

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

LARRY C. JAMES, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	CASE NO. 2017 CV 00839
	:	
vs.	:	
	:	
DAVID HOFFMAN, <i>et al.</i> ,	:	Judge Timothy N. O’Connell
	:	
Defendants.	:	

**PLAINTIFFS’ MEMORANDUM IN OPPOSITION TO DEFENDANTS SIDLEY
AUSTIN LLP AND DAVID HOFFMAN’S MOTION TO STRIKE
AFFIDAVITS SUBMITTED BY PLAINTIFFS**

I. INTRODUCTION

Having obtained a stay preventing Plaintiffs from conducting any discovery, Defendants Sidley Austin LLP and David Hoffman (collectively “Sidley”) now seek to have this Court strike in whole or part all but one of the affidavits submitted with Plaintiffs’ Consolidated Memorandum in Opposition to Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction and Forum Non Conveniens (“Consolidated Memorandum”).

Sidley cites no legal authority authorizing an Ohio court to take such an action, because there is none. The Ohio Civil Rules provide for striking only pleadings, not other documents. If this Court finds that the affidavits contain averments that are irrelevant to the issues before it or otherwise inadmissible, it can simply disregard those portions of the affidavits. Sidley asks it instead to undertake a laborious point-by-point review of the affidavits to reach a decision – whether to strike specific affidavits or averments – for which there is no legal foundation.

Moreover, even if the Court had the authority to strike the affidavits, Sidley has failed to explain a valid basis for doing so.

As Exhibit A demonstrates, the affidavits aver facts relevant to such jurisdictional issues as Defendants' activities in Ohio; the publication of two separate versions of the Hoffman Report (the "Report" or "Reports") into Ohio on multiple occasions by both Sidley and Defendant American Psychological Association ("APA"; together the "Defendants"); the Report's readership in Ohio; and the damage to the reputations of all the Plaintiffs, not only the Ohio residents, in Ohio. These facts demonstrate far more than the minimum basis – a single intentional act – that the Ohio Supreme Court has established as sufficient for jurisdiction in the case of an intentional tort such as libel. They also contradict Defendants' incorrect assertions about the extent of their concerted and individual contacts with Ohio.

In addition, as Exhibit A also demonstrates, the statements attacked by Defendants are based on personal knowledge, not hearsay, or on well-established exceptions to the hearsay rule. Documents included or referenced in the affidavits are not the subject of reasonable dispute and, therefore, are the proper subject of judicial notice by the Court. Sidley's Motion should be denied.

Plaintiffs' goal continues to be to reach a rapid and efficient resolution of this case's key procedural and substantive issues. Arguing about the content of affidavits does not serve that end. Many of the 17 affidavits included with Sidley's Special Motion to Dismiss Under the District of Columbia Anti-SLAPP Act, D.C. Code § 16-5502 could be attacked on grounds similar to those argued in Sidley's Motion to Strike. But Plaintiffs will not file such a motion because they have no desire to delay these proceedings.

II. ARGUMENT

A. **Plaintiffs need make out only a prima facie showing of jurisdiction based upon a review of the pleadings and evidence in the light most favorable to the plaintiffs.**

When a court addresses the question of jurisdiction on the basis of motion papers, the burden on the plaintiffs is simply to make a prima facie showing of a sufficient jurisdictional basis in order to survive the jurisdictional challenge. *Rita Ann Distrib. v. Brown Drug Co.*, 164 Ohio App. 3d 145, 150, 2005-Ohio-5786, ¶ 13 (2nd Dist.) “In considering a challenge on such a record, the court must construe all relevant pleading allegations in the light most favorable to the plaintiff, assume credibility, and draw the most favorable inferences for the existence of jurisdiction.” *Id.*; see also *Goldstein v. Christiansen* (1994), 70 Ohio St.3d 232, 236 (1994) (the trial court must consider the allegations in the complaint and the documentary evidence in the light most favorable to the plaintiff and resolve all competing inferences in the plaintiff’s favor).

Evidence, such as that provided in affidavits, is relevant so long as it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without that evidence.” Ohio Evid. R. 401. And relevant evidence is generally admissible. Ohio Evid. R. 402. The rules should be construed liberally in favor of admission. *Deboo v. Walters*, 2d Dist. No. 12006, 1990 Ohio App. Lexis 4493 (October 17, 1990).

Defendants did not submit any evidence in support of their jurisdictional motions, and no party has requested an evidentiary hearing. Accordingly, here, the Court must review Plaintiffs’ Complaint and any evidence submitted by Plaintiffs (*i.e.*, the affidavits challenged by Sidley’s Motion) in the light most favorable to Plaintiffs and must deny the motion if the allegations and evidence would permit reasonable minds to find personal jurisdiction.

B. The Ohio Rules of Civil Procedure provide no basis to strike Plaintiffs' affidavits from the record.

Tellingly, Sidley cites no provision of the Ohio Civil Rules on which it bases its motion to *strike* Plaintiffs' affidavits from the record. The reason for that is simple; there is none.

Ohio Civil Rule 12(F) provides that a court “may order stricken from any *pleading* any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.” (Emphasis added) An affidavit, however, is not a pleading. Ohio Civ. R. 7(a). Thus, the Ohio Civil Rules do not provide for a motion to strike documents or portions of documents other than pleadings. Cf. *Zep Inc. v. Midwest Motor Supply Co.*, 2010 WL 2572129, *2 (S.D. Ohio June 22, 2010) (Frost, J.) (“The Federal Rules of Civil Procedure do not provide for a motion to strike documents or portions of documents other than pleadings.”); *Lombard v. MCI Telecommunications Corp.*, 13 F. Supp. 2d 621, 625 (N.D. Ohio 1998) (no basis under the civil rules to strike an affidavit from the record).

The cases cited by Sidley are not to the contrary. At most, they simply stand for the proposition that a Court should “*disregard*” affidavits containing inadmissible or irrelevant evidence, not strike the affidavits from the record. In short, there is no procedural authority to grant Sidley's motion to strike.¹

C. There is no basis to strike the affidavits of Anton, Crow, Resnick and Strickland in their entirety.

Sidley contends that the affidavits of Crow, a former consultant to the Office of the Army Surgeon General, and former APA Board members Anton, Resnick and Strickland should be struck in their entirety. Sidley claims, first, that the Anton and Strickland affidavits do not

¹Defendant APA does not join Sidley's Motion to Strike. However, on page 10 of its Reply to Plaintiffs' Consolidated Memorandum, it states that all of Plaintiffs' affidavits are “irrelevant” and should simply be disregarded, an assertion at odds with Sidley's request to strike.

support the proposition for which they are cited and, second, that all four are irrelevant to the issue of personal jurisdiction. Both claims are incorrect.

As to the first claim, the relevant paragraph on p. 4 of Plaintiffs' Consolidated Memorandum reads as follows:

First, in defamation cases, courts have consistently found that the publication of defamatory statements into a jurisdiction constitutes special evidence of purposeful availment, given the special nature of the tort of libel and the fact that a person's reputation is centered in the community in which he or she resides. Here, under such a test, purposeful availment has been amply demonstrated. Hoffman first published the Report to APA. APA's Board included two members who were Ohio residents. (Newman Affidavit, Exhibit J; Complaint FN 2, ¶¶ 59, 240, 247, 281, 295, 380, 456, 477; Anton and Strickland Affidavits; APA Motion, p. 3; Hoffman and Sidley Motion, p.1).

