1 David W. Kesselman (SBN 203838) dkesselman@kbslaw.com 2 Amy T. Brantly (SBN 210893) 3 abrantly@kbslaw.com KESSELMAN BRANTLY STOCKINGER LLP 4 1230 Rosecrans Ave., Suite 690 5 Manhattan Beach, CA 90266 Telephone: (310) 307-4555 6 Facsimile: (310) 307-4570 7 Attorneys for Defendant 8 ZA Central Registry, NPC 9 UNITED STATES DISTRICT COURT 10 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION 11 12 DOTCONNECTAFRICA TRUST, a CASE NO. 2:16-cv-00862 RGK (JCx) Mauritius Charitable Trust, 13 Assigned for all purposes to the Honorable R. Gary Klausner Plaintiff, 14 v. 15 ZA CENTRAL REGISTRY, NPC'S **RESPONSE TO PLAINTIFF'S** INTERNET CORPORATION FOR 16 ASSIGNED NAMES AND **EVIDENTIARY OBJECTIONS TO** NUMBERS; a California corporation; 17 **DECLARATION OF MOKGABUDI** ZA Central Registry, a South African **LUCKY MASILELA** 18 non-profit company; DOES 1 through [Filed concurrently: with: Reply ISO of 50, inclusive, 19 Motion to Reconsider and Vacate Preliminary Injunction; Supplemental Defendants. 20 Declaration of Mokgabudi Lucky 21 Masilela ISO Motion; Consolidated **Evidentiary Objections to Declaration** 22 of Sophia Bekele Eshete; Consolidated 23 Evidentiary Objections to Declaration of Sarah Colón; and Declaration of 24 Akram Atallah ISO of Motion] 25 June 6, 2016 26 Date: Time: 9:00 a.m. 27 Location: Courtroom 850 28

ZACR RESPONSE TO DCA'S EVID. OBJS. TO MOKGABUDI LUCKY MASILELA DECL.

Defendant ZA Central Registry, NPC ("ZACR") hereby responds to Plaintiff DotConnectAfrica Trust's ("DCA") objections to the Declaration of Mokgabudi Lucky Masilela. (Masilela Declaration.") "Due to the urgency of obtaining a preliminary injunction at a point when there has been limited factual development, the rules of evidence do not apply strictly to preliminary injunction proceedings. *Herb Reed Enters.*, *LLC v. Fla. Entm't Mgmt.*, 736 F.3d 1239, 1250 n. 5 (9th Cir. 2013).

Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
¶3: "Due to its	Lacks personal	Mr. Masilela is	
well-known	knowledge, lacks	the Chief	
reputation for	foundation [Fed.	Executive Officer	
independence and	R. Evid. 602].	of ZACR and has	
neutrality, as well		personal	
as technical		knowledge of	
competence and		ZACR's	
operational		reputation and	
excellence, ZACR		operations.	
is the single		"Personal	
largest domain		knowledge can be	
name registry on		inferred from a	
the African		declarant's	
continent."		position within a	
		company or	
		business."	
		Edwards v. Toys	
		"R" Us, 527 F.	
		Supp. 2d 1197,	
		1201 (C.D. Cal.	

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$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$_{2}\parallel$			2007) (collecting	
3			cases).	
4				
5				
6	¶5: "I am familiar	The Application	The Court may	
7	with the ICANN	Guidebook is the	refer to the	
$_{8}\parallel$	selection criteria	best evidence of	Guidebook which,	
9	for the gTLD.	the document	in addition to	
10	ICANN set forth	[Fed. R. Evid.	being accessible	
11	selection criteria	1002]. Lacks	online, is part of	
12	in an Applicant	foundation, lacks	the record.	
13	Guidebook.	personal	(Declaration of	
14	Among other	knowledge [Fed.	Sophia Bekele	
15	things, ICANN	R. Evid. 602]	Eshete, Docket	
16	made clear that		No. 17, ¶ 7 & Ex.	
17	because the		3.)	
18	.Africa gTLD			
19	represented the		Additionally, Mr.	
20	name of a		Masilela is the	
21	geographic		Chief Executive	
22	region, an		Officer of ZACR	
23	applicant would		and has personal	
24	need to provide		knowledge of the	
25	documentation		process for the	
26	showing support		delegation of the	
27	from at least 60%		.Africa gLTD.	
28	of the		"Personal	

