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13 **ZA Central Registry, NPC**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES - CENTRAL**

16 DOTCONNECTAFRICA TRUST, a  
17 Mauritius Charitable Trust,  
18 Plaintiff,

19 v.

20 INTERNET CORPORATION FOR  
21 ASSIGNED NAMES AND NUMBERS; a  
22 California corporation; ZA Central Registry,  
23 a South African non-profit company; DOES  
24 1 through 50, inclusive,  
25 Defendants.

CASE NO. BC607494

*Assigned to the Hon. Howard L. Halm,  
Dept. 53*

**ZA CENTRAL REGISTRY, NPC'S  
RESPONSE TO PLAINTIFF'S  
EVIDENTIARY OBJECTIONS TO  
DECLARATION OF MOCTAR YEDALY**

Date: December 22, 2016  
Time: 8:29 a.m.  
Dept.: 53

1 Defendant ZA Central Registry, NPC (“ZACR”) submits its responses to the evidentiary  
 2 objections to the Declaration of Moctar Yedaly (“Yedaly Declaration”) filed by Plaintiff  
 3 DOTCONNECTAFRICA Trust (“DCA”). As an initial matter, DCA objects to the entire  
 4 Yedaly Declaration arguing that his declaration is misleading in that it fails to state that ZACR  
 5 agreed to grant the African Union Commission (“AUC”) any rights to the gTLD .Africa and that  
 6 the AUC is effectively itself an applicant for the .Africa gTLD. Plaintiff’s objection that Mr.  
 7 Yedaly’s testimony is “misleading” is argumentative and not a proper objection under § 352 of  
 8 the California Evidence Code. Plaintiff’s improper arguments in the guise of evidentiary  
 9 objections should be disregarded. Moreover, whether ZACR agreed to grant any rights to the  
 10 gTLD .Africa to the AUC or not is immaterial. ICANN does not prohibit such assignments. *See*  
 11 *Brantly Decl. Ex. 2 (Willett Tr. at 48:9-49:19); Ex. 3 (Attallah Tr. at 129:2-130:2).*

Yedaly Decl.	DCA’s Objection	ZACR’s Response	Court’s Ruling
¶3:“Notwithstanding this, the Government of Morocco provided its letter of support for ZACR’s application for the .AFRICA TLD.”	1. DCA objects on the grounds that the letter of support from the Moroccan government is the best evidence of that letter. (Evid. Code §1520). 2. Lacks Foundation (Evid. Code § 403) 3. Conclusory ( <i>Evinger v. MacDougall</i> (1938) 28 Cal.App.2d 175.)	The Court may refer to the letter to support from the Moroccan government which is in the record. Yedaly Decl. Ex. F.  Mr. Yedaly’s testimony is not offered to prove the content of a writing, but rather as evidence that the Moroccan	

