information and belief, would  
4 have led to a fairer and far less expensive proceedings, and (vii) which would have led to a  
5 different, more favorable, outcome in Plaintiffs' substantive dispute with ICANN regarding the  
6 delegation of the .hotel gTLD. Plaintiffs have also been denied ICANN's promise to pay IRP  
7 administrative fees.  
8

9           81. As alleged above in Paragraph 10, Plaintiffs supplied legally sufficient  
10 consideration for their original contract with ICANN, including gTLD application fees of  
11 \$185,000.00 each, expert and consultant fees, and reciprocal promises and related obligations.  
12 While they were not obligated to do so, Plaintiffs also accepted and agreed to the first contractual  
13 modification offered by ICANN and supplied legally-sufficient (and considerable) consideration  
14 for it, in part because the Accountability Mechanisms being offered were promised to make the  
15 ADR process more protective and meaningful for parties such as Plaintiffs and provide them  
16 with greater rights, such as to the Standing Panel of expert arbitrators and appeal rights.  
17

18           82. As alleged above in Paragraphs 36, 37, 51 and 52, while no consideration for the  
19 two contractual modifications was necessary given that each was a written modification to a  
20 written contract, Plaintiffs in fact gave in return substantial consideration in that they accepted  
21 new terms promulgated and offered by ICANN, accepted new and often more burdensome  
22 obligations, and also forbore in the assertion of their rights not to accept the offered modification  
23 and to sue.  
24

25           83. Plaintiffs have performed all of the obligations they are required to perform under  
26 their contracts with ICANN and their modified contracts with ICANN, save for those that have  
27  
28



1 been excused by ICANN's material breaches. All conditions precedent to ICANN's  
2 performance have been satisfied.

3 Wherefore, Plaintiffs pray for judgment as set forth below in their prayer for relief.

4 **SECOND CAUSE OF ACTION**  
5 **(Fraud-in-the-Inducement -- Deceit, Civil Code Section 1709, 1710, et seq. --**  
6 **Release/CNTS)**

7 84. Plaintiffs incorporate by reference each and every paragraph above as if restated  
8 here.

9 85. As alleged above in Paragraphs 21-28, 33-35, 39-44, 48-50, 57-58, ICANN made  
10 several material misrepresentations to Plaintiffs regarding ICANN's Accountability  
11 Mechanisms, i.e., ICANN misrepresented the following bylaws and related matters:

12 \* The 12/31/10 ATRT Final Recommendations which were published and  
13 communicated to Plaintiffs on or about the same date. The specific misrepresentations at issue  
14 are those italicized in Paragraph 21, which were made by the persons, to the persons, by the  
15 media, and on the dates alleged in Paragraphs 22, 23.

16 \* ICANN's 3/16/12 bylaws (Arts. IV, V) which were published and communicated  
17 to Plaintiffs on or about the same date. The specific misrepresentations at issue are those  
18 italicized in Paragraphs 25, 26, which were made by the persons, to the persons, by the media,  
19 and on the dates alleged in Paragraphs 27, 28.

20 \* ICANN's 10/26/12 ASEP Recommendations which were published and  
21 communicated to Plaintiffs on or about the same date. The specific misrepresentations at issue  
22 are those italicized in Paragraphs 39, 40, which were made by the persons, to the persons, by the  
23 media, and on the dates alleged in Paragraphs 41, 42.

24 \* The 4/8/13 ICANN in-house counsel misrepresentations which were published and  
25 communicated to Plaintiffs on or about the same date and before Plaintiffs agreed to the first  
26  
27  
28

1 contractual modification. The specific misrepresentations at issue are those italicized in  
2 Paragraph 43, which were made by the persons, to the persons, by the media, and on the dates  
3 alleged in Paragraphs 43, 44.

4 \* ICANN's 4/11/13 bylaws (Arts. IV, V) which were published and communicated  
5 to Plaintiffs on or about the same date and before Plaintiffs agreed to the first contractual  
6 modification, and which promised a Standing Panel, appeal rights and ICANN's payment of IRP  
7 fees. The specific misrepresentations at issue are those italicized in Paragraph 33, which were  
8 made by the persons, to the persons, by the media, and on the dates alleged in Paragraphs 43, 44.

9 \* ICANN's 6/18/18 bylaws (Arts. IV, V) which were published and communicated  
10 to Plaintiffs on or about the same date and before Plaintiffs agreed to the second contractual  
11 modification, and which promised a Standing Panel, appeal rights, new rules of procedure and  
12 ICANN's payment of IRP-related fees. The specific misrepresentations at issue are those  
13 italicized in Paragraphs 48, 57, which were made by the persons, to the persons, by the media,  
14 and on the dates alleged in Paragraphs 49, 50, 58.

