SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

STEVEN J. ROSEN Plaintiff v. AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, INC., *et. al.* Defendants	Case No.: 0001256-0-9

DEFENDANTS, AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, INC., KOHR, DOW, MANOCHERIAN, FRIEDMAN, WEINBERG, ASHER, LEVY, KAPLAN, WULIGER, FRIEDKEN AND DORTON'S, RULE 12(b)(6) MOTION TO DISMISS

Defendants, American Israel Public Affairs Committee, Inc., Kohr, Dow, Manocherian, Friedman, Weinberg, Asher, Levy, Kaplan, Wuliger, Friedken, and Dorton, through counsel, Carr Maloney P.C. and pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure, submit this Motion respectfully requesting that Plaintiff's Complaint be dismissed in its entirety for failure to state a claim for which relief can be granted. In support of this Motion, Defendants respectfully refer the Court to the attached Memorandum of Points and Authorities.

Respectfully submitted,

CARR MALONEY P.C.

By: _____

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RULE 12-I CERTIFICATION

I CERTIFY that, pursuant to District of Columbia Superior Court Rule 12-I, I contacted counsel for Plaintiff to determine whether he would consent to the relief requested in this Motion. Despite good faith efforts, consent of Plaintiff's counsel could not be obtained.

Thomas L. McCally

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of May, 2009, I will electronically file the foregoing with the Clerk of the Court using the CaseFile Express system, which will then send a notification of such filing to David H. Shapiro, attorney for Plaintiff. A copy of the foregoing will be sent via first class mail, postage prepaid to Rational PR, L.C., 1155 15th Street, NW, Suite 614, Washington, DC 20005.

Thomas L. McCally

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

STEVEN J. ROSEN Plaintiff v. AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, INC., *et. al.* Defendants	:	Case No.: 0001256-0-9

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' RULE 12(b)(6) MOTION TO DIMSISS

In support of their Rule 12(b)(6) Motion to Dismiss, these Defendants assert as follows:

I. FACTUAL BACKGROUND

Plaintiff filed this defamation action on March 2, 2009, against his former employer, the American Israel Public Affairs Committee, Inc. (hereinafter referred to as "AIPAC"). Plaintiff also named as Defendants AIPAC's Executive Director (Defendant Kohr), all of the volunteer members of AIPAC's Board of Directors (Defendants Dow, Manocherian, Friedman, Weinberg, Asher, Levy, Kaplan, Wuliger, and Friedman) (hereinafter "the Board Member Defendants") and Patrick Dorton, (who was hired by AIPAC to handle public relations on behalf of AIPAC).[1] As alleged in the Complaint, AIPAC is a non-profit organization whose purpose is to build and enhance a close relationship between the United States and the State of Israel. (*See* Complaint, ¶4).

[1] Plaintiff has also improperly identified as a Defendant Rational PR, LC. Based upon information and belief, the entity identified in the Complaint does not exist.

Plaintiff's defamation claim is premised upon statements that Plaintiff alleges were made by or authorized by the Defendants in 2005 through 2007, and which appeared in the media either originally or by way of republication by the media in 2005, 2006, 2007, and 2008. The statements identified by Plaintiff in his Complaint, and which Plaintiff contends constitute defamation, were statements made in response to media inquiry regarding a Federal investigation into Plaintiff's activities that resulted in a Federal grand jury indictment of the Plaintiff. The Department of Justice investigation and ultimate Federal indictment concerned activities that Plaintiff engaged in while Plaintiff was employed as the Director of Foreign Policy Issues at AIPAC. Plaintiff alleges in his Complaint that Plaintiff was terminated from employment with AIPAC at the insistence of the Department of Justice and that subsequently AIPAC authorized and or made statements regarding the investigation, indictment, and termination. Plaintiff contends that these statements were defamatory.

All statements identified in the Complaint as being made by or on behalf of AIPAC were initially made well over one (1) year prior to the time that suit was filed and, as is demonstrated in more detail below, all claims are clearly time barred. Furthermore, the statements that are identified in the Complaint cannot, as a matter of law, be considered to be defamatory. Moreover, the Complaint is entirely void of any factual allegations which could establish that any Defendant acted with malice, which is a prerequisite to recovery in light of the fact that Plaintiff was a public figure at the time that the statements in question were made. Accordingly, Plaintiff has failed to state a claim of defamation against all Defendants, and Plaintiff's Complaint should, therefore, be dismissed in its entirety.

With respect to the Board of Directors Defendants, Plaintiff's Complaint contains only conclusory allegations that are entirely insufficient to support a claim against any volunteer

Board Member Defendant. Plaintiff's Complaint is completely lacking of any substantive or specific factual allegations with respect to the Board Members involvement with the alleged defamatory statements. Notably, Plaintiff does not allege that any Board Member made any of the alleged statements. Furthermore, as is demonstrated in more detail below, the Board Member Defendants have statutory immunity. Accordingly, all claims against the Board Member Defendants should summarily be dismissed.

II. ARGUMENT

A. The Applicable Legal Standard

Rule 12(b)(6) of the Rules of Civil Procedure for the Superior Court of the District of Columbia permits the Court to dismiss a matter for failure to state a claim upon which relief can be granted. DC-SCR 12(b)(6). "In reviewing the Complaint, the court must accept its factual allegations and construe them in a light most favorable to the non-moving party." *Chamberlain v. American Honda Finance Corp.*, 931 A.2d 1018, 1023 (D.C. 2007) (citing *Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.*, 870 A.2d 58, 62 (D.C. 2005). However, "[f]actual allegations must be enough to raise a right to relief above the speculative level. . . ." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 127 S.Ct. 1955, 1965 (2007). "[D]ismissal under Rule 12(b)(6) is appropriate where the Complaint fails to allege the elements of a legally viable claim." *Chamberlain*, 931 A.2d at 1023.

The United States Supreme Court recently refined the standard for deciding a Rule 12(b)(6) motion in *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007). In *Twombly*, the Supreme Court held that a plaintiff must allege a "plausible entitlement to relief" by setting forth "a set of facts consistent with the allegations." *Id.* at 1969.

While a complaint need not plead "detailed factual allegations," the factual allegations it does include "must be enough to raise a right to relief above the speculative level" and to "nudge[ ][ ] claims across the line from conceivable to plausible." *Id.* at 1965, 1974. The court may, in its discretion consider matters outside the pleadings and thereby convert a Rule 12(b)(6) motion into a motion for summary judgment under Rule 56. *See* Fed.R.Civ.P. 12(b); *Yates v. District of Columbia,* 324 F.3d 724, 725 (D.C.Cir.2003).

Conclusory allegations or legal conclusions masquerading as factual allegations will not suffice to prevent a motion to dismiss. *Warren v. District of Columbia*, 353 F.3d 36, 39 (D.C. Cir. 2004); *Bender v. Suburban Hosp., Inc.*, 159 F.3d 186, 192 (4th Cir. 1998).

As set forth below, Plaintiff has failed to allege facts sufficient to support any cause of action against Defendants. Accordingly, this Motion to Dismiss should be granted and judgment should be entered in favor of Defendants.

B. Plaintiff's Defamation Claim Is Barred By The Applicable Statute Of Limitations And Must Be Dismissed

A claim for defamation must be filed within one (1) year of accrual of the cause of action. *Maupin v. Haylock*, 931 A.2d 1039, 1042 (D.C. 2007); *Sturdivant v. Seaboard Serv. Sys., Ltd.*, 459 A.2d 1058, 1058 (D.C. 1983) ("A suit for libel must be filed within one year of the alleged defamation") (citing D.C. Code §12-301(4)). In defamation cases, the cause of action accrues, and the one-year limitations period begins to run, at the time the allegedly defamatory statement was published. *See, e.g., Mullin v. Washington Free Weekly, Inc.*, 785 A.2d 296, 298 n. 2, 299 (D.C. 2001) (adopting the "virtually unanimous rule" that in a case alleging defamation through a mass media outlet such as a book, magazine, or newspaper, the limitations period begins to run when the publication "is first generally available to the public"). *See, also, Oparaugo v. Watts,* 884 A.2d 63, 72 (D.C. 2005).

Plaintiff filed this action on March 2, 2009. However, virtually every statement that is alleged to have been made by or on behalf of AIPAC was uttered and published well over a year before suit was filed. Accordingly, Plaintiff's claims are clearly time barred.

As alleged in the Complaint, Plaintiff's employment with AIPAC was terminated on March 21, 2005. Plaintiff alleges that after his termination, there were numerous articles and media coverage of the Federal investigation, indictment, and the Plaintiff's termination, including articles that appeared in the New York Times, the Washington Post, the Jewish Times, and the Jerusalem Post. According to the Complaint, included in some of the articles were statements that were allegedly made by or on behalf of AIPAC at or around the time of Plaintiff's 2005 termination. (*See* April 21, 2005 Article, Exhibit 1) With the sole exception of an Article of March 3, 2008, (¶24, page 15 of Plaintiff's Complaint), all of the articles identified in the Complaint were published by the media well over a year prior to the filing of this action.[2]

To the extent that Plaintiff seeks to recover damages for the statements published in the media in 2005, 2006, and 2007, Plaintiff's claims are time-barred as to those statements. Those statements are clearly outside of the limitations period and cannot give rise to a claim for defamation and therefore dismissal as to those claims is appropriate. As is demonstrated below, the March 3, 2008, article does not "revive" Plaintiff's claims with respect to the earlier publications. Furthermore, the March 3, 2008, Article was merely a republication by the media of a much earlier statement made on behalf of AIPAC, and cannot be used to establish a new claim as to these Defendants as no Defendant is alleged to have made any statement within the statute of limitations period.

[2] Plaintiff does make brief reference to an October 14, 2008, Article that appeared in The Forward. The Complaint is void of any details regarding that Article. A reading of the Article shows that it does not even contain a statement from any of the Defendants and therefore cannot be considered as part of Plaintiff's claim. The Plaintiff's Complaint cites the publication date of the Article in The Forward as October 14, 2008, however, the Article was published on October 16, 2008, for the October 24, 2008, issue. (*See* Exhibit 2)

i. The Continuing Tort Doctrine does not apply to claims of defamation.

Plaintiff attempts in his Complaint to circumvent the statute of limitations and to revive otherwise stale claims by suggesting that a continuing pattern of conduct occurred. Specifically, Plaintiff asserts that, "[s]ince April 21, 2005 and continuing thereafter through at least March 3, 2008. . ." the Defendants made allegedly false statements. *See*, Complaint, ¶33. However, under the law of this jurisdiction the publication of the March 3, 2008, "statement," does not serve to undermine the application of the one (1) year statute of limitations to all otherwise time barred claims.

The District of Columbia Court of Appeals in this jurisdiction has specifically rejected application of the continuing tort doctrine with respect to claims of defamation, and has held that each individual statement constitutes "a new assault on the plaintiff's reputation," each giving rise to a separate action. *Wallace v. Skadden, Arps, Slate, Meagher & Flom,* 715 A.2d 873, 882 (D.C. 1998); *citing Jones v. Howard Univ.*, 574 A.2d 1343, 1348 (D.C. 1990); *Dooley v. United Technologies Corp,* 1992 WL 167053 (D.D.C.1992); *Lapointe v. Van Note*, 2004 WL 3609346 (D.D.C. 2004).

Under strikingly similar circumstances, the Court in *Wallace*, rejected the plaintiff's contention that her former employer's defamatory statements were all a part of a single continuing course of conduct as well as the argument that the statute of limitations did not begin to run until the conduct ceased. *Id.* at 882. The Court also decided, "the running of the statute [cannot] be prevented by repetitions of the [defamation], although, of course, a separate action will lie for any repetition within the statutory time." *Id.* (citations omitted); *see, also, Judd v. Resolution Trust Corporation*, 1999 WL 1014964, *6 (D.D.C. Aug. 17, 1999) (citing *Wallace*).

A plaintiff cannot rely on a defendants' alleged repeated use of an offending statement to delay the running of the statute of limitations. *Ivey v. National Treasury Employees Union*, 2007 WL 915229, 5 (D.D.C. 2007) (*citing Wallace* 715 A.2d at 882-83 (D.C. 1998) (rejecting argument that discrete defamatory communications comprise a continuous course of conduct, such that statute of limitations would not begin to run until conduct ceased); *see, also, Nat'l R.R. Passenger Corp. v. Krouse*, 627 A.2d 489, 497-98 (D.C. 1993), *cert. denied*, 513 U.S. 817 (1994) (holding that applicable statute of limitations began to run when Plaintiff knew or should have known of his injury and its possible cause).

The media's publication of an article on March 3, 2008 does not alter the fact that Plaintiff's claims for prior publications are clearly time barred. Accordingly, any claim based upon a statement that was published prior to March 2, 2007, (one (1) year before suit was filed) is properly dismissed. Moreover, any claim based upon a prior statement that was republished in the March 3, 2008, Article is also time barred.

ii. The March 3, 2008, Article was a republication of a statement that was made more than one year prior to the filing of suit and therefore any claim based upon such statement is time barred.

Although the March 3, 2008, Article was published within one (1) year prior to the filing of suit, any claim against these Defendants that is based upon the statement contained in that Article is also time barred.

The alleged March 3, 2008, publication that Plaintiff cites in ¶24 of the Complaint is an article that appeared in the New York Times on "information trading." A close reading of the allegations regarding the article reveals that the quoted statement of Defendant Dorton was originally uttered in 2005. The Article states, "Patrick Dorton said *at the time* that the two men were dismissed because their behavior 'did not comport with standards that AIPAC expects of its

employees." *See* ¶24 of Plaintiff's Complaint (emphasis added). In essence, the article only repeated a statement made by Defendant Dorton much earlier and *at the time of* Plaintiff's actual discharge from AIPAC in 2005. It does actually not contain a quote from Defendant Dorton uttered in 2008, but states a description of what Defendant Dorton said in 2005, to provide context for the article's history of events in the Federal prosecution.

Even if the Court were to consider the March 3, 2008, Article a republication of an allegedly defamatory statement, the Complaint still fails because it was not a republication within one (1) year of the original utterance. *See, Wallace*, 715 A. 2d at 882; *Judd v. Resolution Trust Corporation*, 1999 WL 1014964, at *6.[3] An action cannot be based upon a republication of a statement that was made more than one (1) year prior to the republication, as any action based upon that statement would be time barred at the time of the republication. The republication rule is a narrow exception to the statute of limitations, opening a window of opportunity to file a lawsuit based on a republication of a defamation where the republication occurs within one (1) year of the initial publication. *Judd v. Resolution Trust Corp.* 1999 WL 1014964, *6 (D.D.C. 1999) (citing *Moore v. Allied Chemical Corp.*, 480 F.Supp. 364, 376 (E.D.Va.1979).[4] The Court in *Moore*, interpreting Virginia law, held that "a separate cause of action will lie against the original publisher or wrongdoer for the republication of the libelous

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[3] With respect to Plaintiff's reference to the October 16, 2008, Article in The Forward, there is no description of the alleged statement in the Complaint. The Plaintiff has not alleged sufficient facts to support a claim of defamation as to this "statement" because there is no statement in the actual article, nor is there any allegation that Defendant Dorton or anyone from AIPAC made a statement on October 16, 2008, which would place Plaintiff's claim within the statute of limitations. *See*, October 16, 2008, Forward.com Article, attached as Exhibit 2.

[4] In *Judd v. Resolution Trust Corporation*, the United States District Court for the District of Columbia cited *Wallace* in its explanation of the logic of the republication rule:

> A plaintiff who was initially defamed on January 1, 1999, would have until January 1, 2000, to bring her lawsuit. If the defamation was republished on February 2, 1999, the statute would be extended until February 2, 2000, because the republication occurred within the one year statute of limitations which commenced to run when the defamation was first uttered on January 1, 1999. That principle, however, would not permit a lawsuit to be brought on January 1, 2004, based on the republication of the defamatory statement uttered on January 1, 2003, because that republication did not occur within one year of the original utterance on January 1, 1999.

Judd, 1999 WL 1014964, at *6.

statement by a third party" but only if the republication occurred during the limitations period with respect to the original publication. *Id.*

In the case at bar, the Plaintiff has failed to allege that any Defendant made any actionable statement within the relevant time period. At best, Plaintiff has alleged that the media (as opposed to the Defendants) republished statements that were made well outside the statute of limitations period. Although it is possible that such republication may result in a potential claim against the media outlet, any liability for the republication cannot be imposed as against these Defendants, as any claim premised upon the statement is time barred. *Foretich v. Glamour*, 741 F.Supp. 247, 253 (D.D.C. 1990) (One who republishes a defamatory statement adopts it as his own and is liable for defamation.); *see, also*, *Liberty Lobby, Inc. v. Dow Jones & Co., Inc.*, 838 F.2d 1287, 1298-99 (D.C.Cir.), *cert. denied*, 488 U.S. 825, 109 S.Ct. 75, 102 L.Ed.2d 51 (1988).

Under such circumstances, Plaintiff's claim is clearly time barred and should be summarily dismissed.

C. The Alleged March 3, 2008, Statement Is Not Defamatory as a Matter of Law

Even assuming that the March 3, 2008, statement constituted a new statement made by or on behalf of AIPAC within the applicable statute of limitations, Plaintiff has nonetheless failed to state a claim of defamation against any of these Defendants.[5] As can be gleaned from a review of Plaintiff's allegations regarding what the March 3, 2008, Article contained, the statement that was allegedly made on behalf of AIPAC cannot be construed as defamatory. In fact, Plaintiff has not even alleged that the specific statement was false.

A statement is 'defamatory' if it tends to injure the plaintiff in his trade, profession or community standing, or lower him in the estimation of the community. *Moss v. Stockard,* 580

[5] Even assuming that Plaintiff timely asserted a claim based upon the March 3, 2008, Article, Plaintiff's claim would be limited to the March 3, 2008, statement, and Plaintiff would only be entitled to recover damages attributable to that one (1) statement. *Wallace*, 715 A.2d at 882; citing *Jones v. Howard Univ.*, 574 A.2d 1343, 1348 (D.C.1990).

A.2d 1011, 1023 (D.C. 1990) (citations omitted). Nevertheless, "an allegedly defamatory remark must be more than unpleasant or offensive; the language must make the plaintiff appear 'odious, infamous, or ridiculous.' " *Howard Univ. v. Best,* 484 A.2d 958, 989 (D.C. 1984) (citation omitted); *see, also, Guilford Transp. Indus., Inc. v. Wilner,* 760 A.2d 580, 594 (D.C. 2000). The plaintiff has the burden of proving the defamatory nature of the publication, and the publication must be considered as a whole, in the sense in which it would be understood by the readers to whom it is addressed. *Best,* 484 A.2d at 989 (citations omitted). "[A] statement ... may not be isolated and then pronounced defamatory, or deemed capable of defamatory meaning. Rather, any single statement or statements must be examined within the context of the entire [article]." *Heard v. Johnson,* 810 A.2d 871, 886 (D.C. 2002) (citing *Klayman, supra,* 783 A.2d at 614 (internal quotation marks omitted). "Assertions of opinion on a matter of public concern receive full constitutional protection if they do not contain a provably false factual connotation." *Guilford Transp. Industries, Inc. v. Wilner*, 760 A.2d 580, 597 (D.C. 2000) (citing *Washington v. Smith*, 80 F.3d 555, 80 (D.C. Cir. 1996).

The March 3, 2008, Article gave an overview of the Federal criminal prosecution in the Eastern District of Virginia against the Plaintiff and another former AIPAC employee. It discussed the far-reaching implications the criminal trial could have on how foreign policy is made in the United States. The Article detailed recent rulings of the trial judge and specifically gave details of the allegations in the criminal indictment against the Plaintiff. The Article contains a repetition of a statement made in 2005 as to AIPAC's termination of the Plaintiff due to their belief that the Plaintiff did not reflect AIPAC standards. Further, the notation in the Article "that AIPAC still held the view of that behavior," does not contain a quote or statement from Defendant Dorton, but instead contains an affirmation that AIPAC stands by its reasons for

terminating the Plaintiff and another employee especially in light of the new developments in the Federal case[6]. This is not a false statement, nor does the Complaint specifically allege it to be false.

A contextual examination of the entire Article negates the existence of any defamatory content that could injure the Plaintiff. Plaintiff has failed to allege facts sufficient to establish that any Defendant made any false statement to any third party within the applicable statute of limitations period that caused harm to the Plaintiff. Accordingly, Plaintiff has failed to state a claim upon which relief may be granted, and dismissal is appropriate.

D. Plaintiff Has Failed To Allege Facts Sufficient To Support A Finding Of Actual Malice

Plaintiff's claim also fails because he is a public figure and Plaintiff has failed to allege any facts which would support a finding that any of these Defendants made any alleged defamatory statement with actual malice, which is a prerequisite to recovery in light of the fact that Plaintiff was a public figure at the time that the alleged defamation occurred.

To state a cause of action for defamation, a plaintiff must allege four (4) elements: (1) that the defendant made a false and defamatory statement concerning the plaintiff; (2) that the defendant published the statement without privilege to a third party; (3) that the defendant's fault in publishing the statement amounted to at least negligence; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the

[6] Even were one to give credence to the notion that the March 3, 2008, Article somehow revived a 2005 statement that Plaintiff was dismissed because his actions failed to comport with the standards AIPAC expects of its employees, such a statement is still not defamatory. The statement is pure opinion, as it does not contain a provably false factual connotation. *See, Gibson v. Boy Scouts of America*, 360 F. Supp. 2d 776, 781 (E.D.Va 2005) (where defendant claimed plaintiff was "unfit" to be a leader of the Boy Scouts, such statements were pure opinion). Moreover, by March 3, 2008, all of the facts known to the Defendants at that time must be taken into account to determine (assuming the statement were even arguably defamatory) whether the statement was objectively false. By March 2008, Mr. Rosen had been indicted, and whatever the merits of the indictment may have been, a criminal indictment was not what AIPAC expected of any employee.

plaintiff special harm. *Blodgett v. University Club*, 930 A.2d 210, 222 (D.C. 2007) (quoting *Oparaugo v. Watts*, 884 A.2d 63, 76 (D.C. 2005)).

To prevail on a claim of defamation against a public figure, a Plaintiff must "prove by clear and convincing evidence" that a defendant acted "with actual malice, *i.e.*, intentional or reckless disregard for [the] falsity" of the statement. *Clampitt v. American University*, 957 A.2d 23, 42 (D.C. 2008) (citing *Moss v. Stockard*, 580 A.2d 1011, 1029 (1990).

Generally, a public figure is a person "intimately involved in the resolution of important public questions or [who], by reason of their fame shape events in areas of concern to society at large." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 94 S.Ct. 2997 (1974). Public figures are either general-purpose public figures or limited-purpose public figures. *Moss*, 580 A.2d at 1030. General-purpose public figures are "public figures for all purposes" because of "their position of such pervasive power and influence." *Id.* "[L]limited-purpose public figures are individuals who are not deemed public figures for all purposes, but who assume roles in the forefront of particular public controversies in order to influence the resolution of the issues involved, and who are deemed public figures only for purposes of the controversy in which they are influential." *Clampitt*, 957 A.2d at 43 (internal quotations omitted).

In *Moss v. Stockard,* the Court of Appeals cited the United States Court of Appeals for the District of Columbia Circuit's decision in *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, *cert. denied,* 449 U.S. 898, 101 S.Ct. 266 (1980), to test whether a plaintiff in a defamation action is a limited-purpose public figure. *Moss*, 580 A.2d at 1030. Under the *Waldbaum* three-part test (1) there must be a public controversy; (2) the plaintiff "must have achieved a special prominence in the debate;" and (3) the alleged defamation must be related to the plaintiff's role in the controversy. *Id.* at 1030-1031. "[A] public controversy is a dispute that

in fact has received public attention because its ramifications will be felt by persons who are not direct participants." *Waldbaum*, 627 F.2d at 1296.

In the case at bar, a public controversy existed prior to the initial publication of any alleged defamatory statements about the Plaintiff's termination. The public became aware of the Department of Justice's investigation into the Plaintiff and his role in obtaining information to advocate certain policies as AIPAC's Director of Foreign Policy Issues prior to the utterance of any alleged defamatory statement. AIPAC, its lobbying actions, AIPAC's role in helping to shape positive relationships between the United States and Israel and its effect on American foreign policy were of public discussion. AIPAC is "America's leading pro-Israel lobby," and has a membership of over 100,000. *See*, American Israel Public Affairs Committee website, http://www.aipac.org/about_AIPAC/default.asp. AIPAC's purpose is to "build and enhance a close relationship between the United States and the State of Israel." *See*, Complaint generally. AIPAC's effort in shaping Middle-East foreign policy influences a wider group than only the direct participants.

As for the second part of the test, Plaintiff's prominence, the Plaintiff admits in his own complaint that he was "known internally and outside the AIPAC organization" in matters of foreign policy. He was in the forefront of the public debate about groups lobbying and advocating about foreign policy issues. An internet search of the Plaintiff's name on the Google search engine had over 17,000 hits. *See*, Google search, attached as Exhibit 3. The Plaintiff also has an extensive Wikipedia entry, which describes him as "one of the most influential but controversial figures in the pro-Israel movement, often singled out in writings critical of AIPAC." Wikipedia, http://en.wikipedia.org/wiki/Steve_J._Rosen. Additionally, a search of the New York Times Archives has articles from the 1980's discussing the Plaintiff and his

involvement in Middle East and issues of importance to the U.S.-Israel relationship. He has authored the best-selling textbook titled *The Logic of International Relations*, and some credit the current extensive advocacy reach of AIPAC to the Plaintiff's tenure as Foreign Policy Issues director.

