

October 24, 2019

VIA EMAIL

Candace Trunzo
Executive Editor
DailyMail.com
(212) 402-9035
Candace.Trunzo@mailonline.com

RE: **Cease and Desist**

Ms. Trunzo:

We are counsel to U.S. Representative Katie Hill. We write regarding the posting on your website, *DailyMail.com*, without Representative Hill's consent, of spurious nude photos purported to be of her. This letter serves as notice that civil and criminal laws prohibit the publication of images of the character you have posted, and that our client is prepared to take all necessary means to protect her rights and to protect herself from an unprecedented, unwarranted and extraordinarily offensive invasion of personal privacy. **Without any prejudice to Representative Hill's rights or remedies, we demand you remove these photos from publication at once.**

Katie Hill, like many women in marriages that end in separation, endured years of emotional abuse from a now-estranged husband. After she faced an onslaught of vindictive, malicious and invasive attacks in the past week, your publication asked her this morning "[i]f you wish to comment" on *DailyMail.com*'s professed intention to distribute lewd images of her, of unknown and unverified provenance. By spreading these purported claims, and dehumanizing and shaming images across the globe, you have perpetuated the cycle of abuse Representative Hill has endured.

You have also exposed your publication to grave legal consequences for California has some of the strongest criminal laws in the United States against the secretive generation and distribution of private, sexual images. As a California court has said: "It is evident that barring persons from intentionally causing others serious emotional distress through the distribution of photos of their intimate body parts is a compelling need of society."¹ The California Penal Code accordingly makes it a criminal offense to "intentionally distribute[] the image of the intimate body part or

¹ *People v. Iniguez*, 202 Cal.Rptr.3d 237, 243 (Cal. App. Dep't Super. Ct. L.A. 2016).

parts of another identifiable person.”² A court would consider such images as “intentionally distributed” when published.³ California Penal Code § 647(j)(3) also forbids the use of a concealed photographic camera to secretly photograph “another identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.”

California law provides private causes of action against the publication of such photos. For example, there exists “[a] private cause of action against any person who intentionally distributes by any means a photograph” of another “without the other’s consent, if (1) the person knew that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other person...; and (3) the other person suffers ...damages,”⁴ including damages related to “loss of reputation, shame, mortification, and hurt feelings.”⁵ Publishing what is offered as nude photographs of any person without his/her consent plainly satisfies all of these requirements. Violating either of these provisions is punishable by up to six months of incarceration.⁶ Police have already begun investigating other, spurious images posted without Rep. Hill’s consent and have been notified about threats of future publication.

A separate action for intentional infliction of emotional distress can be brought when there is (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering of severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.⁷ The California Supreme Court has said that conduct is “outrageous” for these purposes “when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community.”⁸ Under case law, “severe emotional distress” is “emotional distress of such substantial quality or enduring quality that no reasonable person in civilized

² Cal. Penal Code § 647(j)(4).

³ A person intentionally distributes an image when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image. *Id.* § 647(j)(4)(B).

⁴ Cal. Civ. Code § 1708.85

⁵ *Id.* § 48a(d)(1).

⁶ Cal. Penal Code § 19.

⁷ *Hughes v. Pair*, 209 P.3d 963, 976 (2009) (citing *Potter v. Firestone Tire & Rubber Co.*, 863 P. 2d 795, 819 (Cal. 2013)).

⁸ *Davidson v. City of Westminster*, 649 P.2d 894, 901 (Cal. 1982).

society should be expected to endure it.”⁹ No one—not Representative Hill, not anyone else—should ever be expected to endure a publication like that which she has suffered today.

Further, California law provides a cause of action against libel, which is defined as the “false and unprivileged publication by writing, printing, picture...which exposes any person to hatred, contempt, ridicule... or which has a tendency to injure him in his occupation.”¹⁰ Libel without the need for any explanation, including “inducement, innuendo or other extrinsic fact, is said to be a libel on its face.”¹¹ **The claim that Representative Hill has Nazi imagery on her body in the form of a tattoo is false and defamatory.**

We demand that you immediately cease and desist the publication of these abusive and spurious images. The continued publication by your outlet or others of these images will warrant legal response.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marc E. Elias', with a stylized flourish at the end.

Marc E. Elias
Rachel L. Jacobs

⁹ See *Potter v. Firestone Tire & Rubber Co.*, 863 P.2d 795 (Cal. 1993) (citing *Girard v. Ball*, 178 Cal. Rptr. 406, 414 (Cal. Ct. App.) (1981)).

¹⁰ Cal. Civ. Code § 45.

¹¹ *Id.* § 45(a).