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February 2, 2005

CONFIDENTIAL LEGAL NOTICE

NOT FOR PUBLICATION

Re: Lindsay Lohan & Dina Lohan
Our File No. : 3801-2

Dear [REDACTED]

We are litigation counsel for Lindsay Lohan and her mother, Dina Lohan. You may be aware that earlier today Michael Lohan and his attorney gave a press conference in which they made a number of malicious, false and outrageous statements about Dina Lohan and Lindsay Lohan. Because of Mr. Lohan's complete lack of credibility with regard to matters affecting Dina Lohan and Lindsay Lohan, his previous self-contradictory statements, his self-evident reasons and motives to make false statements and unfounded accusations, we will not dignify those offensive and groundless statements and threats either by acknowledging each of the specific statements or responding to them. One should merely consider the source, which should then compel any reasonable person or publication to give those statements no credence and to refrain from repeating, republishing or disseminating those statements.

We respectfully request and demand that you not publish or spread those statements in any manner or medium, whether by print publication or electronic transmission. To do so would be defamatory and would depict my clients in a false light and would constitute a clear violation of my clients' respective rights.

Even the most superficial awareness of the numerous legal proceedings to which Michael Lohan has been a party, including orders and judgments entered against him would inform any reasonable person that Michael Lohan is clearly biased and hostile toward my clients, that based on all of his actions toward my clients during the recent years, he has shown that he will do almost anything and say anything to achieve his goals, albeit without any legal or factual support.

Please be advised that any person or media company which republishes or spreads any of these false and damaging statements about my clients will also be liable for any and all damages or injuries which my clients suffer as a result of the republications or reiterations of Michael Lohan's false and damaging statements.

It is well established that where a publisher disseminates false and defamatory or disparaging statements without checking obvious and available sources for corroboration or refutation of a proposed story, such conduct can constitute evidence of actual malice. Akins v. Altus Newspapers, 609 P.2d 1263, 1269 (Okla. 1977), cert. denied, 449 U.S. 1010 (1980); Kerwick v. Orange County Publications, 53 N.Y.2d 625, 438 N.Y.S.2d 778 (1981).

If you proceed to publish or re-publish false and defamatory statements in reliance on Michael Lohan, without making any attempt to investigate or determine the character, integrity or reliability of Michael Lohan as a person whose statements and accusations could be relied on and published, you would be ignoring the litany of well-publicized reports of his longstanding troubles with the law, including his multiple arrests for assault, including against a Manhattan trash collector as well as his own brother-in-law, as well as for a host of serious traffic infractions such as operating a motor vehicle with a suspended license, without insurance, and while under the influence of drugs or alcohol.

Even more troubling, by republishing Michael Lohan's false accusations, threats and rantings, you would be giving him a bully pulpit to cast invective and false accusations at my clients, and would be ignoring well-publicized incidents which clearly draw into question his credibility, including, for example, his arrest and prison sentence for criminal contempt related to securities trading (referred to by some reports as a fraud conviction), and multiple arrests and/or incarcerations for among other offenses, "thefts of services", disorderly conduct, "issuing a bad check", and "ball-jumping." For example, in 1990, a federal district court found by "clear and convincing evidence" that Mr. Lohan had defrauded various individuals in connection with commodities futures trading, and sentenced him to 37 months imprisonment, a \$200,000 fine and a five-year supervisory release term. Lohan was subsequently incarcerated on two additional occasions for violating the terms of his release term.

There have also been oft-repeated reports of Michael Lohan's "psychological" problems

ands drug and alcohol abuse, as well as reports of his repeated violations of a restraining order which was obtained by Dina Lohan in order to protect herself and her children from Mr. Lohan's apparent violent and unpredictable behavior. In 2000, Lohan pled guilty to criminal contempt and aggravated harassment in connection with a series of threatening telephone calls made to Dina Lohan and her parents, in which he stated, among other things, "I will come by and take care of all of you." In this regard, reports have alleged that Michael Lohan was thrown into a "mental home" after pleading guilty to harassing his family, and that he allegedly once threatened to kill his entire family, and made forty "creepy" calls a day to Dina Lohan, scaring the family with threatening messages or hanging up. Evidence of his hostility and bias towards Dina Lohan and Lindsay Lohan and his clear motives and intent to seek revenge for imagined ills is further evidenced by reports of his continuing harassing behavior towards family members, as well as by his filing of a frivolous "family offense" petition in the fall of 2004, which was subsequently dismissed with prejudice by the court, forbidding any refiling.

Moreover, in any event, any claim by Mr. Lohan that he has any reliable information concerning the state of mind or conduct of either Lindsay Lohan or Dina Lohan is a pure fabrication. In view of his estranged relations with his family as well as the extensive amount of time he has spent behind bars and out of the house, particularly in recent years, Mr. Lohan is in no position to know or speak of the state of mind or conduct of either of my clients. His unreliability and lack of credibility is further evidenced by previous statements he made only recently to the effect that he would not be seeking alimony or any monies from Dina Lohan, which are diametrically opposite from his current threats. In a one hundred and eighty degree turnaround, he has now "declared war" on Mrs. Lohan, claiming that he plans to sue her for alimony and would seek to recover half of the money earned in connection with Lindsay Lohan's previous films, a completely groundless and frivolous claim without any factual or legal support.

Although one of the false assertions that Michael Lohan is now making is that he is responsible, at least in part, for the career and success of his daughter, Lindsay Lohan, Michael Lohan had previously acknowledged during an on-air interview with Howard Stern last September 28, 2004 that, in fact, he had "nothing to do" with helping Lindsay Lohan's career, and that Dina Lohan "was responsible for building up her entire career." These are just a few examples of Mr. Lohan's admittedly false statements.

Accordingly, it goes without saying that, based on publicly available information, you should be well aware that information obtained from Mr. Lohan would almost certainly be based, at a minimum, on fabricated and/or erroneous information provided by an unreliable, biased and vindictive individual who has, through his previous behavior toward my clients and others, demonstrated that his statements and representations cannot be taken at face value or given any credence. Any reliance by you on an obviously biased and hostile source is precisely 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). By way of example, in Tavoulareas v. Washington Post Co., 759 F.2d 90, 117-120, rehearing in en banc granted, 763 F.2d 1472 (D.C. Cir. 1985), the court stated that personal bias or hostility of a particular source is one of the factors that may be utilized to affirm a jury finding of actual malice. 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"]; Evans v. Unkow, 38 Cal.App.4th 1490, 1497, 45 Cal.Rptr.2d 624 (1995); Fisher v. Larsen, 138 Cal.App.3d 627, 640, 188 Cal.Rptr. 216 (1983).

Similarly, in Stevens v. Sun Publishing Co., 240 S.E.2d 812 (S.C.), cert. den., 436 U.S. 945 (1978), the court also found that the defendant's reliance on an obviously biased source, when considered together with the fact that there was no "hot news" deadline pressure, was sufficient to demonstrate actual malice. In Pep v. News Week, 553 F.Supp. 1000 (S.D.N.Y. 1983), the court also stated that:

[F]acts such as a failure to investigate, or reliance on a questionable source, are relevant to that [actual malice] determination: they may tend to show that a publisher did not care whether an article was truthful or not, or perhaps the publisher did not want to discover facts which would have contradicted his source." Id. at 1002-1003.

If you do proceed to publish any false and damaging statements concerning Lindsay Lohan or Dina Lohan in reliance on Michael Lohan, it will be clear to any judge or jury that you were purposefully and consciously avoiding and disregarding the truth and were re-publishing malicious falsehoods. As stated by the Court in Foretich v. American Broadcasting Companies, 26 Med.L.Rep. 1171 (D. DC 1997), a media defendant's "dependence on fabricated evidence in producing its story can support a finding of actual malice." As you are aware, malice can be proven in a libel case by evidence of fabricating the story or parts of the story, by falsely attributing quotes, by creating a fictionalized scenario, by 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, or who are not in a position to know the things they speak of, or by purposeful avoidance of the truth. See for example, St. Amant v. Thompson, 390 U.S. 727, 88 S.Ct. 1323 (1968).

Michael Lohan has also previously made false statements to the media stating or implying that Lindsay Lohan and/or Dina Lohan are emotionally unsound, and falsely referred to Dina

Lohan as a "drunk," or as having drug or alcohol problems. As I am sure you are also aware, the false description of a person as mentally unsound, unbalanced, or emotionally volatile can be libelous per se. It is clear that these types of false statements and descriptions applied to Lindsay Lohan or Dina Lohan are libelous per se under the well established rule that a statement is defamatory "if it tends to injure plaintiff in his trade, profession or community standing, or lower him in the estimation of the community." Liberty Lobby, Inc. v. Dow Jones 838 F. 2d 1287, 1293 to 1294 (D.C. Cir. 1998); See also, Weyrich v. The New Republic 235 F.3d 617 (D.C. Cir. 2001).

As stated by the Second Circuit Court of Appeals in Mattox v. News Syndicate Co. 176 F.2d 97, 901 (2d Cir. 1949) cert den. 70 S.Ct. 100 (1949), the "general law" is that "it is libelous per se to say that a person is insane or of unstable mind" (citing Section 559 of Reinstatement of Torts, comment c), also citing New York court decisions). Id. at 901, fn 6. Similarly, the Second Circuit Court of Appeals in Goldwater v. Ginzburg 14 F.2d 324 (2d Cir. 1969) affirmed a judgment in favor of presidential candidate Barry Goldwater against a writer and magazine publisher for defamation based on a false accusation of insanity or mental imbalance which the court found to be the type of statement which would be libelous per se. Id. at 338. Similarly, the Court of Appeal for the District of Columbia in Weyrich v. The New Republic 235 F.3d 617 (D.C. Cir., 2001), in reversing a dismissal of the case brought by a leader of a conservative political movement, found that:

"[A] number of false anecdotes, suggesting to the average reader that appellant is not only a political reactionary but emotionally volatile, perhaps even mentally unsound, and otherwise unfit for his profession," where the anecdotes were materially false and "verifiable," would constitute potentially defamatory statements which should go to the jury."
At p. 626.

The Court went on to say that the defendant author's description of the plaintiff's behavior was potentially defamatory stating:

"If indeed the story is fabricated, we cannot say that it is not reasonably capable of any defamatory meaning - - it arguably makes appellant appear highly volatile, irrational, unsound and otherwise 'odious, infamous or ridiculous.'" At p. 627.

Similarly, false statements, descriptions and references to Dina Lohan taking drugs or having a drug or alcohol "problem" would be highly damaging and defamatory. See, for example, Burnett v. National Enquirer, 144 Cal. App. 3d 991, 193 Cal. Rptr. 206 (1983) [Falsely depicting Carol Burnett as drunk and out-of-control in a restaurant was found to be actionable and supported the award of damages]; Martin v. Municipal Publications 510 F. Supp. 255 (Ed. PA 1981) [Publication of a photograph of plaintiff in a newspaper with a caption implying that he was a closet transvestite with a drinking problem was actionable.]; Fleming v. Imperial Corporation of America, 40 Cal.App.4th 53, 42 Cal.Rptr. 2d 124, 127 (1995) [Court of Appeal affirmed the jury award of compensatory damages for defamation where one of the two false accusations was that the plaintiff "had been caught smoking marijuana"]; Kohn v. West Hawaii Today, Inc., 65 HAW 584, 656 P.2d 79, 9 Media L.Rep. 1238 (1982) [Court of Appeal did not disturb the jury finding that defendant had been defamed by an article that the plaintiff had been criminally charged with possession of certain dangerous drugs and that the confiscated drugs included "heroin, cocaine, hashish and morphine," whereas, in fact, the only substance that was actually confiscated from defendant was "six grams of marijuana"].

Also, the fact that, as justification, you might claim to be merely repeating or republishing the statements made by a third party, is certainly no defense. It is well established by court decisions that someone who broadcasts, disseminates or re-publishes defamatory statements made by a third party with knowledge of falsity or reason to know that the statements are defamatory, or consciously disregards the falsity of the statement is liable for the damages caused by the republication of the statements. See for example, Khawar v. Globe International, Inc., 19 Cal.4th 254, 79 Cal.Rptr.2d 178 (1998); Auvil v. CBS 60 Minutes, 800 F. Supp. 928, 931 (E.D.Wash.1992); Cubby, Inc. v. Compuserve, Inc., 776 F. Supp. 135, 139 (S.D.N.Y.1991); Arditto v. Putnam, 214 Cal.App.2d 633, 639, fn. 2, 29 Cal.Rptr. 700 (1963).

The Court in Michael Jackson v. Paramount Pictures Corporation, 68 Cal.App.4th 10, 80 Cal.Rptr. 2d 1 (1998) recognized and applied this rule, stating:

"... 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. * * * 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." Id. at 27 (citation omitted) (emphasis added).

Accordingly, demand is hereby made that you cease and desist from making, publishing or otherwise disseminating any false or defamatory statements of or concerning either Lindsay Lohan or Dina Lohan, including, without limitation, those statements made by or in reliance on Michael Lohan or his attorney. For the reasons stated above, should you proceed to re-publish any of these false and defamatory statements about my clients, you will be exposed to liability and a substantial damage verdict.

My clients each reserve all of their rights and remedies including those regarding any previous republications by you of any false or defamatory statements made by Michael Lohan or his attorney.

We trust that you will govern yourselves accordingly.

This is a confidential legal notice and is not for publication. Any publication, dissemination or broadcast of any portion of this letter will constitute a breach of confidence and a violation of the Copyright Act.

Sincerely,



JOHN H. LAVELLE, JR.

Of

LAVELLY & SINGER
PROFESSIONAL CORPORATION

JHL/yeh

cc: Lindsay Lohan (via facsimile)
Dina Lohan (via facsimile)
Leslie Sloane (via facsimile)
Jason Sloane (via facsimile)
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