15 86. As alleged above in Paragraphs 24, 29-32, 38-39, 43, 46, 53, 55, all such  
16 misrepresentations were specifically designed and made to induce (and did induce) Plaintiffs to  
17 accept and agree to several specific terms contained in their original and modified contracts with  
18 ICANN, specifically the release/CNTS and each of the bylaw ADR provisions at issue.  
19 ICANN's 12/31/10 (ATRT), 12/8/11 (bylaw) and 3/16/12 (bylaw) misrepresentations were made  
20 *before* Plaintiffs entered into their original contracts with ICANN in May-June 2012. ICANN's  
21 subsequent misrepresentations, 4/8/13 (in-house counsel) and 4/11/13 (bylaw), were all made  
22 *before or at the time of* the first contractual modification was accepted by Plaintiffs. And  
23 ICANN's subsequent misrepresentations, 6/18/18 (bylaws) were all made *before or at the time of*  
24 the second contractual modification was accepted by Plaintiffs.

1           87. Each such misrepresentation was false when made by ICANN and ICANN knew  
2 of that falsity, in that, *inter alia*, ICANN had already decided not to implement real and  
3 meaningful Reconsideration and independent Ombudsman procedures, the promised Standing  
4 Panel, the procedural rules, or to pay IRP-related fees. The proof that ICANN knew that each of  
5 its misrepresentations were false when made to Plaintiffs is both direct and circumstantial, even  
6 absent significant discovery. First, as to the Reconsideration and independent Ombudsman  
7 procedures, at the time ICANN first made the misrepresentations to Plaintiffs it had already  
8 failed to implement the procedures for several years, proof that it never intended to do so.  
9 Second, in the decade since making the misrepresentations, ICANN has continued to deny  
10 Reconsideration or has provided only sham Reconsideration, never *once* changing its initial  
11 decisions. Similarly, and as alleged, as to independent Ombudsman review, ICANN has never  
12 once provided such a review to any party; the Ombudsman has recused himself from every single  
13 matter since inception of the new gTLD program.  
14

15  
16           88. ICANN also knew that its Standing Panel, procedural rules implementation and fee  
17 payment misrepresentations were false when made to Plaintiffs because ICANN's board had  
18 already decided not to implement these procedures as promised despite (supposedly) having  
19 acknowledged their critical importance and the need for immediate implementation.  
20 Circumstantially, ICANN then continued to fail to implement these procedures for some 9 years  
21 (up until the present) despite its representations that implementation was critical and would be  
22 imminent, despite the recommendations of its technical panels and attorneys, and despite the fact  
23 that ICANN has represented that implementation should take just some 6 months. That ICANN  
24 represented that implementation would occur in about 6 months when this action was filed in  
25 March 2020 further underscores the proof of its lies. In fact, ICANN has done nothing to  
26 implement the Standing Panel in the past two years. ICANN was supposed to implement these  
27  
28

1 procedures as a specific, 2016, condition of its agreement to divorce itself from U.S. Government  
2 oversight, but has not. ICANN misled the global internet community and the U.S. Government,  
3 as it has refused to implement the promised procedures.

4  
5 89. Plaintiffs were ignorant of the true facts and reasonably relied on ICANN and its  
6 agents' misrepresentations and subsequent misrepresentations, to Plaintiffs' detriment. In  
7 reliance on the misrepresentations, in example, Plaintiffs contracted with ICANN and accepted  
8 the bylaw Accountability Mechanisms and the purported, related release/CNTS, continued in  
9 their contracts with ICANN including in its dispute resolution processes, and agreed to bilateral  
10 contractual amendments requested by ICANN. Plaintiffs also continued both their financial and  
11 work efforts and outlays. Plaintiffs also paid fees to ICANN, in part for the guarantee of  
12 accountable and fair dispute resolution processes as promised by ICANN. And Plaintiffs have  
13 been forced to pay IRP administrative fees that ICANN, pursuant to specific provisions of its  
14 bylaws, is responsible to incur.

15  
16  
17 90. As a direct and proximate result of ICANN's fraudulent misrepresentations,  
18 Plaintiffs have been injured and damaged in that (i) they have been denied the specific benefits  
19 of their bargain with ICANN, (ii) they have been denied the benefits for which they paid  
20 substantial monies, (iii) they have been denied the promised fair and meaningful Reconsideration  
21 and independent Ombudsman review processes, (iv) they have been denied the Standing Panel  
22 and any appeal process, and (v) they have been denied the promised rules of procedure, (vi) all of  
23 which, on information and belief, would have led to a fairer and far less expensive proceedings,  
24 and (vii) which would have led to a different, favorable, outcome in Plaintiffs' substantive  
25 dispute with ICANN regarding the delegation of the .hotel gTLD.

26  
27  
28 Wherefore, Plaintiffs pray for judgment as set forth below in their prayer for relief.

