

January 13, 2010

**VIA E-MAIL**

Re: Jesse McCartney Photo

Dear Sir/Madam:

We are litigation counsel for Jesse McCartney. It has come to our attention that a person is attempting to circulate a nude photo which purports to be Mr. McCartney. Mr. McCartney was unaware of the taking of this alleged photo, did not knowingly participate in the taking of this photo, and certainly did not consent to the taking of such a photo. He has no recollection of the taking of this photo and it appears that this photo has been manipulated and doctored by computer software.

Please be advised that any attempt to publish this purported photo of Mr. McCartney would be a grave invasion of Mr. McCartney's privacy rights and would expose you to substantial monetary damages.<sup>1</sup> The law recognizes the tort of invasion of privacy, including the torts of "(1) intrusion into private affairs; (2) public disclosure of private facts; (3) publicity placing a person in a false light; and (4) misappropriation of a person's name or likeness." *Hill v. National Collegiate Athletic Association*, 7 Cal. 4th 1, 23-24 (1994). Courts routinely hold that the disclosure of nude images violates the right of privacy because the "right of sexual privacy. . . is a fundamental liberty arising from both the United States and the California Constitutions." *Boler v. Solano County Superior Court*, 201 Cal. App. 3d 467, 473 (1987); *see also Vinson v. Superior Court*, 43 Cal. 3d 833, 841 (1987).

Accordingly, we hereby demand that you immediately cease and desist any attempt to publish any purported photo of Mr. McCartney. In addition, we demand that you provide

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<sup>1</sup> No privilege for news organization applies in a situation such as this. In *Diaz v. Oakland Tribune, Inc.*, 139 Cal. App. 3d 118 (1983), the California Court of Appeal held that "[w]here the publicity is so offensive as to constitute a morbid and sensational prying into private lives for its own sake, it serves no legitimate public interest and is not deserving of protection." *Id.* at 132.

January 13, 2010

Page 2

written assurance by close of business tomorrow that you will not publish any purported photos of Mr. McCartney. If we do not receive timely assurances from you, Mr. McCartney will not hesitate to exercise all available legal and equitable remedies against you.

This letter is not intended as a complete statement of all facts concerning this matter. Nothing contained herein shall constitute a waiver of any of Mr. McCartney's legal and equitable rights, claims and remedies, all of which are expressly reserved.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SCH', is positioned above the printed name.

Shawn Chapman Holley

JTR

10413./49785.1

A large, light gray watermark of the letters 'TMZ' is oriented horizontally across the lower half of the page.