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VERISIGN, INC.  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10 REGISTERSITE.COM, an Assumed Name of )  
ABR PRODUCTS INC., a New York )  
11 Corporation; NAME.COM, LLC, a Wyoming )  
Limited Liability Company; R. LEE )  
12 CHAMBERS COMPANY LLC, a Tennessee )  
Limited Liability Company *d/b/a* )  
13 DOMAINSTOBESEEN.COM; FIDUCIA LLC, )  
a Nevada Limited Liability Company; SPOT )  
14 DOMAIN, LLC, a Wyoming Limited Liability )  
Company; !\$6.25 DOMAINS NETWORK, INC., )  
15 a Delaware Corporation *d/b/a* ESITE )  
Corporation; AUSREGISTRY GROUP PTY )  
16 LTD., an Australian Proprietary Limited )  
Company; ! \$ ! BID IT WIN IT, INC., a )  
17 Minnesota Corporation,

18 Plaintiffs,

19 v.

20 INTERNET CORPORATION FOR ASSIGNED )  
NAMES AND NUMBERS, a California )  
21 Corporation; VERISIGN, INC., a Delaware )  
Corporation; NETWORK SOLUTIONS, LLC, )  
22 a Limited Liability Company of unknown origin; )  
NETWORK SOLUTIONS, INC., a Delaware )  
23 Corporation; ENOM, INCORPORATED, a )  
Nevada Corporation; ENOM, INC., a Washington )  
24 Corporation; and DOES 1-10, inclusive;

25 Defendants.  
26  
27  
28

) Case No. SC 082479

) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **MOTION OF DEFENDANT VERISIGN,**  
) **INC. TO DISMISS OR, IN THE**  
) **ALTERNATIVE, TO STAY THE**  
) **FIRST, FIFTH, SIXTH, SEVENTH,**  
) **AND EIGHTH CAUSES OF ACTION**  
) **ON THE BASIS OF FORUM NON**  
) **CONVENIENS**

) Date: November 16, 2004

) Time: 8:30 a.m.

) Department: F

) Judge: Hon. Gerald Rosenberg

) Action Filed: August 4, 2004

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1 Defendant VERISIGN, INC. ("VeriSign") submits this Memorandum of Points and  
2 Authorities in support of its motion under sections 410.30 and 418.10 of the Code of Civil  
3 Procedure to dismiss or, in the alternative, to stay the First, Fifth, Sixth, Seventh, and Eighth Causes  
4 of Action in the Complaint, on the basis of forum non conveniens.

5 **I. PRELIMINARY STATEMENT**

6 This Court is *not* the appropriate forum for adjudicating Plaintiffs' First, Fifth, Sixth,  
7 Seventh, and Eighth Causes of Action against VeriSign.<sup>1</sup> Plaintiffs freely entered into and agreed  
8 upon an explicit, fully disclosed forum selection clause as part of a Registry-Registrar Agreement  
9 ("RRA") between VeriSign and each of the Plaintiffs. The RRA *mandates* that any legal action  
10 relating to the agreement or its enforcement be brought in a court located in the Eastern District of  
11 Virginia. The Eighth Cause of Action, which is for declaratory relief based upon an alleged breach  
12 of the RRA, manifestly and expressly relates to the RRA and its enforcement, and thus is clearly  
13 subject to the forum selection clause.

14 In addition, under well-established California law, Plaintiffs' First, Fifth, Sixth, and Seventh  
15 Causes of Action under Business and Professions Code sections 17200 *et seq.* ("UCL") also relate  
16 to the RRA for purposes of the forum selection clause, because the crux of these claims is that  
17 VeriSign's proposed Wait List Service ("WLS") will interfere with Plaintiffs' ability to benefit  
18 from, and to operate and maintain profitable businesses pursuant to, the RRA. In particular,  
19 Plaintiffs allege, with respect to each claim, that WLS will interfere with Plaintiffs' opportunity to  
20 provide domain name "back-order" services – services that Plaintiffs may provide only by virtue of  
21 having signed an RRA.

22 Forum selection clauses, such as the one contained in the RRA, are *presumed* to be valid,  
23 and their enforcement is consistent with California public policy. Indeed, California courts  
24 routinely enforce these clauses, and place a *substantial burden on a party seeking to avoid*

25 \_\_\_\_\_  
26 <sup>1</sup> The Complaint alleges claims against VeriSign and Defendants Internet Corporation for Assigned  
27 Names and Numbers ("ICANN"), Network Solutions, Inc., Network Solutions, LLC, Enom,  
28 Incorporated, and Enom, Inc. This Motion, however, concerns only the First, Fifth, Sixth, Seventh,  
and Eighth Causes of Action (which are the only claims asserted against VeriSign) insofar as they  
are directed against VeriSign.

