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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 REGISTERSITE.COM, an Assumed
Name of ABR PRODUCTS INC., a
13 New York Corporation, et al.,

14 Plaintiffs,

15 v.

16 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
17 NUMBERS, a California corporation;
VERISIGN, INC., a Delaware
18 Corporation; NETWORK
SOLUTIONS, INC., a Delaware
19 Corporation; ENOM, INC., a
Washington Corporation; ENOM
20 FOREIGN HOLDINGS
CORPORATION, a Washington
21 Corporation; and DOES 1-10,
inclusive,

22 Defendants.
23

Case No. CV 04-1368 ABC (CWx)

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION BY
DEFENDANT VERISIGN, INC.
TO DISMISS PLAINTIFFS'
ELEVENTH CLAIM FOR
RELIEF FOR IMPROPER
VENUE**

[Fed. R. Civ. P. 12(b)(3)]

Date: July 12, 2004
Time: 10:00 a.m.
Courtroom: Room 680 – Roybal Bldg.
Judge: Hon. Audrey B. Collins

[Notice of Motion and Motion and
Declaration of Barbara Knight filed
concurrently herewith]

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1 Defendant VeriSign, Inc. (“VeriSign”) submits this Memorandum of Points
2 and Authorities in support of its Motion under Rule 12(b)(3) of the Federal Rules of
3 Civil Procedure to Dismiss for improper venue the Eleventh “Cause of Action” in the
4 First Amended Complaint (“Complaint” or “FAC”).

5 **I. INTRODUCTION**

6 Venue for Plaintiffs’ Eleventh “Cause of Action” is *improper* in this Court.
7 Plaintiffs freely entered into and agreed to a fully disclosed, explicit forum selection
8 clause as part of a Registry-Registrar Agreement (the “Agreement”) between
9 VeriSign and each of the Plaintiffs.¹ The Agreement *mandates* that any legal action
10 relating to the Agreement or its enforcement be brought in a court located in the
11 Eastern District of Virginia. The Eleventh Cause of Action, which is for declaratory
12 relief based upon an alleged breach of the Agreement, manifestly and expressly
13 relates to the Agreement and thus is subject to the forum selection clause.

14 As demonstrated herein, forum selection clauses, such as the one contained in
15 the Agreement, are *prima facie* valid and their enforcement is consistent with public
16 policy. Indeed, courts routinely enforce these clauses, and place a *heavy burden on a*
17 *party opposing enforcement*. The circumstances applicable here strongly support
18 enforcement of the clause, and Plaintiffs cannot meet their resulting burden to resist
19 enforcement. Accordingly, the Court should effectuate the clearly stated intent of the
20 Registry-Registrar Agreement and the parties to that Agreement, and dismiss the
21 Eleventh Cause of Action.²

22
23 ¹ The Complaint alleges claims for relief against VeriSign and Defendants Internet
24 Corporation for Assigned Names and Numbers (“ICANN”), Network Solutions, Inc.,
25 and eNom, Inc. This Motion, however, concerns a single claim for relief that
Plaintiffs have directed *only* against VeriSign. Plaintiffs have denominated their
claims as “causes of action” in the Complaint.

26 ² In the event the Court is not inclined to dismiss Plaintiffs’ declaratory relief claim,
27 VeriSign alternatively requests by this motion that the Court either dismiss this claim
28 under Rule 12(b)(3) or sever and transfer it to the Eastern District of Virginia. See
Fed. R. Civ. P. 21 (“Any claim against a party may be severed and proceeded with
separately.”); *Toro Co. v. Alsop*, 565 F.2d 998, 1000–01 (8th Cir. 1977) (affirming
the district court’s decision to sever, pursuant to Rule 21 of the Federal Rules of Civil

1 **II. FACTUAL BACKGROUND**

2 **A. The Parties.**

3 The Complaint asserts claims on behalf of eight businesses:

4 (1) Registersite.com; (2) Name.com, LLC; (3) R. Lee Chambers Company LLC;
5 (4) Fiducia LLC; (5) Spot Domain, LLC; (6) !\$6.25 Domains! Network, Inc.;
6 (7) AusRegistry Group Pty Ltd.; and (8) ! \$! Bid It Win It, Inc. (collectively,
7 “Plaintiffs”). (FAC ¶¶ 2.1-2.8.) All of the Plaintiffs purport to offer services to assist
8 customers who seek to register a domain name that previously was registered to
9 someone else and recently was deleted. (*Id.* ¶ 1.4.)

