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June 19, 2013

**VIA EMAIL jef@fortmanlaw.com
AND VIA FIRST CLASS MAIL**

Sean Kelly
c/o Jonathan E. Fortman
250 Saint Catherine Street
Florissant, MO 63031

Jonathan E. Fortman
250 Saint Catherine Street
Florissant, MO 63031

**Re: Sean Kelly and his wholly baseless false light publications regarding Ziva
Branstetter and the Tulsa World**

Dear Mr. Fortman:

I am writing as it appears that you will not return my call so that I could explain to you why Mr. Sean Kelly is completely wrong in his analysis of what occurred in Ziva Branstetter's email to David Rutkauskas.

As you will recall, in early March, 2013, the former Tulsa World received a subpoena (in a case against a John Doe) seeking information to identify the "Unhappy Franchisee." In a response to that subpoena, Tulsa World interposed the objection or privilege for the "anonymous commenter" and received a response from the plaintiff noting that in a defamation action that "privilege" is not valid or is easily pierced. When Tulsa World raised its objection to the subpoena, I also emailed to Sean Kelly giving him notice that if plaintiff objected, the Tulsa World saw no reason nor merit to contest this anonymous privilege.

In the week following receipt of the subpoena, the Tulsa World newspaper assets were sold to BH Media Group/World Media. Shortly thereafter, Sean Kelley identified himself to plaintiff in the John Doe case, and Beautiful Brands dismissed its John Doe lawsuit and sued Sean Kelly personally (and that case is now dismissed without prejudice).

On May 8, 2013, David Rutkauskas called Ziva Branstetter (who is an enterprise editor) trying to get Branstetter to do a story on Kelly. As enterprise editor for the Tulsa World, Ziva is

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in charge of investigative reporting and is not a management official in the sense of knowing the ins and outs of what is going on with legal matters such as the subpoena. In fact, at that time, Branstetter had no knowledge of Sean Kelly's comments on the Tulsa World stories; had no knowledge of the John Doe subpoena; and had no knowledge that there was an ongoing dispute between Beautiful Brands over what Sean Kelly said in his Unhappy Franchisee blog or in his comments to Tulsa World's story about Beautiful Brands.

As noted above, in a May 8th telephone call to Ziva, Rutkauskas was trying to promote a story to Branstetter about the Unhappy Franchisee. He stated or implied that the Unhappy Franchisee was a blogger who was improperly targeting Tulsa businesses and left the impression that he was a local blogger. As Branstetter does with almost all story tips, she ran a quick public records search under Lexis Nexis (or what she calls auto track), and searched Pacer. She found considerable public information on the Unhappy Franchisee blogger, including that the blogger was Sean Kelly.

She pasted the information into a report to determine whether she thought a story existed. After compiling this information in about a 20 to 30 minute period, she determined that there was no story of local interest, and emailed this information to Rutkauskas to show him that based upon her review, there was no local story there. She provided this information to him to have him explain how this information related to a Tulsa based story rather than an out-of-state blogger objecting to how franchisees are treated.

At no time did Rutkauskas tell her that he had sued John Doe. He did not tell her he was going to sue Sean Kelly; he did not tell her that a subpoena was issued; and he did not hint or imply that there was a dispute between Beautiful Brands and the Unhappy Franchisee over the comments. In providing this information, Ziva did not publish the information other than to Rutkauskas. She provided the report to cultivate what she thought might be a source for future stories and to give him a chance to explain why this would be a story of interest to Tulsans.

In any event, the information Branstetter obtained was publicly available and quickly and readily available to anyone who cared to look. It did not involve anything that was in any way personal or private information, nor was there a "closed" bankruptcy hearing as suggested by Kelly. It took Branstetter approximately 20 to 30 minutes to compile. After she provided this in an effort to cause Rutkauskas to explain to her why this would ever involve a story, Rutkauskas responded in a telephone call but could not explain any local interest.

Thereafter, you called me on May 29, 2013, and objected to Ziva's communication with Rutkauskas implying that it was unethical or worse. Clearly, that is not the case. Rutkauskas could have gathered that same publicly available information on his own, but instead used what Ziva had provided to him.

After our conversation, I investigated and left a voicemail for you explaining that your and Kelly's interpretation of the communication with Rutkauskas was factually incorrect and that Ziva had nothing to do with the personal attacks; there was no conspiracy to defame; and there was no invasion of privacy. But you failed to call me back and did not keep this confidential as

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you promised in your email. Instead, Kelly began his personal attacks against Ziva Branstetter stating and implying that she was unethical, in a conspiracy to defame or invade his privacy and that she has failed and refused to respond or apologize.

