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September 30, 2021

VIA EMAIL

M. Sam Coppola, Avocat/Partner Rimon Law 1100 René-Lévesque W., Suite 700 Montréal, Québec H3B 4N4

Re: Frivolous Legal Threats To Chad Loder

Dear M. Coppola:

I am litigation counsel to Chad Loder, and write in response to your bumptious and unsound legal threat of September 29, 2021.

On whose behalf do you write? You claim to be "special counsel" to The Post Millennial ("TPM"). Congratulations, I'm sure. Yet most of your threat is a gripe about things Mr. Loder said about Andy Ngo, who is apparently an "editor at large" for TPM. (Again – congratulations, I'm sure.) Moreover, after asserting that you represent TPM, you lose track and refer to "our client *and* TPM." Do you represent Mr. Ngo as well? You seem intent on distancing Mr. Ngo from TPM, pointing out that he does not "run" TPM. I'm sure everyone understands why you'd want to clarify that. But you also seem to be arguing that criticisms of Mr. Ngo are false and that Mr. Ngo is perfectly respectable. How, then, is it defamatory to associate TPM with him? That was a rhetorical question. Since your legal theories are nonsense, it doesn't matter.

You may believe that you can intimidate Mr. Loder with frivolous legal threats because Canada, despite being quite delightful in many other ways, indulges such vexatious litigation

¹ https://www.cnn.com/2021/07/06/politics/fact-check-us-womens-soccer-team-pete-dupre-veteran/index.html

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calculated to silence critics on behalf of the thin-skinned, the vengeful, and the cynically partisan. *Au contraire, mon ami*. The United States, conscious of the dangers of libel tourism and pro-censorship legal systems, has enacted the SPEECH Act, 28 United States Code § 4102. The SPEECH Act prohibits American courts from recognizing foreign defamation judgments obtained under regimes that do not provide defendants with free speech protections as robust as those available under the First Amendment to the United States Constitution and the laws of the relevant states. American courts have found that there is "no meaningful dispute that the law applied by [Canadian courts] provides less protection of speech and press than First Amendment and [state] law. Canadian defamation law is derivative of the defamation law of the United Kingdom, which has long been substantially less protective of free speech." (*Trout Point Lodge, Ltd. v. Handshoe,* 729 F.3d 481, 488 (5th Cir. 2013) (upholding refusal to recognize Canadian libel judgment under SPEECH Act). Any Canadian judgment you obtain against Mr. Loder will be worthless – both because Canadian courts lack personal jurisdiction over him (as also required by the SPEECH Act) and because his speech is clearly protected by American law.

Perhaps you plan to sue Mr. Loder in America. It would be my pleasure, M. Coppola, to introduce you and your client or clients to one of our anti-SLAPP statutes. Any suit you file in the United States will fail for multiple reasons, and result in you paying Mr. Loder's legal fees under an anti-SLAPP statute. Here are but a few legal fatuities in your threat:

- Astoundingly, your threat is based largely on things Mr. Loder or his attorney said *in court filings*. Such statements are *absolutely privileged* from defamation claims under relevant law. Cal. Civ. Code § 47(b), *Pollock v. University of Southern California*, 112 Cal.App.4th 1416, 1430-1431 (2003) (declaration filed in court absolutely protected by litigation privilege); *Holland v. Jones*, 210 Cal.App.4th 378, 382 (2012) (litigation privilege barred defamation action because it was based on statements "whether true or false or made with malice or without it, in her declaration in [court] proceedings [that] fall squarely within the litigation privilege. They are communications made in a judicial proceeding by a litigant to achieve the objects of the litigation with some connection to the action.").
- Your threat is also a jumbled, oily poutine of complaints about opinions, insults, and heated rhetoric. But under American law, statements can only be defamatory if they're provably false statements of *fact*. "Thus, rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions of contempt, and language used in a loose, figurative sense have all been accorded constitutional protection." *Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 800 (2002). When statements are made in a "heated and volatile setting," they are more likely to be treated as opinion, not fact. *Steam Press Holdings, Inc. v. Hawaii Teamsters, Allied Workers Union, Loc. 996*, 302 F.3d 998, 1006 (9th Cir. 2002). In "setting in which the audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole, language which generally might be considered as statements of

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fact may well assume the character of statements of opinion." *Gregory v. McDonnell Douglas Corp.*, 17 Cal. 3d 596, 601 (1976). Twitter – the site of many of the statements you complain about — is the epitome of such a setting. American courts have long recognized that most people expect sites like Twitter to offer argument, rhetoric, and insult, not fact. *Chaker v. Mateo*, 209 Cal.App.4th 1138, 1149 (2012) (online discourse "invite[s] the sort of exaggerated and insulting criticisms of businesses and individuals which occurred here.") Any effort to portray the rhetoric you complain of as provably false statements of fact will fail.

- Mr. Loder, who writes about extremism and some of the most loathsome people in modern society, is hardly decorous. He throws rhetorical elbows. This is relevant because American courts, in evaluating whether something is a provable statement of fact or opinion, consider the author and what the audience expects from them. Franklin v. Dynamic Details, Inc., 116 Cal. App. 4th 375, 389 (2004). Just as TPM's audience expects semi-literate bigot-congratulating wankery², Mr. Loder's audience expects vivid and colorful condemnation of bigots and their apologists. This is one more reason you will not be able to establish that the rhetoric you complain about amounts to provably false statements of fact outside of First Amendment protection.
- Your threat also fails because it's aimed at opinions based on disclosed facts. Mr. Loder provides links to evidence supporting his conclusions. Opinions and conclusions based on disclosed facts are protected by the First Amendment. *Franklin*, 116 Cal. App. 4th at 388.
- If you plan to nit-pick and brandish minor technical inaccuracies in any of Mr. Loder's statements, you cannot. It's well-established under American law that a statement is only defamatory if it is *substantially* false if the "gist" or "sting" of it is false. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 516-517 (1991).
- Finally, I am informed that in Canada a defamation defendant carries the burden of proving that a challenged statement is true. This hardly seems polite. In the United States, which values free speech and scorns the censor and the litigious bully, the burden is on the defamation plaintiff to prove that a challenged statement is false. You will fail to carry that burden. Take, for example, your gripe that Mr. Loder described TPM as a "disinformation website vilifying the Anti-Defamation League." Even assuming this statement were a provable statement of fact a laughable proposition your clients' own words will thwart any effort to disprove it.³

² This is an example of insult and rhetorical hyperbole from the prior bullet point, in case that's unclear.

³ See, e.g., https://thepostmillennial.com/search?keywords=ADL; https://www.cnn.com/2021/07/06/politics/fact-check-us-womens-soccer-team-pete-dupre-veteran/index.html; https://www.cbc.ca/news/politics/the-post-millennial-journalism-conservative-advocacy-1.5191593.

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Your meritless demands are rejected unconditionally. Your threat to abuse the Twitter reporting systems dishonestly is noted and documented for future discussion with Twitter. Good relations with Twitter's lawyers I have.

Mr. Loder, like other journalists, has been subjected to threats of violence and death, harassment, and abuse. Your threat on behalf of TPM is simply a continuation of that abuse in the thin and unconvincing guise of what might very generously be called law. That's contemptible, M. Coppola. Mr. Loder hasn't yielded to the other threats, and he won't yield to yours.

Direct all further patently frivolous threats and other communications to me. Kindly govern yourself.

Sincerely,

Kenneth P. White

for BROWN WHITE & OSBORN LLP