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**Via ECF**

The Honorable Frederic Block  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: *Dr. Stacy Blain v. State University of New York Downstate Medical Center, et al.*, Case No. 22-cv-03022**

Dear Judge Block,

We are writing to alert the Court to an imminent and unanticipated harm to Dr. Stacy Blain resulting from SUNY's actions. As a result of SUNY's biased investigation and punitive attack on Dr. Blain, three days ago, the journal of *Molecular and Cellular Biology* ("MCB") published "Expressions of Concern" for Dr. Blain's articles. MCB did this, over our objection, based only on SUNY's request for a full retraction of Dr. Blain's articles. An "Expression of Concern" is a precursor to a full retraction. Although the Court rightly expected that the status quo would be maintained pending the Court's decision, and was quite clear on that point, SUNY's actions have continued to harm Dr. Blain. In order to maintain the status quo, we urged SUNY to contact MCB to request that its retraction request be held in abeyance until the Court resolved Dr. Blain's request for injunctive relief, and we did so again today. SUNY refused.

To make matters much worse, we have now been advised that *Retraction Watch*, an online publication with many readers in the academic and scientific communities, will publish an article dragging Dr. Blain's name through the mud, and causing Dr. Blain's reputation further irreparable harm.

As the Court is aware, Dr. Blain is seeking injunctive relief to salvage what remains of her career and professional reputation, including, critically,

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publications in academic journal articles.<sup>1</sup> Instead of seeking corrections, as the investigation committee initially recommended, SUNY leadership sought to cause maximum damage by instigating MCB to fully retract Dr. Blain's articles, which Dr. Andrew Koff—a preeminent molecular cell biologist and a professor at Sloan Kettering and Weil Cornell Medical School—called flatly “[ir]responsible” during his testimony at the PI hearing. Hearing Tr. 63:15-16. MCB tethered its decision to issue the Expressions of Concern specifically on SUNY's flawed and biased investigation, which it cited in the publication itself. *See* Attachment 1 (MCB was “issuing this Expression of Concern,” “that the above-mentioned paper was investigated by SUNY Downstate,” “that potential image duplications were found,” and that the “Expression of Concern is issued pending the outcome of ongoing litigation.”). We are not aware whether—in direct defiance of the Court's directive—SUNY took additional action to prompt MCB's action, but certainly the Court's directive to maintain the status quo has been breached.

Yesterday, on August 24, 2022, *Retraction Watch* asked Dr. Blain for comment on the Expressions of Concern for inclusion in *Retraction Watch's* forthcoming article. Dr. Blain expects, as is *Retraction Watch's* usual practice, that SUNY received or will receive the same request.

The harm to Dr. Blain's reputation is exactly as Dr. Blain foreshadowed for the Court. As Paul Thaler testified at the hearing, “[a]s soon as [a] retraction happens, [*Retraction Watch*] [is] going to pick it up [and] put a big picture of the respondent at the top of [the] page with a headline underneath that essentially says, Here's a bad scientist.” Hearing Tr. 159:17-20. The fallout will likely not be limited to *Retraction Watch*.

This unfortunate turn of events is just what this Court intended to prevent. Just as SUNY sought to front-run ORI by killing Dr. Blain's career before ORI addressed SUNY's allegation, SUNY has effectively front-run the Court by refusing to take minimal action to maintain the status quo, as the Court instructed. At the Hearing, the Court stated: “the status of Dr. Blain is what I'm concerned about.” Hearing Tr. 535:23-24. The Court ordered that “[SUNY is] not going to tak[e] any more adverse action against her, everything will be status quo,” Hearing Tr. 536:21-22, including “[n]o further action about the journal.” Hearing Tr. 538:8-9. The Court stated that if “[s]omething urgent comes up, then you come back and talk to me.” Hearing Tr. 538:15-16.

For these reasons, and in order to maintain the status quo during the Court's consideration of the underlying issues, we respectfully request that the Court admonish SUNY, by endorsing this letter below, to take two steps: (a) contact MCB and direct that its retraction request be held in abeyance pending the Court's

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<sup>1</sup> *See* Memorandum of Law in Further Support of Motion for Preliminary Injunction (“Memorandum of Law”) at 40.

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decision, and (b) refrain from making any disparaging or harmful comment to Retraction Watch.

Respectfully submitted,

*/s/ Faith Gay*

Faith Gay

**So Ordered.**

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**The Honorable Frederic Block**

Cc: Clement Colucci (via ECF)

# **Attachment 1**



# Expression of Concern for Ray et al., “p27<sup>Kip1</sup> Inhibits Cyclin D–Cyclin-Dependent Kinase 4 by Two Independent Modes”

American Society for Microbiology

Washington, DC, USA

The American Society for Microbiology (ASM) and *Molecular and Cellular Biology* (MCB) are issuing this Expression of Concern regarding the following publication:

Ray A, James MK, Larochelle S, Fisher RP, Blain SW. 2009. p27<sup>Kip1</sup> inhibits cyclin D–cyclin-dependent kinase 4 by two independent modes. *Mol Cell Biol* 29(4):986–999. <https://doi.org/10.1128/MCB.00898-08>.

*Molecular and Cellular Biology* was notified that the above-mentioned paper was investigated by the SUNY Downstate Health Sciences University and that potential image duplications were found in Fig. 3A.

This Expression of Concern is issued pending the outcome of ongoing litigation between SUNY Downstate Health Sciences University and the corresponding author of the paper, Stacy Blain, in the U.S. District Court of the Eastern District of New York.

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# Expression of Concern for Patel et al., “Brk/Protein Tyrosine Kinase 6 Phosphorylates p27<sup>KIP1</sup>, Regulating the Activity of Cyclin D–Cyclin-Dependent Kinase 4”

American Society for Microbiology

Washington, DC, USA

The American Society for Microbiology (ASM) and *Molecular and Cellular Biology* (MCB) are issuing this Expression of Concern regarding the following publication:

Patel P, Asbach B, Shteyn E, Gomez C, Coltoff A, Bhuyan S, Tyner AL, Wagner R, Blain SW. 2015. Brk/protein tyrosine kinase 6 phosphorylates p27<sup>KIP1</sup>, regulating the activity of cyclin D–cyclin-dependent kinase 4. *Mol Cell Biol* 35(9):1506–1522. <https://doi.org/10.1128/MCB.01206-14>.

*Molecular and Cellular Biology* was notified that the above-mentioned paper was investigated by the SUNY Downstate Health Sciences University and that potential image duplications were found in Fig. 2C, H, and I.

This Expression of Concern is issued pending the outcome of ongoing litigation between SUNY Downstate Health Sciences University and the corresponding author of the paper, Stacy Blain, in the United States District Court of the Eastern District of New York.



# Expression of Concern for James et al., “Differential Modification of p27<sup>Kip1</sup> Controls Its Cyclin D-cdk4 Inhibitory Activity”

American Society for Microbiology

Washington, DC, USA

The American Society for Microbiology (ASM) and *Molecular and Cellular Biology* (MCB) are issuing this Expression of Concern regarding the following publication:

James MK, Ray A, Leznova D, Blain SW. 2008. Differential modification of p27<sup>Kip1</sup> controls its cyclin D-cdk4 inhibitory activity. *Mol Cell Biol* 28:498–510. <https://doi.org/10.1128/MCB.02171-06>.

*Molecular and Cellular Biology* was notified that the above-mentioned paper was investigated by the SUNY Downstate Health Sciences University and that potential image duplications were found in Fig. 3A and 6B.

This Expression of Concern is issued pending the outcome of ongoing litigation between SUNY Downstate Health Sciences University and the corresponding author of the paper, Stacy Blain, in the United States. District Court of the Eastern District of New York.