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

13 JOHN A. RUSSO, an individual
14 Plaintiff,
15 vs.
16 NETWORK SOLUTIONS, INC., a foreign
17 corporation, INFO AVENUE INTERNET
18 SERVICES LLC, a foreign company, aka
19 SPRINT TELECOM, LLC and
IAREGISTRY, ENOM, INC., a foreign
20 corporation, NAMEVIEW, INC., a foreign
21 corporation, DOMAIN DELUXE, a Hong
Kong entity, JOHN DOES 1-10, inclusive,
22 Defendants.

) Case No.: C 07 3401 MMC
)
) **DEFENDANT, DOMAIN DELUXE'S ,**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES 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**

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1 Defendant, DOMAIN DELUXE (“Domain Deluxe”), hereby submits its Memorandum of
2 Points and Authorities in support of its Motion For Reconsideration Of Court’s Order Striking Its
3 Motion To Set Aside Default And Vacating Hearing.¹
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5 **I.**

6 **INTRODUCTION**

7 Domain Deluxe respectfully request that this Court reconsider its order striking its
8 Motion to Set Aside Default (“Motion”) for two reasons:

9 (1) The Electronic Case Filing (“ECF”) Help Desk for the Northern District of California
10 has confirmed that Defense counsel did not receive any of the Court’s orders regarding service
11 by chamber’s copies or of Order striking the Motion and vacating the hearing; and
12

13 (2) Domain Deluxe did attempt to serve the Court with chamber’s copies; and
14

15 **II.**

16 **FACTUAL BACKGROUND**

17 **A. Domain Deluxe Did Not Receive the Court’s Orders and Had No Notice Thereof**

18 Domain Deluxe never received any of the Court’s orders regarding service of chamber’s
19 copies or striking the motion. Specifically, the Electronic Case Filing (or “ECF”) Help Desk
20 for the Northern District of California has confirmed that none of Court’s notices were received
21 by Domain Deluxe’s counsel. Declaration of D. Alexander Floum (“Floum Decl.”), ¶¶ 2-10.
22

23 It was only on October 3, 2008, when Alex Floum appeared in Department 7 to argue the
24 Motion, that he learned for the first time that the Court had issued orders and notices regarding
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26 _____
27 ¹ Out of an abundance of caution, Domain Deluxe is also filing a new Motion to Set Aside.
28

1 service of chamber’s copies, striking the Motion, and vacating the hearing on the Motion. Floum
2 Decl., ¶¶ 2-22; Declaration of Ralph Jackson (“Jackson Decl.”), ¶¶ 2-10.

3
4 Indeed, Alex Floum had his secretary call the clerk for Department 7 yesterday to
5 determine whether the Court issues tentative rulings, so as to determine whether or not he had to
6 contest any tentative ruling. Floum Decl., ¶ 13. He did not realize that the Court had issued
7 any orders regarding chamber’s copies of the Motion until today².

8 B. Domain Deluxe Attempted to Serve the Court with Chamber’s Copies

9 Domain Deluxe submitted chamber’s copies of all pleadings regarding the Motion.
10 Floum Decl., ¶¶ 15-21. Specifically, Counsel for Domain Deluxe submitted chamber’s copy by
11 email, and received confirmation each time that chamber’s copies were in fact being submitted.
12 Specifically, each time, counsel received email confirmations from ECF stating:
13

14 “Your email has been received and is *being forwarded to the appropriate*
15 *chambers for processing.*”

16 Floum Decl., ¶¶ 15-21.

17 This method of delivering copies to Department 7 had work on two occasions concerning
18 the submission of stipulations and orders, and defense counsel received the exact same
19 confirmation from ECF. Floum Decl., ¶¶ 20-21.
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26 ² On October 3, 2008, the undersigned appeared in Court, and the Court suggested to the
27 undersigned that he file a Motion for Reconsideration based upon lack of notice of the Court’s
28 orders.

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III.

LEGAL ARGUMENT

After a court enters an order, it may set aside or change its order pursuant to either its own local rules or Rule 60 of the Federal Rules of Civil Procedure. Ground v. Sullivan, 785 F.Supp. 1407, 1411 n.3 (S.D. Cal. 1992). Granting relief under Rule 60 is a matter within the discretion of the district court. Thompson v. Housing Auth. of Los Angeles, 782 F.2d 829, 832 (9th Cir. 1986).

Rule 60(b) provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(6) any other reason that justifies relief.

Additionally, Civil Local Rule 7-9(b)(3) permits reconsideration if the moving party shows “A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.”

Here, Domain Deluxe did not receive the Court’s Orders requesting that chamber’s copies be submitted in a form different from the manner in which Domain Deluxe submitted them. Domain Deluxe did not receive the Court’s warning that the Motion would be vacated if Domain Deluxe did not submit chamber’s copies in a different form. And Domain Deluxe did not receive the Court’s order striking the Motion and vacating the hearing on the Motion. This is a mistake, inadvertence, surprise, and/or excusable neglect on the part Domain Deluxe’s local counsel. For that reason, and because other reasons justify relief, Domain Deluxe respectfully requests that the Court Reconsider its Order Striking the Motion and vacating the Hearing under Rule 60.

1 In addition, because the Court did not consider Domain Deluxe’s Motion papers, it is
2 clear that the Court did not “consider material facts or dispositive legal arguments which were
3 presented to the Court before such” Therefore, Domain Deluxe respectfully request that the
4 Court reconsider its Order Striking the Motion and vacating the Hearing under Civil Local Rule
5 7-9(b)(3).

6
7 **IV.**

8 **CONCLUSION**

9 For all of the foregoing reasons, and good cause appearing, Domain Deluxe respectfully
10 requests that the Court reconsider its Order Striking the Motion and vacating the Hearing and set
11 a new hearing date for the Motion.
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14 Respectfully submitted:

15 THE WILLIAMS FIRM

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17 _____/DAF/_____
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19 Attorneys for Defendant, DOMAIN DELUXE
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