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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAHINAH IBRAHIM, an individual, Plaintiff, v. DEPARTMENT OF HOMELAND SECURITY, et al., Defendants.	Case No. C 06-0545 WHA DEFENDANT JOHN BONDANELLA'S NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(2) AND 12(B)(6); NOTICE OF JOINDER IN FEDERAL DEFENDANTS' AND UNITED DEFENDANTS' MOTIONS TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(1) Date: June 29, 2006 Time: 8:00 a.m. Judge: The Hon. William Alsup Ctrm: 9, 19th Floor

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 29, 2006 at 8:00 a.m. or as soon thereafter as this matter may be heard in the above entitled court, located at 450 Golden Gate Ave., San Francisco, California, in the courtroom of the Hon. William Alsup, defendant John Bondanella ("Bondanella") will and hereby does move this Court, pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the complaint of plaintiff Rahinah Ibrahim.

The grounds for this motion are that this Court lacks personal jurisdiction over Bondanella, a resident of the Commonwealth of Virginia; and that the complaint fails to state a claim upon which relief can be granted. Specifically, plaintiff's civil rights claims under both federal and state law fail because plaintiff has not alleged that Bondanella engaged in any conduct that was actionable; Bondanella was not a state actor and was not acting under color of state law; and Bondanella is not a law enforcement officer and did not engage in any form of coercion. Plaintiff's tort claims fail because Bondanella did not confine plaintiff in any manner, nor was his alleged conduct outrageous and exceeding the bounds of decency; and Bondanella's alleged conduct was absolutely privileged. Finally, plaintiff has not alleged facts which would entitle her to the provisional remedies of injunctive or declaratory relief against Bondanella.

Bondanella also hereby joins in the motions to dismiss the complaint pursuant to Fed. R. Civ. P. Rule 12(b)(1) filed by the federal defendants and the United defendants. As demonstrated in those motions, plaintiff's claims are "inescapably intertwined" with a review of Security Directives over which the appropriate Courts of Appeals have exclusive jurisdiction.

This motion is based on this notice of motion, the accompanying memorandum of points and authorities, the concurrently filed Declaration of John Bondanella, the pleadings and all other papers on file in this action, and on such other evidence and argument as may be presented to the court on reply and at the time of hearing.

I. INTRODUCTION

Plaintiff brings this challenge to the "administration, management and implementation" of what is generally known as the "No-Fly List," a list compiled and maintained by the government for airline passenger safety and security in the wake of the September 11, 2001 attacks. Plaintiff seeks

a declaration that the No-Fly List is unconstitutional, and an injunction to remove her name from that list. Plaintiff also complains that because her name allegedly appears on the No-Fly List, she was detained by officers of the San Francisco Police Department ("SFPD"), searched, and prevented from boarding her flight on January 2, 2005.

In seeking redress for her alleged injuries, plaintiff has cast her net too wide – ensnaring defendants who did not place her name on the No-Fly List; who did not detain her when she tried to check in for her flight; and over whom this Court does not have personal jurisdiction. Bondanella falls into all three categories. Bondanella, a resident of Virginia, is alleged to have had only *one* contact with this forum relating to plaintiff's claims: the receipt of a telephone call from one of the SFPD officers at the San Francisco Airport on January 2, 2005. That single, random communication is not sufficient to comport with settled constitutional requirements for the exercise of jurisdiction over nonresidents. Nor does that single telephone call support any of the civil rights and tort claims plaintiff purports to assert against Bondanella: he is not alleged to have placed plaintiff's name on the No-Fly List, nor was he present when plaintiff was detained by SFPD officers on January 2, 2005.

Accordingly, the entirety of plaintiff's complaint against Bondanella must be dismissed.[1]

II. SUMMARY OF PLAINTIFF'S ALLEGATIONS

In January 2005, plaintiff was a Malaysian citizen then pursuing her doctorate at Stanford University. (Pl.'s Complaint ("Compl.") ¶ 4.) Plaintiff alleges that she arrived at San Francisco International Airport ("SFO") on January 2, 2005 for a flight to Malaysia, with an initial stop in Hawaii. (*Id* ¶ 37.) Plaintiff alleges she was on her way home to present certain research findings at a conference sponsored by Stanford. (*Id.* ¶ 38.)

Once at SFO, plaintiff, her daughter, and an unidentified friend proceeded to the United Air Lines ("United") ticketing counter to check their bags and obtain their boarding passes. (*Id.*) The

[1] Plaintiff also brings this action in the wrong court. As set forth in the motions to dismiss filed by the federal defendants and the United defendants, plaintiff's claims constitute a challenge to Security Directives over which the appropriate Circuit Courts of Appeals have exclusive jurisdiction. Bondanella joins in these motions.

group was greeted at the counter by a United customer service agent who asked to see their tickets so he could initiate the check-in process. (*Id.* ¶ 41.) It was at this time, plaintiff alleges, that the United agent discovered that plaintiff's name appeared on the No-Fly List. (*Id.*) Plaintiff alleges that recipients of the No-Fly List (including, *inter alia*, commercial airlines, airport security, law enforcement agencies) are instructed "to detain and interrogate any individual who checks in for a flight whose name is similar or identical to a name on the No-Fly List." (*Id.* ¶ 35.)

According to plaintiff, the United agent called the San Francisco Police Department and reported the situation. (*Id.* ¶ 41.) Several SFPD officers responded to the report and met the agent at the ticketing counter. (*Id.*) Plaintiff alleges that once there, one of the officers made a telephone call, apparently to inquire further about plaintiff's name appearing on the No-Fly List. (*Id.*). Defendant Bondanella happened to answer the call from the SFPD officer. (*Id.*). Plaintiff alleges that Bondanella told the officer "to not allow Ibrahim on the flight, to contact the FBI, and to detain Ibrahim for questioning." (*Id.*). The officer then terminated the call, and Bondanella had no further connection with the events about which plaintiff complains. (*See id.* ¶¶ 42-47.)

