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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
AT LOS ANGELES

03-5045

JFW

(MAX)

16 DOTSTER, INC., a Washington  
17 corporation, GO DADDY SOFTWARE,  
18 INC., an Arizona corporation, eNOM,  
INC., a Washington corporation,

19 Plaintiffs,

20 v.

21 INTERNET CORPORATION FOR  
22 ASSIGNED NAMES AND  
23 NUMBERS, a California nonprofit  
corporation

24 Defendant.

Civil Case No. \_\_\_\_\_

DECLARATION OF MARTIN S.  
GARTHWAITE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION

26 I, Martin S. Garthwaite, declare and state as follows:

Page 1- DECLARATION OF MARTIN S. GARTHWAITE IN  
SUPPORT OF PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

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ENTERED ON 10/15  
JUL 17 2003  
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10

1 I am the General Counsel of Plaintiff eNom, Inc. ("eNom"). I make this  
2 declaration of my own knowledge, and after a review of documents maintained by  
3 eNom in the normal course of business. If called as a witness I could testify to each of  
4 the following facts:

5 1. I have read and agree with paragraphs 1 through 37 of the Declaration of  
6 Clint Page in Support of Plaintiffs' Motion for Temporary Restraining Order and  
7 Preliminary Injunction dated July 14, 2003.

8 2. eNom has been accredited as a domain name ("Domain") registrar  
9 ("Registrar") by Internet Corporation for Assigned Names and Numbers  
10 ("Defendant"). eNom has signed an Registrar Accreditation Agreement  
11 ("Accreditation Agreement") with Defendant, and such Accreditation Agreement is  
12 dated May 17, 2001, and is attached hereto as Exhibit A. eNom is accredited to  
13 register the .COM and .NET top-level Domains ("TLDs").

14 3. eNom is one of approximately 45 Registrars who compete to re-register  
15 Domains that are expiring or otherwise being deleted by the VeriSign Global Registry  
16 Services, a division of VeriSign, Inc., which operates the .COM and .NET registry  
17 (the "Registry").

18 4. The technology and process that eNom has developed to register expiring  
19 Domains that are being deleted in a Batch Delete is marketed to potential domain  
20 registrants ("Domain Registrants") under the name "Club Drop." Club Drop operates  
21 as combination subscription, first-come first-served, and blind-auction service model.

22 5. Club Drop participants first must purchase a monthly subscription to the  
23 service. The subscription price is approximately ninety-nine dollars (\$99.00) per  
24 monthly subscription. Subscribers are allowed to review a list of the domain names  
25 which are scheduled to be deleted in the Registry's Batch Delete process. Subscribers  
26 select which, if any, of the domain names they wish to attempt to acquire. Under the

1 earlier approach to this service which was in place until July 15, 2003, if two or more  
2 subscribers wish to acquire the same domain name (and if the domain name is  
3 acquired by eNom), the domain name is awarded to the subscriber after consideration  
4 of a complex of factors, including when and how often the subscriber requested the  
5 name and whether and how recently the subscriber had been awarded domain names  
6 in previous rounds (the purpose of these factors generally being to achieve an  
7 equitable distribution of acquired domain names). Under the approach to this service  
8 which will be in place after July 15, 2003 (the day after this declaration is executed), if  
9 two or more subscribers wish to acquire the same domain name (and if the domain  
10 name is acquired by eNom), the domain name is given to the subscriber who placed  
11 the highest bid on the domain (bids being placed prior to when eNom attempted to  
12 acquire the domain from the Registry). Competing subscribers do not, at this time,  
13 know each other's bids, making it a blind auction. If two subscribers submitted the  
14 same bid, then the domain name is awarded using the complex of factors described  
15 above. The change in the service model was made in response to interaction with  
16 subscribers. The service model may be modified in the future.

17         6. eNom then uses its registry connection (as well as the registry  
18 connections of another registrar or registrars who are under contract with eNom for  
19 this purpose) to attempt to acquire the desired domain names at the time when eNom's  
20 staff estimates that the domain names will be available. Some judgment is used by  
21 eNom's staff in determining the order in which to attempt to acquire domain names.  
22 Acquired domain names result in payment of the usual registry fees and in the  
23 payment of registration fees by the ultimate registrant. The registration fee earned by  
24 eNom with respect to each domain name varies slightly, as different eNom registrants  
25 and resellers pay different registration fees to eNom, depending largely on the party's  
26 volume of business with eNom. The higher

1 7. eNom is aware that participants compare estimated success rates, prices,  
2 and overall service packages through online message systems and other means. As a  
3 result, eNom believes that the Club Drop service competes fiercely with the offerings  
4 of the various market participants.

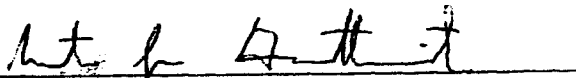
5 8. On an annual basis, eNom pays registrar accreditation fees to Defendant  
6 in accordance with the Accreditation Agreement and Defendant's then-current  
7 policies. In 2002, for example, eNom paid approximately \$123,298.07 in  
8 accreditation fees. In 2001, eNom paid approximately \$44,901.24 in accreditation  
9 fees.

10 9. Implementation of the proposed WLS will effectively destroy eNom's  
11 Club Drop Service and other competing models because WLS creates a first-come,  
12 first-served model that preempts the competitive Batch Delete process that currently  
13 exists, which allows Registrars to compete with one another.

14 10. Implementation of the WLS will essentially end the current business  
15 model eNom has created, as well as the business models created by its competitors.  
16 There will no longer be deleting Domains of value for people to bid on, as valuable  
17 Domains will likely have WLS subscriptions placed on them.

18 11. The estimated value of the business that eNom' will lose if WLS is  
19 implemented substantially exceeds \$100,000.

20  
21 I declare under penalty of perjury under the laws of the United States of  
22 America that the foregoing is true and correct, and that this declaration was executed  
23 on July 14, 2003 at Redmond, Washington.

24  
25   
26 Martin S. Garthwaite