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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF ARIZONA**

8 Gordon Hayes, dba Katz Global Media and )  
The Phoenix Dollar, )  
9 Plaintiff(s), )  
10 v. )  
11 Brenda Bevil and James Bevil, )  
12 dba CattyShaq.com )  
13 Defendant(s). )  
14 \_\_\_\_\_ )

CV 05-465 TUC DCB

**ORDER**

15 Pending before this Court is Defendants' Motion to Strike Plaintiff's Claims Pursuant  
16 to Louisiana Anti-SLAPP Statute, or in the alternative, Motion to Dismiss for Failure to State  
17 a Claim or Lack of Personal Jurisdiction. This Court determines that it does not have  
18 personal jurisdiction over Defendants and dismisses Plaintiff's suit on that basis alone.

19 **I. INTRODUCTION**

20 Plaintiff Gordon Hayes is an Arizona resident doing business as Katz Global Media  
21 and The Phoenix Dollar. Plaintiff provides private anonymous website hosting and domain  
22 names internationally in eight countries, including the United States. (Plaintiff's Affidavit at  
23 ¶ 4) Plaintiff also sells silver-backed "digital currency" on the internet. (*Id.* at ¶¶ 6-7) Prior  
24 to the inception of this lawsuit, neither Katz Global Media nor The Phoenix Dollar were  
25 incorporated or registered as a limited liability company under the laws of Arizona. (*Id.* at  
26 ¶¶ 1, 8) Plaintiff was, however, doing business in Arizona as both Katz and The Phoenix  
27 Dollar. (*Id.*)

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1 Defendants, husband and wife, are residents of Louisiana who own and operate a  
2 website known as Cattyshaq.com. (Defendant Brenda Bevil's Affidavit at ¶¶ 1, 21)<sup>1</sup>  
3 Cattyshaq.com is an online forum, dedicated to "open discussion of online scams," set up for  
4 the public to post information regarding suspected online scams. (*Id.* at ¶1; Plaintiff's Exhibit  
5 A) Anyone who visits the website can obtain that information or post one's own information.  
6 The website does not sell or promote a service and there is no commercial conduct initiated  
7 on its behalf.

8 At all times relevant to this case, Cattyshaq.com had a section of its forum dedicated  
9 to Plaintiff and his enterprises, including Katz and The Phoenix Dollar. In that section,  
10 Defendant Brenda Bevil, as well as numerous individuals from across the globe (including  
11 Canada, New Zealand, the United Kingdom, and Mexico), posted discussions critical of  
12 Plaintiff and his businesses. Plaintiff periodically participated in the discussions himself.

13 In addition to allegedly defamatory remarks, participants in the Hayes/Katz/Phoenix  
14 Dollar discussions posted publicly-available information regarding Plaintiff's home address  
15 in Tucson, Arizona, as well as publicly-available information regarding Plaintiff's companies.  
16 (Plaintiff's Exhibit L) Threats of physical harm to Plaintiff were also posted. (Plaintiff's  
17 Exhibit K)

18 It is undisputed that Defendants do not conduct any business in Arizona and do not  
19 own any assets in Arizona. (Defendant Brenda Bevil's Affidavit at ¶ 22; Defendant James  
20 Bevil's Affidavit at ¶ 3) There are no allegations that either Defendant has ever been to  
21 Arizona.

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24 <sup>1</sup> Defendants claim that Defendant James Bevil neither owns nor operates  
25 Cattyshaq.com and has no involvement in the postings on the site. (Defendant Brenda Bevil's  
26 Affidavit at ¶ 21; Defendant James Bevil's Affidavit at ¶ 2) At this stage of the proceedings, however,  
27 factual disputes are resolved in Plaintiff's favor. *Harris Rutsky & Co. Insurance Services, Inc. v.*  
28 *Bell & Clements Limited*, 328 F.3d 1122, 1129 (9th Cir. 2003). Therefore, for the purposes of  
determining this Court's personal jurisdiction, it is assumed that both Defendants own and operate  
Cattyshaq.com.

