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February 3, 2016

**via ELECTRONIC MAIL  
& FIRST CLASS MAIL**Donald J. Trump  
Corey R. Lewandowski  
Donald J. Trump for President, Inc.  
Headquarters  
725 Fifth Avenue, Fifth Fl.  
New York, NY 10022

Re: Cheryl Jacobus, Cease-and-Desist

Mr. Trump and Mr. Lewandowski:

This firm represents Cheryl Jacobus in connection with a false and defamatory statement Mr. Lewandowski uttered on MSNBC's "Morning Joe" on January 27, 2016, which Mr. Trump then repeated on Twitter on February 3, 2016. We are writing to demand that Mr. Trump, Mr. Lewandowski, and Donald J. Trump for President, Inc., **CEASE-AND-DESIST** from making any further statements of like-kind about Ms. Jacobus, which, as described more fully below, are malicious, damaging, and slanderous *per se*.

As you are aware, Ms. Jacobus is a political strategist who appears frequently on nationally syndicated news channels to provide republican-based political analysis and insight. She was a vocal supporter of John McCain's presidential campaigns in 1999-2000 and in 2008, and she has continued providing commentary on the pending republican primary race.

On May 17, 2015, Ms. Jacobus received an unsolicited Facebook message from a then-soon-to-be member of Donald Trump's presidential exploratory committee, Jim Dornan. "We should grab drinks or dinner soon," the note ended. Shortly thereafter—again unsolicited—Mr. Dornan asked Ms. Jacobus whether she would "consider coming to work for us," adding, "[w]e

need a top notch communications director.” The pair, Dornan and Jacobus, set up a lunch you (Mr. Lewandowski) then attended—during which Ms. Jacobus was asked to provide her salary requirements. She provided them in a follow-up letter expressing her gratitude, and you ultimately convened once more.

After the second meeting, Ms. Jacobus informed Mr. Dornan that she was not interested in working for you. But this did not affect her professional objectivity. For instance, less than two months after the meetings she appeared on CNN to discuss Donald Trump’s candidacy. And not only did she issue your campaign repeated praise—including that people “ignore Donald Trump’s message ... at [their] own peril”—but she then came to Trump’s vigorous defense when a Left-leaning analyst accused him of making racist remarks about Mexicans: “I’d like to jump in on that,” Ms. Jacobus said. “This is where Donald Trump and the Republicans need to fight back hard: when people on the Left, including the media, misrepresent what he said. He was talking about illegal aliens—which is the polar opposite of people who come here legally. And the only way the Left can make points is when they start calling him and others racist and basically lie about what he meant.” Continuing her defense of Trump, she added that “it seems that’s the only way you can make points—when you misrepresent what he said.”<sup>1</sup>

For Ms. Jacobus, Trump’s candidacy became unpalatable later on—when he provided his now-infamous quip on Senator John McCain’s status as a war hero. She believed his comments “insult[ed] all veterans,” as she noted on Twitter.<sup>2</sup> And thereafter, when Mr. Trump eschewed the late-January Republican debate, she again appeared on CNN to discuss his candidacy. “I don’t think it’s a good idea for somebody to skip a debate this close to the caucuses,” she opined. “But, look, Donald Trump is a bad debater.... [H]e comes off like a third grader faking his way through an oral report on current affairs.”

On January 27, 2016—one day after Ms. Jacobus’s comments on Mr. Trump’s debate skills, but over half-a-year removed from her meeting with you—you (Mr. Lewandowski) phoned into MSNBC and stated (falsely) that Megyn Kelly “had Cheri Jacobus on yesterday,” and (falsely again) that Ms. Jacobus “came to the office on multiple occasions trying to get a job from the Trump Campaign, and when she wasn’t hired clearly she went off and was upset by that.”<sup>3</sup> Here is your objectionable statement in full:

[Megyn Kelly] had Cheri Jacobus on yesterday, who, uh, you know, wanted to talk about Mr. Trump. This is the same person, I’ll just tell ya, who came to the office on multiple occasions trying

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<sup>1</sup> Available at: <https://www.youtube.com/watch?v=VMV3L7gSGFY>

<sup>2</sup> Available at: <https://mobile.twitter.com/cherijacobus/status/654826712484749312>

<sup>3</sup> Available at:

<https://www.dropbox.com/s/8vd3qfzb8nrx3fh/Trump%20Campaign%20Guy%20Uses%20Lies%20To%20Bully%20-%201-27-16.wmv?dl=0>

to get a job from the Trump Campaign, and when she wasn't hired clearly she went off and was upset by that.

