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13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN FRANCISCO DIVISION

17 ) MDL NO. 06-1791 VRW  
 18 )

18 IN RE: )

19 NATIONAL SECURITY AGENCY )  
 TELECOMMUNICATIONS )  
 20 RECORDS LITIGATION )

**MEMORANDUM IN SUPPORT OF  
 VERIZON'S MOTION TO DISMISS FOR  
 LACK OF PERSONAL JURISDICTION**

21 This Document Relates To: )

- 22 No. 06-220 (D.R.I.) )
- No. 1:06-cv-632 (E.D. Cal.) )
- 23 No. cv-06-77 (D. Mont.) )
- No. 06-2491 (D. La.) )
- 24 No. cv-06-694 (D. Ore.) )
- No. 1:06-cv-2680 (N.D. Ill.) )
- 25 No. 06-224 (D.R.I.) )
- No. 3:06-cv-3574 (N.D. Cal.) )
- 26 No. 3:06-cv-4221 (N.D. Cal.) )

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**ISSUES TO BE DECIDED**

1. Does a court in the State of California have personal jurisdiction over MCI, LLC, where MCI, LLC is a holding company that does not do any business in California and has no presence in California?

2. Do courts in California, Illinois, Montana, Oregon, and Rhode Island have personal jurisdiction over Verizon Communications Inc., where Verizon Communications Inc. is a holding company that does not do any business in these states and has no presence in them?

3. Does a court in Louisiana have jurisdiction over Verizon Global Networks Inc., where that company offers no services in that state?

## INTRODUCTION

1  
2 In many of the complaints filed against Verizon-related entities in this MDL proceeding,  
3 Plaintiffs have sued the wrong companies. Defendants Verizon Communications Inc. (“VCI”) and  
4 MCI, LLC<sup>1</sup> are holding companies that provide no services of any kind to the public and have no  
5 contacts with the states at issue in this motion: California, Illinois, Montana, Oregon, and Rhode  
6 Island. Indeed, VCI and MCI, LLC do not advertise, do not solicit business, do not provide services,  
7 have no offices, own or lease no property, and have no employees in these states. They have never  
8 been registered or otherwise qualified to do business in these states and they have not appointed an  
9 agent for service of process in them. Because VCI and MCI, LLC lack sufficient minimum contacts  
10 with California, Illinois, Montana, Oregon, and Rhode Island to subject them to jurisdiction in those  
11 states, Plaintiffs’ underlying complaints in these states must be dismissed. Similarly, Defendant  
12 Verizon Global Networks Inc. does not provide telecommunications services (or any services) in  
13 Louisiana, the only state in which it was sued, and the *Herron* case must also be dismissed.

## BACKGROUND

14  
15 In December 2005, *The New York Times* published an article asserting that the National  
16 Security Agency (“NSA”) was secretly monitoring the content of international telephone calls and e-  
17 mails as part of the government’s efforts to combat international terrorism. In May 2006, an article  
18 appeared in *The USA Today* contending that the NSA had also secretly obtained telephone call  
19 records from AT&T, Verizon, and BellSouth as part of its post-September 11, 2001 efforts to fight  
20 terrorism. Based on these press reports, in the months that followed, plaintiffs across the country  
21 filed dozens of lawsuits, almost all of which were class actions, against a host of  
22 telecommunications companies, including over 20 lawsuits against a number of Verizon-related  
23 entities (including the Defendants filing this motion). All of the cases against Verizon allege in  
24 some form that Verizon has cooperated with secret government counter-terrorism programs by  
25 giving the government access to the content of telephone or Internet communications or to records  
26

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27 <sup>1</sup> MCI, LLC changed its name to Verizon Business Global, LLC on November 21, 2006. For  
28 purposes of this motion, however, we will refer to the entity as MCI, LLC, the name used by  
Plaintiffs in their complaint.

1 relating to those communications. Based on these allegations, the cases assert a number of federal  
2 and state constitutional, statutory, and common law causes of action.

