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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NAMECHEAP, INC., a Delaware corporation,

Plaintiff,

v.

TUCOWS, INC., a Pennsylvania corporation;  
ENOM, INC., a Nevada corporation; and  
DOES 1 through 10,

Defendants.

Case No. 2:17-cv-01310-RSM

DEFENDANTS' BRIEF IN OPPOSITION  
TO PLAINTIFF'S MOTION FOR LEAVE  
TO CONDUCT LIMITED, EXPEDITED  
DISCOVERY

NOTE ON MOTION CALENDAR  
September 22, 2017

1 Tucows, Inc. (“Tucows”) and eNom, LLC (formerly eNom, Inc.) (“eNom”)<sup>1</sup>  
 2 (collectively, “Defendants”) respectfully request that the Court deny Plaintiff Namecheap, Inc.’s  
 3 motion for leave to conduct expedited discovery (the “Motion”). Namecheap is not entitled to  
 4 expedited discovery in support of strongly-disfavored injunctive relief that would radically alter  
 5 the status quo between the parties and inappropriately impose on Defendants an extraordinary  
 6 burden at the outset of the litigation. Moreover, wide-ranging expedited discovery into the  
 7 merits of Namecheap’s underlying case is not warranted when regular discovery will suffice.  
 8 The requested discovery is unnecessary and not time-sensitive, so the Motion should be denied.<sup>2</sup>

### 9 FACTS

10 This is a breach-of-contract case in which the parties dispute the method by which  
 11 Defendants are to transfer millions of domain names to Namecheap. The parties agree that the  
 12 domain names may be transferred; the sole dispute is whether the relevant contract requires  
 13 Defendants to transfer them using an extraordinary and resource-intensive process.

#### 14 1. Domain Name Transfers

15 In the domain name industry, a “registrar” is an entity responsible for holding domain  
 16 names for customers. Pursuant to regulations adopted by the Internet Corporation for Assigned  
 17 Names and Numbers (“ICANN”),<sup>3</sup> domain names may be transferred from one registrar (a  
 18 “Losing Registrar”) to another registrar (a “Gaining Registrar”) using a number of different  
 19 methods. One such method – the standard ICANN transfer policy (available at

20 \_\_\_\_\_  
 21 <sup>1</sup> Plaintiffs improperly named eNom, Inc., a Nevada corporation, as a defendant in this action. In February  
 22 2017, eNom, Inc. was converted into eNom, LLC, a Delaware limited liability company. See Nev. Sec’y of State,  
 23 *eNom, Inc. – Business Entity Information*, available at  
<http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=KmhK7XSOzuYLHl6TjcxZsA%253d%253d&nt7=0>  
 (last visited Sept. 18, 2017); Del. Dep’t of State, Div. of Corporations, *eNom, LLC – Entity Details*, available via  
<https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>.

24 <sup>2</sup> As a matter of fairness, should the Court give leave to Namecheap to conduct expedited discovery,  
 25 Defendants reserve their right to seek reciprocal, expedited discovery on topics related to any forthcoming motion  
 for preliminary injunction.

26 <sup>3</sup> ICANN is an internationally organized, non-profit corporation responsible for managing the worldwide  
 system of domain names. See ICANN, *Glossary – ICANN*, <https://www.icann.org/resources/pages/glossary-2014-02-03-en> (last visited Sept. 18, 2017).

1 <https://www.icann.org/resources/pages/transfer-policy-2016-06-01-en>) – is how domain name  
2 transfers are typically accomplished.

3 Another method is Bulk Transfer After Partial Portfolio Acquisition (“BTAPPA”), an  
4 extraordinary and resource-intensive process that is only offered under limited circumstances.  
5 For example, Verisign, Inc. (the entity responsible for maintaining the authoritative list of .COM  
6 and .NET domain names) offers BTAPPA for transfers of .COM and .NET domain names only  
7 when the Gaining Registrar purchases “a portion, but not all” of the Losing Registrar’s portfolio  
8 of .COM and .NET domain names “by means of a stock or asset purchase, merger or similar  
9 transaction.” .COM Registry Agmt., App’x 7, § 8.1 (Dec. 1, 2012), *available at*  
10 <https://www.icann.org/resources/pages/appendix-07-2012-12-07-en>; .NET Registry Agmt.,  
11 App’x 7 § 8.1 (July 1, 2017), *available at* [https://www.icann.org/sites/default/files/tlds/net/net-](https://www.icann.org/sites/default/files/tlds/net/net-agmt-pdf-01jul17-en.pdf)  
12 [agmt-pdf-01jul17-en.pdf](https://www.icann.org/sites/default/files/tlds/net/net-agmt-pdf-01jul17-en.pdf). BTAPPA is otherwise unavailable for domain name transfers.

