INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
ICDR CASE NO. 01-19-0004-0808

FEGISTRY, LLC, MINDS + MACHINES GROUP, LTD., RADIX DOMAIN SOLUTIONS PTE. LTD., AND DOMAIN VENTURES PARTNERS PCC LIMITED
(Claimants)
v.
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS
(Respondent)

**INDEX TO DOCUMENTS SUBMITTED WITH ICANN'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY ADJUDICATION**

| EXHIBIT | DESCRIPTION |
|---|---|
| 15 | International Dispute Resolution Procedures, Including Mediation and Arbitration Rules (1 June 2014). |
| 16 | Hearing Transcript (31 May 2022). |
| 17 | Email from Reconsideration to F. Petillion (19 March 2018). |
| LA-1 | California Code of Civil Procedure section 437c(c). |
| LA-2 | Federal Rule of Civil Procedure 56. |
| LA-3 | *Grell v. Laci Le Beau Corp.*, 73 Cal. App. 4th 1300 (1999). |

# Exhibit 15

RESPONDENT'S EXHIBIT

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INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

# INTERNATIONAL DISPUTE RESOLUTION PROCEDURES

(Including Mediation and Arbitration Rules)

*Rules Amended and Effective June 1, 2014*

*available online at*
**icdr.org**

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# International Dispute Resolution Procedures

(Including Mediation and Arbitration Rules)

## Introduction

These Procedures are designed to provide a complete dispute resolution framework for disputing parties, their counsel, arbitrators, and mediators. They provide a balance between the autonomy of the parties to agree to the dispute resolution process they want and the need for process management by mediators and arbitrators.

The International Centre for Dispute Resolution® ("ICDR®") is the international division of the American Arbitration Association® ("AAA®"). The ICDR provides dispute resolution services around the world in locations chosen by the parties. ICDR arbitrations and mediations may be conducted in any language chosen by the parties. The ICDR Procedures reflect best international practices that are designed to deliver efficient, economic, and fair proceedings.

## International Mediation

The parties may seek to settle their dispute through mediation. Mediation may be scheduled independently of arbitration or concurrently with the scheduling of the arbitration. In mediation, an impartial and independent mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. The Mediation Rules that follow provide a framework for the mediation.

The following pre-dispute mediation clause may be included in contracts:

> *In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by the International Centre for Dispute Resolution under its Mediation Rules, before resorting to arbitration, litigation, or some other dispute resolution procedure.*

The parties should consider adding:

**a.** *The place of mediation shall be [city, (province or state), country]; and*

**b.** *The language(s) of the mediation shall be _____.*

If the parties want to use a mediator to resolve an existing dispute, they may enter into the following submission agreement:

*The parties hereby submit the following dispute to mediation administered by the International Centre for Dispute Resolution in accordance with its International Mediation Rules. (The clause may also provide for the qualifications of the mediator(s), the place of mediation, and any other item of concern to the parties.)*

## International Arbitration

A dispute can be submitted to an arbitral tribunal for a final and binding decision. In ICDR arbitration, each party is given the opportunity to make a case presentation following the process provided by these Rules and the tribunal.

Parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

*Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.*

The parties should consider adding:

**a.** *The number of arbitrators shall be (one or three);*

**b.** *The place of arbitration shall be [city, (province or state), country]; and*

**c.** *The language(s) of the arbitration shall be _____.*

For more complete clause-drafting guidance, please refer to the *ICDR Guide to Drafting International Dispute Resolution Clauses* on the Clause Drafting page at **www.icdr.org.** When writing a clause or agreement for dispute resolution, the parties may choose to confer with the ICDR on useful options. Please see the contact information provided in *How to File a Case with the ICDR.*

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## International Expedited Procedures

The Expedited Procedures provide parties with an expedited and simplified arbitration procedure designed to reduce the time and cost of an arbitration.

The Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds USD $250,000 exclusive of interest and the costs of arbitration. The parties may agree to the application of these Expedited Procedures on matters of any claim size.

Where parties intend that the Expedited Procedures shall apply regardless of the amount in dispute, they may consider the following clause:

> *Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Expedited Procedures.*

The parties should consider adding:

**a.** *The place of arbitration shall be (city, [province or state], country); and*

**b.** *The language(s) of the arbitration shall be _____.*

Features of the International Expedited Procedures:

- Parties may choose to apply the Expedited Procedures to cases of any size;
- Comprehensive filing requirements;
- Expedited arbitrator appointment process with party input;
- Appointment from an experienced pool of arbitrators ready to serve on an expedited basis;
- Early preparatory conference call with the arbitrator requiring participation of parties and their representatives;
- Presumption that cases up to $100,000 will be decided on documents only;
- Expedited schedule and limited hearing days, if any; and
- An award within 30 calendar days of the close of the hearing or the date established for the receipt of the parties' final statements and proofs.

Whenever a singular term is used in the International Mediation or International Arbitration Rules, such as "party," "claimant," or "arbitrator," that term shall include the plural if there is more than one such entity.

The English-language version of these Rules is the official text for questions of interpretation.

## How to File a Case with the ICDR

Parties initiating a case with the International Centre for Dispute Resolution or the American Arbitration Association may file online via AAAWebFile® (File & Manage a Case) at **www.icdr.org,** by mail, or facsimile (fax). For filing assistance, parties may contact the ICDR directly at any ICDR or AAA office.

**Mail:**
International Centre for Dispute Resolution Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, NJ, 08043
United States

**AAAWebFile:** www.icdr.org
**Email:** casefiling@adr.org
**Phone:** +1.856.435.6401
**Fax:** +1.212.484.4178
**Toll-free phone in the U.S. and Canada:** +1.877.495.4185
**Toll- free fax in the U.S. and Canada:** +1.877.304.8457

For further information about these Rules, visit the ICDR website at **www.icdr.org** or call +1.212.484.4181.

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# International Mediation Rules

## 1. Agreement of Parties

Whenever parties have agreed in writing to mediate disputes under these International Mediation Rules or have provided for mediation or conciliation of existing or future international disputes under the auspices of the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA), or the AAA without designating particular Rules, they shall be deemed to have made these Rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement. The parties by mutual agreement may vary any part of these Rules including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

## 2. Initiation of Mediation

1. Any party or parties to a dispute may initiate mediation under the ICDR's auspices by making a request for mediation to any ICDR or AAA office or case management center via telephone, email, regular mail, or fax. Requests for mediation may also be filed online via AAA WebFile at **www.icdr.org.**
2. The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the ICDR and the other party or parties as applicable:
   - **a.** a copy of the mediation provision of the parties' contract or the parties' stipulation to mediate;
   - **b.** the names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation;
   - **c.** a brief statement of the nature of the dispute and the relief requested;
   - **d.** any specific qualifications the mediator should possess.
3. Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the ICDR, a party may request the ICDR to invite another party to participate in "mediation by voluntary submission." Upon receipt of such a request, the ICDR will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

## 3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the ICDR.

## 4. Appointment of the Mediator

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

**a.** Upon receipt of a request for mediation, the ICDR will send to each party a list of mediators from the ICDR's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the ICDR of their agreement.

**b.** If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the ICDR. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the ICDR shall invite a mediator to serve.

**c.** If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the ICDR shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

## 5. Mediator's Impartiality and Duty to Disclose

**1.** ICDR mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Rules, these Mediation Rules shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

**2.** Prior to accepting an appointment, ICDR mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. ICDR mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time frame desired by the parties. Upon receipt of such disclosures, the ICDR shall immediately communicate the disclosures to the parties for their comments.

**3.** The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the

event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

## 6. Vacancies

If any mediator shall become unwilling or unable to serve, the ICDR will appoint another mediator, unless the parties agree otherwise, in accordance with Rule 4.

## 7. Duties and Responsibilities of the Mediator

1. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, un-coerced decision in which each party makes free and informed choices as to process and outcome.
2. The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person, or otherwise.
3. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
4. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
5. In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation conference(s), the mediator may continue to communicate with the parties for a period of time in an ongoing effort to facilitate a complete settlement.
6. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

## 8. Responsibilities of the Parties

1. The parties shall ensure that appropriate representatives of each party having authority to consummate a settlement attend the mediation conference.
2. Prior to and during the scheduled mediation conference(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

## 9. Privacy

Mediation conferences and related mediation communications are private proceedings. The parties and their representatives may attend mediation conferences. Other persons may attend only with the permission of the parties and with the consent of the mediator.

## 10. Confidentiality

1. Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.
2. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.
3. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:
   - **a.** views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
   - **b.** admissions made by a party or other participant in the course of the mediation proceedings;
   - **c.** proposals made or views expressed by the mediator; or
   - **d.** the fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

## 11. No Stenographic Record

There shall be no stenographic record of the mediation process.

## 12. Termination of Mediation

The mediation shall be terminated:

- **a.** by the execution of a settlement agreement by the parties; or
- **b.** by a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- **c.** by a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or

**d.** when there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

## 13. Exclusion of Liability

Neither the ICDR nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the ICDR nor any mediator shall be liable to any party for any error, act, or omission in connection with any mediation conducted under these Rules.

