

By EMAIL: paul@thedefamationattorney.com

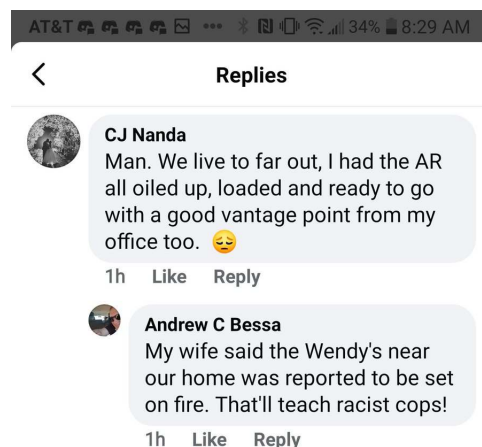
June 18, 2020

Paul M. Sternberg, Esquire
“The Defamation Lawyer”
Suite 100
6223 Richmond Avenue
Houston, Texas 77057

Dear Mr. Sternberg:

I write in response to your threats directed to Jana Hall, claiming that she infringed your copyright by posting online a redacted copy of a demand letter that you sent her, threatening to sue her on behalf of Christopher J. Nanda for defamation because she publicly called out a threatening social media posting by Nanda that led to Nanda’s discharge. Hall will not be removing the post of your redacted letter because she has made fair use of the letter to call attention to the bullying tactics that you employed on Nanda’s behalf, and to ask for advice about how to respond to your threats of litigation.

To recap: Hall noticed some comments posted on the Facebook page of one of her former Facebook friends, which appeared to brag about plans to shoot participants in the Black Lives Matter protests occurring in Wisconsin. One of these comments was posted by your client, Christopher J. Nanda, who said that he had an automatic rifle that was oiled and ready to be fired, and that the vantage point provided by his office made it a good place from which to fire the weapon, implicitly at protesters.

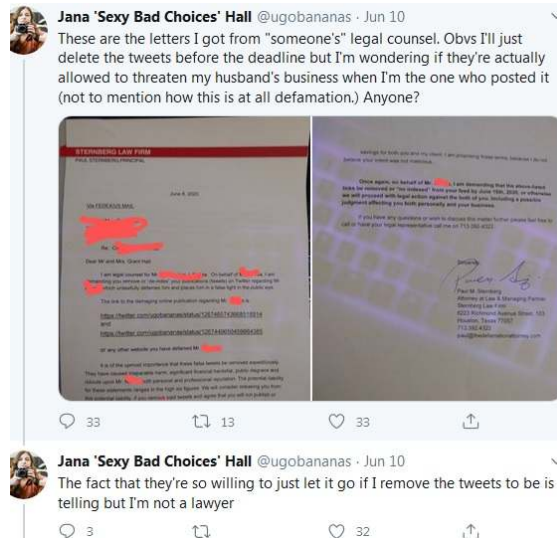


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Hall was concerned by this comment, and researched Nanda's background sufficiently to ascertain that he was employed by ServiceNow, a California-based software company. On the morning of June 1, 2020, she then posted two public statements on her Twitter feed, @ugobananas, calling the attention of ServiceNow to this threatening post by one of its employees, and asking whether the company welcomed an association with a staff member who would make such a public statement about what he had in mind to do from a ServiceNow office. Apparently, ServiceNow agreed with Hall's assessment of Nanda's Facebook comment, and terminated Nanda's employment.

You then wrote a letter to Hall and her husband, Grant Hall, on June 8, 2020, contending that her tweets "unlawfully defame[Nanda] and place[] him in a false light in the public eye." You did not explain in what respect her tweets were false, but you warned her that she and her husband could be held liable for amounts "in the high six figures," saying that you were planning to sue both Hall and her husband (even though he had not made the Twitter comments), seeking a judgment that could damage Grant Hall's business, and that you would take these actions unless Hall removed the tweets; "de-indexed" them; and agreed that she would never again refer to Nanda on any web site. You said that you were "proposing these terms, because I do not believe your intention was not malicious."

Ms. Hall, uncertain about how she should best respond to your threats, posted the letter on her Twitter feed, redacting the letter to conceal Nanda's name. <https://twitter.com/ugobananas/status/1270737000732274689>



A discussion then ensued about the tactics you displayed in the letter, and about how Hall should best respond to your demands.

In the meantime, you called Hall, inviting her to call you back; when she did call back, you threatened her with a claim for copyright infringement. Hall discussed this contention as well on her Twitter feed, and informative public discussion followed

In the end, Hall concluded that she could not afford to hire a lawyer to contest your threatened libel suit; instead, she has responded to your threats on behalf of Nanda by removing her tweets about him (without promising never to talk about Nanda again). However, she is not going to take down her tweets about your letter, and she is not going to take down the letter, because, even assuming that the letter is a sufficiently original work of authorship to qualify for copyright protection (a dubious assertion, in my judgment), the posting of the letter is plainly fair use.

Under 17 U.S.C. § 107, fair use decisions rest on an analysis of four factors:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The first and fourth factors are generally considered the most important. Because posting was entirely non-commercial, you will have the burden of proof in the fair use analysis, and the letter was transformative, in that it was posted for the purpose of commenting on the tactics displayed in the letter as well as seeking advice and commentary from other Twitter users. The statute makes specific reference to publication “for purposes such as criticism [and] comment” as a paradigmatic aspect of fair use. As for factor two, even if your letter meets the minimum standard of originality, the copyright laws were scarcely designed to give lawyers any monopoly on the means of expressing commonplace claims of defamatory character or commonplace demands for removal. Moving on the factor three, the letter was posted as just one part of a series of tweets about this controversy, and although most of the letter was posted (subject only to some redactions), even the posting of an entire copyrighted work does not disqualify the publication for fair use protection. And most important, the posting of the letter will not prevent you from exploiting any market potential that the letter might have. The fair use factors all support a finding of fair use.

The direction of the fair use factors is so clear that, should you sue Hall for copyright infringement, I believe a court would likely award attorney fees against you pursuant to 17 U.S.C. § 505. I might add that other lawyers who have tried to use copyright claims to protect themselves or their clients from the adverse publicity that often results from the sending of bullying demand letters have found the tactic to be counterproductive, in that it just makes them, and their clients, look foolish.

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I suggest, therefore, that you retract your claim of copyright infringement.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul Alan Levy", is written over a light gray, textured rectangular background.

Paul Alan Levy