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By Email and Federal Express

The Tufts Daily
c/o Gil Jacobson, Editor-In-Chief
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Medford, MA 02155-5584
Email: opinion@tuftsdaily.com
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Camilo Caballero
Emails: camilo.caballero@tufts.edu

Re: Demand to Immediately Retract Defamatory Public Statements About Anthony Scaramucci and to Cease and Desist from Ongoing Defamation

Dear Messrs. Jacobson and Caballero:

Sadis & Goldberg LLP has been retained by Anthony Scaramucci (“Scaramucci”) to pursue claims arising from blatantly false and defamatory statements by Mr. Caballero in a November 6, 2017 Op-Ed published by *The Tufts Daily* (the “Article”). Before Scaramucci pursues such claims, we urge Mr. Caballero and *The Tufts Daily* to promptly retract several false and defamatory allegations of fact about Mr. Scaramucci, and to issue an apology. In particular, the Article makes the following egregiously false statements attacking Mr. Scaramucci as:

- “A man who is irresponsible, inconsistent, *an unethical opportunist and who exuded the highest degree of disreputability.*” (Ex. A hereto (emphasis added).)
- “[a] man who makes his Twitter accessible to *friends interested in giving comfort to Holocaust deniers.*” (*Id.* (emphasis added).)
- “the man who *sold his soul in contradiction to his own purported beliefs* for a seat in that White House.” (*Id.* (emphasis added).)
- Calling Mr. Scaramucci “*unethical*” and someone who “cares about gaining attention and nothing more,” in a November 13 Op-Ed that *The Tufts Daily* again published with such false factual allegations. (Ex. B hereto (emphasis added).)

Under Massachusetts law, even statements that “contain some amount of opinion” are “false and defamatory where they refer to lies, backroom deals, conflicts of interest” and “ethics violations,” as matters of “fact.” *Liew v. Eliopoulos*, 92 Mass. Ct. App. 114, 84 N.E.2d 898 (Mass. App. Ct. 2017), *appeal denied*, --- N.E. ---, 2017 WL 5257084 (Mass. Nov. 6, 2017) (Ex. C hereto at 11). In *Liew*, the court upheld a defamation verdict arising from false statements that “a public official” – a local selectman – committed “ethical violations” and acted as a lawyer in contradiction to his own “Voting record.” (Ex. C at 10-11.) Despite the statements being

presented with some amount of opinion, the court found them to be defamatory statements of fact because they purported to represent factual events of ethical and dishonest conduct. (*See id.*) The Court found “actual malice” because the defendant knew the plaintiff “was never charged or found to have committed an ethics violation” and lacked evidence of dishonesty. (*Id.*)

Liew is directly on point and proves defamation by Mr. Caballero and *The Tufts Daily*. As in *Liew*, the Article accuses Mr. Scaramucci of ethical impropriety as an “opportunist” who exuded the greatest “disreputability,” as a matter of historical fact. (Ex. A at 2.) And, as in *Liew*, the Article presents as historical fact that Mr. Scaramucci is dishonest because he “sold his soul” by contradicting his prior beliefs for a job at the White House. (*Id.*) But, just like the plaintiff in *Liew*, Mr. Scaramucci has never been charged nor found to have committed any ethical violation, nor has he been formally alleged or found to be dishonest. Accordingly, the Article’s false statements support liability for defamation under *Liew*.

Neither Mr. Caballero nor the Tufts Daily can credibly hide behind shield of opinion, because the Article plainly presents as fact alleged Scaramucci conduct as unethical and dishonest. The Article’s allegations are not presented as opinion but rather as false facts, claiming Scaramucci “is ... an unethical opportunist” who “sold his soul” and “makes his Twitter accessible to ... giving comfort to Holocaust deniers.” And your repetition of the “unethical” charge in the November 13, 2017 follow-up article is further proof of malice. Having published these false allegations, you cannot escape liability for these baseless allegations unless you retract them.

