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1 **I. INTRODUCTION**

2 Plaintiff complains that her name is on the government’s “No-Fly List” and that, as a result,  
 3 she was arrested at San Francisco Airport when she checked in for a flight. The complaint contains  
 4 a single allegation against defendant John Bondanella: plaintiff alleges that Bondanella received a  
 5 call from an SFPD officer at the airport, and told the officer “to not allow [plaintiff] on the flight, to  
 6 contact the FBI, and to detain [plaintiff] for questioning.” Plaintiff’s Complaint (“Compl.”) ¶ 41.  
 7 In forty pages of opposition briefing and an even lengthier request for judicial notice, plaintiff has  
 8 not demonstrated that this single telephone call either (1) supports the exercise of personal  
 9 jurisdiction over Bondanella; or (2) can be the basis of any liability for plaintiff’s No-Fly List status  
 10 or arrest. Accordingly, plaintiff’s claims against Bondanella should be dismissed.<sup>1</sup>

11 **II. PLAINTIFF HAS NOT ESTABLISHED THAT THE COURT MAY EXERCISE**  
 12 **PERSONAL JURISDICTION OVER BONDANELLA**

13 Plaintiff’s assertion that personal jurisdiction over Bondanella is proper is based entirely on  
 14 a single, uninitiated contact with the forum state. (Plaintiff’s Opposition to Defendant’s Motion To  
 15 Dismiss (“Opp’n”) at 20-28.) Indeed, conceding that all of Bondanella’s other contacts with  
 16 California are irrelevant, plaintiff argues that Bondanella’s one telephone conversation with Officer  
 17 Pate of the SFPD: (i) occurred “inside the forum” and thus functions as some form of consent to  
 18 jurisdiction; or, alternatively, (ii) was a tortious act purposefully directed at the forum and therefore  
 19 gives rise to specific or limited jurisdiction.<sup>2</sup> *Id.* Both theories, however, are fatally flawed.

20 **A. Bondanella’s Receipt of a Single Telephone Call Did Not Occur “Inside the**  
 21 **Forum” And Therefore Does Not Amount to a Consent to Jurisdiction.**

22 Plaintiff appears to contend that Bondanella’s receipt of Officer Pate’s telephone call  
 23 constitutes conduct within the state of California such that Bondanella impliedly consented to  
 24 jurisdiction here. (Opp’n at 20.) If that is what plaintiff contends, she is wrong. A single telephone  
 25

26 <sup>1</sup> As set forth in the Motion, Bondanella joins in the motions to dismiss for lack of subject matter  
 jurisdiction filed by the federal defendants and the United defendants.

27 <sup>2</sup> These are the only theories advanced by plaintiff for the propriety of personal jurisdiction over  
 Bondanella. (See Opp’n at 20.) Plaintiff concedes that general jurisdiction is not at issue in this  
 28 case. (See *id.* at 24 (“Bondanella’s alleged transient history of California contacts is not at issue.”).)

1 call between a nonresident with someone inside the forum does not approximate actual conduct  
2 “inside the state.”<sup>3</sup> See *Murphy v. Erwin-Wasey, Inc.*, 460 F.2d 661, 665 (1st Cir. 1972). Instead, a  
3 majority of cases considering the issue have held that a nonresident may be equated with acting  
4 inside the forum *only* when he or she intentionally directs repeated communications into the forum.  
5 See, e.g., *Swafford v. Avakian*, 581 F.2d 1224, 1227 (5th Cir. 1978) (holding that even “several  
6 phone calls and letters” were not sufficient to support jurisdiction under theory that defendant was  
7 acting inside the state). This is so because only through such repeated and intentional  
8 communications can a nonresident establish the type of meaningful connection with the forum  
9 necessary to draw comparison with actual activity inside the state. See *Delong Equipment Co. v.*  
10 *Washington Mills Abrasive Co.*, 840 F.2d 843, 849 (11th Cir. 1988) (holding that single phone call  
11 was not sufficient to constitute a tort inside the state and thus defendant was not subject to  
12 jurisdiction).

13 *Murphy v. Erwin-Wasey, Inc.*, upon which plaintiff heavily relies, is instructive. 460 F.2d at  
14 662-66. In *Murphy*, the plaintiff filed a fraud action against two nonresidents, Erwin-Wasey, Inc.  
15 (Erwin) and Interpublic Group of Companies (Interpublic). *Id.* 662. The district court granted both  
16 defendants’ motions to dismiss for lack of personal jurisdiction. *Id.* On appeal, the First Circuit  
17 assessed the propriety of asserting personal jurisdiction over each. As to Erwin, the court held that  
18 the repeated direction of certain fraudulent communications into the forum, both orally and by mail,  
19 amounted to conduct “inside the forum” and therefore could function as a basis for asserting  
20 jurisdiction. *Id.* at 663-64. However, as to Interpublic, the court noted that plaintiff’s only relevant  
21 allegation was the mailing of a single payment into the forum. *Id.* at 665. The Court determined  
22 that this lone contact was not sufficient to find that Interpublic had agreed to jurisdiction. *Id.*

23 The facts here compel even more strongly the conclusion that Bondanella’s conversation  
24 with Officer Pate does not approximate actual conduct inside the state. Like Interpublic in the  
25

26 <sup>3</sup> For support, plaintiff cites to *Vishay Intertechnology, Inc. v. Delta International Co.*, 696 F.2d  
27 1062 (4th Cir. 1982). However, in *Vishay*, the Fourth Circuit found the defendant’s actions to  
28 approximate conduct inside the state only in light of the fact that defendant had directed numerous  
contacts into the forum – conduct far more extensive than the single, uninitiated contact here. *Id.* at  
1064.

1 *Murphy* case, Bondanella’s only relevant contact with California was a single communication.  
 2 Moreover, Bondanella’s single contact was even more attenuated than Interpublic’s, in that  
 3 Bondanella did not initiate or direct the contact; he merely answered Officer Pate’s call. (*See*  
 4 *Compl.* ¶ 41.) Accordingly, Bondanella should not be deemed to have acted inside the state or to  
 5 have consented to personal jurisdiction.<sup>4</sup>

6 **B. Officer Pate’s Lone Telephone Call to Bondanella Does Not Give Rise to**  
 7 **Specific or Limited Jurisdiction.**

8 Specific jurisdiction is not exercised in every case where the defendant has made some  
 9 contact with the forum state. Instead, in intentional tort cases, the plaintiff must also demonstrate:  
 10 (1) that the nonresident’s contact was purposefully directed towards the forum state or a resident  
 11 thereof; (2) each and every purported claim for relief arises directly from the nonresident’s contact;  
 12 and (3) the exercise of jurisdiction would be reasonable. *Schwarzenegger v. Fred Martin Motor*  
 13 *Co.*, 374 F.3d 797, 801-03 (9th Cir. 2004). Plaintiff has failed to satisfy any of these essential  
 14 elements.

15 **1. Bondanella’s contact was not “purposefully directed” at the forum.**

16 As discussed in Bondanella’s Motion, the Ninth Circuit rules governing the “purposeful  
 17 direction” element require the plaintiff to show the defendant (1) committed an intentional act; (2)  
 18 expressly aimed at the forum state; (3) which caused a harmful effect inside the forum. *Dole Food*  
 19 *Co, Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). If any prong of the test is not satisfied, the  
 20 nonresident cannot be said to have purposefully directed his or her actions towards the forum.  
 21 *Schwarzenegger*, 374 F.3d at 805 (holding purposeful direction element not satisfied because  
 22 defendant had not “expressly aimed” his efforts at the plaintiff in the forum state).

23 \_\_\_\_\_  
 24 <sup>4</sup> Plaintiff’s argument is not aided by citing to cases for the unremarkable proposition that a  
 25 defendant who engages in wrongful conduct in the forum state may be subject to jurisdiction there.  
 26 (Opp’n at 20.) In *Hess v. Pawlowski*, 274 U.S. 352, 353 (1927) and *Rosenblatt v. American*  
 27 *Cyanamid Co.*, 86 S.Ct. 1 (1965), the non-resident defendants were *physically present in the forum*  
 28 *state* for the alleged wrongful conduct – a motor vehicle accident (*Hess*) and purchasing trade  
 secrets (*Rosenblatt*). Likewise unavailing is plaintiff’s reliance on *Marra v. Shea*, 321 F.Supp. 1140  
 (N.D. Cal. 1971) and *Lundgren v. Sup. Ct.*, 111 Cal. App. 3d 477 (1980). In both *Marra* and  
*Lundgren*, the individual defendants’ motions to dismiss were granted – in part because the  
 defendants did not engage in any conduct in California. *Marra*, 321 F.Supp. at 1143-44, 1146;  
*Lundgren*, 111 Cal. App. 3d at 487.



1 For example, in *Davis v. American Family Mutual Insurance Co.*, 861 F.2d 1159 (9th Cir.  
2 1988), a motorist filed suit against a nonresident insurance carrier for breach of good faith. *Id.* at  
3 1160. The plaintiff contended that jurisdiction was proper based on the carrier's purposeful  
4 direction of certain communications into the forum refusing to settle plaintiff's claim. *See id.* at  
5 1162. The Ninth Circuit disagreed, finding that the carrier's communications were not "expressly  
6 aimed at" the forum. *See id.* at 1162-63. To satisfy this prong, a defendant must affirmatively  
7 direct his or her efforts into forum and deliberately target the plaintiff with such efforts. *See id.* at  
8 1162-63; *see also Schwarzenegger*, 374 F.3d at 806-07. In *Davis*, the carrier did neither. *See* 862  
9 F.2d at 1162-63. First, the carrier's communications were made only in response to plaintiff's  
10 request for settlement. *Id.* Second, any contact with plaintiff was only made pursuant to the  
11 carrier's general duty to answer settlement requests, from wherever or whomever the request  
12 originated. *Id.* The Ninth Circuit concluded that these communications, even if tortious, simply  
13 could not be considered purposefully directed at the forum. *See id.*; *see also Hunt v. Erie Ins.*  
14 *Group*, 728 F.2d 1244, 1247 (9th Cir. 1984) (finding no purposeful direction where defendant sent  
15 communications into the forum simply to fulfill its obligation to negotiate with insured).

16 Such is the case here. Like the plaintiff in *Davis*, plaintiff argues that jurisdiction is proper  
17 based on Bondanella's alleged purposeful direction of a single communication into the forum state.  
18 (*See* Compl. ¶ 41; Opp'n at 24-25.) However, the complaint demonstrates that Bondanella did not  
19 affirmatively direct his communication into the forum. As was true of the carrier in *Davis*,  
20 Bondanella's communication into the forum was the result of Officer Pate's request for information.  
21 (*See* Compl. ¶ 41.) Moreover, and equally as important, Bondanella made no effort to deliberately  
22 target the plaintiff. To the contrary, the sole impetus for the contact between Bondanella and  
23 Officer Pate was the fulfillment of his responsibility to receive phone calls from law enforcement or  
24 airline personnel about the "No-Fly List", regardless of from whom or where the inquiry originated,  
25 or what the inquiry specifically concerned. (*See* Bondanella Declaration in Support of Defendant's  
26 Motion to Dismiss ("Bondanella Decl.") ¶¶ 4, 11.) Accordingly, this Court should conclude that  
27 Bondanella did not expressly aim any communication at the forum and thus plaintiff has failed to  
28 prove the purposeful direction element.

1                   **2. Plaintiff has not and cannot satisfy the “arising out of” element.**

2                   To satisfy the “arising out of” requirement, the plaintiff must prove that each and every  
3 claim for relief grew directly out of some meaningful contact the defendant had with the forum.  
4 *See, e.g., Bancroft & Masters, Inc., v. Augusta National Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000).  
5 At a minimum, the Ninth Circuit has explained, this means the plaintiff must do more than  
6 articulate some loose connection between the defendant’s contacts and the litigation. *E.g. Doe v.*  
7 *American Nat’l Red Cross*, 112 F.3d 1048, 1051-52 (9th Cir. 1997) (finding mere observable  
8 relationship between defendant’s contacts and litigation too tenuous to satisfy “arising out of”  
9 requirement). Instead, the plaintiff must demonstrate that his or her complaint would not exist *but*  
10 *for* the defendant’s purposefully directed actions towards the forum state. *Callaway Golf Corp. v.*  
11 *Royal Canadian Golf Ass’n.*, 125 F. Supp. 2d 1194, 1205 (C.D. Cal. 2000). If the plaintiff falls  
12 short of this standard, by any degree, then the proper nexus may not be found and specific  
13 jurisdiction should not be exercised. *See, e.g., Doe*, 112 F.3d at 1051-52 (defendant’s contacts not a  
14 “but for” cause of the litigation and thus jurisdiction not proper); *Bancroft & Masters, Inc.*, 223  
15 F.3d at 1088 (stating that litigation must arise from defendant’s meaningful contacts with the forum  
16 before jurisdiction may be exercised).

17                   Here, plaintiff has not satisfied any portion of the “arising out of” requirement. First,  
18 plaintiff has failed to show that her complaint is dependent upon Bondanella’s telephone call with  
19 the forum. As plaintiff’s complaint makes clear, it was the presence of her name (or a similar  
20 name) on the “No-Fly List” which led to her alleged injuries. (*E.g. Compl.* ¶ 31; *see also Opp’n* at  
21 16, 18.) Indeed, plaintiff has never made any credible argument that anything other than this single  
22 fact was necessary to give rise to her complaint.<sup>5</sup> Second, and equally as important, plaintiff has not  
23

24 <sup>5</sup> Plaintiff does offer one easily dismissible argument that Bondanella’s telephone call was a “but-  
25 for” cause of the instant action. (*See Opp’n* at 25.) Specifically, plaintiff argues that a person can  
26 never be detained or prevented from flying based on the mere fact that his or her name appears on  
27 the “No-Fly” list and, therefore, Bondanella’s telephone call must have been a “but for” cause of  
28 her arrest and missed flight, citing *Green v. Transportation Security Administration*, 351 F. Supp.  
2d 1119 (W.D. Wa. 2005). However, *Green* does not support plaintiff’s argument. To the contrary,  
*Green* acknowledges that an individual may be detained or prevented from flying altogether based  
on the mere fact that his or her name appears on the “No-Fly” list – even though the plaintiffs in  
*Green* did not themselves miss their flights. *Id.* at 1121-1122. Indeed, in making this argument,

(Footnote Cont’d on Following Page)

1 proven that her complaint arises from any contact that was purposefully directed towards the forum.  
 2 As discussed above, Bondanella’s conversation was initiated by Officer Pate and was not a contact  
 3 purposefully directed by Bondanella towards the forum. (*See supra* Part II.B.1.) As such, plaintiff  
 4 has fallen well short of satisfying the “arising out of” requirement to establish specific jurisdiction.  
 5 *See Bancroft & Masters, Inc.*, 223 F.3d at 1088 (“The second requirement for specific jurisdiction is  
 6 that [a] contact constituting purposeful availment [is the one] that give[s] rise to the current suit.”).

7 **3. Any exercise of jurisdiction over Bondanella would be unreasonable.**

8 Plaintiff agrees that in this Circuit, a multi-factored approach is used to determine whether  
 9 the exercise of jurisdiction over a nonresident would be reasonable. *E.g. Dole Food Co.*, 303 F.3d  
 10 at 1114. Specifically, seven factors are considered, including: (1) the extent of the defendant’s  
 11 purposeful interjection into the forum; (2) the burden on the defendant of litigating in the forum; (3)  
 12 the extent of conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in  
 13 adjudicating the dispute; (5) the most efficient resolution of the controversy; (6) the importance of  
 14 the forum to the plaintiff; and (7) the existence of an alternative forum. *E.g. Core-Vent Corp. v.*  
 15 *Nobel Industries AB*, 11 F.3d 1482, 1487-88 (9th Cir. 1993). No one factor, however, is dispositive.  
 16 *E.g. Panavision Int’l, L.P. v. Toepfen*, 141 F.3d 1316, 1323 (9th Cir. 1998). Instead, in applying  
 17 the test, a court will consider what impact the balance of these factors has on the exercise of  
 18 jurisdiction. *E.g., Core-Vent Corp.*, 11 F.3d at 1490 (finding that the balance of factors weighed  
 19 against exercise of jurisdiction).

20 Plaintiff argues that the balance of factors in this case weighs in favor of exercising  
 21 jurisdiction. (*See Opp’n* at 25-28.) However, the proper construction and application of each factor  
 22 leads to only one reasonable conclusion: that any exercise of personal jurisdiction over Bondanella  
 23 in California would be unreasonable.

24  
 25  
 26  
 27 (Footnote Cont’d From Previous Page)

28 plaintiff ignores the allegations of her own complaint, wherein she acknowledges that the No-Fly  
 List “contains names of people which airlines are prohibited from transporting.” (Compl. ¶ 33.)

1                                   **a.       Extent of the defendant’s interjection**

2           The “extent of interjection” factor is not concerned, as plaintiff suggests, with *whether* the  
3 defendant made a contact with the forum, but rather the *degree* to which the contact extends. *E.g.*  
4 *Zeigler v. Indian River County*, 64 F.3d 470, 475 (9th Cir. 1995) (“Our determination that  
5 defendants’ purposefully availed themselves of California law does not obviate the need to consider  
6 the degree of their intrusion.”). Under the proper construction of this factor, it is clear that it weighs  
7 against the exercise of jurisdiction. As plaintiff has acknowledged, the entire extent of  
8 Bondanella’s interjection into the forum, for purposes of this action, consists of a single, uninitiated  
9 telephone call and nothing more. *See Sher v. Johnson*, 911 F.2d 1357, 1364 (9th Cir. 1990)  
10 (holding that several telephone calls with forum resident was not extensive interjection and thus  
11 jurisdiction appeared less reasonable).

12                                   **b.       Burden on the defendant**

13           Although plaintiff tries to dismiss from the analysis the factor of burden on the defendant, it  
14 is a factor that should never be ignored. *See Loral Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 561  
15 (9th Cir. 1995) (“The law of personal jurisdiction is asymmetrical and is primarily concerned with  
16 the defendant’s burden.”). Even in this age of technology, if a nonresident is likely to suffer  
17 significant burdens as a result of litigating in a foreign jurisdiction, those burdens must be  
18 considered. *See Caruth v. Int’l Psychoanalytical Assn.*, 59 F.3d 126, 128 (9th Cir. 1995). Thus, the  
19 considerable time, effort, and expense that would be require of Bondanella to defend himself across  
20 the country must be taken into account. (*See Bondanella Decl.* ¶ 13.) Accordingly, this factor  
21 clearly favors not exercising jurisdiction.

22                                   **c.       Conflict with sovereignty**

23           As discussed in the motion, the “conflict with sovereignty” factor concerns the extent to  
24 which an exercise of jurisdiction would conflict with the sovereignty of the defendant’s home  
25 forum. *Wolf Designs, Inc. v. DHR & Co.*, 322 F. Supp. 2d 1065, 1074 (C.D. Cal. 2004). Because  
26 there appears to be no conflict between the alternative forums (Mot. At 13-14), this factor remains  
27 neutral in determining whether jurisdiction is proper. *See Panavision Int’l, L.P.*, 141 F.3d at 1323  
28

1 (finding that exercise of jurisdiction did not conflict with sovereignty of defendant's home state and  
2 thus this was not a factor in reasonableness assessment).

3 **d. Interest of the forum state**

4 As plaintiff suggests, the interests of the forum state weigh in favor of jurisdiction when a  
5 current resident of that state is a party in the litigation. *Gordy v. Daily News, L.P.*, 95 F.3d 829, 836  
6 (9th Cir. 1996). However, plaintiff is not a current resident and cites no authority that a similar  
7 finding is justified when the plaintiff is only a former resident of the forum. (*See* Opp'n 26-27.)  
8 Such is the case here. Although plaintiff might have resided temporarily in California while  
9 studying at Stanford, she currently resides in Malaysia, her apparent permanent residence. (Compl.  
10 ¶ 4.) Accordingly, California's interest in litigating this action is reduced and this factor thus  
11 weighs against the exercise of jurisdiction. *See Asahi Metal Industry Co. v. Superior Court of*  
12 *California*, 480 U.S. 102, 114 (1987) ("Because the plaintiff is not a California resident,  
13 California's legitimate interests in the dispute have considerably diminished").

14 **e. Efficient resolution**

15 The "efficient resolution" factor is primarily concerned with where the witnesses and  
16 evidence will be located. *Core-Vent Corp.*, 11 F.3d at 1489. Bondanella does not dispute that some  
17 of the relevant evidence and witnesses will be located in California. Undeniably, however, some  
18 will also be located in Virginia and the District of Columbia. (*See* Mot. at 14; Bondanella Decl. ¶  
19 2). Thus, this factor remains neutral, favoring neither party. *Loral Terracom*, 49 F.3d at 561 ("The  
20 [efficient resolution] factor does not lie in either party's favor because there are witnesses and  
21 evidence in California and Kentucky.").

22 **f. Importance of the forum to the plaintiff**

23 Although not mentioned by plaintiff, the importance of the forum to the plaintiff is accorded  
24 little or no significance in the analysis. *Caruth*, 59 F.3d at 129 ("Although the importance of the  
25 forum to the plaintiff nominally remains part of this test, cases have cast doubt on its [continued]  
26 significance."). In fact, it is considered relevant only when the forum is absolutely essential to the  
27 continued maintenance of the plaintiff's lawsuit. *See Core-Vent Corp.*, 11 F.3d at 1490 ("A mere  
28 preference on the part of the plaintiff for its home forum does not affect the balancing."). That is

1 not the case here. There is no evidence that California is the only forum where plaintiff could bring  
 2 her lawsuit. (*See* Opp'n at 27.) Consequently, this factor weighs against the assertion of  
 3 jurisdiction.

4 **g. Existence of an alternative forum**

5 The existence of an alternative forum is not, as plaintiff implies, something the defendant  
 6 must prove to show the unreasonableness of exercising jurisdiction. *See Callaway Golf Corp.*, 125  
 7 F. Supp. 2d at 1207. To the contrary, this factor weighs in favor of jurisdiction only when the  
 8 plaintiff can prove that no other forum exists. *See, e.g., Core-Vent Corp.*, 11 F.3d at 1490 (“The  
 9 plaintiff bears the burden of proving the unavailability of an alternative forum.”). Here, plaintiff  
 10 has not met this burden. Plaintiff has offered nothing more than conclusory allegations and  
 11 unfounded fears concerning the possibility of litigating elsewhere. (*See* Opp'n at 27-28; *see also*  
 12 *Callaway Golf Corp.*, 125 F. Supp. 2d at 1207-08 (holding that plaintiff’s “procedural and  
 13 speculative concerns” about litigating elsewhere were not enough to show the reasonableness of  
 14 asserting jurisdiction).) Accordingly, this factor weighs against the exercise of jurisdiction.

15 The balance of reasonableness factors clearly weighs against the Court’s exercise of  
 16 personal jurisdiction against Bondanella. Accordingly, plaintiff’s claims should be dismissed.

17 **C. Plaintiff’s Request For Leave to Take Jurisdictional Discovery Should Be**  
 18 **Denied.**

19 A district court’s power to allow jurisdictional discovery, although broad, is not unlimited.  
 20 *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir.1977)  
 21 (jurisdictional discovery should be granted only under certain circumstances, and not as a matter of  
 22 course). Indeed, in most instances, jurisdictional discovery is permitted only when “[i] pertinent  
 23 facts bearing on the question of jurisdiction are controverted . . . or [(ii)] where a more satisfactory  
 24 showing of facts is necessary.” *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430  
 25 n.24 (9th Cir. 1977). If the requesting party fails to show either, then additional discovery may be  
 26 denied and the action dismissed for lack of personal jurisdiction. *See, e.g., Orchid Biosciences, Inc.*  
 27 *v. St. Louis Univ.*, 198 F.R.D. 670, 672-73 (S.D. Cal. 2001).

1 Here, plaintiff's request for jurisdictional discovery should be denied and her complaint  
 2 dismissed. First, none of the facts bearing on the question of jurisdiction are controverted.  
 3 Bondanella has not denied that on the day of the alleged incident he responded to a single telephone  
 4 call from Officer Pate of the SFPD. (*See, e.g.*, Mot. at 10-11.) As both plaintiff's complaint and  
 5 opposition make clear, this is the only jurisdictional contact at issue in the case. (*See* Opp'n 24.)  
 6 Second, a more satisfactory showing of facts is not needed. Bondanella has already testified, in a  
 7 sworn declaration, to every relevant jurisdictional fact pertaining to the telephone call with Officer  
 8 Pate. (*See* Bondanella Decl. ¶¶ 4, 11.) In other words, further discovery would not lead to any  
 9 additional facts which might prove that this lone contact gave rise to some form of personal  
 10 jurisdiction. *See Orchid Biosciences, Inc.*, 198 F.R.D. at 673. The obvious purpose of plaintiff's  
 11 request is to obtain merits discovery from Bondanella before the Court has determined that he is  
 12 subject to the jurisdiction in California.<sup>6</sup>

13 **III. PLAINTIFF'S COMPLAINT MUST ALSO BE DISMISSED FOR FAILURE TO**  
 14 **STATE A SINGLE CLAIM FOR RELIEF.**

15 Independent of the jurisdictional issues, plaintiff's complaint contains a number of incurable  
 16 legal defects. As discussed below and in Bondanella's Motion, these defects compel the dismissal  
 17 of plaintiff's complaint in its entirety.

18 **A. Plaintiff's Claims Under 42 U.S.C. § 1983 Are Fatally Defective.**

19 Plaintiff's lengthy opposition brief cannot obscure the fact that her complaint is based on  
 20 two alleged wrongs: the inclusion of her name on the No-Fly List, and her arrest by San Francisco  
 21 police officers at SFO. Compl. ¶¶ 57, 65, 72, 79, 86. Plaintiff cannot hold Bondanella liable for  
 22 either alleged wrong.

23 First, with respect to the No-Fly List, plaintiff acknowledges that it is compiled and  
 24 maintained by persons and agencies other than Bondanella. Compl. ¶¶ 5, 9-11; Opp'n at 3-5 (the  
 25 Department of Homeland Security, the Transportation Security Administration and the Terrorist

26 \_\_\_\_\_  
 27 <sup>6</sup> Plaintiff admits that she seeks "information relating to his January 2, 2005 order that Ibrahim be  
 28 excluded from her flight and arrested." (Opp'n at 29.) The fact that a communication took place is  
 relevant to the jurisdictional inquiry; the contents and basis for the communication – which is what  
 plaintiff seeks – are not.

1 Screening Center are responsible for maintaining and managing the No-Fly List). Plaintiff  
2 acknowledges that Bondanella did not work for any of these agencies (Opp'n at 5), and therefore  
3 does not, and cannot in good faith, allege that Bondanella had any role whatsoever in the alleged  
4 placement of her name on the No-Fly List. Plaintiff further admits that these agencies "instruct  
5 recipients of the No-Fly List to detain and interrogate any individual who checks in for a flight  
6 whose name is similar or identical to a name on the No-Fly List." Compl. ¶ 35; *see also* ¶ 31.  
7 Airlines are prohibited from transporting persons on this list. Compl ¶ 33. Thus, according to  
8 plaintiff, *it is the fact that a person's name (or a similar name) is on the No-Fly List* that can result  
9 in the passenger's detention, interrogation, and exclusion from boarding the airplane. Plaintiff does  
10 not, and cannot in good faith, allege that Bondanella had any role whatsoever in the agencies'  
11 adoption of these procedures.

12 Second, Bondanella cannot be held liable under 42 U.S.C. § 1983 for plaintiff's arrest at  
13 SFO because he was not acting under color of state law. *Stonecipher v. Bray*, 653 F.2d 398, 401,  
14 403 (9th Cir. 1981) (dismissing § 1983 claims against federal, corporate and individual defendants).  
15 Plaintiff's new argument, that Bondanella is liable because he "instructed local police officers to  
16 arrest" her (Opp'n at 31), is refuted by plaintiff's allegations (and the SFPD "Incident Report"  
17 attached to her request for judicial notice as Exh. "A") – which states only that Bondanella told  
18 Officer Pate "to deny the flight to [plaintiff], contact the F.B.I. and to *detain* her for further  
19 questioning" (emphasis added). *See also* Compl. ¶ 41. There is no allegation, and no basis for any  
20 allegation, that Bondanella "ordered" the police to arrest plaintiff, to handcuff her, search her – or  
21 to do anything else beyond preventing her from boarding the airplane, contacting the FBI, and  
22 detaining her until the FBI could determine the appropriate course of action. Nor has plaintiff made  
23 any showing of any conspiracy between Bondanella and the SFPD officers to act under color of  
24 state law. *Behre v. Thomas*, 665 F. Supp. 89, 93 (D.N.H. 1987) ("it is not enough that [defendants]  
25 simply acted in concert with state officials to deprive plaintiff of a constitutional right.").<sup>7</sup>

26 \_\_\_\_\_  
27 <sup>7</sup> Plaintiff cannot salvage her claims by now labeling them *Bivens* claims. *Bivens v. Six Unknown*  
28 *Federal Narcotics Agents*, 403 U.S. 388 (1971). First, plaintiff did not plead her claims under  
*Bivens*. Second, a *Bivens* claim, because it may be maintained against a person only in his or her  
individual capacity, must be personally served. *See Daly-Murphy v. Winston*, 837 F.2d 348, 355

(Footnote Cont'd on Following Page)



1 In short, however plaintiff chooses to label her claims that her constitutional rights were  
2 violated, those claims are not properly directed at Bondanella and should be dismissed.

3 **B. Plaintiff Cannot State Claims Under California Civil Code §§ 52.1 or 52.3.**

4 Plaintiff correctly cites *Jones v. Kmart Corp.*, 17 Cal. 4th 329 (1998) as the relevant  
5 authority on the scope of a claim under Cal. Civil Code § 52.1. However, like the plaintiff in *Jones*,  
6 plaintiff here “misunderstand[s] the statute’s scope, and accordingly miss[es] the point. ...  
7 [S]ection 52.1 does require an attempted or completed act of interference with a legal right,  
8 accompanied by a form of coercion.” *Id.* at 333-34 (emphasis added). Plaintiff cites the example  
9 given in *Jones* of a burglary victim who goes with the police to the house of the suspected burglar  
10 and *threatens to injure* the homeowner if she does not consent to a search of her home. *Id.* at 334.  
11 But the *Jones* example does not fit the facts here: even assuming Bondanella interfered with  
12 plaintiff’s rights – which Bondanella denies in the strongest of terms – Bondanella did absolutely  
13 nothing to coerce or threaten plaintiff. To the contrary, Bondanella had no contact with plaintiff at  
14 all. Because plaintiff “has not alleged and the record does not establish any conduct that rises to the  
15 level of a threat of violence or coercion,” plaintiff’s claim under § 52.1 should be dismissed without  
16 leave to amend. *City & County of San Francisco v. Ballard*, 136 Cal. App. 4th 381, 408 (2006).

17 Equally deficient is plaintiff’s claim under Civil Code § 52.3. Plaintiff does not contest that  
18 the plain language of § 52.3 applies to “conduct by law enforcement officers.” Plaintiff’s sole  
19 argument for extending liability under this section to Bondanella is that the court in *Ley v. State*,  
20 114 Cal. App. 4th 1297 (2004) “did not say that the state and county were not liable under section  
21 52.3 because they were not law enforcement officers.” (Opp’n at 37.) However, the court’s silence  
22 in *Ley* on the “conduct by law enforcement officers” language is unremarkable, given that the court  
23 had previously found the defendants were absolutely immune from liability under Penal Code  
24 § 1618, and concluded specifically with respect to Civil Code §§ 52.1 and 52.3 that defendants did

25  
26 \_\_\_\_\_  
(Footnote Cont’d From Previous Page)

27 (9th Cir. 1988). In any event, the flaw with plaintiff’s civil rights claims is not the label under  
28 which they are brought – it is that the facts do not support them.

1 not engage in conduct that would interfere with or deprive persons of their civil rights. 114 Cal.  
2 App. 4th at 1300, 1306.

3 In the absence of any authority expanding the plain language of Civil Code §§ 52.1 and  
4 52.3, plaintiff's claims under these statutes must be dismissed without leave to amend.

5 **C. Plaintiff Cannot Satisfy The Elements For a False Imprisonment Claim.**

6 As discussed in Bondanella's motion, plaintiff's false imprisonment claim fails for two  
7 reasons: Bondanella did not confine plaintiff, and she cannot demonstrate that her arrest was  
8 achieved unlawfully. In opposition, plaintiff merely contends – without citation to any authority –  
9 that Bondanella is liable because he “worked collaboratively” with other defendants to arrest and  
10 imprison her. Opp'n at 37. However, the extent of Bondanella's alleged “collaboration” was to  
11 field a phone call from Officer Pate regarding plaintiff's status vis-à-vis the No-Fly List. (Compl. ¶  
12 41; see *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1136 (2004).) Indeed, California law expressly  
13 permits citizens to make reports to local law enforcement concerning potentially illegal conduct.  
14 (See Mot. at 19-20 (citing *Hagberg v. California Federal Bank FSB*, 32 Cal. 4th 350 (2004)).) This  
15 is true even if such a communication was designed only to instigate and eventually achieve a  
16 person's detention by police. See *Kesmodel*, 119 Cal. App. 4th at 1136. Consequently, plaintiff  
17 cannot, under any circumstance, prove the unlawful element of a false imprisonment claim and this  
18 cause of action should be dismissed.

19 **D. Bondanella's Conduct Does Not Rise to the Level of Intentional Infliction of**  
20 **Emotional Distress.**

21 The tort of intentional infliction of emotional distress (IIED), was not intended to punish  
22 every individual whose conduct elicits some emotional reaction in others. See, e.g., *Cole v. Fair*  
23 *Oaks Fire Prot. Dist.*, 43 Cal. 3d 148, 155 n.7 (1987). To the contrary, the law recognizes that as  
24 part of a civilized society, each of us must tolerate some degree of unkind or hurtful conduct. See,  
25 e.g., *Golden v. Duggan*, 20 Cal. App. 3d 295, 304, (1971). It is only when an individual, acting  
26 without privilege, exceeds all bounds of human decency that the law imposes a punishment. E.g.  
27 *Cervantes v. J.C. Penney Co.*, 24 Cal. 3d 579, 593 (1979); *Potter v. Firestone Tire & Rubber Co.*, 6  
28

1 Cal. 4th 965, 1001-02 (1993). Anything less must simply be tolerated. *See Golden*, 20 Cal., App.  
2 2d at 304.

3 Here, plaintiff cannot show that Bondanella's conduct – by any measure – rose to the level  
4 of intentional infliction of emotional distress. First, plaintiff's allegations do not support her claim  
5 that Bondanella's conduct exceeded all notions of human decency. (*See Opp'n* at 38.) Plaintiff's  
6 only allegation is that Bondanella fielded a telephone call from Officer Pate regarding plaintiff's  
7 status vis-à-vis the No-Fly List, and alleges that Bondanella told Officer Pate “to not allow Ibrahim  
8 on the flight, to contact the FBI, and to detain Ibrahim for questioning.” Compl. ¶ 41. Nothing  
9 about this action exceeded society's notions of human decency. Second, Bondanella's conduct was  
10 privileged. As discussed above, Bondanella was completely justified in communicating with Office  
11 Pate. (*See supra* Part III.C.) As such, Bondanella's conduct cannot give rise to a claim of IIED.

12 **E. Plaintiff's Complaint Reveals a Complete Defense to the Claim of Negligent**  
13 **Infliction of Emotional Distress.**

14 Plaintiff agrees that a claim for negligent infliction of emotional distress (NIED) is nothing  
15 more than a traditional negligence claim with emotional distress damages. (*See Mot.* at 21; *Opp'n*  
16 at 39). This means that to sustain and NIED claim, the plaintiff must prove all of the traditional  
17 negligence elements, including duty, breach, causation, and damages. *E.g. Potter*, 6 Cal. 4th at 984-  
18 85. Moreover, any defense that will bar a claim of negligence, such as privilege or assumption of  
19 risk, will also bar a claim of NIED. *See, e.g., Silberg v. Anderson*, 50 Cal. 3d 205, 215 (1990)  
20 (litigation privilege immunizes a defendant from a claim of negligence and NIED).

21 Plaintiff's claim for NIED must fail because Bondanella's conduct was completely  
22 privileged. Irrespective of whether plaintiff can satisfy any of the traditional elements of a NIED  
23 claim, Bondanella was absolutely permitted by law to communicate with Officer Pate. (*See supra*  
24 Part III.C.) As such, plaintiff's complaint discloses a complete defense to any claim of NIED and  
25 this cause of action must be dismissed.

26 **F. Plaintiff Is Not Entitled to Declaratory or Injunctive Relief.**

27 Plaintiff seeks “a declaration that [the] maintenance, management and dissemination of the  
28 No-Fly list are unconstitutional,” and “an injunction requiring defendants to remedy immediately

