No. _____

In the Supreme Court of the United States

COINMARKETCAP OPCO, LLC AND
BAM TRADING SERVICES, INC., PETITIONERS

v.

RYAN COX

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Throughout the United States Code, Congress has enacted special venue and nationwide service-of-process provisions in multiple federal statutes. The Commodity Exchange Act, 7 U.S.C. § 25(c), contains such paired provisions, which are "virtually indistinguishable" from the same provisions found in the antitrust and securities statutes. App., *infra*, 14a. The question presented is:

Whether defendants are subject to personal jurisdiction in every judicial district nationwide by virtue of the nationwide service provision, even where the corresponding special venue provision is not satisfied.

PARTIES TO THE PROCEEDING

Petitioners CoinMarketCap OpCo, LLC and BAM Trading Service, Inc. were defendants-appellees in the court of appeals. Binance Capital Management Co., Ltd., Changpeng Zhao, Catherine Coley, Yi He, and Ted Lin were also defendants-appellees in the court of appeals. Respondent Ryan Cox was plaintiff-appellant in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner CoinMarketCap OpCo, LLC is a wholly owned subsidiary of CoinMarketCap LLC, which is a wholly owned subsidiary of B-CMC Holdings (Delaware) Inc. In turn, B-CMC Holdings (Delaware) Inc. is a wholly owned subsidiary of Digital Anchor Holdings Limited, a privately held company formerly called Binance Capital Management Co., Ltd. No one publicly held company owns 10% or more of the stock of Digital Anchor Holdings Limited.

Petitioner BAM Trading Services, Inc. states that no parent corporation or any publicly held corporation owns ten percent or more of its stock.

RELATED PROCEEDINGS

United States District Court (D. Ariz.):

Cox v. CoinMarketCap OpCo LLC et al., Civ. No. 3:21-08197 (Feb. 10, 2023)

United States Court of Appeals (9th Cir.):

Cox v. CoinMarketCap OpCo LLC et al., No. 23-15363 (Aug. 12, 2024)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners CoinMarketCap OpCo, LLC and BAM Trading Services, Inc. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a) is reported at 112 F.4th 822. The decision and order of the district court granting Petitioners' motion to dismiss (App., *infra*, 29a) is reported at 2023 WL 1929551. The order of the court of appeals denying rehearing en banc (App., *infra*, 76a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 12, 2024. A petition for rehearing was denied on December 4, 2024. App., *infra*, 76a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The Commodity Exchange Act, 7 U.S.C. § 25(c), provides in relevant part:

> Any action brought under subsection (a) of this section may be brought in any judicial district wherein the defendant is found, resides, or transacts business, or in the judicial district wherein any act or transaction constituting the violation occurs.

> Process in such action may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found.

STATEMENT

Paired venue and nationwide service-of-process provisions are found in numerous federal statutes including the Commodity Exchange Act, Clayton Act, Securities Act, and Securities Exchange Act. The federal courts of appeals are divided on whether to read these provisions as an integrated whole, or whether to ignore the venue provision, for purposes of assessing personal jurisdiction over a defendant. The competing approaches have far-reaching consequences for defendants and principles of constitutional due process. Courts reading the statutes as an integrated whole require plaintiffs to satisfy both provisions, and protect defendants from being haled into jurisdictions where their activities are not sufficient to establish general or specific personal jurisdiction. Courts that treat the service provision in isolation, and that permit pairing with the General Venue Statute, 28 U.S.C. § 1391, instead of the statutory venue provision, have converted nationwide service into a basis for personal jurisdiction and venue in any district, regardless of the touchpoints of the defendant with the forum. Because of this split among the courts of appeals, defendants are subject to different rules in different parts of the country, and venue provisions in long-standing federal statutes have effectively been erased by certain courts.

Plaintiff, an Arizona resident and purported purchaser of the cryptocurrency HEX, commenced this lawsuit in the federal district court in Arizona, alleging that defendants violated the Commodity Exchange Act in connection with HEX's low ranking on CoinMarketCap's website. None of the defendants had any presence in Arizona—Petitioners are incorporated and have principal places of business in other states, and the foreign defendants have no presence in the United States—and all moved to dismiss the action for lack of personal jurisdiction. In his opposition to the motion to dismiss, Cox asserted for the first time that personal jurisdiction was established by the Commodity Exchange Act's nationwide service-of-process provision, notwithstanding the fact that the corresponding venue provision of the statute was not satisfied. The district court rejected this argument and granted the motions to dismiss based on lack of personal jurisdiction, finding that the Commodity Exchange Act's service provision must be read in conjunction with the venue provision, and that both provisions must be established in order to give rise to personal jurisdiction in the forum. Because Cox failed to demonstrate that any defendant had sufficient contacts with Arizona to satisfy the venue provision, the district court dismissed the complaint for lack of personal jurisdiction.

On appeal, the Ninth Circuit affirmed dismissal of the foreign defendants but reversed dismissal of Petitioners, concluding that plaintiffs need not satisfy the venue provision of the Commodity Exchange Act, and that the Act's nationwide service provision gives

rise to nationwide venue and nationwide personal jurisdiction.

That decision perpetuates a conflict among the federal courts of appeals as to whether, in determining venue and personal jurisdiction over domestic defendants like Petitioners, the paired venue and nationwide service provisions found in the commodities, antitrust, and securities laws should be interpreted as a whole, or whether the provisions should be interpreted independently (thus rendering the special venue provision meaningless). The Ninth Circuit stands alone in its "independent" approach, while the D.C., Second, and Seventh Circuits follow the "dependent" approach, requiring courts to read the special venue and service-of-process provisions as an integrated whole, based on legislative history and foundational tenets of statutory interpretation. The Third Circuit has taken yet another approach, permitting courts to treat the nationwide service provision as an independent provision vis-à-vis foreign defendants, while emphasizing that foreign defendants are treated differently than domestic defendants for purposes of venue. As a result of this split, district courts vary widely in their interpretations of the special provisions, with some mandating that the provisions be read as an integrated whole and others allowing plaintiffs to hale defendants into jurisdictions to which they have no ties.

The question presented is of exceptional importance to ensure consistency in the interpretation of multiple federal statutes and to preserve constitutional principles of due process. The

Court should grant review to resolve the split among the courts of appeals and to make clear that the special venue and nationwide service provisions must be read as an integrated whole.

A. Background

1. Congress enacted the Commodity Exchange Act of 1936 to regulate all commodities and futures trading activities in the United States. In 1992, Congress amended the Act to include a dual special venue and nationwide service-of-process provision. See Futures Trading Practices Act of 1992, H.R. Rep. No. 102-6 (1992). Section 25(c) of the Commodity Exchange Act, as codified, states:

> Any action brought under subsection (a) of this section may be brought in any judicial district wherein the defendant is found, resides, or transacts business, or in the judicial district wherein any act or transaction constituting the violation occurs. Process *in such action* may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found.

7 U.S.C. § 25(c) (emphasis added). Section 25(c) thus sets venue and authorizes nationwide service in consecutive clauses within the same provision.

Section 25(c)'s special venue and nationwide service provisions are "virtually indistinguishable" from the same provisions found in the antitrust and securities laws. App., *infra*, 14a. "Section 27 of the Exchange Act was modeled after Section 12 of the

Clayton Act," *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1179 (9th Cir. 2004). Section 25(c) of the Commodity Exchange Act, in turn, was modeled after the securities laws to "place commodity futures customers on the same footing as securities customers." H.R. Rep. 102-6, at 57 (1992).[1]

2. "Personal jurisdiction" constitutes the court's power over the parties, which must be established before a court has the power to issue a binding order. See *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979). "Congress' typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process." *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 409 (2017). Federal Rule of Civil Procedure 4(k) governs personal jurisdiction in federal court. A district court usually obtains personal jurisdiction through a plaintiff's service of a summons on a defendant that is subject to the long-arm statute of "the state where the district court is located." Fed. R. Civ. P. 4(k)(1)(A). Service of a summons also establishes personal jurisdiction over a defendant "when authorized by a federal statute." Fed. R. Civ.

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[1] *Compare* Clayton Act, 15 U.S.C. § 22 (". . . process *in such cases* may be served in the district of which it is an inhabitant, or wherever it may be found." (emphasis added)), *with* Securities Act, 15 U.S.C. § 77v(a) (". . . process *in such cases* may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found." (emphasis added)), *with* Exchange Act, 15 U.S.C. § 78aa(a) (same), *with* Commodity Exchange Act, 7 U.S.C. § 25(c) ("Process *in such action* may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found." (emphasis added)).

P. 4(k)(1)(C). As noted, Section 25(c) of the Commodity Exchange is one such federal provision.

3. Venue, by contrast, "is primarily a matter of choosing a convenient forum." *Leroy*, 443 U.S. at 180. The General Venue Statute, 28 U.S.C. § 1391, was last amended in 2011 and "governs 'venue generally,' … where a more specific venue provision does not apply." *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 55 n.2 (2013).

Section 1391(b) provides that venue is proper in:

> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
>
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
>
> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

The General Venue Statute "shall govern the venue of all civil actions in district court of the United States," "[e]xcept as otherwise provided by law." 28 U.S.C. § 1391(a)(1). Congress has also enacted special provisions for establishing venue. See American Law

Institute, Federal Judicial Code Revision Project, Venue, pp. 253–290 (2004) (collecting special venue provisions). Section 25(c) of the Commodity Exchange Act contains one such special venue provision.

B. Facts and Procedural History

1. Petitioner CoinMarketCap OpCo, LLC ("CoinMarketCap") is a limited liability company incorporated in Delaware. ER 17, 258. It operates a website, CoinMarketCap.com, that publishes information about cryptocurrencies and ranks them based on defined criteria. ER 256, 272–273. It is undisputed that CoinMartketCap has no presence in Arizona. See ER 17, 258.

Petitioner BAM Trading Service, Inc. d/b/a Binance.US ("Binance.US") is incorporated in Delaware with a previous principal place of business in California (which has since moved to Florida). ER 236. According to the complaint, Binance.US operates a cryptocurrency exchange in North America. ER 267. Ryan Cox is an Arizona resident and purported purchaser of the cryptocurrency HEX before September 27, 2020.

2. On September 13, 2021, Cox commenced this putative class action alleging, *inter alia,* that defendants[2] violated the Commodity Exchange Act by

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[2] CoinMarketCap OpCo, LLC, BAM Trading Service, Inc., Binance Capital Management Co., Ltd., Changpeng Zhao, Catherine Coley, Yi He, and Ted Lin were defendants in the district court action. The complaint incorrectly conflated Binance Capital Management Ltd. (the parent company of CoinMarketCap) with non-party Binance Holdings, Ltd., ER 262,

ranking HEX below #200 rather than top 10 on the CoinMarketCap.com website. ER 255–298; see ER 276, 284.

Cox accordingly claimed that CoinMarketCap "directly or indirectly participated in the artificial manipulation of the prices of one or more commodities." ER 286. Cox further claimed that Binance.US engaged in unlawful price manipulation by encouraging potential purchasers or sellers of cryptocurrencies to rely on CoinMarketCap's rankings. ER 264, 285.

The complaint alleged that venue was proper pursuant to "15 U.S.C. § 77v(a), 15 U.S.C. § 78aa, common law doctrine, and other applicable law."[3] ER 271. The complaint did not allege that venue or personal jurisdiction were proper pursuant to the Commodity Exchange Act. ER 270–271.

3. On May 23, 2022, all defendants moved to dismiss the complaint for lack of personal jurisdiction under Arizona's long-arm statute and for failure to state a claim. Opposing dismissal, Cox alleged for the first time that personal jurisdiction was established

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and Binance.com (which is operated by Binance Holdings, Ltd.) with Binance.US, ER 215, 77, 193 n.8, 208–209. As the district court recognized, there is no dispute that Binance Capital Management Ltd. is a different entity than Binance Holdings, Ltd. See ER 21, 22, 26, 27. Binance.US is a similarly separate entity operating in the United States but not owned or otherwise a subsidiary of Binance Holdings, Ltd. ER 215, 77, 193 n.8, 208–209.

[3] 15 U.S.C. § 77v(a) and 15 U.S.C. § 78aa are the special venue and service-of-process provisions of the Securities Act and the Securities Exchange Act, respectively.

as a result of the Commodity Exchange Act's nationwide service-of-process provision, 7 U.S.C. § 25(c). ER 132–133.

The defendants argued in reply that the Commodity Exchange Act's use of the nationwide service provision is "contingent on first satisfying the venue provision" and that defendants did not have sufficient contacts with the District of Arizona to satisfy the venue provision. ER 98–99; see also ER 78–80, 112–113.

4. On February 10, 2023, the district court granted defendants' motions to dismiss based on a lack of personal jurisdiction. App., *infra*, 29a–75a. The court held that Cox could not rely on the Commodity Exchange Act's service provision to establish personal jurisdiction because the statute "requires plaintiffs to first satisfy the venue provision," and Cox failed to show that any defendant had sufficient contacts with Arizona to establish venue or to establish personal jurisdiction pursuant to the state's long-arm statute. App., *infra*, 39a. The district court recognized upon full briefing and argument that defendants raised "objections to the District of Arizona being the proper venue." *Ibid*.

5. On appeal, the Ninth Circuit affirmed the dismissal of the foreign defendants (who had no contacts with the United States) but reversed with respect to the domestic defendants, concluding that it was "bound by [its] precedent" interpreting "virtually indistinguishable" provisions under other federal statutes to hold that "personal jurisdiction under the nationwide service provision of the Commodity Exchange Act does not depend on the satisfaction of

the Act's venue requirement." App., *infra*, 9a, 14a & n.6 (citing *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174 (9th Cir. 2004), *Go-Video, Inc. v. Akai Elec. Co.*, 885 F.2d 1406 (9th Cir. 1989), *SEC v. Ross*, 504 F.3d 1130 (9th Cir. 2007), and *Sec. Inv. Prot. Corp. v. Vigman*, 764 F.2d 1309 (9th Cir. 1985)).

Accordingly, the Ninth Circuit concluded that Cox was not required to satisfy the venue provision of the Commodity Exchange Act and that the statute's nationwide service-of-process provision establishes personal jurisdiction over any domestic company in any U.S. district court. *Ibid.*

6. On September 12, 2024, Petitioners filed a petition for rehearing en banc, which the Ninth Circuit denied on December 4, 2024. App., *infra*, 76a–77a.

REASONS FOR GRANTING THE WRIT

A. The Decision Below Perpetuates A Conflict Among The Lower Courts

The decision below perpetuates a conflict among the federal courts of appeals as to whether federal statutes with nationwide service provisions give rise to nationwide personal jurisdiction, even when the same statute's special venue provision is not satisfied.

1. The D.C., Second, and Seventh Circuits have held that nationwide service of process on a domestic defendant is dependent upon satisfaction of the special venue provision

a. In *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343 (D.C. Cir. 2000), the D.C. Circuit

expressly held that use of Clayton Act's nationwide service provision requires satisfaction of the special venue provision. There, a plaintiff sued a group of domestic defendants under the antitrust laws whose sole contact with District of Columbia was "the operation of Internet websites that are accessible to persons in the District." *Id.* at 1345. In response to a motion to dismiss for lack of personal jurisdiction, plaintiff argued that "compliance with Section 12's venue provision is not a prerequisite for use of its national jurisdiction provision" and that a plaintiff may establish venue under Section 12 or the General Venue Statute. *Id.* at 1350–1351.[4]

The D.C. Circuit rejected plaintiff's argument that Section 12 "provides an independent basis for personal jurisdiction" and held that that "invocation of the nationwide service clause rests on satisfying the venue provision." *Id.* at 1345, 1350. In so holding, the court explicitly "disagree[d] with the reasoning of the Ninth Circuit," and characterized the Ninth Circuit's interpretation of Section 12 as "tortured" with "literal convolutions." *Id.* at 1345, 1351.

b. In *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408 (2d Cir. 2005), the Second Circuit joined the

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[4] Section 12 of the Clayton Act provides:

> Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process *in such cases* may be served in the district of which it is an inhabitant, or wherever it may be found."

15 U.S.C. § 22 (emphasis added).

D.C. Circuit in holding that Section 12's nationwide service provision "can supply personal jurisdiction only in cases where venue is established under Section 12." *Id.* at 422 (cleaned up). There, plaintiffs sued two domestic corporations and various American hospitals and affiliated individuals; none of the defendants-appellees was located in the forum. *Id.* at 415–417 & n.5. In determining a motion to dismiss for lack of personal jurisdiction and lack of venue, the district court concluded that Section 12 of the Clayton Act established personal jurisdiction over the defendants and that venue was proper as to some defendants under Section 12 and "as to all defendants" under the General Venue Statute. *Id.* at 420–421.

The Second Circuit rejected the district court's conclusion, holding that "the extraterritorial service provision of Clayton Act Section 12 may be invoked to establish personal jurisdiction only when the requirements of the section's venue provision are satisfied." *Id.* at 424–425. The court added that if the General Venue Statue "is the basis for venue, an antitrust plaintiff cannot employ Section 12's service of process provision to secure personal jurisdiction" and instead "must look to other service of process provisions, notably those specified in Fed. R. Civ. P. 4 or incorporated therein from state law to satisfy this requirement." *Id.* at 427. The court thus "acknowledged" that the "split on the relationship between venue and service of process in Section 12" and expressly "join[ed] the D.C. Circuit" in the debate. *Id.* at 422–423 (cleaned up).

c. Finally, in *KM Enterprises, Inc. v. Glob. Traffic Techs., Inc.*, 725 F.3d 718 (7th Cir. 2013), the Seventh Circuit expressly "join[ed] the Second and D.C. Circuits in holding that Section 12's venue and service-of-process provisions must be read together." *Id.* at 728. There, a plaintiff sued a domestic defendant with "*de minimus*" activities in the forum and the district court dismissed the complaint for lack of venue. See *id.* at 722–723, 731.

On appeal, the Seventh Circuit affirmed the dismissal and rejected the plaintiff's "theory that would allow it to short-circuit the venue analysis by mixing and matching among the service-of-process and venue provisions of Section 12 and [the General Venue Statute]," *id.* at 723, explaining that the text of Section 12 "falls well short of providing universal venue in every judicial district in the United States." *Id.* at 725. The court explained that it saw "nothing in the text, purpose, or history of Section 12 that casts doubt on [such] result" and stated that it was "not persuaded to the contrary by the Ninth Circuit's reasoning." *Id.* at 730. Accordingly, the court held: "To avail oneself of the privilege of nationwide service of process, a plaintiff must satisfy the venue provisions of Section 12's first clause. If she wishes to establish venue exclusively through [the General Venue Statute], she must establish personal jurisdiction some other way." *Ibid.*

2. By contrast, the Ninth Circuit has held on multiple occasions (most recently in this case) that a statute's nationwide service provision is independent of an accompanying venue provision, and the former provides a basis for personal jurisdiction in any

district court, irrespective of defendants' contacts with the forum or satisfaction of the venue provision.

a. In *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174 (9th Cir. 2004), a plaintiff brought a private right of action against a domestic defendant, a Virginia professional corporation, under the antitrust laws and served process on the defendant pursuant to Section 12 of the Clayton Act. *Id.* at 1176. The district court dismissed the action for lack of personal jurisdiction, reasoning that "proper venue is a necessary component of personal jurisdiction under Section 12 of the Clayton Act." *Id.* at 1177. On appeal, the Ninth Circuit reversed, holding that "venue and personal jurisdiction are independent requirements" under the Clayton Act, meaning "the existence of personal jurisdiction over [a] defendant does not depend upon there being proper venue." *Id.* at 1175, 1179–1180.

The court in *Action Embroidery* relied heavily on the Ninth Circuit's earlier opinion in *Go-Video, Inc. v. Akai Elec. Co.*, 885 F.2d 1406 (9th Cir. 1989), a private right of action under the antitrust laws against a foreign corporate defendant. *Action Embroidery*, 368 F.3d at 1177–1180. In *Go-Video*, the Ninth Circuit did not engage with the plain text of Section 12, stating instead that "the answer is certainly not apparent merely from an examination of the face of the statute." *Go-Video*, 885 F.2d at 1408. Instead, the Ninth Circuit concluded that three other interpretive guides—"the manner in which courts have traditionally defined the relationship between one statute's specific venue provision and the general federal venue statutes," the legislative history and

purpose of the Clayton Act to "make it easier for plaintiffs to sue for antitrust violations," and the weight of case law—support the conclusion that the paired provisions should be interpreted independently of each other. *Id.* at 1408, 1413.

The Ninth Circuit has applied similar reasoning to analogous nationwide service-of-process provisions under the Securities Act of 1933, 15 U.S.C. § 77v(a), and the Securities Exchange Act of 1934, 15 U.S.C. § 78aa. In *S.E.C. v. Ross*, 504 F.3d 1130 (9th Cir. 2007), for example, the court treated the question of personal jurisdiction as independent of venue, explaining that "the question of whether the court can exercise personal jurisdiction over a party is distinct from the question of whether venue will properly lie in the court exercising jurisdiction." *Id.* at 1140 n.11; see also *Sec. Inv. Prot. Corp. v. Vigman,* 764 F.2d 1309, 1313–1318 (9th Cir. 1985) (analyzing personal jurisdiction and venue separately under the Securities Exchange Act of 1934).

3. The Third Circuit has taken yet another approach. While the court has not expressly held that a plaintiff may establish personal jurisdiction over a domestic defendant by treating Section 12 as a standalone provision, it has emphasized that foreign defendants are situated differently than domestic defendants. In *In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d 288 (3d Cir. 2004), the Third Circuit adopted *Go-Video*'s reasoning in an antitrust action against a foreign defendant, holding that Section 12's "service of process provision *on foreign corporations* is independent of, and does not require satisfaction of, the specific venue provision." *Id.* at 297 (emphasis

added). In so holding, the court emphasized that the "distinction" between foreign and domestic defendants "is crucial." *Id.* at 296 n.10. The court noted that the general venue provision applicable to domestic corporations, 28 U.S.C. § 1391(c), is "*more* difficult to satisfy" than Section 12's venue provision, while the general venue provision applicable to foreign defendants, then 28 U.S.C. § 1391(d), is easier to satisfy than Section 12's venue provision. See *ibid.* (citation omitted). That is because former Section 1391(d), known as the Alien Venue Rule, lays venue in "any judicial district." 28 U.S.C. § 1391(d); cf. *Cumberland Truck Equip. Co. v. Detroit Diesel Corp.*, 401 F. Supp. 2d 415, 420–421 (E.D. Pa. 2005) (characterizing *In re Auto.* as applying exclusively in cases against foreign corporations).[5]

4. In short, the decision of the court of appeals below perpetuates the entrenched conflict and confusion among the federal courts of appeals regarding the relationship between paired venue and nationwide service provisions. The inconsistency in approaches exacerbates the inequity to defendants like CoinMarketCap and Binance.US, which may be sued in any federal judicial district in the Ninth Circuit, irrespective of their contacts with the forum. In light of the depth and duration of the conflict, and the differential treatment of defendants where they are sued, the Court's review and guidance is sorely needed.

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[5] The Alien Venue Rule, formerly 28 U.S.C. § 1391(d), was recodified in 2011 without substantive change as 28 U.S.C. § 1391(c)(3).

B. The Decision Below Is Erroneous

The decision below conflicts with the text and purpose of Commodity Exchange Act, this Court's precedent, and the Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758 (2011) (the "Venue Clarification Act").

1. The plain text of Section 25(c) makes clear that utilization of the nationwide service clause is contingent on satisfaction of the special venue clause. The phrase "in such action" refers to the action qualifying for venue in the immediately preceding sentence. The common meaning of the word "such" is a "character, quality, or extent" of "the sort or degree previously indicated." *Webster's Third New International Dictionary (Unabridged)* 2283 (1986). The "quality" of the action described in the venue provision are private actions brought where the defendant is "found," "resides," or "transacts business," or where "any act or transaction constituting the violation occurs." 7 U.S.C. § 25(c). Accordingly, in "such" properly venued action, the Commodity Exchange Act affords private plaintiffs the ability to effect nationwide service of process and, thus, obtain personal jurisdiction over defendants.

2. The purpose of dual venue-service provisions confirms that such provisions are read as an integrated whole. In the context of debating an expanded venue provision in the Clayton Act, for example, a Congressman noted that a plaintiff "may not be able to find anyone to service process upon" in a judicial district where venue lies. See 51 Cong. Rec. 9608, 63d Cong., 2d Sess. (July 1, 1914), https://tinyurl.com/4zed2tw8. In response, another

Congressman noted "Congress [may] authoriz[e] service beyond the district." *Ibid.* The Senate later added such nationwide service provision without further debate. See 51 Cong. Rec. 14324, 63d Cong., 2d Sess. (Aug. 27, 1914), https://tinyurl.com/5h75nt27. The nationwide service clause thus is intended to give full effect to the expanded venue clause, not to serve as a standalone provision.

3. This Court has made clear that "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). Treating the Commodity Exchange Act's service provision as a standalone provision that can be paired with 28 U.S.C. § 1391's general venue provisions renders the venue inquiry meaningless for domestic corporate defendants. Section 1391 sets venue for a domestic corporate defendant where such defendant is "subject to the court's personal jurisdiction with respect to the civil action in question." See 28 U.S.C. § 1391(b)(1), (c)(2). So, if the Commodity Exchange Act's service provisions allows plaintiffs to independently establish nationwide personal jurisdiction, then venue is available in every federal district across the country, rendering the Act's special venue provision meaningless.

"In most instances, the purpose of statutorily specified venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy*, 443 U.S. at 183–184 (footnote omitted); see also *id.* at 184 (noting that

"Congress has generally not made the residence of the plaintiff a basis for venue in nondiversity cases"). It is "absolutely clear that Congress did not intend to provide for venue at the residence of the plaintiff or to give that party an unfettered choice among a host of different districts." *Id.* at 185. But that is the result of the Ninth Circuit's reading here: Cox brought suit in his place of residence, even though each defendant had no contact (minimum or otherwise) with the forum. Such an "an unrestrained choice of venues" is "'patently unfair' to the defendant[s]" here. *Id.* at 187 n.23 (quoting *Denver & R. G. W. R. Co. v. Bhd. of R. R. Trainmen*, 387 U.S. 556, 560 (1967)). A defendant has "a right to invoke the protection which Congress has afforded him" under the venue laws. *Olberding v. Illinois Cent. R. Co.*, 346 U.S. 338, 340 (1953).

4. The Federal Courts Jurisdiction and Venue Clarification Act of 2011 confirms that Congress did not intend an "independent" approach to special venue-service provisions. Section 1391 now serves as the default rule for civil actions, which may be displaced by specialized venue provisions that operate as an integrated whole. "[T]he current provision includes a saving clause expressly stating that it does not apply when 'otherwise provided by law.'" *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 269 (2017) (quoting 28 U.S.C. § 1391(a)(1)). The statute, however, "leave[s] intact a variety of special provisions in various statutes that identify the proper forum for litigation of proceedings under specific acts of Congress." H.R. Rep. No. 112-10, at 17 (2011). These special venue provisions "continue to govern within their respective fields," while the

general venue statute "govern[s] diversity and Federal question litigation outside these special areas." *Id.* at 18 n.8.

At the same time, Congress foreclosed any attempt by private plaintiffs to manufacture universal venue through the "independent" approach. The definition of residency under § 1391(b) now applies across all federal statutes "[f]or all venue purposes." 28 U.S.C. § 1391(b); cf. 28 U.S.C. § 1391(c) (1988) (limiting residency definition "[f]or purposes of venue under this chapter"). And the definition of a corporate defendant's residence was narrowed to "any judicial district in which such defendant is subject to the court's personal jurisdiction *with respect to the civil action in question*." 28 U.S.C. § 1391(c)(2) (new language emphasized). This new requirement under Section 1391(c)(2)—which was also added to the fallback venue provision under Section 1391(b)(3)—was "intended to avoid the possibility of an overly broad assertion of venue" by plaintiffs. H.R. Rep. No. 112-10, at 20 (2011). Yet the Ninth Circuit's approach to special service and venue provisions does exactly that—allows plaintiffs to bypass the actual language of the statute and creates an overly broad nationwide venue clause.

C. The Question Presented Is Exceptionally Important And Warrants The Court's Review In This Case

Private plaintiffs file thousands of actions each year under federal commodities, securities, and antitrust laws. See Administrative Office of the U.S. Courts, Federal Judicial Caseload Statistics, U.S.

District Courts—Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit (Dec. 31, 2023) (Table C-2) and (Dec. 31, 2022) (Table C-2). Consistent interpretation of special venue and nationwide service provisions in multiple federal statutes is necessary for fair enforcement of the laws created by Congress. Indeed, the requirement of personal jurisdiction "is one of the constitutional guarantees of due process." *Lyngaas v. Curaden Ag*, 992 F.3d 412, 439 (6th Cir. 2021) (Thapar, J., concurring in part).

This case is an ideal vehicle for resolving this important question. *First*, this case cleanly frames the legal question at issue. The district court dismissed the complaint solely based on the lack of personal jurisdiction over Petitioners, holding that Cox "cannot rely on the national service provision" of the Commodity Exchange Act to establish personal jurisdiction because "[t]he statute requires plaintiffs to first satisfy the venue provision." App., *infra*, 39a. The Ninth Circuit disagreed, concluding that "personal jurisdiction under the nationwide service provision of the Commodity Exchange Act does not depend on satisfaction of the Act's venue requirement." App., *infra*, 9a.

Second, there are no material factual questions that complicate the legal analysis. There is no dispute that Cox cannot satisfy the special venue provision in the Commodity Exchange Act and is relying solely on the nationwide service provision to establish personal jurisdiction and venue. Similarly, there is no dispute that Cox cannot satisfy Arizona's long arm statute for general or specific personal jurisdiction. Cox has attempted to drag defendants into a judicial district

where Petitioners have no contacts and where no act at issue occurred.

Third, this petition arises out of the Ninth Circuit, whose full-throated approach in *Action Embroidery* and *Go-Video* is mostly clearly in conflict with other courts of appeals. While the Third Circuit permits plaintiffs to supplement Section 12 of the Clayton Act with the Alien Venue Rule—the "long-established rule that suits against aliens are wholly outside the operation of all the federal venue laws, general and special," *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 714 (1972)—the Ninth Circuit stands as an outlier in permitting plaintiffs to supplement Section 12 of the Clayton Act with *all* provisions of the General Venue Statute. See *Action Embroidery*, 368 F.3d at 1179–80.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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MARCH 2025

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 12, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-15363
D.C. No. 3:21-cv-08197-SMB

RYAN COX, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED,

Plaintiff-Appellant,

v.

COINMARKETCAP OPCO, LLC; BINANCE CAPITAL MANAGEMENT COMPANY, LTD., DBA BINANCE, DBA BINANCE.COM; BAM TRADING SERVICES, INC., DBA BINANCE.US; CHANGPENG ZHAO; CATHERINE COLEY; YI HE; TED LIN,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
Susan M. Brnovich, District Judge, Presiding

Argued and Submitted February 9, 2024
Phoenix, Arizona

Filed August 12, 2024

Before: Marsha S. Berzon, Andrew D. Hurwitz, and Anthony D. Johnstone, Circuit Judges.

Appendix A

Opinion by Judge Berzon

OPINION

BERZON, Circuit Judge:

We consider whether the Commodity Exchange Act ("the Act"), 7 U.S.C. § 25(c), authorizes nationwide service of process without regard to whether the venue provision in the same subsection of the Act is met. Our answer, contrary to the district court's conclusion, is yes.

Ryan Cox contends in this action that the defendants violated the Act by unlawfully manipulating the price of a cryptocurrency called "HEX." He alleges that the defendants participated in artificially suppressing the price of HEX by inaccurately lowering its ranking among cryptocurrencies on a website called CoinMarketCap.com. Although the Act authorizes nationwide service of process, 7 U.S.C. § 25(c), the district court concluded that its venue provision must be satisfied before the nationwide service provision applies. As a result, the district court reasoned, Cox first had to show that the defendants had sufficient minimum contacts with the forum state, Arizona.

The defendants are two domestic companies headquartered in states other than Arizona, a foreign company, and three individual officers of the foreign company. The district court concluded that each defendant lacked sufficient contacts with Arizona and dismissed the complaint for lack of personal jurisdiction.

Appendix A

Because we conclude that the Commodity Exchange Act authorizes nationwide service of process independent of its venue requirement, we reverse in part. We conclude that the district court had personal jurisdiction over the U.S. defendants under the Act and that the complaint alleges colorable claims against them; we therefore reverse the district court's dismissal of the claims under the Act against those defendants and remand for further proceedings. We affirm the district court's dismissal of Cox's claims under the Act as to the foreign corporate and individual defendants, as they lack sufficient contacts with the United States for purposes of personal jurisdiction.[1]

I. Background

A. Factual Background[2]

Cryptocurrency is a "digital asset[]" traded by investors on online "cryptocurrency exchanges." Unlike traditional forms of currency, cryptocurrency is "not issued by a government or a central bank." *Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1007 (9th Cir. 2023). Instead, it is "decentralized digital money" that is "created by developers" "based on blockchain technology." *Id.*

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1. Cox does not challenge on appeal the district court's dismissal of his state law claims for lack of personal jurisdiction.

2. Unless otherwise noted, the facts in this background section, including all quotations, are drawn from allegations in the complaint. As this appeal comes to us from the district court's grant of a motion to dismiss for failure to state a claim, we construe the complaint in the light most favorable to Cox and assume the facts he alleges in his complaint are true. *See Gilstrap v. United Air Lines, Inc.*, 709 F.3d 995, 998 n.1 (9th Cir. 2013).

HEX, the subject of Cox's complaint was "the best performing cryptocurrency of 2020." According to the complaint, the defendants (collectively "CMC") have for their own financial gain unlawfully and artificially suppressed the value of HEX and artificially inflated the value of other cryptocurrencies.

1. Defendant CoinMarketCap

CoinMarketCap is a Delaware limited liability company headquartered in Delaware. CoinMarketCap operates a website, CoinMarketCap.com, that publishes information about cryptocurrencies, including HEX, and ranks them based on defined criteria. CoinMarketCap.com is the "'dominant data source and go-to platform for asset pricing' in the cryptocurrency space." Cryptocurrencies with higher rankings are displayed higher up on CoinMarketCap.com's homepage.

Each cryptocurrency listed on CoinMarketCap.com appears next to a "buy" button that, if clicked, directs users to a separate cryptocurrency exchange, either Blockchain.com or "Binance." HEX, however, cannot be purchased through either of these two cryptocurrency exchanges. Instead, HEX is traded on thirteen other cryptocurrency exchanges.

CoinMarketCap.com ranks cryptocurrencies based on their overall market capitalization. Market capitalization, or "market cap," is calculated by multiplying the cryptocurrency's price by its circulating supply at a given time. According to the complaint, "[t]here is a direct

relationship between the value of a cryptocurrency and its market capitalization ra[n]king. All other things being equal, [c]ryptocurrencies to [which] CoinMarketCap.com assigns higher rankings are considered to be more solid investments and hence more valuable."

Based on its market cap, the complaint alleges, HEX should be ranked in the top twenty cryptocurrencies on CoinMarketCap.com. Instead, it has been ranked at #201 since September 2020. Although HEX was ranked twentieth on September 20, 2020, a week later, CoinMarketCap.com began suppressing its ranking. Since then, CoinMarketCap.com "locked HEX's ranking at #201." As a result, HEX appeared on the third page of results on the website.

According to the complaint, CoinMarketCap.com's improper ranking of HEX has artificially suppressed its value, causing it to trade at lower prices. "[B]ut for" that improper ranking, "at least some individuals who purchased higher-ranked cryptocurrencies would have purchased HEX instead." CoinMarketCap's statements about HEX's ranking are "untrue" and "[r]esult[] from a misapplication, or selective application, of CoinMarketCap.com's own rankings guidelines." "By misrepresenting HEX's ranking CoinMarketCap.com has directly or indirectly participated in the artificial manipulation of the prices of one or more commodities."

2. Defendants Binance Capital and Binance.US

Binance Capital Management Co., Ltd. ("Binance Capital") owns CoinMarketCap.com. Binance Capital was founded in China, has previously been headquartered in Japan and Malta, and now operates in a decentralized manner with no publicly identified headquarters.

Binance Capital operates Binance, the largest cryptocurrency exchange in the world by market capitalization and trading volume. Through that exchange, Binance Capital provides a marketplace for cryptocurrency trades and earns a commission on those transactions.

Binance Capital previously "engaged in numerous online cryptocurrency transactions inside the United States, with United States residents." But "[i]n 2019, Binance was banned in the United States on regulatory grounds and stopped accepting US users that year."

In response to the ban, Binance Capital partnered with a U.S. company, BAM Trading Services Inc., to launch a new cryptocurrency exchange in North America, Binance.US. Binance.US is Binance Capital's U.S. affiliate. BAM Trading Services (referred to in this opinion as "Binance.US") operates Binance.US. Binance.US uses some of Binance Capital's technologies, including its "wallet" and "matching engine," and it "offers a very similar interface and feature set" to Binance Capital's cryptocurrency exchange. On "information and belief," Binance.US was aware "that there were issues with CoinMarketCap.com's rankings."

When U.S. visitors to CoinMarketCap.com click on a "buy" button that directs them to "Binance," it takes them to "Binance.US's website." The website link "does not inform users that they are being directed to a Binance subsidiary" but does invite them to "purchase cryptocurrency through 'Binance.'" The complaint alleges that "it is simply not clear where Binance ends and Binance.US begins or [] whether there is any meaningful distinction between the two."

On "information and belief," Binance Capital issued the cryptocurrencies Binance Coin and Binance USD, both of which are ranked higher than HEX on CoinMarketCap.com. On "information and belief," Binance Capital has a financial interest in "ensuring the strongest possible demand for BinanceCoin and Binance USD." On "information and belief," CoinMarketCap.com's improper ranking of HEX "provides a financial advantage" to CoinMarketCap.com, Binance Capital, and Binance.US., as CoinMarketCap.com users can buy cryptocurrencies through the Binance.US exchange or through CoinMarketCap.com's sponsor, Blockchain.com, but HEX is not sold through Binance.US or Blockchain.com.

3. Individual Defendants[3]

Changpeng Zhao is the CEO of Binance Capital, defendant Ted Lin its Chief Growth Officer, and defendant

3. In district court, Cox voluntarily dismissed individual defendant Catherine Coley, former CEO of Binance.US.

Yi He its Chief Marketing Officer. "Upon information and belief," Zhao, Lin, and He were "aware at the time Binance [Capital] purchased CoinMarketCap.com that there were issues with its rankings." The complaint alleges that Zhao resides in Taiwan, He resides in Malta, and Lin does not reside in Arizona.

According to the complaint, by encouraging potential purchasers or sellers of cryptocurrencies to rely on CoinMarketCap.com's inaccurate rankings, Binance Capital, Binance.US, and the individual defendants have "directly or indirectly participated in the artificial manipulation of the price of one or more commodities." "Defendants either willfully participated in the manipulation or failed to review or check information that they had a duty to monitor, or ignored obvious signs of market manipulation."

B. Procedural History

Cox, an Arizona resident, filed a putative class action complaint on behalf of himself and those similarly situated in the District of Arizona, alleging violations of the Commodity Exchange Act and the Arizona Consumer Fraud Act. CoinMarketCap, Binance.US, Binance Capital, and the individual defendants moved to dismiss the complaint for lack of personal jurisdiction and failure to state a claim. Each asserted a lack of sufficient contacts with Arizona. The district court granted the motions based on lack of personal jurisdiction and so did not consider whether the complaint failed to state a claim.

The court concluded that Cox "cannot rely on the national service provision" of the Commodity Exchange Act to establish personal jurisdiction because "[t]he statute requires plaintiffs to first satisfy the venue provision, meaning Plaintiff must establish [that the defendants] had sufficient minimum contacts with Arizona." The court held that because Cox had not shown that any of the defendants had sufficient contacts with Arizona, it lacked specific personal jurisdiction over them. There was no motion to dismiss for lack of venue, and the court did not separately consider whether there was venue in Arizona.

II. Discussion

Reviewing de novo the district court's dismissal for lack of personal jurisdiction, *see Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1177 (9th Cir. 2004), we conclude that the court's personal jurisdiction under the nationwide service provision of the Commodity Exchange Act does not depend on satisfaction of the Act's venue requirement.

A. Statutory Analysis: Nationwide Service of Process Under the Commodity Exchange Act

"For a court to exercise personal jurisdiction over a defendant, there must be an 'applicable rule or statute [that] potentially confers jurisdiction over the defendant.'" *Id.* (quoting *Amba Mktg. Sys. Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)). "Congress' typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process." *BNSF Ry. Co. v.*

Tyrrell, 581 U.S. 402, 409, 137 S. Ct. 1549, 198 L. Ed. 2d 36 (2017). That is because a "federal court obtains personal jurisdiction over a defendant if it is able to serve process on him." *Action Embroidery*, 368 F.3d at 1177 (quoting *Butcher's Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th Cir. 1986)); *see BNSF Ry.*, 581 U.S. at 409; Fed. R. Civ. P. 4(k).

The Commodity Exchange Act provides, in pertinent part:

> Any action brought under subsection (a) of this section may be brought in any judicial district wherein the defendant is found, resides, or transacts business, or in the judicial district wherein any act or transaction constituting the violation occurs. Process in such action may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found.

7 U.S.C. § 25(c). The parties agree that the first sentence concerns venue and the second sentence concerns personal jurisdiction. *Id.*; *see BNSF Ry.*, 581 U.S. at 408, 410 (noting that "Congress generally uses the expression, where suit 'may be brought,' to indicate the federal districts in which venue is proper," and that the expression "confers no personal jurisdiction on any court"). The question is whether, as the district court held, establishing personal jurisdiction over CMC under the Act's nationwide[4] service

4. The parties assume that the Act authorizes "nationwide" service of process. We have sometimes described similarly-worded

of process provision requires first satisfying the venue requirement in the preceding sentence.

Our inquiry is guided by several cases in which we have held that personal jurisdiction under closely analogous long-arm statutes is established independent of venue. *Action Embroidery* involved Section 12 of the Clayton Act, which provides:

> Any suit, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; [] and *all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.*

368 F.3d at 1177 (quoting 15 U.S.C. § 22). The district court there had held that "proper venue is a necessary component of personal jurisdiction" under the Clayton Act. *Id.* We reversed, "hold[ing] that venue and personal jurisdiction are independent requirements" under the Clayton Act, with the result that "the existence of personal jurisdiction over [a] defendant does not depend upon there being proper venue in that court." *Id.* at 1176, 1179-80.

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provisions as authorizing "worldwide" service. *See Go-Video, Inc. v. Akai Elec. Co. Ltd.*, 885 F.2d 1406, 1408 (9th Cir. 1989) (discussing the Clayton Act's "worldwide service of process authorization"). Because the distinction does not matter here, we assume without deciding that 7 U.S.C. § 25(c)'s authorization is nationwide.

Action Embroidery highlighted the traditional distinction between personal jurisdiction and venue. "It has long been recognized that the question of a federal court's competence to exercise personal jurisdiction over a defendant is distinct from the question of whether venue is proper." *Id.* at 1178- 79. "[J]urisdiction is the *power* to adjudicate, while venue, which relates to the place where judicial authority may be exercised, is intended for the *convenience* of the litigants." *Id.* at 1179 (quoting *Sec. Inv. Prot. Corp. v. Vigman*, 764 F.2d 1309, 1313 (9th Cir. 1985)). As a result, "personal jurisdiction . . . is typically decided in advance of venue." *Id.* (quoting *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180, 99 S. Ct. 2710, 61 L. Ed. 2d 464 (1979)).

Action Embroidery concluded:

> The juxtaposition of the venue and service of process provisions in Section 12, without more, does not convince us that Congress intended to make these concepts analytically interdependent, rendering a court's exercise of personal jurisdiction over an antitrust defendant dependent on the propriety of venue. Without a clear indication from Congress that it intended to do so, we will not blur the basic, historic difference between these discrete concepts and what is required for their satisfaction.

Id. at 1179.

Action Embroidery relied in part on *Go—Video*. *Go—Video* considered whether an "antitrust plaintiff [must] satisfy the [Clayton Act's] venue provision if it is to avail itself of its worldwide service of process authorization." 885 F.2d at 1408. Like CMC here, the appellants in *Go—Video* contended that the reference in the second clause of section 12 of the Clayton Act to service of process "in such cases" is a phrase which "refers to cases under which the venue requirements of the section have already been satisfied." *Id.* We rejected this argument, concluding that the words "such cases" refer to "the cases encompassed by the first line of section 12, namely '[a]ny suit, action, or proceeding under the antitrust laws against a corporation.'" *Id.* (quoting 15 U.S.C. § 22); *see id.* at 1412-13. In support of this conclusion, *Go—Video* reasoned that there is no indication in the legislative history of the Clayton Act that "Congress affirmatively *intended* that [the] service of process provision would be limited by the venue provision." *Id.* at 1410. In *Go—Video*, we further explained that our conclusion that the service of process provision was independent of the venue provision was "clearly the one more consonant with the purpose of the Clayton Act and better comports with a section designed to expand the reach of the antitrust laws and make it easier for plaintiffs to sue for antitrust violations." *Id.* at 1413.[5]

5. *Go—Video* ultimately held that even if the Clayton Act's venue requirement was not satisfied, the venue provision of then-28 U.S.C. § 1391(d), concerning venue over alien parties, was also available. *See id.*

Similarly, in *S.E.C. v. Ross*, 504 F.3d 1130 (9th Cir. 2007), and *Vigman* we considered analogous nationwide service of process provisions and treated the question of personal jurisdiction as independent of venue. Addressing the nationwide service of process provision of the Securities Act of 1933, 15 U.S.C. § 77v(a), *Ross* explained that, "[a]s in *Vigman*, the question of whether the court can exercise personal jurisdiction over a party is distinct from the question of whether venue will properly lie in the court exercising jurisdiction." 504 F.3d at 1139, 1140 n.11; *see Vigman*, 764 F.2d at 1313-18 (analyzing personal jurisdiction and venue separately under the Securities Exchange Act of 1934).

Our holdings in *Action Embroidery*, *Go—Video*, *Vigman*, and *Ross* are directly applicable here. Although these precedents involved different statutory provisions from the one today before us, the statutory structure and the venue and service of process language at issue in those cases are virtually indistinguishable from that in the Commodity Exchange Act. *Ross*, facing similar congruity, relied on our precedent interpreting another long-arm statute where the language "track[ed] almost word-for-word." 504 F.3d at 1139-40 (relying on *Vigman*). We do so as well.[6]

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6. CMC cites out-of-circuit cases concerning statutes other than the Commodity Exchange Act that disagree with our decisions. *See, e.g.*, *KM Enters., Inc. v. Global Traffic Techs., Inc.*, 725 F.3d 718, 730 (7th Cir. 2013); *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 423 (2d Cir. 2005); *GTE New Media Servs. Inc.*

This result is also consistent with settled principles of statutory construction. The Commodity Exchange Act provides that "[p]rocess in such action may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found." 7 U.S.C. § 25(c). The defendants contend that the words "such action" incorporate by reference the venue requirement in the preceding sentence. We disagree.

"The word 'such' usually refers to something that has already been 'described' or that is 'implied or intelligible from the context or circumstances.'" *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 766, 143 S. Ct. 1433, 216 L. Ed. 2d 18 (2023) (citing *Concise Oxford Dictionary of Current English* 1218 (1931) and *Webster's New International Dictionary* 2518 (2d ed. 1954)). When the word "'such' precedes a noun it refers to a particular antecedent noun and any dependent adjective or adjectival clauses modifying that noun, but not to any other part of the preceding clause or sentence." 2A Norman J. Singer & Shambie Singer, *Sutherland Statutory Construction* § 47:33 n.1 (7th ed. 2023 update). Read according to these usual syntax rules, the words "such action" refer to the only "action" mentioned before the service of process provision—"[a]ny action brought under subsection (a) of this section." 7 U.S.C. § 25(c). The rest of the venue provision explains where that action "may be brought,"

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v. BellSouth Corp., 199 F.3d 1343, 1351, 339 U.S. App. D.C. 332 (D.C. Cir. 2000); *but see In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d 288, 296-97 (3d Cir. 2004). We are, of course, bound by our precedents.

id., but does not change the general description of the action covered by the subsection.

