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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL

16 DOTCONNECTAFRICA TRUST, a  
17 Mauritius charitable trust,

18 Plaintiff,

19 v.

20 Internet Corporation for Assigned Names and  
21 Numbers, *et al.*

22 Defendants.

Case No. BC607494

*[Assigned for all purposes to the Hon. Robert  
B. Broadbelt III – Dept. 53]*

**NOTICE OF MOTION AND MOTION  
BY PLAINTIFF  
DOTCONNECTAFRICA TRUST TO  
TAX COSTS OF INTERVENOR ZA  
CENTRAL REGISTRY, NPC;  
MEMORANDUM OF POINT AND  
AUTHORITIES**

**Reservation ID: 393737666127**

**Date: Jan. 15, 2020**

**Time: 8:30 a.m.**

*[Declaration of Ethan J. Brown filed  
concurrently herewith]*

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

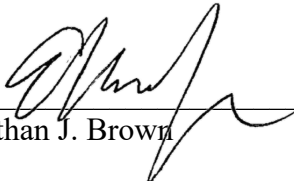
2 **PLEASE TAKE NOTICE** that on January 15, 2020 at 8:30 a.m. in Department 53 of the  
3 Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, CA 90012,  
4 Plaintiff DotConnectAfrica Trust (“DCA”) will, and hereby does, move for an order taxing the  
5 costs claimed by Intervenor ZA Central Registry, NPC (“ZACR”) pursuant to Cal. Code Civ. Proc.  
6 § 1032 et seq.

7 The grounds for this motion are that the costs sought by ZACR in its Memorandum of Costs  
8 (“ZACR MOC”) are not recoverable under Cal. Code Civ. Proc. § 1033.5 et seq. as these costs  
9 were not actually incurred by ZACR as is required by § 1033.5 (c)(1); are not allowable costs as  
10 defined by § 1033.5 (a); were not allowable costs pursuant to § 1033.5 (b); were not reasonably  
11 necessary for ZACR to the conduct of the litigation which is required to be eligible for recovery  
12 pursuant to § 1033.5 (c)(2); were not reasonable in amount as required by § 1033.5 (c)(3); and/or  
13 cannot be allowed as discretionary costs under § 1033.5 (c)(4). DCA must not be ordered to pay  
14 any of ZACR’s claimed costs which do not by law qualify for reimbursement.

15 This Motion is based upon this Notice, the Memorandum of Points and Authorities, the  
16 Declaration of Ethan J. Brown, all pleadings, records, and files herein, those matters of which the  
17 Court may take judicial notice, and upon such evidence and/or oral argument as may be made at  
18 the hearing on this matter.

19 Dated: November 5, 2019

**BROWN NERI SMITH & KHAN, LLP**

20  
21 By:  \_\_\_\_\_  
Ethan J. Brown

22  
23 Attorneys for Plaintiff DotConnectAfrica Trust

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Intervenor ZA Central Registry, NPC (“ZACR”) seeks to recover over \$47,096.37 in costs  
4 under Cal. Code Civ. Proc. §1032 et seq, most of which it is not entitled to, are not expressly  
5 allowed by §1032 et seq; and/or are not allowed as discretionary costs under § 1033.5.

6 For example, ZACR seeks costs for unallowable deposition costs, costs associate with the  
7 electronic hosting of documents, and service costs where parties had entered into an electronic  
8 service agreement, among others costs that were clearly incurred as a convenience or benefit to  
9 the conduct of the litigation rather than reasonably necessary costs.

10 ZACR has failed to show that many of these costs are allowable, and if they are allowable,  
11 that the amounts they seek are reasonable and necessary. Therefore, DCA’s motion to tax should  
12 be granted.

13 **II. STANDARD OF REVIEW**

14 California law recognizes three types of litigation costs: (1) allowable; (2) disallowable;  
15 and (3) discretionary. Code Civ. Proc. § 1033.5, subs. (a), (b), (c)(4). For allowable and  
16 discretionary costs to be recoverable, they must be both “reasonably necessary to the conduct of  
17 the litigation rather than merely convenient or beneficial to its preparation” and “reasonable in  
18 amount.” Code Civ. Proc. § 1033.5 (c)(2-3). If specifically allowable under section 1033.5, the  
19 party challenging the costs has the burden of showing that the costs sought are not reasonable or  
20 necessary. However, if the costs not specifically allowable are objected to, then the burden of  
21 proof lies with the requesting party to demonstrate that the costs were necessary and reasonable.  
22 *Ladas v. Cal. State Automobile Assn.* (1993) 19 Cal.App.4th 761, 774. Whether a cost is  
23 reasonable is a question of fact. *Lubetzky v. Friedman* (1991) 228 Cal.App.3d 35, 39. DCA  
24 respectfully requests that the Court tax ICANN’s costs as set forth below.

25 **III. ARGUMENT**

26 **A. ZACR Cannot Recover Deposition Costs It Claims**

27 ZACR claims costs for a total of 12 depositions – one of which never occurred and three  
28 of which neither it nor DCA noticed and took. Moreover, the remainder of the costs claimed are

1 ambiguous and vague because they are inconsistent with the costs claimed by ICANN for  
2 transcript copies of the same depositions, though they should be the same<sup>1</sup>.

3 The only instances where ZACR can claim costs are for taking, video recording, and  
4 transcribing depositions are in instances of necessary depositions noticed by ZACR, and one copy  
5 of depositions taken by DCA. Code Civ. Proc. § 1033.5 (a)(3)(A). Consequently, ZACR cannot  
6 request costs associated with depositions noticed and taken by ICANN. Therefore, costs  
7 associated with the depositions of Sophia Bekele and Erastus JO Mwencha cannot be recovered.  
8 See ZACR Memorandum of Costs (“ZACR MOC”), Attachment A, at p. 8. Costs for the  
9 deposition of Sophia Bekele on September 22, 2017 also cannot be recovered because no such  
10 deposition took place. *Id.* Therefore, a total of \$10,585.24 of deposition costs for the depositions  
11 of Sophia Bekele and Erastus JO Mwencha must be taxed in full.

12 Next, the remaining costs claimed for depositions by ZACR are vague and ambiguous  
13 and/or unnecessary for ZACR in the conduct of the litigation. They are rather merely convenient  
14 or beneficial to its preparation. All but the depositions of Lucky Masilela and Neil Dundas, were  
15 depositions of either ICANN witnesses or DCA witnesses, or third-party witnesses related  
16 thereto. These depositions were not necessary for ZACR. ZACR did not defend the deponents in  
17 these depositions. ZACR did not ask questions at any of the listed depositions in its MOC. As an  
18 intervener, ZACR did not have any claims against either ICANN or DCA and did not have any  
19 claims against it. Though it may have had an interest in the final outcome of the case, its  
20 participation in the depositions was merely beneficial, and not reasonably necessary to the  
21 conduct of the litigation. Therefore, costs associated with the depositions of Chehade, McFadden,  
22 Silber, Brigety, Crocker, and Nguyen, totaling \$9,506.37 should be taxed.

23 Lastly, travel costs to South Africa associated with the depositions of ZACR witnesses  
24 Neil Dundas and Lucky Masilela must be taxed as unreasonably and excessive, as they clearly  
25 account for first class tickets and stays at expensive hotels, for which DCA is not required to pay.

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26 <sup>1</sup> Costs claimed by ICANN and costs claimed by ZACR in their respective cost  
27 memoranda are inconsistent for the same transcripts, though they should be the same. As such, it  
28 is unclear what the actual costs of certain transcript copies are. For example, both ICANN and  
ZACR claim transcribing costs for Mr. Fadi Chehadi in the sums of \$1,087.75 and \$860.55  
respectively. Compare ZACR MOC, Attachment A at p. 8 with ICANN MOC, Attachment A at  
p. 2.

1 Code Civ. Proc. § 1033.5 (c)(e); Cal. *Thon v. Thompson* (App. 4 Dist. 1994) 35 Cal.Rptr.2d 346  
2 (Holding that travel expenses sought by prevailing party for expenses incurred by its out-of-  
3 county attorneys in attending deposition in county of jurisdiction, would be limited to costs of  
4 commercial flight between city where attorneys practiced and city where deposition occurred;  
5 higher cost of charter flight requested by prevailing party were not “reasonably necessary.”);  
6 *Page v. Something Weird Video* (C.D. Cal. 1996) 960 F. Supp. 1438, 1447 (Holding that flying  
7 first-class is not “reasonably necessary” to further litigation). Based on a Google flight search,  
8 round trip flights booked approximately two to three weeks in advance to South Africa range  
9 between \$810 and \$1,534. Declaration of Ethan Brown (“Brown Decl.”), ¶ 2, Ex. 1. Four and  
10 five star hotels for that same period range between \$78 and \$188 dollar a night. Brown Decl, ¶3,  
11 Ex. 2. As such, the \$7,825.77 in travel expenses for approximately a three night stay is clearly  
12 excessive and must be taxed.

13 In sum, DCA respectfully requests that the Court tax ZACR’s deposition costs found on  
14 page 8 of Attachment A to its Memorandum of Costs in at least the following amounts totaling  
15 \$27,917.38<sup>2</sup>:

- 16 • \$10,585.24 of deposition costs for the depositions of Sophia Bekele and Erastus JO  
17 Mwencha
- 18 • \$9,506.37 of costs associated with the depositions Chehade, McFadden, Silber, Brigety,  
19 Crocker, and Nguyen
- 20 • \$7,825.77 in travel expenses for the depositions of Neil Dundas and Lucky Masilela

21 **B. ZACR Cannot Recover For Costs Associated With ZACR Error, Unnecessary**  
22 **Service of Process Costs, and Unnecessary Photocopying Costs**

23 ZACR seeks to recover costs for the improper filing associated with the correction of the  
24 Declaration of David W. Kesselman totally \$141.76. *See* ZACR MOC, Attachment A at p. 8.  
25 DCA should not have to pay for ZACR’s counsel correcting a mistake in ZACR’s filings.

26 Further, ZACR seeks costs associated with service of process on DCA and ICANN and

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27 <sup>2</sup> Note that the total costs of \$27,917.38 calculated by DCA differs from the total  
28 deposition costs cited by ZACR because of ZACR’s calculation errors, further emphasizing  
DCA’s difficulty of determining the actual costs associated with the listed events. *See* ZACR  
MOC, Attachment A at p. 8.

1 service of its motions in limine on DCA and ZACR totally \$320.12. ZACR MOC, Attachment A  
2 at 9, 10. On May 6, 2016 parties entered into an electronic service agreement. Brown Decl., ¶¶  
3 8-9, Exs. 7-8. As such any such costs associated with service after May 6, 2016 are neither  
4 necessary nor allowable, and must be taxed. Code Civ. Proc. § 1033.5 (c)(2-4).

5 **C. The Discretionary Costs Claimed By ZACR For “Hosting Electronic Documents”**  
6 **Are Not Reasonably Necessary To The Conduct Of The Litigation And Are**  
7 **Unreasonable In Amount**

8 Pursuant to Cal. Code Civ. Proc. ¶1033.5(a)(15), fees for hosting of electronic documents  
9 are allowable if such hosting is ordered by the court. In order for discretionary costs to be  
10 recoverable, they must be both “reasonably necessary to the conduct of the litigation rather than  
11 merely convenient or beneficial to its preparation” and “reasonable in amount.” Code Civ. Proc.  
12 § 1033.5 (c)(2-4). ZARC seeks to recover \$16,309.68 in costs associated with hosting electronic  
13 documents. Here there was no court order requiring such hosting. Therefore, all fees associated  
14 with hosting were voluntarily assumed by ZACR for its convenience and benefit, as they were not  
15 reasonably necessary for conducting the litigation. It is also noteworthy, that Defendant ICANN  
16 claimed no such costs for hosting electronic documents, further indicating that the hosting was  
17 not necessary.

18 For these reasons, ZACR should not be allowed to recover electronic hosting costs, and  
19 the entire \$16,309.68 amount must be taxed.

20 **IV. CONCLUSION**

21 DCA respectfully requests that this Court grant its motion to tax and reduce ZACR’s  
22 MOC in at least the amount of \$44,688.94 in addition to any such costs the Court deems  
23 appropriate to tax.

24 Dated: November 5, 2019

**BROWN NERI SMITH & KHAN, LLP**

25 By: 

26 Ethan J. Brown

27 Attorneys for Plaintiff DotConnectAfrica Trust