с	ase 2:16-cv-00862-RGK-JC Document 94	4 Filed 05/16/16	Page 1 of 13	Page ID #:4196
1 2 3 4 5 6 7 8 9 10	Ethan J. Brown (SBN 218814) <u>ethan@bnsklaw.com</u> Sara C. Colón (SBN 281514) <u>sara@bnsklaw.com</u> BROWN NERI & SMITH LLP 11766 Wilshire Boulevard, Suite 1670 Los Angeles, California 90025 T: (310) 593-9890 F: (310) 593-9890 F: (310) 593-9980 Attorneys for Plaintiff DOTCONNECTAFRICA TRUST			
11				
12	UNITED STATES	DISTRICT CO	OURT	
13				
14	CENTRAL DISTRICT OF CAL	IFORNIA – WE	ESTERN DIV	ISION
15 16 17	DOTCONNECTAFRICA TRUST, a Mauritius Trust, Plaintiff,	EVIDENTIA	6-cv-00862-R ARY OBJEC FION OF M(TIONS TO
18		LUCKY MA	ASILELA	
18 19 20 21 22 23 24 25 26 27 28	v. INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBER a California corporation; ZA Central Registry, a South African non-profit; DOES 1 through 50, inclusive, Defendants.	 Hearing: Courtroom: [Filed concur Opposition to Registry, NP and Vacate; a Bekele Eshet 	rrently: Plaint o Defendant Z C's Motion to and Declaration the and Sara C.	ZA Central o Reconsider ons of Sophia Colón]
	EVIDENTIARY OBJECTIONS TO DEC	CLARATION OF M	IOKGABUDI M	IASILELA

Plaintiff DOTCONNECTAFRICA TRUST ("DCA") respectfully submits the following evidentiary objections to the Declaration of Mokgabudi Lucky Masilela ("Masilela Decl.") relied upon by Defendant ZA Central Registry, NPC ("ZACR") in support of its Motion to Reconsider and Vacate Preliminary Injunction Ruling.

Ŭ			110118	
7	Masilela Decl. ¶	DCA Objection	Sustained	Overruled
8	¶3: "Due to its well-known	Lacks personal knowledge,		
9	reputation for independence	lacks foundation [Fed. R.		
10	and neutrality, as well as	Evid. 602].		
11	technical competence and			
12	operational excellence,			
13	ZACR is the single largest			
14	domain name registry on			
15	the African continent."			
16	¶5: "I am familiar with the	The Application		
17	ICANN selection criteria	Guidebook is the best		
18	for the gTLD. ICANN set	evidence of the document		
19	forth selection criteria in an	[Fed. R. Evid. 1002].		
20	Applicant Guidebook.	Lacks foundation, lacks		
21	Among other things,	personal knowledge [Fed.		
22	ICANN made clear that	R. Evid. 602]		
23	because the .Africa gTLD			
24	represented the name of a			
25	geographic region, an			
26	applicant would need to			
27	provide documentation			
28	showing support from at			

PLAINTIFF'S EVIDENTIARY OBJECTIONS

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least 60% of the		
ogvernments in the region.		
Further ICANN criteria		
provided that no more than		
one objection from a		
government or public entity		
associated with the		
geographic region would be		
permitted. These criteria		
are set forth in ICANN		
Application Guidebook		
Module 2, and available		
onlie at		
http://newgtlds.icann.org/en		
/applicants/agb		
par.2.2.1.4.2.4."		
¶6 "ZACR submitted its	The letters are the best	
application to ICANN with	evidence of the documents	
the full support of African	[Fed. R. Evid 1002].	
Union member states via		
the African Union		
Commission ("AUC")		
endorsement. Specifically,		
the AUC, which serves as		
the Secretariat of the		
African Union, provided a		
letter supporting ZACR's		
application. A true and		

