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

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

15 DOTCONNECTAFRICA TRUST, a
 16 Mauritz Charitable Trust

17 Plaintiff,

18 v.

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

22 Defendants.
 23

Case No. 2:16-cv-00862-RGK-JC

Assigned for all purposes to the
 Honorable R. Gary Klausner

**ANSWER TO FIRST AMENDED
 COMPLAINT**

Complaint Filed: February 26, 2016

1 Defendant Internet Corporation for Assigned Names and Numbers
2 (“ICANN”), by and through its attorneys, responds to the First Amended Complaint
3 (“FAC”) filed by Plaintiff DotConnectAfrica Trust (“Plaintiff” or “DCA”) as
4 follows:

5 **RESPONSE TO INTRODUCTION**

6 1. ICANN is without knowledge or information sufficient to form a
7 belief as to the truth or the falsity of the allegations contained in this paragraph and,
8 on that basis, denies each and every such allegation.

9 2. ICANN admits that in connection with the New gTLD Program,
10 ICANN published the new gTLD Applicant Guidebook (“Guidebook”), which sets
11 forth the requirements and criteria by which new gTLD applications are evaluated.
12 Except as expressly admitted, ICANN denies each and every allegation contained
13 in Paragraph 2.

14 3. ICANN denies each and every allegation.

15 4. ICANN denies each and every allegation.

16 **RESPONSE TO JURISDICTION AND VENUE**

17 5. ICANN admits that the Court has jurisdiction over this matter.

18 6. ICANN admits that the Court has jurisdiction over this matter.
19 ICANN admits that it is a California not-for-profit public benefit corporation with
20 its principal place of business in Los Angeles, California. To the extent Paragraph
21 6 relates to persons or entities other than ICANN, ICANN lacks sufficient
22 knowledge or information to admit or deny the allegations of Paragraph 6, and
23 therefore denies them.

24 **RESPONSE TO PARTIES**

25 7. ICANN is without knowledge or information sufficient to form a
26 belief as to the truth or the falsity of the allegations contained in this paragraph and,
27 on that basis, denies each and every such allegation.
28

1 8. ICANN admits that it is a California not-for-profit public benefit
2 corporation with its principal place of business in Los Angeles, California.

3 9. ICANN is without knowledge or information sufficient to form a
4 belief as to the truth or the falsity of the allegations contained in this paragraph and,
5 on that basis, denies each and every such allegation.

6 10. ICANN is without knowledge or information sufficient to form a
7 belief as to the truth or the falsity of the allegations contained in this paragraph and,
8 on that basis, denies each and every such allegation.

9 11. ICANN denies each and every allegation.

10 **RESPONSE TO FACTUAL BACKGROUND**

11 12. ICANN admits that it was established in September 30, 1998 for the
12 benefit of the Internet community as a whole and is tasked with carrying out its
13 activities in conformity with relevant principles of California law, international law,
14 international conventions, and through open and transparent processes that enable
15 competition and open-entry in Internet-related markets.

16 13. ICANN admits that it enters into contracts with registries to operate
17 generic top-level domains (“gTLDs”). Except as expressly admitted, ICANN
18 denies each and every allegation in Paragraph 13.

19 14. ICANN states that the allegations contained in this paragraph are legal
20 conclusions and/or argument not subject to admission or denial. To the extent that
21 Paragraph 14 contains any allegation that requires an admission or denial, ICANN
22 admits that it is a California not-for-profit public benefit corporation. Except as
23 expressly admitted, ICANN denies each and every allegation in Paragraph 14.

24 15. ICANN states that the allegations contained in this paragraph appear to
25 reference ICANN’s Articles of Incorporation (“Articles”) or Bylaws. ICANN
26 states that the Articles and Bylaws speak for themselves and, on that basis, denies
27 any allegation of Paragraph 15 inconsistent with the actual terms of the Articles and
28 Bylaws.

1 16. ICANN states that the allegations contained in this paragraph appear to
2 reference ICANN’s Bylaws. ICANN states that the Bylaws speak for themselves
3 and, on that basis, denies any allegation of Paragraph 16 inconsistent with the actual
4 terms of the Bylaws.

