



1925 CENTURY PARK EAST, SUITE 800  
LOS ANGELES, CA 90067  
424.203.1600 • WWW.HMAFIRM.COM

November 1, 2014

CONFIDENTIAL LEGAL NOTICE  
PUBLICATION OR DISSEMINATION IS PROHIBITED

VIA EMAIL

michael@horowitzfreedomcenter.org  
tips@truthrevolt.org  
[volunteer@truthrevolt.org](mailto:volunteer@truthrevolt.org)

VIA OVERNIGHT MAIL

Mr. David Horowitz  
David Horowitz Freedom Center  
14148 Magnolia Blvd, Suite 103  
Sherman Oaks, California 91423

VIA OVERNIGHT MAIL

Mr. Bradford Thomas  
Ben Shapiro's Truth Revolt  
David Horowitz Freedom Center  
14148 Magnolia Blvd, Suite 103  
Sherman Oaks, California 91423

VIA OVERNIGHT MAIL

General Counsel  
Ben Shapiro's Truth Revolt  
David Horowitz Freedom Center  
14148 Magnolia Blvd, Suite 103  
Sherman Oaks, California 91423

VIA OVERNIGHT MAIL

Editor-in-Chief  
Ben Shapiro's Truth Revolt  
David Horowitz Freedom Center  
14148 Magnolia Blvd, Suite 103  
Sherman Oaks, California 91423

Re: *Lena Dunham – Ben Shapiro's Truth Revolt, et al.*

Dear Mr. Horowitz, General Counsel, Editor-in-Chief, and Mr. Thomas:

This law firm is litigation counsel for Lena Dunham in connection with her substantial claims against each of you (collectively, "you" and "your") regarding your story dated October 29, 2014, bearing the headline "Lena Dunham Describes Sexually Abusing Her Little Sister", which alleges that my client states in her book *Not That Kind of Girl* that she supposedly:

1. "experiment[ed] sexually with her younger sister Grace";
2. "experimented with her six-year younger sister's vagina"; and
3. "use[d] her little sister at times essentially as a sexual outlet".

(collectively herein, the "Story").

Each of these statements in the Story, among others, is completely **false and fabricated**, and **highly defamatory** of my client. Each of these statements also constitutes a false light invasion of my client's right of privacy, and a violation of her rights of publicity. Remedies available to my client include, without limitation, actual damages to her personal and professional reputation which likely would be calculated in the millions of dollars; punitive damages which can be a multiple of up to **ten times** actual damages; and injunctive relief. Legal authorities on these points are set forth further below.

Demand is hereby made that you **immediately and permanently** remove the Story, and all references to it, from all media that you own or control, including websites, blogs, social media accounts, print publications, and all other forms of media.

Demand is further made that you immediately print a prominent public apology and retraction at all media whereat you published the Story, stating that the Story is false, that you regret having published it, and that you apologize to Ms. Dunham and her family for having published it. An example is as follows: "We recently published a story stating that Ms. Dunham engaged in sexual conduct with her sister. The story was false, and we deeply regret having printed it. We apologize to Ms. Dunham, her sister, and their parents, for this false story."

Demand is further made that you contact all other media and publications that may have obtained or licensed the Story from you, and inform them of its falsity, and demand that they remove the Story (and all versions of it) from all media that they own and control.

### Libel

New York law defines libel as a written statement of fact regarding the plaintiff published by the defendant that is false and causes injury to the plaintiff. *Meloff v. N.Y. Life Ins. Co.*, 240 F.3d 138, 145 (2d Cir.2001); *see also, Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 111 L.Ed.2d 1, 110 S.Ct. 2695 (1990) (U.S. Supreme Court holding that a statement or publication containing provably false factual assertions constitutes defamation); RESTATEMENT (SECOND) OF TORTS, § 559 ("A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him"); *Dillon v. City of New York*, 261 A.D.2d 34,37-38 (1999).

Libel *per se* involves a false allegation that tends to injure a person in his or her trade, business, or profession. *Geraci v. Probst*, 61 A.D.3d 717, 718, 877 NY.S.2d 386, 388 (2009). Libel *per se* is defamatory "on its face" and does not require explanatory matter to be proven; damages are assumed. Here, the Story constitutes both libel and libel *per se*.

Publication of incomplete and hence misleading information also gives rise to liability for defamation, since the incomplete presentation of facts can imply an actionable false assertion of fact. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19, 110 S.Ct. 2695, 2706, 111 L. Ed. 2d 1, 18 (1990) (incomplete facts may imply a false assertion of fact). It is well-established that

defamation by implication stems not from what is literally stated, but what is implied.” *White v. Fraternal Order of Police*, 909 F.2d 512, 518 (D.C. Cir. 1990).

