IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASSANDRA FAIRBANKS, an individual, **Plaintiff**, **v.** **EMMA ROLLER, an individual,** **Defendant**.	Civil Action No. 1:17-cv-01052-CKK ORAL HEARING REQUESTED

DEFENDANT'S SPECIAL MOTION TO DISMISS
PURSUANT TO THE D.C. ANTI-SLAPP ACT

Pursuant to the District of Columbia Anti-SLAPP Act of 2010, D.C. Code § 16-5502(a) (the "Act"), Defendant Emma Roller, by and through her undersigned counsel, respectfully moves for an order dismissing Plaintiff's First Amended Complaint with prejudice. Roller reserves the right to file a motion seeking an award of the costs of litigation hereof, including attorney's fees, as provided by D.C. Code § 16-5504(a), within fourteen days after the entry of judgment in her favor, following a grant of her anti-SLAPP motion. Fed. R. Civ. P. 54(d)(2).

For the reasons set forth more fully in the accompanying Memorandum of Points and Authorities, Roller's Twitter posting at issue is protected by the Act, as the posting constitutes an "[a]ct in furtherance of the right of advocacy on issues of public interest," D.C. Code § 16-5502(a), and Plaintiff is unable to carry her burden of demonstrating that she is "likely to succeed on the merits" of her defamation claim, D.C. Code § 16-5502(b).

Accordingly, Roller respectfully requests that the Court grant her special motion to dismiss and enter judgment in her favor dismissing the First Amended Complaint with prejudice.

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REQUEST FOR HEARING

Roller respectfully requests a hearing on her special motion to dismiss.

Dated: October 23, 2017

Respectfully submitted,

/s/ *Laura R. Handman*

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DEFENDANT EMMA ROLLER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SPECIAL MOTION TO DISMISS UNDER THE D.C. ANTI-SLAPP ACT

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In support of her special motion to dismiss under the District of Columbia Anti-SLAPP Act of 2010, D.C. Code § 16-5502(a), Defendant Emma Roller ("Roller" or "Defendant") respectfully submits this Memorandum of Points and Authorities.

PRELIMINARY STATEMENT

The D.C. Anti-SLAPP statute (the "Act") was enacted to combat "Strategic Lawsuits Against Public Participation" ("SLAPPs")—frivolous actions, like this one, "filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view." *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1226 (D.C. 2016) (citation omitted). The D.C. Circuit has long recognized that "[t]he threat of being put to the defense of a lawsuit … may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself." *Washington Post Co. v. Keogh*, 365 F.2d 965, 968 (D.C. Cir. 1966). The Act—like similar statutes passed by the legislatures of 28 other states—is thus designed to "protect the targets of suits intended as a weapon to chill or silence speech." *Doe v. Burke*, 133 A.3d 569, 571 (D.C. 2016) (citation and quotation marks omitted). For the reasons discussed in more detail herein, the Act fully applies in a U.S. district court sitting in diversity.

This lawsuit is a quintessential SLAPP. Indeed, the Amended Complaint (the "Complaint," cited herein as "Compl.") frames the lawsuit as part of a "personal, political war" among "ideological adversaries" in the field of journalism. Compl. at 2. However, though Plaintiff is free to rail against "gatekeeper" journalists in her writing, *id.*, she may not use meritless lawsuits to punish others for opining on the political implications of her public actions. Anti-SLAPP statutes are designed specifically to prevent this use of expensive libel litigation as a cudgel to chill criticism and silence public debate.

As set forth in the Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss the Complaint (the "MTD Memo"), Plaintiff's claim fails as a matter of law

for two reasons: 1) the Tweets are protected opinion; and 2) Plaintiff fails to plausibly allege actual malice, as she must as a public figure. Even though Plaintiff's claim is utterly meritless, Defendant must nevertheless endure "[c]ostly and time-consuming defamation litigation" over the exercise of her rights to advocate on issues of public interest. *Kahl v. Bureau of Nat'l Affairs, Inc.*, 856 F.3d 106, 109 (D.C. Cir. 2017).[1] The D.C. Anti-SLAPP Act was designed to allow defendants to avoid that exact result, and should be applied to this case. *Mann*, 150 A.3d at 1237–38.

The Complaint should be promptly dismissed under the Act, and Roller should be given the opportunity at the appropriate time to seek reimbursement of her attorney's fees and costs in defending this frivolous lawsuit.

