### BOSTON LAW GROUP, PC

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### **NOTICE OF DEFAMATION PER SE**

Via Certified Mail Nos. Copy by First-Class Mail and Email: krebsonsecurity@gmail.com

April 19, 2024

Krebs on Security LLC Attn: Brian Krebs 4522 Little River Run Drive Annandale, VA 33003

Krebs on Security LLC c/o ZenBusiness Inc. 2008 Bremo Rd, Ste 110 Richmond, VA 23226

### **Re: Notice of Defamatory Article**

Dear Mr. Krebs and Krebs on Security LLC,

This office is legal counsel to Mr. Gary Lubarsky, and Mr. Dan Lubarsky (my "clients"). Please direct all correspondence on this matter to my attention.

This letter serves to put you on notice that you recently made and published a defamatory and libelous article with respect to my clients (the "Article"). A copy of this Article can be found at the following link:

#### https://krebsonsecurity.com/2024/03/a-close-up-look-at-the-consumer-data-broker-radaris/

The Article contains numerous falsehoods and false implications. The Article wrongfully implies that my clients are engaged in illegal activities and falsely claims that my clients are responsible for the allegedly nefarious actions of certain third-party companies. These false statements cause damages to my clients and otherwise constitutes actionable defamation *per se*. My clients demand that you immediately remove the Article from your website and instruct all other websites that have reposted the Article to do the same and refrain from posting anything whatsoever about my clients. If you fail to comply with this demand, my clients reserve the right to file suit against you personally and seek all remedies and damages available at law and equity.

The falsehoods, false implications, and falsely misleading insinuations contained in the Article include (without any necessary limitation) the following:

## Falsely Smearing my Client as "Russian"

In the Article, you went out of your way to falsely portray my clients as "Russian." For instance, the Article states that Mr. Gary Lubarsky "is a native Russian man…" This is false. My clients are not Russian, rather they are Americans with Ukrainian heritage spanning many generations. Indeed, my clients have been United States citizens for over thirty years and have resided in the United States for a much longer period of time than in any other country. Clearly, due to Russia's illegal and horrific war against Ukraine, and otherwise poor reputation throughout the Western world, your obvious intent was to smear my clients with being "Russian" and imply that they are somehow associated with Russia's illegal and horrific activities or otherwise guilty-by-association with regard to Russia's other nefarious activities. This is all the more ironic given that my clients' heritage is Ukrainian<sup>1</sup>.

### Falsely Associating My Clients with the Alleged Activities of Several Websites

The Article claims that my clients are co-CEOs of Radaris LLC ("Radaris") and that Gary Lubarsky was a founder of Radaris. This is false. Neither of my clients is a founder of Radaris, and neither of my clients is the CEOs of Radaris. Additionally, presently and going back at least the past 10 years, neither of my clients are (or were) officers or employees of Radaris. Indeed, neither of them even owns (or ever owned) any equity in Radaris. In intentional disregard of these facts, the Article implies that my clients are personally responsible for Radaris' actions. Therefore, you intentionally caused all negative allegations in the Article made with respect to Radaris to be imputed against my clients personally.

Your actions are all the more egregious, given that Radaris is clearly involved in a legitimate business on the Internet and has never been adjudicated of violating any criminal or civil statute, regulation or ordinance. I am sure you were (or should have been) aware of this fact, yet you went out of your way to cause your readers to draw the opposite conclusion.

## False Conflation with TruthFinder

The Article also falsely implies (and intentionally leads your readers to conclude) that my clients, through Radaris, are engaged in the alleged illegal activities and unfair business practices of third-party TruthFinder. Indeed, the Article states, "Radaris also operates a number of other people-search properties — like Centeda.com — that sell consumer reports directly and behave almost identically to TruthFinder[.]" The Article then states, "[C]onsumer reports advertised for sale at Radaris.com are being fulfilled by a different people-search company called TruthFinder."

The Article proceeds to claim that TruthFinder is involved in *illegal activities* along with a company called "Instant Checkmate." Indeed, the Article states that: "The FTC levied a \$5.8

<sup>&</sup>lt;sup>1</sup> I note that your last name "Krebs" is most likely of German origin. Your depiction of my clients as "Russian" is tantamount to me making an allegation that a German, named Krebs, is defaming my clients on the Internet, except that your actions are expressly intended to besmirch my clients in the eyes of your readers.

million penalty against the companies [TruthFinder and Instant Checkmate] for allegedly acting as CRAs [consumer reporting agencies] because they assembled and compiled information on consumers into background reports that were marketed and sold for employment and tenant screening purposes." This again tarnishes my clients' reputation by implying a substantial relationship between Radaris (as an alleged proxy for my clients) and these companies. You thus intentionally lead your readers to conclude that my clients are engaging in the same allegedly deceptive and illegal activities which the Federal Trade Commission claimed that TruthFinder and Instant Checkmate were involved.

Not only do these statements libel my clients, the Article also provides a false and misleading analysis of the FTC action against TruthFinder and Instant Checkmate, further defaming my clients and bringing their reputation into disrepute. First, the Article incorrectly claims that the FTC "lev[ied] a penalty" against the companies. This term implies that this penalty was forcibly imposed by the FTC against these companies, when in reality, this was part of a settlement of disputed claims that these companies agreed to pay. Moreover, this settlement was entered into months before the Article was written, so even if TruthFinder was engaged in any unfair business practices, TruthFinder is no longer engaging in them at the time that the Article was written (per the stipulated order filed with the court). As you know, the FTC did not make any allegations of wrongdoing whatsoever against my clients, yet your Article falsely insinuates (and intentionally leads your readers to conclude) guilt-by-association with respect to my clients.

#### Wrongful Implication of Criminal Activity and Disreputable Behavior

In a string of tenuous alleged associations reminiscent of John Nash's corkboard in *A Beautiful Mind*, the Article claims, through implication, that my clients are doing business with "Channel One," a Russian state-owned media company sanctioned by the United States. My clients do not do business with Channel One or any other entity or person sanctioned by the United States. As you must know, doing so without a license is a federal crime.

In the same way, you also tenuously imply (and intentionally lead your readers to conclude) that my clients operate lewd websites such as "facebookofsex" and "analslappers.com." You intentionally phrased your Article so as to cast my clients as pornographers who are engaged in other such stigmatized and disreputable behavior. The Article citing "analslappers.com" is especially egregious and misleading as it implies this is an active pornography website, when in actuality, the website is completely blank and only states: "This page has been reserved for future use." As this webpage has no content whatsoever, it is obvious that the only reason you included this reference in the Article was to falsely smear my clients and imply they are involved in pornography and/or other disreputable businesses.

Moreover, the Article's reference to Channel One contains additional falsehoods, which someone – with your ostensible sophistication – would clearly be aware. The supposed "advertisement" purporting to sell advertisements on the lamedia.biz website was clearly placed by a third party through a third-party ad-broker. As is ubiquitous on the internet, the lamedia.biz website sells space on its website to third party advertising brokers to place advertisements, and the advertising broker ran this particular ad, so it is false and defamatory to imply that my clients ran or even approved this ad.

# Specific Intent to Cause Reputational Harm

It is clear that your entire Article was a hatchet job intended to portray my clients as irresponsible, criminal foreign agents with no regard to US laws. Even your description of the Comfi FCC case intentionally misrepresents the underlying facts, by suggesting that my clients failed to fulfill an obligation to file for a license with the FCC. Indeed, Comfi had the proper licenses, and the issue with the FCC (which took place over a decade ago) was not related to any improper business activity.

Even your intentional portrayal of my clients as "Russians" when they have been US citizens and lived in the US for most of their lives (30 years) is telling of your intent to defame and libel my clients.

The bottom line is that you set out to portray my clients in a negative light and you slanted and misrepresented the facts so as to fit your predetermined conclusion.

# **Copyright Infringement**

You have copied and republished as part of the Article a photograph whose copyrights are owned by my clients. You have therefore infringed on my clients' copyrights for which you are liabile.

## **Dissemination of your Article on the Internet**

It is clear that your specific intent was to draw attention to the Article by falsely or recklessly portraying my clients as Russian agents involved in illegal activities that harm the US public. Due to your public allegations that my clients are "Russians" involved in criminal activity in association with Russia and Russian companies sanctioned by the U.S., your Article was picked up and republished in other publications that insinuate – even more directly – that my clients are involved in illegal activities. For instance, the Article was reposted as follows:

https://ruscrime.com/offshore-leaks/how-brothers-dmitry-and-igor-lyubarsky-trade-the-personaldata-of-millions-of-americans/

(Posted to a website entitled "The Russian Crime")

Как братья Дмитрий и Игорь Любарские торгуют личными данными миллионов американцев - Устав - Устинов троллит (ustav.group)

https://antimafia.se/news/57981-ot\_cajta\_znakomstv\_do\_vezdesushchego\_radaris

https://infoslash.net/ekspertno/item/65490-how-brothers-dmitry-and-igor-lyubarsky-trade-the-personaldata-of-millions-of-americans

### Statement of Law

Without limitation, the aforesaid falsehoods and false implications in the Article constitute actionable defamation and libel under Massachusetts law. See, Yohe v. Nuget, 321 F.3d 35, 39 (1<sup>st</sup> Cir. 2003) ("Defamation is the publication, either orally or in writing, of a statement concerning the plaintiff which is false and causes damage to the plaintiff."); White v. Blue Cross Blue Shield of Mass., Inc., 442 Mass. 64, 66 (2004) ("To prevail on a claim of defamation, a plaintiff must establish that the defendant was at fault for the publication of a false statement regarding the plaintiff, capable of damaging the plaintiff's reputation in the community, which either caused economic loss or is actionable without proof of economic loss.") (Citations omitted). Moreover, while these false statements in the Posting are damaging to my clients, because the statements are libelous, defame my clients' businesses, and falsely accuse my clients of crimes, my clients are permitted to recover emotional and reputational damages under Massachusetts law and are not required to prove economic loss. See, Kaiser v. Kirchick, 662 F.Supp. 3d 76, 102 (D. Mass. 2023) ("However, '[f]our types of statements are actionable without proof of economic loss: statements that constitute libel; statements that charge the plaintiff with a crime; statements that allege that the plaintiff has certain diseases; and statements that may prejudice the plaintiff's profession or business.' ... Defamatory statements that fall within one of those exceptions permit the recovery of noneconomic losses, including emotional and reputational damages.") (Citations omitted). "It is well-established in Massachusetts that words imputing a crime are defamatory per se." Ball v. Wal-Mark, Inc., 102 F.Supp.2d 44, 49 (D. Mass. 2000). "Moreover, tort law specifically recognizes reputational harm to a business as actionable defamation." Lionbridge Techs., LLC v. Valley Forge Ins. Co., 53 F.4th 711, 720 (1st Cir. 2022) (internal citations omitted). "A statement falls within this exception to the economic harm requirement if it alleges that the plaintiff lacks a necessary characteristic of the profession." Ravnikar v. Bogojavlensky, 438 Mass. 627, 631 (2003); "The test is, whether, in the circumstances, the writing discredits the plaintiff in the minds of any considerable and respectable class of the community." Smith v. Suburban Rests., Inc., 374 Mass. 528, 529 (1978) (citations omitted).

Moreover, false implications couched in opinions or insinuations are also actionable under Massachusetts law. *See* Levinsky's, Inc. v. Wal–Mart Stores, Inc., 127 F.3d 122, 127 (1st Cir.1997) (The "First Amendment does not inoculate all opinions against the ravages of defamation suits. A statement couched as an opinion that presents or implies the existence of facts which are capable of being proven true or false can be actionable.") Indeed, one must consult an article as a whole when determining if there is a defamatory meaning. *See*, Levesque v. Doocy, 560 F.3d 82, 88 (1st Cir. 2009) ("a court should consider the context in which the challenged statement is made, viewing it within the communication as a whole…") (citations omitted); <u>Stanton v. Metro Corp.</u>, 438 F.3d 119, 125 (1st Cir. 2006)("A communication is susceptible to defamatory meaning if it 'would tend to hold the plaintiff up to scorn, hatred, ridicule or contempt, in the minds of any considerable and respectable segment in the community."")