The Anton and Strickland Affidavits are not cited solely for the proposition that the APA's Board included two Ohio residents.² Rather, they are cited in support of the paragraph's assertion of purposeful availment, including Hoffman's availment when he published the Report to an APA Board that included two Ohio members. At most, Sidley's argument amounts to a complaint about the citation's location. Even if that complaint were justified, it would not be a basis for striking an affidavit (if Ohio law were to authorize such a step).

As to Sidley's second claim, all four affidavits provide information relevant to the issue of jurisdiction. For example:

² The fact that the APA Board, in both 2005 and 2015, contained two members who were Ohio residents is not controverted by any of the Defendants. It is otherwise supported by allegations in the Complaint and other evidence submitted by the Plaintiffs. See Complaint at ¶ 59, Newman Affidavit at ¶17 and Exhibit J (identifying the APA Board members in 2005 and 2015); see also the official Annual Reports of APA for the years 2005 and 2015, which are referenced in and attached in part to the Newman Affidavit. See *Total Benefits Plan. Agency v. Anthem Blue Cross*, 630 F. Supp. 2d 842, 848-849 (S.D. Ohio 2007) (taking judicial notice of a website containing annual reports because they were not subject to reasonable dispute under Federal Rule 201(b)).

- Hoffman's publication via electronic access to the APA Board, two members of which were Ohio residents, contributes to Plaintiffs' demonstration that Hoffman and Sidley as well as the APA are subject to Ohio jurisdiction.
- The Resnick affidavit demonstrates that, as late as 2016, the Board was discussing the Report with a former APA president, Ron Levant, an Ohio resident significantly implicated in many of the events the Report discusses.
- The Resnick affidavit also demonstrates that, before the APA published the Report, the Board gave it to two persons it knew to be sources for James Risen, the *New York Times* reporter whose accusations sparked Hoffman's investigation. Risen then published a copy of the full Report on the *Times*' website. Consequently, the affidavit demonstrates that the Board would have anticipated the Report's broad publication across the country, including into Ohio. So would have Hoffman, since he recommended that the Board share the Report with Risen's sources.
- The Crow affidavit provides more evidence to contradict Defendants' assertions that Washington, D.C. is a more convenient jurisdiction because of witnesses' locations. Crow, who resides in Texas and who was interviewed by phone in Texas, is among the many key witnesses located outside the District of Columbia. As a consultant to the Office of the Army Surgeon General during the period covered by the Report, he was intimately involved in discussions about the ethics of psychologists' roles in the interrogation process. Sidley's contentions that the majority of witnesses are located in DC is without support, and it has not provided a witness list that counters Plaintiffs' proffered evidence.

Sidley's Motion to Strike correctly notes that the Crow and Resnick affidavits are cited only once in the Plaintiffs' Consolidated Memorandum, to show that the Report contained many inaccuracies. Plaintiffs acknowledge that the Consolidated Memorandum did not cite the affidavits for every false assertion in the Defendants' Motions to Dismiss that the affidavits address. But that is not a requirement under the Ohio Civil Rules, and not a basis for striking otherwise proper affidavit evidence.

Plaintiffs also acknowledge that some affidavits, including the Crow and Resnick affidavits, contain statements relevant to issues other than personal jurisdiction. Defendants' motions have opened the door to these statements by their many assertions about the case's merits. (See, for example, Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1; APA Motion to Dismiss for Lack of Personal Jurisdiction or Forum Non Conveniens and Special Motion to Dismiss Under the District of Columbia Anti-SLAPP Act, DC Code § 16-5502; pp. 1-6; Sidley Reply to the Consolidated Memorandum p. 17; APA Reply p. 18.) Sidley cannot now object to affidavits which, while largely relevant to jurisdiction, also address their motions' assertions about the case's merits. The Court will ultimately determine what information is relevant to its analysis at each stage of the case.

D. There is no basis to strike or even disregard portions of ten other affidavits.

Sidley has attached a six-page, single-spaced chart listing in conclusory fashion various averments in ten other affidavits that Sidley contends should be struck on the basis that they are irrelevant, based on inadmissible hearsay, or not based upon the affiant's personal knowledge. See Motion to Strike, Exhibit 1. In Exhibit A to this Memorandum in Opposition, Plaintiffs respond briefly to each of Defendants' specific contentions.

As to Defendants' repeated complaints about lack of personal knowledge, a mere assertion of personal knowledge generally suffices if the nature of the facts in the affidavit

combined with the identity of the affiant creates a reasonable inference that the affiant has personal knowledge of the facts in the affidavit. *Bank One, N.A. v. Lytle*, 9th Dist. Lorain No. 04CA008463, 2004-Ohio-6547, ¶ 13. Thus, unless controverted by other evidence, a specific averment that an affidavit is made upon personal knowledge of the affiant satisfies the Civ.R. 56(E) requirement that the affiant must be competent to testify to the matters stated. *U.S. Bank Natl. Assn. v. Downs*, 6th Dist. Erie No. E-15-062, 2016-Ohio-4990, ¶ 21; see *Deutsche Bank Natl. Trust Co. v. Najar*, 8th Dist. No. 98502, 2013-Ohio-1657, ¶ 20.

As to hearsay, most of the statements or documents Sidley questions are not offered by Plaintiffs for the truth of the matter asserted therein, and therefore do not constitute inadmissible hearsay. If the statement or document could reasonably be construed as hearsay, Exhibit A identifies a well-established exception to the hearsay rule under which the statement or document would be admissible.

As to relevance generally, nothing can be more relevant to the jurisdictional issues before the Court than affidavits setting forth publication and injury in Ohio to all of the Plaintiffs, including nonresident Plaintiffs — injury that arose for all Plaintiffs from the same investigation, the same nucleus of facts, and the same acts by Defendants. More specifically, the affidavits provide facts that are directly relevant under the Ohio Supreme Court’s analysis in *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 2010-Ohio-2551. As Plaintiffs’ Consolidated Memorandum discusses, *Kauffman* adopted the three-factor test for personal jurisdiction developed in *Southern Mach. Co. v. Mohasco Industries, Inc.*, 401 F.2d 374 (6th Cir. 1968). The affidavits speak directly to those factors:

1. The causes of action all arise from the same concerted actions by Defendant APA and Sidley in the state, including but not limited to:

- Hoffman’s six interviews with Ohio residents, conducted with the assistance of Nadine Kaslow, the head of the APA Special Committee overseeing his investigation. At least two of those interviews were in person, in Ohio (James and Levant Affidavits);
- Sidley named each of the Plaintiffs – including two Ohio residents, Levant and James – as “key” players in the “collusive” enterprise Hoffman describes (James, Levant and Swenson Affidavits);
- the search in Ohio of the computer of Dr. Ronald Levant, an Ohio resident, and a former APA president (Levant and Resnick Affidavit); and
- the participation of APA Board members resident in Ohio in conference calls and e-mail exchanges about the APA’s publication of, responses to, and official actions regarding the Report, actions that included firing Plaintiff Behnke (Anton, Strickland and Newman Affidavits).

2. *The Defendants purposefully availed themselves of the jurisdiction.* As the Supreme Court in Ohio stated in *Kauffman, supra* (distinguishing cases relied on by Defendants):

In *Oasis Corp.*, 132 F.Supp.2d 612, Oklahoma residents had launched a "gripe site" concerning the products of an Ohio corporation. *Id.* at 614. The Oklahoma residents had not purchased any item from Oasis, but were upset that an Oasis water cooler had caused a fire in a building the defendants were renting. *Id.* **The district court declined to exercise personal jurisdiction because there was no evidence to suggest that the defendants' communications were received by anyone in Ohio other than the plaintiff. *Id.* at 621. ... In contrast to the plaintiff in *Oasis Corp.*, Kauffman has alleged — and produced at least some evidence — that the alleged defamatory statements were communicated to Ohio residents other than Kauffman. Kauffman received inquiries from at least five Ohio residents who read the Roberts postings. Moreover, KRE is an Ohio-based company whose reputation is centered in Ohio and that *had* engaged in commercial activity with Roberts before the controversy.** (bold emphasis added) *Kauffman, supra* at ¶¶ 63, 65.

Indeed, under the “effects test” established in *Calder v. Jones*, 465 U.S. 783, 783 (U.S. 1984) and *Fallang v. Hickey*, 40 Ohio St. 3d 106, (1988) and applied to an internet-based libel case in *Kauffman*, a defendant’s single tortious act can establish purposeful availment.

Plaintiffs’ affidavits demonstrate, as do the facts about Defendants’ actions in Ohio set forth above, that Sidley and APA availed themselves of Ohio through multiple publications and other actions, and that the effects of those intentional tortious actions were felt in Ohio by Ohio residents and non-residents. See *Gubarev v. BUZZFEED, INC.*, S.D. Fla Case No. 0:15-cv-62104, 2016 WL 1028332 (S.D. Fla. May 22, 2017) (decided after Plaintiffs submitted their Consolidated Memorandum; finding personal jurisdiction due to an article posted on the internet).

More specifically, Plaintiffs’ affidavits demonstrate the following:

- Sidley and APA each published multiple versions of the Report on multiple occasions in Ohio (Alliance for Audited Media, Anton, Behnke, Corrigan, James, Levant, Meyer, Mihura, Peters, Platoni and Swenson Affidavits). They published:
 - to the Board of Directors, which included two Ohio residents (Newman Affidavit: APA Annual Report, Exhibit J³; Anton and Strickland Affidavits);
 - via the *The New York Times*, by giving a draft of the Report, less than 24 hours after the Board received it, to two persons who were known to be working with *The New York Times* reporter who had sparked the allegations Hoffman investigated (Alliance for Audited Media, Behnke, James, Levant, and Swenson Affidavits);

³ A true and correct copy of the APA Annual Report for 2015, of which the Court may take judicial notice as a business record filed as part of APA’s 990, is also available on the APA website: <http://www.apa.org/pubs/info/reports/2015-report.pdf>. The Board’s members are listed on page S2.

- twice on the APA's interactive website, where the Report remains and is continually being accessed by Ohio residents; the second publication occurred after the APA and Sidley had clear notice and evidence of the Report's false statements;
 - through other social media outlets such as Twitter, which APA used to send the Reports into Ohio to be read and circulated by Ohio residents (Newman Affidavit, Exhibits F and G); and
 - to the Council of Representatives of APA (its governing body) which included ten Ohio residents, more than in any other state except California and New York (Behnke Affidavit).
- The Reports were read by multiple Ohio residents (Behnke, Corrigan, James, Levant, Meyer, Mihura, Newman, Peters, Platoni and Swenson Affidavits).
 - Defendants knew that Plaintiff James was an Ohio resident, that he had been repeatedly although unsuccessfully attacked on related grounds in Ohio, and, consequently, that the publication of the Report would severely damage his reputation in the state where he practiced his profession (Behnke, James and Peters Affidavits).

All of the Plaintiffs' reputations, not only that of Dr. James, an Ohio resident, were injured in Ohio (Behnke, Corrigan, James, Newman, Meyer, Mihura, Peters, Platoni and Swenson Affidavits).

3. The exercise of jurisdiction in Ohio does not offend traditional notions of fair play and substantial justice. Plaintiffs' affidavits also establish that litigating in Ohio will meet the third prong of the *Southern Machine* test:

- Plaintiffs have an interest in obtaining convenient and effective relief in Ohio due to Plaintiff James' presence in the state (James Affidavit) and the injuries to all of the Plaintiffs' reputations in Ohio.
- Contrary to Defendants' assertions, litigating in Ohio rather than their preferred jurisdiction of Washington, D.C., will be more efficient. For the majority of potential witnesses, Ohio is an equally or more convenient location (Newman Affidavit). Defendants' contentions to the contrary are made without any support. In addition, an Ohio court is more likely to move the case forward in a timely and efficient manner (James Affidavit). In contrast, as a May 29, 2017, *Washington Post* article described, District of Columbia courts can be clogged and inefficient.⁴

III. CONCLUSION

Sidley's Motion to Strike should be seen as what it is: an attempt to slow down the proceedings, obtain free discovery by forcing Plaintiffs to disclose the use to which they may put witnesses' evidence, and distract from the evidence establishing personal jurisdiction. Even if the Court had a legal basis for striking material the Defendants find offensive, it would still have more than enough grounds for finding jurisdiction.

Sidley's Motion continues Defendants' developing pattern of filing overlapping motions, a common tactic when a party with large resources and deep pockets confronts a party with limited resources and severe financial constraints. Despite having rejected Plaintiffs' request for

⁴ Plaintiffs ask this Court to take judicial notice of the *Washington Post* article, which is offered to provide further evidence that Ohio is a better forum for this action. The article is available on the *Post's* website; alternatively, Plaintiffs will deliver to the Court a printed copy https://www.washingtonpost.com/local/dc-politics/this-womans-sexual-discrimination-case-against-dc-has-lasting-27-years/2017/05/29/79f7442a-2f5d-11e7-8674-437ddb6e813e_story.html?utm_term=.b81f8edd01dc. Plaintiffs attest that this link leads to a true and authentic copy of the article. See also *Total Benefits Planning Agency Inc. v. Anthem Blue Cross & Blue Shield*, 630 F. Supp. 2d 842, 848-849 (S.D. Ohio 2007).

a neutral arbitrator more than once since the Reports were published, the APA has now moved belatedly to compel arbitration. Sidley has stated that it plans to file a similar motion once jurisdiction has been settled. Those motions cannot be decided until the Court has ruled on jurisdiction, and are at cross-purposes with APA's and Sidley's Special Motions to Dismiss the case on the merits.

Sidley's Motion to Strike Affidavits Submitted by Plaintiffs should be denied. To move the case forward, Defendants should be ordered to allow Plaintiffs to proceed with discovery to respond to Defendants' Special Motions to Dismiss and to produce the documents requested in Plaintiffs' Consolidated Memorandum. As the Anton and Strickland affidavits establish, Sidley and APA cannot show that the witness interview memoranda were prepared in anticipation of litigation, and any attorney-client privilege attaching to interviews with APA employees and former employees who could be considered clients has been waived. See *Banneker Ventures, LLC v. Graham*, 2017 WL 163313 (D.D.C., May 16, 2017).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 20, 2017 a true and correct copy of the foregoing was filed using the Clerk of Court's cm/ecf system which by its operation will serve all registered parties. Parties may access this filing through that system.

