



December 3, 2024

VIA EMAIL MIRANDA.C@VALNETINC.COM
AND UPS OVERNIGHT DELIVERY

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RE: Allegations by Valnet Concerning Posts on X.com

Dear Ms. Ciavaglia:

We represent Josh Tyler and his company, Giant Freakin Robot, an industry-leading popular entertainment, science, technology, and culture resource. We are in receipt of your letter dated November 19, 2024, in which you allege that Mr. Tyler’s posts on X “disparage,” “tarnish and damage Valnet’s reputation,” “defame Valnet’s credibility,” constitute “harassment,” contain “abusive statements,” and “intentionally and maliciously spew[] false, frivolous and slanderous accusations about Valnet.”

I have carefully reviewed the allegations in your letter and Mr. Tyler’s posts. Your assertions are frivolous because all of Mr. Tyler’s posts are clearly protected under the First Amendment to the United States Constitution. Accordingly, any legal action taken by Valnet in relation to your baseless allegations will be met with a forceful response, including a request that Valnet be ordered to pay Mr. Tyler’s attorney fees. To be clear, Mr. Tyler has no intention of deleting the posts, which contain his opinions and other protected discourse.

The right to openly and publicly express one’s opinion is a sacred right in the United States, finding its roots in the formation of our country. As the United States Supreme Court recently reiterated, “[i]f there is any fixed star in our constitutional constellation, it is the principle that the government may not interfere with an uninhibited marketplace of ideas.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 143 S. Ct. 2298 (2023). Thus, the First Amendment, adopted in 1791, prohibits “the abridging [of] the freedom of speech, or of the press,” a prohibition which the United States Supreme Court has interpreted to impose specific limits on the ability of plaintiffs

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to prove and collect damages for defamation. U.S. Const. amend. I; *see also, e.g. New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964).

Under this established principle, no laws can be passed (including laws concerning “defamation” or “disparagement”) that would infringe on the fundamental rights of United States citizens to speak their minds and express their opinions. *Paterson v. Little, Brown & Co.*, 502 F. Supp. 2d 1124, 1134 (W.D. Wash. 2007). “A simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is.” *Id.* at 1136. Moreover, “when an author outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the First Amendment.” *Partington v. Bugliosi*, 56 F.3d 1147, 1156-57 (9th Cir. 1995).

Rather, to make out a claim for defamation, a plaintiff must establish that the statement is both a statement of fact rather than opinion, and that it is false. *Miller v. Sawant*, 660 F. Supp. 3d 1015, 1027 (W.D. Wash. 2023). Opinions may always be expressed, protected at the highest standards by the First Amendment. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339, 94 S. Ct. 2997 (1997). Indeed, as the U.S. Supreme Court has held, “Under the First Amendment, there is no such thing as a false idea.” *Id.*

Furthermore, where a plaintiff is a public figure or entity, it must establish that each false statement made by a defendant was made with “actual malice,” i.e. “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Sullivan*, 376 U.S. 254, 279-80, 84 S. Ct. 710 (1964). This heightened standard exists because public figures have greater access to the media and therefore have “a more realistic opportunity to counteract false statements than private individuals normally enjoy.” *Gertz*, 418 U.S. at 344. Public figures also “voluntarily expose[] themselves to increased risk of injury from defamatory falsehood concerning them.” *Id.* at 345. Reckless disregard is not measured by whether “a reasonably prudent man would have published, or would have investigated before publishing.” *Harris v. City of Seattle*, 315 F. Supp. 2d 1105, 1110 (2005). Rather, “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of the publication.” *Id.*

Valnet is a public entity. *See Trump Media & Tech Grp. Corp. v. WP Co. LLC*, 720 F. Supp. 3d 1203, 1209 (M.D. Fla. 2024) (finding that Trump Media and Technology Group, “a prominent social media company” was a public figure generally); *see also Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 267 (9th Cir. 2013) (finding that Trump University, a for-profit corporation, was a public figure with respect to the subject of its advertising campaign, in part because its advertising efforts “invited public attention, comment, and criticism”). As a household name in the media industry, Valnet has voluntarily invited comment on its publishing practices.

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Furthermore, as a media company, Valnet has every possible opportunity and avenue available to counteract false statements, were there any. Thus, Valnet would need to show that Mr. Tyler acted with reckless disregard of whether each of his statements about it was false.

In plain terms, Mr. Tyler is free to express his opinions about Valnet on X or anywhere else. Mr. Tyler is also free to present facts available to him and his interpretation of those facts, on X or anywhere else. It does not matter whether those opinions and interpretations are disparaging or damaging to Valnet—they are his opinions, and he has every right to share them.

Against that background, I respond to some of your specific claims below.

Your Claims

1. You state that Mr. Tyler “disparage[s] Valnet’s reputation by repeatedly making false allegations that all Valnet publications are created by AI, that its articles are ‘thin content’ and are ‘clickbait.’”

The screenshots attached to your letter, ostensibly to back up this assertion, contain Mr. Tyler’s legally-protectible opinions. For example, the only attached post by Mr. Tyler that references artificial intelligence shows that he agreed with another poster’s opinion that a response from Screen Rant “felt” like an AI response. In another post, Mr. Tyler shared his opinion that a page from Valnet is “thin content.” In another post, Mr. Tyler stated his opinion that Forbes and Valnet have clickbait content. “Clickbait” is vernacular for text that is designed to entice users to follow (“click”) a link for more content, but that is generally deceptive, sensationalized, or otherwise misleading. Whether content is “clickbait” is not measurable or provable; it is subjective, and thus a matter of opinion. For each of these reasons, your first claim is baseless, and does not give rise to an action for defamation or any other claim.

2. You state that Mr. Tyler “defame[s] Valnet’s credibility by creating and promulgating a false narrative that Valnet is favored by Google, has an unfair advantage on Discover, and uses dishonest methods and collusion to gain positive status on search results.”

Here, you fail to identify a single statement of fact that Mr. Tyler has said that you believe to be false. To be clear, though, Mr. Tyler keeps a regular account of which sources he sees in his Google Discover feed. He then creates lists of the sources he sees appearing there and occasionally posts those lists. Those lists are neither negative or positive—he simply reports what he sees. He has every right to present and interpret facts available to him. Thus, your second claim is also not actionable.

3. You state that Mr. Tyler “repeatedly and systematically target[s] Valnet” and “engag[es] in conspiratorial theories” such as his post stating, “Well that was short lived. Seems like they have readjusted to increase the Valnet percentage again.”

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Clearly, Mr. Tyler’s post is an expression of his opinion and his interpretation of facts (“*seems* like they have readjusted . . .”). Moreover, your assertion that Mr. Tyler “target[s] Valnet” is not actionable—anyone is free at all times to criticize a public company—and to do so as often as they like. Such public commentary is critical discourse. Thus, your third claim also is not actionable.

4. You state that his posts are “clearly intended to convince the public and the industry that Valnet is unjustly gaining such traffic and is preferentially treated.”

Mr. Tyler’s intent is irrelevant other than to the extent it included actual malice. But the posts you cite to are opinions in any event, and not the types of statements of fact that can give rise to a claim of defamation. Moreover, to be clear, even if Mr. Tyler “intended to convince the public and the industry that Valnet is unjustly” treated, that would not constitute actual malice. That is because “actual malice” is not based on whether Mr. Tyler intended to cause the public to have a negative opinion of Valnet, which he is entitled to do. Rather, “actual malice” means the defendant said something while “in fact entertain[ing] serious doubts as to the truth of the publication.” *Harris*, 315 F. Supp. 2d at 1110. You have elicited no basis to conclude that Mr. Tyler in fact entertains such serious doubts. To the contrary, the evidence suggests Mr. Tyler believes his statements are true, and you have not established otherwise. For all of these reasons, this allegation also is not actionable.

5. You state that Mr. Tyler makes “unfounded accusations and statements” about Valnet spending millions on securing mass quantities of backlinks, and claim that such statements are based on an inference that “Valnet engages in black hat SEO methods” and that such statements are made “solely to tarnish and damage Valnet’s reputation.”

In the post that you attached to your letter, which I assume you refer to in this claim, Mr. Tyler expressed that Reddit, Forbes, and Valnet have a substantial number of top keyword placements on Google. He further referred to “a few others” who have spent millions on backlinks. He did not claim that Valnet spent millions (or any other amount) on backlinks. Moreover, as explained above, even if Mr. Tyler had the express and sole intention of “tarnish[ing] and damag[ing] Valnet’s reputation,” he would be entitled to do so, provided he did not “in fact entertain serious doubts as to the truth of the publication.” *Harris*, 315 F. Supp. 2d at 1110. Again, you have elicited no basis to conclude that Mr. Tyler in fact entertains such serious doubts, or even that the statements are false. Your fifth allegation therefore also is not actionable.

6. You state that Mr. Tyler “relay[s] disparaging and abusive statements via reposting that declare that Valnet is ‘a terrible company,’ is ‘trash’ and is ‘awful to work with and their rates are shockingly low to boot.’” You claim that such statements are both unfounded and “relayed...solely to disparage and damage the business and reputation of Valnet, with the goal of harming Valnet’s business and economic interests.”

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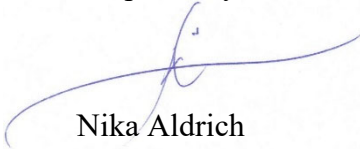
Each of these statements is undisputedly a statement of opinion, and therefore not actionable. Moreover, Mr. Tyler merely reposted another user's tweet stating that Valnet is "a terrible company," etc. He shared a post, without commenting on or endorsing it, as is his right. Even if the words had been his (which they were not) he has every right to share his opinion. As explained above, his intent is irrelevant. Thus, this allegation also is not actionable.

7. Finally, you claim that it is "abundantly clear" that Mr. Tyler "intentionally and maliciously spewed false, frivolous and slanderous accusations about Valnet as part of a deliberate and systematic harassment campaign."

The only thing that is "abundantly clear" is that Mr. Tyler shared his opinions and information that he gathered on the Internet. It is also clear that your letter is an attempt to silence Mr. Tyler, and to prevent open dialogue about Valnet's business practices in the marketplace of ideas.

As stated above, Mr. Tyler has no intention of removing his posts, and will seek all legal remedies available if Valnet pursues this matter further.

Respectfully,

A handwritten signature in blue ink, appearing to read "Nika Aldrich", with a long horizontal flourish extending to the right.

Nika Aldrich

NFA:rnr