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April 23, 2014

VIA CERTIFIED, RETURN-RECEIPT
REQUESTED FIRST CLASS MAIL

Mr. Steven Arthur LaMar
P.O. Box 1702
Cave Creek, AZ 85327

Dear Mr. LaMar:

This firm represents Gerald Freeman. I write to you today to tell you to immediately cease and desist all defamatory activity against Mr. Freeman. Failure to do so will result in legal action against you.

As an attorney, you must know that while the Constitution protects your right to free speech, it does not afford a right to lie about other people and disparage them falsely and publicly. But that is precisely what you have done with Mr. Freeman.

At a January 27, 2014 Cave Creek Town Council meeting, you claimed that Mr. Freeman "is openly physically violent and antagonistic to horse people."

<https://cavecreek.civicweb.net/Documents/DocumentList.aspx?ID=19533>

At a Council meeting the next week, on February 3, 2014, you stated that Mr. Freeman "takes his vehicle and rams mules if they get anywhere near his property, [and]...he's threatened the lives of riders that go past his home..."

<https://cavecreek.civicweb.net/Documents/DocumentList.aspx?ID=19531>

All of these statements are false and intended to harm the reputation of Mr. Freeman. By claiming these things, you have committed the tort of defamation and you are liable for damages. *Turner v. Devlin*, 174 Ariz. 201, 848 P.2d 286 (1993)(stating that tort of defamation requires a false statement that "bring[s] the defamed person into disrepute, contempt, or ridicule, or...impeach[es] plaintiff's honesty, integrity, virtue, or reputation."



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There is no question that all of your statements are false. Mr. Freeman did not hit any mule. And he does not threaten the lives of riders who go past his home. These false statements clearly are intended to and in fact bring Mr. Freeman into disrepute and impeach his honesty, integrity, virtue and reputation.

I know you would probably claim that you were just stating what Terry Smith had claimed about Mr. Freeman. However, this does not shield you from legal liability for two reasons. The first is that you do not have a right to repeat someone else's lies. See *Saban v. Maricopa County*, 2010 WL 2977553, (App. 2010)(quoting the Restatement (Second) of Torts § 578, which provides that "one who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it").

As the Ninth Circuit elaborated in *Flowers v. Carville*:

On the quaint homespun logic that "[t]alebearers are as bad as talemakers," each repetition of a defamatory statement by a new person constitutes a new publication, rendering the repeater liable for that new publication.... The law deems the repeater to "adopt as his own" the defamatory statement. Liability for repetition of a libel may not be avoided by the mere expedient of adding the truthful caveat that one heard the statement from somebody else.

310 F.3d 1118, (9th Cir. 2002).

1 R. Smolla, *Law of Defamation* § 4:87, at 4-136.3 to -136.4 (2d ed.2001) (footnotes omitted). "Every repetition of the defamation is a publication in itself, even though the repeater states the source, or resorts to the customary newspaper evasion 'it is alleged'...." Prosser and Keeton on the *Law of Torts* § 113, at 799 (5th ed.1984) (footnotes omitted).

The second problem with claiming that you were just citing Mr. Smith's testimony is that you even lied about what Mr. Smith said! Mr. Smith's claim about Mr. Freeman hitting his mule is not true. However, even in his false, smear allegation, he only claimed there was one incident. He did not state, as you said, that Mr. Freeman "takes his vehicle and rams mules if they get anywhere near his property." You also indicated that Freeman "threaten[es] the lives of riders that [sic] go past his home..."



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Clearly when you claimed that Mr. Freeman “rams mules” and “threatens the lives of riders: you were saying that Mr. Freeman does this as a matter of course. But that is not at all consistent with Mr. Smith’s claim about a single incident. *Cf. Green Acres Trust v. London*, 141 Ariz. 609, 610, 688 P.2d 617, 618 (1984)(quoting the Restatement of Torts for the point that the fair reporting privilege is only applicable “ if the report is accurate and complete or a fair abridgement of the occurrence reported.”)

Relying on Mr. Smith’s claim will afford you no defense—you do not have an unfettered right to repeat discredited lies, and even if you did - you went far beyond what even Mr. Smith claimed.

You must cease and desist all defamatory conduct against Mr. Freeman. If you say anything else false about Mr. Freeman, we will take legal action against you. Once legal action is instituted, you will be subject to damages, including potential punitive damages. *Hansen v. Stoll*, 130 Ariz. 454, 459, 636 P.2d 1236, 1241 (App. 1981)(holding that jury may award punitive damages in defamation case).

To avoid future litigation, please stop lying about Mr. Freeman. If you continue to make false, disparaging remarks about Mr. Freeman, you will be held legally accountable.

Sincerely,

TIFFANY & BOSCO, P.A.

A handwritten signature in black ink, appearing to read 'Timothy A. La Sota', with a stylized flourish at the end.

Timothy A. La Sota

TAL/jjw

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