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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17  
18 TASH HEPTING, GREGORY HICKS,  
CAROLYN JEWEL and ERIK KNUTZEN  
19 on Behalf of Themselves and All Others  
Similarly Situated,

20 Plaintiffs,

21 vs.

22 AT&T CORP., AT&T INC. and DOES 1-20,  
23 inclusive,

24 Defendants.

No. C-06-0672-VRW

**REPLY IN SUPPORT OF MOTION  
OF DEFENDANT AT&T INC. TO  
DISMISS PLAINTIFFS' AMENDED  
COMPLAINT**

[Fed. R. Civ. P. 12(b)(2), 12(b)(6)]

Date: June 23, 2006  
Time: 9:30 a.m.  
Courtroom: 6, 17th Floor  
Judge: Hon. Vaughn R. Walker

Filed concurrently:  
1. Reply Decl. of Starlene Meyerkord  
2. Reply Decl. of Joseph Tocco  
3. Request for Judicial Notice

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1 **I. INTRODUCTION.**

2 Plaintiffs' opposition (Dkt. 174, "Opposition" or "Opp.") makes the mistake of  
3 assuming that use of a brand name such as "AT&T" (or McDonald's, Coca Cola or  
4 Verizon) by a family of companies means that the parent company is subject to jurisdiction  
5 wherever a subsidiary does business using that brand name. That is wrong.

6 Plaintiffs have assembled various exhibits bearing the AT&T brand name and  
7 having something to do with California (press releases, lobbying certifications and job  
8 postings for AT&T Inc. subsidiaries in California). But these exhibits do not change the  
9 fact that AT&T Inc. is a pure holding company that does not do business in California.  
10 Most make clear on their face that AT&T products and services are sold by subsidiaries—  
11 not by AT&T Inc. itself. That many of those subsidiaries bear the family name "AT&T"  
12 does not confer jurisdiction over AT&T Inc.

13 Plaintiffs argue that the AT&T family website confers jurisdiction over AT&T Inc.  
14 But the website is not operated by AT&T Inc. and offers no goods or services from AT&T  
15 Inc. AT&T Inc. sells no goods or services; it is only a holding company.

16 Plaintiffs argue that AT&T Inc. lobbies in California. It does not. The forms  
17 Plaintiffs cite merely list AT&T Inc. as the corporate parent, as required by law. Besides,  
18 arguments basing jurisdiction on lobbying violate the First Amendment.

19 Plaintiffs argue that the "representative services doctrine" gives jurisdiction, but  
20 they admit that "the representative services doctrine has been held not to apply to a pure  
21 holding company." Because AT&T Inc. is a pure holding company, this argument fails too.

22 Plaintiffs argue that a few isolated allegations in their complaint and the declaration  
23 of Mark Klein are "unrebutted" and establish jurisdiction over AT&T Inc. That is false.  
24 These allegations are wrong and have been rebutted.

25 Plaintiffs concede that they have the burden on this motion. Opp. 3:2. Loose  
26 inferences from brand names, websites, and protected lobbying activity cannot change the  
27 fact that AT&T Inc. is a pure holding company lacking minimum contacts with California.  
28 The Court lacks personal jurisdiction over AT&T Inc. and should dismiss it from this case.

1 **II. ARGUMENT.**

2 Plaintiffs’ three declarations—the O’Brien Decl. (Dkt. 178), the Tyre Decl. (Dkt.  
3 179) and the Rubinger Decl. (Dkt. 180)—cannot and do not rebut the basic facts set forth in  
4 the Meyerkord Decl. (Dkt. 80). Plaintiffs concede that they “do not dispute much of what  
5 Ms. Meyerkord says.” Opp. 2:5-6. These facts are undisputed: AT&T Inc. is incorporated  
6 in Delaware and has its principal place of business in Texas. Meyerkord Decl. ¶¶ 2-3; FAC  
7 (Dkt. 8) ¶ 18. AT&T Inc. has no employees or distributors resident in California. It does  
8 not have an office or mailing address in California, and it does not own or lease any real  
9 property in California. Meyerkord Decl. ¶ 11. AT&T Inc. has never been registered or  
10 otherwise qualified to do business in the State of California, and did not appoint an agent  
11 for service of process in California for such purpose. *Id.* ¶ 12. AT&T Inc. does not pay  
12 income, property, or use taxes to the State of California. *Id.* ¶ 13.

13 In an attempt to conflate AT&T Inc. and the AT&T family brand, Plaintiffs  
14 misleadingly refer to AT&T Inc. as “AT&T” throughout their papers, thus confusing  
15 references to the AT&T family brand with references to AT&T Inc. But the documents on  
16 which Plaintiffs rely show that the distinctions between AT&T Inc. and its subsidiaries that  
17 provide goods and services are strictly maintained and readily apparent.

18 **A. Plaintiffs cannot establish general jurisdiction over AT&T Inc.**

19 Plaintiffs rely on activities of AT&T subsidiaries and the use of the AT&T family  
20 brand. That reliance is contrary to federal law. The activities of the subsidiaries cannot  
21 establish general jurisdiction over the parent, a separate and distinct entity.

22 **1. AT&T Inc. is a holding company.**

23 Plaintiffs’ one-paragraph argument that “AT&T [Inc.] Is Not a Pure Holding  
24 Company” is unsupported by any evidence, including the web pages Plaintiffs assembled.  
25 Opp. 11:1-15, Tyre Decl. Exs. U-X. The generic references to the AT&T family brand in  
26 the four web pages that Plaintiffs collected do not establish that AT&T Inc. is anything  
27 more than a holding company.

28 AT&T Inc. is a Delaware holding company that has no operations and does not do

1 business in California. Meyerkord Decl. ¶¶ 2, 4, 11-14. It conducts no business itself and  
 2 has no assets other than stock in its subsidiaries. *Id.* The telecommunications operations  
 3 associated with the name AT&T are not conducted by AT&T Inc., but by its subsidiaries.  
 4 *Id.* ¶¶ 5, 8.<sup>1</sup> “The existence of a relationship between a parent company and its subsidiaries  
 5 is not sufficient to establish personal jurisdiction over the parent on the basis of the  
 6 subsidiaries’ minimum contacts with the forum.” *Doe v. Unocal Corp.*, 248 F.3d 915, 925  
 7 (9th Cir. 2001). Courts routinely hold that non-resident holding companies are not subject  
 8 to jurisdiction in states where they do not conduct business.<sup>2</sup> *Von Grabe*, 312 F. Supp. 2d  
 9 at 1313; *Newman*, 125 F. Supp. 2d at 725; *Phonetel Communications*, 2001 U.S. Dist.  
 10 LEXIS 7233, at \*17.

11 **a. The press releases do not establish jurisdiction.**

12 Plaintiffs offer press releases that reference AT&T Inc. and note services offered by  
 13 AT&T Inc. affiliates under the family name “AT&T.” *See* Tyre Decl. Exs. F-T. Plaintiffs  
 14 state that they “do not dispute that ‘AT&T’ is a brand name, but each press release names  
 15 specifically ‘AT&T Inc.’” Opp. 9:28-10:1. A plain reading of each release makes it  
 16 obvious that the activities are those of subsidiaries operating under the AT&T brand, and  
 17 not that of AT&T Inc.

18 Plaintiffs argue that the press releases they have collected demonstrate that “AT&T  
 19 is in the business of telecommunications . . . and . . . does substantial, systematic and  
 20 continuous telecommunications business in California.” Opp. 9:25-27. But the press  
 21 releases do not reference any business conducted in California by AT&T Inc. All say that  
 22 “AT&T Inc. is one of the world’s largest telecommunications *holding companies*.” Tyre  
 23 Decl. Exs. F-T (emphasis added). All but three say “Subsidiaries and affiliates of AT&T

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24 <sup>1</sup> Such a structure is common in the telecommunications industry. *See e.g., Von Grabe v.*  
 25 *Sprint PCS*, 312 F. Supp. 2d 1285 (S.D. Cal. 2003); *Newman v. Motorola, Inc.*, 125 F.  
 26 *Supp. 2d* 717 (D. Md. 2000); *Phonetel Communications, Inc. v. U.S. Robotics Corp.*, No.  
 4:00-CV-1750-R, 2001 U.S. Dist. LEXIS 7233 (N.D. Tex. June 1, 2001).

27 <sup>2</sup> Defendant AT&T Corp., which does do business in California, is not challenging this  
 28 Court’s personal jurisdiction over it. Granting this motion will not leave Plaintiffs  
 without someone to sue.



1 Inc. provide products and services under the AT&T brand.” *Id.* Exs. G, H, I, J, L, M, N, O,  
 2 P, Q, S and T. The other three don’t help Plaintiffs either. All say AT&T Inc. is a holding  
 3 company. Exhibit K says “AT&T products and services are provided in specific  
 4 geographic areas by subsidiaries and affiliates of AT&T Inc.” Exhibit F announces the  
 5 appointment of a president of a subsidiary. Exhibit R says it was issued by a subsidiary.  
 6 All 15 releases are copyrighted by AT&T Knowledge Ventures, an indirect subsidiary of  
 7 AT&T Inc.<sup>3</sup>

8 The releases make clear that AT&T Inc. is a holding company and its subsidiaries  
 9 do business under the AT&T brand in various areas, including California. The press  
 10 releases do not evidence any business conducted in California by AT&T Inc. The fact that  
 11 AT&T Inc. conducts no business in California (Meyerkord Decl. ¶ 11) is unrebutted except  
 12 for illogical inferences that Plaintiffs have drawn from unambiguous press releases.