5 17. ICANN states that the allegations contained in this paragraph appear to
6 reference ICANN’s Articles and Bylaws. ICANN affirmatively states that its
7 Articles and Bylaws speak for themselves and, on that basis, denies any allegation
8 of Paragraph 17 inconsistent with the actual terms of the Articles and Bylaws.

9 18. ICANN admits that in 2012, to expand the number of accessible TLDs
10 in the DNS in order to promote consumer choice and competition, ICANN
11 launched the “New gTLD Program.” ICANN denies the remaining allegations of
12 Paragraph 18.

13 **RESPONSE TO DCA AND THE TOP-LEVEL DOMAIN APPLICATION**

14 19. ICANN admits that the New gTLD Program resulted in 1,930
15 applications for new gTLDs, including Plaintiff’s application for the .AFRICA
16 gTLD. ICANN denies the remaining allegations of Paragraph 19.

17 20. ICANN states that the allegations contained in this paragraph appear to
18 reference the rules set forth in the Applicant Guidebook (“Guidebook”) and the
19 Bylaws. ICANN states that its Bylaws and Guidebook speak for themselves and,
20 on that basis, denies any allegation of Paragraph 20 inconsistent with the actual
21 terms of the Bylaws and Guidebook. Except as expressly admitted, ICANN denies
22 each and every allegation in Paragraph 20.

23 21. ICANN admits that Plaintiff applied for the opportunity to be
24 evaluated for the right to contract with ICANN to operate .AFRICA. Except as
25 expressly admitted, ICANN denies each and every allegation in Paragraph 21.

26 22. ICANN admits that Plaintiff paid ICANN the sum of \$185,000.000 in
27 connection with Plaintiff’s application for the .Africa gTLD. ICANN admits that it
28 acted at all times in a manner consistent with its own Articles, Bylaws, and the

1 rules and procedures set forth in the Guidebook. Except as expressly admitted,
2 ICANN denies each and every allegation in Paragraph 22.

3 23. ICANN states that the allegations contained in this paragraph reference
4 the Guidebook. ICANN states that the Guidebook speaks for itself and, on that
5 basis, denies any allegation of Paragraph 23 inconsistent with the actual terms of
6 the Guidebook. ICANN admits that the Guidebook requires applicants for a gTLD
7 that represents the name of a geographic region to provide documentation of
8 support or non-objection from at least 60% of the governments in the region.
9 Except as expressly admitted, ICANN denies each and every allegation in
10 Paragraph 23.

11 24. ICANN admits that Plaintiff submitted a letter from the AUC in
12 connection with Plaintiff's application for the .AFRICA gTLD. ICANN states that
13 this letter from the AUC speaks for itself. ICANN denies the remaining allegations
14 of Paragraph 24.

15 25. ICANN states that the allegations contained in this paragraph appear to
16 reference the Guidebook. ICANN states that the Guidebook speaks for itself and,
17 on that basis, denies the allegations of Paragraph 25.

18 **RESPONSE TO ZACR AND THE AUC'S TOP LEVEL DOMAIN**

19 **APPLICATION**

20 26. ICANN admits that the AUC sent a letter to ICANN relating to the
21 .AFRICA gTLD. ICANN states that the letter sent by the AUC speaks for itself.
22 ICANN denies the remaining allegations of Paragraph 26.

23 27. ICANN denies the allegations of Paragraph 27.

24 28. ICANN denies the allegations of Paragraph 28.

25 29. ICANN denies the allegations of Paragraph 29.

26 30. ICANN denies the allegations of Paragraph 30.

27 31. ICANN denies the allegations of Paragraph 31 with the exception that
28 ICANN admits that ZACR submitted a "standard" application.

1 32. ICANN denies the allegations of Paragraph 32.

2 **RESPONSE TO THE GEOGRAPHIC NAMES PANEL AND**
3 **INTERCONNECT COMMUNICATIONS**

4 33. ICANN denies the allegations of Paragraph 33 with the exception that
5 ICANN admits that the Geographic Names Panel determines which governments
6 are relevant for the applicable geographic region under the terms of the Guidebook.

7 34. ICANN admits the allegations of Paragraph 34.

8 35. ICANN denies the allegations of Paragraph 35 with the exception that
9 ICANN admits that the Geographic Names Panel determines which governments
10 are relevant for the applicable geographic region under the terms of the Guidebook.

