**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

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| MICHAEL E. MANN, PH.D.,<br><br>Plaintiff,<br><br>v.<br><br>NATIONAL REVIEW, INC., *et al.*,<br><br>Defendants. | Case No 2012 CA 008263 B<br>Calendar No.: 10<br>Judge: Natalia Combs Greene<br>Next event: Unscheduled |

**NOTICE OF RECENTLY DECIDED AUTHORITY**

Plaintiff Michael E. Mann hereby files this submission to inform this Court of another recently decided opinion which bears directly on the issues presented here by the parties. The attached decision of Judge Reggie B. Walton of the United States District Court for the District of Columbia in *Boley v. Atlantic Monthly Group*, C.A. No. 13-89 (RBW) (D.D.C. June 25, 2013) (Ex. 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 motions, the parties agreed that as of the time of the briefing, no court in the District of Columbia had yet addressed this issue, although prior to the hearing last week, this same issue was ruled upon by Judge Cordero of this Court in *Payne v. District of Columbia*, Case No. 2012 CA 6163B (D.C. Super. May 28, 2013).

As discussed at the commencement of last week's hearing, 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 Competitive Enterprise Institute, at 34; Opening Memorandum of National Review, Inc., at 20. In this regard, however, it should be noted that at the hearing, counsel CEI stated that the "likelihood of success" standard in the District of Columbia statute required only the "preponderance of the evidence" showing.

With respect to the standard to be applied on the pending motions to dismiss, Dr. Mann asserts that the proper standard is the summary judgment standard applied by the California courts, particularly considering that the District of Columbia statute was modeled after the California statute. Dr. Mann's Brief, at 37-39. This was the standard that was adopted in the *Payne* opinion, and this is the standard that has now been applied in the *Boley* case. *Boley v. Atlantic Monthly Group*, C.A. No. 13-89 (RBW) (D.D.C. June 25, 2013).

In *Boley,* Judge Walton noted that the District of Columbia Court of Appeals has not yet published an opinion interpreting this statute, and noted that in this situation, it is the job of the federal courts to carefully predict how the highest court in the forum state would resolve the uncertainty. He went on to note that the Committee Report of the District of Columbia City Council prepared in connection with the D.C. Anti-SLAPP law explained that the Council was following the model set forth in a number of jurisdictions, and that it would look for guidance to those other jurisdictions, and particularly to California, which has a "well developed body of Anti-SLAPP jurisprudence." *Id.*, at 5-6.

Judge Walton then went on to review the California case law as 'pertinent,' and observed that a plaintiff seeking to show a probability of prevailing on a claim must satisfy a standard comparable to that used on a motion for judgment as a matter of law, citing *Price v. Stossel,* 620 F.3d. 992, 1000 (9th Cir. 2011). Thus, a plaintiff is required only to demonstrate that the

complaint is legally sufficient and supported by a prima facie showing of facts to sustain a favorable judgment—assuming that the evidence submitted by the plaintiff is credited. That is the summary judgment standard urged by Dr. Mann in this proceeding.

DATED: June 28, 2013

Respectfully submitted,
COZEN O'CONNOR

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