Treating the Commodity Exchange Act's venue and service of process provisions independently also serves the broad purposes of that Act. *See Go—Video*, 885 F.2d at 1412-13 (interpreting a long-arm provision in light of the statute's overall purpose). The Act aims

> to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets.

7 U.S.C. § 5. Allowing plaintiffs to establish personal jurisdiction separately from the statute's venue provision facilitates their ability to enforce the protections of the Act with regard to "*all* transactions subject to this chapter" and "*all* market participants." *Id.* (emphasis added).

Consistent with the intended sweep of the Act, Congress amended the Act's service of process and venue provisions in 1992 to make it easier for plaintiffs to bring private rights of action. Before that amendment, the Act was "silent as to service of process." *Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 106, 108 S. Ct. 404, 98 L. Ed. 2d 415 (1987). The Supreme Court held in *Omni Capital* that a nationwide service of process authorization "was not implicit" in the Act, *id.* at 106-08,

so the district court lacked personal jurisdiction over the private plaintiffs, *id.* at 111.

Congress then amended the Act, in 1992. *See* Pub. L. No. 102-546, § 211, 106 Stat. 3590, 3607-08 (1992). A report by the House of Representatives Committee on Agriculture explained the amendment as follows:

> The Commission pointed out that the inability of certain plaintiffs to bring suit under the Commodity Exchange Act was restricted by the Act's narrow authorization for service of process and venue in such actions. The Commission advocated, and . . . the bill provides for, an amendment to section 22 of the Act to provide for nationwide service of process and expanded venue provisions for private rights of action brought under the Act.

H.R. Rep. No. 102-6, at 23 (Mar. 1, 1991).

Notably, the House committee report states that the amendment provides for "nationwide service of process *and* expanded venue provisions," *id.* (emphasis added)—not for nationwide service only if venue is first established. Similarly, neither the House conference report nor the Senate committee report provides any indication that Congress intended the nationwide service of process provision to be dependent on the narrower venue provision. *See* H.R. Conf. Rep. No. 102-978 (Oct. 2, 1992), 1992 U.S.C.C.A.N. 3179, 3192; S. Rep. No. 102-22 (Mar. 12, 1991), 1992 U.S.C.C.A.N. 3103, 3118.

CMC contends that if the nationwide service of process provision is independent of venue, the Act's venue provision is superfluous. Not so. The service of process provision authorizes service where the defendant is an inhabitant or is found. *See* 7 U.S.C. § 25(c). But the venue provision allows suit to be filed in other locations as well, including "in the judicial district wherein any act or transaction constituting the violation occurs." *Id.* For example, a suit could be filed where the violation occurred, and the defendant could be served in another location so long as the defendant is found there. That is, service of process and venue need not be in the same location. *See, e.g., Bourassa v. Desrochers*, 938 F.2d 1056, 1057-58 (9th Cir. 1991) (holding that service was proper in Florida under the nationwide service provision of the Securities Exchange Act of 1934 while venue was proper in California under the venue provision).

CMC also argues that the 2011 Venue Clarification Act forecloses the approach taken in *Go—Video*—which, as discussed, held that the alien venue provision in then-28 U.S.C. § 1391(d) could supplement a special venue provision—with the upshot that the venue provision of 7 U.S.C. § 25(c) is now the exclusive means for establishing venue in Commodity Exchange Act actions.[7] But the only

7. The Venue Clarification Act established a uniform definition of residency for "all venue purposes." 28 U.S.C. § 1391(c). Under that definition, a domestic corporate defendant now "shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." 28 U.S.C. § 1391(c)(2). CMC contends that, if applicable to *venue* determinations in Commodity

issue before us in this appeal is personal jurisdiction, not venue. And CMC has pointed to nothing in 28 U.S.C. § 1391, as amended by the Venue Clarification Act, that would impact our interpretation of the service of process provision in 7 U.S.C. § 25(c).[8] We therefore leave for another day whether, and if so how, the 2011 Venue Clarification Act affects the determination of venue in Commodity Exchange Act cases.

In sum, we hold that the Commodity Exchange Act authorizes nationwide service of process regardless of where venue would lie under 7 U.S.C. § 25(c). The district court erred in holding that to establish personal jurisdiction in Arizona under the Act, the plaintiff first had to show that CMC could establish venue in Arizona under the Act's venue provision.

B. Constitutional Analysis: Minimum Contacts with the United States

We next consider whether each defendant has sufficient minimum contacts with the United States to satisfy due process. *See Action Embroidery*, 368 F.3d

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Exchange Act actions, the broadened residency definition in section 1391(c)(2) could permit nationwide venue.

8. Although the defendants each moved in the district court to dismiss for lack of personal jurisdiction, none sought dismissal based on improper venue. *See* Fed. R. Civ. P. 12(b)(3), (h)(1); *King v. Russell*, 963 F.2d 1301, 1305 (9th Cir. 1992). So the district court never had occasion to address whether venue can be established if there is personal jurisdiction. Further, as CMC acknowledged at oral argument, the defendants have not in this appeal raised venue independently of personal jurisdiction.

at 1180. "In a statute providing for nationwide service of process, the inquiry to determine 'minimum contacts' is . . . 'whether the defendant has acted within any district of the United States or sufficiently caused foreseeable consequences in this country.'" *Id.* (quoting *Vigman*, 764 F.2d at 1316); *see also Warfield v. Alaniz*, 569 F.3d 1015, 1028-29 (9th Cir. 2009).

1. The U.S. Defendants

Neither Binance.US nor CoinMarketCap contends that it lacks minimum contacts with the United States. Appropriately so. General jurisdiction "extends to 'any and all claims' brought against a defendant." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021) (quoting *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011)). A "court may exercise general jurisdiction" over a defendant who is "essentially at home" in the forum. *Id.* (quoting *Goodyear*, 564 U.S. at 919). For a corporation, "the place of incorporation and principal place of business are paradig[m] . . . bases for general jurisdiction." *Daimler AG v. Bauman*, 571 U.S. 117, 137, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014) (alterations in original) (internal quotation marks omitted); *see also Ford*, 592 U.S. at 358-59.

Binance.US is a Delaware corporation with its principal place of business in either California or Florida. CoinMarketCap is a Delaware limited liability company headquartered in Delaware. Given that each company is incorporated or has a principal place of business in the

United States, each has sufficient contacts with the United States to satisfy due process. *See Action Embroidery*, 368 F.3d at 1180.

We therefore reverse the district court's holding that it lacked personal jurisdiction over Binance.US and CoinMarketCap.

2. The Foreign Defendants

Binance Capital and the individual officers contend that the complaint does not allege they have sufficient minimum contacts with the United States to be subject to general jurisdiction. We agree.

The complaint alleges that Binance Capital was founded in China and has no publicly identified headquarters; it does not allege that Binance Capital has a place of business in the United States.

Because Binance Capital (like the individual officers) is not alleged to be "at home" in the United States, *see Ford*, 592 U.S. at 358, the question is whether its case-specific contacts with the United States provide a constitutionally sufficient basis for specific jurisdiction, *see id.* at 359-60. For exercise of personal jurisdiction to comport with due process, the defendant must have "'certain minimum contacts' with the relevant forum"—here, the United States—"such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Ross*, 504 F.3d at 1138 (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme et*

L'Antisemitisme, 433 F.3d 1199, 1205 (9th Cir. 2006) (en banc)). In determining whether the defendant has the requisite contacts for specific personal jurisdiction, we consider "the defendant's purposeful conduct towards the forum, the relation between his conduct and the cause of action asserted against him, and the reasonableness of the exercise of jurisdiction." *Id.*; *see also, e.g.*, *Ford*, 592 U.S. at 358-60.

Cox argues that Binance Capital "has regularly and intentionally engaged in online cryptocurrency transactions with United States residents and has also promoted inside the United States the sale of digital assets on its exchange." The complaint alleges, however, that "[i]n 2019, Binance was banned in the United States on regulatory grounds and stopped accepting US users that year." Cox does not allege that Binance is violating the ban.

The complaint also alleges that CoinMarketCap.com users who click a "buy" button are directed to "Binance's website[]." But the complaint later explains that when U.S. users attempt to visit "the website Binance.com," it "takes US users [to] Binance.US's website." Based on these allegations, Binance Capital's own activities do not establish minimum contacts with the United States.

Cox next argues that Binance Capital "is the world's largest cryptocurrency exchange and *through* [Binance.US] and CoinMarketCap, provides those services to customers in Arizona and throughout the United States." He alleges that Binance Capital partnered with Binance.

US to launch a new U.S cryptocurrency exchange; Binance Capital provided some technologies to the new Binance.US exchange; and, due to references on Binance.US's website to the "Binance" brand, "it is not clear . . . whether there is any meaningful distinction between the two." Cox thus appears to suggest that Binance.US's contacts with the United States should be attributed to Binance Capital, its parent company.

But the fact that a parent company is "closely associated" with a subsidiary that itself has minimum contacts is insufficient to establish personal jurisdiction. *In re Boon Glob. Ltd.*, 923 F.3d 643, 650 (9th Cir. 2019). "As a general principle, corporate separateness insulates a parent corporation from liability created by its subsidiary, notwithstanding the parent's ownership of the subsidiary." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1070 (9th Cir. 2015). Cox's general reliance on Binance Capital's association with Binance.US therefore fails.

Imputation of a subsidiary's minimum contacts to a parent company requires satisfaction of the "alter ego" test, which obligates a party to make out "a prima facie case (1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice." *Id.* at 1073 (alterations in original) (internal quotation marks omitted). The district court rejected Cox's argument that Binance Capital is the alter ego of Binance.US. On appeal, Cox does not argue that Binance Capital is an alter ego of Binance.US or that their relationship satisfies the alter

ego test,[9] and so has forfeited reliance on an alter ego theory to establish minimum United States contacts for Binance Capital.[10]

We conclude that Binance Capital lacks sufficient minimum contacts with the United States.

Cox did not allege that individual defendants Zhao, He, and Lin, officers of Binance Capital, had minimum contacts with the United States. Instead, Cox contends that Binance Capital's contacts should be imputed to the officers based on an alter ego theory. That argument fails because Cox has not established that Binance Capital has minimum contacts with the United States.

Further, the district court did not abuse its discretion in dismissing the complaint against the foreign defendants without leave to amend. At argument, counsel for Cox stated that there are no new facts he could add to the complaint bearing on the contacts of Binance Capital and the individual officers with the United States. A "district court does not abuse its discretion in denying a motion to amend a complaint . . . when the movant presented no new facts but only new theories and provided no satisfactory explanation for his failure to fully develop his contentions

9. Nor does Cox contend that Binance Capital's relationship with CoinMarketCap would satisfy the alter ego test.

10. We therefore do not consider whether Binance.US's activities in the United States, if attributed to Binance Capital, would be sufficient in this case to establish specific jurisdiction over Binance Capital.

originally." *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004) (alteration in original) (internal quotation marks omitted). Accordingly, the district court correctly dismissed the complaint against Binance Capital, Zhao, He, and Lin for lack of personal jurisdiction.

The district court erred, however, in dismissing the case against the foreign defendants *with* prejudice. A dismissal for lack of personal jurisdiction does not adjudicate the merits and so should be without prejudice. *See Grigsby v. CMI Corp.*, 765 F.2d 1369, 1372 n.5 (9th Cir. 1985); *Kendall v. Overseas Dev. Corp.*, 700 F.2d 536, 539 (9th Cir. 1983); *Thomas v. Furness Pac. Ltd.*, 171 F.2d 434, 435 (9th Cir. 1948).

In sum, we affirm the district court's dismissal as to the foreign defendants, but vacate the district court's dismissal order and remand with instructions to dismiss the complaint against them without prejudice.

C. Whether Cox Has Asserted a Colorable Claim Against CoinMarketCap and Binance.US for Purposes of Personal Jurisdiction Under the Commodity Exchange Act

CoinMarketCap and Binance.US assert that Cox cannot invoke the nationwide service of process provision of the Commodity Exchange Act because his statutory claim is not colorable. We disagree.

Satisfaction of the elements of a claim for relief is "not a jurisdictional issue" absent a "clear[]" indication in the

statute's jurisdictional language. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515-16, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2006). Instead, a complaint may only "be dismissed for want of jurisdiction where the alleged claim under the . . . federal statute[] clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Bell v. Hood*, 327 U.S. 678, 682-83, 66 S. Ct. 773, 90 L. Ed. 939 (1946); *see also, e.g.*, *Shapiro v. McManus*, 577 U.S. 39, 45, 136 S. Ct. 450, 193 L. Ed. 2d 279 (2015) (equating an insubstantial or frivolous claim for jurisdictional purposes to one that is "essentially fictitious"). The fact that a claim may be "of doubtful or questionable merit," without more, does not render it "insubstantial" for purposes of establishing jurisdiction. *Hagans v. Lavine*, 415 U.S. 528, 538, 94 S. Ct. 1372, 39 L. Ed. 2d 577 (1974). The plaintiff need only make "a colorable showing that [the defendant] *might* be liable" under that statute. *San Mateo Cnty. Transit Dist. v. Dearman, Fitzgerald & Roberts, Inc.*, 979 F.2d 1356, 1358 (9th Cir. 1992) (emphasis added).

The parties agree that to state a price manipulation claim under the Commodities Exchange Act, 7 U.S.C. §§ 9(1), 9(3), 13(a)(1), Cox must allege that (1) the defendant possessed an ability to influence market prices, (2) an artificial price existed, (3) the defendant caused the artificial price, and (4) the defendant specifically intended to cause the artificial price. *See In re Amaranth Nat. Gas Commodities Litig.*, 730 F.3d 170, 173, 183 (2d Cir. 2013); *Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 247 (5th Cir. 2010); *Frey v. Commodity Futures Trading Comm'n*, 931 F.2d 1171, 1177-78 (7th Cir. 1991); *BMA LLC*

v. HDR Glob. Trading Ltd., No. 20-CV-03345-WHO, 2021 U.S. Dist. LEXIS 46939, 2021 WL 949371, at *13 (N.D. Cal. Mar. 12, 2021). Under that standard, Cox's claims for price manipulation under the Commodity Exchange Act are colorable.

Price manipulation is "conduct [that] has been intentionally engaged in which has resulted in a price which does not reflect basic forces of supply and demand." *Cargill, Inc. v. Hardin*, 452 F.2d 1154, 1163 (8th Cir. 1971). Cox alleges that CoinMarketCap manipulated the price of HEX, a commodity, by artificially depressing its ranking, causing it to drop from a top 20 ranking to a 201st ranking on CoinMarketCap's website. His theory is that by manipulating HEX's ranking on the CoinMarketCap website, CoinMarketCap caused visitors to its popular website to be less likely to purchase HEX and thereby suppressed its value. As a result, Cox alleges, the price of HEX was artificially depressed. Cox maintains that Binance.US was aware of problems with CoinMarketCap's rankings and participated in the manipulation of HEX's price by encouraging potential buyers of cryptocurrency "to rely on CoinMarketCap.com's information when making investment decisions."

Based on his complaint, Cox *might* be able to make out a claim under the Commodity Exchange Act. It is possible that providing or helping to provide false information about a popular cryptocurrency from an authoritative information source could influence potential buyers or sellers of that cryptocurrency to such an extent that it would impact pricing. Although CoinMarketCap

and Binance.US raise questions about whether Cox's allegations can satisfy the elements of a Commodity Exchange Act claim, his allegations are not wholly insubstantial or frivolous.

Regardless of whether Cox's allegations ultimately satisfy the elements of the claim, they provide a sufficient basis upon which to assert personal jurisdiction over CoinMarketCap and Binance.US under the Commodity Exchange Act. We express no opinion on whether his complaint plausibly states claims upon which relief may be granted. That question is for the district court to determine on remand.

