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8 **SUPERIOR COURT OF ARIZONA**  
9 **COUNTY OF MARICOPA**

10 Montana Holdings Ltd. ) Case No. CV2007-014436  
11 a Bahamanian corporation, )  
12 Plaintiff, ) **MOTION TO DISMISS AND TO**  
13 vs. ) **QUASH SUBPOENAS AND**  
14 ) **MEMORANDUM IN SUPPORT**  
15 John Does I-X, )  
16 Defendants. )

17 **INTRODUCTION**

18 Counsel is entering a special appearance on behalf of defendant John Doe for the  
19 purpose of challenging personal jurisdiction and moving to quash two subpoenas  
20 issued by plaintiff on August 10, 2007, to GoDaddy.com, Inc. and Domains by Proxy,  
21 Inc. Doe is the sole person responsible for creating and registering the website at issue  
22 in this case and does not claim Arizona residency.

23 The complaint should be dismissed for lack of personal jurisdiction because  
24 plaintiff filed suit in a foreign jurisdiction where no party resides. Doe is not alleged to  
25 have any significant connection to this forum, and the Arizona presence of the third-  
26 party registrar does not create minimum contacts sufficient for personal jurisdiction in  
27 this state with respect to a case brought by a third party (*i.e.*, not the registrar) based on  
28 the content of the website, under clear case law.



1 Wishing to remain anonymous, Doe registered that website through Domains By  
2 Proxy, Inc., a domain-name registrar formed to protect anonymity, and hosted the  
3 website through that company's parent, GoDaddy.com, Inc., which apparently is the  
4 largest domain-name registrar in the world. GoDaddy and its subsidiary are based in  
5 Scottsdale, Arizona. Complaint, ¶¶9-10.

6 The subpoenas seek to require the registrar/hosting service to disclose the  
7 identity of those persons responsible for posting the website as well as certain  
8 information concerning the website's traffic and content. Montana did not sue the  
9 registrars or claim that any Arizona party was involved in the complained-of conduct.

10 Montana's Complaint does not allege that Montana has any connection with the  
11 State of Arizona. Nor does the Complaint allege that the website statements had any  
12 harm or impact in Arizona. Montana is a non-Arizona (and non-U.S.) entity, and the  
13 website concerns real estate in the Bahamas. *See* Complaint, ¶¶2, 8.

14 Montana did not plead (and has no evidence) that Doe is resident in Arizona or  
15 took any action in Arizona related to the complained-of postings, such as posting while  
16 in this state. Indeed, Montana has no knowledge as to whether Doe resides in the  
17 United States or not. For all Montana (and this Court) knows, this case involves a  
18 dispute between two non-U.S. parties over postings about non-U.S. realty.

19 Immediately upon being hired, Arizona counsel wrote Montana's counsel citing  
20 the key cases showing that there is no personal jurisdiction and highlighting the First  
21 Amendment considerations. Gold Decl., Ex. 7. The letter invited Montana to dismiss  
22 the case or at least withdraw the subpoenas. *Id.* The letter alerted Montana that  
23 attorneys' fees would be sought and noted that the absence of harm in withdrawing the  
24 subpoenas for a time sufficient to allow counsel to consider the matter. *Id.*

25 **I. THIS COURT LACKS PERSONAL JURISDICTION OVER DOE.**

26 To be subject to personal jurisdiction in Arizona, Doe must have "certain  
27 minimum contacts with [the state] such that the maintenance of the suit does not  
28 offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v.*

1 *Washington*, 326 U.S. 310, 316 (1945) (quotation omitted); *Bils v. Bils*, 200 Ariz. 45, 47, 22  
2 P.3d 38, 40 (Ariz. 2001). A court may exercise either general or specific jurisdiction over  
3 a defendant. See *Helicopteros Nacionales de Colom. v. Hall*, 466 U.S. 408, 414-15 nn. 8-9  
4 (1984). In either case, a defendant’s connection with the state must be such that “it  
5 should reasonably anticipate being haled into court” in the state in the event of a  
6 dispute. *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295-96 (1980); *Bils, supra*.  
7 Here, Montana cannot meet its burden of establishing either form of jurisdiction by  
8 showing that Doe lives in Arizona or any relevant events occurred inside this state.

