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INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, WESTERN DISTRICT

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

Plaintiffs,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Defendant.

CASE NO. 20STCV42881

Assigned to Hon. Craig D. Karlan

DEFENDANT ICANN'S REPLY IN SUPPORT OF DEMURRER TO FIRST AMENDED COMPLAINT OF FEGISTRY, LLC, RADIX DOMAIN SOLUTIONS PTE. LTD., AND DOMAIN VENTURE PARTNERS PCC LIMITED

Hearing Date: February 9, 2023
Time: 8:30 a.m.
Place: Department N

Complaint Filed: November 9, 2020

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INTRODUCTION

This Court dismissed Plaintiffs' original Complaint in its entirety on two independent grounds: (1) when Plaintiffs submitted their applications to ICANN for the .HOTEL generic top-level domain ("gTLD") in 2012, they covenanted not to sue ICANN in Court for any claims arising out of or relating to their .HOTEL applications (the "Covenant"); and (2) Plaintiffs failed to state a claim for any cause of action. (*See generally*, Order on ICANN's Demurrer (Jan. 18, 2022) ("Order").) But Plaintiffs' First Amended Complaint ("FAC") does not cure a single defect this Court identified in its Order. Instead, Plaintiffs merely added conclusory statements that are so vague they do not qualify as "factual allegations," and deleted certain facts in hopes of masking the identified deficiencies in their original claims.

Plaintiffs' opposition to ICANN's Demurrer ("Opposition") further confirms that this entire lawsuit must be dismissed with prejudice. In their Opposition, Plaintiffs recycle the same arguments regarding the Covenant that the Court previously rejected. More importantly, Plaintiffs fail to identify any ICANN statements or Bylaws provision regarding an Independent Review Process ("IRP") Standing Panel, Ombudsman review of Reconsideration Requests, or ICANN payment of certain IRP fees that predate Plaintiffs' 2012 .HOTEL applications; meaning such statements or Bylaws provisions could not have been part of a contract with Plaintiffs and could not have induced Plaintiffs to submit their applications. Thus, the FAC should be dismissed in its entirety with prejudice, as any further amendment would be futile.

ARGUMENT

I. PLAINTIFFS' CLAIMS FALL WITHIN THE SCOPE OF THE COVENANT.

Plaintiffs contend that the Covenant is "narrow" and inapplicable because "Plaintiffs have not sought judicial review of any substantive ICANN decision relating to Plaintiffs' applications." (Opp'n at 5–8.) No matter how Plaintiffs try to slice and dice the language of the Covenant, however, it is unambiguously broad in scope and bars Plaintiffs' lawsuit.

The Covenant comprises both a release and an agreement not to sue, as Plaintiffs concede. (Opp'n at 5.) Plaintiffs agreed to "***release***[] ICANN and the ICANN Affiliated Parties from any and all claims by applicant that ***arise out of, are based upon, or are in any way related to***, any

action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application . . . ." (FAC Ex. A, § 6.6 (emphasis added).) Courts construing similar language have repeatedly found it to be unambiguously expansive. *See, e.g.*, *Khalatian v. Prime Time Shuttle, Inc.*, 237 Cal. App. 4th 651, 659–60 (2015) ("The language 'arising out of or relating to' as used in the parties' arbitration provision is generally considered a broad provision[,]" and "[b]road arbitration clauses . . . are consistently interpreted as applying to extracontractual disputes between the contracting parties").

Plaintiffs also agreed not to sue ICANN in court with respect to their applications: "APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ***ON THE BASIS OF ANY OTHER LEGAL CLAIM*** AGAINST ICANN AND ICANN AFFILIATED PARTIES ***WITH RESPECT TO THE APPLICATION***." (FAC, Ex. A, § 6.6 (emphasis added).) Like the release, this language is unambiguously broad and precludes lawsuits asserting any claims with respect to applications.

