

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required by the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE COVER SHEET.)

CV-00-BU-2851-5

I (a) PLAINTIFFS

Stan Smith

DEFENDANTS

Network Solutions, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Jefferson
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Foreign
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Don McKenna
Hare, Wynn, Newell & Newton
The Massey Bldg. Suite 800
2025 Third Avenue North
Birmingham, AL 35203

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|--------------------------|--------------------------|---|--------------------------|--------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen of Another State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> | <input type="checkbox"/> |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. Section 1332

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury: Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 366 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 863 DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence 28 USC 2255 <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ In excess of \$75,000

Check YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See Instructions): IF ANY

JUDGE _____ DOCKET NUMBER _____

DATE 9/29/00

SIGNATURE OF ATTORNEY OF RECORD 

In the United States District Court
For the Northern District of Alabama

STAN SMITH

Plaintiff(s)

vs.

NETWORK SOLUTIONS, INC.
c/o Robert S. Guyton, Jr.
VERISIGN, INC.

Defendant(s)

SUMMONS

(Issued pursuant to Rule 4
of the Federal Rules of
Civil Procedure or other
appropriate laws.)

CIVIL ACTION CASE NUMBER:

CV-00-BU-2851-S

TO DEFENDANT Network Solutions, Inc. c/o Robert S. Guyton, Jr.

(Name and Address)

518 A Walnut Street, Gadsden, AL 35901

You are hereby summoned and required to serve upon plaintiff's attorney(s):

Don McKenna

Hare, Wynn, Newell & Newton The Massey Bldg. Suite 800

2025 Third Avenue North (Name and Address)

Birmingham, AL 35203

a response to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. IF YOU FAIL TO DO SO,
JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.
A signed copy of your response MUST also be filed with the court.

DATE: _____

PERRY D. MATHIS, CLERK

By:

SEE REVERSE SIDE FOR RETURN

Deputy Clerk

(SEAL OF COURT)

NOTE: A separate summons must be
prepared for each defendant.

CLERK, U. S. DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
1729 5th Avenue, North
Birmingham, AL 35203

In the United States District Court
For the Northern District of Alabama

STAN SMITH

Plaintiff(s)

vs.

NETWORK SOLUTIONS, INC.
c/o Michael Green

VERISTGN, INC.

Defendant(s)

SUMMONS

(Issued pursuant to Rule 4
of the Federal Rules of
Civil Procedure or other
appropriate laws.)

CIVIL ACTION CASE NUMBER:

CV-00-BU-2851-S

TO DEFENDANT Network Solutions, Inc. c/o Michael Green
(Name and Address)
226 South 5th Street, Gadsden, AL 35901

You are hereby summoned and required to serve upon plaintiff's attorney(s):

Don McKerna

Hare, Wynn, Newell & Newton The Massey Bldg. Suite 800

2025 Third Avenue North (Name and Address)
Birmingham, AL 35203

a response to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. IF YOU FAIL TO DO SO,
JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.
A signed copy of your response MUST also be filed with the court.

DATE: _____

PERRY D. MATHIS, CLERK

By:

SEE REVERSE SIDE FOR RETURN

Deputy Clerk

(SEAL OF COURT)

NOTE: A separate summons must be
prepared for each defendant.

CLERK, U. S. DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
1729 5th Avenue, North
Birmingham, AL 35203

In the United States District Court
For the Northern District of Alabama

STAN SMITH

SUMMONS

Plaintiff(s)

(Issued pursuant to Rule 4
of the Federal Rules of
Civil Procedure or other
appropriate laws.)

vs.

NETWORK SOLUTIONS, INC.
VERISIGN, INC.

CIVIL ACTION CASE NUMBER:

CV-00-BU-2851-S

Defendant(s)

TO DEFENDANT VERISIGN, INC., GENERAL COUNSEL, VERISIGN WORLDWIDE HEADQUARTERS
(Name and Address)
1350 Charleston Road, Mountain View, CA 94043

You are hereby summoned and required to serve upon plaintiff's attorney(s):

Don McKenna
Hare, Wynn, Newell & Newton The Massey Bldg. Suite 800
2025 Third Avenue North (Name and Address)
Birmingham, AL 35203

a response to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. IF YOU FAIL TO DO SO,
JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.
A signed copy of your response MUST also be filed with the court.

