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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,) Case No. CV 12-09124 (DDP) (JCX)
16 Plaintiff,)
17 vs.) **THE BAUER DEFENDANTS’**
18 BAUER PUBLISHING COMPANY,) **SUPPLEMENTAL MEMORANDUM**
19 L.P., BAUER MAGAZINE L.P.,) **IN SUPPORT OF THEIR MOTION**
20 BAUER MEDIA GROUP, INC.,) **FOR A PROTECTIVE ORDER AND**
BAUER, INC., HEINRICH BAUER) **TO COMPEL RESPONSES TO**
21 NORTH AMERICA, INC., and DOES) **REQUESTS FOR PRODUCTION**
1-10, inclusive,) **[DISCOVERY MATTER]**
22 Defendants.)
23) Date: November 26, 2013
24) Time: 9:30 a.m.
25)
26) Fact Discovery Cut-Off: Dec. 9, 2013
27) Pretrial Conference: June 2, 2014
28) Trial Date: June 10, 2014

1 Pursuant to Central District of California Local Rule 37-2.3, the Bauer
2 Defendants submit this Supplemental Memorandum in Support of their Motion for a
3 Protective Order and to Compel Responses to Requests for Production.

4 **I. THE RFAS AT ISSUE HAVE NO RELEVANCE AND ARE DESIGNED**
5 **ONLY TO HARASS, OPPRESS AND ANNOY**

6 This libel action is about Tom Cruise’s repeated and extended absences from
7 his daughter following his divorce from Katie Holmes. Recognizing that he has
8 admitted as true the critical facts that informed the conclusions actually at issue in
9 this action, Cruise attempts to divert attention to an irrelevant sideshow about a
10 supposed “corporate-wide [Bauer] culture of bigotry” driven by pro-Nazi/anti-
11 semitic/anti-Scientology biases. J.S. at 81. By doing so Cruise trivializes the
12 Holocaust as he attempts to draw entirely unfounded analogies between the most
13 serious of historical events and current entertainment news coverage about his
14 divorce that only briefly touches on his Scientology religion.¹ It is an offensive
15 conspiratorial endeavor that has nothing to do with this action or the Articles at issue.

16 The Bauer Defendants are all U.S. companies that operate in the U.S. and
17 publish magazines in the U.S. Their ultimate corporate parent, commonly called the
18 Bauer Media Group (“BMG”), is owned by the Bauer family and headquartered in
19 Germany. Neither BMG nor any member of the Bauer family is a party to this
20 action or had any involvement in publishing the Articles at issue. Nevertheless,
21 Cruise charges that over the course of BMG’s 138 year history, other entities
22 associated with BMG’s worldwide operations and unnamed members of the Bauer
23 family made statements or held views that he claims are anti-semitic or pro-Nazi.
24 From this, and this alone, Cruise extrapolates that BMG and the Bauer family have

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26 ¹ Cruise’s inability to perceive any boundaries to logic or taste is perhaps best
27 exemplified in footnote 19 of the Joint Stipulation. There, Cruise rejects Dan
28 Wakeford’s observation that it is “ludicrous” to suggest that Bauer had an anti-
semitic/pro-Nazi culture because they have a large number of Jewish and gay
employees. Cruise analogizes Wakeford’s argument to “a plantation owner claiming
‘I’m no racist. Everyone picking my cotton is black!’” J.S. at 85.

1 an “anti-minority religion” bias (and are therefore anti-Scientology) and claims that
 2 BMG caused this supposed pro-Nazi/anti-Scientology message to filter across the
 3 Atlantic to *Life & Style* and *In Touch*, resulting in the coverage at issue in this action.
 4 Cruise’s entire theory for requiring a response to these harassing and odious RFAs is
 5 without any evidentiary support, suffers from innumerable logical and evidentiary
 6 flaws and should not be permitted by the Court.

7 *First*, despite thousands of documents exchanged and nine depositions of
 8 Bauer Defendant witnesses, Cruise identifies *no evidence* that the editors of *Life &*
 9 *Style* or *In Touch Weekly* received any direction, direct or implicit, biased or
 10 otherwise, from BMG or a Bauer family member regarding reporting on Cruise or
 11 Scientology. To the contrary, the undisputed evidence establishes that BMG and the
 12 Bauer family play no role in the editorial content of the magazines: “I cannot think
 13 of a time when a Bauer family member have mentioned a celebrity’s name, let alone
 14 Tom Cruise’s name. They have never mentioned the name Scientology.”
 15 McNamara Decl., Ex. 13, at 216:22-217:4. Cruise’s thesis that BMG or the Bauer
 16 family somehow implicitly communicated supposed biases rests on nothing more
 17 than abstract statements that the company “has a corporate culture” and that it is
 18 “logical to assume” that executives “hew to that culture” or a single news article
 19 where a Bauer U.K. business executive noted in passing that the Bauer family is
 20 involved in business strategies around the world. J.S. at 85-87.² Yet, these scraps
 21 have nothing to do with demonstrating that BMG and the Bauer family impose an
 22 “anti-minority religion culture,” have ever communicated such a message or that the
 23 U.S. editors were otherwise aware of it and understood that they were expected to
 24 adhere to this “culture”.

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 26 ² Cruise ignores Wakeford’s repeated testimony explaining that the Bauer
 27 family is “not involved on a day-to-day basis of the magazines, per se. They’re
 28 involved in the business: The numbers, the strategy. . . .” McNamara Decl., Ex. 13,
 215:16-216:11. Nor does Cruise explain – because he cannot – why he studiously
 avoided asking questions of the nine Bauer witnesses that would have revealed
 whether the imagined pro-Nazi culture actually existed.

1 **Second**, Cruise does not even establish that BMG in fact harbors any anti-
 2 Scientology bias that could have been communicated to the Bauer Defendants. To
 3 support his statement that “over the years” BMG has “not been subtle about its
 4 feelings regarding Scientology,” Cruise relies on *one article* published in Germany in
 5 1973 (over thirty years before *In Touch* or *Life & Style* even existed). J.S. at 82. But
 6 incredibly, even this one piece of “evidence” was held non-defamatory as a matter of
 7 law by a German court, and the U.S. lawsuit Cruise references regarding that article
 8 was similarly dismissed along with identical lawsuits filed in California and New
 9 York. *See Founding Church of Scientology of Washington, D.C. v. Verlag*, 536 F.2d
 10 429, 431-32, n.4 (D.C. Cir. 1976); Galsor Decl., Ex. 1. Cruise has not provided a
 11 shred of evidence beyond this forty year old article to substantiate that BMG, let
 12 alone the Bauer Defendants, holds anti-Scientology views.³

13 At bottom, Cruise has produced no evidence to support the very foundation for
 14 his RFAs: that BMG and the Bauer family harbor anti-semitic/ anti-Scientology
 15 views that were explicitly or implicitly communicated to the editors of *Life & Style*
 16 or *In Touch*. Absent that foundation, the RFAs’ entire line of inquiry concerning
 17 Nazis, anti-semitism, pornography, and Scientology is palpably offensive and
 18 harassing. *See, e.g., Conlon v. United States*, 474 F.3d 616, 622 (9th Cir. 2007)
 19 (Rule 36 “is not to be used in an effort to harass the other side . . .”). Nor does
 20 Cruise provide any legal basis for requiring the Bauer Defendants to hunt down
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 23 ³ Cruise is free to rely on internal emails that he claims suggest some anti-
 24 Scientology bias on the part of the Bauer Defendants – a conclusion the emails do not
 25 support – but such emails do not in any way justify these harassing RFAs directed at
 26 BMG, the entire Bauer Family, and unnamed foreign entities associated with BMG.
 27 J.S. at 79-81. Tellingly, in his zeal to ascribe the reporting at issue to an
 28 anti-Scientology bias emanating from Germany, Cruise dismisses the indisputable
 fact that a broad swath of the media coverage of his divorce during the same time
 period was nearly identical to that of the Bauer Defendants as indicating only that
 “Scientology is a target for widespread discrimination.” J.S. at 81; *see McNamara*
 Decl., Exs. 32-45. If true, then Cruise need not look to implied directives from
 Germany to explain the Articles at issue; he has a ready-made generic prejudice to
 rely on.

1 innumerable undefined entities or unnamed members of the Bauer family with some
 2 tangential relationship to BMG to determine the answers he seeks. Put simply, the
 3 Bauer Defendants do not possess the actual legal control over these people or entities
 4 that would even trigger a duty to inquire. *See U.S. ex rel. Englund v. Los Angeles*
 5 *Cty.*, 235 F.R.D. 675, 685 (E.D. Cal. 2006) (“reasonable inquiry” is limited to people
 6 and entities over which a party has “actual control”). Cruise cites no case where a
 7 party was required to obtain information from a parent company, let alone dozens of
 8 unnamed individuals who are or were part of the family that owns the parent or other
 9 media entities with some tangential relation to the parent.⁴ Though Cruise now tries
 10 to cabin the meaning of “Bauer Family” to “those members of the family in
 11 leadership roles and/or those who would be in a position to know the requisite
 12 information” – a definition that remains boundless – he does not even attempt to
 13 explain the meaning or reach of the terms “Bauer Publication” or “Bauer Outlet.”
 14 J.S. at 91. While Cruise may be surprised to learn that such an investigation would
 15 be well beyond the reasonable inquiry contemplated by Rule 36, responding to his
 16 RFAs would require far more than simply placing a telephone call or two as he
 17 disingenuously suggests.⁵ J.S. at 91.

18 **II. THE DOCUMENT REQUESTS ARE NECESSARY ONLY IF**
 19 **THIS SIDESHOW IS PERMITTED TO CONTINUE**

20 Cruise mischaracterizes the Bauer Defendants’ position on its motion to
 21 compel by conjuring inconsistencies where none exist. Cruise contends that the

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 23 ⁴ Even the RFAs Cruise cites as exemplars of appropriately framed requests
 24 lack any direction and would obligate the Bauer Defendants to admit statements that
 25 require far reaching investigation into the unknown and unknowable. J.S. at 84.
 26 These RFAs ask the Bauer Defendants to admit that any “Bauer Publication” or
 “Bauer Outlet” ever issued “editorial content in favor of” laws “restricting . . .
 activities of Scientologists in Germany,” or “espoused the view” that Scientology is a
 “cult” and should be barred in Germany. *See McNamara Decl., Ex. 3, RFAs 73, 78,*
 and 79.

27 ⁵ Similarly, his repeated assertion that a website was taken down by an entity
 28 with some unspecified connection to BMG or a member of the Bauer family in no
 way proves that the Bauer Defendants had anything to do with that event.

1 Bauer Defendants should not be allowed to obtain documents to “defend” the Bauer
2 Family while at the same time refusing to make inquiry of the Bauer Family. But,
3 the Bauer Defendants do not seek this evidence to defend the Bauer Family; they
4 seek this evidence to defend the *Bauer Defendants*. If produced, the evidence will no
5 doubt further demonstrate that Cruise’s lawyers ginned up this entire false pro-Nazi,
6 anti-semitic, anti-Scientology narrative to tar the Bauer Defendants. *See, e.g.,*
7 McNamara Decl., Ex. 25. Should a word of these theories be allowed in this case,⁶
8 the Bauer Defendants are most certainly entitled to be armed with evidence further
9 demonstrating that this storyline was created out of whole cloth by Cruise’s lawyers.

10 **III. CONCLUSION**

11 In light of the foregoing, the Court should grant the Bauer Defendants’ Motion
12 for a Protective Order and Motion to Compel, and should order Cruise to pay all
13 expenses incurred in bringing this motion.

14
15 DATED: November 12, 2013

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24 BAUER NORTH AMERICA, INC.

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26 ⁶His lawyers have made clear that Cruise does not “waiv[e] his right to
27 introduce evidence at trial of Bauer’s long record of bigoted publications and
28 practices.” McNamara Decl., Ex. 27. Further, Cruise’s contention that his
withdrawal of the 16 RFAs was not conditioned upon Defendants’ answering the
remaining requests is belied by the express language of his letter. *Id.*