SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MIKHAIL FRIDMAN, PETR AVEN, AND GERMAN KHAN,	)	
	)	**Case No. 2018 CA 18-002667 B**
***Plaintiffs*,**	)	
	)	**Judge Anthony C. Epstein**
v.	)	
	)	**Next Court Date: Oral argument to be scheduled after August 31, 2018**
ORBIS BUSINESS INTELLIGENCE LIMITED AND CHRISTOPHER STEELE,	)	
	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT OF CONTESTED SPECIAL MOTION TO DISMISS UNDER THE DISTRICT OF COLUMBIA ANTI-SLAPP ACT, D.C. CODE § 16-5502

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

RULES

STATUTES

OTHER AUTHORITIES

INTRODUCTION

Plaintiffs laid bare their aim to weaponize U.S. defamation law with their initiation of this civil action. But their response to Defendants' special motion to dismiss takes it to the next level—positing the audacious proposition that this Court is not bound by the First Amendment when adjudicating Plaintiffs' civil claim based on Defendants' speech. Plaintiffs—themselves foreign nationals who reside outside of the U.S.—seek to exploit the U.S. judicial system to impose money damages for alleged harms incurred in the U.S. for publication on U.S. soil. Yet they advocate for the deprivation of constitutional rights for the very Defendants they haled into this Court. This ploy must be rejected because it violates the Constitution and all law governing Plaintiffs' claims.

The Anti-SLAPP Act applies. Plaintiffs' own foundational admission that Defendants published the Dossier to make "profound effects in the United States, and specifically the District of Columbia, . . . in connection with the election of the President of the United States" (Compl. ¶ 1) eviscerates their responsive argument that the Dossier is somehow *not* an "act in furtherance of the right of advocacy on issues of public interest." D.C. Code § 16-5502(a). The plain language and policy of the Act bind Plaintiffs, as do their own judicial admissions and legal theories. The Anti-SLAPP Act requires Plaintiffs to "put [their] evidentiary cards on the table" to prove that the case is more than bombast and conjecture. *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1238 (D.C. 2016). Instead, Plaintiffs show an empty hand, relying on the same insufficient factual allegations recited in their initial pleading. Finally, although Plaintiffs beg for a lifeline to fish for nonexistent evidence of actual malice, allowing Plaintiffs to interrogate Defendants would defeat the very purpose of the Act itself, which aims to protect defendants against discovery and calls for a "speedy end" to SLAPP cases like this. *Mann*, 150 A.3d at 1227.

I. This Court Is Bound To Apply First Amendment Principles and Law

The Court's adherence to the First Amendment in this civil defamation case is neither optional nor dependent on the Defendants' citizenship. In its seminal opinion on the power of the First Amendment in the civil defamation setting, the Supreme Court held that "libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). The Court reasoned that any civil defamation claim must be considered "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Id.* at 270. Therefore, "[w]hat a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law of libel." *Id.* at 277.[1]

Thus, the mandate of the First Amendment in civil defamation actions is grounded on the constitutional restriction on this Court, and any other government actor in any branch, to abridge the freedom of speech in the national discourse. *See McCalden v. Calif. Library Ass'n*, 955 F.2d 1214, 1229, n.4 (9th Cir. 1990) (citing *N.Y. Times Co. v. Sullivan* as holding that "the limitations of the first amendment are applicable whenever the effect of the litigation is the repression of expression"). The First Amendment therefore does more than recognize a person's natural right to freedom of speech; it erects a bedrock *limitation* on government action that would suppress robust public debate in this nation.

That limitation is so strong that U.S. courts cannot even *enforce* a foreign judgment that was gained under defamation laws without American constitutional free speech protections. *See* SECURING THE PROTECTION OF OUR ENDURING AND ESTABLISHED CONSTITUTIONAL HERITAGE

[1] Indeed, the Court observed that civil money damages—which can dwarf the amount of criminal fines—"create[] hazards to protected freedoms markedly greater than those that attend reliance upon the criminal law." *Id.* at 278.

