**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

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| MICHAEL E. MANN, PH.D.,<br><br>Plaintiff,<br><br>v.<br><br>NATIONAL REVIEW, INC., et al.,<br><br>Defendants. | Case No. 2012 CA 008263 B<br>Judge Alfred S. Irving, Jr. |

**Defendant Rand Simberg's Opposition to Motion of Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine To Reconsider or To Alter or Amend Award of Sanctions**

The centerpiece of Dr. Mann's damages case was his purported inability to obtain grants, and the Court reasonably expected Dr. Mann and his attorneys to take care in presenting the critical evidence on his grants funding. Instead, what the Court observed was Dr. Mann's counsel presenting as accurate a large demonstrative exhibit with materially false dollar figures that gave an inflated impression of Dr. Mann's damages, and then counsel publishing that exhibit to the jury while Dr. Mann sat next to the false exhibit without ever correcting it. It fell to defense counsel to set the record straight on this hugely consequential issue by correcting the falsehoods that Dr. Mann and his attorneys presented to the jury.

Dr. Mann's request for reconsideration only confirms the soundness of the Court's order. Dr. Mann's attorneys confirm that they knew at the time the numbers they presented to the jury—including in a large demonstrative they had prepared beforehand—were false. Dr. Mann also confirms that he knew at the time that the numbers were false. Forced to concede the only material facts—that they knew the evidence they put before the jury was false and did nothing about it—Dr. Mann and his attorneys are left with nothing to argue besides irrelevancies and points the Court already soundly rejected. This is not the time for Dr. Mann to put on yet more purported evidence about his grant funding, and it is not and never was appropriate for him and his attorneys to point the finger at defense counsel for their own misconduct. The Court did not clearly err—or err at

all—in determining that Dr. Mann's and his counsel's conduct was purposeful and that sanctions are warranted. The motion for reconsideration is groundless.

That motion has, however, imposed further unwarranted burden on Mr. Simberg, in the form of the fees he incurred in responding to it. The Court should not only deny the motion but also award Mr. Simberg his fees.

## Background

### A. Dr. Mann Provides Inconsistent Sworn Statements About His Damages Before Trial

From day one, Dr. Mann's claim of damages has been hotly contested, and over the years, Dr. Mann has repeatedly changed his damages theory. Dr. Mann's private communications evidence that he filed this lawsuit to "ruin" Defendants. EX-607; Ex-534.[1] Despite his lack of evidence of financial loss, Dr. Mann pursued this litigation for more than a decade, demanding millions of dollars from Defendants and forcing the Court and Defendants to expend significant resources along the way.

In his first response to requested discovery on damages from lost grant funding, Dr. Mann refused to produce any documents, swearing that information related to grants was "not relevant to any claim or defense in this case." EX-938 at 5. His attorneys, including John Williams and Peter Fontaine ("Attorneys"), signed those discovery responses. *Id.* After Defendants filed a motion to compel, the Court ordered Dr. Mann to "produce all responsive documents," Order at 4 (May 5, 2020), and sanctioned Dr. Mann for refusing to produce the requested discovery, Order at 1 (June 22, 2020).

In June 2020, Dr. Mann provided his second sworn response on financial damages and stated that his grant funding fell from $3 million to less than $1 million and his unfunded proposals surged from $1.75 million to $11.78 million during the relevant time period. EX-517A at 3. In particular, Dr. Mann represented that he was not funded on the WAVESS grant, which he swore had a budget of around $9.7 million dollars. The Attorneys also signed those discovery responses.

[1] Unless noted otherwise, all exhibits refer to trial exhibits.

At his October 2020 deposition, Dr. Mann provided a third sworn response on financial damages that changed the percentages for both his funded and not funded grants. *See* Mann Vol. 2 Tr. 9:12–23. When asked whether he needed to make any other changes to his responses on funded and not funded grants, Dr. Mann testified, "No." Mann Vol. 2 Tr. 9:24–10:2. Dr. Mann was represented at his deposition by both of the Attorneys.

In March 2023, Dr. Mann provided a fourth sworn response on financial damages, changing his answers yet again. EX-937 (directing CEI and Simberg to Dr. Mann's response to National Review, which was admitted into evidence as EX-1047A and EX-1048A). Dr. Mann stated that his unfunded proposals went from $1.75 to $2.23 million during the relevant time period, and in particular, that the unfunded WAVESS grants was now budgeted at $112,000—rather less than the $9.7 million to which he had previously testified. EX-1048A at 5. For his funded grants, Dr. Mann's response included raw data in Attachment C showing his grant funding with a start date before publication of the blog posts (i.e., pre-publication grant funding) as $3,061,402 and his grant funding with a start date after publication of the blog posts (i.e., post-publication funding) as $895,215. Dr. Mann's responses also included the contradictory statement that his grant funding fell from over $3.3 million to less than $600,000, but this conclusory statement was not supported with the raw data attached that listed specific funded grants with specific start dates. *Compare* EX-1048A at 4 (raw data), *with* EX-1047A at 3. The Attorneys also signed these discovery responses.

**B. Dr. Mann Testifies About His Damages at Trial**

At trial, when Dr. Mann's Attorneys attempted to use the June 2020 responses (Exhibit 517A), defense counsel objected on the grounds that the responses had been superseded and were incorrect. The Court responded to the objection by asking Dr. Mann's counsel "how do the responses supersede what we have here now in evidence" and whether the chart on grant funding from the March 2023 responses "differ[ed] from the chart" in the June 2020 responses. Trial Tr. 27:5–17 (1/29/24 PM). It is plain on the face of the transcript (and was plain at the time to both parties) that the Court was asking whether there were *any* differences in the grant funding charts

between the June 2020 responses and the March 2023 responses. The Attorneys responded, "No" and "Not substantively." Trial Tr. 27:20–21 (1/29/24 PM).

In their motion for reconsideration, Michael Mann, John Williams, and Peter Fontaine ("Movants") *concede* that the two discovery responses reported materially different budget numbers for the listed grants: "[a]t the time of the colloquy, all counsel and parties *unequivocally knew* that Exhibit 517A (and its Attachment C) *contained material differences in some of the dollar amounts* for the identified project grants." Mot. at 17–18 (emphasis added); *see also* Mot. at 6 ("all parties and counsel well knew" that the numbers "had been changed."); Mot. at 16 ("The Attorneys were acutely aware that defense counsel knew the numbers on the chart *had* been changed substantively, since the Attorneys themselves had flagged the errors and furnished corrected figures."); Mot. at 27 ("The Attorneys knew, and they believed at the time that the Court knew, that defense counsel meant that she would highlight the numerical discrepancies for the jury."). Thus, there is no factual dispute that when the Attorneys responded "No" and "Not substantively" to the Court's question about any differences between the charts, that Dr. Mann's Attorneys knew the budget numbers on the chart in Exhibit 517A and enlarged on a posterboard as Exhibit 117 were substantively different from the budget numbers in Dr. Mann's March 2023 responses.

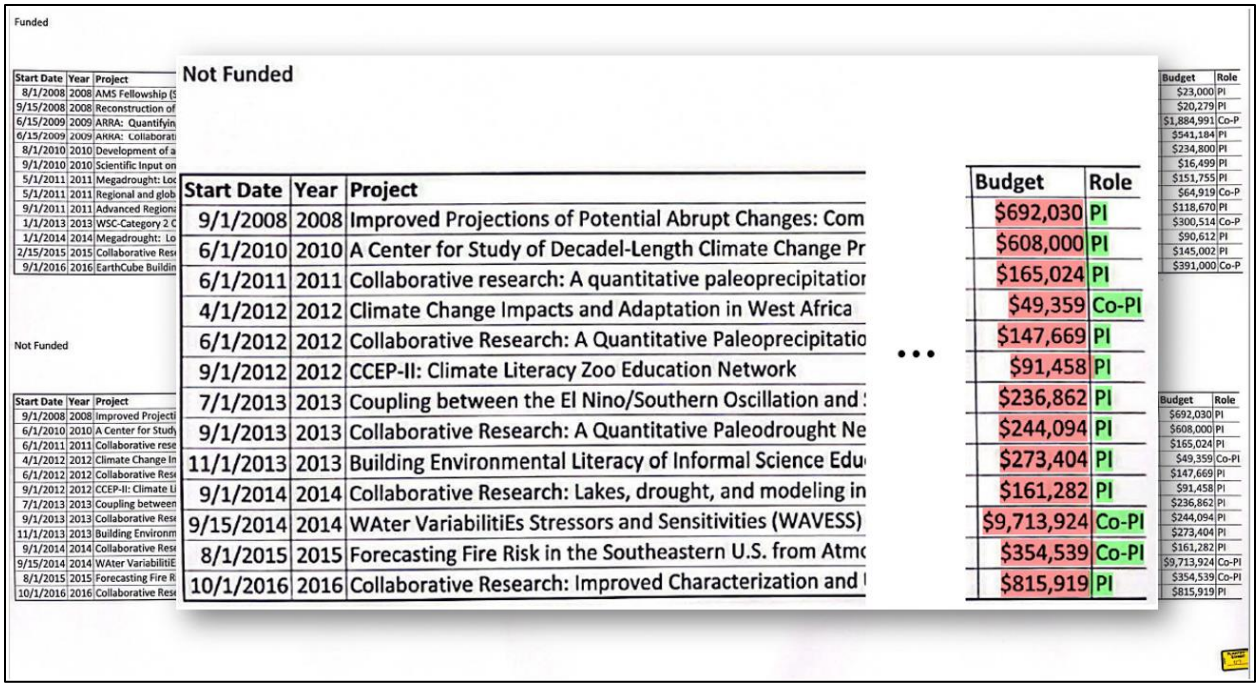
Movants made no attempt to correct this exhibit so that the Court and the jury would understand that the dollar figures they were publishing to the jury were false. Instead, after a seven-minute-long colloquy where the jury had been excused while defense counsel vehemently objected to Movants' use of the June 2020 interrogatory responses because they had been superseded, Mr. Fontaine's first question to Dr. Mann after the jury returned was this: "Dr. Mann, when we last broke, we were talking about Exhibit 517A, which were your answers to interrogatories?" Dr. Mann responded, "Yes." Trial Tr. 28:24–29:2 (1/29/24 PM). Neither attorney nor witness provided any caveat or clarification that Exhibit 517A was inaccurate in any way. Then using the enlarged posterboard prepared in advance and marked as Exhibit 117, Mr. Fontaine identified that the chart showed "funded and nonfunded" grants and asked Dr. Mann to explain what that meant, which Dr. Mann did. After a few preliminary questions, Mr. Fontaine stated, "let's dig into the exhibit"

and then asked, referring to the enlarged chart with the false numbers that was displayed to the jury, "this is your history of grants over the eight-year period, correct?" Dr. Mann responded, "Yes." Trial Tr. 30:19–22 (1/29/24 PM). Again, no caveat or clarification for the jury, despite both attorney and witness knowing the budget numbers that they were publishing to the jury on an oversized demonstrative were false.

From there, referring to the chart displayed to the jury, Mr. Fontaine directed Dr. Mann to "summarize for the jury each of the grants you were denied in the nonfunded chart at the bottom after the Simberg and Steyn writings." Trial Tr. 30:23–25 (1/29/24 PM). Mr. Fontaine also directed Dr. Mann to "identify the program managers…that were connected to the grants," and when defense counsel objected, the Court noted that Dr. Mann "testified last week he couldn't remember anyone," so "if he remembers them today, then that will be impressive." Trial Tr. 32:17–21 (1/29/24 PM). Mr. Fontaine then again directed Dr. Mann's attention to that chart with the false numbers being displayed to the jury, asking him to "go through the list of the nonfunded grants on the below chart and describe for the jury what those grants applications were." Trial Tr. 33:7–10 (1/29/24 PM). Again, no caveat or clarification from either attorney or witness that the information that they were publishing to the jury on an oversized demonstrative was false.

Instead, Dr. Mann attempted to testify about grant applications connected to Dave Verardo, an NSF program manager whom Dr. Mann had previously indicated provided hearsay information about the decisions reached on Dr. Mann's grant applications. Because the Court had issued a pretrial order precluding testimony about Verardo, the Court immediately sustained an objection to Dr. Mann's improper testimony. Trial Tr. 33:17–23 (1/29/24 PM). Mr. Fontaine and Dr. Mann then went through each of the nonfunded grants on the chart with the false numbers, including the $9.7 million-dollar WAVESS grants, with Dr. Mann testifying, "It would have been exciting to do that work but it wasn't funded." Trial Tr. 38:5–17 (1/29/24 PM). At one point when Dr. Mann was unsure about whether he was the principal investigator (PI) or co-PI on a certain grant, Mr. Fontaine directed Dr. Mann's attention to the "role" column, which was right beside the "budget" column, explaining "[t]here's a column here on the far right with role. Can you see that, Dr.

Mann?" And Dr. Mann responded, "Yes. So I can see that now at the end of -- yes, so I was the principal investigator on that one." Trial Tr. 34:5-9 (1/29/24 PM). That exercise directed Dr. Mann's and the jury's gaze directly over the false grant figures in Exhibit 117, without counsel or witness ever suggesting anything was amiss, as shown in the image below:




In so doing, both attorney and witness represented to the jury that the entire chart displayed as Exhibit 117 was correct when both knew that the budget numbers in the chart were false.

The false numbers—published as accurate to the jury—were "not corrected until Ms. Weatherford engaged in her methodical recross examination of Dr. Mann." Order at 36. Using the supplemental charts that Dr. Mann provided in his March 2023 responses, Ms. Weatherford went through each entry of both charts to correct the record so that the jury had accurate information about the nonfunded and funded grants. *See* EX-1047A; EX-1048A. On the nonfunded WAVESS grant, Dr. Mann confirmed that his June 2020 answer of $9.7 million (which had just been prominently displayed as accurate to the jury) was incorrect and that the correct number was $112,000. Trial Tr. 64:1–6 (1/29/24 PM). Ms. Weatherford moved into evidence Exhibit 1114, a demonstrative identifying the errors in the nonfunded grants chart from June 2020. Turning to the charts on funded grants, Ms. Weatherford elicited testimony from Dr. Mann that he had to make corrections

to seven out of thirteen funded grants listed on the June 2020 chart (which had just been prominently displayed as accurate to the jury) in his March 2023 responses. Trial Tr. 71:19–23 (1/29/24 PM). Ms. Weatherford moved into evidence Exhibit 1115, a demonstrative identifying the errors in the funded grants chart from June 2020. But for defense counsel's intervention, the jury would have been left to understand that Dr. Mann lost millions more in grant funding than even he contended was supported by the facts.

### C. The Court Sanctions Dr. Mann for Acting in Bad Faith and Making False Representations to the Jury Regarding Damages

In its sanctions order, the Court found "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." Order at 29. The Court found 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." *Id.* The Court further found that Dr. Mann's Attorneys violated Rule 3.3 and Rule 8.4(c) of the D.C. Rules of Professional Conduct. Order at 37, 39.

In particular, the Court made several factual findings related to specific arguments Dr. Mann and his Attorneys previously raised. First, the Court found 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" and 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." Order at 33. In their motion for reconsideration, Movants concede that they knew the numbers in Exhibit 517A and Exhibit 117 published to the jury were materially wrong. Mot. at 6, 16, 17–18, 27. Second, the Court found that Movants' intent in displaying false numbers to the jury was not innocent because "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*." Order at 36 (emphasis added). The Court also found that "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." Order at 34. Third, the Court found that "[t]he jury's impression of the two exhibits was not corrected until Ms. Weatherford engaged in her methodical recross examination of Dr. Mann," despite that Movants had an "affirmative duty to put before the jury truthful and accurate evidence." Order at 36. Movants concede that "[t]he *first correction came* immediately, *on recross-examination* of Dr. Mann." Mot. at 22 (emphasis added).

**Legal Standard**

The standard for reconsideration is higher than Movants suggest. While granting a motion for reconsideration under Rule 54(b) must be "consonant with justice," the moving party generally must prove: "(1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error in the first order." *Zeigler v. Potter*, 555 F. Supp. 2d 126, 129 (D.D.C. 2008), *aff'd*, No. 09-5349, 2010 WL 1632965 (D.C. Cir. Apr. 1, 2010) (citation omitted). "Despite the flexibility allowed under Rule 54(b), given the tax on parties' and judicial resources from revisiting issues already resolved and the concomitant perverse incentive to invite litigation delay by such reconsideration requests, a court should be loathe to grant a motion for reconsideration in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice." *Freeman v. Giuliani*, No. CV 21-3354, 2023 WL 11926310, at *1 (D.D.C. June 22, 2023) (citations and quotation marks omitted). "A manifest injustice requires at least (1) a clear and certain prejudice to the moving party that (2) is fundamentally unfair in light of governing law." *New LifeCare Hosps. of N. Carolina LLC v. Azar*, 466 F. Supp. 3d 124, 129 (D.D.C. 2020) (quotation marks omitted); *see also In re S.U.*, 292 A.3d 263, 269 (D.C. 2023) (noting that factual findings supporting sanctions issued under the court's inherent authority are reviewed for "clear error").

While Movants' motion for reconsideration is better understood as a motion under Rule 54(b), the standard for reconsideration under Rule 59(e) is similar and courts should only grant such a motion "to correct manifest errors of law or fact." *In re Est. of Derricotte*, 885 A.2d 320, 324 (D.C. 2005).

## Argument

### I. There Is No Error in the Court's Order Sanctioning Plaintiff for Bad Faith Trial Misconduct and Reconsideration Is Not Warranted

Movants come nowhere close to satisfying their burden to prove reconsideration is warranted on the Court's sanctions order regarding Movants' publication to the jury of false numbers on the unfunded and funded grants. To the contrary, Movants confirm that the Court's factual findings were supported by the record and that awarding attorney's fees to Defendants for Movants' publication of false numbers to the jury is not manifestly unjust.

