

**25th Annual
Cutting Edge CE Conference**

2017 Annual Meeting

**“Damage Control: Representing Athletes and Celebrities in
the Media and the Courtroom”**

New Orleans, Louisiana
Thursday, August 24, 2017
2:45-3:45pm

Sabrina Ment, Esq. / LaPolt Law, P.C.
Supplemental CLE Materials

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made on this ___ day of _____, 20__ by _____ ("you" or "your").

You hereby agree as follows:

1. Any and all information disclosed to or obtained by you concerning or relating to _____ p/k/a "_____" ("I" "me" or "my") or my family, pursuant to your communications with me or otherwise (collectively, the "Confidential Information"), shall be strictly confidential, and you hereby agree not to disclose any such Confidential Information to any individual or entity. You agree that in the event of any disclosure in violation of this Agreement, I shall have the right to seek, among other things, (a) injunctive relief and (b) monetary damages including without limitation recovery or disgorgement of the monies or other consideration received in connection with such disclosure, if any.

2. (a) Given the unique situation of my celebrity status, you recognize and acknowledge any other information obtained by you during the course of business dealings (or otherwise) with me, including all information about my life stories and experiences, friends, family members, and business ventures, is Confidential Information. You further acknowledge that I have taken precautions, such as this Agreement, to keep such information confidential.

(b) You agree that you shall not ever disclose or communicate to any person, firm, or corporation, in any manner, any Confidential Information. Accordingly, you agree to hold in strictest confidence any information related to me and my family and shall not, directly or indirectly, use, disclose, publish, disseminate, or cause to be used, disclosed, published, or disseminated, or otherwise make accessible to any person or entity (including, without limitation, newspapers, periodicals, magazines, publications, television stations, publishers, weblogs, websites and any other media entity or enterprise involved in the print or electronic media, including individuals working for, or on behalf of, any of said entities). This obligation applies both during the term of this Agreement and subsequently whether or not you continue to do business (or otherwise) with me.

(c) You acknowledge that the Confidential Information referred to in this Agreement is sufficiently secret so that I derive personal and economic value from the information remaining confidential and not being available to others who could obtain economic value from its disclosure or use. You further acknowledge that the matters covered in this Agreement are important, material, confidential, and greatly affect the successful business, life, and goodwill of me and my family and you hereby acknowledge that I will suffer irreparable and substantial damages and injury in the event you disseminate any information whatsoever about me, my family or Confidential Information or otherwise violate the terms of this Agreement. You agree that I may enforce this Agreement by seeking equitable and injunctive relief, as well as monetary damages, attorneys' fees and costs of a suit.

AGREED AND ACCEPTED, as of the date first referenced above.

Signature

Print name

Phone number

Email address

Position/Relationship

MUTUAL BUSINESS NON-DISCLOSURE AGREEMENT

Date: _____

	<u>VENDOR</u> (the " <u>Vendor</u> ")	<u>COMPANY</u> (Each of the below shall be collectively referred to herein as the " <u>Company</u> ")
NAME		
ADDRESS		

In order to pursue discussions regarding the mutual business purpose identified in Section 2 below ("Business Purpose"), Vendor and Company (each, a "Party" and collectively, the "Parties") recognize that there is a need to disclose to each other Confidential Information (as defined herein) and to provide for mutual agreements to protect such Confidential Information and restrict its use strictly to the pursuit of said Business Purpose. In consideration of the mutual promises contained herein, the Parties agree as follows:

1. **Effective Date; Term.** This Mutual Non-Disclosure Agreement ("Agreement") shall become effective on and as of the date listed above and continue for as long as the Parties continue to pursue the Business Purpose (the "Term"). In the event the Parties no longer pursue the Business Purpose, this Agreement shall terminate, subject to the provisions of Section 13 hereof.

2. **Mutual Business Purpose of Disclosure.** The Parties desire to receive Confidential Information from one another for the following reason(s) (the "Business Purpose"): discussion of a possible business transaction and all purposes incidental or related thereto.

3. **Definition of Confidential Information and Exclusions.**

a. For the purposes of this Agreement, "Confidential Information" shall mean any and all information or material of a Party, whether revealed orally, visually, or in tangible or electronic form, that is not generally known to the public, including, information relating to personnel, employees, consultants and contractors, marketing strategies, sales and marketing data, financial information, customer lists (including the identity of actual and potential customers), supplier lists (including the identity of actual and potential suppliers), operations, business procedures, future technical, business, and marketing plans, product strategies, trade secrets, know-how, capabilities, product designs, drawings, specifications, program code, notes, analyses, compilations, studies, forecast, interpretations, and any Work Product (as defined herein). For purposes of this Agreement, "Work Product" shall mean any notes or documents prepared by any Party containing, that derive from, reflect or are based on, in whole or in part, any Confidential Information of a Disclosing Party. In addition to the foregoing, Confidential Information includes all information in tangible form and marked "confidential" or with words of similar effect and all information identified as confidential at the time of oral disclosure, although such markings and disclosures are not required for such information to be deemed Confidential Information hereunder.

b. For the purposes of this Agreement, any Party receiving Confidential Information hereunder is referred to as the "Receiving Party" and any Party disclosing Confidential Information hereunder is referred to as the "Disclosing Party". Confidential Information shall not include information which: (i) is in or has entered the public domain through no breach of this Agreement or other act by the Receiving Party; (ii) Receiving Party rightfully knew prior to the time that it was disclosed to Receiving Party hereunder; or (iii) Receiving Party received from a third party lawfully possessing and lawfully entitled to disclose such information without breach of this Agreement.

4. **Obligations of Confidentiality.** Each Receiving Party understands and agrees that it will be deemed to be in a relationship of confidence with respect to the Confidential Information disclosed to it by any Disclosing Party. Each Receiving Party will maintain the Disclosing Party's Confidential Information in the strictest confidence and will not disclose such Confidential Information to any third party or use or reproduce such Confidential Information except as is reasonably necessary in furtherance of the Business Purpose, without the prior written consent of the Disclosing Party. Each Receiving Party will keep and maintain the Disclosing Party's Confidential Information in a safe and secure location. Each Receiving Party will use reasonable steps to protect the Disclosing Party's Confidential Information from unauthorized or inadvertent disclosure. Any

Receiving Party may disclose the Disclosing Party's Confidential Information to its affiliates, officers, directors, partners, employees, accountants, lawyers, advisors and other representatives (collectively "Related Persons"), but only to the extent necessary to pursue the Business Purpose. Each Receiving Party will instruct all such Related Persons to carry out their respective obligations under this Agreement not to disclose such Confidential Information to third parties and not to use it for any purpose (other than to pursue the Business Purpose), without the prior written consent of the Disclosing Party. Each Receiving Party shall be responsible for any acts or omissions of its Related Persons that result in a breach of this Agreement. Each Receiving Party understands and agrees that (a) the Disclosing Party has not made and is not making any representations or warranties, express or implied, as to the accuracy, completeness or fitness for any particular purpose of any Confidential Information of such Disclosing Party, and (b) a Disclosing Party shall not have any liability to Receiving Party relating to or resulting from Receiving Party's use of any Confidential Information of such Disclosing Party or any inaccuracies or errors therein or omissions therefrom.

5. Return of Materials. Upon the written request of a Disclosing Party at any time, the Receiving Party will promptly return to the Disclosing Party all Confidential Information and copies thereof in the possession of the Receiving Party or its Related Persons, and promptly return or destroy any Work Product in the possession of that party or its Related Persons unless otherwise specifically instructed in writing by the Disclosing Party.

6. Notification of Disclosure. If a Receiving Party discovers any actual or threatened disclosure or publication of any of Disclosing Party's Confidential Information to any third party by any of the Receiving Party's Related Persons, the Receiving Party shall promptly notify the Disclosing Party of such disclosure or publication and will, at the Receiving Party's own expense, use all reasonable efforts to prevent any future disclosure or publication.

7. Excluded Confidential Information. The obligations imposed by this Agreement shall not apply with respect to any portion of Confidential Information which: (i) has been approved for release by written authorization of the Disclosing Party; or (ii) is required to be disclosed pursuant to a final and binding order of a governmental agency or court of competent jurisdiction; provided that the Disclosing Party has been given reasonable notice of the pendency of such an order and the opportunity to contest such order, the Receiving Party discloses only such Confidential Information required to be disclosed by such order, and the Receiving Party uses its commercially reasonable efforts to secure confidential treatment of such Confidential Information.

8. Injunctive Relief. The Parties acknowledge and agree that the unauthorized disclosure, use or disposition of Confidential Information of a Disclosing Party would cause irreparable harm and significant injury to such Disclosing Party which would be difficult to ascertain and that each Party derives economic value from its own Confidential Information remaining confidential and unavailable to others who could obtain economic value from its disclosure or use. Accordingly, the Parties agree that the Disclosing Party may seek an ex parte restraining order, preliminary injunction, and/or permanent injunction without the need to post a bond in the event of any breach or threatened breach of the obligations set forth in Section 4 of this Agreement, in addition to any other remedies that may be available to the Disclosing Party at law or in equity, including without limitation recovery or disgorgement of the monies or other consideration received in connection with such disclosure, if any.

9. Ownership of Confidential Information. Nothing in this Agreement shall convey to any Receiving Party any rights in or to the Confidential Information of the Disclosing Party, whether rights of ownership, license, patent, copyright, trademark, trade secret or other proprietary right and interest therein.

