

1 Ethan J. Brown (SBN 218814)
ethan@bnsklaw.com
2 Sara C. Colón (SBN 281514)
sara@bnsklaw.com
3 Rowennakete P. Barnes (SBN 302037)
kete@bnsklaw.com
4 **BROWN NERI SMITH & KHAN LLP**
5 11766 Wilshire Boulevard, Suite 1670
6 Los Angeles, California 90025
7 T: (310) 593-9890
8 F: (310) 593-9980

9 *Attorneys for Plaintiff*
10 DOTCONNECTAFRICA TRUST

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL**

13 DOTCONNECTAFRICA TRUST, a
14 Mauritius Charitable Trust,

15 Plaintiff,

16 v.

17 INTERNET CORPORATION FOR
18 ASSIGNED NAMES AND NUMBERS, a
19 California Corporation; ZA CENTRAL
20 REGISTRY, a South African non-profit
21 company; and DOES 1-50, inclusive;

22 Defendant.

Case No.: BC607494

[Assigned to Hon. Howard L. Halm, Dept.
53.]

**PLAINTIFF DOTCONNECTAFRICA
TRUST'S OBJECTIONS TO EVIDENCE**

Hearing: August 9, 2017
Time: 8:30 a.m.
Dept. 53

[Filed concurrently: Opposition to Motion
for Summary Judgment; Separate Statement
of Material Disputed Facts and Additional
Undisputed Material Facts; Declaration of
Sara C. Colón; and Declaration of Sophia
Bekele Eshete]]

Pursuant to California Rules of Courts 3.1352 and 3.1354, Plaintiff DOTCONNECTAFRICA TRUST (DCA) hereby objects to portions of the evidence filed in support of Defendant INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS' Motion for Summary Judgment. Plaintiff respectfully requests that the Court strikes the objectionable and speculative portions of the evidence as specifically set forth below.

OBJECTIONS TO DECLARATION OF JEFFREY A. LEVEE IN SUPPORT OF ICANN'S MOTION FOR SUMMARY JUDGMENT

Levee Declaration	DCA's Objections
<p>10. The IRP proceedings initiated by DCA in 2013 took two years. During this time, ICANN produced hundreds of documents, drafted response pleadings and supporting declarations, and participated at the IRP hearing, including putting forth witnesses to testify under oath. ICANN had opposed allowing witnesses to testify at the IRP hearing, but the IRP Panel ordered that the three persons who had submitted declarations must testify at the hearing, and each of those three did testify.</p>	<p>1. Irrelevant (Evid. Code § 403).</p>
<p>13. DCA filed this suit against ICANN on January 20, 2016, in Los Angeles County Superior Court. After the Superior Court denied DCA's request for a temporary restraining order, ICANN timely removed the case to federal court, invoking diversity jurisdiction. On March 1, 2016, DCA moved for a preliminary injunction, which the federal court granted on April 12, 2016 on the basis of an admitted factual error and before DCA admitted in deposition that the entire basis on which the district court had granted the injunction – that the IRP Panel had allowed DCA to skip the geographic review requirement – was false.</p>	<p>1. Lacks foundation (Evid. Code § 403.) 2. Prejudicial (Evid. Code § 352). This statement is materially misleading because the federal court never determined that the basis of its ruling was the factual error. In fact, the court denied ZACR and ICANN's motion to reconsider the ruling <i>despite</i> the factual error. 3. Best evidence rule (Evid. Code § 1520). Ms. Bekele's deposition transcript is the best evidence of her statements. The federal court's order on DCA's motion for preliminary injunction is the best evidence of the basis for the court's ruling on that motion.</p>

DECLARATION OF CHRISTINE WILLETT (Exhibit to Levee Declaration)

Willet Declaration	DCA's Objections
<p>2. In my role as Vice President for Operations, I have been responsible for overseeing the evaluation of the 1,930 gTLD applications ICANN received in 2012 as part of ICANN's New gTLD Program. Those applications are evaluated in accordance with the procedures set forth in the New gTLD Applicant Guidebook ("Guidebook"). A copy of the Guidebook is attached as Exhibit 3 to the declaration of Sophia Bekele Eshete ("Bekele Declaration").</p>	<ol style="list-style-type: none"> 1. Lacks personal knowledge (Evid. Code § 702). 2. Lacks foundation (Evid. Code § 403).
<p>3. In the spring of 2012, Plaintiff DCA and defendant ZA Central Registry ("ZACR") each submitted application to operate the .AFRICA gTLD. In doing so, they, like all new gTLD applicants, expressly accepted and acknowledged the Guidebook, including the release and covenant not to sue ("Covenant") in paragraph 6 of Module 6.</p>	<ol style="list-style-type: none"> 1. Lacks personal knowledge (Evid. Code § 702). 2. Lacks foundation (Evid. Code § 403).
<p>6. In addition, because DCA and ZACR had each applied for a gTLD that represents the name of a geographic region, the Guidebook requires that DCA and ZACR each provide documentation of support or non-objection from at least 60% of the governments in the region. Bekele Decl. Ex. 3 § 2.2.1.4.2. The Guidebook also provides that a Geographic Names Panel operated by a third-party vendor retained by ICANN must verify the relevance and authenticity of an applicant's documentation of support. <i>Id.</i> §§ 2.4.2, 2.2.1.4.4. The Geographic Names Panel evaluated the support letters submitted by the applicants pursuant to the criteria set forth in the Guidebook. In particular, section 2.2.1.4.3 of the Guidebook required that letters of support for a geographic name "clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government or public authority's understanding of the string being requested</p>	<ol style="list-style-type: none"> 1. Lacks personal knowledge (Evid. Code § 702). 2. Lacks foundation (Evid. Code § 403). 3. Best evidence rule (Evid. Code § 1520).

PLAINTIFF'S EVIDENTIARY OBJECTIONS

<p>1 and its intended use.” It further requires that 2 a letter of support “should demonstrate the 3 government’s or public authority’s 4 understanding that the string is being sought 5 through the gTLD application process and 6 that the applicant is willing to accept the 7 conditions under which the string will be 8 available, i.e., entry to a registry agreement with ICANN requiring compliance with consensus policies and payment of fees.” The Geographic Names Panel treated both of these requirements as mandatory for all applicants (including DCA and ZACR).</p>	
<p>9 7. DCA submitted with its application for 10 .AFRICA (“Application”) what it called a 11 letter of support dated in 2009 (three years 12 earlier) from the African Union Commission 13 (“AUC”). A copy of that letter is attached as 14 Exhibit 6 to the Bekele Declaration. I now 15 understand that, in 2010, DCA had received a 16 letter from the AUC that formally withdrew 17 the AUC’s support for DCA’s Application for 18 the .AFRICA gTLD. A copy of that letter is 19 attached as Exhibit 7 to the Bekele 20 Declaration. DCA did not submit to ICANN 21 with its Application a copy of the AUC’s 22 2010 letter withdrawing its support for DCA.</p>	<ol style="list-style-type: none"> 1. Lacks foundation (Evid. Code § 403.) 2. Best evidence rule (Evid. Code § 1520).
<p>23 8. DCA also submitted with its Application an 24 August 2008 letter from the United Nations 25 Economic Commission for Africa 26 (“UNECA”). A copy of that letter is attached 27 as Exhibit 8 to the Bekele Declaration. In 28 September 2015, UNECA wrote in a letter that it was a “United Nation entity [that] is neither a government nor public authority and therefore is not qualified to issue a letter of support for a prospective applicant,” and that its August 2008 letter was “merely an expression of a view in relation to [DCA’s] initiative and efforts regarding internet governance [and] cannot be properly considered as a ‘letter of support’ within the context of ICANN’s requirements and cannot be used as such.” A true and correct copy of UNECA’s September 2015 letter is attached as Exhibit 10 to the Bekele Declaration.</p>	<ol style="list-style-type: none"> 1. Lacks personal knowledge (Evid. Code § 702). 2. Lacks foundation and irrelevant (Evid. Code § 403). 3. Best evidence rule (Evid. Code § 1520). 4. Prejudicial because the statement is materially misleading because it fails to state that DCA specifically identified the purported withdrawal in its application ICANN and has done so on numerous occasions (Evid. Code § 352). 5. Bekele Decl. ¶ __, Ex. __ (“Unlike the initial letter of support from the AUC the subsequent letter omitted any official stamp, was not signed by the AUC Chairman, and instead was signed by the Deputy Chairperson).