3 In a series of orders in August, September, and October 2006, the Judicial Panel on  
4 Multidistrict Litigation transferred 20 of these cases against Verizon as well as a number of cases  
5 against other telephone carriers to this Court for consolidated treatment along with two similar cases  
6 against Verizon and a number of cases against other carriers that were already pending in this Court.  
7 On January 16, 2007, the plaintiffs filed a series of consolidated complaints grouped by defendants.  
8 One of those consolidated complaints named a number of Verizon defendants, including two entities  
9 associated with the telecommunications company MCI, which was acquired by Verizon in January  
10 2006.

11 In this motion, VCI seeks dismissal of the complaints filed against it in *Bissitt et al. v.*  
12 *Verizon Communications Inc. et al.*, No. 06-220 (D.R.I.); *Conner et al. v. AT&T, Verizon et al.*, No.  
13 1:06-cv-632 (E.D. Cal.), *Fuller v. Verizon Communications Inc.*, No. cv-06-77 (D. Mont.); *Hines v.*  
14 *Verizon Communications Inc.*, No. cv-06-694 (D. Ore.); *Joll et al. v. AT&T Corp., Verizon*  
15 *Communications Inc. et al.*, No. 1:06-cv-2680 (N.D. Ill.); *Mahoney v. Verizon Communications Inc.*,  
16 No. 06-224 (D.R.I.); and *Riordan et al. v. Verizon Communications Inc.*, No. 3:06-cv-3574 (N.D.  
17 Cal.). Those cases were filed in California, Illinois, Montana, Oregon, and Rhode Island.<sup>2</sup>

18 MCI, LLC is moving to dismiss the lone complaint filed against it—*Spielfogel-Landis v.*  
19 *MCI, LLC*, No. 3:06-cv-4221 (N.D. Cal.)—which was filed in this Court in California.

20 Verizon Global Networks Inc. is seeking dismissal of the only case brought against it—  
21 *Herron et al. v. Verizon Global Networks Inc. et al.*, No. 06-2491 (D. La.)—which was filed in  
22 Louisiana.<sup>3</sup>

23 \_\_\_\_\_  
24 <sup>2</sup> VCI has also been named in a suit in New Jersey (*Chulsky*), a suit in Florida (*Jacobs*), and a  
25 number of suits in New York. VCI has not moved to dismiss those cases for lack of personal  
26 jurisdiction but has, instead, moved (long with other Verizon defendants) to dismiss them on the  
27 merits.

28 <sup>3</sup> The list of Verizon defendants named in Plaintiffs' Master Consolidated Complaint Against  
MCI Defendants and Verizon Defendants (MDL Dkt. No. 125) ("Master Consolidated Complaint")  
does not match completely the defendants named in the 22 underlying cases against Verizon. Some  
of the underlying defendants are not named in the consolidated complaint, while the consolidated  
complaint could be construed to name numerous other entities not named in the underlying cases.  
But because Plaintiffs have taken the position that the consolidated complaint is solely an

1 As Plaintiffs acknowledge, VCI is a Delaware corporation with its principal place of business  
2 at 140 West Street, New York, NY 10007. *See* Master Consol. Complaint ¶ 14; Declaration of  
3 Joseph P. Dunbar in Support of Verizon’s Motion To Dismiss for Lack of Personal Jurisdiction  
4 (“Dunbar Decl.”) ¶ 2. Contrary to Plaintiffs’ allegations, however, VCI is not “a  
5 ‘telecommunications carrier’ within the meaning of the Communications Act of 1934, 47 U.S.C.  
6 §§151 *et seq.*” Master Consol. Compl. ¶ 14. Rather, VCI is purely a holding company. *See* Dunbar  
7 Decl. ¶ 3.

8 VCI’s only assets are the stock of its subsidiaries, certain trademarks, cash, promissory notes,  
9 and other equity investments. *Id.* VCI conducts no business and provides no services of any kind to  
10 the public, including telecommunications services. *Id.* Because VCI is a holding company  
11 headquartered in New York that provides no services to the public, it unsurprisingly does not have  
12 any business operations in California, Illinois, Montana, Oregon, or Rhode Island. VCI has no  
13 offices, owns or leases no property, and has no employees in these states. *Id.* ¶ 4. VCI has never  
14 been registered or otherwise qualified to do business in these states, and it has not appointed an  
15 agent for service of process in them. *Id.* Finally, VCI does not advertise, solicit business, or provide  
16 any services in these states. *Id.*

17 Various subsidiaries of VCI do provide various telecommunications services in California,  
18 Illinois, Oregon, and Rhode Island. *Id.* ¶ 5. Each of these subsidiaries, however, is a corporate  
19 entity distinct and independent from VCI. *Id.* Each has its own Board of Directors and  
20 management, has regularly scheduled Board meetings, and keeps its own books and records. *Id.*  
21 VCI does not control the internal affairs or daily operations of these subsidiaries. *Id.*

22 MCI, LLC is a limited liability company incorporated in Delaware. *See* Dunbar Decl. ¶ 6;  
23 *see also Spielfogel-Landis* Compl. ¶ 7; Master Consol. Compl. ¶ 10. Its headquarters are at One  
24 Verizon Way in Basking Ridge, New Jersey. Dunbar Decl. ¶ 6. Like VCI, MCI, LLC is purely a  
25 holding company. *Id.* ¶ 7. Its only assets are the stock of its subsidiaries, certain trademarks, cash,

26  
27 “administrative device” that is not “intended to change the rights of the parties” (Master Consol.  
28 Compl. ¶ 2), and have not amended the underlying complaints to add the newly named entities or  
served the newly named entities, this motion is filed on behalf of only entities named in the  
underlying cases.

1 promissory notes, and other equity investments. *Id.* And it, too, conducts no business and provides  
2 no services of any kind to the public, including telecommunications services. *Id.*<sup>4</sup> MCI, LLC has no  
3 business operations in the State of California. It has no offices, owns or leases no property, and has  
4 no employees in California. *Id.* ¶ 8. The company has never been registered or otherwise qualified  
5 to do business in California, and it has not appointed an agent for service of process in California.  
6 *Id.*<sup>5</sup> It does not advertise, solicit business, or provide any services in the state. *Id.*

7 As with VCI, subsidiaries of MCI, LLC provide telecommunications services in California,  
8 but each is a corporate entity distinct and independent from MCI, LLC. Dunbar Decl. ¶ 9. The  
9 subsidiaries have Boards and management of their own, have regularly scheduled Board meetings,  
10 and keep their own books and records. *Id.*<sup>6</sup>

11 Verizon Global Networks Inc. is a Delaware corporation with its corporate headquarters at  
12 One Verizon Way in Basking Ridge, New Jersey. *Id.* ¶ 18. The company offers services to  
13 affiliated telephone carriers in the wholesale market; it does not provide telecommunications  
14 services to individuals. *Id.* Verizon Global Networks Inc. has no offices, owns or leases no  
15 property, and has no employees in Louisiana. *Id.* ¶ 19. It has never been registered or otherwise  
16 qualified to do business in Louisiana, and it has not appointed an agent for service of process in that  
17 state. *Id.* It does not advertise, solicit business, or provide any services there. *Id.*

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23 <sup>4</sup> The Corporate predecessors of MCI, LLC during the relevant period (October 2001 through  
24 the present) were also holding companies incorporated and headquartered outside of California that  
25 offered no telecommunications services to the public and thus did no business in California. *See*  
26 Dunbar Decl. ¶¶ 10-12, 14-16.

27 <sup>5</sup> Plaintiff Spielfogel-Landis served the summons and Complaint in this action on MCI, LLC's  
28 agent for service of process in Delaware. *See* Plaintiff's Proof of Service Summons and Complaint  
(filed July 21, 2006).

<sup>6</sup> The subsidiaries of MCI, LLC's predecessor holding companies that provided  
telecommunication services in California similarly were corporate entities distinct from their parent  
holding company. *See* Dunbar Decl. ¶¶ 13, 17.

## ARGUMENT

### I. PLAINTIFFS MUST DEMONSTRATE THAT THE VERIZON DEFENDANTS HAVE SUFFICIENT MINIMUM CONTACTS TO SATISFY THE REQUIREMENTS OF DUE PROCESS

In multidistrict litigation cases, personal jurisdiction over the defendants must be proper in the state in which the transferor courts sit. *See* 17 MOORE'S FEDERAL PRACTICE § 112.07[1][b] (3d ed. 2006) ("In those cases in which the litigants have sought to name new defendants or third-party defendants after the actions have been transferred, the courts have held that only new defendants that would have been subject to the jurisdiction of the transferor courts may be added to the proceedings in the transferee district."); *Maricopa County v. American Petrofina, Inc.*, 322 F. Supp. 467, 469 (N.D. Cal. 1971) ("the transferee court may by its process obtain jurisdiction over persons to the same extent as could the court of original jurisdiction"); *Allegheny Airlines, Inc. v. LeMay*, 448 F.2d 1341, 1342 (7th Cir. 1971) (noting that district court had dismissed third parties named in transferee district after transfer because they were not subject to jurisdiction of transferor court, although subject to jurisdiction of transferee court). As a result, Plaintiffs must demonstrate that (1) VCI is subject to the jurisdiction of California, Illinois, Montana, Oregon, and Rhode Island; (2) MCI, LLC is subject to jurisdiction in California; and (3) Verizon Global Networks Inc. is subject to jurisdiction in Louisiana.

Federal Rule of Civil Procedure 4(k) provides that "[s]ervice of summons . . . is effective to establish jurisdiction over the person of a defendant . . . who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located." Fed. R. Civ. P. 4(k)(1)(A). Courts in California, Illinois, Louisiana, Montana, Oregon, and Rhode Island are permitted by the laws of those states to exercise jurisdiction to the extent permissible under the Due Process Clause of the United States Constitution. *See* Cal. Civ. Proc. Code § 410.10; *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001) (interpreting California law); 735 Ill. Comp. Stat. 5/2-209(c); La. Rev. Stat. Ann. § 13:3201(B); Mont. R. Civ. P. 4B; *Davis v. American Family Mut. Ins. Co.*, 861 F.2d 1159, 1161 (9th Cir. 1988) (interpreting Montana law); Or. R. Civ. P. 4L; *Millennium Enters., Inc. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 909 (D. Or. 1999); R.I. Gen. Laws § 9-5-33; *Conn v. IIT Aetna Finance Co.*, 252 A.2d 184, 186 (R.I. 1969).

1 Due process permits a court to exercise personal jurisdiction over a nonresident defendant  
2 only if it has sufficient “minimum contacts with [the forum] such that the maintenance of the suit  
3 does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v.*  
4 *State of Washington*, 326 U.S. 310, 316 (1945). “Applying the ‘minimum contacts’ analysis, a court  
5 may obtain either general or specific jurisdiction over a defendant.” *Unocal*, 248 F.3d at 923; *see*  
6 *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 413-15 (1984). “If the  
7 defendant’s activities in the forum are substantial, continuous and systematic, **general** jurisdiction is  
8 available; in other words, the foreign defendant is subject to suit even on matters unrelated to his or  
9 her contacts to the forum.” *Unocal*, 248 F.3d at 923 (emphasis added). “A court may exercise  
10 **specific** jurisdiction over a foreign defendant if his or her less substantial contacts with the forum  
11 give rise to the cause of action before the court.” *Id.* (emphasis added).

12 “It is the plaintiff’s burden to establish the court’s personal jurisdiction over a defendant.”  
13 *Id.* at 922. To establish a prima facie case that personal jurisdiction is proper in the face of affidavits  
14 submitted by the defendant, the plaintiff must submit affidavits of its own putting the relevant facts  
15 at issue. *AT & T Corp. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

## 16 **II. THE MOVING VERIZON DEFENDANTS DO NOT HAVE “MINIMUM** 17 **CONTACTS” WITH THE RELEVANT FORUM STATES**

18 Applying the standards set forth above, it is clear that this Court lacks personal jurisdiction  
19 over the relevant Verizon defendants in the cases at issue in this motion.