## 13 **2. The Parties**

14 Tucows operates an ICANN-accredited registrar. *See* ICANN-Accredited Registrars,  
15 <https://www.icann.org/registrar-reports/accredited-list.html> (last visited Sept. 18, 2017). In  
16 January 2017, Tucows acquired eNom, another ICANN-accredited registrar. *See id.*; Tucows,  
17 Inc., Current Report (Form 8-K) (Jan. 23, 2017). Namecheap, too, is an ICANN-accredited  
18 registrar, but it also operates as a “reseller” for Defendants, meaning that Namecheap sells  
19 Defendants’ registration services to its third-party customers, and Defendants serve as the  
20 registrar for the domain names registered by Namecheap’s third-party customers.

## 21 **3. The Master Agreement**

22 Namecheap and eNom entered into a “Master Agreement,” dated as of July 31, 2015, to  
23 further define certain aspects of their business relationship.<sup>4</sup> *See* Compl. at Ex. A (“Master  
24 Agmt”), at Recitals. In the Master Agreement, eNom agreed to continue its reseller relationship  
25

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26 <sup>4</sup> United TLD Holdco, Ltd. t/a Rightside Registry, an affiliate of eNom, was also a party to the Master Agreement.

1 with Namecheap through at least December 31, 2018, so that Namecheap could provide for the  
2 registration of its customers' domain names without independently building the technical  
3 infrastructure, and going through the accreditation process, required to provide such services  
4 directly. *Id.* § 3. In exchange, Namecheap agreed that for a specific period of time, "all new  
5 registrations, transfers, and renewals" of .COM and .NET domain names (among others) would  
6 "occur exclusively on the eNom platform." *Id.*

7 Section 7 of the Master Agreement contains a "Transfer Agreement," which provides, in  
8 pertinent part:

9  
10 For the term of this Agreement plus a period of two (2) years thereafter, eNom hereby  
11 consents to the transfer in any manner, bulk or otherwise, of the Namecheap-managed  
12 customer domain names residing on the eNom platform and/or registry credential;  
13 **provided that any such transfer complies with all applicable ICANN and registry  
rules, regulations and processes.** eNom shall not obstruct, delay, deny, obfuscate, or  
otherwise restrict the transfer of the Namecheap-managed customer domain names, and  
**shall provide EPP transfer codes if required for said domains to Namecheap  
forthwith upon request, in any quantity requested.**

14 *Id.* § 7(a) (emphases added). The Master Agreement, which is never characterized as an asset  
15 purchase, explicitly references "EPP transfer codes" (that are only applicable to standard ICANN  
16 transfers) and makes no mention of BTAPPA.

17 On July 27, 2017, Namecheap for the first time contended to Tucows that BTAPPA was  
18 a **requirement** of the Master Agreement. *See* Rome Decl. (ECF No. 10) at Ex. A. In a letter to  
19 Tucows, Namecheap's counsel for the first time characterized the Master Agreement as an "asset  
20 purchase" that "closed" when Namecheap's exclusivity obligations under Section 3 of the Master  
21 Agreement concluded. *Id.* Namecheap's counsel further contended that the "asset purchase"  
22 meant that the Namecheap-managed .COM and .NET domain names qualified for BTAPPA  
23 under unidentified Verisign "guidelines," and that Verisign had in fact approved the transfer via  
24 BTAPPA of the Namecheap-managed .COM and .NET domain names. *Id.* Namecheap's  
25 counsel did not (and has yet to) identify the referenced Verisign "guidelines" or produce  
26 Verisign's supposed approval of the BTAPPA. *Id.*