(SPEECH) ACT, Pub. L. No. 111-223, 124 Stat. 2480 (codified at 28 U.S.C. § 4102 (2010)) (forbidding any domestic court from enforcing a foreign judgment for defamation unless the foreign adjudication "provided at least as much protection for freedom of speech and press . . . as would be provided by the first amendment to the Constitution of the United States," or if the defendant "would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States."). If U.S. domestic courts are forbidden to enforce judgments from *other countries* with unconstitutional defamation adjudication, they certainly cannot conduct their own unconstitutional defamation adjudication in domestic territory.

Plaintiffs ignore constitutional defamation jurisprudence and legislation, and instead hitch misplaced reliance on the case of *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990)—a criminal case involving a Fourth Amendment search and seizure challenge brought by a reputed Mexican drug lord against the admissibility of fruits of a warrantless search conducted by Mexican police at the criminal defendant's residence in Mexico. *Id.* at 261-62. Plaintiffs rely singularly on *Verdugo-Urquidez*, arguing that it establishes a test by which the First Amendment will not apply to protect a civil defamation defendant unless the defendant has "demonstrated deep ties to the United States." Anti-SLAPP Opp.[2] at 4. Plaintiffs misstate and misconstrue the narrow *Verdugo-Urquidez* opinion. By its own terms, the "question presented in [that] case [was] whether the Fourth Amendment applies to the search and seizure by United States agents of property that is owned by a nonresident alien and located in a foreign country." *Verdugo-Urquidez*, 494 U.S. at 261. It holds nothing outside of the scope of that narrow (and unique) issue.[3]

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[2] Plaintiffs' Opposition to Defendants' Contested Special Motion to Dismiss Under the District of Columbia Anti-SLAPP Act, D.C. Code § 16-5502, filed July 6, 2018 ("Anti-SLAPP Opp.").

[3] Indeed, several courts have rejected as dicta portions of the opinion discussing the scope and application of constitutional rights beyond the Fourth Amendment. *See, e.g., United States v.*

The U.S. Court of Appeals for the District of Columbia has expressly rejected litigants' attempts to rely on *Verdugo-Urquidez* for the very proposition that Plaintiffs advance here—i.e., that foreign national parties are undeserving of constitutional protections in U.S. courts. In *National Council of Resistance of Iran v. Dep't of State*, 251 F.3d 192 (D.C. Cir. 2001), the D.C. Circuit refused to deprive foreign national petitioners of due process rights under the Fifth Amendment, despite the urging of the Secretary of State that, under *Verdugo-Urquidez*, foreign entities "'receive constitutional protections [only] when they have come within the territory of the United States and developed *substantial* connections with this country.'" *Nat'l Council of Resistance of Iran*, 251 F.3d at 201 (quoting from the Secretary's brief, including the Secretary's use of brackets and emphasis). Declaring the Secretary's construction "misleading,"[4] the D.C. Circuit held that *nothing* in *Verdugo-Urquidez* "purports to establish whether aliens who have entered the territory of the United States and developed connections with this country but not substantial ones are entitled to constitutional protections." *Id.* at 202.

The Plaintiffs here also follow the Secretary's failed playbook in citing to *People's Mojahedin Org. of Iran v. Dep't of State*, 182 F.3d 17 (D.C. Cir. 1999) for a blanket proposition that "a foreign entity without property or presence in this country has no constitutional rights, under the Due Process Clause or otherwise." Anti-SLAPP Opp. at 4 (quoting *People's Mojahedin*

Bournes, 339 F.3d 396, 397-98 (6th Cir. 2003) (dismissing *Verdugo-Urquidez*'s discussion of the "textual exegesis" of the Second Amendment as nonbinding dicta); *Vogt v. City of Hays, Kansas*, 844 F.3d 1235, 1239 (10th Cir. 2017) (dismissing *Verdugo-Urquidez*'s discussion of the scope of the Fifth Amendment as nonbinding dicta).

[4] Specifically, the Secretary moved the word "only" in the *Verdugo-Urquidez* quote to create the misimpression that foreign entities deserve constitutional protections *only* when they have developed substantial connections within the U.S. *Id.* But the word "only" in the Supreme Court opinion does not limit the scope of constitutional rights; rather it merely "limits the application of prior precedent" to the specific Fourth Amendment issue in question in *Verdugo-Urquidez*. *Id.* at 201-02.

Org. of Iran, 182 F.3d at 22). Plaintiffs ought to have reviewed the D.C. Circuit's subsequent and related opinion in *National Council of Resistance of Iran*, which blasted the Secretary's reliance on that same language as taken out of context and not establishing a blanket rule. Under a constitutional analysis (as opposed to its prior *statutory* analysis), the D.C. Circuit held that the same foreign party in *Mojahedin* was entitled to constitutional protections because it had a sufficient presence in the U.S. *Nat'l Council of Resistance of Iran*, 251 F.3d at 200-202.

In another case, the D.C. Circuit again rejected an overreading of *Verdugo-Urquidez*. *GSS Group Ltd. v. National Port Authority*, 680 F.3d 805 (2012). There, the court recognized the ultimate absurdity of the idea that foreign litigants without a "presence" in the U.S. lack entitlement to constitutional protections. That logic, taken to its natural conclusion, would invalidate the entire line of Supreme Court personal jurisdiction precedent, such as *International Shoe*[5], *Helicopteros*[6], and their progeny, applying Due Process principles to foreign parties. Judge Randolph reconciled those constitutional cases with *Verdugo-Urquidez*'s "presence" language as follows:

> When a foreign corporation is summoned into court, it is being forced to defend itself. To do so, the corporation must appoint a representative to act for it—that is, an attorney. In opposing personal jurisdiction on due process grounds the corporation, through its attorney, makes itself present. And since it has been forced to appear in the United States, at least for that limited purpose, it is entitled to the protection of the Due Process Clause . . . .

Id. at 816. The D.C. Circuit advanced an "alternative reconciliation" founded on the "idea that when a United States court exercises jurisdiction over a foreign corporate defendant it inflicts damage on that defendant . . . *in the United States*." *Id.* (emphasis in original).

This Court should apply the same rationale to reject Plaintiffs' call for a categorical deprivation of constitutional rights for Defendants. Christopher Steele and Orbis Business

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[5] *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).
[6] *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408 (1984).

Intelligence are present in this U.S. Court because *Plaintiffs haled them here* under U.S. law. As the D.C. Circuit has held, the Supreme Court has *never* established that a foreign litigant's showing of a "substantial" presence is a gating mechanism for constitutional rights in U.S. litigation. *Nat'l Council of Resistance of Iran*, 251 F.3d at 202. On the contrary, the D.C. Circuit's *GSS Group Ltd.* opinion suggests that the mere appearance, through counsel, in a U.S. court to face the imposition of damages is "presence" enough to trigger constitutional protections.

But Plaintiffs' own factual allegations show that Defendants' presence in the U.S. regarding the claims at issue is far more substantial than a mere appearance through counsel in this Court. Indeed, Plaintiffs describe Defendants' physical presence in Washington, D.C. on multiple occasions that were integral to the very publication of the statements at issue. *See* Compl. ¶¶ 9, 11, 17. In fact, Plaintiffs' own allegations show that Defendants have indeed shouldered burdens and assumed obligations in the U.S., for example, by having a "long history of supplying [the U.S. State Department] with intelligence," providing the U.S. government with more than 100 reports between 2013 and 2016. Compl. ¶ 11. Additionally, Plaintiffs allege on information and belief that "Steele and Orbis have been retained repeatedly by the District-based F.B.I. to assist in various investigations between 2009 and 2016." *Id.* ¶ 21. These allegations are incompatible with "an alien who has had no previous significant voluntary connection with the United States." *Verdugo-Urquidez*, 494 U.S. at 271. Plaintiffs' record shows that Defendants have had a voluntarily presence in this country and made significant contributions to the national interests.[7]

[7] These facts readily distinguish this case from the sole case cited by Plaintiffs—apparently the sole case anywhere—for the proposition that foreign national status strips a civil defamation defendant of First Amendment protections. *See* Anti-SLAPP Opp. at 4-5 (citing *Hoffman v. Bailey*, 996 F. Supp. 2d 477, 481 (E.D. La. 2014)). The *Hoffman* District Court opinion was never reviewed, and has never been followed by any court for its deprivation of First Amendment rights. The limitations on the application of *Verdugo-Urquidez* noted by the D.C. Circuit (among other

Plaintiffs' position is also hopelessly impractical in application, as the body of American defamation law is inextricably infused with First Amendment principles. The Supreme Court has recognized the indivisible connection between defamation common law and the First Amendment:

> The history of libel law leaves little doubt that it originated on soil entirely different from that which nurtured these constitutional [freedom of speech] values. . . . The law of libel has, of course, changed substantially since the early days of the Republic, and this change is the direct consequence of the friction between it and the highly cherished right of free speech.

