IN THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION A

DotConnectAfrica Trust, Appellant, v. Internet Corporation for Assigned Names and Numbers, Respondent.	Court of Appeal Case No. B302739 Trial Court Case No. BC607494

On Appeal From a Judgment of the Superior Court,
County of Los Angeles, Honorable Robert B. Broadbelt, III

MOTION FOR LEAVE TO FILE A SURREPLY OPPOSING RESPONDENT'S REPLY AND MOTION TO DISMISS APPEAL

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INTRODUCTION

Pursuant to California Rules of Court Rule 8.54, Plaintiff-Appellant DotConnectAfrica Trust ("DCA") respectfully moves this Court for leave to file a surreply brief to respond to new arguments made in Defendant-Respondent Internet Corporation for Assigned Names and Numbers' ("ICANN") reply brief.

On December 3, 2019, DCA filed a timely notice of appeal. On December 20, 2019, ICANN moved to dismiss DCA's appeal in a short motion, containing a mere five pages of argument that lacked any reference to the governing case law from the California Supreme Court's decision in *Alan v. American Honda Motor Co.* (2007) 40 Cal.4th 894, any cases applying *Alan*, or any argument as to how the clerk's service satisfied the strict "single-document" rule set forth in *Alan* and Rule 8.104(a)(1)(A).

On December 31, 2019, DCA filed its opposition to ICANN's motion to dismiss, explaining that the clerk's service did not satisfy the single-document rule and thus did not trigger any deadline under Rule 8.104(a)(1)(A). On January 8, 2020, ICANN filed its reply to DCA's opposition, which was the first time that it addressed the many precedents from the California Supreme Court, this court, and other California appellate courts holding that Rule 8.104(a)(1)(A) requires a "single, self-sufficient document that satisfies all the rule's conditions." (*Alan*, *supra*, 40 Cal.4th at pages 902, 903, 905; see also Opposition at 12-25.)

Because of the significance of ICANN's motion and its failure to discuss the relevant case law until its reply brief, DCA respectfully requests leave to file a surreply, attached hereto, responding to ICANN's new arguments.

ARGUMENT

Basic principles of fairness require that a party be given the "opportunity to counter" new arguments made in a reply. (See *Am. Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453 [noting that considering new arguments in a reply brief "would deprive the respondent of an opportunity to counter the argument"]; see also *Karlsson v. Ford Motor Co.* (2006) 140 Cal.App.4th 1202, 1216-1217; *Hurley v. Cal. Dep't of Parks & Rec.* (2018) 20 Cal.App.5th 634, 648, fn.10, collecting cases.) That fundamental principle is especially strong here because ICANN's motion to dismiss contained no discussion whatsoever of the case law governing the issue raised by its motion: whether the clerk's service of the final judgment triggered a deadline to appeal under Rule 8.104(a)(1)(A). It thus left DCA to guess at what ICANN's arguments might be on those precedents.

Nowhere in its motion to dismiss did ICANN cite the California Supreme Court's decision in *Alan* or its progeny, let alone argue that the clerk's service somehow satisfied Rule 8.104(a)(1)(A)'s strict single-document requirement. Instead, ICANN's motion contained a cursory five-page argument that

devoted a mere paragraph to its bare assertion that the clerk's service satisfied Rule 8.104(a)(1)(A). Even that paragraph was stark in its brevity: it contained no case citations and flatly asserted that the clerk's service triggered a deadline to appeal because the clerk served "the file-endorsed copies of [the] Statement of Decision and the Final Judgment" and "*also* served and filed on the docket the Certificate of Mailing reflecting that service." (Motion to Dismiss at 5, emphasis added.)

In response, DCA identified the governing case law and explained how the clerk's service plainly does not satisfy Rule 8.104(a)(1)(A)'s strict requirements under *Alan* and its progeny. In its reply, ICANN makes several new arguments about the applicability of those precedents to this case. But ICANN's motion to dismiss contained neither those arguments nor any other discussion of the governing case law. DCA thus will have no opportunity to respond to ICANN's late-breaking arguments on this crucial issue and defend its appellate rights without the opportunity to file a surreply.

Though surreplies are rare, "ultimately consideration of [a] sur-reply brief is within the discretion of the court." (Cal. Civ. Ctrm. H'book & Desktop Ref. § 17:24; see also *In re Sena* (2015) 236 Cal.App.4th 1270, 1273, fn.2 [granting a request to file a supplemental brief]; *In re Marriage of James M. & Christine J. C.* (2008) 158 Cal.App.4th 1261, 1272 & fn.3 [stating that the court

invited a respondent to file a supplemental brief responding to "issues not raised in [the appellant's] opening brief," where the new "issues" related to a rule raised by respondent in its opposition brief].) The need for a surreply is especially critical in this context, where ICANN's new arguments are in furtherance of its attempt to dismiss DCA's appeal and deprive DCA of its appellate rights. (See 4 Cal. Jur. 3d Appellate Review § 115 (2019) ["There is a strong public policy in favor of hearing appeals on their merits."], collecting cases; cf. *Silva v. See's Candy Shops, Inc.* (2016) 7 Cal.App.5th 235, 255 ["Where a remedy as drastic as summary judgment is involved, due process requires a party to be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail."].) To the extent that the Court will consider ICANN's new arguments and submissions, DCA should have a chance to respond.

CONCLUSION

For the foregoing reasons, DCA respectfully requests that the Court grant DCA leave to file the attached surreply.

Dated: January 13, 2020 By: /*s/ Anna Q. Do*

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