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September 4, 2018

By Email and First Class Mail

Hon. Gina Raimondo
Jonathan Blair, Campaign Manager
David Ortiz, Deputy Campaign Manager
Friends of Gina Raimondo
P.O. Box 40794
Providence, RI 02940

Re: False and Defamatory Statements Regarding Matthew Brown

Dear Governor Raimondo and Messrs. Blair and Ortiz:

This is to demand that you and Friends of Gina Raimondo (together, "Raimondo Campaign") immediately retract false and defamatory statements about my firm's client, Matthew Brown; cease and desist from making any further such statements; and, in anticipation of litigation that Mr. Brown may bring against the Raimondo Campaign and individuals associated with it, take active steps to preserve and to prevent the destruction of all documents and other evidence in your possession or control and that of the Raimondo Campaign, including any of its employees, consultants and other agents and representatives, that relate to these statements.

The statements are as follows, commencing with the most recent:

- Beginning August 30, the Raimondo Campaign has broadcast a television advertisement that asserts that Mr. Brown "ran" his U.S. Senate campaign "with apparent laundering of campaign contributions," "hid $150,000 in debt," and "stiffed his workers over $100,000 in pay"; and that, at the nonprofit organization where he subsequently worked, Mr. Brown "pa[id] himself nearly $300,000 a year." See https://youtu.be/csacpFSsHWY.

- On July 5 the Raimondo Campaign sent a message to the *Providence Journal*, with intent that the newspaper would further circulate it publicly (as it did), that "[Matt Brown's] last campaign in 2006 ended in a criminal investigation." See https://twitter.com/kathyprojo/status/1014964985540247553.

- On or about July 23, Governor Raimondo stated to Rhode Island resident Brianna McFadden that Mr. Brown is "most famous for having engaged in money laundering and had to drop out of his Senate campaign for doing that." See https://twitter.com/RI_SCC/status/1022075754413207552.

These are all deliberate falsehoods, as the Raimondo Campaign plainly knows. Here are the facts, virtually all of which are reflected in the same public records that the Raimondo Campaign has misused to fashion its false and defamatory statements about Mr. Brown.

First, there was no "criminal investigation" associated with Mr. Brown's 2006 campaign for the United States Senate ("Senate Campaign") or any other proceeding sought or conducted in relation to the campaign that entailed any "criminal" aspect. Nor did Mr. Brown commit the crime of "money laundering," which is set forth in federal law at 18 U.S.C. § 1956, and in Rhode Island law at R.I.G.L. § 11-9.1-15, each provision entitled "Laundering of monetary instruments." Instead, the following is true.

On March 22, 2006, the Rhode Island Republican Party filed a civil administrative complaint against the Senate Campaign with the Federal Election Commission ("FEC") alleging that certain political contributions violated the Federal Election Campaign Act ("FECA"). The Raimondo Campaign's broadcast ad quotes a *Providence Journal* editorial that appeared immediately after the Rhode Island Republican Party filed and publicized its complaint. But that complaint, and the "money laundering" characterization of it, were completely discredited on March 20, 2007 – almost a year after Mr. Brown ended his Senate campaign, but eleven years *before* the Raimondo Campaign's falsehoods about them – when the bipartisan FEC dismissed the complaint in its entirety, concluding that there was "no basis" and "no support" for, and "no reason to believe," the allegations against the Senate Campaign. The Rhode Island Republican Party declined to exercise its right under FECA to challenge that dismissal in court.

Accordingly, there was no "criminal investigation" or criminal case of any kind, and no allegation, let alone a finding, of "money laundering." To the contrary, the responsible federal agency considered and conclusively rejected allegations of civil violations of the federal election law. It was plain twelve years ago that the Rhode Island Republican Party's FEC complaint against the Senate Campaign was a politically motivated gambit to derail Mr. Brown, then the Rhode Island Secretary of State, whom that party evidently feared could succeed in his effort to represent Rhode Island in the United States Senate. The Raimondo Campaign's current statements falsely asserting that there was a "criminal investigation" and that Mr. Brown "engaged in money laundering" exceed in defamatory gravity what even the Rhode Island Republican Party falsely claimed at the time.

