

B302739

**IN THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT – DIVISION 4**

DOTCONNECTAFRICA TRUST,
Appellant

v.

**INTERNET CORPORATION FOR ASSIGNED NAMES
AND NUMBERS,**

Respondent,

and

ZA CENTRAL REGISTRY, NPC

Respondent-Intervenor.

Trial Court Case No. BC607494
On Appeal From Los Angeles County Superior Court
Honorable Robert B. Broadbelt III, Judge

**RESPONDENT-INTERVENOR
ZA CENTRAL REGISTRY, NPC'S BRIEF**

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APPELLANT/ DotConnectAfrica Trust PETITIONER: RESPONDENT/ Internet Corporation For Assigned Names and Numbers, REAL PARTY IN INTEREST: et al	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
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1. This form is being submitted on behalf of the following party (name):
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
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The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: March 3, 2021

David W. Kesselman
 (TYPE OR PRINT NAME)


 (SIGNATURE OF APPELLANT OR ATTORNEY)

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I. INTRODUCTION

This Court should affirm the trial court’s award of \$46,634.49 in costs to Intervenor-Respondent ZA Central Registry, NPC (“ZACR”). For years, Plaintiff-Appellant DotConnectAfrica Trust (“DCA”) sought to judicially invalidate a contract between intervenor ZA Central Registry, NPC (“ZACR”) and Defendant-Respondent Internet Corporation for Assigned Names and Numbers (“ICANN”). Specifically, by its Tenth Claim in its First Amended Complaint (“FAC”), DCA sought a declaration that the ten-year Registry Agreement between ZACR and ICANN for the operation of the gTLD .Africa should be declared null and void. (2AEX1558-1587, First Amended Complaint at ¶¶ 126-132.¹) Accordingly, ZACR was forced to intervene in the underlying action to protect its interests in the Registry Agreement. During the next three years, ZACR actively participated in the litigation, including briefing and arguing against DCA’s motion for a preliminary injunction, propounding and responding to discovery, participating in depositions, and preparing for trial. (2CCT444-452, Opposition to Motion to Tax Costs; 2CCT381-443, Declaration of David W. Kesselman.²) In doing so, ZACR incurred

¹ The citation to “AEX” refers to the volumes of trial exhibits and transcripts lodged by DCA on December 3, 2020.

² Citations to “CCT” refer to the Clerk’s Transcript relating to DCA’s appeal of the cost awards to ZACR and Respondent ICANN, which was filed on September 9, 2020.

tens of thousands of dollars in costs. (*Id.*) On October 3, 2019, this Court ruled that DCA was judicially estopped from pursuing this action and dismissed DCA's lawsuit in full. (20MCT4526-4537, Statement of Decision; 20MCT4522-4524, Final Judgment.³) As a prevailing party, ZACR timely filed a verified cost memorandum. (2CCT60-72). On March 11, 2020, the trial court ordered costs in the amount of \$46,634.49. (2CCT525-535). DCA appealed.⁴

II. THE AWARD OF COSTS TO ZACR SHOULD BE AFFIRMED BECAUSE DCA FORFEITED ANY ARGUMENT THAT THE AWARD WAS IMPROPER BY FAILING TO RAISE THE ISSUE ON APPEAL

On Appeal, DCA's opening brief makes no mention of the trial court's award of costs to ZACR. Accordingly, DCA has forfeited any argument that the trial court erred or abused its discretion in awarding costs to ZACR. *See, e.g. Safeway Wage & Hour Cases*, 43 Cal. App. 5th 665, 687 n. 9 (2019) (contentions not raised in opening brief are forfeited); *Paulus v. Bob Lynch Ford*,

³ Citations to "MCT" refer to the Clerk's Transcript relating to DCA's appeal of the trial court's dismissal of its claims, which was filed on June 18, 2020.

⁴ DCA appealed both the trial court's dismissal of its claims and the trial court's order awarding costs to ZACR and ICANN. On July 14, 2020, the appeals were ordered consolidated for the purposes of briefing, argument, and decision. (Order Consolidating Appeals, July 14, 2020.)

Inc., 139 Cal. App. 4th 659, 686 (2006) (affirming award of fees and costs where appellant failed to preserve argument in opening brief). Accordingly, this Court should affirm the trial court's award of costs to ZACR in its entirety.⁵

III. CONCLUSION

For the reasons set forth herein, the trial court's award of \$46,634.49 in costs to ZACR should be affirmed.

Dated: March 3, 2021

Respectfully submitted,

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ZA CENTRAL REGISTRY, NPC

⁵ ZACR did not participate in the Phase I Trial on the issue of judicial estoppel and therefore does not separately address DCA's contentions on appeal as to the trial court's ruling on that issue. The trial court's ruling and its dismissal of the underlying action should be affirmed for the reasons set forth in ICANN's respondent's brief.

CERTIFICATE OF COMPLIANCE

Counsel for Respondent-Intervenor hereby certifies, pursuant to California Rules of Court, Rule 8.204(c)(1), that the foregoing brief was produced using 13-point type, including footnotes, and contains approximately 563 words, exclusive of the materials stated in Rule 8.204(c)(3), which is less than the 14,000 words permitted by this rule. Counsel relied on the word count of the computer program used to prepare this brief.

Dated: March 3, 2021

Respectfully submitted,

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