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7 CRS Recovery, Inc. and
8 Dale Mayberry

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 CRS Recovery, Inc., a Virginia Corporation,
12 and DALE MAYBERRY

13 Case No. CV 06-07093 CW

14 Plaintiffs,

15 **PLAINTIFFS' NOTICE OF MOTION FOR**
16 **SUMMARY ADJUDICATION, AND**
17 **MEMORANDUM OF POINTS AND**
18 **AUTHORITIES IN SUPPORT THEREOF**

19 vs.

20 JOHN LAXTON and NORTHBAY REAL
21 ESTATE, INC., *et al.*,

22 Date: September 4, 2008

23 Time: 2:00 p.m.

24 Courtroom: 2

25 Defendants.

26 Trial Date: October 20, 2008

27 Hon. Claudia Wilken

28 AND RELATED CROSS-CLAIMS

MOTION

To the Court and all counsel and parties of record, please take notice that on September 4, 2008, at 2:00 p.m., in Courtroom 2 of the above-named Court at 1301 Clay Street, Oakland, California, plaintiffs Dale Mayberry ("Mayberry") and CRS Recovery, Inc. ("CRS") will move this Court pursuant to F.R.Civ.P. 56(a) and (c), for an order granting plaintiff CRS Recovery, Inc. summary adjudication on its First and Fourth Claims for Relief, for Conversion and Declaratory Relief against John Laxton and Northbay Real Estate, Inc. (jointly "Defendants").

This motion is made on the undisputed grounds that: Mayberry was the original registrant and owner of the RL.Com domain, entitled to continued possession and control thereof; RL.Com was stolen from Mayberry by Li Qiang, a domain name hijacker; Defendants received RL.Com from Li Qiang's transferee, Barnali Kalita, and have refused plaintiffs' demand for its return;

PLAINTIFFS' NOTICE OF MOTION FOR SUMMARY ADJUDICATION, AND
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1 CRS is Mayberry's lawful assignee of the rights to recover and possess the domain; and,
2 Defendants' wrongful withholding of RL.Com has caused and is causing irreparable harm to
3 CRS.

4 The motion is made on the further undisputed grounds that all transfers of RL.Com
5 stemming from and including the January 23, 2003 involuntary transfer of registrant status from
6 Dale Mayberry to Li Qiang, were made without Mayberry's knowledge or consent, and are
7 therefore void *ab initio*; and the sole valid transfer of RL.Com has been Mayberry's assignment
8 of rights to CRS, which is entitled to be given immediate effect by means of an order restoring
9 the *status quo ante* by transferring the domain name to CRS.

10 The motion is based upon this notice of motion and Memorandum of Points and
11 Authorities, the Declarations of NSI, Dale Mayberry, Richard Lau, Stevan Lieberman, and
12 Charles Carreon, the Exhibits thereto, the NSI Attachments, the Proposed Order, all other
13 evidence submitted in support of the motion, and such additional matters as the Court may
14 consider at the time of the hearing.

15 Dated: July 17, 2008

ONLINE MEDIA LAW, PLLC

16 By: s/Charles Carreon/s
17 CHARLES CARREON (127139)
18 Attorney for Plaintiffs CRS Recovery, Inc.
19 and Dale Mayberry
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PLAINTIFFS' NOTICE OF MOTION FOR SUMMARY ADJUDICATION, AND
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ISSUES PRESENTED

3 1. Whether plaintiff CRS is entitled to summary adjudication as a matter of law on its claim
4 for conversion, where it is undisputed that Dale Mayberry (“Mayberry”) was the original
5 registrant and owner of the RL.Com domain, entitled to continued possession and control
6 thereof; that RL.Com was stolen from Mayberry by Li Qiang, a domain name hijacker; that John
7 Laxton and Northbay Real Estate, Inc. (“Defendants”) received RL.Com from Li Qiang's
8 transferee, Barnali Kalita, and have refused plaintiffs' demand for its return; that CRS is
9 Mayberry's lawful assignee of the rights to recover and possess the domain; and, that Defendants'
10 wrongful withholding of RL.Com has caused and is causing irreparable harm to CRS.
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13 2. Whether plaintiff CRS is entitled to summary adjudication on its claim for declaratory
14 relief, where it is undisputed that all transfers of RL.Com stemming from and including the
15 January 23, 2003 involuntary transfer of registrant status from Dale Mayberry to Li Qiang, were
16 made without Mayberry's knowledge or consent, and are therefore void *ab initio*, and the sole
17 valid transfer of RL.Com has been Mayberry's assignment of rights to CRS, which is entitled to
18 be given effect by means of an order restoring the *status quo ante* by transferring the domain
19 name to CRS.
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21 **I. INTRODUCTION**