1			government provided	
2			its support for	
3			ZACR's application.	
4	<b>Yedaly Decl.</b>	<b>DCA's Objection</b>	<b>ZACR's Response</b>	<b>Court's Ruling</b>
5	¶6: "I have been	1. Lacks personal	Mr. Yedaly testified	
6	integrally involved in	knowledge (Evid.	that he is the Head of	
7	the UAC's efforts to	Code § 702),	the Information	
8	support the	2. Lacks foundation	Society Division	
9	delegation of a	(Evid. Code § 403),	within the AUC's	
10	.AFRICA top level	3. Speculative (Evid.	Infrastructure and	
11	domain for the	Code § 702	Energy Department	
12	African continent.	4. Lacks Foundation	and that he has been	
13	This initiative is fully	(Evid. Code § 403)	integrally involved in	
14	endorsed by the	5. Conclusory	the AUC's efforts	
15	African Union and	( <i>Evinger</i>	with respect to	
16	has widespread	<i>v. MacDougall</i>	.Africa. (Yedaly	
17	support across the	(1938)	Decl. ¶¶1,6)	
18	continent. The launch	28 Cal.App.2d 175.)	Accordingly, he has	
19	of the .AFRICA	6. Improper lay	personal knowledge	
20	domain is of historic	opinion (Evid. Code	of the AUC's	
21	significance to the	§ 800-803)	member states' views	
22	African continent.		and goals with	
23	With the goal of		respect to the .Africa	
24	establishing "Africa		gTLD.	
25	in One Space",			
26	.AFRICA will			
27	provide secure,			
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world-class technical infrastructure to leverage the continent's socio-economic capacity and potential. Built on a consensus-driven framework of best practices and open standards, the .Africa Registry will place special emphasis on securing the rights of intellectual property owners, Internet users and the broader African community. The .AFRICA gTLD will enable governments, business and civil society to build brands, promote development and establish long-term relationships with this market. The			
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<p>.AFRICA gTLD will also help governments, the private sector, organizations and individuals associate their services, product and information with the continent.</p>			
<b>Yedaly Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
<p>¶8: “Pursuant to that mandate, the AUC issued a public request for expressions of interest, followed by a request for proposals, (“RFP process”) seeking applications from private organizations (including DCA interested in operating the .AFRICA gTLD).”</p>	<p>1. Lacks foundation (Evid. Code § 403) 2. Prejudicial (Evid. Code § 352)</p>	<p>Mr. Yedaly testified that he is the Head of the Information Society Division within the AUC’s Infrastructure and Energy Department and that he has been integrally involved in the AUC’s efforts with respect to .Africa. (Yeadly Declaration ¶¶1, 6).  Mr. Yedaly’s testimony is not</p>	



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<p>become a reality, the AUC determined that a fully vetted and transparent process was needed for the governments of Africa to provide proper support to an applicant seeking to serve as a registry for a gTLD that would represent the entire continent.”</p>		<p>ICANN Guidebook issued.</p>	
<p><b>Yedaly Decl.</b></p>	<p><b>DCA’s Objection</b></p>	<p><b>ZACR’s Response</b></p>	<p><b>Court’s Ruling</b></p>
<p>¶10: “[O]n April 16, 2010, the AUC sent DCA a letter informing it that ‘following consultations with relevant stakeholders...[it] no longer endorse[d] individual initiatives [for .AFRICA].’ Instead, ‘in coordination with the</p>	<p>1. The best evidence of the April 16, 2010 letter is the April 16, 2010 letter itself (Evid. Code § 1520)</p>	<p>The Court may refer to the letter, which is part of the record (Declaration of Sophia Bekele Eschete, Ex. 7).</p>	

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<p>Member States...the [AUC] w[ould] go through [an] open [selection] process.’ This letter is attached as Exhibit 7 to the Declaration of Sophia Bekele Eshete (ECF No. 17-7). One of the purposes of this letter was to advise DCA that the AUC was withdrawing any previous support the AUC had announced for DCA now that the AUC was more fully engaged and had determined to conduct an open selection process to identify the registry operator that the AUC would endorse.</p>			
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Yedaly Decl.	DCA's Objection	ZACR's Response	Court's Ruling
<p>¶11: “DCA acknowledged that it was aware the AUC had withdrawn any previous support because it wrote a letter to the AUC on January 26, 2011 complaining about what it believed to be the “wrongful withdrawal of [the AUC endorsement letter.” A true and correct copy of DCA’s January 26, 2011 letter is attached hereto as <b>Exhibit D.</b> Thereafter, DCA chose not to participate in the AUC’s RFP process. ZA Central Registry (“ZACR”), which was previously</p>	<p>1. The best evidence of the January 26, 2011 letter, is the letter itself. (Evid. Code § 1520).</p> <p>2. Lacks foundation as to DCA’s awareness or ZACR’s fulfillment of ICANN’s Guidebook requirements. (Evid. Code §403).</p> <p>3. Lacks credibility as Mark McFadden’s declaration directly contradicts the statement that “ZACR submitted an application to ICANN for the .Africa gTLD with the full support of the AUC and with more than 60% support from individual</p>	<p>The Court may refer to the letter, which is part of the record (Yedaly Declaration Ex. D).</p> <p>Mr. Yedaly testified that he is the Head of the Information Society Division within the AUC’s Infrastructure and Energy Department and that he has been integrally involved in the AUC’s efforts with respect to .Africa. (Yedaly Declaration ¶¶1, 6).</p> <p>Mr. Yedaly’s testimony is credible and consistent because ZACR had the support of the AUC throughout the</p>	

