Jeffrey A. LeVee (State Bar No. 125863) 1 Erin L. Burke (State Bar No. 186660) Amanda Pushinsky (State Bar No. 267950) 2 Supplied to JONES DAY 555 South Flower Street 3 AUG 6 4 2017 Fiftieth Floor Los Angeles, CA 90071.2300 Sharri Fr. Gerthi, Expositive Officer/Clerk 4 Telephone: +1.213.489.3939 By Haul Sanchez, Deputy Facsimile: +1.213.243.2539 5 Attorneys for Defendant 6 INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS 7 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT 10 11 **CASE NO. BC607494** DOTCONNECTAFRICA TRUST, 12 Assigned to Hon. Howard L. Halm Plaintiff, 13 ICANN'S RESPONSES TO DCA'S **EVIDENTIARY OBJECTIONS** 14 INTERNET CORPORATION FOR August 9, 2017 ASSIGNED NAMES AND NUMBERS, et Date: 15 8:30 a.m. Time: Dept: 53 16 Defendant. 17 Complaint Filed: January 20, 2016 18 **RESERVATION ID: 170308201420** 19 20 21 22 23 24 25 26 27 28

ICANN'S RESPONSES TO DCA'S EVIDENTIARY OBJECTIONS

Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") hereby responds to Plaintiff DotConnectAfrica Trust's ("DCA") evidentiary objections to the Declarations of Jeffrey A. LeVee ("LeVee Decl."), Christine Willett ("Willett Decl."), Akram Atallah ("Atallah Decl.") and Kevin Espinola ("Espinola Decl.") filed in support of ICANN's Motion for Summary Judgment.

Court's

| LeVee Declaration | DCA Objection | ICANN's Response | Court's Ruling |
|--|--|--|-------------------|
| ¶ 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. | 1. Irrelevant (Evid. Code § 403). | Relevance. Testimony regarding the IRP proceedings is relevant to show that that the IRP proceeding between ICANN and DCA bore the "formal hallmarks" of a judicial proceeding and thus qualifies as a "quasijudicial administrative proceeding." This evidence supports ICANN's argument that DCA's entire First Amended Complaint ("FAC") is barred by the doctrine of judicial estoppel. | |
| LeVee Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| ¶ 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 | 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 | Foundation. Mr. LeVee laid the foundation for his testimony. Mr. LeVee testified that he is counsel to ICANN. (LeVee Decl. ¶ 1.) As such, he has personal knowledge of the procedural posture and filings of this case. Prejudicial. This testimony is not materially misleading nor prejudicial. Mr. LeVee's declaration simply states the procedural history of this case. Citing to what the | |

| | district court had granted the | ruling was the | court mistakenly identified | |
|--------|---------------------------------|-----------------------|------------------------------|--|
| 1 | injunction – that the IRP Panel | factual error. In | as the Initial Evaluation | |
| 2 | had allowed DCA to skip the | fact, the court | Report for DCA's | |
| - | geographic review | denied ZACR and | application (which was | |
| 3 | requirement – was false. | ICANN's motion to | actually the Initial | |
| | | reconsider the | Evaluation Report for | |
| 4 | | ruling despite the | ZACR's application), the | |
| _ | | factual error. | district court asserted that | |
| 5 | | | DCA had passed the | |
| 6 | | | Geographic Names | |
| 0 | | | Review. See Declaration | |
| 7 | | | of Ethan Brown in support | |
| | | | of DCA's Motion for | |
| 8 | | | Preliminary Injunction, Ex. | |
| | | | 3 at 2-3. In fact, DCA's | |
| 9 | | 3. Best evidence | application had not. Id. | |
| 10 | | rule (Evid. Code § | | |
| 10 | | 1520). Ms. | Best Evidence. Mr. | |
| 11 | | Bekele's deposition | LeVee's statement is not | |
| 200000 | | transcript is the | offered to prove the | |
| 12 | | best evidence of | contents of a writing. Mr. | |
| | | her statements. The | LeVee's testimony is based | |
| 13 | | federal court's | on his personal knowledge | |
| 14 | | order on DCA's | of the procedural posture | |
| 14 | | motion for | and filings of this case. | |
| 15 | | preliminary | | |
| | | injunction is the | | |
| 16 | | best evidence of the | | |
| | | basis for the court's | | |
| 17 | | ruling on that | | |
| 18 | | motion. | | |
| 1 4 | | | | |

DECLARATION OF CHRISTINE WILLETT (Exhibit to Levee Declaration)

| Willett Declaration | DCA Objection | ICANN's Response | Court's Ruling |
|--|---|--|-------------------|
| ¶ 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 | 1. Lacks personal knowledge (Evid. Code § 702). 2. Lacks foundation (Evid. Code § 403). | Foundation/Personal Knowledge. Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as | |

| copy of the Guidebook is attached as Exhibit 3 to the declaration of Sophia Bekele Eshete ("Bekele Declaration"). | | part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the procedures governing the evaluation of New gTLD applications. | |
|---|---|--|-------------------|
| Willett Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| ¶ 3. In the spring of 2012, Plaintiff DCA and defendant ZA Central Registry ("ZACR") each submitted applications to operate | 1. Lacks personal knowledge (Evid. Code § 702). 2. Lacks foundation (Evid. Code § 403). | Foundation/Personal Knowledge. Ms. Willett testified that she is the Vice President for Operations of the Global | 2 622 |
| the .AFRICA gTLD. In doing so, they, like all new gTLD applicants, expressly accepted and acknowledged the | | Domains Division of ICANN, and that in that role she has been | |
| Guidebook, including the release and covenant not to sue ("Covenant") in paragraph | | responsible for overseeing the evaluation of applications received as | |
| 6 of Module 6. | | part of the New gTLD Program. (Willett Decl. ¶¶ | |
| | | 1-2.) As such, she has personal knowledge of the | |
| .s. | | procedures governing the evaluation of New gTLD applications, including DCA and ZACR's | |
| | | applications for .Africa. | |
| Willett Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| ¶ 6. In addition, because DCA and ZACR had each applied | knowledge (Evid. | Foundation/Personal Knowledge. Ms. Willett | |
| for a gTLD that represents the name of a geographic region, the Guidebook requires that | Code § 702). 2. Lacks foundation (Evid. Code § 403). | testified that she is the Vice President for Operations of the Global | |
| DCA and ZACR each provide documentation of support or | (2.14. 5545 3 155). | Domains Division of | |
| non-objection from at least 60% of the governments in the | | ICANN, and that in that role she has been | |
| region. Bekele Decl. Ex. 3 § 2.2.1.4.2. The Guidebook also | | responsible for overseeing the evaluation of | |
| provides that a Geographic Names Panel operated by a | | applications received as part of the New gTLD | |
| third-party vendor retained by | | Program. (Willett Decl. ¶¶ 1-2.) As such, she has | |
| ICANN must verify the relevance and authenticity of | | personal knowledge of | |
| , | | contents of the Guidebook | |

| 1 | | | | |
|---------------|-----------------------------------|---------------------|--|---------|
| , | 2.2.1.4.4. The Geographic | | the Geographic Names | |
| 1 | Names Panel evaluated the | | Panel. | |
| 2 | support letters submitted by | | | |
| 4 | the applicants pursuant to the | 3. Best evidence | Best Evidence. This | |
| 3 | criteria set forth in the | rule (Evid. Code § | testimony is not offered to | |
| 3 | Guidebook. In particular, | 1520). | The second second control of the second seco | |
| 4 | section 2.2.1.4.3 of the | 1320). | prove the contents of a | |
| | Guidebook required that | | writing. Rather, Ms. | |
| 5 | letters of support for a | | Willett's testimony is | |
| | | | based on her personal | |
| 6 | geographic name "clearly | | knowledge of ICANN's | |
| 8 | express the government's or | | procedures to evaluate | |
| 7 | public authority's support for | | New gTLD applications, | |
| | or non-objection to the | | including ICANN's | |
| 8 | applicant's application and | | implementation of the | |
| | demonstrate the government | | Guidebook's requirements | |
| 9 | or public authority's | | | |
| | understanding of the string | | in reviewing New gTLD | |
| 10 | being requested and its | | applications, including | |
| | intended use." It further | | DCA and ZACR's | |
| 11 | requires that a letter of support | | applications. A true and | |
| | "should demonstrate the | | correct copy of the | |
| 12 | government's or public | | Guidebook is attached to | |
| 12 | authority's understanding that | | the Declaration of Sophia | |
| 13 | the string is being sought | | Bekele in Support of | |
| 1.4 | through the gTLD application | | DCA's Motion for | |
| 14 | process and that the applicant | | Preliminary Injunction, | |
| 15 | | | | |
| 13 | is willing to accept the | | dated November 10, 2016. | |
| 16 | conditions under which the | | | |
| 10 | string will be available, i.e., | | | |
| 17 | entry to a registry agreement | | | |
| * / | with ICANN requiring | 5 | | |
| 18 | compliance with consensus | | | |
| 5555 | policies and payment of fees." | | 10 | |
| 19 | The Geographic Names Panel | | | |
| 3010000 | treated both of these | | | |
| 20 | requirements as mandatory for | | | |
| | all applicants (including DCA | | | |
| 21 | and ZACR). | | | |
| 20 | Willett Declaration | DCA Objection | ACCUMUS D | Court's |
| 22 | | | ICANN's Response | Ruling |
| 22 | ¶ 7. DCA submitted with its | 1. Lacks foundation | Foundation. Ms. Willett | |
| 23 | application for .AFRICA | (Evid. Code § 403.) | testified that she is the | |
| 24 | ("Application") what it called | (| Vice President for | |
| 24 | a letter of support dated in | | Operations of the Global | |
| 25 | | | | |
| 23 | 2009 (three years earlier) from | | Domains Division of | |
| 26 | the African Union | 3 | ICANN, and that in that | |
| 20 | Commission ("AUC"). A copy | | role she has been | |
| 27 | of that letter is attached as | | responsible for overseeing | |
| : | Exhibit 6 to the Bekele | | the evaluation of | |
| 28 | Declaration. I now understand | | applications received as | |
| 12000000000 | | 5 | | |
| | TO A NINIO DE | | VIDENTIA DV OR IECTIONS | |

| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | that, in 2010, DCA had received a letter from the AUC that formally withdrew the AUC's support for DCA's Application for the .AFRICA gTLD. A copy of that letter is attached as Exhibit 7 to the Bekele Declaration. DCA did not submit to ICANN with its Application a copy of the AUC's 2010 letter withdrawing its support for DCA. | 2. Best evidence rule (Evid. Code § 1520). | part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the evaluation of New gTLD applications, including DCA's application for .Africa, the content of that application, and the supporting documentation. Best evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge of ICANN's review of DCA's application for .Africa, including information withheld by DCA at the time of its application and subsequent knowledge of the 2010 AUC letter withdrawing the 2009 endorsement. A true and correct copy of the 2010 AUC letter is attached as Exhibit 6 to the Declaration of Sophia Bekele ("Bekele Declaration"). | |
|---|--|---|---|-------------------|
| 20 | Willett Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| 21 22 | ¶ 8. DCA also submitted with its Application an August 2008 letter from the United | 1. Lacks personal knowledge (Evid. Code § 702). | Personal Knowledge/ Foundation. Ms. Willett testified that she is the | |
| 23 | Nations Economic Commission for Africa | | Vice President for Operations of the Global | |
| 24 | ("UNECA"). A copy of that letter is attached as Exhibit 8 | | Domains Division of ICANN, and that in that | |
| 25 | to the Bekele Declaration. In | 2. Lacks foundation | role she has been | |
| 26 | September 2015, UNECA wrote in a letter that it was a "United Nation entity [that] is | and irrelevant (Evid. Code § 403). | responsible for overseeing the evaluation of | |
| 27 | neither a government nor | (271a. code § 403). | applications received as part of the New gTLD | |
| 28 | public authority and therefore is not qualified to issue a letter | | Program. (Willett Decl. ¶¶ | |
| | | 6 | | |
| | ICANN'S RE | SPONSES TO DCA'S E | VIDENTIARY OBJECTIONS | |

| 1 | of support for a prospective | | 1-2.) As such, she has | |
|--------|--|---|---|--|
| | applicant," and that its August 2008 letter was "merely an | | personal knowledge of the evaluation of New gTLD | |
| 2 | expression of a view in | | applications, including | |
| 3 | relation to [DCA's] initiative | | DCA's application | |
| | and efforts regarding internet | | for .Africa and the | |
| 4 | governance [and] cannot | | processing of that | |
| 5 | be properly considered as a 'letter of support' within the | | application. | |
| | context of ICANN's | | 5.1 | |
| 6 | requirements and cannot be | | Relevance. Testimony | |
| 7 | used as such." A true and | | regarding the 2015 letter from UNECA is relevant | |
| | correct copy of UNECA's | | to show that DCA would | |
| 8 | September 2015 letter is attached as Exhibit 10 to the | | not have been able to | |
| 9 | Bekele Declaration. | | obtain an updated letter | |
| | Bekele Beelaration. | | from UNECA that | |
| 10 | | | conformed with the | |
| 11 | | | Guidebook's requirements following the IRP | |
| | | | Declaration. This evidence | |
| 12 | | | supports ICANN's | |
| 13 | | | argument that DCA has no | |
| 1.5 | | | likelihood of success on | |
| 14 | | | the merits as to its | |
| 15 | | 3. Best evidence | remaining causes of action. | |
| 13 | | rule (Evid. Code § | Best Evidence. This | |
| 16 | | 1520). | testimony is not offered to | |
| 17 | | 7.50 | prove the contents of a | |
| 10,009 | | | writing. Rather, Ms. | |
| 18 | | | Willett's testimony is based on her personal | |
| 19 | | | knowledge of ICANN's | |
| 2000 | | | review of DCA's | |
| 20 | | | application for .Africa, | |
| 21 | | | including subsequent | |
| (4800) | | | knowledge of the 2015 | |
| 22 | | | UNECA letter stating that its 2008 letter cannot be | |
| 23 | | 4 Dusindiaial | considered as a letter of | |
| 24 | | 4. Prejudicial because the | support. | |
| 24 | | statement is | St. | |
| 25 | | materially | Prejudicial. This | |
| 26 | | misleading because | testimony is not materially | |
| 26 | | it fails to state that DCA specifically | misleading nor prejudicial. Ms. Willet's declaration | |
| 27 | | identified the | simply states that UNECA | |
| 28 | | purported | wrote a letter in 2015 | |
| 20 | | withdrawal in its | | |
| | ICANN'S DE | SPONSES TO DCA'S F | VIDENTIARY OBJECTIONS | |
| | ICAININ S RE | DI ONDED TO DUA SE | TIDENTIALL OBJECTIONS | |

| , | | application ICANN | stating that its 2008 letter | |
|--|---|---|---|-------------------|
| 1 | | and has done so on | cannot be considered as a | |
| 2 | | numerous | letter of support. | |
| 3 | | occasions (Evid. Code § 352). | Fifth Objection It is | |
| 4 | | 5. Bekele Decl. ¶ | Fifth Objection. It is unclear what evidentiary | |
| 5 | | , Ex ("Unlike the initial | objection DCA intends to make with its fifth | |
| 6 | | letter of support | objection. Because the 2009 AUC letter failed to | |
| 7 | | from the AUC the subsequent letter omitted any official | conform to the Guidebook's requirements, | |
| 8 | | stamp, was not signed by the AUC | DCA was required to obtain an updated letter | |
| 9 | | Chairman, and instead was signed | from AUC if it were to rely on a letter from AUC to | |
| 10 | | by the Deputy Chairperson). | fulfill the 60% requirement of support or non-objection | |
| 11 | | | from government authorities. Regardless of | |
| 12 | | | any determination by the GNP as to whether AUC | |
| 13 | | | qualifies as a valid endorser, the 2010 AUC | |
| 14 | | | endorser, the 2010 ACC | |
| 15 | | | withdrawal letter shows that DCA would have been | |
| 15 | | | | |
| 15 16 | Willett Declaration | DCA Objection | that DCA would have been | Court's Ruling |
| 15 | Willett Declaration ¶ 9. On June 5, 2013, at the | DCA Objection 2. Best evidence | that DCA would have been unable to do so. ICANN's Response Best Evidence. This | |
| 15 16 | ¶ 9. On June 5, 2013, at the time when ICANN's Board | 2. Best evidence rule (Evid. Code § | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to | |
| 15 16 17 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's | 2. Best evidence | that DCA would have been unable to do so. ICANN's Response Best Evidence. This | |
| 15 16 17 18 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had | 2. Best evidence rule (Evid. Code § | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a | |
| 15 16 17 18 19 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that | 2. Best evidence rule (Evid. Code § | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is | |
| 15 16 17 18 19 20 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic | 2. Best evidence rule (Evid. Code § | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains | |
| 15 16 17 18 19 20 21 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that time, the Geographic Names | 2. Best evidence rule (Evid. Code § | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding evaluation of | |
| 15 16 17 18 19 20 21 22 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been in the midst of its review of DCA's Application; it had determined that the support | 2. Best evidence rule (Evid. Code § | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding evaluation of New gTLD applications, including DCA's | |
| 15 16 17 18 19 20 21 22 23 24 25 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been in the midst of its review of DCA's Application; it had determined that the support documentation submitted by DCA's, including the letters | 2. Best evidence rule (Evid. Code § | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding evaluation of New gTLD applications, including DCA's application for .Africa and the processing of that | |
| 15 16 17 18 19 20 21 22 23 24 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been in the midst of its review of DCA's Application; it had determined that the support documentation submitted by | 2. Best evidence rule (Evid. Code § 1520). | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding evaluation of New gTLD applications, including DCA's application for .Africa and | |
| 15 16 17 18 19 20 21 22 23 24 25 26 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been in the midst of its review of DCA's Application; it had determined that the support documentation submitted by DCA's, including the letters from the AUC and UNECA, did not meet the criteria set forth in the Guidebook, and | 2. Best evidence rule (Evid. Code § 1520). | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding evaluation of New gTLD applications, including DCA's application for .Africa and the processing of that application. | |
| 15 16 17 18 19 20 21 22 23 24 25 26 27 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been in the midst of its review of DCA's Application; it had determined that the support documentation submitted by DCA's, including the letters from the AUC and UNECA, did not meet the criteria set forth in the Guidebook, and was therefore planning to send | 2. Best evidence rule (Evid. Code § 1520). | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding evaluation of New gTLD applications, including DCA's application for .Africa and the processing of that application. Foundation. Ms. Willett | |
| 15 16 17 18 19 20 21 22 23 24 25 26 | ¶ 9. On June 5, 2013, at the time when ICANN's Board accepted the Government Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been in the midst of its review of DCA's Application; it had determined that the support documentation submitted by DCA's, including the letters from the AUC and UNECA, did not meet the criteria set forth in the Guidebook, and | 2. Best evidence rule (Evid. Code § 1520). | that DCA would have been unable to do so. ICANN's Response Best Evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding evaluation of New gTLD applications, including DCA's application for .Africa and the processing of that application. | |

