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8 Attorneys for Defendant
 9 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND NUMBERS

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**
 12 **WESTERN DIVISION**

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 14 DOTCONNECTAFRICA TRUST, a
 Mauritius Charitable Trust,

15 Plaintiff,

16 v.

17 INTERNET CORPORATION FOR
 18 ASSIGNED NAMES AND
 NUMBERS, etc., et al.,

19 Defendant.

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

Assigned for all purposes to the
 Honorable R. Gary Klausner

**ICANN'S RESPONSE TO
 PLAINTIFF'S EVIDENTIARY
 OBJECTIONS TO
 DECLARATION OF AKRAM
 ATALLAH**

Date: April 4, 2016
 Time: 9:00 a.m.
 Ctrm: 850

1 Defendant Internet Corporation for Assigned Names and Numbers
 2 (“ICANN”) hereby responds to Plaintiff DotConnectAfrica Trust’s objections to the
 3 Declaration of Akram Atallah:

4 **RESPONSE TO PLAINTIFF’S EVIDENTIARY OBJECTIONS**

Atallah Declaration	Plaintiff’s Objection	ICANN’s Response	Court’s Ruling
<p>5 ¶8: “I am informed and believe that 6 prior to the opening of the 7 gTLD Program application period, 8 only one IRP had resulted in a 9 written determination, 10 <i>ICM Registry, LLC v. ICANN</i>. The 11 <i>ICM</i> panel declared that the 12 determinations of IRP panels were 13 not binding on ICANN’s Board. 14 Attached hereto as Exhibit A is a true 15 and correct copy of an excerpt of the 16 final declaration of the <i>ICM</i> Panel.”</p>	<p>17 Lacks personal knowledge, lacks 18 foundation [Fed. R. Evid. 602; Local 19 Rule 7-7 (Declarations shall contain only 20 factual, evidentiary matter and shall 21 conform as far as possible to the 22 requirements of F.R.Civ.P. 56(c)(4); <i>See also</i> 23 <i>Bank Melli Iran v. Pahlavi</i>, 58 F.3d 24 1406, 1412-1413 (9th Cir. 1995) 25 (Holding “the Bank’s response to 26 Pahlavi’s evidence was information and belief 27 declarations from their counsel. 28 Those were entitled to no weight because the declarant did not have personal knowledge.” [emphasis added]). Irrelevant</p>	<p>Mr. Atallah testified that he is the President, Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As such, he has knowledge of the IRPs in which ICANN has been involved and is qualified to authenticate the final declaration of the <i>ICM</i> Panel.</p>	

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Atallah Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
	<p>[Fed. R. Evid. 403; Bekele Decl., ¶5, Ex. 1 ¶¶148-149: “148. Based on the foregoing, after having carefully reviewed the Parties’ written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN’s Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust related to the .AFRICA gTLD were inconsistent</p>		

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Atallah Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
	<p>with the Articles of Incorporation and Bylaws of ICANN. 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process."].</p>		
<p>¶10: "In the case of the <i>DCA</i> IRP, the <i>DCA</i> Panel declared that its decision would be binding on ICANN's Board. But, most importantly, the question of whether the Panel's declaration was or was not legally binding became a moot issue once ICANN's Board elected to adopt all</p>	<p>Lacks personal knowledge, lacks foundation, 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 IRP Panel Declaration is the best evidence of the document</p>	<p>Mr. Atallah testified that he is the President, Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As such, he has personal knowledge of ICANN Board's response to the <i>DCA</i> IRP Panel's declaration.</p> <p>The Court may refer to the declaration of the</p>	

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Atallah Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
<p>of the <i>DCA</i> Panel's recommendations, contrary to the representations in Plaintiff's motion for preliminary injunction and TRO application."</p>	<p>[Fed. R. Evid. 1002; Bekele Decl., ¶5, Ex. 1 ¶¶148-149: "148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust related to the .AFRICA gTLD</p>	<p><i>DCA</i> IRP Panel, which is part of the record. (Eshete Decl. Ex. 1, ECF No. 17-1.)</p>	

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Atallah Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
	<p>were inconsistent with the Articles of Incorporation and Bylaws of ICANN. 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process."].</p>		
<p>¶11: "Specifically, on July 9, 2015, the DCA Panel issued its final declaration. The DCA Panel determined that ICANN's Board had violated ICANN's Articles of Incorporation and Bylaws by accepting the GAC's consensus advice that Plaintiffs</p>	<p>The IRP Panel Declaration is the best evidence of the document [Fed. R. Evid. 1002]. Irrelevant [Fed. R. Evid. 403; Bekele Decl., ¶5, Ex. 1 ¶¶148-149: "148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the</p>	<p>The Court may refer to the declaration of the DCA IRP Panel, which is part of the record. (Eshete Decl. Ex. 1.) The understanding of ICANN's President, Global Domains Division, is clearly relevant to assessing ICANN's response to the declaration.</p>	

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Atallah Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
<p>application for .AFRICA ("Application") should not proceed. The Panel therefore recommended that "ICANN continue to refrain from delegating the .AFRICA gTLD and permit [Plaintiff] 's application to proceed through the remainder of the new gTLD application process." (Eshete Decl.. Ex. 1 at 61-62 ¶149.)”</p>	<p>testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN’s Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust related to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN. 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, the Panel recommends that</p>		

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Atallah Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
	<p>ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process."].</p>		
<p>¶12: "As it has done with every IRP declaration to date, ICANN's Board promptly considered and adopted each of the DCA Panel's recommendations. Specifically, on July 16, 2015, the Board resolved to 'continue to refrain from delegating the .AFRICA gTLD,' 'permit [Plaintiff's] application to proceed through the remainder of the new gTLD application process,' and 'reimburse DCA for the costs of the IRP.'"</p>	<p>Irrelevant [Fed. R. Evid. 403; Bekele Decl., ¶5, Ex. 1 ¶¶148-149: "148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3,</p>	<p>Plaintiff's claims are based in part on its allegation that ICANN's Board failed to adhere to the findings of the DCA Panel. (See, e.g., FAC ¶¶ 57, 60, 81.) Plaintiff even brings a claim for declaratory relief seeking "confirmation of [the] IRP declaration." (Id. ¶¶ 115-18.) As such, Mr. Atallah's testimony regarding the Board's acceptance of the DCA Panel's Final Declaration is plainly relevant.</p>	

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Atallah Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
	<p>paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust related to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN. 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process."].</p>		

1 Dated: March 28, 2016

JONES DAY

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By: /s/ Jeffrey A. LeVee

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Jeffrey A. LeVee

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Attorneys for Defendant

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INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

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