

2. Dr. Croce is a pioneer of research into the genetic mechanisms of cancer. He began his research into genetic anomalies in cancer at a time when little was known of the human genome. His decades-long work thereafter uncovered the early events involved in the pathogenesis of leukemias and lymphomas, and lung, nasopharyngeal, head and neck, esophageal, gastrointestinal and breast cancers. His discoveries have led

to revolutionary innovations in the development of novel and successful approaches to cancer prevention, diagnosis, monitoring and treatment, based on gene-target discovery, verification and rational drug development. For example, his discovery of the BCL2 gene and of the mechanisms of its activation have led to the discovery of a drug, ABT-199 or Venetoclax, for the treatment of chronic lymphocytic leukemia, the most common human leukemia.

3. Since 1975, Dr. Croce has received more than 64 awards for his research and discoveries in the field of genetics, including the Mott Award from the General Motors Cancer Foundation (1993), the Pezcoller Award from the American Association for Cancer Research (1999), the Clowes Memorial Award from the American Association for Cancer Research for his discoveries of the molecular mechanisms of leukemia (2006); and the InBev-Baillet Latour Fund International Health Prize (2013) and the 30th Annual Jeffrey A. Gottlieb Memorial Award for “his discovery that non-coding RNAs are involved in cancer pathogenesis” (2013). Most recently, it was announced on January 18, 2017, that Dr. Croce has been selected as the 2017 recipient of the American Association for Cancer Research Margaret Foti Award which “recognizes a true champion of cancer research, an individual who embodies the sustained commitment of Margaret Foti to the prevention and cure of cancer,” and is “given to an individual whose leadership and extraordinary achievements in cancer research or in support of cancer research have made a major impact on the field.”

4. Dr. Croce has been a Member of the National Academy of Sciences for more than twenty years. Scientists are elected by their peers to membership in the National Academy of Sciences for their outstanding contributions to research. Dr. Croce

is also a Member of the American Academy of Arts and Sciences and a Member of the National Academy of Medicine. He is also a Fellow of the Academy of the American Association for Cancer Research, a Fellow of the American Association for the Advancement of Science, and a member of The National Academy of Inventors.

5. Other highly respected scientists in Dr. Croce's field have described Dr. Croce as a distinguished scientist who has made major contributions to cancer research. One such scientist stated that "[o]ur current understanding of genetic mechanisms in cancer is based to a large extent on Croce's fundamental discoveries on chromosomal rearrangements and on the unique role of microRNAs in cancer," and "[h]is discoveries are fundamental guideposts for current and future efforts to defeat cancer."

6. Dr. Croce's research has been reported in the major research journals, including Nature, Science, Cell, Cancer Cell, Journal of Clinical Oncology, The Lancet Oncology, Journal of the National Cancer Institute and Cancer Research, and the Proceedings of the National Academy of Sciences, among many others. Dr. Croce is one of the most cited scientists in the world.

7. As is standard in the scientific research community, Dr. Croce's name will typically appear as the first or last author on those papers for which the research was performed in his lab and which were written by him or by those working under his supervision. Dr. Croce is the first or last author on more than 560 papers.

8. As is also common in the scientific research community, Dr. Croce is often listed as a co-author of scientific papers where the research did not take place in his lab or under his supervision, and he did not participate in the task of writing the paper. In many of those papers, his participation was limited to the contribution of important

reagents or genetically altered mice. For example, Dr. Croce and his colleagues developed a number of transgenic and knockout mice, during the course of their research, which were also helpful to accelerating the research being conducted by others. The sharing of transgenic and knockout mice with other cancer researchers saved those researchers considerable time and resources and greatly facilitated their work; however, in such situations, Dr. Croce would have no control over either the work being performed or the publication of any results.

David A. Sanders PhD

9. Defendant, David A. Sanders, PhD, is an Associate Professor at Purdue University in the Department of Biological Sciences. On information and belief, Dr. Sanders has been an Associate Professor at Purdue for approximately twenty years.

10. On information and belief, Dr. Sanders has been the first author on two papers and the last author on about twenty-four.

JURISDICTION AND VENUE

11. Dr. Croce is a citizen of the United States and Ohio and a resident of Franklin County, Ohio.

12. Sanders is a resident of Tippecanoe County, Indiana.

13. This court has personal jurisdiction over Defendant pursuant to Ohio Revised Code §2307.382(A)(6) and Ohio Civil Rule 4.3(A)(9) because Defendant “caus[ed] tortious injury in this state to [Plaintiff] by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state.”

14. Venue is proper in this court pursuant to Ohio Civil Rule 3(B)(7).

STATEMENT OF FACTS

15. On or about November 23, 2016, Dr. Croce received a letter from New York Times reporter James Glanz (“Glanz”). The letter was addressed to both Dr. Croce and his employer, The Ohio State University. In that letter, Mr. Glanz stated that he had questions he wanted to “put urgently” to Dr. Croce and OSU “as part of an article” Glanz was preparing.

16. Glanz’s letter included false and defamatory statements that Defendant Sanders made to Glanz about Dr. Croce. Defendant Sanders falsely stated to Glanz (and Glanz repeated in his letter to OSU) that “image fabrication, duplication and mishandling, and plagiarism in Dr. Croce’s papers is routine” and that Dr. Croce is “knowingly engaging in scientific misconduct and fraud.”

17. Dr. Croce has not engaged in “routine” “image fabrication, duplication or mishandling” or “plagiarism.” Nor has Dr. Croce “knowingly engag[ed] in scientific misconduct and fraud.”

18. Indeed, fewer than 3% of the more than 560 publications for which Dr. Croce is either the first or the last author have been the subject of any published correction. Not one of Dr. Croce’s scientific findings in any of those papers has ever been altered by any such published correction.

19. Defendant Sanders’ false and defamatory statements published to the New York Times reporter and republished by that reporter to OSU reflect injuriously on Dr. Croce’s reputation and adversely affect Dr. Croce in his profession as a scientist and leading cancer researcher. Sanders knew or should have known that those false and defamatory statements would be republished in Ohio.

20. Defendant Sanders expressly aimed his false and defamatory statements at Ohio and purposely availed himself of the privilege of causing a consequence in Ohio. Specifically, defendant Sanders knew or should have known at the time he published his false and defamatory statements about Dr. Croce that:

- a. Dr. Croce is an esteemed and distinguished professor and scientist who has been employed by OSU for thirteen years during which time he has been the John W. Wolfe Chair in Human Cancer Genetics at OSU; Professor and Chairman, Dept. of Cancer Biology and Genetics (formerly the Dept. of Molecular Virology, Immunology and Medical Genetics) at the OSU School of Medicine; the Director, Institute of Genetics at OSU; Director of Human Cancer Genetics Program at OSU; and since 2005, has held the title of Distinguished University Professor at OSU.
- b. Dr. Croce has received more than half of his approximately sixty-four awards while he has been at OSU.
- c. Dr. Croce's reputation was at the time of Sanders' false and defamatory statements and still is centered in Ohio and his professorship at OSU.
- d. Every scientific paper published during the thirteen years Dr. Croce has been at OSU and on which Dr. Croce has been listed as a coauthor has identified Dr. Croce as a professor at OSU.
- e. Tens of millions of dollars in federal and charitable research grants to OSU are the direct result of the fact that Dr. Croce is the principal investigator on the projects funded by those grants.

- f. Accordingly, any damage to Dr. Croce's reputation resulting from Sanders' defamatory statements will be felt immediately and directly by the State of Ohio and its educational institution, OSU, which was created by and exists under the statutory laws of the State of Ohio.
- g. Defendant Sanders knew or should have known all of these facts at the time that he published his false and defamatory statements about Dr. Croce. Sanders therefore knew or should have known that any damage to Dr. Croce's reputation will be felt immediately and directly by and in the State of Ohio.

21. Sanders' false and defamatory statements were intentionally directed to and impugned Dr. Croce's research activities in Ohio. Sanders knew that the brunt of the harm from his false and defamatory statements would be suffered in Ohio.

22. Defendant Sanders caused tortious injury in this state by an act outside this state committed with the purpose of injuring an Ohio resident, when he knew or reasonably expected that an Ohio resident would be injured thereby in Ohio.

COUNT I

(Defamation per se)

23. Plaintiff repeats and incorporates by reference herein each of the preceding paragraphs.

24. Sanders' false and defamatory statements that Dr. Croce "knowingly engag[es] in scientific misconduct and fraud," and that "image fabrication, duplication and mishandling, and plagiarism in Dr. Croce's papers is routine" constitute defamation per se because they tend to injure Dr. Croce in his trade, profession, and occupation.

They falsely impute to Dr. Croce dishonesty, academic corruption, fraud and deceit, in a manner injurious to the reputation and esteem of Dr. Croce professionally.

25. Because Defendant Sanders' statements constitute defamation per se, damages and actual malice are presumed to exist. The defamatory statements also proximately caused Dr. Croce damages in the form of injury to his reputation as a highly respected scientist and cancer researcher.

26. By publishing the false and defamatory statements to a New York Times reporter, Sanders knew and expected that the New York Times reporter would republish them. The New York Times reporter did in fact republished the statements to Dr. Croce's employer in Ohio.

27. The defamatory statements are false, and were false when made. Sanders knew or should have known the statements were false when made.

28. Sanders made the defamatory statements with actual malice and wrongful and willful intent to injure Dr. Croce. The statements were made with knowledge of their falsity or with reckless disregard for their truth or falsity. Sanders knew or should have known that the statements were injurious to Dr. Croce's professional reputation.

29. Sanders never contacted or communicated with or to Dr. Croce prior to publishing his false and defamatory statements about Dr. Croce to Glanz at the New York Times. Dr. Croce does not know, and had never heard of, Sanders prior to receiving the letter that Glanz sent to Dr. Croce and OSU in Ohio.

30. As a proximate result of Sanders's publication of the false and defamatory statements, Dr. Croce has suffered and will continue to suffer damages in an amount to be determined at trial, but in excess of \$25,000.

31. In making the defamatory statements, Sanders acted intentionally, maliciously, willfully and with the intent to injure Dr. Croce and/or to benefit himself.

32. Sanders is liable to Dr. Croce for punitive damages in an amount to be proven at trial.

COUNT II

(Intentional infliction of emotional distress)

33. Plaintiff repeats and incorporates by reference herein each of the preceding paragraphs.

34. Defendant's false and defamatory statements that "image fabrication, duplication and mishandling, and plagiarism in Dr. Croce's papers is routine" and that Dr. Croce is "knowingly engaging in scientific misconduct and fraud" were made intentionally, maliciously, and willfully.

35. Defendant either intended to cause Dr. Croce emotional distress, or knew or should have known that his conduct would result in serious emotional distress.

36. Defendant's conduct, as described herein, was extreme and outrageous, going beyond the bounds of decency. An average member of the community, including of the scientific community, would feel anger and resentment at Defendant's conduct, and would consider the conduct to be outrageous and intolerable.

37. As a further result of Defendant's actions, Dr. Croce has suffered serious mental anguish and personal humiliation, all of a nature that no reasonable person could or should be expected to endure.

WHEREFORE, Plaintiff Carlo M. Croce demands judgment against Defendant David A. Sanders for compensatory damages in an amount to be proven at trial, punitive damages in an amount to be proven at trial, all costs, interest, attorneys' fees and other

amounts permitted by law, and such other and further relief as this Court may deem just and proper.

/s/ Thomas W. Hill

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