THE
SPACE COAST
ROCKET
CURRENT LOCAL POLITICAL NEWS

May 19, 2023

Beltran Litigation, P.A.
4920 West Cypress St.
Suite 104 PMB 5089
Tampa, FL 33607

Re: Sunrise Boat Marina, et al. v. RB3 Ventures, LLC, et al.

Dear Mr. Beltran:

It is good to hear from you, albeit under such unfortunate circumstances. The last time we communicated, our conversations focused on the legal and ethical issues plaguing, and continuing to plague, State Representative Randy Fine. I look forward to continuing our conversations surrounding Representative Fine once we resolve this current issue.

While I am surprised and disappointed to see your name attached to the May 11, 2023 cease and desist letter on behalf of Sunrise Boat Marina (hereinafter "Grills"), I am nevertheless eager to respond to it. I anticipate my response will provide you with information your Client has either failed to disclose to you, or facts your Client has conveniently misrepresented to you.

Based on the harsh tone and aggressive stance of your formal correspondence, it appears you have not yet read all communications, posts, texts, and articles from The Space Coast Rocket (hereinafter "The Rocket"), or all communications, posts, texts, etc., directly from your Client and/or his staff at Grills. It also appears you have not yet listened to the flurry of interviews your Client has engaged in, both locally and nationally, related to my coverage of this newsworthy story.

To facilitate your review of my response, I will address the erroneous claims within your letter while also illustrating numerous, substantiated instances where your Client has failed to disclose all facts pertinent thereto. I will also demonstrate why your Client lacks standing, as a matter of law, to advance a cause of action against me personally and The Rocket based on your Client's frivolous and malicious allegations. Notwithstanding your Client's lack of standing, should your Client decide to move forward, I hereby waive all statutorily required pre-notification, look forward to the protracted discovery process, and

am confident we will prevail upon defending this malevolent action "to verdict in open Court."

For your convenience, I will respond in **bold** to your Client's cease and desist letter while citing to specific language contained within your letter in *italics*.

*On April 15, 2023, you published an article on your blog, the Space Coast Rocket, quoting Grills Seafood as stating that "we don't serve f*ggot beer."*

The headline falsely attributes a slur to an unnamed and undescribed manager at Grills.

The Rocket is a neutral, unbiased news media publication – not a "blog." Your colleagues in the Florida Senate have defined a blog as: "[A] website or webpage that hosts any blogger and is frequently updated with opinion, commentary, or business content. The term does not include the website of a newspaper or other similar publication."

The Rocket is protected by the neutral reportage privilege. This privilege is designed to protect the interests of the press in reporting on matters of public interest, which can often only be done by reporting accusations made. The privilege will generally apply where:

1. **A responsible, prominent organization or individual;**
2. **Makes a serious charge on a matter of public interest;**
3. **Against another public figure or organization; and**
4. **The charge is accurately and disinterestedly reported.**

The Rocket has met all four (4) of these elements.

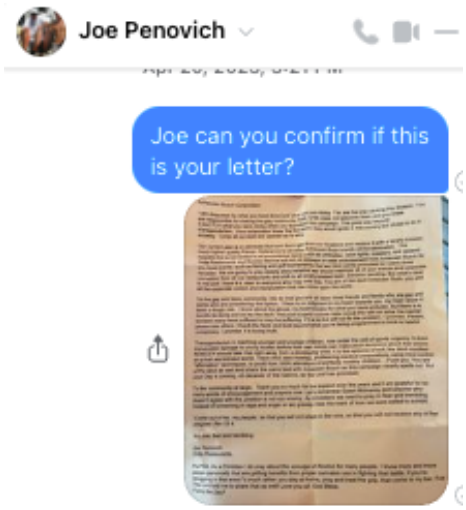
Your client, Joe Penovich, is a public figure. He willfully and voluntarily inserted himself into the public eye during Covid-19, when he took a controversial stance against the government relative to mandates. Your Client appeared personally on numerous media outlets and made public written posts on his position and justification.

Your Client has likewise done so in this case, making public and written statements on a controversial national issue, and conducting numerous interviews with local and national media, to include the most popular news network in the nation, Fox News. Also, as a business owner of three (3) establishments in the service industry for according to him, "over 25 years," he is well known, as is his business. Because

your Client is a public figure, and not a private figure, the threshold for defamation increases from simple negligence to malice.