22 No disputed facts exist regarding the following matters: (1) Mayberry is the original,
23 rightful owner of RL.Com; (2) RL.Com was stolen from Mayberry by a domain hijacker who
24 usurped Mayberry's identifying email address, dale@mat.net, and thereby transferred the domain
25 to himself; (3) Defendants hold the registration and have possession of RL.Com; (4) Defendants
26 have refused the lawful demand of plaintiffs to return the domain; (5) Defendants' wrongful
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1 withholding of possession and control of RL.Com has caused, and is causing, irreparable harm to
2 CRS; and, (6) the continuing injury to plaintiff CRS can be remedied only by order of this Court.

3 **II. UNDISPUTED FACTS WARRANTING SUMMARY ADJUDICATION**

4 The following statement of undisputed facts establishes that the record will support
5 summary adjudication on the first and fourth claims for relief as a matter of law.¹

7 **A. CRS's Acquisition of Lawful Title to RL.Com**

8 On July 21, 2005, Richard Lau,² a principal of CRS Recovery, Inc. ("CRS") acquired the
9 legal right to recover and possess RL.Com from the first and only lawful registrant, Dale
10 Mayberry ("Mayberry"), in exchange for monetary consideration and the promise to recover
11 MAT.Net and return it to Mayberry. (Mayberry Dec., ¶ 16; Exhibit 1, pages 3 – 5; Lau Dec. ¶
12 5.) The terms of the original assignment have been fully performed, and CRS appears as the
13 holder of all Mayberry's rights to RL.Com without reservation. (Mayberry Dec., ¶¶ 16 and 19;
14 Exhibit 1, pages 1 – 2; Lau Dec. ¶ 11.)

16 **2. Dale Mayberry, The Original Registrant of RL.Com and MAT.Net**

17 Mayberry was the first person to register RL.Com, which he did on July 23, 1995,
18 choosing RL.Com as an acronym for "Real Life," a term used in online gaming parlance to
19 describe a gamer's role in the "real world." (Mayberry Dec. ¶ 2.) At that time, Mayberry was
20 active in online game-playing. (Mayberry Dec. ¶ 2.) From approximately 1999 until 2001,
21 Mayberry operated Micro Access Technologies, Inc., a company that provided Internet access
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24 ¹ "Exhibits" are authenticated in the Declaration of Charles Carreon. "NSI Attachments" are
25 records of regularly conducted business activity, offered to prove the truth of facts and establish
26 the occurrence and non-occurrence of events. F.R.E. 803(6) and 803(7).

27 ² Mr. Lau contributed to a report published in June 2005 by the Internet Corporation for
28 Assigned Names and Numbers ("ICANN"), entitled *Domain Name Hijacking: Incidents, Threats, Risks and Recommended Actions*. (Lau Dec. ¶ 4; Exh. 4, the "ICANN Report.")

1 and email service to users in the Washington D.C. area using the domain MAT.Net. (Mayberry
2 Dec. ¶ 2.) When Micro Access Technologies, Inc. ceased operations in or about 2001, Mayberry
3 maintained the registration on the MAT.Net domain. (Mayberry Dec. ¶ 2.) RL.Com and
4 MAT.Net are the only two domains Mayberry ever owned. (Mayberry Dec. ¶ 2.)

5
6 To maintain a domain name registration, the registrant must pay yearly registration fees,
7 which can be paid several years in advance or on a yearly basis. (Mayberry Dec. ¶ 5.) Mayberry
8 paid registration fees for RL.Com and MAT.Net to Network Solutions, Inc. (“NSI”). (Mayberry
9 Dec. ¶ 6.) On July 23, 2002 Mayberry renewed his registration of RL.Com for three years, and
10 NSI confirmed a new expiration date of July 24, 2005. (Mayberry Dec. ¶ 6; NSI Dec. ¶¶ 6 - 9;
11 NSI Att. “C,” pages 40 and 44 - 47.) Since Mayberry also owned MAT.Net, he made
12 dale@mat.net his contact email as the Registrant of RL.Com. (Mayberry Dec. ¶ 5.)

