

1 Perry J. Narancic, SBN 206820
2 LEXANALYTICA, PC
3 3000 El Camino Real
4 Bldg. 4, Suite 200
5 Palo Alto, CA 94306
6 www.lexanalytica.com
7 pjn@lexanalytica.com
8 Tel: 650-655-2800

9 Attorneys for Defendants
10 ONLINENIC, INC. and DOMAIN ID SHIELD SERVICE
11 CO., LIMITED

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 FACEBOOK, INC. and INSTAGRAM,
15 LLC

16 Plaintiffs,

17 v.

18 ONLINENIC, INC. and DOMAIN ID
19 SHIELD SERVICE CO., LIMITED.

20 Defendants.

Case No. 19-CV-07071-SVK

**DEFENDANTS’ STATEMENT RE:
PLAINTIFFS’ EX PARTE
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AT DKT. NO. 129**

21 Defendants OnlineNIC, Inc. and Domain ID Shield Service Co., Limited (“Defendants”) intend to file an opposition to Plaintiffs’ Ex Parte Application for a Temporary Restraining Order at Dkt. No. 129 (“TRO”) by 11 pm PST on July 22, 2021. Defendants’ counsel has not had adequate time to confer with Defendants, where the local China time is 15 hours ahead of Pacific time. In addition, Defendants’ counsel is working on a brief in another matter that is due at 5 pm today, July 22, 2021.

22 In the meantime, Defendants have assured counsel that they will not move, transfer or otherwise dissipate any assets. As to Plaintiffs’ allegations that Defendants are dissipating assets, Defendants have advised counsel that they transferred some domains to a registrar called “Ename” (www.ename.com) - which is the largest domain broker platform in China. Defendants intended

1 to auction the domains for the purpose of paying the Special Master in this case, which was the
2 subject of a case management conference on July 20, 2021. See Dkt. No. 124. As to these
3 domains, Defendants have cancelled or reversed any transfers.

4 Moreover, before the TRO was filed, Defendants agreed to stipulate to parts of the TRO, as
5 set forth in Exhibit A hereto – which was a letter sent by Defendants’ counsel prior to the filing of
6 the TRO. That letter reads in part:

7
8 Also, as discussed, Defendants will agree to deliver control over domain names that it
9 controls to a neutral third-party, so that they can be sold and the proceeds used to pay the Special
10 Master. If you have a proposal on such a neutral third-party, please let me know. For your
11 reference, I attach a spreadsheet with the domain names that are currently registered to
12 “Anthony”.




13 Plaintiffs’ allegations that Defendants were trying to sell domains in order to avoid paying
14 the Special Master (TRO., 11:1-7; 6: 17-26) are inaccurate. Defendants have never stated that they
15 would not pay the Special Master; Defendants have stated to their counsel that they have every
16 intention of doing so by selling such assets as may be necessary to do so. The intended sale of
17 some of the domains owned by OnlineNIC is part of payment plan being formulated by
18 Defendants, which the Court ordered Defendants to file by July 27, 2021. That is why Defendants
19 are happy to stipulate to the sale of those assets to pay the Special Master.

20 In another letter to Plaintiffs sent on July 21, 2021 (attached hereto as Exhibit B),
21 Defendants re-iterated their earlier proposal to Plaintiffs that Plaintiffs should allow OnlineNIC,
22 Inc. to be sold as a going concern, which would maximize return for all parties:

23 Further to today’s case management conference, I write to you to revisit Defendants’
24 proposal about continuing business operations, which we previously discussed. As you recall,
25 Defendants sought Facebook’s consent to continue business operations until its business could be
26 sold as a going concern. This would solve a lot of problems, including getting the Special
27 Master paid and maximizing any recovery for Plaintiffs. I have not yet re-connected with my
28 clients, but I believe that 6 months would be sufficient to find a buyer.

29 So far, Plaintiffs have not responded. Instead, they filed for an asset freeze that would
30 block the very type of transaction that could allow the Special Master and other creditors to be paid
(including, potentially, Plaintiffs).

1 It is important to note that Defendants' commitment to paying the Special Master is not
 2 "new found" religion. In fact, on June 29, 2021 (before a large part of the invoice amount was
 3 incurred), Defendants wrote to the Special Master asking him to *suspend his work until conferring*
 4 *with the Court*:

5
 6 Re: Facebook, Inc. et al v. OnLineNic Inc et al - Special   |
 7 Discovery Master Invoice (Dated: 6/23/2021) 

8  **Perry J. Narancic** <pjn@lexanalytica.com>
 9 to Tom, David, Howard, Steven, Bart 

Jun 29, 2021, 10:37 AM  

10 Hi Tom - Defendants were not expecting this bill and they do not have the funds to pay it. I guess
 11 that I am a little surprised that an invoice was sent so long after the initial deposit was used up. I
 12 think the better course would have been to keep us updated on costs, and not to have incurred
 13 fees beyond the deposit without notice.

14 OnlineNIC is cash flow positive on its business operations. It has every intention to pay your
 15 invoice in full, and it will be able to pay you if the case schedule is adjusted. We will need direction
 16 from the Court on how to proceed, but I suspect that you should consider **suspending** your
 17 services until we hear from the Court.

18 Very sorry about this. I will help in any way I can.

19 P

20 The June 29 email specifically states that Defendants' intended to pay the Special Master's
 21 invoice from cash flow from business operations. But the proposed asset freeze would interfere
 22 with that objective – because OnlineNIC would be frightened to fully operate the business for fear
 23 of violating any court order.

24 Finally, any insinuation (intentional or otherwise) that Defendants' counsel has been part of
 25 a plot to not honor obligations is improper. As far as Defendants' counsel is aware, Defendants
 26 had every intention to fight the litigation through trial – until July 13, 2021 following OnlineNIC's
 27 30(b)(6) deposition. At that time, Defendants' counsel advised Defendants that he could not
 28 continue in the case – and Defendants' counsel moved to withdraw shortly thereafter with the
 clients' consent. (Dkt. No. 121).

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In short, the proposed asset freeze as proposed is not warranted because it would actually hinder the objective of the Court’s order to submit a reasonable payment plan. Further analysis and supporting declarations will follow in Defendants’ formal opposition.

DATED: July 22, 2021

Respectfully Submitted,
LEXANALYTICA, PC

By: /s/ Perry J. Narancic

Attorneys for Defendants
ONLINENIC, INC. and DOMAIN ID SHEILD
SERVICE CO., LIMITED