Plaintiffs' allegations make clear that each of their claims, no matter how styled, "arise out of, are based upon" and "relate[] to" ICANN's review of their .HOTEL applications and make clear that Plaintiffs have brought an action "with respect to" their applications:

- "[H]ad ICANN properly implemented the Reconsideration, Ombudsman review, Standing Panel and new procedural rules' bylaws, Plaintiffs' competitor would not have been presumptively delegated the .hotel gTLD." (FAC ¶ 65.)
- "Finally, the intended and improper delegation of the .hotel gTLD causes Plaintiffs inestimable and irreparable financial damage and lost commercial opportunities." (FAC ¶ 66.)
- ICANN's adherence to its Bylaws "would have led to a different, more favorable outcome in Plaintiffs' substantive dispute with ICANN regarding the delegation of the .hotel gTLD." (FAC ¶ 80; *see also* ¶¶ 90 (same), 97 (same), 108 (same), 116 (same).)
- "[H]ad ICANN properly performed its contractual obligations and not committed the referenced negligent and fraudulent acts and omissions, Plaintiffs' claims to the .hotel gTLD, and ICANN's related delegation of that gTLD would have been subjected to fair and meaningful review that would have resulted in Plaintiffs being delegated the gTLD because of the requirement of adherence to precedent." (FAC ¶ 119.)

Indeed, this entire lawsuit "arise[s] out of," is "based upon" and "relate[s] to" Plaintiffs' applications in that the lawsuit emerged from the selection of a competing .HOTEL application. Similarly, the lawsuit "arise[s] out of," is "based upon" and "relate[s] to" Plaintiffs' applications because it is premised on the pending IRP and the denied Reconsideration Requests, in which Plaintiffs challenged ICANN's review of Plaintiffs' .HOTEL applications. Moreover, Plaintiffs' lawsuit is "with respect to" the applications because Plaintiffs claim that the alleged loss of money Plaintiffs invested in application fees gives them standing to bring this lawsuit. (Opp'n at 19 (alleging that Plaintiffs' application fees give them standing under the UCL).) Likewise, this lawsuit is "with respect to" Plaintiffs' applications in that the lawsuit is predicated on alleged violations of Plaintiffs' contracts with ICANN, which Plaintiffs allege include the Guidebook "that all applicants were required to sign . . . in order to file their applications." (Opp'n at 15.) If Plaintiffs' .HOTEL applications and the Guidebook are the contracts that Plaintiffs claim were breached by ICANN, then Plaintiffs have undeniably asserted claims in court "with respect to" their applications, which is forbidden by the Covenant. (FAC Ex. A, § 6.6.)

This Court previously agreed, reasoning that "there is no other way to read the pleading except to conclude that the purported fraud arose out of Plaintiffs' application(s) with ICANN." (Order at 3.) This Court further noted that it is "unclear what amendments can be made to cure the aforementioned deficiencies," but gave Plaintiffs the opportunity to "provide facts which support the conclusion that the subject covenant does not apply." (Order at 4.) Yet the FAC still does not, and Plaintiffs cannot, set forth any such facts.

Finally, Plaintiffs' request that this court "allow more complete discovery to be had" so that the parties may "provide extrinsic evidence" regarding the scope of the Covenant is baseless. This Court already ruled (as have several other Courts) that the Covenant barred Plaintiffs' claims based on the unambiguous language in the Covenant, such that extrinsic evidence is unnecessary.

II. THE COVENANT IS ENFORCEABLE.

Plaintiffs' argument that the Covenant is unenforceable under California Civil Code section 1668 ("Section 1668") fails again for the same reasons this Court already identified. By its terms, Section 1668 only applies to provisions that "***exempt*** anyone from responsibility for his

own fraud, or willful injury to the person or property of another[.]" Cal. Civ. Code § 1668 (emphasis added). The Covenant, however, does not exempt ICANN because it explicitly provides for the use of ICANN's robust Accountability Mechanisms to resolve disputes, rendering Section 1668 inapplicable. It is applicants' access to ICANN's Accountability Mechanisms that caused the *Ruby Glen* Courts, and this Court, to rule that Section 1668 does not apply to the Covenant. *Ruby Glen v. ICANN*, 740 F. App'x 118, 118 (9th Cir. 2018); *Ruby Glen v. ICANN*, 2016 U.S. Dist. LEXIS 163710, at *10–11 (C.D. Cal. Nov. 28, 2016); Order at 3.

