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**TELECOPY/FAX COVER SHEET**

DATE: March 22, 2011 TIME: \_\_\_\_\_

TO: Mr. Tom Antion  
ANTION & ASSOCIATES

FROM: Lynda B. Goldman, Esq.  
LAVELY & SINGER PROFESSIONAL CORPORATION

RE: James Malinchak / Tom Antion, et al.

NUMBER OF PAGES 6 (including this cover sheet)

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SENT TO TELECOPIER NO. (757) 431-2050

CLIENT/MATTER/FILE NO. 5006-2

COMMENTS: \_\_\_\_\_  
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March 21, 2011

**CONFIDENTIAL LEGAL NOTICE****PUBLICATION OR DISSEMINATION IS PROHIBITED****VIA FAX: (757) 431-2050****VIA EMAIL: orders@antion.com**

Mr. Tom Antion  
 ANTION & ASSOCIATES  
 Box 9558  
 Virginia Beach, VA 23450

Re: **James Malinchak / Tom Antion, et al.**  
 Our File No.: 5006-2

Dear Mr. Antion:

We are litigation counsel to James Malinchak and are writing regarding your wide-spread dissemination of outlandish defamatory lies about our client. We demand that you immediately cease and desist from disseminating false and defamatory Statements about Mr. Malinchak, including your blatant lies to the effect that my client is a “money stealing” “scammer” and an “unethical” “con man” who is “robbing people,” has engaged in “fraud,” has “ripped off a children’s charity,” and has supposedly even been clinically diagnosed by a psychiatrist and psychologist as a “sociopath” (the “Statements”). In essence, you have been falsely portraying my client as an unethical and mentally-unbalanced thief in false Statements you have spread via tens of thousands of emails and in other communications, as well as informing third parties that your Statements will continue be spread across the internet (a thinly-veiled threat to use your expertise in that regard to smear my client), and that you even plan to peddle your lies to the tabloids. All of this demonstrates your malicious intention to harm my client’s reputation by spreading outrageous demonstrable lies. Your conduct exposes you to very substantial liability for defamation, false light invasion of privacy, tortious interference with contract, and interference with prospective economic advantage, among other claims. Moreover, if you continue to engage in this course of wrongful conduct, doing so will exacerbate that liability exponentially, potentially exposing you to liability for compensatory and punitive damages of tens of millions of dollars.

Your offensive and harmful false Statements include referring to my client as an “unethical” “money stealing” “scammer” who provides “No value :: no service :: no refunds :: no nothing” to his customers. Those lies are pointedly calculated to harm my client’s reputation. They are also transparently calculated to exploit my client’s recent notoriety arising from his appearance on ABC’s “Secret Millionaire” and to use that appearance as a catalyst to spread your lies about Mr. Malinchak. The fact that you have been spreading lies about my client not only via internet posts and verbal communications, but also in emails disseminated to tens of

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Antion & Associates  
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thousands of individuals — all notably targeting those who would most likely be aware of and interested in his professional services and seminars — provides ample evidence of your wrongdoing. While we already have evidence in hand proving your wrongful conduct, we hereby put you on notice of your obligation to maintain any and all communications in your possession, custody and/or control regarding my client for evidentiary purposes, as set forth herein.

In addition to your recent spate of defamatory emails and Statements about my client, you previously defamed him in public at a conference several months ago when you instigated a confrontation where you falsely accused him of being a “con man” and a “fraud” in the presence of multiple witnesses. Although at the time my client declined to take formal action against you, you appear to have misconstrued the absence of a legal demand as a license to escalate your dissemination of malicious lies about Mr. Malinchak. Since then, you have intensified your smear campaign. We are aware, for example, that you have been inducing your cohorts to post defamatory Statements about my client and his products and services on the internet (for example, on YouTube), thereby making good on your threats. Meanwhile, by doing so you have exposed the individuals acting in concert with you to substantial liability as well.

