New York Supreme Court

Appellate Division – First Department

KURLAND & ASSOCIATES, P.C., d/b/a THE KURLAND GROUP,

Plaintiff-Respondent-Appellant,

Docket No.: 2021-02776

– against –

GLASSDOOR, INC., MICHALINA SHUTER, and JANE/JOHN DOE,

Defendants-Appellants-Respondents.

NOTICE OF MOTION ON BEHALF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 26 MEDIA ORGANIZATIONS FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF DEFENDANTS-APPELLANTS-RESPONDENTS

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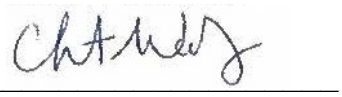
New York County Clerk's Index No. 162083/2018

PLEASE TAKE NOTICE that upon the annexed affirmation of Christine N. Walz dated April 1, 2022, and all exhibits attached thereto, including a copy of the proposed brief of amici curiae, The Reporters Committee for Freedom of the Press and 26 media organizations (collectively, "amici") will move this Court, located at 27 Madison Avenue, New York, New York 10010, on April 11, 2022 at 10:00 a.m. or as soon thereafter as counsel may be heard, for an order granting amici leave to file the brief attached hereto as amici curiae in support of defendants-appellants-respondents in the above-captioned action and for such other and further relief as the court may deem just and proper under the circumstances.

Dated: April 1, 2022
New York, NY

by: 

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Plaintiff-Respondent-Appellant,

Docket No.: 2021-02776

– against –

GLASSDOOR, INC., MICHALINA SHUTER, and JANE/JOHN DOE,

Defendants-Appellants-Respondents.

AFFIRMATION OF CHRISTINE N. WALZ IN SUPPORT OF MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 26 MEDIA ORGANIZATIONS FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF DEFENDANTS-APPELLANTS-RESPONDENTS

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Christine N. Walz, an attorney duly admitted to practice before the courts of the State of New York, and not a party to this action, hereby affirms the following to be true under penalty of perjury pursuant to CPLR § 2106:

1. I am a partner with Holland & Knight, located at 31 West 52nd Street, New York, NY 10019 and am counsel of record for the Reporters Committee for Freedom of the Press (the "Reporters Committee"), Advance Publications, Inc., BuzzFeed, The Daily Beast Company LLC, Dow Jones & Company, Inc., Fox Television Stations, LLC, Gannett Co., Inc., International Documentary Association, The Media Institute, Media Law Resource Center, Mother Jones, MPA - The Association of Magazine Media, National Newspaper Association, National Press Photographers Association, New York News Publishers Association, New York Public Radio, The New York Times Company, The News Leaders Association, News Media Alliance, Nexstar Broadcasting, Inc., Penguin Random House LLC, ProPublica, Society of Environmental Journalists, Society of Professional Journalists, TEGNA Inc./WGRZ-Buffalo, Tully Center for Free Speech, and Vice Media Group (collectively, "amici") in the above-captioned action. I submit this affirmation in support of amici's motion for leave to file a

brief as amicus curiae in support of defendants-respondents-appellants in the above-captioned action.

2. Attached hereto as **Exhibit A** is a true and correct copy of the brief that amici seek leave to file as amici curiae.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Decision and Order from the Supreme Court, County of New York, dated June 28, 2021, from which defendants-respondents-appellants appeal.

4. Attached hereto as **Exhibit C** is a true and correct copy of the notice of appeal invoking this Court's jurisdiction.

5. Lead amicus, the Reporters Committee for Freedom of the Press (the "Reporters Committee"), is an unincorporated nonprofit association. Founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas seeking to reveal the identities of confidential news sources, the Reporters Committee works to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee frequently serves as amicus curiae in cases that concern issues of importance to journalists and news media, including litigation involving defamation claims and anti-SLAPP laws. *See, e.g.*, Amicus Brief on Behalf of the

Reporters Committee for Freedom of the Press, et al., in Support of Defendants-Appellants, *VIP Pet Grooming Studio, Inc. v. Sproule*, No. 2021-4228 (2d Dep't filed Jan. 3, 2022), https://perma.cc/XY4Q-S7MW; Brief of Amici Curiae the Reporters Committee for Freedom of the Press and 20 Media Organizations in Support of Defendants-Respondents, *Rainbow v. WPIX, Inc.*, No. 2018-5119 (1st Dep't filed Oct. 2, 2019), https://perma.cc/5S3H-SLT7. Additional proposed amici curiae are prominent news publishers and professional and trade groups.[1]

6. Amici are well-suited to provide a unique industry-wide perspective not currently represented by defendants-respondents-appellants on the interpretation of the scope and fee-shifting provision of New York's recently amended anti-SLAPP law. Amici or their members frequently publish information on issues of public interest, including information on employers and workplaces. Amici have a strong interest in ensuring that their ability to publish this content without fear of unjustified defamation liability is not hindered by the Supreme Court's decision in this case, and that they are able to recover their attorney's fees and costs if they do prevail in litigation arising out of such speech.

[1] A comprehensive list of amici is annexed hereto as Appendix A.

7. Defendants-respondents-appellants and plaintiff-petitioner-respondent have been notified of this motion. Defendants-respondents-appellants consent to amici's motion. Plaintiff-petitioner-respondent is reserving its decision on whether to oppose or consent until after it has reviewed the instant motion.

WHEREFORE, I respectfully request that this Court grant amici's motion for leave to file a brief as amici curiae in support of defendants-respondents-appellants, a copy of which is attached hereto as **Exhibit A**.

Dated: April 1, 2022
New York, NY

by:_____

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Attorneys for Defendants-Appellants-Respondents Glassdoor, Inc., Michalina Shuter, and Jane/John Doe

APPENDIX A: DESCRIPTION OF ADDITIONAL AMICI CURIAE

Advance Publications, Inc. is a diversified privately-held company that operates and invests in a broad range of media, communications and technology businesses. Its operating businesses include Conde Nast's global magazine and digital brand portfolio, including titles such as Vogue, Vanity Fair, The New Yorker, Wired, and GQ, local news media companies producing newspapers and digital properties in 10 different metro areas and states, and American City Business Journals, publisher of business journals in over 40 cities.

BuzzFeed is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

The Daily Beast delivers award-winning original reporting and sharp opinion from big personalities in the arenas of politics, pop-culture, world news and more.

Dow Jones & Company is the world's leading provider of news and

business information. Through *The Wall Street Journal*, *Barron's*, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional information services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

Directly and through affiliated companies, **Fox Television Stations, LLC**, owns and operates 28 local television stations throughout the United States. The 28 stations have a collective market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet websites offering news and information for its local market.

Gannett is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.

The International Documentary Association ("IDA") is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

The Media Law Resource Center, Inc. ("MLRC") is a non-profit professional association for content providers in all media, and for their defense lawyers, providing a wide range of resources on media and content law, as well as policy issues. These include news and analysis of legal, legislative and regulatory developments; litigation resources and practice guides; and national and international media law conferences and meetings. The MLRC also works

with its membership to respond to legislative and policy proposals, and speaks to the press and public on media law and First Amendment issues. It counts as members over 125 media companies, including newspaper, magazine and book publishers, TV and radio broadcasters, and digital platforms, and over 200 law firms working in the media law field. The MLRC was founded in 1980 by leading American publishers and broadcasters to assist in defending and protecting free press rights under the First Amendment.

Mother Jones is a nonprofit, reader-supported news organization known for ground-breaking investigative and in-depth journalism on issues of national and global significance.

MPA – The Association of Magazine Media, ("MPA") is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA's membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other

interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

National Newspaper Association is a 2,000 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, FL.

The National Press Photographers Association ("NPPA") is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA's members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

The New York News Publishers Association is a trade association which represents daily, weekly and online newspapers throughout New York State. It

was formed in 1927 to advance the freedom of the press and to represent the interests of the newspaper industry.