### 20 **A. Plaintiffs Cannot Establish “General Jurisdiction”**

21 Plaintiffs cannot meet the rigorous standards enunciated by the Ninth Circuit for establishing  
22 general jurisdiction. The Court of Appeals has explained that “[t]he standard for establishing  
23 general jurisdiction is ‘fairly high,’ *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986),  
24 and requires that the defendant’s contacts be of the sort that approximate physical presence.”  
25 *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). “Factors to be  
26 taken into consideration are whether the defendant makes sales, solicits or engages in business in the  
27 state, serves the state’s markets, designates an agent for service of process, holds a license, or is  
28 incorporated there.” *Id.*

1 Plaintiffs cannot make this heightened showing for the moving Verizon defendants. As  
2 discussed above, VCI and MCI, LLC are holding companies incorporated in Delaware with their  
3 headquarters in New York and New Jersey respectively. Dunbar Decl. ¶¶ 2-3, 6-7. Their only  
4 assets are the stock of their subsidiaries, certain trademarks, cash, promissory notes, and other equity  
5 investments. *Id.* ¶¶ 3, 7. They conduct no business and provide no services of any kind to the  
6 public, including telecommunications services. *Id.* And they do not advertise, solicit business, or  
7 provide services in the relevant states. *Id.* ¶¶ 4, 8. Moreover, VCI and MCI, LLC have no offices,  
8 own or lease no property, and have no employees in the relevant states. *Id.* They have never been  
9 registered or otherwise qualified to do business in the relevant states, and they have not appointed  
10 agents for service of process in the relevant states. *Id.*

11 In light of these facts, it is clear that any contacts by VCI and MCI, LLC with the relevant  
12 states are sporadic and limited, not continuous and systematic. In similar circumstances, courts have  
13 found general jurisdiction over telecommunications holding companies—including VCI—to be  
14 lacking. *See Negron-Torres v. Verizon Commc'ns Inc.*, 478 F.3d 19, 24-27 (1st Cir. 2007) (no  
15 general jurisdiction over VCI in Puerto Rico); *Phonetel Commc'ns, Inc. v. U.S. Robotics Corp.*, No.  
16 4:00-CV-1750-R, 2001 U.S. Dist. LEXIS 7233, at \*7-17 (N.D. Tex. June 1, 2001) (no general  
17 jurisdiction over VCI in Texas); *Von Grabe v. Sprint PCS*, 312 F. Supp. 2d 1285, 1295 (S.D. Cal.  
18 2003); *Newman v. Motorola, Inc.*, 125 F. Supp. 2d 717, 722 (D. Md. 2000).<sup>7</sup> Indeed, the Court in  
19 *Phonetel* held that personal jurisdiction over VCI in Texas was lacking in part because VCI “is only  
20 a holding company” that offers no products or services in Texas. 2001 U.S. Dist. LEXIS 7233, at  
21 \*12. This Court should reach the same conclusion here with respect to both VCI and MCI, LLC.

22 Verizon Global Networks Inc. similarly lacks the contacts with Louisiana to sustain a finding  
23 of general jurisdiction. As set forth above, Verizon Global Networks Inc. is not registered to do

24 \_\_\_\_\_  
25 <sup>7</sup> *Covad Communications Co. v. Pacific Bell*, No. C 98-1887 SI, 1999 U.S. Dist. LEXIS  
26 22789, 1999 WL 33757058 (N.D. Cal. Dec. 14, 1999), is not to the contrary. There, the plaintiff  
27 was able to establish a prima facie case of general jurisdiction by putting forward evidence that, on  
28 its face, appeared to indicate that SBC Communications Inc. did business in California. *Id.* at \*18-  
22, 1999 WL 33757058, at \*4-8. Similarly, *Shepherd Investments International, Ltd. v. Verizon  
Communications Inc.*, 373 F. Supp. 2d 853 (E.D. Wis. 2005), is inapposite. That case involved  
claims of breach of contract and misrepresentation related to the sale of stock by VCI. *See id.* at  
856.

1 business in Louisiana and does not have its headquarters, advertise, solicit business, conduct  
2 services, own or lease property, have employees, or have an agent for service of process in  
3 Louisiana. Dunbar Decl. ¶¶ 18-19.

4 **B. Plaintiffs Cannot Establish “Specific Jurisdiction”**

5 Plaintiffs similarly are unable to meet their burden of demonstrating specific jurisdiction over  
6 the moving Verizon defendants in the relevant states. The Supreme Court has explained that “[b]y  
7 requiring that individuals have fair warning that a particular activity may subject [them] to the  
8 jurisdiction of a foreign sovereign, the Due Process Clause gives a degree of predictability to the  
9 legal system that allows potential defendants to structure their primary conduct with some minimum  
10 assurance as to where that conduct will and will not render them liable to suit.” *Burger King Corp.*  
11 *v. Rudzewicz*, 471 U.S. 462, 472 (1985) (internal quotation marks and citations omitted). “Where a  
12 forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to  
13 suit there, this fair warning requirement is satisfied if the defendant has purposefully directed his  
14 activities at residents of the forum, and the litigation results from alleged injuries that arise out of or  
15 relate to those activities.” *Id.* (internal quotation marks and citations omitted). Consistent with the  
16 decision in *Burger King*, the Ninth Circuit applies the following three-part test for specific  
17 jurisdiction:

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

22 (2) The claim must be one which arises out of or results from the defendant’s forum-  
23 related activities.

24 (3) Exercise of jurisdiction must be reasonable.

25 *Unocal*, 248 F.3d at 923 (quoting *Gordy v. Daily News, L.P.*, 95 F.3d 829, 831-32 (9th Cir. 1996)).

26 Plaintiffs cannot satisfy this test for one very simple reason: Plaintiffs’ claims arise from  
27 alleged divulgements of telecommunications content or records, but none of the moving Verizon  
28 defendants provides telecommunications services in the relevant states. VCI and MCI, LLC are  
mere holding companies that do not provide telecommunications services in *any* state. Dunbar Decl.  
¶¶ 3, 7. Verizon Global Networks Inc. does not provide telecommunications services to any

1 individuals, in Louisiana or elsewhere. *Id.* ¶ 18. Because they do not provide telecommunications  
2 services to individual customers, the moving Verizon defendants could not have made the alleged  
3 disclosures of telecommunications content or records in the relevant states or with respect to  
4 customers in those states. As a result, it is clear that the activities Plaintiffs allege the moving  
5 Verizon defendants undertook cannot give rise to specific jurisdiction over those defendants in the  
6 states at issue in this motion.

### 7 **III. CONTACTS OF SUBSIDIARIES OF VCI AND MCI, LLC CANNOT SUBJECT VCI** 8 **AND MCI, LLC TO PERSONAL JURISDICTION**

9 As a general rule, “[t]he existence of a relationship between a parent company and its  
10 subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the  
11 subsidiaries’ minimum contacts with the forum.” *Unocal*, 248 F.3d at 925. Only if “the parent and  
12 subsidiary are not really separate entities, or one acts as an agent of the other,” can “the local  
13 subsidiary’s contacts with the forum . . . be imputed to the foreign parent corporation.” *Id.* at 926  
14 (internal quotation marks omitted). Under this standard, “a parent corporation may be directly  
15 involved in the activities of its subsidiaries” and yet be treated as a distinct corporate entity “so long  
16 as that involvement is consistent with the parent’s investor status.” *Id.* at 926 (internal quotation  
17 marks omitted).

18 To prevail on an alter ego theory by showing that a parent and subsidiary are not really  
19 separate entities, a plaintiff must demonstrate “(1) that there is such unity of interest and ownership  
20 that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard  
21 [their separate identities] would result in fraud or injustice.” *Id.* at 926 (quoting *Compagnie*  
22 *Bruxelles Lambert*, 94 F.3d at 591 (internal quotation marks omitted)). To prevail on an agency  
23 theory, a plaintiff must demonstrate that “the subsidiary functions as the parent corporation’s  
24 representative in that it performs services that are sufficiently important to the foreign corporation  
25 that if it did not have a representative to perform them, the corporation’s own officials would  
26 undertake to perform substantially similar services.” *Unocal*, 248 F.3d at 928. In applying this test,  
27 however, the Court must “distinguish[] an agency relationship between a parent and its subsidiary  
28 from that of a holding company and its subsidiary.” *Id.* at 929. “[I]n the case of a holding company

1 the parent could simply hold another type of subsidiary, in which case imputing the subsidiaries’  
2 jurisdictional contacts to the parent would be improper.” *Id.*

3 Here, Plaintiffs cannot satisfy either standard. First, as demonstrated by the declaration of  
4 Joseph P. Dunbar, VCI and MCI, LLC are legally and factually distinct from the VCI and MCI, LLC  
5 subsidiaries that provide telecommunications services in California, Illinois, Montana, Oregon, and  
6 Rhode Island. Each of those subsidiaries has its own Board of Directors and management, has  
7 regularly scheduled Board meetings, and keeps its own books and records. Dunbar Decl. ¶¶ 5, 9, 13,  
8 17. VCI and MCI, LLC do not direct the internal affairs or daily operations of the relevant  
9 subsidiaries. *Id.* In these circumstances, the subsidiaries of VCI and MCI, LLC cannot be  
10 considered to be the alter egos of the holding companies. *See Phonetel*, 2001 U.S. Dist. LEXIS  
11 7233, at \*12-16 (holding VCI not subject to jurisdiction based on the activities of a subsidiary); *see*  
12 *also Von Grabe*, 312 F. Supp. 2d at 1295-1300; *Newman*, 125 F. Supp. 2d at 722-23.

13 Moreover, VCI’s and MCI, LLC’s subsidiaries in the relevant states are not simply agents for  
14 VCI and MCI, LLC because VCI and MCI, LLC are holding companies. Dunbar Decl. ¶¶ 3, 7. As  
15 noted above, VCI’s and MCI, LLC’s only assets are the stock of their subsidiaries, certain  
16 trademarks, cash, promissory notes, and other equity investments. *Id.* Neither company provides  
17 any services of any kind to the public, including telecommunications services. *Id.* Thus, under  
18 *Unocal*, any theory of agency must fail. *See* 248 F.3d at 929 (contacts of subsidiary cannot be  
19 attributed to holding company under agency theory). In any event, the declaration of Mr. Dunbar  
20 (¶¶ 5, 9) reveals that VCI and MCI, LLC do not exercise sufficient control over their subsidiaries to  
21 make them their agents for jurisdictional purposes. *See Covad Commc’ns Co.*, 1999 U.S. Dist.  
22 LEXIS 22789, at \*21-22, 1999 WL 33757058, at \*7-8 (citing *Kramer v. British Leyland, Ltd.*, 628  
23 F.2d 1175, 1177 (9th Cir. 1980)).

24 Indeed, the only three published cases that appear to have addressed whether VCI and its  
25 subsidiaries should be treated as a single unit for purposes of determining personal jurisdiction have  
26 held that VCI and its subsidiaries cannot be so conflated. In *Negron-Torres v. Verizon*  
27 *Communications Inc.*, the First Circuit refused to consider contacts of Puerto Rico subsidiaries of  
28 VCI in determining whether VCI was subject to personal jurisdiction in Puerto Rico. *See* 478 F.3d

1 at 25-27. The court observed: “[T]he mere fact that a subsidiary company does business within a  
2 state does not confer jurisdiction over its nonresident parent, even if the parent is the sole owner of  
3 the subsidiary. There is a presumption of corporate separateness that must be overcome by clear  
4 evidence that the parent in fact controls the activities of the subsidiary.” *Id.* at 27 (internal quotation  
5 marks omitted).

6 The court in *Phonetel* similarly held that “[s]o long as the parent and subsidiary maintain  
7 separate and distinct corporate entities, the presence of one in a forum state may not be attributed to  
8 the other.” 2001 U.S. Dist. LEXIS 7233, at \*13. Applying this standard, the court concluded that  
9 there was “no evidence that VCI’s relationship with its subsidiaries would justify a finding of  
10 specific or general jurisdiction in Texas.” *Id.* at \*17. Finally, in *Gammino v. Verizon*  
11 *Communications, Inc.*, No. 03-CV-5579, 2005 U.S. Dist. LEXIS 35873, 2005 WL 3560799 (E.D.  
12 Pa. Dec. 27, 2005), the court held that “there is no basis for this court to exercise alter-ego  
13 jurisdiction over the Defendant subsidiaries because Plaintiff has not offered evidence that VCI and  
14 its subsidiaries are a single functioning entity.” *Id.* at \*13, 2005 WL 3560799, at \*5. This Court  
15 should reach the same conclusion here with respect to both VCI and MCI, LLC.

16 **CONCLUSION**

17 For the reasons set forth above, this Court should grant Verizon’s Motion To Dismiss for  
18 Lack of Personal Jurisdiction.

19 Dated: April 30, 2007

Respectfully submitted,

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