correct copy of the July 2,		
2013 AUC letter is attached		
as Exhibit A. In addition,		
the only nonmember,		
Morocco, separately		
provided a letter supporting		
ZACR's application. A		
true and correct copy of the		
March 28, 2012 Moroccan		
letter of support is attached		
as Exhibit B .		
¶7: "ZACR received the	Lacks personal knowledge,	
support of the African	lacks foundation [Fed. R.	
Union only after the AUC	Evid. 602]. The letter is	
publicized a request for	the best evidence of the	
proposal ("RFP"). This	document [Fed. R. Evid.	
was an open bid process.	1002]. Misleading based	
The AUC made clear that it	upon the fact that ZACR	
was only going to support	assigned all rights to the	
on applicant. By way of	AUC prior to the "open bid	
background, the AUC RFP	process." See Dkt. No. 17 -	
process began because it	Bekele Decl. ISO Motion	
was well known that	for Preliminary Injunction,	
ICANN was considering a	Ex. 20, p.617, ¶22 (7) ["It	
new gTLD progam,	should be noted that the	
including .Africa. It was in	AUC shall retain all rights	
anticipation of this new	relating to the dotAfrica	
gTLD program that the	TLD, including in	

AUC decided to hold an	particular, intellectual	
RFP to support a single,	property and other rights to	
qualified applicant for the	the registry databases	
African Union. This is	required to ensure the	
because the AUC was	implementation of the	
specifically mandated by	agreement between the	
member states to set up the	AUC and the ZACR, and	
structures and modalities	the right to re-designate the	
for the implementation of	registry function."]	
the dotAfrica (.Africa)		
gTLD. Details of the		
process are set forth in the		
September 29, 2015 AUC		
letter attached hereto as		
Exhibit C. This letter is		
also available at:		
http://africainonespace.org/		
downloads/GNP.PDF		
¶9: "The Registry	Lacks personal knowledge,	
Agreement between	lacks foundation,	
ICANN and ZACR was	speculative, conclusory	
effective on March 24,	[Fed. R. Evid. 602; Local	
2014 and runs for ten years.	Rule 7-7 (Declarations	
Yet, over two years into the	shall contain only factual,	
Agreement, the .Africa	evidentiary matter and shall	
gTLD has still not been	conform as far as possible	
delegated to ZACR. In	to the requirements of F.R.	
effect, 20% of the period of	Civ.P. 56(c)(4)]. Biased	

the Agreement has already	and misleading in that it	
lapsed without any benefit	was entered into after the	
to ZACR. This delay has	initiation of the IRP	
resulted in unforeseen and	process by DCA, the day	
mounting costs, as well as	after DCA requested	
lost opportunities, for the	ICANN refrain from	
.Africa project."	delegating the .Africa	
	domain based on the IRP	
	proceeding pending, and on	
	the grounds that the IRP	
	ordered ICANN to refrain	
	from further processing	
	ZACR's application until	
	the IRP resolution	
	concluded. See Dkt. No.	
	64 - First Amended	
	Complaint, Ex. A, pg. 31-	
	32, ¶¶13-19.	
¶11: "ZACR has incurred	Lacks personal knowledge,	
considerable expenses both	lacks foundation,	
prior to and after entering	speculative and conclusory	
into the Registry	[Fed. R. Evid. 602; Local	
Agreement. The current	Rule 7-7 (Declarations	
and continuing cost due to	shall contain only factual,	
the delay in the delegation	evidentiary matter and shall	
is running at approximately	conform as far as possible	
\$20,000 per month. This is	to the requirements of	
based upon a review of the	F.R.Civ.P. 56(c)(4)].	

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	F			1	1
		monthly costs incurred	Irrelevant and vague [Fed.		
		during the last 10 months	R. Evid. 403].		
		for the .Africa project,			
		including the ongoing costs			
		related to consultants,			
		marketing, sponsorships			
		and related expenses. The			
		importance of maintaining			
		visibility for the .Africa			
		project, coupled with the			
		ongoing need to interface			
		with government officials			
		throughout the African			
		continent, makes clear that			
		these ongoing expenses will			
		continue during the course			
		of this litigation. In			
		determining these figures,			
		we averaged the monthly			
		expenses for the .Africa			
		project and where			
		necessary converted			
		expenditures from South			
		African Rand to U.S.			
		dollars.			
		¶12: "The Loss of Net	Lacks foundation, lacks		
		Income after Tax	personal knowledge,		
		(opportunity costs) suffered	speculative and conclusory		
Ĺ					