## 14. Interpretation and Application of Rules

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted and applied by the ICDR.

## 15. Deposits

Unless otherwise directed by the mediator, the ICDR will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

## 16. Expenses

All expenses of the mediation, including required travel and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

## 17. Cost of Mediation

*FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT* ***www.adr.org/internationalfeeschedule.***

## 18. Language of Mediation

If the parties have not agreed otherwise, the language(s) of the mediation shall be that of the documents containing the mediation agreement.

Exhibit 15

# International Arbitration Rules

## Article 1: Scope of These Rules

1. Where parties have agreed to arbitrate disputes under these International Arbitration Rules ("Rules"), or have provided for arbitration of an international dispute by the International Centre for Dispute Resolution (ICDR) or the American Arbitration Association (AAA) without designating particular rules, the arbitration shall take place in accordance with these Rules as in effect at the date of commencement of the arbitration, subject to modifications that the parties may adopt in writing. The ICDR is the Administrator of these Rules.
2. These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
3. When parties agree to arbitrate under these Rules, or when they provide for arbitration of an international dispute by the ICDR or the AAA without designating particular rules, they thereby authorize the ICDR to administer the arbitration. These Rules specify the duties and responsibilities of the ICDR, a division of the AAA, as the Administrator. The Administrator may provide services through any of the ICDR's case management offices or through the facilities of the AAA or arbitral institutions with which the ICDR or the AAA has agreements of cooperation. Arbitrations administered under these Rules shall be administered only by the ICDR or by an individual or organization authorized by the ICDR to do so.
4. Unless the parties agree or the Administrator determines otherwise, the International Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds USD $250,000 exclusive of interest and the costs of arbitration. The parties may also agree to use the International Expedited Procedures in other cases. The International Expedited Procedures shall be applied as described in Articles E-1 through E-10 of these Rules, in addition to any other portion of these Rules that is not in conflict with the Expedited Procedures. Where no party's claim or counterclaim exceeds USD $100,000 exclusive of interest, attorneys' fees, and other arbitration costs, the dispute shall be resolved by written submissions only unless the arbitrator determines that an oral hearing is necessary.

## Commencing the Arbitration

## Article 2: Notice of Arbitration

1. The party initiating arbitration ("Claimant") shall, in compliance with Article 10, give written Notice of Arbitration to the Administrator and at the same time to the party against whom a claim is being made ("Respondent"). The Claimant may also initiate the arbitration through the Administrator's online filing system located at **www.icdr.org.**

2. The arbitration shall be deemed to commence on the date on which the Administrator receives the Notice of Arbitration.

3. The Notice of Arbitration shall contain the following information:

   a. a demand that the dispute be referred to arbitration;

   b. the names, addresses, telephone numbers, fax numbers, and email addresses of the parties and, if known, of their representatives;

   c. a copy of the entire arbitration clause or agreement being invoked, and, where claims are made under more than one arbitration agreement, a copy of the arbitration agreement under which each claim is made;

   d. a reference to any contract out of or in relation to which the dispute arises;

   e. a description of the claim and of the facts supporting it;

   f. the relief or remedy sought and any amount claimed; and

   g. optionally, proposals, consistent with any prior agreement between or among the parties, as to the means of designating the arbitrators, the number of arbitrators, the place of arbitration, the language(s) of the arbitration, and any interest in mediating the dispute.

4. The Notice of Arbitration shall be accompanied by the appropriate filing fee.

5. Upon receipt of the Notice of Arbitration, the Administrator shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

## Article 3: Answer and Counterclaim

1. Within 30 days after the commencement of the arbitration, Respondent shall submit to Claimant, to any other parties, and to the Administrator a written Answer to the Notice of Arbitration.

2. At the time Respondent submits its Answer, Respondent may make any counterclaims covered by the agreement to arbitrate or assert any setoffs and Claimant shall within 30 days submit to Respondent, to any other parties, and to the Administrator a written Answer to the counterclaim or setoffs.

3. A counterclaim or setoff shall contain the same information required of a Notice of Arbitration under Article 2(3) and shall be accompanied by the appropriate filing fee.

4. Respondent shall within 30 days after the commencement of the arbitration submit to Claimant, to any other parties, and to the Administrator a response to any proposals by Claimant not previously agreed upon, or submit its own proposals, consistent with any prior agreement between or among the parties, as to the means of designating the arbitrators, the number of arbitrators, the place of the arbitration, the language(s) of the arbitration, and any interest in mediating the dispute.

5. The arbitral tribunal, or the Administrator if the tribunal has not yet been constituted, may extend any of the time limits established in this Article if it considers such an extension justified.
6. Failure of Respondent to submit an Answer shall not preclude the arbitration from proceeding.
7. In arbitrations with multiple parties, Respondent may make claims or assert setoffs against another Respondent and Claimant may make claims or assert setoffs against another Claimant in accordance with the provisions of this Article 3.

## Article 4: Administrative Conference

The Administrator may conduct an administrative conference before the arbitral tribunal is constituted to facilitate party discussion and agreement on issues such as arbitrator selection, mediating the dispute, process efficiencies, and any other administrative matters.

## Article 5: Mediation

Following the time for submission of an Answer, the Administrator may invite the parties to mediate in accordance with the ICDR's International Mediation Rules. At any stage of the proceedings, the parties may agree to mediate in accordance with the ICDR's International Mediation Rules. Unless the parties agree otherwise, the mediation shall proceed concurrently with arbitration and the mediator shall not be an arbitrator appointed to the case.

## Article 6: Emergency Measures of Protection

1. A party may apply for emergency relief before the constitution of the arbitral tribunal by submitting a written notice to the Administrator and to all other parties setting forth the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the reasons why the party is entitled to such relief. The notice shall be submitted concurrent with or following the submission of a Notice of Arbitration. Such notice may be given by email, or as otherwise permitted by Article 10, and must include a statement certifying that all parties have been notified or an explanation of the steps taken in good faith to notify all parties.
2. Within one business day of receipt of the notice as provided in Article 6(1), the Administrator shall appoint a single emergency arbitrator. Prior to accepting appointment, a prospective emergency arbitrator shall, in accordance with Article 13, disclose to the Administrator any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the Administrator to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

3. The emergency arbitrator shall as soon as possible, and in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard and may provide for proceedings by telephone, video, written submissions, or other suitable means, as alternatives to an in-person hearing. The emergency arbitrator shall have the authority vested in the arbitral tribunal under Article 19, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Article.

4. The emergency arbitrator shall have the power to order or award any interim or conservancy measures that the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measures may take the form of an interim award or of an order. The emergency arbitrator shall give reasons in either case. The emergency arbitrator may modify or vacate the interim award or order. Any interim award or order shall have the same effect as an interim measure made pursuant to Article 24 and shall be binding on the parties when rendered. The parties shall undertake to comply with such an interim award or order without delay.

5. The emergency arbitrator shall have no further power to act after the arbitral tribunal is constituted. Once the tribunal has been constituted, the tribunal may reconsider, modify, or vacate the interim award or order of emergency relief issued by the emergency arbitrator. The emergency arbitrator may not serve as a member of the tribunal unless the parties agree otherwise.

6. Any interim award or order of emergency relief may be conditioned on provision of appropriate security by the party seeking such relief.

7. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this Article 6 or with the agreement to arbitrate or a waiver of the right to arbitrate.

8. The costs associated with applications for emergency relief shall be addressed by the emergency arbitrator, subject to the power of the arbitral tribunal to determine finally the allocation of such costs.

## Article 7: Joinder

1. A party wishing to join an additional party to the arbitration shall submit to the Administrator a Notice of Arbitration against the additional party. No additional party may be joined after the appointment of any arbitrator, unless all parties, including the additional party, otherwise agree. The party wishing to join the additional party shall, at that same time, submit the Notice of Arbitration to the additional party and all other parties. The date on which such Notice of Arbitration is received by the Administrator shall be deemed to be the date of the commencement of arbitration against the additional party. Any joinder shall be subject to the provisions of Articles 12 and 19.

2. The request for joinder shall contain the same information required of a Notice of Arbitration under Article 2(3) and shall be accompanied by the appropriate filing fee.

3. The additional party shall submit an Answer in accordance with the provisions of Article 3.

4. The additional party may make claims, counterclaims, or assert setoffs against any other party in accordance with the provisions of Article 3.

## Article 8: Consolidation

1. At the request of a party, the Administrator may appoint a consolidation arbitrator, who will have the power to consolidate two or more arbitrations pending under these Rules, or these and other arbitration rules administered by the AAA or ICDR, into a single arbitration where:

   a. the parties have expressly agreed to consolidation; or

   b. all of the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or

   c. the claims, counterclaims, or setoffs in the arbitrations are made under more than one arbitration agreement; the arbitrations involve the same parties; the disputes in the arbitrations arise in connection with the same legal relationship; and the consolidation arbitrator finds the arbitration agreements to be compatible.

