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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 Charitable Trust,

16
17 Plaintiff,

18 v.

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

24 Defendants.

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

**EVIDENTIARY OBJECTIONS TO
DECLARATION OF AKRAM
ATALLAH**

Date: April 4, 2016

Hearing: 9:00 a.m.

Courtroom: 850

[Filed concurrently: Reply ISO
Motion for Preliminary Injunction;
Supplemental Declaration of Sophia
Bekele Eshete, Declaration of Sara C.
Colón; Evidentiary Objections to
Declarations of Jeffrey LeVee,
Christine Willet, and Moctar Yedaly,
and Kevin Espinola]

1 Plaintiff DOTCONNECTAFRICA TRUST (“DCA”) respectfully submits
 2 the following evidentiary objections to the Declaration of Akram Atallah (“Atallah
 3 Declaration”) relied upon by Defendant Internet Corporation for Assigned Names
 4 and Numbers (“ICANN”) in support of its opposition to DCA’s Motion for a
 5 Preliminary Injunction.

6 **PLAINTIFF’S EVIDENTIARY OBJECTIONS**

Atallah Declaration ¶	DCA Objection	Sustained	Overruled
<p>8 ¶8: “I am informed and 9 believe that prior to the 10 opening of the gTLD 11 Program application 12 period, only one IRP 13 had resulted in a written 14 determination, <i>ICM</i> 15 <i>Registry, LLC v.</i> 16 <i>ICANN</i>. The <i>ICM</i> panel 17 declared that the 18 determinations of IRP 19 panels were not binding 20 on ICANN's Board. 21 Attached hereto as 22 Exhibit A is a true and 23 correct copy of an 24 excerpt of the final 25 declaration of the <i>ICM</i> 26 Panel.”</p>	<p>Lacks personal knowledge, lacks foundation [Fed. R. Evid. 602; Local Rule 7-7 (Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4); <i>See also Bank Melli</i> <i>Iran v. Pahlavi</i>, 58 F.3d 1406, 1412-1413 (9th Cir. 1995) (Holding “the Bank’s response to Pahlavi’s evidence was information and belief declarations from their counsel. Those were entitled to no weight because the declarant did not have personal knowledge.” [emphasis added]). Irrelevant [Fed. R. Evid. 403; Bekele Decl., ¶5, Ex. 1 ¶¶148-149: “148. Based on the foregoing, after having</p>		

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	<p>carefully reviewed the Parties’ written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN’s Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust related to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN. 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust’s application to proceed through the remainder of the new gTLD</p>		
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	application process.”].		
Atallah Declaration ¶	DCA Objection	Sustained	Overruled
¶10: “In the case of the DCA IRP, the DCA Panel declared that its decision would be binding on ICANN’s Board. But, most importantly, the question of whether the Panel’s declaration was or was not legally binding became a moot issue once ICANN’s Board elected to adopt all of the DCA Panel’s recommendations, contrary to the representations in Plaintiff’s motion for preliminary injunction and TRO application.”	Lacks personal knowledge, lacks foundation, conclusory [Fed. R. Evid. 602; Local Rule 7-7 (Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4)]. The IRP Panel Declaration is the best evidence of the document [Fed. R. Evid. 1002; Bekele Decl., ¶5, Ex. 1 ¶¶148-149: “148. Based on the foregoing, after having carefully reviewed the Parties’ written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN’s Bylaws, the Panel declares that both the		

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	<p>actions and inactions of the Board with respect to the application of DCA Trust related to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN. 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust’s application to proceed through the remainder of the new gTLD application process.”].</p>		
<p>Atallah Declaration ¶</p>	<p>DCA Objection</p>	<p>Sustained</p>	<p>Overruled</p>
<p>¶11: “Specifically, on July 9, 2015, the DCA Panel issued its final declaration. The DCA Panel determined that ICANN's Board had violated ICANN's Articles of Incorporation and Bylaws by accepting the GAC's consensus</p>	<p>The IRP Panel Declaration is the best evidence of the document [Fed. R. Evid. 1002]. Irrelevant [Fed. R. Evid. 403; Bekele Decl., ¶5, Ex. 1 ¶¶148-149: “148. Based on the foregoing, after having carefully reviewed the Parties’ written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in</p>		

EVIDENTIARY OBJECTIONS TO DECLARATION OF AKRAM ATALLAH

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<p>advice that Plaintiffs application for .AFRICA ("Application") should not proceed. The 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." (Eshete Decl.. Ex. 1 at 61-62 ¶149.)”</p>	<p>various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN’s Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust related to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN. 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust’s application to proceed through the remainder of the new gTLD application process.”].</p>		
<p>Atallah Declaration ¶</p>	<p>DCA Objection</p>	<p>Sustained</p>	<p>Overruled</p>
<p>¶12: “As it has done with every IRP declaration to date,</p>	<p>Irrelevant [Fed. R. Evid. 403; Bekele Decl., ¶5, Ex. 1 ¶¶148-149: “148. Based on the</p>		

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<p>ICANN’s Board promptly considered and adopted each of the DCA Panel’s recommendations. Specifically, on July 16, 2015, the Board resolved to ‘continue to refrain from delegating the .AFRICA gTLD,’ ‘permit [Plaintiff’s] application to proceed through the remainder of the new gTLD application process,’ and ‘reimburse DCA for the costs of the IRP.’”</p>	<p>foregoing, after having carefully reviewed the Parties’ written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN’s Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust related to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN. 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust’s application to proceed through</p>		
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	the remainder of the new gTLD application process.”].		
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Dated: March 21, 2016

BROWN NERI & SMITH LLP

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

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST