
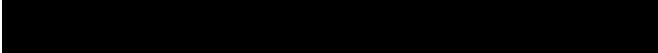




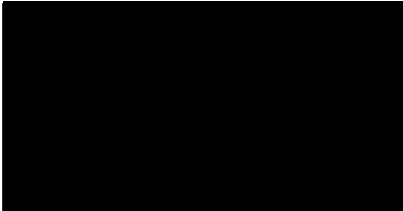
CHRISTIAN DOSCHER,  
 Plaintiff,  
 v.  
 JAMES PATRICK HOLDING,  
 Defendant.

NO. 15-2-01352-9  
 DEFENDANT’S MOTION AND  
 MEMORANDUM FOR DISMISSAL FOR  
 LACK OF PERSONAL JURISDICTION  
 CR 12(b)(2)

The defendant, James Patrick Holding, by and through his attorney of record,   
 hereby moves this Court for an order of dismissal for  
 lack of jurisdiction over the defendant, pursuant to CR 12(b)(2).

**I. INTRODUCTION**

The plaintiff, Christian Doscher, filed his Complaint against the defendant on July 16, 2015, and then filed an Amended Complaint on August 6, 2015. Until October 13, 2015, both parties were *pro se* litigants. Plaintiff’s complaint alleges defamation based upon communications published on a religious website and blog operated by defendant from his home state of Florida, and on another website promoting religious debate. Neither site has any specific geographical focus or bent.



1 Defendant is and always has been a resident of the state of Florida, as acknowledged by  
2 plaintiff's Amended Complaint. See ¶¶ 2 and 9. There is little, if any, intentional conduct involving  
3 the state of [REDACTED] Defendant posted the allegedly defamatory material on websites accessible by  
4 citizens globally, and did not target or distribute the material towards [REDACTED] State specifically. The  
5 postings were made only after plaintiff chose to affirmatively access the internet and engage defendant in  
6 the same forums on which the postings were made.

7 Under traditional notions of fair play and justice, there is no legal or factual basis for this Court to  
8 exercise personal jurisdiction over defendant. As cited herein, recent United States Supreme Court and  
9 federal court cases establish with abundant clarity that merely posting negative comments on the internet  
10 and knowing the plaintiff is in the forum state are insufficient to create the minimum contacts necessary  
11 to support personal jurisdiction.

## 12 II. ISSUES

13 Does this court lack personal jurisdiction over defendant Holding under CR 12(b)(2) where  
14 defendant has no continuous or substantial contact with [REDACTED] state, and did not purposefully direct  
15 the alleged communications toward this state?

## 16 III. EVIDENCE RELIED UPON

17 This motion is based upon CR 12(b)(2); the memorandum submitted in support hereof; the  
18 declaration of James Patrick Holding; and the face of plaintiff's Amended Complaint and the Court's  
19 records herein.

## 20 IV. SUMMARY OF FACTS

21 The following facts are established in the Declaration of James Holding and, except as noted  
22 otherwise, the paragraph citations refer to defendant's declaration.

1 Defendant has, since 1981, resided exclusively in the state of Florida. ¶ 1. His only physical  
2 contact with the state of [REDACTED] occurred in 2000, for less than twenty-four hours, while on vacation.  
3 *Id.* Since approximately 2003, he has interacted with other members on a forum entitled  
4 “TheologyWeb.com” (hereinafter “TWEB”). ¶ 2. This website is nondenominational, not affiliated  
5 with any particular church, and not geographically focused on any one area of the United States. *Id.*  
6 The discussions on this site are generally scholastic views concerning widely varying aspects of  
7 Christianity. *Id.*

8 Since approximately 1998, he has operated an educational website focusing on topics involving  
9 Christianity and promoting his own ministry. ¶ 3. This site is located at www.tektonics.org. He has  
10 run this site exclusively from his home state of Florida. The servers for this site are located in Virginia  
11 and California. *Id.* He is president of Tekton Apologetics Ministries, a non-profit organization doing  
12 business in the state of Florida, which has no connection to the state of Washington. *Id.*

13 Between approximately 2003 through 2006, plaintiff was registered on TWEB under the  
14 internet name “Skepticbud.” ¶ 4. Defendant had several online debates with him over this course of  
15 time. He was banned by the owners and moderators of TWEB sometime in 2006 for rules violations.  
16 *Id.* Defendant did not know plaintiff’s real name or where he lived during this time period.

17 In approximately 2008, plaintiff registered again at TWEB under the name “spirit5er.” ¶ 5.  
18 Defendant had some exchanges with him during this time and did not know that he was the same  
19 person who had previously registered as “Skepticbud.” Plaintiff was banned again, sometime in 2008,  
20 for rules violations. *Id.*

21 In approximately late 2014, plaintiff again registered at TWEB under the name “B&H.” ¶ 6.  
22 In March 2015, defendant had several exchanges with him under this new name on TWEB. *Id.*

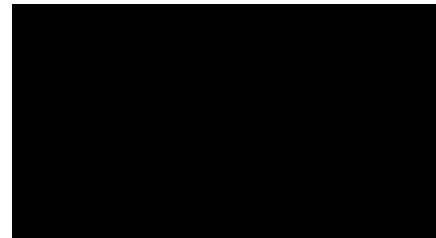
1 Defendant realized that this person was the same person who had previously posted under  
2 “Skepticbud,” and made a TWEB posting to this effect on March 26, 2015. *Id.* After calling plaintiff  
3 out in this manner, defendant and plaintiff had several more internet exchanges on TWEB. *Id.*

4 On April 22, 2015, plaintiff copied some of defendant’s comments on TWEB and emailed  
5 them to a biblical scholar. ¶ 7. When this scholar responded to plaintiff via email, plaintiff copied  
6 this answer and sent it by private message, unsolicited, to several TWEB members. *Id.* This, among  
7 other acts, resulted in plaintiff being banned from TWEB for the third time. Defendant had no  
8 involvement in any of the decisions to ban plaintiff from TWEB, and still did not know plaintiff’s real  
9 name or location. *Id.*

10 On April 23, 2015, defendant learned that plaintiff had been attacking him on the blog of a  
11 different biblical scholar named Daniel Wallace. ¶ 8. Mr. Wallace, who lives in Texas, had previously  
12 endorsed a book written by defendant. *Id.* Based on this, and plaintiff’s previous internet actions  
13 directed towards defendant, defendant made a post on TWEB entitled “Internet Predator Alert,”  
14 concerning the internet activities of plaintiff. *Id.* On April 24, 2015, this same content was posted on  
15 defendant’s own website, tectonics.org. ¶ 9. This communication forms a part of the alleged cause  
16 of action asserted by plaintiff. See Amended Complaint, ¶ 10. At this time, defendant still did not  
17 know plaintiff’s real name. ¶ 8.

18 On June 6, 2015, a person posting under the name “Debunked” posted comments on TWEB  
19 that were consistent in content with all of plaintiff’s prior postings. ¶ 10. Defendant posted a comment  
20 on TWEB alleging that this person was “Skepticbud,” and, based upon this post, “Debunked” was  
21 banned from TWEB. *Id.*

22 The next day, defendant started receiving a large quantity of spam, including pornographic



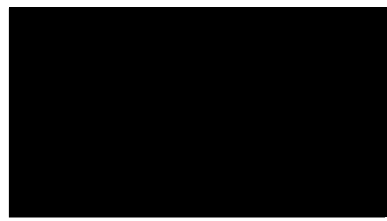
1 spam, to his personal email account. ¶ 11. Defendant traced the source of this spam to an IP (internet  
2 protocol) address in Nashville, which was the same IP address used by “Debunked.” *Id.* Following  
3 these spam attacks, defendant did further research on plaintiff and discovered, for the first time,  
4 plaintiff’s real name and identity and apparent residency in ██████████ State. ¶ 12.

5 On June 8, 2015, defendant initiated a commentary thread on TWEB, entitled “The ‘Secret  
6 Identity’ of Skepticbud aka spirit5er aka Debunked aka B&H aka.” ¶ 13. Based on plaintiff’s  
7 complaint, this, along with the Internet Predator Alert posted on defendant’s website, are the two basis  
8 of his defamation lawsuit. See Amended Complaint, ¶ ¶ 23, 57-82. Many people participated and  
9 commented in this thread and, as acknowledged in plaintiff’s complaint, nowhere in this thread did  
10 defendant reference plaintiff’s actual name or location. ¶ 13.

