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INTERNET CORPORATION FOR ASSIGNED
7 NAMES AND NUMBERS

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 SURAJ KUMAR RAJWANI, an individual,
12
13 Plaintiff,

14 v.

15 B52 MEDIA LLC, a Limited Liability
Company; JONATHAN W. BIERER as
16 personal representative of the Estate of
Lonnie Borck; INTERNET CORPORATION
FOR ASSIGNED NAMES AND
17 NUMBERS, a Corporation; eNOM, Inc., a
Corporation; WHOIS PRIVACY
18 PROTECTION SERVICE, INC., a
corporation and DOES 1 THROUGH 100,
19
20 Defendant.

CASE NO. CGC-16-554684

**DEFENDANT ICANN'S RESPONSE
TO PLAINTIFF'S OBJECTIONS TO
REQUEST FOR JUDICIAL NOTICE**

Date: June 29, 2017
Time: 9:30 a.m.
Dept: 302

Complaint Filed: October 6, 2016

RESERVATION ID: 05250629-06

1 In ruling on a demurrer, it is well settled that the Court may consider matters that are the
 2 proper subject of judicial notice. (Code Civ. Proc. §§ 430.30(a); Cal. Evid. Code §§ 452-454.)
 3 Defendant ICANN hereby responds to Plaintiff's objections to ICANN's Request for Judicial
 4 Notice of the following documents, as follows:

ICANN's Request for Judicial Notice	Plaintiff's Objection	ICANN's Response	Court's Ruling
7 1. "Domain Name 8 Registration 9 Process," 10 available at 11 https://whois.ica 12 nn.org/en/domai 13 n-name- 14 registration- 15 process. 16 [Pushinsky Decl. 17 Ex. A]	California does not permit the court take judicial notice of the truth of the factual content of information contained on public websites (as opposed to the existence of the website). <i>Jolly v.</i> <i>Chase Home finance,</i> <i>LLC</i> (2013) 213 Cal. App. 4th 872, 888, 889.	Not reasonably subject to dispute. A Court may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Cal. Evid. Code § 452(h); <i>see also</i> <i>Monterey Peninsula</i> <i>Taxpayers Ass'n v. Cnty.</i> <i>of Monterey</i> , 8 Cal. App. 4th 1520, 1532, n.8 (1992) (recognizing the court may take judicial notice of matters of public records not reasonably subject to dispute). This exhibit is publicly available on the website of the source of the	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

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ICANN's Request for Judicial Notice	Plaintiff's Objection	ICANN's Response	Court's Ruling
		<p>document, ICANN's website. ICANN is a California non-profit public benefit corporation, responsible for administrating portions of the Internet's Domain Name System. This document came directly from ICANN's website, and is therefore not reasonably subject to dispute. Further, because this document is publicly available on ICANN's website, it is capable of immediate and accurate determination. Plaintiff does not argue that the document is in any way inaccurate.</p>	
<p>2. "About Change of Registrant," available at https://www.icann.org/resources/pages/ownership-2013-05-03-en. [Pushinsky Decl.</p>	<p>California does not permit the court take judicial notice of the truth of the factual content of information contained on public websites (as opposed</p>	<p>Not reasonably subject to dispute. A Court may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

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Ex. B]	to the existence of the website). <i>Jolly v. Chase Home finance, LLC</i> (2013) 213 Cal. App. 4th 872, 888, 889.	<p>resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code § 452(h); <i>see also Monterey Peninsula Taxpayers Ass’n v. Cnty. of Monterey</i>, 8 Cal. App. 4th 1520, 1532, n.8 (1992) (recognizing the court may take judicial notice of matters of public records not reasonably subject to dispute).</p> <p>This exhibit is publicly available on the website of the source of the document, ICANN’s website. ICANN is a California non-profit public benefit corporation, responsible for administrating portions of the Internet’s Domain Name System. This document came directly from ICANN’s website, and is therefore not reasonably subject to dispute. Further, because</p>	

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		this document is publicly available on ICANN's website, it is capable of immediate and accurate determination. Plaintiff does not argue that the document is in any way inaccurate.	
<p>3. "What Does ICANN do?," available at https://www.icann.org/resources/pages/what-2012-02-25-en. [Pushinsky Decl. Ex. C]</p>	<p>California does not permit the court take judicial notice of the truth of the factual content of information contained on public websites (as opposed to the existence of the website). <i>Jolly v. Chase Home finance, LLC</i> (2013) 213 Cal. App. 4th 872, 888, 889.</p>	<p>Not reasonably subject to dispute. A Court may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Cal. Evid. Code § 452(h); <i>see also Monterey Peninsula Taxpayers Ass'n v. Cnty. of Monterey</i>, 8 Cal. App. 4th 1520, 1532, n.8 (1992) (recognizing the court may take judicial notice of matters of public records not reasonably subject to dispute).</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>

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		<p>This exhibit is publicly available on the website of the source of the document, ICANN's website. ICANN is a California non-profit public benefit corporation, responsible for administrating portions of the Internet's Domain Name System. This document came directly from ICANN's website, and is therefore not reasonably subject to dispute. Further, because this document is publicly available on ICANN's website, it is capable of immediate and accurate determination. Plaintiff does not argue that the document is in any way inaccurate.</p>	
<p>4. "ICANN FAQs" available at https://www.icann.org/resources/pages/faqs-2014-</p>	<p>California does not permit the court take judicial notice of the truth of the factual content of</p>	<p>Not reasonably subject to dispute. A Court may take judicial notice of "[f]acts and propositions that are not reasonably</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>

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01-21-en. [Pushinsky Decl. Ex. D]	information contained on public websites (as opposed to the existence of the website). <i>Jolly v. Chase Home finance, LLC</i> (2013) 213 Cal. App. 4th 872, 888, 889.	subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code § 452(h); <i>see also Monterey Peninsula Taxpayers Ass'n v. Cnty. of Monterey</i> , 8 Cal. App. 4th 1520, 1532, n.8 (1992) (recognizing the court may take judicial notice of matters of public records not reasonably subject to dispute). This exhibit is publicly available on the website of the source of the document, ICANN's website. ICANN is a California non-profit public benefit corporation, responsible for administrating portions of the Internet's Domain Name System. This document came directly from ICANN's website, and is therefore not reasonably subject to	

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		dispute. Further, because this document is publicly available on ICANN's website, it is capable of immediate and accurate determination. Plaintiff does not argue that the document is in any way inaccurate.	
5. Excerpt of ICANN's Bylaws, as amended October 1, 2016, available at https://www.icann.org/resources/pages/governance/bylaws-en . [Pushinsky Decl. Ex. E]	California does not permit the court take judicial notice of the truth of the factual content of information contained on public websites (as opposed to the existence of the website). <i>Jolly v. Chase Home finance, LLC</i> (2013) 213 Cal. App. 4th 872, 888, 889.	ICANN's bylaws are pertinent to Plaintiff's claims, not subject to reasonable dispute, and are publicly available on ICANN's website. <i>See El-Attar v. Hollywood Presbyterian Med. Ctr.</i> , 56 Cal. 4th 976, 989 (2013) (taking judicial notice of the model bylaws of the California medical association); <i>People v. Lofchie</i> , 229 Cal. App. 4th 240, 260 (2014) ("We granted the Regents' request that we take judicial notice of the University's conflict of interest code, faculty	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

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		<p>code of conduct, code of ethics, and its policies, guidelines, and personnel manuals implementing those codes.”)</p> <p>Indeed, previous iterations of ICANN’s Bylaws have been determined to be proper subjects of judicial notice. <i>Verisign, Inc. v. Internet Corp. for Assigned Names & Nos.</i>, No. CV 04-1292 AHM (CTx), 2004 U.S. Dist. LEXIS 17330 (C.D. Cal. Aug. 26, 2004) (taking judicial notice of earlier version of Bylaws when granting Rule 12(b)(6) motion).</p> <p>Plaintiff does not argue that the document is in any way inaccurate.</p>	
6. “About Unauthorized Transfers and	California does not permit the court take judicial notice of the	Not reasonably subject to dispute. A Court may take judicial notice of	<input type="checkbox"/> Sustained

ICANN's Request for Judicial Notice	Plaintiff's Objection	ICANN's Response	Court's Ruling
<p>Changes of Registrant,” available at https://www.icann.org/resources/pages/unauthorized-2013-05-03-en. [Pushinsky Decl. Ex. F]</p>	<p>truth of the factual content of information contained on public websites (as opposed to the existence of the website). <i>Jolly v. Chase Home finance, LLC</i> (2013) 213 Cal. App. 4th 872, 888, 889.</p>	<p>“[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code § 452(h); <i>see also Monterey Peninsula Taxpayers Ass'n v. Cnty. of Monterey</i>, 8 Cal. App. 4th 1520, 1532, n.8 (1992) (recognizing the court may take judicial notice of matters of public records not reasonably subject to dispute).</p> <p>This exhibit is publicly available on the website of the source of the document, ICANN's website. ICANN is a California non-profit public benefit corporation, responsible for administering portions of the Internet's Domain Name System. This</p>	<p><input type="checkbox"/> Overruled</p>

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7. January 30, 2017 "Stipulation re: Disclaimer of Interest by eNOM, Inc. and WHOIS Privacy Protection Service, Inc.," filed on January 30, 2017 in conjunction with Plaintiff's Case Management Statement. [Pushinsky Decl. Ex. G]	The referenced stipulation has not been filed with the court and is not part of the public record. The mere fact that it was attached to a case management statement does not make it the proper subject of judicial notice.	A trial court may properly take judicial notice of the records of any court of record of California or any other state of the United States. Cal. Evid. Code § 452(d). Moreover, Section 453 of the Evidence Code further provides that the trial court "shall" take judicial notice of any matter specified in section 452 if a party requests it and gives	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

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		<p>sufficient notice of the request and provides the court with sufficient information to enable it to take judicial notice. Cal. Evid. Code § 453. The Stipulation was filed on January 30, 2017 in conjunction with Plaintiff's Case Management Statement. Because it constitutes a record of a California court and its existence is not reasonably subject to dispute, it must be judicially noticed.</p> <p>Additionally, a court may take judicial notice of the fact of the existence and legal effect of legally operative documents, whether or not those documents are filed with a court. <i>Scott v. JPMorgan Chase Bank, N.A.</i>, 214 Cal. App. 4th 743, 754 (2013)</p>	

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		("Where, as here, judicial notice is requested of a legally operative document—like a contract—the court may take notice not only of the fact of the document and its recording or publication, but also facts that clearly derive from its legal effect"); <i>Intengan v. BAC Home Loans Servicing LP</i> , 214 Cal. App. 4th 1047, 1054 (2013). Even if the Stipulation had not been filed with the Court, the Stipulation is a legally operative document that has the legal effect of requiring eNOM to transfer "funding.com" upon presentation of a Court order directing it to do so. The Court may take judicial notice of these facts.	

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Dated: June 22, 2017

Jones Day

By: 
Amanda Pushinsky

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS