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

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 TOM CRUISE,) Case No. CV 12-09124 (DDP) (JCX)
16 Plaintiff,)
vs.) **THE BAUER DEFENDANTS' ANSWER**
17) **TO COMPLAINT**
18 BAUER PUBLISHING COMPANY, L.P.)
BAUER MAGAZINE L.P., BAUER MEDIA)
19 GROUP, INC., BAUER, INC., HEINRICH)
BAUER NORTH AMERICA, INC., and)
DOES 1-10, inclusive,)
20 Defendants.)
21)
22)

23 As and for their answer to the complaint of plaintiff Tom Cruise (“Cruise” or
24 “Plaintiff”), defendants Bauer Publishing Company, L.P., Bauer Magazine L.P.,
25 Bauer Media Group, Inc., Bauer Inc., Heinrich Bauer North America, Inc.
26 (collectively, the “Bauer Defendants”), while not conceding they were each properly
27 named as defendants or were involved in the publications at issue in this action,
28 allege as follows:

Introduction

1
2 1. To the extent the allegations of paragraph 1 of the complaint are deemed
3 to be allegations of law, the Bauer Defendants are not required to plead thereto; to
4 the extent the allegations of the said paragraph are deemed to be allegations of fact,
5 Bauer Publishing Company L.P. and Bauer Magazine L.P. admit that they are the
6 respective publishers of magazines *Life & Style Weekly* and *In Touch Weekly* and the
7 Bauer Defendants otherwise deny each and every remaining allegation set forth in
8 paragraph 1 of the complaint.

9 **Allegations regarding Jurisdiction and Venue**

10 2. To the extent the allegations of paragraph 2 of the complaint are deemed
11 to be allegations of law, the Bauer Defendants are not required to plead thereto. To
12 the extent such allegations are deemed to be allegations of fact, the Bauer Defendants
13 do not dispute that this Court has subject matter jurisdiction over this action.

14 3. To the extent the allegations of paragraph 3 of the complaint are deemed
15 to be allegations of law, the Bauer Defendants are not required to plead thereto. To
16 the extent such allegations are deemed to be allegations of fact, the Bauer Defendants
17 deny that plaintiff has suffered any harm and do not dispute that venue is proper.

18 **Allegations regarding the Parties**

19 4. Admit the allegations set forth in paragraph 4 of the complaint, except
20 deny knowledge or information sufficient to form a belief as to the truth or falsity of
21 the allegations concerning plaintiff's principle place of residence.

22 5. Admit the allegations set forth in paragraph 5 of the complaint.

23 6. Admit the allegations set forth in paragraph 6 of the complaint.

24 7. Admit the allegations set forth in paragraph 7 of the complaint.

25 8. Admit the allegations set forth in paragraph 8 of the complaint.

26 9. Deny that Heinrich Bauer North America, Inc.'s principal place of
27 business is New York and otherwise admit the allegations set forth in paragraph 9 of
28 the complaint.

1 10. To the extent the allegations of paragraph 10 of the complaint are
2 deemed to be allegations of law, the Bauer Defendants are not required to plead
3 thereto; to the extent the allegations of the said paragraph are deemed to be
4 allegations of fact, the Bauer Defendants deny knowledge or information sufficient to
5 form a belief as to the identities of the JOHN DOES and deny the remainder of the
6 aforesaid paragraph.

7 11. To the extent the allegations of paragraph 11 of the complaint are
8 deemed to be allegations of law, the Bauer Defendants are not required to plead
9 thereto; to the extent the allegations of the said paragraph are deemed to be
10 allegations of fact, the Bauer Defendants deny each and every allegation thereof.

11 12. Admit that Bauer Publishing Company L.P. and Bauer Magazine L.P.
12 are the respective publishers of magazines *Life & Style Weekly* and *In Touch Weekly*,
13 which are distributed in print internationally, and admit that the covers of *Life &*
14 *Style Weekly* and *In Touch Weekly* were published on the magazines' respective
15 websites, and that the Bauer Defendants sell more magazines at retail in the United
16 States than any other magazine publishing company, and otherwise deny each and
17 every allegation set forth in paragraph 12 of the complaint.

18 13. Admit that the Bauer Defendants sell magazines in supermarkets and
19 other stores and outlets throughout the country, and otherwise deny each and every
20 allegation set forth in paragraph 13 of the complaint.

21 **FIRST CLAIM FOR RELIEF**

22 **Allegations of Defamation**

23 **(Against All Defendants)**

24 14. Repeat and reallege the responses set forth in paragraphs 1 through 13
25 set forth above as if fully set forth herein.

26 15. Deny knowledge or information sufficient to form a belief as to the truth
27 or falsity of the allegations set forth in paragraph 15 of the complaint, except admit
28 on information and belief that plaintiff has one child, Suri, with actress Katie

1 Holmes, plaintiff has two children by a prior marriage, and that plaintiff and Ms.
2 Holmes were divorced in August 2012 after reaching a settlement agreement.

3 16. Admit that on July 18, 2012 as a means of conventional incidental
4 promotion for the issue, and the article contained in the issue referencing plaintiff,
5 the Bauer Defendants published the cover of the July 30, 2012 issue of *Life & Style*
6 on the *Life & Style* website, containing a photograph of Suri in a box in the upper left
7 hand corner, with the headline, "Suri in Tears, ABANDONED BY HER DAD," an
8 opinion which is supported by the article in the issue.

9 17. Admit that the July 30, 2012 issue of *Life & Style* was distributed in
10 print, and otherwise refer the Court to Exhibit A to the complaint for the contents
11 thereof.

12 18. Admit that the July 30, 2012 issue of *Life & Style* included a story
13 opining that Suri was having a "difficult time in the wake of her parents' split," that
14 the "normally sunny Suri has had several tearful episodes while out with Katie
15 recently", reporting the undisputed fact that "she hasn't seen her Dad in a month" and
16 otherwise deny each and every allegation set forth in paragraph 18 of the complaint.

17 19. Admit that plaintiff's counsel wrote to *Life & Style's* counsel on or
18 about July 18, 2012; admit that *Life & Style's* counsel responded to plaintiff's
19 counsel that *Life & Style* was confident it had acted in a good faith belief in the
20 accuracy of the information it reported, including information supporting the opinion
21 expressed on the cover of the issue; and as to the remaining allegations in paragraph
22 19 of the complaint, refer the Court to Exhibit B to the complaint for the contents
23 thereof, and otherwise deny each and every allegation set forth in paragraph 19 of the
24 complaint.

25 20. To the extent the allegations of paragraph 20 of the complaint are
26 deemed to be allegations of law, the Bauer Defendants are not required to plead
27 thereto; to the extent the allegations of the said paragraph are deemed to be
28

1 allegations of fact, the Bauer Defendants deny each and every allegation set forth in
2 paragraph 20 of the complaint.

3 21. Deny knowledge or information sufficient to form a belief as to the truth
4 or falsity of the allegations set forth in paragraph 21 of the complaint and otherwise
5 deny that plaintiff's representatives have repeatedly informed the Bauer Defendants
6 that plaintiff speaks to Suri "every day, and often more frequently".

7 22. To the extent the allegations of paragraph 22 of the complaint are
8 deemed to be allegations of law, the Bauer Defendants are not required to plead
9 thereto; to the extent the allegations of the said paragraph are deemed to be
10 allegations of fact, the Bauer Defendants deny each and every allegation set forth in
11 paragraph 22 of the complaint.

12 23. To the extent the allegations of paragraph 23 of the complaint are
13 deemed to be allegations of law, the Bauer Defendants are not required to plead
14 thereto; to the extent the allegations of the said paragraph are deemed to be
15 allegations of fact, the Bauer Defendants deny each and every allegation set forth in
16 paragraph 23 of the complaint.

17 24. To the extent the allegations of paragraph 24 of the complaint are
18 deemed to be allegations of law, the Bauer Defendants are not required to plead
19 thereto; to the extent the allegations of the said paragraph are deemed to be
20 allegations of fact, the Bauer Defendants deny each and every allegation set forth in
21 paragraph 24 of the complaint.

22 25. Admit that on September 19, 2012, the Bauer Defendants published the
23 cover of the October 1, 2012 issue of *In Touch*, a "sister" publication of *Life & Style*,
24 on *In Touch's* website with an accompanying story, and admit that the cover
25 contained a photograph of Suri and a photograph of plaintiff with the following
26 headlines: "44 Days Without Tom, Abandoned by Daddy. Suri is left heartbroken as
27 Tom suddenly shuts her out and even misses her first day of school. Has He Chosen
28 Scientology Over Suri for Good?" To the extent the remaining allegations set forth

1 in paragraph 25 of the complaint are deemed to be allegations of law, the Bauer
2 Defendants are not required to plead thereto; to the extent the remaining allegations
3 of the said paragraph are deemed to be allegations of fact, the Bauer Defendants deny
4 each and every remaining allegation set forth in paragraph 25 of the complaint.

5 26. Refer the Court to Exhibit C to the complaint for the contents thereof
6 and otherwise deny each and every allegation set forth in paragraph 26 of the
7 complaint.

8 27. Refer the Court to Exhibit D to the complaint for the contents thereof
9 and admit that Defendants responded to plaintiff explaining that the article, including
10 how it was referenced on the cover reflected opinions based on revealed and
11 undisputed facts including that plaintiff did not dispute that he had not visited Suri
12 for over two months, despite previously assuring his daughter that he would be
13 spending a lot of time with her after his divorce.

14 28. To the extent the allegations of paragraph 28 of the complaint are
15 deemed to be allegations of law, the Bauer Defendants are not required to plead
16 thereto; to the extent the allegations of the said paragraph are deemed to be
17 allegations of fact, the Bauer Defendants deny each and every allegation set forth in
18 paragraph 28 of the complaint.

19 **SECOND CLAIM FOR RELIEF**

20 **Allegations of Invasion of Privacy (False Light)**

21 **(Against All Defendants)**

22 29. Repeat and reallege the responses set forth in paragraphs 1 through 28 as
23 though they were fully set forth herein.

24 30. To the extent the allegations of paragraph 30 of the complaint are
25 deemed to be allegations of law, the Bauer Defendants are not required to plead
26 thereto; to the extent the allegations of the said paragraph are deemed to be
27 allegations of fact, the Bauer Defendants deny each and every allegation set forth in
28 paragraph 30 of the complaint.

1 31. To the extent the allegation set forth in paragraph 31 of the complaint is
2 deemed to be an allegation of law, the Bauer Defendants are not required to plead
3 thereto; to the extent the allegation in the said paragraph is deemed to be an
4 allegation of fact, the Bauer Defendants deny the allegation set forth in paragraph 31
5 of the complaint.

6 32. To the extent the allegation set forth in paragraph 32 of the complaint is
7 deemed to be an allegation of law, the Bauer Defendants are not required to plead
8 thereto; to the extent the allegation in the said paragraph is deemed to be an
9 allegation of fact, the Bauer Defendants deny the allegation set forth in paragraph 32
10 of the complaint.

11 33. To the extent the allegation set forth in paragraph 33 of the complaint is
12 deemed to be an allegation of law, the Bauer Defendants are not required to plead
13 thereto; to the extent the allegation in the said paragraph is deemed to be an
14 allegation of fact, the Bauer Defendants deny the allegation set forth in paragraph 33
15 of the complaint.

16 34. To the extent the allegations set forth in paragraph 34 of the complaint
17 are deemed to be allegations of law, the Bauer Defendants are not required to plead
18 thereto; to the extent the allegations in the said paragraph are deemed to be
19 allegations of fact, the Bauer Defendants deny the allegations set forth in paragraph
20 34 of the complaint.

21 ***

22 35. Each and every allegation contained in the complaint not specifically
23 admitted is herein denied.

24 36. To the extent that the headings contained in the complaint constitute
25 allegations, such allegations are denied.

26 With respect to the Wherefore clauses in the complaint, the Bauer Defendants
27 deny that Plaintiff is entitled to any relief, including damages, punitive damages, the
28 costs of suit or any other relief.

1 7. Plaintiff's causes of action are barred in whole or in part by the
2 incremental harm doctrine.

3 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

4 8. Plaintiff's causes of action are barred in whole or in part because the
5 challenged statements cannot be reasonably understood by a reasonable reader to
6 have the defamatory meaning that plaintiff strains to allege.

7 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

8 9. Plaintiff's causes of action are barred in whole or in part, because if
9 plaintiff was harmed, which the Bauer Defendants deny, plaintiff impliedly assumed
10 the risk of that harm.

11 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

12 10. Some or all of plaintiff's claims are barred because plaintiff fails to
13 allege a single false statement of fact with the requisite accuracy and specificity to
14 state a cause of action for defamation.

15 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

16 11. The allegedly defamatory statements in the Bauer Defendants' articles
17 were published without the degree of fault required by the First and Fourteenth
18 Amendments to the United States Constitution and Article I, Section 2 of the
19 California Constitution, and thus cannot give rise to any claim against the Bauer
20 Defendants.

21 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

22 12. The allegedly defamatory statement or statements complained of by
23 plaintiff cannot provide a basis for any recovery by plaintiff because he is a public
24 figure and the Bauer Defendants did not act with actual malice.

25 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

26 13. The allegedly defamatory statement or statements complained of by
27 plaintiff are protected by the doctrine of fair comment, and therefore cannot provide
28 a basis for any recovery by plaintiff.

1 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 14. Plaintiff's claims for relief against the Bauer Defendants are barred by
3 the doctrine of neutral reportage.

4 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

5 15. Plaintiff's claims for relief against the Bauer Defendants are barred
6 because the alleged actions undertaken by the Bauer Defendants were privileged
7 under California law and common law.

8 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

9 16. Plaintiff's claims for relief against the Bauer Defendants are barred, in
10 whole or in part, because the damages allegedly suffered by plaintiff, if any, were not
11 proximately caused by the Bauer Defendants.

12 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

13 17. Plaintiff's claims for relief against the Bauer Defendants are barred, in
14 whole or in part, because of plaintiff's failure to mitigate his alleged damages, if any.

15 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

16 18. Plaintiff's claims for relief against the Bauer Defendants are barred, in
17 whole or in part, because any damages allegedly suffered by plaintiff were the result,
18 in whole or in part, of plaintiff's own legal fault, and any recovery by plaintiff should
19 be reduced in proportion to plaintiff's fault.

20 **NINETEENTH SEPARATE AND ADDITIONAL DEFENSE**

21 19. Plaintiff's claims for relief against the Bauer Defendants are barred, in
22 whole or in part, because any damages allegedly suffered by plaintiff were either
23 wholly or in part the legal fault of persons, firms, corporations, or entities other than
24 the Bauer Defendants, and that legal fault reduces the percentage of responsibility, if
25 any, which is to be borne by the Bauer Defendants.

26 **TWENTIETH SEPARATE AND ADDITIONAL DEFENSE**

27 20. Plaintiff's claims against the Bauer Defendants are barred, in whole or
28 in part, because any award of damages would unjustly enrich plaintiff.

1 **TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

2 21. Plaintiff’s claims for relief against the Bauer Defendants are barred, in
3 whole or in part, because plaintiff has not pleaded either libel *per se* or special
4 damages with sufficient particularity.

5 **TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

6 22. Plaintiff’s claims for relief against the Bauer Defendants are barred, in
7 whole or in part, because plaintiff has failed to state a claim upon which punitive
8 damages can be awarded against the Bauer Defendants.

9 **TWENTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

10 23. Plaintiff is not entitled to recover punitive damages because the
11 statement or statements complained of involved a matter of public concern and no
12 statement was made with actual malice.

13 **TWENTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

14 24. The Complaint, to the extent that it seeks punitive damages against the
15 Bauer Defendants, violates the Bauer Defendants’ right to procedural and substantive
16 due process under the Fourteenth Amendment to the United States Constitution and
17 Article I, Section 7 of the California Constitution because, among other things, of the
18 vagueness and uncertainty of the criteria for the imposition of punitive damages and
19 the lack of fair notice of what conduct will result in the imposition of such damages.
20 Therefore, plaintiff cannot recover punitive damages against the Bauer Defendants in
21 this case.

22 **TWENTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**

23 25. The Complaint, to the extent that it seeks punitive damages against the
24 Bauer Defendants, violates the Bauer Defendants’ right to procedural and substantive
25 due process under the Fifth and Fourteenth Amendments to the United States
26 Constitution and Article I, Section 7 of the California Constitution because, among
27 other things, there is no legitimate state interest in punishing the Bauer Defendants’
28 allegedly unlawful conduct at issue here, or in deterring its possible repetition.

1 Therefore, plaintiff cannot recover punitive damages against the Bauer Defendants in
2 this case.

3 **TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**

4 26. The Complaint, to the extent that it seeks punitive damages against the
5 Bauer Defendants, violates the Bauer Defendants’ right to procedural and substantive
6 due process under the Fifth and Fourteenth Amendments to the United States
7 Constitution and Article I, Section 7 of the California Constitution because, among
8 other things, the alleged wrongful conduct at issue here is not sufficiently
9 reprehensible to warrant any punitive damage recovery. Therefore, plaintiff cannot
10 recover punitive damages against the Bauer Defendants in this case.

11 **TWENTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

12 27. The Complaint, to the extent that it seeks punitive damages against the
13 Bauer Defendants, violates the Bauer Defendants’ right to procedural and substantive
14 due process under the Fifth and Fourteenth Amendments to the United States
15 Constitution and Article I, Section 7 of the California Constitution because, among
16 other things, any punitive damage award would be grossly out of proportion to the
17 alleged wrongful conduct at issue here. Therefore, plaintiff cannot recover punitive
18 damages against the Bauer Defendants in this case.

19 **TWENTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

20 28. To the extent that the Complaint seeks punitive damages against the
21 Bauer Defendants, it violates the Bauer Defendants’ right to protection from
22 “excessive fines” under Article 1, Section 17 of the California Constitution, and it
23 violates the Bauer Defendants’ right to substantive due process as provided in the
24 Fifth and Fourteenth Amendments to the United States Constitution and Article 1,
25 Section 7 of the California Constitution. To the extent that the Complaint seeks
26 punitive damages authorized under California law, no punitive damages may
27 constitutionally be awarded because that statute is unconstitutional under the Fifth
28 and Fourteenth Amendments to the United States Constitution and Article 1, Section

1 7 and Article IV, Section 16 of the California Constitution because neither it, nor any
2 other law of California, establishes the maximum punitive damages award which
3 may be imposed in this case. Therefore, plaintiffs cannot recover punitive damages
4 against the Bauer Defendants in this case.

5 **TWENTY-NINTH SEPARATE AND ADDITIONAL DEFENSE**

6 29. The imposition of punitive damages against the Bauer Defendants
7 would deny equal protection of the laws, in violation of the Fifth and Fourteenth
8 Amendments to the United States Constitution and Article 1, Section 7 and Article
9 IV, Section 16 of the California Constitution. Therefore, plaintiff cannot recover
10 punitive damages against the Bauer Defendants.

11 **THIRTIETH SEPARATE AND ADDITIONAL DEFENSE**

12 30. Plaintiff's claims against the Bauer Defendants are barred, in whole or
13 in part, because plaintiff's damages, if any, are vague, uncertain, imaginary, and
14 speculative.

15 **THIRTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

16 31. Plaintiff's claims against the Bauer Defendants are barred, in whole or
17 in part, because the Bauer Defendants' conduct was reasonable, justified, and in good
18 faith.

19 **THIRTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

20 32. Plaintiff's claims against the Bauer Defendants are barred, in whole or
21 in part, because the challenged statements are not offensive to a reasonable person.

22 **THIRTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

23 33. Plaintiff's claims against the Bauer Defendants are barred, in whole or
24 in part, because Plaintiff may not state a claim for false light invasion of privacy
25 where a cause of action for defamation is also alleged.

26 **THIRTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

27 34. The Bauer Defendants have insufficient knowledge or information upon
28 which to form a belief as to whether they may have additional, as yet unstated,

1 separate defenses available to them. The Bauer Defendants reserve their right to
2 assert additional separate defenses in the event discovery indicates that such defenses
3 would be appropriate.

4 **WHEREFORE**, defendants Bauer Publishing Company, L.P., Bauer
5 Magazine L.P., Bauer Media Group, Inc., Bauer Inc., Heinrich Bauer North America,
6 Inc. respectfully seek an Order of this Court as follows:

- 7 1. Dismissing the complaint in its entirety and with prejudice;
- 8 2. Awarding the Bauer Defendants their costs and disbursements incurred
9 in defending this action; and
- 10 3. Granting such other and further relief as this Court deems just and
11 proper.

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DATED: December 14, 2012

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By: /s/ Alonzo Wickers IV
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