13 **b. The website is not operated by AT&T Inc. and does not establish jurisdiction.**

14 Plaintiffs argue that “a California consumer can enter into a binding contract for  
 15 services in California offered by AT&T Inc. or its subsidiaries.” Opp. at 2:16-18. This is  
 16 wrong as to AT&T Inc. O’Brien ordered telephone service from *AT&T California*, not  
 17 AT&T Inc. O’Brien Decl. Exs. C, D. Rubinger’s exhibit is mostly illegible but suggests  
 18 that he ordered DSL service from an AT&T affiliate, as indeed must be true since AT&T  
 19 Inc. offers no services—DSL or otherwise—in California. *See* Rubinger Decl. Ex. A.

20 Plaintiffs concede that the website is not sufficient to establish general jurisdiction.  
 21 Opp. 16:3-4. They offer no facts to refute Meyerkord’s statement that the AT&T brand  
 22 website is maintained by a subsidiary of AT&T Inc., not AT&T Inc. Meyerkord Decl.

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25 <sup>3</sup> Plaintiffs quibble that Ms. Meyerkord’s declaration “does not speak to whether . . . a  
 26 consumer, visiting the web site, would reasonably believe it to be an AT&T Inc. web  
 27 site.” Opp. 8:7-9. The declaration does not speak to this because subjective impressions  
 28 have no legal relevance. *Von Grabe*, 312 F. Supp. 2d at 1301 (“As in similar cases  
 involving use of a common trade name, Plaintiff’s subjective interpretation and/or  
 assumption or conclusion, without more, is not sufficient to establish personal jurisdiction  
 over Sprint Corporation.”).

1 ¶ 17.<sup>4</sup> The webpages are copyrighted not by AT&T Inc. but by AT&T Knowledge  
2 Ventures (Tyre Decl. Exs. F-X) or SBC Knowledge Ventures, L.P. (*id.* Exs. Y, Z).

3 **c. The case law about SBC and other holding companies does not help Plaintiffs.**

4 Plaintiffs cite only a few anomalous cases about SBC Communications Inc.  
5 (“SBC”) and fail to distinguish persuasively the cases recognizing that AT&T Inc. (or SBC)  
6 is a pure holding company and declining to exercise jurisdiction over it.

7 The anomalous cases rely principally on website exegesis. For example, *Covad*  
8 *Communications Co. v. Pacific Bell*, No. C 98-1887 SI, 1999 WL 33757058, 1999 U.S.  
9 Dist. LEXIS 22789 (N.D. Cal. Dec. 14, 1999), expresses uncertainty, stating only “that  
10 SBC *may* conduct a variety of activities” (emphasis added), and that SBC is *either* “present  
11 in California” *or* is “more than a simple holding company.” *Id.* at \*20-\*21. *Gammino v.*  
12 *SBC Communications, Inc.*, 2005 WL 724130, 2005 U.S. Dist. LEXIS 5077 (E.D. Pa. Mar.  
13 29, 2005), holds without any evident basis that statements on the SBC brand website should  
14 be attributed to the holding company. *Directory Dividends, Inc. v. SBC Communications,*  
15 *Inc.*, No. 01-CV-1974, 2003 WL 21961448, 2003 U.S. Dist. LEXIS 12214 (E.D. Pa. July 2,  
16 2003), found jurisdiction over SBC on the theory that the SBC brand name was “evidence  
17 that the subsidiaries are the alter ego of SBC.” *Id.* at \*5. But *GoInternet.net, Inc. v. SBC*  
18 *Communications, Inc.*, No. 3348, 2003 WL 22977523 (Pa. Com. Pl. Dec. 17, 2003),  
19 rejected the *Directory Dividends* theory: “That the companies may have a close relationship  
20 or may coordinate and cooperate is not sufficient to impute forum contacts.” *Id.* at \*7-\*8  
21 (quoting *Rose v. Continental Aktiengesellschaft*, No. Civ. A. 99-3794, 2001 WL 236738  
22 (E.D. Pa. Mar. 2, 2001)).<sup>5</sup>

23 \_\_\_\_\_

24 <sup>4</sup> The website’s job listings (Tyre Decl. Exs. W, X, Y, Z) also prove nothing. AT&T has no  
25 operations or employees in California. Meyerkord Decl. ¶ 12. The job openings that  
26 Plaintiffs rely upon are for positions with subsidiaries, not AT&T Inc. A subsidiary’s job  
27 offerings cannot confer jurisdiction over the parent. *See Doe*, 248 F.3d at 925.

