

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

2009 DEC 23 P 1:17

CLERK OF DISTRICT COURT
ALEXANDRIA, VIRGINIA

BARBARA LOE ARTHUR
(AKA BARBARA LOE FISHER),

[Redacted]

Plaintiff,

v.

PAUL A. OFFIT, M.D.,

[Redacted]

AMY WALLACE,

[Redacted]

CONDÉ NAST PUBLICATIONS INC.,
4 TIMES SQUARE,
NEW YORK, NY 10036

Defendants.

CASE NO. 09 CV 1398
CMH/TRJ

COMPLAINT WITH DEMAND FOR JURY TRIAL

Plaintiff Barbara Loe Fisher, by counsel, sues Defendants Paul A. Offit; Amy Wallace; and Condé Nast Publications (collectively "Defendants") for libel, seeking the following redress:

1. This is an action for defamation (libel). Plaintiff Barbara Loe Fisher is the co-founder and acting president of the National Vaccine Information Center ("NVIC"). NVIC is a non-profit organization founded in 1982 and dedicated to the prevention of vaccine injuries and

deaths through public education and to defending each patient's right to voluntary, fully informed consent to vaccination. Publicly active on issues concerning mandatory vaccination and harms linked to vaccines for the past 28 years, Plaintiff Fisher is a public interest advocate, public speaker, media source for information about mandatory vaccination and harms linked to vaccines, and author of books and articles. She has been consulted repeatedly by public health agencies, including those of the federal government agencies, on those same issues.

2. The November 2009 issue of Wired Magazine, published by Condé Nast Publications Inc., contains an article written by Amy Wallace that quotes Paul A. Offit, M.D., inventor of the rotavirus vaccine and leading national advocate for mandatory vaccination, as saying that Plaintiff Fisher is a liar (“‘she lies,’ he said flatly”). That statement comes within the context of an article that portrays those like Fisher (who oppose mandatory vaccination) as unscientific, uneducated, and harmful to society. By contrast, the article portrays Defendant Offit as a heroic pediatrician who selflessly campaigns for mandatory vaccination in a fight against enemies of science and opportunists (hence the sub-title of the publication (in reference to Offit), “One man’s battle against the anti-vaccine movement”). It portrays Offit as wrongly condemned by opponents (“To hear his enemies talk, you might think Paul Offit is the most hated man in America”) but who is in fact a medical expert and proceeds on the basis of scientific truth and altruism without regard to the millions received in compensation for the childhood vaccines he develops, while Plaintiff Fisher is portrayed as cunningly intelligent (“indisputably the [anti-vaccine] movement’s brain”) and head of “the most influential of the watchdog groups that oppose universal vaccination”). The article does not present science concerning the risks or the informed consent rights issues that arise from mandatory vaccination but adheres to a bias in favor of the general safety of vaccines and a presumed medical necessity

for mandatory vaccination and against informed consent. The article likewise lionizes Dr. Offit and ridicules those who oppose the view he espouses on mandatory vaccination. Although before the Wired article appeared Defendant Wallace interviewed Plaintiff Fisher at length and derived substantial information from her concerning the risks and rights issues that mandatory vaccination begets, she chose not to include content reflecting that information in her article. In the context of this article, the Offit statement, “she lies,” and its publication and republication by Defendants nationwide via Wired magazine, Wired magazine online, and Dr. Offit is libel *per se*. Although libel *per se* leads to presumed damages, Plaintiff Fisher has suffered a substantial loss in professional reputation and association as a result of Defendants national and international publication of the libel to hundreds of millions, impugning her character, honesty, and integrity.

JURISDICTION AND VENUE

3. Plaintiff Barbara Loe Fisher (“Plaintiff Fisher” or “Plaintiff”) is domiciled in and a resident of Virginia, residing in Fairfax County.

4. Defendant Paul A. Offit (“Offit”) is domiciled in and a resident of Pennsylvania, residing in Montgomery County.

5. Defendant Amy Wallace (“Wallace”) is domiciled in and a resident of California, residing in Los Angeles County.

6. Defendant Condé Nast Publications Inc. (“Nast”) is a New York Corporation with its principal place of business at 4 Times Square, New York, NY 10036.

7. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 and there is complete diversity of citizenship between the parties in this matter.

8. This Court has personal jurisdiction over Defendants under Va. Code § 8.01-328.1(A)(4) because they have caused tortious injury to the Plaintiff in Virginia, engage in regular business and a persistent course of conduct in this Commonwealth, and derive substantial revenue from goods used or consumed or services rendered in Virginia.

- a. Defendant Nast circulates and derives substantial profits from numerous magazines throughout the United States and in the state of Virginia, including Wired Magazine.
- b. Defendant Wallace worked as an agent for Nast while writing the offending article, *An Epidemic of Fear: One man's battle against the anti-vaccine movement*,¹ published in the November 2009 issue of Wired Magazine. While researching the article Wallace conducted ongoing communications with the Plaintiff, a Virginia citizen, wherein Wallace interviewed the Plaintiff by phone and email for the purpose of writing the article for Wired Magazine. Wallace knew the article would be published and distributed worldwide and would have substantial effects on the Plaintiff in Virginia.
- c. Defendant Offit is a physician, researcher, vaccine inventor, and mandatory vaccination advocate. He is employed by the Children's Hospital of Philadelphia as a Professor and Chief of Infectious Diseases in the Department of Pediatrics, for the University of Pennsylvania School of Medicine. He conducts business in, has professional ties to and has familial ties in the Commonwealth of Virginia including, but not limited to, the following. Offit is the co-inventor of the RotaTeq® rotavirus vaccine marketed by Merck Sharp & Dohme Corporation

¹ Attached as Exhibit A.

(“Merck”) and administered to Virginia citizens daily. Offit has written numerous books and articles on vaccines that have been promoted to and purchased and read by Virginia citizens, deriving revenue and profit from those sales. Offit is a prominent member of the Pediatric Infectious Disease Society (PIDS) located in Arlington, VA. In 2008 he was given the Stanley A. Plotkin Award by PIDS for Outstanding Achievement in vaccines. In 2007 he spoke at the 9th Vaccine Update Conference, “Strategies for Effective Risk Communication,” in Norfolk, VA. Offit has appeared in articles in Virginia news publications in which he was interviewed by staff reporters. Offit has spoken at vaccine conferences in Virginia on several occasions and interacts with and has interacted with businesses, business professionals, colleagues, and individuals resident in Virginia since at least 1998. Finally, through their professional connections Offit knows that Fisher is a resident of Virginia and knows that her business, NVIC, is located in Virginia. When he stated “she lies” for attribution in the article by Defendant Wallace for Wired Magazine he knew or reasonably should have known that this internationally distributed magazine would be available for purchase throughout retail establishments in Virginia and would be mailed to subscribers in Virginia.

9. Venue is proper in this court pursuant to 28 U.S.C. § 1391 based on the circulation of Wired Magazine in Virginia and the harm caused to Plaintiff in Virginia.

DESCRIPTION OF THE PARTIES

10. Plaintiff Barbara Loe Fisher is the co-founder and acting president of the National Vaccine Information Center (“NVIC”). The NVIC is a small, non-profit organization dedicated

