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11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**

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

14 DOTCONNECTAFRICA TRUST, a Mauritius  
15 Charitable Trust;

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR  
19 ASSIGNED NAMES AND NUMBERS, a  
20 California corporation;

21 Defendants.

Case No. BC607494

Assigned for all purposes to the Honorable  
Howard L. Halm

**EVIDENTIARY OBJECTIONS BY  
DOTCONNECTAFRICA TO  
DECLARATION OF JEFFREY LEVEE  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

DATE: February 2, 2017

TIME: 8:29 a.m.

DEPT: 53

**Evidentiary Objections to Declaration of Jeffrey Levee**

<b>Jeffrey Levee Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
<p>¶ 5: In May 2015, a two-day final hearing was held in the <i>DCA</i> IRP. On July 9, 2015, the IRP Panel issued a 63-page final declaration ("Declaration"). Paragraphs 92-117 (pages 39- 54) detail the IRP Panel's findings regarding the merits of DCA's claims. The IRP Panel's discussion is devoted exclusively to the Board's acceptance of the GAC's Advice. The IRP Panel concludes that ICANN's Board did not act consistently with ICANN's Articles and Bylaws in accepting the GAC's Advice. (¶ 115.) With respect to all of DCA's other claims, the IRP Panel reaches no conclusion except to state in Paragraph 117 that:</p> <p style="padding-left: 40px;">[Plaintiff] had criticized ICANN for its various actions and decisions throughout this IRP and ICANN has responded to each of these criticisms in detail. However, the Panel, having carefully considered these criticisms and decided that the above [i.e., its finding regarding the GAC's Advice] is dispositive of this IRP, [] does not find it necessary to determine who was right, to what extent and for what reasons in respect to the other criticisms and alleged shortcomings of the 27 ICANN Board identified by DCA Trust.</p>	<p>1. Best evidence rule (Evid. Code § 1520).</p>		
<b>Jeffrey Levee Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
<p>¶ 6: The IRP Panel recommends that "ICANN continue to refrain from delegating the .AFRICA gTLD and permit [Plaintiffs] application to proceed through the remainder of the new gTLD application process" (<i>id.</i> ¶¶133, 148-149). The IRP Panel concludes that DCA is the prevailing party and orders ICANN to pay DCA's costs. (¶¶ 139, 146, 150.)</p>	<p>1. Best evidence rule (Evid. Code § 1520).</p>		
<b>Jeffrey Levee Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>

**EVIDENTIARY OBJECTIONS BY DOTCONNECTAFRICA TO DECLARATION OF JEFFREY LEVEE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

<p>¶ 7: The IRP Panel made no findings whatsoever that could be construed to remove or eliminate the Guidebook requirement that an application for a gTLD representing a geographic region (such as .AFRICA) must obtain the support or non-objection of at least 60% of the governments in that region. To the contrary, as the IRP Panel notes in Paragraph 46 (on page 14), DCA specifically asked the IRP Panel to give DCA "no less than 18 months to obtain Government support as set out in the [Guidebook] ... or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA," but the IRP Panel did not address DCA's request at all. Ms. Bekele confirmed in deposition her understanding that nothing in the IRP Declaration addressed whether or not DCA had passed the requirement of obtaining 60 percent governmental support, and she further confirmed that the IRP Panel did not find that DCA could "skip" that evaluation. <i>See</i> Ex. H at 203:4-7.</p>	<p>2. Best evidence rule (Evid. Code § 1520).</p>		
<p><b>Jeffrey Levee Declaration ¶</b></p>	<p><b>DCA Objection</b></p>	<p><b>Sustained</b></p>	<p><b>Overruled</b></p>
<p>¶ 8: In its briefs to the IRP Panel, ICANN argued that IRP panel declarations were not binding on ICANN's Board. ICANN's argument was based, in part, on the fact that the only previous IRP declaration to have been issued (as of that time) expressly found that IRP panel declarations are not binding.<sup>1</sup> The DCA IRP Panel disagreed, however, and in a 14 August 2014 declaration on procedural issues ("Procedural Declaration"), the IRP Panel determined that its declaration would be binding on ICANN's Board. The portions of the Procedural Declaration that address this point are reproduced at paragraph 23 (pages 5-6) of the IRP Panel's Declaration.</p> <p>n.1. A true and correct copy of an excerpt of this previous IRP declaration is attached to the</p>	<p>3. Best evidence rule (Evid. Code § 1520).</p>		

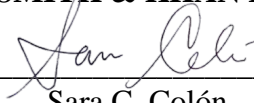
**EVIDENTIARY OBJECTIONS BY DOTCONNECTAFRICA TO DECLARATION OF JEFFREY LEVEE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

1	concurrently-filed declaration of Akram Atallah.			
2	<b>Jeffrey Levee Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
3	¶ 9: Most importantly, however, the question of whether the IRP Panel's Declaration was considered binding in conjunction with the DCA IRP became a moot point when ICANN's Board elected to adopt <i>all</i> of the findings and recommendations in the IRP Panel's Declaration. A copy of the resolution by ICANN's Board adopting the IRP Panel's Declaration is attached to the concurrently-filed Declaration of Akram Atallah.	1. Best evidence rule (Evid. Code § 1520). 2. Lacks foundation (Evid. Code § 403).		
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9	<b>Jeffrey Levee Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
10	¶ 10: DCA filed this suit against ICANN on January 20, 2016, in Los Angeles County Superior Court. After the Superior Court denied DCA's request for a temporary restraining order, ICANN timely removed the case to federal court, invoking diversity jurisdiction. On March 1, 2016, DCA moved for a preliminary injunction, which the federal court granted on April 12, 2016 on the basis of an admitted factual error and before DCA admitted in deposition that the entire basis on which the district court had granted the injunction - that the IRP Panel had allowed DCA to skip the geographic review requirement - was false.	1. Best evidence rule (Evid. Code § 1520).		
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20	<b>Jeffrey Levee Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
21	¶ 11: Following remand, DCA again moved for preliminary injunction based on its ninth cause of action. The Court denied that motion on December 22, 2016 based on "the reasoning expressed in the oral and written arguments of defense counsel." Attached hereto as <b>Exhibit I</b> is a true and correct copy of the Court's December 22, 2016 Minute Order denying DCA's application for preliminary injunction.	1. Best evidence rule (Evid. Code § 1520).		
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1 Dated: January 26, 2017

2 **BROWN NERI SMITH & KHAN LLP**

3 By: \_\_\_\_\_



Sara C. Colón

4 *Attorneys for Plaintiff*

5 DOTCONNECTAFRICA TRUST

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