Yet, your Client will be unable to meet even the lower threshold of simple negligence. As a public figure, he has to prove The Rocket demonstrated actual malice, i.e., knowing that the statements were false or recklessly disregarding their falsity in order to claim defamation. It should be noted that the actual malice standard focuses on the defendant's actual state of mind at the time of publication.

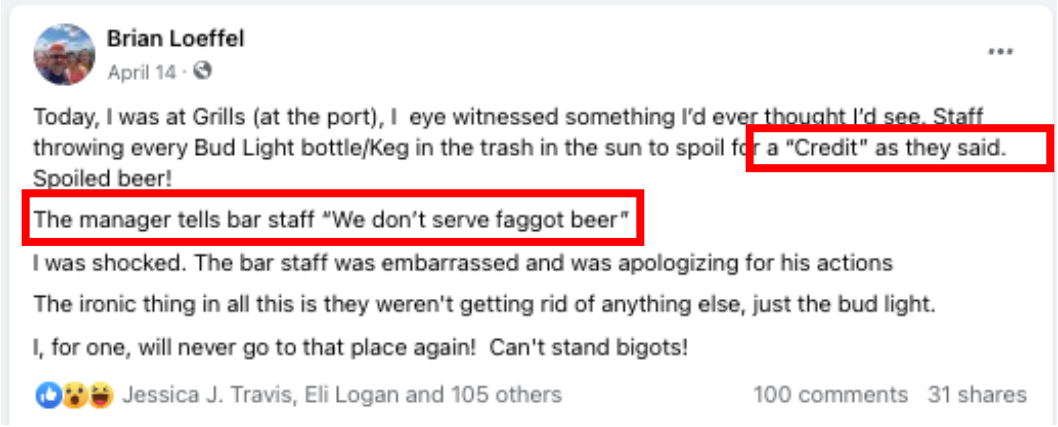
Given the exhaustive attempts both before and after publication to attempt to communicate with your Client and his staff, and then publishing both sides of the story, your Client would not be able to prove actual malice. Here are two examples of our attempts to communicate with your client that went ignored.



In addition, the subject article's headline does not attribute the "[w]e don't serve f*ggot beer" quote to any one particular Grills Seafood staff member and is certainly not a slur, as it is a direct quote from Brian Loeffel, a patron who posted on social media about his negative experience at Grills. However, if you are hereby acknowledging this is, indeed, a quote from "Grills Seafood," then to ensure its accuracy, I will promptly amend the article to reflect this admission.

Grills indeed ceased serving Bud Light. However, no manager has described Bud Light as "faggot beer." Grills sought a credit from the distributor on the basis that it no longer wished to serve Bud Light, not on the basis that the beer was spoiled. No beer was ever spoiled at Grills. Further, no Grills staff were ever directed to place beer in the Sun to spoil.

Thank you for substantiating, in part, the below April 14, 2023 Facebook post by Mr. Loeffel relative to Grills seeking a credit from the distributor for the boycotted Bud Light. While your Client adamantly asserts Mr. Loeffel quickly "deleted" his post, the post remains publicly published. While your Client may be trying to manifest deletion of the newsworthy post that inspired the Rocket to report on it, that deletion has not yet come to fruition.



The public has messaged The Rocket en masse, asking whether Grills receive the requested Bud Light credit, and if so, whether they had to return the unused Bud Light or were they able to receive the credit without returning the beer to the distributor?

Neither The Rocket's article, nor Mr. Loeffel's Facebook post, state a manager described Bud Light as "f*ggot beer." The Rocket literally cited a direct quote by Mr. Loeffel – "the manager tells bar staff 'We don't serve faggot beer'," which is protected by media immunity statutes. Mr. Loeffel does not identify which exact beer the manager was describing; the only person to identify that beer is Your Client.

The Rocket's article does not state any beer was spoiled because Mr. Loeffel's post does not state the beer was spoiled. You state, "[n]o beer was ever spoiled at Grills." As someone familiar with the service industry for decades, I am confident that should your Client wish to pursue this litigation, discovery will reveal that at some point in time, some beer – and not just Bud Light, as you did not specify – has indeed spoiled at Grills. Mr. Loeffel's post does not claim, as you claim in your letter, that Grills' staff was "directed to place beer in the Sun to spoil." Mr. Loeffel simply posted what <u>he witnessed</u> – "staff throwing every Bud Light bottle/Keg in the trash in the sun…".

Mr. Penovich requested a time, location, and description of the manager so that he could pull video recordings to ascertain the veracity of this allegation. Joe Penovich also

posted online to ascertain the identity of any manager who was involved in the allegations. You had the opportunity to ascertain this but nonetheless failed to include this in the story and instead stated that you have "not gotten a response yet" from Penovich. Unfortunately, your article resulted in reporting by several other publications, all of which discussed the erroneous allegations in your original article. However, at least these publications took the time to report on both sides of the story.

I am uncertain who Mr. Penovich made the above-referenced request to, however, I am absolutely certain it was not me or anyone else from The Rocket. Interestingly, why would your Client create an online post to (1) "ascertain" his own staff's schedules; and (2) to review video recordings that are in his sole possessions, custody, and control?

As a reporter, I "ascertained" the same information your Client was seeking simply by requesting the information on social media, by calling two (2) of the three (3) Grills locations, and speaking to two (2) staff members and a manager. I also texted your Client directly, sent him a message on his personal Facebook page, and left a message with his staff at both locations, including my personal cell phone number. While your Client posted a "comment" on the article, he did not respond to any of my attempts to communicate.

The Rocket's subject article <u>did</u> result in reporting by several other publications because <u>it was, and remains, a newsworthy event</u>. This is bolstered by the numerous local and national news outlets that reviewed my article and decided to report on it themselves. None of those reports by the numerous local and national news outlets ever asserted any "erroneous allegations" in The Rocket's original article – because there are no erroneous allegations in that article.

The article directly quotes statements made by two separate patrons of Grills at two separate locations. Which "publications took the time to report on both sides of the story?" You did not cite to any publications, however, The Rocket's article clearly references "both sides of the story," and the substantial measures taken by The Rocket to get "both sides" of that "story."

The Rocket's article, unlike the others, was published several days prior to when your Client finally made a public statement. If that is the "side of the story" in which you reference, obviously no publication can possibly cover a statement that did not yet exist.

The result was a firestorm of hostility towards Grills and its employees and management. This hostility arise not from the decision not to serve Bud Light, which is common, but from the allegation that the manager referred to "faggot beer."

Upon review of, literally, thousands and thousands of comments on your Client's Grills Seafood Facebook page, it is reasonable to conclude that it was clearly Mr. Loeffel's initial allegations that caused "a firestorm."

With that said, it appears the lengthy diatribe your Client posted on Facebook on April 17, 2023, created even more of "a firestorm." In fact, a majority of the comments on Facebook are in direct response to your Client's post, asserting your Client's written words are far worse than the initial post by Mr. Loeffel. Accordingly, if there was "a firestorm," The Rocket's article certainly did not summon it. Your Client did, however, pour gasoline on the "firestorm" with his multiple public Facebook posts and endless televised and radio broadcasted interviews, speaking in such a manner that made it plausible that Grills would disparage Bud Light in that fashion.

In addition, your Client argued on Fox News that the reason why Grills has been experiencing difficulty is due to Anhueiser Busch "holding a social knife over [our] head" because Grills stood "on [our] biblical faith," and *that* virtue signaling "put [us] at odds with other people who didn't take that stance. And that brought [us] into hell on earth." Not once during the interview does your Client state The Rocket was the cause of any of his "turmoil," but repeatedly stated his "hell on earth" was due to his biblical faith and very public position against Bud Light.

https://www.foxbusiness.com/video/6326196024112

Below are just a few of the hundreds of comments made in response to your Client's April 17, Facebook post.

Two days later, your publication continued its unjustified attack on Grills. https:// thespacecoastrocket.com/we-believe-transgenderism-is-a-social- experimentdamaging-our-children-grills-owner-issues-statement-over-bud-light- controversy. Your publication called for Penovich to publish his footage of the alleged incident. However, Penovich reached Brian Loeffel to ascertain the time and place of the incident. Loeffel stated the incident occurred "Friday at the port Canaveral location. You can look at the tape around noon is timeframe I don't recall the exact time. He was wearing a green under armor polo shirt. . ." Penovich then reviewed his footage but was unable to identify Loeffel on the tape even after viewing the photos on his Facebook page. Further Penovich inquired with the manager and other employees at the bar and they all deny that any incident occurred involving a manager or other employee referring to "faggot beer."

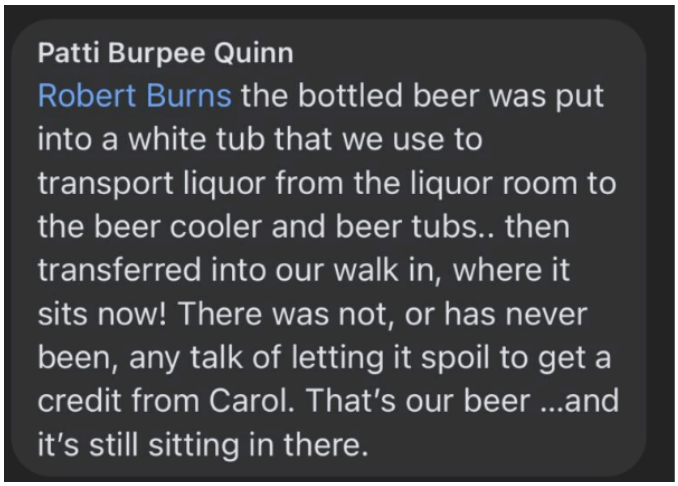
I am pleased your Client was successful in reaching Mr. Loeffel. I am certain your Client demanded you deliver a similar, threatening cease and desist letter to Mr. Loeffel, as Mr. Loeffel is the person who <u>actually</u> posted the allegations The Rocket referenced in its article. I am also certain your Client further demanded Mr. Loeffel remove his initial post from Facebook and issue a public apology, just as you have demanded of The Rocket. As noted above, and easily proven, contrary to your Client's numerous assertions, Mr. Leoffel's initial post remains accessible to the general public on Facebook with no retractions, revisions, or apologies.

You also state your Client was unable to identify Mr. Loeffel on Grills' video footage. It is unclear why being unable to identify Mr. Loeffel in video footage somehow taints or discredits Mr. Loeffel or The Rocket. Curiously, your Client's statements relative to his review of the video footage fails to address whether the "incident" was captured. To be clear, the "incident" refers to Grills staff placing Bud Light bottles/kegs in the sun and/or putting Bud Light bottles/kegs into white tubs.

Your second article unjustifiably implies that Penovich is hiding information about the incident. In fact, Penovich did everything he could to ascertain details about the alleged incident so that he could determine what happened. As it is now, there is no credible evidence that anybody at Grills referred to "faggot beer" or left any beer out to spoil.

The Rocket's second article does not imply your Client "is hiding information about the incident." The second article does, however, report facts as they relate to your Client's post. Namely, (1) your Client stated he was reviewing the video; (2) The Rocket requested the video be published for public viewing; and (3) your Client chose not to publish the video for public viewing. The Rocket is not, and cannot, be responsible for how each reader will interpret the above-referenced neutral facts.

Delving further, it may have been reasonable for Mr. Loeffel to interpret witnessing Grills staff placing bottles of beer into a white tub as "throwing" the beer away. In response to The Rocket's initial article, your Client's staff member of 25 years, Patti Burpee Quinn, described in detail the actions taken by Grills staff on that day. Ms. Quinn's own admission of the actions taken sounds similar to the incident witnessed by the untrained eyes of Mr. Loeffel.



Please do the right thing and correct or retract these articles to reflect the truth.

The Rocket did "do the right thing." The Rocket reported on newsworthy events, i.e., viral Facebook posts by two (2) Grills patrons who described their experiences. Both of The Rocket's articles (1) contain the facts as known on the date of publishing; and (2) remain in a neutral stance. Accordingly, no corrections will be made to either article.

If it is not clear by now, we are ready to litigate.

It is <u>not</u> clear you are ready to litigate. What *is* abundantly clear, however, is that your Client's claims of "defamation and other torts" by me personally and The Rocket fail on multiple principles. To name just a few, your Client (1) fails to establish standing; (2) fails to meet the legal threshold of any element of defamation; (3) fails to state a cause of action for which remedy may be sought; and (4) fails to provide evidence of damages. As an example of the last failure, your Client is on record on iHeart Radio's Bill Mick Show, boasting that as a result of this incident, "business is better than ever." Your Client's Answers to Interrogatories, Responses to our Request for Production, and deposition testimony will bolster that failure.

This lawsuit will be filed on a public docket, tried to verdict in open Court, and result in a substantial judgment.

Yes, lawsuits are indeed public record and contained within a "public docket" as standard protocol. If your Client decides to pursue a harassing and malicious lawsuit against me personally and The Rocket, the "public docket" will also allow the public invaluable access to your Client's discovery responses and on the Court's favorable ruling on me and The Rocket's First Amendment Rights.

Relative to your guarantee and threat of a verdict resulting in a "substantial judgment," against me personally and The Rocket, as you know, I am a 100% service-connected, combat wounded disabled Veteran, medically retired from the United States Army. Using your term of art, I am "judgment proof."

