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**UNITED STATES DISTRICT COURT**

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**DISTRICT OF NEVADA**

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BRADLEY STEPHEN COHEN, et al.,

2:12-CV-1401 JCM (PAL)

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Plaintiff(s),

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v.

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ROSS B. HANSEN, et al.,

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Defendant(s).

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**ORDER**

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Presently before the court is defendants', Steven Earl Firebaugh, Ross B. Hansen, and Northwest Territorial Mint, LLC, motion to dismiss for lack of personal jurisdiction and improper venue. (Doc. # 45). Plaintiffs', Bradley Stephen Cohen and Cohen Asset Management, Inc., filed a response in opposition (doc. # 48)<sup>1</sup>, and defendants filed a reply (doc. # 53).

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Also before the court is plaintiffs' motion for entry of clerk's default against defendant Northwest Territorial Mint, LLC. (Doc. # 51). Defendant Northwest Territorial Mint, LLC, filed a response in opposition (doc. # 55), and plaintiffs filed a reply (doc. # 59).

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Also before the court is plaintiffs' motion for entry of clerk's default against defendant Steven Earl Firebaugh. (Doc. # 52). Defendant Firebaugh filed a response in opposition (doc. # 54), and plaintiffs filed a reply (doc. # 60).

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Also before the court is plaintiffs' motion to strike defendants' reply to their motion to dismiss. (Doc. # 57). No response has been filed even though the deadline date has passed.

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<sup>1</sup> Plaintiffs filed a supplement to their response, which this court has reviewed. (See doc. # 69).

1 **I. Background**

2 Plaintiff Bradley Stephen Cohen (“Cohen”) resides in California. (Doc. # 40, first amended  
3 compl. at ¶ 1). He is the president and chief executive officer of Cohen Asset Management  
4 (“CAM”), a privately held California corporation. (*Id.* at ¶ 1-2). CAM “acquires, finances, operates  
5 and is involved with the disposition of industrial properties across the United States.” (*Id.* at ¶ 2).

6 Defendant Ross B. Hansen (“Hansen”) is a resident of the state of Washington and a part-  
7 time resident of Nevada. (*Id.* at ¶ 3). Defendant Northwest Territorial Mint, LLC (“NW Mint”) is  
8 a Washington limited liability company. (*Id.* at ¶ 4). NW Mint is registered to DO business in  
9 Nevada and maintains a physical address and corporate offices at 80 East Airpark Vista Boulevard,  
10 Dayton, Nevada. (*Id.* at ¶ 4). Defendant Steven Earl Firebaugh (“Firebaugh”) is a resident of  
11 Nevada.

12 In April 2012, plaintiffs discovered allegedly defamatory and malicious websites containing  
13 intentionally false and disparaging publication about plaintiffs. (*Id.* at ¶ 9). The websites, among  
14 other things, compared plaintiff Cohen to Bernie Madoff and displayed a picture with plaintiff Cohen  
15 allegedly photo-shopped with a picture of Bernie Madoff. (*Id.* at ¶ 12). The websites contained  
16 allegedly false and scandalous allegations against plaintiff CAM.

17 Plaintiffs allege that defendants secretly created and established the websites and intended  
18 to conceal any involvement with the websites’ creation. (*Id.* at ¶ 29). Defendants allegedly created  
19 the websites in retaliation for two lawsuits regarding business leases, which defendants lost, in  
20 Washington state court. (*Id.* at ¶ 31).

21 Based on the foregoing, plaintiffs filed the instant complaint alleging the following causes  
22 of action against defendants: (1) defamation and defamation per se; (2) invasion of privacy/false  
23 light; (3) intentional infliction of emotional distress; (4) intentional interference with future expected  
24 business; and, (5) injunctive relief. Defendants’ motion to dismiss argues that this court does not  
25 have personal jurisdiction, either general or specific, over defendant Hansen, and that venue is  
26 improper.

