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LEGAL GROUP

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February 13, 2020

Via Electronic and First Class Mail
Brian D. Festa, Esq.
[redacted]

Re: Jolly & CT Freedom Alliance adv. [redacted]

Dear Attorney Festa,

Please be advised that our firm has the pleasure of representing [redacted] relative to a Notice to Cease and Desist you sent on behalf of your clients Down Jolly and CT Freedom Alliance, LLC. Our clients decline your request to retract and will neither cease nor desist from exercising their First Amendment rights.

As we see your primary occupation is with the CT CHRO, our presumption is that defamation law is outside your usual practice. Allow us, then, to explain why your letter is deficient and what the most likely judicial outcome would be.

1.0 Your Clients have No Valid Claim

Under Connecticut law, in order "[t]o establish a prima facie case of defamation" a party "must demonstrate that: (1) [the defendant] published a defamatory statement; (2) this defamatory statement identified [the plaintiff] to a third person; (3) this defamatory statement was published to a third person; and (4) [the plaintiff's] reputation suffered injury as a result of the defamatory statement." *Simms v. Seaman*, 308 Conn. 523, 547-48 (2013), *quoting Gambardella v. Apple Health Care, Inc.*, 291 Conn. 620, 627-28 (2009). For a statement to be defamatory, it must be false. *See Devone v. Finley*, No. 3:13-CV-00377 (CSH), 2014 U.S. Dist. LEXIS 36356, at *24 (D. Conn. Mar. 20, 2014). Our clients' statements are not false.

A "defendant will not be held liable as long as the statements at issue are substantially true." *Woodcock v. Journal Publishing Co., Inc.*, 230 Conn. 525, 554 (1994). "Contrary to the common law rule that required the defendant to establish the literal truth of the precise statement made, the modern rule is that only substantial truth need be shown to constitute the justification . . . [i]t is not necessary for the defendant to prove the truth of every word of the libel. If he succeeds in proving that the main charge, or gist, of the libel is true, he need not justify statements or comments which do not add to the sting of the

charge or introduce any matter by itself actionable." *Mercer v. Cosley*, 110 Conn. App. 283, 304 (2008), *citing Goodrich v. Waterbury Republican-American, Inc*., 188 Conn. 107, 112-13 (1982).

Though you declare the statements in the attachments to be defamatory, the only purported falsehood you assert is that "they falsely allege that [your] clients have disseminated false information." To be clear, the attachments only address language where our client indicated that the CT Freedom Alliance posted "inaccurate information…regarding proposed legislation", that the "CT Freedom Alliance, a huge antivax group cochaired by Dawn Jolly in Ridgefield, is misrepresenting the legislation", and that Ms. Jolly "uses retracted studies and propaganda to support her claims". These are not actionable in libel.

1.1 Your Clients Disseminated False Information

Our clients' statements are substantially true. For example, Ms. Jolly shared on Facebook (and has since apparently spoliated) the article at https://anyavien.com/no-flu-shots-use-elderberry-syrup-99-effective-for-h5n1/ , claiming "More effective than your damn flu shot". We have a copy, even though it does not appear currently visible on her public Facebook page. The linked article makes no such claim. Instead, it links to the article at https://www.israel21c.org/study-shows-israeli-elderberry-extract-effective-against-avian-flu/ , where the author of the study at issue actually "insists that those at risk continue to take their flu jabs." Thus, Ms. Jolly has disseminated inaccurate information.

Similarly, in what appears to be another spoliated post, Ms. Jolly shared on Facebook a post purporting to assert that autism is not genetic due to an absence of autistic parents and grandparents. The purported connection between vaccines and autism arises from Andrew Wakefield's discredited 1998 publication in The Lancet, which has been retracted. *See* Wakefield, et al., *RETRACTED: Ileal-lymphoid-nodular hyperplasia, no-specific colitis, and pervasive developmental disorder in children,* 351 THE LANCET 637 (Feb. 28, 1998). Thus, Ms. Jolly uses retracted studies to support her claims.

As to proposed legislation, Ms. [redacted] shared a letter from Connecticut Commissioner of Public Health Renée D. Coleman-Mitchell, available at https://www.wtnh.com/wp-content/uploads/sites/100/2019/09/20190916-Ltr-on-vaccines-from-Commissioner-Coleman-Mitchell.pdf , which recommended that the General Assembly eliminate the religious exemption from vaccination for school attendance. In contrast, on February 8, 2020, your client posted a call to action regarding the legislation, at https://www.facebook.com/da.jo.127/posts/10221708827618739 and posted an image, purporting to represent that the decline of deaths from diseases prior to the introduction of vaccines evidences that vaccination is unnecessary, citing to the American Academy of Pediatrics, December 2000. An actual review of the AAP article in question states that,

due to vaccines, "[t]he reductions in vaccine-preventable diseases, however, are impressive[,]" setting forth that, due to vaccination, deaths from diphtheria, pertussis, measles, *Haemophilus influenzae*, tetanus, and poliomyelitis have been virtually eliminated. Guyer, et al, *Annual Summary of Vital Statistics: Trends in the Health of Americans During the 20th Century,* 100 PEDIATRICS 1307, 1315 (Dec. 2000). Simply put, the gist and sting of our clients' statements are substantially true. Please note, although we are primarily addressing the first prong under *Simms*, *supra*, the other elements are not conceded.

1.2 Your Letter is Insufficient

Your letter purports to request a retraction under C.G.S. § 52-237. As the statements are not libelous, our clients have no obligation to make any retraction. Further, your letter is vague and insufficient under C.G.S. § 52-237. "[A] complaint for defamation must, on its face, specifically identify what allegedly defamatory statements were made[.]" *Chertkova v. Connecticut General Life Ins. Co*., Docket No. CV-98-0486346-S, 2002 Conn. Super. LEXIS 2348 (New Britain Sup. Ct. July 12, 2002, Berger, J.), *aff'd*, 76 Conn. App. 907 (2003). There is no reason to suggest the statute would be interpreted any differently. We have been guessing as to what it is, exactly, that you are claiming is libelous, *i.e.* the supposedly false information you claim our clients disseminated. You cannot merely present lengthy statements and expect us to determine what it is that you are claiming is false. If you mean the statements identified above, they are substantially true. If you mean others, please identify them. We will review them, of course, though we suspect you will be wrong as to whether they are actionable.

1.3 The Statements are First Amendment Protected Speech

Our clients' statements are constitutionally protected. Your clients are limited purpose public figures. Public figures must prove "actual malice" to recover for claims based on speech. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964); *Gertz v. Robert Welch*, 418 U.S. 323 (1974). To be deemed a limited purpose public figure, a plaintiff must have: "(1) successfully invited public attention to [its] views in an effort to influence others prior to the incident that is the subject of litigation; (2) voluntarily injected [itself] into a public controversy related to the subject of the litigation; (3) assumed a position of prominence in the public controversy; and (4) maintained regular and continuing access to the media." *Lerman v. Flynt Distrib. Co*., 745 F.2d 123, 136-37 (2d Cir. 1984). In their quest to organize, fundraise, and legislate, your clients have invited attention, voluntarily injecting themselves, become prominent, and have media access.

Notably, on December 4, 2019, your clients announced that Ms. Jolly is seeking to register as a lobbyist with the Connecticut Office of State Ethics and is pursuing registration as a

501(c)(4) organization in order to lobby. Ms. Jolly had previously advocated that the Public Health Committee reject H.B. 7199. *See* Jolly, Dawn, Letter to CT General Assembly, Public Health Committee (Mar. 13, 2019). Your clients have sought media attention on the issue. *See, e.g.,* Raff, Susan & Lank, Olivia, "Lawmakers Pushing Bill to Remove Religious Exemptions for Vaccination of Children", WFSB (Mar. 13, 2019); Carlesson, Jenna, "Health Officials Say Connecticut Child has Contracted Measles", CT MIRROR (Oct. 25, 2019); and Staff, "Department of Public Health Confirms 4th Case of Measles in the State this Year", FOX61 (Oct. 25, 2019). They are, therefore, limited purpose public figures.

Thus, even if our clients made false statements, your clients must meet a heightened standard and "prove that the statement was made with actual malice…with actual knowledge that it was false or with reckless disregard of whether it was false." *Fuller v. Day Publishing Co.*, No. 030565104, 2004 Conn. Super. LEXIS 376, at *14-15 (Super. Ct. Feb. 23, 2004) *aff'd*, 89 Conn. App. 237 (2005), cert. denied 275 Conn. 921 (2005) (limited-purpose public figures)). "The state of mind that constitutes actual malice has been defined as with knowledge that it was false or with reckless disregard of whether it was false or not." *Kelley v. Bonney*, 221 Conn. 549, 580, (1992) (internal quotation marks omitted).

In brief, there is no reasonable expectation that your claims will be met with any success. There will be no damages awarded. There will be no injunctive relief. And, your threat of a temporary restraining order plainly shows you are unfamiliar with the well-established rule that "THE SUPREME COURT HAS ROUNDLY REJECTED PRIOR RESTRAINT!". *Kinney v. Barnes*, 57 Tex. Sup. J. 1428 at n.7, (Tex. 2014) (citing SOBCHAK, W., THE BIG LEBOWSKI, 1998)).

2.0 Your Client will Pay Our Fees

Should you proceed down the path of litigation and actually file suit, you should also advise your clients of their liability. First, they will have the misfortune of incurring the Streisand Effect. *See Guttenberg v. Emery*, 26 F. Supp. 3d 88, 95 (D.D.C. 2014) (describing "the dilemma faced by plaintiffs in defamation cases, who often end up publicizing defamatory statements much more than if they had not filed a lawsuit."); *see also,* Masnick, Michael, "Since When is it Illegal to Just Mention a Trademark Online?" Techdirt (Jan. 5, 2005) *available at* https://www.techdirt.com/articles/20050105/0132239.shtml (coining the term). It is unlikely your clients have suffered any injury to their reputation on account of our clients' statements. Your clients are apt to suffer far greater injury to their reputation, to the extent they might not already be libel proof, on account of their own statements and tactics should they turn to litigation and bring the frivolous suit you propose.

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Second, your clients will be liable to ours under the Connecticut Anti-SLAPP statute, Conn. Gen. Stat. § 52-196a. Dismissal will be swift. Our clients' statements were all communications in public fora on public health, a matter of public concern. And, you lack probable cause under law, as set forth above, to bring your threatened libel claim. With those elements met, the statute mandates that our clients will be awarded their costs and reasonable attorneys' fees. We would be happy to provide you with a list of cases in which we have recovered large fee awards in SLAPP suits so that you may properly advise your clients as to your proposed ill-fated adventure in litigation.

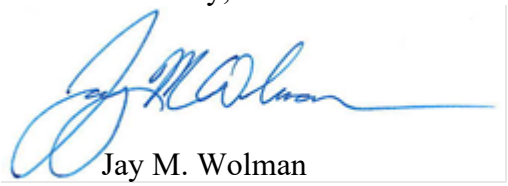
3.0 Stop this Nonsense

Your client states, on its website, "[w]e pledge to never engage in censorship, groupthink, or controlled messaging." *See* https://www.ctfreedomalliance.org/about-us . Similarly, on November 22, 2019, your client stated on Facebook that it is "the arch nemesis of censorship and deception." And on November 8, 2019, your client stated that it is an organization "where every voice is heard, and not one is louder than the others." Your threat directly contradicts these statements. It is an attempt, through bullying, to censor our clients. It is an attempt to control messaging, to thwart the ability of anyone who disagrees with your client to be heard. It promotes but a single ideology, which necessitates groupthink.

In the immortal words of Master Yoda, "Stop it Now". Bad Lip Reading, "SEAGULLS! (Stop It Now)" (Nov. 25, 2016) *available at* https://www.youtube.com/watch?v=U9t-slL130E .

Thank you for your attention to this matter.

Sincerely,



Jay M. Wolman

Cc: Marc J. Randazza