IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

THE WASHINGTON TRAVEL CLINIC, PLLC, *et al.*, **Plaintiffs,** **v.** **JOHN KANDRAC,** **Defendant.**	**Case No.: 2013 CA003233 B** **Judge Laura A. Cordero** **Next Court Date: Jan. 31, 2014** **Event: Initial Scheduling Conference**

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR ATTORNEYS' FEES AND COSTS

Defendant John Kandrac respectfully submits this Reply Memorandum of Points and Authorities in Support of Defendant's Motion for Attorneys' Fees and Costs, and states as follows:

1. Pursuant to the District of Columbia Anti-SLAPP statute, the Court is authorized to award a defendant prevailing on his anti-SLAPP motion the "costs of litigation," including reasonable attorneys' fees and costs. Plaintiffs' Opposition does not contest the reasonableness of Defendant's request for fees and costs. In fact, they do not even address it. Rather, Plaintiffs devote almost their entire Opposition to arguing that Defendant is not entitled to fees at all, by (a) recycling already rejected arguments about the merits (*e.g.*, that the Anti-SLAPP Act does not apply to this case, or that Plaintiffs sufficiently alleged a tortious interference claim), (b) asserting baseless arguments (*e.g.*, that, despite the plain language of the statute, a *jury* must decide whether this case is a SLAPP), and (c) relying on authority that is simply misplaced (*e.g.*,

seeking to import different language from California's statute). Below, Kandrac addresses Plaintiffs' various arguments, each of which is demonstrably without merit.

2. **The Anti-SLAPP Statute Applies To This Case:** Plaintiffs' Opposition first argues that the Court's determination that the Anti-SLAPP statute applies to this case was wrong, and that it does not apply here because "Defendant's published review was not addressing a political or public policy debate." Opp. at 1. Plaintiffs in effect beg the Court to reconsider its judgment, spending pages rehashing already-rejected arguments to support their claim that "this suit is unlikely to be a SLAPP." *Id.* at 2. Plaintiffs' arguments here are pointless. This Court has already determined that the "D.C. Anti-SLAPP Act Applies to the Statements at Issue." Omnibus Order at 6. The Court specifically held that "in this case, the claims at issue fall under the broad umbrella of the Anti-SLAPP Act," because Defendant's Yelp review was clearly his communication of views about Plaintiffs' medical practice to other members of the community and "was related to a service in the marketplace. Thus it is covered by § 16-5501(1)(B)." *Id.* at 7.[1]

3. Relatedly, Plaintiffs assert without any authority that the case is "*unlikely to be a Strategic Lawsuit Against Public Participation*" because "[w]hat matters is the intent of the suit itself" and their suit was not "intended to muzzle speech or efforts to petition the government on issues of public interest." Opp. at 2 (emphasis in original); *see also id.* (asserting that relevant inquiry is whether action was "intended as a SLAPP"). As an initial matter, given that Plaintiffs demanded that Kandrac remove his review both prior to the lawsuit, *see, e.g.*, Opp. at 9, and in

[1] Plaintiffs' "this is not a SLAPP" refrain is consistently repeated throughout their Opposition as support for their various reasons as to why Defendant is not entitled to fees. *See, e.g.*, Opp. at 2, 3, 10, 11, 12. As further explained below, not only are Plaintiffs wrong, but Plaintiffs should not be permitted to re-litigate an issue already conclusively decided by the Court in the context of an opposition to a fee motion.

the Prayer for Relief in both of their Complaints – and that they sought to do so in a lawsuit sealed from public scrutiny – muzzling speech was their obvious intent. Regardless, Plaintiffs' *intent* is irrelevant in any event under the plain language of the statute, which requires only that the lawsuit arises from "an act in furtherance of the right of advocacy on issues of public interest," and which says nothing about a plaintiff's intent. D.C. Code § 16-5502(a). Indeed, courts interpreting California's anti-SLAPP statute have similarly held that a defendant need not demonstrate that the plaintiff intended to chill the defendant's constitutionally protected rights to rely on the protections of the statute. *See, e.g.*, *Bosley Med. Inst., Inc. v. Kremer*, 403 F.3d 672, 682 (9th Cir. 2005) ("The defendant need not show that plaintiff's suit was brought with the intention to chill defendant's speech; the plaintiff's 'intentions are ultimately beside the point.'") (quoting *Equilon Enters. v. Consumer Cause Inc.*, 29 Cal. 4th 53, 67, 124 Cal. Rptr. 3d 507 (Cal. 2002)); *Roberts v. Los Angeles Cnty. Bar Ass'n*, 105 Cal. App. 4th 604, 615, 129 Cal. Rptr. 2d 546, 553 (Cal. Ct. App. 2003) ("there is no intent-to-chill requirement in addition to the 'act in furtherance' requirement in order to apply the anti-SLAPP statute").

4. **The Tortious Interference Claim Will Not Be "Reinstated on Appeal":** Plaintiffs next argue that their tortious interference claim "may be" be reinstated on appeal. Opp. at 3-4; *id.* at 5 (tortious interference claim "could be subject to reversal on appeal"). While it is always possible for a ruling to be reversed on appeal, Plaintiffs' argument here is particularly unavailing. First, they argue that proof of injury is unnecessary for their separate claim for *defamation*, an assertion that is demonstrably incorrect as explained in detail in Kandrac's anti-SLAPP reply brief, at 17-21, his Motion for Reconsideration at 2-4, and his reply in support of that motion, at 2-7 (all explaining that imputation of a crime of moral turpitude is necessary for libel *per se* and presumed damages). Second, even assuming *arguendo* that Plaintiffs'

defamation claim involved libel *per se* for which they could recover presumed damages to their *reputation*, they cite no authority explaining how that would also relieve them of showing *economic* injury for their tortious interference claim, which has *always* required proof of actual injury. As this Court already found in dismissing their tortious interference claim, it is settled law that a plaintiff must plead and prove damages from the alleged interference, Omnibus Order at 15-16 (citing cases), and "Plaintiffs have produced no evidence showing that they have suffered any damages as a result of Defendant's reviews, or that they will suffer harm in the future," *id.* at 17. Plaintiffs' apparent hope that the Court of Appeals might ignore the "crime of moral turpitude" requirement for libel *per se*, and then import the concept of "presumed damages to reputation" into a different cause of action seeking to redress economic injury is an extraordinary series of leaps that need be given weight in resolving this motion. *See, e.g., Act Now to Stop War & End Racism Coal. v. District of Columbia*, 286 F.R.D. 117, 132 (D.D.C. 2012) (refusing to stay award of attorneys' fees until final order entered and party could seek appeal because purpose of fee award "is seriously undermined when the party is allowed to defer its sanction until after final judgment"); *Dowling v. Zimmerman*, 85 Cal. App. 4th 1400, 1425-1426, 103 Cal. Rptr. 2d 174, 194 (Cal. Ct. App. 2001) (awarding attorneys' fees under California anti-SLAPP statute and denying stay of judgment pending adjudication of appeal).

5. **The Court May Properly Strike Individual Statements:**[2] Again rehashing arguments already rejected by this Court, Plaintiffs also argue that the Anti-SLAPP Act authorizes a court "to strike a cause of action but cannot be used to strike particular allegations within a cause of action." Opp. at 6. As result, they claim, no fees should be awarded at all for

[2] The title of this section of Plaintiffs' Opposition argues that the five statements the Court dismissed from their defamation claim also may be reinstated on appeal, but that argument is based solely on Plaintiffs' assertion that the Court of Appeals would not allow the dismissal of only a part of a cause of action. Accordingly, Kandrac addressed that argument directly.

