

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

FAZLUL SARKAR

Plaintiff,

Case No. 14-_____ -CZ

v.

Hon.

JOHN and/or JANE DOE(S)

Defendants.

14-013099-CZ

FILED IN MY OFFICE

WAYNE COUNTY CLERK

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CATHY M. GARRETT

Attorney for Plaintiffs:

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

Nicholas Roumel (P 37056)
101 N. Main Street, Ste. 555
Ann Arbor, MI 48104
(734) 663-7550

nroumel@nachtlaw.com

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.

/s/ Nicholas Roumel

Nicholas Roumel , Attorney for plaintiff

COMPLAINT and JURY DEMAND

Fazlul Sarkar makes his complaint as follows:

PARTIES AND JURISDICTION

1. Plaintiff Fazlul Sarkar (“Dr. Sarkar”) is a resident of Plymouth, Wayne County, Michigan.
2. The identity of Defendant(s) John and/or Jane Doe(s) (“Defendants”) are not yet known, pending discovery.
3. Claims in this action are made pursuant to the common law of the state of Michigan.
4. The amount in controversy is at least \$25,000.

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- κ B, and the regulation of its 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-radiotherapy).

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

the Karmanos Cancer Institute. He is a perfect example of a true translational researcher bringing his laboratory research findings into clinical practice.

10. Moreover, Dr. Sarkar is also involved in several collaborative projects including breast, lung, and pancreatic cancer for both preclinical and phase II clinical trials with other scientists within the institution as well as collaborative work with basic scientists and physician scientists at MD Anderson Cancer Center.

11. He has published over 430 original scientific articles in peer-reviewed journals and written more than 100 review articles and book chapters and also edited a book on pancreatic cancer.

12. 12. He also served as guest editor for “Hot Topic” for the journals of Pharmaceutical Research , Mini Reviews in Medicinal Chemistry and Cancer Metastasis Reviews. He also edited a total of four books. He served as senior editor for the AACR journal “Molecular Cancer Therapeutics” and he is currently an Academic Editor for the journal PLoS One and a member of the editorial board in 10 Cancer Journals. His research has been continuously funded by NCI, NIH, and the Department of Defense (DOD). Dr. Sarkar has trained numerous pre-doctoral and post-doctoral students throughout the last 20 years at Wayne State University. In addition, Dr. Sarkar has served and still serving on a number of departmental, university, and national committees and continues to serve both NIH and DOD study sections including NIH program projects, SPORE grants, and Cancer Center Core grants (site visit) for NCI-designated Comprehensive Cancer Centers. He is currently a Senior Editor of the journal “Molecular Cancer Therapeutics” and member of the editorial board of many scientific journals.¹

¹ Biography from Cancer Metastasis Rev (2010) 29:379, and updated.

The University of Mississippi Hires Dr. Sarkar and Grants Him Tenure

13. Commencing in the fall, 2013, Dr. Sarkar sought employment with the University of Mississippi, a public university in Oxford, Mississippi.

14. On or after September 17, 2013, he received the “anticipated terms of an offer of a position,” including:

- Triplet/Berakis Distinguished Professor, NCNPR (Research Institute of Pharmaceutical Sciences) and Dept. of Pharmacology with tenure
- Associate Director for Translational Research, NCNPR (Oxford Campus)
- Associate Director for Translational Research, UMMC Cancer Institute, and Professor, Dept. of Radiation Oncology
- Salary = \$350,000
- Commitment to “help us realize the \$2 million level on endowed professorship”
- Relocation expenses up to \$15,000
- Laboratory and office space in two locations, Research Assistant Professors, up to two additional Research Associates, and administrative support
- A start up package of \$750,000
- Moving expenses for the laboratory and senior personnel

15. After this communication, the University of Mississippi embarked on a thorough vetting process. Dr. Sarkar was honest and forthcoming during this process, which included multiple interviews and communications with Dr. Sarkar, his peers, and colleagues.

16. On March 11, 2014, the University of Mississippi extended a formal employment offer to Dr. Sarkar including the terms outlined in paragraph 14.

17. This offer letter was signed by Dr. David D. Allen, Dean and Professor, Executive Director of the Research Institute of Pharmaceutical Sciences, and supported by signatures of Chancellor Daniel W. Jones; Provost Morris H. Stocks; Vice Chancellor for Health Affairs James E. Keeton; President and CEO, Foundation Wendell W. Weakley; Dean, School of Pharmacy, Dr.

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 to do so by registration as a user, either under their own name, a pseudonym, or a moniker such as “Peer 1” or “Peer 2;” or to make anonymous submissions without any registration.

26. PubPeer also publishes terms of service [<https://pubpeer.com/misconduct>]. Among these terms include:

- “First, PLEASE don't accuse any authors of misconduct on PubPeer. Firstly, we are scientists. We should only work with data and logic. Our conclusions must be verifiable.”
- They cite the example, “What none of us can verify is any conclusion regarding precisely how or why an apparent instance of misconduct occurred. In particular, the state of mind or the intention of a researcher is not a verifiable fact.”
- They add, “Comments based upon personal knowledge or hearsay are unacceptable.”
- They provide an example, “[I]t is acceptable to state that "band X appears to be surrounded by a rectangle with different background to the rest of the gel". It is NOT acceptable to state that "The authors have deliberately pasted in a different band".”
- They further explain, “[I]f a statement is made along the lines of "X deliberately falsified the data", we would be in the position of having to prove each step of the falsification and also the state of mind of the researcher (that it was done deliberately). The standard of proof can be very exacting and require information to which we would not have access (especially the private thoughts of the researcher!).” [<https://pubpeer.com/faq>]

27. In another portion of the site [<https://pubpeer.com/about>], PubPeer states: “[F]abrication of data is very serious. Mixing up figure labels or making a small logical error in a complex interpretation are obviously both common and excusable.”

28. To maintain these standards, the site states [“In order to keep discussion factual and minimise legal risks for everybody, we reserve the right to remove or edit comments that do not

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]

30. PubPeer’s FAQ section states flatly, “The site will not tolerate any comments about the scientists themselves.” [<https://pubpeer.com/faq>]

“Research Misconduct” is Strictly Defined by Federal Regulations and Has Extremely Serious Consequences

31. “Research Misconduct” is a term of art in the scientific community. It is defined by federal regulations as:

“... fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

- (a) Fabrication is making up data or results and recording or reporting them.
- (b) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- (c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- (d) Research misconduct does not include honest error or differences of opinion.”

[42 C.F.R. § 93.103 (2005)]

32. A finding of “research misconduct” requires “a significant departure from accepted practices of the relevant research community;” and that the “misconduct be committed intentionally, knowingly, or recklessly.” [42 C.F.R. § 93.104 (2005)]

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 rasied." (*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"

That probably works out at about \$200k per PubPeer comment. I should think that NIH must be pretty happy with such high productivity.

Unregistered Submission:

(June 20th, 2014 9:44am UTC)

just letting you know that the award for doing what he/she allegedly did is promotion a prestigious position at a different institution. Strange
http://www.umc.edu/news_and_publications/thisweek.aspx?type=thisweek&date=6%2F9%2F2014 [*link is to the University of Mississippi site announcing Dr. Sarkar's hire*]

Unregistered Submission:

(June 20th, 2014 5:30pm UTC)

The last author is now correcting "errors" in several papers. Hopefully he will be able to address and correct the more than 45 papers (spanning 15 years of concerns: 1999-2014), which were all posted in PubPeer.

Peer 2:

(June 20th, 2014 6:39pm UTC)

From the newsletter:

"Sarkar has published more than 525 scholarly articles"

... nearly 50 of which have attracted comments on PubPeer!

It's not hard to imagine why Wayne State may not have fought to keep him. And presumably the movers and shakers at the University of Mississippi Medical Center didn't know that they should check out potential hires on PubPeer (they just counted the grants and papers). I wonder which institution gets to match up NIH grants with papers on PubPeer.

It can only be a matter of time, grasshopper, but that time may still seem long. You saw it first on PubPeer.

...

Unregistered Submission:

(July 5th, 2014 12:58am UTC)

From a look at this PI's funding on NIH website it seems this lab has received over \$13 million from NIH during the last 18 years. An online CV shows he has received DOD funds as well, bringing the federal fund total close to \$20 million. Why isn't the NIH and DOD investigating? The problems came to light only because they were gel photos. What else could be wrong? Figures, tables could be made-up or manipulated as well.

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 the authors would be "inadvertent errors in figure preparation," which also accuse him of research misconduct and sarcastically noting that any defense to the contrary would be inadequate.

