

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

Kegler Brown Hill & Ritter Co., L.P.A.	:	
65 East State Street, Suite 1800	:	
Columbus, Ohio 43215,	:	
	:	
Plaintiff,	:	
	:	CASE NO.
v.	:	
	:	JUDGE
	:	
Carlo M. Croce	:	
2140 Cambridge Boulevard	:	
Upper Arlington, Ohio 43221,	:	
	:	
Defendant.	:	

COMPLAINT

Plaintiff Kegler, Brown, Hill & Ritter Co., L.P.A. (“KBHR”), for its Complaint against Defendant Carlo M. Croce (“Croce” or “Defendant”), states as follows:

PARTIES, JURISDICTION, AND VENUE

1. KBHR is a law firm operating as an Ohio legal professional association, with its principal place of business located in Franklin County, Ohio.
2. Croce is an individual residing in Franklin County, Ohio.
3. This Court has subject-matter jurisdiction over this action pursuant to Ohio Revised Code Section 2305.01 because the sum or matter in dispute exceeds the exclusive original jurisdiction of the county courts.
4. This Court has personal jurisdiction over Croce, and venue is proper in this Court, because Croce resides in Franklin County, Ohio, and Croce engaged in the activity that gives rise to KBHR’s claims in Franklin County, Ohio. Venue is also proper in this Court because KBHR’s claims for relief arose in Franklin County, Ohio.

COMMON ALLEGATIONS

5. This is an action to recover unpaid legal fees for services provided by KBHR in the course of representing Defendant Croce on a number of related legal matters.

6. Croce is a prominent cancer researcher at The Ohio State University (“OSU”).

7. Beginning in December 2016, Croce engaged KBHR to represent him and perform legal services on his behalf in connection with allegations by the New York Times (“NYT”), NYT reporter James Glanz (“Glanz”), Purdue University professor David Sanders (“Sanders”), and an anonymous “whistleblower” named Clare Francis (“Clare Francis”), among others, that Croce and his collaborators had falsified and manipulated data, and committed plagiarism, in their published scientific papers.

8. Over the course of two and a half years, KBHR represented Croce on numerous related matters, including: (a) investigating and responding to correspondence sent by the NYT and Glanz to Croce and his employer, OSU, which made defamatory statements about Croce’s scientific integrity and requested responses to a litany of questions; (b) preparing, filing and litigating two civil lawsuits, one against NYT and its personnel, and another against Sanders; and (c) other directly related matters.

9. The contractual relationship between KBHR and Croce was set forth at the outset of the representation in a written Engagement Agreement dated December 13, 2016 and signed by Croce (the “Engagement Agreement”). A true and accurate copy is attached hereto as Exhibit A.

10. In the Engagement Agreement, Croce agreed to “pay the Firm fees for the Firm’s services based on the Firm’s standard hourly rates” and agreed to “reimburse the Firm for, all costs and expenses incurred in performing services on [his] behalf.”

11. Defendant retained KBHR to advise and represent him regarding claims arising from statements and accusations made about Croce by Glanz and Sanders, and other related matters. The representation included investigating the falsity of defamatory allegations in a November 23, 2016, letter sent by NYT reporter Glanz to Croce and his employer, OSU (“Glanz’s Letter”), responding to Glanz’s Letter and later additional correspondence from Glanz, pursuing actions against Glanz, Sanders and other responsible parties, and advising and representing Croce in various other directly related matters.

12. Glanz’s Letter sought detailed responses to a number of questions relating to accusations that Croce and his collaborators committed research misconduct, including data manipulation, data falsification and plagiarism. Some of the allegations were anonymous, attributed to a “whistleblower” who has made research misconduct allegations against many scientists under the pseudonym “Clare Francis.” Other allegations were attributed to Sanders, including the allegations that “Dr. Croce and collaborators committed extensive plagiarism,” that “in [Sanders’] observation the 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.” Glanz’s Letter also sought comment on papers authored or co-authored by Croce that had been “retracted or corrected.”

13. Glanz’s Letter made sweeping attacks on Croce’s reputation, including describing claims that Croce “and the operation he oversees routinely handles (sic) experimental data improperly; routinely uses data duplicated from one experiment in figures for unrelated experiments; exercises little oversight when colleagues engage in those practices for papers on which Dr. Croce is an author; and routinely plagiarizes or allows to be plagiarized, text from papers written by other authors.”

14. Glanz's Letter also questioned Croce's association with Dr. Alfredo Fusco ("Fusco"), whom Glanz claimed "is under investigation in Italy for image fabrication." Croce and Fusco are co-authors on a number of papers, including several that have been retracted.

15. Glanz's Letter further asked questions regarding: allegations of research misconduct in 2013, which involved Croce and two collaborators, and which were resolved with OSU in an "Alternate Resolution"; Croce's service on the Scientific Advisory Board of the Council for Tobacco Research in the 1990s; and the validity of Croce's work on the FHIT gene.

16. Glanz's Letter also made clear that Sanders had sent allegations of misconduct about Croce to numerous journals that had published Croce's scientific papers.

17. Once engaged by Croce, KBHR worked during the next several months to become familiar with the facts and issues, and to prepare, on behalf of Croce, written responses to the inquiries and allegations in Glanz's Letter and further correspondence from Glanz.

18. On March 3, 2017, KBHR filed suit on Croce's behalf against Sanders, in Franklin County Court of Common Pleas (the "Sanders Lawsuit"). The Sanders Lawsuit was removed to federal court on April 20, 2017, and was assigned to Judge James L. Graham.

19. Five days later, on March 8, 2017, Glanz and NYT published an article (the "NYT Article") on its digital platform, under the headline "Years of Ethics Charges, but Star Cancer Researcher Gets a Pass." The article also appeared on the front page of NYT's print edition, with the headline "Years of Questions, but Researcher Gets a Pass."

20. The NYT Article was damaging to Croce's reputation. Based on the reader comments, many readers of the NYT Article concluded from it that Croce was guilty of research misconduct, but got away with it because of the amount of grant money Croce attracts.

21. Almost immediately after publication of the NYT Article, OSU announced that it had initiated an independent, external review (“Review”) of the University’s practices for handling allegations of research misconduct. The Review included evaluating whether OSU followed its policies and legal requirements in addressing past research misconduct allegations concerning Croce and his lab. OSU hired the law firm Ropes & Gray to conduct the Review.

22. Croce asked KBHR to advise and represent him in connection with the Review, which Plaintiff did, subject to the terms and conditions set forth in the Engagement Letter.

23. On May 10, 2017, KBHR filed suit on behalf of Croce in the United States District Court for the Southern District of Ohio against the NYT (the “NYT Lawsuit”). Glanz and other individuals associated with the NYT and the NYT Article were also named as Defendants (together with the NYT, the “NYT Defendants”).

24. On May 17, 2017, KBHR and counsel for Sanders held the conference required by Federal Rule of Civil Procedure 26(f) in the previously-filed Sanders Lawsuit. Two days later, on May 19, 2017, KBHR served written discovery requests on Sanders, and sent a copy of those requests to Croce.

25. On May 31, 2017, KBHR filed an Amended Complaint against Sanders, incorporating additional allegations relating to the NYT Article and other events that took place after the filing of the original complaint.

26. On July 10, 2017, the NYT Defendants responded to the NYT Lawsuit by filing a motion to dismiss the complaint.

27. On or about July 20, 2017, KBHR and counsel for the NYT Defendants held the Rule 26(f) conference in the NYT Lawsuit. Several days later, on July 26, 2017, KBHR

propounded discovery requests, including interrogatories and document requests, on all of the NYT Defendants.

28. On August 30, 2017, KBHR filed an opposition to the NYT Defendants' motion to dismiss, and the NYT Defendants filed their reply brief on October 9, 2017.

29. Meanwhile, paper discovery was taking place. Sanders served discovery requests upon Croce on August 29, 2017, and the NYT Defendants propounded discovery requests upon Croce on November 1, 2017. KBHR turned to responding to discovery while the motion to dismiss remained pending, serving responses on Sanders in late October and early November of 2017.

30. On November 14, 2017, Judge Graham set an oral argument on the NYT Defendants' motion to dismiss, to be held on December 11, 2017.

31. At the December 11, 2017, hearing on the NYT Defendants' motion to dismiss, Judge Graham heard arguments and requested that KBHR file an amended complaint to more expressly plead a claim based on defamation *per quod*, even though (as Judge Graham later concluded) the defamation at issue was defamation *per se*.

32. On January 15, 2018, KBHR filed on Croce's behalf a First Amended Complaint in the NYT Lawsuit, asserting a claim of defamation *per quod*, in addition to defamation *per se*, and adding further details to the factual allegations of defamation.