**THIRD CAUSE OF ACTION**  
**(Deceit, Civil Code Section 1709, 1710, et seq.)**

1  
2  
3       91.     Plaintiffs incorporate by reference each and every paragraph above as if restated  
4 here.

5       92.     As alleged above in Paragraphs 21-28, 33-35, 39-44, 48-50, 57-58, ICANN made  
6 several material misrepresentations to Plaintiffs regarding ICANN's Accountability  
7 Mechanisms, i.e., ICANN misrepresented the following bylaws and related matters. However,  
8 ICANN never intended to and, after contracting with Plaintiffs, has never performed on its  
9 representations in fact. Thus, ICANN has failed to make good on its representations made in the:

10           \*     The 12/31/10 ATRT Final Recommendations which were published and  
11           communicated to Plaintiffs on or about the same date. The specific misrepresentations at issue  
12           are those italicized in Paragraph 21, which were made by the persons, to the persons, by the  
13           media, and on the dates alleged in Paragraphs 22, 23.

14           \*     ICANN's 3/16/12 bylaws (Arts. IV, V) which were published and communicated  
15           to Plaintiffs on or about the same date. The specific misrepresentations at issue are those  
16           italicized in Paragraphs 25, 26, which were made by the persons, to the persons, by the media,  
17           and on the dates alleged in Paragraphs 27, 28.

18           \*     ICANN's 10/26/12 ASEP Recommendations which were published and  
19           communicated to Plaintiffs on or about the same date. The specific misrepresentations at issue  
20           are those italicized in Paragraphs 39, 40, which were made by the persons, to the persons, by the  
21           media, and on the dates alleged in Paragraphs 41, 42.

22           \*     The 4/8/13 ICANN in-house counsel misrepresentations which were published and  
23           communicated to Plaintiffs on or about the same date and before Plaintiffs agreed to the first  
24           contractual modification. The specific misrepresentations at issue are those italicized in  
25  
26  
27  
28

1 Paragraph 43, which were made by the persons, to the persons, by the media, and on the dates  
2 alleged in Paragraphs 43, 44.

3 \* ICANN's 4/11/13 bylaws (Arts. IV, V) which were published and communicated  
4 to Plaintiffs on or about the same date and before Plaintiffs agreed to the first contractual  
5 modification, and which promised a Standing Panel, appeal rights and ICANN's payment of IRP  
6 fees. The specific misrepresentations at issue are those italicized in Paragraph 33, which were  
7 made by the persons, to the persons, by the media, and on the dates alleged in Paragraphs 34, 35.  
8

9 \* ICANN's 6/18/18 bylaws (Arts. IV, V) which were published and communicated  
10 to Plaintiffs on or about the same date and before Plaintiffs agreed to the second contractual  
11 modification, and which promised a Standing Panel, appeal rights, new rules of procedure and  
12 ICANN's payment of IRP-related fees. The specific misrepresentations at issue are those  
13 italicized in Paragraphs 48, 57, which were made by the persons, to the persons, by the media,  
14 and on the dates alleged in Paragraphs 49-50, 58.  
15  
16

17 93. As alleged above in Paragraphs 24, 29-32, 38-39, 43, 46, 53, 55, all such  
18 misrepresentations were specifically designed and made to induce (and did induce) Plaintiffs to  
19 accept and agree to several specific terms contained in their original and modified contracts with  
20 ICANN, specifically the release/CNTS and each of the bylaw ADR provisions at issue.  
21 ICANN's 12/31/10 (ATRT), 12/8/11 (bylaw) and 3/16/12 (bylaw) misrepresentations were made  
22 *before* Plaintiffs entered into their original contracts with ICANN in May-June 2012. ICANN's  
23 subsequent misrepresentations, 4/8/13 (in-house counsel) and 4/11/13 (bylaw), were all made  
24 *before or at the time of* the first contractual modification was accepted by Plaintiffs. And  
25 ICANN's subsequent misrepresentations, 6/18/18 (bylaws) were all made *before or at the time of*  
26 the second contractual modification was accepted by Plaintiffs.  
27  
28

1           94. Each such misrepresentation was false when made by ICANN and ICANN knew  
2 of that falsity, in that, *inter alia*, ICANN had already decided not to implement real and  
3 meaningful Reconsideration and independent Ombudsman procedures, the promised Standing  
4 Panel, the procedural rules, or to pay IRP-related fees. The proof that ICANN knew that each of  
5 its misrepresentations were false when made to Plaintiffs is both direct and circumstantial, even  
6 absent discovery. First, as to the Reconsideration and independent Ombudsman procedures, at  
7 the time ICANN first made the misrepresentations to Plaintiffs it had already failed to implement  
8 the procedures for several years, proof that it never intended to do so. Second, in the decade  
9 since making the misrepresentations, ICANN has continued to deny Reconsideration or has  
10 provided only sham Reconsideration, rarely if ever changing its initial decisions. Similarly, and  
11 as alleged, as to independent Ombudsman review, ICANN has never once provided such a  
12 review to any gTLD applicant; the Ombudsman has recused himself from every single matter  
13 since inception of the new gTLD program.

14  
15  
16  
17           95. ICANN also knew that its Standing Panel, procedural rules implementation and fee  
18 payment misrepresentations were false when made to Plaintiffs because ICANN's Board had  
19 already decided not to implement these procedures as promised despite (supposedly) having  
20 acknowledged their critical importance and the need for immediate implementation.  
21 Circumstantially, ICANN then continued to fail to implement these procedures for some 9 years  
22 (up until the present) despite its representations that implementation was critical and would be  
23 imminent, despite the recommendations of its technical panels and attorneys, and despite the fact  
24 that ICANN has represented that implementation should take just some 6 months. That ICANN  
25 represented that implementation would occur in about 6 months when this action was filed in  
26 March 2020 further underscores the proof of its lies. In fact, ICANN has done nothing to  
27 implement the Standing Panel in the past two years. ICANN was supposed to implement these  
28

1 procedures as a specific, 2016, condition of its agreement to divorce itself from U.S. Government  
2 oversight, but has not. ICANN misled the global internet community and the U.S. Government,  
3 as it has refused to implement the promised procedures.

4  
5 96. Plaintiffs were ignorant of the true facts and reasonably relied on ICANN and its  
6 agents' misrepresentations and subsequent misrepresentations, to Plaintiffs' detriment. In  
7 reliance on the misrepresentations, in example, Plaintiffs contracted with ICANN and accepted  
8 the bylaw Accountability Mechanisms and the purported, related release/CNTS, continued in  
9 their contracts with ICANN including in its dispute resolution processes, and agreed to bilateral  
10 contractual amendments requested by ICANN. Plaintiffs also continued both their financial and  
11 work efforts and outlays. Plaintiffs also paid fees to ICANN, in part for the guarantee of  
12 accountable and fair dispute resolution processes as promised by ICANN. And Plaintiffs have  
13 been forced to pay IRP fees that ICANN, pursuant to specific provisions of its bylaws, is  
14 responsible to incur.  
15

16  
17 97. As a direct and proximate result of ICANN's fraudulent misrepresentations,  
18 Plaintiffs have been injured and damaged in that ICANN has totally failed to implement its  
19 promises in practice, never providing Plaintiffs with (i) the specific benefits of their bargain with  
20 ICANN, (ii) the benefits for which they paid substantial monies, (iii) the promised fair and  
21 meaningful Reconsideration and independent Ombudsman review processes, (iv) the Standing  
22 Panel and any appeal process, and (v) the promised rules of procedure, (vi) all of which, on  
23 information and belief, would have led to a fairer and far less expensive proceedings, and (vii)  
24 which would have led to a different, favorable, outcome in Plaintiffs' substantive dispute with  
25 ICANN regarding the delegation of the .hotel gTLD.  
26

27  
28 98. Wherefore, Plaintiffs pray for judgment as set forth below in their prayer for relief.



**FOURTH CAUSE OF ACTION**  
**(Grossly Negligent Misrepresentations)**

1  
2  
3       99.     Plaintiffs incorporate by reference each and every paragraph above as if restated  
4 here.

5       100.    ICANN had statutory and common law duties not to negligently or with gross  
6 negligence misrepresent material facts to Plaintiffs regarding the subject matter of their business  
7 relationship. ICANN breached those duties by making material misrepresentations to Plaintiffs  
8 which ICANN knew or should have known were false. These material misrepresentations  
9 directly and proximately caused Plaintiffs' injuries and damages.  
10

11       101.    In making the alleged material misrepresentations, ICANN acted (and failed to act)  
12 not only below the relevant industry and legal standards of care, but with absolutely no care at all  
13 and with complete indifference to the rights others, including Plaintiffs. In example, ICANN (i)  
14 made knowing false representations over the internet to the public and to Plaintiffs for literally  
15 years, (ii) failed to follow the most basic industry standards of fair and truthful disclosure, (iii)  
16 failed to follow the most basic advice of its own experts that the promised ADR procedures were  
17 critical and should be implemented immediately to assure basic fairness, (iv) failed to follow the  
18 most basic advice of its own lawyers, including its in-house lawyers, that the promised ADR  
19 procedures were critical and should be implemented immediately to assure basic fairness, and (v)  
20 continually failed to actually implement the promised procedures.  
21  
22

23       102.    As alleged in Paragraphs 21-28, 33-35, 39-44, 48-50, 57-58, above, ICANN's  
24 material misrepresentations to Plaintiffs regarding ICANN's Accountability Mechanisms  
25 included:  
26

27       \*       The 12/31/10 ATRT Final Recommendations which were published and  
28 communicated to Plaintiffs on or about the same date. The specific misrepresentations at issue

1 are those italicized in Paragraph 21, which were made by the persons, to the persons, by the  
2 media, and on the dates alleged in Paragraphs 22, 23.