to the prevention of vaccine injuries and deaths through public education and to defending patients' rights to voluntary, fully informed consent to vaccination. NVIC is funded by contributions of public supporters. NVIC's primary public representative is the Plaintiff and the organization depends for its funding on the reputation of Plaintiff Fisher who is NVIC's alter ego. Plaintiff Fisher's income is derived from a small salary that she is paid by NVIC and retirement benefits she inherited when her husband died in 2001. Plaintiff Fisher is the co-author of *DPT: A Shot in the Dark* (Harcourt Brace Jovanovich 1985; Warner 1986; Avery 1991); *The Consumer's Guide to Childhood Vaccines* (NVIC 1997) and *Vaccines, Autism & Chronic Inflammation: The New Epidemic* (2008). She is also the editor of the bi-weekly NVIC Vaccine E-Newsletter. She served on the National Vaccine Advisory Committee (1988-1991); and the Institute of Medicine Vaccine Safety Forum (1995-1998) where she has helped to coordinate five public workshops on vaccine safety issues and co-edited the report on Risk Communication; the FDA Vaccines and Related Biological Products Advisory Committee (1999-2002); the Vaccine Policy Analysis Collaborative (2002-2005); the CDC Blue Ribbon Panel on Vaccine Safety (2004) and the National Vaccine Advisory Committee Vaccine Safety Writing Group (2009). She is a member of the Consumer's United for Evidence-Based Healthcare, Cochrane Collaboration – U.S. She has represented health care consumers at many scientific conferences, government meetings and legislative hearings and has been a featured speaker at health care conferences in the U.S., Canada and Europe. As NVIC's public spokesperson, she has contributed to numerous newspaper and magazine articles about vaccine safety and appears on national radio and television programs, including all major networks (ABC, NBC, CBS, CNN, PBS and FOX), discussing vaccines and diseases and advocating informed consent as a condition precedent to voluntary vaccination. Contrary to representations

made in the article, Plaintiff Fisher does not seek to prohibit or advise against vaccination but to ensure that vaccination is voluntary and that it proceeds following fully informed consent.

Plaintiff Fisher has enjoyed an excellent and heretofore unquestioned reputation for honesty and integrity in all her work. Those who provide NVIC funding, who purchase her publications, who depend on NVIC's information, and who rely on her as a source of information on vaccine science, regulation, policy, law and ethics do so depending on her as a person of honesty and integrity.

11. Defendant Offit is the co-inventor of the Rotavirus vaccination, RotaTeq®. Offit has received millions of dollars as a result of his involvement with the RotaTeq® vaccine and Merck. The RotaTeq® vaccine is now marketed by Merck and administered nationally as a recommended by the Advisory Committee on Immunization Practices (ACIP) for routine immunization of U.S. infants at 2, 4 and 6 months of age. Offit was a member of the ACIP from 1998, shortly after receiving the patent for the RotaTeq® vaccine, through 2003.

12. Offit is a leading advocate for mandatory vaccinations. After years of vaccination advocacy, Offit has become an influential spokesman to whom many in government, industry, and the media turn for information. Offit has written or contributed to at least eight books sold nationally. In addition, Offit is a member of many respected national organizations including, Pediatric Infectious Disease Society, a Virginia based organization. He speaks frequently throughout the United States at vaccination conferences and before the U.S. press, advocating universal mandatory vaccination and disputing risk associated with vaccination. Offit disagrees adamantly with the pro-education, pro-informed consent positions taken by Plaintiff Fisher and advocated by her and by NVIC. Offit and Plaintiff Fisher have met personally on several

occasions. In 2005, Offit and Plaintiff Fisher participated in a federal government -sponsored invitation-only Pandemic Flu Public Participation Pilot Project, National Stakeholders Meeting.

13. Defendant Amy Wallace is a reporter with editorial experience. She is a freelance writer based in Los Angeles and an editor at large at Los Angeles Magazine. *See* <http://www.wired.com/magazine/2009/10/who-is-this-amy-wallace-anyway/> (last visited December 16, 2009). Prior to her current position she was a senior writer at Condé Nast Portfolio and before that she was the deputy business editor at the Los Angeles Times. *Id.*

14. Defendant Condé Nast Publications Inc. is the publisher of Wired magazine, Wired.com and at least 25 other brands, with the majority of them nationally circulated magazines. Its website, www.condenast.com, states Condé Nast Publications is “home to many of the world's celebrated magazines and websites . . .” *Id.* (last visited December 16, 2009).

FACTS

15. On or about October 19, 2009, Defendant Nast published a one-sided article in Wired magazine entitled, *An Epidemic of Fear: One man's battle against the anti-vaccine movement*. Attached as Exhibit A. The article was written by Defendant Wallace as an agent of Defendant Nast, and included extensive quotes from, and commentary on, Defendant Offit. The article was featured as the cover story of the magazine and millions of copies have been distributed across the United States in every state and in countries worldwide. According to Wired magazine's online materials, the magazine boasts a total paid circulation of 703,593. *See* <http://www.wired.com/services/press/center/factsheet> (last visited December 1, 2009). In addition to print publication in Wired Magazine, the article was also published on Wired.com at http://www.wired.com/magazine/2009/10/ff_waronscience/all/1 (last visited, December 1, 2009) and publicized as a storyboard article at

<http://www.wired.com/underwire/2009/10/storyboard-fear-vaccines> (last visited December 1, 2009). Wired.com boasts an average page view of 37.3 million. *See*

<http://www.wired.com/services/press/center/factsheet> (last visited December 1, 2009).

16. The purpose of the Wired article was to create the impression that anyone not in support of universal and mandatory vaccination is irrational, uneducated, unscientific, controlled by fear and a danger to the public health. Wallace and Offit combined in an effort to defame and discredit those not in favor of universal and mandatory vaccination and singled out Plaintiff Fisher, whom the article describes as the “movement’s brain,” and the “media’s go-to interview for . . . ‘parents [sic] rights’” for condemnation as a liar. *See* Exhibit A at 8-9. The article quotes Offit describing Plaintiff Fisher to be untrustworthy to wit: “She lies.” *See* Exhibit A at 9.

17. The Wired article depicts Dr. Paul A. Offit as a lone and heroic pediatrician/scientist who is the primary public voice in favor of mandatory vaccination, a position described as rational and science-based, and describes him as unfairly maligned by a movement of irrational and unscientific fanatics who oppose mandatory vaccination, identifying Plaintiff Fisher as the “movement’s brain.”

- a. The article describes any adult who declines one or more government recommended vaccines for themselves or their child to be ignorant of science and negligent, placing all others in society at risk of illness, injury or death. *See* Exhibit A at 5.
- b. The article lionizes Offit as an altruistic scientist dedicated to child welfare unfairly persecuted by the “anti-vaccine” movement. *See* Exhibit A at 9.

- c. The article cites the vaccination debate as Offit's "battle" pitting his rational view of science against an irrational view held by those who oppose mandatory vaccination. *See* Exhibit A at 3.
- d. The article condemns groups that oppose universal, mandatory vaccinations as similar to others who have harbored irrational fears throughout history, retarding scientific discoveries and advancement and jeopardizing the public health. *See* Exhibit A at 5.
- e. The article states that those who support risk awareness and informed consent do not review scientific data and analysis to come to their conclusions: "But researchers, alas, can't respond with the same forceful certainty that the doubters are able to deploy — not if they're going to follow the rules of science." *See* Exhibit A at 8
- f. The article condemns all science in opposition to mandatory vaccination as "pseudo-science," stating, "The bottom line: Pseudo-science preys on well-intentioned people who, motivated by love for their kids, become vulnerable to one of the world's oldest professions. Enter the snake-oil salesman." Followed by the listing of several groups which "are built around the conviction that autism is caused by vaccines." *See* Exhibit A at 6.
- g. The article states that there is no credible scientific evidence to support claims that vaccines harm American children. *See* Exhibit A at 3.

18. In truth and in fact, Barbara Loe Fisher does not oppose availability or use of vaccines but opposes one-size-fits all vaccine mandates and vaccination performed without the fully informed consent of patients or their legal guardians. Barbara Loe Fisher bases her

understanding of risks associated with vaccines on scientific evidence and opinion as well as adverse event reports accepted by scientists and physicians nationwide as evidence that vaccines do carry significant risks for individuals, some of which include severe injuries and death. Barbara Loe Fisher is the mother of a son who experienced a vaccine adverse reaction and became a pro-education, pro-informed consent advocate opposing mandatory vaccination policies that do not respect biodiversity and lack informed consent protections following that personal experience.