33. On January 25, 2018, KBHR propounded a second set of discovery requests upon the NYT Defendants on Croce's behalf, and served responses to the NYT Defendants' discovery requests on February 2, 2018.

34. On February 14, 2018, the NYT Defendants filed a motion to dismiss the First Amended Complaint, to which KBHR on Croce's behalf responded on March 16, 2018.

35. On April 10, 2018, KBHR, on Croce's behalf and with his knowledge and consent, and the NYT Defendants filed a joint motion to modify the case schedule, which included a temporary stay of discovery.

36. Throughout KBHR's representation of Croce, KBHR and Croce had conversations and email communications about the costs of litigation, and about the increasing amounts of unpaid fees Croce owed to KBHR. Croce repeatedly assured KBHR that he had substantial resources and that he would make payment in full of all legal fees, costs and expenses incurred on his behalf. As the frequency of communications regarding unpaid legal fees increased, Croce repeatedly represented that he would pay those fees, costs, and expenses, stating that he was selling some valuable artwork to fund the representation.

37. In reliance on Croce's repeated representations and assurances, KBHR continued to perform work on Croce's behalf.

38. By June 5, 2018, the outstanding and unpaid fees and expenses due to KBHR from Croce totaled \$887,451.55. Unwilling to continue to incur greater and greater amounts without payment, KBHR notified Croce that he would need to either pay the balance in full or execute a promissory note if he wanted KBHR to continue the representation.

39. On June 14, 2018, Croce represented to KBHR that Croce would pay the balance in full the following week. During this time, KBHR had a duty to, and continued to, work on Croce's behalf.

40. On June 22, 2018, Croce represented to KBHR that the payment would take place the week of July 1, 2018. KBHR agreed not to file a motion to withdraw if Croce paid in full by July 3, 2018.

41. On June 28, 2018, Croce reiterated in an email that the wire of \$887,451.55 would “be done on Monday,” meaning July 2, 2018.

42. No wired funds were sent. On Friday, July 6, 2018, Croce represented to KBHR that the outstanding funds would be wired on Tuesday, July 10, 2018.

43. On July 13, 2018, KBHR notified Croce that, “for all the reasons we have talked about for many months regarding the nonpayment of our fees, we are forced to file Motions to Withdraw in both cases.” KBHR indicated the withdrawal would also apply to the other facets of the representation. KBHR attached the Motions to Withdraw to its July 13, 2018 communication, and it filed the motions with the Court that evening.

44. That same day, Croce responded, “OK. You withdraw from being my counsel. I will get a different counsel, but of course will pay you.” In a second email on July 13, 2018, Croce stated: “[Y]ou have done a remarkable job and I thank you. It has been a pleasure to work with you.”

45. While the Motions to Withdraw remained pending, KBHR continued to perform work on Croce’s behalf, and Croce continued to make representations that he would make full payment of the outstanding fees.

46. On August 2, 2018, Croce stated that he “spoke with Sotheby’s ... about getting a credit line supported by my [art] collection” and that the credit line “would resolve all the problems.”

47. On August 5, 2018, Croce stated in an email “you know you will be paid.”

48. Nevertheless, payment was not forthcoming.

49. On August 13, 2018, the Court granted the Motions to Withdraw.

50. After KBHR's withdrawal, Croce obtained new counsel to represent him in all matters. KBHR cooperated with the new counsel to transition the file.

51. The unpaid balance due for the legal services performed by KBHR for Dr. Croce for the invoices issued in the months of July 2017 through July 2018 is \$923,445.51. These legal services and expenses are itemized on invoices that were submitted to Dr. Croce on a monthly basis throughout the engagement.

52. KBHR has made repeated demands upon Croce to pay the outstanding balance due KBHR. Croce has ignored these demands.

COUNT I
BREACH OF CONTRACT

53. KBHR incorporates by reference its allegations in Paragraphs 1 through 52 as if fully rewritten.

54. KBHR and Croce entered into a binding contract, originally set forth in the Engagement Letter, under which KBHR agreed to perform legal services for Croce, and Croce agreed to pay KBHR for those legal services and any expenses incurred by KBHR on Croce's behalf.

55. KBHR fully performed its obligations under the parties' contract.

56. Croce breached his contract with KBHR by failing to fully pay KBHR for the legal services it performed on Croce's behalf.

