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Re: **Platinum Equity, LLC / *San Diego Reader*, Don Bauder, Matt Potter, *et al.***
Our File No.: 3805-11

Gentlemen:

We are writing as litigation counsel to Platinum Equity, LLC regarding the story about my client being prepared for publication in an upcoming issue of the *San Diego Reader* (the "Story"), concerning specious lawsuits which have since been dismissed, after being filed by disgruntled former employees who hid behind pseudonyms while making prurient unsubstantiated allegations. In the event that you proceed to recklessly and maliciously publish a Story which falsely states, either directly or by implication, that my client engaged in wrongdoing as alleged in those lawsuits or otherwise, you will be exposed to substantial liability for claims including defamation and interference with prospective economic advantage. In the event that you proceed to recklessly and maliciously publish a Story which falsely states, either directly or by implication, that my client engaged in wrongdoing as alleged in those lawsuits or otherwise, you will be exposed to substantial claims for defamation, giving rise to potentially astronomical damages.

The Story is premised on salacious and unproven allegations contained in lawsuits which were ultimately dismissed, and which had been filed by disgruntled former employees of Platinum Equity who were not even willing to put their names on the suits. The fact that the lawsuits were filed under aliases speaks volumes. All three of the plaintiffs hid behind "Doe" pseudonyms. The fact that none of the individuals who made the sordid allegations contained in the suits were willing to stand behind their claims and sue in their own names is indeed telling.

The absurd "John Doe" lawsuit filed by the disgruntled former security guard was thrown out by the Court, after the Court *struck* his sordid and salacious allegations. After being fired for allegedly moonlighting, the former employee had sued claiming that he had been fired for refusing to sign an agreement that he claimed was unenforceable — an agreement that the Court later specifically held *was* valid and enforceable under California law. After the Court found that the lawsuit had been improperly filed under an alias, "John Doe" filed an amended Complaint, this time including a laundry list of gratuitous, inflammatory, unsubstantiated, false and defamatory allegations which had not been included in his original lawsuit, and which were irrelevant and completely unrelated to his lawsuit's claims. Platinum Equity immediately filed a motion to strike those improper and scurrilous allegations. Significantly, the Court agreed with Platinum Equity, and granted its motion *striking the improper allegations from the record*.

It is those *stricken* allegations, which were thrown out of the lawsuit, which you obviously intend to recklessly repeat in the Story. In addition to striking "John Doe's" gratuitous and inflammatory allegations, the Court also dismissed all nineteen of his causes of action against my client, and threw the whole case out. The Court also specifically held that the agreement at issue, which "John Doe" had challenged, was valid and enforceable. Note also that in addition to the Court striking out numerous wild allegations which had improperly been included in "John Doe's" lawsuit, many of the documents filed in that action were placed under seal by the Court.

As to the other specious lawsuit, which was filed by two other "Doe" plaintiffs unwilling to sue in their own names, their allegations of purported lecherous conduct were the very allegations that the Court *struck* from the security guard's "Doe" lawsuit. The case by the two "Doe" plaintiffs was subsequently dismissed. You can confirm that in the Court's records.

As you should be aware, Platinum Equity is a large organization, with over 140 employees. As such, it is not unexpected for employment disputes to arise from time to time. When properly viewed in context, the "Doe" lawsuits are of little significance. Yet, it is evident that the Story's intended angle is to falsely state or imply that the allegations in those lawsuits are indicative of Platinum. If that were true, with 140 employees, one would expect to see literally dozens of such lawsuits. The fact that the inflammatory allegations appeared in lawsuits filed by just three "Doe"

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individuals should suffice to put you on notice that it would be extremely reckless to extrapolate from the isolated "Doe" allegations that they somehow indicative of Platinum and its conduct.

It is the *Reader's* obvious intention to falsely make it appear either directly or by implication that the allegations of inappropriate behavior and sexual wrongdoing in the "Doe" lawsuits had merit, when the opposite is true. It is apparent that the *Reader's* reporters have been on the hunt for inflammatory negative information to publish about Platinum Equity ever since it acquired the *Union-Tribune*. The *San Diego Reader* has a brief but already well-established pattern of taking swipes at my client. The *Reader* had a history of attacking its perceived competitor the *Union-Tribune* before Platinum acquired that paper, and since its acquisition earlier this year, the *Reader* has transparently shifted its criticism to Platinum. For example, last month, the *Reader* published an extremely negative article about Tom Gores and his family which contained numerous inaccuracies. Your paper subsequently published lengthy "Just For the Record" statements from Tom Gores and Alec Gores to correct its errors. In addition, the *Reader's* "Scam Diego" blog page authored primarily by Don Bauder has been filled with numerous negative articles about Platinum, Tom Gores, and/or the *Union-Tribune* since May 1st. For example, after CNBC broadcast the negative and inaccurate piece about Platinum last week which obviously inspired your Story, the *Reader* posted a story about the CNBC segment on its "Scam Diego" blog. The *Readers'* negative bias against my client is evident as it relishes highlighting disparaging aspects of the CNBC story, gleefully noting that "Gores got the worst of it." Referring to Mr. Gores in this derisive manner reveals the *Reader's* preordained negative point of view.

The Story which is now being prepared transparently continues the *San Diego Reader's* pre-conceived agenda to attack, disparage and defame my client. Be advised that Constitutional malice can be shown through the calculated use of the journalistic devices of pre-conceived storylines, themes, or angles. Gertz v. Robert Welch, Inc., 680 F.2d 527, 539 (7th Cir. 1982), *cert denied*, 103 S.Ct. 1233 (1983). That is what is occurring here. In the event that the defamatory Story is published and this matter proceeds to litigation, we are confident that the *Reader's* pattern of publishing negative stories about my client, culminating in the upcoming Story, would establish the *Reader's* use of these journalistic devices, and would supply ample evidence of malice.

The *Reader's* Constitutional malice will also be revealed through examination of its financial motives for publishing a Story such as this, attacking the owner of what it perceives as its primary competitor. As the Ninth Circuit explained in Suzuki Motor Corp. v. Consumers Union of United States, Inc., 330 F.3d 1110, 1136 (9th Cir. 2003), circumstantial evidence of financial motives can support a finding of actual malice, holding: "There is sufficient circumstantial evidence of a financial motive to support the ultimate conclusion of actual malice.

While [defendant] is correct that financial motive cannot, by itself, prove actual malice, it nonetheless is a relevant factor bearing on the actual malice inquiry."

Even that is hardly the only evidence of the *Reader's* Constitutional malice, however. The fact that you attempted to provide my client with an absurdly short window in which to provide comment to the Story (initially insisting on comment within just a few hours after informing my client of the Story) although you will not go to press until Wednesday of next week suggests an intention to deprive my client of an opportunity to provide a meaningful response. This purposeful avoidance of the truth evidences Constitutional malice. Harte-Hanks, Inc. v. Connaughton, 491 U.S. 657 (1989).

If you publish a Story reporting on the unproven specious allegations of bawdy behavior, we caution you that omitting key information, misleadingly characterizing events, or otherwise implying or stating that my client engaged in wrongdoing, would result in a false and defamatory portrayal which would lend credence to the unproven, stricken and dismissed allegations of the "Doe" lawsuits. Publication of incomplete and hence misleading information may give rise to liability for defamation since the incomplete presentation of facts may imply an actionable false assertion of fact. Ringler Associates Inc. v. Maryland Cas. Co., 80 Cal.App.4th 1165, 1180, 96 Cal.Rptr.2d 136, 149 (2002); *see also*, Milkovich v. Lorain Journal Co., 497 U.S. 1, 19, 110 S.Ct. 2695, 2706, 111 L. Ed. 2d 1, 18 (1990) (incomplete facts may still imply false assertion of fact). "Although the truth of an alleged libel may be proven as a complete defense it is not a defense to show that a statement contained in a publication, if taken alone, is literally true, when other facts are omitted which plainly refute the false impression of the partial statement. A statement is not true or even substantially true if, by implication, an entirely untrue impression is made by omission of part of the facts." Express Publishing Co. v. Gonzalez, 350 S.W.2d 589, 592 (Tex. 1961); *see also* Toney v. WCCO Television, Midwest Cable and Satellite, 85 F.3d 383, 392 (8th Cir. 1996) (recognizing cause of action for implied defamation where defendant omits important facts).

Furthermore, it would be immaterial whether the Story's untrue assertions are made as statements of unequivocal fact or by innuendo and implication. In either case substantial liability will arise since it is well established that "defamation by implication stems not from what is literally stated, but what is implied." White v. Fraternal Order of Police, 909 F.2d 512, 518 (D.C. Cir. 1990). A defendant in a libel case is accountable and liable "for what is insinuated as well as for what is stated explicitly." Kapellas v. Kofman, 1 Cal.3d 20, 33, 81 Cal.Rptr. 360 (1969). Whether reporting by using innuendos or explicit statements, of course, to the extent the *Reader* has obtained (and misconstrues) information or allegations contained in documents that were placed under seal by the Court, that, too will give rise to additional liability resulting from having wrongfully accessed such materials.

The *Reader* will be unable to cloak itself behind a privilege to accurately report on judicial proceedings if its report is not accurate, as we expect will be the case. A Story predicated on obvious biases and which omits or buries key facts and/or makes misleading assertions cannot qualify as a "fair and true report" under California Civil Code §47(d). While "'[u]nder California law, a newspaper report is "fair and true" if it captures "'the substance, the gist, the sting of the libelous charge,'" and while an "article need not track verbatim the underlying proceeding," in instances like what we anticipate will occur here, where the "deviation is of such a 'substantial character' that it 'produce[s] a different effect' on the reader . . . the privilege [will] be suspended." Colt v. Freedom Communications, Inc., 109 Cal.App.4th 1551, 1558, 1 Cal.Rptr.3d 245, 250 (2003). In order to qualify for the privilege, a report must be both fair and true. We anticipate that the Story will be neither.

Inasmuch as the lawsuits in question have been dismissed, the *Reader* has no basis whatsoever to support any reasonable belief that any of the suits' claims or assertions were true. Indeed, the fact that the Court struck scurrilous allegations and that the cases have been dismissed suggests the opposite. Furthermore, we assume that none of the "Doe" plaintiffs who filed those lawsuits have gone on the record with you to confirm that their claims were true. If the *Reader* nevertheless proceeds to recklessly publish a false Story repeating and republishing the offensive allegations made in those cases, it would be doing so with knowledge or reason to know that the statements are defamatory or in conscious disregard of the statements' falsity, giving rise to liability for the damages caused by the re-publication. Khawar v. Globe International, Inc., 19 Cal.4th 254, 276, 79 Cal.Rptr.2d 178, 191-192 (1998). "At common law, one who republishes a defamatory statement is deemed thereby to have adopted it and so may be held liable, together with the person who originated the statement, for resulting injury to the reputation of the defamation victim." Id., 19 Cal.4th at 268, 79 Cal.Rptr.2d at 186. If the Story is published, the *San Diego Reader* will be unable to avoid liability by claiming that it was merely reporting on rumors disseminated by others. Ray v. Citizen-News Co., 14 Cal.App.2d 6, 9, 57 P.2d 527, 528-529 (1936) ("A false statement is not less libelous because it is the repetition of rumor or gossip or of statements or allegations that others have made concerning the matter."); Jackson v. Paramount Pictures Corp., 68 Cal.App.4th 10, 80 Cal.Rptr.2d 1, 27 (1998) ("when a party repeats a slanderous charge, he is equally guilty of defamation, even though he states the source of the charge and indicates that he is merely repeating a rumor.").

Furthermore, even if *arguendo* the "Doe" plaintiffs were willing to disclose their identities and vouch for the veracity of the allegations in their lawsuits, your reliance on such sources would nevertheless be reckless. Those individuals filed highly inflammatory claims against my client. As you should know, reliance on obviously biased and hostile sources is the type of circumstantial evidence that may be relied upon to show a "high degree of awareness of probable falsity." Cochran v. Indianapolis Newspapers, 175 Ind.App. 548, 560, 372 N.E.2d 1211, 1220 (1978).

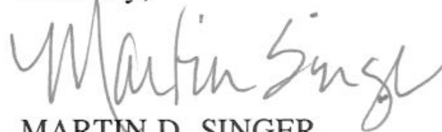
See also, Copp v. Paxton, 45 Cal.App.4th 829, 845, 52 Cal.Rptr.2d 831 (1996) ("A failure to investigate..., anger and hostility toward the plaintiff, reliance upon sources known to be unreliable..., or known to be biased against the plaintiff... --such factors may, in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication"). Malice can be proven in a libel case by, among other things, the publisher's reliance on sources known to be hostile, biased or unreliable, or relying on persons who the publisher does not know to be reliable. St. Amant v. Thompson, 390 U.S. 727, 88 S.Ct. 1323 (1968). If filing lawsuits filled with scurrilous inflammatory allegations isn't enough to demonstrate anger, hostility or bias, I don't know what is.

The dissemination of untrue defamatory statements about Platinum Equity could have far-reaching adverse consequences on its business, including the pending transaction with Delphi. The reckless and malicious publication of a false and defamatory Story about Platinum could give rise to immense monetary damages. We therefore caution you in the strongest possible terms to refrain from publishing any Story containing false and defamatory statements or inferences about Platinum Equity and/or Mr. Gores, either directly, by implication or by innuendo. If you do so, you run the risk that you will become embroiled in litigation in which you will face the unenviable task of justifying your inexcusable reckless publication.

You proceed at your peril.

This does not constitute a complete or exhaustive statement of all of my client's rights or claims. Nothing stated herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of my client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved. This letter is a confidential legal communication and is not for publication. Any publication, dissemination or broadcast of any portion of this letter will constitute a breach of such confidence and a violation of the Copyright Act, and you are *not* authorized to publish this letter in whole or part absent our express written authorization.

Sincerely,



MARTIN D. SINGER

MDS:lg

cc: Mr. Tom Gores (via email)
Eva M. Kalawski, Esq. (via email)
Lynda B. Goldman, Esq.

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