28 <sup>5</sup> Plaintiffs distinguish *Gointernet.Net* on the grounds that “[n]either SBC nor the relevant  
subsidaries were located in Pennsylvania” and “the sole nexus of Pennsylvania to the  
action was that plaintiffs were located in Pennsylvania.” Opp. 13. But AT&T Inc. is not  
located in California. Meyerkord Decl. ¶¶ 2, 3, 12. Nor is AT&T Corp. *See* FAC ¶ 17.  
(continued...)

1 Plaintiffs fail to distinguish the better-reasoned cases that have rejected jurisdiction  
 2 over SBC and other telephone holding companies despite family brands, websites, or  
 3 marketing activities undertaken by subsidiaries. Plaintiffs make no attempt to explain how  
 4 *Newman* is different from this case; they just assert it, as if saying it makes it so. *See* Opp.  
 5 14:21-26. In *Newman*, the court found no personal jurisdiction over SBC Communications  
 6 Inc. on facts very much like those here—no employees or offices, no property, no directly  
 7 conducted business, no selling of goods or services, not registered or licensed, no evidence  
 8 that the holding company acted directly in this forum. *Newman*, 125 F. Supp. 2d at 722.

9 Other federal courts reject jurisdiction over telephone holding companies as well.  
 10 *See, e.g., Von Grabe*, 312 F. Supp. 2d at 1313 (holding that use of a common trade name  
 11 did not provide jurisdiction over Sprint Corp.); *Phonetel*, 2001 U.S. Dist. LEXIS 7233, at  
 12 \*17 (holding that a “Verizon” website offering goods and services to customers in Texas  
 13 did not suffice absent evidence that the holding company ran the site). Plaintiffs dismiss  
 14 these cases as “distinguishable,” but do not provide any significant facts or arguments to  
 15 support that assertion. Opp. 14.

16 **d. The representative services doctrine does not help Plaintiffs.**

17 Plaintiffs invoke the “representative services doctrine,” arguing that a “non-resident  
 18 defendant is subject to general jurisdiction if a ‘local subsidiary performs a function that is  
 19 compatible with, and assists the parent in the pursuit of, the parent’s own business.’” Opp.  
 20 15:8-10 (quoting *DVI, Inc. v. Superior Court*, 104 Cal. App. 4th 1080, 1093 (2002)) .  
 21 (Plaintiffs’ emphasis omitted). Plaintiffs admit, however, that “the representative services  
 22 doctrine has been held not to apply to a pure holding company.” Opp. 15 n.13. The very  
 23 case they cite, *DVI*, states that, “the representative services theory is inapplicable to a

24 \_\_\_\_\_  
 (...continued)

25 The *GoInternet.net* court rejected jurisdiction even though an SBC subsidiary “engages in  
 26 continuous and systematic business in Pennsylvania,” “Pennsylvania residents can  
 27 purchase a limited number of goods and services from a few of SBC’s subsidiaries  
 through their connected websites” and “SBC has undertaken an advertising campaign to  
 28 sell internet service nationwide, including in Pennsylvania.” *Id.* at \*2-3. The facts here  
 are even weaker than those rejected as insufficient by *GoInternet.net*.

1 holding company because “[t]o find the holding company subject to jurisdiction simply  
 2 because the holding company chose to invest rather than operate would swallow the  
 3 distinction, made in the case law . . . between holding companies and operating companies  
 4 . . . .” 104 Cal. App. 4th at 1093 (quoting *Sonora Diamond Corp. v. Superior Court*, 83  
 5 Cal. App. 4th 523 (2000)). The other case they cite, *F. Hoffman-La Roche v. Superior*  
 6 *Court*, 130 Cal. App. 4th 782 (2005), similarly observed that, “jurisdiction will not lie  
 7 where the parent is a true holding company the business of which is not operations but  
 8 passive investment.” *Id.* at 798. Here, AT&T Inc. is a true holding company. Meyerkord  
 9 Decl. ¶¶ 4, 5, 15, 16.

10 **2. AT&T Inc. does not lobby in California and, in any event, lobbying cannot**  
 11 **create jurisdiction.**

12 Plaintiffs cite a single inadmissible webpage from the California Secretary of State  
 13 website (Tyre Decl. Ex. A is inadmissible hearsay, *see* Fed. R. Evid. 801, 802) and four  
 14 lobbying forms—three listing “AT&T Inc. and its affiliates” as the filers of the forms, and  
 15 one stating that “Pacific Telesis Group and its Subsidiaries, Affiliates of AT&T Inc.” filed  
 16 the document. *See* Opp. 5:15-8:2; Tyre Decl. Exs. A-E. These documents do not provide a  
 17 basis for personal jurisdiction over AT&T Inc.