1 *enforcement of a forum selection clause.* As demonstrated below, the circumstances here strongly  
2 support enforcement of the clause in the RRA, and Plaintiffs cannot meet their resulting burden to  
3 resist enforcement. Accordingly, the Court should effectuate the clearly stated intent of the RRA  
4 and the parties to that agreement, and dismiss or, alternatively, stay, the First, Fifth, Sixth, Seventh,  
5 and Eighth Causes of Action as to VeriSign.

## 6 **II. FACTUAL BACKGROUND**

### 7 **A. The Parties**

8 The Complaint asserts claims on behalf of eight businesses: (1) ABR Products Inc. (d/b/a  
9 Registersite.com); (2) Name.com, LLC; (3) R. Lee Chambers Company LLC (d/b/a  
10 domainstobeseen.com); (4) Fiducia LLC; (5) Spot Domain, LLC; (6) !\$6.25 Domains! Network,  
11 Inc. (d/b/a Esite); (7) AusRegistry Group Pty Ltd.; and (8) ! \$ ! Bid It Win It, Inc. (collectively,  
12 “Plaintiffs”). (Compl. ¶¶ 2.1–2.8.) All of the Plaintiffs purport to offer services to assist customers  
13 who seek to register a domain name that previously was registered to someone else and recently  
14 was deleted. (*Id.* ¶ 1.4.)

15 As alleged in the Complaint, VeriSign is a Delaware corporation that, pursuant to an  
16 agreement with the Internet Corporation for Assigned Names and Numbers (“ICANN”), operates  
17 the exclusive “registry” for the .com and .net top level domains (“TLDs”).<sup>2</sup> (*Id.* ¶¶ 2.10, 4.11,  
18 4.40.) Plaintiffs allege that a registry is an organization responsible for maintaining the  
19 authoritative list of second-level domains within a TLD. (*Id.* ¶ 4.7.)

### 20 **B. The Registry-Registrar Agreement Between VeriSign And Plaintiffs**

21 Attached to the Complaint as Exhibit A, and expressly incorporated by reference into the  
22 body of the Complaint, is a copy of the Registry-Registrar Agreement that each of the Plaintiffs  
23

24 <sup>2</sup> Every computer connected directly to the Internet has a unique numerical “address,” known as an  
25 Internet Protocol (“IP”) number. IP numbers are necessary for computers to “communicate” with  
26 each other over the Internet. Because IP numbers can be cumbersome, a corresponding system was  
27 developed that associates alphanumeric character strings, known as “domain names,” with certain  
28 IP numbers. Internet domain names consist of a string of “domains” separated by periods. TLDs  
are found to the right of the last period and include the “.com” and “.net” TLDs. “Second level”  
domains (“SLDs”) are those appearing immediately to the left of the TLDs, such as  
“LASuperiorCourt” in “LASuperiorCourt.org.” (Compl. ¶¶ 4.1–4.5.)

1 admits it has entered into with VeriSign. (Compl. ¶ 12.6, Ex. A.) Among other things, the  
2 Registry-Registrar Agreement contains an *exclusive forum selection clause* in section 6.7:

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

12 (Compl. Ex. A § 6.7 (emphases added).)

13 VeriSign has entered into the same, or essentially the same, .com and .net Registry-Registrar  
14 Agreement with approximately 238 registrars. (See Declaration of Barbara Knight (“Knight Decl.”)  
15 ¶ 6, filed concurrently.) These registrars are located both across the United States and in countries  
16 around the world. (*Id.*) The .com and .net registries, in turn, are located in, and operated  
17 exclusively from, VeriSign’s offices in Dulles, Virginia. (*Id.* ¶ 5.) VeriSign would suffer extreme  
18 prejudice if it were forced to appear in every state and numerous countries throughout the world to  
19 defend itself on every claim that a registrar could conceivably bring relating to the RRA.  
20 Accordingly, one of the legally recognized purposes of the forum selection clause is to limit  
21 VeriSign’s exposure to litigation in multiple fora and to ensure uniform interpretation and  
22 enforcement of the RRA by requiring that any legal action relating to the agreement or its  
23 enforcement be brought in the Eastern District of Virginia. (*Id.* ¶¶ 6–7.)

24 Plaintiffs’ Eighth Cause of Action seeks declaratory relief based entirely on VeriSign’s  
25 purportedly threatened breach of the RRA. (See, e.g., Compl. ¶¶ 12.17 (“Through the WLS,  
26 Verisign will materially breach its obligations under the Registry-Registrar Agreement. . .”), 12.5  
27 (“Verisign will breach the obligation to delete expired domain names. . .”).) Furthermore,  
28 Plaintiffs’ UCL causes of action are based on Plaintiffs’ purported “lost business” (*i.e.*, their  
purported inability to offer their own back-order domain name registration services as a result of  
WLS). (*Id.* ¶¶ 4.78, 4.79, 11.10, 11.11.) These causes of action, like the Eighth Cause of Action,  
also necessarily relate to the RRA, because they all concern Plaintiffs’ ability to register domain  
names in the .com and .net TLDs, an ability that is both a necessary prerequisite to offer back-order

