

1 ARNOLD & PORTER LLP
SHARON DOUGLASS MAYO Bar No. 150469
2 90 New Montgomery Street, Suite 600
San Francisco, California 94105
3 Telephone: (415) 356-3000
Facsimile: (415) 356-3099
4 E-mail: sharon.mayo@aporter.com

5 ARNOLD & PORTER LLP
CHRISTOPHER S. TARBELL Bar No. 240253
6 777 South Figueroa Street, 44th Floor
Los Angeles, California 90017
7 Telephone: (213) 243-4000
Facsimile: (213) 243-4199
8 E-mail: christopher.tarbell@aporter.com

9 Attorneys for Defendant John Bondanella

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

15	RAHINAH IBRAHIM, an individual,)	Case No. C 06-0545 WHA
)	
16	Plaintiff,)	
)	
17	v.)	SUPPLEMENTAL BRIEF IN SUPPORT OF
)	DEFENDANT JOHN BONDANELLA'S
18	DEPARTMENT OF HOMELAND)	MOTION TO DISMISS PLAINTIFF'S
	SECURITY, et al.,)	AMENDED COMPLAINT PURSUANT TO
19)	FED. R. CIV. P. 12(B)(2) AND 12(B)(6)
)	
20	Defendants.)	Original Hearing Date: July 20, 2006
)	
21)	No further hearing scheduled.
)	

1 **I. INTRODUCTION**

2 In its July 20, 2006 Order, the Court requested each set of moving defendants to address the
3 grounds for dismissing plaintiff's first amended complaint – specifically, whether plaintiff's
4 *amended* complaint alters the jurisdictional landscape in this case. The short answer is that the
5 amended complaint does not affect the jurisdictional landscape, and the arguments in defendants'
6 motions to dismiss the original complaint apply with equal force to the first amended complaint.
7 Accordingly, for the reasons set forth below, defendant John Bondanella renews his motion to
8 dismiss for lack of personal jurisdiction and failure to state a claim, and renews his joinder in the
9 federal defendants' and United defendants' motions to dismiss for lack of subject matter
10 jurisdiction.

11 **II. PLAINTIFF'S FIRST AMENDED COMPLAINT DOES NOT ALTER THE**
12 **JURISDICTIONAL LANDSCAPE**

13 Plaintiff's first amended complaint makes the following changes from the original
14 complaint:

- 15 • Paragraph 29 is amended to allege that during the relevant time period, defendant
16 John Bondanella was employed by US Investigations Services, Inc. and was serving
17 as a watch off[ic]er in the Transportation Security Operations Center.
- 18 • Paragraph 30 names the Transportation Security Operations Center ("TSOC"), a
19 department of the United States Government, as a new defendant.
- 20 • Paragraph 31 names the Transportation Security Intelligence Service ("TSIS"), a
21 department of the United States Government, as a new defendant.
- 22 • Paragraph 32 names US Intelligence Services, Inc. ("USIS") (Bondanella assumes
23 plaintiff meant *US Investigations Services, Inc.*, Bondanella's former employer), as a
24 new defendant.

25 Plaintiff's new allegations simply list additional parties to the lawsuit; plaintiff makes no
26 substantive allegations against the new defendants, and does not change her substantive allegations
27 against the existing defendants.

1 The addition to this lawsuit of USIS, Bondanella's former employer, has no effect on the
2 determination of whether this Court may exercise personal jurisdiction over Bondanella.¹ Although
3 USIS maintains offices and conducts business in California, the forum contacts of Bondanella's
4 corporate employer are not to be considered in the jurisdictional analysis. *Calder v. Jones*, 465 U.S.
5 783, 790 (1984). Rather, "[e]ach defendant's contacts with the forum State must be assessed
6 individually." *Id.* Plaintiff has conceded that Bondanella's contacts with California do not support
7 the exercise of general jurisdiction over him, and the only issue for the Court to determine is
8 whether the telephone call allegedly placed by SFPD Officer Pate to Bondanella on January 2, 2005
9 is a sufficient basis upon which to exercise specific jurisdiction over Bondanella. For the reasons
10 set forth in Bondanella's motion to dismiss the original complaint, the exercise of jurisdiction based
11 solely upon that *single, uninitiated contact* with the forum would, in fact, "offend traditional notions
12 of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

13 In response to the Court's inquiry at the July 20 hearing, counsel for plaintiff identified
14 *Vishay Intertechnology, Inc. v. Delta International Corporation*, 696 F.2d 1062 (4th Cir. 1982) as
15 plaintiff's "best case" to support a finding of personal jurisdiction over Bondanella. However, the
16 facts of *Vishay* are markedly different from the present case. In *Vishay*, Delta *initiated* five
17 telephone calls and wrote three letters to the plaintiff in an alleged attempt to fraudulently obtain
18 plaintiff's product at a price lower than that to which it was entitled under plaintiff's pricing policy.
19 696 F.2d at 1064, 1068. In rejecting Delta's argument that these contacts were not sufficient to
20 subject it to personal jurisdiction in North Carolina, the *Vishay* Court found it significant that "Delta
21 initiated the contacts with Vishay in North Carolina" and intended to inflict injury on Vishay there.
22 *Id.* at 1068.² The conduct alleged in *Vishay* is precisely the type of "individual targeting" that has

23 ¹ Bondanella was not employed by either TSIS and TSOC, and the inclusion of these federal
24 departments is irrelevant to the jurisdictional inquiry.

25 ² The significance of the fact that the defendant did not initiate the contact with the forum is
26 highlighted in *Bond v. Messerman*, 162 Md.App. 93, 873 A.2d 417 (2005). In *Bond*, an Ohio
27 attorney was sued in Maryland by his former client, for allegedly failing to expunge plaintiff's
28 juvenile conviction. 162 Md.App. at 112-113. In holding that the attorney was not subject to
jurisdiction in Maryland, the *Bond* court noted that "[o]f the seven relevant contacts [defendant] had
with [plaintiff], five were contacts made by [plaintiff] – either by letter or phone – to [defendant] in
Ohio." *Id.* at 117. Thus, defendant's contacts with the forum "exist[ed] only by virtue of the

(Footnote Cont'd on Following Page)

1 been held to satisfy the “effects test” set forth in *Calder*. See *Schwarzenegger v. Fred Martin Motor*
2 *Company*, 374 F.3d 797, 804-8055 (9th Cir. 2003); *Bancroft & Masters, Inc. v. Augusta National,*
3 *Inc.*, 223 F.3d 1082, 1087-1088 (9th Cir. 2000).

4 In the present case, however, Bondanella’s sole relevant contact with the forum is a single
5 telephone call that he *received* from SFPD Officer Pate. Plaintiff does not – and cannot – allege
6 that Bondanella “individually targeted” her. Instead, the call from Officer Pate was one of many
7 calls that Bondanella routinely received in the course of his duties as a watch officer in the
8 Transportation Security Operations Center – calls which originated in nearly every state and from
9 foreign countries. See Declaration of John Bondanella in Support of Motion to Dismiss filed May
10 22, 2006 (Document no. 65), ¶ 11. Although Officer Pate’s call happened to originate from
11 California, it could just as easily have come from “Istanbul, Bangkok, or anywhere else in the
12 world.” *Schwarzenegger*, 372 F.3d at 799. Requiring Bondanella to defend this action in
13 California, based on a single telephone call that Bondanella happened to receive on January 2, 2005,
14 surely would offend traditional notions of fair play and substantial justice.

15 **III. PLAINTIFF’S FIRST AMENDED COMPLAINT DOES NOT CURE THE DEFECTS**
16 **FATAL TO HER ORIGINAL COMPLAINT**

17 Nothing has changed in plaintiff’s amended complaint – filed *after* plaintiff had the benefit
18 of reviewing defendants’ motions to dismiss – to support any cause of action against Bondanella.
19 Each of plaintiff’s claims is predicated on her alleged placement on the No-Fly List, or on her arrest
20 at SFO on January 2, 2006. As demonstrated in his motion to dismiss the original complaint,
21 plaintiff cannot state a claim against Bondanella for the simple reason that Bondanella neither
22 placed her on the No-Fly List nor arrested her at SFO. Because plaintiff has not and cannot plead
23 around these facts, Bondanella hereby renews his motion to dismiss the first amended complaint for
24 failure to state a cause of action.

25 _____
(Footnote Cont’d From Previous Page)

26 unilateral conduct of his client.” *Id* at 118. Here, Bondanella’s contact with the forum is even more
27 attenuated, in that it existed only by virtue of the unilateral conduct of a third party – Officer Pate.

