SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D., Plaintiff, v. NATIONAL REVIEW, INC., *et al.*, Defendants.	Case No 2012 CA 008263 B Calendar No.: 10 Judge: Natalia Combs Greene Next event: 6/19/2013 Motion Hearing

NOTICE OF RECENTLY DECIDED AUTHORITY

Plaintiff Michael E. Mann hereby files this submission to inform this Court of a recently decided opinion which bears directly on the issues presented here by the parties. The attached decision of Associate Judge Laura A. Cordero in *Payne v. District of Columbia*, Case No. 2012 CA 6163B (May 28, 2013), (Exhibit A) addresses the standard that should be applied by the trial court in ruling upon a motion brought under the District of Columbia Anti-SLAPP Act. In the briefing before this Court on the Defendants' Anti-SLAPP motion, the parties agreed that as of the time of the briefing, no court in the District of Columbia had yet addressed this issue.

One of the principal issues presented in the Defendants' Motions to Dismiss is the standard that the Court should apply in assessing Anti-SLAPP motions. The Defendants have asserted that the Anti-SLAPP statute places a "heavy" and "unique" burden on Dr. Mann, one that is "perhaps the strictest burden of any jurisdiction." Opening Memorandum of the Competitive Enterprise Institute, at 34; Opening Memorandum of the National Review Organization, at 20. Dr. Mann, on the other hand, has asserted that the proper standard is the summary judgment standard applied by the California courts, particularly considering that the

District of Columbia statute was modeled on the California statute. Dr. Mann also asserts that there is no difference between the "likelihood to succeed" language used in the District of Columbia statute and the "probability of success" standard used in the California statute. Dr. Mann's Brief at 37-39.

This issue has now been addressed. In *Payne*, the court stated that "where certain questions remain unresolved in this jurisdiction, California precedent is useful in interpreting certain aspects of the D.C. statute." *See* Order at 4. The court went on to cite to California cases in which the courts in that jurisdiction held that: (1) the plaintiff need only to state and substantiate a legally sufficient claim, *Hailstone v. Martinez*, 169 Cal. App. 4th 728, 735 (2008); *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002); (2) the plaintiff need only establish that his or her claim has "minimal merit," *Soukup v. Law Offices of Herbert Hafif*, 39 Cal. 4th 260, 291 (2006); and (3) a SLAPP motion should be treated like a summary judgment motion, *Roberts v. Los Angeles County Bar Assn.*, 105 Cal. App. 4th 604, 614 (2003). These four California cases cited in the *Payne* decision are also attached as Exhibit B.

Finally, with respect to the difference between the terms "likelihood to succeed" and "probability of success" asserted by Defendants, we note that the *Payne* court used these terms interchangeably. Compare page 7 ("probability of success on the merits") with page 10 ("likelihood of success on the merits").

DATED: June 11, 2013

Respectfully submitted,
COZEN O'CONNOR

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