#### A. Substantial Evidence Supports the Court's Factual Findings that Movants Knowingly Published False Numbers to the Jury on Grant Funding

Movants' argument (at 16) about whether their actions were done "knowingly" is both legally and factually wrong because it conflates knowledge that a proffered document was erroneous (which is required to find a violation of Rules 3.3 and 8.4(c) and is not even contested) with an affirmative intent to deceive through proffering the erroneous document (which is not required to find a violation of the rules). "Documents are an attorney's stock in trade, and should be tendered and accepted at face value in the course of professional activity. If an attorney knowingly proffers altered documents in a context where the attorney knows or should know that action may be taken thereon, the attorney has engaged in conduct involving deceit in violation of the rule, whatever the ultimate intent or motives may have been…." *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989). In *Schneider*, an attorney knowingly altered receipts to receive reimbursement but argued that he had no intent to deceive the client because the total reimbursement requested was for actual client-related expenses. But the Court of Appeals rejected the relevance of that distinction and held that intent to deceive may be relevant to the severity of the sanction but "not to the threshold issue of

violation." *Id.* In other cases, the Court of Appeals has explained that, far from intent to deceive being required, mere failure to correct a "misimpression was an intentional act of dishonesty or fraud." *In re Samad*, 51 A.3d 486, 499 (D.C. 2012); *see also In re Krame*, 284 A.3d 745, 757 (D.C. 2022) (holding that even "'technically true' statements may nonetheless violate Rules 3.3(a)(1) and 8.4(c) if those statements omit material information with the intent to mislead").

As noted, Movants concede knowledge of falsity, and so the Court's determination that they acted knowingly is hardly erroneous. In any event, their actual knowledge is plain on the record. The Court "may infer such knowledge from the circumstances surrounding the alleged falsehood." *In re Carter*, No. 24-BG-0433, 2025 WL 994969, at *4 (D.C. Apr. 3, 2025). "[D]ishonest intent could be established by the wrongful conduct itself." *In re Romansky*, 825 A.2d 311, 317 (D.C. 2003). "It is an established general principle of law that it is reasonable to infer that a person ordinarily intends the natural and probable consequences of acts knowingly done or knowingly omitted. So unless the contrary appears from the evidence, one may draw the inference that a person intended all the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly done or knowingly omitted." *Cobell v. Norton*, 355 F. Supp. 2d 531, 541 (D.D.C. 2005) (quoting 2A Wright & Miller, Federal Practice & Procedure § 497.1 (citation modified)).

**1. Dr. Mann and His Attorneys Knowingly Presented False Testimony on Unfunded Grants**

The Court's holding on unfunded grants is not clearly erroneous. The Court held that "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 constitute violations of Rule 3.3(a)(1)," Order at 33 (citation omitted), and "also constitute violations of Rule 8.4(c)," Order at 37. In reaching this holding, the Court found 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" and inferred 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 given both Attorneys' years-long involvement in this case. Order at 33. Movants come nowhere close to carrying their burden to prove manifest injustice in the Court's order.

First, Movants' representations on unfunded grants concerned a material fact. There is no dispute that the unfunded grant numbers in Exhibit 517A and the unfunded grant numbers in the March 2023 interrogatory responses were materially different. The most notable difference is that the unfunded WAVESS grant went from having a budget of around $9.7 million to a mere $112,000. *Compare* EX-517A at 18, *with* EX-1048A at 5; *see also* EX-1114 (red ink version depicting the change in numbers). This difference is material because Dr. Mann having lost $9.7 million in grant funding is indicative of a much more significant damages claim for reputational injury than having lost $112,000 in grant funding. Substantial evidence supports the Court's finding that Movants' representations about the unfunded grants concerned a material fact.

Second, Movants knew the budget numbers on the unfunded grants chart were materially false and knew that before publishing the false numbers to the jury. Movants concede as much: "At the time of the colloquy, ***all counsel and parties unequivocally knew that Exhibit 517A (and its Attachment C) contained material differences in some of the dollar amounts*** for the identified project grants." Mot. at 17 (emphasis added). Movants have always conceded having this knowledge: "Dr. Mann knew that these figures contained inaccuracies." Mann Br. at 2 (filed on Feb. 4, 2024). Yet despite admitting that they "unequivocally knew" the budget numbers "contained material differences," Movants published these numbers in Exhibit 517A to the jury without any disclaimer or corrective testimony about the false numbers. The sequence of events proves that was not inadvertent: far from making an in-the-moment mistake, Movants prepared in advance an enlarged version of the chart with the false numbers, which they published to the jury without any disclaimer. Because it is undisputed that Movants knew these numbers were incorrect and yet published them to the jury anyways, substantial evidence supports the Court's holding that Mr. Williams and Mr. Fontaine violated Rule 3.3 and Rule 8.4(c). *See Schneider*, 553 A.2d at 209 ("If an attorney knowingly proffers altered documents in a context where the attorney knows or should

know that action may be taken thereon, the attorney has engaged in conduct involving deceit in violation of the rule…").

Third, Movants did not even attempt to correct the false misimpression they knowingly conveyed to the Court and jury about the unfunded grant numbers and the extent of Dr. Mann's claimed damages. To the contrary, the Court and the Movants agree that it was defense counsel, not Dr. Mann or his Attorneys, who did so. *Compare* Order at 36 ("The jury's impression of the two exhibits was not corrected until Ms. Weatherford engaged in her methodical recross examination of Dr. Mann."), *with* Mot. at 22 ("The first correction came immediately *on recross examination* of Dr. Mann.") (emphasis added). As the Court found, Movants' publication of these false numbers to the jury was particularly harmful because this was "the first time during trial where an exhibit or demonstrative linked specific dollar amounts to specific unfunded grants." Order at 34. And while defense counsel had moved Exhibit 517A into evidence *to prove the document contained inaccuracies and that Dr. Mann had provided inconsistent testimony on damages*, when Dr. Mann's Attorneys moved Exhibit 117 into evidence and published it to the jury "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," as the Court found. Order at 34. Substantial evidence supports the Court's factual finding that Dr. Mann's attorneys did not initiate correcting their misleading presentation of Exhibit 517A and Exhibit 117, and Movants do not dispute their knowing decision not to correct.

Fourth, Movants' arguments to defend their actions have already been rejected by the Court and are wrong, in any event. In their motion for reconsideration and attached declarations, Movants attempt to excuse their actions by arguing (at 16) that they only intended to use Exhibit 517A and Exhibit 117 to focus on the part of the chart that provided "the *list* of nonfunded grants that were the subject of the judicial admissions, not the superseded funding numbers associated with those grants." But the Court already considered this argument and found that the trial record contradicts Movants' explanation. Order at 35–36. As noted, Movants prepared their demonstrative in advance

and could easily have omitted the false numbers, rather than displaying them prominently. And then they presented testimony that the chart, including the false numbers, was in fact accurate. With Exhibit 117 displayed to the jury, Mr. Fontaine stated, "let's dig into the exhibit" and then specifically asked, "this is your history of grants over the eight-year period, correct," and Dr. Mann responded, "Yes." Trial Tr. 30:19–22 (1/29/24 PM). In the examination that followed, Mr. Fontaine specifically asked Dr. Mann about multiple columns on the chart, including the year, project, and role columns. The Court found that "Mr. Fontaine and Dr. Mann left the jury" with the impression "that Exhibit 117 and Exhibit 517A were true and accurate in every respect." Order at 35.

Attempting to rationalize their conduct, Movants state (at 6) that "the Court previously had excluded the entirety of Exhibits 102 and 103 [which included the charts from Dr. Mann's March 2023 corrected interrogatory responses], leaving Dr. Mann with only Attachment C to Exhibit 517A as a guide to refresh his recollection." This argument is misleading in the extreme: if Dr. Mann could not recall his unfunded grants, his counsel could have used Exhibit 517A or anything else to refresh his recollection without publishing anything to the jury. Dr. Mann employed experienced trial counsel, *see* Williams Decl. ¶ 2 ("I have more than 40 years of trial experience); Fontaine Decl. ¶ 2 ("professional career of 35 years"), one of whom argued at another point in trial that "you can refresh somebody's recollection with a plate of spaghetti alfredo." Trial Tr. 64:4–5 (2/5/24 AM). The only plausible interpretation is that Movants published the false numbers to the jury because they wanted the jury to see the false numbers, not because they sought to refresh Dr. Mann's recollection. Movants' claim to the contrary is so far-fetched as to be discrediting in itself.

Finally, Movants' cursory, after-the-fact declarations also do not show that the Court's factual findings based on the trial record are clearly erroneous. As an initial matter, Movants' attempt to squeeze far more out of *Krame* than the case supports when they argue (at 17) that the Attorneys' testimony is "highly probative." In *Krame*, the Court held that the Board on Professional Responsibility could not reject the Hearing Committee's factual findings when those factual findings were supported by substantial evidence. *See In re Krame*, 284 A.3d 745, 761 (D.C. 2022) ("[T]he Hearing Committee credited Krame's testimony that he nonetheless interpreted it that way.

The Board was not free to reject that credibility finding—which has substantial evidentiary support (Krame's testimony) and is not premised on any legal mistake…"). But in this case, Dr. Mann and his counsel chose not to introduce testimonial evidence in the underlying proceedings, and based on the trial record, the Court made factual findings contrary to the Attorneys' post hoc testimony on reconsideration. In fact, *Krame* actually supports this Court's sanctions order because it held that even "'technically true' statements may nonetheless violate Rules 3.3(a)(1) and 8.4(c) if those statements omit material information with the intent to mislead" and that an attorney's "failure to correct the court's clear misimpression…cannot be chalked up to good faith, and can only be explained by [the attorney's] deliberate and successful design to mislead the court." *Id.* at 757–58.

While the Court is not required to credit Movants' declarations, the declarations do not undermine the Court's factual findings that Movants knowingly published false numbers to the jury. Mr. Williams' declaration confirms that he knew the numbers presented to the jury were false. Williams Decl. ¶ 9 ("Indeed, the very reason these grant amounts differed in the first place was because we caught the errors—and tried to correct them."). Mr. Fontaine's declaration is even more specific in confirming his knowledge that the numbers were false: "I knew that the numbers had changed, and I knew that defense counsel knew the numbers had changed." Fontaine Decl. ¶ 23. So too, Dr. Mann's declaration confirms his knowledge that the WAVESS grant number provided in June 2020 was false. *See* Mann Decl. ¶ 5 ("I recognized that we had listed one unfunded post-defamation grant at its full funding rate of $9.7 million, whereas the actual budget for the work to be done by me was only about $112,000."). Despite their knowledge, Mr. Fontaine and Dr. Mann incorrectly represented that the June 2020 chart with $9.7 million in lost grant funding was Dr. Mann's "history of grants over the eight-year period," Trial Tr. 30:19–22 (1/29/24 PM), and elicited detailed testimony on it without ever correcting the exhibit's false information. Far from undermining the Court's factual findings, Movants' declarations confirm that they acted knowingly when they published the false numbers to the jury in Exhibit 517A and then enlarged and published in Exhibit 117. Beyond that, Movants' declarations are conclusory, *see, e.g.*, Mann Decl. ¶ 10 ("I had no intention to mislead the Court or the jury about any aspect of my case"), and

largely repeat what was previously provided in their contemporaneous briefing without any accompanying sworn testimony, *cf.* Mann Br. at 3 (filed Feb. 1, 2024) (arguing that Dr. Mann discussed the grant proposals but not the budgets, which they knew were "incorrect"), *with* Williams Decl. ¶¶ 8–9; Fontaine Decl. ¶ 23 (testifying that their responses were focused on the list of grants, not the budget numbers).

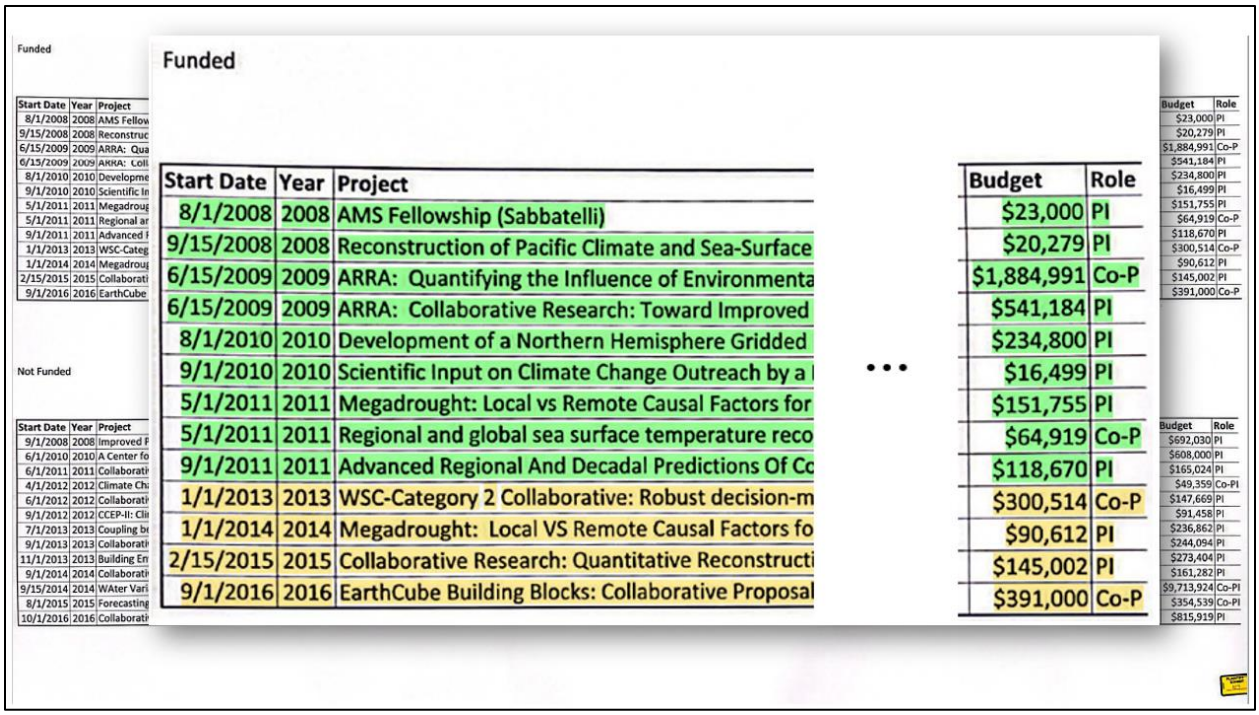
In sum, substantial evidence supports the Court's factual finding that Movants knowingly presented false evidence to the jury. The Court did not err in holding that the Attorneys violated Rule 3.3 and Rule 8.4(c) and that Dr. Mann acted in bad faith.

### 2. Dr. Mann and His Attorneys Knowingly Presented False Testimony on Funded Grants

The Court's holding that Movants understated Dr. Mann's post-publication funded grants is also not clearly erroneous. At trial, Movants published to the jury Exhibit 116, which was a T-chart showing that Dr. Mann received $3.3 million in funded grants in the pre-publication period and only $500,000 in the post-publication period. The Court found that "Exhibit 116 significantly understated the amount of funded grants Dr. Mann received in the post-publication period." Order at 38. The Court held 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" and that both Attorneys "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." Order at 39. The Court also determined that both Attorneys violated Rule 8.4(c). Those determinations are correct, not erroneous.

First, the Court's holding is supported by the trial record. In Dr. Mann's direct examination, Movants failed to provide any specific details regarding the post-publication funded grants, such as the name or budget of any post-publication funded grant. And while Movants' motion for reconsideration and the attached declarations contend that $595,044 was the correct number for the

post-publication funded grants, what Dr. Mann published to the jury was Exhibit 117. Given that the date of the alleged defamation was July 2012, the most reasonable inference from Exhibit 117 is the one the Court drew, that the post-grant funding beginning with the "1/1/2013" start-date WSC-Category 2 Collaborative grant was $927,128. This is depicted in the image below, taken from Exhibit 117 with the pre-publication grants in green and the post-publication grants in yellow.



Funded

| Start Date | Year | Project | Budget | Role |
|---|---|---|---|---|
| 8/1/2008 | 2008 | AMS Fellowship (Sabbatelli) | $23,000 | PI |
| 9/15/2008 | 2008 | Reconstruction of Pacific Climate and Sea-Surface | $20,279 | PI |
| 6/15/2009 | 2009 | ARRA: Quantifying the Influence of Environmenta | $1,884,991 | Co-P |
| 6/15/2009 | 2009 | ARRA: Collaborative Research: Toward Improved | $541,184 | PI |
| 8/1/2010 | 2010 | Development of a Northern Hemisphere Gridded | $234,800 | PI |
| 9/1/2010 | 2010 | Scientific Input on Climate Change Outreach by a | $16,499 | PI |
| 5/1/2011 | 2011 | Megadrought: Local vs Remote Causal Factors for | $151,755 | PI |
| 5/1/2011 | 2011 | Regional and global sea surface temperature reco | $64,919 | Co-P |
| 9/1/2011 | 2011 | Advanced Regional And Decadal Predictions Of Co | $118,670 | PI |
| 1/1/2013 | 2013 | WSC-Category 2 Collaborative: Robust decision-m | $300,514 | Co-P |
| 1/1/2014 | 2014 | Megadrought: Local VS Remote Causal Factors fo | $90,612 | PI |
| 2/15/2015 | 2015 | Collaborative Research: Quantitative Reconstructi | $145,002 | PI |
| 9/1/2016 | 2016 | EarthCube Building Blocks: Collaborative Proposal | $391,000 | Co-P |

If Dr. Mann wished to dispel this inference, it was incumbent on him to explain this to the jury but he did not do so. For that reason, Movants do not identify any trial exhibit or transcript citation where this number was provided to the jury. Instead, all Dr. Mann told the jury in direct was that his post-publication grant funding was "[a]bout 500,000" and that in the post-publication period "nothing [was] funded until all the way to 2016." Trial Tr. 69:24, 71:4–7 (1/24/24 AM).

When Movants attempted to get into more details on funded grants in redirect, the Court asked, "why did this not come out during direct?" and Mr. Fontaine's response was, "We decided that we were going to handle it on redirect." Trial Tr. 28:1–6 (1/29/24 AM); *see also* Trial Tr. 48:2–5 (1/29/24 AM) (THE COURT: "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 in direct."). But even on redirect, Movants still did not provide the jury with the funded grant number cited in the motion for reconsideration. Instead, Movants put into evidence and published to the jury Exhibit 117, which (as discussed above) showed four grants with a post-publication start date that amounted to $927,128. Indeed, rather than try to explain the $500,000 figure, Movants confirmed Exhibit 117 as an accurate representation of Dr. Mann's grants with the question: "And this is your history of grants over the eight-year period, correct," with Dr. Mann responding, "Yes." Trial Tr. 30:19–22 (1/29/24 PM). The $927,128 post-publication number that Movants published to the jury in Exhibit 117 was nearly double the "[a]bout $500,000" that Dr. Mann testified to on direct. Accordingly, from the trial record based on the exhibit that Movants moved into evidence, the Court's holding that Movants understated the post-publication funded grants is not clearly erroneous.

Of course, the budget numbers provided in Exhibit 117 were inaccurate, which defense counsel highlighted in the recross examination of Dr. Mann. Using the chart with the raw data from Dr. Mann's March 2023 interrogatory response (Attachment C), defense counsel moved into evidence Exhibit 1048A, which lists three post-publication funded grants: WSC-Category 2 with a budget of $300,171 and a start date of January 1, 2013; Collaborative Research with a budget of $145,002 and a start date of February 15, 2015; and EarthCube Building Blocks with a budget of $450,042 with a start date of September 1, 2016. These three grants totaled $895,215. Based on the budget numbers that Movants provided in discovery as the correct raw data for Dr. Mann's post-publication funded grants, the Court's holding that Movants understated the post-publication funded grants is also not clearly erroneous from the trial record.

Second, Movants cannot prove clear error in the Court's holding on funded grants using arguments about the evidence that they did not present at trial. Movants now contend (at 12–13) that Exhibit 116 and the $500,000 number that Dr. Mann testified to at trial were materially correct because the correct number—$595,044—"is the sum of two numbers: $145,002 and $450,042, which correspond to the 'Collaborative Research' and 'Earthcube Building Blocks' grants." Movants explain (at 13) that "Dr. Mann did not count the WSC-Cat 2 grant of $300,514 (or $300,171,

as Dr. Mann had revised it) in the post-publication funded category." In support, Movants attach documents not marked as trial exhibits or admitted into evidence purporting to show that the WSC-Cat 2 grant was actually "approved *before* the July 12, 2012, date" when the blog posts were published, despite that the raw data from Attachment C of the March 2023 interrogatory listed the WSC-Cat 2 grant with a start date of January 1, 2013. Given that Dr. Mann has repeatedly offered contradictory sworn testimony about his grant funding, there is no reason for the Court to conclude that his most recent explanation is correct.

But even if the Court did entertain the $595,044 figure, Movants' latest theory for calculating the post-publication funded grant number was never presented to the jury and thus is not supported by the trial record. Furthermore, the $595,044 number is still *substantially* higher than the $500,000 number that Dr. Mann testified to at trial, by almost 20%. With lost grant funding being the centerpiece of Dr. Mann's case, *see* Trial Tr. 82:14–15 (1/23/24 PM) (Mr. Fontaine stating that Dr. Mann has been "very clear what our damages case is. And it is a loss of grant funding."), Dr. Mann had a duty to provide accurate testimony about his post-publication funded grants. But even assuming Dr. Mann, one of the most famous client scientists in the world and who purports to accurately estimate hemispherical temperatures a millennium in the past, simply could not remember the correct number in the moment, *see* Mann Decl. ¶ 9, his Attorneys had a duty to know the correct number on something so important and then to correct the number once they heard Dr. Mann testify to an inaccurate number that was significantly higher than the allegedly accurate number. *See, e.g.*, *United States v. Williams*, 952 F.2d 418, 421 (D.C. Cir. 1991) ("A lawyer appearing before us has a duty to assert facts only if, after a reasonably diligent inquiry, he believes those facts to be true." (citing D.C. Rules of Professional Conduct Rule 3.3)). Instead, his Attorneys prepared a demonstrative summarizing that testimony and then moved into evidence Exhibit 116, leaving the jury with the impression that Dr. Mann had lost more money in grant funding that he actually had lost. *See* Trial Tr. 68:19–69:24 (1/24/24 AM). The Court's holding that Dr. Mann and his Attorneys acted in bad faith is not clearly erroneous.

### B. Movants Cannot Excuse Their Knowing Publication to the Jury of False Numbers on Grant Funding Based on Defense Counsel's Actions

Movants damn only themselves in their attempt to pin the blame for their transgressions on defense counsel—the same attorneys who *corrected* Movants' falsehoods. *See* Mot. at 8, 18, 19, and 22 (suggesting several times that defense counsel "*wanted* to correct the numbers on recross") and Mot. at 8, 18, 19 (suggesting that defense counsel did not object to the publication of Exhibit 517A and Exhibit 117 to the jury).

To start with, Movants suggest that their conduct can be excused because defense counsel *wanted* to correct the false numbers. An attorney's imagined view of opposing counsel's trial tactics does not, of course, provide a license to present false information. Here, there is no basis for Movants' take on defense counsel's tactical decisionmaking, only imagination and projection. What defense counsel wanted to present to the jury was *already presented* in cross examination. Indeed, part of the Court's concern was that Dr. Mann and his Attorneys were playing games by not introducing the specific grants at issue in his direct examination. *See* Trial Tr. 28:1–6, 48:2–5 (1/29/24 AM).

Movants also contend (at 18) that defense counsel did not object to the publication of the charts from Exhibit 517A to the jury and the admission and publication of Exhibit 117 to the jury. But that is irrelevant. Any failure of opposing counsel to object to a false exhibit or false testimony does not somehow immunize those things from sanction. *See* Order at 41 (stating that Movants have a "separate duty not to mislead the jury and the Court"); Order 36 (noting the Attorneys' "duty, as officers of the Court, to correct the falsehoods that they should not have presented in the first place" and "Dr. Mann's affirmative duty to put before the jury truthful and accurate evidence"). The Court already made clear that this argument was "not well taken," Order at 41, and Movants' motion for reconsideration adds nothing.

Regardless, the factual premise of this argument is also wrong. The trial record reflects that defense counsel strenuously objected to Mr. Fontaine's entire line of questioning related to the use of these charts and the admission of Exhibit 117. When Mr. Fontaine indicated his intent to use

the charts from Attachment C in Exhibit 517A, Ms. Weatherford quickly objected and the Court dismissed the jury from the courtroom for seven minutes to evaluate the grounds for the various objections. *See* Trial Tr. 21:1, 23:12–21, 28:15 (1/29/24 PM). It was only after Ms. Weatherford raised multiple objections and the Court overruled those objections based on Dr. Mann's Attorneys' representations, that Ms. Weatherford stated, "if they want to go ahead and show the old responses, we'll deal with it." Trial Tr. 27:23–25 (1/29/24 PM). After repeatedly objecting and receiving a ruling on the objections, Ms. Weatherford's subsequent action should not be interpreted as a failure to object. At that point, there was no need to continue interrupting the trial with futile objections on the same issue to preserve the objection. "The failure to object may be disregarded if the party's position has previously been clearly made to the court and it is plain that a further objection would be unavailing." *Thoma v. Kettler Bros.*, 632 A.2d 725, 727 n.3 (D.C. 1993) (quoting 9 Wright & Miller, Federal Practice and Procedure, § 2553, at 639–40 (1971)). "To require [an attorney] to object again…is to require a pointless formality." *D.C. v. Wilson*, 721 A.2d 591, 601 (D.C. 1998) (alteration accepted).

### C. The Court Properly Sanctioned Dr. Mann for Acting in Bad Faith and Making False Representations to the Jury

Movants contend (at 28) that the Court cannot sanction Dr. Mann because he is not subject to the Rules of Professional Conduct. That is irrelevant. As the Court found, Dr. Mann was complicit in his attorney's presentation of false evidence, and the Court rooted its sanctions order against him in the Court's "inherent authority to award sanctions in appropriate circumstances for intentional abuse of the litigation process." Order at 4 (quoting *In re Jumper*, 909 A.2d 173, 176 (D.C. 2006)). The Court absolutely can sanction any party that acts "in bad faith, vexatiously, wantonly, or for oppressive reasons." *Upson v. Wallace*, 3 A.3d 1148, 1168 (D.C. 2010) (citation omitted).

Here, the Court expressly found that Dr. Mann himself "knowingly participated in the falsehood, endeavoring to make the strongest case possible even if it required using erroneous and misleading information," and that when Exhibit 117 was displayed to the jury that Dr. Mann did

not inform the "jury of the errors in the exhibit," Order at 33–34. The Court found that Dr. Mann "acted in bad faith" and "presented erroneous evidence and made false representations to the jury and the Court regarding damages stemming from loss of grant funding." Order at 29.

As a witness, Dr. Mann was obligated to provide truthful testimony to the jury. He took a solemn oath to tell "the truth, the whole truth and nothing but the truth." Trial Tr. 39:3–6 (1/23/24 PM); *see also* Trial Tr. 7:21–24 (1/29/24 PM). When Exhibit 117 was displayed to the jury with budget numbers that Dr. Mann knew at the time were materially false, Dr. Mann had a duty to correct that information. Rather than do so, Dr. Mann falsely confirmed that the chart, with its false numbers, presented his "history of grants over the eight-year period." Trial Tr. 30:19–22 (1/29/24 PM). In his declaration, Dr. Mann confirms that he knew that his "initial interrogatory responses focusing on grant funding before and after the defamatory publications were incorrect," and in particular "recognized that we had listed one unfunded post-defamation grant at its full funding rate of $9.7 million, whereas the actual budget for the work to be done by me was only about $112,000." Mann Decl. ¶¶ 4–5. When Mr. Fontaine displayed Exhibit 117 to the jury listing the WAVESS grant with a budget of $9.7 million as opposed to $112,000, Dr. Mann provided false testimony when he verified the entire chart as accurate. For that reason, substantial evidence supports the Court's finding that Dr. Mann participated (to say the least) in the falsehood.

Ignoring that glaring falsehood, Movants argue (at 28) that Dr. Mann did not present false testimony because the difference between his alleged actual funded grants ($595,044) was not materially different from his testimony ("about $500,000"). The discrepancy between these numbers is addressed above, *see supra* § I.A.2, and the false impression provided to the jury with this testimony further supports the Court's finding that Dr. Mann presented false testimony and should be sanctioned for his own bad faith trial misconduct.

Finally, regardless of whether Dr. Mann actually acted in bad faith and participated in the publication of false numbers to the jury, the Court could sanction him for it. "[I]f a court finds 'that fraud has been practiced upon it, or that the very temple of justice has been defiled,' it may assess attorney's fees against the responsible party." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991).

Dr. Mann is the party responsible for his Attorneys' conduct. *Link v. Wabash R. Co.*, 370 U.S. 626, 633–34 (1962) (noting that when a party "voluntarily chose [an] attorney as his representative" the party "cannot now avoid the consequences of the acts or omissions of this freely selected agent").

## II. Movants Had Notice the Court Was Considering Sanctions

Movants make a passing reference (at 11) to fair notice, contending that "reconsideration is warranted in part because they did not have fair notice that the Court was contemplating sanctions for violations of the Rules of Professional Conduct," but this contention fails for several reasons. First, Movants waived this argument by not developing it. *Hensley v. D.C. Dep't of Emp. Servs.*, 49 A.3d 1195, 1206 (D.C. 2012) ("We have held repeatedly that 'issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived'" (citation omitted)). Second, Movants had fair notice that the Court was contemplating sanctions. The notice requirement "is satisfied by 'any evidence in the record which describes the specific charges or the ethical violations that form the basis for [the discipline].'" *In re Williams*, 3 A.3d 1179, 1184 (D.C. 2010). The specific charge here is that Movants knowingly published false numbers on grant funding to the jury without correcting them. At trial, the Court notified Movants of his concern with their publication to the jury of "a document that has many, many errors" that was "not as a result of oversight." Order at 1. When the Court requested briefing on the issue, Defendants asked for attorney's fees as sanctions. Simberg Br. at 2 (filed Feb. 1, 2024) ("The Court should exercise its authority to sanction Plaintiff for his false testimony on grant funding," including awarding Mr. Simberg his "legal fees and expenses for the expenses incurred in the trial marked by Plaintiff and his Counsel's misconduct."); Steyn Br. at 5 (filed Feb. 1, 2024) (same). Dr. Mann acknowledged this. Mann Br. at 1–3 (filed Feb. 4, 2024). At the charging conference, Defendants noted that their request for sanctions were outstanding, which the Court noted. Trial Tr. 15:15–16:4 (2/7/24 AM). Finally, while the Court has provided more than sufficient notice, Movants' motion for reconsideration is also sufficient to fully ventilate any concern about fair notice. *See Brady v. Fireman's Fund Ins. Companies*, 484 A.2d 566, 568 (D.C. 1984) (lack of notice "was cured when appellant filed, and the court fully considered, his Rule 60(b) motion.").

## III. Mr. Simberg Should Be Awarded His Full Fee Request and the Fees for Responding to Movants' Motion for Reconsideration

In their 31-page brief in support of their motion for reconsideration, Movants devote only a single paragraph to arguing that the Court should reduce Mr. Simberg's requested fees of $16,762.82. Mot. at 30. Movants do not cite any authority to support this argument and affirmatively state that they "do not contest the hourly rates" charged by Mr. Simberg's counsel. Instead, Movants contend that fees should only be awarded for two attorneys attending trial and that four attorneys working on the response briefs to the Court's request for briefing was excessive.

Movants' argument is wrong on several levels. First, Mr. Simberg should be awarded the time for all attorneys who actually attended trial because the Court's sanctions order awarded fees for "the approximate expenses they incurred in responding to Dr. Mann's bad faith trial misconduct." Order at 42. Mr. Simberg's fee request is based on the actual fees incurred for the three attorneys attending trial. Movants' argument here is also especially perplexing given that Dr. Mann had *four* attorneys attending trial each day (Mr. Williams, Mr. Fontaine, Mr. Coyne, and Ms. Hummel), which further supports that Mr. Simberg's fee request for having *three* attorneys attending trial was not unreasonable. Second, Mr. Simberg should be awarded the time for all attorneys working on the briefing requested by the Court. To be clear, Movants make no attempt to show why it was unreasonable to have four attorneys involved in this briefing. Given the long history on the issue of Dr. Mann's changing responses on financial damages, different attorneys had personal knowledge on the topic as it evolved through discovery, briefing, and trial. Furthermore, briefing on this point was prepared in a limited schedule where different attorneys each had separate responsibilities at the trial, requiring participation from multiple attorneys, including one (Mr. Grossman) without trial responsibilities who provided both research and an independent view on the delicate issue of sanctionable conduct free from the passions of trial. Beyond that, defense counsel takes seriously the issues raised at trial by the Court that lead to the Court's sanctions order, which is another reason why it was particularly important for defense counsel to have all the relevant attorneys, including appellate counsel, review the response brief and reply brief on

sanctions. That exercise of professional judgment should not be penalized with any reduction in the requested fees.

Mr. Simberg should also be awarded $32,947 for the fees incurred in responding to Movants' motion for reconsideration. *See also* DeLaquil Declaration ¶¶ 5–6 (filed June 10, 2025) (identifying the hours and fees incurred in responding to Movants' motion for reconsideration). The "court's inherent powers give it broad authority to craft sanctions that it deems will punish and deter bad-faith litigation," which "certainly includes the authority to award all costs…expended as a result of such litigation." *In re S.U.*, 292 A.3d 263, 271 (D.C. 2023). "Because the costs arising from the sanctions proceedings were 'occasioned by the objectionable conduct,' a district court may include costs arising from the sanctions proceedings in the sanctions award." *Norelus v. Denny's, Inc.*, 628 F.3d 1270, 1298 (11th Cir. 2010) (citation omitted); *see also Wardwell v. Metmor Fin., Inc.*, No. 88-cv-122-S, 1988 WL 156801, at *4 (D. Mass. Nov. 3, 1988) (noting that "it is permissible to award fees for efforts to collect sanctions"); *Rajala v. Allied Corp.*, No. 82-cv-2282, 1985 WL 8030, at *1 (D. Kan. Jan. 10, 1985) ("The court further finds attorney's fees for time spent by plaintiff in opposing defendant's motion for review are proper.").

## Conclusion

The Court should deny Movants' motion for reconsideration and award Mr. Simberg the fees he incurred in responding to it.

Dated: June 10, 2025

Respectfully submitted,

*/s/ Andrew M. Grossman*

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**Certificate of Service**

I hereby certify that on June 10, 2025, I caused a copy of the foregoing, and all accompanying papers, to be served by eFileDC upon the following:

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

| | |
|---|---|
| MICHAEL E. MANN, PH.D.,<br><br>Plaintiff,<br><br>v.<br><br>NATIONAL REVIEW, INC., et al.,<br><br>Defendants. | Case No. 2012 CA 008263 B<br>Judge Alfred S. Irving, Jr. |

**Declaration of Mark W. DeLaquil**

Pursuant to Rule 9-I of the Superior Court Rules of Civil Procedure, I, Mark W. DeLaquil, declare as follows:

1. I am counsel in this matter for Defendant Rand Simberg. I submit this Declaration in support of Defendant Rand Simberg's Opposition to the Motion of Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine To Reconsider or To Alter or Amend Award of Sanctions. I have personal knowledge of the facts stated herein.

2. Baker & Hostetler LLP maintains computerized records of the time spent by its attorneys in connection with its representation of Defendant. At all times relevant to this opposition brief, Baker Hostetler required its attorneys to record their billable time as it was performed into an electronic billing system called InTapp. Attorneys are required to contemporaneously record the amount of time spent on a particular task with a detailed description of the work performed, and for this matter the time is recorded in six-minute increments (i.e., a tenth of an hour or 0.1). Baker Hostetler's usual and customary billing policies and procedures, as generally described above, were applicable to this matter when the work was performed.

3. The rates that Baker Hostetler billed in this matter are substantially lower than our customary rates.

4. Four Baker Hostetler attorneys billed time for the work performed on the opposition brief to the motion for reconsideration, and those attorneys' qualifications are listed below:

a. I, Mark DeLaquil, am a partner at Baker Hostetler LLP. I graduated *cum laude* from Harvard Law School in 2004 and have 20+ years of litigation experience. I have extensive experience in complex litigation matters, including numerous cases involving patent law, environmental law, the Administrative Procedure Act, the First Amendment, and Section 1983. I am rated AV Preeminent by Martindale-Hubbell, have been recognized by Chambers & Partners for Environmental Litigation from 2015–2023, in the Legal 500 United States for Environmental Litigation in 2019, as a Washington, DC "Super Lawyer" from 2018–2020, and as a "Super Lawyer Rising Star" in 2014. I have represented parties in proceedings before the U.S. Supreme Court and most of the United States Courts of Appeals. I have served as lead or co-lead trial counsel in cases across the country, including in the District of Columbia.

b. Andrew Grossman is a partner at Baker Hostetler LLP. Mr. Grossman graduated *magna cum laude* from George Mason University School of Law in 2008 and has 17 years of litigation experience. He also holds degrees from Dartmouth College and the University of Pennsylvania. Mr. Grossman has extensive experience in complex litigation matters, including cases involving patent law, administrative law, and the First Amendment. He has been recognized as "Legal 500" attorney from 2017–2018 and a "Super Lawyers Rising Star" from 2014–2018 and has been awarded the Burton Award for Legal Achievement by the Burton Foundation and Law Library of Congress. Mr. Grossman has represented parties in proceedings before the U.S. Supreme Court and most of the United States Courts of Appeals. Mr. Grossman clerked for Judge Edith H. Jones on the U.S. Court of Appeals for the Fifth Circuit.

c. Victoria Weatherford is a partner at Baker Hostetler LLP. Ms. Weatherford graduated from Yale Law School in 2009 and has 16 years of litigation experience. An accomplished first-chair trial lawyer, Ms. Weatherford possesses a wealth of experience at

the state and local levels, including four years as a Deputy City Attorney in the San Francisco City Attorney's Office. Ms. Weatherford has extensive experience in complex litigation matters. She was recognized by the ABA's "On the Rise – Top 40 Young Lawyers" in 2020 and by *The Best Lawyers in America*'s "Ones to Watch" California: Appellate Practice (2023 to 2024). Ms. Weatherford clerked for Judge Edward C. Prado on the U.S. Court of Appeals for the Fifth Circuit and for Judge William B. Shubb on the U.S. District Court for the Eastern District of California.

d. Renee Knudsen is an associate at Baker Hostetler LLP. Ms. Knudsen graduated *summa cum laude* from Regent University School of Law in 2016 and has 9 years of litigation experience. Ms. Knudsen clerked for Judge Leslie H. Southwick on the U.S. Court of Appeals for the Fifth Circuit and for Judge Claude M. Hilton on the U.S. District Court for the Eastern District of Virginia. She has significant complex litigation experience, including numerous cases involving defamation law, commercial law, patent law, environmental law, and the First Amendment.

5. Included as Exhibit A is a true and correct copy of Baker Hostetler's billing records for fees incurred responding to Plaintiff's motion for reconsideration of the Court's sanctions order. I have personally reviewed the time entries that Baker Hostetler tendered to Defendant for billing in this matter, and in my estimation, the time entries and costs were fair and reasonable for the work performed.

6. Included as Exhibit B is a true and correct summary of the amount billed by each attorney.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 10, 2025

*/s/ Mark W. DeLaquil*
Mark W. DeLaquil

# Exhibit A - Fees Incurred on Opposition to Reconsideration Motion

| Inv Number | Inv Date | Timekeeper Name | Title | Work Date | SBA | Agreed Rate | Bill Rate | Bill Hrs | Bill Amt | Narrative |
|---|---|---|---|---|---|---|---|---|---|---|
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/08/2025 | 1,395.00 | 525.00 | 525.00 | 0.10 | 52.50 | Review correspondence from Mann counsel re: motion for reconsideration of sanctions decision. |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/08/2025 | | 365.00 | 365.00 | 0.40 | 146.00 | Review motion for reconsideration of sanctions order. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/09/2025 | 1,395.00 | 525.00 | 525.00 | 0.20 | 105.00 | Prepare correspondence to Mr. Kazman et al. re: Mann reconsideration motion (0.1); confer w/ Mr. Grossman re: same (0.1). |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/09/2025 | 1,030.00 | 365.00 | 365.00 | 0.20 | 73.00 | Evaluate next steps for responding to motion for reconsideration of sanctions order. |
| 3410960 | 05/21/2025 | Grossman, Andrew | Partner | 04/11/2025 | 1,580.00 | 525.00 | 525.00 | 0.50 | 262.50 | Review Plaintiff's motion for reconsideration and confer with counsel regarding extension for response. |
| 3410960 | 05/21/2025 | Grossman, Andrew | Partner | 04/15/2025 | 1,580.00 | 525.00 | 525.00 | 0.80 | 420.00 | Draft motion for extension on response to reconsideration motion and proposed order. |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/15/2025 | 1,030.00 | 365.00 | 365.00 | 0.40 | 146.00 | Proofread, finalize, and coordinate filing of motion for extension on filing opposition to reconsideration motion. |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/16/2025 | 1,030.00 | 365.00 | 365.00 | 0.80 | 292.00 | Draft, proofread, finalize, and coordinate filing of notice of consent on Plaintiff's nunc pro tunc motion. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/21/2025 | 1,395.00 | 525.00 | 525.00 | 0.10 | 52.50 | Attention to reconsideration response arguments. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/21/2025 | 1,395.00 | 525.00 | 525.00 | 0.10 | 52.50 | Confer w/ Mr. Grossman re: reconsideration response. |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/24/2025 | 1,030.00 | 365.00 | 365.00 | 4.30 | 1569.50 | Review Plaintiff's motion for reconsideration of sanctions order, Court's order on sanctions, trial transcripts from the events in question, trial briefing on sanctions, and exhibits related to issues raised in the motion for reconsideration of sanctions order. |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/25/2025 | 1,030.00 | 365.00 | 365.00 | 4.10 | 1496.50 | Review Plaintiff's motion for reconsideration of sanctions order, Court's order on sanctions, trial transcripts from the events in question, trial briefing on sanctions, and exhibits related to issues raised in the motion for reconsideration of sanctions order. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/28/2025 | 1,395.00 | 525.00 | 525.00 | 0.10 | 52.50 | Prepare correspondence to Steyn counsel re: Motion to reconsider. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/28/2025 | 1,395.00 | 525.00 | 525.00 | 0.20 | 105.00 | Attention to preparation of response to motion to reconsider. |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/28/2025 | 1,030.00 | 365.00 | 365.00 | 2.80 | 1022.00 | Prepare detailed outline of opposition brief to Plaintiff's motion for reconsideration on sanctions. |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/29/2025 | 1,030.00 | 365.00 | 365.00 | 3.10 | 1131.50 | Prepare detailed outline of opposition brief to Plaintiff's motion for reconsideration on sanctions. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/29/2025 | 1,395.00 | 525.00 | 525.00 | 1.00 | 525.00 | Revise outline of motion for reconsideration response. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/30/2025 | 1,395.00 | 525.00 | 525.00 | 1.00 | 525.00 | Review reconsideration motion to assist in reconsideration response. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/30/2025 | 1,395.00 | 525.00 | 525.00 | 1.00 | 525.00 | Review order on sanctions to assist in reconsideration response. |
| 3410960 | 05/21/2025 | DeLaquil, Mark | Partner | 04/30/2025 | 1,395.00 | 525.00 | 525.00 | 1.00 | 525.00 | Revise outline of motion for reconsideration response. |
| 3410960 | 05/21/2025 | Knudsen, Renee | Associate | 04/30/2025 | 1,030.00 | 365.00 | 365.00 | 0.90 | 328.50 | Draft opposition brief to Plaintiff's motion for reconsideration on sanctions. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/01/2025 | 1,030.00 | 365.00 | 365.00 | 2.30 | 839.50 | Research and develop arguments in response to motion for reconsideration. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/07/2025 | 1,030.00 | 365.00 | 365.00 | 4.50 | 1642.50 | Research and evaluate authorities regarding standing for non-party attorneys to move for reconsideration of an order finding the attorneys engaged in professional misconduct. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/08/2025 | 1,030.00 | 365.00 | 365.00 | 3.50 | 1277.50 | Research and evaluate authorities regarding standing for non-party attorneys to move for reconsideration of an order finding the attorneys engaged in professional misconduct. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/09/2025 | 1,030.00 | 365.00 | 365.00 | 2.30 | 839.50 | Draft opposition brief regarding motion for reconsideration of sanctions order with focus on background section. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/12/2025 | 1,030.00 | 365.00 | 365.00 | 5.00 | 1825.00 | Draft opposition brief regarding motion for reconsideration of sanctions order with focus on background section, notice section, and reasonableness of fee section. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/13/2025 | 1,030.00 | 365.00 | 365.00 | 8.20 | 2993.00 | Draft opposition brief regarding motion for reconsideration of sanctions order with focus on argument section. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/19/2025 | 1,030.00 | 365.00 | 365.00 | 0.10 | 36.50 | Correspond with Mr. DeLaquil regarding opposition to motion for reconsideration of sanctions. |
| 3435813 | | ** DeLaquil, Mark | Partner | 05/21/2025 | 1,395.00 | 525.00 | 525.00 | 4.00 | 2100.00 | Revise response to motion for reconsideration of sanctions decision. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/21/2025 | 1,030.00 | 365.00 | 365.00 | 0.20 | 73.00 | Review Mr. DeLaquil's comments to the opposition to motion for reconsideration of sanctions. |
| 3435813 | | ** Knudsen, Renee | Associate | 05/22/2025 | 1,030.00 | 365.00 | 365.00 | 3.20 | 1168.00 | Correspond with Mr. DeLaquil regarding opposition brief to motion for reconsideration of sanctions (1.0); research authority to obtain fees for defending sanctions award and revise opposition brief regarding the same (2.2). |
| 3435813 | | ** Knudsen, Renee | Associate | 05/27/2025 | 1,030.00 | 365.00 | 365.00 | 5.10 | 1861.50 | Revise draft on funded grants and review trial court record and related documents to evaluate other inconsistencies in Plaintiff's testimony about funded grants. |

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| 3435813 | ** Knudsen, Renee | Associate | 05/28/2025 | 1,030.00 | 365.00 | 365.00 | 2.60 | 949.00 | Revise draft on funded grants and review trial court record and related documents to evaluate other inconsistencies in Plaintiff's testimony about funded grants. |
| 3435813 | ** DeLaquil, Mark | Partner | 05/29/2025 | 1,395.00 | 525.00 | 525.00 | 2.00 | 1050.00 | Revise response to motion for reconsideration of sanctions decision. |
| 3435813 | ** Knudsen, Renee | Associate | 05/29/2025 | 1,030.00 | 365.00 | 365.00 | 1.80 | 657.00 | Revise opposition brief to motion for reconsideration. |
| 3435813 | ** DeLaquil, Mark | Partner | 05/30/2025 | 1,395.00 | 525.00 | 525.00 | 0.50 | 262.50 | Review revised response to motion for reconsideration of sanctions decision. |
| 3435813 | ** Knudsen, Renee | Associate | 05/30/2025 | 1,030.00 | 365.00 | 365.00 | 2.50 | 912.50 | Revise opposition brief to motion for reconsideration. |
| 3455769 | ** DeLaquil, Mark | Partner | 06/02/2025 | 1,395.00 | 525.00 | 525.00 | 2.00 | 1050.00 | Revise opposition to motion for reconsideration of sanctions decision. |
| 3455769 | ** Knudsen, Renee | Associate | 06/02/2025 | 1,030.00 | 365.00 | 365.00 | 0.90 | 328.50 | Revise opposition to motion for reconsideration and correspond with Mr. DeLaquil regarding the same. |
| 3455769 | ** Weatherford, Victoria | Partner | 06/02/2025 | 1,080.00 | 525.00 | 525.00 | 0.70 | 367.50 | Review and provide comments to draft opposition to motion for reconsideration of sanctions motion. |
| 3455769 | ** Grossman, Andrew | Partner | 06/05/2025 | 1,580.00 | 525.00 | 525.00 | 1.20 | 630.00 | Review and revise opposition to reconsideration motion. |
| 3455769 | ** DeLaquil, Mark | Partner | 06/05/2025 | 1,395.00 | 525.00 | 525.00 | 0.10 | 52.50 | Review correspondence from Steyn counsel re: opposition to motion for reconsideration of sanctions decision |
| 3455769 | ** Knudsen, Renee | Associate | 06/05/2025 | 1,030.00 | 365.00 | 365.00 | 0.10 | 36.50 | Correspond with team regarding revisions to the opposition to the motion for reconsideration. |
| 3455769 | ** DeLaquil, Mark | Partner | 06/06/2025 | 1,395.00 | 525.00 | 525.00 | 0.10 | 52.50 | Prepare correspondence to Steyn counsel re: opposition to motion for reconsideration of sanctions decision. |
| 3455769 | ** DeLaquil, Mark | Partner | 06/06/2025 | 1,395.00 | 525.00 | 525.00 | 1.50 | 787.50 | Revise opposition to motion for reconsideration of sanctions decision. |
| 3455769 | ** DeLaquil, Mark | Partner | 06/06/2025 | 1,395.00 | 525.00 | 525.00 | 0.20 | 105.00 | Prepare correspondence to Messrs. Kazman and Simberg re: opposition to motion for reconsideration of sanctions decision. |
| 3455769 | ** Knudsen, Renee | Associate | 06/06/2025 | 1,030.00 | 365.00 | 365.00 | 2.30 | 839.50 | Revise the opposition to the motion for reconsideration based on comments from Mr. Grossman and Ms. Weatherford, and correspond with Mr. DeLaquil regarding the same. |
| 3455769 | ** Knudsen, Renee | Associate | 06/09/2025 | 1,030.00 | 365.00 | 365.00 | 2.20 | 803.00 | Prepare summary of fees incurred in drafting the opposition to reconsideration on sanctions. |
| | | | | | | **TOTAL** | **82.20** | **$ 32,947.00** | |

*** Forthcoming invoice number and/or date*

# Exhibit B - Summary of Rates Billed Compared to LSI Laffey Rates

| Title | Attorney | Experience | Hours Billed | Rate Billed | Amount Billed | LSI Rate | LSI Amount | Discount |
|---|---|---|---|---|---|---|---|---|
| Partner | Mark DeLaquil | 20+ years | 15.20 | $525 | $ 7,980.00 | $ 1,141.00 | $ 17,343.20 | $ 9,363.20 |
| Partner | Andrew Grossman | 11-19 years | 2.50 | $525 | $ 1,312.50 | $ 948.00 | $ 2,370.00 | $ 1,057.50 |
| Partner | Victoria Weatherford | 11-19 years | 0.70 | $525 | $ 367.50 | $ 948.00 | $ 663.60 | $ 296.10 |
| Associate | Renee Knudsen | 8-10 years | 63.80 | $365 | $ 23,287.00 | $ 839.00 | $ 53,528.20 | $ 30,241.20 |
| **TOTAL** | | | **82.20** | | **$ 32,947.00** | | **$ 73,905.00** | **$ 40,958.00** |

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

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|---|---|
| MICHAEL E. MANN, PH.D.,<br><br>Plaintiff,<br><br>v.<br><br>NATIONAL REVIEW, INC., et al.,<br><br>Defendants. | Case No. 2012 CA 008263 B<br>Judge Alfred S. Irving, Jr. |

**(Proposed) Order**

Upon consideration of Plaintiff Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine's Motion To Reconsider or To Alter or Amend Award of Sanctions, the memoranda and exhibits in support thereof, it is hereby

ORDERED that the Motion of Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine To Reconsider or To Alter or Amend Award of Sanctions is DENIED; and

ORDERED that Defendant Rand Simberg's request for fees incurred on the opposition to reconsideration is GRANTED, and Plaintiff shall within 30 days of this order pay Rand Simberg the sum of $32,947.

DATED this ____ day of _____, 2025.

_____
The Honorable Alfred S. Irving, Jr.
Associate Judge