IN THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

The Washington Travel Clinic, PLLC *et al.*	)	
	)	
Plaintiffs	)	C.A. No. 2013 CABSLD 003233
	)	
v.	)	
	)	
John Kandrac	)	
	)	
Defendant	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' OPPOSITION TO MOTION FOR RECONSIDERATION

Ziad Akl, MD ("Akl") and The Washington Travel Clinic, PLLC ("WTC"), (collectively "Plaintiffs"), by counsel, hereby file this Memorandum in support of their Opposition to Defendant's Motion for Reconsideration of the Court's order granting in part and denying in part Defendant's Motion to Dismiss the Complaint Pursuant to the D.C. Anti-SLAPP Act, or in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6), and request that the Court deny the Motion.

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PROCEDURAL BACKGROUND

Plaintiffs filed their Amended Complaint on May 9, 2013. Defendant filed his Motion to Dismiss under the D.C. anti-SLAPP statute or in the alternative under Sup. Ct. Civ. R. 12(b)(6) on July 15, 2013. The burden shifted on Plaintiffs to demonstrate a likelihood to prevail on the merits of their defamation and tortious interference with prospective business advantage claims. After briefing, the Court issued an order on December 16, 2013 dismissing the latter claim for failure to demonstrate damages and denied the Motion to Dismiss as to the claim of defamation, after dismissing some of the bases for bringing the claim. Defendant then filed a Motion for Reconsideration on December 20, 2013, arguing that failure to demonstrate damages on the tortious interference claim automatically implies failure to demonstrate the same on the defamation claim.

SUMMARY OF ARGUMENTS

Defendant cannot move for reconsideration of an interlocutory order under Sup. Ct. Civ. R. 59 and 60, and none of the circumstances usually considered in ruling on a motion for reconsideration under Sup. Ct. Civ. R. 54(b) applies here. Further, even if the Court, in its discretion, finds it appropriate to entertain the Motion for Reconsideration, the law cited by Defendant is incorrect and Plaintiffs have succeeded in demonstrating damages as they have successfully pled a cause of action for libel *per se*. Finally, even if Plaintiffs are required to demonstrate special damages, Plaintiffs can do so through targeted discovery as provided for by the D.C. anti-SLAPP statute.

ARGUMENTS

A. None of the Superior Court Civil Rules Defendant Invokes Applies:

Defendant purports to bring his Motion for Reconsideration under Sup. Ct. Civ. R. 59(e) and alternatively under Rules 54(b) and 60(b). Motion for Rec. at 1. As demonstrated below, none of aforementioned Rules help Defendant.

1. Rule 59(e) Only Allows Reconsideration Of Final Orders

"Rule 59 with its inflexible ten-day period applies only to a final, appealable judgment." Williams v. Vel Ray Properties, 699 A.2d 416 (D.C., 1997), citing Riggs v. Scrivner, Inc., 927 F.2d 1146, 1148 (10th Cir. 1991). "A judgment must dispose of *all* claims against *all* parties in order to be final for purposes of appeal." Berryman v. Thorne, 700 A.2d 181, 182 n. 3 (D.C.1997) (emphasis added). The order entered by the Court granting in part and denying in part Defendant's Motion to Dismiss is not a final appealable order. See Newmyer v. Sidwell Friends School, No. 12-CV-847 (D.C., Dec. 5, 2012, *per curiam*) (dismissing appeal from order denying anti-SLAPP motion, holding that order is not appealable under the collateral order doctrine and that anti-SLAPP statute does not provide for interlocutory review). *See also* Kumar v. District of Columbia Water & Sewer Authority, 25 A.3d 9, 15 (D.C., 2011) (holding that order denying motion to dismiss or for summary judgment is interlocutory and not final). Thus, Defendant cannot bring his Motion for Reconsideration under Rule 59(e) since the order that Defendant requests the Court to reconsider is not final.

2. Rule 60(b) Only Allows Reconsideration Of Final Orders

Rule 60(b), by its own terms, relieves a party or a party's legal representative from a *final* judgment, order, or proceeding. See Rule 60(b). *See also* Little v. Johnson, 145 A.2d 852, 855

(D.C., 1958) ("Rule 60(b), by its own terms, is applicable only to *final* judgments and orders.") (emphasis in original). An order is final only if it "dispose[s] of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered." West v. Morris, 711 A.2d 1269, 1271 (D.C., 1998). Since the order in question is not final, Defendant cannot bring his Motion for Reconsideration under this rule either.

3. Rule 54(b) Circumstances Are Not Present

Apparently recognizing that he cannot bring his Motion for Reconsideration under the above Rules, Defendant invokes Rule 54(b) in a footnote on page 4 of his memorandum in support of his Motion.

"Rule 54 is substantially identical to Fed. R. Civ. P. 54." *See* Sup. Ct. Civ. R. 54(b) cmt. notes. "[T]he district court has plenary power to reconsider, revise, alter or amend an interlocutory order...." Williams v. Vel Rey Properties, Inc., 699 A.2d 416, 419 (D.C.App.,1997) (citation omitted). The standard for reconsideration of interlocutory orders under Rule 54(b) is distinct from the standard applicable to motions for reconsideration of final judgments. Cobell v. Norton, 355 F.Supp.2d 531, 539 (D.D.C., 2005). Discussing the legal standard for altering or amending an interlocutory judgment, the U.S. District Court for the District of Columbia stated:

> A district court may revise its own interlocutory decisions "at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." FED.R.CIV.P. 54(b); see also Childers v. Slater, 197 F.R.D. 185, 190 (D.D.C.2000) (citing Federal Rule of Civil Procedure 60(b)'s Advisory Committee Notes). The standard for the court's review of an interlocutory decision differs from the standards applied to final judgments under Federal Rules of Civil Procedure 59(e) and 60(b) ... reconsideration of an interlocutory decision pursuant to Rule 54(b) is available "as justice requires." Childers, 197 F.R.D. at 190.
>
> "As justice requires" indicates concrete considerations of whether the court "has patently misunderstood a party, has made a decision outside the adversarial issues presented to the [c]ourt by the parties, has made an error not of reasoning, but of apprehension, or where a controlling or significant change in the law or facts [has

> occurred] since the submission of the issue to the court." Cobell v. Norton, 224 F.R.D. 266, 272 (D.D.C. 2004) (internal citation omitted). These considerations leave a great deal of room for the court's discretion and, accordingly, the "as justice requires" standard amounts to determining "whether reconsideration is necessary under the relevant circumstances." Id. Nonetheless, the court's discretion under Rule 54(b) is limited by the law of the case doctrine and "subject to the caveat that, where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." Singh v. George Washington Univ., 383 F.Supp.2d 99, 101 (D.D.C.2005) (internal citations omitted).

Potts v. Howard University Hosp., 623 F.Supp.2d 68, 71 (D.D.C., 2009).

In the present case, the parties have already once battled for the Court's decision; Defendant should not be allowed to require Plaintiffs to battle for it again. "A motion for reconsideration is not intended ... to give an 'unhappy litigant an additional chance to sway' the court." Matthews v. United States, 73 Fed. Cl. 524, 525 (2006).

None of the circumstances that form the basis for reconsideration under Rule 54(b) applies here. Defendant does not argue that the Court has patently misunderstood him or that it made an error of apprehension, rather than reasoning. Rather, he argues that the Court made a legal error. Nor does Defendant argue that the Court made a decision outside the adversarial issues presented to it by the parties. Finally, Defendant has not brought forward a controlling or significant change in the law or facts since the submission of the issue to the court. This, alone, is reason for the Court to deny the Motion for Reconsideration.

B. Defendant's Argument As To What Constitutes Libel Per Se Is Meritless:

Unlike a motion for summary judgment, where the movant advances arguments and the non-movant gets to rebut those, an anti-SLAPP motion only shifts the burden on the plaintiff to show likelihood of success on the merits and provides the defendant with an opportunity to rebut those. The plaintiff does not get an opportunity to rebut the defendant's legal and factual arguments; i.e. the plaintiff has to prevail on arguments which have not yet been made. Indeed,

in his Reply to the Opposition, Defendant countered that under D.C. Law, in order to be actionable as libel *per se*, the contents of a defamatory publication must impute the commission of some criminal offense for which the plaintiff may be indicted and punished, if the charge involves moral turpitude, Reply at 17-21, and in his Memorandum in Support of his Motion for Reconsideration, at 2, Defendant refers to the Reply and only to the Reply to point out his argument to the Court. Plaintiffs did not have an opportunity to answer Defendant's argument of law and do so now.