/s/ Gerhardt A. Gosnell II

Gerhardt A. Gosnell II

**EXHIBIT A:
RESPONSES TO DEFENDANTS' OBJECTIONS TO PLAINTIFFS' AFFIDAVITS**

AFFIANT	RELEVANT
<p>Behnke, Stephen (Plaintiff)</p>	<p>*Paragraphs 4–7: Assertions relating to role in John Leso ethics investigation.¹</p> <p>RESPONSE: Establishes the Board knew that statements in the Report related to the ethics adjudication process were false factual statements, not simply opinions as Sidley asserts. (See Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1; APA Motion to Dismiss for Lack of Personal Jurisdiction pp. 1-6.) Also establishes the commission of an intentional tort by Sidley and APA through their publications of the Report into Ohio.</p> <p>*Paragraph 8: Assertions relating to role in Larry James ethics investigation.</p> <p>RESPONSE: Establishes nexus to Ohio (Dr. James is an Ohio resident). Also establishes that decisions were being made by officials outside of the District of Columbia, contrary to Sidley and APA's assertions that the actions described in the Report occurred primarily in DC and, therefore, the action should be litigated there.</p> <p>*Paragraph 10: Assertions relating to role in PENS Task Force and methods of communication among its members.</p> <p>RESPONSE: Establishes that, contrary to Defendants' assertions, activities of the PENS Task Force took place primarily outside DC, including in Ohio, through the PENS listserv.</p> <p>*Paragraphs 11–12: Assertions relating to continuing debate over the role of psychologists in interrogations.</p> <p>RESPONSE: Establishes that significant APA discussions and actions concerning psychologists' role in interrogations took place outside DC, contrary to the Defendants' assertions.</p> <p>*Paragraph 13: Assertions relating to Dr. Kaslow's awareness of whether "two of the main accusers" were working with a New York Times reporter.</p> <p>RESPONSE: Establishes Board's knowledge (through Board member Kaslow) that the Report would be</p>

¹ Defendants' attachment used less than 11-point font and non-standard margins. Plaintiffs have used 12-point font and standard margins and have re-formatted the attachment, resulting in a longer but easier-to-read document.

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	<p>given to <i>The New York Times</i> and therefore distributed and read widely, including by residents of Ohio.</p> <p>*Paragraph 14: Assertions relating to access to the Report and termination from APA.</p> <p>RESPONSE: Establishes APA's method of providing electronic access to the Report outside DC and, in particular, in Ohio for Board members resident there; also establishes injury in Ohio.</p> <p>*Paragraph 15: Assertions relating to receipt of letter from advocate for ban on participation of psychologists in national security settings relating to the accuracy of the Report.</p> <p>RESPONSE: Establishes that people with knowledge of the underlying events identify mischaracterizations and false factual statements in the Report, in contrast to Sidley's assertion that the case arises from "understandable" disagreement about the Report's conclusions and "opinions." (See Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1)</p>
Behnke	BASED ON PERSONAL KNOWLEDGE OF THE AFFIANT
	<p>*In paragraph 3, "I viewed Ohio as an important constituency of the APA Ethics Office because there are over 2800 APA members in Ohio," citing Exhibit A without authentication.</p> <p>RESPONSE: As the Director of the APA Office of Ethics from November 2000 to July 2015, Dr. Behnke is competent to testify based upon his personal knowledge as to the make-up of APA's membership. The only apparent basis for the Sidley objection is that Dr. Behnke also references documents confirming his assertions "without authentication." Those documents are drawn from APA's own business directory and other APA publications. Neither APA nor Sidley has questioned the authenticity or accuracy of APA's business records, nor are they subject to any reasonable dispute.</p> <p>*In paragraph 3, "Additionally, when I was terminated from my position at the APA in 2015, there were ten Council of Representative members from Ohio, more than from any state other than California and New York," citing Exhibit B without authentication.</p> <p>RESPONSE: Exhibit B provides a list of all members of the 2015 Council of Representatives drawn from an official publication of the APA (<i>American Psychologist</i>, July-August 2015), along with a true and accurate representation of search results from the official APA directory demonstrating that 10 Council members were Ohio residents. Sidley has not challenged the authenticity or accuracy of these documents.</p>

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*In paragraph 6, "At no point during the several-year period of time the Leso matter was open and Ms. Springer had access to the Leso filed [sic] did she indicate that the matter was not being handled in a proper fashion."

*In paragraph 7, "These members of the staff and the Board had full knowledge that the allegations made in the Hoffman Report regarding the handling of the Leso matter were false when they published the Report on multiple occasions," citing Plaintiffs' Complaint.

RESPONSE: Dr. Behnke worked with Ms. Springer, the APA in-house counsel, and can testify to his personal knowledge that she never indicated to him that the Leso matter was not being properly handled. Dr. Behnke also has personal knowledge that the Board (including the head of the Special Committee overseeing Hoffman's investigation) had accepted the Ethics Committee's decisions on the Leso case without objection, and had communicated that acceptance to the Council in a document that Dr. Behnke helped to draft (a copy of which was provided to APA's outside counsel in July 2016). Consequently, when the Report was published, Ms. Springer and the Board members who had been involved in closing the Leso matter knew that the Report's statements about its handling were false.

*In paragraph 10, "Two members of the Board at that time were from Ohio – Ron Levant . . . and Sandra Shulman," citing Levant's affidavit and Exhibit D without authentication.

RESPONSE: Exhibit D results from Dr. Behnke's search of the APA official directory and from the APA Annual Report for 2005, which is attached to the Newman Affidavit. Sidley has not challenged the Exhibit's authenticity or accuracy, and the content of this averment is uncontested.

*In paragraph 10, "[A]ll discussions between Task Force members took place on the listserv from their respective home or office locations via email."

RESPONSE: As one of the persons providing staff support to the PENS Task Force and the person who helped establish a listserv exclusively for its members, Dr. Behnke has personal knowledge as to how the members of the PENS Task Force communicated. The listserv has also been published in an online newspaper (ProPublica), of which the Court may take judicial notice: <https://www.propublica.org/documents/item/1445-e-mails-from-the-american-psychological-associations-task-force-on-ethics-and-national-security#p=1>. At the request of the Court, Plaintiffs will print out the entirety of the listserv documents and attach them to their motion papers to further support this averment.

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*In paragraph 11, "Following the work of the PENS Task Force and the adoption of the PENS Guidelines by the Board, considerable discussion and debate concerning psychologists' role in interrogation support continued within the APA, especially by the Council during meetings for the years 2006-2008 taking place at the annual APA conventions in New Orleans, San Francisco, and Boston, respectively," citing three websites without authentication.

RESPONSE: Again, as the Director of the APA Office of Ethics from November 2000 to July 2015, Dr. Behnke can testify to these facts on the basis of personal knowledge. All three links in the paragraph are to the official APA website's descriptions of the conventions, which Dr. Behnke attended. Sidley does not challenge the authenticity of the website or the accuracy of its contents.

*In paragraph 13, "Dr. Kaslow was also fully aware that two of the main accusers of psychologists who participated in national security interrogations were working with the reporter from *The New York Times*, James Risen, whose allegations had sparked the investigation. I was shocked to learn that Dr. Kaslow and others gave a draft of the Report to Drs. Reisner and Soldz before I was given access to the report," with no explanation as to how that knowledge was obtained.

RESPONSE: As Plaintiffs' Memorandum demonstrates (p. 8), there is no obligation that affiants explain how their knowledge was obtained; Sidley cites no authority to the contrary. In fact, however, Dr. Kaslow forwarded to Dr. Behnke a March 17, 2015, email from Soldz to Kaslow describing the collaboration between Soldz, Reisner and *The New York Times*.

Additionally, in April and May of 2015 (two months before the release of the Report), Reisner published on the APA Council listserv, the official listserv of the APA's governing body, a statement corroborating that Sidley had knowledge that he and Soldz were working with *The New York Times*. A true and correct copy of that post is available here and is admissible as a business record of APA:

http://www.hoffmanreportapa.com/resources/reisneremail_Redacted.pdf. It is also available from the APA Council of Representatives official listserv archive.

On April 30/May 1, 2015, during the pendency of the review, Risen published a front-page article about and a full copy of another report authored in part by Reisner and Soldz and based on much of the same evidence that Sidley relied on in the Reports. *The New York Times*' article is publicly available and the

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	<p>Court may take judicial notice of it: https://www.nytimes.com/2015/05/01/us/report-says-american-psychological-association-collaborated-on-torture-justification.html?_r=0; https://www.nytimes.com/interactive/2015/05/01/us/document-report.html. Page 2 of the article lists the report's authors.</p> <p>Moreover, that Reisner and Soldz received the Report early was public knowledge reported in the media. The following links provide true and accurate representations of a video of Soldz and an article by Soldz and Reisner describing their early access to the Report: https://www.youtube.com/watch?v=i9u1EOgeEqw and https://www.counterpunch.org/2015/07/13/opening-comments-to-the-american-psychological-association-apa-board-of-directors/)</p>
Behnke	NOT HEARSAY OR WITHIN AN EXCEPTION TO THE RULE
	<p>*In paragraph 9, "The Executive Director informed me that a group of lawyers had traveled to Ohio from Harvard Law School to discuss the complaint."</p> <p>RESPONSE: Statement to establish the nexus between the current action and the former ethics complaints filed against Dr. James by Ohio residents, not offered to prove the truth of the matter asserted; therefore, it is not hearsay.</p> <p>*In paragraph 9, "He told me that the Ohio Board of Psychology had investigated the complaint and did not find evidence that Dr. James had engaged in behaviors that would warrant sanction by the Ohio board."</p> <p>RESPONSE: Statement to establish the nexus to Ohio, not to prove the truth of the matter asserted; therefore, it is not hearsay. The statement also shows that, when Sidley published the Report into Ohio, it had knowledge of prior similar investigations of Dr. James.</p> <p>*In paragraph 9, "He further stated that the lawyers from Harvard appeared to believe that the complaint had not been fully investigated for political reasons, rather than accepted there was no basis for sanction."</p> <p>RESPONSE: Statement to establish related activity occurring in Ohio, not to prove the truth of the matter asserted.</p> <p>*Exhibit E: Statements regarding the accuracy of the Report by Linda Woolf.</p> <p>RESPONSE: Dr. Behnke has personal knowledge that he received an unsolicited email and follow-up</p>

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	<p>letter (Exhibit E) from Linda Woolf concerning her impressions of the Report. That letter is admissible because it is not hearsay, but a verbal act. <i>See State v. Blevins</i>, 36 Ohio App. 3d 147, 149 (10th Dist. 1987) (“Some statements are merely verbal parts of acts and are, as the acts are themselves, admissible.”) Even if it were hearsay, it is admissible under the present-sense exception: it is a statement made describing or explaining an event or condition, made while or immediately after the declarant perceived it.</p>
AFFIANT	RELEVANT
<p>Corrigan, John (Ohio resident who read the Report)</p>	<p>*Paragraph 4: Assertions relating to substance of the Report and learning in listserv discussion that Dr. Behnke might lose job.</p> <p>RESPONSE: Establishes that Ohio residents discussed the Report and the injury to all Plaintiffs (including Drs. Behnke and Newman) in Ohio.</p>
	NOT HEARSAY OR WITHIN AN EXCEPTION TO THE RULE
	<p>*In paragraph 4, “I also recall that the Division listserv discussion made mention that Dr. Stephen Behnke, the Director of Ethics at APA, might lose his job as a result of the Report.”</p> <p>RESPONSE: Statement made to show the Report was read by Ohio residents, not to prove the truth of the matter asserted (although there is no dispute that Dr. Behnke was fired as a result of the Report). Moreover, the statement is admissible as a verbal act, going to the extent of the Report’s effects on the reputations of the Plaintiffs, and in particular Dr. Behnke, in Ohio.</p>
AFFIANT	RELEVANT
<p>James, Larry (Plaintiff)</p>	<p>*Paragraph 5: Assertions relating to role in PENS Task Force and methods of communication among its members.</p> <p>RESPONSE: Listserv communications among PENS Task Force Members, including Dr. James, from their respective locations before and after the Task Force’s one in-person meeting establish nexus with Ohio, and contradict Defendants’ assertions that the communications were centered in DC.</p> <p>*In paragraph 6, “However, I was not provided any forum for responding to or lodging any objections to the Report’s allegations and conclusions prior to it being published to Council. In spite of lodging my objections to the document, I was not given any notice that a Revised Report was being prepared, or given any chance to contribute to the document. That Revised Report was released by APA on September 4, 2015.”</p> <p>*Paragraph 7: Assertions relating to lack of opportunity to respond to the Report.</p>

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RESPONSE: Establishes that publication of the initial Report before Dr. James could respond to its false allegations, and publication of the revised Report despite knowing of his objections to its accuracy, constituted intentional torts against Dr. James (and the other Plaintiffs) in Ohio.

*Paragraph 8: Assertions relating to access to the Report by Drs. Reisner and Soldz.

RESPONSE: Establishes Defendants' prejudicial publication of the Report to known critics of Dr. James and known sources for *New York Times* reporter James Risen, who promptly distributed the Report through the *Times* website. That publication damaged Dr. James in Ohio and elsewhere.

*Paragraph 9: Assertions relating to posting of objections to the Report on APA website and listserv.

RESPONSE: Establishes damage to Dr. James by Hoffman's refusal to include those objections in the published revised version of the Report, even after Plaintiffs had contacted APA and Sidley regarding the falsehoods in the document. This uncorrected re-publication constitutes an intentional tort against Dr. James (and the other Plaintiffs) in Ohio.

*In paragraph 12, "The Fact that the public Report contained confidential information from my APA ethics complaint case file compounded matters. I had no notice that any of this would be released and it violates the rules of the APA ethics complaint process."

RESPONSE: Inclusion of the confidential ethics information in the Report, and its subsequent publication, had a direct damaging impact on Dr. James in Ohio with staff, students and faculty at his university, establishing the nexus with Ohio and the commission of an intentional tort.

*In paragraph 12, "The situation was made all the more difficult by an article repeating the Report's false conclusions about me that appeared in the *National Psychologist*, a psychology trade newspaper published in Ohio, that was put into the mailboxes of each and every faculty member of my school."

RESPONSE: Further establishes discussion of the Report by Ohio residents and damages to Dr. James in Ohio.

*Paragraph 13: Assertions relating to the merits of the Report and allegedly false allegations filed by Dr. Bond.

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	<p>*Paragraphs 14–16: Assertions relating to legal actions by Dr. Bond. *Paragraph 17: Assertions relating to actions by Human Rights Watch.</p> <p>RESPONSE: The actions of Dr. Trudy Bond, an Ohio resident interviewed by Sidley for the investigation, establish a nexus between the lawsuit and Ohio. The actions by Human Rights Watch demonstrate the ongoing attempts by that organization (among others) to use the Report to bring about prosecutions of Dr. James and others. A true and correct copy of the Human Rights Watch Report (a public record available on its website) is appended to the Affidavit.</p> <p>*Paragraph 18: Assertions relating to merits of the Report. *Paragraph 19: Assertions relating to lack of opportunity to respond to the Report.</p> <p>RESPONSE: These paragraphs identify statements that are factually false, not simply “opinions” as Sidley asserts. (See Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1). They therefore establish the commission of an intentional tort in Ohio through publication of false statements, with knowledge of their falsity, targeting Dr. James’ activities as a psychologist licensed by the State of Ohio. In addition, they establish the commission of an intentional tort by the subsequent republication of the Report in Ohio with knowledge that all of the Plaintiffs, including Dr. James, had objected to its contents as false and defamatory.</p> <p>*In paragraph 21: “No matter what a Court, or legislative body holds, Dr. Bond and her colleagues continue to wrongly accuse me of the same allegations. Mr. Hoffman did not put any of this information in the Report, in spite of me giving it all to him during our multiple conversations-he simply repeated her false allegations once again.”</p> <p>RESPONSE: Further establishes the nexus among the previous Ohio ethics complaints and court actions against Dr. James (none of which had been sustained) and the false and defamatory contents of the Reports. Also establishes Hoffman’s knowing omission of contrary credible evidence from his Reports.</p>
James	BASED ON PERSONAL KNOWLEDGE OF THE AFFIANT
	<p>*In paragraph 5, “[A]ll discussions among Task Force members took place on the listserv by email and members of the Task Force participated from their home or work locations.”</p>

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	<p>RESPONSE: Dr. James' participation in the listserv gave him personal knowledge as to how members of the PENS Task Force communicated.</p> <p>*In paragraph 8, "It was well known that Drs. Soldz and Reisner had previously accused me quite publicly, on numerous occasions of wrongdoing and that they were collaborating with the reporter from <i>The New York Times</i>, whose book had sparked the investigation."</p> <p>RESPONSE: Dr. James had personal knowledge of these public accusations and of Soldz and Reisner's public acknowledgment of their collaborations with James Risen.</p> <p>*In paragraph 20, "Dr. Nadine Kaslow . . . knew about the repeated false allegations made by Dr. Bond, and their dismissal."</p> <p>*In paragraph 20, "When Dr. Kaslow voted to publish the Report on behalf of APA, she knew that many of its allegations were completely false as did others on the Board, including Drs. Douce and Jennifer Kelly."</p> <p>RESPONSE: In Dr. James' conversations with Dr. Kaslow before the Report's publication, he discussed with her the false allegations made against him on numerous occasions; he therefore had personal knowledge that she was aware of these false allegations when the Report was published. Similarly, his conversations with Dr. Kelly and Dr. Douce gave him personal knowledge that they were aware of the false allegations.</p>
James	NOT HEARSAY OR WITHIN AN EXCEPTION TO THE RULE
	<p>*In paragraph 8, "I was particularly surprised to learn from the news media and various posts on the Council listserv that Drs. Steven Reisner and Stephen Soldz were provided with access to a draft of the Report on Jun 27, and that they subsequently met with the Board to provide recommendations at the Board's July 2-3, 2015 meeting."</p> <p>RESPONSE: Dr. James can testify as to his personal knowledge that Drs. Soldz and Reisner had previously accused Dr. James of wrongdoing, that this was well-known, and that he was surprised to learn that Soldz and Reisner were provided access to a draft of the Report and provided recommendations at the Board's July 2-3, 2015 meeting. Statements as to what Dr. James knew and was surprised to learn are not hearsay. Further, the statement is offered to show, in combination with other averments, the Report's distribution, not for the truth of the matters asserted.</p>

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*In paragraph 10, "In fact my Dean emailed me on July 13, 2015 expressing her concern that the Report's finding of improper handling of the ethics complaint against me combined with my membership on the PENS Task Force would reopen old allegations made against me."

RESPONSE: The statement that Dr. James received the email and his description of its content are not hearsay. The averment is not being offered for the truth of what was stated in the email. Instead, it demonstrates that the Report rekindled questions about Dr. James' actions among his peers, causing damage to his reputation in Ohio, and thus further establishes the nexus of the lawsuit with Ohio.

*In paragraph 11, "[T]he Ohio Psychological Association (OPA) sent an email to all of its members reporting it's [sic] Executive Committee met on July 17 to discuss the Report and encouraging members to go to the APA website and read the Report."

RESPONSE: Statement offered not to prove the truth of the matter asserted in the OPA email, but to further establish the Report's impact in Ohio and, therefore, the case's nexus with Ohio. The content of the email itself is excepted from the hearsay rule as a statement setting forth the activities of a public agency. Ohio Evid. R. 803(8) Moreover, the email is not hearsay because it serves as a record of the regularly conducted activity of the OPA Executive Committee.

*In paragraph 11, "The Ohio Board of Psychology also discussed the findings of the Report as reflected in its July 30, 2015 meeting minutes."

RESPONSE: Statement made (and official Board minutes provided) to establish nexus with Ohio, not to prove the truth of the matters asserted. In addition, the content of the Board minutes is covered by the public-records exception to the hearsay rules.

*In paragraph 20, "Shortly after the Report became public, Dr. Douce emailed and phoned me to tell me she knew that I had done nothing wrong and that she hoped I did not feel betrayed by her."

RESPONSE: The fact that Dr. James received the email and call from Dr. Douce is not hearsay. Moreover Dr. Douce was a member of the APA Board that accepted and published the Report as an accurate document. Her statements are therefore excepted from hearsay rule because they are against APA's interest, and the witness is unavailable because Sidley and APA have received a stay of discovery. The statements also constitute an admission of a party opponent (Ohio Evid. R. 801(D)(2)).

