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October 9, 2020

VIA E-MAIL AND U.S. MAIL [info@stevenchoi.org](mailto:info@stevenchoi.org)

Steven Choi for Assembly 2020  
4199 Campus Drive, Suite H  
Irvine, CA 92612

**Re: Cease and Desist**

Dear Steven Choi for Assembly 2020:

Our firm represents Melissa Fox and Melissa Fox for California Assembly. I am writing about the ad "*We can't trust Melissa Fox with Our Tax Dollars*" that you recently began running. Please be advised that the ad violates state defamation and right to privacy laws as well as federal copyright law and must be taken down immediately in order to avoid litigation.

First, the ad constitutes both libel *per se* and libel *per quod* as to Ms. Fox and must be taken down on that basis alone. The ad is libel *per se* because at several points in the ad, including in the introduction on Facebook, the ad proclaims that Ms. Fox, an attorney, was "misusing client funds" or "misused client funds." This affirmative statement that Ms. Fox had engaged in wrong doing and illegal activity is immediately actionable as libel *per se* under California law. *Barnes-Hind, Inc. v. Sup.Ct.*, 181 Cal.App.3d 377, 385, (1986) ("Perhaps the clearest example of libel *per se* is an accusation of crime.")

In addition, as this statement is directed to Ms. Fox's work in her professional capacity it constitutes trade libel and business disparagement as well. *See Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 295. ("What distinguishes a claim of disparagement is that an injurious falsehood has been directed *specifically* at the plaintiff's business or product, derogating that business or product and thereby causing that plaintiff special damages.")

Second, the ad constitutes libel *per quod* because it fails to advise the public that Ms. Fox obtained a judgment in her favor in the referenced litigation. Knowing this undisclosed fact would allow the viewer to conclude that the ad is in fact false and defamatory because Ms. Fox has never been found to have misused client funds or been party to a "Ponzi like" scheme. *Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 351-352. Moreover, the fact that the ad cites to the pleadings in the action demonstrates that the statements were made with *actual malice* because you knew or should have known that the statements were untrue because the docket also shows that Ms. Fox obtained judgment in her favor. Thus, Ms. Fox will be able to sustain her claim as a matter of law.

Third, the ad violates the United States copyright laws. The ad misappropriates footage from Ms. Fox's own advertisement and incorporates that footage into your ad without permission.

**Hanson Bridgett LLP**  
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That footage is protected by copyright. By misappropriating the footage and displaying it in your own ad, you have violated the U.S. Copyright Act. See 17 U.S.C. section 101 et. seq. The fact that you have done so knowingly and willfully entitles the copyright owner to statutory damages as well. 17 U.S.C. section 504.

Finally, please also be advised that the individuals appearing in the footage that you misappropriated have not authorized you nor your campaign to use their images in an attack ad against Ms. Fox. As such, those individuals have claims against you and your campaign for unauthorized use of their images, false light, and invasion of their right to privacy.

For these reasons my clients demand that you cease and desist from running this ad and have it taken down immediately. Please confirm with me that you will comply with this demand.

Very truly yours,

Andrew W. Stroud  
Partner