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<p>known as UniForum SA, prevailed in the RFP Process, and ZACR submitted an application to ICANN for the .Africa gTLD with the full support of the AUC and with more than 60% support from individual African Governments as required by the new gTLD Applicants' Guidebook."</p>	<p>African Governments as required by the new gTLD Applicants' Guidebook." See McFadden Decl. ¶5. Yedaly's next statement in the declaration also contradicts this assertion. See Yedaly Decl. ¶12. (<i>People v. Skyes</i>, 44 Cal. 2d 166,172 (1955) (holding that prior inconsistent statements may impeach credibility)).</p>	<p>application process (Yedaly Declaration ¶¶ 9-11). Mr. McFadden's testimony does not conflict; Mr. McFadden testified only that ZACR's initial AUC endorsement letter did not meet all of the Guidebook requirements. Mr. Yedaly's Declaration acknowledges this (Yedaly Declaration ¶ 12).</p>	
Yedaly Decl.	DCA's Objection	ZACR's Response	Court's Ruling
<p>¶12: "On July 2, 2013, the AUC, pursuant to the Abuja Declaration and with full authority of its member states, sent a</p>	<p>1. The best evidence of the document, is the document itself. (Evid. Code § 1520).</p>	<p>The Court may refer to the letters, which are part of the record (Yedaly Declaration Exs. E, F, G).</p>	

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letter to ICANN  
expressly advising  
that the AUC had  
placed its full  
support behind  
ZACR's application.  
(At the time ZACR  
was known as  
UniForum SA).  
Attached hereto as  
**Exhibit E** is a true  
and correct copy of  
the July 2, 2013  
letter expressing the  
AUC's support for  
ZACR's application.  
I am further informed  
that Morocco, the  
only nonmember of  
the AUC, separately  
provided a letter  
supporting ZACR's  
application. Attached  
hereto as **Exhibit F**  
is a true and correct  
copy of the March  
28, 2012 letter from  
Morocco. It should

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be noted that the  
AUC had provided  
an earlier  
endorsement letter  
for ZACR dated  
April 4, 2012.  
Attached hereto as  
**Exhibit G** is a true  
and correct copy of  
that earlier letter.  
After ZACR had  
been informed that  
the earlier letter  
failed to include  
additional language  
that ICANN or its  
vendor deemed  
necessary to comply  
with the Guidebook,  
the AUC undertook  
to submit the July 2,  
2013 letter. In so  
doing, the AUC had  
asked ZACR to  
provide the language  
that was deemed  
necessary. ICANN  
then provided the

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1	required language;			
2	that language was			
3	ultimately			
4	incorporated into the			
5	July 2, 2013 AUC			
6	endorsement letter.”			
7	<b>Yedaly Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
8	¶13: The AUC never	1. Irrelevant. (Evid.	Mr. Yedaly testified	
9	supported DCA’s	Code § 350);	that he is the Head of	
10	application at any	2. Lacks personal	the Information	
11	time after April 16,	knowledge (Evid.	Society Division	
12	2010, and certainly	Code § 702),	within the AUC’s	
13	not at any time after	3. Lacks foundation	Infrastructure and	
14	ICANN issued its	(Evid. Code § 403),	Energy Department	
15	Applicant’s	4. Speculative (Evid.	and that he has been	
16	Guidebook and	Code § 702)	integrally involved in	
17	invited new	5. Conclusory	the AUC’s efforts	
18	applicants to apply	( <i>Evinger v.</i>	with respect to	
19	for gTLDs, including	<i>MacDougall</i> (1938)	.Africa. (Yedaly	
20	.AFRICA. Thus, the	28 Cal.App.2d 175.)	Declaration ¶¶1, 6).	
21	AUC did not support	6. The GAC Early		
22	DCA’s application	Warning Notices	The ICANN	
23	for .AFRICA at the	themselves are the	Guidebook requires	
24	time DCA submitted	best evidence of the	that the applicant for	
25	it to ICANN in 2012,	notices. (Evid. Code	.Africa demonstrate	
26	and it does not	§ 1520).	support from at least	
27	support DCA’s		60% of the countries	