14 **3. Li Qiang, User # 1775470, Acquires Control of MAT.Net**

15 According to NSI, “on Dec 19, 2003, the domain MAT.Net was transferred from Micro
16 Access Technologies by Beijing Sinonets Network & Telcom Co, Ltd.” (“BSNT”).³ (NSI Dec. ¶
17 11.) Pursuant to the transfer, “the Admin Contact for MAT.Net became “Qiang, Li,” and the
18 Network Solutions account for MAT.Net was “deleted.” (NSI Dec. ¶ 11; Page 4 and 14 of Att.
19 “B;” Page 1, Att. “D.”) Li Qiang was NSI User # 1775470. (NSI Dec. ¶ 17.)

22 **4. Li Qiang's Exploitation of His Control Over MAT.Net**

23 As soon as Li Qiang transferred MAT.Net from Mayberry to BSNT, he changed the
24 “hosting” from NSI's servers to another set of servers at BIM.Com. (Mayberry Dec. ¶ 9; NSI
25 Att. “D,” page 1.) By controlling MAT.Net, Li Qiang also blocked Mayberry's receipt of emails

27 ³ Herein, “BSNT.”

1 at dale@mat.net. (Mayberry Dec. ¶ 9.) The person able to send and receive emails from
2 dale@mat.net was Li Qiang. (Mayberry Dec. ¶ 9.)

3 **5. Li Qiang's Transfer of RL.Com To Himself**

4 On December 23, 2003, Li Qiang, NSI User # 17754740, changed his official email
5 address from lee@bim.com to dale@mat.net. (NSI Dec. ¶ 18; NSI Att. "D," page 2.) Timing
6 his actions to fall on the day before Christmas Eve, at 2:07:01 am, December 23, 2003, Li Qiang
7 sent an email from dale@mat.net using IP address 218.0.215.159, located in China, requesting
8 that NSI transfer the domain to Li Qiang. (NSI Dec. ¶¶ 19 - 20; NSI Att. "C," pages 5 and 7.)

9 **6. Li Qiang's Approval of His Own Transfer Request**

10 Less than one minute after he sent the request, Li Qiang received the Authorization Email
11 NSI had addressed to Mayberry at dale@mat.net. (NSI Dec. ¶¶ 26 - 27; NSI Att. "C," pages 7
12 and 8.) The Authorization Email that Li Qiang received read as follows:

13 "Dear Dale Mayberry,

14 We recently received a request to transfer the following domain name(s) from you:

15 RL.COM

16 To: Li Qiang

17 Date of the original request: December 23, 2003 2:07:01 AM EST

18 Upon completion of the transfer, the registrant for the domain names(s) identified above
19 will be Li Qiang.

20 However, for security reasons, we must have your authorization before we can complete
21 the processing. If this is a valid request and you wish to approve this transfer, please
22 access the secure Web page at <https://registrar-transfers.com/...>⁴ or paste the URL into your
23 browser. Then follow the instructions to authorize the domain name registration transfer
24 for the domain names(s).

25 If you don't respond within 15 days from the date of the original request shown above,
26 the request will be canceled.

27 If you have any questions or need assistance, please e-mail us at
28 customersservice@networksolutions.com. Or call to speak to Customer Service at 1-888-642 or
+1-703-742-0914 outside the United States and Canada.

Network Solutions is committed to delivering high quality services to meet your online
needs. We hope to have another opportunity to serve you in the future.

Sincerely,

Network Solutions Customer Support"

4 This hyperlink has been abbreviated.

1 Mayberry never saw NSI's Authorization Email. (Mayberry Dec. ¶ 12.) As soon as Li
2 Qiang received it, misrepresenting himself as Mayberry, he immediately approved the transfer
3 and thus acquired unlawful control over the registration of RL.Com. (NSI Dec. ¶ 28; NSI Att.
4 “C,” page 5; Mayberry Dec. ¶ 14.) If Mayberry had received the Authorization Email, he would
5 not have authorized the transfer request, and would have actively denied it. (Mayberry Dec. ¶
6 13.) Network Solutions has no record of any “documentation communicating that Dale
7 Mayberry sold or otherwise transferred his rights to be the registrant of MAT.Net or RL.Com to
8 Li Qiang.” (NSI Dec. ¶ 32.) Mayberry was not able to recover the domain through reasonable
9 efforts made following his discovery that Li Qiang had hijacked RL.Com, and as set forth *infra*,
10 transferred all his rights to recover and possess RL.Com to Richard Lau, and thereafter, to CRS.
11 (Mayberry Dec. ¶¶ 15 -16; Lau Dec. ¶¶ 5, 6, and 11.)

14 **7. Laxton's Refusal To Return The Stolen Domain**

15 Laxton bought RL.Com from an individual in India named Barnali Kalita for \$15,000,
16 paid via two PayPal payments of \$7,500 on May 6, 2005 and May 20, 2005, pursuant to an
17 agreement that Laxton would make the second payment after Kalita transferred RL.Com to his
18 name. (Carreon Dec., Exhibit 2, Laxton Depo., 8:13 - 22; 10:19 – 11:1; Exh. 2, Laxton 30(b)(6)
19 Depo., 47:25 – 50:9; Exhibit 5.) Laxton never asked Kalita whether he had any right to sell
20 RL.Com. (Exh. 2, Laxton Depo., 44:3 – 24; 46:20 – 23.) Laxton negotiated with Barnali Kalita
21 via email, but testified that he destroyed the emails, and has no substantial recollection of their
22 contents. (Exhibit 2, Laxton Depo., 8:23 – 9:04; 10:19 – 12:4.) From May 15, 2005 to January
23 21, 2008, Laxton received at least \$2,053.83 in revenue by "renting" RL.Com as advertising
24 space to Thought Convergence, Inc., doing business on the Internet as TRAFFICZ.com (herein
25 “TRAFFICZ.com”). (Exhibit 2, Laxton Depo., 24:18 – 25:8.) On February 27, 2006, counsel
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1 for CRS sent a formal demand letter to Laxton, following up on an oral request, asking Laxton to
2 return the domain name to Mayberry. (Lieberman Dec. ¶ 2; Exh. 3.) Laxton refused to return
3 the domain. (Lieberman Dec. ¶ 2.) This action followed.

4 **III. THE SUMMARY ADJUDICATION STANDARD**

5 Summary judgment is "an integral part of the Federal Rules as a whole, which are
6 designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex*
7 *Corporation v. Catrett*, 477 U.S. 317, 327, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). Summary
8 adjudication of an issue shall be granted when "the pleadings, the discovery and disclosure
9 materials on file, and any affidavits show that there is no genuine issue as to any material fact
10 and that the movant is entitled to judgment as a matter of law." F.R.Civ.P. 56(c). When the
11 moving party has made a showing that there is no genuine issue as to any material fact, the
12 nonmoving party must designate "specific facts showing that there is a genuine issue for trial."
13 *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986)(quoting
14 Rule 56(c)). "When the moving party has carried its burden under Rule 56(c), its opponent must
15 do more than simply show that there is some metaphysical doubt as to the material facts."
16 *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89
17 L.Ed. 2d 538 (1986) "If the evidence is merely colorable, or is not significantly probative,
18 summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50,
19 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986)(citations omitted).

20 **IV. PLAINTIFF CRS IS ENTITLED TO SUMMARY ADJUDICATION ON THE** 21 **FIRST CLAIM FOR RELIEF FOR CONVERSION**

22 The undisputed facts establish that: (1) By virtue of the assignment from Mayberry, CRS
23 has a right to possession of the property; (2) Due to the wrongful acts of Li Qiang and all

1 receivers of RL.Com through his chain of title, the property was wrongfully transferred and is
2 being wrongfully withheld by Laxton and NREI; and (3) CRS has suffered damages due to
3 being deprived of possession.

4 Conversion is the "actual interference with the plaintiff's 'dominion,' i.e., with his
5 ownership or right of property." 5 B. Witkin, *Summary of California Law,*
6 *"Torts,"* § 615 (9th ed. 1988) (citations and emphasis omitted). Witkin adds that
7 "the act must be knowingly or intentionally done, but a wrongful intent is not
8 necessary." *Id.*, § 624 (emphasis in original). An "unauthorized sale or other
9 transfer of property is a conversion." *Id.*, § 621.
10 *Texful Textile Ltd. v. Cotton Express Textile, Inc.*, 891 F. Supp. 1381 (C.D.Cal.
11 1995).

12 Internet domain names are property under controlling California law,⁵ as applied by the
13 Ninth Circuit in *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003). *Kremen* arose out of the theft
14 of the Sex. Com domain by means of a forged letter sent to NSI, purportedly authorizing a
15 transfer of the domain, which was mistakenly honored by NSI, resulting in the transfer of the
16 domain to domain hijacker Stephen Michael Cohen. *Kremen*, 337 F.3d at 1026-1027. *Kremen*,
17 who had sued both the hijacker and NSI for conversion, prevailed against the hijacker on his
18 declaratory relief theory on summary judgment; however, he lost to NSI when District Court
19 Judge James A. Ware ruled as a matter of law that theft of a domain name registration, while
20 wrongful and reversible by court order, would not sustain a claim for conversion. On appeal,

21 ⁵ "In a diversity case, absent a choice-of-law contractual provision and under California choice
22 of law rules, the Court presumes California law to apply unless there exists a compelling reason
23 to displace state law with the law of a foreign jurisdiction." *Shanghai Automation Instrument*
24 *Co. v. Kuei*, 194 F. Supp.2d 995, 1004 (N.D. Cal 2001)(granting default judgment in diversity-
25 based conversion case under California law). There is no "choice of law provision" applicable to
26 this tort action between diverse citizens, and no reason to displace state law governing the return
27 of stolen property. California has a strong policy favoring the recovery of stolen property, and a
28 strong interest in treating the theft of property held by California defendants under its own law,
as evidenced by Cal. Penal Code § 496 (a), that provides in relevant part: "Every person who ...
withholds any property from the owner, knowing the property to be so stolen or obtained, shall
be punished by imprisonment in a state prison, or in a county jail for not more than one year."

1 Kremen prevailed against NSI on his conversion claim, establishing *inter alia* that Internet
2 domains are property, capable of being stolen, and of being returned by court order. *Kremen*,
3 337 F.3d at 1029 – 1030, 1036.

4 As in *Kremen*, the true owner of a valuable domain has been deprived of his property by
5 an unlawful transfer made without his knowledge or consent, and against his intentions. The
6 involuntary nature of the transfer is indisputable, and its damning effects on all subsequent
7 transfers are inescapable. Li Qiang's unlawful transfer of RL.Com caused “actual interference”
8 with Mayberry's “dominion” over the domain, and Defendants are simply playing the same
9 unlawful game of “keep-away” that Li Qiang started. Whether or not Defendants directly stole
10 RL.Com, they are liable for conversion, because a defendant's “mere possession of the property
11 coupled with the ...refusal to return the property to its rightful owner subjects the owner to
12 liability for conversion.” *Adler v. Taylor*, 2005 WL 4658511, at *3 (C.D. Cal. 2005). See, 5
13 Witkin, *Summary of Cal. Law* (10th ed. 2005) Torts § 712 (unjustified refusal to surrender
14 property of another is conversion).

15 There is no dispute that plaintiffs have suffered and continue to suffer damages due to the
16 Defendants' wrongful withholding of RL.Com. Damages to a conversion plaintiff are presumed
17 under California Civil Code § 3336, and pursuant to Civil Code § 3337, the presumption is non-
18 rebuttable. Additionally, Laxton's payment of \$15,000 for RL.Com, and his profitable utilization
19 of it, establish that the domain has value of which plaintiffs have been deprived due to the
20 Defendants' wrongful exercise of dominion and control over RL.Com.

21 The remedy for the withholding of stolen property from the rightful owner is specific
22 recovery. “Specific recovery is an available remedy for conversion.” *Adler v. Taylor*, 2005 WL
23 4658511, at *3 (C.D. Cal. 2005). In a recently-decided Northern District decision applying
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1 California law to a domain name hijacking, *Express Media Group, LLC v. Express Corporation*,
2 Case No. C 06-03504 WHA, the Hon. William Alsup granted the plaintiff's motion for summary
3 adjudication for conversion of the domain Express.com, on facts closely congruent to those
4 presented in this case, ordering the immediate transfer to plaintiffs of the hijacked domain name.
5 (*Express Media Order*, Exhibit 6.) Citing *Kremen, supra*, as authority for the proposition that
6 "intangible property rights are properly the subject of claims for conversion," Judge Alsup
7 granted an injunction to reverse the domain hijacking against "defendants [who] have committed
8 a wrongful act in retaining possession of the domain name." (*Express Media Order*, Exhibit 6,
9 page 7.) Judge Alsup also observes that because the domain name hijacking involved an
10 "involuntary transfer" that "results in void title," a "good faith purchaser defense" may not be
11 asserted. (Exhibit 6, page 7, *citing* Cal. Com. Code § 2403(1) and *Suburban Motors, Inc. v. State*
12 *Farm Mut. Auto Ins. Co.*, 218 Cal.App.3d 1354, 1360-61 (1990).
13
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15 There is no genuine issue as to any material fact where a rational trier of fact could not
16 find for the non-moving party. *Monster Cable Products, Inc. v. Discovery Communications,*
17 *Inc.*, 2004 WL 2445348, at *3 (N.D. Cal. 2006). No rational trier of fact could find that
18 Defendants are entitled to retain stolen property obtained by the victimization of the true owner.
19 Accordingly, plaintiffs are entitled to summary adjudication on the first claim for relief for
20 conversion, and an order directing Defendants to deliver the RL.Com domain to CRS.
21

