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August 29, 2019

**Via Email**

Steven Humphrey  
Editor-in-Chief  
Portland Mercury  
115 SW Ash St., Ste. 600  
Portland, OR 97204  
legaldepartment@portlandmercury.com

**Re: Andy Ngo v. Portland Mercury**  
*Cease & Desist Letter and Evidence Preservation Notice*

Dear Mr. Humphrey:

Our firm is litigation counsel for Andy Ngo. We write concerning the false and defamatory statements published by the Portland Mercury on August 26, 2019, in the article titled, “Undercover in Patriot Prayer: Insights From a Vancouver Democrat Who’s Been Working Against the Far-Right Group from the Inside.”<sup>1</sup> Specifically, the article falsely states and implies that Mr. Ngo overheard members of the Patriot Prayer making plans to commit crimes, only to then “smile[] when the group crack[ed] jokes,” accusing Mr. Ngo of passively condoning criminal acts.

This statement and intentional implication is patently false and defamatory, and is extremely damaging. Mr. Ngo never overheard, nor did he “smile” in response to overhearing, plans by others to commit any crime. Indeed, the video and statements referenced in the article do not support this unfounded accusation. Had you or your publication reached out to Mr. Ngo or his counsel for comment, you would have been informed of these facts—you did not do so. Instead, the Portland Mercury published false and inherently defamatory statements, without any attempt to verify the information, and which even a cursory review of the video and facts undermine definitively. Thus, actual malice can easily be proven based on the Portland

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<sup>1</sup> At the time of this letter, the article remains available online at the following url:  
<https://www.portlandmercury.com/blogtown/2019/08/26/27039560/undercover-in-patriot-prayer-insights-from-a-vancouver-democrat-whos-been-working-against-the-far-right-group-from-the-inside>.

Mercury's reckless disregard of the truth, in clear attempt to mislead the public for political reasons or some other ulterior motives.

To avoid our taking immediate steps to seek injunctive relief in court, the Portland Mercury must satisfy the following demands:

- (1) the Portland Mercury must immediately retract, correct, and apologize for making the false statements in the article;
- (2) the Portland Mercury must immediately cease and desist from publishing any false or misleading statements about Mr. Ngo; and
- (3) confirm to our office its compliance with these demands by September 1, 2019.

Should the Portland Mercury fail to accomplish the foregoing, Mr. Ngo intends to take all necessary next steps to remedy the harm he has suffered and continues to suffer.

### **EVIDENCE PRESERVATION DEMAND**

Litigation is likely to ensue in this matter. Under governing state and federal laws, the Portland Mercury has an obligation to maintain copies of documents, including email and call recordings and other documents relevant to this dispute, as well as all other electronically stored information pertaining to Andy Ngo. We also request that the Portland Mercury immediately initiate a litigation hold for potentially relevant ESI, documents, and tangible things and to act diligently and in good faith to secure and audit compliance with such litigation hold.

The Portland Mercury is hereby given notice to immediately take all steps necessary to prevent the destruction, loss, concealment, or alteration of any paper, document, or electronically stored information ("ESI"), including browser activity, and other data or information generated by and/or stored on the Portland Mercury's computers and storage media (e.g., hard disks, thumb drives, backup tapes, cloud storage etc.), and e-mail related to this dispute, including, but not limited to the following: (1) the Portland Mercury's review of the article and all revision history related thereto; (2) any investigation conducted by the Portland Mercury regarding Mr. Ngo and the events set forth in the article; (3) any complaints, claims, allegations, grievances, correspondence, or communications regarding Mr. Ngo; (4) all documentation and correspondence regarding Mr. Ngo; and (5) records of all relevant ID names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view; and (if necessary) reconstruct any ESI.

Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. The Portland Mercury must also intervene to prevent loss due to routine operations and employ proper techniques to safeguard all such evidence. The Portland Mercury should immediately identify and modify or suspend features of its operations, information systems, and devices that, in routine operations, operate to cause the loss of documents, tangible items, or ESI. Examples of such features and operations include, but are not

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limited to, purging the contents of e-mail repositories by age, capacity, or other criteria; using data or media wiping, disposal, erasure, or encryption utilities or devices; overwriting, erasing, destroying, or discarding back-up media; re-assigning, re-imaging or disposing of systems, servers, devices, or media; running antivirus or other programs that alter metadata; using metadata stripper utilities; and destroying documents or any ESI by age or other criteria.

The Portland Mercury's 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. Please forward a copy of this letter to all persons and entities possessing or controlling potentially relevant evidence. The Portland Mercury's obligation to preserve potentially relevant evidence is required by law.

Your immediate attention to this matter is required. Please contact this office **no later than September 1, 2019** to confirm compliance with the above demands. If you have any questions about the contents of this letter, please contact me or my associate, Gregory R. Michael.

Regards,

A handwritten signature in blue ink that reads "Harmeet K. Dhillon". The signature is fluid and cursive, with the first name being the most prominent.

Harmeet K. Dhillon