These emails, tweets and blogs wholly ignored my communications to you as Kelly's attorney (as I am barred from contacting Kelly except through you). Further, in the information provided to Rutkauskas, nothing was materially false or defamatory. (The statement that Kelly has 4 not 5 children is not defamatory.) The balance of the information was truthful and accurate. I had in fact responded and left you a voicemail which was ignored. When you did not respond, I emailed you. You responded that as soon as your child's activity was over, you would get back to me later in the afternoon. But you failed to call me back or respond other than that one email.

Thereafter, Kelly continued his personal attacks against Ziva Branstetter by emails, tweets, and communications to her employer, editors, and many others, including leaked stories to Urban Tulsa and This Land. When I was informed of this unwarranted vendetta, I wrote an email to you putting you and Sean Kelly **on notice** that Kelly's dissemination of information concerning Ziva Branstetter was improper. His actions bordered on, if they were not already, improper harassment. But I once again received no response.

Since then, Sean Kelly has accelerated his harassment of Ziva Branstetter. He has emailed her, her employer, her husband, and others attempting to interfere with her good standing as an employee and reputation. Kelly has emailed the boards and members of Investigative Reporters and Editors, Inc., a reporters committee of which Ziva is seeking an office. Kelly published unfounded Twitter and other email attacks against Ziva Branstetter, demanding an apology and apparently seeking a pound of flesh.

As noted above, Ziva's distribution of the information to Rutkauskas was not intended to be published in a newspaper as she did not write a story as Rutkauskas sought for her to do. She had no idea that Rutkauskas was going to disseminate the information and he did so without her permission.

Whereas, Kelly has purposefully and intentionally with the intent to harm and cause damage, emailed a multitude of persons, attacked Ziva's ethics and family life, despite the fact that you (Kelly's attorney of record) are **on notice** that his accusations are not well founded. Kelly has failed and refused to investigate or learn the facts, but instead has continued to disseminate his one-sided, uninformed version of Ziva's email to Rutkauskas.

Ziva had no relationship with David Rutkauskas before May 8 (other than him sending a Facebook private message of some sort regarding the Tulsa World's sale). Ziva was hopeful that he would become a source and provide information for good stories, but he was unable to develop this into a story on Kelly or anyone else. Ziva only provided information to Rutkauskas that was publicly available or a matter of public record. She did not fabricate anything; she did not twist anything; nor did she make any false or materially false defamatory statements nor was she doing Rutkauskas a favor. She was trying to corroborate his news tip and develop a source.

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In contrast, Sean Kelly has implied or suggested that Ziva Branstetter and her husband were contemplating bankruptcy, an assertion that is wholly and completely false. He has made a number of other statements which either place her in a false light, or are false and defamatory.

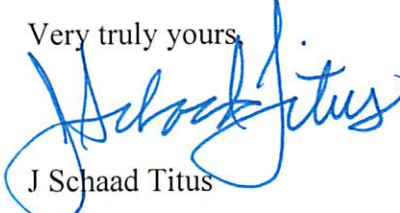
I submit that Kelly's actions have placed Ziva Branstetter and the Tulsa World in a false light, constitute an invasion of her privacy by the publication of truthful but embarrassing private facts, and constitute an intrusion into her privacy when such information is not newsworthy, as is the case here. Kelly has purposefully and intentionally in a willful and malicious fashion distributed private facts as well as false statements with the intent to cause her harm and embarrass her or place her in a false light.

Ziva Branstetter and the Tulsa World demand that Kelly and you cease and desist from any further communication or dissemination of this information about Ziva Branstetter. This puts you on notice of what occurred so that Kelly can no longer disseminate this information without substantial doubt as to the truth of his assertions.

As such, from here on, Kelly and you are **on notice** of why Ziva sent the information to Rutkauskas. Any further publication will be treated as a purposeful publication of false information, published to intentionally place her in a false light or invade her privacy. If Kelly or you wish to communicate with Ziva Branstetter or Tulsa World, those communications must be directed to me. You are his attorney and you have an ethical obligation to request and demand that all of Kelly's further communications with or to Ziva Branstetter or the Tulsa World are to me from you, and you must not allow or permit Kelly to communicate false information that is a circumvention of the restrictions on attorney communications with another party's client. If Kelly continues, we will consider this to be reckless, willful and malicious conduct and will deal with that in an appropriate fashion.

I look forward to discussing this with you if you chose to do so. But it appears Kelly would rather throw bombs from his computer than learn about the facts of what occurred. Accordingly, the Tulsa World and I look forward to Sean Kelly realizing that his dispute is with Beautiful Brands and not with Ziva Branstetter, the Tulsa World or anyone else.

Very truly yours,



J Schaad Titus

JST/mm