

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**RAKESH KUMAR, Ph.D.,** )  
) )  
**Plaintiff,** )  
) )  
**v.** )  
) )  
**GEORGE WASHINGTON UNIVERSITY,** )  
) )  
**Defendant.** )

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**Civ. No. 1:15-cv-00120-JDB**

**PLAINTIFF’S OPPOSITION TO MOTION TO DISMISS**

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Plaintiff, Dr. Rakesh Kumar (“Dr. Kumar” or “Plaintiff”), by and through his undersigned counsel, hereby opposes the Motion to Dismiss filed by Defendant George Washington University’s (“GW” or “Defendant”) and states as follows:

### INTRODUCTION

Almost seven years ago, GW recruited Dr. Kumar, a world-renowned and highly acclaimed cancer research scientist, to be a tenured professor and Chairman of the Department of Biochemistry and Molecular Biology (the “Department”) (since renamed as the Department of Biochemistry and Molecular Medicine). Plaintiff’s First Amended Complaint (“Amended Compl.”) at ¶¶7, 8 (Plaintiff’s original Complaint (“Original Compl.”) at ¶¶7-8).<sup>1</sup> In his capacity as Department Chair, Dr. Kumar was given the title “the Catharine Birch & William McCormick Chair” (the “McCormick Chair”), an endowed title that bestowed upon Plaintiff an average of \$400,000 (range \$312,780-492,078; 2009-2014) for genetic and genomic research and scholarly activities. Amended Compl. at ¶8 (Original Compl. at ¶8).<sup>2</sup> Dr. Kumar started his employment with GW, both as professor and endowed Department Chair, on March 1, 2009. Amended Compl. at ¶12 (Original Compl. at ¶9). Then, more than three years later, in

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<sup>1</sup> Concurrently with this Opposition Plaintiff is filing a First Amended Complaint. The First Amended Complaint does not add any new counts or claims but, rather, includes additional factual allegations. Because the additional allegations have changed the paragraph numbering that was used in the original Complaint, citations to the original Complaint are also included where appropriate for ease of reference.

<sup>2</sup> In addition, Dr. Kumar received an annual salary to compensate him for his research, teaching and service. Amended Compl. at ¶11. Dr. Kumar’s salary included a twenty-five percent discretionary component that was dependent on Dr. Kumar’s ability to generate sponsored projects and attract peer-reviewed research support sufficient to sustain the discretionary component. Amended Compl. at ¶11. At all times pertinent hereto, Dr. Kumar received the discretionary portion of his salary. Amended Compl. at ¶11. In addition to his salary, Dr. Kumar received \$51,000.00 annually for his administrative duties as Department Chair. Amended Compl. at ¶11.

September 2012, an anonymous source made written allegations of research misconduct against Dr. Kumar. Amended Compl. at ¶16. Those allegations were made to the Department of Health and Human Services' ("HHS") Office of Research Integrity ("ORI") which in turn forwarded the allegations to GW for assessment. Amended Compl. at ¶16. In December 2012, GW notified Dr. Kumar of the allegations and its decision to launch a formal inquiry pursuant to GW's Policy and Procedures Regarding Allegations of Research Misconduct ("Policy"). Amended Compl. at ¶17 (Original Compl. at ¶13). At the conclusion of the Inquiry, GW determined that there was enough evidence of research misconduct to warrant an investigation pursuant to the Policy. Amended Compl. at ¶35 (Original Compl. at ¶30). Dr. Kumar's claims against GW arise out of GW's conduct related to the misconduct inquiry and investigation and subsequent employment action taken against him.

As alleged in the Complaint, the inquiry and investigation processes were seriously flawed and Dr. Kumar suffered a series of adverse consequences as a result of the investigation process and findings. He was denied a 3% raise in salary (Amended Compl. at ¶¶61-67 (Original Compl. at ¶¶48-53)); he was removed as Chair of his Department and stripped of his title as McCormick Chair (Amended Compl. at ¶¶68-79 (Original Compl. at ¶¶54-65)); the processing of his research grant applications was delayed (Amended Compl. at ¶¶80-85 (original Compl. at ¶¶66-71)); he was denied access until January 2015 to the Department of Biochemistry and Molecular Medicine where he holds his faculty position as a tenured professor (Amended Compl. at ¶89); his requests for approval of a visiting professorship appointment in the United Kingdom and India, travel to Japan to fulfill his responsibilities as the co-organizer of the 4<sup>th</sup> Global Cancer Genomics Consortium, and for a transfer of his office to a more reasonable location within the Department of Biochemistry and Molecular Medicine were all denied

(Amended Compl. at ¶¶86-89 (Original Compl. at ¶¶72-75)); he was denied the opportunity to continue to supervise his PhD candidate (Amended Compl. at ¶¶91-99 (Original Compl. at ¶¶77-84)); he was subjected to harsh employment sanctions (Amended Compl. at ¶¶100-108 (Original Compl. at ¶¶85-92)); and GW relinquished Dr. Kumar's grant applications and did not process a new grant (Amended Compl. at ¶¶109-119 (Original Compl. at ¶¶94-104)). GW's conduct gives rise to Dr. Kumar's claims for breach of contract, breach of the covenant of good faith and fair dealing, tortious interference with business relations, tortious invasion of privacy and false light.

GW has now moved to dismiss all of Dr. Kumar's claims. GW's Motion is fundamentally flawed, however, because it is largely based on an asserted lack of *evidence* supporting Plaintiff's claims.<sup>3</sup> As discussed below, however, a motion to dismiss does not test the adequacy of evidence; it tests the adequacy of *allegations*. A close review of GW's arguments reveals that it has failed to demonstrate that any of the claims is not adequately plead. Accordingly, Dr. Kumar respectfully requests the Court to deny GW's Motion in its entirety.

### **STANDARD OF REVIEW**

Whether a complaint is sufficiently pled to withstand a motion to dismiss is measured by the standards set forth in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). A motion to dismiss should be denied where, as here, the allegations of the

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<sup>3</sup> Moreover, GW relies on several documents outside the pleadings. Plaintiff requests the Court to disregard these documents because a Motion to Dismiss must be based only on the Complaint. Should the Court decide not to exclude consideration of these extraneous documents and to consider the motion as one for summary judgment, Plaintiff requests that he be given the opportunity to present all material pertinent to such a motion. *See* Fed. Civ. Pro. R. 12(d).

complaint contain sufficient facts which, if true, “state a claim for relief that is plausible on its face.” *Bell Atl. Corp.*, 550 U.S. at 570 (*quoted in Ashcroft*, 556 U.S. at 678). In turn, “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*, 556 U.S. at 678 (citing *Bell Atl. Corp.*, 550 U.S. at 556). The standard is **plausibility**, not probability. *Ashcroft*, 556 U.S. at 678 (citing *Bell Atl. Corp.*, 550 U.S. at 556).<sup>4</sup> See *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1322 n.12 & 1323 (2011). In considering the factual allegations, the Court views the complaint as a whole and assumes the truth of its allegations and affords the plaintiff the benefit of reasonable inferences from the allegations. *Matrixx*, 131 S. Ct. at 1322, 1323; see also *Poindexter v. Wachovia Mortgage Corp.*, F. Supp.2d, 2012 WL 1071248, \*1 (D.D.C. 2012) (Wilkins, J.) (“the court liberally construes the complaint in favor of the non-moving party and grants all reasonable inferences to the nonmovant that can be derived from the facts alleged”). As this court stated in *Paulin v. The George Washington University School of Medicine and Health Sciences*, 878 F. Supp. 2d 241 (D.D.C. 2012), “[i]t is essential to remember that, for the purposes of ruling on a motion to dismiss, the factual allegations of the complaint **must** be presumed to be true and liberally construed in favor of the Plaintiff.” *Paulin*, 878 F. Supp. 2d at 246 (emphasis in original). Under the foregoing standards, the Motion to Dismiss should be denied.

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<sup>4</sup> Dr. Kumar is confident that ultimately the evidence will demonstrate that all of his claims are probable. At this early pleading stage, however, probability is not the standard.

## ARGUMENT

### **I. PLAINTIFF HAS SUFFICIENTLY ALLEGED A BREACH OF CONTRACT CLAIM**

As alleged in Paragraph 112 of the original Complaint, “Dr. Kumar is in a contractual relationship with GW through his employment agreements with GW and GW’s policies and procedures.” *See also* Amended Compl. at ¶127. Under District of Columbia law, in the context of a university setting, employment contracts “comprehend as essential parts of themselves the hiring policies and practices of the University as embodied in its employment regulations and customs.” *Howard Univ. v. Best*, 484 A.2d 958, 967 (D.C. 1984) (quoting *Greene v. Howard Univ.*, 134 U.S. App. D.C. 81, 88 (1969)). In Count I of his Complaint (original and Amended), Dr. Kumar has adequately alleged all of the elements necessary for a breach of contract claim. To state a claim for breach of contract, a complaint must allege that: (1) a contract existed; (2) plaintiff performed his contractual obligations; (3) defendant breached the contract; and (4) plaintiff suffered damages due to the breach. *Squires v. Brown*, 604 F. Supp. 2d 236, 238-239 (D.D.C. 2009). Dr. Kumar’s Complaint easily satisfies these elements. In fact, GW does not dispute that Dr. Kumar and GW had a contractual relationship. Moreover, despite that fact that GW’s Motion seeks to dismiss the entirety of the breach of contract claim, the supporting Memorandum asserts that only two of the several alleged breaches cannot the serve as the basis for a breach of contract claim: GW’s actions in taking away Dr. Kumar’s Department Chairmanship and in failing to give him a promised salary increase. Memorandum of Points and Authorities in Support of Defendant George Washington University’s Motion to Dismiss (“GW’s Memo.”) at 5-7. GW does not even mention any of the other alleged breaches. *See* Amended Compl. at ¶¶ 129 (a)-(e), (g) (Original Compl. at ¶¶114 (a)-(e), (g)). Thus, without

regard to how the Court rules on the two allegations addressed in GW's Memorandum, the remainder of the Count must stand.

**A. Removing Dr. Kumar as Department Chair Breached the Contract**

Dr. Kumar alleges that GW breached the contract by “[p]rematurely removing Dr. Kumar from the Department chairmanship and the McCormick Chair.” Amended Compl. at ¶129(f) (Original Compl. at ¶114(f)). In seeking to dismiss this part of the breach of contract claim, GW argues that Dr. Kumar's appointment as Department Chair could be terminated “at-will.” GW bases its argument on language in Dr. Kumar's employment letters stating that the chair “serves at the pleasure of” the Dean or, later, the University, without considering other provisions of the same original letter. GW's Memo. at 6. GW relies on *Hall v. Ford*, 856 F.2d 255 (D.C. Cir. 1988) in support of this argument. GW, however, overstates the *Hall* decision. GW asserts that “[t]he language ‘at the pleasure of’ creates an at-will employment under D.C. law.” GW Memo. at 6 (citing *Hall*, 856 F.2d at 265-66). *Hall* involved the University of the District of Columbia, a public university governed by District of Columbia statute and regulation, and the plaintiff was an “excepted service employee.” As the *Hall* court noted, “[u]nder District law, excepted service employees ‘do not have any job tenure or protection.’ D.C. Code Ann. § 1-610.5 (1981). *See also* 30 D.C.R. 1461 (1983) (regulation permits UDC Board to establish excepted service positions; such employees ‘shall serve at the pleasure of the President **and may be terminated at any time**’) (emphasis added).” Thus, the plaintiff in *Hall* was subject to an express, specific regulatory provision which declared that he could be terminated at any time.

GW, unlike the University of the District of Columbia, is not a public institution; it is private. Dr. Kumar, unlike the plaintiff in *Hall*, is not an excepted service public employee; rather, he is a tenured professor. Although Dr. Kumar's employment letters do state that as

department chair he will serve at the “pleasure of the Dean” (or, later, the University) his initial employment letter also states that it was GW’s “expectation that [Dr. Kumar] will continue to serve in this capacity [as Department Chair], *contingent upon [his] satisfactory performance in that role . . .*” See Exhibit A to GW’s Memo. (10/21/08 letter from Dean Jim Scott, M.D. to Dr. Kumar, at 2) (emphasis added); see also Amended Compl. at ¶9. The October 21, 2008 letter also stated that Dr. Scott would review Dr. Kumar’s performance annually based on a performance plan “to be mutually agreed upon at the start of each year.” Exhibit A to GW’s Memo. at 3; Amended Compl. at ¶10. The letter also stated that “[a]ll research intensive tenure and tenure-track faculty are expected to cover the major portion of their salary from extramural funding sources. The extent to which this objective is met by yourself and the members of your department will be *a significant criterion of performance evaluation.*” (Emphasis added). Exhibit A to GW’s Memo. at 3-4; Amended Compl. at ¶10.

For the Academic year 2012-2013, Dr. Kumar’s reporting supervisor did not review his Annual Report and performance as a tenured Professor and a Chair until February 1, 2014 (Amended Compl. at ¶67 (Original Compl. at ¶52)<sup>5</sup> and failed to review Dr. Kumar’s Annual Report for the Academic year 2013-2014. *Id.* The annual review process “provides an excellent opportunity for the chair and/or dean to discuss with individual faculty members their continuing professional development. *The dean completes the Annual Report form by adding comments and recommendations. Faculty have the opportunity to review and to respond in writing to comments that chairs and/or deans have appended to their annual reports.* The annual reports are

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<sup>5</sup> By comparison, Dr. Kumar’s Annual Report for fiscal year July 1, 2011-June 30, 2012 was reviewed in September, 2012. Amended Compl. at ¶67.

forwarded to the Office of the Vice President for Academic Affairs, where they become a part of the faculty member's personnel file." See <http://smhs.gwu.edu/faculty/annual-reports> (emphasis added); see also The George Washington University Faculty Handbook at §2-20. By failing to perform a timely annual evaluation of Dr. Kumar's performance in 2013 and 2014 as promised in the October 2008 offer letter, GW not only breached its agreement, but it also deprived Dr. Kumar of the benefits that come with an annual review as stated on GW's own website. Further, although the Plaintiff's service as department Chairman is "at the pleasure of" the university, Dr. Kumar is protected by the University Faculty Code, which protects him against arbitrary and capricious university decisions without a formal annual evaluation. Throughout his tenure as Department Chair, Dr. Kumar's performance has exceeded a satisfactory level and, until May 29 2014<sup>6</sup> he never received any negative reviews or criticisms about his service in that role. Amended Compl. at ¶¶9, 66, 70 (Original Compl. at ¶52). The May 29, 2014 letter's conclusions and erroneous characterizations about the working environment in Dr. Kumar's laboratory (and therefore the decision to remove Dr. Kumar as Chair) were based on an unfair inquiry and investigation laden with irregularities and violations of GW's own policies.

At the very least, in this early pleading stage, Dr. Kumar is entitled to the inference that the language in the employment letter meant that he could only be removed from his chairmanship for cause. This inference is also supported by the communications from the GW Provost in May 2014 purporting to remove Dr. Kumar as Department Chair because of negative performance in that role. See Amended Compl. at ¶¶68-71 (Original Compl. at ¶¶54-57). As

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<sup>6</sup> The May 29, 2014 letter Dr. Kumar received was not only the first negative review he had ever received, the letter came from Provost Lerman rather than from his reporting Supervisor).

events were unfolding in May 2014, GW did not take the position that Dr. Kumar's chairmanship was an at-will position. Dr. Kumar is entitled to the inference that the chairmanship was not at-will. Therefore his breach of contract claim based on his being removed for retaliatory reasons and in the absence of cause should not be dismissed.

**B. Dr. Kumar's 3% Salary Increase Claim Should Not Be Dismissed**

Dr. Kumar alleges that he was promised a 3% salary increase in a draft reappointment letter dated July 9, 2013 which was sent to Dr. Kumar for the purpose of verification of details contained therein. Amended Compl. at ¶62 (Original Compl. at ¶48). He also alleges that the final version of that letter, which coincided with his submission of his response to the draft inquiry report in which he was very critical of GW's handling of the process of the misconduct inquiry, omitted the salary increase. Amended Compl. at ¶¶62-66 (Original Compl. at ¶¶48-52). GW argues that the July 9, 2013 draft letter did not constitute a contractual obligation because it was only a draft reappointment letter. According to GW, "Plaintiff has not identified any contractual right to an increase in salary because there is no such right, and as such Plaintiff's claims based on the University not giving him a raise must be dismissed." GW Memo. at 7. GW misunderstands Dr. Kumar's breach of contract claim on this issue. Dr. Kumar does not allege that the failure to increase his salary was itself a breach of contract. Rather, Dr. Kumar alleges that failure to increase his salary was a component of damage resulting from the other breaches. *Compare* Amended Compl. at ¶129 (Original Compl. at ¶114 (examples of breaches)) to Amended Compl. at ¶130(f) (Original Compl. at §115(f) (itemized damages include loss of salary increase). Dr. Kumar alleges that as a proximate result of the breaches itemized in Paragraph 129 of the Amended Complaint (original Complaint Paragraph 114) he suffered a variety of damages, including the loss of an increase in salary. For three consecutive

years Dr. Kumar's salary increased by slightly more than 3%. From fiscal year 2009-2010 to fiscal year 2010-2011, the increase was approximately 3.33%; from fiscal year 2010-2011 to fiscal year 2011-2012, the increase was approximately 3.35%; and from fiscal year 2011-2012 to fiscal year 2012-2013, the increase was approximately 3.73%. *See* Amended Complaint at ¶61. Thus, the trend certainly was to increase Dr. Kumar's salary, as was reflected in the draft reappointment letter sent to Dr. Kumar. The mishandled misconduct proceedings infected GW's decisions about Dr. Kumar's employment, including compensation levels, proximately causing damage. That is, if the inquiry and investigation had been conducted in an appropriate manner, there would have been no findings of misconduct and no purported basis on which to deny Dr. Kumar's salary increase. Whether or not Dr. Kumar had a contractual right to a salary increase is not the issue. Rather, the issue is that Dr. Kumar had a contractual right to be notified in November that in the upcoming year his salary would change (*i.e.*, that he would not be receiving the increases he had been receiving each prior year) and that Dr. Kumar had a right not to be retaliated against in his compensation for positions taken in defending himself against misconduct allegations.

The George Washington University Faculty Code states that "Tenured members of the faculty and faculty members (except those appointed in the Medical Center) whose appointments do not expire or whose appointments will be renewed shall be notified in writing annually, on or about May 15, of changes in rank or of other terms and conditions of service for the next academic year and further shall be notified annually in writing of changes in salary, no later than November 1." Faculty Code at §IV(A)(1)(b). *See* Amended Compl. at ¶66. Each year Dr. Kumar's salary was increased by approximately the same amount, as noted above. GW was obligated to notify Dr. Kumar by November 1, 2012 that he would not be receiving a salary

increase for fiscal year July 1, 2013 through June 30, 2014 yet Dr. Kumar received no such notice. Amended Compl. at ¶66.<sup>7</sup> To the contrary, Dr. Kumar received notice by way of the draft of the July 9, 2013 reappointment letter (the content of which GW simply asked him to verify was correct) that he *would* be receiving the salary increase consistent with past practices.