Plaintiff alleges that an hour and a half later, the SFPD officers arrested her and transported her to a local SFPD station. (*Id.* ¶¶ 42-43.) While at the station, plaintiff was searched, including a search under plaintiff's hijab, and was placed in a holding cell so that the officers could continue their investigation. (*Id.* ¶¶ 44-45.) During this waiting period, the officers summoned paramedics to provide medical assistance to plaintiff for pain from an unrelated surgery. (*Id.* ¶ 45.) Plaintiff alleges that after two hours in the holding cell, the FBI requested SFPD to release her at approximately 11:15 a.m. (*Id.* ¶ 46.) According to plaintiff, she was informed that her name had been removed from the No-Fly List. (*Id.* ¶ 47.) She alleges that the following day, however, when she returned to the airport to resume her trip, she "discovered that she was still on the No-Fly List when she attempted to fly again." (*Id.*) After "some effort," plaintiff alleges she was allowed to fly to Kuala Lumpur, Malaysia, although she was subjected to enhanced searches along the way. (*Id.*)

After her claims were rejected by the City and County of San Francisco and the City and County of San Mateo (*id.* ¶ 48), plaintiff filed this action on January 27, 2006. Plaintiff seeks "to challenge defendants' administration, management and implementation of the 'No-Fly List'." (*Id.* ¶

31.) She also seeks damages under various tort and civil rights theories resulting from (1) the placement of her name on the No-Fly List, and (2) her detention by SFPD officers. (*Id.* ¶¶ 53, 57-58, 65, 72, 79, 86, 92-94, 99-101, 107, 113, 115 (a)-(g), 117-118, 120 (a)-(g).) Plaintiff also seeks a declaration that the No-Fly List is unconstitutional, and injunctive relief to remove her name from the list. (*Id.*, prayer for relief at (d)-(f).)

III. PLAINTIFF'S CLAIMS AGAINST BONDANELLA MUST BE DISMISSED FOR LACK OF PERSONAL JURISDICTION

It is well settled that a district court's power to exercise personal jurisdiction over a nonresident individual is not unconditional. *See, e.g., Asahi Metal Indus Co. v. Superior Court*, 480 U.S. 102, 113 (1987). Indeed, a court's power is strictly circumscribed by the Due Process Clause of the United States Constitution, which requires as a matter of individual liberty that nonresidents have certain minimum contacts with the forum state before personal jurisdiction may be exercised.[2] *See Go-Video, Inc. v. Akai Elec. Co.*, 885 F.2d 1406, 1415 (9th Cir. 1989). More specifically, a nonresident's contacts with the forum must give rise to a relationship such that continued maintenance of the suit there "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *LeDuc v. Ky. Cent. Life Ins. Co.*, 814 F. Supp. 820, 824 (N.D. Cal. 1992).

Given this requirement of meaningful contact between the defendant and the forum, only two bases for asserting personal jurisdiction over nonresidents have been recognized.[3] *See Yahoo!*

[2] In most cases, a court's power is also limited by the forum state's long arm statute. *See, e.g., Sher v. Johnson*, 911 F.2d 1357, 1360 (9th Cir. 1990). California's statute, however, indicates that a court's power to exercise personal jurisdiction over a nonresident is coextensive with that of the Constitution. *See* Cal. Civ. Proc. Code § 410.10 (West 2006). Accordingly, this court's sole inquiry is whether the assertion of personal jurisdiction over Bondanella comports with federal due process requirements. *See, e.g., Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998).

[3] The Ninth Circuit does recognize some of the "traditional basis" of exercising personal jurisdiction – *i.e.* domicile, presence, and consent. *See, e.g., Shell v. Shell Oil Co.*, 165 F. Supp. 2d 1096, 1104 n.3 (C.D. Cal. 2001). None of these bases, however, apply in this case. First, Bondanella is not domiciled in the state of California; he resides in the Commonwealth of Virginia and intends to remain there indefinitely. (Decl. of John Bondanella in support of Def.'s Mot. to dismiss ("Bondanella Decl."), ¶¶ 2,7, filed concurrently). Second, Bondanella was not served while "present" in the forum. (Bondanella Decl. ¶ 12). Third, Bondanella has not met any of the standard tests for consent, including a voluntary appearance in the action, contractual consent, or designation

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Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1205 (9th Cir. 2005); *Concat LP v. Unilever*, 350 F. Supp. 2d 796, 810 (N.D. Cal. 2004). First, a court may exercise "general" jurisdiction over a nonresident defendant, no matter what the cause of action, if the defendant has had substantial, continuous, and systematic contact with the forum. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarian Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002) [hereinafter "*Glencore Grain*"]. Second, a court may exercise "specific" or "limited" jurisdiction. *Caruth v. Int'l Psychoanalytical Ass'n*, 59 F.3d 126, 127 (9th Cir. 1995). Specific jurisdiction allows a court to exercise its power over a nonresident who has had only minimal contacts with the forum, but *only* as to those causes of action which arise directly from the applicable forum-related contacts. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801-02 (9th Cir. 2004).

As to either basis, it is the plaintiff who bears the burden of establishing that jurisdiction is proper and that the basic fairness requirements of our Constitution are being observed. *See AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). In satisfying this burden, the plaintiff may not rely on mere conclusory allegations that general or specific jurisdiction simply exists. *See Amba Mktg. Sys. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). Instead, the plaintiff must come forward with specific facts, by affidavit or otherwise, that support jurisdiction. *E.g. Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986); *Newport Components, Inc. v. NEC Home Elecs., Inc.*, 671 F. Supp. 1525, 1530 (C.D. Cal. 1989). Failure to do so calls for an immediate dismissal. *See Schwarzenegger*, 374 F.3d at 800, 807.

In this case, plaintiff has not come forward with *any* facts which show that either basis for exercising personal jurisdiction is proper and, as such, plaintiff's claims against Bondanella should be dismissed.

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of an agent for process. (*See* Bondanella Decl. ¶¶ 6, 10-12 (describing Defendant's exclusive contacts with California)).

A. Bondanella's Individual Contacts With the Forum State are not Sufficient to Establish General Jurisdiction.

The level of contact an individual defendant must have with the forum to justify a court's exercise of general jurisdiction is significant. *See Bancroft & Masters, Inc. v. Augusta National Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000); *see also Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414-18 (1984) [hereinafter "*Helicopteros*"]. In fact, the relevant contacts must be so continuous and systematic that one may actually equate the defendant with being physically present in the forum. *E.g. Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1169 (9th Cir. 2006); *CFA N. Cal. Inc. v. CRT Partners, LLP*, 378 F. Supp. 2d 1177, 1183 (N.D. Cal. 2005). The need for such an exacting standard is simple: once a defendant is found subject to general jurisdiction, he or she may "be haled into court in the forum state to answer for any . . . activit[y] anywhere in the world." *Schwarzenegger*, 374 F.3d at 801. To subject an individual to such an onerous burden, on anything less than "approximate presence," would clearly violate our traditional notions of fair play and substantial justice. *See, e.g., Trierweiler v. Croxton and Trench Holding Corp.*, 90 F.3d 1523, 1544 (10th Cir. 1996). Accordingly, general jurisdiction is – as it should be – a rarely asserted basis for exercising personal jurisdiction over nonresidents. *See, e.g., Amoco Egypt Oil Co. v. Leonis Navigation Co.*, 1 F.3d 848, 851 n.3 (9th Cir. 1993) (noting that as of 1993, the Supreme Court had upheld a finding of general jurisdiction only once, in a case with significant and pervasive contacts with the forum).

The *Trierweiler* decision is particularly instructive here. In that case, the nonresident defendant (1) previously lived in the forum for a four year period; (2) continued to travel to the forum even after leaving; and (3) was currently conducting business in the forum, including providing business advice as a member of the advisory board of a holding company located within the forum. 90 F.3d at 1543. Together, plaintiff argued, these contacts were sufficient to imbue the district court with general jurisdiction over the nonresident. *Id.* The Tenth Circuit disagreed, finding that an extraordinary relationship with the forum was needed before general jurisdiction could be exercised. *Id.* at 1543. This is particularly true, the court stated, for individuals, where the standard for imposing general jurisdiction is "demanding." *Id.* at 1544. Given this high threshold,

the court held that even these contacts "did not rise to the continuous and systematic level necessary to confer general jurisdiction." *Id.*

The same result is required here. Like the nonresident defendant in *Trierweiler*, Bondanella's contacts with the forum consist *exclusively* of (1) having previously lived in California for a period of five years (1987-1992); (2) traveling to California a few times for business after becoming domiciled elsewhere; and (3) fielding telephone calls from certain persons within California as an employee of USIS and then the Transportation Security Administration ("TSA"). (Bondanella Decl. ¶¶ 6, 10-11). Together, or separate, these individual contacts do not "rise to the continuous and systematic level necessary to confer general jurisdiction." *Trierweiler*, 90 F.3d at 1544; *see also Panavision*, 141 F.3d at 1320 ("General jurisdiction exists when a defendant *is* domiciled in the forum state.") (emphasis added); *Helicopteros*, 466 U.S. at 417 (finding no general jurisdiction despite numerous business trips to the forum state over a number of years); *LeDuc*, 814 F. Supp. at 824 (finding that defendant's prior occasional business trips to the forum were not sufficient to establish general jurisdiction); *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984) ("Making telephone calls and sending telexes and letters to [the forum] are not activities which support a finding of general jurisdiction."). To hold otherwise would be to ignore the more exacting standard needed for a finding of general jurisdiction in the case of an individual and the absolute constitutional maxim that substantial justice be observed throughout the jurisdictional process.[4] *See, e.g.*, *Schwarzenegger*, 374 F.3d at 801 (finding that district court was correct in not asserting general jurisdiction over individual defendant because to do so would not comport with due process). Thus, Bondanella is not subject to general jurisdiction in California.

B. <u>The Single Contact Bondanella Allegedly Had with California Cannot Support a Finding of Specific Jurisdiction</u>.

As is true of general jurisdiction, specific jurisdiction may only be exercised over those nonresidents who have established some meaningful connection with the forum state. *See, e.g.*,

[4] Moreover, even if this Court were to find that Bondanella's contacts with California rose to the level of being continuous and systematic, jurisdiction would still need to be *reasonable*. *Amoco Egypt Oil Co.*, 1 F.3d at 851 n.2. Plaintiff cannot satisfy this requirement. *See infra* Section III.B.3.

Burger King Corp. v. Rudzweicz, 471 U.S. 462, 475 (1985); *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957). In fact, in the case of specific jurisdiction, a substantial connection must exist between the defendant, the forum, and the litigation. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984); *Yahoo! Inc.*, 433 F.3d at 1205. Only when a substantial relationship exists between all three elements can a court conclude that the defendant could have reasonably anticipated being haled into court in the forum state – the absolute hallmark of due process. *See, e.g., World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Core-Vent Corp. v. Nobel Indus.*, 11 F.3d 1482, 1485 (9th Cir. 1993).

The Ninth Circuit relies on a three-part test for assessing specific jurisdiction. *Caruth*, 59 F.3d at 127. Under this test, specific jurisdiction exists only when: (1) the defendant has performed some meaningful act or acts within the forum by which he purposefully avails himself of the privileges of conducting activities there; (2) the plaintiff's claims for relief arise out of or result directly from the defendant's forum-related contacts; and (3) the exercise of jurisdiction is reasonable. *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002); *Forsythe v. Overmyer*, 576 F.2d 779, 782 (9th Cir. 1978); *LeDuc*, 814 F. Supp. 820, 824. If any of these elements do not exist, specific jurisdiction may not be exercised. *Core-Vent Corp.*, 11 F.3d at 1491 (exercise of specific jurisdiction not proper because it would be unreasonable); *Callaway Golf Corp. v. Royal Canadian Golf Ass'n*, 125 F. Supp. 2d 1194, 1199-1204 (C.D. Cal. 2000) (no specific jurisdiction because defendant had not committed any meaningful act within the forum and claims did not arise from defendant's contacts); *Chandler v. Roy*, 985 F. Supp. 1205, 1212-13 (D. Ariz. 1997) (no purposeful availment).

Here, plaintiff appears to assume that specific jurisdiction is proper based upon *a single contact* Bondanella had with the forum – an alleged telephone conversation with an officer of the SFPD on January 2, 2005.[5] (*See* Compl. ¶ 41.) This contact, however, falls far short of satisfying any portion of the Ninth Circuit's well-established test for specific jurisdiction.

[5] As indicated above, Bondanella has had other limited contacts with the state of California. (Bondanella Decl. ¶¶ 6, 10-11.) However, plaintiff cannot rely on these contacts in seeking to assert personal jurisdiction, because they are not in any way connected with the instant litigation – an absolute requirement for specific jurisdiction. *See infra* Section III.B.2.

1. Bondanella did not purposefully avail himself of the privileges of conducting activities within the forum state.

The intent of the "purposeful availment" prong is to establish that the defendant himself deliberately created some meaningful connection with the forum state. *Burger King Corp.*, 471 U.S. at 475; *Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988). Due process will simply not permit the exercise of jurisdiction over a nonresident whose only contacts with the forum are "random, fortuitous, or attenuated" or initiated entirely by the plaintiff or some third party. *See, e.g.*, *Panavision Int'l, L.P.*, 141 F.3d at 1320; *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 840 (9th Cir. 1986). To satisfy this requirement in intentional tort cases – such as the one here – the plaintiff must prove that the nonresident "purposefully directed" some allegedly unlawful conduct at the forum state. *Schwarzenegger*, 374 F.3d at 802-03. Stated more succinctly, the plaintiff must show that *the defendant*: (1) committed an intentional act, (2) expressly aimed at the forum (3) which caused harm in the forum state. *Yahoo! Inc.*, 433 F.3d at 1206; *Brayton Purcell LLP v. Recordon & Recordon*, 361 F. Supp. 2d 1135, 1140-41 (N.D. Cal. 2005); *Davis v. American Family Mutual Insurance Company*, 861 F.2d 1159, 1162-63 (9th Cir. 1988). If any one of these three elements is missing, then purposeful availment may not be found and specific jurisdiction may not be proper. *See Schwarzenegger*, 374 F.3d at 805.

Plaintiff appears to suggest that an assertion of specific jurisdiction is proper based on Bondanella's telephone call with someone inside the forum. (*See* Compl. ¶ 41.) This communication, however, cannot satisfy the "purposeful direction" requirement because, at the very least, the call was not "expressly aimed at" the forum state.[6] Plaintiff cannot allege and prove that the purported telephone call evidenced a deliberate act on the part of Bondanella to reach into the forum and target the plaintiff with intentionally wrongful conduct. *Davis*, 861 F.2d at 1162; *see also Dole Food Co.*, 303 F.3d at 1111. To the contrary, Bondanella was under an obligation at the time of the call to receive and respond to inquiries from qualified individuals about persons listed

[6] Plaintiff would also have difficulty satisfying the other two elements of the Ninth Circuit's purposeful direction test. For instance, the fact that plaintiff is not a citizen of the United States and currently resides in Malaysia makes it questionable whether she suffered a "jurisdictionally sufficient amount of harm" in California. *See Yahoo! Inc.*, 433 F.3d at 1207.

on the government-maintained No-Fly List, regardless of what forum the request for information originated from. (Bondanella Decl. ¶ 11). Accordingly, that Bondanella had any contact with California was completely fortuitous and solely based on the actions of a third party – the SFPD officer. (*See* Compl. ¶ 41; Bondanella Decl. ¶ 11.) Such communication cannot satisfy the "expressly aimed at" requirement. *Davis*, 861 F.2d 1162; *Hunt v. Erie Ins. Group*, 728 F.2d 1244, 1247 (9th Cir. 1984). Consequently, this court should conclude that Bondanella did not purposefully direct his conduct towards California and therefore any of assertion of specific jurisdiction would be improper.

2. Plaintiff's claims for relief also do not arise out of or result from any substantial contact Bondanella had with the forum.

In addition to proof of purposeful availment, the plaintiff must show that a substantial connection exists between the defendant's forum-related contacts and each cause of action pleaded in the complaint. *See, e.g.*, *Glencore Grain*, 284 F.3d at 1123; *ACORN v. Household Int'l, Inc.*, 211 F. Supp. 2d 1160, 1163 (N.D. Cal. 2002). In other words, there must be evidence that each and every one of plaintiff's purported claims for relief arose out of, or were the direct result of, some meaningful contact the defendant had with the forum. *See, e.g.*, *Bancroft & Masters, Inc.*, 223 F.3d at 1088; *Callaway Golf Corp.*, 125 F. Supp. 2d at 1204; *Karsten Mfg. Corp. v. United States Golf Ass'n*, 728 F. Supp. 1429, 1434 (D. Ariz. 1990). The Ninth Circuit has likened this necessary degree of connectivity to the "but for" test used in the field of torts. *CFA N. Cal.*, 378 F. Supp. 2d at 1184. Consequently, if the plaintiff's claims *would have arisen even without the defendant's contacts* or the defendant's contacts were not meaningful, the plaintiff cannot satisfy the second prong of the well-established specific jurisdiction test. *See, e.g.*, *Callaway Golf Corp.*, 125 F. Supp. 2d at 1204; *LeDuc*, 814 F. Supp. at 825-26; *Figi Graphics, Inc. v. Dollar Gen. Corp.*, 33 F. Supp. 2d 1263, 1267 (S.D. Cal. 1998).

Such is the case here. As described above, Bondanella's contacts with the forum consist exclusively of four separate activities: (1) having previously lived in the state of California for a period of five years (1987-1992); (2) traveling to California a few times for business after becoming domiciled elsewhere; (3) fielding telephone calls from certain persons within California as part of

his employment with USIS and TSA; and (4) the alleged telephone call with an officer of the SFPD on January 2, 2005. (Bondanella Decl. ¶¶ 6, 10-11). The first three contacts clearly fail the "but for" test, because they have absolutely no connection to plaintiff's current claims for relief. Bondanella's final contact with California, the alleged telephone call with a SFPD officer, also does not satisfy the "but for" test because, as plaintiff admits, it was the presence of her name (or a similar name) on the No-Fly List that resulted in her alleged injuries, not anything that Mr. Bondanella is alleged to have done. (*See, e.g.*, Compl. ¶ 35 ("defendants, TSA and DHS, … instruct recipients of the No-Fly List to detain and interrogate any individual who checks in for a flight whose name is similar or identical to a name on the No-Fly List"); Compl. ¶ 41 (plaintiff was informed her name was on the No-Fly List before any contact was made with Mr. Bondanella); Compl. ¶ 47 (the following day, plaintiff was again told her name was on the No-Fly List when she attempted to check in for her flight and she was subjected to enhanced searches).)[7] Plaintiff's allegations clearly demonstrate that the conduct about which she complains would have occurred even in the absence of the telephone call to Bondanella. Accordingly, plaintiff cannot show that each and every one of her purported claims for relief arose out of a meaningful contact Bondanella had with the forum.

