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SEP 10 2001

LOS ANGELES
SUPERIOR COURT

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23 SUPERIOR COURT OF THE STATE OF CALIFORNIA

24 COUNTY OF LOS ANGELES

25 EPRIZE, LLC, a Michigan limited liability
26 company, individually, on behalf of the general
27 public, and on behalf of all similarly situated
28 persons,

Plaintiff(s),

v.

29 NEULEVEL, INC., a Delaware corporation;
30 ABACUS AMERICA, INC., d/b/a
31 NAMES4EVER, a California corporation;
32 ALLDOMAINS.COM, a California corporation;
33 BLUEBERRY HILL COMMUNICATIONS,
34 INC. d/b/a DOMAINS.COM, a California
35 corporation; CATALOG.COM, INC., a
36 California corporation; NAME SECURE.COM,
37 INC., a California corporation; 007 NAMES,
38 INC., d/b/a, WEB EXPRESS, a New Jersey

Case No. **BC257632**

CLASS ACTION

COMPLAINT FOR:

- (1) VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200;
- (2) UNJUST ENRICHMENT;
- (3) FRAUD;
- (4) CONSPIRACY TO COMMIT FRAUD; AND
- (5) DECLARATORY RELIEF

1 corporation; 1eNAMECo, a Texas corporation;)
2 BB ONLINE UK LTD.; BULKREGISTER)
3 COM, INC., a Maryland corporation; DOMAIN)
4 BANK, INC., a Pennsylvania corporation;)
5 DOMAINPEOPLE, INC.; DOMAIN-IT!, INC.,)
6 an Ohio corporation; DOTSTER, INC., a)
7 Washington corporation; EmarkMONITOR)
8 INC., d/b/a MARKMONITOR, a Delaware)
9 corporation; eNOM, INC., a Washington)
10 corporation; GO DADDY SOFTWARE, INC.,)
11 an Arizona corporation; INTERCOSMOS)
12 MEDIA GROUP, INC., a Delaware corporation;)
13 NAME ENGINE, INC., a New York)
14 corporation; NAMESCOUT.COM CORP.;)
15 PARAVA NETWORKS, INC., a Texas)
16 corporation; PROCUREMENT SERVICES)
17 INTERNATIONAL, INC., a Nevada)
18 corporation; THE REGISTRY AT INFO)
19 AVENUE, LLC, a South Carolina corporation;)
20 TUCOWS, INC., a Delaware corporation;)
21 DOTBIZLOTTERY.COM; REGISTER.COM, a)
22 Delaware corporation; and Does 1-500,)

Defendants.

17 Plaintiff ePrize, LLC ("ePrize" or "plaintiff"), for itself, on behalf of the general public,
18 and as a representative of all others similarly situated (the "Class Members") (collectively, the
19 plaintiff and Class Members are referred to herein as "Plaintiffs" and each individually as a
20 "Plaintiff"), complains against the defendants named above (collectively, the defendants are
21 referred to herein as "Defendants" and each individually as a "Defendant") as follows:

22 NATURE OF CASE

23
24
25 1. This class-action complaint seeks to recover for violations of Business &
26 Professions Code §§ 17200 et seq., unjust enrichment, fraud and civil conspiracy, and also seeks
27 declaratory and injunctive relief against the Defendants who are currently conducting a criminal
28 lottery, which is illegal in California and every other state in the United States. Defendants are

1 currently in the process of rolling out the new <biz>^{1/} domain names^{2/} and have induced
2 Plaintiffs to purchase chances (called "applications") to win the right to register valuable <biz>
3 domain names. In particular, Defendants have charged Plaintiffs a fee between \$2.00 and
4 \$35.00 for each "application" to acquire a <biz> domain name. Where more than one Plaintiff
5 has applied for the same <biz> domain name, Defendants will choose the person or entity that
6 may register the domain name (i.e. the winner) through a "randomized process" (i.e., a lottery)
7 set to commence on September 26, 2001. If Plaintiffs or Class Members file additional
8 applications (at additional fees to Plaintiffs), they can increase their odds of winning the right to
9 register a particular domain name. This illegal lottery is referred to herein as the "Lottery
10 Scheme."

11
12
13 2. Plaintiffs are consumers and/or businesses that wish to register certain <biz>
14 domain names and, accordingly, have paid Defendants fees for the chance to win the right to
15 register such domain names. Upon information and belief, Defendants have collected several
16 million dollars in application fees to date. As a result of Defendants' Lottery Scheme, Plaintiffs
17 have paid Defendants money, but, in return, Defendants have only promised to provide a
18 "chance" to register the desired <biz> domain names. In addition, any and all agreements
19 between Plaintiffs and Defendants for a chance to register a <biz> domain name violate state
20 laws against lotteries and are void. Therefore, even if a Plaintiff were to win a <biz> domain
21 name, the award of that domain name would be unenforceable in a court of law.
22
23
24

25 ^{1/} The caret symbols ("<") are used herein to signify Internet domain names. The caret
26 symbols themselves are not part of any domain name.

27 ^{2/} As used herein, "<biz> domain name" means any domain name the top level of which is
28 <biz>. For example, <mcdonalds.biz> is a <biz> domain name. <biz> is a new top
level domain name, similar to the now familiar <.com>, <.net>, <.org>, <.edu>, <.mil>
and <.gov> top level domain names currently in use.

