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July 30, 2020

VIA EMAIL
arash@sadatlawgroup.com
Arash Sadat, Esq.
SADAT LAW GROUP
333 South Hope Street, 40th Floor
Los Angeles, CA 90071

Re: Clarke Fitzsimmons / Lee Stobby

Dear Mr. Sadat,

We are litigation counsel for Clarke Fitzsimmons, and I am writing in response to your July 27, 2020 letter in which you demand that my client "cease and desist from making false and misleading statements regarding Mr. Stobby on social media and other online forums." You assert that Mr. Fitzsimmons' posts "contain willfully false and misleading comments concerning Mr. Stobby" and that if my client persists with his "campaign to improperly defame Mr. Stobby" then Mr. Stobby will have no choice but to pursue legal action against Mr. Fitzsimmons. Your letter is fraught with misstatements and your threat of legal action is meritless. The comments posted by Mr. Fitzsimmons about your client are 100% true and protected by my client's first amendment right of free speech. Indeed, if Mr. Stobby filed any legal claims against Mr. Fitzsimmons based on the posts, Mr. Stobby's claims would be subject to dismissal at the pleading stage under California's anti-SLAPP statute (Code of Civ. Proc. § 425.16) and Mr. Stobby would be liable for my client's legal fees.

Your letter asserts that my client's posts (1) are defamatory of Mr. Stobby, and (2) invade Mr. Stobby's privacy. Neither of these assertions is legally tenable.

A. The Posts Are Not Defamatory

Defamation is the intentional publication of a statement of fact ***that is false***, unprivileged, and has a natural tendency to injure or that causes special damage. (Cal. Civ. Code §§ 44-46.) The "sine qua non" of such a claim is falsehood. *Bently Reserve LP v. Papaliolios* (2013) 218 Cal.App.4th 418, 426. In all cases of alleged defamation, ***the truth of the offensive statements or communication is a complete defense against civil liability***, regardless of bad faith or malicious purpose. *Ringler Associates Inc. v. Maryland Casualty Co*. (2000) 80 Cal.App.4th 1165, 1180.

The statements posted by Mr. Fitzsimmons regarding Mr. Stobby are true, and therefore do not provide the basis for a defamation claim. As your client is well-aware, in November of 2013, on or about April 19, 2014, and on or about May 5-7, 2017, Mr. Stobby engaged in unprotected oral sex with Mr. Fitzsimmons on multiple occasions without Mr. Stobby disclosing that he was HIV positive.[1] The failure to disclose a communicable disease prior to sex vitiates consent and turns consensual sex into sexual battery. Cal. Civ. Code § 1708.5 (1997); *In re Louie* (N.D. Cal 1997) 213 B.R. 754, 762 ("***By engaging in unprotected sexual contacts without informing his partner of his HIV-positive status, a sexually offensive contact resulted***."); *Kathleen K. v. Robert B.* (1984) 150 Cal.App.3d 992, 997 (holding that consent is vitiated by the fraudulent concealment of the risk of infection with venereal disease); s*ee also Aetna Casualty & Surety Co. v. Sheft* (9th Cir.1993) 989 F.2d 1105, 1109 (stating that ***consenting to have sex is not the same as consenting to be exposed to AIDS, and therefore consent is vitiated by the nondisclosure of HIV status***).[2]

Because Mr. Stobby committed sexual battery by concealing that he was HIV positive while engaging in unprotected oral sex with my client, Mr. Fitzsimmons' posts referring to Mr. Stobby as "MY ME TOO SEXUAL PREDATOR" are irrefutably true and not defamatory.

B. <u>The Posts Do Not Invade Mr. Stobby's Privacy</u>

Your assertion that the "posts further constitute repeated and egregious violations of Mr. Stobby's privacy rights" is equally unavailing. You claim that "A person's HIV status is quintessentially private information, and your malicious disclosure of this private information subjects you to liability for damages." Though your letter does not specify the basis for your assertion of invasion of privacy, it is apparent that you are referring to invasion of privacy based on the public disclosure of private facts. The elements of this tort are: "(1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) ***which is not of legitimate public concern***." *Moreno v. Hanford Sentinel, Inc.* (2009) 172 Cal.App.4th 1125, 1129–1130. The absence of any one of these elements is a complete bar to liability. *Id.*

[1] Based on our investigation we believe Mr. Stobby has been HIV positive since as early as December 31, 2012.

[2] Mr. Stobby's act of engaging in unprotected oral sex without informing Mr. Fitzsimmons of his HIV-positive status constitutes a sexually offensive contact (i.e., a sexual battery) and is indistinct from engaging in unprotected anal sex because (1) oral sex is sex, and (2) bodily fluids (including blood and semen) are exchanged during unprotected oral sex and can lead to the transmission of the AIDS virus. Moreover, Mr. Stobby was well-aware that Mr. Fitzsimmons had previously had a severe reaction to and was not taking Truvada (the preventative pill for HIV referred to as PREP and one of two pills used for Post Exposure Prophylaxis or PEP – the other generally being Isentress, to which my client had also had a negative reaction). Thus, Mr. Stobby knew in May 2017 that Mr. Fitzsimmons was not on an HIV preventative. Yet despite this knowledge, Mr. Stobby risked transmitting the AIDS virus to my client by engaging in unprotected oral sex with Mr. Fitzsimmons without disclosing that he was HIV-positive.

Any claim that my client's posts invade Mr. Stobby's privacy would fail because my client's posts are of legitimate public concern. My client has made clear that the reason he has come forward with his posts is to protect the public. My client explained "***I personally believe that Mr. Stobby is likely a risk to other people still and I'm concerned and that's why I'm coming forward in general***." My client's Letters To My Predators Part One states "*You jeopardized my health and upended my life thoughtlessly just so you could get what you wanted from me sexually.* ***I'm coming forward to make sure you can't do that to someone else***." "I wish you no ill will but ***people need to be aware if you are putting others at risk and depriving them of consent by not disclosing***." "And I'm not trying to out your status, ***just protect people***; frankly you have lied and changed your story so much I have no clue whether you are positive, negative, undetectable, or just a cruel maniac. ***I'm just trying to warn the world about you*** and let it go so I can live my life free of this baggage."

"The facts concerning . . . those charged with violation of the law are matters of general public interest." *Coverstone v. Davies*, (1952) 38 Cal.2d 315, 323. Moreover, the right of privacy is not absolute, and in some cases is subordinate to the state's fundamental right to enact laws which promote public health, welfare and safety, even though such laws may invade the offender's right of privacy. *Kathleen K. v. Robert B.* (1984) 150 Cal.App.3d 992, 996; *see also Barbara A. v. John G.* (1983) 145 Cal.App.3d 369, 381 ("[the right to privacy] should [not] insulate from liability one sexual partner who by intentionally tortious conduct causes physical injury to the other").

If, as my client suspects, Mr. Stobby is actively on dating or hook-up sites or apps claiming he is negative (or not disclosing that he is positive) and/or if Mr. Stobby is continuing to engage in unprotected sex without disclosing to his partners that he is HIV positive, that is certainly an issue of legitimate public concern that would justify my client's posts and pose a fatal flaw to any claim for invasion of privacy.

Based on the above, my client will not agree to cease and desist from speaking out about the truth and trying to prevent Mr. Stobby from ruining the lives of other unsuspecting individuals. The toll this matter has taken on my client has been truly devastating and my client is determined to stop Mr. Stobby from continuing his reckless and malicious tirade of selfish and irresponsible conduct. As Mr. Fitzsimmons explained in his open post to Mr. Stobby: "***Please trust that you have irreparably damaged me and sent me dramatically off of my intended life's path to an extent that has taken me years to even start to recover from just so that you could manipulate your way into a few hours of pleasure. . . . Please just don't do this to anyone else***."

Finally, as stated in the introductory paragraph of this letter, Mr. Stobby would be ill-advised to initiate legal action against my client based on his posts. Besides that such action would only bring further public attention to something Mr. Stobby obviously would prefer remain as private as possible, it would expose Mr. Stobby to liability for damages (including legal fees) suffered by my client in having to defend against such frivolous claims, which would be ripe for dismissal under California's anti-SLAPP Statute (CCP §.Section 425.16). I would strongly advise that Mr. Stobby focus more on a constructive resolution to this situation than attempting to intimidate or threaten my client. We are open to discussing constructive means in which Mr. Stobby can alter his behavior to protect the public and himself from further damage. But my client will not succumb to specious threats.

Mr. Stobby should govern himself accordingly.

This letter does not constitute a complete or exhaustive statement of my client's rights, claims, defenses, contentions or legal theories or the facts which support those claims or defenses. Nothing stated herein is intended as, nor shall it be deemed to constitute, a waiver or relinquishment of any of my client's rights, remedies or defenses, whether legal or equitable, all of which are hereby reserved.

Sincerely,

Michael D. Holtz

cc: Clarke Fitzsimmons (*via email*)