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9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 WILLIAM SILVERSTEIN,
12 Plaintiff,
13 v.
14 T.J. WEB PRODUCTIONS, LLC,
15 NINO ENTERPRISES, INC. and Does
16 1-50,
17 Defendants.

Case Number BC 352733

**NOTICE OF MOTION AND
MOTION TO QUASH OF T.J. WEB
PRODUCTIONS, LLC;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION
OF JEFFREY D. MACHER**

Date: September 7, 2006
Time: 8:30 A.M.
Place: Dept. "71"

Hon. Soussan Bruguera

**[Filed with NOTICE OF LODGING
OF NON-CALIFORNIA
AUTHORITY]**

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 7, 2006 at 8:30 a.m. or as soon thereafter
as the matter can be heard, in Department "71" of the above entitled Court, located at 111
North Hill Street, Los Angeles, CA 90012, T.J. WEB PRODUCTIONS, LLC ("T.J. Web"),

1 will and hereby does, specially appear and move this Court for an Order quashing service of
2 the summons in the above-captioned matter.

3 This motion will be based on Code of Civil Procedure Sec. 418.10.

4 Further, this motion will be made on the grounds that this Court lacks personal
5 jurisdiction over T.J. Web since no constitutionally sufficient basis for jurisdiction exists.

6 This motion will based upon this notice, the within memorandum of points and
7 authorities and declaration of Jeffrey D. Macher; and such other argument and evidence that
8 may be presented at the hearing.

9

10 Dated: July 06, 2006

Respectfully Submitted,

11 CLYDE DeWITT
12 JOSEPH P. WOHRLE
13 WESTON, GARROU, DEWITT & WALTERS

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By: 
Joseph P. Wohrle

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Counsel for Specially Appearing T.J. Web
Productions, LLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION AND SUMMARY OF ARGUMENT

T.J. Web makes this motion to quash service of the summons because (1) it is not a California limited liability company, rather, at all relevant times it has been a Nevada limited liability company, and it has never been a California entity; (2) it has never had any physical presence in California; (3) at all relevant times its members (i.e., owners) have been Nevada corporations, the stock of which is held by Nevada residents ; (4) T.J. Web has never owned any property in California, and has never had any employees in California; (5) it directs absolutely nothing to California in terms of solicitations or any other communications; and (6) it did not send any e-mails to plaintiff and in fact, does not send, e-mails to prospective customers.

These and other reasons render the imposition of personal jurisdiction over T.J. Web inconsistent with constitutional norms of due process. Thus, this motion should be granted.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. Facts.

Every person and entity involved with T.J. Web is in Nevada. Specifically, T.J. Web at all relevant times has been a Nevada is a limited liability company. Its members are Vortex Enterprises Inc. and TW Productions Inc., each of which is a Nevada corporation. Declarant Jeffrey Macher is the sole shareholder, sole officer and sole director of Vortex Enterprises Inc. Timothy Knoll is the sole shareholder, sole officer and sole director of TW Productions Inc. Neither Vortex Enterprises Inc. nor TW Productions Inc., engages in any business other than the ownership and management of T.J. Web.

1 T.J. Web (including its owners, officers, managers or employees) has never
2 maintained a residence or office in California, owned property in California, or had any
3 employees in California. Quite simply, T.J. Web has no physical presence whatsoever in
4 California, nor has it ever.

5 Further, T.J. Web directs absolutely nothing to California in terms of solicitations or
6 any other communications; T.J. Web does not focus any of its conduct toward California.

7 What T.J. Webs does do is, from its offices in Nevada, operate adult-entertainment
8 Web sites. Those sites allow members of the public to view adult content over the Internet
9 on their computer's Web browsers.¹

10 T.J. Web's web sites are available to nearly anyone in the world with a computer and
11 an internet connection. When an Internet "surfer" finds one of the sites, the surfer is able
12 to view content (adult motion pictures for the most part) by signing up as a "member."
13 Becoming a member requires payment, normally by credit card, of a membership fee,
14 typically monthly. Once the customer becomes a member, the customer is issued a member
15 username and password. When the member wishes to view non-public content on the Web
16 site, the member goes to the Web site's URL,² types in the username and password that has
17 been issued, and then selects from a menu the content the member wishes to view.

18 However, T.J. Web does not, either on its own or by someone else, send any e-mails
19 to prospective members or other potential customers.

