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April 20, 2022

Via Federal Express

The Hon. Mitt Romney
United States Senate
354 Russell Senate Office Building
Washington, D.C. 20510

Re: Cease and Desist Concerning Your Defamation Against Former Representative Tulsi Gabbard

Dear Senator Romney:

Our firm represents former Representative and Lieutenant Colonel Tulsi Gabbard (“Representative Gabbard”) regarding false and defamatory statements you made about Representative Gabbard on Twitter. This letter concerns an urgent matter requiring your prompt legal attention. Please direct all future correspondence regarding this matter to me (Harmeet@DhillonLaw.com), Karin Sweigart (KSweigart@DhillonLaw.com), and Jesse Franklin-Murdock (JFranklin-Murdock@DhillonLaw.com). To avoid litigation, we demand your response to this letter on or before April 27, 2022. If you are represented by counsel in this matter, please promptly alert us, and we will correspond directly with your attorneys.

FACTUAL BACKGROUND

Representative Gabbard has spent her entire adult life volunteering in service for the United States of America. After this country was attacked by terrorists on September 11, 2001, Representative Gabbard enlisted in the Army National Guard to defend the United States. In 2002, she was elected to the Hawaii state House of Representatives, the youngest person ever elected in the state at the age of twenty-one. She then voluntarily left this post in 2004 to deploy to Iraq with the 29th Brigade Combat Team. Representative Gabbard was not on the mandatory deployment roster, but she nonetheless volunteered to serve in a war zone. Through this experience, Representative Gabbard gained an appreciation of the true costs of war, costs sometimes lost on those who have not served in uniform.

After serving in elected office at the state and local levels, Representative Gabbard was elected to the United States Congress at the age of thirty-one. Representative Gabbard served on the Armed Services, Homeland Security, and Foreign Affairs Committees. Representative Gabbard continues to serve the United States in uniform as a lieutenant colonel in the 351st Civil

Affairs Command, a unit of the United States Army Reserve. Thus, she has skin in the game when it comes to matters of foreign policy and war.

On March 13, 2022, you tweeted the following: “Tulsi Gabbard is parroting false Russian propaganda. Her treasonous lies may well cost lives.”¹ Your tweet had no surrounding context and was not part of a broader conversation. Your accusation that Representative Gabbard, a combat veteran and current military officer, has engaged in “treasonous” activity is completely false, a fact of which you were well aware when you made your claim. And as explained below, your accusation that Representative Gabbard lied also has no basis in fact.

While your tweet lacked any context, we surmise that your tweet was made in reference to a video Representative Gabbard published on Twitter that same day. In her video, Representative Gabbard called for a ceasefire in the ongoing war between Russia and Ukraine so that any biological laboratories in Ukraine could be secured.² In her video, Representative Gabbard discussed United States government reports regarding American-funded biological laboratories in Ukraine and opined on the danger potentially posed by these laboratories. Representative Gabbard also generally criticized the United States government’s ongoing funding of laboratories engaged in experimental research on pathogens both in the U.S. and foreign countries because such pathogens may escape and result in new pandemics—threatening the health and wellbeing of citizens of the U.S. as well as people around the world.

Whether your tweet’s baseless accusations stemmed from Representative Gabbard’s March 13, 2022, video or have some other unknown genesis, they were malicious and could not be further from the truth. Representative Gabbard is loyal to the United States and its interests. Further, any suggestion that she supports Russia’s actions in Ukraine is unmoored from reality. Representative Gabbard has unequivocally condemned Vladimir Putin for this brutal attack on Ukraine. She has personally visited Ukraine and has great love, empathy, and sympathy for both the nation and its people.

While Representative Gabbard believes that free speech is a cornerstone of American democracy, your accusation of treason is far outside of the bounds of free speech and civility. It is defamation.

YOUR LEGAL LIABILITY

As a result of your actions described above, you are liable to Representative Gabbard for the tort of defamation *per se*.

¹ Mitt Romney (@MittRomney), Twitter (Mar. 13, 2022, 13:59), <https://twitter.com/MittRomney/status/1503113473819041796>.

² Tulsi Gabbard (@TulsiGabbard), Twitter (March. 13, 2022 03:59), <https://twitter.com/TulsiGabbard/status/1502960938147729413>.

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Defamation is an “invasion of the interest in reputation” that involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage. *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 27; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369. Publication occurs when the statement is communicated to at least one person other than the plaintiff who understands its defamatory meaning and that it refers to the plaintiff. *Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1242. Defamation *per se* exists when the false statement charges plaintiff with criminal activity, or which, by natural consequence, causes actual damage. Cal. Civ. C. §46; *see also McGarry v. Univ. of San Diego* (2007) 154 Cal.App.4th 97, 112. Actual malice means that the defamatory statement was made “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Khawar v. Globe Int’l, Inc.* (1998) 19 Cal. 4th 254 (internal citation omitted).

Your allegation that Representative Gabbard spoke “treasonous lies” is clear-cut defamation. “An “accusation of treason as that word is used in the United States Constitution” is defamation *per se*. *Bolduc v. Bailey*, 586 F. Supp. 896, 900 (D. Colo. 1984). Treason is so grave and despicable a crime that it is the only crime to be defined in the United States Constitution. *See* U.S. Const. art. III, § 3, cl. 1 (“Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.”). Your tweet about Representative Gabbard implies that she is supporting the enemy in a foreign conflict, by which we reasonably presume you refer to Russia.³ This is not opinion or hyperbole—it is an accusation that Representative Gabbard, a member of the armed forces, is violating her oath to the United States, a high crime punishable by death. *See* 18 U.S.C. § 2381.

Setting aside your outrageous use of the word “treasonous,” your accusation that Representative Gabbard told lies is also false. Representative Gabbard’s March 13, 2022, video is factually accurate, as you were well aware. In her video, Representative Gabbard made the factual claim that there were American-funded biological laboratories in Ukraine. The existence of biological laboratories in Ukraine is beyond dispute. On March 8, 2022, the U.S. Senate Committee on Foreign Relations held a hearing at which Undersecretary of State for Political Affairs Victoria Nuland testified in response to questioning from Senator Marco Rubio that “Ukraine has biological research facilities.”⁴ You were aware of Undersecretary Nuland’s testimony as you are a member on the Committee on Foreign Relations and were present at this hearing. As far as whether these laboratories receive U.S. funding, the U.S. Embassy in Ukraine has publicly stated that the U.S. Department of Defense’s Biological Threat Reduction Program

³ Romney.Senate.Gov, “Romney: “Ukraine Crisis is One of the Greatest Demonstrations of Good Versus Evil We’ve Seen in Our Lifetimes,” <https://www.romney.senate.gov/romney-ukraine-crisis-is-one-of-the-greatest-demonstrations-of-good-versus-evil-weve-seen-in-our-lifetimes/> (last accessed Apr. 13, 2022); Mitt Romney (@MittRomney), Twitter (Mar. 23, 2022, 08:32), <https://twitter.com/MittRomney/status/1506655211330449410>.

⁴ C-SPAN, “Undersecretary of State for Political Affairs Testifies on Ukraine,” <https://www.c-span.org/video/?518355-1/undersecretary-nuland-russian-forces-seeking-control-chemical-weapons> (41:20).

collaborates with Ukraine, including “upgrad[ing] many laboratories for the Ministry of Health and the State Food Safety and Consumer Protection Service of Ukraine,” and “construct[ing] two laboratories for the latter, one in Kyiv and one in Odesa,” and “support[ing] many collaborative research projects through which Ukrainian and American scientists work together.”⁵ There is thus ample factual support for Representative Gabbard’s claims about American-funded biological laboratories in Ukraine, along with every other factual assertion Representative Gabbard made in her video.

Representative Gabbard’s loyalty to the United States is beyond reproach. You knew your claims of treason were false, or, at a minimum, you made your claims of treason with reckless disregard for the truth.

NOTICE TO PRESERVE EVIDENCE

Representative Gabbard will likely be forced to pursue litigation concerning this matter. Under governing state and federal court rules, you are on notice to maintain hard copies of documents as well as all e-mail and other electronically stored information pertaining to any statements you have made regarding Representative Gabbard (whether naming her directly or only referencing her) from March 1, 2022, onward, including but not limited to any prior communications with or concerning Representative Gabbard and any statements alleging Representative Gabbard engaged in treasonous conduct.

Electronically stored information includes e-mail, voicemail, word processing documents, spreadsheets, databases, calendars, networks, computer systems (including legacy systems), servers, archives, backup and disaster recovery systems, tapes, disks, drives, cartridges, other storage media, laptops, internet records (including but not limited to, any postings made to Facebook, Reddit, and other similar social media sites), web pages, personal computers, and other information storage devices. You are instructed to retain any copies you have on any storage medium, including sources of data such as portable hard drives, memory cards, “thumb drives,” blackberry, personal digital assistants, mobile telephones, iPods® and smartphones.

This list is not exhaustive; these potential locations of relevant data are included by way of example only, and all documents relating in any way to the dispute discussed in this letter must be preserved. Your failure to comply with all statutory document and data preservation obligations that now exist may be severe, including monetary sanctions, terminating sanctions, or other sanctions.

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⁵ U.S. Embassy in Ukraine, “Biological Threat Reduction Program” <https://ua.usembassy.gov/embassy/kyiv/sections-offices/defense-threat-reduction-office/biological-threat-reduction-program/> (last accessed Apr. 13, 2022).

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**CEASE AND DESIST
AND SETTLEMENT DEMAND**

Representative Gabbard hereby demands that you immediately cease and desist from making false statements of the type discussed above, including, but not limited to, that Representative Gabbard engaged in treasonous conduct of any kind, to any third parties, and by any means, including verbally, in writing, on social media or otherwise on the Internet.

We further demand that you retract/takedown all such statements you have made about Representative Gabbard and destroy all copies of those statements.

If you wish to settle this matter before litigation is commenced, we further demand that you agree to enter into a settlement and release agreement, which will memorialize the above terms and which will include a retraction and apology, and other terms to be mutually negotiated.

CONCLUSION

While Representative Gabbard is prepared to take whatever legal action necessary to protect her good name and reputation, her preference would be to resolve this matter out of court. Please confirm with us, in writing via e-mail, by Wednesday, **April 27, 2022**, that you will comply with the above demands, and to indicate whether you will enter into a settlement and release agreement. Our client reserves all rights to proceed with litigation in the event that a settlement cannot be reached. Please feel free to contact me (Harmeet@DhillonLaw.com) or my colleagues, Karin Sweigart (KSweigart@DhillonLaw.com) and Jesse Franklin-Murdock (JFranklin-Murdock@DhillonLaw.com) with any questions about the contents of this letter.

Regards,



Harmeet K. Dhillon