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 11 **ZA Central Registry, NPC**

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

14 DOTCONNECTAFRICA TRUST, a
 15 Mauritius Charitable Trust,
 16
 17 Plaintiff,
 18
 19 v.

20 INTERNET CORPORATIONS FOR
 21 ASSIGNED NAMES AND
 22 NUMBERS; a California corporation;
 23 ZA Central Registry, a South African
 24 non-profit company; DOES 1 through
 25 50, inclusive,
 26
 27 Defendants.

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

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

**REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF
 ZACR’S REPLY TO MOTION TO
 DISMISS FOR FAILURE TO
 STATE A CLAIM**

[Reply In Support of ZACR’S Motion
 to Dismiss for Failure to State a
 Claim; and [Proposed] Order Filed
 Concurrently Herewith]

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

1 PLEASE TAKE NOTICE that, pursuant to Rule 201 of the Federal Rules of
2 Evidence, Defendant ZA Central Registry, NPC (“ZACR”) hereby requests that
3 the Court take judicial notice of the draft and final versions of the New gTLD
4 Applicant Guidebook (the “Guidebook”) in considering ZACR’s concurrently-
5 filed Reply In Support of ZACR’s Motion to Dismiss For Failure to State a Claim.
6 A true and correct copy of the draft and final versions of the Guidebook can be
7 found on the Internet Corporation For Assigned Names and Numbers’ (“ICANN”)
8 website at <https://newgtlds.icann.org/en/about/historical-documentation>. A copy
9 of the website page is attached hereto as **Exhibit A**.¹

10 Plaintiff DOTCONNECTAFRICA TRUST (“DCA”) references the
11 Guidebook both directly and indirectly in its First Amended Complaint (“FAC”)
12 and in its opposition brief without raising any question as to its authenticity. DCA
13 has sought judicial notice of the current version of the Guidebook. Dkt. 88 Ex. 1.
14 As a matter of completeness and to give context to DCA’s allegations in the FAC,
15 the historical versions of this document may be properly considered in connection
16 with the Reply In Support of ZACR’s Motion to Dismiss For Failure to State A
17 Claim.

18 **LEGAL STANDARD**

19 “[A] district court ruling on a motion to dismiss may consider a document
20 the authenticity of which is not contested, and upon which the plaintiff’s
21 complaint necessarily relies.” *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir.
22 1998), superseded by statute on other grounds. This includes contracts that
23 plaintiff relies on in the complaint, even where plaintiff does not attach the
24 contract to the complaint. *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d
25

26
27 ¹ ZACR references the website so as to avoid inundating the Court with
28 thousands of pages of hard copy printouts from the website. If the Court prefers
the hard copy documents, ZACR will provide those materials.

1 1101, 1114 (C.D. Cal. 2003) (taking judicial notice of signed contracts relied on in
2 the complaint but not incorporated).

3 Under Federal Rule of Evidence 201, a fact is judicially noticeable when it
4 is not subject to reasonable dispute and is capable of accurate and ready
5 determination by resort to sources whose accuracy cannot reasonably be
6 questioned. The current and historical versions of the Guidebook is publically
7 available on the ICANN website (<https://newgtlds.icann.org/en/about/historical->
8 [documentation](https://newgtlds.icann.org/en/about/historical-)). Information obtained from a website is a proper subject of
9 judicial notice where neither party questions the authenticity of the site, or the
10 document meets the definition in Federal Rule of Evidence 201. *Pollstar v.*
11 *Gigmania Ltd.*, 170 F. Supp. 2d 974, 978 (E.D. Cal. 2000) (taking judicial notice
12 of website printout referenced in complaint when ruling on motion to dismiss);
13 *O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1224-25 (10th Cir. 2007)
14 (collecting cases regarding the propriety of taking judicial notice of website and
15 information contained therein).

16 **ARGUMENT**

17 Plaintiff alleges that ZACR intentionally interfered with the Guidebook and
18 seeks leave to plead a claim for aiding and abetting fraud against ZACR based on
19 the terms of the Guidebook. Opp. Brief at 11-18. Judicial notice of the historical
20 versions of the Guidebook is necessary to give the Court a more complete
21 understanding of the allegations upon which Plaintiff’s claims rest and may be
22 dispositive to ZACR’s Motion to Dismiss. There is no dispute as to the
23 authenticity of Exhibit A and its contents are readily verifiable via the website.
24 Thus, this Court may take judicial notice of its contents under Federal Rule of
25 Evidence 201.

26 It is also in the interest of justice for the Court to take judicial notice of the
27 historical versions of the Guidebook because the applicable version of the
28 Guidebook that was in use at the time that DCA applied for the .Africa gTLD has

1 been omitted from the record. *Parrino*, 146 F.3d at 706 (stating that a policy
2 justification for permitting judicial notice of a document is to “[p]revent[]
3 plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting
4 references to documents upon which their claims are based.”); *see also Cortec*
5 *Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 27 (2d Cir. 1991) (“ . . . we have
6 held that when a plaintiff chooses not to attach to the complaint or incorporate by
7 reference a prospectus upon which it solely relies and which is integral to the
8 complaint, the defendant may produce the prospectus when attacking the
9 complaint for its failure to state a claim, because plaintiff should not so easily be
10 allowed to escape the consequences of its own failure.”). The historical versions
11 of the Guidebook are highly pertinent to Plaintiff’s claims, not subject to
12 reasonable dispute, and are relevant to the disposition of ZACR’s Motion to
13 Dismiss. Thus, they may be considered in the determination of ZACR’s Motion
14 to Dismiss. *Parrino*, 146 F.3d at 706; Fed. R. Evid. 201.

15 **CONCLUSION**

16 For the foregoing reasons, ZACR respectfully requests that the Court take
17 judicial notice of and consider **Exhibit A** in its determination of ZACR’s Motion
18 to Dismiss.

19
20 DATED: May 17, 2016

Respectfully submitted,

21 KESSELMAN BRANTLY STOCKINGER LLP

22
23 By: /s/ David W. Kesselman

24 David W. Kesselman
25 Amy T. Brantly

26 Attorneys for Defendant ZA Central
27 Registry, NPC