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21 **B. Procedural Background.**

22 Plaintiff's lawsuit was filed on May 22, 2006. The complaint alleges, inter alia, that
23 plaintiff has received "at least 120 illegal spams advertising" T.J. Web although it does not
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25 ¹ Microsoft's Internet Explorer, Netscape Navigator and Mozilla Firefox are
three examples of Web browsers.

26 ² This stands for Uniform Resource Locator, popular examples being *yahoo.com*
27 or *aol.com*.

1 appealed that T.J. Web sent any of them. The complaint seeks \$120,000 in statutory
2 damages, unspecified general damages, and punitive damages of “not less than \$1,200,000.”
3 The demand for punitive damages violates Civil Code Sec. 3295(e). Also erroneous is
4 plaintiff’s allegation that T.J. Web is an “advertiser” Business and Professions Code Sec.
5 17529.1(a), as will be shown below.

6
7 **III.**

8 **NO CONSTITUTIONALLY SUFFICIENT BASIS**
9 **FOR PERSONAL JURISDICTION EXISTS HERE**

10 **A. Personal Jurisdiction Generally.**

11 As a leading treatise states:

12 “The following are the recognized bases upon which a court
13 may exercise personal jurisdiction over a defendant consistent
with federal due process standards:

- 14 •• Physical presence in the forum state when served . . .
- 15 •• Domicile in the forum state . . .
- 16 •• General appearance in the action . . .
- 17 •• Contractual consent (forum-selection clauses) . . . and
- 18 •• ‘Minimum contacts’ between defendant and the forum state under so-called
19 ‘long-arm’ statutes . . .”

20 Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter
21 Group, 2003; hereafter, “Weil & Brown”) Sec. 3:131.

22 Here, T.J. Web is a Nevada limited liability company.

23 T.J. Web (including its owners, officers, managers or employees) has never
24 maintained a residence or office in California, owned property in California, or had any
25 employees in California. Quite simply, T.J. Web has no physical presence whatsoever in
26 California. Thus, the first basis set forth above is inapplicable. Similarly, T.J. Web is not
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1 domiciled in California. Further, T.J. Web has not generally appeared in this action. No
2 contract is involved here, thus, California has not been selected by T.J. as a forum.

3 Hence, the only possible basis for personal jurisdiction is minimum contacts between
4 T.J. Web and California under California's "long-arm" statute.³ However, as will be shown,
5 T.J. Web's complete lack of contact with California will not support this Court's exercise of
6 jurisdiction over T.J. Web.

7
8 **B. The "Minimum Contacts" Doctrine.**

9 Weil & Brown succinctly summarize the factors that generally guide courts that
10 evaluate the exercise of personal jurisdiction over a non-California defendant:

11 "The 'minimum contacts' doctrine provides no mechanical
12 yardstick. Rather, personal jurisdiction depends on the facts of
13 each case ... [ellipsis in text] the test being whether, under those
14 facts, California has a sufficient relationship with the defendant
15 and the litigation to make it reasonable ('fair play') to require
16 him or her to defend the action in California courts. The
17 following factors are usually considered:

- 18 •• The extent to which the lawsuit relates to defendant's
19 activities or contacts with California;
- 20 •• The availability of evidence, and the location of witnesses;
- 21 •• The availability of an alternative forum in which the claim
22 could be litigated (defendant's amenability to suit elsewhere);
- 23 •• The relative costs and burdens to the litigants of bringing or
24 defending the action in California rather than elsewhere; and
- 25 •• Any state policy in providing a forum for this particular
26 litigation (e.g., protection of California resident, or assuring
27 applicability of California law)."

28 ³Code of Civil Procedure Sec. 410.10 states: "A court of this state may exercise
jurisdiction on any basis not inconsistent with the Constitution of this state or of the United
States."

1 Weil & Brown Sec. 3:205 [citing World-Wide Volkswagen Corp. v. Woodson (1980)
2 444 U.S. 286, 292, 100 S.Ct. 559, 62 L.Ed.2d 490; Fisher Governor Co. v. Sup.Ct. (1959)
3 53 Cal.2d 222, 225-26].

4 In the case of corporate defendants, whether or not it has ‘qualified’ to do business
5 in California, a corporation incorporated outside California is subject to personal jurisdiction
6 here if minimum contacts exist between it and California. See, e.g., International Shoe Co.
7 v. Washington (1945) 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95.

8 9 **C. General v. Specific Jurisdiction.**

10 If the defendant’s contacts are “substantial, continuous and systematic,” it will be
11 subject to “general jurisdiction” and thereby subject to suit on any matter, including those not
12 arising out of the in-forum activity. Perkins v. Benguet Consolidated Mining Co. (1952) 342
13 U.S. 437, 446-47, 72 S.Ct. 413, 418-19; Vons Cos., Inc. v. Seabest Foods, Inc. (1996) 14
14 Cal.4th 434, 446.

