

1 PROPERTY, such submission, by ARIN's unfair terms, would serve as immediate  
2 grounds for ARIN's instant denial and diminishment of the NETBLOCK PROPERTY  
3 transfer.

4 58. As another form of anticompetitive and wrongful behavior, ARIN's policy of  
5 requiring the disclosure of Plaintiff's and other applicants' confidential and valuable trade  
6 secret information to persons and entities with interests in direct competition, would  
7 irreparably injure Plaintiff's interests and unjustly enriching those of ARIN's Board  
8 Members.

9 59. Lastly, this "policy" allows ARIN unlawfully to obtain detailed information  
10 regarding ALL competitors to the economic interests controlling ARIN, in that all ISPs  
11 must make such disclosures in order to obtain an IP allocation and compete in the  
12 industry.

13 60. On information and belief, it is the general "policy" of ARIN that all  
14 applicants for registration and allocation of IP addresses and ASN numbers similarly  
15 submit to and comply with ARIN's "justification" policy. ARIN provides no guidelines or  
16 standards for such reviews, which are apparently within the complete discretion of  
17 ARIN's President and Board, which are in turn subject to the controlling interest of the  
18 common economic anticompetitive interests of those individuals and of ARIN's  
19 constituent members who select them, as alleged above.

20 61. For these reasons, Plaintiff refused to comply with ARIN's conditions.

21 **C. Act of Conditioning KREMEN's (and Others') Registration of**  
22 **Addresses Upon Acceptance of "Grab Back" Provisions that Render ARIN's**  
23 **Performance Illusory.**

24 62. Mr. Plzak further conditioned any transfer of NETBLOCK PROPERTY  
25 under the NETBLOCK ORDER upon Plaintiff's agreement to be bound by a contractual  
26 provision that would allow ARIN to rescind and cancel KREMEN's ownership of any or  
27 all of the NETBLOCK PROPERTY, and his interests therein, at any time and for any

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1 reason within ARIN's sole and absolute discretion. ARIN's policy in this regard, as  
2 apparently reflected in the present version of its Service Agreement, states:

3 8. REVIEW OF APPLICANT'S NUMBERING RESOURCES. ARIN may review, at  
4 any time, Applicant's use of the previously allocated numbering resources or  
5 other Services to determine if Applicant is complying with this Agreement, the  
6 Policies, and using the Services for their intended purposes. Without limiting the  
7 foregoing, if Applicant is an Internet Service Provider, Applicant agrees that it will  
8 use the numbering resources solely for uses consistent with its application,  
9 including, for example, its internal infrastructure or to provide Internet access to its  
10 customer base. If ARIN determines that the numbering resources or any other  
11 Services are not being used in compliance with this Agreement, the Policies, or  
12 for purposes for which they are intended, ARIN may: (i) revoke the numbering  
13 resources, (ii) cease providing the Services to Applicant, or (iii) terminate this  
14 Agreement.

15 63. Not only would it be within ARIN's sole and unchecked authority to cancel  
16 Plaintiff's ownership should his business operations not proceed in accordance with  
17 ARIN's anticompetitive "intentions," but, as stated above, ARIN's bylaws entitle the  
18 Board to create and amend its "policies" at any time for any reason and with no actual  
19 notice to Plaintiff (or any other transferee). The mandatory acceptance of such a  
20 contract of adhesion that renders ARIN's performance illusory and allows ARIN to  
21 maintain an anticompetitive *status quo*, is unlawful and abusive conduct.

22 64. At the time this condition and requirement was presented to Plaintiff  
23 KREMEN, ARIN indicated, through its President Ray Plzak, that any transfer pursuant to  
24 the NETBLOCK ORDER could and would likely be subject to such a subsequent  
25 rescission and cancellation.

26 65. As with ARIN's condition of requiring a "justification" submission,  
27 submitting to ARIN's contract of adhesion would be contrary to the directives and  
28 purpose of the NETBLOCK ORDER as issued, and would deplete Plaintiff's award  
thereunder.

66. On information and belief, it is the general "policy" of ARIN that all  
applicants for registration and allocation of IP addresses similarly agree to such a "grab  
back" provision. ARIN provides no guidelines or standards for promulgating such a  
procedure, which is apparently within the complete discretion of ARIN's Board and

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1 President, which are in turn subject to the controlling interest of the common economic  
2 anticompetitive interests of those individuals and of ARIN's constituent members who  
3 select them, as alleged above. This "policy" allows ARIN the unlawful anticompetitive  
4 power to control directly the commercial operations and progression of ALL businesses  
5 and persons in competition with the interests of the members of its Board, in that all  
6 ISPs must submit to such terms to obtain an IP allocation and compete in the  
7 marketplace.

8 67. For these reasons, Plaintiff refused to comply with ARIN's "grab back"  
9 condition.

10 **D. Act of Conditioning KREMEN's (and Others') Registration of Addresses**  
11 **upon Submission, for Public Disclosure, of Private and Confidential**  
12 **Information.**

13 68. ARIN also conditioned any transfer of the NETBLOCK PROPERTY to  
14 KREMEN upon KREMEN's providing, and ARIN's public disclosure of, KREMEN's  
15 confidential and private information associated with the proposed use of the  
16 registrations. Such submission and disclosure would make public, at a minimum, such  
17 personal details as Plaintiff's home addresses.

18 69. Submission and subsequent public disclosure of such information  
19 demanded by ARIN as a condition of transfer are in excess of the simple requirements  
20 contained in the NETBLOCK ORDER, and publication of such information would cause  
21 injury to Plaintiff's private and commercial rights and interests.

22 70. On information and belief, it is the general "policy" of ARIN that all  
23 applicants for registration and allocation of IP addresses similarly agree to such an  
24 information collection and publication procedure. ARIN provides no guidelines or  
25 standards for promulgating such a procedure, which is apparently within the complete  
26 discretion of ARIN's Board and managing officers, which are in turn subject to the  
27 controlling interest of the common economic anticompetitive interests of those  
28 individuals and of ARIN's constituent members who select them as alleged above.

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1 71. On these grounds, Plaintiff KREMEN refused to comply with such terms.

2 **E. ARIN's Policies Favor Large "Backbone" Internet Providers and Other**  
3 **Large Organizations Over Smaller Competitors**

4 72. The aforementioned anticompetitive policies and wrongful actions all favor  
5 and benefit large Internet "backbone" providers and other large established  
6 organizations. Large blocks of IP addresses have significant value due to higher  
7 routability and due to the increases business opportunities associated with large  
8 netblocks, as detailed *supra* at ¶ 26, and ARIN's policies favoring large providers makes  
9 it difficult for smaller providers to reap the benefits of large netblocks.

10 **V. INJURY TO PLAINTIFF**

11 73. ARIN's refusal beginning in November 2001 to transfer the NETBLOCK  
12 PROPERTY from COHEN to Plaintiff KREMEN pursuant to the NETBLOCK ORDER  
13 has, since that time, deprived Plaintiff KREMEN of the possession, control, use and  
14 benefit of that property, to which Plaintiff was and is legally entitled. By simultaneous  
15 effect of ARIN's acts, COHEN, now incarcerated for contempt regarding his fraudulent  
16 and criminal acts directed at KREMEN, and COHEN's various alter egos, have remained  
17 in possession and control of the NETBLOCK PROPERTY, and have continually  
18 benefited from that wrongful possession and use. Additionally, the benefits of ownership  
19 after the NETBLOCK ORDER that COHEN continued to receive were applied by  
20 COHEN to the further purposeful detriment of Plaintiff KREMEN.

21 74. The injuries flowing from ARIN's acts can be categorized and described as  
22 follows:

23 **A. Wrongfully Depriving Plaintiff of Benefit of Use and Control of NETBLOCK**  
24 **PROPERTY.**

25 **i. Forgone existing revenue**

26 75. At the time of and since ARIN's initial refusal to transfer the NETBLOCK  
27 PROPERTY as ordered, the NETBLOCK PROPERTY has been associated with  
28 downstream ISP customers and contractual resellers which generate a considerable

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1 amount of income for COHEN and COHEN's alter egos. Plaintiff KREMEN has been  
2 denied the receipt and benefit of such revenue, and shall continue to be so until the  
3 transfer of the NETBLOCK PROPERTY as ordered.

4 **ii. Forgone potential revenue**

5 76. Furthermore, Plaintiff has been denied the opportunity to make any  
6 additional or alternative commercial use of the NETBLOCK PROPERTY.<sup>13</sup> As described  
7 *supra*, Plaintiff KREMEN is in the Internet advertising and traffic brokering business. For  
8 more than five years, ARIN's acts have deprived and continue to deprive Plaintiff  
9 KREMEN of the opportunity to apply the NETBLOCK PROPERTY towards that  
10 commercial purpose, and of the revenues derived therefrom. Such potential  
11 opportunities and revenues are in no way speculative, as they are the foreseeable  
12 results of the natural extension and expansion of Plaintiff's current success business.

13 **B. Wrongful and Knowing Enrichment of COHEN and His Interests Directly**  
14 **Adverse to KREMEN, by maintaining COHEN's Registration of the NETBLOCK**  
15 **PROPERTY, to Direct and Known Detriment of KREMEN.**

16 77. Since being noticed of and refusing to comply with the NETBLOCK  
17 ORDER, ARIN has knowingly enabled COHEN to retain ownership and possession of  
18 the NETBLOCK PROPERTY, despite ARIN's actual notice of COHEN's illegal conduct,  
19 wrongful use and possession of the NETBLOCK PROPERTY, and the other outstanding  
20 judgments and orders against COHEN in Plaintiff's favor.

21 78. As a result, ARIN has knowingly allowed and enabled COHEN and his  
22 alter egos to continue to derive benefit from the NETBLOCK PROPERTY for over five  
23 years, knowing such property to be used by COHEN to resist and evade Plaintiff  
24 KREMEN's attempts to enforce this Court's judgments and bring COHEN to justice. The  
25 income and other benefits derived from COHEN's retrained control have been  
26 continually used to fund COHEN's flight, living as a fugitive, retention of domestic and

27 <sup>13</sup> This would include applications involving addresses in the NETBLOCK PROPERTY  
28 not presently in use, as well as the reallocation of currently assigned addresses to other  
purposes.

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1 foreign counsel and investigators to avoid service of process and warrants, and as  
2 leverage against the NETBLOCK PROPERTY's downstream resellers and users to force  
3 and encourage them to resist Plaintiff KREMEN's attempts to obtain and transfer control  
4 of those interests pursuant to the judgments entered in his favor.

5 79. Not only has this knowing enablement and funding of COHEN's wrongful  
6 evasion of justice extended and exacerbated the denial of Plaintiff's various rights  
7 awarded, but it has forced Plaintiff KREMEN to incur substantial legal and other costs  
8 and fees in his effort to counter this wrongful advantage to COHEN that he otherwise  
9 would not have been forced to incur.

10 **C. Substantially Interfering with Plaintiff's Constructive Trust on Assets**  
11 **Utilizing NETBLOCK PROPERTY.**

12 80. The order directing transfer of the NETBLOCK PROPERTY to Plaintiff  
13 KREMEN was issued pursuant to the April 2001 judgment for KREMEN imposing a  
14 constructive trust on the assets of COHEN, his alter egos, affiliates and successors.<sup>14</sup>  
15 This included, amongst other interests, ISP operations located in Mexico. Prior to the  
16 2001 judgment against him, COHEN had established these alter ego operations  
17 specifically to exploit the value of the NETBLOCK PROPERTY, deriving revenues by  
18 using them for the contractual resale of Internet services and Internet access to  
19 businesses and end users.

20 81. While these operations were subject to the constructive trust established  
21 by Plaintiff KREMEN's April 2001 judgment, by nature of their operation, the only direct  
22 control and effect that could be had over these operations was by controlling the  
23 registrations of the NETBLOCK PROPERTY upon which those operations were based.  
24 As long as KREMEN does not hold the registrations, and as long as they remain  
25 registered to COHEN and his alter egos, KREMEN was and remains unable to take  
26 control of or in any way affect those operations and their utilization of the NETBLOCK  
27 PROPERTY to which Plaintiff is legally entitled. KREMEN is not only prevented from

28 <sup>14</sup> NETBLOCK ORDER, p. 2.

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1 terminating and reallocating those NETBLOCK PROPERTY assignments, but has been  
2 and is forced to negotiate and capitulate to those alter egos of COHEN which have been  
3 to this day able to continue their operations.