"[T]he anti-SLAPP statute does not require the plaintiff "to prove the specified claim to the trial court; rather, so as to not deprive the plaintiff of a jury trial, the appropriate inquiry is whether the plaintiff has stated and substantiated a legally sufficient claim." Burrill v. Nair 217 Cal.App.4th 357, 379 (Cal.App. 3 Dist., 2013) (internal quotation marks omitted) (citation omitted). "Put another way, the plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." Id. (internal quotation marks omitted) (citation omitted).

Defendant argues that Plaintiffs failed to adduce sufficient evidence to defeat the anti-SLAPP motion. Citing Raboya v. Shrybman & Assocs., 777 F. Supp. 58, 59 (D.D.C. 1991), Defendant argues that Plaintiffs are required to show special harm and that the only exception, where damages are presumed, is where the contents of a defamatory publication impute the commission of some criminal offense for which the plaintiff may be indicted and punished, if the charge involves moral turpitude. Motion for Rec. at 2.

In evidence to the damages element of their defamation claim, Plaintiffs cited El-Hadad v. Embassy of the U.A.E., 2006 U.S. Dist. LEXIS 21491, 46 (D.D.C. Mar. 29, 2006), for the

proposition that libel is defamation *per se*, regardless of the nature of the false and defamatory statements, and that defamation *per se* renders a defendant liable for general damages even where no special damages are proved. El-Hadad was decided in federal court under District of Columbia law, Id. at 13, and the Circuit Court concurred. *See* El-Hadad v. United Arab Emirates, 496 F.3d 658, 668 (C.A.D.C., 2007).

As Defendant notes, Raboya quotes Farnum v. Colbert, 293 A.2d 279, 281 (D.C. 1972), which in turn quotes Harmon v. Liss, 116 A.2d 693, 695 (D.C. 1955)). When examined, Harmon, in turn, relied on Friedlander v. Rapley, 38 App.D.C. 208, 212 (C.A.D.C. 1912) and Caldwell v. Hayden, 42 App.D.C. 166 (C.A.D.C. 1914). Harmon, 116 A.2d at 695. All of the above cases, Farnum, Harmon, Friedlander and Caldwell, involved words *spoken*, not written.

In Friedlander, the Court of Appeals of the District of Columbia stated:

> There seems to be a recognized distinction between false words spoken and those written, in respect of their constituting a ground of action per se. Pollard v. Lyon, 91 U. S. 225-228, 23 L. ed. 308-311; Odgers, Libel & Slander, p. 3; Townshend, Slander & Libel, p. 221. However this may be, words falsely spoken of another must, to be actionable per se in this jurisdiction, impute to him the commission of some criminal offense for which he may be indicted and punished, if the charge involves moral turpitude and is such as will injuriously affect his social standing. Pollard v. Lyon, 91 U. S. 225-234, 23 L. ed. 308-313 [1875].

Friedlander, 38 App.D.C. at 212. Thus, it is clear that the law of the District of Columbia with regard to defamatory *spoken* words descends directly from Pollard v. Lyon. In Pollard, the U.S. Supreme Court stated:

> Certain words, all admit, are in themselves actionable, because the natural consequence of what they impute to the party is damage, as if they import a charge that the party has been guilty of a criminal offence involving moral turpitude, or that the party is infected with a contagious distemper, *or if they are prejudicial in a pecuniary sense to a person in office or to a person engaged as a livelihood in a profession or trade*; but in all other cases the party who brings an action for words must show the damage he or she has suffered by the false speaking of the other party. (emphasis added)

See also Meyerson v. Hurlbut, 68 App.D.C. 360, 98 F.2d 232 (1938), cited with approval by Harmon, 116 A.2d at 696.

> To be so actionable, spoken words must 'import a charge that the party has been guilty of a criminal offense involving moral turpitude, or that the party is infected with a contagious distemper,' or they must be 'prejudicial in a pecuniary sense to a person in office or to a person engaged as a livelihood in a profession or trade.' Pollard v. Lyon, 91 U.S. 225, 227, 23 L.Ed. 308.

Meyerson 98 F.2d at 233. *See also* Cleveland Hair Co. v. Kiely, 1988 WL 90199, at *1 (D.D.C. Aug. 4, 1988) (defamatory words, falsely spoken, which would prejudice a party in his business, trade, or profession, are actionable per se). Thus, the case law relied upon by Defendant descends directly from the U.S. Supreme Court through a series of decisions that sometimes omitted the part that also defines slander *per se* as the utterance of words prejudicial in a pecuniary sense to a person engaged as a livelihood in a profession or trade.[1] Plaintiffs are such persons who suffered from defamatory *written* words. If words spoken, which are usually stated once and lost in the ether, can be actionable *per se* in such circumstances, then forcibly written words, which may not be erased,[2] are actionable *per se* when they prejudice someone in their trade or profession. Indeed, in Holt v. Boyle Bros., Inc., 217 F.2d 16, 17 (D.C.Cir., 1954), a case where written words were involved, the D.C. Circuit stated:

> To say, as [the defendant] did in the letter to the personnel officer, that [the plaintiff] refused to pay a just debt, was plainly defamatory, for this sort of charge 'obviously would hurt the plaintiff in the estimation of an important and respectable part of the community'. Nothing more is necessary to make written or printed defamation actionable as libel. Peck v. Tribune Co., 214 U.S. 185, 190, 29 S.Ct. 554, 53 L.Ed. 960. Thackrey v. Patterson, 81 U.S.App.D.C. 292, 157 F.2d 614. Statements in Holtz v. National Furniture Co., 61 App.D.C. 80, 57 F.2d 446, and Cohen v. Marx Jewelry Co., 67 App.D.C. 347, 92 F.2d 498, which imply

[1] Raboya, then, is incorrect and not binding in this Court.

[2] Even if Defendant later deleted his comments, they could be and may have been perpetuated through printing and forwarding by others before he deleted them. Further, Defendant can republish his comments at any time.

> that a charge of failing to pay a just debt is not actionable unless special damage or some other special circumstance is shown, are therefore erroneous.

Nothing in the foregoing involves a crime. *See also* Peck v. Tribune Co., 214 U.S. 185, 189 (1909) ("A libel is harmful on its face") ("if a doctor were represented as advertising, the fact that it would affect his standing with other of his profession might make the representation actionable, although advertising is not reputed dishonest and even seems to be regarded by many with pride.") Id. at 190; Thackrey v. Patterson, 157 F.2d 614 (D.C.Cir., 1946) (mere assertion of marital discord is libelous, and it was unnecessary to allege special damage). Thus, the correct law of libel *per se* is the one enunciated in Holt. Written words that obviously would hurt a plaintiff in the estimation of an important and respectable part of the community are libelous *per se.* Clearly, thus, in this case, alleging that Plaintiffs repeatedly and habitually violate HIPAA and disseminate private information about their patients is certainly libelous *per se.* No damages need to be specially alleged or proven. Defendant's claim that his words do not cause damage on their face is belied by his own review, in which he gave one star because he "would specifically recommend avoiding this clinic." Exhibit 1. To cause damage was Defendant's *intent.* To state now that his statement does not cause damage on its face is disingenuous.

Allegations against a physician that fall short of criminality can still be cause for license revocation and shutting down a medical practice. Common sense requires that defamatory written words are libel *per se.* If the Court dismisses the suit on the basis of Defendant's argument, then any reviewer in the District of Columbia can publish anything about any business on the internet and there is no remedy as long as there is no allegation of criminal conduct. That is inconsistent with Supreme Court rulings about the interest of the States in protecting private individuals from defamation. *See* Gertz v. Robert Welch, Inc., 418 U.S. 323, 348-349 (1974)

(States possess strong and legitimate interest in compensating private individuals for injury to reputation).

C. **Defendant's Claim That A Showing Of Malice Is Required Is Incorrect:**

In a footnote in his memorandum in support of his Motion, Defendant reiterates the point he made in his Reply to the Motion to Dismiss—and to which the Court obviously found no merit—that if Plaintiffs' claim fell into the "narrow" category in which damages are presumed, Plaintiffs would separately be required to submit evidence that Defendant published the statement at issue with constitutional malice, citing Gertz, 418 U.S. at 349. Mem. at 3, n. 1. Defendant adds that the "uncontroverted" evidence confirms that, even if the separate element of falsity is established, he subjectively believed that Plaintiffs sent him other patients' receipts or information, thereby negating as a matter of law any finding that he published this statement with actual malice. Id.