1 services and that only exists because of rights Plaintiffs have under the RRA. (*See, e.g., id.* ¶¶ 1.4  
2 (“Plaintiffs each offer a service to assist consumers in registering expired domain names.”), 1.6  
3 (“Each of the plaintiffs has a contract with . . . Verisign which entitles them [sic] to register deleted  
4 domain names for their customers.”), 12.6 (the RRA “governs Registrars’ use of, and Verisign’s  
5 provision of, the Shared Registration System”).) Plaintiffs’ claims against VeriSign all relate to the  
6 RRA and its enforcement and, therefore, are subject to the forum selection clause mandating that  
7 these claims be brought in the Eastern District of Virginia.

8 **III. VIRGINIA IS THE ONLY PROPER VENUE FOR THE FIRST, FIFTH, SIXTH,**  
9 **SEVENTH, AND EIGHTH CAUSES OF ACTION**

10 Plaintiffs freely and voluntarily entered into a binding agreement, with a fully-disclosed  
11 forum selection clause, vesting exclusive jurisdiction in Virginia courts.<sup>3</sup> The clause is  
12 presumptively valid. Each of Plaintiffs’ First, Fifth, Sixth, Seventh, and Eighth Causes of Action  
13 against VeriSign relates to this agreement and, therefore, is not properly commenced and  
14 maintained before this Court. The Court should therefore dismiss or, alternatively, stay each of the  
15 claims against VeriSign alleged in the Complaint, on the grounds of forum non conveniens,  
16 pursuant to Code of Civil Procedure sections 410.30 and 418.10. *See Cal-State Bus. Prods. &*  
17 *Servs., Inc. v. Ricoh*, 12 Cal. App. 4th 1666, 1680 (1993) (“A defendant may enforce a forum-  
18 selection clause by bringing a motion pursuant to sections 410.30 and 418.10 . . . because they are  
19 the ones which generally authorize a trial court to decline jurisdiction when unreasonably invoked  
20 and provide a procedure for the motion.”); Civ. Proc. Code § 410.30(a) (“When a court upon  
21 motion of a party . . . finds that in the interest of substantial justice an action should be heard in a  
22  
23  
24

25 <sup>3</sup> The RRA is the *only* agreement that governs Plaintiffs’ claims against VeriSign. Plaintiffs allege  
26 that “defendants Verisign, NSI, and Enom have entered into contracts with ICANN, directly related  
27 to the claims alleged herein, providing for this Court as the exclusive venue for a lawsuit relating to  
28 the contract.” (Compl. ¶ 3.3.) However, these other contracts do not govern *VeriSign’s*  
relationships with Plaintiffs (which are governed solely by the RRA) and are consequently  
irrelevant to the claims at issue in this motion.



1 forum outside this state, the court shall stay or dismiss the action in whole or in part on any  
2 conditions that may be just.”); *see also id.* § 418.10(a)(2).<sup>4</sup>

3 **A. The Forum Selection Clause Is Presumptively Valid**

4 Forum selection clauses, such as the one contained in the RRA, are prima facie valid and  
5 should be given effect absent a showing that enforcement of the clause would be unreasonable.<sup>5</sup>  
6 *See Smith, Valentino & Smith, Inc. v. Superior Ct.*, 17 Cal. 3d 491, 495–96 (1976); *Intershop*  
7 *Communications AG v. Superior Ct.*, 104 Cal. App. 4th 191, 198 (2002) (forum selection clause  
8 “presumed valid”); *see also M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972).<sup>6</sup>  
9 “California courts routinely enforce forum selection clauses even where the chosen forum is far  
10 from the plaintiff’s residence.” *Net2Phone, Inc. v. Superior Ct.*, 109 Cal. App. 4th 583, 588 (2003);  
11 *see also Intershop Communications*, 104 Cal. App. 4th at 198; *CQL Original Prods., Inc. v. Nat’l*  
12 *Hockey League Players’ Ass’n*, 39 Cal. App. 4th 1347, 1354 (1995) (noting the “significance  
13 attached to forum selection clauses”).

14 Enforcement of forum selection clauses is particularly warranted where, as here, the clause  
15 contains *mandatory* language: “Any legal action . . . shall be brought . . . in the eastern district of  
16 the Commonwealth of Virginia.” (Compl. Ex. A § 6.7 (emphasis added).) *See CQL Original*  
17 *Prods.*, 39 Cal. App. 4th at 1358 (forum selection clause’s “mandatory character is reflected by the

18 <sup>4</sup> “A defendant . . . may make a motion under [section 418.10] and simultaneously . . . demur . . .  
19 [to] the complaint.” Civ. Proc. Code § 418.10(e).

20 <sup>5</sup> Inasmuch as the clause in question also requires that the agreements be interpreted in accordance  
21 with the laws of the Commonwealth of Virginia, enforcement of the forum selection clause is  
22 similarly consistent with the policy of that state’s law. The Supreme Court of Virginia has held that  
23 forum selection clauses are prima facie valid and should be enforced unless unfair or unreasonable.  
24 *See Paul Bus. Sys., Inc. v. Canon U.S.A., Inc.*, 397 S.E.2d 804, 806–08 (Va. 1990) (enforcing forum  
25 selection clause naming New York as sole forum; Virginia courts “have expressly sustained the  
26 validity of [forum selection] provisions, approved their use, and enforced them”). To the extent that  
27 Virginia law is consistent with California law, the Court may apply California law to this motion.  
28 *See Cal-State*, 12 Cal. App. 4th at 1678 n.11 (applying California law where there was no evidence  
that New York law, which was specified in the choice-of-law provision, differed from California  
law) (citing *Nedlloyd Lines B.V. v. Superior Ct.*, 3 Cal. 4th 459, 469 n.7 (1992)). By bringing this  
motion under California law, however, VeriSign does not concede that California law applies in lieu  
of Virginia law.

<sup>6</sup> California courts frequently rely on United States Supreme Court authority, including *Bremen*, in  
adjudicating questions involving the validity and enforcement of forum selection clauses. *See, e.g.*,  
*Smith*, 17 Cal. 3d at 495; *Cal-State*, 12 Cal. App. 4th at 1678-79.

1 use of the word 'shall'); *Intershop Communications*, 104 Cal. App. 4th at 196-97 (forum selection  
2 clauses specifying where potential litigation "shall" take place are "mandatory clauses").

3 Plaintiffs resisting enforcement of a forum selection clause bear a "substantial burden" to  
4 show that "enforcement of such a clause would be unreasonable." *Smith*, 17 Cal. 3d at 496; *CQL*  
5 *Original Prods.*, 39 Cal. App. 4th at 1354; *see also Bremen*, 407 U.S. at 17 (noting the "heavy  
6 burden of proof" on a party resisting enforcement of a forum selection clause). More specifically,  
7 plaintiffs must demonstrate that (1) "the forum selected would be unavailable or unable to  
8 accomplish substantial justice," *Smith*, 17 Cal. 3d at 494; *Cal-State*, 12 Cal. App. 4th at 1679; and  
9 (2) "no rational basis exists for the choice of forum," *Intershop Communications*, 104 Cal. App. 4th  
10 at 199; *Cal-State*, 12 Cal. App. 4th at 1679. "[N]either inconvenience nor additional expense in  
11 litigating in the selected forum is part of the test of unreasonability." *Cal-State*, 12 Cal. App. 4th at  
12 1679. Moreover, a forum selection clause will be enforced so long as enforcement of the clause  
13 does not "bring about a result contrary to the public policy" of California. *CQL Original Prods.*, 39  
14 Cal. App. 4th at 1354. Plaintiffs have not made and cannot make any such showing to resist  
15 enforcement of the mutually agreed upon forum selection clause.

16 **B. The RRA's Forum Selection Clause Encompasses Each And All Of The Claims**  
17 **Asserted Against VeriSign**

18 The forum selection clause is, on its face, very broad: "Any legal action . . . relating to this  
19 Agreement. . . ." (Compl. Ex. A § 6.7.) "Any" legal action necessarily includes each of Plaintiffs'  
20 claims against VeriSign. Moreover, as the courts have recognized, "relate to" is a "broad phrase."  
21 *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 141 (1990). California courts have liberally  
22 construed this commonly used phrase "relating to" in venue selection and similar types of contract  
23 clauses. *See Oakland-Alameda County Coliseum Auth. v. CC Partners*, 101 Cal. App. 4th 635, 642  
24 (2002) (clause requiring arbitration of disputes "arising out of" and "relating to" agreement was  
25 "very broad"); *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1464 (9th Cir.  
26 1983) ("arising under" language is "intended to cover a much narrower scope of disputes" than the  
27 phrase "arising out of or relating to"; omission of "relating to" language is "significant").  
28

1 For example, in *Berman v. Dean Witter & Co.*, the court stated: “The phrase ‘any  
2 controversy . . . arising out of or relating to this contract . . .’ is certainly broad enough to embrace  
3 tort as well as contractual liabilities so long as they have their roots in the relationship between the  
4 parties which was created by the contract.” 44 Cal. App. 3d 999, 1003 (1975). And, most recently,  
5 in considering the application of an analogously-worded arbitration clause, the court of appeals held  
6 that tort claims were arbitrable even though the clause referred to disputes “concerning the  
7 enforcement or the interpretation of any provisions of this Agreement.” *Buckhorn v. St. Jude*  
8 *Heritage Med. Group*, 121 Cal. App. 4th 1401, 18 Cal. Rptr. 3d 215, 216 (2004). The court  
9 reasoned that the tort claims were “rooted” in the contractual relationship between the parties and  
10 not “wholly independent” of the contractual agreement. *Id.* at 219. In addition, the court was  
11 persuaded by the fact that the tort claims were based on the plaintiff’s “expectation of future  
12 income,” which wholly depended upon the existence of, and the benefits received from, the  
13 agreement. *Id.* Under the reasoning of the foregoing cases, all of Plaintiffs’ claims against  
14 VeriSign “relate to” the RRA and must be litigated in Virginia.

15 First, Plaintiffs’ Eighth Cause of Action for declaratory relief is clearly within the scope of  
16 the forum selection clause in the RRA. Plaintiffs’ Eighth Cause of Action seeks declaratory relief  
17 based entirely on VeriSign’s purported breach of the RRA. (*See, e.g.*, Compl. ¶¶ 12.17 (“Through  
18 the WLS, Verisign will materially breach its obligations under the Registry-Registrar Agreement. . .  
19 .”); 12.5 (“Verisign will breach the obligation to delete expired domain names by denying  
20 registrars’ requests to delete domain names in favor of causing registration of those domain names  
21 to WLS subscribers.”) (emphasis added).) Because Plaintiffs’ declaratory relief claim is based upon  
22 an anticipated breach of VeriSign’s obligations under the RRA, it is plainly subject to the forum  
23 selection clause.

24 Second, Plaintiffs’ UCL claims are likewise subject to the RRA’s forum selection clause.  
25 The RRA entered into by each Plaintiff with VeriSign governs its ensuing relationship with  
26 VeriSign. Plaintiffs’ ability to offer registration services and to assist their customers with  
27 registering recently-deleted domain names flows from and depends upon the existence of the RRA  
28 and its terms. (*Id.* ¶¶ 1.6 (“Each of the plaintiffs has a contract with . . . VeriSign which entitles

1 them [sic] to register deleted domain names for their customers.”); 12.6 (the RRA “governs  
2 Registrars’ use of, and VeriSign’s provision of, the Shared Registration System”).) The RRA  
3 provides registrars, such as Plaintiffs, with the unique ability electronically to interface with the  
4 .com and .net registries for the purposes of registering and deleting domain names. (*Id.* ¶¶ 4.8,  
5 12.6–12.11.) Thus, only *registrars* deal directly with registrants and prospective registrants  
6 regarding domain name registrations in the .com and .net TLDs, and only *registrars* can sell back-  
7 order services, and will sell WLS subscriptions, to the public. (*Id.* ¶ 4.42 (“accredited *registrars*  
8 who choose to offer the WLS”) (emphasis added).)

9 Furthermore, according to the Complaint, registrars, such as Plaintiffs, generate most, if not  
10 all, of their revenue through their ability (dependent on the RRA) to offer these services to the  
11 public. (*Id.* ¶¶ 4.57 (“Several of the Plaintiffs derive their entire revenue from services relating to  
12 deleted domain names. . . .”); 4.79 (“Many of the Plaintiffs will be put out of business” by WLS  
13 because they “will be unable to offer their deleted domain name services”).) Indeed, the court of  
14 appeals recently held that a forum selection provision very similar to the one in the RRA applies to  
15 UCL causes of action. *See Net2Phone*, 109 Cal. App. 4th at 586, 590 (forum selection clause  
16 mandating that “[a]ny dispute . . . *regarding this agreement*” be litigated in New Jersey governed  
17 the plaintiff’s representative action under the UCL) (emphasis added).

18 The gravamen of all of Plaintiffs’ claims against VeriSign is that Plaintiffs have not  
19 received, or will not receive, the benefits they expected under the RRA allegedly due to WLS. That  
20 is, they allege that the back-order services in the .com and .net TLDs that they provide to the public  
21 by virtue of the RRA have become less profitable as a result of WLS and, therefore, that WLS is  
22 causing them to lose business and revenue. (Compl. ¶ 4.78 (“consumers who would, but for the  
23 WLS, use Plaintiffs’ services are instead buying Defendants’ WLS subscriptions”); *see also id.*  
24 ¶¶ 4.73, 4.79, 4.80.) At base, Plaintiffs’ claims all relate to the registration services they provide as  
25 registrars for domain names in the .com and .net TLDs, and these services are made possible, and  
26  
27  
28

1 are defined and governed, by the RRA. Because each of Plaintiffs' claims against VeriSign in the  
2 Complaint relates to the RRA, each is governed by the RRA's mandatory forum selection clause.<sup>7</sup>

3 **IV. THE CHOICE OF A VIRGINIA FORUM IS REASONABLE**

4 **A. Substantial Justice Is Achieved By Litigating Plaintiffs' Claims Against**  
5 **VeriSign In Virginia**

6 **1. Plaintiffs Freely Consented to the Forum Selection Clause in the RRA**

7 Plaintiffs are sophisticated business entities that, at all times, had the option of choosing not  
8 to enter into the RRA or not doing business with VeriSign. Instead, they freely and voluntarily  
9 entered into the RRA and accepted each of its terms, including the explicit forum selection clause.<sup>8</sup>  
10 *See Cal-State*, 12 Cal. App. 4th at 1681 (enforcing forum selection clause where the party resisting  
11 enforcement had "the power to walk away from negotiations if displeased with the provision"); *see*  
12 *also CQL Original Prods.*, 39 Cal. App. 4th at 1355 (same). Substantial justice, therefore, would be  
13 achieved by effectuating the mutual intent of the parties, rather than by allowing Plaintiffs to  
14 circumvent the contracted-for forum selection clause.

