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BAUER PUBLISHING COMPANY, L.P., BAUER
10 MAGAZINE L.P., BAUER MEDIA GROUP, INC.,
BAUER, INC., and HEINRICH BAUER NORTH
11 AMERICA, INC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 TOM CRUISE,
16 Plaintiff,

17 vs.

18 BAUER PUBLISHING COMPANY
L.P., BAUER MAGAZINE L.P.,
19 BAUER MEDIA GROUP, INC.,
BAUER, INC., HEINRICH BAUER
NORTH AMERICA, INC., and DOES
20 1-10, inclusive,
21 Defendants.

) Case No. CV 12-09124 (DDP) (JCX)
)
) **DECLARATION OF ELIZABETH A.**
) **McNAMARA IN OPPOSITION TO**
) **PLAINTIFF TOM CRUISE'S**
) **MOTION TO COMPEL**
) **DEFENDANTS TO ADMIT THEY**
) **HAD NO SOURCES FOR THEIR**
) **MAGAZINE COVER HEADLINES;**
) **OR, IN THE ALTERNATIVE, TO**
) **COMPEL DEFENDANTS TO**
) **REVEAL THOSE SOURCES AND**
) **UPON REFUSAL, FOR A "NO**
) **SOURCE" PRESUMPTION**

) **[DISCOVERY MATTER]**
)

) Date: November 26, 2013
) Time: 9:30 a.m.
)

) Fact Discovery Cut-Off: Dec. 9, 2013
) Pretrial Conference: June 2, 2014
) Trial Date: June 10, 2014
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1 I, Elizabeth A. McNamara, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of New York, and
3 admitted *pro hac vice* to practice before this Court. I am a partner at the law firm of
4 Davis Wright Tremaine LLP, counsel for Defendants Bauer Publishing Company,
5 L.P., Bauer Magazine L.P., Bauer Media Group, Inc., Bauer, Inc., and Heinrich
6 Bauer North America, Inc. (collectively, the “Bauer Defendants”) in the above-
7 captioned action. I submit this declaration in opposition to Plaintiff Tom Cruise’s
8 Motion to Compel Defendants to Admit they had No Sources for their Magazine
9 Headlines; Or, In the Alternative, To Compel Defendants To Reveal Those Sources
10 And Upon Refusal, for a “No Source” Presumption. Everything contained in this
11 declaration is based on the discovery in this case, as referenced by my citations, or
12 my personal knowledge, except as otherwise indicated.

13 2. Attached hereto as Exhibit 1 is a true and correct copy of the relevant
14 excerpts of The Bauer Defendants’ Objections And Responses To Plaintiff Tom
15 Cruise’s Third Set Of Requests For Admission, served on October 9, 2013.

16 3. Attached hereto as Exhibit 2 is a true and correct copy of the relevant
17 excerpts of The Bauer Defendants’ Objections And Responses To Plaintiff Tom
18 Cruise’s Third Set Of Interrogatories, served on October 24, 2013.

19 4. Attached hereto as Exhibit 3 is a true and correct copy of The Bauer
20 Defendants’ Amended Objections And Responses To Plaintiff Tom Cruise’s Second
21 Set Of Requests for Admission, served on November 4, 2013.

22 5. Attached hereto as Exhibit 4 is a true and correct copy of The Bauer
23 Defendants’ Amended Objections And Responses to Plaintiff Tom Cruise’s Second
24 Set Of Interrogatories, served on November 4, 2013.

25 6. Attached hereto as Exhibit 5 is a true and correct copy of the November
26 23, 2012 article on www.mercurynews.com titled “Hicks: Tom Cruise, Suri, spend
27 Thanksgiving together after 3 months apart.
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1 7. I attest based on my personal knowledge that as of November 4, 2013,
2 Plaintiff has deposed nine Bauer witnesses, and the Defendants have produced any
3 called-for reporting files and related documents concerning the Articles.

4 8. Attached hereto as Exhibit 6 is a true and correct copy of a July 16, 2012
5 e-mail exchange regarding reporting on Tom Cruise and Suri Cruise with the subject
6 “Fwd: Suri reporting,” produced in this action by Defendants at BAUER000809.

7 9. Attached hereto as Exhibit 7 is a true and correct copy of an August 30,
8 2012 e-mail exchange regarding Plaintiff and Suri Cruise with the subject “Re: Fwd:
9 How many days has Tom spent with Suri (roughly or exactly) since Katie filed,”
10 produced in this action by Defendants at BAUER009735-36.

11 10. Attached hereto as Exhibit 8 is a true and correct copy of a September
12 17, 2012 e-mail exchange regarding Plaintiff and Suri Cruise with the subject “Fwd:
13 Last time Tom and Suri were photographed together,” produced in this action by
14 Defendants at BAUER012519-21.

15 11. Attached hereto as Exhibit 9 is a true and correct copy of a July 15, 2012
16 e-mail exchange regarding reporting on Katie Holmes and Suri Cruise with the
17 subject “poor suri,” produced in this action by Defendants at BAUER002061-62.

18 12. Attached hereto as Exhibit 10 is a true and correct copy of a July 13,
19 2012 e-mail exchange regarding reporting on Katie Holmes and Suri Cruise with the
20 subject “Revised Katie And Suri File From Today – July 13th,” produced in this
21 action by Defendants at BAUER001280-81.

22 13. Attached hereto as Exhibit 11 is a true and correct copy of a June 29,
23 2012 e-mail exchange regarding Plaintiff, Katie Holmes, and Suri Cruise with the
24 subject “1229 The Suri situation is a disaster,” produced in this action by Defendants
25 at BAUER004296-97.
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1 14. Attached hereto as Exhibit 12 is a true and correct copy of the article
2 titled “In the Know: Suri’s lonely life Without Tom” from the July 9, 2012 issue of
3 *In Touch*, produced in this action by Defendants at BAUER011437.

4 15. Attached hereto as Exhibit 13 is a true and correct copy of a June 29,
5 2012 e-mail exchange regarding Plaintiff with the subject “1229 Tom Cruise Works
6 Non Stop, Not Good Husband Material SOURCE,” produced in this action by
7 Defendants at BAUER011681-82.

8 16. Attached hereto as Exhibit 14 is a true and correct copy of a July 14,
9 2012 e-mail exchange regarding reporting on Plaintiff, Katie Holmes, and Suri
10 Cruise with the subject “Quick TomKat update,” produced in this action by
11 Defendants at BAUER002052.

12 17. Attached hereto as Exhibit 15 is a true and correct copy of a July 16,
13 2012 e-mail exchange regarding Plaintiff, Katie Holmes, and Suri Cruise with the
14 subject “1231 Katie Being Protective,” produced in this action by Defendants at
15 BAUER003666-67.

16 18. Attached hereto as Exhibit 16 is a true and correct copy of a September
17 3, 2012 e-mail exchange regarding Plaintiff’s trip to Croatia with the subject “Fwd:
18 1238 Tom Cruise Partying In Croatia, Why Isn’t He Visting [sic] Suri?” produced in
19 this action by Defendants at BAUER000853-61.

20 19. Attached hereto as Exhibit 17 is a true and correct copy of a September
21 11, 2012 e-mail exchange regarding reporting on Plaintiff in London with the subject
22 “Fwd: 1240 Tom Cruise Drank Beer at The Swan at the Globe—eyewitness
23 account,” produced in this action by Defendants at BAUER000922.

24 20. Attached hereto as Exhibit 18 is a true and correct copy of a September
25 17, 2012 e-mail exchange regarding Plaintiff in London with the subject “Re:
26 PHOTO ALERT: ***EXCLUSIVE PICTURES*** TOM CRUISE IN LONDON
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1 WITH MYSTERY LADY UNTIL 2:30AM!” produced in this action by Defendants
2 at BAUER000265-69.

3 21. Attached hereto as Exhibit 19 is a true and correct copy of a September
4 12, 2012 e-mail exchange regarding Plaintiff, Katie Holmes, and Suri Cruise with the
5 subject “1240 Holmes family friend: ‘Tom could have been there’ – he’s becoming
6 like an ‘uncle’,” produced in this action by Defendants at BAUER003769.

7 22. Attached hereto as Exhibit 20 is a true and correct copy of a September
8 11, 2012 e-mail exchange regarding reporting on Suri Cruise’s first day of school
9 with the subject “Fwd: ADD: 1240 Suri at School,” produced in this action by
10 Defendants at BAUER000917-18.

11 23. Attached hereto as Exhibit 21 is a true and correct copy of a September
12 17, 2012 e-mail exchange regarding Plaintiff and Suri Cruise with the subject “1240
13 Tom and Suri nw info,” produced in this action by Defendants at BAUER001622.

14 24. Attached hereto as Exhibit 22 is a true and correct copy of a July 16,
15 2012 e-mail exchange containing an interview with Psychologist, Beth Proudfoot
16 regarding Plaintiff, Katie Holmes, and Suri Cruise with the subject “Fwd: 1231 Katie
17 Holmes and Tom Cruise—Suri in the Middle, Psychologist,” produced in this action
18 by Defendants at BAUER000796-98.

19 25. Attached hereto as Exhibit 23 is a true and correct copy of a July 23,
20 2012 e-mail exchange containing an interview with Psychologist, Dean Leav
21 regarding Plaintiff, Katie Holmes, and Suri Cruise with the subject “1232-
22 TOM/KATIE-MORE EXPERT QUOTES ON SURI IDEALIZING TOM,” produced
23 in this action by Defendants at BAUER001477.

24 26. Attached hereto as Exhibit 24 is a true and correct copy of a September
25 14, 2012 e-mail exchange containing an interview with Family Therapist, Paul
26 Hokemeyer regarding Plaintiff and Suri Cruise with the subject “1240- TOM
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1 CRUISE- EXPERT QUOTES,” produced in this action by Defendants at
2 BAUER003407.

3 27. Attached hereto as Exhibit 25 is a true and correct copy of a September
4 15, 2012 e-mail exchange regarding Plaintiff, Katie Holmes, and Suri Cruise,
5 produced in this action by Defendants at BAUER003770-71.

6 28. Attached hereto as Exhibit 26 is a true and correct copy of the relevant
7 portions of the deposition transcript of Tom Cruise taken on September 9, 2013.

8 29. Attached hereto as Exhibit 27 is a true and correct copy of the August 5,
9 2013 meet and confer letter from Aaron J. Moss to Elizabeth A. McNamara and
10 Deborah A. Adler.

11 30. Attached hereto as Exhibit 28 is a true and correct copy of the August
12 13, 2013 letter from Elizabeth A. McNamara to Aaron J. Moss responding to his
13 August 5, 2013 meet and confer letter.

14 31. Attached hereto as Exhibit 29 is a true and correct copy of the
15 September 25, 2013 article in *The New York Times* titled “Key Syrian Rebel Groups
16 Abandon Exile Leaders.”

17 32. Attached hereto as Exhibit 30 is a true and correct copy of the relevant
18 portions of the deposition transcript of Mark McGarry taken on August 7, 2013.

19 33. Attached hereto as Exhibit 31 is a true and correct copy of the relevant
20 portions of the deposition transcript of Daniel H. Jewel taken on August 8, 2013.

21 34. Attached hereto as Exhibit 32 is a true and correct copy of the relevant
22 portions of the deposition transcript of Oliver Coleman taken on August 30, 2013.

23 35. Attached hereto as Exhibit 33 is a true and correct copy of the relevant
24 portions of the deposition transcript of Dylan Gadino taken on August 30, 2013.

25 36. Attached hereto as Exhibit 34 is a true and correct copy of the relevant
26 portions of the deposition transcript of Heidi Parker taken on September 12, 2013.
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1 37. Attached hereto as Exhibit 35 is a true and correct copy of the relevant
2 portions of the deposition transcript of Dan Wakeford taken on September 19, 2013.

3 38. Attached hereto as Exhibit 36 is a true and correct copy of an August 8,
4 2012 e-mail exchange regarding the factchecking of an *In Touch* article with the
5 subject "Re: New TC Story," produced in this action by Plaintiff at TC002931-32.

6 39. Attached hereto as Exhibit 37 is a true and correct copy of an August 8,
7 2012 e-mail exchange regarding the factchecking of an *In Touch* article with the
8 subject "RE: New TC Story," produced in this action by Plaintiff at TC003188-89.

9 40. Attached hereto as Exhibit 38 is a true and correct copy of an August 31,
10 2012 e-mail exchange regarding the factchecking of an *In Touch* article with the
11 subject "RE: TOM AND KATIE STORY," produced in this action by Plaintiff at
12 TC003101-02.

13 41. Attached hereto as Exhibit 39 is a true and correct copy of a September
14 14, 2012 e-mail exchange regarding the factchecking of an *In Touch* article with the
15 subject "RE: TOM CRUISE STORY," produced in this action by Plaintiff at
16 TC000936-37.

17 42. Attached hereto as Exhibit 40 is a true and correct copy of a January 28,
18 2011 claim letter sent from Bertram Fields to Random House, Inc., produced in this
19 action by Plaintiff at TC000213-14.

20 43. Attached hereto as Exhibit 41 is a true and correct copy of a February 9,
21 2011 claim letter sent from Aaron J. Moss to Examiner.com, produced in this action
22 by Plaintiff at TC000216-17.

23 44. Attached hereto as Exhibit 42 is a true and correct copy of a February 9,
24 2011 claim letter sent from Aaron J. Moss to AOL, Inc., produced in this action by
25 Plaintiff at TC000218-19.
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1 45. Attached hereto as Exhibit 43 is a true and correct copy of a February 9,
2 2011 claim letter sent from Aaron J. Moss to Nickelodeon/MTV Networks, produced
3 in this action by Plaintiff at TC000220-21.

4 46. Attached hereto as Exhibit 44 is a true and correct copy of a February 9,
5 2011 claim letter sent from Aaron J. Moss to the Boston Herald, produced in this
6 action by Plaintiff at TC000222-23.

7 47. Attached hereto as Exhibit 45 is a true and correct copy of a March 26,
8 2012 claim letter sent from Bertram Fields to Lawrence Wright, produced in this
9 action by Plaintiff at TC000242.

10 48. Attached hereto as Exhibit 46 is a true and correct copy of a July 16,
11 2012 claim letter sent from Aaron J. Moss to Thomas John, produced in this action
12 by Plaintiff at TC000271-72.

13 49. Attached hereto as Exhibit 47 is a true and correct copy of a September
14 25, 2012 claim letter sent from Aaron J. Moss to Vanity Fair Magazine, produced in
15 this action by Plaintiff at TC000309-11.

16 50. Attached hereto as Exhibit 48 is a true and correct copy of a July 13,
17 2012 e-mail exchange regarding Plaintiff, Katie Holmes, and Suri Cruise, produced
18 in this action by Defendants at BAUER002016.

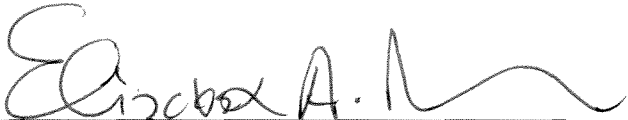
19 51. Attached hereto as Exhibit 49 is a true and correct copy of a July 18,
20 2012 article on www.lifeandstylemag.com entitled "Inside Hollywood: Tom Cruise
21 Reunites with Daughter Suri," produced in this action by Defendants at
22 BAUER013191-92.

23 52. Attached hereto as Exhibit 50 is a true and correct copy of the relevant
24 excerpts of Plaintiff Tom Cruise's Third Set Of Requests For Admission Propounded
25 to Defendants on September 19, 2013.
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53. Attached hereto as Exhibit 51 is a true and correct copy of the relevant excerpts of Plaintiff Tom Cruise's Third Set Of Interrogatories Propounded to Defendants on September 19, 2013.

54. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in New York, New York on November 4, 2013.


ELIZABETH A. McNAMARA