

1 Jeffrey A. LeVee (State Bar No. 125863)
2 Erin L. Burke (State Bar No. 186660)
3 JONES DAY
4 555 South Flower Street
5 Fiftieth Floor
6 Los Angeles, CA 90071.2300
7 Telephone: +1.213.489.3939
8 Facsimile: +1.213.243.2539

9 Attorneys for Defendant
10 INTERNET CORPORATION FOR ASSIGNED
11 NAMES AND NUMBERS

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 DOTCONNECTAFRICA TRUST,

15 Plaintiff,

16 v.

17 INTERNET CORPORATION FOR
18 ASSIGNED NAMES AND NUMBERS,
19 *et al.*,

20 Defendant.

CASE NO. BC607494

Assigned for all purposes to
Hon. Robert B. Broadbelt

**DECLARATION OF JEFFREY A.
LEVEE IN SUPPORT OF
DEFENDANT ICANN'S
OPPOSITION TO PLAINTIFF DCA'S
MOTION TO TAX COSTS OF
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS**

1 alleged conspiracy between ICANN, ZACR, and the African Union Commission. It was
 2 therefore necessary for me, as ICANN's lead counsel, to attend ZACR's PMK depositions in
 3 person, to adequately defend ICANN in this lawsuit. It was also reasonably necessary for me to
 4 attend these depositions in person because participating telephonically from Los Angeles would
 5 have required me to participate in the middle of the night, due to the ten-hour time change.

6 5. My costs for travel to Cape Town, South Africa were, in my opinion, reasonable in
 7 amount. ICANN is seeking the following costs for my travel to ZACR's PMK depositions:

Description	Cost	Rationale
Flights	\$11,480.86	I traveled business class to Cape Town, South Africa. The travel time for the outgoing and returning flights between Los Angeles and Cape Town was nearly 25 hours <i>each way</i> . This amounts to nearly 50 hours of flight time to attend the depositions. Flying business class was reasonably necessary given the extensive travel time.
Hotel	\$3,661.00	I spent five nights at a hotel in South Africa, arriving two and a half days before the deposition, and leaving the day after the deposition. This charge also includes transfer to and from the airport in Cape Town. My five-night stay was reasonably necessary to adjust to the time ten-hour time difference and to account for the two-day deposition. The invoice says "Safari in South Africa," but this invoice accounts for my travel to Cape Town for the ZACR PMK depositions.
Cab Fares	\$91.98	I am seeking costs for my cab fares to and from the airports, and to and from the deposition. I did not include my cab fares to and from restaurants for meals. The invoice for Yellow Cab for \$31.98 reflects my cab fare from LAX to my house after the deposition.
Food	\$70.50	I am seeking costs for my meals while in South Africa for lunch and dinner only October 24, the second day of deposition. I am not seeking costs for any other meals. The invoice for Smak (my dinner on October 24) is listed in Rand. Based on the conversion rate at the time, this invoice amounted to \$33.21.

26 Attached hereto as **Exhibit B** is a true and correct copy of the invoices for my travel expenses for
 27 attending the depositions of Lucky Masilela and Neil Dundas. I paid in cash for several of the
 28 expenses. Therefore, I am attaching the expense report I submitted shortly after my return to Los

1 Angeles, which reflects the payments I made in cash.

2 6. ICANN noticed the deposition of Mr. Mwencha in March 2018. At the time of the
3 deposition, Mr. Mwencha resided in Nairobi, Kenya. ICANN offered to bring Mr. Mwencha to
4 the United States for a deposition to save all parties the cost of traveling to Africa a second time.
5 DCA accepted ICANN's offer, and Mr. Mwencha's deposition took place on April 4, 2018 in
6 Washington, D.C. ICANN reimbursed Mr. Mwencha for his two-night stay at a hotel in
7 Washington D.C. because Mr. Mwencha's willingness to come to the United States saved
8 ICANN, DCA, and ZACR from traveling to Africa a second time. ICANN did not compensate
9 Mr. Mwencha for his flight. Because the date and location for the deposition were not set until a
10 few weeks before the deposition, ICANN booked travel on a somewhat expedited basis.

11 7. My costs for travel to Washington, D.C. were also, in my opinion, reasonable in
12 amount. ICANN is seeking the following costs for travel to Mr. Mwencha's deposition:

Description	Cost	Rationale
Flights	\$1,270.74	I traveled premium economy to Washington, D.C. The cost for my one-way flight from Los Angeles to Washington, D.C. was \$568.35. Following the deposition, I traveled to Sacramento instead of Los Angeles for another client matter. I therefore split the cost of the flight between ICANN and another client. The cost to ICANN for my return flight was \$702.39. Again, I traveled economy.
Hotel	\$1,878.12	I spent one night at a hotel in Washington, D.C., totaling, \$469.53. ICANN also reimbursed Mr. Mwencha for his two-night stay at a hotel in Washington, D.C., the day before and the day of his deposition, totaling \$1,408.59. These costs are reasonable, particularly given the much higher costs DCA, ICANN, and ZACR would have incurred had they traveled to Africa for Mr. Mwencha's deposition.
Cab Fares	\$122.80	I am seeking costs for my cab fares to and from the airport. The invoice from Transco Inc. reflects my cab fare from the airport to the hotel before the deposition. The invoice from UVC reflects my cab fare to the airport after the deposition.
Food	\$398.65	I am seeking costs for my dinner the night before the deposition, and breakfast and lunch for myself, ZACR, and Mr. Mwencha the day of the deposition.

		The invoice from the Oval Room reflects my dinner the night before the deposition, the invoice from Café Du Parc reflects breakfast the day of the deposition, and the invoice from Flik reflects lunch at the deposition.
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Attached hereto as **Exhibit C** are true and correct copies of the invoices for my travel expenses for attending the deposition of Erastus Mwencha. I paid in cash for several of the expenses. Therefore, I am attaching the expense report I submitted shortly after my return to Los Angeles, which reflects the payments I made in cash.

8. ICANN attended a number of depositions in this case, most of which DCA noticed. After each deposition, ICANN ordered a copy of the transcript. Attached hereto as **Exhibit D** are true and correct copies of the invoices for copies of the deposition transcripts.¹

The following chart further explains the costs ICANN is seeking:

Deponent	Transcript and Exhibits ²	Digital	Rough	Condensed
Christine Willett	\$888.10	\$35.00	\$262.35	\$16.00
Akram Atallah	\$1,478.92	\$35.00	\$325.05	\$16.00
ZACR PMK	\$1,791.00 ³			
Trang Nguyen	\$1,116.70	\$35.00		\$16.00
Fadi Chehade	\$809.05	\$35.00	\$227.70	\$16.00
Stephen Crocker	\$707.85	\$35.00		\$16.00
Erastus Mwencha	\$1,708.62 ⁴			
Mike Silber	\$1,167.80	\$35.00		\$16.00

¹ These invoices also reflect payments I, my colleague Erin Burke, and the deponent Ms. Willett, made for parking at DCA’s counsel’s office to attend the depositions. It was reasonably necessary to incur these costs, because ICANN’s counsel (and Ms. Willett) could not have walked to the depositions without substantial burden (Jones Day’s offices are in downtown Los Angeles, and ICANN is located in Playa Vista, while DCA’s counsel’s offices are in the Brentwood area).

² The costs for transcripts and exhibits also include the handling fees and the shipping costs.

³ This cost includes the video recording.

⁴ This cost includes the video recording.

Pierre Dandjinou	\$1,879.55	\$45.00		\$30.00
Mark McFadden	\$3,307.83 ⁵			\$48.00
Reuben Brigety	\$2,090.09 ⁶	\$35.00	\$275.55	\$16.00
TOTAL	\$16,945.51	\$290.00	\$1,090.65	\$190.00

9. I am informed and believe that the standard package from Esquire, the court reporting service used for many of the depositions, includes the transcript and exhibits, a condensed transcript, and a digital copy of the transcript.

10. ICANN also ordered the rough transcript for several of the depositions. These costs were reasonably necessary for the following reasons:

Akram Atallah: Mr. Atallah testified as ICANN’s person most knowledgeable on October 5, 2016. Ms. Willett also testified as ICANN’s person most knowledgeable about a different subset of topics two days later. During his deposition, Mr. Atallah directed DCA to Ms. Willett for certain answers. I, therefore, ordered the rough transcript of Mr. Atallah’s deposition to ensure that Ms. Willett was adequately prepared as ICANN’s person most knowledgeable at her deposition two days later. I also ordered the rough transcript of his deposition because shortly after his deposition, Mr. Atallah was preparing for, and traveling to, ICANN’s public meeting in Hyderabad, India, rendering his review of the transcript truncated.

Christine Willett: Ms. Willett testified as ICANN’s person most knowledgeable deponent on October 7, 2016. I ordered the rough transcript of her deposition because shortly after her deposition, Ms. Willett was preparing for, and traveling to, ICANN’s public meeting in Hyderabad, India, rendering her review of the transcript truncated.

⁵ This cost also accounts for ordering the transcript on an expedited basis. It was reasonably necessary to order Mr. McFadden’s deposition transcript on an expedited basis because his deposition occurred less than one month before the Phase II trial was set to begin.

⁶ This cost also accounts for ordering the transcript on an expedited basis. It was reasonably necessary to order Mr. Brigety’s deposition transcript on an expedited basis because his deposition occurred less than one month before the Phase II trial was set to begin.

1 **Fadi Chehade:** Mr. Chehade was deposed on December 14, 2017, just two and a half
2 months before the February 2018 trial. I therefore ordered the rough transcript in conjunction
3 with ICANN’s trial preparations.

4 **Reuben Brigety:** Mr. Brigety, one of ICANN’s experts, was deposed on July 30, 2018,
5 less than one month before the Phase II trial was set to begin. It was therefore necessary to order
6 the rough transcript to adequately prepare ICANN’s defense for trial.

7 11. I also ordered a copy of the videotaped depositions of Mr. Silber and Mr.
8 McFadden. DCA noticed these depositions, and ordered the videographer. ICANN’s costs for
9 the video recording was, in my opinion, reasonably necessary. Mr. Silber left his employ as an
10 ICANN Board member in October 2018 and resides in South Africa. Mr. McFadden was not an
11 ICANN employee and resides in Wisconsin. Accordingly, both witnesses are outside the
12 subpoena power of the Court. Had ICANN intended to call them at trial, ICANN would have
13 needed to rely on their videotaped deposition, unless either witness volunteered to travel to Los
14 Angeles. Attached hereto as **Exhibit E** are true and correct copies of the invoices for Mr. Silber’s
15 and Mr. McFadden’s videotaped depositions.

16 12. Attached hereto as **Exhibit F** are true and correct copies of the invoices for taking
17 and video recording Ms. Bekele’s deposition, an original and copy of each of the transcripts, and
18 the parking Jones Day provided at the deposition, which was at Jones Day’s office. As reflected
19 on Exhibit F, the cost per page for the December 2016 deposition was \$10, whereas the cost per
20 page for the September 2017 deposition was \$5.25, as set by the court reporting service. The
21 invoice for the July 2018 deposition includes the cost for video recording the deposition, and
22 reflects ICANN’s costs for ordering the transcript on an expedited basis. These costs were
23 reasonably necessary because Ms. Bekele’s deposition occurred less than one month before the
24 Phase II trial date, and just two days before the deadline to file motions *in limine*. One of
25 ICANN’s motions *in limine* was based in part on Ms. Bekele’s testimony at this deposition.

26 13. DCA noticed the deposition of Mr. McFadden. Mr. McFadden is a resident of
27 Wisconsin. To avoid the costs of DCA, ICANN, and ZACR traveling to Wisconsin, ICANN
28 offered to bring Mr. McFadden to Los Angeles. DCA accepted ICANN’s offer. ICANN

1 reimbursed Mr. McFadden his costs for traveling to Los Angeles. Attached hereto as **Exhibit G**
2 is a true and accurate copy of the expenses Mr. McFadden submitted to ICANN for his travel to
3 California for his deposition, and for which ICANN reimbursed Mr. McFadden.

4 **Filing Fees**

5 14. DCA initiated this lawsuit by filing a complaint in Los Angeles Superior Court.
6 ICANN filed a Notice of Removal to federal court based on diversity jurisdiction: ICANN is a
7 citizen of California, DCA is a citizen of the Republic of Mauritius and Kenya, and the amount in
8 controversy exceeded \$75,000. After the case was removed to federal court, ZACR was added as
9 a party. ZACR, like DCA, is a foreign citizen, thereby destroying diversity. The federal court
10 remanded the case back to state court for lack of subject matter jurisdiction. There was nothing
11 improper about the Notice of Removal when filed; the later changed circumstances do not
12 retroactively make ICANN's filing for removal "unreasonable" or "unnecessary."

13 15. This Court held a bench trial in February 2018 and February 2019 on the issue of
14 whether DCA was judicially estopped from pursuing this lawsuit given its repeated statements to
15 a prior tribunal that it could not sue ICANN in court under any circumstance. After the February
16 2019 trial, the Court ordered the parties to submit simultaneous post-trial briefs. I reviewed
17 DCA's post-trial brief and determined that the evidence DCA cited was irrelevant, misstated the
18 documents or trial testimony, or was misleading. I determined that it was necessary to object to
19 much of the evidence DCA cited for this reason, so that I was advocating ICANN's affirmative
20 defense to the fullest extent.

21 **Models, Enlargements, and Photocopies of Exhibits**

22 16. ICANN is seeking to recover its costs for printing exhibits, deposition transcripts,
23 and the trial binder for the February 2018 two-day trial, and the February 2019 three-day trial.

24 17. This Court's trial preparation order requires the parties to bring three copies of
25 exhibits to Court the day of trial. ICANN was responsible for printing all of the parties' joint
26 exhibits and its own exhibits for both trials. This Court also requires the parties to assemble a
27 trial binder with each party's trial brief, motions *in limine*, witness list, and exhibit list. Again,
28 ICANN was responsible for printing the trial binders for this Court.

1 was responsible for printing the parties' joint exhibits in addition to its own exhibits, and
2 transporting these exhibit binders to Court.

3 24. The three sets of exhibit binders amounted to multiple heavy boxes. ICANN's
4 counsel could not have carried these boxes to Court without substantial burden (including
5 multiple trips to and from the car or the office).

6 25. Attached hereto as **Exhibit J** are true and correct copies of the invoices for the
7 messenger fees DCA challenges.

8 **Mediation Fees**

9 26. The parties participated in two mediations in this case: the first in September
10 2016, and the second in January 2019 as ordered by this Court. ICANN participated in the
11 September 2016 mediation to attempt to resolve the dispute prior to expending further time and
12 money on costly litigation.

13 27. At the September 2016 mediation, ICANN incurred \$5,000 in mediator fees, paid
14 for parking validation at Jones Day's office (where the mediation took place), and offered lunch
15 at the mediation. Attached hereto as **Exhibit K** are true and correct copies of ICANN's costs for
16 the mediator, parking validation, and lunch for the September 2016 mediation.

17 28. At the January 2019 mediation at DCA's office, I paid for parking at DCA's
18 office. It was reasonably necessary to park at the deposition, which occurred in Brentwood; I
19 could not have walked from my office in downtown Los Angeles. Attached hereto as **Exhibit L**
20 are true and correct copies of the invoices for parking expenses at DCA's office for the January
21 2019 mediation.

22 **ICANN's Remaining Costs**

23 29. Attached hereto as **Exhibit M** are true and correct copies of the invoices for
24 parking Jones Day provided to DCA's counsel when DCA's counsel came to Jones Day for case-
25 related matters. DCA did not offer ICANN's counsel the same courtesy.

26 30. My colleagues and I were required to appear at court for numerous hearings and
27 two trials in this case. We often brought to Court binders, exhibits, briefs, and other items.
28 Therefore, we could not have walked to Court without substantial burden. Attached hereto as

1 **Exhibit N** are true and correct copies of the invoices for my colleagues' and my parking expenses
2 at Court for hearings and trial. The invoices are listed in the same order as the Memorandum of
3 Costs (Worksheet).⁷

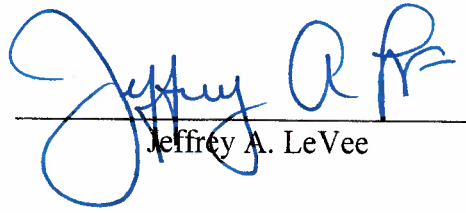
4 31. Both parties identified Christine Willett as a witness on their witness lists for the
5 February 2018 and February 2019 trial, and she appeared in Court each day of the 2018 and 2019
6 trials. Ms. Willett resides in Orange County, not Los Angeles. She stayed at a hotel during each
7 of the trials to avoid traveling between Orange County and Los Angeles during peak hours every
8 day. Attached hereto as **Exhibit O** are true and accurate copies of invoices for Ms. Willett's hotel
9 stays during the February 2018 and February 2019 trial.

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28 ⁷ One invoice for my former colleague's \$8 parking at the courthouse on June 7, 2016 is
missing. I believe that this invoice would be reflected in her expense reports, but she is no longer
at Jones Day.

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I confirm under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 20, 2019, in Los Angeles, California.



Jeffrey A. LeVee

NAI-1510226293