PLAINTIFF’S EVIDENTIARY OBJECTIONS

<p>1 9. On June 5, 2013, at the time when 2 ICANN’s Board accepted the Government 3 Advisory Committee’s (“GAC’s”) advice 4 objecting to DCA’s Application, DCA had 5 not yet passed the Geographic Names Panel 6 review. At that time, the Geographic Names 7 Panel had been in the midst of its review of 8 DCA’s Application; it had determined that the 9 support documentation submitted by DCA’s, 10 including the letters from the AUC and 11 UNECA, did not meet the criteria set forth in 12 the Guidebook, and was therefore planning to 13 send “clarifying questions” to DCA. 14 Clarifying questions are sent where support documentation does not meet the criteria set forth in the Guidebook, and they are an accommodation to provide applicants an opportunity to explain/supplement their documentation. However, as a result of the ICANN Board’s acceptance of the GAC’s advice, DCA’s Application was removed from processing, and the clarifying questions were not sent at that time.</p>	<p>2. Best evidence rule (Evid. Code § 1520). 3. Lacks foundation (Evid. Code § 403.) 4. Irrelevant (Evid. Code § 403). 5. The GNP had already determined that UNECA was a valid endorser. McFadden Decl. ¶ 6.</p>
<p>15 10. By July 31, 2015, following the 16 ICANN’s Board adoption of the 17 recommendations of the Independent Review 18 Panel in <i>DCA v. ICANN</i> (“IRP Panel”), 19 DCA’s Application was returned to 20 processing as the Board directed. DCA’s 21 Application was returned to precisely the 22 portion of the review that was pending on the 23 date the Application was removed from 24 processing—the Geographic Names Panel 25 review. As the Geographic Names Panel had 26 been preparing to do when DCA’s 27 Application was removed from processing, 28 the Geographic Names Panel issued clarifying questions to DCA on September 2, 2015, regarding the documentation DCA had submitted with its Application. Those clarifying questions are attached as Exhibit 13 to the Bekele Declaration. DCA was given an opportunity to respond to those clarifying questions. Instead of supplementing its documentation, DCA wrote to ICANN on September 28, 2015, taking the position that</p>	<p>1. Lacks foundation (Evid. Code § 403).</p>

<p>1 the documentation that it had submitted with its Application in 2012 was sufficient.</p>	
<p>2 11. On October 13, 2015, ICANN issued the 3 Initial Evaluation Report regarding DCA’s 4 Application. The Initial Evaluation Report 5 noted that the Application had passed all 6 reviews except for the Geographic Names 7 Panel review. As provided by the Guidebook, 8 the report stated that DCA would have the 9 opportunity to participate in “Extended 10 Evaluation,” which offered DCA additional 11 time to provide the requisite documentation of 12 support or non-objection from African 13 governments. A true and correct copy of the 14 Initial Evaluation Report is attached hereto as 15 Exhibit A.</p>	<p>1. Lacks foundation (Evid. Code § 403). 2. Lacks personal knowledge (Evid. Code § 702).</p>
<p>12 12. As part of Extended Evaluation, the 13 Geographic Names Panel again issued 14 clarifying questions to DCA on October 30, 15 2015, identifying the issues with the 16 documented support submitted by DCA. 17 Those clarifying questions are attached as 18 Exhibit 15 to the Bekele Declaration. DCA 19 was given until January 28, 2016, to 20 supplement its documentation. However, 21 rather than supplementing its documentation, 22 DCA submitted a letter from its counsel and 23 again took the position that the documentation 24 that it had submitted with its Application in 25 2012 was sufficient.</p>	<p>1. Best evidence rule (Evid. Code § 1520).</p>
<p>26 13. Notably, nearly identical clarifying 27 questions were sent to ZACR in 2013 when 28 ZACR’s application for .AFRICA was undergoing Geographic Name Review. True and correct copies of the clarifying questions issued to ZACR related to the AUC and UNECA letters are attached hereto as Exhibits B and C. Unlike DCA, ZACR submitted an updated letter from the AUC endorsing ZACR on July 3, 2013. That letter is attached as Exhibit A to Exhibit 2 of the Declaration of Sara Colón (“Colón Decl.”).</p>	<p>1. Lacks foundation (Evid. Code § 403). 2. Lacks personal knowledge (Evid. Code § 702).</p>
<p>14. On February 17, 2016, ICANN issued an Extended Evaluation Report stating that the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection</p>	<p>1. Lacks foundation (Evid. Code § 403). 2. Lacks personal knowledge and speculative (Evid. Code § 702). 3. Best evidence rule (Evid. Code § 1520).</p>

