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10
11 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 **SAN FRANCISCO DIVISION**

13
14 JOHN A. RUSSO, an individual)

15 Plaintiff,)

16 vs.)

17 NETWORK SOLUTIONS, INC., a foreign)
corporation, INFO AVENUE INTERNET)
SERVICES LLC, a foreign company, aka SPRINT)
18 TELECOM, LLC and IAREGISTRY, ENOM,)
INC., a foreign corporation, NAMEVIEW, INC., a)
19 foreign corporation, DOMAIN DELUXE, a Hong)
Kong entity, JOHN DOES 1-10, inclusive,)

20)
21 Defendants.)

Case No.: C 07 3401 MMC

**DECLARATION OF D. ALEXANDER
FLOUM IN SUPPORT OF DEFENDANT,
DOMAIN DELUXE'S, MOTION FOR
RECONSIDERATION OF COURT'S
ORDER STRIKING ITS MOTION TO
SET ASIDE DEFAULT AND VACATING
HEARING**

Date: November 7, 2008

Time: 9:00 a.m.

Judge: Maxine M. Chesney

Courtroom: 7

22
23 I, D. ALEXANDER FLOUM, Declare:

24 1. I am an attorney-at-law admitted to practice before all of the federal and state courts
25 within the State of California, including the Northern District. I am one of the attorneys for
26 Defendants, DOMAIN DELUXE ("Domain Deluxe") and NAMEVIEW, INC. in the instant action. I
27 have personal knowledge of the facts stated herein, except as alleged on information and belief, and if
28

1 called upon to testify and placed under oath, I could and would competently testify to these facts.

2 ECF

3 2. On October 3, 2008, immediately after appearing in Department 7 and learning that the
4 Court had issued notices and orders regarding service of chamber's copies and an Order Striking
5 Domain Deluxe's Motion to Set Aside Default (the "Motion") and vacating the hearing for the
6 Motion, I telephoned the Electronic Case Filing ("ECF") Help Desk for the Northern District of
7 California at the number provided to me by the Clerk of Department 7, (866) 638-7829.
8

9 3. I left a message, and a man from the ECF help desk called me back several minutes
10 later.

11 4. I stated that I had not received any of the Court's orders or notices in the instant action.
12 While I waited, he attempted to send me an email, and confirmed that the email bounced and was not
13 delivered to me.

14 5. He then checked his records, and confirmed that all of the emails which the ECF
15 attempted to send to me had bounced and were not received.

16 6. I asked him if there was any written evidence he could provide in that regard. At 2:45
17 p.m. on October 3, 2008, he sent me, as a sample, a report which showed all of the notices and orders
18 which ECF attempted to send me in September 2008. A true and correct copy of the report emailed to
19 me from ECF is attached hereto as Exhibit "A", and is incorporated herein by this reference.
20

21 7. The ECF report shows that every single notice and order which the Court attempted to
22 electronically serve me with in September 2008 bounced, and was not received by me.

23 8. All of ECF's records for August and October will show the same thing, although ECF
24 did not provide reports concerning such periods.

25 9. I asked for the ECF gentlemen's name, but he preferred not to give me his name. He
26 just said "ECF Help Desk". He has an unusually deep and resonant voice, and is or could easily be a
27 radio announcer.
28

1 10. The gentlemen from ECF also explained how to change my email for ECF, and I did so
2 while I was on the telephone with him. A true and correct copy of the confirmation of change of
3 email address for ECF is attached hereto as Exhibit "B", and is incorporated herein by this reference.

4 Lack of Knowledge

5 11. I did not know that the Court issued any orders or notices regarding service of
6 chamber's copies, striking the Motion, or vacating the hearing on the Motion. Had I received notice
7 of such orders and notices, I would have immediately taken action to satisfy the Court concerning
8 service of chamber's copies.

9 12. Moreover, I did not know until I talked to my law firm's outside computer and
10 information technology consultant, Ralph Jackson, that, on January 9, 2008, he had discontinued the
11 old email address listed with ECF. That old email address had previously always forwarded to my
12 current and active email, all as explained in Mr. Jackson's accompanying declaration.

13 13. I was horrified when I learned, on October 3, 2008, that the Court had issued notices
14 and orders regarding service of chamber's copies. Indeed, on October 2, 2008, I had instructed my
15 secretary to telephone the clerk for Department 7 to see if there was a tentative ruling. I appeared on
16 October 3, 2008, expecting to argue the Motion.

17 14. Indeed, I am concerned that I may have missed other important emails concerning other
18 clients sent to my old email account between January 9, 2008, and today. I may need to contact every
19 former client and other parties to determine if they have attempted to contact me through that old
20 address.
21
22

23 Attempted Service of Chamber's Copies

24 15. Domain Deluxe attempted to and believed it had properly submitted chamber's copies
25 of all pleadings regarding the Motion.
26

27 16. Specifically, on August 22, 2008, I submitted to the email addresses
28 'MMCpo@cand.uscourts.gov' and 'MMCpdf@cand.uscourts.gov' chamber's copies of all Domain

1 Deluxe's moving papers concerning the Motion, and copied opposing counsel with such
2 communication. A true and correct copy of my August 22, 2008, submission of the chamber's copy of
3 Domain Deluxe's moving papers is attached hereto as Exhibit "C", and is incorporated herein by this
4 reference.

5 17. On August 22, 2008, I received a confirmation from
6 ECFHELPDESK@cand.uscourts.gov stating:

7
8 "Your email has been received and is *being forwarded to the appropriate chambers for
processing.*"

9 A true and correct copy of ECF's confirmation is attached hereto as Exhibit "D", and is incorporated
10 herein by this reference.

11 18. On September 19, 2008, I submitted to the email addresses
12 'MMCpo@cand.uscourts.gov' and 'MMCpdf@cand.uscourts.gov' a chamber's copy of Domain
13 Deluxe's Reply in Support of its Motion. A true and correct copy of my September 19, 2008,
14 submission of the chamber's copy of Domain Deluxe's Reply is attached hereto as Exhibit "E", and is
15 incorporated herein by this reference.
16

17 19. On September 19, 2008, I received a confirmation from
18 ECFHELPDESK@cand.uscourts.gov stating:

19
20 "Your email has been received and is *being forwarded to the appropriate chambers for
processing.*"

21 A true and correct copy of ECF's confirmation is attached hereto as Exhibit "F", and is incorporated
22 herein by this reference.

23 20. Indeed, I had submitted to the Court two stipulations and proposed orders in this exact
24 same fashion with the exact same results. In each of these two incidences, I received an identical
25 confirmation from ECF regarding submission of the chamber's copies as for the moving and reply
26 papers in support of the Motion. In each of these two incidences, Department 7 of the Court
27 apparently received the submissions to chambers.
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