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8 Attorneys for Defendant
 9 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND NUMBERS

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**
 12 **WESTERN DIVISION**

13
 14 DOTCONNECTAFRICA TRUST, a
 Mauritius Charitable Trust,

15 Plaintiff,

16 v.

17 INTERNET CORPORATION FOR
 18 ASSIGNED NAMES AND
 NUMBERS, etc., et al.,

19 Defendant.

Case No. 2:16-cv-00862-RGK
 (JCx)

Assigned for all purposes to the
 Honorable R. Gary Klausner

**ICANN'S RESPONSE TO
 PLAINTIFF'S EVIDENTIARY
 OBJECTIONS TO
 DECLARATION OF
 MOCTAR YEDALY**

Date: April 4, 2016
 Time: 9:00 a.m.
 Ctrm: 850

1 Defendant Internet Corporation for Assigned Names and Numbers
 2 (“ICANN”) hereby responds to Plaintiff DotConnectAfrica Trust’s objections to the
 3 Declaration of Moctar Yedaly:

Yedaly Declaration	Plaintiff’s Objection	ICANN’s Response	Court’s Ruling
	DCA objects to the entire Yedaly declaration pursuant to Fed. R. Evid. 403 on the grounds that his declaration is misleading as it fails to state that Defendant ZA Central Registry (“ZACR”) agreed to grant the AUC (“African Union Commission”) any rights to the gTLD .Africa that ZACR obtains. [Bekele Declaration, ¶32 Ex. 20, p.617, ¶7] Moctar Yedaly is affiliated with the Infrastructure and Energy Department at the AUC.	ICANN does not understand this objection. The testimony of a representative of the AUC is plainly relevant to Plaintiff’s motion. Further, the New gTLD Applicant Guidebook specifically provides that a governmental entity may support more than one applicant for a specific gTLD, although it did not do so in this case. (Eshete Decl. Ex. 2 at 175 (§ 2.2.1.4.4).) Mr. Yedaly’s position with the AUC does not make his testimony objectionable—to the contrary, it is the basis for his personal knowledge of the matters to which he testifies.	

	Yedaly Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
1 2 3 4 5 6 7 8 9 10	¶3: Notwithstanding this, the Government of Morocco provided its letter of support for ZACR's application for the .AFRICA TLD."	DCA objects on the grounds that the letter of support from the Moroccan government is the best evidence of that letter. (Fed. R. Evid. §1002). Conclusory [Fed. R. Evid. 602].	Mr. Yedlay's testimony is not offered to prove the content of a particular writing, but rather as evidence that the Moroccan government provided its support for ZACR's application.	
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	¶6: "I have been integrally involved in the AUC's efforts to support the delegation of a .AFRICA top level domain for the African continent. This initiative is fully endorsed by the African Union and has widespread support across the continent. The launch of the .AFRICA domain is of historic significance to the African continent. With the goal of establishing "Africa in One Space", .AFRICA will provide secure, world-class technical infrastructure to	Lacks personal knowledge, lacks foundation, speculative and conclusory [Fed. R. Evid. 602]. Improper lay opinion [Fed. R. Evid. 701].	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 Decl. ¶¶ 1, 5.) Accordingly, he has personal knowledge of the AUC's member states' views and goals with respect to the .AFRICA gTLD.	

1	Yedaly Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	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 .AFRICA gTLD will also help governments, the private sector, organizations and individuals associate their services, product and information with the continent.			
26 27 28	¶8: "Pursuant to that mandate, the AUC issued a public	Lacks foundation [Fed. R. Evid. 602]. Prejudicial	Mr. Yedaly testified that he is the Head of the	

	Yedaly Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>	<p>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>[Fed. R. Evid. 403].</p>	<p>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 Decl. ¶¶ 1, 5.)</p> <p>Mr. Yedaly’s testimony is not prejudicial. And because Mr. Yedaly’s testimony demonstrates Plaintiff’s lack of governmental support, it is relevant to Plaintiff’s likelihood of success on the merits of its claims.</p>	
<p>22 23 24 25 26 27 28</p>	<p>¶9: “On April 16, 2010, the AUC sent DCA a letter informing it that ‘following consultations with relevant stakeholders...[it] no longer endorse[d] individual initiates</p>	<p>The best evidence of the April 16, 2010 letter is the April 16, 2010 letter itself [Fed. R. Evid. 1002].</p>	<p>The Court may refer to the letter, which is part of the record. (Eshete Decl. Ex. 7, ECF No. 17-7.)</p>	

