

**CAUSE NO. 2025-25681**

**DR. SONIA MELO, M.D.,**  
*Plaintiff,*

v.

**UNIVERSITY OF TEXAS MD ANDER-  
SON CANCER CENTER,**  
*Defendant.*

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**IN THE DISTRICT OF  
HARRIS COUNTY, TEXAS  
61<sup>ST</sup> JUDICIAL DISTRICT**

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**DEFENDANT’S PLEA TO THE JURISDICTION**

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Defendant, The University of Texas MD Anderson Cancer Center (“MD Anderson”) files this plea to the jurisdiction (“Plea”) based solely on the allegations in Plaintiff’s Amended Petition for Declaratory Judgment, Violation of Procedural Due Process, and Breach of Contract (“Amended Petition”):

**I. INTRODUCTION**

The Court should grant MD Anderson’s Plea and dismiss Plaintiff’s claims with prejudice because (1) sovereign immunity bars Plaintiff’s claims against MD Anderson for money damages; (2) sovereign immunity bars Plaintiff’s claims against MD Anderson for declaratory relief; (3) Plaintiff has only asserted claims against MD Anderson for money damages and declaratory relief; and (4) no amount of re-pleading will give this Court jurisdiction.

## II. BACKGROUND<sup>1</sup>

Plaintiff, Sonia Melo, M.D. (or “Dr. Melo”) worked as a Postdoctoral Fellow at MD Anderson from 2012 to 2014. Dr. Melo’s work at MD Anderson resulted in three (3) patents and an article published in the medical journal *Cancer Cell* in 2014 (collectively, the patents and article are Dr. Melo’s “Work”).<sup>2</sup>

In January 2019, after receiving allegations of research misconduct connected to Dr. Melo’s Work, MD Anderson formed an inquiry committee to investigate. By December 2019, MD Anderson had empaneled an investigation committee to formally investigate the allegations.<sup>3</sup> MD Anderson notified Dr. Melo of its investigation in February 2023. In April 2024, MD Anderson provided Dr. Melo with a draft investigation report, stating that the investigation committee determined that Dr. Melo had, indeed, engaged in research misconduct.<sup>4</sup> Dr. Melo thoroughly responded to the report, claiming that it was inaccurate.<sup>5</sup> In May 2024, after receiving and considering Dr. Melo’s response, the investigation committee prepared a final report accepting all the findings in the draft report.<sup>6</sup> In light of its findings, MD Anderson asked Dr. Melo to pursue retraction of her 2014 *Cancer Cell* article, stating that it would pursue retraction if she was unwilling to. It also indefinitely prohibited her from (1) receiving any appointment or employment at MD Anderson, (2)

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<sup>1</sup> The following background information is based solely on the allegations in Plaintiff’s Amended Petition. Though the Court must—for purposes of deciding MD Anderson’s Plea—assume they are true, MD Anderson does not affirm their veracity by reciting them here.

<sup>2</sup> Am. Pet., ¶¶ 7-11.

<sup>3</sup> *Id.*, ¶¶ 12-20.

<sup>4</sup> *Id.*, ¶27

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, ¶¶ 23-27, Exhibit B.

performing any research at MD Anderson or in collaboration with MD Anderson researchers, and (3) receiving research-related funding directly or indirectly from MD Anderson.<sup>7</sup>

Dr. Melo has sued MD Anderson for declaratory and pecuniary relief, bringing three (3) claims.<sup>8</sup> First, she alleges that in investigating her research misconduct, MD Anderson failed to follow its own Research Misconduct Policy, depriving her of her rights to due process under the Texas Constitution.<sup>9</sup> She seeks a court declaration that “MD Anderson’s final decision related to [her] alleged research misconduct [is] void.”<sup>10</sup> Second, Dr. Melo claims that MD Anderson’s alleged failure to follow its Research Misconduct Policy deprived her of a liberty interest in her standing with fellow scientists and later employment opportunities, for which she presumably seeks money-damages.<sup>11</sup> Third, and finally, Dr. Melo claims that the Research Misconduct Policy constituted an enforceable, written contract between her and MD Anderson. According to Dr. Melo, MD Anderson breached its contract with her by failing to follow the policy, causing her actual and consequential pecuniary loss.<sup>12</sup>

### **III. STANDARD OF REVIEW**

A plea to the jurisdiction challenges the trial court’s authority to determine a cause of action. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). To invoke a court’s authority,

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<sup>7</sup> Am. Pet., Exhibit B.

<sup>8</sup> *See id.*, ¶ 56.

<sup>9</sup> *Id.*, ¶ 37.

<sup>10</sup> *Id.*, ¶ 39.

<sup>11</sup> *Id.*, ¶ 44; *see* discussion concerning Dr. Melo’s “Count II” *infra*, page 5, FN 13.

<sup>12</sup> *Id.*, ¶¶ 47-52.

a plaintiff must allege facts that affirmatively demonstrate that the court has jurisdiction to hear the cause. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

A plea to the jurisdiction can take two forms: (1) a challenge to the plaintiff's pleadings regarding the allegations of jurisdictional facts, or (2) an evidentiary challenge to the existence of jurisdictional facts. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (2012). Thus, the "plea may challenge the pleadings, the existence of jurisdictional facts, or both." *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018).

Where, as here, a plea to the jurisdiction challenges only the pleading itself, the court must determine whether the plaintiff has alleged facts that affirmatively demonstrate the court has jurisdiction over each of plaintiff's claims. *Univ. of Tex. at El Paso v. Esparza*, 510 S.W.3d 147, 154 (Tex. App.—El Paso 2016, no pet.). The court accepts the allegations in the pleading as true and construes them in the plaintiff's favor. *Id.* If the plaintiff fails to meet her burden to demonstrate jurisdiction, then the court must grant the plea. *Id.* If, however, the pleadings affirmatively negate the existence of jurisdiction, then the court should grant the plea and dismiss plaintiff's claims with prejudice without allowing the plaintiff any opportunity to amend. *Id.*

#### **IV. ARGUMENT**

MD Anderson is a governmental entity entitled to sovereign immunity. *See* Tex. Educ. Code § 65.02(a)(11); *Deville v. Univ. of Tex. M.D. Anderson Cancer Ctr.*, 634 S.W.3d 324, 329 (Tex. App.—Houston [1st Dist.] 2021, no pet.). Consequently, M.D. Anderson is immune from suit absent a constitutional or legislative waiver of its immunity. *MD Anderson Cancer Center v. Wang*, No. 01-23-00911-CV, 2024 WL 2853698, \*2 (Tex. App.—Houston [1st Dist.] Jun. 6, 2024, pet. denied). There is nothing waiving MD Anderson's sovereign immunity from Dr. Melo's claims.

Rather, sovereign immunity deprives this Court of jurisdiction over her current claims and any other claims she could possibly allege against MD Anderson. The Court, therefore, must dismiss all of Dr. Melo's claims with prejudice. *Esparza*, 510 S.W.3d at 154

**A. Sovereign immunity bars Plaintiff's claims against MD Anderson for damages.**

Sovereign immunity protects MD Anderson from lawsuits for money damages. *Tex. Nat. Resource Conserv. Comm'n v. IT-Davy*, 74 S.W.3d 849, 853 (Tex. 2002). Thus, to the extent that Dr. Melo seeks damages for any of her claims, sovereign immunity bars those claims.<sup>13</sup> This includes her breach-of-contract claim.<sup>14</sup> Unless Dr. Melo obtained legislative consent to sue MD Anderson for breach of contract—and she has not—sovereign immunity defeats this Court's subject-matter jurisdiction over that claim. *IT-Davy*, 74 S.W.3d at 854-55. Sovereign immunity bars Dr. Melo's constitutional claims for damages as well.<sup>15</sup> See *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995) (“There is no state ‘constitutional tort’”) (citation omitted). Thus, the Court must dismiss Dr. Melo's Counts II (Deprivation of Procedural Due Process) and III (Breach of Contract) with prejudice.

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<sup>13</sup> Am. Pet., ¶¶ 52, 56.

<sup>14</sup> *Id.*, ¶¶ 46-52 (Count III)

<sup>15</sup> See *id.*, ¶¶ 40-45 (Count II). Though the claim appears to be a constitutional claim for damages akin to a claim under 42 U.S.C. § 1983, Dr. Melo does not entirely specify whether Count II (entitled “Deprivation of Procedural Due Process”) of her Amended Petition is a money-damages claim or a Uniform Declaratory Judgment Act (“UDJA”) claim. Whether it's a UDJA claim or a constitutional-tort claim for damages, sovereign immunity bars it, and the Court must dismiss it. See, e.g., *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 620 (Tex. 2011) (explaining that sovereign immunity bars UDJA claims against the state); *Bouillion*, 896 S.W.2d at 149 (holding that sovereign immunity bars constitutional-tort claims against the state for damages).

**B. Sovereign immunity bars Plaintiff’s UDJA claim against MD Anderson.**

Sovereign immunity also bars Dr. Melo’s claim for declaratory relief.<sup>16</sup> The Uniform Declaratory Judgment Act<sup>17</sup> (“UDJA”) does not confer jurisdiction on this Court, but rather, makes the remedy of a declaratory judgment available for a cause of action already within the Court’s jurisdiction. *IT-Davy*, 74 S.W.3d at 859-60; *State v. Morales*, 869 S.W.2d 941, 947 (Tex. 1994); *Kennesaw Life & Acc. Ins. Co. v. Goss*, 694 S.W.2d 115, 118 (Tex. App.—Houston [14th Dist.] 1985, writ ref’d n.r.e.). State entities, like MD Anderson, therefore, are immune from suit under the UDJA. *See, e.g., Sefzik*, 355 S.W.3d at 620 (“[S]overeign immunity bars UDJA actions against the state and its political subdivisions.”); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372-73 (Tex. 2009) (“[G]overnmental entities...[are] immune from suit” for declaratory judgment.); *IT-Davy*, 74 S.W.3d at 860; *see also El Paso Indep. Sch. Dist. v. McIntyre*, 584 S.W.3d 185, 199 (Tex. App.—El Paso 2018, no pet.) (“[Plaintiffs] seek declarations of their rights under the law (for which immunity is not waived).”).

Indeed, “private parties cannot circumvent the States sovereign immunity from suit by characterizing a suit for money damages, such as a contract dispute, as a declaratory judgment.” *Potter Cnty. v. Tuckness*, 308 S.W.3d 425, 429-30 (Tex. App.—Amarillo 2010, no pet.) (quoting *IT-Davy*, 74 S.W.3d at 856.). Here, Dr. Melo’s request for declaratory judgment is just a re-packaged breach-of-contract claim. The alleged operative facts of both claims are identical: MD Anderson

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<sup>16</sup> Am. Pet., ¶¶ 36-39 (Count I).

<sup>17</sup> Tex. Civ. Prac. & Rem. Code § 37.001, et seq.

allegedly failed to follow its Research Misconduct Policy.<sup>18</sup> In Dr. Melo’s UDJA claim, she alleges that this renders MD Anderson’s final decision void. In her breach-of-contract claim, she alleges this is a breach of contract. In any event, the claims are identical, and Dr. Melo cannot simply recouch her contract claim for money-damages as a UDJA claim and hope the Court has subject-matter jurisdiction over one when it does not have subject-matter jurisdiction over the other. The Court, therefore, must dismiss Dr. Melo’s Count I (Declaratory Judgment) with prejudice.

## **V. CONCLUSION**

Sovereign immunity bars all of Plaintiff’s claims for declaratory relief and damages, and no amount of amending her petition can change that. Consequently, the Court should grant MD Anderson’s Plea and dismiss Plaintiff’s claims with prejudice.

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<sup>18</sup> Compare Am. Pet., ¶¶ 38-39 (Count I—Declaratory Judgment) (“38. MD Anderson failed to follow numerous basic procedural protections provided by its Research Misconduct Policy. 39. Thus, Plaintiff requests the Court to declare MD Anderson’s final decision related to Plaintiff’s alleged research misconduct void.”) with ¶¶ 50-51 (Count III—Breach of Contract) (“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 [Plaintiff].”)

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on February 17, 2025, a true and correct copy of this document was served via the court's e-service system on the following counsel of record:

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