4 82. Apart from being forced to do business with COHEN's fraudulent cohorts,  
5 Plaintiff's adverse impositions include his inability to terminate service agreements,  
6 contractual terms of resale far below a fair market value, and having to forgo nearly all of  
7 the rights and privileges normally enjoyed by the actual possession of, rather than an  
8 unrecognized claim to, the NETBLOCK PROPERTY. In this way, ARIN's refusal to  
9 change and knowingly maintaining COHEN's registrations to the NETBLOCK  
10 PROPERTY cause Plaintiff KREMEN to incur damages in the form of lost revenue  
11 opportunity, onerous and unfair contractual obligations, and the forced deference to  
12 COHEN's agents and interests.

13 **D. Devaluation of the NETBLOCK PROPERTY and its Market**

14 83. As has been stated, since the time of ARIN's initial refusal to transfer  
15 control of KREMEN's NETBLOCK PROPERTY in 2001, COHEN and his various alter  
16 egos and successors in interest have retained their control and use of the NETBLOCK  
17 PROPERTY. This use has included, amongst others, COHEN's leasing of the  
18 addresses of NETBLOCK PROPERTY to downstream ISPs and end users, and their  
19 use in connection with online marketing and advertising of COHEN's unlawful online  
20 interests. As a direct result, the NETBLOCK PROPERTY has during that time been  
21 devalued by the disreputable association with COHEN's illicit activity. Additionally, the  
22 addresses of the NETBLOCK PROPERTY during that time were flagged as a source of  
23 "SPAM" or unsolicited or unlawful advertising and traffic by such industry organizations  
24 such as Spamhaus, damaging the value of the NETBLOCK PROPERTY for any  
25 subsequent use in online marketing and advertising.

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VI. CLAIMS FOR RELIEF  
FIRST CLAIM FOR RELIEF

Agreement in Restraint of Trade Under Section 1 of the Sherman Act (15 U.S.C. §1)

84. Plaintiff repeats and incorporates by reference the allegations set forth above as if fully set forth herein.

85. For the purposes of this claim, the relevant product market is the market for IP addresses. The relevant geographic scope of this market is the list of countries detailed in paragraph 9, *supra*.

86. ARIN, its individual officers and directors, and its constituent members have agreed together and with ARIN's supporting organizations to restrain trade and competition in each of the relevant markets in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, with the intent to harm and restrict competition.

87. This agreement and its anticompetitive effects have harmed, and unless enjoined, will continue to harm the efficient allocation of Internet addresses as a resource, and diminish the quality of and raise the price of such resources above competitive levels, in restraint of trade in interstate commerce.

88. The specific wrongful acts of ARIN have not been expressly or impliedly authorized or directed by the Department of Commerce or any other agency of the United States Government, nor have these specific acts been the subject of active supervision by any agency of the United States Government.

89. The agreements alleged have no legitimate efficiency benefits to counterbalance the demonstrated anticompetitive effects.

90. The agreements of ARIN and its membership in restraint of trade in the relevant markets has had, and unless enjoined will continue to have, the effect of harming the competitive process in interstate commerce.

91. By reason of these agreements and their anticompetitive effects, ARIN has caused, and unless enjoined will continue to cause, injury to the business and property

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1 of Plaintiff KREMEN and to the businesses of a multitude of small competitors to ARIN's  
2 membership.

3 92. Plaintiff is without adequate remedy at law.

4 **SECOND CLAIM FOR RELIEF**

5 **Conspiracy to Restrain Trade Under Section 1 of the Sherman Act (15 U.S.C. § 1)**

6 93. Plaintiff repeats and incorporates by reference the allegations set forth  
7 above as if fully set forth herein.

8 94. For the purposes of this claim, the relevant product market is the market  
9 for Internet Protocol addresses. The relevant geographic scope of this market is the list  
10 countries detailed in paragraph 9, *supra*.

11 95. ARIN, its individual officers and directors, and its constituent members  
12 have conspired together and with ARIN's supporting organizations to restrain trade and  
13 competition in each of these relevant markets in violation of Section 1 of the Sherman  
14 Act, 15 U.S.C. § 1, with the intent to harm and restrict competition.

15 96. This conspiracy and its anticompetitive effects have harmed and unless  
16 enjoined will continue to ham the efficient allocation of IP addresses as a resource, and  
17 diminish the quality of and raise the price of such resources above competitive levels.

18 97. The specific wrongful acts of ARIN have not been expressly or impliedly  
19 authorized or directed by the Department of Commerce or any other agency of the  
20 United States Government, nor have these specific acts been the subject of active  
21 supervision by any agency of the United States Government.

22 98. The conspiracy of ARIN and its membership to restrain trade in the  
23 relevant markets has had, and unless enjoined will continue to have, the effect of  
24 harming the competitive process in interstate commerce.

25 99. By reason of this conspiracy and its anticompetitive effects, ARIN has  
26 caused, and unless enjoined will continue to cause, injury to the business and property  
27 of Plaintiff KREMEN and to the businesses of a multitude of small competitors to ARIN's  
28 membership.

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1 100. Plaintiff is without adequate remedy at law.

2 **THIRD CLAIM FOR RELIEF**

3 **Monopoly in Violation of Section 2 of the Sherman Act, 15 U.S.C. §2**

4 101. Plaintiff incorporates by reference all of the allegations of this Complaint as  
5 though fully set forth herein.

6 102. For the purposes of this claim, the relevant product market is the market  
7 for IP addresses. The relevant geographic scope of this market is the list countries  
8 detailed in paragraph 9, *supra*.

9 103. By way of its agreements with its supporting organizations, with and  
10 amongst its own members, directors and officers, and by its own policies and operations  
11 in statement and in practice, ARIN has willfully, unlawfully and permanently obtained an  
12 exclusive monopoly in the market of IP addresses though the acts set forth above, in the  
13 market indicated, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

14 104. By way of its agreements with ICANN, ICANN's constituent members, and  
15 amongst its own members, and by its own policies and operations, ARIN is permitted to  
16 exploit its monopoly power to control and restrict the allocation, assignment, use, and  
17 retention of IP addresses, including of those in direct competition with the shared  
18 economic interests of the controlling contingent of the ARIN Board of Directors and its  
19 constituent members.

20 105. ARIN intends by its actions to:

- 21 a. control the allocation and use of IP addresses;
- 22 b. eliminate, reduce, limit and foreclose actual and potential
- 23 competition with the shared economic interests of the controlling
- 24 majority of ARIN's Board and of its constituent members;
- 25 c. exclude and foreclose other persons in competition with ARIN's
- 26 Board and constituent members from participating in or entering
- 27 said market;
- 28 d. injure and eliminate competition in said market; and

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1 e. leverage its monopoly power into control over Internet service  
2 provisioning.

3 106. By way of these acts, ARIN exploits its monopoly power to control the  
4 market for IP addresses, and the entry and maintenance of businesses in that market,  
5 with the intent to and effect of harming trade in interstate commerce.

6 107. By way of such acts and their anticompetitive effects, ARIN has caused,  
7 and unless enjoined will continue to cause, injury to the business and property of Plaintiff  
8 KREMEN and to the businesses of a multitude of small competitors to ARIN's  
9 membership.

10 108. Plaintiff is entitled to a preliminary and permanent injunction restraining  
11 ARIN from continuing to violate Section 2 of the Sherman Act, 15 U.S.C. §2 as alleged  
12 above.

13 109. Plaintiff is without adequate remedy at law.

14 **FOURTH CLAIM FOR RELIEF**

15 **Attempted Monopoly in Violation of Section 2 of the Sherman Act, 15 U.S.C. § 2**

16 110. Plaintiff incorporates by reference all of the allegations of this Complaint as  
17 though fully set forth herein.

18 111. Defendant ARIN has attempted the acts alleged in paragraphs 100 through  
19 108 above in the Third Claim for Relief, with the intent to bring about the effects  
20 described therein.

21 112. By way of such acts and their anticompetitive effects, ARIN has caused,  
22 and unless enjoined will continue to cause, injury to the business and property of Plaintiff  
23 KREMEN and to the businesses of a multitude of small competitors to ARIN's  
24 membership.

25 113. Plaintiff is entitled to a preliminary and permanent injunction restraining  
26 ARIN from continuing to violate Section 2 of the Sherman Act, 15 U.S.C. § 2 as alleged  
27 above.

28 114. Plaintiff is without adequate remedy at law.

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FIFTH CLAIM FOR RELIEF

Conspiracy and Acts in Restraint of Trade Under the Cartwright Act,  
Cal. Bus. & Prof. Code §§ 16700 et seq.

115. Plaintiff repeats and incorporates by reference the allegations set forth above as if fully set forth herein.

116. For the purposes of this claim, the relevant product market is the market for IP addresses. The relevant geographic scope of this market is the list countries detailed in paragraph 9, *supra*.

117. ARIN, its individual officers and directors, and its constituent members have acted and conspired together and with ARIN's supporting organizations to restrain trade and competition in each of the relevant markets in violation of the Cartwright Act, California Business & Professions Code §§ 16700 et. seq.

118. The conspiracy of ARIN and its membership to restrain trade in the relevant markets has had, and unless enjoined will continue to have, the effect of harming the competitive process in California.

119. If not enjoined, ARIN's restraint on trade will continue, with the result that the members of ARIN holding large NETBLOCKS will continue to maintain advantages in the marketplace, at the expense of a multitude of small competitors in California.

120. Defendants' conspiracy to restrain trade in the relevant markets has had, and unless enjoined will continue to have, the effect of harming the competitive process in California.

121. The conspiracy of ARIN has caused, and unless enjoined will continue to cause, injury to the business and property of Plaintiff KREMEN and to the businesses of a multitude of small competitors of ARIN's membership in California.

SIXTH CLAIM FOR RELIEF

Conversion

122. Plaintiff repeats and incorporates by reference the allegations set forth above as if fully set forth herein.

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1 123. Defendant ARIN's acts as alleged above constitute conversion, in that:

2 124. Plaintiff is, and at all times relevant herein was, the owner of or entitled to  
3 immediately possess the NETBLOCK PROPERTY;

4 125. Culminating in its final refusal in 2005 to comply with the Court's April 2001  
5 NETBLOCK ORDER, Defendant ARIN has deprived or denied Plaintiff of his right to  
6 possession and use of the NETBLOCK PROPERTY, through, but not limited to, refusing  
7 to transfer such property to Plaintiff in accordance with the order of federal Court, by  
8 consenting to such transfer only upon Plaintiff's acceptance of restrictive, invasive, and  
9 other conditions that would negate Plaintiff's property interests in such NETBLOCK  
10 PROPERTY, and by depriving Plaintiff of the benefits and incomes that flow from the  
11 possession and use of such NETBLOCKS and their related rights and resources.

12 126. Defendant knew of Plaintiff's ownership interest in the NETBLOCK  
13 PROPERTY at the time they received notice of the NETBLOCK ORDER in 2001, and by  
14 allowing COHEN to maintain control of the NETBLOCK PROPERTY after the  
15 NETBLOCK ORDER, ARIN allowed COHEN to profit unlawfully from the NETBLOCK  
16 PROPERTY and to apply the benefits of ownership of the NETBLOCK PROPERTY to  
17 the purposeful detriment of KREMEN, and led to the unjust enrichment of Defendant to  
18 the detriment of the Plaintiff.

19 127. As a direct and proximate result of Defendant's acts, Plaintiff has suffered,  
20 and will continue to suffer, damages and irreparable harm.

21 128. Plaintiff is entitled to a constructive trust or equitable lien on the converted  
22 property, and to a tracing thereof.

23 129. Plaintiff is entitled to the specific recovery of the converted property, or the  
24 value thereof.

25 130. Defendant has engaged in conduct of an intentional, oppressive,  
26 fraudulent, and malicious nature, thereby entitling Plaintiffs to an award of punitive  
27 damages.

28 131. Plaintiff has no adequate remedy at law.

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SEVENTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

132. Plaintiff repeats and incorporates by reference the allegations set forth above as if fully set forth herein.

133. Defendant's actions as described above are a breach of its fiduciary duties to Plaintiff, in that:

134. Defendant ARIN owed a fiduciary duty of care and loyalty and fair dealing to Plaintiff and others similarly situated, by way of ARIN's contract with ICANN which charged Defendant ARIN with the obligation of the rightful and fair allocation of resources entrusted to it pursuant to that contract, for the benefit of Plaintiff and others;

135. Defendant ARIN breached this fiduciary duty when it refused to transfer the NETBLOCK PROPERTY to Plaintiff, as required by a federal court order, in contradiction to ARIN's charged duty, pursuant to the benefit of the shared economic interests of those competitors of Plaintiff in control of the ARIN Board and within ARIN's membership.

136. Defendant ARIN further breached its fiduciary duty in its conversion of Plaintiff's property entrusted to it as alleged in paragraphs 121 through 131 above.

137. As a proximate result of the foregoing acts of Defendant, Plaintiff has suffered and will continue to suffer damages, and Defendant is liable to Plaintiff in an amount to be proven at trial.

138. Defendant has engaged in conduct of an intentional, oppressive, fraudulent, and malicious nature, thereby entitling Plaintiff to an award of punitive damages. This includes but is not limited to ARIN's ignoring of a standing court order.

139. Plaintiff has no adequate remedy at law.

140. ARIN's breaches of its fiduciary duty included the misappropriation of property that belongs to Plaintiff. Accordingly, the Court should impose a constructive trust to return said property and all of the proceeds thereof to Plaintiff and order ARIN to make an accounting for all such things and amounts.

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EIGHTH CLAIM FOR RELIEF

Unfair Competition Under Cal. Bus. & Prof. Code §§ 17200 et seq.

141. Plaintiff repeats and incorporates by reference the allegations set forth above as if fully set forth herein.

142. By the acts described above, Defendant has engaged in unlawful and enjoined unfair business practices, with the direct and proximate result of causing past and continuing injury to Plaintiff.

143. Defendant's acts of unfair competition are in violation of California Business and Professions Code §§ 17200, 17203 et seq., in that, as a non-exhaustive list of examples, Defendant's acts as described above constitute:

a. An agreement in restraint of trade under Section 1 of the Sherman Act, as alleged in the First Claim for Relief at paragraphs 83 through 91;

b. Conspiracy to restrain trade under Section 1 of the Sherman Act, as alleged in the Second Claim for Relief at paragraphs 92 through 99;

c. Monopoly in violation of Section 2 of the Sherman Act, as alleged in the Third Claim for Relief at paragraphs 100 through 108;

d. Attempted monopoly in violation of Section 2 of the Sherman Act, as alleged in the Fourth Claim for Relief at paragraphs 109 through 113;

e. Conspiracy and acts in restraint of trade under the Cartwright Act, as alleged in the Fifth Claim for Relief at paragraphs 114 through 120;

f. Wrongful conversion of the NETBLOCK PROPERTY as alleged in the Sixth Claim for Relief at paragraphs 121 through 131;

g. Breach of fiduciary duty as alleged in the Seventh Claim for Relief at paragraphs 132 through 140;

144. Defendant has engaged in conduct of an oppressive, fraudulent, vexatious, and malicious nature, thereby entitling Plaintiff to an award of punitive damages.

145. As a direct result of the foregoing acts and practices, Plaintiff has suffered, and will continue to suffer, damages and irreparable harm.

1 146. Pursuant to California Business and Professions Code § 17203, Plaintiff is  
2 accordingly entitled to equitable relief in the form of restitution of all benefits acquired by  
3 Defendant from Plaintiff as a result of Defendant's unlawful, unfair business practices.

4 147. Unless restrained and enjoined, Defendant will continue the above-  
5 described acts, all to Plaintiff's irreparable injury. It would be difficult to ascertain the  
6 amount of compensation which could afford Plaintiff adequate relief for such continuing  
7 acts, and a multiplicity of judicial proceedings would be required. Plaintiff therefore has  
8 no adequate remedy at law.

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VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in its favor on each and every claim set forth above, and further prays an award to Plaintiff of:

1. For a declaration that the ARIN Service Agreement is unlawful and in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; the Cartwright Act, California Business & Professions Code sections 16720 et seq.; and the California Unfair Competition Act, California Business & Professions Code sections 17200 et seq;

2. That the Court adjudge and decree that ARIN has monopolized the interstate trade and commerce in the relevant markets in violation of Section 2 of the Sherman Act, 15 U.S.C. §2;

3. That the Court adjudge and decree that ARIN has attempted to monopolize the interstate trade and commerce in the relevant markets in violation of Section 2 of the Sherman Act, 15 U.S.C. §2;

4. That the Court adjudge and decree that ARIN has combined and conspired to restrain the interstate trade and commerce in the relevant markets in violation of Section 1 of the Sherman Act, 15 U.S.C. §1;

5. That the Court adjudge and decree that ARIN has combined and conspired to restrain trade, and to have formed a trust, in violation of the Cartwright Act, California Business & Professions Code §§ 16720 et seq.;

6. That the Court adjudge and decree that ARIN has engaged in unfair, unlawful, and fraudulent conduct in violation of the California Unfair Competition Act, California Business & Professions Code §§ 17200 et seq.;

7. That ARIN be ordered to enable and facilitate the entry and operation of competing participants in the market of IP Address and related resource allocation and maintenance in its registry;

8. That Defendant and all persons, firms, and corporations acting on their behalf and under their direction or control be permanently enjoined from engaging in, carrying out, renewing or attempting to engage, carry out, or renew, any contracts,

1 agreements, practices, or understandings in violation of the Sherman Act, the Lanham  
2 Act, the Cartwright Act, or the Unfair Competition Act, including:

- 3 a. That ARIN be prohibited from collecting and disclosing such details regarding  
4 allocation applicants as it currently requires;
- 5 b. That ARIN be prohibited from collecting and publishing the personal and  
6 confidential business contact information it currently collects from allocation  
7 applicants;
- 8 c. That ARIN be prohibited from any act or agreement that would limit the  
9 alienability, transfer, or full possession and disposition of any IP Address or IP  
10 Address space allocation;

11 9. An order that each and every current and prospective board member and  
12 committee member and officer of ARIN be required to submit and make publicly  
13 available detailed reports disclosing all past and existing financial and professional  
14 interests and affiliations;

15 10. That KREMEN and other third parties who shall have been or might be  
16 injured in their business or property as a result of any violation by ARIN of any of the  
17 claims asserted herein under Federal or State antitrust or unfair competition laws be  
18 specifically authorized to enforce the provisions of any order thereon in this Court;