Your baseless accusations of Mr. Scaramucci being an “unethical opportunist” and dishonest have caused particular damage to Mr. Scaramucci’s businesses in the investment adviser and journalism industries – both of which rely on professional trust. It is well-settled that allegations of “dishonesty or lack of ethics” is defamation *per se* creating “damage to professional reputation” for professions like an investment adviser, which involve relationships of trust. *Cordell v. PICC Lines Plus, LLC*, 2016 WL 4702654, at *7 (N.D. Cal. Sept. 8, 2016) (citing *Garcia v. City of Merced*, 637 F. Supp. 2d 731 (E.D. Cal 2008)); *Goulmamine v. CVS Pharmacy, Inc.*, 138 F. Supp. 3d 652, 659 (E.D. Va. 2015) (accusations that “plaintiff is guilty of unethical and unprofessional conduct” is “defamatory per se”). Courts have also recognized that alleging that a journalist’s “conduct is unethical” can give rise to an actionable defamation claim. *Houlahan v. Freeman Wall Aiello*, 15 F. Supp. 3d 77, 83 (D.D.C. 2014); *Savage v. Pacific Gas & Electric Co.*, 21 Cal. App. 4th 434 (1993) (charging journalist with conduct that was generally regarded as unethical” had “tendency to cause professional injury”).

Even worse is your disgustingly baseless claim that Mr. Scaramucci is “[a] man who makes his Twitter accessible to friends interested in giving comfort to Holocaust deniers.” (*Id.*) There is no factual basis for this claim whatsoever. In fact, Mr. Scaramucci and his friend Lance Laifer made very clear that they vehemently opposed Holocaust deniers – over two weeks before you published the Article.

On October 17, 2017, Mr. Scaramucci’s Twitter account noted that a poll about the number of deaths in the Holocaust “was put up by @lancelaifer without consulting @Scaramucci who is travelling in London” and “has been taken down.” *See* “Scaramucci’s Firm Pulls Online


Poll Asking How Many Jews Were Killed in the Holocaust,” (N.Y. Post, Oct. 17, 2017).¹ Mr. Laifer (who is Jewish) apologized for posting the poll, after an explanation that the intent of the poll was to “highlight ignorance of the basic facts of the Holocaust.” (*Id.*)

Indeed, both Scaramucci and Laifer publicly stated their antipathy towards Holocaust deniers on October 22, 2017, when they tweeted: “Do not let Holocaust deniers and anti-Semites control this poll.” “Anthony Scaramucci Twitter Account Doubles Down on Holocaust Deaths Poll,” (Jewish Telegraphic Agency, Oct. 22, 2017).² Scaramucci and Laifer made abundantly clear their intent to combat Holocaust denial, by stating: “We are extremely worried about the disinformation campaign about the genocidal tragedy, the Shoah, which took the lives of 6,000,000 Jews ... We are putting the poll back up because if it helps educate even just one person it will have been [] worthwhile....” (*Id.*) Accordingly, the November 6 Article asserting that Mr. Scaramucci “makes his Twitter accessible to friends interested in giving comfort to Holocaust deniers,” was both false and made with actual malice.

Courts have recognized that the false “flat assertion of facts” that a person engaged in conduct that was “anti-Semitic” or “disparaging... of Jews as a class” itself gives rise to liability for defamation. *Herlihy v. Metro. Museum of Art*, 608 N.Y.S.2d 770, 774 (N.Y. Sup. Ct. 1994), *aff’d as modified*, 214 A.D.2d 250, 633 N.Y.S.2d 106 (1st Dept. 1995). As *Herlihy* held, “under contemporary standards, the accusation of hating Jews is at least as much of an assault upon reputation as statements that charge commission of a crime, impute a loathsome disease, [or] affect a person in his business, trade, profession or office...” (*Id.* (citation omitted).) Thus, the Article’s false allegation of Scaramucci giving comfort to Holocaust deniers – made with public knowledge of his anti-Holocaust denial stance – was an actionable false claim of “anti-Semitic” support that “provide[s] the basis for a defamation claim.” *Tech Plus, Inc. v. Ansel*, 59 Mass. App. Ct. 12, 24, 793 N.E.2d 1256, 1266 (2003).

In sum, the Article has made several objectively false statements about Mr. Scaramucci that constitute actionable defamation. Mr. Scaramucci is ready to take legal action to correct these false and defamatory statements – and to prevent any further damage to his reputation – but will refrain from litigation if you retract the false statements and issue a public apology. Accordingly, please let me know within five (5) business days if you plan to retract the defamatory statements identified above and to issue an apology, or Mr. Scaramucci will be forced to take further legal action.

Very truly yours,



Samuel J. Lieberman, Esq.

¹ Available at <https://nypost.com/2017/10/17/scaramuccis-firm-pulls-online-poll-asking-how-many-jews-were-killed-in-the-holocaust/>

² Available at <https://www.jta.org/2017/10/22/news-opinion/united-states/anthony-scaramucci-twitter-account-doubles-down-on-holocaust-deaths-poll>.