III. Conclusion

We reverse the district court's determination that it lacked personal jurisdiction over CoinMarketCap and Binance.US and remand for further proceedings consistent with this opinion. We affirm the district court's determination that the court lacked personal jurisdiction over Binance Capital, Zhao, He, and Lin, but vacate the dismissal against them "with prejudice," and remand with instructions to dismiss the complaint against them without prejudice.

AFFIRMED IN PART, REVERSED IN PART, VACATED AND REMANDED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED FEBRUARY 10, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-21-08197-PCT-SMB

RYAN COX,

Plaintiff,

v.

COINMARKETCAP OPCO LLC, *et al.*,

Defendants.

Filed February 10, 2023

ORDER

Before the Court are three separate motions to dismiss Plaintiff's Complaint (Doc. 1.) First is Defendant BAM Trading Services Inc.'s ("Binance.US") Motion to Dismiss ("MTD"). (Doc. 70.) Plaintiff filed a Response (Doc. 74), and Binance.US filed a Reply (Doc. 76). Second is Defendants Binance Capital Management Co., Ltd., ("BCM") Changpeng Zhao, Yi He, and Ted Lin's ("Binance Individual Defendants") MTD. (Doc. 71.) Plaintiff filed a Response (Doc. 73), and a Reply was filed (Doc. 78). Last is CoinMarketCap Opco, LLC's ("CoinMarketCap") MTD. (Doc. 72.) Plaintiff filed a Response (Doc. 75), and

CoinMarketCap filed a Reply (Doc. 77). Oral argument was held on February 10, 2023. After considering the parties' arguments and the applicable law, the Court will grant all three motions to dismiss for the reasons discussed below.

I. BACKGROUND

This case involves the alleged artificially suppressed ranking of the HEX cryptocurrency on CoinMarketCap's website. Plaintiff filed this class action lawsuit, alleging that from September 27, 2020, to the present ("the Suppression Period"), the Defendants "artificially suppress[ed]" the value of HEX by "artificially inflat[ing]" the value of other cryptocurrencies. (Doc. 1 at 2 ¶ 3, 22 ¶¶ 90-94.) Plaintiff filed the Complaint "on behalf of all persons who sold HEX during the Suppression Period which they had acquired prior to the Suppression Period." (*Id.* at 27 ¶ 146) (emphasis omitted). Specifically, Plaintiff alleges the following: (1) a private right of action against all Defendants under the Commodity Exchange Act "CEA" for manipulation of commodity prices and provision of false, misleading, or knowingly inaccurate reports tending to affect the price of commodities (*see* 7 U.S.C. §§ 9(1), 9(3), 13(a)(2)); (2) strict liability against Defendants BCM and Binance.US for violations of the CEA; (3) violation of the Arizona Consumer Fraud Act against all corporate Defendants; (4) control person liability for violations of the Arizona Consumer Fraud Act ("ACFA") against all Defendants except CoinMarketCap; and (5) an antitrust claim against all corporate defendants. (*Id.* at 29-42, ¶¶ 157-262.)

Appendix B

Plaintiff alleges that Defendant CoinMarketCap is a coin ranking website owned by Defendant Binance Capital Mgmt. Co., Ltd.—a cryptocurrency exchange.[1] (*Id.* at 2 ¶ 5.) Plaintiff further alleges that Binance.US is the U.S. affiliate of BCM, and that both are affiliated with CoinMarketCap. (*Id.*) Plaintiff also names the following individuals as Defendants: (1) Changpeng Zhao, Binance's Chief Executive Officer; Yi He, Binance's Chief Marketing Officer; (3) Ted Lin, Binance's Chief Growth Officer; and (4) Catherine Coley, Binance.US's Chief Executive Officer from its inception to May 2021. (*Id.* at 8-11.)

Plaintiff alleges CoinMarketCap's historical rankings show HEX was ranked as the 20th top cryptocurrency as recently as September 20, 2020, and "was in line with CoinMarketCap.com's estimation of HEX's market cap." (*Id.* at 22 ¶ 92.) However, Plaintiff contends by September 27, 2020, the Suppression Period began when HEX's ranking dropped to number 201 and has remained locked ever since. (*Id.* ¶¶ 90-94.) Because top ranked cryptocurrencies appear higher on CoinMarketCap's homepage for purchase, Plaintiff asserts that HEX's locked ranking has caused HEX to trade at lower prices due to consumers needing to scroll further down the list. (*Id.* ¶¶ 96-98.)

Plaintiff asserts that HEX should have been ranked 3rd in size by CoinMarketCap in part because Nomics,

1. As discussed later, BCM states it is not a cryptocurrency exchange and Plaintiff is confusing BCM with Binance Holding Ltd., which is a cryptocurrency exchange. Plaintiff never disputes this confusion.

a smaller cryptocurrency ranking site, estimated HEX's true market cap at $85.3 billion as of July 21, 2021—also noting its rankings between 4th and 10th in size from smaller ranking websites. (*Id.* at 23 ¶ 106, 24 ¶ 113.) Plaintiff asserts CoinMarketCap instead estimated HEX at just over $25.6 billion, and that even with that estimation, HEX should have been ranked 6th in size, not 201st. (*Id.* at 23 ¶¶ 108-111.) In contrast, Plaintiff alleges BCM overvalued the cryptocurrencies it issued and owned. Plaintiff alleges BCM issued BinanceCoin and BinanceUSD, which CoinMarketCap ranked as the 4th and 10th largest cryptocurrencies, respectively, as of July 21, 2021. (*Id.* at 23 ¶¶ 99-100, ¶¶ 102-03, 105.) Still, Plaintiff concedes that "some other websites that allow users to buy cryptocurrencies also present [HEX] in the order they are found in CoinMarketCap.com's market cap rankings." (*Id.* ¶ 112.)

Ultimately, Plaintiff alleges that: (1) Defendant CoinMarketCap's failure to properly rank HEX has artificially suppressed its value to Plaintiff's detriment; (2) if HEX had been ranked higher, consumers would have purchased HEX over other cryptocurrencies, including Binances' cryptocurrencies; (3) this artificial suppression has provided a financial benefit to all named Defendants; and (4) the erroneous ratings have improperly inflated the value of cryptocurrencies ranked above HEX, including Binances' cryptocurrencies. (*Id.* at 24 ¶¶ 114-18.)

Plaintiff's claims also rely on the theory that the Defendants artificially suppressed the value of HEX to serve their own financial interests. Plaintiff alleges that

"all Individual Defendants have large holdings of Bitcoin, Binance Coin, Binance USD, and other cryptocurrencies," but hold no units of HEX. (*Id.* at 25 ¶¶ 130, 133.) Plaintiff argues that Defendants' ownership of Bitcoin is problematic because HEX was designed as an alternative to Bitcoin's model, so if HEX succeeds, Bitcoin's value decreases. (*Id.* ¶ 131.) Plaintiff further alleges that "[r]ecognizing the threat that HEX posed, just prior to the beginning of the Suppression Period, Binance launched Binance Smart Chain. . . . Thus, Binance Coin became a direct competitor of HEX." (*Id.* at 26 ¶ 137.) Finally, Plaintiff alleges that: (1) HEX's creator has been a vocal critic of Binance and CoinMarketCap; (2) "Persons with a close connection to CoinMarketCap.com have also expressed a personal dislike of HEX's creator"; (3) Binance and its named principals are financially incentivized to create the highest demand for BinanceCoin and BinanceUSD; and (4) not only have Defendants' actions made it challenging for HEX's model to succeed, they also financially benefit from BinanceCoin and the Binance Smart Chain's adoption through investors. (*Id.* at 23 ¶ 104, 27 ¶¶ 141-44.)

Binance.US, BCM, the Binance Individual Defendants, and CoinMarketCap all move to dismiss Plaintiff's Complaint for lack of personal jurisdiction, and failure to state a claim. (Docs. 70 at 8; 71 at 2; 72 at 2.) BCM and the Binance Individual Defendants also move to dismiss for insufficient service of process on Binance Individual Defendants. (Doc. 71 at 2.)

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(2), a defendant may move to dismiss a complaint prior to trial for lack of personal jurisdiction. After a defendant files a motion to dismiss for lack of personal jurisdiction, the plaintiff has the burden of proving jurisdiction is satisfied. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). Personal jurisdiction exists through either general or specific jurisdiction. *Cybersell, Inc., v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir. 1997).

General personal jurisdiction is established when a defendant has "continuous and systematic" contacts with the forum state. *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317, 66 S. Ct. 154, 90 L. Ed. 95 (1945)). This is an "exacting" standard, and the defendant's forum contacts must be so pervasive they "approximate physical presence" in the state. *Schwarzenegger*, 374 F.3d at 801. Therefore, "only in an exceptional case will general jurisdiction be available anywhere other than the corporation's place of incorporation and principal place of business." *LNS Enters. LLC v. Cont'l Motors Inc.*, 464 F. Supp. 3d 1065, 1072 (D. Ariz. 2020) (cleaned up), aff'd 22 F.4th 852 (9th Cir. 2022); *see also Daimler AG v. Bauman*, 571 U.S. 117, 137, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014) (general jurisdiction exists over a company that is incorporated in or has its principal place of business in the forum). Doing business in a state alone does not rise to establishing general personal jurisdiction in the

forum, *see Hendricks v. New Video Channel Am., LLC*, No. 2:14-CV-02989-RSWL-SSx, 2015 U.S. Dist. LEXIS 74677, 2015 WL 3616983, at *3 (C.D. Cal. June 8, 2015), nor does registering or being licensed to do business in a state. *Wal-Mart Stores, Inc., v. LeMaire*, 242 Ariz. 357, 395 P.3d 1116, 1118-19, 1121-22 (Ariz. Ct. App. May 11, 2017) (to "confer general jurisdiction over every foreign corporation with a large commercial presence in Arizona" would be "neither fair, rational nor consistent with" precedent).

To satisfy specific personal jurisdiction in the Ninth Circuit, the following three conditions must be satisfied:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its law;
>
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable.

LNS Enters. LLC, 464 F. Supp. 3d at 1072 (quoting *Freestream Aircraft (Berm.) Ltd. V. Aero Law Grp.*, 905 F.3d 597, 603 (9th Cir. 2018)). Plaintiff bears the burden

of meeting the first two prongs, and if proven, the burden shifts to the defendants to demonstrate the last prong. *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017).

III. DISCUSSION

A. Personal Jurisdiction Over Binance.US

Binance.US raises numerous arguments as to why it does not belong in this suit. These arguments include: (1) Binance.US is not incorporated in Arizona, nor is its principal place of business in Arizona; (2) Plaintiff has not demonstrated that Binance.US has had minimum contacts with Arizona; and (3) "operating a national website which directed unidentified users from unidentified states to CoinMarketCap does not establish personal jurisdiction in Arizona." (Doc. 70 at 9.) Binance.US notes that Plaintiff has not even alleged its place of incorporation or principal place of business. (*Id.* at 11.) Concurrently, Binance.US requests judicial notice that it is incorporated in Delaware with a California principal place of business. (*Id.*) (citing 70-2.) After reviewing the evidence submitted, and with no objection from Plaintiff, the Court will take judicial notice as to these two facts. To otherwise establish general personal jurisdiction, Plaintiff had to allege that Defendant's contacts with Arizona "are so constant and pervasive as to render it essentially at home" in the state. *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1066 (9th Cir. 2014). Plaintiff makes no such arguments, raising only arguments for specific jurisdiction. Accordingly, the Court finds it cannot exercise general jurisdiction over Binance.US.

Appendix B

1. Personal Jurisdiction Under the CEA

Plaintiff argues that the Court has personal jurisdiction under 7 U.S.C. § 25(c), regardless of Binance. US's minimum contacts with Arizona. Specifically, Plaintiff argues the CEA allows actions to be brought where the act or transaction constituting the violation occurred. *See* 7 U.S.C. § 25(c). Alleging such a violation occurred in Arizona, Plaintiff argues that minimum contacts are not required in federal question cases. *See Warfield v. Alaniz*, 453 F. Supp. 2d 1118, 1127-29 (D. Ariz. 2006) (finding a securities statute authorizing nationwide service of process established personal jurisdiction over defendants). The CEA statute reads:

> Any action brought under subsection (a) of this section may be brought in any judicial district wherein the defendant is found, resides, or transacts business, or in the judicial district wherein any act or transaction constituting the violation occurs. Process *in such action* may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found.

7 U.S.C. § 25(c) (emphasis added).

Plaintiff cites three cases to assert that the CEA's nationwide service of process provision provides this Court personal jurisdiction over Binance.US. None of these cases discuss the CEA. *See Warfield*, 453 F. Supp. 2d at 1127-29 (discussing personal jurisdiction in the

context of the Federal Securities and Exchange Acts); *Bulgo v. Munoz*, 853 F.2d 710, 713 (9th Cir. 1988) (same); *Go-Video, Inc., Akai Elec. Co., Ltd.*, 885 F.2d 1406, 1414 (9th Cir. 1989) (discussing the Clayton Act).

The Second Circuit has addressed this issue under the CEA, providing persuasive authority that this Court must first consider 7 U.S.C. § 25(c)'s venue provision by considering Defendant's minimum contacts before considering the national service of process provision. *See Fire & Police Pension Ass'n of Colo. v. Bank of Montreal*, 368 F. Supp. 3d 681, 695 n.11 (S.D.N.Y 2019) (discussing 7 U.S.C. § 25(c) and noting that "[n]o party has addressed the relationship between the venue provision and the service of process provision, and defendants have not challenged this District's venue. Accordingly, this Court considers whether plaintiffs have made a *prima facie* showing that defendants' national contacts are sufficient for this Court to exercise personal jurisdiction." (quoting *Sullivan v. Barclays PLC*, 13-CV-2811 (PKC), 2017 U.S. Dist. LEXIS 25756, 2017 WL 685570, at *42 (S.D.N.Y. Feb. 21, 2017))).

Binance.US *does* raise arguments regarding the statute's relating venue and service of process provisions, and objections to the District of Arizona being the proper venue. Binance.US argues that 7 U.S.C. § 25(c) requires that the venue provision be satisfied before the national service provision may be executed. The Court agrees. In the statute, the venue provision comes first, allowing actions to be "brought in any judicial district wherein the defendant is found, resides, or transacts business,

or in the judicial district wherein any act or transaction constituting the violation occurs." 7 U.S.C. § 25(c). The national service provision follows and reads, "[p]rocess *in such action* may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found." *Id.* (emphasis added). The statute requires plaintiffs to first satisfy the venue provision, meaning Plaintiff must establish Binance.US has had sufficient minimum contacts with Arizona for this Court to exercise personal jurisdiction. *See Fire & Police Pension*, 368 F. Supp. 3d at 695 n.11. Plaintiff cannot rely on the national service provision to establish personal jurisdiction.

2. Specific Personal Jurisdiction

a. *Prong One*

Plaintiff must demonstrate that Binance.US purposefully directed activities towards Arizona or purposefully availed itself to the benefits and protection of Arizona's laws. *See LNS Enters. LLC*, 464 F. Supp. 3d at 1072. To do so, Plaintiff must show that (1) Binance.US committed an intentional act that was (2) expressly aimed at Arizona, and that (3) the act caused harm that Defendant knew would likely be suffered in Arizona. *See Calder v. Jones*, 465 U.S. 783, 789-790, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984). To prove an intentional act, Plaintiff must demonstrate "an intent to perform an actual, physical act in the real world, rather than an intent to accomplish a result or consequence of that act." *Schwarzenegger*, 374 F.3d at 806. "Evidence of availment is typically action taking place in the forum that invokes the benefits and

protections of the laws in the forum." *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006).

Plaintiff claims Binance.US committed an intentional act by providing "false statements on its website by directing users to CoinMarketCap.Com's website," and authorizing CoinMarketCap to "proceed on its behalf as a subsidiary and marketing channel in dereliction of regulation requirements." (Docs. 1 at 30 ¶ 164, 32 ¶ 183; 74 at 16.) Binance.US does not argue or dispute this factor. The Court therefore finds that Binance.US committed an intentional act by operating in the United States and allowing CoinMarketCap's rankings on its website. *Schwarzenegger*, 374 F.3d at 806.