With an urban vibrancy and a global perspective, **New York Public Radio** produces innovative public radio programs, podcasts, and live events that touch a passionate community of 23.4 million people monthly on air, online and in person. From its state-of-the-art studios in New York City, NYPR is reshaping radio for a new generation of listeners with groundbreaking, award-winning programs including Radiolab, On the Media, The Takeaway, and Carnegie Hall Live, among many others. New York Public Radio includes WNYC, WQXR, WNYC Studios, Gothamist, The Jerome L. Greene Performance Space, and New Jersey Public Radio. Further information about programs, podcasts, and stations may be found at www.nypublicradio.org.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

The News Leaders Association was formed via the merger of the

American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

The News Media Alliance is a nonprofit organization representing the interests of digital, mobile and print news publishers in the United States and Canada. The Alliance focuses on the major issues that affect today's news publishing industry, including protecting the ability of a free and independent media to provide the public with news and information on matters of public concern.

Nexstar Media Inc. ("Nexstar") is a leading diversified media company that leverages localism to bring new services and value to consumers and advertisers through its traditional media, digital and mobile media platforms. Nexstar owns, operates, programs or provides sales and other services to 199

television stations and related digital multicast signals reaching 116 markets or approximately 62% of all U.S. television households.

Penguin Random House LLC publishes adult and children's fiction and nonfiction in print and digital trade book form in the U.S. The Penguin Random House global family of companies employ more than 10,000 people across almost 250 editorially and creatively independent imprints and publishing houses that collectively publish more than 15,000 new titles annually. Its publishing lists include more than 60 Nobel Prize laureates and hundreds of the world's most widely read authors, among whom are many investigative journalists covering domestic politics, the justice system, business and international affairs.

ProPublica is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations

selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

Society of Professional Journalists ("SPJ") is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 64 television stations in 52 markets, including WGRZ-Buffalo.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

VICE Media is the world's preeminent youth media company. It is a news, content and culture hub, and a leading producer of award-winning video, reaching young people on all screens across an unrivaled global network.

EXHIBIT A

New York Supreme Court

Appellate Division – First Department

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Plaintiff-Respondent-Appellant,

Docket No.: 2021-02776

– against –

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Defendants-Appellants-Respondents.

AMICI CURIAE BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 26 MEDIA ORGANIZATIONS IN SUPPORT OF DEFENDANTS-APPELLANTS-RESPONDENTS

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STATEMENT OF INTEREST OF AMICI CURIAE

Lead amicus the Reporters Committee for Freedom of the Press is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. Other amici are prominent news publishers, professional organizations, and trade groups. A supplemental statement of the identity and interest of the amici is included as Appendix A to amici's motion for leave to file amici curiae brief.[1]

Amici are dedicated to defending the First Amendment rights of journalists and news organizations. As members and representatives of the news media, amici are the frequent targets of strategic lawsuits against public participation ("SLAPPs") designed to punish and deter constitutionally protected newsgathering and reporting activities. Amici therefore have a strong interest in ensuring that New York courts properly interpret and apply the state's recently amended anti-SLAPP law, including the interpretation of its scope and fee-shifting provision.

[1] No counsel for a party authored this brief in whole or part, nor did any person or entity, other than amici or their counsel, contribute money toward preparing or submitting this brief.

Amici also draw on their collective experience with SLAPPs to provide the Court with a broader perspective on the impact of state anti-SLAPP laws.

INTRODUCTION AND SUMMARY OF ARGUMENT

SLAPPs are meritless legal claims that threaten to chill the exercise of First Amendment rights. While SLAPPs lack legal foundation, the mere prospect of costly, protracted litigation alone can discourage speech. Indeed, since *New York Times Co. v. Sullivan*, courts have recognized that the threat of a lawsuit—even an ultimately unsuccessful one—leads to self-censorship and diminishes participation in the marketplace of ideas. 376 U.S. 254, 279 (1964). Would-be speakers are forced into a perverse cost-benefit analysis, weighing the value of participating in the public square against the burden of defending against a lawsuit.

To combat this troubling trend, New York, along with thirty other states and the District of Columbia, have adopted anti-SLAPP laws that provide mechanisms to lower the costs and other burdens associated with defending against baseless lawsuits arising out of speech on matters of public concern. *See* Austin Vining & Sarah Matthews, *Introduction to Anti-SLAPP Laws*, Reporters Comm. for Freedom of the Press, https://perma.cc/9VWJ-4SXC. These laws protect a wide range of valuable speech on issues of public interest and enable defendants to recover attorney's fees and costs if they prevail in dismissing a SLAPP.

The importance of broad anti-SLAPP protection is evident in the instant case, an expensive multi-year legal battle arising out of the exercise of constitutionally protected speech on a matter of public interest. An anonymous author of and former employee of Manhattan-based law firm The Kurland Group ("Kurland") posted a review of the firm on the website Glassdoor.com (the "Review"). A-62–63.[2] The one-star review warned others to "STAY AWAY," commenting that "[a]verage employees only stay about 3-6 months," "[p]ay is below average and expectations are unrealistic," "[m]anagement micromanages employees," and "[v]acation time and permission to take days off or leave early is scarce for most employees." *Id*. Kurland contacted Glassdoor claiming the Review was defamatory and asking Glassdoor to take it down. A-52–53. Glassdoor declined to do so, stating that the author had verified its accuracy and that the site was committed to allowing both employers and employees to share their views. A-51, A-54–56, A-62–63. Kurland sued Glassdoor, Michalina Shuter (who Kurland claimed wrote the Review), and other unnamed individuals (collectively, "Defendants") in the Supreme Court of New York, New York County, for defamation and other claims. A-36–39.

In November 2020, during the parties' ensuing legal fight, the New York Legislature (the "Legislature") amended the state's anti-SLAPP law to expand the

[2] All citations are to the corrected Joint Appendix dated Feb. 22, 2022 ("A").

protections available to defendants facing meritless lawsuits arising out of constitutionally protected speech on matters of public interest. A-194–95. Under the amended law, if an action arises out of a defendant's speech on an issue of public interest, a motion to dismiss the action "shall be granted" unless the plaintiff can show "that the cause of action has a substantial basis in law." N.Y. C.P.L.R. 3211(g). The defendant may maintain a claim for attorney's fees and costs, which "shall be recovered upon a demonstration" that the action lacked "a substantial basis in fact and law." N.Y. Civ. Rights Law § 70-a(1). The same "substantial basis" test, then, governs both determinations: if the action was substantially baseless, the court must dismiss it and award defendants their fees.

Here, availing themselves of the protections of New York's amended anti-SLAPP law, Defendants moved to dismiss the defamation claim and to recover their attorney's fees, as well as compensatory and punitive damages. *See* A-15–16 (motion to renew and reargue, seeking dismissal); A-65–66, A-67–69 (motion to dismiss); A-191–92 (motion for attorney's fees). The lower court granted the motion to dismiss pursuant to the amended anti-SLAPP law,[3] finding that

[3] Amici are aware that a recent First Department decision called into question whether the amendments to the anti-SLAPP law apply retroactively. *See Gottwald v. Sebert*, No. 15495, 2022 WL 709757 (1st Dep't Mar. 10, 2022). However, the parties below did not object to the retroactive application of the amendments in this case, and the lower court's application of the amendments is consistent with the holdings of other state and federal courts. *See, e.g.*, *Palin v. N.Y. Times Co.*, 510 F. Supp. 3d 21, 26 (S.D.N.Y. 2020) (holding that the amendments apply retroactively, noting that "remedial legislation . . . should be given retroactive effect in order to effectuate its beneficial purpose") (collecting cases); *Kesner v. Buhl*, No. 20-CV-3454 (PAE),

Kurland's claims were "absurd" and "unavailing." A-9. Yet despite having dismissed Kurland's claims as legally baseless under the anti-SLAPP law, the lower court denied Defendants' motion for attorney's fees. A-10–11. Ignoring the fee-shifting provision's clear textual mandate that a court "shall" award attorney's fees where an action is dismissed as substantially baseless, the lower court erroneously concluded that it had discretion to deny Defendants an award of attorney's fees. A-10. It applied what it deemed to be a separate "frivolousness" standard, finding that because Kurland's claim "was not made up out of whole cloth," it was not frivolous and Defendants were therefore not entitled to recover fees. A-10–11. Defendants appealed from the fee and damages decisions;[4] Kurland appealed from the merits decision. A-3, A-5.