$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$_{2}\parallel$	governments in		knowledge can be	
3	the region.		inferred from a	
$_{4}\parallel$	Further ICANN		declarant's	
5	criteria provided		position within a	
6	that no more than		company or	
7	one objection		business."	
8	from a		Edwards v. Toys	
9	government or		"R" Us, 527 F.	
10	public entity		Supp. 2d 1197,	
11	associated with		1201 (C.D. Cal.	
12	the geographic		2007) (collecting	
13	region would be		cases).	
14	permitted. These			
15	criteria are set			
16	forth in ICANN			
17	Application			
18	Guidebook			
19	Module 2, and			
20	available online at			
21	http://newgtlds.ica			
22	nn.org/en/applica			
23	nts/agb_			
24	par.2.2.1.4.2.4."			
25	¶6 "ZACR	The letters are the	The Court may	
26	submitted its	best evidence of	refer to the letters,	
27	application to	the documents	which are	
28	ICANN with the	[Fed. R. Evid	attached to the	

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$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	full support of	1002].	Masilela	
3	African Union		Declaration as	
4	member states via		Exhibits A and B.	
5	the African Union			
6	Commission		Mr. Masilela is	
7	("AUC")		the Chief	
8	endorsement.		Executive Officer	
9	Specifically, the		of ZACR and has	
$\begin{bmatrix} 0 \end{bmatrix}$	AUC, which		personal	
$1 \parallel$	serves as the		knowledge of	
2	Secretariat of the		ZACR's	
\parallel 3	African Union,		application for the	
4	provided a letter		.Africa gLTD.	
15	supporting		"Personal	
6	ZACR's		knowledge can be	
17	application. A		inferred from a	
8	true and correct		declarant's	
9	copy of the July 2,		position within a	
20	2013 AUC letter		company or	
$_{21}\parallel$	is attached as		business."	
$_{22}\parallel$	Exhibit A. In		Edwards v. Toys	
23	addition, the only		"R" Us, 527 F.	
24	nonmember,		Supp. 2d 1197,	
25	Morocco,		1201 (C.D. Cal.	
26	separately		2007) (collecting	
27	provided a letter		cases).	
28	supporting			

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$_1\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$\ $	ZACR's			
$_{3}\parallel$	application. A			
$_{4}\parallel$	true and correct			
5	copy of the March			
6	28, 2012			
7	Moroccan letter of			
$_{3}\parallel$	support is			
9	attached as			
\parallel_0	Exhibit B.			
$_1\parallel$	¶7: "ZACR	Lacks personal	The Court may	
$_{2}\parallel$	received the	knowledge, lacks	refer to the letter,	
$_{3}\parallel$	support of the	foundation [Fed.	which is attached	
$_{4}\parallel$	African Union	R. Evid. 602].	to the Masilela	
5	only after the	The letter is the	Declaration as	
6	AUC publicized a	best evidence of	Exhibit C.	
7	request for	the document		
$_8\parallel$	proposal ("RFP").	[Fed. R. Evid.	Mr. Masilela is	
9	This was an open	1002]. Misleading	the Chief	
$\ $	bid process. The	based upon the	Executive Officer	
$_{1}\parallel$	AUC made clear	fact that ZACR	of ZACR and has	
$_{2}\parallel$	that it was only	assigned all rights	personal	
	going to support	to the AUC prior	knowledge of the	
$_{4}\parallel$	one applicant. By	to the "open bid	AUC RFP, which	
5	way of	process." See Dkt.	ZACR	
6	background, the	No. 17 - Bekele	participated in.	
7	AUC RFP process	Decl. ISO Motion	"Personal	
$8 \parallel$	began because it	for Preliminary	knowledge can be	