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<p>2 [for .AFRICA].' 3 Instead, 'in 4 coordination with the 5 Member States...the 6 [AUC] w[ould] go 7 through [an] open 8 [selection] process.' 9 This letter is attached 10 as Exhibit 7 to the 11 Declaration of 12 Sophia Bekele 13 Eshete (ECF No. 17- 14 7). One of the 15 purposes of this 16 letter was to advise 17 DCA that the AUC 18 was withdrawing any 19 previous support the 20 AUC had announced 21 for DCA now that 22 the AUC was more 23 fully engaged and 24 had determined to 25 conduct an open 26 selection process to 27 identify the registry 28 operator that the AUC would endorse.</p>				
<p>¶10: "DCA chose not to participate in the RFP Process. ZA Central Registry ("ZACR") prevailed in the RFP Process, and ZACR submitted an application to ICANN for the .AFRICA gTLD with the full support</p>	<p>The documents are the best evidence of the documents [Fed. R. Evid. 1002]. Lacks foundation [Fed. R. Evid. 602]. Exhibit B and C were a part of the process that the IRP Panel found</p>	<p>The Court may refer to Exhibits B and C, which are part of the record. (Yedaly Decl. Ex. B and C, ECF Nos. 40-2 and 40-3.) Mr. Yedaly testified that he is the Head of the</p>		

1	Yedaly Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
<p>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</p>	<p>of the AUC and with more than 60% support from individual African Governments as required by the new gTLD Applicants' Guidebook. The AUC did not support DCA's application for .AFRICA at the time DCA submitted it to ICANN in 2012, and it does not support DCA's application now. In addition, 17 (seventeen) GAC Early Warning Notices and Consensus advice was issued against DCA's application for .Africa. Attached hereto as Exhibit B and C are true and correct copies of the aforementioned documents."</p>	<p>problematic. (See Bekele Decl., ¶5, Ex. 1, p.0052, ¶109 "The above, combined with the fact that DCA Trust was never given any notice or an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice, and that the Board of ICANN did not take any steps to address the issue, leads this Panel to conclude that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were not procedures designed to ensure the fairness required by Article III, Sec. 1 above, and are therefore</p>	<p>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 Decl. ¶¶ 1, 5.) As such, he is qualified to authenticate Exhibits B and C.</p>	

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2 3 4 5		inconsistent with the Articles of Incorporation and Bylaws of ICANN.”)		
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	¶12: “ZACR has signed a registry agreement with ICANN and is fully prepared to proceed once ICANN is able to complete the delegation. I am aware that ZACR has incurred considerable expenses, and will continue to incur such expenses, without being able to proceed with the delegation of .AFRICA. Further delays will increase this prejudice.”	Prejudicial and irrelevant [Fed. R. Evid. 403]. Lacks personal knowledge, lacks foundation, speculative, and conclusory [Fed. R. 602; Local Rule 7-7 (Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4); <i>See also Bank Melli Iran v. Pahlavi</i> , 58 F.3d 1406, 1412-1413 (9th Cir. 1995) (Holding “the Bank’s response to Pahlavi’s evidence was information and belief declarations from their counsel. Those were entitled to no weight because the declarant did not have personal	Evidence regarding the harm to ZACR helps refutes Plaintiff’s argument that the balance of equities weights in favor of its motion for preliminary injunction. <i>Am. Trucking Ass’n, Inc. v. City of Los Angeles</i> , 559 F.3d 1046, 1052 (9th Cir. 2009). 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 Decl. ¶¶ 1, 5.)	

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Yedaly Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
	knowledge.” [emphasis added]).		

Dated: March 28, 2016

JONES DAY

By: /s/ Jeffrey A. LeVee
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS