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12 IN THE SUPERIOR COURT OF ARIZONA
13 COUNTY OF PINAL

14 George Kelly and George Kelly as
15 slingfantasy.com, slingfantasy.net,
securesitel0.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' REPLY IN SUPPORT OF
MOTION TO DISMISS**

Oral Argument Requested

1 **I. INTRODUCTION**

2 Not only has Plaintiff George Kelly (“Plaintiff”) failed to allege a *prima facie* case for
3 personal jurisdiction over defendants the Internet Corporation for Assigned Names and
4 Numbers (“ICANN”) and its President and Chief Executive Officer, Göran Marby, but the
5 evidence submitted with their motion to dismiss (“Motion”) establishes that personal
6 jurisdiction over ICANN and Mr. Marby does not exist in Arizona. Nothing in Plaintiff’s
7 opposition to the Motion (“Opposition”) changes this conclusion. Indeed, Plaintiff offers no
8 basis on which this Court could exercise personal jurisdiction over ICANN or Mr. Marby. Nor
9 has Plaintiff offered any allegation, argument, case law or evidence to rebut ICANN’s and Mr.
10 Marby’s arguments that the Complaint fails to state a claim upon which relief may be granted.
11 For both of these separate and independent reasons, Plaintiff’s Complaint should be dismissed
12 with prejudice.¹

13 **II. ARGUMENT**

14 **A. Plaintiff Has Not Established a Basis for Jurisdiction Over ICANN or Mr.**
15 **Marby.**

16 “When a defendant challenges the existence of personal jurisdiction, the plaintiff must
17 come forward with facts establishing a *prima facie* showing of jurisdiction.” *In re Marriage of*
18 *Peck*, 242 Ariz. 345, 397 P.3d 734, 737 (App. 2017). That showing must be supported by
19 “facts, established by affidavit or otherwise”; “bare allegations” are insufficient. *Id.* Plaintiff
20 has failed to meet this burden in responding to the Motion.

21 Although Plaintiff concedes that ICANN “may not have any physical presence in this
22 jurisdiction” (Opposition at 2:41), Plaintiff asserts that jurisdiction is proper because ICANN

23 ¹ Plaintiff filed another lawsuit in Pinal County, Arizona, against Namecheap, Inc. and
24 Namecheap.com (“Namecheap”), alleging violations of a Domain Registration Agreement.
25 *Kelly v. Namecheap et al*, Case No. J-1108-cv-20161012 (2016). Namecheap moved to dismiss
26 based on a contract between the parties requiring that all disputes be adjudicated in California,
and the presiding judge, Hon. Lyle D. Riggs, dismissed the case on January 23, 2017. Plaintiff
then filed a lawsuit against Judge Riggs claiming the dismissal was wrongful. *Kelly v. Riggs*,
Case No. 01700609 (March 17, 2017).

1 has a contractual relationship with GoDaddy, a domain name registrar headquartered in
2 Scottsdale, Arizona, and because ICANN charges a fee for “some of its services in the State of
3 Arizona, for the benefit of itself, and other entities in Arizona and therefore has a presence of
4 some kind within this jurisdiction.” (Opposition at 2:64-66.) But these unsupported assertions
5 regarding a “presence of some kind” in Arizona cannot establish either general or specific
6 personal jurisdiction over ICANN or Mr. Marby.

7 First, a single contract between ICANN and a single forum resident is not the type of
8 “substantial or continuous” and “systematic” contact that gives rise to general personal
9 jurisdiction over ICANN or Mr. Marby. *Williams v. Lakeview Co.*, 199 Ariz. 1, 3 (2000) (“The
10 level of contact required to show general jurisdiction is quite high,” requiring “substantial or
11 continuous” contact that is “systematic.”); *ThermoLife Int’l, LLC v. DNP Int’l, Co.*, No. CV-12-
12 02105, 2013 WL 1220265, at *4-7 (D. Ariz. Mar. 6, 2013) (contractual relationships with and
13 shipments to entities in the forum state did not support the exercise of jurisdiction). Likewise, a
14 sole contractual relationship between ICANN and a single Arizona resident does not support
15 specific personal jurisdiction because the relationship does not constitute sufficient minimum
16 contacts between either ICANN or Mr. Marby and Arizona. Indeed, as the United States
17 Supreme Court has stated: “If the question is whether an individual’s contract with an out-of-
18 state party *alone* can automatically establish sufficient minimum contacts in the other party’s
19 home forum, we believe the answer clearly is that it cannot.” *Burger King Corp. v. Rudzewicz*,
20 471 U.S. 462, 478 (1985). Moreover, the contract with GoDaddy is not sufficient to maintain
21 specific personal jurisdiction because Plaintiff’s claims do not arise out of the contract. Further,
22 jurisdiction over ICANN and Mr. Marby would be unreasonable. *Williams*, 199 Ariz. at 3
23 (ruling that, in addition to sufficient minimum contacts, specific personal jurisdiction requires a
24 showing that the plaintiff’s claim arises out of or relates to the defendant’s contact with the
25 forum and that the exercise of jurisdiction is reasonable); *In re Marriage of Peck*, 242 Ariz. at
26

1 397 (“If the petitioner’s claim and the non-resident defendant’s forum-related activities are not
2 sufficiently connected, dismissal is warranted.”).

3 Second, Plaintiff cannot support jurisdiction in Arizona merely by claiming that ICANN
4 provides unspecified “services” and charges unspecified “fees” in Arizona. To be clear,
5 Plaintiff offers no facts or evidence supporting his claim that ICANN provides Arizona Internet
6 domain name holders, such as Plaintiff, direct services or that ICANN directly charges Arizona
7 Internet domain name holders, such as Plaintiff, any sort of fee. *In re Marriage of Peck*, 242
8 Ariz. at 397 (allegations of personal jurisdiction must be supported by “facts, established by
9 affidavit or otherwise”; “bare allegations” are insufficient.). Nor could he, because ICANN
10 does not directly contract with or directly charge fees to individual Internet domain name
11 holders anywhere in the world, much less Arizona. Moreover, even if ICANN did, ICANN’s
12 mere receipt of payments from an Arizona resident is not purposeful availment sufficient to
13 support personal jurisdiction in Arizona over ICANN or its President and CEO. *ThermoLife*
14 *Int’l, LLC*, at *4 (contractual relationship, including payments from Arizona resident to the
15 defendant, did not establish minimum contacts to support jurisdiction).

16 Finally, Plaintiff seems to argue that jurisdiction in Arizona is proper because the alleged
17 wrongful acts “ha[ve] affected plaintiff in this jurisdiction.” (Opposition at 3:85.) However, a
18 claim that the alleged harm occurred in Arizona does not establish either general or specific
19 personal jurisdiction in Arizona. Arizona courts have repeatedly reinforced this principle.
20 *Cohen v. Barnhard Vogler & Co.*, 199 Ariz. 16, 19 (App. 2000) (“When the only nexus with the
21 forum state is the effect of a damage-causing event, the requisite minimum contacts generally do
22 not exist.”); *Pebble Beach Co.*, 453 F.3d at 1158 (“there can be no doubt that we still require
23 ‘something more’ than just a foreseeable effect to conclude that personal jurisdiction is proper”).
24
25
26

1 Plaintiff has not made a *prima facie* showing that general or specific personal jurisdiction
2 over ICANN or Mr. Marby is proper in Arizona.² Perhaps more importantly, Plaintiff’s
3 Opposition in no way rebuts the evidence submitted by ICANN and Mr. Marby with their
4 Motion establishing that they do not have contacts with Arizona sufficient to support personal
5 jurisdiction over them in Arizona. (Motion at 6-8; Atallah Decl. ¶¶ 6-13; Marby Decl. ¶¶ 3-10.).
6 Accordingly, Plaintiff’s Complaint must be dismissed as to ICANN and Mr. Marby for a lack of
7 personal jurisdiction.

8 **B. Plaintiff’s Complaint Fails To State A Claim For Relief.**

9 “Arizona courts look *only* to the pleading itself” when adjudicating a Rule 12(b)(6)
10 motion to dismiss, in order to determine whether the complaint gives “fair notice of the nature
11 and basis of the claim and indicate[s] generally the type of litigation involved.” *Cullen v. Auto-*
12 *Owners Ins. Co.*, 218 Ariz. 417, 419 (2008) (emphasis added) (quoting *Mackey v. Spangler*, 81
13 Ariz. 113, 115 (1956)). Put simply, Plaintiff’s Complaint fails to provide ICANN and Mr.
14 Marby with fair notice of the nature and basis of Plaintiff’s claims, as set forth in the Motion.

15 While Plaintiff’s Opposition attempts to offer some semblance of an explanation of his
16 claims, Plaintiff’s Complaint nevertheless fails to state a claim against ICANN and Mr. Marby.
17 For example, Plaintiff asserts in his Opposition that ICANN “put into effect a flawed WHOIS

18 ² Plaintiff also seems to argue that jurisdiction in Arizona is proper because ICANN
19 maintains a website that makes information about ICANN – as well as an ICANN complaint
20 form utilized by Plaintiff – available to Arizona residents along with the rest of the world.
21 (Opposition at 2:50-51.) But as set forth in the Motion (Motion at 8, FN 3), arguments that
22 personal jurisdiction is appropriate in all jurisdictions where a defendant’s website is available
23 to the public have been repeatedly rejected. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1158
24 (9th Cir. 2006) (an internet domain name and passive website alone are not enough to subject a
25 party to jurisdiction); *ThermoLife Int’l*, 2013 WL 12202657, at *2 (passive websites, “on which
26 a defendant simply posts information that is accessible to users broadly, 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.”); *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”). Plaintiff’s claim that ICANN’s website subjects it to jurisdiction in
all forums in which the website is accessible should also be rejected by this Court.

1 policy, . . . then gave Namecheap, a [domain name] registrant, under the influence of defendant,
2 and others an excuse to use it, . . . illicitly and for bad purposes of misappropriation and or
3 theft.” (Opposition at 5:171-74.) These assertions are not only vague and conclusory, they are
4 unsupported by evidence and they fail to give ICANN and Mr. Marby notice of: (1) what
5 domains Plaintiff alleges that he has lost; (2) when he lost them; (3) how the loss was connected
6 to the WHOIS policy; (4) how the WHOIS policy was misused or abused; and (5) how the loss
7 was caused by any specific action or inaction by ICANN or Mr. Marby. Moreover, Plaintiff’s
8 assertion that ICANN and Mr. Marby “hav[e] been notified at least three times of [P]laintiff[’]s
9 concerns and [are] fully aware of the nature of the complaint” (Opposition at 4:131-32) bears no
10 connection to the Court’s analysis of whether the Complaint is well-pleaded. *See Cullen*, 218
11 Ariz. at 419 (the Court looks only to the pleading itself to determine whether the Complaint fails
12 to state a claim). Finally, Plaintiff’s Complaint and his Opposition simply fail to identify any
13 law, statute or regulation allegedly violated that would support Plaintiff’s claims for
14 “malfeasance,” “nonfeasance,” and “conspiracy.”

15 Plaintiff’s Opposition fails to address ICANN and Mr. Marby’s arguments that the
16 Complaint does not give “fair notice of the nature and basis of the claim.” Nor do the assertions
17 raised for the first time in Plaintiff’s Opposition save his Complaint. Accordingly, Plaintiff’s
18 Complaint fails to state a claim upon which relief can be granted under Rule 12(b)(6), and
19 should be dismissed with prejudice.

20 **III. CONCLUSION**

21 This Court lacks personal jurisdiction over ICANN and Mr. Marby and Plaintiff’s
22 Complaint does not state a cause of action against ICANN or Mr. Marby. Plaintiff’s Opposition
23 does not address ICANN’s and Mr. Marby’s arguments for dismissal. The assertions offered in
24 Plaintiff’s Opposition are procedurally improper and substantively insufficient to save the
25 Complaint. ICANN and Mr. Marby therefore respectfully request that the Court dismiss
26 Plaintiff’s Complaint in its entirety and with prejudice.

1 DATED this 8th day of August 2017.

2 DESSAULES LAW GROUP

3
4 By: 

5 Jonathan A. Dessaules

6 F. Robert Connelly

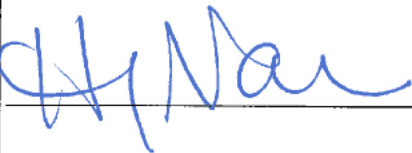
7 *Attorneys for Defendants Internet Corporation
for Assigned Names and Numbers and Göran
Marby*

8 COPY of the foregoing mailed and e-mailed
9 this 8th day of August, 2017 to:

10 George Kelly

11 Contact Information Redacted

12
13 *Plaintiff Pro Per*

14 
15 _____