Fighting for the inalienable rights of the citizens of this beloved Republic under the United States Constitution has been my life's goal, a goal I have relentlessly pursued for decades and will continue to do so.

This judgment will follow you for the remainder of your working years. ***This outcome is not only likely, it is nearly certain****. Footnote:* ***Your only escape from paying a judgment would be bankruptcy, but because defamation is an intentional tort, your liability cannot be discharged in bankruptcy****. See 11 U.S.C. 523(a)(6) (providing exception to discharge for intentional injury to another)* (Emphasis added.)

Any judgment will follow me "the remainder of" my "working years." This unlikely judgment would simply continue to prove my commitment to the First Amendment and my resolve to the to the truth.

Thus, please know that should your Client unwisely proceed with his threats of litigation and a "certain…win," I will immediately file the Fla. Stat. §57.105 safe harbor letter, providing you and your Client 20 days to dismiss this legally unsupported and frivolous lawsuit or face a Fla. Stat. §57.105 Motion for Sanctions against you and your Client.

I respectfully suggest you and your Client be extremely careful with the threatening language you use. Mocking an opposing party's inability to discharge a debt when you, yourself, draft and pass laws as an elected legislator is an exceptionally slippery slope. Please refer below to Florida Supreme Court Rule of Professional Conduct 4-8.4(e).

You will obviously incur fees in defending this lawsuit which ***we are certain to win****.* (Emphasis added.)

I am shocked that you, Mr. Beltran, as not only an attorney but, again, as an elected official, would threaten an opposing party – in writing – of your Client's "certain… win." Upon discussing your cease-and-desist letter, and specifically this and similar

language contained therein, with a Florida Bar Ethics Attorney, the Ethics Attorney directed me to the following Florida Supreme Court's Rules of Professional Conduct, emphasizing the last Rule (4-7.13(b)(1)):

RULE 4-4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer may not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

RULE 4-8.4 MISCONDUCT

A lawyer shall not:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or inherently misleading advertising.

(b) Examples of Deceptive and Inherently Misleading Advertisements. Deceptive or inherently misleading advertisements include, but are not limited to, advertisements that contain:

(1) statements or information that a prospective client can reasonably interpret as a prediction or guaranty of success or specific results;

Accordingly, I'd suggest your Client obtain in writing your guarantee to him/Grills, just as you guaranteed it to me in writing as your opposing Party.

This letter constitutes notice pursuant to Florida Chapter 770. To mitigate your liability, please issue a public apology to Grills and Joe Penovich, retract all your statements, and delete your posts. To be clear, we are requesting immediate removal of both false and inflammatory articles referenced above, and a public apology to the 480 employees of Grills who were deeply impacted, threatened and bullied on social media and in person because of a lie that was posted and promoted by you and your blog. If you do not comply by the end of next week, a lawsuit will follow in due course but without further notice.

