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**Via Electronic and Regular Mail**

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**RULE 1-4:8 NOTICE AND DEMAND NOT TO FILE A COMPLAINT**

**RE: Aladar G. Komjathy v. Matthew B. Hanson, *et al.***

Dear Mr. Furlong:

I am writing to you on behalf of Lambertville United, and the four individuals, Matthew B. Hanson, Lillie Chen, Audrey Griesel Byrnes, and Sue Bell, who administer the group's Facebook page, in response to your letter, dated August 28, 2020, in which you accuse the individuals of publishing and distributing "libelous" statements (through Lambertville United's Facebook page and website). Specifically, you state:

Lambertville United made several statements which can neither withstand factual scrutiny nor be interpreted as other than accusing persons named with professional misconduct. Mr. Komjathy is among this group of persons defamed.

Despite this accusation and the letter that follows (lecturing the aforementioned individuals about the meaning of the term "lobbying"), you have failed to specify any factually-based statements in the August 2020 Lambertville United newsletter that explicitly or implicitly accuse Mr. Komjathy of "professional misconduct" or any verifiable statements that you believe are factually inaccurate and damaging to your client. This is because the statements that you do specify are either factually accurate or constitute an unverifiable opinion. For this reason alone, your threat to file a lawsuit against these individuals unless they withdraw their newsletter from their Facebook page and website and "publish a statement withdrawing their claims raised in the

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newsletter” constitutes nothing more than a threat to file a Strategic Lawsuit Against Public Policy (SLAPP); and if filed, would warrant the imposition of sanctions pursuant to R:1-4:8.

New Jersey Appleseed Public Interest Law Center (“NJ Appleseed”) is a nonprofit 501(c)(3) organization, which has an anti-SLAPP project under which we have decided to represent Lambertville United and the aforementioned individuals. Over the years, the project has focused, and continues to focus, on defending community activists who speak out about matters of public concern, ask questions of government officials, file “Open Public Record Act” requests, and generally take actions designed to promote transparency and accountability especially with respect to local economic development and planning decisions; but who are met with lawsuits typically alleging a host of intentional torts, including defamation. Toward that end, and for the reasons set forth herein, we demand that you, on behalf of Mr. Komjathy, refrain from filing a civil complaint alleging defamation against the aforementioned individuals or any person associated with Lambertville United. We believe that such a complaint would violate R. 1:4-8, and would justify an application for sanctions including but not limited to costs and attorney’s fees. See Maximus Real Estate Fund, LLC et al. v. Marotta and Price, A-5501-07 (App. Div. Aug. 13, 2009)(unpublished decision)(NJ Appleseed attorneys awarded fees and costs because the lawsuit against their client, Price, was acknowledged to be a SLAPP suit).

First, any complaint that you would file based upon statements made in the August 2020 newsletter would violate R. 1:4-8(a)(1) because it would be brought for the improper purpose of intimidating Lambertville United and silencing its members’ speech on issues of significant public concern to the residents of Lambertville, including a specific concern regarding Lambertville’s contract with Waste Management Service Center, Inc. (“Waste Management”), for the collection of food waste or other matters within the municipality. It is apparent from the stated mission of Lambertville United that the predominant issue that concerns the members of the organization is the question of whether certain elected officials are acting on behalf of the residents of Lambertville.<sup>1</sup> It is within the context of this overriding concern, that Lambertville United has raised questions regarding the increased value of Lambertville’s contract with Waste Management (i.e., increasing in value from approximately \$16,000 to \$120,000 from 2018 to 2020), a client of Mr. Komjathy’s firm, Komjathy & Kean, LLC. (as stated in his annual report for government affairs agents, Form L1-A, dated February 2020).

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<sup>1</sup> As stated in their newsletter, Lambertville United is a “grass-roots advocacy organization” that has been established to offer a platform to residents “to share their thoughts, voice their concerns and demand accountability from the city officials we have elected to represent us.” Its mission is “to prevent the City Administration and commercial developers from compromising Lambertville's character and environment, ensure the historic integrity of Lambertville is maintained and protect our quality of life.” A mission that is certain to lead its members into conflict and disagreement with vested commercial interests, and municipal officials, including planning and zoning board members. Lambertville United is an unincorporated membership advocacy organization; it is neither a political action committee nor a lobbying firm, and thus, has no obligation to register with Election Law Enforcement Commission as either type of entity (as you imply in your letter).

The details of the Lambertville-Waste Management contract are a matter of public concern; and Mr. Komjathy is a public figure, despite your ambiguous attempt to characterize him as a “private citizen” for purposes of asserting his claim of defamation. No court would consider Mr. Komjathy a private citizen when evaluating his claim. Mr. Komjathy is certainly a public figure insofar as he currently is a government official, and an active and known person in Lambertville politics: He is an elected member and chair of the Lambertville Fire Commission; he sits on the State Mortuary Board; he serves on the Delaware River Joint Bridge and Toll Commission; and is, or was until recently, the Treasurer of the Lambertville Democratic Club. In addition, he previously served as the Chair of the Lambertville Municipal Utilities Authority and served for several years on the Hunterdon County Board of Taxation. As noted above, Mr. Komjathy is also a registered governmental affairs agent, who represents a host of companies (such as Comcast and Waste Management), some of whom do business with the City of Lambertville, and he has been described in the local press as a political ally of Mayor Julia Fahl.

As a public figure, he must expect scrutiny, and he and the Mayor cannot avoid questioning by members of the public concerning official municipal business, no matter how aggressive that scrutiny becomes. It is simply improper to file a civil action alleging defamation (or threaten to file such lawsuit) with the intent to stifle public criticism about a matter of public concern. It does not matter whether Mr. Komjathy is seeking to protect his client Waste Management, his political ally—the Mayor, or his own political career. What matters is his intent to intimidate the members of Lambertville United, a relatively new organization first established in February of this year, chill their investigative activity and effectively stop them from continuing to scrutinize and question official actions taken by persons associated with the current Lambertville administration.

In New Jersey, and elsewhere in the country, such tort actions filed with such improper purposes are known as SLAPP lawsuits. See LoBiondo v. Schwartz, 323 N.J. Super. 391 (App. Div.), cert. denied 162 N.J. 488 (1999); see also Baglini v. Lauletta, 338 N.J. Super. 282, 302 (App. Div. 2001) (determining existence of SLAPP lawsuit through circumstances surrounding initiation of suit), cert. denied 169 N.J. 607, appeal dismissed 169 N.J. 608 (2001). The lawsuit that you are threatening to file on behalf of Mr. Komjathy, the Chair of the Lambertville Fire Commission, a registered governmental affairs agent, and a politically active member of the local Democratic Club, is a textbook SLAPP action. It seeks to silence members of Lambertville United, and to turn the public eye away from Mr. Komjathy’s support of the Mayor and any official actions the Mayor may have taken in consultation with Mr. Komjathy or alone.

Second, the Complaint, if filed as you threaten, would also violate R. 1:4-8(a)(2) because Mr. Komjathy’s claim of defamation is not warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law. In your letter, you state that Lambertville United “[i]n effect . . . [has] accused Mr. Komjathy of using his official position to benefit himself, financially and professionally, at the expense of taxpayers and his fealty to his oath of office as a commissioner,” thus entitling him to recover “monetary damages in a civil action.” No such statement, phrase, term, or tagline exists in the August 2020 newsletter” on which he could conceivably base a claim of defamation and reputational harm. As set forth below, the one statement that you claim “transgresses the border” of “fair comment” makes no mention of nor implies “official misconduct” by Mr. Komjathy and is not factually and

legally sufficient to support a cause of action for defamation against Lambertville United or any of the individuals you have named.

As a “public figure,” in order to prevail in an action for defamation, Commissioner Komjathy would have to show that each individual defendant: 1. made a false statement about him; 2. communicated the false statement to a third party; 3. did so with “actual malice;” and 4. that he suffered damages as a result of each defendant’s alleged false statement. See DeAngelis v. Hill, 180 N.J. 1(2004) (providing that public officials, all-purpose public figures, and limited-purpose public figures must prove actual malice in defamation claim.). Whether a statement is capable of defamatory meaning is a question of law for the court. Ward v. Zelikovsky, 136 N.J. 516, 529 (1994)(defendant’s characterization of plaintiff as a “bitch” and accusations of bigotry, though “highly offensive,” were not actionable as a matter of law). In making this determination, the courts consider three factors: 1) content, 2) context, and 3) verifiability. Lynch v. N.J. Educ. Ass’n, supra, 161 N.J. at 164-65 (1999)(comments by political opponent and opponent’s election campaign staff and supporters associating an elected state senator with the mob were not defamatory). **Content** is based on the objective standard of “the fair and natural meaning that reasonable people of ordinary intelligence would give [to the statement].” Id. at 167. The content of a work as a whole, not a simple sentence or a few words must also be considered. Romaine v. Kallinger, 109 N.J. 282, 288 (1988)(no defamation action where “only the most contorted reading of the offending language could lead to the conclusion that it accuses plaintiff of illegal drug use and associations.”). The **context** in which a statement is made can significantly alter the fair and natural meaning of the statement, even rendering a statement with potentially defamatory meaning non-actionable. Lynch v. N.J. Educ. Ass’n, supra, 161 N.J. at 167. Finally, even if a statement is potentially defamatory based on its content and context, the statement is only actionable if it can **verifiably be proven false**. Ward v. Zelikovsky, supra, 136 N.J. at 530. The U.S. Constitution also requires that a plaintiff, such as Commissioner Komjathy, bear the burden of proving that the allegedly defamatory statement is false. Milkovich v. Lorain Journal Co., 497 U.S. 1, 16 (1990). Thus, a statement that is not verifiably false cannot be defamatory as a matter of law. Ibid.