2022 WL 718840, at *11 (S.D.N.Y. Mar. 10, 2022) (collecting cases). The legislative history of the amendments makes clear they are remedial—intended "to correct the narrow scope of New York's prior anti-SLAPP law." *Palin*, 510 F. Supp. 3d at 27. Moreover, the Legislature's elimination of language from the 1992 anti-SLAPP law which applied it only prospectively, *see* L. 1992, ch. 767, § 6, clearly indicates its intent that courts apply the 2020 amendments retroactively. *Compare* A5991, § 3 (2019–20) (as introduced), *with* A5991, § 4 (2019–20) (as enacted); *cf. CFCU Cmty. Credit Union v. Hayward*, 552 F.3d 253, 264 (2d Cir. 2009) (finding legislators' decision to exclude anti-retroactivity language "suggests an intent to apply the law" retroactively). Further, the amendments require an award of attorney's fees to prevailing defendants in any SLAPP "commenced ***or continued***" without a substantial basis in law following the effective date of the amendments. N.Y. Civ. Rights Law § 70-a(1) (emphasis added); *see also Reus v. ETC Hous. Corp*., 72 Misc. 3d 479, 485 n.* (Sup. Ct. Clinton Cnty. 2021) (applying amendments retroactively because "plaintiffs have continued this action to date").

[4] On February 10, 2022, this Court granted Kurland's motion to strike Case No. 2021-03169 from Defendant's Notice of Appeal. Accordingly, this brief addresses only Case No. 2021-02776.

Amici urge this Court to affirm that, as speech concerning an issue of public interest, the Review is subject to the amended anti-SLAPP law. Amici further urge this Court to reverse the portion of the lower court's decision denying Defendants' request for an award of attorney's fees and costs.[5] First, as discussed in detail below, issues of public interest under the amended anti-SLAPP law are to be construed broadly. And employee speech concerning workplace experiences and employers' business practices—like the Review—falls squarely within the broad range of speech protected under the law. Second, the plain text of the amended anti-SLAPP law makes clear that fee-shifting is mandatory when a defendant prevails on a motion to dismiss or motion for summary judgment under New York's anti-SLAPP law, as amended—both analyses turn on the same applicable standard: whether the action is substantially baseless. The amendments' legislative history, including the bill jacket and sponsor memorandum, evidences the Legislature's intent to enact a mandatory fee-shifting provision to ensure greater protections for constitutionally protected speech in connection with matters of public interest. Indeed, mandatory fee-shifting is integral to an effective anti-SLAPP regime: it deters plaintiffs from bringing meritless speech-chilling lawsuits

[5] The applicable standard of review is *de novo*, as the questions of what constitutes an issue of public interest and when fee-shifting is required are purely questions of law, involving statutory interpretation. *See, e.g.*, *Nat'l Energy Marketers Ass'n v. New York State Pub. Serv. Comm'n*, 33 N.Y.3d 336, 347 n.5 (2019).

and protects defendants from bearing the costs of exercising the right to free speech. Moreover, strong anti-SLAPP protections, including mandatory fee-shifting provisions, are essential to protecting the news media's ability to inform the public about wrongdoing and to shine a light on abuses of power.

ARGUMENT

I. The amended anti-SLAPP law defines "issue of public interest" in a broad, speech-protective manner that encompasses the speech at issue in the Review.

New York's amended anti-SLAPP law applies to cases involving "any communication in a place open to the public or a public forum in connection with an issue of public interest." N.Y. Civ. Rights Law § 76-a(1)(a)(1). Here, the Review at issue unquestionably meets this standard.

A. New York's amended anti-SLAPP law broadly protects free speech on issues of public interest.

SLAPPs are "characterized as having little legal merit but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." *Mable Assets, LLC v. Rachmanov*, 192 A.D.3d 998, 999–1000 (2d Dep't 2021) (quoting *600 W. 115th St. Corp. v. Von Gutfeld*, 80 N.Y.2d 130, 137 n.1 (1992)). "Short of a gun to the head, a greater threat to First Amendment expression" than SLAPPs "can scarcely be imagined." *Gordon v. Marrone*, 155 Misc. 2d 726, 736 (Sup. Ct. Westchester Cnty. 1992), *aff'd*, 202 A.D.2d 104 (2d Dep't 1994); *see also Ernst v.*

Carrigan, 814 F.3d 116, 117 (2d Cir. 2016) (describing SLAPPs as suits "brought primarily to chill the valid exercise of a defendant's right to free speech").

In response to this threat, in 1992, New York enacted one of the nation's first anti-SLAPP laws. 1992 N.Y. Sess. Laws ch. 767 (A4299) (McKinney). New York's original anti-SLAPP law aimed to "provide the utmost protection for the free exercise of speech, petition and association rights" by protecting citizens from lawsuits arising out of public participation. L. 1992, ch. 767, § 1. Though trendsetting, the scope of the law was narrow, limiting the definition of "public participation" to applications for public permits or similar government entitlements. L. 1992, ch. 767, § 3. Many courts interpreted the law even more narrowly. *See, e.g.*, *Hariri v. Amper*, 51 A.D.3d 146, 151 (1st Dep't 2008). The law gave courts discretion as to whether to award attorney's fees and costs to prevailing defendants, and few did. *See* L. 1992, ch. 767, § 2; S52A Sponsor Mem. (July 22, 2020); *West Branch Conservation Ass'n v. Planning Bd.*, 222 A.D.2d 513 (2d Dep't 1995). Thus, despite the law's laudable aims, few defendants received the benefit of its protections.

Recognizing the need to amend the anti-SLAPP law to address its shortcomings and better achieve its speech-protective goals, in 2020, the Legislature expanded the definition of public participation to include "any communication in a place open to the public or a public forum in connection with

an issue of public interest" and "any other lawful conduct in furtherance of the exercise of the constitutional right[s]" of free speech or petition. N.Y. Civ. Rights Law § 76-a(1)(a)(1)–(2); *see also* S52A Sponsor Mem. (July 22, 2020); L. 2020, ch. 250, Bill Jacket at 5–6 (Letter of Assemblywoman Helene E. Weinstein) (hereinafter "Weinstein Sponsor Letter"). When an action arises out of a defendant's public participation, a motion to dismiss it "shall be granted" unless the plaintiff can show "that the cause of action has a substantial basis in law." N.Y. C.P.L.R. 3211(g). The law, as amended, sets a high bar for this showing: the plaintiff must establish "by clear and convincing evidence" that defendant made the statement knowing it was false or "with reckless disregard" for its falsity—that is, with actual malice. N.Y. Civ. Rights Law § 76-a(2). If the defendant prevails on this motion to dismiss (or a motion for summary judgment), the defendant is entitled to an award of attorney's fees and costs, as discussed below.

Turning first to the scope of speech protected by the amended anti-SLAPP law, the Legislature specified that "'[p]ublic interest' shall be construed broadly, and shall mean any subject other than a purely private matter." N.Y. Civ. Rights Law § 76-a(1)(d). Though few courts have interpreted this provision to date, there is an extensive body of New York case law addressing a nearly identical issue in the defamation context: whether speech involves a matter of "public concern," and thus receives heightened protections, or is of "purely private concern." *Albert v.*

Loksen, 239 F.3d 256, 270 (2d Cir. 2001) (citation omitted); *see also Chapadeau v. Utica Observer-Dispatch, Inc*., 38 N.Y.2d 196, 199–200 (1975) (setting higher "gross irresponsibility" standard when allegedly defamatory statements address matters of public concern); *Lindberg v. Dow Jones & Co.*, No. 20-CV-8231 (LAK), 2021 WL 3605621, at *7 (S.D.N.Y. Aug. 11, 2021) (noting paucity of anti-SLAPP decisions).

Courts interpreting New York's amended anti-SLAPP law have applied this common-law defamation precedent in assessing whether speech concerns an issue of public interest. *See Lindberg*, 2021 WL 3605621, at *7; *Coleman v. Grand*, 523 F. Supp. 3d 244, 257–58 (E.D.N.Y. 2021); *Reus*, 72 Misc. 3d at 485–86. This reasoning is sound, given that the Legislature, in using "materially [the] same language" found in New York defamation cases, was presumptively "aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1762 (2018); *see also Chapadeau*, 38 N.Y.2d at 199; N.Y. Civ. Rights Law § 76-a(1)(d); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 322 (2012) ("If a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort, . . . they are to be understood according to that construction."). Thus, because the anti-

SLAPP amendments imported the well-settled "public" and "purely private" language from New York defamation law, those cases are instructive here.