The Raimondo Campaign's next falsehood is that Mr. Brown "hid $150,000 in debt." In fact, the Senate Campaign reported as quickly as possible all information about campaign debt in its possession in its regularly scheduled reports to the FEC. The Senate Campaign timely filed a quarterly report on April 14, 2006, just before the campaign ended, that disclosed nearly $174,000 in debt. *Twelve days later*, after receiving further vendor invoices and information, the Senate Campaign filed an amended report that disclosed an additional $90,000 of debt. The same sequence occurred with respect to the next quarterly report: on July 15, eleven weeks after

the campaign ended, the Senate Campaign timely filed a quarterly report that disclosed over $314,000 in debt; *nineteen days later*, again after receiving further vendor invoices and information, the Senate Campaign amended the report to disclose an additional $50,000 of debt. (When it later worked with its vendors to settle these debts, as discussed below, they determined together the final figures and the Senate Campaign accordingly amended the two quarterly reports again to adjust the debt figures upward a total of $10,000 more.) The Senate Campaign fully explained this sequence of events to the FEC, and the FEC accepted and resolved the matter administratively, as the public record demonstrates. But the Raimondo Campaign falsely accuses Mr. Brown of a deliberate act of concealment in "hid[ing]" the difference in the amended reported figures, rather than acknowledges that the terminating Senate Campaign timely reported its debt information on hand and – without the FEC or anyone else prompting it to do so – immediately reported all of the additional information that it obtained.

The Raimondo Campaign's next falsehood is that Mr. Brown "stiffed his workers over $100,000 in pay," with a visual graphic of four unknown individuals and the figure "$102,997." In fact, every Senate Campaign employee was fully paid. This figure instead pertains to the Senate Campaign's business vendors, who participated with the Senate Campaign in making a submission to the FEC under its established debt settlement rules. Because the Senate Campaign's effective fundraising ended with the campaign, it settled with each such vendor at 50% of the amount it was owed, and the FEC reviewed and approved this plan, which the Senate Campaign then carried out. But that process – unfortunate, but quite typical of unsuccessful campaigns – had nothing to do with "pay[ing]" "workers," let alone "stiff[ing]" them, as the Raimondo Campaign dishonestly accuses Mr. Brown of having done.

Finally, the Raimondo Campaign's broadcast ad falsely states that Mr. Brown "paid himself nearly $300,000 a year" at the nonprofit organization where he worked. In fact, as Global Zero's Co-Founder Bruce Blair has publicly explained, he, and not Mr. Brown, determined Mr. Brown's salary at Global Zero. But the Raimondo Campaign, without any basis in fact, asserts that Mr. Brown controlled the matter and implicitly accuses him of self-dealing, a breach of Internal Revenue Code-established standards at a charitable organization.

Under Rhode Island law, an actionable defamation claim by a public figure such as Mr. Brown requires proof of: (1) a false and defamatory statement that harms the subject's reputation or "brings him into public hatred or contempt," (2) an unprivileged publication to a third party, (3) actual malice in making the statement, that is, the person making the statement knows it is false or acts in reckless disregard of whether it is false, and (4) damages, unless the statement is actionable *per se* and so irrespective of special harm. *See Lyons v. R.I. Pub. Emps. Council 94*, 516 A.2d 1339, 1342-43 (R.I. 1986). A statement is actionable if it is "defamatory on its face or by way of innuendo." *Marcil v. Kells*, 936 A.2d 208, 212 (R.I. 2007). All of these elements are satisfied here.

First, the Raimondo Campaign's false statements are defamatory and harm Mr. Brown's public reputation as a candidate and potential public servant, tending to subject him to "public hatred or contempt" and imputing to him a "criminal offense" and "matter[s] incompatible with his business, trade, profession, or office." *Marcil, supra.*

Second, broadcasting a television ad, sending a message to a newspaper and speaking with a constituent self-evidently are not privileged communications.

