



LENCEK, POURFALLAH
& ASSOCIATES

CEASE AND DESIST

September 12, 2023

VIA EMAIL AND USPS MAIL

Orange County Power Authority
PO Box 54283
Irvine, CA 92619

CC:

General Counsel, Nicholas Norvell (nicholaus.norvell@bbklaw.com)

VIA EMAIL AND USPS MAIL

The City of Irvine
One Civic Center Plaza
Irvine, CA 92613

CC:

Honorable Councilmember Kathleen Treseder (ktreseder@cityofirvine.org)
City Attorney Jeffrey Melching (JMelching@rutan.com)

Dear Ms. Kathleen Treseder and City of Irvine:

Please be advised that this law firm represents Brian Probolsky. If you are represented by legal counsel, please direct this letter to your attorney for their review and consideration, and have your attorney notify us of such representation.

You are hereby notified and directed to:

CEASE AND DESIST ANY POTENTIAL AND/OR ALL FURTHER UNLAWFUL BREACH OF CONTRACT, DEFAMATION, SLANDER AND/OR LIBEL OF BRIAN PROBOLSKY'S CHARACTER AND REPUTATION.

As you are aware, The Orange County Power Authority ("OCPA") and Mr. Brian Probolsky ("Executive") are parties to that certain Severance Agreement and General Release ("Agreement"), effective May 31, 2023 (the "Separation Date"), containing a Mutual Non-Disparagement of the parties pursuant to Section 12 of the Agreement. The City of Irvine is a party to the Joint Powers Authority creating the OCPA and the entity responsible for appointing Kathleen Treseder to the Board of Directors. The provision imposes a duty upon current Board Members to adhere to the obligations contained therein, specifically, that:



“...[i]n the event [a] ... third-party seeks information about Executive’s employment with OCPA and/or Executive’s separation from it, **OCPA will only confirm dates of employment and job title**, unless Executive has provided a signed, written release for the release of additional information. **All reference inquiries should be directed to Human Resources.**” [emphasis added]

The full recitals to this provision are provided in detail, attached hereto as **Exhibit A**.

On August 31, 2023, published on YouTube and at <https://ocworld.org/>, an interview between Rick Reiff, host of OC World, and OCPA Board Chair Fred Jung and OCPA Vice Chair Kathleen Treseder was conducted. Jung and Treseder spoke as members of the Orange County Power Authority, and their comments are directly related to that service.

Kathleen Treseder was asked several questions seeking information that pertained to Executive’s employment with OCPA and/or Executive’s separation from it, and Ms. Kathleen Treseder provided responses beyond the scope of her mandated obligations pursuant to Section 12 of Agreement. Such responses are a material breach of Section 12 of Agreement (as expressly contemplated therein), and the thrust of Ms. Treseder’s comments are actionable.

For your convenience, a transcript of the actionable conduct is provided below:

STATEMENT 1:

REIFF QUESTION: “Why did you vote to oust him?”

TRESEDER RESPONSE: “I voted to oust him because he didn’t have the experience; he didn’t have the education required. His interactions with the public, I thought, a lot of times were antagonistic. I was concerned about him.”

STATEMENT 2:

REIFF QUESTION: “Are you aware of any investigations or anything into, not audits, but like a criminal investigation?”

TRESEDER RESPONSE: “At one point, I was aware of investigations into former actors in the agency who are no longer there anymore. I don’t know the status ...”

REIFF: “... the status, but there were inquiries?”

TRESEDER RESPONSE: [*nods head up and down with a “yes” response*]

In accordance with California law, it is also illegal to make any false statements, whether written or oral, of an individual’s character and/or reputation, which:



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- (1) Are designed, because of the facts and circumstances known to the listener/reader of the statements, to injure the individual's occupation, or expose him to hatred, contempt, ridicule, or shame, or discourages others from associating or dealing with him; and
- (2) Causes harm to an individual's business, profession, or occupation [including expenses spent as a result of prosecuting the defamatory statements made]. (Civil Code § 44 – 45)

This law is applicable to not only the primary author or speaker, but ***will hold any primary publishers, or one who repeats a defamation liable as well***. Any insinuations or innuendos made about BRIAN PROBOLSKY with malevolent intent (regardless of whether they are couched in terms of an opinion or not) are actionable under this law as well.

THEREFORE, you are hereby requested to refrain from any continuing breach of any material term of Agreement, and you are requested to refrain from making any illegal defamatory, slanderous and/or libelous statements regarding BRIAN PROBOLSKY.

If you do not comply with this cease-and-desist demand, BRIAN PROBOLSKY is entitled to seek monetary damages and equitable relief under law. In the event you fail to meet this demand, please be advised that BRIAN PROBOLSKY has asked us to communicate to you that he will pursue all available legal remedies, including seeking monetary damages, injunctive relief, and an order that you pay court costs and attorney's fees. Your liability and exposure under such legal action could be considerable.

Regards,

Megan Lencek, Esq.
Attorney for Brian Probolsky



EXHIBIT A

*12. **Mutual Non-Disparagement:** Both Executive and OCPA agree that they shall not make, directly or indirectly, to any person or entity, including but not limited to OCPA's present, future, and/or former employees and/or clients, and/or the press, derogatory or disparaging oral, written, and/or electronic statements about the other relating to OCPA's products, services, and business policies, or Executive's employment with and/or separation from employment with OCPA, or do anything which damages Executive or OCPA or any of its and/or their products and services, reputation, good will, financial status, or business or client relationships, which may reasonably be calculated to harm OCPA's reputation or are knowingly false or made with reckless disregard for the truth. Executive further agrees not to post any such statements on the internet or any blog or social networking site, including but not limited to Facebook, Glassdoor, Linked-In, or any other internet site or platform. OCPA, for its part, will advise current Board members of this mutual non-disparagement clause and OCPA's obligations required by it and, further, will instruct current Board members with respect to their obligations, if any, that they may have pursuant to this Section 12, solely in their capacity as directors of OCPA. **In the event an employer or other third-party seeks information about Executive's employment with OCPA and/or Executive's separation from it, OCPA will only confirm dates of employment and job title, unless Executive has provided a signed, written release for the release of additional information. All reference inquiries should be directed to Human Resources.** As stated in Section 14, nothing in the Agreement, including this Section 12, precludes Executive from exercising his rights, if any, under Section 7 of the NLRA or under similar state law to engage in protected, concerted activity with other employees, including discussing his compensation or terms and conditions of employment. Executive agrees, understands, and expressly acknowledges that **this provision is a material provision of this Agreement and that this provision is an inducement to OCPA in agreeing to the terms of this Agreement.** [emphasis added]*