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 13 **ZA Central Registry, NPC**

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

14 DOTCONNECTAFRICA TRUST, a
 15 Mauritius Charitable Trust,
 16 Plaintiff,
 17 v.

18 INTERNET CORPORATION FOR
 19 ASSIGNED NAMES AND
 20 NUMBERS; a California corporation;
 21 DOES 1 through 50, inclusive,
 22 Defendants.

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

**ZA CENTRAL REGISTRY, NPC’S
 NOTICE OF MOTION AND
 MOTION TO INTERVENE
 PURSUANT TO RULE 24**

**[Memorandum of Points and
 Authorities in Support of Motion to
 Intervene; Declaration of David W.
 Kesselman; and [Proposed] Order
 Filed Concurrently Herewith]**

Date: September 19, 2016
 Time: 9:00 a.m.
 Location: Courtroom 850

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on September 19, 2016, in Courtroom 850 of
3 the above entitled Court, located at 255 East Temple Street, Los Angeles,
4 California, ZA CENTRAL REGISTRY, NPC (“ZACR”), will and hereby does
5 move for an order granting ZACR leave to intervene in this action by filing an
6 Answer in Intervention substantially in the form attached to this motion and
7 incorporated herein by reference.

8 ZACR applied to Defendant Internet Corporation for Assigned Names And
9 Numbers (“ICANN”) to be the registry operator of the new top-level domain
10 name (“new gTLD”) .Africa. Plaintiff DotAfricaConnect Trust (“DCA”) also
11 applied for .Africa. DCA could not fulfill all of the application requirements.
12 ZACR, however, successfully completed each of ICANN’s requirements to
13 operate the .Africa gTLD. As a result, ZACR and ICANN entered into a Registry
14 Agreement on March 24, 2014. Although the Registry Agreement runs for 10
15 years, ICANN still has not been able to delegate .Africa to ZACR because DCA
16 has spent the last two years trying to force ICANN to re-evaluate its deficient
17 application. By virtue of this lawsuit, DCA seeks, among other relief, a
18 declaratory judgment that the Registry Agreement between ICANN and ZACR be
19 declared null and void (tenth cause of action) and that DCA be delegated the
20 rights to .Africa (ninth cause of action).

21 ZACR seeks to intervene pursuant to Fed. R. Civ. P. 24(a), or alternatively,
22 under Fed. R. Civ. P. 24(b), as a defendant to the Ninth and Tenth causes of action
23 to enforce its right to .Africa. Intervention is proper because ZACR has an
24 interest in the Registry Agreement which may be impaired or impeded by the
25 disposition of this action and ZACR’s interest is not adequately represented by the
26 existing parties.

27 ZACR’s intervention will not enlarge the scope of this lawsuit because it is
28 based on the same underlying facts. Under the present circumstances, and as

1 more fully set forth in the accompanying Memorandum of Points and Authorities,
2 ZACR's intervention is appropriate under Fed. R. Civ. P. 24.

3 This motion is made following the conference of counsel pursuant to L.R.
4 7-3. Declaration of David W. Kesselman in Support of ZA Central Registry,
5 NPC's Motion to Intervene, ¶¶ 2-3.

6 This Motion is based upon the Notice of Motion and Motion, the
7 accompanying Memorandum of Points and Authorities, the Declaration of David
8 W. Kesselman, the proposed Answer in Intervention (attached hereto as **Exhibit**
9 **A**), the pleadings and documents on file in this action, and any further evidence
10 and argument that may be presented at the time of the hearing.

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DATED: August 1, 2016 KESSELMAN BRANTLY STOCKINGER LLP

By: /s/ David W. Kesselman
David W. Kesselman
Amy T. Brantly
Kara D. McDonald
Attorneys for [Proposed] Intervenor
ZA Central Registry, NPC

EXHIBIT A

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16 DOTCONNECTAFRICA TRUST, a
 17 Mauritius Charitable Trust,
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20 INTERNET CORPORATION FOR
 21 ASSIGNED NAMES AND
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 23 inclusive,
 24 Defendants.

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

28 **[PROPOSED] INTERVENOR’S
 ANSWER IN INTERVENTION AS
 TO NINTH AND TENTH CAUSES
 OF ACTION**

1 Proposed Intervenor ZA Central Registry, NPC (“ZACR”), by and through
2 its attorneys, responds to the Ninth and Tenth causes of action in the First
3 Amended Complaint (“FAC”) filed by Plaintiff DotConnectAfrica Trust
4 (“Plaintiff” or “DCA”) as follows:

5 **RESPONSE TO INTRODUCTION**

6 1. ZACR lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations contained in this paragraph and, on that basis, denies
8 each and every such allegation.

