IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JOY DALEY, *et al.*,	:	
Plaintiffs,	:	**Case No. 2009 CA 004456 B**
vs.	:	**Judge Todd E. Edelman**
ALPHA KAPPA ALPHA SORORITY, INC., *et al.*,	:	**Next Event: Initial Conference March 2, 2012**
Defendants.	:	

DEFENDANT BARBARA MCKINZIE'S REPLY TO
PLAINTIFFS' OPPOSITION TO MOTIONS TO DISMISS

Defendant Barbara McKinzie ("McKinzie"), by and through undersigned counsel, hereby submits her Reply to Plaintiffs' Opposition to Defendants' Motions to Dismiss. Although Barbara McKinzie filed her own motion to dismiss, Plaintiffs have filed one opposition which responds to both Ms. McKinzie's motion to dismiss as well as the motion filed by Alpha Kappa Alpha Sorority ("AKA") and the other individually-named Defendants (AKA and the other individual Defendants are hereinafter collectively referred to as the "Other Defendants"). In opposing the motions to dismiss, Plaintiffs' principal arguments are that the Defendants' motions are barred by law of the case, and that Plaintiffs have sufficiently pled their claims under Rule 8.[1]

[1] Plaintiffs' refusal to acknowledge, or to even mention, the Court of Appeals recent decision in *Potomac Dev. Corp. v. Dist. of Columbia,* 28 A.3d 531, 543 (D.C. 2011), is astounding. As set forth in *Potomac Dev. Corp.*, Rule 8(a) requires more than an "'unadorned, the-defendant-unlawfully-harmed-me accusation.'" 28 A.3d at 544 (citing *Ashcroft v. Iqbal,* 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009)). Although the Second Amended Complaint is full of bombast, it is clearly lacking in substantive allegations that demonstrate a plausible claim to relief. *Potomac Dev. Corp.*, 28 A.3d at 544

These issues (and others raised by the Plaintiffs) have been fully addressed as to all Defendants in the Other Defendants' Reply to the Plaintiffs' Opposition, and Defendant McKinzie hereby adopts the entirety of that Reply.

Although the arguments addressed by the Other Defendants are equally applicable to the claims against her, Ms. McKinzie wishes to bring two additional points to the Court's attention:

First, in footnote 8, Plaintiffs assert that McKinzie has "conceded" that Plaintiffs have "sufficiently pleaded a direct claim against her for breach of fiduciary duty." McKinzie has done no such thing. Rather, McKinzie only stated that a breach of fiduciary claim was "arguable" and for that reason did not move to dismiss on that count.[2] Moreover, there certainly was no "concession" that a "direct" claim existed.

Second, in her motion to dismiss, McKinzie argued that the Plaintiffs' defamation claims against her were barred under the one-year statute of limitations set forth in D.C. Code § 12-301(4) (2011). Plaintiffs' relegate their response to the statute of limitations' argument to footnote 11. Pursuant to the one-year bar, Plaintiffs would have to allege defamatory statements that occurred no earlier than November 28, 2010, as the Second Amended Complaint was deemed filed on November 28, 2011. Citing to Paragraph 84 of the Second Amended Complaint, Plaintiffs argue that "Plaintiffs have alleged that Defendants published defamatory remarks before, during, and after the period that is the focus of many of the allegations." Opposition at 21n.11. The problem is that Paragraph 84 refers to a 2007 New York lawsuit, which, according to Paragraph 81, was resolved in 2009. Clearly, all statements "prior to" and

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[2] McKinzie submits that even if the fiduciary duty claim against her is "arguable," it is questionable whether it *actually* states a claim under the pleading standard announced in *Potomac Dev. Corp*.

"during" the litigation are barred (even if they could provide a basis for a claim) because by the very allegations in the Second Amended Complaint, those statements would have to have occurred before the conclusion of the lawsuit in 2009. Plaintiffs' bald allegations contained in Paragraph 84 that defamatory statements were published "after" the conclusion of the New York litigation, but which fail to identify what was said, when, and to whom, are simply not sufficient to provide a *plausible* basis for relief that can avoid the bar of limitations. The "tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *Iqbal,* 129 S. Ct. at 1949. McKinzie submits that Plaintiffs' allegations that defamatory statement occurred "after" the litigation are nothing more than the kind of threadbare conclusory allegations that are no longer sufficient under *Iqbal* and *Potomac Dev. Corp.*

WHEREFORE, for the reasons set forth above and based on the arguments set forth in the Other Defendants' Reply to Opposition Motion to Dismiss, which are adopted and incorporated by reference herein, the instant Second Amended Complaint, should be dismissed as to all Defendants with prejudice, including Defendant McKinzie.

Respectfully submitted,

COOTER, MANGOLD, DECKELBAUM
& KARAS, L.L.P.

/s/ Dale A. Cooter

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2012 a copy of the foregoing DEFENDANT BARBARA MCKINZIE'S REPLY TO OPPOSITION TO MOTION TO DISMISS was served via the Court's Electronic Filing System on:

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