defeating five of six statements challenged in their defamation claim and the entirety of their tortious interference claim – as well as their Motion for Rule 11 Sanctions. Again, Plaintiffs are simply wrong. This Court has already recognized that the Anti-SLAPP Act allows individual allegations composing a claim to be dismissed by rejecting Plaintiffs' arguments to the contrary and dismissing Plaintiffs' claims with respect to five of the six challenged statements. Omnibus Order at 24. Indeed, Plaintiffs themselves concede that they "already made this argument . . . in their Opposition to the Motion to Dismiss" and that, "[d]espite this," the "Court struck particular allegations within the defamation action." Opp. at 6-7. While Plaintiffs cite California authority interpreting the California anti-SLAPP statute, that statute lacks specific language included in the D.C. Anti-SLAPP Act, which expressly contemplates such partial rulings. *See, e.g.*, D.C. Code § 16-5504(a) (authorizing award of attorneys' fees and costs to "a moving party who prevails, *in whole or in part*, on [an Anti-SLAPP] motion") (emphasis added). It is hard to imagine that the Court of Appeals would rely on the judicial gloss given by a different state's courts to different statutory language, while ignoring the plain language of the D.C. statute, in order to reverse this Court's ruling.[3]

[3] Moreover, California's statute actually authorizes an award of fees and costs to a defendant who partially succeeds on an anti-SLAPP motion. *See, e.g.*, *Mann v. Quality Old Time Serv., Inc.*, 139 Cal. App. 4th 328, 340, 42 Cal. Rptr. 3d 607, 615 (Cal. Ct. App. 2006) (approving award of half of defendant's fees where anti-SLAPP motion succeeded in court's dismissal of only one of four cases of action, and recognizing that "by bringing the anti-SLAPP motion, defendants thus successfully narrowed the scope of the lawsuit, limiting discovery, reducing potential recoverable damages, and altering the settlement posture of the case"). While Plaintiffs rely on *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 124 Cal. Rptr. 3d 256 (Cal. 2011), and *Wallace v. McCubbin*, 196 Cal. App. 4th 1169, 128 Cal. Rptr. 3d 205 (Cal. Ct. App. 2011) (Opp. at 6), neither deals with attorneys' fees. In any event, later California cases have read *Oasis* and *Wallace* to allow striking a part of a cause of action. *See, e.g.*, *Cho v. Chang*, 219 Cal. App. 4th 521, 527, 161 Cal. Rptr. 3d 846, 851 (Cal. Ct. App. 2013) (discussing *Oasis* and *Wallace* and concluding that "a plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one 'cause of action'").

6. Plaintiffs further argue that Kandrac is not entitled to any fees because they "could have brought only a count of defamation based on th[e] single statement" that survived, and "[t]he suit would still stand." Opp. at 7; *see also id.* at 9 (advancing same argument). Such an application would turn the Anti-SLAPP statute on its head. It would allow a plaintiff to force a defendant to defend a meritless defamation claim as to many statements, a meritless tortious interference claim, and a meritless Rule 11 motion, all with their attendant chill on a defendant's exercise of his free speech rights – just because he happened to plead one statement as to which he could make a "sufficient prima facie showing of facts that could sustain a favorable judgment if credited by the trier of fact." Omnibus Order at 9. Rather, the proper approach – particularly given the express statutory language authorizing an award of fees to "a moving party who prevails, *in whole or in part*," D.C. Code § 16-5504(a) (emphasis added) – is to award Kandrac his fees of responding to those meritless claims.[4]

7. **Kandrac Is Entitled To His Full "Costs of Litigation":** Plaintiffs next assert that "[e]ven if the Court were to award Defendant attorneys' fees, only the Special Motion to Dismiss should be considered." Opp. at 8. Once again, the legal premise of Plaintiffs' argument is plainly wrong. The D.C. Anti-SLAPP statute allows a successful movant to be awarded his "*costs of litigation*," and does not restrict that award to only those fees and costs directly pertaining to the successful anti-SLAPP motion. *See* D.C. Code §16-5504(a) ("The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or

[4] Relatedly, Plaintiffs assert that "those parts of the Motion to Dismiss under the anti-SLAPP Act that do not address the allegations stricken by the Court or the tortious interference claim are not reached by the statute either," and that "the skeleton used to construct the Motion was defeated by Plaintiffs." Opp. at 8. If Plaintiffs' point is that Kandrac should not be awarded fees for the portions of his argument regarding the applicability of the Anti-SLAPP Act, this makes no sense, given that this Court determined that the statute applies to the case, and dismissed those statements pursuant to the applicable provisions of the statute. As such, this "skeleton" was not defeated by Plaintiffs as they claim.