Curtis Pub. Co. v. Butts, 388 U.S. 130, 151 (1967) (internal quotations and citations omitted). Simply put, a court cannot apply U.S. defamation law without applying the First Amendment. Plaintiffs thus urge this Court to perform not just an impermissible task, but an impossible one.

II. The Anti-SLAPP Act Applies By Its Own Terms

Plaintiffs center their attempted evasion of the Anti-SLAPP Act on the flawed proposition that this Court can decline to apply First Amendment protections to Defendants in this case. Contrary to the central thesis of Plaintiffs' Opposition, the Anti-SLAPP Act is a resounding endorsement of First Amendment principles that govern court actions that would suppress free speech in this District. Plaintiffs' other efforts to escape the Act likewise fail.

Plaintiffs posit that the Anti-SLAPP Act was "specifically created to protect 'District residents,' which Defendants are not." Anti-SLAPP Opp. at 1. In fact, nothing in the Act restricts its application to D.C. residents—on the contrary, the Act provides protection to *any* "party" for

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federal circuit courts) make clear that *Hoffman* was wrongly decided, constituting an unconstitutional governmental suppression of free speech in the U.S. by the court in Louisiana. But in any event, the British defendant in that case sent a single email from the United Kingdom, although he had never visited, owned property or conducted business in Louisiana. *Hoffman*, 996 F. Supp. 2d at 483. By contrast, Plaintiffs allegations show that Defendants here engaged in conduct at issue within the U.S. and have a lengthy history of conducting business with the U.S. government and others.

any "claim" arising from *any* "act in furtherance of the right of advocacy on issues of public interest" wherever D.C. law applies. D.C. Code § 16-5502(a). The Act's unlimited application to any "party" runs counter to Plaintiffs' imagined limitation to "District residents."[8]

The Anti-SLAPP Act applies to "*[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," or "*[a]ny other expression or expressive conduct* that involves . . . communicating views to members of the public in connection with an issue of public interest." D.C. Code § 16-5501(1)(A)(ii); *id.* § 16-5501(1)(B) (emphasis added). Plaintiffs torture the words and meaning of this statute, positing bizarre and contradictory theories to avoid the broad reach of the Act.

First, despite the Act's clear application to claims arising from *any written or oral statement* or *other expression or expressive conduct*, Plaintiffs focus myopically on the word "views" in the disjunctive second part of sub-section (1)(B) of the Act, and argue that *only* "views" are protected. Not only does this reading defy the plain language and policy of the Act, but it defies legal logic as well. Plaintiffs say that Defendants' reports of factual statements are not "Defendants' views." Anti-SLAPP Opp. at 8. But a speaker's expression of pure opinion is already not actionable as a matter of black-letter defamation law: "Because the First Amendment protects speech as an expression of the fundamental right to freedom of thought, constitutionally speaking, 'there is no such thing as a false idea.'" *Mann*, 150 A.3d at 1241 (quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18 (1990)). Thus, there would be no reason for the legislature to draft and pass a statutory framework for protection of speech that was already fully protected. No faithful reading of the letter or spirit of the Act can sustain Plaintiffs' argument.

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[8] Likewise, the Act contains no limitations that would negate its protections based on some unspoken standard of "sophistication" or degree to which the defendant is or is not a "normal, middle-class and blue-collar American[]." Anti-SLAPP Opp. at 9-10.

Nor can Plaintiffs be heard to argue in their Opposition that the statements at issue were not made "in a public forum" when they allege in their Complaint that "the Defendants published to a worldwide public false and defamatory statements concerning Plaintiffs and Alfa" (Compl. ¶ 43) and submit *in the very same Opposition* that Defendants published the statements at issue to at least six national news publications, a U.S. Senator, a U.S. State Department official, a U.S. Justice Department official and others. Plaintiffs' newfound characterization of Defendants' publication as mere "private discussions" (Anti-SLAPP Opp. at 8) cannot be squared with Plaintiffs' emphatic pleading that Defendants' purpose for those meetings was to ensure that the "provocative material would be published and republished, including to the public at large." Compl. ¶ 8; *see also* ¶¶ 13, 28, 29, 30 and 43.