1 **II. DISCUSSION**

2 **A. Standard**

3 Defendants move for dismissal for lack of personal jurisdiction, pursuant to Rule  
4 12(b)(2), Fed.R.Civ.P. As such, it is Plaintiff's burden to establish this Court's personal  
5 jurisdiction over Defendants. *Harris Rutsky & Co. Insurance Services, Inc. v. Bell &*  
6 *Clements Limited*, 328 F.3d 1122, 1128-29 (9th Cir. 2003). In cases such as this, where the  
7 district court acts on a motion to dismiss without holding an evidentiary hearing, Plaintiff  
8 "need only demonstrate facts that if true would support jurisdiction over [Defendants]." *Id.*  
9 at 1129 (citation and internal quotation marks omitted).

10 Unless directly contradicted, Plaintiff's version of the facts is taken as true. *Id.*  
11 "[C]onflicts between the facts contained in the parties' affidavits must be resolved in  
12 [Plaintiff's] favor for purposes of deciding whether a prima facie case for personal  
13 jurisdiction exists." *Id.* (citation and internal quotation marks omitted). Additionally, any  
14 evidentiary materials submitted on the motion to dismiss are construed in the light most  
15 favorable to Plaintiff and all doubts are resolved in his favor. *Ochoa v. J.B. Martin and Sons*  
16 *Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir. 2002).

17 **B. Specific Jurisdiction**

18 While this Court may have personal jurisdiction over Defendants through either  
19 general or specific jurisdiction, Plaintiff concedes that general jurisdiction does not exist in  
20 this case. (Plaintiff's Response at 14) Therefore, this Court's analysis will be limited to the  
21 question of specific jurisdiction.

22 "Where, as here, there is no applicable federal statute governing personal jurisdiction,  
23 the law of the state in which the district court sits applies." *Harris Rutsky*, 328 F.3d at 1129.  
24 Arizona's long-arm rule allows courts to exercise personal jurisdiction over defendants to the  
25 extent allowed by the due process clause of the United States Constitution. Rule 4(e)(2),  
26 Ariz.R.Civ.P.; *see also Ochoa*, 287 F.3d at 1188. Accordingly, this Court "need only  
27 determine whether personal jurisdiction in this case would meet the requirements of due  
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1 process." *Harris Rutsky*, 328 F.3d at 1129 (citation and internal quotation marks omitted).  
2 Whether the exercise of personal jurisdiction comports with the due process requirements  
3 of the Fourteenth Amendment is a question of federal law. *Data Disc, Inc. v. Systems Tech.*  
4 *Assoc. Inc.*, 557 F.2d 1280, 1286-87 n.3 (9<sup>th</sup> Cir. 1977).

5 Due process requires "that in order to subject a defendant to a judgment *in personam*,  
6 if he be not present within the territory of the forum, he have certain minimum contacts with  
7 it such that the maintenance of the suit does not offend 'traditional notions of fair play and  
8 substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The  
9 Ninth Circuit employs a three-prong test to determine whether a court may exercise specific  
10 jurisdiction over a defendant:

11 (1) the nonresident defendant must do some act or consummate some  
12 transaction with the forum state or perform some act by which it purposefully  
13 avails itself of the privilege of conducting activities in the forum state, thereby  
14 invoking the benefits and protections of its laws; (2) the claim must arise out  
15 of or result from the defendant's forum-related activity; and/or ... (3) the  
16 exercise of personal jurisdiction must be reasonable.

17 *Ochoa*, 287 F.3d at 1188 (footnote omitted).

18 The purposeful availment prong requires "a qualitative analysis of the defendant's  
19 contact with the forum state," so as to determine whether Defendants' conduct and  
20 connection to Arizona are such that Defendants "should reasonably anticipate being haled  
21 into court there." *Id.* at 1130 (citations and internal quotation marks omitted). Defendants  
22 purposefully availed themselves of the privilege of conducting activities in Arizona if they  
23 "performed some kind of affirmative conduct which allows or promotes the transaction of  
24 business within the forum state." *Id.* (citation and internal quotation marks omitted).