1 In response, Tucows rejected Namecheap's position that BTAPPA was required under  
 2 the Master Agreement and that the Master Agreement was an "asset purchase." *See* Rome Decl.  
 3 (ECF No. 10) at Ex. B. Tucows offered alternative methods for transferring the Namecheap-  
 4 managed domains that were consistent with the language of the Master Agreement and  
 5 technologically suited to the situation as it exists (*e.g.*, transferring domain names to  
 6 Namecheap's credential but hosting them on the Tucows platform, or transferring the domain  
 7 names as they come up for renewal in the normal course of business). *Id.* Namecheap rejected  
 8 the offers and insisted on transfer via BTAPPA.

9 Namecheap filed its Complaint on September 1, 2017, asserting claims for breach of  
 10 contract, breach of the duty of good faith, and unjust enrichment. It then filed the instant motion  
 11 for expedited discovery, seeking extensive discovery in a condensed timeframe, ostensibly in  
 12 support of a promised forthcoming motion for preliminary injunction.<sup>5</sup> Namecheap seeks leave  
 13 to conduct wide-ranging discovery in the form of two 30(b)(6) depositions – each encompassing  
 14 eight distinct subjects – and requests for four categories of documents, including requests for  
 15 communications that will require the review of a massive amount of electronically stored  
 16 information ("ESI").

### 17 LEGAL AUTHORITY

18 Rule 26(d) of the Federal Rules of Civil Procedure states that formal discovery will not  
 19 begin until the parties have conferred as required under Rule 26(f). *See* Fed. R. Civ. P. 26(d)(1).  
 20 Courts in the Ninth Circuit do not permit expedited discovery before the Rule 26(f) conference  
 21 unless there is a showing of "good cause." *See, e.g., Fluke Elecs. Corp. v. CorDEX Instruments,*  
 22 *Inc.*, No. C12-2082JLR, 2013 WL 566949 (W.D. Wash. Feb. 13, 2013). To determine whether  
 23 good cause exists, courts examine the requested discovery "on the entirety of the record to date  
 24 and the reasonableness of the request in light of all the surrounding circumstances." *Am.*

25 \_\_\_\_\_  
 26 <sup>5</sup> Despite its promises and the passage of nearly three weeks since the filing of the Complaint, Namecheap  
 has not yet filed a motion for preliminary injunction. Instead, it filed an "Errata and Notice Regarding Motion for  
 Preliminary Injunction" stating – without explanation – that it was "unable to file the motion for preliminary  
 injunction on September 14, 2017." ECF No. 12.

1 *LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1066 (C.D. Cal. 2009). “Factors commonly  
2 considered in determining the reasonableness of expedited discovery include, but are not limited  
3 to: (1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3)  
4 the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply  
5 with the requests; and (5) how far in advance of the typical discovery process the request was  
6 made.” *Id.* at 1067 (quoting *Disability Rights Council of Greater Wash. v. Wash. Metro. Area*  
7 *Transit Auth.*, 234 F.R.D. 4, 6 (D.D.C. 2006)). Namecheap’s Motion should be denied because  
8 all five factors weigh against a finding of good cause.

9 **1. Expedited Discovery Will Not Help Namecheap Secure A Preliminary**  
10 **Injunction**

11 “[E]xpedited discovery is not automatically granted merely because a party seeks a  
12 preliminary injunction.” *Am. LegalNet*, 673 F. Supp. 2d at 1066. Courts routinely deny  
13 expedited discovery when it is sought in support of a meritless motion for preliminary injunction.  
14 *See, e.g., Disability Rights Council*, 234 F.R.D. at 7 (denying request for expedited discovery in  
15 support of an inappropriate request for preliminary injunction).

16 Namecheap claims that it needs expedited discovery in support of its contemplated  
17 motion for a preliminary injunction, by which Namecheap apparently intends to ask the Court to  
18 force Defendants to transfer immediately millions of domain names using the extraordinary and  
19 resource-intensive BTAPPA process. *See Mot.* at 4:24-25. But Namecheap’s forthcoming  
20 motion will fail regardless of whether Namecheap obtains expedited discovery. As a threshold  
21 matter, the relief Namecheap intends to seek is simply inappropriate for a preliminary injunction.  
22 The purpose of a preliminary injunction is to “preserve the relative positions of the parties until a  
23 trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *see also*  
24 *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1023 (9th Cir. 2009) (“The sole purpose of a  
25 preliminary injunction is to preserve the status quo ante litem pending a determination of the  
26 action on the merits.” (internal quotation marks omitted)). A preliminary injunction “does not

1 substitute for a trial, and its usual office is to hold the parties in place until a trial can take place.”  
 2 *Disability Rights Council*, 234 F.R.D. at 7.

3 Here, the status quo is that the Namecheap-managed .COM and .NET domain names  
 4 remain on eNom’s platform. By seeking expedited discovery in an effort to obtain a mandatory  
 5 injunction<sup>6</sup> requiring Defendants to transfer those domain names immediately, Namecheap is  
 6 “not seeking expedited discovery to gain evidence to get the court to preserve the status quo”;  
 7 instead, it wants “to gather all the evidence [it] would need to **radically transform the status**  
 8 **quo**, on an expedited basis.” *Id.* (emphasis added). “[T]hat is not the purpose of a preliminary  
 9 injunction, nor of the limited discovery that the courts traditionally permit a plaintiff to have to  
 10 secure it.” *Id. Accord Am. LegalNet*, 673 F. Supp. 2d at 1068 (expedited discovery requests  
 11 must be limited to information “to preserve the status quo”). Because the preliminary injunction  
 12 that Namecheap plans to request seeks to radically alter, rather than preserve, the status quo, the  
 13 Court should deny Namecheap’s request for expedited discovery in support thereof.

14 Even if the relief sought by Namecheap were suited to the preliminary-injunction stage of  
 15 litigation, Namecheap would not be able to demonstrate its entitlement to provisional relief even  
 16 with the aid of expedited discovery. For example, no amount of expedited discovery would  
 17 change the fact that Namecheap would not suffer irreparable harm if the domain name transfers  
 18 occurred via the standard ICANN transfer process rather than BTAPPA. *See, e.g., Marlyn*  
 19 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)  
 20 (explaining that mandatory injunctions are “particularly disfavored” and are not granted “where  
 21 the injury complained of is capable of compensation in damages”); *see also* Compl. ¶¶ 62-76  
 22 (asserting claim for damages in connection with alleged breach of the Master Agreement).  
 23 Further, the claimed urgency of obtaining a preliminary injunction is the result of a profound

24 \_\_\_\_\_  
 25 <sup>6</sup> Mandatory injunctions are “particularly disfavored” and “are not granted unless extreme or very serious  
 26 damage will result and are not issued in doubtful cases or where the injury complained of is capable of  
 compensation in damages.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th  
 Cir. 2009). There should be no expedited discovery in support of Namecheap’s forthcoming preliminary-injunction  
 motion when Namecheap cannot articulate how “extreme or very serious damage” is supposedly threatened or how  
 any supposed injury would not be “capable of compensation in damages.”

1 misreading of the Master Agreement, Namecheap’s own delay in initiating routine transfers to its  
 2 own platform, and, even if BTAPPA were to apply here, Namecheap’s own delay in seeking it,  
 3 so the balance of equities and public interest weigh against the granting of a preliminary  
 4 injunction.<sup>7</sup> Because expedited discovery would not change the analysis under any of these  
 5 factors, there should be no expedited discovery in support of Namecheap’s flawed motion for  
 6 preliminary injunctive relief.