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AFFIANT	RELEVANT
<p>Levant, Ronald (Former APA Board Member and resident of Ohio interviewed for the investigation; computer searched in Ohio by Sidley; Ohio resident who read the Report)</p>	<p>*Paragraphs 7–8: Assertions relating to merits of the Report.</p> <p>RESPONSE: These assertions identify mischaracterizations and false statements in the Report, and therefore contradict Sidley’s claim that the dispute is about an “understandable” disagreement about the Report’s conclusions and “opinions.” (Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1) They also contradict APA’s contention that Plaintiffs’ claims are without merit. (APA Motion to Dismiss for Lack of Personal Jurisdiction, pp. 1-6), and establish injury to all of the Plaintiffs in Ohio.</p> <p>*Paragraphs 9–11: Assertions relating to personal difficulties of affiant following the Report.</p> <p>RESPONSE: These assertions demonstrate the Report’s impact on those named in the Report in their Ohio communities, including via <i>The New York Times</i> website, and establish injury to all of the Plaintiffs in Ohio.</p>
BASED ON KNOWLEDGE OF THE AFFIANT	
	<p>*In paragraph 9, affiant’s advisees and students working in his research lab “could not reconcile the Report’s depiction of me in comparison to the respected faculty member they had experienced me to be in their program.”</p> <p>RESPONSE: Based upon Dr. Levant’s meetings and discussions with his advisees and students, he can testify from his personal knowledge about what his students expressed to him.</p>
AFFIANT	RELEVANT
<p>Meyer, Gregory (Ohio resident who read the Report)</p>	<p>*Paragraph 3: Circulation of the Report by University of Toledo professor. *Exhibit A: Circulation of the Report by University of Toledo professor.</p> <p>RESPONSE: Establishes readership by residents of Ohio and resulting damage to all of the Plaintiffs in Ohio.</p>
NOT HEARSAY OR WITHIN AN EXCEPTION TO THE RULE	
	<p>*In paragraph 5, “In fact, the Department Chair’s email circulating the Report made it a point to say, ‘the head of the APA Ethics Office, Stephen Behnke, has been fired.’”</p> <p>RESPONSE: Statement made not to prove the truth of the matter asserted in the email (although there is</p>

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	no dispute that Dr. Behnke had been fired), but to establish readership by residents of Ohio and damage to the Plaintiffs in Ohio. Moreover, this evidence is admissible as a verbal act, going to the extent of the Report's damage to the reputations of the Plaintiffs, and in particular Dr. Behnke, in Ohio.
AFFIANT	RELEVANT
Mihura, Joni (Ohio resident who read the Report)	*Paragraph 3: Circulation of the Report by University of Toledo professor. *Exhibit A: Circulation of the Report by University of Toledo professor. RESPONSE: Establishes readership by residents of Ohio and resulting damage to the all of the Plaintiffs in Ohio.
	NOT HEARSAY OR WITHIN AN EXCEPTION TO THE RULE
	*In paragraph 5, "[M]y Department of Psychology Chair . . . when circulating the Report, indicated that Dr. Behnke had been fired." RESPONSE: Statement made to establish readership in Ohio and damage to all of the Plaintiffs, not to prove the truth of the matter asserted in the email.
AFFIANT	RELEVANT
Newman, Russell (Plaintiff)	*Paragraph 3: Assertions relating to impression of Hoffman's investigation. RESPONSE: The assertions go to the independent review's proclaimed goal of objective fact-finding, rather than providing "opinions" as Sidley asserts. (See Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1) *Paragraph 4: Assertions relating to involvement in PENS Task Force. RESPONSE: The assertions identify mischaracterizations and false statements in the Report, thus contradicting Sidley's claim that the dispute is about "opinions." (See Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1) *Paragraph 5: Assertions relating to access to the Report and ability to respond. RESPONSE: Establishes that publication of the initial Report before those attacked had an opportunity to correct its falsehoods, and the later publication of the revised Report without correcting falsehoods that had been identified and communicated to APA and Sidley, constituted intentional torts committed in Ohio.

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	<p>*Paragraphs 6–7: Assertions relating to impact of the Report on work in California.</p> <p>RESPONSE: Establishes the extent of the damage to the Plaintiffs resulting from the Report’s publication.</p> <p>*Paragraph 8: Assertions relating to merits of the Report.</p> <p>RESPONSE: The statements identify mischaracterizations and false statements in the Report, thus contradicting Sidley’s assertion that the dispute is about “opinions.” (See Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1)</p> <p>*Paragraph 9: Assertions relating to findings of APA, communication of the same to government officials and statements to the media.</p> <p>RESPONSE: Establishes that, contrary to Sidley’s assertion that the Report contains “opinions,” the Report was forwarded as factual findings.</p> <p>*Paragraph 13: Assertions relating to impact of the Report on work in California.</p> <p>RESPONSE: Establishes the extent of the damage to the Plaintiffs resulting from the Report’s publication.</p> <p>*Paragraph 15-16: Assertions relating to Sidley Austin bar admissions and litigation.</p> <p>RESPONSE: Establishes Sidley’s numerous contacts in Ohio, including a current suit against the State of Ohio on behalf of a client.</p> <p>*Paragraph 17: Assertions relating to APA Board of Directors involvement in investigation and resulting the Report [sic].</p> <p>RESPONSE: The involvement of the APA Board, which has Ohio members, establishes a relationship between the activities of the APA in Ohio and this lawsuit.</p>
Newman	BASED ON PERSONAL KNOWLEDGE OF THE AFFIANT
	<p>*In paragraph 12, “some in the psychology community [in Ohio] were particularly aware of the negative light in which the Report cast me,” citing Affidavit of John Corrigan.</p>

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RESPONSE: As a former resident of Ohio and visitor to Ohio, with many contacts among Ohio psychologists, Dr. Newman can testify as to his personal knowledge that those in the Ohio psychology community were aware of the negative light in which the Report cast him. The fact that Dr. Newman also references the affidavit of Dr. Corrigan does not mean he lacks personal knowledge.

*In paragraph 14, has compiled “a list of witnesses who *we believe* have important information bearing on the issues related to this case” and “of the 33 so identified, five are from Ohio, more than from any other jurisdiction except California.” (Emphasis added.)

RESPONSE: Dr. Newman conducted an internet search for the location of those witnesses identified to date. He has personal knowledge of the results of that search, and Sidley has not provided grounds for challenging the accuracy of the information. The word “believe” does not detract from Dr. Newman’s personal knowledge of the results of his search. It simply indicates that, until discovery has taken place, it is difficult to be certain about who has important information and which witnesses will ultimately be deposed.

*Paragraph 15: Assertions relating to where Sidley Austin practices and how many of its partners are admitted to practice before the U.S. Court of Appeals for the Sixth Circuit.

RESPONSE: The links to Sidley’s website lead to a true and accurate representation of Sidley’s description of the jurisdictions in which the Sidley lawyers practice.

*Paragraph 16: Assertions relating to Sidley Austin litigation in Ohio and the location of witnesses interviewed by Hoffman.

RESPONSE: As to the existing Sidley litigation against the State of Ohio, the link provided to the following website provides a true and accurate description: <https://www.disabilityrightsohio.org/news/dro-and-partners-file-class-action-lawsuit-on-behalf-of>.

As to the location of witnesses, a simple internet search of witnesses listed in the Report yields a true and accurate representation of the location of those individuals in Ohio and elsewhere. Additionally, Dr. Newman knew many of these witnesses personally and was aware of their residency.

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	<p>*In paragraph 17, “<i>Board meeting minutes indicate</i>, the Board postponed discussion of the remaining Board motions related to the Report until a January 19, 2016, conference call when it voted to finalize remaining motions related to the Report.” (Emphasis added.)</p> <p>RESPONSE: The statement is based upon APA’s admissions from documents readily verifiable by the Court and admissible in their own right. See <i>Perfect 10, Inc. v. Cybernet Ventures, Inc.</i>, 213 F.Supp.2d 1146, 1153–54 (C.D. Cal. 2002) (admitting website postings as evidence due to circumstantial indicia of authenticity, including dates and presence of identifying web addresses); <i>Lorraine v. Markel Am. Ins. Co.</i>, 241 F.R.D. 534, 546 (D. Md. 2007) (same); <i>Van Westrienen v. Americontinental Collection Corp.</i>, 94 F. Supp. 2d 1087, 1109 (D. Or. 2000) (the representations made by defendants on their website are admissible as admissions of the party-opponent under FRE 801(d)(2)(A)) The affidavit’s link to the APA website provides a true and accurate representation of the official Board minutes reporting the vote.</p> <p>*Exhibit K: Assertions relating to APA contains [sic] in Ohio without showing of personal knowledge.</p> <p>RESPONSE: This document summarizes the contents of APA’s own admissions on its website, citations to Ohio administrative code provisions, and the contents of Ohio public records, all of which are independently verifiable by the Court and admissible in their own right. See <i>Perfect 10, Inc., supra</i>; <i>Lorraine, supra</i>; <i>Van Westrienen, supra</i>; <i>Tippie v. Patnik</i>, 11th Dist. No. 2007-G-2787, 2008-Ohio-1653, ¶ 57 (“The website of the Secretary of State can be considered self-authenticating as an ‘official publication,’” under Ohio Evid. R. 902(5)).</p> <p>The affidavit’s links to the official APA website and its official records, publications or press releases provide a true and accurate representation of APA contacts with Ohio. Links to the Ohio Revised Code on a government website provide a true and accurate representation of the Ohio psychology licensing requirements that rely on APA accreditation of doctoral programs, pre-doctoral internships, and specialty retraining programs, as well as APA’s approval of continuing education courses and post-doctoral supervision. A link to the Ohio Attorney General website provides a true and accurate representation that APA is registered as a charity in Ohio.</p>
Newman	NOT HEARSAY OR WITHIN AN EXCEPTION TO THE RULE
	<p>*In paragraph 8, “[W]hen Mr. Hoffman met privately with the APA Council of Representatives . . . he told the Council that “(b)ehind the scenes communication’ would have been a more accurate description than collusion.”</p>

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	<p>RESPONSE: Hoffman’s admission was reported in notes taken by a Council member at the meeting and subsequently distributed on an official APA listserv. The statement is covered by exceptions to the hearsay rule because it is an admission by a party opponent and a business record of APA. (Ohio Evid. R. 801(D)(2)).</p> <p>*Exhibit F: No showing that document satisfies any hearsay exception. *Exhibit G: No showing that document satisfies any hearsay exception.</p> <p>RESPONSE: Exhibit F provides a true and accurate representation of an analysis conducted by Demographics Pro (“DP) (http://demographicspro.com) of the location of the followers of an Ohio politician’s Twitter account that circulated and commented on the Report. Exhibit G summarizes that data for 21 accounts that forwarded or commented on the Report or Kaslow’s statements.</p> <p>Dr. Newman’s affidavit describes how he collected the information for the exhibit, using the DP methodology and reports to identify the demographic characteristics, including state of residence, for each Twitter account’s followers. All 21 Twitter accounts were analyzed in an identical fashion. The Court may take judicial notice of these analyses and the number of Ohio residents who follow the accounts. In addition, the analyses are admissible under the market report exception to the hearsay rule. Defendants have not questioned or disputed the data.</p> <p>*In paragraph 17, “<i>Board meeting minutes indicate</i>, the Board postponed discussion of the remaining Board motions related to the Report until a January 19, 2016, conference call when it voted to finalize remaining motions related to the Report.” (Emphasis added.).</p> <p>RESPONSE: The link provided leads to the APA website, which provides a true and accurate representation of the official Board minutes reporting the vote. These minutes are excepted from the hearsay rule because they are a business record and a record of the Board’s regularly conducted activity.</p>
AFFIANT	RELEVANT
<p>Peters, Wendy (Ohio resident who read the Report)</p>	<p>*Paragraph 3: Assertions relating to discussions among colleagues following the Report without mention of how they learned of it.</p> <p>RESPONSE: As the affidavit states, first-hand conversations with colleagues in Ohio provided the information. In any event, Peter’s perceptions alone, as an Ohio psychologist, establish a relationship between the injury to all of the Plaintiffs and readership in Ohio.</p>

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AFFIANT	RELEVANT
<p>Platoni, Katherine</p> <p>(Ohio resident who read the Report)</p>	<p>*Paragraph 3: Assertions relating to merits of the Report.</p> <p>RESPONSE: The assertions identify mischaracterizations and false statements in the Report, and therefore contradict Sidley's assertions that the Report consists of "opinions" (see Sidley Motion to Dismiss for Lack of Personal Jurisdiction, p. 1) and APA's assertions the Plaintiffs' case lacks merit (see APA Motion to Dismiss for Lack of Personal Jurisdiction, pp. 5-6).</p> <p>*Paragraph 4: Assertions relating to affiant's resignation from APA.</p> <p>RESPONSE: Actions of Ohio psychologist who resigned after receiving the Report establish readership in Ohio and damage to all of the Plaintiffs' reputations, thus establishing nexus between Ohio and this lawsuit.</p>
BASED ON PERSONAL KNOWLEDGE OF THE AFFIANT	
	<p>*In paragraph 3, stating that she "believed" Report assertions "to be false."</p> <p>RESPONSE: The statement recounts Platoni's own personal perceptions in light of reading the Report and her knowledge of James, Banks and Dunivin. "Believed" is used to mean that, based on her personal knowledge, she is confident of the truth of her statement.</p> <p>*In paragraph 3, "Additionally, that the APA would readily accept such distorted findings and proceed to apologize for the actions of military psychologists that never occurred belied motivation <i>that seemed</i> more about face-saving than finding truth." (Emphasis added.)</p> <p>RESPONSE: The statement is based on Platoni's understanding of the facts available to her. What she believes about the Report is within her personal knowledge.</p>
AFFIANT	RELEVANT
<p>Swenson, Elizabeth</p> <p>(Ohio resident who read the</p>	<p>*Paragraph 5-8: Assertions relating to merits of the Report, personal impression of Dr. Behnke, discussion of Report among colleagues.</p> <p>RESPONSE: These assertions establish:</p> <ul style="list-style-type: none"> • Hoffman's purposeful avilment of Ohio through his interview of Swenson while she was in her

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<p>Report and was interviewed by Hoffman)</p>	<p>Ohio office,</p> <ul style="list-style-type: none"> • the mischaracterizations and false statements in the Report that contradict Sidley's assertion that it contains "opinion," and • the Report's readership in Ohio and damage to all of the Plaintiffs' reputations as a result of first accessing the Report via <i>The New York Times</i> website. <p>*Paragraph 9: Assertions relating to conversations with Sidley Austin interviewers regarding handling of Dr. Gelles ethics investigation.</p> <p>RESPONSE: These assertions identify mischaracterizations and false statements in the Report that contradict Sidley's assertion that it contains "opinion" and demonstrate the commission of an intentional tort in Ohio.</p>
BASED ON PERSONAL KNOWLEDGE OF THE AFFIANT	
	<p>*In paragraph 9, "Sidley Austin interviewers had an agenda to characterize the APA Ethics Office as exercising undue influence over the Ethics Code Task Force and the Ethics Committee deliberations regarding Dr. Gelles."</p> <p>RESPONSE: The statement recounts Swenson's own personal perception and experience of her interactions with the interviewer during her interviews by Sidley and her experience in adjudicating the Gelles ethics case. Her impressions of the Sidley interviewers' agendas and her experience during the adjudication are within her personal knowledge.</p>