2. A consolidation arbitrator shall be appointed as follows:

   a. The Administrator shall notify the parties in writing of its intention to appoint a consolidation arbitrator and invite the parties to agree upon a procedure for the appointment of a consolidation arbitrator.

   b. If the parties have not within 15 days of such notice agreed upon a procedure for appointment of a consolidation arbitrator, the Administrator shall appoint the consolidation arbitrator.

   c. Absent the agreement of all parties, the consolidation arbitrator shall not be an arbitrator who is appointed to any pending arbitration subject to potential consolidation under this Article.

   d. The provisions of Articles 13-15 of these Rules shall apply to the appointment of the consolidation arbitrator.

3. In deciding whether to consolidate, the consolidation arbitrator shall consult the parties and may consult the arbitral tribunal(s) and may take into account all relevant circumstances, including:

   a. applicable law;

   b. whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different persons have been appointed;

   c. the progress already made in the arbitrations;

   d. whether the arbitrations raise common issues of law and/or facts; and

e. whether the consolidation of the arbitrations would serve the interests of justice and efficiency.

4. The consolidation arbitrator may order that any or all arbitrations subject to potential consolidation be stayed pending a ruling on a request for consolidation.

5. When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties or the consolidation arbitrator finds otherwise.

6. Where the consolidation arbitrator decides to consolidate an arbitration with one or more other arbitrations, each party in those arbitrations shall be deemed to have waived its right to appoint an arbitrator. The consolidation arbitrator may revoke the appointment of any arbitrators and may select one of the previously-appointed tribunals to serve in the consolidated proceeding. The Administrator shall, as necessary, complete the appointment of the tribunal in the consolidated proceeding. Absent the agreement of all parties, the consolidation arbitrator shall not be appointed in the consolidated proceeding.

7. The decision as to consolidation, which need not include a statement of reasons, shall be rendered within 15 days of the date for final submissions on consolidation.

## Article 9: Amendment or Supplement of Claim, Counterclaim, or Defense

Any party may amend or supplement its claim, counterclaim, setoff, or defense unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement because of the party's delay in making it, prejudice to the other parties, or any other circumstances. A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate. The tribunal may permit an amendment or supplement subject to an award of costs and/or the payment of filing fees as determined by the Administrator.

## Article 10: Notices

1. Unless otherwise agreed by the parties or ordered by the arbitral tribunal, all notices and written communications may be transmitted by any means of communication that allows for a record of its transmission including mail, courier, fax, or other written forms of electronic communication addressed to the party or its representative at its last- known address, or by personal service.

2. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is made. If the last day of such period is an official holiday at the place received, the period is extended until the first business day that follows. Official holidays occurring during the running of the period of time are included in calculating the period.

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## The Tribunal

### Article 11: Number of Arbitrators

If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the Administrator determines in its discretion that three arbitrators are appropriate because of the size, complexity, or other circumstances of the case.

### Article 12: Appointment of Arbitrators

1. The parties may agree upon any procedure for appointing arbitrators and shall inform the Administrator as to such procedure. In the absence of party agreement as to the method of appointment, the Administrator may use the ICDR list method as provided in Article 12(6).
2. The parties may agree to select arbitrators, with or without the assistance of the Administrator. When such selections are made, the parties shall take into account the arbitrators' availability to serve and shall notify the Administrator so that a Notice of Appointment can be communicated to the arbitrators, together with a copy of these Rules.
3. If within 45 days after the commencement of the arbitration, all parties have not agreed on a procedure for appointing the arbitrator(s) or have not agreed on the selection of the arbitrator(s), the Administrator shall, at the written request of any party, appoint the arbitrator(s). Where the parties have agreed upon a procedure for selecting the arbitrator(s), but all appointments have not been made within the time limits provided by that procedure, the Administrator shall, at the written request of any party, perform all functions provided for in that procedure that remain to be performed.
4. In making appointments, the Administrator shall, after inviting consultation with the parties, endeavor to appoint suitable arbitrators, taking into account their availability to serve. At the request of any party or on its own initiative, the Administrator may appoint nationals of a country other than that of any of the parties.
5. If there are more than two parties to the arbitration, the Administrator may appoint all arbitrators unless the parties have agreed otherwise no later than 45 days after the commencement of the arbitration.
6. If the parties have not selected an arbitrator(s) and have not agreed upon any other method of appointment, the Administrator, at its discretion, may appoint the arbitrator(s) in the following manner using the ICDR list method. The Administrator shall send simultaneously to each party an identical list of names of persons for consideration as arbitrator(s). The parties are encouraged to agree to an arbitrator(s) from the submitted list and shall advise the Administrator of their agreement. If, after receipt of the list, the parties are unable to agree upon an arbitrator(s), each party shall have 15 days from the transmittal date in which

to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on the parties' lists, and in accordance with the designated order of mutual preference, the Administrator shall invite an arbitrator(s) to serve. If the parties fail to agree on any of the persons listed, or if acceptable arbitrators are unable or unavailable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have the power to make the appointment without the submission of additional lists. The Administrator shall, if necessary, designate the presiding arbitrator in consultation with the tribunal.

**7.** The appointment of an arbitrator is effective upon receipt by the Administrator of the Administrator's Notice of Appointment completed and signed by the arbitrator.

## Article 13: Impartiality and Independence of Arbitrator

**1.** Arbitrators acting under these Rules shall be impartial and independent and shall act in accordance with the terms of the Notice of Appointment provided by the Administrator.

**2.** Upon accepting appointment, an arbitrator shall sign the Notice of Appointment provided by the Administrator affirming that the arbitrator is available to serve and is independent and impartial. The arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence and any other relevant facts the arbitrator wishes to bring to the attention of the parties.

**3.** If, at any stage during the arbitration, circumstances arise that may give rise to such doubts, an arbitrator or party shall promptly disclose such information to all parties and to the Administrator. Upon receipt of such information from an arbitrator or a party, the Administrator shall communicate it to all parties and to the tribunal.

**4.** Disclosure by an arbitrator or party does not necessarily indicate belief by the arbitrator or party that the disclosed information gives rise to justifiable doubts as to the arbitrator's impartiality or independence.

**5.** Failure of a party to disclose any circumstances that may give rise to justifiable doubts as to an arbitrator's impartiality or independence within a reasonable period after the party becomes aware of such information constitutes a waiver of the right to challenge an arbitrator based on those circumstances.

**6.** No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any arbitrator, or with any candidate for party-appointed arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or impartiality and independence in relation to the parties, or to

discuss the suitability of candidates for selection as a presiding arbitrator where the parties or party-appointed arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.

## Article 14: Challenge of an Arbitrator

1. A party may challenge an arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party shall send a written notice of the challenge to the Administrator within 15 days after being notified of the appointment of the arbitrator or within 15 days after the circumstances giving rise to the challenge become known to that party. The challenge shall state in writing the reasons for the challenge. The party shall not send this notice to any member of the arbitral tribunal.
2. Upon receipt of such a challenge, the Administrator shall notify the other party of the challenge and give such party an opportunity to respond. The Administrator shall not send the notice of challenge to any member of the tribunal but shall notify the tribunal that a challenge has been received, without identifying the party challenging. The Administrator may advise the challenged arbitrator of the challenge and request information from the challenged arbitrator relating to the challenge. When an arbitrator has been challenged by a party, the other party may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall withdraw. The challenged arbitrator, after consultation with the Administrator, also may withdraw in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.
3. If the other party does not agree to the challenge or the challenged arbitrator does not withdraw, the Administrator in its sole discretion shall make the decision on the challenge.
4. The Administrator, on its own initiative, may remove an arbitrator for failing to perform his or her duties.

## Article 15: Replacement of an Arbitrator

1. If an arbitrator resigns, is incapable of performing the duties of an arbitrator, or is removed for any reason and the office becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of Article 12, unless the parties otherwise agree.
2. If a substitute arbitrator is appointed under this Article, unless the parties otherwise agree the arbitral tribunal shall determine at its sole discretion whether all or part of the case shall be repeated.
3. If an arbitrator on a three-person arbitral tribunal fails to participate in the arbitration for reasons other than those identified in Article 15(1), the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling, order, or award, notwithstanding the failure of

the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, order, or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the Administrator on proof satisfactory to it shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Article 12, unless the parties otherwise agree.

## General Conditions

### Article 16: Party Representation

Any party may be represented in the arbitration. The names, addresses, telephone numbers, fax numbers, and email addresses of representatives shall be communicated in writing to the other party and to the Administrator. Unless instructed otherwise by the Administrator, once the arbitral tribunal has been established, the parties or their representatives may communicate in writing directly with the tribunal with simultaneous copies to the other party and, unless otherwise instructed by the Administrator, to the Administrator. The conduct of party representatives shall be in accordance with such guidelines as the ICDR may issue on the subject.

### Article 17: Place of Arbitration

1. If the parties do not agree on the place of arbitration by a date established by the Administrator, the Administrator may initially determine the place of arbitration, subject to the power of the arbitral tribunal to determine finally the place of arbitration within 45 days after its constitution.
2. The tribunal may meet at any place it deems appropriate for any purpose, including to conduct hearings, hold conferences, hear witnesses, inspect property or documents, or deliberate, and, if done elsewhere than the place of arbitration, the arbitration shall be deemed conducted at the place of arbitration and any award shall be deemed made at the place of arbitration.

