

1 Jeffrey A. LeVee (State Bar No. 125863)
 jlevee@Jonesday.com
 2 Eric Enson (State Bar No. 204447)
 eenson@jonesday.com
 3 Charlotte Wasserstein (State Bar No. 279442)
 cswasserstein@jonesday.com
 4 JONES DAY
 555 South Flower Street
 5 Fiftieth Floor
 Los Angeles, CA 90071.2300
 6 Telephone: +1.213.489.3939
 Facsimile: +1.213.243.2539
 7

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

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12

13 RUBY GLEN, LLC,
 14 Plaintiff,
 15 v.
 16 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND
 17 NUMBERS,
 18 Defendant.
 19
 20
 21

Case No. 2:16-cv-5505 PA (ASx)
 Assigned for all purposes to the
 Honorable Percy Anderson

**DECLARATION OF CHRISTINE
 WILLETT IN SUPPORT OF
 ICANN'S OPPOSITION TO
 PLAINTIFF'S *EX PARTE*
 APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER**

22
 23
 24
 25
 26
 27
 28

DECLARATION OF CHRISTINE WILLETT

I, Christine Willett, declare as follows:

1. I am the Vice President, gTLD Operations, Global Domains Division of the Internet Corporation for Assigned Names and Numbers (“ICANN”), the defendant in this action. I have personal knowledge of the matters set forth herein and am competent to testify as to those matters. I make this declaration in support of ICANN’s Opposition to Plaintiff Ruby Glen LLC’s (“Ruby Glen’s”) *Ex Parte* Application For A Temporary Restraining Order.

2. ICANN is a California non-profit public benefit corporation that oversees the technical coordination of the Internet’s domain name system (“DNS”) on behalf of the Internet community, ensuring the DNS’s continued security, stability and integrity. The DNS’s essential function is to convert easily-remembered domain names, such as “uscourts.gov” or “icann.org,” into numeric IP addresses understood by computers. The portion of a domain name to the right of the last dot (such as, “.gov” and “.org”) is known as a generic top-level domain (“gTLD”).

3. Throughout its history, ICANN has sought to expand the number of gTLDs to promote consumer choice and competition. In 2012, ICANN launched a “New gTLD Program” application round, in which it invited any interested party to apply for the creation of a new gTLD and for the opportunity to be designated as the operator of that gTLD. As the operator, the applicant would be responsible for managing the assignment of names within the gTLD and maintaining the gTLD’s database of names and IP addresses.

4. In connection with the New gTLD Program, ICANN published an Applicant Guidebook (“Guidebook”), which prescribes the requirements for new gTLD applications to be approved, and the criteria by which they are evaluated. The Guidebook was developed in a years-long public consultation process in which numerous versions were published for public comment and revised based on

1 comments received from the public. A true and correct copy of the Guidebook is
2 attached to the declaration of Paula Zecchini (“Zecchini Decl.”) as Exhibit C.

3 5. In my role as Vice President, gTLD Operations, I have been
4 responsible for overseeing the evaluation of the 1,930 new gTLD applications that
5 ICANN received in 2012 as part of ICANN’s New gTLD Program.

6 6. In June 2012, Ruby Glen, Nu Dotco, and five other applicants applied
7 for .WEB. Another applicant applied for .WEBS. The seven applications for
8 .WEB and the remaining application for .WEBS passed all applicable evaluations
9 and were placed in a contention set (“Contention Set”), pursuant to the procedures
10 set forth in the Guidebook.

11 7. Upon the resolution of several accountability mechanisms relating to
12 the composition of the Contention Set, ICANN notified all active members of the
13 Contention Set on April 27, 2016 that the auction of last resort was scheduled for a
14 July 27, 2016 auction date (“Auction”). ICANN also provided them with
15 instructions and deadlines to participate in the Auction.

16 8. The auction rules governing indirect contention sets (“Auction Rules”)
17 set forth a prescribed and limited period of time within which members of a
18 contention set may request a postponement of an auction: “an applicant may
19 request an advancement/postponement request via submission of the Auction Date
20 Advancement/Postponement Request Form. The form must be submitted at least 45
21 days prior to the scheduled Auction Date and ICANN must receive a request from
22 each member of the contention set.” (Zecchini Decl., Ex. J [Auction Rules] ¶ 10.)
23 The last day to file any such requests for this Contention Set was June 12, 2016,
24 namely 45 days before July 27, 2016. ICANN did not receive any such request by
25 that date. After the deadline had passed, ICANN received requests, via email and
26 correspondence, to postpone the Auction from three of the seven applicants for
27 .WEB in the Contention Set (Ruby Glen, Radiz FZC, and Schlund Technologies
28 GmbH) on July 11, 2016. This correspondence did not comply with the Auction

1 Rules' requirements regarding postponement requests because they were sent
2 nearly a month after the deadline to do so passed, and requests were not submitted
3 by all of the members of the Contention Set, which is required for ICANN to
4 consider whether to postpone the Auction pursuant to such requests.