18 AT&T Inc. does not do any lobbying in California. Tocco Decl. ¶ 6. AT&T Inc. is  
 19 listed on the forms because California law requires that the ultimate owner of the lobbying  
 20 entities be disclosed. *Id.* ¶ 5. Thus, to obey the law, the holding company is listed. *Id.*  
 21 This does not mean that AT&T Inc. itself lobbies in California.

22 Even if, contrary to fact, AT&T Inc. did lobby in California, such activities could  
 23 not be the basis for personal jurisdiction. *Graziose v. American Home Products Corp.*,  
 24 161 F. Supp. 2d 1149 (D. Nev. 2001). There the plaintiff alleged that a trade association’s  
 25 lobbying activities and testimony before state legislators and government officials subjected  
 26 the association to personal jurisdiction. *Id.* at 1152-53. The court rejected this claim,  
 27 reasoning that to ground personal jurisdiction on a party’s lobbying activities or other  
 28 government contacts would chill the First Amendment right to petition the government:

1 It would chill constitutionally protected rights of free speech and  
 2 governmental contacts to expose every person, who addressed a state  
 3 legislature or public official, to jurisdiction over claims that did not arise out  
 4 of such conduct. This Court joins with the Second Circuit in holding that  
 5 personal jurisdiction may not be founded upon any kind of lobbying or  
 6 “government contacts” such as “getting information from or giving  
 7 information to the government, or getting the government's permission to do  
 8 something.” The “government contacts” doctrine arises out of a  
 9 constitutional right protected by the First Amendment to “petition the  
 10 Government for redress of grievances.” To do otherwise would jeopardize  
 11 public participation in government. This right has been protected by  
 12 numerous courts.

13 *Id.* at 1153 (citations omitted) (quoting *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 51  
 14 (2d Cir. 1991)).

15 Other federal courts have likewise held that personal jurisdiction cannot be based  
 16 upon lobbying efforts or contacts with a government entity. *See, e.g., Lamb v. Turbine*  
 17 *Designs, Inc.*, 240 F.3d 1316 (11th Cir. 2001); *Mgmt. Insights, Inc. v. CIC Enterprises, Inc.*,  
 18 194 F. Supp. 2d 520, 529 (D. Tex. 2001); *Sullivan v. Tagliabue*, 785 F. Supp. 1076 (D.R.I.  
 19 1992). The cases applying this “government contacts” doctrine generally hold that:

20 A basic premise of this exception is that the right to petition government,  
 21 local or national, is a right which cannot be abridged by local governments.  
 22 Using government contacts to establish personal jurisdiction directly  
 23 undermines the right to petition as guaranteed by the Constitution.

24 *Sullivan*, 85 F. Supp. at 1080 (citations omitted).

25 The cases cited by Plaintiffs provide paltry support for disregarding the  
 26 “government contacts” doctrine. Two pertain to the same tobacco trade association and  
 27 expressed uncertainty when declining to apply the doctrine.<sup>6</sup> The third held that to meet the  
 28

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29 <sup>6</sup> *Chamberlain v. Am. Tobacco Co.*, No. 1:96-CV-02005-PAG, 1999 WL 33994451,  
 30 1999 U.S. Dist. LEXIS 22636 (N.D. Ohio Nov. 19, 1999) (dicta); *State of Maine v.*  
 31 *Phillip Morris, Inc.*, No. CV-97-134, 1998 Me. Super. LEXIS 240 (Sept. 30, 1998)  
 32 (stating that whether the “government contacts” doctrine “should be applicable is an  
 33 unsettled question,” and noting the decisions related to “the spate of cases involving states  
 34 suing tobacco companies.”). In both, the lobbying activities were directly related to the  
 35 claims in the litigation, and in *Chamberlain* the association’s other substantial activities  
 36 created jurisdiction even if its government contacts were ignored. *Chamberlain*, 1999  
 37 WL 33994451, 1999 U.S. Dist. LEXIS 22636, at \*76; *State of Maine*, 1998 Me. Super.  
 38 LEXIS 240, at \*13.

1 “continuous and systematic” standard, “the defendant’s forum activities must be constant  
 2 and occur at regular intervals,” and stated that, among other things, the ways in which  
 3 defendant promoted itself in the state and the fact that defendant’s “lobbying activities far  
 4 exceeded those of most local businesses” indicated that it invited personal jurisdiction.  
 5 *Shepherd Invs. Int’l, Ltd. v. Verizon Communications Inc.*, 373 F. Supp. 2d 853, 863, 866  
 6 (E.D. Wis. 2005). Plaintiffs have not made such a showing as to AT&T Inc., nor can they.<sup>7</sup>

7 As in *Graziose*, the issues in this case are completely unrelated to any lobbying  
 8 activities in California that could be attributed to AT&T Inc., and Plaintiffs do not argue  
 9 otherwise. AT&T Inc.’s lobbying activities in California are non-existent; its name appears  
 10 on the forms simply because state law demands that parents be listed. But even if AT&T  
 11 Inc. were engaged in lobbying efforts in California, the law dictates that it not be subjected  
 12 to personal jurisdiction for engaging in constitutionally protected activity.

