V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

Dietz Development LLC, and Christopher Dietz	)	
Plaintiffs,	)	**Case No. CL 2012-16249**
v.	)	
Jane Perez	)	
Defendant	)	

PLAINTIFFS' MOTION TO SET ASIDE THE JURY'S VERDICT AND ORDER ADDITUR OR GRANT A NEW TRIAL ON DAMAGES

Sara E. Kropf (VA Bar No. 84931)
Law Office of Sara Kropf PLLC
1001 G St. NW, Suite 800
Washington, DC 20001
(202) 627-6900
Fax (202) 347-0316
sara@kropf-law.com
Counsel for Plaintiffs

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INTRODUCTION

The jury in this case correctly found that Defendant Jane Perez defamed Plaintiffs Christopher Dietz and Dietz Development. But it improperly disregarded the evidence at trial and the Court's damages instructions and awarded no damages. Plaintiffs therefore request that the Court set aside the jury's verdict on damages as inadequate, and either grant additur or order a new trial on damages.

Plaintiffs sued Defendant for defamation based on fifty-five statements Defendant made in six internet posts and in her complaint to a Virginia state agency.[1] Plaintiffs then presented substantial evidence at trial that these statements were false and that Defendant possessed the requisite degree of fault in making them. Plaintiffs also presented largely-uncontradicted evidence of injury to Mr. Dietz and his company's reputation, of humiliation to Mr. Dietz personally and of loss of business. Critical here, the Court ruled that the vast majority of the statements made by Defendant constituted *per se* defamation, and instructed the jury that if it found that Defendant had committed defamation, Plaintiffs need not prove any specific financial loss to recover compensatory damages.

Virginia law is clear that a trial court has discretion to set aside a verdict that is "plainly wrong or without credible evidence to support it." *Jenkins v. Pyles*, 269 Va. 383, 388 (2005). That is the situation here. The jury's verdict disregarded the Court's instructions on damages, and no credible evidence supports the award of zero damages. It should be set aside.

[1] This brief will refer to the statements contained in Exhibit A. At trial, Plaintiffs submitted a list of fifty-five statements claimed to be defamatory. Defendant repeated some of the statements in her online posts; Exhibit A therefore summarizes the 40 separate statements and notes where Defendant made each statement. The Virginia agency to whom Defendant made her complaint was the Department of Professional and Occupational Regulation ("DPOR").

FACTS

This was a five day trial, held from January 27 to January 31, 2014. The jury returned a verdict around 7:30 pm on Friday, January 31, 2014. It found that Defendant had defamed Plaintiffs but awarded zero damages for this claim.

A. Evidence Supporting the Liability Verdict for Plaintiffs

Defendant did not contest several elements of Plaintiffs' defamation claim. She did not contest that she made the statements, that they were about Plaintiffs or that they were published. She contested that (1) they were false, and (2) she possessed the requisite intent in making them.

The Court correctly instructed the jury that Plaintiffs had the burden to prove that the statement was false and that Defendant made the statement "knowing it to be false or, if believing it to be true, the defendant lacked reasonable grounds for such belief or acted negligently in failing to ascertain the facts on which the statement was based." Virginia Model Civil Jury Instruction 37.097.

Space constraints in this brief prevent a full explanation as to how Plaintiffs proved every statement was false, but a few key examples are below.

Theft of jewelry. Defendant accused Mr. Dietz of having stolen thousands of dollars of jewelry from her home.[2] Mr. Dietz testified at trial that he had not stolen the jewelry. Trial Tr. (1/27/14) at 53-54.[3] Moreover, he was never arrested, charged or convicted of stealing the jewelry. *Id*. at 54-55. Defendant testified that she knew Mr. Dietz had not been convicted of

[2] Exhibit A, Statement No. 7 ("This is after filing my first ever police report when I found my jewelry missing and Dietz was the only one with a key."); *id*. at Statement No. 17 ("Apparently, $K's theft with a sole contractor's access to your home, an email from the contractor of possession of the resident's key as well as not returning that key, and motive are not enough to file charges."); *id*. at Statement No. 21 ("The day after Dietz was let go from the job on my property, thousands of dollars of jewelry were found stolen and I submitted my first ever police report"); *id*. at Statement No. 38 ("This is after filing my first ever police report when I found my jewelry missing and Dietz, as the contractor, was the only one with a key").

[3] The trial transcript excerpts from January 27, 2014, are contained in Exhibit B. The trial transcript excerpts for January 28, 2014, are contained in Exhibit C.

stealing the jewelry. Trial Tr. (1/28/14) at 249. She knew—or at least was negligent—in making these statements. *WJLA-TV v. Levin*, 264 Va. 140, 156 (2002) (where television station published statements that doctor committed criminal sexual assaults, it was appropriate to find that the station committed defamation because it made the statements "while knowing that no criminal charges had been brought against him and having reason to know, based on the results of the Board of Medicine's investigation, that such charges probably could not be sustained.").

Trespass on property. Defendant accused Mr. Dietz of having trespassed on her property.[4] Mr. Dietz testified at trial that he had not done so, Trial Tr. (1/27/14) at 84, and simply knocked on her front door to discuss her unpaid renovation contract, *id*. at 58-60. Moreover, he was never arrested, charged or convicted of trespass. Defendant did not testify that she believed that Mr. Dietz had been convicted of trespass. She knew—or at least was negligent—in making these statements. *WJLA-TV v. Levin*, 264 Va. at 156.

Virginia Licensing Misdemeanor. Defendant accused Mr. Dietz of having committed another crime—the "misdemeanor" of performing unlicensed work in Virginia.[5] Mr. Dietz had not been charged or convicted of a crime related to unlicensed work when Defendant made the statements. Trial Tr. at (1/27/14) 66 (Dietz testimony that DPOR did not refer the case to a prosecutor for criminal charges); *id*. at 84 (Dietz testimony that he was not convicted of a misdemeanor). In fact, Defendant knew that DPOR lacked the authority to convict Mr. Dietz and

[4] Exhibit A, Statement No. 17 ("trespassing past 'no trespassing' signs to the townhome complex after the contractor losing his case and showing up at your front door."); *id*. at Statement No. 21 ("Dietz showed up at my front door going right past the large no trespassing sign to the townhouse complex.").

[5] *Id*. at Statement No. 13 ("Apparently, resorting to swift legal action is not a new tactic for this contractor, although unlicensed contractor work is a first degree misdemeanor punishable by up to a year in jail and $500 per day."); *id*. at Statement No. 18 ("Further, Christopher Dietz committed a Class One Misdemeanor of Unlicensed Work in the State of Virginia, punishable by up to a year in jail and $500 per day"); *id*. at Statement No. 27 ("DPOR found that Christopher Dietz committed a Class 1 Misdemeanor of Unlicensed Work in the State of Virginia."); *id*. at Statement No. 29 ("The BBB just posted an initial rating last week for Dietz that the BBB is now reviewing based on Class 1 Misdemeanor finding by DPOR and their BBB guidelines."); *id*. at Statement No. 32 ("Criminal law violated by Dietz Development: practicing without a license in the state of Virginia.").

that DPOR had refused to refer Mr. Dietz's case to the prosecutor. Trial Tr. (1/28/14) at 208 (Queen testimony that she explained to Defendant that DPOR decided not to "secure a warrant" and instead seek "compliance"). Defendant sought a criminal warrant for Plaintiffs' unlicensed work in October 2012. Exhibit D (trial exhibit 280—warrant).[6] This was *after* she published her defamatory statements from January to September 2012 accusing him of having already committed this supposed crime. Defendant knew when she made these false statements that Mr. Dietz had not been charged or convicted of this crime because DPOR had told her it was not seeking criminal charges and because Defendant herself had not yet sought criminal charges. *WJLA-TV v. Levin*, 264 Va. at 156.

The Court should be aware that on February 26, 2014, the Fairfax County Commonwealth's Attorney declined to prosecute the case against Mr. Dietz and the District Court entered a *nolle prosequi* of those charges. Notably, Defendant waited at court for over three hours to try to convince the prosecutor to convict Mr. Dietz. Her efforts were unsuccessful, and the charges were dropped.

Outcome of General District Court Case. Defendant stated that Mr. Dietz's General District Court case against her for the unpaid contract was dismissed because it had "no merit."[7] In fact, the evidence at trial showed that the case was dismissed because Mr. Dietz did not file a bill of particulars, not because the court decided his case has no merit. Exhibit D (trial exhibit 5—order dismissing warrant in debt). Defendant had a lawyer in that case. *Id*. She was at least negligent in making the statements since she "fail[ed] to ascertain the facts on which the statement was based," Model Instruction 37.037, by asking her lawyer whether the dismissal was on procedural or substantive grounds before she made the false statements.

[6] All trial exhibits are contained in Exhibit D.
[7] Exhibit A, Statements No. 3 and 34 ("I won in summary judgment (meaning that his case had no merit)").

DPOR "Sanctions." Defendant stated that DPOR had imposed "further sanctions" on Plaintiffs.[8] The testimony at trial from DPOR, however, showed that DPOR had not imposed any sanctions on Mr. Dietz or his company because it had no authority to do so. For example, Mr. Dietz testified that DPOR did not force him to get a license, nor did it fine him. Trial Tr. (1/27/14) at 65. Sherrell Queen from DPOR testified that Mr. Dietz obtained his license "voluntarily," and that DPOR could not force Mr. Dietz to get a Virginia license. Trial Tr. (1/28/14) at 204, 235. Ms. Queen agreed that "what happened against Mr. Dietz by DPOR was not a sanction." *Id.* at 213. In fact, according to Ms. Queen, the only "sanction" that could be imposed upon an unlicensed contractor by DPOR was to refer him for criminal sanctions. *Id*. at 196. Defendant knew that DPOR had not sanctioned Plaintiffs because DPOR wrote her a letter stating that it was not doing so. Exhibit D (trial exhibit 265—DPOR letter stating "The compliance efforts in this case do not constitute a disciplinary action" and "the agency did not discipline this entity").

B. Evidence of Plaintiffs' Damages

Plaintiffs presented substantial evidence of their damages at trial. The jury was instructed that Plaintiffs did not have to prove any specific monetary loss to prevail on their defamation claim. It was then instructed that if the verdict was in favor of Plaintiffs, then Plaintiffs "are entitled" to specified compensatory damages. Model Civil Jury Instruction No. 37.0-15. The four categories of required compensatory damages for defamation are (1) any loss or injury to their business; (2) any insult to Plaintiffs including any pain, embarrassment, humiliation, or mental suffering; (3) any injury to their reputation; and (4) any actual, out-of-pocket losses that were caused by the statement. *Id*. No. 37.100.

[8] Exhibit A, Statement No. 19 ("Given Dietz's false online posts that this investigation did/found nothing, DPOR imposed further sanctions against Dietz."); *id*. at Statement No. 28 ("Given Dietz' online posts below about the investigation, DPOR has imposed further sanctions against Dietz.").

Plaintiffs presented uncontradicted testimony of their damages as to each category.

Humiliation or embarrassment. Mr. Dietz explained how he has been "embarrassed . . . [h]umiliated, completed deflated" by the posts. Trial Tr. at (1/27/14) 103. He explained that he has "two little girls, a seven year old and a nine year old" and is "an upstanding part of the community." *Id.* at 85. For example, he coaches one of his daughter's soccer teams, assists with his younger daughter's gymnastics activities and edits his daughters' school yearbook. *Id*. at 5. He explained that it is "embarrassing for someone to call me a criminal and then who knows who is seeing this." *Id*. at 85. He had to "speak[] to my kids' friends' parents asking what's going on" and had to "[e]xplain[] to the community as a whole." *Id*. at 102.

Mr. Dietz summarized how these posts had affected him:

> I'm a coach of 30-some little girls. Some watch the news with their parents. The majority of the parents watch the news, read the news. 100 percent of the parents are tech savvy, they might not admit it, but they certainly have seen the reviews, the articles referencing the case. And so maybe somebody doesn't say something to me, maybe somebody does. But not knowing if somebody looks at me as a criminal, a trespasser, a jewel thief, taking aside the business potential loss, just knowing that somebody is looking at me and potentially my children, my two little girls as the children of a criminal, I'm at a loss for words.

Id. at 103.

Injury to reputation. According to Mr. Dietz, his personal reputation is extremely important to the business because "I am the company. And as such my reputation is in essence the company's reputation." Trial Tr. (1/27/14) at 16. The reviews had "dramatically" affected his business because "in today's society, everyone is on-line. They research their dentist on-line, their doctor on-line, their contractor on-line." *Id.* at 93-94.

Before Defendant's negative online reviews, Plaintiffs' online reputation was unblemished. There were "zero" negative reviews of either Mr. Dietz or his company online. *Id*. at 90-91.

After Defendant's negative online reviews, a customer searching Plaintiffs' names would find that "the first thing you come up with is accusations of criminal behavior." *Id*. at 94. As evidence of the negative effect on his online reputation, Mr. Dietz introduced the results of a Google search for his company's name. The very first result was Ms. Perez's defamatory posts. Exhibit D (trial exhibit 275). He also introduced the results of the Google search for his name, which showed roughly the same results. Exhibit D (trial exhibit 274).

Loss to business. Plaintiffs presented direct evidence of loss to Plaintiffs' business.

First, one of Mr. Dietz's customers, Sevan Topjian, testified that he had tried to refer Plaintiffs to a potential customer who worked for an elder law disability center. Trial Tr. (1/28/14) at 121. This potential customer, however, had read the online reviews by Defendant. *Id.* Although Mr. Topjian "explain[ed] to him [his] relationship with Chris and that they were contrary to some of those reviews," the potential customer did not hire Plaintiffs. *Id*. That job alone was worth $50,000 to $100,000. *Id.*

Second, one of Plaintiffs' potential customers, Dyanne Branand, testified. She explained that she had worked with Mr. Dietz to get an estimate to repair fire damage at an apartment she owned. *Id*. at 184. Mr. Dietz had been referred to her by a trusted colleague of Ms. Branand's. *Id*. at 184-85. She enjoyed working with Mr. Dietz and described him as "really nice and very helpful." *Id*. at 190. Her insurance company would not work with Plaintiffs. *Id*. at 187-88.

Ms. Branand's testimony showed how potential customers reacted to the online reviews. Ms. Branand had read the online reviews at the time she was considering working with Mr. Dietz. *Id*. at 188. She testified that even if she could have hired whomever she wanted (rather than following the insurance company's dictates), she would not have hired Mr. Dietz because of the "disturbing" online reviews. *Id*. at 188-89. As she put it, the other two contractors she worked

with to get estimates were also highly recommended, so, all things being equal," she would not have hired Plaintiffs because of the troubling online reviews. *Id*.

Third, Mr. Dietz testified as to his loss of business. Mr. Dietz explained that the success of his business depends on referrals to potential customers from others in his industry. *Id.* at (1/27/14) 16. His "on-line presence" is "very important" to converting referrals into clients, because his "clients check [him] out on-line before they hire [him]." *Id*. at 16-17. The damage to Mr. Dietz and Dietz Development's online reputation harmed his business. Mr. Dietz testified that he had, "without a doubt," "lost out on certain business opportunities or jobs because of these posts." Trial Tr. (1/27/14) at 94. When asked to explain why he believed he had lost out on these jobs, Mr. Dietz responded "I've been told that." *Id*. at 94. He also explained that around the time of the negative posts, he had sent out to potential clients five to ten proposals for work. *Id*. at 95. But "not one of them came to fruition." *Id*. Viewed in the light most favorable to Plaintiffs, it is reasonable to assume that some of those five to ten potential plaintiffs did an online search of Plaintiffs, saw the reviews and reacted similarly to Ms. Branand.

Two of Plaintiffs' referral sources testified, Rick Baur (of Reico Kitchen & Bath) and Chris O'Neil (of M&M Appliance). They explained how they had to explain to Mr. Dietz's potential customers that the posts were not true. Trial Tr. (1/28/14) at 96 (testimony of Chris O'Neil that he told potential customers about the negative online reviews to be "forthcoming with all the information"); *id*. at 108-109 (testimony of Rick Bauer about having to "explain the situation" with the on-line reviews to one of Mr. Dietz's potential customers). Mr. Dietz authored a letter for Reico to provide to potential customers. *See* Exhibit D (trial exhibit 269). He did so "[a]ll in an effort to hopefully keep potential business." Trial Tr. (1/27/14) at 97 (C. Dietz test.).

Out of pocket expenses. Mr. Dietz also testified that he had certain out-of-pocket expenses because of these posts, including "lawyer fees, court fees." Trial Tr. (1/27/14) at 101. He also felt that he had to join the Better Business Bureau, which cost money. *Id*. at 101-02. He also lost time from his business by having to spend "hours and hours and hours and hours and hours on the phone, on line, trying to take care of these false postings. Hours and hours and hours and hours speaking to potential clients, explaining to them this scenario." *Id*. at 102.

ARGUMENT

Although the "circuit court's authority to set aside a jury verdict is explicit and narrowly defined," a jury's verdict should be set aside "if a jury verdict is plainly wrong or without credible evidence to support it." *Jenkins v. Pyles*, 269 Va. 383, 388 (2005); *see* Va. Code § 8.01-430.