Plaintiffs claim that the Accountability Mechanisms are not a sufficient form of redress. (Opp'n at 8–9.) But Plaintiffs' complaints are mere statements of opinion, devoid of any facts, regarding the Accountability Mechanisms and are therefore insufficient to withstand demurrer. *See Baldwin v. AAA N. Cal., Nevada & Utah Ins. Exch.*, 1 Cal. App. 5th 545, 551 (2016), as modified (July 13, 2016) (sustaining demurrer because plaintiffs' allegations were "mere conclusion[s] unsupported by any specific factual allegations"). Moreover, this Court already rejected this argument: "Plaintiffs allege the independent review process is 'an unfair, sham ADR scheme,' but Civil Code section 1668 only applies where the contract itself seeks to make a party exempt from liability; Plaintiffs' allegations here are not that the contract makes Defendants exempt but that the review process is insufficient, and it is thus not clear how such an allegation can support an invocation of Civil Code section 1668." (Order at 3.) Other courts, when faced with claims that alternative dispute resolution mechanisms were not robust enough, also found that as long as parties "agree[] to submit a dispute for a decision by a third party," that agreement is enforceable. *Wolsey, Ltd. v Foodmaker, Inc.*, 144 F.3d 1205, 1208 (9th Cir. 1998) (quoting *AMF, Inc. v. Brunswick Corp.*, 621 F. Supp. 456, 460 (E.D.N.Y. 1985) (ruling that an agreement to arbitrate was enforceable despite the plaintiff's complaint that it was non-binding arbitration)). Plaintiffs agreed to use ICANN's Accountability Mechanisms to resolve disputes regarding their applications. After-the-fact critiques of those mechanisms does not void that agreement.

Next, Plaintiffs argue that the Covenant cannot apply to claims that were unknown at the time of contracting. This argument is contradicted by established law: California courts have "held that a general release can be completely enforceable and act as a complete bar to all claims

(known or unknown at the time of the release) despite protestations by one of the parties that he did not intend to release certain types of claims." *San Diego Hospice v. Cnty. of San Diego*, 31 Cal. App. 4th 1048, 1053 (1995) (citing *Winet v. Price*, 4 Cal. App. 4th 1159, 1173 (1992)).

Finally, Plaintiffs' argument that the Covenant is unenforceable because Plaintiffs are "suing in part to enforce the public interest" (Opp'n at 12–13) lacks merit, and their reliance on *Tunkl v. Regents of Univ. of Cal.*, 60 Cal. 2d 92 (1963) is misplaced. In *Tunkl*, the Court considered whether Section 1668 applied to a medical release form forced on a helpless hospital patient. *Id*. at 94–95. The Court held that, for purposes of Section 1668, agreements involving the "public interest" relate to services offered to members of the general public that are essential to their well-being, such as housing and medical treatment. *Id*. In contrast, this case involves a commercial transaction, where Plaintiffs, which are corporate entities, applied to operate the .HOTEL gTLD in a private and voluntary transaction between sophisticated entities. As the Ninth Circuit has explained, "[t]he commercial context presented by this case raises equities far different from those of the helpless patient entering the hospital." *Arcwell Marine, Inc. v. Sw. Marine, Inc.*, 816 F.2d 468, 471 (9th Cir. 1987); *Cont'l Airlines v. Goodyear Tire & Rubber Co.*, 819 F.2d 1519, 1527 (9th Cir. 1987) ("[I]t makes little sense in the context of two large, legally sophisticated companies to invoke the *Tunkl* application of the unconscionability doctrine").[1]

III. THE COVENANT WAS NOT PROCURED THROUGH FRAUD.

Plaintiffs' claim that the Covenant was procured through fraud remains unsupported. As this Court recognized in its Order, "fraudulent inducement occurs ***before*** a contract is signed." Order at 3–4 (quoting *SI 59 LLC v. Variel Warner Ventures, LLC*, 29 Cal. App. 5th 146, 152 (2018) (emphasis added), *review denied* (Feb. 13, 2019)). Yet the misrepresentations alleged in the FAC—*i.e.*, those regarding a Standing Panel, Ombudsman review of Reconsideration Requests, and payment of certain IRP fees—occurred ***after*** Plaintiffs submitted their .HOTEL applications and ***after*** Plaintiffs agreed to be bound by the Covenant in 2012. (*See, e.g.*, FAC ¶¶ 33, 39, 43, 48, 57; *see also* Order at 3 ("[T]here are no facts in the complaint indicating that

[1] Plaintiffs' arguments regarding the rules and Bylaws that apply to Plaintiffs' pending IRP (Opp'n at 10–12) conflate two issues. The procedural rules that govern Plaintiffs' IRP (initiated in 2019) are completely unrelated to the sufficiency of Plaintiffs' allegations in the FAC.