| 1 | DCA. Clarifying questions are | | Vice President for | |
|----|--|-------------------------------------|--|--|
| | sent where support documentation does not meet | | Operations of the Global Domains Division of | |
| 2 | the criteria set forth in the | | ICANN, and that in that | |
| 3 | Guidebook, and they are an | | role she has been | |
| 4 | accommodation to provide applicants an opportunity to | | responsible for overseeing | |
| | explain/supplement their | | the evaluation of applications received as | |
| 5 | documentation. However, as a | | part of the New gTLD | |
| 6 | result of the ICANN Board's acceptance of the GAC's | | Program. (Willett Decl. ¶¶ | |
| 7 | advice, DCA's Application was removed from processing, | | 1-2.) As such, she has personal knowledge of the | |
| 8 | and the clarifying questions | | evaluation of New gTLD applications, including | |
| 9 | were not sent at that time. | | DCA and ZACR's | |
| 10 | | | applications, and including ICANN's and the | |
| 11 | | | Geographic Names Panel's handling of the .Africa | |
| 12 | | | applications following the GAC advice in 2013. | |
| 13 | | 4. Irrelevant (Evid. | | |
| | | Code § 403). | Relevance. Testimony regarding the Geographic | |
| 14 | | | Names Panel Review is | |
| 15 | | | directly relevant to DCA's | |
| 16 | | | claim that ICANN intentionally rejected | |
| | | | DCA's application without | |
| 17 | | | reason. | |
| 18 | | 5. The GNP had | Eifth Objection Again it | |
| 19 | | already determined that UNECA was a | Fifth Objection. Again, it is unclear what evidentiary | |
| 20 | | valid endorser. McFadden Decl. | objection DCA intends to make with its fifth | |
| 21 | | Micradan Been | objection. Because the 2008 UNECA letter failed | |
| 22 | | | to conform to the | |
| 23 | | | Guidebook's requirements, DCA was required to | |
| 24 | | | obtain an updated letter | |
| | | | from UNECA if it were to rely on a letter from | |
| 25 | | | UNECA to fulfill the 60% | |
| 26 | | | requirement of support or non-objection from | |
| 27 | | | government authorities. | |
| 28 | | | Regardless of any | |
| | | 9 | | |

| | | | determination by the GNP as to whether UNECA qualifies as a valid endorser, the September 2015 UNECA letter shows that DCA would have been unable to do so. | |
|---|--|---|---|-------------------|
| | Willett Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| - | ¶ 10. By July 31, 2015, following the ICANN's Board adoption of the | 1. Lacks foundation (Evid. Code § 403). | Foundation. Ms. Willett testified that she is the Vice President for | |
| | recommendations of the Independent Review Panel in DCA v. ICANN ("IRP Panel"), | | Operations of the Global Domains Division of ICANN, and that in that | |
| | DCA's Application was returned to processing as the | | role she has been responsible for overseeing | |
| | Board directed. DCA's Application was returned to | | the evaluation of applications received as | |
| | precisely the portion of the review that was pending on | | part of the New gTLD Program. (Willett Decl. ¶¶ | |
| | the date the Application was removed from processing— the Geographic Names Panel | | 1-2.) As such, she has personal knowledge of the | |
| | review. As the Geographic Names Panel had been | | evaluation of New gTLD applications, including | |
| | preparing to do when DCA's Application was removed | | ICANN's and the Geographic Names Panel's | |
| | from processing, the Geographic Names Panel | | processing of DCA's application following the IRP Declaration. | |
| | issued clarifying questions to DCA on September 2, 2015, | | INF Deciaration. | |
| | 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 the documentation that it had | | | |
| | submitted with its Application in 2012 was sufficient. | | | |
| | Willett Declaration | DCA Objection | ICANN's Response | Court's |

| 1 | ¶ 11. On October 13, 2015, | 1. Lacks foundation | Foundation/Personal | |
|--|--|---------------------------|--|-------------------|
| 1 | ICANN issued the Initial | (Evid. Code § 403). | Knowledge. Ms. Willett | |
| 2 | Evaluation Report regarding | 2. Lacks personal | testified that she is the | |
| | DCA's Application. The | knowledge (Evid. | Vice President for | |
| 3 | Initial Evaluation Report | Code § 702). | Operations of the Global | |
| | noted that the Application had | 0000A WA | Domains Division of | |
| 4 | passed all reviews except for | | ICANN, and that in that | |
| - | the Geographic Names Panel | | role she has been | |
| 5 | review. As provided by the | | responsible for overseeing | |
| 6 | Guidebook, the report stated | | the evaluation of | |
| 6 | that DCA would have the | | applications received as | |
| 7 | opportunity to participate in | | part of the New gTLD | |
| 1 | "Extended Evaluation," which | , | | |
| 8 | offered DCA additional time | | Program. (Willett Decl. ¶¶ | |
| 70 | to provide the requisite | | 1-2.) As such, she has | |
| 9 | documentation of support or | | personal knowledge of the | |
| | non-objection from African | | evaluation of New gTLD | |
| 10 | governments. A true and | | applications, including | |
| , , | correct copy of the Initial | | ICANN's and the | |
| 11 | Evaluation Report is attached | | Geographic Names Panel's | |
| 12 | hereto as Exhibit A. | | processing of DCA's | |
| 12 | | | application following the | |
| 13 | | | IRP Declaration. | |
| | Willett Declaration | DCA Objection | ICANN's Despense | Court's |
| 14 | | | ICANN's Response | Ruling |
| | ¶ 12. As part of Extended | 1. Best evidence | Best Evidence. This | |
| 15 | P 1 (' 4 C 1') | | | |
| 15 | Evaluation, the Geographic | rule (Evid. Code § | testimony is not offered to | |
| | Names Panel again issued | rule (Evid. Code § 1520). | testimony is not offered to prove the contents of a | |
| 16 | | | | |
| 16 | Names Panel again issued | | prove the contents of a writing. Rather, Ms. | |
| | Names Panel again issued clarifying questions to DCA | | prove the contents of a writing. Rather, Ms. Willett's testimony is | |
| 16 17 | Names Panel again issued clarifying questions to DCA on October 30, 2015, | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal | |
| 16 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice | |
| 16 17 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of | |
| 16 17 18 19 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains | |
| 16 17 18 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN | |
| 16 17 18 19 20 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of | |
| 16 17 18 19 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, | |
| 16 17 18 19 20 21 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and | |
| 16 17 18 19 20 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and the Geographic Names | |
| 16 17 18 19 20 21 22 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its documentation, DCA | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and the Geographic Names Panel's handling of | |
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| 16 17 18 19 20 21 22 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its documentation, DCA | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and the Geographic Names Panel's handling of | |
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| 16 17 18 19 20 21 22 23 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its documentation, DCA submitted a letter from its counsel and again took the position that the documentation that it had | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and the Geographic Names Panel's handling of | |
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| 16 17 18 19 20 21 22 23 24 25 26 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its documentation, DCA submitted a letter from its counsel and again took the position that the documentation that it had submitted with its Application | | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and the Geographic Names Panel's handling of the .Africa applications. | Court's |
| 16 17 18 19 20 21 22 23 24 25 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its documentation, DCA submitted a letter from its counsel and again took the position that the documentation that it had submitted with its Application in 2012 was sufficient. | 1520). | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and the Geographic Names Panel's handling of | Court's Ruling |
| 16 17 18 19 20 21 22 23 24 25 26 27 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its documentation, DCA submitted a letter from its counsel and again took the position that the documentation that it had submitted with its Application in 2012 was sufficient. | 1520). | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and the Geographic Names Panel's handling of the .Africa applications. | |
| 16 17 18 19 20 21 22 23 24 25 26 | Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its documentation, DCA submitted a letter from its counsel and again took the position that the documentation that it had submitted with its Application in 2012 was sufficient. | 1520). | prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the evaluation of New gTLD applications, including ICANN's and the Geographic Names Panel's handling of the .Africa applications. | |

| , | ¶ 13. Notably, nearly identical | 1. Lacks foundation | Foundation/Personal | |
|--|---|---|--|---------|
| 1 | clarifying questions were sent | (Evid. Code § 403). | Knowledge. Ms. Willett | |
| 2 | to ZACR in 2013 when | 2. Lacks personal | testified that she is the | |
| 55857 | ZACR's application | knowledge (Evid. | Vice President for | |
| 3 | for .AFRICA was undergoing | Code § 702). | Operations of the Global | |
| 4 | Geographic Name Review. | | Domains Division of | |
| 4 | True and correct copies of the clarifying questions issued to | | ICANN, and that in that | |
| 5 | ZACR related to the AUC and | | role she has been | |
| | UNECA letters are attached | | responsible for overseeing | |
| 6 | hereto as Exhibits B and C. | | the evaluation of | |
| 7 | Unlike DCA, ZACR | | applications received as part of the New gTLD | |
| 1 | submitted an updated letter | | Program. (Willett Decl. ¶¶ | |
| 8 | from the AUC endorsing | | 1-2.) As such, she has | |
| | ZACR on July 3, 2013. That | | personal knowledge of | |
| 9 | letter is attached as Exhibit A | | ICANN's processing of | |
| 10 | to Exhibit 2 of the Declaration | | DCA and ZACR's | |
| 10 | of Sara Colón ("Colón Decl."). | | applications for .Africa | |
| 11 | Deci.). | | during the Geographic | |
| 12 | | | Names Review and the | |
| 12 | | | contents of the Guidebook. | |
| 13 | Willett Declaration | DCA Objection | ICANN's Response | Court's |
| | 5.1.1 O. D.I. 17.2016 | Lacks foundation | Foundation/Personal | Ruling |
| 14 | ¶ 14. On February 17, 2016, ICANN issued an Extended | (Evid. Code § 403). | Knowledge/Speculative. | |
| | Evaluation Report stating that | 2. Lacks personal | | |
| 15 1 | | | I ME WILLER TECHNER INAL | |
| 15 | | | Ms. Willett testified that | 1 |
| 16 | the Geographic Names Panel | knowledge and | she is the Vice President | |
| 16 | | | | |
| | the Geographic Names Panel had determined that DCA had | knowledge and speculative (Evid. | she is the Vice President for Operations of the | |
| 16 17 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division | |
| 16 17 18 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that | |
| 16 17 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been | |
| 16 17 18 19 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as | |
| 16 17 18 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD | |
| 16 17 18 19 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ | |
| 16 17 18 19 20 21 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has | |
| 16 17 18 19 20 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of | |
| 16 17 18 19 20 21 22 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of | |
| 16 17 18 19 20 21 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application | |
| 16 17 18 19 20 21 22 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including | |
| 16 17 18 19 20 21 22 23 24 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including ICANN's and the | |
| 16 17 18 19 20 21 22 23 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including ICANN's and the Geographic Names Panel's | |
| 16 17 18 19 20 21 22 23 24 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including ICANN's and the | |
| 16 17 18 19 20 21 22 23 24 25 26 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including ICANN's and the Geographic Names Panel's handling of the .Africa | |
| 16 17 18 19 20 21 22 23 24 25 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ | knowledge and speculative (Evid. | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including ICANN's and the Geographic Names Panel's handling of the .Africa applications and the | |
| 16 17 18 19 20 21 22 23 24 25 26 27 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ | knowledge and speculative (Evid. Code § 702). 3. Best evidence rule (Evid. Code § | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including ICANN's and the Geographic Names Panel's handling of the .Africa applications and the contents of the Guidebook. | |
| 16 17 18 19 20 21 22 23 24 25 26 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ | knowledge and speculative (Evid. Code § 702). 3. Best evidence rule (Evid. Code § 1520). | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including ICANN's and the Geographic Names Panel's handling of the .Africa applications and the contents of the Guidebook. Best Evidence. Ms. | |
| 16 17 18 19 20 21 22 23 24 25 26 27 | the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or non-objection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing DCA's Application. (Guidebook at 174 (§ 2.2.1.4.4).) | knowledge and speculative (Evid. Code § 702). 3. Best evidence rule (Evid. Code § 1520). | she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA's application for .Africa, including ICANN's and the Geographic Names Panel's handling of the .Africa applications and the contents of the Guidebook. Best Evidence. Ms. | |

| | | | offered to prove the contents of a writing, but is based on her personal knowledge of ICANN's processing of DCA's application for .Africa and including ICANN's and the Geographic Names Panel's handling of the .Africa applications. | |
|---|--|---|--|-------------------|
| | Willett Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| | ¶ 15. On March 3, 2016, ICANN's Board adopted a | 1. Best evidence rule (Evid. Code § | Best evidence. This testimony is not offered to | |
| | resolution lifting the stay on the delegation of .AFRICA. A true and correct copy of the | 1520). | prove the contents of a writing. Rather, Ms. Willett's testimony is | |
| | Board's March 3, 2016 resolution is attached to this | | based on her personal knowledge as the Vice | |
| | declaration as Exhibit D . ICANN is now prepared to | | President for Operations of the Global Domains | |
| | delegate the rights to operate .AFRICA to ZACR. | | Division of ICANN regarding the evaluation of | |
| | However, ICANN has voluntarily stayed the | | New gTLD applications, including DCA and | |
| | delegation pending the Court's ruling on DCA's Motion for | | ZACR's applications for .Africa. | |
| | Preliminary Injunction. See Colón Decl. ¶ 2. | | | |
| | Willett Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| | ¶ 16. As described in the concurrently-filed declaration | 1. Lacks foundation (Evid. Code § 403). | Foundation/Personal Knowledge. Ms. Willett | |
| | of Akram Atallah, ICANN's Bylaws provide for several | 2. Lacks personal knowledge (Evid. | testified that she is the Vice President for | |
| | accountability mechanisms to ensure that ICANN operates in | Code § 702). | Operations of the Global Domains Division of | |
| | accordance with its Articles of Incorporation, Bylaws, | | ICANN, and that in that role she has been | |
| | policies and procedures. For example, an aggrieved | | responsible for overseeing the evaluation of | |
| 6 | applicant can file a "request for reconsideration," which is | | applications received as part of the New gTLD | |
| | a mechanism that asks the ICANN Board to re-evaluate | | Program. (Willett Decl. ¶¶ 1-2.) As such, she has | |
| | certain Board or staff actions or inactions that the applicant | | personal knowledge of the mechanisms that ensure | |
| | believes have harmed it. In addition, an aggrieved | | ICANN operates in | |
| | applicant can file a "request | | accordance with its | |

| ll l | | | | |
|------|--|--------------------|--|--|
| 1 | for independent review," a unique process set forth in | | Articles of Incorporation, Bylaws, policies and | |
| 2 | ICANN's Bylaws that asks independent panelists to | 3. Best evidence | procedures. | |
| 3 | evaluate whether an action of | rule (Evid. Code § | Best Evidence. This | |
| 4 | ICANN's Board was consistent with ICANN's | 1520). | testimony is not offered to prove the contents of a | |
| 5 | Articles of Incorporation and Bylaws. Bekele Decl., Ex. 4 | | writing. Rather, Ms. | |
| 6 | (Bylaws, Art. IV, §§ 2-3). | | Willett's testimony is based on her personal | |
| 7 | DCA could have filed, but did not file, a reconsideration | | knowledge as the Vice President for Operations of | |
| 8 | request or a request for an independent review process | | the Global Domains | |
| 9 | ("IRP") related to the clarifying questions issued to | | Division of ICANN regarding the mechanisms | |
| | it, or to the determination that | | that ensure ICANN operates in accordance | |
| 10 | DCA had failed the Geographic Names Review. | | with its Articles of | |
| 11 | | | Incorporation, Bylaws, policies and procedures. A | |
| 12 | | | true and correct copy of excerpts of ICANN's | |
| 13 | | | Bylaws can be found at | |
| 14 | | | Bekele Decl., Ex. 3. | |