44. At <https://pubpeer.com/publications/2D67107831BCCB85BA8EC45A72FCEF>, another discussion takes place among anonymous posters, accusing Dr. Sarkar of “sloppiness” of such magnitude that it calls into question the scientific value of the papers. The comments further demand a “correction” with a “public set of data to show that the experiments exist,” falsely stating that the data were false and that the experiments were fabricated.

45. An unregistered submission on the URL as #44 above doubts that the authors have taken “physics” and that they have decided to “show the world” fabricated data. The same, or perhaps a different unregistered submission concludes: “One has to wonder how this was not recognized earlier by the journals, reviewers, funding agencies, study sections, and the university. Something is broken in our system.”

46. At <https://pubpeer.com/publications/21680704>, "Inactivation of AR/TMPRSS2-ERG/Wnt signaling networks attenuates the aggressive behavior of prostate cancer cells," accusations include "no vertical changes ... problematic," and "same image."

47. On July 24, 2014, at <https://pubpeer.com/publications/22806240>, "Activated K-Ras and INK4a/Arf deficiency promote aggressiveness of pancreatic cancer by induction of EMT consistent with cancer stem cell phenotype," a comment made from "Peer 3" contains the comment "There seems to be a lot more "honest errors" to correct," with the quotes communicating that they were not honest errors.

48. At <https://pubpeer.com/publications/88B8619C6BD964F6EDDD98AD8ECE47>, "Inhibition of Nuclear Factor Kappab Activity by Genistein Is Mediated via Notch-1 Signaling Pathway in Pancreatic Cancer Cells," a discussion takes place between an unregistered submitter and "Peer 1," accusing significant misconduct, as follows:

Unregistered Submission:
(March 29th, 2014 11:20pm UTC)

The last author has more than 20 papers commented in Pubpeer.

Peer 1:
(March 30th, 2014 10:07am UTC)
"The last author has more than 20 papers commented in Pubpeer."

He's been very productive.

Presumably the journals know and his university knows. How long would it have taken for you to find out from them? Still counting.

Unregistered Submission:
(May 17th, 2014 7:38pm UTC)

An Erratum to a report this previous PubPeer comment has been published by the authors in Int J Cancer. 2014 Apr 15;134(8):E3. In the erratum, the authors state that: "An error occurred during the creation of the composite figure for Fig-5B (Rb) and Fig-6B (I?B?) which has recently been uncovered although it has no impact on the overall findings and conclusions previously reported"

Not so fast!

See additional concerns (band recycling, not addressed in Erratum) in Figure 4A and Figure 6; here:

<http://imgur.com/LVa2cVc>
<http://i.imgur.com/4ARd2Mp.png>
<http://i.imgur.com/miK0HGw.png>

Based on these issues, can we agree with the authors that “an ERROR occurred during the creation of the composite figures” and that these (and previous “errors”) have “NO IMPACT on the overall findings and conclusions previously reported”?

49. At <https://pubpeer.com/publications/0189A776A6094A60759DB718F9C535>,

"Foxm1 Is a Novel Target of a Natural Agent in Pancreatic Cancer," there are two comments that seem to be finishing each other’s thought:

Unregistered Submission:
(July 23rd, 2014 6:37pm UTC)

FH Sarkar has never replied to any of the Pubpeer comments.

Peer 1:
(July 23rd, 2014 10:31pm UTC)

but if we send our concerns to his institution and the journals involved, hopefully there will be changes...

50. The dialogue set forth in #49 above urges the PubPeer “community” to target Dr. Sarkar, and contains a false statement, as the Plaintiff has previously replied to PubPeer comments [November 10, 2013 submission apologizing for the inadvertent error and promising a correction at this page: <https://pubpeer.com/publications/170E31360970BE43408F4AC52E57FD>, *"CXCR2 Macromolecular Complex In Pancreatic Cancer: A Potential Therapeutic Target In Tumor Growth."*]

51. The interaction between anonymous posters in the paragraphs above suggests that multiple users are independently conversing about Dr. Sarkar and making false accusations about

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 the sheer number of PubPeer comments as an indication that he must be engaged in misconduct. See, for example, the examples cited at paragraphs 40 (d) and 48, above.

54. Another example of a tactic to artificially increase accusations of misconduct is to make a single comment on old papers. Similar to what is stated in paragraph 53 above, this too is significant because there are so many comments that rely on the sheer number of *papers with comments* on PubPeer (as opposed to just the total number of comments, *cf. ¶ 53*) to indicate misconduct:

a. There are two comments at this page: <https://pubpeer.com/publications/5A875EBFF7D16C8CCE342257412E5B>, “*B-DIM*

Impairs Radiation-Induced Survival Pathways Independently Of Androgen Receptor Expression and Augments Radiation Efficacy in Prostate Cancer." These two comments are in April and July, 2014, concerning a 2012 paper with no previous comments. This indicates someone intentionally seeking to increase the number of papers with comments on PubPeer.

b. Below is a comment simply inviting the reader to perform a search on Dr. Sarkar, at <https://pubpeer.com/publications/58FE2E47C6FEB3BE00367F26BF7A83>, "*P53-Independent Apoptosis Induced By Genistein In Lung Cancer Cells.*" The comment has nothing at all to do with that 1999 paper, but instead is intended for the reader to search and see how many of Dr. Sarkar's papers have been commented about on PubPeer:

Unregistered Submission:
(April 21st, 2014 1:33am UTC)

1999-2014 here:
<https://pubpeer.com/search?q=Sarkar+FH>

c. Another comment was made on July 24, 2014 at 7:04 AM from "Peer 1" at <https://pubpeer.com/publications/997E578FC0B61F6BAE1974D4051157>, "*Mitochondrial Dysfunction Promotes Breast Cancer Cell Migration and Invasion through HIF1 α Accumulation via Increased Production of Reactive Oxygen Species.*" This doubled the amount of comments on this 2006 paper.

d. A July 13, 2014 comment was made about a 2005 paper that previously had no comments:
<https://pubpeer.com/publications/6B44D6D4111B59BAB78E642C8D1758>, "*Molecular Evidence for Increased Antitumor Activity of Gemcitabine by Genistein in Vitro and in Vivo Using an Orthotopic Model of Pancreatic Cancer.*"

e. All told, there are 42 papers with Dr. Sarkar as lead researcher that have garnered only one comment on PubPeer, many of them extremely recent comments on relatively old papers.

55. The comment that was made [as set forth in paragraph 54 (d)] appears innocuous on its face, merely stating that one illustration appears to be the same as another one, but "flipped." This would meet PubPeer's guidelines that it was permissible to state that one illustration appears the same as another. The comment is as follows:

Unregistered Submission:
(July 13th, 2014 6:26pm UTC)

Compare Fig. 3B and Fig. 3D [AT
<http://cancerres.aacrjournals.org/content/65/19/9064.full.pdf+html>]

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 paragraph is false, made in bad faith, and defamatory.

57. To put the false comments publicly communicated on PubPeer in perspective, let it be stated emphatically: **Dr. Sarkar has never been found responsible for research misconduct.** He has published more than 533 papers. He has, to date, not had one retracted by a journal. For a tiny handful – less than 2% of his published total – he has voluntarily submitted errata. Of these errata, half have been published; for the other half, decisions from the journals are pending. These are unremarkable numbers given Dr. Sarkar’s prodigious output, and are quite within the normal range of errata, if not low. For example, one recent publication estimated that error rates in cancer research articles averages 4%: “Together, JCO and JNCI published 190 errata, for an error rate of $4\% \pm 1\%$ (standard deviation).” The article even noted this was “likely an underestimate.” Dr. Sarkar’s error rate is below this average. [Molckovsky, A. et al., *“Characterization of Published Errors in High-Impact Oncology Journals,”* Current Oncology 18.1 (2011): 26-32]

58. In addition to the false allegations of misconduct, another area of concern is that a poster disclosed making a complaint to Wayne State University about Dr. Sarkar [see paragraph 40 (c)]. Even though that same poster quoted WSU’s response concerning the strict confidentiality of such issues, it did not stop that person from making the posting public.

59. As such, there is no privilege. As one court has noted:

“Because the consequences of a research misconduct proceeding can be dire, the [federal] regulations impose conditions of strict confidentiality on allegations of research misconduct. As section 93.108 of the regulations states: "Disclosure of the identity of respondents and complainants in research misconduct proceedings is limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective and fair research misconduct proceeding, and as allowed by law." 42 C.F.R. § 93.108(a) (2005). Disclosure of records or other evidence from which research subjects might be identified is also limited to "those who have a need to know to carry out a research misconduct proceeding." 42 C.F.R. § 93.108(b) (2005)." [Mauvais-Jarvis v. Wong, 2013 IL App (1st) 120070 (Ill. App. Ct. 1st Dist. 2013)]

60. By posting about that complaint, that poster has lost any privilege s/he may have previously enjoyed from making any good faith, private confidential complaint. [E.g. *Mauvais-Jarvis*, Id.]. This is generously assuming, for the sake of pleading, that given the large amounts of defamatory public commentary about Dr. Sarkar, that any such complaint could be characterized as made in good faith, as required by federal regulation for allegations of research misconduct.

61. As self-described research scientists themselves, PubPeer should also know of the strict confidentiality associated with complaints to research institutions. Nonetheless, they allowed an anonymous, unregistered poster to disclose this confidential fact. Even more recklessly, they allowed this to be posted with no verification of whether such an investigation had actually taken place, or whether there had been any relevant findings against Dr. Sarkar. In short, by PubPeer allowing the communication to stand as fact, and otherwise violating its own internal policies and guidelines in multiple ways as alleged herein, PubPeer has also lost any privilege it may have to defend itself from a subpoena for the identity of the posters at issue in this case.

62. PubPeer itself is also artificially inflating the number of comments on Dr. Sarkar's papers. For example, a search for Dr. Sarkar's publications shows a list of his research articles along with the alleged number of comments each article has on PubPeer, but the numbers are often wrong. For example, "*Down-regulation of Notch-1 contributes to cell growth inhibition and*

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. Until such time as further discovery may uncover a connection between the hosts of PubPeer and those who have defamed Dr. Sarkar, and/or a good faith basis for claiming liability against PubPeer, Plaintiff acknowledges that the Community Decency Act, particularly the immunity provisions of § 230, may make PubPeer itself immune from suit.

64. Although PubPeer has since removed some of the allegedly defamatory comments, it has done so well after Plaintiff has suffered the greatest harm from its postings. In addition, PubPeer's violation of its own standards and disclosure of a confidential complaint when it allowed these postings are among the factors this court should examine – in addition to the posters' own defamatory, tortious, and bad faith conduct - in order to deny PubPeer any claim in law or equity that it may have to quash a subpoena for the poster's or posters' identities. [See also, e.g., *Ghanam v. Does*, 303 Mich App 522 (2014)]

**Defendants Sent the False, Defamatory, and Unprivileged Postings from
PubPeer to The University of Mississippi and They Terminated Dr. Sarkar's
Employment Just Weeks Before it was to Begin**

65. Dr. Larry Walker, the Director of the National Center for Natural Products Research at the University of Mississippi Cancer Institute, was the person with whom Plaintiff had primary communications at that University concerning his job offer.

66. As noted in more detail above, at paragraphs 16 – 20, the University of Mississippi extended a formal employment offer to Dr. Sarkar including the terms outlined in paragraph 14, and he accepted that offer. It was confirmed and tenure conferred upon Dr. Sarkar, and he was to begin active employment on July 1, 2014, later adjusted by mutual agreement to August 1, 2014.

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. Dr. Walker added, “At this point, we cannot go forward with an employment relationship with you and your group. With these allegations lodged in a public space and presented directly to colleagues here (I am not sure of the scope of the anonymous distribution), to move forward would jeopardize our research enterprise and my own credibility.”

**Defendant(s) Distributed Defamatory Postings
Throughout the Wayne State Research Community Falsely Communicating
That Dr. Sarkar Was Subject of a Senate Investigation**

69. After being rejected by Mississippi, upon settling in to resume his work at Wayne State, sometime in the first or second week of July, 2014, Dr. Sarkar was stunned to find that someone had widely distributed – in mailboxes throughout the Medical Center there - a screen shot from PubPeer showing the search results and disclosing the number of comments generated for each research article listed on the page.

70. In the upper left corner of the document is a header which is designed to make the document appear as if it is from the National Institute of Health; it reads: “6/9/2014 // .rassle./.O./ORI/e.hibit 1/45 ORI ..S.” Additionally, in large letters diagonally across the page, as

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 public employee's resignation is effective as soon as it is submitted.

79. Nonetheless, in apparent recognition of Dr. Sarkar's many years of contributions to its institution, Wayne State did allow him to do so in this instance – but only for a one year appointment through July 30, 2015, and in a *non-tenure track* position as a Distinguished Professor – making such an offer on August 11, 2014.

PubPeer Refuses Demands to Disclose Identity of Posters But “Outs” Dr. Sarkar

80. On July 7, 2014, Plaintiff's undersigned counsel sent PubPeer (via a “contact” portal on their web site that supported attachments) a letter expressing concerns set forth above, as well as demands for retraction, record retention, and to disclose the identity of the posters of the comments described above.

81. While PubPeer did not respond to that letter, they did remove some of the comments at issue from their website.

82. However, that same day or the next day, someone sent screen shot copies of PubPeer postings to the NIH/ORI and to the Detroit *Free Press*, a major daily newspaper.

83. Someone from the *Free Press* attempted to contact Dr. Sarkar for comment.

84. Counsel wrote PubPeer on July 9 to express concern that immediately after counsel's July 7 letter, PubPeer screen shots were sent to the NIH/ORI and the *Free Press*.

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:

Anonymity is essential to the PubPeer.com's mission to foster robust post-publication peer review, because it allows scientists to debate the merits of published research without fear of recrimination. PubPeer.com therefore rejects your demand for the identities of its contributors and would move to quash a subpoena, should you turn to legal process to obtain them.

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>]].

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 communicate with PubPeer. [See, e.g., www.pubpeer.com/FAQ; www.pubpeer.com/about; and <http://blog.pubpeer.com/?p=15>, PubPeer's counsel's July 29, 2014 letter, *inter alia*].

91. The outing was done without consent and followed PubPeer's attorney's September 9, 2014 letter to Plaintiff's counsel, warning that any public posting regarding Dr. Sarkar's legal claim (such as a request for retraction) would attract media attention, "influential people," and "focus a great deal of attention on the validity of his public research."

92. In light of these statements by PubPeer’s counsel, the subsequent “outing” of Dr. Sarkar appears to be made in bad faith, and in retaliation for Dr. Sarkar’s privately communicating a potential legal claim to PubPeer.

**Count I – Defamation
[Defendants Doe(s)]**

93. Defendant(s) John and/or Jane Doe(s) [hereafter “Does”] made certain public statements to third parties that were false, including but not limited to those detailed in paragraphs 37-79 above.

94. “Does” made these statements intentionally and maliciously, knowing that they were false, and/or with reckless disregard of the statements’ truth or falsity, and/or at least negligently.

95. The statements were not privileged, not opinion, not truthful, and wholly unjustified.

96. The statements were false and defamatory concerning the Plaintiff, and/or they were crafted to falsely indicate that there were wholly independent dialogues among research scientists on PubPeer, and to falsely inflate the number of comments.

97. The statements caused special harm, in that they substantially interfered with Plaintiff’s employment opportunity with the University of Mississippi, and his employment with Wayne State University.

98. The publication of these false statements has otherwise caused Plaintiff great damages, as stated herein and below.

Count II - Intentional Interference with Business Expectancy

99. Plaintiff had a valid business expectancy with the University of Mississippi.

100. “Does” knew of this business expectancy.

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. Plaintiff had a valid continuing business relationship with Wayne State University.

107. “Does” knew of this business relationship.

108. “Does” intentionally interfered with this business expectancy by making false and unprivileged communications various individuals at Wayne State University and the local media, including but not limited to (a) those statements set forth in 37 – 64 and 69 – 76, including (b) PubPeer screen shots which falsely communicated that Plaintiff was subject of a special investigation involving Senator Charles Grassley.

109. These communications were defamatory, illegal, unethical, fraudulent, and/or false, as set forth above. Moreover, the PubPeer comments were crafted to falsely indicate that there were

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 communications did in fact motivate Wayne State University, in whole or in part, to terminate Dr. Sarkar's tenure and place him on a limited, one year employment contract.

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

Count IV - Invasion of Privacy (False Light)

113. Without justification nor any authorization from Plaintiff, and in violation of federal regulations concerning allegations of research misconduct, "Does" widely distributed communications to the public, the media, and to other parties information purporting to indicate that Plaintiff was subject to investigation by his home institution, the federal government, and a United States Senator, as alleged more fully above.

114. These communications were unreasonable and highly objectionable by attributing to the Plaintiff characteristics, conduct, or beliefs that were false and placed him in a false position.

115. Nonetheless, "Does" must have known, or acted in reckless disregard as to the falsity of the published matter and the false light in which the Plaintiff was placed.

116. These unlawful actions caused great damages to Dr. Sarkar, as alleged herein and below.

Count V – Intentional Infliction of Emotional Distress

117. "Does" published false and doctored documents, purporting to indicate that Plaintiff was subject of a federal and/or Senatorial investigation.

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

W H E R E F O R E 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.

/s/ Nicholas Roumel

Nicholas Roumel
Attorney for Plaintiff

October 9, 2014