5 9. The application for new gTLDs requires applicants to provide the
6 names and positions of "directors," "officers and partners" and "shareholders
7 holding at least 15% of shares." (*See* Zecchini Decl., Ex. E [Nu Dot's application].)
8 This information is required so that ICANN can conduct a thorough background
9 check into the persons or entities that, on a practical level, control or own the
10 applicant entity. The precise title or position of each listed person or entity is not of
11 the utmost importance, so long as the persons or entities who control or own the
12 applicant are listed. Indeed, the terminology of the application form is tailored
13 towards a corporation, as opposed to an LLC such as Nu Dotco. Understandably,
14 Nu Dotco (like many other LLC applicants) sought to provide information about its
15 management and ownership that was analogous to the corporate information
16 requested. Nu Dotco listed its CEO, COO, and CFO by title and also as its
17 Directors (referring to them as its "managers"). Like many other applications
18 submitted by LLCs, this showed that those were the persons in control of the
19 company for all practical purposes (as a director would be at a corporation).

20 10. As for the background check, ICANN contracts with
21 PricewaterhouseCoopers to conduct a background check of each applicant. ICANN
22 also ensures that no person or entity that owns or controls an applicant for a new
23 gTLD is on the list of persons and entities with which the U.S. Office of Foreign
24 Assets Control restricts the ability to do business absent a license. Both checks
25 were conducted with respect to the names listed in Nu Dotco's application, as was
26 done with the same information listed in all other new gTLD applications.

27 11. Even if Nu Dotco had submitted a change request indicating that it had
28 undergone a change of control and/or ownership, Nu Dotco would not have been

1 disqualified from the auction set to take place on July 27, 2016. In fact, ICANN
2 has received over 2,700 application change requests. Nearly 800 of those requests
3 made changes to the responses provided to questions pertaining to ownership or
4 control of the applicant. No application has been disqualified to date in connection
5 with a change to responses to those questions.

6 12. ICANN was first notified that Ruby Glen had concerns that Nu Dotco
7 had undergone a change of control or ownership on June 23, 2016 by way of an
8 email from Donuts Inc.'s CEO, Jon Nevett, sent to ICANN's customer portal.
9 Donuts is the ultimate parent company of Ruby Glen. (ECF 4.) ICANN responded
10 that it was "reviewing the information provided" and would follow up with Nu
11 Dotco as needed. ICANN also informed Mr. Nevett that Ruby Glen should
12 continue to follow the "standard auction process" and that ICANN would inform
13 Mr. Nevett if any postponement of the Auction was going to take place. A true and
14 correct copy of that email exchange is attached hereto as **Exhibit A**.

15 13. In view of Ruby Glen's concerns, ICANN immediately investigated.
16 Upon receipt of Mr. Nevett's June 23, 2016 email, I instructed my staff to
17 investigate the claims raised therein. On June 27, 2016, a member of my staff sent
18 an email to Nu Dotco, asking it to confirm that "there have not been changes to
19 your application or the NU DOT CO LLC organization that need to be reported to
20 ICANN." Mr. Jose Ignacio Rasco III, Nu Dotco's Chief Financial Officer,
21 responded: "I can confirm that there have been no changes to the NU DOT CO
22 LLC organization that would need to be reported to ICANN." A true and correct
23 copy of this email exchange is attached hereto as **Exhibit B**.

24 14. One purpose of this investigation was to determine whether Nu Dotco
25 had any previously undisclosed owners or managers that should be subject to
26 background checks. I also instructed my staff that, if appropriate in view of the
27 investigation, they should request that Nu Dotco update its application with respect
28 to any change in ownership and/or control.

1 15. On June 29, 2016, during the ICANN56 Public Meeting in Helsinki, I
2 met with Mr. Nevett to discuss a number of business matters, including his claims
3 regarding Nu Dotco's management. During that meeting, Mr. Nevett requested that
4 the Auction be postponed because of his concerns that Nu Dotco had undergone a
5 change in ownership or management. During this meeting, I informed Mr. Nevett
6 that my team had already investigated the alleged management changes with Nu
7 Dotco's representative, and that Nu Dotco asserted that no such changes had
8 occurred. I further informed Mr. Nevett that, based on the fact that ICANN had
9 found no evidence of such a management change, ICANN was continuing to
10 proceed with the Auction as scheduled.

11 16. During my meeting with Mr. Nevett at the ICANN56 Public Meeting
12 in Helsinki, I suggested to Mr. Nevett that if he was not satisfied with ICANN's
13 course of action he had the option to invoke one of ICANN's accountability
14 mechanisms. Mr. Nevett indicated that he intended to contact ICANN's
15 Ombudsman, Mr. Chris LaHatte ("Ombudsman") while in Helsinki. He did so, and
16 the Ombudsman then asked me for the contact information for Nu Dotco's
17 application contact, Mr. Jose Ignacio Rasco III, which I provided. On July 6, 2016,
18 the Ombudsman sent an email to Nu Dotco on which I was blind-copied, inquiring
19 as to whether any change in ownership/control had taken place and noting that he
20 had "opened an ombudsman complaint file about this matter." A true and correct
21 copy of that email is attached hereto as **Exhibit C**, and a true and correct copy of
22 the email exchange that followed between the Ombudsman and Mr. Nevett is
23 attached hereto as **Exhibit D**.

24 17. On July 7, 2016, the Ombudsman sent another email to Mr Rasco
25 about this issue, and Mr. Rasco's response stated: "There have been no changes to
26 the Nu Dotco, LLC application. Neither the governance, management nor the
27 ownership in Nu Dotco has changed." A true and correct copy of that email
28 exchange is attached hereto as **Exhibit E**. At the time, on July 7, 2016, I was not

1 aware that Mr. Rasco had responded to the Ombudsman's email.

2 18. On July 8, 2016, I emailed Mr. Rasco to again inquire as to whether
3 Nu Dotco had undergone any change in ownership or control. A true and correct
4 copy of that email is attached hereto as **Exhibit F**. Mr. Rasco called me within a
5 few hours, and stated that neither the managers nor the members of the Nu Dotco
6 organization had changed since the application's submission. He further explained
7 that his June 27, 2016 email through the applicant portal confirming the same had
8 been rather brief because he had been under the impression that ICANN was simply
9 conducting a routine and automatic check of all applicants within the Contention
10 Set prior to the Auction; it was not until the Ombudsman reached out to Mr. Rasco
11 that he realized there had been a complaint made to ICANN about a possible
12 change in Nu Dotco's control or ownership. He also explained that his email to "a
13 competing applicant," which ultimately gave rise to this controversy, was not
14 intended to suggest that any change in ownership or control had taken place,
15 because none had, as further discussed in Mr. Rasco's declaration, filed
16 concurrently herewith.

17 19. On July 8, 2016 (received by the Ombudsman on July 9, 2016), I
18 emailed the Ombudsman to again provide information as to ICANN's investigation
19 of the matter, including a summary of my July 8, 2016 phone call with Mr. Rasco.
20 That email stated, among other things, "As you know, my team had reached out to
21 NU DOT CO LLC previously, and we received confirmation that NU DOT's
22 application materials were still true and accurate. In an effort to be extremely
23 cautious, I reached out to Mr. Jose Ignacio Rasco (the application primary contact
24 for NU DOT's .WEB application) again today to ensure that our understanding of
25 his previous response was accurate." A true and correct copy of that email is
26 attached hereto as **Exhibit D**.

27 20. On July 11, 2016, Mr. Rasco emailed me and again confirmed that
28 "[n]either the ownership nor the control of [Nu Dotco] has changed since we filed

1 our application.” Mr. Rasco further explained that: “The Managers designated
2 pursuant to the company’s LLC operating agreement (the LLC equivalent of a
3 corporate Board) have not changed. And there have been no changes to the
4 membership of the LLC either.” A true and correct copy of that email is attached
5 hereto as **Exhibit F**.

6 21. It is not accurate to say that Ruby Glen’s inquiry to the Ombudsman
7 remains pending. In fact, the Ombudsman informed me on July 12, 2016 that he
8 had determined there was no reason to postpone the Auction because he found no
9 evidence of a change to the ownership or control of Nu Dotco. A true and correct
10 copy of the Ombudsman’s email in this regard is attached hereto as **Exhibit G**.

11 22. On July 13, 2016, ICANN informed Ruby Glen and all applicants in
12 the Contention Set that it had “investigated the matter” and “found no basis to
13 initiate the application change request process or postpone the auction.” A true and
14 correct copy of that letter is attached to the Declaration of Paula Zecchini as Exhibit
15 G.

16 23. The Ombudsman re-confirmed that he has concluded his investigation
17 on July 23, 2016. A true and correct copy of the Ombudsman’s email in this regard
18 is attached hereto as **Exhibit H**.

19 ///

20 ///

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I swear under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of July, 2016 at Los Angeles, California.

By: 
Christine Willett