PUBLIC CITIZEN LITIGATION GROUP
1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

(202) 588-1000

BY EMAIL ONLY: ahart@lavelysinger.com

August 5, 2015

Allison S. Hart, Esquire
Lavely & Singer
Suite 2400
2049 Century Park East
Los Angeles, California 90067

Dear Ms. Hart:

I am writing in response to your demand letter dated August 4, 2015, addressed to "LipStick Alley," complaining about a series of statements about the alleged involvement of your client, Jared Leto, in sexual contact with some of his fans, at http://www.lipstickalley.com/showthread.php/540892-Any-Jared-Leto-tea/page3 and http://www.lipstickalley.com/showthread.php/540892-Any-Jared-Leto-tea/page2. You claim that both the posters and Lipstick Alley itself are potentially liable for defamation; because letter is entirely based on citations to decisions by California state courts as well as to the Smolla defamation treatise, I assume that you are threatening to file suit in California.

In summary, your claims are completely frivolous and Lipstick Alley will be taking no action in response to your threats. I myself, however, will be posting your letter, as well as this response, so that the public can judge your own conduct in making empty threats of litigation.

First of all, you have no claim against Lipstick Alley, regardless of whether you have any valid defamation claims against the individuals who have posted the comments about which you complain. Lipstick Alley is an online gossip site, catering most specifically to black women. The site does not post comments, it only hosts them. Consequently, Lipstick Alley is immune from liability, and indeed from suit, under the Communications Decency Act, 47 U.S.C. § 230. The California Supreme Court squarely so held in *Barrett v. Rosenthal*, 146 P.3d 510 (Cal. 2006), as has every federal and state appellate court of which I am aware. You must have been aware of this authority when you wrote your letter.

If you want to proceed against the individuals who posted the allegedly defamatory material on the Lipstick Alley site, you would have to sue them as John Doe defendants and then use the courts' subpoena power to identify them. The use of state power to compel identification will implicate the First Amendment right to speak anonymously, and under the prevailing authority in California, *Krinsky v. Doe 6*, 159 Cal. App. 4th 1154 (Cal. Ct. App. 2008), as in many other states,

this will require you to make a legal and evidentiary showing that you have valid defamation claims against each such poster. Having reviewed the posts that you have identified, I conclude that you do not have any non-frivolous defamation against any of the posters.

Some of the posts of which you object do not appear to me to be defamatory. Two of the posts simply mention claims found elsewhere in the Internet that your client has a large penis. It is hard to see how those statements would hurt your client's reputation, even if they are false. It is, as I understand it, the accusation of having a **small** penis that is understood to be an insult.

Other posts about Leto's allegedly rough and inconsiderate behavior during alleged sexual encounters with fans, and about the age of one of the fans, might well have been defamatory when originally posted, assuming that they are false. I recognize that your letter **claims** that the statements are false. I assume that you do not have personal knowledge about the size of Leto's penis or about whether he is rough with sexual partners, and you do not cite any evidence supporting your claim of falsity. Moreover, the mere fact that a denial comes in a demand letter from a lawyer at Lavely & Singer means that it has no probative value, considering the number of times your firm has sent demand letters claiming that Bill Cosby did not mistreat his fans by using drugs to facilitate sexual conquests. If you have in mind to proceed on the claims about Leto, you will need to file a lawsuit (subject to California's anti-SLAPP statute, of course), and in support of a subpoena present an affidavit from Leto himself addressing the factual assertions in the posts. The affidavit will, no doubt, make for interesting reading.

Moreover, none of the posters on Lipstick Alley claims to have personal knowledge about Leto's conduct during sex with his fans (or about the size of his penis); some simply express their views about what they have read elsewhere, and some have reposted comments from other web sites that purport to reflect first-person descriptions of activities in which the original writers claim to have been involved. Your demand letter mentions that at least one of the linked-to posts has been deleted from the original site, and you seem to suggest that the removal of various posts in response to demand letters from your client supports your assertion that the posts are false. But at most, it only shows that the individuals whom your client threatened decided that the issue was not worth litigating. Lipstick Alley, however, stands up for the First Amendment right of its users to comment on celebrities, and to make those comments anonymously, unless their statements have been proved false and defamatory. It does not remove posts simply because a wealthy actor is able to hire a law firm to send threatening letters.

And beyond the issue of falsity, although you are right that, under the common law of libel, the republisher of defamatory statements can be held liable if the remaining elements of defamation under state law and the First Amendment are satisfied, the California Supreme Court in *Barrett v. Rosenthal* created a special exception in the Internet context through its construction of section 230. The court held that, when an Internet user repeats a statement from elsewhere in an Internet discussion group, the republisher is not an "information content provider" about that information,

and hence cannot be treated as the publisher of that information. Controversial as that holding may be, at least if you bring your action against the Doe defendants in a California court, *Barrett v. Rosenthal* would prevent Leto from prevailing. And even without section 230, considering that your client is unquestionably a public figure, he would have to prove by clear and convincing evidence that at the time the anonymous reviewers reposted the claims about Leto's sexual activities, they had good reason to know that the claims were false but posted them anyway in reckless disregard of probable falsity. I doubt that you will be able to succeed in doing that.

Finally, each and every one of your purported libel claims is barred by the statute of limitations. The dates of republication that you identify in the first footnote of your letter, July 2013 and January 2014, are all well outside California's one-year limitations period for libel claims. California Code of Civil Procedure 340(c). Moreover, under California's Uniform Single Publication Act, Civil Code section 3425.3, which applies to Internet publications, *Traditional Cat Ass'n v. Gilbreath*, 13 Cal. Rptr.3d 353, 358 (Cal. Ct. App. 2004), the fact that the statements remain on the web site does not mean that the statute of limitations continues to run.

Consequently, you have no basis for any of your claims against the individual posters as well as having no claims against Lipstick Alley. Lipstick Alley will not remove any of the comments and it will not give any notice of the threats to its anonymous users. Only if you file suit and pursue subpoenas will Lipstick Alley consider what the appropriate form of notice would be. I note that under the approach of *Dendrite Int'l v. Doe No. 3*, 342 N.J. Super. 134, 775 A.2d 756, (App. Div. 2001) and *Doe v. Cahill*, 884 A.2d 451, 455 (Del. 2005), it is your client that would have the obligation to give appropriate notice, such as by posting on the message thread.

Last, I note that your letter to Lipstick Alley contains the heading

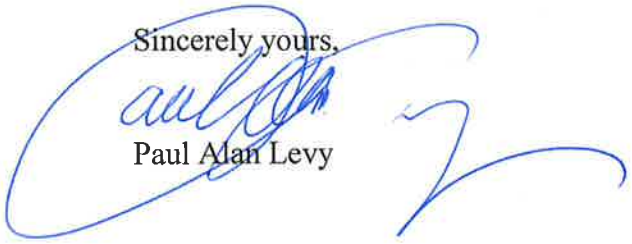
CONFIDENTIAL LEGAL NOTICE
PUBLICATION OR DISSEMINATION IS PROHIBITED

and that your letter closes with a sentence asserting that your letter is "confidential" and "not for publication." You do not provide any legal basis for this assertion, but your senior partner, Martin Singer, apparently argued in a demand letter to the San Diego Reader that the copyright law barred republication of demand letters. http://media.sdreader.com/pdf/confidential-letter.pdf. However, as I explained in responding to a demand letter from a different law firm, http://pubcit.typepad.com/clpblog/2007/10/dont-publish-th.html, and as Don Bauder explained in response to Singer's own demand letter, http://www.sandiegoreader.com/news/2009/jul/15/ city-light-2/#, the copyright claims are bunk. But more than that, including such a claim in your letter makes it more likely that the demand will be republished, thus potentially bringing the public's attention to the alleged defamation that your client has hired you to suppress.

Bauder's story noted that, as of 2009, a non-publication banner similar to the language quoted

above was common in demand letters from your firm. I am surprised that your firm did not learn from its experience with the San Diego Reader, as John Dozier's firm learned after my open letter to it back in 2007, not to repeat the assertion in future letters. It will be interesting to learn whether your firm is now able to learn from the experience. If it does not, perhaps it is potential clients of your law firm who will need to be educated about how the true cost of hiring a lawyer to send frivolous demand letters can be higher than what gets paid to the author of the letter.

Sincerely yours,



Paul Alan Levy

cc: Martin Singer, Esquire