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

14 3. ZACR denies each and every allegation in Paragraph 3.

15 4. ZACR denies each and every allegation in Paragraph 4.

16 **RESPONSE TO JURISDICTION AND VENUE**

17 5. ZACR admits that DCA alleges jurisdiction over this action and these
18 parties under 28 U.S.C. §1332(a). ZACR states that the allegations contained in
19 Paragraph 5 are legal conclusions and/or arguments not subject to admission or
20 denial.

21 6. ZACR admits that ICANN is based in California.. To the extent
22 Paragraph 6 relates to persons or entities other than ZACR, ZACR lacks
23 knowledge or information sufficient to form a belief as to the truth allegations of
24 Paragraph 6, and therefore denies them. ZACR admits that it contracted with
25 Defendant Internet Corporation For Assigned Names And Numbers (“ICANN”)
26 but denies that it directed wrongful conduct to California. ZACR states that the
27 allegations of personal jurisdiction in Paragraph 6 are legal conclusion and/or
28 argument not subject to admission or denial.

RESPONSE TO PARTIES

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2 7. ZACR lacks knowledge or information sufficient to form a belief as
3 to the truth of the allegations contained in Paragraph 7 and, on that basis, denies
4 each and every such allegation.

5 8. ZACR admits that ICANN is headquartered in Los Angeles, CA.
6 lacks knowledge or information sufficient to form a belief as to the truth of the
7 allegations contained in Paragraph 8 and, on that basis, denies each and every
8 such allegation.

9 9. ZACR admits that it is a South African non-profit corporation.
10 Except as expressly admitted, ZACR denies each and every allegation contained
11 in Paragraph 9.

12 10. ZACR lacks knowledge or information sufficient to form a belief as
13 to the truth of the allegations contained in Paragraph 10 and, on that basis, denies
14 each and every such allegation.

15 11. ZACR denies each and every allegation in Paragraph 11.

RESPONSE TO FACTUAL BACKGROUND

16
17 12. ZACR lacks knowledge or information sufficient to form a belief as
18 to the truth of the allegations contained in Paragraph 12 and, on that basis, denies
19 each and every such allegation.

20 13. ZACR admits that ICANN is the sole organization worldwide that
21 assigns rights to Generic Top-level Domains. Except as expressly admitted,
22 ZACR lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations contained in Paragraph 13 and, on that basis, denies each and every
24 such allegation.

25 14. ZACR lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations contained in this Paragraph 14 and, on that basis,
27 denies each and every such allegation.

1 15. ZACR states that the allegations contained in Paragraph 15 appear to
2 reference ICANN’s Bylaws. ZACR states that ICANN’s Bylaws speak for
3 themselves and, on that basis, ZACR denies any allegation of Paragraph 15
4 inconsistent with the actual terms of the Bylaws.

5 16. ZACR states that the allegations contained in Paragraph 16 appear to
6 reference ICANN’s Bylaws. ZACR states that ICANN’s Bylaws speak for
7 themselves and, on that basis, ZACR denies any allegation of Paragraph 16
8 inconsistent with the actual terms of the Bylaws. Except as expressly admitted,
9 ZACR denies each and every allegation in Paragraph 16.

10 17. ZACR states that the allegations contained in Paragraph 17 appear to
11 reference ICANN’s Bylaws. ZACR states that ICANN’s Bylaws speak for
12 themselves and, on that basis, ZACR denies any allegation of Paragraph 17
13 inconsistent with the actual terms of the Bylaws. Except as expressly admitted,
14 ZACR denies each and every allegation in Paragraph 17.

15 18. ZACR admits that, in 2012, ICANN launched an expansion of the
16 TLD program, which included TLDs such as .Africa and .Asia. ZACR lacks
17 knowledge or information sufficient to form a belief as to the truth of the
18 remaining allegations contained in Paragraph 18 and, on that basis, denies each
19 and every such allegation.

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

21 19. ZACR lacks knowledge or information sufficient to form a belief as
22 to the truth of the allegations contained in Paragraph 19 and, on that basis, denies
23 each and every such allegation.

