

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

FAZLUL SARKAR

Plaintiff,

Case No. 14-_____-CZ

v.

Hon.

JOHN and/or JANE DOE(S)

Defendants.

Attorney for Plaintiffs:
NACHT , ROUMEL, SALVATORE,
BLANCHARD, & WALKER, P.C.
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There has never been any other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court.

Nicholas Roumel , Attorney for plaintiff

COMPLAINT and JURY DEMAND

Fazlul Sarkar makes his complaint as follows:

PARTIES AND JURISDICTION

1. Plaintiff

5. Jurisdiction and venue are proper in Wayne County, as it is where the Plaintiff resides and works, where some of the events giving rise to Plaintiff's claims took place, and where (on information and belief) Defendants reside and/or work.

FACTUAL ALLEGATIONS

Dr. Sarkar is a Pre-Eminent Researcher, Professor, and Author

6. Fazlul H. Sarkar, PhD is a distinguished professor of pathology at Karmanos Cancer Center, Wayne State University with a track record of cancer research for over 35 years.

7. He received his MS and PhD degrees in biochemistry in India in 1974 and 1978, respectively. In 1978, performed his postdoctoral training in molecular biology and virology at Memorial Sloan Kettering Cancer Center in New York among other institutions.

8. Dr. Sarkar arrived at Wayne State University in 1989. His research is focused on understanding the role of a “master” transcription factor, NF-upstream and downstream signaling molecules in solid tumors. Moreover, his focused research has also been directed toward elucidating the molecular mechanisms of action of “natural agents” and synthetic small molecules for cancer prevention and therapy. He has done a tremendous amount of work in vitro and in vivo, documenting that several “natural agents” could be useful for chemopreventive research. Most importantly, his work has led to the discovery of the role of chemopreventive agents in sensitization of cancer cells (reversal of drug resistance) to conventional therapeutics (chemo-radio-therapy).

9. Dr. Sarkar is one of the pioneers in developing natural agents such as Isoflavones, Curcumin, and Indole compounds like DIM (B-DIM) for clinical use, and his basic science research findings led to the initiation of Clinical Trials in breast, pancreas, and prostate cancers at

Allen; and Srinivasan Vijayakumar, the Interim Director of the Medical Center Cancer institute.

18. Dr. Sarkar's appointment was confirmed by Provost Stocks in a letter dated April 8, 2014 with "Terms and Conditions of Employment" signed by Dr. Sarkar on April 18, 2014.

19. Tenure was conferred upon Dr. Sarkar by the department and approved by The Board of Trustees of State Institutions of Higher Learning on May 15, 2014.

20. According to the terms of the offer, Dr. Sarkar was to begin active employment on July 1, 2014; his start date was adjusted to August 1, 2014 per later agreement and approval of the University of Mississippi's Provost's Office.

21. Dr. Sarkar duly submitted his resignation to Wayne State University on May 19, 2014.

22. He engaged the services of a real estate agent in Oxford, Mississippi, and made an offer on a house to move himself and his family. He put his house in Michigan on the market.

PubPeer.com Is an Anonymous Web Site Devoted to Discussion Of Scientific Research Journal Articles after Publication

23. PubPeer.com ("PubPeer") is a web site that describes itself as "an online community that uses the publication of scientific results as an opening for fruitful discussion among scientists." In other words, it promotes discussion of scientific journal articles after they are published, citing frustration with the "lack of post-publication peer discussions on journal websites." [<https://pubpeer.com/about>]

24. Those who maintain the site are anonymous. Their URL registration is maintained by proxy. At PubPeer.com, it states only that "the site has been put together by a diverse team of early-stage scientists in collaboration with programmers who have collectively decided to remain

anonymous in order to avoid personalizing the website, and to avoid circumstances in which involvement with the site might produce negative effects on their scientific careers.”

25. In keeping with the promotion of anonymity, PubPeer permits those who comment on the site

conform to these guidelines or in our judgement expose us and you to legal risk in other ways.”

[<https://pubpeer.com/misconduct>]

29. PubPeer cautions, “Depending on the quantity of submitted comments it can take up to a week for "the system" to screen these comments. Comments are screened for content and spam. Only comments that discuss directly the data of the paper are allowed: **If your comment is a personal attack, rumor, or compliment it will never appear.**” [<https://pubpeer.com/faq>, emphasis added]

33. Potential consequences from the U.S. Department of Health and Human Services, National Institutes of Health [“NIH”] include, but are not limited to:

- debarment from eligibility to receive Federal funds for grants and contracts,
- prohibition from service on PHS advisory committees, peer review committees, or as consultants,
- certification of information sources by the respondent that is forwarded by the institution,
- certification of data by the institution,
- imposition of supervision on the respondent by the institution,
- submission of a correction of published articles by the respondent, and
- submission of a retraction of published articles by the respondent.

34. NIH may take further administrative action regarding grants to the researcher, including:

- modification of the terms of an award such as imposing special conditions, or withdrawing approval of the PI or other key personnel,
- suspension or termination of an award,
- recovery of funds, and
- resolution of suspended awards.

35. In addition, the researcher’s institution (university) may impose additional penalties, such as loss of employment, reassignment of personnel, and imposition of a mentorship program.

36. Accordingly, any public accusation of “research misconduct” can, for all intents and purposes, be a career death sentence to a researcher.

Numerous Anonymous Statements Were Posted On PubPeer About Dr. Sarkar That Violated Their Terms of Services, Were False, Spread Rumors, Disclosed Allegedly Confidential Information, and Accused Him of Research Misconduct

37. PubPeer posted numerous statements about Dr. Sarkar that violated their own strict terms of service, and called into question whether any screening process was employed before posting.

38. The reason for PubPeer's in adequate screening may be gleaned from their own online admission: "The truth is that there a lot of things we would like to do/change with PubPeer but we are scientists focusing on running experiments and have little time/expertise to focus on PubPeer." [<https://pubpeer.uservoice.com/forums/188932-general/suggestions/5330661-force-all-users-to-log-in>]

39. Regardless of the reason(s), many statements that were posted about Dr. Sarkar not only violated PubPeer's terms of service, but were false, spread rumors, disclosed allegedly confidential information, and either implied or outright accused Dr. Sarkar of research misconduct. These statements were defamatory, and included but were not limited to the following:

40. At and commencing from "*Down-regulation of Notch-1 contributes to cell growth inhibition and apoptosis in pancreatic cancer cells*" [<https://pubpeer.com/publications/16546962>]

a. In this discussion, "Peer 1's" commentary begins with an invitation for the reader to compare certain illustrations with others. But then an unregistered submission links to another page, where someone sarcastically asserted that a paper "[Used] the same blot to represent different experiment(s). I guess the reply from the authors would be inadvertent errors in figure preparation."

b. Perhaps that same unregistered submission complains, "You might expect the home institution to at least look into the multiple concerns which have been rased." (*sic*) This statement is defamatory. Given the regulatory scheme described above that requires such investigations only where there are "good faith" complaints of "alleged research misconduct" [deliberate fabrication, falsification, or plagiarism], this unknown author has accused Dr. Sarkar of deliberate misconduct.

c. Then an unregistered user (likely the same one, given the context) reveals that s/he is either a person at Wayne State University who made a formal complaint against Dr. Sarkar, or is otherwise privy to the a person who did so:

Unregistered Submission:

(June 18th, 2014 4:51pm UTC)

Has anybody reported this to the institute?

Unregistered Submission:

(June 18th, 2014 5:43pm UTC)

Yes, in September and October 2013 the president of Wayne State University was informed several times.

The Secretary to the Board of Governors, who is also Senior Executive Assistant to the President Wayne State University, wrote back on the 11th of November 2013:

"Thank you for your e-mail, which I have forwarded to the appropriate individual within Wayne State University. As you are aware, scientific misconduct investigations are by their nature confidential, and Wayne would not be able to comment on whether an inquiry into your allegations is under way, or if so, what its status might be.

"Thank you for bringing this matter to our attention."

d. The discussion that follows attack's Dr. Sarkar's character and expresses an invitation for his current employer (Wayne State), his potential future employer (the University of Mississippi), the National Institute of Health, and even the Department of Defense to investigate and take negative action against Dr. Sarkar:

Unregistered Submission:

(June 19th, 2014 1:11pm UTC)

Talking about the Board of Governors, see this public info

<http://prognosis.med.wayne.edu/article/board-of-governors-names-dr-sarkar-a-distinguished-professor>

Peer 2:

(June 19th, 2014 7:52pm UTC)

"currently funded by five National Institutes of Health RO1 grants"

The problems on PubPeer is for about 50 papers-all based on image analysis. That is just 10% of the output from this lab (or \$2 million worth of federal dollars). What about the other 90%? Sadly this is what happens when research output becomes a numbers game. An equivalent PI would be happy to have just 50 high impact papers properly executed, that moves the research field forward. This lab has 500; but now it will be very difficult to figure out the true scientific value of any of them. Sad!

41. At <https://pubpeer.com/publications/16546962> there are comments that conclude that certain figures are “identical” to others, accusing him of research misconduct.

42. At <https://pubpeer.com/publications/21680704> there are comments that conclude that certain figures show “no vertical changes,” are the “same bands,” and are “identical” to others, also accusing him of research misconduct.

43. At <https://pubpeer.com/publications/22806240>, there are comments that state: “You are correct: using the same blot to represent different experiment(s). I guess the reply from

him. On information and belief, these are from the same person pretending to have a dialogue with someone else, or persons working in concert.

52. For example, a “dialogue” between two allegedly different posters took place on July 24, 2014. These posters, “Peer 1” and “Unregistered Submission,” each posted in the middle of the night, one responding to the other just 56 minutes later. See: <https://pubpeer.com/publications/A3845DA138FC83780CB5071ED74AEC>, *"Concurrent Inhibition Of NF-Kappab, Cyclooxygenase-2, And Epidermal Growth Factor Receptor Leads To Greater Anti-Tumor Activity In Pancreatic Cancer."* This is either a very odd coincidence that two scientists were independently reading the same page regarding Dr. Sarkar (in the example stated in this paragraph, a page regarding a 2010 paper that at the time had only had 151 views) – on the same day, in the middle of the night; or drawing a reasonable inference from these facts, it's the same person feigning a dialogue; or two persons working in concert with one another.

53. These probably fake dialogues are an attempt to falsely communicate that there are more scientists concerned about Dr. Sarkar, and more persons communicating accusations, than there actually are. This is significant because there are so many criticisms of Dr. Sarkar that rely on (a)

When Colo357 lane for 0 and 25 in 3B is flipped it looks similar to the control and genistein in Fig. 3D for Colo357.

56. However, while that comment communicates that these are the same illustration, they are in fact not – they are clearly different illustrations to the untrained eye. As such, this is another false accusation of research misconduct. While some PubPeer comments do point out illustrations that appear similar, others like this example are not. Accordingly, the comment set forth in this paragag1.141 TIsfspl.80mp1l 54s8(r)3(s)-4sf unr 0 amrfinch216(ar)r.kls2(mm/2(he)4()1(n)216(1(n

apoptosis in pancreatic cancer cells" is stated to have 18 comments, but after clicking on the link, there are only six [<https://pubpeer.com/publications/8EB4592F23B61CC3EE7CF29A7522AF>].

63.

67. However, in a letter dated June 19, 2014 – just eleven days before Dr. Sarkar was to begin his active employment – Dr. Walker rescinded that employment, as additionally confirmed by the Chancellor Jones on June 27, in effect terminating Dr. Sarkar before he'd even begun. Dr. Walker's June 19, 2014 letter cited PubPeer as the reason, stating in relevant part that he had "received a series of emails forwarded anonymously from (*sic?*)PubPeer.com, containing several posts regarding papers from your lab. These were also sent at about the same time to Dr. Kounosuke Watabe, Associate Director of Basic Sciences for the Cancer Institute at the University of Mississippi Medical Center. I learned yesterday that several were sent on the weekend of 14 June to Dr. David Pasco, Assistant Director of the National Center for Natural Products Research."

68.

if it were stamped, are the words: ACADEMIC EXPRESSION OF CONCERN; and under that, also diagonal, the words: GRASSLEY NIH/ORI/371-xx-xxx/folio A/exhibit C 1/45 [Exhibit A]

71. Charles Grassley is a Senator from Iowa who is well known to have taken an interest in National Institute of Health matters, including research fraud.

72. The clear inference from this document is that Sen. Grassley was investigating Dr. Sarkar and that the PubPeer postings were evidence in that investigation.

73. In fact, that is completely false. This was verified by a WSU inquiry to the NIH's Office of Research Integrity, and undersigned counsel's own investigation with Sen. Grassley's staff, which included discussions with three members of Sen. Grassley's special counsel.

74. Distribution of this doctored and false document by Defendant(s) throughout Dr. Sarkar's department was maliciously intended to embarrass him, harm him, and defame him.

75. It is highly probable, if not certain, that the same person(s) who did this despicable act is/are the same person(s) who posted on PubPeer and alleged making a complaint about Dr. Sarkar to Wayne State, and then learned of his employment with the University of Mississippi.

76. These Defendant(s) have but one aim: to bring down and destroy the career of Plaintiff by any means necessary, while hiding in the shadows of anonymity so that they themselves suffer no consequences. They deserve no protection of their identity from this court.

**Dr. Sarkar Attempted to Rescind His Resignation at Wayne State University
But Lost His Tenure in the Process**

77. Having abruptly lost his expected job with the University of Mississippi just weeks before he was set to begin, and also having already submitted his resignation to Wayne State University, Dr. Sarkar was facing a dilemma of grave and immediate concern to him and his family

- having gone from his choice of two prestigious tenured positions at major research universities, to zero – with great uncertainty about his immediate employment future.