13 **3. AT&T Inc. has not consented to the Court’s jurisdiction.**

14 Plaintiffs erroneously assert that in *RLH Indus., Inc. v. SBC Communications, Inc.*,  
 15 133 Cal. App. 4th 1277 (2005), “the court noted that SBC conceded the jurisdiction of the  
 16 California court.” Opp. 11. In fact, the Court of Appeal simply noted that the plaintiff was  
 17 claiming that jurisdiction had been conceded; the Court of Appeal observed: “On the other  
 18 hand, we *stop short* of endorsing RLH’s claim that because SBC concedes personal  
 19 jurisdiction, no issues arise from applying California law to SBC’s out-of-state conduct.”  
 20 133 Cal. App. 4th at 1293 (emphasis added). There was no “concession.” To the contrary,  
 21 SBC Communications Inc. had contested jurisdiction by filing a motion to quash service of  
 22

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23 <sup>7</sup> Plaintiffs contend that “[a]lthough other courts have also adopted a government contacts  
 24 exception, the better view is that it should be applicable only in the District of Columbia  
 25 since lobbying there may be seeking to influence the federal government, whereas  
 26 lobbying in a state is seeking to influence that state’s policies and legislation.” Opp. 7 n.8  
 27 (citing *Shepherd Invs.*, 373 F. Supp. 2d at 865-66). The attempt of the *Shepherd Invs.*  
 28 court to limit the government contacts exception to inside the beltway is misguided at  
 best. The point of the exception is to avoid penalizing speech protected by the First  
 Amendment. That danger exists whether a party is attempting to influence federal  
 legislation or state legislation. As such, the far “better view” (representing the weight of  
 authority) is the one set forth in *Graziose* and the other authorities cited above.

1 the complaint. *See* Request for Judicial Notice (filed herewith), Ex. A. The trial court  
2 ultimately exercised jurisdiction, but only over the objections of SBC Communications Inc.

3 Although SBC intervened in *Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th  
4 Cir. 2003), it did so only to challenge an FCC ruling. *Brand X* involved national litigation  
5 against a federal agency consolidated in the Ninth Circuit: “Seven different petitions for  
6 review of the Commission’s ruling were filed in the Third, Ninth, and District of Columbia  
7 Circuits. . . . On April 1, 2002, the Judicial Panel on Multidistrict Litigation transferred the  
8 related petitions for review to this court for consolidation with Brand X’s petition” *Id.* at  
9 1127. SBC’s decision to intervene in appellate proceedings consolidated in a federal  
10 appeals court with jurisdiction in nine states plus several U.S. territories—an intervention  
11 designed to support the interests of its various subsidiaries nationwide—hardly confers  
12 general personal jurisdiction over AT&T Inc. in California.<sup>8</sup>

13 **B. Plaintiffs cannot establish specific jurisdiction over AT&T Inc.**

14 Plaintiffs repeatedly cite this Court’s opinion in *Autodesk, Inc. v. RK Mace*  
15 *Engineering, Inc.*, No. C-03-5128 VRW, 2004 WL 603382 (N.D. Cal. Mar. 11, 2004),  
16 which has nothing to do with jurisdiction over holding companies. (The issue there was a  
17 Missouri corporation’s willful infringement of a California corporation’s copyrighted  
18 software—the Missouri corporation admitted that “we may have violated [plaintiff’s license  
19 agreement].” *Autodesk*, 2004 WL 603382, at \*2.) In *Autodesk*, this Court noted that to find  
20 specific jurisdiction over a defendant, plaintiff must “establish that defendant had *some*  
21 contact with the forum state.” *Id.* at \*3 (emphasis in original). Here, there cannot be  
22 specific jurisdiction because AT&T Inc. has *no* contact with California.

23 As acknowledged by Plaintiffs (Opp. 16:8-16), there are three prerequisites to

24 \_\_\_\_\_  
25 <sup>8</sup> Plaintiffs claim that “if AT&T (then SBC) really is a pure holding company, as it claims  
26 in the pending motion, then AT&T should have had no interest in the merits. Plaintiffs  
27 understand fully why *telecommunications* companies had a significant interest in the  
28 FCC ruling and subsequent court proceedings.” Opp. 12 (emphasis plaintiffs’). Plaintiffs  
seem to misunderstand fundamentally the nature of a holding company, which of course  
takes an interest in the business and operations of the subsidiaries in which it owns stock.  
That does not mean that it ceases to be a holding company.

1 finding that AT&T Inc. is subject to the specific jurisdiction of this Court:

2 (1) The nonresident defendant must do some act or consummate some  
3 transaction within the forum or perform some act by which he purposefully  
4 avails himself of the privilege of conducting activities in the forum, thereby  
5 invoking the benefits and protections of its laws.

6 (2) The claim must be one which arises out of or results from the  
7 defendant's forum-related activities.

8 (3) Exercise of jurisdiction must be reasonable.

9 *Doe*, 248 F.3d at 923 (citing *Gordy v. Daily News, L.P.*, 95 F.3d 829, 831-32 (9th Cir.  
10 1996)).<sup>9</sup> To establish specific jurisdiction over AT&T Inc., Plaintiffs must meet all three of  
11 these requirements. They cannot satisfy a single one.

12 **1. The website does not show AT&T Inc. purposefully availed itself of the  
13 privilege of conducting business in California.**

14 Plaintiffs insist that AT&T Inc. targets California through the website,  
15 www.att.com, thereby subjecting itself to the specific personal jurisdiction of courts in  
16 California. Opp. 17:3-18:11. Plaintiffs contend that although AT&T Inc. "has said that the  
17 web site is maintained by an unnamed subsidiary, . . . it cannot be disputed that the  
18 subsidiary maintains the web site for and on behalf of AT&T itself as well as many other  
19 subsidiaries." Opp. 18:1-3. Because plaintiffs provide no actual evidence to support this  
20 contention, it can indeed "be disputed." What is undisputed is that AT&T Inc. neither  
21 maintains nor administers the www.att.com site. See Meyerkord Decl. ¶ 17.

22 In support of their jurisdiction-by-website theory, plaintiffs cite three cases:  
23 *Panavision International, L.P. v. Toebben*, 141 F.3d 1316 (9th Cir. 1998); *Cybersell, Inc. v.*  
24 *Cybersell, Inc.*, 130 F.3d 414 (1997); and *Jamba Juice Co. v. Jamba Group, Inc.*, No. C-01-  
25 4846 VRW, 2002 WL 1034040, 2002 U.S. Dist. LEXIS 9459 (N.D. Cal. May 15, 2002).  
26 Each is distinguishable because the defendants in those cases actually maintained the

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27 <sup>9</sup> Plaintiffs cite *Bancroft & Masters Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082 (9th Cir.  
28 2000) for the same proposition. It is distinguishable, as are all of plaintiffs' cases,  
because the defendant in that case actually engaged in acts in the forum state.



1 websites at issue.<sup>10</sup> In two, the court declined to exercise jurisdiction over the defendant.<sup>11</sup>  
 2 The dealings of O'Brien and Rubinger with the website does not change the analysis. Both  
 3 dealt with subsidiaries, not with AT&T Inc. See part II.A.1.b above.

4 **2. The supposedly “unrebutted” allegations have been rebutted.**

5 Plaintiffs point to two allegations in the FAC (Dkt. 8, ¶¶ 62-63) and one in the Klein  
 6 Declaration (Dkt. 31, ¶ 11), claim that these allegations are unrebutted and argue that they  
 7 demonstrate “forum-related activities.” Opp. 18:3-21. Not so.

8 FAC ¶ 62 alleges that AT&T Inc. is integrating SBC’s telecommunications network  
 9 with that of AT&T Corp. and intends to use AT&T Corp.’s IP network in place of  
 10 arrangements it currently has with third parties. These allegations are vague, but if  
 11 construed to mean that AT&T Inc. has a telecommunications network of its own, they are  
 12 false. AT&T Inc. is a holding company, pure and simple. Meyerkord Decl. ¶ 4. It owns no  
 13 networks of any kind; all it owns is stock. Meyerkord Decl. ¶¶ 4, 5; Reply Meyerkord  
 14 Decl. ¶ 4. None of FAC ¶ 62’s allegations can properly be attributed to AT&T Inc. Reply  
 15 Meyerkord Decl. ¶¶ 3-4.

16 FAC ¶ 63 alleges that “the facilities and technologies of AT&T Corp.” “are being or  
 17 will imminently be used by AT&T Inc. to transmit the communications of its customers  
 18 . . . .” Opp. 19. But AT&T Inc. does not and will not transmit any customer  
 19 communications because it has no network or customers. Meyerkord Decl. ¶¶ 3, 4. Any  
 20 claim related to “the facilities and technologies of AT&T Corp.” should be directed at  
 21 AT&T Corp., not AT&T Inc.

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23 <sup>10</sup> See *Panavision*, 141 F.3d at 1319 (defendant created websites using plaintiff’s  
 24 trademarks, then attempted to extort plaintiff); *Cybersell*, 130 F.3d at 415-16 (defendant  
 25 created web page that was alleged to infringe plaintiff’s trademark); *Jamba Juice*,  
 2002 WL 1034040, at \*1-2 (defendant operated website that was center of dispute).