Dr. Kumar consistently received excellent reviews for his service as Department Chair and as a tenured Professor since 2009. Amended Compl. at ¶66 (original Compl. at ¶52). Dr. Kumar had not received any negative employment reviews or negative reviews regarding his service as Department Chair or as a tenured Professor and was given no explanation as to why his salary would not be increased. Amended Compl. at ¶¶9, 70 (original Compl. at ¶52). When the foregoing is considered in conjunction with the timing of the draft reappointment letter containing a salary increase, followed by the submission of Dr. Kumar's Response to the Draft Inquiry Report a few days later, followed soon thereafter by the final reappointment letter omitting a salary increase, Dr. Kumar is entitled to the inference that the decision not to give Dr. Kumar his promised salary increase was in retaliation for the comments made in his Response to the Draft Inquiry Report.

Thus, for all of the foregoing reasons, GW cannot prevail on its argument that Count I should be dismissed as to the removal of Dr. Kumar's department chairmanship or that it should be dismissed with regard to the salary increase allegations. In addition, as noted at the outset of Argument Section I, there are several other allegations of breach of contract (Amended Compl. at ¶129(a), (b), (c), (d), (e), and (g); Original Compl. at ¶114(a), (b), (c), (d), (e), and (g)) which

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<sup>7</sup> Similarly, GW was required to notify Dr. Kumar by November 1, 2013 that he would not be receiving a salary increase for fiscal year July 1, 2014 through June 30, 2015 yet GW failed to provide any such notice.

GW does not even mention in its motion. For that reason alone, GW's Motion to Dismiss Count I should be denied.

**II. PLAINTIFF HAS SUFFICIENTLY PLEADED A CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

In Count II of both his Complaint and First Amended Complaint, Dr. Kumar alleges that GW breached the covenant of good faith and fair dealing implied in every contract under District of Columbia law. *Nugent v. Unum Life Ins. Co. of Am.*, 752 F. Supp. 2d 46, 56 (D.D.C. 2010). The courts have interpreted this covenant to mean that “neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *Allworth v. Howard Univ.*, 890 A.2d 194, 201 (D.C. 2006). Further, “[i]f the party to a contract evades the spirit of the contract, willfully renders imperfect performance, or interferes with performance by the other party, he or she may be liable for breach of the implied covenant of good faith and fair dealing.” *Id.*<sup>8</sup> Where, as here, a plaintiff has alleged facts from which a jury could find that the university's decisions did not have a rational basis, or that the university was ““motivated by bad faith or ill will unrelated to academic performance,”” the motion to dismiss should be denied. *Paulin*, 878 F. Supp. 2d at 248 (quoting *Alden v. Georgetown Univ.*, 734 A.2d 1103, 1109 (D.C. 1999)). Count II should not be dismissed because Dr. Kumar has sufficiently alleged facts which, if taken as true, would demonstrate that GW's decisions about which he complains were irrational, or motivated by bad faith or ill will unrelated to his performance as a professor and a department chair.

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<sup>8</sup> Plaintiff acknowledges that the *Allworth* Court found in favor of the university, not the plaintiff. Significantly, however, *Allworth* was a review of the grant of summary judgment, not a motion to dismiss. Thus, GW's citation at page 9 of its Memorandum to *Allworth's* statement that a plaintiff must present “evidence” of arbitrary and capricious actions is misplaced in the current posture of this case.

**A. Dr. Kumar has Sufficiently Alleged Bias and Conflict in the Misconduct Proceedings**

As the Complaint alleges, the misconduct proceedings were unfair and not conducted in good faith. GW attempts to salvage the proceedings by contending it complied with the letter of the requirements governing such proceedings. *See* GW Memo. at 9-11. That is insufficient, however and does not excuse the failure to use good faith in implementing the policy. The few steps where GW may have literally complied with the Policy's requirements fail to outweigh GW's failure to comport with other requirements and with the spirit of the Policy which states that "[i]nquiries and investigations will be conducted in a manner *that is designed to provide fair treatment to the respondent* in the inquiry or investigation and confidentiality to the extent possible without compromising public health and safety or the thoroughness of the inquiry or investigation." Policy at III(C) (emphasis added).

GW asserts that Dr. Kumar believes he was entitled to a "unilateral veto over the Committee's membership." GW's Memo. at 9. This is an unfair characterization of Dr. Kumar's allegations. Dr. Kumar's claim is based on no more than what he was entitled to under GW's own Policy - an Investigation Committee free from even the "appearance" of a conflict of interest. Policy at VI(C). That the University had the discretion to deny his request is not dispositive as the University was required to exercise its discretion in good faith. Dr. Kumar alleges that the Committee did have at least the appearance of a conflict of interest and therefore failed to exercise good faith in taking measures to ensure a process that was free from apparent or real conflict. Dr. Kumar attempted, very early in the investigation, to ensure a process free from bias and conflict of interest. GW's defense to the allegation is two-fold. First, GW cites to the fact that it did remove one committee member when Dr. Kumar complained that the member lacked sufficient relevant scientific expertise. GW Memo. at 9-10. GW was required to

do so, however. The Policy states that each Committee member must “have the necessary expertise to evaluate the evidence and issues related to the allegations, interview the principals and key witnesses, and conduct the investigation.” Policy at §VI(C). Moreover, GW’s removal of one committee member (Dr. Ernest Prentice) for lack of expertise does not excuse GW’s refusal to remove another committee member (Dr. Crandall) for an appearance of bias or conflict of interest.

GW’s seeks dismissal of this claim based on its assertion that Dr. Kumar’s request was not timely. The Misconduct Policy states that objections as to the composition of the committee must be made within five business days. GW’s Memo. at 10 (citing Misconduct Policy at §VI(c)). GW asserts that Dr. Kumar’s request to remove the Committee Chair was made almost two months late because the original notice of the committee membership was dated November 8, 2013<sup>9</sup> and Dr. Kumar’s notice of his objection to Dr. Crandall was made January 6, 2014. GW’s Memo. at 9-10. Dr. Kumar has alleged that the committee was empanelled on December 16, 2013 and that he objected to Dr. Crandall’s appointment in less than thirty days, on January 6, 2014. Amended Compl. at ¶¶40-42 (Original Compl. at ¶33). Whether or not the request was made within the five day window is not pertinent to Dr. Kumar’s claim that the empaneling of a biased committee was unfair.<sup>10</sup> *Furey v. Temple Univ.*, 730 F. Supp.2d 380 (E.D. Pa. 2010)

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<sup>9</sup> GW had extended to November 22, 2013 the date by which Dr. Kumar had to note an objection so for the first objection November 22, 2013 was the operative date, not November 15, 2013 (five business days from November 8, 2013). Amended Compl. at ¶37. Dr. Kumar did submit his first objection (based on lack of expertise) within that deadline. Amended Compl. at ¶38.

<sup>10</sup> Because of GW’s obligation to ensure a fair proceeding, whether Dr. Kumar’s request that Dr. Crandall be replaced complied with a deadline is not the important issue. The important issue is that GW allowed Dr. Crandall to serve on and be the chairman of the Investigation

(defendants' summary judgment motion denied where there were facts in dispute on plaintiff's allegations of bias in connection with student disciplinary hearing).

In *Furey*, the plaintiff, a student at Temple University, was involved in an altercation with an off-duty police officer, arrested and was charged with violating the University's student conduct code. 730 F. Supp.2d at 386. Noting the importance of an impartial tribunal, the *Furey* Court stated that "a fair and impartial tribunal and trial is a necessary component of procedural due process. The plaintiff's interest in avoiding expulsion is great, as is the benefit of an impartial panel in safeguarding against an erroneous decision. Nor does the providing of a fair and impartial tribunal impose a great administrative burden on the school." *Furey*, 730 F. Supp.2d at 395. In *Furey*, the plaintiff asserted that bias by one of the panel members deprived him of a fair and impartial tribunal. *Id.* at 395. Specifically, the plaintiff asserted that one of the student panel members was friends with the off-duty officer who arrested the plaintiff and was a principal witness during the disciplinary proceedings. *Id.* at 396. It was undisputed that the student panel member and the officer were Facebook friends, but the student asserted he had 400 Facebook friends and that he and the officer were not "friends" in the traditional sense. *Id.* at 390. However, there was some deposition testimony suggesting that the two may have known each other through an organization. *Id.* The defendants' summary judgment motion as to bias was denied because there were facts in dispute regarding the particulars of the friendship or association and "[t]he extent of [the student panel member] and [the officer's] friendship could impact the bias analysis." *Id.* at 396. *See also United States v. Jordan*, 49 F.3d 152 (4<sup>th</sup> Cir.

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Committee despite a real or apparent conflict of interest. In any case, Dr. Kumar only realized that Dr. Crandall had a conflict of interest after the expiration of the five business day deadline. As soon as Dr. Kumar realized it, he advised GW. *See Amended Compl.* at ¶¶41-42.

1995) (even if judge was not actually biased, she should have recused herself because there was an appearance of bias resulting from the fact that the judge's friend, although not a party or witness in the criminal case before the judge, was in a hostile relationship with the defendant in the criminal case).