1 3. As a result of the forgoing scheme, Defendants' retention of Plaintiffs'
2 application fees and profits derived therefrom pursuant to the illegal Lottery Scheme constitutes
3 an unfair business practice and unjust enrichment. Moreover, Defendants' failure to inform
4 Plaintiffs of the material fact that in submitting an application and paying Defendants a fee,
5 Plaintiffs were participating in an illegal lottery and any award of a domain name would be void,
6 constitutes fraud. Finally, Defendants' creation and concerted participation in the illegal Lottery
7 Scheme to Plaintiffs' detriment constitutes an illegal civil conspiracy to defraud the general
8 public.
9

10 4. Plaintiffs are entitled to a refund of all monies paid to Defendants, and additional
11 damages, costs, and attorneys' fees, as described herein. In addition, this lawsuit seeks to stop
12 Defendants' illegal Lottery Scheme.
13

14 PARTIES

15 5. Plaintiff ePrize is a Michigan limited liability company with its principal place of
16 business in Farmington Hills, Michigan. ePrize has an office in California and does business
17 throughout the state. ePrize brings this action individually, on behalf of the general public, and
18 as a representative of all others similarly situated.
19

20 6. Defendant NEULEVEL, INC. ("Defendant Neulevel"), is a Delaware corporation
21 with its principal place of business located at Loudoun Tech Center, 45980 Center Oak Plaza,
22 Sterling, Virginia 20166. At all times relevant herein, Defendant Neulevel has conducted
23 business in the State of California.
24

25 7. Defendant ABACUS AMERICA, INC. d/b/a NAMES4EVER ("Defendant
26 NAMES4EVER") is a corporation, on information and belief, organized under the laws of
27 California with its principal place of business located at 5266 Eastgate Mall, San Diego,
28

1 California 92121, and which has transacted, and currently does transact, business in the State of
2 California.

3
4 8. Defendant ALLDOMAINS.COM ("Defendant Alldomains.com") is a
5 corporation, on information and belief, organized under the laws of California with its principal
6 place of business located at 2261 Moreilo Avenue, #C, Pleasant Hill, California 94523, and
7 which has transacted, and currently does transact, business in the State of California.

8
9 9. Defendant BLUEBERRY HILL COMMUNICATIONS, INC. dba
10 4DOMAINS.COM ("Defendant Blueberry Hill") is a corporation, on information and belief,
11 organized under the laws of California with its principal place of business located at 77-670
12 Springfield Lane, #11-B, Palm Desert, California 92211, and which has transacted, and currently
13 does transact, business in the State of California.

14
15 10. Defendant CATALOG.COM, INC. ("Defendant Catalog.com") is a corporation,
16 on information and belief, organized under the laws of California with its principal place of
17 business located at 401 East Ocean Blvd., #505, Long Beach, California 90802, and which has
18 transacted, and currently does transact, business in the State of California.

19
20 11. Defendant NAME SECURE, INC., f/k/a NAMESECURE.COM, INC.
21 ("Defendant Name Secure") is a corporation, on information and belief, organized under the
22 laws of California with its principal place of business located at 1855 Gateway Blvd., #1050,
23 Concord, California 94520, and which has transacted, and currently does transact, business in
24 the State of California.

25
26 12. Defendant PROCUREMENT SERVICES INTERNATIONAL, INC. ("Defendant
27 Procurement Services") is a corporation, on information and belief, organized under the laws of
28 Nevada with its principal places of business located at 2041 Park Mount Drive, #201, Glendale,

1 California 91206 and 520 S. 4th Street, Second Floor, Las Vegas, Nevada, 89101, and which has
2 transacted, and currently does transact, business in the State of California.

3
4 13. Defendant DOTBIZLOTTERY.COM ("Defendant DotBizLottery") is an
5 unknown business entity with its principal place of business, on information and belief, located
6 at 9841 Airport Blvd., #700, Los Angeles, California 90045, and which has transacted, and
7 currently does transact, business in the State of California. Plaintiffs will amend their complaint
8 when they ascertain the business structure of Defendant DotBizLottery.

9
10 14. Defendant REGISTER.COM ("Defendant Register") is a Delaware corporation,
11 with its principal place of business at 134 Fifth Avenue, New York, New York 10011. At all
12 times relevant herein, Defendant Register has conducted business in the State of California.

13
14 15. Defendant TUCOWS, INC. ("Defendant Tucows") is a corporation, on
15 information and belief, organized under the laws of Delaware, with its principal places of
16 business located at 4100 Picr North Drive, #A, Flint, Michigan 48504, and which has transacted,
17 and currently does transact, business in the State of California.

18
19 16. Defendant 007 NAMES, INC., d/b/a WEB EXPRESS, ("Defendant 007 Names")
20 is a corporation, on information and belief, organized under the laws of New Jersey with its
21 principal place of business located at 672 Route 202-206 N. Bridgewater, New Jersey 08807,
22 and which has transacted, and currently does transact, business in the State of California.

23
24 17. Defendant 1eNAMECO ("Defendant 1eNAMECo") is a corporation, on
25 information and belief, organized under the laws of Texas with its principal place of business
26 located at 12651 Briar Forest, #178, Houston, Texas 77077, and which has transacted, and
27 currently does transact, business in the State of California.