FACTUAL BACKGROUND

The relevant factual background to this case is set forth in detail in Roller's MTD Memo, which is fully incorporated herein by reference.

ARGUMENT

The D.C. Anti-SLAPP Act accomplishes its "purpose to deter meritless claims filed to harass [a] defendant for exercising First Amendment right[s]" in two key ways relevant to this case. *Mann*, 150 A.3d at 1239. First, the Act "extend[s] substantive rights to defendants in a SLAPP, providing them with the ability to file a special motion to dismiss that must be heard expeditiously by the court." *Id.* at 1235. When a defendant meets the *prima facie* burden of establishing that the claim arises from "advocacy on issues of public interest," D.C. Code § 16-5502(a), the burden shifts to the plaintiff to establish that "the claim is likely to succeed on the

[1] *See* also *Farah v. Esquire Magazine*, 736 F.3d 528, 534 (D.C. Cir. 2013) ("Indeed, this court has observed that summary proceedings are essential in the First Amendment area because if a suit 'entails long and expensive litigation,' than the protective purpose of the First Amendment is thwarted even if the defendant ultimately prevails.") (quoting *Keogh*, 365 F.2d at 968).

merits." *Id.* § 16-5502(b).[2] Second, the Act allows a defendant who prevails in whole or in part on such a motion to recover her costs and attorneys' fees. *Id.* § 16-5504. *See Mann*, 150 A.3d at 1238 (explaining the "financial levies to deter a SLAPP plaintiff," specifically the fees provision).

The Court should apply the Act's provisions to this claim, which readily meets the definition of a claim arising from "an act in furtherance of the right of advocacy on issues of public interest." *See infra* Section II.A. And for the multiple reasons set forth in the MTD Memo, the claim fails as a matter of law, so Plaintiff cannot possibly show that she is "likely to succeed on the merits."

I. THE D.C. ANTI-SLAPP STATUTE APPLIES IN THIS COURT

For the first four years after the Act was passed, numerous courts in this Circuit applied its provisions when sitting in diversity, based on the conclusion that the law's provisions were substantive, and therefore fully applicable in federal court under the basic principles of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).[3] However, in 2015, in *Abbas v. Foreign Policy Grp.,*

[2] The Act also provides for a stay of discovery (except to the extent "targeted discovery" is necessary to oppose the motion) and for an "expedited hearing" with "a ruling as soon as practicable after the hearing." D.C. Code § 16-5503(c)-(d).

[3] *See, e.g.*, *Forras v. Rauf*, 39 F. Supp. 3d 45, 51-52 (D.D.C. 2014) (applying statute), *aff'd on other grounds*, 812 F.3d 1102 (D.C. Cir. 2016); *Abbas v. Foreign Policy Grp., LLC*, 975 F. Supp. 2d 1, 9-11 (D.D.C. 2013) (same), *aff'd in part on other grounds*, 783 F.3d 1328 (D.C. Cir. 2015); *Boley v. Atl. Monthly Grp.*, 950 F. Supp. 2d 249, 254 (D.D.C. 2013) (same); *Farah*, 863 F. Supp. 2d 29, 36 n.10 (D.D.C. 2012) ("The D.C. Anti-SLAPP Act intentionally follows the lead of other jurisdictions, which similarly extended absolute or qualified immunity to individuals engaged in protected actions, [by enacting anti-SLAPP statutes].") (citation and quotation marks omitted), *aff'd on other grounds*, 736 F.3d at 534; *Diwan v. EMP Glob. LLC*, 841 F. Supp. 2d 246, 247 n.1 (D.D.C. 2012) (same); *see also Sherrod v. Breitbart*, 843 F. Supp. 2d 83, 85 (D.D.C. 2012) (recognizing that the D.C. Act, like other state anti-SLAPP statutes, is "substantive – or at the very least, has substantive consequences" that would make it applicable in federal court under *Erie*, but declining to apply statute retroactively), *aff'd*, 720 F.3d 932 (D.C. Cir. 2013). Only one decision—*3M Co. v. Boulter*, 842 F. Supp. 2d 85, 96 (D.D.C.

LLC, 783 F.3d 1328 (D.C. Cir. 2015), the D.C. Circuit diverged from the consensus of the other Circuit Courts of Appeal to have confronted the same question,[4] and held that a state anti-SLAPP statute could not apply in a federal court sitting in diversity. This conclusion was based on the Circuit's prediction—in the absence of any authority squarely on point—that the D.C. Court of Appeals would interpret the "likely to succeed on the merits" standard in the Act in a manner that was inconsistent with the Federal Rules of Civil Procedure. *Id.* at 1334. In particular, the *Abbas* court held that the "likely to succeed on the merits" standard under the Act imposed a "different … and more difficult" burden on a plaintiff than Federal Rules 12(b)(6) (which governs motions to dismiss at the pleadings stage) and 56 (which governs motions for summary judgment). *Id*. at 1335. In so holding, the court expressly noted that "the D.C. Court of Appeals has never interpreted the D.C. Anti-SLAPP Act's likelihood of success standard to simply mirror the standards imposed by Federal Rules 12 and 56," but acknowledged that "[a]n interesting issue could arise if a State anti-SLAPP act did in fact exactly mirror Federal Rules 12 and 56." *Id.* at 1335 & n.3. Thus, under *Abbas*, district courts in this Circuit sitting in diversity were precluded from applying the Act to SLAPPs filed in federal court.[5]

However, less than two years after *Abbas*, in *Mann*, the D.C. Court of Appeals directly took the D.C. Circuit up on the question of the appropriate standard to apply under the Act.

2012)—declined to apply the statute, and all of the subsequent district court decisions held that the Act applied in this Court.

[4] *See Liberty Synergistics Inc. v. Microflo Ltd.*, 718 F.3d 138, 148 (2d Cir. 2013); *Chandok v. Klessig*, 632 F.3d 803, 817-19 (2d Cir. 2011); *Hilton v. Hallmark Cards*, 599 F.3d 894, 901-02 (9th Cir. 2010); *Godin v. Schencks*, 629 F.3d 79, 89 n.16 (1st Cir. 2010); *Price v. Stossel*, 620 F.3d 992, 1000 (9th Cir. 2010); *Gardner v. Martino*, 563 F.3d 981, 990-91 (9th Cir. 2009); *Henry v. Lake Charles Am. Press, LLC*, 566 F.3d 164, 170 (5th Cir. 2009).

[5] *See Forras v. Rauf*, 812 F.3d 1102, 1104 n.2 (D.C. Cir. 2016) (noting that the D.C. Circuit ruled in *Abbas* "that a federal court exercising diversity jurisdiction cannot apply the Anti-SLAPP Act's heightened pleading provision"), *cert. denied*, 137 S. Ct. 375 (2016).

150 A.3d at 1238 n.32. The *Mann* Court held, as a matter of "first impression," that the Act's "likely to succeed" standard, in fact, *is* "substantively the same" and *does* "simply mirror" the standards imposed by Federal Rule 56. *Id.* at 1220, 1238 n.32 (noting *Abbas*'s statement that the Court of Appeals had never so held, and declaring "We do so now").[6] The *Mann* Court also affirmed that the Act "was designed to protect targets of [] meritless lawsuits by creating '*substantive* rights with regard to a defendant's ability to fend off' a SLAPP." *Id.* at 1226 (emphasis added) (citation omitted); *see also id.* at 1235, 1238.

Chief Judge Howell of the D.C. District Court recently instructed that, "when faced with conflicting authority on D.C. law by the D.C. Circuit and the D.C. [Court of Appeals]," the views of the Court of Appeals "must govern" where that court "has spoken clearly and unmistakably to the current state of D.C. law." *See Easaw v. Newport*, No. 17-cv-00028, 2017 WL 2062851, at *9 (D.D.C. May 12, 2017). Thus, "when a decision by the D.C. [Court of Appeals] clearly and unmistakably renders inaccurate a prior decision by the D.C. Circuit interpreting D.C. law, this Court should apply the D.C. [Court of Appeals'] more recent expression of the law." *Id*. at *10.

