

1 Jeffrey A. LeVee (State Bar No. 125863)  
Christina Coates (State Bar No. 206602)  
2 Sean W. Jaquez (State Bar No. 223132)  
JONES DAY  
3 555 West Fifth Street, Suite 4600  
Los Angeles, CA 90013  
4 Telephone: (213) 489-3939  
Facsimile: (213) 243-2539

5 Attorneys for Defendant  
6 INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS  
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES**

10  
11 REGISTERSITE.COM, et. al.,

12 Plaintiff,

13 v.

14 INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS,  
15 a California Corporation, et. al., and  
DOES 1-10, inclusive,

16 Defendants.  
17

**CASE NO. SC082479**

Assigned for all purposes to  
Judge Gerald Rosenberg

Complaint Filed: August 4, 2004

**DEFENDANT INTERNET  
CORPORATION FOR ASSIGNED NAMES  
AND NUMBERS' NOTICE OF REQUEST  
AND REQUEST FOR JUDICIAL NOTICE**

**[Filed concurrently with the Notice of  
Demurrers, Statement of Demurrer, and  
[Proposed] Order]**

Date: November 16, 2004

Time: 8:30 a.m.

Place: Department F  
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1 **TO PLAINTIFF AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to California Code of Civil Procedure section  
3 430.30(a) and California Evidence Code section 452(d), Defendant Internet Corporation for  
4 Assigned Names and Numbers ("ICANN") hereby respectfully requests that, in considering  
5 Defendant's concurrently-filed demurrer, the Court take judicial notice of the following  
6 document:

7 **Stipulation and Order for Dismissal with Prejudice** in *Dotster,*  
8 *Inc., etc. v. Internet Corporation for Assigned Names and Numbers,*  
9 Case No. CV 03-5045 JFW (MANx) (C.D. Cal. Dec. 5, 2003), a  
true and correct copy of which is attached hereto as Exhibit A.

10 This document constitutes a record of a California court and its existence is not reasonably  
11 subject to dispute. Accordingly, it may properly be considered in deciding ICANN's demurrer.

12 **LEGAL STANDARD**

13 Section 430.30(a) of the California Code of Civil Procedure specifically authorizes the  
14 Court to consider, in ruling on a demurrer, any matter which the Court may judicially notice  
15 under Evidence Code Section 452. Pursuant to California Evidence Code section 452(d), judicial  
16 notice may be taken of records of any court of this state or any court of record in the United  
17 States.

18 **ARGUMENT**

19 Plaintiffs are the second group of registrars that have filed suit against ICANN to try to  
20 stop the implementation of WLS. In July 2003, three other registrars that had entered into  
21 Registrar Accreditation Agreements ("RAAs") with ICANN identical to those executed by  
22 plaintiffs, filed a lawsuit in federal court in California – known as the *Dotster* litigation –  
23 attacking the very same WLS proposal. *See Dotster, Inc. v. Internet Corporation for Assigned*  
24 *Names and Numbers*, 296 F. Supp. 2d 1159 (C.D. Cal. 2003). The *Dotster* plaintiffs, a group of  
25 registrars identically situated to the plaintiffs in this case, made the same "contract"-based  
26 arguments asserted here -- *i.e.*, that ICANN's decision to permit the introduction of WLS violated  
27 the RAA. In an order denying the *Dotster* plaintiffs' motion for a preliminary injunction, the  
28 Court made clear that the arguments of the *Dotster* plaintiffs provided no basis for relief.

1 Following this order, the *Dotster* plaintiffs stipulated to dismissal of their action with prejudice;  
2 the court entered that dismissal on December 5, 2003. A copy of the Order is attached hereto as  
3 Exhibit A. Under the doctrines of collateral estoppel and res judicata plaintiffs are precluded  
4 from relitigating these issues.

