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

SURREPLY OPPOSING RESPONDENT'S REPLY AND MOTION TO DISMISS APPEAL

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INTRODUCTION

The law is clear: The California Supreme Court, this Court, and other California appellate courts have repeatedly held that a final judgment mailed by the clerk does not trigger a deadline to appeal unless "the clerk has sent a *single, self-sufficient document* satisfying all of the rule's conditions," "including the requirement that the *document itself* show the date on which it was [served]." (*Alan v. Am. Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 905 (hereinafter *Alan*), emphases added; see also *M'Guinness v. Johnson* (2015) 243 Cal.App.4th 602, 611-13 (hereinafter *M'Guinness*); *Bi-Coastal Payroll Servs., Inc. v. Cal. Ins. Guarantee Ass'n* (2009) 174 Cal.App.4th 579, 586-587 (hereinafter *Bi-Coastal Payroll Servs.*).)

ICANN does not dispute that legal principle. Nor does it contend that the final judgment itself showed when it was served. And it does not argue that the final judgment and certificate of mailing were somehow a "single, self-sufficient document." (See generally Reply.) That should end the inquiry: the clerk did not serve a "single document" that triggered Rule 8.104(a)(1)(A). As a result, DCA's appeal was timely.

Instead of grappling with that obvious conclusion, or explaining why its motion failed to inform this Court of the applicable precedents, ICANN's reply brief predominantly attempts to draw thin, legally irrelevant factual distinctions from

the multitude of cases that DCA has cited. But ICANN cannot avoid the core holdings of *Alan* and its progeny. Indeed, ICANN tellingly does not itself cite a single case holding an appeal untimely in circumstances like these. On the contrary, ICANN's own filings confirm that DCA's appeal was timely under Rule 8.104(a), as interpreted by *Alan*, *Bi-Coastal Payroll Services*, and *M'Guinness*. And, to the extent there is any ambiguity, the law requires that it be resolved in favor of preserving DCA's right to appeal. ICANN's motion should accordingly be denied.

ARGUMENT

I. ICANN's Filings Confirm That DCA's Appeal Was Timely.

ICANN's reply brief admits that the California Supreme Court's decision in *Alan*—which the motion to dismiss failed to cite—governs whether Rule 8.104(a)(1)(A) was triggered. ICANN now agrees that Rule 8.104(a)(1)(A) requires "'a single document . . . that is sufficient in itself to satisfy all of the rule's conditions, including the requirement that the document itself show the date on which it was mailed.'" (Reply at 8-9, quoting *Alan*, *supra*, 40 Cal.4th at page 905.) Yet, ICANN's own filings confirm that the Rule's requirements were not satisfied here.

In both its motion and its reply, ICANN never once argues that the final judgment "itself show[ed] the date on which it was mailed." (See *ibid.*) Nor does ICANN contend that the final judgment and certificate of mailing were a "single document."

(See generally Reply.) ICANN does not disavow its earlier representation that these were *separate* documents, entered *separately* on the docket, and attached as *separate* exhibits to ICANN's motion to dismiss. (See Motion to Dismiss at 5; *id.* Exs. A, B.) Instead, ICANN again states that the clerk served a "copy of the Final Judgment *accompanied by* a certificate of mailing." (Reply at 10, emphasis added.) But, under *Alan*, "accompanying" a final judgment is not enough—a "single document" is required. (*Alan*, *supra*, 40 Cal.4th at pages 898, 905; *M'Guinness*, *supra*, 243 Cal.App.4th at pages 611-12.)

There is no legitimate argument that the final judgment and the certificate of mailing constituted a single document. Indeed, the clerk served three *other* documents alongside the final judgment and certificate of mailing. ICANN does not argue that those separate items were all somehow a "single document." On the contrary, the certificate of mailing was not attached to the final judgment, but was instead attached to two *other* documents: a separate certificate of mailing and a minute order. (See Brown Decl. ¶¶ 5-6.) ICANN does not disagree.

ICANN weakly suggests that the clerk's service satisfied Rule 8.104(a)(1)(A) because the clerk mailed the final judgment and certificate of mailing in a single envelope (with three other documents). (Reply at 6, 9-10.) But, as ICANN acknowledges, *Alan* squarely held that Rule 8.104(a)(1)(A) requires a "single,

self-sufficient document," and two documents do not become one merely because they are mailed together. (Reply at 8-9; *Alan*, *supra*, 40 Cal.4th at pages 898, 903-05; see also *M'Guinness*, *supra*, 243 Cal.App.4th at pages 611-12.) ICANN does not offer a single precedent contradicting these principles or remotely suggesting that the circumstances here require dismissal. (Reply at 6; *In re Marriage of Lin* (2014) 225 Cal.App.4th 471, 475 ["The triggering document must show the date on which it was served."]; Opposition at 16-17, 27, offering several treatises that cite *Alan*.)

That is because the case law makes clear that ICANN's argument necessarily fails. To trigger Rule 8.104(a)(1)(A), the clerk must serve a *single document* that itself shows the date it was served. (See *Alan*, *supra*, 40 Cal.4th at pages 902-05; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1338; *M'Guinness*, *supra*, 243 Cal.App.4th at pages 611-12; *In re Marriage of Lin*, *supra*, 225 Cal.App.4th 471, 475; *Bi-Coastal Payroll Servs.*, 174 Cal.App.4th at 586-87.) That legal principle flows directly from the text of the Rule. Because subsection (a)(1)(A) requires that the final judgment *itself* must "show[] the date [it] was served," it is not enough for the clerk to merely mail "a filed-endorsed copy of the judgment, accompanied by proof of service," as subsection (a)(1)(B) permits for triggering documents served by a party. It is axiomatic that every word in a Rule or

statute must be given meaning—and that differences between neighboring provisions must be respected. (See Rule 8.104(a)(1); *Alan*, *supra*, 40 Cal.4th at page 904.) Under *Alan* and its progeny, ICANN's motion is legally foreclosed.

In a last ditch effort to distract, ICANN accuses DCA of "omit[ting]" *Alan*'s statement that the clerk might "satisfy the single-document requirement by attaching a certificate of mailing to the file-stamped judgment." (Reply at 9, quoting *Alan*, *supra*, 40 Cal.4th at page 905.) But DCA directly quoted that language in its opposition and explained why it does not apply—based on ICANN's own motion and the undisputed facts. (See Opposition at 21-22.) ICANN conspicuously never argues—because it cannot—that the clerk "attach[ed] a certificate of mailing to the file-stamped judgment." (See Reply at 9-10, quoting *Alan*, *supra*, 40 Cal.4th at page 905.) Nor does ICANN dispute the fact that the clerk instead attached the certificate of mailing to *other*, unrelated documents. (*Ibid.*) ICANN's own filings thus confirm that the clerk's mailing does not satisfy the "single document requirement" that *Alan* and Rule 8.104(a)(1)(A) impose.

ICANN's efforts to distinguish the facts of the governing precedents make no legal difference. ICANN claims, for example, that *Alan* would have come out the same way even if the clerk had attached the two documents. (Reply at 9.) But that does not change *Alan*'s fundamental holding, which the California

Supreme Court reiterated again and again: "[R]ule 8.104(a)(1)(A) requires a single, self-sufficient document satisfying all the rule's conditions." (*Alan*, *supra*, 40 Cal.4th at page 902-05 ["[T]he rule does not require litigants to glean the required information from multiple documents or to guess, at their peril, whether such documents in combination trigger the duty to file a notice of appeal."].) And ICANN's complaint that DCA's arguments rest on "hyper-technicalities" flies in the face of the California courts' repeated and explicit statement that courts are required to apply a "hypertechnical" standard to Rule 8.104(a). (*Alan*, *supra*, 40 Cal.4th at page 903, quoting *20th Century Ins. Co. v. Superior Court* (1994) 28 Cal.App.4th 666, 672; see Reply at 6.)

ICANN's efforts to distinguish *M'Guinness* likewise fall flat. (Reply at 10-11.) To start, ICANN complains that DCA's opposition quoted only the question presented—whether the "clerk's service of [a] file endorsed order, either separately or conjunction with service of [a] corrected proof of service" satisfies Rule 8.104(a)(1)(A). (*Ibid.*) But the *M'Guinness* court promptly answered that question by holding that "[o]ur Supreme Court's decision in *Alan* . . . informs us the answer is 'No.'" (*M'Guinness*, *supra*, 243 Cal.App.4th at page 611.) As the *M'Guinness* court held, the clerk's service of the file-endorsed order, "either separately *or in conjunction with service*" of a proof of service, does *not* trigger Rule 8.104(a)(1)(A). (*Ibid.*, emphasis added.)

Nor does anything else in *M'Guinness* suggest that the case turned on whether the proof of service was mailed with the final judgment. Neither the court nor the parties discussed whether the documents were mailed separately or together. (See generally *ibid.*; Reply Exs. J, K.)[1] The court's statement that "the file-endorsed copy of the order cannot be read in conjunction with the separate document" confirms that the proof of service was a separate document—just as it was here—and that fact was dispositive—just as it is here. (*M'Guinness*, *supra*, 243 Cal.App.4th at page 612.) And, as explained above, *Alan* rejected a test that turned on whether documents were mailed together. (*Alan*, *supra*, 40 Cal.4th at pages 898, 905.) No obfuscation by ICANN can change that rule.

II. Any Ambiguity Must Be Resolved In DCA's Favor.

Even if ICANN's arguments were not facially deficient, the law resolves any ambiguity in DCA's favor. California courts have long followed the "well-established policy . . . of according

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[1] ICANN piles inference upon inference to speculate that the items were mailed separately. But the *M'Guinness* appellant never made that argument, and instead argued, like DCA, that under *Alan* "the file-stamped copy of the appealable order does not show the date on which the clerk served the document," and that only a "separate unattached document titled Proof of Service shows this." (Reply Ex. K.) The court held that those separate documents—whether served separately or in conjunction with each other—were insufficient. So too here.

the right to appeal in doubtful cases." (See *Alan*, *supra*, 40 Cal.4th at page 902.) This has led courts in a wide variety of contexts to apply Rule 8.104(a) "strictly and literally," ensuring that parties do not need to engage in "guesswork when calculating jurisdictional time limits." (*Bi-Coastal Payroll Servs.*, *supra*, 174 Cal.App.4th at pages 585-87; *Alan*, *supra*, 40 Cal.4th at 902, collecting cases; Opposition at 28-29, collecting cases.) If nothing else, whether the clerk's certificate of mailing and final judgment constituted a "single, self-sufficient document" that satisfies Rule 8.104(a)(1)(A) is deeply ambiguous here. That ambiguity must be resolved in favor of allowing DCA's appeal.

Rather than disputing this legal rule, ICANN again seeks to draw irrelevant factual distinctions from the cases cited by DCA. (Reply at 17-18.) But those thin distinctions do not disturb the core legal principle that courts "accord[] the right to appeal in doubtful cases." (E.g., *Alan*, *supra*, 40 Cal.4th at page 902; *In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 ["Our interpretation comports with 'the well-established policy, based on the remedial character of the right to appeal, of according that right in doubtful cases.'"]; *Citizens for Civic Accountability v. Town of Danville* (2008) 167 Cal.App.4th 1158, 1164 [same]; *Montgomery Ward & Co., Inc. v. Imperial Cas. & Indem. Co.* (2000) 81 Cal.App.4th 356, 373 [same].) ICANN's disparaging comment that this "well-established" quotation from the

California Supreme Court and numerous appellate courts is a "cherry-picked sound bite[]" only underscores ICANN's ignorance of the California precedents on this issue. (Compare *Alan*, *supra*, 40 Cal.4th at page 902, with Reply at 18-19.)

Nor is it true, as ICANN implies, that the ambiguity principle applies only when there is a "clear conflict" in the evidence. (See Reply at 16.) Not one of the cases cited above uses the words "clear conflict," although each one invokes the ambiguity principle. (See, e.g., *Montgomery Ward & Co., Inc. v. Imperial Cas. & Indem. Co.*, *supra*, 81 Cal.App.4th 356, 372-73 [applying the ambiguity rule even though "it appears *more likely than* not" that the clerk satisfied the Rule, because "there is no *definitive evidence* in the record that this was so"], emphases added.) ICANN instead claims to derive a "clear conflict" requirement from *Hollister Convalescent Hospital, Inc. v. Rico* (1975) 15 Cal.3d 660. But *Hollister* used that language only to characterize a prior case, *Slawinsky v. Mocettini* (1965) 63 Cal.2d 70, as involving a "clear conflict" between a court's permanent minutes and a formal order—"no more and no less." (15 Cal.3d at 668.) In doing so, it in no way purported to limit "the well-established policy . . . of according [the] right [to appeal] in doubtful cases." (*Id.* at 674.) And, to the extent there is any doubt, *Alan*'s invocation of the rule many decades later resolves the uncertainty: Where there is any ambiguity in the law or

facts, the courts accord the right to appeal.

At the very least, there is significant ambiguity here. ICANN does not even attempt to argue that the certificate of mailing and final judgment were a "single, self-sufficient document" as required by Rule 8.104(a)(1)(A) and *Alan*.[2] Because it is plain that the clerk never served a "single document" "that is sufficient in itself to satisfy all of the rule's conditions," ICANN cannot show that the clerk ever triggered a deadline to appeal. (*Alan*, *supra*, 40 Cal.4th at page 905.) And both the final judgment that ICANN attached to its motion and the envelope mailed by the clerk raise doubts as to whether they were actually served on October 4, 2019, which would render DCA's notice of appeal timely even under ICANN's deeply flawed theory (Opposition at 30-32.)

CONCLUSION

For the foregoing reasons, and those set forth in DCA's opposition, DCA respectfully requests that this Court deny ICANN's motion to dismiss.

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[2] In a footnote, ICANN falsely suggests that DCA believed the October 3 date governed its time to appeal but miscalculated the deadline. This untrue speculation is as inappropriate as it is legally irrelevant. What matters under the law is whether the clerk's service met all the requirements of Rule 8.104(a)(1)(A). Here, it plainly did not.

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

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