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John McCann
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Member NJ, NY, MA, DC Bar
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February 12, 2022

Via Hand Delivery

Bob Healy for Congress
BOB HEALEY FOR CONGRESS
PO BOX 999
EDISON, NJ 08818

Theresa Velardi, Bob Healy for Congress Campaign Manager
PO BOX 999
EDISON, NJ 08818

RE: Cease & Desist Defamation of Ian Smith

To Whom It May Concern:

This office represents Ian Smith in connection with the unwarranted, false and defamatory statements made, published, and distributed by you directed at him.¹

Your false and defamatory statements are clearly made and published with actual malice and with the intent to impugn Mr. Smith's integrity and to injure his reputation. See Leang v. Jersey City Bd. Of Educ., 198 N.J. 557, 585 (2009) (quoting DeAngelis v. Hill, 180 N.J. 1, 13 (2004)).

On February 3, 2022, Ian Smith announced his candidacy for New Jersey's 3rd Congressional District. In response to this you have chosen to malign and accuse him of being

¹ <https://www.insidernj.com/healey-ian-smith-unfit-unelectable/> (Last visited February 10, 2022).

arrested for possession of hypodermic needles. Specifically, Ms. Velardi stated that my client was found to be in, "...possession of... hypodermic needles." This is categorically false as he was never found to be possession of hypodermic needles, as evidenced in the Atlantic County evidence report. Your disregard to the truth gives rise to a level of malice.

These statements are defamatory per se as they depict Mr. Smith engaging in criminal activity which he did not engage in. You seem to believe that because the comments were made in connection to another tragic arrest my client was involved in that it is protected speech. Unfortunately, in my experience, you are sadly mistaken.

For reasons that can be explained only by you, the undeniable fact is that you knew or should have known that your statements were false as no such evidence exists to support your published statements. If you believed your allegations may be rumors, you owed Mr. Smith a duty to determine if they were true before you published your comments. Based on your actions, Mr. Ian Smith has concluded, your libelous statements were made specifically to malign him and his candidacy; it serves no public purpose.

Your willful, intentional, and malicious publications of libelous and defamatory material about Mr. Smith, which also serve to place him in a false light, have caused serious and irreparable injury to his reputation, his business and professional career, and his political interests. He demands immediate action by you to prevent further and continuing harm, that you cease from making the above alleged comments, and publicly apologize with the same exuberance you had when you made your statements.

For my client to protect his rights in this matter, my client will take all such actions as they may deem necessary or appropriate to protect these rights and my clients hereby expressly

reserves any and all rights which they may have in the premises, at law or in equity, statutory or otherwise, all of which are hereby expressly reserved without limitation. My client intends to vigorously pursue claims of defamation, false light, invasion of privacy, and any other claims which he has or may have against you and each and every other person or entity in this matter. Finally, this letter also serves as notice to you that your prior statements regarding his possession of hypodermic needles is false. Any further dissemination of this false information by you or your agents will be evidence of your malice.

This office intends to file a lawsuit in which you, John and Jane Doe, and XYZ Corporation(s) are likely to be named defendants. When a lawsuit is anticipated, federal law requires a prospective party to take all reasonable steps to preserve documents, tangible things and electronically stored information (ESI) that are potentially relevant to the anticipated lawsuit and that are in the prospective party's possession, custody or control. The duty applies equally to hard copy documents and other tangible things, and to ESI.

As ESI can be easily deleted, corrupted, or modified in the normal operations of a business, preservation measures must be immediately put in place, including disabling any destruction or deletion protocols ordinarily in place. These measures include, but are not limited to, those explained in this letter. As such you are responsible for any destruction of any records, computers, laptops, cellphones and/or evidence of any kind since January 1, 2022.

Description of ESI to Be Preserved

ESI that may be subject to a duty to preserve includes information electronically, digitally, magnetically or optically stored, including, but not limited to:

- Word processed documents, including drafts and revisions
- Audio files
- Calendars, diaries, planners, and data created by to-do list and task management software
- Text messages, voicemail and other personal or portable electronic device data
- Instant messaging and chats
- Spreadsheets, including drafts and revisions
- Databases
- Presentations, including PowerPoint slide presentations
- Email and email attachments
- Accounting software data
- Image, video and animation data
- Internet usage data, including temporary Internet files, cache files, browsing and download history and cookies
- CAD (computer-aided design) files, including drafts and revisions
- Faxes
- Data created with project management software, document management software, or contact management software
- Social media data
- Network access and server logs
- Archived and backup data
- Data that has been deleted, damaged, erased or fragmented by a user or system process and can be recovered through forensic methods
- Legacy data created by software or hardware that is outmoded or obsolete

This list is not intended to be a comprehensive list of the ESI to which preservation obligations attach.

Potential locations of ESI include, but are not limited to:

- One-site and off-site computer systems
- Personal computers and laptops
- Network and email servers
- Voicemail and answering machines

- Cameras and camcorders
- Paging devices
- Personal digital assistants
- Cordless telephones
- Cellular phones, tablets and other portable devices
- Cloud-based storage
- Social media platforms

Magnetic, optical and other storage media, including archival and backup media, are also potential locations of ESI. They include, but are not limited to:

- Hard drives
- Floppy disks
- USB flash drives
- Tape drives
- Cartridges
- CD-ROMs
- DVDs
- Blue-ray disks
- Microfilm and microfiche
- Cloud-based storage

ESI that is potentially relevant to the contemplated action, but is not limited to, ESI generated since no later than January 1, 2022 which relates to your defamatory statements and effort to defame Mr. Smith.

In addition, potentially relevant ESI should be preserved where it is in the possession of or was authored or received by any agent(s) or representative(s) of yourself.

Preservation Duties

To satisfy its preservation duties, you must take all reasonable measures to preserve all hard copy documents, tangible things, and ESI that are potentially relevant to the aforementioned anticipated lawsuit, including the ESI described above. These measures include, but are not limited to:

- Instituting a litigation hold and monitoring compliance with the hold on an ongoing basis until this legal matter is fully resolved. A litigation hold ensures that all sources of potentially relevant information are identified and preserved.
- Documents and tangible things must be preserved in their original, unmodified condition. ESI must be preserved in the form in which it is normally maintained (its native format) with all metadata, both system metadata and application metadata, intact.
- Preserving all hardware, portable and personal storage devices, and any other electronic storage devices that contain potentially relevant information. Such devices need not be in current use. They may include devices no longer in use and legacy hardware if there is no other way to view potentially relevant legacy data. You shall not replace, destroy or modify such hardware and other electronic storage devices in any manner that could delete, damage or alter the ESI they store.
- Preserving all support information needed to access potentially relevant ESI. Support information includes, but is not limited to, operating systems, installation disks, legacy and other software, operating and user manuals, user IDs, passwords, security and license keys, and encryption/decryption information.

Preservation Duties Extend to Information Controlled, but Not Actually Possessed by Healy for Congress & Therese Velardi

Since a potential party “controls” documents or information when it has the legal right to obtain them upon demand, your preservation duties extend to ESI possessed by its current *and* former attorneys, accountants, consultants, staff, agent, representative, third party information technology vendors, business service providers, and other agents and contractors, and may extend to its subsidiaries, affiliates and divisions.

Please do not hesitate to contact me to discuss any of the matters set forth above.

Please be guided accordingly,

/s/ Giancarlo Ghione
Giancarlo Ghione, Esq.

cc: Ian Smith