5 ICANN requests that the Court take judicial notice of Exhibit A pursuant to California  
6 Evidence Code section 452(b). *See also Williams v. Wraxall*, 33 Cal. App. 4th 120, 130 (1995)  
7 (“We may take judicial notice of the *existence* of judicial opinions and court documents, along  
8 with the truth of the results reached--in the documents such as orders, statements of decision, and  
9 judgments...”) (emphasis in original). That section permits a court to take judicial notice of  
10 records of any court of the United States. The *Dotster* dismissal with prejudice is a record of the  
11 United States District Court, Central District of California, that is being offered to establish the  
12 existence of the dismissal with prejudice, the identity of the named parties, and the subject of the  
13 dispute. The dismissal with prejudice is not a fact subject to reasonable dispute, and it is  
14 maintained by the clerk of that court. Therefore, the *Dotster* dismissal with prejudice may be  
15 judicially noticed.

16 The dismissal in *Dotster* is relevant to this litigation because it establishes one of the  
17 required elements of the doctrines of collateral estoppel and res judicata -- *i.e.*, that the prior  
18 litigation result in a final adjudication on the merits. *Adler v. Vaicius*, 21 Cal. App. 4th 1770,  
19 1776 (1993) (“A voluntary dismissal with prejudice is a final determination on the merits.”); *see*  
20 *also McMahon v. Pier 39 Ltd. P’ship*, 2003 U.S. Dist LEXIS 22178, \*10 (N.D. Cal. 2003) (citing  
21 *Semtek Int’l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001)) (“[a] *voluntary* dismissal  
22 with prejudice, even one based on an agreed or stipulated judgment, operates as an adjudication  
23 on the merits.”) (emphasis added).

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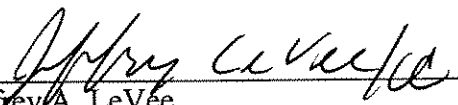
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CONCLUSION

ICANN's request that, in connection with its concurrently-filed demurrer, the Court take judicial notice of Exhibit A, attached hereto, should be granted.

DATED: October 4, 2004

JONES DAY

By:   
Jeffrey A. LeVee

Attorneys for Defendant  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS

**EXHIBIT A**

1 J. W. Ring (Oregon State Bar #85430)  
Melissa A. Boge (SBN 200688)  
2 PRESTON GATES & ELLIS LLP  
222 S W Columbia Street, Suite 1400  
3 Portland, OR 97201-6632  
Telephone: (503) 228-3200  
4 Facsimile: (503) 248-9085

5 Attorneys for Plaintiffs DOTSTER, INC.  
and GODADDY SOFTWARE, INC.

6 Benjamin E. Soffer (SBN 180252)  
7 PERKINS COIE LLP  
1620 26<sup>th</sup> Street, Sixth Floor South  
8 Santa Monica, CA 90404-4013  
Telephone: (310) 788-9900  
9 Facsimile: (310) 788-3399

10 Attorneys for Plaintiff eNOM, INC.

11 Jeffrey A. LeVee (SBN 125863)  
Emma Killick (SBN 192469)  
12 Courtney M. Schaberg (SBN 193728)  
JONES DAY  
13 555 West Fifth Street, Suite 4600  
Los Angeles, CA 90013  
14 Telephone: (213) 489-3939  
Facsimile: (213) 243-2539

15 Attorneys for Defendant  
16 INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

21 DOTSTER, INC., GO DADDY  
22 SOFTWARE, INC., and eNOM,  
INC.,

23 Plaintiffs,

24 v.

25 INTERNET CORPORATION FOR  
26 ASSIGNED NAMES AND  
27 NUMBERS,

28 Defendant.

Case No. CV03-5045 JFW (MANx)

STIPULATION AND PROPOSED  
ORDER FOR DISMISSAL WITH  
PREJUDICE

*[Handwritten signature]*

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Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiffs Dotster, Inc., GoDaddy, Inc., and eNom, Inc. by and through their respective counsel of record hereby request dismissal of this matter with prejudice. Defendant Internet Corporation for Assigned Names and Numbers, by and through its counsel of record, hereby stipulates to Plaintiffs' request. Each of the undersigned parties agrees that it shall bear its own costs and attorney's fees associated with this matter.