19. After labeling supporters of informed consent and vaccine risk awareness as irrational individuals blinded by fear, after identifying Plaintiff Fisher as the “movement’s brain,” and after lionizing Offit as the leading expert on vaccination whose views the public should trust, Wallace portrays Plaintiff Fisher, in reliance on a quote from Offit, as a liar, impugning her honesty, character, and integrity.

20. The following passage contains the principle attack on Plaintiff Fisher’s honesty, character, and integrity, culminating in the *per se* libel (quoted from Offit) that Plaintiff Fisher “lies:”

“‘Kaflooeey theories’ make him (Offit) crazy, especially if they catch on. Fisher, who has long been the media’s go-to interview for what some in the autism arena call ‘parents [sic] rights,’ makes him particularly nuts, as in ‘You just want to scream.’ The reason? **She lies,**’ he says flatly.

See Exhibit A at 9 (emphasis added).

21. Plaintiff Fisher is not a liar. The statement “she lies” is without a basis in fact. Plaintiff Fisher depends on her reputation for honesty and integrity in all of her business, professional, and personal relationships. During her 28 years at the center of the vaccination debate, Plaintiff Fisher has never made a representation that she knew to be false and has scrupulously told the truth. In fact, Plaintiff Fisher is well known for taking special care to

document the written statements she makes about vaccination with numerous references from original sources in an effort to be accurate, transparently honest and trustworthy. The accusation that Plaintiff Fisher is a liar is malicious, spiteful, the product of ill-will, and is an overt attempt to discredit and destroy her reputation for honesty and integrity out of Offit and Wallace's zealous commitment to mandatory, universal vaccination.

CAUSE OF ACTION FOR DEFAMATION PER SE

22. Plaintiff Fisher realleges and incorporates by reference paragraphs 1-21 as though fully set forth herein.

23. Defendant Offit's accusation that Plaintiff Fisher "lies" is false and defamatory. It is made with common law malice-spite and ill will. It is also made with actual malice –reckless disregard of the truth and/or knowing falsity. Offit, a man of sophistication versed in evaluation of scientific proof, knows the statement to be false because he lacks facts necessary to confirm it. Offit described Plaintiff Fisher to be a liar without regard to the statement's falsity or with the intent to discredit, disgrace, and defame Plaintiff Fisher.

24. Facts showing it was false are in the public record.

25. As the author of the Wired article, agent for Nast, and prior author of an article that did not question Plaintiff Fisher's honesty, character, or integrity, Wallace in the present article acted with knowledge of Plaintiff Fisher's reputation for integrity and truthfulness and published the Offit condemnation of her as a liar knowing that the statement would impugn that reputation. Before publishing the article, Wallace engaged in a lengthy interview with Plaintiff Fisher by phone and in communications with her via electronic mail. She never questioned in that interview Plaintiff Fisher's honesty or integrity and did not thereafter confront her with the Offit charge that she was a liar and invite her to respond. In confirmation of Wallace's bias

against those who oppose mandatory, universal vaccination, Wallace wrote and published the libel specifically choosing it as the climax of her article's characterization of Plaintiff Fisher and following her defamatory positioning of Plaintiff Fisher as "the brain" for an entire vaccine safety and informed consent movement which Wallace deliberately mislabeled as "anti-vaccine" and that she condemned as unscientific and opportunistic. Wallace knew Fisher not to be opposed to the availability and use of vaccines but to be opposed to forced use of vaccines and to vaccination without fully informed consent, yet falsely described her as a leader of the "anti-vaccine movement," thus associating her within the article as a vaccine opponent who is unscientific, opportunistic, and dangerous to society. Wallace published the statement "she lies," quoted from Offit, with knowledge of its falsity. Wallace aided and abetted Offit's aim to discredit, debase, and defame Plaintiff Fisher by accusing her of being a liar.

26. Defendants Offit and Wallace knew that the charge that Plaintiff Fisher "lies" was not supported by fact sufficient to establish at the time Plaintiff Fisher made any statement that she then and there knew it to be false but communicated the falsehood nonetheless. To the contrary, their access to interviews and public statements of Plaintiff Fisher established Plaintiff Fisher to be a person of honesty, integrity, and good character, albeit one whose views they opposed.