10 As alleged in the Complaint, VeriSign is a Delaware corporation that, pursuant
11 to an agreement with the Internet Corporation for Assigned Names and Numbers
12 (“ICANN”), operates the exclusive “registry” for the .com and .net TLDs.³ (*Id.*
13 ¶¶ 2.10, 4.13, 4.44.) Plaintiffs allege a registry is an organization responsible for
14 maintaining the authoritative list of second-level domains within a TLD.
15 (*Id.* ¶ 4.9 & n.2.)

16 **B. The Registry-Registrar Agreement between VeriSign and Plaintiffs.**

17 Attached to the Complaint as Exhibit A, and expressly incorporated by
18 reference into the Complaint, is a copy of the Registry-Registrar Agreement that each
19 of the Plaintiffs admits it has entered into with VeriSign. (FAC ¶ 15.3, Ex. A.)
20

21 _____
(Footnote Cont’d From Previous Page)

22 Procedure, one of the counts in the plaintiffs’ complaint, as well as a counterclaim,
23 and to transfer the severed claims to another district pursuant to 28 U.S.C. § 1404(a)).

24 ³ Every computer connected directly to the Internet has a unique numerical “address,”
25 known as an Internet Protocol (“IP”) number. IP numbers are necessary for
26 computers to “communicate” with each other over the Internet. Because IP numbers
27 can be cumbersome, a corresponding system was developed which associates
28 alphanumeric character strings, known as “domain names,” with certain IP numbers.
Internet domain names consist of a string of “domains” separated by periods. “Top
level” domains (“TLDs”) are found to the right of the last period and include the
“.net” and “.com” TLDs. “Second level” domains (“SLDs”) are those appearing
immediately to the left of the TLDs, such as “uscourts” in “uscourts.gov.” (FAC
¶¶ 4.1-4.7.)

1 Among other things, the Registry-Registrar Agreement contains an exclusive forum
2 selection clause in Section 6.7:

3 Any legal action or other legal proceeding relating to this
4 Agreement or the enforcement of any provision of this
5 Agreement *shall be* brought or otherwise commenced in
6 any state or federal court located in the *eastern district of*
7 *the Commonwealth of Virginia*. Each Party to this
8 Agreement expressly and irrevocably consents and submits
to the jurisdiction and venue of each state and federal court
located in the eastern district of the Commonwealth of
Virginia (and each appellate court located in the
Commonwealth of Virginia) in connection with any such
legal proceeding.

9 (FAC Ex. A § 6.7 (emphases added).)

10 VeriSign has entered into the same, or essentially the same, .com and .net
11 Registry-Registrar Agreement with approximately 175 registrars. (*See* Declaration of
12 Barbara Knight (“Knight Decl.”) ¶ 6.) These registrars are located both across the
13 United States and in countries around the world. (*Id.*) VeriSign could not possibly
14 appear in every state and in numerous countries throughout the world to defend itself
15 on every claim that a registrar could bring relating to the Registry-Registrar
16 Agreement. Accordingly, one of the purposes of the forum selection clause is to limit
17 VeriSign’s exposure to litigation in multiple fora and to ensure uniform interpretation
18 and enforcement of the Agreement by requiring that any legal action relating to the
19 Agreement or its enforcement be brought in the Eastern District of Virginia. (*Id.*)

20 Plaintiffs’ Eleventh Cause of Action seeks declaratory relief based entirely on
21 VeriSign’s purportedly threatened breach of the Registry-Registrar Agreement. (*See,*
22 *e.g.*, FAC ¶ 15.3 (“Each Plaintiff is a party to the Registry-Registrar Agreement with
23 VeriSign. . . .”); ¶ 15.2 (“VeriSign is contractually obligated to delete expired domain
24 names . . . and *will breach* that obligation if the WLS is launched.”); ¶ 15.15 (“If the
25 WLS is implemented, VeriSign *will materially breach* its obligations under the
26 Registry-Registrar Agreement. . . .”) (emphases added).) Because this claim clearly
27 relates to the Agreement and to its enforcement, the Court should effectuate
28

1 Plaintiffs' agreement to submit their declaratory relief claim to the exclusive
2 jurisdiction of the federal or state courts in Virginia.

