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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF ARIZONA**

8 Richard Blair,

9 Plaintiff,

10 vs.

11 Automobili Lamborghini S.p.A.,

12 Defendant.

Case No.: 2: 22-01439-PHX-ROS

**PLAINTIFF’S REPLY IN SUPPORT
OF MOTION FOR SANCTIONS
PURSUANT TO FED. R. CIV. P. 11**

13 Plaintiff Richard Blair (“Plaintiff” or “Blair”), by and through the undersigned
14 counsel, submits this Reply in Support of Plaintiff’s Motion for Sanctions pursuant
15 to Fed. R. Civ. P. 11 against Defendant Automobili Lamborghini S.p.A. (“Defendant”
16 or “Lamborghini”).

17 **INTRODUCTION**

18 Plaintiff’s Memorandum of Law in Support of its Motion for Sanctions
19 Pursuant to Fed. R. Civ. P. 11 asserts that Defendant’s Motion to Dismiss is outside
20 the bounds of legally acceptable norms, calling it: “egregious[],” “legally

1 unreasonable and completely frivolous,” “totally devoid of support,” “nonsensical,”
2 “baseless,” “meritless,” “improper,” “profoundly flawed,” “fundamentally lacking
3 in basis,” “wholly disingenuous,” “filed to harass,” and also that it “completely
4 disregarded legal authority,” and “intentionally misstated Plaintiff’s argument[s].”
5 (ECF No. 26) (“Sanctions Motion” or “Pl. Rule 11 Mot. for Sanctions”). In
6 opposition, Defendant simply claims that this is not an egregious case, and blithely
7 ignores the facts, law, and analysis set forth in the Sanctions Motion. Defendant
8 offers no substantive response to the claims that:

- 9 • no court has ever held that only the original registrant of a domain
10 name may seek declaratory relief under 15 U.S.C. 1114(2)(D)(v);
- 11 • in the 24 years since the enactment of the Anticybersquatting
12 Consumer Protection Act, 15 U.S.C. 1125(d) (“ACPA”), no party has
13 even *argued* that only the original registrant of a domain name may
14 seek declaratory relief under 15 U.S.C. 1114(2)(D)(v);
- 15 • it has long been settled that a respondent to a UDRP proceeding has
16 the right to file an action in federal court seeking a *de novo* review of
17 the lawfulness of the registration and use of a domain name;
- 18 • the decision of *GoPets Ltd. v. Hise*, 657 F.3d 1024 (9th Cir. 2011), on
19 which Defendant relies, plainly states that there can be more than a
20 single registrant of a domain name, and that the acquirer of a domain

1 name receives all rights possessed by the original owner;

- 2 • Plaintiff alleges that he *used* the <Lambo.com> domain name
3 (“Domain Name”) in good faith;
- 4 • Defendant availed itself of the Uniform Domain Name Dispute
5 Resolution Policy (“UDRP”), filed a complaint in which it consented
6 to the jurisdiction of this Court for the *de novo* determination of
7 disputes concerning the Domain Name, and argued in the UDRP
8 proceeding that Blair both registered and used the Domain Name in
9 bad faith – claims that are completely at odds with the positions now
10 taken by Defendant in its motion to dismiss; and
- 11 • Defendant’s argument would upend the UDRP and ACPA.

12 ((ECF No. 27) (“Def. Opp. to Mot. for Sanctions”)).

13 Instead of making a substantive response to these and other claims, Defendant
14 rehashes arguments that have been proved to be demonstrably false, mistakes its
15 frivolity for “zealous advocacy,” and contends that the Sanctions Motion is an
16 improper attempt to re-argue the merits of [Plaintiff’s] Opposition to Defendant’s
17 Motion to Dismiss (ECF No. 23) (“Motion to Dismiss” or “Def. Mot. to Dismiss”).
18 With all due respect, there is no need to reargue the merits of Plaintiff’s Opposition
19 to Defendant’s Motion to Dismiss, and that is not why Plaintiff filed it (ECF No. 24)
20 (“Pl. Opp. to Mot. to Dismiss”). The purpose of the Sanctions Motion was not to

1 convince the Court of what already seems obvious – i.e., that the Motion to Dismiss
2 should be denied for lack of merit – but to demonstrate why the Motion to Dismiss
3 was *so legally unreasonable and improper that it should never have been filed*.
4 Doing so invariably requires some discussion of the law.

5 ARGUMENT

6 As stated in the Sanctions Motion, this is an egregious case. Pl. Rule 11 Mot.
7 for Sanctions, at 11. The egregiousness of Defendant’s conduct derives both from
8 the utter frivolousness of its legal arguments, as well as its practice of repeatedly
9 misstating and misapplying the operative law. *Fink v. Gomez*, 239 F.3d 989, 994
10 (9th Cir. 2001) (holding that sanctions are available where an attorney’s reckless
11 misstatements of law and fact is coupled with frivolousness, harassment, or an
12 improper purpose). In the course of demonstrating that Defendant’s arguments are
13 legally nonsensical, it is unavoidable to have some discussion of the merits. *See, e.g.*,
14 Pl. Opp. to Mot. to Dismiss, at 6–7; Pl. Rule 11 Mot. for Sanctions, at 6–9. This
15 does not, however, transmute the Sanctions Motion into a sur-reply.