57. KBHR has been damaged as a direct and proximate result of Croce's breach of contract in the amount of \$923,445.51.

COUNT II
ACCOUNT

58. KBHR incorporates by reference its allegations in Paragraphs 1 through 57 as if fully rewritten.

59. Croce had an open account with KBHR for the legal services it performed and the expenses it incurred on Croce's behalf. A true and accurate copy of that account is attached hereto as Exhibit B.

60. KBHR provided the legal services and incurred the expenses requested by Croce as documented in the invoices summarized on Exhibit B, but Croce has refused and failed to pay KBHR on his open account.

61. As a result, Croce is in breach of the open account.

62. Because of Croce's breach of the open account, Croce owes KBHR the sum of \$923,445.51.

COUNT III
PROMISSORY ESTOPPEL/UNJUST ENRICHMENT/QUANTUM MERUIT

63. KBHR incorporates by reference its allegations in Paragraphs 1 through 62 as if fully rewritten.

64. KBHR performed legal services for Croce and advanced costs and expenses on Croce's behalf. KBHR did so in reasonable and foreseeable reliance on Croce's clear, unambiguous and repeated promises to pay and reimburse KBHR for those legal services and costs and expenses.

65. Croce knew that KBHR was performing legal services on his behalf and advancing costs and expenses on his behalf — all at Croce's express request and in reliance on Croce's promises of payment — and Croce knowingly accepted the benefits of those services and expenses.

66. Croce has nevertheless wrongfully retained the benefit and value of KBHR's legal services and advancement of expenses without remitting full payment to Plaintiff for same.

67. As a direct and proximate result of Croce's conduct, Croce has been unjustly enriched and KBHR has been damaged in the amount of \$923,445.51.

WHEREFORE, Plaintiff Kegler, Brown, Hill & Ritter Co., L.P.A. respectfully requests judgment against Defendants as follows:

- A. Judgment for KBHR in the amount of \$923,445.51;
- B. Pre-judgment and post judgment interest, to the extent permitted by law;
- C. KBHR's court costs; and
- D. Such other relief which this Court may deem appropriate.

Respectfully submitted,

/s/ Rex H. Elliott

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Rex H. Elliott (0054054)

C. Benjamin Cooper (0093103)

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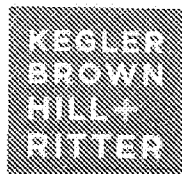
rexe@cooperelliott.com

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Attorneys for Plaintiff

Kegler Brown Hill & Ritter Co., L.P.A.

EXHIBIT A



Kegler Brown Hill & Ritter Co. LPA
 43 East State Street, Suite 1800
 Columbus, OH 43215
 (614) 462-6400
 www.keglerbrown.com

Engagement Agreement

This is an Engagement Agreement entered into effective as of December 13, 2016, between Kegler, Brown, Hill & Ritter ("Firm") and Carlo M. Croce, M.D. ("Client").

1. The Firm's Services.

Client retains Firm to advise and represent Client regarding claims arising from statements and accusations made about Client (hereinafter "Statements") by James Glanz (a New York Times reporter) and David A. Sanders (an associate professor at Purdue University), which Statements Client believes are false and defamatory. The Firm's representation of Client will include investigating the falsity of those Statements and pursuing the appropriate course of action against the responsible parties who may be liable for their publication, which course of action will, if appropriate and authorized by Client, include filing and prosecuting a lawsuit on behalf of Client in the United States District Court for the Southern District of Ohio against the appropriate defendants, which may include The New York Times, James Glanz, David A. Sanders, and, if the facts and the law merit it, Purdue University.

Client understands all of the following: (a) because this is a potential litigation matter, there is no certainty as to its outcome and the Firm has not and cannot make any promises, representations, assurances, or guarantees concerning about the outcome; (b) before filing any lawsuit, an initial pre-litigation investigation must be undertaken and completed to gather evidence necessary to support making a good faith claim in any lawsuit that the Statements were false and defamatory; (c) that pre-litigation investigation will require the hiring of independent experts to advise the Firm on the relevant science and other technical issues necessary to understand Statements and their falsity; and (d) there is no assurance, and the Firm makes no representations, that damages will be recoverable resulting from any claim asserted in any lawsuit or, if they are recoverable, what the amount of those damages could be.