15 The forum selection clause is no less enforceable merely because it appears in a  
16 standardized contract. "[T]he fact that the forum selection clause may have been presented as a  
17 'take it or leave it' proposition, and not subject to negotiation, does not make the clause

18  
19 <sup>7</sup> As shown above, all of Plaintiffs' causes of action against VeriSign relate to the RRA, and should  
20 therefore be dismissed or stayed so that Plaintiffs can pursue them in Virginia. However, if for any  
21 reason the Court were to find that Plaintiffs' UCL causes of action against VeriSign are not subject  
22 to the Virginia forum selection clause, the Court should, nonetheless, still dismiss Plaintiffs' Eighth  
Cause of Action for declaratory relief, because it indisputably is subject to the forum selection  
clause. Indeed under any plausible construction of the clause, a claim, like the Eighth Cause of  
Action, *for breach of the RRA*, is plainly subject to the forum selection clause.

23 <sup>8</sup> There is no allegation in the Complaint that the forum selection clause was in any way concealed  
24 from Plaintiffs as a means of inducing them to enter into the RRA. In fact, no such allegation could  
25 be sustained because the RRA is fully disclosed and publicly available on VeriSign's Internet  
26 website at <http://www.verisign.com/nds/naming/registrar/dotcom/forms/rrasNet/pdf> and at  
27 <http://www.verisign.com/nds/naming/registrar/dotcom/forms/rras.pdf>. *See Net2Phone*, 109 Cal.  
28 App. 4th at 586, 590 (enforcing a forum selection clause that was accessible via a hyperlink on the  
defendant's website). The Court may take judicial notice of the fact that VeriSign's RRA is  
publicly available at VeriSign's Internet website. *See Rankin & Assocs. v. City of Murrieta*, 84 Cal.  
App. 4th 605, 623-24 & n.12 (2000) (taking judicial notice of the Insurance Commissioner's  
official website, which "allows anyone to determine whether a company is an admitted insurer or  
not"); Evid. Code § 452(h).

1 unenforceable.” *Schlessinger v. Holland Am., N.V.*, 120 Cal. App. 4th 552, 559 (2004); *see also*  
2 *Net2Phone*, 109 Cal. App. 4th at 588–89; *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593–  
3 95 (1991) (holding that substantially identical, non-negotiable forum selection clause printed on a  
4 cruise line passengers’ tickets was enforceable).

5 California courts have routinely enforced forum selection clauses that are part of form  
6 contracts such as the RRA. *See Schlessinger*, 120 Cal. App. 4th at 558–61; *CQL Original Prods.*,  
7 39 Cal. App. 4th at 1355; *Cal-State*, 12 Cal. App. 4th at 1679, 1681. This is especially true where,  
8 as here, there is a clear and disclosed forum selection provision, and Plaintiffs necessarily had to  
9 expect to litigate in Virginia any future disputes with VeriSign concerning the RRA. *See Cal-State*,  
10 12 Cal. App. 4th at 1681 (litigating in the contractually-chosen forum was within the “reasonable  
11 expectations” of the plaintiff, because “if two parties to a contract are domiciled on opposite coasts,  
12 either one party or the other will wind up with the home-court advantage . . . so the plaintiff would  
13 have to recognize this would be part of the price of doing business with” the defendant).

14  
15 **2. Enforcement of the Forum Selection Clause Dispels Confusion and**  
**Conserves Resources**

16 California courts have recognized that in commercial disputes between business entities  
17 dispersed across the country and the world, as in this case, forum selection clauses have the salutary  
18 effect of dispelling confusion about where a case should be brought, thereby conserving judicial and  
19 litigants’ resources. For example, in *CQL Original Products*, the defendant, the National Hockey  
20 League Players’ Association (“NHLPA”), represented the interests of international professional  
21 hockey players. 39 Cal. App. 4th at 1351 n.2, 1355. The NHLPA included a forum selection clause  
22 in its agreement with the plaintiff mandating that any disputes arising under the agreement be  
23 litigated in Ontario, Canada. (NHLPA was an “unincorporated, nonprofit association created under  
24 the laws of the Province of Ontario, Canada.”) *Id.* at 1351 n.2, 1352. The court of appeal affirmed  
25 the trial court’s dismissal of the plaintiff’s complaint, which had been filed in California, and agreed  
26 with the trial court that it was proper to enforce the forum selection clause. *Id.* at 1353, 1359. The  
27 court of appeal concluded that the clause was reasonable and “designed to protect NHLPA, which  
28 conducts business internationally, from being confronted by a myriad of different state, provincial

1 and national forums. By selecting Ontario as the forum, NHLPA endeavors to obtain a uniform  
2 interpretation of the terms of its license agreement.” *Id.* at 1355.

