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.**

OMNIBUS ORDER ON DEFENDANTS' POST-TRIAL MOTIONS FOR JUDGMENT AS A MATTER OF LAW, REMITTITUR, NEW TRIAL, AND STAY OF EXECUTION OF THE JUDGMENT

Before the Court is *Defendant Rand Simberg's Motion for Judgment as a Matter of Law under Rule 50(b)* filed on March 8, 2024. Plaintiff Michael E. Mann, PhD filed an opposition on April 17, 2024, and Mr. Simberg filed a reply on May 24, 2024. In addition, before the Court are the following three post-trial motions that Defendant Mark Steyn filed on March 8, 2024:

- *Defendant Mark Steyn's Renewed Motion for Judgment as a Matter of Law and Alternative Motion for Remittitur of Punitive Damages;*
- *Defendant Mark Steyn's Motion for a New Trial*; and
- *Defendant Mark Steyn's Motion for Stay of Execution on the Judgment.*

Dr. Mann filed oppositions to each of Mr. Steyn's motions on April 17, 2024, and Mr. Steyn filed replies on May 24, 2024. For the reasons set forth below, the Court will grant Mr. Steyn's request for remittitur and will deny the remaining aforementioned motions.

I. BACKGROUND

On October 22, 2012, Dr. Mann filed a six-count *Complaint* asserting, among other claims, libel and libel per se claims against Mr. Simberg, Mr. Steyn, National Review, Inc., and Competitive Enterprise Institute. Compl. 14-24. On July 10, 2013, Dr. Mann filed an *Amended Complaint* adding a seventh count of libel per se against all defendants. On July 24, 2013,

Mr. Steyn and National Review filed a motion to dismiss the *Amended Complaint*. *See* Def. Mark Steyn's & National Review's Special Mot. to Dismiss Pl.'s Am. Compl. Pursuant to D.C. Anti-SLAPP Act & Mot. to Dismiss Pursuant to D.C. Super. Ct. Civ. R. 12(b)(6). In addition, on the same date, Mr. Simberg and CEI, as well, moved to dismiss the *Amended Complaint*. *See* Defs. CEI and Rand Simberg's Special Mot. to Dismiss Pl.'s Am. Compl. Pursuant to D.C. Anti-SLAPP Act; Mot. to Dismiss Pursuant to Rule 12(b)(6); Mot. to Reconsider [collectively "*Motions to Dismiss*"]. On January 22, 2014, the Hon. Frederick H. Weisberg denied the *Motions to Dismiss*, which decision Mr. Simberg and CEI appealed on January 24, 2014, and which decision National Review appealed on January 30, 2014. Mr. Steyn did not join the anti-SLAPP appeal but, instead, filed an answer and counterclaim to the *Amended Complaint* on February 21, 2021. *See* Def. Steyn's Answer and Countercls. to Am. Compl. On March 17, 2014, Dr. Mann filed a motion to dismiss Mr. Steyn's counterclaims, which motion the Hon. Jennifer M. Anderson granted on August 29, 2019.

On December 22, 2016,[1] the Court of Appeals issued an opinion reversing Judge Weisberg's denial of the *Motions to Dismiss* as to Count IV, libel per se against National Review, as it related to Mr. Lowry's editorial; Count V, libel per se against CEI as to Mr. Lowry's editorial; and Count VI, intentional infliction of emotional distress as to all Defendants. The Court of Appeals affirmed the denial of the *Motions to Dismiss* as to all remaining counts. *Competitive Enter. Inst. v. Mann* ("*CEI*"), 150 A.3d 1213, 1262 (D.C. 2016).

On May 31, 2019, Judge Anderson, accordingly, issued an order dismissing Counts IV, V, and VI of Dr. Mann's *Amended Complaint*. CEI and Mr. Simberg then filed an answer to the

[1] The Court of Appeals issued an amended order on December 13, 2018, to add a new footnote 39 and a revised footnote 46 (formerly footnote 45).

Amended Complaint. *See* Defs. Competitive Enterprise Institute and Rand Simberg's Answer & Defenses to Pl.'s Am. Compl.; Def. National Review Inc.'s Answer to Pl.'s Compl.

On January 22, 2021, Mr. Simberg and CEI filed a motion for summary judgment as to all remaining claims asserted against them. *See* Defs. CEI and Rand Simberg's Mot. for Summ. J. On July 22, 2021, this Court granted the motion for summary judgment as to CEI and denied the motion as to Mr. Simberg.

By Order dated September 11, 2023, after holding at least two Pretrial Conferences and after having addressed many pleadings in the case, the Court set a jury trial to begin on October 30, 2023. On October 29, 2023, the Court was required to continue the trial. After a status conference on November 14, 2023, the Court rescheduled the trial to begin on January 16, 2024.

The jury trial began on January 16, 2024, as to the following remaining claims: (1) Dr. Mann's claim for defamation against Mr. Simberg for statements Mr. Simberg made in a July 13, 2012 article *The Other Scandal in Unhappy Valley* ("Unhappy Valley") posted on CEI's OpenMarket.org website; and (2) Dr. Mann's claim for defamation against Mr. Steyn arising from statements Mr. Steyn made in a July 15, 2012 article *Football and Hockey* posted on National Review's "The Corner." Dr. Mann rested his case-in-chief on January 31, 2024, the tenth day of trial. That same day, Mr. Steyn and Mr. Simberg made oral motions for judgment as a matter of law pursuant to Super. Ct. Civ. R. 50(a). Mr. Steyn and Mr. Simberg followed their arguments with written motions (collectively "*Rule 50 Motions*"). *See* Def. Mark Steyn's Mot. for J. as a Matter of Law; Def. Rand Simberg's Mot. for J. as a Matter of Law.

On January 8, 2024, the jury returned a verdict in favor of Dr. Mann, awarding him compensatory and punitive damages. On February 9, 2024, the Court denied the *Rule 50*

Motions and entered judgment in accordance with the verdict: judgment against Mr. Steyn in the amount of $1 in compensatory damages and $1,000,000 in punitive damages and judgment against Mr. Simberg in the amount of $1 in compensatory damages and $1,000 in punitive damages.

II. DISCUSSION

The Court will address first Mr. Simberg and Mr. Steyn's motions for judgment as a matter of law before turning to Mr. Steyn's motions for remittitur of punitive damages, a new trial, and a stay of execution of the judgment.

A. Judgment as a Matter of Law

Both Mr. Simberg and Mr. Steyn renewed their motions for judgment as a matter of law. The Court addresses first Mr. Simberg's motion and then Mr. Steyn's motion.

1. Legal Standard

"If [a] court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion." Super. Ct. Civ. R. 50(b). The party who filed a denied motion under Rule 50(a)(2) may file a renewed motion for judgment as a matter of law after the entry of judgment. *Id*.

"A motion for judgment notwithstanding the verdict (now known as judgment as a matter of law) may be granted only when the evidence, viewed in the light most favorable to the non-moving party, permits only one reasonable conclusion in favor of the moving party." *Levi v. District of Columbia*, 697 A.2d 1201, 1204-05 (D.C. 1997) (citing *Sanders v. Wright*, 642 A.2d 847, 849 (D.C. 1994), and *Washington Welfare Ass'n v. Poindexter*, 479 A.2d 313, 315 (D.C. 1984)). The Court must also construe "all reasonable inferences in the light most favorable to

the non-moving party[.]" *McKnight v. Wire Props, Inc.*, 288 A.2d 405, 406 (D.C. 1972) (citing *District of Columbia v. Jones*, 265 A.2d 594, 595 (D.C. 1970)). "In other words, a motion for judgment [as a matter of law] should be granted only when no juror could reasonably reach a verdict for the opponent of the motion." *Levi*, 697 A.2d at 1205.

In ruling on a renewed motion for judgment as a matter of law pursuant to Rule 50(b), the court may (1) allow judgment on the verdict, if a verdict was returned, (2) order a new trial, or (3) direct the entry of judgment as a matter of law. Super. Ct. Civ. R. 50(b)(1)-(3). "Generally, a motion for judgment after trial and verdict is granted only in 'extreme' cases." *United Mine Workers of Am., Int'l Union v. Moore*, 717 A.2d 332, 337 (D.C. 1998) (quoting *Daka, Inc. v. Breiner*, 711 A.2d 86, 96 (D.C. 1998)). "[W]hen there is 'some evidence from which jurors could find the necessary elements,' . . . or when the case turns on disputed facts and witness credibility . . . the case is for the jury." *Washington Welfare Ass'n*, 479 A.2d at 315 (quoting *District of Columbia v. Gandy*, 450 A.2d 896, 900 (D.C. 1982)). "As long as there is some evidence from which jurors could find that the party has met its burden, a trial judge must not grant a motion for judgment as a matter of law." *Sullivan v. AboveNet Commc'ns, Inc.*, 112 A.3d 347, 354 (D.C. 2015) (citing *Scott v. James*, 731 A.2d 399, 403 (D.C. 1999)).

2. Mr. Simberg's Motion for Judgment as a Matter of Law

Mr. Simberg asserts there was not sufficient evidence adduced at trial for a reasonable jury to find him liable for defamation and that Dr. Mann's award of punitive damages must be vacated accordingly. Mem. of P. & A. in Supp. of Def. Rand Simberg's Mot. for J. as a Matter of Law Under Rule 50(b) [hereinafter "Simberg Motion"]. Mr. Simberg contends that a reasonable jury could not make a finding of actual malice because the statements for which he

was found liable for defamation[2] were supported by a number of credible sources and experts and that Dr. Mann provided weak evidence at trial to support a finding of defamation. *Id*. at 4-19. Mr. Simberg also argues that his statements were opinion and were substantially true with no defamatory meaning. *Id*. at 22-31. Further, Mr. Simberg contends that, given the insufficiency of the evidence, and that Dr. Mann's suffered no actual injury, the punitive damages award should be vacated because the Court erred in placing the question of punitive damages to the jury. *Id*. at 31-35.

In opposition, Dr. Mann asserts that a reasonable jury could—seeing as it did—find by clear and convincing evidence that Mr. Simberg acted with actual malice and that its findings support an award of punitive damages. Pl.'s Mem. of P. & A. in Opp. to Def. Simberg's Mot. for J. as a Matter of Law Under Rule 50(b) [hereinafter "Mann Opp'n to Simberg Mot."]. Dr. Mann specifically contends that Mr. Simberg's own awareness of the contents and findings of both the Penn State and National Science Foundation ("NSF") reports was sufficient to prove actual malice, *id*. at 5-10, and asserts that Mr. Simberg's testimony about his reliance on certain

[2] The jury found Mr. Simberg liable for defamation as to two of four statements that were at issue at trial:

- Statement C: "We saw what the university administration was willing to do to cover up heinous crimes, and even let them continue, rather than expose them. Should we suppose, in light of what we now know, they would do any less to hide academic and scientific misconduct, with so much at stake?"

- Statement D: "Mann could be said to be the Jerry Sandusky of climate science, except for instead of molesting children, he has molested and tortured data in the service of politicized science that could have dire economic consequences for the nation and planet."

Verdict Form at 1 (Feb. 9, 2024).

sources was not credible, *id*. at 10-13. Dr. Mann further contends that Mr. Simberg's statements were not opinion, were false, and were defamatory. *Id*. at 22-33.

Mr. Simberg filed a reply, *see* Def. Rand Simberg's Reply in Supp. of his Mot. for J. as a Matter of Law Under Rule 50(b) [hereinafter "Simberg Reply"], in which he reiterated that the NSF and Penn State investigations, alone, do not prove actual malice by clear and convincing evidence, *id*. at 12-19, and that Dr. Mann failed to prove bias or zeal, *id*. at 19-21, and that Dr. Mann failed to prove the other elements of defamation as Mr. Simberg's statements were true, expressions of his opinion, and not defamatory, *id*. at 21-27.

a) Evidence at Trial

At trial, Mr. Simberg testified that he relied on numerous sources when he penned the *Unhappy Valley* blogpost, including the following: (1) several articles and blogposts written by himself and others to which he ultimately linked in his article, Trial Tr. 1/30/24 AM, 28:21-24; *see* Trial Exs. 704, 754, 780, 787, 790, 791, 792A, 793, 794, 789; (2) a number of ClimateGate emails after reading "hundreds," Trial Tr. 1/30/24 PM, 65:7-19; *see* Trial Exs. 533, 603, 635, 636, 640, 775, 1044, 1101; (3) several articles and blogposts written by others that were not linked in the article, *see generally* Trial Tr. 1/30/24 PM, 31-86; *see* Trial Exs. 779, 756, 755, 750, 747; (4) two peer-reviewed articles by Steve McIntyre and Dr. Ross McKitrick, Trial Tr. 1/30/24 PM, 47:13-49:11; *see* Trial Exs. 571, 572; (5) a presentation from University of California, Berkeley professor Dr. Richard A. Muller, Trial Tr. 1/30/24 PM, 51:21-23; *see* Trial Exs. 620A; and (6) his own reading of the MBH source code, Trial Tr. 2/6/24 PM, 22:11-20.

The jury was also presented with the Penn State and NSF reports. Trial Ex. 27 (Penn State report); Trial Ex. 41 (NSF report). The Penn State report unanimously concluded that "there [was] no substance to the allegation against Dr. Mann" and that he "did not engage in, nor

did he participate in, directly or indirectly, any actions that seriously deviated from accepted practices within the academic community for proposing, conducting, or reporting research, or other scholarly articles." Trial Ex. 27 at 19. Notwithstanding the Penn State Report's conclusions, Mr. Simberg testified that he with reason discounted the Penn State investigation because it "didn't really address the real issues," and it instead focused on the "narrow range of [] research misconduct," Trial Tr. 2/6/24 PM, 54:14-19; the investigators "didn't interview any of the people involved in the emails," *id*. at 57:17-20; and the investigation and findings relied solely upon interviews and statements of "all Penn State people," who Mr. Simberg believed were "all going to have a conflict of interest because . . . they are going to have a natural inclination to want to protect the reputation of their colleague and of the university," *id*. at 56:13-16.

Similarly, the NSF report concluded that there was "no research misconduct or other matter raised by the various regulations and laws discussed [therein]." Trial Ex. 41 at 5. Mr. Simberg described the NSF report as a "mess," "confusing," and "not something [he] would have relied on" because it "didn't mention Professor Mann or Penn State University," Trial Tr. 1/30/24 AM, 66:21-25, despite later testifying that he in fact believed the NSF report was about Dr. Mann and the credibility of Dr. Mann's research, *id.* at 73:5-8. Mr. Simberg testified that the "primary reason" that he did not consider the NSF report was that the NSF "did not investigate the things that ClimateGate was revealing[,]" Trial Tr., 2/6/24 PM, 107:15-108:7, elaborating that

> any government report is going to be infected with politics. It's inevitable because the people at the high levels who put them together are hired and serve at the will of politicians in general. So you have to assume that that might be going on in some cases. And in my case, I can say pretty much whatever I want; I don't have to worry about some politician firing me. . . . So it's silly to think that

> anybody should take a government report on its face and just accept it.

id. at 59:22-60:17.

b) Analysis

When viewing the evidence in the light most favorable to Dr. Mann, and giving him the benefit of every reasonable inference, as the Court must, this Court cannot say that no reasonable juror could have found in Dr. Mann's favor as to his defamation claim against Mr. Simberg. First, a reasonable juror could have determined, by a preponderance of the evidence, that Mr. Simberg made false and defamatory statements about Dr. Mann in *Unhappy Valley*. "[A] statement is actionable if viewed in context it 'was capable of bearing a defamatory meaning and . . . contained or implied provably false statements of fact.'" *CEI*, 150 A.3d at 1242 (quoting *Guilford Transp. Indus. v. Wilner*, 760 A.2d 580, 597 (D.C. 2000)). The Court clarified to the jury that in determining whether a statement conveys defamatory meaning, the jury must consider "how those persons who read the statement reasonably understood the meaning that the statement was intended to express[,] . . . the plain and natural meaning of the words of the statement, and . . . the statement in the context of the entire publication taken as a whole." Jury Instructions at 10 (Feb. 8, 2024), *see also* Trial Tr. 2/7/24 AM, 70:13-21.

Mr. Simberg contends that his statement about "academic and scientific misconduct" cannot be deemed false because "uncontroverted evidence" in the form of (1) discrete lines from email correspondence between members of the Penn State investigatory committee, (2) an email from Dr. Mann directing Eugene Wahl to delete emails in response to a FOIA request, and (3) instances of Dr. Mann disparaging other scientists, establishes that Dr. Mann, himself, engaged in similar conduct. Simberg Mot. 23-24. Mr. Simberg also contends that it is impossible to prove his statement regarding the molestation of data as false and in the unlikely

event that the statement could be proven as false, because the statement is nothing more than a comparison of prominent figures under investigation at Penn State. *Id*. at 25-26. Mr. Simberg asserts further that his statements were not capable of defamatory meaning as the climate science debate involves "heated rhetoric and harsh criticism" and the comparison to Jerry Sandusky was merely "highly charged language to emphasize a point about the statistical techniques used." *Id*. at 28.

For his part, Dr. Mann asserts that Mr. Simberg's comment about his alleged misconduct (1) implies a factual commission of "'serious misconduct' of a 'sinister nature,'" when read in context with the surrounding language, Mann Opp'n to Simberg Mot. 24 (citing *CEI*, 150 A.3d at 1244, 1248), (2) was not supported by expert evidence at trial to demonstrate any violation of any Penn State policy, and (3) ignores the evidence to the contrary, namely the findings and conclusions of the Penn State and NSF reports, *id*. at 24-26. Dr. Mann also asserts that Mr. Simberg's comparison of him to Jerry Sandusky, when read in context with allegations of such misconduct, could and was deemed a verifiable assertion of fact. *Id.* at 27.

"[T]o constitute a libel it is enough that the defamatory utterance imputes any misconduct whatever in the conduct of [plaintiff's] calling." *Guilford Transp. Indus*., 760 A.2d at 600. Previously, on appeal, the Court of Appeals determined that Mr. Simberg's statements "that Dr. Mann acted dishonestly, engaged in misconduct, and compared him to notorious persons, *are capable of conveying a defamatory meaning* with the requisite constitutional certainty and included statements of fact *that can be proven to be true or false*." *CEI*, 150 A.3d at 1247 (emphasis added). The Court of Appeals elaborated that,

> when the phrase ["corrupt and disgraced climate science"] is used in conjunction with assertions that Dr. Mann engaged in "deception[]," "misconduct," and "data manipulation," and the article concludes that he should be further investigated, the

> cumulative import is that there are sinister, hidden misdeeds he has committed.

Id. at 1244.

At trial, Mr. Simberg confirmed that his article "communicated [his] opinion that Dr. Mann was deceitful and a fraud, and [that Mr. Simberg] still wanted to have a proper investigation [of Dr. Mann]." Trial Tr. 1/30/24 AM, 40:6-9. Mr. Simberg added that the entire "gist of [his] blog post" is that he "wanted to have a proper investigation" of Dr. Mann, *id*. at 40:13-15, because he believed the investigations about the ClimateGate emails, Penn State, and NSF were not "real true investigations" into Dr. Mann's scientific practices that warranted investigating, *id*. at 60:18-62:23.

Mr. Simberg testified that he knew Jerry Sandusky was national news at the time, and assumed that he was quite big news in State College where Dr. Mann, himself, worked. Trial Tr. 1/30/24 PM, 12:24-13:8. Mr. Simberg knew that Jerry Sandusky was accused of sexual molestation and forced sexual acts with numerous young boys, *id*. at 13:13-14:3, and testified that although he did not need to include Jerry Sandusky in his article about Dr. Mann, he was "very explicit in the comparison. Comparing one was completely unlike the other[,] other than they were both whitewashed by Penn State," *id*. at 33:25-34:2. Yet, Mr. Simberg testified that he wanted to publish his article "as soon as possible" after the Jerry Sandusky article came out, *id*. at 28:13-24, elaborating again to the jury that "if Penn State will coverup child molestation and Climate Change fraud, I wonder what else is going on here," *id*. at 28:8-11.

According to Mr. Simberg, a reasonable jury could find that the gist of Mr. Simberg's article was that Dr. Mann committed deceit and misconduct to such a degree that it rose to a level of criminality on par with that committed by Jerry Sandusky. To be sure, the Court of Appeals noted,

> a jury could find that by calling Dr. Mann "the [Jerry] Sandusky of climate science," the article implied that Dr. Mann's manipulation of data was seriously deviant for a scientist. These noxious comparisons, a jury could find, would demean Dr. Mann's scientific reputation and lower his standing in the community by making him appear similarly "odious, infamous, or ridiculous."

CEI, 150 A.3d. at 1243-44 (quoting *Rosen v. Am Isr. Pub. Affairs Comm., Inc*., 41 A.3d 1250, 1256 (D.C. 2012)). It appears the jury made such a finding, here. As such, the Court is constrained to uphold the decision of the jury.

Second, a reasonable juror could have determined, by clear and convincing evidence, that Mr. Simberg made said defamatory statements with reckless disregard for their falsity. To meet this reckless disregard threshold, the plaintiff must prove that "the defendant in fact entertained serious doubts as to the truth of [the] publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Such doubt can be demonstrated by "proof that the defendant had a 'high degree of awareness of [the statement's] probable falsity.'" *CEI*, 150 A.3d at 1252 (internal citation omitted) (quoting *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989)); *see also McFarlane v. Sheridan Square Press*, 91 F.3d 1501, 1508 (D.C. Cir. 1996) ("[B]ecause the actual malice inquiry is subjective—that is, concerned with the defendant's state of mind when he acted—the inference of actual malice must necessarily be drawn solely upon the basis of the information that was available to and considered by the defendant prior to publication."). A defendant's testimony that he believed his statement to be true at the time of publishing does not automatically preclude a finding of reckless disregard, for the jury "must consider assertions of good faith in view of all the circumstances." *CEI*, 150 A.3d at 1252; *see also id*. ("[R]ecklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." (quoting *St. Amant*, 390 U.S. at 732)).

Mr. Simberg maintains that his statements could not been found to have been made with actual malice because he credibly presented a litany of "reliable sources" upon which he relied in writing *Unhappy Valley*. Simberg Mot. 4-12. Mr. Simberg also argues that Dr. Mann failed to produce any evidence to demonstrate actual malice. Specifically, he maintained that (1) the Penn State and NSF reports by themselves were insufficient to show actual malice, (2) there is nothing connecting Mr. Simberg's bias and zeal to an intent to inflict harm "through falsehood" upon Dr. Mann, and (3) Dr. Mann's counsel infected the deliberations and ultimate verdict with their prejudicial conduct. *Id*. at 12-19. Dr. Mann, on the other hand, contends (1) that Mr. Simberg's awareness of the Penn State and NSF reports and their contents is sufficient to find actual malice, (2) that Mr. Simberg's asserted reliance upon other sources to support his statements was not credible, and (3) statements by Dr. Mann's attorneys did not mislead or confuse the jury. Mann Opp'n to Simberg Mot. 3-22.

Again, the jury heard testimony from Mr. Simberg as to his discounting the NSF report because the Inspector General who conducted the investigation was a "politician," Trial Tr. 1/30/24 PM, 24:11-14, and because the report was a "mess" that "didn't mention [Dr.] Mann or Penn State University," Trial Tr. 1/30/24 AM, 66:21-25, despite later testifying that it was "highly unlikely" that that the NSF investigation was not about Dr. Mann and Penn State, *id*. at 73:5-8. No matter, Mr. Simberg knew the NSF report was about Penn State. Mr. Simberg testified that he considered the NSF report to be unreliable and not "truly independent" because NSF "relied on Penn State to provide it with all relevant material." *Id*. at 21:23-22:7.
Mr. Simberg also testified that he believed the NSF report was "too narrow" in its focus on research misconduct and that its focus should more broadly have included academic and scientific misconduct writ large. Trial Tr. 2/6/24 PM, 107:15-23. Mr. Simberg testified that,

while he did not know which critics NSF interviewed, no one accused Dr. Mann of data manipulation, fabrication, falsification, or plagiarism and it was his assessment that those topics were not, but should have been, investigated, Trial Tr. 1/30/24 AM, 32:12-33:18, despite the NSF report defining "fabrication as making up data or results, and falsification as manipulating or changing or omitting data or results to lead to false conclusions," *id*. at 32:21-34:3.

The jury also heard Mr. Simberg testify as to his discounting the Penn State report because the investigation was conducted by "all Penn State people" who "are going to have a natural inclination to protect the reputation of their colleague and of the university." *Id*. at 56:11-16. Mr. Simberg characterized the Penn State investigation as not a "serious investigation," *id*. at 58:21-59:7, because it seemingly ignored the ClimateGate emails and that the investigators failed to interview the individuals involved in the email scandal, *id*. at 57:17-20; *see also* Trial Tr. 1/30/24 AM, 23:21-23.

The jury was thus tasked with determining whether Mr. Simberg's awareness and ultimate disregard of the investigatory reports amounted to a showing of reckless disregard as to the falsity of his statements. The Court notes that Mr. Simberg similarly quarreled with the reliability of the Penn State and NSF reports during his appeal before the Court of Appeals. *CEI*, 150 A.3d at 1255-56. The Court of Appeals opined that, "even if [Mr. Simberg] initially had reason to be skeptical of Penn State's motivations and thoroughness, a jury could find that the independent, de novo investigation by the NSF corroborated the Penn State findings[.]" *Id.* at 1256 n.57. The Court of Appeals concluded: "Applying the reasoning in *Nader* [*v. de Toledano*, 408 A.2d 31 (D.C. 1979),] to the evidence now of record in this case, we conclude that a jury could find that [Mr. Simberg's] defamatory statements were made with actual malice." *Id*. at 1258. While naturally the evidence adduced at trial was more factually

developed than that presented before the Court of Appeals,[3] construing the evidence and all possible inferences in favor of Dr. Mann, this Court cannot come to a different conclusion and find that no reasonable juror could find in favor of Dr. Mann.

While the evidence, as presented, was clearly prone to differing interpretations, "[t]he determination of credibility, [however,] is for the finder of fact, and is entitled to substantial deference." *Bouknight v. United States*, 867 A.2d 245, 251 (D.C. 2005) (citing *Byrd v. United States*, 614 A.2d 25, 30 (D.C. 1992)). "As long as there is some evidence from which jurors could find that the party has met its burden, a trial judge must not grant a motion for judgment as a matter of law." *Sullivan*, 112 A.3d at 354 (citing *Scott*, 731 A.2d at 403). Based on the evidence and testimony at trial, a reasonable jury could determine that the gist and intent of Mr. Simberg's article was to communicate that Dr. Mann had committed scientific fraud and misconduct so egregious and immoral that it was akin to child molestation. A reasonable jury could further surmise that Mr. Simberg knew Dr. Mann had been cleared of any misconduct and yet he nevertheless posted his article with reckless disregard as to its falsity. Construing all evidence and reasonable inferences in favor of Dr. Mann, the jury having come to a reasonable conclusion here, the Court must uphold the verdict and will deny Mr. Simberg's motion for judgment as a matter of law.

3. Mr. Steyn's Motion for Judgment as a Matter of Law

Mr. Steyn asserts in his renewed motion that the judgment entered against him must be vacated because his article is shielded by the First Amendment, and he therefore cannot be found

[3] *See CEI*, 150 A.3d at 1258 n.60 ("Our legal conclusion [that case can go to jury] is based on the evidence that has been presented at this juncture, in connection with the special motion to dismiss. Once discovery is completed, the legal conclusion that the evidence is sufficient to go to trial could change.").

liable for defamation. Def. Mark Steyn's Renewed Mot. for J. as a Matter of Law and Alternative Mot. for Remittitur of Punitive Damages 14-18 [hereinafter "Steyn Mot. for J. and Remittitur"]. Mr. Steyn also asserts that he cannot be found liable for defamation because (1) his third statement[4] is not defamatory as it is "light-hearted and figurative, [and] not malicious," *id*. at 2, 18; and (2) his first statement[5] quoting Mr. Simberg cannot be defamatory because his second statement,[6] in which he distanced himself from Mr. Simberg, was determined not to be defamatory, *id*. at 2, 19.

In opposition, Dr. Mann contends that the issue of First Amendment protection has already been addressed by the Court of Appeals and that Mr. Steyn's article, published in the form of a blog, does not merit any special constitutional protections. Pl.'s Mem. of P. & A. in Opp. to Def .Mark Steyn's Renewed Mot. for J. as a Matter of Law and Alternative Mot. for Remittitur of Punitive Damages 16-18 [hereinafter "Mann Opp'n to Steyn Mot. for J. and Remittitur"].

a) The First Amendment and Defamation

"A statement is defamatory 'if it tends to injure [the] plaintiff in his trade, profession or community standing, or lower him in the estimation of the community.'" *CEI*, 150 A.3d at 1241

[4] Mr. Steyn's third statement: "Michael Mann was the man behind the fraudulent climate-change 'hockey-stick' graph, the very ringmaster of the tree-ring circus." Verdict Form at 5 (Feb. 9, 2024).

[5] Mr. Steyn's first statement: "Mann could be said to be the Jerry Sandusky of climate science, except that instead of molesting children, he has molested and tortured data in the service of politicized science that could have dire economic consequences for the nation and planet." Verdict Form at 5 (Feb. 9, 2024).

[6] Mr. Steyn's second statement: "Not sure I'd have extended that metaphor all the way into the locker-room showers with quite the zeal Mr. Simberg does, but he has a point." Verdict Form at 5 (Feb. 9, 2024).

(citing *Guilford Transp. Indus., Inc.*, 760 A.2d at 594). A defamatory statement "must be more than unpleasant or offensive; the language must make the plaintiff appear 'odious, infamous, or ridiculous.'" *Rosen*, 41 A.3d at 1256 (quoting *Howard Univ. v. Best*, 484 A.2d 958, 989 (D.C. 1984)). "A statement is not actionable 'if it is plain that a speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts.'" *CEI*, 150 A.3d at 1241 (quoting *Guilford Transp. Indus.*, 760 A.2d at 597). However, the First Amendment does not "create a wholesale defamation exemption for anything that might be labeled 'opinion,'" *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18, (1990), and "statements of opinion can be actionable if they imply a provably false fact, or rely upon stated facts that are provably false," *CEI*, 150 A.3d at 1241 (citing *Guilford Transp. Indus.*, 760 A.2d at 597). "A statement is actionable if viewed in context it 'was capable of bearing a defamatory meaning and . . . contained or implied provably false statements of fact.'" *Id.* at 1242 (quoting *Guilford Transp. Indus.*, 760 A.2d at 597).

b) Analysis

When viewing the evidence in the light most favorable to Dr. Mann, and giving him the benefit of every reasonable inference, as the Court must, this Court cannot conclude that no reasonable juror could have found in Dr. Mann's favor as to his defamation claim against Mr. Steyn. Mr. Steyn attempts to frame his *Football and Hockey* article as a "criticism of a scientist's output at the heart of a heated political debate." Steyn Mot. for J. and Remittitur 14. Yet, in *CEI*, the Court of Appeals noted how, similar to Mr. Simberg's article, a jury could find that "Mr. Steyn's [article] is not about the merits of the science of global warming, but about Dr. Mann's 'deceptions' and 'wrongdoing,' . . . compar[ing] Dr. Mann's alleged wrongdoing—'molesting' and 'torturing' data to achieve a deceptive but desired result that will court funding

for Penn State—to that of Sandusky." 150 A.3d at 1248. The Court of Appeals concluded that a jury could find that "injurious allegations about Dr. Mann's character and his conduct as a scientist are capable of being verified or discredited. . . . [which, if] proven to be false, the statements breach the zone of protected speech." *Id*. at 1249.

Here, the jury heard testimony from Mr. Steyn that he familiarized himself with a number of reports prior to writing *Football and Hockey*, none of which concluded that Dr. Mann engaged in any misconduct. Trial Tr. 1/23/24 AM, 69:12-70:8. Mr. Steyn testified that he did not recall any of the articles that he read prior to writing *Football and Hockey* as describing Dr. Mann's research as "fraudulent" or "deceptive." *Id*. at 68:16-69:9. Mr. Steyn also testified to dismissing the Penn State report as he believed Penn State to be "stinkingly corrupt" with its investigatory committee members operating at "[Penn State President] Spanier's bidding." *Id*. at 36:25-38:14.

"[D]efamatory statements that are personal attacks on an individual's honesty and integrity and assert or imply as fact that Dr. Mann engaged in professional misconduct and deceit to manufacture the results he desired, if false, do not enjoy constitutional protection and may be actionable." *CEI*, 150 A.3d at 1242. Such statements also "do not find shelter under the First Amendment simply because they are embedded in a larger policy debate." *Id.* at 1242-43. In addition, "[t]he law affords no protection to those who couch their libel in the form of reports or repetition. . . . [for] repetition of a defamatory statement is a publication in itself[.]" *Olinger v. Am. Sav. & Loan Ass'n*, 409 F.2d 142, 144 (D.C. Cir. 1969). Mr. Steyn argues that his quotation of Mr. Simberg is protected as "fair comment on matters of public interest," and that the quotation itself cannot be defamatory if Mr. Steyn's subsequent commentary on the quotation is not deemed to be defamatory. Steyn Mot. for J. and Remittitur 18. Even if this Court were to extend to Mr. Steyn privileges of the media, fair comment privileges "ha[ve] been restricted to

extend protection only to opinion, not to misstatements of fact. At least since 1936, D.C. Courts have rejected the minority view which allows 'fair comment' on misstatements of fact as well as opinion[.]" *Phillips v. Evening Star Newspaper Co.*, 424 A.2d 78, 88 (D.C. 1980). As discussed above, the Court of Appeals found that Mr. Simberg's statements were "capable of conveying a defamatory meaning with the requisite constitutional certainty and included statements of fact that can be proven to be true or false," *CEI*, 150 A.3d 1247, and, based on the evidence at trial, the jury here determined that Mr. Simberg's statement was provably false. As such, the fair comment privilege is not available to Mr. Steyn's quoting of Mr. Simberg's defamatory statement.

Mr. Steyn next argues that, should his quotation of Mr. Simberg's article not be found to be defamatory, then his third statement on its own cannot serve as a basis for defamation liability. Steyn Mot. for J. and Remittitur 19. Citing *CEI*, Mr. Steyn contends that, "if the use of 'fraudulent' in [the third statement] were the only arguably defamatory statement in [his] article, . . . such an ambiguous statement may not be presumed to necessarily carry a defamatory meaning." *Id*. (citing *CEI*, 150 A.3d at 1247). However, Mr. Steyn ignores the very next sentence in *CEI*, namely, that "[s]tatements are not to be viewed in isolation but in context, however." 150 A.3d at 1248 (citing *Guilford Transp. Indus.*, 760 A.2d at 597). Indeed, the jury was instructed to consider "the plain and natural meaning of the words of the statement, . . . in the context of the entire publication taken as a whole. . . . [and] the broader social context into which the statement fits." Jury Instructions at 10 (Feb. 8, 2024). Mr. Steyn testified to Dr. Mann "devis[ing]" the Hockey Stick formula to obtain certain results, Trial Tr. 1/23/24 AM, 80:12-18, and "cho[osing]" not to use certain temperature records for decades, *id*. at 81:7-11. Particularly, when viewed in context with his first statement alluding to corrupt and felonious actions, the jury

could have reasonably understood the gist of Mr. Steyn's third statement to be that Dr. Mann is the behind-the-scenes proponent orchestrating, countersigning, and promoting such fraud.

In summary, when viewing the evidence in the light most favorable to Dr. Mann, and giving him the benefit of every reasonable inference, it is apparent that a reasonable juror could have found in Dr. Mann's favor as to the defamation claim against Mr. Steyn. Accordingly, Mr. Steyn's motion for judgment as a matter of law is denied.

B. Mr. Steyn's Request for a Remittitur of Punitive Damages

In addition to renewing his request for judgment as a matter of law, Mr. Steyn seeks, in the alternative, a remittitur of the $1 million punitive damage award entered against him. Mr. Steyn asserts that a reduction in said award is appropriate because (1) his article does not demonstrate the requisite mental state to justify punitive damages, Steyn Mot. for J. and Remittitur 2-3, (2) the award violates the First Amendment and District of Columbia law, *id*. at 3-7, and (3) the award is grossly excessive and violates the Due Process Clause, *id*. at 7-14. Dr. Mann asserts in opposition that there was sufficient evidence at trial for the jury to find actual malice, the award is not excessive and is supported by the jury's finding of actual damages. Mann Opp'n to Steyn Mot. for J. and Remittitur 4-8. Dr. Mann also contends that the award of punitive damages does not violate Due Process concerns because all of the factors set forth in *BMW of North America v. Gore*, 517 U.S. 559, 575 (1996), are met. *Id*. at 8-16.

1. Legal Standard

"While [courts] enjoy considerable discretion in deducing when punitive damages are warranted," *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 427 (2003), "[t]he Due Process Clauses of the Fifth and Fourteenth Amendments prohibit a State [and the District of Columbia] from imposing a 'grossly excessive' civil punishment upon a tortfeasor[,]" *Modern*

Mgmt. Co. v. Wilson, 997 A.2d 37, 45 (D.C 2010) (citing, *inter alia*, *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 433 (2001)). The Supreme Court has identified three "guideposts," known as the "*Gore* factors," to assist courts in assessing the constitutionality of a punitive damages award:

> (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

Id. at 418 (citing *Gore*, 517 U.S. at 575); *see also Gordon v. Rice*, 261 A.3d 224, 227 (D.C. 2021). "Once the necessary malice is established, the amount of punitive damages is left to the jury's discretion.'" *Breiner*, 711 A.2d at 99 (quoting *Robinson v. Sarisky*, 535 A.2d 901, 906 (D.C. 1988)).

"[I]n order to sustain an award of punitive damages, the plaintiff must prove, by a preponderance of the evidence, that the defendant committed a tortious act, and by clear and convincing evidence that the act was accompanied by conduct and a state of mind evincing malice or its equivalent." *Jonathan Woodner Co. v. Breeden*, 665 A.2d 929, 938 (D.C. 1995). However, "[a] trial court has discretion to grant a remittitur when the verdict is so large that it is 'beyond all reason or . . . so great as to shock the conscience.'" *Breiner*, 711 A.2d at 100 (ellipses in original) (quoting *Williams v. Steuart Motor Co.*, 494 F.2d 1074, 1085 (D.C. Cir. 1974)). Such a verdict must be "so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate." *Id*. (quoting *Graling v. Reilly*, 214 F. Supp. 234, 235 (D.D.C. 1963)).

2. Analysis

Mr. Steyn presents two main arguments in support of a remittitur of the jury award of punitive damages in favor of Dr. Mann. The Court first addresses Mr. Steyn's arguments that

punitive damages are not recoverable here. Because the Court will conclude that punitive damages were available to Dr. Mann, the Court will then turn its attention to Mr. Steyn's argument that the award of punitive damages is excessive and that a reduction is appropriate.

a) Punitive Damages Were Available to Dr. Mann

Mr. Steyn first argues that a remittitur of the jury's award of punitive damages is appropriate here because Dr. Mann did not prove by clear and convincing evidence that Mr. Steyn possessed the mental state required for punitive damages. Steyn Mot. for J. and Remittitur 2. Mr. Steyn misapprehends the instruction the Court read to the jury. In so doing, Mr. Steyn attempts to argue that the jury was required to find that his *Football and Hockey* article, itself, evidenced "maliciousness, spite, ill will, vengeance, or deliberate intent to harm," *id*., a mere sentence after quoting the correct jury instruction that charged the jury to consider whether Mr. Steyn's "*conduct in publishing* a defamatory statement" demonstrated such mental state, *id*.; *see also* Jury Instructions at 13 (Feb. 8, 2024). The Court must nevertheless decline to entertain the assertion because "[i]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." *Wagner v. Georgetown Univ. Med. Ctr*., 768 A.2d 546, 554 n. 9 (D.C. 2001) (citing *United States v. Zannino*, 895 F.2d 1, 16 (1st Cir. 1990)). What is more, to the extent Mr. Steyn now quarrels with a particular jury instruction, he waived the challenge because he needed to have so argued when the Court was considering the jury instructions and certainly prior to reading it to the jury. The argument is simply untimely. *See NCRIC, Inc. v. Columbia Hosp. for Women Med. Ctr., Inc*., 957 A.2d 890, 898-99 (D.C. 2008).

Mr. Steyn then argues[7] that punitive damages cannot be awarded because Dr. Mann failed to present evidence of actual loss and was only awarded nominal damages. Steyn Mot. for J. and Remittitur 4. Here, Mr. Steyn mischaracterizes the holding of *Maxwell v. Gallagher*, 709 A.2d 100 (D.C. 1998). In *Maxwell*, the Court of Appeals explained that, "before punitive damages may be awarded, there must be a basis in the record for an award of actual damages, *even if nominal*." 790 A.2d at 103 (emphasis added). The Court of Appeals went on to summarize District of Columbia caselaw as requiring that "[a] plaintiff must prove a basis for actual damages to justify the imposition of punitive damages. The amount of such damages *may be nominal*, stemming from the difficulty of quantifying them or from some other cause. But without proof of at least nominal actual damages, punitive damages may not be awarded." *Id*.at 104 (emphasis added). Indeed, "'a verdict assessing punitive damages can be returned only when there is also a verdict assessing compensatory or actual damages,' *even if nominal*." *Id*. (emphasis added) (quoting *Pyne v. Jamaica Nutrition Holdings Ltd.*, 497 A.2d 118, 133 (D.C. 1985)).

At trial, the jury was tasked with determining whether Dr. Mann "sustained actual injury as a direct result of the publication of a defamatory statement" and, if so, to award compensation "for any injury to [Dr. Mann's] good name and reputation; [] for any mental anguish, distress, and humiliation; and, [] for any economic or monetary loss that the plaintiff suffered as a result." Trial Tr. 2/7/24 PM, 74:8-11. The jury heard testimony of Dr. Mann's having encountered a "mean look" in the grocery store and his feeling like a pariah in his community, Trial Tr. 1/25/24 PM, 25:9-32:4, and heard testimony from Dr. John Abraham about Dr. Mann losing out on the

[7] Mr. Steyn's argument that he did not publish with actual malice has been addressed above and will not be discussed again here. *See supra* section II.A.3.b.

opportunity to be included on a research project as Dr. Abraham believed that Dr. Mann was "too risky" and that other scientists would not want to be associated with him, Trial Tr. 1/30/24 PM, 99:15-25. The jury then returned its verdict, finding that Dr. Mann suffered actual injury because of Mr. Steyn's statements and awarded compensatory damages in the amount of $1. *See* Verdict Form at 7-8 (Feb. 9, 2024). The only way to interpret such a verdict is that the jury determined Dr. Mann to have suffered actual damages, for which he should be compensated, in the amount of $1, a nominal sum. "The jury may not have been able to easily quantify the monetary value of [Dr. Mann's] injuries. But that does not mean the indignities he suffered were insubstantial, or that a punitive damages award [] is unreasonable." *Bryant v. Jeffrey Sand Co*., 919 F.3d 520, 528 (8th Cir. 2019). As the jury found Dr. Mann suffered actual damages, the jury was free to award punitive damages. *See Maxwell*, 709 A.2d at 104-05 (collecting cases finding punitive damages will lie where party makes a showing of injury that is compensable by at least nominal damages).

b) The Punitive Damages Award of $1 Million Must be Reduced

Mr. Steyn's second main argument against the punitive damages award is that the award is excessive, thus violating both the Due Process Clause of the Fifth Amendment and District of Columbia law. Steyn Mot. for J. and Remittitur 5-14. The Court agrees. "The Due Process Clauses of the Fifth and Fourteenth Amendments prohibit a State [and the District of Columbia] from imposing a 'grossly excessive' civil punishment upon a tortfeasor." *Modern Mgmt. Co.*, 997 A.2d at 45 (citing inter alia *Cooper Indus., Inc.*, 532 U.S. at 433). Applying the test the Supreme Court outlined in *Gore, see supra* section II.B.1, this Court finds the jury award of $1 million in punitive damages to be grossly excessive and that a remittitur of the award is appropriate. The Court discusses each of the *Gore* factors in turn.

i. The District's Interest

"The federal excessiveness inquiry appropriately begins with an identification of the state interests that a punitive award is designed to serve." *Gore*, 517 U.S. at 568. Here, such interest is marginal at best. While "[t]he states have long protected the important reputational interests of its citizens in following the strict liability common law of defamation[,]" *Phillips*, 424 A.2d at 83, neither Dr. Mann nor Mr. Steyn are citizens of the District of Columbia and the defamatory speech at issue here did not take place in the District of Columbia, but rather in the online ether, without any special connection or direction to the District of Columbia. *See, e.g.*, *Nunes v. CNN, Inc.*, 31 F.4th 135, 143 (2d. Cir. 2022) (assessing state interests in the choice of law context for online defamation, the court "follow[ed] the lead of numerous other courts in *lex loci delicti* jurisdictions and appl[ied] the law of the state where a plaintiff incurs the greatest reputational injury, with a presumption that a plaintiff suffers the brunt of the injury in their home state."). This matter is only before this Court by occasion of co-Defendants National Review, Inc. and Competitive Enterprise Institute, neither of whom participated at trial as summary judgment was previously granted to them. Thus, the usual interests of punishment and deterrence are less pertinent here as the District of Columbia is only involved by default as the forum for Dr. Mann's suit. However, the District of Columbia does have a general interest in upholding jury verdicts of its residents, particularly a jury determination that resulted after three-and-one-half weeks of trial.

ii. Reprehensibility of Mr. Steyn's Conduct

"Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Gore*, 517 U.S. at 575. In *State*

Farm, the Supreme Court enumerated five "aggravating factors" when considering the reprehensibility of a defendant's conduct:

> [1] the harm caused was physical as opposed to economic; [2] the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; [3] the target of the conduct had financial vulnerability; [4] the conduct involved repeated actions or was an isolated incident; and [5] the harm was the result of intentional malice, trickery, or deceit, or mere accident.

538 U.S. at 419. The Supreme Court has explained that in determining the blameworthiness of a defendant's actions, a court should consider that "nonviolent crimes are less serious than crimes marked by violence or the threat of violence," *Gore*, 517 U.S. at 576 (quoting *Solem v. Helm*, 463 U.S. 277, 292-93 (1983)), and that "'trickery and deceit' are more reprehensible than negligence," *id*. (quoting *TXO Prod. Corp. v. Alliance Res. Corp*., 509 U.S. 443, 462 (1993)).

Here, Dr. Mann did not experience a physical injury as Mr. Steyn's conduct occurred entirely online. In addition, Dr. Mann produced no evidence of a financial vulnerability and Dr. Mann's suit involved one instance of Mr. Steyn's attack through Mr. Steyn's posting of his *Football and Hockey* article—all which weigh against a finding of reprehensibility. However, the jury heard testimony of Dr. Mann's emotional harm and reputational injury caused by Mr. Steyn's defamatory statements. *See* Trial Tr. 1/25/24 PM, 25:9-32:4. The Court of Appeals noted in *CEI* that with evidence of the "noxious comparisons" of Dr. Mann to Jerry Sandusky, "a jury could find[] [such comparisons] would demean Dr. Mann's scientific reputation and lower his standing in the community by making him appear similarly 'odious, infamous, or ridiculous.'" 150 A.3d at 1243-44 (quoting *Rosen*, 41 A.3d at 1256). The jury thus clearly determined that said injury was a result of Mr. Steyn's acting with intentional malice in his publishing the defamatory article, which weighs in favor of Mr. Steyn's conduct being deemed reprehensible.

iii. Disparity Between the Harm Suffered and the Punitive Damages Awarded

This *Gore* factor embodies the long-held principle that an award of punitive damages bears a "reasonable relationship" to the compensatory award, *Gore*, 517 U.S. at 580, endorsing the approach that there must be a "reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred," *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 21 (1991). While the Supreme Court has repeatedly rejected the use of a bright-line ratio, *see Gore*, 517 U.S. at 583 (citing *TXO*, 509 U.S. at 458; *Haslip*, 499 U.S. at 18), it has also indicated that a "breathtaking" award, such as the 500-to-one ratio in *Gore*, must surely "raise a suspicious judicial eyebrow." 517 U.S. at 583 (quoting *TXO*, 509 U.S. at 481 (O'Connor, J., dissenting)). In rejecting the "mathematical bright line between the constitutionally acceptable and . . . unacceptable" awards for the ratio guidepost, *id.*, the Supreme Court has explained that "a general concern of reasonableness . . . properly enters into the constitutional calculus," *id*. (quoting *TXO*, 509 U.S. at 448 (plurality opinion)). Indeed, higher ratios may be justified where the "injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine." *Id*. at 582.

Here, Mr. Steyn contends that the million-to-one ratio awarded must surely raise the suspicious eyebrow of this Court, with the Court of Appeals having deemed a ratio of 145-to-one ratio "staggering." Steyn Mot. for J. and Remittitur 10-11 (citing *Daka, Inc. v. McRae*, 839 A.2d 682, 699 (D.C. 2003)). Mr. Steyn proffers that, if punitive damages are to be awarded, an award of $5,000 or less would be appropriate. *Id*. at 11. Dr. Mann maintains that a ratio analysis would prove an inadequate analysis because the reputational harm he has suffered is hard to quantify, but that the Court must consider the necessary deterrent effect for future behavior in upholding the punitive damages award. Mann Opp'n to Steyn Mot. for J. and Remittitur 16. Interestingly,

Dr. Mann does not cite a single case involving claims of defamation or otherwise, in the District of Columbia or elsewhere, that supports an award of punitive damages with a ratio of one million to one. Here, Dr. Mann's emotional and reputational injury surely falls into this category of the monetary value being difficult to determine, but at the same time, the jury award having a ratio of a million-to-one, indeed, "raises a judicial eyebrow."

Several courts have adopted the principle that, "when a jury only awards nominal damages or a small amount of compensatory damages, a punitive damages award may exceed the normal single digit ratio because a smaller amount 'would utterly fail to serve the traditional purposes underlying an award of punitive damages, which are to punish and deter.'" *Saunders v. Branch Banking & Tr. Co*., 526 F.3d 142, 154 (4th Cir. 2008) (quoting *Kemp v. AT&T*, 393 F.3d 1354, 1364-65 (11th Cir. 2004)); *see also id.* (collecting cases). To ensure that awards are not constitutionally excessive, these courts compare punitive damage awards to those awarded "in [similar cases] to find limits and proportions," *Lee v. Edwards*, 101 F.3d 805, 811 (2d Cir. 1996), and "assess[] whether a lesser amount would 'serve as a meaningful deterrent,'" *Saunders*, 526 F.3d at 154 (quoting *Kemp*, 393 F.3d at 1365); *see also Jester v. Hutt*, 937 F.3d 233, 242 (3rd Cir. 2019).

The Court of Appeals has recognized that under *Gore*, "a punitive damages award should bear some reasonable relationship to the corresponding award of compensatory damages, but such a relationship is only one factor in an excessiveness analysis." *Modern Mgmt. Co.*, 997 A.2d at 58 (quoting *EEOC v. Fed. Express Corp*., 513 F.3d 360, 377 (4th Cir. 2008)). An award "should be enough to inflict punishment, while not so great as to exceed the boundaries of punishment and lead to bankruptcy." *Breiner*, 711 A.2d at 101 (citing *Jonathan Woodner Co.*, 665 A.2d at 941). The Court of Appeals has elaborated that "another important factor in

considering the disparity between the actual harm suffered by a plaintiff and the punitive damages award is that 'a punitive damages award must remain of sufficient size to achieve the twin purposes of punishment and deterrence.'" *Howard Univ. v. Wilkins*, 22 A.3d 774, 783 (D.C 2011) (internal citation omitted) (quoting *Modern Mgmt. Co*., 997 A.2d at 59). For example, in *Howard University*, the jury found in favor of a plaintiff on a retaliation claim brought under the D.C. Human Rights Act. *Id*. at 777. The jury awarded the plaintiff $1 in compensatory damages and $42,677.50 in punitive damages. In affirming the trial court's denial of the defendant's motion for remittitur challenging the constitutionality of the punitive damages award, the Court of Appeals noted that "the small compensatory damages award, combined with the District's strong interest in deterring [D.C. Human Rights Act] violations, justifie[d] a ratio higher than might otherwise be acceptable." *Id*. at 783-84. The Court of Appeals confirmed its departure from the single-digit ratio providing that "[c]learly $1 in compensatory damages and $10 in punitive damages will not deter [defendant] from engaging in the kind of retaliatory behavior which the jury found in this case." *Id*. at 785.

Similarly, here, the *Gore* ratio analysis cannot be the end of the inquiry. Damages in defamation cases are inherently difficult to quantify and, as in *Howard University*, the jury has handed down a nominal damages award. For any punitive damages award to effectuate the twin purposes of punishment and deterrence, the punitive award to Dr. Mann *must* exceed the single digit ratio, a relief which the Supreme Court and the Court of Appeals have not foreclosed. However, the million-to-one ratio of the instant award necessarily raises a judicial eyebrow, as the punitive and compensatory awards vary by a staggering six digits, not to mention that the evidence at trial was mixed as to the true extent of injury Dr. Mann suffered. Accordingly, the

Court turns to the final *Gore* factor and looks to the grant of punitive awards for similar misconduct to guide its remittitur of the punitive damages award, here.

iv. Looking to Punitive Damage Awards in Similar Cases

This *Gore* factor directs a comparison of "the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct." 517 U.S. at 583. The District of Columbia has never had occasion to consider a statutory civil penalty for defamation and has not had occasion to consider a statutory criminal penalty since 1982. *See* Act of Mar. 3, 1901, ch. 854, § 815, 31 Stat. 1189, 1323 (1901) ("Whoever publishes a libel shall be punished by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding five years, or both."), *repealed by* District of Columbia Theft and White Collar Crimes Act of 1982, D.C. Law 4-164, § 602(hh), 29 D.C. Reg. 3976 (1982). As such, the Court, however, finds instructive caselaw addressing similar misconduct.

Mr. Steyn maintains that this case is most comparable to *Phillips v. Evening Star Newspaper Co.*, 242 A.2d 78 (D.C. 1980), and that punitive damages cannot be imposed due to a lack of actual malice. Steyn Mot. for J. and Remittitur 12, *see also Phillips*, 424 A.2d at 90 (punitive damages were denied because plaintiff failed to produce any evidence of the newspaper's knowing or reckless "false publication"). Mr. Steyn then proffers that *if* punitive damages are to be awarded, an award of $5,000 or less would be appropriate. Steyn Mot. for J. and Remittitur 14. Dr. Mann's entire rationale for this Court's upholding the punitive damages award is that it would be consistent with the "basic principles of deterrence and punishment." Mann Opp'n to Steyn Mot. for J. and Remittitur 7 (citing *Afro-Am. Publ'g Co.*, 366 F.2d at 663), *see also id*. at 8-16. This argument is unhelpful and seems to suggest that Dr. Mann, as well, appreciates that the award is unconstitutional.

Under District of Columbia law, "[t]he court may set aside an award of punitive damages deemed to be excessive or against the weight of the evidence, or larger in amount than the court thinks it justly ought to be." *Afro-Am. Publ'g Co. v. Jaffe*, 366 F.2d 649, 662 (D.C. Cir. 1966) (en banc). The Court of Appeals has assessed the reasonableness of many awards of punitive damages, affirming awards with ratios of punitive to compensatory damages as high as several tens of thousands of dollars to one. *See, e.g.*, *Howard Univ.*, 22 A.3d at 788 (affirming jury verdict of $42,677.50 in punitive damages and $1 in compensatory damages given the small damages amount and the District of Columbia's strong interest in deterring DCHRA violations). However, the few defamation cases in the District of Columbia that discuss the reasonableness of punitive damages are not helpful in determining the size of a punitive damages award because those cases were remanded to the trial courts for further proceedings. *See Ayala v. Washington*, 679 A.2d 1057 (D.C. 1996) (remanded to consider new evidence to quantify punitive damages); *Afro-Am. Publ'g Co.*, 366 F.2d at 661 (remanded to determine if the publisher acted with actual malice).

Turning to defamation cases in other jurisdictions, the Court finds that the largest punitive damages award involving nominal or small compensatory damages appears to be around $100,000. *See Fireworks Restoration Co., L.L.C. v. Hosto*, 371 S.W.3d 83 (Mo. Ct. App. 2012) (awarding $150,000 in punitive damages, $1 in compensatory damages); *Tanner v. Ebbole*, 88 So. 3d 856 (Ala. Civ. App. 2011) (awarding $100,000 in punitive damages, $1 in compensatory damages against a single defendant); *Jester v. Hutt*, No. 1:15-cv-00205, 2020 U.S. Dist. LEXIS 217387, *14 (M.D. Pa. Nov. 20, 2020) (awarding $89,999 in punitive damages, $1 in nominal damages). Other courts awarding nominal or small compensatory damages have approved punitive damage awards in the low tens of thousands of dollars. *See e.g.*, *Diversified Water*

Diversion v. Std. Water Control Sys., No. A07-1828, 2008 Minn. App. Unpub. LEXIS 1087 (Minn. Ct. App. Sept. 23, 2008) (awarding $30,000 in punitive damages, $0 in compensatory damages); *Celle v. Filipino Reporter Enters.*, 209 F.3d 163 (2d Cir. 2000) (awarding $5,000 in punitive damages on each of two counts, $1 in nominal damages); *Grundy v. Brown*, 110 Va. Cir. 242, 248 (Va. Cir. Ct. 2022) (awarding $25,000 in punitive damages, $1 in compensatory damages).

However, *Gore* instructs that an inquiry be made into "awards of similar misconduct," so analysis beyond the mere dollar amounts awarded is required. The instant matter bears most similarity to *Celle v. Filipino Reporter Enterprises*, 209 F.3d 163 (2d Cir. 2000), in which punitive damages were awarded for the defendant's publishing two defamatory articles in a newspaper that "impugn[ed] plaintiff's trustworthiness," insinuated plaintiff was "spreading false information," and "portray[ed] [plaintiff] to be a cheat." 209 F.3d at 185, 189. In determining that Mr. Steyn defamed Dr. Mann, the jury could easily have reasoned that Mr. Steyn's article impugned Dr. Mann's character through its "noxious comparisons" to a known sex offender and implied that Dr. Mann's "manipulation of data was seriously deviant for a scientist." *CEI*, 150 A.3d at 1243.

Unlike several of the previously cited cases, in the instant case, Dr. Mann presented no persuasive evidence suggesting that he suffered injury to his business as a result of Mr. Steyn's article.[8] *See, e.g., Fireworks Restoration Co., L.L.C.*, 371 S.W.3d at 88-90 (punitive damages based on financial records indicating plaintiff's loss of business and several witnesses testifying to his likely reputational damage in the "tight-knit" industry community born as a result of

[8] Evidence of Dr. Mann's loss in grant funding was admitted as a proxy for damage to his reputation and is not directly analogous to pecuniary losses. What is more, Dr. Mann failed to connect any purported loss in grant funding to Mr. Steyn's statements.

defamatory online business reviews); *Tanner*, 88 So. 3d at 876 (punitive damages based on the defendants' clear intention of using defamatory online business reviews to redirect customers from plaintiff's business to their own that resulted in profit for the defendants); *Jester*, 2020 U.S. Dist. LEXIS 217387, at *12 (punitive damages based on defamatory emails received by hundreds of recipients that resulted in a sharp decline in plaintiff's business); *but see Diversified Water Diversion*, 2008 Minn. App. Unpub. LEXIS 1087, at *3-5 (punitive damages based on defendant disparaging plaintiff's business practices over the phone to potential customers despite there being no actual injury).[9] Dr. Mann presented no persuasive evidence that Mr. Steyn's conduct was motivated by an intent to harm Dr. Mann's employment. *See Grundy*, 110 Va. Cir. at 247-48 (punitive damages based on defendant submitting a confidential false complaint to the plaintiff's professional licensing agency, despite no evidence being introduced as to whether such conduct could or did threaten licensing revocation). There is simply no factual basis in the trial record to support a greater amount.

An award of punitive damages here remains appropriate given the reprehensibility of Mr. Steyn's conduct. However, given the dollar amount of the punitive award and the lack of support of similar awards in this jurisdiction or elsewhere, a remittitur is appropriate. Upon review of awards for similar misconduct, particularly *Celle*, and Mr. Steyn's proposed alternative

[9] *Diversified Water Diversion* is inapposite here as D.C. law requires proof of actual injury before punitive damages may be awarded. *Compare Maxwell v. Gallagher*, 709 A.2d 100, 104 (D.C. 1998) ("A plaintiff must prove a basis for actual damages to justify the imposition of punitive damages. The amount of such damages may be nominal, stemming from the difficulty of quantifying them or from some other cause. But without proof of at least nominal actual damages, punitive damages may not be awarded."), *with Loftsgaarden v. Reiling*, 126 N.W.2d 154 (Minn. 1964) (affirming jury verdict in the amount of $0 in actual damages and $5,000 in punitive damages, and reversing trial court's judgment notwithstanding the verdict, and clarifying that punitive damages are available without proof of actual damages in libel per se actions under Minnesota law).

punitive damages award and his indicated acquiescence to such award, this Court finds remitting the award of punitive damages to the amount of $5,000 to be appropriate.

C. Mr. Steyn's Motion for a New Trial

Mr. Steyn maintains that the clear weight of the evidence shows that he lacked actual malice and that Dr. Mann did not experience actual injury. Def. Mark Steyn's Mot. for a New Trial 11-18 [hereinafter "Mot. for New Trial"]. As the Court has already addressed Mr. Steyn's arguments as to the true, non-defamatory, and constitutionally protected nature of his statements, *see supra* section II.A.3.b, and the excessiveness of the punitive damages award, *see supra* section II.B.2.b, it will not revisit those arguments again here. However, Mr. Steyn also seeks leave to start anew and retry his case, a case that has been litigated now across the last approximately thirteen years. Mr. Steyn asserts that a new trial is necessary because Dr. Mann and his counsel knowingly presented the jury with false evidence in the form of inflated losses of grant funding, *id*. at 2, and tainted the jury with improper and prejudicial closing arguments, *id*. at 3-11.

Dr. Mann, in opposition, contends that a new trial is improper because no false evidence was presented at trial and that his counsel's closing argument was proper. Pl.'s Mem. of P. & A. in Opp'n to Def. Mark Steyn's Mot. for a New Trial 3-12 [hereinafter "Mann Opp'n to New Trial]. Dr. Mann also contends that evidence for Mr. Steyn's actual malice was overwhelming, *id*. at 12-14, and that a reasonable juror could find that Dr. Mann suffered actual injury, *id*. at 14-19.

1. Legal Standard

Rule 59 of the Superior Court Rules of Civil Procedure provides that after a jury trial, a court may grant a new trial "for any reason" that comports with precedent. Super. Ct. Civ. R.

59(a)(1)(A). Trial courts enjoy "broad discretion when granting or denying a motion for a new trial," *Queen v. D.C. Transit System, Inc*., 364 A.2d 145, 148 (D.C. 1976), and have "traditionally had 'the power and duty to grant a new trial if the verdicts were against the clear weight of the evidence, or if for any reason or combination of reasons justice would miscarry if they were allowed to stand,'" *Fisher v. Best*, 661 A.2d 1095, 1098 (D.C. 1995) (quoting *Eastern Air Lines, Inc. v. Union Trust Co*., 239 F.2d 25, 30 (D.C. 1956)). However, "[t]rial courts have historically given great weight to jury verdicts, granting a new trial only where there are unusual circumstances which convince the trial judge, who has also heard the evidence and seen the witnesses, that the jury had been improperly influenced by non-germane factors or that its verdict is clearly unreasonable." *Vassiliades v. Garfinckel's, Brooks Bros*., 492 A.2d 580, 595 (D.C. 1985). "To grant a motion for a new trial, the trial court must find that the verdict is against the weight of the evidence, or that there would be a miscarriage of justice if the verdict is allowed to stand." *Newell v. District of Columbia*, 741 A.2d 28, 32 (D.C. 1999) (quoting *UMW*, 717 A.2d at 337).

2. Analysis

As this Court noted at trial, Dr. Mann's testimony and placing an exhibit before the jury that intimated damages amounting to nine million dollars was surely "stunning." Trial Tr. 1/31/24 PM, 41:13. However, the Court does not find that such gross misconduct here rises to such a level to warrant a new trial. Indeed, to grant a new trial, this Court must find that "the verdict is against the weight of the evidence, or that there would be a miscarriage of justice if the verdict is allowed to stand." *UMW*, 717 A.2d at 337. Mr. Steyn fails to satisfy his burden of persuasion that such an injustice occurred here.

Mr. Steyn asserts that Dr. Mann centered his case for damages around grant funding and that Dr. Mann's misleading testimony and exhibits "very likely contributed to the verdict on actual injury and the enormous punitive damage award against Steyn." Mot. for New Trial 3. Indeed, Dr. Mann's counsel repeatedly mentioned the importance of grant funding to the Court, *see* Trial Tr. 1/23/24 PM, 82:12-19 ("[W]e've been very clear what our damages case is. And it is a loss of grant funding."), and to the jury, *see id*. at 82:12-19 ("We saw his grant funding drop. Grant funding is, sort of, just to show you that it [a]ffected his reputation. He testified that after the publications, total funding went down, three million to 500,000, thereabouts."). Yet, the clearest support that the jury was *not* improperly influenced by Dr. Mann's misrepresentations is the jury verdict for one dollar in compensatory damages. Had the jury been tainted by Dr. Mann's misrepresentation of nine-million-dollar damages in lost grant funding, the compensatory award would undoubtedly have been significantly larger. Additionally, as Dr. Mann points out, the jury was properly instructed that punitive damages "are not intended to *compensate* an injured plaintiff; rather, the law permits a jury in a civil case to assess punitive damages against a defendant as punishment for outrageous conduct and to deter others from engaging in that kind of conduct." Trial Tr. 2/7/24 AM, 74:16-21 (emphasis added). Indeed, "[w]e presume, unless the contrary appears, that the jury understood and followed the court's instructions." *Smith v. United States*, 315 A.2d 163, 167 (D.C. 1974) (citing *Hall v. United States*, 171 F.2d 347, 349 (D.C. 1948)).

Mr. Steyn also contends that a new trial is required because of improper "send-a-message" remarks by Dr. Mann's counsel during closing arguments urging the jury that "these attacks on Climate Scientists have to stop[.]" Mot. for New Trial 5 (quoting Trial Tr. 2/7/24 PM, 108:1-2). While Dr. Mann's counsel never specifically uttered the words "send a message" to

the jury, Mr. Steyn asserts that "the clear import and intent of what counsel argued was to ask the jury to 'send a message' to defendants." *Id*. (citing *Scott v. Crestar Fin. Corp.*, 928 A.2d 680, 685 n.7 (D.C. 2007). The Court of Appeals has noted that "[j]uries are not in the message-sending business. Their sole duty is to return a verdict based on the facts before them[,]" *Bowman v. United States*, 652 A.2d 64, 71 (D.C. 1994). However, *Bowman* did not involve assessing punitive damages which serve as "punishment for outrageous conduct and to deter others from engaging in that kind of conduct." Trial Tr. 2/7/24 AM, 74:16-25.

The D.C. Circuit has forbidden "send a message" arguments in order "to prevent the jury from deciding a case based on inappropriate considerations such as emotion[,]" *Caudle v. District of Columbia*, 707 F.3d 354, 360-61 (D.C. Cir. 2013), while other courts have held "send a message" arguments to be "at best bad practice." *Porter v. Cabral*, No. 04-11935, 2007 U.S. Dist. LEXIS 12306, at *8 (D. Mass. Feb. 21, 2007). The Court of Appeals, however, has yet to consider whether "send a message" arguments are allowable in punitive damage cases.

At trial, this Court sustained Mr. Steyn and Mr. Simberg's objections to Dr. Mann's closing argument, reminding Dr. Mann's counsel that climate science is not the subject of the defamation trial, *see* Trial Tr. 2/7/24 PM, 108:12-14, and, at Mr. Steyn's behest, *id*. at 109:6-7, reinstructed the jury that this case was not about climate science or the climate change debate and reinstructed the jury as to its role in assessing punitive damages, *id*. at 109:12-110:9. No additional objections were made. Absent direction from the Court of Appeals, this Court cannot say that the closing arguments by Dr. Mann's counsel prejudiced the jury, especially in light of the remitted punitive damages award.

Mr. Steyn next contends that Dr. Mann's closing argument was an improper, "inflammatory . . . appeal to politics," as it compared Mr. Simberg and himself to "Donald

Trump and election deniers." Mot. for New Trial 7-9. Yet, neither Mr. Simberg nor Mr. Steyn made any objection to this characterization during closing arguments. Trial Tr. 2/7/24 PM, 107:3-25. While it is true that attorneys must "refrain from 'arguments calculated to inflame the passions or prejudices of the jury,'" *Bates v. United States*, 766 A.2d 500, 509 (D.C. 2000) (quoting *United States v. Young*, 470 U.S. 1, 9 n.7 (1985)), it is hard for this Court to fathom an argument not egregious enough to warrant an objection at trial but yet so prejudicial as to require a new trial. *See, e.g.*, *Comput. Sys. Eng'g, Inc. v. Qantel Corp*., 740 F.2d 59, 69 (1st Cir. 1984) ("A party may not wait and see whether the verdict is favorable before deciding to object. [Defendant's] failure to object to the argument at trial or move for a mistrial bars it from urging the improper argument as grounds for a new trial after the jury had returned its verdict."). While such a comparison is distasteful trial etiquette, this Court is not convinced that such unobjected-to remarks soured the jury in such a way to warrant a new trial.

Mr. Steyn next asserts that Dr. Mann's counsel interchangeably conflating "reckless with recklessly" during closing arguments was prejudicial and misled the jury. Mot. for New Trial 9-11. Unlike Mr. Steyn's quarrel with the election denier comparison discussed above, both Mr. Steyn and counsel for Mr. Simberg objected to this conflation of words at trial. Trial Tr. 2/7/24 PM, 101:9-10. Both Mr. Steyn and counsel for Mr. Simberg requested a curative instruction to the jury and the Court indicated that it would reread the jury instructions after Dr. Mann's counsel finished his rebuttal. *Id*. at 101:15-102:10. Neither Mr. Steyn nor counsel for Mr. Simberg requested specific corrective action or broader relief beyond the recitation of the jury instructions offered by the Court. After closing arguments, the Court informed the jury that based on the closing argument by Dr. Mann's counsel, the Court found it necessary to remind the

jury of the four elements of defamation and the burden of proof, and would reread such instructions in their entirety. *Id*. at 110:13-118:3. The Court of Appeals has explained:

> The applicable test for prejudice is whether we can say, "with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error." The decisive factors are the closeness of the case, the centrality of the issue affected by the error, and the steps taken to mitigate the effects of the error.

Gaither v. United States, 413 F.2d 1061, 1079 (D.C. Cir. 1969) (quoting *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)); *see also R. & G. Orthopedic Appliances & Prosthetics, Inc. v. Curtin*, 596 A.2d 530, 539-41 (D.C. 1991) (adopting the *Kotteakos* analysis for civil litigation as it is "substantially identical in relevant respects" to the standard in Super. Ct. Civ. R. 61).

As this Court has already herein concluded, there was sufficient evidence for a jury to find as it did here. Even were the Court to "in effect, serve as the 'thirteenth juror,'" *Scott v. Crestar Fin. Corp*., 928 A.2d 680, 687 (D.C. 2007), it would still uphold the verdict based on the evidence presented at trial. While the conflation of "reckless with recklessly" by Dr. Mann's counsel does go to the central question before the jury, such mischaracterization can hardly be deemed significant enough to warrant a new trial. Only "[i]n extreme cases, [have] arguments of counsel which misstate the law [] been held to warrant reversal even where the judge's subsequent instructions to the jury were correct." *Brown v. United States*, 766 A.2d 530, 543 (D.C. 2001); *see, e.g., Thomas v. United States*, 557 A.2d 1296, 1299-302 (D.C. 1989) (reversed because prosecutor told the jury during closing arguments that intent for malice was determined by the reasonable person standard and that the defendant's subjective belief at the time of the act was "not at all important or relevant to the issue of malice" when the "ultimate issue in the [] case [was defendant's] subjective state of mind, and that such improper argument was not rectified by the judge's recitation of the jury instructions, even in response to a note during

deliberations). Additionally, any prejudice which could have resulted from the conflation of "reckless with recklessly" was surely cured by the Court's recitation of the applicable standards and burdens. As noted above, "[w]e presume, unless the contrary appears, that the jury understood and followed the court's instructions." *Smith*, 315 A.2d at 167 (citing *Hall*, 171 F.2d at 349).

Lastly, Mr. Steyn asserts that a new trial is warranted because the clear weight of the evidence demonstrates that he did not act with actual malice and that Dr. Mann did not suffer actual injury. Mot. for New Trial 11-18. Trial courts may grant a new trial if "the verdict was contrary to the clear weight of the evidence." *Washington v. A & H Garcias Trash Hauling Co.*, 584 A.2d 544, 545 (D.C. 1990). However, in doing so, "[t]he trial court must exercise its discretion in ruling on a motion for new trial when it is claimed that the verdict is against the weight of the evidence." *Johnson v. Bernard*, 388 A.2d 490, 491 (D.C. 1978) (citing *Eastern Air Lines v. United Trust Co.*, 239 F.2d 25, 30 (D.C. Cir. 1956)). The Court of Appeals has "stressed that the imbalance between verdict and evidence must be 'clear.'" *Haight v. District of Columbia*, 783 A.2d 590, 597 (D.C. 2001) (citing *Lyons v. Barrazotto*, 667 A.2d 314, 324 (D.C. 1995)). Indeed, a court cannot "simply accept one version of the facts over another" and "set the [jury] verdict aside as against the weight of the evidence merely because, if [it] had acted as trier of the fact, [it] would have reached a different result." *Lyons*, 667 A.2d at 325.

Here, the Court cannot say that the jury's determination as to actual malice is against the *clear* weight of the evidence. At trial, Mr. Steyn vehemently testified that he believed his "entirely truthful piece," Trial Tr. 1/23/24 AM, 12:7-9, stating that he had "[n]o reason to doubt [his] position on the Hockey Stick[,]" *id*. at, 43:24-44:7, and that he "[stood] by every word of that post[,]" *id*. at 75:1. Mr. Steyn testified that he believed Dr. Mann's research was fraudulent

from the moment it "first came out." *Id*. at 38:15-19. Mr. Steyn testified that he read materials about Dr. Mann's "Hockey Stick" for at least six years prior to writing *Football and Hockey*, *id*. at 66:15–67:13, and that during those years, he did not recall any articles characterizing Dr. Mann's research as "fraudulent" or "deceptive," *id*. at 68:16-69:9, yet he continued to do so in *Football and Hockey*, *see* Trial Ex. 60. Mr. Steyn testified that prior to writing *Football and Hockey*, he read the Penn State report, Trial Tr. 1/23/24 AM, 13:22-14:15, which concluded "there [was] no substance to the allegation" for research misconduct against Dr. Mann, Trial Ex. 60 at 19. However, Mr. Steyn testified that he viewed the Penn State report as flawed after several discussions with people excluded from the investigation, Trial Tr. 1/23/24 AM, 8:11-15, because he did not believe that the report "seriously address[ed] the [ClimateGate] emails," *id*. at 7:17-8:2, and because of his general belief that Penn State is "stinkingly corrupt," *id*. at 35:2.

Mr. Steyn also asserts that the jury's determination as to actual injury is against the clear weight of the evidence, asserting that Dr. Mann failed to provide "concrete proof" of any actual injury. Mot. for New Trial 16. However, the Supreme Court has established that actual injury, which includes "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering," must be "supported by *competent evidence* concerning the injury." *Gertz v. Robert Welch*, 418 U.S. 323, 350 (1974) (emphasis added). A dollar value does not need to be assigned to the injury. *Id*.

Dr. Mann provided evidence from which a jury could rationally infer that Mr. Steyn's article adversely affected others' estimation of Dr. Mann's character, negatively impacted his professional relationships, and caused, and continues to cause, him emotional distress. At trial,

Dr. Abraham testified as to Dr. Mann's "excellent reputation for publishing top-quality research," Trial Tr. 1/30/24 PM, 99:8-12, and his initial impression that Dr. Mann was someone who "produced excellent science," *id*. at 92:24-93:3. However, Dr. Abraham added that despite needing someone with Dr. Mann's exact expertise for a major research study, he deliberately excluded seeking Dr. Mann's participation out of concern that other scientists would not be willing to tie their reputation to Dr. Mann's name. *Id*. at 101:15-25. Dr. Abraham testified that he did not publish with Dr. Mann until five years later. *Id*. at 93:7-9. The jury could reasonably infer that Dr. Abraham's concern and ultimate exclusion of Dr. Mann, despite his own opinion of Dr. Mann's reputation not changing, "would be that those who read the article without personal knowledge of plaintiff would have no reason to disbelieve the alleged defamation, which would possibly result in [Dr. Mann's] reputational loss." *Sprague v. Am. Bar Ass'n*, 276 F. Supp. 2d 365, 370 (E.D. Pa. 2003).

Dr. Mann testified at length to his humiliation and mental anguish as a result of Mr. Steyn's article. Dr. Mann testified that he was "horrified," Trial Tr. 1/24/24 AM, 77:3-10, "extremely upset[, and] angry," Trial Tr. 1/25/24 PM, 75:24-76:1, at being compared to Jerry Sandusky, a nationally known sexual predator from his local community. Dr. Mann testified to feeling like a pariah, "experienc[ing] stares that [he] had never experienced before," including the "meanest" look he had ever encountered while grocery shopping with his family. *Id*. at 77:13-19. Dr. Mann testified that, as a father, being compared to Jerry Sandusky was "the worst thing [he had] ever experienced." Trial Tr. 1/24/24 AM, 78:1-10. He added that he continues to feel the impact from that comparison, seeing it on social media as recently as a week before trial. *Id*. at 11-14. At bottom, there is no "clear" imbalance between the jury verdict and the evidence presented at trial on either actual malice or actual injury. As the evidence was not

so clear and undisputed that only one conclusion was possible, this Court will not disturb the jury verdict, and accordingly, the motion for a new trial must be denied.

D. Mr. Steyn's Motion to Stay the Judgment

Lastly, Mr. Steyn requests that the Court stay the execution of the judgment entered against him without requiring bond pending the outcome of the motions addressed in this Order and any appeal. Def. Mark Steyn's Mot. for Stay of Execution on the J. [hereinafter "Mot. to Stay"]. Mr. Steyn offers little support for why the Court should grant the requested relief other than that the Court has the discretion to do so and that Dr. Mann does not need the money. Mot. to Stay 3. In opposition, Dr. Mann asserts that Mr. Steyn has provided no factual basis for why the Court should allow an unsecured stay and urges the Court to consider Mr. Steyn's residency in ruling on the Mot. to Stay. Pl.'s Mem. of P. & A. in Opp'n to Mark Steyn's Mot. for Stay and Execution on the J. 3-5 [hereinafter "Mann Opp'n to Mot. for Stay"].

The Court will deny the motion as moot, given the Court's ruling on remittitur.

ACCORDINGLY, it is by the Court this 4th day of March, 2025, hereby

ORDERED that *Defendant Rand Simberg's Motion for Judgment as a Matter of Law under Rule 50(b)* is **DENIED**; it is further

ORDERED that *Defendant Mark Steyn's Renewed Motion for Judgment as a Matter of Law and Alternative Motion for Remittitur of Punitive Damages* filed on March 8, 2024 is **DENIED IN PART,** as to the request for judgment as a matter of law; it is further

ORDERED that *Defendant Mark Steyn's Renewed Motion for Judgment as a Matter of Law and Alternative Motion for Remittitur of Punitive Damages* filed on March 8, 2024 is **GRANTED IN PART** as to the request for a remittitur of punitive damages; it is further

ORDERED that the entry of judgment in favor of Plaintiff Michael E. Mann and against Defendant Mark Steyn on February 9, 2024 for punitive damages in the amount of $1,000,000.00 is **VACATED**; it is further

ORDERED that **JUDGMENT IS ENTERED** in favor of Plaintiff Michael E. Mann and against Defendant Mark Steyn for punitive damages in the amount of $5,000.00; it is further

ORDERED that *Defendant Mark Steyn's Motion for a New Trial* is **DENIED**; and it is further

ORDERED that *Defendant Mark Steyn's Motion for Stay of Execution on the Judgment* is **DENIED, as moot**.

Judge Alfred S. Irving, Jr.

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