DECLARATION OF AKRAM ATALLAH (Exhibit to Levee Declaration)

| Atallah Declaration | DCA Objection | ICANN's Response | Court's Ruling |
|--|--|---|----------------|
| ¶ 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. | 1. Lacks Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 702) 3. Best Evidence Rule (Evid. Code § 1520) | Foundation/Personal Knowledge. Mr. Atallah laid the foundation for his testimony. Atallah testified that he is the President, Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As such, he has personal knowledge of ICANN's mission and functions. Best Evidence. Mr. Atallah's statement is not offered to prove the contents of a writing. Mr. Atallah's testimony is based on his personal knowledge of ICANN's | |

| 1 2 3 4 | 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 | | mission and Bylaws. A true and correct copy of excerpts of ICANN's Bylaws is in the record (Bekele Decl., Ex. 3.) | |
|------------------|--|--|---|-------------------|
| 5 | Bylaws are relevant to this dispute. | | | |
| 6 | Atallah Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| 7 | ¶ 3. The essential function of the DNS is to convert the | Lacks Foundation (Evid. | Foundation/Personal Knowledge. Mr. Atallah | |
| 8 | numeric IP addresses into easily-remembered domain | Code § 403) 2. Lacks Personal | laid the foundation for his testimony. Atallah testified | |
| 9 | names that permit users to find specific websites, such as | Knowledge (Evid. Code § 702) | that he is the President, | |
| 10 | "USCOURTS.GOV" and "ICANN.ORG." The ".GOV" | 2000 3 / 02) | Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As such, he has | |
| 12 | and ".ORG" in these addresses, just like the more | | personal knowledge of the function of the DNS, | |
| 13 | well-known ".COM," are referred to as top-level | | ICANN's responsibilities | |
| 14 | domains ("TLDs"). ICANN is solely responsible for | | related to TLDs, and the lack of government and | |
| 15 | evaluating potential TLD operators and recommending | 3. Improper Option | regulatory governance. | |
| 16 | that TLDs be added to the DNS. No government entity or | Testimony (Evid. Code §720) | Opinion Testimony: Mr. Atallah is not giving | |
| 17 | regulatory scheme governs ICANN's decisions in that | Code (7/20) | opinion testimony. Even if he were, Mr. Atallah is | |
| 18 | respect. | | qualified to testify, based on his knowledge and | |
| 19 | | | experience demonstrated by his testimony at ¶ 1, of | |
| 20 | | | the function of the DNS, ICANN's responsibilities | |
| 22 | | | related to TLDs, and the lack of government and | |
| 23 | Atallah Declaration | DCA Objection | regulatory governance. ICANN's Response | Court's |
| 24 | ¶ 4. Throughout its history, | 1. Lacks | Foundation/Personal | Ruling |
| 25 | ICANN has sought to expand | Foundation (Evid. | Knowledge. Mr. Atallah | |
| 26 | the number of accessible TLDs in the DNS in order to | Code § 403) 2. Lacks Personal | laid the foundation for his testimony. Atallah testified | |
| 27 | promote consumer choice and competition. The New gTLD | Knowledge (Evid. Code § 702) | that he is the President, Global Domains Division, | |
| 28 | Program ("Program"), launched in 2012, constitutes | V 10000 | for ICANN (Atallah Decl. ¶ 1.) As such, he has | |
| | | Contraction to the second seco | 11.) 110 00011, 110 1100 | 100754747777 |

| 1 2 3 4 5 6 7 8 9 | ICANN's most ambition 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-ASCIII, internationalized domain name gTLDS. It resulted in the submission of 1,930 applications for new gTLDs, including DCA's and ZA Central Registry's ("ZACR;s") applications for | 3. Improper Opinion Testimony (Evid. Code §702) 4. Speculation (Evid. Code § 702) | personal knowledge of TLD expansion and the New gTLD Program. Opinion Testimony: Mr. Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, of TLD expansion and the New gTLD Program. Speculation. Mr. Atallah's own understanding of TLD | |
|--|--|---|--|-------------------|
| 11 12 | the .AFRICA gTLD. | | expansion and the New gTLD Program is not speculative, but a subject Mr. Atallah has personal knowledge of. | |
| 13 | Atallah Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| 20 89 | ¶ 5. A number of "Advisory | 1. Lacks | Foundation/Personal | |
| 15 16 17 18 19 20 21 22 23 24 25 26 27 | Committees" advise ICANN's Board on various topics described in the ICANN Bylaws. The Governmental Advisory Committee ("GAC") has members composed of national governments and distinct economies as recognized in the international fora, including the Unites States, and its purpose is to "consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreement or where they may affect public policy issues." Bekele Decl., Ex. 4 (Bylaws, Art. XI § 2.1). | Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 702) 3. Speculation (Evid. Code § 702) 4. Best Evidence | Knowledge. Mr. Atallah laid the foundation for his testimony. Atallah testified that he is the President, Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As such, he has personal knowledge of the Advisory Committees that advise ICANN's Board, including the GAC. Speculation. Mr. Atallah's own understanding of the ICANN Bylaws and the role of GAC is not speculative, but a subject Mr. Atallah has personal knowledge of. Best Evidence. Mr. | |
| 16 17 18 19 20 21 22 23 24 25 26 | Committees" advise ICANN's Board on various topics described in the ICANN Bylaws. The Governmental Advisory Committee ("GAC") has members composed of national governments and distinct economies as recognized in the international fora, including the Unites States, and its purpose is to "consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreement or where they may affect public policy issues." Bekele Decl., | Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 702) 3. Speculation (Evid. Code § 702) | Knowledge. Mr. Atallah laid the foundation for his testimony. Atallah testified that he is the President, Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As such, he has personal knowledge of the Advisory Committees that advise ICANN's Board, including the GAC. Speculation. Mr. Atallah's own understanding of the ICANN Bylaws and the role of GAC is not speculative, but a subject Mr. Atallah has personal knowledge of. | |

| Atallah Declarati | on DCA Objectio | offered to prove the contents of a writing. Mr. Atallah's testimony is based on his personal knowledge of the Advisory Committees that advise ICANN's Board. A true and correct copy of excerpts of ICANN's Bylaws is in the record (Bekele Decl., Ex. 3.) | Court's |
|--|---|--|---------|
| A stallan Declarati | Jon Objectio | ICANN's Response | Ruling |
| ¶ 6. ICANN's Bylaws p | | | |
| for several accountabilit mechanisms to ensure the | | Atallah's statement is not offered to prove the | |
| ICANN operates in accordance with its Arti | | contents of a writing. Mr. | |
| Incorporation, Bylaws, | | Atallah's testimony is based on his personal | |
| policies and procedures Bekele Decl., Ex. 4 (By | | knowledge of the accountability mechanisms | |
| Arts IV-V). For exampl | e, an | provided by ICANN's | |
| aggrieved applicant can "request for reconsidera | | Bylaws. A true and correct | |
| which is a mechanism the | hat | copy of excerpts of ICANN's Bylaws is in the | |
| asks the ICANN Board evaluate certain Board of | NOVEL CONTROL OF THE PROPERTY | record (Bekele Decl., Ex. | |
| actions or inactions that | the 2. Lacks | 3.) | |
| applicant believes have harmed it. <i>Id.</i> (Bylaws, | Foundation (Evid Art. Code § 403) | Foundation/Personal | |
| IV, §2). In addition, an | 3. Lacks Persona | lilate Completion Combine | |
| aggrieved applicant can "request for independen | | testimony. Atallah testified | |
| review," a unique proce forth in ICANN's Bylav | | that he is the President, Global Domains Division, | |
| asks independent paneli | | for ICANN (Atallah Decl. | |
| evaluate whether an act ICANN's Board was | ion of | ¶ 1.) As such, he has personal knowledge of the | |
| consistent with ICANN | 's | accountability mechanisms | |
| Articles of Incorporatio | (1.5.10 m) | provided by ICANN's | |
| Bylaws. <i>Id.</i> (Bylaws, A. §3). | 4. Speculation | Bylaws. | |
| | (Evid. Code § 70 | operation | |
| | | own understanding of the ICANN Bylaws is not | |
| | | speculative, but a subject | |
| | | Mr. Atallah has personal knowledge of. | |
| 4.6 | | I KIIOWICIEC UI. | |