PLAINTIFF’S EVIDENTIARY OBJECTIONS

<p>1 from relevant governments, despite the 2 extended opportunity to do so. A copy of the 3 Extended Evaluation Report is attached as 4 Exhibit 18 to the Bekele Declaration. As a 5 result, and as provided by the Guidebook, 6 ICANN stopped processing DCA’s 7 Application. (Guidebook at 174 (§ 8 2.2.1.4.4).)</p>	
<p>9 15. On March 3, 2016, ICANN’s Board 10 adopted a resolution lifting the stay on the 11 delegation of .AFRICA. A true and correct 12 copy of the Board’s March 3, 2016 resolution 13 is attached to this declaration as Exhibit D. 14 ICANN is now prepared to delegate the rights 15 to operate .AFRICA to ZACR. However, 16 ICANN has voluntarily stayed the delegation 17 pending the Court’s ruling on DCA’s Motion 18 for Preliminary Injunction. See Colón Decl. ¶ 19 2.</p>	<p>1. Best evidence rule (Evid. Code § 1520).</p>
<p>20 16. As described in the concurrently-filed 21 declaration of Akram Atallah, ICANN’s 22 Bylaws provide for several accountability 23 mechanisms to ensure that ICANN operates 24 in accordance with its Articles of 25 Incorporation, Bylaws, policies and 26 procedures. For example, an aggrieved 27 applicant can file a “request for 28 reconsideration,” which is a mechanism that asks the ICANN Board to re-evaluate certain Board or staff actions or inactions that the applicant believes have harmed it. In addition, an aggrieved applicant can file a “request for independent review,” a unique process set forth in ICANN’s Bylaws that asks independent panelists to evaluate whether an action of ICANN’s Board was consistent with ICANN’s Articles of Incorporation and Bylaws. Bekele Decl., Ex. 4 (Bylaws, Art. IV, §§ 2-3). DCA could have filed, but did not file, a reconsideration request or a request for an independent review process (“IRP”) related to the clarifying questions issued to it, or to the determination that DCA had failed the Geographic Names Review.</p>	<p>1. Lacks foundation (Evid. Code § 403). 2. Lacks personal knowledge (Evid. Code § 702). 3. Best evidence rule (Evid. Code § 1520).</p>

PLAINTIFF’S EVIDENTIARY OBJECTIONS

DECLARATION OF AKRAM ATALLAH (Exhibit to Levee Declaration)

Atallah Declaration	DCA's Objections
<p>2. ICANN is a California not-for-profit public benefit corporation. ICANN 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. As set forth in the version of ICANN's Bylaws relevant to this dispute ("Bylaws"), ICANN's mission "is to coordinate, at the overall level, the global Internet's system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems," including the DNS. Declaration of Sophia Bekele Eshete ("Bekele Decl."), Ex. 4 (Bylaws, Art. I, § 1). ICANN's amended Bylaws became effective October 1, 2016 and DCA does not contend that the amended Bylaws are relevant to this dispute.</p>	<p>1. Lacks Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 702) 3. Best Evidence Rule (Evid. Code § 1520)</p>
<p>3. The essential function of the DNS is to convert the numeric IP addresses into easily-remembered domain names that permit users to find specific websites, such as "USCOURTS.GOV" and "ICANN.ORG." The ".GOV" and ".ORG" in these addresses, just like the more well-known ".COM," are referred to as top-level domains ("TLDs"). ICANN is solely responsible for evaluating potential TLD operators and recommending that TLDs be added to the DNS. No government entity or regulatory scheme governs ICANN's decisions in that respect.</p>	<p>1. Lacks Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 702) 3. Improper Opinion Testimony (Evid. Code § 720)</p>
<p>4. Throughout its history, ICANN has sought to expand the number of accessible TLDs in the DNS in order to promote consumer choice and competition. The New gTLD Program ("Program"), launched in 2012, constitutes ICANN's most ambitious expansion of the Internet's naming system. The Program's goals include enhancing competing and consumer choice, and enabling the benefits of innovation via introduction of new generic TLDs ("gTLDs"), including both new ASCII gTLDs and new non-ASCII,</p>	<p>1. Lacks Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 702) 3. Improper Opinion Testimony (Evid. Code § 702) 4. Speculation (Evid. Code § 702)</p>

PLAINTIFF'S EVIDENTIARY OBJECTIONS

<p>1 internationalized domain name gTLDs. It 2 resulted in the submission of 1,930 3 applications for new gTLDs, including 4 DCA's and ZA Central Registry's 5 ("ZACR;s") applications for the .AFRICA 6 gTLD.</p>	
<p>5 5. A number of "Advisory Committees" 6 advise ICANN's Board on various topics 7 described in the ICANN Bylaws. The 8 Governmental Advisory Committee ("GAC") 9 has members composed of national 10 governments and distinct economies as 11 recognized in the international fora, including 12 the Unites States, and its purpose is to 13 "consider and provide advice on the activities 14 of ICANN as they relate to concerns of 15 governments, particularly matters where there 16 may be an interaction between ICANN's 17 policies and various laws and international 18 agreement or where they may affect public 19 policy issues." Bekele Decl., Ex. 4 (Bylaws, 20 Art. XI § 2.1).</p>	<p>1. Lacks Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 3 702) 4. Speculation (Evid. Code § 702) 5. Best Evidence Rule (Evid. Code § 1520)</p>
<p>14 6. ICANN's Bylaws provide for several 15 accountability mechanisms to ensure that 16 ICANN operates in accordance with its 17 Articles of Incorporation, Bylaws, policies 18 and procedures. <i>See</i> Bekele Decl., Ex. 4 19 (Bylaws, Arts IV-V). For example, an 20 aggrieved applicant can file a "request for 21 reconsideration," which is a mechanism that 22 asks the ICANN Board to re-evaluate certain 23 Board or staff actions or inactions that the 24 applicant believes have harmed it. <i>Id.</i> 25 (Bylaws, Art. IV, §2). In addition, an 26 aggrieved applicant can file a "request for 27 independent review," a unique process set 28 forth in ICANN's Bylaws that asks independent panelists to evaluate whether an action of ICANN's Board was consistent with ICANN's Articles of Incorporation and Bylaws. <i>Id.</i> (Bylaws, Art. IV, §3).</p>	<p>1. Best Evidence Rule (Evid. Code § 1520) 2. Lacks Foundation (Evid. Code § 403) 3. Lacks Personal Knowledge (Evid. Code § 4 702) 5. Speculation (Evid. Code § 702) 6. Improper Opinion Testimony (Evid. Code §702)</p>
<p>26 7. The Bylaws provide for the IRP panel to 27 issue a written determination "declar[ing] 28 whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" and " recommend[ing] that the Board stay any</p>	<p>1. Best Evidence Rule (Evid. Code § 1520) 2. Lacks Foundation (Evid. Code § 403) 3. Lacks Personal Knowledge (Evid. Code § 4 702) 5. Speculation (Evid. Code § 702)</p>

PLAINTIFF'S EVIDENTIARY OBJECTIONS

<p>1 action or decision, or that the Board take any 2 interim action, until such time as the Board 3 reviews and acts upon the opinion of the 4 IRP.” Bekele Decl., Ex. 4 (Bylaws, Art. IV, 5 §3.11). The ICANN Board then considers 6 and acts on the determination. <i>Id.</i> (Bylaws, 7 Art. IV, §2).</p>	<p>5. Improper Opinion Testimony (Evid. Code §702)</p>
<p>8 8. I am informed and believe that proper to 9 the opening of the New gTLD Program 10 application period, only one IRP had resulted 11 in a written determination, <i>ICM Registry, LLC</i> 12 <i>v. ICANN</i>. The <i>ICM</i> Panel declared that the 13 determinations of the IRP panels were not 14 binding on ICANN’s Board. Attached hereto 15 as Exhibit E is a true and correct copy of an 16 excerpt of the Final Declaration of 17 the <i>ICM</i> Panel.</p>	<p>1. Improper Opinion Testimony (Evid. Code §702) 2. Lacks Foundation (Evid. Code § 403) 3. Lacks Personal Knowledge (Evid. Code § 702) 4. Lack of Completeness (Evid. Code § 356) 5. Best Evidence Rule (Evid. Code § 1520)</p>
<p>18 9. To my knowledge, ICANN has never 19 represented that IRPs are binding. Instead, 20 ICANN has consistently argued that IRP 21 declarations are not binding.</p>	<p>1. Improper Opinion Testimony (Evid. Code §702) 2. Lacks Foundation (Evid. Code § 403) 3. Hearsay (Evid. Code § 1200, et seq.)</p>
<p>22 10. In the case of the <i>DCA</i> IRP, the <i>DCA</i> 23 Panel declared that its decision would be 24 binding on ICANN’s Board. But the question 25 of whether the Panels declaration was or was 26 not legally binding became a moot issue once 27 ICANN’s Board elected to adopt all of the 28 <i>DCA</i> Panel’s recommendations, contrary to the representation in Plaintiff’s Motion for Preliminary Injunction.</p>	<p>1. Lacks Foundation (Evid. Code § 403) 2. Best Evidence Rule (Evid. Code § 1520) 3. Improper Opinion Testimony (Evid. Code §702) 4. Hearsay (Evid. Code § 1200, et seq.)</p>
<p>11. Specifically, on July 9, 2015, the <i>DCA</i> Panel issued its Final Declaration. Bekele Decl. Ex. 1. The <i>DCA</i> Panel determined that ICANN’s Board had violated ICANN’s Articles of Incorporation and Bylaws by accepting the GAC’s consensus advice that Plaintiff’s application for .AFRICA (“Application”) should not proceed. The <i>DCA</i> 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.” Bekele Decl., Ex. 1 ¶ 149.</p>	<p>1. Best Evidence Rule (Evid. Code § 1520) 2. Lacks Personal Knowledge (Evid. Code § 720)</p>
<p>12. ICANN’s Board promptly considered and adopted each of the <i>DCA</i> Panel’s recommendations. On July 16, 2015, the</p>	<p>1. Improper Opinion Testimony (Evid. Code §702) 2. Lacks Foundation (Evid. Code § 403)</p>