2. Fees and Expenses.

Client will pay the Firm fees for the Firm's services based on the Firm's standard hourly rates. The legal team working on the case will include attorney Thomas W. Hill as lead counsel, attorney Timothy A. Kelley, and paralegal Lou Anne Conrad. Their current hourly rates are:

Thomas W. Hill	\$485 per hour
Lori Fuhrer	\$370 per hours
Lou Anne Conrad	\$175 per hour (paralegal)

Although these will be the primary members of the legal team working on the case, the Firm may utilize other attorneys or paralegals to assist in the engagement as Mr. Hill deems appropriate and their time will be charged at their then standard hourly rates. The Firm's hourly rates are subject



to review and change on a semi-annual basis, and any changes will be reflected on our monthly invoices.

In addition to its fees, Client will pay for, or reimburse the Firm for, all costs and expenses incurred in performing services on Client's behalf. Those costs and expenses include but are not limited to photocopying, messenger and delivery service, computerized research, travel (including mileage, parking, air fare, lodging, meals and ground transportation), long distance telephone, facsimile, court costs and filing fees. Unless the Firm agrees to a special arrangement, fees and expenses of others than the Firm (such as expert witnesses and court reporters) will not be paid by the Firm and will be the responsibility of, and billed directly to, the Clients.

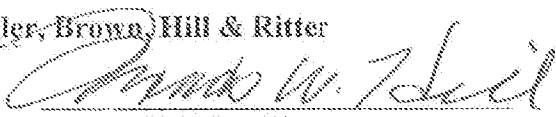
3. Billing and Payment.

The Firm will render monthly invoices for fees and expenses to the Client at the address stated below. All monthly invoices are due and payable within thirty (30) days after Client has received them. The billing address will, unless the Firm is notified otherwise in writing be:

Croce, Carlo
1080 Biomedical Research Tower
460 W. 12th Ave.
COLUMBUS, OH 43210

Kepler, Brown, Hill & Ritter

By:


Thomas W. Hill, Director


Carlo M. Croce, M.D.

EXHIBIT B



Kegler Brown Hill + Ritter Co. LPA
 65 East State Street, Suite 1800
 Columbus, OH 43215
 (614) 462-5400
 www.keglerbrown.com

Tax ID# 31-1037466

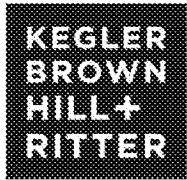
Carlo M. Croce
 2140 Cambridge Boulevard
 Columbus, OH 43221

Payor # 109404 Croce, M.D., Carlo M.
 Client # 109404 Croce, M.D., Carlo M.
 Matter # 000002 Libel Action

For your convenience, we are sending you a reminder statement of outstanding balances **over 30 days past due**. If you have made payment, please disregard this notice. Otherwise, contact Client Services at (614) 462-5439 to arrange for payment.

STATEMENT OF ACCOUNT AS OF JUNE 4, 2020

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Amount Billed</u>	<u>Credits Applied</u>	<u>Balance Due</u>	<u>Date Paid</u>
633116	07/28/17	66,807.13	55,984.12	10,823.01	07/27/18
634337	08/29/17	80,295.97	3,175.97	77,120.00	07/27/18
635616	09/27/17	147,036.54	3,287.79	143,748.75	07/27/18
636983	10/31/17	22,746.38	6,717.63	16,028.75	07/27/18
638116	11/22/17	41,657.18	1,615.93	40,041.25	07/27/18
639173	12/19/17	26,627.18	4,180.93	22,446.25	07/27/18
640572	01/26/18	99,098.35	5,532.10	93,566.25	07/27/18
641906	02/28/18	110,616.69	3,301.69	107,315.00	07/27/18
643171	03/28/18	95,352.67	3,658.92	91,693.75	07/27/18



Kegler Brown Hill + Ritter Co. LPA
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Tax ID# 31-1037466

644315	04/25/18	147,826.53	3,739.03	144,087.50	07/27/18
645793	06/04/18	149,386.93	7,473.18	141,913.75	07/27/18
647678	07/12/18	35,993.96	1,332.71	34,661.25	07/27/18
TOTALS:		\$1,023,445.51	\$100,000.00	\$923,445.51	

31-60 DAYS	61-90 DAYS	91+ DAYS	BALANCE DUE
\$0.00	\$0.00	\$923,445.51	\$923,445.51

Note: Payments received after the statement date will be reflected on your next statement.