

1 DECLARATION OF AMANDA PUSHINSKY

2 I, Amanda Pushinsky, declare:

3 1. I am an associate of Jones Day, counsel to the Internet Corporation for Assigned
4 Names and Numbers (“ICANN”). I am a member in good standing of the State Bar of California
5 and am admitted to practice before the Courts in this State. I have personal knowledge of the
6 matters set forth herein and am competent to testify as to those matters. I make this declaration in
7 support of ICANN’s Report Following The Court’s Request That The Parties Meet And Confer
8 Regarding Stipulation For Separate Judges To Hear Phases Of Trial; Request To Vacate The June
9 1, 2018 Hearing And August 22, 2018 Trial Date And Set A Case Management Conference
10 (“Report”).

11 2. On May 26, 2017, ICANN moved for summary judgment, arguing in part that
12 DCA’s claims were barred by the doctrine of judicial estoppel due to DCA’s repeated assertions
13 during the Independent Review Process (“IRP”) that it could not sue ICANN.

14 3. On August 9, 2017, this Court issued a ruling bifurcating the trial, and setting a
15 bench trial for February 28, 2018 on the issue of whether DCA’s claims were barred by the
16 doctrine of judicial estoppel (Phase One). Attached hereto as **Exhibit A** is a true and correct copy
17 of the relevant portions of the transcript of the August 9, 2017 hearing.

18 4. Phase One took place on February 28 and March 1, 2018. Phase Two of the trial
19 on DCA’s remaining fraud claims and ICANN’s remaining affirmative defenses (if any is
20 necessary following Phase One) is currently set for August 22, 2018.

21 5. On May 4, 2018, this Court issued a Tentative Ruling regarding the judicial
22 estoppel trial. Attached hereto as **Exhibit B** is a true and correct copy of this Court’s May 4,
23 2018 Tentative Ruling.

24 6. On May 22, 2018, DCA and ICANN appeared for Phase One closing arguments.
25 Judge Halm informed the parties that he was retiring on August 3, 2018, and therefore would not
26 be able to preside over the August 22, 2018 trial, if any was necessary. The Court also informed
27 the parties that litigants are entitled to have the same judge try all phases of a bifurcated trial,
28 unless the parties stipulate otherwise. The Court set a tentative date of June 1, 2018 for closing

1 arguments in order to allow the Parties time to consider whether they would stipulate to have two
2 different judges preside over the two phases of trial if Phase Two was necessary.

3 7. My colleagues and I met and conferred with counsel for DCA and ZACR, during
4 which ICANN informed DCA and ZACR that it did not stipulate to having different judges
5 preside over two phases of the trial. ZACR also did not agree to any such stipulation.

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

8 Executed May 30, 2018, in Los Angeles, California.



Amanda Pushinsky

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