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INTERNET CORPORATION FOR  
8 ASSIGNED NAMES AND NUMBERS

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**  
11

12 DOTCONNECTAFRICA TRUST,  
13 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR  
16 ASSIGNED NAMES AND NUMBERS, *et*  
*al.*,  
17 Defendants.

**CASE NO. BC607494**

Assigned to Hon. Howard L. Halm

**DECLARATION OF JEFFREY A.  
LEVEE IN SUPPORT OF ICANN'S  
MOTION FOR SUMMARY  
JUDGMENT**

[Notice Of Motion And Motion For  
Summary Judgment, Memorandum Of  
Points And Authorities, Statement Of  
Undisputed Facts, And [Proposed] Order  
Filed Concurrently Herewith]

Date: August 9, 2017  
Time: 8:30 a.m.  
Dept: 53

Complaint Filed: January 20, 2016

**RESERVATION ID: 170308201420**

**DECLARATION OF JEFFREY A. LEVEE**

I, Jeffrey A. LeVee, declare the following:

1. I am a partner of Jones Day, counsel to defendant the Internet Corporation for Assigned Names and Numbers (“ICANN”). I have personal knowledge of the matters set forth herein and am competent to testify as to those matters. I make this declaration in support of ICANN’s motion for summary judgment seeking to dismiss all claims in the First Amended Complaint filed by Plaintiff DotConnectAfrica Trust (“DCA” or “Plaintiff”).

2. I was counsel to ICANN when it was formed in 1998, and I have remained ICANN’s primary outside litigation counsel since that time. I represented ICANN in connection with the independent review process (“IRP”) initiated by DCA (“DCA IRP”), and throughout this litigation.

3. Attached hereto as **Exhibit A** are true and correct copies of pertinent excerpts of the transcript from the December 1, 2016 deposition taken in this matter of DCA’s “person most knowledgeable,” Ms. Sophia Bekele Eshete.

4. Attached hereto as **Exhibit B** is a true and correct copy of relevant portions of the New gTLD Applicant Guidebook (“Guidebook”). This version of the Guidebook was dated as of June 4, 2012. A complete copy of the Guidebook is in the record and available as Exhibit 3 to the November 10, 2016 Declaration of Sophia Bekele in Support of DCA’s Motion for Preliminary Injunction, filed on November 15, 2016.

5. Attached hereto as **Exhibit C** is a true and correct copy of the December 8, 2016 Declaration of Christine Willett filed in conjunction with ICANN’s opposition to DCA’s motion for preliminary injunction.

6. Attached hereto as **Exhibit D** is a true and correct copy of the December 9, 2016 Declaration of Akram Atallah filed in conjunction with ICANN’s opposition to DCA’s motion for preliminary injunction.

7. Attached hereto as **Exhibit E** is a true and correct copy of the December 8, 2016 Declaration of Kevin Espinola filed in conjunction with ICANN’s opposition to DCA’s motion for preliminary injunction.

1           8.       DCA initiated an Independent Review Process proceeding against ICANN on  
2 August 19, 2013. Attached hereto as **Exhibit F** is a true and correct copy of "DCA's Response to  
3 the Panel's Questions on Procedural Issues," which DCA submitted to the IRP Panel on May 20,  
4 2014.

5           9.       Attached hereto as **Exhibit G** is a true and correct copy of the IRP Panel's 14  
6 August 2014 "Declaration On Procedural Issues."

7           10.      The IRP proceedings initiated by DCA in 2013 took two years. During this time,  
8 ICANN produced hundreds of documents, drafted response pleadings and supporting declarations,  
9 and participated at the IRP hearing, including putting forth witnesses to testify under oath.  
10 ICANN had opposed allowing witnesses to testify at the IRP hearing, but the IRP Panel ordered  
11 that the three persons who had submitted declarations must testify at the hearing, and each of  
12 those three did testify.

13           11.      DCA's CEO, Sophia Bekele Eshete, submitted a declaration to the IRP Panel. A  
14 true and correct copy of an excerpt of that declaration is attached hereto as **Exhibit H**.

15           12.      Attached hereto as **Exhibit I** is a true and correct copy of relevant portions of the  
16 July 9, 2015 IRP Final Declaration. The full declaration is in the record and available as Exhibit  
17 1 to the November 10, 2016 Declaration of Sophia Bekele in Support of DCA's Motion for  
18 Preliminary Injunction, filed on November 15, 2016.

19           13.      DCA filed this suit against ICANN on January 20, 2016, in Los Angeles County  
20 Superior Court. After the Superior Court denied DCA's request for a temporary restraining order,  
21 ICANN timely removed the case to federal court, invoking diversity jurisdiction. On March 1,  
22 2016, DCA moved for a preliminary injunction, which the federal court granted on April 12, 2016  
23 on the basis of an admitted factual error and before DCA admitted in deposition that the entire  
24 basis on which the district court had granted the injunction – that the IRP Panel had allowed DCA  
25 to skip the geographic review requirement – was false.

26           14.      Following remand, DCA again moved for preliminary injunction based on its ninth  
27 cause of action. The Court denied that motion on December 22, 2016 based on "the reasoning  
28 expressed in the oral and written arguments of defense counsel." Attached hereto as **Exhibit J** is

1 a true and correct copy of the Court's December 22, 2016 Minute Order denying DCA's  
2 application for preliminary injunction.

3 15. The Court confirmed the broad basis for its December 22, 2016 Minute Order at  
4 the January 4, 2017 hearing on DCA's *ex parte* TRO application, when the Court stated that its  
5 ruling was indeed based on all defense arguments, just as the Court had written in its order.  
6 These arguments included that the Covenant contained in the Applicant Guidebook barred DCA's  
7 claim.

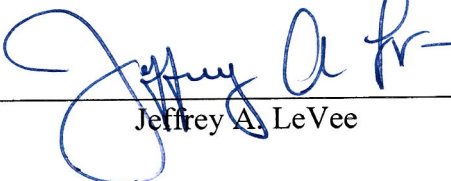
8 16. In January 2017, DCA again moved for preliminary injunction, this time based on  
9 the second, fourth, and fifth causes of action of its First Amended Complaint. The Court denied  
10 that motion as well, holding in part: "For the reasons set forth in the Ruby Glen order, it appears  
11 that the Covenant is enforceable. If the Covenant is enforceable, DCA's claims against ICANN  
12 for fraud and unfair business practices are likely to be barred. As a result, DCA cannot establish  
13 that it is likely to succeed on the merits." Attached hereto as **Exhibit K** is a true and correct copy  
14 of the Court's February 3, 2017 Order denying DCA's second application for preliminary  
15 injunction.

16 17. Attached hereto as **Exhibit L** is a true and correct copy of the district court's order  
17 in *Ruby Glen, LLC v. Internet Corp. for Assigned Names & Nos.*, No. CV 16-5505 PA (ASx)  
18 (C.D. Cal. Nov. 28, 2016).

19 19. Attached hereto as **Exhibit M** is a true and correct copy of relevant portions of  
20 ICANN's Bylaws, as modified 8 December 2011. The full document is in the record and  
21 available as Exhibit B to the Declaration of Sophia Bekele Eshete in support of Plaintiff's Motion  
22 for a Preliminary Injunction (Filed as a TRO), executed on January 6, 2017.

23 I declare under penalty of perjury under the laws of the United States and the State of  
24 California that the foregoing is true and correct.

25 Executed this 26<sup>th</sup> day of May 2017, in Los Angeles, California.

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Jeffrey A. LeVee