3 \* ICANN's 3/16/12 bylaws (Arts. IV, V) which were published and communicated  
4 to Plaintiffs on or about the same date. The specific misrepresentations at issue are those  
5 italicized in Paragraphs 25, 26, which were made by the persons, to the persons, by the media,  
6 and on the dates alleged in Paragraphs 27, 28.

7  
8 \* ICANN's 10/26/12 ASEP Recommendations which were published and  
9 communicated to Plaintiffs on or about the same date. The specific misrepresentations at issue  
10 are those italicized in Paragraphs 39, 40, which were made by the persons, to the persons, by the  
11 media, and on the dates alleged in Paragraphs 41, 42.

12  
13 \* The 4/8/13 ICANN in-house counsel misrepresentations which were published and  
14 communicated to Plaintiffs on or about the same date and before Plaintiffs agreed to the first  
15 contractual modification. The specific misrepresentations at issue are those italicized in  
16 Paragraph 43, which were made by the persons, to the persons, by the media, and on the dates  
17 alleged in Paragraphs 43, 44.

18  
19 \* ICANN's 4/11/13 bylaws (Arts. IV, V) which were published and communicated  
20 to Plaintiffs on or about the same date and before Plaintiffs agreed to the first contractual  
21 modification, and which promised a Standing Panel, appeal rights and ICANN's payment of IRP  
22 fees. The specific misrepresentations at issue are those italicized in Paragraph 33, which were  
23 made by the persons, to the persons, by the media, and on the dates alleged in Paragraphs 34, 35.

24  
25 \* ICANN's 6/18/18 bylaws (Arts. IV, V) which were published and communicated  
26 to Plaintiffs on or about the same date and before Plaintiffs agreed to the second contractual  
27 modification, and which promised a Standing Panel, appeal rights, new rules of procedure and  
28 ICANN's payment of IRP-related fees. The specific misrepresentations at issue are those

1 italicized in Paragraphs 48, 57, which were made by the persons, to the persons, by the media,  
2 and on the dates alleged in Paragraphs 49-50, 58.

3 103. As alleged above in Paragraphs 24, 29-32, 38-39, 43, 46, 53, 55, all such  
4 misrepresentations were specifically designed and made to induce (and did induce) Plaintiffs to  
5 accept and agree to several specific terms contained in their original and modified contracts with  
6 ICANN, specifically the release/CNTS and each of the bylaw ADR provisions at issue.  
7 ICANN's 12/31/10 (ATRT), 12/8/11 (bylaw) and 3/16/12 (bylaw) misrepresentations were made  
8 *before* Plaintiffs entered into their original contracts with ICANN in May-June 2012. ICANN's  
9 subsequent misrepresentations, 4/8/13 (in-house counsel) and 4/11/13 (bylaw), were all made  
10 *before or at the time of* the first contractual modification was accepted by Plaintiffs. And  
11 ICANN's subsequent misrepresentations, 6/18/18 (bylaws) were all made *before or at the time of*  
12 the second contractual modification was accepted by Plaintiffs.  
13

14 104. As alleged above in Paragraphs 24, 29-32, 38-39, 43, 46, 53, 55, all such grossly  
15 negligent misrepresentations were specifically designed and made to induce (and did induce)  
16 Plaintiffs to accept and agree to several specific terms contained in their original and modified  
17 contracts with ICANN, specifically the release/CNTS and each of the bylaw ADR provisions at  
18 issue. All such misrepresentations were never intended by ICANN to be put in place and  
19 practice, and ICANN has never done so.  
20  
21

22 105. Each such misrepresentation was false when made by ICANN and ICANN knew  
23 of that falsity or should have known of it, in that, *inter alia*, at the time of their publication  
24 ICANN had already decided not to implement real and meaningful, or any, Reconsideration and  
25 independent Ombudsman review procedures, the promised Standing Panel or appeal processes,  
26 the procedural rules, or to pay IRP administrative fees. The proof that ICANN knew or should  
27 have known that each of its misrepresentations were false when made to Plaintiffs is both direct  
28

1 and circumstantial, even absent significant discovery. First, as to the Reconsideration and  
2 independent Ombudsman procedures, at the time ICANN first made the misrepresentations to  
3 Plaintiffs it had already failed to implement the procedures for several years, proof that it never  
4 intended to do so. Second, in the decade since making the misrepresentations, ICANN has  
5 continued to deny Reconsideration or has provided only sham Reconsideration, never once  
6 changing its initial decisions. Similarly, and as alleged, as to independent Ombudsman review,  
7 ICANN has never once provided such a review to any gTLD applicant; the Ombudsman has  
8 recused himself from every single matter since inception of the new gTLD program.  
9

10  
11 106. ICANN also knew or should have known that its Standing Panel and appeal  
12 implementation, procedural rules implementation and fee payment misrepresentations were false  
13 when made to Plaintiffs because ICANN's board had already decided not to implement these  
14 procedures as promised despite (supposedly) having acknowledged their critical importance and  
15 the need for immediate implementation. Circumstantially, ICANN then continued to fail to  
16 implement these procedures for some 9 years (up until the present) despite its representations  
17 that implementation was critical and would be imminent, despite the recommendations of  
18 immediacy and the need for fairness made by ICANN's expert technical panels and attorneys,  
19 and despite the fact that ICANN has represented that implementation should take just some 6  
20 months. That ICANN represented that implementation would occur in about 6 months when this  
21 action was filed in March 2020 further underscores the proof of its lies. In fact, ICANN has  
22 done nothing to implement the Standing Panel in the past two years. ICANN was supposed to  
23 implement these procedures as a specific, 2016, condition of its agreement to divorce itself from  
24 U.S. Government oversight, but has not. ICANN misled the global internet community and the  
25 U.S. Government, as it has refused to implement the promised procedures.  
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28

1           107. Plaintiffs were ignorant of the true facts and reasonably relied on ICANN and its  
2 agents' misrepresentations and subsequent misrepresentations to Plaintiffs' detriment. In  
3 reliance on the misrepresentations, in example, Plaintiffs contracted with ICANN and accepted  
4 the bylaw Accountability Mechanisms and the related release/CNTS, continued in their contracts  
5 with ICANN including in its dispute resolution processes, and agreed to bilateral contractual  
6 amendments requested by ICANN. Plaintiffs also continued both their financial and work efforts  
7 and outlays. Plaintiffs also paid fees to ICANN, in part for the guarantee of accountable and fair  
8 dispute resolution processes as promised by ICANN. And Plaintiffs have been forced to pay  
9 IRP-related fees that ICANN, pursuant to specific provisions of its bylaws, is responsible to  
10 incur.  
11

12  
13           108. As a direct and proximate result of ICANN's gross negligence, Plaintiffs have  
14 been injured and damaged in that (i) they have been denied the specific benefits of their bargain  
15 with ICANN, (ii) they have been denied the benefits for which they paid substantial monies, (iii)  
16 they have been denied the promised fair and meaningful Reconsideration and independent  
17 Ombudsman review processes, (iv) they have been denied the Standing Panel and any appeal  
18 process, (v) they have been denied the promised rules of procedure, and (vi) they have been  
19 denied payment of IRP administrative fees, (vi) all of which, on information and belief, would  
20 have led to a fairer and far less expensive proceedings, and (vii) which would have led to a  
21 different, favorable, outcome in Plaintiffs' substantive dispute with ICANN regarding the  
22 delegation of the .hotel gTLD.  
23

24           Wherefore, Plaintiffs pray for judgment as set forth below in their prayer for relief.  
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**FIFTH CAUSE OF ACTION**  
**(Gross Negligence)**

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3           109. Plaintiffs incorporate by reference each and every paragraph above as if restated  
4 here.

5           110. ICANN had statutory and common law duties not to negligently or with gross  
6 negligence fail to implement its promised ADR procedures which it had represented to Plaintiffs  
7 would be timely implemented. ICANN breached those duties by failing to implement such  
8 procedures for over a decade, and at all. These failures directly and proximately caused  
9 Plaintiffs' injuries and damages.  
10

11           111. In failing to implement the promised ADR procedures, ICANN acted (and failed to  
12 act) not only below the relevant industry and legal standards of care, but with absolutely no care  
13 at all and with complete indifference to the rights others, including Plaintiffs. In example,  
14 ICANN (i) made knowing false representations over the internet to the public and to Plaintiffs  
15 for literally years, (ii) failed to follow the most basic industry standards of fair and truthful  
16 implementation of promised matter, (iii) failed to follow the most basic advice of its own experts  
17 to timely implement the promised ADR procedures which its experts advised were critical and  
18 should be implemented immediately to assure basic fairness, (iv) failed to follow the most basic  
19 advice of its own lawyers, including its in-house lawyers, to timely implement the promised  
20 ADR procedures which its lawyers advised were critical and should be implemented  
21 immediately to assure basic fairness, and (v) continually failed to actually implement the  
22 promised procedures.  
23  
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25

26           112. As alleged above, *passim*, the ADR procedures that ICANN failed to implement  
27 included the promised (i) Reconsideration process, (ii) the independent Ombudsman review  
28 process, (iii) the IRP Standing Panel and appeal procedures, (iv) the IRP procedural rules, and

1 (v) the payment of IRP-related fees, all contained within its 12/8/11, 3/16/12, 12/20/12, 4/11/13  
2 and 6/18/18 bylaws.