In defamation law, New York courts have given an "extremely broad interpretation" to speech of "public concern," *Albert*, 239 F.3d at 269, that sweeps in any speech "reasonably related to matters warranting public exposition," *Chapadeau*, 38 N.Y.2d at 199. Personal narratives fit into this category "so long as some theme of legitimate public concern can reasonably be drawn from their experience." *Huggins v. Moore*, 94 N.Y.2d 296, 303 (1999). It is "extremely rare" for courts to label speech a matter of purely private concern. *Albert*, 239 F.3d at 269; *cf. Huggins*, 94 N.Y.2d at 302–03 (speech that "falls into the realm of mere gossip and prurient interest" or is "directed only to a limited, private audience" is of purely private concern (citations and internal quotation marks omitted)). In undertaking this analysis, courts consider the statements' "content, form, and context." *Huggins*, 94 N.Y.2d at 302 (citation omitted).

B. The Review concerns an issue of public interest and warrants anti-SLAPP protection.

Here, as the lower court correctly held, the Review concerns an issue of public interest.[6] The Review's content, form, and context make this clear. The

[6] Specifically, the lower court held, "[i]f the elements of a public petition and participation claim are interpreted liberally, the subject posting is a 'communication' 'in a place open to the public,' 'in connection with an issue of public interest.'" A-10. The lower court was indeed required to interpret "issue of public interest" liberally. *See* N.Y. Civ. Rights Law § 76-a(1)(d) ("'Public interest' shall be construed broadly . . . ."); *see also* N.Y. Stat. § 321 (McKinney) ("Generally,

Review was posted on Glassdoor, a well-known online resource for millions of jobseekers researching potential employers. *See About Us*, Glassdoor, https://www.glassdoor.com/about-us ("Built on the foundation of increasing workplace transparency, Glassdoor offers insights into the employee experience powered by millions of company ratings and reviews . . . ."). [7] In Glassdoor reviews, employees describe pros and cons of working for their current or former companies, offer "advice to management," provide a one-to-five rating, and state whether they recommend working there. Employers can respond to reviews publicly. *See How Does Glassdoor Work?*, Glassdoor, https://www.glassdoor.com/employers/how-it-works; A-54 (Glassdoor inviting plaintiff to "provide an employer response").

The Review was publicly accessible and aimed at informing others about Kurland. It warned prospective employees that "[t]his place looks good on paper

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remedial statutes are liberally construed to carry out the reforms intended and to promote justice."). Nor is this a borderline case—employee reviews are of clear public interest to jobseekers and the public, as discussed below.

[7] Glassdoor—a website with millions of users, accessible by anyone with an Internet connection—is indisputably a public forum under anti-SLAPP law. *See id.*; *Goldman v. Reddington*, No. 18-CV-3662 (RPK) (ARL), 2021 WL 4099462, at *4 (E.D.N.Y. Sept. 9, 2021) (Facebook and LinkedIn are public fora); *GOLO, LLC v. Higher Health Network, LLC*, No. 18-CV-2434 (GPC) (MSB), 2019 WL 446251, at *15 (S.D. Cal. Feb. 5, 2019) ("Product reviews on a website constitute 'public forums[.]'"); *Summit Bank v. Rogers*, 206 Cal. App. 4th 669, 693 (2012) (holding, in anti-SLAPP motion brought by former employee sued over Craigslist post about employer, "[w]ithout doubt, Internet message boards are places 'open to the public or a public forum'"); *Wong v. Jing*, 189 Cal. App. 4th 1354, 1366 (2010) (publicly accessible websites, including Yelp, are public forums).

but please STAY AWAY" and "[d]on't waste your time because you will be looking for a new job in a month." A-63. It provides supporting observations, such as "[a]verage employees only stay about 3-6 months, which should be your first indication that this is not a good workplace," and that "[y]ou will often be expected to stay into all hours of the night." *Id.* Under the "Advice to Management" heading, it advises Kurland to, "[c]onsider why you have a revolving door of employees." *Id.* And, although noting that "you will meet other hardworking and kindhearted employees," the Review ultimately concludes that it "Doesn't Recommend" the firm and rates it a 1 out of 5. A-62.

Courts faced with similar speech by employees warning others of workplace conditions and business practices have held that such speech is of public interest. *See, e.g.*, *Henley v. Jacobs*, No. 18-CV-2244 (SBA), 2019 WL 8333524, at *10 (N.D. Cal. Aug. 2, 2019) (former Uber employee's email to management regarding allegedly "improper practices . . . clearly presents issues 'in which the public is interested'" (citation omitted)); *McNally v. Yarnall*, 764 F. Supp. 838, 847 (S.D.N.Y. 1991) (speech of interest to specialized industry, such as art dealers and scholars, is of public concern); *Gwire v. Blumberg*, No. A134931, 2013 WL 5493399, at *6 (Cal. Ct. App. Oct. 3, 2013) ("[A]ccurate information about [plaintiff] or any lawyer is of more than trivial interest to a potentially large segment of society." (citation omitted)); *Summit Bank*, 206 Cal. App. 4th at 694

(former bank employee's online posts about bank's financial stability and management decisions were of public interest); *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1033 (2008) (former employee's statements to magazine that employer "wanted him to 'work round the clock,'" and "'keeps an eye on his workers like a hawk'" were of public interest); *Profile of the Legal Profession*, Am. Bar Ass'n 2 (July 2020), https://perma.cc/8AY6-JQ6L (counting 117,000 lawyers in New York City).[8] Similarly, here, the Review includes commentary on an employee's negative work experiences, with broader implications. By commenting on Kurland's management practices, pay, hours, and work environment, the Review covers key areas of concern to the large community of legal jobseekers, furthering the purposes of New York's anti-SLAPP law. Providing anti-SLAPP protection for employee speech like the Review is essential to ensuring that varied viewpoints are heard, discourse is not skewed toward employer-approved commentary, and businesses can grow from critical feedback.

[8] Courts have, relatedly, held that statements warning against using businesses' products and services—including attorneys' services—are of public interest and aid consumers in making informed choices. *See, e.g.*, *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 262 (9th Cir. 2013) ("[S]tatements warning consumers of fraudulent or deceptive business practices constitute a topic of widespread public interest[.]"); *Flamm v. Am. Ass'n of Univ. Women*, 201 F.3d 144, 150 (2d Cir. 2000) (statements regarding attorney's allegedly unethical solicitation practices); *Kesner*, 2022 WL 718840, at *10 (statements accusing attorney "of participating or aiding in financial fraud"); *Lindberg*, 2021 WL 3605621, at *8 ("reports of improper business practices"); *Gwire*, 2013 WL 5493399, at *6 (former client's statements about attorney that "told the story of his interactions . . . and impliedly warned consumers not to do business with" attorney); *Wong*, 189 Cal. App. 4th at 1366; *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 899–900 (2004) (negative reviews aimed at "warning [others] not to use plaintiffs' services" and "aid[ing] consumers choosing among" alternatives).

Nor are individuals' narratives about their work experiences solely of interest to prospective employees. Employment-related commentary often garners public attention, driving media coverage of workplaces that, in turn, sparks social movements and workplace reforms. *See, e.g.*, Jodi Kantor, Karen Weise & Grace Ashford, *The Amazon That Customers Don't See*, N.Y. Times (June 15, 2021), https://perma.cc/U5PS-URUY; Tatiana Siegel, *"Everyone Just Knows He's an Absolute Monster": Scott Rudin's Ex-Staffers Speak Out on Abusive Behavior*, Hollywood Rep. (Apr. 7, 2021), https://perma.cc/52BU-N6LV; Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, New Yorker (Oct. 10, 2017), https://perma.cc/KPA3-MS2Q.

This is true, too, of the legal profession, with reporting about employees' experiences shedding light on industry-wide issues such as overwork, sexual harassment, and discrimination. *See, e.g.*, Avalon Zoppo, *On Eve of Mediation, Jones Day Settles Discrimination Claims With Former Paralegal*, Nat'l L.J. (Mar. 10, 2022), https://perma.cc/H9DG-46FC; Madison Alder, *Clerk Who Said Appeals Judge Harassed Her Blasts 'Inaction'*, Bloomberg L. (June 22, 2021), https://perma.cc/6GAQ-4KX6; Jeff John Roberts, *'Best Three Months of My Life': Overworked Lawyers Are Actually Loving Lockdown*, Fortune (May 30, 2020), https://perma.cc/WA7Z-PAWB; Meredith Mandell & Hilary Rosenthal, *Proskauer, Law Firm Known for Handling High-Profile Sex Harassment Cases, Is*

Accused Itself, NBC News (May 15, 2018), https://perma.cc/2TGT-EML9. Without anti-SLAPP protections for the statements that form the backbone of this coverage, sources will fear speaking out, news organizations—particularly smaller, local outlets—will be chilled from reporting on important workplace issues, and the public will lose access to valuable information.