The D.C. Court of Appeals in *Mann* could not have spoken more "clearly and unmistakably" to the question of D.C. law that the D.C. Circuit had previously grappled with in *Abbas*—namely, whether the standards imposed by a provision of the D.C. Code are the same or different than those imposed by the Federal Rules of Civil Procedure. *See Abbas*, 783 F.3d at 1335. In a thoroughly reasoned opinion, the D.C. Court of Appeals squarely answered that question in *Mann*, concluding that the standard set forth in the Act does mirror the summary

[6] Specifically, "the court evaluates the likely success of the claim by asking whether a jury properly instructed on the applicable legal and constitutional standards could reasonably find that the claim is supported in light of the evidence that has been produced or proffered in connection with the motion." *Mann*, 150 A.3d at 1232.

judgment standard, and is not otherwise inconsistent with the Federal Rules. And to avoid ambiguity, the *Mann* Court specifically cited to the *Abbas* court's discussion of the issue, and observed that its "interpretation of the standard applicable to the special motion to dismiss under District of Columbia law will no doubt factor into future analysis of the dicta in *Abbas* concerning the applicability of the Anti-SLAPP Act in litigation brought in federal courts." *Mann*, 150 A.3d at 1238 n.32.

As Chief Judge Howell reasoned, "applying an outdated and incorrect interpretation of D.C. law by the D.C. Circuit would 'subvert the dual aims of *Erie*: discouraging forum shopping and promoting uniformity within any given jurisdiction on matters of local substantive law.'" *Easaw*, 2017 WL 2062851, at *9 (citation omitted). She explained that "[t]hese twin aims rest on a principle of fairness that the 'character or result of a litigation' should not 'differ because the suit had been brought in a federal court.'" *Id.* (quoting *Walko Corp. v. Burger Chef Sys., Inc.*, 554 F.2d 1165, 1171 (D.C. Cir. 1977)). Yet, continued adherence to *Abbas*'s now-rejected reading of D.C. substantive law will have that precise result: A resident of the District of Columbia, Emma Roller, exercising her rights of public advocacy on issues of public interest would potentially face dramatically different consequences depending on whether a plaintiff allegedly aggrieved by her exercise of those rights brought a lawsuit in federal court or D.C. Superior Court.

This concern is not academic—litigants have already engaged in exactly these types of games before. For example, following the decision in *3M v. Boulter*, 842 F. Supp. 2d 85, 96 (D.D.C. 2012), in which a judge in this District held that the Act did not apply in federal court, a defamation plaintiff attempted to abandon his lawsuit pending in D.C. Superior Court—after extensive briefing and on the eve of oral arguments on dispositive motions—for the admitted

purpose of pursuing his claims in D.C. federal court because he assumed at that point the D.C. Anti-SLAPP Act would not be applied there. *See Dean v. NBCUniversal*, No. 12 Civ. 00283, ECF No. 5-1 (D.D.C. filed Feb. 21, 2012) (plaintiffs' notice of voluntary dismissal of libel claim in D.C. Superior Court stating that "[t]he Complaint has been refiled in the U.S. District Court for the District of Columbia due to the Court's recent decision in *3M v. Boulter*"). But now that the D.C. Court of Appeals has resolved any discrepancy between the Act and the Federal Rules, this Court may apply the D.C. Anti-SLAPP statute in this case and grant the special motion to dismiss.[7]

The court should apply ordinary Rule 12(b)(6) standards of review but dismiss the case under the Act to provide Roller with the opportunity to seek recovery of her costs and attorneys' fees under the section 16-5504 of the Act.[8] Plainly, a complaint that fails to plausibly state a claim—even assuming the truth of the factual allegations—is not "likely to succeed," and can be dismissed under the Act without causing any inconsistency between the Act and the Federal Rules. *Cf. Abbas*, 783 F.3d at 1337 n.5 (declining to apply fees because the court was dismissing the case under Rule 12(b)(6) only, but not suggesting that the fees provision of the Act was *per se* not applicable in federal court).

[7] We acknowledge that Judge Huvelle recently reached the opposite conclusion in response to a special motion to dismiss filed in *Deripaska v. Associated Press*, No. 17-cv-913 (ESH), ECF No. 16 (D.D.C. Oct. 17, 2017). We respectfully suggest that the recent decision was incorrect, primarily because it understated the degree to which, in expressly responding to *Abbas*, the *Mann* court did "clearly and unmistakably" resolve the applicable question of D.C. law. While the Court stated that it believed it was constrained until the D.C. Circuit addresses the issue, Judge Huvelle recognized the forum-shopping that could be encouraged by the federal court declining to apply D.C. law in SLAPP cases. *See id.* at 4–5. In any event, we believe that this Court is permitted to follow the authoritative interpretation of D.C. law by *Mann* and apply the Act here.