ICANN misrepresented facts that induced Plaintiffs to submit their applications."). Plaintiffs do not identify any alleged misrepresentations relating to the Covenant that occurred before submission of their .HOTEL applications, meaning that they could not have been fraudulently induced to enter into the Covenant, as this Court previously found. (Order at 3.)[2]

Similarly, the Bylaws about which Plaintiffs complain were enacted ***after*** Plaintiffs submitted their applications in 2012. (Compl. ¶ 12.) Therefore, even if ICANN's Bylaws were incorporated into Plaintiffs' 2012 applications, which they were not, the Bylaws in place at the time did not provide for a Standing Panel, Ombudsman review of Reconsideration Requests, or ICANN payment of certain IRP fees. Plaintiffs could not have been induced to enter into the Covenant based on Bylaws not in existence at the time Plaintiffs agreed to the Covenant.

For this reason (and others), Plaintiffs' reliance on *Engalla v. Permanente Med. Grp., Inc*, 15 Cal. 4th 951 (1997) is misplaced. There, the Court considered whether an arbitration agreement for medical malpractice claims was procured through fraud based on statements contained in the agreement. *Id.*at 973–74. The arbitration proceedings were administered by the defendant, not a third party, and, per the agreement, the defendant was required to convene the tribunal within 60 days after initiation of the arbitration. *Id*. at 962, 964–65. Appointment of the arbitration tribunal, however, took 144 days. *Id*. at 967. In determining whether the arbitration agreement was procured through fraud, the court explained that the fraud claim must relate "specifically to the making of the agreement to arbitrate." *Id*. at 973 (quotation marks and citation omitted). It held that the agreement was procured through fraud based on the misrepresentation in the agreement that a tribunal would be convened within 60 days, which was at the discretion of the defendant. *Id*. at 981.

In this case, Plaintiffs have not identified a single misrepresentation that relates "specifically to the making of the [Covenant]." *See id*. at 973. Instead, each purported misrepresentation post-dates Plaintiffs' agreement to enter into the Covenant, and none relate at all to the Covenant itself. Moreover, unlike the process in *Engalla*, the IRP proceedings are

[2] Plaintiffs identify alleged misrepresentations in 2010, 2011, and early-2012, but these statements do not relate to the issues in this lawsuit—*i.e.*, a Standing Panel, Ombudsman review of Reconsideration Requests, and payment of certain IRP fees—as set forth below.

administered by a third party, not ICANN, and there is no deadline in ICANN's Bylaws for convening the Standing Panel. Rather, the Bylaws specifically provide for a process to appoint an IRP Panel in the absence of the Standing Panel. (*See, e.g.*, ICANN's RJN Ex. 1, Art. 4, § 4.3 (k)(ii).) Nor is appointment of the Standing Panel at the discretion of ICANN. ICANN is required by its Bylaws to consult with the Supporting Organizations and Advisory Committees in a four-step process (which is and has been underway).

In sum, the Covenant is enforceable and covers Plaintiffs' claims. Because Plaintiffs cannot plead around the Covenant, leave to amend would be futile, and this court should sustain ICANN's demurrer with prejudice. *Cansino v. Bank of Am.*, 224 Cal. App. 4th 1462, 1468 (2014) (dismissal with prejudice proper where "no amendment could cure the defect in the complaint.").

IV. PLAINTIFFS FAIL TO STATE A CLAIM FOR BREACH OF CONTRACT.

Plaintiffs' FAC does not cure any of the defects this Court identified when sustaining ICANN's demurrer to Plaintiffs' original breach of contract claim. First, Plaintiffs continue to assert that ICANN's Bylaws were incorporated by reference into their alleged contracts with ICANN, but they offer no factual allegations or law supporting as much. The fact that the Guidebook refers disgruntled applicants to ICANN's Accountability Mechanisms does not mean that ICANN's lengthy Bylaws comprise a contract with the hundreds of entities that applied for a new gTLD. In fact, more than a mere reference to and awareness of an "external document is required to find that the document is incorporated by implication." *Hua Nan Comm. Bank v. HSBC Bank USA, N.A.*, 2011 WL 13217782, at *6 (C.D. Cal. May 19, 2011); *Amtower v. Photon Dynamics, Inc.*, 158 Cal. App. 4th 1582, 1608 (2008) (agreement did not impliedly incorporate an external agreement based on mere reference to that agreement). Indeed, this Court already ruled that Plaintiffs "set forth no contractual term that incorporates the bylaws," (Order at 4) and Plaintiffs have not pointed to a single new fact in their FAC to support this argument.