### Article 18: Language of Arbitration

If the parties have not agreed otherwise, the language(s) of the arbitration shall be the language(s) of the documents containing the arbitration agreement, subject to the power of the arbitral tribunal to determine otherwise. The tribunal

may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration.

## Article 19: Arbitral Jurisdiction

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement(s), or with respect to whether all of the claims, counterclaims, and setoffs made in the arbitration may be determined in a single arbitration.
2. The tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the tribunal that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
3. A party must object to the jurisdiction of the tribunal or to arbitral jurisdiction respecting the admissibility of a claim, counterclaim, or setoff no later than the filing of the Answer, as provided in Article 3, to the claim, counterclaim, or setoff that gives rise to the objection. The tribunal may extend such time limit and may rule on any objection under this Article as a preliminary matter or as part of the final award.
4. Issues regarding arbitral jurisdiction raised prior to the constitution of the tribunal shall not preclude the Administrator from proceeding with administration and shall be referred to the tribunal for determination once constituted.

## Article 20: Conduct of Proceedings

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
2. The tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute. The tribunal may, promptly after being constituted, conduct a preparatory conference with the parties for the purpose of organizing, scheduling, and agreeing to procedures, including the setting of deadlines for any submissions by the parties. In establishing procedures for the case, the tribunal and the parties may consider how technology, including electronic communications, could be used to increase the efficiency and economy of the proceedings.
3. The tribunal may decide preliminary issues, bifurcate proceedings, direct the order of proof, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues whose resolution could dispose of all or part of the case.
4. At any time during the proceedings, the tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate. Unless the parties agree otherwise in writing, the tribunal shall apply Article 21.

5. Documents or information submitted to the tribunal by one party shall at the same time be transmitted by that party to all parties and, unless instructed otherwise by the Administrator, to the Administrator.
6. The tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence.
7. The parties shall make every effort to avoid unnecessary delay and expense in the arbitration. The arbitral tribunal may allocate costs, draw adverse inferences, and take such additional steps as are necessary to protect the efficiency and integrity of the arbitration.

## Article 21: Exchange of Information

1. The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy. The tribunal and the parties should endeavor to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party's opportunity to present its claims and defenses fairly.
2. The parties may provide the tribunal with their views on the appropriate level of information exchange for each case, but the tribunal retains final authority. To the extent that the parties wish to depart from this Article, they may do so only by written agreement and in consultation with the tribunal.
3. The parties shall exchange all documents upon which each intends to rely on a schedule set by the tribunal.
4. The tribunal may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the case.
5. The tribunal may condition any exchange of information subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality.
6. When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form (which may be paper copies) most convenient and economical for it, unless the tribunal determines, on application, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible. The tribunal may direct testing or other means of focusing and limiting any search.
7. The tribunal may, on application, require a party to permit inspection on reasonable notice of relevant premises or objects.

8. In resolving any dispute about pre-hearing exchanges of information, the tribunal shall require a requesting party to justify the time and expense that its request may involve and may condition granting such a request on the payment of part or all of the cost by the party seeking the information. The tribunal may also allocate the costs of providing information among the parties, either in an interim order or in an award.
9. In the event a party fails to comply with an order for information exchange, the tribunal may draw adverse inferences and may take such failure into account in allocating costs.
10. Depositions, interrogatories, and requests to admit as developed for use in U.S. court procedures generally are not appropriate procedures for obtaining information in an arbitration under these Rules.

## Article 22: Privilege

The arbitral tribunal shall take into account applicable principles of privilege, such as those involving the confidentiality of communications between a lawyer and client. When the parties, their counsel, or their documents would be subject under applicable law to different rules, the tribunal should, to the extent possible, apply the same rule to all parties, giving preference to the rule that provides the highest level of protection.

## Article 23: Hearing

1. The arbitral tribunal shall give the parties reasonable notice of the date, time, and place of any oral hearing.
2. At least 15 days before the hearings, each party shall give the tribunal and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony, and the languages in which such witnesses will give their testimony.
3. The tribunal shall determine the manner in which witnesses are examined and who shall be present during witness examination.
4. Unless otherwise agreed by the parties or directed by the tribunal, evidence of witnesses may be presented in the form of written statements signed by them. In accordance with a schedule set by the tribunal, each party shall notify the tribunal and the other parties of the names of any witnesses who have presented a witness statement whom it requests to examine. The tribunal may require any witness to appear at a hearing. If a witness whose appearance has been requested fails to appear without valid excuse as determined by the tribunal, the tribunal may disregard any written statement by that witness.
5. The tribunal may direct that witnesses be examined through means that do not require their physical presence.

6. Hearings are private unless the parties agree otherwise or the law provides to the contrary.

## Article 24: Interim Measures

1. At the request of any party, the arbitral tribunal may order or award any interim or conservatory measures it deems necessary, including injunctive relief and measures for the protection or conservation of property.
2. Such interim measures may take the form of an interim order or award, and the tribunal may require security for the costs of such measures.
3. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.
4. The arbitral tribunal may in its discretion allocate costs associated with applications for interim relief in any interim order or award or in the final award.
5. An application for emergency relief prior to the constitution of the arbitral tribunal may be made as provided for in Article 6.

## Article 25: Tribunal-Appointed Expert

1. The arbitral tribunal, after consultation with the parties, may appoint one or more independent experts to report to it, in writing, on issues designated by the tribunal and communicated to the parties.
2. The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the tribunal for decision.
3. Upon receipt of an expert's report, the tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion of the report. A party may examine any document on which the expert has relied in such a report.
4. At the request of any party, the tribunal shall give the parties an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

## Article 26: Default

1. If a party fails to submit an Answer in accordance with Article 3, the arbitral tribunal may proceed with the arbitration.
2. If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the tribunal may proceed with the hearing.

3. If a party, duly invited to produce evidence or take any other steps in the proceedings, fails to do so within the time established by the tribunal without showing sufficient cause for such failure, the tribunal may make the award on the evidence before it.

## Article 27: Closure of Hearing

1. The arbitral tribunal may ask the parties if they have any further submissions and upon receiving negative replies or if satisfied that the record is complete, the tribunal may declare the arbitral hearing closed.
2. The tribunal in its discretion, on its own motion, or upon application of a party, may reopen the arbitral hearing at any time before the award is made.

## Article 28: Waiver

A party who knows of any non-compliance with any provision or requirement of the Rules or the arbitration agreement, and proceeds with the arbitration without promptly stating an objection in writing, waives the right to object.

## Article 29: Awards, Orders, Decisions and Rulings

1. In addition to making a final award, the arbitral tribunal may make interim, interlocutory, or partial awards, orders, decisions, and rulings.
2. When there is more than one arbitrator, any award, order, decision, or ruling of the tribunal shall be made by a majority of the arbitrators.
3. When the parties or the tribunal so authorize, the presiding arbitrator may make orders, decisions, or rulings on questions of procedure, including exchanges of information, subject to revision by the tribunal.

## Article 30: Time, Form, and Effect of Award

1. Awards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties. The tribunal shall make every effort to deliberate and prepare the award as quickly as possible after the hearing. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the final award shall be made no later than 60 days from the date of the closing of the hearing. The parties shall carry out any such award without delay and, absent agreement otherwise, waive irrevocably their right to any form of appeal, review, or recourse to any court or other judicial authority, insofar as such waiver can validly be made. The tribunal shall state the reasons upon which an award is based, unless the parties have agreed that no reasons need be given.
2. An award shall be signed by the arbitrator(s) and shall state the date on which the award was made and the place of arbitration pursuant to Article 17. Where there

is more than one arbitrator and any of them fails to sign an award, the award shall include or be accompanied by a statement of the reason for the absence of such signature.

3. An award may be made public only with the consent of all parties or as required by law, except that the Administrator may publish or otherwise make publicly available selected awards, orders, decisions, and rulings that have become public in the course of enforcement or otherwise and, unless otherwise agreed by the parties, may publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details.
4. The award shall be transmitted in draft form by the tribunal to the Administrator. The award shall be communicated to the parties by the Administrator.
5. If applicable law requires an award to be filed or registered, the tribunal shall cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements or any other procedural requirements of the place of arbitration to the attention of the tribunal.

## Article 31: Applicable Laws and Remedies

1. The arbitral tribunal shall apply the substantive law(s) or rules of law agreed by the parties as applicable to the dispute. Failing such an agreement by the parties, the tribunal shall apply such law(s) or rules of law as it determines to be appropriate.
2. In arbitrations involving the application of contracts, the tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
3. The tribunal shall not decide as *amiable compositeur* or *ex aequo et bono* unless the parties have expressly authorized it to do so.
4. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate, and the tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law(s).
5. Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary, or similar damages unless any applicable law(s) requires that compensatory damages be increased in a specified manner. This provision shall not apply to an award of arbitration costs to a party to compensate for misconduct in the arbitration.

