

1 David W. Kesselman (SBN 203838)
 2 *dkesselman@kbslaw.com*
 3 Amy T. Brantly (SBN 210893)
 4 *abrantly@kbslaw.com*
 5 KESSELMAN BRANTLY STOCKINGER LLP
 6 1230 Rosecrans Ave., Suite 690
 7 Manhattan Beach, CA 90266
 8 Telephone: (310) 307-4555
 9 Facsimile: (310) 307-4570
 10 *Attorneys for Defendant*
 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
 17 Plaintiff,

18 v.

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

CASE NO. 2:16-cv-00862 RGK (JCx)
*Assigned for all purposes to the
 Honorable R. Gary Klausner*

**ZA CENTRAL REGISTRY, NPC’S
 CONSOLIDATED EVIDENTIARY
 OBJECTIONS TO
 DECLARATIONS OF SARAH C.
 COLÓN**

[Filed concurrently with Reply ISO of
 Motion to Reconsider and Vacate
 Preliminary Injunction; Supplemental
 Declaration of Mokgabudi Lucky
 Masilela ISO Motion; Consolidated
 Evidentiary Objections to Declaration
 of Sophia Bekele Eshete; Response to
 Plaintiff’s Evidentiary Objections to
 Declaration of Mokgabudi Lucky
 Masilela; and Declaration of Akram
 Atallan ISO of Motion]

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

1 Defendant ZA Central Registry, NPC (“ZACR”) respectfully submits the
 2 following evidentiary objections to the Declaration of Sarah C. Colón (Dkt. #46)
 3 (“Colón Declaration”)¹ and the Declaration of Sarah C. Colón (Dkt. #92) (“Colón
 4 II Declaration”), relied upon by Plaintiff Dot Connect Africa Trust (“DCA”) in
 5 support of its opposition to ZACR’s Motion to Reconsider and Vacate Preliminary
 6 Injunction Ruling.

| Colón Declaration | ZACR’s Objection | Court’s Ruling |
|--|--|----------------|
| <p>7</p> <p>8 ¶ 4 “The audio 9 recording of ICANN’s 10 Governmental 11 Advisory Committee 12 (‘GAC’) meeting with 13 ICANN’s Board on 14 March 9, 2016 can be 15 found at 16 http://audio.icann.org/m 17 eetings/marrakech2016/ 18 gac-board-09mar16- 19 en.mp3. The portion of 20 the meeting where the 21 ICAAN board member</p> | <p>Hearsay. [Fed. R. Evid. 801 & 802.] Lacks personal knowledge and lacks foundation. [Fed. R. Evid. 602.] The recording itself is the best evidence of its content. [Fed. R. Evid. 1002.] Further, the excerpted statement mischaracterizes an innocuous comment.</p> | |

23
 24 ¹ ZACR limits its objections to the Colón Declaration, which was filed in
 25 support of Plaintiff’s Reply in Support of Motion for Preliminary Injunction, to
 26 the portions on which Plaintiff relies on in support of its Opposition to ZACR’s
 27 Motion to Reconsider and Vacate Preliminary Injunction Ruling. ZACR does not
 28 concede that portions of the Colón Declaration that Plaintiff does not rely on in
 connection with the instant motion are admissible or proper, and ZACR reserves
 all rights.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| Colón Declaration | ZACR’s Objection | Court’s Ruling |
|---|--|----------------|
| <p>states ‘Thank You, Chair. Thank you for the intervention Namibia, it’s greatly appreciated. I think you have the commitment from ICANN, the Board, and the staff to not let the litigation issues intervene and we will pursue the finalization of this issue with diligence and all appropriate measures to ensure the interests of all parties are protected’ can be heard beginning at 1.08.6.”</p> | <p>The Court can review the entirety of the discussions of the .Africa gLTD at 1:06:50 - 1:15:05. In fact, ICANN Board Member Cherine Chalaby expressed ICANN’s intent to complete the process of delegating the .Africa gLTD “in a fair and consistent manner.” [Recording at 1:14:50 - 1:15:05.]</p> | |
| <p>¶ 5 & Ex. 3 “Attached as Exhibit 3 is a true and correct copy of the July 15, 2015 letter from Defendant ZA Central Registry (‘ZACR’) to ICANN as I obtained it</p> | <p>Relevance. [Fed. R. Evid.] DCA cites Exhibit 3 in support of its claims that: (1) “ICANN improperly allowed the AUC, effectively itself an applicant for .Africa</p> | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| Colón Declaration | ZACR’s Objection | Court’s Ruling |
|---|---|-----------------------|
| <p>from ICANN’s website at https://www.icann.org/en/system/files/correspondence/masilela-to-crocker-15jul15-en.pdf.</p> | <p>through ZACR, to influence DCA’s application after the IRP,” and (2) “In violation of ICANN’s rules, ZACR wrote to the chairperson at ICANN in order to lobby for its view on how ICANN should handle the post IRP processing of DCA’s application.” <u>Opp. Brief at 12</u>. However, DCA identifies no rule or policy violated by ICANN or ZACR, or any basis on which the Court can conclude that the communications complained of were improper.</p> | |

| Colón II Declaration | ZACR’s Objection | Court’s Ruling |
|---|--|-----------------------|
| <p>¶ 5 “DCA’s application for a temporary</p> | <p>Relevance. [Fed. R. Evid. 403.] The documents</p> | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| Colón II Declaration | ZACR’s Objection | Court’s Ruling |
|--|--|-----------------------|
| <p>restraining order and motion for preliminary injunction contained arguments that were almost identical.”</p> | <p>themselves are the best evidence of their content. [Fed. R. Evid. 1002.]</p> | |
| <p>¶ 6 & Ex. 4 “Attached hereto as Exhibit 4 is a true and correct copy of my March 8, 2016 email to Lucky Masilela attaching numerous filings in the case including DCA’s motion for preliminary injunction, DCA’s application for a temporary restraining order, ICANN’s opposition to the temporary restraining order, and the first amended complaint.”</p> | <p>Relevance. [Fed. R. Evid. 403]. Ms. Colón’s March 8, 2016 email was sent to the email address “imasilela@registry.za.net”. [Colón II Declaration, Ex. 4 (emphasis added).] That is not Mr. Masilela’s email address. Mr. Masilela’s email address is “imasilela@registry.net.za”. [Supplemental Declaration of Mokgabudi Lucky Masilela at ¶ 4 (emphasis added).]</p> | |
| <p>¶ 7 “I did not receive a response from Mr. Masilela to my email.”</p> | <p>Relevance. [Fed. R. Evid. 403]. Ms. Colón sent her email to Mr. Masilela to the wrong email address.</p> | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| Colón II Declaration | ZACR’s Objection | Court’s Ruling |
|---|--|----------------|
| | <p>[Compare Colón II Declaration, Ex. 4 to Supplemental Declaration of Mokgabudi Lucky Masilela at ¶ 4.] Mr. Masilela’s failure to respond to an email that was not properly addressed to him is not relevant.</p> | |
| <p>¶ 8 & Ex. 5 “Attached hereto as Exhibit 5 is a true and correct copy of the email chain between myself and counsel for ZACR beginning on April 1, 2016.”</p> | <p>Relevance. [Fed. R. Evid. 403.]</p> | |

DATED: May 23, 2016

Respectfully submitted,
 KESSELMAN BRANTLY STOCKINGER LLP

By: /s/ David W. Kesselman
 David W. Kesselman
 Amy T. Brantly

 Attorneys for Defendant ZA Central
 Registry, NPC