11 On July 1, 2015, after continuing to receive spam emails, defendant updated the “Internet  
12 Predator Alert” posted on his website to include plaintiff’s real name. ¶ 15. Defendant added to this  
13 post from the time it was first placed on his website, and a true and correct copy of the entirety of the  
14 final communication is attached to defendant’s declaration as Attachment D. *Id.* Defendant did not  
15 send this post to anyone and it was available to view only by those who accessed his website. *Id.*

16 The allegedly defamatory thread on TWEB was removed by that website on July 9, 2015, and  
17 the “Internet Predator Alert” communication was removed by defendant from his site on October 31,  
18 2015. ¶ ¶ 16-17.

19 Defendant was served with plaintiff’s complaint on August 5, 2015. ¶ 18. Prior to this time, other  
20 than as previously disclosed herein, defendant’s only contact with ██████████ State, was a contact he  
21 made by email to the ██████████ Police Department, inquiring how to report someone for internet stalking. ¶  
22 19. Defendant did not use plaintiff’s name in this communication, and did not receive a response. *Id.*



1 V. ARGUMENT

2 There are two types of personal jurisdiction: general and specific. [REDACTED]

3 [REDACTED] General personal  
4 jurisdiction exists when a defendant transacts with a forum “substantial and continuous business of such  
5 character to give rise to a legal obligation.” [REDACTED]

6 [REDACTED] There is no evidence to support even the barest  
7 assertion of general jurisdiction in this matter. Thus, if personal jurisdiction exists at all, this Court  
8 must find it within the confines of the specific contacts jurisdiction doctrine.

9 Specific personal jurisdiction can be exercised by [REDACTED] courts over nonresident  
10 defendants to the extent permitted by the Fourteenth Amendment, the federal due process clause.

11 [REDACTED]

12 [REDACTED] An out-of-state defendant must have  
13 some minimum contact with the state so that personal jurisdiction will not offend “traditional notions  
14 of fair play and substantial justice.” [REDACTED]

15 [REDACTED] quoting *International Shoe Co. v. Washington*, 326 U.S. 310,  
16 316, 66 S.Ct. 154 (1945)).

17 Specific jurisdiction over out-of-state defendants is measured by [REDACTED] which reads  
18 in relevant part:

- 19 (1) Any person, whether or not a citizen or resident of this state, who in person or  
20 through an agent does any of the acts in this section enumerated, thereby submits  
21 said person, and, if an individual, his personal representative, to the jurisdiction of  
22 the courts of this state as to any cause of action arising from doing any of said acts:  
(a) The transaction of any business within this state;  
(b) The commission of a tortious act within this state;

[REDACTED]

- 1 (c) The ownership, use, or possession of any property whether real or personal  
situated in this state;  
2 (d) Contracting to insure any person, property or risk located within this state at the  
time of contracting.  
3

4 Three factors must coalesce for the long-arm statute to apply:

5 (1) The nonresident defendant or foreign corporation must purposefully do some  
act or consummate some transaction in the forum state; (2) the cause of action must  
6 arise from, or be connected with, such act or transaction; and (3) the assumption of  
jurisdiction must not offend traditional notions of fair play and substantial justice,  
7 considering the quality, nature, and extent of the activity in the forum state, the  
relative convenience of the parties, the benefits and protections of state laws  
8 afforded the respective parties, and the basic equities of the situation.

9 [REDACTED]  
10 [REDACTED]  
11 This inquiry encompasses both the statutory and due process concerns of exercising personal  
jurisdiction, [REDACTED]

12 964, 331 P.3d 29 (2014), and is almost identical to the test articulated by federal courts. See  
13 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801-02 (9<sup>th</sup> Cir.2004). [REDACTED] long-  
14 arm statute . . . authorizes the court to exercise jurisdiction over a nonresident defendant to the extent  
15 permitted by the due process clause of the United States Constitution.” [REDACTED]

16 [REDACTED] long-arm statute is “designed to  
17 be coextensive with federal due process.” [REDACTED] A plaintiff bears the burden of  
18 making at least a prima facie showing of facts sufficient to support jurisdiction, [REDACTED]  
19 App. at 418, and for purposes of evaluating minimum contacts, the court’s focus is on the acts of the  
20 defendant, not the plaintiff. [REDACTED]  
21 [REDACTED]