19 11. That ARIN be ordered and required to comply with the precise terms of this  
20 Court's April 7, 2001 NETBLOCK ORDER, transferring the NETBLOCK PROPERTY to  
21 Plaintiff KREMEN exactly as directed therein, and that such transfer of registrations to  
22 KREMEN not be subject to or conditioned upon KREMEN's submission of any report,  
23 disclosure, plan statement, business projections, or upon KREMEN's agreement to be  
24 bound by any terms of ARIN that would allow ARIN to diminish or terminate such  
25 registrations or allocations in any way;

26 12. Compensatory damages in an amount according to proof, but not less than  
27 \$15 million;

28

KRONENBERGER HANLEY, LLP  
220 Montgomery Street, Suite 1920  
San Francisco, CA 94104  
www.KronenbergerLaw.com

1 13. Punitive and exemplary damages in an amount to be determined, but in no  
2 case less than treble Plaintiff's damages or \$45 million, whichever is greater;

3 14. That Plaintiff have such other relief as the Court may consider necessary  
4 or appropriate to restore competitive conditions in the markets affected by defendants'  
5 unlawful conduct; and

6 15. That plaintiff recover the costs of this action;


7 16. That Plaintiff be awarded reasonable attorneys fees;

8 17. That Plaintiff be awarded prejudgment interest; and

9 18. Such other further relief to which Plaintiff may be entitled as a matter of law  
10 or equity, or which the Court determines to be just and proper.

11  
12 DATED: April 12, 2006.

13 KRONENBERGER HANLEY, LLP


14  
15 By:   
16 Terri R. Hanley  
17 Karl S. Kronenberger  
Attorneys for Plaintiff Gary Kremen

18 DEMAND FOR JURY TRIAL

19 Plaintiff KREMEN hereby demands a trial of this action by jury.

20  
21 DATED: April 12, 2006.

22 KRONENBERGER HANLEY, LLP

23  
24 By:   
25 Terri R. Hanley  
26 Karl S. Kronenberger  
Attorneys for Plaintiff Gary Kremen

KRONENBERGER HANLEY, LLP  
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San Francisco, CA 94104  
www.KronenbergerLaw.com

**EXHIBIT 1**

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 3 San Francisco, CA 94105  
 Telephone: (415) 371-8500  
 4 Facsimile: (415) 371-0500

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 JENNIFER A. MARONE, ESQ., #208858  
 6 IDELL, BERMAN & SEITEL  
 530 Bush Street, Suite 601  
 7 San Francisco, CA 94108  
 Telephone: (415) 986-2400  
 8 Facsimile: (415) 392-9259

9 Attorneys for Plaintiff  
 GARY KREMEN

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

14 GARY KREMEN	) Case No.: C 98 20718 JW PVT
	)
15 Plaintiff,	) ORDER RE: REGISTRATION OF IP
	) NUMBERS (NETBLOCKS) IN THE NAME
16 vs.	) <u>OF JUDGMENT CREDITOR</u>
	)
17 STEPHEN MICHAEL COHEN, et al.,	) Date: September 17, 2001
	)
18 Defendants.	) Time: 3:00 p.m.
	)
	) Place: Courtroom 8
	) Honorable Judge James Ware
	)

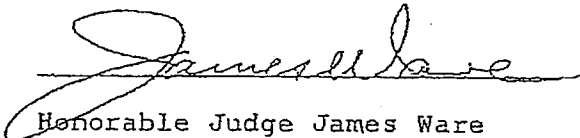
21  
 22  
 23 Pursuant to the Application of Plaintiff, Gary Kremen, and as  
 24 based on the record before this Court, and good cause shown,  
 25

ORDER RE: REGISTRATION OF IP NUMBERS (NETBLOCKS) IN THE NAME OF JUDGMENT CREDITOR -

ORIGINAL COPY

1 IT IS HEREBY ORDERED that the IP Numbers identified as Exhibit  
2 "A" to the Declaration of Gary Kremen on file herein be registered in  
3 the name of Plaintiff Gary Kremen. In furtherance of this Order,  
4 AMERICAN REGISTRY OF INTERNET NUMBERS ("ARIN") is ORDERED to register  
5 IP Numbers on the list to Gary Kremen forthwith. Specifically ARIN  
6 is ordered to change the registration record of each of these IP  
7 Numbers (netblocks) as follows: all fields (registrant,  
8 administration contact, etc.) shall be in the name of Gary Kremen,  
9 listing his address as 2542 Third Street, San Francisco, CA 94107,  
10 telephone number as (415) 217-5121; facsimile number as (415) 285-  
11 7111; and E-mail as Gary@sex.com.

12 Dated: September 12, 2001

  
Honorable Judge James Ware

1 JAMES M. WAGSTAFFE, ESQ. #95535  
 PAMELA URUETA, ESQ., #184579  
 2 KERR & WAGSTAFFE LLP  
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 8 Facsimile: (415) 392-9259

9 Attorneys for Plaintiff  
 GARY KREMEN

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FILED

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

14 GARY KREMEN ) Case No.: C 98 20718 JW PVT  
 15 )  
 Plaintiff, ) EX PARTE APLICATION FOR ORDER  
 16 ) REQUIRING REGISTRATION OF IP  
 vs. ) NUMBERS (NETBLOCKS) IN THE NAME  
 17 ) OF JUDGMENT CREDITOR  
 STEPHEN MICHAEL COHEN, et al., )  
 18 ) Date: September 17, 2001  
 Defendants. )  
 19 ) Time: 3:00 p.m.  
 20 )  
 21 ) Place: Courtroom 8  
 ) Honorable Judge James Ware

22 COMES NOW, Gary Kremen, and files this ex parte application for  
 23 Order requiring registration of IP Numbers (netblocks) in the name of  
 24 Gary Kremen which are now registered in the name of the judgment  
 25

EX PARTE APLICATION FOR ORDER REQUIRING REGISTRATION OF IP NUMBERS (NETBLOCKS) IN THE NAME OF JUDGMENT CREDITOR - 1

ORIGINAL

1 debtors, Stephen Michael Cohen and his companies, their alter egos or  
2 affiliates.

3 Attached to the Declaration of Gary Kremen as Exhibit "A" is a  
4 list of IP Numbers (netblocks) under which Stephen Michael Cohen, his  
5 companies, their alter egos or affiliates are doing business or have  
6 been doing business.