10. Governing Law and Attorneys Fees. This Agreement will be governed and construed in accordance with the laws of the State of California, without regard to or application of choice of law rules or principles. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced in a state or federal court of or in the State of California and all Parties irrevocably submit to the jurisdiction and venue of such court in any such suit, action or proceeding between or among the Parties and any of their respective Related Persons. If any litigation or other proceeding between or among the Parties and their respective Related Persons is commenced in connection with or related to this Agreement, the prevailing Party may seek reasonable attorneys' fees and costs and expenses incurred in connection therewith.

11. Severability. The provisions of this Agreement are severable, and if any provision hereof shall be found invalid, illegal, void or unenforceable, in whole or in part, the remaining provisions or portions thereof shall remain in full force and effect to the maximum extent permissible.

12. No Waiver. No breach of any covenant, condition, agreement, warranty or representation made herein shall be deemed waived unless expressly waived in writing by the Disclosing Party. No waiver shall be deemed to be a waiver or any other matter, whenever occurring and whether identical, similar or dissimilar to the matter waived.

13. **Duration.** All obligations imposed hereunder shall continue in force throughout the Term; *provided, however*, that Vendor's obligations pursuant to Section 4 hereof shall survive indefinitely after any termination of this Agreement. Further, after any termination of this Agreement, the provisions of Sections 6, 8, 9, 10, 11, 12, and 14 shall also survive indefinitely.

14. **No Limitations of Other Protections.** The protections this Agreement provides to the Parties as to their respective Confidential Information hereunder shall be in addition to, and not in limitation of, any other protection provided to the Parties as to such Confidential Information under applicable law or in equity relating to trade secrets, unfair competition, intellectual property or otherwise.

15. **Counterparts.** The Agreement may be executed in counterparts each of which when executed by the Parties shall be deemed to be a complete original document. An electronic or facsimile copy of the executed Agreement or counterpart thereof shall be deemed, and shall have the same legal force and effect as, an original document.

16. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties regarding the subject matters hereof and may not be modified except by a written instrument signed by an authorized representative of each Party.

17. **Assignment.** Company shall have right to assign any of Company's rights hereunder, in whole or in part. Vendor shall not have the right to assign any of Vendor's rights hereunder.

18. **No Joint Liability.** The obligations of the Parties hereunder are several and not joint, and each Party shall be solely and separately liable for complying with its respective obligations or any liabilities associated with any failure to comply.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

VENDOR

COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Varying Morals Clauses

- ❖ If during the Term, Artist is **charged with, or has committed a crime, or engages in any actions involving moral turpitude or is arrested for driving under the influence, arrested for any crime involving public intoxication, or brings Company into public disrepute, contempt, scandal or ridicule, engages in any immoral or scandalous actions tending to bring Artist into public disrepute, contempt, scandal or ridicule, or tending to shock, insult or offend the people of this nation or any class or group thereof**, then Company has the right to terminate this Agreement and Artist will not be entitled to any fee whatsoever, and Artist must return any fees paid pursuant to this Agreement within five (5) business days after Agreement termination and Company is no longer responsible for any future payments. Company's decision to terminate hereunder must be exercised, if at all, no later than forty-five (45) days after the facts giving rise to such right under this paragraph are brought to Company's attention.
- ❖ Company may terminate this Agreement without cause at any time upon fifteen (15) days' written notice, provided that the monies payable to Artist pursuant to Section __ shall nevertheless be promptly paid to Artist if Artist has rendered the Services as of such termination date or has incurred costs in reliance on this Agreement. In the event of Artist's material, uncured breach of the Agreement, Company may immediately terminate this Agreement and shall also have the right to pursue any and all other legal remedies, including without limitation the right to injunctive or other equitable relief. If Artist **becomes involved in a media scandal or is charged with a felony**, Company shall have the right to immediately terminate the Agreement and Artist shall be entitled to retain all monies previously paid hereunder. Upon any early termination pursuant to this Section, the exclusivity restrictions of Section 8 shall immediately cease.
- ❖ Company shall have the right but not the obligation to terminate this Agreement at any time upon ten days prior written notice to the Artist if Artist is **found by public opinion to have engaged in acts that are morally reprehensible, or are convicted of a felony**. The Artist shall have the right but not the obligation to terminate this Agreement at any time upon ten days prior written notice to Company if any officers or employees of Company are found by public opinion to have engaged in acts that are morally reprehensible or are convicted of a felony, or if Company disbands or changes its name, or if Company becomes subject to any restrictions on its ability to distribute and/or sell its products in the United States.
- ❖ Company shall in its sole discretion have the right to terminate this Agreement for cause if Artist is **convicted or pleads guilty or nolo contendere to criminal misconduct constituting a felony or gross misdemeanor involving a breach of ethics, moral turpitude or other immoral conduct which reflects adversely upon the reputation or interests of the Company**, its Contracted Parties or Channels of Trade. This Section expressly excludes any conduct, behavior, incidents or actions which tend to be in conformance with the current persona of the Artist.