1 In response to the amended complaint, defendants filed the instant motion to dismiss for lack  
2 of personal jurisdiction and/or improper venue. The motion is joined by and on behalf of all  
3 defendants. However, the motion makes arguments concerning defendant Hansen only. The motion  
4 makes no arguments pertaining to defendants Firebaugh or NW Mint. Therefore, the court discusses  
5 and analyzes Hansen only.

## 6 **II. Legal Standard**

7 Federal Rule of Civil Procedure 12(b)(2) provides that a court may dismiss a complaint for  
8 “lack of jurisdiction over the person.” “Where a defendant moves to dismiss a complaint for lack  
9 of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is  
10 appropriate.” *Schwarzenegger v. Fred Martin Co.*, 374 F.3d 797, 800 (9th Cir. 2004). A court  
11 evaluating such a motion may consider evidence presented in affidavits to assist its determination  
12 and may order discovery on the jurisdictional issues. *Data Disc, Inc. v. Sys. Tech. Assoc.*, 557 F.2d  
13 1280, 1285 (9th Cir. 1997).

14 Where a court proceeds on the basis of affidavits and without discovery and an evidentiary  
15 hearing, “the plaintiff need only make a prima facie showing of jurisdiction to avoid the defendant’s  
16 motion to dismiss.” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122,  
17 1129 (9th Cir. 2003). “Conflicts between parties over statements contained in affidavits must be  
18 resolved in the plaintiff’s favor.” *Schwarzenegger*, 374 F.3d at 800.

19 “Exercise of *in personam* jurisdiction over an out-of-state defendant is limited by the Due  
20 Process Clause of the Fourteenth Amendment.” *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d  
21 1163, 1168-69 (9th Cir. 2006). “The cornerstone of the due process inquiry is an analysis of the  
22 defendant’s contacts with the selected forum.” *Id.* An out-of-state defendant must have “minimum  
23 contacts” with the forum state so that the exercise of jurisdiction does not offend “traditional notions  
24 of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

## 25 **III. Discussion**

26 The court finds it necessary to discuss general jurisdiction and venue only. Ultimately, the  
27 court concludes that it has general over all the defendants, and that venue is proper in this forum.  
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1           A.       *General Jurisdiction*

2           A court may exercise personal jurisdiction over a defendant in a suit not arising out of or  
3 related to the defendant’s contacts with the forum state, i.e., general jurisdiction, if the defendant has  
4 “substantial” or “continuous and systematic” contacts with the state. *Helicopteros Nacionales de*  
5 *Colombia v. Hall*, 466 U.S. 408, 414-16 & n.9 (1984). “Presence is a well-established basis for  
6 general jurisdiction: an individual who is physically present in a state is subject to the jurisdiction  
7 of its courts on any matter.” *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 921 (9th Cir. 2011)  
8 (citing *Int’l Shoe Co.*, 326 U.S. at 318).

9           “‘It is the nature and extent of the contacts that determines whether they are ‘substantial’ or  
10 ‘continuous and systematic.’ Longevity, continuity, volume, economic impact, physical presence,  
11 and integration into the state’s regulatory or economic markets are among the indicia of such a  
12 presence.” *Tuazon*, 433 F.3d at 1172.

13           Defendants essentially argue that Hansen is domiciled in Washington state and therefore does  
14 not have continuous and systematic connections to the state of Nevada. Plaintiffs counter by arguing  
15 that while domicile is a relevant consideration, a court may still exercise general jurisdiction over  
16 a defendant based on other factors that establish continuous and systematic contacts. The court  
17 agrees with plaintiffs.

18           Both sides agree that defendant Hansen is domiciled in Washington. However, he has  
19 enough contacts with the forum state so that this court may exercise general jurisdiction over his  
20 person. Hansen has admitted that, on average, he spends two to three days per month in Nevada.  
21 He has bank accounts in Nevada and his accounts reveal that he makes regular monthly purchases  
22 to travel to and stay in Carson City, Nevada. He travels occasionally to Las Vegas, Nevada.