11 36. ICANN admits that the ICC recommended that ICANN accept
12 endorsement letters from the AUC and UNECA. ICANN denies the remaining
13 allegations of Paragraph 36.

14 37. ICANN admits that ICANN accepted the endorsement of ZACR from
15 the AUC. ICANN denies the remaining allegations of Paragraph 37.

16 38. ICANN denies the allegations of Paragraph 38.

17 39. ICANN denies the allegations of Paragraph 39.

18 40. ICANN denies the allegations of Paragraph 40 with the exception that
19 ICANN admits that ZACR's application held a lower lottery number than DCA's
20 application.

21 41. ICANN denies the allegations of Paragraph 41.

22 **RESPONSE TO THE GAC**

23 42. ICANN admits that there is a Governmental Advisory Committee
24 ("GAC") with the purpose, according to the Bylaws, to "consider and provide
25 advice on the activities of ICANN as they relate to concerns of governments."
26 ICANN also admits that membership in the GAC is open to representatives of all
27 national governments and, at the invitation through its chair, to "[e]conomies as
28 recognized in the international fora, and multinational governmental organizations

1 and treaty organizations.” ICANN denies the remaining allegations of Paragraph
2 42.

3 43. ICANN denies the allegations of Paragraph 43.

4 44. ICANN denies the allegations of Paragraph 44.

5 45. ICANN denies the allegations of Paragraph 45.

6 46. ICANN denies the allegations of Paragraph 46.

7 47. ICANN denies the allegations of Paragraph 47.

8 48. ICANN denies the allegations of Paragraph 48 with the exception that
9 ICANN admits that ICANN and ZACR entered into a registry agreement.

10 **RESPONSE TO THE INDEPENDENT REVIEW PROCESS**

11 49. ICANN admits that an applicant can initiate an independent review
12 process (“IRP”) under the terms of ICANN’s Bylaws. ICANN denies the
13 remaining allegations of Paragraph 49.

14 50. ICANN denies the allegations of Paragraph 50 and states that the
15 referenced email speaks for itself.

16 51. ICANN admits that Plaintiff initiated an IRP but denies the remaining
17 allegations of Paragraph 51.

18 52. On information and belief, ICANN admits the allegations of Paragraph
19 52.

20 53. ICANN admits that it entered into a registry agreement with ZACR
21 regarding the operation of .AFRICA. ICANN denies the remaining allegations of
22 Paragraph 53.

23 54. ICANN admits that on July 9, 2015 the IRP Panel issued a final
24 declaration (“IRP Declaration”) and that portions of this paragraph purport to quote
25 from the IRP Declaration. ICANN states that the IRP Declaration speaks for itself.
26 ICANN denies the remaining allegations of Paragraph 54, which are at odds with
27 the IRP Declaration.
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1 55. ICANN denies that IRPs are arbitrations but admits that this was the
2 first and only time ICANN was not the prevailing party in an IRP related to the new
3 gTLD Program.

4 56. ICANN admits that Plaintiff attached a copy of the IRP Declaration as
5 Exhibit A to the FAC.

6 **RESPONSE TO ICANN’S PROCESSING OF DCA’S APPLICATION**

7 **AFTER THE IRP DECLARATION**

8 57. ICANN denies the allegations of Paragraph 57.

9 58. ICANN denies the allegations of Paragraph 58.

10 59. ICANN denies the allegations of Paragraph 59.

11 60. ICANN admits that it entered into a registry agreement with ZACR
12 regarding the operation of .AFRICA. ICANN denies the remaining allegations of
13 Paragraph 60.

14 61. ICANN admits that because the Geographic Names Panel determined
15 that Plaintiff had not demonstrated the requisite documented support or non-
16 objection from the governments in Africa as required by the Guidebook, ICANN
17 stopped processing Plaintiff’s application for .AFRICA. ICANN admits that it has
18 stayed the delegation of the .AFRICA gTLD pending the outcome of this litigation.
19 ICANN denies the remaining allegations of Paragraph 61.

20 **RESPONSE TO ALLEGATIONS RE: CLAIMS FOR RELIEF**

21 **FIRST CAUSE OF ACTION**

22 **(Breach of Contract—Against Defendant ICANN)**

23 62. ICANN incorporates its preceding responses to each corresponding
24 paragraph.

25 63. ICANN admits the allegations of Paragraph 63.

