LAW OFFICES OF DAVID W. AFFELD, A.P.C.
David W. Affeld, Esq., SBN 123922
12400 Wilshire Blvd., Ste 1180
Los Angeles, CA 90025
Telephone: (310) 979-8700
Facsimile: (310) 979-8701

IVES, KIRWAN & DIBBLE
A Professional Corporation
Christopher Grivakes, Esq., SBN 127994
660 South Figueroa Avenue, Suite 1990
Los Angeles, California 90017
Telephone: (213) 627-0113
Facsimile: (213) 627-1545

Attorneys for Plaintiff
Michael Davis Sapir

FILED
LOS ANGELES SUPERIOR COURT

DEC 18 2009

JOHN A. CLARKE, CLERK
BY DARNELLA SMITH, DEPUTY

BC428383

Dept 55 Malcolm H. Mackey

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MICHAEL DAVIS SAPIR, an individual, Plaintiff, v. TOM CRUISE, BERTRAM FIELDS, GREENBERG GLUSKER CLAMAN FIELDS & MACHTINGER LLP, a California limited liability partnership, ANTHONY PELLICANO, and Does 1 through 50, Defendants.	CASE NO. **COMPLAINT FOR:** **1. INVASION OF PRIVACY;** **2. INTERCEPTION, DISCLOSURE AND/OR USE OF COMMUNICATIONS IN VIOLATION OF 18 U.S.C. §2511;** **3. VIOLATIONS OF CALIFORNIA PENAL CODE §§ 632 & 637.2;** **4. DISCLOSURE OF CONFIDENTIAL INFORMATION (Cal. Civ. Code § 1798.53);** **5. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS** **6. INJUNCTIVE RELIEF** **DEMAND FOR TRIAL BY JURY** **[C.C.P § 592]**

CIT/CASE: BC428383 LEA/DEF#:
RECEIPT #: DCX5D082008
DATE PAID: 12/21/09 08:51:44 AM
PAYMENT: $355.00 031D
RECEIVED:
CHECK:
CASH:
CHANGE:
CARD: 355.00

Plaintiff MICHAEL DAVIS SAPIR, an individual, complains of Defendants, and alleges as follows:

PARTIES

1. Plaintiff MICHAEL DAVIS SAPIR (aka Michael Davis) ("Davis" or "Plaintiff") is an individual who, at all relevant times, has resided in the State of California, County of Los Angeles.

2. Plaintiff is informed and believes, and on that basis alleges, that Defendant TOM CRUISE ("Cruise") is an individual who, at all relevant times, has resided in the State of California, County of Los Angeles.

3. Plaintiff is informed and believes, and on that basis alleges, Defendant BERTRAM FIELDS ("Fields") is an individual who, at all relevant times, has resided in the State of California, County of Los Angeles.

4. Plaintiff is informed and believes, and on that basis alleges, that Defendant GREENBERG GLUSKER CLAMAN FIELDS & MACHTINGER LLP ("Greenberg") is a California limited liability partnership with its principal place of business in the County of Los Angeles.

5. Plaintiff is informed and believes, and on that basis alleges, that Defendant ANTHONY PELLICANO ("Pellicano") is an individual who, at all relevant times, resided in the State of California, County of Los Angeles, and is a currently a resident of a federal correctional institution in Arizona.

6. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1 to 50, inclusive, and therefore sues these defendants under these fictitious names. Plaintiff will seek leave to amend this Complaint when it learns the names and capacities of these defendants.

7. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, the defendants, and each of them, were authorized and empowered by the other defendants, and each of them, to act, and they did so act, as the agent, principal, partner, joint venturer, employee, co-conspirator and/or aider and abetter of the other defendants, and each of them, and all of the things alleged to have been done by them, and each of them, were done in the capacity of and as agents, principals, partners, joint venturers, employees, co-conspirators and/or aiders and abetters of such

TMZ

other defendants.

GENERAL FACTUAL ALLEGATIONS

8. This case arises from the surreptitious and illegal wiretapping of Plaintiff's telephone calls by the notorious private investigator, Anthony Pellicano ("Pellicano") for the benefit of Defendants Cruise and Fields. Plaintiff's claims against Defendants arise from Defendants' intentional and malicious scheme and course of conduct of intimidation, harassment, and invasion of privacy, and/or their conspiracy to commit, or aiding and abetting, such illegal activities.

9. Plaintiff was the founder, owner and publisher of Bold Magazine, a Beverly Hills, California advertising-based publication which was similar to LA Weekly.

