

CAUSE NO. 2025-25681

DR. SONIA MELO, M.D.,

Plaintiff,

vs.

**UNIVERSITY OF TEXAS
MD ANDERSON CANCER
CENTER,**

Defendant.

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IN THE DISTRICT OF

HARRIS COUNTY, TEXAS

61st JUDICIAL DISTRICT

**PLAINTIFF's AMENDED PETITION FOR DECLARATORY JUDGMENT,
VIOLATION OF PROCEDURAL DUE PROCESS, AND BREACH OF CONTRACT**

Plaintiff, Dr. Sonia Melo, M.D., files this Original Petition, Jury Demand, and Application for Declaratory Relief, and against Defendant, University of Texas MD Anderson Cancer Center ("MD Anderson"), and alleges as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff pleads that it is seeking monetary relief of \$250,000 or less and non-monetary relief. Tex. R. Civ. P. 47(c)(2).
2. Plaintiff intends to conduct discovery under Level 2 of the Texas Rule of Civil Procedure 190.3.

PARTIES

3. Plaintiff Dr. Sonia Melo, M.D., is an individual residing in Maia, Portugal.
4. The University of Texas M. D. Anderson Cancer Center is a member institution of The University of Texas System, having a location at 1515 Holcombe Blvd, Houston, Texas 77030. See, e.g., Tex. Educ. Code Ann. § 65.01, § 65.02, § 65.11.

JURISDICTION & VENUE

5. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

6. Venue is proper in Harris County, Texas, in that, among other things, all or a substantial part of the events or omissions giving rise to the claims occurred in Harris County, Texas. Tex. Civ. Prac. & Rem. Code § 15.011.

BACKGROUND FACTS

7. Dr. Melo is internationally respected medical scientist. She holds PhD in Biomedicine, was a Postdoctoral Fellow at Harvard Medical School and in the Cancer Biology Department at MD Anderson Cancer Center. She has received numerous academic and professional awards. Additionally, Dr. Melo has acted as reviewer for dozens of international medical journals and published numerous articles.

8. In 2012, Dr. Melo began as a Postdoctoral Fellow at MD Anderson.

9. In 2014, Dr. Melo published an article in the medical journal *Cancer Cell*, which was based on research and work she conducted while at MD Anderson ("Article").

10. Dr. Melo's research while at MD Anderson also resulted in three International Patents, which she co-owns ("Patents").

11. In September 2014, Dr. Melo left MD Anderson to pursue new employment in her home country of Portugal.

MD Anderson's Conducts Years of Investigation with No Notice Provided to Dr. Melo

12. Unbeknownst to Dr. Melo, in January 2019, MD Anderson convened an inquiry committee ("Inquiry Committee") to conduct an inquiry of allegations concerning Dr. Melo's Article and Patents.

13. Pursuant to Section 3.4(B) of MD Anderson's Research Misconduct Policy ("Policy"), if it is determined that allegations of research misconduct warrant an inquiry MD Anderson "will send a written notice of such Allegations to the attention of: Any researcher(s) affected by the Allegation(s)." Exhibit A, ¶ 3.4(B), MD Anderson's Research Misconduct Policy.

14. However, MD Anderson failed to provide Dr. Melo notice of the allegations related to her Article or Patents.

15. MD Anderson also failed to provide Dr. Melo notice of the Inquiry Committee's decision to conduct an inquiry into the allegations of her Article or Patents.

16. Pursuant to Section 4.7(D) of the Policy, "[U]pon completion of the Inquiry, the institution shall provide notice to the Respondent. Such notice shall include: A copy of the Initial Inquiry Report." See Ex. A, ¶ 4.7(D).

17. Pursuant to Section 4.9 of the Policy, the Initial Inquiry Report shall include, "the name and position of the Respondent; a description of the Allegations of Research Misconduct; The PHS or other support, including, for example, grant numbers, grant applications, contracts, and publications listing PHS support; if an investigation is warranted, the basis for recommending that the alleged actions warrant an Investigation; and any comments on the report provided by the Respondent or the Complainant." See Ex. A, ¶ 4.9.

18. In addition to not providing Dr. Melo notice of the allegations and notice of the Inquiry Committee's decision to conduct an inquiry into the allegations, MD Anderson failed to provide Dr. Melo the Initial Inquiry Report, as required by their Policy.

19. Pursuant to Section 5.1 of the Policy, "[U]nder no circumstance may an Investigation begin, until the institution has provided the Respondent with written notification of the Allegation(s) of Research Misconduct." See Ex. A ¶ 5.1. Additionally, the "Investigation must

begin within thirty (30) days from the date the Inquiry Committee determine that an Investigation is warranted.” *Id.*

20. In December 2019, MD Anderson empaneled an investigation committee (“Investigation Committee”) of three MD Anderson faculty members. This is well beyond the thirty days provided to begin the Investigation as required by the Policy.

21. Almost two years after initially empaneling the Investigation Committee, MD Anderson allegedly determined that scientists not affiliated with MD Anderson must be used along with an external acting Research Integrity Officer. During the initial appointment of the Investigation Committee, its first two years of investigations, and the re-appointment of non-MD Anderson scientists to serve on the Investigation Committee, Dr. Melo was still provided no notice of the proceedings related to her Article or Patents.

MD Anderson’s Investigation Provides Dr. Melo Notice Over 4 Years After it Began

22. Over four years after MD Anderson convened the Inquiry Committee to conduct an inquiry of allegations concerning Dr. Melo’s Article and Patents, Dr. Melo was finally provided notice that there was an Investigation Committee empaneled to investigate her Article and Patent.

23. On February 2, 2023, Dr. Melo was notified, for the first time, by MD Anderson that she was added as a Respondent. This was over four years after the Inquiry Committee was convened and over three years after the Investigation Committee began the Investigation. Thus, for over four years MD Anderson inquired and investigated Dr. Melo’s Article and Patents without providing her the opportunity to be heard, as required by MD Anderson’s Policy.

24. Notably, MD Anderson’s Policy provides no authority to add Respondents at the Investigation stage. This is consistent with the Policy’s overall position, as discussed above, that Respondents must be notified of an Inquiry and also must be provided the Initial Inquiry Report –

both of which must be provided well before MD Anderson even has the authority to conduct an Investigation. *See* Ex. A.

25. Pursuant to Section 5.5 of the Policy, “[A]ll aspects of an Investigation must be completed within 120 calendar days from the initiation of the Investigation.” *See* Ex. A, ¶ 5.5. This includes MD Anderson’s requirement to provide “the draft Investigation Report to the Respondent for comment.” *Id.*

26. MD Anderson’s Investigation Committee was empaneled in December 2019. Even if this Committee was empaneled on the last day of December, it was required to be completed with the Investigation by April 29, 2020.

27. MD Anderson sent the draft Investigation Report to Dr. Melo on April 23, 2024, at least 1,575 days after initiating the Investigation. Shortly after receiving the draft Investigation Report, Dr. Melo provided MD Anderson a 30-page Response outlining why their findings and position were inaccurate. However, Dr. Melo was notified by Mark Barnes, MD Anderson’s Acting Research Integrity Officer, that MD Anderson has accepted the Investigation Committee’s findings. Exhibit B.

28. In accepting the Investigation Committee’s findings, MD Anderson also decided that it would take certain measures, including contacting *Cancer Cell* “to recommend retraction and/or take other action as may be warranted,” indefinitely prohibit Dr. Melo from receiving any appointment or employment at MD Anderson, indefinitely prohibiting Dr. Melo from performing any research at MD Anderson, and indefinitely prohibiting Dr. Melo from receiving research-related funding directly or indirectly from MD Anderson.

The Investigation’s Faulty Conclusions

29. Defendant’s faulty investigation and blatant disregard for the procedural

requirements resulted in damning and unjustified findings that have no scientific basis.

30. Plaintiff expressly denies the findings of research misconduct made by MD Anderson. Its findings are scientifically unfounded, as all source data for the Cancer Cell manuscript are available, documented, and independently verified. The findings of the publication remain valid and reproducible, and no data manipulation or fabrication was demonstrated. The sole alleged ‘misconduct’ found by the investigation was that there was missing data from an unrelated patent, *not the actual publication in question*.

31. Additionally, some of the Article’s research was conducted at Harvard Medical School, not MD Anderson. Despite this, MD Anderson’s investigation failed to assess any of the research done at Harvard Medical School. Thus, MD Anderson’s conclusions are based on an incomplete record of the research.

The Investigation’s Faulty Conclusions Contradict Established Guidelines and MD Anderson’s Previous Inquiry

32. In fact, the Committee of Publication Ethics (“COPE”) has published a ‘Retraction Guideline’, which is the industry standard used by scientific journals when determining if retractions should be made. COPE specifies that retraction is inappropriate when data is reproducible, findings are valid, and concerns are correctable – all factors that exist here. Thus, MD Anderson’s recommendation for retraction directly contradicts the standards set out by COPE.

33. MD Anderson’s findings were also directly contradicted by *its own previous internal inquiry*. In 2016, the same concerns raised in the current investigation were already formally reviewed by MD Anderson. At that time, following an anonymous PubPeer allegations, an internal inquiry was conducted and confirmed that all original source data for the *Cancer Cell* manuscript were available and properly documented. The inquiry concluded that no further action was warranted. The senior author notified the journal, whose editor-in-chief reviewed the materials

and found no need for editorial action.