3. Finally, this Court's exercise of personal jurisdiction over Bondanella would be unreasonable.

The Ninth Circuit's "reasonableness" requirement is meant to give effect to the Constitution's clear mandate that no assertion of personal jurisdiction may ever violate our traditional notions of fair play and substantial justice. *See, e.g., Ochoa v. J.B. Martin & Sons Farms*, 287 F.3d 1182, 1192 (9th Cir. 2002); *Callaway Golf Corp.*, 125 F. Supp. 2d at 1204. This is true regardless of whether the plaintiff has successfully shown that a nonresident has substantial contacts with the forum and that his or her claims arise from those contacts. *E.g. U.S. Vestor, LLC v. Biodata Info. Tech. AG*, 290 F. Supp. 2d 1057, 1066 (N.D. Cal. 2003). That our "jurisdictional

[7] Moreover, even if this single telephone call were to satisfy the "but for" test, it cannot be considered a meaningful contact with the forum (*see supra* Section III.B.2 (discussing how defendant's telephone call with SFPD officer does not satisfy the purposeful availment requirement)).

rules [are] not employed in such a way as to make litigation 'so gravely difficult and inconvenient' that a party unfairly is at a 'severe disadvantage,'" is simply too important to ignore, no matter what the defendant's contacts with the forum may be. *Core-Vent Corp.*, 11 F.3d at 1487 (quoting *Burger King Corp.*, 471 U.S. at 478). Accordingly, if a court's exercise of personal jurisdiction would not be reasonable, a court may not force a litigant to submit to its power under any circumstance. *See, e.g., Brand v. Menlove Dodge*, 796 F.2d 1070, 1073-76 (9th Cir. 1986).

To assess the reasonableness of exercising specific jurisdiction over a nonresident, the Ninth Circuit has identified seven factors, including: (1) the extent of the defendant's purposeful interjection into the forum; (2) the burden on the defendant of litigating in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient resolution of the controversy; (6) the importance of the forum to the plaintiff's interest; and (7) the existence of an alternative forum. *Dole Food Co.*, 303 F.3d at 1114; *CFA N. Cal. Inc.*, 378 F. Supp. 2d at 1184. Each of these factors is generally assessed separately and none are dispositive. *See, e.g., Panavision Int'l L.P.*, 141 F.3d at 1323. Instead, the totality of all the factors is considered. *Ziegler v. Indian River County*, 64 F.3d 470, 475 (9th Cir. 1995); *Brayton Purcell LLP*, 361 F. Supp. 2d at 1143. Thus, even if some of the factors weigh in favor of jurisdiction, or appear neutral, if the balance argue against reasonableness, specific jurisdiction would not be proper. *Core-Vent Corp.*, 11 F.3d at 1488-91.

As applied here, the totality of all the factors argue against a finding of reasonableness. Specifically, five of the factors clearly point towards a finding of unreasonableness, while the remaining two appear neutral. As such, to comport with the requirements of Due Process, this Court must decline to exercise personal jurisdiction over Bondanella.

a. Extent of the defendant's interjection.

The extent of a nonresident's purposeful interjections into the forum has a direct impact on the fairness of subjecting him to personal jurisdiction. *Data Disc, Inc. v. Systems Tech. Assocs.*, 557 F.2d 1280, 1288 (9th Cir. 1977). This is because the more interjection a defendant has into the forum, the more likely he will reasonably anticipate being haled into court there. *See Core-Vent Corp.*, 11 F.3d at 1488. Conversely, when a defendant has little or no interjection into the forum,

one cannot expect him to anticipate having to defend himself there and thus jurisdiction would be more unreasonable. *Ins. Co. of N. Am. v. Marina Salina Cruz*, 649 F.2d 1266, 1271 (9th Cir. 1981).

Here, Bondanella's only alleged relevant contact with the forum consists of receiving a single telephone call from an officer of the SFPD. (Compl. ¶ 41.) On this contact alone, one cannot expect Bondanella to have reasonably anticipated being haled into court in this forum. As such, the first of the Ninth Circuit's seven reasonableness factors weighs in favor of dismissing plaintiff's complaint for a lack of personal jurisdiction.

b. Burden on the defendant.

Any reasonableness assessment would be incomplete if it did not include a consideration of the defendant's burden in litigating the case. *See Terracom v. Valley Nat'l Bank*, 49 F.3d 555, 561 (9th Cir. 1995). For there will always be some burden associated with requiring a defendant to submit to the power of a foreign court. *See Core-Vent Corp.*, 11 F.3d at 1488-89. It is the nature and quality of this burden that the law is most concerned with. *See Panavision Int'l, L.P.*, 141 F.3d at 1323. If the defendant is unfairly put at a disadvantage because of the burdens of having to litigate in a foreign jurisdiction, then this factor weighs against a finding of reasonableness. *See, e.g.*, *Caruth*, 59 F.3d at 128-29; *Ziegler*, 64 F.3d at 475; *Chandler*, 985 F. Supp. at 1214.

Here, Bondanella would face a cognizable burden if forced to defend himself in California. Bondanella is a single individual, not a corporation, and the time and effort it would take to defend himself in a jurisdiction across the country would be immense. (*See* Bondanella Decl. ¶ 13). Moreover, these burdens are likely to be significant even with our advances in travel and technology. *See Terracom*, 49 F.3d at 561. Thus, whatever weight is to be given to this factor clearly favors Bondanella and a finding of unreasonableness. *Id.*

c. Conflict with sovereignty.

The conflict with sovereignty factor is intended to assess the extent to which an exercise of jurisdiction by the forum would conflict with the sovereignty interest of potential alternative forums. *Panavision*, 141 F.3d at 1323. This factor, however, is almost exclusively implicated in cases where at least one defendant is from a foreign country. *See, e.g.*, *Sinatra*, 854 F.2d at 1199-

1200; *Callaway Golf Corp.*, 125 F. Supp. 2d at 1206-07. As such, this factor appears neutral, and has little, if any, bearing on the reasonableness of asserting jurisdiction over Bondanella.

d. Interest of the forum state.

A forum state does not always have an intense interest in litigating a lawsuit initiated within its borders. *Asahi Metal Indus. Co., LTD.*, 480 U.S. at 114. This is particularly true of cases where neither party is a citizen of the forum. *See, e.g., Roth v. Garcia Marquez*, 942 F.2d 617, 624 (9th Cir. 1991); *Ellicott Mach. Corp. v. John Holland Party*, 995 F.2d 474, 479 (4th Cir. 1993). In such cases, the normal remedial and deterrent functions which accompany litigating a case involving at least one forum citizen are greatly reduced. *See, e.g., Asahi Metal Indus. Co., LTD.*, 480 U.S. at 114-15; *Callaway Golf Corp.*, 125 F. Supp. 2d at 1207. As such, if neither the plaintiff nor the defendant is a citizen of the forum, this factor argues against a finding of reasonableness. *See Sinatra*, 854 F.2d at 1200.