That the publication here covered issues of public interest cannot credibly be denied—especially by Plaintiffs who aver in the very first paragraph of their Complaint that the Dossier was intended or expected to "have profound effects in the United States, and specifically in the District of Columbia, because the . . . political opposition research was intended to be used in connection with the election of the President of the United States." Compl. ¶ 1. Plaintiffs state that the ultimate worldwide publication of the Dossier was "explosive." Compl. ¶ 12.

Yet Plaintiffs engage in doublespeak when attempting to convince this Court that CIR 112 is somehow *not* connected to an issue of public interest. Ignoring absolutely their own allegations, Plaintiffs point instead to Defendants' observations about the topical scope of CIR 112, a tactic that fails on multiple levels. First, Plaintiffs' factual allegations are binding judicial admissions. *See Wemhoff v. Inv'rs Mgmt. Corp. of Am.,* 455 A.2d 897, 899 (D.C. 1983); *see also El Paso Nat. Gas Co. v. United States*, 750 F.3d 863, 876 (D.C. Cir. 2014). Second, Defendants are not obligated to proffer extrinsic evidence to make their *prima facie* case that the Act applies. *See*

Park v. Brahmbhatt, No. 2015 CA 005686 B, 2016 D.C. Super. LEXIS 16, *1-2, *7-10 (Jan. 19, 2016) (deciding application of Anti-SLAPP entirely on factual allegations in the complaint and counterclaims at Rule 12 stage): *cf. Mann*, 150 A.3d at 1237 (holding that the Act "places the initial burden on the claimant to present legally sufficient evidence substantiating the merits without placing a corresponding evidentiary demand on the defendant who invokes the Act's protection"). Third, Plaintiffs themselves admit "CIR 112[] is *completely* focused on Plaintiffs' alleged relationship with Vladimir Putin." 12(b)(6) Opp.[9] at 19. The Russian President is a public figure, as are the billionaire oligarch Plaintiffs, who have collectively garnered tens of thousands of media articles chronicling "their business dealings, art collections and other topics." Anti-SLAPP Opp. at 18. Thus, their relationship is an issue of public interest. "Any written or oral statement made . . . [i]n a . . . public forum in connection with . . . an issue related to . . . a public figure" qualifies for Anti-SLAPP protection. D.C. Code § 16-5501.

III. Plaintiffs Are Definitely Public Figures

Because the record makes clear that the Act applies, this Court must dismiss this action unless Plaintiffs "demonstrate[] that the claim is likely to succeed on the merits," (D.C. Code § 16-5502(b)), taking into account "any applicable heightened fault and proof requirements," such as "the requirement to prove actual malice by clear and convincing evidence when the claimant is . . . a limited purpose public figure with respect to the issue that is the subject of speech claimed to be defamatory" (*Mann*, 150 A.3d at 1236). Plaintiffs here are public figures, *at least* for the subject matters of (a) the commercial and political relationship between Russian oligarchs and the Russian government, *and* (b) the debate over Russian influence in the U.S. Presidential election.

[9] Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss the Complaint Based on Rule 12(b)(6), filed July 6, 2018 ("12(b)(6) Opp.").

While Plaintiffs are understandably desperate to distance themselves from the District of D.C.'s prior opinion finding them to be limited purpose public figures, Plaintiffs cannot distance themselves from the litany of sustained publicity that they have sought and garnered in the intervening years that address their relationship with the Russian government and Putin in particular. *See* Anti-SLAPP Mot.[10] at 11-12 (highlighting a selection of the tens of thousands of available articles); *see also* 12(b)(6) Reply at 9-11.[11]

Plaintiffs' efforts to pretend away their own involvement in a preexisting controversy regarding their connections to the presidential election are comical. Revealing just how famous they are, Plaintiffs seek to diminish the import of recent press coverage of themselves in the nationally recognized publications of *Politico*, *Slate*, *Tablet* and *Bloomberg* as but a "handful of articles" from the "haystack" of their international press coverage—"on the trivial/tangential end of the continuum of involvement in the controversy." Anti-SLAPP Opp. at 18. Unable to refute that a controversy was indeed brewing over their connections to the Trump campaign well before the Dossier was published, Plaintiffs turn their Opposition into a public relations spin zone, characterizing the articles as "fishing expeditions by the media trying to find some connection between Trump and Russia, however innocuous those connections might be," and generated by "a media hungry for scoops on a possible Trump-Russia connection [trying] desperately to connect dots that didn't exist." *Id.* at 18-19, n.23. But Plaintiffs do not need their Opposition to make their voice heard as to the extent and nature of their connections with the Trump campaign; they made their own voices heard in print and on the record on that topic before the Dossier was ever

[10] Defendants' Memorandum and Points of Authority in Support of Contested Special Motion to Dismiss Under the District of Columbia Anti-SLAPP Act, D.C. § 16-5502, filed May 30, 2018 ("Anti-SLAPP Mot.").

[11] Defendants' Reply in Support of Contested Special Motion to Dismiss Under Rule 12(b)(6), filed concurrently herewith ("12(b)(6) Reply").

published. *See* Anti-SLAPP Mot. at 14-15. Higher standards apply to "those who enter the public spotlight have greater access to the media to correct misstatements about them, as shown by their preexisting media exposure." *Waldbaum v. Fairchild Publ'ns., Inc.*, 627 F.2d 1287, 1291 (D.C. Cir. 1980).

IV. Plaintiffs Fail To Proffer Clear and Convincing Evidence of Actual Malice

These public figure Plaintiffs have failed not only to show *clear and convincing* evidence of actual malice; they have failed to show *any* evidence of actual malice. This District's highest court charges the Superior Court to perform the Anti-SLAPP's "likelihood of success" inquiry:

> The precise question the court must ask . . . is whether a jury properly instructed on the law, including any applicable heightened fault and proof requirements, could reasonably find for the claimant on the evidence presented.

Mann, 150 A.3d at 1232, 1236. Critically, unlike Rule 12 motions to dismiss, presumptions favor *Defendants*; Plaintiffs are not entitled to any benefits of the doubt. *See id.* at 1237–38 (holding that the Act "provides substantial advantages to the defendant over and above those usually available in civil litigation" including the reversal of Rule 12 and 56 burdens).

Challenged to show their "evidentiary cards" on actual malice, Plaintiffs show an empty hand. *Id.* at 1238. Deep in their brief, Plaintiffs offer about a page and a half of argument that they "have proffered evidence showing that they already do, or could if granted discovery, meet the standard" of actual malice. Anti-SLAPP Opp. at 21. Their entire submission on actual malice consists of three points—the first two being attempted briefing "gotchas" and the third a mere repetition of a Complaint allegation that ultimately fails as a matter of law.

The first so-called "evidence" that Plaintiffs conjure is simply an argument that Defendants' observation that the body of CIR 112 reports on the relationship between Putin, Alfa Bank, and Plaintiffs—is "essentially" an admission "that they have no facts to support" "the

implication in CIR 112's headline that Plaintiffs 'cooperated' in Russian interference in the U.S. Presidential election of 2016." Anti-SLAPP Opp. at 22 (emphasis added). But Defendants reject wholesale that any such "implication" can be gleaned from the rote title[12] comprising a string of eight words with no subject and no verb. Defendants' rejection of Plaintiffs' unreasonable reading is not evidence of actual malice at all, let alone clear and convincing.

Plaintiffs' second point on actual malice is another act of briefing legerdemain. Plaintiffs say that "noticeably absent" from Defendants' motion to dismiss arguments is an affirmative declaration of the truth of the statements at issue. Anti-SLAPP Opp. at 22. That absence "strongly suggest[s]" to Plaintiffs that "the statements are fabricated" or were recklessly published. *Id.* at 22. It is hard to take this argument seriously, but Defendants nevertheless will. Defendants have not yet answered the Complaint, nor are they required to do so under the D.C. Superior Court Rules of Civil Procedure. Thus, their factual defenses are reserved until such time, if ever, that the dispositive questions of law are resolved against them. Moreover, a defamation defendant is not required to prove the truth of his statements to avoid liability—the burden is on the *plaintiff* to prove falsity. *See N.Y. Times Co.*, 376 U.S. at 271 ("Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth—whether administered by judges, juries, or administrative officials—and especially one that *puts the burden of proving truth on the speaker.*") (emphasis added). Therefore, Defendants need not prove the truth of their statements, and no "suggestion" of actual malice can be drawn from Defendants not trying to do so at the motion to dismiss stage.