PLAINTIFF’S EVIDENTIARY OBJECTIONS

<p>1 Board resolved to “continue to refrain from 2 delegating the .AFRICA gTLD,” “permit 3 [Plaintiff’s] application to proceed through 4 the remainder of the new gTLD application 5 process,” and “reimburse DCA for the costs 6 of the IRP.” Attached hereto as Exhibit F is 7 a true and correct copy of ICANN Board 8 Resolutions 2015.07.16.01-05, adopting the 9 <i>DCA</i> Panel’s recommendations.</p>	<p>3. Best Evidence Rule (Evid. Code § 1520)</p>
<p>10 13. In the event ICANN is permitted to 11 delegate the .AFRICA gTLD to ZACR, a 12 transfer or assignment of the gTLD in the 13 future would still be possible, feasible and 14 consistent with ICANN’s previous conduct. 15 In fact, over forty gTLDs have had their 16 registry contracts transferred from one 17 registry operator to a different registry 18 operator, <i>i.e.</i>, transferred for operation by a 19 different registry operator than the operator 20 when the registry contract was initially 21 executed. These transfers have occurred for a 22 number of reasons, and transfers are not 23 limited to situations where a registry’s 24 contract with ICANN was expiring.</p>	<p>1. Improper Opinion Testimony (Evid. Code §702) 2. Lacks Foundation (Evid. Code § 403) 3. Speculation (Evid. Code § 702) 4. Lacks Personal Knowledge (Evid. Code § 702)</p>
<p>14. Nor is there any truth to DCA’s argument 15 in its Motion (at p. 12) that “the U.S. 16 government’s ties with ICANN ceased” and 17 therefore “the current procedure for gTLD re- 18 delegation is uncertain.” In fact, nothing 19 about the recent transition of the Internet 20 Assigned Numbers Authority (“IANA”) functions 21 from the United States government 22 to ICANN has any effect whatsoever upon the 23 fact that it is possible to transfer the rights to 24 operate a new gTLD from one registry 25 operator to another, post-delegation.</p>	<p>1. Improper Opinion Testimony (Evid. Code §702) 2. Lacks Foundation (Evid. Code § 403) 3. Speculation (Evid. Code § 702) 4. Lacks Personal Knowledge (Evid. Code § 702) 5. Best Evidence Rule (Evid. Code §1520)</p>

DECLARATION OF KEVIN ESPINOLA (Exhibit to Levee Declaration)

<p>25 Espinola Declaration</p>	<p>DCA’s Objections</p>
<p>26 2. ICANN and its community developed the 27 New gTLD Applicant Guidebook 28 (“Guidebook”) as part of a years-long, bottom-up multistakeholder process during which numerous versions were published by ICANN for public comment and revised, in</p>	<p>Irrelevant (Evid. Code § 350)</p>

PLAINTIFF’S EVIDENTIARY OBJECTIONS

1 part based on comments received. In total,
2 six versions of the Guidebook were published
for public comment.

3 3. In the April 15, 2011 version of the
4 Guidebook (“April 2011 Guidebook”),
5 language was added to Section 6 of Module 6
6 of the Guidebook (“Covenant Not to Sue”)
7 making explicit that: “[an] applicant may
8 utilize any accountability mechanism set forth
9 in ICANN’s Bylaws for [the] purposes of
10 challenging any final decision made by
11 ICANN with respect to the application.”
Attached hereto as **Exhibit K** is a true and
correct copy of Module 6 of the April 2011
version of the Guidebook, which was
published with a redline, showing changes
made from the prior version of the
Guidebook.

Irrelevant (Evid. Code § 350)

12 4. As ICANN has stated publicly, ICANN is a
13 not-for-profit public benefit corporation and
14 anticipated that, absent a broad waiver and
15 limitation of liability in the Guidebook’s
16 terms and conditions, the over 1,900
17 applicants could initiate frivolous and costly
18 legal actions in an attempt to challenge
19 legitimate ICANN decisions, which would
20 imperil the successful implementation of the
21 New gTLD Program. Accordingly, ICANN
22 carefully considered how to protect the New
23 gTLD Program. Accordingly, ICANN
24 carefully considered how to protect the New
25 gTLD Program from such challenges, and the
26 Covenant Not to Sue in the Guidebook was
27 deemed appropriate in light of these
28 considerations.

Irrelevant (Evid. Code § 350)

Dated: July 26, 2017

BROWN NERI SMITH & KHAN LLP

By: _____


Sara C. Colón

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST

PLAINTIFF’S EVIDENTIARY OBJECTIONS