3 This analysis applies with equal force to VeriSign’s contractual relationships with Internet  
4 domain name registrars. VeriSign has entered into the RRA with approximately 238 registrars.  
5 These registrars are located throughout the 50 states and across the globe.<sup>9</sup> (*See* Knight Decl. ¶ 6.)  
6 In light of the exceedingly broad geographical scope of VeriSign’s business relationships with  
7 registrars, VeriSign has a legitimate interest in narrowing its obligation to defend itself to a single  
8 forum – the forum in which VeriSign’s registry operations are located (*see id.* ¶ 5). *See Lu v.*  
9 *Dryclean-U.S.A. of Cal., Inc.*, 11 Cal. App. 4th 1490, 1493–94 n.2 (1992) (“Given the nationwide  
10 scope of their operations, it is perfectly reasonable for defendants to have desired to limit the fora in  
11 which they are potentially subject to suit to their nationwide hub in Miami.”); *Cal-State*, 12 Cal.  
12 App. 4th at 1680 (“That a business with transactions in multiple jurisdictions might insist on one  
13 forum in all its contracts is not of itself objectionable.”); *see also Carnival Cruise Lines*, 499 U.S. at  
14 593 (enforcing forum selection clause and reasoning that a cruise line “has a special interest in  
15 limiting the fora in which it potentially could be subject to suit” because a cruise ship “typically  
16 carries passengers from many locales,” thus potentially subjecting the cruise line “to litigation in  
17 several different fora”). Indeed, subjecting *all* disputes relating to the standardized RRA to a single  
18 forum, applying a single body of law, promotes consistency and predictability in the interpretation  
19 and enforcement of the agreement, to the benefit of *both* VeriSign and registrars. *See Net2Phone*,  
20 109 Cal. App. 4th at 588 (forum selection clauses “provide a degree of certainty, both for businesses  
21 and their customers, that contractual disputes will be resolved in a particular forum”).

22 **B. A Rational Basis Exists For Choosing A Virginia Forum**

23 The choice of forum “need only have a ‘reasonable’ basis.” *Cal-State*, 12 Cal. App. 4th at  
24 1682. Here, the contractually-chosen Virginia forum has a strong substantive nexus with the claims  
25

26 <sup>9</sup> The Court may take judicial notice of the locations of ICANN-accredited registrars, which are  
27 listed on links that appear on the ICANN website at “[www.icann.org/registrars/accredited-list.html](http://www.icann.org/registrars/accredited-list.html)”  
28 and “[www.icann.org/registrars/accredited-qualified-list.html](http://www.icann.org/registrars/accredited-qualified-list.html).” *See Rankin & Assocs.*, 84 Cal. App.  
4th at 623–24 & n.12; Evid. Code § 452(h).

1 to which the selection clause applies. The RRA specifies certain rights and obligations as between  
2 registrars and VeriSign, in its capacity as operator of the .com and .net TLD registries. VeriSign  
3 operates those registries out of the Eastern District of Virginia. (Knight Decl. ¶ 5.) *See Lu*, 11 Cal.  
4 App. 4th at 1493–94 n.2 (choice of Florida forum reasonable where the defendants’ principal place  
5 of business was in Florida); *Furda v. Superior Ct.*, 161 Cal. App. 3d 418, 426 (1984) (forum  
6 designated in forum selection clause was reasonable where “[m]any aspects of the contract were  
7 performed” in the designated forum and the defendant was domiciled there).

8 In addition, the RRA expressly provides that Virginia law will apply to any disputes relating  
9 to the agreement: “This Agreement is to be construed in accordance with and governed by the  
10 internal laws of the Commonwealth of Virginia . . . .” (Compl. Ex. A. § 6.7.) Virginia courts  
11 undeniably are in the best position to interpret and enforce Virginia law. Therefore, the designation  
12 in the forum selection clause of the Eastern District of the Commonwealth of Virginia as the  
13 exclusive forum for adjudicating disputes relating to the RRA is entirely reasonable. *See Intershop*  
14 *Communications*, 104 Cal. App. 4th at 200 (where parties agreed that German law would apply to  
15 their agreement, substantial justice was achieved by the choice of a German forum for adjudicating  
16 disputes relating to the agreement).