by ZACR from the date of	[Fed. R. Evid. 602; Local	
the planned delegation	Rule 7-7 (Declarations	
following the Registry	shall contain only factual,	
Agreement through May 1,	evidentiary matter and shall	
2016, are now estimated to	conform as far as possible	
be approximately \$15	to the requirements of	
million (U.S. dollars). Of	F.R.Civ.P. 56(c)(4)].	
that amount, approximately	Biased and misleading in	
\$5.5 million would have	that it was entered into	
been donated to the	after the initiation of the	
dotAfrica Foundation for	IRP process by DCA, the	
African online	day after DCA requested	
development. Until such	ICANN refrain from	
time as delegation takes	delegating the .Africa	
place, the .Africa gTLD in	domain based on the IRP	
effect stagnates and	proceeding pending, and on	
generates no income and no	the grounds that the IRP	
value in the marketplace.	ordered ICANN to refrain	
The ongoing delay is also	from further processing	
prejudicial to the gTLD	ZACR's application until	
itself (no matter who the	the IRP resolution	
operator is) in that the	concluded. See Dkt. No.	
initial interest surrounding	64 - First Amended	
the launch of this domain	Complaint, Ex. A, pg. 31-	
name will have faded, and	32, ¶¶13-19.	
persons who may have		
sought to register will have		
lost interest."		

¶13: "Once a gTLD is	Lacks personal knowledge,	
delegated it starts	lacks foundation,	
increasing in value. The	speculative, and conclusory	
gTLD is at its lowest value	[Fed. R. Evid. 602; Local	
prior to delegation and	Rule 7-7 (Declarations	
increases as the number of	shall contain only factual,	
second level domain	evidentiary matter and shall	
delegations (for example:	conform as far as possible	
xyz.africa) increases. If	to the requirements of	
Plaintiff is redelegated the	F.R.Civ.P. 56(c)(4)].	
.Africa gTLD, it will suffer	Biased and misleading in	
no irreparable harm as it	that it was entered into	
will inherit a more valuable	after the initiation of the	
gTLD without incurring the	IRP process by DCA, the	
cost to develop it."	day after DCA requested	
	ICANN refrain from	
	delegating the .Africa	
	domain based on the IRP	
	proceeding pending, and on	
	the grounds that the IRP	
	ordered ICANN to refrain	
	from further processing	
	ZACR's application until	
	the IRP resolution	
	concluded. See Dkt. No.	
	64 - First Amended	
	Complaint, Ex. A, pg. 31-	
	32, ¶¶13-19.	

ongoing discussions with political, business and civic leaders throughout the[Fed. R. Evid. 602; Local Rule 7-7 (Declarations shall contain only factual,			
upon my numerous and ongoing discussions with political, business and cive (Fed. R. Evid. 602; Local Rule 7-7 (Declarations)leaders throughout theshall contain only factual, ondirary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4); See (Africa is depriving the people of the AfricanF.R.Civ.P. 56(c)(4); See (Africa is depriving the pahlavi, 58 F.3d 1406, 1412-1413 (9th Cir. 1995)opportunity to expand (Holding "the Bank's) internet domain nameresponse to Pahlavi'scapabilities. The .Africa (Admain name would add)and belief declarations (Form that connects)platform that connects (Individuals that have (African people are further (African people are	¶14: "In my role as	Lacks personal knowledge,	
ongoing discussions with political, business and civic[Fed. R. Evid. 602; Localleaders throughout theShall contain only factual,African Union, it is myevidentiary matter and shallfirm understanding andconform as far as possiblebelief that the ongoingto the requirements ofdelay in the delegation ofF.R.Civ.P. 56(c)(4); See.Africa is depriving thealso Bank Melli Iran v.people of the AfricanPahlavi, 58 F.3d 1406,continent of an important1412-1413 (9th Cir. 1995)opportunity to expand(Holding "the Bank'sinternet domain nameresponse to Pahlavi'scapabilities. The .Africaevidence was informationdomain name would addand belief declarationsbrand value to the continentfrom their counsel. Thoseand would provide awere entitled to no weightplatform that connectsbecause the declarant didproducts, businesses andnot have personalinterests in Africa. Theadded]]. Hearsay [Fed. R.African people are furtherEvid. 801].harmed because theagreement between ZACRand the AUC required thatVertice and and weight	ZACR's CEO, and based	lacks foundation,	
political, business and civicRule 7-7 (Declarationsleaders throughout theshall contain only factual,African Union, it is myevidentiary matter and shallfirm understanding andconform as far as possiblebelief that the ongoingto the requirements ofdelay in the delegation ofF.R.Civ.P. 56(c)(4); See.Africa is depriving thealso Bank Melli Iran v.people of the AfricanPahlavi, 58 F.3d 1406,continent of an important1412-1413 (9th Cir. 1995)opportunity to expand(Holding "the Bank'sinternet domain nameresponse to Pahlavi'scapabilities. The .Africaand belief declarationsbrand value to the continentfrom their counsel. Thoseand would provide awere entitled to no weightplatform that connectsbecause the declarant didindividuals that haveadded]]. Hearsay [Fed. R.African people are furtherEvid. 801].harmed because theEvid. 801].agreement between ZACRand the AUC required that	upon my numerous and	speculative, and conclusory	
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African Union, it is my firm understanding andevidentiary matter and shall conform as far as possible to the requirements ofbelief that the ongoing delay in the delegation of Africa is depriving thefr.R.Civ.P. 56(c)(4); See.Africa is depriving the people of the Africanalso Bank Melli Iran v.people of the AfricanPahlavi, 58 F.3d 1406,continent of an important1412-1413 (9th Cir. 1995)opportunity to expand internet domain name(Holding "the Bank'scapabilities. The .Africa domain name would addand belief declarationsbrand value to the continent products, businesses and individuals that have interests in Africa. The African people are further harmed because the agreement between ZACR and the AUC required thatEvidenci & So1].	political, business and civic	Rule 7-7 (Declarations	
firm understanding and belief that the ongoing delay in the delegation of .Africa is depriving the people of the Africanconform as far as possible to the requirements of F.R.Civ.P. 56(c)(4); See also Bank Melli Iran v.people of the African continent of an importantPahlavi, 58 F.3d 1406, 1412-1413 (9th Cir. 1995)opportunity to expand internet domain name(Holding "the Bank's response to Pahlavi'scapabilities. The .Africa domain name would add brand value to the continent individuals that haveand belief declarations were entitled to no weight because the declarant did not have personal added]]. Hearsay [Fed. R.African people are further harmed because the agreement between ZACR and the AUC required thatEvid. 801].	leaders throughout the	shall contain only factual,	
belief that the ongoingto the requirements ofdelay in the delegation ofF.R.Civ.P. 56(c)(4); See.Africa is depriving thealso Bank Melli Iran v.people of the AfricanPahlavi, 58 F.3d 1406,continent of an important1412-1413 (9th Cir. 1995)opportunity to expand(Holding "the Bank'sinternet domain nameresponse to Pahlavi'scapabilities. The .Africaevidence was informationdomain name would addand belief declarationsbrand value to the continentfrom their counsel. Thoseand would provide awere entitled to no weightplatform that connectsbecause the declarant didindividuals that haveadded]]. Hearsay [Fed. R.African people are furtherEvid. 801].harmed because theEvid. 801].agreement between ZACRind the AUC required that	African Union, it is my	evidentiary matter and shall	
delay in the delegation of .Africa is depriving the people of the AfricanF.R.Civ.P. 56(c)(4); See also Bank Melli Iran v.people of the AfricanPahlavi, 58 F.3d 1406,continent of an important1412-1413 (9th Cir. 1995)opportunity to expand(Holding "the Bank'sinternet domain nameresponse to Pahlavi'scapabilities. The .Africaevidence was information domain name would add and belief declarationsbrand value to the continentfrom their counsel. Thoseand would provide awere entitled to no weightplatform that connectsbecause the declarant didindividuals that haveinot have personalinterests in Africa. TheAdded]]. Hearsay [Fed. R.African people are furtherEvid. 801].harmed because theagreement between ZACRand the AUC required thatItal.	firm understanding and	conform as far as possible	
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continent of an important1412-1413 (9th Cir. 1995)opportunity to expand(Holding "the Bank'sinternet domain nameresponse to Pahlavi'scapabilities. The .Africaevidence was information domain name would add and belief declarationsbrand value to the continentfrom their counsel. Thoseand would provide awere entitled to no weightplatform that connectsbecause the declarant didproducts, businesses andnot have personalindividuals that haveknowledge." [emphasisinterests in Africa. Theadded]]. Hearsay [Fed. R.African people are furtherEvid. 801].harmed because theagreement between ZACRand the AUC required thatuere and	.Africa is depriving the	also Bank Melli Iran v.	
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platform that connectsbecause the declarant didproducts, businesses andnot have personalindividuals that haveknowledge." [emphasisinterests in Africa. Theadded]]. Hearsay [Fed. R.African people are furtherEvid. 801].harmed because theagreement between ZACRand the AUC required thatImage: Constant did	brand value to the continent	from their counsel. Those	
Image: Products, businesses and individuals that havenot have personal knowledge." [emphasisinterests in Africa. The African people are further harmed because the agreement between ZACR and the AUC required thatEvid. 801].	and would provide a	were entitled to no weight	
individuals that haveknowledge." [emphasisinterests in Africa. Theadded]]. Hearsay [Fed. R.African people are furtherEvid. 801].harmed because theagreement between ZACRand the AUC required thatImage: Comparison of the section of the	platform that connects	because the declarant did	
interests in Africa. The African people are further harmed because the agreement between ZACR and the AUC required thatadded]]. Hearsay [Fed. R. Evid. 801].	products, businesses and	not have personal	
African people are further harmed because the agreement between ZACR and the AUC required thatEvid. 801].	individuals that have	knowledge." [emphasis	
harmed because the agreement between ZACR and the AUC required that	interests in Africa. The	added]]. Hearsay [Fed. R.	
agreement between ZACR and the AUC required that	African people are further	Evid. 801].	
and the AUC required that	harmed because the		
	agreement between ZACR		
a foundation be created	and the AUC required that		
	a foundation be created		

