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	)	

SUPPLEMENT TO PLAINTIFFS' OPPOSITION TO MOTION FOR RECONSIDERATION

Ziad Akl, MD ("Akl") and The Washington Travel Clinic, PLLC ("WTC"), (collectively "Plaintiffs"), by counsel, hereby file this Supplement to 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), to inform the Court of a supplemental authority that was unavailable as of the the date of filing of the Opposition.

Plaintiffs filed their Opposition on January 7, 2014. On January 22, 2014, a member of this Court issued an order denying a special motion to dismiss filed in a case of defamation similar to the present one. *See* Exhibit 1, Mann v. National Review, Inc. et. al., Case No. 2012 CA 8263 B (Weisberg, J.). In its amended complaint, the plaintiff Michael Mann brought a claim of libel *per se.* In denying the motion to dismiss, the Court found that to state as a fact that a scientist dishonestly molests or tortures data to serve a political agenda would have a strong likelihood of damaging his reputation within his profession, which is the very essence of defamation. The Court added that an allegation of molesting or torturing scientific data is defamatory *and is actionable per se*. Specifically, the Court stated:

> In Count VII, plaintiff alleges that CEI published, and National Review republished, the following defamatory statement: "Mann could be said to be the Jerry Sandusky of climate science, except that instead of molesting children, he has molested and tortured data in the service of politicized science that could have dire economic consequences for the nation and planet." The allegedly defamatory aspect of this sentence is the statement that plaintiff "molested and tortured data," not the rhetorically hyperbolic comparison to convicted child molester Jerry Sandusky. To "molest" means "to annoy, disturb, or persecute esp. with hostile intent or injurious effect." Webster's New Collegiate Dictionary 741 (1977). To "torture" means "to twist or wrench out of shape"; and to "distor[t] or overrefin[e] a meaning or an argument." *Id.* at 1233. The statement "he has molested and tortured data" could easily be interpreted to mean that the plaintiff distorted, manipulated, or misrepresented his data. Certainly the statement is capable of a defamatory meaning, which means the questions of whether it was false and made with "actual malice" are questions of fact for the jury.
>
> A reasonable reader, both within and outside the scientific community, would understand that a scientist who molests or tortures his data is acting far outside the bounds of any acceptable scientific method. In context, it would not be unreasonable for a reader to interpret the comment, and the republication in National Review, as an allegation that Dr. Mann had committed scientific fraud, which Penn State University then covered up, just as some had accused the University of covering up the Sandusky scandal. For many of the reasons discussed in Judge Combs Greene's July 19 orders, to state as a fact that a scientist dishonestly molests or tortures data to serve a political agenda would have a strong likelihood of damaging his reputation within his profession, which is the very essence of defamation. *See Payne v. Clark*, 25 A.3d 918, 924 (D.C. 2011) (citing *Clawson v. St. Louis Post-Dispatch, LLC*, 906 A.2d 308, 313 (D.C. 2006)). Viewing the alleged facts in the light most favorable to plaintiff, as the court must on a motion to dismiss, a reasonable jury is likely to find the statement that Dr. Mann "molested and tortured data" was false, was published with knowledge of its falsity or reckless disregard of whether it was false or not, **and is actionable as a matter of law irrespective of special harm.** *See Payne*, 25 A.3d at 924; *Guilford Transp. Ind., Inc. v. Wilner*, 760 A.2d 580, 597 (D.C. 2000); *Foretich v. CBS, Inc.*, 619 A.2d 48, 59 (D.C. 1993) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 297 (1964)); *Nader v. de Toledano*, 408 A.2d 31, 40 (D.C. 1979) (emphasis in bold added) (footnotes omitted).

Thus, the attached opinion serves as an additional authority in support of Plaintiffs' argument that words are actionable *per se* when they prejudice someone in their trade or profession.

Respectfully,

Michael A. Troy, Esq.
Bar No. 476606
5185 MacArthur Blvd., Suite 702
Washington, D.C. 20016
Tel: (202) 306-2422
michael@troylegalonline.com