

At a Special Term of the Supreme Court of the State of New York held in and for the County of Oneida on October 8, 2021.

PRESENT: **HON. SCOTT J. DELCONTE**
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
ONEIDA COUNTY

CAITLIN MCCANN,

Plaintiff,

v.

Index No. EFCA2019-001574

DAVID GORDON,

Defendant.

DECISION and ORDER following TRIAL ON DAMAGES

APPEARANCES:

Brindisi, Murad & Brindisi Pearlman, LLP by Anthony J. Brindisi, Esq. and Eva Brindisi Pearlman, Esq., for Plaintiff

David Gordon, pro se, Defendant

Defendant David Gordon repeatedly, publicly, and falsely accused Plaintiff Caitlin McCann of engaging in an illicit sexual relationship with her married employer, Oneida County Executive Anthony Picente, and then participating in a corrupt coverup to hide the affair and their nonexistent child. By Decision and Order entered February 10, 2021, this Court held that McCann established as a matter of law that Gordon had defamed her during a series of live media events and press releases (NYSCEF Doc. 176). A jury trial to determine McCann's damages was ordered for June 7, 2021, with jury selection to begin on June 4, 2021 (NYSCEF Doc. 185). By Letter Order of May 20, 2021, the trial date was reaffirmed as a date certain, to be held in person at the Oneida County Courthouse in Rome, New York (NYSCEF Doc. 243).

The morning of June 4, 2021, Gordon – who elected to proceed *pro se* in this action after his counsel withdrew from representation – advised that he would not participate in jury selection (NYSCEF Doc. 306). Thereafter, McCann waived her right to an inquest and assessment of damages by jury, and the Court proceeded with a bench trial. During two days of in-person trial on June 7 and June 8, 2021, McCann's Exhibits 1 through 149 were marked, identified and received by the Court, either upon stipulation or without objection. The Court fully credits all of the exhibits. In addition, live witness testimony was received from McCann and her non-party witnesses Mia McCann (McCann's sister-in-law), Patrick McCann (McCann's father), and Mildred Occhionero (McCann's co-worker). The Court fully credits each of these witnesses' testimony, finding them to have been credible, honest and having answered all questions posed. The Court also heard effective opening and closing statements from McCann's counsel.

Gordan, however, intentionally defaulted and refused to attend the trial, without notifying the Court or requesting an adjournment. Although Gordon would later submit proposed findings of fact and conclusions of law, through his default he strategically and intentionally offered no exhibits or witness testimony on his behalf. In addition to his refusal to personally participate in the trial, Gordon also intentionally refused to comply with a duly served judicial subpoena issued by the Court (NYSCEF Doc. 310), which required his appearance and testimony as part of McCann's presentation of proof in her case-in-chief. Accordingly, the Court draws the strongest negative inference that the opposing evidence permits against Gordon on all matters upon which he could have testified had he been called by McCann (*Nassau Cty Dept of Social Services on behalf of Dante M. v Denise J.*, 87 NY2d 73, 79 [1995]).

Upon completion of the bench trial, McCann and Gordon were given notice and an opportunity to submit proposed findings of fact and conclusions of law pursuant to CPLR 4213(a), and both did. After examining the exhibits and hearing all of the testimony, evaluating the credibility of the witnesses, considering the legal arguments of McCann's counsel and Gordon, and upon due deliberation, the Court makes the following findings of fact and conclusions of law, as set forth below. Specifically, the Court awards McCann damages in the amount of **\$394,416.10**, consisting of \$4,416.10 in economic damages; \$40,000 in damages to McCann's reputation; \$50,000 in past humiliation and mental anguish; \$250,000 in future humiliation and mental anguish; and \$50,000 in punitive damages.

I.