Before I analyze the statement, you have isolated as defamatory, I think it’s important to highlight the case law regarding statements that express the opinion of their author. In particular, statements that constitute opinion in matters of public concern and about public officials, such as herein, are deemed privileged. The U.S. Supreme Court has long recognized a privilege for expressions of opinion and rhetorical hyperbole, particularly in matters that invite public debate, such as Lambertville’s contract with Waste Management. In N.Y. Times v. Sullivan, the Court laid out its commitment to the fundamental principle “that debate on public issues should be uninhibited, robust and wide-open.” 376 U.S. 254, 270 (1964)(finding Alabama law insufficiently protective of First and Fourteenth Amendment rights and remanding to the lower court to revisit its finding of defamation in libel suit brought by city official). A decade later, the Court noted:

Under the First Amendment there is no such thing as a false idea. However, pernicious an opinion may seem, we depend for its correction not on the conscience of judges or juries but on the competition of other ideas.

Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-40 (1974). More recently, in Milkovich v. Lorain Journal Co., the Supreme Court said that the Constitution provides protection of statements of opinion if the statements address matters of public concern and do not contain factual connotations that are verifiably false. Milkovich, *supra*, 497 U.S. at 20.

New Jersey courts have been equally – if not more – protective of opinion, in part because New Jersey courts have held New Jersey law to be more protective of speech than the U.S. Constitution. The New Jersey Supreme Court has said that the New Jersey Constitution is “more sweeping in scope than the language of the First Amendment.” Dairy Stores v. Sentinel Publishing Co., 104 N.J. 125, 147 (1986)(statements calling into question the source of plaintiff food store’s “spring water” on the basis that it was contaminated and chlorinated were not defamatory): N.J. Const. art. I, §6; *see also* Cassidy v. Merin, 244 N.J. Super. 466, 483 (App. Div. 1990)(Plaintiff attorneys failed to prove “actual malice” in defamation action against insurance commissioner, who complained of plaintiffs’ letter-writing campaign).

The Cassidy court went on to state that statements of “pure opinion” were “absolutely privileged.” *Id.* at 482. A similar view on statements of opinion was declared in Kotlikoff v. Community News, a dispute involving a citizen’s letter to the editor that accused a local official of a conspiratorial cover-up in the handling of a public issue, in which the N.J. Supreme Court said that statements of pure opinion on matters involving the public may no longer be actionable for defamation. Kotlikoff, *supra*, 89 N.J. at 68 (1982). Kotlikoff specifically emphasizes protection for the opinion pages of newspapers, a public forum such as Facebook has become<sup>2</sup>, that is a unique example of a “robust and uninhibited commentary on public issues.” *Id.* at 72.

The solicitous attitude of New Jersey courts towards free speech has often been seen in cases such as this one, which involve the scrutiny of actions taken by locally elected government officials, where controversies are often “intense” and feelings are known to “run high.” LoBiondo v. Schwartz, 323 N.J. Super. 391, 409-410 (App. Div. 1999)(no defamation action where letter written by area resident to government officials and other residents include offensive remarks suggesting that club owner had not been truthful with Planning Board and public). In LoBiondo, the Court recognized a long-held distinction between a defamatory statement of fact and non-actionable opinion. *Id.* at 410. Looking to Kotlikoff, the Court noted that New Jersey courts have long relied on the principle that pejorative expressions of opinion are to be protected “no matter how extreme, vituperous or vigorously expressed they may be.” LoBiondo, *supra*, 323 N.J. Super. at 409. *See also* Karnell v. Campbell, 206 N.J. Super. 81, 94 (App. Div. 1985)(finding that defendants’ comments implied no undisclosed facts, but simply public concern and a strong difference of opinion), Greenbelt Cooperative Publ. Ass’n v. Bresler, 398

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<sup>2</sup> *See* Wilbanks v. Wolk, 121 Cal. App. 4<sup>th</sup> 883 (Ca. App. 2004)(finding that the “Web, as a whole, can be analogized to a public bulletin board” and thus defendant’s posting to a website “were made in a “public forum” for purposes of California’s anti-SLAPP statute); *see also* Reno v. American Civil Liberties Union, 521 U.S. 884, 870 (1997)(noting that the Internet involves a “dynamic, multifaceted category of communication” that goes beyond the traditional print and news services, and “through the use of Web pages, mail exploders, and newsgroups, . . . individual[s] can become pamphleteer[s].”)