II. A New Trial on Damages Is Warranted Here

A new trial may be granted where, as here, the damages awarded by the jury are "too small." Va. Code Ann. § 8.01-383 ("In any civil case or proceeding, the court before which a trial by jury is had, may grant a new trial, unless it be otherwise specially provided. A new trial may be granted as well where the damages awarded are too small as where they are excessive."). Because the damages awarded by the jury to Plaintiffs were "inadequate," the Court may "award a new trial" or "require the defendant to pay an amount in excess of the recovery of the plaintiff found in the verdict." Va. Code Ann. § 8.01-383.1(B). "While the law leaves the assessment of damages generally to juries, judges have the power and are charged with the duty to take action to correct what plainly appears to be an unfair verdict." *Reel v. Ramirez*, 243 Va. 463, 466-67 (1992).

The Supreme Court has held that "a court will not disturb the verdict in such a case either because of its smallness or because of its largeness, unless, in the light of all the evidence, it is

manifestly so inadequate or so excessive as to show very plainly that the verdict has resulted from one or both of two causes." *Rawle v. McIlhenny,* 163 Va. 735, 744-45 (1934). The two causes are (1) the "misconduct of the jury," such as by acting "perversely capriciously, or arbitrarily," or (2) the jury's damages verdict "has taken into consideration improper items or elements of damage or has failed to take into consideration proper items or elements of damage, or that it has in some way misconstrued or misinterpreted the facts or the law which should have guided it to a just conclusion as to the amount of the damages, if any, recoverable." *Id*.; *see also Downer v. CSX Trans., Inc.*, 256 Va. 590, 594 (1998). (holding that a verdict may be set aside if the jury "has in some way misconceived or misinterpreted the facts or the law which should guide them to a just conclusion.").

"In making that evaluation, the trial court, as well as this Court, is required to consider the evidence in the light most favorable to the party that received the jury verdict." *Shepard v. Capitol Foundry of Virginia, Inc.*, 262 Va. 715, 721 (2001). Here, the liability verdict was in favor of Plaintiffs and thus all evidence must be viewed in the light most favorable to Plaintiffs. *Bradner v. Mitchell*, 234 Va. 483, 484 (1987) (in appeal over inadequate damages, viewing facts in light most favorable to plaintiff because he "prevailed on the issue of liability").

A. In a *Per Se* Defamation Case, Damages May Be Substantial Even In the Absence of Proof of Economic Loss

The zero damages awarded here is "too small" in light of the evidence at trial. Va. Code § 8.01-383.1(B). In reaching this award amount, the jury plainly "failed to take into consideration proper items or elements of damage" as required by Virginia law. *Rawle,* 163 Va. at 744-45. In *Government Micro Strategies, Inc. v. Jackson*, 271 Va. 29 (2006), the jury awarded plaintiff in a *per se* defamation case $5 million in compensatory damages and $1 million in punitive damages. The trial court granted the defendant's motion for remittitur and reduced the damages to $1

million (compensatory) and $350,000 (punitive). The Supreme Court held that the circuit court abused its discretion in setting aside the jury verdict and ordering remittitur. It explained that the lower court had ignored the plaintiff's "evidence regarding injury to his reputation, humiliation and embarrassment." *Id*. at 47. Also, the plaintiff had presented evidence of his "untarnished reputation prior to the defamation and his fear the defaming remarks reached" a broad audience. *Id*. at 47-48. Thus, the substantial damage awarded should not have been reduced by the trial court.

In a similar defamation case, *Poulston v. Rock*, 251 Va. 254 (1996), the Virginia Supreme Court again reversed the order of remittitur to the defendant. The Court's ruling relied heavily on the fact that the case involved *per se* defamation and therefore the plaintiff had an "acknowledged ***right to recover*** compensatory damages absent any proof of injury or of quantum of injury." *Id*. at 260 (emphasis added). According to the Supreme Court, *per se* defamation cases depend on the "longstanding principle that, even in the absence of any evidence of pecuniary loss, the damages which the injured party is entitled to recover may be substantial." *Id*. This "legal principle presuming injury to reputation, humiliation, and embarrassment . . . ***must be considered*** in any determination of damages based on defamation *per se*." *Id*. (emphasis added).

As in *Government Micro Resources*, the *Poulston* Court considered the fact that the injury to the plaintiff's reputation was "among those employees whom he did not know or who did not know him personally" and there was a large class of persons who "could have formed an opinion of [the plaintiff] based on those defamatory statements." *Id*. at 262. In addition, the plaintiff's evidence of an "untarnished reputation" before the defamation meant that he was "entitled to more damages . . . than one whose reputation is 'little hurt' by the statements." *Id*. The Court reinstated the $10,000 damages award to the plaintiff.

Here, as in *Government Micro Resources* and *Poulston*, Plaintiffs presented evidence in a *per se* defamation case of injury to their reputation. They also showed that they had an "unvarnished reputation" before Defendant's online defamation, because there were no negative reviews of them online. Plaintiffs proved that the online nature of the defamation would reach a broad audience of Mr. Dietz's friends and neighbors as well as any potential customer. *See also Sheckler v. Va. Broadcasting Corp.*, 63 Va. Cir. 368 (2003) (considering the large "geographic breadth" of defamatory statements on television station and that the "broadcasts were uploaded on the internet").

Viewing these facts in the light most favorable to Plaintiffs, the damages here are substantial, even if Plaintiffs were unable to show the loss of a particular contract or client. The jury should not be permitted to disregard all the evidence and ignore the Court's instructions on damages to award zero damages. Because "the jury did not follow the Court's instructions" on damages, a new trial is an appropriate remedy. *Coombs v. Summitt*, No. 110198, 1996 WL 1065539, *1 (May 20, 1996) (noting that the instruction on damages "did not give the jury carte blanc [*sic*] to ignore the evidence presented to it"). The damages awarded by the jury were "too small" to adequately compensate Plaintiffs for all of their proven injury. As a result, the "jury verdict is plainly wrong or without credible evidence to support it." *Jenkins*, 269 Va. at 388 (2005); *see* Va. Code § 8.01-430. A new trial is warranted.

B. A New Trial Should Be Granted Only on Damages

Based on the leading case of *Rawle v. McIlhenny*, 163 Va. 735 (1934), a new trial in this case should be on damages alone. *Rawle* set forth five categories of cases in which a new trial could be sought and analyzed whether a new trial on damages was appropriate. This case fits into the second *Rawle* category: "cases in which the evidence is insufficient to sustain a verdict finding the defendant *not* liable." *Id*. at 748. In such a case, the court should set aside the verdict

but limit the new trial "to the question of the amount of damages" because the liability verdict was amply supported by the evidence. *Id.*

As demonstrated above, *supra* pp. 2-5, Plaintiffs presented considerable evidence that Defendant defamed Plaintiffs. Plaintiffs showed that Defendant's accusations of criminal behavior were demonstrably false and that Defendant either knew they were false, was reckless in making them or was negligent in not properly ascertaining the facts underlying them. The quantum and quality of evidence would be insufficient to support a liability verdict for Defendant. Thus, there is no reason to set aside the liability verdict here. A new trial on damages is the appropriate outcome.

III. Additur Is Appropriate Here

As an alternative to ordering a new trial, the court may instead "require the defendant to pay an amount in excess of the recovery of the plaintiff found in the verdict." Va. Code Ann. § 8.01-383.1(B). Such a result would be appropriate in this case, where the jury awarded zero damages even though Plaintiffs presented substantial evidence of damages allowed by law.

While rare, courts have granted additur when the jury's verdict does not reflect the evidence at trial about damages. *See, e.g.*, *Thesia v. Nugent*, No. 31093, 2005 WL 639481 (Va. Cir. Ct. Mar. 21, 2005); *McCoy v. Gibson*, 2001 WL 35815723 (Va. Cir. Ct. Feb. 22, 2001) (granting additur where jury returned verdict in favor of plaintiff but awarded zero damages).

As demonstrated above, Plaintiffs presented considerable evidence as to the four categories of damages allowed by law—loss to business, injury to reputation, humiliation and embarrassment and out-of-pocket expenses. *Supra* pp. 5-8. The jury's award of zero damages simply does not reflect this evidence. It would be appropriate for the Court to award an adequate amount of damages under § 8.01-383.1(B). The Court should "take action to correct what plainly appears to be an unfair verdict." *Reel*, 243 Va. at 466-67. Granting additur is more efficient than

granting a new trial which would require the Court and parties to empanel a new jury, bring back witnesses and present the same evidence a second time.

Respectfully Submitted,

By: _____

Sara E. Kropf (VA Bar No. 84931)
Law Office of Sara Kropf PLLC
1001 G St. NW, Suite 800
Washington, DC 20001
(202) 627-6900
Fax (202) 347-0316
sara@kropf-law.com

Certificate of Service

I hereby certify that on this 7th day of March 2014, a true and correct copy of the foregoing motion was served on the defendant via electronic mail to:

Raymond D. Battocchi
battocchi@aol.com

_____
Sara E. Kropf (VSB No. 84931)