9 **A. This Court Lacks General Jurisdiction Over Doe.**

10 General jurisdiction applies only if “the defendant has substantial or continuous  
11 and systematic contacts with the forum state.” *Batton v. Tenn. Farmers Mut. Ins. Co.*, 153  
12 Ariz. 268, 270, 736 P.2d 2, 4 (Ariz. 1987) (quotations omitted). In this case, the  
13 Complaint contains no allegation of general jurisdiction, and there is no reason to  
14 suppose that it applies. The website “resortbuyerbeware.com does not offer any goods  
15 for sale in Arizona or solicit any business in Arizona. Montana does not allege that Doe  
16 owns property in Arizona, has employees or offices in Arizona, or has any other  
17 contacts with the state. Doe thus does not have “substantial” or “systematic and  
18 continuous” contacts with Arizona so as to support the exercise of general jurisdiction.

19 **B. This Court Also Lacks Specific Jurisdiction over Doe.**

20 Specific jurisdiction over Doe in Arizona would exist only if: (1) Doe  
21 purposefully availed himself of the privilege of conducting activities in the forum; (2)  
22 the claim arises out of Doe’s forum-related activities; and (3) the exercise of jurisdiction  
23 is reasonable, in that it comports with fair play and substantial justice. See *Bancroft &*  
24 *Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). In tort cases such  
25 as this one, the requirement of purposeful availment is shown if the defendant’s  
26 tortious conduct is purposefully directed at and causes the brunt of its effect in the  
27 forum state. *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir. 1997).

1                   **1.     Doe’s Website Is Not Purposefully Directed at Arizona.**

2                   When personal jurisdiction is claimed based on a defendant’s activities on the  
3 Internet, the courts — including the Ninth Circuit in *Cybersell*, 130 F.3d at 418 — have  
4 followed the lead of the court in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119  
5 (W.D. Pa. 1997), in holding that “the likelihood that personal jurisdiction can be  
6 constitutionally exercised is directly proportionate to the nature and quality of  
7 commercial activity that an entity conducts over the Internet.” *Id.* at 1124. Under this  
8 test, Doe’s website cannot provide the basis for personal jurisdiction.

9                   First, Doe’s website is entirely passive in nature. “A passive Web site that does  
10 little more than make information available to those who are interested in it is not  
11 grounds for the exercise of personal jurisdiction.” *Zippo*, 952 F. Supp. at 1124; *Cybersell*,  
12 130 F.3d at 419-20. Something more is needed to “indicate that the defendant  
13 purposefully (albeit electronically) directed his activity in a substantial way to the  
14 forum state.” *Cybersell*, 130 F.3d at 418. Thus, in *Cybersell*, the Ninth Circuit, applying  
15 Arizona law, held that Arizona did not have jurisdiction over a Florida company  
16 whose only contact with Arizona was a minimally interactive web page that was  
17 “limited to receiving the browser’s name and address and an indication of interest.” *Id.*  
18 at 419. The court reasoned that basing personal jurisdiction “on an essentially passive  
19 web page advertisement ... would not comport with traditional notions of what  
20 qualifies as purposeful activity invoking the benefits and protections of the forum  
21 state.” *Id.* at 420.

22                   Doe’s website is not only passive but also entirely noncommercial in nature. Doe  
23 does not sell any goods or services from his website or make any money from it. Like  
24 the defendant in *Cybersell*, Doe is not subject to jurisdiction in this state when he has  
25 “conducted no commercial activity over the Internet in Arizona.” 130 F.3d at 419.