At stake in the research misconduct proceedings was Dr. Kumar's reputation and livelihood. GW had an absolute obligation to provide Dr. Kumar a process free of even the appearance of impropriety – even if that meant changing the committee chair after the expiration of the five day period for objecting. As soon as Dr. Kumar realized Dr. Crandall's potential conflict, he brought it to GW's attention. Amended Compl. at ¶¶41-42 (Original Compl. at ¶33). Dr. Kumar alerted the Investigation Committee to the fact that Dr. Crandall had offered employment to one of Dr. Kumar's former scientists whom Dr. Kumar suspected was the Complainant. Amended Compl. at ¶¶41-42 (Original Compl. at ¶33). Dr. Kumar further informed the Investigation Committee that Dr. Kumar had filed a human resources complaint against that former scientist. Amended Compl. at ¶41. If Dr. Crandall's employment related discussions with this scientist involved any comments by the scientist regarding her time in the Kumar laboratory, there was a risk of apparent if not actual bias by Dr. Crandall against Dr. Kumar from hearing negative information from a disgruntled former employee of Dr. Kumar's. In addition, it was unfair to Dr. Kumar that Dr. Crandall would have received information outside the parameters of the investigation to which Dr. Kumar, or possibly other members of the Investigation Committee, were not privy.

The fact that Dr. Crandall considered employing Dr. Kumar's former employee who Dr. Crandall knew to have had a troubled history with Dr. Kumar is enough to present a conflict of interest worthy of recusal. In addition, however, Dr. Kumar has also alleged that Dr. Crandall

had a conflict of interest arising from Dr. Crandall's desire to take over office space that was allocated to Dr. Kumar's department. Amended Compl. at ¶41 (Original Compl. at ¶33). Dr. Crandall expressed interest in, and made repeated and directed requests regarding, occupying office for himself in space allocated to Dr. Kumar's department. Amended Compl. at ¶41. Moreover, the fact that Dr. Crandall, with the then current RIO, was involved in GW's plans to use the McCormick Chair funds at a time when Dr. Kumar still had the right to direct the use of those funds (Amended Compl. at ¶76 (Original Compl. at ¶62)) shows that Dr. Crandall was motivated to seek Dr. Kumar's removal as Chair of the Biochemistry Department. Once the Investigation was completed and Dr. Kumar's Response was received, Dr. Crandall himself even acknowledged in an email to Dr. Kumar's then-PhD student, Ms. Prakriti Mudvari on June 26, 2014, of a recently discovered conflict of interest that precluded him from participating in her dissertation committee. Amended Compl. at ¶44 (Original Compl. at ¶34). Dr. Crandall should have made a similar acknowledgment of his actual and apparent conflicts of interest and bias and should not have been permitted to serving on and chair the Investigation Committee.

Having lodged reasonable assertions of conflict of interest and bias by Dr. Crandall, Dr. Kumar was entitled to have him removed from the Investigation Committee, especially considering that he served as Chair of the Investigation Committee. Dr. Kumar has sufficiently alleged bias and his claims in this regard should not be dismissed. *Vines v. Howard*, 658 F. Supp. 34, 37 (E.D. Pa. 1987) (denying motion to dismiss claim based on allegations of bias in disciplinary hearing and noting significance of difference in procedural posture of cases which had reached summary judgment stage). GW was required by its policy to seat a committee free from the appearance of bias. GW's refusal to remove Dr. Crandall because the request was made

outside of the five day window demonstrates a lack of good faith in the process in light of the appearance of impropriety.

**B. Other Irregularities in the Misconduct Proceedings Demonstrate Lack of Good Faith**

The entire misconduct proceeding was unfair and GW's decision to allow the investigation to proceed in the face of Dr. Kumar's objection to Dr. Keith Crandall is just one of the factors that infected the process. Dr. Kumar has also alleged that the investigation was unfair because of the way in which witness interviews were conducted, including leading witnesses, misrepresenting testimony of other witnesses, coaching witnesses, mischaracterizing the truth, offering a defense to selective witnesses rather than asking fact finding questions, and using the investigation to evaluate Dr. Kumar's chairmanship and leadership outside the charge to the Committee. Amended Compl. at ¶¶47-52 (Original Compl. at ¶¶38-40). In addition, on June 10, 2013, Dr. Anne Hirshfield, the then Research Integrity Officer, instructed three junior scientists, who were also respondents in the GW inquiry and responsible for the underlying work that was the subject of the misconduct allegations, that they should not assist Dr. Kumar in his response to the inquiry report despite the fact that they were from Dr. Kumar's laboratory and were involved in the underlying research at issue in the allegations asserted against Dr. Kumar. Amended Compl. at ¶31 (Original Compl. at ¶26). Dr. Hirshfield also told the scientists that if they did assist Dr. Kumar, their own inquiry defenses would be in jeopardy. Amended Compl. at ¶32 (Original Compl. at ¶27). These allegations are sufficient on which to demonstrate bad faith in the conduct of the proceedings. *See Furey v. Temple Univ.*, 730 F. Supp.2d 380 (E.D. Pa. 2010) (defendant's motion for summary judgment on plaintiff's due process claim denied).

As noted above, *Furey* involved due process claims arising from a university student misconduct hearing that resulted in the plaintiff's expulsion. The plaintiff asserted a number of

irregularities in the hearing process. For example, three eyewitnesses and the officers who assisted the arresting officer were absent from the hearing; the hearing panel allowed the arresting officer to testify in “long, mainly uninterrupted statements” and was very courteous toward him, while the panel’s questioning of plaintiff was very aggressive; the chair of the hearing panel refused to ask the officer some of the questions posed by the plaintiff; the officer was apparently allowed to use the phone and prepare a written statement during a recess to respond to some of the plaintiff’s questions even though the officer was still under oath and testifying at the time of the recess. Here, Dr. Kumar has alleged as follows:

- As part of its investigation, the Investigation Committee interviewed: 14 current and former members of Dr. Kumar’s laboratory; Dr. Kumar; three members of Dr. Kumar’s office staff; and five additional witnesses. Amended Compl. at ¶45 (Original Compl. at ¶35);
- On April 23, 2014, GW provided Dr. Kumar with 31 interview transcripts. Amended Compl. at ¶46 (Original Compl. at ¶36);
- A review of the transcripts makes clear that many of the interviews with additional witnesses and office staff focused on Dr. Kumar’s Chairmanship and character, inquiring, for example, whether the witness thought Dr. Kumar should be Chair, whether the witness knew the term of Dr. Kumar’s appointment, what discussions the witness had had with the dean’s office, and whether the witness knew Dr. Kumar’s wife’s name. The questions asked had little, if anything, to do with the misconduct allegations. Amended Compl. at ¶47 (Original Compl. at ¶37);
- The members of the Investigation Committee engaged in improper and unfair leading questioning that was designed to elicit the response that the questioner desired instead of a search for the truth. Amended Compl. at ¶48 (Original Compl. at ¶38);
- The members of the Investigation Committee repeatedly misrepresented testimony of witnesses to other witnesses during their interviews and coached witnesses to provide testimony that would immunize them while implicating Dr. Kumar even while acknowledging that Dr. Kumar did not do the experiment or put together the figure. Amended Compl. at ¶49 (Original Compl. at ¶39);
- The Investigation Committee did not ask Dr. Kumar questions on the same subjects as those asked of the other witnesses. Thus, Dr. Kumar did not have an opportunity to address certain assumptions or information held by the Investigation Committee. Amended Compl. at ¶50 (Original Compl. at ¶40);
- On April 23, 2014, the Investigation Committee issued the Committee’s Draft Investigation Report. Ignoring extensive witness testimony that Dr. Kumar was *not*

responsible for the research and figures in question and that there was nothing wrong or disconcerting about the working environment in the laboratory, the Investigation Committee concluded that Dr. Kumar committed misconduct in ten of the allegations. Amended Compl. at ¶51 (Original Compl. at ¶41); and

- To support the Committee's preconceived conclusions, the Investigation Committee repeatedly misrepresented the testimony of witnesses and, on dozens of occasions, selectively relied on a witness's statements that were in direct conflict with the same witness's other statements or other available evidence. The Draft Investigation Report did not acknowledge these contradictions and inconsistencies. Amended Compl. at ¶52 (Original Compl. at ¶42).

GW asserts in its Memorandum that Dr. Kumar's allegations regarding the irregularities are not accompanied by any factual support. GW Memo. at 11. Dr. Kumar is not required, in the Complaint, to set forth the evidence on which he relies in making his allegations or to detail each place in the 31 transcripts where improper questioning took place. The foregoing allegations are sufficient as they are. These allegations contain sufficient facts which, if true, "state a claim for relief that is plausible on its face" and the claim should not be dismissed. *Bell Atl. Corp.*, 550 U.S. at 570.

GW cites to *Howard R.L. Cook & Tommy Shaw Found. Ex rel. Black Employees of Library of Cong., Inc. v. Billington*, 737 F.3d 767, (D.C. Cir. 2013) in support of its argument that Dr. Kumar's allegations are insufficient. *Howard* is inapposite. The plaintiffs brought a retaliation claim under Title VII. Such a claim has three elements, one of which is that an employee engaged in statutorily protected activity. *Id.* at 772. The complaint alleged that the *Foundation* engaged in activity which resulted in retaliation by the Library of Congress, but failed to allege that any individual *employee* engaged in protected activity resulting in retaliation. *Id.* at 773. Thus, in *Howard*, there was a wholesale failure to even plead an essential element of the claim. That simply is not the case here. The allegations provide factual examples of the ways in which GW breached its duty of good faith in carrying out the investigation; Dr. Kumar need not also provide evidence of each factual example at this stage.

**C. Plaintiff has Sufficiently Alleged that the Committee’s Findings were not Supported by a Preponderance of the Evidence**

Dr. Kumar alleges that the Investigation Committee’s conclusion that he engaged in research misconduct was not supported by a preponderance of the evidence. Amended Compl. at ¶53 (Original Compl. at ¶43).<sup>11</sup> This is not, as GW contends, a “bald assertion.” GW Memo. at 11.<sup>12</sup> Dr. Kumar’s allegation that the Committee’s failed to meet its evidentiary burden is demonstrated by the additional allegations that the Committee’s Draft Report relies on misrepresentations of witnesses’ testimony and on selective reliance on witness statements that were contradicted by other statements by the same witness or by other evidence. Amended Compl. at ¶52 (Original Compl. at ¶42). Only by distorting the inquiry and investigation record could the Investigation Committee reach the conclusions it did. The evidence supporting the Committee’s Report was

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<sup>11</sup> Under both GW’s Misconduct Policy (§§VI(D)(1), VII(B)) and applicable federal regulations (42 C.F.R. §§93.104(c), 93.106(a)), a scientist cannot be found responsible for research misconduct unless the investigation committee proves the misconduct allegations by a preponderance of the evidence.

<sup>12</sup> GW discusses Plaintiff’s allegations (Original Compl. at ¶97; Amended Compl. at ¶112) about the opinion of counsel of a Prestigious Local Institution who agrees with Plaintiff’s assessment of the Investigation Committee’s conclusions. GW Memo. at 11-12. GW asserts that this does not provide factual support for Plaintiff’s allegation that the Investigation Committee’s findings are not supported by a preponderance of the evidence. GW Memo. at 11-12. Although the allegation does support Dr. Kumar’s assertion regarding the problems with the misconduct proceedings and the conclusions reached, the primary purpose of the allegations is not to bolster Plaintiff’s argument concerning preponderance of the evidence. Rather, this paragraph (Amended Compl. at ¶112; Original Compl. at ¶97) is included in the group of allegations regarding Dr. Kumar’s efforts to obtain other employment. As he alleges, he was very frank during negotiations about the findings and even shared the Final Report with his prospective employer (redacted to protect confidentiality). Amended Compl. at ¶112 (Original Compl. at ¶97). Further, for the Court’s information, Plaintiff did not identify the Prestigious Local Institution in his Complaint because of confidentiality obligations arising from the negotiations.

qualitatively bad – misrepresentations of witness testimony; contradictory witness statements; testimony that was elicited as a result of panel members coaching witnesses during their interviews.

Dr. Kumar also alleges that the Investigation Committee failed to consider his comments to the Draft Report, another allegation described by GW as “bald.” Amended Compl. at ¶52 (Original Compl. at ¶42). Contrary to GW’s characterization, this allegation is adequately explained in the Complaint. Dr. Kumar submitted a comprehensive response to the Draft Report. Amended Compl. at ¶54 (Original Compl. at ¶44). In his response, Dr. Kumar explained in detail why the Committee’s findings for each of the allegations of misconduct was erroneous, cited testimony that was inconsistent with and contradicted the conclusions reached by GW, laid out GW’s numerous violations of the Policy’s provisions regarding fairness and the requirement that the investigation be free from both biases and conflicts of interest, and described numerous due process violations. Amended Compl. at ¶54 (Original Compl. at ¶44). Yet the Final Report of the Investigation Committee was nearly identical to the draft Report. Amended Compl. at ¶58 (Original Compl. at ¶47). The Final Report did not adequately consider the arguments and comments included in Dr. Kumar’s Response. Amended Compl. at ¶58 (Original Compl. at ¶47). GW argues as follows regarding the foregoing allegations:

Plaintiff’s inference that the [Final] Report did not consider his comments – an inference totally unsupported by evidence or example- is belied by the facts he does allege. For example, Plaintiff notes that, after he submitted his comments on June 6, the Committee took almost two months to deliberate further and did not issue its Final Report until July 21, 2014. *See* Complaint ¶¶44-45. One can just as easily infer that, rather than ignoring Plaintiff’s comments, the Committee took its time, and duly considered the comments before issuing the Final Report. [footnote 11 omitted].

GW Memo. at 12. GW's argument fails. First, the allegation that the Final Report did not consider Dr. Kumar's comments is more than an inference – Dr. Kumar is alleging that the Final Report does not in fact reflect consideration of his comprehensive comments. Amended Compl. at ¶58 (Original Compl. at ¶47). Second, the allegation is not “belied by the facts” Dr. Kumar alleges stating the date of submission of Dr. Kumar's response (June 6, 2014) and the date of the Final Report (July 21, 2014). Amended Compl. at ¶¶54-55 (Original Compl. at ¶¶44-45). GW seeks an inference *in its favor* (“[o]ne can just as easily infer that”) that the Committee spent the intervening six week period (between Dr. Kumar's Response and the Final Report) deliberating and considering Dr. Kumar's Response. As the movant, GW is not entitled to any such inference. *See Matrixx*, 131 S. Ct. at 1322, 1323; *Poindexter v. Wachovia Mortgage Corp.*, F. Supp.2d, 2012 WL 1071248, \*1 (D.D.C. 2012); *Paulin v. The George Washington University School of Medicine and Health Sciences*, 878 F. Supp. 2d 241, 246 (D.D.C. 2012).

Dr. Kumar also alleged that GW's failure to even consider his evidence-based arguments included in his comprehensive Response the Draft Investigation Report showed that the Committee's conclusions could not have been based on the preponderance of the evidence. *See Furey*, 730 F. Supp. 2d at 398 (the hearing panel's failure to consider certain evidence offered by plaintiff, and its decision to consider other evidence which plaintiff claimed was objectionable, was important to the court's denial of the defendants' summary judgment motion on plaintiff's due process claim). For example, Dr. Kumar has alleged that the substantive Response to the Draft Investigation Report provided extensive detailed examples from the witness interview transcripts demonstrating not only the erroneous factual conclusions drawn by the Investigation

Committee, but also demonstrating the improper manner in which some of the witness interviews were conducted. Amended Compl. at ¶54 (Original Compl. at ¶44). The Response also provided detailed factual statements regarding missed and new physical evidence that should have been considered by the Committee. Amended Compl. at ¶54. The Response also substantively replied to (and disputed) the Draft Report's characterizations of Dr. Kumar's laboratory as being pressure filled. Amended Compl. at ¶54. Dr. Kumar has alleged that the Final Report ignored all of these detailed, record supported, rebuttals to the statements in the Draft Report. Amended Compl. at ¶¶54, 58 (Original Compl. at ¶¶44, 47).<sup>13</sup> By doing so, GW failed to follow its own Misconduct Policies and Procedures, which requires the investigation "provide fair treatment," and that the final Report incorporate the Respondent's response by "[including] the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct." Misconduct Policy at VII(A)(1), and VII(B). Essentially Dr. Kumar has alleged that if the evidence in favor of GW's misconduct findings is compared with the evidence set forth in Dr. Kumar's Response to the Draft Investigation Report, Dr. Kumar's evidence is more convincing and therefore GW failed to prove misconduct by a preponderance of the evidence. A preponderance of the evidence is a measurement of the quality of the evidence. Both GW's Misconduct Policy and the federal regulations define "preponderance of the evidence" as "proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not."

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<sup>13</sup> Remarkably, having ignored Dr. Kumar's arguments in his Response showing why this characterization was not supported by the witness interviews, Provost Lerman relied on the same "working environment" characterization to negatively describe Dr. Kumar's performance as Department Chair in his May 29, 2014 letter to Dr. Kumar. Amended Compl. at ¶73.

Misconduct Policy Definitions at §k; 42 C.F.R. §93.219. It is “evidence which is more credible and convincing than the other evidence brought.” *In re Sorrell*, 292 Bankr. 276, 288 (E.D. Texas 2002); *see also Gess v. U.S.*, 952 F. Supp. 1529, 1538 (M.D. Ala. 1996) (a “preponderance of the evidence means such evidence as, when considered with that opposed to it, has more convincing force, and demonstrates that what is sought to be proved ‘is more likely true than not true’”) (quoting Pattern Jury Instructions, Basic Instruction No. 6.1, U.S. Eleventh Circuit District Judges Association (Civil Cases) (1990)). GW’s finding of misconduct were not based on a preponderance of the evidence.

**D. GW’s Adverse Actions with Respect to Dr. Kumar’s Research Demonstrates Lack of Good Faith**

Having learned that GW intended to revoke his tenure and prevent him from continuing his life’s work as a research scientist, Dr. Kumar began to seek employment at other institutions. Amended Compl. at ¶109 (Original Compl. at ¶94). In August 2014 Dr. Kumar began discussions with a highly prestigious local institution (“Prestigious Local Institution”).<sup>14</sup> Dr. Kumar was very frank with the Prestigious Local Institution regarding the GW research misconduct proceedings. Amended Compl. at ¶111 (Original Compl. at ¶96). Once counsel for the Prestigious Local Institution reviewed the redacted (to protect the confidentiality of the misconduct proceedings) Final Investigation Report and Dr. Kumar’s Response to the Draft Investigation Report, the institution’s counsel concluded that the misconduct findings were not supported and would not impede further discussions about Dr. Kumar’s potential future

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<sup>14</sup> As already explained, the Complaint did not identify this potential employer by name because of confidentiality considerations that were part of the discussions about Dr. Kumar’s potential employment.

employment at that particular institution. Amended Compl. at ¶¶111-12 (Original Compl. at ¶¶96-97). Unfortunately, however, GW's refusal to cooperate with Dr. Kumar's efforts to obtain and transfer grant money and process a new grant that was necessary for Dr. Kumar to successfully relocate to another institution doomed the potential employment opportunity for Dr. Kumar. Amended Compl. at ¶¶116-119 (Original Compl. at ¶¶101-104).

In addition to Dr. Kumar's world-renowned reputation as a research scientist, the Prestigious Local Institution's interest in hiring Dr. Kumar resulted from his having been awarded over \$4.3 million in grants since 2009. Amended Compl. at ¶113 (Original Compl. at ¶98). At the time Dr. Kumar's employment discussions with the Prestigious Local Institution were in the final stages and it appeared an offer was imminent, the National Institutes of Health ("NIH") required a response from GW regarding whether GW would accept a newly awarded five year grant on Dr. Kumar's behalf. Amended Compl. at ¶¶80-85, 114 (Original Compl. at ¶¶66-71, 99). GW could have engaged in what is a fairly simple and common practice when a scientist plans to transfer institutions – it could have accepted NIH's grant on Dr. Kumar's behalf and then relinquished the grant to the subsequent institution. Amended Compl. at ¶115 (Original Compl. at ¶100). GW refused to do so, however, ignoring Dr. Kumar's pleas. Amended Compl. at ¶¶83-85, 115 (Original Compl. at ¶¶69-71, 100). Dr. Kumar warned GW that its refusal would damage him. Amended Compl. at ¶115 (Original Compl. at ¶100). The Prestigious Local Institution commented to Dr. Kumar that GW's refusal would "imped[e] Dr. Kumar's ability to move to another medical center[.]" Amended Compl. at ¶116 (Original Compl. at ¶101). Dr. Kumar and his attorneys conveyed this very fact to GW numerous times. Amended Compl. at ¶117 (Original Compl. at ¶102). Notwithstanding the pleas and warnings of Dr. Kumar and his counsel, GW returned the new grant back to NIH in September 2014. Amended Compl. at ¶¶85,

115 (Original Compl. at ¶¶71, 100). Once GW did so, the negotiations between Prestigious Local Institution and Dr. Kumar halted and Dr. Kumar has been unable to obtain a comparable faculty position at another academic institution at either the local or national level. Amended Compl. at ¶¶118-119 (Original Compl. at ¶¶103-104).

Dr. Kumar alleges that by refusing to cooperate with regard to the grant award, GW failed to comply with Sections X and XI of GW's Misconduct Policy, described by Dr. Kumar as follows: "administrative actions against individuals accused of misconduct will be taken 'when an allegation of misconduct has been *substantiated*,'" *Id.* at § X (emphasis added), and that interim administrative actions are only contemplated to protect Federal funds, protect ongoing research activities, and support the purposes of the Federal financial assistance. *Id.* at § XI(E)." Amended Compl. at ¶25 (Original Compl. at ¶19). In its Memorandum, GW takes issue with Dr. Kumar's insertion of the word "only" in the second part of the allegation ("interim administrative actions are *only* contemplated to protect Federal funds, protect ongoing research activities, and support the purposes of the Federal financial assistance"). GW contends that Section XI(E) does not include the word "only" and that by "grafting" the word "only" into Section XI(E), Plaintiff has misleadingly suggested that administrative actions can be taken pursuant to Section XI(E) only in the three circumstances listed. GW's Memo. at 13. According to GW, it is "expressly authorized" by Section XI(E) to take "'interim'" action between the time allegations are made and an investigation is concluded. GW's Memo. at 13. GW's position that Section XI(E) does not limit in any way the situations in which GW may take interim actions simply is not supported by the language of Section XI(E). The section clearly limits GW's authority. The section may not use the word "only" but there is no other reasonable interpretation. The Section identifies three situations when interim actions may be taken: (1) to protect Federal funds; (2) to protect

ongoing research activities; and (3) to support the purpose of the Federal financial assistance.<sup>15</sup> This list in Section XI(E) is not characterized as being representative of a broader range of situations; the list is not characterized as being “including but not limited to;” and the list is not characterized as being “examples.” The list is a discrete list limited to three specific situations when interim action is permitted.

Dr. Kumar alleges that GW took certain retaliatory action against Dr. Kumar after receiving his Responses harshly criticizing the Draft Investigation and Inquiry Reports. Among the retaliatory actions which GW took were to halt Dr. Kumar’s research and remove him from projects. Amended Compl. at ¶¶80-99 (Original Compl. at ¶¶66-84). GW contends these actions were permitted pursuant to Section X of the Policy. GW’s Memo. at 14. GW quotes Section X as permitting GW to “remove[e] the responsible person from the particular project.” GW ignores that the administrative actions available to GW under Section X can be exercised *only* when the allegations have been *substantiated*, as Dr. Kumar has alleged. Amended Compl. at ¶23 (Original Compl. at ¶19). Section X provides in full as follows:

**X. University Administrative Actions**

The university will take appropriate administrative actions against individuals *when an allegation of research misconduct has been substantiated as determined by the Provost after consultation with the RIO*. The actions may include:

- withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found.

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<sup>15</sup> The provision in GW’s policy is consistent with 42 C.F.R. Section 93.304 which directs institutions to have policies that address “appropriate interim institutional actions to protect public health, Federal funds and equipment, and the integrity of the PHS supported research process.” This regulation, like GW’s policy, identifies only three situations where interim action can be taken.

- removal of the responsible person from the particular project(s), letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible rank reduction or termination of employment, provided such actions are consistent with the **Faculty Code** or the **Manual of Personnel Policies for the Use of Supervisory Staff** or, in the case of a student, the **Guide to Student Rights and Responsibilities**;
- restitution of funds as appropriate.

Policy at §X (bold in original; italics added). All the other administrative actions which GW asserts it was permitted to take under Section X before completing the investigation – preparing for the possible eventuality of Dr. Kumar’s removal as Chair, suspending Dr. Kumar’s access to his Department and laboratory, delaying approval of Dr. Kumar’s proposed visiting professorships and travel to conferences - were improper because when they were taken the allegations of research misconduct had not been *substantiated*. Dr. Kumar contends that to this day the allegations of misconduct have not been substantiated but even under Section X administrative actions could not be taken until the allegations were “substantiated as determined by the Provost after consultation with the RIO.” Policy at §X.

Dr. Kumar has alleged that GW’s bad faith refusal to simply accept and relinquish the grants to the Prestigious Local Institution (or any other subsequent institution) constitutes a breach of the implied covenant of good faith and fair dealing. Amended Compl. at ¶133(i) (Original Compl. at ¶118(i)). In its Memorandum, GW contends that it acted within its rights under its Misconduct Policy and under its obligations as a federal fund recipient in taking the

actions it did with respect to Dr. Kumar's grant applications and awards. GW's Policy at 12-14.<sup>16</sup>

Dr. Kumar has not alleged that he is a third party beneficiary of a contract between NIH and GW for the grant funds and therefore GW's citation to *Tavoloni v. Mount Sinai Med. Ctr.*, 26 F. Supp.2d 678, 683 (S.D.N.Y. 1998) is inapposite. As GW points out (GW Memo. at 15), *Tavoloni* cites to a number of cases in support. All of those cases, however, involved very different fact patterns. *United States of America v. Vanhorn*, 20 F.3d 104 (4<sup>th</sup> Cir. 1994) and *United States v. Becker*, 995 F.2d 779, 783 (7<sup>th</sup> Cir.1993) both involved a National Health Services Corps Scholarship awarded to students. Only *Rubinstein v. Mayor and City Council*, 295 F. Supp. 108, 112 (D.Md.1969) involved an NIH research grant. In that case, the plaintiff co-investigator argued he had a vested right to a grant and sought to enjoin NIH from transferring a grant to the principal investigator's new institution. Dr. Kumar's claim is very different. He is not asserting that he has contractual or property rights arising from the NIH grant itself. Rather, he is asserting his rights under GW's research misconduct policies.

GW argues that the decision whether to relinquish or retain an award is that of the University alone. GW Memo. at 15. While the decision may be GW's to make, it cannot abuse its discretion in making that decision or be motivated by ill-will, as Dr. Kumar alleges it was in this case. *See Paulin*, 878 F. Supp. 2d at 248. The Prestigious Local University with which Dr. Kumar was negotiating for future employment knew not only about the misconduct allegations

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<sup>16</sup> At page 14 of its Memorandum, GW states that it "received the first allegations of research misconduct from the federal government itself . . ." This statement suggests that it was the federal government initiating and making the allegations. That is not true. As GW well knows, the allegations were made by an anonymous source to the federal government (the Office of Research Integrity) which in turn forwarded the allegations to GW to determine whether an investigation was warranted. *See Amended Compl.* at ¶16.

but also GW's conclusions in its Final Investigation Report with respect to those allegations and was willing to hire Dr. Kumar and accept the grant funds which Dr. Kumar requested be transferred. Amended Compl. at ¶¶109-114 (Original Compl. at ¶¶94-99). Presumably the Prestigious Local University was well aware of what its responsibilities would have been as a grantee institution. Essentially, GW's obligations as awardee would have passed to the new institution. Under these circumstances, Dr. Kumar is entitled to the inference that GW failed to exercise reasonable discretion in reaching its decision regarding the grants which would have funded Dr. Kumar's research at a new university.

**E. Plaintiff's Allegations of Breach of Confidentiality are Not "Conjecture"**

In addition to the many other irregularities and improprieties which tainted the inquiry and investigation process, GW breached its obligation to maintain confidentiality. GW's Misconduct Policy requires inquiries and investigations to be conducted in a manner designed to provide confidentiality to the respondent. Amended Compl. at ¶20 (Original Compl. at ¶16) (citing GW's Misconduct Policy at § III(C)). Dr. Kumar alleges several instances when the confidential nature of the proceedings was breached. For example, sources with knowledge of the confidential information about the GW inquiry disclosed confidential information to GW faculty members as well as certain individuals no longer associated with GW who had no involvement in the inquiry (Amended Compl. at ¶30 (Original Compl. at ¶25)); in September 2013, during the early stages of the misconduct inquiry and investigation, GW's administration (through Dr. Chiappinelli) met with Dr. Weglicki to secure his support as a standby acting chair should a need arise to have an interim Department chair and Dr. Weglicki later informed Dr. Kumar that during those discussions Dr. Chiappinelli referred to the inquiry into Dr. Kumar's involvement in the alleged misconduct (Amended Compl. at ¶77 (Original Compl. at ¶63)); and

in March 2013 postings to RetractionWatch by an anonymous commenter revealed confidential information (Amended Compl. at ¶¶26-28 (Original Compl. at ¶¶22-24)). In its Memorandum GW focuses on just one set of allegations – those concerning the postings to RetractionWatch.com.

Dr. Kumar alleges that in March 2013 postings to the website RetractionWatch.com revealed confidential information. Amended Compl. at ¶¶26-28 (Original Compl. at ¶¶22-24).<sup>17</sup> Largely because the allegations of the breach of confidentiality arise from disclosures that were made anonymously, GW characterizes the allegations as “speculative.” GW’s Brief at 16-17. Only Dr. Kumar and those involved in the investigation were privy to the information that was released. Amended Compl. at ¶29. Dr. Kumar did not release the information to RetractionWatch.com and therefore, inferentially, either GW released the information, it assisted others in the release of the information, or it failed to take the steps necessary to safeguard and prevent the release of the information as it was required to do under the Misconduct Policy. Amended Compl. at ¶29.

That Dr. Kumar cannot at this stage of the litigation allege with any more precision or specificity the evidentiary basis supporting his allegation that GW breached its confidentiality obligations with respect to the postings on RetractionWatch.com does not warrant dismissal of this part of his claim. GW disputes Dr. Kumar’s allegations by asserting that the same information was previously disclosed on the internet. GW’s Memo. at 17-18 & nn.13-14. GW’s

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<sup>17</sup> In addition to the breaches of confidentiality alleged in Plaintiff’s original Complaint stemming from the March 2013 postings on RetractionWatch, there was an additional breach in November 2014 when GW contacted Dr. Kumar’s coauthors and Dr. Katherine Brown (Managing Editor - Development) without his knowledge and disclosed confidential and untruthful and unproven information related to the confidential proceedings and allegations. *See* Amended Compl. at ¶56).

citation to these materials go beyond what is appropriate in a motion to dismiss. The arguments that GW has made are more appropriate for the summary judgment stage later in the litigation. Moreover, those materials are not dispositive of this issue as they were dated December 2012 and Plaintiffs' allegations concern statements made by an anonymous source in March, 2013 about the then-current status of the matter. *See* Amended Compl. at ¶¶26-28 (Original Compl. at ¶¶22-24).

GW also violated its confidentiality obligations when in or about November 2014 it had communications with one of the journals (*Development*) and Dr. Kumar's co-authors about the retraction of a manuscript that had been the subject of one of the misconduct allegations. Amended Compl. at ¶56. In the retraction which GW proposed to the journal and to Dr. Kumar's co-authors, GW disclosed that the manuscript contained "a number of errors due to possible fabrication and falsification." Amended Compl. at ¶56. The references to "fabrication and falsification" came directly from the Final Investigation Report which was confidential. Amended Compl. at ¶¶55-56. In fact, each and every page of the Report was marked, in red capital letters "HIGHLY CONFIDENTIAL. DO NOT COPY, FORWARD OR SHARE WITH ANYONE." Amended Compl. at ¶55.

Each of the actions alleged by Plaintiff is a sufficient basis on which to find that GW breached its implied duty of good faith and fair dealing. The cumulative impact of all of the conduct together overwhelmingly establishes the breach. Plaintiff has satisfactorily alleged that GW breached the implied duty of good faith and fair dealing and Count II should not be dismissed.

**III. DR. KUMAR'S TORTIOUS INTERFERENCE CLAIM SHOULD NOT BE DISMISSED**

In Count III, Dr. Kumar asserts a claim for tortious interference with business relations based on GW's interference in Dr. Kumar's efforts to gain employment with another university. Dr. Kumar alleges that because GW refused to cooperate in the transfer of Dr. Kumar's grant funds to the new university, the university ended negotiations, which had reached their final stage. Amended Compl. at ¶¶136-140 (Original Compl. at ¶¶121-125). Because Dr. Kumar has sufficiently alleged the elements necessary for bringing a tortious interference claim, Count III should not be dismissed.

Under District of Columbia law, there are four elements of tortious interference with prospective business relation: (1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of the defendant; (3) intentional interference inducing a breach or termination of the relationship or expectancy; and (4) resultant damage. *Casco Marina Development, L.L.C. v. District Of Columbia Redevelopment Land Agency*, 834 A.2d 77, 83-84 (D.C. App. 2003);<sup>18</sup> *Onyeoziri v. Spivok*, 44 A.3d 279, 286 (D.C. App. 2012).<sup>19</sup> GW contends Dr. Kumar has failed to sufficiently allege "improper" intentional interference. GW asserts that Plaintiff did not allege that GW's actions were "at all improper or were intended to interfere with any business relationship" and therefore seeks the dismissal of Count III. GW's Memo. at 18. It is not a plaintiff's burden to allege that the defendant's interference was "improper." *NCRIC, Inc. v. Columbia Hosp. for Women Med. Ctr., Inc.*, 957

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<sup>18</sup> In *Casco*, the D.C. Court of Appeals reversed the trial court's order granting the defendant's motion to dismiss the tortious interference claim.

<sup>19</sup> The *Onyeoziri* Court reversed the trial court's order granting the defendant's motion for summary judgment on plaintiff's tortious interference claim.

A.2d 890, 920 (D.C. 2008) (“[i]n the District of Columbia, that issue is settled. Instead of the plaintiff bearing the burden of proving that the defendant’s conduct was wrongful, it is the defendant who bears the burden of proving that it was not”). Plaintiff does allege that GW’s “acted with evil motive, actual malice, or with intent to injure, or in willful disregard for the rights of Dr. Kumar” and that GW’s conduct “was outrageous, grossly fraudulent, or reckless toward the career and livelihood of Dr. Kumar.” Amended Compl. at ¶¶141-142 (Original Compl. at ¶¶126-27). Dr. Kumar also alleged that “GW returned the grant to NIH despite Dr. Kumar’s numerous pleas not to do so and warning of the damage it would cause to him.” Amended Compl. at ¶115 (Original Compl. at ¶¶100).

GW also asserts that the timeline in the Complaint shows GW did not act with knowledge of Dr. Kumar’s employment prospects. GW’s Memo. at 19-20. GW points to Dr. Kumar’s allegations that the Provost notified Dr. Kumar in mid-July 2014 that GW would not act on Dr. Kumar’s requests regarding the grants until Dr. Kumar and the Provost could meet to discuss the Final Investigation Report. GW’s Memo. at 19 (citing Original Compl. at ¶69). *See also* Amended Compl. at ¶83. It was not until after that, in early August, that Dr. Kumar alleges he entered into negotiations with the other university about employment. GW’s Memo. at 19 (citing Original Compl. at ¶96). *See also* Amended Compl. at ¶111. GW therefore asks the Court to conclude that “it is impossible that the University’s decision in July to put on hold submissions for grants that funded or would fund Plaintiff’s research could have been made with ‘knowledge’ of a business relationship that did not exist until a month later.” GW’s Memo. at 19-20. GW ignores a very important part of the time-line. It was not until *September* 2014, *after* GW knew about Dr. Kumar’s negotiations for future employment, that GW returned the grant to NIH

despite Dr. Kumar's pleas that it not do so because of the damage it would cause him. *See* Amended Compl. at ¶115 (Original Compl. at ¶100).

The timeline in *Onyeoziri* was similar. There, plaintiff was at risk of having his house foreclosed by the defendants (trustees on a bank's deed of trust) who had begun foreclosure proceedings. Sometime in May 2009 (the record was unclear as to whether it was mid-May or late May), defendants sent plaintiff notice of the foreclosure proceedings. 44 A.3d at 287. At the time the defendant sent the notice, there was no contract on the house. *Id.* On June 2, 2009, however, the plaintiff executed a contract to sell the house to a third-party. *Id.* Defendants learned about the contract no later than June 22, 2009. *Id.* Despite knowing about the plaintiff's sales contract, the defendants sold the property the next day to a different buyer at a foreclosure sale. *Id.* at 288. Under these facts, the Court found that the plaintiff had presented evidence of all four elements of a prima facie claim for tortious interference with business relations. *Id.* at 288. Here, Dr. Kumar has done the same. Although GW may have begun its considerations with respect to the grants in July 2014 before Dr. Kumar was engaged in his negotiations with his prospective employer in August 2014, those negotiations had progressed a long way – and GW knew it – by the time GW made its final decision in September to return the grant. These allegations sufficiently set forth a claim for tortious interference with business advantage.

GW also argues that it was justified by NIH's Grants Policy Statement to return the grant funds. GW's Memo. at 20-21 & n.17. This argument, however, is not relevant to whether Dr. Kumar has sufficiently alleged a prima facie claim for purposes of the motion to dismiss. Whether Dr. Kumar's claim can be defeated by an affirmative defense based on justification is not ripe at this time. The validity of any such defense will be dependent on development of the factual record and is not appropriate for resolution on a motion to dismiss. In fact, the

defendants in *Onyeoziri* were unsuccessful in urging a similar defense even at the summary judgment stage as a bar to plaintiff's claims. The defendants argued that they had a right to foreclose on plaintiff's property and therefore were entitled to judgment on plaintiff's tortious interference claim. *Onyeoziri*, 44 A.3d at 288. In finding that the trial court had erred in granting defendants' motion for summary judgment, the Court stated:

We conclude that the court erred in granting summary judgment because there are genuine issues of material fact with respect to the reasonableness of continuing with the foreclosure sale, and whether it was necessary to protect appellees' economic interest, in light of information that came to their attention after the notice of foreclosure, but before the foreclosure sale was consummated.

44 A.3d at 288. Many factors and all circumstances must be weighed on the issue of whether a defendant's interference is justified and for that reason defendants were denied summary judgment on the defense in *Onyeoziri*. 44 A.3d at 289-92. Here, of course, the litigation is a long way from summary judgment. Particularly at this very early stage it would be error for the Court to grant a motion to dismiss Count III based on GW's justification defense.

#### **IV. THE INVASION OF PRIVACY CLAIMS SHOULD NOT BE DISMISSED**

In Counts IV and V Dr. Kumar asserts two invasion of privacy claims – public disclosure of private facts and false light, respectively.<sup>20</sup> The claims are based on GW's improper disclosure of confidential information to Dr. Kumar's colleagues and the public and the false light claim is additionally based on false statements that Dr. Kumar has engaged in misconduct. GW first argues that both claims should be dismissed because they are barred by a one-year

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<sup>20</sup> In the original Complaint, Count IV was entitled "Invasion of Privacy" and Count V was entitled "False Light." The titles of these Counts have now been amended to more properly read "Invasion of Privacy - Public Disclosure of Private Facts" (Count IV) and "Invasion of Privacy – False Light" (Count V). The substance of the Counts has not changed.

statute of limitations. GW's Memo. at 21-22. GW's argument is based on the faulty premise that both Counts are based on the March 2013 RetractionWatch postings. GW's Memo. at 21-22. This simply is not so. Neither Count specifically refers to the RetractionWatch postings and GW has just assumed that the Counts are exclusively based on those March 2013 Postings. In fact, there are other allegations which form the basis of the Counts.<sup>21</sup> *Forras v. Rauf*, 2014 U.S. Dist. LEXIS 53960, 24 (D.D.C. Apr. 18, 2014). As those allegations concern conduct occurring in 2014, the claims are timely and neither Count should be dismissed on the basis of the statute of limitations.

GW also argues that the Counts should be dismissed because they have not been alleged sufficiently. GW's Memo. at 22-23. GW's argument, however, focuses solely on the allegations with respect to the RetractionWatch postings and therefore is inapposite. With respect to the allegations that do undergird the two counts, Dr. Kumar's allegations are sufficient. "False light" under District of Columbia law requires a showing of: "(1) publicity (2) about a false statement, representation or imputation (3) understood to be of and concerning the plaintiff, and (4) which places the plaintiff in a false light that would be offensive to a reasonable person." *Forras*, 2014 U.S. Dist. LEXIS 53960 (D.D.C. Apr. 18, 2014) (quoting *Kitt v. Capital Concerts, Inc.*, 742 A.2d 856, 859 (D.C. 1999)). "Public disclosure of private facts" requires (1) publicity, (2) absent any waiver or privilege, (3) given to private facts (4) in which the public has no legitimate concern (5) and which would be highly offensive to a reasonable person of ordinary sensibilities. *Wolf v. Regardie*, 553 A.2d 1213, 1220 (D.C. 1989). At the heart of these torts are two very public actions by GW.

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<sup>21</sup> To clear up any confusion in this regard, Counts IV and V have been amended to refer specifically to the allegations on which they are based.

The first concerned the situation involving Dr. Kumar's supervision of Ph.D. student Prakriti Mudvari. For four years, from 2010 through 2014, Dr. Kumar supervised Ms. Mudvari on her dissertation. Amended Compl. at ¶92 (Original Compl. at ¶78). On July 22, 2014, Ms. Mudvari shared the final dissertation draft of her PhD thesis with Dr. Kumar with the title page indicating, "Dissertation directed by Rakesh Kumar, PhD." Amended Compl. at ¶93 (Original Compl. at ¶79). Just a few days later GW emailed Dr. Kumar to ask if he had any edits or corrections on Ms. Mudvari's Defense Program brochure, which listed Dr. Kumar as "Director of the Candidate's Research and Mentor." Amended Compl. at ¶94 (Original Compl. at ¶80). This was followed three days later by two GW circulars on July 25, 2014 to over 110 faculty and staff members belonging to GW, Children National Organization, and NIH. Amended Compl. at ¶95 (Original Compl. at ¶81). These emails announced the upcoming public defense of Ms. Mudvari with Dr. Kumar as her mentor for research work. Amended Compl. at ¶95 (Original Compl. at ¶81). Later that very same day, after the emails had been sent, GW removed Dr. Kumar as Ms. Mudvari's supervisor. Amended Compl. at ¶96 (Original Compl. at ¶82). On July 29, 2014, GW appointed Dr. Anelia Horvath as Ms. Mudvari's thesis advisor for both her public defense presentation as well as in the final PhD document submitted to GW. Amended Compl. at ¶96 (Original Compl. at ¶82). At the public defense on August 1, 2014, GW presented Dr. Anelia Horvath as Ms. Mudvari's thesis advisor even though Dr. Horvath was only designated to be the advisor on July 29, 2014 and Ms. Mudvari's thesis contains data and materials that resulted from Dr. Kumar's work and intellectual property developed together with Ms. Mudvari. Amended Compl. at ¶¶96-97 (Original Compl. at ¶¶82-83). GW's presentation of Dr. Horvath as Ms. Mudvari's thesis advisor created a false impression that Dr. Kumar was not Ms. Mudvari's thesis adviser at any point in time. Amended Compl. at ¶96 Original Compl. at

¶¶83). Further, the final thesis submitted on August 9, 2014 incorrectly listed Dr. Anelia Horvath as Ms. Mudvari's dissertation director for the entire research period despite the fact that the work presented by Ms. Mudvari was performed under the mentorship and supervision of Dr. Kumar from 2010 until July 29, 2014. Amended Compl. at ¶97 (Original Compl. at ¶83). The public shaming of Dr. Kumar by removing him from participation in Ms. Mudvari's public defense of her dissertation, and naming Dr. Horvath in place of Dr. Kumar, was GW were humiliating, painful, and damaging to Dr. Kumar's reputation.

The second situation which supports the invasion of privacy counts is the very public removal of Dr. Kumar from his lab in late July 2014. On July 25, 2014, Dr. Kumar was summoned to a meeting at 1:30 p.m. with Dr. Chiappinelli, Dr. Ray Lucas from Faculty Affairs, and Dr. Weglicki. Amended Compl. at ¶103 (Original Compl. at ¶88). At this meeting, Dr. Chiappinelli told Dr. Kumar that GW's Provost Office, in conjunction with the Human Resources Department, was initiating immediate closure of Dr. Kumar's laboratory and office by 5:00 pm that day. Amended Compl. at ¶103 (Original Compl. at ¶88). Dr. Chiappinelli also told Dr. Kumar that he is not permitted to meet alone with his laboratory members or Department faculty prior to leaving campus. Amended Compl. at ¶104 (Original Compl. at ¶89). Dr. Chiappinelli stated that Dr. Kumar's badge would no longer be operational and demanded that Dr. Kumar leave GWU campus immediately after the meeting. Amended Compl. at ¶105 (Original Compl. at ¶90). Dr. Kumar was also told that he was not permitted to return to Ross Hall, where his office and laboratory are located, without prior permission from GW. Amended Compl. at ¶105 (Original Compl. at ¶90). Approximately an hour later, while Dr. Kumar was in a meeting in his office with his faculty and office staff including Acting Chair Dr. Weglicki and the Acting Department Manager Ms. Nichole Webster, GW security arrived and demanded that

Dr. Kumar must stop the on-going meeting. Amended Compl. at ¶105 (Original Compl. at ¶90). GW security informed Dr. Kumar that they were there to escort him out of Ross Hall. Amended Compl. at ¶105 (Original Compl. at ¶90). GW told Dr. Kumar's laboratory members to immediately leave the laboratory and also told scientists from Dr. Kumar's laboratory that the laboratory would be closing at 5:00 p.m. that day and to immediately cease and discard on-going experiments (including the cultivation of tissue cultures). Amended Compl. at ¶106 (Original Compl. at ¶91). These actions were very public and humiliating. Amended Compl. at ¶¶105, 107 (Original Compl. at ¶¶90, 92). In fact, about a week later, the Faculty of the Department authored a letter to the President Steven Knapp with copy to Provost expressing their concerns about "the humiliating escort" of Dr. Kumar on July 25, 2014, asking why Dr. Kumar was ousted from the chairmanship and removed as McCormick Chair without explanation to the department faculty, and why Dr. Kumar was barred from entering Ross Hall. Amended Compl. at ¶107 (Original Compl. at ¶92).

### **CONCLUSION**

For all the foregoing reasons, Dr. Kumar respectfully requests this Court to deny GW's Motion to Dismiss in all respects.

Dated: May 11, 2015

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of May, 2015, a copy of the foregoing Plaintiff's Opposition to Motion to Dismiss and proposed Order, was served through the Court's CM/ECF system on:

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