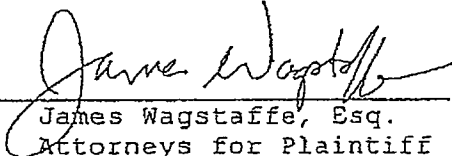
7 As the Court is well aware, Gary Kremen obtained a judgment for  
8 Sixty-Five Million Dollars (\$65,000,000.00) and a judgment imposing a  
9 constructive trust on assets of the judgment debtors.

10 By this ex parte motion, Gary Kremen seeks an order requiring  
11 registration of these IP Numbers (netblocks) in the name of Mr.  
12 Kremen. The registrant for these IP Numbers (netblocks) is the  
13 American Registry of Internet Numbers ("ARIN").

14 This ex parte motion is based upon this Notice of Motion, the  
15 Declaration of James M. Wagstaffe, the Declaration of Gary Kremen and  
16 the exhibit thereto and such other and further matters as may come  
17 before the Court on the hearing of this matter.

18  
19 Dated: 9/17/01

KERR & WAGSTAFFE LLP

20  
21  
22 By:   
James Wagstaffe, Esq.  
Attorneys for Plaintiff  
23 GARY KREMEN  
24  
25



1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION  
2 FOR ORDER REQUIRING REGISTRATION OF IP NUMBERS (NETBLOCKS) IN THE  
3 NAME OF JUDGMENT CREDITOR

4 The Court may make such orders as are necessary and appropriate  
5 in order to aid in the execution of its judgments.

6 Fed. Rule of Civ. Proc. Rule 69(a), 28 U.S.C.A.; Cal. Rule of  
7 Court Rule 303(a)(2).

8 DECLARATION OF JAMES M. WAGSTAFFE IN SUPPORT OF EX PARTE APPLICATION  
9 FOR ORDER REQUIRING REGISTRATION OF IP NUMBERS (NETBLOCKS) IN THE  
10 NAME OF JUDGMENT CREDITOR

11 I, James M. Wagstaffe, do state as follows:

12 1. I am an attorney at law, licensed to practice before all  
13 the courts of the state of California. I am a partner of the firm  
14 Kerr & Wagstaffe. That firm represents Gary Kremen in the above  
15 action. All of the matters stated herein are of my own personal  
16 knowledge and if sworn in as a witness I could testify competently to  
17 the matters stated herein.

18 2. I am familiar with all the records and files in this  
19 action.

20 3. Attached as Exhibit "A" to the Declaration of Gary Kremen  
21 is a copy of certain IP Numbers (netblocks) that are currently  
22 registered to Stephen Michael Cohen, his companies, their alter egos  
23 or affiliates. These Internet IP Numbers (netblocks) are registered  
24 with American Registry of Internet Numbers ("ARIN").

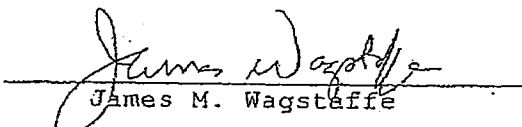
25 4. Pursuant to the Court's judgment of April 3, 2001,  
Plaintiff, Gary Kremen, is entitled to the imposition of constructive  
trust on all assets of Stephen Michael Cohen and his companies.

5. It is respectfully submitted that the Court enter an order

1 requiring ARIN to register these IP Numbers (netblocks) listed on the  
2 said Exhibit "A" to Gary Kremen. As shown by the Declaration of Gary  
3 Kremen, investigation and search has shown that these IP Numbers are  
4 currently in use by Cohen, his companies, their alter egos or  
affiliates.

5 I declare under penalty of perjury under the laws of the State  
6 of California that the foregoing is true and correct and that this  
7 declaration is executed on this 17<sup>th</sup> day of Sept, 2001 at San  
8 Francisco, California.

9  
10 Dated: 9/17/01

  
James M. Wagstaffe

11  
12 DECLARATION OF GARY KREMEN IN SUPPORT OF EX PARTE APPLICATION FOR  
13 ORDER REQUIRING REGISTRATION OF IP NUMBERS (NETBLOCKS) IN THE NAME OF  
JUDGMENT CREDITOR

14 I, GARY KREMEN, do state as follows under penalty of perjury:

15 1. I am the Plaintiff in the above action. All of the matters  
16 set forth in this declaration are of my own personal knowledge and if  
17 sworn as a witness I can testify competently as to the matters stated  
18 herein.

19 2. IP Numbers are the actual numeric addresses linked to  
20 domain names. IP stands for internet protocol. American Registry of  
21 Internet Numbers ("ARIN") is a non-profit organization that allocates  
22 IP Numbers to users. Netnames are an English language phrase that  
23 corresponds to a range of IP Numbers. This is done because it is  
24 easier to use an English mnemonic than a range of numbers.

25  
EX PARTE APPLICATION FOR ORDER REQUIRING REGISTRATION OF IP NUMBERS (NETBLOCKS) IN  
THE NAME OF JUDGMENT CREDITOR - 4

1 Netblocks are the actual blocks of numbers. Autonomous System  
2 Numbers are numbers used by computer routers to optimize the flow of  
3 IP traffic. ARIN assigns such numbers as relates to computer  
4 networks under common control. Sand Man, a Cohen company, is one of  
5 the supporters of ARIN who make voluntary donations to ARIN.

6 2. I have reviewed Internet listings of net blocks and  
7 autonomous system addresses currently in use by Steven Michael Cohen  
8 and/or his companies, their alter egos or affiliates ("Cohen  
9 Parties") and I have determined that the netblocks and autonomous  
10 system names and numbers listed on Exhibit "A" attached hereto are  
11 currently in use by Cohen Parties. I made this determination by  
12 analyzing prior Internet addresses, as to which this Court made a  
13 prior order, to determine which IP Numbers (netblocks) and autonomous  
14 system addresses were utilized for those addresses. I compared the  
15 addresses for the registration of the netblocks and automomous system  
16 numbers and determined in all cases that all were registered to  
17 Cohen's address of P.O Box 433168, San Diego, California 92143 and  
18 registered by Cohen himself, his companies, Cohen alter egos or  
19 affiliates.

20 I declare under penalty of perjury that the foregoing is true  
21 and correct and that this declaration was executed on the 17<sup>th</sup> day of  
22 September, 2001, at San Francisco, California.