3 **III. VIRGINIA IS THE ONLY PROPER VENUE FOR PLAINTIFFS'**
4 **ELEVENTH CAUSE OF ACTION**

5 Plaintiffs' Eleventh Cause of Action should be dismissed because venue is
6 improper. *See* Fed. R. Civ. Proc. 12(b)(3).⁴ Plaintiffs bear the burden of establishing
7 proper venue. *Nissan Motor Co. v. Nissan Computer Corp.*, 89 F. Supp. 2d 1154,
8 1161 (C.D. Cal. 2000); *Mid Atl. Paper, LLC v. Scott County Tobacco Warehouses,*
9 *Inc.*, 2004 WL 326710, at *1 (W.D. Va. Feb. 23, 2004) ("Once improper venue is
10 raised, the burden to establish that venue is proper in this court is on the plaintiff.");
11 *see also Greater N.Y. Auto. Dealers Ass'n v. Env'tl. Sys. Testing, Inc.*, 211 F.R.D. 71,
12 84 (E.D.N.Y. 2002) ("A plaintiff who brings suit in a forum other than the one
13 designated by the forum selection clause carries the burden to make a 'strong
14 showing' in order to overcome the presumption of enforceability."). Plaintiffs cannot
15 meet this heavy burden here, because they each have entered into a binding
16 agreement, with a fully-disclosed forum selection clause, vesting exclusive
17 jurisdiction and venue in the federal and state courts of Virginia.

18
19
20
21
22
23 ⁴ In the Ninth Circuit, a motion to enforce a forum selection clause is treated as a
24 motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(3), and not
25 Rule 12(b)(6). *R.A. Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir.
26 1996) (treating motion to dismiss on the basis of a forum selection clause as a Rule
27 12(b)(3) motion to dismiss for improper venue); *Tokio Marine & Fire Ins. Co. v.*
28 *Nippon Express U.S.A. (Illinois), Inc.*, 118 F. Supp. 2d 997, 998-99 (C.D. Cal. 2000);
Kelso Enter., Ltd. v. M/V Wisida Frost, 8 F. Supp. 2d 1197, 1201 (C.D. Cal. 1998).
Indeed, courts routinely dismiss, pursuant to Rule 12(b)(3) motions, claims that are
brought in a forum other than the one specified in a forum selection clause. *See*
Spradlin v. Lear Siegler Mgmt. Servs. Co., 926 F.2d 865, 866, 869 (9th Cir. 1991);
Vogt-Nem, Inc. v. M/V Tramper, 263 F. Supp. 2d 1226, 1229, 1233 (N.D. Cal. 2002).

1 **A. The Forum Selection Clause Is Presumptively Valid And Applies To**
2 **The Claim At Issue.**

3 Federal common law governs the enforceability of forum selection clauses in
4 federal court.⁵ *Argueta*, 87 F.3d at 324 (In federal court, “[f]ederal law governs the
5 validity of a forum selection clause.”); *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858
6 F.2d 509, 513 (9th Cir. 1988); *Kelso Enter.*, 8 F. Supp. 2d at 1201. Under federal
7 law, the forum selection clause in the Registry-Registrar Agreement is “prima facie
8 valid” and should be enforced unless the resisting party clearly can show that
9 “enforcement would be unreasonable and unjust, or that the clause was invalid for
10 such reasons as fraud or overreaching.” *M/S Bremen v. Zapata Off-Shore Co.*, 407
11 U.S. 1, 10, 15, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972); *see also Spradlin*, 926 F.2d at
12 867. This mandate has been widely recognized and routinely followed by the courts.
13 *See, e.g., Manetti-Farrow*, 858 F.2d at 514–15; *Pelleport Investors, Inc. v. Budco*
14 *Quality Theatres, Inc.*, 741 F.2d 273, 279 (9th Cir. 1984); *Tokio Marine*, 118
15 F. Supp. 2d at 1000 (“strong policy favoring enforcement of forum selection
16 clauses”); *Brinderson-Newberg Joint Venture v. Pac. Erectors, Inc.*, 690 F. Supp.
17 891, 894–96 (C.D. Cal. 1988).