California Civil Code § 45 defines “libel” as the “false and unprivileged publication by writing . . . which exposes any person to . . . ridicule . . . or which has a *tendency to injure him in his occupation.*” Cal. Civ. Code § 45 (emphasis added). *See also Bates v. Campbell*, 213 Cal. 438 (1931) (holding that defamation “has been held to include *almost any language* which, upon its face, has a *natural tendency to injure a person’s reputation*, either generally, or with respect to his occupation.”) (Emphasis added.) A statement can constitute libel “for what is insinuated as well as for what is stated explicitly.” *Kapellas v. Kofman*, 1 Cal.3d 20, 33 (1969).

Here, the Story is false, fabricated, and has the obvious tendency to subject my client to ridicule, and to injure her in her occupation. In fact, numerous negative statements about my client have already appeared in the Internet, including tweets, as a result of the Story, thereby easily proving causation and injury.

Malice easily can be established here, because you have outright falsified statements and attributed them to my client and her book. But the statements do not appear anywhere in the book, thus showing intent to harm, knowing falsity as well as reckless disregard for the truth, any one of which meets the malice requirement. Because you were aware of the outright falsity of the Story at the time you published it, all elements of a cause of action for libel, including malice, easily are met.

Each of the statements in the Story is false and defamatory pursuant to the legal authorities discussed herein, thereby exposing you to substantial monetary damages, punitive damages and injunctive relief. *See Strader v. Ashley*, 61 A.D.3d 1244, 1248, 877 NY.S.2d 747, 751 (2009) (affirming jury’s award of punitive damages in connection with a defamation claim).

### **False Light Invasion of Privacy**

The Story also is actionable under the related legal doctrine of false light invasion of privacy, which constitutes a public statement about a person that either is false or places the person in a false light, is highly offensive to a reasonable person, and is made in reckless disregard of whether the information is false or would place the person in a false light. The statement need not be defamatory. False light invasion of privacy includes embellishment (adding false material to a true story which places the subject in a false light) and distortion (arranging otherwise true information in a way to give a false impression). RESTATEMENT (SECOND) OF TORTS § 652 E (1977); *Machleder v. Diaz*, 801 F.2d 46 (2d. Cir. 1986); *Gill v. Curtis Pub. Co.*, 38 Cal. 2d 273 (1952); *Fellows v. National Enquirer, Inc.*, 165 Cal. App. 3d 512, 528 (1985).

Here, the facts described above easily meet this standard, thereby entitling my client to seek substantial monetary damages and other remedies pursuant to this cause of action.

**Violation of New York Civil Rights Law Sections 50 and 51**  
**Violation of California Right of Publicity**

The only purpose for the false Story, and your use of my client's name and a prominent photograph of her in connection with the Story, is to generate viewers to your website and advertising revenues to your company. As such, your actions constitute a violation of New York Civil Rights Law Sections 50 and 51, as well as California statutory and common law rights of publicity (Cal. Civ. Proc. Code § 3344), which entitle her to seek substantial monetary damages, as well as punitive damages, disgorgement of your profits, and reimbursement of my client's attorneys' fees and costs. Courts have repeatedly upheld right of publicity claims against news organizations that publish false or misleading stories and make prominent use of a celebrity's name and photograph in connection therewith, and in so ruling the courts have repeatedly rejected the First Amendment defense, and related defenses, raised by the publishers. *See e.g. Clint Eastwood v. Superior Court*, 149 Cal. App. 3d 409 (1983); *Jose Solano v. Playgirl, Inc.*, 292 F.3d 1078 (9th Cir. 2002), and *Cher v. Forum Int'l, Ltd.*, 692 F.2d 634 (9th Cir. 1982).

In light of the malicious and hurtful nature of this Story, our client intends to vigorously pursue all possible legal remedies available to her, should you fail to immediately comply with the foregoing demands.

Please confirm within ~~twenty-four~~ (24) hours that you will comply with the foregoing demands.

Nothing contained herein nor omitted herefrom shall be construed as an admission or waiver of any of my client's legal or equitable rights or remedies with respect to these matters, all of which rights and remedies are hereby expressly reserved.

This letter constitutes confidential legal communication and may not be published in any manner.

Very truly yours,



CHARLES J. HARDER OF  
**HARDER MIRELL & ABRAMS LLP**

cc: Client (via email)  
Client Representatives (via email)