24 20. ZACR states that the allegations contained in Paragraph 20 appear to
25 reference the rules set forth in the Applicant Guidebook (“Guidebook”) and
26 ICANN’s Bylaws. ZACR states that ICANN’s Bylaws and Guidebook speak for
27 themselves and, on that basis, ZACR denies any allegation of Paragraph 20
28

1 inconsistent with the actual terms of the Bylaws and Guidebook. Except as
2 expressly admitted, ZACR denies each and every allegation in Paragraph 20.

3 21. ZACR lacks knowledge or information sufficient to form a belief as
4 to the truth of the allegations contained in Paragraph 21 and, on that basis, denies
5 each and every such allegation.

6 22. ZACR lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations contained in Paragraph 22 and, on that basis, denies
8 each and every such allegation.

9 23. ZACR states that the allegations contained in this Paragraph 23
10 appear to reference the Guidebook. ZACR states that the Guidebook speaks for
11 itself and, on that basis, ZACR denies any allegation of Paragraph 23 inconsistent
12 with the actual terms of the Guidebook. ZACR admits that the Guidebook
13 requires applicants for a gTLD that represents the name of a geographic region to
14 provide documentation of support or non-objection from at least 60% of the
15 governments in the region. Except as expressly admitted, ZACR denies each and
16 every allegation in Paragraph 23.

17 24. ZACR admits on information and belief that Plaintiff received letters
18 from the African Union Commission (“AUC”) and the United Nations Economic
19 Commission for Africa (“UNECA”) in connection with Plaintiff’s application for
20 the .AFRICA gTLD. ZACR states that these letters speak for themselves. ZACR
21 denies the remaining allegations of Paragraph 24.

22 25. ZACR states that the allegations contained in Paragraph 25 appear to
23 reference the Guidebook. ZACR states that the Guidebook speaks for itself and,
24 on that basis, ZACR denies any allegation of Paragraph 25 inconsistent with the
25 actual terms of the Guidebook. ZACR denies the remaining allegations of
26 Paragraph 24.

1 **RESPONSE TO ZACR AND THE AUC’S TOP LEVEL**

2 **DOMAIN APPLICATION**

3 26. ZACR admits that the AUC sent a letter to ICANN relating to the
4 .AFRICA gTLD. ZACR states that the letter sent by the AUC speaks for itself.
5 ZACR denies the remaining allegations of Paragraph 26.

6 27. ZACR denies each and every allegation of Paragraph 27.

7 28. ZACR denies each and every allegation of Paragraph 28.

8 29. ZACR denies each and every allegation of Paragraph 29.

9 30. ZACR denies each and every allegation of Paragraph 30.

10 31. ZACR denies the allegations of Paragraph 31, with the exception that
11 ZACR admits that it submitted a “standard” application.

12 32. ZACR denies that it made any misrepresentations. ZACR admits that
13 it had the endorsement of the AUC and that it had the financial capability to
14 operate as a TLD operator. ZACR denies each and every other allegation of
15 Paragraph 32.

16 **RESPONSE TO THE GEOGRAPHIC NAMES PANEL AND**

17 **INTERCONNECT COMMUNICATIONS**

18 33. ZACR denies the allegations of Paragraph 33 with the exception that
19 ZACR admits on information and belief that the Geographic Names Panel
20 determines which governments are relevant for the applicable geographic region
21 under the terms of the Guidebook.

22 34. ZACR lacks knowledge or information sufficient to form a belief as
23 to the truth of the allegations contained in Paragraph 34 and, on that basis, denies
24 each and every such allegation.

25 35. ZACR lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations contained in Paragraph 35, and on that basis denies,
27 them, with the exception that ZACR admits on information and belief that the
28

1 Geographic Names Panel determines which governments are relevant for the
2 applicable geographic region under the terms of the Guidebook.

3 36. ZACR lacks knowledge or information sufficient to form a belief as
4 to the truth of the allegations contained in Paragraph 36 and, on that basis, denies
5 each and every such allegation.

6 37. ZACR admits that ICANN accepted the endorsement of ZACR from
7 the AUC. ZACR lacks knowledge or information sufficient to form a belief as to
8 the truth of the other allegations contained in Paragraph 37 and, on that basis,
9 denies each and every such allegation.

10 38. ZACR lacks knowledge or information sufficient to form a belief as
11 to the truth of the allegations contained in Paragraph 38 and, on that basis, denies
12 each and every such allegation.

