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**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

AUG 18 2006

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By L. ZULUETA, Deputy

7 Attorneys for Specially Appearing T.J. Web Productions, LLC

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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**FOR THE COUNTY OF LOS ANGELES**

11

12 WILLIAM SILVERSTEIN,

Case Number BC 352733

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Plaintiff,

**REPLY OF T.J. WEB  
PRODUCTIONS, LLC TO  
OPPOSITION OF PLAINTIFF  
TO MOTION TO QUASH**

14

v.

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16 T.J. WEB PRODUCTIONS, LLC,  
NINO ENTERPRISES, INC. and Does  
1-50,

Date: August 25, 2006  
Time: 8:30 A.M.  
Place: Dept. "42"

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18 Defendants.

Hon. Elihu Berle

19

[EVIDENTIARY OBJECTIONS AND  
NOTICE OF LODGING OF NON-  
CALIFORNIA AUTHORITIES FILED  
SEPARATELY AND  
CONCURRENTLY]

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T.J. WEB PRODUCTIONS, LLC ("T.J. Web"), hereby provides the above-noted  
25 reply, as follows:

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION AND SUMMARY OF ARGUMENT

4 The Court may recall that T.J. Web's motion relied on the declaration of Jeffrey D.  
5 Macher, the Chief Technical Officer of T.J. Web. Mr. Macher's declaration states:

6 "T.J. Web did not send the e-mails plaintiff complains of, either  
7 directly or through anyone else. T.J. Web did not direct anyone  
8 to send those e-mails."

8 Declaration of Macher, Motion to Quash at page 14, lines 7-9.

9 Plaintiff's opposition does not address this fact with any controverting evidence.  
10 Instead, plaintiff *asserts* that T.J. Web sent the e-mails he complains of, either directly or  
11 through an agent, yet the opposition contains no *evidence* supporting that assertion. Mr.  
12 Macher's declaration is thus uncontroverted, and that fact alone compels the conclusion that  
13 T.J. Web's motion should be granted.

14 Nevertheless, plaintiff's opposition also misconstrues the law regarding who is an  
15 "advertiser" under *Business and Professions Code* § 17529.1.

16 Further, plaintiff's opposition shows that he is once again attempting, unreasonably,  
17 to hale an out-of-state Internet company into a California court. *See Silverstein v.*  
18 *Experienced Internet.com, Inc.*, 2005 WL 1629935 (N.D. Cal., July 11, 2005)(Order granting  
19 motion to dismiss for lack of personal jurisdiction). Indeed, Mr. Silverstein is a self-  
20 proclaimed professional plaintiff.<sup>1</sup> This is not original with Mr. Silverstein; by 2004, a

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25 <sup>1</sup>Silverstein chronicles his litigation at: <http://www.barbieslapp.com/spam/index.html>.  
26 He has even gone so far as to post a docket report of sorts, listing the status of all of his  
27 cases, <http://www.barbieslapp.com/spam/casestat.html>.

1 comparable “cottage industry” had developed of “professional plaintiffs,” using similar  
2 tactics, but suing under the ADA.<sup>2</sup>

3 The evidence submitted by plaintiff supposedly establishing personal jurisdiction,  
4 even if admissible (although, as T.J. Web’s separately and concurrently filed evidentiary  
5 objections show, most is not), fails to do so. Here is what is offered:

6 **Exhibit A.** This is an email, supposedly from TJ Web to Plaintiff, essentially  
7 agreeing to investigate his complaint. Sending an email to California does not support  
8 jurisdiction. *Fenn, et al. v. Mleads Enterprises, Inc.*, 137 P.3d 706 (Utah 2006). *Reliance*  
9 *Nat’l. Indem. Co., et al. v. Pinnacle Cas. Assur. Corp., et al.*, 160 F.Supp.2d 1327 (M.D. Ala.  
10 2001).

11 **Exhibit B.** These are terms and conditions found on Plaintiff’s Web site, containing  
12 a forum selection clause. The shortcoming of that is an absence of agreement. As held in  
13 *Specht v. Netscape Communications Corp.*, 150 F.Supp.2d 585 (S.D.N.Y. 2001), there must  
14 be agreement to such terms, usually by what is called a “click-wrap agreement.” TJ Web  
15 never “clicked.”

16 **Exhibit C.** While obviously a settlement communication, inadmissible under  
17 *Evidence Code* § 1152, if this letter proves anything, it is that TJ Web is not subject to  
18 personal jurisdiction in California because it authorized no emails.

19 **Exhibit D.** This is terms and conditions of a TJ Web Internet site, between TJ Web  
20 and its “Subscribers.” Plaintiff is not a “subscriber” nor is this dispute about that site.

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23 <sup>2</sup> Americans with Disabilities Act. *E.g., Rodriguez v. Investco, L.L.C.*, 305  
24 F.Supp.2d 1278, 1280-82 (M.D. Fla. 2004)(Noting that from this “cottage industry,” 5  
25 organizations, alone, had filed almost 600 ADA cases in that district in a three-year span);  
26 *Molski v. Mandarin Touch Restaurant*, 359 F.Supp.2d 924 (C.D. Cal. 2005)(Court entered  
27 a “vexatious litigant” and noting, “The integrity of the bar is called into question by the  
well-publicized accounts of lawyers employing unethical tactics in the pursuit of their own  
financial gain. The legitimacy of the courts is also injured because the public may view the  
courts as complicit in allowing these shakedown schemes to continue.”).

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1 120 unlawful email advertising [sic] . . . Defendant sent at least  
2 120 email messages to Plaintiff.”

3 Opposition at page 3, line 24 to page 4, line 1; page 4, lines 7-8, lines 13-14; page 5,  
4 lines 20-21, line 23; page 6, lines 9-10.

5 None of these statements are supported by any evidence *at all*. The first statement  
6 quoted above, from page 3, lines 15-20 of the verified complaint is conclusory and  
7 unsupported. The balance of the statements quoted above are also unsupported.

8 Indeed, Mr. Macher’s statement that, “T.J. Web did not send the e-mails plaintiff  
9 complains of, either directly or through anyone else. T.J. Web did not direct anyone to send  
10 those e-mails,” is entirely uncontroverted. Thus, as will be shown below, T.J. Web is not an  
11 “advertiser” under *Business and Professions Code* § 17529.1(a); no cause of action under  
12 *Business and Professions Code* § 17529.5(b)(1)(A)(iii) can be brought against T.J. Web; and  
13 the exercise of personal jurisdiction over T.J. Web would be inappropriate.

14  
15 **III.**

16 **T.J. WEB IS NOT AN “ADVERTISER” UNDER**  
17 ***BUSINESS AND PROFESSIONS CODE SEC. 17529.1***

18 A cause of action under *Business and Professions Code* § 17529.5(b)(1)(A)(iii) can  
19 be brought only against an “advertiser,” defined by *Business and Professions Code* §  
20 17529.1(a) as, “a person or entity that advertises through the use of commercial e-mail  
21 advertisements.”

22 As shown above, there is simply no evidence that T.J. Web sent any e-mails to  
23 plaintiff, or anyone else for that matter. There is this no evidence that T.J. Web is an  
24 “advertiser.”

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IV.

**BECAUSE T.J. WEB NEITHER SENT NOR CAUSED TO BE  
SENT THE E-MAILS IT COMPLAINS OF, AND BECAUSE IT  
IS NOT AN “ADVERTISER,” THE EXERCISE OF JURISDICTION  
OVER T.J. WEB WOULD BE INAPPROPRIATE**

Plaintiff posits the existence of general personal jurisdiction over T.J. Web based upon the unsupported statements quoted above at Section II. *See*, opposition at Section III-B. Such statements are insufficient to confer personal jurisdiction upon a defendant – either of the general or specific type.

As one authority suggests, “[c]ourts determining personal jurisdiction primarily on the basis of Internet activity generally focus on the nature and quality of activity that a defendant conducts over the Internet.” *Fenn v. Mleads Enterprises, Inc.*, 137 P.3d 706, 712-13 (Utah, 2006). The court also stated:

“The email [allegedly a contact that supported the exercise of jurisdiction] did not create an actual business transaction between Mleads and Fenn. . . . the email is not reflective of an actual relationship or exchange between the two parties.”

