IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D., **Plaintiff,** **v.** **NATIONAL REVIEW, INC., *et al.*,** **Defendants.**	**2012 CA 008263 B** **Judge Alfred S. Irving, Jr.**

AMENDED ORDER GRANTING IN PART NATIONAL REVIEW INC.'S MOTION FOR ATTORNEYS' FEES AND SUPPLEMENTAL MOTION FOR "FEES ON FEES"[1]

This matter is before the Court on *Defendant National Review Inc.'s Motion for Attorneys' Fees and Costs* [hereinafter "Motion for Fees"] filed on March 11, 2024. Plaintiff Michael Mann, PhD filed an opposition on April 10, 2024, *see* Pl.'s Mem. of P. & A. in Opp'n to Def. National Review Inc.'s Mot. for Att'ys' Fees and Costs [hereinafter "Mann Opp'n"], and National Review Inc. filed a reply on April 25, 2024, *see* National Review's Reply in Supp. of Mot. for Att'ys' Fees and Costs [hereinafter "Nat'l Rev. Reply"].

On March 11, 2024, National Review contemporaneously filed with its *Motion for Fees* a Rule 54 request for costs. *See* Def. National Review Inc.'s Bill of Costs Under Rule 54(d) [hereinafter "Bill of Costs"]. No opposition was filed.

In addition, before the Court is *Defendant National Review Inc.'s Supplemental Motion for Attorney's "Fees on Fees"* (hereinafter the "Supplemental Motion"), filed on May 3, 2024. Dr. Mann filed an opposition on May 17, 2024, *see* Pl.'s Mem. of P. & A. in Opp'n to Def. National Review Inc.'s Suppl. Mot. for Att'ys' "Fees on Fees" [hereinafter "Opp'n to Suppl.

[1] Order amended to correct the filing date of the Bill of Costs and add page numbers.

Mot.]. For the reasons set forth below, the Court will grant in part the *Motion for Fees* and the *Supplemental Motion*.

I. BACKGROUND

On October 22, 2012, Dr. Mann filed a *Complaint* asserting, *inter alia*, claims of libel and libel *per se* against National Review. Compl. 14-24. On December 14, 2012, Defendant Mark Steyn and National Review[2] filed a motion to dismiss, *see* Def. Mark Steyn's & National Review's Special Mot. to Dismiss Pursuant to D.C. Anti-SLAPP Act & Rule 12(b)(6) Mot. [hereinafter "Mot. to Dismiss"]. On January 18, 2013, Dr. Mann filed an opposition, *see* Pl.'s Mem. in Opp'n to Defs.' Mot. to Dismiss Pursuant to D.C. Anti-SLAPP Act & Mot. to Dismiss Pursuant to D.C. Super. Ct. Civ. R. 12(b)(6), and on February 1, 2013, Mr. Steyn and National Review filed a reply, *see* Reply in Supp. of Mot. to Dismiss Pursuant to the D.C. Anti-SLAPP Act & Mot. to Dismiss Pursuant to D.C. Super. Ct. Civ. Rule 12(b)(6) of Defs. National Review, Inc. & Mark Steyn.

On July 10, 2013, Dr. Mann filed an *Amended Complaint* adding a seventh count of libel *per se* against all Defendants. On July 19, 2013, the Hon. Natalia Combs Greene denied the *Motion to Dismiss*. On July 24, 2013, Mr. Steyn and National Review filed a motion to reconsider, *see* Defs. Mark Steyn & National Review, Inc.'s Mot. for Recons. of July 19, 2013 Order, which motion Judge Combs Greene denied on August 30, 2013. In addition, on July 24, 2013, Mr. Steyn and National Review filed a motion to dismiss Dr. Mann's *Amended Complaint*, *see* Def. Mark Steyn's & National Review's Special Mot. to Dismiss Pl.'s Am. Compl. Pursuant

[2] At the time of filing the *Motion to Dismiss*, both Mr. Steyn and National Review were represented by Shannen W. Coffin, Esq. On January 6, 2014, Mr. Coffin withdrew his representation of Mr. Steyn and proceeded as counsel for National Review.

to D.C. Anti-SLAPP Act & Mot. to Dismiss Pursuant to D.C. Super. Ct. Civ. R. 12(b)(6) [hereinafter "Second Motion to Dismiss"].

On September 17, 2013, Mr. Steyn and National Review appealed Judge Combs Greene's denials of both the *Motion to Dismiss* and *Motion to Reconsider*. On December 19, 2013, the Court of Appeals denied Mr. Steyn and National Review's appeal as Dr. Mann's *Amended Complaint* and the Defendants' *Second Motion to Dismiss* were pending. On January 22, 2014, the Hon. Frederick H. Weisberg denied the *Second Motion to Dismiss*, which Mr. Steyn and National Review appealed on January 30, 2014.

On December 22, 2016, the Court of Appeals affirmed the denial of the special motions to dismiss the defamation claims based on Mr. Steyn and Mr. Simberg's articles and reversed the trial court's denial of the special motions to dismiss Counts IV and V, the defamation claims, based on Mr. Lowry's *Get Lost* editorial, and Count VI, the claim for intentional infliction of emotional distress, with direction to the trial court to dismiss those claims with prejudice on remand. *Competitive Enter. Inst. v. Mann* ("*CEI*"), 150 A.3d 1213, 1262 (D.C. 2016).

On May 31, 2019, the Hon. Jennifer Anderson issued an order dismissing Counts IV, V, and VI of Dr. Mann's *Amended Complaint*. On June 11, 2019, Defendants National Review, Competitive Enterprise Institute, and Rand Simberg filed a consent motion requesting to defer filing their motions for attorneys' fees under the D.C. Anti-SLAPP Act until after the entry of final judgment in the case. *See* Consent Joint Mot. to Defer Fee Application under the Anti-SLAPP Act. Judge Anderson granted the motion on June 13, 2019.

On March 11, 2024, National Review filed the instant *Motion for Fees* and *Bill of Costs* and on May 3, 2024, filed the *Supplemental Motion*.

II. DISCUSSION

The Court initially addresses National Review's request for fees pursuant to the District of Columbia's Anti-SLAPP Act. *See* Mot. for Fees. The Court next turns to National Review's request for costs under Super. Ct. Civ. R. 54. *See* Bill of Costs. It then concludes with addressing National Review's *Supplemental Motion* for "fees on fees." *See* Suppl. Mot.

A. Attorneys' Fees

1. Legal Standard

Courts in the District of Columbia adhere to the American Rule for attorneys' fees, by which each party is responsible for paying its own fees for legal services absent an "exception premised upon statutory authority, contractual agreement, or certain narrowly defined common law exceptions." *Hundley v. Johnston*, 18 A.3d 802, 806 (D.C. 2011). Unless otherwise provided, a motion for attorneys' fees must "specify the judgment and the statute, rule[,] or other grounds entitling the movant to the award; state the amount sought or provide a fair estimate of it and disclose . . . the terms of any agreement about fees for the services for which the claim is made." Super. Ct. Civ. R. 54(d)(2)(B)(ii)-(iv). Whether to award attorneys' fees is committed to the discretion of the trial court. *Jung v. Jung*, 791 A.2d 46, 51 (D.C. 2002).

Computing reasonable attorneys' fees begins with determining the lodestar, "the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate," *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 530 (D.C. 2003), and then, "'in exceptional cases,' making upward or downward adjustments as appropriate," *id*. (quoting *Hampton Cts. Tenants Ass'n v. D.C. Rental Hous. Comm'n*, 599 A.2d 1113, 1115 (D.C. 1991)). In adjusting the lodestar for a fee determination, the court considers:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service

> properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Frazier v. Franklin Inv. Co., 468 A.2d 1338, 1341 n.2 (D.C 1983).

It is "counsel's burden to prove and establish the reasonableness of each dollar, each hour, above zero." *Lively v. Flexible Packaging Ass'n*, 930 A.2d 984, 993 (D.C. 2007) (quoting *Mares v. Credit Bureau of Raton*, 801 F.2d 1197, 1210 (10th Cir. 1986)). "[T]he burden is on the fee applicant to produce satisfactory evidence . . . that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). The court must then determine "what constitutes a reasonable hourly rate for the services rendered, as measured by prevailing market rates in the relevant community for attorneys of similar experience and skill." *District of Columbia v. Jerry M.*, 580 A.2d 1270, 1281 (D.C. 1990).

The fee applicant must also provide documentation "sufficiently detailed to permit the [court] to make an independent determination whether or not the hours claimed are justified." *Hampton Cts. Tenants Ass'n*, 599 A.2d at 1117. However, as "cases may be overstaffed," *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983), the court "should compute the number of hours reasonably expended on the litigation, excluding any claimed hours that are excessive, redundant, or unnecessary," *Jerry M.*, 580 A.2d at 1281 (citing *Henderson v. District of Columbia*, 493 A.2d 982, 999 (D.C. 1985)).

2. Analysis

National Review seeks an award of $1,037,248.41 in fees and prejudgment interest. Mot. for Fees; *see also* Decl. of Anthony J. Dick in Supp. of Def. National Review Inc.'s Mot. for Att'y's Fees and Costs [hereinafter "Dick Fees Decl."], Ex. 1 (table of requested rates and corresponding time entries for work on the anti-SLAPP motion). National Review contends that it is presumptively entitled to such award, having prevailed upon its anti-SLAPP motion, which resulted in the dismissal of two counts against National Review and "substantially narrowed the [third count] against National Review [setting] the stage for its win on summary judgment." Mot. for Fees 9. National Review asserts that, even if the Court were to determine that it only partially succeeded on its anti-SLAPP motion, it is still entitled to a full award of fees because "the work on the successful and unsuccessful claims largely overlapped." *Id*. at 10 (citing *Wagner v. S. Cal. Edison Co.*, No. 2:16-cv-06259, 2019 WL 4257192, at *3, 2019 U.S. Dist. LEXIS 153457, at *9 (C.D. Cal. Sept. 9, 2019), *vacated*, 840 F. App'x 993 (9th Cir. 2021)).

In opposition, Dr. Mann asserts that National Review is precluded from an award of fees as its success was achieved at the appeal stage of the case, not at the motions stage. Mann Opp'n 8. Dr. Mann further asserts that the more "serious" third claim surviving the anti-SLAPP motion warrants "special circumstances" status that would render an award of attorneys' fees unjust. *Id*. at 12-14. In its reply, National Review argues that it is entitled to attorneys' fees because its efforts for which it is now seeking compensation, including work on appeal, are encompassed in the litigation that, taken as a whole, culminated in its success on the anti-SLAPP motion. Nat'l Rev. Reply 1-3.

For the reasons set forth herein, the Court finds that National Review is entitled to attorneys' fees under the Anti-SLAPP Act. The Anti-SLAPP Act provides, in relevant part, as

follows: "The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees." D.C. Code § 16-5504. National Review brought a special motion to dismiss pursuant to D.C. Code § 16-5502. *See* Second Mot. to Dismiss. While the trial judge did not grant the motion, initially, National Review pursued its position on appeal and was successful, thereby securing dismissal of two of the three counts of which it sought dismissal. *See CEI*, 150 A.3d at 1262 (reversing the trial court's denial of the anti-SLAPP motion with respect to Dr. Mann's defamation claims based on Mr. Lowry's *Get Lost* editorial and the claim for intentional infliction of emotional distress).

Again, Dr. Mann maintains that an anti-SLAPP motion must enjoy success at the motion stage of the litigation to warrant an award of attorneys' fees. Mann Opp'n 8-9 (citing *Khan v. Orbis Bus. Intel. Ltd*., 292 A.3d 244, 259 (D.C. 2023) (holding that the anti-SLAPP Act "does not provide for fee awards to defendants who prevail at later stages of a lawsuit" such as after trial, absent a showing of bad faith), and *Abbas v. Foreign Policy Group, LLC*, 783 F.3d 1328, 1337 n.5 (D.C. Cir. 2015) (concluding that the District of Columbia's anti-SLAPP Act "does not purport to make attorneys' fees available to parties who obtain dismissal by other means, such as under Federal Rule 12(b)(6)")). Dr. Mann's argument is without merit.

It should be noted that the Court of Appeals has interpreted the anti-SLAPP Act as "not limited to trial work but generally encompass[ing] 'the costs of litigation,' and post-trial motions *and appeals* are quite clearly part of the litigation." *Jacobson v. Clack*, 309 A.3d 571, 585 (D.C. 2024) (internal citation omitted) (emphasis added). Here, National Review was successful on its anti-SLAPP motion on appeal and any other conclusion would be untenable under the terms of

the statute and the Court of Appeals construction of the statute. Thus, National Review is indeed presumptively entitled to attorneys' fees.

