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8 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12
13 DOTCONNECTAFRICA TRUST,

14 Plaintiff,

15 v.

16 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS, *et*
17 *al.*,

18 Defendants.

CASE NO. BC607494

Assigned for all purposes to
Hon. Howard L. Halm

**DECLARATION OF KEVIN
ESPINOLA IN SUPPORT OF
ICANN'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

DATE: December 22, 2016
TIME: 8:30 a.m.
DEPT: 53

1 **DECLARATION OF KEVIN ESPINOLA**

2 I, Kevin Espinola, declare the following:

3 1. I am a partner of Jones Day, counsel to defendant the Internet Corporation for
4 Assigned Names and Numbers (“ICANN”). I have personal knowledge of the matters set forth
5 herein and am competent to testify as to those matters. I make this declaration in support of
6 ICANN’s opposition to DotConnectAfrica Trust’s (“Plaintiff’s”) motion for a preliminary
7 injunction. I have served as outside counsel to ICANN since May 2009, and in that role I have
8 assisted in the development of ICANN’s New gTLD Program.

9 2. ICANN and its community developed the New gTLD Applicant Guidebook
10 (“Guidebook”) as part of a years-long, bottom-up multistakeholder process during which
11 numerous versions were published by ICANN for public comment and revised, in part based on
12 comments received. In total, six versions of the Guidebook were published for public comment.

13 3. In the April 15, 2011 version of the Guidebook (“April 2011 Guidebook”),
14 language was added to Section 6 of Module 6 of the Guidebook (“Covenant Not to Sue”) making
15 explicit that: “[an] applicant may utilize any accountability mechanism set forth in ICANN’s
16 Bylaws for [the] purposes of challenging any final decision made by ICANN with respect to the
17 application.” Attached hereto as **Exhibit K** is a true and correct copy of Module 6 of the April
18 2011 version of the Guidebook, which was published with a redline, showing changes made from
19 the prior version of the Guidebook.

20 4. As ICANN has stated publicly, ICANN is a not-for-profit public benefit
21 corporation and anticipated that, absent a broad waiver and limitation of liability in the
22 Guidebook’s terms and conditions, the over 1,900 applicants could initiate frivolous and costly
23 legal actions in an attempt to challenge legitimate ICANN decisions, which would imperil the
24 successful implementation of the New gTLD Program. Accordingly, ICANN carefully
25 considered how to protect the New gTLD Program from such challenges, and the Covenant Not
26 to Sue in the Guidebook was deemed appropriate in light of these considerations.

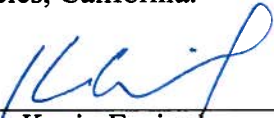
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of December 2016, in Los Angeles, California.



Kevin Espinola