23           In addition to regular physical presence in this state, Hansen has significant business in  
24 Nevada. He owns and operates various corporate entities headquartered or doing business in  
25 Nevada. Most significant of these entities for the purposes of this lawsuit is NW Mint. NW Mint  
26 conducts significant business in Nevada, maintains a physical address in Nevada, and has corporate  
27 offices in Nevada. Hansen is the chief executive officer and president of NW Mint. He is a 99%

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1 controlling owner. Finally, in the Washington state court case between these two parties, the state  
2 court judge found that Hansen is the alter ego NW Mint and that he “blurred legal distinctions”  
3 between his own actions and those of NW Mint.

4 This court has general jurisdiction over defendant Hansen due to his substantial, continuous  
5 and systematic contacts with the forum state. Hansen’s personal contacts and his business contacts  
6 with the forum state, Nevada, are such that it would not offend traditional notions of fair play and  
7 substantial justice to exercise general jurisdiction. *See Gala v. Britt*, no. 2:10-cv-00079-RLH-RJJ,  
8 2010 WL 5248430, at \*3 (D. Nev. Dec. 15, 2010) (“the Court finds that [defendants] repetitive use  
9 of Nevada’s corporate laws to create and manage business entities represents sufficiently continuous  
10 and systematic contact with Nevada for the Court to exercise general jurisdiction over these  
11 Defendants.”) *vacated on other grounds*, 472 Fed. App’x. 643 (9th Cir. 2012).

12 *B. Venue*

13 28 U.S.C. § 1391(b)(1) provides that a civil action may be brought in “a judicial district in  
14 which any defendant resides, if all defendants are residents of the State in which the district is  
15 located. . . .” Alternatively, a civil action may be brought in “a judicial district in which a substantial  
16 part of the events or omissions giving rise to the claim occurred, or a substantial part of property that  
17 is the subject of the action is situated. . . .” 28 U.S.C. § 1391(b)(2).

18 The court finds that this venue is proper under either 28 U.S.C. § 1391(b)(1) or (b)(2). All  
19 of the defendants reside in this state, though some more frequently than others. Additionally,  
20 plaintiffs have provided affidavits that make a prima facie showing that defendants created or  
21 published the websites in dispute from Nevada.

22 **IV. Default**

23 Plaintiffs move the court to enter default judgment against defendants Firebaugh and NW  
24 Mint under Federal Rule of Civil Procedure Rule 55. These defendants have not filed an answer.  
25 Instead, they joined the motion to dismiss for lack of personal jurisdiction and/or improper venue  
26 filed by defendant Hansen.

27 . . .

1 Plaintiffs argue that defendants Firebaugh and NW Mint were required to file an answer  
2 because the motion to dismiss does not make any arguments about the court's ability or inability to  
3 exercise personal jurisdiction over them. The motion argues only that jurisdiction over Hansen is  
4 improper. Defendants Firebaugh and NW Mint counter by arguing that Hansen is a necessary party  
5 under Rule 19 and that their answer is otherwise tolled by joining the motion to dismiss.

6 The court finds that the public policy favoring adjudication or resolution of lawsuits on the  
7 merits to be dispositive on this issue. *See Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986)  
8 (noting "the strong public policy underlying the Federal Rules of Civil Procedure favoring decisions  
9 on the merits."). All defendants must now file an answer in accordance with federal rules because  
10 this order disposes of the motion to dismiss.

11 Accordingly,


12 IT IS HEREBY ORDERED, ADJUDGED, DECREED that defendants' motion to dismiss  
13 for lack of jurisdiction and improper venue (doc. # 45) be, and the same hereby, is DENIED.

14 IT IS FURTHER ORDERED that plaintiffs' motion for entry of clerk's default (doc. # 51)  
15 be, and the same hereby, is DENIED.

16 IT IS FURTHER ORDERED that plaintiffs' motion for entry of clerk's default (doc. # 52)  
17 be, and the same hereby, is DENIED.

18 IT IS FURTHER ORDERED that plaintiffs' motion to strike defendants reply to the motion  
19 to dismiss (doc. # 57) be, and the same hereby, is DENIED.

20 DATED June 24, 2013.

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UNITED STATES DISTRICT JUDGE