1           **A.       MINIMUM CONTACTS NOT SUFFICIENT**

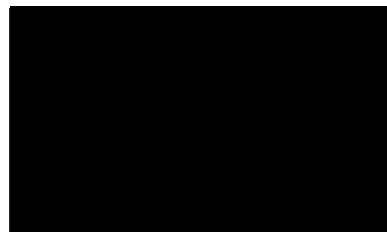
2           Under the first criteria for determining whether assertion of long-arm jurisdiction violates due  
3 process, the nonresident defendant must purposefully avail itself of the privilege of conducting activities  
4 within the forum state, thereby invoking the benefits and protections of its laws. [REDACTED]

5 [REDACTED]. Defendant’s pre-filing contacts with the state of  
6 [REDACTED] a short visit on vacation in 2000 and an email inquiry to a law enforcement agency—do not  
7 suffice for minimum contacts. Due process does not allow jurisdiction based upon “random” or  
8 “attenuated” contacts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174 (1985).

9           Likewise, plaintiff cannot rely on post-filing contacts in a minimum contacts analysis. See, e.g.,  
10 *Newman-Green, Inc., v. Alfonzo-Larrain*, 490 U.S. 826, 830, 109 S.Ct. 2218 (1989) (“jurisdiction  
11 ordinarily depends on the facts as they exist when the complaint is filed.”); *United Phosphorous, Ltd.*  
12 *V. Angus Chem. Co.*, 43 F.Supp.2d 904, 910 (N.D.Ill.1999) (declining to consider post-filing contacts  
13 for purposeful availment analysis); *Steel v. United States*, 813 F.2d 1545, 1549 (9th Cir.1987) (to  
14 determine whether specific jurisdiction is proper, the court must examine the defendant's contacts with  
15 the forum at the time of the events underlying the dispute).

16           **B.       THERE WAS NO EXPRESS AIMING OR DIRECTION TO [REDACTED]**

17           The United States Supreme Court recently confirmed with absolute clarity what many lower courts  
18 had already expressed: “[t]he proper question is not where the plaintiff experienced a particular injury or  
19 effect but whether the defendant’s conduct connects him to the forum in a meaningful way.” *Walden v.*  
20 *Fiore*, 571 U.S. \_\_\_, 134 S.Ct. 1115, 1125 (2014). Knowledge that a plaintiff resides in a particular  
21 location and foreseeable harm in that location are not sufficient to establish defendant’s connection with  
22 the forum. *Id.* at 1124-25.





1 In judging minimum contacts when the cause of action involves intentional torts such as  
2 defamation, a defendant's intentional and alleged tortious actions must be expressly aimed at the forum  
3 such that the forum can be said to be the focal point of the activity and the harm suffered. *Calder v. Jones*,  
4 465 U.S. 783, 789, 104 S.Ct. 1482 (1984). It is necessary to examine "the relationship among the  
5 defendant, the forum and the litigation," and it is the contacts the defendant creates with the forum, not the  
6 plaintiff, that are relevant. *Id.*

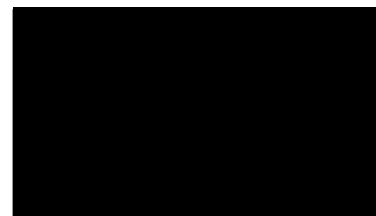
7 In the internet context, these axioms have been translated into the obvious proposition that "merely  
8 posting on the Internet negative comments about the plaintiff and knowing the plaintiff is in the forum  
9 state are insufficient to create minimum contacts." *Burdick v. Superior Court*, 233 Cal. App. 4<sup>th</sup> 8, 25  
10 (2015). Just as the *Calder* case founded jurisdiction upon the defendant's affirmative targeting,  
11 distribution and publication of the defamatory material in the forum state, courts similarly require, in the  
12 internet context, that "defendant's internet activity is expressly directed at or directed to the forum state."  
13 *Revell v. Lidov*, 317 F.3d 467, 475 (5<sup>th</sup> Cir.2002) (quoting *Young v. New Haven Advocate*, 315 F.3d 256,  
14 262 (4<sup>th</sup> Cir.2002)).