Finally, the alleged defamatory statement was germane to the debate on how foreign policy is created. The Plaintiff was the Director for Foreign Policy Issues at AIPAC and as stated before, was known to have shaped the AIPAC agenda and ways AIPAC fought for positive pro-Israel policy issues. Plaintiff's termination from that influential position was directly related to the public debate about lobbying groups and foreign policy. Under that standard the Plaintiff is at least a limited-purpose public figure, as a reasonable person can find that as the Director of Foreign Policy issues for one of the largest lobbying organizations he placed himself into the public controversies about lobbying and American/Middle East policy issues. The Plaintiff was a prominent part of that public debate, and the alleged defamatory statement is relevant to the controversy because it commented on Plaintiff's terminated participation in the controversy as AIPAC's Director of Foreign Policy issues.

Plaintiff is a public figure, or in the alternative, a limited-purpose public figure and therefore he must allege facts sufficient to establish that any alleged defamatory statements were false and made with malice. The fact AIPAC still supports their own reasons for terminating the Plaintiff is not a malicious statement but an affirmation of their reasons for ending the at-will relationship.

The Plaintiff's claim fails because there was no false statement uttered, and the Plaintiff has not alleged sufficient facts to show that any alleged statement was made with malice.

Accordingly, Plaintiff's claims should be dismissed with prejudice as against all of these Defendants.

E. The Advisory Group Defendants Are Statutorily Immune From Liability And Had No Involvement In Any Alleged Defamatory Statements

Plaintiff's claim against Defendants Dow, Manocherian, Freidman, Weinberg, Asher, Levy, Jr., Kaplan, Wuliger, and Friedkin should also be dismissed because these voluntary Board Member Defendants have statutory immunity. (*See*, Affidavit of AIPAC Managing Director, Exhibit 4).

Section 29-301.113 of the District of Columbia Code states in pertinent part, "Any person who serves as a volunteer of the corporation shall be immune from civil liability except where the injury or damage was a result of . . . the wilful misconduct of the volunteer." D.C. Code Ann., §29-301.113 (2001). Here the above named Defendants are all volunteer board members. The only allegation is that they acquiesced in or authorized the statements by the mere fact that they are members of the Board of Directors. There is no allegation that any of the Board Member Defendants actually made any statements about the Plaintiff. Furthermore, there is no allegation of any act by any Board Member Defendant that occurred within the requisite time. Finally, the Complaint is entirely void of any factual allegation that would support a finding of willful misconduct on the part of any of the Board Member Defendants.

Plaintiff has failed to state a viable cause of action against the Board Member Defendants because they have statutory immunity and because there is no allegation that any Board Member Defendant willfully made any defamatory statements about the Plaintiff within the statute of limitations period. Therefore, all claims against the Board Member Defendants should properly be dismissed.

III. CONCLUSION

For the forgoing reasons, these Defendants respectfully requests that this Honorable Court dismiss Plaintiff's Complaint in its entirety with prejudice, and award the Defendants costs and other such relief as this Honorable Court deems just and proper.

Respectfully submitted,

CARR MALONEY P.C.

By:_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of May, 2009, I will electronically file the foregoing with the Clerk of the Court using the CaseFile Express system, which will then send a notification of such filing to David H. Shapiro, attorney for Plaintiff. A copy of the foregoing will be sent via first class mail, postage prepaid to Rational PR, L.C., 1155 15th Street, NW, Suite 614, Washington, DC 20005.

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Thomas L. McCally

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

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STEVEN J. ROSEN Plaintiff v. AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, INC., *et. al.* Defendants	:	Case No.: 0001256-0-9

ORDER

UPON CONSIDERATION of the foregoing Motion to Dismiss filed by Defendants, American Israel Public Affairs Committee, Inc., Kohr, Dow, Manocherian, Friedman, Weinberg, Asher, Levy, Kaplan, Wuliger, Friedken, and Dorton, and any opposition thereto, it is this ___ day of May, 2009

ORDERED, that the Motion to Dismiss is GRANTED; and it is further

ORDERED, that the Complaint and all claims contained therein are hereby dismissed with prejudice.

Judge Jeanette J. Clark

cc: David H. Shapiro
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