This action arises out of Gordon's intentional and defamatory statements to the media and the public during his 2019 Republican Party primary campaign against incumbent Anthony Picente for the office of Oneida County Executive. Gordon's callous and cruel attacks on McCann and her character trace back to the February 8, 2019 broadcast of the long-running and popular "*Keeler in the Morning*" news-talk radio show and, specifically, the host's reporting that Gordon – who was, at the time, vigorously campaigning to unseat Picente – had been arrested in 2017 on a domestic violence charge following a complaint filed by Gordon's fiancée. That reporting was based upon Gordon's actual arrest record, which the show's host had journalistically obtained and then discussed, and read portions of, live on the air. Gordon was invited to appear on the radio show and respond. Gordon, however, declined.

Instead, three days later, on February 11, 2019, Gordon invited major regional media outlets to a press conference at Utica City Hall. At that well-attended event, Gordon responded to the recent reports of his prior arrest by blaming the episode on his fiancée and, as he outlandishly asserted, an unexplainable emotional imbalance caused by her pregnancy. Gordon then strategically pivoted, and sought to redirect the gathered media's attention to his primary opponent by claiming that Picente had abused his elected office by having an affair with a former staffer, who then became pregnant and fled to South Carolina to hide the pregnancy at Picente's insistence. While Gordon did not specifically name the staffer whom he accused of having an affair, a former Oneida County official contacted McCann almost immediately after to inform her of Gordon's accusation. McCann was easily identified as the target of Gordon's allegations, because she was the only former female staffer in Picente's office to have ever relocated to South Carolina.

Although McCann was totally unaware of it at the time, Gordon had also launched a private investigation into her personal life in a desperate attempt to find any evidence that could support his public accusations against Picente. On February 15, 2019, four days after the press conference, Gordon obtained a complete investigative background report containing McCann's date of birth and social security number; McCann's parents' and brother's names and dates of birth; addresses of McCann's prior residences; McCann's current phone number; and negative results of bankruptcy, lien and judgment searches (Trial Exhibits 59, 148). Additionally, Gordon began maliciously posting online about McCann. He dove even deeper into the unknown, feverishly distributing flyers in South Carolina offering a \$2,000 cash reward for "information leading to the whereabouts of the child of Oneida County Executive Anthony J. Picente and Caitlin McCann" (Trial Exhibit 12). Evidence at trial also established that Gordon was fixated on McCann's niece and family, including conducting – as one witness described it – stakeouts in McCann's parents' neighborhood, where Gordon was seen watching school buses with binoculars (apparently with the hopes of catching a glimpse of the nonexistent love child). Additionally, Gordon personally visited with McCann's parents' neighbors in their homes and called others (using a fake accent to disguise his voice) asking for information about the McCanns' "grandchild."

Not satisfied with the lack of results, Gordon intensified his pursuit. On March 8, 2019, McCann received a text message from a person – whom she later learned was Gordon – saying "Caitlin, I believe it's time they [sic] we meet to discuss things before it goes public. Don't you?" (Trial Exhibit 60). McCann, unaware of the identity of the person who sent the ominous message, did not respond to the threat. Receiving no response to his text, Gordon then initiated an online misinformation campaign on the "Yes Hospital St. Luke's Campus" Facebook page that he administered, stepping up his attacks on McCann (Trial Exhibit 2).

On March 9, 2019, Gordon posted an entirely fictitious and photoshopped picture of McCann and Picente, together in an embrace, holding a baby on the “Yes Hospital St. Luke’s Campus” Facebook page, falsely implying that they had conceived a child and that McCann had illegally received a 20% raise because of an affair (Trial Exhibit 61). The following day, March 10, Gordon posted a stolen picture of McCann holding her newborn niece, with the false and defamatory statement “Breaking News: Picente Has Affair with Staffer – Ex Staffer McCann Given Huge Payraise Sent to Charleston, SC to Give Birth” (Trial Exhibit 62).

Then, on May 15, 2019, Gordon took his obsession to another level, holding a second press conference at the Oneida County Office Building. Again, Gordon invited all of the major regional media outlets. Earlier that day, Gordon had appeared on another popular local radio show, “*Talk of the Town*,” to hype up the spectacle and tease the public on the salacious revelations he intended to share. That afternoon, in the live press conference – as well as in a written press release distributed at the event – Gordon expanded upon his prior accusations that Picente had unlawfully engaged in an affair with a staffer. This time, Gordon specifically named McCann, and made the following wildly false and defamatory claims:

- McCann had had an adulterous affair with Oneida County Executive Picente, a married man, while she worked for him as an employee (“Picente had an affair with former staffer Caitlin McCann now head of MVHS marketing.” and “Picente’s affair with former staffer Caitlin McCann started sometime in 2008.”);
- The affair occurred on Oneida County property, while they were working (“This was not, this affair was not at the Motel 6. This was on the 10th floor of the County Office Building.” and “Having an affair in the County Office Building is also unethical and immoral.”);
- McCann received an illegal pay raise as a result of the affair (“As things heated up McCann was rewarded with an unprecedented pay raise of 20%. He got a rise and she got a raise.”);

- The illegal pay raise was a bribe (“This is at the expense of the taxpayers of Oneida County.” and “You can not use taxpayer money to pay for your sexual encounters with a county employee as an elected representative of the people. This is criminal[.]”);
- McCann became pregnant as a result of the affair (“In June of 2010, Picente and McCann discovered that she was in fact pregnant.”);
- McCann moved to South Carolina to cover up the affair (“In one of the biggest cover ups in Oneida County history Picente immediately demanded that Caitlin move to Charleston, South Carolina to hide the evidence of the affair.”);
- McCann abandoned her child (“Today we search for the child of Picente. We believe that Picente either made Caitlin give it up for adoption or that the child was sent to live with relatives.”); and
- Picente pressured Mohawk Valley Health Services to give McCann a job that she was not qualified for (“Upon returning from Oneida County once the dust settled, it is believed that Picente leveraged his relationship with MVHS to get Caitlin a job.”) (Trial Exhibit 92).

Gordon further falsely stated during his May 15 press conference that he had evidence to support all of his defamatory accusations. He bolstered these claims by handing out a photocopy of a screenshot of a text message that he professed to have received that said: “he and Kaitlyn would be in the garage at 10 or 11 at night switching things back and forth between their cars” (Trial Exhibit 58), and asserting in an accompanying press release that the affair had been actually witnessed by two Oneida County Sheriff’s Deputies (Trial Exhibit 58) – although he admitted that he had not spoken with either one of them. Later that afternoon, Picente held a press conference of his own, denying Gordon’s false and defamatory accusations. A short time later, the Chief Executive Officer of Mohawk Valley Health Services, McCann’s employer, also issued a public statement defending McCann against Gordon’s accusations.

On March 18, 2019, McCann, rightfully fearful for her personal safety, went to the Utica Police Department to file a harassment complaint. She was directed by an officer to reply to Gordon's text message by saying: "I don't know who this is. Do not contact me again," which she did (Trial Exhibit 60). Undeterred, Gordon continued making public statements online and to the press throughout the remainder of his primary campaign, including appearances on radio talk shows. He publicly repeated his defamatory accusations, and continued to falsely claim to have evidence of Picente and McCann's affair and pregnancy. On March 25, 2019, Gordon made another post to the "Yes Hospital St. Luke's Campus" Facebook page that included a picture of McCann's former home in South Carolina, with the caption: "New Information tonight into the alleged affair of County Executive Tony Picente and Caitlin McCann, Vice President of Marketing for MVHS. This was the first place of refuge for the former pregnant staffer in Charleston, S.C." (Trial Exhibits 20, 63).

II.

Media coverage of Gordon's allegations was intense and wide-ranging from Gordon's first press conference on February 11, through his defeat in the primary election on June 25, and beyond. Newspaper reporting on the alleged affair and coverup included multiple lead articles in the Utica Observer Dispatch (including on its website and Facebook page), which reached over 616,780 readers across Oneida, Herkimer and Madison Counties (Trial Exhibits 33-35 ["Oneida County executive candidate calls on Picente, others to resign"]; Exhibits 36-38 ["Picente denies affair allegations from opponent Gordon"]; Trial Exhibits 30, 40-41 ["Gordon balks at potential legal threat"]; and Trial Exhibits 42-44 ["Oneida County executive candidate faces lawsuit"]). Similarly, several articles (both print and online) were published by the Rome Sentinel, which reached over 36,501 readers (Trial Exhibit 52 ["Gordon renews allegations against Picente,

who angrily denies and fires back”]; Trial Exhibit 53 [“County candidate Gordon sued for defamation”]; Trial Exhibit 139 [“Incumbents claim big victories”]).

In addition, television news stations also reported extensively on Gordon’s defamatory statements – at times over an eye-catching “Breaking News” banner. WKTU Newschannel 2’s NBC, CBS and CW affiliates broadcasted several stories (which aired multiple times a day and were subsequently posted on its website, Facebook, Twitter and YouTube pages), which reached over 488,808 viewers and readers from Syracuse to Albany (Trial Exhibits 99, 103-104 [“Gordon calls for three Oneida County officials to be removed from office”]; Trial Exhibits 103, 131 [“Picente vehemently refutes Gordon’s claims of affair”]; Trial Exhibits 100, 103, 106, 107 [“Former Picente staffer taking legal action against Gordon after affair allegations”]; Trial Exhibits 101, 103, 108 [“Time is up for Gordon to retract Picente, former staffer affair allegations”]; Trial Exhibit 103 [“Gordon facing defamation lawsuit after claiming Picente had affair with former staffer”]; Trial Exhibits 102, 103, 109 [“Gordon says that Picente cheated the election, will prove primary numbers are fake”]).

WUTR Eyewitness News’s ABC and Fox affiliates also broadcasted several stories (subsequently posted on its website, Facebook and YouTube pages), which reached tens of thousands of individuals across Oneida County (Trial Exhibits 128 and 129). And the local Spectrum News affiliate broadcasted several stories (subsequently posted on its website), which reached tens of thousands more viewers across Central New York, including in Syracuse, Ithaca, Watertown, Binghamton, Utica and Elmira (Trial Exhibit 48 [“Concerns in Oneida County Race”]; Trial Exhibit 144 [“Former Picente Staffer Threatens Lawsuit Against Gordon in Affair Allegations”]; and Trial Exhibit 46 [“Former Picente Aide Files Defamation Suit Against Dave Gordon”]).

Finally, there was substantial radio coverage all throughout the Utica, Rome and Oneida County listening areas. WIBX's radio talk show, *Keeler in the Morning*, included live coverage of press conferences and published subsequent articles on its website, reaching tens of thousands of listeners and viewers in Oneida County and beyond (Trial Exhibit 24; Trial Exhibit 145 ["Lawsuit: Dave Gordon 'Harmed and Defamed Innocent Victim'"]). And WUTQ Talk! 100.7 FM's *Talk of the Town* morning talk radio show (streamed live on Facebook as well), included live coverage of press conferences as well as at least five guest appearances by Gordon on the radio show (February 12, 2019, March 7, 2019, April 12, 2019, May 15, 2019 and June 5, 2019), in which he repeated his false and defamatory allegations, reaching thousands of listeners across Oneida County (Trial Exhibits 94-97, 132).

III.

When Defendant Gordon held his February 15, 2019 and May 15, 2019 press conferences to publicly accuse his political rival of an affair and public corruption – baselessly defaming McCann in the same breath – he did so without any evidence supporting his accusations, as he later admitted during this lawsuit. Instead, Gordon undertook a *post hoc* crusade of harassment, stalking, and intimidation to try and find a single piece of evidence to support his claims against McCann and Picente. That included offering cash rewards and spying on McCann and her family, including her infant niece. All the while, Gordon repeatedly and confidently asserted to every media outlet that would listen that he was telling the truth about McCann and that he would prove it, whether it took one day or ten years. “This is a promise. Not a threat,” Gordon later affirmed in an affidavit (Trial Exhibit 13). But, when the time came to actually litigate this matter in open court, Gordon refused to appear and failed to offer any evidence to support his words or his actions.

Based on the evidentiary record before this Court: McCann did not have an affair with Oneida County Executive Anthony Picente; McCann did not receive a 20% pay raise while she worked for Oneida County; McCann has never been pregnant; and McCann did not get her position at MVHS because of Picente's influence. None of those statements are true. Despite this – and despite not even knowing McCann before he took on Picente in his race for County Executive – Gordon repeatedly made false claims about McCann in public and to the press. Indeed, Gordon sought out as much publicity for his defamatory statements as he was able to drum up with a wishful hope that it would propel his political campaign to victory. He held press conferences, released public statements, circuited local radio talk shows, and commented on social media. When Gordon was pressed by media outlets and asked for proof of his wild accusations, he responded with further false claims that he had actual evidence to support his allegations. Gordon never had any such evidence, and he could never produce any such evidence to the media or this Court, because – as he knew full well – there never was any such evidence.

McCann, on the other hand, submitted uncontradicted evidence at trial proving that Gordon repeatedly made outrageous, unsubstantiated defamatory statements about her in press releases and at news conferences. Gordon's statements were libelous and slanderous *per se* (*Lieberman v Gelstein*, 80 NY2d 429, 435 [1992]), and McCann is therefore entitled to recover not only her direct financial losses, but also all of the damages that flowed from Gordon's libelous and slanderous statements, including “just compensation for the injury to [her] reputation and the humiliation and mental anguish in [her] public and private life” (PJI 3:29). This Court finds on the record before it that McCann has established economic losses, harm to her reputation, past humiliation and mental anguish, and future humiliation and mental anguish, and awards damages in each of those categories.

IV.

With respect to direct economic and financial losses, McCann treated with a mental health professional from October 29, 2019 to December 16, 2020, receiving counseling related to the anxiety that she suffered in connection with Gordon's public lies about her, and the negative impact on her life, incurring \$175 in out-of-pocket expenses (Trial Exhibit 21). In addition, in response to Gordon's spying and offers of a cash reward for information about her, McCann purchased identity theft protection, incurring \$706.85 for two annual subscriptions of Life Lock Ultimate Plus Protection Norton 360 (Trial Exhibit 78). Because of Gordon's continued and aggressive stalking, including improperly acquiring her social security number and continuing to offer public cash rewards for information leading to the whereabouts of her nonexistent child even after summary judgment in this lawsuit had already been granted, the Court finds that a future award of \$3,534.25 to cover purchasing Life Lock or other similar identity theft protection for the next 10 years is also warranted. Altogether, the Court awards McCann \$4,416.10 in economic damages.

V.

Turning to McCann's non-economic loss, this Court must consider her "(1) standing in the community, (2) the nature of defendant's statements made about [her], (3) the extent to which the statement was circulated, (4) the tendency of the statement to injure a person such as the plaintiff, and (5) all of the other facts and circumstances in the case" (PJI 3:29). Here, McCann was a private citizen working in a senior marketing position at MVHS, a large regional medical provider. She was friendly, hard-working, and well-liked and respected by those who knew her. McCann was not a public figure, and never asked to be dragged into a vicious political campaign as part of Gordon's failed vendetta against the incumbent Oneida County Executive.

Gordon's repeated defamatory accusations maligned the core of McCann's personal and professional reputation, as well as her integrity as an individual. They included false claims that McCann, a single, professional woman with no children: was unchaste, immoral and criminal; had an improper sexual relationship with her elected employer; accepted bribes and engaged in a cover-up; abandoned her [nonexistent] child; and only obtained her senior position at MHVS by sleeping with her former boss, despite years of devotion to her education, pursuit of a master's degree and hard work in her field.

Gordon's salacious claims of an illicit affair, pregnancy scandal and cover-up involving a high-profile politician were widely publicized throughout Central New York and across much of the State. Indeed, the evidence establishes that between one and one-and-a-half million different individuals across Oneida, Herkimer, Madison, Onondaga, Otsego, Fulton, Montgomery, Schenectady, Albany, Chenango and Broome Counties may have seen, heard or read various news reports on Gordon's defamatory accusations. In many instances, the media reports remain preserved digitally, and readily accessible, in perpetuity online.

Gordon's cruel accusations – including sexual immorality in order to advance in a profession, public corruption, and abandonment of a newborn child – will have a long-lasting, negative impact on McCann, a young, professional, single woman, and they are among the most damaging accusations that could have been made against her. Further, McCann lives in a small community, and has had to repeatedly address Gordon's baseless accusations to the inquiring press as well as her parents, siblings, friends, coworkers, and supervisors, all to her great embarrassment and continued anguish.

Gordon's defamatory crusade also negatively affected McCann's ability to work with the media as part of her current employment, and damaged valued personal relationships, including her special relationship with her family and niece, whom Gordon stalked in person and online and encouraged others to stalk and harass. Additionally, Gordon's repeated lies subjected McCann to online and in-person harassment, scorn and contempt by strangers and anonymous trolls who had been deceived by Gordon.

Altogether, this Court finds that the damage to McCann's reputation along with the humiliation and mental anguish that she has suffered, and will continue to suffer, is extensive and long-lasting. This case stands as one of the most egregious examples of defamation in the reported decisions. Accordingly, the Court awards McCann \$340,000 in non-economic damages, consisting of \$40,000 in damages for injury to reputation, \$50,000 in damages for the past two-and-one-half years of emotional distress and mental anguish that she has suffered up until the date of the trial, and \$250,000 in damages for the emotional distress and mental anguish that she will continue to suffer in the future (*see e.g. Morsette v "The Final Call,"* 309 AD2d 249, 257 [1st Dept 2003] [setting remittitur value of \$40,000 for injury to reputation, \$100,000 for past mental anguish and \$300,000 for future mental anguish in a defamation action involving a young, female professional wrongly accused of being a criminal]; *Patridge v State of New York,* 173 AD3d 86 [3d Dept 2019] [upholding a \$300,000 Court of Claims award for emotional and psychological injuries in a defamation action involving a man whose photograph was wrongly included on a poster of individuals arrested for sexual exploitation of children]; and *Doe v Merck & Co.,* 1 Misc3d 911(A) [Sup Ct Suffolk Cty 2002] [setting remittitur value at \$650,000 for harm to reputation and mental anguish in a defamation action involving a young female model whose photograph was distributed with a fictitious and defamatory autobiography]).

VI.

In addition, McCann seeks punitive damages based upon the clear and convincing evidence that Gordon acted outrageously and maliciously in making repeated false and defamatory statements about her to the media and public, while wantonly and recklessly disregarding the harm that those statements would cause her, which constitutes constitutional malice. As the law provides, punitive damages may be awarded “to punish a defendant who has acted maliciously and to discourage others from doing the same,” and require the Court to consider: (1) the “nature and reprehensibility of what the defendant did;” (2) the “actual and potential harm created by defendant’s conduct;” and (3) the “defendant’s financial condition and the impact [the] punitive damages award will have on the defendant” (PJI 3:30).

McCann was not a public figure, and Gordon’s false and defamatory statements about her were not a matter of public concern. As conceded during discovery, Gordon never had any actual evidence to support his accusations. Nonetheless, Gordon not only continued to publicly assert that McCann had an illicit affair and then abandoned her child, but he also lied again and again by publicly claiming that he had evidence proving his lies. Becoming more desperate over time, Gordon began investigating, stalking and harassing McCann and her family, vainly hoping to somehow find evidence that would retroactively confirm the wild rumors he was spreading.

Gordon’s distribution of the fake photograph of McCann and Picente – together – holding a baby, is particularly troublesome and telling of Gordon’s motives (Trial Exhibit 61). Gordon (or someone at his command with the requisite technical skill) trolled the internet, likely Facebook, electronically seized photos of McCann and Picente and then digitally (and very convincingly) imposed their faces into an actual photo of an embracing couple holding a baby. Gordon then posted this fake photo on the internet in an attempt to create evidence to support his

false claims. Not only did Gordon defame McCann, but he also digitally created, and then published, false evidence to try to convince the public of his deceitful narrative.

