

Matthew J. Geragos, SBN 153390
GERAGOS LAW GROUP
700 North Brand Blvd., Suite 1180
Glendale, CA 91203
Tel: 213-232-1363 Fax: 888-800-2949
Email: matthew@geragoslaw.com

Electronically FILED by
Superior Court of California,
County of Los Angeles
4/22/2024 3:54 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By V. Sino-Cruz, Deputy Clerk

Varand Gourjian, SBN 205344
Tiffany Hyatt Krog SBN 212915
GOURJIAN LAW GROUP
101 North Brand Boulevard, Suite 1220
Glendale, California 91203
Email: varand@gourjianlaw.com
tiffany@gourjianlaw.com

Attorneys for Defendant,
THOMAS SANDOVAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

RACHEL LEVISS, an individual,

Plaintiff,

vs.

Case No. 24STCV05072

Assigned for All Purposes to
Hon. Daniel M. Crowley
Dept. 71

UNLIMITED JURISDICTION

THOMAS SANDOVAL, an individual;
ARIANA MADIX; an individual; and
DOES 1-50, inclusive,

Defendants.

**DEFENDANT THOMAS SANDOVAL'S
NOTICE OF DEMURRER AND
DEMURRER TO COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF
MATTHEW J. GERAGOS**

DATE: May 24, 2024
TIME: 8:30 a.m.
DEPT: 71

Complaint Filed: 02/29/2024
Trial Date: Not Set

Reservation ID: 734224701332

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 24, 2024, at 8:30 a.m., in Department “71” of
3 this Court located at 111 N. Hill Street, Los Angeles, California 90012, Defendant THOMAS
4 SANDOVAL, will and hereby demurs to Plaintiff RACHEL LEVISS’ Complaint filed in this
5 matter on February 29, 2024.

6 This Demurrer is based upon this Notice, the Demurrer, the attached Memorandum of
7 Points and Authorities, the Declaration of Matthew J. Geragos, the Complaint on file herein, the
8 pleadings and files contained within the Court file in this matter, and such oral and documentary
9 evidence as may be presented at the time of the hearing of this matter.

10 DATED: April 22, 2024

GERAGOS LAW FIRM

11 /s/ Matthew J. Geragos

12 By: _____
Matthew J. Geragos

14 DATED: April 22, 2024

GOURJIAN LAW GROUP, P.C.

15 /s/ Varand Gourjian

16 By: _____
Varand Gourjian
17 Tiffany Hyatt Krog

18 Attorneys for Defendant THOMAS SANDOVAL
19
20
21
22
23
24
25
26
27
28

1 **DEMURRER TO COMPLAINT**

2 Defendant THOMAS SANDOVAL (“SANDOVAL”) demurs generally and specially to
3 Plaintiff RACHEL LEVISS’ (“LEVISS”) Complaint as follows:

4 **DEMURRER TO FIRST CAUSE OF ACTION FOR EAVESDROPPING**

5 1. Defendant SANDOVAL demurs to Plaintiff LEVISS’ first cause of action for
6 Eavesdropping on the grounds that it fails to state facts sufficient to constitute a cause of action
7 for same pursuant to Code of Civil Procedure section 430.10, subdivision (e). Specifically, this
8 cause of action fails because Penal Code section 632 does not protect a general right of privacy
9 from unconsented videotaping and only protects sound-based or symbol-based communications.
10

11 2. Defendant SANDOVAL demurs to Plaintiff LEVISS’ first cause of action for
12 Eavesdropping on the grounds that it fails to state facts sufficient to constitute a cause of action
13 for same pursuant to Code of Civil Procedure section 430.10, subdivision (e). Specifically, this
14 cause of action fails because Plaintiff does not allege any facts showing that the parties’
15 communications were confidential.
16

17 3. Defendant SANDOVAL demurs to Plaintiff LEVISS’ first cause of action for
18 Eavesdropping on the grounds that it is uncertain pursuant to Code of Civil Procedure section
19 430.10, subdivision (f).
20

21 **DEMURRER TO THIRD CAUSE OF ACTION FOR INVASION OF PRIVACY**

22 4. Defendant SANDOVAL demurs to Plaintiff LEVISS’ third cause of action for
23 Invasion of Privacy on the grounds that it fails to state facts sufficient to constitute a cause of
24 action for same pursuant to Code of Civil Procedure section 430.10, subdivision (e).
25 Specifically, this cause of action fails because Plaintiff fails to allege any facts showing an
26 intrusion by Defendant SANDOVAL.
27
28

1 5. Defendant SANDOVAL demurs to Plaintiff LEVISS' third cause of action for
2 Invasion of Privacy on the grounds that it is uncertain pursuant to Code of Civil Procedure
3 section 430.10, subdivision (f).
4

5 **DEMURRER TO FOURTH CAUSE OF ACTION FOR INTENTIONAL INFLECTION**
6 **OF EMOTIONAL DISTRESS**

7 6. Defendant SANDOVAL demurs to Plaintiff LEVISS' fourth cause of action for
8 Intentional Infliction of Emotional Distress on the grounds that it fails to state facts sufficient to
9 constitute a cause of action for same pursuant to Code of Civil Procedure section 430.10,
10 subdivision (e). Specifically, this cause of action fails because Plaintiff fails to state facts
11 showing that Defendant SANDOVAL's conduct was outrageous, done with the requisite intent or
12 that her injuries were actually and proximately caused by Defendant SANDOVAL's conduct.
13

14 7. Defendant SANDOVAL demurs to Plaintiff LEVISS' fourth cause of action for
15 Intentional Infliction of Emotional Distress on the grounds that it is uncertain pursuant to Code
16 of Civil Procedure section 430.10, subdivision (f).
17

18 WHEREFORE, Defendant SANDOVAL requests that:

- 19 1. Defendant's Demurrer be sustained without leave to amend;
20 2. Defendant be awarded the costs of this action; and
21 3. The Court grant such other and further relief that the court considers proper.
22

23 DATED: April 22, 2024

GERAGOS LAW FIRM

/s/ Matthew J. Geragos

24 By: _____
25 Matthew J. Geragos

26 GOURJIAN LAW GROUP, P.C.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Varand Gourjian
By: _____
Varand Gourjian
Tiffany Hyatt Krog