16 In its Opposition, Defendant cherry-picks language from *GoPets*, which it
17 then misleadingly cites out of context, yet purposefully ignores other language
18 referenced in the Sanctions Motion that directly, categorically, and conclusively
19 undermines its arguments. (*Compare* Def. Opp. To Mot. for Sanctions, at 3–4, *to* Pl.
20 Rule 11 Mot. for Sanctions, at 6–7). Defendant clings to the mantra that only the

1 party who initially registers a domain name can be a “domain name registrant,” as if
2 repeating a demonstrably false statement enough times will make it true. *See* Def.
3 Opp. to Rule 11 Mot. for Sanctions, at 3–4. Yet, as stated in the Sanctions Motion,
4 the Ninth Circuit in *GoPets* recognized that there are both “initial registrants” and
5 “new registrants.” *GoPets*, 657 F.3d at 1026 (“The primary question before us is
6 whether the term ‘registration’ applies only to the initial registration of the domain
7 name, or whether it also applies to a re-registration of a currently registered domain
8 name by a new registrant.”).¹ It bears repeating – domain names can be *re-registered*,
9 and that parties who do so are *new registrants*. The *GoPets* court held, however, that
10 the term “registration” embodied in the ACPA applied only to the *first* registration
11 of a domain name – the *GoPets* court never held that a domain name can only be
12 registered a single time. *GoPets*, 657 F.3d at 1031–32 (“We therefore hold that
13 Digital Overture’s re-registration of gopets.com was not a registration within the
14 meaning of § 1125(d)(1)) (emphasis added).

15 It is beyond any legitimate dispute that *GoPets* treats a subsequent owner of a
16 domain name as a new registrant. Defendant’s argument to the contrary – which
17 relies entirely on a selective misquoting of *GoPets* and deliberate misrepresentation

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20 ¹ *GoPets* also recognized that ownership of a domain name is transferred from “*one registrant to another*” (emphasis added), and that “individuals and companies called ‘registrants’ own the domain names.” *GoPets*, 657 F.3d at 1030.

1 of its holding – is egregiously misleading and obviously false. This is true whether
2 applied to the argument that Plaintiff cannot seek a declaration that the “registration”
3 of the Domain Name is lawful, or his “use.” (*See* Def. Opp. to Rule 11 Mot. for
4 Sanctions, at 3–5)

5 Defendant also argues, for the first time, that the ICANN Acronyms and
6 Terms (“Terms”) state that a “domain name registrant” is restricted to only the first
7 “individual or entity who registers a domain name” (Def. Opp. to Rule 11 Mot. for
8 Sanctions, at 3) – but that is not what the Terms say. The Terms state that a registrant
9 is “[a]n individual or entity who registers a domain name,” however, this would also
10 include parties who *re-register* domain names, as recognized by the 9th Circuit in
11 *GoPets. GoPets*, 657 F.3d at 1031–32. The Terms further provide that:

12 Upon registration of a domain name, a registrant enters into a contract with
13 a registrar. The contract describes the terms under which the registrar agrees
to register and maintain the requested name.

14 After registration, registrants manage their domain name settings through
15 their registrar.²

16 The Terms also refer to a “registrant” as a “*domain name holder*,”³ i.e., an

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18 ² ICANN Acronyms and Terms, ICANN, <https://www.icann.org/en/icann-acronyms-and-terms/registrar-en>.

19 ³ ICANN Acronyms and Terms, ICANN, <https://www.icann.org/en/icann-acronyms-and-terms/registrar-en>.

1 owner of the domain name.⁴ There is no dispute that Blair is a party to a domain
2 name registration contract with registrar NameSilo LLC (“NameSilo”), under which
3 he is listed as the “registrant contact” for the Domain Name, and manages the
4 settings for the Domain Name through NameSilo. By ICANN’s definition, this
5 makes him a registrant.⁵ If this Court were to adopt Defendant’s tortured
6 interpretation of the Terms, it would need to conclude that ICANN defined the term
7 “registrant” in a misleading and nonsensical way – that the definition of a registrant
8 was limited somehow only to the original registrant of a domain name, without
9 saying so.

10 Once again, Defendant has selectively and misleadingly quoted cited
11 materials in order to advance an absurd argument that Defendant, itself, does not
12 believe. Indeed, NameSilo confirmed that Mr. Blair was the registrant of the Domain
13 Name as a part of the UDRP proceedings, *after Lamborghini designated him as*
14 *such*.⁶ In the UDRP proceeding, Lamborghini argued that Blair “registered and used”

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17 ⁴ Holder, *Merriam-Webster* (2023), [https://www.merriam- webster.com/dictionary/holder](https://www.merriam-webster.com/dictionary/holder).

18 ⁵ ICANN’s definition refers to the word “registrant” in its colloquial sense, as the term used to
19 define the holder of a domain name. There is no basis by which this Court could conclude that
20 ICANN’s definition was meant to limit or restrict the definition of “registrant,” within the
meaning of the ACPA, to only the first person or entity to register a domain name.

⁶ A registrar must confirm the identity of a registrant in response to the commencement of a
UDRP proceeding. The UDRP decision, itself, identifies the registrant by name. It is not possible

1 the Domain Name in bad faith. *See* Def. Mot. to Dismiss, at 3. Lamborghini has not
2 sought to rescind its prior statements, or have the UDRP decision expunged on the
3 grounds that Blair is not the registrant of the Domain Name because he was not the
4 first person to register it. Nor has Lamborghini informed WIPO that Blair could not
5 have “registered” or “used” the Domain Name in bad faith, for similar reasons.
6 Rather, Lamborghini seeks to have it both ways.

7 By taking opposite positions in this action from the ones it took in the UDRP
8 proceeding, and then arguing that this Court cannot, therefore, grant declaratory
9 relief to Plaintiff, Lamborghini is acting in bad faith. To be clear, Lamborghini has
10 already argued that Blair is the registrant of the Domain Name, but now argues that
11 he is not; that he registered the Domain Name, but now argues that he has not; that
12 he used the Domain Name, but now argues that he did not. This District has
13 previously awarded attorneys’ fees in a case where the defense advanced legally
14 unreasonable arguments that were unwarranted under *GoPets. Dent v. Lotto Sport*
15 *Italia SpA*, No. CV-17-00651-PHX-DMF, 2021 WL 242100, at *10 (D. Ariz. Jan.
16 25, 2021).⁷ This case presents a similar issue. Yet, despite the fact that Plaintiff cited

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19 for Lamborghini to have commenced a UDRP proceeding without so designating Blair as the
20 registrant.

⁷ In the same lawsuit, the *Dent* court granted summary judgment under the ACPA and the Lanham Act to the plaintiff-**registrant**, who purchased the disputed domain name from the original registrant whose initial registration predated the defendant’s first use of its trademark.

1 the *Dent* decisions in Plaintiff’s Opposition to Motion to Dismiss, Defendant’s
2 counsel has simply ignored this highly relevant and persuasive precedent, with full
3 knowledge of the fact that fees were awarded in that case against a defendant who
4 made similarly unfounded arguments, and an attorney who had argued the opposite
5 position on the same legal issues in a different case. Plaintiff respectfully submits
6 that Defendant should be sanctioned here for doing much the same.

7 Defendant’s new argument concerning “traditional property rights” and
8 “vested property rights” did not appear in its Motion to Dismiss, nor was it addressed
9 in Plaintiff’s Sanctions Motion. *See* Def. Opp. to Rule 11 Mot. to Dismiss, at 6. It
10 would also appear to be precluded by the 9th Circuit’s holding in *GoPets* – Plaintiff
11 obtained all rights in and to the disputed domain name owned by the previous
12 registrant, including the right to sue, as he steps into the shoes of the initial registrant.
13 *See GoPets*, 657 F.3d at 1031–32; Pl. Opp. to Mot. to Dismiss at 9. The 9th Circuit
14 applied the concept of “traditional property rights” to domain names. There is no
15 basis for distinguishing *GoPets* based on when trademarks are issued, and it is not
16 even clear that Defendant owns a trademark for the term “LAMBO.” Defendant
17 seems to argue that the 9th Circuit was wrong. The cases cited by Defendant are

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Dent v. Lotto Sport Italia SpA, No. CV-17-00651-PHX-DMF, 2020 WL 1170840, at *13 (D.
Ariz. Mar. 11, 2020) (emphasis added).

1 completely inapposite, and the misapplication of the “vested property rights” cases
2 to the instant case further underscores the frivolousness of Defendant’s position.

3 Plaintiff did not file the Sanctions Motion because Defendant’s argument is
4 “novel.” He did so because Defendant’s position is legally unreasonable, entirely
5 lacking in basis, deliberately misleading, disingenuous, and filed for an improper
6 purpose. Defendant and its counsel *chose* to file a completely frivolous motion for
7 no other reason than to drive up the costs of litigation to Plaintiff. It is evident that
8 this was a malign choice, not zealous advocacy or a simple misunderstanding of the
9 law. Defendant’s counsel time and again deliberately misquotes *GoPets* – the only
10 legal authority that they cite for their outrageous, disingenuous, and inconsistent
11 positions. What’s more, merely intoning that Plaintiff failed to meet its burden –
12 without substantively addressing serious claims of malfeasance – does not make it
13 so. Defendant and its counsel have *chosen* to file a motion advancing arguments that
14 they objectively do not believe, which conflict with arguments they have made, and
15 which have no legal basis, whatsoever. For this, sanctions are not only warranted,
16 but necessary to deter a multi-billion-dollar corporation from abusing legal process
17 improperly to inflict substantial costs onto an individual litigant.

18 CONCLUSION

19 For the foregoing reasons, Plaintiff respectfully requests that its Motion for
20 Sanctions under Fed. R. Civ. P. 11 be granted.

1 Dated: June 21, 2023
2 Brooklyn, NY

3 Respectfully submitted,

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