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.**

ORDER GRANTING IN PART DEFENDANTS' MOTIONS FOR SANCTIONS

This matter came before the Court for a jury trial that began on January 16, 2024, and concluded with a jury verdict in favor of Plaintiff Michael E. Mann, Ph.D., and against Defendants Rand Simberg and Mark Steyn (hereinafter "Defendants"), on February 8, 2024. During trial proceedings on January 31, 2024, the Court directed the Parties to brief the issue of lost grant funding in view of testimony and exhibits presented at trial:

> I'm going to ask for research or a homework assignment from the parties. I want to know what we should do about the claim of lost grant funding. Because the Court, quite frankly, was impressed, stunned that plaintiff had put before the jury an exhibit—a chart that indicated names of funding proposals and dollar amounts. And then Ms. Weatherford [counsel for Mr. Simberg] had to come back with an exhibit to show that 50 percent of the exhibit was erroneous. That is significant. It was stunning. And so I want to know what the Court really should do about a claim for such when the supporting facts were sparse at best, and whether that claim should go before the jury.
>
> [. . .]
>
> And so, tonight, I want briefing on that, what should be done. Should I exclude arguments on that? And, really, what's to be done with the production of a document that has many, many errors, and it's not as a result of oversight or—oversight, because there were corrections made to that presentation during discovery. And so, clearly, the plaintiff was aware that the jury was being presented with an exhibit that contained incorrect information. And you

> wanted the jury to take that back to the jury room and deliberate on those figures.

Trial Tr., 1/31/24 PM, 41:05-16, 42:03-12. In response, on February 1, 2024, Mr. Steyn filed a *Motion for Sanctions for Bad-Faith Trial Misconduct*; Mr. Simberg filed a *Response Brief*; and Dr. Mann filed a *Bench Memorandum on Grant Funding*. Thereafter, on February 4, 2024, Dr. Mann filed a *Consolidated Opposition to Defendant Simberg's Response Brief and Defendant Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct*. Mr. Simberg filed a *Reply to Plaintiff's Opposition* later that same day.

Defendants[1] contend that Dr. Mann engaged in prejudicial, sanctionable conduct through the knowing introduction to the jury of misleading and false testimony and exhibits in support of his claim for damages resulting from an alleged loss of grant funding as a consequence of Defendants' statements. *See generally* Def. Mark Steyn's Mem. in Supp. of Mot. for Sanctions [hereinafter "Steyn's Mem."]; Def. Simberg's Resp. Br. [hereinafter "Simberg's Br."]. Citing Dr. Mann's testimony on January 24, 25, and 29, 2024, Dr. Mann's introduction of Trial Exhibit 117 and use of Trial Exhibit 517A, and representations Dr. Mann's counsel made on January 31, 2024, Defendants contend as follows: (1) Dr. Mann's claims should be dismissed; (2) Dr. Mann should be precluded from presenting any evidence of alleged loss of grant funding and that any such evidence be excluded; (3) Dr. Mann should be limited to nominal damages; (4) Defendants' motions for judgment or mistrial should be granted; and (5) Defendants should be awarded fees for the expenses incurred in responding to Dr. Mann and his counsels' misconduct. *See* Steyn's Mem. 11 (seeking preclusion, judgment as a matter of law, and expenses); Simberg's Br. 12-15 (seeking dismissal, restriction to nominal damages, and

[1] Although Mr. Simberg's filing is styled as a brief, the Court will treat it as a motion for sanctions in accordance with the relief he seeks. *See Nuyen v. Luna*, 884 A.2d 650, 654 (D.C. 2005) ("The nature of a motion does not turn on its caption or label, but rather its substance.").

expenses, and further reserving right to move for mistrial); *see also* Def. Simberg's Reply 1-2 (identifying Dr. Mann's counsel's leading question eliciting false testimony and contending Defendants were entitled to seek admission and use Trial Exhibit 517A as a prior sworn statement that is inconsistent with Dr. Mann's trial testimony).

In opposition, Dr. Mann contends that his testimony and exhibits were not based upon incorrect information. *See* Pl.'s Bench Mem. on Grant Funding 2-3, 6-9 (asserting that Dr. Mann's testimony was based on Trial Exhibit 1048A, which contained accurate information, and that Dr. Mann did not discuss information he knew to be inaccurate); Pl.'s Consolidated Opp'n 1 (contending Defendants failed to identify any false answer). Dr. Mann further contends that any presentation of inaccurate information is wholly the fault of Defendants, as Defendants successfully sought the exclusion of exhibits containing the accurate information (Exhibits 102 and 103), secured the admission of the exhibit with the outdated information (Trial Exhibit 517A), and extensively cross-examined Dr. Mann on the "mistakes" he made within the varying versions of his interrogatory responses concerning his alleged lost grant funding. Pl.'s Bench Mem. 9-10; Pl.'s Consolidated Opp'n 2. Dr. Mann ultimately contends that Defendants' requests for sanctions should be denied on the merits or, in the alternative, as untimely. Pl.'s Consolidated Opp'n 2-3 (contending that Defendants did not object to Dr. Mann's testimony concerning Trial Exhibit 517A and citing "District of Columbia Rule of Evidence 103" and *Sobin v. District of Columbia*, 494 A.2d 1272, 1275 (D.C. 1985)).

In view of the Court's rulings at trial since the Parties' filings, the jury verdict, and the Court's rulings on the Parties' other post-trial motions, the Court will deem Defendants' requests

for dismissal,[2] preclusion of evidence, limitation on damages, and judgment or mistrial as moot or duplicative. The Court, however, pursuant to its inherent authority, must grant Defendants' requests for expenses they incurred at trial in responding to Dr. Mann and his counsel's bad faith misconduct, as related to Exhibits 517A, 117 and 116.

I. LEGAL STANDARD

"[T]he Superior Court has the inherent authority to award sanctions in appropriate circumstances for intentional abuse of the litigation process." *In re Jumper*, 909 A.2d 173, 176 (D.C. 2006). "The Supreme Court has stated such sanctions can be imposed by a court pursuant to its 'inherent power to police itself.'" *Upson v. Wallace*, 3 A.3d 1148, 1168 (D.C. 2010) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991)). "Trial courts enjoy 'considerable latitude' in deciding the type of sanctions to impose under their inherent powers." *In re S.U.*, 292 A.3d 263, 269 (D.C. 2023). "Among the sanctions that can be awarded in the exercise of inherent authority are counsel fees." *In re Jumper*, 909 A.2d at 176. "A court may . . . award a sanction in the form of an attorney's fee to a prevailing party if the opposing party 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Upson*, 3 A.3d at 1168 (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 258-59 (1975)); *see also Jung v. Jung*, 844 A.2d 1099, 1107-08 (D.C. 2004) (explaining that assessment of fees for bad faith misconduct "transcends the relations between litigants and reaches the court's inherent power to

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[2] In any event, the "extreme sanction" of dismissal, *District of Columbia v. Serafin*, 617 A.2d 516, 519 (D.C. 1992), is not warranted because Dr. Mann's conduct throughout the entirety of the case cannot be characterized as "*utterly* inconsistent with the orderly administration of justice." *Breezevale Ltd. v. Dickinson*, 879 A.2d 957, 967 (D.C. 2005) (emphasis added) (quoting *Synanon Found., Inc. v. Bernstein*, 503 A.2d 1254, 1264 (D.C. 1986)). *See also Synanon Found., Inc. v. Bernstein*, 517 A.2d 28, 38-40 (D.C. 1986) (distinguishing between suits *brought* in bad faith as opposed to suits *litigated* in bad faith); *In re Jumper*, 909 A.2d 173, 177 (D.C. 2006) ("Bad faith must be distinguished from, for example, negligence or professional incompetence.).

'vindicate judicial authority without resort to the more drastic sanctions available for contempt,'" with the purpose of "punish[ing] abuses of the judicial process and deter[ring] future misconduct" (quoting *Chambers*, 501 U.S. at 46)). The Court of Appeals has explained:

> "A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees . . . ." [*Chambers*, 501 U.S. at 50.] "A party is not to be penalized for maintaining an aggressive litigation posture, nor are good faith assertions of colorable claims or defenses to be discouraged." [*In re Est. of Delaney*, 819 A.2d 968, 998 (D.C. 2003).] "The court must scrupulously avoid penalizing a party for a legitimate exercise of the right of access to the courts. For this reason, the standards of bad faith are necessarily stringent. Under these stringent standards, the awarding of attorneys' fees for bad faith litigation is proper only under extraordinary circumstances or when dominating reasons of fairness so demand." *Id.* (citations and quotations omitted).

In re Jumper, 909 A.2d at 176-77; *see also Yeh v. Hnath*, 294 A.3d 1081, 1089-90 (D.C. 2023) (explaining that a trial court may only assess sanctions under its inherent authority where it first finds, by clear and convincing evidence, that a party has committed misconduct).

"Bad faith may be found either in the initiation of a frivolous claim or in the manner in which a properly filed claim is subsequently litigated." *Jung*, 844 A.2d at 1108; *see also Yeh*, 294 A.3d at 1089-90 (collecting cases where bad faith was shown by clear and convincing evidence, including knowing violation of rules of professional conduct, fraud upon the court, "wanton[]" failure to comply with a final court order, and maintenance of claim with no evidentiary support in addition to admittance that claim was brought for "coercive purposes"). "Bad faith attorneys' fee awards are limited to payment for work and expense attributable to the guilty party's bad faith endeavors." *Synanon Found., Inc. v. Bernstein*, 517 A.2d 28, 38 (D.C. 1986). Thus, "in an action not itself brought in bad faith, an award of attorneys' fees should be limited to those expenses reasonably incurred to meet the other party's groundless, bad faith

procedural moves." *Id.* at 38-39 (quoting *Browning Debenture Holders' Comm. v. DASA Corp.*, 560 F.2d 1078, 1089 (2d Cir. 1977)).

II. DISCUSSION

The Court first recounts the relevant conduct of Dr. Mann and his counsel before addressing whether Dr. Mann and his counsel acted with the requisite bad faith warranting sanctions. The Court then concludes by setting forth the appropriate sanction.

A. Relevant Conduct

After two days of jury selection, on January 18, 2024, the Parties presented their opening statements. During his opening statement, John B. Williams, Esq., counsel for Dr. Mann, stated, in relevant part, as follows:

> Before the defamations, as Mr. Simberg wrote, Michael Mann had been able to bring in millions of dollars. It didn't go into his pocket, it was for Penn State University to fund research in the Climate Science.
>
> But after the defamations, a lot of this grant money dried up. And you will hear from [sic] that he was excluded from research projects because of reputational concerns. . . .
>
> The impact of those defamations on Dr. Mann has been significant. Professionally we will show you the amount of funds he received, the projects he was able to get for Penn State prior to and after the defamations four years before, four years after. It went from three-and-a-half million about down to $500,000 and has stayed there.

Trial Tr., 1/18/24 AM, 51:12-52:05. After Mr. Williams concluded his opening statement, *see id.* at 63:21-23, Victoria L. Weatherford, Esq., counsel for Mr. Simberg, presented her opening statement, in relevant part, as follows:

> During this trial—remember the promises that Mr. Williams has made to you just now, in particular, his claim for damages, because there will not be any credible evidence that Professor Mann has been harmed in any way by Rand Simberg's Blog posts, because he hasn't been.

> [. . .]
>
> Now, you heard from Mr. Williams that Professor Mann claims that he's los[t] some grant funding, because of Mr. Simberg and Mr. Steyn's Blog post[s]. I hope that Mr. Williams keeps this promise to you during trial to make Michael Mann's case, because it's simply not true. The truth is that Michael Mann has no idea why any of his grant applications were denied.
>
> You're going to hear admissions that Professor Mann does not know the reviewer who denied his gran[t] applications ever considered Rand Simberg or Mark Steyn's Blog post. And Professor Mann took no steps to find out.
>
> There will not be a single grant funder testifying in this case on Professor Mann's behalf, because Climatology Grant Funders would not have relied on anything that Rand [Simberg] had to say in deciding whether to give Professor Mann a research grant.
>
> Throughout this case, Michael Mann has provided sworn testimony, under the same oath that all witnesses in this trial will take, at least three times on the topic of his grant funding. And the evidence will show that every time his story changed, he couldn't even get a dozen grants right. His sworn responses were littered with errors that he had to change, and he's going to expect you to believe that the complicated statistics behind his Hockey Stick are unimpeachable.
>
> And as for Mr. Williams' claim that Michael Mann lost millions of dollars in grant funding after this, yup, the simple reasons for that is because he applied for millions of dollars less. He stopped applying for grants.
>
> The truth is that Rand Simberg[] could have called Michael Mann The Mother Theresa of Climate Science, and Michael Mann still would have seen a decline in millions of dollars of grant funding.

Id. at 67:25-68:04, 81:07-82:14. After Ms. Weatherford concluded her opening statement and a lunch break, *id.* at 111:17-21, Mr. Steyn presented his opening statement, Trial Tr., 1/18/24 PM, 8:16-19. Mr. Steyn did not specifically mention or discuss Dr. Mann's grant funding apart from characterizing Dr. Mann's "relentless[]" activity on Twitter as not "leav[ing] much room for any science, which may be why he hasn't applied for many grants in recent years." *Id.* at 14:01-04.

In the afternoon of January 23, 2024, the third day of trial, Dr. Mann presented testimony in his case-in-chief. Trial Tr., 1/23/24 PM, 38:25-39:16. Peter J. Fontaine, Esq., counsel for Dr. Mann, conducted the direct examination of Dr. Mann. Mr. Fontaine first broached the subject of grants with Dr. Mann when reviewing Dr. Mann's curriculum vitae. Mr. Fontaine elicited testimony about the significance of grants, *id.* at 70:22-71:12, 79:06-19, Dr. Mann's experience in serving on panels that review grant applications, *id.* at 71:13-74:09, and how grant funds are distributed, *id.* at 79:20-80:09. After a brief recess, and before Dr. Mann continued his testimony, Ms. Weatherford raised the concern that Mr. Fontaine would elicit testimony from Dr. Mann that would violate the strictures of the Court's rulings on motions *in limine* concerning Dr. Mann's damages or present new information not previously disclosed in discovery. *Id.* at 81:02-82:11, 85:01-23, 86:08-87:03. The Court ultimately permitted Mr. Fontaine to proceed with his line of questioning on the ground that Mr. Fontaine appeared to have elicited only necessary background and context for the jury to understand Dr. Mann's work and the nature of grant funding, *Id.* at 84:14-24. The Court, however, cautioned Mr. Fontaine not to attempt to elicit information beyond what was disclosed in discovery and, again, observed that Dr. Mann had up to the point of trial produced very little evidence about the nature and extent of and reasoning for any reduction in grant funding after the defamatory statements. *Id.* at 87:04-19.

The following day, Mr. Fontaine resumed his direct examination of Dr. Mann and questioned him about changes to his grant funding:

> Q. Dr. Mann, do you recall Ms. Weatherford saying in her opening statement that there will be—not be any credible evidence that your reputation has been harmed?
>
> A. Yes, I do.

Q. And do you recall Ms. Weatherford also saying that you could be the Mother Teresa of climate change and it still would not have declined because he stopped applying for grants?

A. Yes.

Q. Is that accurate?

A. No.

Q. Have you done an analysis of your history of obtaining grants?

A. I have.

Q. Did you look at the period before and after the defamations in this case?

A. Yes. I looked at the period four years before the defamations and the four years following it.

Q. Please tell the jury what you found in terms of the amount of grants before and after the defamations.

A. Yeah. So we had seven grants that were funded in the four years before and two that were grant—that were funded in the—in the four years after the defamations.

Q. Please tell the jury what you found in terms of the percentages of successful grant proposals before and after the defamations.

A. Yeah. I believe it was nine out of 15—nine funded out of 15 submitted before, and—what was it?—two out of nine, two funded out of nine submitted in the four years after.

Q. Okay.

A. So that's from a 60 percent to a 22 percent.

Q. In your analysis of successful and unsuccessful grants, approximately how much money were you bringing in for the university each year before the defamations?

A. It was about $3.3 million before, and that's over four years, so just under a million a year.

Q. How much after per year?

> A. I think it was—it was $500,000 total in the four years after, so that's a little more than $100,000 a year.

Trial Tr., 1/24/24 AM, 65:08-66:23. After the Court sustained Ms. Weatherford's objection to Mr. Fontaine's attempting to refer to additional grants outside of the eight-year period as disclosed in discovery, *id.* at 68:09-17, Mr. Fontaine, with the assistance of co-counsel, published to the jury a demonstrative—consisting of a T-chart drawn on paper on and easel pad positioned in the well of the Court—summarizing Dr. Mann's testimony, *id.* at 68:19-70:05. Mr. Fontaine elicited additional testimony about the years in which Dr. Mann had successful grant applications, *id.* at 70:16-71:09, before moving for the admission of the T-chart into evidence, *id.* at 71:10-11. The Court received the T-chart into evidence as Exhibit 116 without objection. *Id.* at 71:12-17. Mr. Fontaine then proceeded to questions concerning other matters before ending his direct examination of Dr. Mann.

Ms. Weatherford then began her cross-examination of Dr. Mann. *Id.* at 90:08-11. She first questioned Dr. Mann about his testimony concerning the impact of Mr. Simberg's blog post on Dr. Mann's professional career and reputation, guided by Dr. Mann's extensive curriculum vitae and several "faculty activity summaries" that Dr. Mann prepared as part of the annual performance review and salary determination process at Pennsylvania State University. *Id.* at 91:19-128:17; Trial Tr., 1/24/24 PM, 5:21-14:19. Thereafter, Ms. Weatherford turned to Dr. Mann's testimony as to his claimed damages. Trial Tr., 1/24/24 PM, 14:20-22. In relevant part, Ms. Weatherford reviewed Dr. Mann's income statements, *id.* at 14:23-20:20, inquired about his legal expenses, *id.* at 20:21-22:23, 61:16-62:08, 80:19-81:11, and emphasized that Dr. Mann had failed to name any witnesses or produce any documentation to substantiate his claimed loss of grant funding and assertions about reactions in his community that made him feel like a pariah, *id.* at 22:25-24:22; *see also id.* at 62:22-67:13 (reading of judicial admissions

concerning Dr. Mann's lack of knowledge about the identity of reviewers of his denied grant applications and whether such reviewers considered Defendants' publications in their declination decisions). Ms. Weatherford specifically directed Dr. Mann's attention to his written answers to Defendants' interrogatories concerning his grant funding, *id.* at 73:22-74:07, as first set forth in his June 22, 2020 supplemental answers to National Review, Inc.'s first set of interrogatories, *id.* at 74:07-77:15 (discussing redacted version of Exhibit 517). The Court received into evidence without objection a redacted version of Exhibit 517.[3] *Id.* at 74:17-22.

The following morning, Ms. Weatherford returned to Dr. Mann's interrogatory responses. Trial Tr., 1/25/24 AM, 9:15-19. She queried him about his failure to identify any denied grants in his response to Mr. Simberg's second set of interrogatories and his written explanation that such denied grants were not relevant to any claim or defense in his case. *Id.* at 9:20-15:01 (discussing admitted Exhibit 938). Ms. Weatherford then examined Dr. Mann about his reliance upon Exhibit 116 as the "only shred of documentary evidence for [his] claim that [he] suffered a drop in grant funding due to Mr. Simberg's Blog post," *id.* at 16:10-16, and elicited repeated responses from Dr. Mann (1) that his failure to present any information to the jury about the grants summarized in Exhibit 116 was because he expected such information to be presented by his counsel at a later time during the trial, *id.* at 16:18-21:21; (2) that Ms. Weatherford mischaracterized him as ceasing to apply for any grants, when, in reality, he continued to apply for grants, but at a lower rate, than he had previously, *id.* at 21:22-23:11; and (3) that he agreed that "the only time the jury has heard the names of some of the grants that are at issue in this

[3] The Parties ultimately clarified that all exhibits received into evidence with redactions would be designated with an "A" after the number of the exhibit. *See* Trial Tr., 2/7/24, at 7:16-20. The redacted Exhibit 517 admitted into evidence thus became Exhibit 517A on the final exhibit list that was sent back to the jury.

case" was during the reading of judicial admissions, *id.* at 23:19-24. Later in her examination, Ms. Weatherford directed Dr. Mann's attention to his second supplemental answers to Mr. Simberg's interrogatories and their reference to his supplemental answers to National Review, Inc.'s first set of interrogatories. *Id.* at 88:05-89:23 (discussing admitted Exhibit 937 and link to Exhibit 517). Ms. Weatherford elicited testimony from Dr. Mann about the confusing nature of his interrogatory responses, *id.* at 90:15-94:04; *see also id.* at 105:08-17 (affirming that he prepared his responses with the assistance of the two law firms representing him at trial but that he could have misunderstood a question); she inquired of additional statements by individuals other than Defendants he believed were defamatory that he did not disclose in responding to interrogatories in this case, *id.* at 94:05-105:07, 105:18-135:12; and she inquired of his failure to identify any witness who could testify that his reputation suffered as a consequence of reading Mr. Simberg's post, *id.* at 135:13-142:14. Ms. Weatherford then concluded her cross-examination and passed Dr. Mann to Mr. Steyn for cross-examination. Trial Tr., 1/25/24 PM, 7:09-19.

In relevant part, Mr. Steyn inquired of Dr. Mann's figures about lost grant funding as depicted in Exhibit 116, *id.* at 12:09-23, 13:24-15:15, how grant funding was distributed among individual grant applicants and the applicant's affiliated educational institution, *id.* at 12:24-13:13, 15:18-17:09, and he sought possible alternative explanations for Dr. Mann's claimed drop in grant funding, *id.* at 17:10-25:08. *See also* Trial Tr., 1/29/24 AM, 98:12-109:21 (Mr. Steyn creating and presenting a demonstrative summarizing that all sources of Dr. Mann's personal income increased during the relevant time period, as compared to Dr. Mann's bare assertion that grant funding, which would not go to him personally, decreased). In addition, Mr. Steyn inquired about Dr. Mann's non-responsive interrogatory answers and Dr. Mann's asserted

confusion over the interrogatories to which he responded during discovery in the case, which inquiry elicited Dr. Mann's explanation that the deficient responses were the results of "honest mistake[s]" or "misunderstanding[s]" about the questions, and not attempts to conceal information. *Id.* at 4:24-19:20.

Mr. Fontaine then returned with his redirect examination. Trial Tr., 1/29/24 PM, 7:18-25. After several questions related to Pennsylvania State University's investigation of Dr. Mann, *id.* at 8:04-14:20, and Dr. Mann's decision to sue Defendants upon learning from another "science communicator" of Defendants' writings, *id.* at 14:21-20:07, Mr. Fontaine turned to Exhibit 517, not 517A, and Ms. Weatherford's line of inquiry about Dr. Mann's failure to "show[] the jury one rejected grant application[,]" *id.* at 20:09-11. Mr. Fontaine elicited the following testimony:

> Q. I'm showing you Exhibit 517, which Ms. Weatherford placed into evidence last week.
>
> MR. FONTAINE: Can you scroll through that a little bit?
>
> BY MR. FONTAINE:
>
> Q. Do you recognize that document?
>
> A. Yes, I do.
>
> Q. Does this contain a list of the rejected grant applications?
>
> A. I believe it does.
>
> Q. And does it also include a list of the grant proposals that were funded?
>
> A. I believe it does.
>
> MS. WEATHERFORD: Objection.

Trial Tr., 1/29/24 PM, 20:13-21:01. Ms. Weatherford's objection rested on Exhibit 517 containing information subject to the Court's *in limine* ruling that information related to one Dave Verardo's funding of Dr. Mann's research was inadmissible. *Id.* at 21:11-16 (explaining

that Exhibit 517 was a composite of charts from Dr. Mann's Exhibits 102 and 103, which were ruled inadmissible). Mr. Fontaine countered by noting that (1) Exhibit 517 contained Dr. Mann's responses to interrogatories, not the charts proscribed by the Court's *in limine* ruling, *id.* at 21:22-23, 23:01-04; (2) the grants listed in Exhibit 517 were the same grants identified in the judicial admissions read to the jury, *id.* at 21:19-21; (3) the Court previously indicated that it would provide Dr. Mann "an opportunity to provide a more fulsome explanation to the judicial admissions," *id.* at 21:24-22:04; and (4) it would be "patently unfair" to preclude Dr. Mann from using Exhibit 517 as Ms. Weatherford secured its admission and Dr. Mann testified during cross-examination that further information about grant funding was forthcoming, *id.* at 22:15-21, 23:04-05. After excusing the jury, the Court heard further argument from Mr. Williams:

> MR. WILLIAMS: 102 and 103 were different—it contains information. What it contains, like—I don't know if it's 102 or 103, but what it contains is a list of funded and unfunded grant proposals. There's never been any question about that, that they're admissible.
>
> The issue on 102 and 103 was we had also done a separate analysis in terms of what David Verardo was involved in. And you said, because we had [not] fully disclosed this presentation that they had made to the Verardo group, anything about Verardo was out. So we said, fine.
>
> And what [Mr. Simberg's counsel] actually did is to put in the same type of exhibit, 102, 103, and just took the Verardo columns out. And we're fine with that. That was okay. They put that in.
>
> We're not even going into that analysis right now. All we are looking at right now is the list of exhibit—excuse me, proposals. And it's already in evidence. And he saw that and he said, yeah, I see it. [Ms. Weatherford] then decides to cross-examine on it: Why haven't you told the jury about it? He says, it's right here; it's coming.
>
> So I think it is bad faith, frankly, to say you have excluded that information.

> And I also want to make one other point. They are putting in these exhibits. We're not objecting to it. It's fine. It comes in. We'd like the jury to see everything. And then they realize that they put in things that maybe hurt them. And so then they say, well, that should have been redacted. It wasn't our responsibility to redact it.
>
> So we've got to stop this.

Id. at 24:02-25:07. The Court then inquired about the extent of redactions to Exhibit 517, to which Mr. Fontaine, Mr. Williams, and Ms. Weatherford all confirmed that Exhibit 517, as presented to Dr. Mann and displayed to the jury, redacted "the Verardo-related information." *Id.* at 25:08-26:12. The Court then overruled Ms. Weatherford's objection "largely for the reason that 517A is now in evidence." *Id.* at 26:13-16. Ms. Weatherford then raised a new issue:

> MS. WEATHERFORD: Certainly, Your Honor. The only other issue we have is that the discovery responses in 517 have been superseded, so they are not, in fact, the plaintiff's discovery responses in this case—current responses.
>
> MR. FONTAINE: They're in evidence. The grant applications are in evidence, and he should be able to talk about them.
>
> THE COURT: And how do the responses supersede what we have here now in evidence?
>
> MS. WEATHERFORD: The plaintiff provided supplemental responses in March 2023.
>
> THE COURT: That differ from the chart here?
>
> MS. WEATHERFORD: They do. Yes.
>
> MR. FONTAINE: Not—
>
> MR. WILLIAMS: No.
>
> MR. FONTAINE: Not substantively, and they kept it out.
>
> MS. WEATHERFORD: You know what? Your Honor, your point is well taken on this. If they want to go ahead and show the old responses, we'll deal with it.

Id. at 27:05-25. The Court then inquired of Mr. Fontaine:

> THE COURT: All right. And why did this not come out during the direct?
>
> MR. FONTAINE: Why did it not come out?
>
> THE COURT: Right.
>
> MR. FONTAINE: We decided that we were going to handle it on redirect.
>
> THE COURT: All right. All right.

Id. at 28:01-07. The Court then recalled the jury and permitted Mr. Fontaine to continue with his questioning. *Id.* at 28:10-20.

Mr. Fontaine began his examination by publishing Exhibit 517 to the jury. *Id.* at 28:21-29:01. Noting that the two charts set forth in Exhibit 517 were difficult to read, Mr. Fontaine then presented a demonstrative that enlarged a portion of the text of the charts, which enlargement included the dollar amounts for each grant application. *Id.* at 29:03-09. Ms. Weatherford did not object to the demonstrative. *Id.* at 29:10. Mr. Fontaine proceeded to elicit testimony from Dr. Mann explaining the meaning of "funded" and "not funded" proposals, *id.* at 30:02-05, the time frame of the charts' information, *id.* at 30:07-11, and details about each unfunded grant, including the identity of individuals associated with programs proposed therein, *id.* at 30:23-40:07. Thereafter, Mr. Fontaine pivoted to Exhibit 938 and the judicial admissions read into the record. *Id.* at 40:08-12. Mr. Fontaine elicited testimony from Dr. Mann confirming that Dr. Mann had ultimately provided the information the interrogatories sought and as indicated in Exhibit 938. *Id.* at 40:18-20. Mr. Fontaine then moved for the admission of the demonstrative enlarging the text of the charts in Exhibit 517 as Exhibit 117. *Id.* at 40:21-25 (representing that the demonstrative was "just a blow-up of the version that was provided"); *see also* Simberg's Br. 9 (inset figure containing image of Exhibit 117). The Court admitted Exhibit 117 without objection. *Id.* at 41:02-10. Then, while Exhibit 117 was still displayed to

the jury, Mr. Fontaine elicited testimony from Dr. Mann about why he did not know the identities of reviewers of his grant applications, *id.* at 41:24-42:21, the fact that he "experience[d] less grant funding after [Defendants] published their articles," *id.* at 45:09-11, and his belief that his reputation among "the people who knew [him] and were aware of [his] work" was not damaged, *id.* at 45:17-23. When Mr. Fontaine attempted to elicit testimony about damage to Dr. Mann's reputation among other segments of the population, *id.* at 45:24-46:06, Ms. Weatherford objected on two grounds: (1) any such testimony would be wholly speculative and lacking in foundation, *id.* at 46:07-12; and (2) such testimony would yield information not previously disclosed in discovery or otherwise foreclosed by prior *in limine* rulings and the rule against hearsay, *id.* at 47:16-22, 49:16-22. Ms. Weatherford further moved to terminate redirect examination. *Id.* at 50:07-08. The Court denied Ms. Weatherford's request to terminate redirect examination but otherwise sustained her objection, *id.* at 50:10-11, after hearing argument from Mr. Fontaine, which touched in part on Exhibit 517:

> THE COURT: I'm going to sustain the objection. Because we have not heard anything heretofore about any other—you indicated that you would bring in Dr. Abraham to testify. But Dr. Mann has had every opportunity to tell us how he was otherwise damaged. And so—it's curious that, all of a sudden, on redirect we're going to hear something that we did not hear on direct.
>
> MR. FONTAINE: The issue came upon cross-examination, Your Honor. And we have disclosed that he was injured writ large, not just in his community; in our answers to discovery we made that claim.
>
> THE COURT: Right. But what is the writ large? I don't recall the writ large specifically.
>
> MR. FONTAINE: He was damaged generally by these defamatory posts, and it—
>
> THE COURT: But how so?

> MR. FONTAINE: Well, we cited one example for somebody in his supermarket. We have another example with Dr. Abraham, who will be testifying about his knowledge of that.
>
> See, the problem with defamation is one doesn't know, you know, how they've been damaged necessarily.
>
> THE COURT: Right. But he's here to demonstrate how he's been damaged. And—
>
> MR. FONTAINE: Yes. He needs to be able to testify about how he's been damaged.
>
> THE COURT: He's been given an opportunity to do that. It's unclear what else he could present other than to say that the blogosphere was rampant about their thoughts about him. But they were anonymous people.
>
> MR. FONTAINE: Well, that's exactly right, Your Honor. They are anonymous people who—
>
> THE COURT: If they're people.
>
> MR. FONTAINE: You put your finger right on it. Okay? When something like this is said, it goes out on the blogosphere and there is damage. There may not be damage in the scientists that he's working with, but there is damage, and he should be able to testify about that. And we've provided evidence in our answers to interrogatories about how this thing took off, how it was picked up. It's right in this Exhibit 517.

Id. at 47:24-49:14. Mr. Fontaine then moved on to Dr. Mann's comments about other scientists before ending his redirect examination, whereupon Ms. Weatherford indicated she intended to conduct recross examination, with Dr. Mann's attorneys exhibiting signs of disapproval. *Id.* at 50:17-56:06.

Ms. Weatherford began her recross examination by eliciting testimony from Dr. Mann confirming that Exhibit 117 reflected information drawn from his June 2020 written interrogatory responses on grant funding, and that he subsequently provided significant revisions to those responses in March 2023. *Id.* at 56:09-19. Ms. Weatherford then produced two exhibits that Dr. Mann confirmed were redacted versions of his revised responses, *id.* at 57:24-58:13, and

sought admission of the exhibits into evidence, *id.* at 58:14-15. In a brief bench conference requested by Mr. Fontaine, Ms. Weatherford clarified:

> MR. FONTAINE: Are these interrogatory responses that you objected to that are not in evidence?
>
> MS. WEATHERFORD: These are the written interrogatory responses, which is the next set of responses that are here, which I'm using to impeach your client on.
>
> MR. FONTAINE: And you objected to those, however, right?
>
> MS. WEATHERFORD: I objected to you using them. And now that this chart is in, I'm impeaching your client with the subsequent responses.
>
> MR. FONTAINE: Okay.

Id. at 57:01-12. The Court admitted Ms. Weatherford's two exhibits, without objection, into evidence as Exhibit 1047A and Exhibit 1048A. *Id.* at 58:14-59:04.

Ms. Weatherford then inquired whether Dr. Mann had "made numerous changes to the grants that [he was] claiming are at issue in this case," which drew an affirmative answer. *Id.* at 60:07-10. Ms. Weatherford proceeded to display the fifth page of Exhibit 1048A—reflecting a chart of unfunded grant applications as set forth in Dr. Mann's March 2023 revised responses—on the courtroom's television screens while simultaneously putting up a demonstrative containing enlarged text of the corresponding chart from Exhibit 517A, Dr. Mann's June 2020 responses. *Id.* at 60:13-62:20. Ms. Weatherford identified two changes to the dollar amounts of certain unfunded grants:

> [MS. WEATHERFORD:] I would like to start with grant number 11, which is September 15, 2014, water variabilities stressors and sensitivities (WAVESS) sustainability research network. Do you see that one?
>
> A. Yes.

> Q. In your June 2020 responses, you claim that the amount at issue for that grant was $9,713,924; is that correct?
>
> A. Correct.
>
> Q. And then in your March 2023 responses you change that amount down to $112,000; is that correct?
>
> A. Yeah. Actually—
>
> [. . .]
>
> Q. Your counsel can ask you a follow-up about it. So from your June 2020 answers under penalty of perjury to your March 2023 answers under penalty of perjury, the amount of that not funded grant after the blog post changed from about $9.7 million to $112,000; isn't that right?
>
> A. Yes, it did.
>
> [. . .]
>
> [Q.] Okay, so that one is wrong.
>
> Now, on line 12 here, forecasting fire risk in the southeastern U.S. from atmospheric circulation patterns, that number changed as well, didn't it? You said it was $354,539, and then, in your responses here, you changed it, $382,175; is that right?
>
> A. Yes.
>
> Q. Okay. So you couldn't get that one right either. Let's keep on going.

Id. at 63:02-13, 64:01-06, 64:16-24. Ms. Weatherford directed co-counsel to mark the demonstrative by striking through the incorrect dollar amount and writing in the amount from Exhibit 1048A, the March 2023 revised responses. *See, e.g.*, *id.* at 64:08-09 (striking $9.7 million figure and writing in $112,000).

Ms. Weatherford then turned to Dr. Mann's responses concerning his funded grants. Unlike her previous demonstrative for the unfunded grants, Ms. Weatherford's new demonstrative for the funded grants pre-highlighted in red seven discrepancies between

Exhibit 517A and page four of Exhibit 1048A. Ms. Weatherford displayed the fourth page of Exhibit 1048A on the courtroom's television screens, displayed her demonstrative with the information on funded grants from Exhibit 517A in the well of the Court, and questioned Dr. Mann on each of the discrepancies. *Id.* at 65:20-67:01. Ms. Weatherford ultimately elicited testimony from Dr. Mann confirming that each of the discrepancies indeed existed. *Id.* at 67:03-68:03, 68:13-22 (omission of grant number 2); *id.* at 68:23-70:04 (change in dollar amount of grant number 5); *id.* at 70:09-18 (change in dollar amount of grant number 6); *id.* at 70:19-25 (change in dollar amount of grant number 8); *id.* at 71:01-05 (change in dollar amount of grant number 10); *id.* at 71:06-11 (omission of grant number 11); *id.* at 71:12-18 (change in dollar amount of grant number 13). Ms. Weatherford then pressed Dr. Mann further on the substantial inaccuracies in his responses:

> Q. Okay. So let me get this straight. For your funded grants between June 2020 and March 2023, you had to make corrections to seven, by my calculation, out of the 13 grants on here; isn't that right?
>
> A. Yes.
>
> Q. You did. Okay. That's less than a 50 percent score, Dr. Mann. So are you saying that it's okay to give a failing grade in your sworn responses under penalty of perjury about your grants?
>
> A. My lawyers help put this together based on information off my CV. That information is incomplete because often a grant is funded at a different amount from what was submitted. So in some cases, they were using the submitted numbers but the grant was funded for a larger amount or it was funded for a smaller amount.
>
> In addition, the grant timing changes. It's submitted for one start date and it may be funded for a different start date.
>
> And so there are a number of these sorts of things that weren't taken into account in the original tabulation. I went back to make sure that we got everything right. And in the end, the correct

> data actually make a much stronger case. It goes from 60 percent funding to 22 percent funding. That is the correct data.
>
> Q. Okay. And let me get this straight. You are asking the jury to believe that your complicated statistics in this case are unimpeachable and that they should trust you on the data for your grants when you can't even get a dozen grants right. Is that what I'm supposed to believe and what the jury is supposed to believe?
>
> A. No. What they're supposed to believe is that, if I make a mistake, I own up to it.

Id. at 71:19-72:25. After a brief recess, Ms. Weatherford concluded her recross examination by exploring an apparent misrepresentation about whether the last of Dr. Mann's claimed unfunded grants was actually funded, *id.* at 74:03-78:15 (disputing status of unfunded grant number 13), and inquiring about Dr. Mann's credibility and inability to prove his case, *id.* at 78:16-80:17. Mr. Fontaine conducted a brief re-redirect examination in which he elicited testimony on the "net effect" of the corrections on Dr. Mann's claimed lost funding amounts. *Id.* at 80:21-81:11. Ms. Weatherford then sought admission of her two demonstratives into evidence. *Id.* at 81:12-14. The Court admitted the two demonstratives, without objection, as Exhibit 1114 (unfunded grants) and Exhibit 1115 (funded grants) before excusing Dr. Mann from the witness stand. *Id.* at 81:18-82:01.

The issues concerning Exhibit 117 and Exhibit 517A did not resurface until the afternoon of January 31, 2024, during the Parties' arguments on Defendants' motions for judgment as a matter of law. During Mr. Williams's arguments about the sufficiency of Dr. Mann's case as to damages, the Court questioned whether evidence concerning Dr. Mann's claimed loss of grant funding could go before the jury. Trial Tr., 1/31/24 PM, 28:03-29:21. The Court and Mr. Williams then had the following exchange:

> THE COURT: But then the other big problem, if that is an argument that should be given credence, is your exhibit seemed to have misled the jury. You had errors in the top portion, you had

errors in the bottom portion, and you are going to leave that for the jury to unwind.

MR. WILLIAMS: No, we were not.

THE COURT: All right.

MR. WILLIAMS: All the errors were corrected. And Dr. Mann—

THE COURT: They were corrected on cross-examination.

MR. WILLIAMS: So?

THE COURT: All right.

MR. WILLIAMS: So? It's in evidence.

THE COURT: Okay.

MR WILLIAMS: It is in evidence and can go to the jury. And what Dr. Mann—yes, were mistakes made because initially they had looked at the resumé and not the grants? Yes. And so they were all corrected. And what Dr. Mann said is when they were—

THE COURT: But you did not correct it on direct examination, and that's critical.

MR. WILLIAMS: No, that's not right. Oh—it was corrected. The final results that [Mr. Fontaine] wrote up on the board were the correct results. There is no question about that.

Id. at 29:22-30:22. Thereafter, the Court heard the remainder of the Parties' arguments, went into a brief recess, and then recalled the Parties to issue the call for briefing on the issue of lost grant funding. *Id.* at 40:22-42:14. The Parties and the Court then engaged in the following colloquy:

MR. WILLIAMS: No, Your Honor. Let me just—we'll address it tonight.

THE COURT: Yes, please.

MR. WILLIAMS: Because—I want to be clear one more time. Okay? The numbers that went to the jury were the correct numbers. Okay?

THE COURT: That's not the Court's recollection. I was—

MR. WILLIAMS: No—well, then we'll be very clear—

THE COURT: All right.

MR. WILLIAMS: —to point that out. The numbers—

THE COURT: And then I want to see the transcript.

MR. WILLIAMS: The numbers on the board were the correct numbers. What [Ms. Weatherford] had done is gone back and looked at earlier—

[. . .]

MR. WILLIAMS: She had gone back to earlier drafts prior to the corrections. We'll address that all tonight.

THE COURT: All right. But it was quite clear—and I could see that everyone was quite moved by the fact that the jury had been presented with something—and before you—or you had concluded your direct and they were still left with a document you clearly knew was inaccurate.

MR. WILLIAMS: No, Your Honor. Please. The numbers on the board were accurate. There had been earlier mistakes that were corrected, and that's why we gave them the correct numbers.

MR. FONTAINE: The drawing. The drawing.

MR. WILLIAMS: The drawing up there was the correct numbers, and he testified to that two or three times.

[. . .]

MS. WEATHERFORD: I think, Your Honor—can I clarify?

THE COURT: Yes.

MS. WEATHERFORD: I think what Mr. Williams is referring to is the one-page scribbled piece of paper that was originally presented before the plaintiff deigned to provide, you know, any information at all about any specific grant. However, when they finally did provide some information about what these grants were, what that information was, that was their June 2020

> responses, which they then significantly revised in March 2023, which is what I had to show the jury.
>
> So it is, in fact, true, that when the plaintiff, Michael Mann, and his lawyers, showed grants and numbers to the jury, they knew that what they were showing to the jury was false—
>
> MR. WILLIAMS: Oh, goodness grief.
>
> MS. WEATHERFORD: —and misleading and a falsehood.
>
> THE COURT: Well, and Mr. Williams, what's more—
>
> MR. WILLIAMS: I will—
>
> THE COURT: Hold on. What's more, one entry was for 9 million, and then it was significantly reduced to something a little over a hundred thousand.
>
> MR. WILLIAMS: The error was in the $9 million. What we put on the board was not—did not incorporate the $9 million because we caught the mistake, took it off and put it—put the correct number—the correct number we encompassed on there. So I am sorry that there was confusion on your part, and we will certainly correct it.
>
> THE COURT: All right.
>
> MR. WILLIAMS: But there—we will point you to where we specifically took it through. Okay? But the suggestion that I put up false numbers is simply—
>
> THE COURT: Well, that was the Court's takeaway. And if the Court is in error, the Court apologizes.

Id. at 42:15-43:09, 43:14-44:05, 44:12-45:20. Ms. Weatherford, however, reiterated that Mr. Williams was referring to Exhibit 116, the T-chart presented by Mr. Fontaine during direct examination of Dr. Mann, and that Dr. Mann's counsel's error was presenting "numbers and grants to the jury" drawn from Exhibit 517A—figures that they knew were inaccurate, as demonstrated during Ms. Weatherford's recross examination of Dr. Mann. *Id.* at 45:24-46:09. Upon Mr. Williams's assertion that "[t]he final numbers were the correct numbers," *id.* at 46:13-14, the Court inquired of Mr. Williams and Mr. Fontaine:

> THE COURT: The final numbers were—
>
> MR. WILLIAMS: The numbers—the numbers on her flip chart—our flip chart were the correct numbers.
>
> MR. FONTAINE: The ones that [co-counsel] drew on the chart. Those were the correct numbers.
>
> THE COURT: And then so why did you present something much larger and much more legible?
>
> MR. WILLIAMS: Because then [Ms. Weatherford]—what we then went back to do is—she made a point of fact that you never talked about what the lost grants were. So at her bidding, we then went back, looked at the interrogatory answers, said it's in the record and had him discuss it in order to provide clarity on the point.
>
> We didn't need to show every little bit of the summary information. . . . We showed the summary information and not all the details. Then we she said, where are the details, we said, okay, we'll go back and we'll go through each one of them.
>
> And by the way, Your Honor, we had always said we were going to do that when they wanted you to read all the information about each one of the grants. We said we would come back and address it later.
>
> THE COURT: But the Court's recollection as well is there was a fairly vociferous objection to the presentation of that exhibit in the first place. And I overruled the objection and allowed it. And then what was presented had to be, on cross-examination, corrected. And so that's—that's what—
>
> MR. WILLIAMS: I'm not following, Your Honor. But we're going to have to go back and check.
>
> THE COURT: All right. It's been a long day and I'm likely not at all clear at this juncture.

Id. at 46:16-47:22.

The next time the question concerning Exhibit 117 and Exhibit 517A arose was during oral arguments on the morning of February 7, 2024, when Defendants renewed their request for sanctions, Trial Tr., 2/7/24 AM, 29:18-30:21 (contending publication of Exhibit 117, "with the

grossly inaccurate figures," warranted sanctions foreclosing recovering of purported damages for reputational harm). In response, Mr. Fontaine stated, as follows:

> MR. FONTAINE: Yeah. So in order for you to grant this, it requires that you find that I had intended to mislead. I didn't ask Dr. Mann any question about any of the numbers. I was merely refreshing him on the grants in question.
>
> And [Ms. Weatherford] knew that she was going to cross-examine him on the grant testimony. We didn't put in any information on dollars that was not completely accurate and based upon Dr. Mann's last set of discovery responses in which he went back and looked at the numbers, provided them with notice of it, changed those numbers, and the numbers actually—of the amount of grant reductions went down.
>
> And so when I showed that to him, I never asked him any question about the money. It was strictly, you recall, for me to go through and have him explain some of the context of these grants, which had been the subject of judicial admissions.
>
> Now, I suppose I could have gone through the transcript and—and, you know, asked him about the judicial admissions, but I didn't do that. But it was not an intent—and there's no evidence that I instructed him or said, "is this accurate," in terms of dollars. You recall I never asked a single question about the dollars.

Id. at 31:20-32:18. Mark W. DeLaquil, Esq., counsel for Mr. Simberg, explained that Exhibit 517A was admissible because Ms. Weatherford had used the sworn responses in Exhibit 517A to impeach Dr. Mann's contradictory trial testimony. *Id.* at 33:15-34:15. Mr. DeLaquil went on to emphasize that the inquiry for sanctions did not turn upon whether Exhibit 517A was admitted, but rather on Dr. Mann's use of Exhibit 517A:

> [MR. DELAQUIL:] What is not appropriate and what was—even if the plaintiff's counsel's contention that there was no ill intent is accepted by the Court—was at least grossly negligent—was to take a document that the plaintiff knew was not correct, and if you remember, Ms. Weatherford vociferously objected. She said, this has been superseded. And plaintiff's counsel said, no.
>
> Then they put it up and they asked him, does this reflect your grant history? Does this reflect your grant history? In a leading

> question. And Dr. Mann said, yes, while the jury was staring at a board that included incorrect information that had been superseded, that we had informed counsel and the Court was superseded.
>
> [. . .]
>
> Now, if plaintiff's counsel had said, Dr. Mann, you submitted these responses and you later corrected them; yes, I did; well, let's just ignore the column on the right on dollars; let's just go through grant by grant—that would be an entirely separate subject. If the plaintiff's counsel had handed the document to Dr. Mann to refresh him—and we heard that a spaghetti alfredo dinner could refresh. Well, this document could refresh as well.
>
> If plaintiff's counsel had submitted a new exhibit that was accurate, it's possible we may not have objected to that. But where the prejudice came in was publicizing this inaccurate figure with $9 million on it to the jury, which we think had a great potential for an anchoring effect in the mind of the jurors and caused us great harm. And that's why we're here, Your Honor.

Id. at 34:16-35:03, 36:03-17; *see also id.* at 38:04-15 (contending prejudice was incurable, even with Ms. Weatherford's effective recross examination, because the jury ultimately saw incorrect information after both sides highlighted the issue of whether Dr. Mann would be able to produce specifics about his grants). Mr. Steyn emphasized that the preparation of Exhibit 117 as a separate demonstrative, coupled with counsel's duty to know the accuracy of the figures set forth therein, alone, demonstrated that Dr. Mann's counsel had the intent to "plant false testimony before the jurors." *Id.* at 38:21-39:22; *see also id.* at 43:02-10 (noting preparation of poster board was a conscious act bearing on intent). Mr. Fontaine objected to Mr. Steyn's characterization and pointed to Ms. Weatherford's statement that Mr. Simberg's counsel would "deal with it" the use of Exhibit 517A, *id.* at 39:23-40:02, 40:17-18, before reiterating that he did not intend to mislead the jury and characterizing the situation as "in essence, a trap that was laid for us," *id.* at 41:05-17.

The Court ultimately declined to sanction Dr. Mann or his counsel at that time. *Id.* at 42:11-15. After Mr. DeLaquil noted that Defendants' motions listed other forms of potential relief, Mr. Fontaine consented to the striking of Exhibit 117 from the final list of exhibits and agreed to avoid "compar[ing] or draw[ing] any damages figure" as tied to grant funding. *Id.* at 43:13-45:12. As such, Exhibit 117 was not among the exhibits the Court sent back with the jury, while Exhibit 116, Exhibit 517A, Exhibit 1114, and Exhibit 1115 were sent back with all other admitted exhibits.

B. Bad Faith

The Court of Appeals has identified the following "limited set of scenarios" in which bad faith misconduct was deemed proven by clear and convincing evidence: "where a lawyer knowingly violated the rules of professional conduct, a party committed a fraud upon the court in the course of litigation, a party wantonly failed to comply with a final court order, or a party's claim had 'no basis whatever in the evidence to support it' and was admittedly brought for coercive purposes." *Yeh*, 294 A.3d at 1089-90 (footnotes omitted).

Here, the Court finds, by clear and convincing evidence, that Dr. Mann, through Mr. Fontaine and Mr. Williams, acted in bad faith when they presented erroneous evidence and made false representations to the jury and the Court regarding damages stemming from loss of grant funding. Specifically, the Court finds that Mr. Fontaine and Mr. Williams knowingly violated the rules of professional conduct in eliciting testimony and offering evidence related to (1) the post-publication unfunded grant amounts depicted in Exhibit 517A, and as reproduced in Exhibit 117, and (2) the post-publication funded grant amounts in Exhibit 116. The Court does not reach this decision lightly.

1. Rules 3.3 and 8.4(c) of the Rules of Professional Conduct

Rule 3.3 of the Rules of Professional Conduct provides in relevant part:

> **(a)** A lawyer shall not knowingly:
>
> > **(1)** Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6;
> >
> > [. . .]
> >
> > **(4)** Offer evidence that the lawyer knows to be false . . . .
>
> **(c)** The duties stated in paragraph (a) continue to the conclusion of the proceeding.
>
> **(d)** A lawyer who receives information clearly establishing that a fraud has been perpetrated upon the tribunal shall promptly take reasonable remedial measures, including disclosure to the tribunal to the extent disclosure is permitted by Rule 1.6(d).

D.C. R. Pro. Conduct 3.3 (candor to tribunal). The Court of Appeals' commentary to Rule 3.3 explains:

> [2] An assertion purported to be made by the lawyer, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There may be circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. If the lawyer comes to know that a statement of material fact or law that the lawyer previously made to the tribunal is false, the lawyer has a duty to correct the statement . . . .
>
> [. . .]
>
> [5] When false evidence is offered by the client, however, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. Regardless of the client's wishes, however, a lawyer may not offer evidence of a client if the evidence is known by the lawyer to be false . . . . The lawyer is obligated not only to refuse to offer false

> evidence under subparagraph (a)(4) but also to take reasonable remedial measures under paragraph (d) if the false evidence has been offered.
>
> [6] The prohibition against offering false evidence applies only if the lawyer knows that the evidence is false. A lawyer's knowledge that evidence is false can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

D.C. R. Pro. Conduct 3.3 court commentary, cmts. 2, 5, 6; *see also id.* at cmt. 4 (grounding duty not to offer false evidence in "lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence").

Related to the prohibition in Rule 3.3 against knowingly making misrepresentations or offering false evidence is the prohibition, set forth in Rule 8.4 of the Rules of Professional Conduct, against "[e]ngag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation[.]" D.C. R. Pro. Conduct 8.4(c). The Court of Appeals has explained that "dishonesty, fraud, deceit, and misrepresentation are four different violations, that may require different quantums of proof," with dishonesty the most general of the four. *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003) (citing *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990)); *see also In re Shorter*, 570 A.2d at 768 ("Thus, what may not legally be characterized as an act of fraud, deceit[,] or misrepresentation may still evince dishonesty."). An attorney who "deliberately and knowingly makes a false representation" violates Rule 8.4(c), *In re Cleaver-Bascombe*, 892 A.2d 396, 404 (D.C. 2006), as does an attorney who performs an act "that . . . is obviously wrongful and intentionally done," *In re Romansky*, 825 A.2d at 315; *see also In re Schneider*, 553 A.2d 206, 209 (act of altering documents, without intent of personal gain, still violated Rule 8.4(c) because intent to alter documents was inherently deceitful). In addition, "[c]onduct that

demonstrates a 'reckless disregard of the truth' can . . . sustain a charge of dishonesty, although mere negligence cannot[.]" *In re Dobbie*, 305 A.3d 780, 805 (D.C. 2023) (citations omitted).

2. Exhibit 517A and Exhibit 117: Overstating Post-Publication Unfunded Grants

As to Exhibit 517A and Exhibit 117, Mr. Fontaine and Mr. Williams were alerted—at the latest—of the outdated and inaccurate nature of the information represented in Exhibit 517A and Exhibit 117 through Ms. Weatherford's cross-examination of Dr. Mann about the defects in his June 2020 interrogatory responses in the morning of January 25, 2024. *See* Trial. Tr., 1/25/24 AM, 9:20-24:01. When Mr. Fontaine began his redirect examination of Dr. Mann, he drew a further objection from Ms. Weatherford, who explained that the information in Exhibit 517A had been superseded by Dr. Mann's March 2023 amended responses and further indicated that the amendments were material. *See* Trial Tr., 1/29/24 PM, 27:05-18. While acknowledging that Dr. Mann had filed amended responses, *see id.* at 27:19-22, Mr. Fontaine and Mr. Williams fixated on the Court's having admitted Exhibit 517A as giving them *carte blanche* to examine Dr. Mann on any and all of the information therein without regard for the accuracy of such information and with seeming disregard for the evidentiary basis for Ms. Weatherford's introduction of Exhibit 517A in the first place. *See id.* at 24:16-25 (Mr. Williams); *id.* at 27:10-12 (Mr. Fontaine). Mr. Williams and Mr. Fontaine advanced such arguments notwithstanding Ms. Weatherford's consistent flagging of the issues, Defendants' two cross-examinations eliciting Dr. Mann's own testimony confirming the existence of the inaccuracies, and Mr. Fontaine's own direct examination of Dr. Mann producing a demonstrative (Exhibit 116) containing grant funding numbers that plainly and significantly deviated from Exhibit 517A's figures.

Given such circumstances, the Court can only find that Mr. Williams and Mr. Fontaine knew about the errors in Exhibit 517A prior to Mr. Fontaine's use of Exhibit 517A in his redirect examination. The Court further finds that Mr. Williams and Mr. Fontaine could not have reasonably believed otherwise, as a "reasonably diligent inquiry" would have revealed that Exhibit 517A was erroneous and outdated, especially where Mr. Williams and Mr. Fontaine have been personally involved in this case since at least 2012, when the case was filed, (1) as longtime counsel for Dr. Mann in this litigation, (2) as the attorneys who assisted Dr. Mann in preparing his original, supplemental, and amended discovery responses, and (3) as Dr. Mann's lead counsel who prepared for trial and engaged in the necessary tasks related to reviewing Dr. Mann's likely testimony and the Parties' related exhibits on such a central issue in the case. Again, Dr. Mann maintained throughout discovery, in pretrial filings and proceedings before this Court, and during trial that a significant portion of the damages he suffered was from loss of grant funding. Thus, Mr. Williams and Mr. Fontaine's representations to the Court about the lack of substantive differences between Exhibit 517A and Dr. Mann's subsequent amended interrogatory responses, *see* Trial Tr., 1/29/24 PM, 27:13-22, constitute violations of Rule 3.3(a)(1): They each knowingly made a false statement of fact to the Court and Dr. Mann knowingly participated in the falsehood, endeavoring to make the strongest case possible even if it required using erroneous and misleading information. *See also In re Tun*, 195 A.3d 65, 73-74 (D.C. 2018) (statement in recusal motion, asserting that judge had previously reported attorney for ethical violation and resulting disciplinary investigation concluded without any disciplinary action, was untrue; attorney knew of falsity of statement and had requisite intent to include statement—"in an apparent effort to bolster the recusal argument"—and thus violated Rule 3.3(a)(1)); *cf. In re Soto*, 298 A.3d 762, 768 (D.C. 2023) (attorney's incomplete answers, including answers

"conceal[ing] facts that would have aided" several key determinations in disciplinary proceedings, constituted knowingly false statements and deliberately misleading omissions).

When Mr. Fontaine continued his redirect examination, Mr. Fontaine elected to publish, without any caveats about its accuracy, Exhibit 517A's erroneous information to the jury through Exhibit 117, which was an enlarged, truncated version of Exhibit 517A's table of unfunded grants with only the columns for the identity of the proposed grant sponsor, the grant's budget, and Dr. Mann's role in each proposed grant project visible in their entirety. *See* Simberg's Br. 9 (inset figure). Notably, Exhibit 117 contained two significant errors, namely, (1) a budget amount of $9,713,924 for grant number 11, which eye-catching figure Dr. Mann later confirmed was actually $112,000, *see* Trial Tr., 1/29/24 PM, 63:02-64:06; and (2) a budget of $354,539 for grant number 12, which figure Dr. Mann subsequently explained was actually $382,175, *see id.* at 64:17-23. In inviting Dr. Mann to "dig into the exhibit," *id.* at 30:19, guiding Dr. Mann line-by-line through each of the unfunded grants in Exhibit 117, and eliciting testimony with additional information on each of the unfunded grants, *see id.* at 29:23-40:07, neither Mr. Fontaine nor Dr. Mann informed the jury of the errors in the exhibit and Mr. Fontaine elected not to elicit testimony from Dr. Mann noting the errors on display. What is more, there was not even a suggestion from Mr. Fontaine or Dr. Mann during the entirety of the redirect examination that the jury should treat Exhibit 117 as anything but an accurate reproduction of Dr. Mann's correct interrogatory responses on his lost grant funding. Instead, the jury was presented with a demonstrative listing rows of dollar amounts for lost grant funding—the first time during trial where an exhibit or demonstrative linked specific dollar amounts to specific unfunded grants—alongside a series of questions and lengthy answers about what each grant was about and Mr. Fontaine's successful motion to admit Exhibit 117 into evidence. Thus, the

ultimate, reasonable impression, or "anchoring effect," with which Mr. Fontaine and Dr. Mann left the jury was that Exhibit 117 and Exhibit 517A were true and accurate in every respect, if not a substantial refinement of the limited information in Exhibit 116's simple T-chart, and that the erroneous exhibits were Dr. Mann's substantive response to Defendants' explicit, emphasized assertions that Dr. Mann had zero documentary evidence to prove up his lost grant funding. As such, Mr. Fontaine violated Rule 3.3(a)(4) by offering Exhibit 517A and Exhibit 117, with knowledge of the falsity of the information contained in the two exhibits, as evidence of the true extent of Dr. Mann's unfunded grant amounts. *See, e.g.*, *In re Goffe*, 641 A.2d 458, 464-66 (D.C. 1994) (attorney manufactured and used false documentary evidence in federal and local tax proceedings and civil litigation, in violation of predecessor rule to Rule 3.3(a)(4)). In his defense, Mr. Fontaine argued unabashedly that his intention was innocent because he asked no questions of Dr. Mann about the numbers published to the jury and that Ms. Weatherford was ultimately to blame for it was she who set "a trap that was laid for us." The Court will add here that it is apparent, given the jury verdict, that the jury was paying close attention and concluded that there was no evidence to support Dr. Mann's claim of loss of funding damages linked to the Defendants' defamatory statements. *See* Omnibus Order on Defs.' Post-Trial Mots. for J. as Matter of L., Remittitur, New Trial, & Stay of Execution of J., at 36 (Mar. 4, 2025) ("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.").

Mr. Williams and Mr. Fontaine further violated Rule 3.3(a)(1) and (d) by not promptly disclosing the erroneous nature of Exhibit 117 and Exhibit 517A and correcting their prior

misrepresentations. *Cf. In re Samad*, 51 A.3d 486, 499 (D.C. 2012) (attorney's failure to correct court's misimpression, where attorney could not have reasonably believed that misimpression was in fact materially true, constituted intentional act of dishonesty or fraud). The jury's impression of the two exhibits was not corrected until Ms. Weatherford engaged in her methodical recross examination of Dr. Mann—after Mr. Fontaine spent a significant portion of his redirect examination with Exhibit 117 displayed to the jury and eliciting testimony from Dr. Mann appearing to corroborate the accuracy of the entire exhibit. Even more unsettling, Mr. Williams's extensive remarks reacting to the Court's January 31, 2024 call for briefing did not concede the erroneous nature of the exhibits until the Court recounted Ms. Weatherford's recross examination, whereupon Mr. Williams dismissed the wrongful use of the two exhibits by reiterating his belief that the exhibits' admission into evidence permitted *carte blanche* use of the exhibits and asserting that any misconduct or prejudice was either the misimpression of the Court or had been ameliorated by Ms. Weatherford—ignoring Dr. Mann's affirmative duty to put before the jury truthful and accurate evidence. *See* Trial Tr., 1/31/24 PM, 42:15-45:20. And, in responding orally and in writing to Defendants' motions for sanctions, Dr. Mann's counsel refused—and continue to refuse—to acknowledge that their submission and use of the erroneous exhibits were improper. *See, e.g.*, *id.* at 29:22-30:22; Pl.'s Consolidated Opp'n 1 (asserting Dr. Mann's testimony did not contain any falsehood); Trial Tr., 2/7/24 AM, 31:20-32:18. Therefore, the Court must conclude that Mr. Williams and Mr. Fontaine not only knew about the falsity of the information contained in Exhibit 517A and Exhibit 117 and made false representations to the Court and jury about the two exhibits, but they also failed to discharge their duty, as officers of the Court, to correct the falsehoods that they should not have presented in the first place. *See, e.g.*, *In re Krame*, 284 A.3d 745, 757-58 (D.C. 2022) (attorney's evasive

conduct, including providing “technically true” answers to inquiries without additional information to dispel misrepresentation or correct tribunal’s clear misimpression, constituted bad-faith violation of Rule 3.3(a)(1)). Mr. Fontaine’s ultimate concession, with Mr. Williams’s authorization, to exclude Exhibit 117 from the exhibits to be sent back with the jury does not mitigate the Court’s finding here or absolve these very experienced attorneys of their obligations under the Rules of Professional Conduct. *Cf. In re Corizzi*, 803 A.2d 438, 442 (D.C. 2002) (attorney’s false representations to court about start date of representation of client, in effort to distance himself from client’s perjury, violated Rule 3.3(a)(1)).

Finally, Mr. Williams and Mr. Fontaine’s violations of Rule 3.3 also constitute violations of Rule 8.4(c). Both attorneys deliberately engaged in outright misrepresentations, with the intent of presenting false evidence in support of a crucial aspect of Dr. Mann’s claims, that fall squarely within Rule 8.4(c)’s prohibition against “conduct involving dishonesty . . . or misrepresentation.” *See In re Cleaver-Bascombe*, 892 A.2d at 404 (deliberate and knowing false representation); *In re Romansky*, 825 A.2d at 315 (obviously wrongful and intentionally performed act); *In re Dobbie*, 305 A.3d at 805 (reckless disregard of the truth—“conscious[] disregard[] of risk” that conduct “was untruthful or . . . would lead to a misapprehension of the truth”).

3. Exhibit 116: Understating Post-Publication Funded Grants

In presenting Exhibit 116 to the jury, Mr. Fontaine elicited testimony from Dr. Mann estimating the gross amount of his grants that were funded in the four-year period before Defendants’ publications and the four-year period after Defendants’ publications. *See* Trial Tr., 1/24/24 AM, 65:19-67:02. Mr. Fontaine directed co-counsel to mark the dollar amounts on the two sides of the T-chart: $3.3 million in funded grants in the pre-publication period, and

$500,000 in the post-publication period. *See id.* at 68:19-69:24. Mr. Fontaine further elicited Dr. Mann's testimony confirming that the chart "accurately reflect[ed Dr. Mann's] analysis" as to grant funding amounts. *Id.* at 70:03-05. As Ms. Weatherford brought into stark relief through her recross examination of Dr. Mann, Exhibit 116 significantly understated the amount of funded grants Dr. Mann received in the post-publication period.

First, even before accounting for Dr. Mann's revisions in his March 2023 interrogatory responses to his original June 2020 interrogatory responses, Dr. Mann identified four grants that were funded in the post-publication period. *See* Trial Ex. 517A, at EXH-0517.017; Trial Ex. 1115 (grant numbers 10 through 13). The four funded grants totaled $927,128—significantly greater than the $500,000 amount to which Dr. Mann testified and Mr. Fontaine offered as part of Exhibit 116. *See* Trial Ex. 1115 ($300,514; $90,612; $145,002; and $391,000). Put another way, Mr. Fontaine offered evidence and elicited testimony emphasizing the disparity between pre- and post-publication grant funding, which presentation was accompanied by the representation that the $2.8 million disparity was a true and correct statement of the change in Dr. Mann's funded grant amount. The record does not reveal any cognizable basis justifying the misrepresentation, especially where (1) grant funding was a longstanding, hotly contested issue between the Parties; (2) Dr. Mann had an incentive to maximize the disparity between his pre- and post-publication funded grant amounts as part of his damages case; (3) Mr. Fontaine and Mr. Williams personally reviewed the underlying information summarized in Exhibit 116; and (4) the "true" (as of June 2020) disparity was instead closer to $2.37 million, a figure reduced by almost 16 percent of the figure presented to the jury.

Second, in revising his responses in March 2023, Dr. Mann made three changes to his claimed post-publication funded grants. Setting aside questions of credibility or even perjury,

Dr. Mann eliminated one grant entirely (grant number 11, $90,612), marginally revised the budget amount for another (grant number 10, reducing budget from $300,514 to $300,171), and inflated the budget amount for a third (grant number 13, increasing budget from $391,000 to $450,042). As such, the four funded grants now totaled $895,215, with a resulting disparity closer to $2.4 million—still a far cry from the $500,000 in funded grants and $2.8 million disparity figure presented to the jury. As with the inflated disparity figure derived from Dr. Mann's superseded June 2020 interrogatory responses, the record does not reveal any cognizable basis justifying such misrepresentation or offer of plainly false evidence through Exhibit 116 and Dr. Mann's accompanying testimony.

The same circumstances supporting a finding of Mr. Williams and Mr. Fontaine's knowledge of the erroneous nature of Exhibit 517A and Exhibit 117 also support a finding of their knowledge of the erroneous nature of Exhibit 116. As such, the Court finds that Mr. Fontaine violated Rule 3.3(a)(1) and (4) by offering Exhibit 116 into evidence and representing the accuracy of the information therein while having knowledge of the significant, erroneous nature of the post-publication funded grant amount that he prominently displayed and emphasized to the jury. *See In re Tun*, 195 A.3d at 73-74; *In re Goffe*, 641 A.2d at 464-66. In addition, the Court finds that Mr. Fontaine and Mr. Williams violated Rule 3.3(a)(1) and (d) by failing to disclose promptly such inaccuracies and misrepresentations, as exemplified by their maintaining that Exhibit 116's figures were and continue to be accurate throughout the entirety of the trial and in post-trial briefing—notwithstanding the clear evidence, convincingly demonstrated at trial and rearticulated in Defendants' post-trial briefing, to the contrary. *See In re Krame*, 284 A.3d at 757-78. Such violations of Rule 3.3 further qualify as violations of Rule 8.4(c) because Mr. Fontaine and Mr. Williams engaged in deliberate and wrongful conduct

evincing dishonesty within the meaning of the rule. *Cf. In re Samad*, 51 A.3d at 499 (failure to correct court's misimpression, where attorney could not have reasonably believed that misimpression was in fact materially true, constituted intentional act of dishonesty or fraud).

Therefore, as Mr. Williams and Mr. Fontaine knowingly violated the rules of professional conduct, the Court finds that their conduct, in service of Dr. Mann, involves the requisite bad faith warranting sanctions pursuant to the Court's inherent authority. *See Yeh*, 294 A.3d at 1090 (citing *In re Jumper*, 984 A.2d 1232, 1249-50 (D.C. 2009)); *cf. also Synanon Found.*, 503 A.2d at 1263 (collecting cases noting that counsel's involvement in scheme to "prevent[] the judicial process from operating in an impartial fashion" would constitute fraud on the court).

C. Sanctions

1. Plaintiff's Unavailing Arguments

Dr. Mann makes several arguments against the imposition of sanctions, all of which are unavailing.

First, Dr. Mann's assertion that there was no falsehood or misrepresentation in his testimony or his counsel's conduct borders on frivolity. *Cf. In re Pearson*, 228 A.3d 417, 424 (D.C. 2020) ("Ultimately, a position 'is frivolous when it is wholly lacking in substance and not based upon even a faint hope of success on the legal merits.'" (quoting *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005))). As detailed *supra*, the record plainly shows the deliberate and knowing misconduct of Dr. Mann's counsel in eliciting false testimony from Dr. Mann and misrepresenting his grant funding.

Second, Dr. Mann's argument blaming the presentation of Exhibit 517A to the jury on Defendants, and Ms. Weatherford in particular, conveniently ignores (1) the applicable evidentiary principles permitting admission of Exhibit 517A as substantive evidence; and

(2) Dr. Mann and his counsel's separate duty not to mislead the jury and the Court. Exhibit 517A was appropriately admitted upon Ms. Weatherford's request because Dr. Mann gave the information in Exhibit 517A under penalty of perjury, Dr. Mann testified at trial, and Dr. Mann gave testimony at trial inconsistent with the information in Exhibit 517A. *See* D.C. Code § 14-102(b) ("A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is [] inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury . . . . Such prior statements are substantive evidence.").[4] The admission of Exhibit 517A without any limiting instruction or other special directive, however, did not authorize Dr. Mann's counsel to misrepresent—whether affirmatively or by omission—the truth and accuracy of the information contained in the exhibit. Nor did any purported "unfairness" caused by Defendants' legally correct objections and effective examination of Dr. Mann, or Defendants' seeming acquiescence to Dr. Mann's testimony on Exhibit 517A, somehow relieve Dr. Mann's counsel of their duties as officers of the Court and members of a profession dedicated to honesty and integrity. *See also In re Reback*, 513 A.2d 226, 231 (D.C. 1986) ("Honesty is basic to the practice of law. *See In re Ayala*, 102 N.M. 214, 693 P.2d 580, 582 (1985) (license to practice is representation that holder can be trusted to act with honesty and integrity). . . . A lawyer's word to a colleague at the bar must be the lawyer's bond. A lawyer's representation to the court must be as reliable as a statement under oath.").

Third, Dr. Mann's arguments about Defendants' alleged failure to preserve their objection are not well taken. As detailed, *supra*, Dr. Mann's counsel's bad faith misconduct is

[4] In addition, Ms. Weatherford's offer of Exhibit 517A does not violate the prohibition against offering false evidence because she plainly offered Exhibit 517A to prove its falsity. *See* D.C.R. Pro. Conduct 3.3 court commentary, cmt. 4.

an affront to the Court's authority and an attack on the integrity of the proceedings warranting sanctions. *See Jung*, 844 A.2d at 1107-08. Dr. Mann's focus on procedural requirements for timely objections presumes that the evidence and testimony are not otherwise tainted by inherently sanctionable misconduct. That is plainly not the case here: It bears repeating that Dr. Mann and his counsel should not have engaged in the falsehoods and misrepresentations to the jury and the Court in the first place.

2. Sanctions Award Determination

The Court determines that the appropriate sanction is to award each Defendant the approximate expenses they incurred in responding to Dr. Mann's bad faith trial misconduct, starting with Mr. Fontaine's redirect examination.[5] The Court arrives at such a sanction because the misconduct of Dr. Mann and his counsel (1) was extraordinary in its scope, extent, and intent; (2) subjected a jury not only to false evidence and grievous misrepresentations about a crucial part of Dr. Mann's case, but also to additional trial proceedings for correcting the record and the jury's impressions thereof that otherwise likely would have been unnecessary; (3) further complicated a trial already rife with convoluted and difficult legal and factual issues; and (4) burdened Defendants and the Court with the time- and resource-intensive task of ascertaining the true extent of the misconduct and determining appropriate remedial measures for the same, all without any meaningful acknowledgement of the nature of the misconduct by Dr. Mann or his attorneys. *In re Jumper*, 909 A.2d at 177 (sanctions award appropriate under "extraordinary

[5] The Court declines to include the time during Mr. Fontaine's direct examination when he elicited testimony on Exhibit 116 or Defendants' cross-examinations because the true extent of the misrepresentations and falsehoods relating to Exhibit 116 did not become apparent until Ms. Weatherford's recross examination and use of Exhibit 1115. In her cross-examination, Ms. Weatherford did not elicit testimony about the figures in Exhibit 517A and their inconsistency with Exhibit 116 or display the figures to the jury. Mr. Steyn did not do so in his cross-examination, either.

circumstances or when dominating reasons of fairness so demand" (quoting *In re Est. of Delaney*, 819 A.2d at 998)). The award amount, calculated separately for each Defendant, will consist of the following:

- For both Defendants: the attorneys' fees[6] for the time for Mr. Fontaine's redirect examination of Dr. Mann in the afternoon of January 29, 2024, inclusive of time for objections, bench conferences, and recesses, *see* Trial Tr., 1/29/24 PM, 8:01-56:04, totaling 72 minutes (2:26 p.m. to 3:38 p.m.);
- For both Defendants: the attorneys' fees for the time for Ms. Weatherford's recross examination of Dr. Mann, and Mr. Fontaine's single-question re-redirect examination, in the afternoon of January 29, 2024, inclusive of time for objections, bench conferences, and recesses, *see* Trial Tr., 1/29/24 PM, 56:05-81:25, totaling 50 minutes (3:38 p.m. to 4:28 p.m.);
- For both Defendants: the attorneys' fees for the time expended on oral arguments on Defendants' motions for judgment as a matter of law in the afternoon of January 31, 2024, starting with the Court's inquiry about the erroneous nature of Exhibit 117 and ending with the Court's response to Mr. DeLaquil's inquiry about the deadline for responding to the Court's call for briefing, *see* Trial Tr., 1/31/24 PM, 29:22-49:07, totaling 60 minutes (2:54 p.m. to 3:54 p.m.);

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[6] Although Mr. Steyn represented himself through major portions of the trial, the Court will permit Mr. Steyn to recover fees incurred through his engagement of H. Christopher Bartolomucci, Esq., as "assisting trial counsel" because Mr. Bartolomucci plainly performed legal services for Mr. Steyn commensurate with the activities of the other Parties' trial counsel throughout the periods set forth herein. *See Upson*, 3 A.3d at 1168-69 (award of fees for sanctions under court's inherent authority requires "expenses that must actually be paid to a third party attorney").

- For both Defendants: the attorneys' fees for the time for the Parties' arguments on Defendants' renewed requests for sanctions in the morning of February 7, 2024, *see* Trial Tr., 2/7/24 AM, 28:20-45:12, totaling 26 minutes (10:14 a.m. to 10:40 a.m.);
- For both Defendants: the cost of filing responses to the Court's request for briefing, namely, Mr. Steyn's *Motion for Sanctions* and Mr. Simberg's *Response Brief* and *Reply to Plaintiff's Opposition*;
- For both Defendants: the attorneys' fees for the time spent preparing the aforementioned responses to the Court's request for briefing; and
- For Mr. Simberg: the cost of printing Exhibit 1114 and Exhibit 1115, the demonstratives explicitly noting the inaccuracies in Exhibit 116 and Exhibit 117.

See also In re S.U., 292 A.3d at 271 (noting sanctions pursuant to trial court's inherent authority can include awarding "all costs the prevailing party expended as a result of such litigation, regardless of whether those fees were attorney's fees qua attorney's fees"). The Court notes that Defendants likely may have expended additional time and resources in responding to Dr. Mann's bad faith trial misconduct—*e.g.*, time spent during the hours outside of the courtroom in between trial days—but that separating Defendants' efforts as to Dr. Mann's misconduct from their preparations for other aspects of the trial in the same time blocks may be difficult. *Cf. Nat'l L. Ctr. on Homelessness & Poverty v. U.S. Dep't of Veterans Affs.*, 10 F. Supp. 3d 21, 28 (D.D.C. 2013) ("Block billing is problematic because it may hinder a court's ability to determine the reasonableness of hours with a high degree of certainty."). As such, in view of the need to limit the sanctions award to reasonable efforts that are directly attributable to responding to the misconduct, *see Synanon Found.*, 517 A.2d at 38-39; *In re Jumper*, 909 A.2d at 176-77, and to avoid making the determination of fees the genesis of "a second major litigation," *Fox v. Vice*,

563 U.S. 826, 827 (2011) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)), the Court will exercise its discretion and decline to increase further the sanctions award to encompass Defendants' additional time and effort not solely directed at addressing Dr. Mann's bad faith trial misconduct. *See also id.* ("The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection."); *In re S.U.*, 292 A.3d at 271 (ultimate purpose of sanctions is to punish and deter bad-faith litigation, not compensation). Defendants will separately file their supporting documentation for such fees and costs within fourteen days of issuance of this Order. Dr. Mann will have fourteen days thereafter to file any response, and Defendants will file any reply within seven days.

ACCORDINGLY, it is by the Court this 12th day of March, 2025 hereby

ORDERED that *Defendant Mark Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct*, filed on February 1, 2024, is **GRANTED IN PART**; and it is further

ORDERED that the request for sanctions set forth in *Defendant Simberg's Response Brief*, filed on February 1, 2024, is **GRANTED IN PART**; and it is further

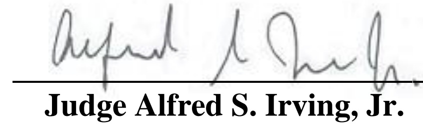
ORDERED that Plaintiff Michael E. Mann, Ph.D., is **SANCTIONED** for bad-faith trial misconduct relating to his use of Exhibit 517A, Exhibit 116, and Exhibit 117, and his counsel's misrepresentations concerning the same; and it is further

ORDERED that Defendants Rand Simberg and Mark Steyn will file all necessary materials in support of the costs and fees awarded in this Order by March 26, 2025; and it is further

ORDERED that Plaintiff Michael E. Mann, Ph.D., will file any response within fourteen days of Defendants' filings in support of the sanction award; and it is further

ORDERED that Defendants Rand Simberg and Mark Steyn will file any replies within seven days of Plaintiff Michael E. Mann, Ph.D.'s response.

SO ORDERED.



Judge Alfred S. Irving, Jr.

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