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 14 GODADDY.COM, INC.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 PETROLIAM NASIONAL BERHAD,
 18 Plaintiff,
 19 vs.
 20 GODADDY.COM, INC.,
 21 Defendant.

CASE NO.: 09-CV-5939 PJH

**DECLARATION OF DAVID L.
 LANSKY IN SUPPORT OF
 GO DADDY'S ADMINISTRATIVE
 MOTION FOR ENTRY OF FINAL
 JUDGMENT ON PETRONAS'S
 CLAIMS AND VOLUNTARY
 DISMISSAL OF GO DADDY'S
 COUNTERCLAIM WITHOUT
 PREJUDICE**

22 GODADDY.COM, INC.,
 23 Counterclaimant,
 24 vs.
 25 PETROLIAM NASIONAL BERHAD,
 26 Counterclaim Defendant.

Honorable Phyllis J. Hamilton

1 I, David L. Lansky, declare:

2 1. I am an attorney admitted to practice law before this Court, and am Of Counsel at
3 the law firm of Wilson Sonsini Goodrich & Rosati, P.C., counsel for Defendant and
4 Counterclaimant GoDaddy.com, Inc. (“Go Daddy”). I attended the most recent Case Management
5 Conference and have personal knowledge of the facts set forth in this Declaration. I submit this
6 declaration in support of Go Daddy’s Administrative Motion for Entry of Final Judgment on
7 Petronas’s Claims and Voluntary Dismissal of Go Daddy’s Counterclaim Without Prejudice.

8 2. On January 19, 2012 the parties participated in a Case Management Conference to
9 discuss the status of the litigation in light of the Court’s January 3, 2012 ruling granting summary
10 judgment in favor of Go Daddy on all claims asserted by Petronas (“Petronas’s claims”) and
11 denying Go Daddy’s motion for summary judgment as to Go Daddy’s counterclaim. Go Daddy’s
12 counterclaim seeks to cancel Petronas’s PETRONAS AND DESIGN trademark registration, U.S.
13 trademark registration Reg. No. 2969707 (the “Trademark claim”)¹. During the Case
14 Management Conference, Go Daddy expressed a willingness to dismiss its Trademark claim
15 without prejudice and instead proceed with the prosecution of a substantially identical claim
16 currently pending before the United States Patent and Trademark Office, Trademark Trial and
17 Appeal Board (“TTAB”), entitled *GoDaddy.com, Inc., v. Petroliam Nasional Berhad*, No.
18 92052741 (the “TTAB proceeding”). A true and correct copy of Go Daddy’s petition in the
19 TTAB proceeding is attached hereto as Exhibit A.

20 3. The TTAB proceeding was suspended on June 7, 2011 in deference to this litigation.
21 A true and correct copy of the order suspending the TTAB proceeding is attached hereto as
22 Exhibit B.

23 4. At the Case Management Conference, Petronas agreed that Go Daddy could dismiss
24 the Trademark Claim in this litigation without prejudice and prosecute the remainder of the claim
25 in the TTAB proceeding based on the discovery adduced to date. (Petronas does not concede the
26

27 ¹ Petronas is reserving its right to appeal the dismissal of its claims, which are based, in part,
28 on this very trademark registration.

1 Trademark claim on the merits, though, nor does it concede Go Daddy's standing to bring the
2 Trademark claim). Go Daddy cited the unlikely possibility that the TTAB would for some reason
3 not lift the suspension of the TTAB proceeding. In response, the Court indicated that, should the
4 TTAB decide not to lift the suspension of the TTAB proceeding, the parties could so inform the
5 Court and seek revive the Trademark claim in this Court.

6 5. On January 19, 2012, following the Case Management Conference, the Court issued
7 a minute order (Dkt. 162) directing the parties to "meet and confer and submit a proposed
8 stipulated judgment covering the summary judgment order and either a voluntary dismissal of the
9 counterclaim without prejudice or proposed order remanding the case back to the trial board[.]"

10 6. Go Daddy subsequently prepared multiple proposed stipulations to reflect what was
11 discussed at the Case Management Conference and to implement the terms of the Court's January
12 19, 2012 minute order. Petronas has not agreed to any of these stipulations. In particular,
13 Petronas has not agreed to language concerning the disposition of the Trademark claim. Petronas
14 initially insisted on obtaining "final judgment" in its favor on the remainder of the Trademark
15 claim but now consents to a dismissal without prejudice. However, Petronas no longer
16 acknowledges that it would be more efficient to litigate the Trademark claim in the TTAB
17 proceeding. Petronas is likewise unwilling to stipulate to Go Daddy's reservation of the right to
18 seek to revive the Trademark claim in this Court in the unlikely event the TTAB refuses to lift the
19 suspension of the TTAB proceeding.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed at Palo
21 Alto, California, on January 27, 2012.

22
23 /s/ David L. Lansky
David L. Lansky