

VIA Email

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Raphael Levy, PhD
Professor of Physics
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UFR SMBH
1 rue de Chablis
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May 15, 2024

Re: CHAD MIRKIN/CEASE AND DESIST DEMAND

Dear Dr. Levy:

Please be advised that this firm represents Dr. Chad Mirkin in conjunction with certain communications you recently disseminated to Proceedings of the National Academy of Sciences (“PNAS”) which falsely disparage him and charge him with having a lack of integrity in his profession as a research scientist. We are putting you on notice that in the event you do not retract the false statements made to PNAS and cease to disseminate further false statements of and concerning Dr. Mirkin to any third parties or the public generally, Dr. Mirkin will take all appropriate action to obtain relief against you for resulting injuries to his good name and reputation.

Your recent attack on Dr. Mirkin’s professional reputation concerns a February 12, 2024 article co-written by our client and published in PNAS. You contacted PNAS and stated: “The published article [authored by Mirkin and others] includes uncited data that is misleading due to its small number of participants and the fact that the clinical trial (NCT03684785) was discontinued due of (*sic.*) a fraud case which found Mirkin’s previous company (Exicure) liable.” This is patently false and defamatory.

Notwithstanding its relative brevity, the falsity of your statement and its implications are brazen and multifaceted.

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First, the clinical trial NCT03684785 related to the use of cavrotolimod and it was not discontinued due to a finding of fraud. In fact, there has been never any allegation of fraud in connection with cavrotolimod. Indeed, Exicure and Bluejay Therapeutics recently entered into a patent license agreement for Bluejay to develop cavrotolimod for potential treatment for hepatitis.

Second, Exicure has not been found liable of fraud. Although Exicure is a defendant in a class action case involving a different Exicure product — unrelated to the “uncited data” to which you refer — there has been no adjudication that Exicure committed fraud and no finding of liability against Exicure. Your assertion to the contrary is defamatory.

Third, contrary to your statements, Exicure is not “*Mirkin’s* company.” As you know, Exicure is a public company with numerous shareholders. Mirkin has never been an employee nor has he had an affiliation with Exicure, other than as a shareholder, for the past 3 years.

Notwithstanding that Dr. Mirkin is not and has never been a defendant in the Exicure case, your false statement implies that he is responsible for the fraudulent conduct alleged in that case. Contrary to your false statement, Dr. Mirkin is not alleged to have made, participated in, or directed, any claimed false representation at issue in the Exicure case. Your statement however falsely suggests that as the result of the conduct of “*Mirkin’s* former company,” a paper co-authored by Dr. Mirkin in 2024 is “misleading.”

Your desire to cause injury to Mirkin’s professional reputation through fabricating and disseminating false statements will not be tolerated further. We are aware, as are your fellow scientists and professional peers, of a campaign you have been waging against Dr. Mirkin for more than ten years, through the repeated publication of false information. Indeed, a recipient of your disparaging blog articles demeaning Dr. Mirkin commented in 2022, “I have no horse in this game, but you are a well-known instigator/antagonist of Chad Mirkin, including a public confrontation with him at a conference. I don’t know your history with him nor do I care, but you have a clear axe to grind against him and that should be taken into account in reading this information.”
([redit.com/r/chemistry/comments/rgbzem/allegations_of_research_improprieties_at/](https://www.reddit.com/r/chemistry/comments/rgbzem/allegations_of_research_improprieties_at/).)
Several of these peers will be called as witnesses against you in the event suit is filed against you.

We are also aware that your affiliation with the University of Liverpool, England terminated in approximately 2018, and prior to that you were investigated by the Research Ethics and Integrity Office at the University of Liverpool for research misconduct, in large part, as a consequence of your campaign disseminating false, disparaging statements concerning similarly situated fellow scientists for apparent personal gain, through your blog. We are likewise aware that in recent years, your peers at the Sorbonne similarly complained about your disparaging statements concerning them and their work. To the extent that any continuing statements are disseminated by you concerning Dr. Mirkin under the auspices of your current employer, the University will be named as a co-defendant in any suit that is filed against you. We will not

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passively allow Dr. Mirkin to be your blog's next target without material and significant consequence to you.

We are also aware that since at least 2018, Dr. Mirkin repeatedly invited you to visit his lab at Northwestern University in Illinois so you could better understand how to use and understand NanoFlares and spherical-nucleic-acid technology. Although you disregarded his invitations, you continued to falsely disparage his research on these subjects in a paper you submitted to Nature Biomedical Engineering that same year. Your paper not only was rejected for publication, it was found to be unsupported by available evidence. You engaged in similar conduct in 2022. Your ongoing attempts to interfere with and disparage Dr. Mirkin's writings through fabrication and misrepresentation must immediately and permanently cease.

We are also aware of your attempt to defame Mirkin by altering Wikipedia sites with false information pertaining to Mirkin, his research, and companies that he founded.

In the United States, false statements which falsely impute unfitness or a want of integrity in the performing of one's professional duties or which adversely reflect on one's ability or ethics in their business, trade, or profession, constitute defamation *per se*. *See, Tuite v. Corbitt*, 224 Ill. 2d 490, 501, 514-15 (Ill. 2007) (statements which falsely implied that attorney was involved in judicial corruption constituted defamation *per se* and, in context, were not reasonably capable of innocent constructions notwithstanding that they were stated metaphorically). *Accord, Dobias v. Oak Park and River Forest High School Dist.* 200, 2016 IL App. (1st) 152205 ¶¶11, 69 (statements that plaintiff high school coach engaged in inappropriate conduct with students imputed a lack of integrity in plaintiff's profession and supported cause of action for defamation *per se*). *See also, Mittelman v. Witous*, 135 Ill. 2d 220, 247-49 (Ill. 1989) (attorney stated claims for defamation *per se* for false comments critical of his handling of lawsuit since they imputed a lack of integrity as a lawyer).

Because your false statements disparage Dr. Mirkin in his professional capacity as a research scientist, they will be found to support actions for defamation *per se* and false light invasion of privacy in a lawsuit against you. In such cases, compensatory damages arising from the publication of your statements are presumed and punitive damages are available for defamatory statements published with actual malice. Both can be awarded to our client without any evidence of out-of-pocket loss. Judgments entered on such awards will be satisfied from your personal assets. Should it be necessary for our client to file litigation to remedy the false statements you cause to be disseminated, we will seek all relief appropriate under the law against you and any parties participating in their publication, including compensatory and punitive damages. You are hereby directed to Cease and Desist from publishing any further false statements of and concerning Dr. Mirkin to any third persons.

In addition, we demand that a litigation hold be placed upon on all documents (whether in hard copy or in electronic form) in your possession or control which relate to Dr. Mirkin, including but not limited to:

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- all documents, including but not limited to emails, text messages, articles, blog posts, social media posts, and tangible documents which refer or relate to Dr. Mirkin within the past 5 (five) years;
- all communications between you and any third party within the past 5 (five) years relating or referring to Dr. Mirkin;

Each of these categories will be the subject of document production requests in the event we proceed with litigation. We demand that all such materials be preserved and not altered, transferred or discarded. If you fail to preserve the records, you may be sanctioned in the lawsuit.

Your prompt attention to this matter is required.

Very truly yours,

Phillip J. Zisook
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