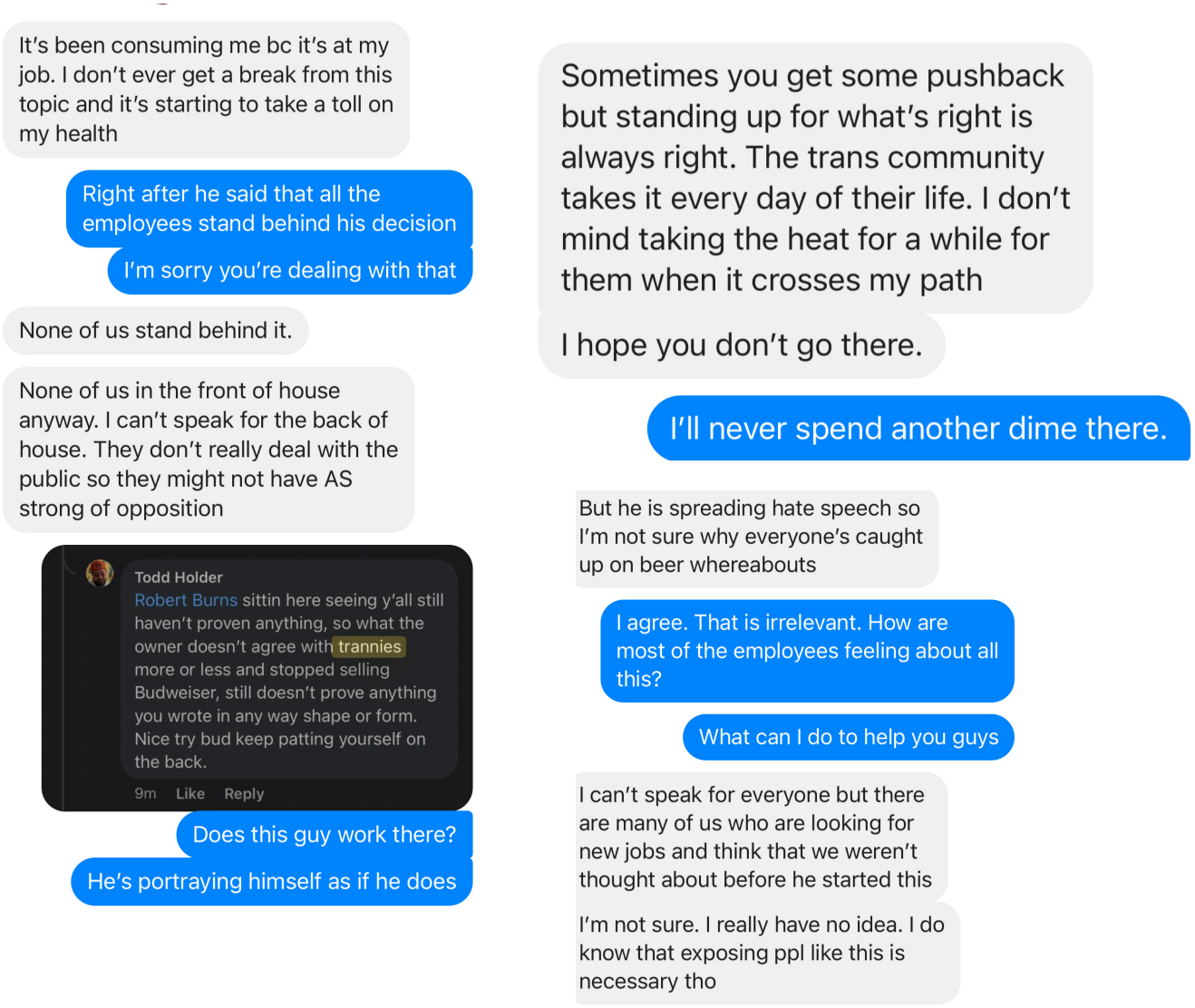
There will be no apology issued from me or The Rocket, as neither myself nor The Rocket apologize for informing the public of newsworthy events. Likewise, we will not delete any posts or retract any statements. The articles will not be removed and speak for themselves.

I have apologized, however, to a plethora of your Client's employees for having to deal with the fallout from your Client's statements and actions. These employees have reached out to me – and continue to reach out to me – providing me information of the inner workings of your Client's restaurants, employee conditions, and the truth surrounding your Client's actions. These employees have reached out seeking protection, refuge, and assistance. Every one of these distraught employees have complained about the harassment they have endured – not because of Mr. Loeffel's post or The Rocket's reporting on Mr. Loeffel and another patron's posts – but because of the statements made and published by your Client.

Your Client must also overcome substantial integrity issues stemming from his repeated false statements about the original Facebook post by Mr. Loeffel and emailing his staff a letter to Anheuser-Busch replete with impugning language and vulgarities, only to then publish a toned-down, absent-of-any-vulgarities-this-time letter to Anheuser-Busch, claiming the first version was never sent to his staff. It

certainly is contrary to the persona he is trying to portray about himself to the media and public.

Below is but a sample of the barrage of private messages received from current and former staff of your Client:

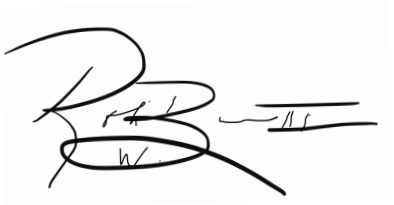


Accordingly, I waive the five (5) day notice period pursuant to Fla. Stat. §770.01. Please allow this letter to also act as a formal reservation request to your Client and demand for copies of all potentially relevant information and documents, including all communications, close circuit television recordings, videos and/or telephone calls, texts, incident reports, publications, flash drives, financial statements, news articles, etc., whether in electronic, paper, copy, or other format, as they relate to the above-referenced matter.

As a point of clarification, relative to providing you and your Client copies of my communications, do those communications include the numerous texts between you and I on many other matters prior to you delivering the cease-and-desist letter to me and The Rocket? To ensure full candor, and potential conflict of interest, I have preserved those as well and am ready to provide those to you at your request.

Thank you.

Cordially,



Robert W. Burns III
Founder/Editor-in-Chief
The Space Coast Rocket