Second, even if the Bylaws were incorporated into the applications (which they were not), Plaintiffs' argument still fails because the Bylaws provisions at issue—*i.e.*, those regarding a Standing Panel, Ombudsman review of Reconsideration Requests, and payment of certain IRP fees—were not in the Bylaws when Plaintiffs submitted their .HOTEL applications in 2012; they

were added in the 2013 and 2016 amendments to the Bylaws. Thus, these provisions could not form part of any contract that ICANN and Plaintiffs entered into in 2012.

To plead around this dispositive fact, Plaintiffs simply deleted from the FAC the allegations from the original Complaint stating that a Standing Panel, Ombudsman review of Reconsideration Requests, and payment of IRP fees were "promised by the ICANN Board and bylaws in critical respects since 2013, and in specific detail since 2016." (Compl. ¶ 12.) However, deleting dispositive facts does not make them less dispositive. The law is clear that "a plaintiff may not discard factual allegations of a prior complaint, or avoid them by contradictory averments, in a superseding, amended pleading." *Cont'l Ins. Co. v. Lexington Ins. Co.*, 55 Cal. App. 4th 637, 646 (1997) (quoting *Cal. Dental Assn. v. Cal. Dental Hygienists' Ass'n*, 222 Cal. App. 3d 49, 53 n.1 (1990)); *Arce v. Childrens Hosp. Los Angeles*, 211 Cal. App. 4th 1455, 1468 (2012) ("A pleader may not attempt to breathe life into a complaint by omitting relevant facts which made his previous complaint defective.")).

With these deletions, Plaintiffs now argue that general Bylaws provisions from 2011 and 2012 regarding the Reconsideration process and the Ombudsman are somehow relevant. (FAC ¶¶ 25–28.) But they are not. Those provisions do not relate to the Standing Panel, Ombudsman review of Reconsideration Requests, or ICANN payment of IRP fees (which, as Plaintiffs admit in their original Complaint, were not included in the Bylaws until 2013 and 2016, respectively). Rather, those Bylaws provisions refer generally to the existence of a Reconsideration process and Ombudsman, which are not at issue in this lawsuit. Thus, Plaintiffs' efforts to revive their breach of contract claim by deleting facts and misconstruing general Bylaws provisions should fail.

Plaintiffs also recycle their argument that each time ICANN's Bylaws were amended, ICANN somehow entered into new, modified contracts with Plaintiffs regarding those Bylaws. (Opp'n at 16–17.) This Court, however, already rejected that argument, finding that "Plaintiffs provide no legal authority to support their argument that amendment to the bylaws creates a new contract." (Order, at 4.) In their Opposition, Plaintiffs do not cite to a single new case on this

point, and instead rely on the exact same case law that this Court already found insufficient.[3]

Finally, Plaintiffs claim that whether ICANN breached its Bylaws is "an ultimate question of fact not subject to demurrer," and that "ICANN contradicts Plaintiffs' allegations which must be taken as true." (Opp'n at 15–16.) In so doing, Plaintiffs ignore that the Bylaws themselves contradict Plaintiffs' arguments that ICANN breached its Bylaws, and thus, Plaintiffs' contradictory allegations are not required to be taken as true. *See Kim v. Westmorre Partners, Inc.*, 201 Cal. App. 4th 267, 282 (2011) ("When a plaintiff attaches a written agreement to his complaint, and incorporates it by reference into his cause of action, the terms of that written agreement take precedence over any contradictory allegations in the body of the complaint.").