13 39. ZACR denies each and every allegation of Paragraph 39.

14 40. ZACR denies the allegations of Paragraph 40 with the exception that
15 ZACR admits on information and belief that its application held a lower lottery
16 number than DCA's application.

17 41. ZACR states that the allegations contained in Paragraph 41 appear to
18 reference the Guidebook. ZACR states that the Guidebook speaks for itself and,
19 on that basis, ZACR denies any allegation of Paragraph 41 inconsistent with the
20 actual terms of the Guidebook. ZACR denies the remaining allegations of
21 Paragraph 41.

22 **RESPONSE TO THE GAC**

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

1 international fora, and multinational governmental organizations and treaty
2 organizations.” ZACR denies the remaining allegations of Paragraph 42.

3 43. ZACR lacks knowledge or information sufficient to form a belief as
4 to the truth of the allegations contained in Paragraph 43 and, on that basis, denies
5 each and every such allegation.

6 44. ZACR lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations contained in Paragraph 44 and, on that basis, denies
8 each and every such allegation.

9 45. ZACR lacks knowledge or information sufficient to form a belief as
10 to the truth of the allegations contained in Paragraph 45 and, on that basis, denies
11 each and every such allegation.

12 46. ZACR lacks knowledge or information sufficient to form a belief as
13 to the truth of the allegations contained in Paragraph 46 and, on that basis, denies
14 each and every such allegation.

15 47. ZACR lacks knowledge or information sufficient to form a belief as
16 to the truth of the allegations contained in Paragraph 47 and, on that basis, denies
17 each and every such allegation.

18 48. ZACR admits that it passed the initial evaluation and entered into a
19 Registry Agreement with ICANN. ZACR further admits that the AUC gave its
20 full support to ZACR’s application for the .AFRICA gTLD. ZACR denies that it
21 lacked sufficient endorsements to meet ICANN requirements. ZACR lacks
22 knowledge or information sufficient to form a belief as to the truth of the
23 remaining allegations contained in Paragraph 48 and, on that basis, denies each
24 and every such allegation.

25 **RESPONSE TO THE INDEPENDENT REVIEW PROCESS**

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

1 50. ZACR lacks knowledge or information sufficient to form a belief as
2 to the truth of the allegations contained in Paragraph 50 and, on that basis, denies
3 each and every such allegation.

4 51. ZACR admits that Plaintiff initiated an IRP but denies the remaining
5 allegations of Paragraph 51.

6 52. On information and belief, ZACR admits the allegations of
7 Paragraph 52.

8 53. ZACR admits that it entered into a registry agreement with ZACR
9 regarding the operation of .AFRICA. ZACR denies the remaining allegations of
10 Paragraph 53.

11 54. ZACR admits that on July 9, 2015, the IRP Panel issued a final
12 declaration (“IRP Declaration”) and that portions of this paragraph purport to
13 quote from the IRP Declaration. ZACR states that the IRP Declaration speaks for
14 itself. ZACR denies the remaining allegations of Paragraph 54, which are at odds
15 with the IRP Declaration.

16 55. ZACR lacks knowledge or information sufficient to form a belief as
17 to the truth of the allegations contained in Paragraph 55 and, on that basis, denies
18 each and every such allegation.

19 56. ZACR admits on information and belief that Plaintiff attached a copy
20 of the IRP Declaration as Exhibit A to the FAC.

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

22 **AFTER THE IRP DECLARATION**

23 57. ZACR denies each and every allegation of Paragraph 57.

24 58. ZACR denies each and every allegation of Paragraph 58.

25 59. ZACR denies each and every allegation of Paragraph 59.

26 60. ZACR admits that it entered into a registry agreement with ICANN
27 regarding the operation of .AFRICA. ZACR denies the remaining allegations of
28 Paragraph 60.

1 75. ZACR lacks knowledge or information sufficient to form a belief as
2 to the truth of the allegations in Paragraph 75, and therefore denies each and every
3 such allegation.

4 76. ZACR denies that ZACR broke the rules or procedures in connection
5 with its application for the .AFRICA TLD. ZACR lacks knowledge or information
6 sufficient to form a belief as to the truth of the remaining allegations in Paragraph
7 76, and therefore denies each and every such allegation.

8 77. ZACR lacks knowledge or information sufficient to form a belief as
9 to the truth of the allegations in Paragraph 77, and therefore denies each and every
10 such allegation.

