

1 KENDALL BRILL & KLIEGER LLP  
Richard B. Kendall (90072)  
2 *rkendall@kbbfirm.com*  
Philip M. Kelly (212714)  
3 *pkelly@kbbfirm.com*  
Joshua Y. Karp (254424)  
4 *jkarp@kbbfirm.com*  
10100 Santa Monica Blvd., Suite 1725  
5 Los Angeles, California 90067

6 [REDACTED]  
7 Attorneys for Plaintiff and Cross-  
Defendant  
8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
11

12 DAVID V. BECKHAM, an individual.,  
13 Plaintiff,

14 v.

15 BAUER PUBLISHING COMPANY,  
L.P., a Delaware limited partnership;  
16 BAUER MAGAZINE L.P., a Delaware  
limited partnership; BAUER MEDIA  
17 GROUP, INC., a Delaware corporation;  
BAUER, INC., a Delaware corporation;  
18 BAUER NORTH AMERICA, INC., a  
Delaware corporation; MICHELLE  
19 LEE, an individual; IRMA NICI, an  
individual; and DOES 1 through 50,  
20 inclusive.,

21 Defendants.

22 IRMA NICI, an individual.,  
23 Cross-Complainant,

24 v.

25 DAVID V. BECKHAM, an individual.,  
26 Cross-Defendant.  
27

Case No. CV10-7980 R (SSx)

**PLAINTIFF AND CROSS-  
DEFENDANT DAVID BECKHAM'S  
OBJECTIONS TO [PROPOSED]  
ORDER GRANTING BAUER  
DEFENDANTS' SPECIAL MOTION  
TO STRIKE**

Hon. Manuel L. Real

Crtrm.: 8

1 Plaintiff and Cross-Defendant David Beckham (“Beckham”) hereby objects  
2 to the [Proposed] Order Granting Defendants Bauer Publishing Company, L.P.,  
3 Bauer Magazine L.P., Bauer Media Group, Inc., Bauer Inc., Heinrich Bauer North  
4 America, Inc. and Michelle Lee’s (“Bauer Defendants” or “Bauer”) Special Motion  
5 to Strike, lodged by the Bauer Defendants on February 24, 2011 (“Proposed  
6 Order”), Dkt. # 37. The Court should reject the Bauer Defendants’ Proposed Order  
7 because it does not accurately reflect the ruling made by this Court during the  
8 hearing that occurred on February 14, 2011 (the “Hearing”).

9 On February 14, 2011, this court held a hearing on the Bauer Defendants’  
10 anti-SLAPP motion. Following oral argument, the Court read into the record its  
11 ruling granting the Bauer Defendants’ anti-SLAPP motion and dismissing  
12 Beckham’s libel and intentional infliction of emotional distress claims against the  
13 Bauer Defendants. The Court directed Bauer to “prepare the ruling.” Instead of  
14 simply preparing the ruling, Bauer revised it.

15 Beckham has prepared a form of order, which is attached to these Objections,  
16 that tracks the Court’s ruling as read into the record. Attached as Exhibit A is a  
17 redline comparison of Beckham’s proposed order (the Court’s actual ruling) with  
18 the Bauer Defendants’ Proposed Order.<sup>1</sup> As demonstrated in this comparison  
19 redline, the Bauer Defendants have added to their Proposed Order several additional  
20 rulings this Court did not make. For example, the Bauer Defendants include the  
21 following material additions to the Court’s ruling in its Proposed Order:

- 22 • **Paragraph 6:** This paragraph concludes with the following: “there is no  
23 evidence that the Bauer Defendants knew the Article was false at the time  
24 of publication.” The Court’s ruling did not include this statement.

25  
26  
27 <sup>1</sup> The portions of the Exhibit A redline that are crossed out in red are the  
28 additions and changes Bauer attempts to add to this Court’s ruling.

- 1 • **Paragraph 7:** This paragraph concludes with the following: “there is no  
2 evidence that the Bauer Defendants recklessly disregarded the truth of the  
3 Article.” Again, the Court’s ruling did not include this statement.
- 4 • **Paragraph 10:** This paragraph of the Proposed Order purports to dismiss  
5 Beckham’s claim for intentional infliction of emotional distress on the  
6 erroneous basis that the California Uniform Single Publication Act, Cal.  
7 Civ. Code § 3425.3, precludes this claim. The Court made no such ruling.  
8 The Court dismissed Beckham’s claim for intentional infliction of  
9 emotional distress because it ruled that Beckham could not demonstrate  
10 with clear and convincing evidence that Bauer acted with actual malice.  
11 The court’s ruling did not discuss Bauer’s erroneous argument that the  
12 California Uniform Single Publication Act barred the claim. This statute  
13 was never discussed at the Hearing and was certainly not part of the  
14 Court’s ruling.
- 15 • **Paragraph 14:** This paragraph purports to order Beckham to pay the  
16 Bauer Defendants their attorneys’ fees and costs pursuant to Cal. Civ.  
17 Proc. Code § 425.16(c). This Court has not issued any order, decision, or  
18 ruling regarding Bauer’s entitlement to attorneys’ fees and costs in this  
19 action. Indeed, Bauer has filed a separate motion for attorneys’ fees and  
20 costs. Dkt. # 38.

21 Additionally, Bauer improperly rephrased the Court’s ruling in Paragraph 5.  
22 The Court correctly acknowledged in its ruling that “plaintiff points out potential red  
23 flags that the defendant should have picked up on and further investigated.” Bauer  
24 revised this phrase in the Proposed Order to read as if the red flag issue was simply  
25 Beckham’s allegation. Proposed Order ¶ 5 (“While Beckham claims the Bauer  
26 Defendants should have picked up on potential ‘red flags’ and investigated further . .  
27 . .”). The Court’s recognition of potential red flags regarding the truth of the Article  
28 is important as it is one piece of the circumstantial evidence that demonstrates,

1 through cumulation and appropriate inferences, that the Bauer Defendants acted  
2 with actual malice. *See Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244,  
3 257 (1984); *Goldwater v. Ginzburg*, 414 F.2d 324, 342 (2d Cir. 1969).

4 For the foregoing reasons, the Court should reject the Bauer Defendants'  
5 Proposed Order and instead enter an order in the form attached to these Objections,  
6 which conforms to the oral ruling this Court issued at the Hearing and excludes the  
7 portions of the Proposed Order that the Bauer Defendants have improperly sought to  
8 revise or add to this Court's ruling.

9  
10 Dated: March 1, 2011

KENDALL BRILL & KLIEGER LLP

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12  
13 By: /s/ Richard B. Kendall  
14 Richard B. Kendall  
15 Attorneys for Plaintiff and Cross-  
16 Defendant