V. PLAINTIFFS' FRAUD-BASED CLAIMS FAIL.

With respect to the fraud-in-the-inducement, deceit, and grossly negligent misrepresentation claims, Plaintiffs' Opposition does not, and cannot, cure any of the defects this Court identified in its Order. First, Plaintiffs do not identify any actual misrepresentations that could have induced Plaintiffs to enter into any contract with ICANN in 2012. The only alleged misrepresentations that could be relevant to Plaintiffs' claims in this case all post-date Plaintiffs' submission of their .HOTEL applications. (*See, e.g.*, FAC ¶¶ 33, 39, 43, 48, 57.) Plaintiffs' only response is that ICANN's amendment of its Bylaws somehow forms new, modified contracts with Plaintiffs, which this Court already has rejected, as set forth above.

Plaintiffs also attempted to plead around this fact by pointing to ICANN's 2011 and 2012 Bylaws and alleged misrepresentations by the Accountability and Transparency Review Team ("ATRT") in 2010. Yet, again, these Bylaws provisions relate generally to the existence of the Reconsideration process and the Office of the Ombudsman (*see* FAC ¶¶ 25–28); they do not relate to, or even mention, the Standing Panel, Ombudsman review of Reconsideration Requests, or ICANN payment of certain IRP fees, as set forth above. Moreover, as to the ATRT statements, by Plaintiffs' own admission, these comprise general "recommendations" from the ATRT to the

[3] The cases Plaintiffs cite actually support ICANN's argument that the amended Bylaws do not form modified contracts with Plaintiffs because in each of those cases the contract modifications were negotiated and agreed to by the parties. (*See* ICANN's Dec. 2, 2021 Reply in Support of its Original Demurrer at FN 4.)

ICANN Board regarding ICANN's Accountability Mechanisms; they are not affirmative commitments or statements by ICANN regarding the Standing Panel, Ombudsman review of Reconsideration Requests, or ICANN payment of certain IRP fees. (*See* FAC ¶¶ 21, 85 (referring to the ATRT statement as a Final ***Recommendation***).)

Additionally, Plaintiffs still fail to identify any facts supporting their contention that ICANN knew the alleged statements were false. Plaintiffs merely point to the same conclusory allegations (Opp'n at 17 (citing FAC ¶¶ 87–88, 94, 100, 105)) that this Court already found were insufficient. (Order at 5 ("There are also no facts indicating that ICANN knew any representations were false or should have known they were false; conclusory statements to this effect are insufficient.").) Plaintiffs claim that evidence of ICANN's knowledge "that each of its misrepresentations were false when made to Plaintiffs is both direct and circumstantial, even absent discovery." (FAC ¶ 94.) But Plaintiffs do not identify any such evidence in their FAC.

VI. PLAINTIFFS' BYLAWS ENFORCEMENT AND UCL CLAIMS FAIL.

In its Order, this Court clearly stated that "under the facts alleged in the complaint, there is no basis for the Court to conclude that Plaintiffs have standing to bring" their claim for public enforcement of ICANN's Bylaws. (Order at 6.) In their FAC, Plaintiffs have not added a single substantive allegation to support this claim, and their Opposition mirrors almost exactly their first opposition (except for the added—yet unsupported—argument that "[s]tanding should be liberally interpreted" (Opp'n at 19). Thus, this claim fails again.

Plaintiffs' Unfair Competition Law ("UCL") claim fails for the same reasons that its underlying breach of contract, fraud, and gross negligence claims fail and because Plaintiffs lack standing to pursue the claim, as this Court previously ruled. (Order at 6–7.)

CONCLUSION

ICANN respectfully requests that this Court sustain ICANN's Demurrer with prejudice.

Dated: February 2, 2023

JONES DAY

By: */s/ Eric P. Enson*
Eric P. Enson
Attorneys for Defendant ICANN

PROOF OF SERVICE

I, Diane E. Sanchez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2452. On February 2, 2023, I served a copy of the within document(s):

DEFENDANT ICANN'S REPLY IN SUPPORT OF DEMURRER TO FIRST AMENDED COMPLAINT OF FEGISTRY, LLC, RADIX DOMAIN SOLUTIONS PTE. LTD., AND DOMAIN VENTURE PARTNERS PCC LIMITED

☒ by transmitting via my electronic service address (dsanchez@jonesday.com) the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Michael L. Rodenbaugh
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San Francisco, CA 94104

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on Febraury 2, 2023, at Los Angeles, California.

Diane Sanchez

Diane E. Sanchez