$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$\begin{bmatrix} 2 \end{bmatrix}$	was well known	Injunction, Ex.	inferred from a	
3	that ICANN was	20, p.617, ¶22 (7)	declarant's	
$_{4}\parallel$	considering a new	["It should be	position within a	
5	gTLD progam,	noted that the	company or	
6	including .Africa.	AUC shall retain	business."	
7	It was in	all rights relating	Edwards v. Toys	
$_{8}\parallel$	anticipation of	to the dotAfrica	"R" Us, 527 F.	
9	this new gTLD	TLD, including in	Supp. 2d 1197,	
10	program that the	particular,	1201 (C.D. Cal.	
11	AUC decided to	intellectual	2007) (collecting	
12	hold an RFP to	property and other	cases).	
13	support a single,	rights to the		
14	qualified	registry databases	Plaintiff's	
15	applicant for the	required to ensure	objection that Mr.	
16	African Union.	the	Masilela's	
17	This is because	implementation of	testimony is	
18	the AUC was	the agreement	"[m]isleading" is	
19	specifically	between the AUC	argumentative and	
20	mandated by	and the ZACR,	not a proper	
21	member states to	and the right to re-	objection under	
22	set up the	designate the	the Federal Rules	
23	structures and	registry	of Evidence.	
24	modalities for the	function."]	Plaintiff's	
25	implementation of		improper	
26	the dotAfrica		arguments in the	
27	(.Africa) gTLD.		guise of	
28	Details of the		evidentiary	

$_1\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$_{2}\parallel$	process are set		objections should	
3	forth in the		be disregarded.	
$_{4}\parallel$	September 29,			
5	2015 AUC letter			
6	attached hereto as			
7	Exhibit C. This			
$_{8}\parallel$	letter is also			
9	available at:			
10	http://africainones			
$_{11}\parallel$	pace.org/downloa			
$_{12}\parallel$	ds/GNP.PDF			
13	¶9: "The Registry	Lacks personal	Mr. Masilela is	
$_{14}\parallel$	Agreement	knowledge, lacks	the Chief	
15	between ICANN	foundation,	Executive Officer	
16	and ZACR was	speculative,	of ZACR and has	
17	effective on	conclusory [Fed.	personal	
$_{18}\parallel$	March 24, 2014	R. Evid. 602;	knowledge of the	
19	and runs for ten	Local Rule 7-7	Registry	
20	years. Yet, over	(Declarations	Agreement	
$_{21}\parallel$	two years into the	shall contain only	between ZACR	
$_{22}\parallel$	Agreement, the	factual,	and ICANN, as	
23	.Africa gTLD has	evidentiary matter	well as the	
$_{24}\parallel$	still not been	and shall conform	business and	
25	delegated to	as far as possible	economic	
26	ZACR. In effect,	to the	consequences of	
27	20% of the period	requirements of	the delayed	
$28 \parallel$	of the Agreement	F.R. Civ.P.	implementation of	

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$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$\begin{bmatrix} 2 \end{bmatrix}$	has already lapsed	56(c)(4)]. Biased	that agreement.	
3	without any	and misleading in	"Personal	
4	benefit to ZACR.	that it was entered	knowledge can be	
5	This delay has	into after the	inferred from a	
6	resulted in	initiation of the	declarant's	
7	unforeseen and	IRP process by	position within a	
8	mounting costs, as	DCA, the day	company or	
9	well as lost	after DCA	business."	
10	opportunities, for	requested ICANN	Edwards v. Toys	
11	the .Africa	refrain from	"R" Us, 527 F.	
12	project."	delegating the	Supp. 2d 1197,	
13		.Africa domain	1201 (C.D. Cal.	
$_{14}\parallel$		based on the IRP	2007) (collecting	
15		proceeding	cases).	
16		pending, and on		
17		the grounds that	Plaintiff's	
18		the IRP ordered	objections that	
19		ICANN to refrain	Mr. Masilela's	
20		from further	testimony is	
$_{21}$		processing	"[b]iased" and	
22		ZACR's	"misleading" are	
23		application until	argumentative and	
24		the IRP resolution	not proper	
25		concluded. See	objections under	
26		Dkt. No. 64 - First	the Federal Rules	
27		Amended	of Evidence.	
28		Complaint, Ex. A,	Plaintiff's	