U.S. 6 (1970)(where a real estate developer’s defamation action against a newspaper that accused him of blackmailing local officials was deemed non-actionable).

In accord with New Jersey’s highly protective legal framework for public speech, including speech about decisions made by public officers, outlined above, it is patently clear that the statement that you have identified as defaming Commissioner Komjathy is not capable of defamatory meaning to either the Mayor or himself.

The optics of Mayor Fahl shutting down communication between a City official who was making inquiries to Waste Management did not look good, especially because Waste Management is a client of Al Komjathy.

This statement, appearing in a newsletter raising questions about municipal decision-making generally, explicitly focuses on a decision by the Mayor to “shut down communication between a City Official who was making inquiries to Waste Management” about its contract with the City of Lambertville. In your August 28, 2020 letter you do not dispute that the Mayor took some action directed at a person serving as a commissioner on the City’s Environmental Commission to stop her direct inquiries to Waste Management regarding the City’s contract with the entity (though you quibble that such person was a volunteer and thus could not be considered a “city official”). Indeed, you supply some explanation for the Mayor’s action (that to the best of my clients’ knowledge has not been publicly stated) that evidences your agreement that this factual component of the statement is true.

The second component of this statement is that “the optics” of the Mayor’s actions “did not look good, especially because Waste Management is a client of Al Komjathy.” This second component of the statement is mere opinion, based on the factually accurate statement that “Waste Management is a client of Al Komjathy.” As evidenced by the recitation of the law regarding opinions stated above, there is no basis in the law or fact for you to distort the meaning of Lambertville United’s statement and convert its opinion that a situation does not “look good,” which was based on two publicly known facts, into an accusation that something nefarious occurred behind the scenes. Even if Mr. Komjathy intervened on behalf of his private client and asked the Mayor to take a certain action, something that my clients do not know actually happened, he **would be entitled to do so**. It is clear that Lambertville United did not accuse Mr. Komjathy of doing anything wrong. Its members simply stated that in their opinion the Mayor’s actions did not **appear** good, and they explicitly set forth the the factual basis for that belief (i.e., that Waste Management was a private client of Mr. Komjathy)—no more, no less. As such, whether their opinion that the “optics” did not look good was a fair and reasonable one, that is for the readers to decide based on the factually accurate predicates set forth in the full sentence; it is not, however, a statement capable of defamatory meaning. In addition, this statement was issued in the context of a genuine public controversy regarding the increased cost of the City’s contract with Waste Management as well as questions surrounding the decision-making of several elected officials more generally. The statement was issued in a newsletter distributed to other residents –a public forum – and therefore, each of the members of Lambertville United had a First Amendment right to express their opinions about the Mayor’s actions robustly and openly, without fear of reprisal

In sum, Mr. Komjathy’s claim for defamation is frivolous and any complaint alleging

such claim would be also be frivolous for purposes of R 1:4-8 because it would constitute an improper SLAPP lawsuit; the alleged defamatory statement constitutes protected opinion based on two accurate facts and are addressed to the Mayor's actions; and there is no *prima facie* showing that any of the Lambertville United's statements contained in the August 2020 newsletter statements were substantially false.

Furthermore, your client should note that his hypersensitivity to my client's newsletter and your explicit position that their statement **implied** that Commissioner Komjathy engaged in "official misconduct" has inadvertently raised their suspicions further that in fact the decision making of certain elected officials has been influenced by certain private interests, at least with respect to the City's waste recovery system. A matter that they would certainly explore through discovery would Mr. Komjathy decide to proceed with litigation.

Notwithstanding Lambertville United's serious interest in examining the private communications between the Mayor and Mr. Komjathy, we are surprised that any attorney of your experience would file a retaliatory and baseless action such as you threaten to do in your August 28, 2020 letter. Moreover, my clients are particularly disturbed that you contacted them through their personal email addresses, which they assume you secured from the City because they signed up either to attend a council meeting held on zoom or to participate in the Swift emergency notification system. Such misuse of personal information submitted to the City for other purposes has not gone unnoticed.

We urge you to discuss this matter with your client and to heed this notice demand. If we are forced to oppose a Complaint, we will not only make a motion for summary judgment relatively early in the litigation after limited discovery but will also request sanctions. We would also note that, my clients believe that both your letter to them and this response are matters of public concern, and they reserve the right to make them public.

If you have any questions, do not hesitate to contact me at 973-735-0523.

Respectfully,

NEW JERSEY APPLESEED PUBLIC  
INTEREST LAW CENTER

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