26 64. ICANN admits that Plaintiff paid ICANN the application fee of
27 \$185,000.00. ICANN denies the remaining allegations of Paragraph 64.
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1 65. ICANN admits that Plaintiff agreed to abide by all rules and
2 regulations with respect to Plaintiff's application for .AFRICA and denies that
3 Plaintiff has in fact abided by such rules and regulations.

4 66. ICANN states that the allegations contained in this paragraph are legal
5 conclusions and/or argument not subject to admission or denial. To the extent that
6 Paragraph 66 contains any allegation that requires an admission or denial, ICANN
7 admits that it acted at all times in a manner consistent with its own Articles, Bylaws
8 and the rules and procedures set forth in the Guidebook. ICANN denies the
9 remaining allegations of Paragraph 66.

10 67. ICANN denies the allegations of Paragraph 67.

11 68. ICANN denies the allegations of Paragraph 68.

12 69. ICANN states that the letter from Dr. Crocker speaks for itself.
13 ICANN denies the remaining allegations of Paragraph 69.

14 70. ICANN denies the allegations of Paragraph 70.

15 71. ICANN denies the allegations of Paragraph 71.

16 72. ICANN denies the allegations of Paragraph 72.

17 **SECOND CAUSE OF ACTION**

18 **(Intentional Misrepresentation—Against ICANN)**

19 73. ICANN incorporates its preceding responses to each corresponding
20 paragraph.

21 74. ICANN denies the allegations of Paragraph 74.

22 75. ICANN denies the allegations of Paragraph 75.

23 76. ICANN denies the allegations of Paragraph 76.

24 77. ICANN denies the allegations of Paragraph 77.

25 78. ICANN denies the allegations of Paragraph 78.

26 **THIRD CAUSE OF ACTION**

27 **(Negligent Misrepresentations—Against ICANN)**

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1 79. ICANN incorporates its preceding responses to each corresponding
2 paragraph.

3 80. ICANN denies the allegations of Paragraph 80.

4 81. ICANN denies the allegations of Paragraph 81.

5 82. ICANN denies the allegations of Paragraph 82.

6 **FOURTH CAUSE OF ACTION**

7 **(Fraud & Conspiracy to Commit Fraud—Against All Defendants)**

8 83. ICANN incorporates its preceding responses to each corresponding
9 paragraph.

10 84. ICANN denies the allegations of Paragraph 84.

11 85. ICANN denies the allegations of Paragraph 85.

12 86. ICANN denies the allegations of Paragraph 86.

13 87. ICANN denies the allegations of Paragraph 87.

14 88. ICANN denies the allegations of Paragraph 88.

15 89. ICANN denies the allegations of Paragraph 89.

16 90. ICANN states that the paragraph purports to reference Article 1
17 (Delegation and Operation of Top-Level Domain Representation and Warranties) of
18 the new gTLD Registry Agreement. ICANN states that the new gTLD Registry
19 Agreement speaks for itself and, on that basis, denies any allegation of Paragraph
20 90 inconsistent therewith.

21 91. ICANN denies the allegations of Paragraph 91.

22 92. ICANN denies the allegations of Paragraph 92.

23 93. ICANN denies the allegations of Paragraph 93.

24 94. ICANN denies the allegations of Paragraph 94.

25 95. ICANN denies the allegations of Paragraph 95.

26 **FIFTH CAUSE OF ACTION**

27 **(Unfair Competition (Violation of Cal. Bus. & Prof. Code §17200)—**

28 **Against All Defendants)**

1 96. ICANN incorporates its preceding responses to each corresponding
2 paragraph.

3 97. ICANN denies the allegations of Paragraph 97.

4 98. ICANN denies the allegations of Paragraph 98.

5 99. ICANN denies the allegations of Paragraph 99.

6 **SIXTH CAUSE OF ACTION**

7 **(Negligence –Against ICANN)**

8 100. ICANN incorporates its preceding responses to each corresponding
9 paragraph.

10 101. ICANN denies the allegations of Paragraph 101.

11 102. ICANN states that the allegations contained in this paragraph are legal
12 conclusions and/or argument not subject to admission or denial. To the extent that
13 Paragraph 102 contains any allegation that requires an admission or denial, ICANN
14 admits that it acted at all times in a manner consistent with its own Articles, Bylaws
15 and the rules and procedures set forth in the Guidebook. Except as expressly
16 admitted, ICANN denies each and every allegation in Paragraph 102.

17 103. ICANN denies the allegations of Paragraph 103.

18 104. ICANN denies the allegations of Paragraph 104.

19 105. ICANN denies the allegations of Paragraph 105.

20 106. ICANN denies the allegations of Paragraph 106.

21 107. ICANN denies the allegations of Paragraph 107.

22 **SEVENTH CAUSE OF ACTION**

23 **(Intentional Interference with Contract Against ZACR)**

24 108. ICANN incorporates its preceding responses to each corresponding
25 paragraph.

26 109. ICANN admits the allegations of Paragraph 109.

27 110. ICANN lacks information sufficient to form a belief as to the
28 allegations of Paragraph 110 and on that basis denies them.

1 111. ICANN denies the allegations of Paragraph 111.

2 112. ICANN denies the allegations of Paragraph 112.

3 113. ICANN denies the allegations of Paragraph 113.

4 114. ICANN denies the allegations of Paragraph 114.

5 **EIGHTH CAUSE OF ACTION**

6 **(Confirmation of IRP Declaration)**

7 115. ICANN incorporates its preceding responses to each corresponding
8 paragraph.

9 116. ICANN denies the allegations of Paragraph 116.

10 117. ICANN admits that on July 9, 2015 the IRP Panel issued a
11 Declaration. ICANN states that the IRP Declaration speaks for itself. ICANN
12 denies the remaining allegations of Paragraph 117.

13 118. ICANN admits that Plaintiff purports to seek a court order confirming
14 the IRP Declaration. ICANN denies that Plaintiff is entitled to any recovery
15 whatsoever against ICANN. Except as expressly admitted, ICANN denies each and
16 every allegation in Paragraph 118.

17 **NINTH CAUSE OF ACTION**

18 **(Declaratory Relief Against ICANN)**

19 119. ICANN incorporates its preceding responses to each corresponding
20 paragraph.

21 120. ICANN admits that the IRP Declaration recommended that ICANN
22 permit Plaintiff's application to proceed through the remainder of the new gTLD
23 application process from the point where ICANN had stopped processing the
24 application. Except as expressly admitted, ICANN denies each and every
25 allegation in Paragraph 120.

26 121. ICANN denies the allegations of Paragraph 121.

27 122. ICANN denies the allegations of Paragraph 122.

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1 123. ICANN states that the allegations contained in this paragraph are legal
2 conclusions and/or argument not subject to admission or denial. To the extent that
3 Paragraph 123 contains any allegation that requires an admission or denial, ICANN
4 denies each and every allegation of Paragraph 123.

5 124. ICANN admits that Plaintiff seeks a judicial declaration that ICANN
6 follow the IRP Declaration and allow the DCA application to proceed through the
7 delegation phase of the application process. ICANN denies that Plaintiff is entitled
8 to any recovery whatsoever against ICANN. Except as expressly admitted, ICANN
9 denies each and every allegation in Paragraph 124.

10 125. ICANN denies the allegations of Paragraph 125.

11 **TENTH CAUSE OF ACTION**

12 **(Declaratory Relief Against All Defendants)**

13 126. ICANN incorporates its preceding responses to each corresponding
14 paragraph.

15 127. ICANN denies the allegations of Paragraph 127.

16 128. ICANN states that this paragraph purports to reference the IRP
17 Declaration. The IRP Declaration speaks for itself. ICANN denies the remaining
18 allegations of Paragraph 128.

19 129. ICANN denies the allegations of Paragraph 129.

20 130. ICANN denies the allegations of Paragraph 130.

21 131. ICANN states that the allegations contained in this paragraph are legal
22 conclusions and/or argument not subject to admission or denial. To the extent that
23 Paragraph 131 contains any allegation that requires an admission or denial, ICANN
24 denies each and every allegation of Paragraph 131.

25 132. ICANN admits that Plaintiff seeks a judicial declaration that the
26 registry agreement between ZACR and ICANN be declared null and void and that
27 ZACR's application does not meet ICANN's standards. ICANN denies that
28

1 Plaintiff is entitled to any recovery whatsoever against ICANN. Except as
2 expressly admitted, ICANN denies each and every allegation in Paragraph 132.

3 **ELEVENTH CAUSE OF ACTION**

4 **(Declaratory Relief Against ICANN)**

5 133. ICANN incorporates its preceding responses to each corresponding
6 paragraph.

7 134. ICANN states that the paragraph purports to quote a covenant not to
8 sue (“Covenant Not to Sue”) contained in Module 6 of the Guidebook. ICANN
9 affirmatively states that the Covenant Not to Sue speaks for itself and, on that basis,
10 denies any allegation of Paragraph 134 inconsistent therewith.

11 135. ICANN admits that Plaintiff could not obtain contractual rights to
12 operate .AFRICA from anyone but ICANN, and denies the remaining allegations of
13 Paragraph 135.

14 136. ICANN denies the allegations of Paragraph 136.

15 137. ICANN denies the allegations of Paragraph 137.

16 138. ICANN denies the allegations of Paragraph 138.

17 139. ICANN denies the allegations of Paragraph 139 with the exception
18 that ICANN admits that IRP declarations are not binding.

19 140. ICANN denies the allegations of Paragraph 140.

20 141. ICANN states that the allegations contained in this paragraph are legal
21 conclusions and/or argument not subject to admission or denial. To the extent that
22 Paragraph 141 contains any allegation that requires an admission or denial, ICANN
23 denies each and every allegation of Paragraph 141.

24 142. ICANN admits that Plaintiff seeks a judicial declaration that the
25 Covenant Not to Sue is unenforceable, unconscionable, procured by fraud and/or
26 void as a matter of law and public policy. ICANN denies that Plaintiff is entitled to
27 any recovery whatsoever against ICANN. Except as expressly admitted, ICANN
28 denies each and every allegation in Paragraph 142.

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RESPONSE TO PRAYER FOR RELIEF

In response to the Prayer for Relief, ICANN denies the allegations in Plaintiff's Prayer For Relief and denies that Plaintiff is entitled to any of the relief sought.

ICANN'S AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses, ICANN states as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim)

The FAC, and each and every remaining claim for relief against ICANN, fails to state a claim upon which relief may be granted against ICANN, and further fails to entitle Plaintiff to the relief sought or to any relief whatsoever against ICANN.

SECOND AFFIRMATIVE DEFENSE

(Release and Covenant Not to Sue)

Plaintiff is barred from asserting the FAC, and each and every claim for relief against ICANN, by the release and covenant not to sue contained in Module 6 of the Guidebook.

THIRD AFFIRMATIVE DEFENSE

(Laches)

Plaintiff is barred from asserting the FAC, and each and every claim for relief against ICANN, by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff is barred from asserting the FAC, and each and every claim for relief against ICANN, by the doctrine of waiver.

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FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff is barred from asserting the FAC, and each and every claim for relief against ICANN, by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

The FAC, and each and every claim for relief against ICANN, is barred in whole or in part because Plaintiff failed to make reasonable efforts to mitigate such purported injury or damage, which reasonable efforts would have prevented his injury or damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

(Adequate Remedies at Law)

Equitable and injunctive relief are barred because Plaintiffs have available remedies at law.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff's conduct with respect to the matters alleged in the FAC deprives Plaintiff of clean hands and, by reason of not coming into court with clean hands, Plaintiff is precluded from recovery from ICANN.

NINTH AFFIRMATIVE DEFENSE

(Speculative Damages)

Plaintiff's claims are barred in whole or in part, or alternatively Plaintiff's recovery should be reduced, because the alleged damages, if any, are speculative.

TENTH AFFIRMATIVE DEFENSE

(Legitimate Business Conduct)

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The FAC is barred because ICANN’s actions, as alleged in the FAC, were undertaken in good faith, with the absence of malicious intent, and were the result of lawful conduct carried out in furtherance of ICANN’s public mission, Articles of Incorporation, and Bylaws.

ELEVENTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

ICANN hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend this Answer to assert such defenses, including defenses asserted by any other defendant.

PRAYER FOR RELIEF

WHEREFORE, ICANN prays for the entry of judgment in its favor and against Plaintiff as follows:

1. That this action be dismissed in its entirety and with prejudice;
2. That Plaintiff take nothing by way of the FAC; and
4. For such other relief as is deemed just and proper.

Dated: May 6, 2016

JONES DAY

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

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

NAI-1501005620v3