

1 Eric P. Enson (*pro hac vice* forthcoming)
Amanda Pushinsky (*pro hac vice* forthcoming)
2 **JONES DAY**
555 South Flower Street, 50th Floor
3 Los Angeles, CA 90071.2300
Tel. 213.489.3939
4 Fax 213.243.2539
epenson@jonesday.com
5 apushinsky@jonesday.com

6 Jonathan A. Dessaulles, State Bar No. 019439
F. Robert Connelly, II, State Bar No. 021031
7 **DESSAULES LAW GROUP**
5353 North 16th Street, Suite 110
8 Phoenix, Arizona 85016
Tel. 602.274.5400
9 Fax 602.274.5401
jdessaules@dessauleslaw.com
10 rconnelly@dessauleslaw.com

11 *Attorneys for Defendants Internet Corporation*
for Assigned Names and Numbers and Göran Marby

12 IN THE SUPERIOR COURT OF ARIZONA
13 COUNTY OF PINAL

14 George Kelly and George Kelly as
15 slingfantasy.com, slingfantasy.net,
securesite10.com, and slingframes.com,

16 Plaintiff,

17 v.

18 ICANN (Internet Corporation for Assigned
19 Names and Numbers) Göran Marby its
president, and CEO And John Doe's 1-15,

20 Defendants.
21

Case No. S-1100-CV-201700918

**DEFENDANTS' MOTION TO DISMISS
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS**

Oral Argument Requested

22
23
24
25
26

1 **MOTION**

2 Defendants, by and through counsel, hereby move to dismiss this action for lack of
3 personal jurisdiction and for failure to state a claim for which relief can be granted under
4 Arizona law. This motion is supported by the following memorandum of points and authorities,
5 the Declarations of Göran Marby and Akram Atallah, and the entire record in this matter.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Plaintiff George Kelly (“Plaintiff”) improperly seeks to have this Court exercise personal
9 jurisdiction over defendants Internet Corporation for Assigned Names and Numbers
10 (“ICANN”), a California non-profit public benefit corporation, and its President and Chief
11 Executive Officer, Göran Marby, a Swedish citizen who lives and works in Los Angeles
12 County, California pursuant to an O-1 nonimmigrant visa. Neither ICANN nor Mr. Marby,
13 however, have any meaningful contacts with Arizona that would render either of them subject to
14 suit in Arizona. Specifically, they do not maintain offices, facilities or any other presence in
15 Arizona, they do not have assets in Arizona, and they do not solicit business in Arizona. Indeed,
16 the evidence submitted by ICANN and Mr. Marby in connection with this motion establishes
17 that neither defendant has sufficient contacts with Arizona that would warrant their being haled
18 into court in this State. In addition, Plaintiff’s Complaint and Summons (“Complaint”), which
19 alleges “malfeasance,” “nonfeasance,” and “aiding and abetting,” fails to identify any
20 cognizable causes of action or factual bases for those claims, and therefore fails to state a claim
21 for which relief can be granted under Arizona law. For both of these separate and independent
22 reasons, Plaintiff’s entire Complaint should be dismissed with prejudice.

23 **II. BACKGROUND**

24 **A. ICANN.**

25 ICANN is a California non-profit public benefit corporation with its principle place of
26 business and headquarters in California. (Declaration of Akram Atallah (“Akram Decl.”) ¶ 2 .)

1 ICANN does not engage in commercial business, but rather oversees the technical coordination
2 of the Internet’s domain name system (“DNS”) on behalf of the Internet community. (*Id.*, ¶ 3.)
3 One essential function of the DNS is to convert numeric IP addresses into easily-remembered
4 domain names such as “azcourts.gov” and “ICANN.org.” (*Id.*)¹

5 ICANN fulfills its DNS coordination role in a number of ways. For example, ICANN
6 accredits the companies that act as “Registrars,” which are the companies that assist consumers
7 and businesses in obtaining the right to use individual, second-level domain names, such as such
8 as ebay.com or NPR.org. (*Id.*, ¶ 4.) But beyond monitoring Registrars’ compliance with
9 ICANN policies regarding the registration of second-level domain names, ICANN is not
10 involved in the actual registration or de-registration of, or disputes regarding, individual domain
11 names. (*Id.*, ¶ 4.)

12 ICANN has no office in Arizona. (*Id.*, ¶ 6.) It does not employ individuals to work in
13 Arizona, does sell anything in Arizona, and does not hold any licenses in Arizona. (*Id.*, ¶¶ 6-9.)
14 ICANN does not have any phone listings or mailing addresses in Arizona, does not have any
15 bank accounts in Arizona, and does not own any real property in Arizona. (*Id.*, ¶¶ 9, 12.)
16 Likewise, ICANN does not directly pay any taxes in Arizona. (*Id.*, ¶ 10.)

17 **B. Göran Marby.**

18 Mr. Marby is ICANN’s President and Chief Executive Officer. (Declaration of Göran
19 Marby (“Marby Decl.”) ¶ 1.) Mr. Marby is a Swedish citizen who resides in Los Angeles
20 County, California, where he works at ICANN’s office pursuant to an O-1 nonimmigrant visa.
21 (*Id.*, ¶ 2.) Like ICANN, Mr. Marby has no office in Arizona, does not employ individuals to
22

23 ¹ ICANN operates a few passive websites on the Internet that provide information
24 regarding its Internet coordination activities, as well as publicly available information about
25 domain name registrants, including the websites at <http://www.icann.org>, <http://www.iana.org>,
26 and <http://www.internic.net>. (Atallah Decl., ¶ 5.) The websites contain a wealth of information
about ICANN, about the people who work for ICANN and about the projects that ICANN has
undertaken in connection with the Internet. (*Id.*) ICANN, however, does not offer anything for
sale on its websites; in fact, ICANN does not sell anything. (*Id.*)

1 work in Arizona, does not sell anything in Arizona, does not hold any licenses or registrations to
2 do business in Arizona, does not have any phone listings, mailing addresses, or bank accounts in
3 Arizona, does not own any real property in Arizona, and does not directly pay any taxes in
4 Arizona. (*Id.*, ¶¶ 3-10.)

5 **C. Plaintiff’s Claims.**

6 Plaintiff’s Complaint alleges that ICANN and/or Mr. Marby committed “malfeasance”
7 and “nonfeasance,” as well as “aiding and abetting,” seemingly in connection with the loss of
8 several second-level domain names that Plaintiff alleges to have operated at one time.²
9 (Complaint at 1:20-2:55.)

10 Plaintiff first alleges that ICANN and/or Mr. Marby committed malfeasance by “electing
11 to adopt an ill-conceived policy without proper oversight to insure [sic] such policy was not
12 abused, then allowing another affiliated entity’s [sic] or person to abuse or misunderstand the
13 nature of that policy, and or any other policy, and then abusing the policy for un-intended use by
14 the contractor, or by it, ICANN, to conduct some sort of an un-natural act[.]” (*Id.*, 1:20-27.)
15 The Complaint, however, does not identify what policy is allegedly at issue, or how such policy
16 purportedly harmed Plaintiff.

17 Plaintiff next alleges that ICANN and/or Mr. Marby aided and abetted “in the
18 commission of an illegal crime, or some other negative event.” (*Id.*, 1:30-38.) The Complaint
19 does not name who ICANN aided or abetted, how such aiding and abetting took place, or what
20 crime or “negative event” occurred. Lastly, Plaintiff claims that ICANN and/or Mr. Marby
21 committed nonfeasance by “fail[ing] to act when it could,” (*Id.*, 40:1-2), but the Complaint does
22 not identify what ICANN and Mr. Marby should have done, when they should have acted, why
23 they should have acted or how failing to act caused harm to Plaintiff.

24 ² Although both ICANN and Mr. Marby are named as defendants in the Complaint, the
25 allegations within the complaint itself are made against “the corporation,” presumably referring
26 to ICANN, or “defendant” in the singular. It is therefore not clear from the Complaint which of
Plaintiff’s allegations, if any, are against Mr. Marby.

1 Plaintiff seeks \$49,990 in damages, as well as costs. (*Id.*, 3:100.) Plaintiff also requests
2 that ICANN and/or Mr. Marby be “directed to help and aid in any way in regaining plaintiff’s
3 legal property, and then to cause, to re-instate all of plaintiff’s domains...and then by it, and
4 cause somehow that the domains shall remain registered in that manner for life or at least twenty
5 five (25) years,” and “revisit its policies to correct any errors that may have been made.” (*Id.*,
6 103-110.) Yet Plaintiff does not identify a single domain name purportedly at issue, nor a single
7 policy that he asserted may need to be corrected.

8 **III. ARGUMENT**

9 **A. Plaintiff’s Claim Must Be Dismissed Because This Court Lacks Personal** 10 **Jurisdiction Over ICANN and Mr. Marby.**

11 Plaintiff’s Complaint fails to invoke any basis for the Court’s jurisdiction over ICANN or
12 Mr. Marby, which itself is cause for dismissal. Ariz. R. Civ. P. 8 (“A pleading that states a
13 claim for relief must contain...a short and plain statement of the grounds for the court’s
14 jurisdiction[.]”). Even if that omission was not fatal to the case (which it is), neither ICANN nor
15 Mr. Marby has the necessary “minimum contacts” with Arizona for this Court – or any court in
16 Arizona – to assert personal jurisdiction over them.

17 Under Arizona’s long-arm statute, Rule 4.2(a), Arizona courts may exercise personal
18 jurisdiction to the maximum extent allowed by the United States Constitution. Ariz. R. Civ. P.
19 4.2(a); *Planning Grp. of Scottsdale, LLC v. Lake Mathews Mineral Props., Ltd.*, 226 Ariz. 262,
20 266 (2011); *Hoag v. French*, 238 Ariz. 118, 122 (2015), *as amended* (Sept. 2, 2015), *review*
21 *denied* (Feb. 9, 2016). The Due Process Clause of the Fourteenth Amendment limits the
22 exercise of personal jurisdiction by state courts over non-resident defendants. *Planning Group*
23 *of Scottsdale, LLC*, 226 Ariz. at 266. “A state court may exercise personal jurisdiction over a
24 [non-resident defendant] only if that defendant has ‘sufficient contacts’ with the forum state
25 ‘such that the maintenance of the suit does not offend ‘traditional notions of fair play and
26 substantial justice.’” *Id.*, quoting *Int’l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945).

1 Personal jurisdiction is divided into two types: general jurisdiction and specific
2 jurisdiction. *Williams v. Lakeview Co.*, 199 Ariz. 1, 3 (2000); *Hoag*, 238 Ariz. at 122. Under
3 either specific or general jurisdiction, “the constitutional touchstone remains whether the
4 defendant purposefully established ‘minimum contacts’ in the forum State.” *Williams*, 199
5 Ariz. at 3. The “minimum contacts” test also applies to natural persons. *Planning Grp. of*
6 *Scottsdale, L.L.C.*, 226 Ariz. at 266. Plaintiff has the burden of establishing the existence of
7 personal jurisdiction, which he has failed to, and cannot, carry. *Macpherson v. Taglione*, 158
8 Ariz. 309, 311-12 (1988).

9 **1. There is no general jurisdiction over ICANN or Mr. Marby in Arizona.**

10 A non-resident defendant is subject to general jurisdiction “when the defendant’s
11 contacts with the forum state are substantial or continuous and systematic enough that the
12 defendant may be haled into court in the forum, even for claims unrelated to the defendant’s
13 contacts with the forum.” *Williams*, 199 Ariz. at 3 (stating that “[t]he level of contact required
14 to show general jurisdiction is quite high.”). Here, ICANN and Mr. Marby do not have
15 sufficient contacts with Arizona to support general jurisdiction.

16 Neither ICANN nor Mr. Marby has offices or employs any individual in Arizona, nor is
17 licensed or registered to do business in Arizona. (Atallah Decl. ¶¶ 6-8; Marby Decl. ¶¶ 3-5.)
18 Neither has a registered agent for service of process in Arizona, pays direct taxes in Arizona, or
19 has a phone number or mailing address in Arizona. (Atallah Decl. ¶¶ 9-11; Marby Decl. ¶¶ 6-
20 8.) Neither holds any bank accounts nor owns any real property in Arizona. (Atallah Decl. ¶¶
21 12, 13; Marby Decl. ¶¶ 9, 10.) In fact, Plaintiff has not presented any evidence that either
22 ICANN or Mr. Marby has any contacts with Arizona, much less continuous and systematic
23 contacts that are sufficient to impose general personal jurisdiction over them.

24 **2. There is no specific jurisdiction over ICANN or Mr. Marby in Arizona.**

25 When a defendant’s activities in the forum state are not so pervasive as to subject it to
26 general jurisdiction, the court may still find specific jurisdiction if: (1) the defendant

1 purposefully avails itself of the privilege of conducting business in the forum; (2) the claim
2 arises out of or relates to the defendant's contact with the forum; and (3) the exercise of
3 jurisdiction is reasonable. *Williams* 199 Ariz. at 3; *Batton v. Tennessee Farmers Mut. Ins. Co.*,
4 153 Ariz. 268, 271, (1987) ("When specific jurisdiction is at issue, the minimum-contacts
5 inquiry focuses on the relationship between the defendant, the forum, and the litigation.").
6 Here, Plaintiff has not established (because he cannot) a single element of the test for specific
7 jurisdiction.

8 ICANN and Mr. Marby cannot be deemed to have "purposefully availed [themselves] of
9 the privilege of conducting business" in Arizona, because neither have conducted business in
10 Arizona, nor have any meaningful contacts in or with Arizona at all. (Atallah Decl. ¶¶ 5-13;
11 Marby Decl. ¶¶ 3-10.) Nor is there any allegation in the Complaint even suggesting that the
12 basis of Plaintiff's allegations arise from activities conducted by ICANN or Mr. Marby within
13 Arizona. To the extent Plaintiff even mentions "actions" ICANN or Mr. Marby allegedly took
14 to cause him harm, he references the enactment of (unnamed) policies. Because ICANN's
15 headquarters and other offices are outside of Arizona and Mr. Marby works and resides outside
16 of Arizona, any activity relating to ICANN's enactment of a policy would not have occurred in
17 Arizona. Moreover, ICANN is not involved in the registration or de-registration of, or disputes
18 regarding, individual domain names (Atallah Decl. ¶ 4), which appears to be the basis of
19 Plaintiff's claims. Given this, Plaintiff certainly cannot establish that the exercise of specific
20 jurisdiction over either ICANN or Mr. Marby in this case would be reasonable.

21 At bottom, Plaintiff has failed to allege any facts suggesting that jurisdiction over either
22 ICANN or Mr. Marby is proper in Arizona. Moreover, the evidence provided by ICANN and
23 Mr. Marby with this motion demonstrates that sufficient Arizona contacts do not exist and that
24 personal jurisdiction over either defendant in Arizona is inconsistent with "traditional notions of
25 fair play and substantial justice." *Hoag*, 238 Ariz. at 122. The fact that Plaintiff alleges that he
26 resides in Arizona, and so presumably allegedly suffered harm in Arizona, is insufficient.

1 *Cohen v. Barnhard Vogler & Co.*, 199 Ariz. 16, 19 (App. 2000) (“When the only nexus with the
2 forum state is the effect of a damage-causing event, the requisite minimum contacts [that are
3 required, under the Due Process Clause, for personal jurisdiction,] generally do not exist.”).
4 Plaintiff’s Complaint against ICANN and Mr. Marby must therefore be dismissed for lack of
5 personal jurisdiction.³

6 **B. Plaintiff’s Claim Must Be Dismissed For Failure To State A Claim.**

7 Arizona courts assess the sufficiency of a claim under Rule 8 of Arizona’s Rules of Civil
8 Procedure, which requires that a pleading contain a “short and plain statement of the claim
9 showing that the pleader is entitled to relief.” Ariz. R. Civ. P. 8(a)(2); *Cullen v. Auto-Owners*
10 *Ins. Co.*, 218 Ariz. 417, 419 (2008), *citing Mackey v. Spangler*, 81 Ariz. 113, 115 (1956).
11 Arizona follows a notice pleading standard, the purpose of which is to give a defendant “fair
12 notice of the nature and basis of the claim and indicate generally the type of litigation involved.”
13 *Id.* If a pleading does not comply with Rule 8, an opposing party may move to dismiss the
14 action for failure to state a claim upon which relief can be granted. *Id.*; Ariz. R. Civ. P.
15 12(b)(6).

16 When adjudicating a Rule 12(b)(6) motion to dismiss, Arizona courts look only to the
17 pleading itself and consider the well-pled factual allegations contained therein. *Id.*; *Dressler v.*
18 *Morrison*, 212 Ariz. 279, 281 (2006); *Long v. Ariz. Portland Cement Co.*, 89 Ariz. 366, 367–68

19 ³ Similarly, ICANN and Mr. Marby are not subject to personal jurisdiction in Arizona by
20 maintaining passive Internet websites that do little more than make information available to
21 citizens of Arizona, along with the rest of the world. (Atallah Decl., ¶ 5). *See Pebble Beach Co.*
22 *v. Caddy*, 453 F.3d 1151, 1158 (9th Cir. 2006) (an internet domain name and passive website
23 alone are not enough to subject a party to jurisdiction); *ThermoLife Int’l, LLC v. DNP Int’l, Co.*,
24 No. CV-12-02105-PHX-NVW, 2013 WL 12202657, at *2 (D. Ariz. Mar. 6, 2013) (passive
25 websites, “on which a defendant simply posts information that is accessible to users broadly,
26 including users in the forum state... do not generally justify the exercise of personal jurisdiction
when a defendant does not have other forum contacts.”); *BBK Tobacco & Foods LLP v. Juicy*
eJuice, No. CV-13-00070-PHX-GMS, 2014 WL 1686842, at *7 (D. Ariz. Apr. 29, 2014) (“...
a passive website cannot support personal jurisdiction.”). *See also Economic Sols., Inc. v.*
Internet Corp. for Assigned Names & Numbers, No. 4:00CV1785-DJS, 2001 U.S. Dist. LEXIS
25449, at *7 (E.D. Mo. Feb. 22, 2001) (ruling that ICANN’s website “does not constitute
purposeful contact with Missouri or any particular location.”).

1 (1961). Because Arizona courts evaluate only a complaint’s well-pled facts, mere conclusory
2 statements are insufficient to state a claim upon which relief can be granted. *Cullen*, 218 Ariz at
3 419. While inclusion of conclusory statements might not automatically invalidate a complaint,
4 if a complaint states only legal conclusions without any supporting factual allegations, it cannot
5 satisfy Arizona’s notice pleading standard under Rule 8. *Id.*

6 No claim in Plaintiff’s Complaint survives under Arizona pleading standards. Putting
7 aside whether Plaintiff’s claims for malfeasance and nonfeasance are viable stand alone civil
8 causes of action, Plaintiff fails to provide any factual basis for the assertion of those claims.
9 Plaintiff vaguely references the enactment of policies without stating what those policies are,
10 what they do, or how they may have harmed Plaintiff. Plaintiff notes that he has lost “certain
11 domains” but fails to identify the domains, or state how or when he lost them – or how the loss
12 was connected to any specific action by either ICANN or Mr. Marby. He accuses one or both of
13 them of aiding and abetting a crime or “negative event,” without stating what that crime or event
14 was, or – again – how the crime or event harmed Plaintiff.

15 Plaintiff’s Complaint is utterly devoid of any information that would give ICANN and
16 Mr. Marby “fair notice of the nature and basis of the claim and indicate generally the type of
17 litigation involved.” Plaintiff has thus failed to state a claim upon which relief can be granted
18 under Rule 12(b)(6), and his Complaint should be dismissed with prejudice. *McHenry v. Renne*,
19 84 F.3d 1172, 1177 (9th Cir. 1996) (affirming dismissal with prejudice of amended complaint
20 that did not comply with Rule 8).

21 **IV. CONCLUSION**

22 As explained above, the Complaint should be dismissed for two separate and independent
23 reasons – lack of personal jurisdiction over either ICANN or Mr. Marby, and failure to state a
24 claim against either defendant. ICANN and Mr. Marby therefore respectfully request that the
25 Court dismiss Plaintiff’s Complaint in its entirety and with prejudice.

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 19th day of July 2017.

DESSAULES LAW GROUP

By: /s/ Jonathan A. Dessaules
Jonathan A. Dessaules
F. Robert Connelly
*Attorneys for Defendants Internet Corporation
for Assigned Names and Numbers and Göran
Marby*

1 ORIGINAL filed and COPY of the foregoing
2 Mailed/e-mailed this 19th day of July, 2017 to:

3 George Kelly
4 Contact Information Redacted

5
6 *Plaintiff Pro Per*

7 /s/ Victoria Saint Amour

8

9

10

11

12

13

14

15

16

17

18 NAI-1502870421

19

20

21

22

23

24

25

26