| | Atallah Declaration | Opinion Testimony (Evid. Code §702) | Opinion Testimony: Mr. Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, of the accountability mechanisms provided by ICANN's Bylaws. | Court's |
|----|---|--|--|---------|
| | Atalian Declaration | DCA Objection | ICANN's Response | Ruling |
| | ¶ 7. The Bylaws provide for the IRP panel to issue a | 1. Best Evidence Rule (Evid. Code § | Best Evidence. Mr. Atallah's statement is not | |
| | written determination | 1520) | offered to prove the | |
| | "declar[ing] whether an action or inaction of the Board was | | contents of a writing. Mr. Atallah's testimony is | |
| | inconsistent with the Articles of Incorporation or Bylaws" and "recommend[ing] that the | | based on his personal knowledge of the provisions in ICANN's | |
| | Board stay any action or decision, or that the Board | | bylaws relating to the IRP Panel and the ICANN | |
| | take any interim action, until such time as the Board | | Board's consideration of an IRP Panel | |
| | reviews and acts upon the opinion of the IRP." Bekele | | determination. A true and | |
| | Decl., Ex. 4 (Bylaws, Art. IV, §3.11). The ICANN Board then considers and acts on the | | correct copy of excerpts of ICANN's Bylaws is in the record (Bekele Decl., Ex. | |
| | determination. <i>Id.</i> (Bylaws, Art. IV, §2). | 2. Lacks Foundation (Evid. | 3.) | |
| | Ait. 1V, 92). | Code § 403) 3. Lacks Personal | Foundation/Personal Knowledge, Mr. Atallah | |
| | | Knowledge (Evid. Code § 702) | laid the foundation for his testimony. Atallah testified that he is the President, | |
| | | | Global Domains Division, for ICANN (Atallah Decl. | |
| | | | ¶ 1.) As such, he has | |
| | | | personal knowledge of ICANN's bylaws relating | |
| | | | to the IRP Panel and the ICANN Board's | |
| | | | consideration of an IRP Panel determination. | |
| | | | Speculation. Mr. Atallah's | |
| 11 | | 4. Speculation | opeculation, Ivii. Atalian 5 | |

| 1 2 3 4 5 6 | | 5. Improper Opinion Testimony | ICANN's bylaws relating to the IRP Panel and the ICANN Board's consideration of an IRP Panel determination is not speculative, but a subject Mr. Atallah has personal knowledge of. Opinion Testimony: Mr. | |
|--|--|---|--|-------------------|
| 7 | | (Evid. Code §702) | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is | |
| 8 | | | qualified to testify, based on his knowledge and | |
| 9 | | | experience demonstrated by his testimony at ¶ 1, | |
| 11 | | | about ICANN's bylaws relating to the IRP Panel and the ICANN Board's | |
| 12 | | | consideration of an IRP Panel determination. | |
| 13 | Atallah Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| 200 | ¶ 8. I am informed and believe | 1. Improper | Opinion Testimony: Mr. | |
| 15 | that proper to the opening of | Opinion Testimony (Evid. Code §702) | Atallah is not giving opinion testimony. Even if | |
| 15 16 17 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written | Opinion Testimony | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based | |
| 16 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the | Opinion Testimony | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that | |
| 16 17 18 19 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on | Opinion Testimony | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated | |
| 16 17 18 19 20 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on ICANN's Board. Attached hereto as Exhibit E is a true | Opinion Testimony (Evid. Code §702) | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that only one IRP had resulted | |
| 16 17 18 19 20 21 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on ICANN's Board. Attached hereto as Exhibit E is a true and correct copy of an excerpt of the Final Declaration of the | Opinion Testimony (Evid. Code §702) 2. Lacks Foundation (Evid. | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that only one IRP had resulted in a written determination prior to the opening of the New gTLD Program. | |
| 16 17 18 19 20 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on ICANN's Board. Attached hereto as Exhibit E is a true and correct copy of an excerpt | Opinion Testimony (Evid. Code § 702) 2. Lacks Foundation (Evid. Code § 403) 3. Lacks Personal | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that only one IRP had resulted in a written determination prior to the opening of the | |
| 16 17 18 19 20 21 22 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on ICANN's Board. Attached hereto as Exhibit E is a true and correct copy of an excerpt of the Final Declaration of the | Opinion Testimony (Evid. Code § 702) 2. Lacks Foundation (Evid. Code § 403) | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that only one IRP had resulted in a written determination prior to the opening of the New gTLD Program. Foundation/Personal Knowledge. Mr. Atallah laid the foundation for his testimony. Atallah | |
| 16 17 18 19 20 21 22 23 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on ICANN's Board. Attached hereto as Exhibit E is a true and correct copy of an excerpt of the Final Declaration of the | Opinion Testimony (Evid. Code § 702) 2. Lacks Foundation (Evid. Code § 403) 3. Lacks Personal Knowledge (Evid. | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that only one IRP had resulted in a written determination prior to the opening of the New gTLD Program. Foundation/Personal Knowledge. Mr. Atallah laid the foundation for his testimony. Atallah testified that he is the President, Global Domains | |
| 16 17 18 19 20 21 22 23 24 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on ICANN's Board. Attached hereto as Exhibit E is a true and correct copy of an excerpt of the Final Declaration of the | Opinion Testimony (Evid. Code § 702) 2. Lacks Foundation (Evid. Code § 403) 3. Lacks Personal Knowledge (Evid. | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that only one IRP had resulted in a written determination prior to the opening of the New gTLD Program. Foundation/Personal Knowledge. Mr. Atallah laid the foundation for his testimony. Atallah testified that he is the President, Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As | |
| 16 17 18 19 20 21 22 23 24 25 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on ICANN's Board. Attached hereto as Exhibit E is a true and correct copy of an excerpt of the Final Declaration of the | Opinion Testimony (Evid. Code § 702) 2. Lacks Foundation (Evid. Code § 403) 3. Lacks Personal Knowledge (Evid. | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that only one IRP had resulted in a written determination prior to the opening of the New gTLD Program. Foundation/Personal Knowledge. Mr. Atallah laid the foundation for his testimony. Atallah testified that he is the President, Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As such, he has personal knowledge of past IRP | |
| 16 17 18 19 20 21 22 23 24 25 26 | that proper to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination, ICM Registry, LLC v. ICANN. The ICM Panel declared that the determinations of the IRP panels were not binding on ICANN's Board. Attached hereto as Exhibit E is a true and correct copy of an excerpt of the Final Declaration of the | Opinion Testimony (Evid. Code § 702) 2. Lacks Foundation (Evid. Code § 403) 3. Lacks Personal Knowledge (Evid. | Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based on his knowledge and experience demonstrated by his testimony at ¶ 1, that only one IRP had resulted in a written determination prior to the opening of the New gTLD Program. Foundation/Personal Knowledge. Mr. Atallah laid the foundation for his testimony. Atallah testified that he is the President, Global Domains Division, for ICANN (Atallah Decl. ¶ 1.) As such, he has personal | |

| | 4. Lack of Completeness | Lack of Completeness. | |
|---------------------|-------------------------|---|---------|
| | (Evid. Code § 356) | Evidence Code § 365 | |
| | | merely states, in relevant | |
| | | part, that "[w]here part of | |
| | | an act, declaration, conversation, or writing is | |
| | | given in evidence by one | |
| | | party, the whole on the same subject may be | |
| | | inquired into by an adverse | |
| | | party[.]" Mr. Atallah's | |
| | | declaration references an excerpt from an IRP Final | |
| | | Declaration by the <i>ICM</i> | |
| | | panel. DCA's objection | |
| | | does not go to admissibility. At most, | |
| | | DCA should offer any | |
| | | other portions of the | |
| | | referenced declaration it | |
| | | feels should be considered, which it has not done here. | |
| | 5. Best Evidence | Willen it has not done here. | |
| | Rule (Evid. Code § | Best Evidence. Mr. | |
| | 1520) | Atallah's statement is not offered to prove the | |
| | | contents of a writing. Mr. | |
| | | Atallah's testimony is | |
| | | based on his personal | |
| | | knowledge of past IRP written declarations. A | |
| | | true and correct copy of an | |
| | | excerpt of the Final Declaration of the | |
| | | ICM Panel is in the record | |
| | | (Declaration of Akram Atallah in Support of | |
| | | ICANN's Opposition to | |
| | | DCA's Motion for Preliminary Injunction | |
| | | ("Atallah Decl."), Exhibit E.) | |
| | | L.) | |
| Atallah Declaration | DCA Objection | ICANN's Response | Court's |
| | | Total it o Response | Ruling |
| | 20 | | |

