

1 Eric P. Enson (*pro hac vice* pending)  
Amanda Pushinsky (*pro hac vice* pending)  
2 **JONES DAY**  
555 South Flower Street, 50<sup>th</sup> 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 16<sup>th</sup> Street, Suite 110  
8 Phoenix, Arizona 85016  
Tel. 602.274.5400  
9 Fax 602.274.5401  
jdessaules@dessaulleslaw.com  
10 rconnelly@dessaulleslaw.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' 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.<sup>1</sup>

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 <sup>1</sup> 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”).

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.<sup>2</sup> 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 <sup>2</sup> 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.”

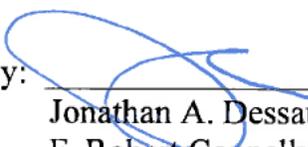
15 Plaintiff’s Opposition fails to address ICANN and Mr. Marby’s arguments that the  
16 Complaint does not give “fair notice of the nature and basis of the claim.” Nor do the assertions  
17 raised for the first time in Plaintiff’s Opposition save his Complaint. Accordingly, Plaintiff’s  
18 Complaint 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*

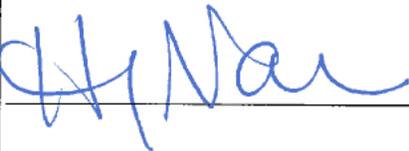
*Marby*

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

10 George Kelly

11 Contact Information Redacted

12  
13 *Plaintiff Pro Per*

14   
15 \_\_\_\_\_