[8] Before Plaintiff amended her complaint, Defendant, through counsel, advised that she would be seeking fees under the Act should she prevail.

Courts consistently hold that fee-shifting provisions are substantive, and do not conflict with the Federal Rules. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 259 n.31 (1975) ("[I]n an ordinary diversity case where the state law does not run counter to a valid federal statute or rule of court, and usually it will not, state law denying the right to attorney's fees or giving a right thereto, which reflects a substantial policy of the state, should be followed"); *United States v. One Parcel of Property Located at 414 Kings Highway*, 1999 WL 301704, at *4 (D.D.C. May 11, 1999) (citing *Alyeska* and noting that, "[i]n diversity cases, attorney's fees are considered substantive and are controlled by state law"); *Godin*, 629 F.3d at 86 n.10 & 89 n.15 (noting that the fee-shifting provision for a successful anti-SLAPP motion, like other "nominally procedural state rule[s] authorizing an award of attorney's fees as a sanction for obstinate litigation," is "substantive for purposes of *Erie* analysis"). Thus, even if the standard of review under the Act were inconsistent with the federal rules (and *Mann* definitively confirms that it is not), the fees provision could, and should, still apply in order to fulfill the substantive policy goals of the D.C. Council to "deter" SLAPP suits. *Mann*, 150 A.3d at 1238. Where, as here, the D.C. Anti-SLAPP Act has been declared wholly consistent with the Federal Rules, and where a complaint is dismissed under the standards of Rule 12(b)(6) the fees provision in the Act clearly should apply.

II. THIS CASE SHOULD BE DISMISSED UNDER THE ANTI-SLAPP ACT

The Act confers a right to file a "special motion to dismiss" when the claim "aris[es] from an act in furtherance of the right of advocacy on issues of public interest." D.C. Code § 16-5502(a). If the defendant "makes a *prima facie* showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest," then the burden shifts to the plaintiff to "demonstrate[] that the claim is likely to succeed on the merits." *Id.* § 16-5502(b). This instant claim satisfies the *prima facie* requirement in that it unquestionably arises from

advocacy in issues of public interest, and, for the reasons set forth in the MTD Memo, Plaintiff cannot succeed on the merits because her Complaint fails to state a claim as a matter of law.

A. The Claim Arises From Advocacy on Issues of Public Interest

The Act defines a claim "in furtherance of the right of advocacy on issues of public interest" in two ways applicable here: (1) "[a]ny written or oral statement" made "[i]n a place open to the public or a public forum in connection with an issue of public interest," D.C. Code § 16-5501(1)(A)(ii), or (2) "[a]ny other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest," *id.* § 16-5501(1)(B).[9] An "issue of public interest" is defined broadly as any "issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place." *Id.* § 16-5501(3). The speech being attacked in this lawsuit readily meets both of those definitions.

First, Tweets posted on social media such that "anyone with a working internet connection or access to one can view it" are written statements made "[i]n a place open to the public or a public forum." *Abbas*, 975 F. Supp. 2d at 11 (citing *Boley*, 950 F. Supp. 2d at 255, and *Farah*, 863 F. Supp. 2d at 38); *Mann*, 150 A.3d at 1227 (the Act applies "because the lawsuit is based on articles that appeared on [defendants'] websites").

Second, as discussed in detail in the MTD Memo and identified in Plaintiff's Complaint, Roller's Tweets addressed important issues of significant public interest, which have been the subject of extensive reporting and commentary, including the debate over "fake news" and the "burgeoning gap within the world of journalism" between "grassroots journalists" like Plaintiff

[9] A third definition ("[a]ny written or oral statement" made "[i]n connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law") is not directly applicable here. D.C. Code § 16-5501(1)(A)(i).

and "gatekeeper" journalist like Roller. Compl. at 2. The Tweets related directly to Plaintiff's role as a "grassroots" journalist who was able to obtain White House press credentials and convey a political message by making the "OK" hand gesture from the White House press podium, a gesture, which at the time, was associated with the alt-right and hate speech.[10] These issues implicate community well-being, the government and public debate itself.