upon delegation and that a

significant portion of the

revenues received from

delegations (for example:

xyz.africa) be directed to

the "dotAfrica Foundation."

second level domain

the detrimed i sundation.			1
The Foundation would use			
the revenues to fund			1
various African domain			l
name and Internet related			1
developmental projects			1
which are not delayed as a			
result of the preliminary			1
injunction."			
¶15: "I am aware that	The manual is the best		
ICANN Builds in time	evidence of the document		
limits in its gTLD registry	[Fed. R. Evid. 1002].		
agreements. I am further	Hearsay [Fed. R. Evid.		
informed, based upon my	801].		
experience in the industry			
and discussions with			1
technical personnel within			1
ZACR, that a re-delegation			
of a gTLD is entirely			1
feasible. In fact, ICANN			1
has prepared for this precise			l
eventuality and issued a			
EVIDENTIARY OBJECTION	IS TO DECLARATION OF MOR	GABUDI MA	ASILELA

manual in 2013 providing		
step-by-step instructions for		
how to redelegate a gTLD.		
The manual, titled "User		
Documentation on		
Delegating and		
Redelegating a Generic Top		
Level Domain (gTLD),"		
makes clear that the process		
is available and feasible if		
necessary. A true and		
correct copy of the manual		
is attached hereto as		
Exhibit E. It is also		
available on ICANN's		
website:		
http://www.icann.org/en/sy		
stem/files/files/gtld-drd-ui-		
10sep13-en.pdf		
¶16: "ZACR has never	Irrelevant [Fed. R. Evid.	
operated in California.	403].	
ZACR has no personnel, no		
offices, no bank accounts,		
and maintains no operations		
in California. ZACR has		
no telephone listings or		
mailing addresses in		
California."		

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¶17: "I have read Plaintiff's Lacks foundation and First Amended Complaint, conclusory [Fed. R. Evid. including the allegation 602]. against ZACR. Contrary to what is asserted in the First Amended Complaint, there was no fraud or conspiracy between ZACR and ICANN. Nor was there any fraud or conspiracy with the AUC. Similarly, there was no interference with Plaintiff's application to ICANN. At all times, ZACR competed fairly and abided ICANN's procedures in seeking the award for the generic top level domain .Africa. Dated: May 16, 2016 **BROWN NERI & SMITH LLP** By: /s/ Ethan J. Brown Ethan J. Brown

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST