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10 Attorneys for Defendants Sarah L. Bird and
11 SEOMOZ, Inc.

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 XCENTRIC VENTURES, LLC, an Arizona
15 limited liability company; and EDWARD
16 MAGEDSON, an unmarried man,

17 Plaintiffs,

18 v.

19 SARAH L. BIRD and JOHN DOE BIRD,
20 wife and husband; SEOMOZ, INC d/b/a
21 SEOMOZ.ORG, a Washington corporation,

22 Defendants.

Case No.:

**DEFENDANTS' MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION**

(Oral Argument Requested)

23 Defendants hereby move the Court for an Order dismissing Plaintiffs' First Amended
24 Complaint ("FAC") with prejudice as to Defendants on the grounds that the Court lacks personal
25 jurisdiction over Defendants. Plaintiffs have not, and cannot, allege any facts to support the
26 conclusion that Defendants are subject to jurisdiction in an Arizona forum. None of the
defendants caused events to occur in Arizona out of which this lawsuit arose, nor did any of the
defendants have the requisite contacts with Arizona to allow a court in Arizona to exercise
personal jurisdiction over them. Accordingly, dismissing the First Amended Complaint is
proper pursuant to Arizona's long-arm statute, Arizona Rule of Civil Procedure 4.2(a).

1 **I. BACKGROUND**

2 **A. The Parties**

3 Plaintiffs Xcentric Ventures, L.L.C. and Edward Magedson are both Arizona residents.
4 (FAC ¶¶1, 2.) Plaintiff Xcentric operates a “consumer information and advocacy website at
5 www.ripoffreport.com (“Rip-off Report”), where consumers and other visitors to the website
6 can post complaints regarding companies.” (FAC ¶4.) Plaintiff Magedson is the Manager of
7 Plaintiff Xcentric. (FAC ¶3.)

8 Defendant SEOMoz, Inc. is a Delaware corporation, with its principal place of business in
9 the State of Washington (“SEOMoz”). (See Declaration of Sarah Bird, ¶8, attached hereto as
10 Exhibit A (“Bird Declaration”).) The allegations in the FAC arise from SEOMoz’s operation of
11 a non-commercial, free public blog about Internet marketing which can be found at
12 <http://www.seomoz.org/blog> (“the Blog”). (Id. at ¶10.) The Blog was started in 2004 before
13 SEOMoz began offering any commercial consulting services and before SEOMoz was
14 incorporated. (Id.) The Blog has always been a non-commercial activity and forum for free
15 speech about Internet marketing. (Id.)

16 The Blog resides on SEOMoz.**org** (emphasis added on the “.org”) because the Blog is a
17 non-commercial endeavor. (Id. at ¶11.) Even today, the Blog remains a completely non-
18 commercial activity; **SEOMoz does not make any revenue from the blog--not even from**
19 **advertisements.** (Id.) It is free to read and anyone interested in Internet marketing may post a
20 comment to the Blog. (Id.) The Blog can be viewed by anyone who has an Internet connection.
21 (Id. at ¶12.) It does not target Arizona residents. (Id.) Like most blogs, individuals who wish to
22 leave comments may do so on the Blog absolutely free of charge by providing SEOMoz their
23 email address and by agreeing to SEOMoz’s “Terms of Use,” which requires any disputes about
24 the Blog to be brought in Washington and to be adjudicated under Washington law. (Id. at ¶13.)

25 SEOMoz does not send files to Blog users’ computers, nor does SEOMoz receive files
26 from Blog users. (Id. at ¶14.) The Blog is merely a free place for anyone in the world to

1 express their ideas and opinions about issues relating to Internet marketing. (Id.)

2 All businesses and people who contract with SEOMoz for its services must sign a
3 contract that: (a) provides the contract is governed by Washington law and (b) selects
4 Washington as the venue for any disputes. (Id. at ¶16.) SEOMoz makes its revenue by
5 providing companies and people around the world with consulting, Internet marketing and
6 search engine optimization tools and resources. (Id. at ¶17.) These services are offered and
7 delivered entirely independent of SEOMoz’s non-commercial blog. (Id.)

