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 11 **ZA Central Registry, NPC**

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DOTCONNECTAFRICA TRUST, a
 15 Mauritius Charitable Trust,

16 Plaintiff,

17 v.

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

24 Defendants.

CASE NO. 2:16-cv-00862 RGK (JCx)

*Assigned for all purposes to the
 Honorable R. Gary Klausner*

**DECLARATION OF MOKGABUDI
 LUCKY MASILELA IN SUPPORT
 OF DEFENDANT ZACR’S MOTION
 TO RECONSIDER AND VACATE
 PRELIMINARY INJUNCTION
 RULING**

[Notice of Motion and Motion to
 Reconsider and Vacate Preliminary
 Injunction Ruling; Memorandum of
 Points and Authorities; Declaration of
 David W. Kesselman; and [Proposed]
 Order Filed Concurrently Herewith]

Date: June 6, 2016
 Time: 9:00 a.m.
 Location: Courtroom 850

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DECLARATION OF MOKGABUDI LUCKY MASILELA

I, Mokgabudi Lucky Masilela, hereby declare as follows:

1. I am the Chief Executive Officer of named defendant ZA Central Registry, NPC (“ZACR”). I have personal knowledge of the matters contained herein, except as to those matters asserted on information and belief, and as to those, I believe them to be true. If called upon as a witness, I could and would testify competently thereto.

2. ZACR is a South African non-profit company with its principal place of business in Midrand, South Africa.

3. ZACR was originally formed in 1988 under the name UniForum S.A. The purpose of the company was to promote open standards and systems in computer hardware and software. In 1995, the company was assigned the administration rights for the South African domain name, “co.za”. Today ZACR has registered over 1 million co.za domain name registrations – or about 95% of the total registrations for “.za.” Due to its well-known reputation for independence and neutrality, as well as technical competence and operational excellence, ZACR is the single largest domain name registry on the African continent.

4. After Internet Corporation For Assigned Names and Numbers (“ICANN”) formally launched the “New gTLD Program”, ZACR submitted an application for the .Africa gTLD on June 13, 2012. I am aware that both ZACR and DCA submitted their respective applications for the .Africa gTLD in the Spring/ Summer of 2012. At the same time, ZACR also applied for, and obtained, the .CapeTown, .Joburg and .Durban gTLDs, and these gTLDs have been launched to the Internet public.

5. I am familiar with the ICANN selection criteria for the gTLD. ICANN set forth selection criteria in an Applicant Guidebook. Among other

1 things, ICANN made clear that because the .Africa gTLD represented the name of
2 a geographic region, an applicant would need to provide documentation showing
3 support from at least 60% of the governments in the region. Further, ICANN
4 criteria provided that no more than one objection from a government or public
5 entity associated with the geographic region would be permitted. These criteria
6 are set forth in ICANN Application Guidebook Module 2, and available online at:
7 <http://newgtlds.icann.org/en/applicants/agb> par 2.2.1.4.2.4.

8 6. ZACR submitted its application to ICANN with the full support of
9 African Union member states via the African Union Commission (“AUC”)
10 endorsement. Specifically, the AUC, which serves as the Secretariat of the
11 African Union, provided a letter supporting ZACR’s application. A true and
12 correct copy of the July 2, 2013 AUC letter is attached as **Exhibit A**. In addition,
13 the only nonmember, Morocco, separately provided a letter supporting ZACR’s
14 application. A true and correct copy of the March 28, 2012 Moroccan letter of
15 support is attached as **Exhibit B**.

16 7. ZACR received the support of the African Union only after the AUC
17 publicized a request for proposal (“RFP”). This was an open bid process. The
18 AUC made clear that it was only going to support one applicant. By way of
19 background, the AUC RFP process began because it was well known that ICANN
20 was considering a new gTLD program, including .Africa. It was in anticipation of
21 this new gTLD program that the AUC decided to hold an RFP to support a single,
22 qualified applicant for the African Union. This is because the AUC was
23 specifically mandated by member states to set up the structures and modalities for
24 the implementation of the dotAfrica (.Africa) gTLD. Details of the process are
25 set forth in the September 29, 2015 AUC letter attached hereto as **Exhibit C**. This
26 letter is also available at: <http://africainonespace.org/downloads/GNP.PDF>
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1 8. I was informed by AUC officials that Plaintiff DotConnectAfrica
2 Trust (“Plaintiff”) chose not to participate in the RFP. Ultimately, ZACR
3 prevailed in the RFP process and received the support of the AUC in its
4 application for the .Africa gTLD.

5 9. Attached as **Exhibit D** are the 17 “Early Warning Notices” from
6 individual African countries to Plaintiff’s application. These “Early Warning
7 Notices” are also available online at:
8 <http://africainonespace.org/content.php?tag=13&title=Resources>

9 10. The Registry Agreement between ICANN and ZACR was effective
10 on March 24, 2014 and runs for ten years. Yet, over two years into the
11 Agreement, the .Africa gTLD has still not been delegated to ZACR. In effect,
12 20% of the period of the Agreement has already lapsed without any benefit to
13 ZACR. This delay has resulted in unforeseen and mounting costs, as well as lost
14 opportunities, for the .Africa project.

15 11. ZACR has incurred considerable expenses both prior to and after
16 entering into the Registry Agreement. The current and continuing cost due to the
17 delay in the delegation is running at approximately \$20,000 per month. This is
18 based upon a review of the monthly costs incurred during the last 10 months for
19 the .Africa project, including the ongoing costs related to consultants, marketing,
20 sponsorships and related expenses. The importance of maintaining visibility for
21 the .Africa project, coupled with the ongoing need to interface with government
22 officials throughout the African continent, makes clear that these ongoing
23 expenses will continue during the course of this litigation. In determining these
24 figures, we averaged the monthly expenses for the .Africa project and where
25 necessary converted expenditures from South African Rand to U.S. dollars.

26 12. The Loss of Net Income after Tax (opportunity costs) suffered by
27 ZACR from the date of the planned delegation following the Registry Agreement
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1 through May 1, 2016, are now estimated to be approximately \$15 million (U.S.
2 dollars). Of that amount, approximately \$5.5 million would have been donated to
3 the dotAfrica Foundation for African online development. Until such time as
4 delegation takes place, the .Africa gTLD in effect stagnates and generates no
5 income and no value in the marketplace. The ongoing delay is also prejudicial to
6 the gTLD itself (no matter who the operator is) in that the initial interest
7 surrounding the launch of this domain name will have faded, and persons who
8 may have sought to register will have lost interest.

9 13. Once a gTLD is delegated it starts increasing in value. The gTLD is
10 at its lowest value prior to delegation and increases as the number of second level
11 domain delegations (for example: xyz.africa) increases. If Plaintiff is redelegated
12 the .Africa gTLD, it will suffer no irreparable harm as it will inherit a more
13 valuable gTLD without incurring the cost to develop it.

14 14. In my role as ZACR's CEO, and based upon my numerous and
15 ongoing discussions with political, business and civic leaders from throughout the
16 African Union, it is my firm understanding and belief that the ongoing delay in the
17 delegation of .Africa is depriving the people of the Africa continent of an
18 important opportunity to expand internet domain name capabilities. The .Africa
19 domain name would add brand value to the continent and would provide a
20 platform that connects products, businesses and individuals that have interests in
21 Africa. The African people are further harmed because the agreement between
22 ZACR and the AUC required that a foundation be created upon delegation and
23 that a significant portion of the revenues received from second level domain
24 delegations (for example: xyz.africa) be directed to the "dotAfrica Foundation."
25 The Foundation would use the revenues to fund various African domain name and
26 Internet related developmental projects which are now delayed as a result of the
27 preliminary injunction.
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1 15. I am aware that ICANN builds in time limits in its gTLD registry
 2 agreements. I am further informed, based upon my experience in the industry and
 3 discussions with technical personnel within ZACR, that a re-delegation of a gTLD
 4 is entirely feasible. In fact, ICANN has prepared for this precise eventuality and
 5 issued a manual in 2013 providing step-by-step instructions for how to redelegate
 6 a gTLD. The manual, titled “User Documentation on Delegating and
 7 Redelegating a Generic Top Level Domain (gTLD),” makes clear that the process
 8 is available and feasible if necessary. A true and correct copy of the manual is
 9 attached hereto as **Exhibit E**. It is also available on ICANN’s website:
 10 <https://www.icann.org/en/system/files/files/gtld-drd-ui-10sep13-en.pdf>

11 16. ZACR has never operated in California. ZACR has no personnel, no
 12 offices, no bank accounts, and maintains no operations in California. ZACR has
 13 no telephone listings or mailing addresses in California.

14 17. I have read Plaintiff’s First Amended Complaint, including the
 15 allegations against ZACR. Contrary to what is asserted in the First Amended
 16 Complaint, there was no fraud or conspiracy between ZACR and ICANN. Nor
 17 was there any fraud or conspiracy with the AUC. Similarly, there was no
 18 interference with Plaintiff’s application to ICANN. At all times, ZACR competed
 19 fairly and abided ICANN’s procedures in seeking the award for the generic top
 20 level domain .Africa.

21 I declare under penalty of perjury under the laws of the United States of
 22 America that the foregoing is true and correct.

23 Executed this 6 day of May 2016 at Georgetown DC.

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 26 MOKGABUDI LUCKY MASILELA

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