## Article 32: Settlement or Other Reasons for Termination

1. If the parties settle the dispute before a final award is made, the arbitral tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of a consent award on agreed terms. The tribunal is not obliged to give reasons for such an award.

2. If continuation of the arbitration becomes unnecessary or impossible due to the non-payment of deposits required by the Administrator, the arbitration may be suspended or terminated as provided in Article 36(3).
3. If continuation of the arbitration becomes unnecessary or impossible for any reason other than as stated in Sections 1 and 2 of this Article, the tribunal shall inform the parties of its intention to terminate the arbitration. The tribunal shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

## Article 33: Interpretation and Correction of Award

1. Within 30 days after the receipt of an award, any party, with notice to the other party, may request the arbitral tribunal to interpret the award or correct any clerical, typographical, or computational errors or make an additional award as to claims, counterclaims, or setoffs presented but omitted from the award.
2. If the tribunal considers such a request justified after considering the contentions of the parties, it shall comply with such a request within 30 days after receipt of the parties' last submissions respecting the requested interpretation, correction, or additional award. Any interpretation, correction, or additional award made by the tribunal shall contain reasoning and shall form part of the award.
3. The tribunal on its own initiative may, within 30 days of the date of the award, correct any clerical, typographical, or computational errors or make an additional award as to claims presented but omitted from the award.
4. The parties shall be responsible for all costs associated with any request for interpretation, correction, or an additional award, and the tribunal may allocate such costs.

## Article 34: Costs of Arbitration

The arbitral tribunal shall fix the costs of arbitration in its award(s). The tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case.

Such costs may include:

a. the fees and expenses of the arbitrators;
b. the costs of assistance required by the tribunal, including its experts;
c. the fees and expenses of the Administrator;
d. the reasonable legal and other costs incurred by the parties;
e. any costs incurred in connection with a notice for interim or emergency relief pursuant to Articles 6 or 24;

**f.** any costs incurred in connection with a request for consolidation pursuant to Article 8; and

**g.** any costs associated with information exchange pursuant to Article 21.

## Article 35: Fees and Expenses of Arbitral Tribunal

**1.** The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the time spent by the arbitrators, the size and complexity of the case, and any other relevant circumstances.

**2.** As soon as practicable after the commencement of the arbitration, the Administrator shall designate an appropriate daily or hourly rate of compensation in consultation with the parties and all arbitrators, taking into account the arbitrators' stated rate of compensation and the size and complexity of the case.

**3.** Any dispute regarding the fees and expenses of the arbitrators shall be determined by the Administrator.

## Article 36: Deposits

**1.** The Administrator may request that the parties deposit appropriate amounts as an advance for the costs referred to in Article 34.

**2.** During the course of the arbitration, the Administrator may request supplementary deposits from the parties.

**3.** If the deposits requested are not paid promptly and in full, the Administrator shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the proceedings. If the tribunal has not yet been appointed, the Administrator may suspend or terminate the proceedings.

**4.** Failure of a party asserting a claim or counterclaim to pay the required deposits shall be deemed a withdrawal of the claim or counterclaim.

**5.** After the final award has been made, the Administrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

## Article 37: Confidentiality

**1.** Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator or by the Administrator. Except as provided in Article 30, unless otherwise agreed by the parties or required by applicable law, the members of the arbitral tribunal and the Administrator shall keep confidential all matters relating to the arbitration or the award.

2. Unless the parties agree otherwise, the tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

## Article 38: Exclusion of Liability

The members of the arbitral tribunal, any emergency arbitrator appointed under Article 6, any consolidation arbitrator appointed under Article 8, and the Administrator shall not be liable to any party for any act or omission in connection with any arbitration under these Rules, except to the extent that such a limitation of liability is prohibited by applicable law. The parties agree that no arbitrator, emergency arbitrator, or consolidation arbitrator, nor the Administrator shall be under any obligation to make any statement about the arbitration, and no party shall seek to make any of these persons a party or witness in any judicial or other proceedings relating to the arbitration.

## Article 39: Interpretation of Rules

The arbitral tribunal, any emergency arbitrator appointed under Article 6, and any consolidation arbitrator appointed under Article 8, shall interpret and apply these Rules insofar as they relate to their powers and duties. The Administrator shall interpret and apply all other Rules.

Exhibit 15

# International Expedited Procedures

## Article E-1: Scope of Expedited Procedures

These Expedited Procedures supplement the International Arbitration Rules as provided in Article 1(4).

## Article E-2: Detailed Submissions

Parties are to present detailed submissions on the facts, claims, counterclaims, setoffs and defenses, together with all of the evidence then available on which such party intends to rely, in the Notice of Arbitration and the Answer. The arbitrator, in consultation with the parties, shall establish a procedural order, including a timetable, for completion of any written submissions.

## Article E-3: Administrative Conference

The Administrator may conduct an administrative conference with the parties and their representatives to discuss the application of these procedures, arbitrator selection, mediating the dispute, and any other administrative matters.

## Article E-4: Objection to the Applicability of the Expedited Procedures

If an objection is submitted before the arbitrator is appointed, the Administrator may initially determine the applicability of these Expedited Procedures, subject to the power of the arbitrator to make a final determination. The arbitrator shall take into account the amount in dispute and any other relevant circumstances.

## Article E-5: Changes of Claim or Counterclaim

If, after filing of the initial claims and counterclaims, a party amends its claim or counterclaim to exceed USD $250,000.00 exclusive of interest and the costs of arbitration, the case will continue to be administered pursuant to these Expedited Procedures unless the parties agree otherwise, or the Administrator or the arbitrator determines otherwise. After the arbitrator is appointed, no new or different claim, counterclaim or setoff and no change in amount may be submitted except with the arbitrator's consent.

## Article E-6: Appointment and Qualifications of the Arbitrator

A sole arbitrator shall be appointed as follows. The Administrator shall simultaneously submit to each party an identical list of five proposed arbitrators. The parties may agree to an arbitrator from this list and shall so advise the Administrator. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the Administrator within 10 days from the transmittal date of the list to the parties. The parties are not required to exchange selection lists. If the parties fail to agree on any of the arbitrators or if acceptable arbitrators are unable or unavailable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator may make the appointment without the circulation of additional lists. The parties will be given notice by the Administrator of the appointment of the arbitrator, together with any disclosures.

## Article E-7: Procedural Conference and Order

After the arbitrator's appointment, the arbitrator may schedule a procedural conference call with the parties, their representatives, and the Administrator to discuss the procedure and schedule for the case. Within 14 days of appointment, the arbitrator shall issue a procedural order.

## Article E-8: Proceedings by Written Submissions

In expedited proceedings based on written submissions, all submissions are due within 60 days of the date of the procedural order, unless the arbitrator determines otherwise. The arbitrator may require an oral hearing if deemed necessary.

## Article E-9: Proceedings with an Oral Hearing

In expedited proceedings in which an oral hearing is to be held, the arbitrator shall set the date, time, and location of the hearing. The oral hearing shall take place within 60 days of the date of the procedural order unless the arbitrator deems it necessary to extend that period. Hearings may take place in person or via video conference or other suitable means, at the discretion of the arbitrator. Generally, there will be no transcript or stenographic record. Any party desiring a stenographic record may arrange for one. The oral hearing shall not exceed one day unless the arbitrator determines otherwise. The Administrator will notify the parties in advance of the hearing date.

### Article E-10: The Award

Awards shall be made in writing and shall be final and binding on the parties. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the award shall be made not later than 30 days from the date of the closing of the hearing or from the time established for final written submissions.

## Administrative Fees

### Administrative Fee Schedules

*FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT* ***www.adr.org/internationalfeeschedule.***

# Exhibit 16

RESPONDENT'S EXHIBIT

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

| | | |
|---|---|---|
| Fegistry, LLC, Minds + Machines Group, Ltd., Radix Domain Solutions Pte Ltd., and Domain Ventures Partners PCC Limited | * | ICDR CASE NO. 01-19-0004-0808 |
| Claimants, | * | |
| And | * | |
| INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, | * | |
| Respondent. | * | |

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AUDIO TRANSCRIPTION OF

ZOOM HEARING

HELD MAY 31, 2022

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of their opposition to the motion. We'd like to brief that in, let's say, the next three, four weeks. Let's get this resolved.

JUDGE MATZ: Well, I -- Piotr, may I be heard?

JUDGE NOWACZYK: Yes, please, please, go ahead.

JUDGE MATZ: What you just said is kind of what the Panel expected and anticipates and I think is inclined to approve. We know that this statute of limitations issue is or isn't in the course of discovery, but our view is if you are right that there is no relevance in the material that's being sought because it can't provide admissible or relevant evidence on this particular IRP, because the claims would be barred even if they were irrelevant, then you won't have to produce those documents if we find that your contention is correct.

If we issue a -- the equivalent of a ruling that you don't have a valid position as to what you've just told us and what the statute of limitations issues, how they would apply, then we would reserve the right to

various other requirements under the Rules and under the standard procedures. We're not going to set those today. Once you have a hearing date, that hearing date is going to be fixed and then you guys, meaning the lawyers, have to do a better job of agreeing on when you're going to do various things, like exchange witness statements and affidavits, and -- and other requirements leading up to any ICDR hearing.

You have to do that. And we are not going to be pleased if you fail to come up with agreements. But that's not necessary to be accomplished today.

JUDGE NOWACZYK: Correct.

MR. LeVEE: Fair enough. Thank you, Judge Matz.

JUDGE NOWACZYK: So are there any other issues to discuss or to present today?

JUDGE CAHILL: Let me hear what Mr. Rodenbaugh has to say about what we've talked about so far.

MR. RODENBAUGH: Thank you, Judge Cahill. We're fine with the summary judgment briefing. I think it's well past time that

we get those issues out of the way, and from there, we can talk about what's left to be discovered. I think in the meanwhile, ICANN should be producing some documents. They've said that they're at least willing to produce as to five of the 30-something requests that we've posed.

And I have to say that all of a sudden now we've been narrowed to 12 requests when the meet and confer process was not intended for me to disable my client's case in that manner. You know, we have 30-plus requests pending, not 12. We agreed to narrow it to try to get an initial corpus of documents and an initial agreement with ICANN as to an initial production.

And then suddenly, the lawyer I agreed with on that, Mr. Enson, is out of the case and I'm dealing with Mr. Lee [sic], who's telling me something completely different, that now I'm limited to 12, and now I'm hearing from the Panel that there'll be no further discovery, I get 12 document requests and that's the extent of discovery that we're entitled to in this case.

CERTIFICATION

I, Carmel Montero, TX CSR No. 8128, FPR No. 1065, do certify that I was authorized to and did listen to and transcribe the foregoing recorded proceedings and that the transcript is a true record to the best of my ability.

Dated this 13th day of June, 2022.

Carmel Montero,
TX CSR No. 8128
FL FPR No. 1065

# Exhibit 17

RESPONDENT'S EXHIBIT

Exhibit 17

**From:** reconsider <reconsider-bounces@icann.org> on behalf of Reconsideration <Reconsideration@icann.org>
**Sent:** Monday, March 19, 2018 3:04 PM
**To:** Flip Petillion
**Cc:** Reconsideration
**Subject:** [Reconsideration Request] Update on Reconsideration Request 16-11
**Attachments:** ATT00001.txt

Dear Mr. Petillion,

On 15 March 2018, in Resolution 2018.03.15.11, the ICANN Board "directe[d] the Board Accountability Mechanisms Committee [BAMC] to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the [Community Priority Evaluation] (CPE) Process Review in accordance with the Transition Process of Reconsideration Responsibilities from the BGC to the BAMC[icann.org] document."

To ensure that the review of the pending Reconsideration Requests are conducted in an efficient manner, the BAMC has developed a Roadmap[icann.org] for the review the requests. In accordance with the Roadmap[icann.org], the BAMC invites you to submit additional information relating to Request 16-11, provided that the submission is limited to any new information/argument based upon the CPE Process Review Reports. Any such additional submission shall be limited to ten pages. The deadline to submit such additional submission is two weeks from today, which is 2 April 2018.

Additionally, accordance with the Roadmap[icann.org], the BAMC invites you to make a telephonic oral presentation to the BAMC in support of your reconsideration request. Please note that the BAMC asks that any such presentation be limited to providing additional information that is relevant to the evaluation of Request 16-11 and that is not already covered by the written materials. If you would like to proceed with a telephonic presentation to the BAMC, please provide confirmation by 23 March 2018. Please include your availability for a 30-minute telephonic presentation in March and April with your response.

Best regards,
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

# Exhibit LA-1

RESPONDENT'S EXHIBIT

West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 2. Of Civil Actions (Refs & Annos)
Title 6. Of the Pleadings in Civil Actions
Chapter 5. Summary Judgments and Motions for Judgment on the Pleadings (Refs & Annos)

West's Ann.Cal.C.C.P. § 437c

§ 437c. Grounds for and effect of summary judgment; procedure on motion

Effective: January 1, 2017
Currentness

(a)(1) A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct.

(2) Notice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. If the notice is served by mail, the required 75-day period of notice shall be increased by 5 days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 75-day period of notice shall be increased by two court days.

(3) The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b)(1) The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be

  

followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

(2) An opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.

(3) The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

(4) A reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

(5) Evidentiary objections not made at the hearing shall be deemed waived.

(6) Except for subdivision (c) of Section 1005 relating to the method of service of opposition and reply papers, Sections 1005 and 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

(7) An incorporation by reference of a matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible

  

from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by a person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. An objection based on the failure to comply with the requirements of this subdivision, if not made at the hearing, shall be deemed waived.

(e) If a party is otherwise entitled to summary judgment pursuant to this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court if the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or if a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof.

(f)(1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. A party shall not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.

(g) Upon the denial of a motion for summary judgment on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material

  

facts raised by the motion that the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion that indicates that a triable controversy exists. Upon the grant of a motion for summary judgment on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of and, if applicable, in opposition to the motion that indicates no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

(i) If, after granting a continuance to allow specified additional discovery, the court determines that the party seeking summary judgment has unreasonably failed to allow the discovery to be conducted, the court shall grant a continuance to permit the discovery to go forward or deny the motion for summary judgment or summary adjudication. This section does not affect or limit the ability of a party to compel discovery under the Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4).

(j) If the court determines at any time that an affidavit was presented in bad faith or solely for the purpose of delay, the court shall order the party who presented the affidavit to pay the other party the amount of the reasonable expenses the filing of the affidavit caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers or on the court's own noticed motion, and after an opportunity to be heard.

(k) Unless a separate judgment may properly be awarded in the action, a final judgment shall not be entered on a motion for summary judgment before the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding provided for in this section.

(*l*) In an action arising out of an injury to the person or to property, if a motion for summary judgment is granted on the basis that the defendant was without fault, no other defendant during

  

trial, over plaintiff's objection, may attempt to attribute fault to, or comment on, the absence or involvement of the defendant who was granted the motion.

(m)(1) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of an order pursuant to this section, except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and before the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(2) Before a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs. The supplemental briefs may include an argument that additional evidence relating to that ground exists, but the party has not had an adequate opportunity to present the evidence or to conduct discovery on the issue. The court may reverse or remand based upon the supplemental briefs to allow the parties to present additional evidence or to conduct discovery on the issue. If the court fails to allow supplemental briefs, a rehearing shall be ordered upon timely petition of a party.

(n)(1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion that has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

  

(3) In the trial of an action, neither a party, a witness, nor the court shall comment to a jury upon the grant or denial of a motion for summary adjudication.

(*o*) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(p) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.

(q) In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the

  

motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review.

(r) This section does not extend the period for trial provided by Section 1170.5.

(s) Subdivisions (a) and (b) do not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(t) Notwithstanding subdivision (f), a party may move for summary adjudication of a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, affirmative defense, or issue of duty pursuant to this subdivision.

(1)(A) Before filing a motion pursuant to this subdivision, the parties whose claims or defenses are put at issue by the motion shall submit to the court both of the following:

(i) A joint stipulation stating the issue or issues to be adjudicated.

(ii) A declaration from each stipulating party that the motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement.

(B) The joint stipulation shall be served on any party to the civil action who is not also a party to the motion.

(2) Within 15 days of receipt of the stipulation and declarations, unless the court has good cause for extending the time, the court shall notify the stipulating parties if the motion may be filed. In making this determination, the court may consider objections by a nonstipulating party made within 10 days of the submission of the stipulation and declarations.

(3) If the court elects not to allow the filing of the motion, the stipulating parties may request, and upon request the court shall conduct, an informal conference with the stipulating parties to permit further evaluation of the proposed stipulation. The stipulating parties shall not file additional papers in support of the motion.

  

(4)(A) A motion for summary adjudication made pursuant to this subdivision shall contain a statement in the notice of motion that reads substantially similar to the following: "This motion is made pursuant to subdivision (t) of Section 437c of the Code of Civil Procedure. The parties to this motion stipulate that the court shall hear this motion and that the resolution of this motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement."

(B) The notice of motion shall be signed by counsel for all parties, and by those parties in propria persona, to the motion.

(5) A motion filed pursuant to this subdivision may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment.

(u) For purposes of this section, a change in law does not include a later enacted statute without retroactive application.

**Credits**

(Added by Stats.2011, c. 419 (S.B.384), § 4, operative Jan. 1, 2015. Amended by Stats.2015, c. 161 (S.B.470), § 1, eff. Jan. 1, 2016; Stats.2015, c. 345 (A.B.1141), § 1.5, eff. Jan. 1, 2016; Stats.2016, c. 86 (S.B.1171), § 22, eff. Jan. 1, 2017.)

West's Ann. Cal. C.C.P. § 437c, CA CIV PRO § 437c
Current with urgency legislation through Ch. 134 of 2022 Reg.Sess. Some statute sections may be more current, see credits for details.

**End of Document**

# Exhibit LA-2

RESPONDENT'S EXHIBIT

United States Code Annotated
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title VII. Judgment

Federal Rules of Civil Procedure Rule 56

Rule 56. Summary Judgment [Rule Text & Notes of Decisions subdivisions I to XV]

Currentness

<Notes of Decisions for 28 USCA Federal Rules of Civil Procedure Rule 56 are displayed in multiple documents.>

**(a) Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

**(b) Time to File a Motion.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

**(c) Procedures.**

**(1)** ***Supporting Factual Positions*****.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

**(A)** citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

  

**(B)** showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

**(2)** ***Objection That a Fact Is Not Supported by Admissible Evidence*****.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

**(3)** ***Materials Not Cited*****.** The court need consider only the cited materials, but it may consider other materials in the record.

**(4)** ***Affidavits or Declarations*****.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

**(d) When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

**(1)** defer considering the motion or deny it;

**(2)** allow time to obtain affidavits or declarations or to take discovery; or

**(3)** issue any other appropriate order.

**(e) Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

**(1)** give an opportunity to properly support or address the fact;

**(2)** consider the fact undisputed for purposes of the motion;

  

**(3)** grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or

**(4)** issue any other appropriate order.

**(f) Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:

**(1)** grant summary judgment for a nonmovant;

**(2)** grant the motion on grounds not raised by a party; or

**(3)** consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

**(g) Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact--including an item of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case.

**(h) Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court--after notice and a reasonable time to respond--may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

**CREDIT(S)**

(Amended December 27, 1946, effective March 19, 1948; January 21, 1963, effective July 1, 1963; March 2, 1987, effective August 1, 1987; April 30, 2007, effective December 1, 2007; March 26, 2009, effective December 1, 2009; April 28, 2010, effective December 1, 2010.)

Fed. Rules Civ. Proc. Rule 56, 28 U.S.C.A., FRCP Rule 56
Including Amendments Received Through 8-1-22

  

End of Document

# Exhibit LA-3

RESPONDENT'S EXHIBIT

73 Cal.App.4th 1300, 87 Cal.Rptr.2d 358, 99 Cal. Daily Op. Serv. 6264, 1999 Daily Journal D.A.R. 7993

CHRISTOPHER E. GRELL, Individually and as Executor, etc., Plaintiff and Appellant,
v.
LACI LE BEAU CORPORATION, Defendant and Respondent.
DAVID HELPHREY, Individually and as Executor, etc., et al., Plaintiffs and Appellants,
v.
LACI LE BEAU CORPORATION, Defendant and Respondent.

No. A083685.
Court of Appeal, First District, Division 5, California.
Aug. 4, 1999.

**[Opinion certified for partial publication. [1] ]**

1 Pursuant to California Rules of Court, rule 976.1, part I of this opinion is not certified for publication.

## SUMMARY

In two coordinated wrongful death and survival actions brought against a corporation based on decedents' deaths from the ingestion of defendant's diet tea product, the trial court entered an order denying plaintiffs' motion to vacate a summary judgment entered for defendant on statute of limitations grounds. Plaintiffs had filed their actions beyond the period permitted by the statute of limitations, at a time when defendant was suspended for nonpayment of taxes. The court determined that the statute of limitations was not tolled during the time period that defendant's corporate status was suspended. (Superior Court of the City and County of San Francisco, No. JCC3185, 965787, and Superior Court of Fresno County, No. JCC3185, 532185-6, Stuart R. Pollak, Judge.)

The Court of Appeal affirmed the order. The court held that the statute of limitations was not tolled during the time period that defendant's corporate status was suspended. Plaintiffs failed to demonstrate the existence of circumstances that effectively rendered timely commencement of their actions impossible or impracticable. Neither defendant's status as a suspended corporation nor any conduct by defendant prevented plaintiffs from filing their complaints timely and moving their actions forward. (Opinion by Haning, J., with Jones, P. J., and Stevens, J., concurring.) ***1301**

## HEADNOTES

### Classified to California Digest of Official Reports

(1a, 1b)
Wrongful Death § 5--Limitation of Actions--Failure to Timely File Action--Filing of Action During Corporate Defendant's Suspension--Tolling:Corporations § 46--Actions by and Against Corporations.
In two coordinated wrongful death and survival actions brought against a corporation based on decedents' deaths from the ingestion of defendant's diet tea product, the trial court properly denied plaintiffs' motion to vacate

  

a summary judgment entered for defendant on statute of limitations grounds. Plaintiffs had filed their actions beyond the period permitted by the statute of limitations, when defendant's corporate status was suspended for nonpayment of taxes under Rev. & Tax. Code, § 23301, which provides, with certain exceptions, that a suspended corporation is disqualified from exercising any right, power, or privilege. The statute of limitations was not tolled during the time period that defendant's corporate status was suspended. Plaintiffs failed to demonstrate the existence of circumstances that effectively rendered timely commencement of their actions impossible or impracticable. Neither defendant's status as a suspended corporation nor any conduct by defendant prevented plaintiffs from timely filing their complaints and moving their actions forward.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Corporations, §§ 225, 226.]

(2)
Limitation of Actions § 3--Nature and Purpose.
The term, statute of limitations, applies to a number of acts that prescribe the periods beyond which an action may not be brought. Statutes of limitations have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. The history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control. Two major purposes underlie statutes of limitations: protecting defendants from having to defend stale claims by providing notice in time to prepare a fair defense on the merits; and requiring plaintiffs to diligently pursue their claims.

(3)
Limitation of Actions § 57--Tolling or Suspension of Statute--Nature and Purpose of Tolling Provisions.
The general rule governing statutes of limitations is that the time for commencing an action ***1302** continues to pass away so long as the proposed defendant can be sued and a personal judgment obtained against him or her. However, in an attempt to avoid unjust application of statutes of limitations where circumstances effectively render timely commencement of an action impossible or virtually impossible, a statute of limitations may be tolled, i.e., its operation temporarily suspended during the pendency of a particular condition specified by statute or judicial decision. Once the condition is lifted, the statute of limitations will continue to run. The Legislature has established various provisions tolling the statute of limitations where a person entitled to sue is under a disability at the time the cause of action accrues, making the commencement of an action impossible or impracticable. In addition, to effect the legislative purpose behind statutory tolling exceptions, courts may create tolling exceptions not prescribed by statute.

(4)
Corporations § 62--Taxation--Penalty for Failure to Pay Tax-- Suspension--Purpose of Statute--Corporate Activity During Suspension.

  

Under Rev. & Tax. Code, § 23301, except for filing an application for tax-exempt status or amending the articles of incorporation to perfect that application or to establish a new corporate name, a suspended corporation is disqualified from exercising any right, power, or privilege. During the period that a corporation is suspended for failure to pay taxes, it may not prosecute or defend an action, appeal from an adverse judgment, seek a writ of mandate, or renew a judgment obtained prior to suspension. The purpose of § 23301 is to prohibit the delinquent corporation from enjoying the ordinary privileges of a going concern. Under § 23301, the powers of a domestic corporation are suspended, not dissolved, due to its failure to pay taxes. A suspended corporation may be sued, and service of process upon a suspended corporation is effected in the same manner as service upon a corporation that is not suspended. In addition, a suspended corporation is not protected against a judgment by default upon its failure to answer within the time allowed.

COUNSEL

Christopher E. Grell for Plaintiffs and Appellants.

Long & Levit, Donald W. Carlson, John H. Quinn and Marsha L. Morrow for Defendant and Respondent. ***1303**

**HANING, J.**

Plaintiffs/appellants Christopher E. Grell, individually and as executor of the estate of June Grell (Grell), and David Helphrey, individually and as executor of the estate of Debbie Helphrey, and Betty Helphrey and Robert Helphrey (collectively Helphrey), appeal an order denying their motion to vacate judgment in their coordinated wrongful death and survival actions. They contend the trial court erroneously ruled the statute of limitations was not tolled during the period of time respondent's corporate status was suspended. Respondent contends the order denying the motion to vacate is not appealable,[2] and that the statute of limitations was not tolled. We affirm.

2 Respondent's previous motion to dismiss the appeal on these grounds was denied without prejudice to raising the issue on appeal.

**Background**

This appeal involves two of five coordinated wrongful death and survival actions arising from ingestion of respondent's Super Dieter's Tea.

Respondent was incorporated in California on August 6, 1987. Its corporate status was suspended on April 1, 1992, pursuant to Revenue and Taxation Code section 23302, and revived on January 29, 1996.

Because appellants concede that both actions were filed beyond the period permitted by the statute of limitations, and argue only that the statute of limitations was tolled during the period of respondent's corporate suspension, a detailed procedural history is unnecessary.

The Grell action was filed while respondent was suspended. After its corporate status was reinstated, respondent successfully moved for summary judgment on all causes of action on statute of limitations grounds, and we upheld

  

the dismissal. (*Grell v. Laci Le Beau Corp.* (Dec. 11, 1997) A077153 [nonpub. opn.].)