27. The editors at *Nast of the Wired* article should have stopped publication of the statement "she lies" because they possessed no proof to establish any statement made by Plaintiff Fisher to have been made at a time when she had knowledge of its falsity. Without that essential support for the statement, they published it nonetheless in reckless disregard of the truth and with knowledge and reason to believe that it would discredit, debase, and defame Plaintiff Fisher by impugning her reputation for honesty and integrity.

28. Defendant Offit, Wallace, and Nast knew or should have known that the statement Plaintiff Fisher “lies” was false.

29. The statement “she lies” is libelous *per se* because the statement on its face describes Plaintiff Fisher as a person lacking honesty and integrity, making her a person to be shunned or excluded by those who seek information and opinion upon which to rely in the conduct of their affairs. In addition, the statement prejudices Plaintiff Fisher in her profession as the head and alter ego of NVIC, as an author, as a public spokesperson. If Defendants are correct, Plaintiff Fisher is not a person to be believed and because her stock and trade is in information and opinion derived from it, she has no business worthy of acceptance and use, honesty being the foundation of every such reliance. The statement impugns her reputation for truthfulness and deters professionals and others who must depend on accurate and truthful information from associating or dealing with her. By falsely labeling Plaintiff Fisher a liar, the Defendants have made Plaintiff Fisher appear odious, infamous, and ridiculous. By so doing, Defendants have imposed a false credibility barrier between Plaintiff Fisher and sources of funding for the small, non-profit consumer advocacy organization she founded and leads, of respected business relationships with government and professional agencies, and with the media, all necessary to continue successfully in her profession.

30. Defendants made the defamatory statement with actual malice, i.e. with knowledge of its falsity or with reckless disregard thereof, and with the intent to injure, debase and defame Plaintiff Fisher; in the alternative, Defendants made the defamatory statement without due care to the identification of falsity.

31. As a direct and proximate result of the publication of the untrue and defamatory statement by the Defendants, Plaintiff Fisher has been exposed to public hatred, ridicule, and

contempt. The statement has been republished by the Defendants and by numerous others over the World Wide Web to hundreds of millions and has become a source of great embarrassment and humiliation to Plaintiff Fisher. Plaintiff Fisher's character and reputation for honesty and integrity cannot be fully restored because of the broad publication of the statement. Moreover, her professional standing as president of NVIC, her professional role as an author, and in the community at large will never be as it was before she was labeled a liar by a leading pediatrician/scientist and a leading international magazine, Wired. The stigma caused by the defamatory statement will dissuade donors from contributing to Plaintiff Fisher's organization, NVIC; will dissuade others from trusting her statements and opinions; and will cause the public to view her with loathing and disapprobation as we all do a dishonest person. Plaintiff Fisher has suffered a terrible wrong and injury on account of the libel *per se*, "she lies," and the related content that portrays her as the "brain[s]" behind an anti-vaccine movement characterized as filled with people who are unscientific and opportunistic and who endanger the public health.

RELIEF

32. The Defendants libel *per se* has caused her to suffer damages in excess of \$1,000,000.00 [one million dollars] for which she seeks recompense from Defendants jointly and severally in this litigation.

33. The untrue and defamatory statement made by the Defendants was made with actual malice and is subject to punitive damages to which she is entitled from Defendants jointly and severally in this litigation.

34. **WHEREFORE**, Plaintiff Fisher demands compensatory damages of at least \$1,000,000.00 [one million dollars] and punitive damages atop compensatory damages in an

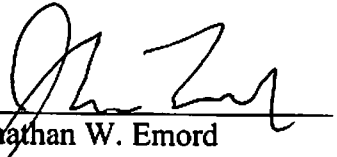
amount deemed just, along with interest, costs and such other and further relief as justice requires.

JURY DEMAND

Pursuant to Fed. R. Civ Proc. 38, Plaintiff in above captioned matter demands a trial by jury of all issues in this matter and respectfully requests this matter to be placed on the jury docket.

Respectfully Submitted,

By:


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