3 113. As alleged above in Paragraphs 24, 29-32, 38-39, 43, 46, 53, 55, all such grossly  
4 negligent failures followed ICANN's related misrepresentations which were specifically  
5 designed and made to induce (and did induce) Plaintiffs to accept and agree to several specific  
6 terms contained in their original and modified contracts with ICANN, specifically the  
7 release/CNTS and each of the bylaw ADR provisions at issue. All such misrepresentations were  
8 never intended by ICANN to be put in place and practice, and ICANN has never done so.  
9

10 114. ICANN's grossly negligent failures are proven by the facts that ICANN's board  
11 had and has decided not to implement the procedures as promised despite (supposedly) having  
12 acknowledged their critical importance and the need for immediate implementation.  
13 Circumstantially, ICANN then continued to fail to implement these procedures for some 9 years  
14 (up until the present) despite its representations that implementation was critical and would be  
15 imminent, despite the recommendations of immediacy and the need for fairness made by  
16 ICANN's expert technical panels and attorneys, and despite the fact that ICANN has represented  
17 that implementation should take just some 6 months. In fact, ICANN has done nothing to  
18 implement the Standing Panel in the past two years. ICANN was supposed to implement these  
19 procedures as a specific, 2016, condition of its agreement to divorce itself from U.S. Government  
20 oversight, but has not. ICANN misled the global internet community and the U.S. Government,  
21 as it has refused to implement the promised procedures.  
22  
23  
24

25 115. Plaintiffs were ignorant of the true facts and reasonably relied on ICANN and its  
26 agents' misrepresentations and subsequent misrepresentations to Plaintiffs' that the procedures  
27 would be timely implemented, to Plaintiffs' detriment. In reliance on the misrepresentations, in  
28 example, Plaintiffs contracted with ICANN and accepted the bylaw Accountability Mechanisms

1 and the related release/CNTS, continued in their contracts with ICANN including in its dispute  
2 resolution processes, and agreed to bilateral contractual amendments requested by ICANN.  
3 Plaintiffs also continued both their financial and work efforts and outlays. Plaintiffs also paid  
4 fees to ICANN, in part for the guarantee of accountable and fair dispute resolution processes as  
5 promised by ICANN. And Plaintiffs have been forced to pay IRP-related fees that ICANN,  
6 pursuant to specific provisions of its bylaws, is responsible to incur.  
7

8 116. As a direct and proximate result of ICANN's gross negligence, Plaintiffs have  
9 been injured and damaged in that (i) they have been denied the specific benefits of their bargain  
10 with ICANN, (ii) they have been denied the benefits for which they paid substantial monies, (iii)  
11 they have been denied the promised fair and meaningful Reconsideration and independent  
12 Ombudsman review processes, (iv) they have been denied the Standing Panel and any appeal  
13 process, (v) they have been denied the promised rules of procedure, and (vi) they have been  
14 denied payment of IRP-related fees, (vi) all of which, on information and belief, would have led  
15 to a fairer and far less expensive proceedings, and (vii) which would have led to a different,  
16 favorable, outcome in Plaintiffs' substantive dispute with ICANN regarding the delegation of the  
17 .hotel gTLD.  
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20 Wherefore, Plaintiffs pray for judgment as set forth below in their prayer for relief.  
21

22 **SIXTH CAUSE OF ACTION**

23 **(Public Benefit Corporation Bylaw Enforcement -- Cal. Corp. Section 14623)**

24 120. Plaintiffs incorporate by reference each and every paragraph above as if restated  
25 here.

26 121. ICANN is an entity subject to the California Public Benefit Corporation law.  
27 Under that law, this Court has the power to require ICANN to comply with its bylaws.  
28



1 Cal. Corp. Code section 14623 provides that, *inter alia*: “A benefit enforcement proceeding may  
2 be commenced or maintained [by] persons as have been specified in the articles or bylaws of the  
3 benefit corporation.”

4 122. ICANN’s bylaws also state that “. . . ICANN shall have a separate process for  
5 independent third-party review of Disputes (defined in Section 4.3(b)(iii)) alleged by a Claimant  
6 . . .” Bylaws, Section 4.3(a). Such third-party review may be brought to “[e]nsure that ICANN  
7 does not exceed the scope of its Mission and otherwise complies with its Articles of  
8 Incorporation and Bylaws.” Bylaws, Section 4.3(a). A Claimant is defined by ICANN as “any  
9 legal or natural person, group, or entity . . . that has been materially affected by a Dispute. To be  
10 materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and  
11 causally connected to the alleged violation.”  
12