Donald Trump then echoed this sentiment on Twitter, stating to his 5.9 million followers that Ms. Jacobus “begged us for a job. We said no and she went hostile. A real dummy!”

These statements are not only false, but they impugn Ms. Jacobus’s professional integrity as a political commentator. And they do so through your reckless disregard for the truth—namely, that Ms. Jacobus does not base her opinions on your campaign on job discussions you had with her back in May; in fact, she continued defending Mr. Trump even after those meetings. And she did not “c[o]me to the office on multiple occasions trying to get a job from the Trump Campaign,” but, instead, received an unsolicited request by Jim Dornan to meet with her, which she accepted, for a job she ultimately told Mr. Dornan she did not want.

New York law is clear that oral “statements ... that tend to injure another in ... her trade, business or profession” constitute “slander per se.” *See, e.g., Epifani v. Johnson*, 65 A.D.3d 224, 233-34 (2d Dept. 2009). *See also Liberman v. Gelstein*, 80 N.Y.2d 429, 434-35 (1992). As the First Department has explained in the context of libel, such profession-related *per se* defamation arises simply when a statement “imput[es] ... any kind of ... dishonesty, ... unfitness or want of any necessary qualification....” *Four Star Stage Lighting, Inc. v. Merrick*, 56 A.D.2d 767, 768 (1<sup>st</sup> Dept. 1977).

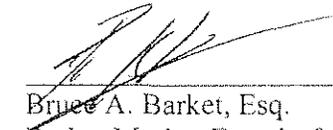
By impugning Ms. Jacobus’s status as an objective and serious political commentator, your live-television statements to Morning Joe and follow-up “Tweets” were *per se* defamatory because they painted her as petty and biased in a profession permitting neither. As the First Department explicitly held in 2001 in a case involving an author (rather than a commentator), a defendant’s misrepresentations give rise to an adequately pled tort when it “reflect[s] on [a plaintiff’s] status as a serious writer.” *Rall v. Hellman*, 284 A.D.2d 113, 113 (1<sup>st</sup> Dept. 2001). Likewise, the Third Department has found adequate defamation-pleadings when representations cast a shadow on a “businessman [as being] not entirely honest[.]” *Grimaldi v. Schillaci*, 106 A.D.2d 728, 729 (3d Dept. 1984). Yet here, your depiction of Ms. Jacobus fits both these molds—casting her as unserious and dishonest.

While Ms. Jacobus likely qualifies as a “public figure” susceptible to a higher standard for pleading slander, that is not a license for you to lie about her. Instead, any leeway you had to make false statements about her faded when you uttered the above-described falsehoods with either (a) “spite or ill will,” or (b) “knowledge that the statement was false or [with] reckless disregard of whether it was false or not.” *Liberman v. Gelstein*, 80 N.Y.2d 429, 437-38 (1992) (internal references omitted). Again, your statements qualify under both these standards—clearly spiteful, made in the immediate aftermath of Ms. Jacobus’s interview on CNN; and made

with at least reckless disregard for the truth, given that much of the accurate picture of Ms. Jacobus's dealings with the Trump Campaign is within your personal knowledge. And at minimum, you possess that personal knowledge now.

Accordingly, accept this letter as notice that the above-identified statements are false and injurious, and any violation of this cease-and-desist demand will be treated in Court accordingly.

Sincerely,



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Bruce A. Barket, Esq.  
Barket Marion Epstein & Kearon, LLP

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