Dr. Mann's further assertion that an award of attorneys' fees for work on appeal is improper because such an award would not be "comparatively modest," Mann Opp'n 8 (quoting *Kahn*, 292 A.3d at 258), is also not persuasive. As the Court of Appeals held in *CEI*, the denial of an anti-SLAPP motion is immediately appealable, noting the Act's "purpose [was] to create a substantive right not to stand trial and to avoid the burdens and costs of pre-trial procedures, a right that would be lost if a special motion to dismiss is denied and the case proceeds to discovery and trial." 150 A.3d at 1231. Thus, it goes hand in hand that if the purpose of the Act is to shortcut unnecessary protracted litigation and award attorneys' fees to the prevailing party, such award must be proper when a party prevails on interlocutory appeal. As with other awards of attorneys' fees, such determination is a matter of the trial court's discretion. *See Lively*, 930 A.2d at 988.

a) Fees Will be Awarded at the *Laffey* Rate

National Review requests an award of attorneys' fees at a rate 25 percent above the *Laffey* matrix rate. Mot for Fees 14-19. National Review asserts that while the *Laffey* matrix rates are "presumptively reasonable," *id*. (citing *Tenants of 710 Jefferson St. v. D.C. Rental Hous. Comm'n*, 123 A.3d 170, 182 (D.C. 2015)), this is an "exceptional case[]" where an "upward . . . adjustment[]" to the *Laffey* matrix lodestar is appropriate, *id*. at 16 (quoting *Fed. Mktg. Co*., 823 A.2d at 530). National Review explains that attorneys from large D.C. law firms, like those whom National Review retained for this matter, who litigate "high-profile First Amendment cases . . . typically charge much *more* than the rates in the *Laffey* matrix," *id*. at 15; and that an increase of 25 percent would more "adequately measure [its] attorneys' true market

value," *id*. (citing *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 554-55 (2010)), and would "properly account for 'the value of attorney services provided'" in this case, *id*. (citing *Downing v. Perry*, 123 A.3d 474, 488 (D.C. 2015)).

Dr. Mann, on the other hand, while simultaneously maintaining that this case involves circumstances that render any award of fees unjust, Mann Opp'n 10-14, argues that an increase to the *Laffey* matrix rates is inappropriate based on the number of pages National Review devoted in its appeal brief to the two claims dismissed on remand, *id*. at 20.

The *Laffey* Matrix is an annual chart that the Civil Division of the United States Attorney's Office for the District of Columbia compiles which "provides a schedule of hourly rates prevailing in the Washington, D.C. area in each year going back to 1981 for attorneys at various levels of experience." *Lively*, 930 A.2d at 988; *see also Laffey v. Nw. Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984). The Court of Appeals has deemed the *Laffey* matrix rates as not "excessive or out of tune with the market" and has repeatedly approved the use of such rates to "calculate the lodestar for attorneys' fees in private litigation." *Tenants of 710 Jefferson St.*, 123 A.3d at 182; *see also Campbell-Crane & Assocs. v. Stamenkovic*, 44 A.3d 924, 947-48 (D.C. 2012); *Lively*, 930 A.2d at 990. Accordingly, this Court will apply the *Laffey* matrix in calculating attorneys' fees, here.

This Court does not agree that the requested increase of 25 percent to the *Laffey* matrix rates is appropriate. As noted above, the Anti-SLAPP Act allows for recovery of "*reasonable* attorney fees." D.C. Code § 16-5504 (emphasis added). Aside from detailing the toplines of their attorneys' resumes, Mot. for Fees 16-17, and noting the "notoriously difficult" First Amendment question at issue, Nat'l Rev. Reply 11, National Review has failed to provide any other justification under the *Frazier* factors to cause the Court to stray from the *Laffey* matrix

rates. *See Frazier*, 468 A.2d at 1341 n.2. Again, "the burden is on the fee applicant to produce satisfactory evidence . . . that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Blum*, 465 U.S. at 895 n.11. While National Review has provided caselaw that intimates enhancements to the *Laffey* matrix may be warranted in rare circumstances, it has not provided caselaw finding such circumstances existed thereby warranting award of an enhanced rate. *See, e.g.*, *Campbell-Crane & Assocs.*, 44 A.3d at 947-48 (affirming a downward adjustment to the requested fee award to calculate properly the award using the *Laffey* matrix's varying annual rates and not a flat rate as requested); *Perdue v. Kenny A.*, 559 U.S. 542, 557 (2010) (finding the District Court did not provide sufficient justification for a 75 percent increase to the lodestar). What is more, National Review has failed to provide any persuasive reason for an enhancement of its attorneys' rates. Thus, the Court will deny the request to depart from the *Laffey* matrix rate.

b) The Hours Awarded Will be Reduced

Filed with the *Dick Fees Declaration* is a table of hours worked in this matter "based on counsel's monthly bills actually tendered to National Review and the detailed contemporaneous narratives" that National Review deems "reasonable when considering the complexity of the case." Mot. for Fees 13; *see also* Dick Fees Decl. Ex. 1. National Review argues that it should be paid fees for all hours worked, including for time spent litigating its vicarious liability for Mr. Steyn's blog post which was unsuccessful on appeal because all of its legal work was based on related "facts and legal theories." Nat'l Rev. Reply 6-8 (quoting *Hensley*, 461 U.S. at 434). National Review also asserts that the joint representation of it and Mr. Steyn in the early stages

of the litigation are indistinguishable because the "core legal arguments in the [*Second Motion to Dismiss*] covered both National Review and [Mr.] Steyn equally." *Id*. at 8-9.

Dr. Mann quarrels with the reasonableness of National Review's fee request, arguing that National Review is not entitled to an award of fees through the end of 2013, Mann Opp'n 17 (asserting fees should not be awarded when National Review and Mr. Steyn were jointly represented by the same law firm), and disputing several general categories of fee requests, *id*. at 19 (generally stating that National Review's request includes "facially unacceptable" fee requests). Dr. Mann also asserts that National Review failed to provide evidence or necessary detail of the overlap between their successful and unsuccessful claims, *id*. at 15 (citing *Hto7, LLC v. Elevate LLC*, No. 2020 CA 003769 B, 2022 WL 3575386, at *10 (D.C. Super. Ct. July 7, 2022), *rev'd*, 319 A.3d 368 (D.C. 2024)), and that National Review was only minimally successful on appeal, thus warranting a percentage reduction, *id*. at 18-19 (stating that three of the five claims proceeded).

i. Hours for Work Related Solely to Mr. Steyn Will not be Awarded

Dr. Mann asserts that National Review should not be awarded any fees incurred from the joint representation of both Mr. Steyn and National Review because Mr. Steyn "did not prevail on a single anti-SLAPP claim." Mann Opp'n 17. At the same time, Dr. Mann acknowledges that Mr. Steyn did not participate in the anti-SLAPP appeal. *Id*. First, there is no textual support for Dr. Mann's argument found in the anti-SLAPP statute that treats jointly represented parties differently. D.C. Code § 16-5504(a) (The court may award a *moving party* who prevails, in whole or in part, . . . the costs of litigation, including reasonable attorney fees). Indeed, the purpose of awarding of fees is intentionally to "punish or prevent" a plaintiff from bringing SLAPPs. *Jacobson*, 309 A.3d at 577 (quoting D.C. Council, Comm. on Pub. Safety and the

Judiciary, Report on Bill 18-893 at 1 (Nov. 18, 2010)). Second, none of the cases Dr. Mann cites involve an award of attorney's fees but involve *costs* under either D.C. Superior Court Civil Rule 54 or Federal Rule of Civil Procedure 54. *See* Mann Opp'n 17 (citing *Knight v. Georgetown Hospital Center*, 725 A.2d 472, 487 (D.C. 1999) (advising jointly represented parties to determine a "fair method of apportioning *costs*" that reflect each party's status of prevailing); *All W. Pet Supply Co. v. Hill's Pet Prods. Div.*, 153 F.R.D. 667, 669 (D. Kan. 1994) (refusing to award *costs* where all parties prevailed in part); *McKenna v. Ferreira*, Civ. A. No. 92-4991, 1996 WL 711019 (E.D. Pa. Dec. 5, 1996) (apportioning *costs* based on the prevailing status of each jointly represented defendant), *Jordan Kahn Music Co., LLC v. Taglioli*, Civ. A. No. 4:21-cv-00045, 2023 WL 2266123, at *10 (E.D. Tex. Feb. 28, 2023) (refusing to award *costs* where one plaintiff's claims were dismissed and the remaining parties each prevailed at least in part on at least one of four claims)). Even more fatal to Dr. Mann's argument is that the cases he cites involve prevailing and non-prevailing parties who participated at trial, unlike here where Dr. Mann acknowledges that Mr. Steyn *did not participate* in the appeal. Mann Opp'n 17.

No matter, National Review should not receive an award of attorneys' fees for work its attorneys performed representing Mr. Steyn. Certain fees are easily attributed solely to representation of Mr. Steyn and should be deducted from the awarded amount. *See, e.g.,* Dick Decl. Ex 1 ("Meet with M[r]. Steyn and [his publicist]," "telephone call with [Mr. Steyn's publicist]"). Upon a review of the requested fees, the Court will deduct $4,106.76 for fees that solely apply to representation of Mr. Steyn. As the Court of Appeals has noted, "it is often impossible to distinguish hours spent on individual claims that are ultimately unsuccessful from time spent on the overall successful litigation." *Nat. Motion by Sandra, Inc. v. D.C. Comm'n on Human Rts.*, 726 A.2d 194, 198 (D.C. 1999) (citing *Hensley*, 461 U.S. at 435). Such is true here

regarding the joint representation of National Review and Mr. Steyn and the descriptions of the hours worked and the fees requested. *See* Dick Decl. Ex 1. As Dr. Mann has not proffered any time entries that he finds apply solely to the representation of Mr. Steyn, this Court will decline scrutinize this specific opposition any further.

When challenging fee requests that he deems "facially unacceptable," Dr. Mann provides no legal support for the challenge. *See* Mann Opp'n 19. Moreover, Dr. Mann neither cites to specific charges in the fee statement, nor identifies an amount that should be deducted from National Review's request. *Id*. "The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838 (2011). A trial court is "not required to perform an in-depth analysis of the billing records," *Lively*, 930 A.2d at 993, and this Court will not do so here to ferret out support for Dr. Mann's bald assertions.

ii. Hours Will be Reduced Due to National Review's Partial Success

The Court of Appeals has interpreted the District's anti-SLAPP statute to "entitle[] the moving party who prevails on a special motion to quash to a presumptive award of reasonable attorneys' fees on request, 'unless special circumstances would render such an award unjust.'" *Doe v. Burke*, 133 A.3d 569, 578 (D.C. 2016) (citing *Christiansburg Garment Co. v. Equal Emp. Opportunity Comm'n*, 434 U.S. 412, 416-17 (1978). Where "a [prevailing party] has achieved only partial or limited success," the court must consider: (1) whether "the [prevailing party] fail[ed] to prevail on claims that were unrelated to the claims on which he succeeded," and (2) whether "the [prevailing party] achieve[d] a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award." *Hensley*, 461 U.S. at 434. "[T]he failure to prevail on [a] count must be considered along with the successful [count or counts] in determining [the prevailing party's] overall degree of success." *Goos v. Nat'l Ass'n of Realtors*,

74 F.3d 300, 302 (D.C. Cir. 1996). This Court cannot parse National Review's anti-SLAPP appeal into a "series of discrete claims" but must consider "the significance of the overall relief obtained." *Hensley*, 461 U.S. at 435. In adjusting a fee to reflect the level of success, a judge "may attempt to identify specific hours that should be eliminated, or . . . may simply reduce the award to account for the limited success," *Lively*, 930 A.2d at 993 (quoting *Hensley*, 461 U.S. at 436-37), by "across-the-board percentage cuts," *id*. (quoting *Gates v. Deukmejian*, 987 F.2d 1392, 1399 (9th Cir. 1992) (upholding a 25 percent reduction of requested attorneys' fees where the plaintiff was successful on one out of four claims all of which arose out of similar facts)). Again, a trial court is "not required to perform an in-depth analysis of the billing records," as it is "not for the [trial] court to justify each dollar or hour deducted from the total submitted by counsel, . . . [but] counsel's burden to prove and establish the reasonableness of each dollar, each hour, above zero." *Id*. (quoting *Mares v. Credit Bureau of Raton*, 801 F.2d 1197, 1210 (10th Cir. 1986)).

Hensley and its progeny offer somewhat muted guidance for courts called upon to address the partial success of an anti-SLAPP motion. *Hensley* assessed the propriety of fees at the end of trial, however, and evaluated the impact of the relief obtained. 461 U.S. at 436-40 (noting the respondent's "commendable effort" affected him, as well as "numerous other institutionalized patients similarly situated," in assessing the degree of success). In contrast, disposition of an anti-SLAPP motion comes early in the litigation and affects only the parties involved in the immediate suit. Furthermore, the Court of Appeals has yet to issue any published opinion passing on a fee request premised on an anti-SLAPP motion that was successful only in part—*i.e.*, an anti-SLAPP motion that did not result in the dismissal of all claims in a case. The Court of Appeals has recognized that California has the "most robust body of anti-SLAPP

precedents," *Jacobson*, 309 A.3d at 582, and has repeatedly "relied on California precedents in this arena given '[California's] similar anti-SLAPP statute,'" *id*. at 582 n.7 (citing *Am. Stud. Ass'n v. Bronner*, 259 A.3d 728, 746 (D.C. 2021)). Accordingly, this Court will look to California caselaw for guidance on fee awards for partial success on anti-SLAPP motions.

A California intermediate appellate court aptly identified the competing public policy concerns of attorney fee awards to a partially prevailing defendant on an anti-SLAPP motion, as follows:

> (1) the public policy to discourage meritless SLAPP claims by compelling a SLAPP plaintiff to bear a defendant's litigation costs incurred to eliminate the claim from the lawsuit; and (2) the public policy to provide a plaintiff who has facially valid claims to exercise his or her constitutional petition rights by filing a complaint and litigating those claims in court.

Mann v. Quality Old Time Serv., Inc., 42 Cal. Rptr. 3d 607, 618 (Cal. Ct. App. 2006). The court concluded that instead of presumptively awarding fees as a matter of right, "the court should first determine the lodestar amount for the hours expended on the successful claims, and, . . . should then consider the defendant's relative success on the motion in achieving his or her objective, and reduce the amount if appropriate." *Id.*, *see also Woulfe v. Universal City Studios LLC*, No. 2:22-cv-00459-SVW-AGR, 2024 U.S. Dist. LEXIS 47663, at *19 (C.D. Cal. Feb. 8, 2024) ("Because it is often impossible to allot particular hours to particular claims, courts should consider the extent [to which] the motion changed the character of the lawsuit in a practical way[.]"). Any fees awarded to a partially successful anti-SLAPP defendant "should be commensurate with the extent to which the motion changed the nature and character of the lawsuit in a practical way[.]" *Quality Old Time Serv., Inc.*, at 618-19 (reducing an award of attorneys' fees by 50 percent where the defendant was only successful on one of the four causes of action in anti-SLAPP motion). The court reasoned, as follows:

> Given the express legislative preference for awarding fees to successful anti-SLAPP defendants, a party need not succeed in striking every challenged claim to be considered a prevailing party within the meaning of section 425.16. A contrary conclusion would require a partially prevailing defendant to bear the entire cost of the anti-SLAPP litigation at the outset of the case. This would create a strong disincentive for a defendant to bring the motion, undermining the legislative intent to encourage defendants to utilize the anti-SLAPP procedure to eliminate SLAPP claims and to discourage plaintiffs from bringing meritless SLAPP claims. On the other hand, there is no reason to encourage a defendant to bring an anti-SLAPP motion where the factual and legal grounds for the claims against the defendant remain the same after the resolution of the anti-SLAPP motion. Where the results of the motion are "minimal" or "insignificant" a court does not abuse its discretion in finding the defendant was not a prevailing party.
>
> We thus hold that a party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion.

Id. at 614 (internal citations omitted). *Compare City of Colton v. Singletary*, 142 Cal. Rptr. 3d 74, 101 (Cal. Ct. App. 2012) (upholding fee award because the defendant obtained a practical benefit in securing dismissals for three out of seven claims, namely eliminating the request for specific performance), *and Maleti v. Wickers*, 298 Cal. Rptr. 3d 284, 327-28 (Cal. Ct. App. 2022) (reversing denial of request for attorneys' fees because the "practical benefit" of dismissing one of two causes of action merited an award of fees), *with Moran v. Endres*, 955, 37 Cal. Rptr. 3d 786, 788 (Cal. Ct. App. 2006) (affirming denial of award where the defendants' prevailing on one of eleven counts "accomplished nothing"). *But see Kozlova v. Doubson*, No. H050512, 2023 Cal. App. Unpub. LEXIS 5648, at *27-30 (Cal. App. Ct. Sep. 25, 2023) (upholding reduced fee award where defendant partially prevailed but did not "achieve any practical benefit" and proceeding to trial instead of filing an anti-SLAPP motion would have been more expedient).

Here, all of the claims asserted against National Review involved a "common core of facts" and the libel claims shared "related legal theories." *See Hensley*, 461 U.S. at 435. In obtaining partial success on the anti-SLAPP motion, National Review secured dismissals for two of the five claims against it: Count IV, libel *per se* regarding Mr. Lowry's article, and Count VI, intentional infliction of emotional distress. Dr. Mann is mistaken to assert that National Review "gained virtually nothing" from the anti-SLAPP dismissals that it obtained. Mann Opp'n 13. As noted, the anti-SLAPP dismissal eliminated *all* of the claims against National Review based on its *own* speech, which significantly narrowed discovery and limited the remaining litigation to whether National Review could be held vicariously liable for Mr. Steyn's blog post. As a result, National Review did not have to engage in discovery or litigation regarding any of the elements of defamation or intentional infliction of emotional distress for its own speech. For example, it did not have to litigate the issue of "actual malice" for its own employees who were involved in the protected *Get Lost* editorial. Instead, it could focus solely upon defeating the false notions that it had an employment relationship with Mr. Steyn or somehow had advance knowledge of his post before he published it online. To be sure, National Review secured a practical benefit at the anti-SLAPP stage as the nature of the litigation changed in its favor as a result of its partial success. Admittedly, the change in posture did not result in complete success. Despite it being largely successful, National Review was still subject to a claim of vicarious liability for Mr. Steyn, which would expose it to the same damages as Mr. Steyn and which meant that National Review had to engage in the some of the discovery process. As the change in posture did not result in complete success, a reduction is warranted to reflect National Review's continuing liability and role in the case up until the dispositive motions stage. Accordingly, the Court finds a reduction of 20 percent in the hours reported is appropriate here to account for

National Review's partial success and continuing need to participate in the litigation, post victory.

c) Prejudgment Interest is Not Appropriate

On top of attorneys' fees, National Review seeks an award of prejudgment interest, compounded annually. Mot. for Fees 18-19. National Review contends that it is "well-established that trial courts have discretion to award prejudgment interest under the common law, even in the absence of a statutory authorization to that effect." Nat'l Rev. Reply 12 (citing *Mazor v. Farrell*, 186 A.3d 829, 836 (D.C. 2018) (internal quotation marks omitted)). National Review asserts that it is entitled to an award of prejudgment interest here because, while each claim asserted against it by Dr. Mann was ultimately "found meritless," National Review was "deprived of the productive use of [its] funds . . . for more than a decade," Mot. for Fees at 18; *see also* Nat'l Rev. Reply at 13. It further argued that equitable considerations argue for such award, given Dr. Mann's purported intent in bringing this "major lawsuit" was to "ruin National Review." *Id*. (citing Dick Fees Decl., Ex. 3 (Trial Ex. 607)). National Review requests that interest be set at the prime rate—"the rate that banks charge for short-term unsecured loans to credit-worthy customers." *Id*. (quoting *Oldham v. Korean Air Lines Co.*, 127 F.3d 43, 54 (D.C. Cir. 1997)).

Dr. Mann argues that prejudgment interest is not available to National Review because: "(1) this is not an action to recover a liquidated debt under Section 15-108; (2) this is not a contract action under Section 15-109; and (3) there is no liquidated debt." Mann Opp'n 20-22. Dr. Mann elaborates that prejudgment interest is also inappropriate here as there was no refusal to pay a debt. *Id*. at 22. While National Review does not contend that §§ 15-108 and -109 apply

here, it maintains that the attorneys' fees at issue here are by definition a liquidated debt. Nat'l Rev. Reply 13 (citation omitted). The Court must side with Dr. Mann.

"[A]t common law, judgments, whatever the cause of action, did not bear interest. [*Perkins v. Foruniquet*, 55 U.S. (14 How.) 328, 331 (1853).] This was so in Maryland at the time of the cession of the District [of Columbia], with perhaps some exceptions, not embracing judgments in actions of tort." *Wash. & Georgetown R.R. Co. v. Harmon's Adm'r*, 147 U.S. 571, 584-85 (1893); *see also Balt. City Passenger Ry. Co. v. Sewell*, 37 Md. 443, 455 (1873) ("[J]udgments in this State did not carry interest at common law, but were made to do so by comparatively recent Acts of [the Maryland General] Assembly.").[3] Congress modified the common law in 1901 with the enactment of what is now D.C. Code § 15-109. *See Duggan v. Keto*, 554 A.2d 1126, 1140 n.15 (D.C. 1989) (tracing history of provision from original enactment in Act of March 3, 1901, ch. 854, § 1185, 31 Stat. 1189, 1378, to recodification at D.C. Code § 15-109). In full, D.C. Code § 15-109 provides:

> In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only. This section does not preclude the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest.

D.C. Code § 15-109. The Court of Appeals has interpreted D.C. Code § 15-109

> as authorizing post-judgment interest in both tort and contract cases, but pre-judgment interest only in contract cases. The second sentence, as we read it, relates back to the first and is limited by it to actions for breach of contract. Our reading is supported by the original version of the statute, in which the language now in the second sentence was part of the first. On the other hand, there is nothing in section 15-109 that prohibits an award of pre-judgment

[3] "The common law of the District of Columbia encompasses all common law in force in Maryland in 1801, unless expressly repealed or modified." *United States v. Jackson*, 528 A.2d 1211, 1215 (D.C. 1987); *see also* D.C. Code § 45-401(a).

> interest. We therefore conclude that pre-judgment interest in tort actions in the District of Columbia *is neither authorized nor forbidden by statute*.

Duggan, 554 A.2d at 1140 (footnotes omitted) (emphasis added), *see also Burke v. Groover, Christie & Merritt, P.C.*, 26 A.3d 292, 305 (D.C. 2011) (quoting *Duggan*, 554 A.2d at 1140) (holding that D.C. Code §§ 15-108 and -109 do not prohibit the award of prejudgment interest in tort actions even though both sections "may appear to 'occupy the space' in connection with pre-judgment interest").

"[I]n a tort action [this Court] has the equitable power to award 'pre-judgment' interest on that part of an interest award whose validity is *undisputed*." *Groover*, 26 A.3d at 306 (holding that although the *total* amount of interest award was disputed, the partial amount of said award that is conceded to be valid is liquidated and thus deserving of pre-judgment interest) (emphasis added). This holding reflects the language of D.C. Code § 15-108, which allows for prejudgment interest on a "liquidated debt" to accrue "from the time when it was due and payable." *Id.* "Debt" in the context of § 15-108 is "broad[ly] read[]," *Bragdon v. Twenty-Five Twelve Assocs. Ltd. P'ship*, 856 A.2d 1165, 1169 n.6 (D.C. 2004), to describe "an amount of money the use of which a prevailing plaintiff has been deprived by the defendant's conduct." *Washington Inv. Partners of Del., LLC v. Sec. House*, 28 A.3d 566, 581 (D.C. 2011). A debt is liquidated if "'at the time it arose, . . . was an easily ascertainable sum certain.'" *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1254 (1990) (citing *Kiser v. Huge*, 517 F.2d 1237, 1251 (D.C. Cir. 1974), *rev'd in part on other grounds*, 517 F.2d 1275 (D.C. Cir. 1975) (en banc)); *see also Giant Food, Inc. v. Jack I. Bender & Sons*, 399 A.2d 1293, 1302 (D.C. 1979) (finding a debt to be liquidated where the defaulting party "knew the exact amount and terms of the contractual debt.").

Other states have reached similar conclusions regarding prejudgment interest on attorneys' fees in the context of anti-SLAPP motions. In California, "interest ordinarily begins to accrue on the . . . attorney fees portion of the judgment as of the same time it begins to accrue on all other monetary portions of the judgment—*upon entry of judgment*." *Lucky United Props. Inv., Inc. v. Lee*, 110 Cal. Rptr. 3d 159, 168 (Cal. Ct. App. 2010) (emphasis added) (citing *Sternwest Corp. v. Ash*, 227 Cal. Rptr. 804, 805-06 (Cal. Ct. App. 1986)). There, prejudgment interest is only awarded if (1) the defendant actually knew the amount owed or (2) the defendant could have computed the amount owed from reasonably available information. *Chesapeake Indus., Inc. v. Togova Enters., Inc*., 197 Cal. Rptr. 348, 352 (Cal. Ct. App. 1983). Other state courts similarly deny prejudgment interest on attorneys' fees on the basis that anti-SLAPP statutes provide purely procedural remedies. *See, e.g*., *Cordova v. Cline*, 489 P.3d 957, 962-63 (N.M. Ct. App. 2021) (denying prejudgment interest because N.M Stat. Ann. § 38-2-9.1 does not establish an independent claim that can be pursued); *Rosenbrook v. Lloyd*, No. A-21-838466-C, 2022 Nev. Dist. LEXIS 758, at *12 (Nev. Dist. Ct. Aug. 2, 2022) (denying prejudgment interest because Nev. Rev. Stat. § 41.670 provides procedural remedies and not damages).

This Court will not award prejudgment interest on the attorneys' fees National Review requests. The purpose of "prejudgment interest . . . on a debtor's obligation . . . is imposed to compensate the creditor for the loss of the use of its money." *District of Columbia v. Potomac Elec. Power Co.*, 402 A.2d 430, 441 (D.C. 1979); *see also Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 732 (D.C. 2003) (awarding prejudgment interest on compensatory damages for moneys that were wrongly withheld for years but not awarding such interest on attorneys' fees). Here, National Review is not yet a creditor of Dr. Mann. Indeed, the Court is only now by this Order determining the fees owed to National Review—Dr. Mann was

heretofore under no previous obligation to pay National Review, let alone an "ascertainable sum certain[.]" *Riggs Nat'l Bank*, 581 A.2d at 1254 (citation omitted); *see also Lucky United Props.*, 152 Cal. Rptr. 3d at 656 ("[P]rejudgment interest is generally denied 'because of the general equitable principle that a person who does not know what sum is owed cannot be in default for failure to pay.'" (quoting *Chesapeake Indus., Inc.*, 197 Cal. Rptr. at 351)).

Further, "[w]hether to award pre-judgment interest in [tort actions] is a determination that lies in the equitable discretion of the trial court." *Groover*, 26 A.3d at 306 (citing *Riggs Nat'l Bank*, 581 A.2d at 1253). National Review asserts that equitable grounds warrant prejudgment interest here because Dr. Mann filed this suit "with the express purpose to 'ruin National Review.'" Mot. for Fees 18 (citation omitted). Investigation into any bad motive on Dr. Mann's part for filing this suit is not required under the Act.

> [T]he statutory text does not call for inquiry into the plaintiff's motives; it focuses on the claim, not the claimant. Nor does anything in the legislative history suggest the Council envisioned an examination of the plaintiff's motives in connection with special motions to dismiss. . . . [T]he Anti-SLAPP Act instructs courts to determine whether the claim at issue "arises from" a protected act. We think no sensible reading of that language could lead to a conclusion that the Council intended courts to gauge a plaintiff's subjective reasons for filing their claims.

Am. Studies Ass'n, 259 A.3d at 748. If Dr. Mann's claims are meritless—which here, two out of five were deemed to be on appeal—the anti-SLAPP statute ameliorates such meritless litigation by allowing attorneys' fees to be awarded, contrary to the American Rule.[4] Absent extraordinary circumstances, this Court will not further punish Dr. Mann's meritless claims by awarding

[4] National Review also asserts that prejudgment interest is appropriate because Dr. Mann's suit was "found meritless at every stage against National Review." National Review Reply 13. While this may be true with the benefit of hindsight, this Court will not consider later dispositions of claims that were unsuccessful at the special motions stage to justify a heightened award of fees.

attorneys' fees at an inflated rate. *See, e.g.*, *Santamaria v. District of Columbia*, 875 F. Supp. 2d 12, 22 (D.D.C. 2012) (awarding prejudgment interest on attorneys' fees that were litigated for over six years), *Kaseman v. District of Columbia*, 329 F. Supp. 2d 20, 28-29 (D.D.C 2004) (awarding prejudgment interest where litigation on attorneys' fees lasted over two and a half years for some plaintiffs). While it is true that National Review prevailed on their special motions to dismiss on May 31, 2019, National Review deferred requesting attorneys' fees until March 11, 2024, upon the filing of the instant motion. *See* Mot. to Defer.; *cf. Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020) (explaining that a party's "asserted harm [being] largely self-inflicted 'severely undermines' its claim for equitable relief"). As such, attorneys' fees can only be said to be truly "in dispute" since March 5, 2024, when Dr. Mann rejected National Review's "formal request" for fees. Mot. for Fees 20. Further, payment of fees has not been "tied up" for such a period as to merit prejudgment interest. *Cf. Santamaria*, 875 F. Supp. 2d at 22.

B. Costs

1. Legal Standard

Unless otherwise provided for by court order, statute, or rule, "costs—other than attorneys' fees—should be allowed to the prevailing party." Super. Ct. Civ. R. 54(d). Whether to award costs to the prevailing party ultimately "is within the trial court's discretion and may only be overturned upon [a] finding that the exercise of such discretion was an abuse." *Talley v. Varma*, 689 A.2d 547, 555 (D.C. 1997).

2. Analysis

National Review seeks costs in the amount of $40,764.62 pursuant to D.C. Code § 16-5504 as "costs of litigation" and pursuant to Super. Ct. Civ. R. 54, as the prevailing party on all

claims asserted against it by Dr. Mann. Mot. for Fees 20; Bill of Costs 3. In his *Opposition*, Dr. Mann asserts that he cannot respond to the request for costs because National Review failed to file documentation in support of its request. Mann Opp'n 22. At the same time, Dr. Mann contends that National Review should not receive costs for the period during which it was jointly represented with Mr. Steyn. *Id.*

National Review indeed filed a *Bill of Costs* and an itemized table of such costs on March 11, 2024. *See* Bill of Costs; *see also* Decl. of Anthony J. Dick in Supp. of Def. National Review Inc.'s Bill of Costs Under Rule 54(d) [hereinafter "Dick Costs Decl."], Ex. 1 (table of requested rates and corresponding time entries for work on preparing the motion for attorneys' fees).

Regarding the overlap of representation with Mr. Steyn, all claims asserted against Mr. Steyn were claims that were also asserted against National Review. Unlike attorneys' fees, the costs incurred here for copying, engaging messengers, and filing fees would have been incurred with or without joint representation with Mr. Steyn. *See, e.g., 3000 E. Imperial, LLC v. Robertshaw Controls Co*., No. CV 08-3985 PA (EX), 2011 U.S. Dist. LEXIS 161747, at *6 (C.D. Cal. May 2, 2011) ("[I]f a party would have incurred the same costs despite the existence of multiple parties, or if the costs were incurred to pursue claims and defenses common to all parties, apportionment is not appropriate."). As National Review prevailed on all claims asserted against it and no legitimate opposition was raised by Dr. Mann, the Court will award costs in full to National Review.

C. "Fees on Fees"

1. Legal Standard

In the District of Columbia, "[t]he law is well established that, when fees are available to the prevailing party, that party may also be awarded 'fees on fees,' *i.e.*, the reasonable expenses incurred in the recovery of its original cost and fees." *Gen. Fed'n of Women's Clubs v. Iron Gate Inn, Inc.*, 537 A.2d 1123, 1129 (D.C. 1988). Similar to determining attorney's fees, calculation of "fees on fees" is accomplished by determining the lodestar which can then be "adjusted, as appropriate, with reference to a variety of factors to reflect 'the quality of representation and the contingent nature of success.'" *Id*. at 1130 (quoting *District of Columbia v. Hunt*, 525 A.2d 1015, 1016 (D.C. 1987)). While the presumption in favor of awarding fees to "prevailing defendants in Anti-SLAPP cases" also applies to awarding "fees on fees," *Khan*, 292 A.3d at 262, ultimately whether to grant "fees on fees" is a matter of trial court discretion, *Gen. Fed'n of Women's Clubs*, 537 A.2d at 1129.

2. Analysis

Finally, National Review seeks an award of $132,472.38 for "fees on fees"—the attorneys' fees incurred in litigating its motion for attorneys' fees for prevailing on the *Second Motion to Dismiss*. Mot. for Fees 19-20; Suppl. Mot. Dr. Mann quarrels with the size of the "fee on fee" award request, namely, the *Laffey* matrix rate, the disparate proportion between the requested award and the degree of National Review's success on appeal, the number of hours billed, and four specific line-item requests. Mann Opp'n to Suppl. Mot. 7-11.

a) "Fees on Fees" will be Awarded at the *Laffey* Rate

"The law is well established that, when fees are available to the prevailing party, that party may also be awarded "fees on fees," *i.e.*, the reasonable expenses incurred in the recovery

of its original cost and fees." *Gen. Fed'n of Women's Clubs*, 537 A.2d at 1129; *see also Kaseman v. District of Columbia*, 444 F.3d 637, 640 (D.C. Cir. 2006) ("[O]ur general rule is that the court may award additional fees for 'time reasonably devoted to obtaining attorney's fees.'" (quoting *Env't Def. Fund v. Env't Prot. Agency*, 672 F.2d 42, 62 (D.C. Cir. 1982))). "[N]o award of fees is automatic." *Comm'r v. Jean*, 496 U.S. 154, 163 (1990) (internal quotations omitted). Whether to grant "fees on fees" is a matter of the trial court's discretion. *Gen Fed'n of Women's Clubs*, 537 A.2d at 1129. The Court of Appeals has explained that "[t]he presumption in favor of awarding fees to prevailing defendants in Anti-SLAPP cases . . . [also] applie[s] to the request for 'fees on fees[.]'" *Khan*, 292 A.3d at 262.

The Court will award National Review an amount representing reasonable "fees on fees," but not in the amount National Review has requested. As in the *Motion for Fees*, National Review requests its award of "fees on fees" be calculated at a rate 25 percent above the *Laffey* matrix. Suppl. Mot. 3. For the same reasons as discussed above, the Court will decline the request for a 25 percent increase. *See supra* Section II.A.2.a.

Dr. Mann asserts that the *Laffey* rate should be cut in half, consistent with caselaw from the U.S. District Court for the District of Columbia. Mann Opp'n to Suppl. Mot. 8-9 (citing, *e.g.*, *McNeil v. Options Pub. Charter Sch.*, No. 12-529 DAR, 2016 U.S. Dist. LEXIS 129432, at *1-11, *9 (D.D.C. Sep. 22, 2016)). As the Parties appreciate, this Court is not bound by decisions of trial judges in the U.S. District Court for the District of Columbia. *See, e.g.*, *Shalom v. Smith*, 304 A.3d 983, 987-88 (D.C. 2023) ("[A] federal district court decision is not binding on this court, and it holds little persuasive force on a question of the proper interpretation of District law."). No matter, Dr. Mann fails to point out that U.S. District Court trial judges are split on the appropriate rate to be awarded on "fee on fee" requests. While some judges have deemed the

"straightforward nature of ['fee on fee'] proceedings warrants an award at one-half of an attorney's applicable *Laffey* rate," *McNeil*, 2016 U.S. Dist. LEXIS 129432, at *9 (collecting cases), other judges have held that "fee on fee" requests should be awarded at the same rate as the underlying fee litigation, given they "arise[] out of the same controversy," *Shaw v. District of Columbia*, 253 F. Supp. 3d 267, 269 (D.D.C. 2017); *see also McNeil v. District of Columbia*, 233 F. Supp. 3d 150, 156 (D.D.C. 2017) ("[R]equiring prevailing plaintiffs to overcome redundant hurdles before recovering fees creates the same 'financial deterrent that fee-shifting statutes aim to eliminate.'" (original brackets omitted) (quoting *Jean*, 496 U.S. at 162-63)). Indeed, "[a] request for attorney's fees should not result in a second major litigation," *Hensley*, 461 U.S. at 437, so as to avoid the "'Kafkaesque judicial nightmare' of infinite litigation to recover fees for the last round of litigation over fees," *Jean*, 496 U.S. at 163. Absent guidance from the Court of Appeals, this Court is not persuaded by the U.S. District Court cases that automatically reduce "fee on fee" award rates. Therefore, this Court will award "fees on fees" at the full *Laffey* matrix rate, consistent with the Court's award of fees.

b) Contested "Fees on Fees" Will Not be Awarded

Dr. Mann takes issue with three categories of "fee on fee" requests across four specific line-items. First, Dr. Mann contends National Review should not be reimbursed for its motion to defer filing its fee request because the motion was consented to and thus not litigated. Mann Opp'n to Suppl. Mot. 10 (two partial line items representing a combined 1.3 hours of work). Second, Dr. Mann contends that communicating with document vendors does not concern fee litigation. *Id*. (one partial line item representing 0.3 hours of work). Third, Dr. Mann points to National Review reporting time regarding a motion to post security for fees which it did not file. *Id*. (two partial line items representing a combined 0.5 hours of work). As no reply was filed by

National Review to justify these requests and the identified fees appearing improper, $1,044.68 representing the disputed 2.1 hours, will be deducted from the requested award.

Aside from these four line-items, Dr. Mann asserts that the remainder of National Review's request is excessive with a naked comparison to Defendants Simberg and CEI's only billing for 112.2 hours in their "fees on fees" request. *Id*. at 9. To support this assertion of excessiveness, Dr. Mann recites "fee on fee" awards in other cases and contends that because the instant request exceeds those awards it is automatically unreasonable. *Id*. at 10 (citing *Khan*, 292 A.3d at 263; *Jones v. District of Columbia*, 153 F. Supp. 3d 114 (D.D.C. 2015); and *Kaseman*, 444 F.3d at 639). However, even if the Court were to find this logic sound and instructive, the *Kaseman* court awarded more than National Review will receive here, after the reductions discussed herein. 444 F.3d at 639 (awarding $90,926.83 in "fees on fees").

c) Hours Reported for "Fees on Fees" Will be Reduced Due to National Review's Partial Success

This Court will similarly reduce the "fee on fee" award as it did on the underlying fee petition. *See supra* Section II.A.2.b.ii. "[F]ees for fee litigation should be excluded to the extent that the applicant ultimately fails to prevail in such litigation." *Jean*, 496 U.S. at 163 n.10; *see also McAllister v. District of Columbia*, 160 F. Supp. 3d 273, 280 (D.D.C. 2016) (awarding 50 percent of the requested "fees on fees" where the movant "received less than 50% of their requested fees in the underlying administrative action."); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec*., 982 F. Supp. 2d 56, 61 (D.D.C. 2013) (awarding "the same percentage of fees for fee litigation as it [did] for fees on the merits."); *Hudson v. Am. Federation of Gov't Employees*, Civ. Act. No. 17-2094 (JEB), 2023 U.S. Dist. LEXIS 104680, at *10 (D.D.C. June 16, 2023) ("Courts reduce 'fees on fees' by the same proportion as they have reduced the total award." (citation omitted)). Here, the hours reported in the request for attorneys' fees were

reduced by 20 percent to account for National Review's partial success on the *Second Motion to Dismiss*. Therefore, the hours reported in the request for "fees on fees" will be similarly reduced.

III. CONCLUSION

In sum, the requested award of $1,037,248.41 for attorneys' fees will be reduced as follows: attorneys' fees will be awarded at the *Laffey* rate, $4,106.76 representing work performed specifically pertaining to representation of Mr. Steyn will not be awarded, and the hours reported will be reduced by 20 percent to account for National Review's partial success on the *Second Motion to Dismiss*. Costs in the requested amount of $40,764.62 will be awarded in full. Finally, the requested award of $132,472.38 for "fees on fees" will be reduced as follows: fees will be awarded at the *Laffey* rate, $1,044.68 in contested "fees on fees" will not be awarded, and the hours reported will be reduced by 20 percent to account for National Review's partial success on the *Second Motion to Dismiss*.

ACCORDINGLY, it is this 7th day of January, 2025, hereby

ORDERED that Defendant National Review's *Motion for Attorneys' Fees and Costs* filed on March 11, 2024 is **GRANTED IN PART** and **DENIED IN PART**; it is further

ORDERED that Defendant National Review Inc.'s *Supplemental Motion for Attorney's "Fees on Fees"* filed on May 3, 2024 is **GRANTED IN PART**; and it is further

ORDERED that Plaintiff shall within 30 days of this order pay National Review Inc. the sum of $530,820.21, representing $406,109.01 in attorneys' fees, $40,764.62 in costs, and $83,946.58 in "fees on fees."

Judge Alfred S. Irving, Jr.

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