Third, there is no doubt that the Raimondo Campaign knew that each of the statements quoted above about the Senate Campaign were false. All of the FEC's files concerning the Senate Campaign have been available for the past eleven years on the FEC's public website, and were the subject again of media attention in Rhode Island – including by the *Providence Journal*, WPRI and RI Future – when Mr. Brown announced his current candidacy for Governor. Indeed, the Raimondo Campaign quite clearly *read those very FEC documents* in fashioning its false and defamatory statements about them; and, on August 31 the *Providence Journal* relied on those same records to address and debunk each of the falsehoods in the current broadcast ad; see http://www.providencejournal.com/news/20180831/new-raimondo-ad-accuses-challenger-of-money-laundering. And, the Raimondo Campaign plainly just made up its assertion about Mr. Brown "pa[ying] himself" at Global Zero, so it is equally culpable by acting with "reckless disregard" of the truth or falsity of its statement. *See generally Lyons, supra; see also New York Times Co. v. Sullivan,* 376 U.S. 254, 279-80 (1964).

Finally, the defamation here is actionable *per se* insofar as the Raimondo Campaign has falsely imputed a criminal offense and other "matter[s] incompatible with his business, trade, profession, or office." *See Marcil v. Kells*, *supra*.

In sum, even measured against the high bar set by the law for defaming public figures, the Raimondo Campaign's statements measure up; they were not mere campaign hyperbole. The Raimondo Campaign must immediately retract its false and defamatory statements about Mr. Brown and cease and desist from making any further such statements.

Further, in anticipation of litigation that Mr. Brown may bring related to this matter, this is to put the Raimondo Campaign, including yourselves and any of its employees, consultants and other agents and representatives, on notice that it is to place a "litigation hold" on all documents and other evidence that is in the possession or under the control of the Raimondo Campaign and that may be relevant to such litigation (including any potential claims or defenses), so as to preserve them and prevent their destruction. "[O]nce a party is on notice of potential litigation, it is under an affirmative duty to 'suspend its routine document retention policy and put in place a 'litigation hold' to ensure the preservation of relevant documents.'" *Berrios v. Jevic Transp., Inc.,* 2013 R.I. Super. LEXIS 18, 18 (2013) (quoting *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 431 (S.D.N.Y. 2004)).

Material is relevant if it refers to or relates in any manner to the Senate Campaign, including, of course, the sources for, creation of and distribution of the Raimondo Campaign's broadcast ad and statements to the *Providence Journal* and Ms. McFadden about the Senate Campaign. Such material includes all documents and other evidence in whatever format and wherever stored, including both paper documents and on- and off-site computer systems, cloud storage systems, and removable electronic media, plus all computer systems, services and devices (including all remote access and wireless devices) used for or by the Raimondo Campaign. This also includes, but is not limited to, e-mail and other electronic communications; electronically stored documents, records, images, graphics, recordings, spreadsheets, and

databases; calendars, system usage logs, telephone logs, internet usage files, deleted files, cache files, user information, and other data; and archives, backup and disaster recovery taps, discs, drives, cartridges, cloud storage, voicemail and other data. All operating systems, software applications, hardware, operating manuals, codes, keys, passwords and other support information needed to fully search, use and access the electronically stored information must also be preserved.

We ask that you immediately acknowledge receipt of this communication and forward to my attention a copy of the Raimondo Campaign's publicly issued retraction of its false and defamatory statements about Mr. Brown, as well as cease and desist from broadcasting the current television ad and from circulating any similar false and defamatory statements. We also ask that you immediately and publicly call upon your supposed "independent expenditure" ally, the so-called "Alliance for a Better Rhode Island," to cease circulating its recent mailer that mirrors the Raimondo Campaign's falsehoods about the 2006 FEC case ("FEC rules violation" and "money laundering") and Mr. Brown's salary ("paying himself").

Yours truly,

Laurence E. Gold

Laurence E. Gold

cc: Matthew Brown