22 **V. PLAINTIFF CRS IS ENTITLED TO SUMMARY ADJUDICATION ON THE**
23 **FOURTH CLAIM FOR RELIEF FOR DECLARATORY RELIEF**

24 Li Qiang transferred RL.Com to himself by forging Mayberry's approval of a transfer
25 request without Mayberry's knowledge and in violation of his exclusive rights to own and
26 possess RL.Com. Li Qiang created a forged transfer authorization by using Dale Mayberry's
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1 dale@mat.net email address to impersonate his identity and usurp his authority to transfer the
2 domain. Because the transfer of RL.Com from Mayberry to Li Qiang was involuntary and
3 accomplished by forgery, it is a nullity. “It has been uniformly established that a forged
4 document is void *ab initio* and constitutes a nullity; as such it cannot provide a basis for superior
5 title” as against the original owner. *Wutzke v. Bill Reid Painting Service, Inc.*, 151 Cal. App. 3D
6 36, 40 – 44 (1984).

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8 Title to property, “like a stream, cannot rise higher than its source,” therefore, no one can
9 transfer “better title than he has.” *Barthelmess v. Cavalier*, 2 Cal. App.2d 477, 487-488 (1934).
10 A thief cannot transfer valid title, as is clearly held in *Naftzger v. American Numismatic Society*,
11 42 Cal. App. 4Th 421, 49 Cal. Rptr. 2d 784 (1996):

12
13 “Under the facts as pled, Naftzger is innocent of any wrongdoing and was
14 unaware of the theft when he purchased the coins. Even if Naftzger is an innocent
15 purchaser, however, he did not acquire valid title to the coins, assuming they were
16 stolen, because a thief cannot transfer valid title. On this record, Naftzger's
obligation to return the coins will be established if and when the museum proves
the coins are its stolen property.”

17 When Li Qiang transferred RL.Com to himself, the transfer was void *ab initio*. Since Li Qiang
18 could not pass better title than he acquired by theft, Barnali Kalita, Laxton, and NREI equally
19 acquired void title. Given these undisputed facts, the Court must cancel the void transactions
20 and return the parties to their *status quo ante* – where they were before the unlawful transfers.
21 “Assuming that the transaction should not have taken place, the court proceeds as though it had
22 not taken place, and returns the parties to that situation.” *Reay v. Reay*, 97 Cal. App. 264, 277,
23 275 P. 533 (1929). The reversal of void transfers and the re-establishment of the *status quo ante*
24 will return the parties to their proper lawful status, that has been interfered with by criminal
25 conduct and void transfers, in which Laxton and NREI have been culpable participants.
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1 During the entire term of their wrongful possession of RL.Com, Laxton and NREI's
2 holding of the domain has been legally subject to an involuntary trust. Cal. Civil Code § 2224
3 provides: "One who gains a thing by fraud, accident, mistake, undue influence, the violation of a
4 trust, or other wrongful act, is, unless he or she has some other and better right thereto, an
5 involuntary trustee of the thing gained, for the benefit of the person who would otherwise have
6 had it." Laxton could acquire no "better right" to RL.Com than that which is held by the true
7 owner. The time has come for Laxton and NREI, the involuntary trustees, to perform their duty,
8 and deliver RL.Com to the true beneficiary of their involuntary trust, Mayberry's designated
9 assignee, CRS.
10

11 VI. CONCLUSION

12 The undisputed facts establish that CRS is entitled to possess the RL.Com domain and to
13 be designated as the Registrant thereof in the Whois database of domain name registrations.
14 Because all genuine issues of fact have been established beyond material dispute, the Court is
15 respectfully requested to summarily adjudicate the first and fourth claims for relief, to enter
16 judgment for plaintiff CRS thereon, and to make findings and orders as set forth in the Proposed
17 Order Granting Summary Adjudication filed herewith.
18

19 Dated: July 17, 2008

ONLINE MEDIA LAW, PLLC

20 By: s/Charles Carreon/s
21 CHARLES CARREON (127139)
22 Attorney for Plaintiffs CRS Recovery, Inc.
23 and Dale Mayberry
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