Attorneys for Defendant THOMAS SANDOVAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PROCEEDINGS	1
III.	AUTHORITY FOR DEMURRER	2
IV.	DEFENDANT SANDOVAL’S COUNSEL MET AND CONFERRED WITH PLAINTIFF LEVISS’ COUNSEL REGARDING THE INSTANT DEMURRER PRIOR TO ITS FILING	3
V.	PLAINTIFF LEVISS’ FIRST CAUSE OF ACTION FOR EAVESDROPPING UNDER PENAL CODE 632 FAILS AGAINST DEFENDANT SANDOVAL BECAUSE PENAL CODE SECTION 632 DOES NOT PROTECT A GENERAL RIGHT OF PRIVACY FROM UNCONSENTED VIDEOTAPING AND ONLY PROTECTS SOUND-BASED OR SYMBOL-BASED COMMUNICATIONS	4
VI.	PLAINTIFF LEVISS’ FIRST CAUSE OF ACTION FOR EAVESDROPPING UNDER PENAL CODE 632 FAILS AGAINST DEFENDANT SANDOVAL BECAUSE PLAINTIFF DOES NOT ALLEGE ANY FACTS SHOWING THAT THE PARTIES’ COMMUNICATIONS WERE CONFIDENTIAL.	6
VII.	PLAINTIFF LEVISS’ THIRD CAUSE OF ACTION FOR INVASION OF PRIVACY FAILS AGAINST DEFENDANT SANDOVAL BECAUSE PLAINTIFF DOES NOT ALLEGE ANY FACTS SHOWING AN INTRUSION BY DEFENDANT SANDOVAL.....	8
VIII.	PLAINTIFF LEVISS’ FOURTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FAILS AGAINST DEFENDANT SANDOVAL BECAUSE PLAINTIFF DOES NOT ALLEGE ANY FACTS SHOWING THAT SANDOVAL’S CONDUCT WAS OUTRAGEOUS, DONE WITH THE REQUISITE INTENT OR THAT HER INJURIES WERE ACTUALLY AND PROXIMATELY CAUSED BY SANDOVAL’S CONDUCT	9

1 IX. AT A MINIMUM, PLAINTIFF LEVISS’ COMPLAINT IS UNCERTAIN WITH
2 RESPECT TO ALL CAUSES OF ACTION ASSERTED AGAINST DEFENDANT
3 SANDOVAL 11
4 X. CONCLUSION..... 11
5 DECLARATION OF MATTHEW J. GERAGOS 1
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

<i>Ankeny v. Lockheed Missiles & Space Co.</i> (1979) 88 Cal.App.3d 531, 536-537	10
<i>Butler v. Sequeira</i> (1950) 100 Cal.App.2d 143, 145-46	3
<i>Cochran v. Cochran</i> (1998) 65 Cal.App.4th 488, 494.....	10
<i>Hughes v. Pair</i> (2009) 46 Cal.4th 1035, 1050-1051	10, 11
<i>KOVR-TV, Inc. v. Superior Court</i> (1995) 31 Cal.App.4th 1023, 1028.....	10
<i>Lazar v. Super. Ct.</i> (1996) 12 Cal.4th 631, 635	2
<i>Leyva v. Nielsen</i> (2000) 83 Cal.App.4th 1061, 1063	3
<i>Martin v. Bridgeport Cmty. Ass'n, Inc.</i> (2009) 173 Cal. App. 4th 1024, 1031.....	2
<i>Miller v. National Broad. Co.</i> (1986) 187 Cal. App. 3d 1463, 1482	9
<i>Oden v. Board of Administration</i> (1994) 23 Cal. App. 4th 194, 203 [28 Cal. Rptr. 2d 388].	5
<i>People v. Drennan</i> (2000) 84 Cal.App.2d 1349	4
<i>People v. Gibbon</i> (1989) 215 Cal.App.3d 1204.....	4
<i>Santa Ana Police Officers Assn. v. City of Santa Ana</i> (2017) 13 Cal.App.5th 317, 320.....	7
<i>Schulman v. Group W. Prods., Inc.</i> (1998) 18 Cal.4th 200, 231	9
<i>Vance v. Villa Park Mobilehome Estates</i> (1995) 36 Cal.App.4th 698	3
<i>Washington v. County of Contra Costa</i> (1995) 38 Cal.App.4th 890.....	2

Statutes

Code of Civil Procedure section 430.10(e).....	2
Code of Civil Procedure section 430.41(a).....	3
Penal Code section 632	5, 7, 8
Penal Code section 632(a)	6
Section 632(c)	7

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This civil case arises out of a sordid affair between Plaintiff RACHEL LEVISS
4 (“LEVISS”) and Defendant THOMAS SANDOVAL (“SANDOVAL”) -- two of the central
5 figures in the widely publicized and popular reality television series entitled “Vanderpump
6 Rules”. The affair, dubbed “Scandoval”, occurred while SANDOVAL was cohabitating with
7 his longtime girlfriend, fellow cast member, and co-Defendant ARIANA MADIX (“MADIX”).
8 The affair came to light when MADIX discovered explicit Facetime videos of LEVISS on
9 SANDOVAL’s phone.

10 After thrusting the vicissitudes of her life into the limelight for ongoing public
11 consumption and critique from 2016 through 2023, LEVISS has now filed the instant action
12 against Defendants SANDOVAL and MADIX complaining of being “an object of public scorn
13 and ridicule”. (¶1 of Complaint) LEVISS’ lawsuit is a thinly veiled attempt to extend her fame
14 and to rebrand herself as the victim instead of the other woman while denigrating her former
15 friend MADIX as a “scorned woman” and her former paramour SANDOVAL as “predatory”.
16 (¶2 of Complaint) Indeed, to establish LEVISS as the victim, her Complaint contains irrelevant
17 but incendiary allegations of LEVISS’ persecution by multiple *non-parties*, i.e., Bravo Media,
18 Evolution Media, her former boyfriend James Kennedy, Scheana Shay, and Andy Cohen.
19 Notably, since November of 2023 to the present date, LEVISS has actively maintained a
20 provocative podcast, “Rachel Goes Rogue”, to further bend the narrative to her will.

21 **II. PROCEEDINGS.**

22 On February 29, 2024, Plaintiff LEVISS filed a Complaint asserting dubious and
23 unsupported causes of action against Defendant SANDOVAL for (1) Eavesdropping, (2)
24 Invasion of Privacy, and (3) Intentional Infliction of Emotional Distress. All of LEVISS’
25 claims against SANDOVAL are based on her allegation that SANDOVAL surreptitiously
26 recorded two videos of LEVISS “in a state of undress and masturbating” during their less-than-
27 discrete public affair. However, these videos were *created* by LEVISS and *published* by
28 LEVISS to SANDOVAL via a consensual exchange on Facetime, i.e., “their video calls”. (See

¶¶24, 35 of Complaint). Based on LEVISS' own allegations, SANDOVAL merely saved private copies of the videos that LEVISS had filmed and shared with him. As a result of the deficient allegations in the Complaint, all of LEVISS' causes of action against SANDOVAL fail and require either dismissal or amendment. Accordingly, Defendant SANDOVAL has filed the instant Demurrer as well as a Motion to Strike Portions of the Complaint.

LEVISS' Complaint alleges the same three causes of action against MADIX with the addition of a claim for revenge porn. All of LEVISS' claims against MADIX arise out of her allegations that MADIX found LEVISS' explicit videos after searching through SANDOVAL's phone, and "At a minimum, Madix circulated the explicit videos to herself and Leviss" and "informed production about what she had found." (¶25 of Complaint)

III. AUTHORITY FOR DEMURRER

Under California case law, "[a] demurrer is properly granted when the pleadings fail to state facts sufficient to constitute a cause of action." (*Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890.) California statutory law is in accord. Code of Civil Procedure section 430.10(e), permits a party to object to a pleading, by demurrer, if "The pleading does not state facts sufficient to constitute a cause of action." "The plaintiff has the burden of showing that the facts pleaded are sufficient to establish every element of the cause of action and overcoming all of the legal grounds on which the trial court sustained the demurrer." (*Martin v. Bridgeport Cmty. Ass'n, Inc.* (2009) 173 Cal. App. 4th 1024, 1031.)

Code of Civil Procedure section 430.10, (f), permits a party to object to a pleading, by demurrer, if "The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible."

In ruling on a demurrer, the court is required to assume the truth of all properly pleaded material allegations of fact. (*Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 635.) However, this general rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. (*Vance v. Villa Park Mobilehome Estates* (1995) 36 Cal.App.4th 698.) A demurrer does not assume the truth of contentions, deductions, or conclusions of facts or law. (See *Leyva v.*

1 *Nielsen* (2000) 83 Cal.App.4th 1061, 1063.) Allegations of a complaint must be sufficiently
2 clear to apprise the defendant of the issues which he is to meet and defend. (*Butler v. Sequeira*
3 (1950) 100 Cal.App.2d 143, 145-46.)

4 While leave to amend may be granted where the plaintiff demonstrates a reasonable
5 probability that any defects identified can be cured by amendment, a demurrer should be
6 sustained without leave to amend “where the facts are not in dispute and the nature of the claim
7 is clear, but no liability exists under substantive law.” (*Harshbarger v. City of Colton* (1988)
8 197 Cal.App.3d 1335.)

9 **IV. DEFENDANT SANDOVAL’S COUNSEL MET AND CONFERRED WITH**
10 **PLAINTIFF LEVISS’ COUNSEL REGARDING THE INSTANT DEMURRER**
11 **PRIOR TO ITS FILING.**

12 Code of Civil Procedure section 430.41(a) mandates:

13 “Before filing a demurrer pursuant to this chapter, the demurring party shall meet
14 and confer in person or by telephone with the party who filed the pleading that is
15 subject to demurrer for the purpose of determining whether an agreement can be
16 reached that would resolve the objections to be raised in the demurrer.”

17 On April 9, 2024, Defendant SANDOVAL’s counsel Matthew Geragos sent Plaintiff
18 LEVISS’ attorneys a letter delineating the defects in the Complaint to be raised in a Demurrer.
19 Matthew Geragos and Plaintiff LEVISS’ attorney Jason Sunshine also participated in a
20 telephonic meet and confer conference on April 11, 2024. No resolution of the deficiencies set
21 forth in Matthew Geragos’ April 9, 2024 correspondence was reached during the April 11, 2024
22 telephonic meet and confer conference. (¶¶3, 4 of Geragos Decl.; Letter attached as Exh. A to
23 Geragos Decl.)

24 ///

25 ///

26 ///

27

28

V. **PLAINTIFF LEVISS' FIRST CAUSE OF ACTION FOR EAVESDROPPING UNDER PENAL CODE 632 FAILS AGAINST DEFENDANT SANDOVAL BECAUSE PENAL CODE SECTION 632 DOES NOT PROTECT A GENERAL RIGHT OF PRIVACY FROM UNCONSENTED VIDEOTAPING AND ONLY PROTECTS SOUND-BASED OR SYMBOL-BASED COMMUNICATIONS.**

People v. Drennan (2000) 84 Cal.App.2d 1349 holds that Penal Code section 632 does not protect a general right of privacy from unconsented videotaping. The court reasoned that the words used in the statute, such as “overhearing,” “eavesdropping,” “telephonic communication,” and “audible,” indicate that the statute protects *only* the content of sound-based or symbol-based communications. Under *People v. Drennan*, the use of the word “records” was not intended as an independent basis upon which to make unlawful the photographing of conduct whether or not incident to a communication. The statute is only intended to protect one's thoughts, ideas, or knowledge, and not the noncontent-based conduct coincident to the communication. Notably, the court in *People v. Drennan* expressly disagreed with earlier case law, *People v. Gibbon* (1989) 215 Cal.App.3d 1204, which held that a defendant who secretly videotaped his acts of sexual intercourse with various women violated section 632. The *People v. Drennan* court provided the following thorough and thoughtful reasoning for its holding:

“The statute is replete with words indicating the Legislature’s intent to protect only sound-based or symbol-based communications. The rule of statutory construction, *noscitur a sociis*, a word takes meaning from the company it keeps, is useful here. ‘A word of uncertain meaning may be known from its associates and its meaning ‘enlarged or restrained by reference to the object of the whole clause in which it is used.’ [Citation.]’ (*Oden v. Board of Administration* (1994) 23 Cal. App. 4th 194, 203 [28 Cal. Rptr. 2d 388].)

...

Section 632 contains other words indicating the communications the Legislature seeks to protect are confidential communications conducted by sound or symbol. Subdivision (b) excludes from the ambit of the statute anyone known by all parties to the communication to be ‘*overhearing* or recording the communication.’ (Italics added.) Subdivision (c) excludes from the statute a communication the parties reasonably expect may be ‘*overheard* or recorded.’ (Italics added.) Subdivision (d) excludes evidence obtained as a result of ‘*eavesdropping* upon or recording a confidential communication’ in violation of the section. (Italics added.) Subdivision (e) exempts from the statute certain

1 ‘telephonic communication’ systems. (Italics added.) Subdivision (f) exempts
2 ‘hearing aids and similar devices, by persons afflicted with impaired hearing, for
3 the purpose of overcoming the impairment to permit the *hearing of sounds*
ordinarily *audible* to the human *ear*.’ (Italics added.)

4 Throughout section 632, subdivision (a), the juxtaposition of the words
5 ‘eavesdrops’ [**589] and ‘records’ shows that when the Legislature used the
6 word ‘records’ it intended to prohibit two kinds of intrusion [***13] upon a
7 communication: (1) a ‘real time’ interception of a communication, by which the
8 perpetrator listens to the communication as it occurs; and (2) a mechanical
recording of a communication for later playback. The use of the word ‘records’
was not intended as an independent basis upon which to make unlawful the
photographing of conduct whether or not incident to a communication.

9 The language of the statute admits of no other construction than that the
10 Legislature intended to address the interception and recording of sound-based or
11 symbol-based communications, and that the statute protects the content of the
communication from being recorded, not the non-content based conduct
coincident to the communication.

12 . . .
13 ‘Eavesdropping’ is notably a term that refers to the surreptitious
14 overhearing of conversations. That is made clear in the exception which section
15 630 recognizes, ‘that law enforcement agencies have a legitimate need to employ
16 modern listening devices and techniques in the investigation of criminal conduct .
17 . . .’ It is manifest that it is listening in or eavesdropping upon private
18 communications that the law seeks to remedy, not the taking of pictures of people
19 engaged in conversation or other private conduct. It is in that context that section
630 declares the policy of the statute to ‘protect the right of privacy of the people
of this state.’ This policy, contrary to the reasoning in Gibbons, is not a source of
law independent of the elements of the statutory offense spelled out in section
632. Rather, section 630 makes clear that it is ‘the invasion of privacy *resulting*
from the . . . use of’ eavesdropping devices and techniques that section 632 seeks
to remedy. (Italics added.)

20 We conclude from the repeated use of words associated with sounds,
21 symbols and hearing that the recordings [***15] prohibited by this statute are the
22 recordings of the contents of audible or symbol-based communications.” (*People*
v. Drennan (2000) 84 Cal.App.2d 1349, 1355 – 1357)

23 LEVISS’ eavesdropping cause of action against SANDOVAL is based on her
24 vague allegation in paragraph 48 of the Complaint that: “Unbeknownst to Leviss and
25 without her consent, Sandoval surreptitiously recorded their communications.” However,
26 the Complaint as a whole makes it clear that this cause of action is deficiently based on
27 conduct rather than protected sound-based or symbol-based communications as LEVISS
28 repeatedly refers to the complained of video recordings as “sexually explicit” or

1 “explicit” without any reference to communications. (§§2, 23, 24, 54, 67, 71 to 73 of
2 Complaint). LEVISS’ most detailed description of the videos states in no uncertain terms
3 that they do not contain communications but are instead “explicit videos” that “depict her
4 in a state of undress and masturbating”. (§24 of Complaint). Accordingly, this cause of
5 action fails against SANDOVAL.

6 **VI. PLAINTIFF LEVISS’ FIRST CAUSE OF ACTION FOR**
7 **EAVESDROPPING UNDER PENAL CODE 632 FAILS AGAINST**
8 **DEFENDANT SANDOVAL BECAUSE PLAINTIFF DOES NOT ALLEGE**
9 **ANY FACTS SHOWING THAT THE PARTIES’ COMMUNICATIONS**
10 **WERE CONFIDENTIAL.**

11 For purposes of a cause of action for “eavesdropping,” Penal Code section 632(a)
12 provides:

13 “A person who, intentionally and without the consent of all parties to a
14 confidential communication, uses an electronic amplifying or recording
15 device to eavesdrop upon or record the confidential communication, whether
16 the communication is carried on among the parties in the presence of one
17 another or by means of a telegraph, telephone, or other device, except a radio,
shall be punished by a fine not exceeding two thousand five hundred dollars
(\$2,500) per violation, or imprisonment in a county jail not exceeding one
year, or in the state prison, or by both that fine and imprisonment.”

18 Section 632(c) defines a “confidential communication” as:

19 “. . . any communication carried on in circumstances as may reasonably indicate
20 that any party to the communication desires it to be confined to the parties
21 thereto, but excludes a communication made in a public gathering or in any
22 legislative, judicial, executive, or administrative proceeding open to the public, or
23 in any other circumstance in which the parties to the communication may
reasonably expect that the communication may be overheard or recorded.”

24 To assess whether it was objectively reasonable for a party to expect that a
25 communication would not be overheard or recorded, the court must review the circumstances
26 surrounding the communication. (*See, e.g., Santa Ana Police Officers Assn. v. City of Santa Ana*
27 (2017) 13 Cal.App.5th 317, 320 [police officers executing a search warrant on a drug operation
28 could not have a reasonable expectation their conversations were not being overheard or

1 recorded]). Further, as discussed in the preceding section herein, case law has held that Penal
2 Code section 632 does not protect a general right of privacy from unconsented videotaping.
3 Instead, it protects only the content of sound-based or symbol-based communications.

4 Thus, even if the complained of recordings in this matter did contain sound-based
5 communications in addition to sexually explicit conduct, this cause of action fails because they
6 are not “confidential communications” as defined by section 632(c). In the instant case, LEVISS
7 affirmatively alleges that she was engaged in a sordid and salacious affair with SANDOVAL
8 which was less than clandestine. For example, at paragraph 21 of the Complaint, LEVISS alleges
9 that: “[a]lthough purportedly secret, the affair was, in fact, well-known to many cast members
10 and suspected by others. LEVISS and SANDOVAL *were not particularly discrete*. LEVISS is
11 informed and believes, and on such information and belief alleges, that Madix knew about it as
12 early as the Fall of 2022. Indeed, in December of 2022, Madix scolded LEVISS and
13 SANDOVAL for being handsy in public, admonishing them to save the story for Season 11.”
14 (§21 of Complaint [emphasis added].)

15 As affirmatively alleged, the sexual conduct at-issue in the Complaint between LEVISS
16 and SANDOVAL was “not particularly discrete.” (*Id.*) To the contrary, as the allegations
17 themselves state, their conduct was open and ostentatious, to the extent that Ms. LEVISS and
18 Mr. SANDOVAL were “scolded” for being “handsy” in public, and they were further
19 “admonished” to “*save the story*” for Season 11 of a widely-publicized reality television series.
20 (*Id.*) The storyline was front and center in an ongoing reality series, under which LEVISS was
21 alleged to have “draconian terms” associated with her “contract” with Bravo, though the terms
22 remain unspecified in the Complaint. (§37 of Complaint) It is thereby impossible to deduce from
23 the allegations whether LEVISS’s private life was subject to a broad relinquishment of rights
24 under the terms of said “contract” including whether the filming and exposure of her private
25 affairs were to be the subject of the show’s narrative plot. Accepting LEVISS’s allegations as
26 true, the line between her “private” conduct and fodder for a high-profile public reality television
27 series is indisputably blurred. As such, Plaintiff has failed to state a cause of action by virtue of
28

1 her own allegations. Indeed, the “communications” that are required to be “confidential” for
2 purposes of the statute are alleged to be *exactly the opposite* in the four corners of the Complaint.

3 Lastly, the additional “facts” offered in support of this cause of action are conclusory—
4 namely, Paragraphs 47 to 52 of the Complaint are allegations that track the language of the
5 statute with no competent facts to support them whatsoever. For these reasons, Ms. LEVISS has
6 failed to state facts sufficient to constitute a cause of action.

7 **VII. PLAINTIFF LEVISS’ THIRD CAUSE OF ACTION FOR INVASION OF**
8 **PRIVACY FAILS AGAINST DEFENDANT SANDOVAL BECAUSE PLAINTIFF**
9 **DOES NOT ALLEGE ANY FACTS SHOWING AN INTRUSION BY**
10 **DEFENDANT SANDOVAL.**

11 Plaintiff LEVISS’ third cause of action for invasion of privacy is based on her allegation
12 that “Sandoval invaded Leviss’s privacy by, among other things, (a) secretly recording their
13 private communications and (b) capturing sexually explicit footage of Leviss without her
14 knowledge or consent in a manner highly offensive to a reasonable person.” (§67 of Complaint).
15 The right of privacy encompasses four distinct types of invasions of four different kinds of
16 interests: (1) Public disclosure of embarrassing private facts, (2) Publicity that places a person in
17 a false light in the public eye, (3) Physical intrusion on a person’s solitude or seclusion, or into a
18 person’s private affairs, and (4) Appropriation of a person’s name or likeness, for defendant’s
19 advantage. Based on LEVISS’ allegations, the only invasion complained of is of the nature of a
20 physical intrusion. This tort consists of three elements (see *Schulman v. Group W. Prods., Inc.*
21 (1998) 18 Cal.4th 200, 231): (1) a prying or intrusion, (2) that is offensive or objectionable to a
22 reasonable person, and (3) into a place or into affairs that are private and entitled to be private.

23 In an intrusion case, courts first ask whether a defendant has intentionally intruded,
24 physically or otherwise, on the plaintiff’s solitude or seclusion—that is, into a place or
25 conversation private to the plaintiff (*Shulman v. Group W Prods., Inc.* (1998) 18 Cal. 4th 200,
26 231; *Miller v. National Broad. Co.* (1986) 187 Cal. App. 3d 1463, 1482). To prove actionable
27 intrusion, the plaintiff must show the defendant penetrated some zone of physical or sensory
28 privacy surrounding, or obtained unwanted access to data about, the plaintiff. Also, the

1 reasonableness of a person's expectation of visual or aural privacy depends not only on who
2 might have been able to observe the relevant interaction, but also on the identity of the alleged
3 intruder and the means of intrusion (*Sanders v. American Broadcasting Companies* (1999) 20
4 Cal. 4th 907, 915, 923).

5 LEVISS fails to and cannot allege any facts showing that SANDOVAL committed an
6 intrusion into her solitude or that SANDOVAL obtained unwanted access to data about LEVISS.
7 To the contrary, LEVISS intended for SANDOVAL to see her explicit videos, LEVISS made the
8 videos for SANDOVAL, and LEVISS shared the videos with SANDOVAL via a consensual
9 exchange on Facetime, i.e., "their video calls". (See ¶24 of Complaint)

10 **VIII. PLAINTIFF LEVISS' FOURTH CAUSE OF ACTION FOR INTENTIONAL**
11 **INFLICTION OF EMOTIONAL DISTRESS FAILS AGAINST DEFENDANT**
12 **SANDOVAL BECAUSE PLAINTIFF DOES NOT ALLEGE ANY FACTS**
13 **SHOWING THAT SANDOVAL'S CONDUCT WAS OUTRAGEOUS, DONE**
14 **WITH THE REQUISITE INTENT OR THAT HER INJURIES WERE**
15 **ACTUALLY AND PROXIMATELY CAUSED BY SANDOVAL'S CONDUCT.**

16 The tort of intentional infliction of emotional distress is comprised of three elements: (1)
17 extreme and outrageous conduct by the defendant with the intention of causing, or reckless
18 disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe or
19 extreme emotional distress; and (3) the plaintiff's injuries were actually and proximately caused
20 by the defendant's outrageous conduct. (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494;
21 *KOVR-TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028.)

22 To meet the first requirement of the tort, case law holds that a defendant's conduct is
23 "outrageous" when it is so "extreme as to exceed all bounds of that usually tolerated in a
24 civilized community." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051) Although there is no
25 bright line standard for judging outrageous conduct, ". . . the appellate courts have affirmed
26 orders which sustained demurrers on the ground that the defendant's alleged conduct was not
27 sufficiently outrageous." (*Cochran, supra*, 65 Cal.App.4th at p. 494, citing *Ankeny v. Lockheed*
28 *Missiles & Space Co.* (1979) 88 Cal.App.3d 531, 536-537.).

1 In the instant case, Plaintiff LEVISS only alleges that Defendant SANDOVAL
2 “secretly” recorded “their video calls” during which LEVISS was “in a state of undress and
3 masturbating”. (See ¶24 of Complaint). However, as set forth in the preceding section herein,
4 these videos were created by LEVISS and published by LEVISS to SANDOVAL via a
5 consensual exchange on Facetime, i.e., “their video calls”. (See ¶24 of Complaint). Based on
6 LEVISS’ own allegations, SANDOVAL merely saved private copies of the videos that LEVISS
7 filmed for SANDOVAL and that LEVISS shared with SANDOVAL. This is not outrageous or
8 extreme conduct exceeding all bounds of that tolerated in a civilized community. Further, to
9 establish the first element for intentional infliction of emotional distress, the defendant’s
10 conduct must be “intended to inflict injury or engaged in with the realization that “injury will
11 result.” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 - 1051). LEVISS states no facts showing
12 that SANDOVAL acted with the intention of causing, or reckless disregard of the probability of
13 causing, LEVISS any emotional distress. Indeed, LEVISS’ own allegations articulate that the
14 affair was open and obvious, and that the footage was obtained and disseminated without the
15 consent or authority of either LEVISS or SANDOVAL. (¶23 of Complaint)

16 Lastly, there is no actual and proximate causation of LEVISS’ emotional distress by
17 SANDOVAL’s conduct. LEVISS’ emotional distress was allegedly caused by Defendant
18 MADIX’s discovery of the videos on SANDOVAL’s phone, and LEVISS’ *belief* that MADIX
19 “distributed them and/or showed them to others without Levis’s knowledge or consent.” (¶25
20 of Complaint). As LEVISS does not allege SANDOVAL disseminated the videos she can show
21 no actual and proximate causation. Additionally, any emotional distress LEVISS alleges to have
22 suffered was also caused in large part by her decision to star in a salacious and drama filled
23 reality television series and to engage in an affair with her friend’s longtime boyfriend. In fact,
24 LEVISS tacitly admits to this in her Complaint:

25 “Due to a narrative deliberately fomented by Bravo, Evolution, and the cast,
26 Levis became an object of public scorn and ridicule.

27 . . .

28 To make matters worse, Levis was misled by Bravo and Evolution into believing
that she was contractually barred from speaking out about her mistreatment. As a
result, she suffered in silence as Bravo and Evolution watched viewership

1 explode, and the rest of the cast enjoyed unseen levels of public recognition and
2 professional opportunity. Meanwhile, Levis, who was humiliated and villainized
3 for public consumption, remains a shell of her former self, with her career
prospects stunted and her reputation in tatters.” (§1, 2 of Complaint)

4 **IX. AT A MINIMUM, PLAINTIFF LEVISS’ COMPLAINT IS UNCERTAIN WITH**
5 **RESPECT TO ALL CAUSES OF ACTION ASSERTED AGAINST DEFENDANT**
6 **SANDOVAL.**

7 Aside from the substantive defects contained in Plaintiff’s Complaint, the allegations
8 against Thomas are uncertain under Code of Civil Procedure section 430.10(f). As noted *supra*,
9 the allegations which purport to state liability for eavesdropping, invasion of privacy, and
10 intentional infliction of emotional distress are uncertain because the line of demarcation
11 between private conduct and the plot of an ongoing television reality series is wholly unclear
12 based on the Complaint. Further, LEVISS alleges that the terms of her contract with Bravo
13 and/or NBC Universal were “draconian” and that she felt she had no choice but to appear at a
14 reunion show. (§37 of Complaint) Based on that allegation alone, it is unclear what the terms of
15 her contract dictated relative to her “private life,” and what was to be deemed necessary
16 material, and/or property of Bravo. Thus, the entire basis and foundation of her eavesdropping,
17 invasion of privacy, and intentional infliction of emotional distress causes of action against
18 SANDOVAL are unclear. For this reason alone, SANDOVAL’s demurrer should be sustained.

19 **X. CONCLUSION.**

20 For the reasons set forth herein, Defendant SANDOVAL respectfully requests that this
21 Court sustain his Demurrer to Plaintiff LEVISS’ Complaint in its entirety.

22 DATED: April 22, 2024

GERAGOS LAW FIRM

23 By: /s/ Matthew J. Geragos
24 Matthew J. Geragos

25 GOURJIAN LAW GROUP, P.C.

26 By: /s/ Varand Gourjian
27 Varand Gourjian
28 Tiffany Hyatt Krog
Attorneys for Defendant THOMAS SANDOVAL

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney, duly licensed to practice law in the State of California, and one of the attorneys for Defendant THOMAS SANDOVAL (“SANDOVAL”) in Los Angeles Superior Court Case No. 24STCV05072.

2. The following facts are stated from my personal knowledge, except those facts stated on information and belief which I believe to be true, and if called as a witness I could and would so competently testify thereto under oath.

3. Prior to the filing of Defendant SANDOVAL's Demurrer and Motion to Strike in this case, I attempted to meet and confer with Plaintiff RACHEL LEVISS' ("LEVISS") counsel. Specifically, on April 9, 2024, I drafted and sent correspondence to attorneys Bryan J. Freedman, Summer E. Benson, and Jason H. Sunshine of the law firm of Freedman Taitelman and Cooley, LLP and Mark J. Geragos and Kimberly Casper, of the law firm of Geragos & Geragos, counsel for Plaintiff LEVISS in this pending action. In my meet and confer correspondence, I outlined all of the substantive defects with LEVISS' Complaint with respect to the causes of action asserted against Defendant SANDOVAL. A true and correct copy of my April 9, 2024 meet and confer correspondence is attached hereto as **Exhibit "A."**

4. I also participated in a telephonic meet and confer conference on April 11, 2024, at approximately 2:30 p.m., with Plaintiff LEVISS' attorney Jason Sunshine. No resolution of the deficiencies set forth in my April 9, 2024 correspondence was reached during the April 11, 2024 meet and confer conference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22nd day of April 2024, at Glendale, California.

/s/ Matthew J. Geragos
Matthew J. Geragos – Declarant

PROOF OF SERVICE
(1013a, 2015.5 C.C.P.)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within entitled action. My business address is 700 North Brand Avenue, Suite 1180, Glendale, California 91203.

On April 22, 2024, I served the foregoing document(s) described as:

**DEFENDANT THOMAS SANDOVAL'S NOTICE OF DEMURRER AND DEMURRER
TO COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF MATTHEW J. GERAGOS**

upon the interested parties in this action by placing the true copies thereof enclosed in sealed envelopes addressed to the following persons:

Bryan J. Freedman, Esq. (SBN 151990)
Summer E. Benson, Esq. (SBN 326398)
Jason H. Sunshine, Esq. (SBN 336062)
FREEDMAN TAITELMAN + COOLEY,
LLP
1801 Century Park West, 5th Floor
Los Angeles, California 90067
Telephone: (310) 201-0005
Facsimile: (310) 201-0045
Email: bfreedman@ftllp.com
sbenson@ftllp.com
jsunshine@ftllp.com
Attorneys for Plaintiff, Rachel Leviss

Ryan P. Pastorek
HANSEN JACOBSON TELLER ET AL
450 N Roxbury Drive, Floor 8
Beverly Hills, CA 90210-4222
rpastorek@hjthl.com
Attorneys for Defendant, Ariana Madix

Mark J. Geragos, Esq. (SBN 108325)
Kimberly M. Casper, Esq. (SBN 333896)
GERAGOS & GERAGOS APC
644 South Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 625-3900
Email: mark@geragos.com
Attorneys for Plaintiff, Rachel Leviss

BY E-MAIL OR ELECTRONIC TRANSMISSION

 X Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent from an e-mail address from the declaration noted below originating from geragoslaw.com to the persons at the e-mail addresses listed above. I did not receive, with a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare, under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 22, 2024, at Glendale, California.

<u>Ivette Molina</u>	<u>/s/Ivette Molina</u>
	(Signature)

April 9, 2024

Via Email Only:

bfreedman@ftllp.com; sbenson@ftllp.com;
jsunshine@ftllp.com

Bryan J. Freedman
Summer E. Benson
Jason H. Sunshine
FREEDMAN TAITELMAN + COOLEY, LLP
1801 Century Park West, 5th Floor
Los Angeles, California 90067

Via Email Only:

mark@geragos.com;
kimberly@geragos.com

Mark J. Geragos
Kimberly M. Casper
GERAGOS & GERAGOS APC
644 South Figueroa Street
Los Angeles, CA 90017Email:

Re: **Rachel Leviss v. Thomas Sandoval, et al.**

Los Angeles Superior Court No. 24STCV05072
Our Client: Thomas Sandoval

Dear Counsel:

Gourjian Law Group, P.C. and Geragos Law Group have been retained to defend the interests of Thomas Sandoval ("Mr. Sandoval") in the above-entitled action. We are in receipt of the Complaint filed on February 29, 2024 by your client, Ms. Rachel Leviss. Pursuant to Code of Civil Procedure section 430.41, in advance of filing a demurrer, we write to meet and confer to request a voluntary dismissal of the action with prejudice against Mr. Sandoval, or that Plaintiff amends the Complaint to address numerous deficiencies outlined below.

1. Eavesdropping (Pen. Code, § 630, et seq.) (first cause of action)

For purposes of a cause of action for "eavesdropping," Penal Code section 632(a) provides:

"(a) A person who, intentionally and without the consent of all parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred

Page 2

April 9, 2024

Rachel Leviss v. Thomas Sandoval, et al.

dollars (\$2,500) per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000) per violation, by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.”

(Pen. Code, § 632(a).)

Section 632(c) defines a “confidential communication” as “any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive, or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.”

(Pen. Code, § 632(c).)

It is acknowledged that, under California law, a “confidential communication” may encompass communication by conduct, including sexual relations. (*See, e.g., People v. Gibbons* (1989) 215 Cal.App.3d 1204, 1209 [stating that “sexual relations is a form of communication, be it communication of love, simple affection, or, simply of oneself, cannot be readily disputed”].)

For purposes of ruling on a demurrer, the trial court accepts as true the facts alleged in the Complaint. (*See Curtis T. v. County of Los Angeles* (2004) 123 Cal.App.4th 1405, 1411, fn. 3, citing *John R. v. Oakland Unified Sch. Dist.* (1989) 48 Cal.3d 438, 441.) For the reasons that follow, the allegations set forth in the Complaint fail to state facts sufficient to constitute a cause of action for eavesdropping under Penal Code section 632 against Mr. Sandoval. (Civ. Proc. Code, § 430.10(e).)

Ms. Leviss affirmatively alleges that she was engaged in an affair with Mr. Sandoval which was less than clandestine. For example, at Paragraph 21 of the Complaint, Ms. Leviss alleges that: “Although purportedly secret, the affair was, in fact, well-known to many cast members and suspected by others. Leviss and Sandoval were not particularly discrete. Leviss is informed and believes, and on such information and belief alleges, that Madix knew about it as early as the Fall of 2022. Indeed, in December of 2022, Madix scolded Leviss and Sandoval

Page 3

April 9, 2024

Rachel Leviss v. Thomas Sandoval, et al.

for being handsy in public, admonishing them to save the story for Season 11.” (Compl., at ¶ 21.)

As affirmatively alleged, the nature of the sexual conduct (i.e., “communications”) between Ms. Leviss and Mr. Sandoval was “not particularly discrete.” (*Id.*) Indeed, their conduct was open and ostentatious, to the extent that Ms. Leviss and Mr. Sandoval were “scolded” for being “handsy” in public, and they were further “admonished” to “save the story” for Season 11 of a widely-publicized reality television series. (*Id.*) Accepting these allegations as true, Plaintiff has failed to state a cause of action. Indeed, the “communications” that are required to be “confidential” for purposes of the statute are alleged to be *exactly the opposite* here.

The additional “facts” offered in support of this cause of action are conclusory—namely, Paragraphs 47-52 of the Complaint are allegations that track the language of the statute with no competent facts to support them whatsoever. For these reasons, Ms. Leviss has failed to state facts sufficient to constitute a cause of action.

2. Invasion of Privacy (third cause of action)

As you are likely aware, the substantive elements regarding a cause of action for intrusion into private affairs are set forth particularly at CACI 1800. At trial, CACI 1800 requires that Ms. Leviss to prove the following: that she “had a reasonable expectation of privacy” in her sexual relations with Mr. Sandoval; that Mr. Sandoval intentionally intruded into Ms. Leviss’ private affairs; that Mr. Sandoval’s alleged intrusion would be highly offensive to a reasonable person; that Ms. Leviss was harmed; and that Mr. Sandoval’s conduct was a substantial factor in causing harm to Ms. Leviss. (See CACI No. 1800, citing *Sanders v. American Broadcasting Co.* (1999) 20 Cal.4th 907, 914-915.)

Critically, a plaintiff in an invasion of privacy case must have conducted himself or herself in a manner consistent with an actual expectation of privacy, i.e., he or she must not have manifested by his or her conduct a voluntary consent to the invasive actions of defendant. If voluntary consent is present, a defendant’s conduct will rarely be deemed “highly offensive to a reasonable person” so as to justify tort liability. (Rest.2d Torts, 652B, com. c [no liability for public observation of plaintiff “since he is not then in seclusion, and his appearance is public and open to the public eye”].) (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 26; *see also Aisenon v. American Broadcasting Co.* (1990) 220 Cal.App.3d 146, 162 [“One factor relevant to whether an intrusion is ‘highly offensive to a reasonable person’ is the extent to which the person whose privacy is at issue voluntarily entered into the public sphere”].)

As the Supreme Court articulated in *Hill*, “[t]he [common law invasion of privacy] tort safeguards the interests of individuals in the maintenance of rules of civility.... [¶] ... [In everyday life we experience privacy] as an inherently normative set of social practices that constitute a way of life, our way of life... In the tort, ‘privacy’ is simply a label we use to identify one aspect of the many forms of respect by which we maintain a community. It is less important that the purity of the label be maintained, than that the forms of community life of which it is a part be preserved.” (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 25, citing Post, *The Social Foundations of Privacy* (1989) 77 Cal.L.Rev. 957, 1008.)

Here, the allegations contained in Ms. Leviss’ Complaint fail to state a cause of action. Specifically, at Paragraph 20 of the Complaint, Ms. Leviss alleges that she and Sandoval started sleeping together in or about August 10, 2022. (Compl., at ¶ 20.) Thereafter, Ms. Leviss alleges that: “[a]lthough purportedly secret, the affair was, in fact, well-known to many cast members and suspected by others. Leviss and Sandoval were not particularly discrete.” (Compl., at ¶ 21.)

Not only do these allegations call into question the legitimacy of Ms. Leviss’ allegations (an issue that, admittedly, would be a question proof for the trier of fact), but—as relevant for purposes of demurrer—these allegations call into question the *legal sufficiency and viability* of her cause of action. By virtue of her own allegations at Paragraph 21, the sexual conduct engaged in by Ms. Leviss and Mr. Sandoval was blatant, open, not “discrete” and avowedly occurring within the context of a developing plot in a high-profile reality television series. Furthermore, it is clear from the allegations that the parties are public figures. As framed, the allegations themselves blur the line between public and private conduct.

This is further underscored by the allegations at Paragraph 23 of the Complaint, in which Ms. Leviss alleges that: “[o]n or about March 1, 2023, Sandoval was performing with his cover band at Tom Tom in West Hollywood when his phone purportedly fell from his pocket and slid, unlocked or otherwise fully accessible, into the crowd. It was reportedly retrieved by an attendee and handed over to Madix, who searched it and found sexually explicit videos of Leviss.” (Compl., at ¶ 23.)

By virtue of these allegations (which must be accepted as true), Ms. Leviss is articulating the very grounds and bases upon which the dissemination of the video was unintentional and

Page 5

April 9, 2024

Rachel Leviss v. Thomas Sandoval, et al.

without the consent of Mr. Sandoval. As such, Plaintiffs' invasion of privacy cause of action fails to state a cause of action against Mr. Sandoval.

3. Intentional Infliction of Emotional Distress (fourth cause of action)

For the same reasons articulated *supra*, Ms. Leviss has failed to state a cause of action for intentional infliction of emotional distress ("IIED"). In particular, Ms. Leviss' affirmative allegations provide the framework for a series of events that unfolded in the public eye, as they were part of an ongoing plot in a reality television series. Her own allegations articulate that the affair was open and obvious, and that the footage was obtained and disseminated without the consent or authority either Ms. Levitt or Mr. Sandoval alike. As a result, Ms. Leviss has articulated facts that permit the trial court to conclude on demurrer that no "intent" has been stated sufficient to constitute a cause of action.

For these reasons, your client has failed to state a cause of action against Mr. Sandoval. We believe that the Complaint is incapable of amendment in light of the aforementioned defects. We would request that your client dismiss all causes of action against Mr. Sandoval with prejudice, or at a minimum, amend the complaint to rectify these deficiencies.

I would kindly request that your office let me know of your position by Friday, April 12, 2024, regarding the aforementioned issues, so that my client can make an informed decision as to whether the claims will be dismissed, an amended complaint will follow, or whether a demurrer will be necessary under the circumstances.

Thank you,

Matthew J. Geragos
GERAGOS LAW GROUP

MJG:



Make a Reservation

RACHEL LEVISS vs THOMAS SANDOVAL, et al.

Case Number: 24STCV05072 Case Type: Civil Unlimited Category: Other Non-Personal Injury/Property Damage tort

Date Filed: 2024-02-29 Location: Stanley Mosk Courthouse - Department 71

Reservation

Case Name: RACHEL LEVISS vs THOMAS SANDOVAL, et al.	Case Number: 24STCV05072
Type: Demurrer - with Motion to Strike (CCP 430.10)	Status: RESERVED
Filing Party: Thomas Sandoval (Defendant)	Location: Stanley Mosk Courthouse - Department 71
Date/Time: 05/24/2024 8:30 AM	Number of Motions: 1
Reservation ID: 734224701332	Confirmation Code: CR-TE7STHSBCTMZKBYIE

Fees

Description	Fee	Qty	Amount
Demurrer - with Motion to Strike (CCP 430.10)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: 1969-12-31	

Print Receipt

Reserve Another Hearing