II. New York's anti-SLAPP law mandates an award of attorney's fees and costs to prevailing defendants.

In addition to adding protections for statements on issues of public interest, the anti-SLAPP amendments instituted another key reform: mandating awards of attorney's fees and costs for prevailing defendants. The lower court erred in declining to award attorney's fees to Defendants in this case, and amici urge this Court to reverse that portion of the decision below.

A. The plain text of New York's anti-SLAPP law confirms that fee-shifting is mandatory, not discretionary.

Among their reforms to New York's original anti-SLAPP law, the amendments' drafters rewrote the law's provision stating that "costs and attorney's fees *may* be recovered," L. 1992, ch. 767, § 2 (emphasis added), to affirmatively state that "costs and attorney's fees *shall* be recovered":

> A defendant in an action involving public petition and participation, as defined in [N.Y. Civ. Rights Law § 76-a(1)], may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

> (a) costs and attorney's fees *shall* be recovered upon a demonstration, including an adjudication pursuant to [CPLR 3211(g), regarding motions to dismiss] or [CPLR 3212(h), regarding motions for summary judgment], that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law[.]

N.Y. Civ. Rights Law § 70-a(1) (emphasis added).

Thus, the statute's plain language makes clear that a fee award is mandatory when a defendant prevails on a motion to dismiss or motion for summary judgment under the anti-SLAPP law. *See Walsh v. New York State Comptroller*, 34 N.Y.3d 520, 524 (2019) ("We have long held that the statutory text is the clearest indicator of legislative intent, and that a court should construe unambiguous language to give effect to its plain meaning." (citations and internal quotation marks omitted)).

Reading the fee-shifting provision alongside the rest of the law underscores this legislative intent, as the standards governing fee-shifting, motions to dismiss, and motions for summary judgment are essentially the same. Each one requires the plaintiff to prove the action has a substantial legal basis. The fee-shifting provision provides for an award of attorney's fees to a prevailing defendant "upon a demonstration" that an "action involving public petition and participation was commenced or continued *without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law*." N.Y. Civ. Rights Law § 70-a(1)(a) (emphasis added). Similarly,

a motion to dismiss under the anti-SLAPP law "shall be granted unless the party responding to the motion demonstrates that the cause of action has *a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law*." N.Y. C.P.L.R. 3211(g) (emphasis added). Likewise, a motion for summary judgment under the law "shall be granted unless the party responding to the motion demonstrates that the action, claim, cross claim or counterclaim has *a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law*." N.Y. C.P.L.R. 3212(h) (emphasis added). Therefore, if a court grants a motion to dismiss or for summary judgment under the anti-SLAPP law, it has necessarily decided that the action is substantially baseless. The requisite "demonstration" has been made, and the court "shall" award defendants their fees and costs. N.Y. Civ. Rights Law § 70-a(1). The SLAPP determination and the fees determination go hand-in-hand under New York's law, as amended.

Here, the lower court erred in concluding that it had discretion to deny Defendants' requests for attorney's fees and costs. Defendants brought a motion to dismiss pursuant to N.Y. C.P.L.R. 3211(g). The lower court applied that law, found Kurland's claims were substantially baseless, and dismissed them. Consequently, under N.Y. Civ. Rights Law § 70-a(1), Defendants were entitled to

recover their attorney's fees and costs.[9] Instead, the lower court found it had discretion to deny that motion, and required Defendants to make a separate showing of frivolity—a showing that has no basis under the anti-SLAPP law. Again, the fee-shifting provision's required "demonstration" that the action lacks "a substantial basis in fact and law" is the same standard applicable to granting an anti-SLAPP motion to dismiss—thus, if the action is substantially baseless, the defendant is entitled to both dismissal and fees. *See* N.Y. Civ. Rights Law § 70-a(1); N.Y. C.P.L.R. 3211(g); N.Y. C.P.L.R. 3212(h). The lower court erred in holding otherwise.

B. The Legislature clearly intended the fee-shifting provision to be mandatory.

The anti-SLAPP amendments' legislative history—including the sponsor memorandum, bill jacket, and floor vote transcript—confirms the law's clear textual mandate that courts must award fees and costs to prevailing SLAPP defendants. *Cf. Matter of OnBank & Tr. Co.*, 90 N.Y.2d 725, 731 (1997)

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[9] The lower court's misreading of the amendments' plain text is evidenced by its omission of the critically important word "shall" when quoting the language of the fee-shifting provision. A-10. The lower court quoted the provision as follows:

> "A defendant in an action involving public petition and participation, . . . may maintain [a claim] to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that . . . the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law[.]"

Id. (quoting N.Y. Civ. Rights Law § 70-a(1)).

(assessing legislative history based on sponsor memorandum and bill jacket); *Laertes Solar, LLC v. Assessor of Town of Harford*, 182 A.D.3d 826, 827–28 (3d Dep't 2020) (same, and finding legislative history confirmed that statute's use of "shall" created mandatory requirement).

In amending New York's anti-SLAPP law, the Legislature recognized that fee-shifting was essential to protect SLAPP defendants from the litigation costs of defending against meritless claims arising out of their free speech on matters of public interest. S52A Sponsor Mem. (July 22, 2020) (citing L. 1992, ch. 767, § 1); *see also* Weinstein Sponsor Letter (noting that "the enactment of mandatory attorney's fees in SLAPP actions for New York would be consistent with statutes enacted in a growing number of states").[10] Despite fee awards being "the principal remedy currently provided to victims of SLAPP suits in New York," the Legislature found that this remedy was "almost never actually imposed" under the old law, as courts had "failed to use their discretionary power to award costs and

[10] California's anti-SLAPP law, which served as a particular model for New York's amendments, states that the "prevailing defendant on a special motion to strike *shall* be entitled to recover [that defendant's] attorney's fees and costs." Cal. Civ. Proc. Code § 425.16(c)(1) (emphasis added). Numerous other states' anti-SLAPP laws contain similar mandatory fee-shifting provisions. *See, e.g.*, Colo. Rev. Stat. § 13-20-1101(4)(a); Conn. Gen. Stat. Ann. 52-196a(f)(1); Fla. Stat. § 768.295(4); Ga. Code Ann. § 9-11-11.1(b.1); 735 Ill. Comp. Stat. Ann. 110/25; Ind. Code Ann. § 34-7-7-7; Kan. Stat. Ann. § 60-5320(g); La. Code Civ. Proc. Ann. art. 971(B); Nev. Rev. Stat. Ann. § 41.670(1)(a); Or. Rev. Stat. Ann. § 31.152(3); R.I. Gen. Laws § 9-33-2(d); Tenn. Code Ann. § 20-17-107(a)(1); Tex. Civ. Prac. & Rem. Code § 27.009(a)(1); Vt. Stat. Ann. tit. 12, § 1041(f)(1); Wash. Rev. Code § 4.105.090(1).

attorney's fees to a defendant found to have been victimized by actions intended only to chill free speech." S52A Sponsor Mem. (July 22, 2020). Accordingly, the Legislature amended the text of the fee-shifting provision to provide that courts "shall," not "may," award fees to prevailing defendants. L. 2020, ch. 250, § 1.

The Assembly floor vote transcript further shows legislators' intent that the amendments mandate fee-shifting. Assemblyman Andrew Goodell, the lone legislator commenting on the bill, voiced his opposition to it based, in part, on the grounds that the fee-shifting provision "doesn't simply allow" but "mandates the payment of costs and attorney's fees on a SLAPP lawsuit." A5991-A Floor Vote Tr. at 46 (July 21, 2020).[11] Later, in its press release announcing passage of the amendments, the Legislature noted that the amended law would "require that victims of SLAPP lawsuits receive an award of costs and attorney's fees, thus strongly discouraging those who attempt to chill free speech." Press Release, N.Y. State Legislature, Senate and Assembly Majorities Advance Anti-SLAPP Legislation to Protect Free Speech (July 22, 2020), https://perma.cc/LZ2P-8A3R.