## 7 **2. The Expedited Discovery Sought is for an Improper Purpose**

8 Namecheap readily admits in its Motion (*e.g.*, at 7:15-16) that it is seeking expedited  
 9 discovery for the improper purpose of “delv[ing] into the merits of the underlying dispute  
 10 between the parties.” *U.S. ex rel. Brown v. Celgene Corp.*, No. CV 10-3165-GHK (SSx), 2014  
 11 WL 12588280, at \*2 (C.D. Cal. Mar. 21, 2014). As numerous courts have explained, that is “not  
 12 [a] proper bas[i]s for expedited discovery.” *Id.* (citing *In re Fannie Mae Derivative Litig.*, 227  
 13 F.R.D. 142, 143 (D.D.C. 2005) (denying motion for expedited discovery where party’s request  
 14 appeared to be “a thinly veiled attempt to circumvent the normal litigation process”)). Though  
 15 “likelihood of success on the merits” is an element that Namecheap would have to prove to  
 16 secure preliminary injunctive relief, Namecheap does not cite a single case in which wide-  
 17 ranging discovery into the underlying merits of a lawsuit was permitted on those grounds.  
 18 Indeed, if expedited merits discovery were permitted simply because a “likelihood of success” is  
 19 an element for securing preliminary injunctive relief, “then expedited discovery would be the  
 20 norm instead of the exception, and there would be no substantive purpose for Federal Rule  
 21 26(d)(1).” *Id.*; *see Am. LegalNet*, 673 F. Supp. 2d at 1066 (“[E]xpedited discovery is not  
 22 automatically granted merely because a party seeks a preliminary injunction.”).

## 23 **3. Namecheap Cannot Show that Standard Discovery is Insufficient**

24 The Federal Rules of Civil Procedure allow Namecheap to proceed with the normal  
 25 course of discovery following the parties’ Rule 26(f) conference. Per the Court’s Order

26 <sup>7</sup> These are but a few examples of the myriad reasons why Namecheap is not entitled to preliminary  
 injunctive relief. Defendants reserve their rights to respond more fully or to supplement this response if and when  
 Namecheap files a motion for preliminary injunction.



1 Regarding Initial Disclosures, Joint Status Report, and Early Settlement (ECF No. 7), the Rule  
2 26(f) conference must occur by September 29, 2017, less than two weeks from the date of this  
3 filing and merely a week after the noting date for the Motion at issue. Namecheap cannot show  
4 that expedited discovery is necessary when standard discovery is available to them so soon. *See*  
5 *Fluke Elecs.*, 2013 WL 566949, at \*12 (denying expedited discovery where Rule26(f)  
6 conference would occur within one month).

7 Namecheap claims there are two reasons why the requested discovery is time-sensitive,  
8 but neither reason holds water. First, Namecheap advances a tortured reading of the Master  
9 Agreement to argue that “the parties face a firm deadline of December 31, 2017 to complete the  
10 bulk transfer of the VeriSign Domains using BTAPPA.” Mot. at 3:10-12. Setting aside the fact  
11 that forcing the bulk transfer of millions of domain names via BTAPPA would be inappropriate  
12 at the preliminary-injunction stage and fundamentally inconsistent with the language of the  
13 Master Agreement, *see supra*, Namecheap’s stated concerns about a year-end BTAPPA deadline  
14 ring hollow when Namecheap still has yet to file a motion for preliminary injunction to secure  
15 the purportedly time-sensitive relief and waited months before trying to initiate a transfer via  
16 BTAPPA in the first place.

17 Second, Namecheap claims that eNom’s conversion from a corporation to an LLC  
18 created “serious questions” about a “risk” to the Namecheap-managed .COM and .NET domain  
19 names on eNom’s platform. This is a red herring. Namecheap does not identify the “risk” it  
20 cites and does not explain how eNom’s conversion violated any ICANN or Verisign regulations.<sup>8</sup>  
21 Moreover, eNom’s conversion is not referenced in the Complaint and thus is not at issue in this  
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23 <sup>8</sup> Contrary to Namecheap’s suggestion that Defendants “failed to transfer” domain names from eNom, Inc. to  
24 eNom, LLC (Mot. at 8:14-16) or assigned rights under the Master Agreement without Namecheap’s consent (Mot. at  
25 8:19-20), eNom’s conversion from a corporation to an LLC has no bearing on the status of its domain names or the  
26 Master Agreement. It is black-letter law that a converted entity is merely a continuation of the original entity, and  
all of the assets and rights of the original entity are automatically the assets and rights of the converted entity. *See*  
Nev. Rev. Stat. § 92A.250 (“The conversion is a continuation of the existence of the constituent entity.”); 6 Del. C.  
§ 18-214(g) (“[T]he limited liability company shall be deemed to be the same entity as the converting other entity  
and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a  
domestic limited liability company.”).

1 litigation; therefore, it is not a proper subject for discovery in connection with any forthcoming  
2 motion for preliminary injunction. *See Shahinian v. Kimberly-Clark Corp.*, No. CV 14-08390  
3 DMG (SHx), 2014 WL 12614439, at \*1 (C.D. Cal. Dec. 29, 2014) (“Without even an allegation  
4 of such [an] injury, that harm is too speculative to be the basis of a preliminary injunction.”).  
5 Namecheap did not consider these general claims of irreparable harm legitimate enough to  
6 include in the Complaint, and they certainly do not warrant expedited discovery.

7 **4. Even if Expedited Discovery were Appropriate, the Expedited Discovery**  
8 **Sought is Overbroad and Unduly Burdensome**

9 Even if expedited discovery were warranted, the particular discovery that Namecheap  
10 seeks is overbroad and unduly burdensome. Namecheap’s requests are overbroad because, as  
11 discussed *supra*, they inappropriately seek the production of documents and deposition testimony  
12 regarding the merits of the underlying dispute. *See Celgene*, 2014 WL 12588280, at \*2  
13 (explaining that expedited discovery in connection with a preliminary injunction should not be  
14 used to “delve into the merits of the underlying dispute between the parties”). For example,  
15 expedited discovery regarding Defendants’ “true motivation for refusing to complete the transfer  
16 via the BTAPPA service” (Mot. at 8:2) is not necessary at the preliminary-injunction stage  
17 because this case turns largely on the meaning of the Master Agreement, and the Court can  
18 evaluate the likelihood of success on the merits based on the Master Agreement itself. The  
19 requests are also overbroad insofar as they seek information relating to eNom’s conversion from  
20 a corporation to an LLC; there are no allegations whatsoever in the Complaint about eNom,  
21 LLC, let alone about any alleged harm resulting therefrom. *See supra*. In short, this is a fishing  
22 expedition, and there is not good cause to permit such discovery on an expedited basis.<sup>9</sup>

23  
24  
25 <sup>9</sup> Namecheap appears to confuse the discovery it seeks, at one point stating that it wants “communications  
26 between Defendants and ICANN/VeriSign relating to the bulk transfer of the VeriSign Domains from **eNom to Namecheap**,” (Mot. at 8:8) but in its Proposed Order requesting “[c]ommunications between Defendants and ICANN relating to transferring the sponsorship of all the domain name registrations sponsored by **eNom, Inc. to eNom, LLC**” (Proposed Order at 2:3-5).

1 The burden on Defendants of complying with the expedited discovery would also be  
2 unreasonable. By requesting the expedited production of several all-encompassing categories of  
3 “communications” between Defendants and/or third-parties, Plaintiffs are demanding that  
4 Defendants engage in a costly search of ESI relating to a large and complicated transaction.  
5 Namecheap’s requested expedited discovery would require Defendants to collect and review a  
6 massive number of documents in a condensed timeframe. It is not appropriate to force  
7 Defendants to bear the burden and expense of responding to expedited discovery when  
8 Namecheap admits that it waited months before attempting to initiate the transfers of the  
9 Namecheap-managed .COM and .NET domain names that are at issue in this lawsuit, and still  
10 has yet to move for preliminary injunctive relief.

### 11 CONCLUSION

12 There should be no expedited discovery in support of Namecheap’s forthcoming and  
13 strongly disfavored motion for preliminary injunction, and there should certainly be no expedited  
14 discovery into the ultimate merits of this lawsuit simply because Namecheap intends to file such  
15 a motion. Any expedited discovery in support thereof – but particularly the wide-ranging and  
16 burdensome discovery sought here – would be too broad. Under these circumstances, there is no  
17 need to short-circuit the regular litigation process provided for by the Federal Rules of Civil  
18 Procedure. Defendants respectfully requests that the Court deny Namecheap’s motion for leave  
19 to conduct expedited discovery.<sup>10</sup>

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26 <sup>10</sup> As a matter of fairness, should the Court give leave to Namecheap to conduct expedited discovery,  
Defendants reserve their right to seek reciprocal, expedited discovery on topics related to any forthcoming motion  
for preliminary injunction.

1 Dated: September 18, 2017

Respectfully submitted,

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