In addition, as also set forth in the MTD Memo, Roller's Tweets expressed her opinions on the conduct of not only of Plaintiff, but also Mike Cernovich—both of whom are "public figure[s]," D.C. Code § 16-5501(c)—while they were in the White House as credentialed journalists.[11]

At base, this lawsuit is an unvarnished attempt to stifle criticism of the (self-publicized) actions of public figures while in the White House. Plaintiff enthusiastically participates in fierce political debate on social media and through published articles, Compl. at 1-2, but when she was the subject of political criticism, she turned to the courts to silence her critics.[12] The Anti-SLAPP Act was passed to deter this abuse of the judicial process.

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[10] *See* MTD Memo at 2-3, n.3-4. These issues continue to be the subjects of extensive public discussion. *See* Joseph Bernstein, *Here's How Breitbart and Milo Smuggled Nazi and White Nationalist Ideas Into the Mainstream*, Buzzfeed (Oct. 5, 2017), https://goo.gl/JZonCz; Joel Stein, *How Trolls Are Ruining the Internet*, Time (Aug. 18, 2016), http://ti.me/2b1jSw5; Joe Concha, *Questions surround Infowars' claim of White House press credentials*, The Hill (May 22, 2017), https://goo.gl/CYANC4; Jared Holt & Brendan Karet, *Meet Jack Posobiec: The "Alt-Right" Troll With A Press Pass In White House*, Media Matters (May 11, 2017), http://mm4a.org/2r6OOEL.

[11] *See* MTD Memo at section II.A (similar arguments apply to Cernovich).

[12] Plaintiff also, without support, accuses Roller of "tr[ying] to erase her tracks" by deleting the tweets at issue in the suit. Roller's Twitter account was set to automatically delete tweets after seven days, so the original Tweets at issue in this case are no longer available on her Twitter account, but they are preserved by archiving websites. *See* MTD Memo at 4 n.6. While accusing Roller of deleting tweets, Plaintiff incredibly fails to mention that both she and Mike Cernovich deleted numerous, highly relevant (and inculpatory) tweets before she filed this lawsuit. *Id.* at 6, n.14-15.

B. Plaintiff Cannot Show That Her Claim Is Likely to Succeed on the Merits

For the reasons set forth in the MTD Memo, Plaintiff's claim fails as a matter of law under Rule 12(b)(6). She therefore, by definition, cannot show that she is "likely to succeed on the merits" in this case. *See, e.g.*, *Farah*, 863 F. Supp. 2d at 39-40 (dismissing under D.C. Anti-SLAPP Act where plaintiff's complaint failed to state a claim).

In particular, Roller's characterization of Plaintiff's hand gesture as a "white power hand gesture" is not actionable because, as an interpretation of an ambiguous symbol, it cannot be verifiably or objectively proven false. This is particularly so when the statement uses undefinable terms like "white power" in the context of political debate over social media. *See* MTD Memo, Section I.A-D.

Plaintiff's claim also fails as a matter of law because she does not—and cannot—plausibly plead that Roller acted with actual malice when she posted her opinion characterizing a photo as depicting a "white power hand gesture." On the contrary, Roller's opinion was fully consistent with numerous published articles in reputable sources that also noted the connection between the hand gesture and the alt-right (and with the "Pepe the Frog" meme, which the Anti-Defamation League officially categorizes as a "hate symbol"). *See* MTD Memo at 2-3, n.3-4. At most, Roller's statements constitute "one of a number of possible rational interpretations of an event that bristled with ambiguities." *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 519 (1991) (citation and quotation marks omitted). The Supreme Court has repeatedly emphasized that, through the "actual malice" standard, the First Amendment protects such "rational interpretation" "by allowing an author the interpretive license that is necessary when relying upon ambiguous sources." *Id.*; *see also Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 513 (1984).

A claim that fails as a matter of law even when the factual allegations of a complaint are taken as true (to the extent they are not contradicted by documents incorporated into the complaint or information subject to judicial notice) cannot be "likely to succeed," and the Complaint should therefore be dismissed with prejudice. D.C. Code § 16-5502(b), (d).

CONCLUSION

For all of the reasons set forth above, Defendant respectfully requests that the Court dismiss Plaintiff's Complaint in its entirety with prejudice under the D.C. Anti-SLAPP Act, and that she should be awarded her fees and costs expended in this lawsuit.

Dated: October 23, 2017

Respectfully submitted,

/s/ *Laura R. Handman*
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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused defendant Emma Roller's Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and supporting Memorandum to be filed and served electronically via the Court's ECF system upon counsel of record.

Dated: October 23, 2017

/s/ *Laura R. Handman*
Laura R. Handman