1 18. Defendant BB ONLINE UK LTD. ("Defendant BB Online") is an unknown
2 business entity, with its principal place of business located at PO Box 2162, Luton Beds LU3
3 4ZS, England, and which has transacted, and currently does transact, business in the State of
4 California. Plaintiffs will amend their complaint when they ascertain the business structure of
5 Defendant BB Online.
6

7 19. Defendant BULKREGISTER.COM, INC. ("Defendant BulkRegister") is a
8 corporation, on information and belief, organized under the laws of Maryland with its principal
9 place of business located at 10 East Baltimore Street, Baltimore, Maryland 21202, and which has
10 transacted, and currently does transact, business in the State of California.
11

12 20. Defendant DOMAIN BANK, INC. ("Defendant Domain Bank") is a corporation,
13 on information and belief, organized under the laws of Pennsylvania with its principal place of
14 business located at 824 8th Avenue, Bethlehem, Pennsylvania 18018, and which has transacted,
15 and currently does transact, business in the State of California.
16

17 21. Defendant DOMAINPEOPLE, INC. ("Defendant DomainPeople") is an
18 unknown business entity, with its principal place of business, on information and belief, located
19 at 555 W. Hastings St., #1440, Harbour Center, Vancouver, British Columbia, Canada V6B
20 4N6, and which has transacted, and currently does transact, business in the State of California.
21 Plaintiffs will amend their complaint when they ascertain the business structure of Defendant
22 DomainPeople.
23

24 22. Defendant DOMAIN-IT!, INC. ("Defendant Domain-It!") is a corporation, on
25 information and belief, organized under the laws of Ohio with its principal place of business
26 located at 9525 Kenwood Road, #328, Cincinnati, Ohio 45242, and which has transacted, and
27 currently does transact, business in the State of California.
28

1 23. Defendant DOTSTER, INC. ("Defendant Dotster") is a corporation, on
2 information and belief, organized under the laws of Washington with its principal place of
3 business located at 1338 Commerce Avenue, Long View, Washington 98632, and which has
4 transacted, and currently does transact, business in the State of California.
5

6 24. Defendant EMARKMONITOR INC. d/b/a MARKMONITOR ("Defendant
7 eMarkmonitor") is a corporation, on information and belief, organized under the laws of
8 Delaware with its principal place of business located at P.O. Box 4817, Boise, Idaho 83711, and
9 which has transacted, and currently does transact, business in the State of California.
10

11 25. Defendant ENOM, INC. ("Defendant eNom") is a corporation, on information
12 and belief, organized under the laws of Washington with its principal place of business located at
13 16770 NE 79th Street, #205, Redmond, Washington 98052, and which has transacted, and
14 currently does transact, business in the State of California.
15

16 26. Defendant GO DADDY SOFTWARE, INC. ("Defendant Go Daddy Software")
17 is a corporation, on information and belief, organized under the laws of Arizona with its
18 principal place of business located at 5320 East Dynamite Blvd., Cave Creek, Arizona 85331,
19 and which has transacted, and currently does transact, business in the State of California.
20

21 27. Defendant INTERCOSMOS MEDIA GROUP, INC. ("Defendant Intercosmos")
22 is a corporation, on information and belief, organized under the laws of Delaware with its
23 principal place of business located at 113 Barksdale Professional Center, Newark, Delaware
24 19711, and which has transacted, and currently does transact, business in the State of California.
25

26 28. Defendant NAME ENGINE, INC. ("Defendant Name Engine") is a corporation,
27 on information and belief, organized under the laws of New York with its principal place of
28

1 business located at Name Engine, Inc., 401 Broadway, New York, New York 10013, and which
2 has transacted, and currently does transact, business in the State of California.

3
4 29. Defendant NAMESCOUT.COM CORP. ("Defendant Namescout.com") is an
5 unknown business entity with its principal place of business located at Whitepark House, White
6 Park Road, Bridgetown, Barbados, and which has transacted, and currently does transact,
7 business in the State of California. Plaintiffs will amend their complaint when they ascertain the
8 business structure of Defendant Namescout.com.

9
10 30. Defendant PARAVA NETWORKS, INC. ("Defendant Parava Networks") is a
11 corporation, on information and belief, organized under the laws of Texas with its principal
12 place of business located at 2600 Persa Street, #3, Houston, Texas 77098, and which has
13 transacted, and currently does transact, business in the State of California.

14
15 31. Defendant THE REGISTRY AT INFO AVENUE, LLC ("Defendant The
16 Registry at Info Avenue") is a corporation, on information and belief, organized under the laws
17 of South Carolina with its principal place of business located at 3545 Centre Circle Drive, Fort
18 Mill, South Carolina 29715, and which has transacted, and currently does transact, business in
19 the State of California.

20
21 32. Plaintiffs are currently unaware of the true names and capacities, whether
22 individual, corporate or otherwise, of defendants sued herein as Does 1 through 500, inclusive,
23 and therefore plaintiff sues said defendants by such fictitious names. Plaintiffs will seek leave to
24 amend this complaint to allege the true names and capacities of the fictitiously named Doe
25 defendants when their identities have been ascertained.

26
27 33. Plaintiffs are informed and believes, and on that basis alleges, that each of the
28 fictitiously named defendants is liable to Plaintiffs in some manner for the claims described

1 below. Plaintiffs are further informed and believe, and on that basis allege, that said One
2 defendants are liable to Plaintiffs as the agents, employees, representatives, partners, or
3 principals of one or more of the Defendants, and each of them, and were and now are acting
4 within the course and scope of such relationships at the time of the acts described below.
5

6 34. With the exception of Defendant Neulevel, all of the Defendants are Registrars²
7 and agents of Defendant Neulevel. By virtue of their contracts with the Internet Corporation for
8 Assigned Names and Numbers (hereinafter "ICANN") and Defendant Neulevel, each Defendant
9 takes "applications" for <.biz> domain names from Plaintiffs, collects a fee, and submits them to
10 Neulevel for entry into the illegal lottery.
11

12 JURISDICTION AND VENUE

13 35. This Court has personal jurisdiction over each Defendants under Code of Civil
14 Procedure § 410.10 because (i) each of the Defendants have done, and are doing, business in this
15 state in that each is selling, through their respective Internet web sites or agents, Internet domain
16 names and <.biz> applications to California residents; and (ii) certain of the Defendants are
17 present, domiciled, resident, or a citizen of this state.
18

19 36. This Court is the proper venue for this action pursuant to Code of Civil Procedure
20 §§ 395 and 395.5 in that some of the Defendants reside in Los Angeles County.
21

22 CLASS ACTION ALLEGATIONS

23 37. Plaintiffs bring this suit as a class action pursuant to section 382 of the Code of
24 Civil Procedure on behalf of themselves and a plaintiff class (the "Class") defined as follows:
25
26
27

28 * See *infra*, ¶¶ 52-56.