18 Enforcement of forum selection clauses is particularly warranted where, as
19 here, the clause contains mandatory language: “Any legal action . . . *shall be* brought
20 . . . in the eastern district of the Commonwealth of Virginia.” (*See* FAC Ex. A § 6.7
21 (emphasis added).) *See Vogt-Nem*, 263 F. Supp. 2d at 1231 (clause stating that “[a]ny
22 dispute . . . will be submitted to the competent court in Rotterdam” is mandatory);
23 *Talatala v. Nippon Yusen Kaisha Corp.*, 974 F. Supp. 1321, 1325 (D. Haw. 1997)
24 (“[T]he instant language ‘any action thereunder shall be brought before the Tokyo
25 District Court in Japan’ is clearly mandatory.”).

26
27
28 ⁵ The Court may examine facts outside the complaint because the pleadings are not
accepted as true under Rule 12(b)(3). *Argueta*, 87 F.3d at 324.

1 Plaintiffs resisting enforcement of a forum selection clause bear a “heavy
2 burden of proof” and must “clearly show that enforcement [of the forum selection
3 clause] would be unreasonable and unjust, or that the clause was invalid for such
4 reasons as fraud or overreaching.” *Bremen*, 407 U.S. at 15. Applying *Bremen*, the
5 Ninth Circuit has held that a forum selection clause is unenforceable only where
6 “(1) its incorporation into the contract was the result of fraud, undue influence, or
7 overweening bargaining power; (2) the selected forum is so ‘gravely difficult and
8 inconvenient’ that the complaining party will ‘for all practical purposes be deprived
9 of its day in court’; or (3) enforcement of the clause would contravene a strong public
10 policy of the forum in which the suit is brought.” *Argueta*, 87 F.3d at 325 (internal
11 citations omitted).

12 Here, Plaintiffs and VeriSign agreed in advance that any disputes relating to
13 the Registry-Registrar Agreement or its enforcement would be adjudicated in the
14 Eastern District of Virginia. The Eleventh Cause of Action alleging a threatened
15 breach of the Agreement necessarily “relates” to the Agreement or to the
16 “enforcement” of the Agreement and, as such, is plainly subject to the forum
17 selection clause. Further, as discussed below, none of the *Bremen* factors necessary
18 to demonstrate unenforceability is present in this action. Thus, Plaintiffs are
19 contractually bound by the clause and cannot avoid its enforcement by commencing
20 their claim for alleged breach of the Agreement in California, instead of Virginia.

21 **1. The forum selection clause is not the result of fraud or undue**
22 **influence.**

23 A party may escape a forum selection clause on the basis of fraud if “the
24 inclusion of that clause in the contract was the product of fraud or coercion.”
25 *Batchelder v. Kawamoto*, 147 F.3d 915, 919 (9th Cir. 1998) (internal quotation marks
26 and citations omitted). Plaintiffs’ Complaint contains no allegation that the forum
27 selection clause fraudulently was included in the Agreement due to concealment or
28 other wrongful conduct. To the contrary, VeriSign’s Registry-Registrar Agreements

1 are publicly available on the Internet at
2 <http://www.verisign.com/nds/naming/registrar/dotcom/forms/rasNet.pdf> and
3 <http://www.verisign.com/nds/naming/registrar/dotcom/forms/ras.pdf>.⁶ Thus,
4 Plaintiffs cannot allege concealment or non-disclosure of the terms of the Registry-
5 Registrar Agreement as a means of securing Plaintiffs' consent to the forum selection
6 clause.

7 Similarly, Plaintiffs cannot point to any exercise by VeriSign of "overweening
8 bargaining power" in connection with the Registry-Registrar Agreement. The
9 inclusion of a forum selection clause in a standardized contract does not itself
10 constitute "overweening bargaining power." *See Carnival Cruise Lines, Inc. v. Shute*,
11 499 U.S. 585, 593-94, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991). In *Carnival Cruise*
12 *Lines*, the Court acknowledged the undoubtedly superior bargaining power of the
13 cruise line and the substantially identical, non-negotiable forum selection clauses
14 included in each cruise passenger's ticket. Nevertheless, the Supreme Court found
15 that something more than mere size difference must be shown to invalidate such a
16 clause. The Court concluded that the cruise line's forum selection clause, printed on
17 the back of a form passenger ticket, was enforceable inasmuch as the plaintiffs
18 "retained the option of rejecting the contract with impunity." *Id.* at 595; *see also*
19 *Talatala*, 974 F. Supp. at 1325-26 (finding no fraud or overreaching where forum
20 selection clause was "standard language in all [of the defendants'] bills of lading");
21 *Rini Wine Co. v. Guild Wineries & Distilleries*, 604 F. Supp. 1055, 1058 (N.D. Ohio
22 1985) ("[T]he fact that the distributor agreements are boilerplate forms should not
23 inherently defeat the validity of a forum-selection clause.").

24 Here, as in *Talatala* and *Rini Wine*, the fact that the forum selection clause is
25 standard language in the Registry-Registrar Agreement does not constitute evidence

26 ⁶ The Court may take judicial notice of the fact that VeriSign's Registry-Registrar
27 Agreements are publicly available at VeriSign's Internet website. *See* Fed. R. Evid.
28 201; *Hendrickson v. Ebay Inc.*, 165 F. Supp. 2d 1082, 1084 n.2 (C.D. Cal. 2001)
(taking judicial notice of website and the "information contained therein").

1 of “overweening bargaining power.” Moreover, like the plaintiff in *Carnival*,
2 Plaintiffs had the option of simply choosing not to enter into the Registry-Registrar
3 Agreement or not to do business with VeriSign at all. Thus, Plaintiffs cannot claim
4 that VeriSign obtained their consent to a Virginia forum through fraud or other
5 wrongful conduct.

6 2. **Plaintiffs cannot establish that Virginia is a forum so gravely**
7 **difficult and inconvenient as to deprive them of their day in**
8 **court.**

9 A party objecting to the enforcement of a forum selection clause on the ground
10 that the agreed-to forum is unreasonable must meet the “heavy burden of showing
11 that trial in the chosen forum would be so difficult and inconvenient that the party
12 would effectively be denied a meaningful day in court.” *Argueta*, 87 F.3d at 325
13 (citing *Pelleport Investors*, 741 F.2d at 281). “Mere inconvenience or additional
14 expense is not the test of unreasonableness since it may be assumed that the plaintiff
15 received under the contract consideration for these things.” *Jack Winter, Inc. v.*
16 *Koratron Co.*, 326 F. Supp. 121, 126 (N.D. Cal. 1971) (citation omitted).

17 Plaintiffs cannot show that their Eleventh Cause of Action against VeriSign is
18 “inherently more suited to resolution in” California than Virginia. *Carnival Cruise*
19 *Lines*, 499 U.S. at 594. *Not a single one of the Plaintiffs is located in California.*
20 They are situated instead, by their own admission, across the country and around the
21 world (e.g., in New York, Colorado, Tennessee, Texas, Minnesota, Australia, and
22 Latvia). (See FAC ¶¶ 2.1–2.8.) Indeed, Plaintiffs’ counsel is not even located in
23 California and, therefore, will have to travel anyway, whether the case is pending in
24 Virginia or California. Consequently, the Central District of California is no more or
25 less convenient than the Eastern District of Virginia for Plaintiffs to litigate their
26 claim relating to the Agreement. Moreover, any minor incremental inconvenience
27 they may experience, if any, travelling to Virginia is insufficient to overcome the
28 strong legal presumption in favor of enforcing the agreed upon forum selection

1 clause. *See Spradlin*, 926 F.2d at 866, 869 (enforcing forum selection clause
2 designating Saudi Arabia as forum for suit even though the plaintiff was located in
3 the United States); *Hopkinson v. Lotus Dev. Corp.*, 1995 WL 381888, at *3 (N.D.
4 Cal. 1995) (financial hardship that California plaintiffs allegedly would suffer if
5 forced to litigate in Massachusetts “is insufficient to establish that the designated
6 forum is gravely difficult and inconvenient”); *Greater N.Y. Auto.*, 211 F.R.D. at 85
7 (“[T]he inconvenience and expense of traveling are themselves not sufficient to
8 require this Court to disturb the parties’ contractual choice of forum.”).

