

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Superior Court No. 1884CV01968

STEPHEN BEHNKE, ET AL.,

Plaintiffs,

v.

STEPHEN SOLDZ, ET AL.,

Defendants.

**DEFENDANTS' EMERGENCY MOTION FOR TEMPORARY STAY PENDING
RULING ON FORTHCOMING MOTION TO
STAY LAWSUIT UNDER THE FIRST-FILED RULE**

Pursuant to Superior Court Rule 9A(e), defendants Sidley Austin LLP, Sidley Austin (NY) LLP, and David H. Hoffman (collectively, "Sidley"), and American Psychological Association ("APA") hereby move for an emergency order granting the following relief for the reasons stated in the accompanying memorandum and declaration of Jonathan M. Albano:

1. Plaintiffs be ordered to file any opposition to this motion on or before Tuesday, July 24, 2018.
2. This action is temporarily stayed pending the Court's ruling on the defendants' forthcoming first-filed motion.
3. During this time, (a) all other deadlines in the case are stayed, including the July 26, 2018 deadline for filing Rule 12(b) motions in response to the complaint and any other threshold motion, thus preserving defendants' right to timely file these motions and any arguments thereunder, at a later date to be set by the Court,¹ and (b) all discovery is

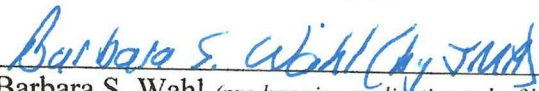
¹ Movants calculate that July 26, 2018 is the earliest date on which any of their responses to the Complaint would be due.

stayed.

**AMERICAN PSYCHOLOGICAL
ASSOCIATION**

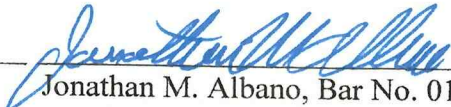
By its attorneys,

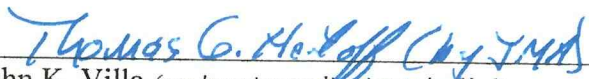

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Dated: July 20, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document
was served upon the attorney of record for each other
party by mail-hand on July 20, 2018



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Superior Court No. 1884CV01968

STEPHEN BEHNKE, ET AL.,

Plaintiffs,

v.

STEPHEN SOLDZ, ET AL.,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' EMERGENCY MOTION
FOR TEMPORARY STAY PENDING RULING ON
FORTHCOMING MOTION TO STAY LAWSUIT UNDER THE FIRST-FILED RULE**

As the Complaint in this action acknowledges, this is the third substantively identical defamation and false-light lawsuit that the same group of five plaintiffs has brought against substantially the same group of defendants over the past two years. Compl. at 27 n.14.¹ Here, plaintiffs have filed a nineteen-count, 151-page defamation and false-light Complaint with an additional 45-page exhibit setting forth 219 sets of allegedly false statements by defendants. They have also served with the Complaint five sets of broad document requests and three deposition notices, with the first deposition noticed for August 10. The Complaint fails to disclose, however, that plaintiffs are seeking to actively litigate the same case in three different jurisdictions at the same time. In plaintiffs' first lawsuit, filed in Dayton, Ohio in February 2017 (the "Ohio Action"), defendants are currently awaiting plaintiffs' promised appeal to the Ohio Supreme Court from an intermediate appellate court's affirmance of the trial court's dismissal of the case for lack of personal jurisdiction. Plaintiffs' second lawsuit, filed in Washington, D.C. in

¹ The five plaintiffs are Dr. Stephen Behnke, Col. (Ret.) L. Morgan Banks, Col. (Ret.) Debra L. Dunivin, Col. (Ret.) Larry C. James, and Dr. Russell Newman.

August 2017 (the “D.C. Action”), is currently stayed in favor of the Ohio Action, but plaintiffs are seeking to lift the stay in the D.C. Action and actively litigate that case.

Plaintiffs have filed this new Massachusetts lawsuit (1) in attempted evasion of a February 16, 2018 District of Columbia Superior Court order that over their objection stayed their D.C. Action in its entirety pending resolution of the Ohio Action, and (2) in the face of an earlier-established automatic stay of all discovery in D.C. because of the filing of defendants’ special motion to dismiss the D.C. Action under the District of Columbia Anti-SLAPP Act, D.C. Code § 16-5501.