| 1 | ¶ 9. To my knowledge, ICANN has never represented | 1. Improper Opinion Testimony | Opinion Testimony: Mr. Atallah is not giving | |
|----------|---|--------------------------------------|---|-------------------|
| 2 | that IRPs are binding. Instead, | (Evid. Code §702) | opinion testimony. Even if | |
| 3 | ICANN has consistently argued that IRP declarations | | he were, Mr. Atallah is qualified to testify, based | |
| 4 | are not binding. | | on his knowledge and experience demonstrated | |
| 5 | | | by his testimony at ¶ 1, that ICANN has consistently | |
| 6 | | | argued that IRP | |
| 7 | | | declarations are not binding. | |
| 8 | | 2. Lacks Foundation (Evid. | Foundation. Mr. Atallah | |
| 9 | | Code § 403) | laid the foundation for his testimony. Atallah testified that he is the | |
| 10 | | | President, Global Domains Division, for ICANN | |
| 12 | | | (Atallah Decl. ¶ 1.) As such, he has knowledge of | |
| 13 | | | ICANN's past and present representations with regard | |
| 14 | | | to IRPs. | |
| 15 | | 3. Hearsay (Evid. Code § 1200, et | Hearsay. Mr. Atallah's testimony is not hearsay as | |
| 16 | | seq.) | no "statement" is offered to prove the truth of the matter | |
| 17 | | | stated. Rather, the | |
| 18 19 | | | testimony represents Mr. Atallah's testimony of | |
| 20 | | | events that he perceived during his employment | |
| 21 | Atallah Declaration | DCA Objection | with ICANN. ICANN's Response | Court's Ruling |
| 22 | ¶ 10. In the case of the DCA | 1. Lacks | Foundation. Mr. Atallah | |
| 23 | IRP, the <i>DCA</i> Panel declared that its decision would be | Foundation (Evid. Code § 403) | laid the foundation for his testimony. Atallah | |
| 24 | binding on ICANN's Board. But the question of whether | 9000 (27th) | testified that he is the President, Global Domains | |
| 25 | the Panels declaration was or was not legally binding | | Division, for ICANN (Atallah Decl. ¶ 1.) As | |
| 26 | became a moot issue once ICANN's Board elected to | | such, he has knowledge of | |
| 27 | adopt all of the DCA Panel's | | the DCA IRP Panel's decision and the ICANN | |
| 28 | recommendations, contrary to the representation in | | Board's election to adopt | |
| | | 21 | 70.000 | |
| | ICANN'S RE | SPONSES TO DCA'S E | VIDENTIARY OBJECTIONS | |

| | Plaintiff's Motion for Preliminary Injunction. | | the DCA Panel's recommendations. | |
|---|--|--------------------|--|-------------------|
| | | 2. Best Evidence | D . E . I | |
| | | Rule (Evid. Code § | Best Evidence. Mr. Atallah's statement is not | |
| | | 1520) | offered to prove the | |
| | | | contents of a writings. Mr. | |
| | | | Atallah's testimony is | |
| | | | based on his personal | |
| | | | knowledge of the DCA IRP Panel's decision and | |
| | | | the ICANN Board's | |
| | | | election to adopt the DCA | |
| | | | Panel's recommendations. | |
| | | | A true and correct copy of ICANN Board Resolutions | |
| | | | 2015.07.16.01-05, | |
| | | | adopting the DCA Panel's | |
| l | | | recommendations is in the | |
| | | | record (Atallah Decl., Exhibit F.) | |
| | | 3. Improper | Exhibit 1.) | |
| | | Opinion Testimony | Opinion Testimony: Mr. | |
| | | (Evid. Code §702) | Atallah is not giving | |
| | | | opinion testimony. Even if he were, Mr. Atallah is | |
| | | | qualified to testify, based | |
| | | | on his knowledge and | |
| | | | experience demonstrated | |
| | | | by his testimony at ¶ 1, of the DCA Panel's decision | |
| l | | | and the ICANN Board's | |
| l | | | election to adopt the DCA | |
| | | | Panel's recommendations. | |
| | | 4. Hearsay (Evid. | Hearsay. Mr. Atallah's | |
| | | Code § 1200, et | testimony is not hearsay as | |
| | | seq.) | no "statement" is offered to | |
| | | | prove the truth of the matter | |
| | | | stated. Rather, the testimony represents Mr. | |
| | | | Atallah's testimony of | |
| | | | events that he perceived | |
| | | | during his employment with ICANN. | |
| | Atallah Declaration | DCA Objection | ICANN's Response | Court's Ruling |

| 1 | ¶ 11. Specifically, on July 9, | 1. Best Evidence | Best Evidence. Mr. | |
|--|--|---|--|-------------------|
| | 2015, the <i>DCA</i> Panel issued its | Rule (Evid. Code § | Atallah's statement is not | |
| 2 | Final Declaration. Bekele Decl. Ex. 1. The <i>DCA</i> Panel | 1520) | offered to prove the | |
| 3 | determined that ICANN's | | contents of a writing. Mr. | |
| 3 | Board had violated ICANN's | | Atallah's testimony is based on his personal | |
| 4 | Articles of Incorporation and | | knowledge of the DCA | |
| 10,0 | Bylaws by accepting the | | IRP Panel's Final | |
| 5 | GAC's consensus advice that | | Declaration and | |
| | Plaintiff's application | | recommendation. A true | |
| 6 | for .AFRICA ("Application") | | and correct copy of the IRP | |
| 7 | should not proceed. The DCA | | Panel's Declaration is in | |
| | Panel therefore recommended | | the record (Bekele Decl., | |
| 8 | that "ICANN continue to | | Ex. 1.) | |
| | refrain from delegating | 2. Lacks Personal | | |
| 9 | the .AFRICA gTLD and permit [Plaintiff]'s application | Knowledge (Evid. | Personal Knowledge. Mr. | |
| 10 | to proceed through the | Code § 720) | Atallah testified that he is | |
| | remainder of the new gTLD | 3 . = 0) | the President, Global | |
| 11 | application process." Bekele | | Domains Division, for | |
| 10 | Decl., Ex. 1 ¶ 149. | | ICANN (Atallah Decl. ¶ | |
| 12 | , | | 1.) As such, he has | |
| 13 | | | personal knowledge of the | |
| | | | DCA IRP Panel's Final | |
| 14 | | | Declaration and | |
| - 11 | t . | | recommendation. | |
| 15 | | 201 011 1 | recommendation | Countra |
| | Atallah Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| | | DCA Objection 1. Improper | | |
| 16 | Atallah Declaration ¶ 12. ICANN's Board promptly considered and | | ICANN's Response | |
| 16 | ¶ 12. ICANN's Board | 1. Improper | ICANN's Response Opinion Testimony: Mr. Atallah is not giving opinion testimony. Even if | |
| 16 17 | ¶ 12. ICANN's Board promptly considered and adopted each of the <i>DCA</i> Panel's recommendations. On | Improper Opinion Testimony | Opinion Testimony: Mr. Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is | |
| 16 17 18 | ¶ 12. ICANN's Board promptly considered and adopted each of the <i>DCA</i> Panel's recommendations. On July 16, 2015, the Board | Improper Opinion Testimony | Opinion Testimony: Mr. Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is qualified to testify, based | |
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| 1 2 | | | consideration and adoption of the DCA IRP Panel's recommendations and the ICANN Board's | |
|--|---|---|--|-------------------|
| 3 | | | resolution. | |
| 4 | | 3. Best Evidence | Best Evidence. Mr. | |
| 5 | | Rule (Evid. Code § 1520) | Atallah's statement is not offered to prove the | |
| 6 | | | contents of a writing. Mr. | |
| 7 | | | Atallah's testimony is based on his personal | |
| 8 | | | knowledge of the ICANN Board's consideration and | |
| 9 | | | adoption of the DCA IRP | |
| 10 | | | Panel's recommendations and the ICANN Board's | |
| 11 | | | resolution. A true and correct copy of ICANN | |
| 12 | | | Board Resolutions | |
| 13 | | | 2015.07.16.01-05, adopting the <i>DCA</i> Panel's | |
| A355000 | | | recommendations is in the record (Atallah Decl., | |
| 14 | | | Exhibit F.) | |
| | | | Exhibit 1.) | |
| 15 | Atallah Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| 15 16 | ¶ 13. In the event ICANN is | 1. Improper | ICANN's Response Opinion Testimony: Mr. | Court's Ruling |
| | A CONTRACTOR OF THE STATE OF | | ICANN's Response | |
| 16 | ¶ 13. In the event ICANN is permitted to delegate the .AFRICA gTLD to ZACR, a transfer or assignment of the | 1. Improper Opinion Testimony | Opinion Testimony: Mr. Atallah is not giving opinion testimony. Even if he were, Mr. Atallah is | |
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| 1 2 | | | knowledge of the possibility of a transfer or assignment of the .AFRICA gTLD after | |
| 3 | | | delegation and of the | |
| 4 | | | existence of other gTLDs that have had their registry | |
| 5 | | | contracts transferred. | |
| 6 | | 3. Speculation (Evid. Code § 702) | Speculation. Mr. Atallah's | |
| 7 | | 4. Lacks Personal Knowledge (Evid. | own understanding of the possibility of a transfer or | |
| 8 | | Code § 702) | assignment of the .AFRICA gTLD after | |
| 9 | | | delegation and the existence of other gTLDs that have had their registry | |
| 10 | | | contracts transferred is not speculative, but a subject | |
| 12 | | | Mr. Atallah has personal knowledge of. | |
| 13 | Atallah Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| 14 | ¶ 14. Nor is there any truth to | 1. Improper | Opinion Testimony: Mr. | |
| 15 | DCA's argument in its Motion (at p. 12) that "the U.S. | Opinion Testimony (Evid. Code §702) | Atallah is not giving opinion testimony. Even if | |
| 16 | government's ties with ICANN ceased" and therefore | | he were, Mr. Atallah is qualified to testify, based | |
| 17 | "the current procedure for | | | |
| 17 | | | on his knowledge and | |
| 18 | gTLD re-delegation is uncertain." In fact, nothing | | experience demonstrated by his testimony at ¶ 1, that | |
| | gTLD re-delegation is uncertain." In fact, nothing about the recent transition of the Internet Assigned | | experience demonstrated | |
| 18 | gTLD re-delegation is uncertain." In fact, nothing about the recent transition of | | experience demonstrated by his testimony at ¶ 1, that the transition of the IANA functions from the U.S. government to ICANN has | |
| 18 19 | gTLD re-delegation is uncertain." In fact, nothing about the recent transition of the Internet Assigned Numbers Authority ("IANA") functions from the United States government to ICANN | | experience demonstrated by his testimony at ¶ 1, that the transition of the IANA functions from the U.S. government to ICANN has not had any effect on the possibility to transfer the | |
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| 18 19 20 21 | gTLD re-delegation is uncertain." In fact, nothing about the recent transition of the Internet Assigned Numbers Authority ("IANA") functions from the United States government to ICANN has any effect whatsoever upon the fact that it is possible to transfer the rights to operate a new gTLD from one registry | | experience demonstrated by his testimony at ¶ 1, that the transition of the IANA functions from the U.S. government to ICANN has not had any effect on the possibility to transfer the operation rights of a new gTLD from one registry operator to another, post- | |
| 18 19 20 21 22 | gTLD re-delegation is uncertain." In fact, nothing about the recent transition of the Internet Assigned Numbers Authority ("IANA") functions from the United States government to ICANN has any effect whatsoever upon the fact that it is possible to transfer the rights to operate | 2. Lacks Foundation (Evid. | experience demonstrated by his testimony at ¶ 1, that the transition of the IANA functions from the U.S. government to ICANN has not had any effect on the possibility to transfer the operation rights of a new gTLD from one registry operator to another, post-delegation. | |
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| II. | P | | | |
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| 1 | | | such, he has knowledge of | |
| | | | the transition of functions from the U.S. government | |
| 2 | | | to ICANN and the | |
| 3 | | | possibility of transferring | |
| 153,651 | | | operation rights for a new | |
| 4 | | | gTLD from one registry | |
| 5 | | | operation to another post- | |
| | | 3. Speculation | delegation. | |
| 6 | | (Evid. Code § 702) | Speculation. Mr. Atallah's | |
| 7 | | 4. Lacks Personal | own understanding of the | |
| | | Knowledge (Evid. Code § 702) | transition of functions from | |
| 8 | | Code (3 702) | the U.S. government to | |
| 9 | | | ICANN and the possibility of transferring operation | |
| 10 | | | rights for a new gTLD | |
| 10 | | | from one registry operation | |
| 11 | | | to another post-delegation | |
| 12 | | | is not speculative, but a | |
| | | | subject Mr. Atallah has personal knowledge of. | |
| 13 | | 5. Best Evidence | personal knowledge of: | |
| 14 | | Rule (Evid. Code | Best Evidence. Mr. | |
| | | §1520) | Atallah's statement is not | |
| 15 | | | offered to prove the | |
| 16 | | | contents of a writing. Mr. Atallah's testimony is | |
| 1.7 | | | based on his personal | |
| 17 | | | knowledge of the transition | |
| 18 | | | of functions from the U.S. | |
| 19 | | | government to ICANN and | |
| 19 | | | the possibility of transferring operation | |
| 20 | | | rights for a new gTLD | |
| 21 | | | from one registry operation | |
| 21 | | | to another post-delegation. | |
| 22 | DECLADATION | OE KEVIN ESDINOI | A (Exhibit to Levee Declaration | 1) |

DECLARATION OF KEVIN ESPINOLA (Exhibit to Levee Declaration)

| Espinola Declaration | DCA Objection | ICANN's Response | Court's Ruling |
|--|----------------------------------|--|-------------------|
| ¶ 2. ICANN and its community developed the New gTLD Applicant Guidebook ("Guidebook") as part of a years-long, bottomup multistakeholder process during which numerous | Irrelevant (Evid. Code § 350) | Relevance. Testimony regarding the development of the Guidebook is relevant to show how the Guidebook was developed over time and the information made available | |

| versions were published by ICANN for public comment and revised, in part based on comments received. In total, six versions of the Guidebook were published for public comment. | | to the public for comment. | |
|---|----------------------------------|---|-------------------|
| Espinola Declaration | DCA Objection | ICANN's Response | Court's Ruling |
| ¶ 3. In the April 15, 2011 version of the Guidebook ("April 2011 Guidebook"), | Irrelevant (Evid. Code § 350) | Relevance. Testimony regarding Module 6 of the Guidebook is relevant to | |
| language was added to Section 6 of Module 6 of the Guidebook ("Covenant Not to | | show the development of the New gTLD Applicant | |
| Sue") making explicit that: "[an] applicant may utilize any | | Guidebook, including language added to Module 6 in 2011 and when | |
| accountability mechanism set forth in ICANN's Bylaws for | | information was made available to the public for | |
| [the] purposes of challenging any final decision made by | | comment. | |
| 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. Espinola Declaration | DCA Objection | ICANN's Response | Court's |
| OT 4. A. ICANINI has stated | Irrelevant (Evid. | Relevance. Testimony | Ruling |
| ¶ 4. As ICANN has stated publicly, ICANN is a not-for-profit public benefit | Code § 350) | regarding the development of Module 6 of the | |
| corporation and anticipated that, absent a broad waiver | | Guidebook is relevant to show the development of | |
| and limitation of liability in the Guidebook's terms and | | the New gTLD Applicant Guidebook, and the | |
| conditions, the over 1,900 applicants could initiate | | considerations behind including the Covenant | |
| frivolous and costly legal actions in an attempt to | | Not To Sue in Module 6 of the Guidebook. | |
| challenge legitimate ICANN decisions, which would | | | |
| imperil the successful implementation of the New | | | |
| gTLD Program. Accordingly, | | | |

| 1 | how to protect the New gTLD | |
|----------|--|--|
| 2 | Program. Accordingly, ICANN carefully considered | |
| 3 | how to protect the New gTLD Program from such | |
| 4 | Not to Sue in the Guidebook | |
| 5 | was deemed appropriate in light of these considerations. | |
| 6 | | |
| 7 | Dated: August 4, 2017 | Jones Day |
| 8 | | By: Jeffy A, Lever Ho |
| 9 | | Joffrey A. LeVee |
| 10 | | Attorneys for Defendant INTERNET CORPORATION FOR |
| 11 | | ASSIGNED NAMES AND NUMBERS |
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| | ICANN'S RESPONSES | TO DCA'S EVIDENTIARY OBJECTIONS |
| | I | |

PROOF OF SERVICE

2 I, Grace M. Directo, declare:

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I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On August 4, 2017, I served a copy of the within document(s):

ICANN'S RESPONSES TO DCA'S EVIDENTIARY OBJECTIONS

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Ethan J. Brown, Esq. Sara C. Colón, Esq. Rowenakete "Kete" Barnes, Esq. BROWN NERI & SMITH LLP 11766 Wilshire Boulevard, Suite 1670 Los Angeles, CA 90025

Phone: 310-593-9890

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David W. Kesselman, Esq.

Kesselman Brantly Stockinger LLP 1230 Rosebrans Avenue, Suite 690 Manhattan Beach, CA 90266

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VIA EMAIL ONLY

VIA PERSONAL SERVICE

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage

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meter date is more than one day after date of deposit for mailing an affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 4, 2017, at Los Angeles, California.

Grace M. Fare

Grace M. Directo