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7 Attorneys for Plaintiff
8 and the proposed class

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 CHRIS McELROY, on Behalf of
13 Himself and All Others Similarly
Situated,

14 Plaintiff,

15 vs.

16 NETWORK SOLUTIONS, LLC, a
17 Delaware Limited Liability Company;
INTERNET CORPORATION FOR
18 ASSIGNED NAMES AND
NUMBERS, a California non-profit
19 Corporation; and DOES 1 through
250, inclusive;

20 Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

21
22
23 Plaintiff, Chris McElroy ("Plaintiff"), individually and on behalf of the Class
24 described below, by his attorneys, makes the following allegations based upon
25 information and belief, except as to allegations specifically pertaining to Plaintiff
26 and his counsel, which are based on personal knowledge. Plaintiff brings this
27 action for damages and injunctive relief against Defendants, demanding a trial by
28 jury.

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NATURE OF THE ACTION

1
2 1. Plaintiff brings this class action against Network Solutions, L.L.C.
3 (“Network Solutions”) and Internet Corporation for Assigned Names and Numbers
4 (“ICANN”) to recover damages and other relief available at law and in equity on
5 behalf of himself as well as on behalf of the members of the following class:

6 *All persons or entities in the United States who searched*
7 *for the availability of a domain name through Network*
8 *Solutions and subsequently registered that domain name*
9 *through Network Solutions.*

10 2. Network Solutions is a domain name registrar. On its website,
11 Network Solutions allows consumers to search for the availability of domain
12 names and then register an available name.

13 3. This action arises from the fraudulent and deceptive business practices
14 that Network Solutions employs to effectively trap consumers into paying its
15 grossly inflated domain name registration fees. Unbeknownst to consumers,
16 Network Solutions immediately registers for itself any domain name that
17 consumers provide to Network Solutions in order to determine whether the domain
18 name is available. Network Solutions never informs consumers that it has
19 registered the domain name for itself; instead, Network Solutions tells consumers
20 that their domain name is "available" and offers to register the domain. It is only at
21 this point – after it has secretly registered the domain for itself – that Network
22 Solutions finally reveals what it will charge.

23 4. Consumers cannot register their domain name through any of
24 Network Solutions’ less expensive competitors because their chosen domain is
25 unavailable through any other service – which (unbeknownst to the consumer) is
26 now held exclusively by Network Solutions – who is now offering to sell the
27 domain name to anyone willing to pay its grossly inflated registration fee.
28 Consumers, therefore, are held hostage: they can either pay what Network

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1 Solutions demands or risk that someone else will and steal their domain name.

2 5. It is through the above practices, that Network Solutions is able to
3 continue charging a substantially higher price for the registration of domain names
4 than its competitors.

5
6 **THE PARTIES**

7 6. Plaintiff Chris McElroy is a resident of Miami-Dade County, Florida.
8 Plaintiff, after searching for the availability of a domain name on Network
9 Solutions, was forced to register the domain name through Network Solutions.

10 7. Plaintiff is informed and believes and thereon alleges that defendant
11 Network Solutions, L.L.C. ("Network Solutions") is a Delaware limited liability
12 company doing business in the State of California. Network Solutions' corporate
13 headquarters are located in Herndon, Virginia.

14 8. Plaintiff is informed and believes and thereon alleges that defendant
15 Internet Corporation for Assigned Names and Numbers ("ICANN") is a California
16 non-profit corporation doing business in the State of California. ICANN's
17 corporate headquarters are in Marina Del Rey, California.

18 9. Plaintiff does not know the true names or capacities of the persons or
19 entities sued herein as DOES 1 to 250, inclusive, and therefore sues such
20 defendants by such fictitious names. Plaintiff is informed and believes and thereon
21 alleges that each of the DOE defendants is in some manner legally responsible for
22 the damages suffered by plaintiff and the members of the class as alleged herein.
23 Plaintiff will amend this complaint to set forth the true names and capacities of
24 these defendants when they have been ascertained, along with appropriate charging
25 allegations, as may be necessary.

26
27 **JURISDICTION AND VENUE**

28 10. This Court has original jurisdiction over the claims asserted herein

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1 individually and on behalf of the class pursuant to 28 U.S.C. § 1332, as amended in
2 February 2005 by the Class Action Fairness Act. Jurisdiction is proper because:
3 (1) the amount in controversy in this class action exceeds five million dollars,
4 exclusive of interest and costs; (2) there is complete diversity of citizenship
5 between Plaintiff and defendants Network Solutions and ICANN; and (3) a
6 substantial number of the members of the proposed class are citizens of a state
7 different from defendants Network Solutions and ICANN.