To the extent that you attempt to claim that in your emails peppered with defamatory statements you might have paraphrased or lifted from other sources and that you are therefore not responsible for stating that Mr. Malinchak is a “money stealing” “sociopath,” etc., any such argument would fail as a legal defense to defamation claims, since you will be deemed to have adopted those defamatory statements as your own. *See, e.g., Khawar v. Globe Int’l, Inc.*, 19 Cal.4th 254, 79 Cal.Rptr.2d 178 (1998) (“one who republishes a defamatory statement is deemed thereby to have adopted it and so may be held liable, together with the person who originated the statement, for resulting injury to the reputation of the defamation victim”); *see also, Jackson v. Paramount Pictures Corp.*, 68 Cal.App.4th 10, 80 Cal.Rptr. 2d 1, 27 (1998) (“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”); Smolla, *Law of Defamation* (2nd Ed. 2004) Vol. 1, §4:91 (secondary publisher, or republisher, may be liable for defamatory publication). Be advised that “[r]epetition of another's words does not release one of responsibility if the repeater knows that the words are false or inherently improbable, or there are obvious reasons to doubt the veracity of the person quoted or the accuracy of his reports....” *Goldwater v. Ginzburg*, 414 F.2d 324, 337 (C.A.N.Y. 1969). That is the case here.

Of course, even if there were any merit to an argument that you ought not be responsible for repeating lies in your emails, your verbal statements to third party witnesses were direct and unquestionably expose you to substantial liability for slander. For example, in addition to calling my client a “fraud” and a “con man,” you have told third parties that he “ripped off” a children’s charity, and even said that my client has supposedly been clinically diagnosed as a “sociopath” by multiple physicians! Such lies are defamatory on their face.

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Your false Statements to the effect that my client is a “scammer” expose you substantial liability. *See, Kolegas v. Heftel Broadcasting Corp.*, 154 Ill.2d 1, 607 N.E.2d 201 (Ill. 1992) (statements about plaintiff “scamming” not entitled to constitutional protection and can reasonably be construed as asserting false facts that plaintiff was lying). Similarly, your false Statements to the effect that my client is a thieving “con man” and a “fraud” expose you to substantial liability. *E.g., Condit v. National Enquirer, Inc.*, 248 F.Supp. 2d 945, 965 (E.D. Cal. 2002) (“statements which falsely impute the commission of a crime are libelous on their face”). It is defamatory to falsely state or imply that someone engaged in criminal conduct. *Goehring v. Wright*, 858 F.Supp. 989 (N.D. Cal. 1994) (“A false charge of criminality is defamatory per se”); *Fisher v. Larsen*, 138 Cal.App.3d 627, 640, 188 Cal.Rptr. 216, 226 (1982), *cert. denied* 104 S.Ct. 390, 464 U.S. 959, 78 L.Ed.2d 335 (“There are no First Amendment protections for accusations of criminal conduct or personal dishonesty”).

Additionally, the false portrayal of someone as mentally unsound, unbalanced, or emotionally volatile is defamatory *per se*. *See, e.g.*, Rest. of Torts 2d §559 (imputation of mental attributes such as insanity are defamatory); *Mattox v. News Syndicate Co.*, 176 F.2d 97, 901 (2d Cir. 1949) *cert den.* 70 S.Ct. 100 (1949) (“general law” is that “it is libelous per se to say that a person is insane or of unstable mind”); *Goldwater v. Ginzburg*, 14 F.2d 324 (2d Cir. 1969) (affirming defamation judgment in favor of presidential candidate falsely accused of insanity or mental imbalance).

The falsity of your Statements about Mr. Malinchak is belied by the fact that, even now, you continue to commercially exploit my client’s valuable name and likeness by using Mr. Malinchak’s implied endorsement in your promotional materials for Tom Antion & Associates. If there was any truth to the lies you have been spreading about my client (which there isn’t), you would not deign to continue using his complimentary statements about you in your materials. The fact that you have the temerity to commercially exploit my client’s name and likeness while simultaneously spewing lies about Mr. Malinchak, thereby undermining the value of his name and likeness, is shocking.

It is apparent that you are bent on harming my client’s reputation and are inexplicably being motivated to do so by animosities and hostility toward him. Your ongoing pattern of defaming my client through mean-spirited lies is nevertheless truly puzzling since my client had shown you nothing but respect, never made negative statements about you, and had considered you a friend. Even after the you sent him an email in September of 2009 filled with hurtful comments and specious untruths (all of which my client refuted), my client reached out to you to discuss the issues you raised. At my client’s invitation, the two of you met and spent hours together at my client’s country club and home, and you even enjoyed a game of tennis. Afterwards, my client thought that whatever had motivated you to send your accusation-laden email had been resolved. Mr. Malinchak was therefore shocked when, a year later in October 2010, you publicly confronted him at a seminar where you outrageously slandered him, calling him a “con man” and a “fraud” in the presence of numerous witnesses.