26                   The allegation that Doe’s website is registered with and hosted by an Arizona  
27 company also does not serve as a basis for establishing personal jurisdiction. Binding  
28 authority from the Arizona Court of Appeals recognizes that a contract with a hosting

1 company is an insufficient basis on which to subject a defendant to jurisdiction in the  
2 host company's home state. *Austin v. Crystaltech Web Hosting*, 211 Ariz. 569, 575, 125  
3 P.3d 389, 395 (Ariz. App. Ct. 2005). In *Austin*, plaintiff sued Daniels, a competing travel  
4 business in Bali, and its registrar, Crystaltech Web Hosting, an Arizona domain-name  
5 registrar, alleging that plaintiff had been defamed by an article that Daniels had posted  
6 on a website that Daniels maintained with Crystaltech.

7 On the issue of jurisdiction, the Court of Appeals framed the proper analysis as  
8 follows: "[I]n addition to determining whether Daniels had minimum contacts with  
9 Arizona, we must consider whether it is reasonable to subject Daniels to Arizona  
10 jurisdiction. This requires us to weigh several factors: Daniel's burden of transoceanic  
11 litigation, Arizona's interest in resolving this defamation matter, Austin's interest in  
12 obtaining relief in Arizona, and another nation's procedural and substantive interests  
13 in Arizona's exercise of jurisdiction." *Austin*, ¶20 (brackets and citations omitted).

14 The Court of Appeals held, even "assum[ing], without deciding, that Daniels  
15 purposefully availed himself of our laws by contracting with CrystalTech and sending  
16 the offending article to Arizona for publication on the website, and that this claim  
17 arises out of those contacts," *Austin*, ¶21, there was no jurisdiction, because:

18 "it would be unreasonable for Arizona to exercise jurisdiction over this  
19 internet defamation case. First, neither Daniels nor Austin are Arizona  
20 residents, and neither lives here. Second, Arizona has no real interest in  
21 resolving a dispute between two Bali travel related competitors. Third,  
22 Plaintiff does not dispute Daniels' claim that Bali law governs the dispute  
23 .... Consequently, because Arizona has no specific interest in the alleged  
24 wrongful conduct or the alleged harm to a British citizen that would  
25 compel an Arizona court to protect Austin's interests, personal jurisdiction  
26 over Daniels would be unreasonable." *Austin*, ¶24.

25 Courts in other jurisdictions have reached the same conclusion. *See Carefirst of*  
26 *Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402 (4th Cir. 2003) ("It is  
27 unreasonable to expect that, merely by utilizing servers owned by a Maryland-based  
28 company, [the defendant] should have foreseen that it could be haled into a Maryland

1 court and held to account for the contents of its website"); *Amberson Holdings LLC v.*  
2 *Westside Story Newspaper*, 110 F. Supp. 2d 332, 335 (D.N.J. 2000) ("It is unreasonable that  
3 by utilizing a New Jersey server, defendants should have foreseen being haled into a  
4 New Jersey federal court").

5 The reason for this judicial unanimity is that an agreement with an Internet  
6 service provider is a brief transaction completed over the Internet with little interaction,  
7 no negotiation of terms, and no promise of future interaction other than the payment of  
8 recurring fees. *AOL, Inc. v. Huang*, 106 F. Supp. 2d 848, 856-57 (E.D. Va. 2000). Such de  
9 minimis contact with the state is not the sort of connection substantial enough to give  
10 rise to personal jurisdiction. *Carefirst*, 334 F.3d at 402 ("[W]e have described as 'de  
11 minimis' the level of contact created by the connection between an out-of-state  
12 defendant and a web server located within a forum"); *Amberson, supra* ("It is  
13 unimaginable that such a contract, without any additional contacts, could serve to  
14 subject a defendant to personal jurisdiction"); *see also Zippo*, 952 F. Supp. at 1125  
15 ("When a consumer logs onto a server in a foreign jurisdiction he is engaging in a  
16 fundamentally different type of contact than an entity that is using the Internet to sell  
17 or market products or services to residents of foreign jurisdictions").

18 This case is indistinguishable. Neither party is claimed to be a resident of  
19 Arizona or have any contacts with Arizona other than contact with an Arizona registrar  
20 from outside Arizona. There is no possible argument that substantive Arizona  
21 defamation law applies or that Arizona has any interest in applying foreign law.

## 22 **2. Doe's Website Has No Impact in Arizona.**

23 Arizona has no interest in resolving this dispute, because it does not impact  
24 Arizona. In *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998), the  
25 Ninth Circuit found personal jurisdiction in California over a defendant in Illinois  
26 because the defendant had engaged in a scheme to extort money from a company that  
27 the defendant knew had its principal place of business in California and was likely to  
28 be injured there. That court noted that the brunt of defendants' tortious activities was

1 felt in the forum state. In contrast, Montana alleges that it resides in the Bahamas and  
2 does business there, and the effects of Doe’s allegedly tortious conduct — if any —  
3 would therefore not be felt in Arizona. *See Dahn World Co. Ltd. v. Chung*, No. CV 05-  
4 3477, 2006 WL 1794758 (D. Ariz. June 27, 2006) (holding that jurisdiction was not  
5 proper in Arizona when the plaintiff did not suffer the brunt of the harm there).

6 Moreover, the subject of Doe’s site has nothing to do with Arizona. In *Carefirst*,  
7 the Fourth Circuit found no personal jurisdiction in Maryland based on a website  
8 devoted to information about medical care in Chicago. 334 F.3d 390. The court  
9 emphasized that “the overall content of [the defendant’s] website has a strongly local  
10 character” that made personal jurisdiction in Maryland inappropriate. *Id.* at 401; *see*  
11 *also Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002) (holding that the  
12 court had no jurisdiction when “[t]he overall content of . . . [the defendant’s] websites  
13 [was] decidedly local”); *Bible & Gospel Tr.*, 354 F. Supp. 2d 1025 (finding no jurisdiction  
14 where the subject of the website was directed at a different jurisdiction).

15 Similarly, Doe’s website in this case is devoted exclusively to Montana’s project,  
16 which is in the Bahamas. *See Cybersell*, 130 F.3d at 419 (finding no personal jurisdiction  
17 in Arizona where the defendant “did nothing to encourage people in Arizona to access  
18 its site, and there is no evidence that any part of its business (let alone a continuous  
19 part of its business) was sought or achieved in Arizona”). Indeed, Montana makes no  
20 allegation that Doe’s website has ever been viewed by anyone in Arizona.

21 Doe’s creation from outside Arizona of a noncommercial website that has no  
22 impact within Arizona has not given him reason to “reasonably anticipate being haled  
23 into court” here. For the foregoing reasons, the Court should dismiss the Complaint on  
24 jurisdictional grounds.

1 **II. DOE'S FIRST AMENDMENT RIGHT TO ANONYMOUS SPEECH HEAVILY**  
2 **OUTWEIGHS MONTANA'S INTEREST IN PURSUING THIS LITIGATION.**

3 **A. The First Amendment Protects Anonymous Internet Speech.**

4 The First Amendment protects the right to anonymous speech. *Best Western Int'l,*  
5 *Inc. v. Doe*, No. cv-06-1537, 2006 WL 2091695 at \*3 (D. Ariz. July 25, 2006); *see*  
6 *Watchtower Bible and Tract Soc'y. of New York v. Village of Stratton*, 536 U.S. 150, 166-67  
7 (2002); *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 199-200 (1999); *McIntyre v.*  
8 *Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Talley v. California*, 362 U.S. 60 (1960).  
9 Anonymous or pseudonymous writings have played an important role over the course  
10 of history, from the literary efforts of Shakespeare and Mark Twain to the authors of  
11 the Federalist Papers. As the Supreme Court wrote in *McIntyre*, 514 U.S. at 341-42, 356:

12 "[A]n author is generally free to decide whether or not to disclose his or  
13 her true identity. The decision in favor of anonymity may be motivated by  
14 fear of economic or official retaliation, by concern about social ostracism,  
15 or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be,... the interest in having anonymous  
16 works enter the marketplace of ideas unquestionably outweighs any  
17 public interest in requiring disclosure as a condition of entry. Accordingly,  
18 an author's decision to remain anonymous, like other decisions concerning  
19 omissions or additions to the content of a publication, is an aspect of the  
20 freedom of speech protected by the First Amendment. ... Under our  
21 Constitution, anonymous pamphleteering is not a pernicious, fraudulent  
22 practice, but an honorable tradition of advocacy and of dissent."

21 The free speech provision of the Arizona Constitution, art. 2, § 6, has repeatedly  
22 been given a broader construction than the First Amendment. *Mountain States Tel. &*  
23 *Tel. Co. v. Arizona Corp. Comm'n*, 160 Ariz. 350, 354-55, 773 P.2d 455, 459-60 (1989).  
24 Unlike the federal constitution, the Arizona Constitution expressly protects the right of  
25 privacy, which includes the right to remain anonymous. *Id.*, 773 P.2d at 462 n.13.

26 As this Court has recognized, the right to anonymity is fully applicable to speech  
27 on the Internet. *Mobilisa, Inc. v. John Doe*, No. CV 2005-012619, at 2 (Ariz. Super. Ct. Jan.  
28 4, 2006) (Gold Decl., Ex. 4); *see also Best Western*, 2006 WL 2091695, at \*3. The U.S.

1 Supreme Court has treated the Internet as a forum of preeminent importance because it  
2 provides any individual who wants to express his views the opportunity to reach other  
3 members of the public who are hundreds or even thousands of miles away at virtually  
4 no cost. *Reno v. ACLU*, 521 U.S. 844 (1997). “Internet anonymity facilitates the rich,  
5 diverse, and far ranging exchange of ideas,” and therefore “the constitutional rights of  
6 Internet users, including the First Amendment right to speak anonymously, must be  
7 carefully safeguarded.” *Best Western*, 2006 WL 2091695, at \*3 (quotation omitted).

8 In particular, courts have granted First Amendment protection to “gripe sites” —  
9 noncommercial websites, such as the website at issue here, set up solely for the purpose  
10 of criticizing a particular person or company. *See, e.g., Lamparello v. Falwell*, 420 F.3d  
11 309 (4th Cir. 2005) (holding that First Amendment concerns limited application of  
12 federal trademark law to fallwell.com, a gripe site about the Reverend Jerry Falwell).<sup>1</sup>

13 **B. Montana Must Make a Preliminary Showing to Learn Doe’s Name.**

14 A number of Arizona decisions have uniformly recognized that civil subpoenas  
15 seeking information regarding anonymous individuals raise First Amendment  
16 concerns. *McMann v. Doe*, CV2006-092226 (Gold Decl., Ex. 1); *Mobilisa*, No. CV 2005-  
17 012619, at 2 (Gold Decl., Ex. 4); *Best Western*, 2006 WL 2091695, at \*3. As another court  
18 stated, in refusing to enforce a subpoena to identify anonymous Internet speakers  
19 whose identities were allegedly relevant to a defense against a shareholder derivative  
20 action: “If Internet users could be stripped of [their] anonymity by a civil subpoena  
21 enforced under the liberal rules of civil discovery, this would have a significant chilling  
22

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23  
24 <sup>1</sup> *See also Taubman Co. v. Webfeats*, 319 F.3d 770, 776 (6th Cir. 2003) (the First  
25 Amendment protects the website “shopsatwillowbend.com” from a claim by the  
26 “Shops at Willow Bend” shopping mall); *Ficker v. Tuohy*, 305 F. Supp. 2d 569, 572 (D.  
27 Md. 2004) (congressional candidate’s website robinficker.com was protected by the  
28 First Amendment against claims by opposing candidate Robin Ficker); *Crown Pontiac,  
Inc. v. Ballock*, 287 F. Supp. 2d 1256 (N.D. Ala. 2003) (gripe site crownpontiacnissan.com  
was protected against claims by car dealer Crown Pontiac Nissan).

1 effect on Internet communications and thus on basic First Amendment rights.” *Doe v.*  
2 *2theMart.com*, 140 F. Supp. 2d 1088, 1093 (W.D. Wash. 2001).

3 Arizona’s courts have enunciated standards that must be followed before  
4 compelling identification of anonymous Internet speakers. In *McMann v. Doe*, CV2006-  
5 092226 (Gold Decl., Ex. 1), the Court dismissed a defamation action for lack of personal  
6 jurisdiction, holding that, “the Plaintiff must show that its claim would survive a  
7 motion for summary judgment before being entitled to discover the identity of an  
8 anonymous speaker through any compulsory discovery process.” The *McMann* Court  
9 adopted the briefs of the Doe defendant [Gold Decl., Exs. 2-3], which present  
10 arguments on personal jurisdiction substantially copied here.

11 The U.S. District Court for the District of Arizona, in *Best Western, supra*, held that  
12 Internet speakers have a qualified First Amendment right to remain anonymous that  
13 must be weighed against the plaintiff’s need for discovery to redress alleged wrongs.  
14 To protect that First Amendment interest, plaintiffs must make a preliminary showing,  
15 specifically submit sufficient evidence to establish a prima facie case, for each essential  
16 element of the claim within plaintiff’s control, before gaining access to the identity of  
17 an anonymous speaker.

18 Cases around the country likewise have adopted similar standards, the lead  
19 cases being *Dendrite v. Doe*, 342 N.J. Super. 134, 775 A.2d 756 (App. Div. 2001), and *Doe*  
20 *v. Cahill*, 884 A.2d 451 (Del. 2005). Another recent opinion, dismissing a case for lack of  
21 prima facie evidence supporting *jurisdiction*, is *McMann v. Doe*, 2006 WL 3102986 (D.  
22 Mass. Oct. 31, 2006).

23 Even in the absence of First Amendment considerations, Arizona law squarely  
24 imposes the burden of proof of personal jurisdiction on plaintiff; once a defendant  
25 challenges personal jurisdiction, plaintiff must come forward with facts establishing  
26 jurisdiction and may not rest on bare allegations of the complaint. *In re Consol. Zicam*  
27 *Prod. Liab. Cases*, 212 Ariz. 85, 89-90, 127 P.3d 903, 907-08 (Ariz. App. Ct. 2006). Only  
28

1 after plaintiff establishes a prima facie case of jurisdiction does the burden of producing  
2 rebuttal evidence shifts to defendant. *Id.*

3 **C. Montana Has Not Made the Required Preliminary Showing.**

4 In this case, Montana has failed to submit any evidence to support its claims.  
5 Montana has submitted no affidavits has not clearly identified factually untrue  
6 statements and provided proof of falsity, nor has Montana quantified or provided any  
7 evidence of damages. There is no prima facie showing that it is possible for Montana to  
8 prove all elements of all pleaded claims, sufficient to pass summary judgment.

9 Montana must provide a prima facie showing overcoming the rule that  
10 expressions of opinion are not actionable for defamation (the issue of whether a  
11 statement is opinion or fact is one for the court to resolve as a matter of law). *Yetman v.*  
12 *English*, 168 Ariz. 71, 811 P.2d 323 (1991). The First Amendment protects against libel  
13 claims based on opinions that do not imply false statements of fact, or on loose,  
14 figurative, or hyperbolic language. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).  
15 And of course truth is an absolute defense. *Id.*

16 Also, proof of damages is an element of a defamation claim in Arizona. *Morris v.*  
17 *Warner*, 160 Ariz. 55, 770 P.2d 359 (Ariz. App. Ct. 1988). Montana's Complaint does not  
18 explain what, if any, damage it suffered during the one week that the allegedly  
19 defamatory material was posted on the site in question or that it lost even one sale as a  
20 result. Montana's Complaint, instead, alleges generally that the website damaged it in  
21 unspecified amounts (although less than the threshold for arbitration) in connection  
22 with unspecified transactions. Complaint, ¶¶17, 27, 34, 42, 43, 52.

23 Montana has not shown that its claims can pass any, much less all, of these  
24 hurdles. No person should be subjected to compulsory identification through a court's  
25 subpoena power unless plaintiff produces sufficient evidence to show a realistic chance  
26 of winning a lawsuit against that Doe defendant. That requirement prevents a plaintiff  
27 from being able to identify critics simply by filing a facially adequate complaint.  
28 Identification of an otherwise anonymous speaker is itself a major form of relief

1 because defendant may then be subjected to harassment, economic retaliation, or other  
2 forms of retribution. In this case, if convicted criminals are connected to the project (*see*  
3 Complaint, ¶13 & Ex. A), identifying the speaker could cause physical harm.

4 Most directly pertinent to this motion, Montana has failed to make a prima facie  
5 showing of the necessary element of personal jurisdiction over Doe in Arizona.

6 Paragraphs 2 and 8 of Montana’s subpoenas [Gold Decl., Exs. 5, 6] demand  
7 production of the identity of the owner of the domain name resortbuyerbeware.com  
8 and all persons involved in its registration, development, and publication, as well as all  
9 communications between the web hosts and website owner. The Court should quash  
10 those paragraphs of the subpoenas unless and until Montana can make the required  
11 preliminary showings that its causes of action can overcome summary judgment.

12 The Court should quash the subpoenas in their entirety, moreover, based on a  
13 ruling that the Court lacks any evidence of personal jurisdiction.

14 **III. DOE SHOULD BE AWARDED ATTORNEYS’ FEES.**

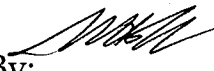
15 Montana and its attorneys ignored clear case law, even after it was brought to  
16 their attention. Gold Decl., Ex. 7. Plaintiff and counsel declined a polite invitation to  
17 withdraw the subpoena even temporarily, to avoid the need for emergency briefing on  
18 this matter. *Id.* For those reasons, attorneys’ fees should be awarded under Ariz. R.  
19 Stat. § 12-349(A) (fees for bringing “a claim without substantial justification” or “solely  
20 or primarily for delay or harassment,” or “engaging in an abuse of discovery”); Ariz. R.  
21 Stat. § 12-341.01(C) (fees if the “claim ... constitutes harassment, is groundless and is not  
22 made in good faith); Ariz. R. Civ. P. 11(a) (fees if an attorney does not assure that a  
23 pleading or paper is “well grounded in fact and is warranted by existing law”).

1 CONCLUSION

2 Specially appearing, Doe respectfully requests that the Court quash the  
3 subpoenas issued by Montana to Godaddy.com, Inc. and Domains By Proxy, Inc.,  
4 dismiss the Complaint for lack of jurisdiction, and award attorneys' fees to Doe.

5 Respectfully submitted this 27th day of August, 2007.

6 HOFFMAN & ZUR

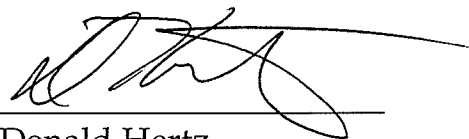
7   
8 By: \_\_\_\_\_

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1 **CERTIFICATE OF SERVICE**

2 I certify that, on August 27, 2007, I caused a copy of this paper to be delivered to  
3 the chambers of Judge Edward O. Burke, and a copy to be served by U.S. mail, postage  
4 prepaid, on:

5 Kimberly A. Warshawsky  
6 GREENBERG TRAURIG  
7 2375 East Camelback Road, Suite 700  
8 Phoenix, Arizona 85016

9 

10 Donald Hertz

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