8 SEOMoz does not have a consulting contract with either of the plaintiffs. (Id. at ¶18.)
9 SEOMoz does not have a consulting contract with any Arizona companies. (Id. at ¶19.)
10 SEOMoz does not own any assets in Arizona, it does not have any offices in Arizona, it does not
11 have any agents in Arizona, and it does not conduct any business in Arizona. (Id. at ¶20.)

12 On its website, SEOMoz identifies its “contact us” information as: (206) 632-3171
13 (phone number) and (206) 905-8507 (fax number) and it provides for its street address as
14 follows: 1221 E. Pike Street, Suite 200, Seattle, WA 98122. (Id. at ¶21.) SEOMoz’s website
15 also provides a map to its office located in Washington for those interested in visiting
16 SEOMoz’s offices. (Id. at ¶22.) SEOMoz’s website does not provide an 800 number. (Id. at
17 ¶23.) With the exception of one employee who operates remotely from her home in Colorado,
18 SEOMoz does business in Seattle, Washington; its agents and assets are all located in Seattle,
19 Washington. (Id. at ¶24.)

20 Defendant Sarah L. Bird is an unmarried woman, and, thus, there is no John Doe Bird.
21 (Id. at ¶3.) Defendant Bird is a resident of the State of Washington and has been a Washington
22 resident her entire life (since 1979). (Id. at ¶4.) Defendant Bird is not a resident of Arizona and
23 has never resided in the State of Arizona. (Id. at ¶5.) Defendant Bird does not currently own
24 property in Arizona and has never owned property in Arizona. (Id. at ¶6.) With the exception
25 of the attorneys representing her in this litigation, Defendant Bird does not currently nor has she
26 ever employed agents or employees in Arizona. (Id. at ¶7.)

1 The allegations in the FAC arise from a blog post Defendant Bird authored on behalf of
2 SEOMoz. (Id. at ¶15.) At the time she wrote the post, Defendant Bird did not know that
3 Xcentric Ventures was an Arizona corporation, nor did she know that Edward Magedson was an
4 Arizona resident. (Id.) Indeed, prior to placing the post on the Blog, Defendant Bird recalls
5 reading an online article that talked about how difficult it was to serve Plaintiff Magedson with
6 process. (Id.) However, Defendant Bird had no actual knowledge of where Magedson or
7 Xcentric legally resided. (Id.) Defendant Bird did not knowingly target Arizona or its residents
8 with her post on the Blog. (Id.)

9 **B. Plaintiffs' Allegations Regarding Jurisdiction**

10 Plaintiffs allege that "SEOMoz, Inc. d/b/a SEOMoz.org 'SEOMoz' is a Washington
11 corporation not licensed to do business in the State of Arizona." (FAC ¶5.) Plaintiffs further
12 allege that "Defendants Sarah Bird ("Bird") and John Doe Bird are wife and husband, and were
13 at all times material hereto residents of King County, Washington." (FAC ¶6.) While not
14 technically true, these allegations support that this Court's jurisdiction over each of these
15 defendants is lacking.¹

16 Plaintiffs allege in conclusory fashion, without any specific factual allegation, that
17 "Defendants have caused events to occur in the State of Arizona, Maricopa County, out of
18 which the Plaintiffs' claims arise and which are the subject of this Complaint." (FAC ¶11.)

19 Plaintiffs allege that: "SEOMoz admits to offering its services 'across the US, Canada &
20 Europe.'" (FAC ¶15.) Plaintiffs further allege that Defendants published and began circulating
21 an article titled "The Anatomy of a RipOff Report Lawsuit" ("Article"). (FAC ¶18.) Plaintiffs
22 further allege that the Article was published and available free of charge on the Internet and was
23 "readily available to the consumer public." (FAC ¶¶19, 20.)

24 As outlined herein, none of these alleged facts, even if true, would support this Court's
25

26 ¹ Defendant SEOMoz is a Delaware corporation with its principal place of business in Washington. It does not
"do business as" "SEOMoz.org." (Bird Declaration, ¶8.) Further, Defendant Bird is an unmarried woman and,
therefore, there is no "John Doe Bird." (Id. at ¶3.)

1 exercise of jurisdiction over these defendants. The FAC contains no other allegations that
2 purport to support this Court's exercise of jurisdiction over these defendants. Indeed, Plaintiffs
3 could not allege facts to establish this Court's jurisdiction over these Defendants.