To avoid unwarranted burden and unfair prejudice from plaintiffs’ forum shopping and tactical multiplication of proceedings, defendants Sidley Austin LLP, Sidley Austin (NY) LLP, and Sidley partner David H. Hoffman (collectively, “Sidley”) and American Psychological Association (“APA”) will file a motion on or before July 26, 2018, to stay this *third*-filed action pursuant to the doctrine courts apply to manage their own dockets, known as “the first-filed rule.”² In the meantime, to ensure that no ambiguity exists about preservation of their Rule 12(b) and other threshold motions, including challenges to personal jurisdiction, and to obtain a stay of the discovery that plaintiffs served with the Complaint, defendants seek the following temporary emergency relief:

Pursuant to Superior Court Rule 9A(e), defendants hereby move for an emergency order temporarily staying this action, including (i) the dates by which any motion in response to the Complaint is due, including but not limited to motions under Mass. R. Civ. P. 12(b), and (ii) all discovery, including the three depositions noticed to take place beginning August 10.

² Another defendant, Dr. Stephen Soldz, to our knowledge has not yet been served with a summons in this case.

When defendants advised plaintiffs that they plan to move to stay this action under the first-filed rule and sought consent to the emergency relief requested here, plaintiffs declined to agree as to all defendants. Plaintiffs refused to temporarily stay the case against co-defendant Stephen Soldz, which would defeat the purpose of a complete temporary stay of the case because discovery that implicates all defendants' rights would still go forward in this Court and dispositive motions that implicate all defendants' rights would still go forward in this Court. As set forth below, plaintiffs' attempt to litigate substantively identical claims in three different forums simultaneously, and to seek immediate discovery in evasion of a discovery stay in another jurisdiction, warrant the emergency relief requested here.

BACKGROUND

Plaintiffs' Complaint principally focuses on a report that Sidley delivered to APA in July 2015, titled "Report to the Special Committee of the Board of Directors of the American Psychological Association: Independent Review Relating to APA Ethics Guidelines, National Security Interrogatories, and Torture" ("Report"). The Report is 541 pages long and is accompanied by more than 7,600 pages of publicly available exhibits. It resulted from a several-months long investigation, led by Sidley partner David Hoffman, concerning events that spanned a decade, involved intelligence and military activities across the globe, and included analysis of more than 50,000 documents and interviews of approximately 150 witnesses. The focus of the Report is a series of allegations that had been made regarding APA's issuance of ethical rules and/or guidelines in 2002 and 2005, and related actions, which determined whether and under what circumstances psychologists who were APA members could ethically participate in national security interrogations, like those that occurred in the 2000s in Iraq, Afghanistan,

Guantanamo Bay, and elsewhere.³

1. **Ohio:** The five plaintiffs in this case initially filed a substantively identical version of this Complaint against Sidley (excluding only the New York LLP that operates Sidley's Boston office), Hoffman, and APA in the Ohio Court of Common Pleas on February 16, 2017, styled *James v. Hoffman*, Case No. 2017 CV 00839. Defendants responded with a number of motions, including a motion to dismiss for lack of personal jurisdiction and *forum non conveniens*, a motion to compel arbitration of the claims of the two plaintiffs who had been APA employees, and a special motion to dismiss pursuant to the District of Columbia Anti-SLAPP Act.⁴ The Ohio court entered a stay of all discovery while these threshold motions were addressed. The court then suspended briefing on all motions except for personal jurisdiction/*forum non conveniens*, with the parties and the court agreeing that the other motions need not be further addressed until later.

On August 25, 2017, the Ohio trial court dismissed the lawsuit for lack of personal jurisdiction over the defendants in Ohio. Plaintiffs appealed that ruling and on June 22, 2018, the Ohio Second District Court of Appeals affirmed the dismissal, *James v. Hoffman*, Appellate Case No. 27735. Plaintiffs' application to the Ohio Supreme Court to hear a discretionary appeal of the dismissal, called a "jurisdictional appeal" under Ohio procedure, is due by August 6, 2018, and plaintiffs have stated in the D.C. Action that they will file such an appeal.

2. **District of Columbia:** On August 28, 2017, three days after the Ohio trial court dismissal, the same five plaintiffs re-filed a second, substantively identical defamation and false-light complaint against the same defendants, in Washington, D.C. Superior Court (adding only

³ Sidley provided APA a revised version of the Report in September 2015.

⁴ Defendants argued that the Ohio court should apply D.C. anti-SLAPP protections, as D.C. had the most significant relationship to the matter under Ohio's conflict-of-laws principles.

the LLP that operates Sidley's D.C. office, as an additional defendant), styled *Behnke v. Hoffman*, Case No. 2017 CA 005989 B. The D.C. complaint contains the same claims as the Ohio Action, and the same Exhibit A alleging the same 219 sets of statements that plaintiffs allege are false. Albano Ex. 1 ("D.C. Compl.").⁵ Plaintiffs also sought extensive document, interrogatory, and deposition discovery in D.C., including the production of all witness interview documents, memoranda, correspondence, and notes created by Sidley during its investigation; the contents of a computer hard drive; interrogatories detailing the creation of the Report; and depositions of a number of individuals, including Massachusetts co-defendant Dr. Stephen Soldz, who is not a defendant in the D.C. Action.

Defendants again filed motions to compel arbitration of the claims brought by the two plaintiffs who had been APA employees, and special motions to dismiss the complaint against all plaintiffs under the D.C. Anti-SLAPP Act, D.C. Code § 16-5501. Because the District of Columbia has determined that a core aspect of protecting Defendants' First Amendment rights is shielding them from burdensome discovery that accompanies lawsuits brought to chill speech, *see* D.C. Council, Comm. Pub. Safety & Judiciary, Report on Bill 18-893, "Anti-SLAPP Act of 2010" (Nov. 18, 2010), at 1, the D.C. Anti-SLAPP Act automatically stays discovery upon the filing of an anti-SLAPP motion (subject to a plaintiff succeeding on a targeted motion for limited discovery needed to defeat the motion). *See* § 16-5502(c).

After plaintiffs rejected defendants' proposal to stay the D.C. Action in its entirety pending resolution of the Ohio Action, defendants filed a motion under the first-filed rule to stay the case or, in the alternative, to schedule the briefing of the other threshold motions in the case,

⁵ All Exhibits referenced herein are attached to the accompanying declaration of Jonathan M. Albano.

including Rule 12(b)(6) motions to dismiss, in stages. In addition to opposing the stay, plaintiffs filed a motion to compel discovery, which defendants opposed. On February 16, 2018, the D.C. Superior Court granted a stay of the case based on the first-filed rule and held the other motions, including plaintiffs' discovery motion, in abeyance. Albano Ex. 2 ("D.C. Stay Order"), at 2. Under the "well-established . . . first-to-file rule," the court ordered the D.C. Action stayed in favor of the Ohio Action, which was "filed first" and "concerns the same issues essentially between the same parties." The court ordered that the stay would last "until the Ohio action has concluded." *Id.* at 3-5.

After defendants informed the D.C. court of the appellate affirmance of dismissal of the Ohio Action, plaintiffs on July 3, 2018 filed a document in the D.C. Action that (1) affirmed that they would be filing a jurisdictional appeal in Ohio; (2) asked nevertheless to lift the stay of the D.C. Action so that discovery could occur in D.C. while the Ohio Action is still pending; and (3) notified the D.C. court that they had filed this third lawsuit in Massachusetts. Albano Ex. 3 ("D.C. Response to Praecipe").

3. **Massachusetts:** On June 25, 2018, plaintiffs filed the Massachusetts Complaint, attempting service on the moving defendants on July 5 and 6. A comparison of the instant Complaint with the complaint in the D.C. Action shows that plaintiffs have once again filed a substantively identical complaint against these same defendants (replacing the D.C. Sidley LLP with the New York Sidley LLP), including the same Exhibit A with the same 219 sets of allegedly false statements. *See* Albano Ex. 1 ("D.C. Compl."). *Compare* D.C. Compl. ¶¶ 22 (citing 219 sets of statements in Complaint's Exhibit A), 39-48 (identifying named parties), 56 (identifying non-party Stephen Soldz), *with* Mass. Compl. ¶¶ 31 (citing 219 sets of statements in Complaint's Exhibits A), 49-59 (identifying named parties, including Soldz). Plaintiffs have