25 It cannot be said that by merely operating a website on which individuals posted  
26 allegedly defamatory information, which was accessible to residents of Arizona, Defendants  
27 purposefully availed themselves of Arizona law. In the Ninth Circuit, the mere posting of  
28 information on an otherwise passive website is insufficient to subject a party to personal  
jurisdiction. *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9<sup>th</sup> Cir. 1997). Rather, in  
the Ninth Circuit, "the likelihood that personal jurisdiction can be constitutionally exercised

1 is directly proportionate to the nature and quality of commercial activity that an entity  
2 conducts over the Internet." *Id.* at 419 (*quoting Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952  
3 F.Supp. 1119, 1124 (W.D.Pa. 1997)).

4 The website, Cattyshaq.com, is passive.

5 It is set up for the public to post information regarding certain companies and  
6 anyone who visits the website can obtain that information or post one's own  
7 message. There is no service being sold or promoted and no affirmative  
8 commercial conduct initiated on behalf of the website.  
9 *Medinah Mining, Inc. v. Amunategui*, 237 F.Supp.2d 1132, 1135 (D. Nev. 2002).

10 Thus, Defendants merely operate a website that is accessible, and is in fact accessed,  
11 from anywhere in the world. Without more, Defendants cannot be said to have purposefully  
12 availed themselves of Arizona law. *See Cybersell*, 130 F.3d at 419. Nevertheless, while  
13 Defendants' website itself is passive, this Court must still determine whether Defendants'  
14 allegedly tortious activity thereon can also be considered passive. *Medinah Mining*, 237  
15 F.Supp.2d at 1135.

16 Plaintiff accuses Defendants of posting, and allowing others to post, allegedly  
17 defamatory information regarding Plaintiff on the Cattyshaq.com website. Plaintiff generally  
18 alleges that the allegedly defamatory remarks damaged Plaintiff and his enterprises. Again,  
19 however, the Ninth Circuit held in *Cybersell* that "something more" is required to show  
20 purposeful availment than merely posting information on a website. *Cybersell*, 130 F.3d at  
21 418. That "something more" is absent from this case.

22 There is no evidence that Defendants deliberately directed their activities toward  
23 Arizona residents. Defendants did nothing to encourage people in Arizona to access  
24 Cattyshaq.com. *Id.* at 419. There is no evidence that any Arizonan other than Plaintiff, or his  
25 attorney "Scott Morgan,"<sup>2</sup> accessed Defendants' web site. *Id.* Defendants did not enter into  
26 any contracts in Arizona, made no sales in Arizona, received no telephone calls from Arizona  
27 (except from Plaintiff himself), and earned no income from Arizona. *Id.* The only message

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28 <sup>2</sup> Apparently, Gordon Hayes and Scott Morgan are the same person. (Defendant Brenda  
Bevil's Affidavit at ¶ 14)

1 Defendants received over the Internet that could have possibly come from Arizona was from  
2 Plaintiff.<sup>3</sup> *Id.* There is no evidence that Defendants had any contact with Arizona other than  
3 the postings on their web site, which could be accessed by anyone. *See Medinah Mining*, 237  
4 F.Supp.2d at 1136. There is no evidence to suggest that Defendants reached out to Arizona  
5 any more than to persons residing elsewhere. *See id.*

6 In the absence of "something more," Defendants did not purposefully avail themselves  
7 of Arizona law and subject them to personal jurisdiction.

### 8 C. The Effects Test

9 In cases where intentional torts are alleged, including cases involving the Internet,  
10 parties may also be subject to personal jurisdiction under the "effects test" of *Calder v.*  
11 *Jones*, 465 U.S. 783, 789-90 (1984). The effects test is another means by which to determine  
12 if there has been sufficient purposeful availment by a party to warrant personal jurisdiction.  
13 *Id.* To satisfy the effects test, "the defendant must have (1) committed an intentional act,  
14 which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which  
15 is suffered and which the defendant knows is likely to be suffered in the forum state."  
16 *Bancroft & Masters, Inc. v. Augusta National, Inc.*, 223 F.3d 1082, 1087 (9<sup>th</sup> Cir. 2000).

17 In the present case, the first prong of the effects test is satisfied since Plaintiff alleges  
18 that Defendants published defamatory statements on their website. Defamation, of course,  
19 is an intentional tort. The effects test is not, however, satisfied merely by "a foreign act with  
20 foreseeable effects in the forum state." *Id.* "Something more" is required. *Id.* That "something  
21 more" is the second prong of the effects test.

22 In *Bancroft*, the Ninth Circuit concluded that "something more" is what the Supreme  
23 Court in *Calder* described as "express aiming" at the forum state. *Id.* The requirement of

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25 <sup>3</sup> This Court uses "possibly" because it is not at all clear that Plaintiff was in Arizona  
26 when he participated in the discussions on Cattyshaq.com. For instance, in one post, Plaintiff  
27 explained that he was in the United States "right now ... doing some work." (Defendants' Attachment  
28 1, Post 155) The clear implication was that Plaintiff was only temporarily in the U.S. Notably,  
Plaintiff did not say that he was in Arizona.

1 "express aiming" is satisfied when "the defendant is alleged to have engaged in wrongful  
2 conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum." *Id.*  
3 In other words, "express aiming" is wrongful conduct which individually targets a known  
4 forum resident. *Id.*

5 Plaintiff points to the posting of his publicly-available Arizona address on  
6 Cattyshaq.com as evidence that Defendants' wrongful conduct individually targeted Plaintiff  
7 as an Arizona resident. The mere fact, however, that otherwise publicly-available  
8 information regarding Plaintiff's Arizona residence was posted on Defendants' web site is  
9 insufficient to demonstrate "express aiming." The salient question is whether the allegedly  
10 wrongful acts of Defendants were "performed for the very purpose of having their  
11 consequences felt in the forum state." *Brainerd v. Governors of the University of Alberta*,  
12 873 F.2d 1257, 1259-60 (9<sup>th</sup> Cir. 1989).

13 In the present case, Plaintiff was not allegedly attacked as an Arizona businessman.  
14 Rather, the allegedly defamatory remarks had to do with Plaintiff's business of providing  
15 anonymous website hosting and domain names internationally in eight countries, as well as  
16 Plaintiff's sale of "digital currency" worldwide. Indeed, in one of his postings on  
17 Cattyshaq.com, Plaintiff declared, "We are not even a US company." (Defendants'  
18 Attachment 1, Post 72) In fact, Plaintiff clarified for the Cattyshaq.com participants that "we  
19 are a Panama company," and that Plaintiff "never claimed to be a Singapore operation." (*Id.*  
20 at Post 55) Plaintiff even posted his company's *international* telephone number (with a  
21 Singapore international dialing code) on Cattyshaq.com. (*Id.*) Thus, the comments posted  
22 on Cattyshaq.com regarding Plaintiff pertained to his practices as an international  
23 businessman and had nothing to do with his state of residence. As such, the allegedly  
24 defamatory comments did not constitute actions that were "expressly aimed" at Arizona. *See*  
25 *Bailey v. Turbine Design, Inc.*, 86 F.Supp.2d 790, 796 (W.D. Tenn. 2000).

26 In a case remarkably similar to the present case, the court in *Barrett v. Catacombs*  
27 *Press*, 44 F.Supp.2d 717 (E.D. Pa. 1999), dismissed the plaintiff's case alleging online  
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1 defamation for lack of personal jurisdiction. The plaintiff in *Barrett* was a Pennsylvania  
2 psychiatrist who was "involved in investigating and dealing with many aspects of quackery,  
3 health frauds, misinformation, and consumer strategy." *Id.* at 720. The plaintiff also  
4 maintained a web site called Quackwatch, which provided information about quackery,  
5 health frauds, and consumer decisions. *Id.*

6 The defendant in *Barrett*, a resident of Oregon, posted on her own web page allegedly  
7 defamatory statements about the plaintiff and his work, particularly his promotion of  
8 fluoridation of public water sources. *Id.* at 722. The defendant also allegedly posted  
9 messages with links back to her site on several other web pages and internet discussion  
10 groups. *Id.* Furthermore, the defendant allegedly set up another web site with the plaintiff  
11 claimed was dedicated to attacking him and his colleagues. *Id.* The defendant in *Barrett* was  
12 associated with others who advocated against the fluoridation of water sources throughout  
13 the United States. *Id.* The defendant had not been in Pennsylvania for more than ten years  
14 and contended that her activity on the internet "was part of a larger public debate on  
15 fluoridation issues." *Id.*

16 The court in *Barrett* first determined that "the nature and quality of the contacts made  
17 by the Defendant were accessible around the world and never targeted nor solicited  
18 Pennsylvania residents." *Id.* at 728. Additionally, the *Barrett* court reasoned that the "non-  
19 commercial nature of Defendant's postings means that she is unlike the commercial  
20 entrepreneurs in other Internet cases who have actively availed themselves of the privilege  
21 of conducting business in the forum state." *Id.* Furthermore, all of the allegedly defamatory  
22 statements made by the defendant "attacked the Plaintiff in his national capacity as an  
23 advocate against health care fraud and in favor of the fluoridation of water sources." *Id.*  
24 There were no allegedly defamatory statements by the defendant that attacked the plaintiff  
25 "in his capacity as a Pennsylvania psychiatrist or any postings by the Defendant that intended  
26 to target Internet users in Pennsylvania." *Id.* at 729. Accordingly, the court in *Barrett* found

1 that the plaintiff could not satisfy either "purposeful availment" or the "effects test." *Id.* at  
2 729, 731.

3 This Court finds *Barrett* and its reasoning extremely persuasive. As in *Barrett*,  
4 Plaintiff, by virtue of his business ventures, is an international figure. All of the allegedly  
5 defamatory remarks posted on Defendants' web site attacked Plaintiff in his international  
6 capacity as the host of anonymous web pages and the purveyor of "digital currency." None  
7 of the allegedly defamatory remarks targeted Plaintiff in his capacity as an Arizona  
8 businessman or resident, and there is no evidence that any of the remarks intended to target  
9 internet users in Arizona. "If anything, the defamatory statements concern the Plaintiff's non-  
10 [Arizona] activities and impugn his professionalism" as an internationally-recognized host  
11 of anonymous web pages and purveyor of "digital currency." *Id.* at 731.

12 Furthermore, there is no evidence, or even an allegation, that the "brunt" of the harm  
13 from Defendants' alleged defamation was suffered by Plaintiff in Arizona. *See Bancroft*, 223  
14 F.3d at 1087. Plaintiff does not allege that he has suffered any harm, much less the "brunt"  
15 of the harm, in Arizona. There is no evidence that anyone from Arizona, other than Plaintiff  
16 himself, even visited Cattyshaq.com or knew of the comments posted there. *See Medinah*  
17 *Mining*, 237 F.Supp.2d at 1138 (mere allegations by the plaintiff that effects of the alleged  
18 defamation were felt in the forum were insufficient absent evidence that any forum resident  
19 (other than the plaintiff) had accessed the web site on which the disputed information was  
20 posted).

21 In short, this Court cannot exercise personal jurisdiction over Defendants.

22 **Accordingly,**

23 **IT IS ORDERED** that Defendants' Motion to Strike, or in the alternative, Motion to  
24 Dismiss for Failure to State a Claim or Lack of Personal Jurisdiction (document 5) is  
25 **GRANTED** to the limited extent that Plaintiff's suit is dismissed for lack of personal  
26 jurisdiction.

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