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Despite that October incident, my client was still determined to look the other way rather than asserting legal claims against you at that time. However, it now appears that no good deed goes unpunished, and that you misinterpreted the fact that you had not yet been sued for defaming my client as justification to ramp up your defamation campaign.

In the event that you do go to the tabloids or other media with your false Statements about my client as you have threatened, be advised that your legal liability will increase each time your defamatory lies about my clients are disseminated by the media, since you will be liable for republication of defamatory statements for which you were the source. Smolla, Law of Defamation (2nd Ed. 2004) Vol. 1, §4:91 ("the originator of the statements is liable for any secondary publication that is the natural and probable consequence of his or her act, even though the secondary publisher, or republisher, may also be liable"). Furthermore, in the event that you believe you will be able to spread lies about my client to the media while hiding behind a cloak of anonymity, be advised that in litigation, the identities of the media's sources may be revealed during the discovery process. See, e.g., *Mitchell v. Sup. Ct.*, 37 Cal.3d 268, 208 Cal.Rptr.152 (1984); *Star Editorial v. U.S. Dist. Ct.*, 7 F.3d 856, 861 (9th Cir. 1993). As such, your role as a source for defamatory false stories about my client would be exposed.

Your outrageous and malicious efforts to besmirch my client's reputation are unconscionable and unacceptable. My client will not tolerate the publication of malicious lies which are so patently false and harmful to his reputation. If you persist in disseminating false and defamatory statements about my client, the legal liability to which you are already exposed will be significantly exacerbated. As you know (especially since you are seeking to commercially exploit them even now), my client's reputation and his brand are extremely valuable, and the lies you have been spewing about him are obviously intentionally calculated to harm his reputation and damage his brand. If that occurs, the financial consequences will ultimately be borne by you in the event that this matter proceeds to litigation. We conservatively believe that, in addition to the very substantial liability you have already incurred due to your previous dissemination of defamatory statements about Mr. Malinchak, if you continue your wrongful conduct, my client's damages will escalate, exposing you to millions of dollars in compensatory and punitive damages.

We demand that you immediately cease and desist from making any further false and defamatory statements about my client to any person or entity, including in verbal statements, in emails, on your own internet websites and blogs, your Facebook page, or otherwise. We also demand that you immediately retract any and all false statements you previously communicated to third parties about Mr. Malinchak and his services.

In addition, we demand that you cease and desist from exploiting or using my client's name and/or likeness in any manner whatsoever, including to state or imply any endorsement of you and/or your products and services. To the extent that you contend that any such uses by you have previously been authorized by my client, any such purported authorization was vitiated by your malicious conduct and is no longer valid. Be advised that your unauthorized commercial

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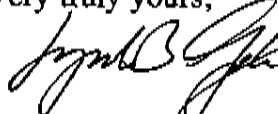
exploitation of my client's valuable name and likeness exposes you to additional liability for common law and statutory violation of my client's publicity rights.

So that the following materials will be available for evidentiary purposes if necessary in litigation, we also demand that you undertake immediate steps to preserve all documents and records (including electronic data such as emails and text messages) in the possession, custody or control of you and/or your agents, representatives and employees, pertaining to the Statements and all communications regarding Mr. Malinchak and/or his services, including without limitation all emails sent and received, drafts, correspondence, and communications of any kind. This preservation demand is also applicable to all communications evidencing your efforts to publicize, disseminate and/or otherwise exploit the Statements or any portions thereof (i.e., your communications to third parties regarding the Statements). Be advised that your failure to ensure that all such materials are appropriately preserved may give rise to additional claims for spoliation of evidence.

We cannot overemphasize the seriousness of this matter. If you disregard the foregoing demands, you do so at your peril.

This does not constitute a complete or exhaustive statement of all of my client's rights or claims. Nothing contained herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved. This letter is a confidential legal communication and is not for dissemination or publication.

Very truly yours,



LYNDA B. GOLDMAN

of

LAVELY & SINGER  
PROFESSIONAL CORPORATION

LBG:lg

cc: Mr. James Malinchak (via email)  
Mr. Davy Tyburski (via email)  
Martin D. Singer, Esq.

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