§ 16-5503 the ***costs of litigation***, including reasonable attorney fees.") (emphasis added). In this regard, the D.C. statute is in direct contrast with the language of the California provision on which Plaintiffs rely (but tellingly do not quote), which authorizes an award of attorneys' fees and costs to "a prevailing defendant on *a special motion to strike*." Cal. Code Civ. Proc. § 425.16(c) (emphasis added). The D.C. Council was well aware of the California statute, which has been on the books since 1992 and was among those statutes specifically referenced in the legislative history. *See* Jones Aff. Ex. 17 (Committee Report explaining that Council was following the lead of a number of jurisdictions, including California). It could have adopted the same language, but instead broadened the D.C. Anti-SLAPP statute's coverage to include all "costs of litigation."[5] To be sure, Kandrac is not entitled to fees for work performed on the one statement as to which he did not prevail (unless his motion for reconsideration as to that statement is granted), but Kandrac has expressly excluded such amounts from his request. *See* Berlin Aff. ¶ 3 & Ex. 1.

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[5] Moreover, even if this Court were to look to California for guidance, courts construing the narrower language of that state's anti-SLAPP statute have held that, where a defendant files mutually overlapping motions raising common speech-related defenses (such as a Rule 12(b)(6) motion and an Anti-SLAPP motion, or other related motions), he should be awarded his full fees. *See, e.g., Manufactured Home Communities, Inc. v. Cnty. of San Diego*, 655 F.3d 1171, 1181 (9th Cir. 2011) ("We conclude that the district court did not abuse its discretion in awarding Defendants' attorney's fees for work on their first anti-SLAPP motion based on its finding that the work relating to the two motions overlapped and that the first anti-SLAPP motion was integral to Defendants' eventual success."); *Kearney v. Foley & Lardner*, 553 F. Supp. 2d 1178, 1184 (S.D. Cal. 2008) ("plaintiff should not be permitted to avoid imposition of attorneys' fees for a motion to dismiss when the factual and some legal bases for the claims are inextricably intertwined as they are in the present action"); *Metabolife Int'l v. Wornick*, 213 F. Supp. 2d 1220, 1223 (S.D. Cal. 2002) (awarding fees under California's SLAPP statute where "the entire lawsuit is subject to the anti-SLAPP motion because all causes of action against [defendant] relate to free speech and all of the activity by [defendant's] attorneys occurred in the context of, and were inextricably intertwined with, the anti-SLAPP motion"); *see also Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1119, 81 Cal. Rptr. 2d 471, 471 (Cal. 1999) (holding that the fee provision of the statute be "construed broadly").

8. As further support for their argument that Kandrac is entitled to no fees, Plaintiffs make the outlandish assertion that "Defendant sought this litigation," and essentially accuse Defendant of bringing this lawsuit on himself. Opp. at 9 (emphasis in original). As the Court knows, Kandrac has not filed a counterclaim, or initiated any other action against Plaintiffs. Rather, *Plaintiffs* initiated this lawsuit, *Plaintiffs* forced Defendant to litigate a contested motion to unseal, *Plaintiffs* litigated and lost almost all of a dispositive motion, and *Plaintiffs* litigated and lost a Motion for Rule 11 Sanctions. Defendant should be awarded his reasonable fees and costs for being forced to take substantial steps to defend himself.

9. For their part, Plaintiffs claim that they "gave [Kandrac] the opportunity to remove his defamatory statements twice before they filed this suit," and that his failure to do so should count against his request for fees. *Id.* This is patently absurd. First, Kandrac should not have needed to take down statements that this Court ultimately dismissed pursuant to the Anti-SLAPP Act – if they were protected by the statute, he should not be faulted for refusing to be bullied into removing them. Second, with respect to the one remaining statement, Kandrac removed that statement days after it was posted and long before Plaintiffs filed their lawsuit. *See* Kandrac Aff. (filed July 15, 2013) ¶ 13. Thus, to the extent that Kandrac's pre-litigation response to Plaintiffs' demands is relevant, it actually supports an award of attorneys' fees and costs.

10. In contrast, Plaintiffs repeatedly refused to even attempt to resolve this matter before forcing Kandrac and his counsel to litigate a contested motion to unseal, the anti-SLAPP motion and the Motion for Rule 11 Sanctions. Their repeated refusals are properly considered in adjudicating this motion. Kandrac's counsel approached Plaintiffs' counsel numerous times since the litigation began for purposes of resolving this matter – including before filing the anti-

SLAPP motion, after filing anti-SLAPP motion, and even after issuance of this Court's Omnibus Order. Counsel for Defendant contacted Plaintiffs' counsel once more before filing the instant Reply, again inviting Plaintiffs to come forward with their own proposal to resolve this matter, but have yet to receive any response. *See, e.g., Meister v. Regents of the Univ. of Cal.*, 67 Cal. App. 4th 437, 452, 78 Cal. Rptr. 2d 913, 923 (Cal. Ct. App. 1998) (court may take a party's rejection of settlement proposal into account in awarding fees).

11. **Kandrac Is Entitled To An Award Of Fees Under Rule 11(c)(1)(a):** In response to Kandrac's showing that he is separately entitled to the portion of the fees his counsel incurred in responding to Plaintiffs' Motion for Rule 11 Sanctions under D.C. Superior Court Rule 11(c)(1)(A), notably, Plaintiffs do not argue that their Rule 11 Motion was improperly denied, that it was necessary or that it was not frivolous. The fact that Plaintiffs filed a Rule 11 motion based solely on arguments already contained in their Opposition to Defendant's anti-SLAPP motion, which this Court also declined to credit, only further supports that their sanctions motion was frivolous and that Defendant should be awarded his fees for defending it pursuant to this Rule as well. *See, e.g., Wilkins v. Bell*, 917 A.2d 1074, 1082 (D.C. 2007) (affirming award of sanctions under Rule 11 for filing meritless Rule 11 motion).

12. **Kandrac's Contingency Fee Arrangement Supports a Fee Award:** Plaintiffs appear to challenge the nature of Kandrac's "retainer agreement," including that it must be disclosed, before the Court can award fees. Opp. at 11. The only authority that Plaintiffs cite, *Dowling v. Zimmerman*, 85 Cal. App. 4th at 1425-1426, 103 Cal. Rptr. 2d at 194, actually affirmed the award of a defendant's attorneys fees for prevailing on an anti-SLAPP motion, where, as here, the defendant was represented on a contingency fee basis. Nothing in *Dowling* required the defendant to submit his actual fee agreement before awarding fees, and in fact, the

case recognizes that a lawyer who takes a SLAPP case on a contingency basis is *entitled* to a reasonable fee award. Accordingly, this case directly undercuts Plaintiffs' argument that an award of fees is not appropriate here.[6]

13. For the avoidance of any doubt, Kandrac wants to be clear about the nature of his counsel's representation. The undersigned counsel agreed to handle the matter with Kandrac paying only out of-pocket expenses, but with the undersigned's law firm otherwise agreeing to recover only those fees and costs awarded by the Court, if any. *See* Def.'s Mem. in Support of Mot. for Fees at 4; Berlin Aff. ¶ 3. Kandrac paid no retainer fee as Plaintiffs suggest. In fact, Kandrac was referred to his counsel by the ACLU, and the firm agreed to represent him under this contingency fee arrangement because of the firm's commitment to the defense of free speech rights and the First Amendment, and its specialized practice area in handling such claims. *See generally* Berlin Aff. ¶¶ 4-5, 7-9 (describing firm's reputation in defending First Amendment actions, and defense counsel's experience in this area). Indeed, the entire essence of the fee shifting portion of the D.C. Anti-SLAPP statute is to encourage such private representation in SLAPP cases, including situations when a SLAPP defendant is otherwise unable to afford proper representation. As demonstrated by *Dowling* and other cases applying California law, arrangements on such a basis are entirely compensable. *See, e.g.*, *Rosenaur v. Scherer*, 88 Cal. App. 4th 260, 283, 105 Cal. Rptr. 2d 674, 690 (Cal. Ct. App. 2001) ("since attorneys are agents