15 The "mere posting of information or advertisements on an Internet website does not confer  
16 nationwide personal jurisdiction." *Remick v. Manfredy*, 238 F.3d 248, 259, fn. 3 (3d Cir.2001).  
17 Otherwise, a "person placing information on the Internet would be subject to personal jurisdiction in  
18 every State,' and the traditional due process principles governing a State's jurisdiction over persons  
19 outside of its borders would be subverted." *Young*, 315 F.3d at 263 (citing *ALS Scan, Inc. v. Digital*  
20 *Service Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir.2002); see also *GTE New Media Servs. Inc. v.*  
21 *BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir.2000) (rejecting the notion that "mere accessibility"  
22 of an internet service in the forum suffices for personal jurisdiction, because that "expansive theory of

1 personal jurisdiction would shred the[] constitutional assurance[] [of due process] out of practical  
2 existence”).

3 In *Young*, the fact that a newspapers' websites could be accessed anywhere, including Virginia,  
4 did not by itself demonstrate that the newspapers were intentionally directing their website content to  
5 a Virginia audience. “Something more than posting and accessibility is needed to ‘indicate that the  
6 [newspapers] purposefully (albeit electronically) directed [their] activity in a substantial way to the  
7 forum state.” 315 F.3d at 263 (quoting *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th  
8 Cir.1998)). The defendant must, through the Internet postings, “manifest an intent to target and focus  
9 on” the forum state. *Id.*

10 Numerous courts have now reached the same or a similar conclusion. (See, e.g., *Advanced*  
11 *Tactical Ordnance Systems, LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir.2014)  
12 (email advertisements to customer lists, some in the forum state, did not evidence “deliberate actions  
13 by the defendant to target or direct itself toward the forum state.”); *Giduck v. Niblett*, \_\_P.3d \_\_, 2014  
14 WL 2986670 (Colo.Ct.App.2014) (no jurisdiction where internet statements, distributed “as widely as  
15 possible,” were not directed towards and did not focus on Colorado); *Herman v. Cataphora, Inc.*, 730  
16 F.3d 460, 465–466 (5th Cir.2013) (to create personal jurisdiction, allegedly defamatory statements on  
17 Web site must have “focal point” in forum state); *DFSB Kollektive Co. Ltd. v. Bourne*, 897 F.Supp.2d  
18 871 (N.D.Cal.2012) (no California jurisdiction because the plaintiffs failed to show a substantial  
19 number of Web site hits came from California and Web site advertisements did not target California);  
20 *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1230 (9<sup>th</sup> Cir.2011) (California had  
21 jurisdiction because the subject of the defendant's Web site was “the California-centered celebrity and  
22 entertainment industries” and Web site advertisements targeted California residents); *Wilkerson v. RSL*

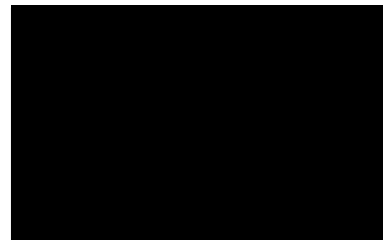


1 *Funding, L.L.C.*, 388 S.W.3d 668, 682 (Tex.App.2011) (“[The defendant]’s online postings, which  
2 were made available to anyone interested in them, were not specifically directed towards Texas, and  
3 therefore do not support exercising jurisdiction over this case.”); *Broadvoice, Inc. v. TP Innovations,*  
4 *LLC*, 733 F.Supp.2d 219, 221-22 (D.Mass.2010) (no jurisdiction in Massachusetts where Texas  
5 residents operated website disparaging services provided by Massachusetts’ company because  
6 defendants “did nothing to incite residents of Massachusetts—as opposed to the world at large—to  
7 take up arms against [the plaintiff].”); *Johnson v. Arden*, 614 F.3d 785, 796 (8th Cir.2010)  
8 (defamatory internet posts did not confer Missouri jurisdiction because they did not focus on that  
9 state.); *Griffis v. Luban*, 646 N.W.2d 527 (Minn.2002) (no jurisdiction where internet postings not  
10 directed at or concerning forum state, and readers spread out all over the country.))

11 In the circumstances before this Court, dismissal is appropriate based on the same  
12 considerations and rationales cited by those jurisdictions, *supra*. Defamation is alleged based upon an  
13 online discussion thread in the TWEB website, and content authored by defendant and posted on his  
14 own religious website. Neither site has any [REDACTED] specific connection or content, and readership  
15 in both sites is likely to come from all over the world. Plaintiff cannot demonstrate any effect on a  
16 [REDACTED]-specific audience.

17 The communications themselves were not directed or expressly aimed towards [REDACTED] or  
18 its residents. If there is a target audience, it is either other members of the TWEB community or users  
19 of the internet in general who might encounter plaintiff. Defendant’s communications are ostensibly  
20 warnings to other users of the internet, generally, concerning plaintiff and his activities.

21 For the most part, defendant’s “Internet Predator Alert” document concerns plaintiff’s online  
22 activities or plaintiff’s character traits, generally. See Declaration of James Holding, Attachment D.



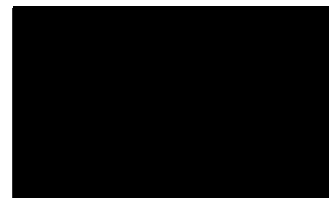
1 The only content in any of the source material identified in plaintiff's complaint that references  
2 [REDACTED] and/or plaintiff's activities in [REDACTED] are allegations concerning lawsuits previously  
3 filed by plaintiff in [REDACTED]. The document authored by defendant asserts: plaintiff is a "serial  
4 filer of nuisance lawsuits in his home state of [REDACTED]." It discusses and/or provides links to court  
5 documents in one or more previous legal actions.

6 This is the only subject matter that gives plaintiff any legal argument, whatsoever, that there is  
7 a connection between the allegedly defamatory material and [REDACTED] but this content does not  
8 overcome due process concerns or create circumstances where it is fair and reasonable to believe that  
9 defendant availed himself of this jurisdiction.

10 First, the allegation itself is not dependent on the location for impact or effect. The allegedly  
11 defamatory allegation is that plaintiff files numerous, frivolous legal actions. The fact that these  
12 lawsuits may occur in [REDACTED] is not relevant concerning the effect of the communication. The  
13 subject is frivolity and numerosity, not location.

14 Second, the fact that the communication may, in part, reference a jurisdictional location, does  
15 not overcome the fact that there was no effort to direct or aim the communication towards that  
16 jurisdiction. This is evidenced in *Johnson v. Arden*, 614 F.3d 785 (8th Cir.2010), where defendant  
17 posted on an internet site the communication that plaintiff "operated from Unionville, Missouri, where  
18 they killed cats, sold infected cats and kittens, brutally killed and tortured unwanted cats and operated  
19 a 'kitten mill' in Unionville, Missouri." *Id.* at 796.

20 In dismissing for lack of personal jurisdiction, the court recognized that, although this  
21 communication was accepted as true, "alone, it fails to show that [defendant] uniquely or expressly  
22 aimed her statements at Missouri." *Id.* "The statements were aimed at the [plaintiffs]; the inclusion



1 of "Missouri" in the posting was incidental and not 'performed for the very purpose of having their  
2 consequences' felt in Missouri." *Id.* (quoting *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d  
3 1384, 1390–91 (8th Cir.1991)). Further, the court based its decision on the fact that here was no  
4 evidence that the website specifically targeted Missouri, or that the content of defendant's alleged  
5 postings specifically targeted Missouri. *Id.*

6 Upon the same reasoning, the mention of lawsuits filed in [REDACTED] does not target the  
7 communication at-issue towards [REDACTED]

#### 8 VI. CONCLUSION

9 For the foregoing reasons, traditional notions of fair play and justice do not warrant personal  
10 jurisdiction by this court over defendant. The underlying facts in this matter do not establish that  
11 defendant availed himself of this jurisdiction, or directed his activities towards this jurisdiction, in a  
12 manner sufficient to establish that he could reasonably expect being summoned into court here.

13 Plaintiff chose to go onto the internet and engage defendant. Defendant responded in essentially  
14 the same forums in which plaintiff chose to interact. Defendant did nothing to direct his communications  
15 towards plaintiff's home jurisdiction. Under these circumstances, it is not established that defendant has  
16 committed any acts which would subject him to plaintiff's home jurisdiction.

17 For these reasons, defendant respectfully requests dismissal.

18 DATED this 21st day of April, 2016.