4 **II. ARGUMENT**

5 As discussed below, Plaintiffs bear the burden of proving that exercise of this Court's
6 jurisdiction would not violate Defendants' Due Process rights. Plaintiffs cannot establish
7 general or specific jurisdiction within the boundaries of due process.

8 **A. The First Amended Complaint Should Be Dismissed Because Plaintiffs Failed**
9 **to Meet Their Burden Of Proof in Establishing a Prima Facie Case for**
10 **Personal Jurisdiction.**

11 As the party seeking to invoke this Court's jurisdiction, Plaintiffs bear the burden of
12 establishing that jurisdiction exists. Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986) (citing
13 Data Disc, Inc. v. Sys. Tech. Assocs., 557 F.2d 1280, 1285 (9th Cir. 1977)). Plaintiffs must
14 make at least a Prima Facie showing of jurisdiction to avoid dismissal. Myers v. Bennett Law
15 Offices, 238 F.3d 1068, 1071 (9th Cir. 2001). However, Plaintiffs cannot "simply rest on the
16 bare allegations of its Complaint." Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc., 551 F.2d 784, 787
17 (9th Cir. 1977).

18 Plaintiffs fall short of making even a prima facie case for jurisdiction in their First
19 Amended Complaint. The facts alleged, even if true, do not give rise to jurisdiction. "Bare
20 allegations," such as: (1) Defendants have caused events to occur in Arizona, (2) Defendants
21 publish their website, which included the allegedly defamatory Article, on the Internet, (3)
22 Defendants offer services "across US, Canada and Europe," and, (4) the Article was offered free
23 of charge and made available to the consumer public, are insufficient to make even a prima facie
24 showing of jurisdiction. (FAC ¶¶11, 15, 18, 19, and 20.)

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26 ///

1 **B. Plaintiffs Cannot Establish That Either General or Specific Jurisdiction**
2 **Exists As Required By The Federal Due Process Clauses And Arizona's**
3 **Long-Arm Statute.**

4 This Court may not exercise jurisdiction over these out of state defendants because
5 Arizona's long arm-statute does not permit the assertion of jurisdiction where doing so would
6 violate Defendants' due process rights. Schwarzenegger v. Fred Martin Motor Co., 374 F.3d
7 797, 800-01 (9th Cir. 2004). Arizona's long arm statute is co-extensive with federal due process
8 requirements, and, thus, the jurisdictional analyses under Arizona law and federal due process
9 are the same. See id. at 801; see also Terracom v. Valley Nat'l Bank, 49 F.3d 555, 559 (9th Cir.
10 1995); Ariz. R. Civ. P. 4.2(a). Absent traditional bases for personal jurisdiction (i.e., physical
11 presence, domicile, and consent), which are not present here, the Due Process Clause requires
12 that Defendants have certain "minimum contacts" with Arizona such that the exercise of
13 personal jurisdiction does not offend traditional notions of fair play and substantial justice. See
14 Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). In
15 determining whether these defendants had minimum contacts with Arizona, the Court must
16 focus on "the relationship among the defendant, the forum, and the litigation." Brink v. First
17 Credit Res., 57 F. Supp. 2d 848, 860 (D. Ariz. 1999) (citing Shaffer v. Heitner, 433 U.S. 186,
18 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977)). The Supreme Court of the United States has long
19 recognized that an essential goal of the minimum contacts test is to protect the nonresident
20 defendant. See, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292, 100 S.Ct 559,
21 564 62 L.Ed. 2d 490, 498 (1980).

22 The "minimum contacts" aspect of due process can be satisfied by either finding general
23 jurisdiction or specific jurisdiction. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466
24 U.S. 408, 414 n.8, 104 S.Ct. 1868, 1868, 1872 n.8 80 L.Ed.2d 404, 411 n.8 (1984). Defendants'
25 contacts with the forum state are insufficient to satisfy the Due Process Clause, and, thus, the
26 Court cannot exercise "general" or "specific" jurisdiction over the defendants. See id.; see also
 Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir. 1995).

1 General jurisdiction refers to the authority of a court to exercise jurisdiction even where
2 the cause of action is unrelated to the defendant's contacts with the forum. Helicopteros, 466
3 U.S. at 408. Specific jurisdiction, on the other hand, refers to the authority of a court to exercise
4 jurisdiction when a suit arises out of or is related to the defendant's contacts with the forum. Id.
5 The nature of the defendant's contacts with the forum state, therefore, will determine whether
6 the court exercises general or specific jurisdiction over the defendant. Id.

7 **C. Defendants Are Not Subject To The General Jurisdiction Of This Court.**

8 This Court may assert general jurisdiction over Defendants only if they engaged in
9 "substantial" or "continuous and systematic" business activities; they have not. See
10 Helicopteros, 466 U.S. at 416 (citing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437,
11 446-47, 72 S. Ct. 413, 96 L. Ed. 485, 63 Ohio Law Abs. 146 (1952)). Further, those continuous
12 and systematic business activities must have "approximated physical presence" in the forum
13 state. See Bancroft & Masters, Inc. v. Augusta Nat. Inc., 223 F.3d 1082, 1087 (9th Cir. 2000)
14 (in determining whether general jurisdiction may be exercised the court should consider
15 "whether defendant makes sales, solicits or engages in business in the state, serves the state's
16 markets, designates an agent for service of process, holds a license, or is incorporated there");
17 see also Brand v. Menlove Dodge, 796 F.2d 1070, 1073 (9th Cir. 1986) (describing various
18 cases where general jurisdiction was denied despite the defendants' significant contacts with the
19 forum states)).

20 While it is unclear whether Plaintiffs are attempting to assert that the Court may exercise
21 general jurisdiction, it is quite clear that Plaintiffs have not alleged and cannot present any facts
22 that Defendants engaged in systematic and continuous business activity in Arizona. Here, the
23 only jurisdictional facts Plaintiffs allege are: (1) Defendants have caused events to occur in
24 Arizona, (2) Defendants publish their website, which included the allegedly defamatory Article,
25 on the Internet, (3) Defendants offer services "across US, Canada and Europe," and, (4) the
26

1 Article was offered free of charge and made available to the consumer public. (FAC ¶¶11, 15,
2 18, 19, and 20.)

3 It is uncontested, however, that Defendant SEOMoz’s principal and only place of
4 business is in Seattle, Washington. (FAC ¶5.) It is uncontested that Defendant Bird is not an
5 Arizona resident. (FAC ¶6.) Plaintiffs do not allege and cannot establish that either of the
6 defendants has ever engaged in consulting transactions in Arizona. (See generally, Bird
7 Declaration, ¶¶6, 7, 9, 14, 16, 17, 18, 19, and 20.) Plaintiffs do not allege and cannot establish
8 that either of the defendants owns property in Arizona, owes taxes in Arizona, or maintains
9 offices, employees, telephone numbers, Post Office boxes or bank accounts in Arizona. (Id. at
10 ¶¶6, 7, 9, 18, and 19.) Plaintiffs do not allege and cannot establish that Defendant SEOMoz is
11 registered or licensed to conduct business in Arizona, or that it has designated an agent for
12 service of process in Arizona. (Id. at ¶9.) When Plaintiffs conclusory allegations are
13 eliminated, it is clear that Plaintiffs have failed to allege any facts to support their contention
14 that this Court has general jurisdiction over these defendants.

15 The Court cannot exercise general jurisdiction over Defendants because their contacts
16 neither qualify as “substantial” nor “continuous and systematic” so as to approximate their
17 physical presence in Arizona. Simply put, Defendants are not Arizona residents, were not doing
18 business in Arizona, have not “stepped through the door,” and “there is no indication that [they
19 have] sat down and made [themselves] at home.” Glencore Grain Rotterdam B.V. v. Shivnath
20 Rai Harnarain Co., 284 F.3d 1114, 1125 (9th Cir. 2002); see also Gator.Com Corp. v. L.L. Bean,
21 341 F.3d 1072, 1079 (9th Cir. 1997) (“This test requires both that the party in question clearly
22 do business over the Internet, and that the Internet business contacts with the forum state be
23 substantial or continuous and systematic.”) (citations and quotation omitted); GTE New Media
24 Servs., Inc. v. BellSouth Corp., 339 U.S. App. D.C. 332, 199 F.3d 1343, 1349-50 (D.C. Cir.
25 2000) (stating that mere operation of an interactive website “does not by itself show any
26 persistent course of conduct by defendants in the [forum state]”). It would violate Rule 4.2(a) of

1 the Arizona Rules of Civil Procedure (Arizona's long-arm statute) and Defendants' Due Process
2 rights for this Court to exercise general jurisdiction over Defendants.

3 **D. This Court May Not Exercise Specific Jurisdiction Over These Defendants**
4 **Without Violating Their Due Process Rights.**

5 In the Ninth Circuit, specific jurisdiction may be exercised only if:

6 (1) the defendant *purposefully avails* himself of the privileges of conducting
7 activities in the forum, thereby invoking the benefits and protections of its laws, or
8 purposely directs conduct at the forum that has *effects* in the forum;

9 (2) the claim *arises out of* the defendant's forum-related activities; and

10 (3) the exercise of jurisdiction comports with fair play and substantial justice; i.e.,
11 it is *reasonable*.

12 See Bancroft, 223 F.3d at 1086-87 (citing Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 417
13 (9th Cir. 1997)); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-76, 105 S. Ct. 2174, 85 L.
14 Ed. 2d 528 (1985). Plaintiffs fail to make a prima facie case on all three of these prongs.
15 Therefore, the FAC must be dismissed.

16 **1. There is no specific jurisdiction because Defendants did not target**
17 **Arizona and did not purposefully avail themselves of this forum.**

18 When the case involves tort claims, the court examines whether the defendant
19 purposefully availed himself of the jurisdiction using the "effects doctrine." Panavision Int'l v.
20 Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998). Under the Effects Doctrine, "in tort cases,
21 jurisdiction may attach if the Defendant's conduct is aimed at or has an effect in the forum
22 state." Panavision, 141 F.3d at 1321; see also Ziegler, 64 F.3d at 473. Personal jurisdiction,
23 under the Effects Doctrine, can be based upon: (1) intentional actions (2) expressly aimed at the
24 forum state (3) causing harm, the brunt of which is suffered - and which the defendant knows is
25 likely to be suffered - in the forum state. Panavision, 141 F.3d at 1321; see also Core-Vent
26 Corp. v. Nobel Indus. AB, 11 F.3d 1482, 1486 (9th Cir. 1993).

1 Defendants' non-commercial blog is not expressly aimed at Arizona. (Bird Declaration,
2 ¶¶10-15.) The Blog does not target Arizona residents. (Id. at ¶12.) Additionally, the Article
3 was not aimed at Arizona. (Id. at ¶15.) Defendant Bird did not know Xcentric Ventures was an
4 Arizona corporation. (Id.) She did not know that Edward Magedson was an Arizona resident.
5 (Id.) Thus, Defendants could not have expressly aimed an intentional action at Arizona,
6 knowing an Arizona resident was likely to suffer harm. Panavision, 141 F.3d at 1321.

7 Under Arizona law, an individual or corporation cannot be subject to Arizona jurisdiction
8 merely by publishing an article about an Arizona corporation on the Internet. See Cybersell,
9 Inc. v. Cybersell, Inc., 130 F.3d 414, 420 (9th Cir. 1997) (simply using an allegedly infringing
10 trademark in advertising on the Internet did not automatically result in personal jurisdiction
11 wherever Plaintiffs' principal place of business is located); see also U-Haul Int'l, Inc. v.
12 Osborne, 1999 U.S. Dist. LEXIS 14466, *9-13 (D.C. Ariz. 1999) (non-Arizona residents who
13 decided to publicize their negative experience with Plaintiff U-Haul over the internet by creating
14 a "U-Hell" website were not subject to Arizona jurisdiction for alleged defamation because they
15 did not take deliberate action within the forum). Rather, the defendant must do "something
16 more" to purposefully avail itself to the jurisdiction of the court. Cybersell, 130 F.3d at 419-420
17 ("Cybersell FL has done no act and has consummated no transaction, nor has it performed any
18 act by which it purposefully availed itself of the privilege of conducting activities, in Arizona,
19 thereby invoking the benefits and protections of Arizona law."); U-Haul, 199 U.S. Dist. LEXIS
20 14466, *12 ("there are no facts to support a finding that Defendants targeted users in Arizona
21 and encouraged them to access their "U-Hell" web site. Lastly, Defendants conducted no
22 commercial activity directed at Arizona.")

23 The Cybersell court specifically noted that the defendant did nothing to encourage
24 Arizona residents to visit the website, did not conduct business in Arizona, entered no contracts
25 with Arizona residents, earned no income from Arizona, received no telephone calls from
26 Arizona, and did not maintain an 800 telephone number. Cybersell, 130 F.3d at 419. The Ninth

1 Circuit indicated that there must be “something more” to “indicate that the defendant
2 purposefully (albeit electronically) directed his activity in a substantial way to the forum state.”
3 Id. at 418.

4 The Ninth Circuit concluded: “creating a site, like placing a product into the stream of
5 commerce, may be felt nationwide-or even worldwide-but, without more, is not an act
6 purposefully directed towards the forum state.” Cybersell, 130 F.3d at 418; see also Golden
7 Scorpio Corp. v. Steel Horse Saloon I, 2009 U.S. Dist. LEXIS 14314 (Feb. 11, 2009) (“Golden
8 Scorpio 1”) (sua sponte dismissal for lack of personal jurisdiction was appropriate where
9 defaulted defendants’ only contact to Arizona was through the Internet); Golden Scorpio Corp.
10 v. Steel Horse Saloon I, 2009 U.S. Dist LEXIS 35949 (April 9, 2009). “[T]he likelihood that
11 personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and
12 quality of commercial activity that an entity conducts over the Internet.” Cybersell, 130 F.3d at
13 419.

14 These defendants are not subject to the jurisdiction of this Court because they committed
15 no act and consummated no transaction in Arizona; they did not perform any act by which they
16 purposefully availed themselves of the privilege of conducting activities in Arizona. Id. at 420;
17 see also Golden Scorpio 1, 2009 U.S. Dist. LEXIS 14314, *24 (Feb. 11, 2009) (merely receiving
18 a cease and desist letter and, thus, making defendant aware of the existence of a plaintiff in
19 Arizona does not transform their acts into acts expressly aimed at Arizona, as required to assert
20 jurisdiction) .

21 Plaintiffs fail to allege any conduct by either of the defendants that occurred in Arizona
22 that would support the purposeful availment prong. Thus, the FAC should be dismissed with
23 prejudice for lack of personal jurisdiction over both defendants. See Pebble Beach Co. v.
24 Caddy, 453 F.3d 1151, 1155-56 (9th Cir. 2006) (“Evidence of availment is typically action
25 taking place in the forum that invokes the benefits and protections of the laws in the forum.”).
26

1 Because Plaintiffs have not plead facts sufficient to satisfy the “purposeful availment”
2 prong of the Ninth Circuit’s specific jurisdiction test, the Court need not reach the “arising
3 under” or “reasonableness” prongs. Even if the Court did find purposeful availment, Plaintiffs
4 have not satisfied the ‘arising under’ or ‘reasonableness’ prongs. Thus, the FAC must still be
5 dismissed.

6 **2. There is no specific jurisdiction because Plaintiffs cannot establish that**
7 **the allegations arose out of Defendants’ offering of “services.”**

8 For this Court to have specific jurisdiction over a nonresident, Plaintiffs’ claims must
9 arise out of Defendants’ particular activities in the forum state. Bankcroft, 223 F.3d at 1087.
10 This requirement is satisfied if Plaintiffs would not have been harmed “but for” Defendants’
11 conduct in Arizona. See, Rio Props., Inc. v. Ro Int’l InterLink, 284 F.3d 1007, 1017, 1021 (9th
12 Cir. 2002). The only non-Washington conduct that Plaintiffs allege Defendants conducted is the
13 “offering” of “services across the US, Canada & Europe.” (FAC ¶15.) Plaintiffs make no claim
14 that these ‘services’ are the source of the alleged defamatory communications. Plaintiffs could
15 not establish such a fact because operating the free, non-commercial Blog is completely
16 independent of SEOMoz’s service offerings. (Bird Declaration, ¶¶10-15.) To make the
17 connection between Defendants’ service offerings and the alleged defamatory blog post, the
18 appropriate question is as follows: “‘But-for’ the sale of Defendants’ ‘services,’ would
19 Plaintiffs have been injured by the blog post?” The answer is “no.” Because Plaintiffs’ claims
20 stem from the blog post, and nothing related to SEOMoz’s ‘services,’ these claims to do not
21 ‘arise under’ SEOMoz’s offering of ‘services.’

22 **3. There is no specific jurisdiction because it would be unreasonable to**
23 **subject the Defendants to jurisdiction in Arizona for publishing a blog**
24 **in Washington.**

25 The “reasonableness” prong exists to protect defendants against unfairly inconvenient
26 litigation. World-Wide Volkswagen, 444 U.S. at 292, 100 S.Ct. at 564-65. Under this prong,
the exercise of jurisdiction will be reasonable if it does not offend “traditional notions of fair

1 play and substantial justice.” International Shoe, 326 U.S. at 316, 66 S.Ct. at 158. When
2 determining the reasonableness of a particular forum, the court must consider the burden on the
3 defendant in light of other factors including: “the forum state’s interest in adjudicating the
4 dispute; the plaintiff’s interest in obtaining convenient and effective relief, at least when that
5 interest is not adequately protected by the plaintiff’s right to choose the forum; the interstate
6 judicial system’s interest in obtaining the most efficient resolution of controversies; and the
7 shared interest of the several states in furthering fundamental substantive social policies.”
8 World-Wide Volkswagen, 444 U.S. at 292, 100 S.Ct. at 564 (internal citations omitted).

9 Here, there is a very great burden on SEOMoz and Bird to defend the lawsuit in Arizona.
10 The Defendants have no employees, offices, records, or assets in Arizona. Thus, the discovery
11 process, most of which will occur in Washington, will be very burdensome. Further,
12 maintaining the lawsuit in Arizona, where they have no contacts would be particularly
13 burdensome. In addition, Arizona has minimal interest in adjudicating this specific dispute, a
14 dispute involving conduct outside the borders of Arizona and unrelated to defendants’ business
15 (or lack thereof) in Arizona. No relevant personnel are alleged to have been located in Arizona;
16 and no relevant activity is alleged to have occurred in Arizona. The claims present no
17 regulatory issues for Arizona. Nor do they indicate a broader pattern of potential harm in
18 Arizona. Finally, the Defendants should not be subject to jurisdiction anywhere in the world for
19 exercising their non-commercial, free speech rights and inviting others to do so too. If
20 publishing a blog were sufficient to create jurisdiction anywhere it could be viewed, the result
21 would be a fatal chilling of free speech. Because of the relative interests and connections of the
22 parties, as well as the nature of the claims involved, it would be unreasonable to find specific
23 jurisdiction over the Defendants in this matter.

24 **III. CONCLUSION**

25 Defendants are not subject to jurisdiction in this forum. Plaintiffs have alleged no facts
26 that would support Defendants’ minimum contacts with Arizona, or any other basis for the

1 Court to exercise personal jurisdiction over these defendants. Further, the facts provided by
2 Defendants themselves establish that Plaintiffs cannot make the required allegations since
3 Defendants do not have the required contacts with Arizona to establish personal jurisdiction.
4 Ultimately, the Court has no jurisdiction over these defendants and Plaintiffs' First Amended
5 Complaint should be dismissed with prejudice.

6 RESPECTFULLY SUBMITTED this 14th day of May, 2009.

7 **SANDERS & PARKS, P.C.**

8
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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2009, I electronically transmitted the attached document to the Clerk’s Office using the ECF System for filing and transmittal of Notice of Electronic Filing to the following ECF registrants:

No CM/ECF registrants

A courtesy copy of the Notice of Electronic filing was also **mailed** on this same date to the following address:

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By /s/ Kimberly A. Hensinger

EXHIBIT A

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10 Attorneys for Defendants Sarah L. Bird and
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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 XCENTRIC VENTURES, LLC, an Arizona
15 limited liability company; and EDWARD
16 MAGEDSON, an unmarried man,

17 Plaintiffs,

18 v.

19 SARAH L. BIRD and JOHN DOE BIRD,
20 wife and husband; SEOMOZ, INC d/b/a
21 SEOMOZ.ORG, a Washington corporation,

22 Defendants.

Case No.:

**DECLARATION OF SARAH L. BIRD
IN SUPPORT OF MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION**

23 I, SARAH L. BIRD, under my oath declare as follows:

24 1. I am the Chief Operating Officer and General Counsel for Defendant SEOMoz,
25 Inc. ("SEOMoz"), which is a defendant in this litigation.

26 2. I am also named individually as a defendant in this litigation.

3. I am an unmarried woman, and, thus, there is no John Doe Bird.

4. I am a resident of the State of Washington and have been a Washington resident
my entire life (since 1979).

5. I am not a resident of Arizona and have never resided in the State of Arizona.

6. I do not currently own property in Arizona and have never owned property in
Arizona.

1 7. With the exception of the attorneys representing me in this litigation, I do not
2 currently nor have I ever employed agents or employees in Arizona.

3 8. SEOMoz is a Delaware corporation, with its principal place of business in the
4 State of Washington.

5 9. SEOMoz is not registered or licensed to conduct business in Arizona and it has not
6 designated an agent for service of process in Arizona.

7 10. The allegations in the First Amended Complaint arise from SEOMoz's operation
8 of a non-commercial, free public blog about Internet marketing located at
9 <http://www.seomoz.org/blog> ("the Blog"). The Blog was started in 2004 before SEOMoz began
10 offering any commercial consulting services and before SEOMoz was incorporated. It has
11 always been a non-commercial activity and forum for free speech about Internet marketing.

12 11. The Blog resides on SEOMoz.**org** (emphasis added on the ".org") because the
13 Blog is a non-commercial endeavor. Even today, the Blog remains a completely non-
14 commercial activity; **SEOMoz does not make any revenue from the Blog--not even from**
15 **advertisements**. It is free to read and anyone interested in Internet marketing may post a
16 comment to the Blog.

17 12. The Blog can be viewed by anyone who has an Internet connection. It does not
18 target Arizona residents.

19 13. Like most blogs, individuals who wish to leave a comment may do so absolutely
20 free of charge by providing their e-mail address and by agreeing to the Terms of Use. (See
21 Exhibit 1, printout from <http://www.seomoz.org/terms>.) The Terms of Use require any disputes
22 about the Blog to be brought in Washington and to be adjudicated under Washington law.

23 14. SEOMoz does not send files to Blog users' computers, nor does it receive files
24 from Blog users. The Blog is merely a free place for anyone in the world to express their ideas
25 and opinions about issues relating to Internet marketing.
26

1 15. The allegations in the First Amended Complaint arise from a blog post I authored
2 on behalf of SEOmoz. I did not know that Xcentric Ventures was an Arizona corporation or that
3 Edward Magedson was an Arizona resident at the time I wrote the post. Prior to placing the post
4 on the Blog, I remember reading an online article that talked about how hard Magedson was to
5 serve, but I had no actual knowledge of where Magedson or Xcentric legally resided. I did not
6 knowingly target Arizona or its residents.

7 16. All people and businesses who contract with SEOmoz for its services must sign a
8 contract that provides the contract is governed by Washington law and that selects Washington
9 as the venue for any disputes. (See, Exhibit 2, printout from <http://www.seomoz.org/services>;
10 see also Exhibit 1, printout from <http://www.seomoz.org/terms>)

11 17. SEOmoz makes its revenue by providing companies and people around the world
12 with consulting, Internet marketing and search engine optimization tools and resources. (See,
13 Exhibit 3, printout from <http://www.seomoz.org/pages/about>.) These services are offered and
14 delivered entirely independent of our non-commercial Blog.

15 18. SEOmoz does not have a consulting contract with either of the plaintiffs.

16 19. SEOmoz does not have a consulting contract with any Arizona companies.

17 20. SEOmoz does not own any assets in Arizona, it does not have any offices in
18 Arizona, it does not have any agents in Arizona (other than the attorneys representing SEOmoz
19 in this litigation), and it does not conduct any business in Arizona.

20 21. On its website, SEOmoz identifies its "contact us" information as: (206) 632-
21 3171 (phone number) and (206) 905-8507 (fax number) and it provides for its street address as
22 follows: 1221 E. Pike Street, Suite 200, Seattle, WA 98122. (See Exhibit 4, printout from
23 <http://www.seomoz.org/contact>.)

24 22. SEOmoz's website also provides a map to its office located in Washington for
25 those interested in visiting SEOmoz's offices. (Id.)

26 23. SEOmoz's website does not provide an 800 number.

1 24. With the exception of one employee who operates remotely from her home in
2 Colorado, SEOmox does business in Seattle, Washington; its agents and assets are all located in
3 Seattle, Washington.

4 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
5 AND CORRECT.

6 EXECUTED this 13 day of May, 2009.

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SARAH L. BIRD
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