The bill next moved to the Governor's desk for signature, accompanied by its bill jacket, which contained numerous supporting letters from legislators, media organizations, and advocacy groups. Many letters highlighted that the

[11] The unaltered bill passed the Assembly by a vote of 116-26 and the Senate by 57-3. L. 2020, ch. 250, Bill Jacket at 47.

amendments would mandate fee-shifting. *See, e.g.*, L. 2020, ch. 250, Bill Jacket at 13 (Letter of NYCLU) ("The bill would make the award mandatory," which is "a crucial deterrent" to SLAPP plaintiffs), 26 (Letter of N.Y. City Bar) ("Consistent with the intent of the Legislature to broaden the application of the statute, the Committee understands this provision as requiring an award of fees upon the granting of a motion to dismiss pursuant to CPLR 3211."), 35 (Letter of N.Y. State Bar Ass'n, Comm. on Media Law) (praising mandatory fee-shifting as "ensur[ing] a level playing field" and noting that "both the dismissal and fee decisions will now turn on the same 'substantial basis' standard, which will serve to streamline the court's analysis of SLAPP suits"). With these letters in hand, the Governor signed the bill into law. New York courts have since awarded mandatory attorney's fees to prevailing SLAPP defendants in suits governed by the amended law. *See, e.g.*, *Harris v. Am. Acct. Ass'n*, No. 20-CV-1057 (MAD) (ATB), 2021 WL 5505515, at *13–15 (N.D.N.Y. Nov. 24, 2021) ("Defendants are entitled to an award of costs and attorney's fees under New York's anti-SLAPP statute."); *Reus*, 72 Misc. 3d at 488 ("Owing simply to the exercise of their constitutional rights, defendants have been forced to suffer this litigation. Under the circumstances, the award of costs and attorney fees is mandatory.").

The legislative history confirms the Legislature's intent to increase protections for constitutionally protected speech through mandatory fee-shifting.

The lower court's holding directly undermines this legislative mandate and, if allowed to stand, would threaten to deny New Yorkers a vital protection afforded to SLAPP defendants in other jurisdictions—the very problem the Legislature sought to remedy in amending the law. *See* Press Release, Sen. Brad Hoylman, Free Speech 'SLAPP's Back: Governor Signs Hoylman/Weinstein Legislation to Crack Down on Meritless Lawsuits Used to Silence Critics (Nov. 10, 2020), https://perma.cc/4TUJ-8GYM (describing New York's amended anti-SLAPP law as "one of the strongest anti-SLAPP suit laws in the nation").

C. Mandatory fee-shifting is essential to achieving the anti-SLAPP statute's goal of protecting free speech on issues of public interest.

The significance of this case extends far beyond the individual actors involved. As the Legislature recognized, mandatory fee-shifting is an essential component of any anti-SLAPP law capable of "provid[ing] the utmost protection for" free speech and public participation. L. 1992, ch. 767, § 1. SLAPP defendants may quickly find that free speech is no longer free when they are forced to spend time and resources defending against claims that, while meritless, are costly to resolve. For many, the most viable option may be to settle the case, retract the allegedly defamatory statement, and remain silent in the future. Bystanders, afraid of facing protracted, expensive litigation of their own, may self-censor too. The public is then deprived of these contributions to the marketplace of ideas. Many have experienced this dangerous phenomenon, including survivors

of sexual violence, consumers' and tenants' rights advocates, individuals commenting on social media, and journalists.

As the anti-SLAPP amendments' sponsors noted, news media organizations are facing a growing number of SLAPPs from politicians and others who dislike their reporting, regardless of its accuracy. For example, in its letter to the Legislature in support of the amendments, New York-based WarnerMedia described three meritless defamation suits faced by its businesses: one against CNN filed by Donald Trump's campaign over a CNN.com op-ed; another against CNN from Representative Devin Nunes related to its coverage of the Trump impeachment proceedings; and one against HBO's "Last Week Tonight with John Oliver" filed by the subject of a feature on coal industry safety issues. L. 2020, ch. 250, Bill Jacket at 14 (Letter of WarnerMedia).

The targets of these baseless suits are not limited to large national media organizations. One local TV station in Wisconsin was hit with a lawsuit from the Trump campaign after it aired an ad criticizing the then-President's COVID-19 policies. *See* Ted Johnson, *Donald Trump's Campaign Sues Wisconsin TV Station for Continuing to Air Super PAC Ad Attacking His Coronavirus Response*, Deadline (Apr. 13, 2020), https://perma.cc/GU5V-VRMM. The suit sparked concerns that the campaign was targeting smaller stations less able to afford to fight back and hoping to intimidate other stations into not airing critical ads. *Id.*

Similarly, a Florida TV news station spent two years defending against a defamation suit by a state attorney who said its broadcast about his trial record "hurt [his] feelings." *NBC2 Wins Judgment in Former State Attorney Stephen Russell Defamation Case*, NBC2 (July 22, 2019), https://perma.cc/Q57Q-4XY9. And, in Iowa, a small-town newspaper faced a defamation suit from a local police officer after it truthfully reported on his sexual relationships with teenage girls. *See* Meagan Flynn, *A Small-Town Iowa Newspaper Brought Down a Cop. His Failed Lawsuit Has Now Put the Paper in Financial Peril.*, Wash. Post (Oct. 10, 2019), https://perma.cc/W7US-DPQ6.

These actions were eventually dismissed on the merits, but not before the defendants incurred significant litigation costs. In states without an anti-SLAPP law, such as Iowa, defendants are often unable to recoup these costs. Indeed, the Iowa newspaper, family-owned for nearly a century, sought $140,000 in crowdfunding to avoid having to sell the paper to pay its legal costs. *Id.*

Other organizations, fearing similarly pricy and protracted court battles, have refrained from publishing critical commentary. *See, e.g.*, Adam Liptak, *Fearing Trump, Bar Association Stifles Report Calling Him a 'Libel Bully'*, N.Y. Times (Oct. 24, 2016), https://perma.cc/378G-GZYC; D. Victoria Baranetsky & Alexandra Gutierrez, *OP-ED: What a Costly Lawsuit Against Investigative Reporting Looks Like*, Columbia Journalism Rev. (Mar. 30, 2021),

https://perma.cc/NB92-ZXTW (describing media organization's "exceptionally costly" five-year effort to defeat SLAPP filed by charity it reported on, and commenting that "other news organizations might look at this lawsuit and decide that reporting on powerful or deep-pocketed organizations isn't worth the risk"). When journalists and media organizations are forced to spend time and money defending against SLAPPs, reporting and newsgathering suffers, scarce financial resources are diverted from newsrooms to legal fees, and readers lose access to valuable content.

Where, however, defendants can avail themselves of strong anti-SLAPP protections, including mandatory fee-shifting, these threats are minimized. Defendants are less likely to face SLAPPs when would-be plaintiffs know they will have to pay defendants' legal bills if they cannot prevail. When SLAPPs do occur, the possibility of recouping fees enables defendants to obtain counsel. This is particularly essential for small news outlets and freelance journalists who often have few resources to muster a legal defense, even against meritless claims. *See* Julio Sharp-Wasserman, *New York's Anti-SLAPP Law Is Only a Slap on the Wrist. Will New Legislation Make It Sting?*, 91 N.Y. St. Bar Ass'n J. 20, 21 (Dec. 2019), https://perma.cc/N58Q-DEYY (noting that "[t]he promise of fee-shifting allowed [attorneys] to take" cases of defendants unable to afford counsel, eliminating "the inaccessibility of anti-SLAPP protections to people of modest means"). Critically

for journalists and media organizations, mandatory fee-shifting enables them to publish robust and accurate journalism, and to hold public officials and others accountable, without fear of being made to bear the costs of their subjects' dissatisfaction. Money spared on attorney's fees can be reinvested in mission-critical newsgathering and reporting work.