15 Even if a nonresident defendant's contacts with California are less than “substantial,
16 continuous and systematic,” it may still be subject to jurisdiction on claims so long as they
17 are related to its activities here. Specific personal jurisdiction requires a showing that: (1)
18 the out-of-state defendant purposefully established contacts with the forum state (“purposeful
19 availment”); (2) plaintiff's cause of action “arises out of” or is “related to” defendant's
20 contacts with the forum state; and (3) the forum's exercise of personal jurisdiction in the
21 particular case comports with “fair play and substantial justice.” Burger King Corp. v.
22 Rudzewicz (1985) 471 U.S. 462, 477-478, 105 S.Ct. 2174, 2184-2185; see also, Vons Cos.,
23 supra, 14 Cal.4th at 446.

1 **D. Personal Jurisdiction Based on Internet Activities.**

2 Whether personal jurisdiction over a non-resident can be based solely on Internet
3 activities depends on the nature and quality of the acts involved. See, Snowney v. Harrah's
4 Entertainment, Inc. (2005) 35 Cal.4th 1054, 1063 [adopting “sliding scale” analysis described
5 in Zippo Mfg. Co. v. Zippo Dot Com, Inc. (W.D. Pa. 1997) 952 F.Supp. 1119, 1124].

6 Pursuant to that ‘sliding scale’ analysis, at one end of the spectrum is a non-resident
7 defendant who enters into contracts with local residents through knowing and repeated
8 transmissions over the Internet and who is thus is subject to personal jurisdiction. At the
9 other end of the spectrum is mere posting of information on a “passive” internet site. Though
10 accessible to forum residents, such mere passive posting is not an act “directed at the forum
11 state,” and thus not enough for the exercise of personal jurisdiction. In the middle of the
12 spectrum is an interactive web site; the exercise of jurisdiction based on such internet activity
13 depends on the level of interactivity and commercial nature of the exchange of information
14 that occurs on the Web site. See, Snowney, supra, 35 Cal.4th at 1063. Importantly,
15 California law does not support the conclusion that web site interactivity alone establishes
16 “purposeful availment” such that would support the exercise of personal jurisdiction.
17 Snowney, supra, 35 Cal.4th at 1064.

18 * * *

19 Analysis of the facts of this case in light of the above-noted considerations will
20 compel the conclusion that T.J. Web’s lacks sufficient contacts with California to permit the
21 exercise of personal jurisdiction over it.

22 First, T.J. Web did not send the e-mails plaintiff complains of, either directly or
23 through anyone else. T.J. Web did not direct anyone to send those e-mails.

24 Second, all of T.J. Web’s witnesses and documentary evidence are in Nevada. There
25 is nothing for T.J. Web to utilize in California.

26 Third, an alternative forum for this litigation exists: Nevada.

1 Fourth, T.J. Web is not aware of any policy – specific or otherwise – that would
2 support this litigation going forward in California. Indeed, the opposite appears to be the
3 case.

4 Business and Professions Code Sec. 17529.5(b)(1)(A)(iii) provides that, “[a] recipient
5 of an unsolicited commercial e-mail advertisement, as defined in Section 17529.1” can
6 “bring an action against a person or entity that violates any provision of this section.”

7 Business and Professions Code Sec. 17529.1(o) defines “unsolicited commercial e-mail
8 advertisement” as,

9 “a commercial e-mail advertisement sent to a recipient who
10 meets both of the following criteria: (1) The recipient has not
11 provided direct consent to receive advertisements from the
12 advertiser. (2) The recipient does not have a preexisting or
13 current business relationship, as defined in subdivision (1), with
14 the advertiser promoting the lease, sale, rental, gift offer, or
15 other disposition of any property, goods, services, or extension
16 of credit.”

17 California Business and Professions Code Sec. 17529.1(o) (emphasis added).

18 Further and most important, Business and Professions Code Sec. 17529.1(a) defines
19 “advertiser” as, “a person or entity that advertises through the use of commercial e-mail
20 advertisements.”

21 Here, T.J. Web did not send any of the e-mails plaintiff complains of to the plaintiff,
22 or to anyone else, either directly or through someone else. Thus, there is no California
23 plaintiff to protect, no policy that militates in favor of allowing this case to go forward in
24 California. The statute sued upon provides a right of action against an “advertiser,” and T.J.
25 Webs does not fit the statutory definition of that term.

26 Fifth, T.J. Web has no contacts with California, including any that were purposefully
27 directed at the state. A glance at its website shows that it looks to the entire world for
28 potential members of its affiliate program.

1 Sixth, for specific jurisdiction to be found, the Court would have to conclude that
2 some contact that T.J. Web had with plaintiff was related to plaintiff's cause of action. Yet
3 here, there is no contact whatsoever between T.J. Web and California.

4 Seventh, based on the foregoing factors, it would be patently unfair to compel T.J.
5 Web to defend itself here.

6 Eighth, the nature of T.J. Web's website, www.adultpaymaster.com, indicates that
7 while it is more than a mere posting, it cannot, standing alone, provide a basis for the
8 imposition of jurisdiction here. The interactive part of the website asks users to designate
9 their address for communication purposes. However, the website is designed to take
10 information from viewers all over the world. There is nothing that is "California-specific"
11 about the website.

12 This analysis alone compels the result that this motion should be granted. However,
13 T.J. Web's lack of any actionable conduct is a matter that independently provides a basis for
14 the relief sought here.

15
16 **E. The Absence of Causation of the Acts Complained of Defeats Jurisdiction.**

17 Usually, courts will not evaluate liability issues on a motion to quash. However,
18 sometimes courts will, and this should be one of those times. Indeed, in J. M. Sahlein Music
19 Co. v. Nippon Gakki Co., Ltd. (1987) 197 Cal.App.3d 539, 545, the court said:

20 "While it is true that the issue on a motion to quash is not
21 whether the ultimate issues of liability will be resolved in the
22 plaintiff's favor [citation omitted], nevertheless, when the
23 plaintiff seeks to predicate jurisdiction on causing tortious
24 effects in the forum state and when the record tends
25 unequivocally to establish that the defendant's conduct did not
26 cause such effects, the plaintiff 'cannot demand that we judge
27 the question of jurisdiction in the light of a claim he apparently
28 does not have.'"

197 Cal.App.3d at 545 [quoting Regents of University of New Mexico v. Superior
Court (1975) 52 Cal.App.3d 964, 970 n. 7].

1 Here, the reality that T.J. Web did not send any of the e-mails plaintiff complains of
2 to the plaintiff, or to anyone else, or direct anyone else to do so, compels the conclusion that
3 this Court's exercise of jurisdiction over T.J. Web would be manifestly unfair.

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5 IV.

6 CONCLUSION

7 For all the foregoing reasons, T.J. Web respectfully requests that the Court grant this
8 motion and enter its order quashing service of the summons upon T.J. Web.

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10 Dated: July 06, 2006

Respectfully Submitted,

11 CLYDE DeWITT
12 JOSEPH P. WOHRLE
13 WESTON, GARROU, DEWITT & WALTERS

14 By: 

15 Joseph P. Wohrle

16 Counsel for Specially Appearing T.J. Web
17 Productions, LLC
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DECLARATION OF JEFFREY D. MACHER

I, Jeffrey D. Macher, declare as follows:

1. I am Chief Technical Officer of T.J. Web Productions, LLC, in connection with which I have, unless otherwise indicated, personal knowledge of the following:

2. I have worked closely with Timothy Knoll for many years and therefore am personally aware of his life circumstances.

3. All of the following has been true since October of 2004:

a. T.J. Web Productions, LLC ("T.J. Web") is a limited liability company, organized and existing under the laws of the State of Nevada. Its members are Vortex Enterprises Inc. and TW Productions Inc., each of which is a corporation, organized and existing under the laws of the State of Nevada. I am sole shareholder, sole officer and sole director of Vortex Enterprises Inc.; Timothy Knoll is sole shareholder, sole officer and sole director of TW Productions Inc.; neither Vortex Enterprises Inc. nor TW Productions Inc., engages in any business other than the ownership and management of T.J. Web.

b. Timothy Knoll and I are residents of Clark County, Nevada; neither of us maintains a residence or office in California; neither of us owns property in California.

c. T.J. Web, Vortex Enterprises Inc. and TW Productions Inc. each maintains offices *only* in Clark County Nevada; none of those companies has any employees other than in Clark County, Nevada.

d. T.J. Web's sole business is the operation of an Internet business from its offices in Clark County, Nevada, in the City of Las Vegas.⁴

4. In October of 2004, TJ Web acquired the assets of TJ Web Productions, L.C., a limited liability company, organized and existing under the laws of the state of Florida, which was formed in May of 2001, which was when the T.J. Web business began. The reason for that

⁴ Mr. Knoll and I both work some of the time from our residences, each of which is in Clark County, Nevada. Our employees all work at the T.J. Web office in the City of Las Vegas.

1 is Mr. Knoll and I previously lived in Florida.⁵ However, since July of 2004, the Florida
2 limited liability company, TJ Web Productions, L.C., operated entirely in Clark County
3 Nevada. Neither it, nor any of its owners (direct or indirect), officers, managers or
4 employees, maintained a residence or office in California, owned property in California, had
5 any employees in California, except from January, 2002 to January, 2003, which Mr. Knoll
6 and I briefly lived in Los Angeles. It maintained a nominal address in Florida after we
7 moved to Las Vegas, only to maintain the official headquarters of the corporation.

8 5. T.J. Web (including its owners, officers, managers or employees) has never maintained
9 a residence or office in California (except when Mr. Knoll and I lived there from January of
10 2002 to January of 2003), owned property in California, or had any employees in California.
11 Quite simply, T.J. Web has no physical presence whatsoever in California.

12 6. Further, T.J. Web directs absolutely nothing specifically to California in terms of
13 solicitations or any other communications; T.J. Web does not focus any of its conduct toward
14 California.

15 7. What T.J. Webs does do is, from its offices in Nevada, operate adult-entertainment
16 Web sites. Those sites allow members of the public to view adult content over the Internet
17 on their computer's Web browsers.

18 8. T.J. Web's web sites are available to nearly anyone in the world with a computer and
19 an internet connection. When an Internet "surfer" finds one of the sites, the surfer is able
20 to view content (adult motion pictures for the most part) by signing up as a "member."
21 Becoming a member requires payment, normally by credit card, of a membership fee,
22 typically monthly. Once the customer becomes a member, the customer is issued a member
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24 ⁵ I lived in Clearwater, Florida in 2001, moved to Sherman Oaks, California in
25 January of 2002, but moved entirely from there to Aventura, Florida in January of 2003. Mr.
26 Knoll likewise lived in Clearwater, Florida in 2001, moved to Sherman Oaks, California in
27 January of 2002, but moved entirely from there to Aventura, Florida in January of 2003. Mr.
28 Knoll moved to Las Vegas, Nevada from Florida in February of 2004; I did so in July of
2004. Neither of us has had a residence or any property in California since we moved to
Aventura from Sherman Oaks in January of 2003.

1 username and password. When the member wishes to view non-public content on the Web
 2 site, the member goes to the Web site's URL, types in the username and password that has
 3 been issued, and then selects from a menu the content the member wishes to view. However,
 4 T.J. Web does not, either on its own or under its direction, send any unsolicited e-mails to
 5 prospective members or other potential customers. Under the circumstances described in the
 6 complaint, it could not have sent any emails to the plaintiff, Mr. Silverstein.

7 9. T.J. Web did not send the e-mails plaintiff complains of, nor did it direct anyone else
 8 to do so. T.J. Web did not direct anyone to send those e-mails.

9 10. Further, all of T.J. Web's witnesses and documentary evidence are in Nevada. There
 10 is nothing for T.J. Web to utilize in California.

11 11. T.J. Web has no contacts with California, including any that were purposefully
 12 directed at the state. A glance at its website shows that it looks to the entire world for
 13 potential members of its affiliate program.

14 12. The nature of T.J. Web's website, www.adultpaymaster.com, indicates that while it
 15 is more than a mere posting, it cannot, standing alone, provide a basis for the imposition of
 16 jurisdiction here. The interactive part of the website asks users to designate their address for
 17 communication purposes. However, the website is designed to take information from
 18 viewers all over the world. There is nothing that is "California-specific" about the website.

19 I declare under penalty of perjury under the laws of the State of California that the
 20 foregoing is true and correct and that this declaration is dated July 6, 2006.

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 22 
 23 JEFFREY D. MACHER

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PROOF OF SERVICE BY MAIL

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

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

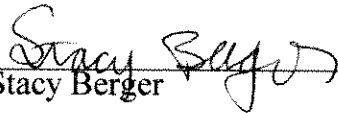
I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service and, in the ordinary course of business, any correspondence delivered to our firm's mail room employee(s) is routinely deposited with the United States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

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

F. Bari Nejadpour, Esq.
3450 Wilshire Blvd., # 715
Los Angeles, CA 90010

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

Executed on July 6, 2006.



Stacy Berger