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[6] *Dowling* offers additional findings that support Kandrac's request for fees. There, the Court awarded fees to the defendant for litigating an anti-SLAPP motion in the lower court action, *and* for an appeal. 85 Cal. App. 4th at 1426-27, 103 Cal. Rptr. 2d at 195. Furthermore, the Court did not stay the judgment of the award pending an appeal, and required the plaintiff to post an appeal bond in the amount of the award in order to perfect his appeal. *Id.* ("a SLAPP plaintiff's perfecting of an appeal from a judgment awarding attorney fees and costs to a prevailing SLAPP defendant . . . does not automatically stay enforcement of the judgment. To stay enforcement of such a judgment, the SLAPP plaintiff must give an appropriate appeal bond or undertaking under the money judgment exception to the automatic stay rule.").

of their client," an award "can certainly include recovery of the fees that the defendant's agent – the attorney – has accrued on defendant's behalf, even if the agent has waived payment from defendant, but not their recovery otherwise").

14. Moreover, in ordinary circumstances under California's statute, Defendant's counsel would not only be entitled to fees, but also entitled to seek a fee multiplier for entering into an agreement on a contingency fee basis. *See, e.g., Ketchum v. Moss*, 24 Cal. 4th 1122, 104 Cal. Rptr. 2d 377 (Cal. 2001) (defendant who is represented on a contingency basis entitled to recover fees for a successful anti-SLAPP motion, and the fees in such a case are subject to application of an enhancement multiplier of the "lodestar" figure). The California Supreme Court explained in *Ketchum* that "[t]he purpose of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives for attorneys enforcing important constitutional rights, such as those protected under the anti-SLAPP [statute], into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis." 24 Cal. 4th at 1132, 104 Cal. Rptr. 2d at 384. Despite this, undersigned counsel has not requested a "contingency" multiplier in this case, seeking only fees from the *Laffey* matrix, which uses hourly rates lower than the firm's standard hourly rates. Berlin Aff. ¶ 11.

15. **The Attorneys' Fees Issue Should Be Decided Now:** Finally, Plaintiffs suggest that the Court defer ruling on this motion until "resolution of this case" and that it "have the parties rebrief the Court before adjudicating the Motion as there are jury questions as to whether this is a SLAPP." Opp. at 12. Plaintiffs do not explain how or when they expect to "rebrief the Court," given that this Court has already decided that the D.C. Anti-SLAPP statute applies to this case as a matter of law, granted Defendant's motion under the Act as to all but one statement, and Plaintiffs did not request reconsideration of the Court's decision.

16. More importantly, however, Plaintiffs' assertion that this is a "jury question" plainly contradicts the statute's express language and the D.C. Council's intent in allowing "a defendant to more expeditiously, and more equitably, dispense of a SLAPP" through the filing of a special motion to dismiss, thereby dispensing with protracted litigation and an unnecessary trial. Jones Aff. Ex. 17; *See also* D.C. Code. § 16-5502(a) ("a party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim"); *id.* § 16-5502(d) (requiring court to hold an "expedited hearing on the special motion to dismiss"); *id.* § 16-5502(b) ("the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied."). Courts interpreting the D.C. Anti-SLAPP statute since it was enacted in 2010 have routinely decided these issues as a matter of law at the outset, rather than finding that they create a "jury question" as to whether the case falls within the statute, or offering an unsuccessful plaintiff the ability to re-litigate that issue later in the case. *See, e.g.*, *Payne v. District of Columbia*, 2012 CA 6163B (D.C. Super. 2013); *Boley v. Atlantic Monthly Grp.*, --- F. Supp. 2d ----, 2013 WL 3185154 (D.D.C. 2013); *Farah v. Esquire Magazine, Inc.*, 863 F. Supp. 2d 29 (D.D.C. 2012), *aff'd*, 736 F.3d 528 (D.C. Cir. 2013); *Abbas v. Foreign Policy Grp., LLC*, --- F. Supp. 2d ----, 2013 WL 5410410 (D.D.C. 2013). Plaintiffs cite no authority or any language in the statute stating otherwise.[7]

17. Furthermore, to the extent that Plaintiffs seek an unspecified delay simply to avoid paying Defendant's fees now, or to avoid having to post an appeal bond, *see* note 6 *supra*,

[7] Indeed, courts interpreting California's anti-SLAPP law have similarly held that such issues are properly resolved by the judge at the outset, not by a jury. *See Blanchard v. DIRECTV, Inc.*, 123 Cal. App. 4th 903, 918, 20 Cal. Rptr. 3d 385, 395 (Cal. Ct. App. 2004) (when ruling on a defendant's anti-SLAPP motion, "'whether plaintiffs have established a prima facie case'" to warrant case to proceed "'is a question of law'") (quoting *HMS Capital, Inc. v. Lawyers Title Co.*, 118 Cal. App. 4th 204, 12 Cal. Rptr. 3d 786 (Cal. Ct. App. 2004)).

delaying the resolution of this motion would unnecessarily prolong this litigation, would needlessly delay Defendant's ability to collect any potential award, and would undermine the very purpose of the Anti-SLAPP statute. *See, e.g.*, *Boley*, 2013 WL 3185154, at *2 (describing the Anti-SLAPP Act's provision instructing courts "to address special motions to dismiss on an expedited basis").

18. **Kandrac's Request For Fees and Costs Is Reasonable:** Finally, Plaintiffs do not in any way contest the reasonableness of Kandrac's fees and costs. Plaintiffs do not contest his use of the lodestar method to determine reasonableness of fees, nor could they, as this method is widely used for determining a reasonable award. *See* Def.'s Mem. in Support of Motion for Fees at 9. Plaintiffs do not contest use of the *Laffey* matrix as a standard indicator of counsel's reasonable rates, nor could they, as it is widely viewed as setting forth reasonable hourly rates in this jurisdiction. *Id.* at 9-10. Plaintiffs also do not contend that counsel expended an unreasonable number of hours on the litigation, as described in detail in the accompanying Berlin Affidavit and Exhibit, which thoroughly explain the time spent by each attorney and paralegal on each task. *See* Berlin Aff. Ex. 1. Nor do Plaintiffs provide an attorney or expert affidavit to dispute defendant's fees or the hours expended. Thus, Plaintiffs do not contest Defendant's request for a total award of $95,763.00 in attorneys' fees as an accurate calculation of the hours Kandrac's counsel reasonably expended on their success in the litigation multiplied by a reasonable hourly rate. *Id.* Finally, Plaintiffs do not contest Kandrac's request for reimbursement of the expenses he himself paid, totaling of $200.40, all of which were related to court costs and filing fees. Def.'s Mem. in Support of Motion for Fees at 12. In light of Plaintiffs' failure to even address this issue, this Court should have no trouble finding that

Defendant spent an appropriate number of hours and that the hourly rates are reasonable in light of the skill and experience of Defendant's counsel, and the circumstances of this action.

CONCLUSION

Based on the foregoing, and his opening papers, Defendant John Kandrac respectfully requests the Court to grant his motion, and award him attorneys' fees in the amount of $95,763.00 in fees and costs in the amount of $200.40.

Dated: January 21, 2014

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: /s/ Shaina Jones Ward
Seth D. Berlin (D.C. Bar No. 433611)
Shaina Jones Ward (D.C. Bar No. 1002801)

1899 L Street, NW
Suite 200
Washington, D.C. 20036-5514
Telephone: (202) 508-1100
Facsimile: (202) 861-9888
E-mail: sberlin@lskslaw.com
sward@lskslaw.com

Counsel for Defendant John Kandrac

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of January 2014, I caused a true and correct copy of the foregoing Reply Memorandum of Points and Authorities in Support of Defendant's Motion for Fees and Costs, to be served via the Court's electronic filing system upon counsel for Plaintiffs as follows:

Michael A. Troy, Esq.
5185 MacArthur Blvd., Suite 702
Washington, DC 20016
(202) 306-2422
michael@troylegalonline.com

Counsel for Plaintiffs

/s/ Shaina Jones Ward
Shaina Jones Ward (D.C. Bar No. 1002801)