78. He attempted to rescind his resignation with Wayne State University, on June 20, 2014. In Michigan, a public entity is under no obligation to rescind a resignation at the request of the employee. See, e.g., *Schultz v. Oakland County et al.*, 187 Mich App 96 (1991), holding that a

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85. PubPeer did not reply.

86. Counsel wrote a letter again asking for communication regarding the above issues, and again delivered it via the PubPeer web portal on July 24, 2014.

87. This time PubPeer responded, through counsel on July 29, 2014, denying liability and stating in part:

88. On August 22, 2014, PubPeer posted a thread about Dr. Sarkar's letters to PubPeer, but without identifying Dr. Sarkar. [See "*PubPeer's first legal threat*," [\[https://pubpeer.com/topics/1/3F5792FF283A624FB48E773CAAD150#fb14545\]](https://pubpeer.com/topics/1/3F5792FF283A624FB48E773CAAD150#fb14545)].

89. On September 22, 2014, PubPeer publicly identified Dr. Sarkar as the scientist making the legal threat [Id.]. Furthermore, PubPeer released information contained in the demand letters written by Plaintiff's counsel. This "outing" resulted in media interest and several articles about the situation and issues described in this lawsuit.

90. To date, the "outing" of Dr. Sarkar is the only exception PubPeer has ever made to its policy of otherwise assuring the anonymity of users and the protection of the privacy of those who

101. “Does” intentionally interfered with this business expectancy by sending communications in the form of PubPeer screen shots to various individuals at the University of Mississippi, as alleged above, particularly at paragraphs 65 – 68.

102. These communications were defamatory, illegal, unethical, fraudulent, and/or false, as set forth above. Moreover, the statements on PubPeer were crafted to falsely indicate that there were wholly independent dialogues among research scientists, and to falsely inflate the number of comments.

103. They were done with malice and without any justification except for the purpose of inducing the University of Mississippi to terminate Dr. Sarkar’s employment with them.

104. The communications did in fact induce the University of Mississippi to terminate Dr. Sarkar’s employment.

105. This termination caused Dr. Sarkar great damages, as alleged herein.

Count III - Intentional Interference with Business Relationship

106.

wholly independent dialogues among research scientists on PubPeer, and to falsely inflate the number of comments.

110. They were done with malice and without any justification except for the purpose of inducing Wayne State to terminate Dr. Sarkar's employment with them.

111. The com

118. “Does” also made false statements on PubPeer, and used tactics such as multiple user names that falsely indicated that there were wholly independent dialogues among research scientists on PubPeer, and otherwise sought to falsely inflate the number of comments.

119. “Does” distributed these statements widely as “proof” of Plaintiff’s alleged misconduct.

120. This was extreme and outrageous conduct, designed specifically to tarnish Dr. Sarkar’s reputation in the research community and in his workplace and intended workplace, and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.

121. This conduct was intended to inflict emotional distress on the Plaintiff, and/or made in reckless disregard as to whether such conduct would cause Plaintiff great emotional distress.

122. “Does” did in fact cause Plaintiff great emotional distress by such conduct, including but not limited to embarrassing him within his department, motivating the University of Mississippi to terminate Plaintiff’s employment and tenure, Wayne State University to terminate his tenure, and otherwise damage him as set forth herein and below.

Damages

123. Defendants’ actions were done willfully and knowingly, with reckless disregard to Plaintiff’s rights.

124. Defendants’ actions directly caused and proximately caused Plaintiff the following damages:

a. economic damages: including but not limited to lost wages and benefits at the University of Mississippi, Wayne State University, loss of tenure, loss of employment opportunities, loss of grant and research opportunities and income, and consequential damages as may be proven.

b. non-economic damages for the psychological harm to Plaintiff: including but not limited to embarrassment, humiliation, pain and suffering, mental and emotional distress; loss of reputation, and exemplary and/or punitive damages as may be allowed by law, to the greatest extent allowed by law.

Jury Demand

Plaintiff demands a trial by jury.

Relief Requested

WHEREFORE Plaintiff requests this honorable court grant the following:

- a. In excess of \$75,000 damages against Defendant(s), as warranted by the law and the proofs, including:
 - i. economic and non-economic damages as described above;
 - ii. the greatest possible combination of non-economic, exemplary and/or punitive damages;
- b. costs and pre- and post- judgment interest as permitted by law;
- c. attorney fees as permitted by law;
- d. issuance of an order to PubPeer and other entities who may have knowledge of “Does” identities;
- e. other remedies as are just, appropriate, and permitted by law or equity.

Respectfully submitted,

NACHT, ROUMEL, SALVATORE,
BLANCHARD, & WALKER, P.C.

Nicholas Roumel
Attorney for Plaintiff

October 9, 2014