The Helphrey action was filed, and respondent's demurrer on statute of limitations grounds to the Helphrey third amended complaint was sustained without leave to amend on several causes of action, while respondent was suspended. Thereafter, the Helphrey appellants filed a fourth amended complaint alleging a single cause of action for fraud, to which respondent demurred on statute of limitations grounds. The demurrer was served while respondent was suspended. However, the hearing and the order thereon sustaining the demurrer without leave to amend as to the wrongful death ***1304** plaintiffs' claim occurred after respondent's corporate status was reinstated. The demurrer was overruled as to the estate's claim.

Respondent then moved for summary judgment in the Helphrey estate's action. At the hearing on the motion, Helphrey's attorney announced that it had "recently been brought to [his] attention" that respondent's corporate status had been suspended for some period of time, and argued that the statute of limitations should have been tolled during the corporate suspension period. The court rejected the tolling argument and ruled the action was barred by the statute of limitations.

Thereafter, the Grell and Helphrey appellants moved to vacate the judgment on the ground that while respondent's corporate status was suspended, it wrongfully used the courts to assert the statute of limitations in contravention of Revenue and Taxation Code section 23301. The trial court denied the motion on the merits, ruling that the statute of limitations continues to run against a corporation suspended for nonpayment of taxes.

## Discussion

### I *

* See footnote 1, *ante*, page 1300.

. . . . . .

### II

(1a) As we noted previously, appellants concede their complaints were filed beyond the period permitted by the statute of limitations. Appellants contend, however, that the statute of limitations was tolled during the period in which respondent's corporate powers were suspended pursuant to Revenue and Taxation Code section 23301.

(2) The term "statute of limitations" applies to a number of acts which prescribe the periods beyond which an action may not be brought. (*Utah Property & Casualty Ins. etc. Assn. v. United Services Auto. Assn.* (1991) 230 Cal.App.3d 1010, 1025 [281 Cal.Rptr. 917].) " '[Statutes of limitations] have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate .... [T]he history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control. ...' [Citations.]" (*Duty v. Abex Corp.* (1989) 214 Cal.App.3d 742, 752 [263 Cal.Rptr. 13].) Two major purposes underlie statutes of limitations: protecting defendants from having to defend stale claims by providing notice in

  

***1305** time to prepare a fair defense on the merits, and requiring plaintiffs to diligently pursue their claims. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112 [245 Cal.Rptr. 658, 751 P.2d 923].)

(3) "The general rule governing statutes of limitation[s] is that the time for commencing an action continues to tick away so long as the proposed defendant can be sued and a personal judgment obtained against him. [Citation.]" (*Bigelow v. Smik* (1970) 6 Cal.App.3d 10, 12 [85 Cal.Rptr. 613].) However, in an attempt to avoid unjust application of statutes of limitations where circumstances effectively render timely commencement of an action impossible or virtually impossible, a statute of limitations may be "tolled," i.e., its operation temporarily suspended during the pendency of a particular condition specified by statute or judicial decision. (*Cuadra v. Millan* (1998) 17 Cal.4th 855, 864-865 [72 Cal.Rptr.2d 687, 952 P.2d 704]; *Lewis v. Superior Court* (1985) 175 Cal.App.3d 366, 372 [220 Cal.Rptr. 594] (*Lewis*).) Once the condition is lifted, the statute of limitations will continue to run. (*Cuadra*, *supra*, at p. 864.)

The Legislature has established various provisions tolling the statute of limitations where a person entitled to sue is under a "disability" at the time the cause of action accrues, making the commencement of an action impossible or impracticable. (3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 633, pp. 812-813.) Such statutes include, for example, tolling due to plaintiff's minority or insanity (Code Civ. Proc., § 352), plaintiff's incarceration (*id.*, § 352.1), and a state of war (*id.*, § 354). Other statutes provide for tolling due to the disability of plaintiff's attorney whose practice has been taken over by the court because of the attorney's incapacity to perform (*id.*, § 353.1), the defendant's subjection to an independent order of restitution for injury as a condition of probation (*id.*, § 352.5), and commencement of action stayed by injunction or statutory prohibition (*id.*, § 356). In addition, to effect the legislative purpose behind statutory tolling exceptions, courts may create tolling exceptions not prescribed by statute. (*Bollinger v. National Fire Ins. Co.* (1944) 25 Cal.2d 399, 411 [154 P.2d 399]; *Lewis, supra,* 175 Cal.App.3d at p. 372; *Kleinecke v. Montecito Water Dist.* (1983) 147 Cal.App.3d 240, 247 [195 Cal.Rptr. 58].)

Appellants have not cited, nor have we independently uncovered, any statute or judicial decision tolling the statute of limitations while a corporation is suspended for failure to pay taxes.

(4) Revenue and Taxation Code section 23301 states: "Except for the purposes of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth ***1306** a new name, the corporate powers, rights and privileges of a domestic taxpayer may be suspended ..." if the corporation fails to pay its taxes or any penalty and interest which may be owing. Thus, except for filing an application for tax-exempt status or amending the articles of incorporation to perfect that application or establish a new corporate name, a suspended corporation is "disqualified" from exercising any right, power or privilege. (Rev. & Tax. Code, § 23301; *Timberline, Inc. v.*

  

*Jaisinghani* (1997) 54 Cal.App.4th 1361, 1365 [64 Cal.Rptr.2d 4] (*Timberline*).)

During the period that a corporation is suspended for failure to pay taxes, it may not prosecute or defend an action (*Reed v. Norman* (1957) 48 Cal.2d 338, 343 [309 P.2d 809]), appeal from an adverse judgment (*Boyle v. Lakeview Creamery Co.* (1937) 9 Cal.2d 16, 20-21 [68 P.2d 968] (*Boyle*)), seek a writ of mandate (*Brown v. Superior Court* (1966) 242 Cal.App.2d 519, 522 [51 Cal.Rptr. 633]), or renew a judgment obtained prior to suspension (*Timberline*, *supra,* 54 Cal.App.4th at p. 1367). The purpose of Revenue and Taxation Code section 23301 is to "prohibit the delinquent corporation from enjoying the ordinary privileges of a going concern" (*Boyle*, *supra*, at p. 19), and to pressure it to pay its taxes (*Peacock Hill Assn. v. Peacock Lagoon Constr. Co.* (1972) 8 Cal.3d 369, 371 [105 Cal.Rptr. 29, 503 P.2d 285]).

Under Revenue and Taxation Code section 23301, the powers of a domestic corporation are "suspended," not dissolved, due to its failure to pay taxes. (*Graceland v. Peebler* (1942) 50 Cal.App.2d 545, 547 [123 P.2d 527].) A suspended corporation may be sued, and service of process upon a suspended corporation is effected in the same manner as service upon a corporation that is not suspended. (Code Civ. Proc., §§ 416.10, 416.20; *Boyle, supra,* 9 Cal.2d at p. 19; *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 301-313 [78 Cal.Rptr.2d 892]; 4 Witkin, Cal. Procedure, *supra*, Pleading, § 77, p. 133.) In addition, a suspended corporation is not protected against a judgment by default upon its failure to answer within the time allowed. (See 6 Witkin, Cal. Procedure, *supra*, Proceedings Without Trial, § 112, pp. 521-522.)

(1b) Here, neither respondent's suspended corporate status nor any conduct by respondent prevented appellants from timely filing their complaints and moving their actions forward. Appellants have failed to demonstrate the existence of circumstances which effectively rendered timely commencement of their actions impossible or impracticable.

As to Helphrey, respondent's demurrer to the third amended complaint while it was suspended constituted an unauthorized act by a suspended corporation in violation of Revenue and Taxation Code section 23301. ***1307** Presumably, the court was unaware of respondent's suspended status when it ruled on the demurrer. However, the third amended complaint was superseded by the fourth amended complaint, and all prior complaints ceased to perform any function as pleadings. (*Meyer v. State Board of Equalization* (1954) 42 Cal.2d 376, 384 [267 P.2d 257].) To the extent appellants attempt to appeal from any rulings involving the third amended complaint, it was superseded and no appeal lies therefrom. (*Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 215 [32 Cal.Rptr.2d 388].)

Although respondent's demurrer to the Helphrey fourth amended complaint was improperly filed while it was suspended, the hearing thereon and the order sustaining the demurrer against the wrongful death plaintiffs occurred after respondent's corporate status was reinstated. Thereafter, respondent obtained summary judgment against the estate on statute

of limitations grounds. As previously noted, appellants concede the action was initially filed beyond the permissible statute of limitations period, and the only issue is whether the statute of limitations was tolled during the suspension period. We have concluded there was no tolling. Therefore, had respondent asserted its statute of limitations defense against the wrongful death plaintiffs as it did against the estate's action once its corporate status was reinstated, it would have prevailed. Consequently, its premature filing of the demurrer to the fourth amended complaint was harmless.

**Disposition**

The order is affirmed. Costs to respondent.

Jones, P. J., and Stevens, J., concurred.

The petition of all appellants for review by the Supreme Court was denied October 27, 1999. Mosk, J., was of the opinion that the petition should be granted. ***1308**