10. Pellicano was a private investigator who was found guilty on May 15, 2008 by a federal jury of 76 of 77 counts, including racketeering, wiretapping (9 counts), conspiracy to wiretap, manufacture and possession of a wiretapping device, wire fraud (19 counts), unauthorized access of national law enforcement database (18 counts), identity theft (13 counts), and computer fraud (13 counts). On December 15, 2008, Pellicano was sentenced to 15 years in prison and ordered, along with his codefendants, to pay fines totaling $2,000,000.

11. Fields is a prominent entertainment lawyer with the Greenberg firm. Plaintiff is informed and believes, and on that basis alleges, that Fields has been Cruise's lawyer since at least the late 1990's. Pellicano regularly worked on matters for the clients of Fields and Greenberg and was paid substantial sums of money in connection therewith. Plaintiff is informed and believes, and on that basis alleges, that Fields and Greenberg were fully aware at all relevant times that Pellicano provided wire-tapping services to obtain information from their adversaries and litigation opponents, and hired him for that express purpose with full knowledge of Pellicano's illegal methods. Indeed, Fields was quoted as saying that Pellicano used "unorthodox methods."

12. Cruise is a movie star with a long-standing business relationship with Fields, Greenberg and Pellicano. Plaintiff is informed and believes, and on that basis alleges, that Cruise has a pattern and practice of hiring Pellicano, either directly or indirectly, for the express purpose of conducting wiretaps. Plaintiff is informed and believes, and on that basis alleges, that in or about the mid 1990's, Cruise visited Pellicano's office for the purpose of listening to wiretaps. Plaintiff is

informed and believes, and on that basis alleges, that in or about 2001, during the time Cruise was about to divorce Nicole Kidman, Pellicano recorded conversations of Kidman and Cruise. Pellicano discussed with at least one of his employees the substance of those recorded conversations.

13. In or about early 2001, Bold Magazine published a $500,000 reward offer for videotape evidence that Cruise was gay. Shortly after the publication of the reward offer, Bold Magazine received an email with a video attachment in response to its reward offer. In or about March 2001, upon receipt of the email response, Plaintiff issued a press release indicating that Bold Magazine had received a response to its reward offer.

14. Sometime prior to June 4, 2001, Cruise retained Fields and Groenberg to prepare a defamation lawsuit against Plaintiff.

15. On June 4, 2001, Cruise filed a lawsuit against Plaintiff for defamation, captioned *Tom Cruise v. Michael Davis*, and bearing Case No. BC 251644 (the "Lawsuit"). The Lawsuit sought $100,000,000 in damages from Plaintiff.

16. The Lawsuit settled in early November 2001. Pursuant to the settlement, Plaintiff was required to enter into a Stipulated Judgment wherein he stipulated at Paragraph 1. b. that "Plaintiff, Tom Cruise, does not appear on the videotape to which said defendant referred to in his statements alleged in the Complaint. Plaintiff is not, and has never been, homosexual and has never had a homosexual affair." A true and correct copy of the Stipulated Judgment is attached hereto as Exhibit "A."

17. Plaintiff is informed and believes, and on that basis alleges, that Pellicano wiretapped Plaintiff in connection with, and during the course of, the Lawsuit, as evidenced by, among other things:

(1) Pellicano's standard business practice was to wiretap the target of an investigation. Plaintiff was the target of a Pellicano investigation. The FBI found a file entitled "Michael Davis Matter" in Pellicano's office.

(2) Pellicano's standard business practice was to assign a password ending with the word "omerta" to access illegally recorded conversations that had been encrypted and stored on iMac computers in his office. The FBI found a computer file entitled "Bold" with a password "Bold

TMZ

cocksucker omerta" in Pellicano's office. That file was a reference to Plaintiff's publication Bold.

(3) Pellicano stated to a witness, in furtherance of the conspiracy, words to the effect that "If you had to listen to him [Plaintiff] as much as I have you'll realize he's an asshole."

18. Plaintiff is informed and believes, and on that basis alleges, that DOES 1 through 10, were law enforcement employees who conspired with or aided and abetted Pellicano in procuring information on Plaintiff.

19. Plaintiff is informed and believes, and on that basis alleges, that DOES 11 through 20, were telephone company employees who conspired with or aided and abetted Pellicano in installing the wiretaps targeting Plaintiff.

20. Plaintiff is informed and believes, and on that basis alleges, that Pellicano wiretapped conversations between Plaintiff and the lawyer representing Plaintiff in the Lawsuit, and thereby obtained Plaintiff's confidential strategy and concerns in connection with the Lawsuit, including his fear that Cruise had vastly greater resources with which to pursue the matter, and that despite the strength of Plaintiff's case, the risk of financial ruination was too great. Defendants thus illegally conspired to obtain this confidential information illegally in order to extort terms of settlement amounting to capitulation by Plaintiff.

21. Plaintiff first suspected that he was a wiretapping victim within the last year when an FBI agent advised him to hire a lawyer.

FIRST CAUSE OF ACTION

(For Invasion of Privacy (Intrusion) (Cal. Const. Art. I § 1)

Against all Defendants)

22. Plaintiff realleges and incorporates each and every allegation of paragraphs 1-21 above as though fully set forth herein.

23. As a result of the conduct of Defendants, Plaintiff's privacy rights guaranteed by common law and the California constitution were intruded upon and violated when Defendants intentionally directed the illegal and unauthorized wiretapping of Plaintiff's telephone lines.

24. Alternatively, Defendants' conduct aided and abetted Pellicano's intrusion of plaintiff's constitutional right to privacy. Plaintiff is informed and believes, and on that basis

TMZ

alleges, that Defendants knew of Pellicano's wiretapping, gave substantial assistance or encouragement to Pellicano, and their conduct was a substantial factor in causing harm to Plaintiff.

25. Alternatively, Defendants are responsible for the acts of Pellicano under the doctrine of Respondeat Superior.

26. The Defendants engaged in a conspiracy to wiretap Plaintiff with knowledge that their conduct was illegal and violated Plaintiff's rights.

27. Plaintiff did not consent to such wiretapping or the invasion of his privacy.

28. As a direct and proximate result of Defendants' acts alleged above, Plaintiff suffered damages, including emotional distress damages, in an amount to be proved at trial, but in excess of Five Million Dollars.

29. Defendants' intrusion was highly offensive to a reasonable person because, among other things, the intrusion resulted in the revelation of confidential and private communications, including without limitation, attorney-client communications and other private conversations.

30. In addition, Defendants' conduct as described herein was done with a conscious disregard of Plaintiff's rights, and was done with the intent to vex, annoy, and harass him. Defendants' actions in conscious disregard for Plaintiff's well being constitute malice, oppression, and/or fraud, pursuant to California Civil Code Section 3294. Plaintiff is therefore entitled to punitive damages in an amount sufficient to punish or set an example of Defendants.

SECOND CAUSE OF ACTION

(For Interception, Disclosure and/or Use of Communications in Violation of 18 U.S.C. § 2511 Against All Defendants)

31. Plaintiff realleges and incorporates each and every allegation of paragraphs 1-21 and 23-30 above as though fully set forth herein.

32. By the acts alleged herein, Defendants intentionally caused to be intercepted, endeavored to cause to be intercepted, or procured another person to intercept or endeavor to intercept Plaintiff's wire or electronic communications in violation of 18 U.S.C. § 2511(1)(a); and/or

33. Defendants intentionally used, endeavored to use, or procured another person to use or endeavor to use an electronic, mechanical, or other device to intercept an oral communication when

(1) such device was affixed to, or otherwise transmitted a signal through, a wire, cable, or other like connection used in wire communications; or (2) such use or endeavor to use (a) took place on the premises of a business or commercial establishment the operations of which affect interstate or foreign commerce; or (b) obtained or was for the purpose of obtaining information relating to the operations of a business or other commercial establishment the operations of which affect interstate or foreign commerce in violation of 18 U.S.C. § 2511(1)(b), 2511(1)(b)(i), and 2511(1)(b)(iv); and/or

34. Plaintiff is informed and believes, and on that basis alleges, that Defendants intentionally disclosed, or endeavored to disclose, to another person the contents of Plaintiff's wire or electronic communications, knowing or having reason to know that the information was obtained through the interception of wire or electronic communications in violation of 18 U.S.C. § 2511(1)(c); and/or

35. Plaintiff is informed and believes, and on that basis alleges, that Defendants intentionally used, or endeavored to use, the contents of Plaintiff's wire or electronic communications, while knowing or having reason to know that the information was obtained through the interception of wire or electronic communications in violation of 18 U.S.C. § 2511(1)(d); and/or

36. Defendants did not notify Plaintiff of the above-described intentional pursuit, interception, divulgence and/or use of his wire or electronic communications, nor did Plaintiff consent to such.

37. Alternatively, Defendants' conduct aided and abetted Pellicano's violation of 18 U.S.C. §2511. Defendants knew of Pellicano's wiretapping, gave substantial assistance or encouragement to Pellicano, and was a substantial factor in causing harm to Plaintiff.

38. Alternatively, Defendants are responsible for the acts of Pellicano under the doctrine of Respondeat Superior.

39. The Defendants engaged in a conspiracy to wiretap Plaintiff with knowledge that their conduct was illegal and violated Plaintiff's rights.

40. Plaintiff has been and is aggrieved by the aforesaid pursuit, interception, divulgence and/or use of his wire or electronic communications.

41. Pursuant to 18 U.S.C. § 2520, which provides a civil action for any person whose wire

TMZ

or electronic communications have been intentionally pursued, intercepted, divulged and/or used in violation of 18 U.S.C. § 2511, Plaintiff seeks equitable and declaratory relief; statutory damages of whichever is the greater of $100 per day for each day of violation or $10,000; and reasonable attorneys' fees and other litigation costs reasonably incurred.

42. Defendants acted wantonly, recklessly and/or maliciously. Pursuant to 18 U.S.C. § 2520, Plaintiff is therefore entitled to punitive damages in an amount sufficient to punish or set an example of the Defendants.

THIRD CAUSE OF ACTION

(For Violations of California Penal Code Sections 632 & 637.2

(Eavesdropping) Against all Defendants)

43. Plaintiff realleges and incorporates each and every allegation of paragraphs 1-21, 23-30, and 32-42 above as though fully set forth herein.

44. Plaintiff is informed and believes, and on that basis alleges, that Defendants intentionally wiretapped or caused to have wiretapped and made or caused to have made an unauthorized and connection with Plaintiff's telephone lines, wire, cable and thereby listened, recorded, eavesdropped and intruded without consent on Plaintiff's private internal telephone conversations, including without limitation, attorney-client communications and other private conversations, in violation of California Penal Code Sections 632 and 637.2.

45. Alternatively, Defendants' conduct aided and abetted Pellicano's violations of Penal Code §632 and 637.2. Defendants knew of Pellicano's illegal wiretapping, gave substantial assistance or encouragement to Pellicano, and was a substantial factor in causing harm to Plaintiff.

46. Alternatively, Defendants are responsible for the acts of Pellicano under the doctrine of Respondeat Superior.

47. The Defendants engaged in a conspiracy to wiretap Plaintiff with knowledge that their conduct was illegal and violated Plaintiff's rights.

48. As a direct result of Defendants' conduct, Plaintiff has sustained and will continue to sustain general and special damages in an amount to be proved at trial, but not less than Five Million Dollars.

49. Pursuant to California Penal Code Section 637.2, Plaintiff is entitled to damages in the amount of $5,000 or three times the amount of actual damages to be proved at trial, whichever is greater, for each instance when his conversations were eavesdropped upon, recorded, or published. Plaintiff is informed and believes, and on that basis alleges, that the Defendants intercepted and illegally wiretapped at least 1,000 conversations.

FOURTH CAUSE OF ACTION

(For Disclosure of Confidential Information (Cal. Civ. Code § 1798.53)

Against all Defendants)

50. Plaintiff realleges and incorporates each and every allegation of paragraphs 1-21, 23 30, 32-42, and 44-49 above as though fully set forth herein.

51. In intentionally causing the disclosure of Plaintiff's confidential information, Defendants caused disclosure of information that was not otherwise public. In intentionally receiving Plaintiff's confidential information, Defendants received information that was not otherwise public.

52. Defendants knew or should have reasonably known that Plaintiff's confidential information, including LAPD computer database and files, was personal information maintained by a state agency or from "records" within a "system of records" (as these terms are defined in the Federal Privacy Act of 1974 (P.L. 93-579; 5 U.S.C. § 552a)) maintained by a federal government agency.

53. Alternatively, Defendants' conduct aided and abetted Pellicano's violation of California Civil Code §1798.53. Defendants knew of Pellicano's wrongful conduct, gave substantial assistance or encouragement to Pellicano, and was a substantial factor in causing harm to Plaintiff.

54. Alternatively, Defendants are responsible for the acts of Pellicano under the doctrine of Respondeat Superior.

55. The Defendants engaged in a conspiracy to wiretap Plaintiff with knowledge that their conduct was illegal and violated Plaintiff's rights.

56. As a result of the disclosure and receipt of confidential information, Plaintiff was damaged in amount to be proven at trial, but not less than Five Million Dollars.

57. Defendants acted in conscious disregard of the rights of Plaintiff. Defendants were aware of the probable dangerous consequences of his conduct toward Plaintiff and willfully and

deliberately failed to avoid those consequences. Defendants' conduct toward Plaintiff was intended to cause injury to Plaintiff and subjected Plaintiff to unjust hardship. Defendants' conduct was carried out with a willful and conscious disregard of the rights of others. As a result, punitive damages should be assessed against Defendants.

58. Pursuant to California Civil Code Section 1798.53, in addition to special and general damages, Plaintiff shall be awarded a minimum of $2,500 in exemplary (punitive) damages as well as attorneys' fees and other litigation costs reasonably incurred in this suit.

FIFTH CAUSE OF ACTION

(For Intentional Infliction of Emotional Distress Against all Defendants)

59. Plaintiff realleges and incorporates each and every allegation of paragraphs 1-21, 23-30, 32-42, 44-49, and 51-58 above as though fully set forth herein.

60. The course of conduct engaged in by Defendants, including the direct intimidation and harassment and purposeful invasion of privacy and illegal wiretapping, constitutes extreme and outrageous conduct and is unacceptable in a decent and law-abiding society.

61. The conduct of Defendants was intentionally designed to cause immediate harm and injury to Plaintiff and instill fear and apprehension in Plaintiff.

62. Defendants knew or should have known that the conduct alleged herein would result in Plaintiff's severe emotional distress, and said conduct was perpetrated by Defendants with the intent to inflict, or with the reckless disregard for the probability of inflicting mental anguish and severe emotional distress on Plaintiff.

63. Alternatively, Defendants' conduct aided and abetted Pellicano's intentional infliction of emotional distress. Defendants knew of Pellicano's wrongful conduct, gave substantial assistance or encouragement to Pellicano, and was a substantial factor in causing harm to Plaintiff.

64. Alternatively, Defendants are responsible for the acts of Pellicano under the doctrine of Respondeat Superior.

65. The Defendants engaged in a conspiracy to wiretap Plaintiff with knowledge that their conduct was illegal and violated Plaintiff's rights.

66. As a direct result of Defendants' conduct, Plaintiff became seriously emotionally

traumatized, anxious, mentally anguished, and suffered severe emotional distress, in an amount to be proved at trial, but not less than Five Million Dollars.

67. Defendants' actions in conscious disregard for Plaintiff's well-being constitute malice, oppression, and/or fraud, pursuant to California Civil Code Section 3294. Plaintiff is therefore entitled to punitive damages in an amount sufficient to punish or set an example of Defendants.

SIXTH CAUSE OF ACTION

(For Injunctive Relief Against all Defendants)

68. Plaintiff realleges and incorporates each and every allegation of paragraphs 1-21, 23-30, 32-42, 44-49, 51-58, and 60-67 above as though fully set forth herein.

69. The Stipulated Judgment in the Lawsuit provides at Paragraph 2. a. "That defendant, Michael Davis, and his agents, employees and representatives, including but not limited to, Bold Magazine, are permanently enjoined from issuing, or authorizing the issuance of, any statement contrary to any of the foregoing findings."

70. Plaintiff is informed and believes, and on that basis alleges, that the Stipulated Judgment in the Lawsuit was unlawfully procured through the use of illegal wiretapping.

71. Furthermore, Paragraph 2. a. of the Stipulated Judgment constitutes an unlawful prior restraint.

72. Plaintiff seeks injunctive relief in the form of an order modifying the Stipulated Judgment.

PRAYER

Wherefore, Plaintiff prays for an order or judgment against Defendants as follows:

1. On the First and Third through Fifth Causes of Action, general and special damages according to proof, but not less than Five Million Dollars;

2. On the Second Cause of Action, the greater of $100 per day for each day of violation or $10,000, according to proof;

3. Treble damages, according to applicable statutes;

4. Punitive damages as to the First, Second, Fourth, and Fifth Causes of Action;

5. Statutory damages, according to applicable statutes;

TMZ

6. Equitable and declaratory relief as to the Second Cause of Action;

7. Injunctive relief as the Sixth Cause of Action;

8. Award of Plaintiff's attorneys' fees and other costs of suit to the extent permitted by law, including without limitation pursuant to 18 U.S.C. § 2520(b)(3), 18 U.S.C. § 2707(b)(3), Cal. Civil Code Section 1798.53, and Cal. Code Civ. Proc. § 1021.5; and

9. As to all causes of action, such other and further relief as the Court may deem just and proper.

DATED: December 18, 2009

LAW OFFICES OF DAVID W. AFFELD, A.P.C.
And IVES, KIRWAN & DIBBLE, A.P.C.

By: David W. Affeld

DAVID W. AFFELD
Attorneys for Plaintiff

TMZ

DEMAND FOR JURY TRIAL

Pursuant to Code of Civil Procedure §592, Plaintiff hereby demands a trial by jury for all issues so triable.

DATED: December 18, 2009

LAW OFFICES OF DAVID W. AFFELD, A.P.C.
And IVES, KIRWAN & DIBBLE, A.P.C.

By: _____
DAVID W. AFFELD
Attorneys for Plaintiff

TMZ