8 11. Venue is proper in this judicial district pursuant to 28 U.S.C. §
9 1391(a) and (c) in that ICANN resides in this district and a substantial part of the
10 events or omissions giving rise to the claim occurred in this district.

12 **FACTUAL BACKGROUND**

13 12. An IP address (or Internet Protocol address) is a set of numbers that
14 uniquely identifies an electronic device on a network. It is only through the use of
15 an IP address that one device can find another device on a network in order to
16 interact with it. Every computer hosting a website on the Internet has a unique IP
17 address.

18 13. Although typing an IP address into the address bar of a web browser
19 would get you to the hosted website, it is both more convenient and flexible to
20 reach a website through its domain name (e.g., whitehouse.gov). Not only is the
21 domain name (whitehouse.gov) more memorable than the IP address
22 (63.161.169.137), the use of a domain name allows the server hosting the website
23 to change without the user having to keep track of the change. The use of domain
24 names also allows multiple IP addresses to be assigned to a single domain name
25 (so that the tasks of hosting a website can be spread among many servers); or –
26 conversely – the use of domain names allows multiple domain names to be
27 assigned to a single IP address (so that one server may have multiple roles).

28 14. The identity of a website is synonymous with that website's domain

1 name – not the IP address of the server that is hosting that website. Needless to
2 say, domain names can be extremely valuable assets. A memorable, short and
3 unique domain name is more likely to be found and remembered, more likely to be
4 searched and more likely to generate revenue.

5 15. Although memorable and useful – and potentially quite valuable – a
6 domain name by itself is unable to point to a server hosting a particular website.
7 Since a server can only be located via its unique IP address, a domain name must
8 be translated into a specific IP addresses. That translation occurs through the
9 Domain Name System (DNS) – essentially a series of “phonebooks” which
10 translates human-understandable domain names into IP addresses. Each of these
11 internet “phonebooks” is referred to as a “domain name registry” or Network
12 Information Center (NIC). A domain name is meaningless to a computer on the
13 network (and therefore useless) unless it can find it is included in the domain name
14 registry. In short, if a domain name does not exist in the domain name registry it
15 does not exist on the Internet.

16 16. A domain name is included in a domain name registry through a
17 registry process. That process is supervised by defendant ICANN, a California
18 non-profit corporation that was created on September 18, 1998 in order to oversee
19 a number of Internet-related tasks including the assignment of domain names and
20 IP addresses.

21 17. A consumer cannot directly register and manage their domain name
22 information with ICANN. Instead, consumers must utilize a domain name
23 registrar to have his or her domain name registered and managed with the
24 appropriate domain name registry. A domain name registrar is a company
25 accredited by ICANN to register domain names in the domain name registry.

26 18. The Shared Registration System (SRS) is a central system that allows
27 all accredited domain name registrars to equally access, register and control
28 domain names. Before the creation of the SRS in 1999, Network Solutions had a

1 monopoly in the operation of the most important domain name registries (including
2 .com, .net and .org) and was therefore the only domain name registrar. With the
3 creation of the SRS, Network Solutions' monopoly ended, since SRS allowed
4 consumers to choose from many different domain name registrars who competed
5 on price and service. Today, defendant Network Solutions is just one of many
6 ICANN accredited domain name registrars.

7 19. Domain names are assigned on a "first-come-first-served" basis.
8 Thus, whenever a consumer seeks to register a particular domain name, the domain
9 name registrar must first determine whether the domain name is available. The
10 domain name registrar does this by checking the name against the domain name
11 registry; if there is no entry for the particular domain name in question the
12 consumer is permitted to register the domain name. Conversely, if the particular
13 domain name appears in the domain name registry, the domain name registrar is
14 obviously precluded from offering to register that domain name on behalf of its
15 potential customer.

16 20. It is defendant Network Solutions' policy and practice to immediately
17 register **for itself** any and all domain names that consumers inquire about through
18 its website. Although Network Solutions still offers to sell the domain name to the
19 consumer (or anyone else who is willing to pay Network Solutions' grossly
20 inflated registration fee), it has ensured through this practice that only **it** can
21 register the domain name, effectively creating a monopoly for itself.

22 21. A consumer who inquires as to the availability of a domain name
23 through Network Solutions, and who is told that the domain name is available but
24 then balks at the grossly inflated price that Network Solution seeks to charge for
25 registering the domain name is left with little recourse. Should the consumer seek
26 to register the domain name through another, cheaper domain name registrar, that
27 registrar will report (after querying the domain name registry) that the domain
28 name is not available, which of course it is not since it is now registered to

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1 Network Solutions.

2 22. Network Solutions never informs consumers that it will immediately
3 purchase for itself any domain name that a consumer shows interest in by
4 searching for the availability of the domain name through Network Solutions.

5 23. Network Solutions never informs consumers that simply by inquiring
6 as to the availability of a domain name through Network Solutions, a consumer
7 will effectively grant Network Solutions the sole right – to the exclusion of all
8 other domain name registrars – to sell that domain name.

9 24. Network Solutions never informs consumers that it will offer to sell
10 the domain name that a consumer has inquired about through Network Solutions to
11 **anyone** – not just the consumer who initially conducted the search – who is will to
12 pay Network Solutions' grossly inflated prices. So although Network Solutions'
13 practice serves to eliminate the threat that any of its competitors will be able to
14 register a domain name, it does nothing to protect consumers who used Network
15 Solutions from having their domain name purchase by someone else (as long as
16 they are willing to register with Network Solutions).

17 25. A consumer who inquires as to the availability of a domain name
18 through Network Solutions is not presented with the grossly inflated registration
19 fee charged by Network Solutions until it is too late (that is, not until after the
20 consumer has searched for a domain name and Network Solutions has registered
21 that domain name for itself.)

22 26. It is through the above practices that Network Solutions is able to
23 maintain its grossly inflated registration fees.

24 27. Network Solutions is able to perpetuate this course of misconduct
25 only through the acquiescence, tacit approval and participation of ICANN. The
26 agreement between ICANN and the domain name registrars includes provisions for
27 an Add Grace Period (AGP). The AGP allows a domain name registrar to avoid
28 paying a registration fee for domain names canceled within five days of

1 registration.

2 28. By using the AGP, Network Solutions is able to register, risk free, the
3 domain names searched on its website, thereby forcing consumers to register the
4 domain names through Network Solutions.

5 29. ICANN was, and is, aware of Network Solutions' actions and
6 continued to permit Network Solutions fraudulent abuse of the AGP for its own
7 gain and to the detriment of consumers.

8 30. On January 31, 2008, Plaintiff conducted a search through Network
9 Solutions inquiring as to the availability of the domain name
10 kidsearchnetwork.com. Network Solutions informed Plaintiff that the domain
11 name was "available," conveniently failing to mention that it had already
12 registered the domain name for itself.

13 31. It was only after inquiring as to availability of the domain name
14 kidsearchnetwork.com that plaintiff was presented with Network Solutions'
15 grossly domain name registration fee of \$34.99 per year. Believing he could get a
16 better deal at another domain name registrar, Plaintiff immediately attempted to
17 register kidsearchnetwork.com with a competing domain name registrar, GoDaddy.
18 GoDaddy, however, informed Plaintiff that the domain name that he was
19 attempting to register – and which Network Solutions informed was available just
20 minutes earlier – was unavailable.

21 32. Plaintiff next attempted to register the domain name with another
22 domain name registrar, eNom, but again Plaintiff was informed that the domain
23 name was not available.

24 33. Curious as to why the domain name kidsearchnetwork.com had
25 suddenly become unavailable, Plaintiff conducted a WHOIS search to determine
26 who had registered that domain name. WHOIS, which is simply a protocol for
27 querying the official domain name registry database, provides contact information
28 for the owner of the searched domain name. Plaintiff's WHOIS search showed

1 that Network Solutions had registered kidsearchnetwork.com.

2 34. Plaintiff then returned to Network Solutions and again inquired as to
3 the availability of kidsearchnetwork.com. Plaintiff was again informed by
4 Network Solutions that the domain name was available.

5 35. By registering the domain name, Network Solutions forced Plaintiff to
6 register the domain name with Network Solutions or face the prospect of losing the
7 domain name to someone else. Not wanting to take that risk, Plaintiff registered
8 the domain name with Network Solutions and paid \$34.99 for a one year
9 registration. In contrast, GoDaddy would have charged only \$9.99 to register the
10 same domain name.

11 12 CLASS ACTION ALLEGATIONS

13 36. Description of the Class: Plaintiff brings this nationwide class action
14 on behalf of himself and a Class defined as follows:

15 *All persons or entities in the United States who searched*
16 *for the availability of a domain name through Network*
17 *Solutions and subsequently registered that domain name*
18 *through Network Solutions.*

19 37. Excluded from the Class are governmental entities, Defendants, any
20 entity in which Defendants have a controlling interest, and Defendants' officers,
21 directors, affiliates, legal representatives, employees, co-conspirators, successors,
22 subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or
23 judicial officer presiding over this matter and the members of their immediate
24 families and judicial staff.

25 38. Plaintiff reserves the right to modify the Class description and the
26 Class period based on the results of discovery.

27 39. Plaintiff and the Class bring this action for equitable, injunctive and
28 declaratory relief pursuant to subdivisions (b)(1), (b)(2) and (b)(3) of rule 23 of the

1 Federal Rules of Civil Procedure.

2 40. Numerosity: The proposed Class is so numerous that individual
3 joinder of all its members is impracticable. Due to the nature of the trade and
4 commerce involved, however, Plaintiff believes that the total number of Class
5 members is at least in the thousands and members of the class are so numerous and
6 geographically dispersed across the United States. While the exact number and
7 identities of the Class members are unknown at this time, such information can be
8 ascertained through appropriate investigation and discovery. The disposition of the
9 claims of the Class members in a single class action will provide substantial
10 benefits to all parties and to the Court.

11 41. Common Questions of Law and Fact Predominate: There are many
12 questions of law and fact common to the representative Plaintiff and the Class, and
13 those questions substantially predominate over any questions that may affect
14 individual Class members. Common questions of fact and law include, but are not
15 limited to, the following:

16 a. Whether Network Solutions failed to disclose to consumers the
17 material fact that when a consumer searches for the availability of a domain
18 name on Network Solutions' website, they will be prevented from
19 registering the domain name with any other domain name registrar;

20 b. Whether Network Solutions was unjustly enriched by the
21 wrongs complained of herein; and

22 c. Whether or not Plaintiff and the members of the Class have
23 been damaged by the wrongs complained of herein, and if so, the measure of
24 those damages and the nature and extent of other relief that should be
25 afforded.

26 42. Typicality: Plaintiff's claims are typical of the claims of the
27 members of the class. Plaintiff and all members of the class have been similarly
28 affected by Defendant's common course of conduct since they were all forced to

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1 pay Network Solutions' inflated registration fees.

2 43. Adequacy of Representation: Plaintiff will fairly and adequately
3 represent and protect the interests of the Class. Plaintiff has retained counsel with
4 substantial experience in prosecuting complex and class action litigation. Plaintiff
5 and his counsel are committed to vigorously prosecuting this action on behalf of
6 the Class, and have the financial resources to do so. Neither Plaintiff nor his
7 counsel have any interests adverse to those of the Class.

8 44. Superiority of a Class Action: Plaintiff and the members of the Class
9 suffered, and will continue to suffer, harm as a result of Defendant's unlawful and
10 wrongful conduct. A class action is superior to other available methods for the fair
11 and efficient adjudication of the present controversy. Individual joinder of all
12 members of the class is impractical. Even if individual class members had the
13 resources to pursue individual litigation, it would be unduly burdensome to the
14 courts in which the individual litigation would proceed. Individual litigation
15 magnifies the delay and expense to all parties in the court system of resolving the
16 controversies engendered by Defendant's common course of conduct. The class
17 action device allows a single court to provide the benefits of unitary adjudication,
18 judicial economy, and the fair and equitable handling of all class members' claims
19 in a single forum. The conduct of this action as a class action conserves the
20 resources of the parties and of the judicial system, and protects the rights of the
21 class member. Furthermore, for many, if not most, class members, a class action is
22 the only feasible mechanism that allows therein an opportunity for legal redress
23 and justice.

24 45. Adjudication of individual class members' claims with respect to the
25 Defendant would, as a practical matter, be dispositive of the interests of other
26 members not parties to the adjudication, and could substantially impair or impede
27 the ability of other class members to protect their interests.

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1 **FIRST CAUSE OF ACTION**
2 **FRAUDULENT CONCEALMENT**
3 **(Against Defendant Network Solutions)**

4 46. Plaintiff realleges the preceding paragraphs as if fully set forth herein
5 and, to the extent necessary, pleads this cause of action in the alternative.

6 47. Network Solutions knew at all material times that, in response to a
7 consumer's search of a domain name on its website, Network Solutions would
8 register the searched domain name, thereby preventing the consumer from being
9 able to register the domain name with any other domain name registrar.

10 48. These facts were not known to Plaintiff and the Class.