MD Anderson's Apparent Conflict of Interest

34. MD Anderson's pursuit of retraction is even more confounding by its inconsistency. The article that was subject to Defendant's Investigation used the same data that was used to support patents co-owned by MD Anderson. However, MD Anderson has not taken any action whatsoever that would call into question the sufficiency of data supporting the patent. Notably, the university has received royalties from the co-owned patents at issue and recently re-licensed the patent to RegenNexus LLC, despite acknowledging that the original patent data are missing. This dual behavior — monetizing the patent while seeking retraction of the publication — suggests a financial motivation to preserve patent credibility at Plaintiff's expense

CAUSES OF ACTION

35. Plaintiff Dr. Melo incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

Count I— Declaratory Judgment

36. Plaintiff adopts and incorporates by reference all allegations set forth hereinabove as if fully restated in this paragraph.

37. Plaintiff petitions this Court for a declaratory judgment pursuant to Chapter 37 of the Texas Civil Practice & Remedies Code declaring that, pursuant to Article 1, Section 19, of the Texas Constitution, Defendant's actions in furtherance of coming to its decision to find Plaintiff guilty of research misconduct infringed the due process rights of Plaintiff.

38. MD Anderson failed to follow numerous basic procedural protections provided by its Research Misconduct Policy.

39. Thus, Plaintiff requests the Court declare MD Anderson's final decision related to

Plaintiff's alleged research misconduct void.

Count II – Deprivation of Procedural Due Process

40. Plaintiff adopts and incorporates by reference all allegations set forth hereinabove as if fully restated in this paragraph.

41. MD Anderson failed to follow numerous basic procedural protections provided by its Research Misconduct Policy, including failure to:

- i. Provide Dr. Melo notice of the allegations received related to her Article and Patents;
- ii. Conduct an Inquiry into allegations of research misconduct related to Dr. Melo;
- iii. Provide Dr. Melo a copy of the Initial Inquiry Report;
- iv. Provide Dr. Melo written notification of the allegations of research misconduct prior to investigation;
- v. Provide Dr. Melo an opportunity to be involved in and respond to the allegations;
- vi. Provide Dr. Melo an opportunity to be involved in and respond to the Inquiry Committee's findings;
- vii. Begin the Investigation within thirty days of the Inquiry Committee's decision that an Investigation was warranted; and
- viii. Complete the Investigation within 120 days of its initiation.

42. Due process at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

43. Moreover, where a person's good name, reputation, honor, or integrity is at stake

because of what the government is doing to him, the minimal requirements of due process must be satisfied. *Goss v. Lopez*, 419 U.S. 565, 574 (1975); *Univ. of Texas Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 930 (Tex. 1995).

44. MD Anderson's decision to find Dr. Melo guilty of research misconduct directly impacts her reputation, integrity, and good name. Thus, MD Anderson's failure to provide Dr. Melo the basic procedural protections enumerated in its own Policy deprived Dr. Melo a liberty interest in her standing with fellow scientists and for later opportunities for employment.

45. Therefore, MD Anderson's utter disregard for the procedural safeguards put in place by its own Policy violated Dr. Melo's procedural due process rights.

Count III – Breach of Contract

46. Plaintiff adopts and incorporates by reference all allegations set forth hereinabove as if fully restated in this paragraph.

47. Under Texas law, a university's policies arise to the level of an enforceable contract.

48. The Research Misconduct Policy was written and published by Defendant.

49. MD Anderson's Research Misconduct Policy provides specific procedural guidelines it must follow before making a finding of research misconduct.

50. MD Anderson failed to follow numerous basic procedural protections provided by its Research Misconduct Policy.

51. In failing to follow numerous basic procedural protections provided by its Research Misconduct Policy, MD Anderson breached its contract with Dr. Melo.

52. As a proximate result of MD Anderson's breaches, Dr. Melo has suffered actual and consequential damages, and has been forced to incur reasonable and necessary attorneys' fees.\

ATTORNEYS' FEES & COSTS

53. Plaintiff is entitled to recover reasonable and necessary attorneys' fees that are equitable and just because this is a suit for declaratory relief. *See* Tex. Civ. Prac. & Rem. Code § 37.009.

54. Additionally, Plaintiff is entitled to recover reasonable and necessary attorneys' fees and costs because this suit is for breach of a written contract. *See* Tex. Civ. Prac. & Rem. Code § 38.001.

CONDITIONS PRECEDENT

55. All conditions precedent have occurred, been performed, been waived, or are excused by law or the actions of Defendant herein.

PRAYER

56. For these reasons Plaintiff Dr. Melo, ask that Defendant be cited to appear and answer, and that Plaintiff be awarded judgment against Defendant for the following:

- All available actual, special, and/or equitable damages;
- Declaratory judgment;
- Reasonable and necessary attorney's fees
- Damages as the Court deems equitable and just
- Pre- and post-judgment interest in the maximum amount under the law; and
- All of other further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

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Violation of Procedural Due Process and Breach of Contract

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Case Contacts

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