

COPY

1 David M. Ring, State Bar No. 151124
2 **TAYLOR & RING**
3 1230 Rosecrans Ave., Suite 360
4 Manhattan Beach, California 90266
5 (310) 209-4100

6 Eric A. Govey, State Bar No. 174352
7 **GOWEY LAW, APC**
8 100 Wilshire Boulevard, Suite 700
9 Santa Monica, CA 90401
10 (310) 404-6850

11 Attorneys for Plaintiff,
12 **DOUG ADLER**

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 14 2017

Sherril R. Carter, Executive Officer/Clerk
By: M. Solo, Deputy
Moses Solo

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 DOUG ADLER,

15 Plaintiff,

16 -vs.-

17
18 ESPN PRODUCTIONS, INC., a California corp.;
19 MARK GROSS; an individual;
20 JAMIE REYNOLDS, an individual;
21 and DOES 1 through 50,

22 Defendants.

CASE NO. **BC 650526**

COMPLAINT FOR:

1. **WRONGFUL TERMINATION OF EMPLOYMENT**
2. **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
3. **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**
4. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
5. **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

DEMAND FOR JURY TRIAL

23
24
25
26 Plaintiff DOUG ADLER, hereby brings his complaint against the above-named Defendants and
27 alleges as follows:
28

//

1 **THE PARTIES**

2 1. Plaintiff DOUG ADLER is a resident of California. ADLER is a tennis commentator
3 who provided play-by-play and expert color analysis for professional tennis television broadcasts,
4 including those on ESPN. For many years Adler has been a broadcaster for the Australian Open, U.S.
5 Open, French Open, and Wimbledon. Adler was hired by ESPN in 2008. He was a broadcaster for the
6 2017 Australian Open. Adler was wrongfully terminated by ESPN after Adler described Venus
7 Williams as using "guerrilla" tactics, a description that is commonly used in tennis to describe a form of
8 aggressive play. ESPN bowed to pressure from those using social media, including Twitter, who
9 mistakenly believed Adler used the word "gorilla" to describe Venus Williams. ESPN wrongfully
10 terminated Adler and has since caused other employers to shun Adler, causing Adler serious financial
11 and emotional harm.
12
13

14 2. Defendant ESPN PRODUCTIONS, INC., ("ESPN") and DOE 1-20 is a California
15 corporation that has a principal place of business in Los Angeles County, California. ESPN is the
16 leading multinational, multimedia sports entertainment company. Defendant DOES 21-50 are other
17 related entities of ESPN that also engage in the production of sports entertainment programming.
18

19 3. Defendant MARK GROSS holds the position of Senior Vice President, Production and
20 Remote Events, for ESPN. He has held that position since 2014. GROSS oversees all event production
21 for ESPN's U.S. television networks.
22

23 4. Defendant JAMIE REYNOLDS holds the position of Vice President, Production, for
24 ESPN. REYNOLDS has primary responsibility overseeing ESPN's tennis portfolio, which includes
25 start-to-finish coverage of three of the sport's four Majors -- the Australian Open, Wimbledon, and the
26 U.S. Open.
27
28

1 commentary. This mid-life entry into the field of sports broadcasting, without any prior experience,
2 was unprecedented.

3
4 10. Plaintiff was a natural at broadcasting and was intimately knowledgeable about the game
5 of tennis, such that by 2008 he was working as a tennis commentator for all four of professional tennis'
6 major championships: the Australian Open, French Open, Wimbledon, and the U.S. Open. Plaintiff
7 worked for ESPN since 2008 as a broadcaster for these events and other tennis events that ESPN
8 broadcast.

9
10 11. Plaintiff estimates that over the course of his broadcasting career, from 2004 to 2016, he
11 announced approximately 3000 tennis matches. Plaintiff travelled the world to do these matches.

12
13 12. Plaintiff is well-respected among his peers. Plaintiff is incredibly knowledgeable about
14 tennis and knows the history of tennis going back to the 1960s when he was a child in L.A. playing
15 junior tennis.

16
17 13. Plaintiff closely followed all aspects of tennis from the mid-1970s on, starting when he
18 played in high school and continuing into his careers at USC and on the pro tour. Even as a
19 businessman, Plaintiff closely followed the sport and knew all of its terminology and tactics. That is
20 one reason why he was able to become a successful tennis broadcaster without having any broadcasting
21 experience whatsoever. He knew the game like few others.

22
23 14. Plaintiff has few peers when it comes to tennis terminology. As such, to someone like
24 Plaintiff, who has over 40 years of tennis experience, the phrase "guerrilla tennis" is one that has
25 frequently been used to describe a player's aggressive tactics in the sport.

26 **"GUERRILLA TENNIS"**

27
28 15. Some of the most famous television advertising campaigns are those by Nike. One of
Nike's all-time famous television ads was entitled "Guerrilla Tennis" and became one of the most

1 talked-about commercials in the 1990s. It featured all-time greats Pete Sampras and Andre Agassi
2 jumping from a taxi in the center of a crowded New York City street, setting up a tennis court in the
3 intersection, and then playing "guerrilla tennis" while crowds gathered around. The two players
4 slammed the ball back and forth at each other in this commercial that is still widely-acclaimed as one of
5 the best ever made. Nike itself entitled the ad "Guerrilla Tennis." Obviously, Plaintiff saw that
6 commercial many times and the phrase became widely used by those who actually understood tennis
7 vernacular and followed the sport closely.
8

9
10 16. Even now, 20 years after the Nike commercial, "guerrilla tennis" is still used among
11 tennis journalists, broadcasters, players, and fans. One of the most respected tennis journalists is Peter
12 Bodo. He is currently the senior editor of Tennis (Tennis.com and *Tennis* magazine), and has written
13 for many sports publications over the years. In 2012, Bodo wrote a profile on female tennis great
14 Agnieszka Radwanska, one of the sport's premier players. Bodo described Radwanska's aggressive
15 style of play as only Bodo could, as follows: "The adjectives that come to mind to describe Radwanska
16 are: Implacable, remote, unflappable, leisurely, languid, measured. She often plays from a low crouch,
17 as if she's dodging real bullets rather than optic yellow ones. It's effective as a discipline that yields
18 consistency, but it's also an apt symbol. ***Hers is a game of the insurgent. It's guerrilla tennis -***
19 ***especially against taller, more powerful, more physical rivals.***" (*Tennis* magazine article entitled
20 "Born This Way" by Pete Bodo, March 31, 2012; emphasis added.)
21
22

23 17. Sports Illustrated highlighted the Bodo article a few days later, in its "Daily Bagel" blog,
24 and used the title "***Agnieszka Radwanska Playing 'Guerrilla Tennis.'***" (Emphasis added.)

25 18. In 2013, Bodo wrote about a five-set epic match between Roger Federer and Andy
26 Murray. Bodo's article was on ESPN.com. Bodo wrote, "Against Federer, Murray confirmed that his
27 new, more aggressive game can bear up under world class stress. The 25-year old Scot dictated the
28

1 tone and pace of that match. He forced his 31-year old rival, the all-time singles Grand Slam
2 champion, *to fight a bitter guerrilla war.*" (Emphasis added.)

3 19. Many other tennis commentators and writers have used "guerrilla" to describe
4 aggressive tennis players who use a specific tennis strategy of aggressively attacking balls and coming
5 to the net so as to intimidate the opposing player, thus forcing their opponent into making unforced
6 errors. The "guerrilla effect" is just that: a player charges his or her opponent's weakly hit serve or
7 forehand and aggressively hits winning shots back at them. The opponent is soon unnerved, and his or
8 her game falls apart. Thus, "guerrilla tennis."

11 PLAINTIFF'S CALL OF THE VENUS WILLIAMS MATCH

12 20. Plaintiff was hired by ESPN to be an announcer at the 2017 Australian Open. On
13 January 18, 2017, Plaintiff was calling the match between tennis legend Venus Williams and Stefanie
14 Voegele from Switzerland, who was ranked 112 in the world in ladies' singles. Venus, who ultimately
15 reached the finals where she played against her sister, Serena, clobbered Voegele in the January 18
16 match by a score of 6-3, 6-2. In fact, Venus played some of her best tennis in years during the 2017
17 Australian Open, and was incredibly aggressive and dominating on her path to the finals. This match
18 against the younger, stronger Voegele was no exception.

19 21. Voegele was missing first serves, and Venus would then hammer Voegele's weak
20 second serve. Venus was so dominant she would move up into the court to take the serve, thus
21 unnerving Voegele. With Venus dominating 6-3, 1-0, and Voegele serving, Voegele again missed her
22 first serve. Plaintiff then said the following, "She misses her first serve and Venus is all over her. . ."
23 Voegele then missed her second serve. Plaintiff continued his commentary by saying, ". . . and you see
24 Venus move in and put the guerrilla effect on charging."
25
26
27
28

1 "guerrilla" but instead of clarifying that comment, Rothenberg portrayed Plaintiff as using "gorilla" in
2 an effort to ingratiate himself with the Williams' sisters.

3 27. Rothenberg's tweet ignited the flames of anger and hatred against Plaintiff. Soon, the
4 Twitter universe was saying that Plaintiff "called Venus a gorilla."
5

6 28. The next day, defendant ESPN forced Plaintiff to go on a live broadcast of another
7 match and apologize for what he said. Plaintiff told defendants that there was nothing wrong with
8 using the word "guerrilla" to describe a tennis tactic. ESPN agreed with Plaintiff, told Plaintiff it
9 understood the use of "guerrilla" in that context, but wanted Plaintiff to apologize anyways.
10

11 Defendants told Plaintiff that he needed to apologize on the air and by doing so it would diffuse the
12 situation and he could then continue with his broadcasting of the tournament. Reluctantly, Plaintiff
13 made an on-air apology and made it clear he never called Venus a "gorilla" but had meant "guerrilla."
14

15 29. After making the on-air apology, Plaintiff assumed, based on what he had been told by
16 defendants, that he would continue calling the match and the rest of the tournament. Suddenly,
17 however, Plaintiff was told to leave the broadcast booth as soon as he finished making the apology.

18 30. Defendants then fired Plaintiff the next day and told him he was done working tennis at
19 ESPN.
20

21 31. Defendants ESPN, Gross, and Reynolds knew that Plaintiff used the word "guerrilla,"
22 and not "gorilla." Yet they fired him anyway. In fact, ESPN announced the firing of Plaintiff on its
23 website with the headline, "ESPN tennis commentator apologizes for description of Venus Williams'
24 style of play." (January 19, 2017). ESPN admitted in its own news article that, because the two words
25 sound the same, it was "impossible" (in ESPN's view) to say for certain which word Plaintiff spoke.
26

27 32. Thus marked the abrupt end of a 15-year broadcasting career. It goes without saying
28 that Plaintiff is anything but a racist. He has never uttered the word "gorilla" to describe any athlete.

1 (Although New York Times writer Rothenberg did just that, writing that Andy Murray was jumping up
2 and down "like a gorilla" after winning a match.) Plaintiff has the greatest respect for all tennis players,
3 and especially the Williams sisters, who grew up on the streets of Los Angeles playing on public
4 courts, just like Plaintiff did when he was young.
5

6 33. Plaintiff is now known as "racist," the person who called Venus Williams "a gorilla" and
7 who is now *persona-non-grata* in all professional tennis circles. For something he never said.
8

9
10 **FIRST CAUSE OF ACTION**

11 **WRONGFUL TERMINATION OF EMPLOYMENT**

12 **(Against ALL Defendants)**

13 34. Plaintiff realleges and incorporates herein paragraphs 1 through 33 of this Complaint as
14 though fully set forth.

15 35. Plaintiff and Defendant ESPN and Does 1-50 entered into an employment relationship in
16 which Plaintiff agreed to announce professional tennis matches and, in return, ESPN promised to
17 compensate Plaintiff for doing so. This employment relationship began in 2008 and continued until
18 January 19, 2017.
19

20 36. Defendant ESPN promised, by words and conduct, to discharge Plaintiff only for good
21 cause.
22

23 37. Plaintiff performed his job duties in an exemplary manner for ESPN for 10 years, up to
24 and including during the 2017 Australian Open.

25 38. On January 19, 2017, Defendant ESPN fired Plaintiff from his announcing jobs with
26 ESPN. The termination of Plaintiff's employment was without any good cause, and done without any
27 investigation into the matter. This decision was made by defendants ESPN, GROSS, and REYNOLDS,
28

1 and Does 1-50, all in the name of protecting ESPN's "brand" regardless of the devastating effect the
2 perceived discharge for making an allegedly racist remark would have on its long-term broadcaster.

3 39. As a direct result of ESPN's public announcement that Plaintiff was fired and removed
4 from announcing any more Australian Open matches, ESPN in effect told the public at large that
5 Plaintiff had used the word "gorilla" in describing an African-American tennis player, and as such he
6 would never work for ESPN again.
7

8 40. As a direct result of ESPN's wrongful termination of Plaintiff, Plaintiff has been
9 ostracized, defamed, labelled a "racist," and lost other announcing jobs with other employers other than
10 ESPN.
11

12 41. As a direct result of ESPN's wrongful termination, Plaintiff has suffered and will
13 continue to suffer serious damages, both economic and non-economic in nature. Plaintiff has lost
14 announcing jobs which translates into lost income. He has lost future opportunities in the sporting and
15 business worlds because no one will ever hire a "racist." He has suffered serious emotional distress and
16 harm, because he has been falsely accused as being the worst thing imaginable, and something he
17 clearly isn't and never has been, all over the use of the word "guerrilla," a word that is commonly used
18 in tennis.
19
20

21 **SECOND CAUSE OF ACTION**

22 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

23 **(Against ALL Defendants)**

24 42. Plaintiff realleges and incorporates herein paragraphs 1 through 33 of this Complaint as
25 though fully set forth.
26
27
28

1 43. Plaintiff and Defendant ESPN and Does 1-50 entered into an employment relationship in
2 which Plaintiff agreed to announce professional tennis matches and, in return, ESPN promised to
3 compensate Plaintiff for doing so. This employment relationship began in 2008 and continued until
4 January 19, 2017.
5

6 44. Plaintiff performed his job duties in an exemplary manner for ESPN for 10 years, up to
7 and including during the 2017 Australian Open.

8 45. On January 19, 2017, Defendant ESPN wrongfully fired Plaintiff from his announcing
9 jobs with ESPN. The termination of Plaintiff's employment was without any good cause, and done
10 without any investigation into the matter. This decision was made by defendants ESPN, GROSS, and
11 REYNOLDS, all in the name of protecting ESPN's "brand" and "image" regardless of the devastating
12 effect the perceived discharge for making an allegedly racist remark would have on its long-term
13 broadcaster.
14

15 46. In fact, ESPN, GROSS, and REYNOLDS and Does 1-50 knew that Plaintiff used the
16 word "guerrilla," and not "gorilla." Yet it fired him anyway. ESPN announced the firing of Plaintiff
17 with a press release and on its website with the headline, "ESPN Tennis Commentator Apologizes For
18 Description of Venus Williams' Style of Play." (January 19, 2017). ESPN admitted in its own news
19 article that, because the two words sound the same, it was "impossible" (in ESPN's view) to say for
20 certain which word Plaintiff spoke. This admission demonstrates that Defendants acted in bad-faith in
21 terminating Plaintiff's employment. ESPN admitted to the public it could not ascertain if Plaintiff said
22 "gorilla." And, prior to the discharge, Plaintiff fully explained to ESPN that he used the word
23 "guerrilla" and explained the context of why that word was appropriate for the situation at hand.
24
25

26 47. As a direct result of ESPN's public announcement that Plaintiff was fired and removed
27 from announcing any more Australian Open matches, ESPN essentially told the public, that at least
28

1 from ESPN's point of view, Plaintiff had, in fact, used the word "gorilla" and as such he would never
2 work for ESPN again.

3 48. Defendants' conduct amounted to a failure to act fairly and in good faith. Defendants
4 shunned their long-time announcer simply to appease a small following of the Twitter universe and to
5 protect its brand and image.
6

7 49. As a direct result of ESPN's wrongful termination of Plaintiff, Plaintiff has been
8 ostracized, defamed, labelled a "racist," and lost other announcing jobs with other employers other than
9 ESPN.
10

11 50. As a direct result of ESPN's wrongful termination, Plaintiff has suffered and will
12 continue to suffer serious damages, both economic and non-economic in nature. Plaintiff has lost
13 announcing jobs which translates to lost income. He has lost future opportunities in the sporting and
14 business worlds, because no one will ever hire a "racist." He has suffered serious emotional distress
15 and harm, because he has been falsely accused as being the worst thing imaginable, and something he
16 clearly isn't and never has been, all over the use of the word "guerrilla," a word that is commonly used
17 in tennis.
18
19
20

21 **THIRD CAUSE OF ACTION**

22 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**

23 **(Against ALL Defendants)**

24 51. Plaintiff realleges and incorporates herein paragraphs 1 through 33 of this Complaint as
25 though fully set forth.
26
27
28

1 52. Plaintiff had other tennis broadcasting jobs with employers other than ESPN and Does
2 1-50. Plaintiff had these other jobs for many years, and Plaintiff had no reason to believe these other
3 employers would suddenly stop hiring him as a broadcaster for 2017 and beyond.

4 53. Defendants ESPN, GROSS, and REYNOLDS and Does 1-50 knew of Plaintiff's
5 relationships with these other entities and employers that hired Plaintiff to broadcast tennis
6 tournaments.
7

8 54. After ESPN wrongfully terminated Plaintiff's employment on January 19, 2017,
9 Defendants engaged in conduct that was directly aimed at ensuring Plaintiff did not resume his
10 broadcasting activities with these other entities and employers. Defendants told the other entities that
11 Plaintiff should not be hired for those jobs and that there would be consequences if he was in fact
12 allowed to work those jobs.
13

14 55. As a direct result of defendants' misconduct, Plaintiff has lost, and will continue to lose,
15 other broadcasting jobs. All of those jobs were ones that Plaintiff had worked on for years. The only
16 reason Plaintiff has or will lose those jobs is because Defendants told the other entities and employers
17 to not hire Plaintiff.
18

19 56. As such, Plaintiff has lost, and will lose, broadcasting jobs that were once his, and were
20 ones he counted on working for many more years.
21

22 57. As a direct result of defendants' intentional interference with prospective economic
23 relations, Plaintiff has suffered and will continue to suffer serious damages, both economic and non-
24 economic in nature, including lost wages, lost employment opportunities, and other financial losses.
25

26 //

27 //

28 //

1 **FOURTH CAUSE OF ACTION**

2 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

3 **(Against ALL Defendants)**

4
5 58. Plaintiff realleges and incorporates herein paragraphs 1 through 33 of this Complaint as
6 though fully set forth.

7 59. Defendants ESPN, GROSS, and REYNOLDS' and Does 1-50 misconduct in its
8 treatment of Plaintiff was outrageous.

9 60. Defendants knew that by terminating Plaintiff during the middle of the Australian Open,
10 after forcing him to apologize on the air, the public at large would simply accept the fact that ESPN
11 fired its announcer for being a racist and calling Venus Williams a "gorilla." ESPN knew this was
12 false, as Plaintiff fully explained the context in which he used the entirely appropriate word "guerrilla."
13 But defendants chose to protect its own brand and image, and instead effectively branded Plaintiff a
14 racist and fired him.
15

16
17 61. As a direct result of ESPN's wrongful termination of Plaintiff, Plaintiff has been
18 ostracized, defamed, labelled a "racist," and lost other announcing jobs with other employers other than
19 ESPN. This has caused Plaintiff serious and severe emotional harm and distress.

20 62. Defendants intended to cause Plaintiff this emotional harm, or, at a minimum, acted with
21 reckless disregard of the probability that Plaintiff would suffer such emotional distress, knowing that
22 Plaintiff would be labeled a "racist" and never work in tennis again because of the stigma attached to
23 the alleged comment he made, which defendants knew he did not make.
24

25 63. As a direct result of defendants' misconduct, Plaintiff has suffered and will continue to
26 suffer serious damages, both economic and non-economic in nature. Plaintiff has lost announcing jobs
27 which translates into lost income. He has lost future opportunities in the sporting and business worlds,
28

1 because no one will ever hire a "racist." He has suffered serious emotional distress and harm, because
2 he has been falsely accused as being the worst thing imaginable, and something he clearly isn't and
3 never has been, all over the use of the word "guerrilla," a word that is commonly used in tennis.
4

5
6 **FIFTH CAUSE OF ACTION**

7 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

8 **(Against ALL Defendants)**

9
10 64. Plaintiff realleges and incorporates herein paragraphs 1 through 33 of this Complaint as
11 though fully set forth.

12 65. Defendants ESPN, GROSS, and REYNOLDS' and Does 1-50 misconduct in its
13 treatment of Plaintiff, if not outrageous, was negligent.

14 66. Defendants knew or should have known that by terminating Plaintiff during the middle
15 of the Australian Open, after forcing him to apologize on the air, the public at large would simply
16 accept the fact that ESPN fired its announcer for being a racist and calling Venus Williams a "gorilla."
17 ESPN knew this was false, as Plaintiff fully explained the context in which he used the entirely
18 appropriate word "guerrilla." But defendants chose to protect its own brand and image, and instead
19 effectively branded Plaintiff a racist and fired him.
20

21
22 67. As a direct result of ESPN's wrongful termination of Plaintiff, Plaintiff has been
23 ostracized, defamed, labelled a "racist," and lost other announcing jobs with other employers other than
24 ESPN. This has caused Plaintiff serious and severe emotional harm and distress.

25 68. Defendants knew or should have known that the manner in which it handled this matter
26 would result in serious backlash against Plaintiff because he would be deemed a "racist" who called
27 Venus Williams a "gorilla." Yet, defendants did not investigate, and did not take into account Ben
28

1 Rothenberg's role in fueling the belief that Plaintiff said "gorilla" and the ulterior motives that
2 Rothenberg very well may have had in so doing. Defendants lied to Plaintiff when they told him if he
3 apologized on the air, it would make things better and he could then resume his duties. Defendants
4 simply wanted Plaintiff to apologize, knowing they would then fire him moments after he did so.

5
6 69. As a direct result of defendants' misconduct, Plaintiff has suffered and will continue to
7 suffer serious damages, both economic and non-economic in nature. Plaintiff has lost announcing jobs
8 which translates to lost income. He has lost future opportunities in the sporting and business worlds,
9 because no one will ever hire a "racist." He has suffered serious emotional distress and harm, because
10 he has been falsely accused as being the worst thing imaginable, and something he clearly isn't and
11 never has been, all over the use of the word "guerrilla," a word that is commonly used in tennis.
12

13
14 **PRAYER FOR RELIEF**

15
16 As a result of all defendants' intentional and negligent conduct, Plaintiff prays for judgment as
17 follows:

- 18 1. For general damages according to proof;
- 19 2. For special damages according to proof;
- 20 3. For punitive damages against all defendants according to proof, for each claim in this
21 complaint that warrants an award of punitive damages;
- 22 4. For attorney fees;
- 23 5. For costs of suit;
- 24 6. For prejudgment and post-judgment interest according to law; and

25
26 //


27 //

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

7. For such other and further relief as the court may deem just and proper.

Dated: February 13, 2017

TAYLOR & RING

By: 
David M. Ring
Attorneys for Plaintiff,
DOUG ADLER


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

DEMAND FOR JURY TRIAL

Plaintiff DOUG ADLER hereby demands a trial by jury.

Dated: February 13, 2017

TAYLOR & RING

By: 

David M. Ring
Attorneys for Plaintiff,
DOUG ADLER