Defendant's argument is based on the assumption that the statements at the heart of this suit are a matter of public concern, for if they are not, Plaintiffs do not need to show actual malice—negligence will suffice. *See* Dun & Bradstreet, Inc. v. Greenmoss Builders, 472 U.S. 749, 761 (1985) (presumed and punitive damages could be awarded to private figure plaintiff on the basis of a negligently-made, false, defamatory statement on a matter of only private concern, without a showing of actual malice). Plaintiffs posit that Defendant's statements are not a matter of public concern.

The parameters for determining when speech is a matter of public concern were set by the District of Columbia Court of Appeals in Ayala v. Washington, 679 A.2d 1057 (D.C., 1996). There, the defendant wrote a defamatory letter about the plaintiff, a commercial airline pilot, to his employer airline, and another to the Federal Aviation Administration, alleging that the

plaintiff had engaged in several acts of misconduct, including the use of marijuana while off duty. Id. at 1059. In discussing whether the defamatory statements were a matter of public concern, the Court stated:

> Where speech concerns the conduct of government or important issues of self-governance, there is a grave danger that those who make and apply the rules at a given time—the governing majority of the moment—will undervalue criticism of the status quo in relation to the reputations of those who represent it. Thus, it is important that the balance in connection with such issues be struck in favor of protection of speech—and against undue government regulation of speech—through the more permanent device of the Constitution. Therefore, such matters are properly treated as of "public concern," and speakers are protected by the First Amendment from the inhibition that they inadvertently may run afoul of defamation laws.
>
> Where the matter is one that affects the interests of all, on the other hand, there is less danger that the value of defamatory speech will be inadequately weighed by the government in the balance against reputation. Applied to the airline safety concern alleged in this case, where the issue is the safety of all and the reputations of a few, it is more likely that the risk of inhibited speech will be overvalued in relation to the risk that damage to the reputations of a few will go unvindicated. Moreover, the danger to public safety posed by various non-governmental actors is one that is subject to significant change over time. Thus, it is more appropriate in that context to use the usual decision-making processes of government to determine which risks should be reduced at the expense of others. Such matters are therefore properly treated as being of "private concern" and speakers are properly subject to the regulation of defamation laws.
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> In view of the foregoing, we conclude that the content of Washington's letters to Ayala's employer was of private concern, and subject to defamation law, but that the content of her letter to the FAA was incidental to allegations of public concern, and therefore protected by the Constitution. Washington's letters to Ayala's employer merely communicated information regarding the alleged misconduct of a single private individual, albeit misconduct that could have a significant effect on public safety. The allegations did not, however, address any issue concerning the conduct of government or the structure of society or any social issue. There is little danger that government, acting through defamation law, will improperly weigh the social interest in communication of such information against the reputation interest of the subject of such communications. Indeed, for the reasons discussed above, where the subject matter is the safety of all, the weighing is best done through the ordinary processes of government, which are able to respond to shifts in the social value of the competing interests, whether they are caused by changes in circumstances or popular mood. In fact, the interest in airline safety implicated by Washington's communication to Ayala's

> employer are precisely the sort that are best evaluated and regulated through the usual non-constitutional legislative and judicial processes, because the interests at stake are shared across society.

From the foregoing, it is clear that Defendant's statements made in his review are not a matter of public concern. Defendant merely communicated false facts concerning Akl, a private individual,[3] to the public. The allegations did not address any issue concerning the conduct of government or the structure of society or any social issue. Thus, the statements at issue are not a matter of public concern and presumed and punitive damages could be awarded to Plaintiffs on the basis of negligence. *See also* Ayala at 1063, n.3 (citing Dun & Bradstreet for the same proposition).

D. Plaintiffs Can Demonstrate Special Damages Through Targeted Discovery:

In their Amended Complaint, Plaintiffs alleged special and general damages. Am. Comp. at ¶¶ 56-62. In the Opposition to the Motion to Dismiss, to demonstrate a likelihood to succeed on the merits, Plaintiffs relied on El-Hadad, *supra*, for the proposition that libel is defamation *per se*, regardless of the nature of the false and defamatory statements, and that defamation *per se* renders a defendant liable for general damages even where no special damages are proved. That was sufficient to show likelihood of success on the merits and defeat an anti-SLAPP motion. However, Plaintiffs did request that, prior to ruling on the Motion, the Court grant them leave to conduct third-party discovery aimed at demonstrating that they are likely to prevail on the merits. Opp. at 27.

[3] Defendant has already conceded that Plaintiff Akl is a private individual, as opposed to a public figure. *See* Reply to Motion to Dismiss, at 19 (("so long as [States] do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher . . . of falsehood injurious to a private individual;")

Indeed, recognizing that demonstrating likelihood of success on the merits may require discovery, the DC Council provided for such in enacting the anti-SLAPP statute. *See* D.C. Code § 16-5502(c)(2):

> When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

Although the Court did not specifically address the issue of damages under the defamation claim and only addressed it in dismissing the tortious interference claim, the Court was obviously convinced that Plaintiffs demonstrated a likelihood of success on the merits in their defamation claim and allowed the defamation claim to proceed, seeing no need for targeted discovery. However, even if D.C. Law required Plaintiffs to demonstrate special damages, Plaintiffs can do so through targeted discovery. Such targeted discovery would be aimed at demonstrating that Plaintiffs 1) suffered; and 2) are likely to continue to suffer damages as a result of Defendant's defamatory statements alleging that Plaintiffs sent him other patients' receipts and information.

In Dun & Bradstreet, the Supreme Court found that the rationale of the common-law rules has been the experience and judgment of history that proof of actual damage will be impossible in a great many cases where, from the character of the defamatory words and the circumstances of publication, it is all but certain that serious harm has resulted in fact. 472 U.S. at 760, citing W. Prosser, Law of Torts § 112, p. 765 (4th ed. 1971). Dun & Bradstreet preceded the age of the internet. Now technology allows the tracing of readers of defamatory statements. Defendant published his defamatory statements on the internet, which makes it virtually accessible to anyone anywhere. The website where the review was posted is well-frequented. In

the last 30 days alone, from December 6, 2013 through January 4, 2014, the website had more than 155 million visits, including more than 86 million unique visitors. Exhibit 2. It is impossible to quantify the extent of the damage caused by Defendant without discovery. The latter can be easily achieved by obtaining the IP addresses from which visits to Plaintiffs' Yelp page originated, thus identifying the visitors and obtaining their testimony. This would be done by Plaintiffs and would not cost Defendant a single penny. Plaintiffs cannot conduct such discovery outside of judicial proceedings as subpoenas are required to obtain the IP addresses. Thus, should the Court find that Plaintiffs are required to demonstrate special harm, Plaintiffs respectfully request that the Court grant them the opportunity afforded them by the anti-SLAPP statute to demonstrate such harm.

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The anti-SLAPP Act was intended to provide "substantive rights with regard to a defendant's ability to fend off lawsuits filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view." *See* Council of the District of Columbia, Committee on Public Safety and the Judiciary Report on Bill 18-893, "Anti-SLAPP Act of 2010", dated November 18, 2010, attached as Exhibit 3, at 1. Here, Defendant's published review was not addressing a political or public policy debate—in fact, there was no debate—nor was Defendant expressing an "opposing point of view" to anything. Plaintiffs were minding their business, and Defendant defamed them. Dismissing this suit would be tantamount to providing bad-faith reviewers such as Defendant with a *carte blanche* to publish *per se* factual defamatory statements while stripping businesses of any remedy. With regard to medical practices, defamatory statements such as Defendant's can be especially harmful. If they don't qualify as libelous *per se*, then what does? "[T]he right to practice is ... a

very precious part of the liberty of an individual physician or surgeon. It may mean more than any property. Such a right is protected from arbitrary infringement by our Constitution, which forbids any state to deprive a person of liberty or property without due process of law." Barsky v. Board of Regents, 347 U.S. 442, 459 (1954). Defendant's argument, that he removed the main statement that Plaintiffs take issue with, is of no moment. Defendant can republish his statement at any time, *especially* if this suit were to be dismissed with prejudice, as the anti-SLAPP statute requires. The real question before this Court is the following: if this suit were to be dismissed with prejudice and Defendant were to republish his statements, would Plaintiffs suffer any harm, and if so, do they have any remedy at law? The answer is clear. This simple reasoning should lead the Court to deny the Motion for Reconsideration.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant's Motion for Reconsideration.

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