1 All persons or entities who (i) requested a <.biz> domain name from the
2 Defendants, any one of the Defendants, any agent of any of the Defendants, any
3 reseller of any of the Defendants, or any affiliate of any of the Defendants
4 (collectively, "Registrars"), and (ii) paid consideration for the chance to register
5 such domain name to any Registrar, which consideration such Registrar accepted
6 understanding that it was tendered in exchange for the chance to register a
7 domain name. Excluded from the Class are the Defendants, their directors,
8 officers, managers, members, and employees, and their families, legal
9 representatives, heirs, successors and assigns.
10
11

12 38. This action has been brought and may be properly maintained as a class action
13 pursuant to section 382 of the Code of Civil Procedure. The Plaintiff Class is ascertainable and
14 there is a well-defined community of interest among the members of the Class.
15

16 39. Based upon the nature of the transactions involved in the litigation, Plaintiffs
17 believe the total number of Class members in the Class is in the tens of thousands, and perhaps
18 millions. Thus, joinder of all members of the Class is not practicable.
19

20 40. There are questions of law and/or fact which are common to the Plaintiff Class,
21 and which predominate over any questions affecting only individual members of the Class
22 including, but not limited to, the following:

23 a. Whether the Defendants sold chances to register domain names to
24 Plaintiff Class members;

25 b. Whether the Defendants received consideration from Plaintiff Class
26 members in exchange for providing the chance to register domain names;
27
28

1 c. Whether the domain names for which Plaintiff Class members paid
2 consideration for the chance to register constitute prizes;

3 d. Whether the Lottery Scheme is illegal under the laws of all 50 states.

4
5 e. Whether Plaintiffs and other members of the Class were injured in their
6 business or property by reason of the Defendants' unlawful conduct;

7 f. Whether the Defendants' wrongful conduct constitutes unjust enrichment,
8 fraud and civil conspiracy;

9
10 g. Whether Plaintiffs and the Plaintiff Class are entitled to damages for the
11 acts of the Defendants;

12 h. Whether Plaintiffs and the putative Class Members are entitled to
13 disgorgement of all wrongfully retained revenue received by the Defendants resulting
14 from the violations alleged herein;

15
16 i. Whether Plaintiffs and the Plaintiff Class are entitled to damages; and

17
18 j. Whether non-monetary relief should be awarded, including but not limited
19 to, an order directing Defendants to stop engaging in the Lottery Scheme described
20 herein.

21
22 41. Plaintiffs' claims are typical Class members' claims. Plaintiffs and Class
23 members have suffered a common harm arising out of Defendants' Lottery Scheme in violation
24 of statutory and common law of this state as alleged herein. All Defendants have engaged in
25 conduct which is the same, or virtually the same, with the same goal, i.e., to deceive the general
26 public, including Plaintiff and the Class members.

27
28 42. Plaintiffs will fairly and adequately protect the interests of the members of the
Class. None of the Plaintiffs have any interests that are antagonistic to other members of the

1 Class. Plaintiffs have retained counsel who are experienced in class action and other complex
2 litigation, and Plaintiffs will vigorously prosecute this case on behalf of the Class.

3
4 43. A class action is an appropriate method for the fair and efficient adjudication of
5 the controversy since individual joinder of all members of the Class is impracticable.
6 Additionally, since the damages suffered by many of the Class members may be relatively small,
7 the expense and burden of individual litigation would make it difficult or impossible for
8 individual members of the Class to obtain meaningful relief. The cost to the court system of
9 adjudicating such individualized litigation would be substantial. Individualized litigation would
10 also present the potential for inconsistent or contradictory judgments and would magnify the
11 delay and expense to all parties and the court system in multiple trials of the complex factual and
12 legal issues of the case. By contrast, the conduct of this action as a class action presents fewer
13 management difficulties, conserves the resources of the parties and the court system, and
14 protects the rights of each member of the Class.
15

16
17 44. In addition, this action is certifiable for equitable relief because:

18 a. the prosecution of separate actions by the individual members of the Class
19 would create a risk of inconsistent or varying adjudications with respect to individual
20 Class members which would establish incompatible standards of conduct for defendants;
21

22 b. the prosecution of separate actions by individual Class members would
23 create a risk of adjudications with respect to them which would, as a practical matter, be
24 dispositive of the interests of the other Class members not parties to the adjudications, or
25 substantially impair or impede their ability to protect their interests; and
26
27
28

1 c. Defendants have acted or refused to act on grounds generally applicable to
2 the Class thereby making appropriate final injunctive relief with respect to the members
3 of the Class as a whole.

4
5 45. The primary questions of law and fact raised by this Complaint are common to all
6 individual members of the Plaintiff Class and center on the issue of whether the Defendants are
7 engaged in an illegal lottery constituting fraud and civil conspiracy by which they are being
8 unjustly enriched and whether contracts between Defendants and Plaintiffs are illegal and void
9 as a matter of law. In addition, all factual issues to be resolved are virtually identical and
10 common to all Plaintiff Class members. These questions of law and fact common to the Plaintiff
11 Class predominate over any questions affecting only possible individual Plaintiffs
12

13 46. In addition, or in the alternative, ePrize brings this on behalf of the general public
14 pursuant to Business and Professions Code sections 17200, et seq. The conduct of each
15 Defendant, as alleged herein, was the same, or virtually the same, with respect to the consumers
16 of the State of California. Each Defendant conducted its business, and in particular the improper
17 acts alleged herein, in the same, or substantially the same, manner. Therefore, proof of liability
18 on the part of each or all of the Defendants will not require complex and/or individualized
19 factual determinations, but rather will be based on the common and unfair course of conduct
20 alleged herein.
21

22 **ALLEGATIONS COMMON TO ALL CLAIMS**

23 **The Domain Name System**

24
25
26 47. The Internet is a large, world-wide network of computers.

27 48. Each computer connected to the Internet has a unique number (similar to a phone
28 number) assigned to it called an Internet protocol address (an "IP address"). IP addresses consist

1 of a lengthy string of numbers separated by decimal points (also called "dots"), and are difficult
2 to remember. For example, the IP address identifying the computer which hosts the web site for
3 Plaintiff ePrize is 129.250.35.31. The IP address system allows one computer to find and read
4 data from another computer on the Internet.
5

6 49. In or about November, 1983, the "domain name system" ("DNS") was
7 developed. The DNS allows the creation and use of domain names that the public can easily
8 remember by matching or "mapping" a domain name to an IP address at a central Registry,
9 which in turn identifies the intended computer. For example, the domain name <eprize.net> is
10 mapped to the IP address which identifies the computer which hosts Plaintiff ePrize's web site.
11 The DNS thus promotes widespread public Internet use by allowing users to find a person or
12 company's web site simply by name and not IP number.
13

14 Top Level Domain Names

15
16 50. Domain names are initially divided by top-level domains, or "TLDs." The top-
17 level domain is the portion of the domain name that appears after the last dot on the right, for
18 example <domain.com>. A second-level domain name is the name immediately to the left of the
19 TLD, for example <domain.com>. This system is similar to that used for telephone numbers:
20 the TLD is like the area code and the second-level domain is like the phone number. Thus, the
21 same second-level domain name may be used once for each of the different TLDs, for example
22 <domain.com> and <domain.net>.
23

24
25 51. From about 1985 until recently, there had been seven (7) generic, three-letter top-
26 level domains, or "TLDs": <.com>, <.net>, <.org>, <.edu>, <.gov>, <.mil>, and <.int>.
27 Initially, <.com> was intended for use by commercial entities, <.net> by entities involved with
28 the Internet networking infrastructure, <.org> by nonprofit organizations, and <.edu> by

1 educational institutions. The restrictions on the first three of these were never enforced,
2 however, and individuals, businesses, network organizations, and non-profit organizations alike
3 are permitted to register in any of them.
4

5 Registrants, Registries, and Registrars

6
7 52. When a person registers a domain name, that person is known as the "Registrant."
8 Registrants are commonly known as the "owner" or "holder" of a particular domain name.

9 53. The "Registry" is the entity that maintains the zone files of a particular top-level
10 domain. These zone files match each domain name under the particular TLD (such as <.com>)
11 with the that domain's corresponding IP address. Thus, the Registry is the entity which allows
12 the domain name system to match a domain name entered by a user with its IP address, allowing
13 the user's computer to find the correct Internet web site. The Registry is sometimes referred to
14 as a "registry operator" and the master database of zone files is referred to as the "registry".
15

16 54. When an Internet user enters a domain name, the user's computer submits the
17 requested name to the Registry's master database (i.e. its zone files) in order to find the matching
18 IP address, which the user's computer employs to find the Registrant's web site. If more than
19 one Registry existed for a single top-level domain space, Internet traffic would be unpredictable
20 because it would route to one computer identified by one Registry, and then perhaps to a
21 different computer identified by a second Registry. Accordingly, there can be only one Registry
22 for each top-level domain name, just as there is only one telephone numeric system in the world.
23 Therefore, a Registry holds a monopoly with respect to a given top-level domain name which
24 yields considerable power to the Registry. Pursuant to its contract with ICANN, Defendant
25 Neulevel is the Registry for the <.biz> top-level domain.
26
27
28

1 55. Registrants do not deal directly with the Registry, but instead use the services of a
2 Registrar. The "Registrar" acts as an intermediary between Registrants and the Registry,
3 providing registration and perhaps other services. Registrants apply for domain name
4 registrations with Registrars, who in turn check with the Registry to determine if the name is
5 available. If so, the Registrar submits the Registrant's information and purchases the domain
6 name on behalf of the Registrant. Registrars must be approved and accredited by ICANN before
7 they can begin selling domain names. With the exception of Defendant Neulevel, all of the other
8 Defendants are Registrars (or agents of Registrars with the authority to register domain names to
9 the same extent as a Registrar).

11 56. The Registry sells domain names to Registrars on a wholesale basis. The
12 Registrars, in turn, sell those domain names to Registrants on a retail basis. Registrars bill and
13 collect fees from Registrants for domain names. The Registry usually charges a per-domain fee
14 to the Registrar.

17 Value of Domain Names

18 57. Domain names can become extremely valuable, and several have recently been
19 sold for millions of dollars. Similar to land speculation, domain name speculation has become a
20 popular business opportunity for many individuals or businesses who register domain names for
21 the purpose of selling them for substantial amounts of money. There are also several domain
22 name appraisal services and domain name sale escrow agents. Of course, domain names can
23 also be very valuable for doing business on the Internet.

24 58. Therefore, when a new top-level domain is created, and the corresponding
25 second-level domain names are all available, there is likely to be a "land rush" of businesses and
26
27
28

1 individuals making all efforts to register the very valuable generic domain names. In fact, many
2 Defendants describe the application process as the "Land Rush" period.

4 **Creation of the <.biz> Top Level Domain**

5
6 59. On November 16, 2000, ICANN named Defendant Neulevel to be the Registry
7 for the new <.biz> TLD. On or about May, 2001, Defendant Neulevel announced its policies for
8 registration of <.biz> domain names.

9 **The Lottery Scheme Developed By Neulevel**

10
11 60. On or about May 11, 2001, Defendant Neulevel developed a three (3) step
12 process for implementing the registration of <.biz> second-level domain names to business
13 consumers. The first step is an "Intellectual Property Claim Service" period during which time
14 trademark owners may, for a \$90 fee, put potential Registrants of their trademark on notice of
15 their rights relating to certain domain names. The second step is the "Domain Name
16 Application" step, where Defendants charge potential Registrants for the chance to register
17 <.biz> domain names and then select winners through a lottery. The third step, which begins
18 October 1, 2001, is when <.biz> domain names may be accessed and used on the Internet. From
19 then on, Defendant Neulevel will accept instant registrations for <.biz> domain names from
20 Registrars as is now done with the current TLD's, i.e., on a first come, first serve basis.

21
22
23 61. On June 25, 2001, Defendant Neulevel implemented and began the Domain
24 Name Application step. Until September 17, 2001, the Defendants are selling the chance to win
25 the right to register <.biz> second-level domain names.

26
27 62. Specifically, for a monetary fee currently ranging from \$2.00 to \$35.00, the
28 Defendants, as or through Registrars, are selling "applications" to potential Registrants.

1 including Plaintiffs and Class members, which provide only the chance to win the right to
2 register certain <.biz> domain names. Defendant Registrars specifically caution that they cannot
3 guarantee that an application will result in a successful registration and that the application
4 "fees" are not refundable.

5
6 63. This scheme of offering for consideration the chance to register a <.biz> second-
7 level domain name is referred to herein as the "Lottery Scheme."

8
9 64. Each time a Registrar sells a chance to register a <.biz> domain name in the
10 Lottery Scheme, the Registrar transmits the name of the purchaser to Defendant Neulevel.

11
12 65. Defendant Neulevel maintains a list of all purchasers of the chances to register
13 <.biz> domain names, and the corresponding domain names which each purchaser desires to
14 register.

15
16 66. On or about September 26, 2001, and before October 1, 2001, unless enjoined by
17 this Court, Defendant Neulevel will randomly select an applicant who will win the right to
18 register a particular domain name for which Neulevel had received multiple applications during
19 the Lottery Scheme. Due to the random nature of the process, an applicant may increase its
20 chances of registering a domain name by purchasing additional chances from Defendants.

21
22 67. Applicants, including Plaintiffs and Class members, must pay consideration in the
23 form of a monetary fee in order to obtain a chance to win a <.biz> domain name during
24 Defendant's Neulevel's "Step 2" Lottery Scheme. Upon information and belief, out of that
25 monetary fee, Defendant Neulevel receives two dollars (\$2.00) for each chance to register a
26 domain name which a Registrar sells in the Lottery Scheme. The fees charged by the Registrars
27 Defendants to Plaintiffs and Class Members range from two dollars (\$2.00) (charged by
28 Defendant eNom, Inc.) to thirty five dollars (\$35.00) (charged by Defendant NameEngine, Inc.).

1 Most Defendant Registrars charge either five dollars (\$5.00) or ten dollars (\$10.00) for each
2 chance to register a <.biz> domain name. Defendant Registrar.com charged Plaintiff ePrize a
3 \$5.00 fee to submit an application for <eprize.biz>.

4
5 68. According to Defendant Neulevel's website, "millions of requests [i.e., lottery
6 applications] have already been submitted."

7 69. As further described below, Defendant Neulevel's Domain Name Application
8 process (i.e. the Lottery Scheme) constitutes a lottery illegal in California and every state of the
9 United States.

10
11 70. In fact, even Registrars accredited by Defendant Neulevel promote and explain
12 the scheme as a "lottery." For example, Defendant NameEngine, Inc., a Neulevel approved
13 Registrar, explains:

14
15 If you only want to submit ONE domain name application for a .BIZ name during
16 the Land Rush, choose this option. However, remember that .BIZ will function
17 like a lottery and the more lottery tickets you have (submissions), the better your
18 chances are for a successful registration.

19
20 (Emphasis added).

21
22 71. Similarly, a Registrar affiliate offering <.biz> domain names via the Internet site
23 located at <http://DotBizLottery.com>, promotes "Get your Name in the Hat and Win!" and
24 explains that:

25
26 Neulevel, the registry operator for the new .biz top-level domain names has
27 opened the preregistration phase for .biz domain name extensions. They are
28 treating the .biz domain name selection process like a lottery. That means that
everyone has a chance at getting a really great domain name like sex.biz or

1 show.biz - just think - these names could be worth millions! ... the more
2 applicarions/entries that you submit for a domain name, the better your chances of
3 winning the right to register that domain name. For example if there are 100
4 applications/entries submitted by different people for the same domain name, if
5 you have submitted 25 of those applications you will have a 25% of getting it!

6
7 (Emphasis added).

8
9 72. None of the Defendants have disclosed to the public how many chances have
10 been sold to date. Consequently, no consumer and/or business which desires to purchase the
11 opportunity to win the right to register a <.biz> domain name, has any idea as to its chances.

12
13 73. Lotteries run by private entities are illegal in California and in every other state in
14 this country.

15 74. Defendants are responsible for, engaging in, and perpetuating the Lottery Scheme
16 described above.

17
18 75. Under California Penal Code § 319, a lottery is defined as follows:

19 A lottery is any scheme for the disposal or distribution of property
20 by chance, among persons who have paid or promised to pay any
21 valuable consideration for the chance of obtaining such property or
22 a portion of it, or for any share or any interest in such property,
23 upon any agreement, understanding, or expectation that it is to be
24 distributed or disposed of by lot or chance, whether called a
25 lottery, raffle, or gift-enterprise, or by whatever name the same
26 may be known.
27
28

1 76. The Lottery Scheme constitutes an illegal "lottery" pursuant to California Penal
2 Code § 319 because Defendants are distributing property (a <.biz> domain name) by chance (the
3 randomized process) among persons (Plaintiffs) who have paid valuable consideration for the
4 chance (application fees) with the understanding that the property would be distributed by
5 chance.
6

7 77. No part of the Lottery Scheme constitutes a charitable raffle.

8 78. Under California Penal Code § 320, "Every person who contrives, prepares, sets
9 up, proposes, or draws any lottery, is guilty of a misdemeanor."
10

11 79. Under California Penal Code § 321, the act of selling or otherwise conveying the
12 chance to win a prize in a lottery is illegal. Specifically, § 321 states:

13 Every person who sells, gives, or in any manner whatever,
14 furnishes or transfers to or for any other person any ticket, chance,
15 share, or interest, or any paper, certificate, or instrument
16 purporting or understood to be or to represent any ticket, chance,
17 share or interest in, or depending upon the event of any lottery, is
18 guilty of a misdemeanor.
19

20 80. Under California Penal Code § 322, simply assisting with a lottery is a crime.
21 Specifically, § 322 states:
22

23 Every person who aids or assists, either by printing, writing,
24 advertising, publishing, or otherwise in setting up, managing, or
25 drawing any lottery, or in selling or disposing of any ticket,
26 chance, or share therein, is guilty of a misdemeanor.
27
28

1 81. The Defendants have, collectively conspired, contrived, prepared, set up,
2 proposed and/or drew the Lottery Scheme in violation of Penal Code § 320.

3
4 82. The Defendants have, collectively and/or individually, sold or transferred to
5 Plaintiffs chances to register <biz> domain names using the Lottery Scheme in violation of
6 Penal Code § 321.

7
8 83. The Defendants have, collectively and/or individually, aided or assisted in
9 advertising, publishing or otherwise setting up, managing or drawing the Lottery Scheme in
10 violation of Penal Code § 322.

11 **FIRST CAUSE OF ACTION**

12 **(Violations Of Business And Professions Code § 17200)**

13 **(By Plaintiffs On Behalf Of General Public vs. All Defendants)**

14
15 84. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 83 as
16 though fully set forth herein.

17
18 85. Under California's Business and Professions Code § 17200 et seq., unfair
19 competition is defined as "any unlawful, unfair or fraudulent business act or practice and unfair,
20 deceptive, untrue or misleading advertising."

21 86. The Lottery Scheme is a business practice.

22
23 87. Defendants, in signing contracts with Defendant Neulevel to accept applications
24 for <biz> domain names, engaged in a common course of conduct to effectuate the Lottery
25 Scheme.

26
27 88. As more fully described above, the Lottery Scheme is an unlawful, unfair and
28 fraudulent business practice.

1 89. Defendants' omission of the odds of winning and the fact that the Lottery Scheme
2 is illegal and unenforceable constitute unfair, deceptive, untrue and misleading advertising.

3 90. The Plaintiffs have suffered damages as a result of Defendant's unlawful, unfair,
4 business practices and Defendant's deceptive, untrue and misleading advertising.
5

6 **SECOND CAUSE OF ACTION**

7 **(Unjust Enrichment)**

8 **(By Plaintiffs vs. All Defendants)**

9
10 91. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 90 as
11 though fully set forth herein.

12 92. Any illegal contract is void anywhere in the United States.

13 93. Since Defendants' Lottery Scheme is unjust and illegal in all 50 states, any
14 contract entered into by Plaintiffs for a chance to register a <.biz> domain name is void.
15

16 94. Plaintiffs have conferred a benefit on Defendants in that Plaintiffs have paid
17 Defendants application fees for the chance to register a <.biz> domain name.
18

19 95. Defendants appreciated, knew of and, in fact, solicited the benefit conferred on
20 them by Plaintiffs (i.e., the application fees), and have thus been unjustly enriched.
21

22 96. It would be inequitable for Defendants to retain the application fees that they
23 obtained by the creation and operation of their illegal lottery. These illegally obtained monies
24 should be returned to Plaintiffs.
25
26
27
28

1 **THIRD CAUSE OF ACTION**

2 **(Common Law Fraud)**

3 **(By Plaintiffs vs. All Defendants)**

4
5 97. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 96 as
6 though fully set forth herein.

7 98. Defendants have sold Plaintiffs "applications" that are worthless because the
8 Lottery Scheme is illegal, making any agreements between the parties unenforceable.

9
10 99. On information and belief, Defendants concealed from Plaintiffs the fact that the
11 Lottery Scheme is illegal. None of the Defendants informed or warned Plaintiffs that the
12 "application process" might constitute an illegal lottery. Furthermore, by virtue of the legitimate
13 nature of TLDs, including <.biz>, Defendants implicitly represented to Plaintiffs and the general
14 public that the Lottery Scheme was legal.

15
16 100. The fact that the Lottery Scheme is illegal is material to Plaintiffs, who would not
17 have paid Defendants the application fees had they been informed that the Lottery Scheme is
18 illegal and, hence, unenforceable. Even if a Plaintiff were to "win" this lottery, that Plaintiff
19 would not be able to enforce the illegal lottery contract. Likewise, if a Plaintiff "wins" a <.biz>
20 domain name in the lottery and begins to use the name in conjunction with its business, a court
21 could later determine that the distribution of domain names was illegal and order repossession of
22 all domain names for a legal redistribution, thereby disrupting and irreparably harming that
23 Plaintiff's business.

24
25 101. Defendants intended to mislead and continue to mislead Plaintiffs by representing
26 on their respective web sites that the Lottery Scheme was legal and that successful applicants
27
28

1 would be entitled to a <.biz> domain name registration when, in fact, such an agreement is
2 unenforceable.

3
4 102. Plaintiffs relied on the misrepresented fact that the Lottery Scheme was legal and
5 enforceable in deciding to submit the applications. Had Plaintiffs known the Lottery Scheme
6 was not enforceable due to illegality, Plaintiffs would not have paid Defendants the application
7 fees.

8
9 103. Plaintiffs have been injured in that they have paid application fees in
10 consideration of an unenforceable, illegal gambling contract.

11 104. Defendants' conduct described herein was oppressive, malicious and fraudulent
12 in that Defendants acted with the intention to cause injury and damage to Plaintiffs and did in
13 fact cause injury and damage to Plaintiffs. Defendants' conduct is grounds for an award of
14 punitive damages pursuant to section 3294 of the California Code of Civil Procedure.

15
16 **FOURTH CAUSE OF ACTION**

17 **(Civil Conspiracy To Commit Fraud)**

18
19 **(By Plaintiffs vs. All Defendants)**

20 105. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 104 as
21 though fully set forth herein.

22
23 106. All Defendants have agreed with each other, by contract, to engage in the Lottery
24 Scheme to distribute unenforceable and, hence, worthless "applications" to register <.biz>
25 domain names in order to obtain money from Plaintiffs. As set forth herein, Defendants have
26 acted in furtherance of their agreement.
27
28

1 107. Each Defendant Registrars has committed the wrongful and fraudulent act of
2 selling the worthless "applications" for <.biz> domain names for consideration, in violation of
3 every State's gambling and/or lottery statutes.

4 108. Each Defendant has also falsely represented that the "agreements" ostensibly
5 created with the "applications" are enforceable contracts.
6

7 109. Defendant Neulevel coordinated the Lottery Scheme among all Defendants and
8 retained two-dollars (\$2.00) from each chance sold by the Defendant Registrars.

9 110. Defendants' actions as described constitute a civil conspiracy.
10

11 111. Plaintiffs have been damaged by such conspiracy in the amount that they have
12 paid to Defendants as a result of the illegal Lottery Scheme.

13 112. Defendants' conduct described herein was oppressive, malicious and fraudulent
14 in that Defendants acted with the intention to cause injury and damage to Plaintiffs and did in
15 fact cause injury and damage to Plaintiffs. Defendants' conduct is grounds for an award of
16 punitive damages pursuant to section 3294 of the California Code of Civil Procedure.
17

18 **FIFTH CLAIM FOR RELIEVE**

19
20 **(Declaratory Judgment)**

21 **(By Plaintiffs vs. All Defendants)**
22

23 113. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 112
24 though fully set forth herein.

25 114. An actual dispute exists between Plaintiffs and Defendants regarding whether
26 Lottery Scheme is an illegal gambling enterprise that dispute is an actual controversy ripe
27 adjudication. Plaintiffs have all paid consideration for the chance to register a <.biz> domain
28

1 name and Defendants are presently still selling "applications" to enter the illegal lottery, which
2 will be held on or about September 26, 2001.

3 115. Plaintiffs request that this Court declare that Defendants' Lottery Scheme
4 constitutes an illegal lottery, and grant further relief preventing Defendants from continuing to
5 operate the illegal lottery and ordering Defendants to return all fees to Plaintiffs.
6

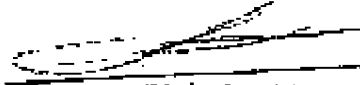
7 **PRAAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs pray for the following relief:

- 9
- 10 1. For a preliminary and permanent injunction against the Defendants preventing
11 them from continuing with the Lottery Scheme;
- 12
- 13 2. For any other and further equitable relief, including, without limitation
14 restitutionary relief, and/or disgorgement of wrongfully gained monies, revenue, or profit;
- 15
- 16 3. For damages, according to proof at trial;
- 17
- 18 4. For punitive damages, according to proof at trial.
- 19
- 20 5. For attorneys' fees and costs;
- 21
- 22 6. For a judicial declaration that the Lottery Scheme is illegal; and
- 23
- 24 7. For such other relief as the Court deems appropriate.

25 Dated: September 2, 2001

KATTEN MUCHIN ZAVIS
Stuart M. Richter
Steven S. Fleischman

26
27 By: 
Steven S. Fleischman
Attorneys for Plaintiff, EPRIZE, LLC