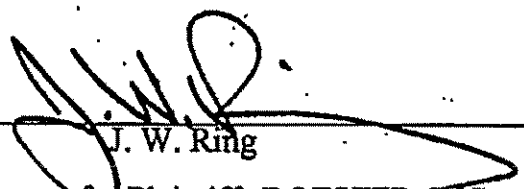
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**IT IS SO STIPULATED.**

Dated: December 21, 2003

PRESTON GATES & ELLIS LLP

By:



J. W. Ring

Attorneys for Plaintiffs DOTSTER, INC. AND GODADDY, INC.

**IT IS SO ORDERED**

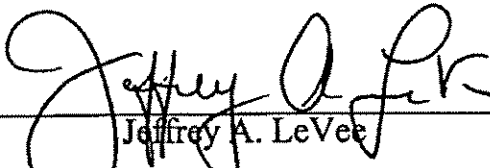
Dated December 4, 2003

  
United States District Judge

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Dated: December 02, 2003

JONES DAY

By:   
Jeffrey A. LeVee

SCANNED

Attorneys for Defendant INTERNET  
CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS



1 Dated: December 2, 2003

PERKINS COIE LLP

By: 

Benjamin E. Soffer

Attorneys for Plaintiff eNOM, INC.

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**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

UNITED STATES DISTRICT  
COURT JUDGE

SCANNED

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

3 I am employed in the County of Los Angeles, State of California. I am over  
4 the age of 18 and not a party to the within action; my business address is 555 West  
5 Fifth Street, Suite 4600, Los Angeles, California 90013.

6 On December 3, 2003, I caused to be served the document described as  
7 **STIPULATION AND (PROPOSED) ORDER FOR DISMISSAL WITH**  
8 **PREJUDICE** on the interested parties in this action.

9 X BY (U.S. MAIL) I placed \_\_\_ the original X a true copy thereof enclosed in  
sealed envelope(s) to the addressee(s) as follows:

10 See attached Service List

11  
12 \_\_\_ BY PERSONAL SERVICE I placed \_\_\_ the original \_\_\_ true copies thereof  
13 enclosed in sealed envelope(s) and caused such envelope to be hand delivered via  
messenger to the offices of the addressee(s) as follows:

14 I am "readily familiar" with the firm's practice of collection and processing  
15 correspondence for mailing. Under that practice it would be deposited with the  
16 U.S. postal service on that same day with postage thereon fully prepaid at Los  
17 Angeles, California in the ordinary course of business. I am aware that on motion  
of the party served, service is presumed invalid if postal cancellation date or  
18 postage meter date is more than one day after date of deposit of mailing in affidavit.

19 \_\_\_(STATE) I declare under penalty of perjury under the laws of the State of  
20 California that the foregoing is true and correct.

21 X (FEDERAL) I declare that I am employed in the office of a member of the  
22 bar of this Court at whose direction this service was made. I declare under penalty  
of perjury under the laws of the United States of America that the foregoing is true  
23 and correct.

24 Executed on December 3, 2003, at Los Angeles, California.

25  
26 \_\_\_\_\_  
Grace M. Salter  
Type or Print Name

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*Grace M. Salter*  
Signature

SERVICE LIST

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J.W. Ring, Esq.  
Preston Gates & Ellis LLP  
222 SW Columbia Street, Suite 1400  
Portland, Oregon 97201-6632

Kathleen O. Peterson, Esq.  
Aaron M. McKown, Esq.  
Preston Gates & Ellis LLP  
1900 Main Street, Suite 600  
Irvine, CA 92614-7319

Martin S. Garthwaite  
General Counsel  
eNom, Inc.  
2002 156<sup>th</sup> Avenue NE, Suite 300  
Bellevue, WA 98007

Benjamin Soffer, Esq.  
Perkins Coie LLP  
1620 26th Street, 6th Floor  
Santa Monica, CA 90404-4013