

1 R. SCOTT ERLEWINE (State Bar No. 095106)  
 2 MEAGAN MCKINLEY-BALL (SBN 245375)  
 3 PHILLIPS, ERLEWINE & GIVEN LLP  
 50 California Street, 35<sup>th</sup> Floor  
 4 San Francisco, California 94111  
 Telephone: (415) 398-0900  
 5 Facsimile: (415) 398-0911  
 rse@phillaw.com  
 mmb@phillaw.com

6 Attorneys for Defendants  
 7 NATIONAL RAILROAD PASSENGER CORPORATION  
 d/b/a AMTRAK AND BRIAN NOLAN

8  
 9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 ROMEO EZIKE, )

13 )  
 14 Plaintiff, )

15 v. )

16 MR. LAKSHMI MITTAL, et al., )

17 Defendants. )  
 \_\_\_\_\_ )

CASE NO. C08-1867 (SBA)

ORDER GRANTING DEFENDANT  
 BRIAN NOLAN’S MOTION TO  
 DISMISS; MOTION FOR A MORE  
 DEFINITE STATEMENT; MOTION  
 TO DISMISS OR TRANSFER FOR  
 IMPROPER VENUE; MOTION TO  
TRANSFER FOR CONVENIENCE

18  
 19 Date: May 12, 2009  
 20 Time: 1:00 P.M.  
 21 Ctrm: 3  
 Hon. Sandra B. Armstrong

22 Before the Court is Defendant BRIAN NOLAN’s motion to dismiss plaintiff’s claims  
 23 against him or quash service, or in the alternative, for a more definite statement, and to dismiss  
 24 this action or transfer it to the Northern District of Illinois for improper venue or convenience.

25 The Court having considered the moving, opposition and reply papers,

26 IT IS HEREBY ORDERED that:  
 27  
 28

1           1.       Plaintiff's claims against Officer Nolan are dismissed for defective service of  
2 process pursuant to F.R.C.P. Rule 12(b)(5). The proof of service filed by plaintiff as to Officer  
3 Nolan purports to have served him at his former employer's corporate headquarters at a time  
4 when Officer Nolan had not worked for that employer in over two years.

5           2.       The action against Officer Nolan is dismissed for lack of personal jurisdiction  
6 pursuant to F.R.C.P. Rule 12(b)(2). Officer Nolan lacks sufficient minimum contacts with  
7 California for the imposition of California jurisdiction to comport with due process.  
8 *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

9           3.       Plaintiff's allegations against Officer Nolan are dismissed for  
10 failure to state a claim upon which relief may be granted pursuant to F.R.C.P. Rule 12(b)(6).  
11 Plaintiff has failed to adequately plead a substantive violation of RICO, since plaintiff has failed  
12 to allege that Officer Nolan engaged in conduct of an enterprise through a pattern of racketeering  
13 behavior. *See Howard v. America Online, Inc.*, 208 F.3d 741, 746 (9<sup>th</sup> Cir. 2000). Further,  
14 plaintiff has failed to allege any non-RICO claim against Officer Nolan, since 18 U.S.C. Section  
15 1503 (influencing or injuring officer or juror generally) does not provide for a private cause of  
16 action (*Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1482 (9<sup>th</sup> Cir. 1997)), California Penal Code  
17 Section 836 does not govern an arrest in Illinois, and plaintiff does not articulate which  
18 Constitutional rights he was allegedly deprived of and what claim he is asserting based on that  
19 deprivation.

20  
21 DATED: 5/19/09

  
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 EZIKE et al,

5 Plaintiff,

6 v.

7 MITTAL et al,

8 Defendant.

Case Number: CV08-01867 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on May 20, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
14 receptacle located in the Clerk's office.

15 Romeo Ezike  
16 P.O. Box 425126  
17 San Francisco, CA 94142

18 Dated: May 20, 2009

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk