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11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DOTCONNECTAFRICA TRUST, a  
15 Mauritius Charitable Trust,

16  
17 Plaintiff,

18 v.

19 INTERNET CORPORATION FOR  
20 ASSIGNED NAMES AND NUMBERS,  
21 a California corporation; ZA Central  
22 Registry, a South African non-profit  
23 company; DOES 1 through 50, inclusive,

24 Defendants.

Case No. 2:16-cv-00862-RGK (JCx)

**EVIDENTIARY OBJECTIONS TO  
DECLARATION OF CHRISTINE  
WILLET**

Date: April 4, 2016

Hearing: 9:00 a.m.

Courtroom: 850

[Filed concurrently: Reply ISO Motion  
for Preliminary Injunction;  
Supplemental Declaration of Sophia  
Bekele Eshete; Declaration of Sara C.  
Colón; and Evidentiary Objections to  
Declarations of Jeffrey LeVee, Kevin  
Espinola, Akram Atallah and Moctar  
Yedaly]

1 Plaintiff DOTCONNECTAFRICA TRUST (“DCA”) respectfully submits  
 2 the following evidentiary objections to the Declaration of Christine Willet (“Willet  
 3 Declaration”) relied upon by Defendant Internet Corporation for Assigned Names  
 4 and Numbers (“ICANN”) in support of its opposition to DCA’s Motion for a  
 5 Preliminary Injunction.

6 **PLAINTIFF’S EVIDENTIARY OBJECTIONS**

Willet Declaration ¶	DCA Objection	Sustained	Overruled
<p>8 ¶2: “Those applications are                      9 evaluated in accordance with the                      10 procedures set forth in the New                      11 gTLD Applicant Guidebook                      12 (“Guidebook”).”</p>	<p>Lacks foundation [Fed.                      R. Evid. 602] and the                      Guidebook is the best                      evidence of the                      Guidebook [Fed. R.                      Evid. 1002]. In fact,                      the IRP Panel already                      concluded that DCA’s                      application was not                      handled in accordance                      with ICANN’s Bylaws,                      Articles and rules.</p>		
Willet Declaration ¶	DCA Objection	Sustained	Overruled
<p>21 ¶3: “In the spring of 2012,                      22 Plaintiff and ZA Central                      23 Registry ("ZACR") each                      24 submitted applications to                      25 operate the .AFRICA gTLD. In                      26 doing so, they, like all new                      27 gTLD applicants, expressly                      28 accepted and acknowledged the</p>	<p>Conclusory, lacks                      foundation, lacks                      personal knowledge                      [Fed. R. Evid. 602].</p>		

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<p>Guidebook, including the release and covenant not to sue found in paragraph 6 of Module 6.”</p>			
<p><b>Willet Declaration ¶</b></p>	<p><b>DCA Objection</b></p>	<p><b>Sustained</b></p>	<p><b>Overruled</b></p>
<p>¶5: “The new gTLD application was complex and required considerable detail. A list of the information new gTLD applicants were required to submit with their applications can be found in the Guidebook. (Guidebook at 201-42 (A-1 - A46).) Among other things, each applicant was required to submit an extensive, technical explanation of its plans for operating a gTLD registry. Attached hereto as Exhibit A is a true and correct copy is a partial excerpt of the technical explanation Plaintiff submitted as part of its New gTLD Application. As required, Plaintiff also submitted evidence of substantial financial support for its Application.”  ///</p>	<p>Completeness doctrine [Fed. R. Evid. 106] The Guidebook is the best evidence of the Guidebook [Fed. R. Evid. 1002].</p>		

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Willet Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶6: “In addition, because Plaintiff and ZACR had each applied for a gTLD that represents the name of a geographic region, in this instance, a continent, the Guidebook requires that Plaintiff and ZACR each provide documentation of support or non-objection from at least 60% of the governments in the region. (Eshete Decl. Ex. 3 (“Guidebook”) at 170-72 (§2.2.1.4.2).) The Guidebook also provides that a Geographic Names Panel operated by a third-party vendor retained by ICANN must verify the relevance and authenticity of an applicant’s documentation of support. (<i>Id.</i> At 173-175 (§2.2.1.4.4).) The Guidebook contemplated the possibility that more than one application for a geographic gTLD would be determined to have the requisite support and would also pass all</p>	<p>The Guidebook is the best evidence of the Guidebook [Fed. R. Evid. 1002].</p>		

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of the other evaluations (technical, financial and so forth). In the event that both are supported by the same government or public authority, and that government or public authority so requests, the applications are placed in a “contention set” that could be resolved via an auction or other processes since only one registry operator can operate a Top Level Domain consisting of the exact same letters. (*Id.*) Otherwise, assuming that the applicants do not reach a resolution amongst themselves, their applications will be rejected. (*Id.*)”<sup>1</sup>

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Willet Declaration ¶	DCA Objection	Sustained	Overruled
¶7: “Plaintiff submitted with its Application what it called a letter of support dated in 2009 (three years earlier) from the African Union Commission	Lacks personal knowledge, lacks foundation, and speculative [Fed. R. Evid. 602]. Prejudicial		

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<sup>1</sup> For the sake of clarity, it is DCA’s belief that the ZACR application will prove to be fatally flawed and that there will be no need for an auction or other type of resolution as between DCA and ZACR.

1	("AUC"). A copy of that letter is	[Fed. R. Evid. 403;		
2	attached as Exhibit 6 to the	Bekele Decl. ¶15, Ex. 7		
3	Eshete Declaration. I have been	(Unlike the initial letter		
4	informed that in 2010, Plaintiff	of support from the		
5	had received a letter from the	AUC, the subsequent		
6	AUC (and all of the African	letter omitted any		
7	governments that were its	official stamp, was not		
8	members) that formally	signed by the AUC		
9	withdrew the AUC's support for	Chairman, and instead		
10	Plaintiff. A copy of that letter is	was signed by Mr.		
11	attached as Exhibit 7 to the	Yedaly)]. The		
12	Eshete Declaration. Plaintiff did	statement is also		
13	not submit with its Application	materially misleading		
14	to ICANN the 2010 letter from	because it fails to state		
15	the AUC to Plaintiff	that DCA specifically		
16	withdrawing its support for	identified the purported		
17	Plaintiff.”	withdrawal in its		
18		application to ICANN		
19		[Fed. R. Evid. 403].		
20	<b>Willet Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
21	¶9: “On June 5, 2013, at the	Lacks foundation [Fed.		
22	time when ICANN's Board	R. Evid. 602].		
23	accepted the Governmental			
24	Advisory Committee's			
25	("GAC's") advice objecting to			
26	Plaintiff's Application, Plaintiff			
27	had already passed all of the			
28	Initial Evaluation reviews except			

1 for the Geographic Names Panel  
2 review. At that time, the  
3 Geographic Names Panel was in  
4 the midst of its review of  
5 Plaintiff's Application; it had  
6 determined that the documented  
7 support submitted by Plaintiff,  
8 including the letters from the  
9 AUC and UNECA, did not meet  
10 the criteria set forth in the  
11 Guidebook, and was therefore  
12 planning to send "clarifying  
13 questions" to Plaintiff.  
14 Clarifying questions are sent  
15 where documented support does  
16 not meet the criteria set forth in  
17 the Guidebook and are an  
18 accommodation to provide  
19 applicants an opportunity to  
20 explain/supplement their  
21 documentation. However, as a  
22 result of the ICANN Board's  
23 acceptance of the GAC's advice,  
24 Plaintiff's Application was  
25 removed from further  
26 processing, and the clarifying  
27 questions were not sent at that  
28 time.”

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Willet Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶10. “By July 31, 2015 following ICANN’s Board’s adoption of the recommendations of the independent review panel in <i>DCA v. ICANN</i> (“IRP Panel”), Plaintiff’s Application was returned to processing as the Board directed. Contrary to what Plaintiff argues on page 1 of its motion for preliminary injunction, Plaintiff’s Application was not returned to the “beginning of the process.” Instead it was returned to precisely the portion of the review that was pending on the date the Application was removed from processing – the Geographic Names Panel review. As the Geographic Names Panel had been preparing to do when Plaintiff’s Application was removed from processing, the Geographic Names Panel sent Plaintiff clarifying questions regarding</p>	<p>Lacks foundation and conclusory [Fed. R. Evid. 602; Local Rule 7-7 (Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4)]. The clarifying questions are the best evidence of the clarifying questions [Fed. R. Evid. 1002; Bekele Decl. ¶24, Ex. 15].</p>		



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<p>the documentation Plaintiff had submitted with its Application. Those clarifying questions are attached as Exhibit 15 to the Eshete Declaration. Plaintiff was given an opportunity to respond to those questions. Instead of supplementing its documentation, Plaintiff took the position that the documentation it had submitted with its Application in 2012 was sufficient.”</p>			
<p><b>¶14</b></p>	<p><b>DCA Objection</b></p>	<p><b>Sustained</b></p>	<p><b>Overruled</b></p>
<p>“Accordingly, on March 3, 2016, ICANN’s Board adopted a resolution lifting the stay on the delegation of .AFRICA, a stay that had been in place since 2014 and continued pending ICANN’s full compliance with the IRP Panel’s recommendation that ICANN resume its evaluation of Plaintiff’s Application for .AFRICA. A true and correct copy of the Board’s resolution is attached to this declaration as Exhibit C.”</p>	<p>Lacks personal knowledge, lacks foundation, and conclusory [Fed. R. Evid. 602; Local Rule 7-7 (Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4)]. The best evidence of the March 3, 2016</p>		

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	Board resolution is the March 3, 2016 Board resolution. Prejudicial [Fed. R. Evid. 403 (DCA’s Motion for Preliminary Injunction was filed on March 1, 2016 and TRO was filed on March 2, 2016.)].		
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Dated: March 21, 2016

**BROWN NERI & SMITH LLP**

By:  /s/ Ethan J. Brown  
Ethan J. Brown

*Attorneys for Plaintiff*  
DOTCONNECTAFRICA TRUST