

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2018-092198

08/27/2018

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT  
T. Cooley  
Deputy

SCOTT ALAN MALCOMSON

SCOTT ALAN MALCOMSON  
4813 E CABALLERO CIR # 1  
MESA AZ 85205

v.

I M V U

CHARLES H OLDHAM

JUDGE WHITTEN

MINUTE ENTRY

Courtroom 612-ECB

1:37 p.m. This is the time set for Oral Argument re: Defendant's Motion to Dismiss Plaintiff's Complaint. Plaintiff is present on his own behalf. Defendant is represented by counsel, Charles H. Oldham.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented.

Based upon matters presented to the Court,

IT IS ORDERED taking this matter under advisement.

1:54 p.m. Matter concludes.

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**LATER:**

The Court has considered Defendant's Motion to Dismiss Plaintiff's Complaint, filed June 22, 2018, Plaintiff's Responsive Memorandum in Opposition, filed June 29, 2018, and Defendant's Reply, filed July 16, 2018. The Court benefited from oral argument on the motion on August 27, 2018.

As an initial procedural matter, Plaintiff's July 23, 2018 Motion to Strike the Defendant's reply brief is denied.

Plaintiff does not show that IMVU made any special effort to solicit uploads from Arizona residents in general or from him in particular. In *Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties, Ltd.*, 226 Ariz. 262, 268-69 ¶ 26-31 (2011), the Supreme Court found "a series of telephone calls, e-mails, faxes, and letters to [each of] the Arizona plaintiffs, seeking to persuade the plaintiffs to invest" to constitute sufficient contacts. No such focused inducement is found in this case.

The facts here, however, are much closer to *Cybersell, Inc. v. Cybersell, Inc.* 130 F.3d 414, 418-19 (9<sup>th</sup> Cir. 1997), and *Smith & Wesson Corp. v. The Wuster*, 243 Ariz. 355 (App. 2017), both analyzing purposeful availment in the context of commercial internet activity in Arizona. *Cybersell* was an extreme case (according to the opinion, the plaintiff was the only Arizonan who accessed its website), but *Smith & Wesson* reached the same conclusion where Arizonans used the website but not disproportionately and were not singled out for solicitation. Under those facts, the court found no purposeful availment and hence no personal jurisdiction in Arizona *Id.* at ¶ 19-20.

Plaintiff objects that he is a *per se* litigant filing *in forma pauperis*. That may be so. However, in our legal system, there is but one law and it applies to rich and poor alike. That Mr. Malcomson is too impecunious to litigate in IMVU's home state of Delaware cannot detract from IMVU's constitutional right not to be sued in an improper forum.

As this Court lacks jurisdiction, it cannot and does not address the remaining issues.

ACCORDINGLY, Defendant's Motion to Dismiss is granted.