Next, Plaintiff must demonstrate that these acts were intentionally directed at Arizona. "[T]he Ninth Circuit has consistently found that 'a mere web presence is insufficient to establish personal jurisdiction.'" *Boehm v. Airbus Helicopters Inc.*, 527 F. Supp. 3d 1112, 1120 (D. Ariz. 2020) (quoting *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007)). Likewise, corporations do not purposefully avail themselves to a specific forum by "passively target[ing] potential and existing customers across North America." *Id.* It follows that personal jurisdiction is not established when a defendant is "operating a website that Arizonans could access, especially when Arizonans were not using the website disproportionally and were not singled out for solicitation." *Malcomson v. IMVU, Inc.*, No. 1 CA-CV 18-0596, 2019 Ariz. App. Unpub. LEXIS 634, 2019 WL 2305013, at *3 (Ariz. Ct. App. May 30, 2019); *see also*

Cybersell, 130 F.3d at 418 (finding that a website "simply was not aimed intentionally at Arizona").

Plaintiff argues Binance.US's intentional act was directed at Arizona because in addition to operating a website accessible by Arizonans, "Binance.US sought and obtained licensure as a money transmitter from the Arizona Department of Financial Institutions." (Doc. 74 at 16 (citations omitted)). Furthermore, Plaintiff notes that Binance.US operates legally in Arizona despite being banned in other states. Binance.US counters that operating a website accessible to Arizona residents does not constitute an express or intentional act directed at Arizona.

The Court notes that Plaintiff alleges no facts to suggest Arizona is being specifically targeted or that Binance.US purposefully availed themselves. Plaintiff's allegations demonstrate that Biance.US operates its website nationwide, except for an alleged seven states that banned it. (*See* Doc. 1 at 11 ¶ 44.) Similarly, merely complying with Arizona law does not qualify as intentionally targeting the forum. Binance.US is responsible for complying with the laws of *every* state its website is accessible, and Plaintiff has failed to allege any intentional acts of Binance.US being conducted in Arizona outside the accessibility of its website—which contains a recommendation for CoinMarketCap.com. For these reasons, the Court finds Plaintiff failed to satisfy factor two of the *Calder* test. *See Boehm*, 527 F. Supp. 3d at 1120.

Even if the Court had found there was enough to show an intentional act directed at the forum, Plaintiff

still failed to allege that Binance.US knowingly caused Plaintiff harm in Arizona. *Calder*'s third factor is satisfied when a defendant's intentional act has foreseeable effects or consequences in the forum. *Bancroft & Masters, Inc. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000). The forum need not suffer the "brunt" of the harm either because "[i]f a jurisdictionally sufficient amount of harm is suffered in the forum state, it does not matter that even more harm might have been suffered in another state." *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006). Plaintiff argues that Binance.US caused harm which it knew was likely to be suffered in Arizona because it obtained licensure in Arizona, and therefore knew its misconduct would affect individuals like Plaintiff who acquire or sell HEX in Arizona. Binance.US argues Plaintiff failed to establish any intentional harm in Arizona because Plaintiff does not allege Binance.US had any contact with Arizona outside its money transmitter state licensure. Binance.US continues that unspecified potential investors throughout the United States potentially relying on its recommendation of CoinMarketCap's rankings would not lead it to foresee Plaintiff's alleged harm in Arizona.

The Court agrees with Binance.US that Plaintiff neither alleges any contact in Arizona, nor does he allege personal reliance on Binance.US's website. Because Plaintiff alleges no personal harm or contact with Binance.US, the Court cannot find that it knowingly and foreseeably caused the alleged harm in Arizona. *See Bancroft*, 223 F.3d at 1087. For these reasons, the Court finds that

Plaintiff fails the first prong of the Ninth Circuit's three-prong test. *See LNS Enters. LLC*, 464 F. Supp. 3d at 1072. Because Plaintiff bears the burden of satisfying the first two prongs of the Ninth Circuit's three-prong test, *see Morrill*, 873 F.3d at 1142, the inquiry would ordinarily end here. However, the Court will complete the analysis.

b. *Prong Two*

To satisfy the second prong, Plaintiff must demonstrate that but for Binance.US's activity in Arizona, Plaintiff's injuries would not have occurred. *See Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995). This test is not satisfied for claims that are "too attenuated." *Doe v. Am. Nat'l Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997). Furthermore, a plaintiff's claims have to arise from "contacts that the 'defendant himself' creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014). But even then, "the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 285.

Plaintiff's only argument for satisfying the second prong is that "Plaintiff's alleged injuries directly arise from and are the result of Defendants' publications of disparaging statements directed at Arizona and its direct contact with Arizona customers. But for that contact, Plaintiff would not have been injured." Binance.US argues that Plaintiff fails to allege that any artificial deflation of HEX would not have arisen "but for" the alleged activity

in Arizona, and that any connection Plaintiff does draw is far too attenuated.

The Court agrees. Here, Plaintiff alleges that because Binance.US's website directed unidentified potential investors to CoinMarketCap.com's rankings, those potential investors did not purchase HEX because its rankings were artificially deflated, thus harming Plaintiff and his investment interest in HEX. Plaintiff's connection is far too attenuated to demonstrate that "but for" Binance.US's website being available in Arizona, Plaintiff's allegations as to HEX's artificial deflation would not have arisen. *See Doe*, 112 F.3d at 1051. Besides the website's accessibility and Plaintiff purchasing and selling HEX in Arizona, Plaintiff fails to allege any specific activity in Arizona that gives rise to his claim that HEX was artificially deflated via its ranking on CoinMarektCap.com. *See Ballard*, 65 F.3d at 1500. For these reasons, Plaintiff fails to satisfy the second prong. *See LNS Enters. LLC*, 464 F. Supp. 3d at 1072.

c. *Prong Three*

Because Plaintiff failed the first two prongs, the Court need not engage in the third, which shifts the burden to Binance.US. Nonetheless, the Court will conduct the analysis. The Ninth Circuit provides a seven-factor test for courts to exercise specific personal jurisdiction over an out-of-state defendant. The seven factors are:

> (1) The extent of the defendants' purposeful interjection into the forum state's affairs;

> (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1132 (9th Cir. 2003). No single factor is dispositive. *Id.*

Binance.US argues all seven factors weigh in its favor. Binance.US first argues purposeful interjection is similar to "purposeful direction," and should thus weigh in Defendant's favor because the Complaint does not allege how Binance.US. purposefully directed its business in Arizona. *See Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1485, 1488 (9th Cir. 1993) (finding that even though purposeful availment was satisfied, "[s]ince the [out-of-state defendants'] contacts were attenuated, this factor weighs in their favor"). Second, Binance.US asserts that because it is not located in Arizona, it would be burdened by defending this action. *See Terracom v. Valley Nat. Bank*, 49 F.3d 555, 561 (9th Cir. 1995 ("[T] he law of personal jurisdiction is asymmetrical and is primarily concerned with the defendant's burden."). Third, Binance.US again points to the Complaint's failure to allege minimum contacts with Arizona to argue that an exercise of personal jurisdiction in Arizona would conflict

with the sovereignty of Delaware and California, the two states that could exercise personal jurisdiction over it.

Fourth, Binance.US argues Arizona has little interest in adjudicating this dispute because the Complaint does not allege how any Arizona resident, including Plaintiff, has used Biance.US to their detriment. *See, e.g., Chandler v. Roy*, 985 F. Supp. 1205, 1214 (D. Ariz. 1997) ("[A] state maintains a strong and special interest in exercising jurisdiction over those who commit tortious acts *within its borders* and in providing an effective means of redress *for its residents* who are tortiously injured."). Fifth, Binance.US argues that the forums' efficiency favors the Defendants because the Complaint alleges only one witness, Plaintiff, who failed to allege any evidence unrelated to himself that is located in Arizona. *Core-Vent Corp.*, 11 F.3d at 1489.

Sixth, Binance.US asserts the Supreme Court and Ninth Circuit do not "give[] much weight to inconvenience to the plaintiff" and Plaintiff's preference for his "home forum" of Arizona "does not affect the balancing." *Id.* at 1490. As such, the effectiveness and convenience of relief lean in Binance.US's favor. Lastly, Binance.US argues that Delaware and California are viable alternative forums.

Plaintiff does not engage in this seven-factor test. Instead, Plaintiff merely argues that Binance.US fails to address whether exercising personal jurisdiction would "comport with fair play and substantial justice." Plaintiff further argues it would not unreasonably burden Binance.US to defend itself in Arizona because it obtained

licensure as a money transmitter. The Court agrees with Binance.US's analysis and arguments under the Ninth Circuit's seven-factor test, and notes Plaintiff failed to offer substantial arguments or objections to the contrary. *See Cybersell, Inc.*, 130 F.3d at 415 ("[I]t would not comport with traditional notions of fair play and substantial justice . . . for Arizona to exercise personal jurisdiction over an allegedly infringing [out-of-state] website advertiser who has no contacts with Arizona other than maintaining a home page that is accessible to Arizonans, and everyone else, over the Internet." (cleaned up)).

For these reasons, the Court finds that Plaintiff has failed to establish the Court's personal jurisdiction over Binance.US. The Court will therefore grant Defendant Binance.US's MTD for lack of personal jurisdiction. Being moot, the Court will not address Binance.US's arguments under Rule 12(b)(6).

B. Personal Jurisdiction Over CoinMarketCap

CoinMarketCap argues this Court does not have personal jurisdiction over it, because it is a Delaware corporation that is not alleged to have any place of business, operation, or employees in Arizona. CoinMarketCap also argues Plaintiff fails to allege any injuries arising from or relating to Arizona, or any of CoinMarketCap's in-forum activities. As such, CoinMarketCap contends Plaintiff cannot establish specific jurisdiction in Arizona. Plaintiff again raises the argument that the CEA's national service of process provision confers jurisdiction over CoinMarketCap. Additionally, Plaintiff argues

personal jurisdiction exists under the Ninth Circuit's three-prong test, because CoinMarketCap directs its activities in Arizona through its website, has a partnership with Binance.US to be advertised on that website, and CoinMarketCap cannot show any burden exists by defending this action in Arizona.

Here, the parties also do not dispute that CoinMarketCap is incorporated in Delaware, has no principal place of business in Arizona, and is not alleged to have an agent for service of process in Arizona, any licensure, mailing addresses, offices, or physical operations in Arizona. Having no basis to exercise general jurisdiction, the Court will whether it has specific jurisdiction. *See LNS Enters. LLC*, 464 F. Supp. 3d at 1072.

1. Personal Jurisdiction Under the CEA

Plaintiff raises the exact same arguments here as he did in response to Binance.US's MTD. The Court rejects this argument for the same reasons stated above. *See Fire & Police Pension*, 368 F. Supp. 3d at 695 n.11.

2. Specific Personal Jurisdiction

The Court will again apply the Ninth Circuit's three-prong test to determine if specific personal jurisdiction may be exercised over CoinMarketCap. *See LNS Enters. LLC*, 464 F. Supp. 3d at 1072.

Appendix B

a. *Prong One*

Plaintiff argues CoinMarketCap committed an intentional act by providing false rankings on its website, which is accessible in Arizona. CoinMarketCap does not dispute this factor. The Court finds this factor is satisfied. *See Schwarzenegger*, 374 F.3d at 806.

However, the parties disagree on whether this act was expressly aimed at Arizona. Plaintiff asserts CoinMarketCap's website was expressly aiming at Arizona because (1) it advertised on Binance.US, a licensed Arizona money transmitter, (2) CoinMarketCap and Binance.US are strategic partners, and (3) Binance.US certified to Arizona consumers that CoinMarketCap.com's information was reliable.

CoinMarketCap counters that its website's mere accessibility in Arizona and/or a third party website's advertisements are not enough to find that its activity was expressly aimed at Arizona. CoinMarketCap also notes that Plaintiff does not allege that CoinMarketCap.com was involved in any purchase or sale of cryptocurrency, or that any part of its website is specifically directed at Arizona.

The Court agrees with CoinMarketCap. The Ninth Circuit finds that "express aiming" occurs when a defendant is alleged to have engaged in wrongful conduct "individually targeting a known forum resident." *Bancroft*, 223 F.3d at 1087. At most, Plaintiff alleges that CoinMarketCap.com's rankings were individually targeting Plaintiff when Binance.US advertised

CoinMarketCap.com on its own website. But Plaintiff fails to allege that any part of CoinMarketCap's website is specifically targeting Plaintiff or Arizona residents. CoinMarketCap.com's accessibility in Arizona does not alone satisfy the second prong. *See Cybersell, Inc.*, 130 F.3d at 415; *see also Handsome Music, LLC v. Etoro USA LLC*, LACV-20-08059(VAP) (JCx), 2020 U.S. Dist. LEXIS 238942, 2020 WL 8455111, at *5 (C.D. Cal. Dec. 17, 2020) (finding a company's "online trading platform" was not "directed at" the forum because plaintiffs did not demonstrate "something more" than the mere operation of the website); *see also JST Performance, Inc. v. Shenzhen Aurora Tech. Ltd.*, No. CV-14-1569-PHX-SMM, 2015 WL 12683958, at *4 (D. Ariz. Sept. 2, 2015) (operating "a passive website, even if it displays advertisements that include infringing material, is insufficient to establish personal jurisdiction").

Plaintiff further argues that CoinMarketCap caused harm it knew Plaintiff would suffer in Arizona because their "intentional act has foreseeable effects in the forum." *Bancroft*, 223 F.3d at 1087. Plaintiff argues that because CoinMarketCap.com is accessible in Arizona and because CoinMarketCap artificially deflated the ranking of HEX—which Plaintiff acquired and sold in the forum—the harm alleged was foreseeable. Even if the Court were to agree with Plaintiff, the Court cannot find that Plaintiff demonstrates purposeful direction because he failed to establish CoinMarketCap intentionally targeted Arizona. *See Calder*, 465 U.S. at 789-90; *LNS Enters. LLC*, 464 F. Supp. 3d at 1072. Any alleged harm is too attenuated because Plaintiff's allegations center on a third party's

(Binance.US) advertisements of CoinMarketCap.com as a website with reliable cryptocurrency rankings—not any conduct CoinMarketCap directed at Arizona. *Bancroft*, 223 F.3d at 1087.

The Court must therefore turn to whether Plaintiff presented any evidence of purposeful availment that would justify the Court to exercise personal jurisdiction. *See Pebble Beach Co.*, 453 F.3d at 1154 (purposeful availment "is typically action taking place in the forum that invokes the benefits and protections of the laws in the forum"). As previously discussed, Plaintiff does not dispute that CoinMarketCap is incorporated in Delaware, has no principal place of business in Arizona, and has no agent for service of process in Arizona, any licensure, mailing addresses, offices, or physical operations in Arizona. As such, the Court cannot justify exercising personal jurisdiction over CoinMarketCap. *See Cybersell, Inc.*, 130 F.3d at 415. Despite failing the first prong in the Ninth Circuit's three-prong test, the Court will continue the analysis.

b. *Prong Two*

Plaintiff bears the burden of demonstrating that "but for" CoinMarketCap's activity in Arizona, Plaintiff's claim would not have arisen. *See Ballard*, 65 F.3d at 1500. Plaintiff offers no specific arguments to satisfy this prong. Plaintiff broadly asserts that his "alleged injuries directly arise from and are the result of Defendants' publications of disparaging statements directed at Arizona and its direct contact with Arizona consumers. But for that conduct,

Plaintiff would not have been injured." (Doc. 75 at 16.) CoinMarketCap counters that the Complaint fails to allege that the administration of the website's ranking system occurred in or was directed in Arizona. CoinMarketCap also notes that Plaintiff alleges no personal contact with CoinMarketCap or its website. CoinMarketCap thus argues that the only connection to Arizona is that Plaintiff in Arizona when his alleged injury occurred.

The Court finds that Plaintiff has failed to demonstrate that his claim arose out of CoinMarketCap's activities in Arizona. Plaintiff's "challenged conduct" of CoinMarketCap have nothing to do with Arizona. *See Walden*, 571 U.S. at 289; *see also Morrill*, 873 F.3d at 1142 (where the "sole connection to the forum state" is that plaintiff resides there, that connection is insufficient to establish specific jurisdiction over a non-resident corporation); *see also Shaw v. Vircurex*, No. 18-cv-00067-PAB-SKC, 2019 U.S. Dist. LEXIS 109796, 2019 WL 2636271, at *4 (D. Colo. Feb. 21, 2019) (finding a lack of specific jurisdiction in a cryptocurrency case in which "[t]he only alleged connection between defendants and Colorado is harm suffered by a Colorado resident").

For these reasons, the Court does not find that CoinMarketCap's alleged conduct is "tethered to [Arizona] in any meaningful way," *Picot*, 780 F.3d at 1215, and that the only connection between that alleged conduct and Arizona is that Plaintiff's injury occurred in Arizona. *See Shaw*, 2019 U.S. Dist. LEXIS 109796, 2019 WL 2636271, at *4. Furthermore, because Plaintiff never alleges any personal contact with CoinMarketCap or its website,

it is far too attenuated to demonstrate that "but for" Defendant's website being available in Arizona, HEX's artificial deflation would not have arisen. *See Doe*, 112 F.3d at 1051. Because Plaintiff does not allege claims that arise out of or relate to any in-forum activities, Plaintiff fails to satisfy prong two of the Ninth Circuit's test. *See LNS Enters. LLC*, 464 F. Supp. 3d at 1072.

c. *Prong Three*

Because Plaintiff failed to meet his burden of demonstrating the first two prongs, the Court need not consider the third. *See Morrill*, 873 F.3d at 1142. However, the Court will address this prong regardless. Neither party addressed the Ninth Circuit's seven-factor test, *see* supra section III(A)(2)(c). CoinMarketCap does argue that: (1) exercising jurisdiction over it would violate "traditional notions of fair play and substantial justice, *see Int'l Shoe Co.*, 326 U.S. at 310; (2) under Plaintiff's theory, CoinMarketCap could be subject to any state that a user can access their website and allege harm from out-of-state conduct with no connection to the forum, *see id.* at 316; and (3) Defendant should not be subjected to litigation in Arizona, where it does not "reasonably anticipate being haled into court there," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980), and where the form has no connection to the suit other than the Plaintiff's residence.

Plaintiff contends CoinMarketCap Defendants intentionally availed itself to Arizona by partnering with Binance.US, because of its Arizona license as a

money transmitter. Plaintiff therefore believes it is not unreasonable to burden Defendant with defending itself in Arizona. In Reply, CoinMarketCap asserts Plaintiff baselessly describes CoinMarketCap and Binance.US as a "partnership" based only on a referral website link. CoinMarketCap continues that a referral link alone does not create a partnership under the law, nor does it subject CoinMarketCap to personal jurisdiction in any forum that Binance.US transacts business. And notably, neither CoinMarketCap nor Binance.US are alleged to be Arizona corporations.

Although the parties did not brief the relevant seven-factor test, the Court will nonetheless weigh those factors. Factor one weighs in CoinMarketCap's favor because the only traceable act in Arizona is the accessibility of CoinMarketCap.com. Next, CoinMarketCap would be burdened by defending itself in Arizona because it has virtually no presence here—it is not an Arizona company, and it has no offices, employees, or service of process agents here. Factor three weighs in CoinMarketCap's favor because it is incorporated in Delaware. Factor four also weighs in CoinMarketCap's favor because the only interest Arizona has in this litigation is tied to Plaintiff's status as an Arizona resident and his alleged injury occurred here. The law dictates that this alone is not enough. Additionally, Plaintiff does not allege that he relied on CoinMarketCap's rankings, or that he ever looked at their website before purchasing HEX. It follows that Arizona is not the most efficient judicial resolution of the controversy, as CoinMarketCap has no ties to Arizona beyond its website's accessibility. Factor six, however,

weighs in Plaintiff's favor because as a resident of the forum, Arizona would be the most convenient forum for him. Finally, an alternative forum exists in Delaware, where CoinMarketCap is incorporated. Weighing all factors, CoinMarketCap prevails in demonstrating that it would be unreasonable for the Court to exercise specific jurisdiction over it.

For these reasons, the Court finds that Plaintiff has failed to allege personal jurisdiction over Defendant CoinMarketCap. The Court will therefore grant Defendant CoinMarketCap's MTD for lack of personal jurisdiction. The Court need not reach Defendant's arguments for dismissal under Federal Rule of Civil Procedure 12(b)(6) as they are moot.

C. Personal Jurisdiction Over BCM and Individual Defendants

BCM moves to Dismiss Plaintiff's Complaint for lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). BCM argues that besides acquiring CoinMarketCap in 2020, Plaintiff's claims have nothing to do with BCM. First, BCM contends no personal jurisdiction can be established because it is a foreign investment company with no alleged offices, employees, or operations anywhere in the United States. Next, BCM argues that specific jurisdiction does not exist because Plaintiff did not allege that the alleged suppression of HEX is tied to BCM's actions with Arizona, nor do Plaintiff's alleged injuries arise from, or relate to, any alleged contacts by BCM with Arizona. BCM also argues that Plaintiff conflates BCM with Binance Holdings Ltd., a separate and distinct entity.

Plaintiff again claims that the Court can exercise personal jurisdiction over BCM under the national service of process provision of the CEA. *See* 7 U.S.C. § 25(c). Plaintiff in his Response also raises for the first time that the Court has personal jurisdiction over BCM because it acted as the alter ego of Binance.US. Plaintiff contends that BCM could influence market prices by knowingly directing users to false rankings set by CoinMarketCap, which is allegedly BCM's subsidiary and strategic partner. Lastly, Plaintiff claims that:

> (1) Binance misrepresented the true ranking of HEX through CoinMarketCap.com, which is deemed as "objective" (while other websites ranked HEX at 201)[,] (2) Binance's misrepresentations occurred in connection with advertising itself as a place to buy and sell cryptocurrency, and (3) Plaintiff occurred injury when Binance failed to disclose the true ranking of HEX, which he relied on to sell HEX during the Suppression period.

(Doc. 73 at 5.)

However, outside his claims for personal jurisdiction under the CEA, and BCM's acting as an alter-ego for Binance.US, Plaintiff fails to assert whether the Court has general jurisdiction or if specific jurisdiction can be exercised under the Ninth Circuit's test.

Appendix B

1. General Personal Jurisdiction

Plaintiff does not allege that BCM is incorporated anywhere in the United States or where its principal place of business is. Plaintiff also does not argue general jurisdiction over Defendant. Absent sufficient factual allegations, general jurisdiction may only be established whether BCM's contacts with Arizona are so "continuous and systematic as to render [it] essentially at home in the forum State." *Daimler*, 571 U.S. at 139 (internal quotation marks omitted). BCM provides some evidence that it is a foreign investment company organized under the laws of the British Virgin Islands. (*See* Doc. 71 at 4.) Plaintiff does not dispute this. Plaintiff does, however, allege that it is unclear where BCM is headquartered. BCM counters that the "lack of any headquarters does not make [Arizona] its jurisdictional home." *See Reynolds v. Binance Holdings Ltd.*, 481 F. Supp. 3d 997, 1003 (N.D. Cal. 2020).

The Court finds that Plaintiff failed "to identify other facts, alleged or otherwise, that would make this case exceptional under *Daimler* and place [BCM] 'at home' in [Arizona]." *Id.* Furthermore, where factual allegations could be drawn from the Complaint to suggest Plaintiff satisfies *Daimler*, BCM argues that Plaintiff has improperly conflated BCM with Binance Holdings, Ltd., a non-party that operates a foreign cryptocurrency exchange. (*See, e.g.*, Doc. 1 at 10 ¶ 35) ("Binance has regularly and intentionally engaged in numerous online cryptocurrency transactions inside the United States, with United States residents. In addition, Binance has promoted, inside the United States, the sale of digital

assets on its exchange."). Plaintiff does not refute these assertions in his Response to BCM's MTD.[2] (*See* Doc. 73.)

Finally, BCM notes that non-party Binance Holdings Ltd. has been involved in other federal lawsuits like the one here, and the courts have found no personal jurisdiction over the non-party. *See Reynolds*, 481 F. Supp. 3d 997. Accordingly, the Court has no basis to find general jurisdiction.

2. Specific Personal Jurisdiction

The Court will analyze the Ninth Circuit's three-prong test to determine whether it can exercise specific

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2. *See also* BCM's further arguments regarding Plaintiff's allegations: "Plaintiff's assertion that Binance Holdings Ltd. regularly engages in transactions with U.S. customers is belied by his very own allegations. As alleged in the Complaint, Binance.com has not been available to U.S. users since 2019—well before the alleged suppression period began in September 2020. [(Doc. 1 at 10 ¶ 36.)] During the time period relevant to the allegations in the Complaint, Plaintiff alleges that U.S. users have bought, sold, and traded cryptocurrencies on the Binance.US platform, which is owned and operated by Defendant [Binance.US] Trading Services Inc. [(*Id.* ¶ 41.)] Plaintiff then questions 'whether there is any meaningful distinction' between Binance Holdings Ltd and [Binance.US] Trading Services. [(*Id.* ¶ 67.)] There is no basis to equate [Binance.US] with Binance Holdings Ltd., and then to equate Binance Holdings Ltd. with BCM. Allegations must be supported by facts, not innuendo. *See Barba v. Lee*, No. CV 09-1115-PHX-SRB, 2009 U.S. Dist. LEXIS 132415, 2009 WL 874768, at *4 (D. Ariz. Nov. 4, 2009)." (Doc. 71 at 8 n.5.) Plaintiff does not rebut this or provide an argument to the contrary.

jurisdiction over BCM. *See LNS Enters. LLC*, 464 F. Supp. 3d at 1072.

a. *Prong One*

Despite bearing the burden to establish this prong, Plaintiff does not analyze this prong. *See Morrill*, 873 F.3d at 1142. BCM does argue that Plaintiff has failed to allege purposeful direction and availment. BCM also argues that Plaintiff fails to allege that any of its conduct regarding the suppression of HEX and the administration of CoinMarketCap's rankings was directed at Arizona specifically.

BCM also argues that Plaintiff erroneously conflates BCM with Binance Holdings Ltd. to allege that BCM "has regularly and intentionally engaged in numerous online cryptocurrency transactions inside the United States" and "has promoted, inside the United States, the sale of digital assets on its exchange. (*See* Docs. 71 at 9; 1 at 10 ¶ 35.) BCM contends there is no factual or legal basis to merge these two entities, nor does Plaintiff set forth a basis to do so in his Response.

Because mere accessibility of a website in the United States does not give rise to specific jurisdiction, see *Cybersell, Inc.*, 130 F.3d at 415, and because Plaintiff does not refute the supposed improper conflation of BCM and Binance Holdings Ltd., the Court finds that Plaintiff has not established that BCM directed an act directed at Arizona or purposefully availed itself to the forum. *See Matus v. Premium Nutraceuticals, LLC*, No. EDCV

15-01851 DDP (DTBx), 2016 U.S. Dist. LEXIS 70878, 2016 WL 3078745, *3 (C.D. Cal. May 31, 2016) ("Absent 'something more' than the maintenance of a minimally interactive website, Plaintiff has not met its burden to satisfy even the purposeful availment prong of the specific jurisdiction test.").

b. *Prong Two*

To satisfy the second prong, Plaintiff must demonstrate that "but for" BCM's activity in Arizona, Plaintiff's claim wouldn't have arisen. *See Ballard*, 65 F.3d at 1500. Again, Plaintiff fails to make any arguments under this prong. BCM notes that Plaintiff does not allege that his claims arise out of or relate to BCM's activity directed at Arizona. The Court agrees that Plaintiff did not meet his burden to allege that his injuries would not have occurred but for BCM's Arizona activity. Plaintiff's only allegation tying any of BCM's conduct to Arizona was that he resided there at the time he purchased, sold, and was allegedly harmed by the suppression of HEX. But an injury to a forum resident is insufficient, "rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Walden*, 134 S. Ct. at 1122; *see also Shaw*, 2019 U.S. Dist. LEXIS 109796, 2019 WL 2636271, at *4 (finding a lack of specific jurisdiction in a cryptocurrency case in which "the only alleged connection between defendants and Colorado is harm suffered by a Colorado resident"). Prong two is thus not satisfied.

c. *Prong Three*

Despite Plaintiff not meeting his burden under prongs one and two, the Court will nonetheless analyze the third, weighing the seven factors articulated by the Ninth Circuit. *See Harris Rutsky & Co. Ins. Servs., Inc.*, 328 F.3d at 1132.

First, Plaintiff fails to allege any facts that satisfy factor one. Second, BCM's burden to defend itself in Arizona would be substantial because BCM is an international company that conducts no business in the United States. Third, there are no allegations that any state has had any contacts with BCM. Fourth, Plaintiff fails to allege facts to support this factor, as the only tie to Arizona is that his alleged injury occurred in the forum. Fifth, Plaintiff does not allege that Arizona would provide the most efficient resolution of this controversy, and the Court finds no reasons to support that. Sixth, the Court acknowledges that Arizona would be the most convenient for Plaintiff because it is where he resides. Lastly, the Court finds that Plaintiff fails to allege any other forum in the United States where Defendant BCM has had any connection.

As such, the Court finds that almost all seven factors weigh in BCM's favor and thus specific jurisdiction cannot be exercised under the Ninth Circuit's three-prong test. *See LNS Enters. LLC*, 464 F. Supp. 3d at 1072.

3. Personal Jurisdiction Under the CEA

Plaintiff also raises the exact same arguments here as he did in response to Binance.US and CoinMarketCap's MTD under the CEA's national service of process provision. For the same reasons stated above, the Court rejects this argument. *See also Fire & Police Pension*, 368 F. Supp. 3d at 695 n.11.

4. Personal Jurisdiction Under Plaintiff's Alter-Ego Assertions

In his Response, Plaintiff for the first time argues that BCM is the alter ego of Binance.US, and that the Court may therefore exercise personal jurisdiction over it via Binance.US's contacts with Arizona. Despite the Court dismissing Binance.US as a party to this suit for lack of personal jurisdiction, the Court will still engage in an analysis.

"[T]he alter ego test may be used to extend personal jurisdiction to a foreign parent or subsidiary when, in actuality, the foreign entity is not really separate from its domestic affiliate." *Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1021 (9th Cir. 2017) (quoting *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015)). Under this test, Plaintiffs must make out a prima facie case that "(1) that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) that failure to disregard their separate entities would result in fraud or injustice." *Harris Rutsky & Co. Ins. Servs., Inc.*, 328 F.3d at 1134 (cleaned up). "Conclusory

allegations of 'alter ego' status are insufficient to state a claim. Rather, a plaintiff must allege specifically both of the elements of alter ego liability, as well as facts supporting each. *Rodriguez v. Whole Foods Mkt. Inc.*, No. CV-18-08301-PCT-SMB, 2019 U.S. Dist. LEXIS 118747, 2019 WL 3220538, at *4 (D. Ariz. July 17, 2019) (quoting *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1116 (C.D. Cal. 2013)).

a. *Unity of Interest*

Arizona courts generally consider several factors in considering unity of interest. These include: (1) the parent's stock ownership; (2) common officers or directors; (3) financing of subsidiary by the parent; (4) the parent's payment of salaries and other expenses of subsidiary; (5) any failure of the subsidiary to maintain formalities of separate corporate existence; (6) similarity of logo; and (7) plaintiff's lack of knowledge of the subsidiary's separate corporate existence. 2019 U.S. Dist. LEXIS 118747, [WL] at *3. Furthermore, "corporate status will not be lightly disregarded" because the test envisions "substantially total control over the management and activities" and "isolated occurrences of some of these factors are not enough." *Id.* (cleaned up).

When countering this claim, BCM again asserts that Plaintiff confuses BCM with Binance Holdings Ltd., a foreign cryptocurrency exchange platform that has already been found to not be an alter ego of Binance. US, when it refers to actions of "Binance" or "BCM." *See Reynolds*, 481 F. Supp. 3d at 1004-09.

Appendix B

1. *Stock Ownership*

Plaintiff alleges that "on information and belief" BCM and Individual Defendant Changpeng Zhao own a significant portion of Binance.US. (Doc. 1 at 11 ¶ 42.) BCM counters that Plaintiff never alleges that Binance.US is a subsidiary of BCM, only that Binance.US is an "affiliate." (*See* Doc. 1 at 2 ¶ 5(c)). BCM further argues that even if it had an ownership interest in Binance.US, "total ownership" is "alone insufficient to establish the requisite level of control." *Ranza*, 793 F.3d at 1073. Lastly, BCM contends that even if Zhao had an ownership interest in Binance.US, it "does not support an inference that [BCM] has an ownership interest in [Binance.US]." *Reynolds*, 491 F. Supp. 3d at 1008 n.7. Without more from Plaintiff, the Court agrees that there are insufficient allegations that BCM exercises the requisite level of control over Binance.US. *See Sandoval v. Ali*, 34 F. Supp. 3d 1031, 1040 (N.D. Cal. 2014) (rejecting conclusory allegations of a unity of interest between two corporate entities founded upon "information and belief").

2. *Common Officers and Directors*

Plaintiff alleges that the CEO of Binance.US stated in an interview that she reports to Binance.US's board of directors, which included Individual Defendants Zhao and Wei Zho (Binance's then CFO). (Doc. 1 at 35 ¶ 201.) BCM argues that the mere sharing of officers and directors "does not undermine the entities' formal separation." *Ranza*, 793 F.3d at 1074; *see also Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980)

(finding there was no alter ego relationship even where parent and subsidiary had overlapping directors); *see also AMA Multimedia LLC v. Sagan Ltd.*, No. CV-16-01269-PHX-DGC, 2016 U.S. Dist. LEXIS 139097, 2016 WL 5851622, at *4 (D. Ariz. Oct. 6, 2016) ("[Plaintiff] does identify some common officers and directors, but such overlap is not sufficient to establish an alter ego relationship"). The Court finds that this factor weighs in Plaintiff's favor but acknowledges BCM's point that it is not alone dispositive.

3. *Financing*

Plaintiff makes no allegations regarding BCM financing Binance.US, paying any of its debts, or that Binance.US is inadequately capitalized. The Court therefore agrees with Defendant's argument that "[a] plaintiff's failure to discuss a unity of interest factor weighs against the finding of alter ego liability." *Reynolds*, 481 F. Supp. 3d at 1007.

4. *Payments*

Plaintiff fails to allege that BCM pays any of Binance.US's expenses, salaries, or that the two entities commingle funds and assets. This factor thus favors BCM.

5. *Corporate Formalities*

Plaintiff alleges that Binance.US "uses Binance's wallet, matching engine, and other technologies" and "offers a very similar interface." (Doc. 1 at 11 ¶¶ 41,

43.) However, BCM argues that Plaintiff has conflated BCM with Binance Holdings Ltd., and that Plaintiff does not allege how this arrangement demonstrates BCM's disregarding corporate formalities in a way that makes Binance.US a "mere instrumentality" of BCM. *See Rodriguez*, 2019 U.S. Dist. LEXIS 118747, 2019 WL 3220538, at *3. Moreover, Defendant argues that even if Binance.US licenses the name "Binance" and certain technologies from Binance, a licensing arrangement is insufficient to confer personal jurisdiction. *See Bancroft*, 223 F.3d at 1086. The Court notes that Plaintiff again fails to dispute BCM's assertions that it is erroneously conflated with Binance Holdings Ltd., when Plaintiff refers to "Binance." Plaintiff also fails to cite any law demonstrating that this factor should weigh in his favor. Therefore, the Court finds this factor weighs in favor of BCM.

6. *Similarity of Logo*

Plaintiff argues that:

> Binance takes American users to Binance.US's website (assuming that there is a distinction at all) and Binance.US provides Binance Services, as that phrase is defined in the Binance Terms, in that it utilizes internet or blockchain technologies developed by Binance and one or more Binance ecosystem components such as 'digital asset trading platform.'

(Docs. 73 at 13; 1 at 34-35 ¶ 200.) Plaintiff also alleges that "[a]s a Binance Operator, Binance.US currently lacks

a CEO and the only individuals remaining on its board are Binance executives." (Doc. 1 at 35 ¶ 203.) BCM again counters that Plaintiff has conflated BCM with Binance Holdings Ltd., and that a federal court has already held that the allegations concerning Binance Holdings Ltd. and Binance.US's "websites and technological platforms do not weigh in favor of finding alter-ego liability." *Reynolds*, 481 F. Supp. 3d at 1007. BCM further argues that even separate entities representing themselves "as one online does not rise to the level of unity of interest required to show companies are alter egos." *Corcoran v. CVS Health Corp.*, 169 F. Supp. 3d 970, 984 (N.D. Cal. 2016). Because Plaintiff does not dispute that he has conflated BCM with Binance Holdings Ltd. and fails to cite any law supporting his argument, the Court agrees with BCM that this factor weighs in BCM's favor.

7. *Lack of Knowledge*

Plaintiff alleges that he is unsure where "Binance ends and Binance.US begins or even whether there is any meaningful distinction between the two at all." (Doc. 1 at 16 ¶ 67.) BCM counters that Plaintiff "must do more [than] make conclusory statements regarding an alter ego relationship . . . the plaintiff must allege specific facts supporting application of the alter ego doctrine." *Barba v. Lee*, No. CV-09-1115-PHX-SRB, 2009 U.S. Dist. LEXIS 132415, 2009 WL 8747368, at *4 (D. Ariz. Nov. 4, 2009). The Court agrees that Plaintiff's allegations are merely conclusory statements, and that this factor weighs in BCM's favor. For these reasons, the Court finds Plaintiff has failed to establish a unity of interest. *See Rodriguez*, 2019 U.S. Dist. LEXIS 118747, 2019 WL 3220538, at *3.

b. *Fraud or Injustice*

The second prong of the alter ego test requires a showing that failure to disregard the separate corporate identities "would result in fraud or injustice." *Williams*, 851 F.3d at 1021. Plaintiff alleges that:

> As a Binance Operator, Binance.US is bound by the Binance Terms as well as by the terms of its supposed "brand partnership" with Binance and any technology licenses with Binance. Binance.US is also responsible for ensuring that Binance's US operations, including those of its Operator and strategic partner CoinMarketCap.com, comply with American law.

(Doc. 73 at 13.)

BCM counters that Plaintiff fails to allege any facts under the second prong that demonstrate fraud or an inequitable result. The Court agrees. Plaintiff makes mere conclusory statements without factual allegations to assert fraud or injustice. *See Rodriguez*, 2019 U.S. Dist. LEXIS 118747, 2019 WL 3220538, at *4 (noting that Plaintiff does not even address how it would sanction a fraud or promote injustice"); *see also Gardner v. Starkist Co.*, 418 F. Supp. 3d 443, 465 (N.D. Cal. 2019) (finding that alter-ego theory failed because the Complaint failed to even "mention[] a possible inequitable result"). Plaintiff does not mention how the alleged partnership creates a fraud or injustice, which "must relate to the forming of the

corporation or abuse of the corporate form, not a fraud or injustice generally." *In re Western W. States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1133 (D. Nev. 2009). Because Plaintiff fails to allege such facts, the Court finds Plaintiff's claims fail under both prongs of the alter ego test. *See Rodriguez*, 2019 U.S. Dist. LEXIS 118747, 2019 WL 3220538, at *4.

5. Personal Jurisdiction Over Binance Individual Defendants

The Binance Individual Defendants assert that there is no personal jurisdiction over them because—as Plaintiff alleges—they live in Taiwan, Malta, and outside of Arizona. (*See* Doc. 1 at 9-10 ¶¶ 32-34.) Furthermore, the Binance Individual Defendants argue that there are no allegations that any of them had any contact with Arizona, none of them live in the United States, and that the fiduciary shield doctrine prevents the assertion of personal jurisdiction over them. Plaintiff offers no competing arguments and fails to defend personal jurisdiction in his Response. The Binance Individual Defendants describe Plaintiff's allegations as nothing more than vague descriptions of their alleged positions in Binance.

The Complaint alleges that the Binance Individual Defendants are "control persons of the Corporate Defendants," with "significant knowledge" and "financial interests" in certain cryptocurrencies. (*See* Doc. 1 at 12 ¶¶ 50-51, 23 ¶ 104.) However, the Binance Individual Defendants note that the Complaint does not identify any affirmative conduct attributable to them or any conduct connecting them with the suppression of HEX.

Appendix B

Defendants argue that a *prima facie* case for general jurisdiction cannot be established because none of the Binance Individual Defendants reside in Arizona. The Complaint alleges that Changpeng Zhao resides in Taiwan, Yi He resides in Malta, and that although Plaintiff does not know where Ted Lin resides, that he was not a resident of Arizona. (*Id.* at 8-9, 33-34 ¶¶ 27, 32-34, 186-87, 198.) The Court thus agrees that it does not have general jurisdiction over these defendants. *See Daimler*, 571 U.S. at 137. The Complaint is similarly devoid of allegations of affirmative conduct that would give rise to specific jurisdiction. With no alleged facts, and no arguments made by Plaintiff in his Response, the Court agrees that there is no *prima facie* case for specific personal jurisdiction either.

The Binance Individual Defendants also object to personal jurisdiction based on an attenuated association with BCM, arguing such an exercise is not available under the fiduciary shield doctrine. The fiduciary shield doctrine provides personal jurisdiction over nonresident corporate directors and officers based on the contacts with their employer. *See M2 Software Inc. v. M2 Comms., L.L.C.*, 149 F. App'x 612, 615 (9th Cir. 2005); *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 520 (9th Cir. 1989). For Plaintiff to overcome the fiduciary shield doctrine, he must establish that (1) CoinMarketCap or BCM are alter egos of the Binance Individual Defendants, or (2) the Binance Individual Defendants were the "guiding spirit" behind the wrongful conduct, *see Davis*, 885 F.2d at 521, 523 n.10, in that they "personally directed the activities toward the forum state giving rise to the complaint." *Indiana*

Plumbing Supply v. Standard of Lynn, 880 F. Supp. 743, 750 (C.D. Cal. 1995). Likewise, the corporate officer must be the "primary participant in the alleged wrongdoing" or have "had control of, and direct participation in the alleged activities." *AMA Multimedia LLC*, 2020 U.S. Dist. LEXIS 188394, 2020 WL 5988224, at *2 (citation omitted).

Plaintiff fails to allege any of these claims. To start, Plaintiff does not allege that BCM or CoinMarketCapare alter egos of the Binance Individual Defendants. *See Success Is Yours, Inc. v. LifeSuccess Publ, LLC*, No. CV10-0758-PHX DGC, 2010 U.S. Dist. LEXIS 112457, 2010 WL 4225880, at *3 (D. Ariz. Oct. 21, 2010) (finding that conclusory allegations about defendants being "the guiding spirit and driving force behind" the alleged wrongdoing are "not sufficient"). To the extent Plaintiff intended the Binance Individual Defendants to be included in the argument for BCM being an alter ego of Binance. US, the Court has already determined in this Order that Plaintiff failed to allege such a claim.

Lastly, Plaintiff never alleges that the Binance Individual Defendants directed the suppression of HEX. Rather, at most Plaintiff alleges that the Binance Individual Defendants were "aware at the time Binance purchased CoinMarketCap.com that there were issues with its rankings" and that, "[u]pon information and belief," the Binance Individual Defendants have "large holdings" in certain cryptocurrencies that compete with HEX. (*See* Doc. 1 at 12 ¶ 50, 25 ¶ 130.) But as the Binance Individual Defendants note, mere awareness or incentives to suppress HEX is not the same allegation as stating that

they personally directed, ratified, or even participated in the alleged suppression. *See Tangiers Investors, L.P. v. Americhip Int'l, Inc.*, No. 11CV339 JLS BGS, 2011 U.S. Dist. LEXIS 83820, 2011 WL 3299099, at *2 (S.D. Cal. Aug. 1, 2011) (plaintiff's conclusory allegations that fraud occurred with CEO's "knowledge and support" was insufficient to conclude that he "was the driving force or primary participant in the alleged wrongdoing"). The same applies here. For all these reasons, the Court finds that Plaintiff has failed to establish personal jurisdiction over the Binance Individual Defendants.

6. Plaintiff's Request for Additional Discovery

Finally, Plaintiff argues that if the Court is inclined to grant BCM's MTD for lack of personal jurisdiction, which it is, that Plaintiff first be given time to conduct further jurisdictional discovery. *See Laub v. United States DOI*, 342 F.3d 1080, 1093 (9th Cir. 2003) ("[D]iscovery should ordinarily be granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." (quoting *Butcher's Union Loc. No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986)).

On the other hand, Defendants BCM and Binance Individual Defendants argue that Plaintiff's request should be denied because his jurisdictional allegations are fundamentally flawed, and Plaintiff fails to make a showing that discovery would produce facts establishing personal jurisdiction. *See Pebble Beach Co.*, 453 F.3d at 1160

("Where a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by the defendants, the Court need not permit even limited discovery." (cleaned up)). As such, to obtain additional discovery Plaintiff must demonstrate "more than a hunch that it might yield jurisdictionally relevant facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008).

Here, Plaintiff's entire argument for personal jurisdiction over BCM relies on his arguments under the CEA, which the Court rejects as a matter of law, and alter ego claim—essentially conceding that the Court lacks general or specific personal jurisdiction over BCM in Arizona. Furthermore, Plaintiff does not even attempt to argue personal jurisdiction for the Binance Individual Defendants in his Response. Like the *Reynolds* court, which denied jurisdictional discovery on an alter ego theory between Binance Holdings Ltd. and Binance.US because the plaintiff's "bare allegations [were] insufficient to justify jurisdictional discovery," the Court finds the same true here. 481 F. Supp. 3d at 1010. Just like in *Reynolds*, here Plaintiff fails "to offer any details supporting the assertion that discovery will establish facts supporting this Court's jurisdiction over [BCM] under Plaintiff's alter ego theory." *Id.; see also Armstrong v. GM LLC*, No. CV-20-00284-PHX-DLR, 2020 U.S. Dist. LEXIS 203859, 2020 WL 8024424, at *3 (D. Ariz. Oct. 29, 2020) (denying jurisdictional discovery where plaintiff merely "postulates" that defendant "might not have followed all the corporate formalities"); *see also Sutcliffe v. Honeywell Int'l, Inc.*, No. CV-13-01029-PHX-

PGR, 2015 U.S. Dist. LEXIS 40382, 2015 WL 1442773, at *10 (D. Ariz. Mar. 30, 2015) (denying "jurisdictional discovery related to the internal relationships among the various Airbus-related entities").

Therefore, the Court will deny Plaintiff's request for jurisdictional discovery and grant BCM's MTD for lack of personal jurisdiction. As such, the Court need not reach BCM and the Binance Individuals' arguments for failure to state a claim and failure to provide proper service, as they are moot.

IV. DISMISSED WITH PREJUDICE

"A district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (cleaned up). Plaintiff's Complaint, Response, and oral argument assertions fail to assert any facts that could satisfy personal jurisdiction. Plaintiff's Complaint will therefore be dismissed with prejudice.

V. CONCLUSION

IT IS ORDERED granting Defendants Binance.US, CoinMarketCap, and BCM's MTD. (Docs. 70; 71; 72.)

IT IS FURTHER ORDERED dismissing Plaintiff's Complaint **with prejudice**. (Doc. 1.)

IT IS FURTHER ORDERED instructing the Clerk of Court to terminate this case.

Dated this 10th day of February, 2023.

/s/ Susan M. Brnovich
Honorable Susan M. Brnovich
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 4, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RYAN COX, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED,

Plaintiff-Appellant,

v.

COINMARKETCAP OPCO, LLC; *et al.*,

Defendants-Appellees.

No. 23-15363
D.C. No. 3:21-cv-08197-SMB
District of Arizona,
Prescott

Filed December 4, 2024

ORDER

Before: BERZON, HURWITZ, and JOHNSTONE, Circuit Judges.

Judge Johnstone has voted to deny the petition for rehearing en banc, and Judge Berzon and Judge Hurwitz so recommend. The full court was advised of the petition

for rehearing en banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc, Dkt. No. 54, is DENIED.