

BELL, McANDREWS & HILTACHK, LLP
ATTORNEYS AND COUNSELORS AT LAW

455 CAPITOL MALL, SUITE 600
SACRAMENTO, CA 95814

(916) 442-7757
FAX (916) 442-7759

May 31, 2018

BY EMAIL TRANSMISSION

Email: support@homeytel.com

Homeytel Network

Re: **Cease and Desist: False and Defamatory Material**
Notice of Potential Imminent Litigation

Dear Madam or Sir:

I am legal counsel to State Assembly candidate Philip Graham, about whom you are presently engaged in an adverse, widespread and illegal robocall program.

By this letter, you are hereby on notice that the basis for your robocall campaign – allegations by a complainant of battery against Mr. Graham – has now been proven false by the San Diego Sheriff's Office.

According to a "News Release Information Sheet" issued yesterday by the Sheriff's Office (attached hereto as Exhibit A) "[a]fter conducting a thorough investigation, interviewing several witnesses and reviewing video surveillance from both inside and outside of the business, detectives disproved the allegations made against Mr. Graham." The San Diego Sheriff's Office has concluded that the case is "being closed as unfounded...." **Given these unequivocal findings by the Sheriff's Office, your robocalls regarding Mr. Graham are indisputably materially false and deceptive.**

We therefore demand that you and any organization and/or activities under your direction and control immediately cease and desist from disseminating these or any similar communications. Failing to abide by this admonition will subject you to civil liability and damages under California and Federal law. Additionally, because you have enjoyed the benefits of the public telephone lines in the state, you must equally avail yourself to the burdens of misuse of the utilities as governed by the California Public Utilities Commission. As you are likely aware, the content of your calls warrants *no* First Amendment protections.

The First Amendment protects some political speech, it does not protect the type of defamatory speech described above. (See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).) This is true even in cases where the target is a public figure and the element of "actual malice" needs to be established. The United States Supreme Court has conclusively and unequivocally stated, "[i]f a false and defamatory statement is published with knowledge of falsity or a reckless disregard for the truth, the public figure may prevail." (See *Harte-Hanks*

BY ELECTRONIC TRANSMISSION

May 31, 2018

Page 2 of 2

Communications v. Connaughton, 491 U.S. 657, 688 (1989).) Supreme Court precedent also makes abundantly clear that with respect to public figures, publishers of any type are liable for a “defamatory statement [made] with actual malice, *i.e.*, with ‘knowledge that it was false or with reckless disregard of whether it was false or not.’” (See *Masson v. New Yorker Magazine*, 501 U.S. 496, 510 (1991) (citing *New York Times Co. v. Sullivan*, *supra*, 376 U.S. at 279-280 (1964); see also *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).) Simply put, the First Amendment provides zero protection for the dissemination of false information. (*Herbert v. Lando*, 441 U.S. 153, 171 (1979) [“Spreading false information in and of itself carries no First Amendment credentials. ‘[T]here is no constitutional value in false statements of fact.’”].)

Of course, our client respects the rights of citizens to engage in spirited debate and criticism, but we will not allow Mr. Graham’s character and reputation to be assailed by your false and defamatory claims. Should you choose to continue to distribute the false and defamatory allegations described above, it will be with a knowing and reckless disregard for the truth that will be sufficient to demonstrate to a court “actual malice” towards our client. (See *St. Amant*, *supra*, 390 U.S. at 730.)

In case it is not abundantly clear from the foregoing, you are hereby on notice of potential imminent litigation, and should immediately seek counsel on the Evidence Code’s preservation obligations, as the destruction of any evidence concerning the circumstances set forth herein (including internal communications relative to the material at issue) may lead to evidentiary or other sanctions in litigation.

Finally, the robocalls being distributed by you violate the California Government Code (Political Reform Act) and the Public Utilities Code. Your calls contain none of the required disclaimers the State Legislature and the People California have imposed on auto-dialed calls and political advertising. If you are not the true funder of the calls at issue, consider this letter a further demand that you immediately provide the identity of the organization or individual funding the calls. Any delay will risk a complaint filed with the Fair Political Practices Commission and PUC requesting an investigation into your activities and potential misuse of the State’s utilities.

Should you wish to discuss the resolution of this matter, please contact me at my office.

Very truly yours,



Brian T. Hildreth