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<p>application now. It should be noted that DCA never requested a letter of support from the AUC after ICANN issued its Guidebook in 2012, and the AUC would have declined such a request because following the RFP process the AUC had determined only to support ZACR's application. The strong feelings of the African governments on this matter can also be gleaned by the 17 (seventeen) GAC Early Warning Notices issued by individual African governments that were issued against DCA's application for .AFRICA. Attached hereto as</p>		<p>in Africa. Declaration of Sophia Bekele Eschete Ex. 3 at 2-18. The Early Warning Notices are thus relevant to show that DCA did not have the support of the governments in Africa.  The Court may refer to the Early Warning Notices, which are part of the record (Yedaly Declaration Ex. H).</p>	
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<p><b>Exhibit H</b> are true and correct copies of the GAC Early Warning Notices.</p>			
<b>Yedaly Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
<p>¶14: On September 29, 2015, the AUC sent a further letter to ICANN to clarify, once again, that the AUC, on behalf of the African governments, only supports ZACR’s application and does not support the application submitted by DCA. Attached hereto as <b>Exhibit I</b> is a true and correct copy of the AUC’s letter of September 29, 2015. The AUC deemed this additional letter necessary after it came to light that</p>	<p>1. The best evidence of the “early letter” is the letter itself. (Evid. Code § 1520).</p>	<p>The Court may refer to the “early letter,” which is part of the record (Declaration of Sophia Bekele Eschete Ex. 7).</p>	

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DCA was still attempting to use an early letter that had been expressly withdrawn and repudiated. As addressed in the September 29, 2015 AUC letter: <ul style="list-style-type: none"><li>• “To be clear, the application submitted by ZA Central Registry (ZACR) . . . is the only application fully endorsed and supported by the AUC and hence African member states. The AUC officially endorsed the ZACR application in our letter dated 4 April 2012, which was followed by our letter of support dated 2 July 2013.”</li></ul>			
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• “Any reliance by DCA in its application . . . proclaiming support or endorsement by the AUC, must be dismissed. The AUC does not support the DCA application and, if any such support was initially provided, it has subsequently been withdrawn with the full knowledge of DCA even prior to the commencement of ICANN’s new gTLD application process.”

<b>Yedaly Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
¶15: I should also note that, on or about July 20, 2015, the AUC received a letter from the Secretary of the	1. The best evidence of the letter is the letter itself. (Evid. Code § 1520).	The Court may refer to the letter which is part of the record (Yedaly Declaration Ex. J).	

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<p>Commission and Legal Advisor for the United Nations Economic Commission for Africa (“UNECA”). A true and correct copy of the July 20, 2015 UNECA letter is attached hereto as <b>Exhibit J.</b> As set forth in the letter, UNECA “reaffirmed its commitment and support to the AU in the management of Internet-based resources in Africa”, and further advised that an earlier 2008 UNECA letter referenced by DCA could not constitute a proper endorsement by the governments of Africa: <ul style="list-style-type: none"><li>• “ECA as United Nations entity is</li></ul></p>			
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neither a government  
nor a public authority  
and therefore is not  
qualified to issue a  
letter of support for a  
prospective applicant  
in support of their  
application. In  
addition, ECA does  
not have a mandate  
to represent the  
views or convey the  
support or otherwise  
of African  
governments in  
matters relating to  
application for  
delegation of the  
gTLD.”

- “In this regard,  
the August 2008  
letter referenced  
above is merely  
expressions of a view  
in relation to the  
entity’s initiatives  
and efforts regarding  
internet governance,

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<p>including efforts to obtain a gTLD for Africa. It is ECA’s position that the August 2008 letter to Ms. Bekele [later used by DCA] cannot be properly considered as a “letter of support or endorsement” within the context of ICANN’s requirements and cannot be used as such.”</p>			
<b>Yedaly Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
<p>¶16: ZACR has signed a registry agreement with ICANN, and I am informed that ZACR is fully prepared to proceed once ICANN is able to complete the delegation.</p>	<p>1. Irrelevant. (Evid. Code § 350); 2. Lacks personal knowledge (Evid. Code § 702).</p>	<p>Evidence regarding the harm to ZACR is material in refuting Plaintiff’s argument that the balance of the harms weighs in its favor.  Mr. Yedaly testified that he is the Head of</p>	



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concern that we are faced with [] delay in delegating this important regional TLD.” Our letter continued: “[I]t is becoming increasingly difficult for the AUC to explain to not only its member states but also other African stakeholders, why the African geographic TLD application has become so challenging for ICANN to expedite despite the various statements made towards the need to support developing regions.” A true and correct copy of this letter is attached to this declaration as <b>Exhibit K.</b>			
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<b>Yedaly Decl.</b>	<b>DCA's Objection</b>	<b>ZACR's Response</b>	<b>Court's Ruling</b>
<p>¶18: In my role at the AUC, I communicate regularly with political, business and civic leaders from throughout the African Union and its member states regarding the .AFRICA gTLD. It is evident that the ongoing delay in the delegation of .AFRICA is depriving the people of the African continent of an important opportunity to expand internet domain capabilities. There are real opportunities being lost because we remain unable to develop and promote</p>	<p>1. Lacks personal knowledge (Evid. Code § 702), 2. Speculative (Evid. Code § 702) 3. Lacks Foundation (Evid. Code § 403)</p>	<p>Mr. Yedaly testified that he is the Head of the Information Society Division within the AUC's Infrastructure and Energy Department and that he has been integrally involved in the AUC's efforts with respect to .Africa. (Yedaly Declaration ¶¶1, 6).</p>	

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<p>a gTLD that would be uniquely identified with the African continent. It is difficult to explain to African citizens why .AFRICA is not yet operational when other continents have their own unique gTLDs that have been available for years. It is particularly frustrating when I am informed that the delay is due to DCA's efforts to continue to rely upon a supposed endorsement by the AUC that was withdrawn over six years ago – a point that the AUC, on behalf of its representative governments, has</p>			
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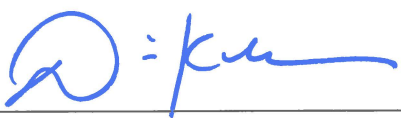
repeatedly advised in the correspondence referenced above.			
<b>Yedaly Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
<p>¶19: In addition, the AUC has required as a condition to its support of .AFRICA that all surplus funds generated through the administration of the .AFRICA gTLD will be channeled into a Development Fund, which will be applied towards African developmental projects and initiatives. The Development Fund will be administered by the dotAfrica Foundation, which will ensure that dotAfrica’s core developmental</p>	<p>1. Irrelevant. (Evid. Code § 350); 2. Lacks personal knowledge (Evid. Code § 702), 3. Lacks foundation (Evid. Code § 403), 4. Speculative (Evid. Code § 702)</p>	<p>Mr. Yedaly testified that he is the Head of the Information Society Division within the AUC’s Infrastructure and Energy Department and that he has been integrally involved in the AUC’s efforts with respect to .Africa. (Yedaly Declaration ¶¶1, 6).</p> <p>Mr. Yedaly’s testimony is relevant because courts consider “the degree of adverse effect on the public interest or interests of third parties the granting of the injunction will</p>	

1 objectives are  
2 addressed. I am  
3 informed that these  
4 projects and  
5 initiatives will  
6 provide millions of  
7 dollars to benefit  
8 projects supporting  
9 the people of Africa.  
10 The continued delay  
11 in the delegation of  
12 the .AFRICA gTLD  
13 to ZACR has  
14 impeded this goal  
15 and further  
16 prejudices the AUC's  
17 member states and  
18 the African  
19 community.

cause.” *Loma Portal  
Civic Club v.  
American Airlines,  
Inc.*, 61 Cal. 2d 582,  
588 (1964).

20  
21 DATED: December 21, 2016

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