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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

DOTCONNECTAFRICA TRUST, a
Mauritius Charitable Trust,

Plaintiff,

v.

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

Defendants.

CASE NO. 2:16-cv-00862 RGK (JCx)

*Assigned for all purposes to the
Honorable R. Gary Klausner*

**[PROPOSED] ORDER GRANTING
ZACR’S MOTION TO DISMISS
FOR FAILURE TO STATE A
CLAIM AND REQUEST FOR
JUDICIAL NOTICE**

Date: May 31, 2016
Time: 9:00 a.m.
Location: Courtroom 850

1 Having fully considered ZA Central Registry’s (“ZACR”) Motion to
2 Dismiss Plaintiff’s First Amended Complaint for failure to state a claim
3 (“Motion”) and concurrently filed Request for Judicial Notice, the Court hereby
4 ORDERS as follows:

5 (1) ZACR requests that the Court take judicial notice of Module 6 of the
6 New gTLD Applicant Guidebook (the “Guidebook”). The Guidebook serves as
7 the basis of Plaintiff’s Fourth and Seventh Causes of Action. Plaintiff refers to the
8 Guidebook without raising any question as to its authenticity. Pursuant to Rule
9 201 of the Federal Rules of Evidence and *Parrino v. FHP, Inc.*, 146 F.3d 699, 706
10 (9th Cir. 1998), the Request for Judicial Notice is hereby GRANTED.

11 (2) ZACR requests that the Plaintiff’s Fourth Cause of Action for Fraud
12 and Conspiracy to Commit Fraud be dismissed for failure to state a claim upon
13 which relief can be granted since plaintiff fails to identify any misrepresentations
14 made to it as part of the conspiracy, and further fails to allege any of the other
15 elements of fraud as set forth in *Lazar v. Superior Court*, 12 Cal. 4th 631, 638
16 (1996). Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the
17 Motion is hereby GRANTED and Plaintiff’s FOURTH CAUSE OF ACTION is
18 DISMISSED WITH PREJUDICE.

19 (3) ZACR requests that Plaintiff’s Fifth Cause of Action for Unfair
20 Competition (Cal. Bus. & Prof. Code §17200) be dismissed for failure to state a
21 claim upon which relief can be granted since the allegations of what could be
22 unfair, unlawful or fraudulent behavior by ZACR are conclusory and vague. *Bell*
23 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Moreover, Plaintiff fails to
24 sufficiently plead a viable underlying unlawful act to support an unlawful business
25 practice (*Rabago v. Deutsche Bank Nat’l Trust Co.*, No. 5:10-CV-01917-JST
26 (DTBx), 2011 U.S. Dist. LEXIS 60262 at *14-15 (C.D. Cal. June 1, 2011) and
27 fails to plead “conduct that threatens an incipient violation of an antitrust law” in
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1 order to plead an unfair business practice by a competitor (*Cel-TechComm., Inc. v.*
2 *Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 186-87 (1999)). Plaintiff also fails
3 to properly plead a fraudulent business practice since its allegations do not meet
4 the heightened pleading standards under Rule 9(b) (*Kearns v. Ford Motor Co.*,
5 567 F. 3d 1120, 1124-25 (9th Cir. 2009). Pursuant to Rule 12(b)(6) of the Federal
6 Rules of Civil Procedure, the Motion is hereby GRANTED and Plaintiff's FIFTH
7 CAUSE OF ACTION is DISMISSED WITH PREJUDICE.

8 (4) ZACR requests that Plaintiff's Seventh Cause of Action for
9 Intentional Interference with Contract be dismissed for failure to state a claim
10 upon which relief can be granted since Plaintiff fails to plead any intentional acts
11 by ZACR designed to induce ICANN to breach its obligations to Plaintiff under
12 the terms of the Guidebook. *Image Online Design Inc. v. Internet Corporation for*
13 *Assigned Names & Nos.*, No. CV 12-08968-DDP (JCx), 2013 U.S. Dist. LEXIS
14 16896 at *28 (C.D. Cal. Feb. 7, 2013); *Twombly*, 550 U.S. at 555. Further, DCA
15 has not alleged that ZACR's acts proximately caused DCA damages because
16 ICANN had full discretion to award a new gTLD. Pursuant to Rule 12(b)(6) of
17 the Federal Rules of Civil Procedure, the Motion is hereby GRANTED and
18 Plaintiff's SEVENTH CAUSE OF ACTION is DISMISSED WITH PREJUDICE.

19 (5) ZACR requests that Plaintiff's Tenth Cause of Action for Declaratory
20 Relief be dismissed for failure to state a claim upon which relief can be granted
21 since Plaintiff lacks standing to challenge the validity of agreements or procedures

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1 to which it is not a party. *Douglas v. Don King Productions, Inc.*, 736 F. Supp.
2 223, 224 (D. Nev. 1990). Pursuant to Rule 12(b)(6) of the Federal Rules of Civil
3 Procedure, the Motion is hereby GRANTED and Plaintiff's TENTH CAUSE OF
4 ACTION is DISMISSED WITH PREJUDICE.

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6 **IT IS SO ORDERED.**

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9 Dated: _____, 2016

By: _____

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Hon. R. Gary Klausner
United States District Judge

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