23 Dated: 9/17/2001

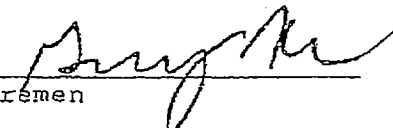
24   
Gary Kremen

Exhibit "A"

Net Blocks:

Netname: PACNET-MX1  
Netblock: 209.205.192.0 - 209.205.239.255  
Maintainer: PCNT

Paenet, S.A. de C.V. (NETBLK-PACNET-MX1)  
P.O. Box 433168  
San Diego, CA 92143  
US

Coordinator:

Pacnet, S.A. de C.V. (SCPI-ARIN) ip@pacnet.com.mx  
52 66 33 90 71

Including but not limited to: NS1.PACNET.COM.MX 209.205.195.50 and  
NS2.PACNET.COM.MX 209.205.195.70

Netname: UU-208-214-46  
Netblock: 208.214.46.0 - 208.214.47.255  
Maintainer: SAND

Sand Man International  
San Diego, CA 92101  
US

Coordinator:

Cohen, Stephen Michael (SMC43-ARIN) steve@SEX.COM  
0115266 343480 (FAX) 0115266 343480

Netname: PACNET-MX  
Netblock: 64.19.192.0- 64.19.239.255  
Maintainer: SAND

Sand Man International Limited S.A. de C.V. (NET-PACNET-MX)  
P.O. Box 433168  
San Diego, CA 92143  
USA

Coordinator:

de C.V., PACNET S.A. (MM1338-ARIN) ip@pacnet.com.mx

52 66 34 34 80 (FAX) 52 66 34 64 86

Autonomous System Numbers:

Autonomous System Name: PACNET-MX  
Autonomous System Number: 20228

Pacnet S.A. de C.V. (ASN-PACNET-MX)  
P.O. Box 433168  
San Diego, CA 92143  
US

Coordinator:

de C.V. PACNET S.A. (MM 1838-ARIN) IP@pacnet.com.mx  
52 66 34 34 80 (FAX) 52 66 34 64 86

Autonomous System Name: SEXCOM  
Autonomous System Number: 11083

Ocean Fund International Ltd.  
Paseo De Los Heroes, #10105  
Piso 7<sup>th</sup>, Del Rio Tijuana  
Del Rio Tijuana  
Tijuana, Baja California CP 22320  
MX

Coordinator:

Cohen, Stephen Michael (SMC4-ARIN)  
steve@omnitec.com  
0115266343480 (FAX) 0115266 346486

# EXHIBIT B

**Exhibit B**  
**to the**  
**Request for Judicial Notice of (1) May 2006**  
**Complaint and (2) September 2001 Court Order**

12/05/2003 09:54 41539289

IDELL BERMAN SEITEL

PAGE 06/14

2/17/01

1 JAMES M. WAGSTAFFE, ESQ. #95535  
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 8 Facsimile: (415) 392-9259

9 Attorneys for Plaintiff  
 GARY KREMEN

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

14 GARY KREMEN

15 Plaintiff,

16 vs.

17 STEPHEN MICHAEL COHEN, et al.,

18 Defendants.

) Case No.: C 98 20718 JW PVT  
 )  
 ) ORDER RE: REGISTRATION OF IP  
 ) NUMBERS (NETBLOCKS) IN THE NAME  
 ) OF JUDGMENT CREDITOR  
 )  
 ) Date: September 17, 2001  
 )  
 ) Time: 3:00 p.m.  
 )  
 ) Place: Courtroom 8  
 ) Honorable Judge James Ware

21  
 22  
 23 Pursuant to the Application of Plaintiff, Gary Kremen, and as  
 24 based on the record before this Court, and good cause shown,  
 25

ORDER RE: REGISTRATION OF IP NUMBERS (NETBLOCKS) IN THE NAME OF JUDGMENT CREDITOR -

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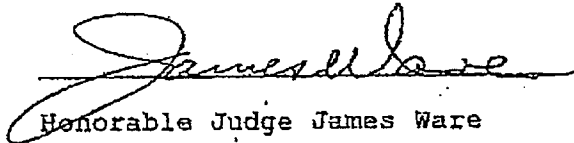
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IDELL BERMAN SEIT

PAGE 07/14

1 IT IS HEREBY ORDERED that the IP Numbers identified as Exhibit  
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 3 the name of Plaintiff Gary Kremen. In furtherance of this Order,  
 4 AMERICAN REGISTRY OF INTERNET NUMBERS ("ARIN") is ORDERED to register  
 5 IP Numbers on the list to Gary Kremen forthwith. Specifically ARIN  
 6 is ordered to change the registration record of each of these IP  
 7 Numbers (netblocks) as follows: all fields (registrant,  
 8 administration contact, etc.) shall be in the name of Gary Kremen,  
 9 listing his address as 2542 Third Street, San Francisco, CA 94107,  
 10 telephone number as (415) 217-5121; facsimile number as (415) 285-  
 11 7111; and E-mail as Gary@sex.com.

12 Dated: September 17, 2001

13   
 14 Honorable Judge James Ware

15  
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25 ORDER RE: REGISTRATION OF IP NUMBERS (NETBLOCKS) IN THE NAME OF JUDGMENT CREDITOR -

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ARIN adv. Gary Kremen

(22149-060)

C. Wanger D. Wishon  
S. Ryan (DC) Client (CLW)  
C. Hummel (LA) ~~by Calendar~~

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GARY KREMEN, an individual,

Plaintiff,

vs.

STEPHEN MICHAEL COHEN, et al.

Defendants.

Case No. C-98-20718 JW

**[PROPOSED] ORDER DESIGNATING  
CASES AS RELATED**

Related Case No. C-06-2554-MMC

[N.D. Local Rule 3-12 and 7-11]

Having considered the motion and the files and records of this case and Case No. C-06-2554-MMC, *Kremen v. American Registry for Internet Numbers, Ltd.* (the "Related Case"), the Court now finds that the Administrative Motion to Consider Whether Cases Should be Designated as Related of American Registry for Internet Numbers, Ltd. is hereby GRANTED.

IT IS HEREBY ORDERED that the above-captioned case and Case No. C-06-2554-MMC, *Kremen v. American Registry for Internet Numbers, Ltd.* (the "Related Case") — which is pending before the Honorable Maxine M. Chesney in the Court's San Francisco Division — be designated as "related".

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IT IS FURTHER ORDERED that the Clerk reassign the Related Case to Judge Ware in the San Jose Division.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2006

\_\_\_\_\_  
Honorable James Ware  
United States District Court Judge

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