11 78. ZACR lacks knowledge or information sufficient to form a belief as
12 to the truth of the allegations in Paragraph 78, and therefore denies each and every
13 such allegation.

14 **RESPONSE TO THIRD CAUSE OF ACTION**

15 **(Negligent Misrepresentation Against ICANN)**

16 79. Plaintiff incorporates by reference Paragraphs 1 through 78 as though
17 set forth in full herein.

18 80. ZACR lacks knowledge or information sufficient to form a belief as
19 to the truth of the allegations in Paragraph 80, and therefore denies each and every
20 such allegation.

21 81. ZACR lacks knowledge or information sufficient to form a belief as
22 to the truth of the allegations in Paragraph 81, and therefore denies each and every
23 such allegation.

24 82. ZACR lacks knowledge or information sufficient to form a belief as
25 to the truth of the allegations in Paragraph 82, and therefore denies each and every
26 such allegation.

RESPONSE TO FOURTH CAUSE OF ACTION

(Fraud & Conspiracy to Commit Fraud Against All Defendants)¹

83. ZACR incorporates its preceding responses to Paragraphs 1 through 82 as set forth herein.

84. ZACR denies each and every allegation in Paragraph 84.

85. ZACR denies each and every allegation in Paragraph 85.

86. ZACR denies each and every allegation in Paragraph 86.

87. ZACR denies each and every allegation of Paragraph 87.

88. ZACR denies each and every allegation of Paragraph 88.

89. ZACR denies each and every allegation of Paragraph 89.

90. ZACR states that Paragraph 90 purports to reference Article 1 (Delegation and Operation of Top-Level Domain Representations and Warranties) of the new gTLD Registry Agreement. ZACR states that the new gTLD Registry Agreement speaks for itself and, on that basis, denies any allegation of Paragraph 90 inconsistent therewith.

91. ZACR denies each and every allegation of Paragraph 91.

92. ZACR denies each and every allegation of Paragraph 92.

93. ZACR denies each and every allegation of Paragraph 93.

94. ZACR denies each and every allegation of Paragraph 94.

95. ZACR denies each and every allegation of Paragraph 95

RESPONSE TO FIFTH CAUSE OF ACTION

(Unfair Competition Against All Defendants)²

96. ZACR incorporates its preceding responses to Paragraphs 1 through 95 as set forth herein.

¹ In its June 14, 2016 Order, the Court dismissed this cause of action as to ZACR. ECF 112.

² In its June 14, 2016 Order, the Court dismissed this cause of action as to ZACR. ECF 112.

1 97. ZACR denies each and every allegation of Paragraph 97.

2 98. ZACR denies each and every allegation of Paragraph 98.

3 99. ZACR denies each and every allegation of Paragraph 99.

4 **RESPONSE TO SIXTH CAUSE OF ACTION**

5 **(Negligence Against ICANN)**

6 100. ZACR incorporates its preceding responses to Paragraphs 1
7 through 99 as set forth herein.

8 101. ZACR lacks knowledge or information sufficient to form a belief
9 as to the truth of the allegations in Paragraph 101, and therefore denies each and
10 every such allegation.

11 102. ZACR states that the allegations contained in Paragraph 102 are
12 legal conclusions and/or argument not subject to admission or denial. To the
13 extent that Paragraph 102 contains any allegation that requires an admission or
14 denial, ZACR lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations, and therefore denies each and every such allegation.

16 103. ZACR denies each and every allegation in Paragraph 103.

17 104. ZACR lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations in Paragraph 104, and therefore denies each and
19 every such allegation.

20 105. ZACR lacks knowledge or information sufficient to form a belief
21 as to the truth of the allegations in Paragraph 105, and therefore denies each and
22 every such allegation.

23 106. ZACR lacks knowledge or information sufficient to form a belief
24 as to the truth of the allegations in Paragraph 106, and therefore denies each and
25 every such allegation.

26 107. ZACR lacks knowledge or information sufficient to form a belief
27 as to the truth of the allegations in Paragraph 107, and therefore denies each and
28 every such allegation

RESPONSE TO SEVENTH CAUSE OF ACTION

(Intentional Interference Against ZACR)³

108. ZACR incorporates its preceding responses to Paragraphs 1 through 107 as set forth herein.

109. ZACR states that the allegations contained in Paragraph 116 are legal conclusions and/or argument not subject to admission or denial. ZACR admits that the application process for the .Africa gTLD was governed by the procedures set forth in the Guidebook. To the extent that Paragraph 116 contains any other allegation that requires an admission or denial, ZACR lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies each and every such allegation.

