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11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DOTCONNECTAFRICA TRUST, a
15 Mauritius Trust,

16 Plaintiff,

17 v.

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

23 Defendants.

Case No. 2:16-cv-00862-RGK (JCx)

24 **PLAINTIFF’S RESPONSE TO ZA
25 CENTRAL REGISTRY, NPC’S
26 CONSOLIDATED EVIDENTIARY
27 OBJECTIONS TO
28 DECLARATIONS OF SOPHIA
BEKELE ESHETE**

Date: June 6, 2016

Hearing: 9:00 a.m.

Courtroom: 850

[Filed concurrently: Plaintiff’s
Response to ZA Central Registry,
NPC’s Consolidated Evidentiary
Objections to Declarations of Sara C.
Colón and Evidentiary Objections to
Supplemental Declaration of
Mokgabudi Lucky Masilela]

1 Plaintiff DOTCONNECTAFRICA TRUST (“DCA”) hereby responds to ZA
2 Central Registry, NPC’s (“ZACR”) evidentiary objections to the declarations of
3 Sophia Bekele Eshete (Dkt. No. 17 – “Bekele Decl.”; Dkt. No. 45 – “Bekele Supp.
4 Decl.”; Dkt. No. 91 – “Bekele II Decl.”).

5 As an initial matter the Court should not consider ZACR’s objections to the
6 Bekele Decl. and the Bekele Supp. Decl., which DCA filed with its motion for
7 preliminary injunction papers. Evidentiary objections must be filed before a
8 hearing on the motion to which they relate. *See Traylor v. Pyramid Servs.*, 2008
9 U.S. Dist. LEXIS 73494 at *4 (C.D. Cal. September 23, 2008). ZACR was served
10 with the initial preliminary injunction motion and supporting declarations on
11 March 22, 2016, had counsel as of April 1, 2016, and could have made evidentiary
12 objections to the declarations filed in support of the preliminary injunction papers
13 before the Court ruled on April 12, 2016. *See* Docket No. 55; Declaration of Sara
14 C. Colón (Docket No. 92) Ex. 5. At the very least, ZACR could have filed these
15 evidentiary objections with its initial motion for reconsideration. Its failure to do
16 so was apparently calculated to prevent DCA from addressing those objections in
17 its opposition.

18 Furthermore, ZACR’s objections are made after the Court considered the
19 evidence and made its ruling. Thus, the Court accepted the evidence and ZACR
20 waived any objections. Accordingly, these objections are not timely and the Court
21 should not consider them. For the same reasons, DCA declines to respond to
22 ZACR’s specific objections to the Bekele Decl. (Docket No. 17) and the Bekele
23 Supp. Decl. (Docket No. 45)

24 DCA responds to ZACR’s objections to the Bekele II Decl. (Docket No. 91)
25 as follows:
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PLAINTIFF’S RESPONSE

Bekele II Declaration	ZACR’s Objection	DCA’s Response	Ruling
<p>¶ 4 “If .Africa is delegated to ZACR before this case is resolved, DCA’s mission will be seriously frustrated and funders will likely pull their support due to the uncertainty involved in the re-delegation process.”</p>	<p>Lacks foundation, speculative, conclusory and assumes facts not in evidence. [Fed. R. Evid. 602].</p>	<p>Sophia Bekele Eshete is the Chief Executive Officer of DCA and has personal knowledge regarding DCA’s mission and relationship with its funders. <i>Edwards v. Toys “R” Us</i>, 527 F. Supp. 2d 1197, 1201 (C.D. Cal. 2007) (collecting cases) (“Personal knowledge can be inferred from a declarant’s position within a company.”).</p>	
<p>¶ 5 “If .Africa is delegated to ZACR before this case is resolved DCA will likely be forced to stop operating due to lack of funding.”</p>	<p>Lacks foundation, conclusory, speculative, and assumes facts not in evidence. [Fed. R. Evid. 602].</p>	<p>Sophia Bekele Eshete is the Chief Executive Officer of DCA and has personal knowledge regarding DCA’s funding. <i>Edwards v. Toys “R” Us</i>, 527 F. Supp. 2d 1197, 1201 (C.D. Cal. 2007) (collecting cases) <i>Edwards v. Toys “R” Us</i>, 527 F. Supp. 2d</p>	

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		<p>1197, 1201 (C.D. Cal. 2007) (collecting cases) (“Personal knowledge can be inferred from a declarant’s position within a company.”).</p>	
<p>¶ 6 “I have searched for examples of gTLDs being re-delegated but have been unable to find any.”</p>	<p>Relevance. [Fed. R. Evid. 403]. Ms. Bekele’s inability to locate instances of re-delegation does not mean such instances to not exist.</p> <p>In fact, “[o]ver forth (sic) gTLDs have had their registry contracts transferred from one registry operator to a different registry operator...” [Declaration of Akram Atallah at ¶ 4. <i>See also</i> Exs. B & C to the Supplemental Declaration of Mokgabudi Lucky</p>	<p>The evidence submitted in the Supplemental Declaration of Mokgabudi Lucky Masilela is unsupported by personal knowledge nor is it authenticated. [Fed. R. Evid. 602].</p>	

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	Masilela].		
<p>¶ 7 “Based on my understanding of ICANN’s Rules and requirements of a registry, if .Africa were re-delegated from ZACR to DCA, third party registrar contracts would have to be unwound. Third parties whom ZACR contracted to provide domain names under the .Africa gTLD would have to transition technically and contractually to DCA – a process that would be burdensome for all such that re-delegation is simply not viable here. Further ZACR plans to charge more to registrars than DCA, which will create more complications in the re-delegation</p>	<p>Lacks personal knowledge, lacks foundation, speculative, and assumes facts not in evidence. [Fed. R. Evid. 602].</p>	<p>The Bekele II Declaration is based upon Ms. Bekele’s personal knowledge.</p>	

process.”

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Dated: May 26, 2016

BROWN NERI SMITH & KHAN LLP

By: /s/ Ethan J. Brown
Ethan J. Brown

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST

CERTIFICATE OF SERVICE

I, Ethan J. Brown, hereby declare under penalty of perjury as follows:

I am a partner at the law firm of Brown, Neri Smith & Khan LLP, with offices at 11766 Wilshire Blvd., Los Angeles, California 90025. On May 26, 2016, I caused the foregoing **PLAINTIFF’S RESPONSE TO ZA CENTRAL REGISTRY, NPC’S CONSOLIDATED EVIDENTIARY OBJECTIONS TO DECLARATIONS OF SOPHIA BEKELE ESHETE** to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on May 26, 2016

/s/ Ethan J. Brown