DATE: _____

PERRY D. MATHIS, CLERK

By:

SEE REVERSE SIDE FOR RETURN

Deputy Clerk

(SEAL OF COURT)

NOTE: A separate summons must be
prepared for each defendant.

CLERK, U. S. DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
1729 5th Avenue, North
Birmingham, AL 35203

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

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U.S. DISTRICT COURT
N.D. OF ALABAMA

STAN SMITH, individually and on)
behalf of all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
NETWORK SOLUTIONS, INC. and)
VERISIGN INC.,)
)
Defendants.)

CIVIL ACTION

NO. _

CV-00-BU-2851-S

CLASS ACTION COMPLAINT

COMES NOW the Named Class Representative, on his own behalf and on behalf of others similarly situated throughout the United States of America (Hereinafter the "Plaintiffs") by and through their attorneys of record, and hereby allege as follows:

NATURE OF THE CASE

1) This nationwide class action seeks remedies for the antitrust violations by Defendants in an attempt to maintain a former government sanctioned monopoly for the registration of non-military Internet domain names. Defendants have unlawfully attempted to maintain their monopoly power and restrain trade by refusing to delete expired domain names from the central WHOIS registry database so that the names will be available to the Class Members for registration through any of the accredited registrars. The Plaintiffs seek injunctive relief and damages to remedy Defendants unlawful conduct.

JURISDICTION AND VENUE

- 2) This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because complete diversity exists among the parties and the amount in controversy exceeds \$75,000.
- 3) Venue is proper pursuant to 28 U.S.C. § 1391 because the Named Representative resides within this District and the Defendants transact business within this District.

PARTIES

- 4) Plaintiff, Class Representative, Stan Smith is a resident of Jefferson County, Alabama. In June 2000, Stan Smith was denied access to register several expired domain names, registered by Network Solutions, Inc. Defendants have refused to delete the names from the WHOIS database so that he may attempt to be the first person to register the names and have a one to ten year renewable license to use the domain names.
- 5) Defendant Network Solutions, Inc. (NSI) is a foreign corporation incorporated and headquartered in Herndon, Virginia. NSI has recently become a wholly owned subsidiary of Defendant VeriSign, Inc.
- 6) VeriSign, Inc. is the parent company of NSI, headquartered in Mountain View, California.

FACTUAL ALLEGATIONS

- 7) Today, NSI is the world's leading registrar of Internet domain names – having enjoyed a monopoly power over registration for more than five years. NSI claims to

have registered nearly twelve million domain names. NSI remains the sole keeper of the master list of domain names in the “WHOIS” registry database. NSI Determines when expired domain names, which they have registered, are deleted from the WHOIS database giving them a competitive advantage in re-registration of those names.

- 8) An Internet domain name is an addressing construct used for identifying and locating computers on the Internet. Domain names provide a system of easy-to-remember Internet addresses, which can be translated by the Domain Name System to numeric addresses used by the Network. A domain name is simply a label that represents a domain. There are four primary Top Level Domains (“TLDs”) used by the public: .com, .org, .net, and .edu. Second Level Domain names (“SLDs”) have a unique set of characters before the .com, .org, .net, or .edu, such as hwnn.com.
- 9) The “WHOIS” database is a central database that stores information regarding all of the registered domain names including: the registration date, the expiration date, who registered the name and the contact information for the person or organization that registered the domain name. NSI is the sole keeper of the WHOIS database.
- 10) A registrar is an authorized entity that, for a fee, registers the information for a SLD in the central WHOIS database.
- 11) A Registrant is the individual or organization that registers a specific domain name with a registrar. This individual or organization holds the right to use that specific domain name for a specified period of time, provided certain conditions are met and the registration fees are paid.

12) The following is a brief history of how Network Solutions, Inc. obtained a more than 5 year, government sanctioned, monopoly on the registration of non-military domain names.

13) Before the Internet, there were two networks known as ARPANET and NSFNET. The entities that used these networks were research oriented organizations-mostly within the government, business and academia. ARPANET users engaged in military research and received funding from the Defense Department (“DOD”) and like agencies, while NSFNET users included ARPANET users plus scientific researchers receiving funding from the National Science Foundation (NSF), other Federal agencies, universities and corporations. By 1995, those networks had generally been known as the Internet.

14) The Internet Protocol (“IP”) numbering system was established in 1983 as part of a network system software called Transmission Control Protocol/Internet Protocol (“TCP/IP”). The NSF supported many of the original technical studies that developed the Internet Protocol. Over time, more and more institutions and sites desired to be connected to the network and those that did connect were required to operate in accordance with TCP/IP and other consensus-based network standards.

15) The Internet Engineering Task Force began in 1986 and received NSF support. Assignment of IP numbers and registration of domain names was initially the responsibility of the Internet Assigned Numbers Authority (“IANA”). The actual registrations were conducted by the Defense Information Systems Agency Network Information Center, operated by a military contractor. In the late 1980’s, NSF began to support registration services for the non-military network. From 1987 to 1991

IANA had a DOD contract to handle the registration of IP numbers and domain names, with the actual registrations performed by SRI (until 1990) and Government Systems Incorporated (“GSI”) (1991-1992); GSI subcontracted to NSI in March 1991 to perform the actual registrations.

16) On March 19, 1992, NSF solicited competitive proposals for three network information service managers: one to provide registration services for the non-military internet; one to serve as a central directory and database service; and one to serve as an information service assisting new entities in joining the internet. The solicitation was issued pursuant to the National Science Foundation Act of 1950, 42 U.S.C. § 1861 et seq., as amended, and the Federal Cooperative Agreement Act, 31 U.S.C. § 6305.

17) NSI’s bid to provide registration services was selected by NSF.

18) In 1992, The United States of America, represented by the The National Science Foundation (NSF), and Network Solutions, Inc. (NSI) entered into cooperative agreement No. NCR-9218742. The effective date of the Agreement was January 1, 1993 and the expiration date was September 30, 1998. The expiration date has been extended several times by amendment.

19) Under the Cooperative Agreement, NSI was to exclusively provide to non-military internet users and networks all necessary registration services (which were) previously provided by the Defense Information Systems Agency Network Information Center (the DISA). These services included, but were not limited to the following: Domain Name Registration; Domain Server Registration; Network Number Assignment; and Autonomous system number assignment.

- 20) In 1995, by amendment to the cooperative agreement, NSF authorized NSI to charge a fee of \$50 per year to register domain names for a 2 year renewable term. In 1997, the fee was reduced to \$35 year and NSI remained the exclusive registrar for non-military domain names.
- 21) On July 1, 1997, as part of the Administration's Framework for Global Electronic Commerce, The President of the United States directed the Secretary of Commerce to privatize the management of the domain names system (DNS) in a manner that increases competition and facilitates international participation in its management.
- 22) On June 8, 1998, the Department of Commerce (DOC) issued a statement of policy entitled Management of the Internet Names and Addresses. In the Statement of Policy, the DOC stated its intent to enter an agreement with a not-for-profit entity to establish a process to transition current U.S. Government management of the DNS to such an entity based upon the principles of stability, competition, bottom-up coordination, and representation.
- 23) On September 9, 1998, NSF and DOC entered into a Memorandum of Agreement pursuant to which NSF transferred responsibility for administering the Cooperative Agreement with NSI to DOC. This was done to ensure the seamless and stable transition from the existing framework of Internet administration to a private sector management structure as set forth in the Statement of Policy.
- 24) On October 6, 1998, NSI and DOC extended the Cooperative Agreement to September 30, 2000 at the latest by agreeing to Amendment no. 11, which also provided for NSI's recognition of a new non-profit corporation that was later embodied by ICANN. The Amendment also provided for the development,

deployment and licensing by NSI of a mechanism that allows multiple registrars to accept registrations for SLDs with NSI acting as the registry.

25) In October 1998, the DOC and NSI amended the Cooperative Agreement to facilitate the evolution of the DNS in accordance with the Presidents July 1997 directive and to introduce competition into the provision of registrar services in the .com, .net and .org domains. The amendment provided that NSI should allow existing customers to terminate their agreements and register with other registrars.

26) In the fall of 1998, the Internet Corporation for Assigned Names and Numbers ("ICANN") was incorporated as a nonprofit public benefit corporation..

27) In November 1998, the DOC entered into a Memorandum of Understanding with ICANN for collaborative development and testing of the mechanisms, methods and procedures necessary to transition management responsibility for specific DNS functions to the private sector.

28) Pursuant to the provisions of the amended Cooperative Agreement, NSI developed the Shared Registration System (SRS), which allows multiple registrars to submit domain name registrations to the registry for the .com, .net, and .org domains. On April 21, 1999, ICANN selected five Accredited Registrars to participate in phase 1 testing of the SRS and competition for the registration of domain names began. The test period has been extended several times and has been opened to all registrars accredited by ICANN. Currently, there are at least 76 registrars accredited by ICANN. Of these, 29 have obtained the SRS software from NSI; 13 have been certified to begin operations; and 11 are actively registering domain names.

- 29) On September 28, 1999, ICANN announced a tentative agreement with the United States Department of Commerce and Network Solutions, Inc. on a series of agreements that will put the newly introduced competition among registrars in the .com, .net and .org TLDs on a permanent and firmer footing. After written and oral public comments, these agreements were revised in several respects and were adopted by the ICANN Board on November 4, 1999. One of these agreements is a revised NSI-Registrar License and Agreement under which competitive ICANN-accredited registrars are permitted to place and renew registrations in the registry.
- 30) NSI, desiring to be an accredited registrar, entered into a Registrar Accreditation Agreement with ICANN in November of 1999. This agreement expressly anticipates implementation of policies prohibiting the warehousing or speculation of domain names by registrars. Such warehousing would stifle and restrain competition among the newly accredited competitive registrars.
- 31) The Accreditation Agreement also requires registrars to submit the expiration dates of all domain names registered through the registrar to the WHOIS database. The same agreement specifically provides that the registrars disclaim any rights in all SLD names submitted by Registrar or sponsored by Registrar in, the registry database for the .com, .net and .org TLDs.
- 32) Section II(J)(5) of the Registrar Accreditation Agreement provides that “Registrar shall register SLDs to SLD holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the SLD holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in the cancellation of the registration.”

- 33) Section II(J)(2) provides that “Registrar shall abide by applicable laws and governmental regulations.”
- 34) NSI is contractually obligated with ICANN to provide equivalent access to the Shared Registration System to all registrars accredited by ICANN (including NSI acting as a registrar) and to ensure that all revenues and assets of the registry are not utilized to advantage NSI’s registrar activities to the detriment of other registrars.
- 35) NSI’s registration service agreement with its registrants provides that the service is for a two-year initial term and renewable in perpetuity thereafter for successive one-year terms. Renewal is subject to payment of all applicable fees. The same agreement provides that NSI will make both the registration and expiration date of domain names available to the public.
- 36) According to NSI’s Fee for Registration of Domain Names Policy, new domain names are valid for two years from the date NSI activates the domain name.
- 37) Despite the clear directive of the United States Government to end the monopoly for the registration of domain names, and encourage and facilitate competition in the registration of domain names, NSI has continued to try and maintain its monopoly power.
- 38) Sometime around May 2000, NSI implemented a unilateral policy of refusing to delete expired domain names, registered by NSI, from the WHOIS registry database.
- 39) Reports estimate that NSI has refused to delete between 1 million and 3 million expired names from the WHOIS database for registration and use by Class Members on the traditional first come first serve basis.

- 40) NSI holds close to one hundred percent of the market for expired domain names. NSI enjoys and is exploiting this position, because of its complete monopoly in the registration of domain names from 1993 through mid-1999.
- 41) Names registered earlier, when NSI held pure monopoly power and registered all non-military names, tend to be shorter and easier to remember. The short names are easier to find and are thus, considered more valuable.
- 42) Names ending in .com are the most popular and command the most dollars. Four-fifths of the registered domain names are dot-coms.
- 43) In June 2000, NSI announced plans to auction the expired domain names. The announcement was met with public protest, and NSI delayed its plans to auction the expired names.
- 44) NSI is restraining trade and willfully attempting to maintain its monopoly power by refusing to release millions of expired domain names, despite the fact that the accreditation agreement signed by NSI specifically disclaims any rights in the domain names.

CLASS ACTION ALLEGATIONS

- 45) The Class Representative brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The proposed Plaintiff's class is composed of and defined as:
All persons or entities denied access to expired domain names by NSI.
- 46) Plaintiffs reserve the right to expand and/or amend the Class Definition as may be appropriate based upon evidence uncovered during the course of discovery.

47) Excluded from the proposed class are the Defendants; any entity which has a controlling interest in a Defendants' operations; any entity in which any of the Defendants have a controlling interest; any agents, employees, officers and directors of the foregoing entities or their immediate families; and any legal representatives, heirs, successors and assignees of the foregoing entities; any branch, organization or division of the United States government; and any Judge to which this matter is assigned and members of that Judge's immediate family.

48) This action has been brought and may be properly maintained as a class action pursuant to the provisions of Fed. R. Civ. P. 23(a)(1)-(4) and 23(b)(3), and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements thereof because:

- a. The proposed Plaintiffs' Class is so numerous that the individual joinder of all its members is impracticable, meeting the requirements of Fed. R. Civ. P. 23(a)(1). While the exact number of Class Members is unknown to Plaintiffs at this time, it is ascertainable by appropriate discovery. Plaintiffs are informed and believe the proposed Class includes thousands of persons.
- b. Common questions of law and fact exist as to all Class members as required by Fed. R. Civ. P. 23(a)(2), and within the meaning of Fed. R. Civ. P. 23(b)(3), and predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, but are not limited to:
 - i) Whether the Defendants have unlawfully restrained trade by refusing to delete expired domain names to from the WHOIS registry database for registration by Class Members.

- ii) Whether the Defendants are unlawfully exercising or attempting to maintain monopoly power by refusing to delete expired domain names from the WHOIS database for registration by persons and/or organizations.
- iii) Whether the Class Members are entitled to injunctive relief;
- iv) Whether the Class Members are entitled to equitable relief;
- v) Whether the Class Members are entitled to damages;
- c. The Class Representative has claims that are typical of the claims of the Class, as required by Fed. R. Civ. P. 23(a)(3).
- d. The Class Representative will fairly and adequately protect the interests of the Class members, as required by Fed. R. Civ. P. 23(a)(4). The Class Representative is an adequate representative of the Class and any subclasses designated by the Court, having no interests that are adverse to the interests of the Class Members. The Class Representative has retained counsel experienced trial counsel with a history in the prosecution of class action lawsuits against large corporate defendants.
- e. Common questions of law and fact predominate over any individual issues that exist, satisfying the predominance requirement of Rule 23 (b)(3).
- f. A class action is superior to other available methods for the fair and efficient adjudication of this controversy within the meaning of Fed. R. Civ. P. 23(b)(3). The costs to the court system of adjudicating such individual litigation would be substantial. Individualized litigation would also present the potential for inconsistent results and would magnify the delay and expense to all parties and to the court system as a result of multiple, repetitive trials of the same issues. By

contrast, the conduct of this action as a class action presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each Class Member.

- g. In the alternative, this action is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2) because:
- i.) The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications, thus establishing incompatible standards of conduct for the Defendant; and
 - ii.) The prosecution of separate actions by individual Class Members would create a risk of adjudication with respect to them that would, as a practical matter, be dispositive of the interests of the other Class Members not parties to such adjudications or that would substantially impair or impede the ability of such other Class Members to protect their interests; and
 - iii.) The Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

COUNT I

(Violation of Sections 1 and 2 of the Sherman Act 15 U.S.C. §§ 1-2)

49) The Class Representative, on behalf of himself and all others similarly situated, adopt and reallege each of the foregoing paragraphs as though fully set forth herein.

50) Defendants have illegally restrained trade and willfully maintained monopoly power by engaging in the impermissible exclusionary practice of refusing to delete expired

domain names, registered through NSI at a time when NSI had a government sponsored monopoly, from the WHOIS database for registration by class members.

51) Defendants have monopoly power in the relevant market, in that:

- a) Defendants possess nearly one hundred percent of the previously registered and expired domain names.
- b) Defendants have registered the vast majority, nearly 12 million, of non-military domain names.
- c) Until other registrars received accreditation in 1999, NSI had a government sanctioned monopoly on the registration of non-military domain names.
- d) The new registrars that have received accreditation and begun registering domain names, have registered only a comparatively small percentage of domain names.
- e) The new registrars that have received accreditation and begun registering domain names have a small number, if any, of domain names registered by these new registrars that have expired.

52) This case involves a not insubstantial amount of commerce.

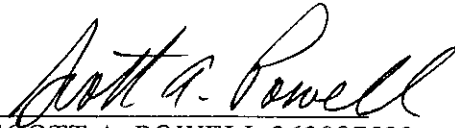
- (1) The Plaintiffs have suffered an antitrust injury in that Plaintiffs are not able to obtain expired domain names, and the expired and withheld names are not available from any other source. This inability to obtain expired domain names has harmed class members in their ability to compete in the market place.
- (2) Competition in the arena of domain name registration, as directed by the President in 1997, has been injured by Defendants' actions, because

competitor registrars are unable to register the expired domain names that Defendants' refuse to release for re-registration. If Defendants are ordered to release the expired domain names, Class Members would be free to register those names through any of the accredited registrars.

53) The Plaintiffs are entitled to injunctive relief and monetary damages.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against the Defendants as follows:

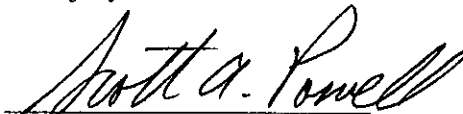
- a. For an Order certifying the Plaintiff Class for purposes of this litigation and appointing Class Representative and his counsel to represent the Class in this litigation;
- b. For an injunction Ordering Defendants to release the expired domain names, withheld by Defendants, for registration by members of the class.
- c. For an injunction Ordering Defendants to cease withholding expired domain names in the future.
- d. For an award to Plaintiffs and the Class Members of their damages for Defendants unlawful, antitrust conduct;
- e. For an award to the Plaintiffs and the Class Members of their costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees, and costs;
- f. For such other further monetary or equitable relief as this Court may deem just and proper.



SCOTT A. POWELL 263087523
DON MCKENNA ASB-6494-C66D
Hare, Wynn, Newell and Newton
2025 Third Avenue North, Suite 800
Birmingham, Alabama 35203
(205) 328-5330
(205) 324-9791 fax

JURY DEMAND

The Plaintiffs hereby demand a trial by struck jury in this case.



SCOTT A. POWELL

PLEASE SERVE DEFENDANTS AT:

Network Solutions, Inc.
C/o Robert S. Guyton, Jr.
518 A Walnut Street
Gadsden, AL 35901

Network Solutions, Inc.
Michael Green
226 South 5th Street
Gadsden, AL 35901

VeriSign, Inc.
General Counsel
VeriSign Worldwide Headquarters
1350 Charleston Road
Mountain View, CA 94043