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[12] Plaintiffs repeatedly characterize the title of Defendants' research report as a "headline," as if it were a breaking newsflash drafted by a newspaper editor to grab readers' attention. Plaintiffs' own itemization of the Dossier's other headers in their Complaint shows that the headers are utilitarian in nature. Most apply the convention of starting with the words "Russia/US Presidential Election" followed by a colon. *See* Compl. ¶ 31.

Finally, as a final attempt to meet their heavy burden, Plaintiffs recycle an allegation from their Complaint based on nothing more than the following paraphrase by a journalist in a magazine article: "Steele recognised that no piece of intelligence was 100% right. According to friends, he assessed that his work on the Trump dossier was 70-90% accurate." Compl. ¶ 19 n.10 (citing article by Luke Harding). Plaintiffs twist this layered hearsay into a faux "evidentiary" proposition that "Steele himself has estimated that as much as 30 percent of his reports' content may not be accurate." Anti-SLAPP Opp. at 22-23. One sentence from an article paraphrasing a statement by unnamed "friends" allegedly paraphrasing Defendant Steele is not admissible evidence to satisfy the Anti-SLAPP Act and *Mann*. *See, e.g., Nooner v. Norris*, 594 F.3d 592, 603 (8th Cir. 2010) ("Newspaper articles are 'rank hearsay.'"). Moreover, "mere reliance on allegations in the complaint" are insufficient as a matter of law. *Mann*, 150 A.3d at 1233.

But even if this Court could consider the reported notion that some percentage of the Dossier as a whole is inaccurate—a benefit of the doubt to which Plaintiffs are decidedly not entitled in an Anti-SLAPP analysis—it fails to satisfy Plaintiffs' actual malice burden because that general observation is not tied to any of the specific statements at issue in CIR 112. *See Tavoulareas v. Piro*, 817 F.2d 762, 794 (D.C. Cir. 1987) (holding that a public figure "cannot show actual malice in the abstract; they must demonstrate actual malice *in conjunction* with a [specific] false defamatory statement"). In *Tavoulareas*, the D.C. Circuit Court of Appeals found that even a defendant's own expressions of "serious doubts" about a publication *as a whole* were insufficient to show actual malice absent evidence *tying* that assessment to the specific statements at issue. *See id.* at 776. Even assuming that the Dossier is not "100% right," there is nothing to say that any theoretical inaccuracies are contained within CIR 112, or that they are inaccuracies as to substance, or that they relate to anything that is also defamatory in meaning. *Armstrong v. Thompson*, 80

A.3d 177, 183–84 (D.C. 2013) (holding that "minor inaccuracies" are discounted in the defamation context so long as the "gist" or substance" of the statement is true).

Three swings and three misses. Plaintiffs tacitly acknowledge their shortcomings in making the following plea to the Court to grant them discovery:

> Here, in order to show a likelihood of success on the merits as required under the Anti-SLAPP Act, Plaintiffs must provide evidence as to what Defendants were thinking and doing when they compiled CIR 112 and published it, and what communications they had with their sources, their contractees and others regarding the reliability of the information they had gathered.

Anti-SLAPP Opp. at 25. As shown in Defendants' 12(b)(6) Reply, Plaintiffs' reliance on *Herbert v. Lando*, 441 U.S. 153 (1979) is misplaced. Nearly forty years of defamation jurisprudence belies Plaintiffs' position. *See* 12(b)(6) Reply at 13-14. To subject Defendants to the invasive discovery sought by Plaintiffs, who fail to meet their evidentiary burden in response to Defendants' special motion to dismiss, would defy the purpose of the Anti-SLAPP Act, which seeks to prevent "the expensive and time consuming discovery that is often used in a SLAPP as a means to prevent or punish." Comm. Report at 4. Indeed, research has uncovered no case in any District of Columbia court where a defamation plaintiff was granted limited discovery under the Anti-SLAPP Act when faced with a special motion to dismiss. Plaintiffs do not deserve to be the first.

CONCLUSION

Defendants' Special Motion to Dismiss Under the Anti-SLAPP Act must be GRANTED.

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