137 P.3d at 714.

The same is true here. The activity portrayed by plaintiff as supporting jurisdiction, besides unsupported, is not reflective of any “relationship or exchange between” plaintiff and T.J. Web, in the parlance of *Fenn, supra*. *See further, Smith v. Hobby Lobby Stores*, 1968 F.Supp. 1356, 1364 (W.D. Ark. 1997) [mere advertising via the Internet does not subject a non-resident to local jurisdiction in a tort case].

Plaintiff’s unsupported “the defendant sent the emails” statement is insufficient to meet its burden of proof of the issue of facts supporting the exercise of personal jurisdiction. *Reliance National Indemnity Co. v. Pinnacle Cas. Assur. Corp.*, 160 F.Supp.2d 1327 (N.D.

1 Ala.) [defendant's "emphatic statement that 'I did not send those e-mails to plaintiffs'  
2 negates any contrary inference urged by the plaintiffs, who bear the burden of proof."].

3 As to the burden on this motion, even though T.J. Web is the moving party, the burden  
4 of proof is on the plaintiff: "Where jurisdiction is challenged by a non-resident defendant,  
5 the burden of proof is upon the plaintiff to demonstrate that "minimum contacts" exist  
6 between defendant and the forum state to justify imposition of personal jurisdiction." *Mihlon*  
7 *v. Sup. Ct.* (1985) 169 Cal.App.3d 703, 710; *Floveyor Int'l, Ltd. v. Sup. Ct.* (1997) 59  
8 Cal.App.4th 789, 793. The burden is on the plaintiff to demonstrate by a preponderance of  
9 the evidence that all jurisdictional criteria are met. *Ziller Electronics Lab GmbH v. Sup. Ct.*  
10 (1988) 206 Cal.App.3d 1222, 1232.

11  
12 V.

13 CONCLUSION

14 Plaintiff has not shown that T.J. Web sent the e-mails he complains of. Plaintiff thus  
15 cannot prevail on his claim that T.J. Web is an "advertiser" under *Business and Professions*  
16 *Code* § 17529.1. No facts justifying the imposition of jurisdiction upon T.J. Web exist here.  
17 What is apparent is that plaintiff has utterly failed to meet its burden to show that T.J. Web  
18 had any cognizable connection with California.

19 Thus, T.J. Web respectfully urges that its motion should be granted.

20 Dated: August 17, 2006

Respectfully Submitted,

21 CLYDE DeWITT  
22 WESTON, GARROU, DEWITT & WALTERS

23  
24 By: 

25 Joseph P. Wohrle  
26 Counsel for Specially Appearing T.J. Web  
27 Productions, LLC

1 **PROOF OF SERVICE BY MAIL**

2 [Pursuant to Calif. Code of Civil Procedure § 1013a(3)  
3 and Fed.R.Civ.P. 5]

4 I am a resident of and/or employed in the County of Los Angeles, State of California.  
5 I am over the age of eighteen years and not a party to the within entitled action. I work at the  
6 law firm of Weston, Garrou, DeWitt & Walters, located at 12121 Wilshire Blvd., Suite 900,  
7 Los Angeles, California 90025.

8 I am readily familiar with this law firm's practice for collection and processing of  
9 correspondence for mailing with the United States Postal Service and, in the ordinary course  
10 of business, any correspondence delivered to our firm's mail room employee(s) is routinely  
11 deposited with the United States Postal Service on the same day.

12 **REPLY OF T.J. WEB PRODUCTIONS, LLC TO OPPOSITION OF PLAINTIFF  
13 TO MOTION TO QUASH**

14 On the date shown below, I served the foregoing document on the interested parties  
15 in this action, by placing a true copy thereof enclosed in a sealed envelope, first class, with  
16 postage thereon fully prepaid, and either: (1) personally delivering it to our firm's mail room  
17 employee(s) for deposit with the United States Postal Service pursuant to our firm's ordinary  
18 business practice; or (2) personally depositing such correspondence directly in the United  
19 States mail, addressed as follows:

20 **F. Bari Nejadpour, Esq.**  
21 **3450 Wilshire Blvd., # 715**  
22 **Los Angeles, CA 90010**

23 I declare under penalty of perjury under the laws of the United States and the State of  
24 California that the foregoing is true and correct.

25 Executed on August 18, 2006.

26  
27   
28 Stacy Berger