added additional detail in support of some of their claims and attempted to tailor their personal jurisdiction allegations to Massachusetts, *see* Mass. Compl. ¶¶ 70-79, but the defamation and false-light claims against Sidley and APA are the same, with plaintiffs merely adding five additional counts about distributions of copies of the Report (such as APA emailing links to the Report to their members) or articles discussing the Report that were already the subject of discussion in the earlier complaints. *Compare* D.C. Compl. ¶¶ 1 (“This action . . . asserts claims of defamation *per se*, defamation by implication, and false light.”), 300-535 (complaint counts), *with* Mass. Compl. ¶¶ 1 (“This action . . . asserts claims of defamation *per se*, defamation by implication, and false light.”), 328-725 (complaint counts). Plaintiffs have added a new defendant, Massachusetts resident Dr. Stephen Soldz, who also had been extensively discussed in the earlier complaints and the subject of prior discovery requests. *See* D.C. Compl. ¶¶ 28, 56, 79, 173, 175, 176, 243, 244, 247, 299, 322, 333, 343; *see also* Albano Ex. 4 (“Ohio Compl. Excerpts”) ¶¶ 55, 78, 176, 240, 241, 316, 317, 327, 337, 338.

Plaintiffs also have served five sets of broad document requests with the Complaint here, as well as notices of three depositions, with the first one noticed for August 10. This service of discovery flouts the D.C. Superior Court’s February 2018 Stay Order in a case the plaintiffs themselves filed, as well as the automatic stay imposed to protect defendants’ First Amendment rights under the D.C. Anti-SLAPP Act.

ARGUMENT

For the reasons that follow, defendants ask that the Court order the following temporary emergency relief: (a) stay the deadline for any motion responding to the Complaint pending the Court’s resolution of defendants’ forthcoming motion to stay pursuant to the first-filed rule; (b) temporarily stay all discovery during this time period; and (c) confirm that any motion

responding to the Complaint filed subsequent to the first-filed motion disposition is timely and preserved.

I. The Court Should Stay the Deadlines for Defendants to File Dispositive Motions Until the Resolution of Defendants' Forthcoming Motion to Stay this Case in Favor of the First-Filed Ohio and D.C. Cases.

Defendants intend to file on or before July 26, 2018 a motion to stay this third-filed case under the first-filed rule. In that motion, Defendants will argue that a court has control over its docket and the inherent power, in its discretion, to stay proceedings pending the outcome of another related lawsuit. *Town of Danvers v. Wexler Const. Co.*, 12 Mass. App. Ct. 160, 164 (1981); *see also Williams v. FedEx Ground Package System, Inc.*, No. 062344C, 2007 WL 3013266, at *1 (Mass. Super. Ct. Sept. 20, 2007). Accordingly, where “entirely duplicative lawsuits are filed in different jurisdictions at materially different times, typically the later-filed action is stayed pending final resolution of the first-filed action,” *FTI, LLC v. Duffy*, No. 1684CV03176BLS2, 2017 WL 3251514, at *1 (Mass. Super. Ct. May 4, 2017), reflecting a “prioritizing, at least in Massachusetts, of first-filed litigation,” *Davenport v. Benhamou*, No. 07379323F, 2007 WL 4711512, at *2 (Mass. Super. Ct. Dec. 20, 2007). Doing so helps to avoid the waste of judicial and party resources, polices duplicative litigation and tactical forum shopping, and removes the opportunity for two separate judges to issue different and conflicting decisions on identical issues of law or discovery disputes. *See Sussman v. Vieau*, No. MICV201201917, 2012 WL 11893990, at *1 (Mass. Super. Ct. Sept. 18, 2012).

Defendants will argue that under the “first-filed rule” this Court should stay this case pending the outcome of the Ohio and D.C. Actions. As the Background section in this motion notes, the Ohio and D.C. Actions were filed materially earlier than this action and are well underway. The arguments, allegations, and parties in all three suits are substantively identical and raise no legal issues particular to Massachusetts. The only “new” party in this action—

defendant Stephen Soldz—is hardly new, but rather has been a consistent presence as a non-party in plaintiffs’ allegations and discovery requests in Ohio and D.C. *See* Albano Ex. 4 ¶¶ 55, 78, 176, 240, 241, 316, 337 (references to Dr. Soldz as a non-party in the Ohio complaint); Albano Ex. 3 ¶¶ 28, 56, 79, 165, 243, 244, 322, 343 (references to Dr. Soldz as a non-party in the D.C. complaint). Massachusetts courts have rejected the tactical addition of a new defendant to evade the first-filed rule. *See Fromm v. City of Boston*, No. 13-P-246, 2014 WL 349309, at *1 (Mass. App. Ct. Feb. 3, 2014). As explained briefly below, the Massachusetts suit appears designed as an attempted end-run around D.C.’s Anti-SLAPP Act and as an effort to obtain immediate discovery to circumvent the D.C. Superior Court’s stay of discovery pending the resolution of the Ohio Action. Given the number of simultaneous lawsuits at issue and the number of possible dispositive motions that can and will be filed, a stay will ameliorate otherwise substantial expenses and burdens on the defendants and the Court.

II. The Court Should Stay Discovery Until It Rules Whether this Case Should Proceed on the Merits.

The Ohio and D.C. courts have stayed plaintiffs’ previous attempts to force defendants to produce voluminous, burdensome, and premature discovery during the pendency of important threshold motions. Plaintiffs now attempt to use the Massachusetts action to circumvent those stays and obtain broad discovery. The Court should temporarily stay all discovery until it has decided defendants’ forthcoming motion to stay this case under the first-filed rule in favor of the Ohio and D.C. Actions.

On or about July 5, 2018, defendants received copies of the instant Complaint and five document requests, with responses purportedly due by August 20, 2018, as well as three deposition notices (collectively, the “Discovery Requests”), including but not limited to:

- **Request for Production of Documents to the Sidley Defendants**, seeking ten categories of documents, including, among other things, all Sidley interview

notes, documents pertaining to 167 individuals, written legal opinions regarding the application of privilege or work product to Sidley's interview notes, and correspondence to or from *New York Times* reporter and author James Risen regarding a publication titled "All the Presidents Psychologists," his book *Pay Any Price*, and/or the allegations made therein.

- **Request for Production of Documents to Defendant APA**, seeking, among other things, all documents pertaining to the Report, and *all activities* undertaken by Massachusetts residents on behalf of APA, without any time or subject matter limitation.
- **Request for Production of Documents to Defendant Dr. Stephen Soldz**, seeking twelve categories of documents, including, among other things, communications with Julian Assange regarding an article posted on WikiLeaks co-authored by Dr. Soldz, and correspondence to or from Dr. Soldz's personal friend Nathaniel Raymond, without limitation as to subject or time frame.
- **Notices of Depositions of Dr. Soldz and Third-Party Nathaniel Raymond**, noticed for August 10 and 17, 2018, respectively. A request appended to Mr. Raymond's deposition notice requests that he bring with him documents responsive to twelve separate categories of documents, including, but not limited to, all correspondence of any sort between Mr. Raymond and Dr. Soldz (again without limitation as to time frame or subject matter), documents pertaining to events described in the Report, and documents pertaining to events described in or related to Risen's book *Pay Any Price*.
- **Notices of Deposition of Jessica Henderson Daniel**, noticed for August 24, 2018. Dr. Daniel is APA's current President.

None of this discovery should go forward until this Court has the opportunity to decide whether this action should proceed in light of plaintiffs' pending lawsuits in Ohio and D.C.

A. Plaintiffs' Discovery Requests Contravene the Automatic Stay of Discovery Imposed by Defendants' Pending Anti-SLAPP Motions.

Both the Sidley and APA defendants filed special motions to dismiss under the D.C. Anti-SLAPP Act in both the Ohio and D.C. Actions. When a special motion to dismiss is filed under the Act, a stay of discovery is mandatory until the motion is resolved. D.C. Code § 16-5502(c)(1); *accord* Mass. Gen. Laws ch. 231, § 59H (Massachusetts Anti-SLAPP statute includes automatic discovery stay upon motion filing). Accordingly, discovery was

automatically stayed in the D.C. case upon the filing of defendants' anti-SLAPP motions. Moreover, the Ohio court stayed discovery in its discretion and the D.C. court stayed the case in its discretion.⁶ The stay of discovery continues to remain in full force and effect during the pendency of the Ohio appeal.

Barred from obtaining discovery in connection with the Ohio and D.C. Actions, plaintiffs served Discovery Requests here concurrently with their Complaint. These Discovery Requests seem to be a transparent end-run around the courts' stays under the Anti-SLAPP Act, as plaintiffs seek much of the same discovery requested in the previously filed lawsuits (including Sidley's interview notes, documents that pertain to the leak of the Report to Risen, legal analyses provided to APA, and the deposition of Dr. Soldz). Albano Ex. 5. Such tactics also undermine the Anti-SLAPP Act's protection for defendants from the cost of burdensome discovery that may chill their constitutional rights of freedom of speech and petition. *See Cardno ChemRisk, LLC v. Foytlin*, 476 Mass. 479, 483-84 (2017).

Requiring defendants to respond to the extensive, overbroad, and often irrelevant discovery propounded by the plaintiffs and to participate in depositions at this stage of the case would intrude upon the First Amendment rights that the D.C. Anti-SLAPP Act was enacted to protect. Until the Court has an opportunity to review and rule on the motion to stay this case in favor of the first-filed litigation, all discovery should be stayed.

B. Plaintiffs' Discovery in this Third-Filed Action May Ultimately Prove Moot, and Otherwise Unduly Burdensome, Overbroad, and Improper.

A stay of discovery is also favored when a newly filed case is substantially the same as a lawsuit already ongoing in another forum, making it unlikely that the later-filed case will ever

⁶ The Ohio trial court stayed all discovery on March 27, 2017, and the District of Columbia court stayed all proceedings (including discovery) on February 16, 2018, Albano Ex. 2, at 5.

reach the merits. *See Sandoval v. RLI Ins. Co.*, No. 17-12054-JGD, 2017 WL 6447866, at *1 (D. Mass. Dec. 18, 2017) (ordering discovery in federal action to be stayed pending resolution of related state court action). Given that this Court is third in line to hear the parties' dispute, there is a very real possibility that the case will not move forward in this jurisdiction at all. At this stage, requiring defendants to collect, review, and produce documents in response to plaintiffs' extensive discovery requests, in this unwarranted triplication of the litigation between the parties, is particularly unnecessary and a waste of the parties' resources.

Moreover, plaintiffs' requests are not only premature, but overly broad, irrelevant, and overreaching.⁷ Most of the discovery sought is not relevant to this lawsuit and disproportionate to the needs of the case, Mass. R. Civ. P. 26(b), making a stay particularly appropriate. *See Dicenzo*, 2016 WL 158505, at *2 (granting motion to stay discovery pending resolution of motions to dismiss); *MacKnight v. Leonard Morse Hosp.*, 828 F.2d 48, 50, 52 (1st Cir. 1987). When, as here, there is legitimate doubt that the Court will ever exercise jurisdiction in this matter, such broad and burdensome discovery is inappropriate, and premature.

Similarly, plaintiffs' Discovery Requests are unduly burdensome and unwarranted since they are directed at premature personal jurisdiction arguments that this Court may never reach. For example, plaintiffs seek "[a]ny and all documents" relating to "all activities undertaken in MA by MA residents on behalf of APA." Plaintiffs' Request for Production of Documents by Defendant APA, at 2. Similarly, plaintiffs have requested any correspondence Sidley sent to or

⁷ For example, plaintiffs seek Dr. Soldz's communications with WikiLeaks founder Julian Assange, although neither Mr. Assange nor WikiLeaks is even mentioned in the Complaint. Plaintiffs further seek any and all APA documents that pertain to APA's activities in Massachusetts, without date range or subject matter. With regard to Sidley, plaintiffs have requested they produce not only a list of all interviews conducted, and the searches for documents undertaken for the investigation, but also extensive non-documentary information.

received from ten Massachusetts residents. Plaintiffs' Request for Production of Documents by Sidley Defendants, at 2. Using discovery to attempt to establish a basis for personal jurisdiction at this stage of litigation is premature and may ultimately prove unnecessary.

III. The Court Should Order that the Filing of Threshold Motions in Response to the Complaint Is Stayed and that the Motions Are Preserved.

The Court should eliminate any possible ambiguity and cause for later dispute by ordering that the filing of any other threshold motion in response to the Complaint is stayed pending further Order of the Court and that defendants' arguments thereunder are thus preserved.

There are a number of meritorious threshold motions that defendants can file in response to the Complaint. Part of the unfair prejudice to defendants from plaintiffs' forum shopping and tactical multiplication of proceedings is the time and expense defendants need to brief and argue these motions, some for a third time.

The threshold motions that defendants intend to file in the event the Court denies the plaintiffs' first-filed motion include:

- Motions to dismiss for lack of personal jurisdiction or *forum non conveniens*.
- Motions to compel arbitration of the claims of plaintiffs Stephen Behnke and Russell Newman pursuant to their APA employment agreements and equitable estoppel doctrines.
- Special motions to dismiss the Complaint pursuant to the D.C. Anti-SLAPP Act, § 16-5501, or any other applicable state anti-SLAPP statute, applying Massachusetts conflict of law principles.
- Motions to dismiss based on the one-year statute of limitations of the District of Columbia, D.C. Code § 12-301, or other applicable jurisdiction, applying Massachusetts conflict-of-laws principles.
- Motions to dismiss under Rule 12(b)(6) for failure to state a claim. Defendants' anticipated Rule 12(b)(6) motions would raise legal arguments about each of the 219 sets of allegedly false statements set forth in Complaint Exhibit A. Defendants' motions would establish that, as a matter of law, as to each of the five plaintiffs, each of the 219 sets of statements fails to satisfy at least one of the

required elements of a defamation claim. These include the following elements, the failure of a plaintiff to establish any one of which defeats his or her claims: whether each challenged statement is (1) defamatory; (2) reasonably susceptible of a defamatory meaning; (3) “of and concerning” the particular plaintiff; (4) protected opinion rather than an actionable statement of fact; (5) materially false or substantially true; and (6) sufficiently pleaded in light of plaintiffs’ obligations as public officials or public figures to prove actual malice, among others.

Given that these motions may be unnecessary, in the interest of preserving the parties’ and Court’s resources, and limiting the unfair prejudice to defendants from the filing of this third lawsuit, defendants request that the Court stay the filing of any such motions until further Order of the Court and direct that all such motions are preserved.

CONCLUSION

WHEREFORE, defendants Sidley Austin LLP, Sidley Austin (NY) LLP, David H. Hoffman, and American Psychological Association respectfully request that the Court enter an order temporarily staying this action, including the dates by which responses to the Complaint are due, including motions under Mass. R. Civ. P. 12(b), as well as all discovery.

**AMERICAN PSYCHOLOGICAL
ASSOCIATION**

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Dated: July 20, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document
was served upon the attorney of record for each other
party by mail-hand on email on July 20, 2018



COMMONWEALTH OF MASSACHUSETTS

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Superior Court No. 1884CV01968

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Plaintiffs,

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STEPHEN SOLDZ, ET AL.,

Defendants.

ORDER GRANTING TEMPORARY STAY

This matter came before me on the emergency motion of defendants Sidley Austin LLP, Sidley Austin (NY) LLP, and David H. Hoffman (collectively, “Sidley”), and American Psychological Association (“APA”) for an order temporarily staying this action, including the dates by which Mass. R. Civ. P. 12(b) motions and other threshold motions responding to the complaint are due, as well as all discovery, until the Court rules on defendants’ motion to stay this action under the first-filed rule pending the resolution of two related actions between the parties currently pending in Ohio and Washington, D.C.

Upon consideration of the parties’ submissions, it is hereby ordered as follows:

1. Sidley and APA shall file their motion to stay under the first-filed rule on or before July 26, 2018.
2. Apart from briefing and argument on defendants’ first-filed motion, this action shall be stayed temporarily pending the Court’s ruling on the first-filed motion. During this time, (a) all other deadlines in the case are stayed, including the deadlines for filing Rule 12(b) motions in response to the complaint and any other threshold motion, thus preserving defendants’ right to timely file these motions

and any arguments thereunder, at a later date to be set by the Court, and (b) all
discovery is stayed.

So ordered this ____ day of July 2018

Edward P. Leibensperger
Associate Justice, Superior Court