In this case, neither plaintiff nor Bondanella is domiciled in California. As discussed above, Bondanella is a resident of Virginia. (Bondanella Decl. ¶ 2.) Plaintiff, it appears, "currently resides in the country of Malaysia." (Compl. ¶ 4.) Accordingly, California's interest in litigating this dispute is greatly reduced, and instead this factor weighs in favor of a finding of unreasonableness. *See Sinatra*, 854 F.2d at 1200.

e. Efficient Resolution.

The efficient resolution factor is primarily concerned with where the witnesses and evidence are most likely to be located. *E.g. Core-Vent Corp.*, 11 F.3d at 1489; *Callaway Golf Corp.*, 125 F. Supp. 2d at 1207. To be sure, some of the witnesses and evidence will be located in California. However, it is undeniable that some of the witnesses and evidence will also be located outside of California, as both Bondanella and the Federal Defendants are located outside the forum. Accordingly, this factor appears neutral, not favoring either party. *See Chandler*, 985 F. Supp. at 1214-15.

f. Importance of the forum to the plaintiff.

Although the importance of the forum to the plaintiff is still a factor in the reasonableness inquiry, it is accorded little significance. *Caruth*, 59 F.3d at 129. This is because the mere

preference of the plaintiff for a particular forum is not a factor which routinely affects the substantive fairness of a court's exercise of personal jurisdiction. *Ziegler*, 64 F.3d at 476; *Core-Vent Corp.*, 11 F.3d at 1490. To prove otherwise, the plaintiff must do more than point out the routine inconveniences that come from litigating a claim in another jurisdiction. *See, e.g.*, *Callaway Golf Corp.*, 125 F. Supp. 2d at 1207-08. Instead, the plaintiff must show that the selected forum is somehow essential to the continued maintenance of the lawsuit. *See Core-Vent Corp.*, 11 F.3d at 1490.

While plaintiff is likely to argue that California is a more convenient forum for litigating her claims, this argument must fail. First, as discussed above, the plaintiff's convenience is not a factor that is accorded any weight is assessing the reasonableness of personal jurisdiction. Second, even if it was, plaintiff cannot prove that California is more convenient when she is not even a resident. (Compl. ¶ 4.) Plaintiff has not carried her burden of showing that a California forum is essential to the continued maintenance of her suit and thus this factor argues against reasonableness.

g. Existence of an alternative forum.

The existence of an alternative forum is a relevant factor in the reasonableness inquiry only to the extent that the plaintiff can show that no alternative exists for the lawsuit. *Caruth*, 59 F.3d at 129. To do this, the plaintiff must prove that it would be impossible to bring the suit in any other venue or, to the extent that the lawsuit could be initiated elsewhere, the alternate forum would not provide for full and effective relief. *See, e.g.*, *Core-Vent Corp.*, 11 F.3d at 1490; *Sinatra*, 854 F.2d at 1201. If all the plaintiff can show instead are speculative and unfounded fears about the possibility of litigating elsewhere, the plaintiff has not proven this factor and it supports a finding of unreasonableness. *Callaway Golf Corp.*, 125 F. Supp. 2d at 1207-08.

Plaintiff cannot show that another viable forum for this lawsuit does not exist. For instance, plaintiff could bring her lawsuit in Virginia, the state where Bondanella is currently domiciled. Not only would Bondanella be subject to personal jurisdiction there, but Virginia would offer a full and effective forum for relief. As such, this factor, like most of the others, argues against a finding of reasonableness and in favor of a dismissal of plaintiff's complaint against Bondanella.

IV. PLAINTIFF HAS ALSO FAILED TO STATE A SINGLE CLAIM UPON WHICH RELIEF CAN BE GRANTED AND THUS HER ENTIRE COMPLAINT MUST BE DISMISSED

Without waiving his challenges to this Court's jurisdiction, Bondanella also moves to dismiss plaintiff's complaint for failure to state a claim. Under Federal Rule of Civil Procedure 12(b)(6), any claim for relief may be dismissed if it is "based on a uncognizable legal theory," "lacks sufficient facts to support a cognizable theory," or discloses an absolute bar to recovery. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988); *Weishbuch v. County of Los Angles*, 119 F.3d 778, 783 (9th Cir. 1997). In testing whether a claim should fail for one of these reasons, the court must accept all of the well-pleaded allegations of material fact contained in the complaint. *See Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). However, this does not mean that a court is free to ignore clear or incurable defects. *See Ove v. Gwinn*, 264 F.3d 817, 821 (9th Cir. 2001). The touchstone remains whether "it appears beyond any doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). If so, the plaintiff's claim for relief must be dismissed. *Balistreri*, 901 F.2d at 698-702.

Here, none of plaintiff's eleven causes of action state a valid claim for relief against Bondanella. As a result, plaintiff's complaint should be dismissed in its entirety.

A. Plaintiff's Claims Under 42 U.S.C. § 1983 Are Not Properly Directed to Bondanella.

Each of plaintiff's claims under § 1983 is predicated on her alleged placement on the No-Fly List, or on her arrest at the San Francisco Airport on January 2, 2005. (*See* Compl. ¶ 57 (alleging that plaintiff's name and the names of others were placed on the No-Fly List in an "arbitrary and capricious manner"); ¶ 65 (plaintiff was placed on the No-Fly List and arrested "based on her religious beliefs and her national origin"); ¶ 72 (plaintiff was "arrested," and "searched . . . without any probabl[e] cause or an arrest or search warrant"); ¶¶ 79 and 86 (plaintiff and others on the No-Fly List "are targeted based on their religious beliefs or appearance" or "based on their association with the Muslim community or the Islamic religion, and based on her [sic] national origin"); and

¶ 50 (as a result of these acts, plaintiff's rights under the First, Fourth, Fifth and Fourteenth Amendments were violated).)

However, these facts do not support any actionable claim against Bondanella for the simple reason that plaintiff does not, and cannot in good faith allege that Bondanella either placed her on the No-Fly List or arrested her at SFO. According to plaintiff, the Department of Homeland Security ("DHS") and the TSA are responsible for maintaining and managing the No-Fly List. (Compl. ¶¶ 5, 9-11.) Plaintiff further alleges that recipients of the No-Fly List (including commercial airlines, airport security and law enforcement agencies) are instructed by DHS and TSA "to detain and interrogate any individual who checks in for a flight whose name is similar or identical to a name on the No-Fly List." (Compl. ¶ 35.) Thus, according to plaintiff, *it was the fact that her name (or a similar sounding name) appears on the No-Fly List* that set in motion the events of January 2, 2005 about which she complains – a fact that plaintiff cannot link to Bondanella. Indeed, plaintiff acknowledges that Bondanella was called on the telephone by an SFPD officer *after* she tried to check in for her flight and was told her name appeared on the No-Fly List, and *after* SFPD had already arrived at the airport. (Compl. ¶¶ 40-41.) In short, Bondanella did nothing that resulted in a deprivation of plaintiff's rights under the Constitution, and the § 1983 claims against him must be dismissed.

Plaintiff's § 1983 claims against Bondanella also fail – even assuming the single allegation against him was actionable – because Bondanella was not acting under color of state law. On its face, § 1983 applies to "[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia* [who] subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]" 42 U.S.C. § 1983 (2000) (emphasis added). Based on this statutory requirement for action under color of state law, it is clear that federal agencies and federal agents are not persons subject to § 1983, because they act pursuant to *federal* law. *See American Science & Eng'g, Inc. v. Califano*, 571 F.2d 58, 63 n.8 (1st Cir. 1978) (relief under § 1983 "is available only against state actors, not against agents of the federal government"); *Behre v. Thomas*, 665 F. Supp. 89, 92-93 (D.N.H. 1987)

(dismissing § 1983 claims against "employees and agents of the United States").[8] The same rule applies where private individuals are named as defendants along with federal agents. *Stonecipher v. Bray*, 653 F.2d. 398, 401, 403 (9th Cir. 1981) (dismissing § 1983 claims against the Internal Revenue Service, Bechtel Corporation, and their respective employees). Bondanella, whether an employee of the TSIS (as alleged in ¶ 41 of the Complaint), or a watch officer in the Transportation Security Operations Center (Bondanella Decl. ¶ 4.), unquestionably *was not* a state actor, and any action he took was under the direction of the federal government and pursuant to federal law.[9]

Accordingly, plaintiff cannot state a claim under § 1983 against Bondanella, and her first through sixth claims for relief should be dismissed.

B. Plaintiff's Claims Under California Civ. Code §§ 52.1 and 52.3 Fail Because Bondanella is Not a Law Enforcement Officer And Did Not Engage in Any Form of Coercion.

Plaintiff bases her state law claims for civil rights violations on the same alleged conduct as her § 1983 claims – that is, the allegations that "[d]efendants placed plaintiff on the No-Fly List" and "on January 2, 2005, defendants, police officers, arrested plaintiff without a warrant or other legal process." (Compl. ¶¶ 92, 99.) According to plaintiff, these actions deprived her of constitutional rights. (Compl. ¶¶ 94, 101.) Again, the factual predicate for these claims does not support a cause of action against Bondanella: plaintiff does not and cannot in good faith allege that Bondanella either placed plaintiff on the No-Fly List, or that he arrested her at SFO when she checked in for her flight on January 2, 2005. On that basis alone, the seventh and eighth causes of action must be dismissed.

Moreover, a claim under Cal. Civ. Code § 52.1 (West Supp. 2006) must meet the threshold requirement that the defendant's interference with plaintiff's rights be accompanied by "conduct

[8] Indeed, plaintiff admits that the regulations and procedures about which she complains – the No-Fly List – were adopted pursuant to *federal* law and are administered by *federal* agencies. (Compl. ¶¶ 8, 11 (discussing the Aviation and Transportation Security Act (P.L. 107-71), enacted November 19, 2001, and the compilation of the No-Fly List).)

[9] Plaintiff's bare allegation that "[d]efendants, in committing the acts herein alleged, were acting under color of state law" (Compl. ¶¶ 51, 59, 66, 73, 80, 87) does not salvage her § 1983 claims against Bondanella. *Behre*, 665 F. Supp. at 93 ("bald statement that defendants were acting under color of the laws of New Hampshire" not sufficient to survive motion to dismiss).

that rises to the level of a threat of violence or coercion." *City & County of San Francisco v. Ballard*, 136 Cal. App. 4th 381, 408 (2006). Bondanella was not even present at SFO on January 2, 2005 (Compl. ¶ 41; Bondanella Decl. ¶ 11); did not have any contact with plaintiff whatsoever; and did not threaten or coerce plaintiff in any way.

Nor can plaintiff state a claim against Bondanella under Cal. Civ. Code § 52.3 (West Supp. 2006). The plain language of that statute applies to "conduct *by law enforcement officers* that deprives any person of rights, privileges or immunities secured or protected by" federal or state law or the U.S. Constitution.[10] Bondanella is not alleged to be – and is not – a law enforcement officer. And, as discussed above, Bondanella did not engage in any conduct that deprived plaintiff of her legal or constitutional rights. Both of plaintiff's Civil Code claims must be dismissed.

C. Plaintiff's Claim for False Imprisonment Cannot Survive Because Bondanella Did Not Confine Her and His Conduct was not Unlawful.

Plaintiff alleges that "defendants, *police officers*, maliciously seized and arrested [her], without a warrant, or other legal process." (Compl. ¶ 107 (emphasis added).) Again, it appears that this claim is not directed at Bondanella, as he is not a police officer, and did not confine plaintiff in any manner.

If plaintiff did intend to charge Bondanella with false imprisonment, the claim fails because only those persons who were detained *unlawfully* may sustain such a claim. *Asgani v. City of Los Angeles*, 15 Cal. 4th 744, 753 (1997). In other words, if a person is confined by someone privileged to do so, no cause of action exists, for the law was not designed to deter all conduct which results in a detention. *See, e.g., Mulder v. Pilot Air Freight*, 32 Cal. 4th 384, 387 (2004). It is simply undeniable that there are some types of actions resulting in a detention which the law aims to promote. *Hagberg v. Cal. Fed. Bank FSB*, 32 Cal. 4th 350, 360-61 (2004).

One of these activities involves the reporting of potentially unlawful conduct to local law enforcement. *Id.* (citing and construing Cal. Civ. Code. § 47(b)). Even if such a communication

[10] There is a dearth of authority discussing Civ. Code § 52.3. As a result, a court looking to interpret § 52.3 must first look to the statute's plain language. *See, e.g., United States v. Carter*, 421 F.3d 909, 911 (9th Cir. 2005); *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 977 (1999).

was designed solely to instigate, and eventually achieve, a person's detention by police, the reporter may not be subject to a claim of false imprisonment. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1135 (2004). This is so, the California Supreme Court has held, because it is essential that we as a society "'assure [the] utmost freedom of communications between citizens and public authorities whose responsibility it is to investigate and remedy wrongdoing.'" *Hagberg*, 32 Cal. 4th at 360. No fear of potential liability should mute that goal. *See id.*

Accordingly, even assuming all the facts alleged in her complaint were true, plaintiff cannot sustain a claim against Bondanella for false imprisonment. As it stands, plaintiff's only allegation against Bondanella is that upon receiving a call from an SFPD officer, Bondanella told officer Pate "not [to] allow [plaintiff] on the flight, to contact the FBI, and to detain [plaintiff] for questioning." (Compl. ¶ 41.) This type of conduct falls squarely within the absolute reporting privilege recognized by the California Supreme Court. *Kesmodel*, 119 Cal. App. 4th at 1135. Bondanella is alleged to have done nothing more than provide information for the SFPD officer on the scene about plaintiff and her alleged relationship to the No-Fly List (as plaintiff alleges Bondanella was required to do (Compl. ¶ 35.)). If liability were to attach for such conduct, it would surely mute the necessary lines of open communication between citizens and law enforcement. *See Hagberg*, 32 Cal. 4th at 360. As such, plaintiff's claim for false imprisonment must fail.

D. Bondanella's Reasonable Conduct Cannot Give Rise to a Claim of Intentional Infliction of Emotional Distress.

A tort for intentional infliction of emotional distress (IIED) will not lie in every case where the plaintiff has suffered emotional harm. *See, e.g., Cole v. Fair Oaks Fire Prot. Dist.*, 43 Cal. 3d 148, 155 n.7 (1987) (citing Restatement (Second) of Torts § 46 cmt. D (1990)). To hold otherwise would be to ignore one of the more fundamental tenets of our society: that as part of a free and civilized citizenry, we must endure some degree of unkind and/or inconsiderate conduct. *See, e.g., Golden v. Duggan*, 20 Cal. App. 3d 295, 304 (1971). Accordingly, the lodestar of any IIED claim is proof that the defendant committed some outrageous act, exceeding all bounds of human decency, which causes the plaintiff to suffer severe emotional harm. *Cervantes v. J.C. Penny Co.*, 24 Cal. 3d 579, 593 (1979); *Angie M. v. Superior Court*, 37 Cal. App. 4th 1217, 1226 (1995).

California courts have distilled this standard into a five part test. To sustain a claim of IIED, a plaintiff must prove that (1) in the absence of any privilege, (2) the defendant intentionally (3) engaged in some unreasonable act, exceeding all bounds of human decency, (4) which proximately caused the plaintiff (5) to suffer severe emotional harm. *See, e.g., Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 1001-02 (1993).

Plaintiff's allegations fail at least two parts of this test. First, plaintiff cannot show that Bondanella's conduct was unreasonable to the point of exceeding all bounds of human decency. As discussed, plaintiff's only allegation concerning *Bondanella's* conduct during the alleged incident was the fielding of a phone call and the directing of officers to contact the FBI and detain plaintiff for questioning. (Compl. ¶ 41.) By any measure, this does not rise to the level of unreasonable, much less extreme and outrageous conduct. Second, plaintiff cannot demonstrate the absence of a privilege. As discussed above, Bondanella was completely privileged in making a report to local law enforcement about the plaintiff. *See supra* Section IV.D. Plaintiff's IIED claim therefore fails.

E. Bondanella Has an Absolute Defense to Plaintiff's Claim of Negligent Infliction of Emotional Distress.

Negligent infliction of emotional distress (NIED) is nothing more than the tort of negligence with accompanying emotional distress damages. *See, e.g., Potter*, 6 Cal. 4th at 984-85. To state a successful NIED claim, then, the plaintiff must prove each and every one of the traditional elements of a negligence claim, including duty, breach, causation, and damages. *Huggins v. Longs Drugs Store Cal.*, 6 Cal. 4th 124, 129 (1993). It likewise follows that any of the routine defenses which defeat an ordinary negligence claim may also be used to defeat a claim of NIED. *See, e.g., Silberg v. Anderson*, 50 Cal. 3d 205, 215 (1990) (litigation privilege immunizes a defendant from a claim of negligence and NIED). Stated differently, an absolute defense to negligence, is an absolute defense to NIED. *Id.*

Here, plaintiff does not allege any facts to demonstrate that Bondanella owed or assumed any duty to plaintiff. Moreover, as discussed above, Bondanella was completely privileged in responding to an inquiry from local law enforcement about plaintiff. *See supra* Section IV.D. For at least these two reasons, plaintiff's NIED claim must fail.

F. Plaintiff is Not Entitled to Declaratory or Injunctive Relief.

To sustain a "cause of action" for declaratory or injunctive relief[11] against another person, the plaintiff must allege that such person committed or threatened to commit some wrongful conduct. *See, e.g.*, *City & County of San Francisco v. Market St. Ry. Co.*, 95 Cal. App. 2d 648, 655 (1950) (injunctive relief); *Travers v. Louden*, 254 Cal. App. 2d 926, 929 (1967) (declaratory relief). If the subject of the action has not done either, these provisional remedies are not appropriate. *See City & County of San Francisco*, 95 Cal. App. 2d at 655.

Plaintiff cannot meet this requirement. At no point does plaintiff in any way allege that Bondanella *personally* committed or threatened to commit the conduct that is the subject of her request for declaratory and injunctive relief. (*Compare* Compl. Prayer (d), (e) and (f) *with* ¶ 41.) Accordingly, plaintiff's purported twelfth cause of action must be dismissed.

V. CONCLUSION

Defendant John Bondanella does not have sufficient minimum contacts with California to support the Court's exercise of either general or specific jurisdiction over him, and this action should be dismissed pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

Even if the exercise of jurisdiction over Bondanella comported with constitutional standards, plaintiff has not alleged – and cannot in good faith allege – any cognizable claim against Bondanella. Accordingly, plaintiff's claims against Bondanella should be dismissed with prejudice.

Dated: May 22, 2006

ARNOLD & PORTER LLP

By: /s/
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[11] Plaintiff improperly pleaded these "requests for relief" as an independent cause of action. *See, e.g.*, *Shell Oil Co. v. Richter*, 52 Cal. App. 2d 164, 168 (1942) ("Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted.").