And on top of all this, Gordon's sole purpose in his defamatory crusade against McCann was his hope that the salacious rumors might sabotage his political rival and somehow distract from the public reports of his domestic violence arrest. McCann was an innocent bystander in his political crusade, and Gordon's attacks upon her were made with an utterly wanton and reckless disregard for her rights and the harm that those lies could cause her.

Moreover, in addition to defaming McCann, Gordon engaged in a pattern of threatening, harassing and misogynistic behavior towards her and others that raises serious concerns as to McCann's continued emotional and physical safety. Among other things, Gordon unlawfully obtained McCann's social security number; sent her an unsolicited threatening text message; publicly posted "photoshopped" pictures of her to make it seem as though she had a child; stole an online picture of her niece and posted it publicly; tried to hide outside of her parents' house with binoculars to catch a glimpse of her niece; visited and called McCann's parents' neighbors; publicly distributed flyers and posted online offering "cash rewards" for information about her nonexistent child; and sent a letter to the Federal Bureau of Investigation accusing McCann of having an illicit affair with Picente in exchange for an unlawful pay raise and employment at MVHS (Trial Exhibit 64). This conduct is morally reprehensible.

The actual harm that McCann has suffered is extensive. Her reputation was maligned, and her personal and work life were significantly negatively impacted. McCann was embarrassed, humiliated and endured mental anguish. She was accosted online by strangers and in person by members of the press. There is no telling how damaging all of Gordon's false, cruel and outrageous allegations will be for McCann's professional career and future advancement.

Not only was Gordon aware of the potential for all of this harm, but he, in fact, sought to make it as devastating as possible, encouraging the public to harass and stalk McCann with “evidence” that he fabricated through photoshop and cash rewards that he offered for leads as to the whereabouts of a child who simply did not exist. Despite all of that, McCann’s attorneys still gave Gordon multiple opportunities to merely recant his defamatory statements and avoid, or end, the litigation. Gordon refused every single time, telling the press that he welcomed a defamation lawsuit because then he would have the opportunity to prove the truth of his rumors. But when the trial in this action finally arrived, despite his bravado, Gordon refused to appear.

Because Gordon refused to appear at the trial, McCann was unable to place into the record any evidence as to Gordon’s financial condition, other than that he presently owns and operates an insurance agency.

Considering all of these factors, the Court finds that punitive damages are appropriate and necessary to punish Gordon for his repeated intentional, callous and malicious acts and to prevent others from doing the same. The Court awards McCann \$50,000 in punitive damages (*see e.g. Geraci v Probst*, 61 AD3d 717 [2d Dept 2009] [affirming Trial Court’s remittitur value of punitive damages in a defamation action involving claims a fire commissioner illegally profited from a transaction at \$50,000]; *Grieco v Galasso*, 297 AD2d 659 [2d Dept 2002] [setting remittitur value of punitive damages in a defamation action involving public claims that a defendant refused to pay child support at \$100,000]); *contra Nellis v Miller*, 101 AD2d 1002 [4th Dept 1984] [setting remittitur value of punitive damages in a defamation action at \$15,000 where there was no proof of any harm to plaintiff’s reputation or mental anguish]).

VII.

Pursuant to CPLR 5001 and 5004, Plaintiff is entitled to statutory interest at the rate of 9% from the date of entry of this Decision and Order.

VIII.

Accordingly, upon the bench trial in this action and due deliberation, it is hereby

ORDERED that Plaintiff Caitlin McCann have judgment over and against Defendant David Gordon as a result of his intentional conduct in the amount of \$394,416.10, consisting of \$4,416.10 in economic loss, \$40,000 for humiliation, \$50,000 for past mental anguish, \$250,000 for future mental anguish, and \$50,000 in punitive damages, with interest to run thereon at the statutory rate, plus costs and disbursements; and it is further

ORDERED that Plaintiff Caitlin McCann submit a proposed Judgment consistent with this Decision and Order, with statutory interest from the date of entry of this Decision and Order and costs, to be signed by the Court and entered in the Office of the Oneida County Clerk.

Dated: October 8, 2021



HON. SCOTT J. DELCONTE, J.S.C.

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