

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

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NORMAN WANG, :  
 :  
 Plaintiff, :  
 :  
 -against- : No. 20-1952  
 :  
 UNIVERSITY OF PITTSBURGH, UNIVERSITY :  
 OF PITTSBURGH MEDICAL CENTER, UNIVERSITY :  
 OF PITTSBURGH PHYSICIANS, AMERICAN HEART :  
 ASSOCIATION, INC., WILEY PERIODICALS, INC., :  
 SAMIR SABA, MARK GLADWIN, KATHRYN :  
 BERLACHER, MARC SIMON, and JOHN DOES 1-10, :  
 :  
 Defendants. :  
 :  
-----X

**COMPLAINT**

This is an action for retaliation in violation of the First Amendment and in violation of federal law, as well as state law claims.

**JURISDICTION AND VENUE**

1. This is an action arising under the Constitution and laws of the United States. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)-(4).
2. Plaintiffs seek relief under 42 U.S.C. §§ 1981, 1983, 1988, and 2000d et seq.
3. Jurisdiction over the state law claims at Count III through Count VII is invoked pursuant to the doctrine of supplemental jurisdiction at 28 U.S.C. § 1367. The state law claims (Count III through Count VII) form part of the same case or controversy as Counts I and II.
4. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claim occurred in this district.



9. Defendant UPP is a group medical practice that employs faculty physicians and is affiliated with, and wholly-owned by, UPMC. It supplies physician services to UPMC facilities and its employees also serve as faculty at UPSOM.

10. Defendant American Heart Association, Inc. is a New York not-for-profit corporation whose headquarters is in Dallas, Texas. It publishes the Journal of the American Heart Association (“JAHA”), which is published online and throughout the world, including in this district.

11. Wiley Periodicals, Inc. (“Wiley”) is a Delaware corporation that publishes and distributes online journals, including JAHA.

12. Defendant Samir Saba is the Chief of the Cardiology Division in the Department of Medicine at UPSOM. The actions taken by Defendant Saba described below were taken in

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## FACTUAL BACKGROUND

17. Plaintiff's employment contract with UPP requires him to provide both academic services to UPSOM and physician services to UPMC. In the contract, UPP delegates supervision of all of Plaintiff's activities required by the contract – both his academic ac







Plaintiff any opportunity to rebut any such charges of wrongdoing or errors. In a statement announcing the retraction on August 5, 2020, Wiley and AHA explained the need to remove Plaintiff's article from the publication:

The author's institution, the University of Pittsburgh Medical Center (UPMC), has notified the Editor-in-Chief that the article 12 0Tw 9.24 0 Td (h)2421h



39. AHA and Wiley did not return the \$1600 fee that Plaintiff paid pursuant to the contract between him, on the other hand, and AHA and Wiley, on the other.

40. Plaintiff asked AHA and Wiley to identify the flaws in the article, including the misquotations that they claim he included in it. Neither AHA nor Wiley responded to Plaintiff's request.

41. On or around August 2, 2020, Saba re-tweeted a Twitter post that stated that the article used misquotes, false representations, and racist thinking:

This article [of Plaintiff's] uses misquotes, false interpretations, and racist thinking to defend a single person's conclusions. We are outraged that @JAHA\_AHA published this shameful and infuriating piece

In an email sent to the UPMC community at UPMC, on August 6, 2020, Saba asserted that the Dean of UPSOM, Dean Anantha Shekhar, sought the retraction of Plaintiff's article.

42. On or around August 2, 2020, Berlacher tweeted a Twitter post in which she

sources, that necessitated the intervention of his school's dean to ensure the retraction of the article.

45. To date, Plaintiff remains barred by UPSOM, UPMC, and UPP from contacting any residents or fellows. His removal from the position of director of the fellowship program in clinical cardiac electrophysiology remains in effect. These adverse actions constituted substantial changes in Plaintiff's employment responsibilities.

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56. UPMC receives federal funds for the purpose of funding residents and fellows.

57. UPMC retains residents and fellows by contract.

58. Among other reasons, Pitt receives federal funds so it can provide assistance for medical students in paying its tuition and fees.

59. Pitt has a contractual relationship with the medical students it admits to UPSOM. The students pay money in exchange for a medical education.

60. UPMC and Pitt discriminated against Plaintiff and imposed adverse consequences against him because he apprised Saba and Berlacher on July 31, 2020 (i) that UPMC's selection process for residents and fellows discriminated on the basis of race and ethnicity, and violated federal law; and (ii) that UPSOM's selection process for medical students discriminated on the basis of race and ethnicity and violated federal law.

61. Plaintiff had a reasonable belief that UPMC's selection process for residents and fellows discriminated on the basis of race and ethnicity, and violated federal law, and that UPSOM's selection process for medical students discriminated on the basis of race and ethnicity and violated federal law.

62. UPMC's and Pitt's discrimination against Plaintiff violated Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and 42 U.S.C. § 1981.

63. Plaintiff has suffered damages and will continue to suffer damages as a consequence of the adverse actions taken by defendants. Accordingly, he is entitled to both damages for past harm and injunctive and/or declaratory relief to prevent ongoing and future harm.

THIRD CLAIM FOR RELIEF (FOR DEFAMATION)

AGAINST PITT, UPMC, UPP, SABA, BERLACHER, SIMON, AHA,

WILEY, AND JOHN DOES 6-10

64. Plaintiff incorporates all prior allegations.

65. Under Pennsylvania Law, the publication or utterance of defamatory statements made with the intent to injure an individual regarding his business or chosen profession constitutes defamation *per se*.

66. “A statement is defamatory *per se* as an accusation of business misconduct if it “ ‘ascribes to another conduct, characteristics or a condition that would adversely affect his fitness for the proper conduct of his lawful business.’ ” *Synogy, Inc. v. Scott-Levin, Inc.*, 51 F. Supp. 2d 570, 580 (E.D. Pa. 1999) (quoting *Clemente v. Espinosa*, 749 F.Supp. 672, 677-78 (E.D. Pa. 1990) (quoting Restatement (Second) of Torts § 573 (1977)). *Clemente v. Espinosa*, 749 F. Supp. 672, 677 (E.D.Pa.1990).)

67. Defendants Pitt, UPMC, UPP, Saba, Berlacher, Simon, John Does 6-10, AHA, and Wiley made verbal and written statements in response to Plaintiff’s scholarly article, which accused Plaintiff of professional incompetence, and academic dishonesty.

68. Defendants Pitt, UPMC, UPP, Saba, Berlacher, Simon, John Does 6-10, AHA, and Wiley engaged in defamation *per se* by offering statements that would be particularly harmful to an individual engaged in Plaintiff’s business or profession.

69. Defendants Pitt, UPMC, UPP, Saba, Berlacher, Simon, John Does 6-10, AHA, and Wiley had reviewed and read Plaintiff’s article, and made their defamatory statements

70. Saba's assertion that the Dean of UPSOM had sought the retraction of Plaintiff's article was defamatory. Saba stated this knowing it was false or with reckless disregard of whether it was false.

71. The statements made by Defendants were clearly and intentionally false and communicated to a broad audience.

72. The statements made by Defendants were offered as statements of fact, not

and Wiley publishing the article in JAHA online. In retracting Plaintiff's article, AHA and Wiley breached its contract with Plaintiff.

78. Plaintiff has suffered damages and will continue to suffer damages as a consequence of AHA and Wiley's breach of contract.

FIFTH CLAIM FOR RELIEF (FOR TORTIOUS INTERFERENCE)

AGAINST PITT, UPP, UPMC, AND JOHN DOES 6-10

79. Plaintiff incorporates all prior allegations.

80. Pitt, UPP, UPMC, and John Does 6-10 knew that Plaintiff had an agreement with AHA and Wiley to publish Plaintiff's article in JAHA. Each of them tortiously interfered with the contract without justification, and Plaintiff's business relationship with AHA and Wiley, by inducing AHA and Wiley to breach the contract by retracting the article.

81. Plaintiff has suffered damages and will continue to suffer damages as a consequence of these defendants' tortious interference with his contract and business relationship with AHA and Wiley, and their inducement of AHA and Wiley's breach of contract.

SIXTH CLAIM FOR RELIEF (FOR BREACH OF CONTRACT)

AGAINST UPP

82. Plaintiff incorporates all prior allegations.

83. By seeking retraction of the article, UPP breached the implied covenant of good faith and fair dealing under its contract with Plaintiff because it frustrated Plaintiff's ability to receive additional compensation for academic productivity. Accordingly, it breached the contract with Plaintiff.







100. Therefore, Pitt, UPMC, UPSOM and UPP, including Gladwin, Saba, and Berlacher, retaliated against Plaintiff for his decision to report the violations of federal and

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severe loss of professional status and reputation in the community of his peers, serious losses of pay, benefits and other employee remunerations, and an undeserved and painful diminution of his ability to provide himself and his family with the earned rewards of excellence in his career.

Demand For Judgment

WHEREFORE plaintiff demands judgment:

A. A declaratory judgment that defendants violated, and are violating, 42 U.S.C. §§ 1981, 1983, and 2000d

Michael E. Rosman (pro hac vice application forthcoming)  
Michelle A. Scott (pro hac vice application forthcoming)  
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