110. ZACR admits that it was aware that Plaintiff had submitted an application for the .Africa gTLD. Except as expressly admitted, ZACR denies the allegations of Paragraph 110.

111. ZACR denies each and every allegation of Paragraph 111.

112. ZACR denies each and every allegation of Paragraph 112.

113. ZACR denies each and every allegation of Paragraph 113.

114. ZACR denies each and every allegation of Paragraph 114.

RESPONSE TO EIGHTH CAUSE OF ACTION

(Confirmation of the IRP Declaration.)

115. ZACR incorporates its preceding responses to Paragraphs 1 through 114 as set forth herein.

116. ZACR states that the allegations contained in Paragraph 116 are legal conclusions and/or argument not subject to admission or denial. To the extent that Paragraph 116 contains any allegation that requires an admission or

³ In its June 14, 2016 Order, the Court dismissed this cause of action. ECF 112. Because Plaintiff has not filed an amended complaint, ZACR responds to all the allegation set forth in the FAC.

1 denial, ZACR lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations, and therefore denies each and every such allegation.

3 117. ZACR admits that on July 9, 2015 the IRP Panel issued a
4 Declaration. ZACR states that the IRP Declaration speaks for itself. Except as
5 expressly admitted, ZACR denies the remaining allegations in Paragraph 117.

6 118. ZACR admits that Plaintiff purports to seek a court order
7 confirming the IRP Declaration. Except as expressly admitted, ZACR denies the
8 remaining allegation in Paragraph 118.

9 **RESPONSE TO NINTH CAUSE OF ACTION**

10 **(Declaratory Relief Against ICANN.)**

11 119. ZACR incorporates its preceding responses to Paragraphs 1 through
12 118 as set forth herein.

13 120. ZACR admits that the IRP Declaration recommended that ICANN
14 permit Plaintiff's application to proceed through the remainder of the new gTLD
15 application process from the point where ICANN had stopped processing the
16 application. Except as expressly admitted, ZACR denies each and every
17 allegation in Paragraph 120.

18 121. ZACR denies each and every allegation of Paragraph 121.

19 122. ZACR denies each and every allegation of Paragraph 122.

20 123. ZACR 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 123 contains any allegation that requires an admission or denial,
23 ZACR denies each and every allegation of Paragraph 123.

24 124. ZACR admits that Plaintiff seeks a judicial declaration that ICANN
25 follow the IRP Declaration and allow the DCA application to proceed through the
26 delegation phase of the application process. Except as expressly admitted, ZACR
27 denies each and every allegation of Paragraph 124.

28 125. ZACR denies each and every allegation of Paragraph 125.

RESPONSE TO TENTH CAUSE OF ACTION

(Declaratory Relief Against All Defendants)⁴

126. ZACR incorporates its preceding responses to Paragraphs 1 through 125 as set forth herein.

127. ZACR denies each and every allegation of Paragraph 127.

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

129. ZACR denies each and every allegation of Paragraph 129.

130. ZACR denies each and every allegation of Paragraph 130.

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

132. ZACR admits that Plaintiff seeks a judicial declaration that the registry agreement between ZACR and ICANN be declared null and void and that ZACR's application does not meet ICANN's standards. Except as expressly admitted, ZACR denies each and every allegation in Paragraph 132.

RESPONSE TO ELEVENTH CAUSE OF ACTION

(Declaratory Relief Against ICANN.)

133. ZACR incorporates its preceding responses to Paragraphs 1 through 132 as set forth herein.

134. ZACR states that the paragraph purports to quote a covenant not to sue ("Covenant Not to Sue") contained in Module 6 of the Guidebook. ZACR states that the Covenant Not to Sue speaks for itself. Except as expressly admitted, ZACR denies each and every allegation in Paragraph 134.

⁴ In its June 14, 2016 Order, the Court dismissed this cause of action as to ZACR. ECF 112.

1 135. ZACR admits that Plaintiff could not obtain the contractual rights to
2 operate .AFRICA from anyone but ICANN. ZACR states that the remaining
3 allegations contained in this paragraph are legal conclusions and/or argument not
4 subject to admission or denial. To the extent that Paragraph 135 contains any
5 allegation that requires an admission or denial, ZACR lacks knowledge or
6 information sufficient to form a belief as to the truth of the allegations, and
7 therefore denies each and every such allegation.

8 136. ZACR states that the allegations contained in this paragraph are legal
9 conclusions and/or argument not subject to admission or denial. To the extent that
10 Paragraph 136 contains any allegation that requires an admission or denial, ZACR
11 lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations, and therefore denies each and every such allegation.

13 137. ZACR states that the allegations contained in this paragraph are legal
14 conclusions and/or argument not subject to admission or denial. To the extent that
15 Paragraph 137 contains any allegation that requires an admission or denial, ZACR
16 lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations, and therefore denies each and every such allegation.

18 138. ZACR states that the allegations contained in Paragraph 138 appear
19 to reference ICANN's website and the Guidebook. ZACR states that ICANN's
20 website and the Guidebook speak for themselves. ZACR lacks knowledge or
21 information sufficient to form a belief as to the truth of the allegations in
22 Paragraph 138, and therefore denies each and every such allegation.

23 139. ZACR lacks knowledge or information sufficient to form a belief as
24 to the truth of the allegations in Paragraph 139, and therefore denies each and
25 every such allegation.

26 140. ZACR lacks knowledge or information sufficient to form a belief as
27 to the truth of the allegations in Paragraph 138, and therefore denies each and
28 every such allegation.

1 141. ZACR 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 141 contains any allegation that requires an admission or denial, ZACR
4 lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations, and therefore denies each and every such allegation.

6 142. ZACR admits that Plaintiff seeks a judicial declaration that the
7 Covenant Not to Sue is unenforceable, unconscionable, procured by fraud, and/or
8 void as a matter of law and public policy. ZACR states that allegations contained
9 in this paragraph are legal conclusions and/or argument not subject to admission
10 or denial. To the extent that Paragraph 142 contains any allegation that requires
11 an admission or denial, ZACR lacks knowledge or information sufficient to form
12 a belief as to the truth of the allegations, and therefore denies each and every such
13 allegation.

14 **RESPONSE TO PRAYER FOR RELIEF**

15 ZACR denies that Plaintiff is entitled to any of the relief sought.

16 **ZACR's AFFIRMATIVE DEFENSES**

17 As separate and distinct affirmative defenses, ZACR states as follows:

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(Failure To State A Claim)**

20 The Ninth and Tenth causes of action fail to state a claim upon which relief
21 may be granted against ZACR, and further fail to entitle Plaintiff to the relief
22 sought or to any relief whatsoever against ZACR.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Laches)**

25 Plaintiff is barred from asserting the Ninth and Tenth causes of action
26 against ZACR, by doctrine of laches.

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THIRD AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff is barred from asserting the Ninth and Tenth causes of action against ZACR, by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff is barred from asserting the Ninth and Tenth causes of action against ZACR, by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Adequate Remedies at Law)

Equitable and injunctive relief are barred because Plaintiff has available remedies at law.

SIXTH 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 injunctive relief against ZACR.

SEVENTH AFFIRMATIVE DEFENSE

(Legitimate Business Conduct)

The Ninth and Tenth causes of action are barred because ZACR'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 ZACR's business.

EIGHTH AFFIRMATIVE DEFENSE

(Competition Privilege)

The Ninth and Tenth causes of action are barred by the competition privilege.

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NINTH AFFIRMATIVE DEFENSE

(Noerr-Pennington Doctrine)

The Ninth and Tenth causes of action are barred by *Noerr-Pennington* and any related doctrines.

TENTH AFFIRMATIVE DEFENSE

(Act of State Doctrine)

The Ninth and Tenth causes of action are barred by the Act of State doctrine.

ELEVENTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

ZACR 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 In Intervention to assert such defenses, including defenses asserted by any other defendant.

PRAYER FOR RELIEF

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

1. That the Ninth and Tenth causes of action be dismissed in their entirety and with prejudice;
2. That Plaintiff take nothing by way of its Ninth and Tenth causes of action; and
3. For such other relief as is deemed just and proper.

DATED: August 1, 2016 KESSELMAN BRANTLY STOCKINGER LLP

By: /s/ David W. Kesselman
David W. Kesselman
Amy T. Brantly
Kara D. McDonald
Attorneys for [Proposed] Intervenor
ZA Central Registry, NPC