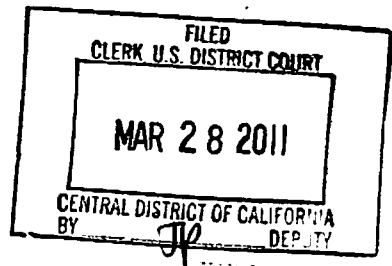


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FAXED

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 I/S
11 21

11 MICHAEL ZELENY, an individual; }
12 Plaintiff, }
13 vs. }
14 DAVID AMIR MAKOV, an individual; and }
15 DOES 1-10, inclusive, }
16 Defendants. }

CASE NO. 7
CV 11-02565 MRP (VBR)

- COMPLAINT FOR:
- (1) VIOLATION OF ANTI-TERRORISM ACT;
 - (2) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
 - (3) ASSAULT

17
18 Plaintiff Michael Zeleny ("Zeleny") alleges:

19
20 **JURISDICTION AND VENUE**

- 21 1. Jurisdiction is based upon 18 U.S.C. §2333(a). There is also
22 diversity jurisdiction under 28 U.S.C. § 1332(a) in that there is complete diversity of
23 citizenship between Zeleny and Defendants.
24 2. Venue is based in this District pursuant to 18 U.S.C. §2333(a)
25 and 28 U.S.C. § 1391(a)(2) and (a)(3).

26 **THE PARTIES**

27 3. Zeleny is now, and at all times relevant hereto was, an individual
28 residing in the city and County of Los Angeles, California.

1 4. Zeleny is informed and believes, and on that basis alleges, that
2 defendant David Amir Makov ("Makov") is an individual who resides in Herzeliya,
3 Israel.

4 5. The true names and capacities, whether individual, corporate,
5 associate or otherwise, of defendants Does 1 through 10, inclusive, are unknown to
6 Zeleny. Zeleny therefore sues them by those fictitious names, and will seek leave of
7 court to amend this Complaint to allege their true names and capacities when they
8 have been ascertained. All references to any defendant in the following allegations
9 shall be interpreted to include a reference to any and/or all of these Doe defendants.
10 Zeleny is informed and believes, and on that basis alleges, that each of the
11 defendants designated herein as a Doe defendant is, in some manner, responsible for
12 the events and happenings herein referred to, either contractually or tortiously, and
13 caused damages to Zeleny as alleged below.

14 6. Zeleny is informed and believes, and on that basis alleges, that
15 the defendants, and each of them, knowingly, wilfully and maliciously agreed and
16 conspired among themselves to engage in the conduct and acts alleged in this cause
17 of action pursuant to and in furtherance of a conspiracy and agreement to engage in
18 such tortious conduct.

19 7. Zeleny is informed and believes, and on that basis alleges, that
20 the defendants, and each of them, furthered the conspiracy by cooperating or lending
21 aid, assistance and encouragement to, or ratified and adopted the acts of, their fellow
22 Defendants and conspirators. The purpose of this conspiracy was to engage in the
23 tortious conduct alleged below.

24 **COMMON ALLEGATIONS OF FACT**

25 8. Zeleny Michael Zeleny ("Zeleny") and defendant David Amir
26 Makov ("Makov") met and became friends while attending Harvard College in the
27 Fall of 1989. They stayed friends for approximately 15 years thereafter. From
28

1 approximately 2004 until late 2008 they remained on cordial terms and stayed in
2 occasional contact.

3 9. While Zeleny and Makov were still in college together, in the
4 summer of 1991 Zeleny introduced Makov to Zeleny's then-girlfriend Erin Zhu. At
5 that time, Zhu related to Zeleny and Makov that when she was 14, she suffered
6 brutal sexual abuse by her father Min Zhu.

7 10. Zeleny, Makov, and Erin Zhu maintained contact over the years
8 after they moved away from Cambridge, Massachusetts in the early 1990's. They
9 remained in touch after Zeleny and Zhu moved to Los Angeles in the Summer of
10 1993, and after Makov moved to the San Francisco Bay Area in 1998.

11 11. The romantic relationship between Zeleny and Erin Zhu ended in
12 1997. Between 1996 and 2000, Zeleny and Erin Zhu engaged in business ventures
13 together. Those ventures included a venture involving Min Zhu's company, WebEx
14 Communications, Inc. ("WebEx"), which Erin Zhu negotiated with her parents, Min
15 Zhu and Susan Xu, as well as with other WebEx personnel.

16 12. After their business ventures ended in 2000, Zeleny and Erin Zhu
17 entered into a dissolution agreement (the "Dissolution Agreement").

18 13. In early 2000, Erin Zhu successfully pursued a claim against her
19 father Min Zhu for childhood sexual abuse. Zeleny assisted Erin Zhu in the pursuit
20 of that claim. Zeleny and Erin Zhu discussed this claim and Erin Zhu's progress in
21 asserting it with Makov, in conversations in person and over the phone and via
22 email.

23 14. By the fall of 2001, Erin Zhu reneged on her obligations under
24 the dissolution agreement between her and Zeleny. From that point through the end
25 of 2001, Zeleny repeatedly attempted to negotiate resolution of his disputes with
26 Erin Zhu, other members of her family, and WebEx. He expressed his intention to
27 take legal action against them on claims arising from their former business ventures
28 and arising from the dissolution agreement. Zeleny repeatedly discussed these

1 events with Makov in the fall of 2001, in conversations in person and over the phone
2 and via email.

3 15. In late December of 2001 and early January of 2002, while
4 Zeleny attempted to negotiate a resolution of his claims against Erin Zhu, her family,
5 and WebEx, Zeleny received a series of anonymous threats of violence, including
6 death threats, against himself and his family in the names of WebEx and Min Zhu.
7 The author of these anonymous threats told Zeleny that these acts of violence would
8 be committed against him and his family unless he abandoned his attempts to assert
9 his rights against Min Zhu and WebEx. In this same time frame and many times
10 thereafter, Zeleny discussed these threats with Makov, in conversations in person
11 and over the phone and via email.

12 16. In early 2002, Zeleny filed litigation against Erin Zhu, Min Zhu,
13 Susan Xu, and WebEx, Santa Clara County Superior Court case number CV810705.
14 Zeleny pursued this litigation to a resolution in October 2004, at which time he
15 entered into a confidential settlement agreement with Erin Zhu. Zeleny discussed
16 these matters with Makov regularly between 2002 and October 2004, in
17 conversations in person and over the phone and via email (although Zeleny has not
18 disclosed the terms of the settlement to Makov).

19 17. On February 11, 2004, Zeleny's father Dr. Isaak Zelyony
20 suffered massive burns in an apartment fire of unknown origin. Dr. Zelyony never
21 recovered consciousness. He died of his injuries on March 1, 2004. After his
22 father's death, Zeleny went public with this story. Zeleny discussed these events
23 with Makov from time to time during that period, in conversations in person and
24 over the phone and via email.

25 18. Between 2004 and 2010, Zeleny also was engaged in various
26 other litigation matters against WebEx and Erin Zhu's mother, Susan Xu, including
27 *WebEx Communications, Inc. v. Zeleny*, Los Angeles County Superior Court case
28 no. BC 324927; *Zeleny v. WebEx Communications, Inc.*, Santa Clara County

1 Superior Court case no. 1-06-CV062767; and *Xu v. Zeleny*, Santa Clara County
2 Superior Court case no. 110-CV 162026. Zeleny also discussed these matters other
3 than the *Xu v. Zeleny* matter with Makov from time to time during that period, in
4 conversations in person and over the phone and via email.

5 19. In May of 2005, Zeleny began a campaign of protests against
6 Min Zhu and the coverup of Min Zhu's having raped his daughter Erin Zhu. Zeleny
7 has maintained this campaign of protests in various venues from May of 2005 to the
8 present. The protests have taken the form of in-person demonstrations at events
9 such as a WebEx user conference in San Francisco, ceremonies to honor Min Zhu at
10 Stanford University, and outside the business facilities of investment firms that did
11 business with Min Zhu. They also took the form of posts on Zeleny's Internet-based
12 LiveJournal blog, at <http://larvatus.livejournal.com/tag/webex>. Zeleny created a
13 website, www.subrah.com, summarizing the contents of these protest activities.

14 20. Makov was specifically aware of all the foregoing events, based
15 on numerous discussions with Zeleny in person and over the phone and via email.
16 Among other things, Makov was aware of the threats Zeleny received in late 2001
17 and early 2002; of the circumstances under which Zeleny's father, Dr. Isaak
18 Zelyony, perished; and of the history of disputes between Zeleny and the Zhu family
19 or their affiliates.

20 21. On multiple occasions between late March 2010 and June of
21 2010, Zeleny received anonymous calls making express or implied threats to Zeleny.
22 The anonymous caller claimed credit for the death of Zeleny's father, reminded
23 Zeleny of his dead dogs, and ordered Zeleny to "be a good boy", threatening him in
24 the alternative with the same fate. The caller stated that if Zeleny did as he was told,
25 "maybe [he] live long" [sic], and threatened that Zeleny might be "raped" if he did
26 not leave Erin Zhu alone. The calls were laced with vulgar profanity and contained
27 express and implied threats to Zeleny's life and safety. In the context of the
28 previous threats Zeleny received in 2001 and 2002, and the circumstances under

1 (Violation of Anti-Terrorism Act, Against Defendants Makov and Does 1-50)

2 26. Zeleny incorporates by reference paragraphs 1-25, inclusive, of
3 this Complaint as though fully set forth at this point.

4 27. At all times herein alleged, Makov and the other defendants'
5 threats against Zeleny were a violation of the criminal laws of the United States and
6 California, specifically, in violation of California Penal Code Section 653m and
7 California Penal Code Section 422. These threats were made via telephone using
8 electronic media.

9 28. Zeleny is informed and believes, and on that basis alleges, that
10 the threatening, harassing, and menacing phone calls by Makov and the other
11 defendants were intended to intimidate Zeleny and influence him into ending his
12 protests.

13 28. As alleged above, these phone calls made by Makov and the
14 other defendants originated outside of the United States in Israel.

15 29. Zeleny was damaged by the foregoing conduct in an amount to
16 be determined at trial. Pursuant to 18 U.S.C. §§2333(a) *et seq.*, Zeleny is entitled to
17 an award of treble damages and attorney's fees against Makov and the other
18 defendants.

19 **SECOND CLAIM FOR RELIEF**

20 (Intentional Infliction of Emotional Distress,
21 Against Defendants Makov and Does 1-50)

22 30. Zeleny incorporates by reference paragraphs 1-25, inclusive, of
23 this Complaint as though fully set forth at this point.

24 31. Beginning on or about April 1, 2010, Makov and the other
25 defendants repeatedly contacted Zeleny over the telephone, using obscene language
26 and addressing to Zeleny threats to inflict injury against Zeleny's person and a
27 member of his family.

28

1 32. From and after April 1, 2010, the threatening phone calls by
2 Makov and the other defendants to Zeleny demonstrated extreme and outrageous
3 conduct with the intention of causing, or reckless disregard of the probability of
4 causing, emotional distress in Zeleny.

5 33. Zeleny has suffered severe emotional distress. As a result of
6 these phone calls, Zeleny lives in constant and persistent fear for his life and, given
7 the callers' message regarding the death of Zeleny's father coupled with the
8 suspicious nature of his father's death, Zeleny is unable to put the death of his father
9 to rest. Zeleny was damaged by the foregoing conduct in an amount to be
10 determined at trial.

11 34. The extreme and outrageous conduct by Makov and the other
12 defendants was a substantial factor in causing Zeleny's severe emotional distress.

13 35. Makov and the other defendants engaged in despicable conduct
14 in a willful and conscious disregard of the rights of Zeleny. They acted with an
15 intent to injure Zeleny and to subject Zeleny to cruel and unjust hardship. The acts
16 and omissions of Makov and the other defendants alleged above were malicious,
17 oppressive, and despicable. Therefore, Zeleny is entitled to an award of exemplary
18 and punitive damages against Makov and the other defendants pursuant to California
19 Civil Code §3294.

20 **THIRD CLAIM FOR RELIEF**

21 (Assault, Against Defendants Makov and Does 1-50)

22 36. Zeleny incorporates by reference paragraphs 1-25, inclusive, of
23 this Complaint as though fully set forth at this point.

24 37. Zeleny is informed and believes, and on that basis alleges, that
25 when they made the threatening phone calls in 2010, Makov and the other
26 defendants desired or were substantially certain that their actions would cause
27 Zeleny's apprehension of immediate harmful or offensive contact.

28

1 38. Given the threatening nature of the phone calls in 2010, and the
2 suspicious nature surrounding the death of Zeleny's father, Zeleny perceived that
3 harmful or offensive contact was about to happen to him.

4 39. Zeleny suffered damages as a result of the defendants' conduct in
5 an amount to be determined at trial.

6 40. Makov and the other defendants engaged in despicable conduct
7 in a willful and conscious disregard of the rights of Zeleny. They acted with an
8 intent to injure Zeleny and to subject Zeleny to cruel and unjust hardship. The acts
9 and omissions of Makov and the other defendants alleged above were malicious,
10 oppressive, and despicable. Therefore, Zeleny is entitled to an award of exemplary
11 and punitive damages against Makov and the other defendants pursuant to California
12 Civil Code §3294.

13 Wherefore, Zeleny prays for relief as follows:

14 (1) On each Claim for Relief, for general and specific damages in an
15 amount to be determined at trial;

16 (2) On the First Claim for Relief, Action, for treble damages and
17 reasonable attorneys fees;

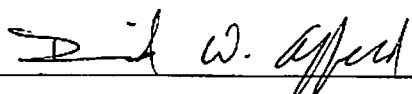
18 (3) On the Second and Third Claims for Relief, for an award of
19 punitive damages;

20 (4) For costs of suit incurred herein; and

21 (5) For such other and further relief as this Court may deem just and
22 proper.

23
24 DATED: March 25, 2011

AFFELD GRIVAKES ZUCKER LLP

25
26 By 

27 David W. Affeld

28 Attorneys for Plaintiff Michael Zeleny

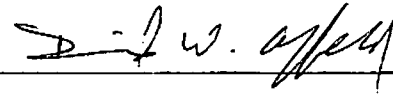
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DEMAND FOR JURY TRIAL

Plaintiff Michael Zeleny demands trial by jury of all issues so triable.

DATED: March 25, 2011

AFFELD GRIVAKES ZUCKER LLP

By: 

David W. Affeld

Attorneys for Plaintiff Michael Zeleny