26 <sup>11</sup> See *Cybersell*, 130 F.3d at 415 (finding that Arizona district court did not have  
 27 jurisdiction where defendant had “no contacts with Arizona other than maintaining a  
 28 home page that is accessible to Arizonans”); *Jamba Juice*, 2002 WL 1034040, at \*2-3  
 (the “fact that defendant operates a website, which may be accessed anywhere in the  
 United States . . . does not . . . establish that venue is proper in the Northern District”).

1 Klein Declaration ¶ 11 states that Mr. Klein toured “a building that was then  
2 operated by SBC Communications, Inc. (now known as AT&T Inc.)” Opp. 19:20-21.  
3 Mr. Klein does not provide any facts to support his conclusion, which is wrong. AT&T  
4 does not own or lease any real estate in California, including the building referred to by Mr.  
5 Klein. Meyerkord Decl. ¶ 12. Neither AT&T Inc. nor SBC Communications Inc. ever  
6 “operated” that building, or any other building in California. Reply Meyerkord Decl. ¶ 5.

7 To repeat: AT&T Inc. is not an operating business; it is a holding company. It has  
8 engaged in no activity in California. Any acts performed in California under the AT&T  
9 brand are performed by its subsidiaries, not by the holding company. AT&T Inc. has not –  
10 and could not have – performed acts in California giving rise to Plaintiffs’ claims.

11 **3. Exercise of jurisdiction over AT&T Inc. is not reasonable.**

12 Even if the first two requirements for specific jurisdiction were met, this Court must  
13 also determine whether exercise of jurisdiction is reasonable. Plaintiffs correctly note that  
14 courts look to seven factors when making this determination. Opp. 20:6. Those factors are:  
15 (1) the extent of the defendant’s purposeful interjection into the forum state, (2) the burden  
16 on the defendant in defending in the forum, (3) the extent of the conflict with the  
17 sovereignty of the defendant’s state, (4) the forum state’s interest in adjudicating the  
18 dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of  
19 the forum to the plaintiff’s interest in convenient and effective relief, and (7) the existence  
20 of an alternate forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-77 (1985).  
21 Here, exercising jurisdiction over AT&T Inc. would not be reasonable.

22 *First*, AT&T Inc. has not interjected itself – purposefully or otherwise – into  
23 California. *Second*, AT&T Inc., which is incorporated in Delaware and has its principal  
24 place of business in Texas (Meyerkord Decl. ¶¶ 2-3; *see also* FAC ¶ 18), would be  
25 burdened by having to defend a suit in the Northern District. *Third*, sovereignty concerns  
26 are not implicated by the FAC’s assertion of a claim under California law (Cal. Bus. &  
27 Prof. Code § 17200) because that claim is based on the same allegations as the federal  
28 claims. As noted in the *Panavision* case cited by Plaintiffs, sovereignty is not implicated

1 where “[t]he allegations in support of [plaintiff]’s] state law claim and those in support of it  
2 federal claim . . . require the same analysis.” 141 F.3d at 1323. *Fourth*, California has no  
3 special interest in adjudicating this matter: This is a purported class action brought on  
4 behalf of a national class. FAC ¶ 65. *Fifth*, plaintiffs concede that “it cannot yet be known  
5 where many witnesses and much evidence may be located.” Opp. 20:28-21:1. Any  
6 witnesses or evidence of AT&T Inc. would likely be based in Texas, where AT&T Inc. is  
7 headquartered. *Sixth*, plaintiffs’ argument as to convenient and efficient relief fails for the  
8 same reason as the fourth factor. A purported class action brought on behalf of a national  
9 class does not have any particular ties to California. Indeed, at least 20 copycat suits have  
10 been filed in courts across the country. *Seventh*, as conceded by Plaintiffs, there are  
11 alternative forums where jurisdiction would lie as to AT&T Inc., namely Texas and  
12 Delaware.<sup>12</sup>

13           Considering all of these factors, exercise of specific jurisdiction over AT&T Inc.  
14 would be unreasonable. But such an analysis is unnecessary because AT&T Inc. has  
15 neither purposefully availed itself of the privilege of conducting business in California nor  
16 engaged in any activities in California.

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27 <sup>12</sup> Indeed, other actions alleging similar facts have been filed against AT&T Inc. in Texas.  
28 *See Harrington v. AT&T Inc.*, No. A06CA374-LY (W.D. Tex); *Trevino v. AT&T Corp.*  
*and AT&T Inc.*, No. 2:06-cv-00209 (S.D. Tex.).

1 **III. CONCLUSION.**

2 For the foregoing reasons, defendant AT&T Inc. respectfully submits that this  
3 action should be dismissed as to it for lack of personal jurisdiction.

4 Dated: June 16, 2006.

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