17 **C. Inconvenience Cannot Be Considered In Determining Reasonableness**

18 In deciding whether to enforce the RRA’s forum selection clause, the Court may *not*  
19 consider any purported inconvenience or additional expense that may be associated with requiring  
20 Plaintiffs to litigate their claims against VeriSign in Virginia. Indeed, the California Supreme Court  
21 flatly rejected this exact argument in *Smith*: “Mere inconvenience or additional expense is not the  
22 test of unreasonableness since it may be assumed that the plaintiff received under the contract  
23 consideration for these things.” 17 Cal. 3d at 496 (internal quotation marks and citation omitted);  
24 *see also Intershop Communications*, 104 Cal. App. 4th at 199; *Lu*, 11 Cal. App. 4th at 1493.

25 Even if inconvenience were a relevant factor (which it is not), Plaintiffs could not show any  
26 purported “inconvenience” that would compel their resort to a California forum. *Not a single one of*  
27 *the Plaintiffs is located in California*. They are situated instead, by their own admission, across the  
28 country and the around the world (e.g., in New York, Colorado, Tennessee, Texas, Minnesota,



1 Australia, and Latvia). (Compl. ¶¶ 2.1–2.8.) Indeed, Plaintiffs’ counsel is not even located in  
2 California and, therefore, will have to travel anyway, whether the case is pending in Virginia or  
3 California.

4 Consequently, Los Angeles County is no more or less convenient than the Eastern District of  
5 Virginia for Plaintiffs to litigate their claims against VeriSign relating to the RRA. Moreover, any  
6 minor incremental inconvenience they may experience, if any, traveling to Virginia, would not  
7 overcome the strong legal presumption in California in favor of enforcing an agreed upon forum  
8 selection clause. *See Intershop Communications*, 104 Cal. App. 4th at 202 (enforcing forum  
9 selection clause selecting Hamburg, Germany as forum for suit); *CQL Original Prods.*, 39 Cal.  
10 App. 4th at 1355–59 (same; Ontario, Canada); *Lu*, 11 Cal. App. 4th at 1493–94 (same; Florida);  
11 *Furda*, 161 Cal. App. 3d at 427 (same; Michigan).

12 **D. The Forum Selection Clause Comports With California Public Policy**

13 Plaintiffs cannot point to any public policy of California that would be impaired by holding  
14 them to their contract and by requiring them to pursue their declaratory relief and UCL claims  
15 against VeriSign in Virginia. In fact, as discussed, *supra* pp. 9–11, it is the policy in California  
16 routinely to find forum selection clauses valid and enforceable. *See, e.g., Smith*, 17 Cal. 3d at 495  
17 (“we are in accord with the modern trend which favors enforceability of . . . forum selection  
18 clauses”); *Intershop Communications*, 104 Cal. App. 4th at 201 (“We likewise conclude as a matter  
19 of law that no public policy of this state is violated by enforcing the forum selection clause and  
20 transferring the matter to Germany for trial.”). Moreover, the California Supreme Court has made  
21 clear that forum selection clauses, such as the one contained in the RRA, comport with the public  
22 policy of the State: “No satisfying reason of public policy has been suggested why enforcement  
23 should be denied a forum selection clause appearing in a contract entered into freely and voluntarily  
24 by parties who have negotiated at arm’s length.” *Smith*, 17 Cal. 3d at 495–96. Indeed, the public  
25 policy of California in favor of enforcing forum selection clauses is extremely strong. *See*  
26 *Net2Phone*, 109 Cal. App. 4th at 586, 590 (enforcing forum selection clause mandating that claims  
27 regarding the agreement be brought in New Jersey even though the plaintiff would lack standing to  
28 bring its UCL claims in this contractually agreed upon forum).

1 The forum selection clause in the RRA was fully disclosed to and freely accepted by  
2 Plaintiffs, has a strong substantive nexus with the claims to which it applies, is wholly reasonable in  
3 light of the Virginia choice of law provision contained in the RRA, and is consistent with the  
4 expectations of the contracting parties. The forum selection clause therefore should be enforced.

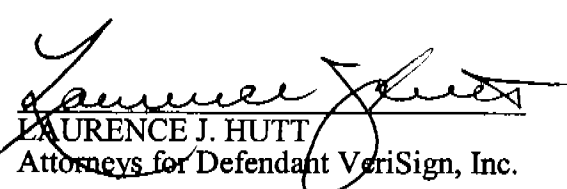
5 **V. CONCLUSION**

6 Dismissal of the First, Fifth, Sixth, Seventh, and Eighth Causes of Action as against  
7 VeriSign fulfills the actual and stated expectation of Plaintiffs and VeriSign, who entered into the  
8 Registry-Registrar Agreement with full knowledge of its mandatory forum selection clause. It  
9 would also serve the strong and legitimate interest that VeriSign and all registrars share that the  
10 RRA be uniformly construed and enforced in one jurisdiction and under one body of law.

11 For all of the foregoing reasons, the motion should be granted. The Court should enforce  
12 the forum selection clause contained in the Registry-Registrar Agreement and dismiss or,  
13 alternatively, stay the First, Fifth, Sixth, Seventh, and Eighth Causes of Action on the ground of  
14 forum non conveniens.

15  
16 DATED: October 4, 2004.

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