$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$_{2}\parallel$		pg. 31- 32, ¶¶13-	improper	
3		19.	arguments in the	
$_{4}\parallel$			guise of	
5			evidentiary	
6			objections should	
7			be disregarded.	
8	¶11: "ZACR has	Lacks personal	Mr. Masilela is	
9	incurred	knowledge, lacks	the Chief	
$_{10}\parallel$	considerable	foundation,	Executive Officer	
$_{11}\parallel$	expenses both	speculative and	of ZACR and has	
$_{12}\parallel$	prior to and after	conclusory [Fed.	personal	
13	entering into the	R. Evid. 602;	knowledge of	
$_{14}\parallel$	Registry	Local Rule 7-7	ZACR's expenses	
15	Agreement. The	(Declarations	in connection with	
16	current and	shall contain only	the Registry	
$_{17}\parallel$	continuing cost	factual,	Agreement.	
$_{18}\parallel$	due to the delay in	evidentiary matter	"Personal	
19	the delegation is	and shall conform	knowledge can be	
$_{20}\parallel$	running at	as far as possible	inferred from a	
$_{21} \parallel$	approximately	to the	declarant's	
$_{22}\parallel$	\$20,000 per	requirements of	position within a	
23	month. This is	F.R.Civ.P.	company or	
$_{24}\parallel$	based upon a	56(c)(4)].	business."	
$_{25}$	review of the	Irrelevant and	Edwards v. Toys	
$_{26}$	monthly costs	vague [Fed. R.	"R" Us, 527 F.	
$_{27}\parallel$	incurred during	Evid. 403].	Supp. 2d 1197,	
$_{28}\parallel$	the last 10 months		1201 (C.D. Cal.	

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Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
for the .Africa		2007) (collecting	
project, including		cases).	
the ongoing costs			
related to		Mr. Masilela	
consultants,		further testified	
marketing,		that his estimate	
sponsorships and		of monthly	
related expenses.		expenses was	
The importance of		based on a review	
maintaining		of actual costs	
visibility for the		incurred by	
.Africa project,		ZACR. Costs	
coupled with the		incurred by	
ongoing need to		ZACR as a result	
interface with		of the delay in the	
government		delegation of the	
officials		.Africa gLTD are	
throughout the		directly relevant	
African continent,		to hardship ZACR	
makes clear that		will suffer if the	
these ongoing		preliminary	
expenses will		injunction in this	
continue during		action is	
the course of this		sustained.	
litigation. In			
determining these		"Vague" is not a	
figures, we		proper evidentiary	

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$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	averaged the		objection under	
3	monthly expenses		the Federal Rules	
$\frac{1}{4}$	for the .Africa		of Evidence.	
5	project and where			
6	necessary			
7	converted			
8	expenditures from			
9	South African			
10	Rand to U.S.			
11	dollars.			
12	¶12: "The Loss of	Lacks foundation,	Mr. Masilela is	
13	Net Income after	lacks personal	the Chief	
$_{14}\parallel$	Tax (opportunity	knowledge,	Executive Officer	
15	costs) suffered by	speculative and	of ZACR and has	
16	ZACR from the	conclusory. [Fed.	personal	
17	date of the	R. Evid. 602;	knowledge of the	
18	planned	Local Rule 7-7	economic	
19	delegation	(Declarations	consequences of	
20	following the	shall contain only	the delayed	
21	Registry	factual,	delegation of the	
22	Agreement	evidentiary matter	.Afica gLTD.	
23	through May 1,	and shall conform	"Personal	
24	2016, are now	as far as possible	knowledge can be	
25	estimated to be	to the	inferred from a	
26	approximately	requirements of	declarant's	
27	\$15 million (U.S.	F.R.Civ.P.	position within a	
28	dollars). Of that	56(c)(4)]. Biased	company or	

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Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
amount,	and misleading in	business."	
approximately	that it was entered	Edwards v. Toys	
\$5.5 million	into after the	"R" Us, 527 F.	
would have been	initiation of the	Supp. 2d 1197,	
donated to the	IRP process by	1201 (C.D. Cal.	
dotAfrica	DCA, the day	2007) (collecting	
Foundation for	after DCA	cases).	
African online	requested ICANN		
development.	refrain from	Plaintiff's	
Until such time as	delegating the	objections that	
delegation takes	.Africa domain	Mr. Masilela's	
place, the .Africa	based on the IRP	testimony is	
gTLD in effect	proceeding	"[b]iased" and	
stagnates and	pending, and on	"misleading" are	
generates no	the grounds that	argumentative and	
income and no	the IRP ordered	not proper	
value in the	ICANN to refrain	objections under	
marketplace. The	from further	the Federal Rules	
ongoing delay is	processing	of Evidence.	
also prejudicial to	ZACR's	Plaintiff's	
the gTLD itself	application until	improper	
(no matter who	the IRP resolution	arguments in the	
the operator is) in	concluded. See	guise of	
that the initial	Dkt. No. 64 - First	evidentiary	
interest	Amended	objections should	
surrounding the	Complaint, Ex. A,	be disregarded.	
launch of this	pg. 31- 32, ¶¶13-		

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$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	domain name will	19.		
3	have faded, and			
4	persons who may			
5	have sought to			
6	register will have			
$\begin{bmatrix} 0 \\ 7 \end{bmatrix}$	lost interest."			
8	¶13: "Once a	Lacks personal	Mr. Masilela is	
9	gTLD is delegated	knowledge, lacks	Chief Executive	
10	it starts increasing	foundation,	Officer of ZACR,	
11	in value. The	speculative, and	the single largest	
12	gTLD is at its	conclusory [Fed.	domain name	
13	lowest value prior	R. Evid. 602;	registry of the	
14	to delegation and	Local Rule 7-7	African continent.	
15	increases as the	(Declarations	As such, he has	
16	number of second	shall contain only	personal	
17	level domain	factual,	knowledge of the	
18	delegations (for	evidentiary matter	economics of	
19	example:	and shall conform	domain	
20	xyz.africa)	as far as possible	delegations.	
21	increases. If	to the	"Personal	
22	Plaintiff is	requirements of	knowledge can be	
23	redelegated the	F.R.Civ.P.	inferred from a	
24	.Africa gTLD, it	56(c)(4)]. Biased	declarant's	
25	will suffer no	and misleading in	position within a	
26	irreparable harm	that it was entered	company or	
27	as it will inherit a	into after the	business."	
28	more valuable	initiation of the	Edwards v. Toys	

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Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
gTLD without	IRP process by	"R" Us, 527 F.	Court 5 Kumg
incurring the cost	DCA, the day	Supp. 2d 1197,	
to develop it."	after DCA	1201 (C.D. Cal.	
to develop it.	requested ICANN	2007) (collecting	
	refrain from	cases).	
		cases).	
	delegating the	D1. '' CC'.	
	.Africa domain	Plaintiff's	
	based on the IRP	objections that	
	proceeding	Mr. Masilela's	
	pending, and on	testimony is	
	the grounds that	"[b]iased" and	
	the IRP ordered	"misleading" are	
	ICANN to refrain	argumentative and	
	from further	not proper	
	processing	objections under	
	ZACR's	the Federal Rules	
	application until	of Evidence.	
	the IRP resolution	Plaintiff's	
	concluded. See	improper	
	Dkt. No. 64 - First	arguments in the	
	Amended	guise of	
	Complaint, Ex. A,	evidentiary	
	pg. 31- 32, ¶¶13-	objections should	
	19.	be disregarded.	
¶14: "In my role	Lacks personal	Mr. Masilela is	
as ZACR's CEO,	knowledge, lacks	Chief Executive	
and based upon	foundation,	Officer of ZACR,	

Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
my numerous and	speculative, and	the single largest	- Court s Rumg
ongoing	conclusory [Fed.	domain name	
discussions with	R. Evid. 602;	registry of the	
political, business	Local Rule 7-7	African continent.	
and civic leaders	(Declarations	He has personal	
throughout the	shall contain only	knowledge of the	
African Union, it	factual,	economics of	
is my firm	evidentiary matter	domain	
understanding and	and shall conform	delegations and	
belief that the	as far as possible	the value of the	
ongoing delay in	to the	.Africa domain.	
the delegation of	requirements of	"Personal	
.Africa is	F.R.Civ.P.	knowledge can be	
depriving the	56(c)(4); See also	inferred from a	
people of the	Bank Melli Iran v.	declarant's	
African continent	Pahlavi, 58 F.3d	position within a	
of an important	1406, 1412-1413	company or	
opportunity to	(9th Cir. 1995)	business."	
expand internet	(Holding "the	Edwards v. Toys	
domain name	Bank's response	"R" Us, 527 F.	
capabilities. The	to Pahlavi's	Supp. 2d 1197,	
.Africa domain	evidence was	1201 (C.D. Cal.	
name would add	information and	2007) (collecting	
brand value to the	belief declarations	cases).	
continent and	from their		
would provide a	counsel. Those	That Mr.	
platform that	were entitled to	Masilela's	

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connects products, businesses and the declarant did individuals that not have personal have interests in Africa. The [emphasis with political, business, and further harmed [Fed. R. Evid. civic leaders does because the agreement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica" was formed in part by conversations with political, business, and civic leaders does not make his testimony about his own conclusions hearsay.	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
businesses and individuals that not have personal have interests in Africa. The [emphasis with political, business, and further harmed [Fed. R. Evid. gareement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The		•	-	Court 5 Kuning
individuals that have interests in Africa. The African people are further harmed because the agreement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The Impacts Africa Impacts of the revenues received from second for the revenues received for the "dotAfrica Foundation." The Impacts of the revenues received from second for the revenues received formation." The Impacts of the revenues received formation. The Impacts of the revenues received from second for the revenues received formation. The Impacts of the revenues received formation. The Impacts of the revenues received formation in the revenues received formation. The Impacts of the revenues received formation in the revenues received for the revenues received formation. The Impacts of the revenues received formation in the revenues received formation. The Impacts of the revenues received formation in the re	_			
have interests in Africa. The African people are further harmed because the agreement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The				
Africa. The African people are further harmed because the agreement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The				
African people are further harmed because the agreement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The				
further harmed because the agreement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The		-	_	
because the agreement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The		•	·	
agreement between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The		_		
between ZACR and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The		801].		
and the AUC required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The			_	
required that a foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	between ZACR		his own	
foundation be created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	and the AUC		conclusions	
created upon delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	required that a		hearsay.	
delegation and that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	foundation be			
that a significant portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	created upon			
portion of the revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	delegation and			
revenues received from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	that a significant			
from second level domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	portion of the			
domain delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	revenues received			
delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation." The	from second level			
example: xyz.africa) be directed to the "dotAfrica Foundation." The	domain			
xyz.africa) be directed to the "dotAfrica Foundation." The	delegations (for			
directed to the "dotAfrica Foundation." The	example:			
"dotAfrica Foundation." The	xyz.africa) be			
Foundation." The	directed to the			
	"dotAfrica			
	Foundation." The			

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Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
use the revenues			
to fund various			
African domain			
name and Interne	t		
related			
developmental			
projects which are	e		
now delayed as a			
result of the			
preliminary			
injunction."			
¶ 15: "I am aware	The manual is the	The Court may	
that ICANN	best evidence of	refer to the	
Builds in time	the document	manual, which is	
limits in its gTLD	[Fed. R. Evid.	attached to the	
registry	1002]. Hearsay	Masilela	
agreements. I am	[Fed. R. Evid.	Declaration as	
further informed,	801].	Exhibit E.	
based upon my			
experience in the			
industry and			
discussions with			
technical			
personnel within			
ZACR, that a re-			
delegation of a			
gTLD is entirely			

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$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	feasible. In fact,			
3	ICANN has			
$_{4}\parallel$	prepared for this			
5	precise			
6	eventuality and			
7	issued a manual in			
$_{8}\parallel$	2013 providing			
9	step-by-step			
$_{10}\parallel$	instructions for			
$_{11}\parallel$	how to redelegate			
$_{12}\parallel$	a gTLD. The			
13	manual, titled			
$_{14}\parallel$	"User			
15	Documentation on			
16	Delegating and			
$_{17}\parallel$	Redelegating a			
\parallel 18	Generic Top			
19	Level Domain			
20	(gTLD)," makes			
$21 \parallel$	clear that the			
$_{22}\parallel$	process is			
23	available and			
$_{24}\parallel$	feasible if			
25	necessary. A true			
26	and correct copy			
27	of the manual is			
28	attached hereto as			

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$_{1}\parallel$	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
$\frac{1}{2}$	Exhibit E . It is			
3	also available on			
$\frac{1}{4}$	ICANN's			
5	website:			
6	http://www.icann.			
7	org/en/sy			
$_{8}\parallel$	stem/files/files/gtl			
9	d-drd-ui-10sep13-			
$_{10}\parallel$	en.pdf			
$_{11}\parallel$	¶16: "ZACR has	Irrelevant [Fed. R.	ZACR's lack of	
$_{12}\parallel$	never operated in	Evid. 403].	California	
13	California.		contacts is	
$_{14}\parallel$	ZACR has no		relevant to show	
15	personnel, no		that serious	
16	offices, no bank		questions exist as	
$_{17}\parallel$	accounts, and		to whether a	
18	maintains no		proper basis for	
19	operations in		personal	
$_{20}\parallel$	California.		jurisdiction exists	
$_{21}\parallel$	ZACR has no		absent ZACR's	
$_{22}\parallel$	telephone listings		consent.	
23	or mailing		Accordingly,	
$_{24}\parallel$	addresses in		ZACR was	
$_{25}$	California."		entitled to a	
$_{26}$			reasonable period	
$_{27}\parallel$			of time after	
$28 \parallel$			service of the	

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1	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
2			First Amended	
3			Complaint to	
4			evaluate whether	
5			and how to	
6			respond.	
7	¶17: "I have read	Lacks foundation	As the Chief	
8	Plaintiff's First	and conclusory	Executive Officer,	
9	Amended	[Fed. R. Evid.	Mr. Masilela has	
10	Complaint,	602].	personal	
11	including the		knowledge of	
12	allegation against		ZACR's	
13	ZACR. Contrary		application for the	
14	to what is asserted		.Africa gLTD and	
15	in the First		its actions in	
16	Amended		connection	
17	Complaint, there		thereto. "Personal	
18	was no fraud or		knowledge can be	
19	conspiracy		inferred from a	
20	between ZACR		declarant's	
21	and ICANN. Nor		position within a	
22	was there any		company or	
23	fraud or		business."	
24	conspiracy with		Edwards v. Toys	
25	the AUC.		"R" Us, 527 F.	
26	Similarly, there		Supp. 2d 1197,	
27	was no		1201 (C.D. Cal.	
28	interference with			

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1	Masilela Decl.	DCA's Objection	ZACR's Response	Court's Ruling
2	Plaintiff's		2007) (collecting	
3	application to		cases).	
4	ICANN. At all			
5	times, ZACR			
6	competed fairly			
7	and abided			
8	ICANN's			
9	procedures in			
10	seeking the award			
11	for the generic top			
12	level domain			
13	.Africa.			

DATED: May 23, 2016 KESSELMAN BRANTLY STOCKINGER LLP

By: /s/ David W. Kesselman David W. Kesselman

Amy T. Brantly

Attorneys for Defendant ZA Central Registry, NPC

ZACR RESPONSE TO DCA'S EVID. OBJS. TO MOKGABUDI LUCKY MASILELA DECL.