9 The result is no different, and the forum selection clause is no less enforceable,
10 merely because Plaintiffs will have to litigate their declaratory relief claim in Virginia
11 and the rest of their claims in California. *See Vogt-Nem*, 263 F. Supp. 2d at 1233
12 (enforcing forum selection clause requiring the parties to litigate their dispute in the
13 Netherlands and concluding that, “[w]hile admittedly inconvenient, litigation of this
14 dispute in three fora would hardly ‘fragment [the] case beyond recognition’”) (citation omitted and alteration in original); *Tokio Marine*, 118 F. Supp. 2d at 1000
15 (potentially duplicative litigation insufficient to overcome strong policy favoring
16 forum selection clauses).

17
18 Accordingly, Plaintiffs cannot establish any “serious inconvenience” justifying
19 disregard of the otherwise valid forum selection clause in the Registry-Registrar
20 Agreement.

21 **3. Enforcement of the forum selection clause here does not**
22 **contravene any strong public policy of California.**

23 Finally, Plaintiffs cannot point to any public policy of California that would be
24 impaired by pursuit of their declaratory relief claim in Virginia. Both the Ninth
25 Circuit and California courts routinely find forum selection clauses prima facie valid
26 and enforceable. *See, e.g., Richards v. Lloyd’s of London*, 135 F.3d 1289, 1294 (9th
27 Cir. 1998); *Manetti-Farrow*, 858 F.2d at 514-15; *Smith, Valentino & Smith, Inc. v.*
28

1 *Superior Court*, 17 Cal. 3d 491, 495, 131 Cal. Rptr. 374 (1976) (“we are in accord
2 with the modern trend which favors enforceability of such forum selection clauses”).⁷

3 Far from contravening any public policy, the forum selection clause contained
4 in the Agreement is reasonable and comports with public policy. The contractually-
5 chosen forum has a strong substantive nexus with the claims to which the selection
6 clause applies. The Registry-Registrar Agreement specifies certain rights and
7 obligations as between registrars and VeriSign, in its capacity as operator of the .com
8 and .net TLD registries. VeriSign operates those registries out of the Eastern District
9 of Virginia. (See Knight Decl. ¶ 5.) See *Carnival Cruise Lines*, 499 U.S. at 595
10 (determining that Florida forum selection clause was fair and made in good faith
11 where petitioner’s principal place of business was in Florida and many of its cruises
12 departed from and arrived in Florida ports). The Registry-Registrar Agreement also
13 expressly provides in Section 6.7 that it “is to be construed in accordance with and
14 governed by the internal laws of the Commonwealth of Virginia” Under the
15 circumstances, the specification of the Eastern District of Virginia as the exclusive
16 forum for adjudicating disputes relating to the Registry-Registrar Agreement is
17 wholly reasonable.

18 In addition, enforcement of the forum selection clause with respect to the
19 Eleventh Cause of Action is consistent with the expectations of the contracting
20 parties. Given the clear and disclosed forum selection provision, Plaintiffs, in
21 entering into the Agreement, necessarily had to expect to litigate any potential future
22 disputes with VeriSign concerning the Agreement in the Eastern District of Virginia.

23
24 ⁷ Inasmuch as the clause in question also requires that the agreements be interpreted
25 in accordance with the laws of the Commonwealth of Virginia, enforcement of the
26 forum selection clause is similarly consistent with the policy of that state’s law. The
27 Supreme Court of Virginia has held that forum selection clauses are prima facie valid
28 and should be enforced unless unfair or unreasonable. See *Paul Bus. Sys., Inc. v.*
Canon U.S.A., Inc., 240 Va. 337, 341, 344, 397 S.E.2d 804 (1990) (enforcing forum
selection clause naming New York as sole forum; Virginia courts “have expressly
sustained the validity of [forum selection] provisions, approved their use, and
enforced them”).

1 See *Kelso Enter.*, 8 F. Supp. 2d at 1205 (“the parties *anticipated* that any disputes
2 would be heard” in the forum specified in the forum selection clause); *Brinderson-*
3 *Newberg*, 690 F. Supp. at 894 (“when parties negotiate for a forum-selection clause
4 their purpose obviously is to nail down where the action will be tried”).

5 **4. VeriSign’s forum selection clause dispels confusion and helps**
6 **conserve judicial resources.**

7 In *Carnival Cruise Lines*, the Supreme Court discussed the effective use of an
8 enforceable forum selection clause, especially in the case of a cruise line that interacts
9 with passengers from all over the world. Without an enforceable forum selection
10 clause, the Court noted that the cruise line would be exposed to litigation in
11 innumerable fora. The *Carnival Cruise Lines* Court found that a forum selection
12 clause had the salutary effect of dispelling confusion about where a case should be
13 brought, thereby conserving judicial and litigants’ resources. The Court noted that a
14 cruise line’s passengers also benefit from a forum selection clause in the form of
15 reduced fares reflecting the reduced litigation expenses resulting therefrom. *Carnival*
16 *Cruise Lines*, 499 U.S. at 593-94.

17 The *Carnival Cruise Lines* analysis applies with equal force to VeriSign’s
18 contractual relationships with Internet domain name registrars. VeriSign has entered
19 into the Registry-Registrar Agreement with approximately 175 registrars. These
20 registrars are located throughout the 50 states and across the globe.⁸ (*See Knight*
21 *Decl.* ¶ 6.) In light of the exceedingly broad geographical scope of VeriSign’s
22 business relationships with registrars, VeriSign has a legitimate interest in narrowing
23 its obligation to defend itself to a single forum. *See Carnival Cruise Lines*, 499 U.S.
24 at 593 (enforcing forum selection clause and reasoning that a cruise line “has a
25

26 ⁸ The Court may take judicial notice of the locations of ICANN-accredited registrars,
27 which are listed on links that appear on the ICANN website at
28 “www.icann.org/registrars/accredited-list.html” and
“www.icann.org/registrars/accredited-qualified-list.html.” *See Fed. R. Evid.* 201;
Hendrickson, 165 F. Supp. 2d at 1084 n.2.

1 special interest in limiting the fora in which it potentially could be subject to suit”
2 because a cruise ship “typically carries passengers from many locales,” thus
3 potentially subjecting the cruise line “to litigation in several different fora”). Indeed,
4 subjecting *all* disputes relating to the standardized Registry-Registrar Agreement to a
5 single forum applying a single body of law promotes consistency and predictability in
6 the interpretation and enforcement of the Agreement, to the benefit of *both* registrars
7 and VeriSign.

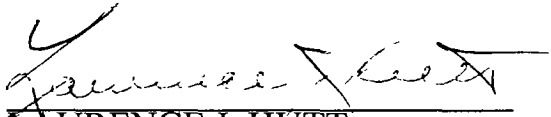
8 **IV. CONCLUSION**

9 Either dismissal of the Eleventh Cause of Action so that it can be refiled by
10 Plaintiffs in the Eastern District of Virginia, or severing that claim and transferring it
11 to the Eastern District of Virginia, fulfills the actual and stated expectation of these
12 parties, who entered into the Registry-Registrar Agreement with full knowledge of its
13 mandatory forum selection clause. Also, either dismissal or severance and transfer
14 would serve the strong and legitimate interest that VeriSign and all registrars have
15 that the Agreement be uniformly construed and enforced in one jurisdiction under one
16 body of law. For all of the foregoing reasons, the Motion should be granted.

17 VeriSign respectfully requests that the Court enforce the forum selection clause in the
18 Registry-Registrar Agreement and dismiss Plaintiffs’ Eleventh Cause of Action for
19 declaratory relief on the basis of improper venue. In the alternative, the Court should
20 sever that claim from Plaintiffs’ other claims and transfer it to the Eastern District of
21 Virginia.

22 DATED: May 28, 2004

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