11 49. Network Solutions had a duty to disclose the above known material
12 facts because Network Solutions knew that these material facts were unknown to
13 Plaintiff and the Class, because Network Solutions was in a superior position of
14 knowledge with regard to its own business practices, and because Network
15 Solutions chose to make certain representations that presented only a part of the
16 true story and misled consumers.

17 50. Network Solutions' knowledge that its registration of searched
18 domain names prevents consumers from registering the domain name through any
19 other domain name registrar, combined with Network Solutions' knowledge that
20 Plaintiff and the Class relied or relies upon Network Solutions to communicate the
21 true state of facts relating to its domain registration practices, creates a legal
22 obligation on Network Solutions' part to disclose to Plaintiff and the Class that by
23 searching for the availability of a domain name on Network Solutions' website, a
24 consumers are prevented from registering the domain name through any other
25 domain name registrar.

26 51. Plaintiff and the Class were unaware of the above facts and would not
27 have acted as they did if they had known of the concealed material facts.

28 52. Network Solutions intentionally concealed and/or suppressed the

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1 above facts with the intent to defraud Plaintiff and the Class.

2 53. Network Solutions intended and intends to deceive Plaintiff and the
3 Class by failing to disclose that a search on Network Solutions' website for the
4 availability of a domain name will result in the consumer's inability to register the
5 domain name through any other domain name registrar.

6 54. Network Solutions' concealment of the above facts has caused
7 damage to Plaintiff and the Class in an amount to be shown at trial.

8 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

9

10

SECOND CAUSE OF ACTION

11

AIDING AND ABETTING FRAUDULENT CONCEALMENT

12

(Against Defendant ICANN)

13

14 55. Plaintiff realleges the preceding paragraphs as if fully set forth herein
and, to the extent necessary, pleads this cause of action in the alternative.

15

16 56. ICANN, at all relevant times knew of Network Solutions' policies and
procedures to defraud Plaintiff and the Class.

17

18 57. ICANN offered Network Solutions substantial and material assistance
to Network Solutions by implementing and continuing the AGP which permitted
19 Network Solutions to engage in the fraudulent scheme alleged herein.

20

21 58. ICANN's aiding and abetting of Network Solution's fraudulent
scheme caused damage to Plaintiff and the Class in an amount to be shown at trial.

22

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

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THIRD CAUSE OF ACTION

UNJUST ENRICHMENT

(Against Defendant Network Solutions)

59. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

60. Through the schemes described above, Network Solutions has received money belonging to Plaintiff and the Class through the registration of domain names.

61. Network Solutions has reaped substantial profit by concealing the fact that by searching for the availability of a domain name through Network Solutions, consumers would be prevented from registering the domain name through any other domain name registrars. Ultimately, this resulted in Network Solutions' wrongful receipt of profits and injury to Plaintiff and the Class. Network Solutions has benefited from the receipt of such money that it would not have received but for its concealment.

62. As a direct and proximate result of Network Solutions' misconduct as set forth above, Network Solutions has been unjustly enriched.

63. Under principles of equity and good conscience, Network Solutions should not be permitted to keep the full amount of money belonging to Plaintiff and the Class which Network Solutions has unjustly received as a result of its actions.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or judgment against the Defendants as follows:

1. Certification of the proposed class and notice thereto to be paid by

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1 Defendant;

2 2. Adjudge and decree that Defendants have engaged in the conduct
3 alleged herein;

4 3. For restitution and disgorgement on certain causes of action;

5 4. For an injunction ordering Defendants to cease and desist from
6 engaging in the unfair, unlawful, and/or fraudulent practices alleged in the
7 Complaint;

8 5. For compensatory and general damages according to proof on certain
9 causes of action;

10 6. For special damages according to proof on certain causes of action;

11 7. For both pre and post-judgment interest at the maximum allowable
12 rate on any amounts awarded;

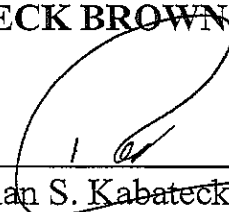
13 8. Costs of the proceedings herein;

14 9. Reasonable attorneys fees as allowed by statute; and

15 10. Any and all such other and further relief that this Court may deem just
16 and proper.

17
18 DATED: February 25, 2008 **KABATECK BROWN KELLNER LLP**

19
20 By _____


21 Brian S. Kabateck

22 Richard L. Kellner

23 *Counsel for Plaintiff and the class*
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury in the instant action.

3
4 DATED: February 25, 2008 **KABATECK BROWN KELLNER LLP**

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6 By _____

7 Brian S. Kabateck
8 Richard L. Kellner
9 *Counsel for Plaintiff and the class*

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