13 123. Plaintiffs in this case have standing as IRP “Claimants” because they have suffered  
14 harm directly caused by ICANN’s violations of its own bylaws. Accordingly, ICANN’s own  
15 bylaws contemplate and explicitly describe persons and/or parties that are afforded standing to  
16 bring such a claim against ICANN, including Plaintiffs. A guiding principle of ICANN’s  
17 Accountability Mechanism enhancements was that those Accountability Mechanisms were not  
18 intended to be exclusive of other remedies at law or equity, in any court or forum. And indeed,  
19 ICANN has not challenged Plaintiffs’ standing as “Claimants” in the IRP.  
20

21 124. Plaintiffs have been injured and damaged by ICANN’s failure to adhere to its  
22 bylaws, as alleged, which also form part of ICANN’s contracts with each Plaintiff. As a direct  
23 and proximate result of ICANN’s failure to adhere to its bylaws as alleged, Plaintiffs have each  
24 been injured and damaged contractually, practically, financially and at least in part irreparably,  
25 as alleged above.  
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28

Wherefore, Plaintiffs pray for judgment as set forth below in their prayer for relief.

**SEVENTH CAUSE OF ACTION**

**(Unfair Competition “UCL”/”FAL”-- Cal. B&P Code Sections 17200, 17500 et seq.)**

1  
2  
3       117. Plaintiffs incorporate by reference each and every paragraph above as if restated  
4 here.

5       118. ICANN’s (i) *seriatim* breaches of its contracts with Plaintiffs, (ii) its intentional  
6 and grossly negligent misrepresentations (see Cal. Civ. Code sections 1428, 1668, 1709, 1710, et  
7 seq., 3333, 3512, 3514, 3520, 3543), (iii) its fraud and gross negligence in the performance of its  
8 contracts with Plaintiffs (see Cal. Civ. Code sections 1428, 1668, 1709, 1710, et seq., 3333,  
9 3512, 3514, 3520, 3543), and (iv) its violation of Cal. Corp. Codes sections 5210, et seq., as  
10 alleged, are both unfair and unlawful pursuant to the referenced statutes and the common law of  
11 contract, negligence, fraud and deceit. ICANN’s unfair and unlawful acts and omissions also  
12 affect not only Plaintiffs but the entire, worldwide internet community and the public generally.  
13

14       119. As a direct and proximate result of ICANN’s unfair and unlawful acts as alleged,  
15 Plaintiffs have each been injured and damaged contractually, practically, financially and at least  
16 in part irreparably, as alleged above. More specifically, (i) Plaintiffs parted with very substantial  
17 monies based upon and as a direct result of ICANN’s contractual breaches and its grossly  
18 negligent and intentionally unlawful acts and omissions made before Plaintiffs originally  
19 contracted with ICANN, before Plaintiffs agreed to ICANN’s offered modifications to Plaintiffs’  
20 contracts, and after both, and (ii) had ICANN properly performed its contractual obligations and  
21 not committed the referenced negligent and fraudulent acts and omissions, Plaintiffs’ claims to  
22 the .hotel gTLD, and ICANN related delegation of that gTLD, would have been subjected to fair  
23 and meaningful review that would have resulted in Plaintiffs being delegated the gTLD because  
24 of the requirement of adherence to precedent.  
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28       Wherefore, Plaintiffs pray for judgment as set forth below in their prayer for relief.

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor on  
3 each and every cause of action set forth above and award them relief including, but not limited  
4 to, the following:  
5

6 1. Specific performance of ICANN’s contractual Accountability Mechanisms as set  
7 forth in its bylaws, including meaningful Reconsideration, meaningful independent Ombudsman  
8 review, constitution of the expert, community-chosen Standing Panel to adjudicate Plaintiffs’  
9 gTLD claims and to provide *en banc* appeal, implementation of the promised procedural rules,  
10 and payment of all related administrative fees and costs.  
11

12 2. A mandatory public injunction requiring ICANN to implement the Accountability  
13 Mechanisms in its bylaws, and a prohibitory public injunction forbidding ICANN from flouting  
14 any such bylaws in the future.  
15

16 3. An award of Plaintiffs’ reasonable attorneys’ fees pursuant to both, or either, the  
17 California Public benefit corporation law and/or the private attorney general statute (Cal. Civ.  
18 Proc. Code section 1021.5), as this is an action to enforce important rights affecting the public  
19 interest.  
20

21 4. Compensatory, general and/or special damages to be proven at trial, including for  
22 attorneys’ and consultants’ fees otherwise not awarded.

23 5. Punitive damages to be proven at trial.

24 6. All recoverable costs.

25 7. Any other relief as the Court may deem appropriate.  
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27 **JURY DEMAND**

28 Plaintiffs respectfully request trial by jury as to all issues so triable.

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Dated: March 4, 2022

Respectfully submitted,

RODENBAUGH LAW

By: /s/ Mike Rodenbaugh  
Michael L. Rodenbaugh

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