On the other side of the fee-shifting equation are SLAPP plaintiffs. If plaintiffs are not required to pay the legal expenses of prevailing defendants, they may learn the worrisome lesson that they can effectively silence, intimidate, and bankrupt critics without repercussions. Along the way, they can generate publicity and scare others into staying quiet. *See* Editorial Board, *New York's Chance to Combat Frivolous Lawsuits*, N.Y. Times (Nov. 4, 2020), https://perma.cc/K66A-CVDR (reporting on Donald Trump's failed defamation lawsuit against an author who questioned his purported net worth and quoting Trump as stating "I spent a couple of bucks on legal fees and they spent a whole lot more. I did it to make his life miserable, which I'm happy about."). As the anti-SLAPP amendments' sponsors recognized, "the best remedy for this problem is to require those who bring these lawsuits to pay the legal fees and costs of those who they have wrongfully sued." *See* Press Release, N.Y. State Legislature, *supra*; *see also Harris*, 2021 WL 5505515, at *15 (awarding fees to prevailing defendants in SLAPP where plaintiff had "attempted use of the threat of crippling legal fees to

intimidate the Defendant Authors into complying with his demands"). As a result, potential SLAPP plaintiffs are disincentivized from filing such suits going forward.[12]

Mandatory fee-shifting is essential to ensuring that New York's amended anti-SLAPP law achieves its robust speech-protective goals—a principle which the Legislature recognized in passing the 2020 amendments, and which amici urge this Court to recognize now.

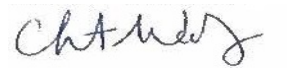
CONCLUSION

For the foregoing reasons, amici urge this Court to hold that the challenged speech concerned an issue of public interest, and that the lower court erred in declining to grant Defendants' motion for attorney's fees and costs.

[12] Mandatory fee-shifting also benefits the judicial system. By clogging the courts with meritless defamation and related claims, SLAPP plaintiffs waste judicial resources and co-opt the courts into their harmful efforts to chill speech. Mandating fee awards also streamlines courts' adjudication of SLAPPs. When a plaintiff cannot show a substantial basis for its claims, the court's path is clear: it must dismiss the case and award attorney's fees and costs. No further assessment of plaintiff's motives is needed on this score.

Dated: April 1, 2022
New York, New York

Respectfully submitted,

By: 

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APPELLATE DIVISION – FIRST DEPARTMENT

PRINTING SPECIFICATIONS STATEMENT

It is hereby certified, pursuant to 22 NYCRR 1250.8(j) that, according to the word count of the word-processing system used to prepare this brief, the total word count for all printed text in the body of the brief exclusive of the material omitted under 22 NYCRR 1250.8(f)(2) is 6,993 words.

This brief was prepared on a computer using:

- Microsoft Word (Version 16.53) for Microsoft 365
- Times New Roman, a proportionally spaced font
- 14-point size font

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **IAS MOTION 37EFM**

Justice

----------X

KURLAND & ASSOCIATES, P.C.,

Plaintiff,

- v -

GLASSDOOR, INC.,MICHALINA SHUTER, JANE DOE, JOHN DOE

Defendant.

----------X

INDEX NO. 162083/2018

MOTION DATE 04/02/2021, 04/14/2021, 04/30/2021, 05/12/2021

MOTION SEQ. NO. 008 009 010 011

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 172, 173, 174, 175, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 212, 213, 214, 225

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 226, 227, 228, 229, 230, 231, 232, 233, 234, 245, 246, 247, 248, 251, 252, 253

were read on this motion to/for RENEWAL.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 249, 250, 254, 259, 260, 261, 262, 280, 281, 282, 283, 284, 285

were read on this motion to/for ATTORNEY - FEES.

During the undersigned's combined total of 30 years in the courts (12 as a law clerk; 18-and-counting as a judge), a more unfortunate case has never presented itself. The negative review of her brief experiences at a small law firm that an employee posted on a website has led to three years of litigation; 285-and-counting documents filed on the NYSCEF system (some short but many long); a fleeting trip to federal court; at least one appeal to the Appellate Division; four complaints and at least as many motions to dismiss; and enormous amounts of time (and billing) litigating and attempting to settle this case, which has become a "Hatfield-McCoy Feud" minus the murders.

And all for nothing. Meanwhile, the earth is frying; buildings are collapsing; the Middle East is in flames; the COVID-19 pandemic is raging; and almost half the country does not accept the legitimacy of the current president. The time has come to end this legal bloodletting.

Working for plaintiff, Kurland & Associates, P.C. d/b/a The Kurland Group, disappointed Michalina Shuter, and she said so in no uncertain terms in a posting on defendant Glassdoor Inc.'s website. Plaintiff asked Glassdoor to remove the posting; Glassdoor refused. Plaintiff commenced the instant case, asserting causes of action for, at various times in various iterations, breach of contract; negligence; defamation (per se); intentional interference with contractual relations; deceptive business practices; violations of General Business Law ("GBL") § 249; and there may have been a few others (the details do not matter).

The contract claim is, frankly, absurd. Whether or not Glassdoor followed its own rules, it did not contract with plaintiff (it is that simple). The negligence claim is unavailing because Glassdoor owed no duty, the first requirement of a negligence claim, to plaintiff. The intentional interference claim fails because there was no business relationship with which to interfere. The GBL claim fails because people consulting a website are not "consumers" as the meaning of that word has developed in decades of § 349 litigation.

Furthermore, all claims fail for three further reasons. First, as Glassdoor vociferously argues, § 230 of the cloyingly (or Puritanically) named Communications Decency Act immunizes the subject posting. The law treats websites like bulletin boards; the person who administers the bulletin board is not responsible for the postings. The exception is the administrator who adds comments or editorializes. Here, plaintiff makes much ado about a "badge" that basically says that if you post something about plaintiff, plaintiff might sue you. This is obviously true, and truth is a complete defense to defamation claims. Second, viewed in context, the posting is all opinion, no facts. Ms. Shuter was letting off steam, and the reasonable objective reader would see that she was trying to make a point. Also, her statements fail to meet the "can they be proven true or false" test. Finally, after all the "how many angels can dance on the head of a pin?" debate, this Court is now convinced that plaintiff has not made out a claim for defamation per se that has not been proven incorrect by documentary evidence, namely, the offering letter to Ms. Shuter, with its $1,000 figure.

As Glassdoor convincingly claims in its CPLR 2221 motion to reargue, this Court erred when it considered plaintiff's principal's statements, during an oral argument, about the salaries that plaintiff paid at the time in issue: the statements were unsworn, and the complaint was not based on salary information. In sum, plaintiff sued over immunized opinions that, even if viewed as statements of fact, for all that appears were true.

Thus, this Court should have dismissed the Second Amended Complaint pursuant to New York's recent upgrading of its Anti-SLAPP ("Strategic Lawsuit Against Public Participation") Law, now codified in New York Civil Rights Law §§ 70-a and 76-a.

The "teeth" in this newly robust scheme is the possibility of mandatory attorney's fees. Section 70-a provides, in pertinent part, as follows:

> A defendant in an action involving public petition and participation, ... may maintain [a claim] to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that ...the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law; * * * other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights[.]

Section 76-a provides, in pertinent part, as follows:

> (a) An "action involving public petition and participation" is a claim based upon:
> (1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or
> (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, * * *
> (d) "Public interest" shall be construed broadly, and shall mean any subject other than a purely private matter.

This Court has long believed that legislatures should draft expansively and courts should interpret narrowly. One classic example of expansive drafting and expansive interpreting arose out of the Racketeer Influenced and Corrupt Organizations Act, known as "RICO," part of the federal Organized Crime Control Act of 1970. This was a Richard Nixon-era attempt to combat "organized crime," colloquially known as "the Mafia." In order to spread a wide net over an amorphous concatenation of clever, creative criminal combinations and conspiracies, the statute, with its private right of action and the possibility of severe penalties, covered two acts of "theft" or "securities fraud" within a ten-year period. Before you knew it, pleadings in garden variety financial disputes would include RICO claims as a matter of course. This led to time-consuming, expensive motions to dismiss. The wave of RICO litigation died down only when courts stopped focusing on the "wording" of the statute and started focusing on the "purpose" of the statute, which was to combat "organized crime," as indicated in its title, not to throw casually careless Wall Street executives into prison.

Here, the legislative history indicates that the purpose of the statute is to prevent deep-pockets from stifling free speech by suing ordinary members of the community who "speak out" on matters of important public interest. If the elements of a public petition and participation claim are interpreted liberally, the subject posting is a "communication" "in a place open to the public," "in connection with an issue of public interest." But this last element is a stretch. Whether or not plaintiff creates a positive work environment is hardly of the same moment as, say, whether a large construction project should go forward despite community opposition (one of the incubators of the SLAPP concept). An ounce of common sense indicates that plaintiff simply did not want Glassdoor to publish a post dissing the work environment at plaintiff's firm. Furthermore, this Court interprets "without a substantial basis in fact and law"

to equate, more or less, to the well-known "frivolous" standard. Plaintiff's lawsuit was ill-considered, but it was not made up out of whole cloth: there was a posting declaring damaging information about plaintiff's business.