Moreover, it is no defense to your liability to the extent that the Article simply republished other information it found online; so long as the information is false, you are liable.

See, <u>Butcher v. Univ. of Mass.</u>, 483 Mass. 742 (2019) ("[O]ne who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it.' ... In the eyes of the law, '[t]ale-bearers are as bad as the tale-makers." (citations omitted).

Without limiting the false statements made throughout the Article, it is clear that the intent of the Article, as a whole, is to wrongfully suggest a specter of wrongdoing and impropriety against my clients and imply that my clients are nefarious or unscrupulous businessmen. Such false statements damage my clients' reputations in their industry, for which you are liable.

Predictably, it is not exactly a shock to see the false and defamatory statements contained in the Article given your history of defamation. Indeed, recently you were sued for defamation by a company, Ubiquiti Inc., in *Ubiquiti Inc. v. Krebs, et al*, Case No. 22-cv-00352, E.D. Va., for falsely claiming that Ubiquiti Inc. covered up a cyber-attack and misled customers in that regard. You later admitted that your sole source in you "reporting" was the Ubiquiti employee responsible for this cyber attack and who was subsequently federally indicted for his activities. Your statement regarding this was posted to your website here: https://krebsonsecurity.com/2022/08/final-thoughts-on-ubiquiti/

It is obvious, however, that your unprofessional journalistic standards and proclivity to maliciously libel and defame others was not deterred by the last lawsuit.

#### Harm caused by your Article to my clients

Although, as discussed above, your Article constitutes defamation per se for which my clients do not need to prove actual damages, please be advised that your Article caused and continues to cause my clients' significant damages.

For example, the reputation of Gary Lubarsky, who holds a Bachelor's degree in Business Administration and a JD degree, both from US institutions, and whose primary occupation is in the real estate field, is severely tarnished because the Article references properties that he owns and suggests that he is involved in illegal or nefarious activities, clearly defaming him and placing him in disrepute in the real estate community. As you should know, lenders routinely conduct simple internet searches before issuing loans to investors, and your Article will surely cause lenders not to want to do business with Mr. Lubarsky, which will in turn force Mr. Lubarsky to obtain credit at an above-market interest rate, causing hundreds of thousands of dollars (if not millions) in direct damages, for which you are liable.

Dan Lubarsky, who holds a Master's degree in physics and a PhD in Computer Science, is an experienced developer and scientist with a successful record of more than fifty IT ventures. My clients' business success depends on their personal connections, reputation and relationships with business partners and vendors. It is clear that your Article adversely impacts such relationships of both of my clients andwill cause people to refuse to do business with them at great financial detriment to my clients, for which you are personally liable.

## Demand

Accordingly, my clients hereby demand that you immediately:

- 1) **Remove** the Article from your public website and any affiliate site;
- 2) **Publish** a retraction approved by my clients in advance;

3) **Provide the retraction to and instruct** all third party websites which are publishing the Article to remove it the Article, including, but not limited to, the four examples provided herein above,

Please confirm compliance with the foregoing within five (5) days of receipt of this letter.

You may contact me directly by email at vgurvits@bostonlawgroup.com or by phone at 617-928-1804. I look forward to your response.

This letter is not intended to constitute a full statement of all facts, rights or claims relating to this matter, nor is it intended as a waiver, release or relinquishment of any rights or remedies available to my client, whether legal or equitable, all of which are hereby expressly reserved.

Very Truly Yours,

Apro. h

Val Gurvits vgurvits@bostonlawgroup.com 617-928-1804