In sum, the motion to reargue (Motion Seq. No. 008) is granted; upon reargument the Court dismisses whatever complaint is the current one (a matter of some dispute); Glassdoor's request for attorney's fees is denied; the subject posting can stay posted; all other requests for relief, including Glassdoor's request to stay the instant proceeding (Motion Seq. No. 009), are denied on the merits or as moot; the case is over; nobody won, but both sides can declare victory; and everybody can go about their personal and professional lives. The earth will continue to warm; buildings will continue to collapse; ancient hatreds in the Middle East will continue to flare; the COVID-19 pandemic will continue to kill; and Americans will continue to debate 2020 presidential election. But one unfortunate case in New York State Supreme Court will not continue. It is over.

The motion to stay (Motion Seq. No. 009) is denied solely as moot. Plaintiff's motion to reargue (Motion Seq. No. 010) and Glassdoor's motion for attorney's fees (Motion Seq. No. 011) are both denied for the reasons stated herein.

The Clerk is hereby directed to enter judgment denying and dismissing all claims, with considerable prejudice, and without, in the Court's discretion, costs and disbursements to any party.

6/28/2021
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

KURLAND & ASSOCIATES, P.C. d/b/a THE KURLAND GROUP, Plaintiff, v. GLASSDOOR, INC., MICHALINA SHUTER and JANE/JOHN DOE Defendants.	Index. No. 162083/2018 **NOTICE OF APPEAL**

PLEASE TAKE NOTICE Defendants Glassdoor, Inc., Michalina Shuter and Jane/John Doe hereby appeal to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from an Decision and Order of the Supreme Court, New York County, dated and entered on June 29, 2021 and attached hereto. Specifically, Defendants appeal the portion of the Court's Decision and Order failing to award mandatory attorney's fees, compensatory and punitive damages under New York Civil Rights Law §70-a and New York Civil Rights Law §76-a.

DATED: New York, New York
July 27, 2021

By: /s/ Michael T. Hensley
Michael T. Hensley, Esq.
17 State Street, 34th Floor
New York, New York 10004
(212) 425-9300
Attorneys for Defendants
Glassdoor, Inc., Michalina Shuter and
Jane/John Doe

To: Supreme Court of New York
County of New York
60 Centre Street, Room 161
New York, NY 10007

-and-

Yetta G. Kurland, Esq.
The Kurland Group
85 Broad Street, 28th Floor
New York, NY 10004

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

KURLAND & ASSOCIATES, P.C. d/b/a THE KURLAND GROUP

- against -

GLASSDOOR, INC., MICHALINA SHUTER and JANE/JOHN DOE

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☐ Business Relationships	☒ Commercial	☒ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☐ Statutory	☐ Taxation	☒ Torts

Appeal

Paper Appealed From (Check one only):

If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 06/28/2021	Entered: 06/29/2021
Judge (name in full): Arthur F. Engoron	Index No.: 162083/2018
Stage: ☐ Interlocutory ■ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ☐ Yes ■ No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Not Applicable

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Defendants submit this appeal of the Court's June 28, 2021 Decision and Order which granted Defendants Glassdoor and Jane/John Doe's Motion to Renew and Reargue and dismissed Plaintiff's action in its entirety but errenously denied Defendants' motion to award attorneys' fees, compensatory and punitive damages as mandated by New York Civil Rights Law §70-a and New York Civil Rights Law §76-a.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

The basis of Defendants' appeal is straightforward: 1) The Court erred when it granted Defendants Motion to Renew and Reargue and dismissed Plaintiff's action pursuant to CPLR 3211(g) and New York's Civil Rights Law §70-a and 76-a, which state that Plaintiff must proffer clear and convincing evidence that Plaintiff had a substantial basis for its defamation per se, breach of contract, negligence, unfair business practices and tortious intereference claims, but failed to award attorneys' fees, compensatory and punitive damages as required by New York Civil Rights Law §70-a and New York Civil Rights Law §76-a.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Kurland & Associates, P.C. d/b/a The Kurland Group	Plaintiff	Respondent
2	Glassdoor, Inc.	Defendant	Appellant
3	Michalina Shuter	Defendant	Appellant
4	Jane/John Doe	Defendant	Appellant
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Michael T. Hensley, Esq., Bressler Amery & Ross			
Address: 17 State Street, 34th Floor			
City: New York	State: New York	Zip: 10004	Telephone No: (212) 425-9300
E-mail Address: mhensley@bressler.com			
Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 3, and 4.			
Attorney/Firm Name: Yetta G. Kurland, Esq., The Kurland Group			
Address: 85 Broad Street, 28th Floor			
City: New York	State: New York	Zip: 10004	Telephone No: (212) 253-6911
E-mail Address: kurland@kurlandgroup.com			
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Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
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Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
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Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** IAS MOTION 37EFM

Justice

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INDEX NO. 162083/2018

MOTION DATE 04/02/2021, 04/14/2021, 04/30/2021, 05/12/2021

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> (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, * * *
> (d) "Public interest" shall be construed broadly, and shall mean any subject other than a purely private matter.

This Court has long believed that legislatures should draft expansively and courts should interpret narrowly. One classic example of expansive drafting and expansive interpreting arose out of the Racketeer Influenced and Corrupt Organizations Act, known as "RICO," part of the federal Organized Crime Control Act of 1970. This was a Richard Nixon-era attempt to combat "organized crime," colloquially known as "the Mafia." In order to spread a wide net over an amorphous concatenation of clever, creative criminal combinations and conspiracies, the statute, with its private right of action and the possibility of severe penalties, covered two acts of "theft" or "securities fraud" within a ten-year period. Before you knew it, pleadings in garden variety financial disputes would include RICO claims as a matter of course. This led to time-consuming, expensive motions to dismiss. The wave of RICO litigation died down only when courts stopped focusing on the "wording" of the statute and started focusing on the "purpose" of the statute, which was to combat "organized crime," as indicated in its title, not to throw casually careless Wall Street executives into prison.

Here, the legislative history indicates that the purpose of the statute is to prevent deep-pockets from stifling free speech by suing ordinary members of the community who "speak out" on matters of important public interest. If the elements of a public petition and participation claim are interpreted liberally, the subject posting is a "communication" "in a place open to the public," "in connection with an issue of public interest." But this last element is a stretch. Whether or not plaintiff creates a positive work environment is hardly of the same moment as, say, whether a large construction project should go forward despite community opposition (one of the incubators of the SLAPP concept). An ounce of common sense indicates that plaintiff simply did not want Glassdoor to publish a post dissing the work environment at plaintiff's firm. Furthermore, this Court interprets "without a substantial basis in fact and law"

to equate, more or less, to the well-known "frivolous" standard. Plaintiff's lawsuit was ill-considered, but it was not made up out of whole cloth: there was a posting declaring damaging information about plaintiff's business.

In sum, the motion to reargue (Motion Seq. No. 008) is granted; upon reargument the Court dismisses whatever complaint is the current one (a matter of some dispute); Glassdoor's request for attorney's fees is denied; the subject posting can stay posted; all other requests for relief, including Glassdoor's request to stay the instant proceeding (Motion Seq. No. 009), are denied on the merits or as moot; the case is over; nobody won, but both sides can declare victory; and everybody can go about their personal and professional lives. The earth will continue to warm; buildings will continue to collapse; ancient hatreds in the Middle East will continue to flare; the COVID-19 pandemic will continue to kill; and Americans will continue to debate 2020 presidential election. But one unfortunate case in New York State Supreme Court will not continue. It is over.

The motion to stay (Motion Seq. No. 009) is denied solely as moot. Plaintiff's motion to reargue (Motion Seq. No. 010) and Glassdoor's motion for attorney's fees (Motion Seq. No. 011) are both denied for the reasons stated herein.

The Clerk is hereby directed to enter judgment denying and dismissing all claims, with considerable prejudice, and without, in the Court's discretion, costs and disbursements to any party.

6/28/2021
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE